THE Pension Digest

December 2022
Published Since 1984

ALSO IN THIS ISSUE –

Collin W. Fritz and Associates, Inc.,
"The Pension Specialists "

Major IRA Law Changes in SECURE Act 2.0 as Incorporated into the Omnibus Act of 2022

1. An IRA accountholder's RMD age changes to 73 from age 72 for 2023. This means those IRA accountholders attaining age 72 in 2023 no longer will have an RMD for 2023. Starts for tax year 2023.

2. The 50% excess accumulations RMD tax has been repealed for 2023 and subsequent years. The highest tax rate for 2023 and subsequent years will be 25%. If certain requirements are met the rate will be 10%. Presumably, the IRS would still have the authority to waive the tax. Starts for tax year 2023.

3. The $1,000 IRA catchup contribution for those IRA accountholders age 50 or older will be indexed. Presently it is not. Starts for tax year 2024.

4. There are two changes to the QCD rules The limit of $100,000 will be indexed for inflation. An eligible IRA accountholder or beneficiary is now allowed one time to make a QCD equal to $50,000 to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts. Starts for tax year 2023.

5. IRS is instructed it must expand EPCRS in two ways. Under current law the IRS permits employer sponsored plans to correct tax qualification situations. In many situations an employer must pay the IRS a fee to retain its tax qualified status.

A. An employer which has made an inadvertent mistake (i.e one which is not an egregious mistake) would be permitted to self-correct it without paying the IRS and fee or penalty. The IRS would need to issue additional guidance.

B. This revised procedure would be expanded to cover various IRA failures.

Congress chose to codify the IRS program regarding the Employee Plans Compliance Resolution System. It is effective immediately and applies for 2023. This is the MAJOR change for IRAs. It is good news for IRA accountholders. It allows the correction of inadvertent IRA errors and exempts certain failures regarding RMDs. The IRS has never applied its EPCRS program to IRAs. Now it must. The IRS will have to define inadvertent. With respect to retirement plans the new law allows more types of errors to be self-corrected.

6. There are numerous new exceptions to the 10% tax applying to pre-age 59½ distributions.

The concept of current law is - a person should not be withdrawing these funds prior to age 59½ because these are retirement funds. But there are now many exceptions when the law permits a person to withdraw the funds and pay tax on the amount withdrawn even though not used for retirement, but the 10% tax is not assessed. The proposal is to create new exceptions for additional worthy causes.

Continued on page 2

Major Law Changes,
Continued from page 1

A. An exception for a terminal Illness. Starts for tax year 2023.

B. An exception for domestic abuse. There would be a limit of $10,000 or 50% of the account balance if the account balance was less than $20,000. Such a withdrawal could be rolled over under special rollover rules. Starts for tax year 2024.

C. The 10% tax for taking a pre-age 59½ distribution will not apply to distribution used to pay certain emergency expenses. These expenses must be unforeseeable and/or creating an immediate financial need relating to a personal or family situation. A person is limited to withdrawing only one distribution per year of up to $1,000 for three years. The person is allowed to repay (i.e. rollover) the distribution within 3 years. If repayment occurs during the three year repayment period it appears there could be additional emergency distribution for tax year 2024.

D. An exception for withdrawing the income related to an excess IRA contribution. Starts for tax year 2023.

E. A clarification that the waiver of the 10% tax for a distribution which is a substantially equal periodic payment applies when the account is rolled over, there is an exchange of an annuity or the annuity satisfies the RMD rules.

F. An IRA owner would be authorized to withdraw $2,500 to pay premiums related to a qualifying long-term care insurance contract and the 10% additional tax will not be owed. The long term contract is one that will provide meaningful financial assistance if the IRA owner needs home based assistance or nursing home care. This change is effective December 23, 2025.

7. 3-Year Repayment Period to apply to a qualified birth or adoption distribution. The law has a 1-year period for certain distributions which the recipient repays. The SECURE Act did not define a time period when such a distribution was to be repaid. Most people assumed it would the 1-year rule. It will be 3 years. Starts for 2023 and is retroactive for 3 years.

8. A SEP-IRA may now be established to benefit a nanny or other domestic worker. In the past a SEP-IRA plan could be established only if there was a sponsoring business, including a one person business. The technical problem was, the person or family wanting to hire a nanny and make a SEP-IRA contribution was not a business and so the SEP-IRA could not be established. This change starts in 2023.

