BENEFIT PROFESSIONALS, INC.

Building a better future, together.

P.O. Box 1789
302 East Main Street
Albertville, AL 35950
(800) 545-6741

This Issue

Are You Ready for Health Care Reform?

The wait is over. The U.S. Supreme Court has upheld the majority of the provisions in the Patient Protection and Affordable Care Act ("the Act"), including the hotly contested individual coverage mandate. To help you get ready to implement the Act, here's a summary of some of the provisions you need to know about.

Currently in Effect

Certain parts of the Act's provisions are already in effect:

o A Small Employer Health Care Tax credit for providing coverage

o Dependent coverage for children up to age 26 (prior to 2014, a "grandfathered" plan need not provide coverage to dependents who are eligible for other employer-provided coverage)

o No preexisting condition exclusions for children under age 19

o No rescinding of health care coverage, except in the case of fraud

o No lifetime caps on dollar value of essential health benefits

o A requirement to furnish a Summary of Benefits and Coverage disclosure to participants and applicants (Initial distribution generally must be provided beginning on the first day of the first open enrollment period or first plan year that begins on or after September 23, 2012.) (*continued on page 2*)

Can We Help?

Our firm offers a broad range of employee benefit plan services. If we can be of service to you, please call 800-545-6741.

(Continued from Page 1)

Effective Starting in 2013

Other provisions make their debut in 2013:

o Automatic enrollment of employees in large employer plans

o A $2,500 limit on annual health flexible spending account (FSA) contributions by employees

o Elimination of business deduction for certain retiree prescription drug costs

o An additional 0.9% Medicare tax on wages/self-employment income of high earners

o A 3.8% Medicare surtax on investment income of higher income taxpayers

Employer Penalties and Individual Mandate

Starting in 2014, employers with 50 or more full-time or "full-time equivalent" employees during the previous calendar year (certain employees are excluded) must provide at least a minimum level of essential health care coverage or pay a penalty. In general, a penalty applies where the employer fails to provide minimum essential coverage or the coverage provided is "unaffordable" or does not provide "minimum value" (as defined by the law).

Under the Act's individual mandate provision, most individuals will be required to maintain minimum essential coverage, generally either through their employer or an individual plan. People who fail to satisfy this requirement will be subject to a penalty tax based on income level. (Exceptions apply, such as for those whose income is below the threshold for filing a federal income-tax return.)

Other provisions taking effect in 2014 include:

o Exchanges available to help individuals and small businesses secure health care coverage

o No preexisting condition exclusions for adults (provision for children under age 19 took effect in 2010)

o No waiting period for plan entry in excess of 90 days

o Expanded information reporting regarding employer-sponsored health plans (first reports filed in 2015 for 2014 coverage)

Avoiding Compensation Errors

The amount your company can contribute to your retirement plan and deduct for federal income-tax purposes generally depends on the amount of compensation you pay employees. Using an incorrect definition of compensation in your retirement plan can lead to costly operational failures that can affect your plan's qualified status.

To help plan sponsors, the IRS's website provides five tips for avoiding compensation-related plan failures:

o Review your plan document's definition of compensation for each plan purpose.

o Use the statutory definition of compensation when required.

o Transmit accurate compensation data for each employee to your payroll processor and plan administrator.

o Consider amending your plan to use one definition of compensation for all plan purposes.

o Periodically review your plan for errors and fix them as quickly as possible using the IRS's Employee Plans Compliance Resolution System (EPCRS).

BENEFIT PROFESSIONALS, INC.

Building a better future, together.

Good Plan Governance

With retirement plan operation and performance coming under increased scrutiny from several corners, plan governance is fast becoming a more important part of providing a retirement plan. The following are actions you can take as a plan sponsor to help ensure good governance for your plan.

Know Who's in Charge

It's important that a plan sponsor clearly identify who the plan fiduciaries and other responsible parties are as well as what they are expected to do for the plan. Retirement plans must have at least one fiduciary (a person or entity) designated in the written plan or through a process described in the plan document as having control over the plan's operation. For some plans, the named fiduciary is an administrative committee or a company's board of directors. Plans can also hire professional service providers to handle various aspects of plan administration and investment management.

Put Processes and Procedures in Place

You should develop and implement formal written policies and procedures for investments and plan administration -- starting with an investment policy statement (IPS). As plan fiduciaries, employers are responsible for setting an overall investment policy for their plans.

A written IPS is documentary evidence that your plan has a carefully considered investment policy. It provides the employer and other plan fiduciaries that are responsible for investments with guidance for making investment management decisions, setting investment goals, monitoring investment performance, and communicating the plan's investment policy to employees. Without a prudent -- and written -- investment policy statement, an employer could be found liable for fiduciary shortcomings.

