Retirement Plans
BULLETIN

DOL Issues Proposed Fee Disclosure Regulations

UNIVERSAL

The Department of Labor's Employee Benefits Security Administration (EBSA) has released long-awaited proposed regulations on fee and compensation disclosures that must be provided to employee benefit plan sponsors (e.g., an employer sponsoring an ERISA-covered plan). The proposed regulations tie fee disclosures to the ERISA prohibited transaction rules. The DOL has asked that comments on these proposed regulations be submitted to them by February 11, 2008. Once comments are received and reviewed, the DOL will issue final regulations. The proposed regulations indicate that the final regulations will be effective 90 days after the final issue date, but invite comments on whether the final regulations should be effective on a different date.

General Overview

According to ERISA Sec. 406, a prohibited transaction occurs when a party-in-interest to a qualified retirement plan receives compensation for a transaction related to the income or assets of the plan. The term "party-in-interest" includes any fiduciary of the plan, such as the employer, and any person or entity providing services to the plan, such as a plan recordkeeper or a financial advisor.

ERISA Sec. 408(b) provides an exemption to the prohibited transaction rules for contract services where the contract is reasonable, the services are "necessary for the establishment or operation of the plan," and the compensation paid for the services is reasonable. The proposed regulations add a requirement that certain information related to the contract be disclosed to the plan fiduciary as part of that contract for the contract to be deemed "reasonable." If the service provider fails to provide this information, the exemption is lost and the plan fiduciary is subject to prohibited transaction penalty taxes. The fiduciary could be subject to prohibited transaction penalty taxes of 15 percent of the compensation paid to the provider in the year and to a 100 percent penalty tax if the transaction is not corrected.

Timing of Disclosure

The proposed regulations require that the disclosure of fees and expenses be provided at the time the contract or arrangement is entered into, when the arrangement renews or is renegotiated, or at any time upon the plan fiduciary's request. The proposed rules do not specify any set time period before entering into a contract or arrangement (or having the arrangement renew) under which the disclosure must be provided. Rather, the regula-

Fee Disclosure
Continued on Page 2

FEBRUARY 2008

Online IRA Training 3
Reporting Changes to the 5500 Series ... 4
Don't Forget the 2007 Saver's Credit 5
Bits N' Pieces 6
Sole Proprietor Plan Calendar: February 7
QRP Focus 8
IRA Advisor 9

"Art arises when the secret vision of the artist and the manifestation of nature agree to find new shapes."
—Kahlil Gibran

800-346-3860
P.O. Box 979, Brainerd, MN 56401
www.ascensus.com

tions state that plan fiduciaries must act in accordance with their fiduciary obligations under ERISA and must receive the information far enough in advance to ensure that they have adequate time to review the information and act prudently in considering what they receive.

If during the term of the agreement there is any material change to any fee or cost, a new disclosure must be provided. This follow-up disclosure is required within 30 days from the date on which the provider knows of the material change.

Content and Form Requirements

The proposed regulations do not contain a sample fee disclosure. The DOL refers to the sample fee disclosure it has on its website (www.dol.gov/ebsa/) and other information that service providers can look to in developing their own disclosure documents. The proposed regulations do provide guidance on the content and form of the disclosure and applicable contract.

