

# HR UPDATE

## You NOTICED!

As we move into the final months of the year, employers should be aware of various notices they may have to provide to their 401(k) plan participants before year-end. To help, here's a review of the notices most likely to be required.

### SAFE HARBOR PLAN NOTICE

If your 401(k) plan has a safe harbor design, you must provide eligible employees with a written notice at least 30 days and not more than 90 days before the beginning of every new plan year. The notice must describe your plan's safe harbor provisions and the employees' rights and obligations under the plan. For employees who become eligible to join the plan after the start of the year, notice must be provided not more than 90 days before but no later than the date the employee becomes eligible.

The safe harbor notice can be a standalone notice or combined with the automatic enrollment notice and/or with the qualified default investment alternative notice. For employers that want to combine notices, the IRS has a sample notice available on its website ([www.irs.gov/pub/irs-tege/sample\\_notice.pdf](http://www.irs.gov/pub/irs-tege/sample_notice.pdf)).

### AUTOMATIC ENROLLMENT NOTICE

If your plan has automatic enrollment features, you must provide employees with an automatic enrollment notice when they are hired, when they become eligible to participate in your plan, and annually at least 30 days before the beginning of the plan year. That way, employees have time to make any deferral or investment changes they want and to return the form before the new plan year starts.

The notice must explain the employee's right to decline automatic enrollment, to make changes to the election amount, and to opt out of the plan altogether. For example, the sample notice mentioned above meets the automatic enrollment notice requirements by explaining:

- ▶ To whom a plan's automatic enrollment features apply,
- ▶ What amounts will be deducted from an employee's compensation and contributed to the plan,

- ▶ What other amounts the employer will contribute to the employee's plan account,
- ▶ When the plan account will be vested, and
- ▶ How the employee can change his or her contributions.

### QUALIFIED DEFAULT INVESTMENT ALTERNATIVE NOTICE

Do you use a qualified default investment alternative (QDIA) for investments made on behalf of employees and plan beneficiaries who fail to direct the investment of their 401(k) plan account balances? If so, you must provide a QDIA notice.

All employees and beneficiaries must receive the notice at least 30 days before (1) they are eligible to participate in the plan or (2) the first investment in a QDIA is made on their behalf or on or before the date of eligibility if they have the opportunity to withdraw investments from the QDIA within 90 days of the first deposit. They also must receive an annual QDIA notice within a reasonable period of at least 30 days before the beginning of each plan year.

The QDIA notice must explain the employee's rights under the plan to designate how his or her contributions will be invested and, if he or she doesn't make any investment election, how the contributions and earnings will be invested. The notice also must describe the QDIA, including the investment objectives, risk and return characteristics, and any fees and expenses involved. Employees must be given a reasonable period after receiving the notice and before the beginning of the plan year to make investment choices.

The notice may not be provided in a summary plan description or a summary of material modification. However, employers can provide the required fee and expense information in a separate, simultaneously furnished document, such as the default investment's prospectus.

All three notices must be written so that they can be understood by the average employee.

LATE FALL 2008

### IN THIS ISSUE

- ▶ You Noticed!
- ▶ The Impact of Automatic Enrollment
- ▶ New Guidance for Health Savings Accounts
- ▶ Sponsor It and They Will Come
- ▶ Benefit Notes

## THE IMPACT OF AUTOMATIC ENROLLMENT

The Pension Protection Act of 2006 (PPA) enhanced the benefits of adding automatic enrollment features to 401(k) plans. However, many plan sponsors are still weighing whether automatic enrollment is the way to go for their plans. If your company is undecided, new analysis from the Employee Benefit Research Institute (EBRI) may help in your decision.\*

The study looks at the likely impact of switching from a voluntary enrollment system to automatic enrollment with automatic increases in employees' contribution rates over time. Researchers basically assumed that the new plan features would apply to essentially all employees, not just current 401(k) plan participants or those eligible to participate in a plan, and that everyone was starting from scratch in 2008 with a zero balance.

The study projects that automatic enrollment and contribution increases would have the greatest benefit for younger and lower paid employees. For example,

according to co-author Jack VanDerhei, a 25-year-old worker making \$25,000 would be likely to have a median increase of between \$92,000 and \$166,000 in today's dollars by age 65.

As you can see in the accompanying table, most higher paid employees in the youngest group would benefit, as well. Projections for other age groups are similar but less dramatic, particularly at higher income levels.

Automatic enrollment, however, won't do it all. The EBRI analysis notes that the extra retirement savings expected to be generated by auto enrollment will still not be enough for some workers to be able to meet savings targets that would provide sufficient income for their full retirement. They will need other income sources.

