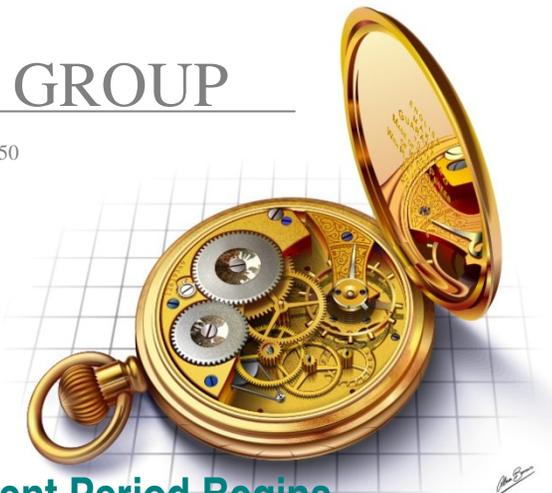


THE BENEFITS CONSULTING GROUP

53 W. Jackson Blvd., Suite 1250
Chicago, IL 60604
(312) 427-9140
www.benefitsconsulting.net



NEWSLETTER Fall 2008, Issue 4

Inside this issue

The EGTRRA Restatement Period Begins..... 1
What Is An AFTAP?..... 1
Expect to See Some Changes to the Form 5500 2
Final(ly) 403(b) Regulations.....3

2009 Plan Limits just announced!

Click here to view or go to:
www.benefitsconsulting.net

The EGTRRA Restatement Period Begins

by Bill Mayer

Congress has a history of frequent tweaking of the retirement plan rules. The changes come fast and furious. While employers are required to operate their plan in compliance with the changes as soon as they take effect, they have historically been given a little relief when it comes to updating the language in their plan document. In the past, employers were required to update the plan about every 5-7 years, incorporating all the changes that were made since the last big plan rewrite. Well, we're now at another BIG PLAN REWRITE.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) became effective for plan years beginning in 2002. This restatement period has been named the EGTRRA restatement period

because all of the changes from EGTRRA and some other less extensive guidance must now be incorporated into plan documents.

All pre-approved defined contribution plans (prototype and volume submitter) need to be restated by April 30, 2010. All 401(k), profit sharing, money purchase or target benefit plans that are eligible for the six-year remedial amendment period* must be restated and if they choose, submitted to the IRS for an individual determination letter by this date.

You may be wondering whether the Pension Protection Act of 2006 (PPA) will be included in this restated document. That is a good question. The answer is that EGTRRA pre-approved plan documents are only required to incorporate the legislation from the 2004

continued on next page

What Is An AFTAP?

by Larry Shippee

A beer dispenser in the back of the boat? It's not a health insurer with duck ads. AFTAP stands for Adjusted Funding Target Attainment Percentage and it is now a big part of defined benefit plan administration, thanks to changes brought on by The Pension Protection Act.

Starting in 2008, if a defined benefit plan's assets are not at least equal to 80% of the plan's liabilities, certain events are triggered automatically. If the percentage drops below 60%, even more "restrictions" kick in. The percentage is referred to as the AFTAP and is quickly becoming a

continued on page four



“All pre-approved defined contribution plans (prototype and volume submitter) need to be restated by April 30, 2010.”

The EGTRRA Restatement Period Begins (continued from page 1)

cumulative list of changes**. PPA was not yet enacted when the current pre-approved EGTRRA documents were submitted to the IRS for review. Plans do not have to be updated for PPA until the last day of the plan year beginning in 2009. So PPA will be part of the pre-approved document as an amendment until the next restatement.

***What is the six-year remedial amendment period?**

In the past the restatement cycles have been somewhat haphazard. The IRS has now created a systematic six-year cycle. Pre-approved plans must be restated every six years to incorporate the interim amendments and any discretionary amendments that have been adopted since the last restatement. At the end of this six-year period, there will be a two-year window in which to update the plan document and if desired, submit the document to the IRS for a letter of determination. We have just entered the first window of restatements for defined contribution plans under this new program. The EGTRRA restatement window began May 1, 2008 and will end on April 30, 2010.

****What is the Cumulative List?**

Each year the IRS publishes a list of required changes to be included in a plan document. It is expected that this list will be published mid-November each year. Any new requirements on the list since the prior year need to be added to the plan by amendment. This new IRS procedure is the reason you may have received a 2007 interim amendment.

Why not wait until the end of 2009 or early 2010 to restate our document?

You should consider restating your document earlier in the period. This is an excellent time to review the current plan provisions and be sure the restated plan will meet your goals. For those of you who went through the GUST restatement several years earlier, you may recall how quickly time passes. The Benefits Consulting Group, Inc. will be providing you with more information on the EGTRRA restatement process soon.

Expect To See Some Changes To The Form 5500

by Lori Mayer

If you are a plan sponsor, every year you are required to file an annual report disclosing your plan's financial condition and operation. This annual report is known as the Form 5500. The Form 5500 has had several changes and updates throughout the years. Now you can get ready for another change. The Form 5500 will be revamped into an electronic online version. Mandatory electronic filing will be effective for the 2009 plan year, beginning in 2010. As this deadline approaches, we will provide you with more information.

