

REPTECH

Customized Employee Benefits Administration

DOCUMENTS UPDATE

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The last time we had to completely amend and restate the plan documents of REPTECH clients was in 2002 for the so-called GUST restatement. GUST was an acronym for various laws covering the period 1994-2000. In 2001 the Congress passed the Economic Growth and Tax Relief Reconciliation Act ("EGTRRA") which made substantial changes in the pension laws such as raising the compensation limit, raising 401(k) deferral limits, adding catch-up contributions for those participants who are age 50 and over, and raising the 415 limit (i.e., the maximum amount that may be allocated to a participant's account during a plan year: \$45,000 for 2007). Furthermore, since the GUST round of restatements there have been a number of regulatory initiatives including final loan regulations, final regulations for 401(k) plans and matching contributions, regulations regarding the "gateway" for new comparability plans, final regulations on required minimum distributions (i.e., 70 ½ distributions), and automatic rollovers.

These legislative and regulatory changes require the complete amendment and restatement of all plan documents. The process for individually designed plans, such as those of you who have adopted cash balance pension plans, started in 2006 with the staggered 5-year cycles of Revenue Procedure 2005-66 (updated by Revenue Procedure 2007-44) which divided the EGTRRA submission process by the Employer Identification Number (EIN) of the plan sponsor. Cycle A was for EIN's ending in 1 or 6, Cycle B for EIN's ending in 2 or 7 and so on. If you are affected by this change, we have already notified you. For some, we have already submitted the EGTRRA restated document to the IRS for a Determina-



tion Letter. For others, the mandated submission date is January 31, 2008, 2009, 2010, or 2011.

The majority of our clients are on our prototype or volume submitter documents. These so-called pre-approved plans are subject to a separate 6-year cycle which is NOT tied to the EIN of the plan sponsor. The first year of the 6-year cycle began on February 1, 2005 during which we submitted our amended and restated EGTRRA prototype and volume submitter defined contribution plans to the IRS for review. The IRS has up to two years to issue Opinion and Advisory Letters on these documents. The two-year review period expires on January 31, 2008 and we are expecting approved plan documents shortly thereafter together with an IRS announcement of the date by which the EGTRRA restated documents must be adopted by you---and Summary Plan Descriptions updated. Early in 2008, we expect to be notifying each of you of the procedure we implement to work with you to keep your plan documents up to date.

The Scoop on Cash Balance Plans

Cash Balance Plans

AGE	401(K) ONLY	401(K) WITH PROFIT SHARING	CASH BALANCE	TOTAL
65	\$20,500	\$50,000	\$185,000	\$235,500
60	\$20,500	\$50,000	\$177,000	\$227,000
55	\$20,500	\$50,000	\$135,000	\$185,000
50	\$20,500	\$50,000	\$103,000	\$153,000
45	\$15,500	\$45,000	\$ 80,000	\$125,000
40	\$15,500	\$45,000	\$ 61,000	\$106,000
35	\$15,500	\$45,000	\$ 47,000	\$ 92,000
30	\$15,000	\$45,000	\$ 38,000	\$ 83,000

The Internal Revenue Service (“IRS”) calls cash balance a hybrid. It’s basically a defined-benefit plan with a benefit expressed in terms of an account, similar to a defined-contribution plan. In actuality, the cash balance plan is not subdivided into individual participant accounts,

Here’s how it works. Each year, the employer guarantees the participant: (1) a contribution, based on a formula stated in the plan for that participant’s class, plus (2) an interest credit that cannot exceed a “market rate of return,” a PPA 2006 term of art that the IRS had not clarified as of this writing. Participants fully vest within three years. When they leave or retire, vested money is theirs to take in a lump sum or annuity.

Different participant groups may receive different contributions and get different benefits under the plan, so long as the

plan complies with IRS nondiscrimination rules. There may be multiple classes of owners and key employees with contributions and benefits differing among the classes, along with multiple classes of other participating employees. The possibilities are virtually infinite.

The plan must cover the lesser of: (1) 50 individuals; or, (2) 40% of all those eligible to participate. For example, if the participation requirement is age 21, with a year of service, and a company has 12 employees, 10 with a year of service, then at least four (40% times ten eligible employees) must be in the cash balance plan.

All four could be owners, with the right set of circumstances. Or say there’s a large law firm with 50 or more partners. Their plan could cover only the partners.

