JUNE 2021 WEBINAR

Current Events: Government Relations Update

RECAP OF FINDEC'S GOVERNMENT RELATIONS UPDATE WEBINAR

Bob Spoerl, President of Bear Icebox Communications, a communications agency that works with FinDec, was joined by Kevin Mahoney, Business Development Officer at FinDec. Bob moderated the FinDec webinar featuring Kevin on Tuesday, June 29 which provided updates about recent and pending legislation impacting retirement. As a member of NAPA's Government Affairs Committee, Kevin has access to the latest policy changes and proposals affecting workplace benefit plans. Kevin also recently testified in front of the Department of Labor's ERISA Advisory Council on self-directed brokerage windows.

In this webinar, Bob and Kevin discuss some of the key topics to be aware of in recent and potential new legislation in this space. We recap in this article in case you missed it.

SECURE 1.0 ACT RECAP

In December of 2019, the Secure Act was signed into place by former President Donald Trump. This was arguably the first significant legislation for retirement policy since the Pension Protection Act of 2006. The Secure Act increased tax credits for small plans, which was very helpful to many businesses since small 401K plans with less than 50 employees make up the vast majority of plans in the U.S. and cover the most workers. The Long Term Part-Time Eligible Employee Provision was put into place with the Secure Act, where if someone works more than 500 hours a year for more than three years, you have to include them in a company sponsored retirement plan. Additionally, the Secure Act increased the required minimum distribution (RMD) age to 72, increased penalties for late filings of Form 5500s, and reduced "stretch" IRA' from lifetime to 10 years.

THE SECURE ACT 2.0

Many things that were not in the Secure Act 1.0 were on the table for Congress to address for H.R. 2954— Securing a Strong Retirement Act (SSRA), or a Secure Act 2.0 if you will. The bill was introduced to the House Ways and Means Committee by Chairman Richard Neal (D-MA, 1st) and Ranking Member Kevin Brady (R-TX, 8th), from opposite sides of the aisle, but both parties have a mutual interest in making retirement better. Compared to Secure Act 1.0, SSRA is very lengthy, with six title sections and 45 individual provisions. On May 5, 2021 the act was approved by committee on a voice vote, which means that all committee members approved moving it to the floor of Congress. This type of vote means that it is very bipartisan and has a reasonable possibility of passing. This bill would raise $158 million in revenue over ten years which we will discuss further in another topic.

REQUIRED MINIMUM DISTRIBUTIONS (RMD)

With the Secure Act, there has been an increase in the minimum age of the first RMD to age 72. RMD's were initially put into place when life expectancy was a lot lower, and people were retiring in their early 60s. People are working longer, sometimes into their 70s. Yet, the current RMD rules require individuals to take out minimum distributions each year. These distributions are likely taxed at a higher rate because the individuals are still earning income. The new required beginning dates for RMD's under the SSRA is:

- Age 73 beginning in 2027
- Age 75 beginning in 2033

Increases in the RMD age will likely be included in SSRA because there is nothing controversial about it. The cost of this change is $6.8 billion over ten years.

There is also a proposed reduction in excise tax penalties for RMD failures. If you happen to miss your RMD, your penalties will be less severe than the current law states. Specifically, the proposal is to reduce the current 50% excise tax penalty to 25%. If you somehow miss your RMD payment, there are ways to apply to get an exception rather than just paying the penalty fee. Keep in mind: this legislation is still just a proposal. But while it's not yet law, it will likely be sometime in the near term.

HIGH IMPACT PROVISIONS

Included in SSRA are additional tax credits for employer matching contributions to encourage companies to match 401K contributions. For companies with 50 or less employees who start a matching program after enactment of SSRA, the tax credit is stated as a percent of contribution up to maximum of $1,000 per participant for the first two years. Then, it phases out until it's gone after five years. The government is trying to incentivize small businesses to start a 401K plan, match a percentage for individuals, by offering a tax credit.

