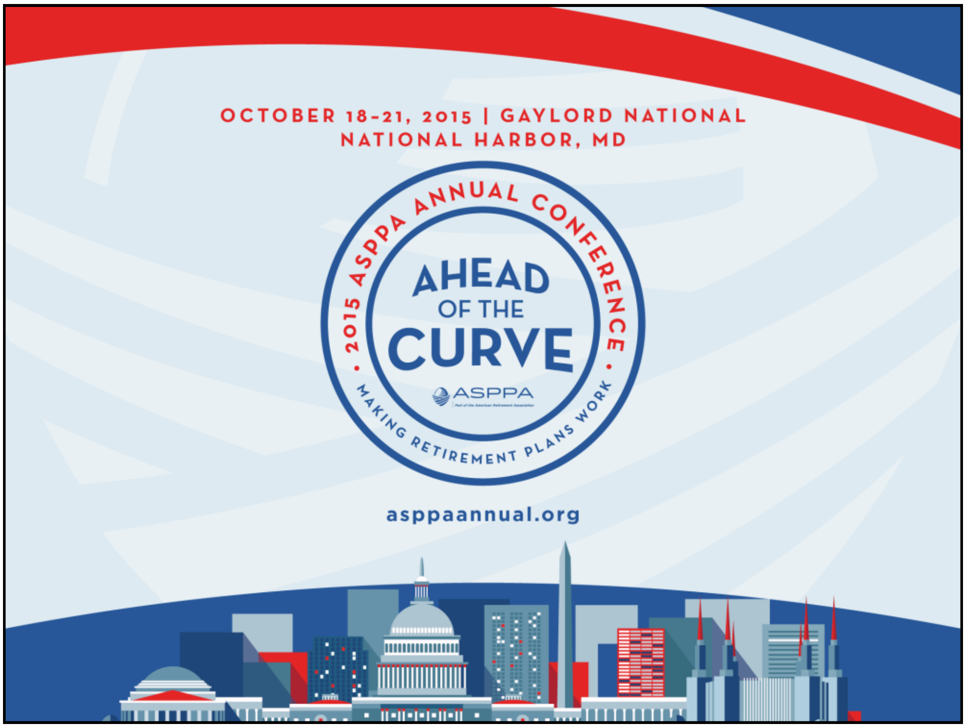

Communication Challenges for Back Office Actuaries

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What is a Back office Actuary?

- This is a good question!
- Could be:
  - An independent contractor hired by TPA to help with DB plans
  - An employee stuffed in a closet in the back of the TPA's office because he's not allowed to actually talk to anyone
  - An actuary who communicates to the client through a third party such as the CPA or business manager
- We'll discuss all types, as the issues are important

Best, Minimum, and Optional Practices

As pertains to your communications with third parties:

- How would you define "Best" practice?
- How would you define "minimum" practice?
- How would you define "optional" practice?

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Required Communications

- What items are “required” to be communicated by the actuary?
  - Valuation Report
  - Schedule SB
  - AFTAP Certification
  - Contribution requirements

Additional Communications

- Other items potentially communicated by the actuary:
  - Benefit/Distribution amounts
  - PBGC certifications
  - FAS valuations and disclosures
  - Effect of law changes
  - Explain how DB plans “work”
  - Proposals/Plan design

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The Principal

- The actuary's primary responsibility is to the Principal.
- The Code of Conduct describes the "Principal" as "A client or employer of the Actuary".

Who is the Principal?

- This is one of the most important questions to answer!
- Is the Principal the one who is paying his bills directly, or indirectly?
- Is the Principal the Plan Sponsor?
- What responsibility does the actuary owe to the intended or unintended audience of his communications?

Who is the Principal?

- JBEA regulations/ERISA speak about the enrolled actuary providing reports to the ERISA Plan Administrator
- ERISA speaks about the enrolled actuary acting on behalf of the participants
- Where do these requirements put the ERISA Plan Administrator and plan participants in the responsibility column?

Case Study One

- As part of the annual valuation work, you are reviewing the trust accounting for a one-man DB plan for reasonableness. There seem to be missing assets.
- What is your responsibility? And to whom? What do you do?

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Case Study One

- Did you consider that someone (CPA/TPA/Investment Advisor/Trustee) might have stolen from the Plan?

JB Reg 901.20(f)(2)

- An enrolled actuary … generally may rely in good faith without verification upon information furnished by the client. The enrolled actuary may not, however, ignore the implications of information furnished to, or actually known by, the enrolled actuary, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

Case Study One

- Having read JB Reg 902.20(f)(2) have you changed your mind?

Communicating to whom?

- The actuary must understand that any communication will or may be shared with:
  - TPA
  - Plan Sponsor/ ERISA Plan Administrator
  - Plan Advisors (CPA, attorney, broker, etc)
  - Plan Participants
  - IRS/PBGC/DOL/ABCD
  - Court of Law

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Communicating to whom?

- Although you may only speak directly with the TPA or administrator and never have any direct communication with any other entities, the actuary must be aware that his/her communications are often shared with many other interested parties WITHOUT the actuary's knowledge or permission!

