



FBA NEWS NOTES

Winter 2003

NEWS AND INFORMATION ON EMPLOYEE BENEFIT PLANS

IRS Announces 2004 Limitations For Qualified Retirement Plans

The IRS issued News Release IR-03-122 which provides *Cost Of Living Adjustments (COLAs)* applicable to dollar limitations for qualified retirement plans and other items for the 2004 tax year. Highlights of the COLAs are as follows:

- ◆ The defined benefit plan maximum benefit limit increased to \$205,000 (IRC 415(b)(1)(A))
- ◆ The defined contribution plan maximum dollar contribution limit increases to \$41,000 (IRC 415(c)(1)(A))
- ◆ The annual compensation limit increases to \$205,000 (IRC 401(a)(17), 404(I), 408(k)(3)(C), and 408(k)(6)(D)(ii))
- ◆ The compensation limitation with respect to the definition of key employees remains at \$130,000 for officers (IRC 416(I)(1)(A)(i))
- ◆ The compensation limitation with respect to the definition of key employees remains at \$150,000 for 1% Owners (IRC 416(I)(1)(A)(i))
- ◆ The compensation limitation used in the definition of highly compensated employee remains at \$90,000 (IRC 414(q)(1)(B))
- ◆ The compensation amount with respect to simplified employee plans (SEPs) remains at \$450 under IRC 408(k)(2)(c)

As specified in EGTRRA, the deferral limitations for 2004 are as follows:

- ◆ The dollar limitation for elective deferrals and for deferrals under 401(k), 403(b), 457(b) and 457(c) plans increased to \$13,000 (IRC 402(g)(1) and 457(e)(15))
- ◆ The dollar limitation regarding SIMPLE retirement accounts increased to \$9,000 (IRC 408(p)(2)(B))

- ◆ The dollar limitation with respect to Catch Up contributions for participants aged 50 or over for 401(k), 403(b), and 457 plans increased to \$3,000 (IRC 414(v)(2)(B)(i))

- ◆ The dollar deferral limit with respect to SIMPLE retirement accounts increased to \$9,000 (IRC 408(p)(2)(B) and 401(k)(11)(B))

- ◆ The dollar deferral limit with respect to SIMPLE Catch Up contributions increased to \$1,500 (IRC 414(v)(2)(B)(ii))

It is said that one machine can do the work of 50 ordinary men. No machine, however, can do the work of one extraordinary man.
-Tehyi Ssieh

Form 5500 and late remitters

Form 5500 is used each year to report financial and compliance activity to the Department of Labor. The form specifically addresses the issue concerning timing for participant deposits for employee deferral accounts.

According to the regulations, employee deferrals must be remitted to the plan trust "as of the earliest date which such contributions can be reasonably segregated from the employers' general assets." C.F.R. 2510.3-102.

The DOL has stated that sponsors cannot wait until the 15th business day following the date in which the paycheck was issued which is the maximum time allowed. Question 4(a) in the 5500 Form (Schedule H for large filers and Schedule I for small filers) specifically asks plan sponsors: "Did the employer fail to transmit to the plan any participant contributions within the time period described in 29 CFR 2510.3-102?"

An affirmative response to this question will be considered by the Department of Labor as an impermissible loan from the plan to the employer: therefore a prohibited transaction and a breach of fiduciary duty. This may be used by the DOL to trigger an audit of the plan.

Sponsors should answer this question truthfully since the form is signed under penalty of perjury. The Department of Labor does allow sponsors to correct any failures via its Voluntary Fiduciary Correction Program. For further information on timely remittance of employee deferrals, visit the Department of Labor web site at www.dol.gov. ♦

Final Regulations on Catch-Up Contributions

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) permits employees participating in a company sponsored 401(k), 403(b), 457, SIMPLE IRA, or Simplified Employee Pension Plan (SEP) and who are over the age of 50, to exceed the deferral limits.¹ The Internal Revenue Service issued the final Catch-Up contribution regulations in July 2003. The Catch-Up contribution is exempt from many of the regulatory compliance tests that govern some retirement plans. Treasury Regulation 1.414(v). The Catch-Up contribution updates are effective for tax years beginning on or after January 1, 2004.²

The final regulations address when a participant is eligible to take advantage of the Catch-Up contribution. The regulations state that the participant can make a Catch-Up deferral in the year in which the participant reaches the age of 50.

