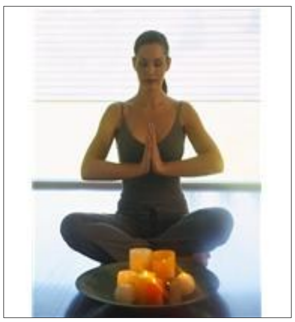
PLAN SPONSOR RETIREMENT PLAN UPDATE

Quarter 1, 2013

Maximize Your Contributions in 2013

Did you know?

As part of our wellness program , Noble –Davis holds in-office Yoga classes every Thursday . Feel free to join us sometime!



Inside this issue:

The rules regulating qualified retirement plans contain a variety of limitations that affect how much can be contributed on a participant's behalf. Many of these limitations include an actual dollar amount that is subject to cost-of-living adjustments (COLAs). These dollar limits are determined annually by the IRS – and the 2013 COLAs have been announced. Maximize your 2013 contributions by taking advantage of these increased limits.

Salary Deferral Limit-$17,500

A 401(k) plan participant cannot make pre-tax and Roth salary deferrals in excess of the calendar year limit set by the IRS. The limit for 2013 is $17,500

Catch-Up Contribution Limit-$5,500

If your 401(k) plan permits, participants who are at least age 50 may be able to make additional "catch-up" salary deferrals. The 2013 catch-up contribution limit set by the IRS is $5,500

Section 415 limit-$51,000

Internal Revenue Code Section 415 limits the maximum allocation that can be credited to a participant's account in a plan year. A participants "annual additions" are limited to the lesser of 100% of compensation or a dollar amount set by the IRS. The limit for 2013 is $51,000

***Annual* Compensation Limit-$255,000**

The maximum amount of compensation that may be used for determining a participants contribution is limited. The 2013 compensation limit set by the IRS is $255,000

Other Important Limits:

SIMPLE Deferral Limit-$12,000
SIMPLE IRA Catch-Up-$2,500
Highly Compensated Employee Compensation Definition-$115,000
Social Security Taxable Wage Base-$113,700

Putting the pieces together

How do these limits work together to determine the maximum amount a participant may be allocated in a 401(k) plan? The following example illustrates how the various limits apply to a plan participant, age 55, with compensation of $300,000 in 2013. The plan is a safe harbor calendar year plan with the basic matching formula and a new comparability profit sharing allocation.

Salary deferral	$17,500	
Basic safe harbor match	$10,200	
Profit sharing contribution	$23,300	
Allocations Included in 415 Limit		$51,000
Catch-up contribution	$ 5,500	
Total Contribution for 2013		$56,500

In-Plan Roth Conversions

As part of the American Taxpayer Relief Act of 2012 (ATRA), Congress tapped into the existing retirement plan rules to enhance a stream of revenue by expanding the rules for in-plan Roth conversions.

Prior to ATRA, participants could convert pre-tax assets to Roth accounts within the plan only if they had a distributable event (usually attaining a certain age ie: 59 1/2 or older) . ATRA expanded this rule by eliminating the requirement that a participant must be eligible for a distribution under the plan in order to take advantage of the in-plan Roth conversion. This change considerably increases the number of individuals eligible to make an in-plan Roth conversion.

An individual who converts any of their pre-tax assets to Roth must treat those amounts as taxable income in the year of conversion. The 10% early distribution tax does not apply to the converted amount, as long as it stays in the plan for five years (or the participant meets a penalty exception at the time of distribution) . In-plan Roth Conversions may appeal to participants who want to diversify the taxable portions of their retirement income, expect to pay a higher tax rate in the future, or want to transfer assets to their beneficiaries tax free.

If a plan does not already allow in-plan conversions or designated Roth contributions, the plan will need to be amended in order to take advantage of this opportunity. The IRS anticipants issuing guidance later this year, including information about necessary amendments for the expanded rules .

Please contact your plan administrator if you are interested in obtaining more information about in-plan Roth conversions.

Stay Away From My 401(k)!

With Congress in the middle of debating tax reform, there is great concern that tax benefits of 401(k) plans are on the chopping block. The American Society of Pension Professionals and Actuaries (ASPPA) has launched a campaign to bring awareness to the fact that the federal government may consider changing the tax benefits of retirement savings accounts, resulting in Americans saving less and employers eventually deciding to discontinue their own 401(k) Plans. The last time Congress made major changes to the tax code, they cut 401(k) contributions by more than 70%. You can help by going to the website http://savemy401k.com and clicking on the tab to email your congressmen (it only takes 20 seconds!)

The “Code” for Retirement Plan Sponsors

One of the most difficult and some-times, thankless jobs out there is being a retirement plan sponsor. However, it doesn’t have to be that way. With a little work and focus on some details, you can make your retirement plan a rewarding experience for both you and your employees. This article is supposed to act as a Code, so you can follow it and turn your retirement plan from something that can be a liability pitfall into something that can be used as a tool to recruit and retain treasured employees.

1. Never forget, it’s an em-ployee benefit
When it comes to retirement plans, it’s often forgotten that it’s supposed to be an employee benefit. Like health insurance, it’s something that current and potential employees should value and if the plan is poorly run or high in fees or comes with draconian plan provisions, it’s something that they are going to dread. So with all this talk about fiduciary liability and plan fee disclosure, you should never lose sight of why you put the plan in the first place: as a benefit for your employees. If you remember that, the rest of the Code should come easy.

