The Swerdlin Quarterly

A Trusted Source for all your **Benefits** Needs.

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Why is a Beneficiary Designation so Important?

One of the most overlooked items related to participants' retirement plan accounts is their beneficiary designation. Why is this so important?

If no beneficiary is designated, the plan administrator must determine who receives the death benefit based on the plan document. Generally, if no beneficiary designation is found, and if there is a spouse, he/she receives the death benefit. If there is no spouse, the plan document may provide for a default beneficiary.

Participants should review and update their beneficiary designations periodically, especially following life changes, such as marriage, divorce, birth or death. A valid beneficiary election form must be on file for EACH benefit plan in which the individual participates. Even if a participant's will addresses retirement accounts, these accounts will be distributed according to

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Dorn's Corner

This quarter I want to fill you in on some exciting news at Swerdlin & Company. As of 3:00 p.m., March 31, 2011, we closed on an acquisition of a company in the Boston area. This is our first office outside our home base in Atlanta. It brings us a market in New England with the additional book of business and increased revenue.

Our growth over the years has included similar deals where we purchased smaller firms in our line of business. The Boston deal is our latest; however, we have had three other acquisitions in the past where the owners of firms were looking to get out of the retirement business. Each of these firms were in Atlanta and did not result in an additional office out of town.

Starting in 1983, the Connecticut General Insurance Company (now CIGNA) decided to stop providing actuarial and administrative services for their pension clients. We were lucky to have been selected to take over the plans in the Atlanta agency. At that time our business was only three years old and the acquisition of these CIGNA plans doubled our revenue and enabled us to hire some additional employees.

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Small Plan Audit Waiver

Generally, all pension plans are required to obtain an audit by an independent accountant to be submitted with the annual Form 5500. However, small retirement plans (plans with fewer than 100 participants at the beginning of the plan year) are excluded from this requirement if they meet the following three conditions for an audit waiver:

1. As of the last day of the preceding plan year, at least 95% of the plan's assets are "qualifying plan assets." If less than 95% are qualifying plan assets, any person handling these assets must be bonded in an amount at least equal to the value of the non-qualifying plan assets.
2. The Summary Annual Report (SAR) furnished to participants and beneficiaries must include additional disclosures and asset information.
3. In response to a request from any participant or beneficiary, the plan administrator must furnish, without charge, copies of statements the plan receives from the "regulated financial institutions" holding or issuing the plan's qualifying plan assets and evidence of any required fidelity bond.

Qualifying plan assets are:

- Any asset held by certain regulated financial institutions;
- Shares issued by an investment company registered under the Investment Company Act of 1940 (e.g., mutual fund shares);
- Investment and annuity contracts issued by any insurance company;
- In the case of an individual account plan, any assets in the account for which the participant or beneficiary is furnished a statement from a regulated financial institution describing the plan assets held and the amount of such assets;
- Qualifying employer securities, as defined in ERISA; and
- Participant loans, whether or not they have been deemed distributed.

Only the following institutions are regulated financial institutions for purposes of the audit waiver conditions:

- Banks or similar financial institutions, including trust companies, savings and loan associations, domestic building and loan associations, and credit unions;
- Insurance companies qualified to do business under the laws of a state;
- Organizations registered as broker-dealers under the Securities Exchange Act of 1934;
- Investment companies registered under the Investment Company Act of 1940; or
- Any other organization authorized to act as a trustee for individual retirement accounts under Internal Revenue Code.

Pension plans are required to have a bond for at least 10% of the plan assets, up to a maximum of $500,000. However, if the plan has non-qualifying plan assets, the bond coverage must increase to the greater of 10% of the plan assets or 100% of the non-qualifying plan assets.

Example 1:

Total assets are $550,000, of which $50,000 are in non-qualifying plan assets. The 10% bond of $55,000 is sufficient because the bond amount covers the non-qualifying assets.

Example 2:

Total assets are $550,000, of which $300,000 are in non-qualifying plan assets. The 10% bond of $55,000 is not enough, and needs to be increased to $300,000.