Investments aren't the only aspect of a plan that needs to be reviewed and monitored. Your plan should have processes in place to review plan documents and other communications, vendor performance, plan expenses, and fiduciary compliance. You can develop and implement other policies and procedures as needed to meet the needs of your company and plan. (*Continued on Page 4*)

(*Continued from Page 3*)

Inform Participants and Beneficiaries

Keeping plan participants and beneficiaries informed is another part of plan governance. Retirement plans are required to furnish certain documents and information to plan participants and beneficiaries, including:

o A summary plan description (SPD)

o A summary of material modifications (SMM) describing changes made to the plan or to the information required to be in the SPD

o Periodic individual benefits statements with information about their account balances and vested benefits

o A summary annual report (SAR) outlining financial information from the plan's Annual Return/Report of Employee Benefit Plan (IRS Form 5500)

o Periodic notices including, but not limited to, blackout notices when you change the plan's investment options or recordkeeper or because of a corporate merger or acquisition, automatic enrollment notices, distribution notices, safe harbor plan notices, and qualified default investment alternative (QDIA) notices

o Plan fee disclosures

If you have any questions or need assistance in reviewing your plan's governance structure, don't hesitate to call.

Consequences of Plan Disqualification

A tax-qualified retirement plan, such as a 401(k) plan, provides you, as the employer, and the employees who participate in your plan with numerous advantages. These advantages are lost if you fail to follow tax law requirements and your retirement plan loses its qualified status.

Essentially, when the IRS disqualifies a plan, the plan's trust ceases to be tax exempt. Instead, it becomes a non-exempt (or taxable) trust. This status change affects plan participants, the employer, and the trust.

For Plan Participants

Generally, participants must include in gross income any amounts the employer contributed to the plan for their benefit in the years the plan is disqualified (to the extent the participant is vested in those contributions). As a result, participants are subject to current federal income tax on those contributions. Highly compensated employees may have to include their entire vested plan balance in income (any amount not previously taxed) if the plan is disqualified for certain reasons.

In addition, distributions from a plan that has been disqualified are not considered eligible rollover distributions. Consequently, employees receiving distributions cannot roll them over to an individual retirement account or another employer's retirement plan. Distributions generally are taxable to the recipients in the year they are received. (*Continued on Page 5*)

BENEFIT
PROFESSIONALS, INC.
Building a better future, together.

(*Continued from Page 4*)

For Employers

If your retirement plan is disqualified, your deductions for contributions to the plan could be restricted and delayed. Once a plan is disqualified, different rules apply to the amount an employer can deduct for plan contributions and when deductions are allowed. Unlike contributions to a qualified plan, contributions to a nonexempt employees' trust cannot be deducted until the contributions are includable in employees' gross income. Employers that sponsor a defined benefit plan (or other plan that does not maintain separate accounts for each employee) cannot deduct any contributions.

For the Plan Trust

When a plan is disqualified, the plan trust must pay income tax on the trust earnings. Qualified plan earnings are not taxed to the plan trust but, rather, generally, to plan participants in the year those earnings are distributed to them from the plan.

Regaining Tax-exempt Status

Before the IRS will reinstate a plan's qualified status, generally, the error that caused the disqualification has to be corrected. Corrections can be made through the IRS Voluntary Correction Program or, if the plan is under examination by the IRS, through the Audit Closing Agreement Program.

Top Ten Plan Errors

- Failure to amend the plan for tax law changes by the required date
- Failure to follow the plan's definition of compensation for purposes of determining contributions
- Failure to include eligible employees in the plan or to exclude ineligible employees from the plan
- Failure to satisfy plan loan provisions
- Impermissible in-service withdrawals
- Failure to satisfy required minimum distribution rules
- Employer eligibility failure
- Failure to pass annual nondiscrimination testing
- Failure to properly provide the minimum top-heavy benefit or contribution to non-key employees
- Failure to observe the limits on maximum annual contributions a participant can receive (in a defined contribution plan) or the amount of benefits a participant can accrue (in a defined benefit plan)

Source: IRS, 2011

"If your retirement plan is disqualified, your deductions for contributions to the plan could be restricted and delayed."

Benefit Notes

Fee Disclosure Reminder

With the initial annual fee disclosures to participants out of the way for many plan sponsors, you should have your eye on the due date for the first required quarterly fee disclosures. Initial annual disclosures were due to participants and beneficiaries by August 30, 2012, for calendar-year plans. The first quarterly disclosures for these plans are due by November 14. To help sponsors meet their disclosure obligations, the U.S. Department of Labor has issued guidance in the form of 38 frequently asked questions (www.dol.gov/ebsa/regs/fab2012-2.html).

New FSA Cap for 2013

Under the Patient Protection and Affordable Care Act, for tax years beginning after December 31, 2012, the maximum annual amount an employee can contribute to a health flexible spending account (FSA) under a qualified cafeteria plan is $2,500 (subject to future inflation adjustment). The IRS recently provided guidance on the effective date of the limit and on when and how plans should be amended to comply. Among the points included in the guidance: The $2,500 limit does not apply for plan years that begin before 2013 or to FSAs for dependent care assistance. The term “taxable year” refers to the tax year of the cafeteria plan, not the employee or employer. Plans may adopt required amendments to reflect the $2,500 limit at any time through the end of calendar year 2014, as long as the plan otherwise operates in accordance with the new requirements.

The Importance of 401(k) Plan Participation

According to the Employee Benefit Research Institute (EBRI), being able to participate in a 401(k) plan at work is one of the single most important factors in closing the retirement savings gap for Generation X (those born between 1965 and 1974). EBRI gap modeling estimates that Gen Xers with at least 20 years of future eligibility to participate in a 401(k) or other defined contribution plan will have an average financial shortfall at retirement of approximately $23,000. For those with no future years of eligibility, the projection of the average retirement savings shortfall widens to $78,000.