

The Heritage 401(k) Retirement Plan
Discussion Items: May 2021

Plan restatement required. Pre-approved defined contribution plan documents must be restated by 7/31/2022. Employers can rely on a favorable opinion letter issued for a pre-approved plan to the extent that no modifications are made from specimen documents. Employers cannot rely on provisions that have been modified from the specimen documents.

- **For planning:** 6-year restatement cycles for pre-approved defined contribution plans
- **To Consider:** Submitting restated Plan to IRS for favorable determination letter unique to the Heritage plan. Can submit restated document to IRS for a favorable determination letter if pre-approved specimen wording has been modified. (*Not required*)

Current Plan modifications:

- ⇒ Spousal consent must be witnessed by a notary (Plan representative is not adequate)
- ⇒ Deemed hire date if an Employee is hired on weekend or holiday
- ⇒ Fail-safe Plan entry is on the 1st day of the month following completion of 1,000 hours (not January 1 or July 1)
- ⇒ Employer's designee can determine the Plan's funding policy
- ⇒ Fail-safe entry into 401(k) plan added

SECURE Act amendments required. Amendments required by 12/31/2022. Will include required provisions and optional provisions to reflect Employer's elections.

SECURE Act – Long-term, part-time employees “LTPT employee” provisions (*Mandatory*)

- **Statutory provision – 401(k) eligibility.** Employees who work at least 500 hours in each of the prior 3 consecutive years must be allowed to participate in the 401(k) portion of a plan. Need not make Employer contributions for LTPT employees (unless they meet the Plan's eligibility requirements for Employer contributions).
- **Effective date.** 1/1/2021. Start counting hours in 2021, so earliest entry under this provision is 1/1/2024. Need to track employee hours starting 1/1/2021 to determine if the rules will apply.
- **Vesting of Employer contributions (if LTPT employees enter).** If a LTPT employee enters a plan and Employer contributions are made, must credit vesting for each year in which the LTPT employee is/has been credited with at least 500 hours (even years before 2021). Since Heritage has 100% vesting, this is N/A.
- **Proposed legislation.** The Securing a Strong Retirement Act of 2021 would reduce the 3 years to 2 years but disregard pre-2021 service for vesting.
- **Current document:**
 - ⇒ To be an “Eligible Employee” for the 401(k) portion of the Plan, an employee must be regularly scheduled to work 1,000 hours in a year. An Eligible Employee enters on the 1st day of the month on or following completion of 3 consecutive months of service. (Fail-safe entry for part-time employees is on the 1st day of the month following 1,000 hours.)
 - ⇒ “Eligible Employees” enter the Employer contribution portions of the Plan on the 1st day of the month on or following 1 year with 1,000 or more hours of service.

The Heritage 401(k) Retirement Plan
Discussion Items: May 2021

⇒ Current document. Actual hours counted, but if actual hours are not maintained, 190 hours/month equivalency.

- More guidance is expected from IRS.

SECURE Act – Required beginning date for minimum distributions during participant’s lifetime

- **Mandatory change.**
- **Statutory provision.** 1st distribution required by the 4/1 following the later of: Age 72 or retirement if not a 5% owner.
- **Applicability.** Applies for participants who were born 7/1/1949 or later. For participants with DOB prior to 7/1/1949, required beginning date is still the April 1 following 70½ (or retirement if later and not a 5% owner).
- New life expectancy tables for distribution years beginning on or after 1/1/2022.
- **Proposed legislation.** The Securing a Strong Retirement Act of 2021 would increase the retirement age to 73 at 1/1/2022, to 74 at 1/1/2029, and to 75 at 1/1/2032.

SECURE Act – Minimum distribution requirements for post-death distributions (Mandatory)

- **Statutory provision.** In general, beneficiaries must take over a maximum of 10 years. Exceptions can be made for surviving spouses, minor children, disabled or chronically ill persons, or persons not more than 10 years younger than participant. IRS publication re minimum distributions from IRAs suggests that annual minimum distributions are required (e.g., not the option of a balloon distribution at 10 years). Others think that is not necessary as the current 5-year provision did not require annual distributions, provided that the entire amount was distributed by the end of the 5th year following participant’s death.
- **To Consider:** Retain the 5-year provision? Need to check with recordkeeper regarding its procedures? Issue of maintaining accounts in the Plan for longer periods of time and possible lost participant/beneficiary issues.
- **Applicability.** Applies for deaths after 2019
- **Current document:** All distributions to be paid within 5 years of death (all beneficiaries – spouse or non-spouse)
- **Regulations:** Not yet issued. Want to wait to decide provisions?

