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ALSO IN THIS ISSUE –

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Proposed Tax Bill in U.S. Senate Would Make A Number of IRA Law Changes. Some Are Major.

Senator Orrin Hatch (R-Utah) is chairman of the Committee on Finance which is the committee originating new tax legislation in the U.S. Senate. He is retiring from the U.S. Senate as he did not run for reelection in 2018. He was first elected in 1976.

Senator Hatch along with Senator Wyden (D-Oregon) have introduced the bill, Retirement Enhancement and Savings Act of 2018. This bill is bipartisan as Senator Wyden is the ranking member of this committee and Senator is the chair. Although Senator Hatch has agreed to some of Senator Wyden's proposals and vice versa, other Republicans may not vote to support a number of the proposals. The most controversial of the changes is the proposed change in the laws applying to inherited IRAs and inherited pension accounts.

The following IRA law changes are proposed. Unless stated otherwise, the law changes would be effective for 2019 (i.e. plan years and tax years beginning after December 31, 2018).

1. Repeal the traditional IRA rule preventing a person age 70 1/2 or older from making a current year traditional IRA contribution. Under current law a person age 70 1/2 or older who has qualifying compensation is able to make a SEP-IRA, SIMPLE IRA or Roth IRA contribution. Consistency suggests a traditional IRA contribution should also be able to be made.

2. Under current IRS guidance, a person is only eligible to make an IRA contribution if the person has qualifying compensation. In order to clarify the law, the law would be changed to define the term compensation as including any amount paid to an individual to aid the person in the pursuit of graduate or post-doctoral study. That is, certain taxable non-tuition fellowship and stipend payments are to be treated as compensation for IRA contribution purposes.

3. There are two proposed changes with respect to the rules applying to when an IRA owns S corporation bank stock. These changes are to take effect on January 1, 2018.

The law would be repealed that an IRA (including a Roth IRA) can qualify as a shareholder of a S corporation only to the extent the stock was held as of a certain date. The changed law is - an IRA (including a Roth IRA) can qualify as a shareholder of as corporation regardless of when the stock was acquired.

A second corresponding change (i.e repeal) would be made to Code section 4975 (d)(16) which granted a prohibited transaction exemption but only to the extent the stock was held as of the date of enactment. The changed law is - an exemption now applies and it is not dependent on when the S stock was acquired by the IRA as long as the other requirements of Code section 4975(d)(16) are met and other requirements of Code section 4975.

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IRAs, the GLBA Privacy Notice Requirements and the Prohibited Transaction Rules

A financial institution acting as an IRA custodian/trustee must comply with the privacy notice laws. The duty of a financial institution to furnish the privacy notices arises from the Gramm-Leach-Bliley Act (GLBA) and Regulation P which implements the GLBA. There are situations where the Consumer Financial Protection Bureau has primary jurisdiction rather than the Federal Reserve Board, OCC, FDIC and OTS and there are situations where the FTC has enforcement jurisdiction.

The privacy laws of GLBA govern the disclosure of nonpublic personal information. There is no exception because the new customer or consumer is an IRA account holder. A financial institution is required to furnish a notice to its customers describing its privacy policies and procedures; it must describe the conditions when it may disclose nonpublic personal information to nonaffiliated third parties; and it must describe the method or methods a consumer may use to prevent a financial institution from disclosing such information. In some situations the consumer has no right to opt out so that the financial institution is prevented from disclosing such information.

There is a second law with which a financial institution acting as an IRA custodian/trustee must be concerned if it is considering disclosing the personal information of its IRA account holders. The prohibited transaction rules of Code section 4975 will prevent in most situations a financial institution which is the IRA custodian/trustee from disclosing information about the IRA owner.

A financial institution is required to provide customers with certain privacy notices regarding the institution's privacy policies. The duty to furnish the privacy notice applies at three different times - initially, annually, and when a change in a privacy policy requires the furnishing of a revised privacy notice.

A financial institution must provide an initial privacy notice upon the establishment of a new customer relationship. See section 1016.4(a)(1) of GBL. This privacy notice must describe the institution's privacy policies. This duty applies to an individual establishing a new IRA with a financial institution when such individual has not previously been a customer of the financial institution.

A financial institution is also required to provide an annual privacy notice. The financial institution is able to define this annual period as being any 12 consecutive month period which is applied on a consistent basis. For example, if an individual opened a new IRA with Institution ABC on February 17, 2017, the annual notice to that customer for the second year must be furnished by December 31, 2018.

