

Plan Sponsor

Outlook

A Current Issues Resource for Plan Sponsors and Administrators 1st Quarter 2008

Final QDIA Guidance Is Issued

The Department of Labor (DOL) has issued final regulations regarding qualified default investment alternatives (QDIA). The Pension Protection Act of 2006 created the QDIA concept to limit fiduciary liability for plan losses by establishing a safe harbor for selecting an investment for participants who fail to choose their own.

The rules were effective on December 24, 2007, and are intended to support automatic enrollment plans.

The QDIA rules focus on participants' long-term retirement savings needs, not just preserving capital. Three investment vehicle categories make up the new QDIAs:

- A life-cycle or target-retirement-date fund,
- A balanced fund, and
- A professionally-managed fund.

A fourth alternative, a capital preservation product, may be used as a QDIA but only for the first 120 days of participation.

Restrictions are limited

The final rules generally prohibit restrictions, fees and expenses for transfers out of, or withdrawals from, a QDIA made during the first 90 days of the investment.

Two notices are required

An initial notice to a participant or beneficiary must be provided at least 30 days before the date of plan eligibility or at least 30 days before the first QDIA investment. However, if the plan permits participants to withdraw contributions made during the first 90 days in an auto enrollment plan, notice may be given as late as the date of plan eligibility.

The annual notice must be furnished at least 30 days before each subsequent plan year.

The DOL's Fact Sheet on the final regulations is at <http://tinyurl.com/24v7ys>.



By The Numbers...

How does your plan compare?

The Profit/Sharing 401(k) Council of America's (PSCA) annual survey shows that nearly 78% of eligible employees had account balances in their 401(k) plans, and deferrals averaged 5.4% for non-highly compensated employees and 6.9% for highly compensated employees. The 50th Annual Survey of Profit Sharing and 401(k) Plans covered 2006 activity of 1,000 plans with six million participants and more than \$600 billion in assets.

Other findings include:

- 26% of 401(k) plans use automatic enrollment, up from 8% in 2003,
- The number of fund options averaged 19 (18 in 2005),
- Immediate vesting of matching contributions was offered in 40% of plans,
- About 18% of plans offered a Roth 401(k) feature, and nearly 12% of those eligible made Roth contributions, and
- 80% of plans had an investment policy statement, and 53% of those conducted quarterly monitoring.

The full survey can be purchased from the PSCA, available at pzca.org. ■



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Pension Plan Limitations for 2008

401(k) Maximum Participant Deferral	\$15,500*
(*\$20,500 for those age 50 or over, if plan permits)	
Defined Contribution Maximum Annual Addition	\$46,000
Highly Compensated Employee Threshold	\$105,000
Annual Compensation Limit	\$230,000

Plan Sponsors Are Shifting Their Focus

Only 25% of employers identified a high participation rate as the main measure of their 401(k) plan's success, down from 43% in 2005, according to Hewitt Associates' *Trends and Experience in 401(k) Plans 2007* survey. Sponsors appear to be concentrating on enhancing retirement savings for employees, and doing so with automatic plan features.

Toward that end, the number of plans using automatic enrollment in 2007 nearly doubled since 2005 (34% vs. 19%). About 83% set their default contribution rates at 3% or more, compared to 66% who did so in 2005. Further, almost 30% of sponsors used automatic contribution increases.

Automatic rebalancing was offered in 42% of plans, up from 26% two years earlier and only 11% in 2003.

Other highlights include:

- 40% offered outside investment advisory services,
- 20% increased their company match over the previous two years,
- Immediate vesting was a feature in 44% of plans, and
- 23% of plans offering employer stock made their match exclusively in company stock, down from 36% in 2005. Among these plans, 66% allowed participants to diversify out at any time, up from just 24% in 2005.

The population surveyed by the PSCA (see page 1) was different from the group surveyed by the Hewitt; therefore, results will differ.

