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Upcoming Plan Document Restatement for 403(b) and Defined Benefit Plans

As stated in prior issues of the *Benefits Advantage*, federal law requires certain qualified retirement plans be amended and restated at certain intervals to maintain their tax qualified status. These periodic restatements assure that various laws and regulations are incorporated into your retirement plan document and allow your plan to retain its IRS pre-approved status. This current restatement cycle includes 403(b) retirement plans and defined benefit pension plans.

Defined Benefit (Traditional Defined Benefit and Cash Balance Plans): April 30, 2020

Plan sponsors of defined benefit pension plans, including cash balance plans, are required to restate their plan documents no later than April 30, 2020. Most organizations begin the restatement process as soon as the documents are available to ensure timely compliance with the restatement deadlines.

While the restatement process typically starts as a "roll forward" of the pre-existing plan provisions, plan sponsors should consider if there are discretionary changes desired to the plan's existing provisions. Some features to consider updating are eligibility requirements, modifying the benefit formula, or designing more flexibility in the employer's annual contribution for certain participants. Plan sponsors should review their plan's definition of compensation, as they may need to change the payroll system to reflect whether the newly modified moving expense component of income is included or excluded for plan purposes.

There will be no need to request a separate IRS approval letter on a plan sponsor's defined benefit plan provided that the resulting restatement, with or without discretionary changes, doesn't deviate from the IRS approved language. This saves the plan sponsor both time and money, while assuring that its pension plan document remains in compliance.

403(b) Plans: March 31, 2020

If you're a 403(b) plan sponsor, such as a tax exempt/501(c) (3) organization, school, or hospital, etc., your 403(b) plan document needs to be restated onto the IRS pre-approved

plan document. This 403(b) restatement must be completed by March 31, 2020.

This 403(b) restatement affords the plan sponsor an opportunity to review the current plan document's design and make necessary changes to ensure that current practices are comparable to the plan's actual provisions.

If you sponsor a 403(b), defined benefit, or cash balance plan, watch for future communications regarding the restatement process. ■

Major Hardship Distribution Changes for 2019

Earlier this year, the Bipartisan Budget Act of 2018 (BBA) made several changes to retirement plans. Of all the changes brought by BBA, those made to hardship distributions in 401(k) and 403(b) retirement plans—which will take effect in 2019—are among the most likely to affect your retirement plan.

What Changed?

The changes detailed below will take effect for plan years beginning after December 31, 2018. These include but aren't limited to:

1. BBA directs the Treasury Department to write new regulations eliminating the requirement that elective deferrals (either pre-tax, Roth, or after-tax deferrals) be suspended for six months after a hardship distribution is taken.
2. BBA allows additional contribution types to be included in hardship distributions. These include:
    - certain Safe Harbor Contributions,
    - qualified Non-elective Contributions (QNECs)[1],
    - qualified Matching Contributions (QMACs)[1],
    - earnings on these QNECs and QMACs, and
    - earnings on 401(k), but not 403(b), elective deferrals.
3. BBA eliminates the provision requiring participants to take a plan loan before receiving a hardship distribution.
4. Casualty Loss Revision – the Tax Cut and Jobs Act of 2017 redefined a disaster related/casualty loss to only include those hardship situations which relate to a federally declared disaster area. However, see item #6 for potential beneficial modifications to this rule.
5. Primary Beneficiaries – The IRS' recently-released proposed regulations confirm that expenses related to primary beneficiaries may be considered as hardship-eligible medical, educational, and funeral expenses.
6. New Expense Added – Under the proposed regulations, a new safe harbor expense is added to accommodate expenses related to the result of certain disasters such as Hurricane Maria and the California Wildfires. This new option is intended to eliminate any delay or uncertainty concerning access to plan funds following a disaster that ocurs in an area designated by FEMA for individual assistance. Also under the proposed regulations, the safe harbor for casualty losses would continue to apply as it has in past years. Thus, a casualty-related hardship request may not need to be related to a federallly declared disaster event after all.

[1]QNECs and QMACs may assist your retirement plan in satisfying certain nondiscrimination tests for deferrals and matching contributions, respectively.

How Do the Changes Impact Retirement Plan Sponsors and Their Participants?

These changes expand the sources and amounts available to your participants' 2019 hardship distributions while streamlining the distribution request process for your retirement plan administrator. Thus, your retirement plan participants may potentially access a larger hardship distribution in a faster and easier manner.

What Next?

While the IRS works to finalize the proposed regulations it recently released, you can start considering what these changes may mean from a plan design perspective.

- If your retirement plan doesn't allow for hardship distributions, you might now consider allowing them, given the new flexibility. Or, perhaps you view the changes as too charitable, and wish to continue disallowing hardship distributions.
- If your document is lenient in terms of hardship

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distributions, you might consider making it more lenient so as to be in line with the changes.

Either way, once final regulations are provided by the IRS, you'll want to work with your document sponsor and TPA to make desired amendments. The important thing is to be aware of the changes and to consider their impact on your plan so that you're prepared when the time comes to implement them. Ascensus TPA Solutions will continue to monitor the progress of this guidance.

