



FUNDAMENTALS OF QUALIFIED RETIREMENT PLANS SESSION 5

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Session 5 Topics

- ▶ **Plan Documents**
- ▶ **Plan Communications**
- ▶ **IRS/DOL Audits**
- ▶ **Plan Correction Programs**
- ▶ **Government Filings**



Establishing a Qualified Plan

- ▶ Plan must satisfy all Code requirements for tax qualification under §401(a)
- ▶ Plan must be established by an employer
- ▶ Employer must execute written plan document and plan must be communicated to employees
- ▶ Must generally have trust to hold plan assets



Plan Documents

- ▶ Qualified plan – form and operation
- ▶ Plan document – written document setting forth the terms of the plan, including eligibility, vesting, benefit determination, benefit distributions and other legal provisions
- ▶ Plan sponsor – employer executing the plan document
- ▶ Employer may be corporation, partnership, LLC, sole proprietor, tax-exempt organization, government, or other type of legal entity



Plan Documents

▶ Trust agreement

- Funding vehicle for the plan
 - The powers and duties of trustees, investment authority, and the kinds of investments that may be made
- Qualified trust is exempt from taxation under Code §501(a)
- Alternatives
 - Custodial arrangement
 - “Fully-insured” plan



Plan Documents

▶ Types of plans

- Defined contribution plan – profit sharing, 401(k), money purchase, target benefit, ESOP
- Defined benefit plan – unit benefit, career average, cash balance, fully insured

▶ Format of plan documents

- Individually-designed plan
- Pre-approved plan
 - Currently – “Master & Prototype (M&P)” and “Volume Submitter” plans
 - Next cycle – “Pre-Approved” plans



Individually-Designed Plans

- ▶ **Custom document**
 - Often drafted by law firm
- ▶ **Plan type that does not fit onto pre-approved plans format**
- ▶ **Determination letters now only available on initial plan qualification and plan termination**



Individually-Designed Plans

- ▶ **Determination letter**
 - Request filed using Form 5300
 - Generally, a determination by the IRS that the form of the plan meets the requirements of Code §401(a)
 - Not required as a condition of qualification, but plan sponsor receives reliance that the plan satisfies the applicable qualification requirements
 - IRS cannot retroactively go back if form of document fails to meet qualification requirements
 - IRS can require prospective changes



Revenue Procedure 2016-37

- ▶ Significant modification to determination letter program for individually designed plans
- ▶ Minor changes to pre-approved plan program
- ▶ Effective January 1, 2017



Revenue Procedure 2016-37

- ▶ 5-year restatement cycle eliminated for IDPs
- ▶ Determination letters only available on initial plan qualification and plan termination
 - IRS may provide exceptions, but none provided in RP 2016-37
- ▶ No more interim amendments for IDPs



Revenue Procedure 2016-37

- ▶ Introduces Required Amendment List and Operational Compliance List
- ▶ Only applicable to individually designed plans
- ▶ **Discretionary amendments for individually designed plans still required by the end of the plan year in which the amendment is operationally put into effect!**



Required Amendments List

- ▶ In the case of an individually designed plan, the remedial amendment period for a disqualifying provision arising as a result of a change in qualification requirements generally is extended to the end of the second calendar year that begins after the issuance of the Required Amendments List in which the change in qualification requirements appears



Operational Compliance List

- ▶ **The Operational Compliance List ("OC" List) is provided to help plan sponsors and practitioners achieve operational compliance by identifying changes in qualification requirements effective during a calendar year**
 - Identifies matters that may involve either mandatory or discretionary plan amendments depending on the particular plan
 - May contain other significant guidance that affects daily plan operations
 - Is available on IRS webpage only and will not appear in the Internal Revenue Bulletin



RP 2016-37 – Pre-Approved Plans

- ▶ **No substantial changes to pre-approved plan program**
- ▶ **6-year cycle remains**
- ▶ **Uniform restatement period for DC and DB plans**
- ▶ **Interim amendments still required by the end of the RAP designated in the regulations!!**
- ▶ **IRS solicited comments**



