

TGPC-1: Tax-Exempt & Governmental Plan Administration-1 2012 Syllabus

Course Overview

This course focuses on the administration and compliance requirements of 403(b), 457(b) and other plans maintained by tax-exempt and governmental entities. The topics covered include employee eligibility, vesting, contributions types and limits, nondiscrimination rules, allowable investments, contract exchanges, transfers and plan documents. Also, the ethical responsibilities of the administrator are discussed.

The candidate will be awarded the Tax-Exempt & Governmental Plan Administration certificate upon successful completion of this open book exam. The exam is provided exclusively through on-line resources.

Additionally, if candidates choose to continue their education of tax-exempt and governmental plans, an additional course, Tax-Exempt & Governmental Plan Consultant-2 (TGPC-2) is offered which completes the TGPC credential requirements. This course is geared towards the financial professional and will focus on the sales aspects, distribution channels and the different types of providers that support this unique marketplace. View additional information on the Tax-Exempt & Governmental Plan Consultant (TGPC) credential on the ASPPA website at www.asppa.org/tgpc.

Required Reading

Cook, Kristi, and Ellie Lowder. *The Source: 403(b) and 457(b) Plans, 3rd Edition*. St. Louis, MO: NTSAA, 2011.

Additional Required Reading (provided at the end of the syllabus):

Miller, Girard. "Time to Drop DROPs." *www.governing.com*. June 4, 2009.
<http://www.governing.com/column/time-drop-drops>.

Joyner, Jr., Leon F. "The DROP Feature of Defined Benefit Plans." *Government Employees Benefits Update*, February 1996. Reprinted by permission of The Segal Group, Inc., parent of The Segal Company, c2009. All rights reserved.

fyi: Pension Protection Act—Impact on Governmental Plans, Volume 29: Issue 65, September 8, 2006. Buck Consultants, an ACS company.

ASPPA Code of Professional Conduct

Recommended Reading

Bloom, Lauren. *Elegant Ethical Solutions*. Elegant Solutions Consulting: Goodlettsville, TN.

Supplementary Study Materials

Webcourse

ASPPA webcourses cover an extensive variety of topics essential to retirement plan professionals. The webcourses can be utilized for training purposes and to assist candidates preparing for ASPPA examinations. ASPPA Webcourses provide introductory training for new employees and topical training for exam candidates and other professionals seeking education in specific areas.

It is expected that webcourse registrants preparing for an examination will thoroughly study the topics covered in this syllabus and the required reading for the corresponding examination. The webcourse sessions should not be used as a substitute for these materials, and candidates should be aware that some currently available webcourses may have been produced in previous program years. While these webcourses are still relevant, candidates should use them as a supplementary exam preparation tool. Visit www.asppa.org/webcourse for more information.

Practice Examination

An online practice examination that mimics the actual testing experience is available for purchase at www.asppa.org/practice-exams.

Educational Material Copyright

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Distributable Educational Materials

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Exam

The corresponding online exam will include 10 true/false questions and 65 multiple choice questions. Upon completion of the TGPC-1 exam, a candidate will receive an immediate score and feedback report. **A score of 64 or more out of 75 is a passing score.** Once registered for the TGPC-1 examination, a candidate can access the examination from the “Access Exams and Quizzes” link (www.asppa.org/access-exams-and-quizzes) on the Education and Publication web pages on the ASPPA website. There are two versions of the examination. If a candidate fails one version of the TGPC-1 exam he/she can register, pay and take the second version within the same year. **The exam is open book and must be completed by Midnight Eastern Time on December 13, 2012.** Upon successful completion of the TGPC-1 examination, the Tax-Exempt & Governmental Plan Administration Certificate will be immediately issued online to the candidate.

Additional Information

All candidates are encouraged to visit ASPPA’s Candidate Corner (www.asppa.org/candidate-corner) for additional information regarding this exam. It is the candidate’s responsibility to check the ASPPA Web site for the most current information on examinations and publications. The Candidate Corner includes information about examinations, dates, study tips, current information on regulatory limits and other helpful information. You may also contact ASPPA with questions at education@asppa.org.

Exam & Publication Errata and References

As needed, errata to required reading material, practice examinations and/or examinations will be posted on the ASPPA website at www.asppa.org/errata. It is the candidate’s responsibility to check this page regularly for any updates prior to taking an examination.

Topic 1: An Overview: Historical Perspective and Current Trends

Overview

In order for a candidate to understand the unique rules of 403(b) plans, it is important to follow their legislative history and how they have evolved over time. Candidate will be given a brief history lesson along with a description of the two major categories of 403(b) arrangements; ERISA and non-ERISA.

Learning Objectives

The successful candidate will be able to:

- 1.01 State when elective deferral 403(b) programs became available to IRC §501(c)(3) organizations and public education institutions.
- 1.02 Identify the types of investment and insurance options that may be offered in a 403(b) plan.
- 1.03 List the areas of concern that an employer may have in selecting a single provider for its 403(b) plan.

Exam Weighting

This topic will comprise approximately 3 to 5 percent of the exam questions.

Required Reading

Chapter 1: Cook, Kristi, and Ellie Lowder. *The Source: 403(b) and 457(b) Plans, 3rd Edition*. St. Louis, MO: NTSAA, 2011.

Topic 2: Non-ERISA 403(b) Plans

Overview

This topic focuses primarily on non-ERISA 403(b) plans but also covers basic 403(b) knowledge such as identifying eligible employers that may sponsor 403(b) plans. Additionally, the candidate will learn about determining maximum contribution amounts including the unique catch-up option that is available to certain plans. Also covered are rules regarding the participant's and employer's ability to make post-employment contributions to the participant's 403(b) account.

The written plan requirement for non-ERISA 403(b) plans is discussed in detail and includes a listing of mandatory and optional provisions. Finally, the rules regarding plan loans and the employer's responsibilities for monitoring them will be covered.

Learning Objectives

The successful candidate will be able to:

- 2.01 Identify the types of employers that are eligible to sponsor 403(b) plans and discuss how they can prove that they are eligible to sponsor this plan type.
- 2.02 Explain the universal availability rules of a 403(b) plan.
- 2.03 Explain the concept of offering a 403(b) plan participant a "meaningful opportunity to participate" and identify which types of employers are exempt from this requirement.

