Employee Benefit Plans Alert

SECURE Act 2.0 Could Be Coming Very Soon

By Jordan Mentry, Manager and Louis F. LiBrandi, Principal

The House Ways & Means Committee unanimously approved the Securing a Strong Retirement Act of 2021 (SECURE Act 2.0 or the Act), sending it to the House floor for consideration. This potential new legislation looks to make even more significant and sweeping changes to the retirement landscape in the United States than the first SECURE Act of 2019.

Some of the more important and interesting changes in the proposed SECURE Act 2.0 as currently drafted are included in this Alert.

Backdrop

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) was signed into law on December 20, 2019. This law provided incentives for employers to improve their retirement plan options, and make saving for retirement easier and more accessible for employees. For information on some of the changes implemented by the SECURE Act, please see our prior EBP Alert here.

Proposed Modifications in 2.0

SECURE Act 2.0 proposes:

- **Raising the required minimum distribution (RMD) age over time** – The SECURE Act changed the RMD age from 70 ½ to 72. Secure 2.0 proposes to raise the RMD over the next 10 years to 73 in 2022, 74 in 2029 and 75 in 2032.

- **Expanding automatic enrollment** – After 2021, newly-created defined contribution plans must enroll new employees at a 3% of pay pretax contribution level. This percentage will automatically increase by 1% annually up to at least 10%, but no more than 15%. Some exceptions as outlined in the Act are church plans, governmental plans, new businesses, and businesses with less than 10 employees.

- **Expediting part-time worker enhancements** – Under the original SECURE Act "long-term, part-time" workers became eligible to contribute to their employers' 401(k) plan once they completed three consecutive years with at least 500 hours of work per year for their employer and were 21 years of age. The proposed legislation would change the eligibility waiting period from three years to two years of employment. The effective date of this change would be January 1, 2024 (from January 1, 2023).

- **Changing catch-up contributions** – The 2021 401(k) catchup contribution limit is $6,500, indexed for inflation. The Act would increase the catch-up limit for participants age 62 to 64 by $10,000. The Act also proposes to put into effect that starting in 2022 all 401(k) catch-up contributions must be made on a Roth or after-tax basis.

Other Proposed Enhancements

- **403(b) Plan Investment Option** – Under current law, 403(b) plans are not allowed to invest in collective investment trusts (CIT), unlike their 401(a) plan counterparts. The Act would allow 403(b) plans to invest in CITs, which are normally lower cost investment options compared to the mutual funds and annuity contracts traditionally found in 403(b) plans. A plan can invest in CITs provided that the plan is: an ERISA plan, the plan sponsor accepts investment selection fiduciary responsibility, a government plan, or the plan has a separate exemption from the securities rules.

- **Matching Contributions** – The Act proposes to allow matching contributions from employers to be treated in part or in whole as Roth contributions, at the employee's direction. However, this feature is not required to be made available in plans by plan sponsors.

- **Student Loans** – The new Act would allow, but not mandate, employers to make matching contributions to their retirement plan on behalf of participants who are making "qualified student loan payments." For nondiscrimination testing purposes, the employees who receive such a match on student loan repayments can be tested separately.

- **Military Spouse Eligibility Credit for Small Employers** – Military spouses often do not remain employed long enough to vest in employer contributions in a plan, or even become eligible to participate. Under the proposed Act, small employers will be eligible for tax credits with respect to their defined contribution plans if they: allow immediate eligibility for military spouses, including eligibility for any match or non-elective contributions, and make the military spouse immediately 100% vested in all employer contributions.

Closing

The changes and enhancements listed just briefly summarize some of the proposals contained in the Securing a Strong Retirement Act of 2021 (SECURE Act 2.0). There are many more contained in the bill. The Employee Benefit Services Group at PKF O'Connor Davies will continue to monitor this bill's progress as it makes its way through the House and Senate.

Contact Us

PKF O'Connor Davies has assisted many clients with a review of their plan documents. In some cases, we were able to identify needed amendments or modifications that permitted employers to correct their plan documents prior to the expiration of the statutory period requiring adoption, or before an IRS examination. We are available to provide this service for sponsors of qualified retirement plans as they navigate the ever-changing retirement plan landscape.

The Employee Benefit Services Group at PKF O'Connor Davies is available to assist employers with all aspects of employee benefit plan compliance. For more information, please email Timothy J. Desmond, Partner at tdesmond@pkfod.com or Louis F. LiBrandi, Principal at llibrandi@pkfod.com.