FPA
FINANCIAL PLANNING ASSOCIATION
The Heart of Financial Planning™

# Idaho News

February 2007



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## "419 Plans – The Good, The Bad & The Ugly"

Presented by B. Todd Bailey, JD, MAcc, CFP®
of Emerald Financial Advisors

Tuesday, February 20, 2006

The Arid Club
1137 W River St, Boise, Idaho

12:00 – 1:30 PM

Local Members – Free
Non-Members - $25

First time visitors may join us for a complimentary lunch

Please RSVP to Lacy by Friday the 16th at 468-0231 or fpaidaho@msn.com

**See Attached for an overview of the Section 419 Plans Historical Development**

**See Attached to preview an outline of B. Todd Bailey's 419 Plan**

**Congratulations to Ben Boettcher of The Lodestar Group who has received his CFP® designation!**

Thank You

# Happy Anniversary!

**17 Years**

**Jack Cogswell**
Cogswell Asset Management
Boise, Idaho

**8 Years**

**Bob Long, CPA, CFP®**
Jordan & Company, Chtrd, CPA
Boise & Pocatello, Idaho

**4 Years**

**Suzanne Hazlett**
Boulder Financial Alliance, LLC
Ketchum, Idaho

## Upcoming Events:

**March 20: FPA Idaho lunch meeting. 12-1:30pm at the Arid Club in Boise. Topic TBA.**

**March: CFP® Certification courses to begin. For registration information, please contact Lacy Hazel at 468-0231**

# Message From the President

Dear FPA Members and Future Members:

I hope you took the opportunity to attend this year's Idaho Roundtable. My thanks to all the people who helped make it a success. This event highlights the number and quality of the financial professionals in Idaho.

I read an article this month in *Financial Advisor* magazine titled *Faux Financial Planning* by Tere D'Amato whose theme dovetails with that of our chapter's for this year; being a trusted advisor for your client and providing a comprehensive approach to protecting their wealth. Emphasizing the plan, instead of only one part of it, allows the advisor to see the client's "big picture" and create an awareness of the many issues that could hinder the client from reaching their desired goals. We don't have to be an expert in every area or have all the answers. But the planning approach will allow us to ask the right questions and work well with the client's planning team.

This approach, according to the author, will make us more indispensable to our clients, which I am certain is a goal we all have. I hope to see you all at our Tuesday, February 20 meeting at the Arid Club.

Sincerely,

Dave Turner, CFP®, 2007 President

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# Section 419 Plans
# Historical Development

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### 1880's

During the Industrial Revolution of the late 1800's the workforce became increasingly mobile. Workers were no longer limited to working in the same towns in which they were born, and could easily move across the state or across the country in search of better paying jobs. Companies found it necessary to offer more than merely wages in order to recruit and retain quality employees. Some of the nation's first welfare benefit plans provided life and health benefits and were established by companies such as Sears Roebuck, American Express and Southern Pacific Railroad.

### 1928

Congress recognized the usefulness of these early welfare benefit plans and provided a tax incentive to encourage more companies to establish them. In 1928 Congress enacted IRC §501(c)(9) to allow for the creation of a Voluntary Employee Beneficiary Association (VEBA). This is a type of trust which allows for the trust assets to grow on a tax free basis. Although §501(c)(9) allows for tax-free growth, the tax deductibility of contributions is governed by IRC §162.

### 1928-1974

VEBAs proliferate in America as a vehicle for funding Welfare Benefit Plans. Many companies began abusing VEBAs by using them to purchase yachts, ski lodges, etc. and taking a tax deduction under the provision of §162 which allows a current deduction for "recreational facilities". Also during this period Congress found need to address the problem of billions of dollars of unfunded and unsecured pension benefits being terminated.

## 1974

Congress enacts the Employee Retirement Income Security Act (ERISA) to regulate the provision of pension and welfare benefit plans. ERISA contains four parts: Part I - Reporting and Disclosure; Part II - Participation and Vesting; Part III - Funding; and, Part IV - Fiduciary Responsibility. Although all four parts apply to pension plans, only Parts I and IV are made applicable to Welfare Benefit Plans.

## 1974-1984

Small businesses "discover" a loophole in ERISA. Since the funding limitations and non-discrimination rules of Parts II and III do not apply to Welfare Benefit Plans, many tax planners began using VEBAs to get around the strict rules of ERISA. Essentially they were disguising deferred compensation arrangements as welfare benefit plans.

## 1982

Greensboro Pathology vs. U.S. 698 F.2d 1196 (Fed. Cir., 1982)

A medical group in Greensboro, NC found that they could not compete with the Univ. of North Carolina Medical Center which provided free tuition to the children of employees. To become more competitive they established a VEBA to provide educational benefits.

- Tax Years 1974, 1975, 1976
- IRS Position:
    1. Deferred Comp. thus deduction is governed by §404 and not §162
    2. Large contribution is indication of deferred compensation arrangement
- Court Held: IRS Wrong!!!!!!!!! The Court noted that all Welfare Benefit Plans have an element of Deferred Compensation but that does not make them deferred compensation plans subject to §404.
    1. Taxpayer's deduction is governed by IRC §162 and Reg. §1.162-10
    2. Size of contribution is irrelevant to determination that plan is Welfare Benefit Plan
    3. The phrase in Reg. §1.162-10 "…welfare and other benefits…" includes educational benefits

> We realize the appellant [employer] could at any time terminate or alter the plan although the monies of the trust could never revert to or inure to the appellant's benefit. This minimal retention of the control is not sufficient to make the benefits of the plan in any way illusory. Employers need to retain rights to alter or terminate plans to meet the changing needs of the employees and employer. This flexibility may be required with numerous types of plans including the medical, vacation and other welfare benefit plans specified by regulation. We hold that the critical inquiry is whether the funds in

the plan may ever revert to or inure to the benefit of the company. *Greensboro* at 1203.

