HICKS NOTES

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A BUSY YEAR BRINGS NEW OPPORTUNITIES

2023 was a year of new laws and regulations that affects retirement plans now and in the future. Many provisions of SECURE Acts and CARES Act currently passed are now taking effect. Market volatility and inflation are affecting contributions, participation and administrative decisions and burdens. These and other issues provide opportunities for all practitioners working in the small retirement plan market.

PEPS and MEPS (Pooled Employer Plans and Multiple Employer Plans): Once touted as the future of small retirement plans, we have not seen the potential these plans once promised. This is because they lack the benefits afforded to an individually designed plan. The so-called savings and ease of administration did not materialize as those trying to disrupt the market failed in their attempt. Expertise, employer savings, and plan flexibility proved to be a better solution in today's market. Payroll providers and bundled products are great takeover prospects.

New Laws and Regulations: Two recently passed laws, the SECURE Act and the SECURE Act 2.0 have provisions that will affect our clients now and into the future. We have written newsletters and summaries of these laws that can be found here, but the following provisions are the ones you need to focus on as they present future and existing client opportunities.

We have created a chart to help you understand what provisions are required, which are optional and provide their effective dates. Check out our October 2023 newsletter for an outline of these provisions.

Automatic Enrollment: Beginning in 2025, all new 401(k) plans established after the enactment of SECURE 2.0 will be required to automatically enroll new employees at an initial contribution amount between 3 and 10%. The amount will increase by one percentage each year until it reaches 10-15%.

Plans established before enactment will not be impacted. New companies in business for less than three years and employers with 10 or fewer workers are excluded.

This may have unforeseen consequences to a 401(k) matching safe harbor plan. The safe harbor match plan saves employers on contributions in plans with low participation and no discretionary profit sharing contribution. Presumably, this will make the 3 percent non-elective safe harbor a better option for clients with high levels of employee participation.

In addition , this will change the way these plans are communicated to participants. I see them much like a private social security, especially in Safe Harbor Plans. You contribute, your employer matches, and you own it. Then there are the opt-out provisions and how they are communicated and enacted. We will see how this plays out, but perhaps a reason to establish a plan before 2025.

Required Minimum Distribution (RMD) Rules: Beginning in 2023, the SECURE 2.0 Act raised the age that you must begin taking RMDs to age 73. If you reach age 72 in 2023, the required beginning date for your first RMD is April 1, 2025, for 2024. The RMD age will increase to 75 starting in 2033.

RMD Penalty Relief: Starting in 2023, the steep penalty for failing to take an RMD decreased to 25% of the RMD amount not taken from 50%. Additionally, Roth accounts in retirement plans will be exempt from the RMD requirements starting in 2024.

Market Volatility: Big swings in the stock market and interest rates can dramatically affect Defined Benefit plans and their contribution and funding limits. Large contributions and deductions are still available but will be lower in 2024. To view our defined benefit contribution chart for 2023, click here.

Existing DB clients should be aware of their situation and how their current and future funding is affected. For more information DB issues, read our March 2023 Newsletter here.

Employee valuation in pooled accounts within Defined Contribution plans can be problematic. Market swings in either direction affect participant accounts from the time they left to the time they are paid. Beware of participants with big balances and stay diligent.

Inflation: Many plan limitations are increased with inflation. These increases produce larger contributions in all retirement plans. Understanding these increases and the benefits to small employers can help get new plans. For a table of these updated limits click here.

Compliance and Administrative Issues: The new laws allow for various other provisions as incentives for participation. Each of these provide administrative burdens on the employer and their third party administrator (TPA). These include student loan payments, and distributions (covering birth and adoptions, federal disasters, and victims of domestic abuse). These are all covered in our SECURE Act 2.0 chart, and each should be presented to existing clients as an option to each plan.

The plan amendments to include the changes from the CARES Act, SECURE Act, and SECURE Act 2.0 must be completed by December 31, 2025. This a perfect reason and opportunity to visit your clients and go through these new provisions.

In addition all Defined Benefit Plans **must** be restated by March 31, 2025. We are beginning this restatement process in May of next year. This restatement is called Cycle 3 or Post PPA and is required on all defined benefit plans. This is a great opportunity to review and redesign existing plans to better fit our Defined Benefit clients' needs and expectations. Many providers are charging big fees and providing inadequate service for this work. There are marketing opportunities here.

Finally, we are seeing audits from the IRS that are AI generated. Controlled groups and/or plans excluding union employees appear to be targeted. Many clients are getting outrageous penalties for late or missing 5500 as the human element is being removed.

Bottom Line: Using a good administrator and being diligent in your compliance is becoming a must for all plan sponsors. There are opportunities in plan design, great service, and price. Seeing your clients and educating participants is always a great idea and a basic requirement.

As always, we are here to help. Let us know if you have any questions or comments.