

# Trends

Fall 2004

## Nyhart Appoints New President and Chief Executive Officer



Jeffrey S. Line, JD, CPA

Jeffrey S. Line, JD, CPA was recently appointed President and Chief Executive Officer of Nyhart. The following is an interview with Jeff.

**Please give us a brief description of your professional background.**

*I have spent fourteen of the last seventeen years and the last eleven years consecutively at Nyhart. The missing three years were spent as a consultant with an international employee benefit consulting organization. Prior to that period of time, I spent some time in the practice of law and public accounting. I started at Nyhart as a staff attorney on the retirement plan administration side of the business. I have assumed positions of increasing responsibility over the years. At various times, I have had responsibility for managing departments as diverse as legal, finance, IT, human resources and office services. Most recently, I served as Chief Financial Officer and as a member of the Board of Directors.*

**Does your appointment as CEO represent a change of direction for Nyhart?**

*No, I have been a member of the senior management team for a number of years. I believe we are headed in a very positive direction in all of our lines of business. While there will be some subtle changes in style and focus, our primary objective will be to hold a steady course as we strive to meet and exceed our clients' expectations.*

**How would you describe your management style?**

*My style is to hire good people, provide them the resources they need to succeed and then stay out of their way. I am committed to Nyhart's continued use of the Balanced Scorecard™ methodology for ensuring accountability and measuring progress toward achievement of corporate goals.*

**What do you view as your most immediate challenges?**

*I feel an urgent need to increase awareness of Nyhart and its services in the marketplace. I plan to build a more sales and marketing oriented culture without losing our focus on offering superior customer service. Competing in today's marketplace requires such a substantial investment in technology that a company must continue to grow in order to cover the IT investment related overhead.*

**What is important for clients to know about Nyhart's future?**

*Nyhart is in a solid position to serve our clients. We have invested in our people and in IT resources to ensure the services offered by Nyhart meet and exceed the requirements of today's marketplace. Nyhart has some of the strongest people in the industry committed to developing the products and services that will serve our clients' present and future needs. If anyone reading this newsletter has any questions, suggestions or comments, please contact me directly at 317-803-7713 or [jeff.line@nyhart.biz](mailto:jeff.line@nyhart.biz).*

## Fiduciary Duties with Regard to Missing Participants

On September 30, 2004, the U.S. Department of Labor (DOL) issued Field Assistance Bulletin 2004-02 (FAB) which provides plan fiduciaries with guidance as to their duties to missing participants in a terminated defined contribution plan. FAB addressed: (1) a plan fiduciary's obligation under ERISA to locate a missing participant of a terminated defined contribution plan and (2) distributing a missing participant's account balance when the plan fiduciary is unable to obtain the missing participant's distribution election.

One of the most important duties of a plan fiduciary, in the context of a defined contribution plan termination, is to notify participants of the

termination and of the plan's intention to distribute benefits. In most cases, common place methods of delivering notice to participants will be sufficient. If, however, such delivery methods do not result in the plan fiduciary obtaining the information necessary for the distribution or the plan fiduciary has reason to believe the participant has neglected to inform the plan of an address change, the plan fiduciary is obligated to take further action.

In DOL's view, certain search methods involve such nominal expenses and are so potentially effective that a plan fiduciary must always use them, regardless of the size of the missing participant's account balance. Stated another way, a plan fiduciary *cannot*

distribute a missing participant's account balance in accordance with the distribution options set forth in FAB *unless* each of these methods proved ineffective. All of the required methods do not have to be utilized *if* one or more of them have proven successful in locating the missing participant.



The search methods required by DOL are: (1) use of certified mail; (2) checking related plan records; (3) checking with the designated plan beneficiary; and (4) the use of *either* the

Internal Revenue Service's or the Social Security Administration's letter forwarding service. Other search methods, which a plan fiduciary *may* consider, include: (1) Internet search tools; (2) commercial locator services; and (3) credit reporting agencies.

In deciding whether to utilize any of the other search methods, a plan fiduciary will need to consider the size of a missing participant's account balance in relation to the cost of the locating service. Plan fiduciaries must remember that reasonable expenses in connection with locating a missing participant may be charged against the participant's account, provided that the amount charged is reasonable and the method of allocation is

consistent with plan terms and the plan fiduciary's duties under ERISA.

There will be instances where despite a plan fiduciary's diligence in searching for a missing participant, the plan fiduciary will be unable to locate the participant or obtain a distribution election regarding such participant's benefits. In these instances, the plan fiduciary will need to consider distribution options to effectuate the plan termination.

