

I] h; ^chZXV^GZedg^B Vg Ziea^XZ^1 Vh^egZeVgZY^ZnXj h^kZan^[dg; ^chZXV^e[aj ZcXZg
b Zb WZghVh^?b : VgZ!^8] ghide] ZgE#^HidX^!VcY^7gVccV^=dj g] Vc^Vi Troutman Pepper#

What to Think About When Designing

a SERP

Market Trend /e^V^Xdb eZi^kZ^a^Wdgb Vg Zi!^Zb eadnZgh^b Vn^1 Vci^id^XdchYZgegd^k^Y^e^l^VYY^t^dcVá
gZi^gZb Zci^WZcZ[^t^h^id^~ Zn^Zb eadnZZh^j cYZgV^hj eeZb ZciVaZnZ^Xj i^kZ^gZi^gZb Zci^ea^c^!^di] Zg^ hZ^~ cdl^ c^
Vh^V^ H: GE#^

Synopsis: H: GEh^VgZ^VineZ^d[^cdcfj Vaf^ZY^YZ[ZggZY^Xdb eZchVi^dc^ea^c^#^H: GEh^Xdb Z^c^b Vcn^h] VeZh^
VcY^h^bZ^h^#^1] Z^H: GE^WZcZ[^t^b Vn^ad^d^ a^ Z^V^eZch^dc^ea^c^h^ YZ[^cZY^WZcZ[^t^ heZX^!n^e^l^ Vc^Vccj Vá
afZi^b Z^gZi^gZb Zci^WZcZ[^t^hi^Vg^e^l^ Vi^V^Z^+^*^#6aZgc^Vi^kZan^!^i] Z^H: GE^b^ ^] i^WZ^YZh^c^ZY^Vh^Vc^VXXdj ci^
W^a^c^XZ^1 ^] [^t^ZY^dgY^hXgZi^dcVgn^Zb eadnZg^XdcigVY^i^dch^#^e^ Vcn^XVhZ^!^i] Z^H: GE^b^ j^ hi^Xdb ean^1 ^] ^
kVgdj h^gZfj ^gZb Zci^h^j cYZg: G^H6^VcY^i] Z^e^iZgc^VaGZkZcj Z^8dYZ^#^1] h^Vg^Xá^ZneadgZ^h^ Zn^YZh^c^
XdchYZg^i^dch^Vc^Y^X] d^XZ^h^!^dg^H: GEh^VcY^YZhXgVZ^h^ Zn^Xdb eaVcXZ^gZfj ^gZb Zci^h^i] Vi^Veean^#

Takeways: ^6c^Zb eadnZg^XdchYZg^e^l^VYdei^e^l^V^H: GE^h^ dj^ a^Zhi^W^h^ V^YZh^c^i] Vi^XdggZhedcYh^id^
i] Z^WY^h^cZhh^d^Vh^!^dg^i] Z^H: GE^#^6YY^t^dcV^an^!^i] Z^Zb eadnZgh^ dj^ a^j^ cYZgh^VcY^i] Z^Xdb eaVcXZ^
gZfj ^gZb Zci^h^i] Vi^1 ^a^Veean^VcY^ckd^kZ^i] Z^g^l^i^iZVb^d[^ZneZgh^id^W^a^c^XZ^i] Z^kVgdj h^Xdb eaVcXZ^
XdchYZg^i^dch^1 ^] YZ^h^c^X] d^XZ^h^#^

What is a SERP?

7gdVYan^heZV^ e^l^V^H: GE^h^VineZ^d[^cdcfj Vaf^ZY^YZ[ZggZY^Xdb eZchVi^dc^ea^c^j^ cYZgi^] X] Vc^
Zb eadnZgegd^k^YZh^V^gZi^gZb Zci^WZcZ[^t^dgV^hZá^Xi^g^gj e^d^!^b Vc^V^Zb Zci^dg] ^] an^Xdb eZchViZY^
Zb eadnZZh^#^1 ne^XVan^!^V^H: GE^YdZ^h^c^di^e^Xj YZ^Vc^Zá^Xi^kZ^YZ[ZggV^a^ZVij^gZ!^Vá] dj^ \] Vc^Zb eadnZgb Vn^
X] ddhZ^id^e^Xj YZ^dcZ^#^1] Z^gZi^gZb Zci^WZcZ[^t^egdk^YZY^j cYZgV^H: GE^VgZ^e^VYY^t^dc^id^i] Z^WZcZ[^t^h^
egdk^YZY^j cYZgi] Z^Zb eadnZgh^i^Vn^fj Vaf^ZY^gZi^gZb Zci^ea^c^h^!^#^

