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BLOG

2018 Year-End Qualified Plan Amendments

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As the end of the calendar year approaches, sponsors of tax-qualified retirement plans need to consider whether their plan documents require updates to meet legal compliance deadlines. Below is a list summarizing the important legal changes that may impact tax-qualified defined contribution (DC) and defined benefit (DB) retirement plans.

Disability Claims Procedures – DB and DC Plans

The U.S. Department of Labor issued regulations that strengthened procedural protections applicable to claims for disability benefits filed on and after April 2, 2018. The regulations apply to retirement plans that provide a disability retirement benefit, or condition a right or feature (such as full vesting or other benefit), based on a determination of disability by the plan administrator—but only if the determination of disability is *not* based on an objective, third-party standard (such as eligibility for disability benefits under the Social Security Act or the employer's long-term disability plan). Not all plans include detailed ERISA claims procedures, although increasing numbers of plan sponsors are choosing to include them. If a retirement plan does include claims procedures, amendments to comply with these new disability rules must generally be adopted by the end of the plan year that includes April 2, 2018 (December 31, 2018 for calendar year plans).

Hardship Distributions – DC Plans

The Bipartisan Budget Act of 2018 (the "Budget Act") gave plan sponsors the option to eliminate certain restrictions on hardship withdrawals for plan years beginning after December 31, 2018. Specifically, the Budget Act eliminates: (i) the mandatory six-month suspension of any new elective deferrals to an employer-sponsored plan following a hardship withdrawal; (ii) the requirement that a participant take all permissible nontaxable plan loans before taking a hardship withdrawal; and (iii) the restriction on taking a hardship withdrawal from qualified nonelective contributions, qualified matching contributions, or earnings on post-1986 pre-tax contributions. These changes are voluntary. To the extent an employer adopts one or more of these discretionary design changes, a plan amendment will be required by the end of the plan year in which such changes become effective (December 31, 2019 for calendar year plans).

Disaster Relief – DC Plans

In 2017, four natural disasters struck—Hurricanes Harvey, Irma, and Maria, and the California Wildfires. The Internal Revenue Service, U.S. Congress (the Disaster Tax Relief and Airport and Airway Extension Act and the Budget Act), and the Puerto Rico Treasury provided disaster relief in the form of expanded in-service withdrawal and loan provisions under defined contribution plans. Plan sponsors who voluntarily offered this disaster relief to participants in affected areas should work with their respective plan record-keepers to confirm the scope of the relief provided. Plan amendments to implement relief extended under IRS Announcement 2017-11, 2017-13 or 2017-15, or by the Puerto Rico Treasury, must generally be adopted by the end of the 2018 plan year.

Use of Forfeiture Accounts in Safe Harbor Plans – DC Plans

The IRS issued regulations permitting employers to use forfeitures to fund safe harbor contributions. Previously, safe harbor contributions were required to satisfy nonforfeitability requirements (*e.g.,* fully vested) when *contributed* to a plan. To the extent an employer updates its plan document to permit the use of forfeitures to make safe harbor contributions, a plan amendment will be required by the end of the plan year in which such an update becomes effective (December 31, 2018 for calendar year plans).

Note: Effective for plan years beginning after December 31, 2017, the Tax Cuts and Jobs Act of 2017: (i) prohibited a plan participant from re-characterizing a rollover to a Roth individual retirement account (IRA) as a rollover to a traditional IRA, and (ii) extended the time a terminated plan participant has to “roll over” a plan loan offset by making an equivalent contribution to an IRA or another tax-qualified plan and, thus, avoid the loan being deemed a taxable distribution. These changes are unlikely to require a plan amendment, but could affect plan participants and may require updates to summary plan descriptions, depending on the level of detail provided.

If you sponsor a tax-qualified plan, you should review your plan documents carefully to determine whether any of these legal changes may impact you. Please contact a member of Winston & Strawn’s Employee Benefits & Executive Compensation Practice for assistance with reviewing and amending, if necessary, your plan documents.

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