- The terms of the contract or arrangement must be in writing. In addition, any disclosure done separately from the contract must also be in writing. While the regulation does not specifically require the "contract" be signed, contract law is typically governed by state laws, which do generally require signatures.
- The contract or arrangement must include a representation that the service provider supplied the required information to the plan fiduciary before the contract was executed.
- The contract or arrangement must specify the services provided and the fees or compensation related to the service.
  - Fees and compensation include direct or indirect fees received by the service provider or an affiliate of the entity entering into the arrangement from the plan or the employer. Indirect compensation is defined to include "money or any other thing of monetary value (for example, gifts, awards, and trips) received, ...indirectly (i.e., from any source other than the plan, the plan sponsor or the service provider) by the service provider or its affiliate in connection with services to be provided…or because of the service provider's or affiliate's position with the plan."
  - Fees or compensation can be expressed using dollar amounts, percentage of assets, a formula, or a per capita charge. Whatever method is used, it must be expressed so that the plan fiduciary can ascertain the "reasonableness" of the fee.
  - When services are offered through a bundled provider, only the provider offering the bundled services must provide the disclosure. The contract or arrangement must contain an explanation of all fees, but it does not have to break down fees by each affiliate or subcontractor that may be a part of the bundled solution. The exceptions to this breakdown are investment-related fees, such as commissions, that are a direct charge against the plan's investment vehicles or that are set on a transaction basis (e.g., finders fees, brokerage commissions, soft dollar arrangements). These investment types of fees must be disclosed as a separate item in the contract or arrangement.
  - The contract must describe how the fees will be billed (e.g., against the plan, to each participant, or directly from the plan investments). It must also describe how any prepaid fees will be refunded if the contract is terminated.
- The contract must state whether the provider or any affiliate will act as a fiduciary.
- The contract must include a statement of whether the provider expects to participate in or acquire a financial or other interest in any transaction to be entered into by the plan. If the provider does, the transaction and the provider's interest must be described.
- The contract or arrangement must state whether the service provider has any material financial, referral, or other relationship with a money manager, broker, client of the provider, another service provider for the plan, or any other entity that may create a conflict of interest for the service provider, and if so, the contract must describe the relationship.
- The contract or arrangement must inform the plan if the provider has the ability to affect its own compensation or fees without the prior approval of the plan fiduciary in connection with its provision of services (e.g., float or other contingent compensation).
- Any policies or procedures designed to prevent conflicts of interest and to address conflicts that may arise must be disclosed.

Fee Disclosure
Continued on Page 3

Proposed PTE

Now, what happens to a plan fiduciary if a service provider fails to meet the above requirements? As mentioned earlier, the result of such failure is a prohibited transaction. The DOL is proposing a class exemption that would provide relief to a plan fiduciary who enters into a contract that is not "reasonable" because, unknown to the plan fiduciary, the service provider failed to comply with its disclosure obligations under the proposed regulation. The prohibited transaction exemption is a necessary adjunct to the proposed regulations to protect plan fiduciaries.

More to Come

These DOL regulations requiring fee disclosures to plan fiduciaries are only the first part of three projects to promote greater fee disclosure in the retirement plan industry. The DOL has also already revised Form 5500, *Annual Return/Report of Employee Plan*, to require greater fee disclosure by defined contribution plan service providers. (See next article in this *Retirement Plans Bulletin.*) Additionally, the DOL has indicated its intent to release regulations that require additional fee disclosure directly to plan participants.

B

President's Day Closing

Ascensus, including the *800 Consulting* service, will be closed on Monday, February 18, 2008, to celebrate President's Day. The offices will reopen for normal business on Tuesday, February 19.

Ascensus Offers Intensive Online IRA Training

You can attend one of the retirement industry's most comprehensive IRA educational programs without leaving your home or office; access to a computer is all you need. Ascensus' *IRA Online Institute* is an intensive 12-week study program covering all aspects of IRA compliance and operations. Offered entirely online, this program is instructor-led with weekly lessons, reading assignments, and all study materials available at the click of your mouse. You can converse with your instructor or fellow students through emails and discussion boards. The *IRA Online Institute* is designed to meet the educational expectations of the serious IRA student and serves as a preparatory course for those specifically seeking either the Certified IRA Professional (CIP) or the Certified IRA Services Professional (CISP) designation.

Whether you work with Traditional IRAs, Roth IRAs, simplified employee pension (SEP) plans, or savings incentive match plans for employees (SIMPLE) IRAs, this program is for you.

2008 IRA Online Institute Programs

March 3–May 25

September 8–November 30

For more information regarding the *IRA Online Institute*, the professional designations, or the CIP or CISP examinations, please contact an Ascensus Representative at 800-346-3860 or email customer-support@ascensus.com.

Visit our online training calendar at www.ascensus.com for additional education offerings.

