

## Dorn's Corner

Most people think listening is passive; you just sit and receive information sent to you by the outside world. Such information is unchanged as it passes to you. This thinking comes from the Newtonian way of thinking: separate, fragmented, and mechanical. Listening changes significantly when viewed from a Quantum thinking point of view: holistic, connected, subjective. If you assume that we are already connected, as does Quantum thinking, then listening can take on higher dimensions.

Listening is actually a very active process. Not only does one's listening filter out much information, but also how one listens can actually alter the speaking of another, or of a whole group.

What is this filtering process? The filter or "noise" that obstructs clear listening is our own inner conversation. These conversations go on continuously in our heads. We are either aware of them or not. If we are not aware of them, we might think we are listening to others, when we are only listening to our own prejudices. We react automatically to defend our beliefs and our point of view.

The first step to better listening is to become aware of our inner noise and automatic reactions. Only then can we choose to quiet the noise and begin to experience our connection to others and really listen with a capital "L." ■



## The Defined Benefit Plan is Back

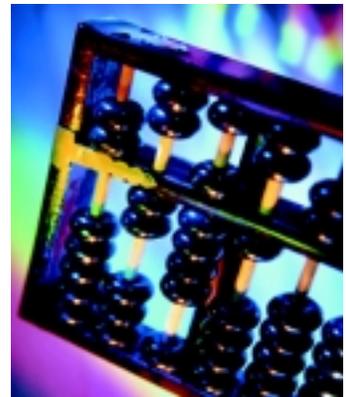
For the first time in years, defined benefit pension plans are seeing a resurgence. The Tax Reform Act of 1986, along with other tax laws during the 80's, severely curtailed the value of defined benefit plans for small employers and professional corporations. As a result, the number of defined benefit plans dropped dramatically.

Now many small businesses are once again becoming interested in defined benefit plans. Several changes over the last 10 years have effected this new interest:

- The maximum annual pension a participant can receive from a defined benefit plan has increased from \$90,000 to \$140,000;
- Congress eliminated the 15% excise tax on large retirement plan distributions;
- The maximum tax rate has increased from 28% to 39.6%, making current tax deductions more valuable; and
- The combined limit on defined benefit and defined contribution plan benefits has been repealed.

These changes are great for the baby boomers who have spent their lives investing in their small businesses or professional practices rather than saving for retirement. Now, as they reach peak earning years and approach retirement, they realize the need to save more to enjoy a comfortable retirement. The \$35,000 maximum contribution allowed by defined contribution plans may not be enough. Fortunately, defined benefit plans allow substantially more savings.

Defined contribution plans and defined benefit plans each have advantages. We find that a combination of the two types of plans can maximize your benefits at a reasonable cost. If you want to explore the options for increasing your retirement savings, call us. ■



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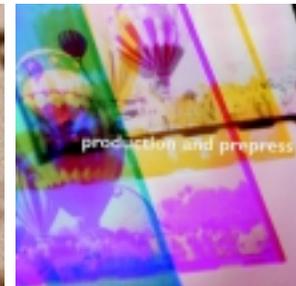
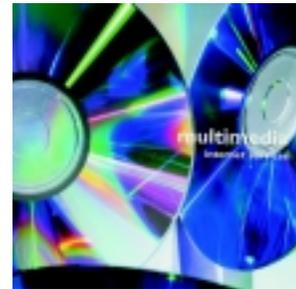
We are proud to feature GA Communications, Inc. as our client of the quarter. Swerdlin provides administrative and recordkeeping services for the GA Communications ESOP and 401(k) Plans. We've seen significant growth within their company since they implemented their ESOP in 1996.

GA Communications has been in the advertising production industry for 33 years. The company operates five full service advertising production facilities in Atlanta, Philadelphia, Pittsburgh, Los Angeles and San Francisco. The company has long been recognized as an innovator, always providing its customers with the most advanced solutions in the advertising industry. Their current mix of products includes consulting, creative services, photography, data resource management, production/prepress, multimedia (internet services) and broadcast services.

GA Communications was founded in Atlanta, GA in 1967. Since their beginning, GA Communications has been a leader in the use of digital technology which has helped provide them with constant growth.

