

THE ASPPA Journal

ASPPA's Bi-monthly Journal for Actuaries, Consultants, Administrators and Other Retirement Plan Professionals

WASHINGTON UPDATE



Why Automatic Enrollment is the “In” Thing



by Brian H. Graff, Esq., APM

If there was a television show dedicated to hot benefits issues—something like “Pensions Tonight” instead of “Entertainment Tonight”—the topic of automatic enrollment would certainly be one of the recurring headlines. The retirement plan community is simply fascinated with the subject. There have been numerous articles covering automatic enrollment in the trade press and several studies researching its impact on participant behavior. The Department of Labor (DOL) is expected to issue guidance to make it easier for plan sponsors to adopt an automatic enrollment provision. Even Congress has gotten into the act. There have been over 15 bills introduced designed to stimulate the use of automatic enrollment by plan sponsors. If there was ever a topic in the retirement plan arena that could be considered the “in” thing, automatic enrollment is it.

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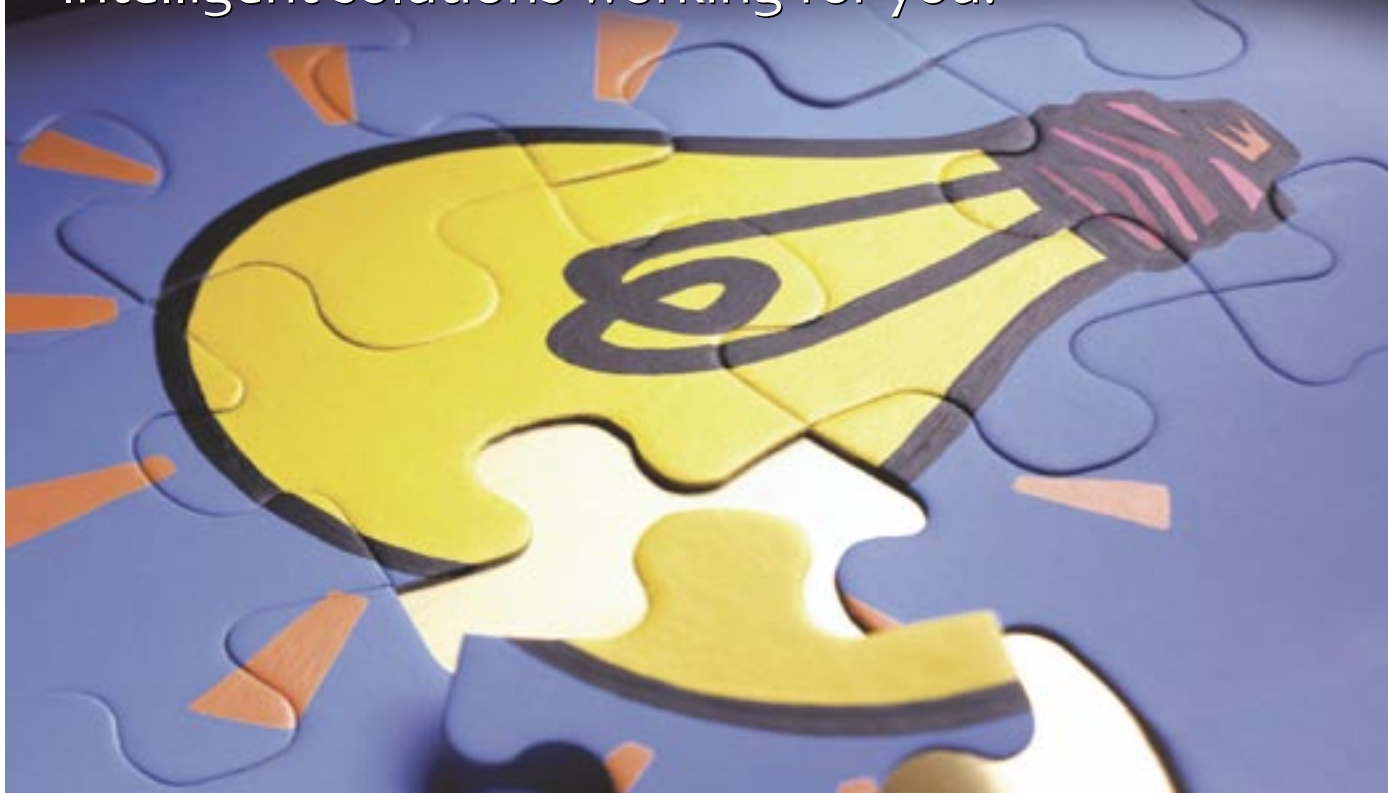


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ASPPA—A Port in the Storm

by Chris L. Stroud, MSPA

Members have come to respect and appreciate ASPPA for many reasons—great conferences, quality education, effective advocacy, industry news, networking opportunities, etc. Now some members have a new reason to add to this list. In the wake of the recent catastrophic events, Hurricanes Katrina, Rita and Wilma, ASPPA became their “port in a storm.”

In normal times, ASPPA leadership is always forward-thinking and tries to anticipate changes in the regulatory environment and identify industry trends that could significantly affect its membership. ASPPA’s involvement at many levels often plays an important role in new legislation and in shaping the future of our industry. It is comforting to know that in extremely difficult times, even when events occurring have no direct relationship to our industry, ASPPA stays focused on its members’ needs and provides assistance behind the scenes—finding solutions to problems even before the members are fully aware of what the problems are.

Within hours after the magnitude of Hurricane Katrina’s wrath became apparent, ASPPA was at work creating a message board for members to help other affected members and assembling a think tank to determine what type of temporary relief the government could give via special qualified plan legislation. Quick action got quick results. By now, we all know the outcome of the Congressional relief.

The more personal side of this saga is even more touching. ASPPA members opened up their hearts and their homes to help other displaced ASPPA members. The ASPPA message board displayed many examples of all types of assistance being offered. Members offered office space, desks, computers, phone lines, use of computer systems, employment opportunities, etc., to help other members less fortunate. System vendors offered temporary solutions to their affected customers. Through connections, some members helped others find housing and schools in their areas. Even pets were taken care of through ASPPA connections.

Numerous phone calls and e-mails were circulated to check on members in the affected areas, to express concern over their status and to seek ways to help. During the aftermath, the media often focused on the “bad side” of the disaster. The ASPPA network and outpouring of assistance brought to light the good that surfaces in times of disaster. ASPPA members are truly a “family”—and, in times of need, it is human nature to turn to those to whom we feel the closest for help and comfort. ASPPA members were there to help their fellow members.

It was also encouraging to see how resilient ASPPA members were during this difficult time. Sarah Simoneaux, CPC, our esteemed new President who lives just outside New Orleans, was able to joke in the midst of all the chaos about feeling like the star of the movie *Groundhog Day*. She made this comment as she left Houston, where she had relocated after Hurricane Katrina (after brief stints in Tennessee, North Carolina and Georgia), to head back to New Orleans in order to escape Hurricane Rita. Mark Heller, a New Orleans resident, joined an ASPPA committee conference call just days after Katrina hit. He had relocated to Dallas and was living in a new environment, working out of a temporary office—and when asked why he bothered to join the conference call, he replied that he needed to stay in touch with the outside world. He explained that being on an ASPPA call offered him some semblance of normalcy, which was comforting when everything else in his life was turned upside down. There are many stories...some gut-wrenching and some humorous. The camaraderie, care and concern of all involved speak volumes.

ASPPA is an organization of many unique individuals who share a common interest and earn their livelihood in the retirement planning industry. Thankfully, it is also an organization where members respect and care about other members, and where it is not uncommon to establish strong bonds that transcend typical working relationships. It is comforting to know that when the going gets tough, members can turn to ASPPA and each other to find their port in a storm. ▲

Letter to the Editor



Comment on Washington Update

I was rather amused by the Washington Update, *The ASPPA Journal*, July–August 2005, “Tax Reform Could Undermine Long-Term Retirement Savings.” It’s not that I don’t support the cause, but as a practitioner I see the everyday reality of retirement plans that would never be mentioned in an appeal to Congress. Most of the plans we administer are treated more like banks than retirement vehicles. The vast majority of our employer sponsors choose to allow loans, hardships and distributions upon termination. Most employees who participate in plans do so knowing that they do have access to their money if they want it. Most distributions that we process are not for rollovers but for cash withdrawals that are subject to the 10% penalty. I have even processed two distributions for people who actually quit their jobs just to gain access to their money. I find it sad that the average American has to be legislated to do the right thing; but if the goal in keeping our employer-sponsored retirement plan system is to encourage long-term savings, then we should be pushing for pension reform that will accomplish that. Eliminate loans, hardships and early cash distribution options!

Alison L. Carpenter, QKA
QRPS, Incorporated

RESPONSE:

Although it’s true that some take full advantage of “the system” and ignore the long-term implications, many believe that the incentive to save would not be as strong without those distribution provisions. Let’s see if we get other comments from our readers on this subject.

—Chris

CONTINUED FROM PAGE 1

WASHINGTON UPDATE



The reason for this enthusiasm, particularly among government policy makers, is the perceived impact that automatic enrollment would have on plan participation. According to the Congressional Research Service (CRS), 72.6 percent of employees covered by a defined contribution plan in 2003 actually participated in the plan.¹ Although this statistic is an improvement from a participation rate of 67.7 percent in 1998, policymakers remain concerned that more than 25 percent of employees are not participating. As the defined contribution plan is increasingly the only retirement plan option for most workers,² this policy concern has become even more acute. Those workers who are not participating will likely have little or no private retirement savings to rely on. Consequently, there has been enhanced policy emphasis on measures to improve employee participation.

According to the CRS report analyzing the *Survey of Income and Program Participation*, most workers with access to an employer sponsored defined contribution plan who did not participate said that they did not believe that they were eligible to participate. Although lack of eligibility may in fact be true for some of these survey respondents, many in the retirement plan industry believe that a certain percentage of employees will simply never read the human resource materials given to them to know that they are eligible to participate in the plan. Further, there was a strongly held view that many employees, being creatures of habit, would continue to save if they could just get started. This belief was based on compelling behavioral evidence

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showing high levels of continued participation once employees initially elected to save in the plan.

The concept of automatic enrollment has gained favor as a way to address these factors that contribute to non-participation. It is not a new idea. Public sector employers have been using the concept for a long time. Contributory defined benefit plans with automatic payroll deductions are relatively common, and some public sector employers apply the same concept to defined contribution plans.³ As you know, automatic enrollment works by automatically deferring a specified percentage of an employee's pay into the employer sponsored defined contribution plan. IRS rules allow this automatic deferral, provided that the employee is notified in advance and has the option of dropping out.⁴ In 2000, the IRS clarified that, in addition to new hires, automatic enrollment could be applied to existing employees who have not already enrolled in the plan.⁵

Although there is not yet enough comprehensive research on the effectiveness of automatic enrollment in improving plan participation, some data suggests that the impact could be significant. Vanguard's experience with 15 clients showed that participation rates rose on average from 75 to 84 percent. Other data suggests that automatic enrollment could be a significant factor in increasing account balances in 401(k) plans, with lower-income individuals benefiting the most. A recent joint study by the Employee Benefits Research Institute and the Investment Company Institute showed that for employees within the lowest quartile of compensation, retirement income replacement rates from 401(k) accumulations increased by 60 percent, assuming automatic enrollment of a three percent contribution rate invested in a money market fund.⁶

Notwithstanding these positive indications, less than ten percent of defined contribution plans have adopted an automatic enrollment provision. There are various reasons cited for the lack of implementation, including the potential administrative cost of small balances, fiduciary issues surrounding the setting of a default investment option and worries about running afoul of state wage garnishment laws.⁷

In response, the regulators and Congress are taking steps to address these plan sponsor concerns that appear to be discouraging automatic enrollment. Before the end of the year, the DOL is expected to issue guidance that would address some of the fiduciary issues that arise from designating a default investment option when participants under an automatic enrollment plan fail to select an investment option. Ideally, the DOL would specify that ERISA §404(c) protection would continue to apply as long as the default investment option selected by the plan sponsor is reasonable and within certain parameters (e.g., lifestyle or balanced fund).

