The DATAIR News

From the Top

By Aaron Venouziou, President

This is an exciting time at DATAIR. Our Windows Defined Contribution administration system, *DC/Win* has been shipped to DATAIR customers across the country. Initial response has been overwhelmingly enthusiastic.

We confronted the problem of how to train the employees of hundreds of DATAIR licensees quickly and efficiently. Our solution: Webcast Training. During the Preview Release phase we are providing a 3½ hour webclass.

Attendance at each webclass is limited to allow for questions and answers. So, we use a first come, first served approach. Sign up now on our website to pick convenient dates and times for your training. When you complete *DC/Win* licensing and have registered for a class, we will send you the *DC/Win* software. Then you can begin converting and running your plans. We think that you will appreciate these advantages of DATAIR's Webcast Training:

Savings: For a modest fee, you participate in the live webclass, receive a CD recording of the class, and later receive another CD with more detailed training program. No travel or hotel expenses. No limit on the number of students at one location hookup.

Convenience: Your office is your classroom. No time away from the office. Some of our clients use a data projector and speaker phone to comfortably accommodate many students at once.

Consistency: Using the CD, students may review and future employees can be taught. This certainly improves upon the old "train the trainer" approach.

We will be expanding our webcast training to cover other systems as well. A Pension Reporter System class to be offered soon will include information on electronic filing of 5500s and 1099Rs as well as transfer of data from other systems. Look for announcements about other classes on www.datair.com.

In addition to our work on *DC/Win*, we've also completed the following...

✓ Added Cash Balance plan documents & SPDs to our Retirement Document System *(RDS)*. Cash Balance plans combine the advantages of Defined Benefit and Defined Contribution plans. Note that our Pension System handles Cash Balance proposals and administration.

✓ Added Electronic Filing of 5500s to our Pension Reporter System and delivered the 2004 5500 series to our customers before Christmas...the earliest since the EFAST program began!

✓ Received IRS approval for new 401(k) Prototype documents with more powerful and flexible capabilities. Look for these new documents in *RDS* this spring.

DATAIR Profile

Meet John Vasko, one of our System Developers. John came to DATAIR four years ago bringing 12 years of expertise in programming and designing finance and insurance software for the Automobile Industry. His responsibilities ranged from technical support and training to marketing—putting his BSEET (Bachelor of Science in Electronics Engineering Technology) to good use.

His current position involves developing the Batch Print module, enhancements to the Import/Transfer modules, and updating and maintaining the Cafeteria/FlexPlus Windows System.

Being a man of many talents, John is a songwriter who plays guitar in a local band, dabbles in electronic design and finds time to hone his carpentry skills.

What do you enjoy most about working at DATAIR, John? "One advantage to working at DATAIR for me is the flex hours. It allows me to avoid peak rush hour when commuting, and as a night owl I prefer to start and work later into the day where I can be more productive. In summer, I enjoy Friday barbeques with the other programmers."

Special Points of Interest
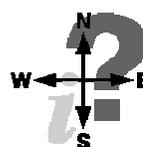
★ IRS and DOL issue new rules regarding Automatic Rollover of Mandatory Distributions

★ WFTRA and Cafeteria Plans

New IRS & DOL Automatic Rollover Rules

By Bill Brown, J.D.

IRS and DOL Issue New Rules Regarding Automatic Rollover of Mandatory Distributions

Q. Why have the IRS and DOL issued these rules?
A. The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") amended Code section 401(a)(31) to require that certain mandatory distributions from retirement plans be directly transferred to an IRA unless the participant makes an "affirmative election" to the contrary. This provision relates to Code section 411(a)(11), which allows plans to provide for an immediate, mandatory lump-sum distribution if a participant terminates employment with a vested accrued benefit having a present value equal to or less than $5,000. EGTRRA directed DOL to issue regulations providing safe harbors for the plan administrator's designation of an institution to receive these automatic rollovers and the initial investment choice for the rolled-over funds.

Last fall, DOL issued regulations that provide a safe harbor under which a plan fiduciary is deemed to have met its fiduciary duties in connection with automatic rollovers described in Code section 401(a)(31)(B). [69 Fed. Reg. 58017 (Sept. 28, 2004)] New DOL

The DATAIR News

Regulation section 2550.404a-2(c) states the conditions under which the plan fiduciary can qualify for this safe harbor. In a stroke of impeccably bad timing, these regulations are effective six months after the date of issuance, so they apply to mandatory distributions made on or after March 28, 2005, right in the middle of the busiest season for plan administrators.