9. SIMPLE-IRA Changes. An employer sponsoring a SIMPLE-IRA plan will be permitted to make limited contributions to participants in addition to its matching contribution (1-3%) or its 2% nonelective contribution. The additional contributions must be made using a uniform formula. The additional contribution is limited to the lesser of $5,000 (indexed) or 10% of a person's compensation. Starts for tax year 2024.

An employer with no more than 25 employees sponsoring a SIMPLE-IRA plan will be permitted to increase the elective deferral limit and the catch-up deferral limit by 10% for those participants age 50 or older.

An employer with 26 to 100 employees sponsoring a SIMPLE-IRA plan will be permitted to increase the elective deferral limit and the catch-up deferral limit by 10% for those participants age 50 or older as long as the employer provides either a 4% match or a 3% nonelective contribution. Starts for tax year 2024.

10. Starting in 2027 the Saver's Tax Credit is changing. From 2023-2026 the credit will be as it is currently, The person receives a tax credit which lowers their current year's tax bill. The change requires the credit amount earned to be deposited in an IRA or retirement plan. From 2023-2026 the IRS is supposed to promote the Saver's Credit and explain better that a person will incur tax penalties if the funds are withdrawn prematurely.

11. A Major Change in the Disaster Relief Laws. Current law permits a person to withdraw $100,000 on account of a federally declared disaster. This $100,000 limit would be reduced to $22,000. This change is effective for disasters occurring on or after January 26, 2021. It applies to 2023.

Three of the current benefits would not be changed - 10% additional tax is not owed, may spread the distribution over 3 years for tax purposes and the person is allowed to repay the amount over 3 years. The laws applying to loans from 401(k) plans would be changed

Continued on page 3

Major Law Changes,
Continued from page 2

to increase the permissible loan amount on account of a disaster and the repayment period could be longer than 5 years.

12. Roth Contributions Can Be Made to a SIMPLE-IRA or a SEP-IRA. SIMPLE-IRAs are now allowed to accept elective deferrals be made to a Roth account. SEP-IRAs are now allowed to be written to allow an employer to offer to its employees the right to treat in total or in part the employer's contribution as a Roth contribution. It applies for 2023.

13. QLAC Changes. A QLAC is a qualifying longevity annuity contract. QLACs are generally deferred annuities that begin to make deferred payments at the end of a person's life expectancy. By starting distributions so late at age 85 one in ensured to still have funds in their later years. The new law repeals the current 25% limit and allows a person to have 100% of their IRA funds invested in a QLAC. Current law limits a person to having $135,000 invested in a QLAC. This has been increased to $200,000. A person with less than $200,000 in IRAs and other funds can move their entire IRA balance into a QLAC and not be subject to the standard RMD rules until the year one reaches age 85. The new law applies to QLACs purchased after the date of the new law. It applies for tax year 2023.

14. Under current law there is no right to rollover Section 529 funds into a Roth IRA. If certain requirements are met, such a rollover is permissible. This rollover would be processed as an annual Roth IRA contribution. There would be a lifetime limit of $35,000. The rollover is only permissible if the section 529 account had been maintained for 15 years. Starts for distributions occurring in 2024.

15. Present law allows an employer to write its plan to require that a terminating participant must withdraw their vested account balance if $5,000 or less. A default IRA must be established if their account balance is $1,000 or more and the person fails to furnish a distribution instruction. If less than $1,000 it may be paid out. The $5,000 limit may be changed to be $7,000.

16. The DOL will now be required to maintain a data base to help employees locate an employer who is holding retirement benefits for them and will help employers find employees who have failed to withdraw their plan balance. The law requires such a data base for retirement plans but not for IRAs.

17. Statute of Limitations for IRAs. The law has been that the standard three year statute of limitation period does not start to run until he taxpayer has filed Form 5329 to reflect that an excise tax amount is owed. For many IRA owners they remain liable for an excess contribution or an excess accumulation for many years because he or she never filed Form 5329. The amount of interest and tax penalties could be very high. The law change is - the 3-year statute of limitations start to run from when the person files their Form 1040 for that year regardless of whether the Form 5329 is filed. There is an exception for excess contributions. The time period is 6 years rather than 3 years. There is a longer period than the 6 years if there has been a bargain sale to an IRA. Starts for tax year 2023.

18. Prohibited Transaction Clarification. If an IRA accountholder has multiple IRA plans and a prohibited transaction occurs with respect to one of the IRAs, it is made clear that only the IRA with respect to which the prohibited transaction occurred is disqualified. This applies for 2023.

