

September 2020

## **IRS Issues Guidance on SECURE Act, Miners Act, and Discretionary Amendment Deadlines**

On September 2, 2020, the Internal Revenue Service released Notice 2020-68 (“Miscellaneous Changes under the Setting Every Community Up for Retirement Enhancement Act of 2019 and the Bipartisan American Miners Act of 2019”) and Revenue Procedure 2020-40 (“Modifications to Rev. Proc. 2016-37 and Rev. Proc. 2019-39”).

### **Notice 2020-68 Provides Q&A Guidance on SECURE Act, Miners Act**

While not intended to serve as comprehensive guidance on specific provisions of SECURE and the Miners Act, Notice 2020-68 provides answers to questions about the following provisions:

- the small employer automatic enrollment business credit for 401(k) plan sponsors,
- the repeal of maximum age for traditional IRA contributions,
- participation of long-term part-time employees in 401(k) plans,
- qualified birth or adoption withdrawals, and
- the reduction in the minimum age for in-service distributions under governmental 457(b) plans and under pension plans.

The Notice also provides guidance on deadlines for plan amendments for 401, 403(b) and governmental 457(b) plans and for amending IRA contracts.

The full text of the Notice is available at <https://www.irs.gov/pub/irs-drop/n-20-68.pdf>. Selected highlights of the guidance follow.

### **Small Employer Automatic Enrollment Business Credit**

For taxable years beginning after 2019, SECURE added a business credit of \$500 for any taxable year within a credit period for an eligible employer who establishes an eligible automatic contribution arrangement (EACA) in a qualified employer plan.

The Notice clarifies that:

- An eligible employer may receive the credit for taxable years only during a single 3-year credit period that begins when the employer first includes an EACA for any of the applicable plans noted below.
- To be eligible for the credit for the second or third taxable years of an eligible employer’s 3-year credit period, the employer must include the same EACA in the same plan in that second or third taxable year, with certain allowances made for spin-offs.

- The credit applies separately to each eligible employer that participates in a multiple employer plan (MEP) as if each employer participating in the MEP were the sponsor of a single-employer plan maintained by the eligible employer.

Applicable Plans: 401(k) plans of for-profit employers, simplified employee pension plans (SEP), and SIMPLE IRAs.

### **Maximum Age for Traditional IRA Contributions**

Effective for taxable years beginning after December 31, 2019, SECURE eliminated the maximum age limitation for contributions to a traditional IRA, that prevented individuals with an attained age of 70½ from making additional contributions to their traditional IRAs.

The Notice clarifies that:

- A financial institution that serves as trustee, issuer, or custodian for an IRA is not required to accept post-age 70½ contributions to a traditional IRA.
- If a financial institution chooses to accept post-age 70½ contributions to a traditional IRA, that institution must amend its IRA contracts to permit such contributions and distribute copies of the amendment and amended disclosure statement to benefiting individuals by the 30<sup>th</sup> day after the later of the date that the amendment is effective or the date that the amendment is adopted. The IRS notes that it intends to issue revised model IRA and prototype language to assist financial institutions in amending their contracts.
- An individual may not offset the amount of required minimum distributions from the traditional IRA by the amount of the post-age 70½ contributions made to a traditional IRA in the same year. The IRS notes that contributions and distributions from a traditional IRA are separate transactions and that financial institutions report those transactions independently to the IRS.
- SECURE also modified the amount that could be taken as a qualified charitable contribution, since an IRA owner may now make post-age 70 ½ contributions to a traditional IRA. The Notice includes an example illustrating the reduction of the excludable amount of qualified charitable distributions when an individual makes post-age 70½ contributions to a traditional IRA.

Applicable Plan: Traditional IRAs.

### **Participation of Long-Term, Part-Time Employees in 401(k) Plans**

Generally applicable for plan years beginning after December 31, 2020, SECURE provides that, except in the case of collectively bargained plans, a 401(k) plan must maintain a dual eligibility requirement -- an employee must complete either (1) one-year of service (under the 1,000-hour rule) or (2) three consecutive years where the employee completes at least 500 hours of service. This requirement will not apply unless the employee has attained age 21 by the end of the three consecutive 12-month periods

The Notice clarifies that:

- This SECURE provision that excludes 12-month periods beginning before January 1, 2021, from being taken into account pertains *only* for purposes of eligibility for long-term, part-time employees.
- All years of service with the employer (unless there is a specific exception under the vesting provisions of the Internal Revenue Code) continue to be taken into account in determining the non-forfeitable percentage of an account of a long-term part-time employee. Such employees would receive credit for each 12-month period during which the employee earned at least 500 hours of service.

Applicable Plan: 401(k) plans.

