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ASPPA's Quarterly Journal for Actuaries, Consultants, Administrators and Other Retirement Plan Professionals

WASHINGTON UPDATE

Ensuring Financial Regulatory Reform Carves Out Retirement Plan Service Providers

by Kara Getz, APM

The US House of Representatives recently passed financial regulatory reform legislation that, among other things, would create a Consumer Financial Protection Agency (CFPA). As happens entirely too frequently in Washington, a change was made to the bill in the wee hours of the night that would have a significant impact on our industry. Specifically, the CFPA language was amended to eliminate a carve out for services provided to qualified retirement plans and tax-preferred accounts. As a result, service providers of qualified retirement plans, including recordkeepers and third party administrators, would potentially be subject to CFPA jurisdiction [in addition to Department of Labor (DOL), Treasury Department and Internal Revenue Service (IRS) jurisdiction].

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FROM THE EDITOR

Hail to the Geeks!

by Chris L. Stroud, MSPA

The actuarial profession was in headlines all over the country, even in *The Wall Street Journal*. One such headline read: "Actuary Rules Rankings of US Jobs."

Actuaries are often teased about being at the top of the geek chain—but this time, it really paid off. Actuaries were sought out at cocktail parties and became the center of attention. It became cool to be a geek. To these highly skilled actuaries who live in a world of numbers, for a brief moment, the number "one" took on a special meaning. Actuary: Number One Job!

When I first became an actuary, I was proud to tell people what I did, but became frustrated because the majority of them just didn't get it. I just never perfected that "elevator speech." After a while, I changed my story to say "I work for a software firm that helps people manage retirement plans." They got that. Then, when 401(k) plans became popular and I did more defined contribution work and less defined benefit work, I found people understood my job more if I related it to 401(k) plans, because they "got" the 401(k) concept. Now, after all these years, I can tell people once again that I'm an actuary, and although many still don't quite understand what actuaries do, they now understand that it's a good job that pays well and has something to do with risk. After the publicity about actuaries having the number one job, I now have people coming up to me and saying, "So, it's really cool that you're an actuary. Number one job—wow! My sister's husband's cousin is married to a woman whose nephew is an actuary at some big insurance company." (Hmmmm. About this time, the actuary in me wants to make some wisecrack like—"Wow! What are the odds of that? Two people in the same room who know an actuary! Unbelievable!" But I refrain.) And of course, I have to hear all the actuary jokes all over again, because they can't contain their excitement when they hear, and actually understand, an actuary joke—so they are now obligated to pass it on to me.

Back to this most recent study, which was commissioned by CareerCast.com. The study ranked 2009 jobs and overall, the geeks ruled! Six of the top ten positions were filled by jobs that score high on the "Geek-ometer," including actuary, software engineer, computer systems analyst, mathematician, statistician and accountant. (And yes, I've heard the actuary/accountant joke. Q: "What is the difference between an actuary and an accountant?" A: "An actuary is someone who didn't have the personality to be the accountant.")

In prior studies over the past 20 years, actuary has frequently placed high on the best jobs list. This most recent 2009 study and other similar previous studies have used data from government sources (*e.g.,* US Bureau of Labor Statistics, the US Census Bureau) and also from trade associations and industry groups. The current study evaluated 200 jobs based on five criteria: environment, income, employment outlook, physical demands and stress.

So here's *my* evaluation of a pension actuary's job, based on this criteria:

Environment: Usually indoors, air conditioned, no toxic fumes, fun ASPPA conferences.

Income: High billing rate (assuming you still have some defined benefit plans and companies that can afford to pay their bills in this economy). An actuary's autograph is worth money on a Schedule B!

Employment outlook: Not bad if you have expanded your horizons to include cash balance and 401(k). Great future if you buy into the concept that every person needs his or her own "personal actuary."

Physical demands: Thankfully, the IRS Code and *The ERISA Outline Book* are available online! Otherwise, if we had to carry these items around, the physical demands would be so great that actuary would drop to the bottom of the heap in job ranking just from shear weight alone.

Stress: Hmmm. What's the latest status on funding relief?

Seriously, this publicity was a great moment in actuarial history. Actuaries are Geeks, and Geeks are Cool. Therefore, Actuaries are Cool. Hail to the Geeks! Q.E.D.

CONTINUED FROM PAGE 1

ASPPA is taking this development very seriously. As of this writing, the US Senate Banking Committee is working on their version of financial regulatory reform. ASPPA Government Affairs staff and ASPPA members have been meeting with key Senators, and their staffs, to ensure that the Senate financial regulatory reform bill, and ultimately the final bill, includes a carve out for retirement plan service providers.

House of Representatives

In response to the near collapse of the US financial system in 2008, Congress has been working on financial regulatory reform legislation. In December, the House of Representatives passed an expansive financial regulatory reform bill. Among other provisions, the bill would create an independent CFPA. The CFPA would have extremely broad regulatory and enforcement authority over consumer financial products and services. The mission of the CFPA would be to protect consumers when they borrow money, make deposits or obtain other financial products and services.

Every previous version of the legislation (including the version that passed the House earlier in the year) included a carve out from CFPA jurisdiction for services provided to qualified plans and tax-preferred accounts. However, the night before the bill went to the House floor, House Financial Services Committee Chairman Barney Frank (D-MA) filed an amendment that, among other things, substantially changed the service provider carve out. The new language, which ultimately passed the House, carves out the plan itself and the plan sponsor. However, the amendment dropped the carve out for services provided to the plan. As a result, service providers of retirement plans, including recordkeepers and third party administrators, would potentially be subject to CFPA jurisdiction (in addition to DOL, Treasury and IRS jurisdiction). Our understanding is that this change was made because of the view of some House staff that service providers of retirement plans are not appropriately regulated under current law.

Senate

The Senate is currently working on their version of financial regulatory reform legislation. In November, Banking Committee Chairman Chris Dodd (D-CT) issued a discussion draft, the "Restoring American Financial Stability Act of 2009." This proposal includes a carve out from CFPA for retirement plan service providers.

However, for the last couple of months, the Senate Banking Committee had been trying to reach a bipartisan agreement on financial regulatory reform. As many Republicans oppose the creation of a CFPA, it was unclear as to whether the Senate legislation would even include the creation of a CFPA.

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On February 5, Chairman Dodd announced that the bipartisan negotiations had reached an "impasse." He stated further that it was time to move the process forward and he had instructed his staff to begin drafting legislation to present to the Banking Committee later this month. It is our understanding that the legislation that Chairman Dodd's staff is drafting will include a CFPA.

ASPPA's Efforts

ASPPA's Government Affairs Committee is working very hard on this issue. Our efforts have included ASPPA Government Affairs staff and ASPPA members meeting with key members of the Senate and House, including members of the Senate Banking Committee. We've also raised the issue with key officials in the Administration.

We have a strong, straightforward argument as to why the CFPA must include a carve out for retirement plan service providers: under current law, service providers of qualified retirement plans are already regulated by the DOL, Treasury and IRS. For example, the DOL is about to issue significant regulations requiring service providers of qualified plans to disclose their fees. The DOL also regularly conducts service provider audits to verify that they have systems in place to ensure compliance with ERISA. If Congress wants to clarify authority to regulate service providers of qualified plans, they should amend ERISA or the Internal Revenue Code to specifically give such authority to the DOL and/or Treasury. Congress should not give yet another agency authority to regulate qualified plans and service providers.

The next step on financial regulatory reform will be in the Senate, and we are working to ensure that the Senate financial regulatory reform bill includes a carve out for retirement plan service providers. When the legislation passes the Senate, then heads to conference to reconcile the House and Senate bills, we are hopeful that by working with key members in both the House and Senate, the final bill also will include a retirement plan service provider carve out.

We will certainly continue to keep you apprised of these important developments.

The next step on financial regulatory reform will be in the Senate, and we are working to ensure that the Senate financial regulatory reform bill includes a carve out for retirement plan service providers.

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2010 Roth IRA Conversions

by Susan D. Diehl

As I am sure is the case with many of the readers of this article, our organization, through our Techline, has received many questions regarding the new rules on conversions to Roth IRAs effective this year. Under the Tax Increase Prevention and Reconciliation Act of 2006 (TIPRA), the current-law conversion eligibility rules are being repealed with respect to conversions occurring after December 31, 2009.

Beginning in 2010 all taxpayers with money in an eligible retirement plan [traditional IRAs, SEP IRAs, SIMPLE IRAs, qualified plans, §403(b) plans and governmental §457(b) plans] will be permitted to convert to a Roth IRA without regard to the amount of his or her adjusted gross income or marital status. Before contemplating a conversion to a Roth IRA, it would be wise for taxpayers and their advisors to be well versed in the tax consequences and other rules applicable to conversions. There is apparently widespread confusion in this area and this article is meant to overview these rules and provide readers with the facts.

Qualified Rollover Contributions to a Roth IRA

On March 5, 2008, the IRS issued Notice 2008-30 that, among other issues, addressed the Service's interpretation of Section 824 of the Pension Protection Act of 2006. This provision was effective in 2008.

Prior to 2008, a Roth IRA could accept rollovers only from the following plans:

- Another Roth IRA;
- A conversion from a traditional IRA, SEP IRA or SIMPLE IRA; or
- A designated Roth account under an employer's §401(k) plan or §403(b) plan (effective in 2006).

These rollover contributions to Roth IRAs are technically called *Qualified Rollover Contributions* (QRCs). In the case of a conversion from a traditional IRA, SEP IRA or SIMPLE IRA, the individual must include in gross income any portion of the conversion amount that would otherwise be taxable. The pro-rata basis recovery calculation applies in determining the amount that is taxable. Prior to 2010, a conversion from a traditional IRA, SEP IRA or SIMPLE IRA was permitted only if the taxpayer's adjusted gross income for the year did not exceed $100,000 [not including the taxable amount converted or any Required Minimum Distributions (RMDs)] and, if married, the taxpayer must be filing a joint tax return. Under TIPRA and effective in 2010, all taxpayers are eligible to make conversions to Roth IRAs.

Section 824 of the Pension Protection Act of 2006 expanded the types of money that can be rolled over to a Roth IRA and permits any eligible rollover distribution from an employer's qualified plan, 403(b) or governmental 457(b) plan to be rolled over to a Roth IRA beginning in 2008. For purposes of the following explanation, we are describing the requirements for rolling over amounts, other than any designated Roth accounts. In other words, we are talking about "direct conversions" or "rollover conversions."

Additional guidance was provided in Section II of IRS Notice 2008-30 and it provided seven questions and answers on rollovers to Roth IRAs from employer plans, the highlights of which are described below:

- A rollover (direct conversion) from an employer's plan to a Roth IRA may be accomplished either as a direct rollover or as a 60-day rollover (where the employee first takes receipt of the distribution followed by a rollover contribution to a Roth IRA). However, in either case, the amount rolled over must be an eligible rollover distribution and the taxable amount must be included in the taxpayer's gross income for the year. Additionally, for years prior to 2010, the individual must be current-law conversion eligible (AGI not exceeding $100,000 and, if married, filing jointly).
- In addition to qualified plans, eligible rollover distributions from §403(b) plans or governmental §457(b) plans may be rolled over (converted) to a Roth IRA under these same requirements, taxation rules and limitations.
- Identical to conversions from traditional IRAs, SEP IRAs and SIMPLE IRAs to Roth IRAs, rollover conversions from an employer's plan are not subject to the 10% additional income tax under §72(t). However, if the conversion amount is withdrawn from the Roth IRA before that particular conversion has been in the Roth IRA for five years, the 10% additional tax is "recaptured" on the original taxable amount that was converted unless another exception under §72(t) applies at the point of distribution. This rule, referred to as the 10% recapturing rule, is identical to a conversion from a traditional, SEP or SIMPLE IRA that is withdrawn within five years.
- §401(a)(31), concerning the right of a participant to elect a direct rollover of an eligible rollover distribution to an eligible recipient plan, includes the right to elect a direct rollover conversion to a Roth IRA. [Note: This requirement will affect the language required to be included in a §402(f) Rollover Notice and any administrative forms used to effectuate such a direct rollover conversion to a Roth IRA.]
- Although the right to elect a direct rollover conversion to a Roth IRA is required, the plan administrator is not responsible for determining whether or not the employee has or will meet the conversion eligibility requirements (the $100,000 AGI rule and married, filing jointly) for years prior to 2010. However, if an employee elects a direct rollover conversion to a Roth IRA or completes a 60-day rollover conversion, but the taxpayer then determines that he or she is not eligible to have made such rollover conversion to a Roth IRA, the taxpayer may recharacterize the rollover amount to a traditional IRA. [Note: Although the Notice specifically mentions only being able to recharacterize an ineligible rollover conversion, the IRS verbally told PenServ that a recharacterization may be accomplished even if the individual is otherwise eligible to have converted, whether the individual is a spouse or nonspouse.]

  If the amount is recharacterized to a traditional IRA and meets the other established rules and requirements for a recharacterization under §408A(d)(6), the amount is no longer taxable to the individual. And, although the Notice does not expressly explain, the recharacterization to a traditional IRA would be registered in the exact manner as the Roth IRA.

- If the rollover conversion to the Roth IRA is made in the form of a direct rollover, no Federal income tax withholding applies, even though the taxable amount is included in the taxpayer's gross income. Alternatively, if the eligible rollover distribution is actually distributed to the employee or the employee's spouse, the mandatory 20% Federal income tax withholding applies to the taxable amount of the distribution. However, even if 20% is withheld, the distributee may make up the amount withheld from other sources and roll it over just like he or she can under current law.

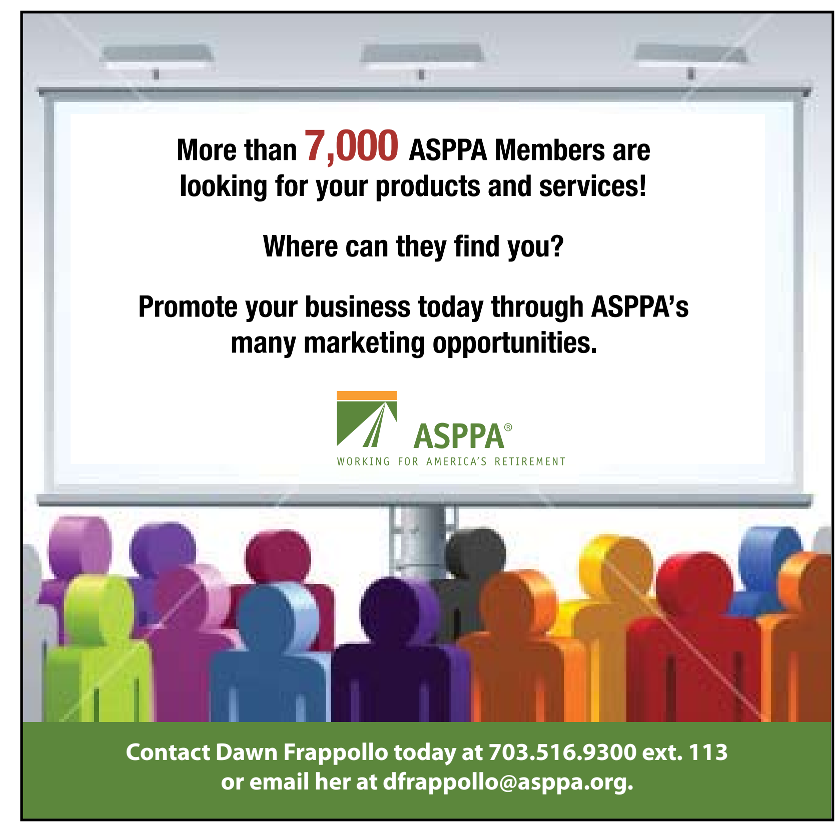
  Also, for a distribution that is directly rolled over in a rollover conversion to a Roth IRA by a nonspouse beneficiary to an inherited Roth IRA in accordance with the requirements of Notice 2007-7, the mandatory 20% Federal income tax withholding does not apply. However, an eligible distributee and payer or plan administrator may enter into a voluntary withholding agreement with respect to the direct rollover conversion amount since such amount is included in the distributee's gross income.

Before contemplating a conversion to a Roth IRA, it would be wise for taxpayers and their advisors to be well versed in the tax consequences and other rules applicable to conversions.

- If a beneficiary, spouse or nonspouse elects a direct rollover conversion from an employer's plan (but not a Roth IRA) to a Roth IRA under this provision, the AGI and marital filing status applicable to any conversions (until 2010) is determined by the status of the beneficiary and not of the deceased employee. In addition and pursuant to Notice 2007-7 and §402(c)(11), an employer's plan is not required to permit rollovers by nonspouse beneficiaries until plan years beginning on or after January 1, 2010 (WRERA made this change after Notice 2007-7). But if the plan does permit such nonspouse beneficiary rollovers, it must be accomplished only by a direct rollover.

  A nonspouse who elects a direct rollover conversion to an inherited Roth IRA can later decide, by the appropriate deadline, to elect a recharacterization to an inherited traditional IRA, the result of which is no amount is taxed until distributed from the recipient inherited traditional IRA.

