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EXECUTIVE BENEFIT PLANS, INC.
Employee Benefit & Pension Specialists

Plan Insight
A Qualified Plan Newsletter for Plan Sponsors

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In This Issue

Benefits Enrollment Increasingly Going Paperless

(PLANSPONSOR.com) - The past five years have witnessed a 165% growth rate in the proportion of employees that use some combination of Web-based technology to enroll in their benefits, according to a new study from The Guardian Life Insurance Company of America.

Forty percent of employees enrolled via computer only versus 12% five years ago, and 36% used paper only to enroll versus 58% five years ago, The Guardian said in a press release. Twenty-one percent of respondents report that they used a combination of paper and computer, compared to 11% five years ago.

Overall, 61% of employees say they used computer-based enrollment for some portion of their employee benefits enrollment. Among those, most (92%) cite convenience as the top reason they access their benefits online.

Eighty-seven percent said online access to benefits saves time, and 73% said it gives them more control.

While not the top choice, the environment was mentioned by 67% of employees as an important reason for accessing their benefits online. Women (75%) were more likely than men (61%) to value the environmental benefits of online enrollment.

Benefits & Behavior: Spotlight on Technology and Enrollment presents the findings of a telephone survey of 342 full-time employed respondents, of whom 186 were men and 156 were women.

Defined Benefit

To be precise, a defined benefit plan is defined in the Internal Revenue Code as a retirement plan "other than an individual account plan." So, if the plan isn't a DC plan, it must be a DB plan. But, as noted earlier, the major determinant of a DB plan is that the

Defined Benefit Cont'd. . .

benefits be "definitely determinable," generally by a specific ("defined") formula in the plan document.

In theory, what you "know" at a given point is the benefits due, based on that formula (though that may be easier said than done).

Those benefits are generally paid based on three factors: the worker's age, service, and compensation. Those benefits paid may be based on Social Security benefits, and may or may not be adjusted for subsequent cost-of-living adjustments, based on the terms of the plan.

In the corporate sector, these programs are insured by the Pension Benefit Guaranty Corporation (PBGC), and the costs of these plans are borne by the employer, including the need to hire actuaries and pay insurance premiums (PBGC), in addition to regular operating costs. In the public sector, these programs also may have an employee-contributory feature.

Cash Balance Plans

Technically, a cash balance plan is a defined benefit plan. However, since these plans also have some of the characteristics of a defined contribution plan, they are frequently called a "hybrid" plan.

Like a defined benefit plan:

• The benefits, rather than the contribution, are defined by the plan.

• The employer makes contributions to the plan based on the same kinds of actuarial assumptions.

• The employer is responsible for any shortfall between the value of the plan and its benefit commitments.

• The plans are covered by the Pension Benefit Guaranty Corporation (PBGC), and the employer must pay premiums.

Like a defined contribution plan:

Cash Balance Plans Cont'd. . .

• Individual accounts are established and maintained.

• Employees are generally given account statements showing them the value in their account on a regular basis.

A cash balance plan is unique:

• In establishing and crediting individual accounts with income based on a predetermined formula/rate, regardless of the actual investment return of the plan;

• Balances accumulate gradually over an employee's career.

Plan Design

Just as a builder begins with a blueprint, plan design is an integral part of building a successful plan. The type of plan you choose may have a dramatic impact on the benefits received, and how they are perceived by your employees.

Plan design is the process of choosing the type of plan—and the array of options—that will meet the needs of your company and its employees. To do so, you need to know the ages and types of employees you are seeking to benefit, the financial and resource boundaries of your company, and the options that are available to you.

Making changes to an existing plan can be an expensive and time-consuming proposition. Furthermore, once granted, some benefits cannot simply be "taken away" or modified at a whim.

The plan document that creates the plan and outlines its conditions is a contract—and should be viewed accordingly. Contracts, of course, can be modified. But frequently the consent of both parties is required—and almost always the services of an enrolled actuary, pension specialist, and an attorney.