### **Qualified Birth or Adoption Withdrawals**

Effective after December 31, 2019, SECURE permits a participant to take a withdrawal of up to \$5,000 per birth or adoption from certain employer-sponsored plans or a traditional IRA for the birth or adoption of the participant's child for the 1-year period following the birth or adoption. This withdrawal is an exception to the IRS 10% premature distribution penalty tax.

The Notice clarifies that:

- An eligible adoptee is an individual who has not attained age 18, or is physically or mentally incapable of support (determined in accordance with Internal Revenue Code Section 72(m)(7)). However, an eligible adoptee is not the child of the taxpayer's spouse.
- Each parent can take a withdrawal of up to \$5,000 for the same child or eligible adoptee. To be eligible for the exception to the IRS 10% premature distribution penalty tax, the individual must include the name, age, and the taxpayer identification number of the child or eligible adoptee on the individual's federal income tax return for the taxable year in which the withdrawal is made.
- Withdrawals can be taken for the birth of more than one child or the adoption of more than one eligible adoptee (for example, an employee who gives birth to twins is eligible for a \$10,000 distribution).
- A plan sponsor/administrator may rely on reasonable representations from the individual, unless the plan sponsor/administrator has actual knowledge to the contrary, when making a determination of eligibility for the qualified birth or adoption withdrawal.
- If a plan permits a qualified birth or adoption withdrawal feature, the plan must accept the re-contribution of a qualified birth or adoption withdrawal if the plan also accepts rollover contributions.

An individual can treat an otherwise permissible in-service distribution under the plan as a qualified birth or adoption withdrawal on the federal individual income tax return, even if the plan does not permit qualified birth or adoption withdrawals, as long as the distribution meets the requirements of a qualified birth or adoption withdrawal.

Applicable Plans: 401(a), 401(k), 403(b), and governmental 457(b) plans and traditional IRAs.

### **In-Service Distributions under the Miners Act**

Effective for plan years beginning after December 31, 2019, the Miners Act permits sponsors of governmental 457(b) plans to reduce the minimum age requirement under the plan from 70½ to 59½ for purposes of receiving an in-service withdrawal. The Act also permits sponsors of pension plans (both defined benefit plans and money purchase pension plans) to reduce the minimum age requirement under the plan from age 62 to 59½ for purposes of receiving an in-service withdrawal.

The Notice clarifies that:

- A governmental 457(b) plan or a pension plan is not required to offer an in-service withdrawal feature. If such a plan does offer an in-service withdrawal feature, the plan is not required to reduce the minimum age to 59½.
- Reducing the minimum age for an in-service distribution under a pension plan does not have bearing on the plan's definition of normal retirement age. Normal retirement age must not be earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed; the IRS notes that a normal retirement age of 62 or later is deemed to satisfy the reasonably representative requirement. The IRS also notes that governmental entities may continue to rely on the proposed regulations defining normal retirement age under a governmental pension plan.

**Applicable Plans:** Governmental 457(b) plans and pension plans (including defined benefit and money purchase pension plans).

### **Guidance on Deadlines for Plan Amendments**

SECURE generally provides for a retroactive remedial amendment period by:

- the end of the 2022 plan year if the employer is not a governmental employer; and
- the end of the 2024 year if the employer is a governmental employer.

SECURE also notes that this amendment deadline may be further modified to “such later date as the Secretary may prescribe.”

The Notice clarifies that:

- The dates by which a plan must be amended apply to both SECURE and the Miners Act, and emphasizes that plans subject to the Internal Revenue Code vesting requirements and ERISA that make such amendments after these dates may not be entitled to anti-cutback relief.
- IRA contracts generally must be amended for SECURE by December 31, 2022, or such later date as the Secretary prescribes in guidance. However, the date for amendment of a deemed IRA contract is governed by the deadline to amend the employer-sponsored plan under which the deemed IRA is established.

The Department of the Treasury and the IRS “continue to analyze the various provisions of the SECURE Act and the Miners Act and anticipate issuing further guidance, including regulations, as appropriate.”

## **Revenue Procedure 2020-40 Expands Plan Amendment Deadlines for Certain Discretionary Amendments**

Generally, discretionary amendments to qualified pre-approved and 403(b) pre-approved plans must be adopted by the end of the plan year in which they are operationally put into effect.

For qualified pre-approved and 403(b) pre-approved plans, Revenue Procedure 2020-40 provides that the end-of-plan-year deadline for discretionary amendments applies unless a statutory provision, or regulations or other guidance published in the Internal Revenue Bulletin, set an earlier or later deadline, or a statutory provision or guidance provides another specific earlier or later deadline for the adoption of a particular type of interim amendment.

The full text of the Revenue Procedure is available at <https://www.irs.gov/pub/irs-drop/rp-20-40.pdf>.

Voya continues to monitor regulatory developments impacting retirement plans.

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