- In 1978, they were the fourth company nationally to invest in high resolution scanners for color separation. Color separation companies were the first in the advertising industry to create, manipulate and manage digital information.
- In 1989, GA Communications implemented desktop publishing systems and produced the first total electronic catalog (design, copywriting, typesetting, page building and prepress) in the advertising industry for Strawbridge Department Stores.
- In 1992, they built the first image database in the industry for Kmart Advertising.
- In 1995, they became aggressively involved in the new medium of the Internet. GA Communications designed, produced and managed the first e-commerce websites in the retail advertising industry.
- In 1996, they began to offer database publishing solutions with the development of the ADsembly program - an automated system designed to streamline production processes. The ADsembly program, which continues to develop and offer options for their customers, beginning in merchandising, facilitates the most efficient workflow solution in the advertising industry.

During the last decade, most companies involved in the advertising services experienced difficulties. GA Communications, however, has continued to grow at least 15% each year in addition to opening new facilities. They attribute this success to their vision and trust. The GA Communications commitment is to exceed customer expectations - always. ■



## Harbor Improvements

If your 401(k) plan barely passes or regularly fails the 401(k) discrimination tests, you might want to consider a Safe Harbor Plan. This design is now easier to adopt, operate and communicate.

What is a Safe Harbor 401(k)? It's a plan exempt from the normal 401(k) tests (ADP and/or ACP tests). Therefore, all highly paid employees in the plan can contribute the maximum of \$10,500 during 2001 (unless limited by another code section) regardless of the participation rate among the other employees. A Highly Compensated Employee (HCE) for 2001 is someone who earned \$85,000 last year or was a 5% owner last year or this year.

To qualify for the safe harbor, the plan sponsor must commit to a 401(k) plan contribution. It can be either (1) a matching contribution (based on employee deferrals) or (2) a non-elective contribution (based on employees' pay). The contribution formula must be written in the plan document.

Note that participants are fully vested in the safe harbor contribution regardless of service with the employer. However, if additional employer contributions are made, a vesting schedule is still permitted.

- (1) To use the *matching contribution*, the employer must match 100% of the first 3% of pay contributed by the employees and 50% of the next 2%. You can also provide an enhanced matching formula that considers up to 6% of an employee's pay.
- (2) To use the *non-elective contribution*, the company must contribute 3% of pay for all eligible employees. This contribution can do triple duty. It can be used to satisfy top-heavy minimum required contributions, non-discrimination tests and the 401(k) ADP test.

The new rules give employers some flexibility regarding safe harbor contributions. The matching contribution can be calculated for each payroll period, month or quarter (according to the plan document).

No safe harbor contributions are necessary for employees who are otherwise excludable (under age 21 and less than 1 year of service). These participants would be tested separately as if they were covered under a separate plan.

A safe harbor 401(k) provision may now be added to an existing plan. If you have a profit sharing plan, you can add this provision as long as the plan is amended not less than 3 months before the end of the plan year. Ongoing 401(k) plans (that are using current year testing method) can wait as late as 30 days before the end of each plan year to use the safe harbor provision when using the 3% non-elective contribution.

What information are you required to provide employees? All eligible employees must be notified of your intention to meet the safe harbor requirements at least 30 days but not more than 90 days before the beginning of each plan year. The notice or Summary Plan Description must contain the following information:

1. Safe harbor contribution formula used by the plan.
2. Other contributions provided by the plan and conditions under which they are made.
3. Name of the plan receiving the safe harbor contribution.
4. Type and amount of pay that can be deferred into the plan.
5. How to make deferral elections.
6. Information on the timing of elections.
7. Withdrawal and vesting provisions of the plan.

If accessible and understandable, the notification requirement may be distributed electronically; however, a free paper copy must be available to any participant upon request.

If a safe harbor 401(k) sounds like it might be right for your organization, give us a call. We can help you decide which plan design will do the best job of meeting your needs. ■

## Timely Deposit of Employee Deferrals

Do you deposit employee deferrals on a timely basis? The Department of Labor (DOL) is making sure you do. They are sending out the message that when it comes to depositing employee money into your plan, there is no such thing as "too soon." You must deposit employee deferrals as soon as possible. If you don't, the DOL will penalize you. Not only can the DOL impose fines, they can prosecute you.