The Basics On Catch-Up Contributions Allowed In 401k Plans

Congress added the new catch-up contribution option to retirement plans out of concern that baby boomers hadn't been saving enough for retirement. This new option enables savers age 50 and over to increase contributions at a time when retirement draws near. Age-50 catch-up contributions are possible in

Catch-up Contributions Cont'd. . .

401k, 403b and 457 plans, and IRAs, but the rules differ among plans. This article focuses on 401k rules.

We have put together the answers to some of the most common questions we have been getting regarding the catch-up provision.

What is a catch-up contribution?

A catch-up contribution is any elective deferral made by an eligible participant that is in excess of the statutory limit ($15,500 in 2008), an employer-imposed plan limit, or any limit applied in order for the plan to satisfy the ADP nondiscrimination test for the year.

Who is eligible to make a catch-up contribution?

Plan participants who are or will turn 50 years of age during the calendar year are eligible to make catch-up contributions. However, the participant's regular plan contributions must reach at least one of the following limits before catch-up contributions can begin: the annual deferral limit, the plan's deferral limit, or the annual ADP limit for Highly Compensated Employees.

How many retirement plans offer this feature?

According to Fidelity, 93% of the more than 26,000 employer sponsored retirement plans they service offer the provision.

Are we required to provide this additional elective deferral to our plan participants?

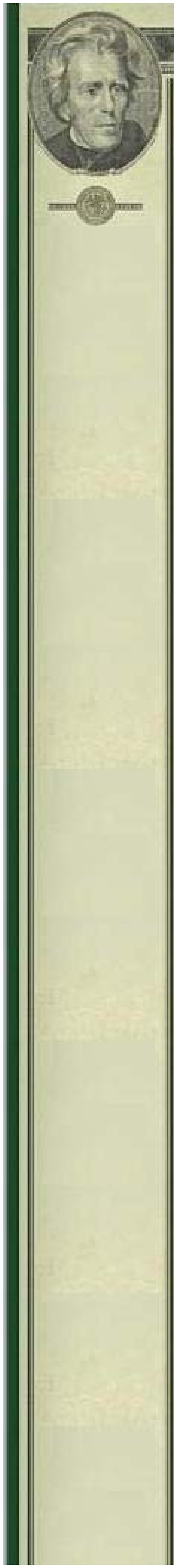
No, a plan is generally not required to provide for catch-up contributions.

If we want to offer the catch-up provision, does our plan have to be amended?

There is a high likelihood that your plan will need to be amended in order for you to allow catch-up contributions. The IRS has provided model amendment language that can be used, but you should immediately check with your legal counsel or recordkeeper on what your specific plan needs.

Do the catch-up contributions have to be made from payroll deductions?

Yes, contributions must be made by payroll deduction.



Does the employer have to match these catch-up contributions?

No, an employer does not have to match these contributions. If you don't match, it would be wise to communicate this to your plan participants.

Do we need to show these contributions separately on W-2 forms?

No, the IRS has indicated that regular and catch-up contributions can be reported together on W-2 forms.

How will catch-up contributions impact plan testing?

Among other testing issues, catch-up contributions are not considered when doing the ADP test and they are not considered in determining the amount of the minimum contribution required for a top-heavy plan.

How are these contributions treated for hardship withdrawals, loans or distributions purposes?

Catch-up contributions to a plan are treated for plan purposes as any other pre-tax contribution would be. For example, catch-up contributions would be treated as any other elective deferral when calculating available balances for loans.

If one of our plans permits catch-up contributions to be made, do all of our plans have to permit them?

Yes, if one plan of an employer permits catch-up contributions to be made, then catch-up contributions must be permitted in all plans of the employer permitting elective deferrals ("universal availability" requirement). See IRS Notice 2002-4 for more information.

What other issues do I have to think about if we want to offer this provision?

Actually allowing catch-up contributions within the plan may be the easy part. The harder part may be the implementation. For example, can your payroll system handle the raised minimum for eligible participants? Can payroll segregate catch-up contributions from other pre-tax deferrals? Can the plan recordkeeper handle this type of contribution? Are there additional costs involved? How will you communicate this new benefit to your employees, or how will you respond to employees if you don't offer it? How will you train your staff to answer

questions related to it? Do forms and other operational issues need to be addressed or changed?