Pre-Approved Plans

▶ M&P (Master & Prototype) Plans

- Basic plan document (“umbrella document”) and adoption agreement
 - Adoption agreement is the “check the box” and/or “fill-in the blank” document completed by the employer adopting plan
- **Opinion letter** issued by IRS to sponsoring organization as to the acceptability of the form of the plan
- Cannot submit for a determination letter using Form 5307



Pre-Approved Plans

▶ Volume submitter plan

- Specimen plan
 - Basic plan document and adoption agreement
 - Text version with optional provisions
- Slightly more flexible than M&P plans
- **Advisory letter** issued by IRS to volume submitter sponsor as to the acceptability of the form of the plan
- Determination letter request submitted on Form 5307
 - Only allowed if modification to volume submitter document



Pre-Approved Plans

- ▶ **Mass submitter**
 - Person with established business in the United States and submits opinion letter applications on behalf of at least 30 sponsoring organizations
 - Provides pre-approved plans for adoption by plan document providers (e.g., TPAs, financial institutes, law firms, and consultants)
 - ASC Institute is a mass submitter



RP 2017-41 – Pre-Approved Plans

- ▶ **Significant changes to pre-approved plan program**
- ▶ **Effective for THIRD restatement cycle**
- ▶ **Revised terminology**
 - Elimination of the terms “Master and Prototype (M&P)” and “Volume Submitter Plans” and instead uses the term “Pre-Approved Plans”
 - Organizations that sponsor a Pre-Approved Plan are now referred to as “Providers”
 - Pre-Approved plans may utilize the basic plan document/ adoption agreement format or a text-based format



RP 2017-41 – Highlights

- ▶ **Providers will receive “opinion letters” on their Pre-Approved Plans**
 - The term “advisory letter” is no longer applicable
- ▶ **Types of plan designs acceptable under the pre-approved plan program is expanded**
 - Cash balance plans
 - ESOPs (leveraged, non-leveraged and 401(k))
 - Church plans
- ▶ **A Pre-Approved Plan may combine profit sharing, 401(k) and money purchase plan features into a single plan**



RP 2017-41 – Highlights

- ▶ **The IRS will continue to accept determination letters applications (using Form 5307) for Pre-Approved Plans that are modified**
- ▶ **The procedure clarifies that the IRS only considers tax qualification requirements and does not review Title I of ERISA requirements in issuing its opinion letters**



RP 2017-41 – Highlights

- ▶ The IRS will no longer review the trust or custodial provisions of a Pre-Approved Plan and trust and custodial provisions **MUST** be in a document separate from the plan provisions.
- ▶ The IRS has clarified that electronic signatures are acceptable under the pre-approved plan program.



Participant Communications

- ▶ Title I of ERISA requires certain disclosures to plan participants about the terms of the plan and the participants' enforcement rights
- ▶ Summary Plan Description (SPD) – primary disclosure document
 - Participants and beneficiaries given information about the material provisions of the plan, how they make a claim for benefits and their rights under ERISA



Summary Plan Description

▶ **Style**

- Written in a manner that can be understood by average plan participant

▶ **Contents**

- Identifying information - plan, employer and fiduciaries
- Requirements for eligibility
- How benefits accrue
- Vesting requirements
- When distributions are available
- Forms of distribution
- How to make a claim for benefits



Summary Plan Description

▶ **When to provide SPD**

- Participants - no later than 90 days after he or she first becomes a participant
- Beneficiaries - no later than 90 days after he or she begins to receive benefits from the plan

▶ **When plan is first established**

- No later than 120 days after the plan first becomes subject to Title I

▶ **Updating SPD**

- Every fifth year if amendments
- Every tenth year if no amendments



Summary of Material Modifications

- ▶ **Summary of material modification (SMM) necessary when there has been a material modification to the plan or when the information in the SPD is changed**
 - Explanation of the amendment or change in manner understood by average participant
- ▶ **When to provide SMM**
 - No later than 210 days after the close of the plan year in which the amendment was adopted



Summary Annual Report

- ▶ **Summary annual report (SAR) – summary of financial status of the plan (based on Form 5500 information)**
- ▶ **Content**
 - Total administrative expenses for the plan
 - Amount of benefits paid to participants and beneficiaries
 - Total value of plan assets
- ▶ **Defined benefit plans**
 - No SAR, but annual funding notice required
- ▶ **When to provide SAR**
 - No later than 9 months after close of plan year (or 2 months after extended due date for Form 5500)



