

PKF PERSPECTIVES

FOR BENEFIT PLAN ADMINISTRATORS

EMPLOYEE BENEFIT PLANS YEAR-END ACTION ITEMS

THE FOLLOWING INFORMATION CONTAINS IMPORTANT ACTION ITEMS PLAN ADMINISTRATORS MAY NEED TO PROCESS PRIOR TO YEAR-END. THE ITEMS INCLUDE AMENDMENTS, NOTICES AND OTHER COMPLIANCE MATTERS FOR TAX-QUALIFIED RETIREMENT PLANS, 403(B) PLANS, NONQUALIFIED DEFERRED COMPENSATION AND WELFARE PLANS. THESE ITEMS DO NOT REPRESENT AN EXHAUSTIVE LIST, BUT ARE INTENDED TO PROVIDE A REMINDER OF THE GENERAL ISSUES THAT MAY NEED TO BE REVIEWED AND CONSIDERED.

Code Section 403(b) Plans

The Internal Revenue Service (IRS) final regulations issued in July 2007 require that eligible employees be provided with an “effective opportunity” to enroll or change contribution elections at least once a year.

Providing employees with an “annual meaningful notice” at the beginning of the year or during year-end open enrollment can satisfy this requirement.

IRS Determination Letter Program – Cycle A

The IRS’s determination letter program provides a staggered cycle for individually designed and adopters of prototype plans to request a favorable determination letter for their qualified retirement plans. The deadline to submit an application to the IRS is **January 31, 2012** for employers with an employer identification number (EIN) ending in a six (6) or a one (1).

Therefore, plan sponsors who will be submitting an application to the IRS to obtain a favorable determination for their plan must ensure they have adopted the required amendments and gathered the

other required information to ensure the timely submission to the IRS. An IRS determination letter program for 403(b) and government plans is being worked on by the IRS Employee Plans Office. There is no scheduled completion date for these projects.

Cost of Living Adjustments (COLAs)

Plan sponsors should review the cost of living adjustments (COLA) to determine what, if any changes there are. In addition, these amounts may be needed to be input into the payroll or other Human Resource Information System used by the employer to monitor contributions into an employee benefit plan.

Annual Notice Requirements

Depending upon the type of qualified plan and the plan's features, one or more annual notices may be required. Plan administrators should carefully review the following notices to determine whether any are required to be issued:

<i>Notice/Report</i>	<i>Due Date</i>	<i>Plan Affected</i>
Safe-Harbor Formula	At least 30 days prior to the beginning of the plan year	401(k)
Auto Enrollment	At least 30 days prior to the beginning of the plan year	401(k)
Default Investment	At least 30 days before date of plan eligibility or first investment in QDIA	Defined contribution plans with participant-directed investments

<i>Notice/Report</i>	<i>Due Date</i>	<i>Plan Affected</i>
Annual Funding Notice	Within 120 days after the end of the plan year	Defined Benefits (DB) Plan
Summary Annual Report	7 months after the plan year ends, or 9-1/2 months if the Form 5500 was filed on an extension	All benefit plans subject to Title I of ERISA, except DB Plans

Amendments

A required amendment relates to changes in the laws that need to be adopted by the end of the 2011 plan year, if applicable. Other amendments, referred to as “discretionary amendments” (i.e., changes not required by law, such as plan design changes) must be adopted by the end of the plan year in which the amendment is effective (unless earlier adoption is necessary to avoid a benefit cutback).

Thus, calendar year plans must be amended by **December 31, 2011** for optional changes that took effect in 2011.

WRERA Act

The Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) enacted several changes in the laws governing employee benefit plans. Perhaps the best-known provision of WRERA was applicable to the 2009 calendar year. For 2009, defined contribution plans could choose to avoid making required minimum distributions (RMDs) to participants at the later of age 70½ or termination of employment (age 70½ for 5% or more owners).

