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RETIREMENT PLAN SOLUTIONS

Insight from Alliance Benefit Group, One of the Largest National Independent Retirement Plan Providers

Founded in 1992 • Administration of Over 20,000 Plans and 1.3 Million Plan Participants • Over $70 Billion in Assets Under Management • Plans in All 50 States

FALL 2017

Inside This Issue

CYBERSECURITY: IT'S EVERYONE'S ISSUE

Cyberattacks have increased significantly in recent years. This year's notable attacks include the data breach for credit agency Equifax with over 143 million consumer records compromised. In fact, almost 2 billion records have been lost or stolen globally in the first half of 2017.*

The 401(k) industry, with its trillions of dollars invested in retirement plan accounts, is not immune to cybercrimes. Plan sponsors increasingly face the dual challenge of providing online access to participants' retirement plans while keeping their information secure.

Once online, participants' names, account information and social security numbers can be vulnerable to a data breach. This is compounded by the fact that typically plan participants tend to check their accounts infrequently compared with other accounts such as credit card or bank accounts.

Being Proactive Is Key

All these factors elevate the need for plan sponsors to implement and maintain a proactive cybersecurity strategy. Effective cybersecurity planning needs to consider the possibility of security breaches from multiple vantage points including the following three potential access points:

1. **Plan participants:** Participants can inadvertently cause a breach which could be potentially damaging to their retirement plan account. A few examples of potential cyberattacks on a retirement account at a participant level include:
   - » **Phishing** - Via email, a criminal masquerades as a bank or institution that the victim has a

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WHEN M&A OCCURS, DON'T FORGET RETIREMENT PLAN REVIEW

With sluggish organic growth in the aftermath of the Great Recession, many companies have grown their businesses through mergers and acquisitions (M&A). In fact year to date in the US, there have been 12,109 M&A transactions representing a total value of $1,931 billion.* This robust M&A trend only looks to continue.

If your company is contemplating acquiring another organization, the following considerations may prove helpful when evaluating another firm's retirement plan. Understanding the nature of the M&A transaction and comparing the respective retirement plans are important first steps.

Start By Analyzing The Structure Of The M&A Transaction

Understanding whether the M&A transaction is a stock sale or an asset sale can help in determining next steps and identifying any issues involved that need to be front of mind as you progress through the transaction.

What You Need To Know About Stock Sales

If the transaction is a stock sale, the acquiring employer purchases another company in its entirety. The acquiring employer becomes the employer and, therefore, the sponsor of the seller's qualified retirement plan. Key considerations of a stock sale include:

» If both the acquiring and selling employers have a 401(k) plan at the time of the transaction, the successor plan rules prevent the acquirer from terminating the 401(k) plan of the purchased company once the sale is complete.

» An acquiring employer may decide during the planning stages that the two 401(k) plans will be merged. Once the stock sale transaction is complete, the new owner can then merge the two plans together.

» If the acquiring employer does not want to keep the selling employer's 401(k) plan, the purchase agreement needs to be crafted to include a requirement that the seller terminate the plan before the business transaction occurs. If the resolution to terminate the seller's plan is passed by the board and takes effect prior to the transaction, the seller is responsible for distributing all plan assets.

» When a stock sale takes place, the acquired employees typically continue working for the acquiring company. Therefore they do not incur a severance from employment and there is no distributable event. The years of service the employees have with the seller will count toward eligibility and vesting credit under the acquiring employer's plan.

What You Need To Know About Asset Sales

If the transaction is an asset sale, the acquiring company purchases only the assets or, for example, divisions of the selling company. The following outcomes will occur:

» The seller continues to exist and maintains its own qualified plan while employees of the purchased divisions or company move to the acquirer.

» Participants are generally treated as having severed service with the seller and can take a distribution from the seller's retirement plan.

» The entities may agree to transfer the retirement assets of the relocated participants from the seller's plan to the acquiring employer's plan. This would not be considered a distributable event since the acquiring employer would be seen as maintaining the seller's plan.

Evaluating And Comparing Retirement Plans Is Key

Once you understand the nature of the transaction and the issues involved, the next step is to review both the acquiring company's and the selling company's retirement plans. Creating a detailed comparison will enable you to identify differences that may need to be addressed as you move forward. It is also a perfect time to do a competitive analysis of the plans compared with industry best practices.

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UNDERSTANDING PARTIAL PLAN TERMINATIONS – MORE ART THAN SCIENCE

Partial plan terminations occur when, by virtue of employer action, a plan realizes a significant decrease in the number of covered participants. Staff layoffs, factory closures and the sale of businesses are all common causes of a reduction in plan participation. Failing to identify a partial plan termination can result in the disqualification of a plan sponsor's qualified retirement plan by the IRS as well as other adverse consequences for both the plan sponsor and plan participant. In this article, we take a quick look at what you need to consider with partial plan terminations.

