PLAN SPONSOR RETIREMENT PLAN UPDATE

Quarter 3, 2013

On Track for Retirement?

The new world of retirement plans requires that employees are able to prepare for their own retirement - many 401(k) plans are being tweaked to add more automatic features to help employees save—and save more!

At the same time, Congress is looking at changing the current retirement system as they prepare tax budget proposals since employer-provided retirement benefits are the second largest tax deduction after employer-provided health care.

One proposal suggests that there should be a retirement savings cap on individuals so that they can only save up to an annuitized amount of approximately $200,000 per year, thus cutting back future contributions. (We are hopeful that this proposal will not be enacted, however, the likelihood is that some limits *will* be put into effect.)

Another proposed tax reform is a 28% cap on itemized deductions that will be applied to 401(k) contributions—but *not* ROTH 401(k) contributions.

We will keep you up-to-date as legislation progresses. Watch these pages for future updates!

We encourage you to continue to maximize your contributions for 2013—as always, we will work with you for 2014 and beyond to make any plan design tweaks that may be needed once tax reform is solidified.

Help! my plan is being audited by the IRS!

Don't worry, we CAN help. The IRS is targeting some plans for characteristics shown on your annual form 5500. They have completed small-group projects defined for sole proprietorships, plans with excess contributions, real estate investments and participant loans among others. Each group they audit has allowed them to uncover wide-spread issues where plan sponsors are not in compliance. So, the IRS will continue their audit efforts in order to ensure that qualified plans are 'qualified.'

If you receive correspondence from the IRS, please notify your administrator as soon as possible, so that we can assist you with their questions and satisfy their requests.

Did you know?

We are a Crain's Cleveland Business 2013 Health Care Heroes Wellness Category award winner!

Health Care heroes

Inside this issue:

Roth 401(k) Revisited

We do not know what the ultimate outcome will be in Congress this year as far as tax proposals; we can only surmise that there will be some effect on the current retirement system. Some proposals indicate a reduced tax-deferred 401(k) deduction, while allowing or requiring after-tax Roth deferrals since Roth deferrals will postpone the tax-deferred advantage for employees.

Also, as part of the American Taxpayer Relief Act of 2012 (ATRA), Congress eliminated the requirement that a participant must be eligible for a distribution under the plan in order to take advantage of the in-plan Roth conversion. This change considerably increases the number of individuals eligible to make an in-plan Roth conversion—as long as you offer Roth deferrals in your plan.

Since only a small percentage of our clients currently offer a Roth deferral option, here are some of the ins and outs of Roth 401(k):

- after tax dollars are invested in the plan, but at the time of a **"qualified"** withdrawal, there will be no tax on the amount invested or the associated earnings.
- In order to be qualified, contributions to the Roth account must have commenced at least 5 years prior to the withdrawal. The withdrawal must also be made due to retirement, death, disability or the attainment of age 59 1/2.
- Roth contributions can also escape the Required Minimum Distribution rules if the Roth 401(k) is rolled over to a Roth IRA prior to the required minimum distribution age of 70 1/2.
- An individual who converts any of their pre-tax assets to Roth must treat those amounts as taxable income in the year of conversion. The 10% early distribution tax does not apply to the converted amount, as long as it stays in the plan for five years (or the participant meets a penalty exception at the time of distribution) .
- Roth 401(k) may appeal to participants who want to diversify the taxable portion of their retirement income, expect to pay a higher tax rate in the future, or want to transfer assets to their beneficiaries tax free.
- Distributions from Roth accounts are more complex because of the requirement to track the income separately from the contributions for Roth accounts

If a plan does not already allow in-plan conversions or designated Roth contributions, the plan will need to be amended in order to take advantage of this opportunity.

Please contact your plan administrator if you are interested in obtaining more information about adding Roth or in-plan Roth conversions to your plan.