19. Substantially equal periodic payment rule clarification. The exception to the 10% rule continues to apply when a person has established a schedule even though there has been a rollover, an exchange of an annuity providing the payments or an annuity which satisfies the RMD rules.

20. Special RMD Beneficiary Rule for a Special Needs Trust. A special needs trust may provide for a charitable organization to be the remainder beneficiary and still qualify as an EDB trust entitled to stretch out distributions over the life expectancy of the disabled beneficiary. It would not be required to use the 10-year rule or another rule because the charitable organization was the remainder beneficiary. Starts for 2023.

21. Repeal of the 10% Tax When An Excess Contribution Is Withdrawn A person is required to withdraw the related income when an excess contribution is made. Prior to December 23, 2022, the person had to pay tax on the income and the 10% tax if under age $59^1/_2$. The 10% tax has been repealed effective for any determination of, or affecting, liability for taxes, interest, or penalties which is made on or after December 23, 2022,

Continued on page 7

Basic Approach in Applying the RMD Trust Beneficiary Rules

1. The general rule is - a beneficiary of a see through trust is treated as a beneficiary of the IRA owner if the beneficiary is a primary beneficiary of the trust. That is, the trust is not treated as the IRA beneficiary for RMD purposes. The beneficiary of the trust is treated as the IRA beneficiary.

   In order to be a see through trust the beneficiary must be entitled to receive amounts in the trust arising from the IRA and such amount is not contingent nor delayed until the death of another trust beneficiary who does not predecease the IRA owner or is not treated as having predeceased the IRA owner.

   Whether any other beneficiary of that trust is treated as a beneficiary of the IRA owner, depends upon whether the trust is a conduit trust or an accumulation trust.
2. An accumulation trust is a see-through trust which is not a conduit trust. The accumulation trust may have multiple beneficiaries who all must be considered in determining who is the oldest beneficiary. A beneficiary of an accumulation trust is treated as a beneficiary of the IRA owner if the beneficiary has a residual interest in that part of the trust entitled to the IRA funds.

   When a trust is an accumulation trust all beneficiaries will be considered to determine the measuring life and all must be EDBs if the IRA owner has died before their RBD or the 10-year rule will apply.
3. Is the trust a see through (qualified) trust? Four requirements must be met to be a see-through trust:
   1. The trust is valid under state law or would be but for the fact there is no corpus;
   2. the trust is irrevocable or will by its terms become irrevocable upon the death of the IRA owner;
   3. the beneficiaries of the trust who are beneficiaries with respect to the IRA funds are identifiable; and
   4. the specified documentation requirements are satisfied.
4. A conduit trust is one which requires that any IRA distribution to the trust will, upon receipt by the trustee, be paid directly to or for the benefit of certain beneficiaries. The conduit trust is not required to make an immediate total close-out distribution just because all of the trust's specified beneficiaries have died.
5. If a trust is a conduit trust, then when is the surviving spouse beneficiary treated as the sole primary beneficiary?

   The surviving spouse is treated as the sole beneficiary because the spouse could receive amounts that are neither contingent upon nor delayed until the death of another beneficiary. Even if IRA funds have not been totally withdrawn from the IRA and paid to the trust prior to the death of the surviving spouse, the subsequent beneficiary is NOT treated as a beneficiary for RMD purposes.
6. If a subsequent beneficiary's interest is minimal or remote that beneficiary is to be disregarded for RMD calculation purposes. A beneficiary is to be disregarded if the beneficiary could receive payments from the trust arising from the IRA only upon the death of another trust beneficiary whose sole benefit is a residual interest in the trust and that beneficiary did not predecease the IRA owner.
7. A trust is an applicable multi-beneficiary trust

   The two applicable multi-beneficiary trusts - Type I and Type II.

   An applicable multi-beneficiary trust is an EDB entitled to use the life distribution rule. A trust is an applicable multi-beneficiary trust if it has more than one beneficiary, at least one beneficiary is·disabled or chronically ill and all the beneficiaries are considered when determining the distribution period.

   A type I multi-beneficiary trust is where the trust terms require upon the death of the IRA owner the trust to be immediately divided into separate trusts for each beneficiary.

   A type II applicable multi-beneficiary trust is one which requires that all distributions must be limited and made to the beneficiaries who are disabled or chronically ill. Once all of these individuals have died, then the remaining funds may be made to the other trust beneficiaries.