=dl ZkZg^Vh^dj i^a^cZY^WZadl^!^H: GEh^Xdb Z^c^V^kVgZin^d^!^h] VeZh^VcY^h^bZ^h^#^6c^Zb eadnZgh^ dj^ a^
XdchYZg^l^] Vi^WY^h^cZhh^ej gedhZ^h^t^ciZcYh^id^b ZZi^Vh^VYdei^e^l^V^H: GE^VcY^b^ViX] i] dhZ^ej gedhZ^h^
l^ ^] i] Z^YZh^c^!^ZVij^gZ^h^i] Vi^WZ^hi^b^ZZi^i] dhZ^c^ZZY^h^#^1] Z^Y^h^Xj hh^dc^WZadl^!^dXj hZ^h^dc^H: GEh^VYdeiZY^
W^h^!^dg^eg^l^!^Zb eadnZgh^#^H: GEh^!dg^cdc^eg^l^!^h^VgZ^h^j WZ^Xi^id^VYY^t^dc^Vá^gZhi^g^i^dch^j cYZgi] Z^e^iZgc^Va
GZkZcj Z^8dYZ^d^!^&. -^!^Vh^Vb ZcYZY^ti] Z^8dYZ^!^i] Vi^VgZ^dj ih^YZ^i] Z^h^XdeZ^d^!^i] h^Vg^Xá^#

¹ See the March 2022 FRMP "What to Think About When Designing Nonqualified Deferred Compensation Plans in the Resource Library."



Why provide a SERP?

: b eadnZghXdb b dcanVYdei V'H: GE id'egdkYZ' ZnZb eadnZZh' i' V'b Vg Zi Xdb eZi kZ'gzi gzb Zci WZcZ[i'] Vi XVccdi W'egdkYZY'i] gij \] Vi Vmf j Vaf ZY'gzi gzb Zci ea/c Yj Z'id'G8'ab th#H: GEh' ciZcYZY'id'hZgZ'i' h'ej gedhZ Vg' d[i Zc XadhZanXddg' cViZY' i'] Vc Zb eadnZgh'gZa/iZY'i Vmf j Vaf ZY' ea/c#

6'H: GE b VnVand'hZgZ'VhV'gziZci d'c idda#H: GEhVgZ'iZX] c'XVan'XdchYZgZY' eZch'dc'ea/ch j cYZgi] Z' : b eadnZZ'Gzi gzb Zci 'eXdb Z'HZXj gfn'6Xi d['& ,) !'VhVb ZcYZY' : G#6 tQ] dl ZkZg'VhV' ide'] Vi ea/c! i] ZnVgZ'ZnZb ei [gdb b dhi d[: G#6 h'hj VhiVci kZ'gZf j gzb Zcih!'cXj Yc\ : G#6 h'b c'b j b kZhi c\ g zh#6hV'gZhj a!H: GE WZcZ[th'XVc'cXj YZV' YZ'gVc\Z'd[kZhi c\ XdcY' dch'ciZcYZY'id'ZcXdj g\Z' adc'iZg' Zb eadnb Zci!ab tZY'dcanVh'i] Z'b V' c'Vi d'c#

6YY' d'cVan!H: GE WZcZ[th'b VnWZ' j hZY VhV'[dgb d['cXZci kZ'Xdb eZchVi d'c#1] Z'Vb dj ci d[i] Z' H: GE WZcZ[th'XVc'WZ'i ZY'id'heZX'Z'Y'Vh' h'cZhh\ dVah#; dgZnVb eZ'V'YZ[cZY'XdcigVY' i d'c'H: GE thZZ' WZad i'XVc'XdcY' d'c'i] Z'Vb dj ci d[i] Z'Vccj VaXdcigVY' i d'c'dc'ViV'c'b Zci d[Vccj VaVY' h'cZhh\ dVah#