Introducing Polly Sejka

Polly has been with our firm just under one year. She has over 15 years of experience in retirement plan administration and holds a Bachelor's Degree in Finance. She and her husband Scott have three children, eleven year old Scott, nine year old Michael, and six year old Halle. Polly has wanted to work at Noble-Davis ever since she met Pam Noble 13 years ago. She enjoys the work/family life balance that our firm encourages and the flexibility of being able to work at home occasionally. In her free time, Polly enjoys spending time with her husband and children and is currently planning her family's first tropical cruise before the kids go back to school.

A "Recipe" for a Great Retirement Plan

Every good meal needs a good recipe and every good recipe needs good ingredients. While many products out there have secret ingredients (Coca-Cola), others have ingredients that aren't secret (that Big Mac special sauce is essentially Russian Dressing). When it comes to operating a retirement plan, the secret ingredients for the recipe for having a great retirement plan don't have to be a secret. This article will let you know the "secret" recipe for having a great retirement plan.

You, the Plan Sponsor

We can talk all day about what it takes ultimately to have a successful retirement plan, but it starts with you as the plan sponsor. Whether you decide to assume the responsibility yourself or whether you delegate most of that responsibility to an ERISA fiduciary, it's still your ultimate responsibility to make it so. Like a high school game of pick em, you have to select the providers and put your plan in place. While you have to select your team of providers, you also need to select the team at your office who will serve as the contacts for your plan providers to work with on the day-to-day administration of your plan. Whether that's a full-blown retirement plan committee, your HR staff, or someone in finance, it's important to have someone who can handle the role. The best plan sponsors are those that know what they don't know, but make sure to keep tabs on what their providers do as well as having an open mind.

Paper the process

In school, we were taught to take notes. We need notes to study. When it comes to being a retirement plan sponsor, you need to take good notes and document the process. What is the process? Well, everything that involves a decision in your retirement plan. Selecting and changing plan providers, approving all plan documents, and approving and changing plan investments are some of your fiduciary responsibilities that need to be documented. The reason they need to be documented is not only because you need to have good plan records, you need it to limit your liability. Whether it's being contacted by the Internal Revenue Service (IRS) or Department of Labor (DOL) for an audit/investigation or a lawsuit by an aggrieved plan participant, documenting the decision making process for your plan will go a long way in limiting the potential liability to you as plan fiduciaries.

A competent TPA

Out of all your plan providers, the single most important ingredient to a successful retirement plan is the third party administrator (TPA). A TPA is responsible for the recordkeeping of your plan, as well as the preparation of Form 5500. Since the TPA handles the most technical and difficult aspects of the workings of a retirement plan, it stands to reason that most plan errors you may suffer are derived from an incompetent TPA. On the other, a good TPA will provide you with seamless administration as well as plan consulting that can maximize the retirement savings of your most important employees through intricate plan designs. Too many plan sponsors treat the TPA as a no-frill product, but good TPAs have lots of frills. Too many plan sponsors focus on TPA fees and try to pick TPAs based on cost; a great retirement plan is where the TPA is picked on competence.

The right financial advisor

Folks in the retirement plan industry can argue whether you should pick a broker or a registered investment advisor (RIA) as your retirement plan financial advisor and some will argue whether you should pick an advisor who has a certain investment style. While you can pick an RIA because the RIA will serve as a plan fiduciary and a passive style has less risk, the real importance is that you pick an advisor who understands their role in the fiduciary process of a retirement plan. While touting certain funds and strategies are nice, the role of a financial advisor is to help you button the buttons that you have trouble with, i.e., selecting plan investments and helping par-

The "Recipe"—continued

ticipants select investments (if your participants direct their own investments).

