

Employee Benefit News

June 29, 2006

PLAN ASSET RULE FOR PARTICIPANT CONTRIBUTIONS

The fiduciary responsibility rules of ERISA require that participant contributions and participant loan repayments be paid to the plan's trust as soon as these amounts can reasonably be segregated from the general assets of the employer. The outside limit provided in the regulations is the 15th business day of the next month, but the Department of Labor does not consider the outside limit acceptable for most employers, and it should not be treated as a "safe harbor."

In determining the amount of time within which employee contributions and loan repayments must be paid to the trust after being withheld from pay, the employer should look at other amounts withheld from pay that must be segregated and paid from general assets. For example, an employer can look to the amount of time needed to pay income tax withholding amounts to the IRS, to pay insurance premiums for health or life insurance, or to pay amounts to a court pursuant to a garnishment.

The test is one of facts and circumstances, and it will be up to the employer to justify the number of days taken in general and for any special situations that arise. For example, an important consideration could be that the employer has multiple locations and must consolidate multiple payrolls prior to sending employee contributions and loan payments to the trustee. However, under no circumstances may a deposit be later than the 15th business day of the next month.

The Department of Labor has a Voluntary Fiduciary Correction Program in place to help employers correct late deposits. The employer is a plan fiduciary and must act prudently with regard to making sure the amounts withheld from participants' pay are paid to the trust timely. If you have questions about the timeliness of your deposits, please contact your McCready and Keene consulting team.

THINGS WE NEED TO KNOW

To provide accurate administrative services to the defined contribution, defined benefit, 403(b), and 457(b) plans that we work on and to monitor the events that must be reported to the Pension Benefit Guaranty Corporation ("PBGC") for defined benefit plans, you should let us know as soon as any of the following events occur:

- Reduction of more than 20% of active participants.
- Purchase or sale of entities in your controlled group or affiliated service group. (If you do not know what a controlled group or affiliated service group is, contact your McCready and Keene consultant.)
- Closing of a plant or facility.
- Failure to make required contributions to a defined benefit plan (including quarterly contributions).
- Liquidation of your company.
- Filing for bankruptcy.
- Inability to pay benefits when due.

This is not an exhaustive list of events that could affect the administration of your plan. If there is any change which could increase the probability of a plan termination or, in the case of a defined benefit plan a liability to the PBGC, please let us know. For defined benefit plans, notice may be required to be given to the PBGC within 30 days of the event.

PENSION LEGISLATION (defined benefit plans)

For 2004 and 2005, the interest rate for defined benefit valuations was based on corporate bond rates. If use of corporate bond rates is not extended to 2006, plans will be required to use 105% of the 30-year treasury rate, which will significantly increase funding requirements for 2006. Congress has indicated that it intends to extend the corporate bond rate to 2006 and later years. The provision for extending the rate is included in both the Pension Protection Act and the Pension Security and Transparency Act, which are currently in Conference Committee.

However, Congress continues to extend the anticipated date for passage of pension legislation. We have faxed a letter to Senate Conferees, House Conferees, Indiana Senators, and Indiana House members urging carve-out and immediate passage of the interest rate relief for 2006.





ELECTRONIC FILING OF PBGC FORMS

(Applies only to defined benefit plans)

Effective July 1, 2006, the Pension Benefit Guaranty Corporation ("PBGC") will require all premium filings (Form 1-ES, Form 1-EZ, Form 1, and/or Form 1 with Schedule A), for plans with 500 or more participants to be filed electronically for plan years beginning on or after January 1, 2006. This electronic filing requirement will be expanded to all plans beginning January 1, 2007. Exemptions will be available on a case by case basis, but we do not anticipate there will be many granted.

The primary purpose behind this change is to reduce paperwork and the resulting errors. Users will have to create an account with the PBGC through which all filings will be made. Payments can also be made electronically, but for now the PBGC will still accept checks. However, the PBGC does reserve the right to require electronic payments in the future.

The first plans affected by this change are those with at least 500 participants and a June 30 or later plan year end that have to file the 1-ES by the last day of the second full calendar month in the premium payment year (August 31, 2006 for June 30, 2006 plan year ends.) The next group will be calendar year plans whose final due date is the 15th day of the tenth full calendar month following the end of the plan year preceding the premium payment year (October 16, 2006 for January 1, 2006 plan years.)

These filing rules apply to both single-employer and multiemployer defined benefit plans. However, they do not apply to government or church plans. If McCready and Keene prepares your PBGC forms, we will do most of the set up with the PBGC. However, you will have to take some steps. Your consultant will contact you with the details.

DB BENEFITS CORNER

A participant who terminates employment before retirement age may request commencement of benefits when he or she satisfies the requirements for early retirement. If the participant does not request an early retirement benefit or did not have sufficient years of service to satisfy the early retirement requirement, then benefits must commence at normal retirement date. If you have not already done so, please set up a system to monitor the year terminated participants reach normal retirement age and to contact them regarding commencement of payments, if they do not contact you. If benefit notices are given to a participant after normal retirement age, there are issues surrounding retroactive payments. A good tracking system helps avoid these issues.

HAVE YOU EVER CONSIDERED AN AGE-WEIGHTED PROFIT SHARING PLAN?

An Age-Weighted Profit Sharing Plan is a defined contribution plan with the employer contribution allocated based on age and compensation, allowing older workers to receive greater contributions than they would receive under a straight profit sharing plan. This is particularly attractive to business owners and key employees who are older than the staff employees and want a larger share of the plan contributions allocated to their own accounts, but would still like to retain the contribution discretion of a straight profit sharing plan.

Downside to consider: As a result of key employees receiving larger contributions than other plan participants, the plan may become top-heavy at a faster rate than it would with a traditional profit sharing allocation. A top-heavy plan requires a minimum contribution for all non-key participants and a special vesting schedule.

McCready and Keene can design an Age Weighted Profit Sharing Plan for you that will automatically pass the nondiscrimination rules. The plan should be submitted to the IRS for approval. Please call your McCready and Keene Consulting team to see if an Age-Weighted Profit Sharing Plan would meet your needs!

70½ DISTRIBUTIONS

The law requires that retirement plans commence distribution to participants who are 5% owners by the April 1st following their 70½ birthday. Distribution to participants who are not 5% owners must commence by the April 1st following the later of the participant's 70½ birthday or termination of employment. In the annual report that we prepare for your plan, we include a list of participants who are required to commence distribution. It is very important that those distributions be made in a timely manner. A participant is required to report a late distribution on his or her income tax return and pay a penalty equal to 50% of the late distribution!

If you have questions or would like additional information about the items presented in this newsletter, call your McCready and Keene consultant.

Employee Benefit News is not intended as legal advice. Readers should seek legal advice before acting on any of these subjects.

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