- 2.04 Differentiate between the different types of plan documents (master plan, prototype, volume submitter and individually designed) and the trust document.
- 2.05 Discuss the optional and required features that are included in a 403(b) plan document.
- 2.06 Identify the key documents that must be prepared when implementing a new plan.
- 2.07 Explain the differences in the required language that must be included in a 403(b)(7) custodial agreement versus a 403(b)(1) annuity contract.
- 2.08 Identify the types of pre-2009 403(b) accounts that do have to be included in a 403(b) plan.
- 2.09 Identify the types of pre-2009 403(b) accounts that do not have to be included in a 403(b) plan.
- 2.10 Explain the W-2 reporting requirements that are applicable to elective deferrals in a 403(b) plan.
- 2.11 Explain the differences between the taxation and reporting of elective and employer contributions in a 403(b) plan.
- 2.12 Explain whether ERISA 403(b) and non-ERISA 403(b) plan assets are subject to creditors of the employer and the employee.
- 2.13 Explain the general rules of salary reduction agreements for elective deferrals into a 403(b) plan during employment and post-employment.
- 2.14 Explain the type of post-employment contributions that can be made to a 403(b) plan.
- 2.15 Describe the flexibility that governmental employers have in making employer contributions to 403(b) plans.
- 2.16 List the reasons that an employer may consider adding Roth provisions to a 403(b) plan.
- 2.17 Explain the contribution limits of a 403(b) plan including the catch-up provisions.
- 2.18 Explain who is eligible for the 15 year catch-up limitation in 403(b) plans and discuss how it is applied and coordinated with the age 50 catch-up limit.
- 2.19 Define the timing rules for remitting contributions to non-ERISA 403(b) plans.
- 2.20 Define includible compensation in a 403(b) plan.
- 2.21 Compare the definition of includible compensation used in a 403(b) plan versus a 457(b) plan.
- 2.22 Explain the loan rules as they apply to 403(b) plans.
- 2.23 Calculate the maximum available loan amount based on a participant's account balance.
- 2.24 Describe an employer's responsibilities when sponsoring a 403(b) plan.

Exam Weighting

This topic will comprise approximately 20 to 24 percent of the exam questions.

Required Reading

Chapter 2: Cook, Kristi, and Ellie Lowder. *The Source: 403(b) and 457(b) Plans*, 3rd Edition. St. Louis, MO: NTSAA, 2011.

Topic 3: Contract Exchanges, Plan to Plan Transfers and Distributions

Overview

This topic helps candidates to understand the differences between contract exchanges and plan to plan transfers. It also covers what these terms mean in today's environment and what steps an administrator may take to help facilitate the transaction process. Additionally, 403(b) and 457(b) distribution and eligible rollover rules are covered.

Learning Objectives

The successful candidate will be able to:

- 3.01 Describe the types of tax-free transfers permitted from a 403(b) plan.
- 3.02 Identify what a contract exchange is as it relates to 403(b) plans.
- 3.03 Describe the information sharing process that occurs between an employer and a 403(b) provider.
- 3.04 Explain how and for what reasons a participant would purchase service credits in a state's defined benefit plan.
- 3.05 Explain the eligible rollover rules as they apply to governmental 457(b) and 403(b) plans.
- 3.06 Explain the in-plan conversion rules for designated Roth accounts in 403(b) and governmental 457(b) plans.
- 3.07 List the distributable events that allow a participant to withdraw elective deferrals from a 403(b) plan.
- 3.08 List the distributable events that allow a participant to withdraw employer contributions from a 403(b) plan.
- 3.09 Describe the rules for a standard hardship distribution from a 403(b) plan.
- 3.10 Describe the rules for a facts and circumstances hardship distribution from a 403(b) plan.
- 3.11 Identify the sources within a 403(b) that have no IRS withdrawal restrictions.
- 3.12 List the distributable events that allow a participant to take a distribution from a 457(b) plan.
- 3.13 List the requirements for in-service distributions including unforeseen emergencies from an eligible 457 plan.
- 3.14 Compare the taxation and the 10 percent tax on early distributions as they apply to governmental 457(b) plans, 403(b) and 401(k) plans.
- 3.15 Explain the rules regarding RMDs from 403(b) and eligible 457 plans and explain how they differ from 401(k) plans.

Exam Weighting

This topic will comprise approximately 10 to 14 percent of the exam questions.

Required Reading

Chapter 3: Cook, Kristi, and Ellie Lowder. *The Source: 403(b) and 457(b) Plans, 3rd Edition*. St. Louis, MO: NTSAA, 2010.

Topic 4: 403(b) Plans: ERISA vs. Non-ERISA

Overview

This topic introduces the impact of ERISA on 403(b) plans. The candidate will learn about the specific employer actions that may subject a plan to ERISA and what types of employers are not subject to ERISA requirements.

The candidate will learn about the compliance requirements of ERISA 403(b) plans including the joint and survivor requirements, vesting rules and bonding requirements. There is also a discussion regarding the nondiscrimination rules for different types of 403(b) plan sponsors and how they compare to 401(k) plans.

Learning Objectives

The successful candidate will be able to:

- 4.01 Identify the different types of issued guidance regarding 403(b) plans and their position in the hierarchy of authority.
- 4.02 Explain when a 403(b) plan is subject to ERISA, including the specific employer's actions that could subject the plan to ERISA.
- 4.03 Explain when a 403(b) plan will not be subject to ERISA.
- 4.04 Identify the types of employers that are not subject to ERISA requirements.
- 4.05 Define the concept of vesting.
- 4.06 Identify the vesting schedules and other vesting issues that pertain to 403(b) plans.
- 4.07 Explain the concept of forfeitures in ERISA 403(b) plans and how they may be used.
- 4.08 Explain the qualified domestic relations order (QDRO) rules.
- 4.09 Describe the involuntary cash-out procedure that applies to distributions from a 403(b) plan.
- 4.10 Describe the qualified joint and survivor annuity (QJSA) and the qualified pre-retirement survivor annuity (QPSA) requirements in 403(b) plans.
- 4.11 Explain when elective deferrals and employer contributions must be deposited into an ERISA 403(b) plan.
- 4.12 Define who is a highly compensated employee (HCE).
- 4.13 Describe the allocation methods that can be used for employer contributions in a 403(b) plan.

- 4.14 Describe the nondiscrimination rules (including minimum coverage testing) that are applicable to IRC §501(c)(3) organizations.
- 4.15 List the correction methods for a failed ACP test.
- 4.16 Describe the nondiscrimination rules that are applicable for governmental and non-electing IRC §3121(w)(3)(A)(B) church plans.
- 4.17 List the types of safe harbors that a 403(b) plan may use to avoid nondiscrimination testing.
- 4.18 Compare the nondiscrimination rules applicable to 403(b) and 401(k) plans.
- 4.19 Explain the fidelity bond requirements and who must be bonded.
- 4.20. List the type of information (SPD, SMM, etc.) that must be provided to ERISA 403(b) participants and when it must be provided.
- 4.21 Describe the Form 5500 annual reporting requirements applicable to 403(b) plans including required schedules and the filing deadlines.
- 4.22 Describe the Form 5500 reporting requirements for non-electing churches, QCCOs and governmental organizations.
- 4.23 Identify the potential affect of the controlled group rules on tax-exempt organizations.
- 4.24 List the additional requirements that an ERISA 403(b) plan is subject to compared to a non-ERISA 403(b) plan.
- 4.25 State the potential consequences of the loss of 403(b) status to the plan sponsor and participants.
- 4.26 Describe the correction programs available to 403(b) plans.
- 4.27 Explain the difference between a frozen and a terminated 403(b) plan.
- 4.28 Explain how a 403(b) plan can be terminated.