A plan sponsor can treat an elective contribution as a Catch-Up contribution when the deferral exceeds an employer provided limit. For purposes of IRC 401(k)(3), Catch-Up contributions are not included as elective deferrals when calculating average deferrals for ADP testing, when applying the Top Heavy rules of IRC 416 or for purposes of IRC 410(b) coverage rules.

Under the final regulations, the employer may exclude collectively bargained and non-resident alien employees entirely.

The final regulations extend the exception to the universal availability rule for plans acquired by an employer as part of a merger or acquisition. Catch-Up contributions must be included in the acquired plan by the end of the plan year following the plan year in which the plan is acquired.

In the final regulations, the Internal Revenue Service retained the proposed regulations to determine the Catch-Up Contribution at the end of the plan year.

Lastly, the final regulations confirm that a sponsor is not required to match the Catch-Up contributions.

The new rules will provide sponsors more flexibility in administering the Catch-Up contribution provisions of their plans and will provide administrative and record keeping relief. ♦

Trends

According to a poll conducted in July 2003 by KRC Research, more than ½ of baby-boomers polled- considered themselves ready for retirement. Yet, when asked how well they were prepared financially for a financial emergency without tapping into their retirement nest egg, most would not be able to last more than six months without a regular income. (ING July 2003)

Then we have those that have already used up part of their retirement savings. About 22% of those who have changed jobs in the last couple of years have already cashed out their retirement savings.

The 2001 survey indicated that boomers were expecting to retire by age 60, the current survey indicated the expected age for retirement among baby boomers is 62. In all, most baby-boomers would have hoped to retire at age 55.

The next generation seems to be more optimistic regarding retirement savings with 32% believing that they will certainly be better off by the time they retire.

The majority of those surveyed, are increasingly relying on employer sponsored plans for their retirement goals. Almost half of those surveyed (46%) continued their planned course even in the last two years of economic instability. ♦

Flexible Spending Accounts Update

The Treasury Department and the Internal Revenue Service announced that the cost of nonprescription medicines can qualify for reimbursement from flexible spending accounts and other pretax health-care plans (IR-2003-108). The Treasury and IRS issued guidance clarifying that reimbursements for nonprescription drugs by an employer health plan that are excluded from income, reimbursements by health flexible spending arrangements (FSAs) and other employer health plans for the cost of over-the-counter drugs available without prescription are not subject to tax if properly substantiated by the employee.

The ruling is due in part to the recent changes in the number of prescription drugs that are now available over the counter. Many health plans do not cover the cost of over-the-counter medications. The over-the-counter medication is less expensive than the prescription drug, but the cost to consumers increases because the price paid by the consumer for the over-the-counter drug is greater than the co-payment paid by the consumer had the drug been covered by insurance.

For purposes of the itemized medical expense deductions, the cost of such over-the-counter drugs continues to be non-deductible. The IRS noted that over-the-counter-medications will continue to be ineligible for tax deductions as itemized

¹ K & L Alert, July 2003

² Sungard Corbel News September, 2003

medical expenses. For more information on the ruling, visit the Department of Labor web site at www.dol.gov. ♦

Fidelity Bonds for Small Company Pension plans

As of April 17, 2001 small company plans with less than 100 participants had two choices:

1. Obtain a fidelity bond for their plan assets and report them on Form 5500
2. Obtain an annual independent audit of the plan.

In December 2002, the U. S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) and the Internal Revenue Service announced a joint project to ensure that all employee benefit plans comply with their Form 5500 filing obligations¹. Compliance was encouraged by lowering penalties to \$1,500 or less per plan per year under a revised Delinquent Filer Voluntary Compliance Program (DFVC). Lower penalties means that the DOL expects compliance and will therefore be tougher on non-complying sponsors.