2. If something goes wrong, it’s your fault
In another life, I must have been a scapegoat. Whether it’s business or personal, I often get the blame for the transgressions of others. Unlike my neurosis, the fact is that you are on the hook for liability when it comes to what goes on with your plan. As a fiduciary, you have the highest duty of care at law and equity. That means that even if you hire plan providers and delegate duties, you are still at fault if something goes wrong with your plan even if your providers screw up. You are also still on the hook for some liability even if you hire an ERISA §3(38) fiduciary to assume all the responsibility for managing your plan’s investments. You can never fully eliminate the liability, but good practices will help you minimize that risk.

3. Look for the best providers
If you are on the hook for liability for hiring plan providers, then common sense dictates that you hire plan providers that can handle the job. So find a financial advisor, third party administrator (TPA), and ERISA attorney that are up to the task of helping you administer your Plan.

4. Focus more on competence, less on cost for plan providers
One of the fears in allowing retirement plan fee disclosure was that there would be a race to the bottom in terms of fees and when presented with choices, plan sponsors would seek out providers who charge the lowest fees. While that may be a consequence of fee disclosure, the fact is that too many times you get what you pay for. Some of the lowest cost providers are the lowest quality providers and the cost to fix the errors that these providers cause outweigh any of the upfront savings.

5. Your plan needs to be constantly reviewed
Too often, plan sponsors have what I called a “back in the drawer” mentality, which means that they often take their retirement plan and put it in the back of drawer to forget about it. A retirement plan is like a car, you need constant maintenance to make sure that it’s running in optimum shape. Over time, plan assets change; the demographics of your company change, the stock market changes, and the retirement plan industry changes. As a fiduciary with the potential liability that goes with it, you can’t stand pat. Every 1-3 years, you should have the “hood” of your retirement plan lifted up to make sure that everything is in working condition and what needs to be replaced that isn’t.

The "Code"—continued

6. Your plan is for the exclusive benefit of your employees, it's not a patronage mill
When you have your own business, there is nothing legally wrong to hire a relative or someone you know socially. It happens all the time, how do you think my town hires employees? When it comes to your retirement plan and your plan providers, you can't. You have to hire plan providers for what they know and not whom they know. A retirement plan is for the exclusive benefit of its participants and any benefit that you derive by using the hiring of plan providers for patronage might be considered a prohibited transaction. Hiring plan providers requires a process that needs to be documented and it can be an issue if the reason your hire a provider is because he's your nephew; a fellow congregation member at church or synagogue; or your golf buddy. With your neck on the line as a plan fiduciary, you will want to find a provider that was selected for reasons other than the fact that they were "juiced" in.

7. The plan's financial advisor does more than just pick investment options
A financial advisor is supposed to assist you with the fiduciary process and the fiduciary process is a little more than just selecting mutual funds and other investment options. The fiduciary process requires the development of an investment policy statement (IPS) that delineates on what basis investment options are selected and need to be replaced. It requires that investment options be reviewed on a consistent basis to make sure it still meets the needs of the IPS. It also will require that if participants direct their own investments that you make sure that they receive enough information to make informed decisions. If you have a financial advisor that covers all these bases, a good chunk of your liability as a plan sponsor will be minimized. If you have a financial advisor that only focuses on investment options, then you don't have your bases covered.

8. It's the little things that cause the greatest headaches and potential liability
As a retirement plan sponsor you have so many responsibilities, but it's the ministerial acts that many plan sponsors don't follow that lead to the greatest liability threats. While having a financial advisor or someone in your company steal your plan assets, it's less likelier than some of the most common plan mistakes that plan sponsors fail to avoid making. So having a financial advisor not doing their job as it pertains to the IPS or fund selection or not checking your plan expenses is likelier to happen and likelier to cause you pecuniary harm. Forgetting to provide participants investment education when they direct the investments in their account is a greater threat or having poor compliance work by your TPA are likelier to cause you to have more grey hair and sleepless nights.

9. Good practices will minimize liability, so will enough insurance
Good practices will help minimize your potential liability as a plan sponsor, but that may not stop an aggrieved former employee to be suing you for perceived transgressions to your Plan. That is why in addition to the required ERISA bond to protect the plan assets from theft, you need fiduciary liability insurance to help you in the case of ERISA litigation because legal costs to defend any lawsuit can be staggering. I know, I'm an ERISA attorney and I play one on TV.

10. Fee disclosures aren't fish wrapping, they need to be reviewed
80% of businesses that received their initial fee disclosures from their plan providers didn't understand them and that's understandable when it's full of legalese. The problem is that as a plan sponsor and a plan fiduciary, you need to understand what they mean and what you have to do with it. Putting the disclosure in your back drawer isn't an option. You need to determine whether your plan expenses are reasonable and the way to do it is to benchmark them by using a service or working with an ERISA attorney. Reasonableness is determined by the fees paid for the service provided. So you can pay more in plan expenses if you receive a level of service that justifies those fees.

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celebrating 20 years

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Mark Your Calendar

Stay on top of your retirement plan's mandatory deadlines! Here are some important dates in the upcoming months. (Please note that filing dates are for calendar year plans. Non-calendar year plans must adjust these dates.)

Each Payroll: Remit deferral and loan repayments within 7 business days (small plans) or as soon as possible (large plans).

April 15: The deadline for correcting 402(g) excess deferrals (for any participant that exceeded the $17,000 deferral limit)

April 15: Tax Returns and contributions due (without extension) for Unincorporated Entities, Individuals and/or Partnerships

May 15: First Quarter PPA Statements due for participant directed plans

June 30: Corrective distributions due for failed ADP/ACP Testing from a plan with an eligible automatic contribution arrangement (EACA) (without employer 10% excise tax)

July 31: Form 5330 and excise tax due on prohibited transactions (i.e.: late 401(k) deposits)

July 31: Annual Form 5500 report and schedules due to be filed electronically with DOL (without extension)

August 14: Second Quarter PPA Statements due for participant directed plans