B

Reporting Changes to the 5500 Series

UNIVERSAL

Each year most employers that maintain qualified retirement plans (e.g., 401(k), profit sharing, target benefit) must file an annual report with the Department of Labor's Employee Benefits Security Administration (EBSA) or face penalties for not filing. The number of participants in the plan and the amount of assets will typically affect which form, and accompanying schedules, is filed: Form 5500, *Annual Return/Report of Employee Benefit Plan*, or Form 5500-EZ, *Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan*. Recently the IRS and DOL (the Agencies) have announced significant changes to these forms. The changes to Forms 5500 and accompanying schedules, according to the November 2007 IRS/DOL notice of revisions, "are intended to

- streamline the annual reporting process,
- reduce annual reporting burdens, especially for small businesses,
- update the annual reporting forms to reflect current issues and agency priorities, incorporate new reporting requirements contained in the Pension Protection Act of 2006 (PPA), and
- facilitate electronic filing."

Because of the extent of the revisions, the forms changes, other than those tied to an earlier PPA effective date, will be initially effective for 2009 plan year reporting. This effective date ties in with the new effective date for mandatory electronic filing. The new electronic reporting system (EFAST2), scheduled for reporting the 2008 plan year, is not complete. Therefore, the mandatory use of EFAST2 will also launch for 2009 plan year reporting. Note that the removal of the IRS-only schedules from the Form 5500 filing is a result of the electronic filing mandate.

Some of the more significant changes applicable to employers sponsoring defined contribution plans are listed below.

Schedule C

The changes to Schedule C, *Service Provider Information*, are certainly getting the most press right now as part of the DOL's fee transparency initiative. Schedule C is designed to clarify the reporting requirements and improve the information that plan officials receive regarding direct and indirect compensation and fees received by plan service providers. Typically, Schedule C applies to "large" plans of 100 or more participants.

Schedule C has three parts.

- Part I is the most challenging part for the employer to complete. The employer will now be required to list any person, with certain listed exceptions, who performed services for (or had any transactions with) the plan in which that person received, directly or indirectly, $5,000 or more in compensation from the plan. The IRS defines both direct and indirect compensation and includes examples so that employers will not overlook any compensation that might not be immediately apparent—but must be reported.
- Employers only complete Part II to report service providers who failed (or refused) to provide the information that is needed to fill out Part I.
- Employers complete Part III to report a termination in the appointment of an accountant or enrolled actuary during the plan year.

Form 5500-SF

An important PPA initiative requires the development of a simplified reporting form for employers with 25 or fewer employees. This form, Form 5500-SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*, will be available for 2009 plan year reporting. Until then, certain small plans may file a simplified Form 5500, as described in the instructions to the form.

403(b) Plan Reporting

The special limited financial reporting rules for 403(b) plans are eliminated effective for 2009 plan year reporting. This means that employers sponsoring 403(b) plans will generally have to file Forms 5500.

Summary

In addition, miscellaneous changes to other schedules and instructions are made to improve and clarify reporting, effective for the 2009 plan year. The changes in the Schedule C requirements, however, are clearly some of the most significant Form 5500 changes. Employers and administrators that provide Form 5500 reporting services must carefully read the Schedule C instructions for insight on the information that must be gathered.

B

Don't Forget the 2007 Saver's Credit

UNIVERSAL

The IRS issued news release IR-2007-187 in early November 2007, reminding taxpayers of the opportunity to take a partial tax credit on the first $2,000 of contributions to certain retirement plans. Eligible retirement plans include Traditional or Roth IRAs, salary reduction simplified employee pension (SAR-SEP), savings incentive match plan for employees of small employers (SIMPLE), 401(k), 403(b), or governmental 457(b) plans. Members of Congress have been critical of the IRS for what they describe as a lack of effort to give visibility to this tax option, which is available to certain moderate-income taxpayers. Lawmakers recommended that this provision of the Economic Growth and Tax Relief Act of 2001 (EGTRRA) be highlighted in as many IRS publications as possible, such as Publication 590, *Individual Retirement Arrangements (IRAs)*.

2007 Adjusted Gross Income*						Applicable percentage
Joint return		Head of household		All other cases		
Over	Not over	Over	Not over	Over	Not over	
	$31,000		$23,250		$15,500	50
31,000	34,000	23,250	25,500	15,500	17,000	20
34,000	52,000	25,500	39,000	17,000	26,000	10
52,000		39,000		26,000		0

*Adjusted gross income includes foreign earned income and income from Guam, American Samoa, North Mariana Islands, and Puerto Rico.

