

REPTTECH

Customized Employee Benefits Administration

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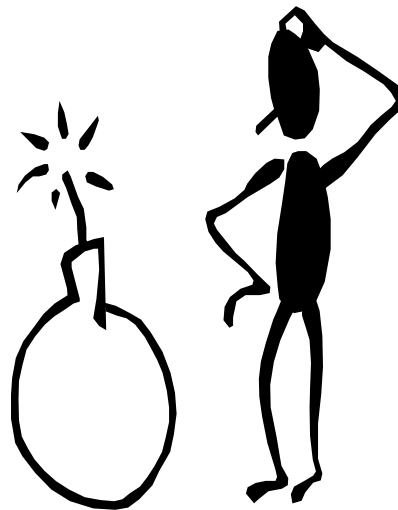
Big Problems—Easy Solutions

We all know that maintaining a qualified retirement plan can be trying at times. Over the years we have helped many clients repair a “broken” plan. Most of the problems we see stem from the late deposit of 401(k) contributions, and the incorrect application of plan provisions.

Taking the following steps can prevent these two costly and time consuming benefit problems from occurring.

Deposit 401(k) Employee Deferrals ASAP Following Each Payroll. The law requires that 401(k) employee deferrals be deposited as soon as administratively possible following

each payroll. This means that as soon as the employer can determine the amount to



be transmitted to the trust, and can provide any neces-

sary payroll reconciliation, the funds must be transmitted. **It is not acceptable, for example, for an employer with a bi-weekly payroll to deposit 401(k) employee deferrals only once per month. The deposit should be made within two business days following each payroll.** Failure to transmit 401(k) employee deferrals to the trust as soon as possible constitutes a prohibited transaction and a breach of fiduciary duty, exposing the employer to excise taxes and to owing the plan additional funds to compensate for the time the funds should have been in the

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Roth 401(k) Regulations—Part One

The IRS has announced that they will issue the rules pertaining to Roth 401(k) in three parts. On December 30, 2005, the IRS released part one — final rules on administrative issues. These final rules were effective January 3, 2006.

The final regulations apply to plan years that begin on or after January 1, 2006. However, off-calendar year plans may add a Roth

401(k) provision before the beginning of their 2006 plan year. Example: a plan that maintains a July 1 through June 30 Plan Year may add the Roth contribution provisions effective January 1, 2006. Since the Roth feature is an optional plan provision, the adoption of the Roth amendment to the plan must be completed by the last day of the plan year in which the Roth contribution provision is

first added.

Basic Requirements. Roth contributions must be:

1. designated irrevocably as Roth deferrals
2. included in the employee’s wages at the time of deferral, and
3. maintained in a separate account in the plan.

The separate account rule is actually only a record-

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trust. This is not the type of problem that can be swept under the rug. Form 5500 (signed under penalty of perjury) specifically asks whether employee deferrals have been timely deposited. Retirement plan auditors and the Department of Labor have been more closely scrutinizing whether deposits are being made soon enough. If your company has not been timely remitting 401(k) deferrals or you are not sure whether your deposits have been fast enough, give us a call. We can recommend various methods which are accepted by the governmental agencies for correcting past late deposits.

Read Your Summary Plan Description. Fortify yourself with your favorite caffeinated beverage and review those summary plan descriptions. If you're lucky, you will find that the summary plan description matches the manner in which you understood the plan to work and the manner in which you have been operating it. Too often,



however, there is a disconnect between one or more of the plan's terms and the manner in which the plan has been operated (sometimes for as long as anyone can remember). This type of error is called an "operational error." Since

the IRS takes the position that it can disqualify retirement plans that contain operational errors, any operational error (even if it seems small to you), should be addressed. Often there are multiple alternatives for correcting operational errors, but it is always easiest and cheapest to catch operational errors early. A different problem you may identify by reading the summary plan description is that it does not accurately reflect the terms of the plan (this happens more often than you would think, even with computer generated summary plan descriptions). This type of error may also be costly. Many courts will enforce the terms of a summary plan description that are more favorable to a participant even though the plan document is more restrictive. The bottom line is that this is one area where an ounce of prevention (reading your summary plan description each time your plan is redone or amended) is worth a pound of cure.

