Swerdlin & Company
Actuaries and Employee Benefit Consultants

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Self-Directed Brokerage Account Disclosure Requirements

The Department of Labor (DOL) Participant Disclosure regulations under ERISA §404(a)(5) apply different requirements to self-directed brokerage accounts than to those applied to other investment arrangements.

Self-directed brokerage account investment arrangements differ from the investment alternatives offered under the plan. It is the plan administrator's responsibility to describe how self-directed brokerage accounts work and what arrangements are available to the participants under this scenario. Any account balance restrictions or limitations on trading must be discussed and participants must be informed of their options for self-directed accounts.

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Dorn's Corner

This quarter I'd like to use my "Corner" to plug my new book, "A New Science Worldview," which was recently published and released. If you are an avid reader of "Dorn's Corner," you may recognize some of the conversation from prior articles that became a resource for my book.

My book is a quick read with only about 50 or so pages, ideal for busy people with limited time for reading. I compare "old science" with "new science" and talk about a new paradigm for living and working. By bringing consciousness and spirituality into science, we open the door to understanding our relationship to our surroundings and other people. We need to change some of our old beliefs we are "stuck in" to change the world and make it a better place for all of us. I believe this new way of thinking can rid our world of many of its problems. I know this statement sounds like a big stretch, but I believe it is possible.

When I started working on my book about 10 years ago, only a very few people could relate to my ideas. Over this last decade, the events we have experienced, including terrorism, greed, and threats of nuclear warfare, have made people more open to listening to my ideas for a different way of thinking, believing, and living. Our society is desperate for solutions to the overwhelming problems in our country and the world as a whole. Things that worked in the past are no longer working.

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F.A.Q.

Q *I am a Human Resources professional at a local non-profit organization. I am unable to locate a plan document for our 403(b) plan. The CEO does not recall ever signing a plan document. What should we do?*

A Revenue Procedure 2013-13 now allows a plan sponsor to use the Voluntary Correction Program to correct a failure to timely adopt a written 403(b) plan. Plans can correct this failure using Appendix C and Schedule 2 on the new IRS Forms 8950 and 8951.

Q *In 2011, our cash flow did not allow us to make the employer matching contribution to our 401(k) plan, and we were under the impression that the employer matching contribution was discretionary. We have recently found out that it was not discretionary. What should we do?*

A In the event an employer fails to make a required matching contribution, the new EPCRS program provides that, in some cases, a plan sponsor may make a corrective matching contribution rather than a qualified non-elective contribution (QNEC). Unlike a QNEC, this corrective contribution would be subject to the plan's vesting schedule.

Q *Our 401(k) plan is not a safe harbor plan and we failed our 2012 ADP test. Our forfeitures for 2012 are over $150,000. Could we use our forfeitures to make a QNEC contribution so that our highly compensated participants do not have to receive a refund?*

A No. Revenue Procedure 2013-12 clarifies that employer contributions (QNECs) made to correct an ADP or ACP test may not be funded with forfeitures.

New Fees for Health Plans

The Patient Protection and Affordable Care Act (PPACA) established the Patient-Centered Outcomes Research Institute (PCORI), which will be funded by the PCOR fee. This will impact the total amount paid by employers for health benefits. The PCOR fee is assessed on plan sponsors and insurers to provide funding for research on further health care decisions, including proof of the effectiveness of various treatments being used by health care providers. The PCOR fee is also referred to as the Comparative Effectiveness Research Fee.

Filing and payment of the PCOR fee will be reported on IRS Form 720. The form and payment will be due as follows:

Due Dates for Form 720 and Payment of PCOR Fee

Plan Year End	Due Date	For Plan Year
Before 10/01/2012	N/A	N/A
10/01/2012-12/31/2012	7/31/2013	2012
1/01/2013-12/31/2013	7/31/2014	2013

The PCOR fee is set up for years 2012 through 2019.

For fully-insured plans, the health insurance company is responsible for filing the form and paying the fee on behalf of the employer. The insurance carrier will include the PCOR fee in the annual premiums. For self-insured plans, the plan sponsor (employer) is responsible for filing the form and paying the fee. Self-insured plans include Health Reimbursement Arrangements (HRAs).

If an employer has a fully-insured plan and an HRA, the insurance carrier will be responsible for the form/fee on the health insurance plan and the employer will be responsible for the form/fee on the HRA.

Please see below for the fee for each year:

PCOR Fee	Plan Year End	Fee Formula
Year 1	10/01/2012–12/31/2012	$1.00 X average number of covered lives
Year 2	2013	$2.00 X average number of covered lives
Years 3-7	2014-2019	$2.00 X average number of covered lives (indexed)

Please note the fee is determined by the average number of covered lives. This includes the employee, spouse, and dependents covered under the health insurance plan. Several methods can be used to determine the number of covered lives, including the actual count method, snapshot count method, and the Form 5500 count method. Since this is very complicated, feel free to call Cynthia Navan-Clark for assistance.

