DC Document Issues
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Bipartisan Budget Act of 2018
- Elimination of 6-month suspension and requirement to obtain all loans
- Expansion of sources to include earnings on elective deferrals, QNECs, QMACs and SIH
  - Earnings on elective deferrals to a 403(b) plan cannot be withdrawn
Mandatory Changes

• Can no longer suspend deferrals after hardship withdrawal
• Must use written representation to show need
• Effective for hardship distributions made after January 1, 2020
  • Not tied to the plan year

Representation

• Written representation that employee has insufficient cash or other liquid assets reasonably available to satisfy the need
  • Written includes electronic medium permitted by Reg. §1.401(a)-21(e)(3)
  • “Reasonably” available was added in final regulation
    • Preamble: Can make representation if other assets “provided those assets were earmarked for payment of an obligation in the near future (for example, rent)”
    • This replaces the rule that counterproductive measures weren’t required

Optional Changes

• Could eliminate the suspension and loan requirement for plan years beginning after December 31, 2018 and prior to January 1, 2020
• Not required to expand contribution sources that can be withdrawn
• Can keep the requirement to obtain loans before a hardship
• Not required to add the new hardship events
  • Casualty loss (rather than tied to federally declared disaster)
  • Disasters (FEMA declared)
When Must Plans be Amended?

- December 31, 2021
- Individually designed plans must be amended by the end of the second year after the issuance of the Required Amendments List
  - Notice 2019-64 includes the final hardship regulations in the Required Amendment List
- Preapproved plans (Rev. Proc. 2020-09)
- Doesn’t matter whether the changes are optional or required
- Doesn’t matter if the required changes were implemented before 1/1/20

Hardship Amendment Issues

- For preapproved plans, what should the defaults be?
  - Removal of suspension period and loan requirement?
  - What effective date?
- Allow the withdrawal of earnings?
  - What effective date?
- Requiring an election for other sources?
  - Expand to include earnings on deferrals and nothing else?

Employee Communication
**When Is Notice Required?**

- An employer with a non-safe harbor plan implemented the new hardship provisions on 1/1/2020
- Do employees need to be notified of the changes?
  - If so, by when?
    - 210 days after the plan is amended
    - 210 days after 1/1/2020
    - At any time on or before 2/1/2020
    - 30 days prior to 1/1/2020

**When is Notice Required?**

- An employer with a safe harbor plan implements the new hardship provisions as of 1/1/2020
- Do employees need to be notified of the changes?
  - If so, by when?
    - 210 days after the plan is amended
    - 210 days after 1/1/2020
    - At any time on or before 1/1/2020
    - 30 days prior to 1/1/2020

**COMPENSATION**
Deferral Elections

• Jennifer elects to defer 10% of compensation
• Plan defines compensation as W-2 wages
• Jennifer receives the following:
  • Annual wages = $60,000
  • Discretionary bonus = $5,000
  • Thanksgiving gift card = $25
  • Imputed income from group-term life insurance = $100

How much should the employer withhold as a deferral?

Be Specific in the Plan and Election Form

• Consider an exclusion:
  • The plan excludes tips, fringe benefits, and other items of Compensation not regularly paid in cash or cash equivalents, or for which the Employer does not or may not have the ability to withhold Elective Deferrals in cash
• Consider different rules for different amounts of compensation
  • The Employer may, on a uniform and nondiscriminatory basis, permit different salary deferral elections for different items of Compensation (e.g., a separate salary deferral election for bonuses)

Further Consolidated Appropriations Act, 2020

Provisions Affecting DC Plans
Further Consolidated Appropriations Act, 2020

- Further Consolidated Appropriations Act, 2020
- Signed into law on December 20, 2019
- Three Sections Impact Retirement Plans
  - Division M – Bipartisan American Miners
  - Division O - Setting Every Community Up for Retirement Security (SECURE) Act of 2019
  - Division Q – Revenue Provisions

RMD Age Increase To 72

- Provision: RMD age increased from 70 ½ to 72
- Effective Date: Distributions after December 31, 2019, for those who attain age 70 ½ after that date
  - Turn 70 ½ in 2019 – not impacted by this change, even if first distribution isn’t made until April 1, 2020
  - Turn 70 ½ in 2020 (born after June 30, 1949) – distribution not required until year of 72nd birthday

RMD Age Increase – What Now?