Have an investment policy statement

Whether your plan is participant directed or the investments are directed by the trustees, picking these investment options aren't enough. Your plan needs an investment policy statement (IPS). The IPS papers the process of selecting and replacing the investment options offered under the plan. It lays out your investment objectives as well as criterion for which type of investments you will select and replace. It is essentially a blueprint as to why you selected and replaced the investments offered under your plan and outside of the plan document, the IPS is probably the most important piece of paper you can have when it comes to protecting yourself as a plan sponsor. Your retirement plan's financial advisor needs to help you develop an IPS, review and edit the IPS when needed, and in the selecting and replacing of investment options of the plan when they no longer fit the needs of the IPS on at least a semi-annual basis.

Educating plan participants

Plan sponsors offer participant directed retirement plans because ERISA §404(c) is supposed to limit the plan sponsor's liability for losses incurred by participants when participants direct the investments in their accounts. The problem is that it's supposed to, but only if the plan sponsor follows a process that includes selecting plan investments based on the IPS, plus giving participants enough information so that they can make informed decisions in choosing their investments. In order to give them enough information, you need to make sure that your employees get investment education, which should be provided by one of your providers (usually the investment advisor). Investment education is general information about investing. Thanks to a change in DOL regulations, you can now more easily provide investment advice. Investment advice is far more thorough than investment education because it's your plan provider advising participants which investments they should make based on their financial situation and future. If your plan providers don't offer advice, you can hire an outside provider like RJ20.com which will charge a very reasonable per participant charge.

Fiduciary Liability Insurance

Even if you do everything right, there is no guarantee that you will not have an aggrieved plan participant (such as an employee you fired for cause) that will try to sue. So to protect you from the cost of litigation, you need to purchase fiduciary liability insurance that will help you avoid going into your pocket to pay the cost of being sued.

Review the Plan

In order to avoid breaching your fiduciary responsibility, you need to be vigilant and the way to do this is a plan review. While it should be annual, it must be done at least once every few years. The review should be thorough. You should review your plan document and determine whether the plan is being administered according to the document's terms. You should review the fee disclosures you receive from your plan providers and determine whether they are reasonable by benchmarking them against what other providers charge. You should also review the administration of your plan and determine whether the plan still fits your needs and whether there are other plan provisions that can augment your plan in maximizing contributions to your highly compensated employees. While you probably don' have the background to make such a thorough review, you certainly can hire someone who can. You can hire an ERISA attorney or an independent retirement plan consultant. Whomever you pick to do the review, you will find that this preventative care will help you spot issues before they become problems.

The recipe to make a great retirement plan isn't such a secret. It just takes dedication on your part and the ability by you to surround yourself with the very best in plan providers .

Reprinted by permission by Ary Rosenbaum, Esq.

Quarter 3, 2013

Retirement Plan Administration and Consulting

Noble-Davis Consulting, Inc.
30275 Bainbridge Road, Building B
Solon, OH 44139

Phone: (440) 498-8408
Fax: (440) 498-9566
Toll-Free: (888) 657-0702
Participant Call In: (866) 811-6604

Mail To:

Mark Your Calendar

Stay on top of your retirement plan's mandatory deadlines! Here are some important dates in the upcoming months. (Please note that filing dates are for calendar year plans. Non-calendar year plans must adjust these dates.)

Each Payroll: Remit deferral and loan repayments within 7 business days (small plans) or as soon as possible (large plans).

October 15: Extended deadline for filing Plan's annual Form 5500 filing.

November 14: Third quarter PPA Statements due for participant directed plans. Quarterly fee disclosure documentation also due to plan participants.

December 2: Last date to send out annual notices for safe harbor, QDIA and automatic enrollment plans.

December 15: Summary Annual Report due for plans that extended the Form 5500

December 31: Last day to correct any failing compliance tests

December 31: Required Minimum Distributions must be paid to those affected participants over age 70 1/2

January 1: Check Cost of Living Adjustments (COLA) to consider the effects of any annual increases on deferral and catch up amounts

January 31: 1099-R Forms are due to participants who received distributions in the prior year

February 14: Fourth quarter PPA Statements and quarterly Fee Disclosure documents due for participant directed plans