Plan Issues

- 401(k) Questionnaire Interim Report – comments and highlights
- Use an employee's entire calendar-year compensation for determining employer contributions to SIMPLE IRA plans
- April 30 deadline for employers to adopt and submit determination letter applications for pre-approved defined benefit plans

Plan Loans

- What's a reasonable interest rate for participant loans?
- Before you take a loan from your retirement plan, there are a few rules you need to know

Forms

- Tips for Form 5558 requests for extension to file Form 5500-series returns
- Using old forms may cause errors and could result in processing delays

Required Minimum Distributions

- Use the IRA required minimum distribution rules for SEP, SIMPLE IRA and SARSEP plans
- RMD rules for non-IRA plans for retiring participants over age 70½

Individual Income Taxes

- Save on your taxes - there's still time to contribute to your IRA and claim the Saver's Credit for 2011
- How to report 2010 Roth rollovers and conversions on your 2011 return

EP Phone Forums

- Register for:
  - Benefit Restrictions (February 23) - a review of the funding based benefit restrictions in IRC section 436
  - 401(k) Questionnaire Interim Report (March 6) - a discussion of the report and next steps

New on the Web

- **Updated**:
  - 401(k) Fix-It Guide
  - Publication 4284, *SIMPLE IRA Plan Checklist*
  - Publication 4222, *401(k) Plans for Small Businesses*

Tax Practitioners

- Enrolled Agent Special Enrollment Examination fee increased to $105 per part effective January 5, 2012
- Renew your Preparer Tax Identification Number for 2012

Stay Connected to IRS Employee Plans

- Install the Retirement Plans News widget to get the latest news items delivered to you
- Watch Employee Plans videos on a range or retirement plan topics
- Use IRS social media tools to get the latest tax information

Recurring Columns

- Mark Your Calendar
- DOL News

We're Glad You Asked!

Some of our employees started or stopped contributing to our SIMPLE IRA plan in the middle of the year. Are we required to make our 3% match based on the employees' compensation for the entire calendar year or only the compensation earned during the period they actually contributed to the plan?

You must base your SIMPLE IRA plan employer matching contribution on an employee's entire calendar-year compensation, regardless of when the employee starts or stops contributing during the year.

Examples:

1. Bob's annual salary is $50,000 and he starts contributing to his employer's SIMPLE IRA plan on September 1. He contributes $1,536 through December 31. Bob's employer must match Bob's contributions up to 3% of Bob's calendar-year compensation, or $1,500 (3% of $50,000). It doesn't matter that Bob only contributed to the plan during the last 4 months of the calendar year.

2. John, age 56, earns $60,000 a year. He made the maximum salary reduction contribution for 2011 of $14,000 ($11,500 plus $2,500 catch-up contributions) to his employer's SIMPLE IRA plan from January 1 to September 30. John's employer is required to match John's contribution up to 3% of his entire calendar-year compensation or $1,800 (3% of $60,000), even though John stopped contributing to the plan on September 30.

3. Joe's annual salary is $70,000 and he contributed 1% of his compensation, or $700, to his employer's SIMPLE IRA plan. Joe's employer must make a matching contribution of $700 because the employer is only required to match the amount Joe actually contributes during the year up to a maximum of 3% of his calendar-year compensation.

An employer can make matching contributions to an employee's SIMPLE IRA:

- on a per-pay-period basis, or
- by the due date of the employer's tax return (including extensions).

Additional Resources

- FAQs: SIMPLE IRA Plans
- SIMPLE IRA Plan
- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*

Time to Adopt a New Defined Benefit Plan

Employers who have pre-approved defined benefit plans generally must sign and date (adopt) their restated plan, approved for EGTRRA, by April 30, 2012, to be eligible for retroactive remedial amendment and reliance.

This deadline also applies to employers who have:

- individually designed defined benefit plans, and
- signed Form 8905, *Certification of Intent to Adopt Pre-approved Plan*, prior to the end of their plan's 5-year EGTRRA remedial amendment cycle.

If you don't adopt an updated defined benefit plan by April 30, your plan may lose its qualified status for tax benefits.

Your new defined benefit plan will have a favorable letter from the IRS dated March 31, 2010, or later. The letter states that the plan has been reviewed for changes in the plan qualification requirements (EGTRRA and the 2006 Cumulative List).