; cVan!H: GE WZcZ[th'b Vn'egdkYZ'WY' d'cVaa'c\ 'iZg' Xdb eZchVi d'c'id' ZnZb eadnZZ'h'Vi'egkVi' Xdb eVc'Zh'i] Vi Yd'cdi' d'gXVccdi' egdkYZ'Zf j th'Xdb eZchVi d'c'deedgj c'tZh#1] Z'H: GE WZcZ[th'XVc' [aa] Z'Zf j th'Xdb eZchVi d'c'kd'Y'c'V'Xdb eZi kZ'idi VaXdb eZchVi d'c'eVX' V\Z'1] Zc'Xdb eZi c\ [dg iVZci' i'] di] Zg'Xdb eVc'Zh'i] Vi Yd'd[[Zg'Zf j th'Xdb eZchVi d'c#L] h'Z'V'H: GE b Vn'cdi' egdkYZ'i] Z' \] j ehYZ' deedgj c'ni] Vi Zf j th'Xdb eZchVi d'c'XVc' egdkYZ' i' V'and'] Vh'zh'h'Ydl ch'YZ' gh' [dgi] Z' eVg' X'eVci#

Defined Benefit v. Defined Contribution Alternatives

I] Z' [thi' b V.dgYZX'h'dc'ed'ci' c'YZh'Ac'c\ V'H: GE 'h'X] ddh'c\ i] Zi] Zgi] Z'gzi gzb Zci WZcZ[th'h] dj a' W'YZhXgWZY Vh'Z'] Zg'

- V'YZ[cZY'WZcZ[th'Vb dj ci eVnWZ' j edc'gzi gzb Zci tV' 97'H: GE t'dg
- Vc Zb eadnZg'XdcigVY' i d'c'eZgdY'XVan'XgZY' tZY'id'V'cdi' d'cVa'VXXdj ci c'i] Z'eVg' X'eVci h'cVb Z! VYj hiZY' i'] 'ciZg'hi'dg'YZZb ZY'ZVg' c\h!VcY'eVnWZ' j edc'gzi gzb Zci tV' 98'H: GE t#

I] Z'WZcZ[th'dgb j a' [dgV'97'H: GE XVc'kVgn' YZan#6'Xdb b dc'Veeg'VX] 'h'id'Vg'Zi V'zKZad[YZh'gZY' c'Xdb Z'g'ea'XZb Zci Vi V'[ij g' c'dgb Vag'Zi gzb Zci YViZ! 'hj X] Vh'V\Z'+*#1] Z'YZh'Ac'b ^] i'Vg'Zi Vc' Vccj Vag'Zi gzb Zci WZcZ[th'Vg'c\ Vi i] Z'cdgb Vag'Zi gzb Zci YViZ'Zf j Vaid'V'heZX'Z'Y'eZg'Zci V\Z'd['WWhZ' hV\g'n'dg [c'VaVkZg'V\Z'Xdb eZchVi d'c#; dgV'[dgb j a' WWhZY'dc' [c'VaVkZg'V\Z'Xdb eZchVi d'c! i] Z' H: GE h] dj a' heZX'ni] Z'Xdb edcZcih'd[Xdb eZchVi d'c'XdchYZgZY' e.g.! WWhZ'hV\g'n'dg'hV\g'n'eaj h' Vccj VaVdcj hZh'ZVg'ZY' VcY'i] Z'eZgdY'dkZg'i] X] i] Z'Vb dj ci h'YZiZg' cZY' e.g.! i] Z' \] i] g'Z' nZVg'h'dj i d[i] Z' a'hi' iZc'nZVg'h'eg'XZY'c\ g'Zi gzb Zci#1] Z'[dgb j a' b ^] i' V'and' egdkYZ'i] Vi i] Z'b Vmb j b i Vg'Zi eZg'Zci V\Z' h'g'VX] ZY'dcan'dkZg'Vc'ZmiZcYZY'VXXg' VaeZgdY'd[h'Zg'XZ#1] Z'[c'VaWZcZ[th'ZVg'ZY' b VnWZ'Zne'g'zhZY'Vh'V'af[Z'Vccj th'c'Xj Yc\ 'edhh'Vn'V'd'ci VcY'hj g'kdgVccj th'dgVccj Va c'hiVab Zcih'[dgV[th'ZY'eZgdY' thj X] Vh'iZc'nZVg'h' #''



