Retirement Update
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Internal Revenue Service

Employee Plan News Published

Issue No. 2015-1 of *Employee Plan News* was published February 2, 2015. http://www.irs.gov/pub/irs-tege/epn_2015_1.pdf Articles of interest include options available to plan sponsors when certain retirement plan returns are delinquent, as well as reports on several projects completed by the Employee Plans Compliance Unit.

Delinquent Retirement Plan Returns Plan sponsors may have the opportunity to avoid paying late filing penalties if they participate in the Form 5500-EZ Late Filers Pilot Program or if they qualify for a waiver when filing Form 5500 series returns and Form 8955-SSA.

- *Form 5500-EZ Late Filers Pilot Program* is available for non-ERISA plans (a) covering only a 100% business owner or one or more partners, and their spouses (with no common law employee participants), or (b) are being maintained outside the U.S. primarily for non-resident aliens (foreign plans) that must annually file a report with the IRS.

- *Form 5500 series returns and Form 8955-SSA* delinquent filing waivers are available for plans subject to ERISA. In accordance with a program modification, the IRS will now only waive late filing penalties for filers who satisfy the Department of Labor's Delinquent Filer Voluntary Compliance Program requirements for Form 5500, *Annual Return/Report of Employee Benefit Plan*, or Form 5500-SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*; file a paper Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits*, (if applicable) with the IRS for the same delinquent tax year filings; and meet certain other requirements.

Employee Plans Compliance Unit (EPCU) Reports on Completed Projects

- *Fraud and internal controls* - Weak internal controls and risky investments were linked to findings of fraud in this project, which involved reviewing Form 5500 series returns that reported fraud loss. http://www.irs.gov/Retirement-Plans/Employee-Plans-Compliance-Unit-EPCU-Completed-Projects-Fraud-Project The report cautioned that risky investments may also cause the plan to be subject to additional taxes on prohibited transactions or unrelated business income. Recommendations made to prevent fraud include the following suggestions for strengthening internal controls:
  - Ensure the plan's books and records are checked regularly by an outside third party.
  - Trace deposits and payments to original documents.
  - Have someone else review work when only one employee is in charge of plan operations.
  - Ensure the fidelity bond is current and in a sufficient amount.
  - Keep blank checks locked up.
  - Have outside professionals verify transactions.
  - Ensure any loans to third parties are in writing with all forms properly completed, adequately secured, and all interest payments made on time.
  - Reconcile bank, investment and account statements regularly.
  - Require two original signatures on checks or forms that involve plan assets.
  - Keep copies of plan documents including Form 5500 series returns and determination letters.
  - Ensure that payments are sent to correct vendors.

- Request that product and service providers promptly remove employees or trustees with signature authority after they retire or leave employment.
- Verify participants who are supposed to receive loans or other distributions actually received them in the correct amounts.

- *Form 1099-R, Code Section 72(t) Project*- EPCU found errors in reporting taxable distributions. http://www.irs.gov/Retirement-Plans/Reporting-Taxable-Distributions The EPCU reviewed Forms 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.,* marked as 'Early distribution, no known exception' (box 7, code 1) and then compared that information against the Form 1040 tax returns filed. The IRS found almost 40% of the individuals made errors on their Form 1040 returns as most individuals didn't qualify for an exception to the 10% additional tax on early distributions. These individuals were asked to properly report the distributions by amending their returns.

- *Final Return with Assets Project* - EPCU reviewed Form 5500 annual returns marked 'the final return/report' that also showed over $5,000 in plan assets at the end of the plan year. http://www.irs.gov/Retirement-Plans/Employee-Plans-Compliance-Unit-EPCU-Completed-Projects-Projects-with-Summary-Reports-Final-Return-with-Assets-Project Over 90% of the responses showed that plan sponsors made errors when filing their Form 5500, mostly by checking the box indicating the return was 'the final return/report' when all assets were not distributed by the end of the plan year, or not showing zero end of year assets when they had actually distributed all plan assets by the end of the plan year. In addition, the project found that sponsors incorrectly marked their 5500 return to show they adopted a resolution to terminate the plan when they had not and identified a plan as terminated when it was not.