  Notice 2008-30 also permits a surviving spouse of a deceased employee to elect a rollover conversion to a Roth IRA plus has a choice in how the Roth IRA is treated. The surviving spouse can either: (1) elect to treat the Roth IRA as an inherited Roth IRA and would be subject to the RMD rules as a beneficiary; or (2) elect to treat the Roth IRA as the spouse's own Roth IRA. If the spouse elects to treat the Roth IRA as an inherited Roth IRA, the same rules under Notice 2007-7 that apply to a nonspouse beneficiary, including how to determine the maximum amount eligible to roll over and the resulting distribution period applicable to the Inherited Roth IRA, will apply to the spouse as a beneficiary rather than as the Roth IRA owner.



Additional Issues under Notice 2008-30

The above discussion covers the seven Q&As in Notice 2008-30. There are other questions that came up as a result of the Notice.

- Can a spouse beneficiary elect a rollover conversion to a Roth IRA as an inherited Roth IRA and then elect a recharacterization under the rules of §408A(d)(6) to an inherited traditional IRA?

  It is the author's opinion that the answer to this question is "yes." In this case, not only will the spouse beneficiary avoid any taxation on the original amount, but also the spouse beneficiary can take penalty-free distributions from the inherited traditional IRA.

  The real question is: Can a surviving spouse roll over from a qualified plan, §403(b) plan or governmental §457(b) plan into an inherited traditional IRA, or must the traditional IRA be in the spouse's own name and thus any distributions would be subject to the 10% additional income tax if the spouse is under the age of 59½? The author's answer to this question has always been "no" because of §402(c)(9) that says in the case of a surviving spouse beneficiary of a deceased employee, such spouse shall be treated in the same manner as the employee. In other words, if the spouse rolls over to an IRA, it's the same as if the employee rolls over to his or her *own* IRA.

  There have, however, been a handful of private letter rulings over the years that permitted a spouse beneficiary to roll over to an inherited traditional IRA. But, in closely reading those PLRs, they indicate that the Service assumes that the spouse will always treat the IRA as an inherited IRA. Moreover, we can't rely on PLRs. We also know that the industry, as a whole, has never permitted a spouse beneficiary to roll over to an inherited traditional IRA unless the spouse obtained a PLR.

  The argument lies in the language of regulation §1.408-8, Q&A 7, and the use of the word "may." This regulation states that "If the surviving spouse of an employee rolls over a

distribution from a qualified plan, such surviving spouse *may* elect to treat the IRA as the spouse's own IRA in accordance with the provisions in A-5 of this section." A-5 of this regulation deals with how a surviving spouse elects to treat an *IRA* as his or her own. In researching issues involved in a direct conversion (QRC), we went to the IRS. The IRS apparently has no problem with a surviving spouse rolling from an employer's plan into an inherited traditional IRA, notwithstanding the language in §402(c)(9). Although we have been aware of this argument since the 1987 RMD regulations were issued, the opposite of the word "may" in regulation §1.408-8, Q&A 7 must mean, "may not!" In other words, the spouse is not *required* to treat the traditional IRA as his or her own traditional IRA. It's important to note that although the nonspouse beneficiary direct rollover rule in §402(c)(11) clearly excludes spouse beneficiaries, the Service also did not want to give nonspouse beneficiaries any advantages over spouse beneficiaries.

[Caution: Before changing your organization's policy on this issue, you must consult with your own legal counsel and may need to amend your IRA agreement and administrative forms accordingly.]

So, not only can a surviving spouse roll over to an inherited Roth IRA and then recharacterize to an inherited traditional IRA, he or she can also go the other direction—roll over to an inherited traditional IRA and then convert to an inherited Roth IRA.

- Can an inherited traditional IRA be converted to an inherited Roth IRA under the QRC rules, since a traditional IRA is included in the definition of "eligible retirement plan" under §402(c)(8)(B)?

It depends. The author believes that a nonspouse cannot use the QRC rules to roll (convert) from an inherited traditional IRA to an inherited Roth IRA because §408(d)(3)(C) precludes a nonspouse beneficiary from rolling between inherited IRAs. However, a spouse beneficiary can, in fact, use the QRC rules to roll (convert) from an inherited traditional IRA to an inherited Roth IRA, subject of course to taxation, being conversion eligible, etc. Although §402(c)(11) relating to a nonspouse beneficiary rolling from an employer's plan to an IRA also refers to the definition of "eligible retirement plan," the Technical Corrections Act to the PPA amended that section to exclude IRAs.

The Harry T. Eidson Founders Award

Submit nominations by May 31, 2010 for this prestigious award.

The Harry T. Eidson Award was established to honor the memory of ASPPA's founder, Harry T. Eidson, FSPA, CPC. This award is designed to acknowledge individuals who have made significant contributions to ASPPA and/or the private pension industry and is awarded annually.

Visit www.asppa.org/harryteidson to submit a nomination.

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Those individuals who "jumped the gun" by starting the conversion process in 2009 and completing the transaction in 2010 may end up not being eligible for the conversion!

Conversions are Taxable Income

The fact that the taxable portion of an amount converted to a Roth IRA is included in the taxpayer's gross income is nothing new. However, because many taxpayers were not eligible to make a conversion to a Roth IRA until 2010, and because qualified plans could only move directly to Roth IRAs since 2008, it seems that these new rules have created a flurry of activity and confusion over the repeal of the conversion eligibility requirements.

When is the Taxable Amount Included in Income?

The taxable amount of the conversion is included in gross income in the year the money leaves the IRA or employer's plan—not necessarily the year that the money gets to the Roth IRA. Thus, the repeal of the conversion eligibility requirements applies only to money that leaves the IRA or employer's plan *after* December 31, 2009. In other words, those individuals who "jumped the gun" by starting the conversion process in 2009 and completing the transaction in 2010 may end up not being eligible for the conversion!

Determining the Taxable Amount of a Conversion from Traditional IRA to Roth IRA[1]

If the traditional IRA owner has ever made any nondeductible contribution to any IRA he or she owns or has rolled over any "after-tax" employee contributions from an employer's plan, then, regardless of the type of IRA being converted to a Roth IRA (whether a contributory IRA, rollover IRA, SEP IRA or SIMPLE IRA), the individual must calculate the portion of the conversion that is attributable to the nondeductible or after-tax amounts. The taxpayer uses IRS Form 8606 to calculate the tax-free "return of basis" and the taxable amount of any IRA distribution (other than distributions from a Roth IRA) by treating all IRAs as one IRA. This calculation includes balances in contributory IRAs, rollover IRAs, SEP IRAs and SIMPLE IRAs. Having nondeductible funds in any IRA would also compound the confusion for those rolling from a qualified plan to a traditional IRA and then converting to a Roth IRA.

▲ ▲ ▲

1 Reg. §1.408A-4, Q&A 7

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Example #1: Janet owns two IRAs, a contributory IRA and a SEP IRA. Since 1987, she has contributed a total amount of $6,000 as nondeductible contributions. Janet decides to convert her entire IRA balances in both her contributory IRA and her SEP IRA that total $18,000. Since she is closing out all traditional IRAs, the $6,000 nondeductible amount is treated as the tax-free amount of the conversion and the remaining amount of $12,000 is the taxable amount of the conversion.

Example #2: The facts are the same as in Example #1, except that Janet also owns a Rollover IRA with a year-end balance of $40,000. This balance must also be included in the calculation in determining the taxable amount of her conversion of $18,000. Her calculation would look like this:

6,000/58,000 = .103;
.103 x 18,000 = $1,854 Basis Recovery

Therefore, of her $18,000 conversion, $16,146 is her taxable conversion amount ($18,000 – $1,854 = $16,146). She has a remaining basis in her traditional Rollover IRA of $4,146 ($6,000 – $1,854 = $4,146). She would continue recovering the remaining $4,146 basis as she takes subsequent distributions from her traditional IRA(s). Janet would use Part I and Part II of Form 8606 (following the instructions closely) to compute the taxable conversion amount.

Example #3: If a taxpayer owns a rollover IRA (or any other traditional IRA) and is planning on rolling any IRA into an employer plan, only the taxable amount can be rolled over.

As in Example #2, in the following year, if Janet decides to subsequently roll her Rollover IRA to her employer's qualified plan, the remaining basis of $4,146 cannot be rolled over at that point; the only amount remaining in any of Janet's IRAs is the unrecovered basis of $4,146. Janet could then take a distribution of $4,146 and recover all of it tax-free. Or, she could convert the remaining basis of $4,146 to her Roth IRA and the entire amount would not be taxable.

Example #4: Mark owns a traditional IRA valued at $100,000, which has a basis of $20,000. He takes a total distribution of $100,000, converts $80,000 to a Roth IRA and keeps $20,000. Can he attribute the entire $20,000 he kept as the return of basis? No!

Mark must use Part I and Part II of Form 8606 to calculate the portion of the $80,000 conversion amount that is taxable and also the portion of the $20,000 that is taxable. Mark determines that of the $80,000 converted, $64,000 is taxable and of the $20,000 he kept, $16,000 is taxable. He attributes his basis as follows:

$ 80,000	conversion	$ 16,000	basis recovered
$ 20,000	kept	$ 4,000	basis recovered
Total		$ 20,000	basis recovered

The total taxable amount is $80,000. Of the $20,000 he kept, $16,000 is taxable. The $16,000 is part of his AGI to determine whether he is eligible to have converted the $80,000. Also, the $16,000 is subject to the 10% premature tax if Mark is under age 59 1/2. The $64,000 taxable amount of his conversion is not subject to the 10% premature tax.

Two-year Spread Election

If a taxpayer converts an eligible retirement plan to a Roth IRA in 2010, the entire taxable amount of the conversion can be either: (a) included in gross income for the year of the conversion (2010); or (b) included in gross income by including only 1/2 of the taxable amount the year following the conversion (2011) and the remaining 1/2 of the taxable amount the next year (2012). Using the two-year spread will be an irrevocable election and will be notated on the Form 8606 filed with the IRS by the taxpayer. For example, Christine converts her traditional IRA in the amount of $50,000 to a Roth IRA in 2010. Assume she has no basis in her traditional IRA, thus the entire $50,000 is taxable. Christine can either: (a) include the entire $50,000 in her gross income in 2010; or (b) include $25,000 in her gross income in 2011 and the remaining $25,000 in her gross income in 2012. If she includes the entire $50,000 in her gross income in 2010, she will pay income taxes based upon her tax bracket applicable to 2010. If she elects the two-year spread, the $25,000 included in her 2011 gross income is taxed based upon her tax bracket applicable to 2011. The final $25,000 included in her 2012 gross income is taxed based upon her tax bracket applicable to 2012. In other words, Christine is spreading the *income* over 2011 and 2012—she is NOT spreading the tax liability as if the amount were taxed in 2010.

No Conversion of Required Minimum Distribution to Roth IRA[2]

The law prohibits the rollover (or transfer) of any required minimum distribution to another plan, including a Roth IRA. If a minimum distribution is required for a year (including the year during which the participant attains age 70 1/2) with respect to the eligible plan being converted to a Roth IRA, (regardless of the methodology used in the conversion) the first dollars distributed during that year are treated as consisting of the required minimum distribution until an amount equal to the required minimum for that year has been distributed.

Any converted amount is treated as a distribution from the other plan, even if the conversion is accomplished as a direct transfer or as a direct rollover. Thus, the minimum distribution must be made first before the remaining amount can be converted.[3]

Example: Sally is required to receive a minimum distribution from her traditional IRA of $10,000. If Sally attempts to convert $11,000 to a Roth IRA prior to receiving the required distribution amount, then $10,000 of the conversion amount would be treated as a required minimum distribution and would be ineligible for conversion. This result would be the same regardless of the methodology used in completing the conversion (rollover or transfer) or whether an amount greater than or equal to $10,000 remains in Sally's traditional IRA after the conversion.

If a required minimum is contributed to a Roth IRA, it is treated as having been distributed to the individual, subject to the normal taxation rules, and then contributed as a regular contribution to a Roth IRA and an excess contribution could arise. The required minimum distribution cannot be treated as an eligible conversion contribution.

Although a required minimum cannot be converted to a Roth IRA, beginning in 2005 the RMD amount was to be ignored in determining conversion eligibility.

Acceleration of Income Inclusion

If a taxpayer elects the two-year spread rule and then takes a distribution from the Roth IRA prior to including in gross income the entire taxable amount of the conversion, the income inclusion will be accelerated.

For example, Paul converts his qualified plan in the amount of $20,000 to a Roth IRA in 2010 and he is using the two-year spread. Assume that the entire $20,000 is taxable. Without any distributions, Paul would include in gross income $10,000 in 2011 and $10,000 in 2012.

Assume next that during 2011 he takes a distribution of $5,000. The normal Roth IRA ordering rules continue to apply. For purposes of this example, further assume that Paul has never made any regular Roth IRA contributions. Therefore, the $5,000 distribution taken in 2011 is "deemed" coming from his taxable conversion. He will include in gross income for 2011 the normal 1/2 scheduled to be included, $10,000, plus the $5,000 distribution for a total of $15,000.

In 2012, he will include in gross income the remaining $5,000 of the original $20,000 taxable conversion where he is using the two-year spread rule. Under this acceleration rule, Paul will not include in gross income more than the original taxable conversion. If Paul withdraws $5,000 in 2010, he will include $5,000 in his 2010 gross income; $10,000 in 2011; and the remaining $5,000 in his 2012 gross income. Note that since Paul is under age 59 1/2, he will be subject to the recapture tax as he has made a distribution of conversion funds before they have been in the Roth IRA for five years.

How is the Taxable Amount of the Conversion Determined?

Any "basis" that is part of the amount being converted is not included in the taxpayer's gross income. Basis in a traditional IRA includes nondeductible regular IRA contributions, after-tax employee contributions that were rolled over to any traditional IRA, and repayments of qualified reservist distributions to any traditional IRA. For example, Sophie has made nondeductible contributions to her traditional IRA over several years of $20,000. In 2010, she takes advantage of the new conversion rules, but decides to convert just $20,000, although she has other traditional IRAs. Sophie cannot isolate just her "basis" amount of $20,000 and treat the entire conversion amount as nontaxable. As a result, part of the $20,000 will be taxable based upon the pro-rata taxation requirements under §408(d)(2) by taking into consideration balances she holds in all traditional-type IRAs, including SEP IRAs and SIMPLE IRAs. Sophie must file Form 8606 with her 2010 income tax return and complete Part II based on the instructions to that form. In this example, the distributing IRA trustee or custodian

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2 §408A(e), §408(d)(3)(E) and Reg. §1.408A-4, Q&A 6
3 Reg. §1.408A-4, Q&A 1(c)

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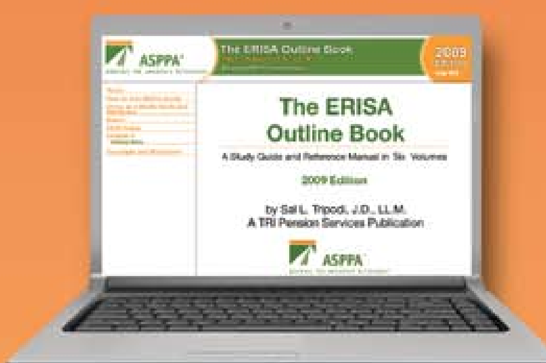

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A taxpayer may recharacterize regular contributions or conversions if he or she is ineligible for the contribution or merely wishes to change his or her mind.

will issue a 2010 Form 1099-R entering $20,000 in both Boxes 1 and 2a; the receiving Roth IRA trustee or custodian will issue a 2010 Form 5498 entering $20,000 in Box 3 (since in this example the conversion is coming from a traditional IRA).

Employer Plans Converted to a Roth IRA

Basis in an employer's plan includes after-tax employee contributions and loan repayments after a default which also create basis in the account. For this discussion, we are not talking about designated Roth accounts under the employer's §401(k) or §403(b) plan. We are talking about the other portions of the plan, such as pre-tax deferrals, matching, profit sharing, rollovers and after-tax employee contributions. For example, Amber has a total balance of $100,000 in her employer's §401(k) plan. Amber has never made any designated Roth contributions to her §401(k) plan.

The $100,000 is comprised of the following:

- $40,000 pre-tax elective deferrals, including attributable gains and losses;
- $30,000 employer matching contributions, including attributable gains and losses;
- $20,000 employer profit sharing contributions, including attributable gains and losses; and
- $10,000 after-tax employee contributions, consisting of $8,000 basis and $2,000 of gains.

If Amber has a distributable event under the §401(k) plan, and she takes a distribution, the taxable amount would be $92,000. The $8,000 after-tax principal amount comes out of the plan as nontaxable return of basis. If Amber doesn't want to pay any income taxes on her distribution, she could elect a direct rollover to her traditional IRA of at least $92,000 that represents the taxable amount of the distribution. She could also roll over the $8,000 after-tax principal amount to her traditional IRA that would then become part of her total traditional IRA "basis" subject to the pro-rata taxation rules of §408(d)(2). Or, she could direct the payer to direct roll the $92,000 to her traditional IRA and distribute the $8,000 directly to her. In this example, none of the distribution is taxable to her. In this case, the §401(k) plan would issue Form 1099-R and the receiving traditional IRA would issue Form 5498 entering the amount of her rollover in Box 2. She could then convert the $92,000 to a Roth IRA.

