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DAVID K. YOUNG,

MPA, CEBS

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AUTOMATIC ENROLLMENT IN 401(K) PLANS

By Steve Mise

Automatic Enrollment in 401(k) Plans has been available for many years. Also known as Negative Election, allows Plan Sponsors to automatically defer amounts (usually 2% to 3%) from an eligible employee's compensation into a 401(k) Plan. The employee can always reduce or cease the deferrals. This has proven to be successful in terms of increasing and retaining employees participation in the 401(k) Plans having this feature. In fact, over 90% of participants who were Automatically Enrolled, continued their contributions and

in many cases even increased their deferral percentages. Some states that didn't allow Automatic Enrollment provisions because they considered the process to be wage garnishment. The Pension Protection Act (PPA) now allows Plan Sponsors to utilize this feature in 401(k) Plans in every state providing the Plans meet certain requirements.

The first requirement, as well as the most logical, is that a notice must be given to each participant who is Automatically Enrolled and has not otherwise made an election to defer. It must be

given within a reasonable period before each Plan year and explain the employee's rights and obligations under the provision. The notice must:

- Ensure the employee's right to choose not to have elective contributions made on his or her behalf or to choose a different percentage,
- Ensure the employee has a reasonable amount of time after receiving the notice to choose a different percentage before the

(See "Auto enroll... on page 2)

CONSUMER DIRECTED HEALTH PLANS, HRA, MERP & HSA, DEBATE CONTINUES

Consumer-driven health care is either just getting started or is already on its way out. Both perspectives were presented recently at the National Consumer Driven Healthcare Summit in Washington. When talking with individual insurance agents you will also get the same feed back. Some are selling "tons" of HSAs, while others say they show it but no one takes the concept. The

experience of DKY has been more the latter too. We have employers visit with us about the HSA concept, but in the end seem to go with a HRA, or a Medical Expense Reimbursement Plan (MERP). A MERP is a promise to pay a specifically designed benefit, vs. a HSA or HRA that are defined contribution plans with an account of money per participant. Findings of one specific survey, the 2nd Annual

EBRI/Commonwealth Fund Consumerism in Health Care Survey, found that enrollment in the plans has been virtually static since 2005.

In addition to some of the negative indicators for the CDHC plan concept, many early consumer-driven companies have been swallowed up by the incumbent players, such as the acquisitions of Lumenos, which Indi-

(See "Consumer ..." on page 3)

AUTO ENROLLMENT.....CONTINUED FROM PAGE 1

first elective contribution is made and

- Explain how the contributions will be invested in the absence of an investment election by the participant

More specifics on the content and timing of the notice should be provided when the regulations are released, which are still pending.

Plan Sponsors will receive fiduciary relief under ERISA 404(c) for the investment of these deferrals as long as the Automatically Enrolled participants receive proper notice of their right to opt out of the contribution arrangement and the contributions are invested in accordance with the new default investment guidelines.

The Secretary of Labor has just recently issued a list of Default Investment Accounts (DIAs). The DIAs can be any one of 3 types of investment accounts:

- Lifecycle or targeted-retirement accounts
- Balanced funds
- Managed accounts that allocate assets among the plan's investment options

Note that Money Market Accounts, Stable Value Funds and Guaranteed Investment Contracts aren't included as DIAs.

The PPA also created a new Safe Harbor Plan design, called a Qualified Automatic Contribution Arrangement to further encourage

Plan Sponsors to adopt this type of Plan. This new Plan design is available for Plan years beginning after December 31, 2007. Like traditional Safe Harbor Plans, the Actual Deferral Percentage (ADP), Actual Contribution Percentage (ACP) and Top Heavy tests are not required. Unlike traditional Safe Harbor Plans, the new qualified arrangement does not require immediate 100% vesting on the Safe Harbor contributions. The new provision allows the participant to be 100% vested on the Safe Harbor contributions after 2 years of service with the Plan Sponsor.