They are also proposing to increase the 401(k) and 403(b) Catch-Up Limit to $10,000. This is a significant increase for individuals who max out their contributions each year. They will also be increasing the Simple plan catch up contribution limit to 5k for individuals 62-64 beginning in 2023. The proposal will cost $2.1 billion over ten years.

Also included are provisions to reduce the Long-Term Part-Time inclusions from three years to two. So, if you have worked over 500 hours for two consecutive years you are eligible for the company's retirement plan. This is a reduced time frame from the Secure Act which was three years of 500 hours.

Employee Self-Certification Hardships are also a positive provision. The Cares Act, passed because of the pandemic, included provisions that allowed participants to check a box if they needed to take a distribution as a result of the pandemic. The self-certification of the Cares Act was a huge success to eliminate paperwork and streamline the process of withdrawing funds in the event of an emergency. In the long run the SSRA provision will make funds more accessible to those who need it.

STUDENT LOAN MATCHING PROGRAM

This is a popular provision since student loan debt is such a significant issue for the next generation. Here is what is being proposed: Employers may contribute a certain percent of an employee's student loan repayment into the employee's retirement account. This means that even if an individual can't afford to contribute a percent to their 401k because they need to contribute to their student loans first, employers can still contribute a matching percentage as if they were contributing as long as they made the student loan payments. There are some non-discrimination issues addressed in the SSRA that were a concern for service providers. The provision will likely be evaluated and adopted in many industries trying to recruit college graduates. The challenge for service providers will be monitoring the 401k plans to ensure the individuals are making loan payments and the plan sponsor are matching the proper amount.

REVENUE RAISERS

Here are some revenue raisers legislators are discussing:

1. Roth capabilities added to Simple and Sep plans. This applies to taxable years beginning in 2022.
2. Hardship rules for 403(b) plans conform to the existing hardship distribution rules for 401(k)s to 403(b)s. This will be effective for play years beginning in 2022.
3. Catch-up contributions required to be Roth: This applies to taxable years beginning in 2022 and raises $13.2 billion over ten years.
4. Optional Roth treatment or E.R. matching contributions: E.R. may permit on E.E. to designate E.R. matching contributions as Roth. This raises $12.8 billion over ten years.

OTHER ADMINISTRATIVE ITEMS

1. Additional time for correction for failure to defer elective contributions on auto-enrollment: This provides up to 9 ½ months following close of the plan year to correct. The Secure Act 2.0 mandates auto-enrollment for most new plans
2. EPCRS Self-Correction Program allows for eligible inadvertent compliance failure to be selfcorrected and allows plan loan errors to be self-corrected.
3. Discretionary amendments that increase benefits are allowed for the previous year up until the employer tax return due date (i.e., additional match or other employer contribution; student loan feature)

4. Family attribution rule fixes. Stock attribution rules do not apply for spouses with separate businesses in community property states. Stock attribution rules do not apply for spouses with different companies on account of a minor child.

POTENTIAL AREAS OF IMPROVEMENT

1. Student Loan Matching Design—fix ADP Non-Discrimination Testing Issue
2. Streamline Long-Term Part-Time E.E. Compliance Rules for Vesting
3. Revise Family Attribution Rules
4. Allow certain discretionary plan amendments to be added after close of the plan year
5. Paper statement mandate will increase costs

Overall, there is no urgency to move the Secure Act 2.0 through the entire U.S. House of Representatives. Instead, all eyes are on the Senate. There have been multiple retirement savings policy bills introduced in the Senate over the past few weeks, including:

- Cardin-Portman: Retirement Security and Savings Act (S. 17770)
- Grassley-Hassan-Lankford: Improving Access to Retirement Savings Act (S. 1703)
- Wyden: Retirement Parity for Student Loans Act (S. 1443)
- Warren-Daines: Retirement Savings Lost and Found Act (S. 1730)
- Lankford-Bennet: Enhancing Emergency and Retirement Savings Act (S. 1870)

The Senate Finance Committee Hearing on these issues will likely be this summer and the Senate Finance Committee Bill and Markup will likely be this fall, so keep an eye out for these changes!