DOL has set forth fiduciary considerations that are relevant to the various options available to plan fiduciaries in the context of missing participants of terminated defined

contribution plans. DOL provides that, in its view, a plan fiduciary must *always* consider distributing missing participants' benefits into individual retirement plans (i.e., IRAs). If, however, a plan fiduciary is unable to locate an individual retirement plan provider willing to accept the rollover distribution on behalf of the missing participant, the plan fiduciary may consider either setting up an interest-bearing, federally-insured bank account in the name of the missing participant or transferring such participant's account balance to state unclaimed property funds. Transferring a participant's account balance to the Internal Revenue Service, (i.e., 100% income tax withholding) is *not* a distribution option that is in the best interest of a participant. It, therefore, should *not* be used by a plan fiduciary as a means to distribute benefits.

For more information on handling missing participants in a terminated defined contribution plan, see Federal Assistance Bulletin 2004-02, available at DOL's website ([www.dol.gov/ebsa/regs/](http://www.dol.gov/ebsa/regs/)).

## careTeam Health Plan

careTEAM is Nyhart and Deaconess's Health Plan's response to the ever increasing cost of providing health care to employees. We brought together the key aspects of health care and created an integrated health care solution aimed at actually reducing health care costs. How do we do that? By decreasing the demand for health care services. The key aspects of careTEAM are:

- Innovative administrative and data collection systems
- Ongoing expert analysis of clinical data
- Patient education and health coaching programs
- Quarterly consultative reviews with comprehensive reports

What's different about careTEAM? We utilize the most comprehensive data collection system in the health care arena to identify those plan participants who are the "emerging risks". In other words we are able to find tomorrow's costly participants today and begin to intervene before they become large claimants. By focusing on those who are chronically ill and those who fail to meet the criteria for general wellness and prevention, as well as monitoring physician practice patterns, we have the tools to find the emerging risks and the programs to coach people to a healthier lifestyle. This will translate into lower utilization and health care costs.

Tax qualified retirement plans are permitted to distribute a terminated participant's benefit without the participant's consent if the vested accrued benefit is \$5,000 or less. Such distributions are commonly referred to as "cash-outs".

The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") added a provision to the Internal Revenue Code that requires cash-out distributions greater than \$1,000 up to \$5,000 be automatically rolled over to an individual retirement account ("IRA") where the participant does not make an affirmative election to receive the distribution in cash or roll it over. However, plan administrators were not required to comply with this new requirement until the Department of Labor ("DOL") issued regulations providing guidance to plan fiduciaries.

On September 28, 2004 the DOL issued final regulations establishing a safe harbor under which plan fiduciaries will be deemed to have satisfied their fiduciary duties under the Employee Retirement Income Security Act of 1974 in connection with the selection of an IRA provider and the initial investment choice. The regulations identify five conditions that a fiduciary must satisfy in order to take advantage of the safe harbor. Those five conditions are summarized below:

1. **Amount of the Distribution** – The present value of the vested accrued benefit or account balance must be \$5,000 or less. This amount may or may not include the value of any rollover contributions the participant made to the plan, depending on whether or not the plan disregards such amounts for purposes of mandatory cash-outs. Automatic rollovers are only required for cash-out

distributions that are greater than \$1,000 but equal to or less than \$5,000. However, the DOL has provided in the final regulations that the safe-harbor will apply to cash-out amounts of less than \$1,000.

2. **Rollover to an IRA** - The distribution must be rolled over into an IRA which can be an individual retirement account or an individual retirement annuity.
3. **Written Agreement with IRA Providers** – The plan fiduciary must enter into a written agreement with the IRA provider. IRA providers must be a state or federally regulated bank or savings association, an insurance company or a regulated investment company. The agreement must state, among other things, how the money will be invested as well as the fees and expenses that will be charged to the account. The investment product selected must be designed to preserve the principal, and provide a reasonable rate of return and liquidity with the goal of maintaining the principal amount for the term of the investment. The fees and expenses charged to the account cannot exceed those charged for IRA rollovers that are not automatic rollovers. If the written agreement complies with these requirements, the responsibility of the plan fiduciary, with respect to the transferred funds, will end at the time the distribution is transferred to the IRA.
4. **Participant Notices** – Prior to making an automatic rollover, plan administrators must inform participants through a Summary Plan Description or a Summary of Material Modification of the



plan's automatic rollover provisions. The notice must explain the automatic rollover provision, the IRA provider, the investment product, fees and expenses that will be charged to the IRA along with a name, address and telephone number of a plan contact from whom they can receive additional information. In addition, revisions will have to be made to the plan's existing tax and rollover notice.