Swerdlin & Company is developing further guidance on PCOR fees and PPACA provisions, and will dedicate the second quarter newsletter to healthcare reform. Please feel free to contact Cynthia at Swerdlin & Company if you have any questions regarding how to prepare your company for the new PPACA requirements. Cynthia's direct line is 678.775.5551 and her email is cnavan@swerdlin.net. ■

We can help you with the following:

1. Actuarial services, including:
    - Defined Benefit
    - Cash Balance
    - Supplemental Executive Retirement Programs (SERPs)
    - Actuarial Expert Witness
    - Medicare Part D Actuarial Attestation
    - Post-retirement medical calculations: ASC 715-60
    - Actuarial studies for Health and Welfare Plans
    - Compliance testing for self-funded plans.

2. **ESOP administration**, including:
    - Publicly traded
    - Privately held
    - Leveraged
    - Non-leveraged
    - KSOPs
    - Repurchase Liability Studies

3. Other Defined Contribution Plans, including:
    - 401(k)
    - TPA & Recordkeeping Services
    - Cross-tested and age-weighted
    - 403(b), 401(a), 457

4. Cafeteria (Section 125) Plan Administration, including:
    - FSAs
    - POPs
    - HRAs
    - QTPs

5. Other consulting services, including:
    - Comprehensive Employee Benefit Statements
    - Plan Design
    - Employee Communication
    - Regulatory Compliance
    - Special Studies

Each retirement plan must retain an outside broker or investment advisor. We are not investment advisors.
Give us a call at 770-396-6601 or 800-507-9373.
www.swerdlin.net

Service Spotlight: ESOPs: Avoiding the Have & Have-Not Situation

So, what is the "Have and Have-Not" problem? One of the most common challenges faced by mature Employee Stock Ownership Plans (ESOPs) occurs when some ESOP participants (usually those who have been with the company for many years) have accumulated significant stock account balances, and the newcomers have little or no stock. It is a challenge to sustain an employee ownership culture when a group of employees have a very small share of the stock.

The "Haves" are highly motivated to protect and enhance the value of their accounts, and the "Have-Nots" are unlikely to appreciate the significance of employee ownership. These newcomers are likely to be skeptical of the benefits the ESOP offers. Aside from the culture and morale problems produced by the "Have and Have-Not" situation, the concentration of ESOP stock in the accounts of the more senior employees results in an acceleration of the company's repurchase obligation.

It is difficult to completely avoid the "Have and Have-Not" situation. However, a couple of steps to minimize and/or delay this are as follows:

1. Extend the term of the internal loan (the one between the ESOP and the Company) over a longer period of time, such as 20 years instead of 10 years.
2. Design the ESOP document to allow the allocation of dividends or S-corporation distributions made on unallocated shares of company stock to be based on participant compensation, as opposed to share balances.

If your ESOP participants are already divided into the "Haves" and the "Have-Nots," the following strategies may be available to you in order to better balance your plan.

- **Recycle shares in the ESOP.** Contribute enough cash to the ESOP each year to repurchase shares from former participants and exchange this cash contribution in the participants' accounts for the repurchased shares.
- **Issue new shares as a contribution to the ESOP.** This will dilute the ownership of the existing shareholders. However, it will likely improve motivation and productivity among the newer shareholders.
- **Provide early diversification.** Amend the plan document to allow for earlier diversification, in larger amounts, and for longer periods of time than is required by law. This will create a larger pool of shares to be recycled.
- **Re-leverage the ESOP**. The ESOP can acquire the shares of former participants by taking out another loan, and reallocating these shares as the loan is paid down.

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ESOPs: Avoiding the Have & Have-Not Situation

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- **Reshuffle or rebalance ESOP shares**. Each year the plan accounts are rebalanced so that each participant has the same percentage of his or her account invested in company stock and other investments. This method will most likely require some cash contributions. Besides providing the "Have-Nots" with more shares of company stock, this method also provides for diversification of the accounts of longer-term participants. This method must be clearly communicated, along with the message that the ESOP is designed for the benefit of all.

The "Have and Have-Not" situation is definitely one that can trouble mature ESOPs. However, it is something for younger ESOPs to keep in mind. Your Swerdlin & Company representative would be glad to discuss this further with you. ■

Employee Plans Compliance Resolution System (EPCRS)

In December 2012, the IRS updated the Employee Plans Compliance Resolution System (EPCRS). EPCRS allows sponsors of qualified plans a way to correct plan errors. They offer the following three programs:

- Self-Correction Program (SCP),
- Voluntary Correction Program (VCP), and
- Audit Closing Agreement Program (Audit CAP).