Exam Weighting

This topic will comprise approximately 23 to 27 percent of the exam questions.

Required Reading

Chapter 4: Cook, Kristi, and Ellie Lowder. *The Source: 403(b) and 457(b) Plans, 3rd Edition*. St. Louis, MO: NTSAA, 2011.

Topic 5: Alternative Plan Designs

Overview

This topic outlines the differences between 403(b) and IRC §401(a) plans with an in-depth review of the advantages and disadvantages of each plan type.

Learning Objectives

The successful candidate will be able to:

- 5.01 State the benefits of participating in or sponsoring a retirement plan.

- 5.02 Describe the characteristics of a 403(b) plan and how it is different from an IRC §401(a) plan.

Exam Weighting

This topic will comprise approximately 1 to 3 percent of the exam questions.

Required Reading

Chapter 5: Cook, Kristi, and Ellie Lowder. *The Source: 403(b) and 457(b) Plans*, 3rd Edition. St. Louis, MO: NTSAA, 2011.

Topic 6: Governmental Plans

Overview

Governmental plans have their own unique set of rules that an administrator must understand to effectively administer these plans. A candidate will learn about the deferred retirement option plan (DROP) and what purpose it serves. The waiver of the 10% tax on early distributions will be covered along with eligible rollover rules and tax considerations.

Learning Objectives

The successful candidate will be able to:

- 6.01 Describe the characteristics of IRC §414(h) pickup contributions, when they are typically used and how they impact contribution and compensation limits.
- 6.02 Describe what an Optional Retirement Plan/Alternative Retirement Plan is and how it is used by governmental employers.
- 6.03 List the primary differences between governmental defined benefit plans and private sector defined benefit plans.
- 6.04 Summarize the issues that many governmental defined benefit plan sponsors have in applying final phased retirement regulations and discuss the resulting consequences.
- 6.05 Describe the DROP subaccount in a governmental defined benefit plan.
- 6.06 Describe the purpose a DROP option governmental defined benefit plan serves, and list the types of employee groups that are typically offered a DROP.
- 6.07 Explain the waiver of the 10% additional income tax for distributions to public safety employees from a governmental defined benefit plan and the potential tax implications if these accounts are rolled over and distributed from another retirement plan or IRA.

Exam Weighting

This topic will comprise approximately 4 to 6 percent of the exam questions.

Required Reading

Chapter 5: Cook, Kristi, and Ellie Lowder. *The Source: 403(b) and 457(b) Plans, 3rd Edition*. St. Louis, MO: NTSAA, 2011.

Miller, Girard. "Time to Drop DROPs." *www.governing.com*. June 4, 2009.
<http://www.governing.com/column/time-drop-drops>.
(Provided within)

Joyner, Jr., Leon F. "The DROP Feature of Defined Benefit Plans." *Government Employees Benefits Update*, February 1996. Reprinted by permission of The Segal Group, Inc., parent of The Segal Company, c2009. All rights reserved.
(Provided within)

fyi: Pension Protection Act—Impact on Governmental Plans, Volume 29: Issue 65, September 8, 2006. Buck Consultants, an ACS company.
(Provided within)

Topic 7: Compliance Tools for 403(b) and 457(b) Plans

Overview

A pension administrator working with tax-exempt and governmental plans must be well versed regarding the multiple agreements that are needed to conduct business and what parties must sign them.

The required reading includes sample service agreements, salary reduction agreements and other valuable forms. Also included are checklists that employers may use to track the required activities that will keep their plans in compliance.

Learning Objectives

The successful candidate will be able to:

- 7.01 Explain the components of a service provider agreement and describe the purpose it serves.
- 7.02 Identify the specific tax form that is prepared when a participant takes a distribution from an eligible 457 plan or a 403(b) plan.

Exam Weighting

This topic will comprise approximately 2 to 4 percent of the exam questions.

Required Reading

Chapter 7: Cook, Kristi, and Ellie Lowder. *The Source: 403(b) and 457(b) Plans, 3rd Edition*. St. Louis, MO: NTSAA, 2011.

Topic 8: Third Party Administrators and Other Providers

Overview

An administrator who has experience working with 401(k) plans will quickly learn that administering a 403(b) plan can prove a challenge to the uninitiated! Historically, these plans have been serviced by many different providers other than the traditional TPA. This topic will explore the different types of firms that are available and the array of services they may provide for employers.

Learning Objectives

The successful candidate will be able to:

- 8.01 List the various services that may be performed in order to keep a 403(b) plan in compliance.
- 8.02 Identify the parties that may be involved in the servicing of a 403(b) plan.

Exam Weighting

This topic will comprise approximately 2 to 4 percent of the exam questions.

Required Reading

Chapter 8: Cook, Kristi, and Ellie Lowder. *The Source: 403(b) and 457(b) Plans, 3rd Edition*. St. Louis, MO: NTSAA, 2011.

Topic 9: 457 Plans

Overview

All 457(b) plans are not created equal! This topic covers two types of 457(b) plans: nongovernmental tax-exempt and governmental. A candidate will gain insight into the characteristics of each plan, including employee eligibility, contribution limits and trust requirements. Also discussed will be the differences between the plans, and whether they are protected in the case of employer or employee bankruptcy.

Learning Objectives

The successful candidate will be able to:

- 9.01 List the characteristics of a 457(b) plan sponsored by a nongovernmental tax-exempt entity.
- 9.02 Discuss who may be a participant in a 457(b) plan of a nongovernmental tax-exempt entity.

- 9.03 Identify the types of nongovernmental tax-exempt entities that may sponsor a 457(b) plan.
- 9.04 Explain the irrevocable distribution election requirements that apply to a nongovernmental tax-exempt employer's 457(b) plan.
- 9.05 List the characteristics of a governmental 457(b) plan.
- 9.06 Discuss who may be a participant in a 457(b) governmental plan.
- 9.07 Identify the types of entities that may sponsor a 457(b) governmental plan.
- 9.08 Explain the contribution limits of a governmental 457(b) plan including coordination with contributions to other plans.
- 9.09 Identify the contribution limits for a participant who defers into an eligible 457 plan and other deferral programs, such as a 403(b) and/or 401(k) plan.
- 9.10 Explain what is considered includible compensation for eligible 457 plan purposes.
- 9.11 Explain how and when unused sick and vacation pay may be deferred to a governmental 457(b) plan.
- 9.12 Explain the loan rules as they apply to governmental 457(b) plans and 457(b) plans of nongovernmental tax-exempt employers.
- 9.13 Explain the rules for transfers between eligible 457 plans.
- 9.14 Discuss private letter rulings, government filings and the IRS approval process as it relates to eligible 457 plans.
- 9.15 Explain the differences between nongovernmental tax-exempt 457(b) plans and governmental 457(b) plans and whether they are protected from the creditors of the sponsoring entity.
- 9.16 Describe the IRS correction programs available to 457(b) plans of governmental and nongovernmental tax-exempt employers.

