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Consulting Offices:
Omaha, Nebraska
Albuquerque, New Mexico
Rochester, Minnesota

Regional Consulting and Administrative Office:
Tucson, Arizona

Ask Kidder.®

2008 is almost over. What's in store for 2009?

The last year has been a wild ride for qualified plans and the participants in those plans. Besides potential market volatility and an economic slowdown, what should a plan sponsor and its participants look forward to in 2009?

1) Document Restatement - As reported in prior newsletters, the plan document restatement process has started. This means that ALL Defined Contribution Plan Documents are required to be restated over the next couple of years. All Defined Benefit Plans will then need to restated following that time period. The restatement process began late summer of 2008 but will hit full stride in 2009. This is an excellent time to make sure your plan design is doing what you intend it to do. Kidder is an IRS-approved plan document sponsor, and can handle any plan document issue.

2) Regulatory Issues - ERISA Section 408(b)(2) - The proposed regulations previously reported have not yet been finalized. The Department of Labor (DOL) was expecting the new regulations to go into effect on January 1, 2009. That deadline will not be met because the regulations will not go into effect until 90 days after they have been published in the Federal Register. They are now expected to go into effect sometime in early 2009. These regulations will help plan fiduciaries fulfill their responsibilities. Service engagements between the Provider and Plan Sponsor will become more transparent and have increased disclosures. Among the many changes are: required "reasonable" written agreements outlining their duties and responsibilities; whether they are acting in a fiduciary capacity; direct and indirect compensation from all sources; real or potential conflicts of interest; and Point of Sale disclosure of fees and responsibilities.

3) Regulatory Issues - ERISA Section 404(a) Fee Disclosure for Plan Participants - These proposed regulations were also discussed in a prior issue and were originally expected to be in place for 2009. These regulations focus on consistent disclosure to plan participants of investment related returns over specific time periods and fees such as expense ratios and asset management charges. Non-investment related fees must also be disclosed, such as administrative costs and how they are paid by plan participants. There have been considerable comments from the investment platform industry regarding their ability to modify software to accommodate these changes. Change will occur but the final regulations may not go into effect until late 2009 or early 2010.

4) Regulatory Issues - 403(b) Plans: Document and Administrative Compliance - The 403(b) Final Regulations go into effect on January 1, 2009. We are busy fielding calls from many not-for-profit organizations, their CPAs and financial professionals. We are finding that many not-for-profit tax exempt organizations operating under Section 501(c)(3) of the Internal Revenue Code have not addressed the requirements of these final regulations. A written plan document is required by December 31, 2008. The IRS has indicated that if a good faith effort is being made, then they may be lenient. However, just having a plan document will not be enough. There must be compliance with the terms of the document and processes in place to administer the plans properly. A 501(c)(3) organization that is making an employer contribution, such as a match, is covered under ERISA, and must adhere to the rules of ERISA. In the past, many 403(b) plan sponsors did the minimum to satisfy any compliance requests, as they felt it was an employee plan that the employee was responsible for. Now, under the new rules, the 403(b) plan has shifted to an employer plan, and the plan sponsor has the same duties as a "for profit" plan sponsor. Consequently, the Executive Director and Human Resources areas have new responsibilities. The Boards of Directors of these organizations, which are usually comprised of many external community leaders, now must understand that the personal liability for proper administration and compliance of these plans also extends to them.

5) Fiduciary Due Diligence - This is the buzz word of the industry, but is not something new. Since we were founded in 1996, Kidder has impressed upon our clients and their advisors the fiduciary principles involved in qualified plan governance. These principles have drawn greater attention since 401(k) and 403(b) plans are now considered the primary retirement accumulation vehicle. In 2009, they will be a continued focus especially since the markets have not been favorable to participants' account balances. The key to Fiduciary Due Diligence is having a proper process in place, including proper policies for the various fiduciary aspects of the plan (not just the investments), reviewing the results on a regular basis and consistently applying them.