Participant Fee Disclosures

- ▶ **Participant fee disclosures must include the following:**
 - General plan-related information (at least annually);
 - General information about administrative expenses (at least annually);
 - General information about individual expenses that may be charged to participant accounts (at least annually);
 - Specific information about administrative expenses and individual expenses actually charged to the participant account (at least quarterly); and
 - Investment-related information (some mandatory and some upon request).



Periodic Benefit Statements

- ▶ **ERISA requires that plan administrator provide certain benefit information (e.g., total account balance, vesting percentage, investment information) on a regular basis to participants**
 - **Periodic benefit statements**
 - At least once every calendar quarter for participant-directed defined contribution plans
 - At least once every year for other defined contribution plans
 - At least once every three years for defined benefit plans (or annual notice of availability of pension benefit statement)



IRS Notices

- ▶ **Interested party notice – plan submission**
 - Forms 5300, 5307 and 5310
 - If employer applies for a determination letter, notice must be given to all interested parties (generally employees, former employees or beneficiaries entitled to benefits)
 - Timing – 10 to 24 days before determination letter application is filed



IRS Distribution Notices

- ▶ **Several different notice and consent requirements apply to plan distributions**
 - Notice – information participant must receive before distribution
 - Consent – whether distribution can be made on an involuntary basis
 - Rules depend on type of plan and value of participants accrued benefit or account balance



IRS Distribution Notices

- ▶ **Notice requirements**
 - Explanation of optional forms of benefit – different forms of payment and relative values of each form of benefit
 - Right to delay or refuse payment until normal retirement age or age 62, if later
 - Rollover and taxation information (“402(f)” notice)
- ▶ **Timing of notices**
 - 30 to 180 days before the date distribution commences



DC Administrative Forms

- ▶ **ACA notice**
- ▶ **Beneficiary designation**
- ▶ **Benefit statements**
- ▶ **Black out notice**
- ▶ **Claims procedures**
- ▶ **Distribution - termination**
- ▶ **Distribution - hardship**



DC Administrative Forms

- ▶ **Distribution - required minimum distribution**
- ▶ **Distribution - Mandatory distribution/automatic rollover**
- ▶ **Distribution - Special tax notice**
- ▶ **EACA Notice**
- ▶ **Employer stock diversification notice**
- ▶ **Form 1099-R**



DC Administrative Forms

- ▶ **Investments - QDIA notice**
- ▶ **Investments - investment advice disclosures**
- ▶ **Investments - election forms**
- ▶ **Investments - mapping notice**
- ▶ **Investments - prospectuses**
- ▶ **Loan forms**
- ▶ **Loan policy**



DC Administrative Forms

- ▶ **New employee education**
- ▶ **Notice to interested parties**
- ▶ **QACA Notice**
- ▶ **QDRO procedures and notices**
- ▶ **QJSA/QPSA notices**
- ▶ **Participant fee disclosures**
- ▶ **Rollover form**



DC Administrative Forms

- ▶ **Safe harbor 401(k) notice**
- ▶ **Salary deferral agreement**
- ▶ **Statement of deferred benefits**
- ▶ **Summary annual report**
- ▶ **Summary of material modifications**
- ▶ **Summary plan description**
- ▶ **Supplemental safe harbor 401(k) notice**



Plan Audit and Correction Programs

- ▶ **Qualified plans must meet form and operation requirements**
- ▶ **Qualification failure – potential plan disqualification**
- ▶ **IRS audit program**
- ▶ **IRS Employee Plans Correction Resolution (EPCRS) Program**
- ▶ **Department of Labor Delinquent Filer Voluntary Compliance and Fiduciary Correction Program**
 - Enforces Title I requirements (fiduciary breaches, prohibited transactions, reporting and disclosures requirements, etc.)



