January 4, 2013

IRS Releases Procedure Updating and Expanding Retirement Plan Correction Program

On December 31, 2012, the Internal Revenue Service ("IRS") released Revenue Procedure 2013-12 (the "Revenue Procedure") updating the Employee Plans Compliance Resolution System ("EPCRS").

What Is EPCRS?

EPCRS, first introduced in 2000 and updated periodically, provides several procedures under which employers sponsoring qualified plans (e.g., Section 401(k) plans), annuity plans (e.g., Section 403(b) plans) and certain individual retirement accounts (e.g., SEPs) can correct errors in their retirement plans. Some errors may be corrected without formal submission to the IRS, while others may require formal application and payment of a compliance fee or payment of a negotiated sanction amount. The IRS will not disqualify a retirement plan for an error that is corrected in accordance with EPCRS.

Expanding Program for Section 403(b) Plans

The most significant change is the expansion of the correction procedures for Section 403(b) plan errors. Previously, the ability to correct Section 403(b) errors was limited to certain specified failures, such as the inclusion of employees of a for-profit entity or the failure to satisfy the nondiscrimination rules for employer matching contributions. Now Section 403(b) plan errors occurring on or after January 1, 2009, can be corrected generally in the same manner as qualified plans, including corrections for the failure to maintain a written plan document in accordance with the Internal Revenue Code and applicable regulations and the failure to operate the Section 403(b) plan in accordance with its terms. The ability to correct Section 403(b) plan errors that occurred prior to January 1, 2009, is more limited.

Other Significant Changes

Other significant changes include:

- Permitting preapproved plans, such as master and prototype or volume submitter documents, to maintain reliance on their opinion or advisory letter for errors corrected through an amendment not provided for among the preapproved plans' provisions. Previously such amendments would cause the preapproved plans to lose reliance on the opinion or advisory letter and cause the plans to lose their ability to remain within the six-year remedial amendment cycle for such plans.
- Expanding the errors that can be corrected using a reduced compliance fee. Among other errors, the reduced fee schedule will apply to certain failures to adopt an amendment upon which a favorable determination letter is conditioned.
- Clarifying the actuarial factors that must be used to correct errors involving distributions from defined benefit plans.
- Adding correction procedures for the payment of benefits from a defined benefit plan in which the plan's funding percentage ("AFTAP") is below a certain level, including payments to a spouse from whom proper consent was not obtained.
- Providing a limited exception to the requirement that a plan sponsor repay the amount of an overpayment from a defined contribution plan or 403(b) plan in those cases where the participant fails to repay such amount.

- Allowing the IRS to convert a compliance fee check to an electronic fund transfer.

What Should Employers Do?

In light of this update, employers, especially sponsors of Section 403(b) plans, may wish to review their retirement plan documents and operations to identify possible errors and consider correcting them under the new and improved EPCRS. The Revenue Procedure is effective on April 1, 2013. However, beginning December 31, 2012, employers can elect to correct plan errors in accordance with the new Revenue Procedure.

If you have any questions about EPCRS or any other employee benefits or executive compensation matter, please contact a member of Day Pitney's Employee Benefits practice group.??