

Employee Benefit News

April 30, 2009

CELEBRATING A JOB WELL DONE

Sondra Heeter recently spearheaded the updating of McCready and Keene's Actuarial Valuation report to be compliant with the new Pension Protection Act rules. The results have been impressive.



"McCready and Keene's Defined Benefit practice provides the best of both worlds. The expertise of our actuaries is on par with larger national firms, but we are able to offer the responsiveness and long-term personal relationships found only when working with a smaller firm."

Sondra Heeter, Senior Actuary and Director of Actuarial Operations

We received a great compliment from an actuary with more than 20 years of experience at the Pension Benefit Guaranty Corporation in Washington, DC regarding our Actuarial Valuation report. She was reviewing one of our 2008 Actuarial Valuations in conjunction with the merger of two large Indiana corporations and volunteered that we have the best Pension Protection Act valuation that she has seen. She described the report as easy to follow, understandable, well organized and indicated that "The layout of your report is worthy of positive feedback." She ended by saying "It's a work of art!"

Sondra wants to recognize Richard Lenar, Chief Actuary, and Stan Brown, Associate Director of Actuarial Operations, for the many hours spent collaborating on this ongoing project. Each time a new IRS regulation or Notice is issued, programming begins immediately to incorporate the latest guidance into our valuation report.

MAY THE SAFE HARBOR CONTRIBUTION TO A 401(k) PLAN BE ELIMINATED MID-YEAR?

An employer may amend a safe harbor 401(k) plan during the year to eliminate or modify a safe harbor matching contribution. Eliminating the safe harbor match requires:

- a 30-day notice to participants,
- adoption of an amendment 30 days prior to the effective date,
- providing employees with a reasonable opportunity to change their deferral election prior to the effective date of the change, and
- current year ADP and ACP testing for the entire year.

A plan may **not** be amended mid-year to eliminate a safe harbor nonelective contribution. The only way to eliminate the safe harbor nonelective contribution mid-year is to terminate the plan in conjunction with a substantial business hardship or in conjunction with a change in controlled group status through sale or purchase.

DEFINED BENEFIT PLAN ANNUAL FUNDING NOTICE

The Pension Protection Act of 2006 requires an annual funding notice for all single-employer and multiemployer defined benefit plans covered by the Pension Benefit Guaranty Corporation ("PBGC"). For most plans, the funding notice replaces the Summary Annual Report (which was distributed to participants after the filing of the plan's Form 5500) and the PBGC underfunding notice (which was only required for certain plans). The due date for issuing the annual funding notice depends on the size of the defined benefit plan. If the employer has more than 100 participants (the participant count includes all plans maintained by all employers in the controlled group), the notice is due no later than 120 days after the end of the plan year. That means April 30th for calendar year plans! The funding notice is much longer than the Summary Annual Report and for large plans is now required much earlier than the 5500. In the past, much of the information that is required for the funding notice was collected at the time the Form 5500 was prepared. Now, we need to push to obtain this information earlier in the year, at a time when completion of plan valuations and other year-end reports would have been the priority.

For employers who have 100 or fewer participants, the funding notice is due when the 5500 is filed. For all plans, the notice must also be furnished to the PBGC, and failure to furnish it in a timely manner could subject the employer to significant penalties.

The notice needs to be distributed to each active participant, deferred vested participant, retiree, beneficiary, alternate payee, any labor organization representing participants, and for multiemployer plans each employer with an obligation to contribute to the plan. The notice may be provided electronically if Department of Labor rules are followed. Please contact us if you need information about filing electronically.

McCREADY AND KEENE, INC. FILE RETENTION POLICY

We have an ever increasing number of long-term clients, which is wonderful! But we are running out of storage space. As a result, we are changing our file retention policy for *terminated* clients from 10 years to 7 years. (ERISA only requires that files be retained for 6 years.) We keep all historical files for ongoing clients. The change in policy only applies to clients who have terminated their plan or terminated our services. For your information, a copy of our revised privacy statement is attached.





