Employee Benefits Plan Alert

Winter 2020 EBP News

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With the new year and the new decade comes new information that employers and participants will need to know in the employee benefits sphere. These topics include:

- The SECURE Act: Retirement Plan Changes
- 403(b) Plans: Document Restatements – Last Call
- PCORI Fee Extended
- DOL Proposes Default Electronic Delivery of Retirement Plan Documents

The SECURE Act: Retirement Plan Changes

The Setting Every Community Up for Retirement Enhancement Act (the SECURE Act) was signed into law on December 20, 2019 as part of the Further Consolidated Appropriations Act of 2020. This legislation is intended to provide incentives for employers to improve retirement plans and also to enhance the retirement opportunities for employees. To pay for the many improvements, the SECURE Act also has significantly increased the penalties for the failure to timely file forms and notices required to be reported to the IRS/Department of Labor or plan participants, respectively.

It is the most comprehensive retirement plan legislation since the Pension Protection Act of 2006.

The following is a summary of the major provisions affecting qualified retirement plans and 403(b) plans. There will be further guidance and regulations issued on these provisions, and we will be preparing future Alerts identifying and clarifying these changes.

Plan Years Beginning after December 31, 2019

Rules in Electing Safe Harbor Status: (ONLY applies to Safe Harbor Non-Elective Option)

- Traditional 401(k) plans can now be amended mid-year to become a 3% non-elective contribution type safe harbor plan before 30 days are left in the given plan year.
- If the mid-year amendment is adopted fewer than 31 days before the end of the plan year, the non-elective safe harbor contribution of at least 4% of annual compensation (or from participant entry date depending on the plan document) and the amendment must be adopted no later than the end of the next plan year.
- The annual safe harbor notice would no longer be required for plans using the non-elective contribution approach.

Increase in Cap for QACA (Qualified Automatic Contribution Arrangement) Plans:

- The cap on automatic enrollment contributions for QACA plans has increased from 10% to 15% of compensation for qualified automatic contribution arrangement safe harbor plans. This increased percent applies after the employee's first plan year of participation.
- The first year the plan is adopted the automatic enrollment contribution cannot be more 10%.

Reduction in Minimum Age Allowable for In-service Distributions for Defined Benefit and Governmental Plan:

- Moves the voluntary in-service distribution age for defined benefit plans and Governmental 457(b) plans from age 62 to age 59½.

Tax Years Beginning after December 31, 2019

Adopt a Profit Sharing Plan by Filing Due Date:

- Permit a new plan to be treated as effective for the prior tax year if adopted no later than the due date of the prior year's tax return, including extensions.
- The additional time to establish a plan provides flexibility for employers that are considering adopting a plan and the opportunity for employees to receive contributions for that earlier year and begin to accumulate retirement savings.

Penalty-Free Withdrawals for Birth of a Child/Adoption:

- The SECURE Act allows Americans who just had a baby or adopted a child to take a withdrawal of up to $5,000 from their vested retirement accounts, including a 401(k) or IRA, without the typical 10% early withdrawal penalty. Taxes still apply.
- The new rule allows each parent to use the $5,000 exemption, which means a couple could take up to $10,000 out penalty-free if they each had separate retirement accounts.
- You have one year from the date your child is born or the adoption is finalized to withdraw the funds from your retirement account without paying the 10% penalty.

Increase in Required Minimum Distribution (RMD) Age:

- Increase the age at which minimum distributions must begin to 72 (effective with respect to individuals who attain age 70½ after December 31, 2019).
- Individuals who have already started to receive their 70½ required minimum distribution will continue taking their RMD.

Calendar Years after December 31, 2019

Increased Penalties for Failure to File Form 5500:

- Increase the late filing penalties for Form 5500 to $250 per day, not to exceed $150,000, and for the registration statement for deferred vested benefits (Form 8955-SSA) to $10 per participant per day, not to exceed $50,000.
- Failure to file a required notification of change in a plan's registration information would result in a penalty of $10 per day, not to exceed $10,000 for any failure.

- Failure to provide a required withholding notice results in a penalty of $100 for each failure, not to exceed $50,000 for all failures during any calendar year.

Plan Years Beginning after December 31, 2020

Allowing Long-term Part-time Employees to Participate in Retirement Plans:

- Effective January 1, 2021, any part-time employee who has not otherwise satisfied the plan's eligibility conditions must be permitted to participate and make elective contributions ***if*** the employee has completed 3 consecutive 12-month periods of employment and was credited with at least 500 hours of service in each of those periods. (Exception: collectively bargained plans not applicable.)

- No employer contribution (including top-heavy minimum contributions) would be required until the employee has satisfied the plan's normal eligibility requirements. However, the part-time employee would need to be allowed to defer into the plan.

- Twelve-month periods of service before January 1, 2021, however, need not be counted, which will further delay the date by which a part-timer might first enter a plan under this new mandate.

Miscellaneous Provisions Effective January 1, 2020

Disclosure Regarding Lifetime Income:

- The legislation requires benefit statements provided to defined contribution plan participants to include a lifetime income disclosure at least once during any 12-month period. The disclosure would illustrate the monthly payments the participant would receive if the total account balance were used to provide lifetime income streams, including a qualified joint and survivor annuity for the participant and the participant's surviving spouse and a single life annuity.

- Effective for benefit statements issued 12 months after the release of DOL guidance.

Modification of Required Distribution Rules for Designated Beneficiaries:

- SECURE eliminates the so-called stretch IRA (which also applies to qualified plans and 403(b) plans). Under current law, after the death of a plan participant or IRA owner, a non-spouse beneficiary is permitted to stretch the required minimum distributions over the beneficiary's life based on his or her life expectancy.

