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Correspondence Memorandum

Date: October 30, 2019

To: Wisconsin Deferred Compensation Board

From: Tarna Hunter, Director of Government Relations

Subject: Legislative Update

The following federal legislative proposals affect the Wisconsin Deferred Compensation Program. At the time of writing, there has been no legislative action on the bills since the last board meeting.

Federal Legislation

SECURE Act – The Setting Every Community Up for Retirement Enhancement Act of 2019 (H.R. 1994)

The SECURE Act modifies the requirements for employer-provided retirement plans, individual retirement accounts (IRAs), and other tax-favored savings accounts.

The main provisions of the legislation include:

Tax Credits – Increases the tax credit for new plans from the current cap of $500 to $5,000. Small employers that implement an automatic enrollment feature in their retirement plan design would also be eligible for an additional $500 tax credit.

Open Multiple-Employer Plans – Allows two or more unrelated employers to join a pooled employer plan. Additionally, the bill amends the Internal Revenue Code (IRC) to provide for a process for ensuring one employer's qualification problem would not lead to the disqualification of the entire Pooled Employer Plan.

Plan Adoption Date – Allows an employer to adopt a qualified retirement plan after the close of the tax year if it is adopted before the deadline for filing the employer tax return for that taxable year.

Reviewed and approved by Pamela Henning, Assistant Deputy Secretary
Pamela L Henning Electronically Signed 10/30/19

Board	Mtg Date	Item #
DC	10.31.19	15C

Fiduciary Safe Harbor – Creates a new fiduciary safe harbor for employers who opt to include a life-time income investment option in their defined contribution plans.

Lifetime Income Disclosure – Requires employers to provide plan participants with an estimate of the amount of monthly annuity income the participant's balance could produce in retirement.

Portability of Lifetime Income Options – Permits a plan participant to roll over lifetime income investments to an IRA or another retirement plan without a traditional distribution event if their plan no longer permits such investments.

Part-time Worker Plan Participation - Permits long-term part-time workers to participate in 401(k) plans.

Automatic Enrollment – Increases automatic enrollment caps of 401(k) plans from a 10 percent limit to a 15 percent limit. The 10 percent cap would still apply for the participant's first year of participation.

Custodial Accounts on Termination of 403(b) Plans – Permits the plan administrator or custodian of a 403(b) custodial account to distribute the account in kind to a participant or beneficiary when the employer is terminating the 403(b) plan.

Post-Death Required Minimum Distribution – Generally provides that all distributions to a designated beneficiary after death be made by the end of the tenth calendar year following the death of the participant.

Increase in Age for Required Minimum Distribution – Extends the current required minimum distribution requirements to age 72 (effective for individuals turning 70½ after Dec. 31, 2019).

Birth/Adoption Tax Exemption – Permits individuals to take withdrawals of up to $5,000 for childbirth or adoption expenses.

In addition to the above provisions, the bill modifies the nondiscrimination rules of closed plans to protect longer-service participants; prohibits plan loans made through credit cards, makes changes to Safe Harbor rules; consolidates Form 5500 reporting requirements; increases certain IRC penalties for plan reporting failures; changes certain defined benefit plan provisions; changes certain IRA plan provisions (including allowing participants to make contributions after age 70½); and includes provisions affecting specific plan types.

H.R. 1994 was introduced by Rep. Richard Neal (TX) on March 29, 2019. On May 23, 2019, the House passed the bill, as amended, 417-3. The Senate received the bill on June 3, 2019. At the time of writing, the Senate has taken no action on this bill.

<u>RESA – Retirement Enhancement and Savings Act of 2019 (S. 972 and H.R. 1007)</u>

The RESA is nearly identical to the SECURE Act with the following main differences:

Post-Death Required Minimum Distribution – Generally provides that all distributions to a designated beneficiary after death be made by the end of the fifth calendar year following the death of the participant (The SECURE Act provided distributions within ten years).

Increase in Age for Required Minimum Distribution – The bill does not increase the age when minimum distribution requirements are required (maintains current law – RMDs are required to start at age 70½).

Birth/Adoption Tax Exemption – The bill does not include the provision allowing individuals to take withdrawals of up to $5,000 for childbirth or adoption expenses.

Additionally, RESA includes proposed changes for magistrate judges of the U.S Tax Court not included in the SECURE Act.

