THE Pension Digest

Published Since 1984 — Collin W. Fritz & Associates, Inc., *"The Pension Specialists"* — July, 1990

Many Benefit From Exceptions to the Pre-Age 59-1/2 Premature Distribution Tax

Part One: Substantially Equal Periodic Payments

(Editor's Note: beginning in this issue of The Pension Digest, we will discuss the important topic of the 10% Penalty Tax for pre-age 59-1/2 IRA or qualified plan withdrawals—termed premature distributions—and the various exceptions to this general rule.

Normally, any distribution from such a retirement plan before age 59-1/2 will result in this 10% penalty tax being imposed. But the Internal Revenue Code does allow certain specific exceptions. Most—but not all—are related to hardship, such as death, disability, or other unusual demands on an accountholder's resources.

Part One, however, will consider one that is NOT related to hardship, the Substantially Equal Periodic Payments exception.)

The Substantially Equal Periodic Payments exception is an option of choice for the IRA or qualified plan accountholder, assuming certain conditions are met. It need not be related to death, disability, or any other event that one associates with a premature need for access to retirement assets. This makes it unlike most exceptions to the pre-59-1/2 Premature Distribution surtax.

Although it is speculative to make assumptions about the logic behind this provision of the Code, the Substantially Equal Periodic Payments exception does follow the often stated theme of "retirement dollars for retirement needs." Tax-advantaged retirement plans were not envisioned as means for building estates, or for shifting income to avoid payment of taxes. They were given this status as a means to allow taxpayers to better provide for their retirement.

Premise for this Exception

Under the Substantially Equal Periodic Payments guidelines, distributions are to be made in a series of essentially equal payments—annually or more frequently—over the life expectancy of the accountholder, or the joint life expectancies of the accountholder and a beneficiary.

Clearly such a distribution—begun before age 59-1/2—would extend its benefits throughout the accountholder's expected lifetime, and therefore their retirement years. This is certainly in keeping with the spirit of the IRS "retirement needs" doctrine.

Qualifying for the Exception

But there are very specific conditions that must be met in order for a distribution to qualify as Substantially Equal Periodic Payments under IRS Code section 72(t)(2)(A) (iv):

• the payment must be based on a calculation method that would be acceptable for calculating a normal 70-1/2 minimum distribution required under section 401(a)(9)—determined by the life expectancy of the accountholder, or the joint and last survivor expectancy of the accountholder and their beneficiary.

• or, payment may be based on amortizing the account balance over a single or a joint life and last survivor expectancy, at a reasonable interest rate determined as of the date that payments begin.

For example: A 50-year-old with an account balance of $100,000, would receive $8,679 per year over 33.1 years, if his or her beginning balance were amortized at an 8% interest rate.

• or, payment may be based on an annuity factor, which is derived from a "reasonable" mortality table, using a "reasonable" interest rate as determined on the date that payments begin. The annuity factor calculation can be based on

