



ANNUAL DATA COLLECTION: PANDEMIC EDITION

THE END OF THE YEAR IS QUICKLY APPROACHING WHICH MEANS ANNUAL DATA COLLECTION REQUESTS FOR MANY PLAN SPONSORS. We all know the drill by now, annual census data, an employer questionnaire, and plan asset information. While this process may be all too familiar for some plan sponsors and their advisors, due to the ongoing pandemic and the enactment of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, this year the annual data request may look a little different. In this article, we will explore some of the additional points that may be addressed during the upcoming year-end data collection process.

CORONAVIRUS-RELATED DISTRIBUTIONS (CRDS)

Under the CARES Act, a qualified individual is permitted to take a distribution of up to \$100,000 without being subject to the 10% penalty typically applied to distributions made prior to age 59½. Affected participants may spread the taxes over a three-year period and may repay all or part of the distribution to the plan or any plan that accepts rollovers no later than the 3rd anniversary of the date of distribution. The allowable timeframe to take a CRD is January 1, 2020 through December 30, 2020.

Due to the favorable tax treatment of CRDs, it is important to make the distinction between CRDs and regular plan distributions to ensure all applicable reporting and repayment requirements are satisfied.

- **Tax and reporting considerations for the plan:** When a participant receives a distribution greater than \$10 from a qualified retirement plan, a Form 1099-R is issued to report the

distribution. Some of the items included on the Form are the amount of the distribution, the amount of the distribution that is taxable, the amount withheld for tax purposes, and a code that represents the type of distribution. Which distribution code is reported on the Form will depend on if the plan acknowledges the CRD. It is important to note that a qualified individual may report the distribution as a CRD on their individual tax return even if the plan does not acknowledge the distribution as a CRD.

- **Tax and reporting considerations for the participant:** If a participant elects to spread the applicable taxes over 3 years, the distribution must be included in income ratably over the three-year period, starting with the year in which the distribution was received. The participant must also file a Form 8915-E.
- **Repayment considerations:** In general, a participant may repay all or part of a CRD, provided that they complete the repayment within three years after the date that the distribution was received. If a CRD is repaid, the distribution will be treated as though it were repaid in a direct trustee-to-trustee transfer so that no federal income tax is owed on the distribution. It is anticipated that eligible retirement plans will accept recontributions of CRDs if they accept rollover contributions in general. Amounts eligible for repayment include the principal distribution only (not subsequent earnings) and should be classified as a rollover contribution within the participant's account.



Plan administrators can rely on the participant's self-certification that they qualify for a distribution or loan under the CARES Act. It is imperative that plan sponsors retain a copy of the self-certification with their plan records. The IRS provided a model self-certification that can be found in the IRS publication, Notice 2020-50, pages 9-10.

CORONAVIRUS LOANS

The CARES Act modified the rules pertaining to participant loans by allowing loans up to 100% of a qualified individual's vested account, up to \$100,000. In addition to increasing the maximum allowable loan limit, the CARES Act allowed qualified individuals to defer loan payments due on any outstanding loan between March 27, 2020 and December 31, 2020 for up to one year. The five-year repayment period was also extended for one year.

Increasing loan limits and delaying payments for one year seemed easy enough, but now as we approach the end of the year it's time to consider the impact these provisions have on the plan and any action that needs to be taken to ensure a plan is operating in compliance with the new rules.

- **Increased loan limits:** While CRDs are available to qualified individuals through December 30, 2020, the increased loan limits were only available from March 27, 2020, to September 23, 2020.
- **Delayed loan payments:** The IRS recently clarified that only 2020 loan payments are delayed. This means that repayment, including accrued interest, must begin by the first loan payment due date in 2021. If payments were delayed, the loan must be re-amortized from the first payment date in January 2021 to the end of the loan term, which can be extended by one year. As most loan repayments are payroll deducted, the re-amortization and new loan payment amount must be in effect for the first payroll in January 2021.

REQUIRED MINIMUM DISTRIBUTIONS (RMD)

The CARES Act allowed any participant with an RMD due in 2020 from a defined contribution plan to waive their RMD. This included anyone who turned age 70½ in 2019 and would have had to take the first RMD by April 1, 2020, and anyone who would normally take a delayed RMD by April 1, 2021. If an RMD was distributed prior to the enactment of the CARES Act, participants had the ability to roll the funds back to a retirement account without taxation if done by August 31, 2020.

REQUIRED PLAN AMENDMENT

While the CARES Act provided much needed relief to plan participants, in many cases, plan sponsors had very little time to decide if they wanted to offer the optional provisions to plan participants. In addition, many recordkeepers took an opt-out approach while some required plan sponsors to make an affirmative election opting into the new provisions. Most plans do not have to be amended to include these new provisions until the end of the 2022 plan year (or such later date as the Secretary of the Treasury provides). Since the amendment will be retroactively effective and must detail the plan's operations in the interim, it is imperative that plan sponsors have kept records regarding the operation of the plan so the amendment accurately reflects the action taken by the plan sponsor.