A financial institution is also required to provide a revised privacy notice if the institution modifies it procedures so that a revised privacy notice must be furnished. Except for a number of exceptions, a financial institution which chooses to disclose nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice must furnish a revised privacy notice.

The privacy notice must describe if and how the financial institution shares its consumers' nonpublic information with other parties. The privacy notice must describe how the financial institution protects the information it collects and maintains. The privacy notice must discuss whether or not an individual has the right to prevent such information from being shared with certain nonaffiliated third parties. And if so, how the person must furnish his or her instruction to opt out.

A financial institution has the duty to furnish a privacy notice to both consumers and customers. Not all consumers will be customers. A consumer is an individual who obtains or has in the past obtained or applied for a financial product or service from a financial institution to be used primarily for personal, family or household purposes.

A customer is a consumer who has a continuing customer relationship with the financial information.

Regulation P expressly provides that a customer relationship has been established when a consumer executes the contract to open a deposit account, including an IRA deposit account.

Regulation P also expressly provides that a consumer has a continuing relationship with a financial institution if the financial institution is the IRA custodian or trustee and the IRA holds an investment product and the financial institution acts as a custodian for securities or for assets in an IRA.

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IRAs, The GLBA Privacy Notice

A financial institution is not required to furnish a consumer with an initial privacy notice if the two conditions are met. First, the financial institution does not have a customer relationship with the consumer. Second, the financial institution does not disclose any nonpublic personal information about the consumer to any nonaffiliated third party other than as authorized by sections 1016.13, 1016.14 and 1016.15. Section 1016.13 creates an exception to the opt out requirements for service providers and joint marketing agreements. Section 1016.14 creates exceptions to the notice and opt requirements for processing and servicing transactions that a consume has requested or authorized.

A financial institution is not required to furnish a consumer with the annual privacy notice if two conditions are met. The BCFP recently adopted a new rule. First, the financial institution must provide nonpublic personal information to a third party only in accordance with the exceptions within GLBA (e,g, service provider). Secondly, the financial institution must not have changed its policies and practices since the last time it furnished its disclosure describing such policies and procedures.

The law has some major exceptions which allow a financial institution to disclose certain nonpublic personal information about a customer to a nonaffiliated third party.

A customer has no right or ability to opt out if the information is provided to a nonaffiliated third party which assists the financial institution in performing its banking duties as long as the financial institution provides the initial notice and the financial institution has a contract with the third party service provider and such contract prohibits the third party from disclosing or using this information.

In summary, the GLBA privacy notice rules apply to IRA account holders. A determination will need to be made if and how the financial institution will comply with the requirements to furnish the initial notice, the annual notice and any revised notice. It appears a financial institution could initially inform the new IRA account holder that it never shares nonpublic personal information except as GLBA permits. That is, a financial institution has no duty to inform the IRA account holder that it may use the services of a third party IRA service provider to assist with IRA reporting duties. There would be no duty to furnish the annual privacy notice to the IRA account holders as long it would not change its policies and procedures.

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4. The law would be changed to authorize or create new type of deemed IRAs. The proposed law change shows the political power of the mutual fund companies and the insurance companies. A 403(b) plan is required to be sponsored by an employer. Under current law it is not settled what happens to the individual participant 403(b) accounts when the employer terminates its sponsorship. That is, can these 403(b) accounts continue to exist as 403(b) accounts? It appears the IRS position is that such accounts cannot continue to exist as 403(b) accounts.

The law would be changed to provide that if the party holding such assets has demonstrated to the IRS' satisfaction under section 408(a)(2) that the party has met the requirements to be an IRA custodian/trustee, then as of the date of termination a 403(b) custodial account is deemed to be an IRA. And any custodial account will be deemed to be a Roth IRA only if the 403(b) custodial account was a Designated Roth account. The new law does not discuss what is required, if anything, of the various parties so that the new deemed IRAs may be administered. Presumably, the IRS would be required or authorized to furnish additional guidance. For example, would the provider of the custodial accounts be required to prepare 1099-R forms to report such deemed direct rollovers and would such party now the IRA custodian required to report such direct rollover contributions as rollover contributions on the participants' 5498 forms.

5. Revised RMD rules for IRA Beneficiaries and 401(k)/Pension plan Beneficiaries.

The new laws would apply to beneficiaries of any person dying after December 31, 2018. These proposed changes are major.

