

Employee Benefit News

DEFINED BENEFIT ALERT!

June 30, 2003

Defined benefit plan sponsors may need a refresher on some administrative items that dropped off the radar screen during the market boom of the 1990s. Three years into a bear market and with interest rates at or near historical lows, sponsors of defined benefit plans have seen plan funding percentages drop significantly. While a higher contribution requirement is the first issue that comes to mind in this economic environment, there are other matters that may require the plan sponsor's attention:

➤ Beginning in 1987, the accounting standards board required that the cost of a defined benefit plan be reflected on the balance sheet of companies complying with GAAP accounting rules. **The decrease in interest rates from 2002 to 2003 means the plan expenses that are reflected on the balance sheet will increase for 2003 and 2004.** This is the case even though there has been some recovery in the stock market during the past three months. If you would like a preview of how the current asset figure and interest rate will affect your year-end 2003 disclosure and 2004 preliminary net periodic pension cost, please contact your McCready and Keene consultant.

➤ The plan may owe an additional variable rate premium to the Pension Benefit Guaranty Corporation ("PBGC"), and a notice to participants of the funding status may be required.

➤ Quarterly contributions may be required.

➤ Plans with 100 or more participants may have an additional funding requirement.

➤ Failure to make timely plan contributions may result in a penalty tax to the IRS.

➤ Certain events, such as corporate liquidation or bankruptcy, must be reported to the PBGC.

➤ If a plan permits a lump sum form of payment, lump sum benefits to the employer's highest paid 25 employees may be restricted and require the establishment of an escrow account if after payment of the lump sum the value of the remaining assets of the Plan do not equal or exceed 110% of the value of the plan's current liabilities.

If you have any questions, contact your McCready and Keene consultant for more information.

DOL REVERSES ITSELF *Welcome Relief on DC Plan Expenses*

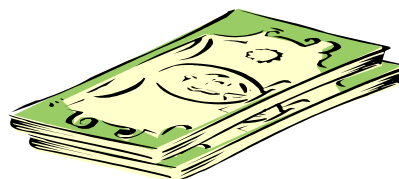
For years the Department of Labor (DOL) took the position that individual participants in defined contribution plans cannot be charged administrative fees for services required by the plan, such as the cost of processing qualified domestic relations orders (QDROS). The DOL has recently reversed its opinion. The DOL's new position (described in its Field Assistance Bulletin 2003-3) permits sponsors of defined contribution plans to determine whether the employer, the plan in general, or specific participants should be charged for administrative functions of the plan. Of course, the determination must be reasonable.

This change permits defined contribution plans to charge expenses arising from the following situations to the specific participant involved:

- benefit distribution,
- hardship withdrawal,
- calculation of benefits when there are different distribution options,
- determination of whether a domestic relations order is a QDRO, and
- maintaining accounts for a terminated participant.

In addition, the Field Assistance Bulletin gives general guidance on allocating expenses (such as recordkeeping, legal, auditing, claims processing, and investment management fees) among individual accounts.

Please contact us if you want to make a change in the way your defined contribution plan expenses are paid. The employer's policy will need to be documented in administrative minutes, the summary plan description, and QDRO procedures. The DOL has not yet addressed these issues for defined benefit plans.





UPDATE ON DEFINED BENEFIT WEB CALCULATOR

In our March 31, 2003 newsletter, we mentioned that we are developing a new internet service to enhance employees' appreciation of their defined benefit plans. This service will enable participants to estimate their retirement benefits using various assumptions regarding length of service and compensation increases. The calculator will provide a participant with an estimated monthly benefit payable at a certain age in various forms of payment. Our target date for this innovative service continues to be the end of 2003. The project is advancing on schedule!! The initial programming has been completed and testing began last week.



BE CAREFUL HOW YOU DISTRIBUTE SPDs!

ERISA requires that an employer distribute Summary Plan Descriptions (SPDs) in a manner reasonably calculated to ensure actual receipt by plan participants. In a recent case, the Second Circuit Court of Appeals held that merely distributing a copy to employees at an employee meeting where attendance was not taken is not sufficient to satisfy the distribution requirement. An SPD must also be distributed to any beneficiary receiving benefits under the plan.

As a reminder, an SPD must be given to a new participant within 90 days after his or her participation date and to a beneficiary within 90 days after he or she first receives benefits. If a Plan is amended in a way that changes information in the SPD, a new SPD, or a Summary of Material Modifications must be distributed to all participants and to all beneficiaries who are receiving benefits. The distribution must be made within 210 days after the last day of the plan year in which the amendment was adopted. Generally speaking, an updated SPD must be furnished every 5 years.

JOBS AND GROWTH TAX RELIEF ACT

President Bush signed the Jobs and Growth Tax Relief Reconciliation Act of 2003 into law on May 28, 2003. The Act contains numerous tax breaks for individuals, investors, and businesses, but does not change the provisions governing qualified retirement plans.

REMINDERS

- ❖ Do you maintain a cafeteria plan with automatic enrollment? If so, be sure to let your McCready and Keene consultant know. Special language is needed in the compensation definition in your qualified plan if you have this type of cafeteria plan. "Automatic enrollment" means the employee is automatically enrolled unless he or she affirmatively elects **not** to be covered by the cafeteria plan. The special qualified plan language does not apply to an employer that requires an active election for participation in its cafeteria plan.
- ❖ Do you have a 401(k) plan with a safe harbor feature that allows you to avoid ADP and ACP testing? If so, at least 30 days (and not more than 90 days) before the plan year began, you distributed a safe harbor notice to participants. To maintain your safe harbor status, you need to distribute the same notice to new participants no earlier than 90 days before their entry date and no later than their entry date.
- ❖ Finally, the GUST and EGTRRA amendment project is drawing to a close! Timely adoption of GUST restatements and EGTRRA amendments is necessary to maintain the qualified status of your plan. If your plan is on the McCready and Keene prototype, GUST and EGTRRA provisions must be adopted no later than September 30, 2003. If you have an individually designed plan, GUST restatements should have been adopted by the later of February 28, 2002, or the last day of the 2002 plan year (in some cases plans were submitted to the IRS in proposed form and those GUST restatements must be adopted no later than 90 days after the date of your IRS determination letter), and EGTRRA amendments should have been adopted by the last day of the plan year beginning in 2002. If the GUST adoption date is later than the adoption date of the EGTRRA amendment, you will need to re-adopt the EGTRRA amendment.



Have a nice summer!