SOCIETY OF ACTUARIES

Article from:

Pension Section News

January 1998 – Issue 35

The Critic's Corner

by Joel I. Rich

Welcome to a new column reviewing tapes from various and sundry actuarial meetings. Seeing that I'm a bit schizophrenic, I have no problem being a one-man Siskel and Ebert, rating the tapes and summarizing interesting (at least to me) insights. Neither the author nor the publication takes any responsibility for any of the views expressed in this column. The column, in fact, will only be written when the author is channeling long-dead actuaries.

Our first installment is a review of several sessions from the 1997 Enrolled Actuaries Meeting.

Session 6–3: Postretirement Welfare Benefits

An interesting introductory session.

The IRS "informally" frowns on use of the aggregate cost method for 401(h) funding.

Don't forget about excluding highly compensated employees from 501(c)(9) for funding purposes.

Some organizations have been putting 401(k) matches into a money purchase plan in order to use these amounts as a basis for a 401(h) [25%] deduction. This is okay, but remember that you can't have in-service withdrawals from this money purchase plan and that the match is subject to qualified J&S rules.

The 401(h) limit is a cumulative one based on how long the 401(h) has been in existence. Some believe you need to deposit at least $1 to get the clock started, but this is not necessarily a universal option.

Trust-owned life insurance—remember it accelerates the deduction, but it's a discounted deduction, so whether it makes sense or not will depend on the investment return inside versus outside the plan and the tax rate now and in the future.

The IRS has apparently approved the plan in which the 401(h) maximum limit is based on the normal cost piece of the pension cost versus the normal cost piece of the retiree medical. The speaker was not sure that the IRS really looked at this carefully.

Section 3–6: 403(b) Plans—Compliance Issues

Some good discussions on current issues.

Under the Small Business Jobs Protection Act, you are now allowed more than one election per year of salary deduction for tax-sheltered annuities. They also point out that the definition of compensation for the maximum exclusion allowance was changed.

Under the TVC program, there have been 75 applications for corrections and 11 were closed. They dealt with multiple elections, MEA calculations, or 415 limit violations and have had penalties in the 10% range compared to the 40% allowed. In all cases, the fixes have been prospective; in other words, they didn't require disgorgement of assets in these case. However, in 402(g) cases where the elective deferrals have been in excess of those allowed, they have followed the VCR program rule of distributing the excesses and interest on them, but usually no additional sanctions.

Speakers also mentioned that if you have a 403(b) plan with a match going into a cash balance plan, the TSA may, in fact, be considered an ERISA plan, even though it only has employee money going in.

General Session: Questions for the IRS and the Treasury

Run-of-the-mill gray book, etc., issues. Two items of interest were (1) the IRS will not approve a 414(k) plan, and (2) if there are excess assets transferred to a 414(k) account, it will impose excise taxes and may even disqualify it.

On a window plan, the IRS position is that if the window benefit is greater than the normal retirement benefit, the window benefit becomes the accrued benefit even after the window closes.

Session 1–5: Paying Expenses from ERISA Trusts

A good discussion of the Department of Labor's position with regard to settlor versus fiduciary expenses.

The various DOL pronouncements were reviewed. In general, the DOL tends to be conservative. You need to check the plan language to see if you can even pay expenses from the trust. They also felt that plan amendments or trust documents should not be paid for from the trust unless they are required by the trust for legal reasons (for example, law change requires a plan amendment).

One other interesting comment was about charging individual participants for services. Their general position was that you cannot charge individual participants for services, but these costs should be allocated amongst all participants. This was clearly true where participants were exercising an ERISA right (for example, QDROs), but not as clear for other options which were not right (for example, could you charge an employee who wants to take out a plan loan).

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