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## 2009 Legislative Wrap Up

*Judy A. Miller, MSPA, ASPPA Chief of Actuarial Issues/Director of Retirement Policy, Arlington, VA*

One of the challenges to getting anything done legislatively is having a “must do” bill to serve as the vehicle for our legislative priorities. Throughout most of 2009, we thought legislation extending or modifying the estate tax would be that vehicle. Without a change in the law, there will be no estate tax for one year, starting January 1, 2010. Surely Congress would not allow the estate tax rate to fall to zero for even a day, let alone weeks or months. We were wrong.

### Unfinished Business

Congress left town with a lot of unfinished business, including extension or reform of the estate tax, and extension of a number of other expiring tax provisions. Two issues ASPPA has been working hard to get included in this tax legislation include funding relief for defined benefit plans, and allowing participants to convert pre-tax retirement savings to Roth accounts within 401(k) plans.

- Funding relief. There is strong bipartisan support in both the House and Senate for providing funding relief related to 2008 investment losses for both single and multiemployer plans. The single employer relief is expected to provide for extension of the amortization period for losses by permitting payments of interest only on losses for two years, followed by seven year amortization. Also under consideration is an alternative of 15-year amortization of the

2008 losses. Maintenance of effort requirements or curbs on executive pay, such as those in the Pomeroy-Tiberi bill (HR 3936), may be included with the relief. Extended amortization would also be available to multiemployer plans. Funding relief could travel with a package of tax extenders that Senate Finance Committee Chairman Baucus and Ranking Member Grassley have pledged to act on early next year. The relief would be a revenue raiser, and could help pay for the tax extenders package.

- Roth conversions. Effective January 1, 2010, the income limits are lifted on conversion of traditional IRAs to Roth IRAs. However, plan participants have to take distributions from qualified plans to qualify for Roth treatment. ASPPA has been working to educate lawmakers on the negative impact this inequity will have on qualified plans, and asking them to permit conversions to Roth accounts in 401(k) and 403(b) plans. We have made progress, but with no year-end tax legislation there was no viable path to getting the problem corrected before year end. We will continue to press to get equal treatment for qualified plans as early as possible in 2010.

### New Issue – CFPA

A new issue came up in the last month of 2009 that has required our immediate attention, and will be a

top priority when the Senate returns in January. Before leaving town, the House of Representatives passed a financial regulatory reform bill that includes the creation of an independent Consumer Financial Protection Agency (CFPA) with broad regulatory and enforcement authority over consumer financial products and services. Previous versions of the legislation excluded services provided to qualified plans and tax-preferred accounts from CFPA jurisdiction. However, the night before the bill went to the floor, Chairman Frank filed an amendment that included a substantial change to the service provider carve out. The bill (HR 4173) which passed the House on December 11, carves out the plan itself and the plan sponsor, but dropped the carve-out for services provided to the plan. As a result, service providers of retirement plans, including record keepers and third party administrators, could be subject to CFPA jurisdiction (in addition to DOL and Treasury jurisdiction).

The Senate Banking Committee is expected to mark up their version of financial regulatory reform legislation, including language creating a CFPA, at the end of January. Chairman Dodd has issued the Chairman's mark text that includes a carve-out for retirement plan service providers. ASPPA will be working very hard to make sure the carve-out remains in the Senate legislation. We will also lobby key players in the House for support of the carve-out with an eye toward retaining the exclusion when the House and Senate bills are reconciled in conference.

## Looking Ahead

In addition to working for funding relief, Roth conversions within qualified plans, and exclusion of qualified plan service providers from CFPA jurisdiction, we will continue to engage with House

staff on issues raised by the Doggett bill (HR 4126) that attacked cross-testing and would have effectively eliminated vesting schedules in small plans. We are preparing to engage in healthy discussion of the success of the private pension system, the real value provided to rank and file workers through the existing tax structure and the need to expand coverage by improved access to retirement savings. As part of that effort, ASPPA will also continue to work with the administration and key House and Senate staff on shaping the auto-IRA proposal so that it encourages employers to move toward a qualified plan in the private employer-sponsored system. We expect to see legislative proposals early next year and will keep you informed as the process moves along.

Although 2009 was a very busy year, it appears that next year will be even busier. ASPPA is in the middle of the action, and we will keep you informed as these and other issues move forward in 2010.



4245 North Fairfax Drive, Suite 750  
Arlington, VA 22203  
P 703.516.9300 F 703.516.9308  
[www.asppa.org](http://www.asppa.org)

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