S. 972 was introduced by Sen. Charles Grassley (IA) on April 1, 2019. H.R. 1007 was introduced by Rep. Ron Kind (WI) on February 6, 2019. At the time of writing, no action has been taken on either bill.

<u>Retirement Security and Savings Act of 2019 (S. 1431)</u>

The Retirement Security and Savings Act includes a number of provisions that make changes to defined contribution (DC) and defined benefit (DB) plans but doesn't address open multiple employer DC plans or nondiscrimination testing relief for closed DB plans included in the above legislation.

The key provisions of the bill include:

Student Loan Match Programs – Permits sponsors of 401(k), 403(b), governmental 457(b) and SIMPLE plans to match their workers' student loan payments as if the payments were salary reduction contributions.

Automatic Enrollment – Provides for higher minimum deferral rates than the existing auto-enrollment safe harbor and a tiered safe harbor matching contribution up to 10% of pay. Additionally, directs the U.S. Department of Treasury to issue regulations simplifying the notice timing requirements and auto-escalation rules for eligible automatic contribution arrangements and auto-enrollment church plans.

Part-time Worker Plan Participation - Permits long-term part-time workers to participate in 401(k) plans.

Minimum Distribution Requirements – The bill makes a number of changes to MRD requirements, including increases the MRD starting age from the current 70½ to age 72 starting in 2023 and then age 75 starting in 2030; requires the U.S. Department of Treasury to update mortality tables for determining distributions; removes penalties of partial annuitizations; exempts aggregate retirement plan balances that don't exceed $100,000 from RMDs; reduces excise taxes on missed RMDs; exempts Roth accounts from RMDs and the incidental death benefit rules; and provides that the surviving spouse of a deceased employee could elect to be treated as the employee.

Tax Credits – Increases the tax credit for new plans from the current cap of $500 to $5,000. Small employers that implement an automatic enrollment feature in their retirement plan design would also be eligible for an additional $500 tax credit.

Post-Termination Elective Deferrals – Permits employees to make elective deferrals on severance and back pay as if the employees were still actively employed.

Cash-Out of Annuity Benefits – Permits some or all of an annuity benefit already in pay status to be cashed out from a qualified plan without being subject to the excise tax on distributions made before age 59½ (or changed within five years after payments start), so long as the benefit is rolled over to another qualified plan that continues the annuity stream. The same treatment would be available for payments from nonqualified annuity contracts rolled over into similar contracts.

Non-Spouse Rollovers. Permits non-spouse beneficiaries to roll over a deceased participant's account to an "inherited IRA" established for receiving the distribution. Additionally, Roth accounts in employer plans would accept rollovers from Roth IRAs.

Qualified Retirement Planning Services – Employees offered a choice between receiving retirement planning services or cash would not be taxed under the constructive receipt doctrine if they chose retirement planning services.

Catch-Up Contribution Limits – Permits qualified and 403(b) plans to allow increased catch-up contributions up to $10,000 starting at age 60. SIMPLE plans could allow an increased limit of $5,000 at age 60. All catch-up contribution limits (including the current $1,000 limit for IRAs) would be adjusted for cost-of-living increases.

457(b) Deferral Rules – Permits 457(b) plans to allow deferrals of compensation if the deferral agreement is in place before the compensation would otherwise have been available to the employee. (Current rules require the agreements to be in place before the beginning of the month of deferral.)

Transfers by Non-Spouse Beneficiaries – Permits non-spouse beneficiaries to transfer distributions among pension, 403(b) and 457(b) plans with tax-favorable rollover treatment.

Charitable Contributions – Permits participants age 70½ or older to use their pension, 457(b) and 403(b) plan funds to make donations of up to $100,000 directly to a charity without paying tax on the withdrawals. Current rules only exempt charitable donations from IRAs.

Finally, the bill contains numerous additional provisions, including targeted provisions affecting defined benefit plan sponsors; changes to 403(b) plans (including allowing 403(b) custodial accounts to invest in group trusts); several provisions aimed at simplifying reporting and disclosure requirements; expanding the self-correction program under the IRS's Employee Compliance Resolution System; changes to commercial annuities (including allowing annuity payment increase up to 5% annually); changes to Qualified Longevity Annuity Contracts; and expanding the Saver's Credit.

S. 1431 was introduced by Senators Rob Portman (OH) and Ben Cardin (MD) on May 13, 2019. At the time of writing, no action has been taken on the bill.

Staff will be available at the October 31, 2019 Board meeting to answer any questions.