Retirement Plans Legislative and Regulatory Update

Presented by Judy Simons, CPC, QPA, QKA

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Introducing Your Speaker

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Member of American Society of Pension Professionals and Actuaries

Chief Compliance Officer, TCMI

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About TRI-AD

- Benefits administration and consulting since 1974
- Total Benefits Administration Outsourcing provider
  - All Health and Welfare services
  - All Retirement services

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Agenda

- Tax Reform Act of 2017 – Impact on Plans
- Bipartisan Budget Act – Impact on Plans
- DOL Fiduciary Regulations Update
- IRS Voluntary Correction Program – Fee Changes
- Missing Participant PBGC Program
- Lost Participants and Required Minimum Distributions at 70½
- DOL Civil Penalty Increase
- Plan Document Amendment Requirements
- IRS Operational Compliance List
- IRS and DOL Guidance Priorities

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Tax Reform Act – Impact on Plans

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Tax Reform of 2017

- Several concerns that retirement plan laws would change significantly
- Final bill did not change many retirement provisions
  - Concern about:
    - Reduction of 401(k) and 403(b) deferrals
    - Reduction in pension benefits
    - Reduction in employer contributions
    - "Rothification" of 401(k) or 403(b) deferrals

Tax Reform of 2017

- Law changes for retirement issues:
  - Extension of time to rollover loan distributions
  - 2016 disaster relief
  - Hardship distributions for casualty loss

Extended Rollover Period for Distributed Loans

- Effective for tax years beginning after 12/31/2017
- Applies to loans that offset a participant's account balance due to:
  - Termination of employment
  - Termination of the plan
- Prior law: required the participant to rollover (payoff) a loan within 60 days of distribution to avoid taxation
- New law: the participant can rollover (payoff) a loan by the due date of the participant's tax return plus extensions

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Extended Rollover Period for Distributed Loans

- Little change for plan sponsor's administration
  - 1099R includes loan amount in year of distribution (participant will have to deal with taxation issue with personal tax return)
  - Special Tax Notice for distributions should be modified to indicate loan rollover timing
  - Accepting a cash payment from a participant for the loan rollover into the plan by the filing of their tax return due date plus extensions

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Tax Reform of 2017

- Qualified 2016 disaster distribution relief
  - Grants relief for distributions made between 1/1/2016 and 1/1/2018 to individuals whose principal residence was in certain 2016 disaster areas:
    - 10% excise tax does not apply
    - 20% federal tax withholding requirements not required
  - Distributions cannot exceed $100,000 reduced by aggregate amounts treated as 2016 disaster distributions for all prior tax years
  - Allows for pro-rata taxation over three years
  - Participant may repay the distribution during the 3 year period beginning on the day after the date of the qualified 2016 disaster distribution
- Amendments to plans adding 2016 disaster distributions must be done by the last day of the first plan year beginning on or after 1/1/2018, or 12/31/2018 for a calendar year plan, (1/1/2020 for governmental plans)

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Tax Reform of 2017

- Hardship distributions for casualty losses (2018 – 2025)
  - Safe harbor hardship distribution rules impacted
    - Prior law: allowed hardship for expenses for the repair of damage to a participant's residence that would qualify as a casualty loss deduction (IRC §165) on personal income tax return
  - New law: casualty loss must be as a result of a federally-declared disaster (disasters declared by the President)
- IRS may provide guidance on whether this was the intent of the law change
  - What do employers do in the meantime?
    - Most conservative approach is to apply the new rule to hardships and only allow if loss due to federally declared disaster
    - Wait and see – wait until the IRS issues guidance on the matter
    - Review your plan document to determine how you should handle this situation

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Bipartisan Budget Act of 2018 – Impact on Plans

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Bipartisan Budget Act of 2018

- Signed into law February 9, 2018
- Included continuing resolution for government funding until March 23, 2018, at which time Congress will need to pass an omnibus appropriation package
- Gives relief for 2017 California wildfire victims
- Includes another 4 years of extension of the Children's Health Insurance Program (CHIP) – on top of the 6 years authorized earlier in 2018
- Suspension of debt ceiling until March 1, 2019
- Extended through 2017 only, certain tax deduction provisions for individuals and businesses that had expired at the end of 2016
- Other non-retirement plan provisions

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Bipartisan Budget Act of 2018

- Retirement Provisions
  - Hardship distribution relief
  - California wildfire relief
  - Relief for improper federal tax levy

Hardship Distribution Relief – Welcome Relief!

