



Qualified Retirement Plan  
Consulting & Administration Services

## New and Proposed Regulations to Consider

### Final 415 Amendments

In 2007, IRS published final regulations that impact on important plan definitions and testing. These are required to be adopted and made part of your plan document. These rules are effective for plan years beginning on or after July 1, 2007. So, for those of you with a calendar year plan, your amendment would be due by December 31, 2008. Those with off calendar year plans will be due sooner or later depending on your year end. We will be mailing out mini packages with all necessary adoption materials during the late spring in time for the June 30 adopters to sign and return their amendments. The amendments will not be filed with the IRS at this time, but will be needed when all documents are updated in 2009 and later filed with IRS. (See the last article about document updates below.)

### Periodic Participant 401(k) Deposit Deadlines

Good news for sponsors of plans with less than 100 employees! The Department of Labor (DOL) has proposed a safe harbor deadline for an employer to deposit participant 401(k) contributions withheld from his/her compensation.

**Background.** In 1996, the DOL issued regulations which established a deadline for employers to pay the contributions withheld from employees into a 401(k) plan. The deadline required the employer to contribute the amounts withheld or payments it received no later than "the earliest date on which such contributions could reasonably be segregated from the employer's general assets (general rule), but in no event to exceed 15 business days after the first of the month following the month from the date on which such amounts are received or withheld by the employer (outer limit)."

**Safe Harbor.** Despite efforts by the DOL to clarify the general deadline, employers and plan administrators have continued to struggle with determining the date by which they needed to deposit contributions and payments with the plan. To provide more certainty, the DOL is proposing a safe harbor for small plans (defined as plans with fewer than 100 participants at the beginning of the plan year). For participant contributions withheld from a participant's compensation, the DOL will consider contributions deposited with the plan no later than the 7th business day following the date of the withholding to be in compliance with the general rule. For participant payments made to an employer, the safe harbor is the 7th business day following the day on which the employer receives the payment. The safe harbor applies both to retirement and welfare plans.

A plan that fails to comply with the safe harbor does not automatically violate the plan asset regulations. However, the employer would have the burden of demonstrating that it deposited the participant contributions as soon as reasonably possible, and not later than the maximum deadline. DOL likely will challenge any deposits or payments beyond the safe harbor. For employers who determine that they have late deposits, the safe harbor should provide a precise date from which the employer can determine the make-up of lost earnings.

Consistent with the current regulations, the DOL will consider a participant contribution deposited with the plan on the date it is placed in an account of the plan. The regulations do not require the participant contribution to be allocated to an individual participant's account or to a specific investment by the safe harbor deadline. The terms of the plan and the general fiduciary rules will govern when the plan must allocate a contribution to a participant's account or to a particular investment.

The safe harbor does not apply to plans with over 100 participants. However, the DOL is considering developing a safe harbor for large plans, and specifically requests input regarding the contribution practices of employers with large plans and the need for a safe harbor for those plans.

**Loan Repayments.** The DOL also is proposing to extend the plan asset regulations (and therefore, the safe harbor) to participant loan repayments. In DOL Advisory Opinion 2002-02A, the DOL expressed the view that although the regulations did not apply to participant loan repayments, the principles of the regulations should apply to such repayments. Therefore, the regulations will incorporate the position of the Advisory Opinion into the regulations.

**Effective Date.** The safe harbor will be effective on the date the DOL publishes the final regulations. However, the proposed regulations indicate that the DOL will not assert a violation of the plan asset regulations if a small plan is in compliance with the safe harbor. **Therefore, an employer may take advantage of the safe harbor now.**

### **Plan Documents to be Restated Late this Year and Early Next**

IRS notified us in 2005 of their future intention to cause all retirement plan sponsors to be placed on a 6 year revolving review cycle. We now know that this cycle will begin for defined contribution plans in May of 2008. This Revenue Procedure requires each plan sponsor who has in the past adopted a pre-approved document (prototype or volume submitter plan), to begin the process of updating and restating their plan document at that time. All plans will be required to have this update completed by April of 2010. An important part of the exercise will be to file your plan document with the IRS and obtain a Letter of Determination. This Determination Letter demonstrates your plan's tax qualification and will be good for the full 6 year cycle described in the Revenue Procedure. We will be in contact with you in the early summer to discuss how this will impact your plan and help determine if there are any discretionary design changes you might wish to incorporate into your plan restatement.