VIEWPOINT

SageView Advisory Group Quarterly Newsletter Q2 2017

IRS Announces Bump in 2018 HSA Limits

The Internal Revenue Service (IRS) has announced the annual inflation-adjusted limits for health savings accounts (HSAs) for calendar year 2018.

An HSA is a tax-exempt savings account employees can use to pay for qualified health expenses. Deposits into an HSA are tax free; contributions grow within the account tax free; and distributions are tax free as long as the money is used for out-of-pocket health care expenses, including deductibles.

If the money is withdrawn before the account owner turns 65, and gets spent on something other than eligible health care expenses, the account owner will have to pay a 20 percent penalty and applicable taxes.

The limits vary based on whether an individual has self-only or family coverage under a High Deductible Health Plan (HDHP). The 2018 Limits are below:

HSA contribution limit:
Single: $3,450 (an increase of $50 from 2017)
Family: $6,900 (an increase of $150 from 2017)
Catch-up contributions for those age 55 and older remains at $1,000

HDHP minimum deductible (not applicable to preventive services):
Single: $1,350 (an increase of $50 from 2017)
Family: $2,700 (an increase of $100 from 2017)

HDHP maximum out-of-pocket limit:
Single: $6,650 (an increase of $100 from 2017)
Family: $13,300 (an increase of $200 from 2017)

These changes will go into effect for calendar year 2018. Click here to read the IRS announcement.

DOL Secretary Acosta Forges On … For Now

The Trump Administration has made a point of branding itself as committed to rolling back unnecessary regulations. One of the first executive orders signed by the President was meant to roll back regulations harmful to job creation. And, where costs exceed the beneficial impact by causing two regulations to be rescinded for every new regulation written.

[DOL Secretary Acosta Forges On … For Now Continued]

With R. Alexander Acosta's confirmation as the Secretary of Labor on April 27, 2017, the industry has been wondering how he might respond regarding the DOL's fiduciary rule (originally slated to go into effect on April 10, 2017 and subsequently delayed 60 days to June 9, 2017). The matter was complicated due to the required procedures for any changes pursuant to the Administrative Procedures Act. Ultimately, Acosta has affirmed that the rule will not be further delayed from the June 9 date.

That does not mean the rule, in its current form, is finalized. Many of the enforcement provisions are not set to go into effect until January 2018. The DOL signaled in FAB 2017-02 that it would not pursue claims against those working in good faith to comply and will be seeking public input in a wholesale review of the rule. Further, Acosta has called on the SEC to be a "full participant" in the process.

While June 9 is upon us, this matter is far from settled.

IN THE NEWS

Join SageView at the 2017 Mid-Sized Retirement and Healthcare Conference

Please join us at the upcoming Mid-Sized Retirement and Healthcare Conference in Chicago, IL. SageView's Kevin Kaiser will be presenting "Evolving Trends of Socially Responsible Investing" on Monday, June 12 at 3:15pm.

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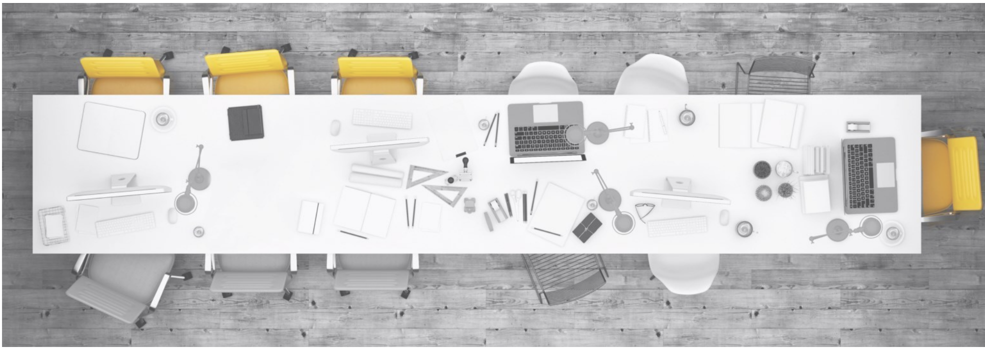