What about a conversion directly from the qualified plan to a Roth IRA? If Amber rolls over the $100,000 to her Roth IRA, this will be considered a conversion and she must include $92,000 in her gross income (where she can decide whether to include the $92,000 in her income for 2010 or use the two-year spread discussed earlier). Can Amber isolate just the basis amount of $8,000 in the employer's plan (after-tax employee contributions) and elect a rollover conversion of just that basis to a Roth IRA, while at the same time electing a rollover of the taxable portion ($92,000) to a traditional IRA thus escaping any taxation? The general answer is "no." However, it has been the author's opinion that if the participant receives his or her *entire* balance in the plan, and part of the distribution consists of after-tax employee contributions, then the participant can elect a direct rollover of the after-tax principal to a Roth IRA and elect a direct rollover of the taxable amount to a traditional IRA. This would result in none of the distribution being subject to Federal income tax.

This same situation could also be accomplished by a 60-day rollover. If Amber takes a partial distribution of the after-tax employee portion of the §401(k) plan, the prorated taxation rules would apply to the partial distribution. However, there may be one exception to the prorate taxation rules if the participant is *not* receiving a total distribution. If the employer's plan as of May 6, 1986, permitted in-service withdrawals of the employee's after-tax contributions, then the principal amount of the employee's after-tax contributions already in the plan as of December 31, 1986, may be withdrawn. (This exception is often referred to as the "pre-1987 grandfather rule.") In this case, the pro-rata taxation rules would not apply, but only if the participant meets the criteria explained above. Again, the §401(k) plan will issue the Form 1099-R entering the taxable amount of the conversion in Box 2a, and the receiving Roth IRA will issue the Form 5498 entering the amount converted in Box 2 (rather than Box 3). Caution: Do not give tax advice! If a client asks, "can I direct roll $92,000 to my traditional IRA and convert $8,000 to my Roth IRA?" the answer is absolutely "YES." We strongly recommend that you not specifically address the tax consequences in this situation.

Conversions of an Annuity Contract

Final regulations under §1.408A-4, Q&A 14 regarding converting an IRA Annuity in kind to a Roth IRA were published in the Federal Register on July 29, 2008. These regulations are applicable to any Roth IRA conversion where an annuity contract is distributed or treated as distributed from a traditional IRA on or after August 19, 2005. These final regulations provide guidance concerning the tax consequences of converting a traditional IRA Annuity to a Roth IRA and how

to value such conversion for purposes of issuing Form 1099-R to the taxpayer. These final regulations adopt the provisions of the proposed regulations issued in 2005, with certain modifications.

Eligibility Requirements Still Apply to Regular Roth IRA Contributions

As a reminder, the eligibility requirements for making regular Roth IRA contributions continue to apply. However, if a taxpayer cannot make regular Roth IRA contributions because his or her AGI is too high, that individual may be able to make a regular contribution to a traditional IRA as a nondeductible contribution (if under age 70 1/2). After the regular contribution is made to the traditional IRA, the individual could then convert from the traditional IRA to a Roth IRA. However, it is critical to remember that the amount converted is still subject to the pro-rata basis recovery calculation by considering balances held in all traditional-type IRAs, including SEP IRAs and SIMPLE IRAs. Moreover, the IRA owner will be required to complete both Parts I and II of Form 8606.

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Keep in mind that an individual could contribute to his or her employer plan and make an annual conversion.

Recharacterizations[4]

A taxpayer may recharacterize a contribution to or from a Roth IRA under two different circumstances:[5]

- By transferring a current year regular contribution plus earnings (from a traditional IRA to a Roth IRA or from a Roth IRA to a traditional IRA); or
- By recharacterizing a conversion made to a Roth IRA from a traditional IRA or an employer's plan by transferring the converted amount plus earnings to a traditional IRA.

A taxpayer may recharacterize regular contributions or conversions if he or she is ineligible for the contribution or merely wishes to change his or her mind. Also, a taxpayer is permitted to recharacterize all or just a portion of a regular contribution or conversion.

If a conversion contribution is determined to be ineligible (a failed conversion) and it is not recharacterized in accordance with these rules, the contribution amount will be treated as a

4 §408A(d)(6)
5 Reg. §1.408A-5, Q&A 1

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regular contribution to the Roth IRA, and, thus, may be an excess contribution if it exceeds the individual's regular contribution limit. In addition, the distribution from the traditional IRA that was converted in error will not be eligible for the two-year spread and will be subject to the 10% additional tax for premature distributions unless an exception applies.[6]

If an individual makes a contribution to an IRA (the FIRST IRA) for a taxable year and then transfers the contribution (or a portion thereof) in a trustee-to-trustee transfer to another IRA (the SECOND IRA), the individual treats the contribution as having been made to the SECOND IRA, instead of the FIRST IRA, for Federal income tax purposes.

Miscellaneous Recharacterization Rules

- . A traditional "conduit" rollover IRA that is converted to a Roth IRA but subsequently recharacterized back to a traditional IRA retains its status as a "conduit" rollover IRA.[7]
- A recharacterization is not a designated distribution, and therefore is not subject to Federal income tax withholding.[8]

Nothing in the law or the regulations prevents an IRA owner from recharacterizing a regular contribution and then re-recharacterizing it again back to the FIRST IRA, provided, however, that the election is timely made. For example, Alice made a regular contribution to her traditional IRA of $3,000 in 2010 for 2010. Knowing that none of the contribution would be deductible, she recharacterizes the contribution, plus earnings, to a Roth IRA in January of 2011. In preparing her 2010 tax return, she realizes that she would rather the amount be in her traditional IRA. She then re-recharacterizes the amount, again plus earnings, back to her traditional IRA on a timely basis and reports it as a nondeductible contribution on her Form 8606.

- Recharacterizations must be reported by both the FIRST IRA and the SECOND IRA in accordance with the instructions for Forms 1099-R and 5498.
- If the participant makes a direct rollover or 60-day rollover from a designated Roth account under a §401(k) or §403(b) plan to a Roth IRA, the Roth IRA owner cannot recharacterize such amount to a traditional IRA. Also, the amount cannot be rolled back into a §401(k) or §403(b) plan.

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6 Reg. §1.408A-4, Q&A 3
7 Preamble to the Final Regulations
8 Preamble to the Final Regulations

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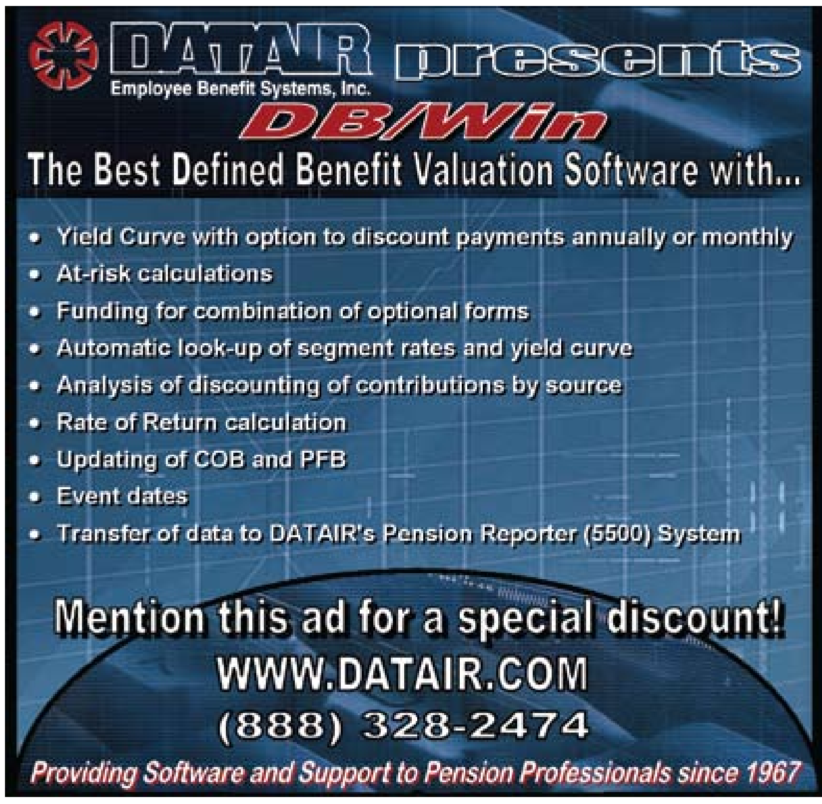
- If the participant makes a rollover conversion contribution from an employer's qualified plan, §403(b) plan or governmental §457(b) plan (from funds other than a designated Roth account) to a Roth IRA (either by way of a direct rollover conversion or 60-day rollover conversion), the Roth IRA owner may elect to recharacterize such amount to a traditional IRA even if the taxpayer was eligible to have converted the amount to a Roth IRA.
- If a spouse beneficiary makes a conversion contribution from an employer's qualified plan, §403(b) plan or governmental §457(b) plan (from funds other than a designated Roth account) to a Roth IRA (either by way of a direct rollover conversion or 60-day rollover conversion), the spouse beneficiary may elect to recharacterize such Roth IRA to a traditional IRA. If the spouse beneficiary elected to treat the Roth IRA as his or her own Roth IRA, the traditional IRA receiving the recharacterization must also be the spouse's own traditional IRA. However, if the spouse beneficiary elected to treat the Roth IRA as an inherited Roth IRA (as permitted in Notice 2008-30), the traditional IRA receiving the recharacterization must also be an inherited traditional IRA.
- If a spouse beneficiary makes a direct rollover or 60-day rollover from a designated Roth account under an employer's §401(k) or §403(b) to a Roth IRA (either as his or her own Roth IRA or as an inherited Roth IRA), such Roth IRA cannot be recharacterized to a traditional IRA.
- If a nonspouse beneficiary makes a direct rollover conversion contribution from an employer's qualified plan, §403(b) plan or governmental §457(b) plan (from funds other than a designated Roth account) to an inherited Roth IRA (which must be done only as a direct rollover), the nonspouse beneficiary may elect a recharacterization from the inherited Roth IRA to an inherited traditional IRA.
- If a participant, spouse beneficiary or nonspouse beneficiary makes a rollover from an employer's plan (from funds other than a designated Roth account) to a traditional IRA, such rollover cannot be recharacterized to a Roth IRA. The only type of contribution made to a traditional IRA that is eligible for recharacterization to a Roth IRA is a regular contribution. However, if a participant or spouse beneficiary makes a rollover from an employer's plan to a traditional IRA, the participant or spouse beneficiary could elect a conversion to a Roth IRA.
- If a nonspouse beneficiary rolls over (direct rollover) from an employer's plan (from funds other than a designated Roth account) to an inherited traditional IRA, such nonspouse beneficiary cannot elect a conversion to an inherited Roth IRA.
- If a nonspouse beneficiary rolls over (direct rollover) from a designated Roth account under an employer's §401(k) or §403(b) plan to an inherited Roth IRA, such inherited Roth IRA cannot be recharacterized to a traditional IRA.



Additional IRS Guidance Issued in 2009

IRS Notice 2009-75 reiterated the tax consequences of rolling over (converting) an eligible rollover distribution from a qualified plan [including a §401(k) plan], a §403(b) plan or a governmental §457(b) plan to a Roth IRA of amounts that are not designated Roth accounts. It also provided an explanation of rolling a designated Roth account under an employer's §401(k) or §403(b) to a Roth IRA.

In the Background section of the Notice, the IRS states ". . . a rollover from an eligible employer plan (other than from a designated Roth account) to a Roth IRA results in the same federal income tax consequences for a participant as a rollover to a [traditional] IRA immediately followed by a conversion to a Roth IRA [except that the special rule at §408(d)(2) for aggregating after-tax amounts would not apply]." This statement equates to requiring a pro-rata calculation when "after-tax" contributions are a part of the employer's plan.

Therefore if the employee has made after-tax employee contributions, the taxable amount of the conversion equals the total amount converted reduced by the after-tax amount. It now appears that the employee cannot isolate just after-tax employee contribution amounts, convert that amount and claim that nothing is taxable.

Thus, if an employee splits the eligible rollover distribution by rolling part of the amount to a traditional IRA and converting the other part to a Roth

IRA, any after-tax employee contribution amounts is pro-rata allocated to each part as if the entire amount were first rolled over to a traditional IRA and then immediately converted to a Roth IRA.

However, if the conversion is made directly from the employer's plan to a Roth IRA, the person's other traditional IRAs are NOT aggregated in determining the taxable conversion amount.

On the other hand, let's assume that the employee first rolls over to a traditional IRA (with or without after-tax employee contributions), and then converts from the traditional IRA to a Roth IRA. The aggregation of all of the person's traditional-type IRAs are included in determining the taxable amount of the conversion.

Rollovers from Designated Roth Accounts

This Notice also describes the tax consequences of rolling over a designated Roth account from an employer's §401(k) or §403(b) to a Roth IRA. In this case, none of the amount rolled over is taxable even if the distribution is not a qualified distribution from the designated Roth account (one that is after a five-year aging period and after the employee is 59 1/2, has died or has become disabled).

Ordering Rules for Distributions from a Roth IRA

If an employee rolls over to a Roth IRA from a designated Roth account under an employer's §401(k) or §403(b), the principal amount is added to the Roth IRA owner's "bucket #1" money (the regular contribution source); the earnings go in "bucket #3" (the earnings source). (On the other hand, in the future when these distributions are "qualified distributions" where the earnings are tax-free and the participant rolls over the designated Roth account to a Roth IRA, the entire amount will be added to the Roth IRA owner's "bucket #1" money.) If an employee directly converts to a Roth IRA from an eligible employer's plan (other than from a designated Roth account), the entire amount is added to the Roth IRA owner's "bucket #2" money (the conversion source).

When there are conversion funds in a Roth IRA and a distribution occurs, there are specific ordering rules for the funds being distributed (instead of pro-rata). Note: All Roth accounts are aggregated for these rules (Roth and non-Roth are not aggregated). The Roth ordering rules are as follows:

- First: Roth IRA contributions (This step also includes rollovers from designated Roth accounts, rollovers of the military death gratuity and SGLI payments, and rollovers from the airline carrier bankruptcy and Exxon Valdez litigation.)
- Second: Converted funds
  - — FIFO: Funds that were taxable
  - — FIFO: Funds not taxable, such as non-deductible IRA
- Third: Earnings

Ordering Rules Example

In 2009, the Roth IRA has a cumulative amount of $15,000 of Roth IRA contributions, excluding earnings. In addition, there is $40,000 of conversion from a non-Roth IRA in 2008. In 2009, the taxpayer (age 35) withdraws $16,000. The first $15,000 is treated as from the regular Roth IRA contributions. $1,000 is treated as from the conversion amount. The $1,000 is subject to the 10% penalty, due to withdrawal being made before five years of conversion.

Susan D. Diehl is president of PenServ, a nationally recognized pension consulting firm in Horsham, PA, dedicated to providing its clients, institutional and retail, with the ability to sponsor retirement plans. Susan is highly respected in Washington, where she served as the 1995 Chairperson on the Department of Labor's ERISA Advisory Council and often testifies before the IRS and DOL on matters relating to retirement plan regulatory issues. She served a two-year term during 2000 and 2001 on the IRS' Information Reporting Program Advisory Committee (IRPAC) as vice chairperson. In 2007, Susan was appointed to a three-year term on the IRS' Advisory Committee on Tax Exempt and Government Entities (ACT), and she served on the Employee Plans Subcommittee. Through the ACT Committee, Susan assisted in the formation of the new IRS 403(b) Liaison Group, which meets periodically with the IRS to assist employers and financial institutions regarding issues specifically dealing with 403(b) plans. Through 2009, she also was a co-author of the SIMPLE, SEP and SARSEP Answer Book*, the* Roth IRA Answer Book*, the* Health Savings Account Answer Book *and the AICPA's* Understanding the Mechanics of Health Savings Accounts. ***(sdiehl@penserv.com)***

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Restoring Confidence in the 401(k)

What Retirement Plan Sponsors Need to Do

by Christine Bradford

The past year's global collapse in financial markets, cutting across asset classes and sectors, took 401(k) investors on a harrowing ride. Nearly all participants have seen their nest eggs seriously diminished, at the very least. In some cases, the loss has been devastating, particularly for those near retirement age whose investment portfolios were heavily weighted toward equities.

While little can undo the short-term damage, barring an unpredictable economic upturn, the focus of plan fiduciaries today is on enabling participants to move forward. Many people are willing, if warily, to stick with their investments. Others, however, may seek to withdraw (and incur stiff tax penalties in the process) or reallocate investments in ways that rein in risk, yet may ultimately jeopardize their long-term objectives.

How, then, can plan fiduciaries begin to rebuild confidence and enable participants to make informed decisions in allocating their retirement savings? The process depends on an honest assessment based on answers to three key questions:

- Are plan participants sufficiently advised and educated to make informed investment decisions?
- Does the plan offer options that participants need in order to adequately diversify and manage risk in their investments?
- Do plan fiduciaries have the ability to carry out their overriding responsibility, which is to provide a wide enough range of options, with prudent oversight?

Diversification and Education

If the first rule of investment is diversification—among asset classes and industry sectors—it is one that is not always well understood by retirement plan participants. In the current downturn, too many have discovered that they are less diversified than they thought or that investments they've used to balance stocks, including presumably

"safe" money market instruments, have proven surprisingly vulnerable to the unraveling of financial markets.

