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THE PANGBURN GROUP®

THE PANGBURN COMPANY
Third Party Administration of Nonqualified Executive Benefit Plans

TPC CONSULTING
BOLI Compliance and Reporting

PANGBURN TECHNOLOGY
Technology Solutions & Custom Software

TPC ACTUARIAL
Actuarial Consulting for COLI & BOLI

IN THIS ISSUE

The information in this publication is for general use and should not be applied to individual situations unless carefully coordinated with professional financial advice.

The Pangburn Group

IRS NOTICE 2010-6 GUIDANCE ON CORRECTING 409A DOCUMENT FAILURES

"This notice provides methods for taxpayers to voluntarily correct many types of failures to comply with the document requirements applicable under section 409A of the Internal Revenue Code to nonqualified deferred compensation plans and thereby avoid or reduce the current income inclusion and additional taxes under section 409A." So states the "Purpose" of Notice 2010-6 that offers employers an opportunity to correct certain documentary issues that are not compliant with Section 409A. Analysis of the 86-page Notice is beyond the scope of this Newsletter, but suffice it to say, any guidance and relief is welcomed, especially in light of an IRS initiative to audit 6,000 companies (including 409A audit compliance) over the next 3 years. The new correction program is intended to encourage taxpayers to review their nonqualified deferred compensation arrangements to identify provisions that fail to comply with the requirements of 409A and to correct those plan provisions promptly. Only certain types of document failures are eligible for relief and include, but are not limited to, the following:

- Correction of failure to properly define applicable permissible payment events
- Correction of an impermissible payment period following a permissible payment event
- Correction of certain impermissible payment events and payment schedules
- Correction of failure to include 6 month delay for Specified Employees
- Correction of provisions for impermissible initial and subsequent deferral elections

As we have more time to study and digest this Notice, more information will be forthcoming, but at first blush the mechanics of the relief program can be confusing and difficult to understand; however, not taking corrective action will result in significant financial penalty, in many cases, to unwitting plan participants. It is also important to remember that, generally speaking, the relief applies to failures that are inadvertent and unintentional. We strongly encourage all plan sponsors to take quick action to review their plan documents even if they have previously made a good faith attempt at compliance. Early correction is important not only because the relief is generally not available once the taxpayer is under audit, but also because some of the relief under the Notice is time-sensitive. Please contact us if you feel we can be of assistance in any way.

THE YEAR IN REVIEW

2009 was in many respects the most challenging year we have ever faced…general economic malaise, 409A in its first full year of required operational and documentary compliance, and a significant downturn in COLI sales. On the bright side, there continues to be strong demand for our fee-for-service non-commission sharing business model, and we enjoyed our 13th straight year of increased revenue and an ever-increasing client base. Our BOLI service clients are expanding exponentially as competitors find it increasingly difficult to provide timely reporting and compliance services in the face of sharply declining front office sales revenue. In a period of just 5 years, we have managed to capture about 15% of the BOLI market measured by number of bank clients. New nonqualified plans continue to be dominated by 401(k) Mirror Plan designs, and our web-based reporting and administrative services have continued to see improvements in both design and function. As is true in the BOLI market, regional and national COLI marketing organizations continue to find it difficult to provide competitive back office administrative support with declining front office sales revenue, and, as a result, we are more involved than ever in taking over the recordkeeping services on inforce plans. As the market has started on a path of recovery, new COLI VUL sales appear to be increasing, and the prospects for 2010 are promising. We are confidently approaching the new year with great optimism. Hopefully this time next year we will be reporting another record year.

HAPPY NEW YEAR!

Planning Briefs

CLAWBACKS ARE BACK:

According to the executive compensation research firm Equilar, 73% of Fortune 100 companies report having clawback provisions in their employment agreements in 2009 compared to only 18% in 2006.

SMALL BUSINESS OWNERS PLANS:

A Discovery Small Business Watch survey in December 2009 found that only 62% of small business owners have a financial plan for their retirement. When asked at what age they plan to retire, only 13% said before age 60, 28% said between 60 and 65, 18% said between 65 and 70, and 9% will retire past 70. Thirty percent indicated they do not plan to retire.

2010 COLA ADJUSTMENTS:

The following dollar limitations for 2010 are unchanged from 2009 because the cost-of-living index for the quarter ending 9/30/09 is less than the index for the quarter ending 9/30/08:

Defined Benefit Funding Limit:	$195,000
Defined Contribution Limit:	$49,000
Pre-Tax Salary Deferral Limit:	$16,500
SIMPLE Contribution Limit:	$11,500
414(q)-HCE Threshold:	$110,000
416(i) Top-heavy if over:	$160,000
Max Comp for Qualified Plan:	$245,000
Social Security Wage Base:	$106,800

UNDERWATER BOLI POLICIES:

The IRS through PLR 200945032 has ruled that the surrender of BOLI policies at a time when the surrender value of the policies has declined can create a deductible loss under IRC Section 165. This is not a new position, merely a reiteration.