Exam Weighting

This topic will comprise approximately 18 to 22 percent of the exam questions.

Required Reading

Chapter 9: Cook, Kristi, and Ellie Lowder. *The Source: 403(b) and 457(b) Plans, 3rd Edition*. St. Louis, MO: NTSAA, 2011.

Topic 10: Ethics and Professional Responsibility

Overview

Administrators and other pension professionals must be bound by certain ethical duties to the plan sponsor and to the participants. This topic explains the ASPPA Code of Professional Conduct and its impact on these professionals.

Learning Objectives

The successful candidate will be able to:

- 10.01 Identify actions that do and do not violate the ASPPA Code of Professional Conduct.

Exam Weighting

This topic will comprise approximately 4 to 6 percent of the exam questions.

Required Reading

ASPPA Code of Professional Conduct. Available online at www.asppa.org/code-of-conduct and is also provided within.

Recommended Reading

Bloom, Lauren. *Elegant Ethical Solutions*. Elegant Solutions Consulting: Goodlettsville, TN.

TGPC-1
Additional Reading

Time to Drop DROPs
Alice-in-Wonderland math can't work for Deferred Option Retirement Plans

Girard Miller
www.governing.com, June 4, 2009

Time to Drop DROPs

Alice-in-Wonderland math can't work for Deferred Option Retirement Plans.

By [Girard Miller](#) | June 4, 2009



Girard Miller

is a senior strategist for retirement plans and investments at the PFM Group, and has 30 years of experience in the public, private and nonprofit sectors. Questions, success stories or anecdotes about benefit issues in government? E-mail him at miller@pfm.com.

Some public-sector pension funds morphed into mutants in the 1980s. The transformation started with a simple issue: In many major pension plans for teachers, police and firefighters, an employee could "max out" under the lifetime payment formula at a fairly young age; the cost of replacing them could be higher than keeping them on payroll. The solution many plans came up with was to craft an appendage to the pension plan — a Deferred Option Retirement Plan, or DROP. There are [several varieties of the DROP features](#), but they all provide incentives for employees to keep working and to collect extra money in an individual "side account." In most cases, the employee foregoes any additional increases in pension benefits, and often makes no further contributions into the pension plan proper.

The mere existence of a DROP plan should signal that something is wrong with the pension plan. The idea of providing incentives to seniority workers to keep them in service — because their pension plan encourages a life of leisure well before age 60 — is a signal that the pension benefit is simply too rich. But early retirement plans with full lifetime benefits are simply not sustainable in today's world of increased longevity, shrunken government budgets and underwater pension fund portfolios. While most workers in the private sector must now toil until or beyond age 65 because their 401(k) accounts are insufficient to retire, the public sector continues to act as if nothing has changed in the world around them. Further sweetening the pot with what some might call a bribe to remain working is a Mad-Hatter-meets-Rube-Goldberg scheme.

When DROP plans first appeared, there was justifiable skepticism among many public managers. Advocates' claims of "Something for nothing" just didn't ring right. In most cases, unions — not management — pushed for DROPs. Sympathetic actuaries, often recommended by unions, declared that the costs of these arrangements would be actuarially neutral and not create yet another taxpayer-financed boondoggle. Sometimes the resulting plan designs actually met the financial-fairness test and created no added costs — even if they failed to reform the original problem of excessive benefits.

But in many cases, the suspicions of early cynics proved correct, and these DROP plans have been nothing more than another way for employee organizations to outwit politicians and public managers — and siphon money off the pension fund. As this reality sets in, concerned elected officials are slowly awakening. San Diego Mayor Jerry Sanders is one leader who has [called for reforms](#), as the price tag there has become more obvious. [Local media in other states](#) have also called for reform or elimination of DROP plans.

Milwaukee County officials uncovered a massive actuarial deficiency and sued their pension actuary for misrepresenting the actual costs of their DROP plan. News reports there of a [\\$45 million settlement](#) should alert pension professionals nationwide to the financial liabilities they could face if they fudge the numbers or their assumptions prove wrong in later years. Industry observers now expect far greater due diligence and documentation of client communications and cost projections in the future, as these kinds of liabilities could quickly raise the costs of actuarial services in this market sector.

One of the common features of DROP plans is the payment of interest to employees on money deposited into an individual account in their name but held by the retirement plan. Instead of paying interest at a rate appropriate for short-term savings, or letting the employee invest at-risk in a self-directed investment account, many pension plans have been paying a guaranteed interest rate on DROP accounts equal to their expected long-term earnings rate on investments such as stocks and bonds. On its face, this is an imprudent practice. Who wouldn't want to collect 6, 7 or even 8 percent guaranteed on a 5-year deposit in their IRA or 401(k) plan, or their bank account? And what bank or insurance company would accept such terms?

Pension funds that allow these sweetheart arrangements accept all the risks and costs of a short-term liability that the employee can convert to cash — not a long-term liability similar to a pension promise. Nobody in the private sector would underwrite such a liability with a stock portfolio, because the long duration of the investment is not matched to the shorter-term liabilities. That shifts all market risk to the pension plan and the taxpayers. It would be like investing a 14-year-old child's college savings in a stock mutual fund and hoping that the market always achieves its average return every five years, even if the bills come due when the market is down.

Yet we see pension funds paying interest on DROP accounts as high as 8.5 percent. Needless to say, the plans that paid such generous guaranteed interest rates in the past 10 years have suffered huge underwriting losses on their "DROP business line." If they were insurance executives, the participating pension trustees and plan administrators would be dismissed as incompetent, and their actuaries would be fired and unable to find work elsewhere. Yet in the public sector, these practices persist.

As the nation's financial crisis puts increasing pressure on pension funds, one of the first reforms to consider is the suspension or redesign of DROP plans that operate on Alice in Wonderland principles.