If Swerdlin & Company prepares your Form 5500, please be sure to provide us with a copy of the fidelity bond for our files. Should you have any questions on this subject, please contact your Client Manager. ■

In Memoriam

It is with great sadness that we inform our clients and friends of the sudden death of Karen Miracle on April 12.

Karen worked for Swerdlin for 12 years and was a great technical and personal resource to her Team, the Company and our Clients. Karen always had a smile for everyone and was never too busy to help any of us.

Karen was originally from Minneapolis, and had lived in Atlanta for 18 years. She was a devoted mother, grandmother, daughter and sister. Her interests included photography, gardening, fishing and cake decorating with her granddaughters.

We all have fond memories of Karen and will miss her very much. ■

F.A.Q.

Q *We inadvertently allowed an ineligible employee to make salary deferrals to our plan. How can this be corrected?*

A If your plan document does not provide any guidance, then this error can usually be self-corrected. Forfeit the deferral and any related match, and return the deferral to the employee through the next payroll. This will ensure the correct taxes are withheld and the returned deferrals included in the employee's W-2 form. Be sure to let your administrator know so the deferrals are not included in the year-end testing.

Another option is to retroactively amend the plan to make the employee eligible.

Q *One of our employees pledged his account balance in the plan as collateral for a bank loan. He has stopped making payments on the loan and the bank has contacted us. What should we do?*

A Since assets in a qualified retirement plan cannot be assigned, the plan has no responsibility towards the loan. The Plan Administrator should notify the Bank that the pledge is invalid.

Q *Many of our staff are "on-call" during which time they can be called into the office or assigned a specific job. Do we count this time for vesting, etc.?*

A Yes. Generally, all such hours should be credited as Hours of Service for plan purposes.

Q *Can a 401(k) plan limit the deferral percentage and still permit catch-up contributions?*

A Yes. A plan can limit the deferral percentage of the Highly Compensated Employees (HCEs). Once the limit is reached, any HCE age 50 or older can still defer an additional amount to be treated as a catch-up. For example, assume the plan limits deferrals to 6% of compensation that converts into a dollar amount of $10,500. An HCE age 50 or older can defer an additional $5,500 catch-up contribution, since the catch-up is not counted towards the 6% maximum limit.

Uh-oh! Now What? Correcting Plan Mistakes

As we all know, pension laws are very complex. Even the most diligent plan sponsor can make a mistake. The question is, "How do you correct plan mistakes?" Both the IRS and DOL offer programs for plan sponsors to correct these violations.

The IRS offers three programs for correcting mistakes that are collectively referred to as the Employee Plans Compliance Resolution System (EPCRS). Each of these programs targets different types of mistakes based on the severity of the violation and the timing of the correction.

The first and easiest to use is the Self-Correction Program (SCP). This program allows plan sponsors to self-correct certain insignificant operational errors such as paying out the wrong vested percentage or excluding an eligible employee from the contribution allocation. Under SCP, these errors can be fixed at any time as long as they are isolated incidents. If the mistake involves more than one or two participants, or the mistake is considered significant, the plan sponsor must make the corrections within two years of the mistake. The best feature of this program is that no penalties are assessed.

The next correction program is the Voluntary Correction Program (VCP). This program is used for voluntary correction of qualification failures and operational issues that cannot be corrected using the SCP. The VCP can be used as long as the mistake is corrected prior to notification of a plan audit by the IRS. Fees associated with VCP are usually much less than fees imposed when a mistake is found during an IRS audit.

The third program of the IRS is the Audit Closing Agreement Program (Audit CAP). If you are required to use this program, it means the IRS has audited the plan and found a significant error or errors that have not been corrected or disclosed. The IRS dictates the correction method to be used and the penalty. The cost of these corrections and penalties under the Audit CAP program are much more significant than under the VCP.

The DOL offers two voluntary correction programs for plan sponsors who have violated certain ERISA requirements. The Delinquent Filer Voluntary Compliance Program (DFVCP) is available for late or missed Form 5500 filings. The advantage of using this program is the reduction in penalties.

The Voluntary Fiduciary Correction Program (VFCP) allows plan sponsors to correct certain violations such as late deposits of employee deferrals, improper loans and other prohibited transactions. This program offers specific solutions to certain issues which allow violations to be completely resolved and also offers reduced penalties for self-correction.

