INSIDE retirement

Fourth Quarter 2017

RETIREMENT PLAN NEWS

LEGISLATIVE UPDATE

Tax Reform

Republican legislators kept tax reform a high priority during fourth quarter and passed the Tax Cuts and Jobs Act on December 20 after reconciling the differences between the House and Senate's separate versions of tax reform bills. The President signed the *Tax Cuts and Jobs Act* into law on December 22.

In addition to making big changes to personal income taxes, such as reducing tax rates, increasing the standard deduction, and eliminating or capping many itemized deductions, the law reduces the corporate tax rate and provides a new deduction for pass-through income entitles, such as partnerships.

For the retirement plan industry, the biggest concern was the potential loss of tax benefits for retirement savings. "Rothification" of retirement savings, which had been much speculated as a potential revenue raising provision, is not included in the new law. Retirement plan tax incentives and contribution limits were not affected.

The primary change that will affect retirement plans will help plan participants retain the tax-deferred status of their savings if they leave an employer with an outstanding 401(k) loan.

Currently, if a plan participant leaves employment with an outstanding plan loan, the employer typically offsets the remaining account balance by the outstanding loan amount, creating a taxable event for the participant.The participant has 60 days to roll over the outstanding loan amount to another plan or IRA to avoid taxation, and additional 10% tax if they are younger than age 59½.

The new law extends this rollover period until the participant's tax return deadline for the year in which the loan offset occurs. This extended period is effective in cases where the employee terminates employment or the plan is terminated, and the loan offset occurs in 2018 or later.

Michael Romig, AIF®
transform401(k)

Michael R Romig AIF®. mromig@transform401k.com
17304 Preston Road, Ste. 800, Dallas, TX 75252 469-941-6059 www.transform401k.com

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Qualified Hurricane Distributions

This fall, Congress passed legislation to provide retirement plan-related relief to victims of Hurricanes Harvey, Irma and Maria. Retirement plan participants who live in an area affected by one of these hurricanes and who sustained an economic loss may take a “qualified hurricane distribution” of up to $100,000 without needing to satisfy any other distribution triggering event under the plan. This relief is available until January 1, 2019. These distributions are not subject to the mandatory 20% withholding rule or the 10% early distribution tax. Individuals may spread the tax liability for these distributions over three years or re-contribute these amounts to an eligible retirement plan over a three-year period.

This legislation also increases the plan loan limits for those affected by the hurricanes to the lesser of $100,000 or 100% of a participant’s plan balance. Qualified participants may also extend their loan repayment periods for up to one year.

Retirement Plan Modernization Act

The Retirement Plan Modernization Act recently introduced in the House would increase the amount that 401(k) plan sponsors can cash out of their plans without the consent of the account owner, for individuals who no longer work for the company sponsoring the plan. Currently, the law allows plan documents to include an involuntary cashout provision. This provision allows plan sponsors to force small balances out of the plan if a former employee is unresponsive to plan communications about distributing their plan balance. Balances up to $5,000 may be cashed out of the plan. If a cashout is between $1,000 and $5,000, the plan sponsor must roll it over to an IRA on behalf of the participant rather than distribute as a check payable to the participant. This legislation proposes to raise the cashout limit to $7,600 and add the potential for increasing the amount for inflation in future years.

IRS UPDATE

Disaster-Related Relief

In addition to the law passed by Congress allowing hurricane victims to take distributions from their retirement plans, the IRS has provided relief to individuals affected by Hurricane Harvey, Irma or Maria, as well as the California wildfires.

The tax-related deadline extension the IRS granted to plans, employers, and participants who live or work in areas affected by Hurricane Harvey has now also been granted for those affected by Hurricanes Irma and Maria or by the California wildfires. This relief provides extensions for tax-related deadlines from the date of the applicable disaster through January 31, 2018. This relief includes deadlines for filing individual and business tax returns and the annual Form 5500 series and for completing certain tax-related acts, such as completing rollovers within 60 days and making a required minimum distribution.

