

The DATAIR News

NEWS FOR THE DATAIR PENSION AND BENEFITS PROFESSIONAL

SPRING 2000

FROM THE TOP

By Aaron Venouziou

Nobody calls me anymore... Not so long ago that I can't remember it (which is good, because at my age I worry about things like that) I used to answer the phones, help people with the programs, even taught the classes. I knew every user by name and voice, even had many of the phone numbers memorized.

Now, I have 35 other people running around doing all of that stuff (which is good, because at my age I can no longer answer all the phones, support all the users, teach classes all over the country). That's great – but with all of this help you would think I would have more time to golf and watch the stock market go up and down.

I'm still working closely with the development of the programs, and I go to the conferences and keep up on the changes, so that chews up a great deal of my time. We have so many users now, I can't keep track of them all, but I try to meet as many as possible at the various conferences, and there I run into people I haven't talked to in years. So I wonder

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CONGRATULATIONS



DATAIR is pleased to announce the promotions of Gina Iaccino to Vice President, Customer Service, and Gary Ward to Supervisor, Customer Support. In addition, please welcome three new members to our Customer Support team: Del Horton (DC and CA), Gerald West, Jr. (Technical), and Kristina Kananen, QPA (DC).

DATAIR PROFILE

By Laurie Brophy

Lanning Hochhauser, our in-house attorney, has been head of the Retirement Document System and Cafeteria Document System for the past 5 years tackling an array of Documents' questions.

After receiving a BS in Business, an MBA from Eastern Illinois University, and a JD from IIT-Chicago Kent College of Law, Lanning began a career specializing in employee benefits with a bank in the Chicagoland area. After that, he headed for the West Coast and worked for several consulting firms until the Midwest called him back home. With nearly 20 years of experience, Lanning joined DATAIR, and the rest—as they say—is history.

Lanning and his wife, Sara, have 5 children. So if he's not attending a swim meet or PTA meeting, you can find him out practicing with a 10 meter Air Pistol which is now an Olympic sport. As for his favorite past time—fly fishing—he will have to 'catch' that dream later.

What's most notable about working at DATAIR? Says Lanning, "In the past 5 years I've been here, it continues to be new and interesting. And because we service such a wide variety of administrative and consulting firms, I address new and different challenges every day. As a result, my days are never boring."

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CAFÉ CORNER

By Christopher Tipper

Welcome to a new column in *The DATAIR News*. As space allows and subject matter permits, this column will appear regularly. The first columns will keep you apprised of what is going on with DATAIR's development of the Windows **Flex/PLUS** system. After the system is available in general release, I will be keeping you up to date with expected developments and enhancements in the system, tricks and traps to watch out for and developments in the general world of Cafeteria.

We are all waiting for Windows. Really. Just as much as you are. Honest. And, we really are working on it. It's just taking us a little longer than expected to develop a system that will be easy to use, but have the power and features that a "power" user would expect.

The Windows version of Cafeteria is going to appeal to both the user that wants to simply print benefit checks and perform annual non-discrimination testing, and to the user that has the staff and inclination to use the system to its fullest capabilities. These might seem like mutually exclusive goals, but they are possible and they are a cause in the delay in releasing the new version. DATAIR does appreciate

"In addition, a step-by-step example converting a DOS plan to a Windows plan will be included."



the comments and suggestions that you are providing regarding what you want and don't want in the system. We won't, however, be able to implement all of your suggestions with the first release. The system will be a work in process. Before a release goes out, we will already be working on enhancements and upgrades for the next one.

It is not really possible to just "convert" the DOS system to Windows. It must be designed, developed and written from scratch. As a result, there will be very little, if any, one-to-one correlation between current procedures and features and how a Cafeteria plan would be administered in Windows.

With the Windows version of **Flex/PLUS**, DATAIR is going to provide its most comprehensive on-line help and tutorial package yet. For both the new **Flex/PLUS** user and the long time **Flex/PLUS** user, a step-by-step tutorial will be included documenting every step of plan set up and plan administration. The tutorial package will let you know which features in DOS relate to which features in Windows, which DOS procedures are gone and which Windows features and procedures are new. In addition, a step by step example converting a DOS plan to a Windows plan will be included.

As the Windows version will be so different from the DOS version, it is extremely critical that the layout of the screens and the procedures that the users will have to follow are laid out in as logical and intuitive a fashion as possible. The combination of standard features, screen layout and on-line help should make it a relatively easy system to get up and running. What's my basis for this optimism? I am designing some of the main system screens as well as being the help author.

Everybody involved in developing the Windows **Flex/PLUS** System is excited about what this release will mean to DATAIR. Please feel free to e-mail me with your comments at ca.support@datair.com.



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The DATAIR News strives to provide our customers with valuable and enjoyable information about DATAIR software, services, and the pension industry. Reader contributions are welcome.