6°98'H: GE WZcZ[↑hVWhZYdc i] Z'kVā Z'd[V'cdi'đcVāVXXdj ci'ēi] Z'eVg'X'eVci h'cVb Z#1] Z'VXXdj ci' h'XgZY↑ZY'1 ↑] Z'b eadnZgXdcigWY i'đch!VcY'i] ZgZV[iZgVYj hiZY[dgYZZb ZY'ēiZgZhi'dgZVg'ēVhVWhZY' dc'gZij gch'd[YZZb ZY'ēkZhib Zcih'đj X] Vh'i] Z'ēkZhib Zci'X] d'XZh'ēgdk'YZY'ēi] Z'Zb eadnZgh'iVn' f j Vaf'ZY')%&ē f'ēa/ci#1] Z'Zb eadnZgXgZY'↑h' VnVZ'VWhZY'dcV'[hZY'eZgZciV\Z'd[eVn'dgXdj ā'WZ' kVgVWZ'VWhZY'dc'Xdb eVcn'dgeVg'X'eVci'eZgdg' VcXZ#E'Vnb Zci'd[i] Z'kZhiZY'VXXdj ci'j edc' gZi'gZb Zci'b VnVZ'ēVā b e'hj b VcY\$dg'ē'ēchiVab Zcih!dgXdj ā'ēXā YZ'V'eVg'X'eVci'ZāXi'đc'Vh'id'i] Z' [dgb d[eVnb Zci'đj WZXi'id'Xdb eāVcXZ'1 ↑] '8dYZ'HZXi'đc') % 6ē) % 6 f' hZZ'Y'hXj hh'đc'WZad' VVdij i'Vn'XdYZ'Xdb eāVcXZ'Xdch'YZg'i'đch!#''

97'H: GEh'XVc'WZ'hj WZXi'id'b dgZ'Xdb eāZmVXXdj ci'ē\ 'h'j Zh'i] Vc°98'H: GEh#1] Z'Vb dj ci'd[i] Z' Wā/cXZ'h] ZZi'aVWān[dgi] dhZ'WZcZ[↑h'1 'āYZeZcY'dc kVgdj h'Vhhj b ei'đch!h'j X] Vh'ij ij gZ'ēiZgZhi' gViZh'VcY'b dgVaf'n'iVWZ'hēf'WZcZ[↑h'VgZ'ēgdk'YZY'Vh'Vaf'Z'Vccj ↑n#1 ne'Xvan'i] Z'Zb eadnZg'i' āicZZY' Vc'VXij VgVā[đb id'Zchj gZ'ēgdeZgVXXdj ci'ē\ d[i] Z'97'H: GE'aVWān'Zh#1] ZhZ'aVWān'kVā Vi'đc'h'hj Zh' XVc'Vānd'b V'Z'ē[dgb Vālj cY'ē\ [dg97'H: GEh'b dg'X] VāZ'c\ē\ i] Vc'[dg98'H: GEh'đhZZ'Y'hXj hh'đc' VVdij i'ē[dgb Vālj cY'ē\ WZad' f#?j hi'Vh'Zb eadnZgh'] VkZ'WZc'i'gZcY'ē\ V' Vn'[gdb'ēgdk'Y'ē\ i'Vn' f j Vaf'ZY'YZ[ēZY'WZcZ[↑ēZch'đc'eā/ch!'98'H: GEh'] VkZ'WZ'Xdb Z'hdb ZI] Vi'b dgZ'Xdb b dc'i] Vc°97' H: GEh'ē'gZ'XZci'nZVgh#

Qualified Plan Offsets

H: GEh'ēiZcYZY'id'hj eeāzb Zci'iVmf j Vaf'ZY'gZi'gZb Zci'eā/c'WZcZ[↑h'b Vn'j hZ'VWZcZ[↑[dgb j ā/i] Vi'h' XddgY'ēViZY'1 ↑] i] Z'iVmf j Vaf'ZY'eā/c'h'WZcZ[↑[dgb j ā/#'6'Xdb b dc'VeegVX] !hdb Zi'b Zh'gZ[ZggZY'id' Vh'V' gZhidg'i'đc' eā/c!YZ[ēZh'i] Z'H: GE WZcZ[↑1 ↑] Vc° 6'b ēj h'7' [dgb j ā/i!] ZgZ/

- 6 °h'i] Z'WZcZ[↑i] Z'eVg'X'eVci'1 dj ā'] VkZ'VXXg ZY'dgWZc'XgZY'↑ZY'j cYZgi] Z'iVmf j Vaf'ZY'eā/c] VY'8dYZ'āb ↑h'đc'idiVāVWZcZ[↑h'VcY'Vccj VāXdb eZchVi'đc'cdi'VeēāZY'VcY
- 7 °h'i] Z'WZcZ[↑i] Z'eVg'X'eVci'VXij Van'VXXg ZY'dgi Vh'XgZY'↑ZY'1 ↑] j cYZgi] Z'iVmf j Vaf'ZY'eā/c#

