How to Correct Common Mistakes in the Administration of Your 401(k) or Profit Sharing Plan

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The IRS recently issued an update to its qualified plan correction guidance, the Employee Plans Compliance Resolution System ("EPCRS") which was effective January 1, 2017.

EPCRS may be used to correct plan qualification issues affecting certain types of retirement plans, including 401(k) and profit sharing plans. It permits the correction of errors either (i) by "self-correction," whereby a plan sponsor takes reasonable steps to correct an issue, or (ii) under the auspices of the IRS via its "voluntary compliance program", whereby a plan sponsor submits a proposed correction to the IRS for review, along with a user fee, and ultimately receives a compliance statement from the IRS "blessing" the correction. For the next several issues of this newsletter, I will be reviewing the most common errors plan sponsors make and how to correct them.

One of the most common mistakes is late deposits, especially with 401(k) plans. This mistake can easily occur if your regular payroll person is on vacation or there is a change in the person responsible for payroll.

Department of Labor rules require that a plan sponsor segregate plan assets as soon as possible. In no event can the deposit be later than the 15th business day of the following month. However, remember that the rule about the 15th business day isn't a safe harbor for depositing deferrals; rather, it sets forth the maximum deadline for deposits. Deferrals must be deposited or segregated into the plan's name as soon as reasonably possible although the DOL does provides a 7-business-day safe harbor rule for employee contributions to plans with fewer than 100 participants.

If you fail to segregate plan assets as soon as possible, you must self-correct under EPCRS by contributing the late deferrals as well as reasonable interest accrued thereon as soon as possible, filing an IRS form 5330, and paying an excise tax. If you catch this error quickly, both the additional interest required and the excise tax will be fairly small. It's important to plan for possible disruptions in the contribution of deferrals.

If you have any questions, please do not hesitate to contact me or the attorney in our firm with whom you typically work.

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