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ERISA Newsletter

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Ten Retirement Plan Resolutions for Plan Sponsors John C. Hughes, Esq.



Happy New Year! As we recover from the holidays and the year-end flurry of plan activity, there are some important issues that will require plan sponsors' attention in the new year. Here are a few for consideration:

1. Adopt a restated and amended "PPA" plan document by April 30, 2016. This applies to those qualified defined contribution plans that are on "preapproved" (i.e., "volume submitter" and "prototype") documents. In the course of the restatement process, exercise caution to ensure that existing provisions are properly carried over to the new document (or changed, as desired and permitted). We have observed in many (too many) instances that provisions are inadvertently changed or left out during the restatement process. This will result in qualification failures. The restatement is also a good time to "scrub" your document to ensure it is up to date in terms of prior amendments, particularly if the plan will be submitted to the IRS on or before April 30 for a determination letter.
2. Begin to develop a plan of action to transition onto a preapproved document if your plan is individually designed, given that individually designed plans will generally no longer be able to obtain their own determination letters. Several pieces of guidance have been issued on this topic including IRS Notice 2016-03, which was issued on January 4, 2016.
3. Carefully review (and revise, as necessary) your Form 5500 (and audit report) prior to filing. This will decrease the chances that your plan will become the subject of a Department of Labor or IRS audit, investigation, or inquiry.
4. Make sure that you automatically enroll participants if your plan provides for automatic enrollment, and that you are otherwise operating that feature (and any associated automatic escalation feature) in accordance with the plan terms. It is important to actually enroll and/or escalate the right employees at the right time and in the right amounts, and that the proper notices are timely furnished. Often this does not occur, requiring difficult and sometimes costly corrections.
5. Make sure that any plan related documents such as SPDs and quarterly/annual notices that are being furnished electronically to participants are being delivered electronically by legally

permissible means. That is, there are acceptable and unacceptable ways to electronically deliver notices and disclosures. These rules are sometimes ignored, which means that under ERISA and the Internal Revenue Code the disclosures have not been made at all.

6. Assess the reasonableness of the fees that are being paid with plan assets. There are new class actions being filed by participants constantly, not to mention the Department of Labor's keen interest in the issue.
7. Avoid instances of late deposits (and/or identify past instances) so that they are properly reported and corrected. Late deposits continue to be a frequently occurring problem, and a problem that is receiving increased attention from the Department of Labor.
8. Review plan terms and internal processes to ensure that the correct employees are being let into the plan at the right time. For example, it is not permissible to exclude "temps" or "part-time" employees on a blanket basis. Similarly, there are often issues with regard to "leased employees" and/or independent contractors that go unnoticed (and snowball as time goes by).
9. Be conscious of the effect of any corporate transactions. For example, an acquisition may require new employers to affirmatively adopt a plan, or require an amendment to keep new employers out of a plan. In most cases, it is critical to identify these issues and take appropriate action prior to the close of any transaction. Those kinds of problems are difficult to untangle once they occur.
10. Complete ADP/ACP testing so that corrections can be made in early 2016. In performing such tests, ensure that the correct categories of employees are properly considered. For example, sometimes all "highly compensated employees" are improperly categorized, which in turn makes the test results useless. Overall, check in with your recordkeeper to ensure other necessary IRS testing is being properly performed (and documented).

This is by no means an exhaustive list. Unfortunately, the volume and complexity of the laws governing qualified retirement plans (and also nonqualified and welfare plans) is burdensome. This burden rests with the employer plan sponsor, and requires constant oversight and evaluation.

For more information for your plan, contact Jeff Mandell (jeff@erisalawgroup.com) or John C. Hughes (john@erisalawgroup.com), or call 208-342-5522 or 1-866-374-7252.

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