

The ADVISOR

401(k) Inside and Out

April 2010

Vol. 6, No. 1

Inside this issue:

➤ Model Notices Released

1

➤ Preview of Changes for 2010

1-2

➤ 401(k) Plan Enrollment - Making it Automatic

2-3

➤ Sharing Information Electronically

3

Model Notices Released

Employers are always on the alert for tax law changes affecting their retirement plans. And there have been plenty of them over the last decade. Two pieces of legislation in particular, the Pension Protection Act of 2006 (PPA) and the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), made substantive changes that affect the information plans must provide in their "402(f)" notices..

402(f) notices are written explanations plans must give any employee slated to receive an "eligible rollover distribution." Basically, the explanations describe available rollover options and the tax consequences of not rolling over a distribution.

Recently, the IRS released two model 402(f) notices reflecting the PPA and EGTRRA rules. One is a standard notice, and the other applies to payments from designated Roth accounts. They can be found in Notice 2009-68 (Internal Revenue Bulletin 2009-39). ■

Preview of Changes for 2010

Not only is 2010 the beginning of a new decade (and the name of the movie sequel to 2001: A Space Odyssey), it also marks the effective date of a number of retirement plan changes. Following is a preview of coming attractions — at least the ones we know of at this point.

EGTRRA amendment deadline: The deadline for plan sponsors of preapproved defined contribution plans to restate their plans onto an EGTRRA plan document is April 30, 2010. Preapproved master, prototype, and volume submitter plans must be restated every six years. Failing to restate a plan by the deadline will result in a non-amender failure. To bring a plan back into compliance, the plan sponsor must make a correction through the IRS's Employee Plans Compliance Resolution System (EPCRS) and pay associated non-amender penalties.

In addition to the EGTRRA plan restatement (which many plans have already completed), there will be "snap-on" amendments required by provisions in the Pension Protection Act of 2006 (PPA), the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART), the Emergency Economic Stabilization Act of 2008 (EESA), and the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). The PPA amendments are generally required by the end of the 2009 plan year. Other provisions are required in 2010 and 2011 for WRERA. To ease the burden, many plans have put the latter components into the PPA amendment completed in 2009.

DB(k) plans: PPA introduced the DB(k) plan effective January 1, 2010. This new qualified plan is available to businesses with at least two and not more than 500 employees. The DB(k) permits a defined benefit plan to accept elective deferrals. The defined benefit component must either provide a minimum formula of 1% of final average pay for up to 20 years of service or use a cash balance design. The 401(k) component must provide for automatic enrollment with a minimum deferral rate of 4% of pay (with no automatic annual increase) and a fully vested employer matching contribution of 50% on the first 4% of compensation deferred. Any additional employer contributions — matching or non-elective, which are permitted — must be fully vested after three years of service. Additional details include:

- Uniform provision of contributions and benefits is required.
- Permitted disparity may not be used.
- The plan satisfies the top heavy rules.

Continued on page 2...

Preview of Changes for 2010 (continued)

- The ADP/ACP tests are satisfied by the 4% automatic deferral and the 50% employer match on the first 4% contributed.
- Amounts deferred or matched above those minimums will be subject to ADP/ACP testing.

At press time, we were still awaiting detailed guidance for the DB(k) from the IRS.

RMDs for 2010: WRERA permitted participants to waive their required minimum distribution (RMD) amounts for the 2009 distribution calendar year (DCY). The following rules apply for the 2010 DCY:

- Participants who had been receiving RMDs prior to 2009 must receive an RMD for 2010.
- Participants who turned age 70 1/2 in 2009 and did not take an RMD for the 2009 DCY by April 1, 2010, must take an RMD for the 2010 DCY by December 31, 2010.
- Participants who will turn age 70 1/2 in 2010 (and were therefore not affected by the WRERA provision waiving RMDs for the 2009 DCY) have until April 1, 2011, to take their first RMD.

Charitable IRA donations end: The PPA provision allowing IRA owners age 70 1/2 or older to donate up to \$100,000 a year to a qualified charitable organization (and apply the donation amount toward their RMD for the year) ends December 31, 2009. This provision, which was set to expire at the end of 2007, was extended by EESA. Note: The WRERA provision allowing 2009 RMDs to be waived may have reduced the number of taxpayers who took advantage of this opportunity.

402(f) notice changes: The 402(f) notice, commonly known as the "Special Tax or Rollover Notice," must be provided to individuals prior to their receiving a distribution. The notice explains everything participants need to know about distributions including eligible rollover options and distribution rules, various

tax consequences, and myriad other distribution details.

Even though the IRS required the notice to be updated in 2007, the long-awaited IRS model notice (which was last updated in 2002) wasn't issued until 2009. The model notice is in Question and Answer format and includes important language about designated Roth distributions, distributions from automatic enrollment arrangements, distributions to individuals currently serving in the military, and much more. The effective date for implementing the information in the newly released model notice is January 1, 2010.

Mandatory nonspouse rollovers: For plan years beginning after December 31, 2009, allowing nonspouse beneficiaries to roll over their benefit will be a mandatory plan provision. Distributions to nonspouse beneficiaries will now be considered "eligible rollover distributions" subject to the 20% mandatory federal tax withholding and 402(f) notice requirements. ■

401(k) Plan Enrollment - Making It Automatic

Approximately 47 million Americans actively participate in 401(k) retirement savings plans. Despite their popularity, however, 401(k) plan participation rates aren't what they should be at some companies. Be it for lack of motivation, lack of understanding, or other reasons, some employees who are eligible to join a 401(k) plan simply don't.