More information about the Hewitt survey results is at <http://tinyurl.com/yv3fk3>. ■

Want a snapshot of 401(k) facts? See the Investment Company Institute's *401(k) Plans: Frequently Asked Questions* at <http://tinyurl.com/yvuf57>.

New Guide Helps Find, Fix and Prevent Mistakes

The Internal Revenue Service has introduced *401(k) Plan Potential Mistakes*, an extensive, Web-based guide to help plan sponsors identify, correct and avoid common errors in 401(k) plan administration. Included are overviews of 401(k) plans and the correction programs available under the Employee Plans Compliance Resolution System.

The guide covers ten potential retirement plan problem areas:

- plan document updates,
- plan operations based on plan document,
- definition of compensation,
- nondiscrimination test failures,
- excess deferrals,
- matching contributions,
- eligible employees,
- timely deposit of deferrals,
- hardship distributions, and
- Form 5500.

Once a potential mistake is selected, the guide leads the user to a series of questions, tips and examples that can help pinpoint errors. Correction avenues are described in detail. Perhaps most valuable are the specific, practical suggestions regarding how to avoid the error.

For example, one potential mistake involves failed nondiscrimination tests. This tool offers a detailed (but easy-to-understand) explanation of the rules and continues with specific items to check to see if a mistake has been made, such as identification of family members of owners. Alternative corrective actions are presented, along with examples. Finally, specific tips involving such aspects as eligible employees, compensation definition and identification of highly compensated employees are described.

Plan sponsors will likely find this resource very useful in many respects, particularly the practical steps to prevent errors in the future.

401(k) Plan Potential Mistakes is at <http://tinyurl.com/2ub84a>. ■

Life-cycle and target-retirement-date funds are becoming increasingly popular in 401(k) plans. Is this true of small plans (defined as less than \$20 million in assets) as well as large ones? No, according to a survey from PLANSPONSOR and RiverSource Investments. In fact, only 54% of small plans offered this type of fund. Read why at <http://tinyurl.com/3b7su6>.

Plan Sponsors Ask...

Q: The IRS announced new rules last year regarding automatic contribution provisions for 401(k) plans. What are the highlights, and when do the rules take effect?

A: Pursuant to the Pension Protection Act of 2006, the Internal Revenue Service (IRS) issued proposed regulations for automatic contribution arrangements in November, 2007. Effective January 1, 2008, the proposed rules provide a design-based safe harbor for qualified automatic contribution arrangements (QACAs). If the safe harbor requirements are met, the ADP and ACP tests are deemed satisfied and top-heavy rules won't be applied. Until final regulations are issued, the proposed rules can be relied upon by plan sponsors.

To obtain safe harbor protection, the plan must provide an automatic deferral percentage of at least 3% of compensation during the "initial period," which begins when the employee first participates and ends on the last day of the next plan year (so this "initial period" is as long as two full plan years). After the initial period, the minimum required percentage rises by 1% each year until it reaches 6%. A QACA can use higher percentages, but cannot exceed 10%.

Sponsors must issue an annual safe harbor notice to all eligible employees at least 30 days, and no more than 90 days, prior to the start of the plan year. They must also make a minimum nonelective or matching contribution to non-highly compensated employees. A two-year vesting schedule may be set.

If certain requirements are met, the proposed rules allow sponsors to return automatically deferred amounts, with earnings, to participants who request such a distribution within 90 days of their first elective deferral.

The proposed regulations are summarized in a special edition of the IRS' Employee Plan News, which can be viewed at <http://tinyurl.com/39r5ol>. The IRS' sample notice to employees is at <http://tinyurl.com/3d5xoc>.

Q: Is there any official news about a delay in the requirement that Form 5500 must be filed electronically?



A: Yes. The Department of Labor (DOL) announced in November, 2007 that plans will not have to use the wholly electronic filing system until the due date for the Form 5500 for the 2009 plan year, which is a one-year delay. For calendar year plans, this means that electronic filing is postponed to mid-2010.