TOP HEAVY PLANS AND §401(a)(4)

By Lanning Hochhauser

Generally, a prototype Profit Sharing or Money Purchase Plan passes the non-discrimination requirements of Section 401(a)(4) of the Internal Revenue Code (the "Code") because it is required to use a uniform allocation formula. Most individually designed plans and volume submitter plans also use a uniform allocation formula. However, if the plan is Top Heavy, and has a "last day/1000 hour" rule, it could easily be determined to be discriminatory.

"...under the multiple formula requirements, the top-heavy minimum is not available to all employees. It is only available to the non-keys."

Section 401(a)(4) of the Code requires that "the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees." The regulations specify that a plan meets this requirement if it has either a "uniform allocation formula," a "uniform points allocation formula," or passes the General Test.

An allocation formula where everyone receives the same rate of contribution to compensation is a uniform allocation formula. An allocation formula that provides for permitted disparity under §401(l) of the Code is treated as satisfying this uniform allocation requirement.

Furthermore, if a plan has multiple formulas for the allocation of the employer contribution, the plan must meet certain requirements that will also allow it to be considered "uniform." These requirements are: (1) that these multiple formulas are "the only formulas under the plan," (2) that each formula, separately, meets the uniformity requirements, and (3) that all formulas are "available on the same terms to all employees."

So, what happens if we have a simple Profit Sharing Plan where everyone who has 1,000 hours or more receives a 10% allocation, and everyone with less than 1,000 hours gets the 3% Top Heavy Minimum. This does not satisfy §401(l) of the Code, and, therefore, does not satisfy the uniform allocation requirement. Additionally, under the multiple

formula requirements, the top-heavy minimum is not available to all employees. It is only available to the non-keys. This is a problem that the regulations for §401(a)(4) of the Code specifically address.

IRC Regulation §1.401(a)(4)-2(b)(4)(vi)(D)(3) requires that, "in the case of a plan that provides the greater of the allocations under two or more formulas, one of which is a top-heavy formula," the plan would fail to satisfy the availability requirement **unless** "the plan would satisfy Section 410(b) if all employees who are benefiting under the plan solely as a result of receiving allocations under the top-heavy formula were treated as not currently benefiting under the plan."

It is this exact point on which we must concentrate our analysis of the plan: Does our plan satisfy this "availability" requirement, which will allow it to be considered "uniform" under the regulations for §401(a)(4) of the Code?

Note: The plan already satisfies the participation requirements of §410(b) of the Code or we would not be concerned with §401(a)(4) of the Code. The regulation cited above recognizes this fact, by referring to the participants who receive the top-heavy minimum as "benefiting." In fact, the regulations for §410(b) of the Code do not define these people as "not benefiting."

HERE IS OUR SITUATION:

We have a Profit Sharing Plan with a last day / 1,000 hour requirement. All eligible participants receive an allocation integrated with Social Security, maximized to benefit the owners. There are 2 participants who are HCEs, both of whom are eligible and benefiting. There are 8 participants who are NHCEs, but only 4 of these are eligible. The other 4 are employed on the last day, but have less than 1,000 hours.

We fail the 410(b) Ratio Percentage Test with a ratio of only 50%. The ages of our

(Continued on page 4)

(Top Heavy, continued from page 3)

census is such that we also fail the Average Benefit Test.

Fortunately, the Plan is Top Heavy. This brings in our 4 part-timers and we pass the 410(b) Ratio Percentage Test. Now we have another problem. Our plan has 2 allocation formulas for purposes of §401(a)(4) of the Code. One is a uniform allocation formula with permitted disparity. The other is a top-heavy allocation. Because we have people who benefit “solely” because they receive a top-heavy minimum allocation, we must satisfy the availability requirement by running the plan through 410(b) Ratio Percentage Test as if these people were “not currently benefiting.” This brings us back to the 50% Ratio Percentage Test.

Therefore, we fail the 401(a)(4) non-discrimination test. Or do we? What about the Average Benefit Test? Do we include the 3% allocation to the top-heavy people and pass? Or, do we give them a zero allocation and fail?

DATAIR has interpreted the regulations to exclude the top-heavy allocation for those people who benefit “solely” because they receive the top-heavy allocation. There are others who dispute this interpretation, but we believe the phrase “not currently benefiting” leaves us no room.

However, just because the plan fails the “availability” requirement, does not mean that it fails the non-discrimination requirements of §401(a)(4) of the Code. We can still pass under the General Test. In our example, though, we still fail. We have only one rate group in the DC Allocation with Permitted Disparity, but only 50% of the NHCEs fit into that group. The ages of our census still prevent us from passing under any other method.