Many plans chose not to make RMDs during 2009 unless a participant requested a distribution. However, different options were also available, including continuing to make RMDs as usual during 2009. Plans must be amended by **December 31, 2011** to reflect the method used by the plan if it was a change from prior plan provisions. Regardless of what choice was made, the IRS will ask for a WRERA amendment when the plan is filed for a

determination letter. Therefore, it may be practical to include a WRERA amendment specifying how the plan was administered, even if the amendment is not technically required.

In-Plan Roth Conversions

The Small Business Jobs Act of 2010 (SBJPA 2010) allows in-plan Roth conversions for 401(k) and 403(b) plans.

Under the Act, plan sponsors may amend their plans to permit employees to convert their 401(k) and 403(b) pre-tax contribution accounts to Roth contribution accounts within the plan. Effective January 1, 2011, the Act also provides that Roth salary deferrals and in-plan conversions may be included under governmental 457(b) plans. Plans that permitted the conversions in 2010 must be amended by **December 31, 2011**.

In-plan Roth conversions may be offered only under a plan that allows Roth salary deferrals to be made under the plan.

Special PPA Deadlines for Defined Benefit Plans

Defined benefit plans must reflect certain Pension Protection Act (PPA) changes no earlier than the end of the 2010 plan year, including:

- (i) funding-based limits on benefit accruals and distributions, and
- (ii) for cash balance and other hybrid pension plans, provisions relating to three-year vesting, special rules for comparing accruals to similarly situated younger participants, and the “market rate of return” limits for cash balance plan interest credits.

Cafeteria Plan and Flexible Spending Accounts

- The Patient Protection and Affordable Care Act (PPACA) added a new rule generally effective January 1, 2011

regarding expenses incurred for over-the-counter medicines or drugs purchased without a prescription. Under the new rule, a plan amendment would be needed to be adopted for expenses incurred after December 31, 2010.

- Nondiscrimination testing for cafeteria plan and flexible spending accounts should be completed prior to year-end to determine if any processes can be implemented to ensure the compliance rules are satisfied.
- Plan year cafeteria plans should remind employees that unused amounts become forfeitures at the end of the plan year (December 31), unless the plan has adopted an amendment to extend the time up to two and a half months (March 15th for calendar year plans) after the plan year-end.
- Any other changes (discretionary) to the provisions or operations of the cafeteria plan and the flexible spending accounts made during 2011 are generally required to be adopted by **December 31, 2011** for calendar year plans.

W-2 Reporting of Health Care Coverage Cost

The PPACA originally required employers to report on Form W-2 the cost of an employee's employer-provided group health plan coverage beginning with the 2011 tax year (i.e., on Form W-2 issued in January 2012). Form W-2 reporting of health care coverage cost was subsequently made voluntary for 2011.

The IRS has issued interim guidance that is generally applicable beginning with 2012 Forms W-2 and has provided additional transition relief for smaller employers until 2013. Accordingly, larger employers should begin considering how they will determine and track the cost of employer-provided group health plan coverage for 2012 to be reported on each employee's Form W-2 issued in January of 2013.

Nonqualified Deferred Compensation (NQDC) Plans

Year-end deadlines also apply to calendar year NQDC plans because participants are required to make elections regarding their deferral of compensation, timing and form of payment of those deferred amounts, etc. prior to the beginning of the next tax year.

Additionally, the IRS has issued guidance in 2010 and 2011 to provide an employer with the opportunity to make certain corrections to plan documents to avoid Section 409A taxation and penalties. The relief is more limited than previously issued by the IRS for NQDC plan failures. The guidance indicates the correction(s) should have been made by **December 31, 2010**, and the plan may be considered as having been corrected as of January 1, 2009 which may result in a waiver of any Section 409A penalties.

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IF YOU WOULD LIKE MORE INFORMATION, PLEASE CONTACT LEO PARMEGIANI OR JOE LEE, TAX PARTNERS.

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