BENEFIT BYLINES

Spring 2015
Published by Associated Benefit Planners, Ltd.

PPA Plan Document Restatement

As discussed in our mailings to clients and most recent newsletters, plan document restatements are now required for profit sharing, money purchase and 401(k) plans. We have begun the restatement process for those clients who have responded thus far. If you have received our mailing and have not yet responded, we urge you to do so in the near future. Although the restatement deadline is April 2016, we should have discussions over the coming months (which may require some in depth consulting) to determine what features to incorporate in the restatement. Please don't hesitate to call Marie Dawson, our Director of Compliance, or your ABP administrator should you have any questions regarding the process ▪

Cybersecurity Update

Hardly a week goes by without news of a breach of cyber security. Major banks, credit card companies, social networks, computer firms and even the Federal government have been victimized, resulting in the theft of personal data on millions of individuals. If these major institutions are getting hacked and can't protect themselves and their clients, what hope is there for the rest of us?

We clearly don't have comforting answers to this question. Nonetheless, we thought it would be helpful to discuss what ABP is doing to protect the security of employer and employee data for our clients. We currently take the following actions:

- Implement computer hardware and firewalls to secure our network and protect from outside threats
- Utilize software and virus protection to ward off email attacks that may provide access to our network and files
- Access ABP's network and mobile email only through secured internet connections
- Periodically update passwords to access network and email
- Use secure methods for transferring sensitive data to our clients and advisors (Sharefile and PlanSponsorLink).

Many of our clients should be enacting similar safeguards if they maintain, send or receive customer information. We recommend consulting with an IT professional regarding customized solutions for protecting your data.
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IRS Identifies Top Compliance Concerns

The Internal Revenue Service (IRS) continuously monitors compliance failures on the part of employers who sponsor tax-qualified retirement plans. They do so through employer and plan audits, compliance submissions under the Employee Plans Compliance Resolution System (EPCRS), determination letter applications, and yearly Form 5500 Annual Report filings.

Recently, a representative of the IRS identified the following 11 common compliance failures:

1. Failure to amend plan documents for tax law changes by the end of the period required by law.
2. Not following the plan document's definition of compensation for determining contributions.
3. Failure to follow the plan document's eligibility provisions.
4. Failure to satisfy Code Section 401(a)(9) required minimum distributions requirements (age 70 ½ distributions).
5. Not properly administering the in-service distribution provisions of the plan document. *(Continued on Page 6)*

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However, ABP is able to offer a solution for sending your sensitive data to us. Each client and advisor that works with ABP has access to our secure PlanSponsorLink portal through https://plansponsorlink.com/abp-ltd. After logging in, click on the *Secure File Transfers* tab. By initiating a *New Transfer* from this screen, our clients and advisors can send any file to a member of ABP's staff through a secure, encrypted method. Should you have any trouble using the portal, please contact our technical guru Matt Donnachie for assistance, mdonnachie@abp-ltd.com.

Cybersecurity is a significant worldwide problem. Given the sophistication of those who engage in cyber- attacks for fun, financial gain or to send a political message, we are all vulnerable at work and in our personal lives. Nonetheless, there are prudent steps that each of us can take to reduce the probability of data theft and other security breaches. At a minimum, ABP recommends that our clients and advisors use PlanSponsorLink or another secure method for sending ALL sensitive data to us. Keeping your data secure requires a joint effort and we are happy to offer this portal as a means to this end. ▪

Correcting Elective Deferral Errors

Even the most diligent employers occasionally experience errors in administering their company's employee benefit programs. By necessity, individuals associated with the administration of benefit programs must deal with considerable complexity and often a significant volume of transactions. One type of error that sometimes occurs with 401(k) and 403(b) plans is the failure to properly implement employee elective deferral (payroll deduction) elections. This can occur when a new eligible employee isn't given a timely opportunity to enroll or when an employee's enrollment paperwork falls between the cracks. Deferral errors also happen when there is a breakdown in communications with the employer's payroll provider or the plan's recordkeeper. Similarly, errors or omissions are sometimes experienced when a participant decides to change a current payroll deduction election without success. Plans with Automatic Contribution Arrangements are also subject to elective deferral errors. Under these types of plans, a plan specified payroll deduction is required for employees who do not return enrollment paperwork. If the employer fails to implement that employee's payroll deduction for any reason, the failure is treated in manner similar to the situation where the employer failed to follow a participant's affirmative election.