Congress is also exploring incentives for automatic enrollment. Although there are several variations of automatic enrollment provisions being pursued, the proposals being worked on



Before the end of the year, the DOL is expected to issue guidance that would address some of the fiduciary issues that arise from designating a default investment option when participants under an automatic enrollment plan fail to select an investment option.

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The American Society of Pension Professionals & Actuaries (ASPPA), a national organization made up of more than 5,500 retirement plan professionals, is dedicated to the preservation and enhancement of the private retirement plan system in the United States. ASPPA is the only organization comprised exclusively of pension professionals that actively advocates for legislative and regulatory changes to expand and improve the private pension system. In addition, ASPPA offers an extensive credentialing program with

a reputation for high quality training that is thorough and specialized. ASPPA credentials are bestowed on administrators, consultants, actuaries and other professionals associated with the retirement plan industry.

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by the Senate Finance Committee and the Senate Health, Education, Labor and Pensions Committee, the Senate committees of relevant jurisdiction, are the most likely to move through Congress. This package includes a new nondiscrimination safe harbor for plans using automatic enrollment, a default investment option that will retain ERISA §404(c) protection and ERISA preemption of state garnishment laws.

The proposal, although still being developed, would generally exempt a 401(k) plan from ADP/ACP testing and top heavy rules if the plan provides for automatic enrollment for new employees and current employees contributing less than the applicable percentage within one year following the inception of the automatic enrollment arrangement. Employees would have the right to opt out of making the deferrals. If they did opt out after making these deferrals, employees would have the right to ask for the return of such deferrals (plus any earnings) as long as they made such request within 60 days after the date of their first elective contribution. The distribution would be taxed in the year the distribution was received (and there would be no early withdrawal penalty). Any employer contributions on such deferrals would be forfeitable.

Under the safe harbor, the default deferral percentage could not be less than three percent in the first year. In the second year and thereafter, the default percentage would need to be increased by one percent a year up to at least ten percent (although the plan could allow for a higher percentage). Again, employees would be free to opt out or elect a lower percentage. The plan would have to provide at least a three percent of compensation non-elective contribution or a matching contribution not less than 50 percent of the elective deferrals of non-highly compensated employees up to seven percent of pay. The plan sponsor could impose a two-year vesting schedule if automatic contributions begin on the date of hire. Otherwise, employer contributions must vest after one year of participation, and participation must begin no later than the first day of the first calendar quarter following the date the employee first becomes eligible (with no minimum service requirement permitted). Congress is willing to consider a relaxed safe harbor formula for automatic enrollment plans because it recognizes that automatic enrollment would increase the contribution cost of plans utilizing the current safe harbor and it does not want to discourage those plan sponsors from considering automatic enrollment.

Even if a plan chooses not to adopt a nondiscrimination safe harbor formula, the committees will likely include an alternative incentive. Plans utilizing automatic enrollment would be given an extended ADP/ACP

testing deadline until June 30 of the following year (instead of March 15), and distributions of any excess contributions would not have to include gap period income and would be taxed in the year of distribution.

ERISA would be amended to extend 404(c) protection to plan sponsors who utilize a default investment option in accordance with DOL regulations.⁸ Further, any state garnishment laws that might interfere with an automatic enrollment arrangement would be preempted. Both of these ERISA provisions are contingent on adequate notice being given to participants within a reasonable period before the first salary deferral is made and annually before the beginning of each plan year.

Although there is bipartisan consensus surrounding these automatic enrollment provisions, the pension reform bill generally addressing defined benefit funding issues is the most likely legislative vehicle for getting them enacted. Many of the proposals affecting defined benefit plans are, to say the least, controversial. As a result, any automatic enrollment legislative provisions may get stalled as the larger pension reform legislation gets held up. Nonetheless, look for the DOL guidance before the end of the year. It will likely draw increased attention to this increasingly popular and “in” design concept. ▲



Brian H. Graff, Esq., APM, is the Executive Director/CEO of ASPPA. Before joining ASPPA, he was pension and benefits counsel to the US Congress Joint Committee on Taxation. Brian is a nationally recognized leader in retirement policy, frequently speaking at pension conferences throughout the country. He has served as a delegate to the White House/Congressional Summit on Retirement Savings, and he serves on the employee benefits committee of the US Chamber of Commerce and the board of the Small Business Council of America.

1 Congressional Research Service, *Participation in Retirement Plans: Findings from the Survey of Income and Program Participation* (October 2005) (CRS Report).

2 Only 22 percent of workers are covered by a defined benefit plan. See *National Compensation Survey: Employee Benefits in Private Industry in the United States, March 2005*, US Department of Labor, Bureau of Labor Statistics, Summary 05-01 (August 2005).

3 For example, the Federal Thrift Savings Plan automatically forces employees to contribute two percent of pay to the plan.

4 See *Revenue Ruling 98-30*.

5 See *Revenue Ruling 2000-8*.

6 See Investment Company Institute, *Perspective: The Influence of Automatic Enrollment, Catch-up, and IRA Contributions on 401(k) Accumulations at Retirement* (July 2005). According to companies surveyed by the Profit Sharing/401(k) Council of America, the majority of employees utilizing automatic enrollment deduct three percent of pay and invest it, in the absence of participant instruction, in a money market or similar fund.

7 See PlanSponsor.com, *Survey Says: Why Don't More Plans Use Auto Enrollment* (August 4, 2005).

8 The default investment provision would apply to the use of any default investment even in the absence of automatic enrollment. For example, if an entirely new fund family is selected by the plan sponsor, this provision would presumably apply when a default investment is used where a participant fails to select from among the new investment options.

New Plan Amendment Protocol Will Provide Predictability...Or Will It?

by Michael J. Finch, CPC, and Michael E. Rahn

The process by which retirement plans are amended and restated and plan determination letters are received is undergoing a major transformation. Details are found in IRS Rev. Proc. 2005-66, issued August 26, 2005, which defines restatement procedures beginning with the Economic Growth and Tax Relief Reconciliation Act of 2004 (EGTRRA). As we will see, as well thought out as the IRS' new restatement scheme may be, it is not without surprises.

In simplest terms, the IRS and the retirement industry are moving from an ad hoc process of aligning plan documents with statutory and regulatory changes and other published guidance affecting plan qualification, including issues integrally related to qualification (hereinafter referred to as qualification changes), to a more predictable, structured process. Past amending events, such as that for GUST, have generally occurred when the IRS determined that existing plan documents were unacceptably outdated in light of qualification changes. This determination did not happen according to a fixed time schedule. Because amendment timing has historically been unpredictable, it has been difficult for both the IRS and retirement industry organizations to plan, staff for and execute restatements without undesirable spikes in workload and expense.

At least in part for this reason, the IRS has for several years been examining alternatives that might lend some degree of predictability and order to the plan restatement process. Time will tell whether the solution will prove to be ideal, or in need of further refinement. To get us started, the IRS has delivered a plan to the industry. The degree to which the new process will be a success will be revealed as financial organizations, practitioners, service providers and plan sponsors go through the first amendment cycle of restating for EGTRRA.

As expected, Rev. Proc. 2005-66 extends the EGTRRA remedial amendment period (RAP) to the end of the remedial amendment cycles discussed throughout this article. This extension, however, is only applicable to plan sponsors



The solution the IRS has settled on is to prescribe a consistent schedule for restating plans for important changes that may occur since the last restatement.

that adopted good-faith EGTRRA amendments pursuant to the deadline stated in IRS Notice 2001-42 (*i.e.*, the later of the end of the plan year that includes the effective date of EGTRRA or the end of a plan's GUST remedial amendment period).

Major Structural Changes

The solution the IRS has settled on is to prescribe a consistent schedule for restating plans for important changes that may occur since the last restatement. In theory, the random timing of qualification changes will no longer drive the process. In reality, even though the IRS has created bright line rules for determining when plans must be restated, unexpected requirements imposed by the IRS regarding mid-cycle amendments (discussed later) negate much of the perceived benefit of the new restatement process. The schedules for "pre-approved plans" [*i.e.*, master and prototype (M&P) and volume submitter plans] and for individually designed plans (IDPs) differ notably in some respects, but the concepts are similar. In all cases, plan sponsors and service providers will know when their plan(s) will be restated and what provisions must be included in their plan(s).

In addition to eliminating the periodic spikes in staffing needs, many industry professionals believed the IRS' new program would provide an even bigger benefit: the elimination of, or a significant reduction in, required interim amendments.

The IRS Cumulative List

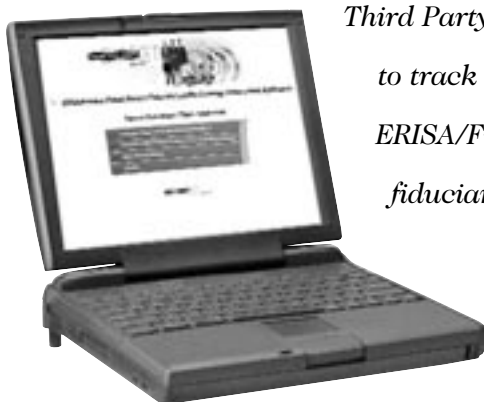
To facilitate the new restatement process, the IRS will issue an annual list of qualification issues that must be included in plans the next time they are required to be restated. The IRS intends to issue such a list each November. Which list applies to a plan sponsor depends on the type of plan it maintains and, for IDP plans, the plan sponsor's tax identification number. These items will be discussed in more detail as the remedial amendment cycles are defined below. The first cumulative list was issued in November 2004 in anticipation of the opening of the EGTRRA submission process for the defined contribution (DC) pre-approved plan submissions that began earlier this year. In addition to eliminating the periodic spikes in staffing needs, many industry professionals believed the IRS' new program would provide an even bigger benefit: the elimination of, or a significant reduction in, required interim amendments.

Interim Amending

The IRS originally proposed "reserving the right" to require one or more interim (mid-cycle) amendments, if necessary. However, citing the requirement that plans must be operated in accordance with written plan document provisions, Rev. Proc. 2005-66 generally requires interim amending when changes in qualification leave a plan with what would, absent amending, be considered to have disqualifying provisions. Other changes (*i.e.*, discretionary plan amendments) must also be timely adopted before the end of plan sponsors' current amending cycles.

With respect to changes in the qualification requirements, an interim amendment must generally be adopted by the later of the last day of the plan year in which the change is effective, or the due date of the plan sponsor's tax return (including extensions). The deadline for discretionary amendments is generally the last day of the plan year in which the amendment is effective.