For sponsors, the choice is about expense. In most cases, an audit is more expensive than a bond since the required amount is 10% of qualified plan assets. Qualified assets include assets held by a financial institution, such as a bank, insurance company, broker-dealer or regulated entity, as well as mutual funds, participant loans, qualifying employer securities, or self-directed individual account plans. Real estate is not considered qualified plan asset unless it is held in trust by an above institution. Non-qualifying pension plan assets include limited partnerships, artwork, collectibles, mortgages, real estate and securities of "closely-held" companies.

If non-qualifying assets comprise 5% or more of the entire plan assets, the plan must have either an annual "full-scope" audit or fidelity bond coverage. Under a full scope audit, a Certified Public Accountant would physically confirm the existence of the assets at the start of the plan year. Fidelity Bond coverage is a fidelity bond equal to 100% of the value of the non-qualified assets. In contrast, under a limited-scope audit, the Certified Public Accountant bases the audit opinion on another party's review of the operation. The PWBA of the Department of Labor and the IRS target small company pension plans that neglect or refuse to protect their plan assets. Past non-compliance can be addressed through the Delinquent Filer Voluntary Compliance Program (DFVC), current and future non-compliance requires sufficient fidelity bonds for both qualifying and non-qualifying assets or an independent annual audit. To obtain more information on Fidelity Bond requirements, visit the Department of Labor web site at <http://www.dol.gov>. ♦

Sarbanes-Oxley Act Update

Securities & Exchange Commission final regulations implementing insider trading prohibition of Sarbanes-Oxley Act. The SEC has adopted final rules implementing provisions of the Sarbanes-Oxley Act of 2002 (P.L. 107-204) that prohibit company directors and executive officers from trading in employer stock during a blackout period imposed on participants in individual account plans of the employer.

The new Regulation Blackout Trading Restriction (BTR) generally reflects rules proposed by the SEC in November. The rules, effective January 26, 2003, name which persons, securities, and transactions are subject to the trading prohibition. The final regulations define the blackout period during which the prohibition would be in effect and the application of statutorily mandated exceptions. Finally the regulations provide guidance on the recovery of profits realized by an insider from a prohibited transaction during the blackout period.

Sarbanes-Oxley makes it unlawful for directors and executive officers (as defined under article 16 of the Exchange Act (Rule 16a-1(f))) of a public company to acquire or transfer equity securities of the company during the black out period.² A black out period for insider trading purposes, is any period of time lasting more than three consecutive business days in which less than 50% of participants and/or beneficiaries ability to purchase, sell, acquiring or transferring any equity security of the issuer is suspended.

The black out trading prohibition violations are violations of the Exchange Act, therefore, remedies available all under the Security & Exchange Commission (SEC). Penalties are substantial, as a result, compliance is critical and plan sponsors and third party administrators should take precautions to avoid violations. For more information on the Sabarnes-Oxley Act, visit Department of Labor web site and the Securities and Exchange Commission's web sites at www.dol.gov and www.sec.gov. ♦

Missing Participants

Locating participants and/or their beneficiaries is a requirement of plan sponsors. Accomplishing this task can be time consuming, expensive, and often without positive results.

The Internal Revenue Service's Letter Forwarding Program (REV PROC 94-22, 1994-1 CB 608) may be a solution. The IRS Disclosure Office will forward letters to missing participants if the plan sponsor submits a cover letter indicating why use of the Letter Forwarding Program is requested. The cover letter must include:

- A brief explanation of the need for letter forwarding

¹ Janet Maniscalco consultant at Colonial Surety Company

² Pension & Benefits Week May 2003

- The approximate number of recipients that the company is attempting to locate in order to complete a distribution of retirement funds
- A statement that the Company can provide the appropriate social security numbers in electronic form and that the company will comply with the appropriate format for computer disc when the request has been accepted
- A statement that the Company is aware that there is a fee for this service
- A sample of the letter to recipients, on requester's letterhead, signed, general in nature and containing the Service's disclaimer language
- A statement of the approximate value of the retirement funds to be distributed

The letter addressed to the participant or beneficiary, should disclose the fact that the IRS has not given the sponsor the participant/beneficiary address along with, the reasons why the sponsor needs to contact the participant/beneficiary and how to reach the sponsor.

