

Plan Sponsor

Outlook

A Current Issues Resource for Plan Sponsors and Administrators 4th Quarter 2009

IRS: Safe Harbor Relief

The Internal Revenue Service (IRS) has proposed rules permitting sponsors of Safe Harbor plans, including Qualified Automatic Contribution Arrangements, to suspend or reduce nonelective contributions during the plan year because of business hardship. Safe Harbor plans generally require the employer to make either nonelective or matching contributions throughout a plan year.

To determine a business hardship, the IRS considers if, among other factors:

- The employer is operating at an economic loss;
- There is significant unemployment in the employer's industry;
- Industry sales and profits are declining; and,
- It is expected that the plan will continue only if contributions are reduced or suspended.

To take advantage of the proposed relief, the sponsor must issue a supplemental notice to all eligible employees explaining the effective date and consequences of the plan amendment that changes the safe harbor contributions. The notice must also describe how employees may change their pre-tax deferral elections.

The amendment must specify that the ADP test (and ACP test, if applicable) will be conducted and the requirements met for the entire plan year. And, when the amendment is adopted, the standard top-heavy and minimum contribution requirements for the entire plan year apply.

The proposed rules can be reflected in amendments adopted after May 18, 2009. The IRS is permitting plans to follow the proposed rules until they are final, and will impose any new or stricter requirements on a prospective basis.

Consult your plan's counsel or tax advisor to determine if this relief would be beneficial to your business situation and, if so, the effective date of a change in your plan. ■



Saving Behavior Barely Changed

A study of the saving and investment behavior of 3.2 million participants shows little change in the face of major market volatility.

During 2008, only 16% of participants traded within their accounts, and only 2% moved out of equity funds entirely to a totally-fixed-income portfolio.

About 3% of active participants discontinued their elective contributions. Only 2% of participants requested a hardship withdrawal.

The results indicate that inertia continues to play a key role in decision-making about retirement saving. Despite historic equity market volatility in 2008, participant reaction was only marginal in terms of transfer, contribution and distribution behavior.

The study can be viewed at <http://tinyurl.com/ParticipantInertia2008>. ■



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Pension Plan Limitations for 2010

401(k) Maximum Participant Deferral	\$16,500*
<i>(*\$22,000 for those age 50 or over, if plan permits)</i>	
Defined Contribution Maximum Annual Addition	\$49,000
Highly Compensated Employee Threshold	\$110,000
Annual Compensation Limit	\$245,000

Participants Choose Poorly

According to a recent working paper from the Pension Research Council at the University of Pennsylvania's Wharton School, how individual retirement portfolios perform depends on the investment choice menu offered by plan sponsors and the portfolio selections made by participants.

Using data from over 1,000 401(k) plans and their participants, the authors applauded sponsors' efforts. They concluded that the vast majority of plans offer "efficient" investment menus compared to market benchmarks. This means that sponsors are offering reasonable selections that provide ample choice and diversification opportunities. In fact, "a savvy investor can do quite well."

Unfortunately, most participants "undo" the efficient menu and make significant errors. In fact, the researchers calculated that over twenty years, participants' mistakes reduce their retirement accumulation by 20%, more than the results of a "naïve" allocation strategy. Participants simply fail to invest and diversify sufficiently, and their failure to select the best mixture from the options available to them accounts for the largest proportion of their poor performance record.

The PRC's working paper, WP2009-08, is at <http://tinyurl.com/PortfolioChoice>. ■

The Investment Company Institute's *The Economics of Providing 401(k) Plans: Services, Fees and Expenses, 2008*, reports that, among other things, 401(k) mutual fund investors tend to keep low-cost funds with below average portfolio turnover. See the full report at <http://tinyurl.com/ICI401kFees>.

Race, Ethnicity Affect Behavior

A study of 3 million participants found significant disparities in 401(k) saving and investing behavior among racial and ethnic groups. The Ariel/Hewitt study looked at behaviors of African-American, Hispanic, Asian and Caucasian employees.

Regardless of income and age, African-American and Hispanic employees have lower participation and contribution rates than Asian or white workers. Of the groups studied, Asians have the highest participation and deferral rates.

African-American participants are less likely to invest their contributions in equity-type options. They are more likely than other groups to have a plan loan and twice as likely to have taken a hardship withdrawal. Asian participants are the least likely to request in-service distributions.

Among other recommendations, the study suggests that different cultural perspectives need to be reflected in educational communications to employees.

The report is at <http://tinyurl.com/EthnicDifferences>. ■

Another View of Retirement Confidence

Workers in the 50-64 age group are much less confident about retirement security than they were two years ago. Less than half (44%) were confident about that security in 2009, down significantly from 63% in 2007.

The Watson Wyatt survey found that only 18% thought they had financial resources to last 15 years into retirement, which is about half of what this figure was in the 2007 survey. Only 8% were confident about their financial security 25 years into retirement.

For details, visit <http://tinyurl.com/RetireAttitudes>. Free registration is required. ■

How does account balance size affect retirement plan rollovers? Find out at <http://tinyurl.com/RolloverBalance>.

Plan Sponsors Ask...