Final USERRA Notice Regulations

The Veterans Benefits Improvement Act of 2004 ("VBIA") amended the Uniform Services Employment and Re-employment Rights Act ("USERRA") to impose a requirement that employers provide a notice of USERRA rights, benefits and obligations. On March 10, 2005, the DOL issued an interim final rule implementing this requirement, including a form notice for employers to use. The DOL now has issued final notice regulations. The regulations were effective on January 18, 2006. An employer may post the notice where it customarily places employee

notices, or may mail or e-mail the notice. The requirement to provide the notice became effective March 10, 2005. Employers may access the notice on the DOL Web site at www.dol.gov/vets/programs/userra/poster.htm. The DOL does not prescribe how long a USERRA poster must remain on the bulletin board. The DOL advises employers to use their "best judgment" to determine the method of compliance with the notice requirement. Presumably, the notice in new employee "packets" will satisfy the notice requirement for prospective employees.

FOR USE BY PRIVATE EMPLOYERS AND GOVERNMENT EMPLOYERS

YOUR RIGHTS UNDER USERRA THE UNIFORM SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Oceanic and Atmospheric Administration (NOAA) and certain employees have documentation, signed and sent, present members of the uniformed services, and applicants for the uniformed services.

REEMPLOYMENT RIGHTS

- You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:
 - you receive that your employer receives advance written or verbal notice of your service;
 - you have five years of service of cumulative service in the uniformed service, unless you are reemployed in a substantially similar position after completion of service; and
 - you have not been discharged from service with a disqualifying discharge or other other than honorable conditions.

If you are eligible to be reemployed, you must be returned to the job and benefits you would have obtained if you had not been absent due to military service or in some cases, a comparable job.

RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

- If you:
 - are a past or present member of the uniformed service;
 - are required for membership in the uniformed service; or
 - are obligated to serve in the uniformed service;

then an employer may not deny you:

- initial employment;
- reemployment;
- benefits in employment;
- promotion; or
- any benefits of employment.

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including assisting or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

The rights listed here may vary depending on the circumstances. This notice was prepared by USERRA and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.htm>. Contact the nearest office to which employees or their rights under USERRA, and employers may refer the Department by filling in the table where the contractor is located for assistance.

U.S. Department of Justice

U.S. Department of Labor
1-800-827-2385

ESCR
1-800-538-4598
Publication Date—January 2006

Roth 401(k) Regulations (Continued)

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keeping requirement and does not mandate that Roth contributions be physically held in a separate account. Roth contributions must also meet all the standard requirements—vesting, distribution restrictions, and ADP testing—that apply to any other 401(k) deferral contributions.

Clarifications. The regulations clarify several important questions. First, they confirm that a plan must offer pre-tax 401(k) contributions before it can add the Roth contribution option. Thus, it is not permitted to adopt a Roth-only 401(k) plan. Also, catch-up contributions can be designated as Roth contributions, and Roth contributions can be used for participant loans.

Distributions. The final regulations included limited guidance on distributions. The regulations did confirm that Roth contributions are subject to the required minimum distribution (“RMD”) rules of §401(a)(9) (unlike Roth IRAs, which are not subject to the RMD rules). They also provide that Roth contributions can only be rolled over to another 401(k) plan that includes a Roth 401(k) provision or to a Roth IRA. However, a Roth IRA cannot be rolled over to a Roth 401(k) account.

A plan may permit participants to elect whether Roth contributions or pre-tax deferrals are distributed for a partial withdrawal such as a hardship distribution. Alternatively, the terms of the plan can dictate the order in which

the money types are distributed.

Excess Contributions. A distribution of excess contributions for a failed ADP test will not be included in gross income if the excess returned is a Roth contribution. However, any earnings returned will be included in income in the same manner as a return of earnings associated with a pre-tax deferral. If a participant makes both pre-tax and Roth contributions in the year of the ADP failure, the terms of the plan may allow the participant to designate which money type is returned *or* the terms of the plan may designate which money type is returned first.