6c° 6'b ēj h'7' [dgb j ā/b VnVZ'j hZY'1 ↑] Z'↑] ZgV°97'H: GE'dg98'H: GE#°ē'V°98'H: GE!i] Z'WZcZ[↑h' b VnVZ'VWhZY'dc'i] Z'b ViX] ē\ XdcigWY i'đc [dgb j ā/dgZb eadnZg'cdcZāXi'kZ'XdcigWY i'đc [dgb j ā/i] Vi' VēēāZh'ēi] Z'gZāiZY'iVmf j Vaf'ZY')%&ē f'ēa/c#''

6āZg:Vi'kZan'i] Z'H: GE'Xdj ā'ēgdk'YZ'i] Vi'i] Z° 6'ēdg'đc'd[i] Z'WZcZ[↑h'VWhZY'dc'Vc'Zc] VcXZY' [dgb j ā'Vh'Xdb eVgZY'id'i] Z'iVmf j Vaf'ZY'eā/c#; dgZnVb eā!i] Z'gZākVci'VXXg VāgVi'Z'dgXdcigWY i'đc' gViZ'b VnVZ'Vi'V'] ^] ZgēZgZciV\Z'd[Xdb eZchVi'đc!dgi] Z'YZ[ē'↑'đc'd[Xdb eZchVi'đc'j hZY[dgi] Z' H: GE'Xdj ā'ēXā YZ'Zāzb Zcih'cdi'Xdj ciZY'ēi] Z'iVmf j Vaf'ZY'eā/c'đj X] Vh'Vccj Vā'ēXZci'kZ'Vi' Vg'h'dg Vb dj cih'i] Vi'] VkZ'WZc'YZ[ZggZY'id'V'cdcf j Vaf'ZY'YZ[ZggZY'Xdb eZchVi'đc'eā/ci#

=Vk'ē\ i] Z'H: GE WZcZ[↑XVāj āiZY'j h'ē\ VYY'↑'đc'VāineZh'd[d[[hZih'h'j X] Vh'd[[hZih'[dgi] Zg cdcf j Vaf'ZY'YZ[ZggZY'Xdb eZchVi'đc'WZcZ[↑h'h] dj ā'WZ'XVgZ'j an'gZ'Zi' ZY#1] ZgZ'VgZ'heZX'↑'X'g āh' j cYZg) % 6'VWdij i] Zc'd[[hZih'ē'V'H: GE'[dgb j ā'VgZ'eZgb ↑h'VZ#; j g] Zgb dgZ'i] Z' Xdci'ē\Zci' WZcZ[↑g ā' j cYZg8dYZ'HZXi'đc') %&ē f'h] dj ā'WZ'Xdch'YZgY'↑i] Z'WZcZ[↑'ē'V'H: GE'°h'āc' ZY'id'Vi'Vn' f j Vaf'ZY')%&ē f'ēa/c'WZcZ[↑#

Tax Code Compliance Key Issues

H: GEhVgZ°ciZcYZYid°gzhj á°c°dg°cVgn°cXdb Z°id°i] Z°eVg°X°eVci°dcan°l] Zc°Vb dj cih°VgZ°VXij Van°eVY#° l di] h°ZcY!i] Z°H: GE°l° h°icZcY°id°VZ°YZh°cZ°Y°id°Xdb ean°l °) % 6#°l] Zg°°h°Vhd°V°heZX°Vai°b° c°\°g° z° i] Vi°Veeazh°id°; °86°i°Vn°zh°i] Vi°Xvc°g°h°j° á°c°; °86°i°Vn°zh°VZ°c°\°dl° ZY°l] Zc°H: GE°VZcZ[°h°Vg°°kZhiZY° g°vi] Zgi] Vc°l] Zc°eVY#°l] Z°[dadl° c°\°egk°YZh°V°] ^] "z°kZah°j° b° b° Vgn°d°i] ZhZ°i°l° d°° Zn°i°Vn°Xdb° eaVcXZ° °h°j° Zh°#

409A#°) % 6°Veeazh°id°Vcn° cdcf°j° Vaf°ZY°YZ[Zg°ZY°Xdb° eZch°Vi°dc°ea°c° Vh°YZ[°cZY°] cYZg°) % 6!° c°Xá° Y°c°\° H: GEh°#°) % 6°b° edhZh°V°cj° b° VZgd[°Xdb° eaVcXZ° g°f°j° g°zb° Zcih°dc°H: GEh!°c°Xá° Y°c°\° i] Z° [dadl° c°\°