The new proposed RMD rules applying to a deceased individual with IRA and 401(k)/pension assets require an aggregated total be determined for such individual. This individual might have one beneficiary or multiple beneficiaries. Assets within a defined benefit plan would not be aggregated with assets within a defined contribution plan or an IRA.

If an individual dies with IRA and pension assets of less than $450,000 as of his or her date of death, then the current laws will continue to apply. For example, Jane Does dies with assets totaling $145,000, $280,000, or

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$325,000, then the current laws will continue to apply.

If an individual dies with IRA and pension assets of more than $450,000 as of his or her date of death, then to the extent of the excess amount, each beneficiary will be required to withdraw their share of the excess within 5 years after the death of the individual. It does not appear that the IRS' current 5 year rule could be used with respect to the excess. That is, the IRA or pension plan would not have until December 31st of the year containing the 5th anniversary of the individual's death. 5 years means 5 years and it commences on the date of the individual's death.

The purpose of the new law requiring inherited IRAs and 401(k) beneficiaries to close the inherited IRA or inherited 401(k) plan is to raise tax revenues. Again, the 5 year rule only applies when the decedent has an aggregate balance of more than $450,000 and the designated beneficiary is not an eligible designated beneficiary.

If an individual dies with IRA and pension assets of more than $450,000 as of his or her date of death and the individual had multiple plans, then the $450,000 amount and the amount in excess of the $450,000, then such amounts must be allocated to each plan comprising the multiple plans. The IRS is to write regulations defining how such allocations are to be made to the applicable plans.

If an individual dies with IRA and pension assets of more than $450,000 as of his or her date of death, then to the extent of the amount less than $450,000, then the current laws will continue to apply each beneficiary with respect to their pro rated amount.

There is a special exception for certain beneficiaries. The $450,000 limit and the 5 year rule does not apply to these beneficiaries.These beneficiaries will be able to use the life distribution rule. The beneficiary must commence periodic distributions not later then 1 year after the IRA account holder dies or at such later date as the IRS may define by regulation. The determination of whether a designated beneficiary is an eligible designated beneficiary is determined as of the date the IRA account holder dies.

The term used to discuss these beneficiaries are "eligible designated beneficiaries."

The following individuals will qualify as an eligible designated beneficiary:

1. the surviving spouse of the IRA accountholder;
2. a child of the IRA account holder if the child has not attained the age of majority;
3. if the beneficiary is disabled;
4. a chronically ill individual; or
5. an individual who is not more than 10 years younger than the IRA accountholder.

Once a child beneficiary reaches the age of majority, any remaining portion within the inherited IRA shall be distributed within 5 years after such date.

There is a special rule for a surviving spouse who is the beneficiary of the IRA accountholder. The distribution is not required to commence within one year of the IRA accountholder's death. The distribution is required to commence by the date the IRA account holder would have attained age 70 1/2. If the surviving spouse dies before such spouse commences distributions, then such spouse is treated as the IRA account holder for purposes of applying these beneficiary RMD rules.

There is an exception for certain existing annuity contracts. The new beneficiary rules will not apply to a qualified annuity which is a binding annuity contract on the date of enactment and at all times thereafter.

The new law does set forth any discussion that a surviving spouse has the right to treat the ceased spouse's IRA as his or her own IRA or to do a rollover. Presumably such rights will still exist.

Note that there are no special rules for a qualified trust which has been designated as the beneficiary of the IRA. The trust does not qualify as an eligible designated beneficiary. The 5 year rule will apply to the extent the trust is the designated beneficiary and the individual had aggregated assets of more than $450,000.

In summary, the proposed changes in the beneficiary RMD rules are complex and will radically change existing law. The public may well wish to express their dissatisfaction with these new proposed rules to their senators and House representatives. There is little attempt to grandfather existing IRA owners and 401(k) participants who have made contributions after relying on existing law.

First New 2018 Rollover Rule - Outstanding Loans in a Qualified Plan/401(k) Plan Can Now Be Rolled Over by the Tax Filing Deadline (April 15th)

Administering rollovers and direct rollovers into IRAs are complicated because each year new rollover rules are enacted increasing the situations where a person who has withdrawn IRA or pension funds is able to make a rollover contribution thereby allowing the person to not have to include the distribution in income.

A new rollover rule was authorized by the Tax Cuts and Jobs Act of 2017.