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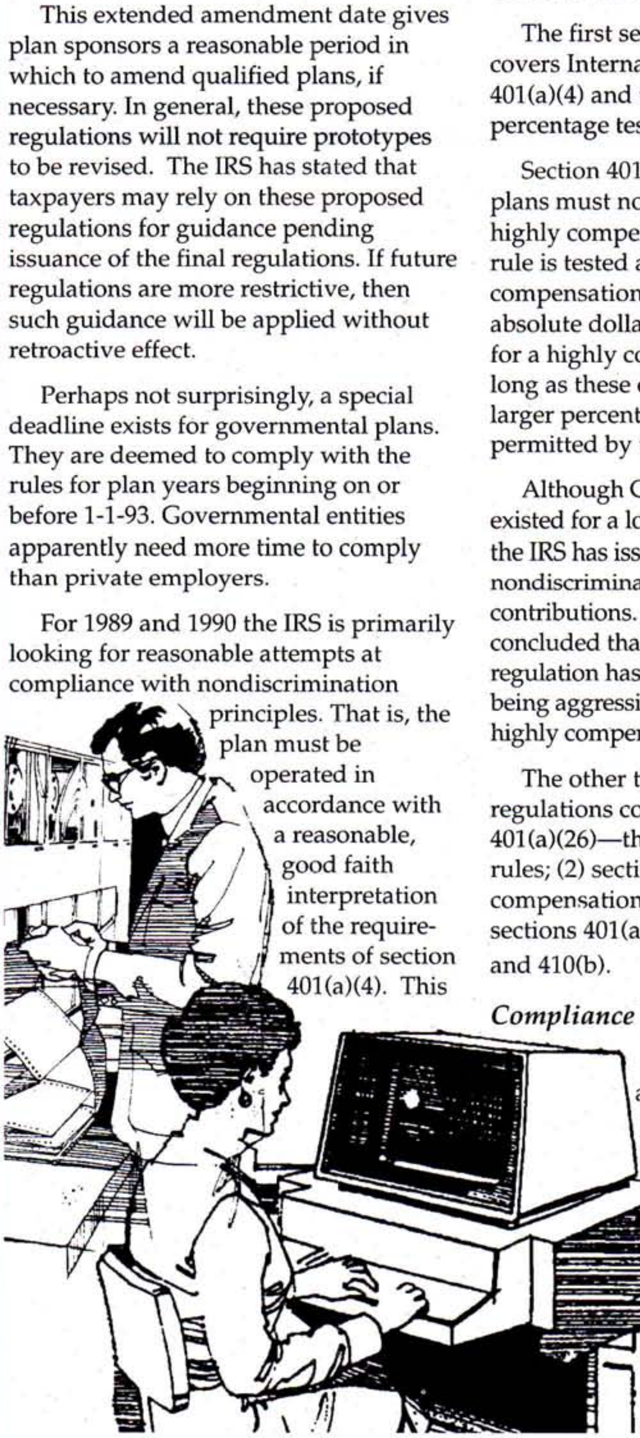
IRS Issues New Nondiscrimination Regulations

In May the IRS issued four sets of proposed regulations affecting all qualified plans. When considered together, they define when a plan will or will not be guilty of discriminating in favor of highly compensated employees. In general, the regulations are proposed to be effective for plan years beginning on or after January 1, 1991.

This extended amendment date gives plan sponsors a reasonable period in which to amend qualified plans, if necessary. In general, these proposed regulations will not require prototypes to be revised. The IRS has stated that taxpayers may rely on these proposed regulations for guidance pending issuance of the final regulations. If future regulations are more restrictive, then such guidance will be applied without retroactive effect.

Perhaps not surprisingly, a special deadline exists for governmental plans. They are deemed to comply with the rules for plan years beginning on or before 1-1-93. Governmental entities apparently need more time to comply than private employers.

For 1989 and 1990 the IRS is primarily looking for reasonable attempts at compliance with nondiscrimination principles. That is, the plan must be operated in accordance with a reasonable, good faith interpretation of the requirements of section 401(a)(4). This is determined on the basis of facts and circumstances. The IRS has indicated that they will be skeptical of an employer who always decides every unresolved issue in favor of the highly compensated. If the plan is operated for 1989 and 1990 in accordance with the proposed regulations, there is deemed compliance.



General Rule

The first set of proposed regulations covers Internal Revenue Code section 401(a)(4) and the average benefit percentage test of 410(b).

Section 401(a)(4) says that pension plans must not discriminate in favor of highly compensated employees. This rule is tested as a percentage of compensation, which means that the absolute dollar amount can be greater for a highly compensated employee as long as these employees don't receive a larger percentage of pay except as permitted by the integration rules.

Although Code section 401(a)(4) has existed for a long time, this is the first time the IRS has issued regulatory guidance on nondiscrimination in plan benefits and contributions. The IRS has rightly concluded that its lack of a clarifying regulation has resulted in some plans being aggressively designed to benefit the highly compensated employees.

The other three sets of proposed regulations cover: (1) section 401(a)(26)—the minimum participation rules; (2) section 414(s)—the definition of compensation; and (3) miscellaneous sections 401(a)(17), 401(k), 401(l) 401(m) and 410(b).

Compliance by Plan Design

The IRS has adopted the approach in each of the proposed regulations that most plans will be able to comply with the nondiscrimination rules on the basis of plan design (i.e. look to the plan document) rather than making calculations based on individual employee data.

To determine compliance with 401(a)(4), the IRS has come up with seven safe harbors for the various types of plans (profit sharing, money purchase, uniform benefit pension plans, flat benefit plans, etc.) to determine if the contributions or benefits are nondiscriminatory. For example, a profit sharing or money purchase plan which provides all participants with the same percentage of compensation or the same percentage as modified by the permitted disparity rules, automatically passes the nondiscrimination requirement.

