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Show Me the Money!

How soon must an employer transmit salary deferrals to the 401(k) plan after they have been withheld from employees' pay? Until recently, Department of Labor (DOL) regulations provided that employee contributions become plan assets on "the earliest date on which such contributions can reasonably be segregated from the employer's general assets." The DOL regulations also stated that in no event should the segregation date be later than the 15th business day of the following month.

Based on the above, many employers assume that as long as they deposit employee contributions before the 15th business day of the following month, they are making timely deposits. **Not so.** When auditing a 401(k) plan, the DOL reviews the employer's deposit pattern. The DOL may consider contributions late even if they are transmitted within the time period described above. Many employers have been penalized for late deposits based on the DOL's interpretation of these regulations.

Dorn's Corner



Those of you who are loyal readers of Dorn's Corner may remember that I make a declaration for our firm every year. Sometimes it takes years for these declarations to be realized.

This quarter I want to talk about three of my past years' declarations: **accountability**, **communication** and **corporate culture**; and how these relate to what we are trying to accomplish within our firm this year.

"Conversation" is the vehicle of **communication** between people. Jamie and Maren Showkeir authored a book entitled, "Authentic Conversations, Moving

Finally, the DOL has proposed a clear safe harbor timeframe for small plans (plans with less than 100 participants at the beginning of the plan year). On February 29, 2008, the DOL proposed regulations which provide definitive guidance



regarding the timeliness of employee contribution deposits. The safe harbor deadline is the 7th business day following the day on which the employee contributions are withheld from paychecks. The proposed regulations confirm participant loan payments are treated the same as employee contributions for this purpose. To satisfy the depositing deadline, the money must be in the plan trust, not necessarily allocated to participants.

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from Manipulation to Truth and Commitment." They say **conversations** in the office determine the company's **corporate culture** and the company's **accountability**. In order to change the culture and accountabilities, we first need to change the conversations in our office. This concept integrates my three annual declarations mentioned above.

Let's define the nature of existing conversations prevalent in many companies. Most organizations have a "parent-child" conversation. Management as the adult treats and talks about the employees as their children. For example:

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Client of the Quarter



We are pleased to spotlight Southern States, LLC as our Client of the Quarter. Swerdlin provides actuarial services for their defined benefit pension plan.

Southern States was founded by Mr. W.E. Mitchell in 1916 in Birmingham, Alabama as a repair shop for electric motors and transformers. From the creation of its first product, a motor operator, Southern States has displayed the spirit of innovation for which the company is known throughout the industry. They are a quality producer of high voltage switches, power fuses, and other electrical products.

As the business grew from a “mom and pop” shop into a thriving corporation, their space was quickly outgrown. In 1940, Southern States relocated to Hampton, Georgia, where they purchased Henderson Foundry & Machine Works. Their new home was a much larger facility, with a machine shop and a foundry capable of producing many different metal castings. Their facility sits on 30 acres, consisting of 120,000 square feet of manufacturing space, 40,000 square feet of office space, and a high voltage laboratory.

As the United States entered World War II, Southern States shifted from being a supplier to the electrical utility industry to supplying bomb casings and firing

pins to the U.S. military. Southern States’ significant contribution to the war effort was recognized by the U.S. military through the presentation of an Army-Navy “E” award for munitions excellence.

Southern States’ vision is to be innovators in their field. This is evidenced by the more than 120 patents issued for various Southern States inventions in the 90 plus years they have been in business. The list continues to grow as new inventions are created by their highly talented design engineers. They strive to keep a step ahead of utility demands for better technology by providing reliable, high quality electric power to customers.

In 2004, Southern States took a major step towards an expanded global presence by acquiring two European disconnect switch manufacturers, Egic of Lyon, France and Coelme of Venice, Italy. This move, along with the continued expansion of their product line, and their entry into the power electronics field, positions them to move forward into the 21st century. The need for electric power continues to increase, and Southern States is there to fill this need now and for many years to come. They are sure their founder, Mr. Mitchell, would be proud of what Southern States has become – ‘The Quality Name In High Voltage Switching.’