- Effective for plan years beginning on or after January 1, 2019
- No longer requiring the participant to first take a loan before a hardship distribution can be taken
- Eliminates the 6-month deferral suspension requirement following a hardship withdrawal
- Expands the type of money that can be distributed due to a hardship
  - Participants will be able to take hardship distributions from:
    - Safe harbor contribution accounts
    - Qualified Nonelective Contributions (QNEC)
    - Qualified Matching Contributions (QMAC)
    - Earnings for all eligible sources including post 1/1/89 earnings on elective deferrals

Hardship Distribution Relief

- IRS instructed to issue regulations about these changes
- Plan amendment will eventually be required, timing will be determined by IRS

California Wildfire Relief

- Similar provisions as hurricane relief in 2017
- Applies to Californians whose principal place of residence was in a federally declared California wildfire disaster area between October 8, 2017 – December 31, 2017 and who sustained an economic loss due to the fires

California Wildfire Relief

- Distributions
  - Special in-service distributions up to $100,000
    - Relief from 10% early distribution penalty tax (generally distributions before age 59 ½) for distributions made on or after October 8, 2017 and before January 1, 2019
    - Exempts distributions from 20% mandatory Federal withholding
    - Participant able to spread out the distribution taxation over 3 years
    - Participants can repay the distribution back to the plan within 3 years from the distribution date with repayments being treated as qualified rollovers

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California Wildfire Relief

- Distributions
  - Before 6/30/18, to avoid taxation, participants can recontribute to the plan hardship distributions taken between 3/31/17 – 1/15/2018 that were intended for the purchase of a principal residence in the wildfire disaster zone but were not used due to the wildfires

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California Wildfire Relief

- Participant loan provision changes for loans taken by qualified individuals between 2/9/2018 – 12/31/2018
  - Increase in the participant loan limit from the
    - lesser of $50,000 or ½ of the vested balance or present value of benefit
    - lesser of $100,000 or 100% of the vested balance or the present value of benefit
  - Loan repayments may be delayed for one year
    - Interest will accrue during the period of delay

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California Wildfire Relief

- Plan amendment required
  - Plan sponsors can apply the rules immediately but are not required to offer these provisions
  - Plan amendments must be made by the last day of the plan year beginning on or after January 1, 2019 (later date for governmental plans)
    - Example, calendar year plans must be amended by December 31, 2019 if the plan sponsor allowed any relief to affected participants
  - If the plan sponsor did not provide such relief because they had no affected participants, no amendment is required

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Wrongful IRS Levy Relief

- Participants who withdrew funds from their qualified retirement plan accounts after 12/31/17 to satisfy an IRS levy may recontribute to the plan any amounts returned by the IRS due to a wrongful levy
- Such returned amounts will be treated as rollover contributions

DOL Fiduciary Regulations Update

Fiduciary Regulations

- Broadens definition of fiduciary and now includes brokers and advisors who provide recommendations to these plans who were previously not fiduciaries
- Applies to:
  - ERISA Plans (including ERISA 403(b) plans)
  - Non-ERISA Arrangements
    - Traditional IRA and Individual Retirement Annuities
    - Roth IRA
    - Health Savings Account
    - Archer Medical Savings Account
    - Coverdell Education Savings Account

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Fiduciary Regulations

- DOL Final fiduciary regulations published 4/6/2016
- Prohibited transaction exemptions published same day
- Effective 6/7/2016
- Applicable on 6/9/2017 and 7/1/2019
- Plan sponsors should be familiar with the requirements to ensure compliance

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Fiduciary Regulations – What's in Effect?