The changes made to EPCRS by Revenue Procedure 2013-12 include:

- Expanded corrections for 403(b) plan failures,
- Revised submission procedures for the VCP,
- Rules for defined benefit plans subject to Section 436 restrictions, and
- Changes to 401(k) safe harbor correction methods and fee structures.

If you would like to discuss this further in light of your own plan, please contact your Swerdlin representative.

Self-Directed Brokerage Account Disclosure Requirements

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Disclosures for self-directed accounts must include an explanation of fees and expenses charged on an individual basis, rather than on a plan-wide basis. This includes commissions or fees charged in connection with the purchase or sale of an investment. The DOL allows for a general statement that fees exist and may be charged to a participant's account provided the disclosure also (1) provides directions for participants to obtain information regarding any fees, and (2) advises participants to obtain from the provider of the brokerage account fees, as well as any undisclosed fees, for purchasing or selling an investment.

The plan administrator must provide the participant with a quarterly statement listing the actual dollar amount and a clear explanation of the fees charged to a participant's account for the preceding quarter.

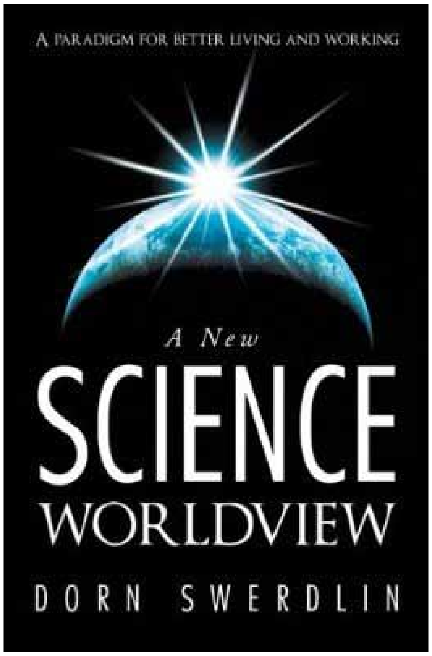
Finally, the disclosures regarding individual fee and expense information for self-directed brokerage accounts must be provided to all plan participants, not just to those who have elected to use this plan feature. ■

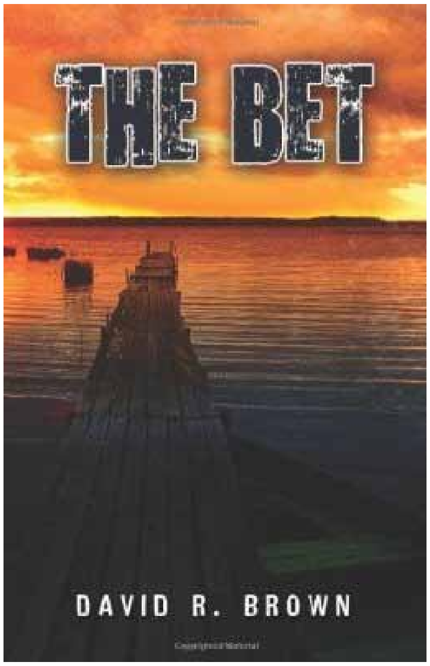
Roth In-Plan Conversions – Round 2

On January 2, 2013, The American Taxpayer Relief Act of 2012 (the "fiscal cliff" bill) was signed into law. This law allows employers to amend 401(k), 403(b), and governmental 457(b) plans to permit conversions of pre-tax account balances to Roth account balances. Previously, such conversions were permitted only when the pre-tax amounts could be distributed.

The revision to this rule allows for all plan participants to take advantage of this feature if the plan document is amended to allow for Roth Conversions. Before January 2, 2013, only participants already eligible for a distribution (in-service or termination) could convert pre-tax money into a Roth account within the plan.

In 2010, participants who qualified for a Roth conversion were provided the opportunity to spread the tax burden for this conversion over two years. The new law does not allow the tax burden to be spread out. Going forward, taxes generated from a pre-tax to Roth conversion within a qualified retirement plan must be paid in full in the year of the conversion. ■





Congratulations to our newly published authors: Dorn Swerdlin and David Brown

Congratulations to Travis and Cherish Drummond on their December wedding.

What's Happenin'

Anniversaries we celebrate this quarter: **Susan Petrirena**, 18 years; **Julie Isom** and **Kim Hall**, 16 years; **Kristin Hamilton**, 10 years; **Linda Mathews** and **Shenita Spivery**, 6 years; **Christi Koberg**, 4 years; **Mary Butina**, **Tiffany Enoch** and **Tina Gilbert**, 3 years; **Christine Fu** and **David Benoit**, 2 years; and **Lisbet Flaxman**, **Travis Drummond**, and **Waveney Blackman**, 1 year.