The IRS Perspective

According to the IRS, partial terminations occur because of employer-initiated turnover. Under IRS Rev. Rul. 2007-43, this includes any severance from employment other than that which results from death, disability, or normal retirement.

To complicate matters, the IRS does not explicitly define the term "partial termination." As a result, the determination of whether a reduction in a plan sponsor's workforce results in a partial termination of the sponsor's tax-qualified retirement plan can be problematic.

Instead, it requires the IRS to consider all facts and circumstances surrounding a plan and the employer sponsoring the plan to determine whether a plan has incurred a partial termination. Often IRS rulings and case law is referenced to provide context to this determination.

Why It Matters

The IRS specifies that upon the partial termination of the plan, the rights of all affected employees to benefits accrued as of the date of such partial termination are non-forfeitable. If a partial termination occurs and a plan sponsor does not vest affected employees in their accrued benefits, the plan will cease to be qualified.

Losing qualified status can result in a number of serious consequences for both for the plan sponsor and the plan participants:

Plan Sponsor Impacts:

- The employer loses its tax deduction for non-vested contributions made to the plan.
- The plan's trust must also recognize income on its earnings.
- The plan sponsor and/or the plan fiduciaries responsible for failing to maintain the plan's tax-qualified status face the risk of lawsuits by participants who are forced to prematurely recognize income on their tax returns.
- In addition, in the event of an unfavorable IRS audit, the plan sponsor may need to pay fines and reinstate any forfeited benefits or balances to participants.

Plan Participant Impacts:

- The plan participants must declare income on their tax return with respect to their vested accrued benefits.
- Distributions from the disqualified plan are not eligible for rollover into another tax-qualified vehicle.

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CYBERSECURITY: IT'S EVERYONE'S ISSUE

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relationship with to solicit personal data from them.

- » **Malware -** Criminals access personal data through the use of malicious software that the participant may not have protections against.
- » **Ransomware -** Criminals collect information about their victims and withhold access to a computer system or account until a sum of money is paid by the victim.
- » **Suspicious call center activity** - Criminals call into retirement plan call centers impersonating participants to access accounts.

2. **Employees:** Many times, it's an unintentional action such as misplacing a laptop, accessing client data through an unsecured internet connection or opening email messages and downloading attachments that can lead to a cybersecurity breach.
3. **Partners and/or vendors:** With access to firm networks or data, they have the potential to increase a plan sponsor's cybersecurity risk and the appropriate security protocols should always be in place.

Reviewing Your Cybersecurity Plan

While cybersecurity is complex, adopting best practices and keeping up with the changing cyber landscape is key. When reviewing your company's cybersecurity plan, the following issues should be considered:

- » **Rights and controls**: What policies and procedures does your company have in place to prevent unauthorized access to systems or information?
- » **Participant verification:** How does your company verify the authenticity of a participant's request to transfer funds or conduct other transactions?
- » **Incident response:** What are the firm's policies and procedures related to a cybersecurity incident response?

As always, your local ABG representative is available to you as a resource for any questions you may have on this growing cybersecurity issue. ■

*According to international digital security company Gemalto.

UNDERSTANDING PARTIAL PLAN TERMINATIONS – MORE ART THAN SCIENCE

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The 20% Turnover Test

Historically, the IRS has used 20% or greater turnover on an annual basis as a threshold for requiring an employer to demonstrate why a partial termination has not occurred. The onus is on the employer and the following factors are generally considered:

- » Is the turnover rate for an applicable period "routine" for the employer?
- » Do any new employees hired subsequently perform the same function or have the same title or comparable compensation?

Because of the lack of clarity surrounding the application of the partial termination rule and the adverse consequences that could result, an employer whose workforce has seen significant reductions should carefully evaluate whether or not their retirement plan has incurred a "partial termination."

Although an employer may request a determination letter from the IRS (using Form 5300) as to whether or not the plan has experienced a partial termination, that can be an onerous and lengthy process. Proactive evaluation by the plan sponsor now can save time and complexity later. Ask your local ABG representative for any guidance you may need. ■

DID YOU KNOW?

- According to the Social Security Administration, 30% of all 50 year old women are expected to see their 90th birthday while 19% of all 50 year old men are.
- According to a recent study by the American Institute of CPAs*, the following were the top two financial concerns cited by CPA financial planners that give many retirees and soon-to-be retirees cause for concern:
  1. Running out of money
  2. Maintaining their current lifestyle and spending level
- According to a study by the Bureau of Labor Statistics, late baby boomers (those born from 1957-1964) have held morethan11jobsintheirworkinglife.Thisprobablymeans multiple retirement accounts with multiple employers.

