

# VIEWPOINT

SageView Advisory Group Quarterly Newsletter

Q1 2017

## DOL Moves To Delay Fiduciary Rule

On March 1, 2017, the Department of Labor (DOL) announced a proposed regulation that would delay the applicability date of the new fiduciary rule by 60 days. The proposed regulation was published in the Federal Register on March 2, 2017. Following a 15-day public comment period that is expected to run until March 17, 2017, DOL will need to review and evaluate the comments, determine whether the proposed 60-day extension is viable, develop a final regulation, have the final regulation reviewed by the Office of Management and Budget (OMB), and publish the final regulation in the Federal Register. Assuming the proposed regulation is finalized, the fiduciary rule's initial applicability date of April 10, 2017 will be extended to June 9, 2017. Given the scope of the DOL's expected review and the limited 60-day delay, numerous commentators have suggested that further extensions are likely.

DOL's latitude to delay applicability of the fiduciary rule was constrained when OMB determined that regulation moving the compliance date back would be economically significant. This designation required DOL to follow a more rigorous public comment process. Industry commentators believe that the reduction in length of the proposed delay, from 180 days to 60 days, and the publication of the rule as a proposed regulation with public comments prior to finalization, instead of as an interim final regulation, with comments after the rule took effect, was intended to reduce the chance that the delay would trigger lawsuits from the rule's proponents, alleging violations of the federal Administrative Procedures Act (APA). The APA makes it difficult for a new administration to repeal or amend regulations published by a prior administration.

The proposed regulation also solicits public comments on President Trump's February 3, 2017 Executive Memorandum directing DOL to entirely reconsider the impact of the fiduciary regulation. This second comment period will run for 45 days. DOL notes that part of the rationale for delaying the applicability date of the new fiduciary rule by 60 days is to avoid forcing affected advisers, retirement investors and other stakeholders to temporarily comply with a rule that may subsequently be rescinded or revised. While a 60-day delay would provide sufficient time for the 45 day public comment period, it's unlikely that DOL can complete all the other steps (including economic impact evaluations) required to make major revisions to the rule.

DOL also invited comments on whether it should "delay applicability of all, or only part, of the final rule's provisions and exemption conditions" as well as comments on whether a different delay period would best serve the interests of investors and the industry. Thus, it appears that DOL is open to considering further delays as it works to determine how or if to implement the new fiduciary rule.

[Click here for the proposal for delay, published on March 2, 2017.](#)

SageView Advisory Group is a Registered Investment Adviser. This brochure is solely for informational purposes. Advisory services are only offered to clients or prospective clients where SageView Advisory Group and its representatives are properly licensed or exempt from licensure. Past performance is no guarantee of future returns. Investing involves risk and possible loss of principal capital. No advice may be rendered by SageView Advisory Group unless a client service agreement is in place.

1920 Main Street, Suite 800, Irvine, CA 92614 T: 949.955.1395 [www.sageviewadvisory.com](http://www.sageviewadvisory.com)  
SageView is not affiliated with Cetera Advisor Networks.

## IN THE NEWS

### [SageView's Beniah Burnich Recognized in 2017 NAPA's Young Guns List](#)

SageView is proud to announce that Retirement Plan Consultant, Beniah Burnich, was selected for the 2017 National association of plan advisors (NAPA) Top Young Advisors Under 40.

The Young Guns winners will be recognized in the Summer issue of NAPA Net Magazine and acknowledged at the NAPA 401(k) Summit, in Las Vegas on March 19-21. Congratulations to all of the 2017 nominees and winners!

### [SageView Welcomes new Advisor in West Palm Beach, FL](#)

SageView is excited to announce the further expansion of its Southeast presence with the hiring of Eszter Koch as Retirement Plan Consultant. Eszter joins the West Palm Beach, FL office and fellow team members including Jeff Petrone, Justin Bogart and Maressa Etzig.

### [Join SageView at the 2017 Mid-Sized Retirement and Healthcare Conference](#)

Please join us at the upcoming Mid-Sized Retirement and Healthcare Conference in Phoenix, AZ. SageView's Ed Wagner will be presenting "Best Practices for Proactively Managing Retirement Plan Fees" on Monday, March 20th at 3:15pm.