FINANCIAL ACCOUNTING STANDARDS BOARD AMENDS RULES FOR PENSION DISCLOSURES

The Financial Accounting Standards Board ("FASB") has issued new rules for financial statement disclosures under Generally Accepted Accounting Principles ("GAAP"). The changes are part of an ongoing project of the FASB to improve the usefulness of these financial disclosures to users of financial statements. The major change in the new rules is the requirement for significantly more detailed disclosures of information concerning plan assets.

The new rules are contained in a FAS Staff Position (FSP) published on December 30, 2008. The FSP, which is referred to as FSP 132(R)-1, amends the current disclosure requirements which are specified in FASB Statement No. 132(R). The rules apply not only to defined benefit pension plans, but also to other postemployment benefit plans, such as retiree medical or life insurance plans, if those plans are considered to possess plan assets for GAAP purposes.

Important features of the new disclosure requirements include:

1. A statement of investment policies and strategies,
2. A narrative description of how the long term rate of return was determined,
3. The fair value of each category of plan assets,
4. The level in the fair value hierarchy of each major asset category (for Level 3 assets, a detailed reconciliation of the beginning and ending balances is required),
5. The inputs and valuation techniques used to measure fair value, and
6. Information regarding concentrations of risk within the plan assets.

These disclosure rules will require a significant amount of information to be collected each year and presented in the financial statement disclosures. It is likely that most or all of the information will have to be provided by the trustee or investment managers/advisors.

The new rules are effective for fiscal years ending after December 15, 2009. Earlier compliance is possible.

A copy of FSB 132(R)-1 can be downloaded at www.fasb.org/pdf/fsp_fas132r-1.pdf.

If you have a defined benefit pension plan or other postemployment benefits which are subject to GAAP, McCreedy and Keene recommends that you consult with your auditors and/or investment advisors regarding the new rules. If you must comply, we recommend you take steps to determine how the relevant information will be collected. Although McCreedy and Keene is not in a position to provide this information, we are willing to assist you in any way we can as you prepare to comply with the new pension disclosure rules. Please contact us if you have any questions. We highly recommend taking a proactive approach by collecting the information now so it is available at the end of the fiscal year.

CAUTION – CALCULATING YOUR OWN EMPLOYER CONTRIBUTIONS TO A DEFINED CONTRIBUTION PLAN

If you calculate or otherwise determine your own employer contribution to a defined contribution plan, please remember that such calculations cannot take into account compensation for any plan participant in excess of the compensation limit under Internal Revenue Code Section 401(a)(17). The limit is indexed and changes each year. New limits for various plan purposes are announced each year, usually in the month of October preceding the year of applicability. Our October newsletter contains these updated limits to keep you abreast of the changes. The compensation limit for years beginning in 2008 is \$230,000. For years beginning in 2009, the compensation limit is \$245,000. If you determine your own contributions, we do not audit your calculations. Please contact your McCreedy and Keene consultant if you would prefer to have us calculate the employer contribution for you.

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

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

NEW RELIEF FROM IRS PROVIDES TEMPORARY FUNDING RELIEF FOR DEFINED BENEFIT PLANS

The Internal Revenue Service ("IRS") has issued guidance that may provide relief for sponsors of calendar year defined benefit plans in the areas of funding requirements, benefit restrictions, and Pension Benefit Guaranty Corporation variable rate premiums and filing requirements.

The Pension Protection Act of 2006 and proposed regulations issued last year require a plan to use one of the following interest rates to determine funding targets, which in turn determines whether a plan is subject to benefit restrictions, amortizations and variable rate premiums:

- Option 1: Use three different "segment rates" that are based on a 24-month average of corporate bond yields.
- Option 2: Use a full "yield curve" that is based on a one-month average for the month preceding the month in which the plan year begins.

The relief provided by the IRS a few weeks ago relates to the second option and permits a plan sponsor with a January 1, 2009 valuation date to select the monthly yield curve for January 2009 or any of the four preceding months. With October and November 2008 having unusually high rates (higher interest rates result in lower liabilities), we are finding that this change can significantly reduce an employer's funding requirements for 2009.