2009 3RD QTR BANKING PROFILE:

According to the FDIC, member banks reported net income of $2.8 billion in the 3rd quarter, but loan balances declined by the largest percentage since quarterly reporting began in 1984.

BOLI, FAILED BANKS, & TARP

Highlights of a 12/31/2009 Study
By
TPC Consulting

From January 2001 to December 2007, 25 banks failed and were taken over by the FDIC. In 2008 alone, 26 banks failed, and in 2009, 140 banks failed. Of banks with BOLI holdings, only 3 failed between 2001 and 2007, 9 failed in 2008, and 66 failed in 2009. 35% of all banks that failed in 2008 had BOLI holdings, while 47% of all banks that failed in 2009 had BOLI holdings. Georgia accounted for the greatest number of bank failings in 2009 (18%), followed by Illinois (15%), California (12%), and Florida (10%). Failed banks in Georgia with BOLI accounted for almost a quarter of all failed banks with BOLI in 2009 (21%), followed by California (15%), Illinois (12%), and Florida (6%). The value of the BOLI holdings of the banks that failed equaled $6.4 billion. The bank with the largest BOLI holdings to fail was Washington Mutual. It failed on 09/28/2008, and as of 12/31/2007, its BOLI holdings were $4.9b.

The current cost to the FDIC to take over the 166 banks that have failed since 2008 is $47.4b. Most banks were acquired by other banks. Only 8 banks had no successor (6%). Three of the failed banks without a successor had BOLI holdings totaling $30m as of 12/31/2008. It appears that most of the banks with BOLI holdings that failed had the BOLI liquidated. However, JP Morgan Chase, which acquired Washington Mutual in 2008, did keep about $4b of the BOLI. In 2009, 69 banks took over failed banks that had BOLI holdings. Only 4 banks acquired the failed bank's total or a portion of the BOLI holdings equal to $136m of BOLI.

The original amount of TARP funds given to banks was $205b. As of 12/31/2009, $146.1b (71%) has been paid back to the Treasury. There are still 663 banks with TARP funds equaling $58.6b that have not paid back the Treasury.

Two banks have failed that had received TARP funds. Pacific Coast National Bank (CA) received $4.1m in January 2009 and the FDIC closed its doors on 11/13/2009. United Commercial Bank (CA) received $299m in February 2009 and the FDIC closed its doors on 11/06/2009. United Commercial Bank had BOLI Holdings of $13.3m. CIT Group Inc. (NY), a bank holding company, went into bankruptcy and came out of Chapter 11 with the TARP debt wiped off its books. It had received $2.3b in TARP funds. Many of the 663 banks that still have TARP funds are still in financial trouble. The FDIC issued an Issuance of Consent Order to Central Pacific Bank (HI) on December 11, 2009. The bank took $135m of TARP funds. Many banks that still have TARP funds are missing the quarterly dividend payments. In December 2009, 56 banks missed the payments, up from 33 in August 2009. 33% of the banks that have been missing the quarterly dividend payments are in California.

On December 31, 2009, the Treasury announced that it was ending its TARP program to banks. TARP funds will now be made available to small businesses.

(for complete results, visit pangburngroup.com)

COMPANY NEWS

Please join us in welcoming Lindsey David as an Account Manager for The Pangburn Company. Lindsey graduated from Louisiana State University in 2007 with a bachelor of science in accounting. She received a Masters in Business Administration from Southeastern Louisiana University in 2008. Prior to joining us, Lindsey worked for Postlethwaite & Netterville in Baton Rouge, Louisiana, as a Staff Auditor. Lindsey's primary responsibilities will include the implementation and administration of nonqualified benefit plans for corporations.

INTERESTING RATES

	2009											
Index	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Short-Term AFR	0.81	0.60	0.72	0.83	0.76	0.75	0.82	0.83	0.84	0.75	0.71	0.69
Mid-Term AFR	2.06	1.65	1.94	2.15	2.05	2.25	2.76	2.80	2.87	2.66	2.59	2.64
Long-Term AFR	3.57	2.96	3.52	3.67	3.58	3.88	4.36	4.26	4.38	4.10	4.01	4.17
Federal Funds	0.08	0.24	0.22	0.16	0.22	0.21	0.20	0.18	0.15	0.11	0.12	0.13
T-Bill (One Year)	0.40	0.51	0.67	0.58	0.49	0.48	0.54	0.48	0.43	0.37	0.38	0.26
T-Bill (Ten Year)	2.46	2.76	2.91	2.68	3.21	3.71	3.55	3.66	3.38	3.21	3.45	3.28
T-Bill (30 Year)	2.83	3.47	3.64	3.51	4.09	4.55	4.34	4.42	4.19	3.97	4.26	4.26
Moody's Aaa	4.83	5.19	5.41	5.32	5.50	5.70	5.45	5.29	5.14	4.95	5.19	5.09

(Rates which fluctuate daily are shown on or about the 1st day of the month.)

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