

# 2005 Year-End Alert

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**Insight — 11/22/2005 12:00:00 AM**

This Alert briefly summarizes the 2005 employee benefit developments, some of which may require plan amendments before year-end. Please take a few minutes and review the following items to ensure your plans are compliant with current law.

**Section 125 Cafeteria/Flex Plan Changes.** In order for your employees to take advantage of the extended "use-it-or-lose-it" grace period with respect to 2005 contributions made to flexible spending accounts, you must amend your plan on or before December 31, 2005. The IRS has indicated that it will issue guidance regarding the effect of the grace period on health savings accounts within a matter of weeks and amended Code Section 125 regulations within a few months.

**Section 401(k) Regulations.** The final 401(k) regulations take effect January 1, 2006.

**Section 401(k) Safe Harbor Notice.** Sponsors of 401(k) safe harbor plans must provide employees with the required safe harbor notice no later than December 1, 2005.

**Section 409A Regulations.** If you have a plan or arrangement you think is subject to Section 409A, it should be reviewed immediately since certain transitional rules, which may require some sort of action, expire December 31, 2005.

**Anti-Cutback Rule Changes.** The IRS issued guidance regarding plan amendments that affect protected benefits. Bottom line: If your plan has been amended to change benefit options, it should be reviewed to determine whether the amendment negatively impacts a participant's accrued benefit. If necessary, the plan must be corrected by a reforming amendment before December 31, 2005.

**Automatic Rollovers.** Calendar year plans must be amended by December 31, 2005 to reflect the new automatic rollover rules. You may also need to update the summary plan description and other employee communications.

**Bankruptcy Law – Impact on Retirement Plans.** The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 clarifies and expands the retirement assets that are exempt from creditor claims when an individual files for bankruptcy. The new Act expands protection to plans that are not subject to ERISA and exempts from a bankruptcy estate assets held in qualified 401(a) plans, 403(b) plans, 457 plans and IRAs.

**EGTRRA Remedial Amendment Period/Determination Letter Process.** Some individually designed plans will need to apply for an EGTRRA

determination letter beginning in 2006. **Medicare Part D Notices.** Determine whether your group health plan is subject to the Medicare Part D disclosure notice requirements.

**Missing Participants in Terminating Defined Contribution Plans.** The DOL issued guidance setting forth fiduciary guidelines for locating missing participants. This guidance specifically relates to missing participants with a vested benefit in a terminated defined contribution plan, but also appears to be useful for fiduciaries attempting to locate missing plan participants with a vested benefit in an active plan.

**Roth 401(k) Accounts.** Beginning January 1, 2006, a 401(k) plan may allow participants to make Roth 401(k) contributions to the plan. If you intend to allow Roth 401(k) contributions to your 401(k) plan, you will need to distribute participant notices and election forms and implement the necessary recordkeeping systems prior to accepting Roth contributions. In addition, your plan will need to be amended to permit Roth 401(k) contributions by the end of the plan year in which the plan first accepts these contributions. We are still awaiting guidance from the IRS to clarify certain issues pertaining to Roth 401(k) contributions.

**Voluntary Correction Programs.** The DOL recently revised its Voluntary Fiduciary Correction Program ("VFCP"), available to fiduciaries, and allows them to voluntarily correct potential breaches under ERISA. Further, the IRS expects to issue a revised revenue procedure updating its Employee Plans Compliance Resolution System ("EPCRS") program in the near future. This is a voluntary correction program for plan sponsors to correct plan document defects and plan operational failures in order to keep the plan tax qualified.

### 2006 Pension Plan Limits

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| Compensation Limit                             | \$220,000 |
| Section 415 Defined Benefit Dollar Limit       | \$175,000 |
| Section 415 Defined Contribution Dollar Limit  | \$44,000  |
| Elective Deferral Limit                        | \$15,000  |
| Catch-up Contribution Limit                    | \$5,000   |
| Highly Compensated Employee Definitional Limit | \$100,000 |

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|---|---------------------|
| Key Employee Officer Compensation   | \$140,000           |
| ESOP Payout Limits  | \$175,000/\$885,000 |
| Social Security Wage Base   | \$94,200            |
| Minimum Compensation Amount for SEPs  | \$450               |
| Contribution Limit for SIMPLE   | \$10,000            |
| Catch-up Limit for SIMPLE   | \$2,500             |
| IRA Contribution Limit<br>(Traditional, Nondeductible or Roth)  | \$4,000             |
| <p><b>HSA Limits:</b></p> <p>The maximum out-of-pocket limit under an HDHP cannot exceed \$5,250 for single coverage and \$10,500 for family coverage.</p> <p>The monthly limitation on deductions for single coverage in an HDHP is 1/12 of the lesser of the annual deduction or \$2,700; for family coverage, it is 1/12 of the lesser of the annual deduction or \$5,450.</p> |                     |

Please contact any member of our Benefits Law Group if you have any questions regarding the 2005 benefit law changes and the effect on your plan.

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