## 1984

Congress addressed these continued abuses by enacting four new sections to the IRC:

IRC § 505(b) - imposes on VEBA's, non-discrimination rules similar to those in ERISA parts II and III

IRC § 512(a)(3)(E) " - subjects VEBA reserves to Unrelated Business Taxable Income

IRC § 419 - limits the amount of current tax deduction to the annual cost for providing the benefits

IRC § 419A - establishes account limitations for reserves set aside to fund future benefits

## Important Features of 1984 Legislation

§ 419(e) - recognizes the ability to establish a welfare benefit trust which is not a VEBA, thereby statutorily sanctioning the situation in the *Schneider* case. The significance of this is that since §505(b) only applies to welfare benefit plans which utilize a tax-exempt VEBA, if a welfare benefit plan is established utilizing a taxable trust then the non-discrimination provisions of §505(b) do not apply.

§ 419A(h) - subjects welfare benefit plans to UBTI under §512

§ 419A(f)(6) - provides that the deduction and funding limitations of §§419 and 419A do not apply if the plan meets four requirements:

1. Is a Single Plan
2. To which more than one employer contributes
3. No employer normally contributes more than 10 percent of all contributions
4. The Plan is not Experience Rated as to employers.

The significance of this is that if a welfare benefit plan can meet these 4 requirements then the deduction limitations imposed by §§419 and 419A do not apply. This was explicitly recognized by the Treasury Department in Notice 95-34 and the Final Regulations.

Moser vs. Commissioner, TC Memo 1989-149

Taxpayer contributed $200,000 in one year to a VEBA providing death, sickness/accident, and severance benefits for three employees. The annual cost for providing the benefits was only $7,500 per year and the VEBA invested the balance in telecom leases which, due to the tax exempt status of the VEBA, were earning an 11.8% tax-free rate of return. (NOTE: although this case was decided in 1989 it involved tax years prior to enactment of §§ 419 and 419A)

- Tax Years: 1981, 1982
- IRS Position:
    1. $200,000 contribution not ordinary and necessary under §162
    2. Excess contribution was a private investment fund and earnings should be taxed
    3. Only $7,500 deductible (amount to fund current year's benefit)
- Court Held: IRS Wrong!
    1. Death Benefit is Welfare Benefit (even though not explicitly listed in Reg. §1.162-10)
    2. The fact that the owner received 90% of the benefits is not determinable
    3. The fact that the owner could terminate the plan thereby triggering benefit payment does not invalidate the plan or deductibility of contribution
    4. Pre-funding is OK

*Petitioners assert that because the terms of the VEBA were structured in accordance with all relevant regulations, an independent trustee was chosen to hold the VEBA's assets, the terms of the VEBA were followed in operation, and the amounts Inland paid to the VEBA were ordinary and necessary expenses, Inland is entitled to the entire $200,000 deduction under section 162 in fiscal 1982. Petitioners also assert that because the VEBA assets were owned by the trustee and because the [Taxpayer] received no direct economic benefits from the VEBA during the years in issue, [*24] the [Taxpayer] had no taxable dividend on account of the VEBA. For the reasons set forth below, we agree with petitioners with respect to the VEBA issues.* Moser at 23.

Schneider vs. Commissioner, TC Memo 1992-24

Dr. Schneider contributed $1.2 Million over three years to a welfare benefit plan which only covered himself and his nurse with 98% of the benefits being for himself. He submitted a request to the IRS for a letter of determination that his welfare benefit plan qualified as a VEBA and the IRS denied the request. As a result, he continued to operate the plan through a taxable trust. (NOTE: although this case was decided in 1992 it involved tax years prior to the effective date of §§ 419 and 419A)

- Tax Years: 1983, 1984, 1985
- IRS conceded applicability of deductibility rules under §162 and not the Deferred Comp. rules under § 404
- IRS conceded the plan was a Welfare Benefit Trust despite no §501(c)(9) letter of determination; first official recognition that the tax deductibility of contributions is not dependant upon tax treatment of the trust
- IRS challenged the deduction on two grounds:
    1. Excessively large contribution constituted a Capital Expense which must be capitalized, not deducted
    2. Pre-paid expense
- Court Held:
    1. Since the contribution to the welfare benefit plan was irrevocable and could never revert back to the employer it ceased to be an asset of the employer. If it is not an asset it could not possibly be a capital asset, therefore capitalization rules do not apply and the contribution is currently deductible.

2. In order to have a prepaid expense there must be, at the time of prepayment, a pre-existing obligation to pay a fixed sum at a fixed time in the future. Since the payment made related only to the year in which it was made at which time Dr. Schneider had no obligation to make a future payment the payment could not be characterized as a prepayment. The Court drew a distinction between "pre-paid" and "pre-funded".

## 1994

Wellons vs. Commissioner, 31 F.3d 569 (7th Cir., 1994)

Taxpayer contributed $194,000 in both 1984 and 1985 to a severance pay plan. The plan provided severance benefits to any employee who left the company after 5 years of employment. The amount of benefits was based upon length of employment and rate of compensation. The Court noted that although § 162 allows a deduction for severance (i.e. dismissal) wages, the Regulations provide that such contributions are governed by § 404 "…if under any circumstances, they may be used to provide benefits under a…deferred compensation plan…" The Court then found that "at least in some circumstances" the benefits appeared to be deferred compensation in nature. The Court reached this conclusion based upon the provision of Trea. Reg. §1.404(a)-1(a)(2) which provides that section 404 does not apply to contributions to a plan that is "solely a dismissal, wage or unemployment, benefit plan, or a sickness, accident, hospitalization, medical expense, recreation, welfare, or similar benefit plan, or a combination thereof."

The court's decision in concluding that the Wellons plan was governed by section 404 was based upon the fact that the severance benefit was not *solely* a welfare benefit. This conclusion was based upon the fact that all employees were guaranteed to receive the benefit regardless of the reason for their employment termination, that the right to payment vested after 5 years, and, that benefits were based upon length of service and salary, which are features typically found in deferred compensation arrangements. The Court found that such feature were more akin to the elements found in a deferred compensation plan than a welfare benefit plan in which benefits are payable as a result of an unforeseeable contingency.

For the Trial Court decision see Wellons vs. Commissioner, TC Memo 1992-704

(NOTE: although this case was decided in 1994 it involved tax years prior to the effective date of §§ 419 and 419A)

## 1995

The IRS issues Notice 95-34 to alert taxpayers to beware of certain plans which were being marketed by promoters as meeting the §419A(f)(6) exception and which in fact do not. The Notice acknowledges, however, that if a plan does meet the requirements of §419A(f)(6) then the limitations of §§419 and 419A do not apply.

