

Year-End Planning for Qualified Plans

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Year-End Planning

- Annual Notices for Qualified Plans
- Required Amendments
- IRS Determination Letter Filings
- 403(b) Plan Written Document Deadline
- Questions

Annual Notices

- Safe Harbor 401(k) Plan Notices
- Qualified Default Investment Alternative
- Automatic Enrollment Notice
- Defined Benefit Plan Annual Funding Notice
- Participant Benefit Statements

Safe Harbor 401(k) Notice

➤ Traditional Safe Harbor Notice

- Notice describing the safe harbor contribution and other material plan features.
- Notice must be provided no less than 30 and no more than 90 days prior to the beginning of the plan year.

Safe Harbor 401(k) Notice (cont'd)

➤ “Wait and See” Safe Harbor Notice

- Available to plan sponsors who may want to provide a 3% nonelective safe harbor contribution to satisfy nondiscrimination testing. Allows decision to be made at a later time.
- Notice must be provided to participants explaining that a safe harbor contribution may be made and must be provided no less than 30 and no more than 90 days prior to the beginning of the plan year.

Safe Harbor 401(k) Notice (cont'd)

➤ “Wait and See” Approach (cont'd)

- If a plan sponsor decides to make the safe harbor contribution, a subsequent notice is required before the end of the plan year informing participants of the contribution.
- Notice must be provided no less than 30 and no more than 90 days before the end of the plan year.
- Failure to provide the “Traditional” or “Wait and See” notices could result in the inability to use the safe harbor to satisfy nondiscrimination testing for a particular year.

Qualified Default Investment Alternative Notice

- A QDIA is an investment option in a participant-directed plan into which participant contributions are “defaulted” if the participant has not made an affirmative investment election.
- Proper QDIA selection and maintenance can provide fiduciary protection under Section 404(c) of ERISA for plan fiduciaries and participants will be “deemed” to have elected to invest their contributions into the QDIA.

QDIA Notice (cont'd)

- QDIA notices are required to be given both before a participant is initially invested in a QDIA and on an annual basis.
- DOL regulations set forth specific requirements in order to meet the QDIA notice requirements.
- Annual QDIA notices must be distributed at least 30 days prior to the beginning of each plan year.
- Failure to provide notice could result in loss of QDIA protection.

Automatic Enrollment Notice

- Auto enrollment notices are required to be given both before a participant is initially auto enrolled and on an annual basis.
- The notice must describe the automatic enrollment process and may be combined with the QDIA notice.
- Notice must be provided at least 30 days prior to the beginning of each plan year.
- Failure to provide the notice could result in a penalty of up to \$1,000 per violation per day.

Defined Benefit Annual Funding Notice

- Plan sponsors of single and multiemployer defined benefit pension plans must provide an annual funding notice to participants, beneficiaries, the PBGC and labor organizations representing participants.
- The notice must contain certain information, including the plan's funding status for the previous two years, and a statement of the plan's assets and liabilities, among other items.
- The notice must generally be provided within 120 days following the end of the plan year. Small plans (covering less than 100 participants) must provide the notice by the filing due date of the plan's IRS Form 5500.
- For calendar year plans, the first notice is due on April 30, 2009.

Participant Benefit Statements

- *Defined Benefit Plans.* Plan sponsors of defined benefit plans must either provide participant benefit statements every three years to participants who are active employees or, provide an annual notice to participants describing how a benefit statement may be obtained.
 - If a plan sponsor with a calendar year plan year end decides to provide an annual notice instead of providing a benefit statement every three years, the notice must be provided by December 31, 2008. If a plan sponsor decides to provide a benefit statement every three years, the first statement must be provided by December 31, 2009.

Participant Benefit Statements (cont'd)

- *Participant-Directed Defined Contribution Plans.* Participant-directed defined contribution plans are required to provide participant statements on a quarterly basis.
 - Plan sponsors are deemed to timely provide statements if they are provided within 45 days following the end of each calendar quarter.
- *Non-Participant-Directed Defined Contribution Plans.* Plans that do not permit participants to direct their account balances are required to provide statements at least once each calendar year.
 - Plan sponsors are deemed to timely provide statements if they are provided within 45 days following the end of the calendar year.