Employee Plans Compliance Resolution System

The IRS has developed a program called the Employee Plans Compliance Resolution System (EPCRS) to provide the opportunity for plan sponsors to voluntarily correct many types of operational errors (including those involving elective deferrals) in an affordable and relatively painless manner. Some types of errors require a formal request to the IRS for approval in conjunction with the payment of monetary penalties, but others can be self-corrected by the plan sponsor without prior IRS review and approval, often with no monetary penalty.

Through EPCRS, the IRS specifies correction methodologies that the plan sponsor must follow to qualify for relief from what could otherwise be plan disqualification or the imposition of significant sanctions if problems are detected later as a result of an IRS inquiry or audit. The specific correction method varies based on the type of error involved. The IRS's general philosophy is to make participants "whole" and put them in a similar position to where they would have been if the error had not occurred.

The IRS has modified EPCRS correction procedures for specific errors on several occasions throughout the years. This has often been in response to complaints by plan sponsors and industry professionals that required "fixes" were too expensive or too complicated. The IRS's procedure for correcting errors associated with elective deferrals is one of the areas that has been the subject of criticism. Prior guidance (which remains in effect in some circumstances) required the employer to make a fully vested employer contribution (called a Qualified Nonelective Employer Contribution or QNEC) in the amount of 50% of the employee's missed deferral opportunity. This is intended to partly make up for deferrals that the employee was not given the opportunity to make for himself. In addition, there was and continues to be the requirement for the employer to fund any employer matching contributions that would have been made on the missed deferrals.

Fortunately, the IRS recently issued Revenue Procedure 2015-28 which provides more flexible and less expensive methodologies for many employers to correct employee deferral errors.

Revenue Procedure 2015-28

Under Revenue Procedure 2015-28, the specific methodology that is required to correct elective deferral errors depends on when the errors are detected and whether corrections begin within or beyond a three month period from when the errors first occurred. Further, a similar but different process applies to correcting elective deferral errors applicable to plans that include Automatic Contribution arrangements, as discussed below.

Fixes for Errors Not Exceeding 3 Months

The latest guidance provides an incentive for the Employer to quickly correct employee deferral errors. Significantly, if the elective deferral error has not lasted more than 3 months and the plan sponsor follows the rules below, the employer will **not** be required to make an employer QNEC contribution on behalf of the individual.

The following steps must be followed to obtain this relief:

Timing: If the affected employee notifies the employer of the error, deferrals must begin no later than the employee's first paycheck on or after the end of the second month after notification. On the other hand, if the employer learns of the error in any other way, deferrals must commence no later than the employee's first paycheck on or after the first day of the 3-month period after the error first occurred.

Notice: The plan sponsor must provide a written notice of the error to the affected employee within 45 days after it begins to implement correct deferrals.

Matching Contributions: The employer must deposit any matching contributions, adjusted for missed earnings, to the participant's account no later than the last day of the second plan year following the plan year in which the error occurred.

Observation: In contrast to original EPCRS guidance, the employer is not required to make QNEC contributions to make up for the missed deferrals not exceeding 3 months in duration. So, except for the need to contribute what is typically a modest amount to cover earnings on any required matching contributions and the administrative expenses charged by a service provider to help fix the problem, deferral errors that are self- corrected promptly don't cost the employers any more than would have been the case if the error had not occurred in the first place.

Fixes for Errors Exceeding 3 Months

Recognizing that some errors involving elective deferrals are not detected and corrected within the first 3 months, Revenue Procedure 2015-28 provides guidance and relief to sponsors who require more time. To qualify for that relief, the following must occur:

Timing: If the affected employee notifies the plan sponsor of the error, deferrals must begin no later than the first paycheck on or after the end of the second month after notification. On the other hand, if the employer learns of the error in any other way, deferrals must begin no later than the employee's first paycheck on or after the last day of the second plan year following the plan year in which the error occurred.

Notice: The plan sponsor must provide a written notice of the error to the affected employee within 45 days after it begins to implement correct deferrals.