Sponsors of the **Prime Plan** asked Treasury for a Private Letter Ruling. Instead, Treasury issued Notice 95-34 in which Treasury in which it identified the following items with which it took issue in regards to a Plan designed to qualify for the §419A(f)(6) exception:

> 1) The arrangements may actually be providing deferred compensation. This is an especially important consideration in arrangements similar to that in *Wellons v. Commissioner*, 31 F.3d 569 (7th Cir. 1994), *aff'g*, 64 T.C.M. (CCH) 1498 (1992), where the courts held that an arrangement purporting to be a severance pay plan was actually deferred compensation.
>
> > The *Booth* court dismissed this flawed argument and held that the arrangement was not deferred compensation. Moreover, the *Booth* court pointed out that benefits always involve some sort of deferral.
> >
> > Note: *Booth* involved participants in the Prime Plan. *Booth* addressed each of the issues involved in Notice 95-34.
>
> 2) The arrangements may be, in fact, separate plans maintained for each employer. As separate plans, they do not qualify for the 10-or-more-employer plan exemption in section 419A(f)(6).
>
> > This is the real problem in *Booth*. The Prime Plan was not a single plan. Instead, it was an amalgamation of multiple individual plans. For this reason, the taxpayers lost. Interestingly, the *Booth* court pointed out that the Prime Plan structure was a valid Welfare Benefit Plan. Had the plan truly operated a single plan with multiple employers as participants it is likely would have prevailed in US Tax Court.
>
> 3) The arrangements may be experience rated with respect to individual employers in form or operation.
>
> > This follows the reasoning of number 2.
>
> 4) Even if the arrangements qualify for the exemption in section 419A(f)(6), employer contributions to the arrangements may represent prepaid expenses that are nondeductible under other sections of the Internal Revenue Code. Taxpayers and their representatives should be aware that the Service has disallowed deductions for contributions to these arrangements, and is asserting the positions discussed above in litigation.
>
> > This is vague overreaching on the part of the Service. Worse yet, it is contradictory. If "the arrangements qualify for the exemption in section 419A(f)(6)" then will not be treated as nondeductible prepaid expenses.

## 1996

Connecticut Mutual vs. Commissioner, 106 T.C. 445

Taxpayer established a welfare benefit plan and contributed $20 million to pre-funded "holiday pay". The tax court denied the deduction under § 162 and held that the contribution was governed by capitalization rules. This case provides an excellent discussion of the *Moser* and *Schneider* cases explaining the circumstances under which pre-funding of welfare benefits is permissible and thus currently deductible under § 162. The court explains that the essence of a currently deductible pre-funded benefit is that *the contribution must relate to a vested right in the employee to receive the benefit if a qualifying benefit trigger occurs*. Such was not present in the Connecticut Mutual case.

*The most significant benefits payable under the plans involved in Moser and Schneider were payable to employees upon the occurrence of an event, which would terminate their services for the employer. Employer contributions to these plans tended to boost employee morale, but we found that the employer's only benefit was its expectations that its employees were more likely to remain loyal and perform to the best of their abilities. As a result, we found that these benefits provided the employer with only incidental or indirect future benefits, which do not require capitalization.* Connecticut Mutual at 457-458.

## 1997

Booth vs. Commissioner, 108 TC 524

This is the only case ever decided which directly addresses the issue of compliance with the provisions of §419A(f)(6). The Plan allowed employers to make a single contribution to permanently fund death and severance benefits and was marketed for the specific purpose of avoiding pension funding limitation rules. Employers' contributions were maintained in segregated accounts and each employer determined participation and vesting requirements. Benefits were paid out of each employers' segregated account and any shortfalls were made up from a "suspense account". No employee could have benefits paid from any contributions made by other employers.

- IRS challenged the plan on two grounds:
    1. That it was actually a plan of deferred compensation and not a welfare benefit plan, thus subject to §404
    2. That it was not a "single plan" but rather was an aggregation of separate plans
- Court Held:
    1. The plan was a welfare benefit plan therefore deduction is governed by §162 and not by §404
    2. The plan was not a plan of deferred compensation
    3. The plan was not a "multiple employer plan" but rather was an aggregation of separate plans
    4. No accuracy related penalties for taxpayers because the plan sponsor took all reasonable steps to establish a valid plan under §419A(f)(6)

Commenting on the Government's interpretation of the Wellons case the court stated:

All welfare benefit plans bear some element of deferred compensation [citations omitted], and respondent's reading of the Seventh Circuit's opinion emasculates the right of a taxpayer to avail itself of the tax attributes of a welfare benefit plan. Unlike the Prime Plan, the plan at issue in Wellons was 'more akin to a deferred compensation plan than the sort of 'welfare benefits' arrangement contemplated by the regulations. Booth at 564.

We are unable to find any requirement in the applicable statutory and regulatory provisions that would limit welfare benefits to cases in which an employer could not voluntarily terminate its participation in the plan. We find in the statutory text that the Congress knew how to say "involuntary separation" when it wanted. See, e.g., sec 501(c)(17)(D), which is referenced in sec. 419A(f)(1)(A). In the absence of a legislative pronouncement that limits severance benefits to cases where an employer could not voluntarily terminate its participation in a plan, we refuse to adopt such a pronouncement here. Although respondent is concerned that the ability of a participating employer to terminate voluntarily its participation in the Prime Plan allows the employer to control the timing of income to its employees, we regard that concern as misplaced. Respondent's concern could also be expressed with respect to the pension plan of a corporation owned by a single shareholder. Although the shareholder may be the only employee, it does not necessarily follow that such a pension plan provides for receipt of deferred compensation merely because the owner/shareholder has the ability to terminate the pension plan at will." Booth at 564

The sole issue on which the government was successful was in demonstrating that the plan was not a "multiple employer plan" but rather was an aggregation of single employer plans. The Court set forth nine factors which lead to the conclusion that the plan was not a single plan.