- Under the new law, all amounts held by the plan or IRA must be distributed within 10 years of the plan participant's or IRA owner's death.

- An exception to the 10-year distribution rule is provided for an "eligible beneficiary," which includes a surviving spouse, minor child, disabled or chronically ill individual, or any other beneficiary who is no more than 10 years younger than the participant or IRA owner. An exception is also provided for certain binding annuities in effect on the date of enactment.

- These new distribution rules will generally apply with respect to participants or IRA owners who die after December 31, 2019. However, government plans will apply the new rules to employees dying after December 31, 2021, and collectively bargained plans will apply them to employees dying in calendar years beginning after the expiration of the current collective bargaining agreement or December 31, 2021, if earlier.

Given the short time before much of SECURE becomes effective, it will allow plans to operate in accordance with the new law without having to immediately amend the plan document. Instead, most plans will have until the end of the 2022 plan year to adopt conforming amendments.

403(b) Plans: Document Restatements – Last Call

Tax-exempt employers that sponsor or offer Internal Revenue Code Section 403(b) plans (including non-ERISA plans) have until March 31, 2020 to complete the amendment and restatement of those plans.

The following is a portion of an article that appeared in a prior Employee Benefit Services Group (EBSG) Alert. It is being provided to assist an employer who has not yet followed the process of restating their 403(b) plan to meet the deadline provided by the Internal Revenue Service in Revenue Procedure 2017-18, or for an employer who has received a signature-ready restated plan document from their vendor without any input or changes made to the prior document. Many employers have taken the time during this restatement process to add (e.g., auto enrollment) or change (e.g., reduce the number of loans available, increase the cash-out dollar limit) plan provisions.

> **403(b) Plans**
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> The time to adopt an amended or restated 403(b) plan is running out. Many 403(b) plan sponsors have completed the transition process of restating their 403(b) plan. Others are awaiting receipt of an IRS approved prototype or volume submitter type of plan from their record keeper or other service provider. These "new" plan documents are required to be adopted **by March 31, 2020**. The plan documents provided are pre-populated with provisions that are included in the existing plan document. However, there are several additional choices and required attachments that will require consideration for its completion.
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> One example of this process: all amendments that have been made to a plan since its inception (whether it is the 2009 plan year — this was the initial year the IRS required a 403(b) plan document) or a subsequent plan year — will be required to be identified in the new plan document. A prior Employee Benefits Plan Newsletter provided additional information on the 403(b) plan document update. That newsletter can be found here.
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> Some employers who are relying on their record keepers and other service providers to make available an IRS approved 403(b) plan document are realizing these service providers did not elect to submit the required application for an Opinion Letter which is issued by the IRS to a plan document preparer when their review of the plan document is completed. In those situations, the EBSG has worked with employers to secure an approved plan document to ensure the applicable provisions of the plan are correctly identified and represent it to the plan's record keeper and other service providers. This process assists an employer who otherwise may have considered changing their record keeping or other service providers.

PCORI Fee Extended

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) was signed into law on December 20, 2019. This federal legislation will have significant impact in the realm of employee benefits. Among the changes is the extension of the Patient-Centered Outcomes Research Institute (PCORI) fee until 2029 (or 2030 depending on the employer's plan or policy year).

Background: The PCORI fee was established by the Affordable Care Act (ACA), signed into law in 2010. This fee, paid annually by insurers and by employers with self-insured group health plans, is used to fund research to evaluate the effectiveness of medical treatments, procedures, and strategies that treat, manage, diagnose or prevent illness or injury. The fee went into effect beginning with plan/policy years ending on or after October 1, 2012, and was scheduled to expire or "sunset" by October 1, 2019.

Extension: Rather than expiring in 2019, the SECURE Act extends the PCORI fee for another ten years, meaning that insurers and applicable employers will continue to be responsible for paying the fee on an annual basis until 2029 or 2030.

DOL Proposes Default Electronic Delivery of Retirement Plan Documents

The U.S. Department of Labor (DOL) has announced its proposal to permit online retirement plan disclosures in an effort to make them more accessible to millions of Americans who are participants in employer-sponsored retirement plans.

The proposal to electronically deliver retirement plan information is expected to provide substantial savings to plan sponsors and participants (estimated at $2.4 billion over the next decade). Research conducted by private organizations confirms the substantial savings that would result from the implementation of a default electronic delivery system. The research also suggests that there would be an uptick in the number of employees saving through their employer's retirement plan. This is especially true of younger workers who are already getting most of their daily information online and rarely engage with "paper" forms.

How It Works: Under the proposal, announced in October 2019, plan participants would be notified that information is available online, including instructions for how to access the disclosures and their right to receive paper copies of disclosures. The proposal also includes additional disclosure protections for retirement savers, such as standards for the website where disclosures will be posted and a requirement of system checks for invalid electronic addresses by administrators who choose to rely on the new, optional, delivery system. In addition, individuals who prefer to receive these disclosures on paper would still be able to request paper copies and to opt out of electronic delivery entirely. Moreover, administrators may not default disclosures to electronic formats without first notifying – by paper! – the ability to opt for paper disclosures.

Contact Us

The Employee Benefit Services Group at PKF O'Connor Davies is available to assist employers with the various compliance reporting and other requirements imposed by federal agencies. We also provide a full spectrum of compliance services for qualified retirement plans, non-qualified deferred compensation plans, and welfare plans. For more information, please contact your client services partner or either of the following:

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