- Applicable on 6/9/2017:
  - Fiduciary status of compensated financial advisors
  - Requirement that advisors comply with the impartial conduct standards of the prohibited transaction exemptions

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Fiduciary Requirements Applicable on 6/9/2017

- Fiduciary – a person who provides to a plan, IRA or IRA owner the following types of advice for a fee, or other compensation, direct or indirect:
  - Recommendation as to the advisability of acquiring, holding, disposing of or exchanging securities or other investment property, or a recommendation as to how securities or other investment property should be invested after the securities or other property are rolled over, transferred, or distributed from the plan or IRA
  - Recommendation as to the management of securities or other investment property, including investment policies or strategies, portfolio composition, selection of other persons to provide advice or management services, or selection of account arrangements (brokerage vs. advisory)
  - Recommendations with respect to rollovers, transfers or distributions from a plan or IRA, including recommendations on the amount, form, destination of the distribution
    - Not a fiduciary if providing participants with information about distribution options and taxation of distributions and not giving investment advice or recommending specific investments

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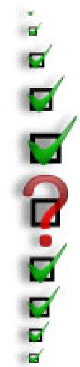
Who Could Be a Fiduciary?

- Impacts
  - Financial institutions
  - Broker/dealers
  - Insurance companies
  - Registered Investment Advisors
  - Recordkeepers
  - TPAs – very limited impact, if any



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Impartial Conduct Standards Applicable on 6/9/2017

- Impartial Conduct Standards Requirements
  - Best interest – make recommendations that are in account holder's best interest
    - Prudence – advice must meet a professional standard of care
    - Loyalty – advice must be based on the interests of the customer, rather than the competing financial interest of the advisor or firm
  - No material misstatements – no misleading statements to the account holder about the recommended transaction, fees, material conflicts of interest or any other matters
  - Reasonable compensation – charge no more than reasonable compensation for investment advisory services

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Fiduciary Regulations – What's on Hold?

- Most components of the Best Interest Contract Exemption (BICE) and other prohibited transaction rules
- BICE includes:
  - Exemption requires the financial institution to acknowledge fiduciary status for itself and its advisors for a plan or IRA customer
  - Best Interest Contract requirement (non-ERISA plans)
  - Policies and procedures – financial institution is to develop to prevent material conflicts of interest
  - Required disclosures – initial, transaction-based and extensive website disclosures
  - Reporting to DOL of exemption – institution must notify DOL of its intention to rely on exemption (notify through email)
  - Keep records for at least 6 years for examination

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Status of Fiduciary Rules & Prohibited Transaction Rules

- 11/2017 - Labor Secretary Acosta (DOL) issued formal extension of rules that were to be effective 1/1/2018 to 7/1/2019 so modifications may occur
- Securities Exchange Commission also working on their own version of the fiduciary rule
  - Asked for public comment on whether it should create a harmonized fiduciary definition for all investors
- States are getting into the action
  - New York, New Jersey, Connecticut and California have introduced legislation to impose a fiduciary duty on financial institutions
  - Nevada passed a law effective July 1, 2017 which imposes a state fiduciary duty on financial institutions and investment advisors rendering investment advice to Nevada-based clients
    - Impacts non-ERISA plans and not clear if ERISA pre-emption would apply

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Status of Fiduciary Rules & Prohibited Transaction Rules

- Fifth Circuit Court of Appeals vacates the DOL fiduciary rule
  - Court struck down both the new fiduciary advice definition and the prohibited transaction exemptions
  - If the Fifth Circuit decision becomes final:
    - Revert to the regulatory definition of fiduciary adopted in 1975
    - Revert to pre-2016 prohibited transaction exemptions
- DOL has the following options:
  - The DOL has 45 days from entry of the judgement to request that all Fifth Circuit judges re-hear the case (earliest date is 5/7/2018)
  - The DOL could ask the Supreme Court for permission to appeal the decision and ask that the Fifth Circuit's ruling be stayed pending resolution (e.g., the fiduciary and prohibited transaction rules will remain in effect)

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IRS Voluntary Correction Program – Fee Changes

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IRS Employee Plans Compliance Resolution System (EPCRS)

- EPCRS is the IRS program for fixing plan document and operational failures within retirement plans and is widely used by most employers when they have problems in their plans
- IRS charges “user” fees for those employers that submit their failure(s) to the IRS for review and approval of the corrections through the voluntary correction program (VCP) filing
- IRS user fees are subject to change and are published annually
- Effective 1/2/2018, the IRS significantly changed the EPCRS fees from a participant count basis to an asset value basis

