

Retirement Report

*News and updates for Plan Sponsors and
Fiduciaries of Defined Contribution Plans*

Volume VII, Number VI

June 2009

How Important Is an Updated Beneficiary Form? Very!

The United States Supreme Court recently handed out a persuasive lesson for retirement plan participants to make sure that their beneficiary form is updated. The facts of *Kennedy v Plan Administrators for DuPont Savings* (Jan. 2009) are the following: an employee William Kennedy joined his company retirement plan and designated his wife as beneficiary. When they later divorced, his wife agreed to forfeit, via the divorce decree (not a QDRO), all claims to the retirement plan. Mr. Kennedy failed to submit an updated beneficiary form. When Mr. Kennedy passed away, the plan administrator paid out the account to the participant's ex-wife according to the beneficiary form instead of to the decedent's daughter, executor of his estate. The Supreme Court ruled that DuPont acted correctly in making payment to the ex-wife. According to the US Supreme Court, the plan administrator was (and is) obligated to manage the plan in accordance with the plan document and governing instruments.

This case illustrates the importance of your plan participants keeping their beneficiary forms up-to-date, especially following a life changing event. Consider asking your participants for a new beneficiary form every five years. Please refer to the 'Communication Corner' feature of this month's newsletter for a sample memo you can distribute to participants about the importance of keeping beneficiary forms up to date.

Updated 5500 Reporting Requirements

Beginning with 5500 filings for 2009 plan years, large employers (100 or more participants at the beginning of the plan year) must comply with new reporting rules regarding plan expenses.

The changes are meant to assist sponsors in monitoring plan expenses, revenue sharing, and the compensation their vendors are receiving. Previously only the top 40 service providers receiving compensation of \$5,000 or greater had to be reported, and only the total fee had to be reported. Now all such service providers must be reported and fees must be broken down between direct and indirect classifications (including bundled arrangements). In addition, fiduciaries and certain "conflict sensitive" service providers receiving \$1,000 or more in indirect compensation must be reported.

Some of the new "reportables" are extremely technical and sponsors will have to rely heavily upon their service providers for the correct information. Recognizing this very fact, the EBSA also now requires plan sponsors to report whether service providers failed to provide information necessary for the completion of the 5500.

Though it will be some time before you are looking to prepare your 5500 for the 2009 plan year, it is never too early to discuss these items with your service providers. If you have any questions, please do not hesitate to contact Jennifer Eggers via phone at 303-863-7788 or via email at jeggers@twgservices.com.

Contribution Relief Announced for Safe Harbor Plans

The IRS recently proposed regulations regarding the mid-year reduction or elimination of safe harbor contributions (both nonelective and matching). The proposed regulations stipulate explicit rules for being able to do so and include requirements of notice, timing and amending the plan document. To reduce or eliminate the nonelective contribution, there is an additional requirement of having incurred a "substantial business hardship." These regulations come at a time when many sponsors that have been operating under the safe harbor provisions of the Code may be in desperate need of such relief as an alternative to terminating the plan.

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Summary Plan Description Reminder

A Summary Plan Description (SPD) describes the key provisions of an employer's retirement plan and participant rights. SPDs must be disseminated to newly eligible participants within 120 days after a new plan is established or within 90 days after a participant becomes eligible to participate in an existing plan. In addition, SPDs must be disseminated to all participants once every five years unless there have been no amendments to the plan during that period. The Department Of Labor issued final regulations on electronic delivery that indicate an SPD can be delivered through an electronic medium if all the requirements are satisfied. Contact Jennifer Eggers via phone 303-863-7788 or via email at jeggers@twgservices.com for assistance with your Summary Plan Description or other plan-related documents.

Participant Behavior Remains Steady Despite Market Downturn

Are participants panicking as a result of the current market turmoil? Not according to a recent Fidelity Investments survey comprised of 17,500 corporate defined contribution plans and 11.3 million participants. Although participants in Fidelity plans have been found to be more engaged with their investments, based on the increased number of hits to Fidelity's online investment education tools and other identifiers, the level of fund exchanges are actually down during the first quarter of 2009 vs. the last quarter of 2008 as well as from year-to-year levels. Fidelity indicates that only about 5.2% of participants made an exchange during the first quarter, down from 6.2% during the first quarter of 2008.

In addition, 51% of new contributions are going into equities, including domestic, international and company stock. About a quarter of new contributions are being invested in more conservative short-term, stable value, or fixed income investments, up slightly from the previous quarter. In total, participants are directing nearly 69% of their new contribution dollars into equities, based on the Fidelity survey results.

With all the doom and gloom we hear about in the media it is encouraging to learn that many participants are not falling into the old trap of responding in a knee jerk reaction to, what is often, a misinformed media. Clearly, investors should be much better off entering a recovery with a reasonably well balanced portfolio.

Communication Corner: 401(k) Beneficiary Considerations

This month's sample participant memo reminds participants of the importance of keeping their beneficiary forms up to date. Email jeggers@twgservices.com for a copy you can print and distribute to employees.

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