For starters, governments could use an earnings rate that reflects the market returns of the pension fund, with a cap, as Philadelphia Mayor Michael Nutter reportedly [has proposed](#). Alternatively, you could pay an interest rate comparable to bank CDs that mature when the employee is first allowed to cash out. Then ask for a hard-nosed actuarial audit of the current scheme to see if it's really cost-neutral. If it's not, require the actuary to propose viable plan redesign changes. Finally, ask the broader question of whether the real problem lies in faulty core pension plan design that discourages sustained public service. Consider reforms of the entire plan, not just the DROP feature, to take into account today's longevity and the illogic of retaining workers at unnecessary expense because the basic pension formula is outdated, excessive and illogical.

In fairness, there are also well-designed pension plans with rational DROP features. But the burden now falls on the remaining plan sponsors, unions and pension trustees to prove that there is not a better way to retain and reward genuine public servants for a full career.

TGPC-1
Additional Reading

The DROP Feature of Defined Benefit Plans

Leon F. Joyner, Jr., A.S.A., M.A.A.A
Government Employees Benefits Update, February 1996

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GOVERNMENT EMPLOYEES

The DROP Feature of Defined Benefit Plans

This article was originally published in the February 1996 issue of *Government Employees Benefits Update*.

Governmental employers are constantly looking for ways to add benefit flexibility for plan participants without increasing costs. With this goal in mind, a growing number of public-safety and other public-sector employers are considering “DROP” features for their defined benefit plans.

The acronym “DROP” refers to “Delayed Retirement Option Plan” or “Deferred Retirement Option Plan.” DROPs are optional payment forms under defined benefit plans similar to the traditional or partial lump-sum options that allow participants to elect to receive a lump sum in exchange for a reduced monthly benefit for life.

ORIGINS

The first DROPs were established in Louisiana in the mid-1980s. Several firefighter plans had provisions for the payment of unreduced benefits after 20 years of service. Virtually all participants opted for retirement as soon as they were eligible. This pattern led to increased actuarial costs because benefits were paid over a long period of time. DROPs were offered to encourage participants to continue working beyond the earliest possible normal retirement date.

For example, one plan that wanted to encourage participants to continue working for another five years made the following offer shortly before each participant attained 20 years of service: by delaying retirement for five years, the participant would receive a one-time lump sum equal to two years (i.e., 24 months) of his or her accrued benefit as of the date of earliest eligibility for retirement (i.e., 20 years) in addition to his or her accrued benefit at actual retirement.

Drops Today: Three Variations

Today, DROPs are chiefly enacted to add flexibility to the pension plan and are intended to be cost neutral regarding plan funding. Three basic DROP designs have evolved. They are described below.

1. Regular Drops

Under a regular DROP, a participant who has attained eligibility for retirement can sign a binding agreement to cease employment with the employer after completing an additional period of service. This DROP period is typically two or three years, but in some plans may be as long as five years.

At the conclusion of the DROP period, the participant will be paid a monthly benefit based on his or her age, salary, service and plan formula in effect on the date of entry into the DROP. This is, in effect, an agreement to accept a lower monthly benefit in retirement. Participants who select the DROP, also receive a lump-sum equal to the accumulation of the DROP monthly benefit, with some interest, from the date they entered the DROP until they retire.

2. Immediate Drops

Typically, an immediate DROP determines a participant's monthly retirement benefit by reducing the regular accrued benefit by a fixed percentage. For example, at the time a participant attains eligibility for retirement and opts for the DROP, he or she would eventually receive a pension, based on a 15 percent loss of the accrued benefit as of the early retirement age, plus a lump sum of 24 times the reduced monthly benefit amount.

3. Retroactive Drops

As the name suggests, retroactive DROPs permit participants to choose the DROP long after attaining eligibility for retirement age. Under this flexible arrangement, a participant "returns" to the beginning of the period of eligibility for the DROP. The monthly benefit is determined as of that earlier point in time.

The lump sum is then determined in a manner similar to the regular DROP. Many plans with mandatory employee contributions also refund these as part of the lump sum.

DESIGN ISSUES

Employers that are adding a DROP feature should consider the following aspects of plan design:

- **Employee Contributions:** If employee contributions are mandatory must they continue during the DROP period?
- **Disenrollment:** What happens if an employee changes his or her mind about participation in the DROP if there are no contributions and no accruals during the DROP period?
- **Changed Conditions:** Can the binding agreement under a regular DROP be adjusted?

Of course, adding a DROP feature requires an amendment to the defined benefit plan and written communication to plan participants.

ACTUARIAL COST IMPACT OF DROP FEATURES

Most plans that add a DROP feature want to ensure that the option will be cost-neutral. An example follows.

The plan under consideration has a normal retirement age of 50 after 20 years of service and a benefit formula of 3 percent per year of service times final three-year average salary. The plan expects an 8 percent annual return on its investments. Salaries are expected to increase by 5 percent per year. Retirement is assumed to be postponed beyond what is the normal age under the plan. In fact, the assumed retirement age has been the earlier of age 52 with at least 25 years of service and age 55 with 20 years of service.

A cost-neutral DROP for this plan should set eligibility for the DROP at the same age as the assumed retirement age; that is, participants should be allowed to elect the DROP feature beginning at the earlier of age 52 after 25 years of service or age 55 after 20 years of service. If the DROP is a retroactive DROP, the retroactive period should not extend prior to age 52 with 25 years or age 55 with 20 years.

These combinations of plan designs and actuarial assumptions would, in effect, assume the same basic retirement pattern under the plan. Therefore, the funding period and mechanisms would not be altered. In fact, if the interest rate credited on the foregone benefit payments were a nominal rate (as is typical of many of these plans) of, say 4 percent, plan funding would experience a small gain from the DROP feature if plan investments return the 8 percent actuarial assumption for the period.

In order to incur a reduction in required actuarial funding due to earlier than preferred retirement ages, the lump sum offered under the DROP must have less value than the benefits that have been foregone and deferred under the program. For example, the plan described in the “origins” section of this article reduced plan funding because the deferral was for five years and the lump sum was for 24 months.

POSSIBLE ADVANTAGES AND DISADVANTAGES OF DROPS

Advantages

Although the primary reason that today’s employers implement DROPs is to offer more flexibility to plan participants at no additional cost, there are other advantages. Employers that offer retiree health coverage may save over the deferral period because

LEGAL ISSUES

A couple of legal questions about DROPs have already been answered decisively:

- Does a DROP raise the issue of “constructive receipt?” There appears to be consensus among attorneys that the answer is “no” because the benefits are paid from a qualified pension trust and are conditioned upon the participant being alive, not working for the plan sponsor and available to receive the benefit.
- When do Internal Revenue Code Section 415 maximum benefit rules apply—at the beginning of the DROP period or at retirement? The Internal Revenue Service considers the date an individual ceases employment to be the retirement date.

These and other legal issues, including the applicability of state law and local ordinances, should always be discussed with the plan’s attorneys.

costs for active employees are generally lower than those for retirees. Another advantage of keeping experienced employees on the job longer is saving the cost that would otherwise be incurred in hiring and training their replacements (provided, of course, that the experienced workers' salaries do not exceed these educational and salary expenses).