2008 Adjusted Gross Income*						Applicable percentage
Joint return		Head of household		All other cases		
Over	Not over	Over	Not over	Over	Not over	
	$32,000		$24,000		$16,000	50
32,000	34,500	24,000	25,875	16,000	17,250	20
34,500	53,000	25,875	39,750	17,250	26,500	10
53,000		39,750		26,500		0

*Adjusted gross income includes foreign earned income and income from Guam, American Samoa, North Mariana Islands, and Puerto Rico.

For financial organizations promoting IRA contributions, providing information about the tax credit makes sense. The message can be incorporated into such client communication vehicles as newsletters, brochures, statement suffers, on-premises signage, etc. (Details on how to calculate the credit are provided in IRS Publication 590.)

The retirement savings contribution credit began in 2002 as a temporary provision of EGTRRA. The Pension Protection Act of 2006 (PPA) made this provision permanent. PPA also added an indexing mechanism to ensure that inflation and the accompanying cost-of-living increases do not, over time, have the effect of phasing moderate-income persons out of the program. Future indexing will now take place under the standard cost-of-living-adjustment (COLA) process.

The credit can increase the amount of a taxpayer's refund or reduce the amount of an additional tax owed. It is not, however, a "refundable" credit and cannot generate a refund if a taxpayer's income is sufficiently low that he has no income tax obligation. Taxpayers must complete and file Form 8880, *Credit for Qualified Retirement Savings Contribution*, with their Forms 1040, *U.S. Individual Income Tax Return*, to claim the credit.

The Credit Formula

A qualifying taxpayer may claim a credit of 10, 20, or 50 percent (declining as taxpayer income rises) on contributions up to $2,000. By this formula, the maximum credit available is $1,000 for a $2,000 contribution.

Results So Far

IRS data is not current on the number of taxpayers who have claimed the credit on their income tax returns. But as of the 2005 tax year (the fourth year the credit was available), some 5.3 million tax returns claimed the credit. Tax credits totaling $900 million were claimed on these tax returns. If greater publicity is given to this tax credit option in the future, as lawmakers are now demanding, an additional increment of retirement savings growth might be realized.

B

Bits N' Pieces

UNIVERSAL

IRAs and "Wash Sales"

The IRS has issued Revenue Ruling 2008-5, which provides guidance on the availability or loss of a personal income tax deduction when an individual sustains losses in certain stock or other securities transactions. In general, taxpayers may take an income tax deduction for certain losses suffered when securities are sold. The deduction is not available, however, for certain "wash sales" intended to create a loss for income tax purposes. A loss cannot be claimed on a tax return if a taxpayer 1) acquires the same security within 30 days before a sale that results in a loss, or 2) subsequently reacquires the same security within 30 days after a sale resulting in a loss. This prevents a taxpayer from making an end-of-year transaction that shows a loss for income tax purposes, then reacquiring that security shortly after the close of the tax year.

Some industry professionals have contended that if the transaction is based on investments held within a Traditional or Roth IRA (legal trust), the IRA owner does not technically execute the transaction, and consequently, the "wash sale" rules should not apply. In the court case *Security First National Bank of Los Angeles* and the court case *Carbon Steel Co. v. Lewellyn*, the courts have found that corporations and trusts cannot be "used deliberately to accomplish the very thing which Congress intended to frustrate." The IRS extends this logic in Rev. Rul. 2008-5, stating that a taxpayer cannot claim a loss for income tax purposes if his IRA executes securities sales that are disallowed for an individual taxpayer.

Therefore, if a Traditional or Roth IRA acquires a security within 30 days before a sale of that same stock that results in a loss, or subsequently reacquires the same security within 30 days after a sale that results in a loss, the taxpayer may not claim this securities sale loss as a deduction on her income tax return.

