

## 2015 Legislative Update and Tax Reminders

Again this year, the Affordable Care Act drew enough attention to give 401(k) and pension plans a reprieve from the normal constant bombardment of regulation. Although The Pension Protection Act of 2006, (PPA) is eight years old, all Defined Contribution prototype plans must now finally be amended to comply with this far reaching law. Defined Benefit prototype plans have a further delayed restatement date.

### **Restatement of 401(k) and Profit Sharing Plans**

All 401(k) and Profit Sharing prototype plans must be restated in their entirety to comply with PPA and the intervening regulations by April 30, 2016. We have continued our sponsorship of a regional prototype, submitted modifications for governmental approval and received favorable IRS qualification. Adopters of our prototype will have reliance on our IRS determination letter that their plan is qualified. We will begin restating the 401(k) and Profit Sharing plans this summer. As a reminder the major changes enacted by PPA which we have been meeting for several years now are –

- **More rapid vesting** is required for all Defined Contribution Plans. The PPA requirements extend the matching contribution vesting schedule to all employer contributions. Therefore, all employer contributions must vest as least as rapidly as under a three year cliff vesting schedule or a six year graded schedule.
- **The Special Tax Notice** and the Qualified Joint and Survivor explanation can be provided up to 180 days (up from 90 days) before distribution commences.
- **Benefit Statements** must automatically be provided once per calendar quarter for participant directed plans (including a notice which stresses the importance of diversification) and annually for non-participant directed plans.
- **Rollovers** are allowed for *non-spousal* beneficiaries to an IRA through a trustee-to-trustee transfer and will then be treated as an inherited IRA.
- **Default investment funds** used in the absence of a participant election must meet the DOL's Qualified Default Investment Alternative (QDIA) requirements. A QDIA may be a life-cycle, target date fund or a balanced fund. A required notice must be furnished to participants 30 days in advance of the first investment in a QDIA and at least 30 days in advance of each subsequent Plan Year.

### **Roth 401(k)**

Effective 1/1/2006, 401(k) contributions can be designated as *after-tax* money that grows *tax-free*. The Roth 401(k) has significant advantages for certain highly paid employees. Your Plan must contain this optional provision in order to designate your 401(k) contributions as *after-tax* Roth. If you're maxing out your 401(k), designating them as Roth contributions to permit *tax-free* growth can be a real financial advantage. Visit [www.myekon.com](http://www.myekon.com) to read To Roth, or Not to Roth to get the full scoop.

### **IRS Dollar Limits for Retirement Plans**

The IRS announced the updated benefit and contribution limits for 2015:

<b><u>IRS Dollar Limits for Retirement Plans</u></b>	<b><u>2012</u></b>	<b><u>2013</u></b>	<b><u>2014</u></b>	<b><u>2015</u></b>
Elective 401(k) and 403(b) Deferrals	\$ 17,000	\$ 17,500	\$ 17,500	\$ 18,000
Catch-up Contributions (over age 50)	5,500	5,500	5,500	6,000
Maximum Defined Contribution Limit	50,000	51,000	52,000	53,000
Maximum Defined Benefit Limit	200,000	205,000	210,000	210,000
Maximum Compensation Limit	250,000	255,000	260,000	265,000

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

ERISA 404(a)(5) requires detailed investment and expense disclosures for participant-directed, individual account plans to help American workers manage and invest for their retirement security. Plan Administrators were required to provide the initial annual disclosure by **August 30, 2012** and annually within 12 months thereafter. The DOL granted a one-time extension of 18 months for 2013 or 14, but did not eliminate the “within 12 month” requirement which would require earlier and earlier due dates unless mailed exactly on the same date each year.

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 Participant **Savings Spectrum** benefit statement. Therefore the annual disclosure nuance is not a nuisance.

**401(k) Contribution Depositing Requirements**

Under DOL rules, 401(k) contributions must be deposited as soon as possible after they are withheld from wages. Under final DOL rules for plans of less than 100 participants, contributions are considered to be timely only if deposits are 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 as long as contributions are made pursuant to a Collective Bargaining Agreement.

**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**

- Blackout periods for individually directed, daily valued plans require a minimum of 30 days advance notice before changing providers.
- Combinations of Defined Benefit and Defined Contribution plans are not subject to the 25% aggregate limit if DC contributions are 6% or less (actually this turns out to be an overall deduction of 31% of payroll if the employer DC contributions are 6% or less). The 25% limit also 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.
- Regular, 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.
- Sub-S pass through of profits is not FICA taxed and therefore not compensation for qualified plan purposes.