

# Ensure employees know of retirement plan rollover rules change



By Stephanie A. Smithey, Esq., Ogletree Deakins

Modifications to the rollover distribution rules for certain retirement plan participants with defaulted plan loans went into effect in January 2018. As a result of a provision in the Tax Cuts and Jobs Act, the rollover distribution rules are now more relaxed for rollovers of defaulted loans resulting from plan terminations or a participant's failure to repay a loan upon severance from employment.

The changes impact several provisions in the "safe harbor" model tax notices for eligible rollover distributions that were published by the Internal Revenue Service in 2009 and updated in 2014.

When the IRS published the 2014 updated tax notices, it specified that the "safe harbor" notices would no longer satisfy the legal notice requirements "to the extent the explanations are no longer accurate because of a change in the relevant law occurring after December 8, 2014."

The IRS has not yet updated the model tax notices to reflect the 2018 changes in the law, and we do not expect updated notices to be published soon.

Thus, employers may want to confirm with their plan administrators that the required tax notices are updated for use in 2018.

## Changes to the rollover rules

Before this year, a retirement plan participant with a defaulted plan loan following the participant's severance from employment or the termination of the plan was subject to an offset against his or her account balance.

The participant had 60 days to avoid paying taxes and penalties on the deemed distribution of the defaulted loan balance. To do so, the participant had to come up with funds equal to the defaulted loan balance, plus any tax withholding, and roll over those funds to an individual retirement account or other qualified plan.

Beginning Jan. 1, a participant has considerably more time to complete the rollover and avoid paying taxes and penalties. Participants now must complete the rollover by their tax return due date on the year following the year of the plan loan offset. That means the participant must complete the rollover by April 15 (or, if he or she filed an extension, Oct. 15) of the year after the year the defaulted loan was offset against the participant's plan account.

## **Duty to update**

Plan fiduciaries have a duty under the Employee Retirement Income Security Act to act solely in the interests of plan participants to protect their retirement benefits. As a result, it is the plan fiduciary's duty to clearly, accurately and timely communicate the steps participants can take to avoid a loan offset and taxation.

The extension of the period for rolling over plan loan offsets means several references in the special tax notices to a 60-day rollover period are no longer accurate. If a plan administrator distributes the 2014 notice, a participant would likely not be aware that he or she has several months to repay the loan and complete the rollover. For example, a participant who terminates in October 2018 with an outstanding loan may not realize she has until October 15, 2019 to save enough money to equal the loan offset plus the 20% tax withholding and complete the rollover of her account, thus avoiding the income tax and a potential 10% early distribution penalty tax on the loan offset amount.

## **Actions required**

Remember, as timely issuance of required plan notices is a fiduciary function, plan administrators may have fiduciary liability under ERISA for failure to issue accurate tax notices to affected participants.

Simple but important updates to the notices may be needed to avoid potential liability caused by a participant's reliance on inaccurate statements in the 2014 notices.

It is common for a third-party service provider administering a plan to provide the special tax notices to participants who receive a distribution from the plan. The plan sponsor may rarely see the tax notice if the distribution package is sent directly from the service provider to the participant who will be receiving the distribution.

Accurate communication and administration is a fiduciary function of the plan administrator. In many plans, the employer is the plan administrator and the fiduciary responsible for providing accurate plan disclosures. In other companies, individual officers or an established committee serves the plan administrator role and bears this responsibility.

The plan sponsor may want to confirm who is serving as the plan administrator and make sure the fiduciary contacts the plan service providers to update their loan program and the special tax notices for eligible rollover distributions to reflect the 2018 tax law changes.

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*Stephanie Smithey is an Ogletree Deakins shareholder specializing in qualified retirement plans and health and welfare plans.*