Tulsa Chapter of the Oklahoma Society of CPAs

Retirement Plan Update for CPAs

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Agenda

- Recent law changes
- 2023 inflation-adjusted limits
- Current developments
- Plan design ideas
- Tax credits
- Employee education

Recent law changes

2019 SECURE Act

- More accessibility for employees and more favorable for employers
- "The most impactful retirement plan security legislation of the decade"
- In 2020 - overshadowed by COVID and CARES Act
- Known as SECURE 1.0; with SECURE 2.0 in sight

2019 SECURE Act: Top 10 changes

1. Age 72 for RMDs
2. Extended Adoption Date for New Plans
3. Flexibility for Safe Harbor 401(k) plans
4. New Tax Credits for Small Business
5. Expanded Lifetime Income Options
6. Withdrawals for Birth or Adoption
7. More Opportunities for Part-time EEs
8. Higher Penalty for Late-filed 5500s
9. Repeals Stretch IRAs
10. Pooled Employer Plans

2023 inflation-adjusted limits

2023: Employee deferrals and catch-up

✓401k/403b/457b deferrals	$22,500
✓Catch-up age 50	$ 7,500
	$30,000
✓SIMPLE-IRA deferrals	$15,500
✓Catch-up age 50	$ 3,500
	$19,000
✓IRA contributions	$ 6,500
✓Catch-up age 50	$ 1,000
	$ 7,500

2023: Other key limits

✓415: EE+ER contributions	$ 66,000
✓Catch-up age 50	$ 7,500
	$ 73,500
✓Maximum compensation	$330,000
✓HCE compensation	$150,000
✓ Social Security Wage Base	$160,200

2023: 415 limit and 404 deduction limit

401k/403b/457b EE deferral	\$ 22,500
ER contribution	\$ 43,500
415: EE+ER contribution	\$ 66,000

ER contribution deduction limit: 25% of compensation

\$174,000 comp x 25% =	\$ 43,500

Notes:

- Need W-2 of \$174,000 for maximum 415 limit
- FICA tax impact
- Non-discrimination testing impact

Current developments

IRS compliance priorities

- Classifications: independent contractor vs. employee
- Types of plans with common compliance issues:
  - Small tax-exempt organization plans
  - “Solo” 401k plans
- Use 5500 data to drive IRS inquiries and audits
- Emphasize/expand Corrective Action program (EPCRS)

Treasury regulations and IRS notices

- RMDs – Controversial Feb 2022 proposed regs re: after-death rules; effective 1/1/23

- Substantially equal periodic payments – IRS Notice 2022-6 provides 3 methods to calculate in order to avoid 10% early tax prior to age 59 ½.

- Form 8880 – Saver's Credit for employee/individual contributions to 401k, 403b, 457b, SIMPLE, IRA

Dept of Labor regulations and guidance

- Environmental, Social, and Governance (ESG) – final rule expected in Dec 2022

- Cryptocurrency –
  - March 2022: DOL has "serious concerns"
  - Nov 2022: FTX bankruptcy

- Fiduciary investment advice – new proposed regulations expected in Dec 2022

- Independent contractor vs employee – Oct 2022 proposed rule

Dept of Labor – Form 5500 changes

- 2022 Form 5500
  - Improved reporting on schedules
  - Additions to plan characteristics codes

- Expected in future
  - Independent audit requirement based on number of participants with balances
  - Compliance questions (nondiscrimination, coverage, plan document)

Dept of Labor examination/audit focus

- Late deposits of employee withholdings
- Missing participants
- Failure to obtain required Fidelity bonding
- Waiting for more clarity:
  - ESG investments
  - Cryptocurrency investments
  - Fiduciary investment advice

Litigation against fiduciaries

- Top 2 litigation issues regarding fiduciary duties:
  - Excessive, unreasonable costs
  - Failure to adequately monitor investments
- Hughes vs. Northwestern University (Jan 2022): Supreme Court reinforced duty to regularly monitor costs and investments of all funds offered to employees
- Class-action lawsuits are trending toward smaller plans; settlements ranging from $1million to $4million