\* Jack VanDerhei and Craig Copeland, "The Impact of PPA on Retirement Savings for 401(k) Participants," *Employee Benefit Research Institute, Issue Brief, No. 318, June 2008.*

### PROJECTED MEDIAN ACCOUNT BALANCE AT AGE 65 FOR EMPLOYEES CURRENTLY AGES 25 TO 29

(As a multiple of final earnings)

|  | Bottom 25% of Earners | Second 25% of Earners | Third 25% of Earners | Top 25% of Earners |
|--|-----------------------|-----------------------|----------------------|--------------------|
| Voluntary Enrollment                                       | 0.1                   | 1.4                   | 2.2                  | 5.7                |
| Automatic Enrollment                                       | 1.2                   | 2.3                   | 2.8                  | 3.7                |
| Automatic Enrollment with Contribution Increases up to 6%  | 2.7                   | 4.4                   | 5.2                  | 6.6                |
| Automatic Enrollment with Contribution Increases up to 10% | 3.4                   | 5.2                   | 6.0                  | 7.9                |

Source: Employee Benefit Research Institute, Issue Brief, No. 318, June 2008, [www.ebri.org](http://www.ebri.org)

The general information in this publication is not intended to be nor should it be treated as tax, legal, or accounting advice. Additional issues could exist that would affect the tax treatment of a specific transaction and, therefore, taxpayers should seek advice from an independent tax advisor based on their particular circumstances before acting on any information presented. This information is not intended to be nor can it be used by any taxpayer for the purpose of avoiding tax penalties.

## NEW GUIDANCE FOR HEALTH SAVINGS ACCOUNTS

For employers who offer their employees tax-favored health savings accounts (HSAs) to supplement a high deductible health plan (HDHP), the IRS recently released additional guidance addressing a variety of HSA issues (*IRS Notice 2008-59*).

With an HSA, an individual sets aside money that, along with account earnings, can be used tax free to pay qualified medical expenses that aren't reimbursed by the health insurance plan. HSAs are available only to individuals covered by an HDHP. For 2008, an HDHP's deductible must be at least \$1,100 for self-only coverage (\$2,200 for family coverage). Out-of-pocket expenses payable under the plan can't be more than \$5,600 for individual coverage (\$11,200 for family coverage).

The following are some of the issues covered by the guidance that might affect your employee benefit program.

### FSAs AND HRAs

Generally, if an employee participates in an employer-provided flexible spending account (FSA) or health reimbursement arrangement (HRA), he or she cannot contribute to an HSA. An exception applies to FSAs and HRAs that provide certain limited benefits, such as reimbursement only for dental, vision, or preventive care. The new guidance clarifies that these limited benefits can include reimbursement for the employee's share of premiums for the employer-sponsored HDHP.

## SPONSOR IT AND THEY WILL COME

Your retirement savings plan is an important employee benefit and, for the plan to be successful, your employees need to know and appreciate that fact. How can you communicate the value of the plan to employees and, ideally, get them all to participate? Here are some suggestions.

### BOOSTING MEETING ATTENDANCE

If the attendance at your enrollment and other plan meetings is not what you'd like, you need to consider ways to entice employees to come. One approach some companies take is to make attendance at an initial enrollment meeting mandatory. With this approach, all employees are at least introduced to the plan when they become eligible to participate. Of course, such attendance doesn't ensure every employee will join the plan.

Consequently, you may want to consider other ways to draw nonparticipating employees into subsequent enrollment meetings and all employees into any educational meetings you provide. Free food and giveaways have proven to be effective in sparking employee interest. While giveaways may not attract everyone you want at first, they can get a buzz going among employees and increase attendance at later meetings.

If possible, letting employees attend meetings on company time, rather than on personal time, can improve attendance. Some employees may feel resentful if they have to give up their lunch break, for instance, to attend a company meeting – even if lunch is provided at the meeting. Also, using both in-person and online presentations may help you reach more employees.

### SWITCHING COVERAGE

The IRS also weighs in on situations in which an HSA-eligible employee switches from family HDHP coverage to self-only coverage during the year. For purposes of satisfying the employee's self-only deductible for the year, the HDHP may use any reasonable method to allocate covered expenses incurred during the period of family coverage. The IRS notice gives examples.

### RECOUPING EMPLOYER CONTRIBUTIONS

The notice also explains how employers can recoup excess contributions or contributions made to an HSA on behalf of an ineligible employee.

### EDUCATING EMPLOYEES

To fully appreciate your plan, employees need to understand how the plan works and what it can do for them – personally. Look for ways to provide retirement planning and investment information in formats customized to the individual employee. For example, according to the Employee Benefit Research Institute, a majority of people (56%) say that they prefer retirement calculation tools that ask for seven to ten pieces of detailed information and give an answer tailored to their individual situations. Nearly three quarters (72%) say they like tools that give a range of answers based on different scenarios.

