

Morgan Lewis

seminar

Year-End Plan Sponsor Webcast

Presenters

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Year-End Review of Qualified Plans

- Annual Notices
- Plan Amendments

Annual Notices

- Savings Plans
 - Safe-Harbor Notice
 - Qualified Default Investment Notice
 - Automatic Enrollment Notice
 - Participant Benefit Statements
- Retirement Plans
 - Annual Funding Notice
 - Notice of Consequences of Failure to Defer
 - Participant Benefit Statements

Annual Notices – Savings Plans Safe-Harbor Notice

- Safe-Harbor Plan Notices
 - Traditional Safe-Harbor Plan Notice
 - “Wait and See” Safe-Harbor Notice
 - Provide at least 30 days but no more than 90 days prior to beginning of plan year
 - *For calendar year plans – December 1*

Supplemental Notice for Mid-Year Suspension/Reduction Safe Harbor Contribution

- Mid-Year Suspension/Reduction of Safe Harbor Employer Contributions
 - IRS proposed regulations (effective for amendments adopted on or after 5/18/09) that permit the suspension / reduction of safe harbor non-elective contributions for an employer that experiences a substantial business hardship
 - Supplemental notice must be given at least 30 days in advance and employees must be provided with an opportunity to adjust deferral elections

Annual Notices – Savings Plans

QDIA Notice

- Qualified Default Investment Alternative Notice
 - Applies to savings plans that invest participant contributions in a “QDIA”
 - Must be provided to all participants that have been or may be defaulted into the QDIA
 - Must be separate from other notices, but may be combined with a safe-harbor and/or automatic enrollment notice
 - Must be provided at least 30 days prior to the beginning of the plan year
 - *For calendar year plans - December 1*

Annual Notices – Savings Plans Automatic Enrollment Notice

- Automatic Enrollment Notice
 - Applies to plans that automatically enroll participants
 - Must describe circumstances under which contributions may be automatically contributed to the plan
 - Must be provided to all eligible employees
 - Distribute at least 30 days prior to the beginning of each plan year
 - *For calendar year plans - December 1*

Annual Notices – Savings Plans Participant Benefit Statements

- Participant-Directed Plans
 - Must be provided on a quarterly basis
 - Provide 45 days following end of calendar quarter
- Non-Participant Directed Plans
 - Must be provided annually
 - Provide on or before the date the Form 5500 is filed
 - *For calendar year plans - July 31 or October 15 (if extension is obtained)*

Annual Notices – Retirement Plans

Annual Funding Notice

- Annual Funding Notice
 - Applies to single and multiemployer plans
 - Must be provided to participants, beneficiaries, and labor organizations
 - Must contain information regarding the plan including funding statistics and a statement of assets and liabilities
 - Must be provided within 120 days after the end of the plan year
 - *For calendar year plans - April 30*

Annual Notices – Retirement Plans

Notice of Consequences of Failure to Defer

- Notice of Consequences of Failure to Defer
 - Consent is required to distribute benefits in excess of \$5,000
 - Consent is only valid if participant is informed of right to defer receipt of distribution
 - Pension Protection Act of 2006 (PPA) now requires that the participant be informed of the consequences of failing to defer distribution until normal retirement age

Annual Notices – Retirement Plans: Participant Benefit Statements

- Participant Benefit Statements
 - Must be provided to vested participants who are active employees
 - Provide benefit statement every 3 years, OR
 - Provide annual notice informing participants how to obtain a benefit statement
 - *Provide by December 31*

Other Notices

- 402(f) Notice
 - Required to be provided to recipients of eligible rollover distributions
 - Updated model notices for
 - *Roth designated accounts*
 - *Non-Roth designated accounts*
 - Effective January 1, 2010, but may be used immediately

Plan Amendments

- PPA
- Worker, Retiree, and Employer Recovery Act of 2008 (“WRERA”)
 - For single-employer plans, amendments are generally required by December 31, 2009

Savings Plans - Required Amendments

Vesting of Nonelective Contributions

- Vesting of Nonelective Contributions
 - 3-year cliff OR 6-year graded vesting
 - Effective for contributions allocated after December 31, 2006