Consequences of Disqualification

- ▶ **If plan is disqualified, substantial tax consequences may apply for “open” years**
 - Three year period from filing of Form 5500
- ▶ **Tax consequences include:**
 - Taxation to participants
 - Taxation of trust
 - Loss of deduction
 - Loss of rollover opportunity for participants



IRS Plan Audit Process

- ▶ Plan is selected for audit
- ▶ IRS sends letter requesting a review of plan records and documents
- ▶ IRS agent may conduct on-site audit of plan
- ▶ Request for additional information
- ▶ Issues requiring change
 - Tax changes – income or excise tax
 - EPCRS program
 - Unagreed case/revocation
- ▶ Case closed



IRS Plan Audits

- ▶ Areas of review
 - Eligibility, participation and coverage
 - Vesting
 - Discrimination
 - Top-heavy requirements
 - Contribution and benefits limits
 - Funding and deductions
 - Distributions
 - Trust activities
 - Plan and trust documents
 - Returns and reports



Top-Ten Failures

- ▶ Failure to amend
- ▶ Compensation definitions
- ▶ Inclusion of ineligible employees and exclusion of eligible employees
- ▶ Loan provisions
- ▶ In-service withdrawals
- ▶ Minimum required distributions
- ▶ Employer eligibility failure
- ▶ ADP/ACP testing
- ▶ Top-heavy minimums
- ▶ 415 violations



EPCRS

- ▶ **Employee Plans Compliance Resolution System**
 - Comprehensive correction program for qualified plans, 403(b) plans, SEPs and SIMPLE IRAs
 - Permits correction of qualification failures
- ▶ **Rev. Proc. 2016-51 sets forth most recent procedures**
- ▶ **EPCRS correction programs**
 - SCP (Self-Correction Program) - no submission to IRS
 - VCP (Voluntary Correction Program) – submission to IRS before examination
 - Audit CAP (Audit Closing Agreement Program)



EPCRS

- ▶ **Correction principals**
 - Generally full correction required (including for closed years)
 - Restore plan and participants to the position as if failure had not occurred
 - Reasonable correction
 - Keep assets in the plan
 - Corrective allocations and earnings based on plan terms
 - Report distributions



Self-Correction Program

- ▶ **Established practices and procedures**
- ▶ **Operational failures only**
 - All insignificant failures
 - Certain significant failures
- ▶ **General correction principles used**
 - Rev. Proc. appendices
- ▶ **Change administrative procedures**
- ▶ **Maintain adequate records**
- ▶ **No fee to IRS**



Self-Correction Program

- ▶ **Significant operational failures**
 - Two-year correction rules – correct within two years of the plan year in which the operational failure occurred
 - No limit on number of failures or times the SCP can be used
- ▶ **Insignificant operational failures**
 - No time limitation
 - Base on facts and circumstances
 - Available even on examination



Voluntary Correction Program (VCP)

- ▶ **Plan sponsor identifies failures to IRS**
 - One or more qualification failures
 - Not under examination
- ▶ **Plan sponsor proposes correction and changes to administrative procedures**
- ▶ **Plan sponsor pays user fee**
- ▶ **IRS issues a compliance statement**
- ▶ **Plan sponsor corrects**
- ▶ **Plan not examined**



VCP Fees

Plan Assets	VCP fee
\$500,000 or less	\$1,500
Over \$500,000 - \$10,000,000	\$3,000
Over \$10,000,000	\$3,500

Audit CAP

- ▶ **Plan sponsor is under IRS examination**
- ▶ **Plan sponsor enters closing agreement**
- ▶ **Plan sponsor makes correction**
- ▶ **Plan sponsor pays sanction**
 - Negotiated amount
 - Maximum payment amount (MPA) for open years used as guide
 - Tax on trust
 - Income tax due to loss of employer deductions
 - Income tax due to inclusion of income for participants



DOL DFVC Program

- ▶ **Delinquent Filer Voluntary Compliance Program**
 - Failure to file Form 5500
 - Avoid civil penalties
- ▶ **IRS penalty relief**



DOL VFC Program

- ▶ **Voluntary Fiduciary Correction Program**
 - Designed to encourage employers to voluntarily comply with ERISA by correcting fiduciary violations
 - Procedure
 - Identify violation
 - Correct violation
 - Restore losses or profits with interest
 - File an application with DOL