Certainly, in a treacherous market, there have been very few safe havens. But some diversification strategies have helped portfolios soften the blow. A prime example is the balancing of stocks with bonds, which have performed much better in the current environment than have equities.

In 2008 the value of equities dropped 37%, as measured by the S&P 500 Index. While this would have had an adverse impact on any portfolio with exposure to stocks, an allocation to fixed-income assets would have resulted in less of a hit. As the S&P plummeted last year, the Barclay's Capital Aggregate Bond Index rose, managing a 5.5% gain for all of 2008. Thus, had a portfolio maintained an allocation of 60% stocks and 40% bonds, the year's loss, based on these two indices, would have been roughly halved, to 20%.

Another principle of retirement investment is age-appropriate allocation among asset classes offering varying degrees of growth potential and downside risk. Simply put, people of different ages have different objectives and time

horizons and ought to be exposed to levels of risk that make sense for their particular stages of life. Young or middle-aged participants, with a relatively long time horizon, can accept a greater level of risk in return for long-term growth potential. Participants approaching retirement, however, should be focused on preserving capital, which means they should avoid the substantial risks involved in a portfolio heavily weighted to equities. Many plans, of course, have default options that automatically diversify and allocate contributions. Such default options, at this point, ought to be closely considered by plan fiduciaries, with an eye toward using mechanisms that shift allocations as participants age, such as target-date retirement funds.

Plan administrators should make sure that participants are aware of the above principles—that they know the options available, understand the risks of each and grasp the roles various instruments play in a well-designed portfolio strategy. To increase understanding, the plan must offer substantial opportunities for participants to seek education, whether through publications, fact sheets, live investment seminars or Web-based retirement planning tools.

While some plans have the in-house resources to educate plan participants, for others the solution lies in contracting the services of an outside investment advisor. Such professionals can be invaluable in helping participants build the right portfolio—one aimed at achieving sensible objectives based on number of years to retirement and risk tolerance.

Of course, education is less effective if participants lack good options to work with, and best practice demands that the plan be able to offer good choices from a varied list of options. The aim should be a range of options that allows participants to diversify and grow, with component investments closely monitored for performance, value and untoward risk.

Documentation, Choice and Oversight

The imperative to provide wide-ranging options—and to monitor each of those options closely—may get less attention than it should in a bull market, when all boats rise. However, it becomes absolutely critical in a more challenging investment environment. Here, then, are a few best practices that a well-managed plan should consider:

Documentation

Every retirement plan should have a formal investment policy statement (IPS), a document that describes plan policies, procedures and fiduciary responsibilities. The IPS should detail overriding plan objectives, such as enabling participants to maximize returns with prudent and appropriate levels of risk. It should also describe how the plan selects various options, reviews them periodically, terminates them if need be and controls plan administrative and management costs. Once finalized, the governing principles of the IPS should be publicized to all participants, reinforcing the impression that their retirement plan is both well conceived and well governed. In addition, all meetings—including those with investment managers and advisors—should be documented in the form of minutes, thereby demonstrating due diligence and adherence to ERISA and the plan IPS.

Choice

The second hallmark of a well-managed plan is a broad range of investment options with distinct risk/return profiles (the US Department of Labor specifies at least three). A poorly managed plan with an inadequate choice of options would be one in which options are focused almost entirely on equities. Participants then have little room to diversify or to allocate assets in ways most appropriate to their age and length of time to retirement.

Oversight

Finally, disciplined, ongoing oversight of investment options is critical. This means that performance objectives must be established for each investment option, with periodic evaluation via comparison with appropriate peer groups and indices. Beyond performance, fiduciaries must also monitor the underlying holdings of each investment option, including those of funds that might be considered the most conservative. In the past year, many investors have been shocked by degradation of money market funds, long considered among the most conservative and secure of investment vehicles. The problem was that some funds, unknown to investors, had troubling assets among their holdings. These included subprime-related investments, the assets that kicked off the global slide.

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While it is not necessarily a requisite practice to hire an outside investment consultant, living up to fiduciary responsibility demands a great deal of time and expertise.

Diligence and Expertise

Ensuring a high degree of choice and oversight is a huge responsibility, and those so charged must pursue their charge with care, skill and diligence. This means it is essential to ensure that fiduciaries understand and are able to carry out their roles: prudently selecting plan options, monitoring performance and underlying holdings and making decisions based on thorough evaluation of an option's suitability for the plan. While it is not necessarily a requisite practice to hire an outside investment consultant, living up to fiduciary responsibility demands a great deal of time and expertise. For this reason, it may be prudent to engage the assistance of outside advisors who can help review the plan's options, objectively gauge investment performance, monitor options for adverse developments and recommend the addition (or elimination) of options as market conditions and plan demographics change.

In the end, plan sponsors must accept that challenge is a constant in financial markets and that best practices ensure a better outcome in any environment, challenging or benign. While ERISA does not require that plan fiduciaries be able to foresee financial crises, it does require that said fiduciaries take all prudent and necessary steps—to structure the right plans, provide good oversight and give participants the resources and education they need to avoid big losses and ultimately succeed in reaching their retirement objectives. Armed with a sound investment strategy, participants can begin to rebuild confidence in their retirement programs and in their ability to meet long-term objectives.

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Get Ready, Get Set, Go…PAPERLESS!

Getting Ahead of the Curve on the Path to a Paperless Office

by Mike Mason

Transitioning to a paperless plan administration office can seem like a daunting challenge, but the benefits in efficiency, improved customer service, cost savings and contributions to the green environment will far outweigh the challenges.

Third Party Administration (TPA) firms have been contemplating "if" they should transition to a paperless office model for the past 10 to 15 years. In the last three to five years, however, the question has changed from "if" to "when." As paperless technology takes hold in larger plan administration organizations and retail consumers are indoctrinated in the use of paperless technologies in their personal lives from online banking to online bill payments, the jury is getting much closer to a verdict on the paperless revolution.

The ease or difficulty of the transition to a paperless office depends in great part on the amount of advance analysis and preparation that an organization puts into the project. One benefit of advance analysis and preparation is that firms will more often than not find out that they are already much farther along the path to a paperless office than they ever would have originally thought.

Consider the following steps in relation to your own organization's transition:

- Decision Point: Decide to make a decision.
- Sales Effort: How do we coach staff to embrace a paperless office?
- Firm Analysis: Where are we today?
- Technology: Select technology/software to support your paperless office.
- Implementation: Define implementation, training and conversion methodology.

Decision Point: Decide to make a decision.

The ability to make the paperless office decision along with the appropriate commitment to follow the decision through to its successful conclusion can be difficult, but it is absolutely necessary. Additionally, management at all levels should be on board with the decision and management should be strong advocates for the initiative. Starting a project or initiative is often perceived as the hardest part, but once management puts their full support behind the initiative, the path is cleared to take the steps and actions necessary for success.

Sales Effort: How do we coach staff to embrace the paperless office?

Once management has embraced the paperless office initiative, the next step is for management to enthusiastically "sell" the benefits to the rest of the staff. The benefits of the paperless office should be illustrated at all levels. Staff should understand that the firm will benefit directly from the cost savings of a paperless office, the customers will benefit from faster and more efficient customer service and the staff will benefit from having the information they need when they need it to perform their roles in plan administration and client service.

While the unfettered support of management is extremely important to the success of a paperless office initiative, it is equally important to ensure that

In addition to selecting a technology platform, you are also selecting the firm behind the solution.

the rest of the staff has meaningful roles in the process and that they are encouraged to participate and share in the construction and delivery of the project. Solicit feedback and suggestions from the staff along the way to help establish a sense of investment and ownership on the part of every staff member. Publish time-specific milestones and goals, monitor the progress as you go and celebrate the successes with the staff.

Firm Analysis: Where are we today?

Analysis of the firm is critical to the process of determining where the firm is today, where the firm wants to be in the future and the path to get from point A to point B. The firm analysis is broken down into Administration/Operations, Infrastructure/Technology and Current Workflow/Collaboration. The sample questions outlined for each of these three areas should provide a basis and springboard for additional questions within your firm.

Administration/Operations

- How much paper do we still receive and who is sending it?
- Is all of the paper necessary?
- Can we request electronic copy instead of hard copy?
- How do we handle the paper we receive currently?
- What amount of our current work product is already electronic?

In the areas of administration and operations, ask questions like the ones outlined above. You may find that some of the paper is coming from surprising sources that are capable of sending the information electronically. That knowledge might facilitate a simple request of the sender to start sending the information electronically. Moreover, you may find that some of the paper that you have been receiving is not necessary at all. Sometimes you will discover that a practice or procedure is based on nothing more than the age-old adage "…because that is the way we have always done it." Make these evaluations objectively, but never lose sight of the fact that one of the primary drivers for the evaluation is process improvement.

Infrastructure/Technology

- Are our fax machines digital?
- Are our scanning devices up to date?
- Can we capture e-mail to store electronically along with other client data?
- How do we currently share data with plan sponsors?
- Do we use encryption technology or secure portals to share data with clients?
- Are we proficient in the use of Adobe® PDF documents?
- Are we using dual monitors for review purposes as opposed to printing documents for review?
- Is there a provision for staff to work remotely?

Infrastructure/Technology questions are central to assessing the current state of your technological physical plant. If you have a fax machine that only produces paper, but for a minor investment you could have a fax machine that will produce digital outputs in various formats, the decision to upgrade becomes simple. If you have scanners that are the size of large kitchen appliances and scan 1.5 pages per minute in a somewhat grainy quality, perhaps a nominal investment in a newer, faster, more compact scanner would be a wiser path to follow. Can your employees work from remote locations without lugging paper files around? Working remotely may not be a very viable option if your firm is paper-based, but as soon as you digitize all of your workpapers, remote employees suddenly become a very real possibility.

Current Workflow/Collaboration

- Analyze current workflow and collaboration practices for more efficient methods.
- Create a "Paperless Initiative Champions Team" to identify, define and promote best paperless practices.
- Emphasize standardization so that workflow is seamless and transferrable.
- Develop a "Paperless Procedures and Policies" document and publish it for all.

Are any of your current workflow and collaboration processes dictated by the fact that you are still handling physical paper documents? If your answer is "yes," then how might the process of digitizing the information enable you to create more streamlined workflow and collaboration processes? Are your current processes dictated by the various administrators who each perform his or her work in his or her own way? Would standardization of those processes and workflows make it easier to train new hires and make it easier for current staff to fill in behind each other in the event of absences? These are all valid questions which open real possibilities for process improvement in your firm.

Technology: Select technology/software to support your paperless office.

Selection of technology/software solutions for a paperless office can be daunting. One of the first things to remember about the process is that it is a dual process. In addition to selecting a technology platform, you are also selecting the firm behind the

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solution. Ostensibly, the best software application in the world can be rendered useless if you, as the customer, and the software itself are not properly supported by the vendor firm.

The improved efficiency and substantial cost savings of a paperless office will help TPAs to remain competitive for years to come.

Evaluate available technology/software solutions

- Consider the software feature set and design.
- Evaluate the flexibility of the software as it relates to your workflow and processes.
- Determine whether the solution provides open architecture which enables you to continue to use your familiar productivity solutions such as Microsoft® Office, Adobe® Acrobat, etc.
- Ensure that the solution is scalable to meet your current needs as well as anticipated growth.
- Interview current users of the solution who are comparable in size and practice to your own firm.

When evaluating a software solution, it is wise to evaluate the features of the solution as well as the design, but it is also very important to evaluate the solution in the context of how your firm operates. Consider the flexibility of the solution to accommodate the way that your firm operates. Ideally, the software should be capable of "flexing" to the way your firm works versus your firm having to modify the way it works to accommodate the solution.

Another very important consideration in the evaluation process is to determine whether or not the solution is an "open architecture" solution. Simply stated, you want to make sure that office productivity tools you currently use (Microsoft® Excel, Word, Outlook, Adobe® PDF, etc.) are compatible with the solution under consideration. Look at your current book of business and your anticipated growth projections to ensure that the solution is scalable to meet your needs today and into the future.

Finally, seek out peer industry references to discuss the solution. If possible, ask potential vendors for reference firms that are similar in size and practice to your own firm. Contact the references and ask questions about experiences with installation, training and consulting, conversion of their existing book of business, support, etc. There is no substitute for the insight and perspective of peer references who are actually using the solution on a day to day basis.

Evaluate the firms behind the solutions

- Ask targeted due diligence questions.
- How many production based users are there currently?
- Will the vendor provide current references?
- What is the size and stability of the vendor firm?
- What is the size of the vendor's support staff?
- What are the support options of the vendor?
  - Toll-free telephone support
  - Online chat support
  - Online context-sensitive help
  - Current and up-to-date documentation
  - Hours of operation
- What types of training and consulting does the vendor provide?

As important as the evaluation of the software solution is, the evaluation of the company offering the solution is also very important. Due diligence questions regarding the current number of production users, the size and stability of the vendor and whether or not the vendor is willing to provide reference contacts are critical. Questions about the vendor's ability to support the solution are paramount. Find out the various support options, the size of the support staff, the hours of support, and whether or not the user documentation is current and up-to-date.

Implementation: Define implementation, training and conversion methodology

Once you have selected your solution, the next steps are to clear the way for implementation and training. After implementation and training, you will be ready to convert your existing book of business to your chosen solution.

- Ensure that your firm infrastructure is prepared for the solution implementation.
- Determine and publish a schedule for system implementation with milestones.
- Choose between an historical versus date-forward conversion.
- Determine and publish a schedule for converting your existing book of business.

Make sure to investigate the system requirements for your chosen solution and ensure that any additional components required for the implementation are ready and available prior to the implementation date. Establish and publish an implementation and training schedule and monitor it closely. Implementations that exceed their deadlines can be detrimental to the confidence of the team (users); therefore, you should be vigilant about deadlines so as not to shake the confidence of the team who will be responsible for using the solution.

Conversion of your existing book of business is an issue that requires some significant decision making up-front. The first question is whether you will convert all prior data for your existing plans

(an "historical" conversion) or, instead, select a "date-forward" conversion approach, wherein you select a conversion date and you convert new data only for the plans on a date-forward basis starting on the conversion date. There are relative merits and challenges to both methods.

The historical conversion approach provides the most obvious advantage of including and capturing all historical data in the new paperless environment. This would mean that all data for a plan, including prior years, would be located in one electronic repository. Some of the challenges of this approach are the time, labor and expense of converting the historical data. One argument posed against the historical conversion approach suggests that the cost/benefit equation does not justify the work involved. The argument suggests that the prior data is accessed far less frequently than current data and as the data ages out of retention, the investment in converting the data is diminished.

The date-forward conversion approach entails establishing a conversion date on which all new plan administration data will be processed in the new paperless environment. The obvious advantage to this approach is that the firm can avoid the time, effort and expense of converting historical data. One disadvantage to the approach is that historical data will be held and have to be accessed separately.

Conclusion

It's time to get started! TPAs are doubly challenged currently with the general economy that everyone is experiencing, in addition to the consolidation in the TPA industry that has been occurring during the past several years. The consolidation in the industry has placed downward pressure on pricing; therefore, TPAs need to avail themselves of products, processes and initiatives that will allow them to do more work with the same amount of resources to remain competitive. The improved efficiency and substantial cost savings of a paperless office will help TPAs to remain competitive for years to come.

As stated earlier, many times the hardest part of a project or initiative is starting it. The conversion to a paperless office is no exception, but with the appropriate prior planning, preparation and commitment, it can be accomplished with relative ease. The standard benefits of a paperless office, such as increased efficiency, improved customer service and substantial cost savings, are very compelling and real.

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Fiduciary Adviser Audit Requirements

by Louis S. Harvey

In passing the Pension Protection Act of 2006 (PPA) Congress sought to provide 120 million participants and beneficiaries with quality, cost effective and unbiased investment advice for their defined contribution [401(k)] and IRA investments. The quality, cost effectiveness and lack of bias are accomplished through an annual audit.

As it stands today, the Department of Labor (DOL) estimates that 3 million participants and 13 million IRA investors need advice and are left to fend for themselves or to use intimidating computer systems to make their investment decisions. The social objective of broad availability of quality investment advice runs counter to the goals of the advisers who seek to serve the less than one million top of the pyramid clients. Recognizing this disparity in goals, Congress included fiduciary relief as an incentive to professionals to serve clients with smaller balances.

The Law & Regulations

Congress' goal of making quality, cost effective and unbiased investment advice is addressed by the addition of Section 408(g) to ERISA. On February 26, 2010 the DOL proposed regulations in specific areas of 408(g) to expand this goal to include providers with a conflict of interest and those serving IRA accounts. This article reflects the newly proposed regulations planned to take effect later in 2010.

In 2007, the DOL issued a Field Assistance Bulletin (FAB 2007-01) that provided guidance for one segment of advisers—the unconflicted, level fee fiduciary adviser protections. The regulations for advisers with a conflict of interest and for IRAs remain open because the proposals for these, developed under the Bush administration, were cancelled by the current administration.

Proposed regulations permit level fee adviser arrangements (typically RIAs) as defined in ERISA 408(g) and FAB 2007-01. These level fee advisers need not wait for final regulations and can move forward to take advantage of the fiduciary protection and expand their business model. The larger universe of conflicted advice, which includes mutual fund companies and registered reps, will be required to use an independently certified computer model.

