

November 25, 2008

Looking Ahead To 2009: Participant Notices and Cost of Living Adjustments

Qualified retirement plans are required by federal law to issue various notices to plan participants at least 30 days before the start of a new plan year. For calendar year plans, notices are due no later than **December 2, 2008** for the plan year beginning January 1, 2009.

Where applicable, a plan administrator must provide the following:

- **Qualified Default Investment Alternative (“QDIA”) Notice.** This notice provides information regarding the investment fund used by the plan as a default to provide fiduciaries with a degree of protection under ERISA section 404(c). The notice must contain information regarding the circumstances under which a participant’s account may be invested in a QDIA; a description of the fund (including investment objectives, risk and return characteristics and fees and expenses); a description of participants’ rights to direct the investment of assets in their accounts including any restrictions on transfers from a QDIA to another investment; and an explanation of where the participant can obtain additional information concerning the plan’s investment alternatives.
- **Qualified Automatic Enrollment Arrangement/Eligible Automatic Enrollment Arrangement Notice.** This notice outlines to whom the automatic enrollment feature applies, the level of deferral subject to the automatic enrollment feature, what other employer contributions may be made, how plan accounts are invested, when the plan accounts vest, and how a participant may change his or her contributions.
- **Safe Harbor Notice.** This notice describes the employer contributions to be used in the following year to satisfy the exception to non-discrimination testing for 401(k) plans and the circumstances under which such a contribution may be suspended by the employer

These notices must be distributed to all employees eligible for the plan, but they may be combined into a single notice for administrative ease and expense.

Another end-of-year housekeeping matter relates to the IRS’s adjustment of various dollar limits applicable to qualified retirement plans. The Internal Revenue Service recently issued Notice 2008-102, which provides a schedule of cost of living adjustments for tax-qualified plans applicable for 2009. Unlike last year, many of the qualified plan limitations will change for 2009 because the increase in the cost-of-living index met the statutory thresholds that trigger their adjustment.

Among the most significant increases:

- The 402(g) elective deferral limit will increase to \$16,500.
- The 414(v) “catch-up” deferral limit will increase to \$5,500.
- The 415 overall contribution limit for defined contribution plans will increase to \$49,000.
- The 401(a)(17) includable compensation limit will increase to \$245,000.
- The 414(q) limit for determining a “highly compensated” employee will increase to \$110,000.
- The Social Security wage base will increase to \$106,800.

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For your convenience, [click here](#) for a printable version of a chart that reflects relevant COLA limits from 1980 to the present.

Please contact any member of the Benefits Law Group with any questions regarding the notices or cost of living adjustments.



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