Generally, employers who adopt pre-approved plans can rely on the plan's opinion or advisory letter for assurance that the plan's form meets most qualification requirements. Employers seeking individual determination letters for pre-approved defined benefit plans generally must file their applications by April 30, 2012 (the end of the 6-year EGTRRA remedial amendment cycle for pre-approved defined benefit plans).

Participant Loans – What is a Reasonable Interest Rate?

When a retirement plan allows participant loans, that loan is an investment of plan assets and must bear a reasonable rate of interest.

According to the Department of Labor, a plan's loan interest rate is reasonable if it is equal to commercial lending interest rates under similar circumstances (DOL Regulations section 2550.408b-1(e)).

To determine if a participant loan interest rate is "reasonable," ask these questions:

- What current rates are local banks charging for similar loans (amount and duration) to individuals with similar creditworthiness and collateral?
- Is the plan rate consistent with the local rates?

Examples

The DOL Regulations give several examples of how to determine a reasonable rate of interest for a plan loan.

Example 1: Plan P makes a participant loan to A at the fixed interest rate of 8% for 5 years. The trustees, prior to making the loan, contacted two local banks to determine under what terms the banks would make a similar loan taking into account A's creditworthiness and the collateral offered. One bank would charge a variable rate of 10% adjusted monthly for a similar loan. The other bank would charge a fixed rate of 12% under similar circumstances. Under these facts, the loan to A would not bear a reasonable rate of interest because the loan did not provide P with a return commensurate with interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances. As a result, the loan would fail to meet the requirements of section 408(b)(1)(D) and would not be covered by the relief provided by section 408(b)(1) of the Act.

Example 2: Pursuant to the provisions of plan P's participant loan program, T, the trustee of P, approves a loan to M, a participant and party in interest with respect to P. At the time of execution, the loan meets all of the requirements of section 408(b) (1) of the Act. The loan agreement provides that at the end of two years M must pay the remaining balance in full or the parties may renew for an additional two year period. At the end of the initial two year period, the parties agree to renew the loan for an additional two years. At the time of renewal, however, A fails to adjust the interest rate charged on the loan in order to reflect current economic conditions. As a result, the interest rate on the renewal fails to provide a "reasonable rate of interest" as required by section 408(b)(1)(D) of the Act. Under such circumstances, the loan would not be exempt under section 408(b)(1) of the Act from the time of renewal.

Example 3: The documents governing plan P's participant loan program provide that loans must bear an interest rate no higher than the maximum interest rate permitted under State X's usury law. Pursuant to the loan program, P makes a participant loan to A, a plan participant, at a time when the interest rates charged by financial institutions in the community (not subject to the usury limit) for similar loans are higher than the usury limit. Under these circumstances, the loan would not bear a reasonable rate of interest because the loan does not provide P with a return commensurate with the interest rates charged by persons in the business of lending money under similar circumstances. In addition, participant loans that are artificially limited to the maximum usury ceiling then prevailing call into question the status of such loans under sections 403(c) and 404(a) where higher yielding comparable investment opportunities are available to the plan.

What are the consequences of not using a reasonable loan interest rate?

Unless a reasonable rate of interest is assessed, participant loans may result in a prohibited transaction (see DOL Regulation section 2550.408b-1(a) and Internal Revenue Code section 4975(c)(1)(B)).

As a result, the loans would not:

- meet the requirements of ERISA section 408(b)(1)(D);
- be covered by the relief provided by ERISA section 408(b)(1); and
- meet the prohibited transaction exemption for participant loans in IRC section 4975(d)(1).

Retirement Tips for Individuals - Retirement Plan Loans – Look before you Borrow!

Before you decide to take a loan from your retirement plan, there are a few rules you need to know.

Does your retirement plan allow loans?

The law does not allow IRA-based plans, such as the following, to offer loans:

- SEP
- SARSEP, and
- SIMPLE IRA

Other types of retirement plans, such as 401(k), profit-sharing and 403(b) plans, are permitted to offer loans, but if they do offer them, the plan document must say so. Check with your employer to find out if your plan allows loans.

What are the terms of the plan's loan program?

If your plan allows loans, the plan must state:

- who is eligible to borrow;
- the maximum amount you can borrow (no more than $50,000);
- how to apply for the loan (some plans may require your spouse to consent to the loan);
- the number of years to pay back the loan (most loans can only be 5 years, longer if the loan is to purchase your principal residence);
- the loan repayment terms (for example, your monthly loan repayment is deducted from your paycheck); and
- what happens if you default.

