Plan Sponsor
Outlook
A Current Issues Resource for Plan Sponsors and Administrators 2nd Quarter 2007

DOL Issues Guidance on Statements

The Department of Labor's (DOL) Field Assistance Bulletin 2006-03 provides interim guidance regarding the pension benefit statement requirements of the Pension Protection Act of 2006.

In addition to specifying the general format, the PPA requires that statements include an explanation of any limitation or restriction on the participant's or beneficiary's right to direct investments under the plan. The Field Assistance Bulletin clarifies this rule by specifying that statements must include descriptions of any plan limitations, not those imposed by investment funds.

The Bulletin provides sample language for satisfying the PPA requirement that statements contain an explanation of the importance of a well-balanced portfolio. It also includes a DOL Web address (www.dol.gov/ebsa/investing.html), to be shown on statements, for use by participants and beneficiaries to obtain information about individual investing and diversification.

Field Assistance Bulletin 2006-03 is at http://tinyurl.com/2dbwl9.

Roth 401(k) Survey Released by PSCA

The Profit Sharing/401(k) Council of America (PSCA) found in a recent survey that 61% of plan sponsors surveyed plan to implement or are considering implementing a Roth 401(k) feature.

Survey results showed that 22% of plans already offer a Roth 401(k) option. In plans that have a Roth provision, 8% of participants made such contributions in 2006.

Small plans (1-49 participants) were more likely to offer Roth 401(k) contributions (37%) and had the highest percentage (13%) of eligible employees making these contributions. Large plans (5,000+ participants) were least likely to offer this option (13%) and had the fewest participants taking advantage (1.3%).

Among respondents who have not added Roth 401(k) accounts, the reasons most often cited were concerns about additional participant education, lack of participant demand and additional administrative burden.

The PSCA's *Roth 401(k) Survey 2007* is available at http://tinyurl.com/27lpnq.

High Earners Also Don't Participate

A new Watson Wyatt analysis of 300,000 workers found, not surprisingly, that 52% of those earning between $10,000 and $25,000 did not participate in their employer's 401(k) plan. What was unexpected was the finding that 10% of those earning more than $100,000 also were non-participants.

Workers earning between $10,000 and $25,000 contributed, on average, 6.2% of pay, while those making at least $100,000 contributed 10%.

Large account balances have not been accumulated by participants who have been with their current employer for at least 20 years. Two out of three participants earning $10,000 to $25,000 a year and who have worked for the same employer for 20 years have accumulated less than a year's pay in their 401(k) accounts. Among those earning $75,000 or more, about 25% had less than a year's salary in their accounts.

More about the Watson Wyatt report is at http://tinyurl.com/2bsopu.

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Pension Plan Limitations for 2007

401(k) Maximum Participant Deferral *(*$20,500 for those age 50 or over, if plan permits)*	$15,500*
Defined Contribution Maximum Annual Addition	$45,000
Highly Compensated Employee Threshold	$100,000
Annual Compensation Limit	$225,000

DOL Issues Investment Advice Guidance

The Department of Labor (DOL) has issued guidance regarding the new prohibited transaction exemption included in the Pension Protection Act of 2006. The exemption applies to advice provided by a "fiduciary advisor" through an "eligible investment advice arrangement."

The DOL's view, expressed in Field Assistance Bulletin (FAB) 2007-01, is that plan sponsors are not required to oversee the furnishing of specific advice, but must exercise prudence in selecting and monitoring a fiduciary investment advisor.

Sponsors must follow an "objective process" in reviewing the provider's qualifications, quality of service and "reasonableness" of fees. The selection process should specifically include consideration of the advisor's experience, qualifications, willingness to accept fiduciary status and responsibility for advice, and how closely advice will follow generally accepted investment theories.

Monitoring of the advisor's performance should include a review of the advisor's continued registration in accordance with securities laws, utilization of advice services by participants in relation to the cost of the services to the plan, and participant comments and complaints about the quality of the advice.

Fees charged by the fiduciary advisor for advice must be level; they may not vary depending on the investment option selected.

The DOL also pointed out that its previous guidance on investment advice remains in effect, and is not altered by the Pension Protection Act's investment advice rules.

The FAB can be viewed at http://tinyurl.com/2gvzhs. ■

In Brief...

…..The Internal Revenue Service (IRS) has made available a **new Web page devoted exclusively to the Pension Protection Act of 2006 (PPA).**

The page includes links to a chart of PPA provisions and effective dates, IRS newsletter articles on PPA topics, and PPA guidance issued by the IRS. Also shown is a link to the Department of Labor's Web page concerning the PPA.

The special IRS Web section is at http://tinyurl.com/y5fuhw.

…..The **trend toward faster eligibility continues to be upward**, based on The Profit Sharing/401(k) Council of America's (PSCA) recent survey regarding eligibility practices. It revealed that 69% of 401(k) plans allow enrollment within three months of starting employment, up from 65% a year earlier. Almost 40% permit participant deferrals immediately (defined as one month or less). Only 18% had a waiting period of one year or more.

Faster eligibility for employer contributions rose only slightly from the previous year. About 61% grant the company match within the first three months of employment, and employer profit sharing contributions are available within the first three months in 35% of plans.

Learn more about the PSCA's survey results at http://tinyurl.com/28e25h.

…..Plan sponsors will be busy in 2007 **adding or enhancing plan features**. More than half (58%) of respondents to a Hewitt Associates survey will automatically enroll employees in 401(k) plans by the end of 2007, and 34% already have or will implement automatic contribution rate increases.

About 12% of sponsors added a Roth 401(k) provision in 2006 and 11% said they were likely to do so this year.

With respect to investment advice, 43% offered or were likely to add third-party investment guidance, and 19% offer or plan to offer in-person investment advice.