- Need to implement system and processes to address the change
- Can plans keep age 70 1/2?
- If yes, are the amounts paid prior to 72 eligible for rollover?
  - No, if using minimums (substantially equal period payments)
  - Yes, if entire account is being distributed
- Will we get rules similar to SBPA (Notice 97-75)?
Death RMD Rules

• Provision: Death RMD rules for DC plans and IRAs have changed
• General rule: Distributions must be completed by end of the 10th calendar year following death of account holder
  • Applies whether distributions have started or not
  • Can no longer base it on life expectancy of beneficiary

Death RMD Rules

• Exceptions (must be beneficiary at time of participant’s death):
  • Spouse
  • Disabled or chronically ill individuals
  • Beneficiaries not more than 10 years younger
  • Child who has not reached age of majority (10 year time frame starts when reach age of majority)

Death RMD Rules

• Effective Date: Distributions for participants who die after December 31, 2019
  • Collectively bargained plans – earlier of December 31, 2021 or later of December 31, 2019, or date on which CBA terminates
  • Governmental Plans – distributions for participants who die after December 31, 2021
  • Exception: existing qualified annuity contracts
  • What now? Update disclosures and systems
Death RMD Rules

- Bob dies today
  - If spouse is beneficiary then the rules don’t change
    - Life expectancy, spousal rollover; can leave $ in plan until Bob would have been 70½
  - If beneficiary is disabled then the rules do not change
  - Adult child – can be paid over life expectancy
  - If beneficiary is Bob’s twin brother – then rules do not change
    (not more than 10 years difference in age)
  - If beneficiary is Bob’s 12 year old child – then wait 9 years until age of majority (2029) then the 10 year clock starts (2039)
  - If beneficiary is Bob’s adult child then payments must be completed by 2030

Election of Safe Harbor 401(k) Status

- Provision: Annual Safe Harbor Notice for plans that use the nonelective contribution to satisfy the SH is eliminated
- Notice requirement still applies if:
  - Using the matching contribution to satisfy the SH
  - Using the ACP test safe harbor
  - Using an EACA (which would also apply to a QACA if you want to use the EACA distribution provision)
- Effective Date: PYs beginning after December 31, 2019

Election of Safe Harbor 401(k) Status

- Issues:
  - If no notice is required, what happens when we want to reduce or terminate SHNEC during the year?
  - Remember the current regulations require there to be either an employer operating at an economic loss or language in the notice that it is possible...
  - What Now? Wait to get this answer before recommending change to client
Election of Safe Harbor 401(k) Status

- Reminder: Plans must still provide each eligible employee with an effective opportunity to make or change an election
  - This is based on the relevant facts and circumstances, including the adequacy of notice of the availability of the election
  - This is currently not an "annual" notice (except for pre-approved 403(b) plans)

Provision: Amendment to adopt a Safe Harbor nonelective provision can be made after the start of a plan year:
- If elected up to 30 days before the end of the plan year
- If elected before the deadline for correcting the ADP/ACP test (last day of subsequent plan year)
  - If this option is used, then the 3% nonelective must be increased to 4%
Issues to Consider

• May be used to correct a failed test, but is it preferable to a targeted QNEC?
• SH would still be given to employees that terminated in PY
• Deduction and annual additions may not relate to year tested (depends on timing of contribution)
  • Due date of tax return for deduction
  • 30 days after due date of tax return for annual additions
• Can SH be elected if plan was using prior year testing method (under the maybe approach, a plan must be using current year testing)?

QACA Deferral Rate

• Provision: QACA Maximum Contribution Rate
  • 10% maximum in first period (which ends on the last day of the plan year following the year the first contribution is made) – this has not changed
  • 15% for all subsequent years
  • See next slide
• Effective Date: PYs beginning after December 31, 2019

QACA Deferral Rate

• Period 1 (first full plan year)
  • Auto enroll rate of no less than 3% and no greater than 10%
• Period 2
  • No less than 4% and no greater than 15%
• Period 3
  • No less than 5% and no greater than 15%
• Period 4
  • No less than 6% and no greater than 15%
• What Now?
  • Review with plan sponsors to see if this is a provision they want to amend
  • Update disclosure forms and communicate to employees
New Distributable Event

• Provision: Adds a new distributable event for qualified child birth or adoption expenses
  • Not subject to 10% penalty tax under IRC §72(t)
  • Not eligible for rollover (voluntary withholding)
  • Must be within 1 year period following birth or adoption
  • Maximum is $5,000 per individual per child
• Adoptee means
  • Child who has not attained age 18
  • Spouse’s children excluded
  • A child (of any age) who is physically or mentally incapable of self support