The enforcement of the fiduciary adviser statutes and regulations has been minimal since their enactment. The author is aware of no enforcement with respect to IRAs and only one case where the DOL has challenged a level fee fiduciary adviser. The matter was easily settled with an explanation to a DOL field office. This posture is likely to change in 2010, as the DOL has budgeted to add approximately 75 new staff to its enforcement unit in this area and the IRS has appointed leadership in this area.

Type of Audit	Goal	Performed By
Financial Audit	Report financial condition to stakeholders consistent with accounting standards.	CPA firms
401(k) Audit	Protect participants' assets from misuse by fiduciaries.	CPA firms with 401(k) expertise
Securities Audit	Achieve compliance with securities laws and regulations.	Broker/Dealers
Regulatory Audit	Deter and detect violations of securities, tax and labor laws.	FINRA, SEC, IRS, DOL
408(g) Audit	Provide quality, cost effective and unbiased investment advice to participants and beneficiaries.	Independent auditor with appropriate technical training or experience and proficiency

Audit versus Audit

Quoting from the statute:

> "The requirements of [Section 408(g)] are met if an independent auditor, who has appropriate technical training or experience and proficiency and so represents in writing—
>
> (A) Conducts an annual audit of the arrangement for compliance with the requirements of this subsection, and
>
> (B) Following completion of the annual audit, issues a written report to the fiduciary who authorized use of the arrangement…"

The use of the term "audit" as the mechanism to achieve quality, cost effective and unbiased investment advice has created confusion in the marketplace since the term is easily confused with other "audits" that have very different objectives.

Examples of these audits and goals are given in the table above.

Who Must Be Audited

ERISA Section 408(g) permits a variety of advisers to qualify to advise participants. These include RIA firms and representatives, bank trust officers and insurance agents. While ERISA does allow broker/dealers and registered reps, these are prevented from providing advice by the limitations of the broker/dealer exemption in the Investment Advisers Act of 1940.

The PPA calls for all fiduciaries who provide advice to ERISA and IRA participants and beneficiaries to undergo an annual 408(g) audit and the DOL has provided guidance only for advisers who are unconflicted (level fee advisers). As mentioned earlier, guidance for conflicted advisers and IRAs is still pending. In the absence of these regulations, investment advice by conflicted advisers and to IRAs remains prohibited, thus 408(g) audits are not yet applicable for those with a potential conflict of interest.

Guidance for unconflicted advisers was provided in FAB 2007-01, in which the DOL excluded previously permitted advisers from the 408(g) audit requirement. This exclusion applies to:

- *Advisory Opinion Nos. 97-15A and 2005-10A.* The DOL explained that an adviser could provide investment advice with respect to investment funds that pay it or an affiliate additional fees without engaging in a prohibited transaction if those fees are offset against fees that the plan otherwise is obligated to pay.
- *Advisory Opinion 2001-09A (SunAmerica).* The DOL concluded that investment advice is permitted where the investment funds pay additional fees to the adviser but the advice is the result of methodologies developed, maintained and overseen by a party independent of the adviser.

All advisers serving participants and beneficiaries of ERISA plans, except as noted above, are subject to annual 408(g) audits. Forthcoming regulations are expected to expand the categories of advisers that will require 408(g) audits.

408(g) Audit Requirements

ERISA Section 408(g) defines requirements for compliance to include:

- Investment advice is provided under an eligible investment advice arrangement.
- Fees (including any commission or other compensation) received by the adviser for investment advice or for the sale, holding or acquisition of any security or other property in the plan may not vary on the basis of any investment option selected.
- The eligible investment advice arrangement is expressly authorization by separate fiduciary.
- Certain specified disclosures are made.
- All disclosures must be made in accordance with securities laws.
- Recipient of advice must direct investments.

A crucial step in preparing for the first 408(g) audit is a pre-audit that goes through the paces of the formal audit but the results are not available to the public.

- Compensation must be reasonable.
- Terms must be at least as favorable to the plan as an arm's length transaction.
- Disclosures must be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant.
- Evidence of compliance must be maintained for at least six years.

The DOL has explained in FAB 2007-01 that 408(g) audits are expected to assess compliance with Section 408(g) of ERISA as well as existing regulations, including:

- Prudent selection and periodic monitoring of the advisory program;
- An objective process that is designed to elicit information necessary to assess the provider's qualifications, quality of services offered and reasonableness of fees charged for the service;
- Avoidance of self dealing, conflicts of interest or other improper influence;
- Taking into account the experience and qualifications of the investment adviser, including the adviser's registration in accordance with applicable federal and/or state securities law, the willingness of the adviser to assume fiduciary status and responsibility under ERISA with respect to the advice provided to participants, and the extent to which advice to be furnished to participants and beneficiaries will be based upon generally accepted investment theories;
- Periodic review of any changes in the information used in the selection of the adviser, including whether the adviser continues to meet applicable federal and state securities law requirements, and whether the advice being furnished to participants and beneficiaries was based upon generally accepted investment theories; and
- Taking into account whether the investment advice provider is complying with the contractual provisions of the engagement; utilization of the investment advice services by the participants in relation to the cost of the services to the plan; and participant comments and complaints about the quality of the furnished advice.

Preparing for 408(g) Audits

Preparation for the 408(g) audit begins with the selection of an auditor and understanding the audit process. In selecting the auditor, it is important to establish the expertise in ERISA, financial planning, in the securities laws and specifically in meeting the requirements of Section 408(g).

There are a myriad of ways for advisers to comply with Section 408(g) and the auditor should not put rigid and undue restrictions on an adviser's flexibility. It is also important for the auditor to understand and conduct the audit in a way that is consistent with the goals of Section 408(g).

A crucial step in preparing for the first 408(g) audit is a pre-audit that goes through the paces of the formal audit but the results are not available to the public. The pre-audit identifies deficiencies that can be corrected before the formal audit is conducted. In this way, adjustments can be made to practices, agreements, etc., before it is necessary to make the findings public.

Before either the pre-audit or required formal audit is conducted, it is important to notify plan sponsor and participant clients that they will be contacted as part of the process. This notification can be presented as a very positive step that helps the adviser to continually improve and better meet their needs.

Required Documents

The adviser is expected to provide the auditor with a number of documents. Having these documents in good order will shorten and simplify the audit process. These documents are:

- Annual audit disclosure form, providing the framework for the audit;
- Documentation of procedures and systems in use;
- Compensation statements and agreements;
- Certification that adviser is in compliance with FINRA;
- List of participants served during the year being audited;
- Samples of disclosures/notifications used for participants;
- Samples of participant questionnaires and investment recommendations; and
- Other documents or communication used in the advice delivery to participants.

Audit Process

A prudent audit process includes the following steps that test compliance with all ERISA and DOL requirements with a minimum inconvenience to the adviser, plan sponsor and participant. These nine recommended steps are:

- Adviser prepares an annual audit disclosure describing the practice and any changes since the last audit. This disclosure provides affirmative answers regarding possible changes that may have occurred since the previous year's audits;
- Auditor analyzes complaints received from plan participants and other employees by plan sponsors or other entities;

- Review of compensation agreements for compliance with the level fee requirement. Each variant of any standard agreements as well as non-standard agreements are examined;
- Test sample of signers of eligible investment advice arrangements to verify fiduciary status. Plan sponsors and other primary fiduciaries are asked to confirm their fiduciary status, the engagement of the adviser and the quality of services provided;
- Test sample of participants to determine receipt of disclosures and services received. Participants served by the adviser are polled to determine if the standard is maintained;
- Evaluate notification/disclosure to determine compliance. Required notifications/disclosures are reviewed for content and understandability by typical participants;
- Compare results to peer group. Compensation for services provided are compared to establish reasonableness as required by the statute;
- Examine terms of eligible investment advice arrangement. Eligibility is defined by specific conditions in regulations and the PPA; and
- Random request for delivery of copy of various documents. These requests confirm that disclosed practices are in fact being used.

Audit Results

The results of the audit process are put into a preliminary audit report and management letter that is reviewed by the adviser. Adviser feedback is taken into consideration in preparing the final documents. The final audit report must then be delivered to all plan sponsor clients using the adviser's participant services.

Advisers are encouraged to contact plan sponsor clients at the time of the audit report delivery to answer questions and explain any deficiencies that may be reported.

*Louis S. Harvey is the architect of Dalbar's 408(g) audit services. Dalbar's audit practices and technology may be licensed by firms interested in performing 408(g) audits, after the appropriate training and certification. Louis has also built the system for validating qualified default investment alternatives (QDIAs) that attests to compliance of funds, computer models and managed accounts with regulations. (**lharvey@dalbar.com**)*

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Back-to-Basics: Average Deferral Percentage Test

by William C. Grossman, QPA

Congress has devised several nondiscrimination tests in order to prevent qualified retirement plans from overly favoring highly compensated employees (HCEs). Keep in mind that the first test that must always be done is the Code §410(b) coverage test, which is beyond the scope of this article. Once the coverage test is passed or, if not passed, once the necessary steps have been taken to pass coverage, then the average deferral percentage (ADP) test may be performed.

Both the coverage test and the ADP test use mathematical techniques to compare the participation and contribution rates of the HCEs to the non-highly compensated employees (NHCEs) to determine whether the plan is discriminating in favor of the HCEs.

Performing the ADP Test

To perform the ADP test, first determine every employee who is eligible to make an elective deferral. It does not matter if the employee actually made a deferral; it only matters whether the employee was eligible to defer. Upon this determination, the list is divided into HCEs and NHCEs. Starting with the NHCEs, each employee's Actual Deferral Ratio (ADR) is determined by dividing the employee's compensation into the amount the employee deferred into the plan. Employees who are eligible but did not defer are included in this calculation. Once each employee's ADR is determined, the ADRs are averaged to arrive at the NHCEs' ADP. Below is an example to illustrate this process:

NHCE	Compensation	Deferral	ADR
1	$70,000	$ 4,000	5.71%
2	$28,000	$ 0	0%
3	$30,000	$ 800	2.67%
4	$10,000	$ 0	0%
5	$47,000	$ 2,000	4.26%
NHCE ADP Determined	(5.71%+0%+2.67%+0%+4.26%) = 12.64 divided by 5 = 2.53% NHCEs' ADP		

For the HCEs, the same process is used to arrive at the HCEs' ADP. Once both the NHCE

and the HCE ADP figures have been determined, they are compared against each other. The HCEs' ADP may only exceed the NHCEs' ADP by specific limits. The limits may be summarized as follows:

ADP Test Limits	
NHCE's ADP	**Maximum HCE Limit**
0 to 2%	2 times the NHCE ADP
2% to 8%	Add 2 to the NHCE ADP
>8%	1.25 times the NHCE ADP

Using our example in which the NHCEs' ADP is 2.53%, the HCEs' ADP is limited to 2.53% plus 2%—for a maximum HCE limit of 4.53%.

Timing of the Test

Generally, the ADP test must be completed within 2 1/2 months after the end of the plan year. The test must be made using the entire year's compensation and deferrals, and thus cannot be completed before year end. Timely completion of the test will permit the employer to make any refunds required to pass the test without the employer paying an excise tax penalty, which is due

on refunds made after 2 1/2 months. Thus, it is in the interest of the employer and its recordkeepers to complete the test within the 2 1/2 months of year end. (As discussed later, for Eligible Automatic Contribution Arrangements, the 2 1/2 months is extended to 6 months.)

That is the big picture of how the ADP test is done. The Actual Contribution Percentage test (ACP test) is performed in a manner similar to the ADP test except that it is based on matching and employee after-tax contributions.

There are a variety of additional factors to be taken into consideration when designing plans and deciding which testing methods may lead to the most favorable result.

Current Year versus Prior Year Testing

Plan design allows the choice of whether to utilize what is known as the current year and prior year testing methods. The prior year testing method allows the test to be done using the prior year NHCEs' ADP. This test makes it easier for some plans to pass the ADP test because the HCEs already know their maximum ADP level. For example, in a calendar year plan using this method, when determining the maximum ADP of the HCEs for the 2010 year, the ADP of the NHCEs for the 2009 plan year is used. Therefore, if the NHCEs' ADP for 2009 was 3%, then the HCEs' ADP for 2010 could not exceed 5%.

If the current year testing method is used, the HCEs will not know the actual NHCEs' ADP until after the end of the plan year being tested. Although the current year method has less certainty, there are advantages to its use since the prior year method has a tendency to artificially depress the maximum amount that individual HCEs may defer. The prior year test method is based on group averages and ignores individual decisions to defer or to not defer. In addition, the current year method provides more flexible options for the employer in the event the plan were to fail testing, which is addressed later in this article.

A plan may shift from the prior year method to the current year method at any time. However, once the change from the prior year method to the current year method occurs, the plan may generally not return to prior year method testing for five years. [The plan must use the current year testing method for any year in which the plan is a safe harbor 401(k).]

Discretionary Amendments During Plan Year Only

Rev. Proc. 2005-66 and 2007-44 stated that discretionary amendments must be made by the end of the plan year for which they are effective. Thus, to change from prior to current year testing or vice versa, the plan amendment must be made during the plan year for which it is to be effective. Unfortunately, most often, the employer does not know that there is a need to change until the test is being done—after the end of the plan year—when it is too late to make the amendment.

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If the Test Fails, Determine the Amount of Refund via the "Leveling" Correction Method

Determine the excess amount for HCEs by reducing the deferral percentage of the HCE having the highest actual deferral or contribution percentage. The percentage is reduced for such employee until the test is passed or until the adjusted percentage is equal to the rate for the HCE with the next highest percentage. Both HCEs are then reduced together until the test is passed or until the employee with the third highest rate is reached. The process continues in this manner until the average deferral or contribution percentage for the highly compensated group passes the test.

However, the law provides that once the amount of the excess contributions (deferrals that cause the test to fail) or excess aggregate contributions (matching or after-tax voluntary amounts that cause the test to fail) are determined for the HCEs, the amounts to be returned are apportioned among the HCEs in the order of the dollar amounts deferred or contributed. The HCE who deferred the largest dollar amount (or received the largest match or made the largest after-tax contribution) will receive the largest refund. As a result, when all amounts are returned, the percentages may not fall within the permitted ranges. For that reason, the test is not re-run after the excess contributions have been distributed.

PPA Changes

The Pension Protection Act of 2006 (PPA) changed taxation of corrective distributions to the year distributed as of the beginning with plan year 2008 testing. Earnings are taxable in the year the excess and/or excess aggregate contributions are taxable. GAP period income was eliminated on ADP and ACP test failure refunds starting with the testing performed in 2009 for the 2008 plan year. Thus, interest will not have to be calculated for the GAP period (from January 1 to the distribution date) as had been required prior to the final 401(k) regulations. PPA permits plans with eligible automatic contribution arrangements (EACAs), whether safe harbored or not, that cover all eligible participants to return the excess and excess aggregate contributions up to six months after the end of the plan year without the 10% employer penalty. If the EACA does not cover all participants, then the 2 1/2 month refund rule still applies.

Nondiscrimination Rules When Refunding Deferrals

A cash or deferred plan must satisfy both the ADP and ACP tests and, after those tests are performed and any corrective distributions made, must satisfy the nondiscrimination rules under Code §401(a)(4). After all the testing is done, *the HCEs must **not** have a matching percentage larger than the matching percentage for the NHCEs*. This point is illustrated in the following example. (Assume there is just one HCE and one NHCE, and the matching contribution is 25% of deferrals.)

Example

Employee Group	Elective Deferral %	Matching Contribution %
HCE	6.20%	1.55%
NHCE	4.00%	1.00%

In this situation, the plan must first correct the ADP for HCE since the spread exceeds the maximum HCE limit. The correction can be made by distributing .20 of elective deferrals to the HCE. After the elective deferrals are distributed, a discriminatory rate of match results because the HCE has now received a rate of match of 1.55% on 6% instead of 1.5%. Thus, the HCE received a rate of match that is higher than the 25 cents/dollar that the NHCE received. This situation can be corrected by a forfeiture of the excess match.

The problem with this situation is that even though the deferrals have been returned/distributed to the appropriate HCEs, the plan satisfies the ACP test without any corrective distribution of excess aggregate contributions. In this case, the plan must provide for the forfeiture of the excess match (.05%) since there is no basis to distribute the funds (even if the amounts are fully vested). The plan is placed in the anomalous situation of forfeiting seemingly non-forfeitable amounts.

Recharacterization of Refunds

After-tax

Excess amounts consisting of pre-tax elective deferrals not in excess of the Code §402(g) limit may be recharacterized as after-tax employee contributions within 2 1/2 months following the close of the plan year. The plan must allow for after-tax contributions and then must pass the ACP test.

Catch-up

If the plan permits catch-up contributions, and the participant is eligible for a catch-up and has not made a catch-up, the excess must be recharacterized as a catch-up to the extent possible before any excess is returned.

The employer must notify affected individuals of the recharacterization and advise them that such amount is taxable income for the calendar year in which the first elective deferral was made assuming that the first deferrals received are the first to be recharacterized.

Income allocable to recharacterized contributions remains in the plan.

