



Qualified Retirement Plan
Consulting & Administration Services

Newsletter - Winter 2008-2009

There are a number of items that we wanted to bring to your attention impacting your plan this winter season.

Partial Plan Terminations - Given these tough economic times, layoffs or termination of employees are on the rise. Generally, the IRS views a participant reduction equal to or greater than 19% of the total participant workforce a partial plan termination. While this number is subject to a "facts and circumstances" test, it is important to note that those employee/participants may be required to be fully vested as a result. If the terminations take place in stages (perhaps over 2 or more years) so as to grow into a 19% workforce reduction, you may need to retroactively fully vest the whole group. If you are in the process of terminations that may rise to the description above, please contact your Pension Works administrator to discuss the implications for your plan.

2009 Plan Limitations - IRS has published the new plan limits for 2009. We have reproduced and posted them on our web site for your convenience. Go to www.pensionworks.com and click on IRS Dollar Limits.

Plan Document Updates - By now you are probably aware of the need to update your 401(k), profit sharing or money purchase plan document. IRS released a revenue procedure in the early summer of 2008 requiring the rewrite of all pre-approved plan documents by April 30, 2010. Pension Works administrators have been working hard to contact each of you about this process. Because this new document will entirely replace your older model, now is an excellent time to enact any changes you may have been considering over the past years. The addition of safe harbor, profit sharing allocation changes, eligibility, vesting and other plan design changes can be easily incorporated into the plan as part of the restatement. We expect to be spending most of the summer and fall working with you to perfect your new document terms and getting it filed with IRS in advance of the April 2010 deadline.

2008 Valuation Cycle - Calendar year plans have been sent their Annual Data Request packages in preparation for your plan's 2008 valuation work. Components of the request require a response before we can begin your work. Thanks to those of you who have already responded with your input. We will be scheduling plans on a "first come first serve basis", so please plan accordingly.

Plan Bonding - ERISA requires all plan fiduciaries to be bonded. Fidelity bonding protects the plan from fraud or dishonesty of individuals who handle plan assets. Plan fiduciaries are responsible for securing and maintaining adequate fidelity bonds for their plans. The amount of the bond needed is generally equal to 10% of plan assets to a limit of \$500,000. If your plan has employer securities as an investment option, the maximum bond was recently changed from \$500,000 to \$1,000,000. If your plan has non-qualified investment assets, you may be required to have a bond larger than the 10% amount described above. For those plans that file a 5500EZ, bonding is not required. Failure to provide adequate bonding may subject your plan to an independent CPA audit and additional 5500 reporting. Your Pension Works administrator can help you properly determine the bonding amounts needed for your plan.

Some clients have asked about the need to obtain fiduciary liability insurance. This coverage is NOT the same as an ERISA fidelity bond and is not required by ERISA. Fiduciary liability insurance protects the plan against losses due to breaches of fiduciaries' responsibilities. Plan assets can be used to purchase both an ERISA fidelity bond and fiduciary liability insurance, but in the case of fiduciary liability insurance, the policy must permit recourse by the insurer against the named fiduciary.

Minimum Required Distribution - Generally, a person who is retired and attains age $70\frac{1}{2}$ is required to begin taking distributions from a retirement plan. The Technical Explanation of the Worker, Retiree and Employer Recovery Act of 2008 has provided forgiveness for the need to take such a distribution in 2009. This would impact ONLY those people who turned $70\frac{1}{2}$ during 2009 and who would otherwise be required to take a distribution on 12-31-2009 or alternately, by 4-1-2010. Minimum distributions will be forgiven for both of those dates. People turning $70\frac{1}{2}$ during 2008 and who chose to take their first distribution on 4-1-2009 will still need to take that amount. Different rules apply to individuals who are 5% or greater shareholders of the plan sponsor. Contact your Pension Works administrator if you have specific questions about how the new rules will apply to your plan

401(k) Plan Testing - If your plan year begins in calendar year 2008, there is a change in the taxation rules of all salary reduction or matching contribution corrective distributions. In the past, if the distribution was processed less than

2½ months after the plan year end, the refund would have been taxable in the year deferred, not the year distributed. Now, as long as the corrective distribution is made within 12 months of the last day of the plan year, the refund is taxable in the year received. Corrections made beyond 2½ months following the plan year end are subject to a 10% penalty, payable by the plan sponsor, so if you have had testing problems in the past, be sure to get us your plan year data ASAP!