Also, for those sponsoring a defined benefit plan, the Schedule B will have several modifications, including a name change. Starting for 2008 plan years, your Schedule B will be known as Schedule SB for single-employer plans. The Schedule SB has been created to reflect changes made to defined benefit plans by The Pension Protection Act.

The Benefits Consulting Group's consultants are available to assist you in preparing for the new changes ahead.

Final(ly) 403(b) Regulations

by Bill Mayer

The final section 403(b) regulations become effective January 1, 2009. Some major components of the final regulations are the written plan requirement, changes to contract exchange rules and the ability to terminate a 403(b) plan. Although this is not an exclusive list, it is a good start to analyzing the impact of these new regulations.

Written Plan Requirement

Prior to these regulations there was no written plan requirement under IRS rules. Only section 403(b) plans subject to ERISA (usually plans with employer contributions) were required to have a plan document. Now, all section 403(b) plans, including employee-contribution-only plans, will need to be operated pursuant to a written plan document. Existing plans that are subject to ERISA and already have a written plan document may also need to be restated or at least amended to comply with the final regulations.

What exactly does it mean to operate a plan pursuant to a written plan document? The new regulations require that the plan document contain all of the material terms for eligibility, benefits and applicable limitations. The plan must be a written defined contribution plan, which, in both form and operation satisfies the [new regulations]. Treas.Reg. §1.403(b)-3(b). This is not a new concept for ERISA plan sponsors. But those who have not had a written document may be surprised by the new level of required detail.

What is the deadline to adopt a written plan? As it stands now, the deadline to adopt a written plan is January 1, 2009. All 403(b) plans will need to be operating pursuant to a written plan which satisfies the final regulations by this date. However, we may see some guidance from the IRS

extending the deadline. Stay tuned.

Contract Exchanges

In addition to the written plan requirement, the final regulations have made significant changes to the contract exchange rules. Under the old rules, contracts could be exchanged virtually at will with only the contract creating limitations. All of the free exchanging had no impact on the contract's status as a 403(b) contract.

Although there are some grandfather rules and relief for problem contracts issued prior to the effective date of the new regulations, all of the free exchanging will vanish with the final regulations. The final §403(b) regulations limit exchanges to the following:

1. Exchange from one funding vehicle in a given plan to another funding vehicle in the same plan
2. Transfer from one 403(b) plan to another
3. Transfer to governmental defined benefit plan for service credits

Moreover, valid exchanges within the plan to another funding vehicle outside of the plan require an agreement between the employer and the issuer of the contract to share information. This required agreement will likely make it more difficult for participants to transfer outside of the investment choices under the plan.

Plan Termination

The previous rules made it difficult or impossible to terminate a 403(b) plan. The final regulations allow a 403(b) plan to be terminated and the accumulated benefits of participants to be distributed. This is welcome news for employers who no longer wish to keep their 403(b) plan. Because the accounts under the 403(b)

“Now, all section 403(b) plans, including employee-contribution-only plans, will need to be operated pursuant to a written plan document.”



AFTAP (continued from page 1)

part of the pension actuaries' vocabulary.

Some of the events that can be triggered include a restriction on paying lump-sum distributions and possibly even a complete freeze of benefit accruals. And this can happen without any action on the part of the employer! If an event is triggered, employees are required to be notified, generally before 30 days following the trigger date.

So now the plan's actuary must certify to the plan's AFTAP for each plan year. Until the certification is actually provided, an AFTAP is assumed. The assumed AFTAP depends on whether it is before April 1, between April 1 and October 1, or after October 1 (for calendar year plans). So even without a determination of the actual AFTAP, restrictions can be triggered due to the assumed AFTAP.

Confused? So is the actuarial community. But while the actuaries and the IRS sort out the rules through regulations, expect to hear about AFTAP's if you have a defined benefit plan.

403(b) (continued from page 3)

plan may be rolled into an IRA and often into a qualified plan, terminating the plan will make sense if the 403(b) plan has been replaced by a 401(k) plan in recent years.

Other important changes for ERISA covered 403(b) plans:

The Department of Labor (DOL) has issued reporting and disclosure regulations. Beginning in the 2009 plan year, ERISA 403(b) plans will no longer have the luxury of completing a simplified filing of the Form 5500. The new DOL regulations subject 403(b) plans to the same reporting requirements as other ERISA covered pension plans including the large plan audit requirement. This new reporting rule will require plans to track the value of individual contracts within the plan.

The final 403(b) regulations and the DOL reporting requirements will bring section 403(b) plans more in line with 401(k) plans. Although differences still remain, they are much less significant than before these final regulations. Given the significant changes brought about by these regulations, we expect to see some additional guidance to assist employers with compliance.

BCG to the rescue

Many 403(b) plans are, for the first time, now going to need the services of a competent plan administration service. BCG can provide that service. Feel free to contact us if you're not sure how you may be affected.