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**DOL Clarifies Deadline For Depositing Employee Salary Deferrals**

On February 29, 2008, the Department of Labor published proposed regulations providing a safe harbor timeframe for depositing employee contributions to a 401(k) plan. Existing regulations provide that employee contributions become assets of the plan and must be deposited as soon as such amounts can be segregated from corporate assets but no later than the 15<sup>th</sup> business day of the month following withholding. With no clear-cut deadline, there has been confusion among employers and inconsistent enforcement by DOL auditors.

Under the proposal, employers sponsoring plans with fewer than 100 participants as of the beginning of the plan year, and who deposit salary deferrals and participant loan payments within 7 business days of withholding (*i.e.*, the pay date), are deemed to be timely.

Although the new rule is still only in proposed form, the DOL has indicated they will not take enforcement action against small employers who comply with the 7-business day rule now. The rule also clarifies that loan repayments are subject to general payment requirement set forth in the first paragraph, regardless of the plan size.

Now that DOL has set a clearly defined standard, they are likely to scrutinize the timing of deposits even more than they have in the past. We recommend that all employers currently taking more than 7 business days to remit employee contributions and loan payments should take action to accelerate those deposits to comply with this new standard, unless you can clearly justify a longer period within the general rule.

### **Mandatory Document Restatement Coming Soon**

Every five to ten years, the Internal Revenue Service (IRS) requires retirement plan sponsors to completely re-write (or restate) their plan document to reflect regulatory and legislative changes. The last major restatement was required in 2002-2003.

After the last restatement period, the IRS established a new process for future plan restatement "cycles" for different types of plans and plan documents. The cycle for defined contribution plans whose language is pre-approved by IRS (referred to as "pre-approved" documents) begins in the next couple of months. Some of the regulatory changes addressed in this upcoming restatement include:

- Economic Growth And Tax Relief Reconciliation Act of 2001 (EGTRRA)
- Updated Required Minimum Distribution Regulations
- Updated 401(k) Regulations
- Mandatory Distribution/Automatic Rollover Regulations

While these regulatory changes have been addressed through individual plan amendments, the IRS requires the full incorporation of all regulatory and voluntary plan amendments into the main body of the plan document during these restatement cycles. As part of this restatement process, BCG is actively reviewing our clients' defined contribution plans to identify potential opportunities to enhance plan design and/or improve operational efficiency.

As of this date, we are awaiting final IRS approval of our new plan documents which we anticipate in early April. Once we have the new, approved documents in hand, we will be contacting you to inform you of next steps. If you do not currently use a BCG pre-approved document, you may choose to do so at that time.

**Restating your plan document is not optional. Not complying with IRS restatement guidelines may result in IRS penalties or the loss of your plan's tax qualified status.**

### **Direct Rollover of Plan Benefits to Roth IRA**

Effective in 2008, plan distributions can be rolled over to a Roth IRA . Any taxable portion of the rollover

amount will be taxed in the year of the rollover. Rollovers are subject to the Roth IRA conversion rules, which restrict conversions of traditional IRA's to Roth IRA's to taxpayers with adjusted gross income of no more than \$100,000, whether single or married filing jointly. If the rollover is made directly to the Roth IRA there is no tax withheld at the time of the distribution from the plan, but the taxable portion will still be taxed in the year of the rollover. BCG distribution forms have been revised to incorporate this new option.

### **BCG Current Events**

Robert Paglione, CEO of BCG recently attended a meeting of the Business Leader Conference. Mr. Paglione is a founding member of BLC, which is made up of a group of 20 owners of the nation's leading retirement planning administration firms. The purpose of the conference was to discuss ways to raise the bar on supporting the retirement plan industry through such topics as: creative business practices, office technology, strategic planning, enhancing profitability and building a winning team.

Recently, Robert Paglione, CEO of BCG hosted an all-day meeting of Vistage Group 528. The group consists of experienced leaders with a wide range of achievements in different industries and professions. Vistage provides a forum that allows executives, on an intimate level, to tackle topics such as business strategies, best business practices and leadership styles to enhance their decision-making performance.

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