If one of the safe harbors is not met, then the plan sponsor must determine if the general rule is met. That rule is that a highly compensated employee cannot have an allocation or accrual rate greater than the rate for any non-highly compensated employee, except in accordance with the permitted disparity rules (i.e. integration with social security). The proposed regulation then provides options to show that a plan does not discriminate—such as converting contributions to benefits or vice versa, or restructuring the plan. These options, however, are complex and are beyond the scope of this article.

Nondiscriminatory Benefits, Rights and Features

The 401(a)(4) regulation contains nondiscrimination rules other than just the rule that the contributions or benefits must be nondiscriminatory. The "benefits, rights and features" of a plan must also be nondiscriminatory. For example, if a highly compensated employee has the right to receive a lump sum distribution, self-direct his or her investments, etc. so too must non-highly compensated participants. The rule is that such rights must be available to a nondiscriminatory group of employees. Every employee need not be offered a certain benefit or right. The rule is that the optional form of benefit or right must be available to a group of employees that satisfies either the ratio percentage test of 410(b)(l)(B) or the nondiscriminatory classification test of 410(b)(2)(A)(i).

This proposed regulation eliminates the existing requirement that the average benefit percentage test must also be satisfied. Thus, for example, the test is met for a given right if the percentage of non-highly compensated employees to whom a right is available, is at least 50 percent of the percentage of highly compensated employees to whom the right is available. This percentage will decrease as the percent of non-highly compensated employees increases.

The 401(a)(4) regulation also contains the requirement that the effect of the plan in certain special circumstances must be nondiscriminatory. The special circumstances include plan amendments, grants of past service credit, and plan terminations. Thus, plan amendments, grants of past service credit, and plan terminations must not have the effect of discriminating in favor of highly compensated employees. For example, a safe harbor is provided for grants of up to 5 years of past service credit, which is automatically deemed to be nondiscriminatory. A grant of more than 5 years is not necessarily discriminatory, but must be reviewed to see if it is. Thus it is not granted safe harbor status.

The proposed regulation requires separate nondiscrimination testing for former employees versus current employees. However, a plan which has no former employees currently benefiting is deemed to satisfy section 401(a)(4) with respect to the amount of contributions or benefits provided to former employees.

Implementing the Average Benefit Percentage Test

This proposed regulation also contains the rules implementing the average benefit percentage test of section 410(b). A plan sponsor will need to determine if it can meet this test when it does not meet the tests of Code section 410(b)(l)(A) or (B). These tests are hard to meet, so many plan sponsors will need to look to the average benefit percentage test.

Paragraph (A) requires the plan to cover 70% of all nonhighly compensated employees. Paragraph (B) requires that the percentage of benefitted employees who are not highly compensated is at least 70% of the percentage of those highly compensated employees benefiting under the plan.

The IRS states that the proposed regulations have been designed to simplify the calculations required to determine whether a plan satisfies the average benefit percentage test. This may be true, but the rules are still complex.

In order to meet this test, the benefits provided to nonhighly compensated employees under all plans of the employer must generally be at least 70% as great, on average, as the benefits provided to the employer's highly compensated employees. Note that a separate percentage must be calculated for each employee and then a separate average must be made for the employees who are non-highly compensated and for those who are highly compensated.

Non-Qualified Consequences

The proposed regulation also discusses the consequences which will result if a plan fails to be "qualified." The IRS has never liked the end result that the statutory language seems to stipulate. Under Code section 402(b)(2), the general rule is that a plan which fails to "qualify" is to have the tax-exempt status of the earnings revoked (i.e. the earnings become taxable), the employer deductions for contributions may be deferred or eliminated, and all employees must include in income the vested contributions pursuant to Code section 83. The IRS has never liked the fact that all employees—including the non-highly compensated—must include the vested amounts in income.

However, a special rule applies if the failure to qualify is due to failure to satisfy Code section 401(a)(26) or 410(b). The consequence in this situation is that the highly compensated employees must include in income an amount equal to the vested amount not yet included in income, but no adverse tax consequences are imposed on the non-highly compensated employees. The IRS has always liked this result.

The IRS has now extended this treatment to all disqualifications and not just those due to 410(b) and 401(a)(26). The IRS' rationale is that the "uniform approach" should prevail. Therefore, any failure to satisfy section 401(a)(4) should be seen as a failure to satisfy 410(b) and thus the 410(b) penalties will apply. Obviously, the IRS has done some interpretive gymnastics but most employers are not going to argue, since the IRS is being more lenient than the law requires.

