

# Employee Benefits Corner

## IRS Brings Clarity to a Number of SECURE Act Provisions for Qualified Plans (and IRAs)

By Elizabeth Thomas Dold and David N. Levine

The IRS and the Treasury Department recently issued Notice 2020-68 that provides much anticipated guidance, in Q&A format, to some of the more challenging provisions under the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) and the Bipartisan American Miners Act of 2019 (Miners Act). The guidance includes provisions that impact IRAs and qualified plans. A summary of the provisions covered is outlined below:

- Small employer automatic enrollment credit,
- Repeal of maximum age for traditional IRA contributions,
- Participation of part-time employees in 401(k) plans,
- Qualified birth or adoption distributions,
- Permitting excluded difficulty of care payments,
- Miners Act changes on in-service distributions, and
- Deadline for IRA and plan amendments.

Notably, the most difficult provision regarding the changes to the required minimum distribution rules are not included.

### Business Credit for Eligible Automatic Contribution Arrangement

Section 105 of the SECURE Act added a new business credit under Code Sec. 45T that provides a tax credit for certain employers who add an eligible automatic contribution arrangement (EACA) to a qualified employer plan. The credit is \$500 for any taxable year that occurs during the credit period, beginning in 2020:

- *Who is eligible for the credit?* The employer must have no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year. See Notice 98-4, Section B for more details.
- *Is the credit available in more than three years?* No, regardless of the number of plans with the feature. The credit is available only in the three-year credit period that begins when the employer first includes an EACA in any qualified employer plan.
- *Can the EACA be changed during the three-year period and still receive the tax credit?* No, the EACA feature must continue within

the same plan (or spun-off plan) to obtain the credit.

- *Does the credit apply if the plan is a multiple employer plan (MEP)?* Yes, the credit applies to an employer in a MEP the same way it applies to a single-employer plan, without regard to when the MEP or other employers added the EACA.

## Repeal of Maximum Age for Traditional IRA Contributions

Section 107(a) of the SECURE Act repeals long-standing age 70½ restriction for IRA contributions, which prohibited an individual from making regular contributions to a traditional IRA after reaching such age by the last day of the year, beginning in 2020:

- *Is this provision optional?* Yes, the financial institution is not required to accept post-age 70½ contributions.
- *Does the IRA contract need to be amended to accept these contributions?* Yes, the deadline is December 31, 2022. Notably, the IRS confirms that revised model IRAs and prototype language addressing SECURE Acts are expected.
- *If the IRA allows these contributions, must the financial institution distribute a copy of the amendment and a new disclosure statement to each benefited individual?* Yes, the disclosure statement must be updated, and must be distributed, along with the amendment, to each IRA owner in accordance with Reg. §1.408-6(d)(4)(ii)(C).
- *Can the post-70½ contributions offset the amount of required minimum distributions for such year?* No.
- *How is the qualified charitable distribution impacted by the post-70½ contributions?* An IRA owner turned 70½ before 2020 deducts \$5,000 for IRA contributions in 2020 and 2021, and no contribution is made for 2022. He makes a qualified charitable distribution of \$6,000 in 2021 and \$6,500 in 2022. There is no excludible amount of the qualified charitable distribution in 2021 as the aggregate post-70½ contribution (\$10,000) exceeded the \$6,000 distribution. For 2022, the excludible amount of the qualified charitable distributions is \$2,500 (\$6,500 – (\$10,000 – \$6,000)).

## Participation of Part-Time Employees in 401(k) Plans

Section 112 of the SECURE Act requires employers maintaining a 401(k) plan to cover long term, part-time

employees for elective deferrals who have reached age 21 and have at least 500 hours of service in three consecutive 12-month periods. This 500 hours of service rule also applies to vesting purposes, even if the participant later becomes a full-time employee. This provision is effective for plan years beginning after December 31, 2020:

- *What service applies for vesting purposes?* In general, all years of service with the employer(s) maintaining the plan must be taken into account for vesting purposes, including periods before January 1, 2021. Service prior to reaching 18 can be disregarded.

## Qualified Birth or Adoption Distributions

Section 113 of the SECURE Act added a new distribution right for defined contribution plans, along with an exception to the 10% additional income tax for early distributions from a qualified plan/IRA. This provision is effective for distribution made after December 31, 2019:

- *What is a qualified birth or adoption distribution?* Any distribution of up to \$5,000 from an applicable eligible retirement plan to an individual if made during the one-year period beginning on the date on which the child is born or the legal adoption is finalized.
- *Are there any additional requirements for the distribution?* The individual must include the name, age, and the taxpayer identification number (TIN) of the child or adoptee on the individual's tax return for the taxable year in which the distribution is made.
- *What plans are eligible for the distribution?* A defined contribution 401(a) plan, 403(a) annuity plan, 403(b) annuity plan, governmental 457(b) plan, or an IRA.
- *Who is an eligible adoptee?* Any individual who has not attained age 18 or is physically or mentally incapable of self-support. This means the adoptee must be disabled under Code Sec. 72(m)(7), which is defined as unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be long-continued and indefinite duration. This does not include a child of the taxpayer's spouse.
- *Can each parent receive the distribution for the same child?* Yes (so can get up to \$10,000 for each child/adoptee).
- *Can a parent receive multiples of \$5,000 for multiple births/adoptions?* Yes, as long as the distribution is made within the one-year period. For example, for twins a \$10,000 distribution can be taken from each parent's plan/IRA.

