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MCCREADY AND KEENE, INC.

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DOL and IRS Audits

There has recently been an uptick in the number of Department of Labor (DOL) and IRS audits of retirement plans. McCready and Keene's staff stands ready to assist you in providing any requested documents and reports. Please remember that any assistance with an audit is outside the scope of our normal administrative services and will be billed on an hourly basis.

You should also be aware that the DOL takes participants' complaints very seriously. The DOL will initially contact the plan sponsor to resolve a participant complaint. (In 2012, it closed 239,520 participant complaints/inquiries.) If the complaint cannot be resolved informally, then the DOL launches an investigation, which can be time consuming and expensive.

Spring Cleaning? Don't Get Rid of Important Documents!

Have you ever wondered what plan records you need to keep and for how long? Listed below are some general guidelines to assist you.

Keep most records at least six years:

- Financial reports
- Form 5500 filings
- Nondiscrimination and coverage test results

Retain plan records for the life of the plan:

- Complete plan document, including SPDs, SMMs and plan amendments
- Other documents related to your plan such as trust documents, custodial agreements, group annuity contracts and/or funding instruments
- Notices such as explanation of joint and survivor annuity options, special tax notices
- Participant distribution election forms

Save participant information at least six years after plan termination:

- Participant age and service records that are used to determine eligibility, vesting, breaks in service and benefits
- Participant records including payroll, marital status, beneficiary designation and election forms
- Participant account information and participant deferral and investment elections (DC plans)
- Participant benefit information (DB plans)

While there is no requirement that you keep records in any particular format, it is recommended that records be kept in a manner that is easily retrievable.

Finding Lost Participants

Maintaining current addresses for plan participants after they terminate employment will help minimize costs and is important for the proper administration of your plan. Current addresses are necessary to distribute required reports and notices, such as:

- Summary Annual Reports
- Funding Notices
- Summary Plan Descriptions
- Benefit Applications
- Fee Disclosures

Finding Lost Participants, continued

For defined benefit plans, the Pension Benefit Guaranty Corporation premiums are based on participant counts. Further, administrative fees for both defined contribution and defined benefit plans are based on participant counts. Therefore, the ability to locate and distribute a former participant's account balance or benefit is crucial for reducing administrative costs.

Timely distribution of small benefit or account balance cash-outs can help reduce the instance of lost participants. Small benefit cash-out rules are governed by the plan document. The Internal Revenue Service permits a plan document to include the following mandatory cash-out rules:

Value of retirement benefit or account balance is $1,000 or less. If the participant does not make an election regarding distribution of his or her benefit or account balance, the benefit or account balance can be distributed in cash without the participant's consent.

Value of retirement benefit or account balance is $1,001-$5,000. If the participant does not make an election regarding distribution of his or her benefit or account balance, the plan can transfer the funds to an IRA established for the participant.

If you discover that you do not have a good address for a terminated participant, the following may prove helpful in locating lost participants:

Employer records.

- Write or call anyone listed as an emergency contact.
- Check beneficiary designations for relatives who may be able to help.
- Check with other benefits providers to see if they have a different address on file.
- Ask the people who worked closely with the employee to see if anyone has kept in touch.

The Social Security Administration (SSA) Letter Forwarding Service. For a non-refundable fee of $35, the SSA will forward your letter that notifies a lost participant that benefits are available from your retirement plan. The SSA cannot assure you that the letter will be delivered or that a reply will be received. Further, they cannot advise you of the results of the search and cannot make a second attempt to locate the missing person. The process can take up to six months. Go to www.socialsecurity.gov/foia/html/ltrfwding.htm for more information.

An Internet search such as Google or social media (Facebook, Twitter, LinkedIn, etc.).

Commercial locator services such as www.Intelius.com/people-search.html or the Berwyn Group at www.berwyngroup.com.

Overall, it is important to encourage participants to review and update their personal information frequently. In addition, you should update the participant's information when he or she terminates employment.

IRS Final Report on 401(k) Plans

If you'll recall, in 2010 the IRS mailed a Section 401(k) Compliance Check Questionnaire to 1,200 401(k) plan sponsors of various sizes. The IRS was concerned about the health of 401(k) plans and their compliance issues because 401(k) plans have now become the most prevalent form of retirement plan in the United States. They now number more than 500,000 and cover approximately 60 million Americans.

The IRS's Final Report was issued in March, and the following are some interesting statistics:

- 20% of the plans are top-heavy
- 43% of the plans are safe harbor
- 5% have an automatic contribution arrangement (most common in larger plans)
- 76% permit hardships
- 65% offer loans
- 86% are on some sort of pre-approved plan (such as a prototype or volume submitter)
- 23% request an IRS determination letter
- 6% of respondents maintain a defined benefit pension plan
- 22% permit after-tax Roth contributions
- 68% provide a match
- 65% provide a nonelective contribution (such as a profit sharing contribution)
- 60% use current year testing for the ADP test
- 49% use a nonelective safe harbor while 51% use either the basic safe harbor match or enhanced match
- 2% offer in-kind distributions

- Interest rates for plan loans are as follows:

Interest Rate	Plans
Prime rate	16%
Prime rate plus 1%	46%
Prime rate plus 2%	19%
Prime rate plus 3%	1%
Local bank rate	11%
Other	8%

- 93% require repayment of a loan by payroll deduction
- 87% require repayment of a loan upon termination of employment

If you want to read the full 91-page report, go to http://www.irs.gov/pub/irs-tege/401k_final_report.pdf

Failure to Notify Early Retiree of Benefit Enhancement Resulted in Payment of Lost Benefits

A recent court case serves as a reminder that prompt disclosure to participants is important. A defined benefit plan participant terminated employment before age 55, and the participant was not entitled to receive a benefit until age 65. Before the participant attained age 65, the plan was amended to allow certain participants to receive an unreduced early retirement benefit prior to age 65. The participant was eligible for the unreduced early benefit, but the employer did not notify the participant of the benefit. The fourth circuit upheld an award of retroactive benefit payments. (Helton, Francine v AT&T Inc (2013, CA4) 2013 WL 812118.

If your plan is amended to provide an enhancement in distribution options, such as an early retirement benefit or a lump sum window, it is a good idea to notify all affected participants as soon as possible, even before the required distribution date for a summary plan description ("SPD") or summary of material modifications ("SMM"). Reminders regarding delivery of an SPD or SMM are as follows:

1. The SPD and SMM must be distributed within 210 days after the end of the plan year in which the restatement or amendment to the plan was adopted.
2. The SPD must be distributed to:
   a. Active participants in the plan
   b. Terminated and retired participants who have not received their entire benefit
   c. Beneficiaries receiving benefits
   d. Terminated participants who have no vested interest in plan benefits, but who have not incurred a one-year break in service
   e. New participants (the SPD and any subsequent SMMs should be given to them within 90 days after their plan participation date)
3. The SPD and SMM must be delivered in hard copy unless you qualify to deliver the SPD and SMM electronically. In most cases, the electronic delivery only applies to participants who must access your computer system as an integral part of their work duties.

An SMM does not have to be distributed to retired participants, vested terminated participants, or beneficiaries receiving benefits if the change does not affect their rights under the plan. For example, an SMM describing a change in the definition of compensation or the freezing of benefit accruals would not need to be distributed to that group.