Quality. Service. Innovation. Long-life Performance. Reliability. Responsiveness. Cost-effectiveness. These are their commitments to their customers. In a world of ever-increasing electric demand, deregulation and global competition, Southern States is there. Be it product, engineering information/assistance, service, training, or complete and comprehensive solutions to challenging electric power needs, call on Southern States first and let them perform beyond your expectations. They stand ready to meet the rapidly changing needs of their customers in the future with the same steadfast support that has long been their hallmark.

Explore their website (www.southernstatesllc.com) to see the full spectrum of Southern States’ offerings. If your needs are not met by one of the standard products, contact them. They welcome the challenge of developing the most cost-effective solution for your power switching application, as many of their new products were developed in direct response to customer needs. Whether your requirements call for new equipment, replacement parts, retrofits, or a totally engineered solution, you can count on Southern States. ■



ATTENTION! New COBRA Regulations

The American Recovery and Reinvestment Act of 2009 (the Act), signed by President Obama on February 17, provides COBRA subsidies and special election rights to individuals who lost group health plan coverage due to an involuntary termination of employment between September 1, 2008 and December 31, 2009. The subsidies and special election rights are available effective March 1, 2009, and employers must notify affected individuals of these changes by April 13, 2009.

Under the subsidized coverage, an Assistance Eligible Individual (AEI) pays no more than 35% of the applicable COBRA premium for up to 9 months. The employer must provide the remaining 65% of the premium, but is entitled to an equal credit toward payroll taxes. In effect, the Act requires employers to act as the administrator and short-term

fundors of a government-mandated health program.

An AEI who did not elect COBRA during an original election period which expired before March 12, 2009 will have a second chance to elect COBRA coverage. The second chance to elect COBRA must be offered both to AEIs who originally declined COBRA coverage and to AEIs who elected but subsequently terminated COBRA coverage. This one-time, special election period will end 60 days after the employer provides the special election notice.

The employer must notify AEIs of these new COBRA rights no later than April 13, 2009, using one of two different notices. One notice must be provided to all AEIs currently on COBRA continuation coverage as of March 1, 2009. The other notice must be provided to all AEIs who either declined COBRA when

it was initially offered or who elected but subsequently terminated COBRA coverage before March 1, 2009. You should consult your COBRA administrator or attorney immediately for additional information.

Swerdlin is sponsoring a Client Workshop on Thursday morning, April 2, 2009 and these COBRA regulations will be on the agenda. ■



What's Happenin'

Anniversaries we celebrate this quarter: Carol Friend, 17 years; Susan Petirena, 14 years; Kim Hall and Julie Isom, 12 years; Kristin Hamilton and Mike Raker, 5 years; Marie O'Sullivan, 4 years; Kirsty Simmons, 3 years; Linda Mathews and Shenita Spivery, 2 years; Danielle Farmer and Tina Gilbert, 1 year.

We welcome three new employees this quarter: Amanda Nichols to the Actuarial Team, Christi Bussey to the Cafeteria Team and Esmeralda Juarez to the Health and Welfare Team.

Congratulations to several of our employees who recently passed tests sponsored by ASPPA (the American Society of Pension Professionals and Actuaries): Adam Stone and Kim Hall passed the Defined Contribution #3, and Craig Lindenlauf, Kristin Ellis, Marie O'Sullivan, Shenita Spivery, Takeya Simmons and Tina Gilbert all passed Retirement Plan Fundamentals 1 and 2.

Connie Woodmansee, Donna Martin, Karen Miracle, Julie Isom, and Trey Stephens attended the Benefit Conference

Show Me the Money!

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The new safe harbor depositing deadline does not apply to large plans. The DOL feels employers with large plans are better able to deposit their employee contributions sooner than 7 days. They are currently working on a safe harbor deadline for these large plans.

What are the consequences of making late deposits? When employee contribution deposits are late, the employer is considered to be using plan assets for corporate purposes. This is a prohibited transaction. The employer must pay the "lost earnings" to each participant's account as well as a 15% prohibited transaction penalty to the IRS. Although the lost earnings and the 15% penalty may not be significant, the calculation and allocation of these amounts can be time consuming and result in increased administrative costs.

In conclusion, it is very important that you transmit employee contributions and participant loan payments in a timely manner. Feel free to contact your Swerdlin representative if you need our help. ■



of the South, January 15 and 16, sponsored by the local chapter of ASPPA.

Lee Swerdlin attended the TD Ameritrade Conference in Las Vegas in February.