Low participation among a company's non-highly compensated employees can make it difficult for a plan to pass the tax law's nondiscrimination tests, forcing the company to restrict deferrals by highly compensated employees. Increasing overall participation can make it possible for highly paid employees to take full advantage of the 401(k) plan, in addition to improving the retirement outlook for all employees. Automatic enrollment is one approach employers are using to boost participation.

How It Works

With automatic enrollment, preset elective deferrals to the 401(k) plan begin as soon as an employee becomes eligible to participate, unless the employee elects to receive cash or have another amount contributed. The set percentage is withheld from the employee's pay and deposited in the plan.

Example. Acme's 401(k) plan provides for an automatic enrollment contribution of 3% of eligible compensation. Jason begins working for Acme and is immediately eligible to participate in the plan. He does not opt out of making a plan contribution or choose to contribute a different amount. As a result, Acme begins to withhold 3% of Jason's compensation, contributing the money to his plan account.

To implement automatic enrollment, the employer notifies each eligible employee of the arrangement and of the employee's right

to choose not to make contributions.

Employees must be given sufficient time after receiving the notice to elect *not* to participate in the plan and have the option of changing their elections in the future.

Pension Protection Act Incentives

The 2006 pension law provides several incentives for employers to adopt automatic enrollment.

Prohibitions on withholding. Conflicts with state laws on wage withholding without employee consent have been eliminated.

Default investments. Employers will be protected from fiduciary liability for the investment of contributions made to the plan through automatic enrollment, provided the plan follows U.S. Department of Labor guidelines regarding default investments.

Continued on page 3...

401(k) Plan Enrollment - Making it Automatic (continued)

Nondiscrimination safe harbor. 401(k) plans have the option of following certain safe harbor rules that will allow them to avoid the tax law's top-heavy rules and bypass actual deferral percentage (ADP) and actual contribution percentage (ACP) nondiscrimination testing. The safe harbor requires:

- First-year automatic contributions of no more than 10%, with a minimum contribution of 3% of pay, increasing by 1% annually up to 6% of pay in the fourth year;



- Mandatory employer contributions, either in the form of matching contributions on up to 3.5% of compensation or

nonelective contributions of at least 3% of compensation;

- 100% vesting of these employer contributions after two years of service; and
- Compliance with certain notice requirements.

Worth Considering

If your company sponsors a 401(k) plan or is considering starting a plan, automatic enrollment is a feature you may want to consider. Please let us know if you'd like help with your analysis. ■

Sharing Information Electronically

Distributing information about your retirement plan electronically can be quick and cost effective. However, to comply with federal regulations, you must take care how you distribute the information. The method you choose must be reasonably calculated to ensure actual receipt of the material and to prevent individuals other than the intended recipient from receiving or gaining access to it.

Basically, you can electronically distribute almost any plan information, including:

- Summary plan description, summary of material modifications, summary annual report
- Benefit statements
- Section 404© investment information
- Plan loan information
- Qualified domestic relations order notifications

In addition, participants can give certain consents electronically.

Format

Acceptable electronic media include Internet and intranet websites, e-mail, computer disks, CD-ROMs, and DVDs. To ensure the actual receipt of the information, you can use

return-receipt or notice of undelivered e-mail features or conduct periodic reviews or surveys to confirm receipt. Safeguards such as personal identification numbers (PINs) can help protect the confidentiality of personal information. Avoid providing access at a company kiosk or other common access point where someone else could potentially view the information.

The electronically delivered documents do not have to look exactly like the paper documents. But be sure to prepare and furnish them in a manner consistent with the style, format, and content requirements applicable to the particular document. Include a notice that informs the recipient of the importance of the document (for example, "the attached document describes changes in benefits offered by your plan") and of the right to request and receive a paper version. The notice can be part of the electronic transmission or it can be a paper notice distributed concurrently.

Access and Consent

The type of electronic access a participant routinely has generally determines whether you need to secure the recipient's affirmative consent to provide plan documents and information electronically. Generally, if the employee has effective access to electronic

media at work as part of his or her regular duties, you don't need prior consent. However, you will have to provide paper documents if the participant or beneficiary requests them.

For employees who do not have routine electronic access at work, beneficiaries, and other nonemployee recipients, you must obtain their affirmative consent to receive documents electronically. The consent must contain a clear and conspicuous statement informing the person of the types of documents to be disclosed, the right to withhold or withdraw consent and how to do so, the right to request paper documents, and the hardware and software requirements for accessing and retaining the documents.

Generally, for disclosures using the Internet or other electronic communication network, the consent must reasonably demonstrate that the person has the ability to access the information. You also must communicate changes in hardware or software that could affect access and offer recipients the right to withdraw consent after such changes. And they must consent to receiving documents in the new way. ■

The ADVISOR
401(k) Inside and Out

Geoff Mettler, AIF®, PRP
Vice President
Jenkins Retirement Plans
(NRP Member Firm)
2552 Stanwell Drive
Concord, CA 94520
800-234-6363

Securities offered through and advisory services provided by NRP Financial, Inc. Member FINRA/SIPC.

Articles used in this document were originally published by IOMA and are reprinted with the express written permission of IOMA. Any further use or reproduction of these articles requires the copyright permission of IOMA. © 2005. For more information about IOMA or to subscribe to the newsletters from which these articles were extracted – Managing 401(k) Plans, DC Plan News & Analysis, Managing Benefit Plans – contact IOMA at 212-576-8741, email content@ioma.com or visit our web site at www.ioma.com.

©2008 401(k) Advisors USA. All rights reserved. The Advisor is published as a general informational source. Articles are general in nature and are not intended to constitute advice in any particular matter. 401(k) Advisors USA does not warrant and is not responsible for errors or omissions in the content of this newsletter.