Minimum Participation Rules

The second set of proposed regulations discusses the minimum participation rules of section 401(a)(26). The IRS made monumental policy changes in its proposal, withdrawing a prior proposed regulation, and inserting a new one.

The minimum participation rule applies separately to each qualified plan of an employer. A plan generally satisfies section 401(a)(26) for a plan year if the plan benefits the lesser of: 50 employees of the employer, or 40 percent of the employees of the employer.

The IRS views 401(a)(26), 401(a)(4) and 410(b) as an integrated trio of rules designed to ensure that a plan does not impermissibly discriminate in favor of the highly compensated employees. Primarily, 401(a)(26) was enacted to limit the extent to which an employer is able to design different benefit formulas for different employees, in order to maximize benefit disparities in favor of highly compensated employees.

The prior proposed regulation exercised a statutory grant of approval which allowed the IRS to require any separate benefit structure (i.e. any difference in benefits, rights and features) to separately meet the 50/40 test. The new proposed regulation removes this requirement, as the new 401(a)(4) rules will cover this concern.

In the new proposed regulation a plan may satisfy section 401(a)(26) on a single day in a plan year (rather than each day), as long as the day selected is reasonably representative of the employer's workforce and the plan's coverage.

No Aggregation

Section 401(a)(26) applies separately to each plan of an employer. Thus, plans may not be aggregated to comply with 401(a)(26) even where the plans are identical in all respects or where the plans are treated as a single plan for purposes of section 401(a)(4) and section 410(b).

Four Assumed Compliance Situations

The proposed regulation creates four exceptions—four types of plans deemed

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Nondiscrimination—*Continued from page 3*

to comply with 401(a)(26), and so no further "testing" is necessary.

The first exception is for a plan which does not currently benefit any employee or former employee who is a highly compensated employee, as long as the plan is not top-heavy. The prior regulation had imposed a five year look-back rule; this rule has been eliminated.

The second exception is for a multi-employer plan, or portion thereof, that benefits only employees included in a unit of employees covered by a collective bargaining agreement. Such a plan is not required to meet the rules of 401(a)(26).

The third exception is for underfunded defined benefit plans.

The fourth exception is for acquisitions and dispositions. Rules similar to those in section 410(b)(6)(C) apply in the event of an acquisition or disposition.

Note that a plan will meet the 50/40 test if it provides benefits to the required number of employees. A plan also automatically satisfies the requirement if it does not currently benefit any employees or former employees. Thus a plan that has no contributions in a given year remains qualified.

Miscellaneous Regulations

The third set of regulations deals with a number of topics found in Code sections 401(a)(17), 401(k), 401(l), 401(m) and 410(b)(6)(G) and 7805.

Section 401(a)(17) provides an annual compensation limit of $200,000 for each employee under a qualified plan. This $200,000 is adjusted annually for years after 1989. This limit affects plans in a number of ways. First, the plan cannot consider or use compensation in excess of the limit for allocation purposes. Second, compliance with the nondiscrimination rules will be determined by using only that compensation not in excess of the current limit.

This $200,000 applies to each separate plan, or each group of plans, that are treated as a single plan for purposes of the applicable nondiscrimination requirement. The proposed regulation does not address the effect to the family aggregation rules. This subject has been reserved.

This proposed regulation also modifies the multiple use limitation under 401(k) by modifying the aggregate limit calculation.

Compensation Definitions/Safe Harbors

The fourth set of regulations are the temporary/proposed regulations which define compensation for plan purposes. The definition of compensation is important for testing compliance under 415, 401(a)(26), 401(a)(4) and 401(a)(17).

Again, the IRS gives some safe harbors that can be used.

First, any definition of compensation automatically satisfies section 414(s) if it includes all compensation within the meaning of 415(c)(3) and excludes all other compensation. The definition of compensation for 415 purposes is long and complex, but it can be summarized as requiring the inclusion of all income which will taxable to the employee (including reimbursements and allowances, etc), but excluding amounts which are excluded from income, and certain amounts realized from the exercise of a non-qualified or qualified stock option.

Second, two types of W-2 income qualify for safe harbor treatment since they are deemed to comply with section 415(c)(3). Type one is FICA wages as defined in section 3121(a) without regard for the wage base limitation. Type two is wages as defined in section 3401(a) for purposes of income tax withholding at the source.