Congratulations to Emily Spencer on her recent engagement to Walt Kopp. An October wedding is planned. ■

An Interim Valuation?

Do you sponsor a defined contribution plan valued only once a year? If so, you may want to consider an interim valuation. With the current volatility of the investment markets, a participant may receive a windfall without an interim valuation. For example, if Participant A took a distribution in October, 2008, based on his account value as of December 31, 2007, he would receive significantly more than his account is actually worth. As you know, the stock market was down about 40% during this period.

In the above example, Participant A would enjoy a windfall to the detriment of the other participants. This is an inequity which could be viewed as a violation of fiduciary responsibilities.

If you are a plan sponsor, you should

review your document to see if interim valuations are allowed. If you choose to have an interim valuation performed, you should ensure that your participants understand the procedure. There is no fiduciary violation since a participant does not have a protected benefit regarding a particular allocation date.

If your plan does not currently allow interim valuations, it can be amended. Following are some examples of such an amendment:

1. Allow more frequent valuations, such as quarterly or semi-annually.
2. Perform an interim valuation if the market fluctuates a certain percentage in a given time period (for example, 10% in a one-month period).
3. Perform an interim valuation when the Trustee feels it is appropriate.

Please call your Swerdlin representative if you would like more information on interim valuations. ■



“WRERA” for Defined Benefit Plans

The Worker, Retiree and Employer Recovery Act (WRERA) of 2008 became law on December 23, 2008. This bill serves two purposes. First, it includes technical corrections to the Pension Protection Act of 2006 (PPA) and certain other provisions. Secondly, the bill provides guidance on specific issues related to Defined Benefit (DB) plans, such as:

- Target Normal Cost calculations can now include anticipated administrative expenses paid from plan assets.
- Relief on restrictions imposed by PPA on mandatory cash-outs.
- Plans with 100 or fewer participants can provide a fixed 5.5% interest rate for determining maximum lump sum benefits.
- Rules related to the maximum tax deductible contribution were clarified for employers who sponsor both DB and Defined Contribution (DC) plans. Generally only employer contributions in excess of six percent of compensation to a DC plan count against the deductible limit for DB plans.
- A two-year asset “smoothing” replaces the two-year asset “averaging” that was required by PPA.

For details on how this law will affect your DB plan, call Swerdlin & Company. We can help you understand the impact to you and your participants. ■



Q Our plan says that if a terminated participant’s account balance is under \$5,000, it must be cashed out or rolled over. When determining the \$5,000 vested balance amount, can I exclude rollovers?

A Yes. If your plan allows, you can ignore any rollover amounts in the terminated participant’s account.

Q What if the terminated participant had an outstanding loan?

A Plans generally provide for an automatic loan offset at termination of employment. This means that you can ignore the loan when determining if the balance in the account is over or under \$5,000.

Q Do I have any options in making mandatory distributions from the plan?

A Yes, but the option must be in the plan document. You can lower the threshold to \$1,000 or remove it completely. Keep in mind that you are probably being charged on a per participant basis, so

making mandatory distributions will lower your administrative costs. ■

Privately Held ESOPs

Current economic conditions make it more important than ever for ESOP companies to forecast their liability and plan for the funding of their obligations.

Swerdlin & Company can provide this service to our ESOP clients. Please contact us for information about having a repurchase liability analysis produced for your ESOP.

- “They act like children, so we have to treat them like children,” or
- “We have to tell them what to do and watch to make sure they do it; we have to make them accountable,” or
- “We need to keep this information from the employees because they won't know how to deal with it,” or, as Jack Nicholson said, “You can't handle the truth!”

Have you heard these kinds of conversation in your Company? I have to admit we have here at Swerdlin. Many leaders are also parents and may not have made the transition from parenting to managing. Our culture is still influenced by Newtonian thinking where the universe is a big machine and we are all separate components. Also, the Industrial Age still influences our behavior where employees are treated as interchangeable parts in the company's operations. These thought processes still remain with us, except employees have evolved from machine parts to human children with no ability or right to think for themselves or be responsible.

In the parent-child relationship within the family, the children exchange their freedom and self-expression for shelter, food and security. Children need this support because they are not yet able to live independently. Adult employees deal with all sorts of complex issues in life outside the workplace. Why should we treat them like kids in the office?