- **Compliant Payment Rules#°)** % 6°g°f°j° g°zh°i] Vi°i] Z°i°b° Z°VcY°[dgb° °d[°e°Vnb° Zcih°te°g°#°á° b° e°h°j° b° !° c°hi°Vab° Zcih°dg°Vccj° °Zhi°VZ°[°h°ZY°Vi°i] Z°i°b° Z°d[°c°°V°a°YZ[Zg°V°#°l°] Z°ZkZci°ig°\°Zg°c°\°e°Vnb° Zci° b°j° hi°VZ°ab° °ZY°id°dc°Z°d[°h°me°Zgb° °iZY°e°Vnb° Zci°ZkZcih°t&t°YZVi]!°t° °Y°h°VW°at°n° °Vh°YZ[°cZY° j° cYZg°) % 6!°t° °h°ZeVg°Vi°dc°[gdb° °h°Zg°XZ° °Vh°YZ[°cZY°] cYZg°) % 6!°t° °V°[°h°ZY°YVi°Z°dg[°h°ZY° h°X] ZYj° z°l°t° °V° °X] Vc°Z°c°Xdcig°la° °Vh°YZ[°cZY°] cYZg°) % 6!°dg°t° °Vc° °j° c[dg°h°ZZW°Z°b° Zg°Zc°Xn° °Vh°YZ[°cZY°] cYZg°) % 6!°#°l°] Z°e°Vnb° Zci°g° z°°Xvc°°c°Xá° YZ° ZVg°Zgd[° °dg° a°i°Zgd[° °Xdb° Wc°Vi°dc°h°d[° i] ZhZ°ZkZcih°h°j° X] °Vh°i] Z°ZVg°Zhi°d[°YZVi]!°Y°h°VW°at°n°°dg°h°ZeVg°Vi°dc°[gdb° °h°Zg°XZ°#
- **No Accelerations or Further Deferrals (With Limited Exceptions)#°DcXZ°i]** Z°i°b° Z°VcY°[dgb° °d[° e°Vnb° Zci°h°[°h°ZY°] cYZgi] Z°H: GE!°i] Z°e°Vnb° Zci°i°b° c°\°ZcZg°/an°°Xvccdi°VZ°°X] Vc°\°ZY°l° °) dj° i° k°d°a°i°c°\°) % 6#°l°] Zg°°Vg°!°] dl° ZkZg°XZg°V°c°ab° °ZY°Zn°XZei°dc°h°#; dg°Zn°Vb° eaZ°°c°XZg°V°c°°XVh°Zh°V° H: GE°°Xvc°VZ°i°Zgb° °Vi°ZY°Vc°Y°VZcZ[°h°e°VY°dj°i°°c°°V°á° b° e°h°j° b° °l° °) dj° i° k°d°a°i°c°\°i] Z°eg°d[° °W°dc°dc° VXXZ°Zg°Vi°ZY°e°Vnb° Zcih°#°6°hd°!°[°i] Z°H: GE°°Vadl° °h°[dg°!°i] Z°i°b° Z°VcY°\$dg°[dgb° °d[°e°Vnb° Zci°°Xvc°VZ° °X] Vc°\°ZY°hd°ad°c°\° °Vh°t° °Vc°Z°Z°Xi°dc°[dg°i] Z°°X] Vc°\°Z°h°b° VYZ°Vi°°z°Vhi°i°l° Z°kZ°b° dci] h°VZ[dg°°i] Z° e°Vnb° Zci°l° dj° á°] V°kZ°di] Zg° °h°Z°Xdb° b° Zc°XZY°Vc°Y°t°°i°] Z°c°Zi° °i°b° Z°\$[dgb° °d[°e°Vnb° Zci°h°YZ°a°n°ZY° °Vh° Vi°°z°Vhi°[°k°Z°n°ZVgh°[gdb° °l°] Zc°i] Z°e°Vnb° Zci°l° dj° á°] V°kZ°di] Zg° °h°Z°Xdb° b° Zc°YZY°t°h°db° Zi°b° Zh°°XV°z°Y° V° °&° \$° Z°Z°Xi°dc° °#
- **6-month Rule for Public Companies#°Ej° W°X°Xdb° eVc°Zh°i] Vi°hedch°dg°H: GEh°Vhd°°b° j° hi°g°f°j° g°z° e°Vnb° Zcih°id°°XZg°V°c°°heZX°[°ZY°Zb° eadn°ZZh° °Vh°YZ[°cZY°] cYZg°) % 6!°i] Vi°Vg°°ig°\°Zg°Y°°Vh°V° h°ZeVg°Vi°dc°[gdb° °h°Zg°XZ°°VZ°a°n°ZY°°Vh°Vi°°z°Vhi°°h°mb° dci] h°[dadl° c°\°i] Z°h°ZeVg°Vi°dc°[gdb° °h°Zg°XZ°# °) % 6!° °Vh°°VY°dei°ZY°°c°°e°Vg° °Vh°°Vg°hedch°Z°id°°XZg°V°c°°e°Zg°Z°kZY°°W°Y°h°Zh°Vi°°Xdb° eVc°Zh°°a° Z°: cgd°c! °l°] Zg°°Zn°Z°Xj° i°k°Zh°g°XZ°kZY°e°Vndj° ih°d°i] Z°g°j°cdcf°j° Vaf°ZY°YZ[Zg°ZY°°Xdb° eZch°Vi°dc°VZcZ[°h°h°] dg°an° VZ[dg°°i] Z°°Xdb° eVcn°[V°z°Y°°H°] °z°°di] Zg°Zb° eadn°ZZh°h°j° [[Zg°Y°] °j° \°Z°ad°hh°Zh°°c°°i] Z°g°) %&°t° °ea°c° VXXdj° cih°i] Vi°] Z°á°°Xdb° eVcn°hid°X° °#°) % 6°h°h°mb° dci] °e°Vnb° Zci°YZ°a°n°g°f°j° g°zb° Zci°h°V°g°hedch°Z° id°i] °h°Xdc°i°Zn°i°Vc°Y°°Vh°°X°V°an°°V°Y°g°h°h°Zh°°V° g°/ih°[z°Z°c°\°i] Z°h°c°°c°\°h° °e°°Xdc°XZg°#°l°] Z°°heZX°[°ZY° Zb° eadn°ZZh° °Vg°°Vc°°Vccj° Van°YZi°Zgb° °cZY°°gd°j° e!°ZcZg°/an°°ab° °ZY°id°i] Z°ide°°°°e°VY°° Zn°Zb° eadn°ZZh°#**
- **Compliance in Form and Operation#°)** % 6°g°f°j° g°zh°i] Vi°i] Z°H: GE°t°°VZ°°c°°l° g°t°°c°\°Vc°Y°t°°c°Xá° YZ° i°Zgb° h°i] Vi°°Xdb° ean°l° °) °) % 6#°°i] Z°H: GE°°c°Xá° YZ°h°cdc°Xdb° eaVci°i°Zgb° h°h°j° X] °Vh°°b° e°Zgb° °h°VZ° e°Vnb° Zci°ZkZcih°dg°Y°h°Xg°i°dc°°Vh°id°i°b° c°\°d[°e°Vnb° Zci°!°i] Zc°i] Z°H: GE°°h°Xdc°h°YZg°Y°id°[V°á°id° °Xdb° ean°l° °) °) % 6#°°6°á°] dj° \°] °V°H: GE°°b° Vn°°Xdb° ean°l° °) °) % 6°c°[dgb° °!°°Vhd°°b° j° hi°VZ°de°Zg°Vi°ZY° °Xdch°hi°Zci°l° °) °) Z°g°f°j° g°zb° Zcih°d°) % 6#°



