

2013 *Legislative Update and Tax Reminders*

Although it was a relatively quiet year on the regulatory front, big news came in the form of the Department of Labor (DOL) issuing final regulations on the last two prongs of their three part agenda on fee disclosure. After many years of delaying the effective date, at long last the regulations became operational during 2012. In the defined benefit arena, the continuing dramatic decline in fixed income interest rates due to governmental intervention has resulted in higher annual contribution requirements. However, corporate defined benefit plans received much needed relief from the PPA funding rules. For all plans - 401(k), defined benefit, and defined contribution - the maximum contribution and benefit limits increased for the second year in a row for 2013.

Fee & Investment Performance Disclosure Legislation

Last year the Department of Labor (DOL) final regulations implementing the last two prongs of their fee disclosure agenda became a reality. The DOL regulations are designed to provide fee transparency for all plans and also help America's workers in 401(k)-type plans to manage and invest for their retirement security. The last two prongs provide for (1) direct and indirect fee disclosure to Plan Fiduciaries under ERISA 408(b)(2) and (2) fee and expense disclosure and investment-related performance information for Participants to make informed decisions. The DOL final regulations required the following reporting last year –

Plan Fiduciary Disclosure Rules – ERISA 408(b)(2)

This prong of the DOL rules is designed to assist plan fiduciaries in procuring direct and indirect fee information from their Covered Service Providers (CSP). The final rule requires CSPs to provide detailed information on both direct and indirect compensation paid by the plan. Fee transparency will help Responsible Plan Fiduciaries determine if the fees they are paying are reasonable. All pension plans subject to ERISA are covered by this rule including 401(k), defined benefit and defined contribution plans. Covered Service Providers had to provide the following disclosure information to the Responsible Plan Fiduciary by **July 1, 2012**:

- Detailed disclosures about the services they provide;
- Fees they expect to receive for those services;
- Disclose information on third parties from whom they directly/indirectly receive compensation in connection with plan services; and
- Disclose potential conflicts of interest.

Participant Fee and Performance Disclosure Rules – ERISA 404(a)(5)

This final prong of the DOL initiative applies specifically to participant-directed, individual account plans subject to ERISA. This final DOL rule requires detailed investment and expense disclosures that will help America's workers manage and invest for their retirement security. This rule will aid participants in making informed decisions regarding their investments by providing them access to fee and performance information. Plan Administrators were required to provide the initial annual disclosure by **August 30, 2012** containing the following information:

- General information about the structure and mechanics of the plan;
- Annual and quarterly information on administrative and individual expenses;
- Performance Disclosure in a comparative format enabling meaningful comparisons of the investment alternatives;
- Website(s) for plan investment information, including performance, benchmarks and fees; and
- Information regarding brokerage accounts or windows.

For those plans on Ekon Benefits daily trading platform, we provide these disclosures and the comparative investment chart in an easy-to-read, full-color format each quarter on the Participants' **Savings Spectrum** benefit statement.

401(k) Contribution Depositing Requirements

Under final DOL rules for plans of less than 100 participants, contributions are considered to be timely if made by the 7th business day after they are withheld from wages. The DOL final regulations did not address a safe harbor for plans of 100 or more participants, because the DOL presumes that such plans should be able to deposit even sooner than the 7th business day.

All companies should be depositing 401(k) contributions as soon as possible after each payroll. Multiemployer plans may have less stringent requirements if made pursuant to a Collective Bargaining Agreement.

IRS Dollar Limits for Retirement Plans

The IRS announced the updated benefit and contribution limits for 2013:

<u>IRS Dollar Limits for Retirement Plans</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Elective 401(k) and 403(b) Deferrals	\$ 16,500	\$ 16,500	\$ 17,000	\$ 17,500
Catch-up Contributions (over age 50)	5,500	5,500	5,500	5,500
Maximum Defined Contribution Limit	49,000	49,000	50,000	51,000
Maximum Defined Benefit Limit	195,000	195,000	200,000	205,000
Maximum Compensation Limit	245,000	245,000	250,000	255,000

Qualifying Asset Requirement

At least 95% of your Plan Assets must be *Qualifying Plan Assets* as defined by Department of Labor regulations. *Qualifying Plan Assets* include:

- Assets held by banks or similarly organized financial institutions, insurance companies or registered broker-dealers;
- Mutual Fund Shares;
- Insurance investment and annuity contracts; and
- Participant Loans.

If less than 95% of Plan Assets are *Qualifying Plan Assets*, an independent accountant audit or additional bonding is required. Contact your administrator if you have any questions regarding this requirement.

Miscellaneous

- ADP and ACP refunds and income during the year are now taxed in the year distributed, rather than the year deferred; however GAP period income (after the end of the year until distributed) was eliminated.
- Combinations of Defined Benefit and Defined Contribution are not subject to the 25% aggregate limit if DC contributions are 6% or less (actually if the employer DC contributions are 6% or less, the limit is 25% plus the contribution percentage to the DC plan). The 25% limit doesn't apply at all if the DB plan is covered by PBGC.
- Contributions must be made by your tax-filing time with extensions to be deductible and must be made within 8½ months of the Plan Year end if subject to Minimum Funding Standards.
- Controlled Groups are treated as a single employer for all retirement plan purposes.
- Sick and vacation pay paid after termination and by the later of the end of the Plan Year or 2½ months should be counted unless you have elected to exclude it in your plan document.