Regardless of who is covered, advisors report that everyone involved appreciates the easy-to-understand account-balance concept, as compared to the usual DB plan mumbo jumbo about career average pay and coordination with Social Security.

Better Than Traditional Pensions

Part of what makes cash balance plans so attractive to professional practices is that the partners don’t subsidize one another—that is, pay for one another’s benefits—which can sometimes happen with a traditional pension. An owner who puts \$100,000 of gross pay into a cash balance plan will receive in benefits \$100,000 plus the interest credits. Such a direct linkage between what goes into the plan and the benefit that comes out doesn’t always materialize with a traditional

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401(k) Plan Fees Initiatives

As 401(k) plans become the major source of retirement savings, Congress, GAO, DOL and the SEC are all turning their attention to the issue of 401(k) fees. Last fall, GAO issued a report on [Changes Needed to Provide 401\(k\) Plan Participants and the Department of Labor Better Information on Fees](#) at the request of Congressman George Miller, now Chair of the House Education and Labor Committee. Last week, the Committee held a hearing on "Hidden 401(k) Fees Undermining Retirement Security?" If you missed the hearing, you can view it on line at the

Committee's [website at http://edworkforce.house.gov/hearings/fc030607.shtml](http://edworkforce.house.gov/hearings/fc030607.shtml) where the written testimony of the witnesses is also posted.

The DOL has indicated that they will be launching a number of new initiatives to increase disclosure of 401(k) fees, particularly the payment of indirect fees to service providers. The DOL has already proposed a revision of Schedule C of the Form 5500 which would require annual disclosure of indirect fees. Recognizing that plan fiduciaries often have difficulty getting

information about indirect fees, the Department is planning to propose an amendment to the statutory prohibited transaction exemption that permits service providers to be paid (ERISA section 408(b)(2)) to require service providers to provide information about indirect compensation so that plan fiduciaries can determine if their total fees are reasonable. The Department is also expected to issue a request for information about 401(k) disclosure of fees, both direct and indirect, to plan participants.

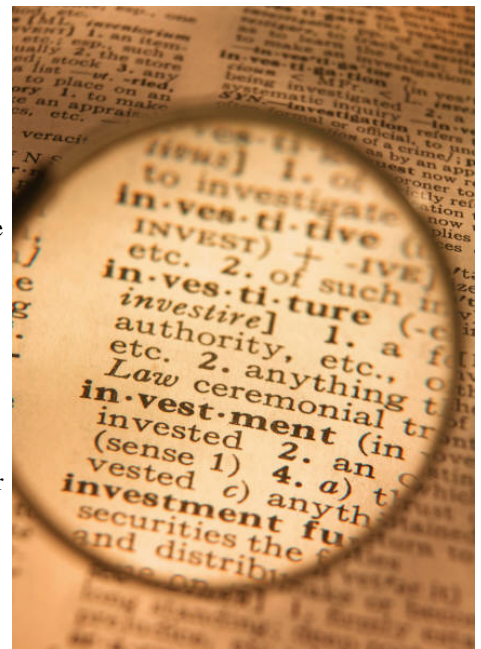
REPTECH Weighs in on Fee Disclosures

Over the last twenty years we have seen our industry change dramatically. In the 1980s retirement plan assets were most often invested in managed accounts and the trustees were solely responsible for the investment decisions. Because the money was invested in single accounts and managed as a pool, the fee structure was often easier to understand.

Today, most retirement plan assets are participant-directed. This trend has led to the utilization of investment platforms provided by recordkeepers which provide both participant level and plan level reporting. Many investment and insurance companies have entered and exited this business over the years. Because there are more options than ever for 401(k) investments, plan sponsors typically need to work with a financial advisor to determine the appropriate investment platform for their specific needs. Along with all the choice in investment platforms has come complexity in the pricing of the plan services.

There are currently no rules governing the disclosure of fees charged by plan service providers and recordkeepers, and thus disclosure is generally inconsistent and too often nonexistent. Plan sponsors have a duty to know what fees are being charged to the plan and its participants. In addition, they need to determine that the fees are "reasonable." For many plan sponsors, it is difficult to decipher what fees they are actually paying, let alone determine whether or not they are reasonable. This is especially difficult when the plan services are bundled and provided by one carrier. Often times in that situation, administration fees can be shifted to the expense ratios of the funds and not disclosed at all.