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However, because Rev. Proc. 2005-66 does not provide relief from the anti-cutback rules under Code Section 411(d)(6), an earlier deadline may be necessary for any plan amendment. Although the deadlines described are straightforward, they are complex. At the time this article went to press, ASPPA's Government Affairs Committee (GAC) was in the process of working with the IRS on two matters regarding the interim amendment requirement. First, in order to simplify the process of amending for qualification issues, GAC proposed a more uniform deadline for such amendments, such as the last day of the plan year following the year in which a qualification requirement becomes effective.

Second, the amendment deadlines work fine on a prospective basis. However, there are many outstanding issues for which amendments were necessary before Rev. Proc. 2005-66 was issued. These "transition" items were the subject of prior IRS guidance and it remains to be seen whether the rules provided in Rev. Proc. 2005-66 supersede such guidance. Examples of such issues include, but are not limited to, changes previously made to the retroactive annuity starting dates for certain plans, final 401(k) regulations and required minimum distribution requirements for defined benefit (DB) plans. GAC proposed that amendments be required for such issues by the later of December 31, 2006, or the date determined under the rules provided in Rev. Proc. 2005-66. Such deadline would provide pre-approved plan sponsors, practitioners and plan sponsors with a uniform "fresh-start" date, providing additional time to get acclimated to the new rules.

Amending and Plan Termination

Depending on a plan's position in the restatement cycle, plan termination may have the effect of shortening its remedial amendment cycle. Plan amendments, retroactive or otherwise, must be adopted to update the plan. A determination letter application must be filed by the later of 1) one year from the effective date of the termination, or 2) one year from the date of the action terminating the plan, in order to have reliance. For example, if a board resolution was adopted July 1 terminating a plan effective the prior January 1, a determination letter application must be filed by July 1 of the following year. In no case, however, may a determination letter application be filed more than 12 months following distribution of "substantially all plan assets."

The Pre-Approved Plan Cycle

Pre-approved plans of all plan sponsors will generally be restated during the same window of time: on a six-year cycle. DC and DB pension plans have identical elements to their six-year RAP cycles. But implementation of the new amendment protocol will begin with DC plans, followed two years later by the DB plan cycle. The DC plan restatement for EGTRRA provides an example, using the timeline below. *For purposes of determining deadlines during a restatement cycle, the applicable year is a fiscal year beginning on February 1 and ending on January 31. The IRS used fiscal years to avoid conflicts with existing calendar year-end plan activities.*

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 1
2005	2006	2007	2008	2009	2010	2011

The cumulative list describing the provisions that must be included in pre-approved plans is the cumulative list issued in year six of the previous cycle. (In the case of this first cycle, the 2004 cumulative list must be used.)

In year one of the sequence (2005 for EGTRRA DC plans), drafters of retirement plan documents submit their plans to the IRS for approval. In 2006 and 2007, years two and three of the cycle, the IRS will review all submitted documents. All IRS approval letters will generally be issued by the agency at the same time. This approach departs from the past IRS practice of issuing letters as each review is completed. Actual EGTRRA restatement involving service providers, practitioners and plan sponsors will take place in 2008 and 2009, years four and five of the restatement cycle. The IRS will announce the exact date by which plan sponsors must complete the restatement of their plans.

The following year, year six—2010—the IRS will present its annual cumulative list of provisions, which will be used for the next restatement cycle beginning in 2011, six years after the prior restatement cycle's submission year of 2005. As mentioned earlier, pre-approved DB pension plans will operate with the same type of six-year cycle. However, DB document drafters must submit their plans to the IRS in 2007, two years after the 2005 DC plan document submission deadline. The corresponding procedural periods within the six-year cycle for DB plans will begin and end two years following the equivalent DC plan time periods.

Qualifying For and Maintaining the Six-year Cycle

Certain requirements must be met for a plan to qualify and maintain its status for restating according to the six-year cycle. These requirements are outlined below.

A plan sponsor will qualify for the six-year cycle if an M&P sponsor/volume submitter/practitioner timely submits an opinion/advisory letter application *and* the plan sponsor is one of the following:

1. **A Prior Adopter:** A plan sponsor is considered a prior adopter if its pre-approved plan was adopted and effective on or before the last day of the prior six-year cycle.

Example: ABC financial organization uses Able Retirement Service's GUST documents, and employer X established its plan in July 2003. Able submits its EGTRRA plan and ABC's opinion letter application by January 31, 2006. Employer X is considered a prior adopter and is eligible to use the six-year cycle.

A pre-approved plan sponsor/practitioner's decision to change document providers has no impact on whether a plan sponsor is considered a prior adopter.

2. **A New Adopter:** A plan sponsor is a new adopter if it maintains an IDP, but before the end of its five-year cycle (which is explained later in this article), adopts a pre-approved plan with a valid opinion/advisory letter; or an "interim" pre-approved plan pending IRS approval.

Example: ABC financial organization uses Able Retirement Service's GUST documents. In addition, Able Retirement Service submits for an opinion/advisory letter on behalf of ABC financial organization by January 31, 2006. Employer X maintains an IDP, but before the end of its five-year cycle, restates onto either ABC's GUST or interim EGTRRA document. Employer X is considered a new adopter, and is eligible to use the six-year cycle.
3. **An Intended Adopter:** An intended adopter is a plan sponsor that signs IRS Form 8905, *Certification of Intent to Adopt a Pre-Approved Plan*, in association with a pre-approved plan sponsor/practitioner, before the end of its five-year cycle. (Note: IRS Form 8905 is not expected to be available from the IRS for several months. Since the end of Cycle A—the first cycle for plan sponsors maintaining IDPs—does not occur until January 31, 2007, plan sponsors that wish to use this form will have plenty of time to do so after it is made available by the IRS.)

Example: ABC financial organization uses Able Retirement Service's GUST documents. In addition, Able Retirement Service submits for an opinion/advisory letter on behalf of ABC financial organization by January 31, 2006. Employer X maintains an IDP, but before the end of its five-year cycle, signs IRS Form 8905 along with ABC financial organization. Without immediately having to restate its IDP plan to qualify as a prior adopter, Employer X is considered an intended adopter, and is eligible to use the six-year cycle.
4. **An Adopter of a Replacement Plan:** A plan sponsor is an adopter of a replacement plan if it has adopted a pre-approved plan that is intended to be replaced because of a merger, or due to becoming a member of a controlled group of financial organizations where one of these organizations is to be the source of the plan sponsor's pre-approved plan document.

While the four definitions provided are important for purposes of determining whether the six-year cycle applies to any given plan sponsor, the rules have no application unless a pre-approved plan sponsor/practitioner's application for an opinion/advisory letter is filed by January 31, 2006. In other words:

Current pre-approved plan sponsors/practitioners must have an application for an opinion/advisory letter submitted to the IRS on their behalf by January 31, 2006, to avoid subjecting their existing plan sponsor clients to the five-year remedial amendment cycle rules.

More important than simply having to restate every five years versus every six in this scenario, a plan sponsor that wishes to submit for a determination letter would be required to update the plan to include the items in the IRS' most recent cumulative list. In short, a pre-approved plan sponsor/practitioner that misses the January 31, 2006, submission deadline will likely lose a very high percentage of its plan sponsor clients to competitors who met the submission deadline.

Plan Amendments: Maintenance or Loss of Six-year Cycle

Certain actions altering a plan's provisions may have the effect of causing the plan to lose the ability to restate on the six-year cycle, while other actions will not. Following are examples of both.

1. **General Amendments to M&P Plans:** Generally, a plan sponsor that amends any provision of an M&P plan—other than to select permissible options on the adoption agreement—is considered to have adopted an IDP and must file a Form 5300, *Application for Determination Letter*, in order to have reliance that the plan will not be retroactively disqualified.

However, the six-year cycle may continue to be used by the plan sponsor, unless item 2 below applies.
2. **Amendment to Include Impermissible Plan Provision:** A plan sponsor that amends a pre-approved plan to incorporate a type of plan not permitted in the pre-approved program under Rev. Proc. 2005-16 [e.g., cash balance, multiple employer (in the case of an M&P), multiemployer, ESOP, etc.], will remain on the six-year cycle until the current cycle ends, after which time the five-year IDP cycle will apply. This rule also applies to plan sponsors that have restated from a pre-approved plan to an IDP that is not based on a pre-approved plan.

3. **“Other” Amendment of Pre-Approved Plan:** A plan sponsor that adopts an amendment that does not result in inclusion of an impermissible type of plan, but which the IRS nevertheless determines—in its judgment—should be considered an IDP, will be immediately subject to the five-year cycle. This process will be difficult for the IRS to monitor and could result in plans being subject to amendment cycles that have already passed by the time the IRS makes its determination. However, it is likely that this rule will only be used for egregious situations.

The IDP Cycle

The IRS took a quite different tack with IDPs. Rather than requiring all plans to be submitted during a limited time period, IRS review and subsequent plan restatement will take place within annual cycles, staggered over a five-year cycle. Beginning February 1, 2006, the IRS will begin accepting applications for EGTRRA determination letters for IDPs. Plan sponsors are to be grouped by taxpayer identification number (TIN). Assuming an even dispersion of TINs, approximately one-fifth of IDP plans will be restated in any given year. Therefore, IDPs need not be restated, or new determination letters applied for, more frequently than every five years. The timeline below illustrates the five-year cycle. (Note: For purposes of determining the last day of any cycle in the five-year period, the applicable year is the fiscal year beginning on February 1 and ending on January 31.)

Cycle A	Cycle B	Cycle C	Cycle D	Cycle E	Cycle A	...etc.
2006	2007	2008	2009	2010	2011	2012

Plan sponsors in Cycle A—with TINs ending in 1 or 6—will amend and submit (or practitioners will submit on their behalf) for IRS determination letters beginning in 2006. The end of the cycle is the date by which such plan sponsors must complete their restatement. Cycle A ends on January 31, 2007. Cycle B (TINs ending in 2 or 7), Cycle C (3 or 8), Cycle D (4 or 9) and Cycle E (5 or 0) will follow with their restatements and submissions in each subsequent year of the five-year rotation.

As a consequence, each subsequent plan sponsor cycle will be reviewed based on a Cumulative List that may contain different required provisions than those that were contained in the Cumulative List used to review plans submitted in the previous cycle. The net effect is that during any given five-year cycle there may be five different versions of required plan amendments that are technically fully compliant. This scenario is much unlike the pre-approved plan approach, under which there will be only one cumulative list of provisions for any one six-year restatement cycle. This IDP approach may be challenging for practitioners to track for clients, particularly where a pre-approved plan was used as the basis to create an individually designed plan.

As noted earlier, the IRS intends to issue its annual cumulative lists by mid-November each year. An IDP should apply for a determination letter during the last 12 months of its remedial amendment cycle. For example, a Cycle B plan (whose employer TIN ends in a 2 or 7) has a remedial amendment cycle that ends January 31, 2008. Such a plan should apply for a determination letter between February 1, 2007, and January 31, 2008. Items on the IRS' November 2006 cumulative list will govern its amending. Determination letters will include a specific expiration date. The IRS does reserve the right to extend determination letter expiration dates by cycle year.

Special Exceptions to Amendment Cycle Rules

The ownership structure or type, or employee characteristics (union, non-union) of a plan-sponsoring employer may influence the amending cycle that is used.