   Note that the separate accounting rules will apply to the separate trusts set up under a type I multi-beneficiary trust.

Current IRS Summary of Saver's Credit – Applies Until 2027 When it Will Change

IR-2022-224, December 21, 2022

Save for retirement now, get a tax credit later: Saver's Credit higher limits can help low- and moderate-income workers save more in 2023

WASHINGTON — The Internal Revenue Service reminds low- and moderate-income workers that they can save for retirement now and possibly earn a special tax credit in 2022 and years ahead.

The Retirement Savings Contributions Credit, also known as the Saver's Credit, helps offset part of the first $2,000 workers voluntarily contribute to Individual Retirement Arrangements, 401(k) plans and similar workplace retirement programs. The credit also helps any eligible person with a disability who is the designated beneficiary of an Achieving a Better Life Experience (ABLE) account, contribute to that account. For more information about ABLE accounts, see Publication 907, available on IRS.gov.

The Saver's Credit is available in addition to any other tax savings that apply.

Still time to take action

Eligible workers still have time to make qualifying retirement contributions and get the Saver's Credit on their 2022 tax return. People have until April 18, 2023- the due date for filing their 2022 return - to set up a new IRA or add money to an existing IRA for 2022. Both Roth and traditional IRAs qualify.

On the other hand, those participating in workplace retirement plans must take action by the end of 2022 for contributions to count for this year. This means elective deferrals (contributions) must be made by December 31 to a:

- 401(k) plan.
- 403(b) plan for employees of public schools and certain tax-exempt organizations.
- Governmental 457 plan for state or local government employees.
- Thrift Savings Plan (TSP) for federal employees.

Contributions to certain other workplace retirement plans also qualify. See the instructions to Form 8880 for details.

Employees unable to set aside money this year may want to schedule their 2023 contributions soon so their employer can begin withholding them in January.

Who qualifies

Income limits, based on a taxpayer's adjusted gross income and marital or filing status, apply to the Saver's Credit. But due to inflation, the limits will increase markedly in 2023.

As a result, the Saver's Credit can be claimed by:

- Married couples filing jointly with incomes up to $68,000 in 2022 or $73,000 in 2023.
- Heads of household with incomes up to $51,000 in 2022 or $54,750 in 2023.
- Married individuals filing separately and singles with incomes up to $34,000 in 2022 or $36,500 in 2023.

Like other tax credits, the Saver's Credit can increase a taxpayer's refund or reduce the tax owed. Though the maximum Saver's Credit is $1,000 ($2,000 for married couples), the IRS cautioned that it is often much less and, due in part to the impact of other deductions and credits, may, in fact, be zero for some taxpayers.

A taxpayer's credit amount is based on their filing status, adjusted gross income, tax liability and amount contributed to qualifying retirement programs or ABLE accounts. Form 8880 is used to claim the Saver's Credit, and its instructions have details on figuring the credit correctly.

In tax year 2020, the most recent year for which complete figures are available, Saver's Credits totaling more than $1.7 billion were claimed on about 9.4 million individual income tax returns. That's an average of about $186 per eligible return.

The Saver's Credit supplements other tax benefits available to people who set money aside for retirement. For example, most workers may deduct their contributions to a traditional IRA. Though Roth IRA contributions are not deductible, qualifying withdrawals, usually after retirement, are tax-free. Normally, contributions

Continued on page 6

Saver's Credit,
Continued from page 5

to 401(k) and similar workplace plans are not taxed until withdrawn.

Some restrictions apply

Other special rules that apply to the Saver's Credit include:

- Eligible taxpayers must be at least 18 years of age.
- Anyone claimed as a dependent on someone else's return cannot take the credit.
- A student cannot take the credit. A person enrolled as a full-time student during any part of 5 calendar months during the year is considered a student.

Any distributions from a retirement plan or ABLE account reduce the contribution amount used to figure the credit. For 2022, this rule applies to distributions received after 2019 and before the due date, including extensions, of the 2022 return. Form 8880 and its instructions have details on making this computation.

To learn more about other ways to get ready for the tax season ahead, visit IRS.gov/getready.

Email Guidance – Estate as the IRA Beneficiary

Q-1. We had a client that passed away, who had an IRA with us. He had no beneficiaries on the IRA, but he does have three children who have opened an estate account with us. Originally they had closed the IRA and deposited the funds into the estate account. They have since consulted a tax advisor, who asked if the funds could have been deposited into an estate-owned IRA I'm not sure how that would work or how the funds should be distributed. Do you have any guidance on this?