Once the address is located, the letter will be forwarded to the missing participant in an IRS envelope. The IRS will include a letter addressed to the Participant/Beneficiary advising the participant that:

- Neither the recipient's address, nor
- any tax information has been disclosed,
- and that the plan sponsor has not been notified that the letter was forwarded, and
- the IRS has no involvement in the matter aside from forwarding the sponsor's letter and that the decision whether to respond is entirely up to the recipient

Sponsors will not receive any response to their request, nor a report of search results, and all letters returned to the IRS as undeliverable will be destroyed.

For more information on the process or to obtain sample letters visit the Department of Labor web site at <http://www.irs.gov/retirement/> ♦

Revenue Procedure 2003 – 16

Eligible Rollover distributions from a qualified retirement plan must be transferred to another qualified plan within 60 days or be subject to income tax. The participant may also incur possible penalties if he/she is less than 59 ½. Previous to Revenue Procedure 2003-16, the only time that a waiver could be obtained if the 60-day deadline was missed was in the event of military service in a combat zone or a presidentially declared disaster.

Under Revenue Procedure 2003-16, the restrictions are eased allowing participants to submit a request of a waiver if reasons for the missed deadline are due to events beyond the control of the participant such as clerical errors, death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, postal errors.

The participant requesting the waiver is required to apply for a Private letter ruling from the IRS. The regulations state that the waiver is automatic in the event the receiving institution received the rollover instructions before the 60-day deadline; but, because of internal delays, the funds have not been properly credited to the benefit of the participant as long as the funds are deposited within one year form the beginning of the 60-day period. ♦

Profit-Sharing and 401(k) plans

Profit sharing and 401(k) plans remain popular investment choices for the majority of eligible employees. According to a survey conducted by the Profit Sharing /401(k) Council of America for 2002, 82% of employees in the companies that participated in the survey, qualify to participate in the company sponsored 401(k) or Profit Sharing Plan. On the average, in 2002 approximately 78% of participants eligible to participate in a company sponsored 401(k) plan do so.

Low-income participants save on the average 5.3% of wages while High-income participants save about 6.4% of wages. Compared to 2001, the savings averages are down. In 2001, savings deferral rates for low income earners was 5.4% and 6.4% for those with higher pay, according to the Profit Sharing/401(k) Council of America (PSCA).

On the brighter side, the average company contribution was 4.1% of payroll in 2002, up slightly from an even 4% the previous year. For another year of the survey, Profit Sharing contributions continue to be the most generous, 8.8%, up from 8.1% in 2001.

What are the most common formulas used by employer to calculate a contribution? According to the PSCA survey, contribution formulas varied accordingly for different types of plans. In plans permitting participant contributions, the most common formula is a fixed match only, present in 25.7% of plans. The most popular was a match of \$.50 per \$1 up to the first 6% of pay, present in 27.9% of plans that have fixed matches, up from only 26% of plans offering such a match in 2001. The most common type of company contribution for profit sharing plans is a discretionary profit sharing contribution only, which is present in 75.7% of plans, an increase from 70.9% the previous year.

The average number of fund options in any given plan has also increased. Currently, 80.8% of plans offer 10 or more fund options. On average in 2002, company contributions had 14 funds available to them, while participant contributions had 15 fund options.

PSCA found most plan assets to be managed by mutual funds (39.1%), followed by banks (19.7%), insurance companies (12.1%) and investment advisors (10.8%), with investment management, trusteeship and recordkeeping still dominating the service offerings.

Providers have also been busy offering more in the way of advice and investment education, the most popular advice options being:

- one-on-one counseling (55.2%)
- internet providers (50.2%)
- telephone hotlines (31.9%)

Sponsors and providers, are looking to the Internet for some administrative functions. Nine out of 10 (89.9%) plans permit participants to make some type of transaction via the Internet, up from 83.9% of plans in 2001 and 79.3% in 2000.

