Secure Act 2.0 Provisions of Interest to Nonprofits

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The $1.7 trillion omnibus budget law (the Consolidated Appropriations Act) passed at the end of 2022 includes provisions from the so-called “SECURE Act 2.0,” which are intended to enhance retirement benefits. Several of these provisions are significant for nonprofit organizations. The most important include:

Retirement Provisions

Multiple Employer 403(b) Plans

Multiple employer plans (“MEPs”) provide an opportunity for small employers to band together to obtain more favorable retirement plan terms such as more efficient and less expensive management services. 403(b) plans, which are generally sponsored by nonprofits and educational institutions, are now permitted to participate in MEPs.

In addition, nonprofits can now offer Pooled Employer Plans (PEPs). PEPs were created by the original SECURE Act passed in 2019 to permit unrelated small businesses (those without a common nexus, such as being in the same industry group or association) to join together to participate in a single retirement plan.

Advantages for smaller nonprofits

By outsourcing and consolidating the fiduciary obligations related to offering a retirement plan, employers can reduce costs and potential liability. Smaller employers often cited cost as the largest obstacle to offering an employee retirement plan. By pooling assets into a single, large plan, employers may save on administrative costs and achieve economies of scale. Most importantly, MEPs and PEPs can be a key employee retention benefit, helping to supplement financial security for existing and potential employees.

In the coming year, we'll share more about how your nonprofit can connect with MEPs and PEPs.

Automatic Enrollment

The law also will require employers, with some exceptions, to include automatic enrollment in new 401(k) and 403(b) retirement plans. According to a recent government study, while 68 percent of private industry workers had *access* to retirement benefits through their employer, only 51 percent chose to participate. Studies show that automatic enrollment increases participation rates in retirement savings plans. Under the automatic enrollment provision, beginning in 2025, employers who start new retirement plans after December 29, 2022 (the effective date of the new law) will be *required* to automatically enroll employees in their retirement plan at a rate of at least three percent, but not more than 10 percent, of eligible wages. Annual increases of one percent are required until the 10 percent ceiling is reached. Employees may opt out of automatic enrollment.

Employers that have been in operation for less than three years – including nonprofits – as well as churches and employers with 10 or fewer workers are excluded from this requirement, as are plans that were in existence before the December 29, 2022 effective date.

Note: The "grandfather" exception to automatic enrollment for plans that were in existence before December 29, 2022 does not apply to MEPs.

Charitable Provisions in Omnibus Budget Law

IRA Charitable Rollovers Enhanced

Individuals age 70½ or older are permitted to make distributions from their IRA directly to charity and avoid recognition of income. This IRA charitable rollover, known as the “qualified charitable distribution” (QCD), is limited to $100,000 each year. Beginning in 2024, this amount will be indexed for inflation.

The law also expands the QCD by allowing a one-time transfer of up to $50,000 to fund a charitable remainder annuity trust (CRAT), a charitable remainder unitrust (CRUT), or an immediate charitable gift annuity (CGA) ($100,000 if funded by the IRAs of both spouses).

The income beneficiaries of qualifying CRATs or CRUTS can only be the IRA owner and their spouse. CGAs funded by a QCD must have payments beginning no less than one year after funding, and such payments are established at a fixed rate of 5 percent or greater.

Advantages of QCDs

Donors to charitable nonprofits can satisfy both their philanthropic objectives and their required minimum distributions (“RMDs”) through a QCD. When a QCD is made, the charitable contribution made from the IRA counts towards the RMD, but is not included in the gross income of the IRA owner. The IRA owner does not have to itemize to utilize the QCD.

It is estimated that retirement balances represent almost 40 percent of the total assets of U.S. households. More than $33 trillion is held in funded retirement accounts. Thus, charitable gift planners often advise qualifying nonprofits (generally any public charity) to consider "marketing” QCDs to potential donors. Planners recommend that charitable organizations promote the benefits of QCDs three times a year: early in the year when individuals may be considering taking an RMD, then at tax time when individuals think about the impact of their current tax bill and ways to decrease next year's amount, and finally at the end of the year when many people make charitable contributions.

Required Minimum Distribution (RMD) Age

Required withdrawals from amounts that have accumulated tax-free in employer-sponsored retirement accounts (RMDs) must begin in the year the individual reaches a certain age (generally age 72). Starting in 2023, the age for RMDs will increase from 72 to 73. The RMD age will increase again in 2033 to 75. Individuals who are currently taking RMDs will continue to take a distribution each year based on their age.

RMD Penalty

The existing penalty for failing to take a required minimum distribution is 50%. Starting in 2023, this penalty will be reduced to 25%. If the individual corrects the failure in a timely manner, the tax on the penalty is reduced further to 10%.

Impact of RMDs

RMDs are included in taxable income, except for any part that was taxed before or that can be received tax-free, such as qualified distributions from so-called Roth accounts.

Withdrawals from IRA accounts, whether RMDs or larger sums, can result in additional income taxes, subject more Social Security benefits to tax, or increase Medicare Part B and D premiums. Thus, in addition to their desire to support their favorite nonprofits, individuals may find it advantageous to work with charitable gift planners to discuss ways to minimize the tax burden on distributions from retirement plans, including by making QCDs as discussed above.

Special Note: although the law delays the beginning age for RMDs, QCDs still can begin at age 70½.