

HIGHLIGHTS

October 21, 2004 - Plan Fees, Expenses and Revenue Sharing

Irvine, CA - Orange County Chapter, Western Pension & Benefits Conference

PLAN EXPENSE RULES AND PLANNING OPPORTUNITIES

- **WHAT MOST PLAN SPONSORS THINK THEY ARE PAYING**
 - D&T 2003 ANNUAL BENCHMARKING SURVEY

- **DOL AND IRS FOCUS ON PLAN EXPENSES**
 - REASONABLE ADMINISTRATION EXPENSES - EXCEPTION TO PROHIBITED TRANSACTION RULES [ERISA 403, 404 & IRC 4975]
 - PAYMENTS CAN'T BE MADE FOR THE EMPLOYER'S BENEFIT AND CAN'T PAY EXPENSES THE EMPLOYER COULD BE REASONABLY EXPECTED TO PAY [PWBA INFO LTR MARCH 2, 1987]
 - GUESSING WRONG - PROHIBITED TRANSACTION, SUBJECT TO EXCISE TAX, FORM 5330
 - APPROPRIATE ALLOCATION OF EXPENSES TO PARTICIPANTS
 - ALLOCATION METHODS IN ACCORDANCE WITH THE PLAN DOCUMENT
 - SUMMARY PLAN DESCRIPTION ("SPD") MUST DESCRIBE PARTICIPANT PLAN EXPENSE CHARGES

- **PLAN EXPENSE FIDUCIARY POLICY DECISIONS**
 - APPROPRIATE ALLOCATION OF EXPENSES TO PARTICIPANTS
 - COSTS ARE PRUDENT AND SOLELY IN THE INTEREST OF PARTICIPANTS
 - REFLECT INDUSTRY STANDARDS
 - REASONABLE WHEN COMPARED TO CURRENT MARKET BENCHMARKS
 - CHARGING THE ACCOUNTS OF INDIVIDUAL PARTICIPANTS
 - SPECIFIC COST ALLOCATED TO PARTICIPANTS
 - ACTIVE PARTICIPANTS VS. TERMINATED VESTED PARTICIPANTS
 - PRO RATA VS. PER CAPITA
 - SILVER LINING IN RECENT DOL & IRS GUIDELINES & FOCUS - REDUCTION AND/OR SHIFTING OF PLAN COSTS

- REASONABLE PLAN EXPENSES THAT CAN BE PAID OUT OF THE PLAN
- DOL ADVISORY OPINION LETTERS 97-03A & 2001-01A SETTLOR FUNCTIONS & NOT PLAN ASSETS
- WHICH EXPENSES CAN BE CHARGED TO PLAN PARTICIPANTS?
[DOL FIELD ASSIST. BULL. 2003-3 & REVENUE RULING 2004-10]
- PLAN EXPENSE ALLOCATION METHODS: PER CAPITA VS. PRO RATA

SEC REVENUE SHARING INVESTIGATION IMPLICATIONS AND OPPORTUNITIES FOR FIDUCIARIES

- WHAT IS REVENUE SHARING?
 - PAYMENT OF SOME PORTION OF THE INTERNAL FEES ASSOCIATED WITH AN INVESTMENT PRODUCT TO AN ENTITY PROVIDING SERVICES TO THE PLAN SPONSOR
 - PAYMENTS COME IN MANY FORMS:
 - FINDER'S FEES
 - SUB-TRANSFER AGENT FEES
 - DISTRIBUTION AND MARKETING FEES
 - DIRECTED BROKERAGE
 - PLAN EXPENSE REIMBURSEMENT AGREEMENTS
- PAYMENTS GOING TO MANY PARTIES
 - ENTITIES SELLING RETIREMENT PLAN PRODUCT
 - RECORD KEEPERS / THIRD PARTY ADMINISTRATORS
 - CONSULTANTS
 - PLAN SPONSORS
- THE CURRENT SEC REVIEW
 - EXAMINATION OF THE REIMBURSEMENTS, REBATES, SUBSIDIES AND OTHER PAYMENTS THAT MUTUAL FUNDS AND THEIR ADVISORS MAKE AS PART OF THEIR PARTICIPATION IN THE DEFINED CONTRIBUTION BUSINESS
 - AN EXTENSION OF EARLIER INVESTIGATION INTO MUTUAL FUND "PAY-TO-PLAY" COMPENSATION TO BROKERS AND OTHER DISTRIBUTORS
 - AN EXAMINATION OF HOW PAYMENTS ARE DISCLOSED
 - AN EFFORT TO UNDERSTAND HOW DOLLARS FLOW WITHIN THE DC MARKETPLACE

- SEC REVIEW SPECIFICS
 - DETAILED QUESTIONNAIRE SENT TO MANY OF THE LARGEST FUND COMPANIES. LOOKING FOR INFORMATION COVERING:
 - TYPES OF PAYMENT
 - AMOUNTS AND TO WHOM PAID
 - COPIES OF CONTRACTS AND AGREEMENTS
 - BASIS FOR COMPUTING PAYMENT AMOUNTS
 - DIRECT & INDIRECT AMOUNTS
 - MONITORING PROCEDURES
 - MORE DETAILED INFORMATION ON LARGEST PLANS AND AGREEMENTS
 - INFORMATION PROVIDED TO FUND BOARD OF DIRECTORS
 - BOARD MINUTES RECORDING DISCUSSION
 - PROSPECTUS DISCLOSURE WORDING

- WHY SHOULD PLAN SPONSORS BE INTERESTED AND WHAT SHOULD THEY DO?
 - FIDUCIARY DUTY TO "...ACT PRUDENTLY AND SOLELY IN THE INTERESTS OF THE PLAN PARTICIPANTS AND BENEFICIARIES.."
 - AS SUCH, NEED TO ASSURE THAT COMPENSATION PAID DIRECTLY OR INDIRECTLY BY THE PLAN IS REASONABLE
 - NEED TO IDENTIFY ALL SERVICE PROVIDERS, MEASURE ALL FEES PAID AND EVALUATE ECONOMIC BENEFITS
 - NEED ADEQUATE DISCLOSURE TO PLAN PARTICIPANTS TO ENABLE THEM TO MAKE SOUND INVESTMENT DECISIONS
 - REQUEST DISCLOSURE LETTERS FROM ALL SERVICE PROVIDERS ATTESTING TO FEE AMOUNTS AND FORM OF COMPENSATION INCLUDING ANY AMOUNTS PAID TO THIRD PARTIES

- OPPORTUNITIES
 - CPA'S & ERISA ATTORNEYS
 - CLIENT EDUCATION
 - DEVELOPMENT OF PRUDENT PROCEDURES
 - TPA'S AND PROVIDERS
 - REVIEW AGREEMENTS AND DISCLOSURE PRACTICES
 - DEVELOP PACKAGED PRODUCTS INCLUDING FIDUCIARY CONTROLS
 - PLAN SPONSORS
 - REVIEW PLAN GOVERNANCE PROCEDURES
 - SEIZE OPPORTUNITIES TO REDUCE/REDISTRIBUTE COSTS