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## New Regulations Shine a Light on Blackout Periods

On October 21, 2002, The Department of Labor's Pension and Welfare Benefits Administration released regulations to be effective January 26, 2003 regarding blackout periods in retirement plans.

Blackout periods can occur when changing service providers, investment options, or adding participants due to mergers or acquisitions. Other circumstances range from systems maintenance to data transmission issues.

The regulations define a blackout as any period of more than 3 consecutive business days during which a participant is unable to direct or diversify investments, obtain a plan loan, or receive a distribution. Therefore, it is imperative for all plan sponsors to be mindful of the new regulations.

If a blackout period occurs, the plan sponsor is required to provide a detailed notice to all affected participants between 30 and 60 days prior to the

start of the blackout. If notice is not provided, penalties of \$100 per day per participant may be assessed. The rules require notices be written in a manner easily understood by the average plan participant and contain the following:

- The reasons for the blackout period;
- The features to be suspended during the blackout period; and
- The start and end dates of the blackout period.

In addition, participants must be advised to evaluate their current investments since they will be unable to make certain changes during the blackout period.

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### Dorn's Corner



Hello to all of our loyal readers! In my Corner for this quarter, I'd like to talk about loyalty - what it is and why it is important in business.

Studies show that loyal customers are much more profitable than new customers. Furthermore, it costs much more to attract a new customer than it does to retain an existing one. Is a satisfied customer the same as a loyal customer? No. A satisfied customer is

measured by surveys but loyal customers are measured by their behavior. Satisfied customers may manifest what can be called "false loyalty," which means they:

- Feel little or no brand or organizational loyalty or attachment;
- Have little or no tolerance for mistakes or problems; and/or
- Are open and vulnerable for influences (minor price differences and the like).

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# Client of the Quarter

Scott-McRae Group, Inc.

We are proud to present the **Scott-McRae Group, Inc.** as our Client of the Quarter. Swerdlin assists Scott-McRae with the administration and recordkeeping of their 401(k) plan.

Just like the rest of the automotive industry, the Scott-McRae Group, Inc. began with the Henry Ford Model T. What started as the Duval Motor Company is now a diversified operating and holding company engaged in the management and ownership of innovative, dynamic and profitable companies which include 5 automobile dealerships and 4 divisions.

The Duval Motor Company opened its doors in 1916 in downtown Jacksonville, Florida. In 1923, Walter A. McRae, Sr. joined the company eventually buying into Duval Motors and bringing it through the depression and World War II. The company continued to expand by adding more locations and additional companies and adding Walter A. McRae, Jr. and Jack Scott to the list of

employees. In 1981, the Scott-McRae Automotive Group was formed.

With 702 employees, Scott-McRae puts people first. Part of the mission of the company is to “engage in the fair management of quality people and provide them with fulfilling career opportunities and high quality of work life through wellness programs and other activities which contribute to their health and well being.”

With this emphasis on its employees, Scott-McRae had its second best profit year in its 86 year history at the end of fiscal year 2002.

Scott-McRae was listed in the top 60 public and private dealer groups in the US as well as ranked in the Top 50 of Private Companies in Florida by Florida Trend magazine.

It's not only about cars for Scott-McRae. The company has built other divisions to assist the 5 dealerships with additional services. These divisions are:

**AutoCredit** offers flexible financing to non-prime customers for the Scott-McRae dealerships as well as franchised and independent dealers.

**AutoLease** is a fleet leasing superstore for corporate and individual transportation needs in the Southeast.

**Matrix Data Solutions** is a dynamic, fast-paced software development company with specific automotive industry expertise that streamlines business-to-business data exchange and provides real-time management tools to evaluate operations.

**Scott-McRae Advertising** was formed over 30 years ago to serve the advertising needs of the Scott-McRae Group. In recent years, the company has broadened its client base to include other dealerships as well as other industries.

The automobile dealerships are located in the Jacksonville and Tampa areas. They represent the makers of Acura, Ford, and Honda. In recent years, Scott-McRae dealerships have placed a major emphasis on marketing low emission alternative-fueled vehicles which are said to be the future of the auto industry.

