PROTOTYPE PLAN News

DECEMBER/JANUARY 2007

Participant Statement Requirements for 2007

Before the Pension Protection Act of 2006 (PPA), employers were only obligated to give active plan participants an account or accrued benefit statement once a year; and then, only if a participant requested a statement in writing. The only other statement requirement applied to a terminated participant with an account balance or accrued benefit, or a participant who had a "break in service" during the year.

The Rules

Under PPA §508, a defined contribution plan (such as a 401(k), profit sharing, or money purchase plan) that permits participants to select their own investments must provide statements quarterly. When participant investments are directed by a fiduciary, only annual statements are required.

Active participants in defined benefit plans who have non-forfeitable accrued benefits must generally be given a benefit statement at least once every three years, or annually upon written request. Under an exception for defined benefit plans, it appears that if active participants are provided with an annual notice about their right to request a written statement, then statements are required only for participants who formally request them.

Defined Contribution Statement Requirements

The quarterly benefit statements for participants or beneficiaries who have the right to direct their own investments must disclose the value of each investment, including employer securities, determined as of the plan's most recent valuation date. The statement must also include the following:

1. An explanation of any limitations or restrictions on the individual's rights to direct an investment;

2. A plain English explanation of the importance of a well-balanced and diversified investment portfolio for the long-term security of participants and beneficiaries, including a statement of the risk that holding more than 20% of a portfolio in the security of one entity (such as an employer's securities) may not provide adequate diversification; and

3. A notice directing the participant or beneficiary to the Internet website of the Department of Labor for sources of information on individual investing and diversification.

The quarterly statement mandate applies to both daily valued and balance forward plans that permit participants to direct their investments. This will mean that balance forward plans that usually issue one or two statements a year will now have to issue quarterly statements, resulting in additional administrative complexity and expense. Similarly, plans with both pooled and participant-directed assets will also have to issue quarterly statements — at least for the participant-directed portion.

Effective Date

These requirements generally go into effect for plan years beginning after 2006. The DOL has been instructed to issue

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McKay Hochman
A Division of Newkirk

Ten Park Place, Second Floor
P.O. Box 196, Butler, NJ 07405-0196
Tel 973-492-1880
Fax 973-492-1231
Fax 973-492-6633
Website www.mhco.com

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Preparing for 2007

In light of the Pension Protection Act of 2006 (PPA), what changes should defined contribution plan administrators and sponsors be preparing for with the 2007 plan year approaching? Following are the provisions that become effective the first day of the 2007 plan year. (PPA provisions covering statements and default investments are addressed at length in separate articles in this newsletter.) Some of these changes are awaiting guidance from the IRS, DOL, or PBGC before they are available for use.

Top-heavy Vesting for All Employer Contributions (PPA §904)
EGTRRA mandated the use of a top-heavy cliff or graded vesting schedule for matching employer contributions. PPA extends this requirement to all other employer contributions to defined contributions plans. The accelerated vesting need only apply to employees who have worked at least one hour in 2007. This poses a potential recordkeeping issue where multiple vesting schedules may apply to the same contribution source. Thus, plan sponsors will need to consider added administrative complexity and cost when deciding whether to limit the new vesting requirements to post-2006 assets or apply the new schedule across the board, and when considering which employees to include.

There will also be document amendment timing issues pending IRS guidance on whether a special PPA amendment is required. Plans that exceed a top-heavy vesting schedule for employer contributions should be amended to adopt a schedule conforming to top-heavy vesting rules for contributions made after December 31, 2006. For administrative simplification, this amendment should apply to employer contributions made prior to 2007 as well.

Note: This makes the more-than-top-heavy vesting provisions of our defined contribution plans submitted for EGTRRA obsolete before even receiving IRS approval.

Nonspouse Inherited Rollover (PPA §829)
Beginning in 2007, nonspouse beneficiaries in a qualified plan (such as a 401(k) plan) may roll over their inherited amounts to an inherited IRA. Previously, only surviving spouses could do this. However, nonspouse beneficiaries must begin taking required distributions immediately using the so-called "minus one" method, while spouses may defer required distributions until December 31 of the calendar year in which the decedent would have attained age 70½. Alternatively, the spouse could roll over the amount and postpone minimum distributions until he or she reaches age 70½, if later.