PSCA's study examined the 2002 plan year experience of 1,046 profit sharing and 401(k) plans. Together, these plans hold over \$244 billion in plan assets and include nearly 3.2 million participants. More information can be obtained by visiting the Profit Sharing/401(k) Council of American at www.psc.org. ♦

Communicating with Participants

Employees participating in a 401(k) plan give up current income in exchange for a future benefit. Understanding the difference between future savings via contributions and future retirement income is pertinent for the success of a company sponsored 401(k) plan. Employees who do not understand the benefits of a 401(k) plan are less likely to actively participate in the plan.



Plan sponsors are not legally required to provide investment education to plan participants. ¹Under section 404 (c) sponsors are required to provide participants with information concerning the available investment alternatives. ERISA Section 404(c) does require sponsors to provide the following information to participants²:

- The factors an individual should consider when making investment decisions (e.g., risk tolerance)
- The effect of a participant's age, income, years to retirement, and other individual factors on his or her investment decisions
- How to estimate income needed for retirement
- An explanation of basic investment concepts (e.g., risk, return, diversification, inflation)
- A historical analysis showing how different asset types (e.g., stocks, bonds, fixed income funds) have performed when measured in 5-, 10-, or 20-year cycles
- The attributes of each investment option (e.g., risk characteristics, performance data)
- The importance of asset allocation decisions
- An explanation of the saver's credit

Under ERISA anyone who provides investment advice for a fee becomes a fiduciary with respect to that plan. Sponsors rely on ERISA Section 404(c) to avoid fiduciary liability.

The DOL provides guidance as to when investment education does not constitute investment advice. The DOL addressed this issue in Interpretive Bulletin 96-1, titled Participant Investment Education. [DOL Reg § 2509.96-1] According to ERISA Section 3(21)(A), a person is a fiduciary with respect to an employee benefit plan to the extent that such a person does any of the following:

Participants are determined to obtain more information regarding their investment choices to avoid some of the savings pitfalls that have plagued the retirement market in the last couple of years. As reported by Cerulli Associates in Boston, more than 42 million people have a total of about \$1.5 trillion invested in 401(k) plans. Cerulli also found that during 2002, more than \$100 billion evaporated from 401(k) accounts. That makes choosing the right investments even more critical as people try to rebuild their portfolios. ³

Participants are primed to take charge of their financial futures.⁴ A survey conducted by CIGNA Retirement & Investment Services entitled The Workplace Investor: Taking Control. The survey sampled opinions from a pool of 750 employees and 200 employers nationwide. 80% of survey respondents said they intend to be more involved in managing the investments in their workplace-provided retirement programs. The survey found that employees rely on their own employer or retirement plan provider as their primary resource for investment information and assistance. But more and more, workers want employers to provide more investment education, communication, guidance, and financial-planning tools.

The idea is catching on, according to the Profit Sharing/401(k) Council of America's 45th Annual Survey, 41.4% of plans are providing some type of investment Advice. The Retirement Confidence Survey, sponsored by the Employee Benefit Research Institute (EBRI) and the American Savings Education Council (ASEC) indicates that 89% of employees consider their investment knowledge "less than comprehensive". These participants again and again look for employer sponsored seminars on investments to get the edge on investing for the future.

A study conducted by The Defined Contribution Market Insights 2003 (National Defined Contribution Council (NDCC) and the Spectrem Group) recommends concentrating education efforts on⁵:

- Saving for retirement on a tax-deferred basis
- The tax-free accumulation of assets
- A 401(k) plans access to diversified investment opportunities
- Long-term investment strategies

³ THE WALL STREET JOURNAL, Rachel Emma Silverman, Jul. 30, 2003

⁴ Plan Horizons – Winter 2002

⁵ Survey: K Plan Participation Decline Calls for Back to Basics Ed. August 1, 2003 (PLANSponsor.com) –

¹ Thomas R. Hoecker. Snell & Wilmer, L.L.P.

² ERISA Fiduciary Answer Book - 4th Edition, including 2002 Supplement

For more information of the appropriate level of sponsor involvement when directing participant to make educated choices with regards to their self-directed 401(k) plan, contact the Department of Labor, or visit their web site at www.dol.gov. ♦

Department of Labor Field Assistance Bulletin 2003-3

Department of Labor Field Assistance Bulletin 2003-3 permits certain plan expenses to be allocated to individual participant accounts in a defined contribution plan. The DOL interpretation would permit sponsors to allocate expenses for the maintenance of accounts to terminated participants while not assessing the same fees to active participants.

