

PUBLIC SUBMISSION

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PROPOSED IMPLEMENTATION OF SECURE ACT REVISIONS TO FORM 5500
EMPLOYEE BENEFIT PLAN REPORTS

Comment On: EBSA-2021-0006-0002

Annual Information Return/Reports

Submitter Information

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General Comment

Qualified plan loan offsets are a leading cause of premature distributions from 401(k) style retirement plans. Unfortunately, these loan offsets are not separately identified anywhere on Form 5500, which has led to confusion and ambivalence on the part of plan sponsors to what is an important retirement issue. I request the current Proposed Revision of Annual Information Return/Reports RIN 1210-AB97 initiative to require plan sponsors to separately identify qualified plan loan offsets each year as part of their Form 5500 report.

Many plan sponsors remain unaware of the extent qualified plan loan offsets are contributing to plan leakage due to the poor state of reporting on this important issue. Separation is the leading cause of 401(k) loan defaults. These defaults result in billions of dollars in premature distributions of 401(k) style plan assets annually, and when included with penalties and lost earnings are projected to subtract more than two trillion dollars (\$2T) from retirement plans during the next decade (Loan Leakage: How Can We Keep Loan Defaults From Draining \$2 Trillion from America's Retirement Accounts, Deloitte, 2018).

- Qualified plan loan offsets occur when a participant's account balance is reduced to repay a plan loan upon severance from employment or termination of the plan. However qualified plan loan offsets are not separately reported on Form 5500.
- Form 5500 separately tracks Deemed distributions in Schedule H, Financial Information, and includes loan offsets with overall Benefit Payments in line 2e(1). However, deemed distributions make up less than 10% of all loan defaults, with the

majority of defaults occurring after termination as loan offsets (deemed distributions represent those defaults incurred by active participants).

DOL should add a new line that separately identifies loan offsets with general distributions at a plan level each year to Form 5500 in Section H, Financial Information. This would be consistent with Form 1099R and begin to bring more needed attention to a serious problem.

This same request was made by the GAO in RETIREMENT SAVINGS, Additional Data and Analysis Could Provide Insight into Early Withdrawals, Report to the Special Committee on Aging, U.S. Senate, March 2019
GAO-19-179

In the 60 page report, GAO concluded that, ‘... the way plan sponsors treat outstanding loans after a participant separates from employment has the potential to adversely affect retirement savings. In the event of unexpected job loss or separation, plan loans can leave participants liable for additional taxes. Currently, the incidence and amount of loan offsets in 401(k) plans cannot be determined due to the way DOL collects data from plan sponsors. Additional information on loan offsets would provide insight into how plan loan features might affect long-term retirement savings. Without clear data on the incidence of these loan offsets, which plan sponsors are generally required to include, (but not itemize) on the Form 5500, the overall extent of unrepaid plan loans in 401(k) plans cannot be known.’

GAO made a single recommendation for executive action. The report recommended the Secretary of Labor direct the Assistant Secretary for EBSA, in coordination with IRS, to revise the Form 5500 to require plan sponsors to report qualified plan loan offsets as a separate line item distinct from other types of distributions.

(Recommendation 1).

- In a comment letter dated February 29, 2019, Kirsten B. Wielobob, Deputy Commissioner for Services and Enforcement, IRS, agreed with the recommendation.
- ♣ The IRS modified Form 1099R in 2018 (IRS Form 1099-R) with a new code M, which is used to report a qualified plan loan offset when a participant’s account balance is reduced to repay a plan loan upon severance from employment or termination of the plan.
- Unfortunately, Assistant Secretary, EBSA, Preston Rutledge, while acknowledging the reporting problem indicated it was beyond current resource capacity.

I am attaching the Deloitte report and the GAO report referenced earlier with these comments.

Sincerely,
George White

Attachments

Deloitte Retirement Plan Loan Leakage

GAO-19-179 RETIREMENT SAVINGS