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IRS Issues Notice Clarifying SECURE Act Provisions on Participation and QBOADs

The Internal Revenue Service (IRS) recently issued additional clarification on key provisions of the Setting Every Community Up for Retirement Enhancement (SECURE) Act), signed into law on December 20, 2019. On September 2, 2020, the IRS published Notice 2020-68, which includes guidance on the Secure Act's new rules regarding 401(k) plan participation by long-term, part-time employees as well as qualified birth or adoption distributions (QBOADs).

The SECURE Act removed a restriction that had prevented those aged 70 ½ or older from contributing to a traditional Individual Retirement Account (IRA). The Notice states that any financial institution allowing that individual to make such contributions—the institutions are not required to do so—must amend its IRA contracts and update the disclosure statement that must be given to IRA owners. Those amendments and updates can be deferred until at least December. 31, 2022.

The IRS notice also clarifies that all periods of service—including those that begin before January 1, 2021—must be taken into account for purposes of a special vesting rule. That rule involves determining the service of a long-term part-time employee who is included in employer contributions; essentially, such an employee must be credited with a year of vesting service for each 12-month period during which the employee has at least 500 hours of service. The rule does not apply to participants who met the plan's regular participation requirement, which usually includes being at least 21 years old and working 1,000 hours in a 12-month period.

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As for QBOADs, the Notice includes a Q&A section designed to clarify several issues, including:

- Plan sponsors are not required to permit such distributions. Even so, a participant may treat an otherwise permissible in-service distribution from the plan as a qualified birth or adoption distribution, thereby avoiding the 10% early distribution tax.
- SECURE limits such distributions to $5,000 within one year of the birth or adoption of a child of a participant. The Notice specifies that such distributions apply per child, not per birth or adoption.
- A plan sponsor may accept the participant's self-certification that they are eligible to receive a QBOAD.
- If a plan permits QBOADs, it must allow the participant to repay a QBOAD to the plan if the participant is otherwise eligible to make a rollover contribution to the plan.

Additional IRS guidance is likely to follow in the coming weeks and months.

Contact the Pentegra Solutions Center at solutions@pentegra.com
or 855-549-6689 for expert guidance on how to make the most of the new rules.