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CHARTERED

2020 Year-End Benefits Plan Checklist

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As we all anxiously await the end of 2020 and hope for an end to the pandemic and a return to normal in 2021, it's important to keep track of year-end issues. Given the volume of legislative and regulatory changes, largely related to COVID-19, it could be easy to miss something in the typical crunch to close out the year.

With that in mind, we are sending this list of 10 items to be sure to check off your list before 2020 year-end:

1. **Amendments**. Plans that made discretionary changes in 2020 need to adopt amendments by year-end. SECURE Act and CARES Act amendments are not required until the end of 2022 for non-governmental employers. But other amendments may need to be adopted this year; for example, if a plan reduced or eliminated a match.

2. **Part-Time Employees**. Companies that exclude part-time employees from 401(k) plan participation need to be ready to start counting hours in 2021. The SECURE Act includes a provision that mandates plan eligibility for long-term part-time employees, starting in 2024. Eligibility is based on working at least 500 hours during three consecutive 12-month periods. That means employers need to start counting in January 2021. Note that bipartisan legislation recently introduced in the House of Representatives, the Securing a Strong Retirement Act, would reduce the eligibility threshold to include people who work at least 500 hours over two consecutive 12-month periods.

3. **RMDs**. Defined contribution plans need to be ready to resume paying Required Minimum Distributions (RMDs). The SECURE Act changed the RMD age from 70.5 to 72. Then the CARES Act gave a 2020 RMD waiver for defined contribution plans (but not defined benefit plans). Proposed legislation could raise the RMD age again, to 75. In the meantime, employers should confirm with their 401(k) recordkeeper that the RMD process will resume in 2021.

4. **Distributions**. The CARES Act permitted coronavirus-related distributions (CRDs) to qualified individuals in 2020. Participants may elect to repay these CRDs within 3 years. Employers should confirm that their 401(k) plan recordkeeper has a process for this.

5. **Loans**. The CARES Act permitted participants to delay 2020 loan repayments. These repayments must resume in 2021. Different recordkeepers may be handling the repayment resumptions differently.

Employers should confirm that their 401(k) plan recordkeeper has a process for loan repayments to resume, and that participants receive communications about the timing.

6. **Pension Funding**. The CARES Act permitted companies to delay defined benefit funding contributions until 1/1/21. IRS guidance issued November 16 (IRS Notice 2020-82) clarifies that the deadline for making these delayed contributions (with interest) is 1/4/21.

7. **Cafeteria Plans**. Employers need to decide and communicate some cafeteria plan issues by year-end, so they are ready for 2021. (The actual amendments are not due until 2021 or 2022.) For example:
   - Are you indexing the $500 carryover for health FSA? If so, it would become $550 in 2021, and 20% of the health FSA annual limit thereafter.
   - Did you allow 2020 midyear changes due to COVID for health FSA, DC FSA, and/or medical coverage enrollment?
   - Anything special for people on LOA or layoff?

8. **Nonqualified Plans**. IRS deadlines for dealing with Section 409A failures have not been extended in connection with the COVID state of emergency. This means that certain failures must be corrected by year-end in order to get IRS relief from potentially significant penalties. In addition, some plans sponsored by publicly-traded companies may need to be amended by December 31 to accommodate changes in Section 162(m). See more in our separate alert here.

9. **Extensions Expiring**. The Department of Labor extended a number of deadlines due to the pandemic. These extensions apply to participant communications such as SPDs, SMMs, blackout notices, and claims and appeals deadlines. Although this extension was presented as effective March 1, 2020 through the end of the COVID state of emergency, it actually expires on February 28, 2021. This is because DOL Notice 2020-01 was issued pursuant to ERISA 518, which only authorizes the agency to extend relief for up to one year.

10. **Notarization**. The IRS authorization for virtual notarization (IRS Notice 2020-42) is only valid until the end of 2020. We hope it will be extended. But employers should talk to their defined benefit plan third party administrators about the processes for getting spousal consent.