Matching Contributions: The employer must deposit any matching contributions, adjusted for missed earnings, to the participant's account no later than the last day of the second plan year following the plan year in which the error occurred.

QNEC Contributions: The employer must make a QNEC contribution equal to 25% of the affected employee's missed deferral. This is a reduction from a 50% QNEC provided under earlier guidance. The reduced QNEC amount applies only if the elective deferral error does not extend beyond the last day of the second plan year following the plan year in which the error first occurred.

Fixes for Plans with Automatic Contribution Arrangements (Please also see separate article titled "Automatic Contribution Arrangements-Time To Re-visit?")

In traditional 401(k) and 403(b) arrangements, errors related to elective deferrals usually (but do not always) occur due to the employer's failure to properly implement employees' affirmative elections. On the other hand, errors that occur in plans with Automatic Enrollment and Automatic Escalation provisions are typically the result of the failure to follow or properly implement plan prescribed procedures related to employees who fail to make affirmative deferral elections.

The process for correcting these types of errors in plans that include Automatic Contribution Arrangements is similar to those described above, but are set forth below:

Timing: If the affected employee notifies the employer, deferrals must begin no later than the employee's first paycheck on or after the last day of the month following the month in which the employee notifies the employer. On the other hand, if the employer learns of the error in any other way, deferrals must begin no later than the employee's first paycheck on or after 9½ months following the end of the plan year in which the error occurred.

Notice: The plan sponsor must provide a written notice of the error to the affected employee within 45 days after it begins to implement correct deferrals.

Matching Contributions: The plan sponsor must deposit any missed matching contributions, adjusted for missed earnings, to the participant's account no later than the last day of the second plan year following the plan year in which the error occurred.

Final Comment

Administrative errors are a fact of life, particularly when dealing with the complexities associated with administering 401(k) and 403(b) plans. Taking advantage of the IRS's EPCRS is a practical and generally affordable way to correct many types of errors that can occur in administering a tax-qualified retirement plan. The latest IRS guidance in Revenue Procedure 2015-28 evidences the Service's increasing recognition of the complexities encountered by plan sponsors in the day-to-day operations of their plans and a willingness to offer alternatives that make it more attractive for employers to self-correct administrative errors. ▪

Automatic Contribution Arrangements – Time To Re-Visit?

Retirement professionals are increasingly shifting their focus from employer-centric issues to a concept being referred to as "Participant Outcomes". This shift reflects an increased awareness that many workers are not saving adequately for retirement and some are not saving at all. Studies have confirmed that although savings rates are much higher for individuals who have access to 401(k), 403(b) and other payroll deduction savings programs at work, a disappointing number of workers do not take full advantage of the arrangements when offered. Automatic Contribution Arrangements are plan design options that have proven successful in improving participant outcomes related to saving for retirement.

All Automatic Contribution Arrangements (ACAs) include Automatic Enrollment provisions. Auto Enrollment supplements the traditional affirmative enrollment process by automatically enrolling participants who fail to make affirmative elections. In effect, an employee who fails to submit enrollment paperwork or enroll online is "deemed" to have elected to enroll in the plan and make elective deferral contributions through payroll deduction at a plan specified rate, say 3% of pay. This approach is sometimes referred to as "negative enrollment" because the employee is enrolled unless he or she takes action **not** to participate. Plan Sponsors can also choose to include Automatic Escalation provisions in their ACA, under which participants' contribution levels are automatically increased on an annual basis.

The purpose of this article is to provide a general discussion of ACAs and their advantages and disadvantages. Readers who are interested in learning more details after reading this article should contact ABP.

Background/Advantages

Studies have repeatedly demonstrated that plans that include Automatic Contribution features tend to achieve higher levels of enrollment and increased rates of elective deferrals when compared to similarly situated plans that do not. In some instances, the differences are quite substantial. So, from a pure numbers perspective, these optional plan design techniques appear to be accomplishing their intended purpose.