Under the Automatic Enrollment Safe Harbor, unless the participant chooses otherwise, the default elective deferral rate must be at least equal to the

(See "Auto enroll..." on page 3)

IRS UPDATES LONG STANDING PROPOSED SECTION 125 REGS

On August 6, 2007, the Internal Revenue Service completed the first phase of its overhaul of proposed cafeteria plan regulations originally published in 1984 and 1989, by restating the regulations in an updated and expanded form.

The new proposed regulations reflect an effort by the IRS to address and clarify many of the questions that have been raised by the public since the original proposed regulations were published. Indeed, these regulations collect, in one document, many of the rules and principles articulated by the IRS through formal and informal guidance issued over the past two decades. However, the cost of this clarity is that once these proposed regulations become final, all of these requirements, including those that are

restrictive or administratively burdensome, will be given high authority by the courts. Therefore, the public comment period provided for under these regulations is particularly important, because it may mark the last time that the public will be given a meaningful opportunity to shape the IRS's interpretation of the law in this area. If you are interested in providing comment on the new regulations, written or electronic comments must be received by November 5, 2007, and the IRS will hold a public hearing on November 15, 2007.

To conform to these regulations, employers will need to review and amend written plan documents and administrative practices, including election procedures and nondiscrimination testing. In the coming year DKY will be providing addi-

tional news on how to proceed under the new regulations. With two exceptions, the proposed effective date for these regulations is plan years beginning on or after January 1, 2009.

There is not enough space within this newsletter to address the many areas these new regulations cover, but briefly the new regulations deal with plan discrimination testing, plan document requirements, election rules, FSA guidance, substantiation, the use of debit cards, and a number of other important issues.

Remember, these are only proposed rules that are sure to change and are not effective until 2009. However, the public can rely on these proposed regulations until they are revised and made final.

AUTO ENROLLMENT..... *CONTINUED FROM PAGE 2*

following percentages:

- 3% in the first year
- 4% in the second year
- 5% in the third year
- 6% in the fourth year

The Automatic Enrollment deferral rate is not allowed to exceed 10%.

In addition, Plan Sponsors are required to make either a:

- Non-elective contribution of at least 3% of compensation for all eligible Non-Highly Compensated Employees (NHCEs), or
- Match for NHCEs of 100% of de-

ferred up to 1% of compensation, plus 50% in excess of 1% up to 6% of compensation.

A Plan Sponsor may, but is not required to, apply the Safe Harbor default deferral rate to new participants and participants who were eligible for the Plan immediately before the date the Safe Harbor takes effect and who haven't made an election prior to the enrollment date to participate.

New Plans with Automatic Enrollment provisions may allow employees to receive a Corrective Distribution (return) of their elective deferrals plus earnings within 3 months (90 days) after the start of the Automatic Enrollment deferrals. This allows participants who didn't understand, failed to

initially respond to the provision or opt out in a timely manner (no more than 90 days) to seek a refund of the amounts deferred on their behalf. The Corrective Distribution must be for the full amount deferred on behalf of the participant and is taxable to the employee in the year the distribution is made. The Corrective Distribution is not subject to the 10% excise tax and is not included in the Non-Discrimination Tests (ADP, ACP & Top-Heavy).

Another key feature is that Excess Deferral Contributions (ADP refunds) may be distributed within 6 months vs. 2.5 months to avoid the 10% employer penalty.

CONSUMER DIRECTED HEALTH PLANS.... *CONTINUED FROM PAGE 1*

anapolis-based WellPoint has acquired, and Definity Health, which now is owned by UnitedHealth Group. Finally, employers and insurers are not adopting consumer-driven plans at the rate that had been expected, and the individual market is not developing to allow employers to get out of the health care business.

Yet, there are those who still have a strong belief the CDHC plan concept will continue to grow and overtake other forms of health insurance product design. It is just taking longer than expected.