Watch future newsletters for more information on Roth 401(k)s as it becomes available from the IRS.

PBGC Premium Increase for Defined Benefit Plans

On February 8, 2006, the President signed the Deficit Reduction Act of 2005 (DRA ‘05), which immediately increases the Pension Benefit Guaranty Corporation’s (PBGC) flat-rate premium, calls for automatic future increases based on wage growth, and establishes a new premium ‘exit fee’ for employers who terminate underfunded plans and continue in business.

Initial Increase in Flat-Rate Premiums. The initial increase in the PBGC’s per-participant flat-rate premium is from \$19 to \$30 for single-employer plans. This increase is effective for plan years beginning on or after January 1, 2006. Thus, for small plans (those with fewer than 500 participants for the 2005 plan year), the first filing subject to the new rate is the filing due for calendar-year plans on October 16, 2006 (October 15, 2006, falls on a Sunday).

Future Automatic Indexing. For plan years beginning on or after January 1,

2007, the flat-rate premium rate of \$30 for single-employer plans will be automatically adjusted each year to track increases in the national average wage index that is currently used for Social Security indexing. For each post-2006 plan year, the adjustment will be based on the ratio of that index for the calendar year two years in the past (*e.g.*, in the case of the 2007 plan year, the index for the 2005 calendar year is used) to that index for the 2004 calendar year. The resulting rate will be rounded to the nearest multiple of \$1. In no case will there be a decrease, *i.e.*, the rate for a given plan year will always be at least what it was for the immediately preceding plan year.

New “Exit Fee.” DRA ‘05 adds a new flat-rate premium charge that is, in effect, an “exit fee” for an employer who terminates an underfunded plan in a distress or involuntary termination and continues in business. The exit fee is \$1,250 per participant per year for three years. Thus, for example, the total for

a plan with 40 participants is \$150,000 over a three-year period.

The new exit fee applies to plans that terminate on or after January 1, 2006, and on or before December 31, 2010, with one exception: plans that terminate during a bankruptcy reorganization proceeding where the bankruptcy filing was made before October 18, 2005, are exempt. The three-year period during which the exit fee applies generally starts shortly after the plan’s termination date. However, for involuntary terminations and certain distress terminations during a bankruptcy reorganization proceeding, the three-year period does not start until after the bankruptcy proceeding has been concluded.

More to come. Additional changes to the flat-rate premium and, more likely, changes to the variable-rate premium may be addressed as part of pending pension reform legislation. We will keep you informed as more information becomes available.

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IRS RAISES USER FEES IN 2006

On December 19, 2005, the IRS announced increases in selected user fees for 2006. The new fee structure will more accurately reflect the costs of processing various applications, ruling requests, and opinion letters.

The Office of Management and Budget has directed federal agencies to change user fees reflecting the full cost of goods or services "that convey special benefits to recipients beyond those accruing to the general public."

The fee increases affect a limited population of taxpayers and tax-exempt entities with technical questions or procedural issues.

We have reproduced selected categories of interest to plan sponsors in the table below.

Changes effective 7/1/2006:

	User fee for applications postmarked before 7/1/2006	User fee for applications postmarked after 7/1/2006
Determination Letters		
Form 5300 (Application for Determination of Employee Benefit Plan)	\$700	\$1,000
Form 5310 (Application for Determination upon Termination)	\$225	\$1,000
Form 5307 (Application for Determination for Adopters of M&P or VS Plans)	\$125	\$300
Form 6406 (Short Form Application for Minor Amendment of Employee Benefit Plan)	\$125	\$300
If the applicant is selecting to receive a determination with respect to the average benefit test and/or any of the general tests:		
Form 5300 (Application for Determination of Employee Benefit Plan)	\$1,250	\$1,800
Form 5310 (Application for Determination upon Termination)	\$375	\$1,800

QUESTIONS?

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