

Employment & Employee Benefits Developments | Fall 2013

2013 Year-End Action Items for Pension Plan Sponsors

This issue of SRZ's *Employment & Employee Benefits Developments* newsletter provides a list of action items that employers and other sponsors of qualified retirement plans (collectively referred to throughout as "plan sponsors") should be considering before 2013 comes to an end. These items — concerning retirement plan dollar limits, DOMA, various fee and participant disclosures, Cycle C determination filings and ongoing plan maintenance — are designed to help employers and other plan sponsors ensure their plans maintain compliance with statutory and regulatory provisions that the Internal Revenue Service ("IRS") and Departments of Labor and Treasury have issued over the past year.

Retirement Plan Dollar Limits for 2014

The Internal Revenue Service announced the cost-of-living adjustments affecting the dollar limitations for qualified retirement plans for 2014. We have highlighted some of the new limits in the following table, comparing the new limits to the limits of the prior five years. The

Consumer Price Index for all Urban Consumers is the benchmark used to determine if the limits increase. Note that only some of the 2013 dollar limits will increase because the thresholds to trigger adjustments for 2014 have been met, as highlighted in bold in the table below:

IRS Limits	Internal Revenue Code Section	2009 2010 2011	2012	2013	2014
Elective Deferral Limit for 401(k), 403(b) and 457(b) Plans	§ 402(g)(1) § 457(e)(15)	\$16,500	\$17,000	\$17,500	\$17,500
Catch-Up Contribution Limit for Age 50+	§ 414(v)(2)(B)(i)	\$5,500	\$5,500	\$5,500	\$5,500
Annual Compensation Limit for Qualified Plans	§ 401(a)(17), § 404(l) § 408(k)(3)(C)	\$245,000	\$250,000	\$255,000	\$260,000
Highly Compensated Employee Limit	§ 414(q)(1)(B)	\$110,000	\$115,000	\$115,000	\$115,000
Defined Benefit Plan Dollar Limit	§ 415(b)(1)(A)	\$195,000	\$200,000	\$205,000	\$210,000
Defined Contribution Plan Limit	§ 415(c)(1)(A)	\$49,000	\$50,000	\$51,000	\$52,000
Key Employee Limit	§ 416(i)(1)(A)(i)	\$160,000	\$165,000	\$165,500	\$170,000
Social Security Taxable Wage Base		\$106,800	\$110,100	\$113,700	\$117,000

Plan sponsors of qualified retirement plans should look to implement the new limits for 2014. We are available to advise you on updating your enrollment materials, summary plan descriptions, employee handbooks and other employee communications.

DOMA

The U.S. Supreme Court earlier this year struck down a key part of the Defense of Marriage Act, or DOMA, which had defined “marriage” as a legal union between members of the opposite sex and “spouse” as an individual of the opposite sex for purposes of all federal laws. On Aug. 29, 2013, the IRS issued its first set of guidance implementing the Supreme Court’s decision. In a set of frequently asked questions released simultaneously with Revenue Ruling 2013-17, the IRS clarified that, effective Sept. 16, 2013, same-sex couples must be recognized as married for federal tax purposes if the marriage was valid in the state in which it was entered into, regardless of where the married couple resides. Accordingly, a qualified retirement plan must treat a same-sex spouse as a spouse for purposes of receiving retirement benefits to maintain its qualified status, even if the same-sex couple resides in a jurisdiction that has not legalized or does not recognize the validity of same-sex marriages.

Plan sponsors should consult their SRZ attorney to review their plan documents, policies, procedures and participant communications for potential changes after the Supreme Court’s decision and the IRS’s guidance. For example, many plan documents will require amendments clarifying that same-sex spouses are considered spouses under the terms of the plan, and plan sponsors will need to change certain administrative procedures. Plan sponsors of qualified defined benefit plans must now recognize same-sex spouses as automatic beneficiaries eligible to receive benefits under the plans’ qualified joint and survivor option and pre-retirement survivor annuities, and plan sponsors of qualified defined contribution plans must now require spousal consent from same-sex spouses for hardship distributions and loan requests.