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VCP Fee History

Schedule up to 2/1/2017

Participants	Fee
<21	$750
21 - 50	$1,000
51 - 100	$2,500
101 - 500	$5,000
501 – 1,000	$8,000
1,001 – 5,000	$15,0000
5,001 – 10,000	$20,000
>10,000	$25,000
Participant count from most recent 5500 form is used	

Schedule 2/2/2017 – 1/1/2018

Participants	Fee
<21	$500
21 - 50	$750
51 - 100	$1,500
101 – 1,000	$5,000
1,001 – 10,000	$10,0000
>10,000	$15,000
Discounted fees for streamlined filings, e.g. Req Min Distr failures - $500	
Participant count from most recent 5500 form is used	

Schedule effective 1/2/2018

Plan Assets	Fee
$500,000 or less	$1,500
$500,001 - $10,000,000	$3,000
Over $10,000,000	$3,500
Eliminated discounted fees for streamlined filings	
Sch H - Line 1(l) Col (b) Sch I - 1(c) Col (b) 5500-SF - Line 7(c) Col (b) Most recent 5500 forms	

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EPCRS VCP Fees

- Larger plans positively impacted
  - Reduced fees for larger fees
    - Example – plan with 1,100 participants with $9,000,000 in assets, fee decreases from $10,000 to $3,000, a 70% reduction
    - Example – plan with 10,001 + participants with over $10,000,000 in assets, fee decreases from $15,000 to $3,500, a 75% reduction

- Smaller plans negatively impacted
  - Increased fees for smaller plans
    - Example – plan with 70 participants and $1,700,000 in assets, fee increases from $1,500 to $3,000, a 200% increase
    - Example – plan with 25 participants and $800,000 in assets, fee increases from $750 to $3,000, a 400% increase

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EPCRS VCP Fees – Impact on Plans

- Larger plans will more than likely submit failures to the IRS
- Smaller plans will more than likely not submit failures to the IRS and will self-correct failures
- Pushback from organizations representing retirement professionals to IRS
  - American Society of Pension Professionals and Actuaries (ASPPA) sent letter of concern on behalf of small employers to IRS
    - IRS response – will consider impact to small employers but they want the fees to reflect the average time it takes to review large and small cases

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EPCRS – Self Correcting Failures

- Some failures meet the requirements to self correct under EPCRS
- Any employer self correcting should:
  - Follow the EPCRS Revenue Procedure 2016-51 correction methods
  - Make participants whole according to the Revenue Procedure
  - Document the correction in case of a future IRS audit where the employer may have to provide evidence of the correction
  - TRI-AD assists our clients with the corrections and documents the corrections for future reference
- Plan document failures – most document failures cannot be self corrected so a filing to the IRS may be necessary based on the circumstances
- There are usually operational failures that occur, especially in 401(k) and 403(b) plans
  - Most common failures:
    - Failure to allow someone to participate timely
    - Failure to automatically enroll an employee
    - Failure to implement an employee's deferral election

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Missed Deferrals in a 401(k) or 403(b) Plan – Self Correction

401(k) / 403(b) Plan Type	Deferral Failure Corrected Within 3 Months of Failure	Deferral Failure Corrected 9 ½ Months After End of Plan Year	Deferral Failure Corrected After 9 ½ Months After End of Plan Year but Before Self-Correction Period
Failure to automatically enroll or escalate an employee or failure to implement an affirmative election for an employee subject to auto enrollment	If plan contains automatic enrollment provisions, if correction is made by the first compensation paid on or after the earlier of: • 3-month period beginning after the failure began • end of month following the month in which employee notifies employer of failure 45-day notice to employee required	If plan contains automatic enrollment provisions, if correction is made by the first compensation paid on or after the earlier of: • last day of 9 ½-month period after end of plan year • end of month following the month in which employee notifies employer of failure 45-day notice to employee required Expires 12/31/20 unless extended by IRS	If plan contains automatic enrollment provisions, if correction is made by the first compensation paid on or after the earlier of: • last day of 2nd plan year following the plan year of failure • end of month following the month in which employee notifies employer of failure 45-day notice to employee required
Missed Deferrals	No missed deferral make up is required	No missed deferral make up is required	25% of missed deferral is required to be made up (QNEC)
Matching Contributions	100% of matching contribution is required Allocate as a match	100% of matching contribution is required Allocate as a match	100% of matching contribution is required Allocate as a match
Earnings	Calculate lost earnings using participant's account experience (if no account exists, default investment earnings can be used)	Calculate lost earnings using participant's account experience (if no account exists, default investment earnings can be used, but no reduction in match can occur due to losses)	Calculate lost earnings using participant's account experience (if no account exists, default investment earnings can be used)

