

MEMO# 32741

September 4, 2020

IRS Issues Guidance on Certain SECURE Act Changes and Plan Amendment Deadlines

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September 4, 2020 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: IRS Issues Guidance on Certain SECURE Act Changes and Plan Amendment Deadlines

The IRS recently released two guidance items related to retirement plans:

1. Notice 2020-68,[\[1\]](#) providing guidance on certain changes made under the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act)[\[2\]](#) and the Bipartisan American Miners Act of 2019 (Miners Act)[\[3\]](#); and
2. Revenue Procedure 2020-40,[\[4\]](#) expanding the situations in which the plan amendment deadline for discretionary amendments made to qualified pre-approved plans and pre-approved 403(b) plans may be extended.

These items are described in more detail below.

Notice 2020-68

SECURE Act Guidance

Notice 2020-68 provides guidance in the form of questions and answers with respect to the following sections of the SECURE Act:

- Section 105 (small employer automatic enrollment credit).[\[5\]](#) The guidance addresses issues related to application of the 3-year credit period and separate application of the credit to individual employers participating in a multiple employer plan.
- Section 107 (repeal of maximum age for traditional IRA contributions).[\[6\]](#) The Notice states that financial institutions are not required to accept post-age 70½ contributions and describes the requirements for amending IRA contracts to accept such contributions and distributing updated disclosure statements. It also provides an example illustrating the rules for reduction of the excludable amount of qualified

charitable distributions caused by a deduction of post-age 70½ contributions.

- Section 112 (participation of long-term, part-time employees in 401(k) plans).[\[7\]](#) The Notice indicates that, for purposes of determining a long-term, part-time employee's nonforfeitable right to employer contributions under applicable vesting rules, the exception in section 112(b) that excludes 12-month periods beginning before January 1, 2021 (for purposes of determining eligibility to participate), does not apply. In other words, generally all years of service with the employer or employers maintaining the plan must be taken into account for purposes of determining the long-term, part-time employee's nonforfeitable right to employer contributions.
- Section 113 (qualified birth or adoption distributions).[\[8\]](#) The Notice includes several questions and answers on qualified birth or adoption distributions (QBOADs), and states that Treasury and IRS intend to issue regulations that will address the rules for recontribution of such distributions (including rules on timing). Among other things, the Notice indicates that each parent may receive QBOADs up to the \$5,000 limit with respect to the same child or adoptee; the dollar limit applies separately for each child or adoptee in a situation involving multiple births or adoptions; plans do not have to permit in-service distributions for QBOADs; plans may rely on reasonable representations from an individual that the individual is eligible for a QBOAD (unless there is actual knowledge to the contrary); and plans generally must accept recontributions of QBOADs made from that plan, if the individual is eligible to make a rollover contribution to the plan.
- Section 116 (permitting excluded difficulty of care payments to be taken into account as compensation for purposes of determining certain retirement contribution limitations).[\[9\]](#) The Notice provides that difficulty of care payments (a type of foster care payment) received by an employee from a person other than his or her employer, are not includible in the definition of compensation (for purposes of the Code section 415(c) limits) under that employer's plan. The Notice also indicates that future guidance will address the applicability of the excise tax on excess IRA contributions under Code section 4973 to nondeductible IRA contributions that are based on difficulty of care payments.

Miners Act Guidance

The Notice also addresses section 104 of the Miners Act (reduction in minimum age for in-service distributions from qualified pension plans and 457(b) governmental plans), including guidance that such a plan is not required to provide for in-service distributions, or to reduce its minimum age for in-service distributions to 59½.

Plan Amendment Deadlines

Section G of the Notice sets forth the deadlines for plan amendments (and IRA amendments) to reflect provisions of the SECURE Act, the regulations thereunder, and section 104 of the Miners Act. These amendment deadlines apply to both required and discretionary plan amendments. The guidance builds on section 601 of the SECURE Act, which requires that plan or contract amendments needed to reflect changes under the legislation (including regulatory changes pursuant to the legislation) generally must be adopted by the last day of the first plan year beginning on or after January 1, 2022 (or a later date provided by Treasury).[\[10\]](#) With respect to IRAs, the Notice states that the deadline to amend the trust governing the IRA for provisions of the SECURE Act (or the regulations thereunder) is December 31, 2022, or a later date provided by Treasury.

