

# REGULATORY Update



QUARTERLY UPDATE, OCTOBER 2015



## Key Retirement Plan Projects on Tap for Treasury and IRS

On July 30, the U.S. Department of the Treasury and the IRS released their [2015–2016 Priority Guidance Plan](#) (the Plan), a joint statement announcing the key projects that the two agencies will be focusing on from July 2015 through July 2016. Below is a summary of several key projects that will be of particular interest to plan sponsors.

### → Substantiation of Hardship Distributions.

When a participant requests a hardship distribution from his or her account, retirement plan sponsors are tasked with verifying that the hardship falls within one of the IRS's six approved exemptions for withdrawing retirement funds in the case of a hardship, as well as collecting and retaining associated documentation. The substantiation of hardship distributions commentary, which was originally addressed in the April 2015 edition of the IRS Employee Plans newsletter, provides guidance to plan sponsors on documentation requirements for administering hardships and loans from qualified plans. Diligent administration of hardship rules is critical for plan sponsors to ensure proper plan compliance in accordance with Treasury Reg. §1.401(k)-1(d)(3).

Here are some important considerations for properly administering hardship distributions:

- Hardship withdrawals are permitted if it is deemed that a distribution is necessary to satisfy an immediate and heavy financial need.
- The hardship must be to satisfy one of six qualifying reasons (uninsured medical expenses, purchase of a primary residence, tuition, to prevent eviction or foreclosure, funeral or burial expenses, expenses for damage of employee's primary residence).
- The distribution may not exceed the amount of the financial need. The amount required to satisfy the need may include amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution.

- Employees must exhaust alternative means prior to obtaining a hardship withdrawal. In some cases, this may mean taking a loan from his or her retirement plan (if offered by the plan).
- Documentation that substantiates the participant's immediate and heavy financial need must be collected, verified, and maintained by the plan sponsor.

→ **Safe Harbor 401(k) Plans.** The Plan states that guidance will be forthcoming regarding certain midyear changes and business transactions for safe harbor 401(k) plans under §401(k)(12) and (13). Current rules regarding midyear safe harbor changes are very restrictive. The most recent guidance on midyear changes was adopted in November 2013 and provided incremental relief in specific economic circumstances. The 2015–2016 Plan could further expand the allowance of certain midyear changes in specific circumstances.

→ **QNEC and QMAC Contributions.** According to the Plan, guidance for Qualified Nonelective Contributions (QNECs) and Qualified Matching Contributions (QMACs) will be provided.

→ **Guidance Pertaining to Plan Failures and Corrections.** Retirement plan sponsors frequently make errors on the administration of their plan, and as such, the IRS has a program that allows for the correction of various plan errors. The 2015–2016 Plan calls for two items related to plan failures and subsequent corrections—one offering clarification on the Voluntary Closing program for failures not covered by the Employee Plans Compliance Resolution System (EPCRS) and another amending Revenue Procedure 2013-12 related to the EPCRS to provide guidance on certain plan corrections.



## Compliance Reminder: PPA Restatement Deadline Quickly Approaching

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Approximately every six years, the IRS requires retirement plan documents to be restated and resubmitted for approval. Although the IRS deadline is April 30, 2016, most service providers and TPAs are targeting 2015 for completion of their restatements

and incorporating language and provisions as required by the Pension Protection Act (PPA). **A helpful hint to plan sponsors:** Take into account any impending plan document amendments and coordinate them with the mandatory PPA restatement.



## We can help

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The current regulatory environment is challenging for retirement plan sponsors. Our firm is ready to provide you with the ideas, guidance, and foresight to prepare for what lies ahead—and to help your employees get on track for retirement. If you would like to review any aspect of your retirement plan, we're here to assist you.

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