MINUTES
PENSION REVIEW COMMITTEE
Tuesday, October 27, 2020
Room 113 - Bill Luxford Studio, County-City Building

Present: David Derbin, Chief Administrative Officer; Scott Gaines, Chief Deputy Assessor/Register of Deeds; Doug Cyr, Chief Deputy County Attorney; Joe Nigro, Public Defender; Rick DeBoer, AFSCME; and Eric Synowicki, Deputy County Attorney.

Other Participants: Julie Klassen, Vice President, Key Accounts; and Cy Tuason, Client Service Manager Total Retirement Solutions; Prudential Retirement

Absent: Kenny Nolan, FOP 77; Dennis Meyer, Budget & Fiscal Officer; Sean Flowerday, County Commissioner; Robert Holbrook, FOP 32; Kevin Nelson, County Clerk Accounting Operations Manager

Derbin called the meeting to order at 2:35 p.m.

1. Roll Call

Derbin asked for a Roll Call. All were present except Meyer, Flowerday, Holbrook, Nelson and Nolan who did not attend.

2. Approval of Pension Review Committee Meeting Minutes for September 22, 2020

MOTION

Cyr moved and Gaines seconded to approve the Pension Review Committee meeting minutes for September 22, 2020. The motion carried unanimously.

3. Secure Act Directive.

Klassen stated that she would be going over the Secure Act and Miners' Act Withdrawal Provision flexibility that was created by recent Legislation. What is before the Committee is to decide what to do with the optional provisions. She stated there is no immediate deadline to make this decision unless Lancaster County wanted to make these optional provision effective January 1, 2021, and if so, the Directive needs to be returned to Prudential by December 1, 2020. Otherwise the provisions can be added at a later time before 2024.

A. Qualified Birth or Adoption Distributions – Secure Act § 113 ("QBAD")

A copy of Prudential's Retirement Directive is included with these minutes as Exhibit A and the Pension Analyst Compliance Bulletin is included as Exhibit B. Klassen stated that the QBAD permits an individual to self-certify that they have had the birth of a child or an adoption of a child with the ability to take $5,000 out within a years' time of the child entering their life. She went on to say the details are:

- Permits a withdraw from the plan
- 1099 is issued to the participant
- No automatic Federal withholding of 20%
- 10% Penalty is not applied on the 401A (457 doesn't have a penalty to begin with)

- Can repay it by rolling back into the plan at a later date

B. In-Service Pension Distributions – BAMA Act § 103

Klassen stated that the In-Service Distributions would allow participants to withdraw from their plan at age 59½; otherwise a 457 could not have an in-service withdrawal under current rules until age 70½ and for the 401A it isn't until age 62. She also said that the intent of the two pieces of legislation is to give greater access to funds if elected to have these options available in the plans. They are not required provisions, only optional.

Klassen reiterated that there is no rush with making these decisions unless there is a desire to have any of them available by January 1, 2020. She also stated that the amended documents of the 401(a) and/or 457 (if selected) would be provided by Prudential.

Derbin suggested considering the two provisions by first looking at the 401(a) plan and then moving on to the 457. Then he asked for feedback on making changes to the 401(a) plan.

Gaines said he wasn't comfortable with adding any withdraw options to the 401(a) plan at this time.

Cyr mentioned that this would make the QBAD option from the 401(a) unavailable to those in the age group who would be having or adopting children and also stated that they probably wouldn't have enough saved up in a 457 to take advantage of the QBAD option there either. With that being said, he is also opposed to the distributions from the 401(a).

DeBoer stated he could see where the option could help young struggling families that may need the additional funds.

Nigro also voiced his understanding of those who may need access to the funds now to get through a tough time and maybe it should be an option available. He asked if any plan participants have requested any withdraw options, for in-service distributions. Derbin said he had not heard of any and Prudential had not mentioned that anyone has asked.

Cyr said he views the 401(a) as a retirement fund and doesn't feel comfortable with withdrawing early from that plan. Derbin agreed with Cyr as far as the 401(a) is concerned.

There being no further discussion, Derbin asked for a motion.

MOTION

It was moved by DeBoer and Nigro seconded to not take any action on the 401(a) plan at this time. The motion passed unanimously.

