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Inside this issue:

New Rules on Forced Distributions	1
Assistive Technology Bill Passes Congress	1
New COLAs for benefit plans issued by IRS	2
Missing Participant Rules	4

NEW RULES FOR FORCED DISTRIBUTIONS BETWEEN \$1,000 AND \$5,000

At the end of September the DOL released new safe harbor rules concerning forced distributions from retirement plans between \$1,000 and \$5,000. Previously a plan sponsor could force a terminated employee/participant from the plan below \$5,000 by a cash distribution or some other method. Qualified plans will no longer be able to send a check to the participant if the distribution is greater than \$1,000, unless the participant affirmatively elects a lump sum distribution. Distributions of \$1,000 or less can still be distributed directly to the participant. The new rules can also apply to amounts below \$1,000, though they are not required to be followed below \$1,000.

Employers taking advan-

tage of a final Labor Department rule would be shielded from fiduciary liability when they transfer terminating employees' small pension distributions to individual retirement accounts.

The new safe harbor rule stems from tax legislation Congress passed three years ago that requires employers, in certain situations, to transfer small pension distributions to IRAs. Employers also have the option of keeping terminating employees' account balances in their retirement plans. Many employers, though, want to transfer the balances because of the administrative cost of maintaining the account balances.

Under the Economic Growth and Tax Relief

Reconciliation Act of 2001, if a pension distribution is between \$1,000 and \$5,000 and the terminating employee hasn't told the employer what to do with the money, the employer must transfer or roll over the funds to an IRA selected by the employer (unless the Employer allows the money to stay in the plan).

To reduce employers' concerns that transferring benefit distributions to an IRA could expose them to fiduciary liability, Congress required the Labor Department to draft a safe harbor that would protect employers from liability.

To qualify for the safe harbor, under the final Labor Department rule, the IRA provider selected by an

(See Distributions on page 3)

ASSISTIVE TECHNOLOGY BILL PASSES U.S. HOUSE AND SENATE

The Society for Human Resource Management (SHRM) applauded the United States House of Representatives and Senate for passing the Assistive Technology (AT) Act (HR 4278) in the first

week of October. The bill provides federal funding to state programs that aid people with disabilities and provides access to technology and services that assist in gaining full employment. President Bush is expected to sign

the bill into law within the near future.

The goal of the AT Act is to ensure that people have access to the technology they need to fully participate in schools and

See Technology Bill on page 3)

COST OF LIVING ADJUSTMENTS ARE ISSUED BY THE IRS FOR 2005

The Internal Revenue Service announced on October 20th the cost of living adjustments applicable to dollar limitations for pension plans and other items for Tax Year 2005.

Section 415 of the Internal Revenue Code provides for dollar limitations on benefits and contributions under qualified retirement plans. It also requires that the Commissioner annually adjust these limits for cost of living increases.

Many of the pension plan limitations will change for 2005. For most of the limitations, the increase in the cost-of-living index met the statutory thresholds that trigger their adjustment. Furthermore, several limitations, set by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), are scheduled to increase at the beginning of 2005.

For example, under EGTRRA, the limitation under section 402(g)(1) on the exclusion for elective deferrals described in section 402(g)(3) is increased from \$13,000 to \$14,000. This limitation affects elective deferrals to section 401(k) plans and to the Federal Government's Thrift Savings Plan, among other plans.

Cost-of-Living limits for 2005

Effective January 1, 2005, the limitation on the annual benefit under a defined benefit plan under section 415(b)(1)(A) is increased from \$165,000 to \$170,000. For participants who separated from service before January 1, 2005, the limitation for defined benefit plans under section 415(b)(1)(B) is computed by multiplying the participant's compensation limitation, as adjusted through 2004, by 1.0273.

The limitation for defined contribution plans under section 415(c)(1)(A) is increased from \$41,000 to

\$42,000.

The Code provides that various other dollar amounts are to be adjusted at the same time and in the same manner as the dollar limitation of section 415(b)(1)(A). These dollar amounts and the adjusted amounts are as follows:

The annual compensation limit under Sections 401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii) is increased from \$205,000 to \$210,000.

The dollar limitation under Section 416(i)(1)(A)(i) concerning the definition of key employee in a top-heavy plan is increased from \$130,000 to \$135,000.

The dollar amount under Section 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a 5 year distribution period is increased from \$830,000 to \$850,000, while the dollar amount used to determine the lengthening of the 5 year distribution period is increased from \$165,000 to \$170,000.

The limitation used in the definition of highly compensated employee under Section 414(q)(1)(B) is increased from \$90,000 to \$95,000.

The annual compensation limitation under Section 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost of living adjustments to the compensation limitation under the plan under Section 401(a)(17) to be taken into account, is increased from \$305,000 to \$315,000.

The compensation amount under Section 408(k)(2)(C) regarding simplified employee pensions (SEPs) remains unchanged at \$450.

The compensation amounts under Section 1.61 21(f)(5)(i) of the Income Tax Regulations concerning the defi-

inition of "control employee" for fringe benefit valuation purposes increased from \$80,000 to \$85,000. The compensation amount under Section 1.61 21(f)(5)(iii) is increased from \$165,000 to \$170,000.

Limitations specified by statute

The Code, as amended by the Economic Growth and Tax Relief Act of 2001 (EGTRRA), specifies the applicable dollar amount for a particular year for certain limitations. These applicable dollar amounts are as follows:

The limitation under Section 402(g)(1) on the exclusion for elective deferrals described in Section 402(g)(3) is increased from \$13,000 to \$14,000.

