



Securities Industry Association

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January 3, 2001

Leslie Kramerich
Assistant Secretary of Labor
Pension and Welfare Benefits Administration
U.S. Department of Labor
Rm S-2524
200 Constitution Avenue, NW
Washington, DC 20210

Dear Leslie:

The Securities Industry Association (SIA) would like to express our concern over a recently formed enforcement initiative focusing on employer-sponsored retirement plan expenses. SIA represents approximately 740 broker-dealers, investment bankers, and mutual fund companies, many of whom directly or indirectly provide services to private sector pension plans.

SIA members agree that certain expenses that are for the benefit of the plan sponsor, so-called settlor expenses, should not be paid out of plan assets. However, Section 403 and 404 of the Employee Retirement and Income Security Act (ERISA) permit the plan sponsor to pay reasonable expenses from plan assets. These expenses have historically been for administration, investment, or compliance activities. However, certain Department of Labor (DOL) regional offices are taking a different position that we believe conflicts with Section 403 and 404 and long-standing practice. In audits, enforcement officials have taken the position that a variety of plan expenses must be allocated between the employer and the plan. This shift in interpretation is troubling, particularly since many of the questioned expenses arise because of the need to comply with ERISA or the Internal Revenue Code.

As one of the lead federal policy-making offices for private sector pension plans, we believe that the DOL has not considered the negative impact this legal interpretation will have on its stated goal of promoting plan sponsorship. This shift in interpretation will directly impact plan sponsors' desire to maintain their plans and discourage other employers from adopting a plan. The 401(k) plan market is the fastest growing segment of the private sector benefits market. Competition is fierce among service providers and is continuing to grow. This competition, and the utilization of state-of-the-art technology, has decreased the cost of administering a 401(k) plan making these plans

more attractive to employers. However, finding non-compliance when expenses are not allocated between the plan and the employer will undercut many of the lower costs that have encouraged employers to adopt plans.

Employers do receive certain benefits from establishing and maintaining a pension plan. The tangible benefit to the employer is a tax deduction. There are intangible benefits as well -- increased employee retention and the ability to attract employees. At the same time, DOL officials must not overlook the fact that employers have other alternatives that satisfy these needs and provide the employer with a tax deduction. An employer could decide to increase compensation above the rates offered by his competitors and forego offering a pension plan altogether. The employer is still eligible for a tax deduction and has not accepted any new regulatory burdens or fiduciary liability.

The system that you are responsible for regulating is still a voluntary one. As such, ERISA does provide a way to balance the needs of employers while protecting plan participants. This initiative goes too far in adding new burdens on the plan sponsor and should come to an end. If the Department believes that the law requires this change in long-standing practice, our members would like notice and the opportunity for public comment. SIA would be pleased to discuss our views with you further. If you have any questions, please contact me at (202) 296-9410.

Sincerely,

Liz A. Liess
Vice President and Director
Retirement Policy

Cc: Alan Lebowitz
Bob Doyle