Some psychologists surmise that one reason why traditional enrollment processes do not always get desired results but auto enrollment does is that individuals tend not to be easily motivated to change. Some employees do not initially enroll because doing so requires affirmative action. Those same employees, once automatically enrolled, tend not to opt out for the same reason. Simply stated, it is easier to do nothing and maintain the status quo than to either opt in or opt out. Similarly, some employees are not likely to increase their deferral elections after they are initially enrolled. However, if payroll deductions are increased automatically, they tend to accept that change. Clearly some employees go through more of a thought process than others. However, the documented reality is that Automatic Contribution Arrangements tend to result in increased levels of employee participation and savings.

Some employers do have philosophical reservations about taking money out of participants' paychecks without their affirmative approval. A counter point is that employers who sponsor plans that include these provisions are required to provide notices to affected employees alerting them in advance to the fact that if they do nothing, they will be enrolled in the plan. Although not mandatory, Federal Regulations permit employers to refund deferrals deducted pursuant to certain ACAs if the participant requests their return within a plan defined time frame of not less than 30 or more than 90 days following the first payroll deduction.

Another factor leading to an increasing number of plans with Automatic Contribution provisions is that the US Department of Labor (DOL) has strongly and publicly encouraged employers to add these features to their plans, particularly when traditional strategies are not resulting in high rates of employee participation. The DOL views one of its primary goals to be protecting the interests of plan participants and their beneficiaries. Given that automatic contribution arrangements tend to achieve the desired objective of improving participant outcomes with respect to saving for retirement, it is not surprising for the DOL to embrace them.

A number of employers have been motivated to add Automatic Contribution provisions to their plans as way to help their highly compensated employees (HCEs) increase their tax-deferred contributions and savings. Although the DOL is not that concerned about improving participant outcomes for HCEs, a by-product of strategies that result in non-highly compensated employees contributing more is often an increased deferral opportunity for the HCEs. The reason for this is that in 401(k) plans that have not elected safe harbor status, the amount HCEs can contribute tends to be restricted by required nondiscrimination testing, i.e., the Average Deferral Percentage (ADP) test. In applying the testing methodology, if non-highly compensated employees contribute more through payroll deduction, HCEs have the opportunity to proportionately increase their own deferrals.

Certain ACAs can offer a few more advantages. If certain requirements are met, an ACA can allow plan sponsors to apply a two-year vesting schedule to Safe Harbor contributions, which would normally be fully and immediately vested. Further, those sponsors who elect to use the matching Safe Harbor contribution alternative can utilize a slightly less costly matching formula than normally applies. For plan sponsors that choose not to implement Safe Harbor provisions, certain ACAs permit an extended time period to deal with discrimination testing failures and associated refunds to plan participants.

Disadvantages

To date, smaller employers have been less inclined to implement plans with Automatic Contribution provisions. This reluctance is often attributable to one or more of the following factors:

1. Being able to achieve favorable employee enrollment/savings results using traditional strategies and techniques (If it ain't broke, don't fix it!)

2. Concerns about the complexities of plan administration. Certain payroll vendors or service providers have not yet automated these processes. As such, this may require additional time from the employer and ABP to properly administer these provisions. Even in cases where processes are more automated, administering these provisions requires air tight procedures and coordination among the employer, payroll vendor, and plan service providers.

3. The internal and external expenses associated with plan administration. The direct and indirect expenses associated with administering these features tend to be more of a financial burden to small employers who have fewer participants among whom costs can be amortized.

4. Fear of the financial exposure and costs associated with plan administration, including the failure to properly enroll or escalate contributions for participants in accordance with the provisions of the plan. Some attorneys have made a lot of money representing plan sponsors who have experienced glitches in their administrative processes. And, until recently, the rules for fixing errors in administering Automatic Enrollment and Escalation arrangements using the IRS' Employee Plans Compliance Resolution System (EPCRS) were not as flexible or cost effective as many smaller employers would like.

The Current Environment

The advantages of Automatic Contribution Arrangements, as listed above, continue to apply. Notably, other factors remaining constant, employers who include these provisions in their plans are more likely to help their participants improve their outcomes with respect to the amount of money they have when they retire. In addition, some of the disadvantages identified above have been minimized with the passage of time and recent IRS guidance. Specifically:

1. Administrative Complexities: There is no getting away from the fact that plans that include Automatic Contribution features tend to be more challenging to administer than plans that do not. However, 401(k) and 403(b) service providers have gained considerable experience in administering plans with these features over time as have some payroll providers. As a result, plan sponsors are increasingly able to minimize their own administrative burdens by partnering with a financial institution or participant recordkeeper who does the heavy lifting.

