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June 10, 2011

Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2011-39)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

**Re: IRS Notice 2011-39
2011-2012 Guidance Priority List**

Dear Ladies and Gentlemen:

The American Society of Pension Professionals & Actuaries (“ASPPA”) is writing in response to Internal Revenue Service (“IRS”) Notice 2011-39, to provide input on the Retirement Benefit items (and relative priority of such items) to be included on the 2011-2012 Guidance Priority List.

ASPPA is a national organization of more than 7,500 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines including consultants, administrators, actuaries, accountants, and attorneys. ASPPA is particularly focused on the issues faced by small- to medium-sized employers. ASPPA’s membership is diverse but united by a common dedication to the employer-based retirement plan system.

ASPPA believes that each and every item on the Guidance Priority List is important to provide clarity and guidance to sponsors of retirement plans and the professionals who assist them. We also recognize that the IRS and the Department of the Treasury have limited resources and that pending guidance projects must be prioritized as a practical matter. We have listed the items below in order of priority, beginning with the guidance projects that are most important to ASPPA members.

ASPPA recommends that the following Retirement Benefit items be included on the 2011-2012 Guidance Priority List, in the following order of priority:

I. Form 8955-SSA Relief - ASPPA recommends that the IRS revise the due date for filing the 2009 and 2010 Form 8955-SSA as follows:

- The filing deadline for the Form 8955-SSA for any plan year beginning in 2009 and 2010 should be changed to no earlier than 180 days following the date: (a) the IRS releases the official form and instruction to the public; and (b) the Filing Information Returns Electronically (“FIRE”) system is available to support receipt of Form 8955-SSA filings.

- After the 180 day transition period expires, such 2009 and 2010 plan year filings should be due no earlier than the due date, with extensions, for filing the related plan's 2010 Form 5500 series report.¹

ASPPA further recommends that the IRS issue further guidance regarding participant disclosure requirements with respect to Form 8955 to provide greater flexibility and transition relief.

II. Mid-Year Changes for Safe Harbor Plans - ASPPA recommends that the IRS provide additional guidance on permissible mid-year changes to plans utilizing the methods of either Internal Revenue Code (“Code”) section 401(k)(12) (ADP test safe harbor provisions), 401(m)(12) (ACP test safe harbor provisions), or 401(k)(13) (qualified automatic contribution arrangement) and issue final regulations on suspending or decreasing safe harbor 401(k) contributions. Given current economic conditions and various changes in plan design, it is important that plan sponsors understand what changes are permissible.²

ASPPA notes that the Department of the Treasury indicated in its *Preliminary Plan for Retrospective Analysis of Existing Rules* that it plans to review the regulations on safe harbor contributions to section 401(k) and (m) plans and provide relief to employers facing financial difficulty from certain requirements under the existing regulations.³

III. Interim Amendments and LRM Language - ASPPA recommends that the IRS update and improve Revenue Procedure 2007-44 and the interim amendment process.⁴ Also, the “List of Required Modifications” for pre-approved defined contribution plans has not yet been released for the next cycle of pre-approved defined contribution plan review. Therefore, ASPPA strongly recommends a delay in the October 31, 2011 deadline for national and mass submitter plans until no earlier than January 31, 2012.

IV. Update and Expand EPCRS - ASPPA recommends that the IRS update and expand Revenue Procedure 2008-50 for qualified plan corrections, including additional flexibility to correct loan violations and 403(b) plan defects.⁵

¹ For additional information, see ASPPA comment letter submitted to the IRS on May 31, 2011, available at <http://www.asppa.org/Document-Vault/pdfs/GAC/2011/060111-comment.aspx>.

² For additional information, see ASPPA comment letter submitted to the Department of the Treasury on April 29, 2011, available at <http://www.asppa.org/Document-Vault/pdfs/GAC/2011/0429-comm.aspx>. See also, ASPPA’s comment letters dated November 16, 2007, available at <http://www.asppa.org/documentvault/pdfs/gac/2007/irsshplanspdf.aspx>; and June 4, 2010, available at <http://www.asppa.org/documentvault/pdfs/GAC/2010/safeharbor642010.aspx>.

³ Department of the Treasury, *Preliminary Plan for Retrospective Analysis of Existing Rules* 9 (May 18, 2011), available at <http://www.whitehouse.gov/files/documents/2011-regulatory-action-plans/DepartmentoftheTreasuryPreliminaryRegulatoryReformPlan.pdf>.

⁴ For additional information, see ASPPA comment letters submitted to the Department of the Treasury and the IRS on April 29, 2011, available at <http://www.asppa.org/Document-Vault/pdfs/GAC/2011/0429-comm.aspx>; March 4, 2010, available at <http://www.asppa.org/document-vault/pdfs/GAC/2010/2007-44.aspx>; and November 25, 2009, available at <http://prod-pres.asppa.org/document-vault/pdfs/gac/2009/final1125.aspx>.

⁵ For additional information, see ASPPA comment letters submitted to the Department of the Treasury and the IRS on February 18, 2010, available at <http://www.asppa.org/document-vault/pdfs/GAC/2010/finalasppaEPCRS.aspx>;

V. Pre-Approved 403(b) Program - ASPPA recommends that the IRS provide guidance on the new pre-approved 403(b) plan program and relief for hardship distributions for certain 403(b) contracts.⁶

VI. Update Revenue Procedure 2000-40 - ASPPA recommends that the IRS give priority to guidance on approval of a change in valuation date, a change in method from fair market value to an asset averaging method, and a change from one set of segment rates to another or between segment rates and the full yield curve.

