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Employee Benefits Update

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Pension Protection Act (“PPA”)

- Signed into law on August 17, 2006
- Stated Goal – Strengthening employees’ retirement security
- Stricter Defined Benefit funding requirements
- More disclosure to employees
- Expanded retirement savings opportunities

PPA Provisions Affecting Defined Contribution Plans

- Automatic enrollment options
- Faster vesting of employer contributions
- Protection for offering investment advice
- Reporting and disclosure expansion



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PPA Provisions Effecting Defined Contribution Plans

Presented By David G. Burch

Automatic Enrollment

Automatic Enrollment

- Effective immediately, PPA gives a green-light to automatic enrollment for 401(k) Plans and erases previous concerns by clarification of the rules applicable to automatic enrollment arrangements.

Automatic Enrollment

- Although automatic enrollment has been an option previously, there were several concerns:
 - Prohibited by State laws
 - Opened employer to fiduciary responsibility
 - Potential for small account balances for employees who disregard the notice of automatic enrollment until after the first paycheck.

Automatic Enrollment

- Benefits of automatic enrollment
 - Beneficial to passing nondiscrimination testing
 - Assist employees in savings for retirement
 - DOL has claimed that participation increases 20% plus after adoption of automatic contribution features

Automatic Enrollment

- Automatic enrollment will help you pass nondiscrimination testing
 - By automatically enrolling employees you will increase both overall participation.
 - Also, deferral rates will most likely increase.
 - Must be at least 3%

Automatic Enrollment

- How do automatic enrollment arrangements work?
 - Compensation reductions are automatic unless participant elects otherwise
 - May be structured to increase the deferral percentage automatically

Automatic Enrollment

- Who can automatic enrollment be used for?
 - New hires or for all employees
 - With Roth contributions

Automatic Enrollment

- Qualified automatic contribution arrangement – a new alternative non-discrimination safe harbor
 - Qualified automatic contribution arrangements exempt from non-discrimination testing
- How to meet the new safe harbor
 - Match of 100% of first 1% of deferral, plus 50% of the next 5% of deferral (3.5% total), or
 - 3% non-elective contribution

Automatic Enrollment

- Deferral rate rules for safe-harbor
 - Deferral cannot be more than 10%, but
 - Deferral cannot be less than 3%
 - Deferral must be at least 3% for the first year a qualified automatic contribution is made for an employee
 - Must increase 1% annually until 6% deferral rate is achieved for the fourth year

Investment Advice

Investment Advice

- The investment advice arrangements apply to advice given after December 31, 2006
- This new legislation addresses employer's desire to give investment advice to employees and their concerns over liability for giving advice
- Protections for plan sponsor or other fiduciary that make eligible investment advice arrangement available under a plan

Investment Advice

- Who qualifies for the exemption as an advisor?
 - An advisor includes banks, insurance companies, registered brokers/dealer, their affiliates, and others.

Investment Advice

- There are two recognized eligible investment advice arrangements
 - Computer model arrangement
 - Fee neutral arrangement

Investment Advice

- Computer model eligible investment advisor arrangement
 - Use relevant information about the participant or beneficiary, which may include age, life expectancy, retirement age, or risk tolerance to determine appropriate investments.

Investment Advice

- Fee neutral eligible investment advice arrangement
 - Advisor's fee is not affected by the actual investment allocation

Investment Advice

- General requirements applicable to both arrangements
 - Annual Audits
 - Detailed annual disclosure requirements
 - The Investment Advisor must receive only reasonable compensation and the transaction must be ongoing

Vesting Provisions

Vesting Provisions

- Under PPA, generally these new vesting rules apply for all employer non-elective contributions (i.e., discretionary profit-sharing contributions) in plan years beginning after December 31, 2006
- Under the new rules profit-sharing contributions must vest as fast as:
 - Matching contributions; and
 - Top-heavy contributions

Vesting Provisions

- Employee deferral and 401(k) safe harbor vesting remains at 100%

Vesting Provisions

- If a plan uses cliff vesting, then accrued benefits derived from employer contributions must vest after three (3) years of service
- If the plan uses graded vesting, then accrued benefits derived from all employer contributions must vest at the rate of 20% per year, beginning with the second year of service

Vesting Provisions

Before PPA:

Up to five year cliff; or
seven year graded

After PPA:

Up to three year cliff;
or six year graded

Vesting Provisions

- New vesting schedules must look like one of these:

Cliff Vesting

1st yr--0%
2nd yr--0%
3rd yr--100%
4th yr--100%

Graded Vesting

1st yr--0%
2nd yr--20%
3rd yr--40%
4th yr--60%
5th yr--80%
6th yr--100%
7th yr--100%

New Reporting & Disclosure Requirements

New Reporting & Disclosure Requirements

- The new Benefit Statements must be provided in plan years beginning after December 31, 2006
- Under the PPA, Plan Sponsors must provide comprehensive Benefit Statements to Participants
 - Previous rules required Plans to supply Benefit Statements only upon a Participant's request

New Reporting & Disclosure Requirements

- Frequency of Benefits Statements Depends on Type of Plan:

Plan Type	Required Benefit Statement
Participant Directed Defined Contribution Plan	Quarterly Statement
Other Defined Contribution Plan	Annual Statement
Defined Benefit Plan	Every three years to participant with vested benefit unless plan gives annual notice of the availability of these statements

New Reporting & Disclosure Requirements

- Deadline for providing the Benefit Statement
 - 45 days following the time period for which the statement is required
 - The first Benefits Statement must be provided by May 15, 2007 for a participant directed contribution plan (45 days following the quarter ending March 31, 2007)

New Reporting & Disclosure Requirements

- Required contents of Benefit Statements
 - Total account balance, vesting, investment value
 - Emphasize importance of diversification
 - Point employees to DOL website at:
<http://www.dol.gov/ebsa/investing.html>
 - If an employee has more than 20% of portfolio in one investment—employer must provide additional warning on importance of diversification.

New Reporting & Disclosure Requirements

- Benefit Statements – Miscellaneous
 - Owner-only plans are exempt
 - Statements can be provided electronically if reasonably accessible
 - Example: continuous availability to account information through a web site
 - Penalties:
 - Participants can sue to recover \$100 for each day the Benefit Statement is late
 - Therefore, if you are required to provide Benefit Statements to your employees, you should contact your Plan Administrator immediately.

Required Plan Amendments

Required Plan Amendments

- As it stands today
 - A Plan Sponsor has until the last day of the 2009 plan year to amend the Plan retroactively for the PPA changes
 - However, it is clear that a Plan must comply operationally with the PPA prior to the amendment through the end of the 2009 plan year

Required Plan Amendments

- Summary of Material Modifications (SMM)
 - Neither Congress nor the Department of Labor have provided any reprieve in providing a SMM
 - A SMM is due 210 days following the plan year in which the employer makes a modification, including a modification to comply with the PPA

Summary

- Automatic Enrollment - A new opportunity to increase participation.
- Investment Advice - Now a safe option.
- Vesting - Important changes apply immediately.
- Reporting & Disclosure - First of the new Benefits Statements are due shortly.



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PPA Provisions Affecting Defined Benefit Plans, Individuals and other Miscellaneous Benefit Matters

Presented by Sharon A. McAuliffe

PPA Provisions Affecting Defined Benefit Plans

- New rules for Plan funding
 - 100% funding test
 - Change to Plan asset smoothing rules
 - Restrictions on use of funding credit balances
- Possible in-service distributions at age 62
- New disclosure requirements

Defined Benefit Plan Funding Notice

- For Plan years beginning on or after December 1, 2008, new notice replaces the Summary Annual Report (SAR)
- More detailed information being provided to participants regarding Plan's funded status, eg asset allocation of plan investments and plan amendments effecting benefits
- Notice required within 120 days after the end of the Plan year for plans with more than 100 participants
- Notice must be given to participants, beneficiaries, and labor organizations representing participants and beneficiaries
- DOL is required to issue a model notice

New Opportunities

- Automatic enrollment for 403(b) Plans
- EGTRRA Permanence – Roth 401(k)
- New anti discrimination rules open way for more Cash Balance Plans

Non-Spousal Rollovers

- Effective for distributions made after December 31, 2006
- New rollover opportunity for non-spouse beneficiaries
- IRS Notice 2007-7 provides further guidance, but questions remain

Qualified Charitable Distributions from IRAs

- Applies to IRA distributions during 2006 and 2007
- Not applicable to employer plans such as 401(k)
- Annual limit is \$100,000
- Individual must be 70 ½ or older
- Good planning opportunity for charitably inclined individual who doesn't need their minimum required distributions (MRD)

Miscellaneous Benefit Matters

- EGTRAA – Remedial amendment period
- Form 5500 will have to be filed electronically and DOL has to post on the Internet within 90 days



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Don't Leave Your Plan Behind:

Key Points to Remember As Your Business Grows

Presented By Laurence G. Bousquet and Kathleen M. Faulkham

Introduction

Due Diligence Process

Negotiating Employee Benefit Plan Covenants

What to do with Benefit Plans?