1. **Multiemployer (union) plan:** a plan sponsor having a multiemployer plan under Code Section 414(f) will generally amend according to the timing of Cycle D.
2. **Multiple-employer plan (not a controlled group):** a common plan sponsored by more than one employer that is considered a multiple employer plan will be amended according to the timing of Cycle B.
3. **Governmental plan:** a plan sponsor maintaining a governmental plan under Code Section 414(d) will amend according to the timing of Cycle C.
4. **Controlled or affiliated service groups:** the plan of employers considered to be a controlled group [Code Sections 414(b) or (c) or an affiliated service group Code Section 414(m)] will be amended according to the cycle determined by the TIN recorded on IRS Form 5500 filed for the plan.
5. **Special controlled group options:** If two or more plans are maintained by a controlled group or an affiliated service group, a joint election may be made by all members of such group to amend all plans according to Cycle A. (Multiemployer plans and multiple-employer plans within such a group will still amend under the cycle determined by the TIN recorded on the Form 5500 filed for the plan.) If a controlled group is considered to be a parent-subsidiary controlled group, an election may be made to amend according to the timing determined by the TIN of the parent entity of the controlled group. Either of the elections described above must be filed by the earliest determination letter application deadline that would otherwise have applied for a member employer, based on that employer's TIN.

What is known is that there will be a learning curve and acclimation process for plan sponsors, practitioners and service providers.

The Influence of Plan Sponsorship Change on Amendment Cycles

There will be some situations in which a plan's amendment cycle will be influenced by changes to a plan or by plan sponsor ownership or business entity changes. In these situations, one looks at the TIN of the entity maintaining the applicable plan to determine which amendment cycle applies. However, in some cases the change will result in back-to-back cycles. Therefore, the IRS provided an exception to the general rule—if a cycle change would shorten the amending period to one of less than 12 months, then the current cycle of such plan (TIN-determined) will be extended for 12 months. The next cycle of this sponsor, however, will be shortened by 12 months and will return to its TIN-determined cycle thereafter. Situations where this special rule may apply include:

- If IDPs with different amending cycles are merged due to a merger of business entities, the cycle of the sponsor that maintains the merged plan will control, regardless of whether this would shorten or extend the remedial amendment cycle of any plans involved (subject to the 12-month rule).
- If a plan sponsor's TIN changes (e.g., due to an acquisition or change in business entity structure), then the new TIN is used to determine the amendment cycle—again, regardless of whether the cycle would be extended or shortened (subject to the 12-month rule).

- If a portion of a plan is spun off, the TIN of the sponsor-employer that maintains the spun-off plan will determine which five-year amending cycle applies, regardless of the extending or shortening effect of the change (subject to the 12-month rule).

“Off-cycle” IDP Submissions

For various reasons, plan sponsors may decide to apply for a determination letter in a year that is “off-cycle” (i.e., not its year for restating). For example, a plan with a TIN ending in 9 is a Cycle D plan, with a RAP that ends 1/31/10. If, for some reason, the plan is amended in 2008, and a determination letter is sought at that time, such determination letter might not address all of the qualification issues required to be addressed by a Cycle D plan submission. Therefore, such plan might need to be further amended (and resubmitted for reliance, if applicable) by its normal amending deadline of 1/31/10.

Summary

With limited exceptions, the old adage “the more things change, the more they stay the same” certainly seems to apply with respect to the new process of seeking IRS approval of, and amending and restating, qualified plans. However, only time will tell whether this latest IRS initiative will deliver the intended benefits. What is known is that there will be a learning curve and acclimation process for plan sponsors, practitioners and service providers. All hope that it will be relatively painless. ▲

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Michael F. Rahn is a researcher, consultant and writer for BISYS® Retirement Services. In his role with BISYS, Mike is responsible for monitoring pending and issued regulatory guidance and legislation affecting tax-favored savings arrangements. He also maintains contact with key federal agency staff for the purpose of guidance interpretation. His work is reflected not only in BISYS Retirement Services' news gathering processes, but also in its presentation of information in BISYS' periodicals, technical resources and training materials.

Welcome to 2006 in the 401(k) World

by Lisa A. Scalia, CPC, QPA, QKA

As 2005 draws to a close, providers of qualified plans look to perform traditional year-end activities to ensure their plans are in compliance with the law and applicable regulations. In addition to the usual year-end activities, the impact of the new 401(k) regulations, which must be effective no later than the start of the 2006 plan year, must be addressed. For most of us, that means January 1, 2006—which is just around the corner!

The finalization of the regulations offers an excellent opportunity for plan sponsors to update enrollment materials, revisit plan provisions and communicate with the employees regarding their plan options. Some resulting impacts of the regulations may force plan sponsors or third party administrators to redesign systems, change testing methods and update procedures. This article will summarize some of the more noteworthy issues that should be addressed.

Correcting Failed ADP/ACP Tests

One of the most significant changes to the regulations that will be upon us in 2006 is the elimination of the commonly accepted use of the “bottom up” QNEC (qualified non-elective contributions). Ever since the Code Section 415 limit was raised from 25% of compensation to 100% of compensation, there has been speculation that a change to QNECs was forthcoming, but even skeptical plan sponsors continued to use this somewhat questionable method. The fact that the method is specifically eliminated for plan years starting after January 1, 2006, confirmed that plan sponsors could in fact use the bottom up QNEC method for plan years prior to and including 2005.

Those plan sponsors who historically enjoyed the ability to remedy a failing ADP/ACP test for relatively low cost will be faced with the challenge of how to correct in the future. While some will resort to corrective distributions for the HCEs (highly compensated employees) rather than fund costly contributions to the NHCEs (non-highly compensated employees), plan sponsors would be wise to revisit plan design and try to maximize the plan’s options for corrections that will avoid refunds.



Some resulting impacts of the regulations may force plan sponsors or third party administrators to redesign systems, change testing methods and update procedures.

For plans that failed the ADP/ACP tests and where the sponsors have relied on the bottom up QNEC in the past, one of the first steps now would be to look at the cost of the “targeted” QNEC correction method using the new rules, which can increase costs. Depending on the size of the plan, the cost of this increase can be staggering.

Consider a plan of 1,200 lives that needs to “raise” the NHCE ADP from 3% to 4%. Under the prior bottom up QNEC approach, the plan would have given the “lowest paid” NHCEs up to a 100% QNEC each. Depending on the deferral levels, this increase may have been given to 12-15 participants, many of whom would have terminated during the year and, as a result, had a lower salary. Hence, a relatively inexpensive QNEC would fix a failed ADP test.

Compare this scenario to the new rules that may limit the targeted QNEC to as little as 5%. The QNEC would now go to approximately 250 participants, which would substantially increase the cost. Analysis of an actual plan yielded a cost of a \$250,000 targeted QNEC as opposed to a \$10,000 bottom up QNEC. (Note: Caution is in order to timely fund any QNEC so

Plan sponsors may want to revisit some design issues. While safe harbor plans tend to be more expensive than even the new higher cost QNEC, they remove the issue of having to even perform the test.

that the contribution is within the allowable Code Section 415 limit for the year that the QNEC is made. Otherwise, the plan sponsor will find participants with Code Section 415 limits of \$0.00 if the participants terminated in the prior year.)

The rules under the final regulations require that the QNEC, in order to be included in the ADP test, must not exceed the greater of 5% of compensation or two times the representative contribution rate under the plan. The representative contribution rate is defined as the greater of (1) the lowest contribution rate by taking into account at least 50% of all eligible NHCEs; or (2) the lowest contribution rate of any NHCE employed on the last day of the plan year. Contributions include all QNECs (even if not used in the ADP test) and any QMACs (qualified matching contributions) shifted into the ADP test. They do not include QNECs used in the ACP test.

Therefore, a plan with a representative contribution rate of 3% would be limited to 6% targeted QNECs. Contrast this 6% with a bottom up 100% to low paid participants. In cases where the new regulations are applied, significantly more NHCEs will be receiving QNECs in order to bring the plan into compliance.

Plan sponsors may want to revisit some design issues. While safe harbor plans tend to be more expensive than even the new higher cost QNEC, they remove the issue of having to even perform the test. With these additional testing requirements, it may be wise to find ways to avoid the test altogether. As an alternative, the sponsor could consider vesting immediately all or part of the matching contribution. If turnover is low, or the sponsor was already reallocating the forfeitures, then there may be little impact on the bottom line. By designating some or all of the matching contributions as QMACs, there are increased options for passing the test. In addition, any QMACs shifted to the ADP test will help raise the “representative contribution rate” and potentially lower any resulting QNECs, should the plan need to fund them. As failed tests may be corrected by more than one method, it may be in the plan’s best interests to combine methods.

Matching Contributions Under Disproportionate Formulas

Plans currently using a service-based match or any formula that results in different participants receiving significantly different rates of match should revisit the match formula and ensure certain safe guards are in place.

The new regulations define what is called a representative matching rate. The representative matching rate is the greater of (1) the lowest NHCE matching rate, taking into account at least 50% of all eligible NHCEs; or (2) the lowest matching rate of any eligible NHCE who is employed on the last day of the plan year. The total amount of matching contributions that may be included in the ACP test cannot exceed the greatest of (1) 5% of compensation; (2) 100% of the employee’s total deferrals for the plan year; or (3) two times the representative matching rate.

The matching rate for an employee is generally the matching contributions made for the employee divided by the employee’s elective deferrals for the plan year. In cases where the matching rate is not uniform for all levels of deferral (for example, a cap on the matching contribution at a certain rate), the matching rate is determined by assuming that all deferrals are equal to 6%. Therefore, an employer who offers a matching contribution of 50% of the first 6% of deferrals to all participants would not encounter any issues with employees who save more or less than 6% on account of the non-uniform rates.

In a case where the match is disproportionate, for example, a service-based match, the entire contribution may potentially not be included in the ACP test. That is not to say that the disproportionate match cannot be offered, but rather it may or may not be included in the ACP test. All matching contributions on behalf of HCEs are always included in the ACP test. Only the matching contributions of the NHCEs that meet the above criteria would be included in the test in order to demonstrate compliance with the ACP test. The excess amount may still be contributed, but would not be included in the ACP test for the NHCEs. In the event that contributions are excluded from the ACP test for the NHCEs, the plan may encounter difficulties in attaining an ACP test result that is in compliance. Depending on the formula for the match, there may also be a need to pass nondiscrimination testing under Code Section 401(a)(4).

With one of the most common matching formula being 50% of the first 6% of deferrals, most plans do not match at rates exceeding 100% of the contributions. Only plans with extremely



high match rates to a select group might run afoul of the 100% limit. Plans with service-based matching formulas that provide high rates for longer-term employees should do advance testing now to see if the formula will work under the new rules. Even if all the contributions cannot be included in the ACP test, as long as the test passes, the sponsor should be able to either maintain the plan provision or else look for other ways to provide similar benefits. It would therefore seem that the representative matching rate will not cause too much difficulty for plan sponsors.

Roth 401(k)

The new year brings a new option that offers participants another way to save for retirement—the Roth 401(k). The final regulations expand the definition of a cash or deferred arrangement (CODA) to include an arrangement where participants may make after-tax designated Roth contributions.