Scott-McRae focuses not only on employees and the environment, but also community. The company was a major supporter of community events and charitable organizations by donating more than 1,000 volunteer hours in 2002. ■

## SCOTT-McRAE GROUP

### Dealerships:

#### Jacksonville, Florida

- Duval Acura
- Duval Ford
- Duval Honda

#### Tampa, Florida

- Tampa Honda Land
- Brandon Honda

### Divisions

- Auto Credit  
Offices in Florida, Georgia, North Carolina, South Carolina, and Tennessee
- Autolease Corporation of Florida  
Jacksonville, FL
- Maxtrix Data Solutions  
Jacksonville, FL
- Scott-McRae Advertising  
Jacksonville, FL



### A Family Business Four Generations Strong

top: Henry Ford and  
Walter McRae, Sr.

bottom (left to right): Mr.  
and Mrs. Walter McRae  
Jr., (Bitty), Mr. and Mrs.  
Henry “Tip” Graham  
(Diane), Alex Graham,  
Hampton Graham,  
Katie Graham

# Underfunded Defined Benefit Plans

There are some 44 million workers who participate in defined benefit plans. The retirement "promise" from a defined benefit plan is to make a specific monthly payment at retirement for the lifetime of the participant. The employer (or group of employers) contributes to the plan on behalf of all eligible employees and then invests the funds. If the growth of the assets is insufficient to pay participants the promised amount, the employer must make up the difference under the rules of the Employee Retirement Income Security Act of 1974 (ERISA). If, for economic reasons, the employer can no longer continue the plan, the Pension Benefit Guaranty Corporation (PBGC), an employer-funded government insurance program, takes over the plan and pays benefits. Not all plans are covered by the PBGC. If a plan is covered, there are limits to how much the government will pay. The PBGC does not cover state and local government sponsored plans. Since they cannot declare bankruptcy to relieve their pension obligations, they have to make up their own losses.

Calculating how much money a pension plan will need to pay benefits in the future is a complicated process. The actuary uses the following information to calculate the annual employer contribution:

- Employee census: date of hire, date of employment, salary;
- Employee turnover;
- Projected death and disability;
- Current and future interest rates; and
- Increase in salaries.

A company does not need to have all the money on hand to pay every beneficiary for future years. But the fund must provide for current retirees and a percentage of funds for future retirees.

The PBGC starts to pay attention when a plan is underfunded by 10 percent. If a plan is underfunded by more than \$50 million in vested benefits, ERISA requires that companies file statements with the PBGC. These statements are confidential, but the law does require such plans to notify the participants each year of the under-funding.

If the PBGC takes over your plan in 2003, your participants will still be able to collect all the benefits to which they are entitled, up to a specified limit. If a participant is vested but not yet retired, they'll receive a monthly payment that reflects their pay and years of service at retirement. The maximum monthly benefit for members of single-employer plans is \$3,664.77 at age 65. In a multi-employer plan, the maximum payable (after 30 years of service and age 65) is \$1,072.50 a month.

The PBGC takes over a very small number of pension plans. The PBGC will determine if the employer falls under the following criteria before they initiate a plan termination:

- 1 The entity is in a liquidation process under bankruptcy law or similar state law;



- 2 The entity is in a reorganization proceeding under bankruptcy law or similar state law, and the court determines that the employer will be (a) unable to pay its debts pursuant to a plan of reorganization or (b) unable to continue in business outside a reorganization if the plan is not terminated, and the court approves the termination; or

- 3 The entity is unable to pay debts when due and unable to continue in business if the plan is not terminated, or the costs of pension coverage have become unreasonably burdensome to the employer solely as a result of a decline in the workforce covered under all pension plans of the employer.

Most employers plan for their pension obligations with help from their actuary.

If you are not sure what this all means, call us. ■

## FAQ

**Q** When a participant requests a distribution, can we have the funds transferred from the plan into our corporate account and then write a check directly to the participant?

**A** No. Generally, any time assets are removed from a qualified retirement plan and deposited into an account of the plan sponsor, it is considered a prohibited transaction subject to penalties. While there are certain limited exceptions to this rule, participant distributions is not one

of them. Checks for distributions and any associated tax withholding should be paid directly from the plan to the Participant or the IRS and not "passed through" a company account. If this poses undue administrative burden or expense, the plan sponsor can open a separate checking account in the name of the plan and use it as a "pass through" account.

**Q** When do I have to deposit taxes withheld from participant distributions?

**A** The IRS has several schedules for depositing non-payroll tax withholding.

If the plan sponsor had withholdings of \$50,000 or less during the preceding year, the sponsor is on a monthly remittance schedule. This schedule requires all taxes to be deposited by the 15th day of the month after the month of the distribution.