More information about this survey is at http://tinyurl.com/2yqbgg. ■

Plan Sponsors Ask...

Q: What are the provisions of the final regulations on the use of electronic media for benefit-related notices and elections?

A: The Internal Revenue Service's (IRS) final regulations on this topic were generally effective on January 1, 2007, and cover 401(k) and other retirement plans. The rules reflect the federal E-SIGN law enacted in 2000.

Broadly speaking, the regulations provide that electronic records and signatures have the same legal effect as paper records and signatures. The standards contained in the final rules act as a safe harbor for benefit plan notices, consents and elections that are not otherwise required by the IRS to be in writing.

Sponsors may provide notices by either of two methods. The first, following E-SIGN procedures, requires prior consent from the participant. The second provides that the participant must be effectively able to gain access to the electronic medium and must be advised that he or she may request and receive the notice in writing at no charge.

The electronic system must be reasonably designed to prevent anyone other than the participant from making an election, and has to provide a reasonable opportunity to review, confirm, modify or rescind the election before it is effective. Also, the participant must be given a written or electronic confirmation within a reasonable time.

ERISA notices, such as Summary Plan Descriptions and Summary Annual Reports, are not covered by the IRS rules, nor are any notice or disclosure requirements established by the Department of Labor.

The final regulations are at http://tinyurl.com/y23jxn.

Q: Can you suggest a source for a concise summary of the provisions of the Pension Protection Act of 2006 (PPA)? We want to use a summary to create our own checklist to make sure we don't miss anything.

A: Many summaries of the PPA have become available in recent months. Some are very detailed, while others focus only on narrow categories, such as new disclosure notices.

One helpful summary combines, for each PPA topic, a description of the prior law (if applicable), an explanation of the PPA provision and comments. This summary has the advantage of reflecting recent Internal Revenue Service and Department of Labor guidance.

Prepared for the American Benefits Council, the summary is at http://tinyurl.com/yuyyof. Of course, a summary is no substitute for advice specifically related to your plan from your plan's legal counsel.

Q: What is the Internal Revenue Service's Self-Correction Program (SCP)? How does it differ from the Employee Plans Compliance Resolution System (EPCRS)?

A: The Self-Correction Program is a part of the EPCRS and provides a way for plan sponsors to correct "significant" and "insignificant" plan operational failures without disclosing the failure or paying a fee to the Internal Revenue Service (IRS).

To determine if a failure is insignificant, facts and circumstances are weighed. Factors to be reviewed include the percentage of plan assets involved, the number of participants affected, whether correction was made within a reasonable time and why the failure occurred.

As a general rule, significant violations must be corrected within two plan years following the plan year in which the failure occurred, though there are exceptions.

A description of the SCP is in the Winter, 2007 edition of the IRS' *Retirement News for Employers* newsletter, which is available on the IRS' Web site.

Web Resources for Plan Sponsors

Internal Revenue Service, Employee Plans
www.irs.gov/ep

Department of Labor,
Employee Benefits Security Administration
www.dol.gov/ebsa

401(k) Help Center
www.401khelpcenter.com

BenefitsLink
www.benefitslink.com

BenefitNews
www.benefitnews.com

Profit Sharing/401(k) Council of America
www.psca.org

Employee Benefits Institute of America, Inc.
www.ebia.com

Employee Benefit Research Institute
www.ebri.org

Plan Ahead for Auto Enrollment Safe Harbor

The Pension Protection Act of 2006 provides, effective for plan years beginning on or after January 1, 2008, a new safe harbor for avoiding ADP, ACP and top-heavy testing. The safe harbor requirements include an automatic deferral percentage of at least 3% in the first year, 4% in the second, 5% in the third and 6%, but not more than 10%, thereafter.

There must also be an employer match of at least 100% of the first 1% and 50% of the next 5% of employee contributions, or an employer contribution of at least 3% of compensation.

Full vesting must occur after no more than two years.

The safe harbor also requires that sponsors notify employees prior to the beginning of the plan year.

Participants may take penalty-free distributions of amounts contributed (and related earnings) under automatic deferral arrangements if they request such a withdrawal within 90 days of the first deferral. Withdrawn amounts are to be treated as taxable compensation.

Plan Sponsor's Quarterly Calendar

Consult your plan's counsel or tax advisor regarding these and other items that may apply to your plan.

JULY

- Conduct a review of second quarter payroll and plan deposit dates to ensure compliance with the Department of Labor's rule regarding timely deposit of participant contributions and loan repayments.
- Ensure that the plan's Form 5500 is submitted by July 31st, unless an extension of time applies. (Calendar year plans)
- Verify that employees who became eligible for the plan between April 1st and June 30th received and returned an enrollment form. Follow up on forms that were not returned.

AUGUST

- Submit employee census and payroll data to the plan's record-keeper for mid-year compliance testing. (Calendar year plans).
- Confirm that participants who terminated employment between January 1st and June 30th elected a distribution option and returned their election form.
- Begin preparing for the distribution of the plan's Summary Annual Report to participants and beneficiaries by September 30th, unless a Form 5500 filing extension applies. (Calendar year plans)

SEPTEMBER

- Send a reminder memo or e-mail to participants to remind them to review and update their beneficiary designations for all of their employee benefit plans.
- Distribute the plan's Summary Annual Report to participants and beneficiaries. (Calendar year plans)
- Begin preparing and planning for distribution the annual safe harbor notice to employees between October 3rd and December 2nd. (Calendar year plans electing the safe harbor)

Safe Harbor Notice Reminder

For plan years beginning on or after January 1, 2007, a 401(k) plan's safe harbor notice must include a description of the plan's vesting and withdrawal rules. Simply referring participants to the relevant sections of the Summary Plan Description is no longer acceptable, according to the Internal Revenue Service.

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