An employer is permitted to write its qualified plan to allow a plan participant to borrow from his or her vested account balance. There are, of course, certain loan rules. Many times a participant who separates from service with the sponsoring employer will have an outstanding loan. For example, Jane Roe has a vested 401(k) account balance of $97,000. She also has an outstanding loan of $15,000 which she was repaying under a 5 year repayment schedule. She wishes to move her 401(k) account to her traditional IRA by direct rollover. Current law does not permit her to move "her loan" to her traditional IRA.

She must resolve the outstanding loan of $15,000. Her first option is to repay the $15,000 loan to the plan. By doing so, she then may instruct to have the $97,000 directly rolled over to her traditional IRA. The source of the $15,000 can be other personal funds or the individual might be able to obtain a loan from a bank or other lender. The financial institution which is the IRA custodian may also make the loan to Jane Roe.

If she is unable to pay the $15,000 to the plan, the plan will offset her loan against her vested plan balance and she is treated as if she was distributed the $15,000. A special tax rule permits that the mandatory 20% federal income tax withholding rule does not apply to this situation. She is eligible to instruct to have the $82,000 directly rolled over to her traditional IRA. She will have to include the $15,000 distribution on her income tax return and pay tax at whatever marginal tax rate applies to her.

Her second option is to make a rollover contribution of $15,000 to her traditional IRA. Under the old law she had 60 days to make her rollover contribution. The new law permits her to make her rollover contribution by her tax filing deadline (plus extension). For example, if she can obtain another $15,000 loan, then she could use that $15,000 to make her rollover contribution and she no longer would have to include the deemed distribution of $15,000 in her income.

It is possible for a trust IRA or a self-directed IRA to have a loan as an investment, but the borrower must be with an unrelated third party. The borrower of the loan cannot be the IRA owner as this is a prohibited transaction.

The IRA custodian/trustee should have Jane Roe complete a rollover certification form indicating her rollover is the rollover of an outstanding loan.

Second New 2018 Rollover Rule - Certain IRS Repayments Of IRA Levies and Pension Plan Levies Can Now Be Rolled Over by the Tax Filing Deadline (April 15th)

Administering rollovers and direct rollovers into IRAs are complicated because each year new rollover rules are enacted increasing the situations where a person who has withdrawn IRA or pension funds (or is deemed to have withdrawn) is able to make a rollover contribution thereby allowing the person to not have to include the distribution in income.

A new rollover rule was authorized by the Bipartisan Tax Act of 2018.

The IRS will levy a person's IRA or 401(k) account if the person has an unpaid federal tax debt. The levy results in a distribution which the individual must include in their income and the individual will need to pay the applicable tax liability. There are times the IRS must return the levied amount to the individual.

There can be various reasons why the IRS must return a portion or all of the levied amount. The IRS does make mistakes.

Prior law did not grant any type of relief to a person who was repaid a levy amount by the IRS. The individual had still withdrawn funds from his or her IRA or pension plan. Almost always the 60 day rollover period had expired so the person was unable to repay these funds into an IRA or the pension plan.

The new law provides an individual is eligible to rollover the returned funds either into a pension or an IRA. This special rollover must be made no later than the due date of the individual's tax return for the year the money is returned by the IRS, but not including any extension. For example, the IRS levied on John Doe's traditional IRA to the extent of $40,000 on March 9, 2018. The IRS returns the $40,000 (plus interest) on June 10, 2019. John Doe would have until April 15, 2020 to make a rollover contribution of such amount to his traditional IRA.

Note this special rollover does not count for purposes of the once year or once per 12 month rollover rule.

Also note the law expressly states that if the funds were taken from an inherited IRA that the inherited IRA beneficiary does have the right to make a rollover contribution. This is the only exception under current law to the rule that a non-spouse beneficiary is ineligible to rollover a distribution from an inherited IRA.

The IRA custodian/trustee should have John Doe complete a special rollover certification form indicating his rollover contribution is comprised of certain levy funds returned by the IRS and complies with the applicable special rules.

SIMPLE-IRA Summary Description—IRA Custodian Must Furnish by September/October 2018 for 2019

What are a financial institution's duties if it is the custodian or trustee of SIMPLE IRA funds? After a SIMPLE IRA has been established at an institution, it is the institution's duty to provide a Summary Description each year within a reasonable period of time before the employees' 60-day election period. CWF believes that providing the Summary Description 30 days prior to the election period would be considered "reasonable." The actual IRS wording is that the Summary Description must be provided "early enough so that the employer can meet its notice obligation." You will want to furnish the Summary Description to the employer in September or the first week of October. The employer is required to furnish the summary description before the employees' 60-day election period.