Q. What guidance has the IRS provided?
A. On December 28, 2004, the IRS issued Notice 2005-5, which explains that a mandatory distribution is a distribution made without the participant's consent that occurs before the participant attains the later of age 62 or normal retirement age. For purposes of the automatic rollover rules, a mandatory distribution also does not include a distribution to the participant's surviving spouse or an alternate payee. The automatic rollover rules apply to *any* mandatory distribution *that exceeds $1,000* and is an eligible rollover distribution subject to the direct rollover requirements of Code section 401(a)(31).

If the automatic rollover rules apply to a distribution, the plan administrator must pay the distribution in a direct rollover to an IRA if the participant, after receiving the notice described in Code section 402(f), fails to elect to receive the distribution directly or have it paid in a direct rollover to an eligible retirement plan. A mandatory distribution can be paid to a separate IRA described in Code section 408(c) or to a deemed IRA that is part of the distributing plan and meets the requirements of Code section 408(q).

Q. Do plans have to be amended as a result of these new rules?
A. Yes, except in the circumstances discussed in the next paragraph. Notice 2005-5 states that a plan must be amended if it does not already include an automatic rollover provision that satisfies the requirements of Code section 401(a)(31)(B). If a plan does not have the necessary language, the sponsor must adopt a good-faith amendment reflecting the automatic rollover rules. Notice 2005-5 includes a sample plan amendment that satisfies this requirement. The only alternative is to amend the plan to lower its mandatory cash-out ceiling to $1,000. According to Notice 2005-5, this amendment does not violate the anti-cutback provisions of Code section 411(d)(6).

We are aware of only two exceptions that avoid an amendment to an existing plan:

1. The plan already has a mandatory cash-out ceiling that is $1,000 or less. Unfortunately, we believe that almost no existing plans have a ceiling that low.
2. The plan does not allow any cash-outs at all.

Q. What has DATAIR done about these new rules?
A. If you are a DATAIR Document System subscriber, you already have access to new automatic rollover provisions that are in the Folder View tree as the last entry under Plan Documents. This new feature gives you two options for each plan:

1. Amend the plan to reduce the mandatory cash-out ceiling to $1,000, which means that the plan will not be subject to the new automatic rollover rules.

2. Amend the plan to include an acceptable good faith amendment adding the automatic rollover provisions to the plan.

Either option gives you an SMM and a corporate resolution regarding the amendment. If you choose Option 2, you also get a supplement to the 402(f) notice explaining these new rules for participants entitled to receive a distribution.

Q. *When* do plans have to be amended as a result of these new rules?
A. The new rules apply to any mandatory distribution made on or after March 28, 2005. If a plan sponsor wants to avoid these provisions, **it must amend its plan document by March 27, 2005**, to reduce the amount of any mandatory distribution to $1,000 or less.

A plan adopting a good-faith amendment to include the automatic rollover provisions must do so by the end of the first plan year ending on or after March 28, 2005. Thus, a plan with a calendar plan year must adopt the good-faith amendment by December 31, 2005. (Church plans and governmental plans have different deadlines for the adoption of the good-faith amendment.) The deadline could be much sooner for a plan that has a fiscal plan year. For example, a plan with a plan year ending March 31st must adopt the good-faith amendment by March 31, 2005.

Q. Are your plans able to comply with Code section 401(a)(31)(B)?
A. Plan sponsors must determine *now*, not later, whether they will be able to operationally comply with the automatic rollover requirement. The plan administrator and employer must be certain they have the ability to comply, which means asking investment providers whether they are going to offer a product to accept automatic rollovers. *If a plan sponsor determines compliance will not be possible, the plan should be amended to remove the mandatory distribution requirement on or before March 27, 2005.* (Option 1 in DATAIR's new feature)

Q. What if the plan sponsor adopts the good-faith amendment (Option 2), but the plan administrator is unable to comply with the new rules by March 28, 2005?
A. Notice 2005-5 explains that if the plan administrator lacks "sufficient administrative procedures for automatic rollovers, including establishing individual retirement plans to accept automatic rollovers," the plan will not be treated as failing to operate in accordance with its terms if it does not immediately process mandatory distributions subject to these rules. The plan must make those mandatory distributions on or before December 31, 2005.