DB(k) Plans

The Pension Protection Act of 2006 (PPA'06) provided for the development of a new 'hybrid' plan type – the DB(k). Beginning in 2010, an employer may adopt an "eligible combined plan." Consisting of a defined benefit plan and a 401k plan held in a single trust, using one plan document, one summary plan description, one Form 5500, and one audit (if required). The DB(k) plan may be used only by employers with no more than 500 employees.

For plan sponsors, the new retirement hybrid will function as a single trust, offering efficiencies never before available. Sponsors will be required to file a single Form 5500 with the federal government, for example. For those companies that already offer the typically costly-to-fund defined benefit plans, the new model offers a way to reduce their responsibility, while not eliminating the benefit to employees completely, said Dallas L. Salisbury, president and chief executive of the Employee Benefits Research Institute in Washington.

That doesn't mean they come cheap. Like traditional pensions, DB(k)s requires a significant funding commitment on the part of the employer, and are best suited to companies with high profit margins or those flush with cash. But sometimes, it's worth the investment in recruitment and retention, especially in hard-to-staff fields, or those subject to widespread worker poaching.

The DB(k) would be deemed NOT top-heavy or subject to non-discrimination testing where it meets specific safe harbor formulas for both the DB and the 401k elements of the plan. The DB component is either a 1% of final average pay formula for up to 20 years of service, or a cash balance formula that increases with the participant's age. The 401k component must provide automatic enrollment and a fully vested 50% match on the first 4% of deferred pay.

For small companies especially, if you have a different retirement package than your competitors, you can have a better opportunity to hire high-quality workers, said David L. Wray, president of the 401(k)/Profit Sharing Council in Washington. Adoption of the plans will be slow, experts agreed. Wray noted that professional firms, such as doctors and lawyers offices, most often are the types of small businesses to offer pension plans, making them a potential target for the new hybrids.

401k Hardship Withdrawals - An Overview

Like loans, hardship withdrawals are allowed by law, but your employer is not required to provide for them in your plan. Again, most companies do, but some don't. The cost of administering such a program can be prohibitive for many small companies. Check with your Human Resources department if you're not sure if your plan allows hardship withdrawal. Like loans, your employer must adhere to some very strict and detailed guidelines.

The IRS code that governs 401k plans provides for hardship withdrawals only if: (1) the withdrawal is due to an immediate and heavy financial need; (2) the withdrawal must be necessary to satisfy that need (i.e. you have no other funds or way to meet the need); (3) the withdrawal must not exceed the amount needed by you; (4) you must have first obtained all distribution or nontaxable loans available under the 401k plan; and (5) you can't contribute to the 401k plan for six months following the withdrawal.

Under the provisions of the Pension Protection Act of 2006, the need of the employee also may include the need of the employee's non-spouse, non-dependent beneficiary.

The following items are considered by the IRS as acceptable reasons for a hardship withdrawal:

1.Un-reimbursed medical expenses for you, your spouse, or dependents.

2. Purchase of an employee's principal residence.

3.Payment of college tuition and related educational costs such as room and board for the next 12 months for you, your spouse, dependents, or children who are no longer dependents.

4. Payments necessary to prevent eviction of you from your home, or foreclosure on the mortgage of your principal residence.

5. For funeral expenses.

6. Certain expenses for the repair of damage to the employee's principal residence.

Hardship withdrawals are subject to income tax and, if you are not at least 59½ years of age, the 10% withdrawal penalty. You do not have to pay the withdrawal amount back.

A hardship distribution may not exceed the amount of the need. However, the amount required to satisfy the financial need may include amounts necessary to pay any taxes or penalties that may result from the distribution.

Most plans that offer a loan provision require the participant to exhaust the loan prior to making a hardship election.

Definition of Terms

Participant Directed - Plan participants are provided the opportunity to direct their own retirement assets/dollars within their own 'participant' accounts by making their own investment choices in funds that more closely meet their specific goals and objectives.

Trustee Directed – The plan does not permit the participants to invest their own assets, but rather, the assets are pooled and invested in investments selected by the plan's trustees.

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