Discussion of Suggestion to Eliminate Refund Waiting Period

This email was sent by Deb Peake to Member and Retiree Services staff on 6/13/03:

> We recently asked Mike [Moquin, MERS' lead attorney] what the relationships was between the 30 day requirement in the Plan Document and the Safe Harbor requirements. I thought you might be interested in his answer:
>
> > There are several 30 day requirements, you refer to layoff cases in Plan section 3(5) language.
> > The Refund Application, on first page, prominently states that a refund cannot be made in less than 30 days from receipt of final contributions or date complete application rec'd by MERS, whichever date is later. This language implements layoff language in plan section 3(5), and the Internal Revenue Code as applicable to such refunds that will (or may) be rolled over.
> >
> > The Safe Harbor language required to be provided by tax-qualified plans such as MERS. This requirement is imposed by Code section 402(f), as stated in IRS Notice 2002-3[linked to Refund App on MERS webforms]. Basically, no direct rollover [MERS to trustee/custodian] or indirect transfer [$$ paid to member, who then has 60 days to put into a traditional IRA or another Er plan that will accept it], earlier than 30 days after member receives the Safe Harbor Explanation. In the case of an indirect rollover, the refund may, or may not, be transferred to an IRA/ER plan--regardless, the 30 day period applies. While there is a limited exception for waiver of the 30 day period [page 2 of Safe Harbor language], it does not apply if there is a DRO issue involved. Due to the often-acrimonious nature of such disputes, allowing waivers [no refund in less than 30 days] provides additional time cushion for contacts to/from MERS to AP/prospective AP--this protects MERS, and such AP's.
> >
> > So, the short answer is the 30 day period may not be eliminated: unless plan section 3(5) layoff/refund language is repealed by Board; and IRS' Safe Harbor Notice eliminates entirely the 30 day waiting period after receipt of the Notice.
>
> Let me know if you have any questions about it.

Email from Steve Harry to Mike (6/16):

> Are you saying that since the Plan Document requires only that "the break in membership is at least 30 days…", this statement on the Refund Application has no basis in law?

REFUND CANNOT BE MADE IN LESS THAN 30 DAYS FROM RECEIPT OF FINAL CONTRIBUTIONS OR DATE APPLICATION IS RECEIVED BY MERS, WHICHEVER IS THE LATER DATE.

If that is the case, we can issue the refund as soon as these 2 conditions have been met: 1) the refund application has been received and 2) 30 days have passed since the employee terminated. Is that correct?

Mike to Steve:

My June 12 memo concluded that the 30 day refund period cannot be changed unless:

1. Plan section 3(5) layoff provision for 30 days is repealed by Board; and
2. IRS revises the Safe Harbor Notice to eliminate the 30 day waiting period.

Both are provisions of law. The additional provision relating to receipt of contributions is to avoid having to do 2 refunds.

Steve to Mike (6/17):

I disagree.

The 30-day requirement in the Plan Document would not have to be repealed because it is completely different from the 30-day requirement on the Refund Application. My suggestion was that we make the rule *conform* to the rule in the Plan Document. We would replace this...

REFUND CANNOT BE MADE IN LESS THAN 30 DAYS FROM RECEIPT OF FINAL CONTRIBUTIONS OR DATE APPLICATION IS RECEIVED BY MERS, WHICHEVER IS THE LATER DATE.

with this:

REFUND CANNOT BE MADE LESS THAN 30 DAYS FROM TERMINATION OF EMPLOYMENT.

The 30-day requirement in the Safe Harbor Notice doesn't apply at all. It applies to rollovers, not refunds. Besides, it is 30 days from receipt of the Notice, and it can be waived at the request of the applicant, which is exactly what a refund application is: a request from the applicant for an immediate refund.

Mike to Steve:

I note your comments. The refund language stands for the reasons earlier stated. We operate according to the Plan, forms, IRS requirements, etc, not preferences.

Steve to Mike:

> It is my position that policy should conform to the Plan. The Plan says the refund cannot be issued earlier than 30 days from termination, which is a way of stating that the refund can be issued 30 days after termination. The form says the refund cannot be made in less than 30 days from receipt of final contributions or date application is received by MERS, whichever is the later date. The form imposes a stronger restriction than the Plan. Shouldn't the policy conform to the Plan?

Mike to Steve:

> Plan, and administrative practice, form basis for policy. Just like practice formed consistent with Board rulings, court cases, hearing officer decisions. Where EE contribs, section 46 applies, as does remission/reporting.So, refund is later of 30 days contribs remitted/app filed. Where noncontributory, then operative date is 30 days after app filed. Avoiding 2 refund calcs and payments not a minor problem. Safe Harbor applies, and potential waiver of 30 days under federal law does not overrule MERS policy in any event.

Steve to Mike (6/18):

> So in response to my suggestion that we change the MERS policy in regard to the refund waiting period, you are saying that we cannot do so because it is MERS policy. Is that correct?
>
> You also mention the problem of issuing a second refund check because the first was issued before all wages were posted. I did not suggest that we issue a refund before the wages were posted. My suggestion was that we issue the refund "as soon as the employee's final contributions are posted."

Mike to Steve:

> It is correct.