Missing Participants: Some Best Practices for Fiduciaries

The term "fiduciary" refers to the high standard of care that one person owes to another. In a qualified retirement plan, the fiduciary is a person who exercises discretionary authority or control over the administration or management of the plan or disposition of its assets (ERISA Section 3(21)).

Locating missing participants is one of the many challenges retirement plan fiduciaries and their third-party administrators (TPAs) face. While there is no official "missing participant" definition, participants are generally deemed missing if they fail to respond to an administrative notice or if mail sent to their address is returned (Field Assistance Bulletin (FAB) 2014-01).

Advantages to Having Best Practices

Some plan fiduciaries might wonder why they should bother finding missing participants. According to the Department of Labor's (DOL's) FAB 2004-02, plan fiduciaries are responsible for locating missing participants and providing them with options to distribute their benefits. With a written policy and consistent procedures, a retirement plan can establish "best practices" to handle challenges regarding missing participants.

Certain administrative fees (e.g., Pension Benefit Guaranty Corporation (PBGC) insurance premiums, TPA fees, and CPA audit fees) are calculated by the number of participants in the plan. Following a set of best practices can help fiduciaries locate missing participants and pay out their assets, which can save on plan administrative fees.

Prevention Is Key

Avoiding repeated administrative and reporting requirements is one reason a plan fiduciary should prevent participants from going missing in the first place. This can be accomplished by taking the following actions.

- Update participant data upon an employee's or participant's separation from service and annually thereafter. For example, when a participant separates from service, the employer may want to provide an informational packet explaining the participant's distribution options and the need for current address information while any funds remain in the retirement plan.
- Immediately follow up on instances of routine administrative forms coming back as undeliverable.
- Periodically request contact information updates when participants log in to the plan investment recordkeeper's website.

It's considered a best practice for plan fiduciaries to maintain a written policy that outlines steps to take when they have a missing participant. This policy may be drafted directly into the retirement plan document. If isn't, then the plan sponsor should have a separate written administrative policy in order to keep procedures consistent.

Locating Missing Participants

There are many tools fiduciaries can use to search for missing participants. The DOL suggests sending certified mail to the last known address, checking related plan and employer records, contacting the designated beneficiary, and using free electronic search tools. A plan may also use alternative methods, such as using credit reporting agencies, commercial search and locator services, and other Internet search services—including social media. Plan fiduciaries should always consider the cost of the measures relative to the missing participant's account balance when determining the best search method.

In addition, the plan administrator can take advantage of the PBGC's Missing Participants Program for plans terminating on or after January 1, 2018. The program was recently expanded to include certain small pension plans and 401(k) and profit sharing plans that used to be excluded from this assistance.

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Missing vs. Nonresponsive Participants

When handling missing and nonresponsive participants, a plan fiduciary must determine if the participant is truly missing or if he is nonresponsive. In an ongoing retirement plan, a nonresponsive participant may limit a plan fiduciary's options, as participant consent is required for a distribution if the participant's vested balance exceeds $5,000 (IRC Sec. 411(a)(11)). This means that if a participant is found to be merely nonresponsive, the employer typically may not force the participant out of the plan if the balance is over $5,000. In a terminating retirement plan, a nonresponsive participant will be treated as a missing participant.

Handling Assets of Missing Participants

Once it's determined that a participant can't be located after using all reasonable search methods, a participant will be considered missing. The DOL's preferred method for distributing the account is to place the funds in an individual retirement account (IRA) or annuity regardless of the participant's account balance. However, sometimes rolling over an account to an IRA may not be an option. For example, challenges may arise if the missing participant is deceased and the beneficiary is unknown or if the participant has attained the age when required minimum distributions must begin. Alternatively, the plan fiduciary may consider moving the account balance into a federally insured bank account, or, depending on state law, transferring the funds to the unclaimed property fund in the participant's state of residence (FAB 2014-01). As a best practice, the plan fiduciary should prudently consider and avoid options that will cause negative consequences to the participant's account balance.

By establishing and following a missing participant policy and instituting a few best practice procedures, plan fiduciaries can fulfill their obligations while potentially saving money on PBGC insurance premiums, TPA administrative fees, and certain plan audit fees. ■

Compliance Reminders 1Q2019

The following list highlights important, but not all, compliance dates for retirement plan administrators. Please contact your consultant with questions about compliance dates for your plan.

January 2019

15 Minimum funding requirements for defined benefit, money purchase, and target benefit plan years ended April 30, 2018, must be met by January 15, 2019, in order to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

15 Retirement plan employer contributions are due in order to be deducted on employer tax returns due to be filed January 15, 2019.

15 Form 5500 Series/8955-SSA – Forms that are on extension are due for the plan year ended March 31, 2018.

31 Form 5500 Series/8955-SSA – Forms are due for the plan year ended June 30, 2018, that aren't on extension.

February 2019

15 Minimum funding requirements for defined benefit, money purchase, and target benefit pension plan years ended May 31, 2018, must be met by February 15, 2019, in order to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

15 Retirement plan employer contributions are due in order to be deducted on employer tax returns due to be filed February 15, 2019.