A SERP that fails to comply with 409A (either in form or operation) triggers significant adverse tax consequences to the participants. If a failure occurs, the entire SERP benefit must be included in the participant's income in the year of failure. Under 409A, the failure applies not only to the specific amount involved under the participant's SERP, but all amounts due to the participant under any other plans of the employer that are required to be aggregated with the SERP (referred to as the "plan aggregation rule").² The participant must also pay an additional 20% tax, plus potentially a "penalty interest" additional tax under 409A. The employer must report the failure on the participant's Form W-2 or Form 1099 (as applicable). If the employer fails to properly withhold income taxes for the year of failure the employer may be liable for penalties for failure to properly report and withhold the compensation paid to the participant. The IRS does, however, provide a pair of correction programs that allow employers to correct certain operational and form failures if fixed quickly (generally within two years after the year of failure).³

Although 409A imposes a number of restrictions on the time and form of payments, there are design opportunities that include degrees of participant flexibility to make payment elections. For DB SERPs, the plan could permit a participant at time of initial eligibility to elect a lump sum payment in lieu of installments or an annuity (although in that case the DB SERP will need to specify the relevant interest and mortality assumptions to determine the lump sum value of the benefit at the time of payment). For a DB SERP that pays benefits as an annuity, 409A permits participant elections as to the specific form of annuity at the time of commencement, as long as the permitted annuity choices all have the same actuarially equivalent value. DC SERPs may also allow participant elections at time of initial commencement, or prior to the year of a particular contribution, to elect the time and form of payment from a menu of 409A permitted alternatives. Adding participant elections involves a trade-off, as increased participant flexibility usually involves increased administrative complexity. Each employer needs to decide for itself what the right balance is between these competing considerations.