As enacted by EGTRRA, the long awaited Roth 401(k) is available to be offered to participants effective January 1, 2006. The Roth 401(k) contribution uses the tax rules applicable to the Roth IRA but is generally treated as an elective deferral in other regards. It is included with elective deferrals in the ADP test, combined with elective deferrals as part of the limit for deferrals under Code Section 402(g), is eligible for catch-up contributions and has all the withdrawal restrictions applicable to a traditional 401(k) contribution. It does not, however, have the income restrictions that the Roth IRA has. Participants who may not have been able to take advantage of the Roth IRA may now want to invest in the Roth 401(k).

The Roth 401(k) offers a new opportunity for plan participants to meet their retirement needs. For the younger saver and any saver who believes that he or she will be in a higher tax bracket at retirement, the Roth 401(k) may be a great idea. Paying taxes today, along with the benefit of tax-free earnings (if participants meet distribution requirements) will offer attractive retirement planning for these participants. While the contribution will cost more upfront (contributions are fully taxed at the time of contribution), the tax-free distribution (if qualifying conditions are met) may offset the higher cost today. Participants will need assistance with making these decisions and employers would be wise to provide useful 401(k) decision making tools for participants.

Since the Roth 401(k) feature is optional, plan sponsors should add the feature with care and ensure that participants and the plan sponsor are ready for the change. For sponsors who currently

offer after-tax contributions, the tracking of the basis in the plan should not cause difficulty but rather the tracking of the Roth contributions in terms of timing, length of time in plan, etc., may cause some issues. Plan sponsors will need to weigh the benefits of offering after-tax contributions versus the potential reduction on an employee's ability to save on a pre-tax basis if the employee wants to take advantage of the Roth 401(k). The tradeoff, however, is that the Roth 401(k) contribution will be competing with the elective deferrals. It would be wise for plan sponsors to offer communications to educate participants so that wiser choices are made if the plan will be offering the Roth 401(k). If offered, plan sponsors will also have to deal with payroll changes to handle the contribution, recordkeeping issues for the separate money type and communications to handle participant issues and questions.

ADP testing will also be a challenge, in that participants may have an option of how to have the excess deferrals and excess contributions classified if the participant has made both Roth 401(k) contributions as well as traditional deferrals.

Other Areas to Consider

Waiving Out of a Plan on an Irrevocable Basis

Employees who irrevocably opt out of a 401(k) plan have until their eligibility date to make the election. Better communications will enable employees to opt out with more information if they decide that the 401(k) plan is not for them. Employees who are lower-paid and short-term may want the option of investing in IRA type investments on a pre-tax basis. Eligibility in a 401(k) plan would preclude them from doing this.

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Prior Year Shifting Rule Restrictions Removed

It appears that while the restrictions on double counting of QNECs in the ADP or ACP test when changing from current to prior year testing remain, the restrictions on shifting elective deferrals and QMACs are no longer applicable. Employers who hesitated to move from the current year to prior year method may want to consider the switch if the calculations will benefit them in 2006. Should the employer wish to switch back to the current year method, the change can be made at any time, but the move to prior year would generally be restricted for five years.

GAP Period Earnings are Back

Generally, GAP period earnings will apply to plans that are valued more frequently than quarterly. GAP period earnings will apply from the end of the plan year to which the refunds relate and the date of the refunds. For most plan sponsors that provide refunds within 2½ months of plan year-end, this requirement will mean an additional calculation with regards to earnings. Many plan sponsors will want to consider using the safe harbor since the seven-day window may not give enough time between calculation of the refund and distribution of the check. This timing is especially difficult when different organizations are involved in the process. Note that this requirement does not apply until the 2006 ADP/ACP tests, so no GAP earnings need to be calculated until 2007 when the 2006 refunds are processed.

ESOPs No Longer Need to be Aggregated with Non-ESOP Portion of Plan

Testing the ESOP portion of a qualified plan will no longer be subject to the mandatory disaggregation rules.

Conclusion

The 401(k) regulations offer some new opportunities and, perhaps, some new challenges. It is not too soon to start familiarizing yourself with these regulations and understanding their implications and potential impacts on current and new plans. Happy New Year! ▲



Lisa A. Scalia, CPC, QPA, QKA, is an employee benefits compliance consultant. Lisa has over 16 years of experience in the industry, and her areas of expertise include discrimination testing and government reporting for qualified plans with a concentration in 401(k) plans and Puerto Rico plans.

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QPFC is Coming in Early

Overview

Q: What is QPFC and for whom is it designed?

A: QPFC, or Qualified Plan Financial Consultant, is the new ASPPA credential designed specifically for financial professionals who sell, market, support or provide advice to qualified retirement plans. The target audience is mainly asset management oriented, not plan administration focused.

Q: How is the QPFC credential different than other ASPPA credentials?

A: QPFC is for financial professionals who focus primarily on investments and asset management in the retirement plan community. The QPFC education program will provide an in-depth understanding of general retirement planning concepts, terminology, distinctive features of qualified plans and the role of retirement plan professionals. It also includes a significant focus on the financial aspects of retirement planning—including distributions, investment products and fiduciary responsibilities. QPFC is not an entry-level credential. Candidates will be expected to have professional knowledge of investments, securities regulations and selling techniques prior to the start of this program.

Q: Why will candidates pursue the QPFC?

A: The QPFC credential will signal to potential clients that QPFC-credentialed professionals are retirement plan specialists with demonstrated expertise. The program will provide a comprehensive knowledge base, lending added confidence and credibility to the financial professional. In addition, QPFC credential holders can expand their referral network to include the more than 5,500 ASPPA retirement plan professional members: consultants, plan administrators, accountants, attorneys, actuaries, human resource managers and other financial professionals.

Q: Will QPFC have continuing education requirements?

A: Yes, all credentialed members are subject to ASPPA's Continuing Education (CE) requirements and must complete 40 CE credits by the end of every two-year cycle in order to maintain their credentials. CE from organizations outside ASPPA is accepted, provided it meets ASPPA's list of approved CE topics.



Candidate Eligibility

Q: What are the requirements for the QPFC credential?

A: In addition to passing the four required exams (see "About the Exam Series"), QPFC candidates need to have at least one of the following:

- Series 6, 7 or 65 license issued by the NASD and two letters of reference demonstrating at least two years of retirement plan related experience; or
- State life or annuity insurance license and two letters of reference demonstrating at least two years of retirement plan related experience; or
- Investment Advisor Representative or Registered Investment Advisor credential and two letters of reference demonstrating at least two years of retirement plan related experience; or
- Two letters of reference demonstrating at least three years of investment-related experience in connection with retirement plans.

About the Exam Series

Q: What topics will be covered?

A: The QPFC curriculum will include qualified plan design techniques; marketplace and industry trends; investment products, pricing models and fee disclosure; distribution planning, rollovers and fiduciary issues and responsibilities.

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Q: How many exams are required and how are the exams administered?

A: The QPFC program includes four exams. The two Retirement Plan Fundamentals (RPF) exams are non-proctored and available online. The two advanced level exams are proctored and delivered through Thomson Prometric Testing Centers across the United States.

Q: When will the QPFC exams be offered?

A: The Retirement Plan Fundamentals (RPF) exams will be available in early 2006. These exams will be available throughout the year as Web-based exams. The two advanced level exams will be available during two exam windows each year. The 2006 windows are scheduled for May 15-June 30, 2006, and November 1-December 15, 2006. Online registration for taking the exams will open in November 2005 on ASPPA's Web site, www.asppa.org.

Q: What is the format of the QPFC exams?

A: The two RPF exams are non-proctored, self-paced multiple choice style tests. The two advanced level proctored exams contain 65-75 multiple choice questions each. These will be presented in case study style. Each proctored exam should take approximately 2.5 hours.

Q: What if I already have credentials from ASPPA?

A: Those candidates who have already passed ASPPA's Pension Administrator exams (parts 1, 2 and 3) may skip the two non-proctored exams and proceed directly to the two proctored exams.

Q: How long will it take to earn my QPFC credential?

A: Most candidates will earn the credential within one to two years.

Q: What is the cost for taking the exams?

A: Exam registration fees range from \$140-\$260 each depending on the exam and ASPPA membership status. Total estimated cost is less than \$2,000 including textbooks, study materials and exam registration fees.

Q: How can I prepare for the QPFC exams?

A: RPF study materials will be available in an electronic format beginning January 2006. To prepare for the proctored exams, candidates are encouraged to read the newly-developed textbook written specifically for the QPFC exams titled, *Financial Professionals Guide to Qualified Retirement Plans*, 2006 edition, by Stephen Abramson, CPC, CLU, ChFC. ASPPA will also offer a supplemental investment topic reading book to help candidates prepare further. These books will also be available in January 2006.

Q: Who should trainers contact?

A: Contact Bunny Fernhall, ASPPA Chief of Pension Education, at bfernhall@asppa.org.

Q: Is there a place where I can sign up to learn more?

A: Yes, on ASPPA's Web site there is a sign-up to receive periodic updates about the program. Visit www.asppa.org/qpfc.htm.

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Qualified Plan Tax Issues for Citizens of Foreign Countries

by William J. Myer, QPA, QKA

In the contemporary business environment, it is commonplace for US organizations to hire foreign citizens. These “inpatriates” receive US compensation and are generally permitted to participate in the US firm’s qualified plans. Unless the plan specifically excludes such employees as a class, they must be included in the qualified plan if they otherwise meet the eligibility requirements.

It is important for human resource managers in multinational corporations, as well as their employee benefits consultants and third party administrators, to understand the international tax aspects of the qualified plan rules. It is also important for the inpatriates themselves to understand the tax treatment of contributions and distributions for proper tax planning purposes. This article will focus on the US tax treatment of qualified plan distributions for foreign citizens who have worked in the United States, including how distributions are taxed, how distributions are reported and what the withholding requirements are.

Tax Status

The principal issue affecting the taxation of qualified plan distributions for foreign citizens is their US tax status as a resident or a nonresident. Resident aliens are generally taxed in the same manner as US citizens; namely, they are taxed on worldwide income. Nonresident aliens, on the other hand, are taxed only on US source income and on income that is effectively connected with a US trade or business.¹

For tax status purposes, residency is determined under Internal Revenue Code §7701(b). Residency is established under either the “green card” test² or the “substantial presence” test³; it can also be elected by means of the “first year” election.⁴ Under the green card test, a foreign citizen is taxed as a resident alien from the time he or she is admitted to the US as a lawful permanent resident until the time that status is revoked. A foreign citizen who meets the green



card test is deemed a resident alien even if living outside the US. Permanent resident status can be abandoned in two ways: either the foreign citizen may complete INS Form I-407, *Abandonment of Lawful Permanent Resident Status*, or the foreign citizen may send a letter revoking lawful permanent resident status along with his or her green card to the INS or US consular office. As discussed below, abandoning permanent resident status can give rise to expatriate tax issues under §877.