Employer Securities and Investment Diversification

The IRS issued Notice 2008-7 in mid-December, extending the deadline for certain defined contribution (DC) plans to comply with the Pension Protection Act of 2006 (PPA) provisions concerning plan investments in the employer's securities. PPA guarantees plan participant rights to divest plan accounts of investments in employer securities. IRS Notice 2006-107 provided transitional guidance and relief through 2007, with the expectation that the IRS and the Treasury Department would issue proposed regulations on diversification.

The IRS did release the proposed regulations, REG-136701-07, January 3, 2008. The proposed regulations focus on the requirements in IRC Sec. 401(a)(35) as added by the PPA. This section of PPA deals with investment diversification requirements for defined contribution plans, in particular the right of participants to diversify out of employer securities. A DC plan (other than an ESOP) must provide the opportunity for participants to diversify their investments by divesting their accounts of employer securities, and may not impose restrictions that are not imposed on other investments in the plan. The regulations address general participant restrictions on diversification rights and investment election frequency, prohibitions against certain investment restrictions or conditions, plans subject to the diversification requirements, etc.

The regulations are proposed to be effective for plan years beginning on or after January 1, 2009. Transition rules as provided in Notices 2006-107 and 2008-7 will continue to apply until then, although plans can rely on the proposed regulations before final regulations go into effect. Written or electronic comments and requests for a public hearing must be received by April 2, 2008.

B

No More IRA Charitable Distribution Requests

The Pension Protection Act of 2006 (PPA) allowed eligible IRA holders to take tax-free charitable distributions during 2006 and 2007. As of January 1, 2008, the law no longer provides for tax-free charitable distributions. Although IRA holders may donate their IRA assets directly to charities, they will pay tax on such distributions under the existing pro rata tax rules for Traditional IRA distributions and the distribution ordering rules for Roth IRA distributions.

Ascensus has discontinued offering its *IRA Charitable Distribution Request* form (#22). Financial organizations must stop using this form immediately. If Congress passes technical corrections to PPA and extends the option for IRA holders to request charitable distributions from their IRAs, Ascensus will make this form available again and will notify clients accordingly.

B

Sole Proprietor Plan Calendar: February

UNIVERSAL

This month, employers are busy reconciling 2007 calendar year financials to meet their business' tax return due date, which is generally April 15, 2008, for sole proprietors. Part of the year-end reconciliation process is determining the amount of plan contributions employers can deduct for the prior taxable year. Employers use this information not only for income tax purposes, but to determine the amount of employer contributions that they may contribute to their plans.

Deduction Limit

The IRC Sec. 404 deduction limit is an employer-level limit that is based on all employer contributions made for a given tax year to the plan's eligible participants, regardless of plan participation. For profit sharing plans, Individual(k) plans, and SEP plans, the deduction limit is generally 25 percent of all eligible participants' aggregate compensation earned during the employer's tax year. The deduction limit for SIMPLE plans is the amount of the required employer contribution.

Although the deduction limit applies to employer contributions for a given tax year, IRC Sec. 404(a)(6) states that contributions made for the preceding taxable year, but before an employer's tax return due date (plus extensions), are deemed made on the last day of that preceding tax year and are, therefore, deductible for the preceding tax year.

Claiming the Deduction

Sole proprietors deduct contributions for themselves on their individual tax returns (i.e., IRS Form 1040, *U.S. Individual Income Tax Return*). They may deduct contributions for their common-law employees on Schedule C, *Profit or Loss From Business (Sole Proprietorship)* of Form 1040 (or Schedule F, *Profit or Loss From Farming*, for farmers).

To take a deduction for employer contributions, sole proprietors may generally fund contributions for the previous taxable year until the business' tax return due date plus extensions. If an employer's typical tax return due date is April 15, he may file IRS Form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return*, by April 15 to request an automatic six-month filing extension, which also applies to the deadline for funding employer contributions.

Contributions for Business Owners	Contributions for Common-Law Employees	Original Due Date	Filing Extension
Report on IRS Form 1040, line 28	Report on Schedule C (IRS Form 1040), line 19 For farmers, Schedule F (IRS Form 1040), line 25	File IRS Form 1040 (with Schedule C or F) by April 15 following the report year	File IRS Form 4868 by original tax return due date to obtain an automatic six-month extension

Excess Nondeductible Contributions

Because employers generally make their plan contributions at the same time that they are completing their tax returns for the year, they are usually able to determine their IRC Sec. 404 deduction limits before making their contributions, thereby avoiding any excess contributions. If an employer does contribute more than the allowable deduction for a given tax year, IRC Sec. 4972 generally requires the employer to pay a 10 percent penalty on the excess nondeductible contribution amount. To report this penalty, the employer must file IRS Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, and remit the payment to the IRS.