The IRS has also relaxed the rules for taking hardship distributions and loans for participants who have a home or worked in one of the disaster areas, or had a spouse, child or parent who lived or worked in one of the disaster areas. If a participant or one of their family members has an emergency need related to Hurricane Harvey, Irma, or Maria, or the California wildfires, the plan may allow a hardship distribution or loan without obtaining the typical documentation required. A plan may allow disaster-related hardship distributions and loans even if the plan does not otherwise include these plan features.

To qualify for the relief for Hurricane Harvey or Irma, the hardship distribution or loan must be made on or after the date the hurricane hit the affected area, and no later than January 31, 2018. For Hurricane Maria and the California wildfires, hardships and loans permitted under this guidance must be taken by March 15, 2018.

Plan sponsors may rely on participants' representations as to their need for the distribution and the dollar amount needed. Plans must make reasonable attempts as soon as practical to obtain documentation that would otherwise be required for the loan or hardship distribution.

If a plan allows disaster-related hardship distributions or loans to participants, but doesn't otherwise include these plan features, the plan must be amended to add these features no later than the end of the first plan year beginning after December 31, 2017.

NEW GUIDANCE ON RMDs FOR MISSING PARTICIPANTS

Federal tax law requires retirement plan participants to begin taking required minimum distributions (RMDs) when they reach age 70½. December 31 is the deadline by which RMDs must be paid out each year, except for the first year's RMD which may be delayed until April 1 of the following year.

To enforce this annual distribution rule, the IRS assesses a 50% excess accumulation tax on participants who fail to distribute the required amount. The IRS also has the authority to disqualify a plan if the plan sponsor does not make certain that RMDs are distributed. Because compliance with the RMD rules is a plan qualification issue, plan sponsors have the authority to initiate an RMD payment if a participant does not provide payment instructions. In some cases, however, plan sponsors do not have current contact information for participants or beneficiaries who are required to take a distribution under the RMD rules. In these circumstances, plan sponsors may be prevented from paying out RMDs as required. The IRS has provided guidance to address this issue.

In a recent memorandum to its Employee Plans examiners, the IRS instructed examiners to not challenge a plan for failing to pay out RMDs to a participant (or a beneficiary if a payment is required) if they are unable to locate a participant, provided they have taken the following steps:

- Searched the plan records, records of any related plans, and other records of the plan sponsor to find alternative contact information
- Searched publicly-available records or directories to find alternative contact information

- Used a commercial locator service, a credit reporting agency, or a proprietary internet search tool for locating individuals
- Attempted contact through the United States Postal Service by sending certified mail to the last known mailing address, and attempted contact through the appropriate means for any other address or contact information that has been obtained (for example an email address or a telephone number)

If a plan has not completed these steps, the IRS examiner may challenge the plan for failure to satisfy the RMD requirements.

2018 COLAs

Each year in October, the IRS announces the cost-of-living adjustments (COLAs) that will affect the dollar limitations and thresholds for retirement plans in the coming year. Sometimes, the change in the cost-of-living index does not meet the statutory thresholds necessary to trigger an increase for all the limits and thresholds. For 2018, a few of the retirement plan limits will increase. These include the:

- Overall contribution limit that determines the maximum amount of contributions and forfeitures that can be allocated to a plan participant's account for the year – known as the 415 limit
- The limit on compensation that can be considered for determining benefits – known as the compensation cap and
- The elective deferral amount

In a separate pronouncement, the Social Security Administration announced that the taxable wage base, or the maximum amount of earnings subject to Social Security tax, will increase for 2018. In addition to affecting payroll taxes, this limit affects retirement plans that use the permitted disparity contribution allocation method (also known as Social Security integration)

The following chart is taken from the IRS COLA Increase Table, which can be found on www.irs.gov.

COLA Chart	2018	2017
Annual Compensation	$275,000	$270,000
Elective Deferrals	$18,500	$18,000
Catch-up Contributions	$6,000	$6,000
Defined Contribution Plan Limits	$55,000	$54,000
ESOP Limits	$1,105,000 $220,000	$1,080,000 $215,000
HCE Threshold	$120,000	$120,000
Defined Benefit Limits	$220,000	$215,000
Key Employee	$175,000	$175,000
457 Elective Deferrals	$18,500	$18,000
Taxable Wage Base	$128,400	$127,200

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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