Under the substantial presence test, a foreign citizen is considered to be a resident alien if he or she is physically present in the US for at least 31 days in the current year *and* has been physically present in the US for a weighted average of 183 days over a three-year testing period comprising the current year and the two preceding years.⁵ Days of US presence are computed under a weighting formula.⁶ When applying the substantial presence test, there are a number of exceptions and considerations, among which is a “closer connection exception” for an alien who satisfies the green card test if he or she is present in the US for fewer than 183 days during the current

Under certain conditions, a foreign citizen who satisfies neither the green card test nor the substantial presence test can still elect to be treated as a US resident.



year, maintains his or her tax home in the foreign country for the entire year and has a closer connection to the foreign country than to the US.⁷ A foreign citizen taking advantage of this exception must file Form 8840, *Closer Connection Exception Statement for Aliens*, which is attached to IRS Form 1040NR or 1040NR-EZ, *US Nonresident Alien Income Tax Return*.

Under certain conditions, a foreign citizen who satisfies

neither the green card test nor the substantial presence test can still elect to be treated as a US resident. To make this first year election, the foreign citizen must be able to meet the substantial presence test in the following year and satisfy other requirements.⁸ The election is made by attaching a statement to IRS Form 1040.⁹

Tax Effect of Residency Status

If a foreign citizen is a resident alien for tax purposes under the substantial presence test, the green card test or the first year election, he or she will be taxed in the same manner as a US citizen, *i.e.*, on worldwide income, and would file IRS Form 1040 (or a similar form) to report his or her income.¹⁰ If the foreign citizen is a nonresident alien (an individual who is neither a US citizen nor a resident alien¹¹), he or she will only be taxed on US source income (such as wages for services performed in the US) and on ECI (effectively connected income)—income that is effectively connected with a US trade or business. US source income that is not ECI is subject to a flat 30% tax (or a lower treaty rate).¹² ECI is taxed to nonresident aliens at the same graduated rates that apply to US citizens.¹³ The nonresident alien would file IRS Form 1040NR (or Form 1040 NR-EZ) to report ECI; for passive income, withholding at source is imposed.

As stated above, nonresident aliens are taxed only on US source income and on ECI. To determine what part of a plan distribution is subject to tax, the distribution must be apportioned among three categories: contributions resulting from US services, contributions resulting from service abroad and earnings. Any portion

of the distribution that represents contributions to a plan attributable to services performed outside the US would be foreign source income. US source income would consist of all contributions attributable to services performed in the US and all earnings on the deferred income (assuming the trust is a United States trust), including the earnings on contributions attributable to services performed outside the US. The portion of the distribution that is traceable to services performed abroad is foreign source income and is not subject to US income tax for nonresident aliens. The portion of the distribution traceable to services performed within the US is ECI, subject to graduated rates. The portion of the distribution traced to earnings, however, is non-ECI income, subject to the flat 30% tax.¹⁴ Apportioning the distribution among these three categories of income can be challenging. For example, it is not immediately apparent in defined benefit plans what represents contributions and what represents earnings.¹⁵ If the source of the distribution cannot be determined, it is presumed to be from a US source.¹⁶

Tax Treaties

The preceding paragraphs give a general description of the tax implications of a qualified plan distribution to a resident or nonresident alien in the absence of a tax treaty. However, the US has bilateral income tax treaties with a number of countries, and the existence of an income tax treaty can affect the taxation of distributions to nonresident aliens, including nonresident aliens who were *former* resident aliens. (If the foreign citizen is a resident alien, he or she will be taxed on worldwide income in the same manner as US citizens.) The objective of a tax treaty is to prevent double taxation, since in the absence of a tax treaty, the same income could be taxed in both the US and in an individual's country of residence. If there is a tax treaty, the nonresident alien can avoid US tax if he or she resides outside the US, since under most US income tax treaties, only the country of residence may impose taxes upon pension distributions.

However, not all distributions from qualified plans meet the criteria for pension distributions. The language of the specific income tax treaty should be consulted, and if the language is unclear, a private letter ruling could be requested from the IRS. Under the model treaty language, for a distribution to qualify as a pension distribution, the following conditions must be met:

1. The employee must have been employed by the same employer for five years or be at least age 62 at time of distribution;

2. The distribution must be on account of death or disability, must be a series of substantially equal payments made over life expectancy or must be made after the employee attains age 55; *and*
3. The distribution must be made either after separation from service or on or after attainment of age 65 (thus, a distribution solely on account of plan termination does not qualify).¹⁷

As an example, suppose that a foreign citizen works in the US as a resident alien and accordingly is covered under a qualified retirement plan. The foreign citizen retires and returns to his home country, terminating his residency and again becoming a nonresident alien. Assuming that there is no tax treaty, any pension payments received that are attributed to employer contributions would be ECI, subject to tax to the extent that they are attributable to US sources, and would be taxable at the graduated rates that apply to US citizens; any pension payments traced to earnings would be non-ECI income, taxable at 30%. The nonresident alien would file IRS Form 1040 NR or 1040 NR-EZ to report the income. However, if the nonresident alien is a resident of a country whose income tax treaty with the US provides that pension distributions are exempt from tax, the distributions would be exempt from US tax, as long as the pension payments meet the requirements set forth in the treaty.

Clearly, these rules present tax planning opportunities that will differ based on treaty provisions and on the taxation of the foreign citizen's pension distributions in his or her country of residence or citizenship. Moreover, if the pension distributions are not taxable in the country of residence or citizenship of the foreign citizen, the distributions may entirely avoid taxation. Note that these planning opportunities only exist for foreign citizens, not US citizens. Since citizens of the United States are taxed on worldwide income, US citizens residing in a foreign country would still be subject to US taxation on pension distributions.

Withholding and Reporting

Withholding from a foreign citizen's qualified retirement plan is determined based on residency status. Resident aliens are taxed in the same manner as US citizens. As with US citizens residing within the United States, tax upon eligible rollover distributions paid to a resident alien is withheld at the statutory 20% rate. For non-eligible rollover distributions, Form W-4P, *Withholding Certificate for Pension and Annuity Payments*, is used to instruct the withholding agent how much federal income tax to withhold.

For nonresident aliens, pension income that is from sources within the US is generally subject to the 30% withholding rate (in the absence of a treaty exemption).¹⁸ For countries with which the US has a bilateral income tax treaty, Publication 515 lists the required withholding rates for pension income.¹⁹ For the portion on the pension that arises from the performance of services in the US after December 31, 1986, the tax may be withheld at graduated rates.²⁰ Form W-8ECI, *Certificate of Foreign Person's Claim for Exemption*, is completed to claim the exemption from the 30% withholding rate and to certify what portion of the distribution is ECI, and the form is generally valid for three years. Also, if the nonresident alien elects to receive an annuity from the qualified plan, and if all services were performed outside of the United States, no part of the annuity payments is taxable if, at the time the annuity payments begin, at least 90% of the plan participants are US citizens or residents.²¹

Resident aliens can request a direct rollover to an IRA or another eligible retirement plan in the same manner as US citizens. Nonresident aliens are also able to elect a direct rollover and avoid current taxation and withholding.²² Any additional earnings in the IRA or other eligible retirement plan would be US source income. However, caution is necessary when deciding whether to roll over a distribution, because depending on the

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income tax treaty, distributions from the IRA may not be considered pension payments for treaty purposes.²³

Pension distributions to nonresident aliens are reported on Form 1042-S, *Foreign Person's US Source Income Subject to Withholding*, rather than on Form 1099-R, and the withholding agent must file a Form 1042 tax return. A social security number is not required on Form 1042-S.

Expatriation Tax

IRC §877 subjects long-term permanent residents who terminate US residency to expatriation tax provisions. These provisions are imposed if the principal purpose of terminating residency was tax avoidance. Permanent residents who terminate US residency and do not have a tax avoidance motive will be taxed in the same manner as a nonresident alien, whereas permanent residents who are considered to have a tax avoidance motive will be taxed on US source income.

A long-term permanent resident is an individual who is a lawful permanent resident of the US for eight of the 15 years preceding termination of residency. To terminate residency for tax purposes, the foreign citizen must notify the Secretary of State or the Secretary of Homeland Security and file Form 8854, *Initial and Annual Expatriation Information Statement*.²⁴

The expatriation rules changed in 2004 as a result of the American Jobs Creation Act of 2004, so that on or before June 3, 2004, different rules were in place. Under current rules, a tax avoidance motive will be presumed to exist if:

1. The average annual net income tax for the five years ending before the date of cessation of residency is more than an indexed amount (\$124,000 for 2004);
2. The net worth is \$2 million or more on the date of cessation of residency; or
3. If the foreign citizen fails to make a certification on Form 8854 that he or she has complied with all US federal tax obligations for the five years preceding the date of cessation of residency.²⁵

If the foreign citizen meets the tax liability test or net worth test described previously, or if he or she fails to make the required certification, then the expatriation tax applies and the foreign citizen is subject to the *greater* of the tax on US source gross income and gains on a net basis at graduated rates or the 30% tax on non-ECI income. Additionally, he or she must file Form 1040 NR and Form 8854 each year during the ten-year period following the date of expatriation.²⁶ Note also that for expatriates, there is a more inclusive concept of what constitutes US source income.

Conclusion

The tax issues surrounding qualified plan distributions are quite complex, even when amounts are distributed to United States citizens. Things become even more complicated when the distributions are made to foreign citizens. This article is merely a primer on the US tax concerns that affect foreign citizens who receive distributions from qualified plans. In many cases, it may be necessary to obtain professional tax advice or seek an IRS private letter ruling. ▲



William J. Myer, QPA, QKA, CPA, is a tax senior in the employee benefits tax practice at Deloitte Tax, LLP, in Philadelphia, PA. He has a Master's degree in Business Administration from Fairleigh Dickinson University.

1 §§871(a) and 871(b)(1). Unless otherwise specified, all section references are to the Internal Revenue Code of 1986, as amended.

2 §7701(b)(1)(A)(i).

3 §7701(b)(1)(A)(ii).

4 §7701(b)(1)(A)(iii).

5 §7701(b)(3)(A).

6 §7701(b)(3)(A)(ii).

7 §7701(b)(3)(B).

8 §7701(b)(4).

9 2004 IRS Publication 519, *US Tax Guide for Aliens*, page 9.

10 Note that under §§6013(g) and 6013(h), certain married nonresident aliens may also elect resident alien status.

11 §7701(b)(1)(B).

12 §871(a).

13 §871(b).

14 §871(a).

15 Revenue Procedure 2004-37 (June 28, 2004) provides a method for determining the source of defined benefit plan distributions to nonresident aliens.

16 Treas. Reg. 1.1441-2(a).

17 *US Model Income Tax Treaty: Technical Explanation*, Article 18, United States Model Income Tax Convention of September 20, 1996.

18 2005 IRS Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, page 19.

19 2005 IRS Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, page 36.

20 2004 IRS Publication 519, *US Tax Guide for Aliens*, page 42; 2005 IRS Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, page 19.

21 §871(f).

22 See for example PLR 9206015 (November 7, 1991), in which the IRS ruled that no §1441 withholding was required for plan participants who were nonresident aliens and the distribution was sent directly to the trustee of an IRA.

23 PLR 8904036 (October 31, 1988).

24 2004 IRS Publication 519, *US Tax Guide for Aliens*, page 4.

25 2004 IRS Publication 519, *US Tax Guide for Aliens*, page 21.

26 2004 IRS Publication 519, *US Tax Guide for Aliens*, page 21.



FROM THE IMMEDIATE PAST PRESIDENT

Looking Back

by Stephen H. Rosen, MSPA, CPC

It is hard to believe, but this article is my last opportunity to communicate with all of you through this venue. Now that I have completed my term, I would like to share some of my thoughts and my experiences of the past year.