Safe Harbor Vote Delayed In Senate

The U.S. Senate delayed a vote to block an Obama administration safe harbor rule that makes it easier for states to establish retirement savings programs for businesses that do not offer a 401(k) plan, Benefits Pro reported. According to sources, the Senate was prepared to bring a vote to the floor on February 3, but it was delayed. In February, resolutions passed the House of Representatives that would block safe harbors allowing states and some municipalities the option of mandating enrollment in state-administered IRA plans. In order to comply with the safe harbor, states would have to allow workers to opt out of the savings plans. California, Illinois, Connecticut, Maryland, and Oregon have passed legislation creating mandates for businesses that don't sponsor a plan. Washington and New Jersey have passed legislation that will create new state-operated marketplaces for employers without mandating participation. As many as 20 other states are considering or have proposed legislation. The resolutions to roll back the safe harbors were brought under the Congressional Review Act, which will require a simple majority vote in the Senate. Under the safe harbor rule, state administered auto IRA plans would operate outside of the Employee Retirement Security Income Act (ERISA), which regulates pension and defined contribution plans offered in the private sector and requires employer-sponsors of retirement plans to serve as fiduciaries. The safe harbor rule would allow small employers to enroll workers in state administered plans but not be fiduciaries, and would have limited administrative duties. Republican critics of the safe harbor characterize it as a "regulatory loophole" that will erode consumer protections by allowing states to operate retirement plans outside of ERISA's fiduciary requirements.

IRS Rethinks Hardship Documentation

In February, the IRS issued a memo to field examiners outlining a change to the substantiation requirements for hardship withdrawals. Previously, plan sponsors were responsible for verifying the veracity of the hardship need. The Service has outlined safe harbor hardship events, but has never promulgated or outlined the process required to verify an "immediate and heavy" financial need.

The internal guidance for examiners outlines that acceptable forms of documentation can be from either of the following categories:

(1) Source documents, or
(2) Summary information.

Source documents. These items are the more traditionally thought of: eviction notices, tuition bills, past due bills, etc.

Summary information. This is a new category and would be information summarizing the source documents. This information can be in documented in writing (hard copy or electronically) or via phone. The requirements for the summary information are:

- The participant's name;
- The total cost of the event causing the hardship;

[IRS Rethinks Hardship Documentation Continued...]

- The amount of distribution requested;
- Certification by the participant that the information provided is true and accurate; and
- Additional information (as detailed in the IRS memo) based on the hardship event (i.e., medical expenses, eviction/foreclosure, etc.).

In addition to this, there are required disclosures to the participant making the request.

While this appears to demonstrate a shift away from the guidance in 2015 that stated electronic self-certification was insufficient for a plan sponsor to rely upon, it is important to note this is not legal guidance from the IRS. It is a good reminder for plan sponsors to review their current hardship review process along with their auditor and any third-parties (recordkeepers, TPAs, etc.) to ensure compliance.

Bills Would Require Lifetime Income Disclosure

Bipartisan legislation has been introduced in Congress that would require employers to provide 401(k) participants with a projection of monthly income at retirement, based on their current account balance, InvestmentNews reported. Sens. Johnny Isakson, R-Ga., and Chris Murphy, D-Conn., introduced the Lifetime Income Disclosure Act, or S. 868, in the Senate. Reps. Luke Messer, R-Ind., and Mark Pocan, D-Wisc., introduced a companion measure in the House. The new Senate and House measures are reintroductions of bills that had been put forth in the prior session of Congress. Neither bill made it through committee. The legislation builds on the federal government's push to frame Americans' thinking about the need to generate a retirement income stream, similar to that provided by a pension plan, rather than wealth accumulation. A bill that unanimously passed the Senate Finance Committee late last year -- the Retirement Enhancement and Savings Act -- contained a similar provision calling for annual participant benefit statements to include income disclosures. Department of Labor officials had also pursued a regulatory project for years. In 2014 the Treasury Department issued guidance approving use of 401(k) assets to purchase certain longevity annuities. That same year, it also issued guidance to encourage bundling of deferred income annuities into target-date funds.