Fee Disclosure

408(b)(2) Fee Disclosures

Plan sponsors of most defined benefit and defined contribution plans were required in 2012 to request, receive and review disclosure statements from “covered service providers” who provide services of \$1,000 or more, or who expect to receive \$1,000 or more in indirect compensation over the course of providing services to the plan. These providers include plan fiduciaries or trustees, registered investment advisers, investment contract providers, investment managers and other professionals (including attorneys, actuaries, custodians and third-party administrators).

These plan sponsors should now be sending their covered service providers follow-up requests for any new or additional information that may change the disclosures received in 2012, or written confirmation from the covered service provider that the covered service provider has no new or additional information to report.

404(a)(5) Participant Disclosures

Plan sponsors of individually directed account plans must ensure that quarterly statements continue to

States that Have Legalized Same-Sex Marriage

California	Maine	New York
Connecticut	Maryland	Rhode Island
Delaware	Massachusetts	Vermont
Hawaii	Minnesota	Washington
Illinois*	New Hampshire	District of Columbia
Iowa	New Jersey	

**Effective June 1, 2014*

The IRS is expected to issue future guidance addressing plan amendment requirements, including the timing of such amendments (e.g., whether the amendment must have a retroactive effect and, if so, to what date), as well as any necessary corrections for plan operations prior to the date such future guidance is issued.

VISIT

srz.com

For more information and additional implications that the Supreme Court’s recent DOMA decision may have on sponsors’ plans, please see the [*SRZ Alert, “Supreme Court’s DOMA Decision Sparks Changes in Employee Benefits.”*](#)

“... many plan documents will require amendments clarifying that same-sex spouses are considered spouses under the terms of the plan, and plan sponsors will need to change certain administrative procedures.”

“Plan sponsors should remind employees to review and update their beneficiary designation forms on file.”

comply with new information standards. Each quarterly statement must include information on the plan's general administrative fees, individual expenses charged under the plan and updated performance data on fixed-return investments.



For a fuller discussion of these fee and participant disclosures, please see SRZ's *Employment & Employee Benefits Developments | 2012 Year-End Reminders for Pension Plan Sponsors* newsletter.

Cycle C Determination Letter Filings

Plan sponsors of retirement plans scheduled to apply for a determination letter from the IRS under Cycle C (i.e., governmental plans and plans whose sponsors' EINs end in 3 or 8) should have adopted all of the necessary amendments so that their plans maintain tax-qualified status. Applications for Cycle C determination letters must be submitted to the IRS no later than Jan. 31, 2014. Please consult with your SRZ attorney to ensure no amendments have been missed.

Ongoing Plan Maintenance

Check Fidelity Bonds

Plan sponsors should ensure that their qualified plans have adequate coverage against theft of assets. Plan sponsors must have an ERISA Fidelity Bond that generally provides coverage of at least 10 percent of the plan assets up to a maximum requirement of \$500,000 (or \$1,000,000 if the plan holds employer stock). The bond protects plan assets against theft or other misappropriation by the person or persons "handling" those assets. Plan sponsors should review the bond terms to make sure the bond is properly titled and provides the proper coverage.

Allocate All Forfeitures

Plan sponsors of defined contribution plans should ensure that any amounts in their plans' forfeiture accounts or ERISA budget accounts are allocated by the end of the plan year according to the terms of their plan documents (e.g., by allocating them to active plan participants or applying them toward future plan expenses).

Adopt Required Plan Amendments

If you sponsor a single employer pension plan and have not yet adopted a plan amendment to reflect the funding-based benefit restrictions for plans less than 80 percent funded, an amendment must be adopted by the latest of: (i) the last day of the first plan year that begins on or after Jan. 1, 2013; (ii) the last day of the plan year for which Section 436 is first effective for the plan; or (iii) the due date, including extensions, of the employer's tax return for the tax year that contains the first day of the plan year for which Section 436 is first effective for the plan (Dec. 31, 2013 for most calendar year plans). Please contact your SRZ attorney for assistance with drafting a plan amendment.

Adopt Discretionary Plan Amendments

Plan sponsors should ensure that they timely adopt any discretionary amendments they have made to their plan documents by the end of the plan year (December 31 for calendar year plans).