Best fiduciary practices and risk mitigation

- Identify all cost components and ensure each is reasonable and appropriate
  - Subjective business decision
  - Competitive quotes and RFPs
  - National benchmarking
- Hire an independent investment fiduciary to monitor investments on a quarterly basis
- Create committee and review quarterly
- Create an Investment Policy Statement and follow it
- Hire and monitor professional service providers
- Prepare documentation of decisions and action
- Obtain fiduciary liability insurance coverage

SECURE Act 2.0

- 3 proposed bills in both House and Senate
- >50% chance of passing in 2022; impact of mid-terms?
- Could be most extensive retirement plan legislation since ERISA in 1974
- Focus on expanding coverage and accumulations, with no reductions for owners or HCEs
- Will increase compliance and administration

SECURE Act 2.0: Key proposals

- Match may be made on EE’s student loan payment
- More options for emergency withdrawals
- Increase catch-up to $10k for ages 60-63
- Allow self-certification of financial hardship withdrawal
- Increase RBD to age 75 (eff 2032)
- Eliminate RMDs for Roth balances
- Increase tax credits for small employers
- Loosen “top heavy” rules

SECURE Act 2.0: Key proposals (cont'd)

- Expand EPCRS corrective action program
- Change "family ownership attribution" rules
- Birth and adoption repayments, if desired, in 3 years
- Require EE catchup contribution to be after-tax Roth
- Allow ER contributions to be after-tax Roth
- Expand automatic enrollment
- Consolidate notices for employees
- Change fee disclosure rules

Plan design ideas

401(k) plans

- Safe Harbor options: 4% match or 3% non-elective
- Cross-tested ER contribution
- Automatic enrollment
- Pre-tax vs after-tax Roth deferrals
- In-Plan Roth Rollover (conversion)
- Withdrawal options
  - Age 59 ½
  - Rollovers
  - Hardship
  - Birth and adoption
- Loans

Cash Balance plans

- Defined Benefit pension plan
- Higher deduction limits than 401k plan
- Ability to target owners and key employees
- Minimum 8% of pay to staff (approx.)
- Combined limits and testing with 401k plan
- Could be part of owner exit strategy

Non-qualified deferred comp plans

- Not a tax-qualified plan; not subject to most of ERISA
- Must be for select group of management or highly compensated employees
- Design flexibility for individual benefits, incentives, vesting, payouts, etc.
- Can mirror the 401k plan to provide lost benefits
- “Golden handcuff” for reward and retention of key employees
- Rolling vesting schedule

Safe Harbor 401k vs SIMPLE-IRA

SIMPLE-IRA advantage: little or no admin cost

SIMPLE-IRA disadvantages:

- Lower contribution limits
- No ability for add’l discretionary contributions
- No after-tax Roth
- Less ability to design eligibility
- No loans
- No restrictions on withdrawals
- Restrictions on rollovers in and out
- 25% penalty for certain early withdrawals

Safe Harbor 401k vs SEP-IRA

SEP-IRA advantage: little or no admin cost

SEP-IRA disadvantages:

- Same max and 25% deduction limit but no deferral option; thus, need higher W-2 (higher FICA tax)
  - For $66k max: 401k W-2 = $174k; SEP W-2 = $264k
- Employer contribution is same % of pay to all employees
- No matching option
- No after-tax Roth
- No loans
- No restrictions on withdrawals

Tax credits

Tax credits for employers

For employers with 100 or fewer employees and at least one Non-Highly Compensated Employee:

<u>Start-up costs for a new plan (401k, SEP, SIMPLE-IRA)</u>: Tax credit up to $5,000 for 3 years based on number of Non-Highly Compensated Employees

<u>Add automatic enrollment</u>: Tax credit of $500/yr for 3 yrs

Tax credit or tax deduction, but not both

Form 8881

Tax credits for employees

- Known as Saver's Credit

- Tax credit of 10%, 20%, or 50% of employee contributions to 401k, 403b, 457b, SIMPLE, IRA

- Only available if AGI is at or below:

	2022	2023
• Married joint	$68,000	$73,000
• Single	$34,000	$36,500

- Form 8880

Employee education

Employee education

- Should be top priority for employers
- Customize based on specific needs
- Sample education topics
  - How to access website, call center, and advice
  - Importance of saving
  - Key features of the plan
  - Experts’ advice in turbulent markets
  - How much do I need to save?
  - How to invest your account?
  - Beneficiary designations
  - What’s a target date fund?

Q&A