REGULATORY Update

Q4 2020

Presented by John J. Higgins, CFP®, AIF®, CFS®
john@psabenefits.com

IRS Announces 2021 Pension Plan and Retirement Account Limits

On October 26, 2020, the IRS released Notice 2020-79, announcing cost-of-living adjustments that affect contribution limits for retirement plans and retirement accounts in 2021. The list below, although not exhaustive, highlights key limits retirement plan sponsors should be aware of:

- The elective deferral limit remains unchanged at $19,500.
- The catch-up contribution limit for employees age 50 and older remains unchanged at $6,500.
- The aggregate contribution limit for defined contribution plans is increasing from $57,000 to $58,000.
- The annual compensation limit used to calculate contributions is increasing from $285,000 to $290,000.
- The limitation on the annual benefit under a defined benefit plan remains unchanged at $230,000. (For a participant who separated from service before January 1, 2021, the limitation for defined benefit plans under Section 415(b)(1)(B) can be computed by multiplying the participant's compensation limitation, as adjusted through 2020, by 1.0122.)
- The dollar limit used in the definition of *key employee* in a top-heavy retirement plan remains unchanged at $185,000.
- The dollar limit used in the definition of *highly compensated employee* remains unchanged at $130,000.

The table below compares the newly announced 2021 retirement plan contribution limits with 2020 limits.

Plan Feature	2020 Limit	2021 Limit
401(k) and 403(b) elective deferral	$19,500	$19,500
Aggregate defined contribution	$57,000	$58,000
Compensation limit	$285,000	$290,000
Defined benefit dollar limit	$230,000	$230,000
Key employee compensation	$185,000	$185,000
Highly compensated employee compensation	$130,000	$130,000
Catch-up contribution	$6,500	$6,500
457 deferral	$19,500	$19,500

IRS Provides Clarifying SECURE Act Guidance

To provide clarification and guidance on several provisions of the Setting Every Community Up for Retirement Enhancement (SECURE) Act—the December 2019 legislation that comprehensively reshaped retirement regulations—the IRS recently issued Notice 2020-68. The SECURE Act, as new legislation often does, left several unanswered questions for retirement plan sponsors and retirement account owners upon its passage. Notice 2020-68 answers many of those questions. The summary below, though not exhaustive, highlights the important clarifications that affect how plan sponsors might administer employer-sponsored retirement plans and retirement accounts.

Small Employer $500 Automatic Enrollment Credit

The SECURE Act created a new tax credit opportunity for small employers (defined in the SECURE Act as businesses with 100 or fewer employees) that included an automatic enrollment feature in their new or existing 401(k), 403(b), SEP IRA, or SIMPLE IRA plans. Employers would be eligible for a $500 credit for adding an auto-enroll feature to their plan (the credit applies for new plans and existing plans that didn't already offer this feature).

Notice 2020-68 clarifies that employers may receive a credit for each year during a three-year period, starting in the first year an employer adds the auto-enroll feature. In addition, employers that maintain more than one qualified employer plan must offer the automatic contribution feature in the same qualified plan for each year of the three-year period.

Participation of Long-Term, Part-Time Employees in 401(k) Plans

Beginning in 2021, the SECURE Act mandates that employers offer 401(k) plan eligibility to long-term, part-time employees once they complete either one full year of service with more than 1,000 hours worked or three consecutive years of service with at least 500 hours worked per year.

Notice 2020-68 clarifies that all years of service, even years before 2021, must be considered for determining a long-term, part-time employee's vesting in any employer contributions allocated to that participant's account, unless those years may otherwise be excluded due to age restrictions or other terms of the plan's document.

Qualified Birth or Adoption Distributions

The SECURE Act created a rule that exempts parents from the 10 percent early withdrawal penalty for distributions up to $5,000 for a qualified birth or adoption (QBAD). The distribution must be taken after the date of birth or date on which adoption is finalized and within one year of the birth or adoption. The amount withdrawn generally may be paid back to the eligible qualified plan or IRA.