## 2001

The IRS issued PLR200127047 in which it found that the plan at issue did not qualify for the exception provided by § 419A(f)(6). The Plan failed on numerous grounds including:

- One employer was invoiced for a $3,000,000 contribution in one year which was in excess of 10% of the contributions of all employers, thus the plan failed the 10% rule of § 419A(f)(6)
- The trust was never valued as a whole, rather each employer's sub-account was valued separately thus indicating the presence of separate accounting
- Individual employers were given the authority to direct relevant terms under which employees might collect benefits, thus indicating separate plans
- Each employer's contributions served to benefit primarily its own employees, thus indicating separate accounting and separate plans
- There was no real risk of forfeiture of benefits and under the rationale of the Wellons case, thus indicating a deferred compensation plan governed by § 404 and not a welfare benefit plan governed by § 162

*In summary, there does not appear to be a substantive mechanism whereby assets or liabilities are pooled, shared or distributed among the plans to the various individual employers. Also, the Trust has several characteristics that are typical of arrangements in which separate plans share*

*a common administrator. Consequently, the Trust is an aggregation of separate plans with a common administrator. It is not a single plan.* PLR 200127047

## 2002

The Treasury Department issues Proposed Regulations governing §419A(f)(6)

## 2002

Neonatology vs. Commissioner, 299 F.3d 221 (3rd Cir, 2002)

This was an appeal of the Tax Court's decision in Neonatology vs. Commissioner 115 T.C. 43 (2000) which held that the payment of inflated term rates far in excess of the cost of current insurance was taxable to the shareholders as a disguised dividend. In light of the strength of the trial court's well reasoned 79 page decision it is questionable why this case was ever appealed. The case actually has nothing to do with qualification under the § 419A(f)(6) exception, however, because many commentators have misread this decision we have included it here merely to address some of the mis-readings and misconceptions about this case.

- The Case is NOT about a Welfare Benefit Plan - The trial court noted at footnote 3:

  "Petitioners argue that these plans are welfare benefit funds within the meaning of sec. 419(e). Respondent argues to the contrary. We do not decide this issue."

  At Footnote 4 the Tax Court stated: "We do not decide whether this plan is a welfare benefit fund under sec. 419(e)."

- **The case does NOT determine qualification as a VEBA or under §419A(f)(6), At Footnote 2 the Court stated:**

  "We use the terms 'VEBA' and 'plan' for convenience and do not suggest that any or all of the subject arrangements are either bona fide plans for Federal income tax purposes or VEBA's under sec. 501(c)(9)."

- The case Does Not stand for the proposition that only the cost of Term Insurance is deductible Although it is true that the Tax Court only allowed a deduction for the cost of term insurance, that is because they only bought term insurance. In fact, the Court questioned whether the thing purchased was even insurance at all and referred to it as "a novel product designed by Inter-American… to masquerade as a policy that provides only term life insurance "

## 2003

Treasury Department issues Final Final Regulations governing §419A(f)(6)

The Treasury Department issued Final Regulation governing the § 419A(f)(6) exception in July, 2003, 19 years after Congress enacted the statute

What they do NOT contain:

- No non-discrimination provisions
- No compensation formulas
- No benefit limits
- No requirement to cover all employees
- No prohibition against cash value life insurance

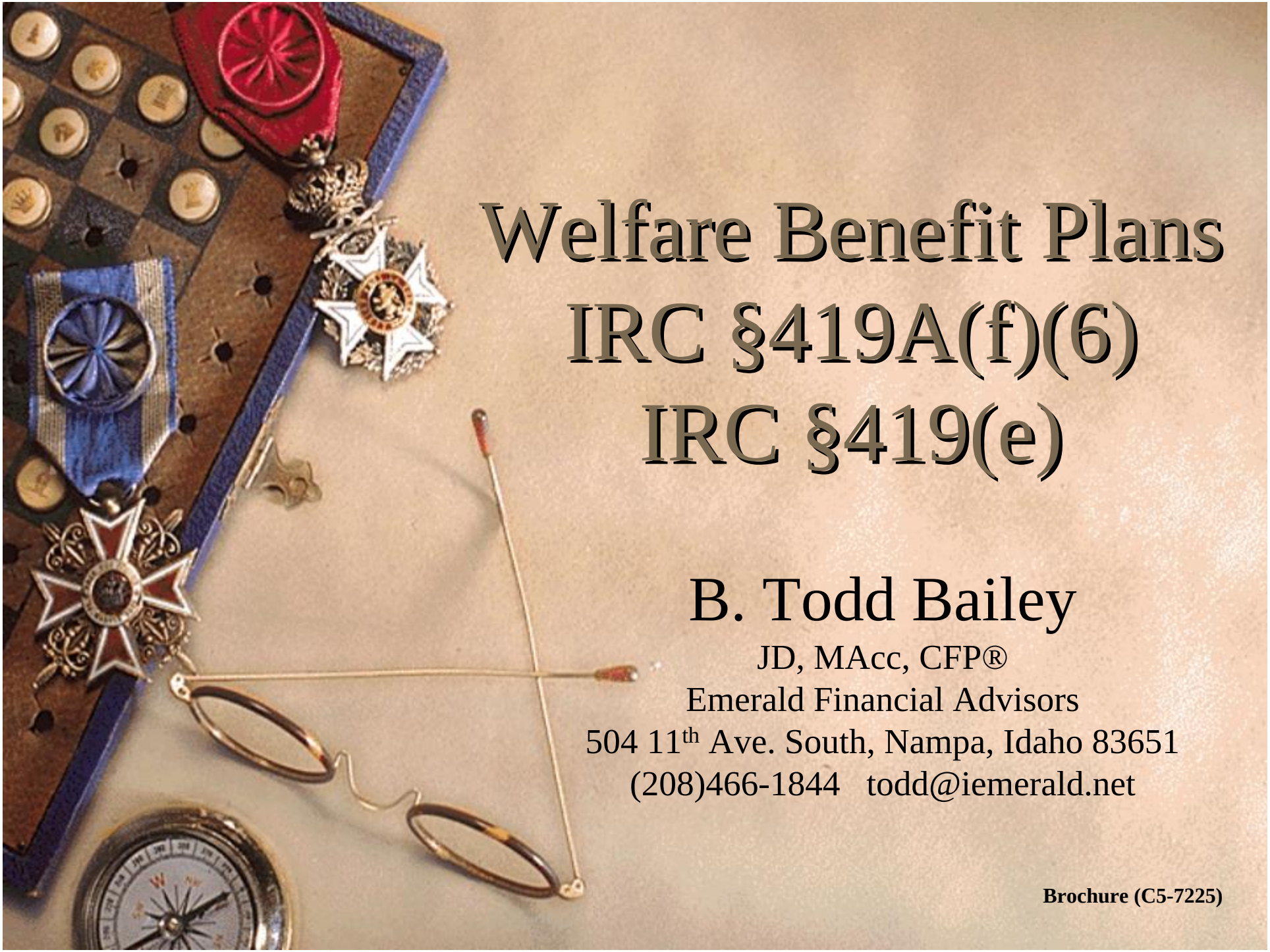
What they Contain:

