

The Blue Chip Blast – February, 2023

Partners In-Sync

Washington has certainly added more challenges for plan sponsors, investment advisors, institutional recordkeepers and us TPAs with regards to the myriad of changes in new laws in the fold. It is imperative that all service providers are on the same page keeping up with and being in-sync implementing these changes. The value of an experienced Compliance Consultant / Administrator cannot be overstated here. The role of the Compliance Consultant at the TPA is to coordinate and educate the plan sponsor regarding the requirements and/or options of the new provisions involved, along with game planning the timing of the effective dates for when the provisions are to take effect. For example, a new provision in the law requires any deferral Catch-up contributions are to be **in the form of a Roth** for those participants with wages in excess of \$145,000 in the prior year (indexed) beginning after December 31, 2023 (Come on! Really!? Who makes this stuff up!?). The Compliance Consultant will not only need to work with the plan sponsor, but also the recordkeeper and payroll company to make sure any participants who fall in this category are complying with this new law. The Compliance Consultant must be proactive with this approach, otherwise it may be too late in the year to realize this plan defect has occurred. Being in-sync is the key focus on being compliant.

SECURE 2.0 becomes law

On December 29, 2022 SECURE 2.0 was enacted into law. This legislation contains a lot of Retirement Plan related provisions, most of which are optional though some are required. The passage of this legislation comes while we are still waiting for guidance on several of the provisions of the original SECURE Act that was passed in 2019. The one thing almost all of the new provisions have in common is that we don't yet have guidance on the implementation of the provisions and software providers, recordkeepers and payroll companies are not yet ready to handle these new provisions. Some pieces of the legislation were effective immediately upon enactment and the rest have various effective dates over the next several years. Via this newsletter and other communications, Blue Chip will keep you updated on provisions and the details of how to incorporate them into your Plan. If you hear about a provision and have questions or want to know how to add it to your Plan, please contact your Compliance Consultant to discuss in more detail. The rest of this issue will focus on some of the provisions that are effective this year.

Required Minimum Distribution Age changes...AGAIN

For years, the age at which you had to start taking distributions from a qualified plan was 70 ½. This requirement previously was revised so that if you were not a 5% owner you could delay starting distributions until you retired if that was after the year you attained age 70 ½. The original SECURE Act changed the age to 72 starting in 2020 and now SECURE 2.0 changed it to 73 effective in 2023 and will adjust further to age 75 in 2033. The ability to delay until you retire is still included for those who are not a 5% owner. This is a required change in SECURE 2.0 and one we do not have to wait for guidance on to move forward. This chart will help to simply who is subject to which age requirement.

Date of Birth	RMD Age
Before July 1, 1949	70 ½
7/1/1949 - 12/31/1950	72
1/1/1951 – 12/31/1959	73
1/1/1960 or Later	75

Incentives to Employees who contribute to the Plan

It has always been forbidden to condition the receipt of a bonus or other benefit (besides a Matching Contribution) on if an Employee makes 401(k) contributions to the Plan. Starting with plan years beginning in 2023 or later that is no longer true. SECURE 2.0 allows for optional de minimis financial incentives to be given to Employees who contribute. An example would be a small gift card. This incentive cannot be paid for with Plan Assets. So if you are hoping to boost participation in your plan either to help pass discrimination testing or just to help employees set themselves up for a better retirement this provision may be of interest to you. This is an example of a provision lacking guidance; the Act does not define “de minimis”.

Updates to Distribution Rules

Hardship Distributions can now be allowed without the Employee providing documentation of the financial need. Instead the employee will self-certify that they meet the financial need requirements for the distribution. This is an optional provision and is effective with the first plan year that begins 1/1/23 or later. When Treasury issues regulations they may include language providing for situations when the Employer knows the certification is false or when it is later found that the employee made a misrepresentation of the situation. Recordkeepers need time to update forms to provide for this provision and to track which plans will allow for self-certification.

Qualified Birth and Adoption Distributions (QBAD) were a new distribution type added with the original SECURE Act. For plans that chose to include this provision, Employees may take a distribution of up to \$5,000 within 12 months of the birth or adoption of a child. The original Act simply stated that the distribution could be repaid to the Plan to avoid taxation on that distribution. Secure 2.0 clarifies that the payback must occur within 3 years of the distribution. For any QBAD taken prior to Secure 2.0, the deadline for repayment is December 31, 2025.

Terminally Ill Exemption was added with SECURE 2.0, so that the 10% penalty will not apply to distributions to a terminally ill individual. A doctor must certify the employee has a terminal illness which is defined as one that is reasonably expected to result in death within 7 years. The Employee must otherwise be eligible to take a distribution and the Employee may repay the distribution within 3 years of the distribution similar to the new QBAD Rule. This provision is effective immediately, though recordkeepers will need to update their systems to provide for proper coding of these distributions so that the 1099R shows exempt from the penalty and distribution forms will have to be updated for this provision.

Roth Employer Contributions

Perhaps one of the most interesting new provisions of SECURE 2.0 that is effective immediately is the ability for an employee to elect for the Employer’s contribution to be made to a Roth account in the Plan. This is an optional provision. While this provision is getting a lot of interest, it is a provision that requires guidance and time for set up by the recordkeepers and payroll companies. Presumably with this provision if an employee makes this election the employer will tax them on the value of the employer contribution via the W-2 which may in fact impact the wages used both to calculate contributions to the Plan and for testing.

Reduction of required notices to “Unenrolled” Participants

There are so many notices that go out to Participants. A Participant is anyone who is eligible even if they have elected not to contribute and thus do not have a balance in the Plan. This new provision allows that Participants who are eligible to participate and were given initial enrollment materials and SPD but chose not to participate in the plan do not have to receive all of the required notices. Ironically, they do have to receive a new Annual Reminder Notice and can request any notice/documents which must be provided. IRS/DOL are to provide guidance on other criteria that defines an Unenrolled Participant. This is effective for plan years beginning in 2023.