[SageView has been named as one of PLANADVISER's Top 100 Retirement Plan Advisers for the ninth consecutive year!](#)

planadviser's 2017  
**TOP100**  
RETIREMENT PLAN ADVISERS

SAGE  
VIEW



## Managing the Use of Plan Loans

A plan loan feature can be a useful tool for helping to increase plan participation and contribution rates. Nevertheless, plan loans may impede employees' efforts toward achieving their long term retirement goals and complicate plan administration. Following is a general discussion of some of the issues surrounding plan loans and suggestions for addressing them.

### Understanding the Rules

Two sets of rules must be complied with when a plan maintains a participant loan program — those under the pension law (ERISA) and the tax rules set forth in the Internal Revenue Code. Generally, ERISA rules provide that loans will be exempt from treatment as prohibited transactions if, under the plan, loans are available to all participants on a "reasonably equivalent basis," are not made available to "highly compensated employees" in amounts greater than to other participants, are adequately secured, are extended at a reasonable rate of interest, and comply with the plan's terms. The Internal Revenue Code contains parallel prohibited transaction provisions. The income tax rules also provide that, generally, a loan from a qualified plan will not be treated as a taxable distribution if it must be repaid within five years (except for certain home loans) and doesn't exceed the lesser of: (1) \$50,000 or (2) the greater of (a) half the present value of the employee's nonforfeitable accrued benefit under the plan or (b) \$10,000. (The limits are somewhat different where an employee has more than one loan.) The tax law also requires that a loan be amortized in substantially level payments, at least quarterly, over its term. An exception applies while an employee is on unpaid leave for up to one year (or possibly longer for those in the uniformed services).

### Responsibilities

When a plan allows loans, plan sponsors should make sure they have appropriate procedures in place to keep track of each loan. In a broad sense, loan administration involves determining the right of the employee to take a loan, ensuring that the employee makes loan payments on a timely basis, and promptly identifying loan defaults. The IRS recommends that sponsors retain the following information for each plan loan:

- Evidence of the loan application, review, and approval process
- An executed plan loan note
- If the loan is for buying or constructing a primary residence, documentation verifying that the loan proceeds were used for that purpose
- Evidence of loan repayments
- Evidence of collection activities for defaulted loans, if any

### Curbing Enthusiasm

To reduce the overuse of plan loans, sponsors may want to begin by educating participants about these potential disadvantages of taking loans from their retirement plan:

- Loan repayments are made with after-tax money
- Income taxes are paid again on distributions
- It may be difficult to save for retirement and pay back a loan at the same time
- Generally, loans must be paid back when the employee leaves
- If the loan is not repaid, the outstanding balance is treated as a taxable withdrawal subject to income tax and a possible 10% tax penalty

Additionally, sponsors may want to consider amending their plans to provide for some or all of the following:

- Limiting the number of loans participants can have outstanding at one time
- Implementing a waiting period between loans
- Not permitting borrowing from employer contributions
- Not allowing employees to refinance loans

## [Managing the Use of Plan Loans Continued]

- Restricting the loans to specified purposes only
- Making loans available only to active employees and not to terminated participants or plan beneficiaries

Other options include increasing the loan origination fee or processing charges. If fees incurred by the plan to set up and administer loans are reasonable and permitted under the plan document terms, they may be charged to the participant's account.

Giving participants the ability to take out a loan can reassure employees that they have access to their account assets if they need them. Taking some of the steps outlined here may prove helpful in discouraging employees from taking unnecessary plan loans.

## Relief for Late Rollovers

The IRS has issued new guidance that will help some taxpayers avoid taxes and penalties on rollovers of distributions from employer-sponsored retirement plans that aren't completed within 60 days. The new guidance allows taxpayers who miss the deadline for any one of 11 specified reasons to correct the error by sending the IRS's model certification letter (or one substantially similar to it) to the receiving plan trustee. The taxpayer must complete the rollover "as soon as practicable" — usually within 30 days — after the reason for the delay ceased to apply.

## IRS Makes Changes to EPCRS

The IRS has updated the Employee Plans Compliance Resolution System (EPCRS) to account for changes in the determination letter application program and to incorporate certain other modifications outlined in previous IRS guidance. Among other updates, Revenue Procedure 2016-51 provides that determination letters may no longer be submitted with Voluntary Correction Program (VCP) submissions. Additionally, VCP user fees will be published in the annual Employee Plans revenue procedure that sets forth user fees, although the IRS reserves the right to impose a sanction higher than the VCP user fee for the correction of "egregious" failures.

