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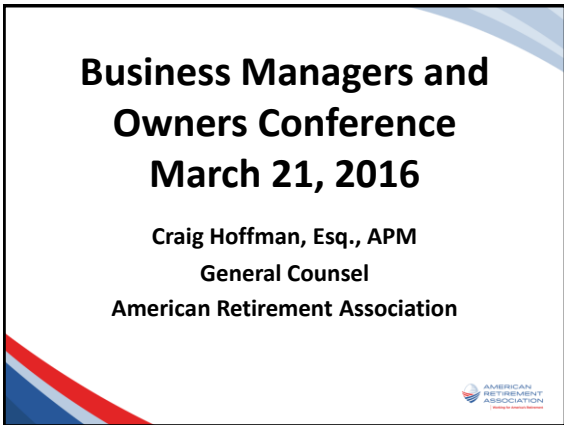
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### Proposed Change

- For purposes of the coverage test, the Nondiscriminatory Classification component of the average benefits test requires employees eligible to benefit do so under a "reasonable classification."
- A "reasonable classification" is one that, based on all the facts and circumstances,
  - "...is reasonable and is established under objective business criteria that identify the category of employees who benefit under the plan.
  - Reasonable classifications generally include specified job categories, nature of compensation (i.e., salaried or hourly), geographic location, and similar bone fide business criteria.
  - ***An enumeration by name or other specific criteria having substantially the same effect...is not considered reasonable.***




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### Application to Rate Group Testing

- Under existing regulations the reasonable classification component of the nondiscriminatory classification test doesn't apply to rate group testing.
- Under the 2016 proposal, **the formula** that is used to determine the allocation or benefit for each HCE must apply to a "... to a group of employees that satisfies the reasonable classification requirement."




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### Reasonable Classifications

- The test is unfair to small businesses since criteria having the effect of enumeration by name is, per se, unreasonable.
- Since small business job categories may only cover one or two people, categories such as this could be classified as enumeration by name.
- Since the test is based on "all the facts and circumstances" there is very little assurance that any category, other than the few specified in the regulation, are business related.




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### Reasonable Classifications

- The proposed regulation does NOT specifically say that one person groups reflecting a valid business classification are unreasonable.
- However, EXAMPLE 6 in the proposed regulation IMPLIES that this may be the case.
- The “reasonable” definition is so vague as to call certain common classifications into question.




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### Reasonable Classifications

- There is no requirement that a formula be reasonable or nondiscriminatory. It's not the formula...**its the group to which the formula applies.**
- Allocation formulas that place each employee in their own allocation group would not satisfy the reasonable classification test because each employee effectively has his own formula which is clearly equivalent to choosing the group covered by the allocation formula by name.
- Other formulas are open to debate.
- And that's the problem, *i.e.* the general test for nondiscrimination will now be subjective.




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### Allocation/Benefit Formulae

- The IRS definition of “formula” is unknown.
- Arguably, a formula is any mathematically determined map which allocates all of the contributions made for an eligible group.
- Thus a super-integrated allocation or a “points” allocation would be just as much a formula as straight ratio of pay formula.
- But what if a “points” allocation formula awards points based on names or criteria that is substantially the equivalent?




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### DB Plans and DB/DC Combos

- The proposal applies to DB plans.
- It also applies to BOTH PLANS in a DB/DC Combo
  - Both the benefit formula applicable to the HCE in the DB plan and the allocation formula applicable to the HCE must cover reasonable classification or HCE's rate group must satisfy ratio pct test
  - Not clear if they have to cover the SAME reasonable classification




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### What's Next for the Reg?

- Comment letter due April 28, 2016.
- ASPPA/ACOPA Task Force has been appointed to consider response.
- Regulation slated to be effective for plan years beginning on or after the date published as a final regulation in the federal register.
- Treasury has indicated to us that they aren't "rushing" to finalize the regulation so it isn't clear what the timetable really is.




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### What's Being Done

- Our message -
  - The "reasonable classification" component should not apply in circumstances where a minimum contribution gateway is met.
  - Minimum gateway plans provide substantial benefits to rank and file employees (and better than most large employer plans).
  - Proposal discriminates against small businesses because a "reasonable business classification" may only have 1 or 2 people who fit the category.




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## What's Being Done

- ASPPA GAC strategy for fighting the proposal
  - Comment letter of course.
  - Petition to accompany the comment letter.
  - Educate Congress – let them know this is an anti-small business proposal, and ask them to weigh in.
- Website to make it easy.
- <http://savemyplan.org/>




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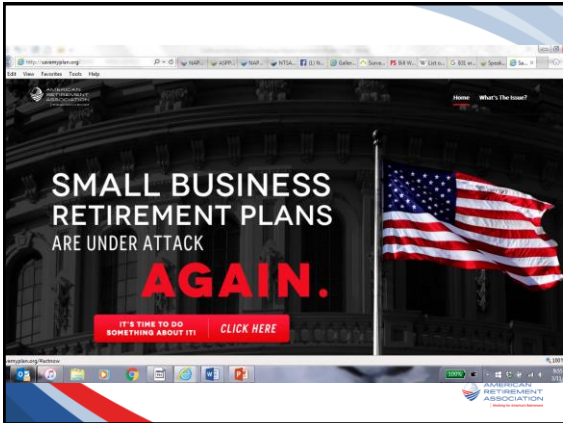
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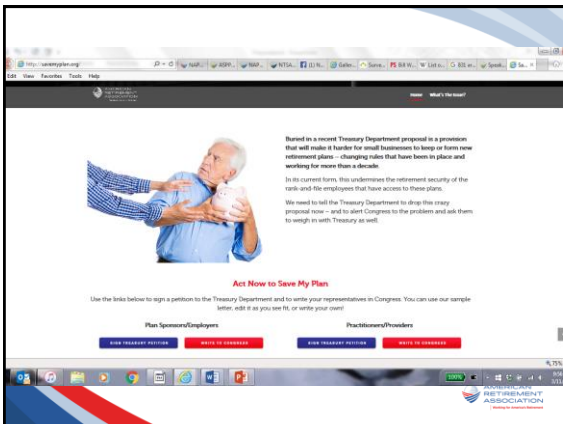
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### What You Can Do

- Send letters
  - Send a comment letter to Treasury, and encourage your clients to do the same
  - Easy to use sample letters are available at <http://savemyplan.org/>
    - One for practitioners
    - One for plan sponsors




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### What You Can Do

- **Contribute to the ASPPA PAC!!!**
- ASPPA PAC is working to educate, build, and maintain strong relationships with the key lawmakers who will influence federal retirement policy.
- A Capitol Hill strategy is an important part of the cross-testing fight!
- ASPPA members who contribute to ASPPA PAC help us ensure that Congress understands what is needed to protect Americans' retirement security.
- **Your support of ASPPA PAC is critically important to fulfilling ASPPA's mission and we can't do it without you!**




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### BMOC Peer-to-Peer

- How many plans have rate groups that can pass the ratio test and are therefore unaffected by the proposal?
- How many folks have DB/DC combos that will be affected?
- How much do you estimate will be the increased cost to a typical client if the proposal goes through?
- Will clients terminate, reduce HCE benefits or ante up the additional costs for NHCEs?
- What are you telling clients and/or prospects?
- Do you feel obligated to at least mention the issue?
- How about dual illustrations, good or bad idea?
- Are you considering changing your typical plan designs? (i.e., super-integrated, larger allocation groups)? If so, now or only after the proposal is finalized?




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QUESTIONS???



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