

INFORMATION UPDATE (DECEMBER 2020)

Hello. We hope that everyone has been staying safe and is making it through 2020 as well as possible. It's been a busy year in the world in general, and it's been a busy year in the pension world, too. Here are some highlights on things that may be affecting you shortly. For more information, you can visit the Newsletters tab on our website (www.crepen.com).

LONG TERM, PART TIME EMPLOYEES

Congress' goal has been to get as many people as possible enrolled in 401(k) plans in order to give them the opportunity to defer. The SECURE Act, enacted at the end of 2019, added a provision that 401(k) plans have to let employees who are employed for at least three consecutive years with more than 500 hours per year ("long term, part time employees", or "LTPTEs") defer into the plan regardless of what the actual plan provisions are. Congress left a lot of the details up to the IRS to figure out and those details have been slow in coming. We know that employers have to start tracking hours worked for these people beginning 1/1/21 and that there's a three-year period to become eligible. So, the first time these employees will be able to defer is 1/1/24. If they worked for you before 2021, that time does not count for this. We know that you don't have to give them any employer contributions; but if you do, they might fall under different vesting rules. Beyond that, we're still waiting for a lot of guidance. **The important thing to note is that plan sponsors are going to have to track the number of hours worked for all employees starting January 1, 2021** – a shortcut like "this person never worked more than 1,000 hours" doesn't seem like it will be sufficient anymore. So, when we ask for your annual data, you will need to include all employees and provide accurate hours for all employees. For those who work over 1,000 hours, just knowing that they made 1,000 hours is probably still going to be sufficient. If you are providing your full census each pay period to a recordkeeper so that they can determine eligibility and/or vesting throughout the year, make sure it has all employees and full data, including hours worked, for all employees. As we learn more, we'll provide updates.

POOLED EMPLOYER PLANS

Also effective January 1, 2021 as part of the SECURE Act, pooled employer plan (PEP) rules allow non-related plans to join up into an arrangement where they can be part of the same plan. The theory behind this is that if enough small plans join up into one big plan, they can take advantage of economies of scale to push for better fee structures on the plan assets.

We certainly agree that in theory this is possible. However, we believe that there are major considerations for small plan sponsors to think about before joining this kind of set-up:

- These rules are brand-new. In fact, some of them are not yet even written. So, there are a lot of areas where things are unclear.
- The economies of scale likely won't make any significant difference until the PEP hits \$10,000,000 in total assets, if not more. This could require aggregating a dozen or more plans. At this point, you risk losing the service model you have with your financial advisor.
- While the regulations have made it easier to remove companies that act badly from such a plan, the entire plan is at risk until they are removed, especially if the situation is not being handled properly and promptly...and this is something that a different member company might have no idea is going on.

POOLED EMPLOYER PLANS (continued)

- We expect that many PEPs will be written to minimize customization and design options in order to streamline administration of the PEP overall. So individual plan sponsors will lose the ability to have a plan design that best works for them.
- Plan audits are required for large plans. While the audit thresholds have increased, we believe that the audit cost will also increase. Therefore, a plan that would never have been subject to an audit would now have this additional requirement, burden, and portion of the cost.
- Since the member company will be part of an overall larger whole where the expectation is built for a lower cost model, we expect that there will be a reduced service model offered by the provider so they can stay profitable.

While there is certainly a place in the retirement space for individual companies to gather together and pool into one plan, we believe that the plans who value our services and the customization that we can do for them will be better serviced with the higher-touch model we provide. And we remind everyone that the fiduciary standard is “reasonable”, not “cheapest”. If a plan is getting reasonable value and services for reasonable fees compared to the overall market for a plan with similar characteristics, the Trustee should have no problems. If there is concern about fiduciary issues, we recommend discussing them with the plan’s financial advisor.

STARTING NEW PLANS - EXTENDED TIMING and INCREASED TAX CREDIT

On a positive note, the SECURE Act extended the timing for when a new plan could be started. Now, like an IRA, a new plan may be adopted up until the due date of the employer’s tax return, including extensions. This can be done retroactively for employer money only; deferrals can only be started prospectively. This means, for example, as a calendar-year business is getting their taxes done in March, they can set up a profit sharing (or cash balance) plan for the prior year. The plan can then be immediately amended to allow deferrals going forward to make for a better overall design.

With the increased start-up credit of \$250 per non-Highly Compensated Employee (up to \$5,000) for the first three years, this is a good pairing.

SAFE HARBOR NOTICES

Another SECURE Act change: Plans that use the flat “non-elective” safe harbor contribution (usually 3%) to all participants, whether they defer or not, are no longer required to distribute safe harbor notices. However, we still recommend that you do distribute them, especially because giving the notice provides you the legal cover to say that you can cease the safe harbor contribution. If you don’t give the notice, it’s much harder to stop the contribution mid-year. Also, if you’re giving a benefit, you might as well point it out to your participants and get credit for it!

If you make a safe harbor match contribution, there is no change – you must still hand out the notices.

DEFERRAL DEPOSIT TIMING

We are still seeing plan sponsors failing to deposit employee deferrals timely after withholding them from the employees’ paychecks. Department of Labor guidance says that they should be deposited to the participants’ account as soon as possible, but there is a seven-business day ‘safe harbor’ for plans with fewer than 100 participants. Deposits made after that must be “made whole” with lost earnings paid by the plan sponsor, an excise tax paid to the IRS, and possibly a filing to the Department of Labor explaining the reason for the error and the steps taken to correct the issue. The late deposits must also be reported on the Form 5500-SF under penalty of perjury. We urge all plan sponsors to review their procedures to make sure they are handling these deposits timely.

S-CORP SHAREHOLDER HEALTH INSURANCE PREMIUM

The health insurance premiums paid by greater-than-2%-shareholders in an S-corp are counted as compensation for pension purposes, but only if reported in Box 1 on the shareholder's W-2; mis-reporting these amounts may be a nondiscrimination issue. If this applies to you, please review your year-end reporting to avoid potential issues and delays in your annual calculations.

CYBERSECURITY

Data theft continues to be a major problem, heightened by the number of businesses and employees who work remotely. Therefore, we are requesting and sending information via secure electronic means more often, even defaulting to it in many cases. Keeping your information secure is very important to us. We will be utilizing our secure portal, PlanSponsorLink, to share files and collect year-end data to help prevent data theft. If you're not already registered for the portal, contact your administration team for assistance.

LATE FILING PENALTIES

The IRS and DOL have increased the penalties for filing the annual Form 5500 and Form 8955-SSA late by tenfold. To avoid these penalties, it is more important than ever to return your data as soon as possible to give us enough time to do a thorough review before the deadline.

OFFICE RELOCATION

After more than 20 years, we moved...to the building behind our old place. Our new address is on the header of this update; "Concord St." is like a suite number, not an actual street. All phone and fax numbers are the same. Please make sure you have our new information in your records.

*We wish you the best of health, happiness, and success in 2021.
Thank you for trusting us with your business.*