The proposed regulation eliminates the ability to use accrued compensation for plan years beginning after 12-31-91. Compensation currently includible in gross income (i.e. the amount which has been paid) must be used. There is a de minimis rule that permits an employer to include in compensation amounts earned but not paid in a year because of the timing of pay periods and paydays, as long as these amounts are paid during the first few weeks of the next year. The de minimis exception can only be used on a uniform and consistent basis with respect to all similarly situated employees.

The proposed regulation also modifies the alternative definition of compensation. This is another safe harbor. Under this safe harbor alternative definition (the definition which most prototypes use), an employer may generally define compensation as including regular or base salary or wages, plus commissions, tips, overtime and other premium pay, and bonuses, excluding (even if includible in gross income) reimbursements or other expense allowances, fringe benefits (whether cash or noncash), moving expenses, deferred compensation and welfare benefits. Thus, most forms of noncash compensation are excluded.

If the plan provider does not wish to use a safe harbor, the proposed regulation provides that any other definition of compensation satisfies section 414(s) if it is reasonable, does not by design favor highly compensated employees, and satisfies a nondiscrimination requirement. It will be deemed nondiscriminatory if the average percentage of total compensation included under the alternative definition for the highly compensated employees as a group, does not exceed by more than a de minimis amount the average percentage of total compensation included under the alternative definition for the non-highly compensated as a group.

The summary above is intended to apprise you of the new antidiscrimination rules, and the basic concepts behind them. They are technical and complex. Yet their basic concepts must be understood if an employer's plan is to remain qualified, and their employees are to continue receiving maximum benefits from their retirement plans. PD

Update: Favorable Opinion Letters Now Expected Soon

Last month's Pension Digest reported that the IRS determination—or "favorable opinion"—letters (which verify that qualified plan prototypes meet Code regulations) had been delayed. The delay was due to difficulty the IRS was having with their computer program for processing and evaluating plans submitted on disk.

After forecasting a potentially lengthy delay, it now appears that issuance of favorable opinion letters will happen imminently. This is good news for all institutions that have adopted mass submitter plans.

All Collin W. Fritz and Associates prototype customers will be notified immediately upon issuance of their favorable opinion letters. PD

Pre-Age 59-1/2—*Continued from page 1*

ANY DISTRIBUTION PERIOD, as long as it is AT LEAST ANNUALLY. For example,

(1) If distributions are to be MONTHLY, the calculation requires dividing the account balance by an annuity factor equal to the present value of an annuity of $1 PER MONTH, beginning at the accountholder's age reached in the first distribution year, and continuing for life.

(2) If distributions are to be taken ANNUALLY, then the account balance is divided by an annuity factor equal to the present value of an annuity of $1 PER YEAR; again, beginning at the accountholder's age attained in the first distribution year, and continuing for life.

SAMPLE CALCULATION (using ANNUAL distributions, as in (2) above):

A 50-year-old individual has an account balance of $100,000. Using one of the several acceptable mortality tables (in this case the UP-1984 table), and factoring in an 8% interest rate, the annuity factor would be 11.109. The annual distribution is then determined by dividing the $100,000 account balance by the annuity factor of 11.109:

$$\frac{\$100{,}000}{11.109} = \$9{,}002 \text{ annual distribution}$$

(The terms "reasonable mortality table," and "reasonable interest rate are somewhat vague. In the case of mortality tables, several are acceptable. If you need assistance in obtaining a usable mortality table, send $10.00 for your copy to Collin W. Fritz and Associates, Ltd., P.O. Box 426, Brainerd, MN 56401. Or call 218-828-0249.)

Is the distribution schedule then irrevocable?

Once an accountholder begins taking distributions under the Substantially Equal Periodic Payments method, must this distribution schedule be maintained forever? The answer is "no". There are, however, penalties whose purpose is to ensure that this schedule is not flippantly altered by the accountholder.

YOU MAY NOT (without penalty) alter the schedule of payments:

(1) before age 59-1/2, or

(2) within five years of beginning distributions. Thus an accountholder could not begin receiving distribution payments under this exception at age 58, and then alter them after turning 59-1/2. He or she would have to maintain the series of payments for five years, or face an IRS penalty.

Penalty for Prematurely Altering Distribution Schedule

The penalty for breaching either (1) or (2) above is a CURRENT-YEAR TAX INCREASE equal to the amount that would have been owed as tax (back to the year of first distribution) had the Substantially Equal Periodic Payments exception not existed, plus interest on this amount. This interest is calculated from the earliest point when the penalty would have been owed.