Employers continue looking for every available advantage to maintain health coverage for their employees at a reasonable cost to both the employee and the employer. One tool that employers have been utilizing is a Health Reimbursement Account (HRA). The HRA is being used in a variety of different ways, including deductible and coinsurance reimbursement, vision plan replacements, and now

individual health premium reimbursement. Employers can now use an HRA to help lock in employer health expenses, and employees can utilize a Premium Reimbursement Plan (PRP) to pay for any additional premium contributions to individual policies on a pre-tax basis.

The recently released new Proposed Section 125 Cafeteria Plan Regulations issued by the IRS (see IRS Issues New Proposed Section 125 Cafeteria Plan Regulations) expressly allows Premium Reimbursement Plans (PRP) that permit employees to reimburse themselves on a pre-tax basis for their individual health policies. The mechanism can be established by an employer in a number of different ways, but it is similar to the Premium-Only Plans (POP) that are currently utilized for employer-provided health plan employee contributions.

The advantage of the HRA/PRP solution to an employer is the ability

to still provide funds for health coverage for their employees, but also allows them to limit their total expenditure each month/year, and to realize payroll tax savings as well. Employees have the advantage of still having, in essence, employer-provided health care via the HRA, and pre-tax savings for their premium contributions. The availability of individual policies also has an added advantage of allowing employees to tailor the plan to their needs.

Within the State of Texas there are questions that the State will allow these types of arrangements where the employer sponsors in any way the individual health insurance product. With the new 125 Regulations the State will have to revisit the regulations at the Federal level and determine their limitations on state regulations. It is DKY's opinion that an employee can ask for reimbursement via the HRA for an individual health insurance product they are having bank drafted from their personal bank account.

**DAVID K. YOUNG CONSULTING
LLC**

**11118 Wurzbach Road
Suite 300
San Antonio, Texas 78230**

**Phone: 210-558-0999
Fax: 210-641-7771
Email: david@dkyoung.com**



DID YOU KNOW YOU ARE IN A MINEFIELD?

Have you asked yourself lately about all the rules and regulations concerning the management of your human resources and employee benefit programs? You are in a minefield that could destroy you and your company.

Do you have an administration need or questions about your:

Pension or Retirement Plan

COBRA Compliance and Administration

Section 125/Cafeteria Plan

Workers' Compensation/ERISA Plan

FMLA Compliance

ADA Compliance

FLSA Compliance

Job Descriptions

Employee Handbook

Policy & Procedures...?

401(k) limits	2008	2007	2006	2005	2004
401(k) deferrals	\$15,500	\$15,500	\$15,000	\$14,000	\$13,000
415(c) Limit	\$46,000	\$45,000	\$44,000	\$42,000	\$41,000
Annual Comp Limit	\$230,000	\$225,000	\$220,000	\$210,000	\$205,000
Catch-up limit	\$5,000	\$5,000	\$5,000	\$4,000	\$3,000
HCE Comp Limit	\$105,000	\$100,000	\$100,000	\$95,000	\$90,000
Non-401(k) Limits					
Max Pension @ 62	\$185,000	\$180,000	\$175,000	\$170,000	\$165,000
403(b)/457 limit	\$15,500	\$15,500	\$15,000	\$14,000	\$13,000
Simple Deferrals	\$10,500	\$10,500	\$10,000	\$10,000	\$9,000
Simple Catch-up	\$2,500	\$2,500	\$2,500	\$2,000	\$1,500
SEP Min. Comp	\$500	\$500	\$450	\$450	\$450
Key EE Comp Limits	\$150,000	\$145,000	\$140,000	\$135,000	\$130,000
Transit Pass Limits	\$115	\$110	\$105	\$105	\$100
Qualified Parking	\$220	\$215	\$205	\$200	\$195
Adoption Assistance	\$11,650	\$11,390	\$10,960	\$10,630	\$10,390
Soc Sec Wage Base	\$102,000	\$97,500	\$94,200	\$90,000	\$87,900