Plan participants benefit from DROPs by receiving a lump sum that they can use to "jump-start" themselves into retirement. These lump-sum payouts, however, will usually be subject to the mandatory, 20 percent withholding requirements unless the employee elects a direct rollover to an eligible plan or an IRA. To ease the potential tax burden on the participant, most DROPs allow the lump sum to be paid over a period of time, typically up to three years in three or four installments.

Disadvantages

One fear that plan sponsors have when introducing a DROP is that it could result in an increase in required actuarial contributions if retirement patterns do not change as expected after the DROP is implemented and/or if lump-sum payments exceed the actuarial value of the foregone and deferred benefits. Careful planning can alleviate much of this concern. To avoid complicating administration, another possible disadvantage of DROPs, the plan design can impose limitations on employees who elect the DROP and then change their minds.

There are other personnel and payroll issues associated with DROPs that plan sponsors should investigate before pursuing the option. Questions to consider include: Will the DROP change employment patterns? How will this impact salary budgeting?

Disadvantages of DROPs for participants arise if they do not use their lump sums judiciously, precisely because their accrued monthly benefit will typically be less under the DROP.

Adding a DROP to your pension plan may enhance the benefits offered. However, in designing a DROP, the following issues should be considered to assure that they do not become problems:

- Define specific goals and expectations for the DROP.
- Review plan retirement patterns and assess the impact that the DROP may have on them.
- Consider the age and service characteristics of the group and forecast how the DROP may change them.
- Review the salary and training implications of the DROP.
- Whether a particular public-sector plan and its participants would benefit from the introduction of a DROP depends on its financial position and participant demographics.

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Additional Reading

fyi: Pension Protection Act–Impact on Governmental Plans

Buck Consultants, an ACS company
Volume 29: Issue 65, September 8, 2006



Pension Protection Act – Impact on Governmental Plans

The Pension Protection Act of 2006 (PPA) includes many provisions that will impact governmental plans. New flexibility in the minimum distribution rules gives governmental employers the opportunity to offer new payment options and protect existing ones. Special rules apply to benefits for school teachers, public safety officers and public safety employees. Many general provisions of the new law will also be of interest, including provisions regarding in-service distributions from pension plans, permissive service credit purchases, distribution timing and rollovers.

Background

President Bush signed the Pension Protection Act of 2006 (PPA) into law on August 17th. Although the primary focus of the PPA is the funding of private sector defined benefit plans, it has many provisions that affect governmental retirement plans. The PPA creates opportunities that many governmental employers, especially employers of school teachers and public safety employees, will want to take advantage of.

Many of the provisions affecting governmental employers are effective upon enactment and some have retroactive effect. Governmental employers have until the last day of the plan year beginning on or after January 1, 2011 to retroactively amend their plans to comply with the applicable PPA provisions (as long as they are operated in accordance with the provisions from their effective dates).

An overview of the PPA provisions that affect governmental employers is provided below.

PPA Provisions Directed at Governmental Employers

Minimum Distribution Rules

Code Section 401(a)(9) imposes minimum distribution standards on qualified retirement plans, including governmental plans. Current IRS regulations permit annuity distribution options in governmental plans in place before April 17, 2002 to satisfy Section 401(a)(9) by meeting a reasonable good faith compliance standard.

The PPA directs the IRS to issue regulations for governmental plans clarifying that a plan's distribution options will be deemed to be in compliance with Section 401(a)(9) for all years that the section applies to them as long as they represent a reasonable good faith interpretation of the rules.

BUCK COMMENT. *Governmental plans should already be operating in good faith compliance with the minimum distribution rules and existing distribution options will continue to be protected. The PPA may encourage employers to offer new annuity distribution options under this reasonable good faith standard.*

Public Safety Officers and Employees

Retiree Medical Premiums for Public Safety Officers. An important PPA provision allows public safety officers who separate from service at the plan's normal retirement age or on account of disability to elect to have up to \$3,000 per year of their otherwise taxable retirement distributions from a qualified retirement plan, a Section 403(b) plan or a Section 457(b) plan transferred directly to pay for retiree medical or long-term care insurance premiums on a pre-tax basis. A "public safety officer" is defined as a law enforcement officer, firefighter, chaplain, or member of a rescue or ambulance crew. This provision is effective for distributions in taxable years beginning in 2007.

BUCK COMMENT. *Thus, it appears that a public safety officer who is eligible for an early retirement benefit or an unreduced retirement benefit before normal retirement age will not qualify for this exclusion from income. Plan sponsors must amend their plans if they wish to take advantage of this provision.*

Distributions to Public Safety Employees Over Age 50. Distributions from a governmental defined benefit plan made after August 17, 2006 to qualified public safety employees who separate from service after attaining age 50 will not be subject to the 10% early distribution penalty tax. A "qualified public safety employee" is any employee of a state or political subdivision of a state who provides police protection, fire-fighting services, or emergency medical services for any area within the jurisdiction of such state or political subdivision.

BUCK COMMENT. *This provision was driven by the tax treatment of deferred retirement option plans (DROPs). An employee who retired prior to attaining age 55, who elected a lump sum DROP benefit, and who elected not to roll over the distribution was subject to income taxes and the 10% early distribution penalty tax. Public safety employees who retire before attaining age 50 and elect a lump sum DROP benefit are still subject to the penalty tax unless they roll over the distribution. A plan amendment is not needed to take advantage of this provision.*

School Teachers

Early Retirement Incentive Plans. Prior to the PPA, if a school district or tax-exempt educational association provided early retirement subsidies or temporary supplements outside of a defined benefit plan, the benefits were considered deferred compensation subject to Section 457. These benefits could also violate age discrimination standards under the Age Discrimination in Employment Act (ADEA) because they are typically more valuable to younger early retirees than older retirees.

The PPA amends Section 457 to provide that early retirement incentive plans that are coordinated with governmental defined benefit plans will be treated as bona fide severance plans and therefore not subject to the Section 457 limits. The law amends ERISA to provide that they are treated as welfare plans for ERISA purposes. Finally, the law amends ADEA to provide that they will be treated as defined benefit plans and not as providing severance pay for purposes of ADEA. These provisions are generally effective August 17, 2006. The amendments to Section 457 apply to taxable years ending after August 17, 2006. The ERISA amendment is effective for plan years ending after August 17, 2006.

Employment Retention Plans. The PPA provides that school districts and tax-exempt educational associations may provide a retention benefit of up to two times the applicable Section 457(b) limits on deferrals (e.g., two times \$15,000 in 2006) without the benefit being treated as deferred compensation subject to Section 457(f) – i.e., the amounts are not includable in income until paid. In addition, the PPA provides that these plans are treated as welfare plans under ERISA. This provision is effective August 17, 2006 and applies to taxable years ending after August 17, 2006.