The law states that this provision is effective for distributions occurring after December 31, 2006. Therefore, beneficiaries of a participant who died in 2006 or later will be able to use these rules. However, IRS guidance is needed to determine whether this treatment will be extended to the beneficiary of a participant who died *before* 2006 if the beneficiary will continue receiving distributions *after* December 31, 2006.

Prohibited Transaction Exemption for Investment Advice (PPA §601)
Retirement plan service providers who offer investments to plans ("fiduciary advisers") will be allowed to recommend their own funds without violating fiduciary rules. For an investment advice arrangement to qualify, either the adviser's fees must be neutral with respect to the investments a participant chooses *or* it must use an unbiased computer model, certified by an independent expert, to create a recommended portfolio for a participant's consideration.

These new rules are generally applicable in 2007. "Eligible investment advice arrangements" will be required to comply with a *new* annual independent compliance audit for years beginning in 2007. To take advantage of this provision, vendors will have to accept "fiduciary" status, which many have tried to avoid in the past.

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Around the Firm

Rich Hochman will be making the following presentations:

DATE	NAME OF ORGANIZATION	TOPICS
Dec. 12	ASPPA Benefit Council of Cincinnati Covington, KY	The Pension Protection Act and Year-end Planning

Bob Kaplan will be making the following presentations:

DATE	NAME OF ORGANIZATION	TOPICS
Dec. 6	NIPA's Connecticut Chapter Farmington, CT	PPA, Legislative Updates, Participant Loans, Prototype Documents, Form 5500
Feb. 13	Louisville Employee Benefit Council Louisville, KY	EPCRS (IRS Correction Program)

Preparing for 2007

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Divestiture of Employer Stock in Non-ESOP Plans; Notice Requirement (PPA Section 901; 507)
Beginning with the 2007 plan year, certain plans holding employer stock must permit participants to immediately divest employer securities purchased with elective deferrals (or other employee contributions) and diversify the proceeds into other plan investments. Plans must allow participants to divest employer securities bought with employer contributions after completing three years of service. The divestiture requirement does not apply to Employee Stock Ownership Plans that do not hold elective deferrals or other employee contributions, or to employer matching or certain nonelective contributions.

A three-year phase-in period applies to employer contributions in existing plans. The IRS is required to issue a model participant notice within six months after August 17, 2006. We will provide additional information on this subject in a future article.

Tax Refund May Be Sent to an IRA (PPA §830)
Starting in 2007 (with income-tax returns for 2006), taxpayers may have all or part of their federal income-tax refund deposited directly into an IRA. Statutory contribution limits apply (i.e., $4,000 and $1,000 catch-up). The IRS already has issued Form 8888 in draft form, and we await its finalization.

Rollover/402(f) Notice (PPA §1102)
The rollover or 402(f) notice explains the rollover and taxation rules for distributions from a qualified plan. The time frame for providing the notice has been changed from 30 to 90 days in advance of a distribution date to 30 to 180 days in advance of a distribution date. This will simplify operations for plans administered under the balance forward method while still allowing the 30-day waiting period to be waived. The rule requiring a minimum seven-day waiting period for plans subject to qualified joint and survivor rules remains in effect. The extension of the notice period may also allow certain defined benefit plans to avoid retroactive annuity starting date considerations.

Along with the description in the notice of a participant's right (if any) to defer receipt of a distribution, the IRS has been instructed to include an explanation of the consequences of failing to defer such a receipt. The IRS will no doubt also update the notice to include information on the nonspouse beneficiary rules and direct rollovers from a qualified plan to a Roth IRA (effective 2008). We recommend remaining with the 30- to 90-day time frame until the IRS issues guidance and/or a new 402(f) notice.

