

Year-End Planning for Your Employee Benefit Plans

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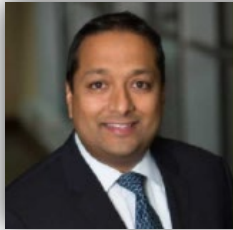
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Learning Objectives

At the end of this session, you will be able to:

- Recognize updated legislation and regulations affecting employee benefit plans
- Determine action you may be required to take in light of recent legislation
- Identify how election results may impact employee benefit plans



Investment Advisory Update

- Assessing market performance
- Considering risks
- Preparing your portfolio



SECURE Act

- Enacted on December 20, 2019, the SECURE Act made a number of changes that are applicable to retirement plans, including:
 - Change to Required Minimum Distributions to Age 72
 - Distribution on Birth of Child or Adoption
 - Lifetime Income Disclosures
 - Long-Term Part-Time Employees Eligible to make deferrals
 - Increase in Maximum Default Deferral Rate for Qualified Automatic Contribution Arrangements
 - Elimination of Annual Notice Requirement for Section 401(k) Safe Harbor Plans that Make Nonelective Contributions



SECURE Act – Required Minimum Distributions

- Change to Required Minimum Distributions
 - The required beginning date by which an individual must begin taking required minimum distributions from qualified plans and IRAs has been changed to April 1 of the calendar year following the calendar year in which an individual attains age 72 (rather than age 70½)
 - Applies to individuals who attain age 70½ after December 31, 2019
 - Mandatory change to the required minimum distribution rules
 - Dual tracking of participants pre-2019 age 70 ½ and post-2019 age 72 distributions



SECURE Act – Distribution on Birth of Child or Adoption

- Distribution on Birth of Child or Adoption
 - Optional provision for employers to adopt
 - Permits a participant to receive a distribution of up to \$5,000 from an eligible retirement plan if the distribution is a qualified birth or adoption distribution:
 - ◇ Must be taken during the one-year period beginning on the date that the child was born or legally adopted by the participant
 - ◇ Distribution is includible in gross income, but not subject to the additional 10% early withdrawal tax
 - ◇ Distribution may be recontributed to an applicable eligible retirement plan to which a participant is permitted to make an eligible rollover contribution, i.e. the plan permits such distributions, the participant received such distribution from the plan and the participant is eligible to make rollover contributions to the plan if amount is recontributed to the plan

SECURE Act – Eligibility for Long Term Part-Time Employees

- Applies to plan years beginning after 12/31/2020
- Does not apply to collectively bargained plans
- 12-month periods beginning before 1/1/2021 shall not be taken into account
- New vesting rules apply to the 3-year participants

Begin Tracking Long Term Part-Time Employees

- A 401(k) Plan must maintain dual eligibility (not applicable to 403(b) plans):
 - An employee must complete either:
 - ◇ One Year of service (under the 1,000 hour rule), or
 - ◇ 3 consecutive years with the employee completing at least 500 hours of service each year

Employees who satisfy the 3 year rule may be excluded from:

Non-discrimination and coverage testing

Top heavy rules

Employer matching or non-elective contributions

Age 21 eligibility requirement may be imposed



SECURE Act – Qualified Automatic Contribution Rate Increase

- Maximum Default Deferral Rate for Qualified Automatic Contribution Arrangements Increased:
 - The maximum permissible deferral rate for a qualified automatic contribution arrangement (“QACA”) increased from 10% of compensation to 15% of compensation for the second plan year and all subsequent plan years (the maximum rate through the end of the first year remains at 10%)
 - Effective for plan years beginning after December 31, 2019

SECURE Act – 401(k) Plan Safe Harbor Flexibility

- Additional flexibility to add or amend safe harbor non-elective contributions
- Future plan years: may add safe harbor 3% no later than 30 days prior to close of plan year retroactive to first of year
- Good strategy for plans failing annual non-discrimination testing
- Amend plans for the 2020 plan year AFTER close of the 2020 plan year:
 - Must provide a non-elective contribution of at least 4% of compensation for the plan year, and
 - The plan is amended by the close of the following plan year (i.e., close of 2021 plan year for 2020 amendment).
 - An annual safe harbor notice may not be required for safe harbor plans using non-elective employer contributions; however a notice is required for plans using Section 401(k)/401(m) matching contribution



Plan Documents

- Cycle 3 plan document restatements – defined contributions plans except 403(b) plans
 - Deadline July 31, 2022
- SECURE Act amendments
 - Deadline last day of plan year starting on or after 1/1/2022 – generally by 12/31/2022. Governmental and collectively bargained plans – end of 2024 plan years
- CARES Act amendments – same deadline as SECURE Act amendments. May not be required



Plan Documents (continued)

- 403(b) plan documents not restated before extended June 30, 2020 deadline – may correct using IRS Self Correction Program (SCP)

CARES Act & COVID Distributions

- COVID Related Plan Distributions
 - Not subject to 10% early withdrawal penalty
 - Participants have option to spread the taxable income from the distribution over 3 years or treat as taxable entirely in 2020
 - Participants have the option to re-contribute the distribution to an eligible qualified plan within 3 years
- Establishes Separate Groups/Classes of Distributions
- Requires Special Tracking Beyond 2020 Plan Year



COVID Distributions – Recommendations

- Proactively review listing of distributions that occurred in 2020 to make sure coronavirus distributions are:
 - ◇ Identified separately from “regular” distributions
 - ◇ Not subject to 10% early withdrawal penalty
 - ◇ Tracked appropriately - outcomes have not yet been determined
 - ◇ Are properly reported on Form 1099-R for 2020
- Engage with service providers to understand how their system will be tracking COVID distributions in 2020, 2021 and 2022
- Modify “off-boarding” checklists to ensure that exiting employees are aware of the CARES Act provisions and reporting that will be made