# Upcoming Compliance Reminders

## **FEBRUARY 1, 2017 - Forms 1099**

Provide IRS Forms 1099-R (and 1099-DIV for ESOPs with pass through dividends) to participants. Plan to mail the forms to participants within the required IRS deadline for transactions subject to income tax reporting.

## **MARCH 15, 2017 - Return of Excess Contributions (ADP Test) and Excess Aggregate Contributions (ACP Test)**

Corrective distributions must be made to participants within 2½ months after the end of the plan year to avoid imposing the 10% penalty excise tax on the plan sponsor. [Non EACA Plans]

## **MARCH 15, 2017 - Employer Contributions due for Calendar Year Corporations**

Corporations (and LLCs filing as corporations) must make employer contributions to the plan by March 15, 2016 (the 2015 federal corporate income tax return filing deadline), unless the plan sponsor has extended its filing deadline.

## **MARCH 31, 2017 - Form 5330 for excise tax on "Return of Excess" payments**

If the 10% excise tax is due on a corrective distribution for ADP and ACP tests, Form 5330 (Return of Excise Tax Related to Employer Benefit Plans) must be filed by last day of the 15th month after the close of the plan year to which the excess contribution relates.

## **APRIL 1, 2017 - Required Minimum Distributions**

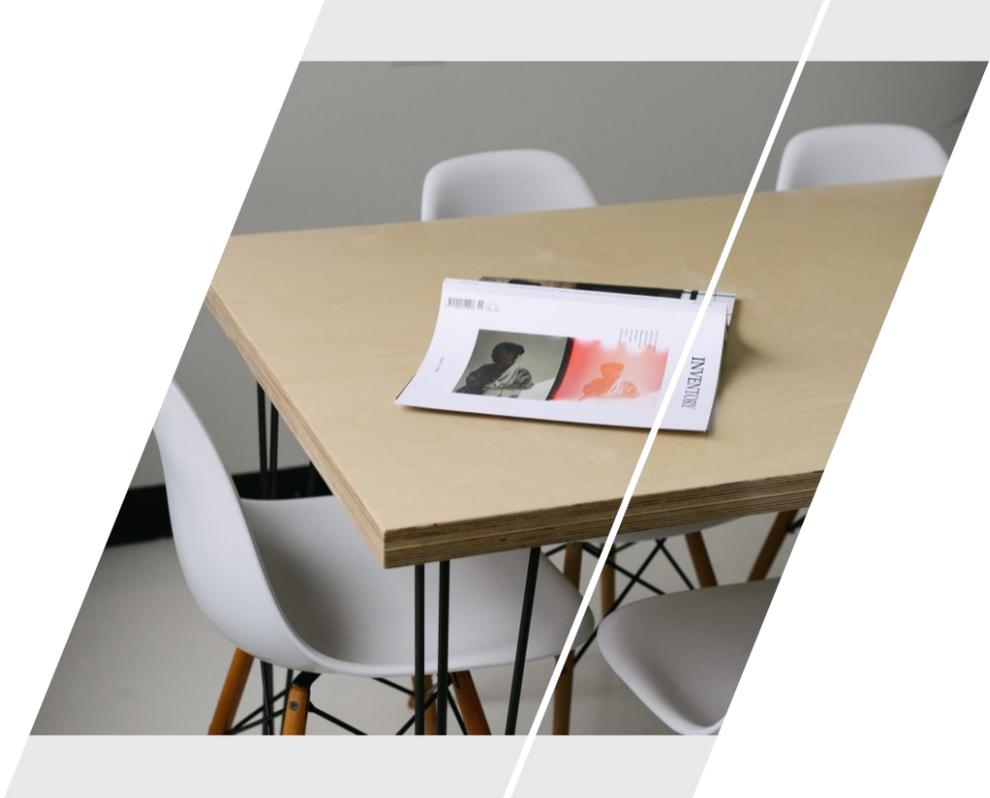
Initial required minimum distribution must be made to 5-percent-or-more owners who reached 70½ during the preceding year, or to participants who attained at least 70½ and terminated during the preceding year.

## **APRIL 1, 2017 - Return of Excess Deferrals**

On or before this date, return excess deferrals to most participants who exceeded the applicable 402(g) dollar limitation for the tax year. (NOTE: Participants who made excess deferrals in unrelated plans cannot receive a corrective distribution after this date).