Negotiating Employee Benefit Plan Covenants

What to do with Benefit Plans?

- Keep Seller's existing plans
- Set up new plans
- Add employees to Buyer's existing plans

Protection Provided by Transaction Documents

Protection Provided by Transaction Documents

- Representations and Warranties
- Escrow
- Indemnification

COBRA and Non-Qualified Plans

Closing Day

Concluding Remarks



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Hidden Investment Costs in Your 401(k) Plan

Will Buried Fees Land You in Federal Court ?

Presented By Kathleen M. Faulkham

Overview

- I. Overview of 401(k) Plan Lawsuits
 - A. Summary of the Claims
 - B. Review of the Types of Plan Fees challenged

- II. Current Guidance on Fee Disclosure and What to Expect in the Near Future
 - A. Current Reporting Requirements
 - B. DOL Initiatives

- III. Best Practices for Employers as Plan Sponsors to Avoid ERISA Liability

Fiduciaries Under Attack

Breach of Fiduciary Duty Lawsuits Challenge High Fees and Expenses

Fiduciaries Under Attack

- The Underlying Claim
 - Plan Fiduciaries of participant directed 401(k) plans breach their fiduciary duties to participants when they allow excessive fees to be charged against plan assets.
 - Most of the suits name the Plan Sponsor (usually the Employer), but some also name the third party administrator and other service providers.

Breakdown on Fees

- Contract fees (i.e. management fees)
- Fund fees (also known as investment fees)
 - These are generally the biggest component of overall plan expenses, often making up 80-99% of 401(k) plan fees
- Participant specific fees
- Statement fees
- Trustee, audit and legal fees

Fund Fees – A closer look

- Revenue sharing arrangements, in which third-party administrators and brokers are paid revenues from mutual funds, affect total returns, and are often obscured from plan participants.
- Investment fees vary depending on participant selections
- In 2005, almost half of 401(k) Plan assets were invested in equity funds (e.g. mutual funds, pooled funds), which can often have higher fees
- Bundled products

The Hidden Cost of “Bundled” Fees

Example: 401(k) Plan: Year 1
\$2 million in Assets

	Unbundled	Bundled
Administrative/TPA fee (flat fee)	\$3,100	0
Average fund expense	\$18,800	\$28,200
+ Broker's fee .50 basis points	\$10,000	
+ Investment Company Fee (Platform fee) 7 basis points	\$1,400	
Net Plan fees	\$33,300	\$28,200
Revenue Sharing 30 basis points	-\$6,000	\$0
Total Cost to Participants	\$27,300	\$28,200
Overall Percentage of Plan Assets	1.37%	1.41%

The Hidden Cost of “Bundled” Fees (cont’d)

401(k) Plan: Year 2

\$2.5 million in Assets

	Unbundled	Bundled
Administrative/TPA fee (flat fee)	\$3,100	\$0
Average fund expense	\$23,500	\$35,300
+ Broker's fee .50 basis points	\$9,500	
+ Investment Company Fee (Platform fee) 7 basis points	\$1,750	
Net Plan fees	\$37,850	\$35,300
Revenue Sharing 30 basis points	-\$7,500	\$0
Total Cost to Participants	\$30,350	\$35,300
Overall Percentage of Plan Assets	1.21%	1.41%

The Hidden Cost of “Bundled” Fees (cont’d)

401(k) Plan: Year 3
\$3 million in Assets

	Unbundled	Bundled
Administrative/TPA fee (flat fee)	\$3,100	\$0
Average fund expense	\$19,250	\$42,300
+ Broker's fee .50 basis points	\$15,000	
+ Investment Company Fee (Platform fee) 7 basis points	\$2,600	
Net Plan fees	\$39,950	\$42,300
Revenue Sharing 30 basis points	-\$9,000	\$0
Total Cost to Participants	\$30,950	\$42,300
Overall Percentage of Plan Assets	1.03%	1.41%

The Hidden Cost of “Bundled” Fees (cont’d)

Overall Percentage of Plan Assets	Unbundled	Bundled
Year 1	1.37	1.41
Year 2	1.21	1.41
Year 3	1.03	1.41

Is Your Small or Mid-Sized Company Plan at Risk?