Rollover of After-tax Amounts in Annuity Contracts (PPA §822)
The Act permits rollovers of after-tax amounts in 403(b) plans. However, the plan must be able to separately account for the after-tax contribution amounts for this provision to be allowed.

Qualified Default Investment Arrangement (PPA §624)
See separate article on this topic. ■

PPA Provisions Currently in Effect

(Some await regulations)

Penalty Free Withdrawals for Reservists (PPA §827)
Reservists who have served at least 179 days may make penalty free qualified plan withdrawals effective for distributions occurring after September 11, 2001.

PBGC Missing Participant Program (PPA §410)
The PBGC missing participant program has been extended to terminating defined contribution plans and certain defined benefit plans with fewer than 25 participants. However, this extension will only occur after the PBGC issues regulations.

Hardship Withdrawals for Beneficiaries (PPA §826)
The IRS has been instructed to issue regulations within 180 days after August 17, 2006, to extend a participant's ability to take a hardship withdrawal for the benefit of any beneficiary under the plan, not just a spouse, qualifying child, or dependent. We anticipate that the guidance will, at a minimum, require that plans that offer a hardship provision be amended to incorporate this option. Whether the provision can be used before the amendment is still unknown.

Deduction Rules for DB and DC Plan Combinations (PPA §803)
For contributions to a combination of one or more defined contribution and defined benefit plans, the overall limit on deductions (generally the *greater of* the defined benefit funding requirement or 25% of eligible compensation) now applies only to the extent that the employer contribution to the DC plan exceeds 6%. This change applies to contributions made in taxable years after December 31, 2005.

Participant Statement Requirements for 2007

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model benefit statements within 12 months after August 17, 2006 (PPA's enactment date). Obviously, there is a gap between when the quarterly notices must be provided and when the DOL models may be available. (Use of the DOL's model benefit statements is optional.)

Statements may be provided in written or electronic form as long as they are accessible to participants. Regulations could permit benefit statements to be made available on a continuous basis on a secure website. Average plan participants must be able to understand such statements. ■

IRS Rules on Electronic Employee Communications

Employee benefit plans are required to communicate with participants about certain matters "in written form." The IRS has issued final regulations relating to the use of electronic media to satisfy those requirements. In addition to protecting the rights of participants and beneficiaries, the regulation provides a safe harbor for any communications *not* required to be in written form. The new regulations update earlier regulations (issued in 2000) and coordinate IRS notice and consent rules with the Electronic Signatures in Global and National Commerce Act (ESIGN).

The final regulations apply to notices and participant elections made on or after January 1, 2007. However, if a notice or participant election was made electronically between October 1, 2000, and December 31, 2006, and meets the requirements of the final regulation, it is considered to have been provided in a proper legal manner.

Scope of the New Regulations
The final regulations apply to the following:

• **Retirement Plans**: Qualified plans under §401(a) or §403(a), §403(b) arrangements, §408(k) SEP plans, SIMPLE IRAs, and eligible governmental §457(b) plans.

• **Employee Benefit Arrangements:** Accident or health plans or arrangements under §104(a)(3) and 105, §125 cafeteria plans, §127 educational assistance programs, §132 qualified transportation fringe programs, §220 Archer MSAs, and §223 health savings accounts.

• **Individual Retirement Accounts:** Traditional IRAs, §408A Roth IRAs, and §408q deemed IRAs.

The final regulations cover any notice, report, statement, or other document that employees are required to receive under a retirement plan, employee benefit arrangement, or IRA. Some examples of such notices include:

- Safe harbor 401(k) notice
- §402(f) rollover notice
- Participant consent to cash out prior to normal retirement age if vested benefit exceeds $5,000 — §411(a)(11)
- QJSA notice and waiver — §417 and 417(a)(2)
- Notice for a participant to elect not to have federal taxes withheld
- Notice of cutback in benefits — §4980F and ERISA 204(h)
- Notice to interested parties
- Elections with respect to employee benefit arrangements

The regulations do *not* apply to other IRS areas, such as tax reporting, tax records, substantiation of expenses, or COBRA. Nor do they cover areas within the authority of the Department of Labor (DOL) or Pension Benefit Guaranty Corporation (PBGC), which means they do not apply to Summary Plan Descriptions, Summary of Material Modifications, and other employee benefit plan disclosures.