Notice 2020-68 clarifies several nuances of this provision, including the following:

- A distribution to an individual will not be treated as a QBAD unless the name, age, and taxpayer identification number of the child or eligible adoptee appears on the individual's tax return for the taxable year in which the distribution is made.
- An eligible retirement plan distribution for purposes of a QBAD may be made from a 401(a) (including 401(k), 403(b), governmental 457(b), or an IRA). Notably, defined benefit plans are excluded in this definition.
- An eligible adoptee is defined as any individual who has not attained age 18 or is physically or mentally incapable of self-support. An eligible adoptee does not include an individual who is the child of the taxpayer's spouse.
- For purposes of determining a "physically or mentally incapable" person, an individual is considered to be disabled if that individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration.
- Each parent may receive a QBAD of up to $5,000 with respect to the same child or eligible adoptee and may receive QBADs with respect to multiple births or adoptions of eligible adoptees, provided they are made during the one-year period following the date on which the children are born or the legal adoption is finalized.
- Employers are not required to permit in-service withdrawals for QBADs; it is optional.

Treatment of Difficulty of Care Payments as Compensation

The SECURE Act included a provision that allows home health care workers to contribute to a retirement plan or IRA by treating difficulty of care payments as eligible for calculating contributions.

Notice 2020-68 clarifies that only difficulty of care payments received by an individual's employer should be included in that employee's definition of compensation.

As stewards of qualified retirement plans governed by IRS rules and guidelines, it's important for retirement plan sponsors, human resources staff, and benefits administrators to be up to date on retirement plan regulations and guidelines. If any of the SECURE Act's provisions and recent guidance are confusing to you, seek the counsel of service providers, such as your plan's custodian, third-party administrator, or retirement plan advisor, to help you understand your plan's characteristics and how the IRS guidelines should be properly and judiciously applied.

DOL Proposes Changes to Proxy Voting Rules

On September 4, 2020, the DOL issued a proposal that would amend proxy voting rules in retirement plans subject to ERISA. The proposed rules aim to require fiduciaries to exercise more consideration to the financial interests of retirement plan participants over those of corporate financial institutions.

Currently, the investment duties regulation that mandates the duty of prudence as it applies to fiduciary decision-making on investments fails to specifically address the exercise of shareholder rights as it relates to how fiduciaries must act for the exclusive purpose of providing benefits to participants and beneficiaries. The proposed rule would remedy those gaps in the regulations.

In a fact sheet accompanying the proposal, the DOL acknowledged previous guidance may have contributed to the confusion about the duty fiduciaries hold when it comes to proxy voting and led to the misunderstanding that fiduciaries must vote on all proxies presented to them, rather than only proxy proposals that would have a material effect on the value of the plan's investments. The DOL also cited concern that fiduciaries may be using plan assets to research and vote on proxy proposals that would not have a material impact on the value of the plan's investments.

The proposal would, according to the DOL's fact sheet, suggest making the following additions to the investment duties regulations (ERISA section 404(a)(1)(B)) for proxy voting and the exercise of shareholder rights:

- Require plan fiduciaries, when deciding whether to exercise shareholder rights and when exercising such rights, including the voting of proxies, to carry out their duties prudently and solely in the interests of the plan participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan
- Provide a list of obligations that fiduciaries must comply with when making decisions on exercising shareholder rights, including proxy voting, in order to meet their prudence and loyalty duties under ERISA section 404(a)(1)(A) and (B)

The DOL subsequently invited the public to comment (the deadline to submit comments was October 5, 2020) on its proposal.

Retirement plan fiduciaries will want to keep a close eye on the unfolding developments of the DOL's proposal and determine how, if seen to fruition, the new rules could affect their company's retirement plan. If you're uncertain, tap into the advice of your third-party administrator or other service providers contracted to help you manage your retirement plan administrative duties.

We Can Help

We are ready to provide you with the ideas, guidance, and foresight to position your firm for success. If you would like to review the SECURE Act clarifications, recent DOL proposals, or any happenings that may affect your firm's benefit plan offerings, we're here to assist you.

John J. Higgins, CFP®, AIF®, CFS®
Managing Partner
3 Elm Street • Suite 201 •Morristown, NJ 07960
Phone: 800.572.8859 • 973-326-9300 • Fax 888.469.1922
john@psabenefits.com • www.psabenefits.com

Securities and advisory services offered through Commonwealth Financial Network®, member FINRA/SIPC, a registered investment advisor. Fixed Insurance products and services offered by Patterson Smith and Associates are separate and unrelated to Commonwealth.

Commonwealth Financial Network® does not provide legal or tax advice. Please contact your legal or tax advisor for advice on your specific situation.

Authored by the Retirement Consulting Services team at Commonwealth Financial Network.

© 2020 Commonwealth Financial Network®

RCS-1479-33146_10/20