The limitation under Section 408(p)(2)(E) regarding SIMPLE retirement accounts is increased from \$9,000 to \$10,000.

The limitation on deferrals under Section 457(e)(15) concerning deferred compensation plans of state and local governments and tax-exempt organizations is increased from \$13,000 to \$14,000.

The dollar limitation under Section 414(v)(2)(B)(i) for catch-up contributions to an applicable employer plan other than a plan described in Section 401(k)(11) or 408(p) for individuals aged 50 or over is increased from \$3,000 to \$4,000. The dollar limitation under Section 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in Section 401(k)(11) or 408(p) for individuals aged 50 or over is increased from \$1,500 to \$2,000.

Administrators of defined benefit or defined contribution plans that have received favorable determination letters should not request new determination letters solely because of yearly amendments to adjust maximum plan limits.

TECHNOLOGY BILL CONTINUED FROM PAGE 1

workplaces. Although improvements have been made in incorporating more individuals with disabilities in the workplace, the proportion of individuals with disabilities in the American workforce remains very small. Therefore, an important component to the AT Act is the effort to promote public awareness about services available to employers and employees.

"Being able to use personal computers and the Internet is as necessary to the workforce today as being able to read and write," said Susan R. Meisinger, SPHR, president and CEO of SHRM. "It is not merely helpful to provide individu-

als with disabilities access to technology in order for them to be fully engaged in the workplace, it is absolutely essential. We support the reauthorization of the AT Act as a component of the ongoing effort to provide equal opportunities to the millions of Americans with disabilities."

Federal funding for AT is provided via state grants that fund access to technology programs, research and development projects, information-system improvements, and educational efforts on what is available and how to use AT. These programs were first established in 1988 and reauthorized in 1998.

Funding for the AT state projects expires in 2004.

Reauthorization of the AT Act was initiated in the Senate by Senators Judd Gregg (R-NH) and Tom Harkin (D-IA) and in the House by Representatives Howard McKeon (R-CA), John Boehner (R-OH), and Dale Kildee (D-MI). The two chambers worked together to draft a solid bi-partisan bill that passed through each body. The bill now awaits an expected signature from the president.

DISTRIBUTIONS FROM QUALIFIED RETIREMENT PLANS

CONTINUED FROM PAGE 1

employer must be a state or federally regulated financial institution. In addition, any fees imposed by the provider must be comparable to those it charges for other rollover distributions, while the distribution must be invested in a product designed to preserve principal.

In a change from the proposed rules, the safe harbor also could be utilized for distributions of less than \$1,000.

The safe harbor requirements were published in the Sept. 28 Federal Register.

The new safe harbor regulations also require the plan documents to be amended no later than March 28th 2005. Expect our firm to be making the amendments and sending them to you sometime between now and March 28th. If you are not a DKY client for retirement plan administration, please feel free to contact us if you feel you may need assistance in amending your documents. Sponsors

have at least a couple of different options for amending their plans to be in compliance.

(1) The plan could be amended to reduce the "automatic cash-out" amount to \$1,000. In so doing, the plan would not need to include any language regarding automatic rollovers to an IRA. However, participants with an account balance or accrued benefit greater than \$1,000 could not be forced out of the plan. This may increase a plan's administrative costs.

(2) The plan could be amended to keep the maximum "automatic cash-out" amount at \$5,000, but add language requiring that distributions of \$1,000 - \$5,000 must be rolled over to an IRA, unless a participant affirmatively elects otherwise. If this option is selected, the sponsor would also need to select a financial institution to accept the rollover and establish a default investment option for the ini-

tial IRA investment.

(3) The plan amendment could add a "deemed IRA" option to the qualified plan which would separate out the IRA from other plan assets and relieve an administrator from fiduciary duty as to the IRA. Deemed IRAs in a qualified plan are a new option also made available as part of EGTRRA, and are likely to be used more commonly as a part of qualified plans.

Remember, be looking for plan amendments for your qualified retirements changing the procedure required when forcing a participant off of the plan. We will no longer be able to make forced distributions in cash for participant account balances below \$5,000 starting next year.

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DOL ISSUES FIDUCIARY RESPONSIBILITIES ON MISSING PARTICIPANTS

The Labor Department's Employee Benefits Security Administration has issued guidance on what plan sponsors must do to fulfill their fiduciary responsibilities when 401(k) participants go missing. Found in Field Assistance Bulletin 2004-02, the help is particularly relevant now that employers will soon be required to automatically roll 401(k) balances from \$1,000 to \$5,000 into an individual retirement account when employees leave the company. The discussion of the recent safe harbor guidance from the DOL is on the front page of this newsletter.

Plan fiduciaries must exhaust the following four search meth-

ods before distributing the benefits of missing 401(k) participants:

- Certified mail,
- A check of related plan records,
- A check with designated plan beneficiaries, and
- Use of a letter-forwarding service from the Internal Revenue Service or the Social Security Administration.

Expenses for using the mandatory search methods – in addition to other options such as Internet search tools, commercial locator services and credit reporting agencies – may be charged to the missing partici-

pant's account under certain circumstances, regulators said.

Some plan sponsors mistakenly think if they try to reach missing participants through a known bad address, they have at least attempted to fulfill their fiduciary responsibility, says Sue McDonald, president of Tiburon, Calif.-based Pension Benefit Information. She cautions employers to keep records proving that each of the four required methods was ineffective before doing anything with the balance of a lost participant's account.

If DKY is administering your retirement plan always check with us before making any distributions.