2. Expenses: A by-product of the industry gaining more experience in administering plans with Automatic Contribution features is a reduction of fees by many vendors. In fact, some financial institutions are willing to provide Automatic Enrollment and Automatic Escalation support services at no cost because they are able to capture additional revenues as a result of increased retirement plan assets under management.

Arguably, the increased experience of service providers in administering plans with Automatic Contribution provisions has made it less likely that errors will occur than when these features first became available. In addition, the IRS recently announced revisions in its EPCRS program that make it easier and less expensive for employers to correct errors now than under prior guidance. A separate article in this newsletter discusses the new IRS guidance applicable to correcting elective deferral errors under Revenue Procedure 2015-28.

In Summary

If your firm's 401(k) or 403(b) plan is achieving high levels of participation and employees are contributing at sufficient levels to experience a reasonable standard of living when they retire, keep doing what you are doing. On the other hand, if you are concerned that employees at your firm are not putting aside enough for retirement, it may be time to visit or re-visit an Automatic Contribution Arrangement as a way to help them. Your plan's financial advisor can be an important resource in discussing these and other strategies to help participants in a way that does not result in excessive risks or expenses to the employer/plan sponsor. ▪

ABP Quarter Century Club

Two members of ABP's professional staff are celebrating their 25th year with the company in 2015. Elaine Garyantes joined ABP in 1985 after working for several years in the financial services industry. She quickly established herself as a talented administrator and consultant. She has actually worked with several of the same clients continuously throughout her entire career at ABP. Elaine lives in Lancaster, PA with her two teenage daughters. Marie Dawson joined Pension & Financial Services (PFS), which is now part of ABP, 25 years ago and has been a welcomed addition to our staff. Marie managed the PFS office until the PFS staff relocated to ABP's King of Prussia office last year. She now directs ABP's Compliance Department which is currently immersed in restating retirement plan clients' plan documents to comply with the Pension Protection Act. Marie lives with her husband in West Chester, PA. Please join us in congratulating Elaine and Marie on this important milestone. ▪

(IRS Identifies Top Compliance Concerns - Continued from Page 1)

6. Failure to make timely distributions and/or to provide correct tax reporting for those distributions.
7. Errors in applying the plan's vesting schedule.
8. Not retaining adequate plan and participant records.
9. Lack of internal controls (i.e., to prevent errors related to plan administration).
10. Failing to follow the terms of a qualified domestic relations order (QDRO) related to divorce settlements.
11. Failure to limit contributions as required by Code Section 415, i.e., not applying the annual limit on combined contributions ($53,000 for 2015 or $59,000 if the participant is age 50 or over and making catch-up contributions).

Important Note: The IRS representative who provided the above list did not include failure to timely remit elective deferrals. The late deposit of employee deferrals has consistently been ranked as a major compliance issue by the Department of Labor which also oversees employer-sponsored retirement plans.

Let ABP Help

ABP's compliance services and our internal procedures and controls address each of the items on the above list in one way or another. For example, as part of our year-end review of clients' plans, ABP routinely monitors code section 415 contribution limits (item 11) and we identify individuals who should likely be given age 70½ minimum distributions (item 4). Our experienced administrators interact with clients as necessary throughout the year on virtually all of the other issues identified by the IRS representative.

ABP's staff sometimes detects compliances issues or red flags when we complete the year-end review of clients' plans. There are very few errors that cannot be fixed if they are detected and addressed in a timely manner. Nonetheless, the best case scenario is to prevent errors from occurring in the first place. Accordingly, ABP encourages all of our clients to contact us when situations arise that take them out of their comfort zones. A quick phone call or email exchange can often prevent a problem from occurring in the first place or resolve a minor problem before it becomes a major problem. ▪

Associated Benefit Planners, Ltd.

Associated Benefit Planners, Ltd. (ABP) is an independent consultant and third party administrator (TPA). We specialize in the design and administration of employer-sponsored retirement/savings plans, including 401(k) arrangements. ABP also provides plan document and compliance support for Section 125 Plans and Employee Welfare Plans, operating on a fee-for-service basis.

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