Also inherent in this philosophy is that people will not choose accountability on their own; therefore they must be bribed or coerced. Companies expend enormous amounts of energy and resources hammering home the message that no one else is responsible for their accountability. The authors of *Authentic Conversations* say you can't impose accountability on people – they must choose it on their own. When the organization tries to impose accountability, employees have three choices:

1. To choose commitment;
2. To choose compliance; or
3. To choose the appearance of compliance.

If they choose commitment, they internalize the choice and consistently make decisions to live out that commitment. If they choose compliance, they focus on the consequences of not being accountable. This choice puts them in a fear-based mindset. The worst choice for the company is when employees choose to work really hard to look compliant, while getting away with the minimum, expressing cynicism, and getting coworkers to agree.

So what can management do to change the conversation in the office? The following list compares old assumptions to new assumptions

Old Assumptions	New Assumptions
Seeing people as objects	Seeing people as complex human beings
Viewing people's feelings about their individual experiences as useless and irrelevant in creating the future	Inviting and encouraging the disclosure of individual plans and feelings in creating a shared future
Ignoring the freedom and will of the individual	Emphasizing freedom and accountability of the individual
Seeking techniques to shape behavior and manage emotional responses	Framing choices as the primary means for engagement and creating change
Using policies, procedures, and practices to ensure compliance and alignment	Using policies, procedures, and practices to encourage engagement, disclosure, and commitment
Having faith in leadership, experts, and authority to make things happen	Having faith in collaboration, goodwill, and intelligence to make things happen
Insisting that dominant and relevant reality is: <ul style="list-style-type: none"> ■ Roles and responsibilities ■ Job description ■ Practices ■ Procedures ■ Processes ■ Structures ■ Corporate visions and values 	Acknowledging the primary reality is the experience of the person and his or her: <ul style="list-style-type: none"> ■ Plans ■ Projects ■ Concerns ■ Sense of meaning ■ Practical motives ■ Behavior ■ Way he or she sees things

for helping change the conversation and improve the culture.

We at Swerdlin are working to shift from the old assumptions to the new. I'll keep you posted on our progress. We want to encourage our employees to voice their feelings in creating a shared future.

I hope this has been helpful – I'll be back next quarter. ■

Understanding Your 401(k)

ADP and ACP Testing

One aspect of 401(k) plans that is not easily understood is the annual 401(k) and 401(m) nondiscrimination testing process for deferrals and match.

Unless a 401(k) plan is a safe harbor plan, every year it must satisfy the 401(k) and 401(m) nondiscrimination testing. The purpose of the tests is to ensure that Highly Compensated Employees (HCEs) do not benefit disproportionately to Non-Highly Compensated Employees (NHCEs), based on their contributions to the 401(k) plan. The two required tests are the Actual Deferral Percentage Test (ADP test), and the Actual Contribution Percentage Test (ACP test).

A plan must use one of two testing methods. The Current Year method uses all current year contribution rates in the calculation. The Prior Year method compares the current plan year HCE contribution rates to the prior plan year NHCE contribution rates. The testing method to be used must be specified in the plan document.

If a plan fails either test, IRS regulations provide a number of ways a plan can make corrections. The two most common methods are: to allocate additional contributions to the

NHCEs; or refund excess contributions to the HCEs. The method to use depends on the specific circumstances, and your Swerdlin representative will be happy to discuss these options with you.

For plan years beginning January 1, 2008, refunds of excess contributions and attributable earnings are taxable in the year distributed. In general, a penalty applies to refunds paid later than 2-1/2 months after the end of the plan year. However, if the plan has an eligible automatic contribution arrangement (EACA), the employer has 6 months to make the refunds without incurring the excise tax. ■



Vision Statement

We strive for financial strength for our clients, our employees and our company by caring to be the best.

We are committed to be the leading employee benefit consulting firm in our market. We achieve this through cooperative teamwork, community building and continuous learning and development.

Mission Statement

We focus primarily on design and administration of all types of employee benefit plans. Our mission is to develop relationships with our clients, our employees and our community so that all parties grow and develop financially and otherwise.

Shaping Your Benefits World

Knowing the complexities and understanding the choices and options available in the benefits world shouldn't be a focus of your job; it's a focus of ours. We help you shape your benefits 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 benefit questions. Our job is to make yours easier!



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