FICA Special Timing Rule. FICA imposes a tax on both employers and employees based on "wages" under Code Section 3121(a). The FICA tax includes the Social Security tax (at a rate of 6.2% for both employer and employee, subject to annual wage cap) and the Medicare tax (at a rate of 1.45% for both employer and employee on all wages without a cap, plus an additional 0.9% on the employee on wages over a specified level depending on filing status).

² See Treas. Reg. § 1.409A-1(c)(2)(i); common categories of plans that must be aggregated include all elective account balance plans (e.g., a DC SERP), all non-elective account balance plans (e.g., a DC SERP), and all non-account balance plans in which a participant has a benefit (e.g., a DB SERP).

³ For more information on the IRS 409A correction program for operational failures, please see our prior Marketplace article *Whoops - What to Do When You Discover an Operational Error in a Non-Qualified Deferred Compensation Plan in the Resource Library*.



Claims Procedures

ISRFPI TSIHISIRMLIMPMSRSEFIRIMPMSMMSRSEFIRIMHIIMRMSRRH
TTIPSHIIFIRIMHIIMRMSRSPPIIMPMTSIH
TMMTRIMIHSPMPPPP S LIIMIHITRHILIPMTSIHIFISI
LIMPIMPMSRMLITPRLSIILIRAMPSEFPMLSLIITPSI
MPSSPPS LIIMMIPMTSIHIPMRMHIHSLILIH
HMRMMIHMITSMHIHRHILITPRRHTSIHMLSMMPPMSR

R LIIRPMMIRPPFSLMRSSTTPHIIRMPRHHSIMISLI
TPRHMRMS MRLI 4 HSIRMRPHIRSHMIMSRSL
HMRMS RHL TPRHMRMS HIMMSRMPPEFISIRIHSRPMLSIHIMMSR
FMRHTMMSSSRMIRFIS HMIMSR LITTPMMSRSLSFPI
RHHSIMIRDISFIORPMSFIRIMLTSIHSPMMMSR

LI4MRPHITIMPEFIRIMPIHSTMMTRHMFMPTIMP
TSIH IRIHSEFIMRPHIHMRLI4LSITIMPMTSIHIMRPHIRLRIH
SRIRMIIRMRISP MHIRMPITRHIHTTIPMLRHITIHMIHMS
HIMMSRRHTTIPITIMPMTSIHISPHRSTTPLSIIMLI 4
HIMRMSRSHMFMPMMEFIHSRHIMRMSRSHMFMPMFLISPMHMRMMSR
SELI ITPSI PSRHMFMPMTPRMIRLILIMRSHMIMSR
HIIMRMSR IHMRHMFMPEHIFLI 4 HMRMS

Informal Funding

RS ISIRIMWSWPMRHEPSMRSQIEEMSRERSEPMEWESTETPERS

¹² For more information about filing top-hat plan statements, please see our prior Marketplace article *New Year Reminder: Have you Filed a Top Hat Plan Statement for Your Non-Qualified Deferred Compensation Plans?* in the Finseca Resource Library.

¹³ As of August 16, 2019, it is mandatory for sponsors of top hat plans to file top hat plan statements electronically via the Top Hat Plan Statements Online Filing System located [here](#).

¹⁴ See 29 C.F.R. § 2560.501-1(b)

¹⁵ See *Miller v. Metro Life Ins. Co.*, 925 F.2d 979, 986 (6th Cir. 1991); 29. C.F.R. § 2560.503-1(I)(1)

¹⁶ *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989) (establishing the principle that the amount of deference to be paid to a decision to deny benefits depends on a grant of discretion under the plan).

¹⁷ For more information on top hat plan filings, please see our prior Marketplace article *entitled "The Importance of Claims Procedures in Nonqualified Deferred Compensation Plans"* in the Finseca Resource Library.



