



February 2010 Qualified Plan Corner: Legislative and Regulatory Update

2010 promises to be filled with legislative and regulatory developments as the Administration, Congress, and the Department of Labor (DOL) refocus attention on employer sponsored qualified plans. Below is a summary of recent and possible near-term developments.

Final Regulations Regarding Timely Deferral Deposits

Already in 2010, we have seen the DOL publish final regulations providing for the 7 business day safe harbor for small plans (less than 100 participants) to deposit employee contributions to the plan. These regulations are very similar to the proposed regulations issued February 29, 2008 and cited in the October 2009 issue of Qualified Plan Corner addressing DOL enforcement in this area.

Unfortunately, the final regulations do not extend the safe harbor to large plans (100 or more participants). Thus, large plans will have to comply with the general rule requiring employee contribution deposits as soon as they can be reasonably segregated from employer assets. Large plans would be advised to deposit deferrals by the same day they withhold from employee compensation to comply with this rule.

Participant Disclosure

On July 22, 2008, the DOL had proposed a new regulation, the 404a-5 Regulation, requiring certain disclosures to plan participants with an emphasis on plan costs. The tentative effective date was for plan years beginning on or after January 1, 2009.

However, the newly installed Obama administration promptly pulled the regulation citing a desire to further study the issue. It appears probable that DOL will revisit the issue with new regulation(s) during 2010. Industry consensus is that forthcoming regulation will also emphasize disclosure of costs borne by participants.



Plan Sponsor Disclosure

The 404a-5 Regulation mentioned above was accompanied by the 408b-2 Regulation requiring specific disclosures from plan service providers to plan sponsors as part of their written service agreement. The emphasis was disclosure of the compensation received by the service provider, whether direct or indirect.

This Regulation was likewise pulled early into the Obama administration. It appears this issue will also be revisited during 2010 with new DOL regulation(s), which we are hearing will require assignment of a dollar value to each of the various services provided.

Automatic IRA's at Work

The Obama administration has *proposed* requiring employers which have been in business for at least two years with more than ten employees to offer automatic IRA's to employees. Employees would be allowed to opt out, with those who do not opt out automatically participating at 3% of compensation funded through payroll deduction.

Employees could select either regular or Roth IRA's with Roth being the default selection. Employers offering 401(k), SIMPLE, SEP, or other traditional employer sponsored plans would be exempt from the requirement. The requirement would be effective after 12/31/2011.

Retirement Plan Credits

The administration has *proposed* that employers establishing an automatic IRA plan would receive a \$25 credit per enrollee up to \$250 for each of two years. Also, the credit for establishing a traditional employer sponsored plan would be doubled to \$1,000 for three years. These proposals would be effective after 12/31/2011.

Saver's Credit

The Obama administration *proposes* to increase the AGI limit from \$55,000- to \$65,000 for joint filers in order to qualify for the tax credit for contributions made to employer sponsored plans or IRA's. The proposal would also make the credit refundable (i.e. paid to the taxpayer from the I.R.S. to the extent the credit plus tax payments already made exceeds the taxpayer's liability) and would be effective after 12/31/2010.



Concluding Comments

As advisors to employer sponsored plans, we strive to be at the leading edge regarding disclosure. Those of you who work with us may well recognize elements of our service model that are not yet required but likely will be in the near future as described above.

We will keep you posted regarding developments in the above topics and others that may emerge as 2010 progresses.

W. Brad Mann, JD, ChFC, CLU
Investment Advisor Representative
Advanced Markets Specialist
DMJ Wealth Advisors, LLC

Advisory services offered through Investment Advisors, a division of ProEquities, Inc. Securities offered through ProEquities, Inc., a Registered Broker-Dealer, Member FINRA & SIPC. DMJ and DMJ Wealth Advisors, LLC are independent of ProEquities, Inc