What happens if you leave your job before you repay the loan?

If you quit, retire or are terminated, your plan administrator may "accelerate" repayment of the loan. This means you would be required to repay the outstanding amount of the loan in full at that time or the amount may be deducted from your account balance.

What happens if you don't repay the loan?

When you don't repay your loan according to its terms, your employer will report its balance as a taxable distribution to you on Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, (instructions). You will have to include the balance in your gross income on your income tax return and, unless you meet an exception, you will also have to pay an additional 10% early distribution tax on it.

Your loan's outstanding amount will be subtracted (offset) from your retirement plan account balance.

Additional Resources

- Retirement Topics - Loans.
- FAQs: Loans.
- Your employer - for information on loans from your plan.

Form 5558 - Avoid Errors When Requesting an Extension

Have you ever met the deadline to file a Form 5558, *Application for Extension of Time to File Certain Employee Plan Returns*, only to receive a Notice from IRS that your return was filed late?

It's possible that the information on your extension application didn't match your Form 5500-series return (Form 5500, 5500-SF or 5500-EZ), Form 5330 or Form 8955-SSA. For example,

- **Mismatched plan sponsor or administrator name** - The plan sponsor or plan administrator listed on Form 5558, Part 1, Block A didn't match the name listed on the Form 5500-series return. The names must be identical.

- **Example – abbreviation**: Form 5500 shows "Dana Kay Inc." as the plan sponsor, while Form 5558 shows "DK Inc." as the plan sponsor.
- **Example – common variation**: Form 5500-SF shows "Hawk Inc." as the plan sponsor, while Form 5558 shows "The Hawk."
- **Example – different entity**: Form 5500-EZ shows "Alvin Cooke P.C." as the plan sponsor, while the Form 5558 shows "Alvin Cooke."

- **Mismatched EIN, plan year-end or plan number** - The employer identification number, Social Security number, plan year-end, or 3-digit plan number on Form 5558 didn't match the ones used on your 5500-series return. Always use the EIN assigned to the plan sponsor for the Form 5500-series return. If you don't have an EIN, you can apply for one over the phone or online.
- **Mismatched plan name** - The name you entered in Form 5558, Part 1, Block C didn't match the name used on your Form 5500-series return.

Sponsors of multiple plans

If you sponsor more than one plan, make sure the plan name and number on the Form 5558 match the plan name and number on the Form 5500-series return for that plan. This is especially important if you have recently merged one plan into another or changed your plan's name.

Respond to your IRS Notice

Remember that a Notice of proposed penalty for filing your Form 5500-series return late is just that – a proposed adjustment. Make sure you timely respond to the IRS to avoid assessment of any penalties.

Always use the current version of the form

Check that you are using the most current version of any IRS form. The Retirement Plan Forms and Publications Web page has the latest version of forms, including the fillable versions if available.

Additional Resources

- Form 5558 Reminders
- Form 5558 video

Throw Your Old Forms Away!

Do you have old IRS forms lying around? If so, they might be out of date. Using old forms may cause errors and could result in processing delays.

Always use the current version of the form

Check that you are using the most current version of any IRS form. The Retirement Plan Forms and Publications Web page has the latest version of forms, including the fillable versions if available.

Where can I find the latest revision date?

The latest revision date is usually found in the top left corner of the form.

Don't use any paper forms with revision dates earlier than these:

- Form 2848 (Revised October 2011)
- Form 5330 (Revised April 2009)
- Form 5500-EZ (use only the 2011 form for 2011 returns and file electronically)
- Form 5558 (Revised June 2011)
- Form 8821 (Revised October 2011)

Can you file it electronically?

Want an easier solution to tracking versions of paper forms? File electronically! Electronic filing is fast, easier than filing on paper, cost-effective and more accurate.

Form Number	Form	Avoid the Mistake
Form 5500	Annual Return/Report of Employee Benefit Plan	Use DOL EFAST2
Form 5500-SF	Short Form Annual Return/ Report of Small Benefit Plan	Use DOL EFAST2
Form 5500-EZ	Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan	File on Form 5500-SF using the DOL EFAST2 system
2010 Form 8955-SSA	Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits	Use IRS FIRE (Filing Information Returns Electronically)

Additional Resources

- Electronic Filing for One-Participant Plans Video (1:47)
- Form 5500 Corner

We're Glad You Asked!

