Important 2010 Year-End Notices for Qualified Retirement Plan Sponsors

By Dana Thrasher on November 18, 2010

As we approach the end of 2010, we remind you to determine your need to provide certain required year-end notices, as the failure to provide required notices exposes a plan sponsor to fines from $110 to $1000 per day, depending on the notice violation. The list below describes those notices and indicates applicable due dates:

Safe Harbor Annual Notice (401(k) Plans): The notice must provide information about the safe harbor nonelective or matching contribution formula, as well as other important plan features. Safe harbor plans must provide the notice to participants and eligible employees at least 30 (but no more than 90) days prior to the beginning of each plan year (December 1 for calendar-year plans).

Qualified Default Investment Alternative ("QDIA") Notice: This notice explains the QDIA rights and obligations, such as the situations in which a plan will invest a participant's assets in the QDIA and the participant's right to direct amounts in the QDIA into other investment options. All defined contribution plans with participant-directed investments must provide this notice to participants and eligible employees at least 30 days prior to the beginning of each plan year (by December 31 for calendar-year plans).

Notice Regarding Diversification of Employer Stock: Defined contribution plans holding publicly traded employer securities must provide this notice. Plans must give this notice to inform participants of the right to diversify amounts invested in employer securities into other investment options. Plans must provide the notice no later than 30 days prior to the first date on which a participant can exercise diversification rights (by December 1 for a calendar year plan in which a participant can diversify investments immediately). **401(k) Automatic Enrollment Notice:** 401(k) plans that have an automatic enrollment feature must deliver to all participants and eligible employees at least 30 days (but not more than 90 days) prior to the beginning of the plan year (by December 1 for a calendar year plan) a notice explaining that automatic feature. The notice should explain that, in the absence of an affirmative election, the plan will make automatic deferrals on behalf of the participant into specified investments. The notice also should contain all other pertinent information regarding the right to stop or change deferrals and investments (and, if applicable, the right to request a refund).

Defined Benefit Annual Funding Notice: Plan sponsors of defined benefit pension plans must provide an annual funding notice to participants, beneficiaries and labor organizations that represent participants. The notice must include required information, such as the funding status of the plan for the prior two years and a statement of plan assets and liabilities. Plans must provide the notice generally within 120 days after the plan year ends (except that small plans with fewer than 100 participants may provide the notice by the due date of the Form 5500). Calendar year plans must provide the notice by April 30, 2011.

Notice of Funding-Based Benefit Restrictions: If a plan is less than 80% but at least 60% funded, as a general rule the plan cannot pay more than 50% of a participant's accrued benefit in the form of a lump sum; moreover, the plan sponsor cannot amend to provide for increased benefits. If a plan is less than 60% funded, laws do not allow additional benefit accruals; in addition, those same laws impose strict benefit restrictions (including a prohibition on lump sum benefit payments). Recent legislation (The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, enacted on June 25, 2010) provides for a two-year delay on the funding restrictions for benefit accruals under single employer pension plans.

Updated 402(f) Notice: Plans should have begun using updated model notices for Roth and non-Roth designated accounts that were effective January 1, 2010.

Benefit Statements: For defined benefit plans, sponsors must either provide benefit statements every three years to active employee participants or must provide a notice annually to participants to explain how they may obtain a benefit statement. Defined contribution plans that are participant-directed must provide quarterly benefit statements within 45 days after the end of each quarter. Defined contribution plans that are not participant-directed must provide annual statements to participants on or prior to the date of the Form 5500 filing.

New Health Plan Required Disclosures: In addition to the usual annual health plan disclosures at year-end (Medicare Part D Notice, Women's Health and Cancer Rights Act of 1998 or "WHCRA" Notice, and HIPAA Privacy Notice (required every three years)), plan sponsors now must provide a notice explaining the extension of coverage of adult children until age 26 by the first day of the plan year (with a 30-day enrollment period following the notice date) and, if applicable, a notice of grandfather status of the plan (generally included with open enrollment materials).