Permissive Service Credit Purchases

Governmental defined benefit plans often allow participants to be credited with permissive service credit if they make voluntary contributions in an amount necessary to fund the benefit attributable to the service credited. Code Section 415(n) permits a governmental plan to ignore Section 415(c) (which limits employee after-tax contributions to a retirement plan) when an employee purchases service credits with after-tax contributions, and instead to include the benefit attributable to those contributions in the employer provided benefit in testing for compliance with Section 415(b). The IRS had ruled earlier that Section 415(n) was only available if the employee had actually performed service not considered by the governmental plan and had also ruled that Section 415(n) was not available when an employee made an after-tax contribution to become eligible for an early retirement subsidy (e.g., a buy down of the actuarial reduction for early commencement).

Effective retroactively to plan years after the enactment of the Tax Reform Act of 1997, the PPA amends Section 415(n) to clarify that no actual performance of service is required and that Section 415(n) is available for actuarial reduction buy downs.

Effective retroactively to plan years after the enactment of EGTRRA, the law provides that permissive service credits purchased through trustee-to-trustee transfers from Section 457(b) and Section 403(b) plans are not subject to the limitations on nonqualified service and that the amounts transferred are subject to the defined benefit plan's distribution rules.

Exemption from Nondiscrimination and Minimum Participation Rules

Retirement plans sponsored by state and local governmental or other political subdivisions are exempt from the Code's rules regarding discrimination in favor of highly-compensated employees and minimum participation. Certain other governmental plans (e.g., international organizations) have been subject to these rules, although a moratorium on the application of these rules has been in effect indefinitely pending the issuance of final IRS guidance. (See our February 14, 2003 [For Your Information](#).)

The PPA now explicitly exempts all governmental plans from the nondiscrimination and minimum participation rules, effective August 17, 2006.

Indian Tribal Plans

The new law amends the Code and ERISA to include plans maintained by Indian tribal governments in the definition of governmental plans – but only for employees performing governmental functions and not commercial functions. This provision is effective for any year beginning on or after August 17, 2006.

BUCK COMMENT. *We understand that there will be an attempt to have the governmental function requirement modified in a technical corrections bill.*

Participation Rules for Section 457(b) Plans

The PPA provides that an individual that received a distribution of \$3,500 or less under Section 457(e)(9) before the enactment of the Small Business Job Protection Act of 1996 is not precluded from participating in a Section 457(b) plan.

General PPA Provisions that Affect Governmental Employers

Extension of EGTRRA Provisions

Certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) affecting retirement plans (e.g., the increases in benefit, contribution and compensation limits, the availability of Roth 401(k) and Roth 403(b) contributions, pre-tax catch-up contributions to defined contribution plans) have been made permanent. Many of these provisions directly affect Section 403(b) plans and Section 457 deferred compensation plans.

Phased Retirement

IRS regulations define a defined benefit pension plan as one that provides for payments after retirement or separation from service. Although IRS rulings have permitted in-service distributions from pension plans after an employee attains normal retirement age, they have not allowed employers to offer in-service distributions prior to a plan's normal retirement age (i.e., phased retirement).

Effective for distributions in plan years beginning after January 1, 2007, the PPA provides that a pension plan may make in-service distributions to employees who have attained age 62 and are still actively employed.

BUCK COMMENT. *This provision is more restrictive than IRS' proposed approach under which in-service distributions would be allowed starting at age 59½.*

Employers who want to offer phased retirement will need to carefully consider all of the issues before implementing it – e.g., whether additional accruals should be offset for the value of the distributions, whether in-service distributions at age 62 will be available to all employees or only employees that agree to work part-time, and how to distribute any new accruals.

Changes to Rollover Rules

402(f) Notices. Employees receiving eligible rollover distributions must receive a notice not more than 90 or less than 30 days prior to the distribution advising them of their rollover rights and the rules on tax withholding (the 402(f) notice). Effective for years beginning after 2006, the 402(f) notice may be provided up to 180 days prior to the distribution.

Non-Spouse Beneficiary Rollovers to an IRA. Surviving spouses may roll over eligible rollover distributions (e.g., lump sums and installment payments for less than 10 years) from a qualified plan, a Section 403(b) plan or a Section 457(b) plan to an IRA. Currently, a non-spouse beneficiary may not roll over such a distribution to an IRA.

Effective for distributions after 2006, the PPA allows a non-spouse beneficiary (e.g., child, domestic partner) to make a direct transfer of the distribution from a qualified plan, a Section 403(b) plan or a Section 457(b) plan to an IRA (but not to another qualified plan). This transfer is treated like a non-spouse inherited IRA. In general, distributions from the rollover IRA must either be paid in full within five years of the employee's death or must commence within 12 months of the employee's death over the life expectancy of the non-spouse beneficiary.

BUCK COMMENT. *This provision will permit the non-spouse beneficiary to spread the taxation of the distribution over a 5-year period or over his or her lifetime.*

Although eligible rollover distributions not rolled over are subject to mandatory 20% federal income tax withholding, the non-spouse distribution not rolled over will be subject to the 10% voluntary withholding and

not the mandatory 20% withholding. The IRS is expected to issue a new model 402(f) notice that would address this change.

After-Tax Rollovers. EGTRRA permitted an employee to roll over after-tax amounts to an IRA or a qualified defined contribution plan that separately accounts for the after-tax amount and the earnings on the after-tax rollover.

Effective for taxable years beginning after 2006, rollovers of after-tax amounts to defined benefit plans and Section 403(b) plans that agree to accept them will also be permitted – provided the recipient plan separately accounts for the rollover and the earnings on the rollover.

Roth IRA Rollovers. Currently, an employee may not roll over an eligible rollover distribution from a qualified plan, a Section 403(b) plan or a Section 457 plan directly to a Roth IRA. The employee must roll over the distribution into a regular IRA, and then convert that IRA into a Roth IRA.

Effective for distributions from these plans beginning in 2008, an employee may elect a direct rollover to a Roth IRA, provided the current rules for converting a regular IRA to a Roth IRA are satisfied (e.g., amounts generally are subject to income taxation for the year of the transfer).

Hardship Withdrawals

Active employees may not receive in-service distributions from Section 401(k) and Section 403(b) plans prior to attaining age 59½, or from Section 457(b) plans prior to attaining age 70½, unless the participant (or spouse or tax dependent) has a hardship or unforeseen emergency.

