

# UPDATE: SECURE Provides New Option to Help Pay for Birth or Adoption

By: Alex Mattingly on September 10, 2020 on [graydon.law](https://graydon.law)

The IRS has again directed our attention back to the SECURE Act by issuing guidance related to qualified birth or adoption distributions. Withdrawals from a qualified retirement plan before age 59 ½ are generally subject to a 10% tax for early distribution, but as discussed [in our blog post earlier this year](#), the SECURE Act created a new distribution option that permits plan participants to take distributions of up to \$5,000 as a penalty-free early withdrawal to help cover expenses related to the adoption or birth of a child. The IRS has now issued further guidance on these qualified birth or adoption distributions in [Notice 2020-68](#).

To recap, qualified birth or adoption distributions are an optional feature that a plan sponsor may add to its plan. A qualified plan could begin making these distributions on January 1, 2020, and the deadline to adopt such an amendment is December 31, 2022 for calendar year end plans. The maximum \$5,000 distribution must be made during the one-year period following the birth or adoption, and plan participants that make such a withdrawal are permitted to recontribute the distribution to the plan.

The Notice made several clarifications regarding the amount and source of the qualified birth or adoption distributions. It is now clear that the \$5,000 maximum distribution amount is applicable separately to each parent for every child born or every eligible adoptee the is adopted in a one-year period. For example, a mother and father of twins would each be eligible to take up to a \$10,000 distribution that would qualify as a qualified birth or adoption distribution, so long as all other requirements are met.

The Notice also clarified that qualified adoption or birth distributions will meet the distribution requirements under IRC sections 401(k), 403(b) and 457(d). In other words, qualified distributions are permitted to be sourced from elective deferrals, qualified nonelective contributions, qualified matching contributions, or safe harbor contributions without an otherwise permitted distributable event, such as severance from employment, disability, or attainment of age 59 ½.

Lastly, the Notice clarified that “eligible adoptee” means any individual who has not attained age 18 or is physically or mentally incapable of self-support, but does not include

an individual who is the child of the taxpayer's spouse. An individual is considered to be physically or mentally incapable of self-support if that individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration.

If you have any questions regarding implementing a qualified birth or adoption distribution feature in your plan, contact any member of Graydon's employee benefits team.