An educational approach that emphasizes retirement income – how much income the employee's plan account may provide during retirement and how long they could receive that income without exhausting their account balance – may have more meaning for many employees than emphasizing asset accumulation. For instance, show them how increasing their plan contribution by 1% a year over the next several years could make their retirement income last X more years, rather than showing them how the additional contributions would increase their account balance at retirement.

### GETTING BEHIND THE PLAN

Employees also need to see that company management is behind your plan. Consider having senior management present any plan changes to your work force. You might also make a policy of having supervisors regularly discuss the benefits of plan participation and increasing plan contributions at employee performance and compensation reviews. You'll reinforce the importance of the plan and get employees talking about it.

## BENEFIT NOTES

### QDIA TECHNICAL CORRECTIONS

The DOL has issued technical corrections to the qualified default investment alternative (QDIA) final regulations and issued Field Assistance Bulletin 2008-03, which provides guidance in an FAQ format on issues that were raised after the final regulations were published. Among the issues addressed:

- ▶ The grandfathering relief for stable value funds,
- ▶ The capital preservation investment option,

*Continued on Page 4*

### Call KBA Today

KBA is the current auditor of more than 20 public companies, 110 private companies and more than 50 employee benefit plans. KBA is also a member of the AICPA Employee Benefit Plan Audit Quality Center. For more information or a free estimate, contact

**Camille Irvin**  
972.788.0330  
cirvin@kbagroupllp.com

or

**Tom Hudgins**  
469.341.0800  
thudgins@kbagroupllp.com

Copyright © 2008 BEN

### WANT TO GO ELECTRONIC?

Would you prefer to receive our newsletter via email? Send your email address to our Marketing Director, Aimee Glass, at [aglass@kbagroupllp.com](mailto:aglass@kbagroupllp.com). Be sure to include "HR Update" in the subject line.

# KBA SERVICE OFFERINGS

*Continued from Page 3*

- ▶ The scope of investment managers for a QDIA,
- ▶ Multiple QDIAs,
- ▶ QDIA notice requirements, and
- ▶ “Round-trip” restrictions: The DOL clarified that plan sponsors may impose a restriction that prohibits a participant from reinvesting in the QDIA for a limited time after affirmatively electing to transfer out of the QDIA default fund.

## THE HEART ACT

The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART) is designed to provide income-tax relief to members of the military serving

combat duty. Several of the Act’s provisions affect employee benefit plans. One of these provisions permanently allows reservists called to active duty for more than 179 days or for an indefinite period to make penalty-free withdrawals from 401(k) and 403(b) retirement plans and IRAs. Under prior law, this provision didn’t apply to individuals called to active duty after 2007. Another provision permits recipients of military death benefits to roll over such amounts to a Roth IRA or a Coverdell education savings account. HEART also liberalizes the rules for distributing any unused benefits in flexible spending accounts (FSAs) of reservists called to active service for more than 179 days or an indefinite period.

**KBA Group LLP**  
14241 Dallas Parkway  
Suite 200  
Dallas, TX 75254  
972.702.8262

**ADDRESS SERVICE REQUESTED**

PRSR. STD.  
U.S. POSTAGE  
PAID  
DALLAS, TX  
PERMIT No. 430

- ▶ **AUDIT SERVICES**
  - ▶ Audits, reviews and compilations of private companies
  - ▶ Audits of SEC registrants and related filings
  - ▶ Audits of 401(k) & other benefit plans
- ▶ **TAX SERVICES**
  - ▶ Federal and state tax consulting and compliance
    - Federal services:**
      - ▶ Entity selection and conversion
      - ▶ FAS 109 computations
      - ▶ FIN 48 assistance
      - ▶ IRS controversy and audit representation
      - ▶ Executive services
    - State services:**
      - ▶ Franchise tax planning
      - ▶ Multi-state tax planning
      - ▶ Sales and use tax consulting
    - Other services:**
      - ▶ Cost segregation
      - ▶ LIFO studies
      - ▶ R&D tax credit studies
  - ▶ Outsourced tax compliance
  - ▶ International tax services
- ▶ **RISK ADVISORY SERVICES**
  - ▶ Sarbanes-Oxley Section 404 services
  - ▶ Internal audit services including: outsourcing, assessments, testing and consulting
  - ▶ SAS 70 Reports for service organizations
  - ▶ Audit Committee advisory services
- ▶ **TRANSACTION ADVISORY SERVICES**
  - ▶ Financial due diligence in connection with acquisitions and other transactions
  - ▶ Transaction readiness services
  - ▶ Post-acquisition support
  - ▶ Tax and financial planning/execution for mergers, acquisitions and divestitures
- ▶ **OTHER VALUE-ADDED SERVICES**
  - ▶ Business services
  - ▶ Profit enhancement
  - ▶ SBIC regulatory consulting & compliance
  - ▶ Family owned business