Derbin then asked for discussion on the 457 plan, first asking about the QBAD option then moving on to the in-service option.

DeBoer stated that he is in support of having QBAD Distribution provisions from the 457 plan, sharing that it would have been helpful to him having that option when his twins were born.

Nigro said that the QBAD option should be available from the 457 plan to let younger people have the option to pull funds from this account if they have funds available.

Derbin reminded the committee that there are other hardship provisions in the 457 plan as well as provisions through the CARES ACT and reminded the committee that the QBAD would allow distributions only for birth or adoptions.

Cyr also explained the process for a hardship withdrawal goes through a review process, starting with Derbin then going to himself. He explained that the criteria for hardship withdrawals were pretty "loose" as long as it was an unexpected need through the course of life.

Gaines stated he is willing to be more flexible with the 457 options made available to plan participants.

There being no further discussion, Derbin asked for a motion.

MOTION

It was moved by Nigro and seconded by DeBoer to allow QBAD Distribution provisions from the 457 plan effective January 1, 2021. Voting for the motion: Derbin, Nigro, Gaines, and DeBoer. Voting against the motion: Cyr and Synowicki. The motion passed 4-2.

Derbin then asked for discussion on the in-service distribution provision that would reduce the age for in-service distribution from 70½ to 59½.

Nigro asked if there were tax consequences and Derbin stated that based on the age when the distribution was requested there would be marginal tax consequences.

MOTION

It was moved by Nigro and seconded by DeBoer not to take action on the 457 in-service distribution option. DeBoer seconded the motion.

Derbin asked for any further discussion. Cyr stated that he could see employees still working but close to retirement age that would benefit from this option being available to them. They could use the money for home improvements, a second home, or getting a boat. He sees this option as having less adverse consequences than the QBAD.

Nigro asked what the current age is to withdraw from the 457, and Derbin stated it's 70 ½.

Gaines stated he wasn't aware of the age being 70 ½, he thought you could receive a distribution from the 457 earlier than that.

Nigro said he would like to withdraw his previous motion after hearing Cyr's comments.

DeBoer agreed that he didn't think of it how Cyr explained things and also wanted to withdraw seconding the motion.

There being no further discussion, Derbin asked for a motion.

MOTION

It was moved by Nigro and seconded by Cyr to allow In-Service Distribution provisions at age 59 ½ from the 457 plan effective January 1, 2021. Voting for the motion: Nigro, Gaines, DeBoer, Cyr and Synowicki. Voting against the motion: Derbin. The motion passed 5-1.

4. Adjournment.

MOTION

It was moved by Gaines and seconded by Cyr to adjourn the meeting. The motion passed unanimously.

There being no further business the meeting was concluded at 3:25 p.m.

Prudential

PRUDENTIAL RETIREMENT DIRECTIVE SETTING EVERY COMMUNITY UP FOR RETIREMENT ENHANCEMENT (SECURE) ACT

The Further Consolidated Appropriations Act of 2020 ("the FCAA Act"), which was signed into law on December 20, 2019, contains multiple provisions impacting retirement plans. This Act included provisions of the Setting Every Community Up for Retirement Enhancement Act ("SECURE Act"), and Bipartisan American Miners Act ("BAMA Act"), which provides a comprehensive retirement package intended to expand and preserve retirement savings. For a detailed summary, see our January 2020 issue of the Pension Analyst.

DELAYED REQUIRED BEGINNING DATE–SECURE ACT § 114 ("RBD")

Effective for Required Minimum Distributions ("RMDs") required to be made after December 31, 2019.

- For a participant who was born after June 30, 1949 ("Affected Participant") their Required Beginnning Date (RBD) shall not be earlier than April 1 of the calendar year following the year the Affected Participant attains age 72.[1] For purposes of determining an Affected Participant's RBD, an Affected Participant will be treated as a more than 5% owner if he or she was a 5% owner (as defined in Code §416(i)(B)) as to the Plan Year ending in the calendar year the participant attains age 72.
- If an Affected Participant dies prior to the participant's RBD, and the participant's sole designated beneficiary is the participant's surviving spouse, and the Plan allows for the spouse to delay RMDs, then the RMDs to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 72, if later.