EPCU Reports on Money Purchase Pension Plan Contributions and Qualified Joint and Survivor Annuities (QJSA) Projects

On February 20, 2015, the Employee Plans Compliance Unit (EPCU) of the IRS reported the completion of the Money Purchase Pension Plan Contributions and the Qualified Joint and Survivor Annuities (QJSA) Projects.
http://www.irs.gov/Retirement-Plans/Employee-Plans-Compliance-Unit-EPCU-Completed-Projects-Projects-with-Summary-Reports-Money-Purchase-Pension-Plan-Contributions-Project
http://www.irs.gov/Retirement-Plans/Employee-Plans-Compliance-Unit-EPCU-Completed-Projects-Projects-with-Summary-Reports-Qualified-Joint-and-Survivor-Annuities-QJSA-Project

Money Purchase Pension Plan Contributions Project

Based on a review of money purchase plans filing a Form 5500-SF for 2012 as a small plan that reported no contributions, EPCU contacted a sample of the sponsors to determine the reason for the lack of contributions. Money purchase pension plans must have a definitely determinable benefit formula. Typically, the formula expresses the benefit accrual in terms of a percentage of compensation. Failure to make contributions required by the plan's formula may not comply with the terms of the retirement plan, thereby putting plan qualification at risk.

According to the report, the majority of cases complied with the money purchase pension plan contribution requirement because they were either amended or set up with a 0% contribution formula. Further, some of the plans with no self-employment earnings or earned wages indicated that the participant(s) retired and they were holding the plan assets until they met one of the plan's allowable distribution events.

Qualified Joint and Survivor Annuities (QJSA) Project

The purpose of this project was to ascertain whether money purchase pension plans comply with the spousal consent requirements when making distributions in a form other than a qualified joint and survivor annuity (QJSA). After sampling plan sponsors whose Form 5500-SF filings showed a money purchase plan (other than target benefit plan), and distributions during the plan year, a contact letter and List of Required Information attachment was sent. The purpose was to determine whether the sampled plan sponsors distributed benefits to married participants in the form of a QJSA, and obtained spousal consent before distributing benefits to married participants in a form other than a QJSA, such as a single lump sum.

According to the report, almost all of the sponsors in the sample were compliant with the QJSA notice and consent requirements. It is important to note that EPCU did find a few plan sponsors that did not secure spousal consent to the waiver of the QJSA, and/or have a plan representative or notary public witness the consent. In addition, the report noted that some sponsors did not know that direct rollovers need to comply with the QJSA requirements, and that required minimum distributions (RMDs) are not subject to the QJSA requirements.

IRS Publication and Social Security Press Release Tout Availability of Replacement Forms

IRS Publication 915 Social Security and Equivalent Railroad Retirement Benefits have been updated for 2014 tax filings. http://www.irs.gov/pub/irs-pdf/p915.pdf Starting February 2, 2015, replacement forms SSA-1099 and SSA-1042S are available through my Social Security at www.socialsecurity.gov/myaccount.

In addition, a press release was published by the Social Security Administration on February 2, 2015, which explained this new service. http://www.socialsecurity.gov/news/press/releases.html#!/print/2-2015-1

> *my Social Security is a secure, online account people use beginning in their working years and continuing throughout the time they receive Social Security benefits. Once the account is created, it is used by people who are working to keep track of their earnings and to get estimates of future benefits. People already receiving benefits manage them with their account – changing their address, starting or changing direct deposit, getting a benefit verification letter, and more. In addition to those existing services, beneficiaries will now be able to immediately get their SSA-1099 replaced without needing to call or visit an office and often wait for a replacement form in the mail.*

Webinar on Retirement Plan Loans Scheduled

On March 26, 2015, the IRS will hold a webinar on *Retirement Plan Loans to Participants.* http://www.visualwebcaster.com/IRS/101560/reg.asp?id=101560 Topics to be covered include the following:

- What type of plans can make loans to participants.
- What are the conditions a plan must follow to make loans.
- What are the required terms of a plan loan.
- How plan loans may be taxable under 72(p).
- When plan loans violate the prohibited transaction rules of 4975.
- How to fix plan errors involving loans.

Tax Exempt and Government Entities Publication Updated

Revised Publication 4484, *Choose a Retirement Plan for Employees of Tax Exempt and Government Entities*, has been updated. http://www.irs.gov/pub/irs-pdf/p4484.pdf. This publication features a comparison chart which highlights available retirement plans. The graphics and information have been revised to ensure that the material is easier to understand.

