

## 2012 *Legislative Update and Tax Reminders*

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Thankfully it was a very quiet year without many new 401(k) and Pension Plan regulations. However, there are several important matters, some of which were postponed until this year and other continuing sagas, which should be considered and reviewed. The DOL's agenda on fee disclosure continued during the past year and will come to a head this summer. The interim regulations, further extended in July and expected to be final by the end of this year, have not yet been made final as of this writing (see reverse side for details). Plan limitations were increased for 2012 after remaining unchanged for three years due to low inflation (see below).

### **"EGTRRA" Amendments**

The Economic Growth and Tax Relief Reconciliation Act, **EGTRRA**, was passed in 2001 and is generally effective for Plan Years starting in 2002. Almost all of the Defined Contribution Plans have been amended to comply with these rules.

Our Defined Benefit prototype was finally approved last year. If you have adopted or intend on adopting (IRS Form 8905) our Prototype Plan, you have an extended remedial amendment period until April 30, 2012 to amend your Plan to bring it into compliance. We will be contacting Defined Benefit prototype clients in the first quarter of 2012 to restate their plans to comply with the law. All qualified plans must be amended to comply with EGTRRA.

### **401(k) Contribution Depositing Requirements**

Under DOL rules, 401(k) contributions must be deposited as soon as possible, but not later than 15 business days after the end of the month for which they were withheld. Under final DOL rules for plans of less than 100 participants, contributions are considered to be timely if made by the 7<sup>th</sup> 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 7<sup>th</sup> 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 2012:

<b><u>IRS Dollar Limits for Retirement Plans</u></b>	<b><u>2009</u></b>	<b><u>2010</u></b>	<b><u>2011</u></b>	<b><u>2012</u></b>
Elective 401(k) and 403(b) Deferrals	\$ 16,500	\$ 16,500	\$ 16,500	\$ 17,000
Catch-up Contributions (over age 50)	5,500	5,500	5,500	5,500
Maximum Defined Contribution Limit	49,000	49,000	49,000	50,000
Maximum Defined Benefit Limit	195,000	195,000	195,000	200,000
Maximum Compensation Limit	245,000	245,000	245,000	250,000

### **EFAST2**

As you are aware, several changes have been made to the Form 5500 filing process, most notable of which is the requirement to sign and submit all filings electronically. We will continue to file the IRS Form 5500 on behalf of our client sponsors and other providers to ease their burden in complying with the new electronic filing requirements.

## **Fee & Investment Performance Disclosure Legislation**

On July 13, 2011 the Department of Labor (DOL) issued regulations to postpone, but align, the applicability dates for both of the new Participant Disclosure and the new Plan Sponsor Disclosure. Although not yet final and we expect some changes, the current interim regulations provide for the following –

### **Participant Fee and Performance Disclosure Rules**

Applicable to all participant-directed individual account plans subject to ERISA, Plan Administrators must provide the following beginning **May 31, 2012**:

- Annual and quarterly information on administrative and individual expenses;
- Comparative chart on plan investment, including applicable benchmarks;
- Websites(s) for plan investments;
- Information regarding brokerage accounts or windows; and
- Certain statements regarding plan investments.

### **Plan Sponsor Disclosure Rules**

These disclosure regulations, which apply to both Defined Contribution and Defined Benefit pension plans subject to ERISA, are designed to help plan fiduciaries determine the reasonableness of the fees assessed by their service providers. Plans will need to comply with the new disclosure rules by **April 1, 2012**. Service providers will need to provide the following information to plan sponsors:

- 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.

## **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. 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.