LD CO
LOREN D. STARK COMPANY

The Practical Application for a SLOB

In the retirement plan industry "SLOB" is the acronym for Separate Line of Business. By separating employees into smaller groups by disaggregating different companies of a Controlled group; Parent and subsidiaries; or different divisions, locations, activities, etc., the following potentials might be available:

1) Different non-discrimination testing for each SLOB desired to avoid a low participation group adversely affecting the testing for the higher participation group.

2) Different plans for each SLOB or no plan for a SLOB or a Safe Harbor 401(k) plan for one SLOB.

3) Smaller number of participants for one or more SLOB thereby avoiding the requirement for an independent CPA audit of such plan and therefore the elimination of the audit cost.

In order to qualify as a SLOB, i.e. a Qualified Separate Line of Business (QSLOB), the SLOB must satisfy three (3) requirements of IRC Sec 414(r) as follows:

1) The SLOB must have at least 50 employees who on each day of the testing year
   a) have completed 6 months of service
   b) normally work more than 17 ½ hours per week
   c) normally work more than 6 months during a year
   d) are age 21 or older
   e) are not covered by a collective bargaining agreement,

2) The employer notifies the IRS by filing Form 5310(A) on or before 15 October of the year following the first year the employer has elected to be treated as a QSLOB. In the case of a Controlled Group, only one notice (Form 5310(A)) is filed on behalf of the group. The election applies to all members of the Controlled Group. Affiliated Service Groups (ASGs) may not make a QSLOB election. The IRS issues no response as a result of this notice, and

3) Here is the tricky provision. The SLOB must meet the guidelines prescribed by the IRS. The IRS has prescribed six (6) safe harbor tests to satisfy this requirement as follows, otherwise the employer must request an IRS determination as the status of the QSLOB:

   a) Statutory Safe Harbor. IRC Sec 414(r)(3)(A) provides that this safe harbor is satisfied if the percentage of Highly Compensated Employees (HCEs) employed by the SLOB relative to its total employees is not less than one-half or more than twice the percentage of HCEs of all the employees of the entire group of employers. This rule is deemed satisfied if each SLOB employs at least 10% of the total HCEs of the group.

If the Statutory Safe Harbor (a) is not satisfied, one of the following safe harbors must be satisfied as set forth in IRC Reg 1.414(r):

b) The SLOBs are in separate industries. For this purpose the IRS has published industry classification in Rev Proc 91-64 such as transportation, equipment and services; banking, insurance and finance; machinery and electronics; and entertainment, sports and hotels. In the examples set forth by the IRC Regulation, an airline and a trucking company would not be SLOBs. A hotel and a bank would be SLOBs.

c) A Merger and Acquisition transition rule.
d) The SLOBs are in one or more industry segments on the employer's annual SEC report.
e) Average Benefit Safe Harbor. If the SLOB failed the one-half test of (a) above, the benefit percentage of the Non-Highly Compensated Employees (NHCEs) must be no less than the benefit percentage of all NHCEs of the entire group. If the twice test of (a) above is the failure, the benefit percentage of the HCEs of each SLOB must be no greater than the benefit percentage of all the HCEs of the group. The IRC Regulation establishes the testing guidelines.

f) Maximum or Minimum Benefit Safe Harbor. The IRC Regulation prescribes how this safe harbor is satisfied and depends on how (a) above was not satisfied.

If the use of the QSLOB rules would benefit the employer's objectives as to Qualified Plans or result in the reduction of cost, a careful analysis of the employer is necessary to determine the existence of SLOBs under IRC Sec 414(r) and the IRC Regulation. In most situations, the Statutory Safe Harbor ((a) above) will be satisfied. If not, more work will be needed.