



Retirement Plan Update



Issue 14

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2005 Plan Limits

401(k), 403(b), 457 Deferral	\$14,000
401(k), 403(b), 457 Catch-up	\$4,000*
Maximum Compensation	\$210,000
DC Plan 415 Limit	\$42,000
Social Security Wage Base	\$90,000
SIMPLE Deferral Limit	\$10,000
SIMPLE Catch-up	\$2,000*
HCE Comp. Determination	\$95,000
Top Heavy Key Employee	\$135,000
Defined Benefit 415 Limit	\$170,000

*Available to participants who are age 50 or older by December 31.

Deposit 401(k) Deferrals IMMEDIATELY

The Department of Labor (DOL) rules state that employee deferrals and loan payments must be deposited as soon as the amounts can be separated from the employer's general assets, but no later than the 15th business day of the following month. Recent investigations and rulings show that the DOL is enforcing this rule, and that the DOL believes many employers can remit deferrals to the plan within days after each payroll cycle. ❖

Are you a Plan Fiduciary?

Plan Fiduciaries could be legally responsible for certain actions involving a plan. A Plan Fiduciary is generally defined as:

- Any person or entity who has any discretionary authority over the plan management or the plan assets
- Any person that offers investment advice regarding plan assets for a fee or other compensation or has discretionary authority over assets
- Anyone who has a named position as a trustee or plan administrator

Responsibilities of a Plan Fiduciary include but may not be limited to:

- Act solely in the interests of plan participants
- Act with care, skill, prudence, and diligence
- Selection and monitoring of suitable investment options
- Act in accordance with the plan document
- Monitor the activities of the other plan fiduciaries

If you are performing the duties listed below for the plan it is possible you may not be considered a plan fiduciary:

- Applying rules to determine who is eligible to participate in the plan
- Preparing government reporting forms
- Allocating contributions in accordance with the plan document
- Maintaining participant records
- Calculating Benefits/Processing distributions
- Making recommendations regarding how the plan is administered

Fiduciary insurance, which is different than a Fidelity Bond which covers dishonesty/theft, will help cover the legal liability arising from claims of failure to act prudently. The above descriptions may seem broad, therefore any questions as to whether you are or are not a Plan Fiduciary should be addressed to your RPA administrator. ❖

IRS Issues Guidance on Automatic Rollovers

On December 28, 2004 IRS Notice 2005-5 was issued which contained guidance to implement the new automatic rollover rules. The automatic rollover rules apply to mandatory distributions also known as "force-outs" of eligible rollover distributions of \$1,000 or more beginning on March 28, 2005.

In simple terms, this means if your plan currently requires you to "force-out" terminated participants with balances below \$5,000 you must now roll their balance into an IRA. The good news.... If the balance is less than \$1,000, you can continue to "force-out" the participant.

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Do you have an enrollment period coming up? Give us a call and we will arrange for a representative from your investment company and/or an RPA representative to attend your enrollment meeting.

Automatic Rollovers (con't)

How do we go about providing IRAs?

At this point, investment companies do not have IRAs set up to handle these new requirements. The IRS does recognize that investment companies need some time to set up these IRAs and will therefore permit plan sponsors to delay processing "force-out" distributions until December 31, 2005.

Will my plan need to be amended?

If your plan currently allows for "force-out" distributions, Yes! If it does not No!

According to the IRS, all plans will have until the end of 2005 to adopt a plan amendment reflecting the new rules.

What if I do **not** want to continue providing "Force-Out" Distributions?

When RPA provides you with additional information on amending your plan, you will have the option of retaining the "force-out provisions or eliminating them from your plan. By eliminating them you will not have to worry about providing IRA's.

If I chose to eliminate the "force-out" distributions is there a way I can charge the maintenance fees to the participant?

Maybe. The IRS has previously approved allowing sponsors to charge the accounts of terminated participants, which can offset the cost of keeping their account in the plan. Please keep in mind that some investment providers are not able to charge fees to specific individual accounts, or they may require an annual request and list from you to deduct fees.

Will we have to do more work to provide the IRA rollovers?

Yes, but we have already developed a solution to help you out. When we notify you that it is time to amend your plan we will give you the details of how we can handle the accounts of your terminated participants.

Is there anything I should do now?

Yes, you can try to locate terminated participants with balances under \$5,000 to cash them out before the March 28 automatic rollover rules take effect.

We will be contacting each of our clients in late February or early March to inform them of their options and will make preparations to appropriately amend their plans. ❖

Taxation of Refunds to HCE's for a Failed ADP Test

You have just been notified that your plan has failed the ADP and/or ACP test for 2004 and some of your HCE's have received or will receive a refund of some of their deferral and/or match contributions. If the refunds were processed by *March 15, 2005* the refund is taxable in **2004**. Please be sure that your HCE's are aware that while the refund is taxable in 2004 they will not receive a 1099-R reporting the refund until the end of 2005 (by January 31, 2006).

If refunds to your HCE's were not processed by the March 15th deadline, the refunds to your HCE'S are taxable in **2005** and a 1099R will be issued by January 31st of 2006. The principal amount of the refund(s) is subject to a 10% excise tax on the **employer** for failure to comply with the March 15th deadline. ❖

Reminders & Tid-bits:

Summary Plan Description

You must give a copy of the Summary Plan Description (SPD) to every newly eligible participant within 90 days of their becoming eligible.

Fidelity Bond

A Fidelity Bond protects the plan assets against fraud. Regulations require a plan to have a Fidelity Bond for no less than 10% of the plan assets. Not having a Fidelity Bond can subject even the smallest of plans to a costly annual audit. A Fidelity Bond can be obtained through your property or health insurance provider and should cost between \$75 and \$250 per year. Be sure to project the plan assets for the next couple of years to avoid having to request an increase each year.

Safe Harbor Contribution Notices

If your plan is utilizing Safe Harbor Contributions to avoid certain tests, you must hand out your Notice to participants 30 days before the beginning of your plan year. Additionally, if you are using the 3% of compensation "optional" notice, you must hand out your final decision notice 30 days before the end of the plan year.

Enrollment Forms

If a newly eligible employee does not wish to make deferrals to the plan, you are still required to get an enrollment form signed, indicating the election not to participate, as proof that the opportunity was offered.

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