Missed Deferrals in a 401(k) or 403(b) Plan – Self Correction

401(k) / 403(b) Plan Type	Deferral Failure Corrected Within 3 Months of Failure	Deferral Failure Corrected After 3 Months but Before Self-Correction Period
Failure to follow an enrollment election (no automatic enrollment or escalation provision exists)	If plan does **not** contain automatic enrollment provisions, if correction is made by the first compensation paid on or after the earlier of: • 3-month period beginning after failure began • end of month following month in which employee notifies employer of failure 45-day notice to employee required	If plan does **not** contain automatic enrollment provisions, if correction is made by the first compensation paid on or after the earlier of: • last day of 2nd plan year following the plan year of failure • end of month following the month in which employee notifies employer of failure 45-day notice to employee required
Missed Deferrals	No missed deferral make up is required	25% of missed deferral is required to be made up (QNEC)
Matching Contributions	100% of matching contribution is required Allocate as a match	100% of matching contribution is required Allocate as a match
Earnings	Calculate lost earnings using participant's account experience (if no account exists, default investment earnings can be used)	Calculate lost earnings using participant's account experience (if no account exists, default investment earnings can be used)

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Missing Participant PBGC Program

Pension Benefit Guaranty Corporation (PBGC)

- A federal agency created by ERISA (retirement law passed in 1974)
- Provides protection of pension benefits for defined benefit plans (DBP) that usually pay a monthly pension to participants at retirement age
- Employers who sponsor a DBP whose benefits are covered by the PBGC must pay annual premiums to the PBGC
- PBGC takes over plans in distress that cannot pay the benefits, e.g. employers that go into bankruptcy

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PBGC Missing (Lost) Participant Program Expansion

- PBGC issued final regulations on 12/22/17
- Expands lost participant option to terminated defined contribution plans and non-PBGC defined benefit plans that terminate on or after January 1, 2018
  - Employers can send lost participants' retirement money to the PBGC
- Voluntary program for plans not subject to PBGC rules
- $35 per participant one-time fee for transferred amounts exceeding $250
  - Fee is due when money is sent to the PBGC
  - No other fees will be charged
  - PBGC did not make a comment on whether the fee could be paid by the plan, the employer or the participant in a DC plan

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PBGC Missing (Lost) Participant Program Expansion

- Missing participants are:
  - those participants that cannot be located with "reasonable certainty"
  - those participants that are non-responsive and whose vested account values are $5,000 or less
- Terminated DC sponsors can elect to:
  - Transfer lost participant money to PBGC – all or nothing
    - The employer must transfer all missing participants' balances or none (no cherry picking)
  - Rollover to IRA (or purchase annuity contract)
- PBGC may expand program in the future for lost participants in active plans
  - This will be awhile since they want to test this new program first

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Lost Participants – Required Minimum Distributions at 70 1/2

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Lost Participant & Required Minimum Distributions (RMD)

- Terminated participants and 5% owners of a business must receive RMD's at age 70 ½ from a retirement plan or the plan faces a plan qualification failure
- Participants who cannot be located present a problem because the plan cannot pay the required amounts
- IRS grants relief through 2 directives to Employee Plans examiners (IRS auditors) on 10/19/2017 and 2/23/2018

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IRS Relief for Lost Participants Owed RMD's