Note: All parties must be able to electronically retain electronic notices and participant elections so they can be accurately reproduced for later reference. Otherwise, their legality, validity, or enforceability may be denied under ESIGN regulation §101(e).

Notice Requirements
Timing and Content. The rules applicable to a particular notice's timing and content must be satisfied.

Understandability. The content and delivery medium must be designed so the communication is no less understandable than if delivered in paper form.

Significance. The transmittal must clearly identify the subject matter of the notice and alert the recipient to its significance.

Instructions. The transmittal must provide readily understandable instructions to ensure accessibility.

Participant Consent Requirements
Consent and Access. Before an electronic notice may be provided, the participant must consent to receive it electronically. The consent may be written or given electronically. (Neither an oral instruction nor a recording of an oral instruction may be used to satisfy the consent requirement.) If consent is made on paper, the participant must demonstrate that he or she can access the notice in the electronic form in which it will be provided. A participant has the right to withdraw his or her consent before the applicable notice is delivered.

Disclosure Prior to Consent. The participant must receive a *clear and conspicuous* disclosure statement, which must include information on:

- The participant's right to receive a paper document, (even after having received the electronic copy) and any applicable fees.
- The participant's right to withdraw his or her consent on a prospective basis and the procedure for doing so, including any fees.
- The scope of the consent (i.e., whether consent covers all notices and elections or just specific ones).
- Procedures for updating the recipient's electronic contact information.
- Hardware and software requirements.

Change in Hardware or Software. If a hardware or software change creates a material risk that the recipient will not be able to access or retain notices, he or she must be informed of:

- Revised hardware and/or software requirements.
- The right to withdraw consent without fees or consequences being imposed.

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IRS Rules on Electronic Employee Communications

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- The fact that a new consent form must be completed to receive subsequent electronic delivery.
- The procedures for updating the participant's electronic contact information.

Exemption from Consent Requirements. The exemption will be obtained only if the participant has the *effective* ability to access the electronic medium used to transmit the notices, consents, and elections, and is advised at the time the notice is provided that a free paper copy is available at no charge upon request.

Participant Election Requirements
The term "participant election" includes any consent, election, request, agreement, or similar communication from a participant, beneficiary, alternate payee, or individual entitled to benefits under a retirement plan, employee benefit arrangement, or IRA. There are five basic requirements.

1. **Effective availability to access.** Participants and beneficiaries must have *effective* access to the electronic medium used for participant elections and be able to transmit the election. If a participant is not able to access that electronic medium, the election is treated as not being made available to the individual under the nondiscrimination rules of 401(a)(4).

2. **Authentication.** A safeguard must be used — e.g., a personal identification number (PIN) — so the participant is the only one able to make the election.

3. **Opportunity to review.** The participant must have a reasonable opportunity to review, confirm, modify, or rescind the terms of the election before it becomes effective.

4. **Confirmation of action.** A confirmation must be sent to the participant within a reasonable time either by paper or electronically, provided the electronic notice requirements are met.

5. **Participant elections that must be witnessed.** To accommodate the requirement that a spouse's waiver of his or her QJSA rights be witnessed by either a plan representative or a notary public, the regulations require that the individual's signature be witnessed in the physical presence of either the plan administrator or a notary, regardless of whether the signature is in writing or via an electronic medium. (The regulations state that the Commissioner may alternatively provide for the use of electronic procedures to satisfy the physical presence requirements *if* those procedures provide the same safeguards provided by the physical presence requirements.)

