

2014 Legislative Update and Tax Reminders

The Affordable Care Act drew enough attention to give 401(k) and pension plans a reprieve from the normal constant bombardment of regulation. In the defined benefit arena, the substantial decline in fixed income interest rates over the past few years due to governmental intervention has resulted in higher annual contribution requirements. However, corporate defined benefit plans received much needed relief not only from the PPA funding rules but also from the dramatic increase in the stock market. The 401(k) deferral limit remained level at \$17,500 but the maximum limitations for defined benefit and defined contribution plans increased for the third straight year for 2014. But the big news may be the Supreme Court's ruling that §3 of the Defense of Marriage Act, DOMA, is unconstitutional.

Repeal of Defense of Marriage Act (DOMA)

On June 26, 2013 the Supreme Court held that §3 of DOMA is unconstitutional. DOMA §3 states,

"In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife".

On August 29th the IRS announced that legally married same-sex couples will be treated as married for federal tax purposes. Therefore a couple legally married in a state that recognizes same-sex marriages will be recognized as married regardless of the state of residence for federal tax purposes – often referred to recognition of the *state of celebration* and not the *state of residency* standard. Because qualified plans are governed by federal law, they will be required to provide same-sex spouses with the appropriate benefit options and spousal death benefits. Although the federal government is applying the rules retroactively, we will await IRS regulations for clarification.

Participant Fee and Performance Disclosure Rules – ERISA 404(a)(5)

This final prong of the DOL fee disclosure initiative applies specifically to participant-directed, individual account plans subject to ERISA. ERISA 404(a)(5) requires detailed investment and expense disclosures that will help America's workers manage and invest for their retirement security. Plan Administrators were required to provide the initial annual disclosure by **August 30, 2012** and annually within 12 months thereafter. Because there was *no window* of time the "within 12 month" requirement would have required earlier and earlier due dates unless mailed exactly on the same date each year.

For those plans on Ekon Benefits daily trading platform, we provide these disclosures and the comparative investment chart in an easy-to-read, full-color format **each quarter** on the Participants' **Savings Spectrum** benefit statement. Therefore the annual disclosure nuance is not a nuisance.

IRS Dollar Limits for Retirement Plans

The IRS announced the updated benefit and contribution limits for 2014:

<u>IRS Dollar Limits for Retirement Plans</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Elective 401(k) and 403(b) Deferrals	\$ 16,500	\$ 17,000	\$ 17,500	\$ 17,500
Catch-up Contributions (over age 50)	5,500	5,500	5,500	5,500
Maximum Defined Contribution Limit	49,000	50,000	51,000	52,000
Maximum Defined Benefit Limit	195,000	200,000	205,000	210,000
Maximum Compensation Limit	245,000	250,000	255,000	260,000

2014 Legislative Update and Tax Reminders Continued

401(k) Contribution Depositing Requirements

Under DOL rules, 401(k) contributions must be deposited as soon as possible, but not later than 15 business days after the end of the month for which they were withheld. Under final DOL rules for plans of less than 100 participants, contributions are considered to be timely if made by the 7th business day after they are withheld from wages.

The DOL final regulations did not address a safe harbor for plans of 100 or more participants, because the DOL presumes that such plans should be able to deposit even sooner than the 7th business day. All companies should be depositing 401(k) contributions as soon as possible after each payroll. Multiemployer plans may have less stringent requirements as long as contributions are made pursuant to a Collective Bargaining Agreement.

Qualifying Asset Requirement

At least 95% of your Plan Assets must be *Qualifying Plan Assets* as defined by Department of Labor regulations. *Qualifying Plan Assets* include:

- Assets held by banks or similarly organized financial institutions, insurance companies or registered broker-dealers;
- Mutual Fund Shares;
- Insurance investment and annuity contracts; and
- Participant Loans.

If less than 95% of Plan Assets are *Qualifying Plan Assets*, an independent accountant audit or additional bonding is required. Contact your administrator if you have any questions regarding this requirement.

Miscellaneous

- Fidelity Bonds are required on all plans in the amount of 10% of plan assets subject to a maximum of \$500,000 (\$1 Million for ESOP plans).
- Blackout periods for individually directed, daily valued plans require a minimum of 30 days advance notice before changing providers.
- Combinations of Defined Benefit and Defined Contribution plans are not subject to the 25% aggregate limit if DC contributions are 6% or less (actually this turns out to be an overall deduction of 31% of payroll if the employer DC contributions are 6% or less). The 25% limit also doesn't apply at all if the DB plan is covered by PBGC.
- Contributions must be made by your tax-filing time with extensions to be deductible and must be made within 8½ months of the Plan Year end if subject to Minimum Funding Standards.
- Controlled Groups are treated as a single employer for all retirement plan purposes.
- Regular, sick and vacation pay paid after termination and by the later of the end of the Plan Year or 2½ months should be counted unless you have elected to exclude it in your plan document.
- Sub-S pass through of profits is not FICA taxed and therefore not compensation for qualified plan purposes.