Savings Plans - Required Amendments

Gap Period Earnings

- Gap Period Earnings
 - “Gap Period” is the period between the end of the taxable year and the date of distribution
 - Earnings for the Gap Period may not be distributed for corrective distributions of ADP/ACP testing failures
 - *Effective for plan years beginning after December 31, 2007*
 - Under WREERA, earnings for the Gap Period may not be distributed for corrective distributions of excess deferrals
 - *For the 2007 plan year, Gap Period earnings on corrective distributions of excess deferrals were required to be distributed pursuant to Treasury regulations*
 - *WREERA is effective for plan years beginning after December 31, 2007*

Savings Plans - Required Amendments

Diversification Requirements

- Diversification Requirements
 - Plan must allow diversification at least quarterly of:
 - *Amounts attributable to elective deferrals or after-tax contributions that are invested in publicly traded employer securities, and*
 - *Amounts attributable to employer contributions that are invested in publicly traded employer securities*
 - To meet the “diversification” requirement, plans must offer at least 3 investment options with materially different risk and return characteristics
 - *Effective for plan years beginning after December 31, 2006*

Savings Plans - Required Amendments

Hardship Rules

- Hardship Rules
 - Plans may permit participants to obtain a hardship distribution for expenses such as medical costs or college tuition for the participant's beneficiary.
 - *Effective for distributions after August 16, 2006*
 - Plans that have permitted these additional hardship distributions before or during 2009 must be amended by December 31, 2009

Savings Plans - Required Amendments

Qualified Reservist Distributions

- Qualified Reservist Distributions
 - Plans may permit certain reservists ordered or called to active duty for more than 179 days to take early distributions of elective deferrals
 - *Effective for distributions made on or after the date of the order to call to duty*
 - Plans that have permitted these distributions before or during 2009 must be amended by December 31, 2009

Savings Plans - Required Amendments

Benefits Statements

- Benefits Statements
 - Plan amendment is required if a plan provides that benefit statements will be provided less frequently than required
 - *Effective for plan years beginning after December 31, 2006*

Savings Plans - Required Amendments

QDIA

- Qualified Default Investment Alternative Options
 - Plan amendment required if the plan specifies the default investment option
 - *Effective for plan years beginning after December 31, 2006*

Savings Plans - Required Amendments

Required Minimum Distributions

- Required Minimum Distributions
 - WRERA waived the 2009 required minimum distribution requirement for defined contribution plans
 - Treatment of waivers depends on whether the plan forces commencement of distributions at 70½ or simply pays the required minimum amount each year
 - RMD waiver rules are complicated, and each plan must be evaluated separately to determine whether an amendment is required

Recent IRS Guidance - Required Minimum Distributions

- Notice 2009-82
 - Issued September 24, 2009
 - IRS Sample Amendments
 - *Amendments are generally required by December 31, 2011 for calendar year plans*
 - Rollover relief for individuals who already received a 2009 RMD
 - *Generally individuals have until later of November 30, 2009 or 60 days after the distribution was received to rollover the distribution*
 - Transition relief for plans that have not been operated in accordance with its terms through November 30, 2009

Retirement Plan – Required Amendments

Interest Rate Assumptions

- Lump-Sum Distributions
 - Interest rate assumptions changed for distributions made after December 31, 2005
- Minimum Lump-Sum Value
 - Applicable interest rate and applicable mortality table change for distributions with annuity starting dates beginning after December 31, 2008

Retirement Plans – Required Amendments

Vesting for Cash Balance/Hybrid Plans

- Cash Balance/Hybrid Plan Vesting
 - 3-year cliff vesting required
 - *Applies to plans in existence on June 29, 2005 and participants who have an hour of service after December 31, 2007*
 - Other changes
 - *Amendments are generally required by December 31, 2009 for calendar year plans, but many issues remain open*