When does our 401(k) plan have to pay the first required minimum distribution to a 72-year-old employee who will stop working for us on February 29, 2012, but is going to work for another company?

A retirement plan must pay required minimum distributions to participants over the age of 70½ who have stopped working for the employer maintaining the plan.

Your 401(k) plan must pay the first RMD to your 72-year-old plan participant no later than April 1, 2013.

Retirement plans must start paying RMDs to a plan participant by April 1 following the year:

- the individual turns age 70½, or,
- if later, the year in which the individual retires. However, this later date does not apply if the participant is a 5% owner of the company sponsoring the retirement plan. Also, some plans may require **all** participants, including non-5% owners, to start RMDs by April 1 following the year in which the participant turns 70½.

The first RMD - the payment required for the year the participant turns 70½ or retires, if applicable - can be paid as late as April 1 following the year the participant turns 70½ (or retires). For each subsequent year (including the year containing this April 1), the plan must pay the RMD by December 31 of the year. For example, if your retiring employee receives her first RMD in 2013 (no later than April 1), she must be paid her second RMD in the same year, by December 31, 2013.

A plan must pay RMDs to a participant over the age of 70½ who no longer works for the company sponsoring the plan, even if he or she continues to work elsewhere.

If a plan fails to pay RMDs on time, it may be able to correct the error using the Employee Plans Compliance Resolution System (see The Fix Is In: Common Plan Mistakes - Failure to Timely Start Minimum Distributions).

Additional Resources:

- RMD Comparison Chart (IRAs vs. Defined Contribution Plans) – includes information on how to calculate the amount of RMDs
- FAQs: Required Minimum Distributions
- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*
- Publication 571, *Tax-Sheltered Annuity Plans (403(b) Plans) For Employees of Public Schools and Certain Tax-Exempt Organizations*

It's Not Too Late to Get a Saver's Credit for IRA Contributions

You may qualify for the Saver's Credit of up to $1,000 ($2,000 if filing jointly) on your 2011 tax return for your 2011 IRA contributions. You have **until April 17, 2012**, to contribute to an IRA for 2011. The Saver's Credit reduces the amount of *income tax you may owe* dollar-for-dollar, but not less than zero.

Who's eligible for the Saver's Credit?

To qualify for the Saver's Credit (Retirement Savings Contributions Credit) for your eligible IRA contributions, your 2011 adjusted gross income can't be more than:

- $56,500 if your filing status is married filing jointly;
- $42,375 if your filing status is head of household; or
- $28,250 if your filing status is single, married filing separately or qualifying widow(er).

Additionally, you **cannot** be:

- younger than age 18,
- a full-time student, or
- claimed as a dependent on another's tax return.

The Saver's Credit can also be taken for your contributions to 401(k), SIMPLE IRA, SARSEP, 403(b), 501(c)(18) and governmental 457(b) plans, and your voluntary after-tax employee contributions to your qualified retirement and 403(b) plans.

Additional Resources

- Publication 4703, *Retirement Savings Contributions Credit*
- 2011 and 2012 IRA Contribution and Deduction Limits
- IRAs
- FAQs: IRAs
- Publication 590, *Individual Retirement Arrangements (IRAs)*

Mark Your Calendar

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

February 28: File paper Forms 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, (and Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*) with the IRS for 2011 distributions

March 15:

- Apply for waiver of 2011 minimum funding standard for single-employer defined benefit plans if the sponsor will not be able to make the required contribution and there is reason to believe that the sponsor will meet the conditions necessary to qualify for a funding waiver
- Distribute 2011 ADP/ACP excess amounts, with earnings, to highly compensated employees to avoid 10% excise tax (June 30, in the case of certain eligible automatic contribution arrangements)
- File Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, and Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, with the IRS to report retirement plan distributions and income tax withheld from distributions made to nonresident aliens
- Make 2011 corporate employer contributions to be eligible to take a tax deduction for 2011 (if no tax return filing extension)

March 31: Have a single-employer defined benefit plan actuary certify the Accumulated Funding Target Attainment Percentage for 2012 to avoid a potential 10% decrease in the presumed AFTAP from prior year

April 1: Pay required minimum distribution to participants who retired or turned 70½ in 2011 and didn't receive their first RMD in 2011 (see plan terms)

April 2: Electronically file Form 1099-R with the IRS for 2011 distributions

April 15:

- Return 2011 participant salary deferrals, with earnings, in excess of $16,500 ($22,000, if age 50 or older)
- Make first quarterly contribution installment for single-employer defined benefit plans for the 2012 plan year
- Make 2011 self-employed individual and partnership employer contributions to be eligible to take a tax deduction for 2011 (if no tax return filing extension)

DOL News

The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) announced new guidance as featured below. You can subscribe to DOL/EBSA's website homepage for updates.

