

## **Rules, Rules and More Rules**

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### **Where does it all lead?**

As the largest business in the world, the United States Federal Government sometimes operates using sound business practices. Business people know that sound business planning is a key to sound business results and, yes, even the Feds actually do some planning.

In March of this year, the IRS announced its 1999 Business Plan (bet you didn't know that they had one!) In one of their more ambitious efforts, the 1999 IRS Business Plan contains over 230 guidance projects for the coming years—an increase of over 50 projects from the last business plan. The projects range from “Final regulations regarding transactions involving inter-company obligations” to “Guidance under Section 1379E regarding qualified zone academy bonds”. Yet tucked in the middle are 49 (count 'em) planning items regarding Employee Benefits. Over 20% of the items in the 1999 IRS business plan relate to new guidance on retirement benefits, health care and other employee benefits!!

The introduction to the Business Plan states that “the plan should *not* be viewed as an exclusive list of either the guidance that may be published in 1999 or the guidance and other matters to which the Internal Revenue Service ...will devote attention in 1999.” But...in an addendum to the plan is a list of 12 projects for which substantial resources will be committed in 1999 and for which publication is expected to occur in 2000. Surprise—there are only two employee benefit agenda items mentioned—(Final regulations on COBRA continuation coverage and Final regulations on HIPPA)—neither one in the retirement plan area.

Are retirement plans falling out of favor as a preferred whipping boy of the IRS? Is the proliferation of 401(k) plans just too overwhelming for the IRS and their staff? Do the new voluntary compliance programs send the message that the IRS has lost interest in auditing and threatening to disqualify non-compliant pension and profit sharing plans? Or has it just finally come to pass that even the IRS has had enough of the regulatory process? I think the answer is a little bit of all!

Let's look at some of the 32 items in the retirement plan area on the 1999 business plan. Number 2—Guidance related to consolidated employee plans compliance resolution system (EPCRS) followed closely by Numbers 3, 9, 12, 16 and 23 relating to guidance on methods of correcting plan qualification violations under Section 401(a)(17) [compensation violations], violations under Sections 401(k) and 401(m) [discrimination testing], corrections for failure to make timely contributions, corrections for improperly excluding eligible employees from 401(k) plans, and corrections under 415 [maximum benefit and contribution limitations]. The IRS message—“physician, heal thyself” rings loud and clear.

We asked for guidance and it looks like we may be getting some more. Number 1 gives us Guidance relating to Plan loans, Number 4—Guidance relating to rollovers involving qualified plans, Number 6—Guidance on 401(k) plans in general, Number 7—Guidance on automatic enrollment on salary reduction contributions, Number 8—Guidance on matching and employee contributions, Number 10—Guidance on electronic technologies in administration, Number 17—Guidance under 411(a) [vesting standards], Number 20—Guidance relating to funding issues, Number 22—Guidance relating to highly compensated employees and Number 24—Guidance relating to the repeal of Section 415(e) [coordination of maximum benefit and maximum compensation limits]. Of course, with the IRS, “guidance” doesn’t necessarily mean answers. But at least it is a start.

The balance of the list involves procedural items like applying for determination letters using model notices, publishing new tables and the like. Of course, there is the “big one”—Number 27—“Guidance relating to the one-year extension of the remedial amendment period for plans amendments relating to recent legislation.” [See my three part article “Decisions, Decisions, Decisions...” appearing in the December '98, February '99, and April '99 issues of CBMM]. I told you there were rumors!!

Missing from the list are still long awaited guidance on issues like predecessor employers, shared and leased employees, and some still antiquated accrual regulations. But we are moving in the right direction.

With the proliferation of 401(k) plans, employees have begun to take more interest in their retirement savings. Fortunately, the IRS really has very little to do with the day-to-day management of 401(k) programs. Other than the compliance and testing rules, the IRS interest in 401(k) plans is minimal. The important issues are left to the Pension Welfare Benefit Agency (PWBA)-- the employee benefit arm of the Department of Labor. If you thought the IRS was tough to deal with – in the words of the immortal Al Jolson—“you ain’t seen nothing yet!!”.

The PWBA is charged with the protection of the rights of the employee and as an agency they can be unrelenting if they become interested. Perhaps there is something fortunate in all this because they seldom become interested. I have seen plans which have been administered improperly and practices which are clearly discriminatory in operation. I have personally watched as the PWBA has stood by and sent a clear message that the issues are too small for them to become involved. They are only looking for the big violators. If you read the papers, you will see that any pension issues which involve the DOL are only against large corporations or involve millions of dollars. The common man or the common plan sponsor is reasonably safe.

It is sad, but true-- pension administration is complex. As consultants and administrators we have begged for simplification. It is encouraging that some congresspersons are listening. New plans and new ideas keep popping onto the scene. Cash balance, pension equity and now new life cycle plans. Where is the "New Millenium Plan"? Hasn't someone thought of that yet?

The multitude of regulations make it virtually impossible for smaller plan sponsors to stay in compliance. The IRS realized it when they developed and implemented the new self-correction programs. The DOL seems disinterested and the participants seem to be the ones who may be the ultimate victims of uninformed or poorly intentioned plan sponsors. Perhaps one day we will look back at "the good old days" when fear of IRS disqualification kept plan sponsors on their toes; but in the meantime I often wonder who is watching the store.