Year-End Benefit Issues 2003

Thanksgiving is over, and the end-of-year crunch has begun. Below is a checklist of operational issues to discuss – and possibly some amendments to adopt – by year-end.

DC Plans: Required Minimum Distributions. Final regulations issued on required minimum distributions under Code section 401(a)(9) affect how long a participant or beneficiary can leave assets in the plan. *Amendments may be required for your defined contribution plans by the end of this plan year (December 31, 2003 for calendar year plans).* Defined benefit plans do not have to be amended until the end of 2005.

401(k) Plan Loans. You can now offer additional flexibility to participants in your loan program, under the latest final regulations under Code section 72(p). For example, you can now permit loan refinancings, and there is no limit on the number of loans a plan may permit (the proposed regulations would have imposed a two-loan limit). Additionally, the final regulations discuss the effect of a new loan after the deemed distribution of a prior loan. *These provisions affect all new loans made on or after January 1, 2004.*

DB Plans: Retroactive Annuity Starting Date. When a participant's retirement application is delivered late – after the scheduled retirement date – when does the benefit begin? You can allow participants in a defined benefit plan to elect a *retroactive* annuity starting date (ASD) and still remain compliant with the spousal consent requirements. The final regulations under Code section 417 require that you jump through a number of hoops, however, some of which must be stated in your plan document and on your forms. Changes may be required even if you do <u>not</u> want to use a retroactive ASD. *These restrictions apply for plan years beginning on or after January 1, 2004.*

Split-Dollar Favorable Tax Treatment for Executives: Equity split-dollar arrangements entered into before January 28, 2002 may be eligible for favorable tax treatment under two separate safe-harbor transition rules. <u>Option #1</u>: Executives can avoid tax on the equity which they are entitled to receive from mature policies by terminating the arrangement (and transferring the underlying policy to the executive). This may be attractive where an arrangement has a cash value that significantly exceeds the premiums paid. <u>Option #2</u>: Executives can convert the arrangement to a loan (i.e., by treating all premium payments as an interest-free loan to the individual). This may be preferable for arrangements with little equity upon conversion, because future increases in the cash value of the property would escape taxation. *Must act by December 31, 2003*.

New QJSA & QPSA Disclosures: Informal discussions with IRS personnel have indicated that the January 1, 2004 effective date will slide for the new, detailed spousal disclosure requirements. Proposed regulations under Code section 417 would require that you disclose the relative value of optional forms on an actuarial basis. Most likely, you will need to rewrite your retirement forms and spousal consent notices to comply. The IRS will hold employers to a "good faith compliance" standard until the final regulations are issued.