MHC Commentary
Though not specifically required in the regulations, the employer should have a system whereby it can electronically verify that participants and/or beneficiaries have received and opened e-mail communications. These electronic receipts should be saved in a file for later proof. ■

IRS and Social Security Cost-of-Living Adjustments

IRS Limits	2007	2006
Defined Contribution Plan Limit on Annual Additions	$45,000	$44,000
Defined Benefit Plan Limit on Annual Benefits	$180,000	$175,000
Maximum Compensation Used for Allocation and Accrual Purposes	$225,000	$220,000
401(k), SARSEP, 403(b), and 457 Plan Deferrals/Catch-Up	$15,500/$5,000	$15,000/$5,000
SIMPLE Deferrals/Catch-Up	$10,500/$2,500	$10,000/$2,500
IRA Contributions/Catch-Up	$4,000/$1,000	$4,000/$1,000
Compensation Defining Highly Compensated Employee (the 2007 amount is used in 2008 plan year tests)	$100,000	$100,000
Compensation Defining Key Employee/Officer	$145,000	$140,000
Social Security Taxable Wage Base (SSTWB)	$97,500	$94,200

Plan Amendments for the 2006 Plan Year: A Recap

The following is a summary (to date) of plan amendments for plan year 2006. Many of these are optional; some are required. Please note that the McKay Hochman Co., Inc. Volume Submitter Plan amendments (provided by the Brucker & Morra law firm) are employer-level amendments. Prototype amendments may be adopted at the document sponsor level, the employer level, or both.

Amendments for Defined Contribution Plans

1. Roth 401(k). This is a *discretionary* amendment due by the end of the plan year in which Roth contributions are accepted by the plan.

2. Automatic Rollover Arrangement. The deadline for this amendment is the latter of December 31, 2005, *or* the tax-filing deadline, including extensions, for the plan year that included March 28, 2005.

3. Final 401(k) and 401(m) Regulations. *For 401(k) plans,* the changes included in the final regulations are *required,* so plans generally must be amended accordingly by the tax-filing deadline for the employer's 2006 plan year. The changes are also required for 401(m) plans with matching and/or after-tax contributions and are due by the tax-filing deadline for the employer's 2006 plan year. *Profit sharing plans* using the safe harbor rules for hardship distributions should adopt this amendment during the same time period. For plans that terminate prior to the deadline, the amendment must be made before termination. The McKay Hochman prototype amendment was provided in September as a sponsor level amendment only.

4. Katrina Amendments for Prototype Plans. Plans that elected to follow IRS Announcement 2005-70 (permitting individuals affected by Hurricane Katrina and their relatives to take hardship distributions or loans between August 29, 2005, and March 31, 2006) must be amended by the end of 2006.

Plans that utilized the Katrina Emergency Tax Relief Act (KETRA) or Gulf Opportunity Zone Act (GOZA) laws permitting hurricane distributions must be amended by the end of the 2007 plan year. McKay Hochman included all the hurricane relief provisions in the final 401(k) and 401(m) amendment discussed above.

Money purchase plans that provide plan loans and were impacted by the hurricanes should also adopt this amendment. For DB plans, the hurricane relief provisions are included in the PFEA and RMD amendments that follow.

5. ADP/ACP Plan Discretionary Amendment Deadline. IRS Rev. Proc. 2005-66 states definitively that *discretionary plan amendments* must be completed by the end of the plan year in which they are to become effective. Changing a plan from prior to current testing method or vice versa is considered a discretionary amendment. Thus, *if a plan wishes to change its ADP or ACP testing method, it must do so before the end of the plan year for which the test will be run.* The method of testing may not be changed after the end of the plan year. Theoretically, the same would be true for amending a plan's "top paid" group election.

Amendments for Defined Benefit Plans

1. Pension Funding Equity Act (PFEA) Amendment. This is a *required* amendment for defined benefit plans. The deadline was generally the end of plan year beginning on or after January 1, 2006; however, passage of the PPA extended the deadline to the end of the 2008 plan year. McKay Hochman has finalized this amendment for employers terminating their plans. Since this amendment is only for those plans, it is being provided as an employer level amendment.