- So far, defendants include large employers, but in fact small and mid-size employers often maintain plans with even higher fees and expenses and are vulnerable to similar lawsuits.
- The plaintiff bar has become more aggressive, organized and sophisticated as a result of the increase in ERISA class-action cases

Fee Disclosure

Current Disclosure Requirements and Changes on the Horizon

Little Understanding of Fees

- The American Association for Retired Persons ("AARP") reported in 2004 that, based on a nationwide survey, more than 80 percent of 401(k) plan participants do not know how much they pay in fees.

What's the Harm?

- As much as one percentage point can make a huge difference.
 - Example: Assume you are an employee with 35 years until retirement and a current 401(k) account balance of \$25,000
 - » Assuming returns at 7% percent, and an over all charge for fees and expenses of 0.5%, your account balance will grow to \$227,000 at retirement, even if there are no further contributions to your account.
 - » If fees and expenses are 1.5%, however, your account balance will grow to only \$163,000.
 - » The 1% percent difference in fees and expenses would reduce your account balance at retirement by 28%

Little Disclosure Required

- Under ERISA, which was enacted before the advent of 401(k) plans, information on fees that is required to be disclosed to participants is limited.
- Section 404(c) "safe harbor" protects plan sponsors that adequately describe any fees and expenses that affect a participant's account balance in connection with the purchases or sales of interests in investment alternatives (e.g. commissions).

DOL – Changes on the Horizon

- In response to recommendations from the GAO, the DOL has several initiatives in place, including:
 - The development of additional fee disclosure regulations.
 - In July 2006, DOL proposed changes to the Form 5500 Schedule C and instructions to improve the disclosure of fees paid to both direct and indirect service providers.
 - Fiduciary Education Program

Best Practices

How to Best Protect Your Business

Best Practices

- Evaluate your plan's fees and expenses annually against investment alternatives.
- Fully document each review and all negotiations for fees.
- Ensure that all plan fiduciaries are properly identified and that fiduciary authority is allocated to the appropriate persons.
- Follow your plan's investment policy statement.
- Disclose all fees to participants.

For More Information

For More Information

- The Department of Labor's website for retirement plans:
 - www.dol.gov/ebsa
 - For materials on fiduciary responsibilities:
<http://www.dol.gov/ebsa/fiduciaryeducation.html>

If an Employer Finds Itself in Hot Water

IRS & DOL Correction Programs



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Problems with your Retirement Plan?

They Won't Go Away If You Ignore Them

Presented By David G. Burch

AGENDA

IRS Correction Program

DOL Correction Program

IRS Correction Program

Employee Plans Compliance Resolution System

IRS Correction Program

- Bad stuff happens to good plans
 - It is all too easy to violate a qualification rule
 - And the penalty for doing so is severe—
Disqualification
- Fortunately, the IRS has provided a program to remedy violations so that disqualification can be avoided.

IRS Correction Program

- Types of Qualification Failures
 - Operational failures
 - Failure to follow terms of Plan
 - Plan document failure
 - Plan violates the Internal Revenue Code
 - Demographic failure
 - Fail nondiscrimination tests

IRS Correction Program

- Three Programs Available
 - Self-Correction
 - Voluntary Correction Program
 - Audit Closing Agreement Program

IRS Correction Program

- Example
 - Improperly excluded employees
 - Solution—correct based on a percentage of “missed deferrals”

IRS Correction Program

- Example
 - Failure to amend plan as required
 - Amend plan and send in fee

IRS Correction Program

- Example
 - Bad loan
 - Treat it as a distribution; or
 - Pay down loan with new amortization schedule

DOL Correction Program

Voluntary Fiduciary Correction Program

DOL Correction Program

- Employers who violate their fiduciary duties or commit a prohibited transaction can be held liable by the DOL.
- Only means of correction is to confess your breach to the DOL and pay a fee.

DOL Correction Program

- Possible failures which will require correction:
 - Late deposit of deferrals/ loan repayments
 - Improper purchases, sales, exchanges of property
 - Improper expense payment to a fiduciary

DOL Correction Program

- Benefits of using the DOL Correction Program
 - Get a “no action” letter from DOL
 - Avoid 20% penalty on correction amount
 - Avoid excise tax (possibly)

DOL Correction Program

- Example
 - Failure to deposit contributions on time.
 - Regulations require as soon as possible, but never later than 15th business day of next month.
 - To correct failure—must deposit deferrals plus lost earnings.
 - DOL has provided an online calculator.

DOL Correction Program

- Example
 - Improper expense payment to a fiduciary.
 - The Plan can never pay for the employer's expenses in taking any corrective measures.
 - To correct failure—must deposit improper payment plus lost earnings.



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