## **APRIL 18, 2017 - Employer Contribution due for Partnerships, Sole Proprietorships, and LLCs taxed as Partnerships**

For partnerships, sole proprietorships, and LLCs taxed as partnerships, make contributions to the plan no later than April 18, 2017 (i.e., the 2016 federal income tax return filing deadline), unless the plan sponsor has extended its filing deadline.



## Review Plan-related Insurance Protection

It's not unusual to see litigation against retirement plans in the news. Sponsors of 401(k) and other defined contribution retirement plans should evaluate their fidelity bonds and fiduciary liability policies to make sure they have adequate protection.

Pension law (ERISA) generally requires that every fiduciary of an employee benefit plan and any other person who "handles funds or other property" of the plan be covered by a fidelity bond unless exempted under the law. This requirement protects a retirement plan against losses due to fraud or dishonesty (e.g., larceny, theft, embezzlement, or forgery). In contrast, fiduciary liability insurance — which is not required by ERISA — more broadly protects the plan (and typically the fiduciaries) against claims for losses resulting from the act or omission of a fiduciary.

### Who Requires Fidelity Bonding?

A person "handles" funds or other property of a plan whenever his or her duties or activities might cause a loss of plan funds due to fraud or dishonesty. The general criteria for determining "handling" include:

- Physical contact with cash, checks, or similar property
- Ability to transfer funds from the plan
- Ability to negotiate plan property
- Authority to direct disbursements
- Authority to sign checks
- Supervisory responsibility for activities that require bonding

"Funds or other property" generally refers to all funds or property that the plan uses or may use to pay benefits to participants and or beneficiaries, including investments such as land and buildings, mortgages, and stock in closely held corporations. Service providers may have to be bonded if they have access to plan funds or other property or have decision-making authority that can give rise to a risk of loss through fraud or dishonesty.

### Parties to Fidelity Bonds

Usually, the insurer provides the bond and the plan is named as the insured party. The parties covered by the bond are those handling funds or other property of the plan. If a plan official causes a covered loss to the plan due to fraud or dishonesty, the plan can make a claim on the bond. [continued on next page]

## [Review Plan-related Insurance Protection Continued]

### Bonding Coverage Requirements

Fidelity bonds must be purchased from a surety or reinsurer named on the Department of the Treasury's Listing of Approved Sureties. Each person generally must be bonded in an amount equal to at least 10% of the plan assets handled during the plan's previous year. The minimum required bond amount is \$1,000, and there is a maximum requirement, generally, of \$500,000. For officials of plans that hold employer securities, the maximum required bond amount is \$1,000,000. Fiduciaries should review the adequacy of bonding amounts at the beginning of each plan year as plan asset totals change. Since the purpose of fidelity bonding is to protect the plan, plan assets may be used to pay for the bond.

### Fiduciary Liability Insurance

Because plan liability may arise out of not only acts of fraud or dishonesty but also out of breaches of the many complex fiduciary duties involved in administering a plan, many plans maintain fiduciary liability insurance. These policies protect the plan and typically any fiduciaries against losses resulting from acts or omissions — particularly, for failures to observe the many complex statutes, regulations, court rulings, and other guidance that define a fiduciary's obligations to the plan.

### Other Aspects of Fiduciary Liability Coverage

Fiduciary liability insurance typically protects a wide range of plan fiduciaries, including administrators, trustees, committees, and the plan sponsor. Coverage of fiduciaries often includes past, present, and future trustees and all plan and trust fund employees who are fiduciaries.

Fiduciary liability insurance may also provide protection for situations when a fiduciary knew of a breach by a co-fiduciary and failed to remedy the breach. A plan may also maintain fiduciary liability insurance to protect itself from losses caused by a fiduciary's involvement in a prohibited transaction, but it may not contain a provision relieving a fiduciary of liability in that situation.

When selecting the amount of fiduciary liability insurance protection for the plan, a fiduciary must purchase the most suitable coverage at a cost of plan assets no greater than necessary. To meet ERISA's requirements, the insurance company should have a satisfactory rating from a reputable rating agency.