According to the FAB, ERISA has no official provisions addressing plan expenses allocated to participants and beneficiaries. Therefore, it is up to the plan sponsor and fiduciaries of the plan to use their discretion to determine the appropriate fees to be allocated to participants. The method of allocating expenses would not fail to be in the interest of participants merely because the selected method disfavors one class of participants (terminated participants in our case). In the event the expenses are not associated with the services rendered or available to the individual account, then it may be considered that fiduciary duty on the part of the sponsor/trustee allocating the expense is breached.

Fees paid by plan sponsors on behalf of certain plan participants are equivalent to the plan sponsor providing an increased benefit to those employees on whose behalf the expenses are paid.

Fees charged to terminated participants must be a bona fide expense charged by a third party and cannot be a fee created by the plan sponsor to develop a revenue stream. ♦

The Department of Labor and the National Association of Securities Dealers have launched two new web sites that can provide participants with information regarding retirement savings:

<http://www.dol.gov/ebsa/PDF/SavingsFitness1/pdf>
<http://www.nasd.com/Investor/Smart/401k/index.html>

Retirement Outlook

According to a recent study released by the Prudential Financial, Inc. indicated that six in ten American workers consider their 401(k) plans the single largest source of their future retirement income. Workers anticipate a higher dependency on their company sponsored retirement plan over social security. Considering that if current patterns continue, the Social Security program could be facing a

deficit of \$45 billion by the year 2030¹, employees are on the right mode of anticipation. The majority of employees consider that their retirement savings will contribute up to 54% of their income during retirement.²

Many employees are still not taking advantage of the programs. Surveys have found that only 73% of eligible participants do take advantage of employer sponsored 401(k) plans. To make matters worse, in an analysis of 160,000 American workers, 42% cashed out their savings when changing jobs. The remainder rollover their retirement into IRAs (52%) or their next employer (6%).³

According to the study, 39% of employees, age 60 or older and 33% of those between the ages of 50-59 cashed out their savings cash out their savings upon employment termination. The most significant numbers are in the cash out rate of young employees between the ages of 20-29, 50%. Financial analysts view this as a trend, were American workers postpone saving for retirement for later years. Dangerous for most since the time for savings to grow is reduced considerably.

For employees who cash out their savings, the amount of losses associated with tax liabilities and early distribution penalties is considerable. For example, a \$5,000 cash-out could grow to \$38,000 in 30 year (7% growth). Cashing-out the savings ahead of retirement would reduce the cash value to only about \$2,850 after taxes (assuming 28% bracket) and 10% penalty payable to the IRS and a 5% state tax.⁴

The full analysis of this study is found in the Employees Benefits Research Institute web site. EBRI is a private, nonprofit public policy research organization based in Washington, DC. Founded in 1978, its mission is to contribute to, to encourage, and to enhance the development of sound employee benefit programs and sound public policy through objective research and education. ♦

IRS Flash

Social Security is going magnetic. Employers with 250 or more W-2 submissions must transmit the data online. For more information on electronic filing, visit www.socialsecurity.gov/employer/bsohbnew.html

Updates

2003-2004 Internal Revenue Service Office of Tax Policy Priority Guidance Plan. The plan indicates subjects on which regulations will be issued in 2004. Included are qualified plan benefit and contribution limits and required

¹ Study by the Employee Benefit Research Institute in collaboration with the Milbank Memorial Fund.

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http://www.401khelpcenter.com/press/pr_prudential_121803.html

³ Hewitt Associates

⁴ Thomas Watterson Correspondent of The Christian Science Monitor.

minimum distributions and Revenue Procedures for 457(b) plans to specify model provisions.

Congress approved Medicare reform legislation (H.R. 1) designed to provide senior citizens and disabled individuals with access to prescription drugs. H.R.1 will authorize tax-free subsidies to employers as an incentive to maintain retiree drug coverage and allow taxpayers to finance health care expenses through deductible contributions to Health Savings Accounts.