Fee Disclosure for Plan Fiduciaries

On February 3, DOL/EBSA published a final rule that will provide employers who sponsor pension and 401(k) plans with information about the administrative and investment costs associated with providing such plans.

This rule requires service providers to furnish information to enable fiduciaries to determine both the reasonableness of compensation paid to the service providers and any conflicts of interest that may impact a service provider's performance under a service contract or arrangement. It requires disclosures of direct and indirect compensation certain service providers receive in connection with the services they provide.

The rule applies to those service providers that expect to receive $1,000 or more in compensation and:

- provide certain fiduciary or registered investment advisory services,
- make available plan investment options in connection with brokerage or recordkeeping services, or
- otherwise receive indirect compensation for providing certain services to the plan.

DOL/EBSA also announced that in the near future it intends to publish for public comment a separate proposal that would require service providers, in addition to providing the required fee and investment expense information, to furnish a guide or similar tool to assist plan fiduciaries in identifying and locating the potentially complex information that must be disclosed and which may be located in multiple documents.

DOL/EBSA also announced a 3-month extension in the effective date of this rule, meaning that service providers must be in compliance by July 1, 2012, for new and existing contracts or arrangements between ERISA-covered plans and service providers.

The 3-month extension of the effective date was provided to allow service providers sufficient time to prepare for compliance. Service providers not in compliance as of July 1 will be in violation of ERISA's prohibited transaction rules and subject to penalties under the Internal Revenue Code. The final rule includes a class exemption from the prohibited transaction provisions of ERISA for plan fiduciaries that enter into service contracts without knowing that the covered service provider has failed to comply with its disclosure obligations. The class exemption requires that fiduciaries notify the Department of the disclosure failure. Fiduciaries can file the notice online.

The effective date of this final rule works in conjunction with the compliance date of DOL/EBSA's participant-level disclosure regulation, which requires plan administrators to give workers who direct their retirement accounts in 401(k)-type plans easy-to-understand information in order to compare the plan investment options available to them. Plan administrators for calendar year plans now must make the initial annual disclosure of plan and investment information (including associated fees and expenses) to participants no later than August 30, 2012, and the first quarterly statement (for fees incurred July through September) must be furnished no later than November 14, 2012.

See the fact sheet for additional information on this final rule. Plan sponsors and service providers with questions about the final rule can contact DOL/EBSA's Office of Regulations and Interpretations at 202-693-8500.

Interim E-Disclosure Policy under Participant Fee Disclosure Regulation

On December 8, 2011, DOL/EBSA issued Technical Release 2011-03R, which revises DOL/EBSA's interim policy regarding the use of electronic media to satisfy the disclosure requirements under DOL/EBSA's participant-level disclosure regulation.

On September 13, 2011, DOL/EBSA issued Technical Release 2011-03. The interim policy states that DOL/EBSA will not take enforcement action based solely on a plan administrator's use of electronic media to make the required disclosures under the participant fee disclosure regulation if the administrator complies with the conditions in the technical release.

DOL/EBSA received a number of inquiries regarding whether Technical Release 2011-03 is intended to apply to continuous access websites and whether, and under what circumstances, it allows investment-related information required under paragraph (d) of the participant fee disclosure regulation (i.e., the comparative chart) to be furnished as part of a pension benefit statement.

Technical Release 2011-03R revises and restates the earlier technical release. The revised technical release is identical to the earlier guidance except as necessary to clarify that:

- continuous access websites are permissible if the administrator complies with the conditions in the technical release; and
- investment-related information under paragraph (d) of the participant-level fee disclosure regulation may be furnished as part of, or along with, a pension benefit statement, either electronically under the conditions of the technical release or in paper form.

CFTC Final Business Conduct Standard Rules and ERISA

On January 17, 2012, DOL/EBSA sent a letter to the Commodity Futures Trading Commission following its review of this rule as part of the agencies ongoing coordination and DOL/EBSA's regulatory and enforcement role with respect to the rules governing ERISA fiduciaries