



SLEVIN & HART, P.C.

Benefits Update

IRS Guidance Clarifies Birth and Adoption Distribution Rules Under the SECURE Act

October 22, 2020

The Internal Revenue Service recently issued Notice 2020-68 providing guidance on the provisions of the Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE Act”) permitting qualified birth or adoption distributions from eligible retirement plans.

The Internal Revenue Code imposes a 10% additional tax on early distributions (typically before age 59 ½) from qualified retirement plans, unless a specific exception applies. As discussed in our January 9, 2020 Benefits Update, [available here](#), effective for distributions on or after January 1, 2020, the SECURE Act added a new exception to the 10% additional tax for distributions of up to \$5,000 that meet the requirements of a qualified birth or adoption distribution (“QBAD”). The SECURE Act defines a QBAD as a distribution from an eligible retirement plan made during the one-year period beginning on the date a child is born or the date a legal adoption of an eligible adoptee is finalized.

The Notice provides the following clarifications concerning the QBAD provisions of the SECURE Act:

Eligible Retirement Plans. A QBAD may be made from a 401(k) plan or other tax-qualified defined contribution plan, a 403(b) annuity contract, a 457(b) governmental plan, or an individual retirement account (“IRA”).

Eligible Adoptees. An “eligible adoptee” must be under the age of 18 or physically or mentally incapable of self-support and does not include the child of the taxpayer’s spouse, even if adopted by the participant. An individual is considered physically or mentally incapable of self-support if the individual is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration.

Plan Requirements. A plan is *permitted*, but is not required, to offer QBADs. If a plan does not permit QBADs, an individual may still treat an otherwise permissible in-service distribution from the plan as a QBAD for federal income tax purposes to avoid the 10% tax for early distributions.

A plan is permitted to rely on reasonable representations from the participant when making a determination that the individual is eligible for a QBAD, unless the plan has “actual knowledge to the contrary.”

A QBAD may include elective deferrals as well as employer contributions.

A QBAD is not treated as an eligible rollover distribution for purposes of the Code's direct rollover rules and a plan is not required to offer a direct rollover for a QBAD, provide a Section 402(f) special tax notice, or withhold 20% of the QBAD. The distribution is subject to the Code's voluntary federal income tax withholding rules.

QBADs for Both Participant Parents and Multiple Births or Adoptions. Each participant parent may separately receive a QBAD of up to \$5,000 for the same child or eligible adoptee, including from the same plan. For example, if Parent A and Parent B together adopt the same child, both Parent A and Parent B may receive a QBAD of up to \$5,000 each for that adoption, for a total of up to \$10,000. Further, a parent may receive a QBAD for each birth or each adoption of an eligible adoptee, as long as the distributions are made during the one-year period following the birth or adoption of the children. For example, a parent may receive a \$10,000 distribution for the birth of twins if the distribution otherwise meets the requirements of a QBAD.

Recontribution of a QBAD. A plan that offers a QBAD is required to accept the recontribution of that QBAD if the individual is eligible to make a rollover contribution to the plan at the time the recontribution is made. A recontribution of a QBAD is treated as a direct rollover from another eligible retirement plan.

The Notice advises that the IRS intends to issue additional guidance to address recontributions of QBADs, including the timing of recontributions.

Please contact Slevin & Hart for more information about how this guidance affects your retirement plan.

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