"Retirement Plans: Navigating Recent Law Changes & Using them to Your Advantage"

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OUR SPEAKERS

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COVID-19 CONSIDERATIONS

What are we likely to see as a result?

- Partial plan terminations
- Terminations
- Suspension of employer contributions
- Increased loan/distribution activity
- Changes in savings rates
- ADP/ACP testing implications
- Market declines and going concern
- Significant plan amendments

NEW LAWS & REGULATORY UPDATES

Primarily relates to 2020 plan year:

- CARES Act (signed 3/27/20)
- SECURE Act (signed 12/20/19)
- “End of year” rule for amendments (extended for CARES/SECURE through end of 2022)

Primarily relates to 2019 plan year:

- Plan amendments for hardships (Budget Act); effective 1/1/19
- Student loan benefits
- No additional Form 5500 or PBGC filing extension yet for calendar year plans (still 10/15)

CARES Act – Distributions (“CRDs”)

- Withdrawal of up to $100,000 up until December 31, 2020 for qualified individuals*
- The tax consequence may be recognized ratably over 3 years or may be repaid into a qualified retirement account or IRA for up to 3 years (without regard to IRS annual limits)
- Repayment of contributions will be treated as eligible rollover contributions
- No early withdrawal 10% penalty on qualified withdrawals for non-retiree age individuals
- RMDs can be suspended in 2020 for DC plans and IRAs (regardless of COVID-19 eligibility)
- At the plan sponsor’s discretion, however, plans must be amended

CARES Act - Loans

- 401(k) loans of up to $100,000 or 100% of their vested balance for qualified individuals (up from $50,000 or 50%)
    - For new loans made on or before September 23, 2020
- Loan repayments due March 27, 2020 through December 31, 2020 can be delayed for up to 1 year
- At the plan sponsor's discretion, however, plans must be amended

CARES Act – Plan Sponsor Considerations

- Fiduciary responsibilities still need to be fulfilled by regular meetings with plan committee members and outside advisors
- Pension contributions – employers can delay funding contributions until December 31, 2020
- DC employer contributions are still due the following year (as late as September or October) to be deductible on the current year tax return
- Limited relief for timing of employee contributions!
- Possible suspension of safe harbor contributions if operating at an “economic loss” or if the employer sends out an annual safe harbor notice that the plan could be amended or suspended with 30 days notice
- Possible suspension of matching contributions and nonelective employer contributions (may require plan amendment and notice to participants)

CARES Act – Auditor Considerations

- Ensure loans and distributions are being properly administered (plan amendments need to occur when necessary)
- Loan repayments could be impacted
- Partial plan terminations as a result of layoffs
- Additional disclosures in financial statements may be necessary
- Timing and amount of employer contributions could be impacted and still need to be in compliance with plan provisions

CARES Act – Auditor Considerations

- Timely employee contributions and loan repayments
- Internal controls changes at the service provider or plan sponsor
- New payment types/codes; as always, we need to ensure the definition of compensation is followed and contributions are properly calculated
- Plan fees may increase with more expenses running through the plan

ADDITIONAL RELIEF

IRS Notices:

- 2020-23 & 2020-35 (deadline extensions)
- 2020-42 (notary/spousal consent)
- 2020-50 & IRS FAQs (CARES)
- 2020-51 (RMDs)
- ESBA Disaster Relief Notice 2020-01
- Final Treasury Regulations (hardships)

Polling Question #1

SECURE Act – Defined Contribution Plans

Relevant updates include the following:

- Required minimum distribution (RMD) age increase to 72 (from 70 ½)
- RMD rules for non-spouse beneficiaries
- Qualified birth and adoption withdrawals (and related payback)
- New lifetime income participant disclosures
- Nondiscrimination testing relief for DC make-whole contributions

SECURE Act – Defined Contribution Plans

Auto-enrollment cap increase to 15% (from 10%) for QACA safe harbor plans

Increased access to lifetime income/annuities in DC plans (safe harbor & liquidity restrictions removed)

Long-term, part-time employees will be granted participation (upon meeting criteria – 3 years and 500 service hours)

No safe harbor notice for non-elective contributions

SECURE Act – Defined Contribution Plans

Pooled Employer Plans (PEPs):

Also known as open multiple employer plans (MEPs)

Allow unrelated employers to participant in the same MEP

Compliance failure by one employer does not jeopardize qualification for other employers

Benefits to employers:
- Outsources substantially all fiduciary responsibility and risk to PEP provider
- Frees up time and resources to focus on core business
- Reporting and disclosure obligations are condensed and standardized

Benefits to employees:
- Larger scale reduces administrative and investment fees
- Professional management leads to adoption of best practices and new opportunities (e.g., lifetime income)

Responsibilities retained by employer:
- PEP provider selection
- Level of DC contributions
- Data feed with recordkeeper

1st PEPs will be effective January 1, 2021

Polling Question #2

SECURE Act – Defined Benefit Plans

- Nondiscrimination testing relief for closed pension plans
- Required minimum distribution (RMD) age increase to 72 (from 70 ½)
  - Actuarial increases or in-service distributions continue to be required beginning at age 70 ½ for active employees
- Lowers minimum permissible age for in-service distributions from 62 to 59 ½
- Repeal of three Affordable Care Act taxes:
  - 40% excise tax on high-cost plans (“Cadillac tax”)
  - Health Insurer Fee applicable to insured plans
  - 2.3% medical device tax

SECURE Act – Auditor Considerations

- Ensure RMDs are being administered properly
- Analyze new withdrawal types closely and ensure appropriate support is provided
- Pay close attention to various plan amendments and if plan is being operated in accordance with these amendments
- Understand new nondiscrimination testing requirements

On the horizon (consulting opportunities) –

- As plan sponsors gear up for the part-time employee changes over the next few years, clients may ask for our assistance in tracking relevant criteria
- Plans may opt for the MEP option which will change the audit landscape

Thank you!

More questions?

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