



## ***News and Updates for Plan Sponsors and Fiduciaries of Defined Contribution Plans***

### **A New Kind of Hybrid: The DB(k)**

Beginning in 2010, small employers will have the opportunity to take advantage of an “eligible combined plan,” aka a “DB(k) plan.” The DB(k) will be a hybrid plan, part defined benefit and part defined contribution. The design will allow employers to sponsor a plan that provides employees with a low employer-paid guaranteed lifetime income that the employee can supplement with their own deferrals. The following are some of the requirements and definitions for these new plans:

- “Small Employer” means that the sponsor employed between 2 and 500 employees on each business day during the preceding calendar year (reasonable expected average can be used for new employers)
- Assets are held in a single trust (for both portions of the plan)
- Single 5500 required for both portions of the plan
- Defined benefit must be funded at 1% of final average pay for up to 20 years of service, or using an age-weighted cash balance method
- Defined contribution must be an automatic contribution arrangement (4% deferral) where the employer is required to match 50% of deferrals (as long as the deferral does not exceed 4% of compensation)
- The accrued defined benefit must be fully vested after three years of service
- Matching contributions must be immediately fully vested, and any nonelective contributions that the plan may make must be fully vested after three years of service
- All benefits under both portions of the plan must be provided uniformly to all participants
- ADP/ACP testing is considered to have been automatically met and the plan will be treated as meeting top-heavy requirements
- Notice requirements exist

Additional guidance is expected from the IRS, who requested comments due October 15, 2009. As a result many vendors are still in the planning stages for these new plan designs. If you have any questions please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

### **IRS Expected to Cut 401(k) Limit to \$16,000 for 2010**

Because of the low inflation rate in the U.S., the Internal Revenue Service likely will reduce the \$16,500 402(g) limit on 401(k) deferrals to \$16,000 for next year. The limit is based on a formula tied to inflation that the IRS is required by law to follow, according to an analysis by human resources consultant Mercer. Unless Congress changes the law, the IRS

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probably will have no choice, said Bill McClain, a senior consultant at Mercer. We will keep you informed of any changes via our monthly newsletter.

### Distribution of Mutual Fund Settlement Proceeds

In recent months plan sponsors have received restitution checks as mutual fund settlement proceeds stemming, primarily, from alleged late trading and market timing activities. These payments are being made to plans on behalf of participants who suffered losses as a result of the alleged misconduct. Plan sponsors must adopt an allocation methodology for the settlement checks. Where possible, these funds should be allocated directly to affected participants. However, prudence dictates that fiduciaries examine the efficiencies of doing so, given the existing facts and circumstances.

The Department of Labor has stated that the fiduciary may weigh the competing interests of various participants or classes of plan participants and the effects of allocation methods thereon, and if plan records are insufficient to reasonably determine specific participants investment in specific mutual funds during relevant periods, the fiduciary may allocate the proceeds to participants currently invested in that fund. Also, if the cost to research the affected participants exceeds the amount of the proceeds, the fiduciary may allocate the proceeds to those participants currently invested in the mutual fund.

A few (but not all) allocation options to consider are: 1) allocating the proceeds as income, pro-rata among all current participant accounts; 2) if the timing of the source of the proceeds is identifiable, allocate the proceeds as income, pro-rata among those participant accounts existing during the time of the source of the proceeds; and 3) if the source of the proceeds is identifiable, allocate the proceeds to the current participant accounts based upon ownership of the source of the proceeds.

### Q2 Trends Illustrate Lessons Learned and New Strategies for Plan Participants

Fidelity Investments recently released their Defined Contribution Plans Trends Report for the second quarter of 2009. Some interesting findings were:

- **More participants are increasing their deferrals** than those who are decreasing. This reversed a trend dating back to the third quarter of 2008.
- There has been a **gradual shift into more conservative investments**. Notably Fixed Income and Stable Value Investments have seen an increase in investment allocations from about 18% in June of 2008 to 24% in June of 2009. Lifecycle funds remained the same during the past year.
- Competing financial priorities have led to **increases in loan activity**. On average nearly 1 in 4 participants has taken a loan from their account and about 10% of those loans have been initiated in just the past 12 months.
- **Participation levels for 50 and over participants have grown to over 70%**, with an average deferral of about 10%.
- **92% of employers that offered employer contributions in 2008 have continued to offer them in 2009**. Fidelity found that only about 8% of the companies scaled back their contributions.

If you have questions about your plan, please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

### Communication Corner: Clues to Stay on Track for Retirement

This month's sample participant communication memo is complements of PSCA, as part of the many materials available to employers on [www.401kday.org](http://www.401kday.org). The two-page memo outlines several essential tips to for a more financially secure retirement. Please continue to distribute these participant memos to your plan participants every month.