New Distributable Event

• If plan permits the distribution, it must permit the participant to repay the amount distributed from the plan
  • No time limit on the repayment
  • Joint Committee on Taxation indicates intention is that amount would not be subject to taxation
  • A rollover and presumably there would be a form for participant to file with income tax return similar to what is used for repayment of disaster distributions

New Distributable Event

• Effective Date: Distributions made after December 31, 2019
• What Now?
  • Decide whether to permit the distributable event and repayment
  • Update distribution notice and communicate to participants
In-Service Distributions

- Provision: The age for voluntary in-service distributions for DBs, MPs and governmental 457(b) plans is lowered from 62 to 59 ½
- Effective Date: PYs beginning after December 31, 2019
- Optional provision but need to resolve conflict between Code and ERISA

Distribution of Lifetime Income Options

- Provision: If a DC plan no longer authorizes the holding of a lifetime income investment, then the plan may make:
  - A direct trustee-to-trustee transfer to another plan or IRA of lifetime income investments, or
  - Distributions of a lifetime income investment in the form of a qualified plan distribution annuity
- Must be within 90 days prior to no longer being an investment option
- Effective Date: PYs that begin after December 31, 2019
- What Now? If a plan permits the investments, decide whether to allow this distribution event

Credit Card Loans

- Provision: Creates a prohibition on participant loans made through credit cards or other similar arrangements
- Effective Date: Date of enactment (December 20, 2019)
Small Employer Start-Up Credit

• Provision: Tax credit for adoption of a plan is the greater of
  • $500,
  • Lesser of
    • $250 per NHCE, or
    • $5,000
• Small employer = Less than 100 employees who receive less than $5,000 in compensation
• Based on 50% of actual or incurred expenses
• Effective Date: Taxable years that begin after December 31, 2019

Small Employer Start-Up Credit - Example

• Assume a plan with 30 NHCEs
• Greater of
  • $500,
  • Lesser of
    • $250 per NHCE, x 30 = $7,500
    • $5,000
• Credit is $5,000 (greater of $500 or $5,000)
• But, cannot exceed 50% of the actual costs

Small Employer Automatic Enrollment Credit

• Provision: Tax credit of $500 for up to three years for adopting an eligible automatic contribution (EACA) provision
• Applies to new plans or existing plans that add the provision
• Only applicable if the plan maintains the EACA for that year
• Is in addition to the regular start-up credit
• Small employer = less than 100 employees who earn less than $5,000 in compensation
• Effective Date: for taxable years beginning after December 31, 2019
**Disaster Tax Relief (Division Q)**

- **Provision:** Tax relief applies to those who suffered loss in disaster area:
  - Excludes California wildfires which were covered in another bill
  - Waives 10% excise tax up to $100,000 of withdrawal from qualified plan, 403(b) or IRA
  - Can spread income on taxes over a 3 year period
  - Can pay back distribution within 3 years from date of distribution
  - Hardship for first time home buyer – can redeposit back to plan if it was not used
  - Loan limit increases to $100,000 or vested account balance
  - Loan repayment period extended – 1 year

**Disaster Tax Relief**

- **Effective Date:** For taxpayers in affected areas beginning after 2017 and ending 60 days after enactment
- **What Now?**
  - Determine which employers want to use the provisions
  - Communicate to participants
  - Amend the plan by last day of 2020 PY (or last day of 2020 for governmental plans)

**Deadline to Adopt a New Plan**

- **Provision:** Plans may be adopted by the due date of the tax return (including extensions) for the tax year it first applies to
  - Still cannot accept deferrals until plan is actually adopted
- **Effective Date – Tax years beginning after December 31, 2019**
Long-Time Part-Time Workers

- Provision: 401(k) plans will be required to cover “long-time part-time” employees
  - Applies to 401(k) plans only
  - Not to collectively bargained plans or 403(b) plans
- “Long-term part-time” = Three consecutive 12 month periods with more than 500 hours of service (age requirement still must be met)

Example

- Bob is credited with the following hours:
  - 2019 – 600
  - 2020 – 750
  - 2021 – 550
  - 2022 – 498
  - 2023 – 600
  - 2024 – 575
- Do not take into account 2019 and 2020 (prior to 2021)
- Need three consecutive so count starts again in 2023
- If work over 500 in 2025, then enter the plan January 1, 2026

What Must Plan Provide?