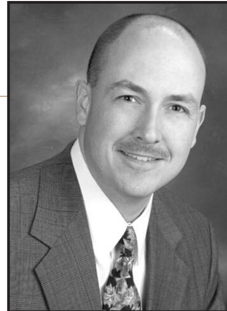
IRC Sec. 404(a)(1)(E) provides that the amount of the otherwise deductible contribution that exceeds the limitation for any given year may be carried forward indefinitely and applied to subsequent years. Although excess nondeductible contributions may be returned (or reverted) to an employer under limited circumstances, the employer generally runs the risk of incurring substantially greater penalties by taking a reversion of plan contributions (up to 50 percent of the reverted amount).

Compensation for Calculating Deductible Contributions

As indicated earlier, the deduction limit is generally 25 percent of all eligible employees' aggregate compensation earned during the employer's tax year. But what constitutes a sole proprietor's compensation for determining the deduction limit? There are several factors that affect this calculation, including rules incorporated by the Economic Growth and Tax Relief Reconciliation Act of 2001, the IRC Sec. 401(a)(17) compensation cap, and the use of a sole proprietor's adjusted net business income. Look for a detailed discussion of calculating compensation for deduction purposes in the March issue of the *Retirement Plans Bulletin.*

B

QRP FOCUS



Steve Bontjes
FEATURED CONSULTANT

Please send topics for Ascensus' QRP Focus column to the following address: Editor, *Retirement Plans Bulletin*, Ascensus, Inc., P.O. Box 979, Brainerd, MN 56401. The editor does not guarantee that questions will appear in the column and regrets that no personal responses can be sent.

FOCUS ON DISCRETIONARY EMPLOYER CONTRIBUTIONS

Q If an employer-sponsored qualified retirement plan has a discretionary employer contribution subject to a vesting schedule, how often does a contribution have to be made?

A Although the employer generally has the discretion from year to year whether to contribute to the plan, if amounts are not substantial enough to reflect the employer's intent to continue maintaining the plan, a complete discontinuance of contributions may be deemed to have occurred (Treas. Reg. 1.411(d)-2(d)(1)). This determination will be made with regard to all the facts and circumstances in the particular case, and without regard to the amount of any contributions made under the plan by employees. The following factors must be considered when determining whether an employer has completely discontinued contributions to a plan:

1. whether the employer has characterized a discontinuance of contributions merely as a suspension of such contributions to avoid the requirement of full vesting applicable to a discontinuance of benefits, or for any other reasons;
2. whether contributions are recurring and substantial; and
3. whether there is any reasonable probability that the lack of contributions will continue indefinitely.

The IRS states in its audit guidelines (Announcement 94-101) that an issue of discontinuance arises when the employer has failed to make substantial contributions for at least three years in a five-year period. In such cases, the IRS typically presumes that a complete discontinuance has occurred and shifts the burden to the employer to present evidence that it has not occurred. Employers should consult with competent ERISA counsel for assistance regarding plan discontinuance determinations.

Q What happens if the IRS determines that there has been a "complete discontinuance" of employer contributions?

A The rights of each affected employee to benefits accrued to the date of such discontinuance, to the extent funded, or the rights of each employee to the amounts credited to his account at such time, are nonforfeitable (100 percent vested) if the IRS determines that a complete discontinuance has occurred (Treas. Reg. 1.411(d)-2(a)(1). This special rule is consistent with requirements relating to plan termination or partial termination. A profit sharing plan is not qualified unless it provides for full vesting in the event of a complete discontinuance of contributions.

Q What is the timing of the discontinuance?

A If the IRS determines that a discontinuance of contributions has occurred, Treasury Regulation 1.411(d)-2(d)(2) states that the discontinuance becomes effective no later than the last day of the taxable year following the last taxable year for which a substantial contribution was made under the profit sharing plan.

