

Employee Benefit News

June 30, 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.



"Technology and security are priorities for our company. We use the latest technology to insure client data is received, transmitted and stored securely. Technology and security enhance our customer relationships."

Steve Sheridan, V.P.
Director of Corporate Computer Services

ROLLOVERS TO ROTH IRAs

Beginning in 2008, all qualified plans and 403(b) plans must permit participants and spouse beneficiaries to roll distributions to a Roth IRA. The employer has a choice whether to permit rollovers by non-spouse beneficiaries. For 2008 and 2009, rollovers cannot be made by individuals who have more than \$100,000 modified adjusted gross income in the year the eligible rollover distribution is made. Beginning in 2010, highly compensated employees may also roll distributions to a Roth IRA. It is not the employer's responsibility to determine whether an individual who elects a rollover to a Roth IRA satisfies the eligibility requirements. The rollover is not subject to the mandatory 20% withholding. However, since it is being rolled into a Roth, the individual will need to include the distribution as income when he files his or her income tax return for the year of distribution. The 10% early distribution tax does not apply if the taxable amount rolled over to the Roth IRA remains in the IRA for at least 5 years.

DEFINED BENEFIT PLANS AND LUMP SUM PAYMENTS

As we have mentioned in prior newsletters, the structure of the interest rate for computing lump sums distributed in 2008 and later was changed by PPA. However, your plan can be written to use an interest rate that is lower than the PPA rate (which means lump sums will be higher). If you want to do something other than change the 30-year treasury rate to the PPA rate, please contact your McCready and Keene consultant.

PLAN AUDITS

If your plan is required to be audited by an independent accountant, the audit should be starting soon, if it hasn't already. The Auditing Standards Board of the AICPA issued 8 new auditing standards effective for the audit of 2007 financial statements. These standards are primarily concerned with the plan's internal controls and according to the AICPA "likely will result in a substantial change in audit practice." Therefore, you should be ready to answer questions related to the plan's internal controls that you may not have been asked before. Please see <http://ebpaqc.aicpa.org/> for more information about plan audits.

One item that changed for last year's audits and which will continue is the requirement to value all plan assets at fair value. This requirement caused changes in the values reported on Form 5500 for guaranteed investment contracts (GICs) and stable value funds that hold GICs. Previously, these assets had been reported at their contract value because that is what participants will receive. In fact, the values reported on participant statements have been and will continue to be contract value. However, because of the fair value requirement and the different methodologies used to determine contract value and fair value, the 5500 value will usually be different than the value reported by the trustee and on the participant statements. Because this is the second year of the requirement, auditors, GIC issuers, and GIC funds should be familiar with the fair value requirements. McCready and Keene will assist in providing information and making any fair value adjustments to the Form 5500 as a result of the audit.

INDIANA TREASURER ANNOUNCES THE INDIANA ESOP INITIATIVE

The Treasurer of the State of Indiana, Richard Mourdock, recently announced the Indiana ESOP Initiative to encourage the formation of new ESOPs in Indiana. The primary initiative is a \$50 million linked deposit program. The State will accept a lower interest rate on its deposits with participating banks in exchange for the banks charging a lower rate on ESOP loans. The Treasurer has dedicated a portion of his website to information about ESOPs and the Indiana ESOP Initiative. Among other things the site includes an ESOP toolbox that lists companies such as McCready and Keene that provide services to ESOPs.

You can see the website at <http://www.in.gov/tos/2771.htm>. Please contact Jackie Salmon at McCready and Keene, jsalmon@mcak.com, if you have questions about ESOPs.





CREDIT BALANCES AND QUARTERLY CONTRIBUTIONS UNDER PPA (Defined Benefit Plans)

Proposed regulations issued in April under the Pension Protection Act of 2006 ("PPA") dramatically change the results of using credit balances to pay a defined benefit plan's quarterly contributions. Generally speaking, a credit balance results from an "over-contribution" in prior plan years. In other words, a credit balance is the excess of the employer's contribution over the minimum required contribution. Under the proposed regulations, the employer may no longer temporarily use credit balances to pay quarterly contributions and then restore the credit balance by later making a contribution to the plan.