- Record keeping & Disclosure requirements
- Defines Plan to include "totality of arrangement"
- Defines "Experience Rating"
- Sets forth "Single Plan" Characteristics

## 2004

Congress enacts the American Jobs Creation Act (AJCA)

The AJCA does not directly affect welfare benefit plans in general, nor does it affect plans which meet the requirements of § 419A(f)(6). Reference is included here only because the AJCA does impact plans which are the same as or substantially similar to the plans described in Notice 95-34.



# Welfare Benefit Plans
# IRC §419A(f)(6)
# IRC §419(e)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**Brochure (C5-7225)**

# "Welfare Benefits"

- . . . any employee benefit which is not considered a pension benefit or deferred compensation; i.e. bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefits
  - *See* Treasury Regulation 1.162-10

# 419 Plans—Where to Begin

- Order of Preference
  - 419(e)—Sole Employer Plan
  - 419A(f)(6)—Multiple Employer Plan

- *The Balance of this presentation addresses Multiple Employer Plans*

# Historical Overview

- 1890s – Welfare benefit plans first used by early industrial corporations
- 1928 – First mention of "*Welfare Benefits*" in Tax-Code
- 1974 – ERISA enacted
- 1984 – IRC §§419 and 419A enacted
- 1995 – Treasury Notice 95-34
- 1997 – Booth Case
- 2001 – Listed Transaction Rules (for Notice 95-34 plans)
- 2002 – IRC §419A(f)(6) Proposed Regulations
- 2003 – IRC §419A(f)(6) Final Regulations

# 1984

## Congress enacts IRC Sections 419 & 419A to restrict unlimited tax deductions to Welfare Benefit Plans

### 419

- Does NOT create a tax deduction
- Limits §162 to "Qualified Direct Costs"
- Allows "Carryover" of excess contribution
- Recognizes the legitimacy of Welfare Benefit Plans which are not tax exempt under §501(c)(9)

### 419A

- Limits additions to "qualified asset accounts" – the account set aside to pay welfare benefits
- Establishes 2 exceptions

  ⇨ 419A(f)(5) - collective bargaining (i.e., Union Plans)

  ⇨ 419A(f)6) - multiple employer plans

# Terminology

- "*419 Plan/Welfare Benefit Plan*"
  - Funded arrangement to provide "welfare benefits"
- "*Welfare Benefit*"
  - Any employee benefit that is **not** a pension benefit or deferred compensation---Includes:
    - **Death benefit**
    - **Disability pay**
    - **Severance pay**
    - **Vacation leave**
    - **Sick leave**
    - **Education**

# Terminology

- "419(e) Plan/Single-employer Plan"
- "Funded"
  - Assets are set aside
  - Assets can only be used by benefit of employees
  - No Assets (or their fruits) can return to the employer
  - Assets are not subject to claims fo employer's creditors

# Overview of 419 Plans

- Ordinary deduction for Employer
- Contribution amounts determined by Employer
- Employer determines participants
  - Not required to include all employees
- Contributions are not limited by qualified plan rules
  - Do not interfere with funding of other plans

# Overview of 419 Plans (cont.)

- Funds in 419 Plan ***can be*** invested to accumulate tax free*
- Death proceeds can be free of both income tax and estate tax
- Funds in the 419 Plan are secure from creditors

***Only true if trust is tax-exempt [501(c)(9)] or if all trust assets are held in non-taxable assets (e.g. life insurance, muni bonds, etc.)**

# “ Welfare Benefits”

IRC § 162 – “Ordinary & Necessary” Expense (*see also* Treas. Regs. § 1.162-10(a))

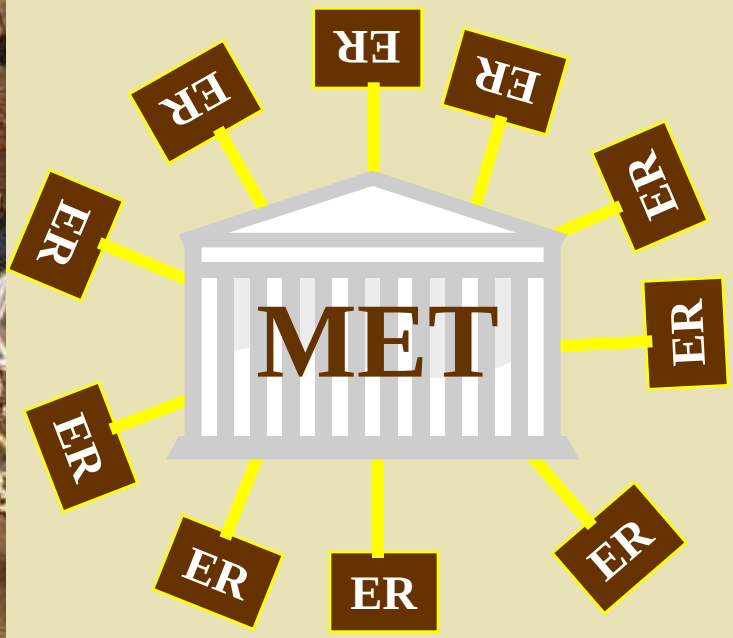
What are Welfare Benefits:

**(1) Living Benefits**

- Disability Benefits
- Long-Term Care
- Health
- Education
- Vacation pay
- Severance (use with care)