*The AICPA Personal Financial Planning Trends Survey, 2016.

WHEN M&A OCCURS, DON'T FORGET RETIREMENT PLAN REVIEW

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Key considerations include:

- » Does the surviving plan(s) meet your company's benefit objectives and comply with all regulatory requirements?
- » Are plan investment options and performance consistent with your investment policy statement?
- » Is plan pricing in line with industry standards and your company's expectations?
- » Do you have the information needed to identify liabilities and estimate future contribution and expense requirements?
- » Does the acquired plan contain any protected benefits, such as, early retirement provisions and distribution options?

With M&A Comes An Opportunity To Improve Your Plan

A merger or acquisition can also present an opportunity to update and refine your retirement plan. Your local ABG representative is always available to help evaluate plans in terms of investment options, pricing, participant engagement and more. ■

*Factset, as of 8/31/17.

ABG NEWS

ABGIL Acquires Investment Manager And Receives DALBAR Award

Alliance Benefit Group of Illinois (ABG Retirement Plan Services) has two reasons to celebrate. This past summer they acquired Cleveland Hauswirth Investment Management, Inc., an investment advisory firm specializing in customized investment management and education services to qualified retirement plans and high net worth individuals.

ABG Retirement Plan Services has been Cleveland Hauswirth Investment Management's preferred partner for retirement plan administration for the past 16 years. Headquartered in Milwaukee, Wisconsin, Cleveland Hauswirth will continue to work as an independent fiduciary, providing investment advisory services to qualified retirement plans.

Plan Participant Website Recognition

In addition, ABG Retirement Plan Services was awarded the DALBAR Seal of Excellence for Communications through an evaluation of their plan participant website. This is the second time they have received this prestigious award, winning previously in 2015.

DALBAR noted that the ABG Retirement Plan Services plan participant website excelled in terms of:

- » Providing a large range of functionality and content that allows participants to monitor their retirement accounts.
- » Offering a range of features to participants in support of the use of the online method.

John Blossom, CEO of ABG Retirement Plan Services said "DALBAR's recognition of the tools included in our participant website confirms the success of our effort to serve plan members with resources to reach a successful retirement."

As the leading independent expert in the financial services industry for over 40 years, DALBAR conducts third party evaluations of financial services websites through its WebMonitor Program. ■

TAX TALK

In this issue of Tax Talk, we update you on important upcoming compliance deadlines for defined contribution plans and take a quick look at the safe harbor notice requirement.

Upcoming Compliance Deadlines

December 2017	
Deadline	**Compliance Requirement Details**
December 1	» Deadline for sending annual 401(k) and (m) safe harbor notice. » Deadline for sending annual qualified default investment alternative (QDIA) notice. » Deadline for sending annual automatic contribution arrangement notice. For administrative ease, a combined notice may be provided for the above notices.
December 15	» Extended deadline for distributing Summary Annual Report (SAR) to participants.
December 31	» Deadline for processing corrective distributions for failed prior year ADP/ACP test with 10% excise tax. » Deadline for correcting a failed prior year ADP/ACP test with qualified nonelective contributions (QNEC). » Deadline for amendment to convert existing 401(k) plan to safe harbor design for next plan year. » Deadline for amendment to remove safe harbor status for next plan year. » Deadline for amending plan for discretionary changes implemented during plan year.
January 2018	
January 31	» Deadline for determination letter submission for individually designed plan documents. The year of submission is determined by the last digit of the employer identification number (EIN). » Deadline for sending Form 1099-R to participants who received distributions during the previous year.

Safe Harbor Summarized

The advantage of a safe harbor 401(k) plan is that it is not subject to the nondiscrimination tests required by traditional 401(k) plans. However, employees must receive a pre-determined level of employer contribution either in the form of safe harbor matching or safe harbor non-elective contributions.

In addition, the IRS requires the plan sponsor to provide an annual safe harbor notice to participants either by mail or electronically. This notice must inform participants of their rights and obligations under the retirement plan as well as the pre-determined level of employer contribution for the following plan year.

The Safe Harbor Notice Deadline

For calendar year plans, there is a December 1st deadline. The safe harbor notice must also be provided to each newly eligible participant throughout the year. The following information should be included:

- » The identification of plan(s) intended to satisfy the safe harbor provisions.
- » Details about the formula used to compute the safe harbor match or non-elective contribution as well as information about other possible contributions.
- » Information about the compensation on which the contributions are based.
- » Information about the method for participants to make deferral elections.
- » Details about withdrawal and vesting provisions.
- » Also, if the plan sponsor reserves the right to decrease or suspend the safe harbor contribution, this must be noted.

For any questions about this safe harbor notice requirement or any other compliance deadline, please contact your local ABG representative.