PARTIAL PLAN TERMINATION

One of the harshest realities of the pandemic has been the number of job losses for the American work force. The Bureau of Labor Statistics reported that the unemployment rate skyrocketed from 3.5% in February 2020 to 14.6% in April 2020. Since that time, unemployment has continued to decline but was reported at 6.9% in October 2020. If the pandemic has affected your business in this way, even temporarily, it is possible that your plan incurred a "partial plan termination". Though an employer may voluntarily terminate their retirement plan for any number of reasons, all plan participants must become 100% vested in all accounts as of the date of termination. In addition to a full voluntary plan termination, a plan may experience a partial plan termination when turnover among plan participants exceeds 20% in a particular year. Like a full plan termination, participants affected by a partial plan termination must also be fully vested in their account balance. Whether a partial termination has

occurred is not always an easy call. The IRS makes it clear that the determination is based on the facts and circumstances of the particular scenario. Many factors must be considered when making this determination such as the participant turnover rate, the time period in which the turnover took place, if the turnover was employee or employer initiated, and if the turnover rate is routine for the employer.

Due to the economic struggles many companies experienced during 2020, there has been uncertainty about this determination in the COVID-19 environment. The IRS recently provided guidance to clarify that generally, employees who had been furloughed or laid off due to COVID-19 but are rehired by the end of 2020 would likely not be treated as having an employer-initiated severance for the purposes of determining a partial plan termination.

DEFINED BENEFIT FUNDING DEADLINE

Under the CARES Act, the due date for any required contributions to single employer defined benefit plans due during 2020 was extended to January 1, 2021. Because January 1st is a federal holiday, depositing and documenting the required contributions on that day could be difficult for plan sponsors. The IRS recently announced in Notice 2020-82, that the January 1st funding deadline would be extended to January 4, 2021.

PREPARE FOR LONG-TERM, PART-TIME EMPLOYEE PARTICIPATION

Beginning with the 2024 plan year, long-term part-time employees who have attained age 21 and worked at least 500 hours per year for 3 consecutive years, must be given the opportunity to make elective deferral contributions. While eligibility will not occur until the 2024 plan year, 2021 is the first year that hours must be tracked to determine if these employees have satisfied the eligibility requirement. ■



Upcoming Compliance Deadlines for Calendar-Year Plans

15th

December 2020

Extended deadline for distributing summary annual report (SAR) to participants.

31st

Deadline for a plan to make ADP/ACP corrective distributions and/or to deposit qualified nonelective contributions (QNEC) for the previous plan year with a 10% excise tax.

Deadline to adopt discretionary amendments to the plan, subject to certain exceptions (e.g. anti-cutbacks).

1st

February 2021

Deadline to file IRS Form 945 to report income tax withheld from qualified plan distributions made during the prior plan year. The deadline may be extended to February 10th if taxes were deposited on time during the previous year.

Deadline to distribute Form 1099-R to participants and beneficiaries who received a distribution or a deemed distribution during the previous year.

10th

Deadline to file IRS Form 945 to report income tax withheld from qualified plan distributions made during the previous year if taxes were paid timely.

1st

March 2021

Deadline for filing Form 1099-R with the IRS along with Form 1096 to report distributions made in previous year, if filing by paper.

15th

Deadline for processing corrective distributions for failed ADP/ACP tests without a 10% excise tax for plans without an Eligible Automatic Contribution Arrangement (EACA).

31st

Deadline for filing Form 1099-R with the IRS to report distributions made in previous year, if filing electronically.

The CARES Act gives the DOL the authority to delay retirement plan deadlines due to public health emergencies. The dates above are in effect as of the date of this publication.

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THE SECURE ACT 2.0

ON TUESDAY, OCTOBER 27, 2020, THE HOUSE WAYS AND MEANS COMMITTEE CHAIRMAN RICHARD NEAL (D-MA) AND RANKING MEMBER KEVIN BRADY (R-TX) INTRODUCED THE SECURING A STRONG RETIREMENT ACT OF 2020 (REFERRED TO AS SECURE ACT 2.0), WHICH AIMS TO EXPAND ON THE SECURE ACT THAT WAS ENACTED IN DECEMBER 2019. The goal of this bipartisan legislation is to “help a greater number of Americans successfully save for a secure retirement.”

“COVID-19 has only exacerbated our nation’s existing retirement crisis, further compromising Americans’ long-term financial security,” Neal said in a statement. “With the Securing a Strong Retirement Act, Ranking Member Brady and I build on the landmark provisions in the SECURE Act and enable more workers to begin saving earlier—and saving more—for their futures.”

The proposed legislation includes but is not limited to, the following key provisions:

- Promote savings earlier for retirement by enrolling employees automatically in their company’s 401(k) plan when a new plan is created.
- Create a new financial incentive for small businesses to offer retirement plans.
- Increase and modernize the existing federal tax credit for contributions to a retirement plan or IRA (the Saver’s Credit).
- Offer individuals 60 and older more flexibility to set aside savings as they approach retirement.
- Allow individuals to save for retirement longer by increasing the required minimum distribution age to 75.
- Allow individuals to pay down a student loan instead of contributing to a 401(k) plan and still receive an employer match in their retirement plan.
- Make it easier for employees to find lost retirement accounts by creating a national, online database of lost accounts.

While the chance of SECURE Act 2.0 passing before the end of the year is slim, it is still worth noting that the legislation may pick up steam once the presidential election has been finalized. It is not clear at this time whether this bill will have the same level of bipartisan support as the original SECURE Act. ■