The PPA directs Treasury to issue guidance by February 17, 2007 allowing plans to permit a hardship distribution to an employee based on the financial hardship or unforeseen emergency of the employee's plan beneficiary (who may be other than a spouse or tax dependent – e.g., a domestic partner). For example, a Section 457(b) plan can be amended to provide that if the employee's adult child or domestic partner is the beneficiary of the employee's Section 457(b) plan and that beneficiary has a financial hardship (such as unreimbursed medical expenses or expenses for the repair of a principal residence), the employee may receive a hardship withdrawal. The withdrawal will be taxable to the employee.

Distributions to Active Duty Military Reservists

A distribution between September 11, 2001 and December 31, 2007 from an IRA or from a Section 401(k) or Section 403(b) plan that is attributable to employer contributions to an employee who is called to active military service for a period of at least 180 days will not be subject to the 10% early distribution penalty tax. The reservist may repay the withdrawal to the IRA within two years following the end of active duty, or August 17, 2008 if

longer, without violating the limits on contributions to IRAs. The contribution will not be deductible by the individual.

Automatic Enrollment

The PPA contains many provisions that encourage defined contribution plan sponsors to set up automatic enrollment features to boost participation. Many private sector plan sponsors are expected to add automatic enrollment provisions to their plans – governmental plan sponsors may also wish to consider adding these provisions.

Cash Balance Plans

The PPA now prescribes rules under which hybrid pension plans, including cash balance plans, may be designed or conversions may be made to these plans without running afoul of IRS and ADEA rules. ADEA is amended to state that any defined benefit plan will not discriminate on the basis of age if under the terms of the plan, the accrued benefit of any employee is not less than the accrued benefit of any similarly situated younger employee. In light of this more certain environment, governmental entities may wish to review whether a cash balance or other hybrid plan is a feasible alternative for providing pension benefits to their employees.

Conclusion

Governmental employers should be pleased with the new law, as it clarifies and liberalizes many provisions that they were concerned with. International organizations will be relieved that nondiscrimination testing has once and for all been eliminated. In any event, governmental employers have greater flexibility and many opportunities to improve their benefit offerings in light of changes made by the PPA.

Buck's consultants would be pleased to discuss the provisions of the new law affecting governmental employers and help in implementing any changes to your plans.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.

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Additional Reading

ASPPA Code of Professional Conduct



ASPPA Code of Professional Conduct

Professional standards that set the standard for the industry.

ASPPA is committed to encouraging every retirement plan professional to achieve and maintain the highest levels of technical competence and integrity. To this end, each member of ASPPA must abide by these professional and ethical standards.

▲ Compliance

An ASPPA member shall be knowledgeable about this Code of Professional Conduct, keep current with Code revisions and abide by its provisions. Laws and regulations may impose binding obligations on a benefits professional. Where the requirements of law or regulation conflict with this Code, the requirements of law or regulation take precedence.

▲ Professional Integrity

An ASPPA member shall perform professional services with honesty, integrity, skill and care. A member has an obligation to observe standards of professional conduct in the course of providing advice, recommendations and other services performed for a principal. For purposes of this Code, the term “principal” means any present or prospective client or employer. A member who pleads guilty to or is found guilty of any misdemeanor related to financial matters or any felony shall be presumed to have contravened this Code and shall be subject to ASPPA’s counseling and disciplinary procedures. A member’s relationship with a third party shall not be used to obtain illegal or improper treatment from such third party on behalf of a principal.

▲ Qualification Standards

An ASPPA member shall render opinions or advice, or perform professional services only when qualified to do so based on education, training or experience.

▲ Disclosure

An ASPPA member shall make full and timely disclosure to a principal of all sources of compensation or other material consideration that the member or the member’s firm may receive in relation to an assignment for such principal. A member who is not financially and organizationally independent concerning any matter related to the performance of professional services shall disclose to the principal any pertinent relationship which is not apparent.

▲ Conflicts of Interest

An ASPPA member shall not perform professional services involving an actual or potential conflict of interest unless:

- the member’s ability to act fairly is unimpaired;
- there has been full disclosure of the conflict to the principal(s); and
- all principals have expressly agreed to the performance of the services by the member.

If the member is aware of any significant conflict between the interests of a principal and the interests of another party, the member should advise the principal of the conflict and should also include appropriate qualifications or disclosures in any related communication.

▲ Control of Work Product

An ASPPA member shall not perform professional services when the member has reason to believe that they may be used to mislead or to violate or evade the law. Material prepared by a member could be used by another party to influence the actions of a third party. The member should recognize the risks of misquotation, misinterpretation or other misuse of such material and should take reasonable steps to ensure that the material is clear and presented fairly and that the sources of the material are clearly identified.

▲ Confidentiality

An ASPPA member shall not disclose to another party any confidential information obtained through a professional assignment performed for a principal unless authorized to do so by the principal or required to do so by law. “Confidential information” refers to information not in the public domain of which the member becomes aware during the course of rendering professional services to a principal. It may include information of a proprietary nature, information which is legally restricted from circulation, or information which the member has reason to believe that the principal would not wish to be divulged.

▲ Courtesy and Cooperation

An ASPPA member shall perform professional services with courtesy and shall cooperate with others in the principal's interest. Differences of opinion among benefits professionals may arise. Discussion of such differences, whether directly between benefits professionals or in observations made to a client by one benefits professional on the work of another, should be conducted objectively and with courtesy. A member in the course of an engagement or employment may encounter a situation such that the best interest of the principal would be served by the member's setting out a differing opinion to one expressed by another benefits professional, together with an explanation of the factors which lend support to the differing opinion. Nothing in this Code should be construed as preventing the member from expressing such differing opinion to the principal. A principal has an indisputable right to choose a professional advisor. A member may provide service to any principal who requests it even though such principal is being or has been served by another benefits professional in the same matter.

If a member is invited to advise a principal for whom the member knows, or has reasonable grounds to believe, that another benefits professional is already acting in a professional capacity with respect to the same matter or has recently so acted, it would normally be prudent to consult the other benefits professional both to prepare adequately for the assignment and to make an informed judgement whether there are circumstances as to potential violations of this Code which might affect acceptance of the assignment. The prospective new or additional benefits professional should request the principal's consent to such consultation.

▲ Advertising

An ASPPA member shall not engage in any advertising or business solicitation activities with respect to professional services that the member knows or should know are false or misleading. "Advertising" encompasses all communications by whatever medium, including oral communications, which may directly or indirectly influence any person or organization to decide whether there is a need for professional services or to select a specific person or firm to perform such services.

▲ Titles and Credentials

An ASPPA member shall make use of the membership titles and credentials of ASPPA only where that use conforms to the practices authorized by ASPPA.

▲ Collateral Obligations

An ASPPA member who is an actuary shall also abide by the Code of Professional Conduct for Actuaries. A member or representative shall respond promptly in writing to any letter received from a person duly authorized by ASPPA to obtain information or assistance regarding possible violations of this Code. To find out more, visit www.asppa.org or call 703.516.9300.