Upcoming Compliance Reminders

JULY 1, 2017 - Return of Excess Contributions (ADP Test) and Excess Aggregate Contributions (ACP Test)

Corrective distributions must be made to participants within 6 months after the end of the plan year to avoid imposing the 10% penalty excise tax on the plan sponsor. [EACA Plans]

JULY 28, 2017 - Summary of Material Modifications

If plan amendments or other changes to the material terms of the plan were made during the prior plan year, and if a new Summary Plan Description has not been distributed, issue a Summary of Material Modifications ("SMM") no later than 210 days after end of the plan year in which the change in plan provisions was made (e.g., July 28, 2017 for calendar year plans.)

AUGUST 1, 2017 - Form 5330 for Excise Tax on Prohibited Transactions, excess contributions, etc.

If the plan sponsor is subject to penalty excise tax on certain transactions for 2016 (e.g., late deposit of §401(k) salary deferrals; other prohibited transactions; excess plan contributions, etc.), file Form 5330 (Return of Excise Taxes Related to Employee Benefit Plans) no later than August 1, 2017 (the last day of the seventh month after the close of the plan year). (NOTE: Extension of the Form 5330 filing deadline may be obtained by filing Form 5558 on or before August 1, 2017, but this will not extend the deadline for payment of excise taxes).

AUGUST 1, 2017 - Form 5500 and Schedules

On or before August 1, 2017 (i.e., the last day of the seventh month after the close of the plan year), file Form 5500 (Annual Return/Report of Employee Benefit Plan) and all required Schedules, or file Form 5558, (Application for Extension of Time To File Certain Employee Plan Returns), with the Department of Labor Employee Benefit Security Administration (EBSA).

AUGUST 1, 2017 - IRS Form 8955-SSA

On or before August 1, 2016 (i.e., the last day of the seventh month after the close of the plan year, plus extensions), file form 8955-SSA.

Treading Familiar Grounds, Another University's Retirement Plans Sued

Another day, another university retirement plan charged with imprudently permitting excessive fees to be charged to participants who were also subjected to imprudent investment options. This is not a repeat, though it certainly feels that way.

The suit, Nicolas v. Trs. of Princeton Univ. (D.N.J., No. 2:17-cv-03695, complaint filed 5/23/17), brought by plaintiff Elysee Nicolas individually and as representative of a class of participants and beneficiaries of the Princeton University Retirement Plan and the Princeton University Retirement Savings Plan, charges that the plan fiduciaries "…selected and retained as the Plans' investment options investment funds and insurance company annuities that caused the Plans to incur far higher administrative fees and expenses relative to the size and complexity of the Plans." The suit also alleges that the defendant "failed to engage in a prudent process for the evaluation and monitoring of amounts being charged for administrative expense, allowing the Plans to be charged an asset-based fee for recordkeeping calculated in a manner that was completely inconsistent with a reasonable fee for the service and was grossly excessive for the service being provided."

Familiar Grounds

As have other university suits, this one takes issue with the selection of the Teachers Insurance and Annuity Association of America and College Retirement Equities Fund (TIAA-CREF), TIAA Traditional Annuity as the plan's principal capital preservation fund, because they allege it prohibits participants from redirecting their investment in the Traditional Annuity into other investment choices during employment except in 10 annual installments, and limiting them from taking a lump sum distribution of the amount invested in the Traditional Annuity unless they pay a 2.5% surrender charge that the plaintiffs claim "bears no relationship to any reasonable risk or expense to which the fund is subject."

