

AUGUST NEWSLETTER

Did You Know?

How quickly should you deposit employee deferrals and loan payments?

The Department of Labor (DOL) has the responsibility for looking after the assets in a qualified plan. This means the DOL has to define what 'Plan Asset' means. The definition of plan assets is in the DOL Regulations under 2510. When it comes to employee deferrals and loan payments, the DOL defines when they become plan assets under 2510-3.102. Deferrals (and loan payments) become assets at the "earliest date (they) can reasonably be segregated" from the employer assets. The regulation gives an absolute maximum date which is the 15th business day of the month following the month the deferrals are made. This gives the DOL plenty of latitude of determining the date any particular employer COULD have deposited the deferrals. DOL agents have the authority to decide in each case what that date should be. Many agents have chosen between 3 and 10 business days and imposed penalties for every payroll not deposited in that time.

Due to complaints about the uneven imposition of dates, on April 29th, 2008, the DOL issued a proposed regulation change to 2510-3.102. This proposed regulation says that if the deferrals (and loan payments) are deposited within 7 business days of date of the pay check, they will be considered deposited timely. This rule applies to any plan with under 100 participants. The DOL went on to say that while the regulation is only proposed, they will not impose penalties on any employer who adheres to the 7 day rule. BCG strongly urges our clients to adhere to the rule to avoid having to pay penalties imposed by the DOL.

For more information, please contact your Plan Account Manager at 800-524-401k, option 5.



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Get to Know BCG

Stopping a Matching Contribution

The challenging economic times have made it imperative for many employers to consider cutting benefits that were previously regarded as necessities for companies that wanted to compete for and retain talented employees. Eliminating a matching 401(k) plan contribution is one example. The issue has raised a number of questions.

If an employer is going to stop a discretionary match that has been given on an annual basis for a number of years, must employees be informed before the plan year begins?

No. Although it may seem strange in this world of full disclosure, by definition, a discretionary contribution allows an employer to decide each year whether to make a matching plan contribution and then inform the plan participants. There is no legal requirement to give a notice when such a contribution will not be made; it may be discontinued or modified without prior notification. However, many employers do inform their employees to soften the blow to morale that a lack of communication may cause.

Many employers provide the same discretionary matching contribution year in and year out. Although this makes it easy for employees because they know what to expect, it makes it difficult for employers to retain the flexibility not to make such contributions. Some employers inform their employees before the first day of the plan year that they will not be making a discretionary matching contribution, thus permitting employees to adjust the amount of their deferrals.

There is no need to amend a plan document that already reflects a discretionary contribution. However, if an employer is going to make a discretionary contribution - especially if the amount is different from prior years - it is important for the employer to timely adopt a board resolution stating the decision to make a discretionary contribution. In many cases, the employer does not actually determine the contribution amount until after profitability for the year has been determined. To be deductible for the employer's tax year that includes the plan year for which such contribution will be made, the resolution may be adopted as late as the due date, with extensions, of the tax return for that tax year. It is permissible for the employer to include a statement in the board resolution saying that the formula will be used each subsequent year until there is a board resolution superseding the formula.

What is the procedure for stopping a fixed matching contribution?

To remove a fixed matching formula that is written into a plan document, a plan amendment is required, and employees must be informed of such an amendment through either a new Summary Plan Description (SPD) or a Summary of Material Modifications (SMM). Strangely, the deadline for providing an SMM is 210 days after the close of the plan year in which the employer makes the amendment, which is likely to be long after the participant receives their benefit statement showing that no contribution was made.

May an employer amend a plan and remove a match that is written

Technical Consulting



Reed Cline

J. Reed Cline is a Technical Consultant for BCG. Reed has more than thirty years experience and has been responsible for the complex technical and compliance issues regarding retirement programs.

Reed is responsible for reviewing the legal documents of all clients and directing the amendments of same in order to comply with the changes in regulations.

Reed is a member of the American Society of Pension Actuaries and has earned the professional designations of Qualified Pension Administrator (QPA) and Qualified 401(k) Administrator (QKA) through that organization. Reed is also a regular columnist for the Journal of Pension Benefits and a

into the plan document after the plan year has started?

Yes. However, if the allocation requirement (such as employment on the last day of the year) has already been met, then the matching contribution must be made through the amendment date. Thus, the amendment must be prospective. However, if the allocation requirement has not been satisfied, then the amendment can be made with retroactive effect. Note that different rules apply to safe harbor 401 (k) plans, where 30 days' advance notice must be given before the amendment becomes effective.

If the employer matches on a payroll-by-payroll basis, may the match be stopped?

This may only be done prospectively.

BCG Financial Advisor, Jake Reardon Competes in Ironman Competition

The seventh edition of the Ford Ironman Coeur d'Alene took place on Sunday, June 21. That date also denotes the summer solstice in the Northern Hemisphere, the longest day of the year. For some of those that will be attempting the 2.4 mile swim, 112 mile bike, and 26 mile run--no truer words will have been spoken. Over 2,200 people participated in the event. Jake completed the event in 14 hours, 40 minutes.

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