REPTECH has always advocated full disclosure of fees. We strongly believe that any disclosures required of service provider fees to a plan fiduciary must be provided in a uniform manner (regardless of how plans services are delivered) so that information can be provided in a way that allows plan sponsors to make apples-to-apples comparisons when analyzing various providers. The problem, as we see it, it not necessarily the fees being charged, but the lack of disclosure of the fees. This information is critical to plan sponsors to make the best decisions for their plans.



REPTECH

Customized Employee Benefits Administration

Suite 500
6400 S. Fiddler's Green Circle
Greenwood Village, CO 80111

Phone: 720.489.8700
Fax: 720-489-8444
Toll Free: 1.877.291.4015

www.reptech.com

Cash Balance Plans

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pension, particularly when the owners differ along variables such as age, tenure, or ownership percentage

A second attractive feature is potentially much less contribution volatility than has historically and famously plagued traditional pensions. If the cash balance plan assets earn the interest-crediting rate precisely, the plan will not become underfunded—in other words, the assets will equal the obligations to pensioners—and the employers contribution can stay constant. Another factor helping to steady the contribution is that it's less dependent upon an interest-rate-sensitive present-value calculation than the contribution to a traditional pension is.

Profile of Candidates

What business is ripe for this plan? A successful one with predictable cash flows that are likely to continue. You don't use it when high business profits are a one-year deal. IRS guidelines require a pension plan, even a hybrid one, to be "permanent." That normally means funding it for minimum of five years.

During that time, the owners must be willing to spend for their worker's benefit. Younger employees in the cash balance plan, and a low ratio of employees to owners, help keep the contribution down. But even so, in order for the IRS to agree the plan doesn't unduly favor highly compensated employees, it usually must be operated in tandem with a reasonably generous defined-contribution profit-sharing plan that covers the rank and file.

For example, contributing 7.5% of pay to profit-sharing for workers allows you to cross-test, which facilitates passing the IRS nondiscrimination testing for the cash balance plan.

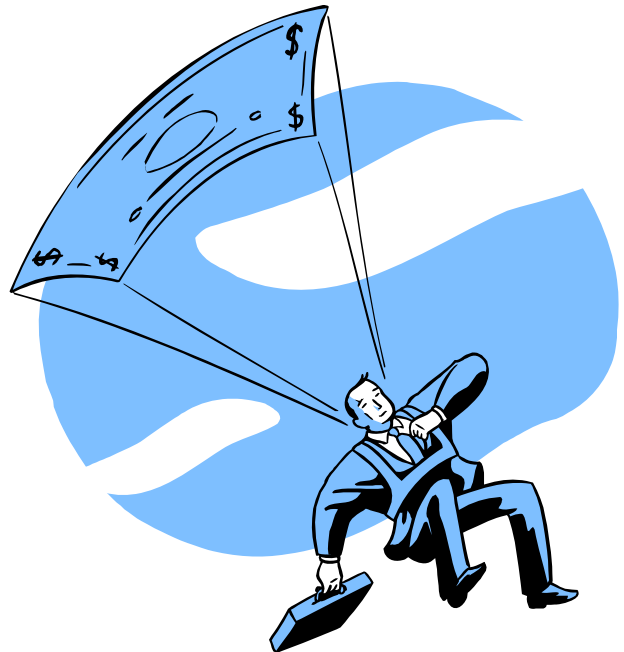
The downfall to cash balance? Complexity which creates additional costs. There is no IRS prototype plan document, no off-the-shelf product that available. Each plan needs to be custom drafted—not a trivial expense. Annual operating costs tend to run on the high side also.

Investing the Plan Assets

The participants' interest credit is set as generously as the employer feels appropriate, within IRS limits. But remember, it's really a defined-benefit plan behind the scenes. There doesn't necessarily have to be a connection between the rate you're promising participants and the rate the pool of money is actually earning. With participants' benefits guaranteed, the employer bears the investment risk—and likewise enjoys any out-performance. Which raises an important question for the plan's investment advisor.

Do you attempt to match the interest-crediting rate, so that the employer's contribution doesn't fluctuate? Or do you try to beat it? Because if the assets earn more than the rate participants get, the company can make a smaller contribution the following year.

Cash balance plans are becoming very popular after receiving the government's blessing under the Pension Protection Act of 2006.



QUESTIONS?

Contact:

Eileen Baldwin
303.327.5545
ebaldwin@reptech.com

Don Oldag
303.327.5316
doldag@reptech.com

Ralph Shaw
303.327.5543
rshaw@reptech.com