If prior year withholdings exceeded \$50,000, deposits are required more frequently.

**Q** When can I pay a terminated participant from our plan?

*continued on page 4*

# Participant Loan Regulations Now "Final"

For years, plan sponsors have offered participants access to their retirement accounts by allowing them to request loans. The regulations under which loans operate have been the source of much discussion. Sponsors have issued loans under the "old" final 1995 proposed regulations and then under the additional proposed 1998 regulations, which became final in 2002. However, we now have new 2000 proposed regulations, which we are now calling the final regulations. Are you confused yet?

In general, plan sponsors may allow participants to request loans not exceeding the lesser of 50% of their vested account balance or \$50,000. Loans must be made available to all participants on a non-discriminatory basis. Usually, the guidelines for requesting loans, interest rates, and limitations are set forth in a separate loan policy.

The final regulations contain special exceptions for participants who temporarily leave employment due to military service. They postpone loan repayments during the leave, extend the repayment terms by the length of the leave, and cap interest rates in accordance with the Soldiers' and Sailors' Civil Relief Act.

Also, the final regulations specifically permit loan refinancing. If the loan policy permits refinancing, then participants may take advantage of lower interest rates if they are not violating other terms of the loan regulations. For example, a participant who requests a loan for something other than a primary residence for an original period of less than five years may refinance the loan and extend payments to the full five year term.

Aside from the loan regulations, but equally important, the Pension and Welfare Benefits Administration has issued an advisory opinion regarding the segregation of loan repayments similar to the rules for depositing employee 401(k) deferrals to the trust. Specifically, employers must send loan repayments to the trust as quickly as they send deferrals (see the Swerdlin Quarterly, 2nd Quarter, 2001).

If you want more details regarding participant loan rules or you are considering modifying or introducing a loan program, please contact us ■.

## What's Happenin'

Congratulations to Adam Pozek who was voted in as President-Elect of the American Society of Pension Actuaries (ASPA) Benefits Council of Atlanta as well as Vice-Chair of ASPA's national Sub-Committee on Reporting and Disclosure.

On January 23, Adam Pozek moderated and participated in an all-day session entitled "The Nuts and Bolts of 401(k)s," which was sponsored by Lorman Education Services.

Joanne Swerdlin, Lee Swerdlin, Dee Robbins and Stephanie Davis assisted in planning the Southeast Regional ESOP conference held in Savannah, GA on February 21. Dorn Swerdlin served as moderator for one of the sessions.

Kudos to Melodi Kline who passed the C1 ASPA exam. Mel also celebrated her fifth anniversary with Swerdlin in January.

Intrepid employees, friends and spouses recently participated in the Swerdlin & Company's second bi-annual golf tournament. Everyone had a great time, and raised \$150 for charity. By the way, Tiger doesn't have to worry about any competition from us!

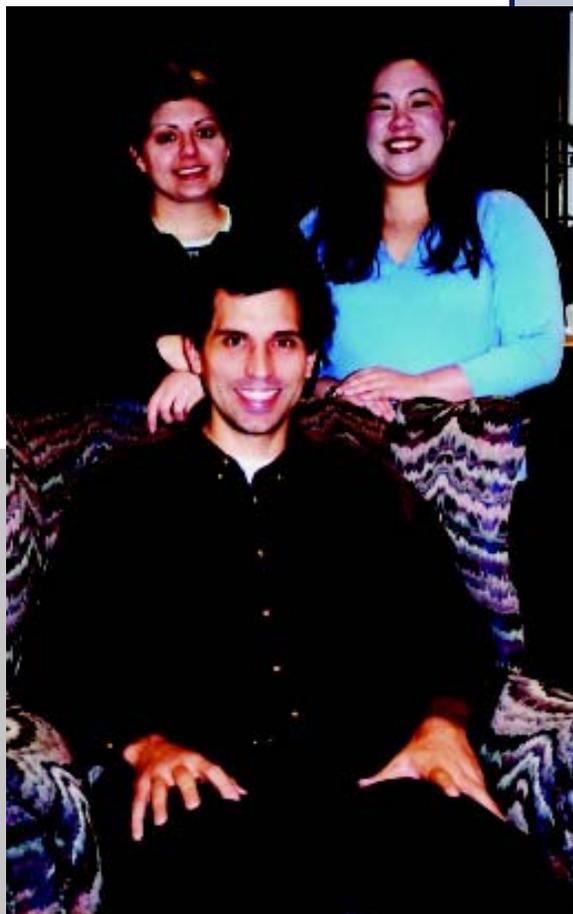
As part of our annual tradition, Swerdlin employees sponsored "a family in need" for Christmas. Our bake sale raised \$80; our "penny drop" collected \$413, and with a match by Swerdlin, we collected a grand total of \$909. (Call us if you would like the rules on the penny drop - it's great fun!) For Christmas 2002, we provided gifts for a family of five.