Notice of Benefit Restrictions

- Strict rules apply to plans that do not meet specific funding requirements
 - Restrictions relate to:
 - Benefit increases
 - Benefit payments
 - Benefit accruals
 - Shutdown benefits

Notice of Benefit Restrictions (cont'd)

➤ Benefit Increases

- A plan cannot be amended to increase benefits if the plan is generally less than 80% funded
 - Restriction does not apply if the plan sponsor funds the increase or makes a large enough contribution to satisfy the 80% funding threshold

Notice of Benefit Restrictions (cont'd)

➤ Benefit Payments

- A plan generally cannot pay benefits in a form other than a life annuity when
 - The plan is less than 60% funded, or
 - The plan sponsor is in bankruptcy and the plan is less than 100% funded

➤ Benefit Accruals

- If a plan is generally less than 60% funded, the plan must freeze all future benefit accruals

Notice of Benefit Restrictions (cont'd)

➤ Shutdown Benefits/Freeze of Accruals

- Plans that are less than 60% funded may not pay shut down benefits or other unpredictable contingent event benefits and the plan must be frozen.

➤ Restriction on Funding Nonqualified Plans

- Plan sponsor may not prefund nonqualified benefits in a rabbi trust if qualified DB plan is “at risk.”

Notice of Benefit Restrictions (cont'd)

- Notice of benefit restrictions must be provided to participants within 30 days after a defined benefit plan is below the respective funding targets.

Plan Amendments

Required by December 31, 2008

- Code Section 415 Amendments
- Pension Funding Equity Act Amendments
- Discretionary Plan Amendments

Code Section 415 Amendments

- Final Code Section 415 regulations are effective for limitation years beginning after July 1, 2007.
- The effective date for calendar year plans was January 1, 2008.
- The due date for adopting Code Section 415 amendments depends upon whether the amendments implement any discretionary provisions.

Code Section 415 Amendments (cont'd)

- Examples of discretionary provisions include:
 - Leave cashouts and deferred compensation paid following termination of employment, including payment for unused bona fide sick, vacation or other leave that an employee could have used if employment had continued.
 - Salary continuation payments for military service and disabled participants.

Code Section 415 Amendments (cont'd)

- *No Discretionary Changes.* Amendments for plans with no discretionary changes that have a calendar year limitation year and a calendar year fiscal year must be adopted by the due date plus extensions for the employer's tax year ending December 31, 2008.
- *Discretionary Changes.* Amendments for plans with discretionary changes that have a calendar year limitation year and a calendar year fiscal year must be adopted by December 31, 2008.

Pension Funding Equity Act (“PFEA”) Amendments

- The PFEA generally changed the actuarial assumptions in defined benefit plans used for determining the Code Section 415 limits for lump sum distributions made in 2004 and 2005.
- Amendments to adopt PFEA changes must be made by the end of the 2008 plan year. Thus, calendar year plans must be amended by December 31, 2008.

Discretionary Amendments

- Amendments to make discretionary changes (such as plan design changes) must be adopted by the end of the plan year in which they are implemented.
- Calendar year plans must be amended by December 31, 2008.

IRS Determination Letter Program

- Under the IRS's determination letter program, individually-designed plans have staggered, five-year remedial amendment cycles.
- The period for submitting individually designed plans in the third remedial amendment cycle began February 1, 2008 and ends January 31, 2009.
 - Cycle C includes employers with employer identification numbers that end in 3 or 8 and most governmental plans.

IRS Determination Letter Program (cont'd)

- The period for submitting plans in the fourth remedial amendment cycle starts February 1, 2009 and ends January 31, 2010.
 - Cycle D includes employers with employer identification numbers that end in 4 or 9.

403(b) Plan Document Deadline

- Final regulations under Code Section 403(b) were issued last year and, among other things, require that Code Section 403(b) arrangements be maintained pursuant to a written plan document.
- Pending a possible extension from the IRS, sponsors of Code Section 403(b) plans will need to update existing plan documents or adopt new plan documents by December 31, 2008 to comply with these final regulations.

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