2. Required Minimum Distributions (RMDs). Although these provisions become effective this year, the remedial amendment period is the end of the EGTRRA cycle or January 1, 2013. However, we have made the prototype amendment available for terminating plans only. For ongoing plans, the amendment will be part of the EGTRRA restatement. This amendment is also available for volume submitter plans.

3. Retroactive Annuity Starting Date (RASD) Amendment. As part of the amendment provided for PFEA and RMD, we have included an RASD provision that employers may adopt. The RASD provision relates to the possible need to recalculate benefit payments that do not begin as of the original annuity starting date.

GUST Amendments for Preapproved DB Plans

At this time, the IRS has not yet closed the submission program for preapproved defined benefit GUST documents. The IRS is expected to close this program soon due to the expected opening of the submission program for preapproved DB EGTRRA documents in 2007. (The submission deadline for that program is January 31, 2008. However, because McKay Hochman is a mass submitter, unless the rules change, we must submit our preapproved DB documents (prototype and volume submitter) by October 31, 2007.) ■

Proposed Default Investment Rules

The Pension Protection Act of 2006 (PPA) includes an ERISA amendment designed to assist plans with automatic enrollment and participant investment direction. The Department of Labor, which was instructed to design safe harbor criteria for default plan investments within six months after August 17, 2006, has issued a proposed regulation.

Newly added ERISA Section 404(c)(5) provides that participants who receive a notice that (1) explains their right to designate how their contributions are invested, and (2) describes the default investment into which their contributions will be directed in the absence of an investment election, will be deemed to have exercised control over the default investment. Fiduciaries of a plan using a default investment that meets the DOL criteria, called a Qualified Default Investment Alternative (QDIA), will not be liable for any losses that occur as a result of investment in the QDIA. This change would apply for plan years beginning after December 31, 2006, and the final regulation will become effective 60 days after it is published in the Federal Register.

Notice Requirements

Participants and beneficiaries must be notified 30 days in advance of the first investment in a QDIA and annually thereafter (at least 30 days before the start of each plan year). This is to give participants ample time to make investment choices before the plan year begins. The notice must describe the circumstances under which investments will be made in the QDIA. In addition, the notice must disclose the investment objectives of the QDIA and the right of the participant or beneficiary to move money out of the QDIA without penalty.

Permitted Investments

Investments are to include a mix of asset classes consistent with capital preservation, long-term capital appreciation, or a blend of both. In 2004, when the DOL drafted the default investment regulations for automatic rollovers, it placed an emphasis on the preservation of capital. However, over the long term, capital preservation funds are unlikely to yield an adequate investment return for most active participants or beneficiaries, so Congress modified the QDIA rules based on the need to yield adequate savings for retirement.

Fiduciary Relief

The statutory language will provide relief to the fiduciaries of any participant directed individual account plan that complies with the terms of the plan document and the DOL's default investment regulation as ultimately finalized. Relief is not contingent upon a plan having ''ERISA 404(c) plan'' status or otherwise meeting the requirements of DOL Reg. Sec. 2550.404c-1.

However, nothing in the proposed regulation relieves an investment manager from his or her general fiduciary duties or from any liability that results from a failure to satisfy those duties, including liability for investment losses. Therefore, if the plan offers more than one investment that meets the definition of a QDIA, the investment manager should consider the effect of fees and expenses when deciding which QDIA is to be used.

There are six conditions that must be met for fiduciary relief.

1. The participant's or beneficiary's assets must be invested in a QDIA.

2. Participants or beneficiaries must have had the ability to select their own investments before the QDIA was implemented. Once a participant or beneficiary makes an investment election, the QDIA may not be used.

3. Notice must be provided to participants at least 30 days in advance of the first investment in a QDIA and 30 days in advance of each subsequent plan year.

4. Investment materials provided to the plan regarding the QDIA, such as account statements, prospectuses, and proxy voting materials, must also be provided to participants or beneficiaries.

5. Participants or beneficiaries must be permitted to transfer assets out of the QDIA to another plan investment without penalty. Such transfers must be permitted with the same frequency that applies to other plan investments, but not less than quarterly.