A simplified example (ignoring interest and other actuarial details) is the best way to demonstrate the change. Let's assume a plan has a minimum required contribution (not taking into account any credit balance) of \$100,000, a credit balance of \$80,000, and quarterly contributions of \$20,000 per quarter.

PRE-PPA: The employer could make the quarterly contributions and a final contribution of \$20,000, preserving the credit balance of \$80,000. Alternatively, the employer could use the credit balance to make the quarterly contributions and then make a final contribution of \$100,000. In either alternative, the plan would end up with a credit balance of \$80,000.

PPA: The terminology has changed. The "credit balance" as of the end of the 2007 plan year will be referred to as "funding standard carryover balance." Using the same numbers as the example above, the employer could make the quarterly contributions and then make a final contribution of at least \$20,000, preserving the funding standard carryover balance of \$80,000. Alternatively, the employer could use the funding standard carryover balance to make the quarterly contributions and then make a final contribution of at least \$20,000. Here is the big change. If the employer makes a final contribution of \$100,000, the funding standard carryover balance is still reduced to zero because it was used to satisfy quarterly contribution requirements.

"Credit balances" established at the end of the 2008 plan year will be called "prefunding balances." A prefunding balance will only be established if the employer contributes (in cash) more than the minimum required. In our example, the employer would have to contribute more than \$100,000 to create a prefunding balance.

Under the proposed regulations which will be effective for the 2009 plan year, to use the credit balance to satisfy a quarterly contribution requirement or to establish a prefunding balance, an employer must make a written election. For plan years beginning in 2008, good faith compliance with the funding rules is required.

DC PLANS: REQUIRED EGTRRA RESTATEMENTS

The McCready and Keene, Inc. Defined Contribution Prototype Plan and our Corbel Volume Submitter Plan have been approved by the IRS, and we are beginning to draft the required EGTRRA restatements for our defined contribution clients. Restatements of plans on the prototype or volume submitter format must be completed over the next two years. This is the time for those clients to think about changes they may want to make in their plans. McCready and Keene does not add an amendment charge for changes when we are restating a plan for required IRS provisions, so this is a very cost effective time to request plan design changes.

Consider, for example, changing eligibility to allow participants to enter your plan earlier than your current entry dates, adding in-service distributions for those over age 59-1/2, or changing or adding loan provisions to your plan. Now may be the time to consider whether adding safe harbor employer contributions would avoid testing problems or whether automatic enrollment would increase participation in your plan. It may also be the time to consider whether adding a Roth option would benefit your participants. The law may eventually change to require plans to give non-spouse named beneficiaries the option to roll death distributions to IRAs, but in the meantime you may want to consider adding this option. New rules also allow participants to help their nondependent named beneficiaries by allowing hardship withdrawals for medical, tuition, or funeral expenses.

NOTEWORTHY ITEMS

- At an IRS conference in Cincinnati earlier this month, the comment was made that the number one issue on audit is checking the plan document for timely adopted amendments. When McCready and Keene sends amendments or restatements, the date by which the document needs to be signed will be provided. Failure to timely adopt is a qualification issue.
- The severance portion of a participant's pay cannot be considered compensation for qualified plan purposes. For example, in a 401(k) plan, deferrals cannot be taken from the severance pay.
- In a defined contribution plan, if the death benefit payable to a non-spouse beneficiary does not commence by the end of the plan year following the year of the participant's death, then the entire death benefit will need to be distributed within 5 years, even if the benefit is rolled to an inherited IRA.
- The 2008 HEART Act provides 100% vesting in defined contribution and defined benefit plans for participants who die while performing military service. Defined benefit plans are permitted, but are not required, to include benefit accrual for the period of military service in the death benefit.
- Beginning in 2008, if you want to amend your defined benefit plan in a manner that increases plan liabilities (examples include lowering the early retirement age, improving the vesting schedule, improving the benefit formula), you may have to make additional contributions before the amendment is adopted, depending on the funding status of your plan. Collectively bargained plans may have a delayed effective date. You will want to check with us to determine the impact of an increase in the dollar multiplier before the next round of union negotiations begins!
- Have you been notified of an upcoming IRS audit of your Form 5500? Here is a link to the IRS website to help you prepare.
<http://www.irs.gov/retirement/article/0,,id=162931,00.html>

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.

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