- Examiners may not challenge a plan's qualification (including a 403(b) contract) if the plan sponsor has taken the following steps:
  - Searched the plan and any related plan, sponsor and publicly-available records for alternative contact information
  - Used any search methods below:
    - A commercial locator service;
    - A credit reporting agency; or
    - A proprietary internet search tool for locating individuals; and
  - Attempted contact via the USPS certified mail to the last known address and through appropriate means for any address or contact information (including email addresses and telephone numbers)
- Employers should document their search efforts

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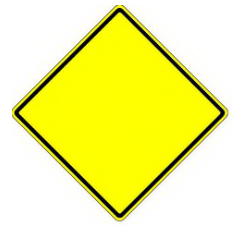
IRS Relief for Lost Participants Owed RMD’s



- Examiners may challenge the plan’s qualification or a 403(b) contract if the plan sponsor has not taken these steps to locate the lost participant
  - Qualification issue that must be resolved through the IRS audit cap program where higher penalties usually apply

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Increased DOL Civil Penalties

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Increased DOL Civil Penalties

Violation	2018 Penalty	2017 Penalty
Failure to file an annual report (Form 5500) with the DOL (unless an exemption applies)	Up to $2,140 / day	Up to $2,097 / day
Failure to furnish plan-related information requested by the DOL	Up to $152 per day, but not to exceed $1,527 per request	Up to $149 per day, but not to exceed $1,496 per request
Failure to provide a blackout notice	Up to $136 per day	Up to $133 per day
Failure to provide a notice of right to divest employer securities	Up to $136 per day	Up to $133 per day

Delinquent 5500 Filings

- DOL's Voluntary Fiduciary Correction Program – Delinquent 5500 Filer Program
  - $10 / day not to exceed:
    - Single late 5500 form maximum penalty
      - Small plans (generally fewer than 100 participants) - $750
      - Large plans (generally 100 participants or more) - $2,000
    - Multiple late 5500 forms maximum penalty
      - Small plans - $1,500
      - Large plans - $4,000
- Penalties far less when you voluntarily remit late forms through the DOL program (civil penalty if caught - up to $2,140 / day)
- https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/dfvcp.pdf

Plan Document Changes

Pre-approved Plans – Next 6-Year Amendment Cycle

- Next 6-year amendment and restatement cycles:
  - 403(b) plans – deadline is 3/31/2020
  - Defined Benefit Plans (including cash balance plans)
    - 5/1/18 - 4/30/2020 – DBP documents should be updated during this time period
      - IRS Announcement 2018-05 issued 3/9/2018 - IRS guidance indicating they will be approving specimen documents soon and communicated deadline to amend
  - Defined Contribution Plans next cycle est: 2020 – 2022
    - Specimen documents are due to IRS by 9/30/18
    - Employee Stock Ownership Plans (ESOP's) – the IRS is now allowing document providers to submit their ESOP specimen documents for review and issuance of an IRS approval letter

403(b) Amendment and Restatement Requirements

- Several years ago, the IRS published guidance to bring 403(b) compliance in line with 401(k) compliance (e.g, taming the Wild West)
- By end of 2009, most 403(b) sponsors had to adopt a plan document
  - Documents drafted were not perfect and the IRS realizes this
  - IRS had no amendment cycle for 403(b) documents to be updated periodically
- IRS allowed document providers to submit 403(b) plan documents for review and the issuance of an approval letter on the specimen document so 403(b) plans are now IRS pre-approved documents
- 403(b) plans – deadline to fully update the document is 3/31/2020
- Sponsors of 403(b) plans can retroactively amend back to 1/1/2010 (or if later, effective date of the plan) to fix any document defects
  - Requires all amendments since 2010 to be reflected in the plan documents

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Individually Designed Plans – Rev Proc 2016-37

- Required Amendments List (RA List) – regulatory amendments
  - Annually, IRS will issue a RA List that outlines the required changes in plan documents for IDPs to stay in compliance
  - RA List will be published in 4th quarter of each year
  - Amendments must be adopted by the end of the 2nd calendar year after the first year the item is included on the RA List, unless required to be adopted sooner, e.g., if the legislation requires earlier adoption or it is a cut back in benefits issue
  - New amendment rules effective 1/1/2017
- If you currently sponsor an IDP, check with your providers to find out the status of your document
- Government plans have different deadlines based on the type of amendment and the timing of legislative sessions