Treasury Department Publishes "Green Book" Containing Fiscal Year 2016 Budget Proposals

The Treasury Department released *General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals* dated February 2015. http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2016.pdf This document is commonly referred to as the "Green Book."

Selected proposals seeking to enhance retirement security include the following:

- Provide for Automatic Enrollment in IRAs - Employers in business for at least two years with more than ten employees would be required to offer an automatic IRA option to employees, under which regular contributions would be made to an IRA on a payroll-deduction basis. If the employer sponsored a qualified retirement plan, SEP, or SIMPLE for its employees, it would not be required to provide an automatic IRA option for its employees. The proposal would become effective after December 31, 2016.

- Expand Penalty Free Withdrawals for Long Term Unemployed - The exception from the 10-percent additional tax would be expanded to cover more distributions to long-term unemployed individuals from an IRA (in excess of the premiums paid for health insurance) and to include distributions to long-term unemployed individuals from a 401(k) or other tax-qualified defined contribution plan. This proposal would apply to eligible distributions occurring after December 31, 2015.

- Require Retirement Plans to Allow Long-Term Part-Time Workers to Participate - 401(k) plans would be required to expand eligibility to participate by permitting employees to make salary reduction contributions if the employee has worked at least 500 hours per year with the employer for at least three consecutive years. This proposal would apply to plan years beginning after December 31, 2015.

- Facilitate Annuity Portability - To help preserve retention of assets for retirement, a plan would be permitted to allow participants to take a distribution of a lifetime income investment through a direct rollover to an IRA or other retirement plan if the annuity investment is no longer authorized to be held under the plan, without regard to whether another event permitting a distribution (such as a severance from employment) has occurred. The proposal would be effective for plan years beginning after December 31, 2015.

- Simplify Minimum Required Distribution (MRD) Rules - An individual would be exempt from the MRD requirements if the aggregate value of the individual's IRA and tax-favored retirement plan accumulations does not exceed $100,000 (indexed for inflation after 2016) on a measurement date. The proposal would be effective for taxpayers attaining age 70½ on or after December 31, 2015 and for taxpayers who die on or after December 31, 2015 before attaining age 70½.

- Allow all Inherited Plan and IRA Balances to be Rolled over Within 60 Days - The options that are available to a surviving non-spouse beneficiary under a tax-favored employer retirement plan or IRA for moving inherited plan or IRA assets to a non-spousal inherited IRA would be expanded by allowing 60-day rollovers of such assets. This treatment would be available only if the beneficiary informs the new IRA provider that the IRA is being established as an inherited IRA, so that the IRA provider can title the IRA accordingly. The proposal would be effective for distributions made after December 31, 2015.

Department of Labor

Proposed Fiduciary Rule Sent to Office of Management and Budget for Review Prior to Expected Release

In conjunction with Thomas Perez, Secretary of Labor, the White House announced on February 23, 2015 that the Department of Labor will issue a notice of proposed rulemaking, "beginning a process in which it will seek extensive public feedback on the best approach to modernize the rules on retirement advice and set new standards, while minimizing any potential disruption to good practices in the marketplace." [See Fact Sheet linked below.] Regulations, which were proposed in 2010 to better ensure that those providing investment advice to plan fiduciaries and/or plan participants and beneficiaries are subject to ERISA's standards of fiduciary conduct, were withdrawn after stiff opposition.

Note the following details and commentary explaining the issues to be addressed in the forthcoming rules:

- *White House Office of Press Secretary* - Fact Sheet: Middle Class Economics: Strengthening Retirement Security by Cracking Down on Backdoor Payments and Hidden Fees, *February 23, 2015*
http://www.whitehouse.gov/the-press-office/2015/02/23/fact-sheet-middle-class-economics-strengthening-retirement-security-crac

- *White House Office of Press* Secretary - Remarks by President Obama at AARP, *February 24, 2015*
http://www.whitehouse.gov/the-press-office/2015/02/23/remarks-president-aarp

- *The White House Blog* - What You Need to Know about Retirement "Conflicts of Interest," in Three Big Sentences Lindsay Holst, *February 23, 2015*
http://www.whitehouse.gov/blog/2015/02/23/what-you-need-know-about-retirement-conflicts-interest-three-big-sentences