A-1. I do. The children should have asked questions before a distribution was made to the estate.

Federal tax law provides a non-spouse beneficiary is ineligible to make a rollover. That is, a non-spouse beneficiary has no rollover rights. A distribution once made to a non-spouse beneficiary is irrevocable. Under current law there is no exception that allows a correcting rollover just because somebody made a mistake.

In this situation the general procedure is - the IRA custodian will establish an inherited IRA It will be titled, the estate of Jane Doe as beneficiary of Jane Doe's. The estate is not required to close immediately this inherited IRA by taking a lump sum distribution. The personal representative will need to instruct how and when distributions will be taken to comply with the beneficiary RMD rules.

If the deceased IRA owner had not taken their 2022 RMD it should be paid to the estate by December 31. The IRS has proposed the December 31 deadline be changed to be April 15 of the following year.

There are special RMD rules applying depending upon whether the IRA owner died before or after their required beginning date. In general, the 5-year rule applies when the person died before their required beginning date and a special life distribution rule applies when the IRA owner died after their required beginning date. If a bank is furnished an opinion letter from an attorney or an accountant the bank may set up individual inherited IRAs for the children and these schedules would apply to the children.

Q-2. We have a customer who passed away and listed his estate as the beneficiary. My question is do I have to open an estate account to transfer the funds from the deceased customer prior to closing or can I just change the ownership to the estate and notate these changes on the existing paperwork and when closed code it as a death distribution?

I can see the transfer being cleaner, but also more work if not required.

What are your thoughts on this?

A-2. The normal procedure is to set up an inherited IRA for the estate. For example, the Jane Doe estate as beneficiary of Jane Doe's IRA There is a transfer from the decedent's IRA to the beneficiaries IRA

The estate is not required to close out the inherited IRA immediately. The 5-year rule applies when the IRA accountholder dies before their required beginning date and a special life distribution rule when the IRA accountholder died after their required beginning date.

Continued on page 7

Email Guidance,
Continued from page 6

The bank is to deal with the personal representative of the estate. He or she will give distribution instructions. An estate as any other non-spouse beneficiary cannot rollover a distribution.

The personal representative must decide when funds will be moved from the IRA to the estate account. The RMD rules must be complied with.

Email Guidance – ESOP to Inherited Roth IRA

Q-1. How do we report the direct rollover of an ESOP distribution into an inherited Roth IRA by a beneficiary?

A-1. Your institution as the Roth IRA custodian reports it as a rollover contribution.

The ESOP must prepare the Form 1099-R for the beneficiary showing that she or he is doing a direct rollover. This deemed distribution is taxable because the taxable funds are going into a Roth IRA. Box 1 and 2A will show the same gross and taxable value. The reason code in box 7 is to be G4 for the direct rollover. Note the Form 1099-R does not inform the IRS into which type of IRA the funds went.

Your institution will prepare the 2022 Form 5498 for the inherited Roth IRA. You will use the titling to Indicated this is an inherited Roth IRA. Box 2 will be completed to show the amount directly rolled over.

The individual will complete their tax return to report this quasi-conversion. The ESOP amount (possibly cost basis) will be included in income and taxes will need to be paid.

IRS guidance authorizes this individual being able to move the inherited ESOP funds Into an inherited Roth IRA. The IRS has not yet finalized the rules for this situation as the proposed regulation is still proposed.

If the beneficiary is not an EDB, the beneficiary will use the 10-year rule to close out this inherited Roth IRA. No distribution is required for years 1-9.

If the beneficiary is an EDB, the beneficiary could use the life distribution rule or the 10-year rule to close out this inherited Roth IRA.

Is the individual directly rolling over shares of stock or cash? I really don't need to know. The individual will need to meet the 6-year rule for this inherited Roth IRA. Once met all income, including stock appreciation, will be tax free.

Email Guidance – Roth IRA Conversion

Q-1. I have a client wishing to convert part of his traditional IRA to a Roth IRA before year end. I assume the transfer from the traditional IRA gets reflected on a 1099-R.

- How do I ensure the transfer into the Roth gets reflected as a conversion rather than a Roth contribution?
- Does the IRS or CWF have documents that must be completed to reflect the conversion?
- Where we manage the current traditional IRA and will manage the Roth IRA must we complete a DOL Rollover Checklist for this conversion?

