

# U|P|A|L

## **SPECIAL NOTICE**

### **CHARGING RETIREMENT PLAN FEES TO FORMER EMPLOYEES IS NO LONGER VIEWED AS A SIGNIFICANT DETRIMENT BY THE IRS**

Historically, the Internal Revenue Service has taken the position that the retirement plan accounts of former employees cannot be charged a pro rata share of Plan expenses when current employees are not charged their pro rata share of Plan expenses, because to do so imposes a significant detriment on the former employees and forces them to consent to a distribution when they would not otherwise take one.

The Dept. of Labor, joined by the IRS, has concluded that the allocation of expenses among Plan participants in a defined contribution plan who do not consent to a distribution is not a significant detriment within the meaning of ERISA, provided the allocation is reasonable. DOL and IRS reached this conclusion based on the fact that fees would be imposed in the marketplace, either implicitly or explicitly, for a comparable investment outside the Plan (e.g., fees charged by an investment manager for an IRA investment). Thus, whether or not such expenses are charged to the accounts of current employees, charging such expenses on a pro rata basis to the accounts of former employees is not a significant detriment. Refer to Rev. Ruling 2004-10 for more details.

#### **What does this change in position mean to UPAL practices sponsoring retirement plans?**

UPAL has a longstanding policy of encouraging its member practices participating in the Retirement Program to pay Plan expenses – administrative and investment management – as deductible practice expenses, rather than eroding the Plan’s assets which are growing tax-free.

Most member practices take advantage of this benefit by paying the Plan expenses monthly with a practice check. The practices have been obligated to pay these Plan expenses for former employees, along with those of current employees. The practice may now choose not to pay the Plan expenses of former employees, whether they continue to pay the expenses of current employees or not. In cases where the practice elects not to pay the expenses of former employees, those expenses will be collected by charging the pro rata share of administrative expenses to the participant’s account, along with any investment management fees the former employee incurred based on his or her investment election.

Please call UPAL if you are currently paying retirement plan fees for terminated participants and wish to charge terminated participant fees to their account.