Your Client Manager can help you through any of these correction programs. ■

NCEO Conference

In April, Swerdlin was a sponsor of the annual National Center for Employee Ownership (NCEO) conference in Denver, Colorado. During the three-day conference, Susan Petrirena spoke on "How 401(k)s and ESOPs Work Together," and Melissa Spencer addressed "ESOP Distribution Rules."

The NCEO is an organization that promotes broad-based employee ownership including ESOPs. If you are interested in learning more about the NCEO, please contact Susan Petrirena at 678.775.5527.

Susan Petrirena and Rita Harris of Greenberg Farrow Architecture, Inc. (one of our clients) are pictured on the left at the conference Trade Show.

What's Happenin'

We are excited to announce the acquisition of **Penret Services, Inc.**, a Third Party Administrator for Qualified Retirement Plans in the greater Boston area. See Dorn's Corner for more information.

Congratulations to **Lorene Pierre** who recently graduated from Georgia State University with a bachelor's degree in Managerial Sciences.

Anniversaries we celebrate this quarter: **Dorn and Joanne Swerdlin**, 31 years; **Jaynie Cormier**, 25 years; **Donna Martin**, 18 years; **Dee Robbins**, 15 years; **Connie Woodmansee**, 10 years; **Barbara Sneed** and **Mike Raker**, 7 years; **Rigbe Hailesellassie**, 4 years; **Beverly Bailey**, **Craig Lindenlauf** and **Graeme Hefner**, 3 years; **Christy Kennison** and **Jeremy Brayton**, 1 year.

We welcome new employees this quarter: **Atyia Riley-Hart** as an Administrative Assistant to the Defined Contribution Team and **Ed Ilano** who joins our Defined Contribution Team as a Pension Consultant. **Jillian Cecere** will be working on Billing and Cafeteria Benefits, and **Jim Martin** is a new addition to the Technical Operation Team.

Pinehurst, North Carolina hosted an ESOP Conference at the end of March. **Connie Woodmansee**, **Donna Martin** and **Susan Petrirena** were in attendance. Donna spoke on "401(k)s and ESOPs, Hand in Hand."

Scott Foreman attended the Crystal Reports Seminar in Jacksonville, Florida on April 11.

On April 12, **Cynthia Navan Clark, David Benoit**, **Glenda Devechio** and **Tiffany Enoch** conducted an instructional and training seminar regarding FMLA, ADA and other issues for the human resource professionals of a major manufacturing company based in Atlanta, Georgia.

On April 15, **Kathy Latour**, **Kim Hall**, **Julie Isom** and **Tianna Barran** attended the annual Breakfast of Champions for Bobby Dodd Industries, one of our clients.

The Annual ESOP Conference was held in Washington, DC on May 11-13. Swerdlin attendees included **Donna Martin**, **Joanne Swerdlin** and **Susan Petrirena**.

Adrian Farnon, **Lee Swerdlin** and **Michele Gresham** attended the annual Benefits Conference of the South, held in Atlanta on May 12 and 13.

Cynthia Navan Clark, **David Benoit** and **Glenda Devechio** spoke at the American Society of Women Accountants, South East Regional Conference on Saturday, June 4. Their topic was "Healthcare updates and current Human Resource issues."

Julie Isom presented the new Fee Disclosure Requirements at Swerdlin's quarterly client workshop on June 9. Clients and friends attended in person or by phone.

Dorn's Corner

(continued from page 1)

Next, in 1992, the owner of a small administration firm in Atlanta decided to sell his business. We bought his retirement plans and picked up two of his employees. By the way, they are still with Swerdlin & Company today.

Then, in 1997, a small pension administration firm, also in Atlanta, was owned by an insurance outfit. The parent company was sold and the new owner did not want to be in the plan administration business. We bought that firm and, as before, brought over an employee who remains with us today.

Over the years, these acquisitions have been a significant contribution to our growth. However, the latest and largest acquisition to date brings a second office location and gives us a foothold in the New England market-place.

2011 started out with the Boston deal and new business is finally picking up after the terrible economic climate most businesses have had to weather.

We are very excited about our growth which helps us continue to develop our people and better serve our clients.

