

401(k) Notices and Updates

05.29.18

The Tax Cuts and Jobs Act enacted late in 2017 and the Bipartisan Budget Act enacted in early February this year both made changes to the laws regarding rollovers from retirement plans and when a plan must accept certain rollovers. The tax notices that all qualified retirement plans provide to participants when their employment terminates need to be updated to reflect the changes to these rules. (The changes were discussed in earlier news alerts.)

Plan sponsors should contact their record keepers to determine if the tax notices the record keeper is providing to the plan sponsor's participants have been updated (related to the changes regarding outstanding participant loans and rolling over the loan offset amounts and certain tax levies released).

In addition, plan documents will need to be updated for the changes in the rollover rules related to when the plan will accept these rollovers because plan documents frequently include the former standard 60 day limitation on the time period in which the rollover must be made to protect the plan. The new laws have added a couple of exceptions that need to be incorporated into the plan so that the plan's operations are in compliance with the plan document as required by ERISA.

Plans using prototype documents will need to ask their prototype document provider regarding when the prototype plan will be updated for the changes under these two laws.

The changes made in the Bipartisan Budget Act with respect to rollovers of amounts released from tax levies became effective on April 1, 2018. The extended rollover period for plan loan offset amounts became effective on January 1, 2018.

The changes made regarding hardship withdrawals by the laws are awaiting regulatory guidance implementation and definition. There was no similar delay on the change in the rollover requirements that would delay the effective date until regulations were issued so the effective dates in the statutes are the effective dates, unless guidance providing an extension is provided.

Other 401(k) Plan Guidance

The limits on issuance of new regulations and additional procedures for issuing tax regulations not only delays issuance of guidance on changes, but also delays finalizing regulations that were in the proposed format. One of the proposed regulations caught in the change in procedures for guidance was a proposed change to the regulations related to Qualified Non-Elective Contributions (QNECs) and Qualified Matching Contributions (QMACs). The proposed regulations proposed changing the requirement that such contributions be non-forfeitable both when allocated to a participant's account and when contributed to the plan, to only require such amounts to be non-forfeitable when actually allocated to a participant's account.

This is a significant change because if they only must be non-forfeitable when allocated to a participant's account, amounts that are in the plan as forfeitures from other employer contributions can now be used to fund an employer's QNECs or QMACs and this means an employer's forfeitures can be used to reduce the amount an employer must fund to fulfill its obligation to make QMACs or QNECs, if the plan so provides. Normally this would not have been effective until final regulations were issued. However, last week the Internal Revenue Service issued a number of "Issue Snapshots". Two of the Issue Snapshots dealt with QMACs and QNECs and permitted taxpayers to rely on these Issue Snapshots currently.

Plan sponsors that may want to be able to correct ADP/ACP nondiscrimination testing by using forfeitures to fund QNECs or QMACs to facilitate passing such nondiscrimination testing need to review their plan documents to determine how the plan documents may need to be changed to permit use of forfeitures to fund such corrective contribution allocations. This is an amendment that would need to be in place during the plan year to which it applies as it is a discretionary amendment and not a change required to remedy a document for a change in a qualification requirement.

Additional Issue Snapshots dealt with the calculation of the limits on contributions to plans for short plan years and limits related to multiple participant loans issued to the same participant from plans maintained by commonly controlled employers and in instances when the plan permits multiple loans outstanding at the same time. If a plan permits a participant to have more than one loan outstanding at the same time or permits loans to be refinanced, the plan sponsor should carefully consider whether its participant loan program is following the Issue Snapshot which also contains a list of audit tips.

Another Issue Snapshot dealt with the vesting requirements for matching contributions in different types of safe harbor 401(k) and (m) plans- Qualified Automatic Contribution Arrangements (QACAs) v. non-QACAs.

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