IRS Notice 98-4 provides the rules and procedures for SIMPLEs. This notice is reproduced in CWF's IRA Procedures Manual.

The Summary Description to be furnished by the SIMPLE IRA custodian/trustee to the sponsoring employer depends upon what form the employer used to establish the SIMPLE IRA plan.

The employer may complete either Form 5305-SIMPLE (where all employees' SIMPLE IRAs are established at the same employer-designated financial institution) or Form 5304-SIMPLE (where the employer allows the employees to establish the SIMPLE IRA at the financial institution of his or her choice).

There will be one Summary Description if the employer has used the 5305-SIMPLE form. There will be another Summary Description if the employer has used the 5304-SIMPLE form. If you are a user of CWF forms, these forms will be Form 918-A and 918-B.

The general rule is that the SIMPLE IRA custodian/trustee is required to furnish the summary description to the employer. This Summary Description will only be partially completed. The employer will be required to complete it and then furnish it to his employees. The employer needs to indicate for the upcoming 2017 year the rate of its matching contribution or that it will be making the non-elective contribution equal to 2% of compensation.

In the situation where the employer has completed the Form 5304-SIMPLE, the IRS understands that many times the SIMPLE IRA custodian/trustee will have a minimal relationship with the employer. It may well be that only one employee of the employer establishes a SIMPLE IRA with a financial institution. In this situation, the IRS allows the financial institution to comply with the Summary Description rules by using an alternative method.

To comply with the alternative method, the SIMPLE IRA custodian/trustee is to furnish the individual SIMPLE IRA accountholder the following:

- A current 5304-SIMPLE — this could be filled out by the employer, or it could be the blank form
- Instructions for the 5304-SIMPLE
- Information for completing Article VI (Procedures for withdrawal) (You will need to provide a memo explaining these procedures.)

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- The financial institution's name and address.

Obviously, if an institution provides the employee with a blank form, he/she will need to have the employer complete it, and, the employee may well need to remind the employer that it needs to provide the form to all eligible employees.

CWF has created a form which covers the "alternative" approach of the Summary Description being provided directly to an employee.

The penalty for not furnishing the Summary Description is $50 per day.

Special Rule for a "transfer" SIMPLE IRA.

There is also what is termed a "transfer" SIMPLE IRA. If your institution has accepted a transfer SIMPLE IRA, and there have been no current employer contributions, then there is no duty to furnish the Summary Description.

If there is the expectation that future contributions will be made to this transfer SIMPLE IRA, then the institution will have the duty to furnish the Summary Description.

Reminder of Additional Reporting Requirements

The custodian/trustee must provide each SIMPLE IRA account holder with a statement by January 31, 2017, showing the account balance as of December 31, 2016, (this contribution and distribution is the same as for the traditional IRA), and include the activity in the account during the calendar year (this is not required for a traditional IRA). There is a $50 per day fine for failure to furnish this statement (with a traditional IRA, it would be a flat $50 fee).

Is it Still Possible to Establish a SIMPLE-IRA Plan for 2018?

Yes, if the sponsoring business has never sponsored a SIMPLE-IRA Plan before and if the business has not made any contributions for 2018 to another type of retirement plan (e.g. profit sharing plan or SEP).

A person or business can set up a SIMPLE-IRA plan effective on any date between January 1 and October 1 of a year, provided it did not previously maintain a SIMPLE-IRA plan. This requirement does not apply if there is a new employer that comes into existence after October 1 of the year the SIMPLE-IRA plan is set up and you set up a SIMPLE-IRA plan as soon as administratively feasible after you come into existence. If it previously maintained a SIMPLE-IRA Plan, it can set up a SIMPLE-IRA plan effective only on January 1 of a year. A SIMPLE-IRA plan cannot have an effective date that is before the date you actually adopt the plan.

SIMPLE-IRA Fees May be Charged Good Notices and Timing are Needed

The IRS has written two model SIMPLE-IRA forms. One (Form 5305-SIMPLE) provides for a designated financial institution and other (Form 5304-SIMPLE) does not.

An employer may choose to complete Form 5305-SIMPLE because it allows the employer to designate a particular financial institution to which all SIMPLE-IRA contributions will be made. This right greatly reduces the employer's administrative tasks of having to make contributions at multiple financial institutions. An employer which sponsors a SEP does not have such a right. Each employee can have his or her SEP-IRA set up with the financial institution of its choice. These requirements must be met in order for there to be a designated financial institution:

1. The employer and the financial institution must agree in writing the financial institution will be the designated financial institution (DFI).
2. Upon a participant's request his or her SIMPLE-IRA balance will be transferred without cost or penalty to another SIMPLE-IRA or to any IRA once 24-months have elapsed since the date of the first SIMPLE-IRA contribution.
3. Each participant must be furnished a notice explaining the procedures which must be used in order that the SIMPLE-IRA balance will be transferred without cost or penalty.