6) Cash Balance Plans: A growing trend - A Cash Balance Plan is a form of a Defined Benefit Plan with a twist. Rather

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NOTICE- Any tax advice expressed in this communication (including any attachments) is not intended to be used, and cannot be used, for the purpose of avoiding penalties imposed on the taxpayer by any government taxing authority or agency. If any such tax advice is made available to any person or party other than the party to whom the advice was originally directed, then such advice is to be considered as being delivered to support the promotion or marketing of the transaction or matter discussed or referenced. Each taxpayer should seek specific tax advice based on the taxpayer's circumstances from an independent tax advisor.

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than focusing on what your benefit is at retirement, the Cash Balance plan defines the benefit as a dollar amount and shows that as a current hypothetical account balance. The differences in layman's terms are that the contribution to the plan is an *employer* contribution and the participant's hypothetical account balance increase is calculated based on a fixed formula. The employer is responsible for investing the funds in a pooled investment account, thereby assuming the risk of investing and achieving the interest rate return utilized. Cash Balance Plans have become popular due to recent law changes and are the only growing segment in the Defined Benefit Plan arena. They are often used in conjunction with a 401(k) plan in order to provide higher tax deductible contributions than available with just a 401(k) and/or profit sharing plan. Keith Gredys, CEO of Kidder, was a featured panelist on the topic of Cash Balance Plans at the recent Plan Advisor National Conference in Florida during September.

7) Continued Vendor Consolidation - As indicated above, there are a number of system, software, and compliance changes that will affect Investment Platforms, mutual funds, open-architecture record keepers and Third Party Administration firms. Over the past four years, over 30 significant providers involving billions of dollars and hundreds of thousands of participants have either exited the field or merged. There will be continued consolidation, especially among those organizations that have relied on or subsidized their operating expenses with revenues that were a percentage of the fair market value of plan assets. Due to the drop in the stock market, their revenues are down, the cost for them to update programs and systems and stay in compliance has increased, and the ability to pass on those costs is more difficult. As a result, in 2009, many will decide to sell their businesses, exit the industry or consolidate with another vendor. At Kidder, due to our scale, with 1,100 plan relationships and business spread throughout the U.S., we have focused on working with those vendors that will be survivors in this phase of the business cycle and that are well positioned for the opportunities that lie ahead.

8) Financial Professional Consolidation - The same comments regarding Vendors also applies to many Financial Professionals. The new regulations will force many of these individuals to change their compensation and servicing models. Many will decide that it will be better to focus on other areas. Some will partner with other groups that provide the level of service and capabilities that Plan Sponsors will demand. Based on national statistics, there are about 9,000 financial professionals across the country that provide services to two or more qualified plans. Due to the new regulations and servicing expectations, some industry experts anticipate the number to drop to between 3,000 to 5,000 in just a few years. That means those financial professionals staying in the qualified plan marketplace will have more experience and expertise, and that will be good on a long term basis for the industry, plan sponsors and participants.

9) Qualified Default Investment Alternative (QDIA) and Automatic Enrollment expansion - An area of Plan Design that is expected to pick up additional momentum is Automatic Enrollment of participants in qualified plans. In the past, an employer needed to ask the eligible employee to participate. With the Pension Protection Act of 2006, the plan sponsor can have an employee that is eligible become automatically enrolled in the plan, have a set percentage automatically deferred from their paycheck and have those funds invested in a QDIA. If done correctly, the plan sponsor is relieved of fiduciary responsibility for those actions. By automatically enrolling a person, it forces the participant to elect NOT to participate in the plan. This concept involves a Behavioral Finance concept which hypothesizes that the participant will not have the behavioral inertia to elect not to enroll, and will subsequently remain in the plan. Studies so far have indicated that the concept is working. So, we expect many employers to investigate Automatic Enrollment in 2009.

*** * PLEASE NOTE * ***

Our KBC offices will be CLOSED the following dates:

November 27th & 28th — Thanksgiving Holiday

December 24th — closing at noon for the Christmas Holiday
December 25th & 26th — Christmas Holiday

January 1st & 2nd — New Year's Day Holiday

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