We welcome three new employees this quarter, Jim Callea, Julie Nix and Kristen Rohal. ■

## Welcome New Employees

From left to right:

Kristen Rohal, Jim Callea and Julie Nix.



## FAQ

*continued from page 3*

**A** The plan document and the Summary Plan Description will tell you when a distribution can be processed. It could be immediately, after the next allocation date, or the terminated participant may have to wait until reaching normal retirement age. It is important to follow the plan's provisions, because paying out at the wrong time is considered an operational failure and can be subject to significant penalties. ■

# EGTRRA Changes Top-Heavy Rules

On June 7, 2001, the president signed the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), and one of the changes was to the Top-Heavy Rules. A plan is top-heavy if the combined balances of the Key Employees are more than 60% of the total plan assets. The top-heavy determination date is the last day of the preceding plan year.

The first significant change is to the definition of Key Employee. Under the new rules, a Key Employee is any employee who met one or more of the following requirements in the preceding plan year:

- An officer having an annual compensation greater than \$130,000;
- A greater than 5% owner of the employer; or
- A greater than 1% owner having an annual compensation of more than \$150,000.

The new rules also changed the calculations necessary to determine a plan's top-heavy status. After dividing participants between Key and Non-Key employees, start with the total account balances for each group as of the determination date and make the following adjustments:

- Add all termination distributions made during the plan year;
- Add all in-service distributions made during the current and 4 preceding plan years;
- Subtract the account balances of all employees who did not work at least 1 hour during the plan year;



- Subtract the account balances of all former Key Employees; and
- Subtract unrelated rollovers.

Top-Heavy plans are required to meet some additional requirements including accelerating their vesting schedule (minimum of 6-year graded or 3-year cliff) and allocating minimum contributions to Non-Key employees. Under the new rules, an employer can offset any top-heavy minimum contributions by any matching contributions that have already been made. In addition, certain safe-harbor 401(k) plans are deemed to automatically meet these requirements. EGTRRA also relaxed the minimum accrual requirements for frozen defined benefit plans.

The new Top-Heavy Rules are effective for all plan years beginning on or after January 1, 2002. If you have any questions regarding the top-heavy status of your plan, please give us a call. ■

# New Regulations Shine a Light on Blackout Periods

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If participants have questions concerning the blackout period, you must provide a name, address and telephone number of a person who can answer their questions.

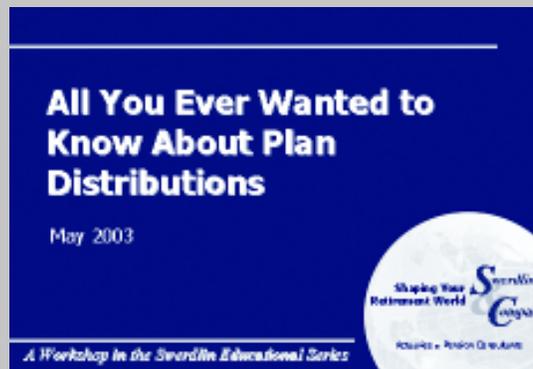
The 30-day advance notice requirement does not apply under the following 2 circumstances:

- 1 Where a postponement of the blackout period would result in a violation of the exclusive purpose and prudent man requirements of the Internal Revenue Code.
- 2 Where commencement of the blackout period is due to unforeseeable events beyond the control of the plan administrator.