Congratulations to **Dorn Swerdlin** on the release of his first book, "A New Science Worldview: A Paradigm for Better Living and Working." Dorn spoke about his book and held a book signing at Phoenix & Dragons Book Store on Roswell Road on February 19.

We also congratulate **David Brown**, a Relationship Manager for our Daily Recordkeeping Department, who also released his first book, "The Bet."

Congratulations to **Patti Williams**, Manager of our Daily Recordkeeping Department, who recently became engaged.

Congratulations to **Travis Drummond**, from our Actuarial Team, who married Cherish Lykins on December 29!

On February 2, **Stacey Moquin** participated in the American Lung Association 2013 Fight for Air Climb. **Stacey met her fundraising goal of $1,000**. She climbed 41 flights of stairs, covering 82 floors with 789 stairs. Way to go, Stacey!

Adrian Farnon, **Kathy Latour**, **Lee Swerdlin** and **Lorene Pierre** attended the January 23 workshop for the Atlanta Benefits Council of ASPPA. The workshop discussed the latest rules for compliance testing of 401(k) plans.

On February 1, **Joanne** and **Lee Swerdlin** attended the UBS Fiduciary Forum at the Capital City Club. Lee participated as a speaker at one of the sessions.

Joanne Swerdlin, **Julie Isom**, **Melissa Spencer** and **Susan Petrirena** will be in Seattle, April 24-26 for the Annual NCEO Conference. Melissa Spencer will be speaking at one of the sessions and Susan Petrirena will lead a roundtable discussion. Swerdlin will also have a table at the Trade Show. If you plan to be there, please come by and see us!

We are proud of our Swerdlin employees who participate in various charity events throughout the year. Last year, **Swerdlin raised $2,200 for their charity fund.** In December, the money was used to help several families in need. In addition, a portion was also donated to the Cherokee County Battered Women's Shelter. Swerdlin employees have already begun their fundraising events for 2013.

On January 29 **Adrian Farnon**, **Joanne Swerdlin**, **Julie Isom**, **Kathy Latour**, **Kim Hall** and **Susan Petrirena** attended the first Women in Pensions (WIPs) dinner held for 2013. Susan Petrirena has been a Board Member of the organization for several years.

Our first **Client Workshop** for 2013 was held on Thursday, March 21 at our office. Topics discussed included health care reform, actuarial requirements for health plans, and more.

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Dorn's Corner

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In my book, I provide examples of how I've incorporated some of these new beliefs and ideas in both my personal life and within my firm. I describe some of the processes I have gone through to help me incorporate some of the new findings set forth in "new science." I contend that if enough people change their worldview, by reaching a critical mass we can change and evolve the whole human species to a significantly higher level. Some believe our species, homo sapiens, will have a new name and will be as different from us as we are from Neanderthal man.

Now that I have excited you about my book (?), let me tell you how to order a copy. Since my declaration for 2013 is The Year of Affluence, buying my book can enable me to flow good positive energy to more people. Also, it helps me become more affluent financially!

My first choice is for you to send a check for $8.99 made out to me personally to my office address, shown on this newsletter. You can also buy it on Amazon, either paperback or eBook. Bookstores such as Barnes & Noble will take orders online or at the stores.

Thanks to my loyal readers! Your feedback, interest, and comments over the years have been most appreciated and were certainly instrumental in motivating me to write this book.

I wish you all a Happy & Affluent New Year! I'll be back next quarter. ■

Plan Fee Disclosures Have Been Distributed – So Now What?

The first round of plan sponsor and participant fee disclosure requirements have come and gone. According to industry surveys, the response to all of this information is lackluster at best. One survey indicates more than 80% of small business owners are now more confused about plan fees than before! These notices are not really doing a good job of providing plan sponsors with the "easy to understand" information they need to answer participant questions.

Surveys also indicate plan benchmarking to be a good way for service providers to more clearly describe plan and participant level fees to the plan sponsor. Swerdlin works with an independent third party to benchmark our fees against those paid to other service providers for similar plans. These benchmark reports include recordkeeping and administration fees, as well as advisor and investment fees.

When we deliver these reports to our clients, we explain each of the fees and how they relate to the plan sponsor and/or the plan participant. These reports also indicate, in several different categories, how your fees compare to others in your peer group. These reports help plan sponsors better understand the true cost of the plan. Also, documentation that the fees have been reviewed for reasonableness helps satisfy the DOL requirements.

If you are interested in having your 401(k) or 403(b) plan fees benchmarked, please contact your Swerdlin representative. ■

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