Before I do, you might be wondering, “Why would anyone be interested in volunteering to be President of this prestigious organization? After all, the pay isn’t so great!” I certainly asked myself that same question during a number of sleepless nights this past year. For the record, I would do it again in a heartbeat. I was so honored to have been asked to assume this role. The real payback has been much more than you can imagine!

As you may recall from previous articles, I am a strong believer in volunteerism. *All* ASPPA members should be volunteering as much as possible. After all, ASPPA is a volunteer organization, so who else but the members can take on that responsibility? The only questions that need to be asked are “How much time are you willing to pledge?” and “In what areas would you make the greatest contribution?”

Over the 30 years that I have been a member of ASPPA, I have been fortunate to have served on a variety of committees and task forces, each of which had varying time commitments. Each volunteer experience gave me the opportunity to learn a great deal about our profession, make a contribution to its purpose and network in a pleasant social setting with my contemporaries. For me, those wonderful life experiences and the chance to make the optimal contribution to our profession are the reasons that I accepted the Presidency.

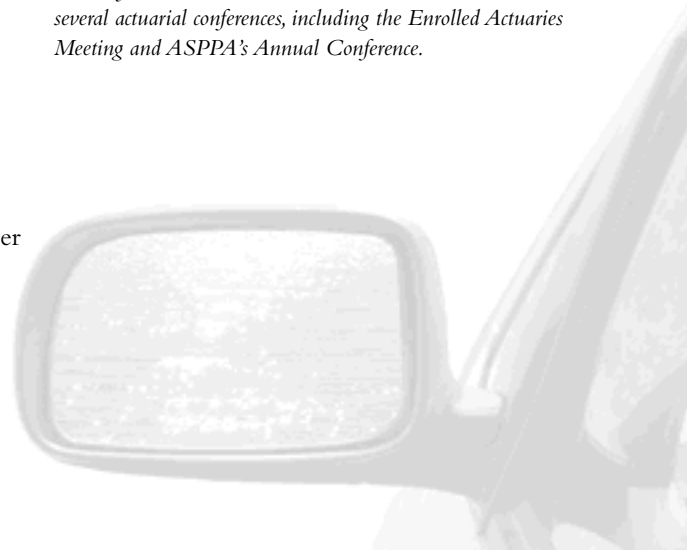
To be honest, the amount of work and time involved in taking on the role of President has been more than I had expected. But the people that I have partnered with, both from the volunteer and staff ranks, and the relationships that I have

made have more than made up for the workload. I am so honored to have been granted this tremendous opportunity.

I was also fortunate, in the course of my duties, to have interacted with a number of our “sister” organizations, representing both the actuarial and non-actuarial constituencies of our industry. My hope is for ASPPA to continue to foster these relationships in order to achieve our strategic goal of remaining the premier educator and advocate for our profession.

I hope that each of you will make or renew a commitment for a personal contribution of your time and expertise to enhance our profession. With the pressures of government intervention and industry competition and consolidation, now is the time for all of us to step up and make a difference. Thank you again for giving me the opportunity to serve as your President. I only hope that I have made a positive impact and have met your expectations. ▲

Stephen H. Rosen, MSPA, CPC, is an independent consulting actuary specializing in the design and implementation of employee benefit plans. He is president of Stephen H. Rosen & Associates, Inc., a division of National Investments Managers, which is an employee benefits consulting firm in Haddonfield, NJ. Steve is the Immediate Past President of ASPPA, an Enrolled Actuary, a Member of the American Academy of Actuaries and the Conference of Consulting Actuaries. He has served as president and chairman of the board of the ABC of the Delaware Valley and is the former Chair of ASPPA’s ABC Committee. Steve has lectured at several actuarial conferences, including the Enrolled Actuaries Meeting and ASPPA’s Annual Conference.



New Retirement Plan Fundamentals (RPF) Exams to Replace Pension Administrator (PA) Exams in 2006

by Catherine Diver

The Education and Examination Committee has recently announced that the current Pension Administrator exams (PA-1, -2 and -3) will be phased out in 2006 and will be replaced by two new Retirement Plan Fundamentals (RPF-1 and -2) exams. The RPF examinations will serve as the foundation for all ASPPA credentials.

This new RPF program brings ASPPA's introductory courses up-to-date with the latest industry information and standards and introduces new topics that are essential to today's retirement practitioner. RPF study material is presented in a logical fashion, aiding learning comprehension and knowledge retention, in accordance with the high educational standard for which ASPPA is known.

RPF-1 and RPF-2 self-study materials and exams will be available in electronic format only. Unlike the PA exams, there will be no paper exam grading for RPF exams.

PA Phase Out

For candidates who are part-way through the PA exam cycle, the credits for successful passage of the exams will be important.

The PA exams will be phased out on July 1, 2006. Any candidate who has taken one or two PA exams will have until June 30, 2006, to complete the remaining exams. If all three PA exams are not completed by June 30, 2006, the candidate will be required to take both of the RPF exams to satisfy the basic requirements for the Retirement Plan Fundamentals certificate program. Register today to complete your PA series.

For candidates who have not started the PA exam series we recommend that you begin with the RPF exams which will be available in January 2006.

Credential Changes

As a result of the restructuring, RPF exams will be the foundation for all ASPPA credentials.

The Qualified 401(k) Administrator (QKA) credential will require the successful passage of the:	RPF-1, RPF-2, DC-1 and DC-2 examinations.
The Qualified Pension Administrator (QPA) credential will require the successful passage of the:	RPF-1, RPF-2, DC-1, DC-2, DC-3 and DB examinations (or QKA credential plus DC-3 and DB)
The Certified Pension Consultant (CPC) credential requires the successful passage of the:	RPF-1, RPF-2, DC-1, DC-2, DC-3, DB, C-3 and C-4 examinations (or QPA credential plus C-3 and C-4)
The new Qualified Plan Financial Consultant (QPFC) credential will require the successful passage of the:	RPF-1, RPF-2 and the new PFC-1 and PFC-2 examinations.

More information about topics, learning objectives, procedures and requirements for the RPF exams will be available by January 2006 on the Education and Examination Web pages at www.asppa.org. Any questions can be directed to the Education Services Department at educasppa@asppa.org.

RPF exams registration will be available in November 2005. ▲



Catherine Diver, ASPPA's Director of Education Services, joined ASPPA in August 2005. Before joining ASPPA, she served as the director of administration and Web services at the American Telemedicine Association, based in Washington, DC.



Ella Aderhold, QPA, QKA: Recipient of the Martin Rosenberg Academic Achievement Award

ASPPA proudly recognizes Ella Aderhold, QPA, QKA, as the recipient of the Martin Rosenberg Academic Achievement Award for the summer 2004 Defined Benefit (DB) examination.

Ella has been with Pension Service, Inc., in Connecticut for over five years. Pension Service specializes in serving the small- to mid-sized market in the New England region. Ella serves as an actuarial consultant and manager in the actuarial and consulting unit, where she is involved in all aspects of retirement planning, plan design, consulting and administration with a primary focus on new comparability plans, defined benefit/defined contribution combinations, solo DB plans, as well as governmental DB plans. Ella graduated from Louisiana State University with a BS in Mathematics. She has been a member of ASPPA since February 2005 and is currently working on her CPC credential.

The award is presented in honor of the late Martin Rosenberg, a Fellow of ASPPA. Mr. Rosenberg served as an Education and Examination Committee member from 1979 to 1985 and as E&E's General Chair from 1985 until his death in 1987. The award is designed to recognize the top performing candidates (certain

minimum performance criteria are applied) on the DC-1, DC-2, DC-3, DB, C-3, C-4 and A-4 examinations.

The Martin Rosenberg Academic Achievement Award was presented on Monday, November 7, 2005, at General Session 3 during the 2005 ASPPA Annual Conference. Congratulations Ella! ▲

Previous Martin Rosenberg Academic Achievement Award Recipients

Award Recipient	Examination(s)	Administration
Weixing Han, QPA, QKA	C-2(DB)	Dec 2003
William J. Hein, QPA, QKA	C-2(DB)	Dec 2002
Holly H. Tatuaca, QKA	C-2(DC)	May 2002
Victoria Castagno, QPA, QKA	C-2(DB)	Dec 2001
Kenneth S. Eberle, CPC	C-3	Dec 2000
Pamela A. Johnson, CPC, QPA	C-4	Dec 1999
Jeannine A. McAllister, QPA	C-2(DB)	Dec 1999
Teena M. Sarkissian, MSPA, CPC	C-4	Dec 1999
Anneli E. Schalock, CPC, QPA	C-2(DB)	Dec 1998
Connie D. Husley, QKA	C-2(DC)	Dec 1998
Robert A. Hartnett, Jr., CPC, QPA, QKA	C-1 & C-2(DB)	Jun 1998
Jeannine M. McAllister, QPA	C-1	Jun 1998
William L. Andrews, QPA, QKA	C-1	Dec 1997
Diane M. Armstrong, QPA, QKA	C-2(DB)	Dec 1997
Amy P. Wicker	C-1	Dec 1996
Carolyn A. Campbell, QPA, QKA	C-2(DC)	Jun 1996

Educators' Honor Roll

As reported in the September-October issue of *The ASPPA Journal*, the ASPPA Education and Examination (E&E) Committee selected Carol R. Sears, FSPA, CPC, as the recipient of the 2005 Educators' Award. Carol is principal and consulting actuary of Actuarial Consulting Group, Inc., an employee benefits consulting firm. The award was presented on Monday, November, 7, during the 2005 ASPPA Annual Conference.

The following individuals were also nominated for the 2005 Educators' Award. The E&E Committee is proud to recognize these individuals for their contributions to pension education:

Amy L. Cavanaugh, CPC, QPA, QKA
Stephen L. Dobrow, CPC, QPA, QKA
Dwayne Smith



Welcome New Members and Recent Designees

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Renewal Invoices

All members should have received a personalized e-mail membership invoice in November that provides payment information, member login and password information and a link to the login page. Credentialed members who are eligible for a multi-member discount should see the appropriate discount noted when they log on to the ASPPA Web site to renew.

Members have also been mailed a hard copy renewal invoice to accommodate those who prefer to pay by check.

Don't forget—the 2006 membership renewal deadline is January 2, 2006. Renew online today!



2006 Conferences: Meeting Member Needs Better Than Ever!

by Jane S. Grimm

ASPPPA conferences help ASPPA meet one of the essential elements of its mission statement—to provide education for retirement plan professionals. ASPPA's conferences are a great way to keep current on regulatory and legislative developments, hear from industry experts and their counterparts from the government and earn continuing education credits to keep your ASPPA, EA and other credentials up-to-date.

The 2006 conference schedule meets ASPPA's goals and contains some old favorites, plus some new and exciting attractions. Planning and executing ASPPA conferences require the hard work and dedication of more than 50 ASPPA volunteers plus a six-member staff. Each year, more than 300 speakers and 3,500 retirement plan professionals participate in one or more of ASPPA's conferences. The conferences touch nearly all of ASPPA's membership in some way, if not through personal attendance, through conference CD-ROM purchases and summaries of the most popular sessions that are given at our ASPPA Benefits Councils (ABCs) meetings.