Q: Distributing the plan's Summary Plan Description via our Web site rather than sending out a booklet would cut our expenses significantly. Can we do that?

A: Yes. You're describing "electronic delivery" of the Summary Plan Description (SPD). It saves mailing costs and allows for quick and cost-effective SPD updates, and eliminates printing costs.

There are Department of Labor rules for electronic delivery. Sponsors have a safe harbor available to them to show that they are using steps reasonably designed to ensure actual receipt when distributing the SPD electronically.

You can satisfy the safe harbor if your recipients have the ability to gain access to electronic documents at any location where they work, and their access to your information system is an integral part of their duties. Participants must receive an affirmative notification about the significance of the SPD and an offer to provide, upon their request, a paper copy.

Participants who do not regularly use the sponsor's computer or e-mail system must affirmatively consent to receiving the SPD electronically. The consent itself must be provided electronically, in a way that demonstrates their ability to gain access to the electronic SPD.

You should confirm these and any related requirements with your plan's counsel.

Q: It appears that our administrative procedures for handling hardship withdrawals aren't complete. Can you suggest some easy-to-follow procedures?

A: Hardship withdrawals, if permitted by the plan, may be approved to address a participant's "immediate and heavy financial need." Generally, such needs are defined as including medical expenses, purchase of a principal residence, tuition and education expenses, to prevent eviction, funeral expenses and repairing damage to the participant's home. The plan must specify permissible circumstances under which a hardship distribution may be made.



The Internal Revenue Service provided step-by-step instructions for handling hardship withdrawals in a recent issue of its *Retirement News for Employers* newsletter. See the "7 Steps to Making a Hardship Distribution" article on pages 1 and 2 at <http://tinyurl.com/7StepsHardship>.

Q: Our plan's Administrative Committee would like to conduct a self-audit that parallels what an IRS plan audit would cover. Is that information available?

A: Yes. The Internal Revenue Service (IRS) has a number of the tools used by examiners available on its Employee Plan Team Audit Web pages.

A helpful starting point is the Internal Control Questionnaire. This includes examples of questions asked by examiners, and has four sections: Human Resources personnel, Payroll, Plan Failures and Plan Administration. Links to each of these sections are at <http://tinyurl.com/IRSInternalControlQuest>.

The Compliance Trends and Tips area describes plan mistakes found by the IRS in audits and voluntary compliance submissions. Trends identified include failure to correct ADP and/or ACP deficiencies and improper application of the matching formula. This section is at <http://tinyurl.com/IRSComplianceTrends>.

A list of the top ten issues found during 401(k) plan examinations would also be helpful to you. See the list at <http://tinyurl.com/IRSTop10Issues>.

Lastly, a review of the IRS' ten most common failures found in the Voluntary Correction Program may suggest additional items to include in your internal audit. View this list at <http://tinyurl.com/IRSTop10Failures>. ■

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

Plan Sponsor Magazine
www.plansponsor.com

BenefitsLink
www.benefitslink.com

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

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

Employee Benefit Research Institute
www.ebri.org

401(k)s Play Key Role

Nearly 65% of total U.S. retirement assets were held in employer-sponsored retirement plans in 2008, and defined contribution plans accounted for about 40% of employer-sponsored plan assets.

The Investment Company Institute's (ICI) annual report on the retirement market noted that investors held \$2.4 trillion in 401(k) plans in 2008. (Overall, defined contribution plan assets were \$3.5 trillion.) About \$1.1 trillion of 401(k) plan assets were in mutual funds.

About 70% of 401(k) plan mutual fund assets were in equity-type funds.

See the ICI's full report, *The U.S. Retirement Market, 2008*, at <http://tinyurl.com/RetirementMarket>. ■

What are the implications for financial education of widespread financial illiteracy? See the TIAA-CREF Institute's study at <http://tinyurl.com/FinLiteracy>.

Plan Sponsor's Quarterly Calendar

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

JANUARY

- Audit fourth 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.
- Verify that employees who became eligible for the plan between October 1st and December 31st received and returned an enrollment form. Follow up on forms that were not returned.
- Send payroll and employee census data to the plan's recordkeeper for plan-year-end compliance testing. (Calendar year plans)

FEBRUARY

- Review and revise the roster of all plan fiduciaries and confirm each individual's specific responsibilities and duties in writing. Ensure that each fiduciary understands his or her obligations to the plan.
- Update the plan's ERISA fidelity bond coverage to reflect the plan's assets as of December 31st. (Calendar year plans) Remember that if the plan holds employer stock, bond coverage is higher than for non-stock plans.
- Issue a reminder memo or e-mail to all employees to encourage them to review and update, if necessary, their beneficiary designations for all benefit plans by which they are covered.

MARCH

- Review all outstanding participant plan loans to determine if there are any delinquent payments. Also, confirm that each loan's repayment period and the amount borrowed do not violate legal limits.
- Begin planning for timely completion and submission of the plan's Form 5500 and, if required, a plan audit. (Calendar year plans) Consider, if appropriate, the Department of Labor's small plan audit waiver requirements.
- Check bulletin boards and display racks to make sure that posters and other plan materials are conspicuously posted and readily available to employees, and that the information is complete and current.

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