

# IRS ISSUES GUIDANCE CLARIFYING IMPLEMENTATION OF SECURE ACT RETIREMENT PLAN PROVISIONS

*Hodgson Russ Employee Benefits Newsletter*  
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IRS Notice 2020-68 provides guidance concerning the implementation of several retirement plan provisions of the Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE Act”) and the Bipartisan American Miners Act of 2019 (“Miners Act”). This article focuses on the most significant provisions related to qualified retirement plans, including:

- Expanded eligibility and vesting for long-term part-time employees in 401(k) plans;
- Qualified birth or adoption in-service distributions;
- Reduced age limitation on in-service distributions from defined benefit plans; and
- Plan amendment deadlines.

## Ability of Long-Term Part-Time Employees to Make Elective Deferrals to 401(k) Plans

Effective January 1, 2021, the SECURE Act requires employers to allow employees to make elective deferrals to a tax qualified 401(k) plan if the employee has worked at least 500 hours per year for three consecutive years, and has attained age 21 by the end of the three year period (a “long-term part-time employee”). While employers may exclude long-term part-time employees from eligibility for matching and nonelective employer contributions, the employees must receive vesting credit for any year in which they complete 500 hours of service.

Notice 2020-68 makes clear that periods of service prior to January 1, 2021 are excluded from consideration in determining a long-term part-time employee’s ability to make elective deferrals. However, employers must count all periods of service with the employer, including periods before January 1, 2021, when determining whether a long-term part-time employee has vested in any employer matching or nonelective contributions, unless Code Section 411(a)(4) permits the service to be ignored under another rule.

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Previously, employers could exclude from eligibility, contributions and vesting those employees who did not completed a year of service (1,000 hours). This may make implementation of the vesting service requirements problematic for employers who have not tracked service for part-time employees, an administrative concern about which the IRS has requested comments.

### **Administration of Qualified Birth or Adoption Distributions**

The SECURE Act created a new in-service distribution option for tax qualified defined contribution retirement plans, qualified annuities under Code Section 403(a), 403(b) plans and governmental 457(b) plans. Effective after December 31, 2019, such eligible retirement plans may now permit participants to take up to \$5,000 as an in-service distribution in the one-year period after the birth or legal adoption of a child. An eligible adoptee is a child (other than a child of the taxpayer's spouse) who has not attained age 18 or is disabled.

Notice 2020-68 clarifies that each parent may take a qualified birth or adoption distribution from an eligible retirement plan for the same child, both up to the \$5,000 limit. In addition, the Notice addresses situations of multiple births, and allows the \$5,000 maximum distribution to be made respecting each child. A qualified birth or adoption distribution may be made from a variety of contribution sources, including elective contributions, qualified non-elective contributions, qualified matching contributions, and safe harbor contributions. Plan administrators can rely on the participant's reasonable representation that s/he is eligible for a qualified birth or adoption distribution unless the plan administrator has actual knowledge to the contrary.

Qualified birth or adoption distributions are not subject to the 10% tax under Code Section 72(t) on early distributions, and are not subject to mandatory 20% withholding. Participants may recontribute qualified birth or adoption distributions to an eligible retirement plan, and it will be treated favorably as an eligible rollover or trustee-trustee transfer, excludable from income. Plans that offer qualified birth or adoption distributions are required to accept such recontributions.

Qualified birth or adoption distribution must be reported on the individual's tax return, which must include the tax identification number of the child. Even if the participant's retirement plan does not provide for qualified birth or adoption distributions, and the participant takes another type of in-service distribution under the plan, s/he may still claim relief from the 10% excise tax on a tax return if the circumstances would have satisfied the requirements for a qualified birth or adoption distribution, had the plan allowed it.

### **Reduction in Minimum Age for In-Service Distributions from Defined Benefit and Governmental 457(b) Plans**

The Miners Act lowers the minimum age for in-service distributions under Code Section 401(a)(36) for defined benefit plans from age 62 to age 59½. Governmental 457(b) plans may now permit in-service distributions at age 59 ½, formerly age 70 ½. Notice 2020-68 makes clear that such changes are optional, and do not by operation of law change the plan's current definition of normal retirement age.

**Plan Amendment Deadlines**

A plan amendment to conform to the SECURE Act or Miners Act, whether discretionary or mandatory, must be adopted by the last day of the plan year beginning on or after January 1, 2022 (January 1, 2024, for governmental plans and collectively bargained plans).