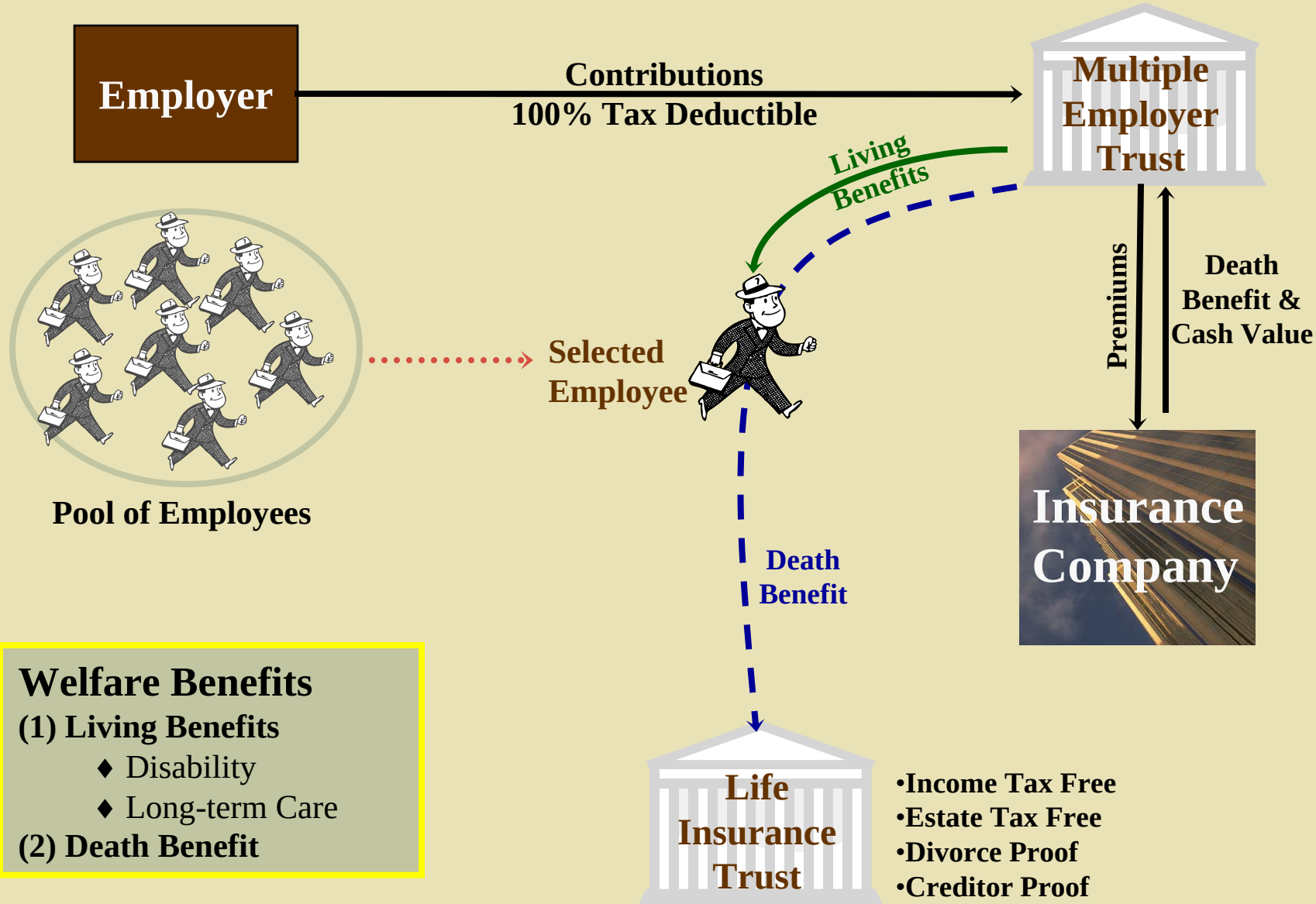
**(2) Death Benefit**

# The "Exception"
# The Multiple Employer Trust




- Key: **IRC § 419A(f)(6)**
- 10 or More Employer Plan (10% Max./Yrs)
- No ***Experience Rating***
  - Share risks
  - Share rewards

