PKF O'CONNOR DAVIES
ACCOUNTANTS AND ADVISORS

Employee Benefit Plans Alert

2021 – End-of-Year Items for Retirement Plans

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As we reach the end of 2021, retirement plan sponsors should – or may want to – take several actions and/or review plan items to ensure compliance with ERISA and the Internal Revenue Code (the Code). Depending on the type of plan and the plan's features, there are several year-end requirements that may need to be reviewed or completed. Some of the items are outlined in this newsletter. This is not an exhaustive list.

SECURE Act Requires Lifetime Income Disclosures

Under the SECURE Act, defined contribution (DC) plans now must provide lifetime income disclosures in their plan benefit statements. This went into effect for statements after September 18, 2021. Therefore, if participants are provided monthly statements, the life income disclosure should be part of the September 2021 statement. If participants are provided quarterly statements, the disclosure will need to be shown starting with their Q3 2021 statement. Plan sponsors should consult with their recordkeepers or TPAs to ensure that the income disclosures are/will be included in participant statements going forward.

Form 5500 and 8955-SSA (if applicable)

Calendar year plans filing on a valid extension must have filed their annual Form 5500 by October 15, 2021, as well as their form 8955-SSA if applicable to their plan. However, if the plan sponsor's place of business was in a county identified in one of the IRS Hurricane Ida Relief Notices, they may be eligible for additional extended time to file, until January 3, 2022. If you are taking advantage of the relief offered for areas affected by Hurricane Ida, you will need to identify as such on the Form 5500 using a special extension FEMA code.

Section 401(k) Plans Annual Notice Requirements

401(k) plans are required to distribute notices before the start of the next plan year for Safe Harbor notices, qualified automatic contribution arrangements (QACA), automatic contribution arrangements (ACA), qualified default investment alternative notices (QDIA), and eligible automatic contribution arrangements (EACA). Calendar year plans generally should distribute these notices by December 1.

Summary Annual Report (SAR) Distributed

Summary Annual Reports (SAR) of the Form 5500 must be provided to plan participants by December 15, 2021 if the Form 5500 was filed by the extension due date of October 15, 2021. Plan sponsors who are eligible under the IRS Hurricane Ida Relief Notices (see above) may file their Form 5500 by January 3, 2022. In these cases, the SAR should be distributed soon after the 5500 is filed.

The SAR requirement is applicable to qualified defined contribution retirement plans and welfare benefit plans. Since 2006 the annual funding notice that was previously required only for multiemployer plans was changed to require this disclosure to plan participants for all qualified defined benefit plans.

IRS Update on 457(b) Written Plan Requirements

A 457(b) plan can be maintained by a governmental entity or a not-for-profit employer. When a 457(b) plan is examined by the IRS, an examination agent must review plan documents to ensure the plan was adopted in a timely manner and is in compliance with applicable regulations.

Similar to qualified retirement plans, a 457(b) plan document must be kept current for all law changes, such as the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART) effective for years beginning after December 31, 2007 and which applies only to state and local government plans. The recent IRS guidance warns that a plan document failure may cause an operational failure.

Review Electronic Disclosures

In 2020, the Department of Labor (DOL) provided new methods for plan sponsors to distribute notices electronically. Notices which can be distributed electronically include Summary Annual Reports (SARs), QDIA notices and Summary Plan Descriptions (SPDs). The DOL's news release and reference to other key documents is found here.

ACA Reporting Changes Starting in 2022

The threshold for mandatory electronic filing of ACA returns has been lowered from 250 information returns to 100 information returns beginning in 2021. In other words, if you are filing 100 or more Forms 1095-B or 1095-C for the 2021 calendar year, you must file electronically. The threshold is further reduced to 10 information returns starting with years after 2021. This will affect the IRS Forms 1094/1095 reporting.

Per IRS Notice 2020-76, the IRS will no longer provide relief where incorrect or incomplete information is reported on ACA reporting. Relief was provided for reporting years 2015 through 2020 as long as good faith efforts to comply were shown by the reporting entity. Organizations will be responsible for ensuring that data like EINs, DOBs and other information on the Form 1095 are accurate.

Generally, the due date to furnish ACA reports to individuals is January 31st following the plan year. The IRS recently published proposed rules that would make a 30-day extension for this permanent and automatic. Additionally, the service has stated that the proposed relief can be relied upon for 2021 reporting. Applicable Large Employers (ALEs) will now have until March 2, 2022 to distribute Forms 1094/1095 to individuals. Electronic filing of the 2021 ACA Forms to the IRS by the Employer still must be completed by March 31, 2022.