So, what is the downside? Once a plan sponsor chooses a yield curve month, the choice is locked in unless the IRS approves the change. So, for example, if a plan sponsor elects the rate for November 2008, then for the 2010 valuation, the rate for November 2009 will apply and if the November 2009 rate is abnormally low, the employer's costs for 2010 would increase dramatically. The other downside is that if assets do not recover in 2009, the 2010 contribution will have to make up for the relief provided in 2009.

The interest rate change in combination with the smoothing of assets permitted under the Worker, Retiree, and Employer Recovery Act of 2008 (which allows you to use an asset average up to 110% of market value) could result in up to a 30% increase in funding percentages and a much greater decrease in cash funding requirements for 2009. However, utilizing the relief and hoping for a recovery in asset values will most likely only defer the increases in funding requirements to 2010 and later years.

We will discuss the asset averaging and interest rate options with our defined benefit plan sponsors before finalizing the 2009 valuations. To date, many employers have elected **not** to use the relief offered by the IRS, but others are still considering the implications.

CAUTION ON WITHHOLDING FOR PENSION PAYMENTS IN 2009

The American Recovery and Reinvestment Act of 2009 enacted the Making Work Pay tax credit, which applies to earned income. The tax credit reduced withholding effective April 1, 2009. The reduced withholding tables also apply to periodic pension payments. However, pension payments are NOT eligible for the tax credit. That means a participant or beneficiary who is receiving periodic payments from a retirement plan will most likely owe additional taxes when they file their 2009 tax returns and could owe penalties for underpayment of taxes! Although notification of the change is not required, you may want to let participants and beneficiaries in pay status know about the reduced withholding and that they may contact the trustee to increase their withholding.

Privacy

Policy:

In the course of providing actuarial, record keeping, and other administrative services for our clients and their retirement and other employee benefit plans, we receive participant information and related financial data from employees and financial institutions in connection with such plans. This Privacy Policy establishes the following guidelines for how McCready and Keene, Inc. and its employees are to deal with any such information:

1. The use of information is specifically limited to those activities for which we have been employed. Such information will be used to compile reports and other materials, including the processing of plan benefits, as appropriate, in connection with our services to the plan(s) and the participants to which such information relates.
2. Computer files and hard copies containing such information are maintained as deemed appropriate for providing ongoing services to the plans involved in a manner reasonably designed to preserve their confidentiality.
3. The Company has a shredding policy and a contract with a vendor providing shredding and certified disposal services for all materials containing client information. This policy is designed to prevent inadvertent disclosure of client information contained on discarded materials.
4. If the Company learns that any client or participant information is disclosed to a third party without the client's permission, the Company will notify the client of such breach and comply with rules and regulations related to this matter.
5. Our records retention policy generally involves the retention of materials for ongoing clients as long as they are deemed pertinent to those services. Some older records are transferred from time to time to an off-site storage facility maintained by a third party in that business. From time to time, we direct the disposal of certain stored information that is no longer needed in connection with our services. The storage facility has contracted to dispose of such materials in a manner designed to protect the confidentiality of any client information contained in the materials. The storage facility's security procedures also ensure that such stored materials can only be delivered to one of our authorized employees. When a client terminates our services, we will retain records for seven years, and then such records will be disposed of in due course in a manner designed to protect client and participant confidentiality.
6. The names of representative clients may be used with their permission from time to time as references in connection with our efforts to obtain new business, but specific financial information on clients and their plans and participating employees is not used for any purpose other than providing the agreed services to individual clients and is not disclosed to anyone outside the Company, except as required in connection with providing our agreed services or as required by law.
7. Our Employee Manual emphasizes the importance of using client information only in connection with providing our professional services. Employees are prohibited from disclosing client information to anyone outside the Company, except as required in connection with our agreed services.
8. We also will comply with any legal process that might require the disclosure of certain client information. However, it is generally the Company's policy to notify the client before complying with any request for production of documents pursuant to subpoena or in any other legal proceeding.
9. We maintain internal security procedures with regard to our premises and our computer systems to restrict access to any information provided to us so that we can provide services for our clients, including their employees and plan participants. Our policy applies to both active and former clients.

Authority: Deviation from these guidelines must be approved by the President.