BENEFICIARY REQUIRED MINIMUM DISTRIBUTIONS–SECURE ACT § 401 ("BENEFICIARY RMD")

To the extent a plan utilizes the life expectancy method, the Beneficiary RMD provisions are generally effective for participants who die on or after January 1, 2020 (January 1, 2022 for governmental plans, or as may be elected below for collectively bargained plans).

- **10-Year Rule.** If the beneficiary of a deceased participant's account is a designated beneficiary who is not an "Eligible Designated Beneficiary," then the Plan will distribute the account in full no later than December 31 of the tenth year following the year of the participant's death.
- **Beneficiary Death.** If an Eligible Designated Beneficiary dies before receiving distribution of the beneficiary's entire interest in the participant's account, the Plan will distribute that interest in full no later than December 31 of the tenth year following the year of the Eligible Designated Beneficiary's death.

1 Generally, for a participant that is not a 5-percent owner, the new RBD is April 1 after the year a participant reaches age 72 or terminates from service, whichever is later. For plans that determine the RBD without regard to whether a participant has terminated from service, the plan RBD will be determined based on age 72.

PENSION ANALYST
COMPLIANCE BULLETIN

Prudential

IRS provides SECURE Act guidance

On September 2, 2020, the IRS issued IRS Notice 2020-68 to provide guidance relating to certain provisions of the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act") and the Bipartisan American Miners Act of 2019 (the "Miners Act"). The guidance is not intended to provide comprehensive guidance on the specific provisions but provides guidance to assist with implementation of these provisions.

Qualified birth or adoption distributions

The SECURE Act allows participants to withdraw up to $5,000 penalty-free from an IRA, a defined contribution plan, including a 403(b) plan, or a governmental 457(b) plan due to the birth or adoption of a child. The qualified birth or adoption distribution (QBAD) will not be treated as an eligible rollover distribution, and therefore is exempt from mandatory 20% withholding and the special tax notice (also known as the "402(f) notice"). These withdrawals are also exempt from the 10% early distribution tax penalty. The participant is required to include the name, age, and Taxpayer Identification Number (TIN) of the child or eligible adoptee on the individual's tax return for the taxable year in which the distribution was made. The $5,000 limit applies in the aggregate to all plans of the employer (and any member of any controlled group which includes the employer) for the participant. The distribution must occur within the one-year period beginning on the date on which a child of the individual is born or on which the legal adoption is finalized.

The recent guidance clarifies:

- Each parent of a child may receive a QBAD of up to $5,000 with respect to the same child or eligible adoptee.
- An individual may receive QBADs with respect to the birth of more than one child or the adoption of more than one eligible adoptee if the distributions are made during the one-year period following the date on which the children are born or the legal adoption is finalized. *For example, Employee A gives birth to twins in October 2020. Employee A takes a $10,000 distribution from her 401(k) plan in January 2021. The entire $10,000 is a QBAD, assuming she includes the TINs of her twins and other required information on her 2021 tax return.*
- It is optional for an eligible retirement plan to permit QBADs. If a plan does not permit QBADs and an individual receives an otherwise permissible in-service distribution that meets the requirements of a QBAD, the individual may treat the distribution as a QBAD on the individual's federal income tax return.
- A plan sponsor or plan administrator may rely on a reasonable representation from an individual that the individual is eligible for a QBAD, unless the sponsor or administrator has actual knowledge to the contrary.
- If an eligible retirement plan permits QBADs, the plan is required to accept a recontribution of a QBAD an individual received from that plan, as long as the individual is eligible to make a rollover contribution to that plan at the time the individual wishes to make the recontribution.
- QBADs are treated as meeting the distribution restrictions under 401(k) plans, 403(b) plans, and governmental 457(b) plans. An employer may expand the distribution options under its plan to allow amounts attributable to elective deferrals, qualified nonelective contributions (QNECs), qualified matching contributions (QMACs), or safe harbor contributions under a 401(k) plan to be distributed as a QBAD even though it is distributed before an otherwise permitted distributable event, such as severance from employment, disability, or attainment of age 59½.

Long-term part-time employees

Except for collectively bargained plans, the SECURE Act requires employers sponsoring a 401(k) plan to cover employees who complete at least 500 hours of service for three consecutive 12-month periods (and have reached age 21). For employees who are eligible under this new rule, each 12-month period for which the employee has at least 500

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