Example

	Elective Deferral			ACP Test	
$	9,000	9%	$	4,500	4.5% (match)
	(1,000)	recharacterize		1,000	
$	8,000	8%	$	5,500	5.5%

Note: Although the $1,000 recharacterized amount will now be subject to the ACP test, it is treated as employee after-tax money, not a matching contribution. It is still subject to the distribution restrictions applicable to deferrals (*e.g.,* it may not be withdrawn on account of a hardship).

Correcting Failed Test by Additional Employer Contributions

The employer may correct a potential ADP test failure by making an additional 401(k) qualified contribution that is allocated only to NHCEs. This Qualified Nonelective Contribution (QNEC) results in an increase in the actual deferral percentage for NHCEs to the point at which the plan passes the test. Such additional contributions may be made at any time prior to the last day of the 12-month period immediately following the applicable plan year.

If the prior year method is used for testing, then the additional contribution for the NHCEs must be during the current testing year. In this case, the contribution is due prior to receipt of actual end-of-year data.

Example
2010 is the testing year for HCEs. 2009 is the prior year for NHCEs. The booster contribution must be made by December 31, 2010. The actual HCE final data and results will not be known until early 2011 (after the contribution is due).

Note: All NHCE participants on the allocation date are entitled to the booster contribution even if they have subsequently terminated.

If the current year method is being used and the plan sponsor switches to the prior year method, booster contributions used to pass the current year test may not be used again in the prior year test, thus preventing the plan sponsor from double counting contributions. Similarly, if additional employer contributions are used to pass the ADP test, the same dollars may not be used again to help pass the ACP test.

Any QNECs utilized for testing purposes must be accounted for separately, be 100% vested and must be subject to in-service withdrawal restrictions prior to age 59 1/2. They may not be withdrawn for hardship reasons.

Targeted QNECs/QMACs Limited by 401(k) and (m) Regulations

QNECs or Qualified Matching Contributions (QMACs) of 5% of compensation or less may be used for ADP or ACP testing with no restrictions. If an employer wishes to make a QNEC or QMAC of more than 5%, the QNEC cannot exceed two times the plan's "representative contribution rate," which is the greater of:

- The lowest applicable contribution rate (greater than 0) of any eligible NHCE among a group of eligible NHCEs that consists of half of all the eligible NHCEs during the year, or
- The lowest applicable contribution rate of any eligible NHCE in the group of all eligible NHCEs for the plan year and who are employed by the employer on the last day of the year.

The applicable contribution rate for an eligible NHCE is the sum of the QMACs taken into account for the plan year plus the QNECs made on his or her behalf for the plan year divided by his or her compensation for the same period.

Example 1
All NHCEs employed on the last day of the plan year receive an 11% QNEC, which would satisfy the new restrictions because all the NHCEs would receive the QNEC. The representative rate is 11%.

Example 2
An employer has 24 NHCEs: 12 do not receive a QNEC, eight receive 7%, and the remaining four receive 14%. Half of the employees receive a QNEC, so the representative contribution rate is the lowest contribution rate in that group or 7%. The 14% QNEC is within the limits of twice the representative rate, so all can be used in testing.

There is a similar rule for the ACP test. A plan's representative contribution rate for ACP testing includes QNECs, QMACs, plus all matching contributions in the ACP test.

Note: There is a limited exception for plan contributions that an employer makes pursuant to prevailing wage laws (*e.g.,* the Davis-Bacon Act). Because they make prevailing wage contributions to certain employees, prevailing wage plans may use QNECs or QMACs of up to 10% in testing without regard to the representative contribution rate limit.

Definition of Compensation

The definition of compensation also impacts the calculation of the ADRs. The following issues need to be considered:

Does the definition of compensation for testing purposes that is selected by the employer include pre-tax contributions? Effectively, is the employer using "gross" or "net" compensation for testing?

This choice may dramatically affect the ADR calculation. For example, if testing with pre-tax contributions included, and a participant defers $5,000 and has compensation of $45,000 (less deferrals), the ADR for this employee will be 11.11% ($5,000 divided by $45,000). If instead the pre-tax dollars are included in compensation, the ADR for this individual would be 10% ($5,000 divided by $50,000).

In the year a participant enters the plan, what is the definition of compensation for the year of entry? Is compensation taken into account for the entire year or is it limited to the time the employee actually participated in the plan? Plan design typically drives this answer. In general, if the compensation calculation period is defined as "plan year while a participant," compensation included will be limited to that received while the individual was actually participating. This choice will have a dramatic effect on the ADR calculation. Assume that compensation is defined as that received while a participant instead of an alternate definition such as the entire plan year or the calendar year ending within the plan year. Further, an employee receives compensation of $60,000 in the entire plan year in the year the employee enters the plan, and this employee enters the plan on July 1. In the first year, compensation taken into account is limited and only a half year's compensation would be included in the ADR calculation. Thus, if this participant deferred $3,000, the ADR would be $10% ($3,000 divided by $30,000). Had the plan substituted compensation received during the entire year, then the ADR would be 5% ($3,000 divided by $60,000). Since very few HCEs enter in the first year, using compensation while a participant will generally improve the testing results.

Who is a Highly Compensated Employee?

Generally, an HCE is an employee who is either a more than 5% owner of the business (also known as a 5% owner) in the year of testing (or the prior year) or someone who makes more than $80,000 in compensation in the prior year, as adjusted annually for cost of living increases (COLA). Currently, the COLA adjusted limit is $110,000. As discussed below, it is further possible to limit the number of HCEs by compensation to the top 20% paid group, which may be a particularly effective tactic in plans maintained by businesses with many highly paid employees, such as law firms and physicians.

Keep in mind that the 5% owner rule also requires careful review of the ownership attribution rules for families and trusts. In effect, certain family members are deemed through their relationship to share in the ownership interests of the 5% owner. The family relationships taken into consideration when determining attribution of ownership include spouse, parent, child and grandchild. An adopted child is also taken into consideration; siblings, grandparents and in-laws are not included. An example of how this works is such that if a husband and wife each work for a firm and the husband is 100% owner of the firm, by the family attribution rules, the wife would also be deemed to own 100% of the business and would thus be an HCE (because she would be a more than 5% owner).

Top 20% Option

Generally, a highly compensated employee is an individual who is, either in the current year or the prior year, a more than 5% owner (either directly or by family attribution) of the business or an employee who received compensation of more than $80,000 as adjusted, in the prior year (*i.e.,* $110,000 in 2009 and 2010). The top 20% plan design option allows the employer to limit the number of HCEs by compensation to the top 20% paid. This selection decreases the number of HCEs and increases the number of NHCEs, which usually will improve the ability of the plan to pass ADP testing. For example, assume that there are 100 employees in a company. There are 30 HCEs (by compensation or ownership) and 70 NHCEs. If using the top 20% rule, the employees would be listed in a descending order from highest compensation to lowest, and the top 20% of the employees by compensation would be classified as HCEs (if they earned more than the adjusted compensation threshold). Thus, the top 20% rule would limit the number of actual HCEs to 20% (20 in our example), decreasing the number of HCEs by ten and increasing the number of NHCEs by ten.

FAQs

In a preliminary ADP test, it was clear that one HCE would have an excess contribution of more than $6,000. May the excess contribution be refunded during the current plan year, or must the plan wait until the actual ADP test is run after the plan year closes?

Treasury regulations state that ADP corrections [Regulations §1.401(k)-2(b)(2)(v)] and ACP corrections [Regulations §1.401(m)-2(b)(2)(v)] must be made after the close of the current plan year. There is an exception for an HCE who is receiving a distribution of his or her entire plan balance during the current plan year.

If an off-calendar-year plan fails to satisfy the ADP test, which catch-up limit is used for the recharacterization of the refund?

The catch-up limit is based on the calendar year in which the plan year ends. For example, if the plan year runs from July 1, 2009, to June 30, 2010, the catch-up limit for 2010 ($5,500) would be used for the recharacterization of the refund.

May a 401(k) plan that utilizes the prior year testing method use a QNEC to correct a failed ADP test?

No. Prior year testing does not permit a QNEC because the 12-month time period during which a QNEC is permitted is past. Here's an example. For a calendar-year plan with prior year testing, the 2009 ADP test is performed in early 2010 using NHCE data from 2008 and HCE data from 2009. If the test fails, a QNEC can only be made within 12 months of the end of the plan year containing the NHCE data. Since the NHCE data in this case is from 2008, the 12-month period has already elapsed. Note that since the only correction for such a failed ADP test is a refund, the test should be completed no later than March 15, 2010. If the refund is not made by that date, the employer is subject to a 10% penalty on the refund amount.

A 401(k) plan with a June 30 year-end date fails the ADP test and refunds excess contributions. To which tax year are the refunded deferrals attributed?

Refunds are taxed in the year of distribution. To avoid the 10% penalty on the excess contributions, the ADP test must be completed and excess contributions (elective deferrals) distributed to HCEs within the 2 1/2-month period after the plan year ends. An EACA that covers all participants provides the employer with six months instead of 2 1/2.

Which test must be performed first, the ADP/ACP test or the coverage test?

The coverage test is always done first, and the plan must pass the coverage test before the ADP/ACP tests may be performed. As a general rule, standardized prototype plans pass coverage testing automatically because only statutory exclusions are permitted. However, nonstandardized prototype plans, volume submitter plans and individually designed plans are required to perform the coverage test before proceeding to ADP/ACP testing.

Note: Only those deemed benefiting under the coverage test are subsequently included in the ADP or ACP test as applicable. Thus, if a match has a last day requirement to be eligible and a participant terminates September 30, the participant will be eligible to make deferrals and must be included in the ADP test, but will not be eligible for the matching contribution and will not be in the ACP test [and will be treated as not benefiting for purposes of the Code §410(b) coverage test].

How Does the Top 20% Option Work?

Example

Assume that a company has 30 eligible employees whose compensation, listed in descending order, is as follows:

Employee	Compensation	HCE	HCE under Top 20% Option
1	$ 255,000	Yes	Yes
2	$ 240,000	Yes	Yes
3	$ 225,000	Yes	Yes
4	$ 215,000	Yes	Yes
5	$ 212,000	Yes	Yes
6	$ 205,000	Yes	Yes
7	$ 203,000	Yes	No
8	$ 201,000	Yes	No
9	$ 195,000	Yes	No
10	$ 191,000	Yes	No
11-30	$ 20,000 to $ 90,000	No	No

Without the top 20% option, all ten employees making more than $110,000 would be considered HCEs. However, if the top 20% election were made, only the top 20% would be considered HCEs; and therefore, in this example, instead of ten HCEs, only the top 20%, or the top six individuals, would be considered HCEs. Four of the HCEs become NHCEs, which may greatly alter testing results. As those with higher incomes generally defer more income, the typical results of this option are an increase in the average deferral percentage of the NHCE group and sometimes also a decrease in the HCE group percentage.

Conclusion

This article has touched on the basics of ADP testing. There are other factors to be considered that are beyond the scope of this article, including coverage, ACP, otherwise excludable employees, permissive aggregation, safe harbor designs, etc. It is essential to know the basics, but it is important to take into account all additional factors when designing plans and performing testing calculations.

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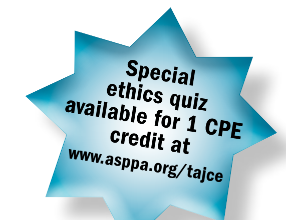
The Ethics of Conflict of Interest



by Lauren Bloom

The past two years have been tough for the financial services industry. In hindsight, the crash of 2008 that triggered a deep recession was not only foreseeable, but probably inevitable. Too many people were looking for ways to beat the market, seeking out ever-more risky investments in the hope of generating ever-increasing returns. Investor expectations for growth became so unreasonable that they were bound to encourage fraud (think Bernie Madoff and his ilk) and the proliferation of chancy investments like subprime mortgages. It was only a matter of time before the whole precarious mess came crashing down.

At this point, investors both large and small are suffering from a profound lack of trust in their professional advisors. Those investors include pension plans, and they have a point. Far too many plan design and funding decisions were made based on unrealistic expectations and, in some cases, imprudently optimistic advice from pension professionals. Despite their expertise, too many pension advisors failed either to anticipate the coming crash or to help their clients avoid its consequences.

It also appears that some pension plans may have been the victims of intentional misconduct on the part of their advisors. Recent claims that public plans across the US have been targets of nationwide "pay-to-play" schemes have called the integrity of public plan advisors into question. If those allegations turn out to be true, the pension community's reputation will be severely damaged and calls for increased regulatory oversight are sure to follow.

If pension professionals want to regain the trust of their clients and retain their independence, they will need to recommit to strong professional ethics. They will also need to be able to demonstrate that commitment to their clients and regulators. ASPPA members can do both by reacquainting themselves with ASPPA's Code of Professional Conduct (and, for actuaries, the Code of Professional Conduct for Actuaries) as well as IRS Circular 230, and then taking steps to ensure that their professional practices fully comply.

ASPPA's Code of Professional Conduct provides comprehensive guidance on ethics in professional pension practice, and all of its requirements are important. In the current climate, however, one ethical issue in particular stands out: conflicts of interest. It will be essential for pension professionals to deal appropriately with such conflicts if they are to maintain credibility and restore their clients' trust.

Conflicts of interest can present a major problem for pension professionals, who often provide a range of services to various parties associated with particular plans. In an ideal world, the interests of the plan sponsor, administrators, fiduciaries, participants and practitioners would be the same; in practice, that is all too often untrue. In some situations it can be difficult for the pension professional even to identify his or her client. Is the client the sponsoring company's management, its Board of Directors, the plan administrator, the participants or the pension professional's firm? And whom has the professional been hired to serve? In many cases, one party—for example, a plan sponsor—may hire a pension professional to provide services

that are intended to benefit someone else, such as the plan's participants. Diverging goals, internal plan politics and conflicting requests for confidentiality from the many parties associated with a plan can put a pension professional in an ethically untenable position unless potential conflicts of interest are carefully considered and successfully resolved.

ASPPA's Code addresses conflicts of interest and provides guidance on how to resolve them. First, an ASPPA member must recognize when an actual or potential conflict of interest exists, not only with respect to the member's principal (*i.e.*, the person or entity with authority to hire and fire the ASPPA member) but also other interested parties. That requires the ASPPA member to think carefully about the implications of an engagement not only for the principal requesting services, but for the member's other clients, other parties with an interest in the plan, the ASPPA member's firm and, in some situations, the federal government.

Section 10.29 of IRS Circular 230 offers clarifying guidance, stating that a conflict of interest exists if:

- The representation of one client will be directly adverse to another client; or
- There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or third person, or by a personal interest of the practitioner.

Circular 230 permits the practitioner to make a professional judgment that a particular assignment will not be *directly* adverse to the interests of another client or create a *significant* risk of conflict. However, such judgments can carry real risk. Conflicts of interest often seem less serious at the beginning of an engagement than they do with the benefit of hindsight, and failure to properly identify and address a conflict can do real harm to a professional's credibility. These days, an ASPPA member is prudent to take potential conflicts of interest very seriously, more so than he or she might have even a year or two ago.

Identifying real or potential conflicts of interest does not necessarily prevent the ASPPA member from accepting the assignment, but it does require him or her to determine whether he or she can act fairly or, in the words of Section 10.29 of IRS Circular 230, "be able to provide competent and diligent service to each affected client." This obligation should not be taken lightly, and the determination should be made before the ASPPA member requests the affected principals' consent to having the member complete the engagement. The ASPPA member needs to think long and hard about whether he or she can be objective in serving his or her principal. Even if he or she is convinced that he or she can act fairly, the ASPPA member is wise to consider whether third parties would agree. An appearance of bias can seriously harm

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Historically, many professional advisors have focused on disclosure as the key to addressing conflicts of interest, but disclosure alone is not enough.

a professional's credibility even if that professional is certain that his or her conduct is entirely appropriate.

The ASPPA member must also consider whether the law permits him or her to provide professional services in a situation where a real or potential conflict of interest exists. Section 10.29 specifically addresses this point, as does the requirement in ASPPA's Code that members comply with applicable law. Some situations (for example, certain contingency fee arrangements) present so great a risk of conflict of interest that the law prohibits a pension professional from entering into them regardless of whether he or she can maintain objectivity or not. The ASPPA member should be sufficiently familiar with applicable law to comply with this requirement, obtaining legal advice as necessary.

If the ASPPA member concludes that he or she can act fairly and in compliance with law, he or she should disclose the conflict to all principals involved and obtain their consent to him or her performing the engagement. Section 10.29 requires practitioners to obtain clients' confirmation of their consent in writing within 30 days, to keep the written confirmation for three years, and to provide the confirmations to the IRS upon request. (Nothing prevents ASPPA members from keeping such confirmations longer, consistent with their firms' document retention policies.) If one or more of the affected principals refuses to consent, the ASPPA member should decline the engagement even if he or she believes that he or she could have provided unbiased advice.

Additionally, ASPPA's Code requires members to disclose to their principals any significant conflict between their principals' interests and those of a third party, and to make appropriate qualifications or disclosures in any related communications. Again, this requirement gives the member discretion to determine that a particular conflict of interest is insignificant enough that there is no need to disclose it, but such determinations require careful thought. In most cases, the member is probably wise to err on the side of caution, disclosing a seemingly minor conflict with a third party's interest to the principal, rather than neglecting to do so only to discover later than the conflict was more significant than it first appeared.