Q. Can a mandatory distribution exceed $5,000?
A. Yes. Under Code section 411(a)(11)(D), a plan can allow a plan administrator to ignore rollover contributions in its determination of the $5,000 limitation on mandatory distributions. The automatic rollover rules apply to the entire amount of a mandatory distribution, however, so a plan that adopted the exclusion of section 411(a)(11)(D), as many did, could have a distribution of the accrued benefit, plus the rollover contribution, that exceeds $5,000.

Q. Do the automatic rollover rules apply to other types of plans?
A. Yes. Notice 2005-5 applies these rules to governmental plans described in Code sections 414(d) and 457(b), section 403(b) plans, and church plans within the meaning of Code section 414(e). ✺

WFTRA and Cafeteria Plans

The Working Families Tax Relief Act of 2004 (WFTRA) takes effect on January 1, 2005. It includes a new definition of code Section 152 dependent. Version 1.25 of the document system has been updated to comply. The new definition of Qualifying Child and Qualifying Relative are as follows:

Qualifying Child
A Qualifying Child is an individual who satisfies <u>each</u> of the following tests:

➤ **Relationship to taxpayer**:
  - Son or stepson (or descendant)
  - Daughter or stepdaughter (or descendant)
  - Sibling or stepsibling (or descendant)
  - Legally adopted
  - Pre-adoption (lawfully placed with taxpayer)
  - Foster child (lawfully placed with taxpayer)

➤ **Residency**: The child must have the same principal place of abode as the taxpayer for more than one-half of the taxable year.
➤ **Age**: Generally, the child must be under age 19 (under age 24 if a full-time student). No age limit applies in the case of a child who is totally and permanently disabled. For purposes of the dependent care tax credit and dependent care reimbursement account, a child must be under age 13.
➤ **Support**: The child must not have provided more than one-half of his or her own support for the taxable year.

Qualifying Relative
A Qualifying Relative is an individual who does not meet the definition of "qualifying child" with respect to any individual and who satisfies the following tests:

➤ **Relationship to taxpayer**:
  - Son or stepson (or descendant)
  - Daughter or stepdaughter (or descendant)
  - Sibling or stepsibling (or descendant)

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ROUTE TO:

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(**WFTRA,** Continued from page 3)
- Parent (or ancestor of either)
- Stepparent (not including ancestors)
- Father-in-law or mother-in-law
- Brother-in-law or sister-in-law
- Son-in-law or daughter-in-law
- Aunt or uncle
- First cousin
- Any other individual (i.e. non-relative) who has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, but only if the relationship of the individual and the taxpayer does not violate local law.

➤ **Residency:** For purposes of the dependent care tax credit and dependent care spending account, the individual must reside with the taxpayer for more than one-half of the year.

➤ **Income Limit:** The individual must not have gross income in excess of the exemption amount ($3,200 for 2005). Under the WFTRA amendment to Section 105(b), an individual's status as a dependent will be determined without regard to Section 152(d)(1)(B), which contains the gross income limit.

➤ **Support:** The individual must have received over one-half of his or her support from the taxpayer.

Let's look at a summary of the changes and how it will affect Dependent Care FSA and Medical FSA plans. For Dependent Care FSA, the main change is the income limit applying to a Qualifying Relative. Individuals whose disabled parents receive pension benefits or other income in excess of the income amount will not be able to claim them. The new residency requirement will not affect Dep. Care FSA since these expenses must be employment related. Thus the dependent was already required to reside with the plan participant.

For a Health FSA (which is a self-insured medical reimbursement plan which falls under Code Section 105), note that under the WFTRA amendment to Section 105(b), an individual's status as a dependent for purposes of Section 105(b) will be determined without regard to Section 152(b)(1) and (b)(2), which contain certain exceptions to the definition of dependent. Along with disregarding Section 152(d)(1)(B), the only significant change is regarding certain children under age 19 (or under 24 if a full time student). This determination is now based on residency rather than support for a Qualifying Child.

Current Software Versions

CA Cafeteria Administration	4.55
CA/Win Cafeteria Admin	1.04
CD Cafeteria Plan Document	1.25
CM/Win Client & Task Manager	1.04
DE Data Entry & Review	1.13a
DS/Win Document	1.11
DV DATAIR Voice	1.02
FA FAS 132 Reporting	2.02
QP Qualified Plan Distribution	2.01
PA Plan Accountant	2.03
PE Pension Administration	3.23
PR/WIN Pension Reporter	1.19
PT Participant Term. Calc	2.03