- *Can an individual retribute the distribution to an applicable eligible retirement plan?* Yes, an individual can retribute any portion of the distribution to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made under Code Secs. 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16).
- *Is this distribution right optional by the plan sponsor?* Yes, this provision is not required to be offered.
- *Is an employee certification sufficient for the distribution?* Yes, a plan sponsor or plan administrator is permitted to rely on reasonable representations from the individual, unless the plan sponsor or plan administrator has actual knowledge to the contrary.
- *If the plan sponsor adds the distribution event, is the plan required to accept a retribution of that distribution to the plan?* Yes, the plan must accept the retribution of the qualified birth or adoption distribution from an individual if he or she is eligible to make a rollover contribution to that plan at the time the individual wishes to retribute the distribution.
- *What sources are expressly permitted to be distributed as a result of this SECURE Act change?* Elective deferrals, qualified nonelective, qualified matching, and safe harbor contributions are permitted to be distributed.
- *Is this distribution treated as an eligible rollover distribution for purposes of direct rollover rules, 402(f) notice, and mandatory 20% withholding?* No. The plan is not required to offer an individual a direct rollover option or a 402(f) notice, and the 10% withholding applies (unless elect out).
- *How is the retribution treated?* The retribution is treated as a direct trustee-to-trustee transfer within 60 days of the distribution. Notably, the Notice indicates that 72(t) regulations will be issued to provide additional guidance on the retribution rules, including the timing of retributions.
- *Can an individual treat an otherwise permissible in-service distribution as a qualified birth or adoption distribution?* Yes, through their Form 1040. This results in no 10% additional income tax and can be retributed to an IRA.

## Permitting Excluded Difficulty of Care Payments

Section 116 of the SECURE Act provides that difficulty of care payment (which is a type of non-taxable qualified foster care payment) is counted as compensation for Code Sec. 219 for IRA and for Code Sec. 415 qualified

plan purposes. For 415 purposes, the provision applies retroactive for plan years beginning after December 31, 2015, and for IRAs it applies for contributions made after December 20, 2019:

- *Are difficulty of care payments received by an employee from a person other than his or her employer includible in compensation?* No, the 415 change only applies to payments from the employer. Therefore, no amendment is needed unless the employer makes these payments to employees.
- *Does the 6% excise tax on excess IRA contributions apply to contributions on these types of payments?* This will be addressed in future guidance.

## Miners Act Changes

Section 104 of the Miners Act lowers the minimum age for allowable in-service distributions under Code Sec. 401(a)(36) for defined benefit plans (and money purchase pension plans) from age 62 to age 59½. Similarly, for governmental 457(b) plans, it lowers the minimum age from 70½ to age 59½. These changes are effective for plan years beginning after December 31, 2019:

- *Are these changes optional?* Yes. There is no requirement to offer these in-service distribution rights.
- *Does this change permit a change in the normal retirement age?* No, these in-service distribution rights are separate from the normal retirement age definition.

## Deadline for Plan (and IRA) Amendments

Section 601 of the SECURE Act provides for the end of the 2022 plan year (2024 for governmental plans) to reflect the SECURE Act changes, which includes anti-cutback relief:

- *What is the amendment deadline for qualified plans?* For both discretionary and required plan amendments under the SECURE Act and section 104 of the Miners Act, the last day of the first plan year beginning on or after January 1, 2022 (2024 for governmental plans).
- *What is the amendment deadline for 403(b) plans?* The last day of the first plan year beginning on or after January 1, 2022 (2024 for public schools).
- *What is the amendment deadline for governmental 457(b) plans?* For the SECURE Act and section 104 of the Miners Act, the later of (1) the last day of the first plan year beginning on or after January 1, 2024, or (2) if applicable, the first day of the first plan year beginning more than 180 days after the date of notification

by the Secretary that the plan was administered in a manner that is inconsistent with the requirements of Code Sec. 457(b).

- *What is the amendment deadline for IRAs?* December 31, 2022, or such later date as the Secretary prescribes in guidance. For a deemed IRA, the applicable plan deadline applies.

IRS asks for comments by November 2, 2020. This includes how to address the administrative burden regarding counting vesting service for part-time employees.

## Next Steps

Although plan sponsors and service providers of qualified plans and IRAs have much needed time for plan amendments, plan operations should be reviewed to ensure compliance with these new provisions and the details herein (to the extent plan sponsors elect to offer these benefits, other than the part-time provision which is required), which will likely be well received by plan participants.

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