

Rosen Seymour Shapss Martin & Company LLP
Certified Public Accountants & Profitability Consultants

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BENEFITS BLAST

Greetings!

Welcome to the Employee Benefits & Executive Compensation Service Group's Benefits Blast! (a publication of Rosen Seymour Shapss Martin & Company LLP). Here is where you will receive periodic updates on all your employee benefits and executive compensation needs.

Employee benefits programs and executive compensation issues are more complex than ever - tax laws and the applicable statutory schemes are continually changing, and increasingly employers must consider international implications. These issues also are critical to maintaining continuity in your workplace and retaining key employees.

We welcome your questions or comments about the topics discussed or related ones. Please feel free to contact us at 212-303-1806 or e-mail us at aneumark@rssmcpa.com and let us know how we can be of assistance.

Sincerely,

Avery E. Neumark, CPA, JD
Partner-in-Charge of Employee Benefits & Executive Compensation

It's That Time of Year Again

Most retirement and some health and welfare plans are required to file an annual report with the Department of Labor ("DOL"). The report is used by both the DOL and the Internal Revenue Service and consists of Form 5500,

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including appropriate schedules, and if applicable, audited financial statements. The report is due seven months after the close of the plan's year. For plans operating on a calendar year basis, the deadline is July 31st. A 2-1/2 month extension of time to file Form 5500 can be obtained.

DOL regulations distinguish between "small" and "large" plans. Plans with 100 or more participants at the beginning of the plan year are generally considered to be large plans. With limited exception, primarily health and welfare plans fully funded by insurance, large plans are required to include an audited financial statement with their annual filing. Thus the requirement to include audited financial statements certified by a qualified CPA hinges on the number of plan participants at the beginning of each plan year.

Each plan document is different. It is important to determine which employees are eligible to participate. For plans with a 401(k) feature, all employees eligible to make an elective contribution are deemed participants, whether or not they actually participate.

DOL regulations permit, under certain circumstances, the plan sponsor to limit the scope of the required audit. Such an election is usually available where the plan assets are held and managed by appropriate custodians, most notably banks and regulated insurance carriers, and the plan sponsor can use information certified by those custodians to prepare their financial statements.

It is extremely important to know what your filing and reporting requirements are, and to obtain the services of professionals who have the necessary training and expertise to assist you. RSSM is a member of the AICPA's Employee Benefit Plan Audit Quality Center and is well qualified to assist you with your individual requirements.

New Developments

Effective for the 2007 plan year, new auditing standards require the performance of additional audit work focusing on the plan's system of internal control and more detailed communication with those individuals charged with plan governance.

In addition, the DOL has begun to vigorously review how independent auditors are performing their audits. Increased emphasis is being placed on the qualifications of the CPAs

performing the audit work.

The use of new and varied investment vehicles such as hedge funds and private equity investments place an additional burden on both the plan sponsor and the independent auditor to value the plan's investments appropriately in accordance with new fair value accounting standards.

Timeliness of Deposits of Employee Deferrals

Employers are required to remit their employees' elective deferrals to their pension plan by the earlier of (1) the first date they can reasonably be expected to segregate their employees' contributions from their own funds, or (2) the 15th business day of the month following the month in which the employee's deferrals were withheld. Earlier wording in the regulations gave the impression that the 15th business day of the following month was a "safe harbor" and could be relied upon for compliance purposes. Many employers with bi and semi weekly payrolls would "bundle" the contributions for the month and deposit them by the 15th business day of the following month. Beginning in 2002, the DOL began stressing that this interpretation of the regulations was incorrect. But because of the subjective wording of the regulation - the amount of time needed for the deposit will vary from plan to plan based on items such as payroll locations, reconciliation procedures, etc - many plan sponsors continue to incorrectly use the 15th business date of the following month as a safe harbor. The DOL has made this a hot issue in its recent audits of pension plans, and has recently issued a draft of a new regulation indicating that 7 business days is the appropriate time for "small" plans; the implication being that "large" plans should require less time. The fact is that the 15th business day of the following month is not a safe harbor and should not be relied upon. Employers should be depositing their employees' deposit as soon as administratively possible. Please feel free to contact us for further guidance on this emerging issue.

**EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION
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