ASPPA's Code also requires members to keep appropriate control over their work product. Members should decline engagements if they have reason to believe that their work would be used to mislead or to violate or evade the law. They should also take appropriate steps to make sure that their work products are clear and presented fairly, with sources of the material clearly identified. These requirements complement the Code's conflict of interest provisions by reducing the risk that the member's work will harm the legitimate interests of third parties, and should be kept in mind as the member addresses conflicts of interest.

Conflicts of interest are not always apparent at the beginning of an engagement. If a conflict of interest emerges during the course of an ASPPA member's work on a particular assignment, the ASPPA member should resolve the conflict consistent with the Code and Circular 230. This is true regardless of when the conflict becomes apparent.

If an ASPPA member is faced with a conflict of interest, he or she may wish to document the analysis he or she conducted to resolve it. Such documentation can be useful if questions arise later about the member's compliance with the Code or Circular 230. Documentation concerning resolution of conflicts of interest should usually be created and maintained consistent with the document retention policy of the member's firm and, if necessary, in consultation with an attorney.

Historically, many professional advisors have focused on disclosure as the key to addressing conflicts of interest, but disclosure alone is not enough. An ASPPA member is much more likely to be successful in dealing with conflicts of interest if he or she complies fully with all aspects of the Code. While rigorous compliance with the Code's conflict of interest requirements may sometimes cause an ASPPA member to make painful decisions in the short-term, it will go a long way toward helping that member maintain professional credibility and strong relationships with clients and regulators.

Lauren Bloom is an attorney who speaks, writes and consults on business ethics and responsible litigation risk management. She is the author of the award-winning book, The Art of the Apology—How to Apologize Effectively to Practically Anyone *and a contributing columnist on* TheStreet.com*. Her consulting firm, Elegant Solutions Consulting, is dedicated to helping professionals incorporate strong ethics into their business practices. (**lauren@businessethicsspeaker.com**)*

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FROM THE PRESIDENT

ASPPA Works to Fulfill Its Mission

by Sheldon H. Smith, APM

ASPPA is pleased to welcome members of the National Tax Sheltered Accounts Association (NTSAA) to the ASPPA fold. These new members (almost 400 of them) who joined ASPPA on January 1, 2010, as a component of the combination of ASPPA and NTSAA, represent that aspect of our industry that works primarily with 403(b) and 457(b) plans. By joining with NTSAA, ASPPA takes another big step in fulfilling its mission to educate retirement plan professionals and to preserve and enhance the employer-sponsored retirement system. By adding a focus on governmental and tax-exempt employer plans, ASPPA adds significantly to its efforts to fulfill this mission.

ASPPA now has in place the finest professional staff that any of us have seen. Our Chiefs and the staffs that they have assembled are comprised of diligent, hard-working, bright and effective people who are devoted to ASPPA and the retirement plan industry. Our entire staff is very member-oriented, and, if you have a question or wish to express an opinion about what goes on at ASPPA, please feel free to contact the folks at ASPPA. A listing of staff members with contact information can be found at **www.asppa.org/contact**. You will be heard. Of course, the staff accepts accolades as well as fielding suggestions and constructive criticism.

If you haven't paid attention carefully, you might not be aware that ASPPA now conducts 15 conferences each year. Three of these are the "large" national conferences, the ASPPA Annual Conference (at the Gaylord National in National Harbor, MD), The ASPPA 401(k) SUMMIT (next year in Las Vegas, NV), and the Western Benefits Conference (this year at the new LA Live in Los Angeles, CA). There are now five regional IRS conferences (Los Angeles, Atlanta, Chicago, New York-Boston and Philadelphia), the DOL Speaks conference (National Harbor, MD), the Women Business Leaders Forum (in San Antonio, TX this year), two ACOPA conferences (in Chicago, IL and Las Vegas, NV this year), two NTSAA conferences (coming up in Chicago, IL and Orlando, FL) and the new ERPA Conference (Chicago, IL). ASPPA offers something for everyone involved in our industry, and you should make every effort to attend at least one of these great events every year, not only to enhance your knowledge, but to meet others engaged in the retirement plan system, to share ideas and to meet government decision-makers. To learn more about the ASPPA conferences, check them out at **www.asppa.org/conferences**.

ASPPA's Board of Directors focuses constantly on making certain that ASPPA is the best professional society for those who work in the employer-based retirement system. The Board has directed the Membership Development Committee to focus on adding more retirement plan auditors to ASPPA membership. This effort will also require that ASPPA develop more educational content for CPAs, and we are committed to that end. ASPPA recently hired an experienced person to be the Senior Director, Business and Membership Development, and we are looking forward to having many new members in all of the disciplines represented by our membership. The Board believes it is important to provide education to as many retirement plan professionals as possible in order to continuously upgrade the level of service provided to plan sponsors and plan participants by all individuals working in this wonderful industry.

ASPPA's Board "meets" monthly for a Web-based conference. This relatively frequent communication allows the Board to address and follow up on matters that are important to the organization and that require direction from your volunteer leadership. As President, I appreciate how devoted the Board is to ASPPA. The Board is strategic in its outlook and comprehensive in creating its agenda. If you believe that there are strategic initiatives that the Board should address, please feel free to contact any Board member and let him or her know your thoughts. All of the Board members are identified at **www.asppa.org/leadership**, and you can locate contact information in the ASPPA yearbook under the Leadership tab on the ASPPA Web site. ASPPA is, first and foremost, a member organization, and we would appreciate hearing from you.

*Sheldon H. Smith is a partner in Holme, Roberts & Owen LLP's Compensation and Benefits Group. Since 1980, Sheldon had been a member of either the adjunct or visiting faculties of the University of Denver College of Law. Sheldon has been a member of the Western Pension & Benefits Conference since 1986 and has served as its president and as president of the Denver Chapter. He is currently President of ASPPA and is a member of its Executive Committee and Board of Directors. Sheldon is also the president of the Colorado Regional Cabinet of Washington University in St. Louis. Sheldon is a fellow of The American College of Employee Benefits Counsel and has been selected to "Chambers USA—America's Leading Lawyers," "The Best Lawyers in America," "Who's Who in American Law," "Who's Who in American Education" and named as a Colorado Super Lawyer. Sheldon is admitted to practice before the Colorado Supreme Court, the United States District Court for the District of Colorado, the United States Tax Court, the Tenth Circuit US Court of Appeals and the Seventh Circuit US Court of Appeals. (**sheldon.smith@hro.com**)*

Nominations Open for ASPPA's Board of Directors

Nomination Deadline – August 18, 2010

For ASPPA to continue to be the effective organization that it is, active participation by all of its credentialed members is essential. One of the ways that you can take action is to understand and participate in the Board of Directors nomination process. It is important that the ASPPA Board of Directors be made up of a broad mix of individuals so that the needs and concerns of all constituencies and stakeholders are effectively represented.

If you know a forward-thinking ASPPA credentialed member (FSPA, MSPA, CPC, QPA, QKA, QPFC, TGPC or APM) with admirable leadership skills, please check to see if he or she would be interested in having his or her name submitted for nomination to the Board of Directors. If he or she is interested, now is the time to begin the nomination process.

The Nominating Committee's Review Process

Many criteria are considered in choosing potential members of the Board of Directors, including the current makeup of the Board and the number of open slots. There are always more nominations than open seats on the Board of Directors, so not everyone nominated will be elected; however, you will know that you have done your part by participating in the process.

The goal of the selection process is to select new Board members such that the Board of Directors in total includes individuals with diverse backgrounds and characteristics that effectively represent the entire organization. It is not simply a choice of who is the "best" candidate, but more often it is a function of what issues the Board is currently dealing with and what individual qualities and experience are needed at the time. When evaluating a nominee, the Nominating Committee considers a number of characteristics, including:

- Ability to meet ASPPA's core values of strategic thinking, responsiveness, courage and dedication;
- Willingness to serve in a leadership capacity;
- Activities within ASPPA, including demonstrating leadership in more than one area;
- Ability to represent the organization as a whole;
- Professional credentials;
- Time available for volunteer activities;
- Geographic location; and
- Current employer and type of firm.

Nominations must be received by ASPPA no later than 60 days prior to the Annual Business Meeting (which is held each year in conjunction with the ASPPA Annual Conference) in order to be considered for the upcoming year. In order for a nominee to be considered for the 2011 ASPPA Board of Directors, nominations must be received by August 18, 2010.

The Selection Process

The Nominating Committee's work begins in the spring and continues into the summer. They review the current Board, noting whose terms are expiring, how many open slots there will be and what characteristics are currently needed. The Nominating Committee keeps nomination forms on file from previous years for candidates who did not become Board members. (The committee, however, appreciates updated information on any candidate who is still interested in serving on the Board. Updated information on previously nominated candidates can be e-mailed to the Board of Directors Liaison, Troy L. Cornett, at **tcornett@asppa.org**.) The committee begins reviewing candidates as nominations are submitted or updated information on prior nominees is provided. Prior to the ASPPA Annual Conference, the Nominating Committee submits a slate of prospective Board members to the Board. This slate is then presented to the ASPPA membership for a vote at the Annual Business Meeting that takes place during the ASPPA Annual Conference.

If you would like to nominate a credentialed ASPPA member to serve a term on ASPPA's Board of Directors, visit **www.asppa.org/boardnom**, complete the nomination form and submit it to the Chair of the Nominating Committee, Immediate Past President, Stephen L. Dobrow, CPC, QPA, QKA, QPFC, and the Board of Directors Liaison, Troy L. Cornett.

ASPPA will send a confirmation when a nomination has been received. If confirmation is not received, please e-mail the Board of Directors Liaison directly at **tcornett@asppa.org**.

ACOPA: Looking Ahead to Year Three

ASPPA's Actuarial Leaders are Nominated and Elected by ACOPA Membership

Mary Ann Rocco, MSPA, COPA

It was almost two years ago—May 19, 2008—that ASPPA and the College of Pension Actuaries (COPA) announced that the organizations had "agreed to collaborate in moving toward the goal of combining their efforts in the pension actuarial profession." Votes by ASPPA's Board of Directors and COPA's membership in September 2008 resulted in the creation of the ASPPA College of Pension Actuaries (ACOPA), a semi-autonomous operating unit within ASPPA.

This type of collaboration was a first for ASPPA, and there have been some procedures to work out, lines of communication to establish, roles to define and to fill. I was President-Elect when the decision was made, and I became President of ACOPA last August. It has been a rewarding adventure.

ACOPA has responsibility for making sure the needs of enrolled actuaries are being met within ASPPA. Our volunteers have been preparing comment letters on proposed regulations, planning conferences and webcasts, representing ACOPA on both inter-societal committees and internal committees and participating in task forces addressing various short and longer-term planning needs. Now we have a major volunteer opportunity coming soon that I encourage all ACOPA members to consider—leadership nominations and elections.

Part of ACOPA being semi-autonomous is choosing leaders to make decisions on behalf of ACOPA's membership. ACOPA's Leadership Council is elected by its membership. The current President-Elect, Annie Voldman, will succeed me as President of ACOPA in August. The new President-Elect, Vice Presidents, Secretary, Budget Officer, and several other members of the Leadership Council, will be nominated by ACOPA membership, and elected by a vote of the membership, in the weeks leading up to the Actuarial Symposium in August. This year, ACOPA's President-Elect (Annie Voldman) joined ASPPA's highest ranking actuary-officer (Tom Finnegan) as ASPPA/ACOPA representatives on the North American Actuarial Council and Council of US Presidents (NAAC and CUSP).

Next year, ACOPA's President and President-Elect will have that honor.

If you are a credentialed actuarial member of ASPPA, you are a member of ACOPA. You are eligible to vote, to nominate and to run for office. I hope that in the next few months, ACOPA members will take the time to think about and participate in the future of ACOPA. Consider if you, or another ACOPA member you respect, should be nominated to a leadership position. Be thinking about who you would like to see representing you in ACOPA leadership, and then talk to him or her about his or her willingness to serve. The election commissioner (another volunteer) will be notifying ACOPA members when nominations open in June. Be ready!

*Mary Ann Rocco, MSPA, COPA, started her actuarial consulting firm in 1987 in Huntington Beach, CA. Her firm provides actuarial services to pension administration firms throughout the country. Mary Ann was elected to the College of Pension Actuaries (COPA) board of directors in 2006 and was primarily responsible for designing and implementing the first COPA Actuarial Conference (now the ACOPA Actuarial Symposium). Mary Ann was serving as President-Elect at the time COPA joined forces with ASPPA and became President of the ASPPA College of Pension Actuaries (ACOPA) in August 2009. (**mrocco@earthlink.net**)*

SAVE THE DATE!

ACOPA Advanced Actuarial Conference

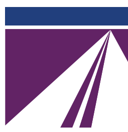
Millennium Knickerbocker Hotel Chicago
Chicago, IL
June 10-11, 2010

www.asppa.org/actuarial

ACOPA Actuarial Symposium

Wynn Las Vegas
Las Vegas, NV
August 13-14, 2010

www.asppa.org/aas



ASPPA® College of Pension Actuaries

The ASPPA Recordkeeper Certification Program

Why this Program is Important to Your Firm

by Laura S. Moskwa, CPC, QPA

In a complex and continually changing retirement industry, independent verification is a necessary mechanism to increase trust with plan sponsors, advisors and retirement plan participants.

The ASPPA Recordkeeper Certification program promotes service provider excellence in the retirement planning industry spanning all areas of recordkeeping, administration and business operation.

Why ASPPA Created the Certification Program

ASPPA's decision to sponsor a certification program for recordkeepers and administrators has many positive implications for the retirement plan market. The program was designed with three primary objectives:

- to promote self-regulation within the recordkeeping and administration industry;
- to offer a means for plan sponsors and other fiduciaries to make informed decisions on recordkeeper and administrator selection; and
- to provide the industry with a viable program in order to avoid federal regulation. The initiative was prompted by the fact that in 2005, the US Securities and Exchange Commission (SEC) considered a proposal to start regulating independent recordkeepers. ASPPA's leadership did an excellent job of helping the industry gain a reprieve from onerous government oversight by developing a quality certification program.

"The ASPPA Recordkeeper Certification program is a major step in our continuing goal to meet the highest standards required by plan sponsors and investment fiduciaries. For the near future, we envision this certification giving us an advantage over the firms that are not able to meet the requirements. However, it won't be long until this certification will become the standard just to be considered a service provider."

—William C. Presson, QPA, QKA, Vice President, Benefit Consultants, LLC, Birmingham, AL

How the Program Works

An ASPPA Certification Task Force developed and continues to maintain the Standards of Practice and the associated practice criteria for the certification program, which form a uniform standard of excellence for firms providing various levels of recordkeeping and/or plan administration services. The certification program is run by the Centre for Fiduciary Excellence (CEFEX) in order to maintain complete independence during the registration process. CEFEX qualified analysts conduct assessments of the service providers and provide a written Consultant's Assessment of Practices (CAP) report to CEFEX, along with a recommendation for certification. As part of the assessment and reporting process, analysts identify areas of general conformity to best practices, opportunities for improvement (OFIs) and areas of nonconformity (NCRs). Certification candidates are given an opportunity to correct any non-conformities prior to submission for review. After review by the CEFEX Registration Committee (CRC), CEFEX awards the ASPPA Recordkeeper Certification to the firms that successfully satisfy the assessment criteria and meet the best practices. Registered certificate holders are entitled to exhibit the ASPPA "Service Provider Excellence" Certification Seal. These certified firms are listed on the ASPPA and CEFEX Web sites. A list of CEFEX qualified analysts can also be found on both sites.

Candidates for this certification are divided into three service classes:

Service Class I	Recordkeeping including investments and administration services
Service Class II	Recordkeeping through multiple alliances and third party administration services
Service Class III	Third party administration services

The overall registration process typically takes four to six weeks, depending on the readiness of the candidate to provide the necessary materials and data. The evaluation process can be defined as four basic steps:

Step One
Data is collected by an independent assessment firm.
Step Two
Onsite visit and interviews are conducted by an independent qualified CEFEX analyst that represents the independent assessment firm.
Step Three
The qualified CEFEX analyst prepares a CAP report of its findings and conclusions for the CRC.
Step Four
The CRC makes the final determination, and if the firm has satisfied the necessary requirements, CEFEX awards the ASPPA Recordkeeper Certificate.

The Best Practices

The ASPPA Certification Task Force identified 17 Best Practices, accompanied by 72 supporting practice criteria. These Best Practices are organized under a four-step Management Process. The process categories are analogous to the global ISO 9000 Quality Management System standard, which emphasizes continuous improvement to a decision-making process:

What Owners of Certified Firms Have to Say About the Program

Now that a significant number of firms have gone through the certification and the annual renewal process, we asked them to identify some of the benefits their firms have experienced by going through the process and actually being awarded the certification.

- **Differentiation**

  A certified firm receives a seal of Service Provider Excellence, which can be used to market and meaningfully differentiate your firm from the competition.

"Our challenge is to hold ourselves out as credible professionals. The ASPPA Recordkeeper Certification process reinvigorates a company. We now have new systems, we boast the certification seal on our Web site, every presentation, our stationary, our business cards and our newsletters. We're not shameless, but we're definitely proud—and our clients get it!"

