



**NOBLE
DAVIS**
CONSULTING, INC
PEACE of MIND

PLAN SPONSOR RETIREMENT PLAN UPDATE

Quarter 2, 2015

Watch Out for Hardship Distributions

Did you know?

We just added an extra benefit for our clients—quarterly seminars that highlight business topics you want to know about. Our topic for June is Wellness and our topic for September will be Health Care.

Your retirement plan may allow hardship distributions. These allow participants to take money out of their retirement plan account before they retire or leave employment. Typically, hardship distributions are allowed only for a specific set of reasons. The pre-approved reasons that the IRS provides are for the following:



complete a hardship withdrawal form and indicate the reason for the hardship, but it will be up to the plan sponsor to verify that

Inside this issue:

IRS Audit Triggers	2
Plan Compensation	2
Lessons from Tibble	3
Mark Your Calendar	4

- Medical expenses
- Funeral expenses
- College tuition and expenses
- Purchase of a principal residence
- To prevent eviction or foreclosures on a principal residence
- Catastrophic home repairs

Plans are allowed to have fewer or additional reasons to allow a hardship distribution, but typically we advise that you limit your choices to the IRS standard reasons.

Recently, the IRS has issued guidance that they will be taking a closer look at the documentation for hardship withdrawals. We always require that a participant

the participant meets the hardship requirements and that documentation is retained. The IRS says that plan sponsors must keep:

- Documentation of the hardship request, review and approval
- Financial information and documentation that the employee's need for the distribution is heavy and immediate
- Documentation to support that the hardship meets one of the requirements (listed earlier in this article)

The IRS notes that it is not sufficient for the participant or the TPA to keep these records since they may be needed for an IRS audit.

IRS Audit Triggers

Recently, Mike Sanders of the IRS warned attendees of the 44th Annual Retirement & Benefits Management Seminar about what may trigger an audit of your retirement plan. Essentially, the IRS uses the Form 5500 that every qualified retirement plan must file to search for inconsistencies and red flags that raise questions and may get the plan added to the audit list.

Some examples of items the IRS looks for are:

- A large number of terminated participants who were not 100% vested
- A high percentage of assets categorized as “other”

- Large distribution amounts
- Top heavy plans
- Filing the incorrect form series (a 5500 instead of a 5500 EZ)
- Employers that did not provide the required benefit contribution



- Missing information about asset transfers
- Hard to value assets including real estate, hedge funds and collectibles
- Document retention for hardships and loans

Often times, the IRS will send out a questionnaire to inquire about any anomalies they may find. Always be sure to forward that to us right away so we can help you answer the questions and avoid the audit.

Plan Compensation



As you probably know, your plan document describes the provisions for your plan. It also defines what compensation is to be used in the plan. Increasingly, the IRS is finding that plan sponsors are not using the definition of compensation described in their retirement plan document.

The document will say what compensation should be used for calculating 401(k) deferrals. However, we have found that many payroll companies will not take deferrals out of taxable fringe benefits. While that is an option, your plan document must allow it. Likewise, many companies do not withhold deferrals on bonuses. While again, that is allowable under the law, your plan document (as well as participant deferral election forms), must match the way you are handling the deferral computation.

The correction for these errors can be costly. The IRS will determine the correct deferral amount that should have been deducted from the taxable fringes or bonus pay and require the plan sponsor to contribute a portion of that amount into the participant’s account along with lost earnings and any match that would have been allocated if the deferral computation had been made correctly.

We can make your document match what is happening in the real world—just let us know when you want to make that change.

Lessons from *Tibble*

Recently, the US Supreme Court came to a unanimous decision in the case of *Tibble vs. Edison International*. The case was brought against Edison by the 401(k) plan participants that felt the plan sponsor was keeping high priced retail class mutual funds in the plan when there were lower priced institutional funds available. The Supreme Court agreed that part of a plan sponsors' fiduciary duty is the "duty to monitor" and sent the case back to an appellate court for further review.

Plan fiduciaries are generally defined by the functions performed for the plan and not a person's title. According to the Department of Labor (DOL), a fiduciary "will ordinarily include the trustee, investment advisers, all individuals exercising discretion in the administration of the plan, all members of a plan's administrative committee (if it has such a committee), and those who select committee officials."

The key to being a fiduciary, the DOL continues, is exercising control or discretion over the plan. Once you are a fiduciary, there are several important responsibilities. The most important standard is that you always act solely in the interest of plan participants and their beneficiaries. Others include being prudent in carrying out those duties, following the plan document, diversifying plan assets and paying only reasonable expenses from the plan assets. Acting prudently focuses on the process for decision making. In order to prove that your decisions were prudent, it is important to document your processes and keep notes as to why certain decisions were

made. A fiduciary may want to consult with experts to help them to make the correct decisions, but when hiring any service provider, the fiduciary must also document that the hiring of service provider was in itself a prudent process and keep documentation showing why the decision to hire a certain provider was made.

Even after selecting a service provider, the fiduciary duties aren't over. There is then a responsibility to monitor that provider. A plan sponsor

needs to establish and follow a formal review process to evaluate the provider's performance, checking actual fees charged, reading any notices or reports provided and following up on any participant complaints.

While the *Tibble* decision reinforced that there

is a fiduciary responsibility to monitor the plan and plan providers, they did not give exact examples of what that would entail. For certain, asking questions about retail vs. institutional shares such as their features, cost and availability is one area where fiduciaries should be especially diligent. Retail shares aren't necessarily a bad thing, but it must be documented why they are the right choice for the plan.

Understanding your fiduciary duties is a crucial step to making sure you and your plan are protected. Although there are no specific guidelines, asking questions and documenting your decisions are the start of being a good fiduciary. The courts have said over the years that to satisfy your fiduciary duties "a pure heart and empty head are not enough."



Quarter 2, 2015

celebrating
20 years



**NOBLE
DAVIS**
CONSULTING, INC

PEACE of MIND

**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

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).

June 30: Corrective distributions due for failed ADP/ACP Testing from a plan with an eligible automatic contribution arrangement (EACA)

(without employer 10% excise tax)

July 31: Form 5330 and excise tax due on prohibited transactions (i.e.: late 401(k) deposits)

July 31: Annual Form 5500 report and schedules due to be filed electronically with DOL (without extension)

August 14: Second Quarter PPA Statements due for participant directed plans



September 15: Extended deadline for filing of corporate tax returns and contribution deadline for deductibility.

September 30: Summary Annual Report due to participants (if Form 5500 not extended).

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.