In conclusion, we must all be aware of a trap that lies in the comfortable world of any DC plan that has a 1,000 requirement to share in a contribution. It is possible for that plan, given certain circumstances, to fail the non-discrimination requirement of §401(a)(4) of the Code. Those circumstances do not have to be unusual for this situation to arise. The solution is similar to the same reparation we would make to pass the 410(b) participation test if this plan were not Top-Heavy – lower the hours requirement and give someone a full allocation. In our sample plan we only need

give one person the full allocation to pass the non-discrimination test.

The greater question should not be “How to solve the problem?” but what does this do to the status of our plan if this plan is a “non-standardized prototype” or a volume submitter? Perhaps the only true “safe harbor” is a “standardized” plan that avoids this situation altogether, since the last-day rule is not an option.

Version 3.10 of the Pension Administration System will recognize a safe harbor plan that has this situation and produce an additional test under the 410(b) report to reflect satisfaction of the availability requirement. Therefore, if your plan has a safe harbor allocation formula which does not normally require a 401(a)(4) nondiscrimination determination, and you have participants who benefit solely because they are receiving a Top Heavy Minimum allocation, the



SINGING THE ‘BACK-UP’ BLUES

Sung to the tune of The Beatles’ Yesterday.

♪ Yesterday,
All those back-ups seemed a waste of pay
Now my database has gone away
Oh, I believe in yesterday

♪ Suddenly,
There’s not half the files there used to be
And there’s a millstone hanging over me
The system crashed so suddenly

♪ I pushed something wrong
What it was I could not say
Now all my data’s gone
And I long for yesterday-ay-ay-ay

♪ Yesterday,
The need for back-ups seemed so far away
I knew my data was all here to stay
Now I believe in yesterday

Author Unknown

GRADED MATCHING CONTRIBUTIONS—TESTING FOR DISCRIMINATION

By Gary Ward

A 401(m) Plan that passes the ACP Test can still be discriminatory – not in its allocation, but in the availability of the different levels of a graded schedule.

Reg. §1.401(a)(4)-4 provides rules for “determining whether the benefits, rights, and features provided under a plan ... are made available in a nondiscriminatory manner.” This includes the separate tiers of a graded matching contribution.

Certain methods of grading a match are acceptable. These include a match that is graded on rates of salary deferral. In this schedule, each tier is based on a percentage that the deferral bears to the participant's compensation. Since a rate of deferral is something that is available to all participants, this is generally not a problem. However, if the level of match increases as the rate of deferral increases (example: a 50% match up to 4% of comp., then 100% up to 6%) you could have a problem with “effective” availability. This is not a design issue, but one of facts and circumstances, where the actual details of a particular plan must be examined to prove that the higher matching level is not effectively benefiting the highly compensated more than the non-highly compensated. Establishing a schedule that reduces as the deferral rates increase would eliminate this potential problem (example: a 100% match up to 4% of comp., then 50% up to 6%).

Reg. §1.401(a)(4)-4(b)(2)(ii)(A)(1) allows us to disregard a schedule that is based upon age or service as long as there is no time limit imposed upon the schedule's requirements (such as “anyone who is 50 by the end of the 2000 plan year gets 100% match, and everyone else gets 50%”). However, we must still be aware of any potential problems with “effective” availability.

A matching schedule based upon classes or divisions will put you right into a testing situation. This test is simply passing the groups of participants eligible to receive each tier through the 410(b) participation test, without regard to the Average Benefit Test.

This is simple in explanation, but how do we do it in DATAIR's Pension Administration System?

First, we must isolate the matching contribution from the rest of the employer contributions, determine which individuals benefit from which tier of match, and then run the match through the 410(b) test choosing the Component Plan Option 2. (You must pass the ACP test, or correct a failure in the ACP or Multiple Use test before beginning this procedure.)

- Copy the plan.
- Update the Plan through Cycle 2 using Update Option 1. Answer "Yes" to all "clear" options (compensation, premiums and transfers).
- After update, clear all contributions calculated on Screens 13 and 14. (Do not, however, turn off the match by setting the Match option to 0. Rather, delete the formula.)
- Remove any forfeitures held, any QNECs and any Safe Harbor factors. (If the plan is a Safe Harbor Plan, set the "O in the 401(a)(4)" to 'No.')
- Go to the accounts and change all E (Employer) accounts to K (Matching), and all K accounts to E.

“A matching schedule based upon classes or divisions will put you right into a testing situation.”

Next, part of the §401(a)(4) General Test options for testing a Cross-Tested or New Comparability Plan is the Component Plan feature. On Screen 38 of each employee (at the very bottom) is a component plan code. This code can be either a number or a letter. For each participant, determine the highest level of match that was available to that participant during the plan year, even if that participant chose not to defer and, therefore, did not receive a match. In the case of those participants who were eligible for the match but did not receive one because they did not defer, also enter a 'Y' in the first “Benefiting” field at the top of Screen 38 – this is very important, in that we want to test for the “availability” of a benefit, not whether the participant actually received a benefit.

