INSIDE retirement

Third Quarter 2017

RETIREMENT PLAN NEWS

IRS UPDATE

Revised Pre-Approved Plan Document Program

This summer, the IRS announced the new framework for its pre-approved plan document program. A pre-approved document is drafted by a retirement plan expert and designed to be used by many employers. It includes flexible plan options that can accommodate a wide range of employer needs.The document provider drafts the plan documents and submits them to the IRS to be pre-approved before making them available to employers. This contrasts with an individually-designed document, which is custom drafted, usually by a law firm, for one employer. The changes announced in the IRS's new guidance are intended to provide more flexibility in pre-approved plans, making them usable by an even larger pool of plan sponsors.

Historically, the pre-approved document program allowed two types of plan documents: a prototype plan document and a "volume submitter" plan document:

- A prototype plan is designed with many different plan features for employers to choose from. Although each employer is filling out identical documents, each will select only the features that are appropriate for its plan. No changes can be made to the document, aside from selecting from the available options.The approval letter issued by the IRS for a prototype plan is called an opinion letter.

- A volume submitter plan document offers plan sponsors more flexibility and choices over the terms of the plan, including making some adjustments to the text approved by the IRS. A volume submitter approval letter from the IRS is referred to as an advisory letter.

The IRS's new guidance eliminates the distinction between these plan documents and combines the approval programs into one opinion letter program. The new program also expands the types of plan features that may be included in a pre-approved document and increases the types of plans eligible for pre-approved status.These changes will provide more flexibility to plan sponsors who want a more customized plan design but want to stay on a pre-approved plan document, which is generally more cost effective. The IRS is encouraging plan sponsors to switch

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from individually designed documents to pre-approved documents.

Document providers are drafting new documents now to submit to the IRS for approval in the coming year. Once the IRS has approved the documents, plan sponsors will have to adopt a new plan document by the end of the current six-year restatement cycle (January 31, 2023, or other date announced by the IRS) to maintain compliance.

Hurricane Harvey Relief

Certain tax or retirement-related deadlines have been extended for plans, employers, and participants who live or work in the areas affected by Hurricane Harvey.

For example, the IRS has postponed certain deadlines for taxpayers who reside or have a business in the disaster areas. Tax deadlines falling between August 23, 2017–January 31, 2018, are extended to January 31, 2018. This includes filing most tax returns (individual, corporate, partnership and S corporation returns) and the annual Form 5500 series if the original or extended due dates fall within that time frame.

The IRS has also relaxed the rules for taking hardship distributions or loans for participants who have a home or worked in one of the FEMA-identified disaster areas, or had a spouse, ascendant or descendant who lived or worked in one of the disaster areas. If a participant has an emergency need related to Hurricane Harvey, the plan may allow a hardship distribution or loan without obtaining the typical documentation required, even if the plan does not otherwise allow hardship distributions or loans. To qualify for this relief, the hardship or loan must be made on or after August 23, 2017, and no later than January 31, 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.

Participants who want to take advantage of these relaxed loan and hardship distribution rules should be informed that normal tax and early distribution tax rules apply. Participants must include distributions in income (excluding Roth and after-tax amounts) and must make at least quarterly loan repayments as required under the existing loan rules.

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

See the IRS website for updates on disaster areas: https://www.irs.gov/newsroom/tax-relief-in-disaster-situations

Upcoming Compliance Deadlines

Summary Annual Report

Plan sponsors must furnish a Summary Annual Report (SAR) to participants and beneficiaries by September 30. The SAR provides a summary of the financial information that was reported on the plan's Form 5500. The SAR must be provided by the later of nine months after the end of the plan year or two months after the due date for the Form 5500 filing, including extensions. For calendar-year plans that filed their Form 5500 by July 31, the deadline to deliver the SAR to participants is September 30. The SAR is most

commonly created by the service provider who prepares the Form 5500 for the plan.

If an extension to file Form 5500 was obtained and the plan operates on a calendar-year basis, the 2016 Form 5500 filing is due by October 16, 2017. Plans that obtained an extension to file Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits*, must file with the IRS by this same deadline.

If the extended due date is used to file the Form 5500, the plan has until December 15 to provide the SAR to participants and beneficiaries.

Employee Notices for Certain Plan Features

If a plan incorporates certain design features, a notice explaining the plan feature must be provided to eligible employees by December 1. This deadline applies if a plan will be using automatic enrollment, a qualified default investment alternative (QDIA), or the safe harbor 401(k) feature next year. The plan's third party administrator or plan design professional will typically prepare the required employee notices each year for plan sponsors to deliver.

Automatic Enrollment – An automatic enrollment plan feature uses inaction to bring an employee into active participation in the 401(k) plan. Eligible employees are notified they can affirmatively elect to defer a portion of their compensation into the plan, just as they would with a traditional 401(k) plan design. However, employees are also notified that if they do not respond, they will automatically be enrolled in the plan and a specified percentage of their compensation will be deposited in the plan each pay period until the employee notifies the plan sponsor to stop the deferrals or selects a different deferral percentage. Inaction leads to continued plan participation. This plan design strategy has proven successful in significantly increasing participation rates.

Plan sponsors must provide an initial notice before an employee becomes eligible to participate in the plan and must provide a notice every year the automatic enrollment feature is in effect, generally 30-90 days before the start of the plan year.

Qualified Default Investment Alternative (QDIA) – Plan sponsors have a fiduciary responsibility to select a default investment alternative for participants who do not make an investment election. When selecting a default investment, many plan sponsors designate an investment that meets the regulatory requirements to be a QDIA. QDIAs are deemed to be prudent default investments and will protect the plan sponsor fiduciary from liability for the performance of the default investment if properly selected and monitored. Offering a QDIA is not mandatory but is a popular risk management practice.

Three types of investments qualify as QDIAs:

- Life-cycle or targeted-retirement-date funds (TDFs)
- Professionally-managed accounts
- Balanced funds

Capital preservation products may be used as the QDIA, but only during the first 120 days of participation.

An initial QDIA notice must be provided to eligible employees generally at least 30 days before they are eligible for the plan. An annual notice must be

provided each year at least 30 days before the start of the plan year.

Safe Harbor 401(k) – A safe harbor 401(k) plan feature is popular with plans that have a history of failed 401(k) nondiscrimination tests or that have had to limit contributions made by highly compensated employees (HCEs) because of these tests. A safe harbor 401(k) plan is "deemed" to satisfy the ADP and ACP requirements so long as the plan includes certain features like mandatory employer contributions and more favorable vesting. If a plan satisfies the safe harbor 401(k) structure, the HCEs may be able to make the maximum level of salary deferral without worrying about the level of contribution being made by the lower paid employees. A safe harbor 401(k) plan is also deemed to satisfy the top heavy requirements as long as the safe harbor contributions are the only employer contributions made to the plan.

An employee notice must be given when the plan first adopts the safe harbor feature. Eligible employees must then receive an annual notice for each year the plan is a safe harbor plan, within 30-90 days before each plan year.

SEPTEMBER

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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.