The IRS has not yet released final instructions for completing the 2021 Forms; however, based on draft instructions released, the Form 1095-C will include two new reporting codes, “1T” and “1U,” related to individual coverage Health Reimbursement Arrangements (HRAs) offered to an employee and their spouse, but not to dependents.

For the 2022 tax year, the ACA affordability threshold will decrease to 9.61%. According to IRS Revenue Procedure 2021-36, employee premiums for health plans offered by employers beginning January 1, 2022 will need to be no more than 9.61% of an employee's household income for employer-sponsored self-only coverage to be ACA affordable.

Review Cybersecurity Policies and Procedures

Given the DOL's recent publications providing guidance around cybersecurity and the ever-growing risk surrounding that area, the policies and procedures of the plan recordkeepers and TPAs should be reviewed and updated if necessary. PKF O'Connor Davies publishes monthly cybersecurity updates. The link to our most recent release can be found here.

Timely Adopt Required Plan Amendments

Certain plan amendments need to be adopted by December 31, 2021 for legal changes. In addition, if any plan design options were changed during the year, the amendments adopting such changes must be adopted by the end of the plan year.

Employer Discretionary Match Requirements Updated by IRS

The IRS now requires an employer discretionary match to be “definitely determinable.” Until recently, an employer matching contribution that was discretionary did not have to be stated in the plan document. Now the IRS has taken the position that a discretionary employer match must also be definitely determinable.

Here is what an employer needs to do if its match is discretionary. As part of the required Cycle 3 Restatement of 401(k) plans, employers must follow a three-step process to meet IRS requirements.

- First, the employer must specify the amount and the allocation method for any matching contribution in a resolution of its governing body whether a Sole Proprietorship, Partnership, Limited Liability Partnership, Limited Liability Corporation, C corporation, or S corporation;

- Second, the employer must provide written instructions to the Plan Administrator (or Trustee, if applicable), that describes how the discretionary employer matching contribution formula will be allocated to participants and the period to which the discretionary employer matching contribution formula applies; and

- Third, a summary of those instructions must be communicated to plan participants outlining the applicable matching formula, the period used to calculate the match, and when it will be deposited.

Several Welfare and Cafeteria Plan Updates due by December 31, 2021

The COVID-19 pandemic brought a plethora of Section 125 plan and FSA changes via various legislative acts (SECURE, CARES, etc.) and agency notices. If an employer took advantage of any of the recent changes, they must amend their Section 125 cafeteria plans and FSA plans by December 31, 2021. Some of the items put into practice by many administrators during the pandemic that now must be adopted formally into the plan by December 31, 2021 are:

- In an FSA, changing the definition of qualified medical expense to include over-the-counter (OTC) drugs and menstrual products;
- Changing the FSA carryover rule from $500 to $500 indexed for inflation (the 2020 and 2021 amount was $550);
- Group health plans covering COVID-19 and related services with no cost-sharing, preauthorization, or medical management activities;
- 2020 and 2021 unused FSA balances are allowed to be used up to 12 months after the plan year ends;
- Allowance of FSA election changes or revocations mid-year without a qualifying event for the 2021 plan year; and
- Increase the dependent care FSA maximum from $5,000 to $10,500 for the 2021 plan year.

New York State Mandates Auto-IRA Program Enrollment

Governor Hochul signed legislation that makes the once voluntary NYS IRA program mandatory for employers that have been in business for at least two (2) years, have 10 or more employees and do not already offer a retirement plan. While it is now mandatory for applicable employers, participants can always opt out. This legislation goes into effect immediately, and qualifying employers have nine (9) months to create the payroll arrangements.

2022 IRS Priority Guidance Released

The Tax Exempt & Government Entities (TE/GE) Division of the IRS recently released their 2022 Program Letter, outlining the priorities for their compliance program initiatives for the year. Two (2) significant priorities related to employee plans are listed below.

- Collaborate across the Service on existing and new issues related to ESOPs
- IRS examinations for high-income taxpayers, including retirement plans

Our Firm has experienced an increase in the number of examinations of retirement plans as we have increased our representation of such plans. On behalf of our clients, we are very familiar with the examination items discussed in the IRS Program and are deeply knowledgeable in these matters.

Contact Us

The Employee Benefit Services Group at PKF O'Connor Davies is available to assist plan sponsors in meeting the various compliance requirements applicable to their plans. We also provide a full spectrum of compliance services for qualified retirement plans, nonqualified deferred compensation plans, and welfare plans. For more information, please contact your client services partner or any of the following:

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