# 419A(f)(6) Multiple Employer Trust



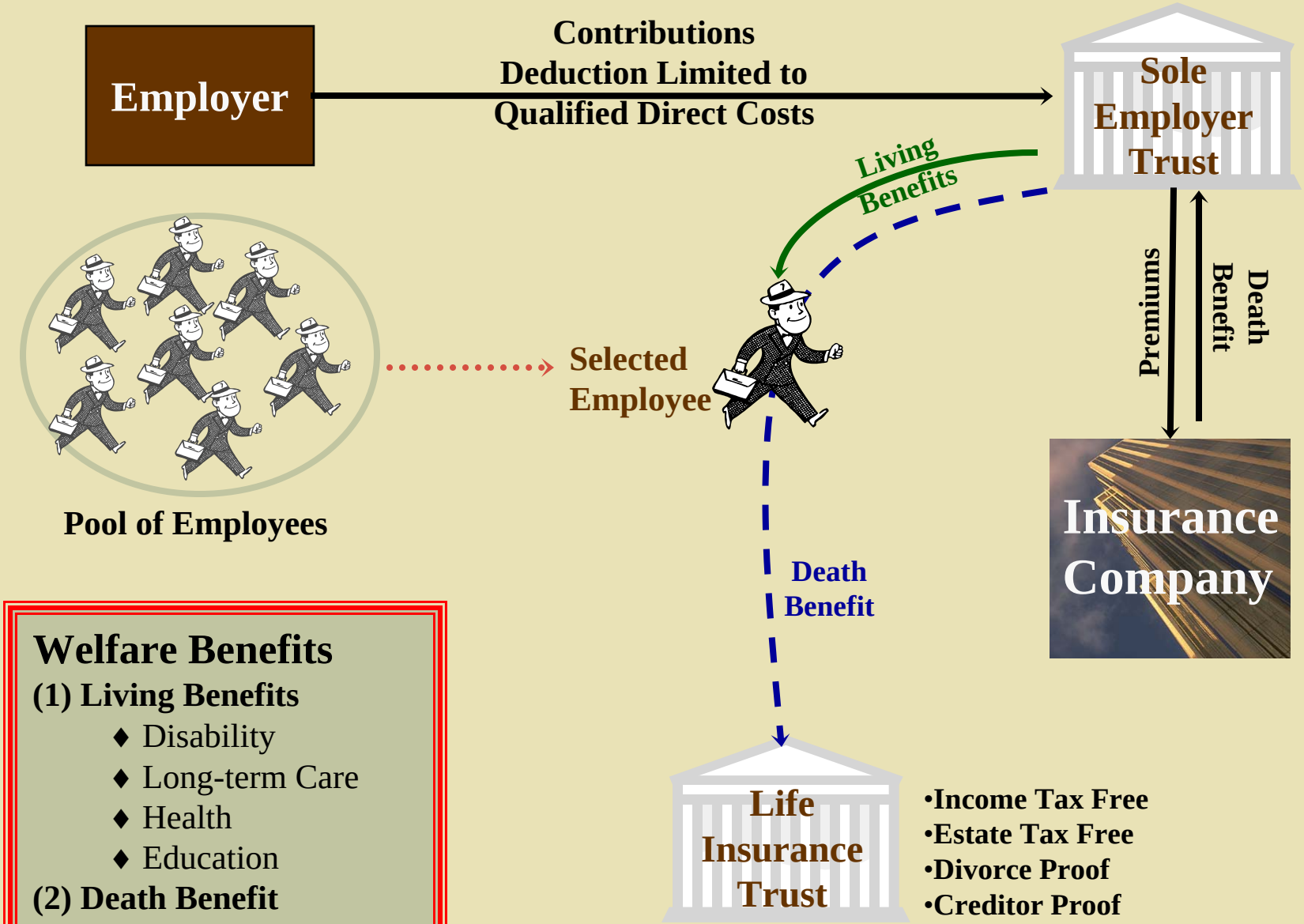

**Welfare Benefits**

**(1) Living Benefits**

- ♦ Disability
- ♦ Long-term Care

**(2) Death Benefit**

# 419 Sole Employer Trust



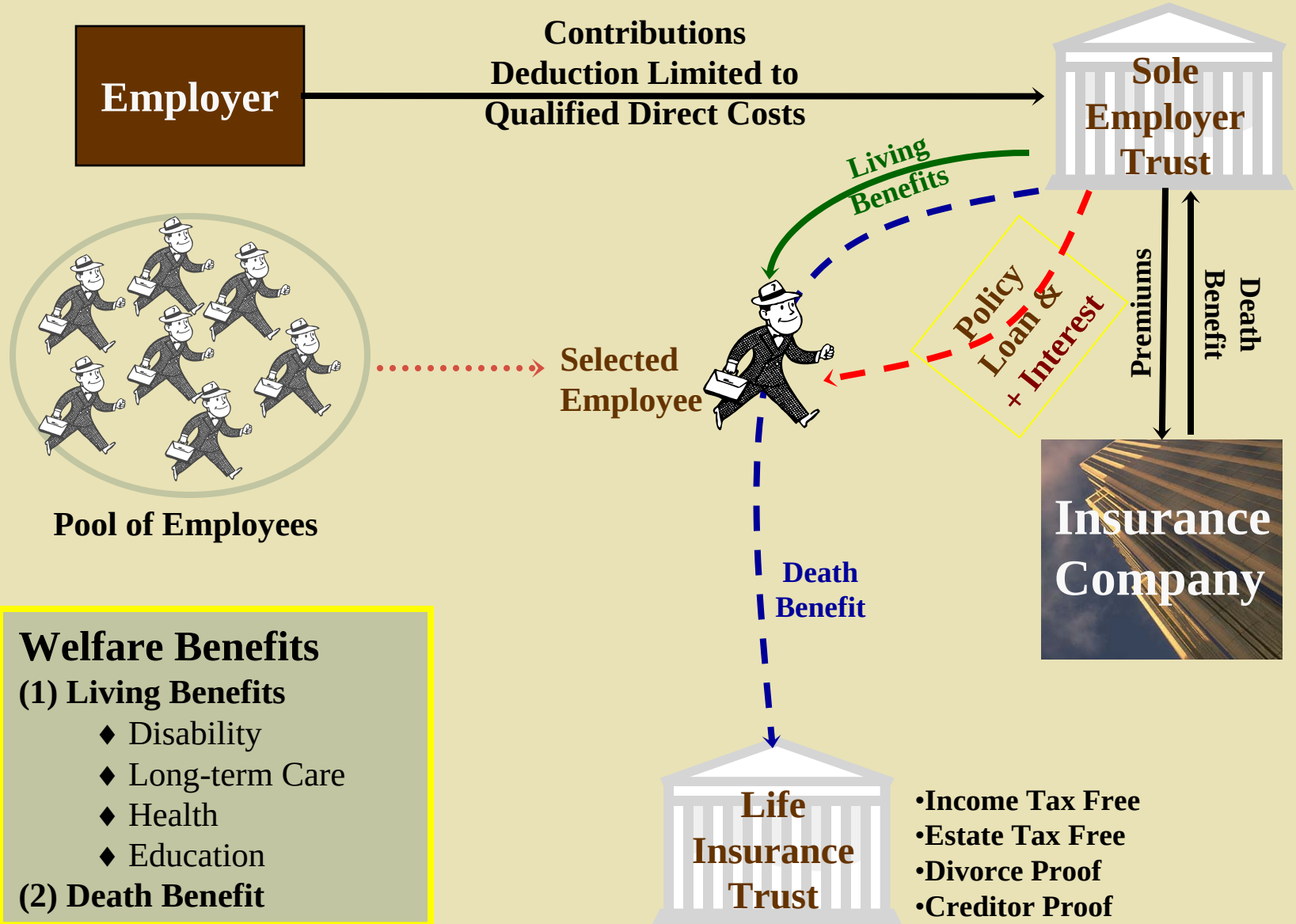

**Welfare Benefits**

**(1) Living Benefits**

- Disability
- Long-term Care
- Health
- Education

**(2) Death Benefit**

# Split-Dollar & Sole Employer Trust




**Welfare Benefits**

**(1) Living Benefits**

- ♦ Disability
- ♦ Long-term Care
- ♦ Health
- ♦ Education

**(2) Death Benefit**

# Which Bridge For You?

"I live in Alexandria, Virginia. Near the Supreme Court chambers is a toll bridge across the Potomac. When in a rush, I pay the dollar toll and get home early. However, I usually drive outside the downtown section of the city and cross the Potomac on a free bridge.