- Only required to allow the long-term part-time employees to defer
- Employer may elect to exclude for:
  - Coverage
  - Nondiscrimination
  - Top Heavy
- If plan provides employer contributions to these employees, then a YOS for vesting is lowered from 1,000 hours to 500 hours
Long-Time Part-Time Workers - Effective Date

- Effective Date: PYs beginning after December 31, 2020
- 12-month periods before January 1, 2021 not taken into account in determining if someone is a long-term part-time employee
  - Means the rule will not impact a plan until 2024

Long-Time Part-Time Workers - Issues

- What if plan already includes all employees?
  - Can we use the new TH exclusion?
  - Do we need to use the liberal YOS for vesting?
  - Statute provides that these rules apply if the mandate is the “sole” reason for inclusion in the plan
- No relief from 100 participant count for purposes of audit and 5500 requirements

Fiduciary Safe Harbor for Selection of Lifetime Income Provider

- Provision: Optional safe harbor provided for selection of a guaranteed income contract
  - Objective, thorough and analytical search to identify insurers
  - Must consider financial capability to satisfy options
  - There is a list of specifics for insurer/vendor
  - Cost – fees and commissions
  - No requirement to select the lowest cost! Consider value
  - Applicable at time of selection
  - Must periodically review

- Effective Date – none was provided in law
- What Now: Which insurers will satisfy the requirements?
Lifetime Income Disclosures

• Provision: Benefit statements must provide a lifetime income disclosure at least once in a 12 month period
  • Monthly amount of lifetime income stream based on total account balance
  • QSA and Single Life
  • DOL to provide model disclosures (1 year) – see next slide
  • DOL to provide assumptions
  • Plan fiduciaries will have no liability if use assumptions and disclosures
• Effective Date: 12 months after DOL issues interim final rules, model disclosures and assumptions

Lifetime Income Disclosures

• Model Disclosures will explain:
  • Only an illustration
  • Numerous factors will impact actual payments and may vary from illustration
  • Assumptions used in determining monthly amount
• What Now?
  • Wait for guidance

Combined 5500 filing

• Provision: Treasury and DOL directed to modify filing of Form 5500 instructions to allow:
  • Single aggregated return for a group of employers
    • May require filing to include information regarding each plan (details to be determined)
  • Must be DC Plans
    • Same Trustee
    • Same Fiduciary (or named fiduciaries)
    • Same Plan Administrator
    • Same Plan Year
    • Same investments or options
**Combined 5500 filing**

- Effective Date: Plan years that begin after December 31, 2021
  - Must be implemented by IRS/DOL not later than January 1, 2022
- What Now? Wait for guidance

**Plan Amendments for SECURE**

- Plan Amendments not required until last day of 2022 plan year
  - Will be close to the end of the third cycle restatements
- Additional two years for:
  - Union plans
  - Governmental Plans
- Except for terminating plans
- IRC §411(d)(6) relief provided

**Rev. Proc. 2017-41 – The Third DC Restatement Cycle**
Third Cycle Restatement Period

- DC plan submission period began 10/2/17 and ended December 31, 2018
- IRS approval expected in August or September 2020
- Restatement period around 2020 – 2022

New Terminology

- New consolidated program is referred to as Opinion Letter Program
  - No distinction between M&Ps and Volume Submitter plans
  - Sponsor of preapproved plan is the Provider

Preapproved Plan Formats

- Adoption Agreement Plan
  - AA and Basic Plan Document
- Single Plan Document
  - Contract style
Two Types of Plans

- Standardized Plans
  - Same as existing rules
  - Must satisfy coverage and nondiscrimination
  - Employer modifications destroy reliance
  - Nonstandardized plans (next slide)

Nonstandardized Plans

- Same as rules that currently apply to volume submitter plans
- Not required to use safe harbor hardship standards
- Permitted to have irrevocable elections not to participate
- If employer makes modifications, then Form 5307 may be used (unless modifications are major)

Expansion of Permissible Provisions

- Nonstandardized ESOP may include a 401(k) feature
- A money purchase plan may be combined with a 401(k) or profit sharing plan
- Employer maintaining both would still need to adopt 2 plans
- Non-electing church plans are permitted
No Reliance

• IRS will not rule on trust provisions
  • Must be a separate document
• No reliance on Title I ERISA provisions (clarification – technically not a change in reliance rules)

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