ERISA FIDUCIARY ADVISORS

Timely Topics for Fiduciaries & Plan Sponsors MAR 2015

In This Issue

Safe Harbor Regulations Rethought

Top Five New Year's Resolutions for Retirement Plan Fiduciaries

EFA Named as PLANADVISER's TOP 100

Safe Harbor Regulations Rethought

Traditionally safe harbor contributions have been rather stringent in the sense that once adopted, there seemed to be little leeway allowing suspension or discontinuance. In 2014, the IRS issued new, final regulations of the requirements that need to be met to reduce or suspend a safe harbor contribution during a plan year. The new regulations are effective for plan years beginning on or after January 1, 2015. If the plan year is the calendar year, the new regulations apply now.

Under the new regulations, a safe harbor match or safe harbor nonelective contribution may be suspended or reduced midyear in two instances:

1. The plan sponsor is "operating at an economic loss" as defined in Code Section 412(c)(2)(A), (one determinant of whether the business is experiencing a hardship).
2. The annual safe harbor notice provided prior to the beginning of the plan year included a statement that the safe harbor contribution may be reduced or suspended during the plan year.

In addition to one of these two requirements being met, certain procedural requirements must be met as well. The procedural requirements are as follows:

1. Amend the plan prior to year end to reduce or suspend the safe harbor. The amendment should not be effective until the earlier of its adoption date or 30 days after participants are provided the supplemental notice.
2. Provide participants with a supplemental notice explaining the consequences of the reduction/suspension.
3. Give participants a reasonable opportunity to change their deferral elections as a result of the reduction/suspension.
4. Make all safe harbor contributions through the effective date of the amendment.
5. The plan amendment must provide that the plan will satisfy ADP & ACP testing for the entire plan year using the current year testing method.
6. The plan must satisfy the top-heavy requirements.

While certain allowances have been made, the idea behind safe harbor remains the same which is to enhance the participant benefit. Although there is some new flexibility, the decision to suspend or discontinue safe harbor plan design should be thoughtfully considered.

If you have questions about the new Safe Harbor Regulations, please contact your Plan Consultant.

Understanding Plan Eligibility

Is your company's eligibility attracting and retaining quality employees? Is it competitive with other companies?

Eligibility is a waiting period and an age requirement for participants to meet in order to become eligible for a retirement plan. Some plans may also require an employee to work a certain number of hours to become eligible and there may be on-going requirements in order to receive company contributions.

The maximum waiting period that a company can choose is two years and the age requirement cannot exceed 21. If a plan has a two year waiting period, the employee must be 100% vested immediately in employer contributions. The maximum number of hours that an employee can be required to work to become eligible is 1000 hours. Immediate eligibility is permissible and plans are not required to have a waiting period, age requirement or hours worked requirement. Most companies have a waiting period of one year or less and choose age 21 or age 18 as the age requirement. To align with other employee benefit plans, companies will commonly choose the same waiting period as they have for their other employee benefits. As an on-going requirement, companies can require employees to be employed on the last day of the plan year and/or work at least 1000 hours during the 12-month plan year to be eligible for a company contribution.

Plans can have different waiting periods for employee contributions and employer contributions. For example, companies can choose "dual-eligibility" and allow employees to begin contributing their own contributions after three months of employment, but complete a year of service to be eligible for company matching contributions. Companies will consider this option if employer matching cost and employee turnover are a concern. Once an employee has met the eligibility requirements for the plan, they will enter the plan on pre-established intervals. These entry dates can be anywhere from immediate entry (1st pay period after meeting eligibility requirements) to an annual entry date which is only available if the plan has immediate eligibility and no waiting period. Common entry dates are immediate, monthly and quarterly.

For plans that choose a waiting period of less than one year of service and less than age 21, annual ADP/ACP non discrimination testing rules allow plans to test the group of employees with less than a year of service and less than age 21 separately from those that have met the one year of service and age 21. The annual ADP/ACP non discrimination testing compares the average contributions from highly compensated employees to non-highly compensated employees and if the difference between the averages is above the permissible amount, a correction needs to be made to pass the test. This usually results in taxable refunds back to highly compensated employees. Generally speaking, plans have lower participation from shorter term employees and companies can choose to use the test with the more favorable results - those with a year of service and age 21 and those without.

A company's eligibility requirements should be monitored to ensure that eligible employees have access to join the plan. Also, companies should have automated processes in place to administer their eligibility requirements effectively.

EFA Named as PLANADVISER's TOP 100 Retirement Plan Advisors

ThePLANADVISER Top 100 Retirement Plan Advisers is an annual listing of adviser individuals, teams and multi-office teams that stand out in the industry in terms of a series of quantitative measures. These include the dollar value of qualified plan assets under administration (AUA), as well as the number of plans under advisement.

This year's qualification standards-which rise nearly every year-have escalated considerably from 2014's. Individuals had to either have at least $750 million in AUA or serve 105 or more plans; teams needed to advise at least $2.25 billion in assets or a minimum of 145 plans; and

multi-office teams were required to oversee $10 billion in plan assets or 400 or more plans.

The 2015 PLANADVISER Top 100 Retirement Plan Advisers list is available online here. It was printed in the January-February issue of PLANADVISER magazine, and the advisers named to the list will be honored at the annual PLANSPONSOR/PLANADVISER Awards for Excellence dinner on March 31. Please visit the event page for more information.

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