CARES Act & COVID-19 Plan Loans

- COVID Related Participant Loans
 - Loans for up to \$100K (lesser of (a) \$100K or (b) the participant's vested balance in the plan) – only for loans taken between March 27, 2020 and September 22, 2020
 - Loans outstanding as of March 27, 2020 and any repayment due from March 27, 2020 to December 31, 2020 may be delayed for up to one year



COVID-19 Loans – Recommendations

- Proactively review the listing of participant loans to separately identify loans with suspended payments versus defaulted loans (do they look any different on the reports?)
- Carefully review any Form 1099 reports to make sure loans with suspended payments are not inadvertently reported as defaulted loans and taxable to participants in 2020
- Review all loans over \$50K to make sure they met the requirements under the CARES Act (qualified individual and taken within the special period)



COVID-19 Loans – Recommendations

- Establish a review and tracking procedure until all CARES Act related items are back on the “normal” loan operations (in pay status)
- Engage with service providers (i.e., recordkeeper or TPA) to understand how their system will be tracking these in 2020, 2021 and 2022
- Modify off-boarding checklists to ensure that exiting employees are aware of the coronavirus provisions and reporting that will be made



Other Special Year End Housekeeping Items

- Verify Timeliness of Employee Elective Deferral Contributions
 - Check around the months of March/April/May when shutdown occurred
 - If late deposits exist, work to correct and remit lost earnings before year-end
- Distributions & Participant Loans Often Handled 100% by Recordkeeper
 - Recommend checking distribution and loan reports before year end to ensure that Form 1099-Rs issued for 2020 are accurate
 - Will save time and employee anxiety later to get Form 1099-Rs corrected
 - 402(f) Notice updated for required minimum distribution age change and coronavirus related distributions

Participant Deferral and Loan Repayments

- DOL states in EBSA Notice 2020-21, that they will not take enforcement with a temporary delay of participant deferral deposits and payments to Plans past normal remittance timeline:
 - If the delay is due to COVID-19 related issues beginning from March 1, 2020 through the 60th day following the announced end of the National Emergency
 - Employers and the plan's service providers must act reasonably, prudently, and in the interests of the employees, and make the deposits as soon as administratively practicable under the circumstances
 - Unclear if will be reportable on Form 5500 and, if applicable, in a Plan's audit report and Supplemental Schedule



Become Familiar with 2021 IRS Plan Limits

- \$19,500 for salary deferrals (\$26,000 if age 50 or older)
- \$58,000 total contributions per individual (\$64,500 if age 50 or older)
- Compensation limit \$290,000

[COLA Increases for Dollar Limitations on Benefits and Contributions | Internal Revenue Service \(irs.gov\)](#)



Workforce Reductions & Partial Plan Terminations

- 2020 workforce changes with layoffs, furloughs and rehires due to COVID, evaluate if these changes triggered a partial plan termination under the qualified plan
- Generally a partial plan termination has occurred with the reduction of 20% or more of the workforce in a given year
- If a partial plan termination occurs, all affected participants must be 100% vested
- Is a facts and circumstances determination



Health and Welfare – Section 125 Plans

- IRS Notices 2020-29 and 2020-33 released on 5/12/2020 to help taxpayers address health and dependent care expenses due to the COVID-19 pandemic
 - Employers may amend plans to allow employees to make prospective mid-year elections for health coverage, health FSAs and dependent care assistance programs, or amend plans to add a grace period
 - Unused amounts remaining in a taxpayer's health FSA or dependent care assistance program for expenses incurred for those same qualified benefits are extended through 12/31/2020, fiscal year Plans may differ with timing
 - An employer electing to provide mid-year election flexibility, or allow additional time to apply unused amounts in a health FSA to pay expenses for the remainder of the 2020 year, must adopt a plan amendment by 12/31/2021



Health and Welfare – Section 125 Plans

- IRS Notices 2020-29 and 2020-33 released May 12, 2020 to help taxpayers address health and dependent care expenses due to the COVID-19 pandemic
 - The permitted carryover amount for health care FSAs amount increased to \$550 from \$500. May use for expenses incurred through Dec. 31, 2020
 - Previously provided temporary relief for high deductible health plans (HDHPs) may be applied retroactively to Jan. 1, 2020



Self-Insured Health Plans – PCORI Fees

- PCORI fees reinstated for an additional ten years under the Further Consolidated Appropriations Act 2020:
 - Health insurance issuers and plan sponsors of self-insured health plans are required to report and pay PCORI fees for plan and policy years ending before October 1, 2029 on the Form 720 by the July 31 following the last day of the plan year
 - ◇ The PCORI fee for a plan or policy year is equal to the average number of lives covered under the plan or policy, multiplied by an applicable dollar amount for the year, e.g. \$2.54 for plan years that end on or after October 1, 2019 and before October 1, 2020



Affordable Care Act Requirements

- Employer Shared Responsibility remains law of the land:
 - Employers must continue to comply with the requirements, including annual reporting to employees and Internal Revenue Service
 - Applicable large employers can be subject to penalties if any full-time employee receives a premium tax credit and either the employer fails to offer minimum essential coverage to 95% of its full-time employees, and their dependents, or if the coverage is either unaffordable or does not provide minimum value

Affordable Care Act Requirements

- Internal Revenue Service continues to enforce large employer shared responsibility penalties under Code Section 4980H by issuing Letters 226J and other notices
- IRS has taken position that no statute of limitations applies for failure to comply
- Penalties for failure to file, late filing or no offer of coverage can be significant
- Retention of records and annual filings to employees and IRS should be retained with company permanent files





Questions?

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