Also, as has been common in such lawsuits, the plaintiffs claim that as a "jumbo" Plan, the Plan should have been able to negotiate a better deal, including the negotiation for recordkeeping services on a per participant basis rather than on asset-based fees. The plaintiff here claims, as have numerous other suits over the past 12 months, that the cost of record

keeping and administrative services depends on the number of participants, not the asset balance of the plan or the amount of savings held in a participant's account – and that otherwise "…as plan assets increase through participant contributions or investment gains, the recordkeeping revenue increases without any change in the services provided."

This suit also mirrors common charges in the suits against these university plans that the defendants imprudently chose to use multiple recordkeepers (here TIAA-CREF and Vanguard), claiming that "the inefficient and costly structure maintained by Defendant has caused Plan participants to pay and continue to pay duplicative, excessive, and unreasonable fees for Plan recordkeeping and administrative services." Moreover, the plaintiffs allege "there is no loyal or prudent reason for Defendant's failure to engage in a process to reduce duplicative services and the fees charged to the Plan or to continue with two recordkeepers to the present."

Recordkeeping Records

The suit claims that benchmarking data indicates that a "reasonable recordkeeping fee for the Plans would have been a fixed amount between $500,000 and $850,000 (approximately $35 per participant with an account balance)," and that the plans "paid at least hundreds of dollars per participant per year from 2010 to 2015 for recordkeeping; much higher than a reasonable fee for these services, resulting in millions of dollars in excessive recordkeeping fees each year." The suit notes that in 2014 Princeton "finally negotiated an arrangement in which TIAA would credit the Plans with an amount by which revenue sharing payments received in connection with the Plans' investment options exceeded a negotiated amount for recordkeeping expense" – and that "even after the $1.062 million aggregate "credit' received by the Plans in 2014, the Plans still paid more than $300 per participant for recordkeeping."

Indeed, the suit notes that from June 30, 2009 to June 30, 2015, the Plans' assets increased more than 100%, but that "because revenue sharing payments are asset-based, the already excessive compensation paid to the Plans' recordkeepers became even more excessive as the Plans' assets grew, even though the administrative services provided to the Plans remained the same."

Fund Failings?

The suit also challenges the selection and retention of investments in CREF Stock Account (which comprised more than 20% of the Plans' assets), as well as the TIAA Real Estate Account, which it says "has far greater fees than are reasonable (88.5 bps as of 12/31/15), has historically underperformed, and continues to consistently underperform comparable real estate investment alternatives."

There was no allegation of a "dizzying array" of fund choices here, though the suit points out that the Plans "offer more than forty investment choices managed by The Vanguard Group and/or Vanguard Fiduciary Trust Company." They do, however, cite incorrect reporting on the participant fee disclosure prepared by TIAA of expense ratios for the available Vanguard funds, "making many of those funds appear more expensive than they really were."

Still, the plaintiffs allege that, "It is well known in the defined contribution industry that plans with dozens of choices and multiple recordkeepers 'fail' based on two primary flaws," overwhelming choices and that multi-recordkeeper platforms are "inefficient." The former because people given too many choices lose confidence or make no decision; the latter because "it does not allow sponsors to leverage total plan assets and receive appropriate pricing based on aggregate assets."

As for the ultimate amount of damages, while the suit alleges that the failure to properly evaluate the reasonableness of amounts being charged to the Plans have caused plaintiff and the class millions of dollars in direct economic loss, "the Plans' total losses will be determined after complete discovery in this case and are continuing."

This suit – and another one just filed against the University of Chicago — were filed by Schneider Wallace Cottrell Konecky Wotkyns LLP and Berger & Montague PC.

If you're having trouble keeping track of these suits, it's no wonder. The list now includes plans at Cornell University, Northwestern University, Columbia University, and the University of Southern California, as well as Emory University, Duke University, MIT, New York University, and Yale. Meanwhile, some of the earlier suits are just getting to hearings on motions to dismiss, specifically Emory University and Duke University — both of which are now proceeding to trial.

Source: NAPA Net, Author: Nevin E. Adams, JD, 5/25/17

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