

HIGHLIGHTS

July 21, 2005 - Top Ten Issues - IRS Plan Audits

North Hollywood, CA - Employee Benefits Plan Committee of California Society of Certified Public Accountants

STRUCTURAL INTEGRITY IS IMPORTANT - 401(K) ADMINISTRATION SYSTEMS ARE LIKE THE FOUNDATION OF A HOUSE

- IF YOU HAVE A SOUND FOUNDATION, FRAMEWORK, ELECTRICAL, PLUMBING, A GOOD ROOF... THE HOUSE BECOMES A PLATFORM FOR LIVING YOUR LIFE
- IF YOU *DON'T* HAVE SOUND STRUCTURE...YOU WILL BE CONSTANTLY WORRYING - SPENDING TIME, ENERGY AND MONEY PATCH-WORKING THE PROBLEMS

SUNLIN DISCUSSES HOW ERRORS OCCUR - HOW TO MITIGATE AND HOW TO FIX THEM

- DATA PROBLEMS
 - LACK OF INTERNAL CONTROLS
 - LACK OF COORDINATION BETWEEN ANY COMBINATION OF: PLAN SPONSOR, PAYROLL PROVIDER, RECORDKEEPER, DIVISIONS/SUBSIDIARIES, ATTORNEYS
 - DECENTRALIZED PAYROLL SYSTEMS
 - PLAN DATA DOES NOT MATCH ACTUAL RECORDS
- ELIGIBILITY AND VESTING
 - PLAN ADMINISTRATORS INCORRECTLY APPLY PLAN DOCUMENT VESTING PROVISIONS
 - INADEQUATE OR OVERLY COMPLICATED DATABASE STRUCTURE
 - FAILURE OF COMPANY TO RECONCILE CURRENT DATA FEED AND YEAR-END TOTALS
 - TERMINATIONS, REHIRES, TEMPS AND LEASED EMPLOYEES, AND TRANSFERS BETWEEN DIVISIONS AND STATES

- COMPENSATION
 - PLAN DOCUMENT DEFINITION NOT FOLLOWED OR MULTIPLE DEFINITIONS IN PLAN
 - COMPENSATION IN EXCESS OF \$210,000 LIMIT USED TO DETERMINE BENEFITS OR CONTRIBUTIONS
 - INCORRECT TREATMENT OF BONUSES, OVERTIME AND FRINGE BENEFITS
 - ADMINISTRATIVE LIMITATIONS
 - INTERNAL COMMUNICATIONS
 - INITIAL PAYROLL FEED SET-UP
 - PAYROLL FEED NOT UPDATED
 - NON-CASH PAYMENTS
 - REHIRES, TRANSFERS BETWEEN DIVISIONS AND OR STATES

- PLAN LIMITS
 - DEFERRAL LIMIT OF \$14,000, DCP 415 LIMIT OF \$42,000, AND DBP 415 LIMIT OF \$170,000 EXCEEDED
 - ADMINISTRATIVE LIMITATIONS
 - REHIRES, TRANSFERS BETWEEN DIVISIONS AND STATES
 - MULTIPLE PLANS AND PAYROLLS

- ADP & ACP TESTING
 - MID-YEAR TESTING NOT PERFORMED
 - HCES NOT PROPERLY IDENTIFIED
 - APPROPRIATE PLANS NOT AGGREGATED FOR TESTING
 - "OTHER-WISE EXCLUDABLE" RULE NOT APPLIED
 - CATCH-UP PROVISION NOT UTILIZED TO REDUCE REFUNDS
 - FAILURE TO DISAGGREGATE MULTIPLE EMPLOYER PLAN

- TERMINATION/PARTIAL TERMINATION
 - 20% OR MORE DROP IN PARTICIPANTS DUE TO DOWNSIZING IS GENERALLY DEEMED TO BE A PARTIAL PLAN TERMINATION - 100% VESTING OF PARTICIPANTS - SEE MATZ V HOUSEHOLD INTERNATIONAL TAX REDUCTION INVESTMENT PLAN, 2004 AFTR 2D 2004-5466, 7TH CIRCUIT
 - THE EMPLOYER USES PLAN ASSETS TO PROVIDE INCENTIVES FOR TERMINATION, SUCH AS ENHANCED EARLY RETIREMENT BENEFITS OR SEVERANCE PAY NOT SPECIFIED IN THE PLAN DOCUMENT.
NOTE: THIS IS A PROBLEM EVEN WHEN ALL THE AFFECTED PARTICIPANTS ARE FULLY VESTED, AS IS OFTEN THE CASE.
 - NOT ALL OF THE PARTICIPANTS FROM AN ACQUIRED PLAN CONTINUE TO PARTICIPATE AFTER THAT PLAN HAS BEEN MERGED WITH AN ONGOING PLAN

