McCready and Keene, Inc. Actuaries and Employee Benefit Consultants for Over 70 Years

Employee Benefit News

March 31, 2008

CELEBRATING 75 YEARS OF BUSINESS

McCready and Keene is proud to have administered retirement plans for over 75 years. We enjoy working with our clients and know that our success is based on pleasing them.

"This our 75th anniversary year is all about you, our clients. We thank you for your business, your friendship and your referrals. We look forward to serving you for the next 75 years."

Dan Shelley
Chairman of the Board and
Senior Vice President

CORRECTION FOR ALLOWING PARTICIPANTS TO ENTER THE PLAN EARLY

If an employer allows an employee to enter the plan before the plan's eligibility requirements have been satisfied, the IRS has outlined the following steps of correction:

1. The employer prepares a memo for its file outlining the problem, how it was corrected, and the steps that have been taken to insure that allowing an employee to participate early will not occur again.

2. The plan is amended to provide an exception to the eligibility requirements by naming the employee who participated early.

3. The amendment is submitted to the IRS the next time the plan is required to be restated. Please note that if the plan is on a prototype document, submission to the IRS may not have been required but will be because of the correction amendment.

CHANGE IN YOUR EIN

If your employer identification number ("EIN") changes, it is *very important* that you notify us as soon as possible. Your EIN is included in filings with the Internal Revenue Service ("IRS"), Department of Labor ("DOL"), and Pension Benefit Guaranty Corporation ("PBGC"). (PBGC filings only apply to defined benefit plans.). In addition, if you have a defined benefit plan, an ESOP, or an individually designed defined contribution plan, the last digit of your EIN will determine what year your plan needs to be restated and submitted to the IRS.

DEFAULT INVESTMENTS FOR DEFINED CONTRIBUTION PLANS WITH PARTICIPANT DIRECTED INVESTMENT

The Pension Protection Act of 2006 provides additional protection for fiduciaries who offer a Qualified Default Investment Alternative ("QDIA"). When a participant fails to exercise his or her right to direct investments, the employer and trustee are protected from responsibility for investment performance if the contributions are deposited into a QDIA. For example, if the Plan provides automatic enrollment for 401(k) deferrals, a QDIA should be considered (and may be required depending upon the type of automatic enrollment arrangement). The IRS issued final regulations on QDIAs effective December 24, 2007. The regulations apply to defined contribution plans subject to ERISA.

The types of investments that qualify as QDIAs can be described in three categories:

1. Short-term. These are money market type funds. The investment may not be used for more than 120 days, and no transfer restrictions or transfer fees can be imposed for the first 90 days.

2. Grandfathered. This is a stable value investment, which guarantees principal and a rate of return generally consistent with that earned on intermediate investment grade bonds. The grandfathered investment vehicle applies to amounts invested on the date the final regulations were issued (October 24, 2007) plus any additional amounts that were deposited on or before December 23, 2007.

3. Long-term. Investments that fall into this category are a) life-cycle or targeted-retirement-date funds, b) balanced funds (i.e., a mix of equity and fixed income investments targeted for participants of the Plan as a whole), and c) a managed account (i.e., a mix of equity and fixed income investments based on the participant's age, targeted retirement date or life expectancy).

Each participant must be furnished with a notice regarding the default investment provisions of the Plan. The notice must be provided at least 30 days in advance of the first investment and at least 30 days in advance of each subsequent plan year. The purpose of the notice is to give participants the opportunity to make an affirmative investment election and bypass the QDIAs. McCready and Keene can assist you with the notice. The Plan's investment advisor can assist you with information on what funds satisfy the QDIA requirements.

COMING IN 2008!

1. Defined Benefit Plans. There are new rules for determining the funding status of defined benefit plans. Our Actuarial staff is very busy preparing new report formats and making programming changes. As a result, the valuations for defined benefit plans may be a little later this year. Also, you should be aware that we will be sending you Actuarial Certifications as required by the new benefit restriction rules, and there may be situations which require the employer to provide written direction to the Actuary where there are funding alternatives.