Precept 5

- An Actuary who issues an Actuarial Communication shall, as appropriate, identify the Principal(s) for whom the Actuarial Communication is issued and describe the capacity in which the Actuary serves.
- Remember the Code of Conduct describes the "Principal" as "A client or employer of the Actuary"

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Communicating to whom?

- How might it matter if your report was obtained by the Wall Street Journal?
- Should you care?
- Does this mean you should provide more or less?

Communication style

- Understanding that all communications may have a VERY large unseen audience, how should the actuary communicate the following:
- Contribution range?
- Distribution amounts?
- IRS limits?
- Effect of changes (census, interest rates)?

Communication Style

- Advice: "Just the facts, Ma'am."
  - Pay attention to tone
  - No value judgements
  - No emotional content
  - Emails and other written communications do not provide the softening effect of body and face language so keep it polite
- Check for typos and grammatical errors

Communication Style

- Acronyms and Jargon
  - One level for TPAs / CPAs
  - Another level for Plan sponsors
- Can we consider email as a "simpler language" supplement to the official communication?
- Copies of articles as a supplement?

Which items MUST go to Principal?

- Contribution requirements
- Schedule SB
- AFTAP certification
- Election forms
- Valuation report
- Are there others?
- Which items MAY go to the Sponsor?

JB Reg 901.20(c)

- An enrolled actuary shall provide to the plan administrator upon appropriate request, supplemental advice or explanation relative to any report signed or certified by such enrolled actuary.

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Which items MUST go to Sponsor?

- Now that you've read 901.20(c), have you changed your mind?

How does the actuary make sure the Principal receives these?

- If the actuary only communicates with the TPA/Administrator, how does he/she make sure the sponsor receives necessary things?
- And ***how*** are they being communicated to the Principal?

Case Study Two

- An actuary provides a copy to the TPA of every single report the valuation system provides. The TPA does not forward to the client the detail reports on Funding Target/Target Normal Cost.
- Is this a problem?
- If so, why?

The Actuary is the most knowledgeable person on the planet

- Actuaries are often asked the darnedest questions!
  - What is the best formula for this client?
  - This client has deferrals, 179 expenses, health insurance reimbursements, blah blah blah, what is his compensation for plan purposes?
  - If the H/W plan gets divorced, could they contribute more?

Case Study Three

- You have an hour long conversation with a client about redesigning the Plan. The client asks you to write a letter regarding the conversation.
- What do you tell the client and what do you do?

Case Study Three

- Do you think an email summary might be a good idea for you as well as for the client?
- But is it a best practice, minimum practice, or optional practice?

Case Study Four

You've taken over a DB plan as the actuary that is very overfunded on 415 basis.

What calculations do you do?

How do you communicate this to the TPA to make sure it is communicated properly to the Plan Sponsor?

Case Study Four

- Did you consider an email or letter or memo outlining the problem so that later it's clear that it's not your fault?

Contribution Range

- How is the contribution range communicated to the TPA/Administrator?
- How do you advise them not to contribute too little? Too much?

Case Study Five

- An enrolled actuary only communicates the minimum required contribution in his report. Is this a problem?
- If so, why?

Case Study Six

- An actuary only communicates the minimum and maximum deductible contribution in his report. Is this a problem?
- If so, why?

Contribution Range

- What advice should the actuary provide regarding the range?
- Does the answer depend on the terms of engagement?
- Is the actuary a "tax advisor" or does the actuary assist or provide consulting advice to the tax advisor?

Distributions

- How do you explain the different distribution options to the TPA/Administrator to make sure the ERISA Plan Administrator explains them to the participant?
- How do you make sure the TPA/Administrator understands this is NOT a Super-Duper 401k plan?

Distributions

- What worksheets/elections/reports do you provide to the TPA?
- When the elections are returned, is there any communications between you and the TPA at that time?
  - Do values need to be updated?
  - Who checks to see if elections correctly completed & signed?
  - What's minimum practice?

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AFTAPs

- Do your TPAs/Administrators really understand AFTAPs well enough to explain what it means to the sponsor?
- Do they know what it means for a plan to have restrictions, or what happens if the AFTAP isn't done by a certain date?
- How much about 436 actually can be communicated to a non-actuary?

AFTAPs

- What procedures/communications might be helpful in preventing surprise AFTAP problems?

Case Study Seven

- The plan sponsor did not provide the data necessary to do either the AFTAP or the Range Certification by 10/1.
- What are the consequences and how would you communicate them?

Case Study Seven

- How many of you issue a Range Certification with the valuation just in case there is a problem later with the AFTAP?
- Who initiates the request for an AFTAP, you or the TPA?

Funding issues under PPA

- Many Plan Sponsors and TPAs don't really understand how funding under PPA is linked to benefit accruals.
- How do you communicate this?
  - Benefit accruals v.s. contributions
  - Funding target v.s. Assets/ account balances
  - Target normal cost v.s. contributions
  - Segment rates and mortality table changes

Case Study Eight

- You run a proposal that with an assumed W-2 compensation of $100,000 generating a contribution of $100,000. The client's actual compensation ended up being $75,000 but he contributed and deducted $100,000.
- How do you communicate the problem to the TPA or client?