The plan can purchase fiduciary liability insurance for its fiduciaries or itself if the policy allows recourse by the insurer against the fiduciary where the loss was caused by a breach of a fiduciary obligation by the fiduciary. Alternatively, a fiduciary can purchase insurance (or an employer can purchase insurance for the fiduciary) to cover his or her liability from a breach of fiduciary duties. Where the employer purchases such a policy, there is no need for the policy to provide for recourse against the fiduciary.

## Tax Savers Credit

The Saver's Tax Credit is a highly advantageous tax credit that can reduce your tax bill by up to \$1,000 (or \$2,000 for married couples) if you made contributions to an IRA, 401K, 403B, 457B, or any other IRS recognized retirement savings plan.

To qualify for the 2016 tax year, your adjusted gross income (AGI) must have been less than \$61,500 for married couples filing jointly, less than \$46,125 for heads of household, and less than \$30,750 for singles or married individuals filing separately. In addition, the credit is available for contributions to a traditional or Roth IRA.

### Other requirements:

- Age 18 or older
- Are not a full-time student
- Are not claimed as a dependent on another taxpayer's return

The amount of the credit is 50%, 20%, or 10% of the retirement plan/IRA contributions up to \$2,000 (\$4,000 if married filing jointly), dependent upon the taxpayer's adjusted gross income. Visit [www.irs.gov](http://www.irs.gov) to learn more.



## CONTACT US



**HQ IN IRVINE, CA**  
1920 Main Street, Suite 800  
Irvine, CA 92614



**E-MAIL**  
[sageviewinfo@sageviewadvisory.com](mailto:sageviewinfo@sageviewadvisory.com)



**PHONE**  
949-955-1395

## OUR LOCATIONS

**Atlanta, GA**  
5 Concourse Parkway, Suite 1800  
Atlanta, GA 30328  
T (404) 654-0289

**Austin, TX**  
6500 River Place Boulevard  
Building 7, Suite 250  
Austin, TX 78730  
T (512) 243-6162

**Boston, MA**  
114 State Street, Suite 501  
Boston, MA 02109  
T (617) 982-7250

**Chicago, IL**  
2 N. Riverside Plaza, Suite 1420  
Chicago, IL 60606  
T (312) 357-5486

**Denver, CO**  
2000 South Colorado Boulevard  
Tower II, Suite 900  
Denver, CO 80222  
T (303) 564-2779

**Honolulu, HI**  
900 Fort Street Mall  
Pioneer Plaza, Suite 1505  
Honolulu, HI 96813  
T (808) 739-7600

**Houston, TX**  
920 Memorial City Way, Suite 500  
Houston, TX 77024  
T (713) 625-1029

**Knoxville, TN**  
1111 N. Northshire Drive, Suite N 325  
Knoxville, TN 37919  
T (865) 293-4051

**Los Angeles, CA**  
1334 Parkview Avenue, Suite 320  
Manhattan Beach, CA 90266  
T(310) 698-0778

**Milwaukee, WI**  
400 North Executive Drive, Suite 300  
Brookfield, WI 53005  
T (262) 780-3467

**Minneapolis, MN**  
201 Lake Street, Suite 240  
Wayzata, MN 55391  
T (763) 302-7149

**Nashville, TN**  
26 Century Boulevard  
Nashville, TN 37214

**Omaha, NE**  
15808 West Dodge Road, Suite 200A  
Omaha, NE 68118  
T (402) 315-3391

**Orinda, CA**  
4 Orinda Way, Suite 175-A  
Orinda, CA 94563  
T (925) 438-0550

**Overland Park, KS**  
6900 College Boulevard, Suite 300  
Overland Park, KS 66211  
T (913) 906-4229

**Pasadena, CA**  
140 S. Lake Ave, Suite 249  
Pasadena, CA 91101  
T (626) 817-9734

**Portland, OR**  
522 SW 5th Avenue, Suite 1225  
Portland, OR 97204  
T (503) 841-5255

**Richmond, VA**  
4510 Cox Road  
Glen Allen, VA 23060  
T (804) 523-1681

**San Francisco, CA**  
2995 Woodside Road, Suite 450  
Woodside, CA 94062  
T (650) 260-8640

**Washington, DC**  
8161 Maple Lawn Boulevard, Suite 440  
Fulton, MD 20759  
T (301) 317-7190

**West Palm Beach, FL**  
1645 Palm Beach Lakes Boulevard, Suite 1200  
West Palm Beach, FL 33401  
T (561) 337-3122