

**Participant Fee Disclosure, Service Provider Fee Disclosure
and Required Amendments, Oh My!**

It's been (another) busy year in the pension world, with new requirements for fee disclosures to participants, new requirements for fee disclosures by service providers to plan sponsors, and required amendments. (So my staff doesn't roll their eyes too much, I have to admit that I've also been a little busier than usual with "appointments" on the PA-NJ border.) As always, we're trying to shoulder as many of these burdens as we can so you can go about running your businesses.

We've already reviewed and written to most plan sponsors about the disclosure requirements (to be frank about this, if you haven't heard from us already, it's because you're in the "difficult" pile, but we'll get to you).

If you've had your plan for a while, you understand that we generally have to amend your plan periodically, to keep it up to date with new laws and regulations - generally a minor amendment every couple of years and a complete re-write or "restatement" every six years. This is a year with a "minor" required amendment. **The good news is that the required changes are just words on a piece of paper that typically don't affect your plan operations, and for most plans we're able to use "default" language that doesn't even have to be signed.** (If you care, the primary change has to do with 2009 required minimum distributions, which were allowed to be suspended...but most of our plans don't have anyone over age 70½ who would have been affected, so it had no effect. It was a stupid law, stunningly stupid in fact, but I digress.)

If applicable, an amendment to your plan is enclosed. In most cases, it just needs to be filed; if it needs to be signed first that will be indicated. It's a little bit of extra work so we will be adding a modest charge of \$25 - \$50 to your next invoice, depending on the complexity. New plans adopted in the last few months already have the language and defined benefit plans get some additional time, so if there's nothing enclosed you don't need it, or in a couple of instances you'll hear from us later.

Our usual year-end information - chart with new and old limitation numbers, and reminders about plan operations - follows on a separate sheet.

Best wishes for a happy and healthy holiday season from all of us!

Ed Snyder

Annual update

1) The key limitation numbers for 2012 (and the old 2011 numbers) are:

| | 2011 | 2012 |
|---|-----------|-----------|
| <i>Maximum annual benefit</i> | \$195,000 | \$200,000 |
| <i>Maximum annual contribution</i> | \$49,000 | \$50,000 |
| <i>Maximum 401(k) deferral</i> | \$16,500 | \$17,000 |
| <i>401(k) deferral catchup (over age 50)</i> | \$5,500 | \$5,500 |
| <i>Maximum SIMPLE deferral</i> | \$11,500 | \$11,500 |
| <i>SIMPLE catch-up (over age 50)</i> | \$2,500 | \$2,500 |
| <i>Maximum IRA contribution</i> | \$5,000 | \$5,000 |
| <i>IRA catch-up (over age 50)</i> | \$1,000 | \$1,000 |
| <i>Annual compensation limit</i> | \$245,000 | \$250,000 |
| <i>Social Security Wage Base</i> | \$106,800 | \$110,100 |
| <i>Medicare maximum</i> | Unlimited | Unlimited |
| <i>Comp. threshold for Highly Compensated Employees</i> | \$110,000 | \$115,000 |
| <i>Income (exclusion) threshold for SEPs</i> | \$550 | \$550 |

(After 3 years of no changes due to low inflation, some of the numbers changed; e.g. the maximum contribution to a defined contribution plan went from \$49,000 to \$50,000 and the 401(k) maximum went from \$16,500 to \$17,000.)

2) Year-end reminders...

~ **Remember** to check the appropriate boxes on your W-2s for employees who are covered by your plans...this can sometimes get a bit tricky, especially for profit sharing plans which make contributions after the end of the year, so call if you're not sure.

~ **Remember**, when you get your 5500 tax return postcard from the DOL, you do **not** have to send it to us.

~If you'd like to see a trial allocation of a profit sharing contribution, or estimated required contributions to a pension plan, **call or e-mail or fax us** an estimated census (names, compensations, dates of termination if applicable).

~ **Please** be sure to include all employees on your year-end census (for calendar year plans, we mail out blank forms in early January). We like to know about all part-time employees, even if you think they'll never enter the plan. If you have "leased employees" or work with "independent contractors", these individuals may have to be covered, or at least considered in certain coverage and participation tests. (Although true independent contractors are not employees, we sometimes run across a client or prospective client who says they have no employees, but then the phone is answered by someone else. If that someone else is paid hourly and works in your office, he or she is most likely an employee in the eyes of the Employee Benefits Security Agency and the IRS.) **Please call** if you have any questions about this area.

~Employee deferrals (401(k) contributions) must be deposited as soon as they can reasonably be segregated from your business assets. ***Small plans (under 100 participants) have a safe harbor of 7 business days, and you simply must meet this safe harbor!*** There is absolutely no reason not to make the deposits immediately after each payroll; if participants did not have deferrals withheld then you would have paid the money in their paychecks. If we know of late deposits, we will advise you to make up for lost earnings and charge for those calculations.

~Employee deferrals (401(k) contributions) should generally be withheld from **all** pay (including bonuses). (For instance, if a participant has elected a 10% withholding rate, you should withhold 10% of bonuses as well as regular pay.) We have a handful of plans where this does not apply, so check with us if you're not sure.

~You should have a signed form on file for eligible participants who are not deferring to a 401(k) plan. We're getting hints that the IRS might think **you** should make contributions **for them** if they haven't properly elected not to contribute (!)

~In general, you **MUST** maintain a fidelity bond for the greater of 10% of plan assets or 100% of the assets that are not "Qualifying Plan Assets" (generally, "Qualifying Plan Assets" are assets held at a financial institution, and plan loans). Most of our clients' assets are "Qualifying Plan Assets", but you must nevertheless make sure that you maintain the appropriate bond! We look at this each year, but the minimum bond is supposed to be in place at the **beginning** of the year, and we might not recognize a deficiency until we do the review during the (next) year.

3) Terminated participants

Terminated participants are paid according to the terms of your plan document - in most cases, after the end of the plan year in which they terminate, or later. It's a good idea to remind these people, when they leave, that they have plan benefits and should keep you posted as to their whereabouts. (I know, they're the last ones you want to keep in touch with, but it saves some problems down the road. And no, you can't just hope they disappear and use their money for other participants!) We often have problems finding these "lost" participants, and as always, an ounce of prevention is worth a pound of cure.

4) 1099-R reporting

If your plan is on a self-directed platform, Form 1099-R distribution reporting will generally be handled by the investment custodian and you don't have to do anything. Otherwise, we will outsource that reporting for electronic filing...which means you don't have to do anything except file copies that will be sent to you! (However, if there was withholding during the year, you still have to file Form 945, which reconciles the deposits made during the year. We will prepare this form for you with filing instructions.)

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