Finally, recalculate the plan and print the Contributions YTD. Confirm that the contributions now listed as Employer are the same as those allocated previously as Matching. If everything looks normal, select to print the 410(b) Test and set the Component Plans to a '2.' The 410 (b) Test will print for each separate component. (Continue on page 6)

RELIEVING 1099 STRESS

By Kristina Kananen, QPA

Do you find yourself scrambling at the end of the year, trying to remember who was paid out of which plan and how much? Where they live and when they were paid? Then, after the 1099-R's have been prepared, finding out your distribution instructions were not followed or that terminees had moved? And worse yet, determining that the EIN you used on the 945 was not the same as the Client used when depositing the income tax withheld, thus generating IRS inquiries?

DATAIR's Pension System can help relieve a great deal of your 1099 stress.

- As distributions are processed, enter all the appropriate 1099 information onto participant level Screen 35. This information is retained even though you may update the plan file for the next plan year before the 1099 form is actually prepared.
- The 1099 will print when the 1099 Tax Year on plan level Screen 10 matches the 1099 Tax Year shown on participant level Screen 35. The 1099 information is saved and processed independently from the plan year, so you need not worry about using the "right" DATAIR file.
- A summary of the 1099 information input to the Pension System can be printed in late October or early November, before the "12/31 Rush" begins, and mailed to the Client for verification. This will help you determine if anyone moved and if the distribution instructions were followed before 1099's are produced.
- By signing off on the 1099 summary, the Client is telling you the information you have in your files matches his data. Which, in effect, says that approved 1099's could be printed and stuffed into envelopes, ready for mailing in January. Be aware that if additional distributions are then made from that plan, you will want to print the remaining 1099's on a "by employee" basis instead of a global print of all 1099's.

To be sure you and the Client are using the same EIN for depositing and for reporting, consider including a completed 8109B tax deposit coupon when you send distribution instructions that include income tax withholding.

If you have Client Manager/Task Manager, set up a task for the 1099 preparation when you first process a plan's distribution in a calendar year. You will then be able to produce a list of plans requiring 1099's with ease and eliminate the worry over missing 1099's.

A do-it-as-you-go method coupled with DATAIR's capabilities can help to make January 31st a no-big-deal day. 🌸



(From the Top, Continued from page 1)

why I have to catch-up on so much – "How's business? How's the family? Did you ever straighten out that hook? When did all your hair fall out?"

I'm not saying that everyone needs to call me – it's not that lonely at the top – just that I look back on the 'old' days and find that what made them 'good' was talking to all of you. So, just because I haven't seen you or spoken to you in years, I haven't forgotten you (which is good – well, you know what I mean).

Call me sometime. 🌸



(Matched Contributions, Continued from page 5)

results splashed on the top of each test and focus on Section I. – The Ratio Percentage Test, part E. – The Ratio Percentage (we must disregard Section II. – The Average Benefit Percentage Test).

Once you have printed the test you can discard the testing copy of the plan so as not to confuse it with the original valuation.

We will be examining this situation further and determining a better way of running the availability tests, but since it is a facts and circumstances test, it is difficult for the system to determine availability for each participant. The only enhancement we could make would be in the area of printing the results, not in determining who is in which component.

The best solution, of course, is to keep it simple and not create a matching formula that will require this type of testing. 🌸



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ROUTE TO:

WESTMONT 2000 TRAINING SCHEDULE

Master the tools and fundamentals of pension administration through DATAIR's step-by-step systems training classes in Westmont, Illinois.

- July 10-14
- September 11-15
- November 13-17
- December 4-8

REGIONAL 2000 TRAINING SCHEDULE

Join us 'on the road' for DATAIR's Defined Contribution, Data Import and Data Entry, and Report Writer systems training.

| Dates | Locations |
|---|------------|
|  June 26-28 | Reno, NV |
|  Sept. 18-20 | Albany, NY |
|  Nov. 6-8 | Dallas, TX |

Visit our website at www.datair.com, then click on 'System Training' or contact our Training Department.

CURRENT SOFTWARE VERSIONS



| | |
|----------------------------------|-------|
| PE Pension Administration..... | 3.10 |
| PR/WIN Pension Reporter..... | 1.00 |
| RD Retirement Plan Doc..... | 1.41 |
| CA Cafeteria Administration..... | 4.52 |
| CD Cafeteria Plan Document..... | 1.23a |
| CM Client & Task Manager..... | 1.03 |

| | |
|-------------------------------------|-------|
| PA Plan Accountant..... | 2.03 |
| QP Qualified Plan Distribution..... | 1.52 |
| FA FAS 132 Reporting..... | 2.01 |
| PT Participant Term. Calc..... | 1.50 |
| DE Data Entry & Review..... | 1.13a |