The DOL is also introducing a simplified annual reporting form for small plans that have secure, easy-to-value investments with regulated financial institutions. The new Form 5500-SF, or short form, will be available for the 2009 plan year.

Q: Is there research available regarding the potential effect of automatic contribution increases on retirement savings?

A: Yes. The Employee Benefit Research Institute (EBRI) estimated that the automatic escalation of 401(k) contributions will yield a significant increase in retirement savings accumulations, especially for low-income workers, compared to earlier estimates for automatic enrollment.

The assumptions and modeling used in the research suggest that the auto escalation feature will likely increase overall accumulations between 11% and 28% for participants in the lowest-income group and between 5% and 12% for highest-income group participants.

EBRI's report is at <http://tinyurl.com/377cxy>. ■

What's the latest in the broad retirement plans market? Find out in *The U.S. Retirement Market, 2006* from the Investment Company Institute (at <http://tinyurl.com/2ztqxq>) and *Pension Sponsorship and Participation: Summary of Recent Trends* issued by the Library of Congress' Congressional Research Service (<http://tinyurl.com/2c9akp>).

Web Resources for Plan Sponsors

Internal Revenue Service, Employee Plans
www.irs.gov/ep

Department of Labor,
Employee Benefits Security Administration
www.dol.gov/ebsa

401(k) Help Center
www.401khelpcenter.com

BenefitsLink
www.benefitslink.com

BenefitNews
www.benefitnews.com

Profit Sharing/401(k) Council of America
www.pzca.org

Employee Benefits Institute of America, Inc.
www.ebia.com

Employee Benefit Research Institute
www.ebri.org

Fiduciary Advisor Is Introduced

Understanding fiduciary responsibilities is critically important for plan sponsors and all those involved with retirement plans. An interactive Web tool, the ERISA Fiduciary Advisor, is available to help.

The Department of Labor's new compliance resource has an overview of ERISA, covers common mistakes made by sponsors and provides links to more information and other tools to assist plan officials.

Users are guided through yes-or-no questions about various aspects of retirement plan laws. Starting points in the Advisor include questions such as "What are my liabilities as a fiduciary and how can I limit them?" Separate sections have "Tips for Employers with Retirement Plans" and "Resources."

The ERISA Fiduciary Advisor is at <http://tinyurl.com/yswqke>.

Need a quick, one-page summary about automatic enrollment? See the American Benefits Council's 401(k) fast facts at <http://tinyurl.com/2syajs>.

Plan Sponsor's Quarterly Calendar

Consult your plan's counsel or tax advisor regarding these and other items that may apply to your plan.

APRIL

- If a plan audit is required in connection with the Form 5500, make arrangements with an independent accountant/auditor for the review to be completed before the Form 5500 due date. (Calendar year plans)
- Conduct a review of first quarter payroll and plan deposit dates to ensure compliance with the Department of Labor's rule regarding timely deposit of participant contributions and loan repayments.
- Verify that employees who became eligible for the plan between January 1st and March 31st received and returned an enrollment form. Follow up on forms that were not returned.

MAY

- Perform a detailed annual review of the plan's Summary Plan Description and other enrollment and plan materials to confirm that all information is current, and identify situations in which revisions are necessary.
- Monitor the status of the completion of Form 5500, and, if required, a plan audit. (Calendar year plans)
- Issue a reminder memo or e-mail to participants to encourage them to review and update, if necessary, their beneficiary designations for all benefit plans.

JUNE

- Confirm that Form 5500, and plan audit if required, will be completed prior to the filing deadline or that an extension of time to file will be necessary. (Calendar year plans)
- Begin planning an internal audit of participant loans granted during the first six months of the year. Check for delinquent payments, and verify that repayment terms and amounts borrowed do not violate legal limits.
- Review plan operations to determine if any qualification failures or operational violations occurred during the first half of the year. If a failure or violation is found, consider using an Internal Revenue Service or Department of Labor self-correction program to resolve it.