INSIDE

retirement

First Quarter 2018

RETIREMENT PLAN NEWS

CAPITOL HILL UPDATE

Tax reform finally became a reality late December 2017, when Congress passed the Tax Cuts and Jobs Act of 2017. Some of the retirement plan enhancements that did not make it into the final version of that bill were tacked onto the Bipartisan Budget Act (the Budget Act) that was signed into law February 9, 2018.

Bipartisan Budget Act of 2018

The Budget Act relaxes some of the rules for obtaining a hardship distribution. If a plan allows, a participant may request a hardship distribution of their salary deferrals up to an amount needed to satisfy an immediate and heavy financial need. The Budget Act provides that a hardship distribution may now also be taken from amounts in a participant's account including qualified nonelective contributions, qualified matching contributions, and the investment earnings accrued on these types of contributions and deferrals. Plans will also no longer be required to

- Suspend a participant's deferral contributions for six months after granting a hardship distribution
- Require participants to exhaust all available plan loans before qualifying for a hardship distribution.

These changes are effective for plan years beginning after December 31, 2018.

The Budget Act also extends the relaxed distribution options afforded to hurricane victims to individuals whose principal place of residence was damaged by the California wildfires. This relief includes an increased loan limit up to $100,000. Additionally, participants may delay for up to one year loan repayments that are due between October 8, 2017, and December 31, 2018. If a participant chooses to take a hardship distribution, they may take up to $100,000 as a Qualified Wildfire Distribution, which will be exempt from the 20% withholding requirement and the 10% tax for early distribution. Participants also have the option to spread taxation for the hardship distribution over a three-year period, and the option to repay the amount to the plan or an IRA within three years as a rollover. This relief is available for distributions taken between October 8, 2017, and January 1, 2019.

The final retirement plan change included in the Budget Act applies to cases in which the IRS

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mistakenly levied an individual's retirement plan assets to collect taxes owed. If the IRS returns the money to the individual, and notifies the individual that they may return the money to a retirement plan, the individual may re-contribute this money to a retirement plan that accepts such a contribution or to an IRA. These deposits should be treated as a rollover contribution. The rollover must be completed by the individual's tax return due date (not including extensions) for the year the IRS returned the money. This provision is effective for tax years starting after December 31, 2017 (generally January 1, 2018).

If you choose to incorporate these enhancements in your plan, you may need to amend your plan document.

DOL UPDATE

Increased Civil Penalties

In January, the DOL announced further increases to several civil monetary penalties that can be assessed against employers for not complying with the DOL rules. These increases are applicable for penalties assessed by the DOL on or after January 2, 2018. Here are a few of the most common violations.

Failure	Description	2018 Penalty
Failure to provide plan blackout notice	This notice is required to be provided at least 30 days before a plan blackout (when a service provider change or other change to the plan restricts plan participants from directing investments or requesting distributions results for 30 days or longer).	$136 per participant per day

Failure	Description	2018 Penalty
Failure to provide annual ACA notice	A plan that contains an Automatic Contribution Arrangement (ACA) must provide annual participant notices to explain the feature.	$1,693 per day per participant

Failure	Description	2018 Penalty
Failure to file or filing a late Form 5500	Form 5500 must be filed by the last day of the 7th month after the plan year ends. For plans operating on a calendar year, the deadline is July 31, unless an extension has been obtained.	$2,140 per day

IRS UPDATE

Changes to VCP Fees Under Employee Plans Compliance Resolution System

Like the DOL, the IRS is aware that mistakes can and do happen when operating a retirement plan. That's why the IRS has a corrections system that lets plan sponsors bring their plans back into compliance without losing the tax benefits provided to qualified retirement plans. This system is referred to as the Employee Plans Compliance Resolution System (EPCRS). EPCRS is designed to improve overall plan compliance by promoting voluntary corrections after a plan sponsor discovers an error on their own. Oftentimes the financial impact to the plan sponsor who self-corrects the plan defect is much smaller than it would be had the defect been discovered during an IRS audit.

EPCRS consists of three subcomponents:

- The Self-Correction Program or SCP permits plan sponsors to self-correct at any time an insignificant operational problem, such as not following the terms of the plan. There is no IRS application form and no fee for self-correcting under SCP. Even when the problem is significant, a plan sponsor who discovers the problem within two years of the year in which the problem occurred can correct it under SCP and pay no fee.

- If a plan experiences a qualification failure, such as failure to timely amend a plan document, the plan sponsor may use the Voluntary Correction Program or VCP to correct the error if they discover the problem before the plan comes under IRS examination. Under VCP, the plan submits a correction application with the IRS and pays a fee based on the size of the plan. The fee is much smaller than the amount that would typically be assessed following a plan audit.

- The Audit CAP program is used if a failure is discovered during a plan audit by the IRS. There is a much higher sanction involved based on the extent and severity of the failure.

In January, the IRS published a notice of updates to its procedures for requesting rulings and determinations, as well as its fees for determinations and for submitting under the VCP. The IRS is changing how it structures VCP fees, beginning in 2018. These changes result in a significant fee reduction for large plans, but a big increase in fees for smaller plans.

Prior to 2018, the VCP fee was based on the number of participants in the plan. Beginning in 2018, the fee is based not on the number of participants but on the amount of plan assets.

Also, the largest fee possible has been reduced from $15,000 to $3,500. However, based on the new fee structure, this fee decrease applies to plans with more than $10 million in assets. The fees that apply now for smaller plans are bigger than they were in 2017.

For example, the smallest fee available was $500 for plans with 20 or fewer participants. Now the smallest fee is $1,500, and it applies to plans with assets between $0-$500,000 – most likely a $1,000 increase for the small plans.

2018 VCP submission fees
$1,500 for plans with assets between $0–$500,000
$3,000 for plans with assets between $500,001–$10,000,000
$3,500 for plans with assets over $10,000,000

The IRS also eliminated most of the alternative or reduced fee options for certain types of plan errors. For example, the streamlined fees for correcting plan loan and required minimum distribution (RMD) errors, which were as low as $300, are no longer available.

Upcoming Plan Deadlines for Calendar-Year Plans

April 1, 2018	Deadline for processing RMDs for participants who attained age 70½ in 2017. If a plan permits, participants who work past age 70½ and do not own 5% or more of the business may be able to delay their first RMD until April 1 of the year after they retire.

Upcoming Plan Deadlines for Calendar-Year Plans (continued)

April 15, 2018	Deadline to process corrective distributions for participants who exceeded the $18,000 IRC Sec. 402(g) limit in 2017. Catch-up contributions by participants age 50 or older are not included in this limit.

June 30, 2018	Deadline to correct ADP/ACP excess contributions for Eligible Automatic Contribution Arrangement (EACA) plans.

This information is provided as a reference tool for your convenience and may not represent a complete list of all events that apply to your plan.

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