Substantially Equal Periodic Payment Tracking by the IRS

Forms 1099-R and W-2P are the vehicles for this distribution tracking.

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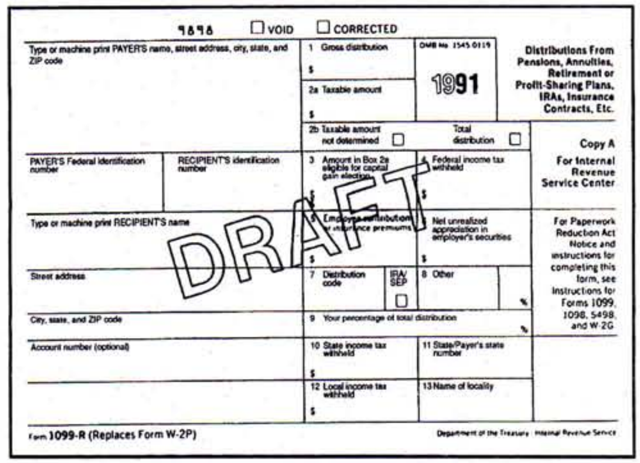
It's Official: Forms W-2P and 1099-R Combined



9898 ☐ VOID ☐ CORRECTED

Type or machine print PAYER'S name, street address, city, state, and ZIP code

1 Gross distribution $

2a Taxable amount $

OMB No. 1545-0119

1991

Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Etc.

2b Taxable amount not determined ☐ Total distribution ☐

Copy A For Internal Revenue Service Center

PAYER'S Federal identification number

RECIPIENT'S identification number

3 Amount in Box 2a eligible for capital gain election $

4 Federal income tax withheld $

Type or machine print RECIPIENT'S name

5 Employee contributions or insurance premiums $

6 Net unrealized appreciation in employer's securities $

For Paperwork Reduction Act Notice and instructions for completing this form, see Instructions for Forms 1099, 1098, 5498, and W-2G.

Street address

7 Distribution code

IRA/SEP ☐

8 Other %

City, state, and ZIP code

9 Your percentage of total distribution %

Account number (optional)

10 State income tax withheld $

11 State/Payer's state number

12 Local income tax withheld $

13 Name of locality

Form 1099-R (Replaces Form W-2P)

Department of the Treasury - Internal Revenue Service

DRAFT

The December, 1989 issue of The Pension Digest reported the IRS was considering combining accountholder reporting Forms W-2P and 1099-R. In June, the combining of these forms was made official in Announcement 90-79. The new form will first be used for 1991 reporting filed in 1992.

Contrary to expectations, the form will not carry both form numbers, but will simply be identified as Form 1099-R. Due to space requirements resulting from the combination, there will be two-per-page, rather than the current three.

Additions to Form

Based on recommendations received during a public comment period, several items have been added to the combined form.

(1) Box 2b now has:

(a) a checkbox for "taxable amount not determined." This was incorporated from Form W-2P, and was not formerly a part of Form 1099-R.

(b) A "Total distribution" checkbox, to distinguish a total from a partial distribution.

(2) Local tax information is reported in newly-added Boxes 12 and 13.

(3) Additional information can be recorded in a newly-added blank box beneath the account number box.

Methods of Submission

Filing with the IRS is to be done in either paper or magnetic media format, using the current threshold of 250 accounts as the determinant for required magnetic media filing. In general, procedures that formerly applied to the "old" Form 1099-R apply to this combined form.

"Substitute" Statements Allowed

Despite this being the newly issued and accepted form, the IRS is allowing use of not only the official form, but also substitute forms that look like this one, for statements to recipients.

(The DRAFT form reprinted here is subject to Office of Management and Budget (OMB) approval and change before final printing.) PD

Pre-Age 59-1/2—*Continued from page 5*

Note, however, that for 1990 reporting, the reason codes for these distributions were changed. Code #2—which formerly was used to report rollovers— is now used to report ANY distribution that qualifies as an EXCEPTION TO THE PRE-59-1/2 10% PREMATURE DISTRIBUTION TAX. Substantially Equal Periodic Payments qualifies as one of these exceptions, and thus calls for a Code #2 checkoff.

The Substantially Equal Periodic Payment exception represents a very important retirement plan distribution option for many accountholders. Be sure, however, that you and your customers are fully aware of its requirements, and that you administer and document this election properly if it is chosen.