All of this is happening at Swerdlin because of our loyal clients and friends. Thanks to you all. ■

The Penret Staff
(L to R) Brian Santos, Stacey Moquin, Brendan Moquin, Joan Lennox, Sandi Vriesema, Susan Bertolino

Why is a Beneficiary Designation so Important?

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the latest beneficiary election forms that the Plan has on file. A valid beneficiary designation overrides any provision in the participant's will.

If married participants want to designate someone other than their spouse as the primary beneficiary of any percentage of their account, they must obtain the consent of their spouse. Beneficiary election forms should always provide for both primary and contingent beneficiaries.

Here is a great example of why it is so important for participants to update their beneficiary forms. This is an actual case decided by the U. S. Supreme Court in January, 2009 (Kennedy v. DuPont).

Mr. Kennedy was a participant in the DuPont Savings and Investment Plan. He designated his wife as the sole beneficiary of his plan benefits. They subsequently divorced, and his ex-wife waived her interest in the Plan benefits as part of the divorce decree. However, Mr. Kennedy never submitted the waiver before his death, nor changed his beneficiary designation. After Mr. Kennedy died, the plan administrator paid his benefit to his ex-wife because she was still the designated beneficiary. The appointed executor of the estate argued that because the order in the divorce decree was issued by a Court, his benefit should instead revert to the estate. The U. S. Supreme Court unanimously ruled that the ex-wife of a plan participant, who was still named as the beneficiary at the time of the participant's death, was entitled to the benefits of the plan. Even though she signed a settlement waiving her interest in the plan as part of the divorce agreement, the original beneficiary designation took precedence.

For further information regarding the importance of current beneficiary designations, please contact your Client Manager. ■

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At Swerdlin & Company, we're taking an active role in conserving the world's resources by printing on FSC-certified paper from well-managed forests with environmentally-friendly ink. Please recycle this newsletter when you are finished reading it.

Health Reimbursement Arrangements

A Health Reimbursement Arrangement (HRA) is an employer-funded medical reimbursement plan. The HRA reimburses employees, their spouses, and dependents for certain medical expenses. An HRA must be funded solely by the employer. Typically, an employer creates an unfunded HRA account for each participating employee, and then reimburses substantiated, qualifying medical expenses up to the employee's HRA account balance. Unused balances may be carried over into subsequent periods. No specific IRS Code Section provides for HRAs, but the IRS confirms the tax-favored treatment under the general principles of Code Sections 105 and 106.

Often, the HRA is used to reduce a company's health insurance costs. This is accomplished by offering a health insurance plan with higher out-of-pocket expenses and using the HRA to reimburse employees for these expenses. For example, if you now have a plan with a $1,000 deductible and no co-insurance, you could consider a plan with a $2,500 deductible and 80/20 co-insurance. The premium costs for this plan should be lower. You can use the premium savings to reimburse employees for their increased deductible and co-insurance costs through the HRA. This could reduce the employer's overall cost.

In order to determine if an HRA is right for your company, you should look at the total premium savings from an alternate health plan and the estimated claims paid through the HRA. We advise employers to be very conservative when estimating expected HRA claims. Swerdlin & Company can assist you with this process. If you decide to go forward with an HRA, we can help you with design, set up and on-going administration.

If you implement an HRA, communication of the new benefit is critical. Initially, employees may only see the increased out-of-pocket costs and not understand these costs are reimbursed through the HRA. We can provide information about the HRA to help your employees understand and appreciate this new benefit.

Please contact Cynthia Navan Clark at 678.775.5551 if you would like further information on HRAs. ■

HRA Facts at a Glance

- Employer contributions only
- HRA requires a plan document in order to be compliant
- Reimbursements from HRA are tax free to employees
- HRA can be set up so the employee has immediate access to annual amount, or it can be set up to give the employee monthly credit and the balance only used as it accrues
- HRAs can be funded as claims are paid
- Unused funds can roll over or be forfeited back to the employer
- Employer can require employees to participate in medical plan in order to be eligible for HRA
- Employees do not have to pay their portion of the expense before being reimbursed from the HRA. The expense only has to be incurred
- HRA can allow for reimbursement of covered dependent expenses

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