SECURE Act: Penalty-free withdrawals permitted for “qualified births & adoption distributions” (“QBADs”) (Optional)

- Up to \$5,000 distribution per parent with no 10% early withdrawal penalty
- Distribution must be made within the 1-year period following birth or adoption
- QBADs are not “eligible rollover distributions” (thus, no 402(f) notice, no mandatory withholding)
- Withdrawn amount may be recontributed to Plan, treated as rollover
- Additional guidance is expected

The Heritage 401(k) Retirement Plan
Discussion Items: May 2021

SECURE Act: Lifetime income disclosures required. *Mandatory.* Check with recordkeeper re its procedures.

- Lifetime income disclosures must be provided on at least 1 benefit statement each 12-month period
- Must state participant's benefit as a lifetime income stream both as a 100% joint and survivor annuity and as a single life annuity
- Applies to benefit statements furnished after 9/18/2021

SECURE Act: Safe harbor notice can be discontinued for non-elective safe harbor contributions

- *Statutory provision.* Safe harbor notices are no longer required under SECURE Act, but we feel that it is still advisable to retain the right to suspend or terminate safe harbor contributions during a year.

CARES Act amendments required. Amendments required by 12/31/2022.

- Amendment required to document if a plan permitted coronavirus distributions, coronavirus loans, suspension of loan repayments under the CARES Act, and whether 2020 minimum distributions were suspended.

2021 Plan limits

- Maximum 401(k) contributions: \$19,500
- Maximum catch-up 401(k) contributions: \$6,500
- Maximum pay considered: \$290,000
- Maximum annual addition: \$58,000

Electronic distribution of disclosures – DOL final regulations

- Email delivery, or
- Online access (“notice and access” approach)
- Specific requirements for each method, including initial paper notice

Lost participants/uncashed checks. DOL issued 3 part guidance for missing participants (January 2021)

- Best practices for plan sponsors to take regarding lost participants
- DOL's “red flags” re lost participants when it conducts audits
- Field Assistance Bulletin 2021-01. DOL gives fiduciaries of terminating defined contribution plans the authority to use PBGC's Missing Participant Program (by transferring an account or submitting information without actual transfer) if they have:
 1. Performed a diligent search in the prior 9 months,
 2. Maintained adequate records,
 3. Informed a participant of the transfer if an account goes to PBGC, and

**The Heritage 401(k) Retirement Plan
Discussion Items: May 2021**

4. Acted in good faith in interpreting ERISA

“Qualified disaster distributions”

- **Statutory provision.** Special distribution and loan treatment for disasters (not Covid-related) from 1/1/2020 – 2/25/2021. If implemented, amendments are required by 12/31/2022.

Partial Plan termination

- **To Consider:** If Plan incurred a partial plan termination during 2020 due to furloughs/layoffs.
- **Rule.** Generally, a plan incurs a “partial plan termination” if there has been a 20% (or more) reduction in workforce. If yes, 100% vesting. Since Heritage has 100% vesting, no practical impact.
- **Temporary relief.** Taxpayer Certainty and Disaster Tax Relief Act of 2020 provides that no partial termination occurs during a Plan Year that includes the period beginning 3/13/2020 and ending 3/31/2021 if the number of active participants covered by the plan on 3/31/2021 is at least 80% of (or combo of) active participants covered on 3/31/2020.
- **IRS FAQs.** IRS FAQs clarify that for a calendar year plan year, the 80% applies to both the 2020 Plan Year and the 2021 Plan Year and that the same individuals need not be counted on the beginning and end dates. Also, the reduction of workforce is not solely limited to reductions related to the Covid pandemic.

IRS Notice 2021-03 – Extension of relief for physical presence requirement for spousal consent

- Extended to 6/30/2021 if certain requirements are met. Must also consider state law requirements.

DOL: Cybersecurity guidance (April 2021). Sub-regulatory guidance so is not required at this stage:

- Best practices for service providers
- Tips for hiring service providers with strong cybersecurity practices
- Best practices for individuals
- Likely to be an area for which DOL will issue regulatory guidance soon and an area that DOL will examine in future audits

Plan document provisions to possibly discuss:

- Eligibility provisions in light of the SECURE Act’s long-term, part-time employee rules
- Verify compensation that is counted for the various portions of the Plan
- Current document says 401(k) changes are allowed quarterly. Allow more frequent changes?
- Verify that an automatic rollover agreement is in place for distributions from \$1,001 - \$5,000
- Verify spousal consent procedures with recordkeeper for distributions and beneficiary designation
- Confirm that still want to prohibit hardship withdrawals, participant loans and in-service withdrawals prior to 70½. Want to change in-service withdrawal provision to age 72?

**The Heritage 401(k) Retirement Plan
Discussion Items: May 2021**

- Confirm that still want to prohibit withdrawals from rollover accounts unless amounts are otherwise distributable.
- Remove hours of service equivalency and use only actual hours?