Newsletter Survey Reminder

Responses to The Pension Digest newsletter survey (sent out with your last issue) began returning within less than a week from mailout date - very gratifying to say the least. Survey cards are continuing to arrive, but responding to YOUR opinions will only be possible if we have YOUR card. If you have not filled it out and dropped it in the mail, we encourage you to do so. We will publish a summary of reader responses, most likely in the next issue. We will also evaluate and begin to respond to these comments, as needed. Thank you.

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Question: An IRA accountholder–age 72–has died. Required minimum distributions have already begun, based on a single life expectancy and use of the nonrecalculation method. The beneficiary is a NON-SPOUSE. What options does this beneficiary have for continuing or changing the distribution method?

✔ A non-spouse beneficiary in this situation is very restricted in what he or she can do to alter distribution. With distribution having begun, the non-spouse is limited to continuing the distribution schedule based on the decedent's single-life expectancy and nonrecalculation election, or choosing to accelerate (including lump sum) distribution payments. This–if desired–would be done by means of the non-spouse beneficiary instructing you as to the larger amount that they would like distributed.

Note that—since distributions have begun—the 5-year rule and the life distribution method are not available options.

Question: What if the beneficiary in the above question had been the SPOUSE of the IRA account-holder, rather than a non-spouse?

✔ In that case, he or she could choose either: (a) to continue the distribution schedule set by the decedent, or speed it up, as discussed above, or (b) to treat the IRA as his or her own. If the spouse was less than 70-1/2 and did not need the funds at that time, THE DISTRIBUTION ALREADY BEGUN COULD BE HALTED.

Question: We recently had a customer come in with a pension distribution check (it was a lump sum payment of her entire account balance) issued by the pension plan established by the city of Morris, Minnesota for the city's employees. Does the distribution qualify to be rolled over to an IRA?

✔ Probably. A rollover to an IRA is only permissible if the distribution comes from certain types of plans. Most distributions from other IRAs qualify as do some distributions from tax sheltered annuities (i.e. those defined in code section 403(b)). Some distributions from "qualified plans" (i.e. those plans which meet the requirements of code section 401(a)) also qualify.

The problem is that not all governmental plans are "qualified." Most are, but some are not. Unfortunately, most people working for a governmental entity will assume that their plan is qualified without really knowing.

When you are faced with this situation or a similar one, you should recommend to your customer that they obtain a written statement from someone who knows that the plan is qualified, therefore making the rollover permissible. The best of all worlds is if the governmental entity has an attorney's opinion that the plan is qualified, or a specific ruling from the IRS that it is qualified, and can furnish either to your customer. The Code section 402(f) requirement that the plan administrator, when making an eligible rollover distribution, provide a written explanation of the rollover provisions, applies to all qualified plans including governmental ones.

The point is: make sure the customer understands that it is his or her responsibility to know if the funds qualify to be rolled over, not your institution's.

The Pension Digest invites your questions and comments.
Please address to "Check It Out," Collin W. Fritz & Associates, Ltd., P.O. Box 426, Brainerd, MN 56401.

Maximum Late-Filer Penalties in Force After August 1

Financial institutions making late or corrected filings of information returns to the IRS have only until August 1st to do so if they wish to avoid the maximum per account and per year aggregate penalties.

In prior years the deadline was October 1, but this was changed under the Omnibus Budget Reconciliation Act (OBRA) of 1989. (These penalties were previously part of a separate set of regulations, the Improved Penalty and Compliance Act, but were subsequently merged into OBRA.)

A very detailed treatment of the penalties for late filing was presented in the January, 1990 issue of The Pension Digest. For specifics on these penalties, and the points at which the varying penalty levels go into effect, please refer to that issue (if unavailable, send a SASE to Collin W. Fritz and Associates, P.O. Box 426, Brainerd, MN 56401 for a photocopy of this article).

Briefly, penalties are set by OBRA at \$15, \$30 and \$50 per account for varying degrees of late filing of corrected returns. Corresponding maximum penalties per calendar year escalate from \$75,000 to \$150,000 to \$250,000 respectively.

The MAXIMUM PENALTIES of \$50 per account and \$250,000 per year ARE IN EFFECT after August 1.

Exceptions to These Penalties

There are "de minimus" exceptions for certain minimal reporting failures, as well as the Small Business Exception, both of which reduce the various penalty levels. These also are covered in the January, 1990 Pension Digest, as previously cited.