Case Study Eight

- Was there some disclosure you could have sent with the proposal that might have minimized the chances the client would think the proposal was locked in stone?

Combination Plans

- Often the actuary is the one that is required to do the combination plan non-discrimination testing. While there are many ways to pass the test, there will always be a certain minimum level of contributions to the DC plan or benefits from the DB plan that must go to the non-HCEs or, else, the test will fail.

Combination Plans

- How do you communicate the results of testing with the TPA?
- What reports do you provide?
- How do you provide the advice?

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Case Study Nine

- The plan sponsor files the tax return on 9/15/2015 with no contribution to the profit sharing plan. You find this out on 10/1/2015.
- The TPA tells you the Sponsor decided to only make the DB contribution because it was a better ratio to him.
- How do you communicate the problem and solutions to the client?

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Case Study Nine

- What kinds of communications might be helpful to prevent this kind of last minute confusion?

Annotation 1-2 of Precept 1

- An Actuary shall not provide Actuarial Services for any Principal if the Actuary has reason to believe that such services may be used to violate or evade the Law or in a manner that would be detrimental to the reputation of the actuarial profession.

Annotation 1-2 of Precept 1

- Old saying, "Never make a client's problem your problem."

Case Study Ten

- Plan Sponsor says that a terminated participant was paid in full but no distributions are shown in the trust accounting.
- How do you communicate the problem to the TPA/Plan Sponsor?
- Do you care if the participant gets stiffed?

Case Study Ten

- What are your practical recourses if the participant was not paid?
- How do you communicate this to the TPA?

Annotation 4-1 of Precept 4

- An Actuary who issues an Actuarial Communication shall ensure that the Actuarial Communication clearly identifies the Actuary as being responsible for it.

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Case Study Eleven

- You work as the back office actuary for a TPA. The TPA substitutes your signature page with recommended contributions with one that doesn't show your name but just the name of the firm.
- Is this a problem?

Case Study Eleven

- Which documents & forms need your signature and which need only identify you as the actuary?

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Changing 417(e) Assumptions

- 417(e) assumptions are, by design, volatile and are currently in a state of flux with guaranteed changes in mortality and uncertain changes in interest rates.
- What kinds of communications might be desirable to give to the TPA? To the Plan Sponsor?

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Indirect Compensation

- Precept 9 of the ARA Code of Conduct and Precept 6 of the Actuarial Code of Conduct require disclosure of the sources of material direct and indirect compensation. There may or may not be a conflict of interest.
- What disclosure is appropriate and to whom?

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Indirect Compensation

- Does anyone have an example where you found that either direct or indirect compensation created a conflict of interest for another actuary?

Delegating Communications

- Consider that there may be a role for TPAs and CPAs to be effective translators of actuaries for some clients.

Case Study Twelve

- Most communications to the client go through the CPA (the business source). The CPA tells the Plan Sponsor to contribute the recommended contribution and not the maximum. The Plan Sponsor client pays no attention to the CPA and contributes the maximum.

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Case Study Twelve

- How could this possibility have been minimized?
- At what point is it the Plan Sponsor's responsibility and problem?

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Delegating Communications

- Consider when a CPA or business manager becomes a legal agent for the Plan Sponsor and what that means in terms of communications?

Case Study Thirteen

- Mr. Academy Award Winning Actor cannot be contacted directly but only through his business manager.
- Are there any circumstances in which you would insist on direct communications? What would you do if denied direct communications?

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Case Study Thirteen

- Have you considered that it might be better to keep the actuary away from the "Artist"?
- What other types of clients might it be ***best*** to have indirect communications with?

Case Study Fourteen

- CPA/TPA only sends the actuary emails listing contributions & dates, salaries, and asset values.
- Is this acceptable?

Additional Topics for Discussion

- Following are additional topics for discussion. For each one, given the preceding discussions, what topics must a plan sponsor know about his/her DB plan, who's responsibility is it to communicate these to him/her, and how?

415 max accumulation in plan vs contributions

- Do you look at the current year 415 maximum, this and next year, more, or does it depend?
- To whom do you communicate your advice and how?

Effect of interest rates on liabilities

- What interest rates have effect on which liabilities?
- What kinds of advice/communications do you provide, to whom, and how?

Effects of Changing Demographics

- How can changing demographics change plan costs, in regular DB and in combo plans?
- What kinds of advice/communications do you provide, to whom, and how?

Best, Minimum, and Optional Practices

- Has anyone changed his or her mind as to what constitutes best, minimum and optional practices?
- Best?
- Minimum?
- Optional?
- If it "depends", what does it depend upon?

Questions?

- Maya Angelou — 'Hoping for the *best*, *prepared for the worst*, and unsurprised by anything in between.'
- We need to communicate as if everything we say is under scrutiny, hoping it isn't, but unsurprised (and not unprepared) for anything in between.

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