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Required Amendments List (RA List) – IRS Notice 2016-80

- Each year the RA list will include 2 parts:
  - Part A – Changes that require amendments to most plan types
  - Part B – Changes that won't require amendments in most plans
- RA List published in 2016 for individually designed plans required amendments
  - Part A – None
  - Part B – Collectively bargained defined benefit plans – restrictions on accelerated distributions from underfunded single-employer plans in employer bankruptcy under IRC Section 436 (Highway and Transportation Act of 2014)
- Required amendment date = 12/31/2018

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Required Amendments List (RA List) – IRS Notice 2016-80

- RA List published in 2017 for individually designed plans required amendments
  - Part A
    - Final cash balance defined benefit pension plans (DBP) for market rate of return and other provisions that first become effective for the plan year beginning in 2017
    - Benefit restrictions for certain DBP's that are eligible cooperative plans or eligible charity plans
  - Part B – Final regulations regarding partial annuity distribution options for defined benefit pension plans
- Required amendment date = 12/31/2019

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IRS Operational Compliance List

IRS Operational Compliance List

- Plans must be operated in compliance if regulatory or legislative changes are made, even though plan amendments are not required until the RA List indicates
- IRS will publish the Operational Compliance List to identify changes that are effective during a calendar year
- 2016 and 2017 Operational Compliance List: https://www.irs.gov/retirement-plans/operational-compliance-list
- No list for 2018 yet
- List doesn't include all operational compliance issues
- For information on IRS recent published guidance, visit:
  - https://www.irs.gov/retirement-plans/recent-ep-published-guidance

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2016 Operational Compliance List

- Mid-year changes to safe harbor 401(k) plans
- Hurricane relief – Hurricanes Matthew and Louisiana storms
- Proposed regulations regarding nondiscrimination testing under section 401(a)(4) for closed defined benefit plans – IRS withdrew some portions of the regulations
- Extension of temporary nondiscrimination relief for closed defined benefit plans
- Proposed regulations regarding normal retirement age for governmental pension plans
- Restrictions on distributions in bankruptcy for collectively-bargained single-employer defined benefit plans

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2017 Operational Compliance List

- Proposed regulations regarding QNECs and QMACs in defined contribution plans (forfeitures can be used to fund 100% immediate vested contributions)
- Extension of temporary nondiscrimination relief for closed defined benefit plans
- Final regulations regarding annuity distribution options for defined benefit plans
- Final regulations regarding cash balance/hybrid plans
- Application of benefit restrictions for eligible cooperative or eligible charity defined benefit plans

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IRS and DOL Guidance Priorities

DOL Expected Guidance – Still Waiting for Priority Guidance

- Preston Rutledge, Assistant Secretary, Employee Benefits Security Administration (EBSA) was sworn in on 12/21/2017

DOL Projects
Fiduciary rules Final regulations published, but under review by new DOL leadership
Expand Voluntary Fiduciary Correction Program Final rule stage
Fiduciary relief for investments in Qualified Default Investment Alternative (QDIA) – determining if use of lifetime income products and features are appropriate as QDIAs Pre-rule stage
Modernize Form 5500 Series – joint project with IRS and PGBC
See DOL site: http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCd=1200

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IRS Expected Guidance

IRS Projects – July 2017 - June 2018 (23 listed items)
Regulations updating the rules applicable to ESOPs
Final regulations regarding QNECs and QMACs and forfeiture issues
Guidance updating regulations for service credit and vesting under §411
Final regulations for closed defined benefit plans, Notice 2017-45 issued in 9/2017
Additional guidance on issues relating to lifetime income from retirement plans
Revenue procedure modifying EPCRS to provide guidance with regard to certain corrections
Guidance on missing participants
See IRS Priority Guidance Plan: https://www.irs.gov/pub/irs-utl/2017-2018_pgp_2nd_quarter_update.pdf

Join us for our Next Web Seminar

10:00AM – 11:00PM PT

Date	Topic
5/22/2018	Health and Welfare Legislative Update

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Thank You!

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