DOL VFC Program

▶ **Covered transactions**

- Delinquent participant contributions
- Loan violations
- Purchase/sale of assets to/from party in interest
- Improper valuations
- Improper payment of plan expenses
- Other transactions



Reporting and Disclosures

▶ **Reporting and Disclosure Guide for Employee Benefit Plans**

www.dol.gov/ebsa/pdf/rdguide.pdf

www.irs.gov/pub/irs-tege/irs_reporting_disclosure_guide.pdf



Form 5300

- ▶ **Generally used for individually-designed defined contribution or defined benefit plans to request a determination letter**
- ▶ **Possible requests**
 - Initial qualification
 - Partial termination



Form 5307

- ▶ **Generally used for adopters of pre-approved VOLUME SUBMITTER plans (Pre-Approved Plans for cycle 3) that wish to file for a determination letter**
- ▶ **May only use if modification to approved volume submitter plan**



Form 5310

- ▶ **Request for determination letter upon plan termination**
- ▶ **Must include provisions for all laws in effect as of the date of termination**
- ▶ **Used by individually designed plans and pre-approved plans**



Form 2848

- ▶ **Power of Attorney and Declaration of Representative**
- ▶ **Purpose - Authorizes an individual to represent taxpayer (employer/sponsor of qualified retirement plan) before the IRS**
- ▶ **POA can perform any and all acts that the taxpayer can perform for designated years or periods**
- ▶ **POA must be an individual (attorney, CPA, Enrolled Agent, Enrolled Actuary, ERPA)**



Form 5500

- ▶ **Annual Return/Report for Employee Benefit Plan**
- ▶ **Plan administrator reports plan statistical and financial information and demonstrates compliance with various legal requirements**
- ▶ **Enforcement tool for IRS and DOL**
- ▶ **Types of plans – covered by Title I of ERISA**
 - Pension plans, including qualified plans and frozen plans
 - Welfare plans
- ▶ **Modernization project at the Department of Labor**



Form 5500

- ▶ **Exemptions**
 - Governmental and nonelecting church plans
 - SEPs
 - IRAs
 - Excess benefit plans
 - Top-hat plans
- ▶ **Form 5500 series**
 - Various forms and attachments
- ▶ **Electronic filing**



Form 5500

▶ Reporting requirements

- Large plan – plan that covers 100 or more participants at the beginning of the plan year
- Small plan – plan that covers fewer than 100 participants at the beginning of the plan year
- 80-120 rule – if number of participants is between 80 and 120, may file forms as if in the same category as the previous year



Form 5500

▶ Accountant's report

- Plans that file Schedule H must engage an independent qualified public accountant to form an opinion with respect to the financial status of the plan
- Separate report is required
- Must be prepared in accordance with generally accepted auditing principals
- Filing is incomplete without an accountant's report



Form 5500-SF

- ▶ **Conditions to file simplified Form 5500-SF**
 - Fewer than 100 participants at the beginning of the year
 - Exempt from audit requirements
 - Plan does not hold employer securities
 - Plan 100% invested in assets that have a readily determinable fair market value and held by a regulated financial institution
 - Plan is not a multiemployer plan



Filing Forms 5500 and 5500-SF

- ▶ **When to file**
 - Deadline – last day of the 7th month after the end of the plan year
 - Form 5558 for extensions
- ▶ **Significant penalties for non-filings**
- ▶ **DOL DFVC Program**



Form 5500-EZ

- ▶ **One-participant retirement plans**
 - Plan covers only owner (or owner and spouse)
 - Plan covers one or more partners (or their spouses)
 - Other conditions
 - Plan meets minimum coverage requirements without combining with another plan
 - Plan does not benefit any other employees
 - Plan is not part of a related employer group
 - Plan does not cover a business that uses leased employees



Form 5500-EZ

- ▶ **Not required to file Form 5500-EZ if total assets are \$250,000 or less at the end of the plan year**
 - Must file Form 5500-EZ for the final plan year
- ▶ **Form 5500-EZ must be filed by the last day of the seventh calendar month after the end of the plan year**



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**Thanks
for attending!**