6. The plan must offer participants and beneficiaries the opportunity to invest in a "broad range of investment alternatives" as defined in DOL Reg. Sec. 2550.404c-1. A range of investment alternatives is defined as a selection sufficient to permit investment in a diversified portfolio. (The ERISA 404(c) investment rules would be the standard for this determination.)

QDIA Requirements

According to the proposal:

1. A QDIA may not be invested in employer securities, with two exceptions:

   a. Employer stock held or acquired by a mutual fund (or similar investment vehicle) that is regulated and subject to periodic examination by a state or federal agency. Investment in such securities must have been made in accordance with the stated objectives of such investment fund, independent of the employer or its affiliate.

   b. Employer securities acquired (by a matching contribution or at the direction of the participant or beneficiary) before implementation of the QDIA. For this exception to apply, there must be no restriction on transferability. If such a restriction exists, the safe harbor is not available until the restriction expires.

   Note: This could occur if the individual had previously given direction with respect to employer securities but failed to provide a new investment direction after a change in investment alternatives. This assumes the plan terms indicate that the subsequent investment in a QDIA would permit the investment management service to hold or manage those employer securities in the absence of direction from the individual. In any event, the investment management may not acquire any additional employer stock after this point.

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Proposed Default Investment Rules

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2. No restrictions may be placed on the transfer of funds from a QDIA to any other investment alternative available under the plan. Transfer must be permitted with the same frequency that applies to other plan investments, but not less than quarterly. No financial penalties may be imposed when funds are moved from the QDIA to other plan investments.

3. A QDIA must be managed by an investment manager or mutual fund. (Thus, those responsible for the QDIA are "investment managers" within the meaning of ERISA Section 3(38).)

4. A QDIA must be diversified to minimize possible investment losses.

5. A QDIA must be one of the following three types of investment products:

a. *A life cycle or targeted-retirement-date fund.* This option focuses on the age, target retirement date, or life expectancy of the participant. The investment might be a "stand-alone" fund or a "fund of funds" portfolio comprised of various investment options available under the plan. A "fund of funds" may include a money market, stable value, or similar capital preservation investment along with equity and fixed income investments.

b. *A "balanced fund."* This option focuses on an investment fund product or model portfolio designed to provide long-term appreciation and capital preservation (through a mix of equity and fixed income investments) at a target level of risk determined by treating the plan's participants as a whole. This approach would not require the age of individual participants to be taken into account but rather is based on the demographics of the entire group. Changes in demographics may require new or additional investment fund products. A balanced fund also may be a "stand alone" or "fund of funds" investment.

c. *A professionally managed account.* This choice features investment management services for individual participants based on age, target retirement date, or life expectancy and becoming more conservative as a participant ages. However, the investment manager is not required to take into consideration an individual's risk tolerance, other investments, or other preferences.

Note: A person who is named as fiduciary with respect to the control or management of the assets of the plan may appoint an investment manager. If an investment manager is appointed, then the trustee(s) shall not be liable for the acts or omissions of such investment manager(s) or required to invest or manage any assets placed under the investment manager's responsibility. Nonetheless, plan fiduciaries are responsible for the prudent selection and monitoring of the QDIA. ■

William C. Grossman, QPA
Senior Consultant

The general information in this publication is not intended to be nor should it be treated as tax, legal, or accounting advice. Additional issues could exist that would affect the tax treatment of a specific transaction and, therefore, taxpayers should seek advice from an independent tax advisor based on their particular circumstances before acting on any information presented. This information is not intended to be nor can it be used by any taxpayer for the purpose of avoiding tax penalties.

REGIONAL SEMINARS

Upcoming eSeminars

Form 1099-R	Dec. 11-12
The Pension Law (PPA)	Jan. 17
Automatic Enrollment	Feb. 8
Default Investments	Mar. 20
Disclosures and Notices	Apr. 18
Current Issues with 401(k)s	May 1

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McKay Hochman
A Division of Newkirk

Ten Park Place – Second Floor
P.O. Box 196
Butler, NJ 07405-0196

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