- *White House Council of Economic Advisers (CEA)* - The Effects of Conflicted Investment Advice on Retirement Savings, *February 2015*
http://www.whitehouse.gov/sites/default/files/docs/cea_coi_report_final.pdf

- *Department of Labor Blog* - If You're Saving for Retirement, This Matters To You**:** Secretary of Labor Thomas Perez, *February 24, 2015*
http://blog.dol.gov/2015/02/24/if-youre-saving-for-retirement-this-matters-to-you/

- Department of Labor Web Page - *Are Your Retirement Savings at Risk?*
http://www.dol.gov/featured/protectyoursavings/

Securities and Exchange Commission

Securities and Exchange Commission Issues Guidance Synchronizing Participant Fee Disclosure Requirements for ERISA Plans with Plans Not Subject to ERISA

By way of background, on October 26, 2011, the Securities and Exchange Commission (SEC) issued a Staff No-Action Letter to the Department of Labor (DOL Letter), which agreed to treat specified investment-related information required by ERISA that is provided by a plan administrator (or his/her delegate) to participants and beneficiaries in participant-directed individual account plans, as if it were a communication that satisfies the requirements of Rule 482 under the Securities Act of 1933. http://www.sec.gov/divisions/investment/noaction/2011/dol102611-482.htm According to the SEC, the DOL Letter was designed to ensure that plan participants are provided with sufficient information regarding the plan and designated investment alternatives, in a comparative format, to make informed decisions when managing their accounts.

The American Retirement Associations asked that the SEC to extend its position in the DOL Letter concerning Rule 482 to certain information furnished to participants and beneficiaries in 403(b) plans that are not subject to ERISA. The SEC responded by issuing a Staff No-Action Letter dated February 18, 2015 (ARA Letter).
http://www.sec.gov/divisions/investment/noaction/2015/american-retirement-sssociation-021815-482.htm#_ftn3

The ARA Letter described that participants in Non-ERISA 403(b) Plans, through payroll contributions, may invest in annuity contracts or in custodial accounts limited to open-end management investment companies registered under the Investment Company Act of 1940. The ARA Letter noted that while the DOL Letter does not apply to plans not subject to ERISA, the SEC agreed that participants would benefit from receiving the investment information about investment options required by the DOL for ERISA plans. Accordingly, the SEC agreed to treat such fee disclosure communications furnished to participants in Non-ERISA 403(b) Plans as if the communication satisfies the requirements of Rule 482, as long as the identified requirements are satisfied. The SEC noted that such information is in addition to any information that a participant in a plan not subject to ERISA may be required to receive under the federal securities laws, such as a prospectus and annual and semi-annual shareholder reports.

It is important to note that the SEC in the ARA Letter explicitly extended the guidance in the ARA Letter to other plans that are not subject to ERISA, including governmental 457(b) plans, governmental 401(a) plans, 415(m) plans, church 401(a) plans, non-governmental 457(b) plans, and 409A plans or 457(f) plans of governmental or tax-exempt entities.

Trade Association

The Center for State and Local Government Excellence Published Paper on Importance of Supplemental Retirement Plans

In January 2015, the Center for State and Local Government Excellence published an Issue Brief *Importance of Supplemental Retirement Savings Plans for City and County Employees*.
http://slge.org/wp-content/uploads/2015/01/Importance-of-Supplemental-Retirement-Savings-Plans-for-City-and-County-Employees-01-15.pdf According to the authors, local governments rely on retirement plans and other employee benefits to help recruit, retain, and provide economic security for career employees in retirement. The issue brief looked at employee participation in primary and supplemental retirement plans, retiree health care benefits, and Social Security in 20 large cities and counties.

…workers consider the value of the retirement benefits offered by their employer when determining whether they need to enroll in and contribute to supplemental retirement saving plans. While many of the plan characteristics considered would apply only to career 30-year employees who are able to earn substantial benefits in the retirement plans offered by public employees, workers must make planning and saving decisions throughout their working life without having complete information on their eventual career path. The full suite of retirement benefits allows public employers to attract and retain high quality workers, many of whom remain with the government for their entire careers.

However, these same plans that provide relatively generous benefits to career workers provide benefits of considerably less value to workers with shorter careers. Supplemental retirement saving plans provide these workers with an important opportunity to build retirement wealth.