Future Guidance and Comments

The guidance provided in the Notice is not intended to be comprehensive, but rather is intended to assist in implementing the changes. The IRS and Treasury continue to assess the need for more comprehensive guidance, including regulations, on SECURE Act changes and Miners Act changes.

The Notice specifically invites comments and suggestions regarding the matters discussed therein, no later than November 2, 2020.^[11] In particular, the Notice requests comments on how to reduce potential administrative burdens related to counting years of service beginning before January 1, 2021, for purposes of determining a long-term, part-time employee's nonforfeitable right to employer contributions pursuant to section 112 of the SECURE Act.

Rev. Proc. 2020-40

Rev. Proc. 2020-40 modifies Rev. Proc. 2016-37 (relating to pre-approved qualified plans) and Rev. Proc. 2019-39 (relating to pre-approved 403(b) plans) to specify that with respect to discretionary amendments (which generally must be adopted by the end of the plan year in which the plan amendment is operationally put into effect), a statutory provision, or regulations or other guidance published in the Internal Revenue Bulletin, may set forth an amendment deadline that is either earlier or later than the general deadline.

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endnotes

[1] Notice 2020-68 is available here: <https://www.irs.gov/pub/irs-drop/n-20-68.pdf>.

[2] For more background on the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019. Available here: https://www.ici.org/my_ici/memorandum/memo32118.

[3] Like the SECURE Act, the Miners Act was enacted as part of the Further Consolidated Appropriations Act, 2020 (H.R. 1865).

[4] Revenue Procedure 2020-40 is available here:
<https://www.irs.gov/pub/irs-drop/rp-20-40.pdf>.

[5] Section 105 adds a new tax credit for small businesses that automatically enroll participants into a retirement plan, equal to \$500 per year for up to three years for startup costs for new section 401(k) plans and SIMPLE IRA plans that include automatic enrollment, as well as for adding automatic enrollment as a feature of an existing plan.

[6] Section 107 allows taxpayers to continue making contributions to traditional IRAs after reaching age 70½, for taxable years beginning after December 31, 2019. The provision also reduces the amount of any qualified charitable distributions excluded from income if deductible contributions are made to a traditional IRA after age 70½.

[7] Section 112 requires 401(k) plans (except for collectively-bargained plans) to permit

participation by workers who complete at least three consecutive years of service with at least 500 hours of service each year. Such workers would not need to be included in testing for nondiscrimination and coverage requirements or application of the top-heavy rules. The provision applies to plan years beginning after December 31, 2020, except that for determining whether the three consecutive year period has been met, 12-month periods beginning before January 1, 2021 will not be taken into account.

[8] Section 113 adds a new exception from the 10 percent early distribution penalty for qualified withdrawals from a defined contribution plan or IRA for the birth or adoption of a child. Under the new exception, qualified withdrawals are limited to \$5,000 in the aggregate across an individual's accounts with respect to a birth or adoption; the withdrawal must be made within one year after the birth or adoption date; and the distribution may be recontributed to an eligible retirement plan or IRA, subject to certain rules, and is treated as a rollover.

[9] Section 116 permits certain individuals to contribute to a retirement plan or IRA based on compensation (so-called "difficulty of care" payments) that is tax-exempt under Code section 131.

[10] For governmental plans, the deadline generally is the last day of the first plan year beginning on or after January 1, 2024.

[11] ICI previously requested guidance from Treasury and IRS on SECURE Act changes. See ICI Memorandum No. 32170, dated January 23, 2020, available here:

https://www.ici.org/my_ici/memorandum/memo32170 and ICI Memorandum No. 32628, dated July 22, 2020, available here: https://www.ici.org/my_ici/memorandum/memo32628.