



NYLEX News

News and Events in the Executive Benefit Program Marketplace

iSERP™ Provides Executive Benefit Opportunities; Update on Other Current Issues

TO OUR CLIENTS AND FRIENDS

THIS ISSUE OF NYLEX NEWS DISCUSSES NEW OPPORTUNITIES FOR EMPLOYEE BENEFITS AND SOME OF THE TAX REPORTING ISSUES, FUNDING RESTRICTIONS, AND CONTRIBUTION LIMITS FOR QUALIFIED AND NONQUALIFIED PLANS THAT ARE NEW FOR 2009.

PLEASE SEND COMMENTS ABOUT THIS EDITION OF NYLEX NEWS, AS WELL AS SUGGESTIONS FOR FUTURE ISSUES, TO OUR STAMFORD, CT OFFICE.

iSERP™ : A Simple Solution for Complex Times

Employee retirement account values have been substantially reduced by losses in the stock market over the past year. Many employees will not be able retire when they expected.

Highly paid executives have been hit just as hard, if not harder, than the average worker. The cap on Social Security benefits and the top heavy rules for qualified plans result in higher paid workers being forced to provide a larger percentage of their retirement income from personal savings. Therefore, a larger percentage of their retirement savings may have been exposed to stock market losses.

Layoffs have placed a growing number of workers into the pool for employers to hire. However, with a growing number of companies facing financial difficulties, the need to find and retain outstanding talent is more critical than ever.

Many employers are looking for new ways to reward top executives without committing to large, ongoing contributions for rank-and-file employees. An **iSERP™** may be the solution. Executives like **iSERPs™** because they provide a portable benefit with:

- Enhanced financial security
- Tax-deferred build up of cash values

The concept and execution of the **iSERP™** is simple. The employer provides periodic cash bonuses to the executive that are used to pay premiums for permanent life insurance coverage. The insurance is owned by the executive making it a highly attractive, portable benefit.

The bonus is currently taxable to the employee and deductible by the employer. If desired, the employer can “gross up” the bonus to cover both the premium and the executive’s income tax on the bonus.

*NYL Executive Benefits LLC (NYLEX Benefits) is a subsidiary of New York Life Insurance Company
Securities offered through NYLIFE Securities Inc., Member NASD, SIPC.*

Typically an **iSERP**[™] does not require the executive to reimburse the employer if the executive's employment terminates prematurely. However, the employer can require repayment of premiums paid if the executive leaves employment within a specified period of time.

Companies may want to consider providing **iSERPs**[™] in addition to or as an alternative to qualified pension plans or nonqualified deferred compensation plans because the **iSERP**[™] offers employers:

- A current income tax deduction like a qualified plan
- The simplicity of a nonqualified plan

Restrictions on Funding Rabbi Trusts Imposed by IRS Code Section 409A

Section 409A(b)(3) of the Internal Revenue Code imposes new restrictions on "funding" rabbi trusts that provide deferred compensation benefits when the employer has a qualified defined benefit pension plan that is considered to be underfunded, or "at risk". With the tremendous drop in asset values in recent months, many employers with defined benefit pension plans that were not previously at-risk are now facing the possibility that their plans may fall into that category. Now having an "at risk" qualified plan may also trigger a freeze on funding the nonqualified deferred compensation plan.

Small Plan Exception

The at-risk rules generally do not apply to small qualified plans, which are defined as qualified plans that, on each day during the preceding plan year, have 500 or fewer participants. Therefore, Section 409A(b)(3) would not apply in these situations. For purposes of this exception, all qualified defined benefits plans (other than multi-employer plans) maintained by the same employer (or

any member of the employer's controlled group) will be treated as one plan.

At-Risk Rules

A qualified defined benefit plan will be at-risk under IRS Code Section 430(i) for a particular plan year if, for the preceding plan year, its assets were both (i) less than 80% of its funding target (subject to phase-ins) using actuarial assumptions and (ii) less than 70% of its funding target using certain special actuarial assumptions.

For purposes of the 80% threshold, there is a transition rule which provides that the applicable funding threshold for determining at-risk status is 65% for 2008, 70% for 2009 and 75% for 2010.

Plan funding thresholds calculated on December 31, 2008 failing the 65% transition standard for 2008 will be considered to be at risk as of January 1, 2009. These plans would be subject to the nonqualified plan funding restrictions for the 2010 plan year. Employers in this situation may want to consider funding their rabbi trusts in 2009. Any proposed actions should be carefully evaluated with plan actuaries, and legal and tax advisors.