If a financial institution is not a DFI, then it is free to impose a reasonable fee with respect to transferring funds from the SIMPLE-IRA to another SIMPLE-IRA or any IRA if the 2-year requirement has been met.

The general rule is – if a financial institution is a DFI, it is unable to impose any fee and/or cost for transferring funds from the SIMPLE-IRA to another SIMPLE-IRA or any IRA if the 2-year requirement has been met. Code

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section 408(p)(7) states this requirement. "A transfer is deemed to be made without cost or penalty if no liquidation, transaction redemption or termination fee, or any commission, load (whether front-end or back-end) or surrender charge, or similar fee or charge is imposed with respect to the balance being transferred.

Note that this rule does not prevent the imposition of fees for any non-transfer transaction. For example, if the SIMPLE-IRA accountholder wanted to take a distribution, the SIMPLE-IRA custodian could impose a distribution fee, or if the SIMPLE-IRA accountholder would close his or her SIMPLE-IRA, the financial institution could impose a closing fee. This restriction of fees applies once the employee has notified the custodian the he or she will be exercising their rights under the transfer policy.

The DFI will need to settle on its fee policies and write a notice explaining such policies and procedures. The DFI should furnish this notice to both the employer and the employees. It could be an attached summary description which the DFI furnishes the employer.

<u>In 1998 in Notice 98-4 the IRS created and announced some major exceptions to this no fee for transfers requirement.</u>

Exception #1. The financial institution may impose transfer fees as long as SIMPLE-IRA participants are given a reasonable time in which to accomplish a transfer without cost or penalty. If a participant fails to do the transfer during this period, then fees and costs may be imposed for transfers during other time periods.

An employer is required to furnish the eligible employees a summary description for 2019 during the period from November 2, 2018 to December 31, 2018.

The IRS has concluded that this same 60-day period may apply for the transfer rules. That is, the employee during this period must instruct the employer and the DFI that he or she will be transferring their 2019 contributions. No fee would be charged for a transfer during this period.

IRS rules require that the time period during which transfers may be made without cost or penalty must be reasonable. The IRS has said that limiting the free transfer period to the same standard 60-day period is reasonable. For existing employees, the standard 60-day period is November 2, 2018 to December 31, 2018. For a newly hired employee in 2019, the 60-day period would start on the day he or she becomes eligible for the SIMPLE-IRA plan. Of course, the DFI could define the period for transfers without any cost as being longer than 60-days, but a 60-day period is compliant.

Exception #2. The restriction on charging fees for a transfer of SIMPLE-IRA funds applies to the contributions to be made in 2019, but does not apply to the funds comprising the SIMPLE-IRA as of December 31, 2018. That is, the DFI may impose transfer fees to the extent existing balances would be transferred.

Exception #3. Although the DFI may not assess an employee any fee with respect to a transfer, the DFI and the employee may enter into an agreement that the employer shall pay such fee(s).

Exception #4. If the DFI charges an annual administration fee to all of its IRAs, including its SIMPLE-IRAs, the imposition of this administration fee does not violate the no fee for transfer rules.

If an employee instructs that he or she wishes to have his or her 2019 SIMPLE-IRA contributions transferred, then the SIMPLE-IRA custodian must do so on a reasonably frequent basis. The IRS has stated that "at least monthly" is deemed to be a reasonably frequent basis. Again, the SIMPLE-IRA custodian could decide to transfer the funds on a per payroll basis.

If an employee instructs that he or she wishes to have his or her 2019 SIMPLE-IRA contributions transferred, then the SIMPLE-IRA custodian is permitted to restrict how such contributions may be invested before being transferred. Such investment must have no sales charge. There only needs to be one limited investment.

In summary, many financial institutions performing SIMPLE-IRA services wrongly believe that fees cannot be charged on SIMPLE-IRAs The only time there is a legal restriction on fees for SIMPLE-IRAs is when the employer has chosen one financial institution to act as the designated financial institution. And then the restriction applies only to certain transfers. As discussed above, the IRS has created a number of exceptions allowing for fees to be charged in some transfer situations.