IRS/ASPPA Conferences

For more than a dozen years, ASPPA has partnered with the Internal Revenue Service (IRS), and in many cases with other "sister" organizations, to present co-sponsored conferences in each of the five IRS districts. These conferences enable attendees to discuss benefits issues directly with local, regional and national IRS representatives. In addition to the Los Angeles (January 26-27, Los Angeles, CA), Great Lakes (May 8-9, Chicago, IL), Mid-Atlantic (May 15-16, Philadelphia, PA) and Northeast (June 7, Tarrytown, NY and June 8, Boston, MA) Benefits Conferences, ASPPA has added a new conference in 2006. The first Benefits Conference of the South will be held in Atlanta, GA, on March 20-21 and will include many of the features that have made the other IRS/ASPPA conferences so popular.



The 401(k) SUMMIT (February 26-28, Orlando, FL)

Celebrating its fifth year in 2006, The 401(k) SUMMIT continues to grow in prestige, attendance and exhibit hall space. The unique combination of sales strategies, technical information, practical workshops and networking opportunities sets this conference apart from other industry conferences. The SUMMIT has rapidly become the one conference that retirement plan professionals who actively sell, market, support or influence the sale of 401(k) plans cannot afford to miss. The exhibit hall boasts more than 110 exhibits displaying the latest products and services for the industry. Last year's conference attendance topped 1,200.

At The 401(k) SUMMIT 2006, ASPPA's newest credential, the Qualified Plan Financial Consultant (QPFC), will be formally introduced. There is a general session regarding QPFC on Sunday, February 26, and there will be plenty of information at the ASPPA Education and Examination and Membership booths.

DOL Speaks (April 24-25, Washington, DC)

The DOL Speaks conference was extremely well received in its inaugural year, 2005. At DOL Speaks: The 2006 Employee Benefits Conference, the sessions will be uniquely designed to include perspectives from both the private sector and the Department of Labor (DOL). All members interested in learning more about current regulatory, legislative, fiduciary and retirement and health issues will want to attend. Check it out!

Advanced Actuarial Conference (June 9-10, Boston, MA)

A new conference in 2006, designed especially for our actuary members, has been added to ASPPA's growing list of conferences. This conference will include topics for our more senior actuary members and for those who want

to learn more about advanced actuarial topics and issues. Stay tuned for more information as the agenda takes shape.

**Western Benefits Conference
(July 16-19, Las Vegas, NV)**

In 2006, ASPPA will partner again with the Western Pension & Benefits Conference to present a conference that includes retirement plan, health and welfare and compensation issues. The “inaugural” joint summer conference in 2005 was called “Meeting Midway.” Next year’s theme will be “Fountains of Knowledge.” Presenters include industry and government experts in a variety of sessions, ranging from individual speakers to panels. An exhibit hall, receptions and other casual activities make this conference a great networking experience. It’s an excellent opportunity.

ASPPA Annual Conference (October 22-25, Washington, DC)

You won’t want to miss the 2006 ASPPA Annual Conference. We’ll be culminating the celebration of ASPPA turning 40 years old with all the regular features that you know and enjoy at the annual event. ASPPA’s Annual Business Meeting, election of new Board members, presentation of the Eidson Founders, Educators’ and Rosenberg awards are

all part of the conference program. In addition to learning the latest news from the industry, the ASPPA Annual Conference is an excellent time to catch up with old friends and make new ones. The exhibit hall, featuring more than 80 exhibits, the President’s Reception, held on Sunday evening, and the Tuesday night reception, are very popular networking venues.



Enclosed with this issue of *The ASPPA Journal* is a calendar marking the dates for all ten 2006 ASPPA conferences. I hope you will find it a handy reference as you consider your ongoing educational needs. As always, you can find information, the number of continuing education credits you can earn and updates on conferences and all of ASPPA’s educational programs on the ASPPA Web site at www.asppa.org. ▲



Jane S. Grimm, Chief Programs Officer, has been with ASPPA since 1996. She is the Co-chair of the Conferences, Membership and ABC committees and is an editor of The ASPPA Journal. Before joining ASPPA, she worked as the membership director and the director of public affairs for two other associations.

Calendar of Events

Date	Description	ASPPA CE Credits
Nov 1 - Dec 15	Fall 2005 Examination Window	
Dec 15	PA 1-3 Examination Deadline for 2005 Paper Submission	
Dec 31	PA 1-3 Examination Deadline for 2005 Online Submission (Midnight, EST)	
2006		
Jan 26 - 27	Los Angeles Benefits Conference • Universal City, CA	15
Feb 26 - 28	The 401(k) SUMMIT • Orlando, FL	20
Mar 20 - 21	Benefits Conference of the South • Atlanta GA	15
Apr 24 - 25	DOL Speaks: The 2006 Employee Benefits Conference • Washington DC	15
May 8 - 9	Great Lakes Benefits Conference • Chicago, IL	15
May 15 - 16	Mid-Atlantic Benefits Conference • Philadelphia, PA	15
May 15 - Jun 30	Spring 2006 Examination Window	
Jun 7	Northeast Benefits Conference • Tarrytown, NY	8
Jun 8	Northeast Benefits Conference • Boston, MA	8
Jun 9 - 10	Actuarial Conference • Boston, MA	
Jun 15	PA 1-3 Examination Deadline for 2006 Paper Submission	
Jun 30	PA 1-3 Examination Deadline for 2006 Online Submission (Midnight, EDT)	
Jul 16 - 19	Western Benefits Conference • Las Vegas, NV	15
Oct 22 - 25	The Annual Conference • Washington, DC	20
Nov 1 - Dec 15	Fall 2006 Examination Window	
Dec 31	RFP 1-2 Examination Deadline for 2006 Online Submission (Midnight, EST)	

* Please note that when a deadline date falls on a weekend, the official date shall be the first business day following the weekend.

Dallas/Ft. Worth ABC Still Going and Growing

by Sally J. Zavattari, FSPA, CPC

The ASPPA Benefits Council of Dallas/Ft. Worth started in January of 2002 and is still going strong. Over the years, membership in the ABC of Dallas/Ft. Worth has grown to several corporate and 65 individual members. We have 26 members enrolled through our corporate memberships.

The 2005 Board of Directors is as follows:

President and ASPPA Liaison

Sally J. Zavattari, FSPA, CPC

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Web Site Coordinator

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The success of our ASPPA Benefits Council can be attributed to the hard work of the board and the enthusiasm of our membership for this type of organization.

I attended ASPPA's annual ABC leadership conference in March in San Diego and got several useful tips for running our ABC. I was also able to share our experience in enlisting meeting sponsors, which helps offset the cost of putting on our meetings. We offer sponsors a table for literature at the meetings, feature the sponsor on meeting invitations and give each a ten minute time slot at meetings to introduce themselves and talk about their products. Also, they are encouraged to bring "give-aways" to the meetings, which are given away as door prizes. The door prize give-aways have become very popular. In fact, we have learned to be sure there are door prizes, even if the meeting sponsor does not donate any! ASPPA has donated certificates for examination fees, membership dues and conference discounts, which we also use as door prizes.

Our annual meeting schedule has settled into three breakfast meetings and one full-day meeting (in the fall) each year. The presenters at our fall meeting this year were Ilene H. Ferenczy, CPC, and Richard N. Carpenter, CPC, of the Technical Answer Group. Ilene and Richard updated our members on current hot topics in retirement plans, including Roth 401(k) plans and Most Frequently Asked Questions of Technical Answer Group.



To encourage new members who wanted to attend our all-day fall meeting, we allowed a non-member to pay the member price for the meeting if the meeting application was accompanied by the membership application and the next year's membership dues. This offer has been very popular.

Our current meeting schedule is as follows:

January 25, 2006

Craig P. Hoffman, APM (breakfast meeting)

April 2006

To be arranged (breakfast meeting)

August 2006

To be arranged (breakfast meeting)

October 2006

Sal L. Tripodi, APM (all-day meeting)

Our Web site is www.dfw-abc.org, where members and non-members can download membership application forms and other useful information.

For more information about the ASPPA Benefits Council of Dallas/Ft. Worth, including membership registration and upcoming events, contact Pam Frazzitta at pgfrazzitta@wtbenefits.com, or Sally Zavattari at sally@asgpension.com. ▲



Sally J. Zavattari, FSPA, CPC, is president of Actuarial Services Group, Inc., an actuarial and employee benefits consulting firm in Dallas, TX. She has been in the employee benefits field for 28 years. She is an Enrolled Actuary, and her practice includes all types of retirement plans, including defined benefit, profit sharing/401(k), money purchase, ESOP, 403(b) and 457 plans.

ABC Meetings Calendar

November 16

ABC of Delaware Valley

Topic: Annual Dinner Meeting/Recap of the ASPPA Annual Conference
Speaker: TBD

November 17

ABC of Northern Indiana

Topic: IRS Determination Program
Speaker: Stephen W. Forbes

November 29

ABC of North Florida

Topic: Annual Conference Review/Holiday Party
Speaker: Craig P. Hoffman, APM, and Robert M. Richter, APM

November 29

ABC of Greater Cincinnati

Topic: Non-qualified Plan Guidance
Speaker: Debbie Reiss

December 2

ABC of South Florida

Topic: Washington Update
Speaker: Brian H. Graff, Esq., APM

December 7

ABC of Western Pennsylvania

Topic: Full-Day Seminar (topics to be determined)
Speaker: Sal L. Tripodi, APM

December 7

ABC of Chicago

Topic: Investments and Fiduciary Issues
Speaker: Jason Crane

December 7

ABC of Cleveland

Topic: 401(k) Update Including Roth 401(k)
Speaker: TBD

December—TBD

ABC of the Texas Gulf Coast

Topic: Membership Mixer
Speaker: None

December—TBD

ABC of Greater Cincinnati

Topic: Annual Meeting
Speaker: None

February 14

ABC of Cleveland

Topic: TBD
Speaker: TBD

April 18

ABC of Cleveland

Topic: Washington Update
Speaker: Brian H. Graff, Esq., APM

June 13

ABC of Cleveland

Topic: TBD
Speaker: TBD



Something's Different...



Continuing education quizzes will no longer be inserted with your copy of *The ASPPA Journal*.

You can find all *The ASPPA Journal* continuing education quizzes online on ASPPA's Web site at www.asppa.org.

Questions?

Emma Carter
Data Services Coordinator
ecarter@asppa.org

Fun-da-Mentals



McHUMOR by T. McCracken



"What do you mean you're retiring?"

Word Scramble

Unscramble these four puzzles—one letter to each space—to reveal four pension-related words. Answers will be posted on ASPPA's Web site in the Members Only section. Log in, scroll down to "Check out the last issue of *The ASPPA Journal*" and click on the latest issue. Scroll down to "Answers to Fun-da-Mentals."

I CORNER COT _ _ _ _ _ _

FAD LIE _ _

ON MICE _ _ _

TAME TENTS _ _ _ _ _ _

BONUS: Arrange the boxed letters to form the Mystery Answer as suggested by the cartoon.

Mystery Answer:

They had a "_____ of _____"



Why the two actuaries couldn't agree on the valuation results.



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The 401(k) SUMMIT
2006

The Forum for Retirement Sales and Investment Professionals

Orlando World Center Marriott

Orlando, Florida

February 26-28, 2006

www.asppa.org/summit.htm



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