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Commitment Bias

- Commitment bias is the tendency to be consistent with what we have already done or said we will do in the past.
- This can cause people to refuse to contradict themselves and be strong-willed in their initial opinions.
- Escalation of commitment is a human behavior pattern in which an individual or group facing increasingly negative outcomes from a decision, action, or investment nevertheless continues the behavior instead of altering course opinions.

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Recognition and Accountability



"We didn't take a broad enough view of our responsibility, and that was a big mistake. And it was my mistake. And I'm sorry. I started Facebook, I run it, and I'm responsible for what happens here."

- Mark Zuckerberg

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How do you "right" the "wrong"?

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The Relationship between Failure and Success

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"Learn from the mistakes of others. You can't live long enough to make them all yourself."

- Eleanor Roosevelt

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Discussion 1

- Your Firm becomes aware of a solo actuary who has passed away and was the Enrolled Actuary on 90 Plans. Upon further review, the minimum required contribution for all Plans have been determined using PPA rates, not HATFA.
- There are numerous other issues and many of the Plans do not fit into the IRS Automatic Approval under Revenue Procedure 2017-56.
- What would you propose as the next step?

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Discussion 1

- Revenue Procedure 2017-56 requires that the matching valuation by the successor actuary be completed using the assumptions of the prior actuary. Solely for the issue about the interest rates, the matching valuation should be completed using non-HATFA rates and matching may occur
- Revenue Procedure 2017-57 has a \$10,000 User Fee, but a “Class Ruling” is possible for 40 or more plans

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Discussion 2

Laura received a new takeover case.

Upon review of the 2017 Actuarial Report and Schedule SB, Laura determines that the Individual Aggregate funding method was used rather than the PPA funding method.

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Discussion 2

What options does Laura have?

Does Laura have an obligation to report the prior actuary?

What if Laura is subject to a confidentiality clause in her service agreement?

Does it change your answer if the actuary is not a member of a US actuarial organization?

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Discussion 2

Actuarial Code of Professional Conduct

A member shall not disclose to another party any Confidential information obtained in rendering Professional Services for a Principal unless authorized to do so by the Principal or required to do so by Law



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Discussion 3

- It is February 2019 and a new client (Plan implemented for 2018) of your Firm with a Cash Balance Plan claims that he never understood the obligations of a Cash Balance Plan.
- Many solutions have been suggested, including putting the document in the shredder and forgetting that it ever happened.
- What are your proposed solutions and what comments do you have regarding the proposed solution?



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Discussion 3

Is VCP a possible solution? Parameters might be:

1. Do not reduce the benefits for any NHCE
2. Determine benefits that are more manageable for the business owner

What could have been done differently in the beginning?

What disclosures should have been given?



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Discussion 3

Treasury Department Circular No. 230

§ 10.37 Requirements for written advice.

(a) (2) The practitioner must—

- (i) Base the written advice on reasonable factual and legal assumptions (including assumptions as to future events);
- (ii) Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know;
- (iii) Use reasonable efforts to identify and ascertain the facts relevant to written advice on each Federal tax matter;

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Discussion 4

Chad, a firm owner and EA, has a major referral source Advisor, Barry. Barry has referred over \$150,000 in annual recurring revenues to Chad's firm.

Barry brings a Cash Balance Prospect to Chad. Chad reviews the data and it is clear, this prospect is unlikely to have future revenues consistent with this year.

Chad discusses this with Barry and Barry advises Chad to create a Cash Balance Plan that the client can just terminate after this year.

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Discussion 4

What should Chad do?

Can Chad implement the plan?

Should Chad consult with client directly?

Does Chad need to remove himself from the case?

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Discussion 4

20 CFR 901.20 - Standards of performance of actuarial services

(b) **Professional duty.**

(1) An enrolled actuary shall perform actuarial services only in a manner that is fully in accordance with all of the duties and requirements for such persons under applicable law and consistent with relevant generally accepted standards for professional responsibility and ethics.

(2) An enrolled actuary shall not perform actuarial services for any person or organization which he/she believes, or has reasonable grounds to believe, may utilize his/her services in a fraudulent manner or in a manner inconsistent with law.

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Discussion 5

Mary, an EA, prepares a proposal for one of her top advisors. The advisor comes back with a proposal their client obtained from one of his competitors. While Mary cannot find anything technically wrong, the plan design is very aggressive and she believes the design will fall apart in the second year.

The advisor asks Mary to duplicate the results and says they will worry about the problems in the second year down the road and will provide a bunch of disclosures to cover themselves.

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Discussion 5

Should Mary implement the plan design?

Will disclosure satisfy her requirement?

What should disclosures include?

How can Mary be assured disclosure will be distributed to the appropriate parties?

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Discussion 5

20 CFR 901.20 - Standards of performance of actuarial services

(e) **Assumptions, calculations and recommendations.**

(1) The enrolled actuary shall exercise due care, skill, prudence and diligence when performing actuarial services under ERISA and the Internal Revenue Code. In particular, in the course of preparing a report or certificate stating actuarial costs or liabilities, the enrolled actuary shall ensure that -

- (i) Except as mandated by law, the actuarial assumptions are reasonable individually and in combination, and the actuarial cost method and the actuarial method of valuation of assets are appropriate;
- (ii) The calculations are accurately carried out and properly documented;
- (iii) The report, any recommendations, and any supplemental advice or explanation relative to the report reflect the results of the calculations.

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Discussion 5

Actuarial Code of Conduct

Precept 4 –

An Actuary who issues an Actuarial Communication shall take appropriate steps to ensure that the Actuarial Communication is clear and appropriate to the circumstances and its intended audience.

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Other topics to consider...

- You notice a mistake on last year's Schedule SB that is inconsequential, what do you do?
- Working with other professionals. Cash Balance and Pension Plans will be restated by April 2020. Many of us will state (verbal or written) to our clients that the document should be reviewed by counsel. What steps should be taken to assure that the client has the Plan reviewed by an attorney?

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*"An error doesn't become a mistake until
you refuse to correct it."*

-O.A. Batista
