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EMPLOYEE BENEFITS GROUP

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Latest Posts

11.13.2018 **IRS (Finally) Answers Questions re: 2019 Hardship Distributions**

By Robert A. Browning

On November 9, 2018, the IRS issued proposed amendments to the regulations under Code Section 401(k) that describe the circumstances under which participants may take an in-service distribution of elective deferrals (and contributions subject to similar withdrawal restrictions, such as QMACs, QNECs and safe-harbor contributions) on account of financial hardship. The proposed amendments to the regulations reflect several statutory changes to 401(k) plans since the Pension Protection Act of 2006, including the recent changes (that are scheduled to apply to hardship distributions in plan years beginning after December 31, 2018) under the Bipartisan Budget Act ("BBA") of 2018. Most importantly, the amendments answer several questions that plan sponsors and plan administrators have had with respect to both the BBA and the Tax Cuts and Jobs Act ("TCJA") of 2017, and provide some much-needed transition relief for hardship distributions made in 2019.

11.01.2018 **2019 Inflation Adjustments**

By Beth Miller

Following announcements by both the Internal Revenue Service and the Social Security Administration, we know most of the dollar amounts that employers will need to administer their benefit plans for 2019. The key dollar amounts for retirement plans and individual retirement accounts ("IRAs") are shown on the front side of our 2019 limits card.

The reverse side of the card shows a number of dollar amounts that employers will need to know in order to administer health flexible spending accounts ("FSAs"), health savings accounts ("HSAs"), and high-deductible health plans ("HDHPs"), as well as health plans that are not grandfathered under the Affordable Care Act.

A laminated version of the 2019 limits card is available upon request. To obtain one or more copies, please contact any member of our Employee Benefits Group. You also can contact the Spencer Fane Marketing Department at 816-474-8100 or marketing@spencerfane.com.

09.19.2018 **IRS Updates Required Tax Notice to Address Plan Loan Offsets and Other Law Changes**

By Robert A. Browning

The IRS has updated the model notice (sometimes referred to as the "402(f) Notice" or "Special Tax Notice") that is required to be provided to participants before they receive an "eligible rollover distribution" from a qualified 401(a) plan, a 403(b) tax-sheltered annuity, or a governmental 457(b) plan. Notice 2018-74, which was published on September 18, 2018, modifies the prior safe-harbor explanations (model notices) that were published in 2014. Like the 2014 guidance, the 2018 Notice includes two separate "model" notices that are deemed to satisfy the requirements of Code Section 402(f): one for distributions that are not from a designated Roth account, and one for distributions from a designated Roth account. The 2018 Notice also includes an appendix that can be used to modify (rather than replace) existing safe-harbor 402(f) notices.

06.26.2018 **Cyber Liability Insurance for Employee Benefit Plans: Hackers and Malware and Phishing – Oh My!**

By Laura L. Fischer

Cyberattacks have managed to invade all walks of life, and employee benefit plans are no exception. When a plan is attacked, the fallout can be overwhelmingly expensive and burdensome to correct. Many plan sponsors are purchasing cyber liability insurance coverage to supplement their data security measures. Understanding those policies – and their exclusions – is important for sponsors who are exploring such coverage.

05.23.2018 **Federal Appellate Court Decision Highlights Importance of "Firestone" Language**

By Kenneth A. (Ken) Mason

In a recent decision, the Sixth U.S. Circuit Court of Appeals resolved an important question in a way that should put administrators of ERISA plans in a far stronger position vis-à-vis claimants who disagree with the administrators' plan interpretations. Essentially, the court in *Clemons v. Norton Healthcare Retirement Plan* held that the contract-interpretation doctrine of "*contra proferentum*" has no application once a court has determined that a plan document grants the administrator the type of broad discretion approved by the U.S. Supreme Court in its 1989 *Firestone*decision.

05.21.2018 **Health Plans' Anti-Assignment Clauses Upheld by Two More Federal Appellate Courts**

By Robert A. Browning

Over the past two months, the United States Court of Appeals for both the Ninth Circuit and the Third Circuit have upheld "anti-assignment" clauses in ERISA-governed health plan documents. These holdings – which adopt the same position previously taken by the First, Second, Fifth, Tenth, and Eleventh circuits – are a blow to healthcare providers that attempt to bring suits against employer-sponsored health plans (or the insurance companies funding benefits under those plans) as "assignees" of individual plan participants.

04.25.2018 **The SEC's Fiduciary Proposal – Form CRS**

By Beth Miller

On April 18, the Securities and Exchange Commission issued a proposal package that includes two new rules and one interpretative release. The package consists of three components – Regulation Best Interest, Investment Adviser Standard of Conduct Interpretation, and Form CRS – Relationship Summary. According to the SEC, the proposal is intended to balance investor protections and regulatory requirements with investor access and choice. Each component of the proposal is available for public comment for 90 days after publication in the Federal Register.

In a series of three articles, Spencer Fane LLP describes the SEC's proposal and potential impacts on broker-dealers and investment advisers. This third article describes the Form CRS – Relationship Summary portion of the SEC's fiduciary proposal.

04.24.2018 **The SEC's Fiduciary Proposal – Investment Adviser Standard of Conduct**

By Beth Miller

The Securities and Exchange Commission voted on April 18 to issue a proposal package that includes two new rules and one interpretative release. According to the SEC, each component of the proposal – Regulation Best Interest, Investment Adviser Standard of Conduct Interpretation, and Form CRS – Relationship Summary – is intended to enhance investor protections and regulatory clarity while maintaining investor access and choice. Each part of the SEC's proposal is available for public comment for 90 days after publication in the Federal Register.

In a series of three articles, Spencer Fane LLP describes the SEC's proposal and potential impacts to broker-dealers and investment advisers. This second article describes the Investment Adviser Standard of Conduct Interpretation.

04.23.2018 **The SEC's Fiduciary Proposal – Regulation Best Interest**

By Beth Miller

In an open meeting on April 18, the Securities and Exchange Commission voted four to one to issue two new rules and one interpretative release that are intended to provide investor protections and regulatory clarity, as well as investor access and choice. Specifically, the SEC issued Regulation Best Interest, Investment Adviser Standard of Conduct Interpretation, and Form CRS – Relationship Summary. Each component of the SEC's proposal is available for public comment for 90 days after publication in the Federal Register. In a series of three articles, Spencer Fane LLP describes the SEC's proposal and potential impacts on broker-dealers and investment advisers. This first article describes the Regulation Best Interest portion of the SEC's fiduciary proposal.

03.21.2018 **Here We Go Again… Fifth Circuit Strikes Down DOL's Fiduciary Rule**

By Gregory L. Ash

In a significant blow to the Department of Labor's controversial regulation re-defining what constitutes an investment-advice fiduciary, a split three-judge panel of the Fifth Circuit Court of Appeals ruled on March 15 that the DOL exceeded its authority when creating the rule. The 2-1 decision of the appellate court strikes down the regulation and its associated prohibited transaction exemptions in their entirety. (*Chamber of Commerce v. U.S. Dept. of Labor* (5th Cir. March 15, 2018)). In its wake, the court's decision leaves even more of the confusion that has plagued the DOL's 2016 rulemaking.

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