Sharon,

We are struggling with deferred compensation plans and changes in retirement plans. Please read all below - hopefully it will make some sense but at least get a discussion started about what is allowable, etc. We have a several sponsoring organizations in this situation and have filed budgets containing these changes and trying to include both items. Are you familiar with this stuff? Do we need a call to discuss and try to explain?? Do you need to go to HQ for further information?? Thanks for all your assistance.

Mark

The regulations do identify that the deferred compensation plan is a separate expense then the retirement. But the 403b (deferred compensation plan) is what has been converted to the 401k plan. The 401k portion that is matching is considered a deferred compensation component just as the top heavy deferral was affordable for the 403b plan to only key employees. When the companies converted to the 401k plan, they appear to have lost the option that the 403b plan allowed for the top heavy contributions identified as the 457 plan. In that the regulations were written many years ago, the regulations allow 457 contributions for the old 403b plan top heavy contributions. The regulations may continue to offer both plans, but the second plan would likely become unqualified for deferred compensation. Please help us interpret FNS 796-2 (deferred comp – VIII I 23 k) In addition, here is a link that could provide little more information about change in plan requirements. The additional top heavy deferrals appear to be for “profit sharing” purposes and of course our organizations are not for profits where profit is not allowable as per the regulations. DCR’s plan is a safe harbor plan so please look at the documentation in that area also.

https://www.mvpplanadmin.com/retirementplantypes.html#403bplans

We have several sponsors that have had 403 (b) Deferred Compensation plans with participation for all staff but company contributions issued to only key employees (directors) as a 457 plan. With the recent increased regulation requirements creating increased administrative plan costs by the Internal Revenue Service for the 403 (b) plans, many have opted to switch to the 401 (k) plans which have less administrative costs. In a 401(k) plan company contributions are required to be equitable to all staff in the company match of contributions. It appears from their budgets, the chosen plans no longer offer the 457 plan option for the directors no longer allow the larger company contribution as the 403(b) plan allowed.
The 401 (k) plan requires equitable contributions to all staff at the percentage in the plan documents. These sponsors are presenting budgets for FY 2010 requesting an increase in compensation due to their loss of this top-heavy benefit. We do not believe that these deferred compensation plans can be converted to compensation. No such guidance is offered through the regulations.

The sponsors are then requesting that the directors be allowed to continue with this additional retirement benefit for themselves and no other staff if it is not allowed by their chosen plan. Is such an option available to sponsorships for administrative reimbursement? We do not know the IRS implications of the two plans for a not for profit company. It is possible the second plan would become non-qualifying. Can a sponsorship receive reimbursement for both a qualifying and an un-qualifying plan?

We would appreciate your assistance in an interpretation of the regulations for the sponsor’s allowable cost reimbursement for the retirement plan and the deferred compensation arrangement.

Thank you

Deborah Stoneburner  
ISBE Principal Consultant  
Nutrition Programs- Day Care Homes  
phone (800) 545-7892,  
fax (217) 524-6124  
dstonebu@ISBE.net