

Qualified Retirement Plans

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The Basics. Our practice covers design, implementation, and compliance work for all forms of tax-qualified pension and savings plans, including 401(k), ESOPs, and cash balance plans.

We advise a significant percentage of the Fortune 100 on qualified plan legal work – including 40% of the Top 10. At least a dozen of our clients have plan assets well into the billions, many with over 100,000 active employees. Our clients cut across all industries, including automotive, aerospace and defense, oil and gas, manufacturing, retail, and technology.

One of our specialties is auditing clients' qualified plans for operational compliance. We have performed compliance reviews on some of the largest plans in the country, with assets over \$300 billion. We regularly assist all clients with self-corrections of operational "goofs", as well as with more formal IRS and DOL corrections programs.

M&A. Few firms can match our experience in helping clients with the transition period following major acquisitions. During the last ten years we have worked on over fifty transactions, many of which were multi-billion dollar deals. These include the spin-off of Dresser from Halliburton, the creation of a joint venture between Reichhold and Dow Chemical, and numerous substantial acquisitions within the aerospace and defense industries.

This M&A work involves intensive drafting to set up new plans and to coordinate with existing plans. We assist with the high-level plan design strategy, as well as the day-to-day vendor contracts and payroll conversions.

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Perhaps our most valuable contribution in this area is our ability to trouble-shoot quickly. Because we have worked through so many acquisitions, we can provide detailed guidance at the inception of a deal about the many tasks ahead.

Cash Balance Plans. Our cash balance plan practice and expertise is unmatched. We set up one of the Fortune 100's first cash balance plans fifteen years ago, and we continue to draft new cash balance plans for clients each year. Nearly two dozen of our clients have cash balance plans today.

Our expert knowledge of cash balance plans is frequently tapped for lobbying, litigation support, and scholarly publications — even by other law firms, and by employers who use other counsel for their regular work. For example:

- We were retained by IBM to provide expert press commentary and education on cash balance plans in the wake of *Cooper v. IBM Personal Pension Plan*.
- We were hired by numerous large companies to represent their cash balance interests before Treasury and Congress.
- We were retained by American Benefits Council (ABC) to file an amicus brief on the case of *Hirt v. The Equitable Retirement Plan* in the Southern District of New York.
- Kevin O'Brien and Rosina Barker are contributing authors to *The Guide to Cash Balance Plans* (Aspen Press), the leading treatise on the tax and ERISA issues raised by cash balance plans, and have written extensively on cash balance plans for the *Benefits Law Journal*.

ERISA Fiduciary Rules. The ERISA fiduciary area continues to expand because of the steady increase in ERISA litigation. We advise both boards of directors and plan administrative committees on their fiduciary duties and on ways to minimize liability. We also consult with clients more broadly on the impact of the fiduciary and prohibited transaction rules in plan administration, and obtain special prohibited transaction exemptions for clients from the Department of Labor.

International Issues. We have long experience advising clients that are U.S. and foreign multinationals. We have consulted with them on the special problems arising because of cross-border issues and employees transferring among different jurisdictions. We have developed particular expertise in 404A plans. We have also helped our clients set up plans in Canada and Puerto Rico.

Lobbying. We have an active and long-standing lobbying practice both on Capitol Hill and with the Treasury and Labor Departments. We were involved with the enactment of the cafeteria plan (section 125) and the 401(k) provisions of the Code, two of the most significant employee benefit changes in the

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last 30 years.

More recently, we formed the Cash Balance Alliance, an employers' umbrella group to represent clients on their unique cash balance questions in front of Treasury, the IRS, and Congress.

NEWS

- April 18, 2012
Rosina Barker Speaks to State Bar of Michigan: Correcting 409A Failures
- December 15, 2011
Ivins Attorneys Speak at DC Bar on Estate Planning with Retirement Plan Assets
- September 23, 2011
Rosina Barker Gives 409A Presentation to the Southern Federal Tax Institute

STRATEGIES & OPPORTUNITIES

- Code § 401(a)(17) Compensation Limit – Simplify 401(k) Plan Administration and Increase Permitted HCE Deferrals with a Simple Drafting Technique
- 401(k) Plan Nondiscrimination Testing Solution

PUBLICATIONS

- September 23, 2011
409A Failures: Correcting With and Without the IRS Formal Correction Programs
46th Southern Federal Tax Institute
- November 18, 2010
Achieving Success in a Worker Classification Audit
Practical Tax Strategies