Q Who is an "affected employee"?

A In a defined contribution plan, an "affected employee" is an employee or former employee who has not forfeited his nonvested interest as of the deemed discontinuance.

B

IRA Advisor

Michael Lundin
FEATURED CONSULTANT
Ascensus *800 Consulting* Service

Please send questions for Ascensus' IRA Advisor column to the following address: Editor, *Retirement Plans Bulletin*, Ascensus, Inc., P.O. Box 979, Brainerd, MN 56401. The editor does not guarantee that questions will appear in the column and regrets that no personal responses can be sent.

Q What is the deadline for establishing and funding a SEP plan?

A According to Internal Revenue Code (IRC) Sec. 404(h)(1)(B), an employer has until her tax return due date, including extensions, to establish and fund a simplified employee pension (SEP) plan. For example, an employer has until April 15, 2008 (or later if she files for an extension), to establish a SEP plan and make a 2007 SEP plan contribution. Keep in mind that financial organizations must report all SEP contributions as current-year contributions, even if the employer is going to treat the contribution as a prior-year contribution for tax deduction purposes.

Q What documents are required to establish a SEP plan?

A There are two types of documents associated with SEP plans: employer-level documents and employee-level documents. The employer-level documents establish the the employer's right to make SEP contributions to the participants' Traditional IRAs and contain the eligibility requirements that employees must meet to participate in the SEP plan. An employer may choose from three different types of employer-level documents to establish a SEP plan: (1) the IRS Form 5305-SEP, *Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement*; (2) a prototype SEP plan document, or (3) an individually designed SEP plan document. The IRS drafts Form 5305-SEP and makes it available to the public free of charge. Prototype document drafters design prototype SEP plan documents for document sponsors (usually financial organizations). Financial organizations then make prototype documents available to adopting employers (usually for a fee). A prototype document typically offers employers more flexibility in plan design than a Form 5305-SEP. An individually-designed SEP plan document is drafted specifically for the use of one employer. Consequently, this document is usually the most expensive SEP plan document.

After the SEP plan documentation and eligibility requirements have been chosen, the employer should complete and sign the SEP plan document. If an employer is using Form 5305-SEP, all eligible employees must receive a completed copy of Form 5305-SEP. If an employer is using a prototype document, all employees, regardless of whether they are eligible to participate, must receive a copy of the adoption agreement, as well as a description of the general rules and provisions of the plan.

To receive SEP plan contributions, all eligible employees must establish a Traditional IRA. An employee may establish a Traditional IRA by signing a Traditional IRA plan agreement, which may be IRS Form 5305, *Traditional Individual Retirement Trust Account*; IRS Form 5305-A, *Traditional Individual Retirement Custodial Account*; or a prototype document. The employee must receive a copy of the plan agreement, the disclosure statement, and the financial disclosure; these documents are the employee-level documents. If all eligible employees (including the employer) do not establish a Traditional IRA, the SEP plan could be disqualified. If an eligible employee refuses to establish a Traditional IRA, becomes disabled, or cannot be located, the employer may establish an IRA on behalf of the employee.

B

©2008 Ascensus, Inc., Brainerd, MN – February 2008, Vol. 29, No. 2 (ISSN #10627499)

Subscription rate: One year (12 issues) – $149. Contact customersupport@ascensus.com with email address changes or for back issues of the *Retirement Plans Bulletin*. The *Retirement Plans Bulletin* is published monthly by Ascensus, Inc., P.O. Box 979, Brainerd, MN 56401. Phone: 218-825-5000. Editor: Anissa Langhorst, CISP, CIP; Assistant Editor: Polly Heins; Design and Layout: Lynne' Ellis.

The information contained in this *Retirement Plans Bulletin* has been carefully compiled from sources believed to be reliable, but the accuracy of the information is not guaranteed. The *Retirement Plans Bulletin* is sold with the understanding that the publisher and the editor are not engaging in any legal or accounting type of work, such as practicing law or C.P.A. services. Entire contents are copyrighted. All rights reserved. No part of this newsletter may be reproduced without written permission.