Qualified Pension Plan Limitations for 2009

Each year the Internal Revenue Service announces cost-of-living adjustments applicable to dollar limitations for pension plans. New limitations for 2009 include the following.

- The limitation for elective deferrals, including contributions to 401(k) plans, is increased from \$15,500 to \$16,500.
- Catch-up contribution provisions for individuals aged 50 or over is increased from \$5,000 to \$5,500

- Effective January 1, 2009, the limitation on the annual benefit under a qualified defined benefit pension plan is increased from \$185,000 to \$195,000.
- The limitation for qualified defined contribution plans is increased from \$46,000 to \$49,000.

Adoption of International Accounting Rules

If U.S. regulators have their way, thousands of U.S. companies will adopt International Financial Reporting Standards (IFRS) by 2014, and by 2011 for companies that elect early adoption. The U.S. Securities and Exchange Commission is seeking public comment and has said it will decide in 2011 whether to keep this timetable.

The impact of this change is likely to surpass that of the Sarbanes-Oxley Act of 2002, the tough anti-corporate fraud law of the Enron era that cost individual businesses millions of dollars to comply. Companies must prepare for the switch to IFRS well in advance of implementation.

It is estimated that companies will need 2-3 years to prepare for the change. Thousands of financial professionals will need to intensely study global accounting principles.

The European Union and 113 nations - including Australia, China, India, Mexico and Canada - have adopted or soon plan to use international rules.

Perhaps the biggest upside for U.S. companies in adopting the IFRS is conforming to a single global financial reporting standard.

Determining The Fair Market Value of a Life Insurance Policy

Determining the fair market value of a life insurance policy is not a simple matter and is a topic of increasing interest to the Internal Revenue Service. The fair market value of

life insurance policies also is a financial reporting issue for companies owning Corporate Owned Life Insurance (COLI), and banks owning Bank Owned Life Insurance (BOLI)

COLI and BOLI policies owned by companies and banks are routinely reported on financial statements as having a fair market value equal to the cash surrender value.

For individuals making charitable contributions of policies or gifting policies to trusts or other individuals, the determination of fair market value is less certain, but just as critical.

In recent years, the sale of policies to life settlement and viatical companies have become popular alternatives for individuals who no longer need the death benefits of a life insurance policy or need access to cash currently. In the sale of a policy in the secondary market, the sales price is determined by criteria such as the insured's age and medical condition, the policy performance factors and financial market influences including market interest rates, which represent the appreciation in the value of the asset itself and not upon interest earned under the life insurance contract.

Whenever a company, bank, or individual owns a life insurance policy, the fair market value of that policy must be evaluated prior to the sale, reporting, or transfer of that policy in light of the interest being shown by the IRS is this issue.

Requirement to Report Employer-Owned Life Insurance Contracts

Beginning with the 2007 tax year, employers are required to complete and file Form 8925 reporting life insurance contracts issued after August 17, 2006. Life insurance contracts issued prior to that date that are materially modified also are subject to reporting.

Form 8925 requires reporting (1) the total number of the policyholder's employees at the end of the tax year, (2) the number of employees insured under employer-owned life insurance contracts issued after August 17, 2006 and (3) the total amount of life insurance on those policies disclosed in the answer to Question 2. Form 8925 also asks whether the policyholder has valid consents to insure for all employees referred to in Question 2

and the number of employees for whom the policyholder does not have valid consents.

Information for Our Clients

NYLEX Benefits is preparing now and will send to our clients within the next few weeks the information required to complete Form 8925.

About **NYLEX**Benefits

NYL Executive Benefits LLC ("NYLEX Benefits") provides supplemental executive benefit programs to a wide range of commercial clients. We focus on developing cost effective executive benefit solutions that are designed to attract, reward and retain key employees. Our services are designed to assist clients at all stages in the adoption and operation of executive benefit programs and include:

- Initial assessment
- Plan design
- Funding
- Plan implementation
- Ongoing administration

NYLEX Benefits' professional staff includes the following professional disciplines, all

dedicated to supporting our client's programs, processes, systems and services:

- Accountants
- Actuaries
- Attorneys
- Benefit specialists
- Insurance specialists

We take great care to assure that client programs are practical and cost effective and that they are designed to achieve our clients' strategic and operational goals.

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