Retirement Plans – Required Amendments

Funding-Based Benefit Restrictions

- Funding-Based Benefit Restrictions
 - If a plan is $< 80\%$ but $\geq 60\%$ funded, the plan generally cannot pay more than 50% of the participant's accrued benefit in a lump sum and cannot be amended to increase benefits
 - If a plan is $< 60\%$ funded, no benefit accruals are allowed and tighter benefit restrictions apply (e.g., no lump-sum payments may be made)
 - *Effective for plan years beginning after December 31, 2007*

Retirement Plans – Required Amendments

- Definition of Average Compensation
 - PPA eliminates the active participation requirement from the definition of “high three years”
 - Plan amendment required if this former requirement is specifically stated in the plan
 - *Effective for plan years after December 31, 2005*

Savings and Retirement Plans – Required Amendments

- Qualified Optional Survivor Annuity Options
 - 75% annuity option if the Plan's QJSA is less than 75%
 - 50% annuity option if the Plan's QJSA is 75% or greater
 - *Effective for distributions with annuity starting dates beginning after December 31, 2007*

Savings and Retirement Plans – Required Amendments

- Rollovers
 - Direct to Roth IRAs
 - *Applies to distributions after December 31, 2007*
 - After-Tax Contributions to 403(b) Plans and Defined Benefit Plans
 - *Applies for taxable years beginning after December 31, 2006*
 - Nonspouse Beneficiaries may make an eligible rollover to an inherited IRA
 - *Optional under PPA for distributions made after December 31, 2006*
 - *Mandatory under WRERA for plan years after December 31, 2009*

Savings and Retirement Plans – Required Amendments

- Notice and Consent
 - May expand current 90 day notice and election period to 180 days
 - *Effective for notices provided after December 31, 2006*
- Notice of Consequences of Failure to Defer
 - Plan amendment required if plan describes the notice requirements

Savings and Retirement Plans – Required Amendments

- Determination Letter Cycle Amendments
 - Cycle D is for employers with EINs that end in “4” or “9” that wish to file for a determination letter
 - *Plans must be amended to include items on the IRS’s Cumulative List*
 - *Plans must submit the determination letter application to the IRS by January 31, 2010*

Discretionary Amendments

- Discretionary Amendments
 - Changes not required by law
 - *Generally, must be adopted by the end of the plan year in which the amendment is effective*
 - *Exception - Mid-year suspension or reduction of safe-harbor employer contributions*

HEART Act

- Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART Act")
 - Distribution of Elective Deferrals
 - Military Differential Pay
 - Military Benefit Accruals on Death or Disability
 - Beneficiary Death Benefits
 - Qualified Reservist Distributions

HEART Act

Distribution of Elective Deferrals

- Distribution of Elective Deferrals
 - Must treat an individual who is on active duty for more than 30 days as having terminated employment for purposes of the ability to take a distribution of elective deferrals
 - Individual may not make elective deferrals or after-tax contributions for 6 months

HEART Act

Military Differential Pay

- Military Differential Pay
 - If differential pay is provided to employees on active duty for more than 30 days, the employment relationship is considered to continue and the differential pay is counted as compensation
 - May be used for determining pension benefits and/or employee or employer contributions

HEART Act

Military Benefit Accruals on Death or Disability

- Military Benefit Accruals on Death or Disability
 - Plan may provide additional accruals or contributions to participants who die or become disabled while performing qualified military service
 - Amounts are generally based on what the participant would have earned under the USERRA rules if he/she had been reemployed on the day preceding the date of death or disability and then terminated on the actual date of death or disability
 - *Effective on or after January 1, 2007*

HEART Act

Beneficiary Death Benefits

- Beneficiary Death Benefits
 - Plans are required to provide that survivors of participants who die while performing qualified military service will be entitled to any additional benefits under the plan that the participant would have received if the participant had terminated due to death
 - *Exception for accruals*
 - *Effective on or after January 1, 2007*

HEART Act

Qualified Reservist Distributions

- Qualified Reservist Distributions
 - Extends existing provision
 - Optional
 - Does not require suspension of contributions

Reminder – 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.
- Sponsors of 403(b) plans need to update existing plan documents or adopt new plan documents by December 31, 2009 to comply with these final regulations.

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