The law requires separation of employee deferrals from the employer's assets as soon as "reasonably" possible, but no later than the 15th business day following the end of the month the money was withheld. Although the DOL will allow up to 15 business days, it's not a safe harbor. If you send the money to the plan within the 15

days, you could still be in violation if the DOL thinks you could have deposited the money sooner.

Some investment providers won't accept deposits more than once a month. So, what do you do? One option is to establish a plan checking account for depositing employee deferrals. Then you can allocate the money among the investment funds on a monthly basis.

Be sure to keep good records of your deposits. Was your deposit later than normal because of a computer problem, or because someone was on vacation? If so, note the reason in your file. There's no guarantee the DOL will consider your excuse "reasonable," but without a record you don't have a chance. ■



# Is Your Plan in Compliance?

From a population of 130,000 of which 472 plans were examined, the IRS finds 44% of 401(k) plans have some sort of compliance violation. Surprisingly, the survey finds small plans (0-16 participants) to actually have the highest rate of compliance with 59% of them having no violations.

The **top 3 violations** found by the IRS are:

## 1. Distributions Eligible for Rollover Treatment

Many distributions in qualified plans may be rolled over. Violations of this provision include:

- Not providing a direct rollover option. Participants receiving an eligible rollover distribution must have the option to transfer the account balance directly to another eligible retirement plan.
- Not providing timely notice to participants. A plan administrator must provide written explanation within a specified period of time before making an eligible rollover distribution. This explanation must include:
  - Information on how funds may be transferred,
  - When withholding of tax applies,
  - The 60-day rollover rules, and
  - Other special rules as they apply.
- Improper withholding. If an eligible rollover distribution is not transferred by a direct rollover, the distribution is subject to a mandatory 20% withholding.
- Improper reporting. Distributions from a qualified retirement plan must be reported to the IRS on Form 1099-R.

## 2. Non-Discrimination Testing (ADP/ACP)

401(k) plans must be tested to compare amounts contributed by the highly paid employees, as a percentage of pay, to amounts contributed by other employees expressed as a percentage of their pay. The average savings rate of the highly paid employees can only exceed the average savings rate of the other employees by a certain amount.

Corrective measures must be taken if a plan fails one or more of the non-discrimination tests. Correction may involve distributions to highly paid employees or special employer contributions, as described in the regulations. The IRS survey discovered many plans did not include all eligible employees in the test, or they failed a test and made no attempt to correct it.

## 3. Loans

The IRS survey found some plan loans to not meet certain requirements, such as:

- Exceeding statutory limitations;
- Repayment periods exceeding 5 years except for certain home loans;

- Not following amortization requirements; and
- Inadequate documentation.

If a loan doesn't meet these requirements, it's deemed a distribution, and the defaulted amount taxable to the participant is reported on the Form 1099-R. Depending on the participant's age, the loan amount may also be subject to a 10% penalty tax.

Other violations uncovered in this survey include:

- Hardship distribution violations;
- Not meeting top-heavy requirements;
- Inappropriate contingent benefit requirements;
- Exceeding maximum benefit limit; and
- Vesting violations.

To learn more, you can download the complete survey at the IRS's web site, located at [www.irs.gov/prod/bus\\_info/ep/401k.html](http://www.irs.gov/prod/bus_info/ep/401k.html).

If your plan is not in compliance - don't panic. The IRS has a number of correction programs, collectively known as the Employee Plans Compliance Resolution System, available to help plan sponsors. Depending on the violation, the severity and the timing, the IRS may still need to be involved to authorize corrections and assess penalties, if any. Please call us if you suspect a problem. ■

## PBGC Simplifies Premium Rules

Effective January 1, 2001, the Pension Benefit Guaranty Corporation (PBGC) announced 3 changes to its premium regulations to simplify procedures and ease burdens for administrators of private defined benefit plans. "These changes are part of our ongoing efforts to improve service to plan sponsors and the pension professionals who assist them," said PBGC Executive Director David M. Strauss.

The **First** change allows plan administrators to pay a prorated premium for a short plan year. Previously you had to pay a full year's premium and request a refund or claim a credit against a future premium payment.