- 5. Compliance With Prohibited Transaction Rules** – The safe-harbor is not available where the plan fiduciary engages in a prohibited transaction with the selection of an IRA provider or investment product unless such action has an exemption. As a general rule, a plan fiduciary may not receive compensation from the IRA provider or investment company in exchange for selecting the provider or investment product. However, the DOL has issued an exemption so that a financial

institution or bank may select itself or an affiliate as the IRA provider for its own retirement plan and may choose its own investment products and receive fees for its services. This exemption was designed so that IRA providers would not be required to utilize the services of their competitors with respect to automatic rollovers from its own plan.

The final regulations are effective for distributions on and after March 28, 2005. As a result, employers need to begin implementing procedures to comply with the automatic rollover requirement now. The first step is to decide whether to maintain or eliminate the plan's existing cash-out provisions. If the plan does not provide for cash-out distributions, it will not be subject to the new rules regarding automatic rollovers. If the plan is going to maintain a cash-out provision, the next decision should be whether or not to apply the automatic rollover to cash-out distributions of less than \$1,000. As mentioned earlier, the law only requires the automatic rollover of cash-out amounts greater than \$1,000 and equal to or less than \$5,000. However, the regulations have extended the safe-harbor guidelines to amounts of \$1,000 or less. The next step is to select an IRA provider and investment product keeping in mind the requirements listed in item 3 above. The plan document will need to be amended and presumably, the amendment is not required until the end of the EGTRRA remedial amendment period. However, if the decision is made to apply the automatic rollover rules to cash-outs of \$1,000 or less, the plan should be amended prior to making such distributions. Finally, participants will need to be provided with notice of the new automatic rollover requirements and procedures prior to March 28, 2005.

## New FLSA Regulations May Affect Your Benefit Plans

The new FLSA (Fair Labor Standards Act) regulations took effect August 23, 2004. The new regulations changed some of the criteria for determining whether an individual is “exempt” or “non-exempt” from the FLSA rules and have received a great deal of publicity with respect to their effect on pay status. (Basically, FLSA mandates the minimum wage and which employees must be paid overtime for work in excess of 40 hours per week.)



For many employers, the new rules will not affect their benefit plans in any way. If, however, eligibility for benefits, waiting periods and other plan rules vary based on whether an individual is “salaried” or “hourly”, or “exempt” or non-exempt”, the employer needs to make sure that individuals who were reclassified for overtime purposes also are appropriately moved to the correct plan benefit. For example, if your group health plan has a higher deductible for salaried employees than for hourly employees, make sure you notify your health insurer or TPA about any individuals who were hourly, but are now salaried, and vice versa.

Another issue to beware of is that while employers often use “hourly” and “non-exempt” and “salaried” and “exempt” interchangeably, under the rules you can, for example, have a “salaried non-exempt” employee so care needs to be taken to make sure that the terms are appropriately applied.

## 2005 Pension and Cafeteria Plan Limitations

The following chart sets forth some of the cost of living adjustments applicable to dollar limitations for pension plans for the 2005 tax year.

Type of Limitation	2005*	2004
Elective Deferrals under Section 402(g)(3) (adjusting 401(k) and 403(b); not including catch-ups) and 457(e)(15) (adjusting 457(b)(2) and (c))	\$14,000	\$13,000
Age 50 Catch-Up Contributions	\$4,000	\$3,000
DB Maximum Annuity Benefit	\$170,000	\$165,000
DC Maximum Annual Addition	\$42,000	\$41,000
Annual Compensation Limit	\$210,000	\$205,000
Social Security Wage Base	\$90,000	\$87,900
Highly Compensated Employee	\$95,000	\$90,000
Key Employee	\$135,000	\$130,000
ESOP Maximum Balance subject to 5-year distribution period	\$850,000	\$830,000
Amount for Lengthening of 5-year ESOP distribution period	\$170,000	\$165,000

\*Source of Pension Plan Limitations for 2005 was the Internal Revenue Service's IR-2004-127, Oct. 20, 2004.

## Mental Health Parity Act Extended Through 2005

Congress has again passed legislation extending the Mental Health Parity Act, this time through December 31, 2005. This law (which originally was passed in

cost-share, including higher co-pays, calendar year visit limits and lower co-benefit rates.)

**Mental Health Parity Act**  
**Mental Health Parity Act**

1996) prohibits group health plans from providing lower lifetime maximums and annual dollar limits for care of mental and nervous disorders. (Plans are permitted to

Bills have been introduced again this year to require identical benefits for mental and physical disorders, but have not passed due to concerns about cost and how to define the types of mental health services to cover under this type of a law.



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