The total cost for this legislation is estimated at \$400 billion in the next 10 years. The subsidy would be available only for costs incurred by an individual who was eligible under an employer's plan and who was eligible to obtain prescription drug coverage under the proposed Medicare program but did not elect such coverage.

The Military Family Tax Relief Act of 2003 (H.R. 3365) was signed into law legislation. The law provides temporary postponement of individual federal tax filing deadlines for military personnel serving in a "combat zone".

The combat zone filing relief is extended to military personnel deployed outside the United States in "contingency operations". The Act will increase the death gratuity payments from \$6,000 to \$12,000 and exempt the entire amount from tax.

IRS Ruling 200342007 allows for the garnishment of 401(k) accounts to collect federal criminal fines. As stated in the ruling, Code Section 401(a)(13) anti-alienation provisions does not prohibit a court from entering a garnishment order against the 401(k) account of a participant to collect fines imposed in a federal criminal action. The ruling indicates that federal criminal fines are to be treated as if they are debts for unpaid income taxes. A garnishment judgement can be enforced against a plan participant and will not cause the plan to lose its qualified status.

Final Regulations on the disclosure to participant distributions comparing QJSAs and QPSAs and optional forms for benefit distributions have been issued¹. The regulations consolidate the content requirements applicable to the explanations of qualified joint and survivor annuities (QJSA) and qualified pre-retirement survivor annuities (QPSA) payable under certain plans and specify the requirements for disclosing the relative value of the optional forms of benefit in lieu of a QJSA and QPSA.

A plan must provide within a reasonable amount of time, (1) a written explanation of the terms and conditions of the QJSA, (2) the participant's right to make an election to waive the QJSA, (3) the rights of the participant's spouse, (3)

the right to revoke an election to waive the QJSA form of benefit. Code Section 417(a).

The final regulations also address that the description of the relative value of an optional form of benefit compared to the value of the QJSA. The explanation must be in a manner that provides a meaningful comparison of the economic values of the two forms of benefit.

These final regulations are applicable to QJSA explanations with respect to distributions with annuity starting dates on or after October 1, 2004, and to QPSA explanations provided on or after July 1, 2004. ♦

In the News



- According to the US Department of Labor's Bureau of Labor Statistics (BSL), the unemployment rate for the month of November was relatively unchanged as compared to October's rate. The November rate is at 5.9% and the number of unemployed persons also remained steady at 8.7 million.
- The GDP (Gross Domestic Product) the output of goods and services produced by labor and property located in the United States, increased to an annual rate of 8.2% in the 3rd quarter of 2003.
- According to the US Department of Labor's Bureau of Labor Statistics, the number of layoffs fell 5.6% to 1,438 in November from October's 1,523; while the number of affected workers plummeted 12.4% to 138,543 in November, from October's total of 158,240. The government defines mass layoffs as those involving at least 50 people from the same organization as measured by new jobless benefit requests.
- Consumer spending surged ahead in November, registering a 0.4% gain after a 0.1% increase in October, and a flat September reading, according to the Commerce Department. Meanwhile, personal incomes rose by an even stronger 0.5% - the best increase since May. Consumers saved 1.8% of their disposable income, up from 1.7% the prior month
- Personal income increased \$44.0 billion, or 0.5 percent, and disposable personal income (DPI) increased to \$39.2 billion, or 0.5 percent, in November, according to the Bureau of Economic Analysis.
- Personal consumption expenditures (PCE) increased \$31.1 billion, or 0.4 percent.
- In October, personal income increased \$22.4 billion, or 0.2 percent DPI increased \$21.8 billion, or 0.3 percent, PCE increased \$8.1 billion, or 0.1 percent, based on revised estimates.

¹ Pension and Benefits Week December 2003

FULL SERVICE SUPPORT

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WHO TO CALL

For information concerning items in this newsletter, or information about our services, please call one of the following people. They will be pleased to assist you.

- ▲ **Your Plan Administrator**
- ▲ **Dick Watson - Ext. 1030**
- ▲ **J. R. Piper - Ext. 1037**
- ▲ **Steve Cranfield - Ext. 1024**
- ▲ **Ed Dorman - Ext. 1010**

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