- ACQUISITIONS
 - COMMUNICATIONS REGARDING NEW/OLD PLAN
 - TERMINATION OF OLD PLAN
 - MISSED OR INCORRECT MATCHING; PROFIT SHARING CONTRIBUTIONS DUE TO INCORRECT PAYROLL FEEDS
 - PREDECESSOR SERVICE ISSUES
 - MERGING PLANS WITH DIFFERENT VESTING SCHEDULES
 - NON-COMPLIANCE WITH 411(D)(6)
 - MERGER OF PREDECESSOR PLAN PRIOR TO ANALYSIS OF OLD PLAN ISSUES
 - MULTIPLE EMPLOYER PLAN/CONTROL GROUP PROBLEMS

- PLAN DOCUMENTS
 - PLAN DOCUMENTS (BOTH ADOPTION AGREEMENT AND UNDERLYING PLAN DOCUMENT) HAVE NOT BEEN ADOPTED BY ALL PARTICIPATING EMPLOYERS
 - NO EXECUTED TRUST DOCUMENT
 - PLAN PROVISIONS ARE:
 - NOT ADMINISTRATIVELY FEASIBLE
 - NOT CONSISTENT WITH ACTUAL ADMINISTRATION
 - NOT AMENDED TIMELY
 - "GOOD FAITH" EGTRRA AMENDMENT NOT ADOPTED
 - GUST REMEDIAL AMENDMENT VIOLATED
 - NOT IN COMPLIANCE WITH PLAN'S TESTING PROCEDURES

- DISTRIBUTIONS AND LOANS
 - LARGE DISTRIBUTIONS RELATIVE TO PLAN ASSETS
 - PLANS FAIL TO SUSPEND "SALARY DEFERRALS" OF PARTICIPANTS RECEIVING HARDSHIP DISTRIBUTIONS
 - FAILURE TO REPORT DISTRIBUTIONS AND/OR ERRORS ON FORM 1099 CAUSES IMPROPER TAX TREATMENT (INCLUDING 10% EXCISE TAX) BY PLAN PARTICIPANTS RECEIVING DISTRIBUTIONS OR PREMATURE DISTRIBUTIONS, OR DEFAULTING ON PLAN LOANS
 - FORM 5500 INDICATES THAT THE PLAN TERMINATED A LONG TIME AGO, BUT THAT DISTRIBUTIONS DID NOT TAKE PLACE
 - AUTOMATED SYSTEMS TO SECURE PLAN LOANS, IN-SERVICE DISTRIBUTIONS, OR HARDSHIP DISTRIBUTIONS CAN LEAD TO SIGNIFICANT COMPLIANCE ISSUES, IF REQUIRED DOCUMENTATION OR SPOUSAL CONSENT ARE NOT SECURED AND MAINTAINED
 - DISTRIBUTIONS MAY BE UNDERSTATED DUE TO FAILURE TO PROPERLY VALUE EMPLOYER REAL PROPERTY OR EMPLOYER SECURITIES IN A CLOSELY HELD CORPORATION

- ASSETS
 - PROVIDING INCORRECT STATISTICAL INFORMATION TO IRS
 - LARGE DISTRIBUTIONS CAN:
 - CREATE SIGNIFICANT ACTUARIAL LOSSES
 - INDICATE TERMINATION OR RETIREMENT OF OWNERS
 - INDICATE PARTIAL PLAN TERMINATIONS
- IMPRUDENT FIDUCIARY ACTIONS
- LACK OF INVESTMENT DIVERSIFICATION
- CHARGING SETTLOR EXPENSES TO PLANS THAT ARE PROHIBITED TRANSACTIONS