This bridge was placed outside the downtown Washington, DC area to serve a useful social service, getting drivers to drive the extra mile and to help alleviate congestion during the rush hour.

If I went over the toll bridge and through the barrier without paying the toll, I would be committing tax evasion.

If, however, I drive the extra mile and drive outside the city of Washington to the free bridge, I am using a legitimate, logical, and suitable method of tax avoidance, and I am performing a useful social service by doing so.

For my tax evasion, I should be punished. For my tax avoidance, I should be commended.

The tragedy of life today is that so few people know that the free bridge even exists."



***Justice Louis D. Brandeis***
***United States Supreme Court***

# CPA's

- Do not be surprised if your CPA is not familiar with 419 Plans
- As many as 20,000 plans in the USA
- We help with
  - Background material and due diligence
  - Conference calls
  - Meetings

***Unfortunately, we tend to be down on things we're not up on.***

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# Implementation

- Adoption
- Contribution
- Deduction

# Company Adopts Plan

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# Company Makes Tax Deductible Contributions

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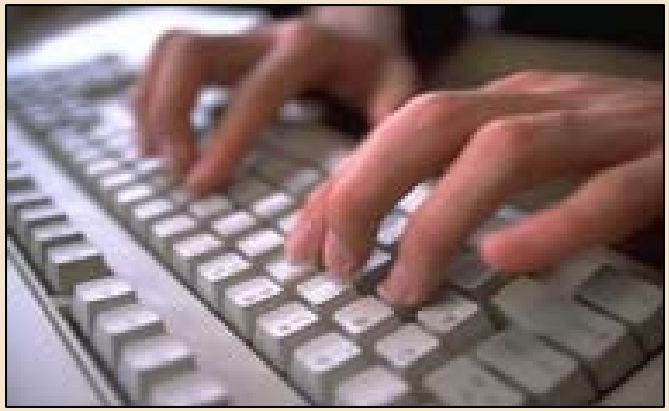

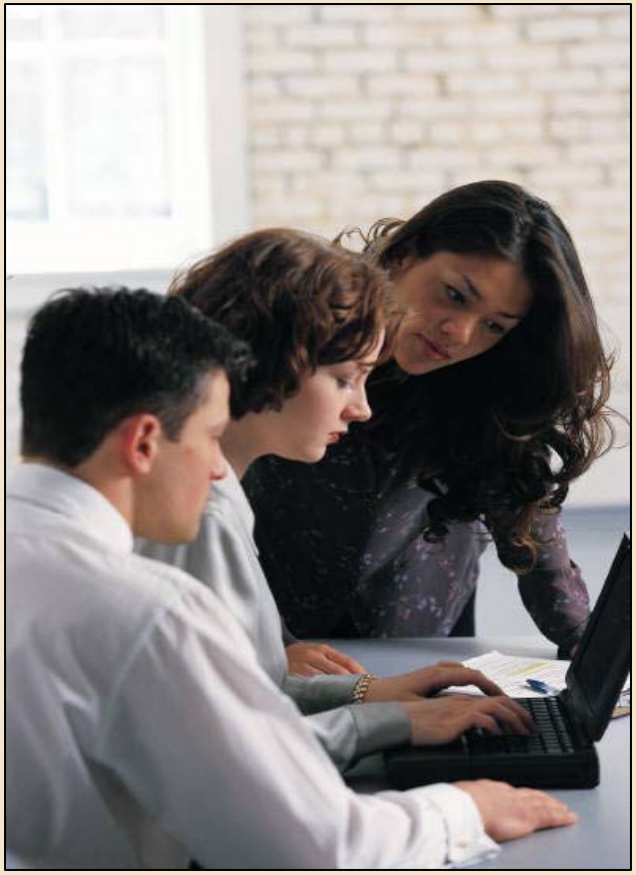

# Sent to Plan Administrator

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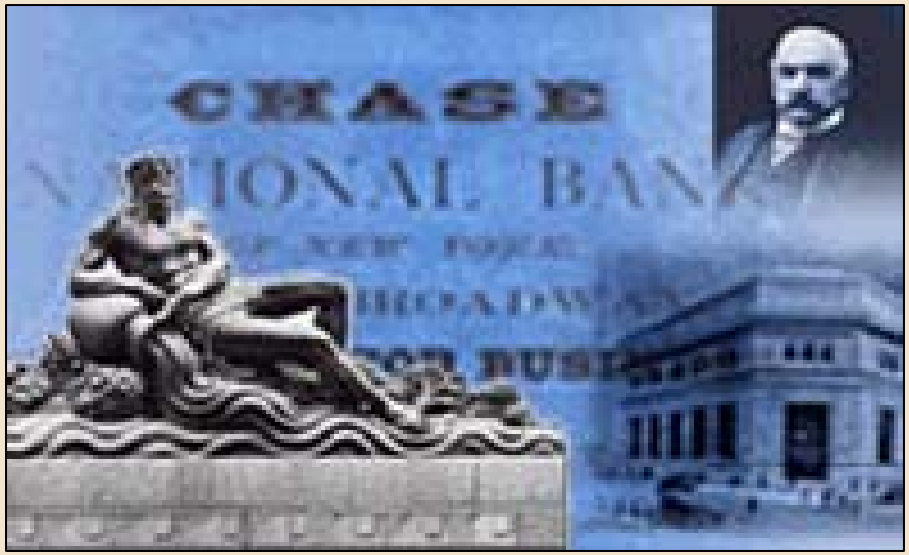


# Funds Are Deposited With a Trustee

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# Welfare Benefit Trust

Funds are Contributed into the 419A(f)(6) Welfare Benefit Trust At the Trustee

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Manulife

Fidelity & Guaranty Life
INSURANCE COMPANY

MINNESOTA LIFE

Nationwide

MIDLAND NATIONAL
Life Insurance Company

NEW YORK LIFE

EQUITABLE

Penn Mutual

Lincoln
Financial Group
Lincoln Life

ING

JF

INDIANAPOLIS LIFE
An AMERUS Company

John Hancock

Columbus Life
Insurance Company

# Funds are used to purchase Policies With Major Insurance Carriers

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# Benefits are Payable at Death or Otherwise (Per Plan Documents and Adoption Agreement)

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# For the Benefit of Owners And Employees

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