IRS provides SECURE Act guidance

On September 2, 2020, the IRS issued IRS Notice 2020-68 to provide guidance relating to certain provisions of the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act") and the Bipartisan American Miners Act of 2019 (the "Miners Act"). The guidance is not intended to provide comprehensive guidance on the specific provisions but provides guidance to assist with implementation of these provisions.

Qualified birth or adoption distributions

The SECURE Act allows participants to withdraw up to $5,000 penalty-free from an IRA, a defined contribution plan, including a 403(b) plan, or a governmental 457(b) plan due to the birth or adoption of a child. The qualified birth or adoption distribution (QBAD) will not be treated as an eligible rollover distribution, and therefore is exempt from mandatory 20% withholding and the special tax notice (also known as the "402(f) notice"). These withdrawals are also exempt from the 10% early distribution tax penalty. The participant is required to include the name, age, and Taxpayer Identification Number (TIN) of the child or eligible adoptee on the individual's tax return for the taxable year in which the distribution was made. The $5,000 limit applies in the aggregate to all plans of the employer (and any member of any controlled group which includes the employer) for the participant. The distribution must occur within the one-year period beginning on the date on which a child of the individual is born or on which the legal adoption is finalized.

The recent guidance clarifies:

- Each parent of a child may receive a QBAD of up to $5,000 with respect to the same child or eligible adoptee.
- An individual may receive QBADs with respect to the birth of more than one child or the adoption of more than one eligible adoptee if the distributions are made during the one-year period following the date on which the children are born or the legal adoption is finalized. *For example, Employee A gives birth to twins in October 2020. Employee A takes a $10,000 distribution from her 401(k) plan in January 2021. The entire $10,000 is a QBAD, assuming she includes the TINs of her twins and other required information on her 2021 tax return.*
- It is optional for an eligible retirement plan to permit QBADs. If a plan does not permit QBADs and an individual receives an otherwise permissible in-service distribution that meets the requirements of a QBAD, the individual may treat the distribution as a QBAD on the individual's federal income tax return.
- A plan sponsor or plan administrator may rely on a reasonable representation from an individual that the individual is eligible for a QBAD, unless the sponsor or administrator has actual knowledge to the contrary.
- If an eligible retirement plan permits QBADs, the plan is required to accept a recontribution of a QBAD an individual received from that plan, as long as the individual is eligible to make a rollover contribution to that plan at the time the individual wishes to make the recontribution.
- QBADs are treated as meeting the distribution restrictions under 401(k) plans, 403(b) plans, and governmental 457(b) plans. An employer may expand the distribution options under its plan to allow amounts attributable to elective deferrals, qualified nonelective contributions (QNECs), qualified matching contributions (QMACs), or safe harbor contributions under a 401(k) plan to be distributed as a QBAD even though it is distributed before an otherwise permitted distributable event, such as severance from employment, disability, or attainment of age 59½.

Long-term part-time employees

Except for collectively bargained plans, the SECURE Act requires employers sponsoring a 401(k) plan to cover employees who complete at least 500 hours of service for three consecutive 12-month periods (and have reached age 21). For employees who are eligible under this new rule, each 12-month period for which the employee has at least 500

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hours of service is counted as a year of service for vesting purposes and is not treated as a one-year break-in-service. Generally, this provision applies for plan years beginning after December 31, 2020, except that, for eligibility purposes, 12-month periods beginning before January 1, 2021 are not taken into account.

The recent IRS guidance clarifies that all years of service with an employer or employers maintaining the plan must be taken into account for purposes of determining a long-term part-time employee's vesting percentage, subject to certain exceptions. These exceptions include, for example, years of service before the employee attains age 18. The IRS has requested comments on how to reduce potential administrative burdens related to this and the other provisions included in the notice.

In-service distribution age for money purchase and governmental 457(b) plans

Prior to the Miners Act, the minimum age for allowable in-service distributions from pension plans, including defined benefit plans and money purchase pension plans was age 62. The minimum age for allowable in-service distributions for governmental 457(b) plans was age 70½. The Miners Act reduced the minimum age for allowable in-service distributions from these plan types to age 59½. This change applies to plan years beginning after December 31, 2019.

The IRS guidance clarifies that pension plans and governmental 457(b) plans are not required to provide for in-service distributions, and if they do permit them, they are not required to reduce the available age to 59½. The guidance also clarifies that the change to the age for permitting in-service distributions does not affect the rules regarding the normal retirement age under the plan.

Foster care "difficulty of care" payments

For purposes of the limitation on "annual additions" to a defined contribution plan, the participant's compensation in increased by any difficulty of care payments excluded from income. Difficulty of care payments are provided to foster care providers as additional compensation because the individual has a physical, mental, or emotional handicap. Any contributions of difficulty of care payments made to the plan are considered after-tax contributions. This provision applies to plan years beginning after December 31, 2015. The recent guidance clarifies that if an employer makes difficulty of care payments to its employees, those payments are includible in the definition of compensation for purposes of the contribution limits. Such payments received by an employee from a person other than his or her employer are not includible in the definition of compensation under that employer's plan.

Automatic enrollment tax credit

The SECURE Act also included a special tax credit for employers with fewer than 100 employees who received at least $5,000 of compensation for the preceding year. These employers are eligible for the special tax credit of $500 per year for up to three years (for a total of $1500) if they include an eligible automatic contribution arrangement ("EACA") under their plan, even if the feature is added after the plan is adopted. The credit applies to taxable years beginning after December 31, 2019.

The recent IRS guidance clarifies that an eligible employer may only receive this credit for taxable years during a single three-year credit period that begins when the employer first includes an EACA in any qualified plan. For example, where an employer first included an EACA in one if its qualified plans during the 2018 tax year, the employer is eligible to receive a $500 credit for the 2020 taxable year (the only tax year the credit applies under the new provision) and no credit for subsequent years. The employer must continue to maintain the same EACA in the same plan for all three taxable years to be eligible for the full $1,500 credit.

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Plan amendments

The deadline for amendments reflecting provisions from the SECURE Act and Miners Act is generally the last day of the plan year beginning on or after January 1, 2022 for non-collectively bargained, non-governmental plans. For governmental and collectively bargained plans, the plan amendment deadline is the last day of the first plan year beginning on or after January 1, 2024. The guidance clarified that while a sponsor may amend its plan to reflect the SECURE Act or Miners Act after the deadlines provided, the anti-cutback relief available under the Act would not apply to those amendments.

Next steps

Prudential Retirement will be contacting plan sponsors separately regarding implementation of SECURE Act provisions. Prudential continues to monitor federal agencies' guidance regarding the SECURE Act and will keep you informed as additional guidance is provided.

Compliance Bulletin by Prudential Retirement
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