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With the end of the year approaching, employers who are sponsors of qualified benefit plans must comply with a variety of plan amendment and notice requirements as well as put into place new IRS limits on retirement plan contributions.

Retirement Plans Must Be Amended Before Year End

By Melissa B. Kurtzman

The end of the calendar year is soon approaching. For sponsors of qualified benefit plans, this means that plan amendments must be adopted and certain notices may need to be distributed. Below is a summary of the major amendments and notices that apply to most qualified retirement plans. The IRS has also released the new retirement plan limits for 2010 that are available here. During the year end flurry of activity, employers need to focus on these deadlines, notice requirements and new limits. If employers have not yet been contacted by their plan's service provider, employers should take action now to avoid being in noncompliance.

Pension Protection Act of 2006 (PPA)

In general, calendar year-end qualified retirement plans must be amended for PPA compliance by December 31, 2009. For many of these amendments, earlier effective dates have been in place for operational compliance and the end of 2009 is a date upon which documentary compliance is required. The PPA amendments include, but are not limited to, the following items:

- **Automatic Enrollment:** 401(k) plans that automatically enroll participants under qualified automatic contribution arrangements and eligible automatic contribution arrangements must be amended.
- **Diversification Rules:** Non-ESOP plans that are invested in publicly traded employer securities must be amended to comply with the diversification rules that became effective after December 31, 2006.
- **Hardship Distributions:** Some plan sponsors have expanded hardship distributions to a participant's primary beneficiary. This amendment is optional but if expanded distributions were implemented, the plan must be amended to reflect this.
- **Vesting of Non-Elective Contributions:** Plans vesting schedules must reflect, at a minimum, a three-year cliff schedule or six-year graded schedule.

- **Qualified Reservist Distributions:** Qualified plans that permit qualified reservist distributions, which are an optional distribution trigger, must be amended.
- **Qualified Optional Survivor Annuities:** Defined contribution plans (i.e., money purchase plans) subject to the joint and survivor annuity requirements and defined benefit plans (including cash balance plans) may need to be amended to include a 50% or 75 % survivor annuity.
- **180-day Notice Expansion:** Plans, at their option, may now provide each participant with a “tax notice” (also known as a “402(f) notice”) 180 days in advance of a distribution event, in lieu of 90 days. Plans that extended their participant notice windows from 90 days to 180 days will need to add the new notice timing date to their plans.
- **Nonspouse Rollovers:** Defined benefit plans and defined contribution plans must be amended to allow an eligible rollover distribution received by a non-spouse beneficiary to be directly rolled into an “inherited IRA.”
- **Direct Rollovers:** Plans must be amended to permit rollovers of plan distributions to Roth IRAs.
- **Normal Retirement Age:** Defined benefit plans as well as defined contribution money purchase plans may need to be amended to comply with a change to normal retirement age if the age in the plan is lower than age 62.
- **Defined Benefit Plans:** New rules must be adopted for underfunded plans that restrict certain benefit distributions. Defined benefit plans must also be amended for 415 interest rate assumptions for lump sum distributions; and cash balance defined benefit plans may be required to be amended for certain PPA law changes including three year cliff investing.

Required Minimum Distribution Waiver

Recent IRS guidance on the temporary suspension for 2009 of required minimum distributions under defined contribution plans may require plan sponsors to amend their plans for any 2009 suspensions. Plan sponsors should discuss the options with their advisors.

Annual Notices

Defined contribution plan sponsors must be aware of the annual notice rules for safe harbor 401(k) plans, qualified default investment alternative arrangements, 401(k) plan automatic enrollment arrangements, and participant statements. Defined Benefit Plan sponsors must be aware of their annual funding notice obligations and the three year cycle for benefit statements for vested active employees or the annual notice to participants describing how to obtain the benefit statements.

Participant Statements for Participant Directed Plans

The PPA also requires sponsors of participant directed qualified plans to provide benefit statements to plan participants each quarter. The statements are deemed timely if provided within 45 days of the end of the calendar year quarter.

Participant's Right to Defer Benefits

The PPA requires participants to be informed of their right to defer the distribution of retirement plan benefits if the benefits exceed \$5,000. Plan sponsors are required to make a reasonable attempt to comply with this requirement until 90 days following the issuance of final regulations.

At this time the IRS has issued proposed regulations and sample safe harbor language to comply with the notice requirement. Until final regulations are issued, plan sponsors should continue good faith compliance.

Safe Harbor Tax Notice

The IRS has provided two revised safe harbor documents (one with a Roth account and one without a Roth account) that may be provided to plan participants who receive plan distributions. The prior safe harbor tax notice expires December 31, 2009. Many service providers distribute these notices on behalf of the plan sponsor. It is important to make sure the new safe harbor distribution explanations are provided by January 1, 2010.

403(b) Plan Document

Almost every 403(b) plan must be embodied in a written plan document that includes all the material provisions of the plan and is written to conform with the operation of the plan.

IRS Determination Letters for Cycle D Filers (January 31, 2010)

Sponsors of multiemployer plans and sponsors of individually designed plans whose Employer Identification Numbers end in 4 or 9 must file their plans for an Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) determination letter by January 31, 2010.

Employers Who Adopt Master or Prototype Plans or Volume Submitter Plans (April 30, 2010)

Employers who adopt pre-approved master, prototype plans or volume submitter plans sponsored by their service providers (financial institutions, third-party administrators, law firms, etc.) have until April 30, 2010, to adopt and, if necessary, file their plans for a favorable EGTRRA determination letter with the Internal Revenue Service.

Heroes Earnings Assistance and Relief Act of 2008 (“HEART Act”)

Although an amendment is not required until the end of 2010, employers may want to consider updating their plans for HEART Act compliance in conjunction with PPA amendments. In general, the HEART Act requires that participants who die on or after January 1, 2007 while in military service be eligible for any death benefits provided under the Plan. In addition, effective January 1, 2009, compensation paid by employers to employees during military service to replace all or part of what the employee would have received if he or she had remained in active employment (i.e. differential wage payments) must be treated as compensation under any employer sponsor plan.

What to Do Now

Review all qualified plan documents to make certain they are properly amended and, if a service provider is responsible for amendments, contact them to confirm that all necessary documentation has been completed or is in the process of being completed. If applicable, prepare to file your qualified plan with the IRS and self-audit your plan for compliance with the new laws and notices. Ensure employees have been notified as to the new retirement plan limits as applicable.

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