Update Beneficiary Designation Forms

Plan sponsors should remind employees to review and update their beneficiary designation forms on file. This update is especially important for employees with same-sex spouses, as these employees' spouses are now eligible for spousal benefits under retirement plans.

Distribute Participant Notices

Depending upon the type of qualified retirement plan offered, plan sponsors may need to issue certain notices before the start of the 2014 plan year (e.g., summary annual reports and 404(c) notices). For example, plan sponsors of safe harbor 401(k) plans must distribute a "safe harbor" notice explaining the safe harbor matching or non-elective contribution arrangement used under the plan. If a plan has a qualified default investment alternative, or "QDIA," plan sponsors must distribute a notice explaining how a participant's contributions will be invested in the absence of specific directions from the participant. Additional notice requirements may apply, so please contact your SRZ attorney for more information.

Schulte Roth & Zabel Contacts

If you have any questions about the dollar limitations for qualified retirement plans for 2014, the action items included in this newsletter or any other employee benefit matters, please contact your Schulte Roth & Zabel attorney or one of the following authors:



Mark E. Brossman is a partner and co-chair of the Employment & Employee Benefits Group. His areas of focus are ERISA, employment discrimination, labor relations, education law, and related litigation.

+1 212.756.2050 | mark.brossman@srz.com



Ronald E. Richman is a partner and co-chair of the Employment & Employee Benefits Group and a member of the firm's Executive Committee. Ron concentrates his practice on litigating employment and employee benefits cases in federal and state courts through the United States. He represents employee benefit plans before the U.S. Department of Labor, the Pension Benefit Guaranty Corporation and the Internal Revenue Service.

+1 212.756.2048 | ronald.richman@srz.com



Susan E. Bernstein is a special counsel in the Employment & Employee Benefits Group, where she focuses on ERISA issues for single, multiple and multiemployer qualified and nonqualified benefit plans, including designing and amending plans, and plan administration and regulatory compliance.

+1 212.756.2056 | susan.bernstein@srz.com



Melissa A. Jacoby is an associate in the Employment & Employee Benefits Group, where she focuses her practice on health and retirement plan administration and regulatory compliance.

+1 212.756.2163 | melissa.jacoby@srz.com



Visit SRZ's website for more resources from the Employment & Employee Benefits Group, including our [Fall 2013 health care issue](#) summarizing the rules and regulations for group health plans that will impact employers and plan sponsors now and in the coming years.

Schulte Roth & Zabel

New York

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
+1 212.756.2000
+1 212.593.5955 fax

www.srz.com

Washington, DC

Schulte Roth & Zabel LLP
1152 Fifteenth Street, NW, Suite 850
Washington, DC 20005
+1 202.729.7470
+1 202.730.4520 fax

London

Schulte Roth & Zabel International LLP
Heathcoat House
20 Savile Row, London W1S 3PR
+44 (0) 20 7081 8000
+44 (0) 20 7081 8010 fax

This information and any presentation accompanying it (the "Content") has been prepared by Schulte Roth & Zabel LLP ("SRZ") for general informational purposes only. It is not intended as and should not be regarded or relied upon as legal advice or opinion, or as a substitute for the advice of counsel. You should not rely on, take any action or fail to take any action based upon the Content.

As between SRZ and you, SRZ at all times owns and retains all right, title and interest in and to the Content. You may only use and copy the Content, or portions of the Content, for your personal, non-commercial use, provided that you place all copyright and any other notices applicable to such Content in a form and place that you believe complies with the requirements of the United States copyright and all other applicable law. Except as granted in the foregoing limited license with respect to the Content, you may not otherwise use, make available or disclose the Content, or portions of the Content, or mention SRZ in connection with the Content, or portions of the Content, in any review, report, public announcement, transmission, presentation, distribution, republication or other similar communication, whether in whole or in part, without the express prior written consent of SRZ in each instance.

This information or your use or reliance upon the Content does not establish a lawyer-client relationship between you and SRZ. If you would like more information or specific advice on matters of interest to you, please contact us directly.