2. All Plans subject to ERISA. The DOL has issued proposed regulations on fee disclosure. The regulations provide guidance on disclosing direct and indirect fees paid for all services to a plan, such as investment, consulting, recordkeeping, accounting, actuarial, and legal. Compliance will be particularly challenging for defined contribution plans, since so many of the fees are indirect. This is a hot topic in the benefits community! We anticipate that the regulations will be finalized this year. We will provide you with more information when the regulations are finalized.

3. Defined Contribution Plans Subject to ERISA. Plans are now required to provide benefit statements quarterly for plans with participant directed investments and at least annually for all other plans. Initially the due date for all benefit statements was 45 days after the end of the relevant period (calendar quarter or calendar year). In the last quarter of 2007, the Department of Labor issued guidance extending the annual due date for plans without participant directed investment to the due date for the filing of Form 5500. The due date for plans with participant directed investment has not changed.

IMPORTANCE OF PLAN DOCUMENTS

A Plan sponsor must be able to prove to the IRS that its Plan has met the IRS requirements for qualification since its inception. The easiest way to demonstrate qualification is to provide a copy of prior IRS favorable determination letters. If the Plan uses a prototype or volume submitter document and does not have its own separate determination letter, the Plan sponsor is required to keep all signed documents since the inception of the Plan. Failure to demonstrate qualification may result in substantial monetary sanctions.

If you have any signed Plan documents that you have not sent us, please do so. The accuracy of administration depends on having current plan documents. Sending us an electronic scanned version is sufficient.

409(p) AND S CORPORATION EVENTS

S Corporation ESOPs have had to deal with the requirements of Section 409(p) of the Internal Revenue Code for several years. In 2006 Treasury issued final regulations under 409(p) that were effective for plan years beginning on or after January 1, 2006. While there might be nothing new from a regulatory standpoint regarding 409(p), an S corporation must be continually alert to the impact that certain events can have on its ESOP for the year in which the event occurs. These events include:

1. Implementation of or changes in the structure of any component of synthetic equity, including, for example, a deferred compensation plan.

2. Any stock transaction, regardless of whether it involves the ESOP.

3. Termination, including retirement, of a disqualified person.

4. Changes in family relationships between shareholders inside and outside the ESOP.

5. Layoffs or other significant workplace demographic changes.

It is important that a preliminary 409(p) test be done before any of these events occur to see if the event will cause a problem under the ESOP. If a problem is recognized in advance, then strategies can be developed. If a 409(p) problem is discovered after the event, it is too late to fix it. As the regulations make clear, if the requirements of 409(p) are not met **at any time during the year**, that year is a "nonallocation year." A nonallocation year is something to be avoided at all costs, because among other things, it can result in substantial excise taxes being levied and a termination of the corporation's S election.

Another item that can impact 409(p) testing is a drop in stock price when the company has synthetic equity. A drop in price can result in a significant increase in the number of synthetic equity shares that must be included in the 409(p) test. While a price drop is not something over which a company has control, a preliminary 409(p) test should be completed if a price drop seems likely so synthetic equity alternatives can be explored.

Please remember to contact McCready and Keene along with your tax and legal advisors if any of the above types of events might occur.

DEPOSITING PARTICIPANT CONTRIBUTIONS

The general requirement of the DOL is that participant contributions must be deposited in the trust as soon as possible, with an outside limit of the fifteenth business day of the next month. For some employers that means deposits should be made on the next business day.

Recently, the DOL issued a proposed safe harbor that gives small employers (under 100 participants) seven business days to deposit employee contributions and loan repayments.

If a small employer plan is audited by the DOL, it appears likely that the DOL will challenge any deposit that takes longer than seven business days to reach the trust. If the employer takes more than seven business days, it will have the burden to prove that a longer time period was necessary.

The proposed regulation does not extend the safe harbor to large plans (100 or more participants), but it is hoped that the DOL will consider such a rule. The safe harbor for small plans will not be effective until the DOL publishes final regulations, but making deposits within seven business days will most likely comply with the rules even before the safe harbor regulation is finalized.

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

McCready and Keene, Inc. 7941 Castleway Drive, Indianapolis, Indiana 46250 (317) 849-4333
Virginia Office: 8200 Hampton Glen Drive, Chesterfield, Virginia 23832 (804) 513-4015