VII. Hybrid Retirement Plans - ASPPA recommends that the IRS issue further guidance for hybrid plans under Code section 411, including guidance on rules for testing plans with variable interest crediting rates and anti-cutback relief.⁷

VIII. Lifetime Guaranteed Payment Products - ASPPA recommends that the IRS issue guidance regarding the use of lifetime guaranteed payment products within qualified plans. Even when participants prefer a lifetime guarantee, it is difficult for them to commit 100% of their benefit to an annuity payment. As a result, rules should be provided that will encourage plans to offer participants the opportunity to elect a portion of their benefits in a lump sum or IRA rollover and a portion (a minimum percentage or dollar amount) as an annuity or a set of fixed payments.

IX. Reduce Regulatory Burdens - ASPPA recommends that the IRS revise existing regulations in order to support innovation and reduce administrative burdens on the retirement plan system, with a focus on simplifying and creating uniform rules for electronic disclosure under the Employee Retirement Income Security Act of 1974, as amended, and the Code and permitting plan sponsors to choose electronic communications as the “default” method for required disclosures.⁸

X. Governmental Plans - ASPPA recommends that the IRS publish long-awaited guidance on the definition of a governmental plan under Code section 414(d).

XI. Multiple Employer Plans - ASPPA recommends that the IRS provide guidance on defined contribution multiple employer plans as these types of plans are becoming more popular. This guidance should include: (1) who is liable for a missed contribution; (2) transfers between participating employers; and (3) distributable events.

XII. Compensation Definition - ASPPA recommends that the IRS issue further guidance to clarify and conform permitted definitions of “compensation” under Code section 414(s) with

and April 25, 2008, available at <http://www.asppa.org/document-vault/pdfs/gac/2008/correction-document-errors-042508.pdf.aspx>.

⁶ For additional information, see ASPPA comment letters submitted to the IRS on June 25, 2010, available at <http://www.asppa.org/document-vault/pdfs/GAC/2010/403b625.aspx>; and June 1, 2009, available at <http://www.asppa.org/document-vault/pdfs/GAC/2010/prototype403b.aspx>.

⁷ For additional information, see ASPPA comment letter submitted to the Department of the Treasury and the IRS on January 12, 2011, available at <http://www.asppa.org/document-vault/pdfs/ACOPA/2011-comments/11311-comment.aspx>.

⁸ For additional information, see ASPPA comment letter submitted to the Department of the Treasury on April 29, 2011, available at <http://www.asppa.org/Document-Vault/pdfs/GAC/2011/0429-comm.aspx>.

final regulations under Code section 415 pertaining to the exclusion of post-severance compensation. For example, ASPPA submitted a comment letter to the IRS and Treasury on August 26, 2008, recommending that the IRS add a Code section 414(s) safe harbor to exclude certain post-severance payments without requiring discrimination testing.⁹

XIII. 402(f) Notice and Partial Rollovers - ASPPA recommends that the IRS update the 402(f) notice for changes in the law (including in-plan Roth rollovers) and permit basis rolled-last approach for partial and split rollovers. The 402(f) notice was last published in Notice 2009-68.¹⁰

XIV. Retirement Plan Deadlines - ASPPA recommends that the IRS provide guidance on which retirement plan deadlines are extended when a deadline falls on a weekend or holiday.

XV. Failure To Defer Notice - ASPPA recommends that the IRS issue final regulations under Code section 411(a)(11) regarding the requirement to provide a description of the consequences of failure to defer a distribution.¹¹

XVI. Deduction Limits for Single-Employer Defined Benefit Plans - ASPPA recommends that the IRS issue guidance under Code section 404(o). The ASPPA College of Pension Actuaries (ACOPA) is preparing a letter regarding requested issues to be addressed.



These comments were prepared by ASPPA's IRS Subcommittee of the Government Affairs Committee and primarily authored by Elizabeth T. Dold, Esq., APM, Chair of the IRS Subcommittee. We welcome the opportunity to discuss these issues. If you have any questions regarding the matters discussed herein, please contact Craig Hoffman, General Counsel and Director of Regulatory Affairs at (703) 516-9300.

Thank you for your time and consideration.

Sincerely,

/s/
Brian H. Graff, Esq., APM
Executive Director/CEO

/s/
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Chief of Actuarial Issues

/s/
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/s/
Mark Dunbar, MSPA, Co-Chair
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⁹ Available at http://www.asppa.org/document-vault/pdfs/gac/2008/082608_asppa_final_lt_irs_414s.pdf.aspx.

¹⁰ For additional information, see ASPPA comment letter submitted to the IRS on June 8, 2010, available at <http://www.asppa.org/document-vault/pdfs/GAC/2010/402fcomment.aspx>.

¹¹ For additional information, see ASPPA comment letter submitted to the IRS on January 7, 2009, which includes a request to integrate this notice requirement with existing notices, available at <http://www.asppa.org/document-vault/pdfs/gac/2009/010709proposednoticetodeferdistributionasppafin.aspx>.

/s/

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