A-1. On the Form 1099-R, the transfer must be treated as a normal distribution. Use code 7 if the person is over age 59½. The individual includes in income.

For Form 5498 for the Roth IRA the amount converted is to be reported in box 3.

The individual must complete Part II of Form 8606.

You must make the business decision regarding the DOL Rollover checklist. See section 1.27 A

Major Law Changes,
Continued from page 3

without regard to whether the act or the failure to act upon which the determination is based occurred before December 23, 2022. Example. Jane Doe made an excess contribution on July 1, 2022. She must withdraw the related income. She does so on December 30, 2022. The 10% tax is not owed. It has been repealed.

22. A surviving spouse is eligible to be treated as the deceased employee for purposes of the RMD rules. Starts for tax year 2024.

Are IRA Amendments Required For 2022-2023?

There are now three major changes to be communicated in the 2022-2023 IRA amendment: the RMD changes for beneficiaries; the substantial changes in the 2023 IRA limits and the many IRA changes required by the Omnibus Bill signed into law on December 23, 2022 which go into effect for 2023. The following are the changes prior to the Omnibus Bill.

In 2022 there have been many important IRA changes affecting 2022 and 2023:

1. New RMD rules for beneficiaries;
2. New maximum IRA contribution limits of $6,500 and $7,500;
3. New maximum SEP-IRA ($66,000) and SIMPLE-IRA contribution limits;
4. New compensation limits applying to all four types of IRAs (traditional, Roth, SEP and SIMPLE showing large changes due to inflation;
5. New taxation rules for Iowa residents;
6. Revised IRS procedures for withholding with respect to an IRA distribution; and
7. Other technical changes.

In February of 2022 the IRS issued a new proposed regulation setting forth new beneficiary RMD rules. Theis proposed regulation has not been finalized, but in all likelihood the proposed changes will be adopted. These rules are important because when an IRA beneficiary fails to withdraw their RMD they will owe the 50% excelss accumulations tax. The IRS has announced that the IRS will not try to collect this tax for certain 2021 or 2022 RMDs which should have been withdrawn under these new proposed rules.

The governing IRA regulation requires an IRA custodian/trustee to furnish an IRA amendment when the IRA plan agreement provisions are changed or when one or more of the topics discussed in the IRA disclosure statement is no longer correct and it needs to be revised or amended to set forth a current and correct explanation. Regulation 1.408-6(4)(ii)(C) requires that an IRA amendment be furnished no later than the 30th day after the amendment is adopted or becomes effective.

A cardinal rule of IRA and pension law is, the terms of the IRA plan agreement control and in order for a person to benefit from a law change the plan document must be revised to set forth the new law. Individuals have the right to be informed and understand current laws and the particulars of the specific IRA plan agreement. Many individuals and possibly many IRA custodians might wish the law to be, since federal tax law authorizes a certain tax benefit, then a person should be able to realize a tax benefit regardless of what the IRA plan agreement provides. The law does not adopt this approach. For example, in order for a person age 74 to make an IRA contribution in 2022 or subsequent years to his or her traditional IRA or Roth IRA, the IRA plan agreement must be revised to authorize the person to make such a contribution.

The IRS in Notice 2022-23 has extended the amendment deadline for IRAs from December 31, 2022 to December 31, 2025. A user of IRS Model forms is permitted to continue to use these forms until revised by the IRS.

Each institution must make its own determination because one needs to understand when was the IRA agreement last amended and how is it being amended. A primary question is, "when is the last time the financial institution furnished an amendment?" What do the current IRA plan agreements provide? Are there some IRAs set up with one certain plan agreement and others with a different plan agreement?

A long time ago (1986/1987) the IRS acknowledged that there are times that even though the IRA plan agreement has not been changed, a disclosure statement amendment must still be furnished. The IRS stated there needed to be a disclosure statement amendment discussing or explaining the deductible/ nondeductible rules.

In summary, answering a question whether or not an amendment is required is not simple. Each financial institution will need to make its own decision to furnish one or both amendments.

It is true that the IRS has not been very active in auditing whether or not IRA custodian/trustees are furnishing IRA amendments as required by the IRA regulation. We at CWF believe it is in the best interest of a financial institution to furnish the amendments. The governing IRA regulation provides that a $50 fine may be assessed an institution for each time it fails to furnish the IRA plan agreement and $50 each time it fails to furnish the IRA disclosure amendment.