



# Retirement Plan Update



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## 2009 Plan Limits

401(k), 403(b), 457 Deferral	\$16,500
401(k), 403(b), 457 Catch-up	\$5,500
Maximum Compensation	\$245,000
DC Plan 415 Contribution Limit	\$49,000
Social Security Wage Base	\$106,800
SIMPLE Deferral Limit	\$11,500
SIMPLE Catch-up	\$2,500
HCE Compensation Determination	\$110,000
Top-Heavy Key Employee	\$160,000
Defined Benefit 415 Limit	\$195,000
Traditional/Roth IRA	\$5,000
Traditional/Roth IRA Catch-up	\$1,000
SEP Minimum Compensation	\$550

## Deposit Employee Deferrals IMMEDIATELY

Although the requirement to deposit employee withholdings in a timely manner is nothing new, we continue to see too many employers exposing themselves to the risk of a DOL investigation with late deposits. For this reason, RPA suggests that all employee withholdings be remitted within two to seven business days after each payroll cycle.

The Department of Labor 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 15<sup>th</sup> 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. ❖

## Your Plan's Default Fund

Although money market funds are no longer the recommended default fund to use when a participant has not made their own fund choices, many plans have not made the switch to a balanced-type fund or other fund outlined in the DOL Qualified Default Investment Alternative rules. The use of a Qualified Default Investment Alternative (QDIA) to invest the contributions of a participant that did not affirmatively select funds will provide additional protection to the fiduciaries of the plan. A QDIA is a balanced, life-cycle or target-date fund, or a professionally managed account. ❖

## Your Plan Document Must be Restated

On August 1, 2008 we sent a letter to all of our 401(k), profit sharing and money purchase plan clients informing them of the IRS requirement to restate their plan document no later than April 2010. We have begun our restatement project and will be contacting each of our clients in the coming months to review their plan design.

Plan restatements are required because the Internal Revenue Service (IRS) and the Department of Labor (DOL) will occasionally make changes to the regulations that govern retirement plans, and these changes usually require an amendment to the plan document. Over time, these needed amendments can accumulate to the point that the plan document is no longer cohesive.

To make certain that plan documents remained functional for plan sponsors and plan participants, occasionally the IRS would require that all retirement plans be "restated", or re-written, to reflect updated regulation changes since the previous plan restatement. To this end, and to better manage the restatement workflow, the IRS has instituted a restatement program in which all qualified plans will generally need to be restated every five or six years

403(b) plans must have their plan documents restated by December 31, 2008, and over the past month we have sent these clients draft versions of their new documents for review and approval. Defined benefit plans are on a different cycle than defined contribution plans and those clients will be notified when it is time to restate their plan documents. ❖

## Direct Rollover to a Roth IRA

Beginning in 2008 participants can make direct rollovers from a qualified plan to a Roth IRA. The participant must meet two conditions: 1) the participant is not a married individual filing a separate return, and 2) the participant's gross income for Roth IRA purposes is less than \$100,000. The distribution must be included in the participant's gross income, and the amount is subject to the same rules for converting a traditional IRA into a Roth IRA. The participant must also be aware of the fact that they will need to pay income taxes on the amount rolled over, or have taxes withheld when the distribution is made (although this may cause the participant to incur a 10% penalty on the amount of taxes withheld). ❖

**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.

## Final 403(b) Regulations

New 403(b) regulations are set to take effect on January 1, 2009. Many of the new regulations will have little effect on our clients as we have been administering them very close to the new requirements. Below is a review of some of the new requirements starting with those that could have the most impact on our clients and ending with the ones that will have little or no impact. It should be noted, that with the exception of the plan document requirement, these rules generally do not apply to church, non-erisa, and government 403(b) plans.

- All 403(b) plans must have a written plan document, and it must be restated by December 31, 2008.
- A complete IRS Form 5500 series must be filed each year. This means that complete financial records on plan activity will need to be maintained for each plan year. This may be especially difficult for plans that allow multiple investment vendors to solicit participant accounts, especially when those vendors do not provide consolidated plan reporting.
- Large plans, those over 100 participants, will also need to have an independent CPA audit attached to the 5500 – an expense ranging from \$2,000 to \$10,000 depending on the size of the plan and the auditing firm that is hired. This audit may cause additional headaches if the employer does not have sufficient controls and procedures in place, which was common in the past since the IRS and DOL turned a blind eye on 403(b) plans.
- Controlled group rules have been established for non-profits when directors or trustees of one organization are representatives or controlled by another organization. When a controlled group exists the two entities are treated as one employer for purposes of non-discrimination testing, certain contribution and distribution limits, and can even affect other qualified retirement plans the organizations may sponsor.
- Certain employee categories, such as union employees, employees of a religious order under a vow of poverty, and visiting professors, are no longer allowed to be excluded from the plan. You are still able to exclude non-resident aliens, certain students, employees eligible to defer to other plans of the employer, and employees who normally work less than 20 hours per week.
- A severance from employment, which determines when a participant may take a withdrawal, occurs when an employee ceases to be employed by the employer maintaining the plan. This is true even when the employee continues to work for another entity in the controlled group so long as that entity cannot maintain a 403(b) plan.

- Participants are no longer allowed to self-certify their hardship withdrawal. Instead, the plan sponsor can either review each hardship request on its individual facts and circumstances, or they can be made pursuant to the safe harbor standards where they are deemed to be compliant with regulations.
- Previously, plans were allowed to use a “good faith” reasonable standard for satisfying non-discrimination requirements in regards to employer contributions. Under the final regulations the employer contributions will need to satisfy non-discrimination and coverage requirements in much the same way as employer contributions in qualified plans.
- Contract exchanges and plan-to-plan transfers have new rules, the primary one being that the issuer and receiver must have an information sharing agreement in place. This sharing of information is mostly to ensure that hardship, loan, and distribution limits are not exceeded.
- 403(b) Plans may now be terminated and assets distributed.

## 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 entry into the plan.

### 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, and to new participants as they become 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. Be sure to project the plan assets for the next couple of years to avoid having to request an increase each year.



Paybridge, the payroll arm of Retirement Planners, provides integration between 401(k) and payroll data to make your job easier. Payroll contribution files can be easily uploaded to your investment provider, and year-end census data is easily captured by Retirement Planners. Call Michael Fisch for more details at 1-877-300-4501 ext. 216 or michael.fisch@paybridgeusa.com.

## *Retirement Planners & Administrators, Inc.*

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