The **Second** change simplifies the definition of "participant" for premium purposes. Plans may now exclude from their participant counts those individuals who don't have accrued benefits and for whom the plan has no other benefit liabilities. For example, a new plan won't pay a premium for its first year unless it provides credit for service prior to when the plan began.

The **Third** change simplifies the standard for claiming the variable-rate premium exemption for fully insured plans - that is, funded exclusively by individual insurance contracts. The exemption now applies if the plan meets the requirements of Internal Revenue Code Section 412 (i) on the premium snapshot date. ■

## What if you could . . .

- Dramatically improve your employees' understanding and appreciation of their benefits package?
- Increase job satisfaction and productivity?
- Decrease employee turnover?
- Lessen the demand for greater wages and benefits?

You can by providing your employees with **comprehensive benefit statements**. To find out more, visit <http://www.swerdlin.net/services/communication/ongoing/cbs/main.html> or call us to find out how we can help design these statements for you.

## Is That a Plan Expense?

The Department of Labor recently issued guidance for paying employee benefit plan expenses from a trust. The focus was whether an expense was categorized as a "settlor" or a fiduciary expense.

**What are settlor expenses?** These are expenses related to the establishment, design and termination of plans which cannot be charged to the plan.

The following expenses **may not** be charged to a plan:

- Design studies;
- Amendments for corporate transactions;
- Union negotiation costs;
- FASB 88 Statement costs;
- Amendments to establish early retirement windows;
- Amendments to establish a loan program;
- Consulting fees to review various methods for compliance with law changes; and
- Portions of benefit communication booklets not related to the specific plan.

The following expenses **may** be charged to a plan:

- Computations or recomputations necessary to implement plan-to-plan asset transfers;
- Communication costs;
- Benefit calculations;
- Amendments to comply with tax law changes;
- Routine non-discrimination testing;
- Obtaining IRS determination letters; and
- Start-up and ongoing costs attributable to plan administration.

Keep in mind these lists depend on the individual facts and circumstances. In some cases, cost sharing between the employer and the plan may be appropriate. It's always important to have documentation relating to these fiduciary issues when deciding to pay expenses from the plan. If the DOL decides an expense shouldn't be paid from the plan, it could require reimbursement of the expenses to the plan and assess a 20% penalty.

For the full text of DOL hypothetical case studies, refer to <http://www.dol.gov/dol/pwba/public/programs/ori/advisory2001/setq&are.htm>. ■



## Good News From Washington

Swerdlin & Company will host a breakfast and discussion of The Economic Growth and Tax Relief Reconciliation Act (EGTRRA) and its positive impact on retirement plans. Please mark your calendar!

Wednesday, June 27, 2001  
7:30 to 11:00 AM

The Ashford Club  
5565 Glenridge Connector  
Suite 100  
Atlanta, GA 30342  
770.395.1333

If you would like to attend this breakfast and discussion, please respond by Friday, June 22nd to <http://www.swerdlin.net/rsvp.html>. You can also contact Dee Robbins at 770.396.6601 ext 346 or [drobbins@swerdlin.net](mailto:d Robbins@swerdlin.net). ■

## What's Happenin'

Congratulations to Joanne Swerdlin for being elected Vice President of the Southern Region for the national organization, Worldwide Employee Benefits Network (WEB). Joanne has served as President of the local chapter of WEB for the past 2 years.

Congratulations to Bill Tyrlick, who recently passed the required examinations for the Enrolled Actuary designation.

Congratulations to Rick Rothschild for graduating with a bachelors degree from Kennesaw State University.

Twenty-eight "Swerdlinaires" bowled for the Big Brothers Big Sisters of Atlanta in March. Visit our website to enjoy some action photos of the bowlers!

Join us in welcoming 5 new employees: (from left to right) Keith Holder, Connie Woodmansee, Susan Zhou, Paris Guillory, and Raye Suss (not pictured). ■



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We are dedicated to making your employee benefit program a tool for reaching your organizational goals.

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- ESOPs
- Age-Weighted Plans
- New Comparability Plans (Cross-Tested)
- TSAs/403(b)/457 Plans
- Comprehensive Employee Benefit Statements
- Supplemental Executive Retirement Programs (SERPs)

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**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 being the leading pension 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 qualified retirement 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.