SECURE 2.0 Act: Focus on Pension Plans

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As we previously reported here, the SECURE 2.0 Act includes many provisions that have an immediate impact on retirement plans. This article is the first in a series where we will focus on how the SECURE 2.0 Act will impact specific types of plans. The provisions listed below are all provisions that plan sponsors of defined benefit, money purchase, and cash balance plans should note and discuss with their third party administrators and outside counsel. Please note these provisions, in many cases, will also apply to other types of retirement plans, such as 401(k) plans.

Penalty-Free Withdrawals

The SECURE 2.0 Act provides for distribution relief for various unforeseeable events that allow participants to access their retirement savings:

- Money purchase pension plan participants may take advantage of special early distribution rules for withdrawal amounts up to $22,000 in connection with a qualified federally declared disaster that occurs after January 26, 2021. This relief provides an exception to the 10% penalty for such distributions, and such amounts may be repaid to the plan over three years to avoid income taxes.

- Amounts distributed prior to such a disaster to purchase a home can also be recontributed to the plan, and plans may provide affected individuals increased loan limits and additional time to repay the loan.

- A participant may take a penalty-free withdrawal if the participant has a terminal illness. This distribution option became effective after the SECURE 2.0 Act enactment date on December 29, 2022 (the "***SECURE 2.0 Enactment Date***").

*Increase in Age for Beginning Date for Required Minimum Distributions ("**RMDs**")*

As previously reported here, the SECURE 2.0 Act increases the age for determining the required beginning date for RMDs from 72 to 73 for participants who were born in the years 1951 through 1959 (i.e., an individual "who attains age 72 after December 31, 2022, and age 73 before January 1, 2033") and from age 73 to 75 for participants who were born in 1959 or later (i.e., an individual "who attains age 74 after December 31, 2032). Presumably, the incongruity for individuals born in 1959 (who both attained age 73 before January 1, 2033, and attained age 74 after December 31, 2032) will be corrected by a future technical amendment. Although the SECURE 2.0 Act raises the required beginning date for RMDs, retirement plans are not required to adopt this higher age and may require distributions to commence as of an earlier date following separation from employment, such as at normal retirement age. Importantly, this change does not impact participants who attained age 72 in 2022 and are scheduled to receive an RMD distribution on April 1, 2023. In addition, in the event a participant receives a penalty for failing to take a RMD, the IRS excise tax is reduced from 50% to 25% on the missed RMD amount for taxable years beginning after the Secure 2.0 Enactment Date.

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Changes to Plan Corrections Guidance

The SECURE 2.0 Act updated the Employee Plans Compliance Resolution System ("***EPCRS***") to allow more types of failures to be corrected by the employer through self-correction without a submission to the IRS through the Voluntary Correction Program, subject to further guidance from the IRS. In addition, ERISA retirement plan fiduciaries now have clear guidance providing them the flexibility to decide to not recoup overpayments that were mistakenly made to retirees in certain circumstances depending on the type of plan. For further information regarding this new guidance for retirement plan corrections, please see our blog post here.

Although plan amendments are not required under the SECURE 2.0 Act until the last day of the first plan year beginning on or after January 1, 2025, these provisions are currently effective. Therefore, pension plan sponsors should consult with their third party administrator to determine which changes are necessary to ensure that their plans are in operational compliance.

In addition to the provisions described above, the SECURE 2.0 Act includes actuarial related provisions concerning pension mortality improvement factors, annual funding notices, and lump sum window notices, which will likely become effective in 2024, subject to further guidance from the IRS and DOL. Pension plan sponsors should discuss these changes with the plan's actuary.

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