In either of these situations, the plan administrator must make a written statement with respect to the circumstances precluding compliance with the 30-day advance notice requirement. This statement must be dated and signed by the plan administrator. A notice must be provided as soon as reasonably possible under these circumstances. However, if providing such notice is deemed to be impractical, no notice would be required. ■

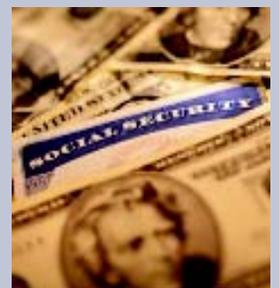
## Swerdlin Educational Series

We're excited to announce a new educational program for our clients and friends. We will offer a free workshop and continental breakfast on a quarterly basis to discuss an important pension-related topic. Our first quarter workshop topic on February 12, 2003 was Year End Testing. Our second quarter topic will focus on distributions, including loans, hardship withdrawals, QDROs, etc. Be sure to check our website frequently for a schedule of topics in our Swerdlin Educational Series. ■



## New Rules for Social Security Numbers (SSN) to Ensure Participants' Privacy

Under a California court ruling, entities doing business in California must remove SSNs from employee communications. Certain exceptions are permitted such as requiring a Personal Identification Number in addition to the SSN, but general correspondence should not reference the entire number. Unless specifically requested, Swerdlin & Company will remove SSNs from all participant benefit statements for all of our clients across the country in an attempt to ensure privacy and help prevent identity theft. ■



## Dorn's Corner

continued from page 1

So, how does one go about making loyal customers?

Studies show that loyal employees generate loyal customers. A good book on the subject is "The Loyalty Link: How Loyal Employees Create Loyal Customers," by Dennis G. McCarthy. Some of the information in this article comes from this book.

After you've read the book about how to link employee loyalty to customer loyalty, the next question is "How do I get my employees to be loyal?"

I think an important step in that direction is to create an office environment where people wake up and are happy or even excited to come to work; an environment where they can feel safe, feel like they belong, and feel appreciated. Having fun at work helps and it's not against the law!

We at Swerdlin & Company have consciously focused on this for a long time. Some of the things we do in our office to help make it a nice place to work include:

### Monthly "STARS" Lunch Meeting

We started this Monthly All-Employee Lunch over 15 years ago. We call it "Stars" because employees award paper stars to other employees to show appreciation for something they did to help them and/or the company. At first some employees thought it was a "Mickey Mouse" idea because we applauded a lot and the meeting was upbeat. However, these same people didn't mind

when they were recognized. After we award stars, we have company announcements and reports from various teams. We end every Stars meeting with birthday cake and ice cream for those celebrating birthdays during the month.

### WOW Bonuses

At any time, a Team Leader can give a cash bonus (\$50 to \$100) to anyone whose actions deserve a "Wow, that was a great job!"

### Personal Development

In addition to technical and general business skills development, we require every employee to have a minimum number of hours of personal development each year. Examples of activities we have funded are:

- Weight Watchers,
- Art class,
- Cooking class,
- Astronomy class,
- Physics class,
- Personal trainers,
- Spanish class, and
- Dale Carnegie class.

### Playroom

Our latest addition is a room in our office for parents to bring in their sick young children when other arrangements are not available. It's not a full nursery, but it provides a place for a child to play or nap so their parent can come to work.

### Casual Dress

Our dress code allows all employees to wear jeans and sneakers as long as they wear a Swerdlin logo shirt. On Fridays, we allow jeans and sneakers

even without a Swerdlin shirt. This is probably the most appreciated and least expensive "perk" of all.

The message we are trying to send is that an employee's whole life is important to us, not just the business or professional aspect. We believe that one's personal life affects the work life and you can't separate the two.

We feel the most important way to encourage employee loyalty is to show appreciation, make people feel valued, and provide an environment where people feel they belong. ■

How would you like  
**free money**  
that you could apply towards  
your Plan Administration  
Expenses?

Did you know we get all of our business from referrals? Swerdlin & Company is launching **CARE**, our **Client Assistance Referral Exchange**. Existing clients may be eligible to receive a discount for referring us a new client. For details, please call Laura O'Connor at 770.396.6601 ext 313. ■

**C.A.R.E.**

### Shaping Your Retirement World

Knowing the complexities and understanding the choices and options available in the retirement world shouldn't be a focus of your job; it's a focus of ours. We help you shape your retirement program to better meet the needs and goals of your company and your employees. Swerdlin & Company is the only resource you need to answer all of your retirement plan questions.

Our job is to make yours easier!

**Swerdlin  
&  
Company**

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