15 Form 5500 Series/8955-SSA – Forms that are on extension are due for the plan year ended April 30, 2018.

28 Form 5500 Series/8955-SSA – Forms are due for the plan year ending July 31, 2018, that aren't on extension.

March 2019

15 Minimum funding requirements for defined benefit, money purchase, and target benefit pension plan years ended June 30, 2018, must be met by March 15, 2019, to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

15 Retirement plan employer contributions are due to be deducted on employer tax returns due to be filed March 15, 2019.

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15 Form 5500 Series/8955-SSA – Forms that are on extension are due for the plan year ending May 31, 2018.

15 Calendar year 401(k) plans must process corrective distributions for failed nondiscrimination tests to avoid a 10% excise tax. (Certain automatic enrollment plans have until June 30.)

31 Deadline for the calendar-plan-year pension plan's enrolled actuary to prepare the funding adequacy related Adjusted Funding Target Attainment Percentage (AFTAP) calculation to avoid a presumed 10% funding adjustment.

April 2019

1 Form 5500 Series/8955-SSA – Forms are due for the plan year ending August 31, 2018, that aren't on extension.

1 Initial required minimum distribution (RMD) for separated participants who have attained age 70 1/2 or older during 2018. Or, for more than 5% owners that are still active or separated.

Reminder: Cost of Living Adjusted (COLA) Plan Limits for 2019

On November 1, 2018, the IRS followed its established fourth quarter practice and announced the contribution and benefit limits for qualified plans and related retirement arrangements effective in 2019. This announcement was documented as IRS Notice 2018-83. We're providing this information as a helpful reminder.

The new 2019 limits provide opportunities for both retirement plan sponsors and their employees. The cost of living adjusted limits for 2019 are as follows:

2019 Cost of Living Indexed Adjustments for Qualified Plans and Related Arrangements	2019	2018
Employee Deferral Limit 401(k)/403(b)/457 Plans	$19,000	$18,500
Catch-up (age 50+) Deferral 401(k)/403(b)/457 Plans	$6,000	$6,000
Defined Contribution Maximum Annual Additions	$56,000	$55,000
Defined Benefit Maximum Annual Benefit	$225,000	$220,000
Maximum Compensation–Qualified Retirement Plans	$280,000	$275,000

2019 Cost Of Living Indexed Adjustments for Qualified Plans and Related Arrangements	2019	2018
Definition of Highly Compensated Employees (HCEs)	$125,000	$120,000
FICA Taxable Wage Base	$132,900	$128,400
SEP Minimum Compensation	$600	$600
SIMPLE Retirement Accounts Deferral Limit	$13,000	$12,500
Catch-up Deferral Limit for SIMPLE Accounts	$3,000	$3,000
Key Employee/Officer Compensation Threshold	$180,000	$175,000
Traditional IRA Contribution Limit	$6,000	$5,500
ESOP Amount to Determine Lengthening of the 5-Year Distribution Period	$225,000	$220,000
ESOP Maximum Balance Subject to the 5-Year Distribution Rule	$1,130,000	$1,105,000

Additional Helpful Information

The term "annual additions" generally means the sum for any year of employer contributions, employee contributions, and forfeitures.

For plans that include salary deferral features, individuals who are age 50 and older by the end of the calendar year may make catch-up contributions in addition to the annual additions limit (if catch-up contributions are permitted under the plan).

Notes for Off-Calendar Plan Years

- Deferral limits are on a calendar year basis, regardless of plan year.
- Use the taxable wage base in effect at the beginning of the plan year.
- Use the Annual Compensation limit in effect at the beginning of the plan year.
- Use the 415 limit in effect at the end of the plan year.

How this affects retirement plans and their sponsors

The annual contribution and benefit limit increases effective in 2019 present a number of opportunities to retirement plans, their sponsors, and certain participants.

For example, the increase in the 401(k) deferral limit to

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$19,000 gives all 401(k) participants an opportunity to defer extra compensation from taxation in 2019.

The 2019 increase in the defined contribution maximum annual addition to $56,000 gives the plan sponsor an opportunity for a larger contribution deduction while providing additional tax deferred savings for plan participants.

The increase in the defined benefit annual benefit to $225,000 provides an opportunity for certain plan sponsors to increase their contribution deduction, while providing a larger benefit for certain pension plan participants.

The increase in the 2019 compensation limit to $280,000 allows certain participants to have additional income recognized for plan purposes. This can boost their allocated share of their plan sponsor's contribution, while helping the plan pass the annual nondiscrimination – assuming the ratio of benefits to compensation decreases.

Finally, the increase in the 2019 dollar amount to determine highly compensated employees (HCEs) to $125,000 reduces the number of participants who may have to receive 401(k) deferral refunds.

Please contact your plan consultant with questions about how the 2019 COLA limits relate to your plan.

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