—G. Patrick Byrnes, MSPA, President, Actuarial Consultants, Inc., Torrance, CA; ASPPA Past President; ACOPA – Leadership Council

- **Quantifies competency**
- **Improved risk management: The program uncovers procedural risks within your organization**

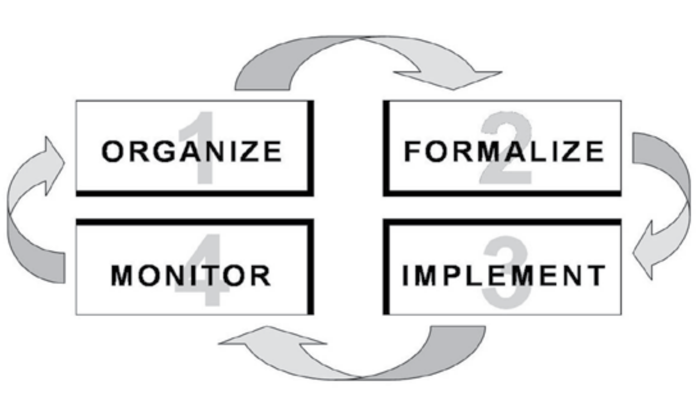
"Ten years ago we obtained a SAS 70 audit for our recordkeeping firm. At the time almost nobody had heard of a SAS 70. Today if a recordkeeping firm does not have a SAS 70, many of the major CPA firms will not do a certified audit for their retirement plan clients with over 100 employees. We see the ASPPA Recordkeeper Certification going that same route pretty quickly with regard to plan administration services. Even though we're a Service Class II firm, we find ourselves in competition with the 'big boys,' thanks to the certification. It's all about transparency, credibility and fiduciary responsibility."

—Kenneth Ingham, MSPA, President/CEO, Ingham Retirement Group, Miami, FL

- **Establishes proof of quality**
- **Improved performance: Certified firms run more efficiently and with increased employee morale**

"We've gotten very positive responses from our clients after we informed them of our ASPPA Recordkeeper Certification. The certification will help us to be a better company since we can benchmark company and employee performance against industry best practices."

— Craig Suemori, CPC, QPA, QKA, President, Suemori & Inouye, Inc., Honolulu, HI



1.	**Organize** Develop and maintain an effective organizational structure
2.	**Formalize** Develop and maintain processes and controls
3.	**Implement** Document the execution of the processes
4.	**Monitor** Continuously evaluate the effect of the processes

- **Differentiates firms on issues that are important to plan sponsors**

"The ASPPA Recordkeeper Certification is a testament to the talent on diverse expertise of our staff. Our goal is to continue our heritage while meeting the demand for both employers and employees."
—John Blossom, MSPA, President & CEO, Alliance Benefit Group of Illinois, Peoria, IL

- **Builds profitability through better acquisition and retention of clients**
- **The investment has a measurable ROI**

"Slavic has won many RFPs lately and we can attribute that success to our ASPPA Recordkeeper Certification. This certification is essential to the retirement plan service platform. The recordkeeping and statement process is central to the confidence of the plan sponsor and participant alike. In this time of economic stress and instability, we must do all we can to win and maintain that confidence. The certification is an excellent way to convey that to the plan and its participants. Further, it is an efficient method to ensure internal compliance and integrity to a firm's protocols and processes."
—John Slavic, President, Slavic Integrated Administration, Inc., Boca Raton, FL

Conclusion

In our current environment of focus and disclosure, the ASPPA Recordkeeper Certification program will drive organizational and procedural excellence that your firm can easily promote to your clients and referral sources. Contact one of the analysts or CEFEX to begin the process today!

• • •

For more information about the ASPPA Recordkeeper Certification and a list of certified firms and qualified CEFEX analysts, visit **www.asppa.org/rkcertification**.

Laura S. Moskwa, CPC, QPA, is the principal of Laura S. Moskwa Consulting, providing services to retirement plan providers primarily focusing on TPA service and product solutions. With more than 25 years in the pension industry, Laura has accumulated a broad range of experience. She worked for Transamerica Retirement Services as vice president and director of TPA services, where she developed and grew the TPA Channel program. Laura also worked at a broker dealer/RIA firm and as a TPA for 18 years. Laura currently sits on the ASPPA Board of Directors and is Co-chair of the Marketing Committee. Laura also sits on the Centre for Fiduciary Excellence (CEFEX) Registration Committee. (laura.moskwa@live.com)

ASPPA Recordkeeper Certified Firms

- 401K ASP, Inc.
- Actuarial Consultants, Inc.
- Alliance Benefit Group of Houston
- Alliance Benefit Group of Illinois
- Alliance Benefit Group of Michigan
- American Pensions, Inc.
- Benefit Consultants, LLC
- Benefit Consulting Group of PR, Inc
- Benefit Plans Plus, LLC
- Creative Plan Designs, Ltd.
- Crowe Horwath, LLP
- DailyAccess Corp.
- ExpertPlan, Inc.
- Ingham & Company, Inc.
- Moran & Associates, Inc./G. Russell Knobel & Associates, Inc.
- Noble-Davis Consulting, Inc.
- Pension Plan Professionals, Inc.
- Pension Solutions, Inc.
- Pinnacle Financial Services, Inc.
- Rogers & Associates
- RSM McGladrey, Inc.
- SLAVIC401K.COM
- Suemori & Inouye, Inc.
- Summit Retirement Plan Services Inc.

Recordkeeping Excellence. Plan Administration Credibility.

Who Cares?

You Should!

In today's complex and uncertain environment, your firm needs a competitive advantage.

That's what the ASPPA Recordkeeper Certification program is all about. We have partnered with the Centre for Fiduciary Excellence (CEFEX) to provide independent verification of your firm's compliance with industry best practices. The result is increased trust, greater operational efficiency and higher profitability.

For more information and a list of certified firms, visit www.asppa.org/rkcertification.

“The ASPPA Recordkeeper Certification is a major step in our continuing goal to meet the highest standards required by plan sponsors and investment fiduciaries. It's what sets us apart as a reputable service provider."

William C. Presson, QPA, QKA
VP, Benefit Consultants, LLC
Birmingham, AL

Profile on DST Retirement Solutions

by Sarah Simoneaux, CPC

DST Retirement Solutions offers a broad array of retirement plan servicing options for financial organizations distributing retirement investment products and serving their customers' retirement needs. For almost two decades, DST Retirement Solutions clients—mutual funds, banks, insurance companies and third party administrators—have benefited from the firm's experience, innovation and commitment to continually invest in technology and deliver excellence in outsourcing services.

DST Retirement Solutions' commitment to excellence prompted a training initiative and relationship with ASPPA that began in 2008, with the formal adoption of ASPPA's Retirement Plan Fundamentals (RPF) program in September of 2008. When asked about the reasons behind the training initiative, Jane Brennan, division vice president and COO, DST Retirement Solutions, explained, "Regardless of economic climate, we are committed to investing in the development of our associates and providing superior service on behalf of our clients. We wanted to raise the bar and provide even more knowledgeable, timely, flexible and responsive service to our clients." After researching several alternatives, DST Retirement Solutions ultimately chose ASPPA's RPF program, and Jane highlighted the main reasons for the choice. "We liked that ASPPA offers an online, self-study program in addition to an exam, which allows us to benchmark our success. We also believe that ASPPA's Retirement Plan Fundamentals Certificate program is a solid, reputable certificate program that carries a lot of weight in our industry."

During 2008 and 2009, DST Retirement Solutions put approximately 120 employees through the RPF program. Upon successful completion of the RPF-1 and RPF-2 exams, these employees were awarded the ASPPA Retirement Plan Fundamentals Certificate. For 2010, DST Retirement Solutions has targeted a group of 25 additional employees to complete the RPF program, primarily consisting of new employees who have not yet gone through the training. This year, the firm will also utilize ASPPA's online RPF webcourses (produced by Indiana University-Purdue University Fort Wayne) in a classroom setting to assist with training.

A Successful Phased Approach

DST Retirement Solutions approached the training initiative in phases, first targeting "client-facing" employees and then extending the initiative to all remaining employees "who touch a plan." Phase 1 training included approximately 75 DST Retirement Solutions associates. These associates held retirement plan account manager (RPAM) positions. The RPAMs interact directly with plan sponsors, TPAs and advisors, and they manage the plan sponsor relationships day-to-day. Phase 1 also included the DST Retirement Solutions compliance team. These employees are responsible for nondiscrimination testing, document design and 5500 reporting. The first group started in September 2008 and completed the training and exams by early December 2008 (approximately three months).

Phase 2 was comprised of 45 associates, including new associates fulfilling either of the above-described roles (RPAMs or compliance staff), as well as plan conversion specialists and all client relationship representatives. This second group began preparing in April 2009 and completed the RPF-1 and RPF-2 courses and exams by July 2009.

The Learning Experience

To maximize effectiveness of the training initiative, DST Retirement Solutions utilized ASPPA's Retirement Plan Fundamentals self-study program materials (online study materials, RPF study guides and practice exams) and supplemented with custom classroom training that the firm developed internally. They held working lunch sessions where topics from chapters of the ASPPA RPF study guides were reviewed and explored in detail. DST Retirement Solutions developed an assessment tool to determine where associates might need additional education

to prepare for the exam. They analyzed the results of these assessments by person and by group, and identified key areas where associates needed additional study for the exam.

Editor's Note: In 2009, ASPPA made available automated pre-assessments to assist firms with this type of individual assessment and candidate feedback prior to taking the exams.

In addition to the firm's organized efforts, some associates formed additional study groups independently, meeting weekly to discuss what they'd read in the online materials. The overall initiative proved to be a very motivating experience for the firm's employees.

The Catalyst for the DST Retirement Solutions Training Initiative

The firm's commitment to excellence was the catalyst. DST Retirement Solutions recognizes how critical the RPAM role is. As Jane points out, "We know that having a strategic relationship with the plan manager is a top requirement of plan sponsors and correlates highly with satisfaction. We also know that a lot of our larger institutional clients participate with the Anova Consulting Group in conducting surveys that gauge plan sponsors' relationships with plan managers."

DST Retirement Solutions' internal learning and development organization enhanced the internal training curriculum for new associates, but the firm wanted to provide added advanced training for the RPAMs and compliance teams. After careful consideration of several different organizations for this advanced training expertise, the decision was made to utilize ASPPA's education programs.

DST Retirement Solutions now requires that all RPAMs and compliance associates attain the ASPPA Retirement Plan Fundamentals Certificate within their first year on the job.

Positioned for the Future

When asked if the training initiative has yielded positive benefits, Jane responds enthusiastically. "Our RPAMs are now positioned to play a much more proactive, consultative role with the plan sponsors with whom they interface. We have implemented several internal changes with regard to the RPAM role, and certainly training and education played a big part in these efforts." Jane also points out that DST Retirement Solutions has seen the Anova survey scores go up significantly, as well as the scores in the annual customer surveys with their institutional clients.

www.asppa.org

"Our RPAMs are now positioned to play a much more proactive, consultative role with the plan sponsors with whom they interface."

"The ASPPA training we undertook represents one of the most far-reaching and strategic training and education that we've done," says Jane. "Although it was a big endeavor, our associates were eager to get going on this and have the ASPPA certification under their belts. They thanked us for that opportunity—for our willingness to invest in their future. Three members of our management team are already affiliated or credentialed ASPPA members."

DST Retirement Solutions is now looking into longer-term involvement with the ASPPA credentialing programs, including the Qualified Plan Financial Consultant (QPFC), the Qualified 401(k) Administrator (QKA) and the Qualified Plan Administrator (QPA) credentialing programs, in order to offer employees an enhanced career path and continued learning.

*Sarah L. Simoneaux, CPC, is president of Simoneaux Consulting Services, Inc., located in Mandeville, LA, a firm offering consulting services to for-profit companies providing retirement services and to non-profit organizations. Sarah also provides consulting through Simoneaux & Stroud Consulting Services, specializing in business planning, business consulting, professional development, industry research and customized skill building workshops. She has worked in the employee benefits industry since 1981. Sarah was formerly vice president of Actuarial Systems Corporation (ASC). Prior to her position at ASC, she was a partner in JWT Associates, a qualified plan consulting firm in Los Angeles, CA. Sarah has volunteered her services in various capacities to assist ASPPA, and she served as the 2005-2006 ASPPA President. She currently works with the ASPPA Education and Examination Committee and she authored a book for the Qualified Plan Financial Consultant credentialing program. Sarah earned her Certified Pension Consultant (CPC) credential from ASPPA in 1988. (**sarah.simoneaux@scs-consultants.com**)*

QKA and QPA Credentials Easier to Obtain with ASPPA Webcourses.

ASPPA has partnered with the Institute for Pension Plan Management at Indiana University-Purdue University Fort Wayne (IPFW) to offer specialized webcourses designed to be a valuable educational resource for industry professionals at all stages of their careers.

REGISTRATION FEES

Online access to each 7 hour webcourse includes access for up to 6 months:

- Individual webcourses (single login) with assessment: **$325**
- Classroom viewing with single login: **$2,500**

Complete Corporate Access with Metrics/Assessment Scores Provided to Purchaser:
Unlimited logins for all courses during a calendar year: **$50,000**

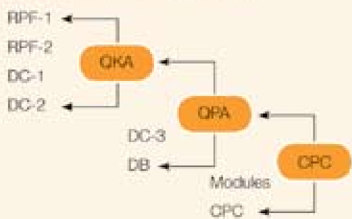
RPF Corporate Access with Metrics/Assessment Scores Provided to Purchaser:
Unlimited logins for RPF-1 and RPF-2 courses during a calendar year: **$25,000**

Additional training tools available for individuals or corporations. For more information, please contact us at education@asppa.org.

AVAILABLE COURSES

- **Retirement Plan Fundamentals: Part I (RPF-1) Webcourse** *Ilene H. Ferenczy, J.D., CPC*
- **Retirement Plan Fundamentals: Part 2 (RPF-2) Webcourse** *Ilene H. Ferenczy, J.D., CPC*
- **Defined Benefit (DB) Webcourse** *Michael L. Bain, ASA, EA, MAAA*
- **Plan Qualification and Compliance Basics (DC-1) Webcourse** *Sarah Simoneaux, CPC*
- **401(k) Plans and Intermediate Administration Topics (DC-2) Webcourse** *Charles J. Klose, FSPA, CPC*
- **Advanced Compliance and Administration Topics (DC-3) Webcourse** *Laura Harrington, CPC, QPA, QKA*

PLAN ADMINISTRATION, COMPLIANCE AND CONSULTING TRACK



CONTINUING PROFESSIONAL EDUCATION (CPE) CREDIT

Participants can earn ASPPA and ERPA continuing professional education (CPE) credit for these webcourses. For a complete listing of topics included in each webcourse and more information, please visit www.asppa.org/webcourse.

Leadership for Retirement Plan Professionals
www.asppa.org

ASPPA and CFFP Form Education Partnership

Financial Advisors for Retirement Plans to Benefit

ASPPA and the College for Financial Planning (CFFP) have joined forces to offer advanced qualified retirement plan education to financial professionals. Beginning in April, CFFP will begin offering live online instructor-led courses to prepare candidates for the advanced exams required to obtain ASPPA's Qualified Plan Financial Consultant (QPFC) credential. To obtain the QPFC, candidates must pass two preliminary non-proctored exams, *Retirement Plan Fundamentals 1 and 2* (RPF-1 and RPF-2) and two advanced exams, *Plan Financial Consulting 1 and 2* (PFC-1 and PFC-2).

Both ASPPA and CFFP view the new partnership as essential to achieving their respective missions of educating and credentialing financial advisors. "Our two organizations complement one another very well," said ASPPA President Sheldon H. Smith, Esq, APM. "ASPPA is the premier credentialing organization for retirement plan professionals and CFFP is the premier educational institution for financial professionals. If you're a financial advisor engaged in the increasingly complex world of qualified plans, this partnership represents a significant opportunity to advance your career."

CFFP is renowned for creating the Certified Financial Planner™ (CFP®) certification. CFFP offers its own professional designations, one of which is the Chartered Retirement Plans Specialist, or CRPS® designation. An additional benefit of the ASPPA/CFFP partnership is that CRPS® designees will automatically receive credit for the RPF-1 and RPF-2 exams for purposes of pursuing the QPFC. (Note: Candidates not eligible for the waiver can take ASPPA webcourses, produced in conjunction with Indiana University – Purdue University Fort Wayne, to prepare for RPF-1 and RPF-2 exams.) CRPS® designees will be encouraged to take QPFC courses through CFFP and then demonstrate their commitment to retirement financial planning at the highest level by earning the QPFC credential with ASPPA," said CFFP President John Sears. "Clients today expect financial services professionals to be experts in their chosen field. Our goal is to help meet those expectations and to be just as successful with education for the QPFC credential as we have been with education for the CFP® certification."

Under the partnership, CFFP will offer *Plan Financial Consulting 1* (PFC-1) online beginning April 19, 2010. The next course, *Plan Financial Consulting 2* (PFC-2), will be offered in the fall. PFC-1 covers retirement plan design concepts and PFC-2 covers the fiduciary and investment aspects of qualified plans. The courses will be taught by Bill Yurkovac, CFP®, a financial services specialist with Arnold, Gentleman & Associates in Naples, FL. Mr. Yurkovac has a master's degree in education and 25 years experience in financial planning.

More information about the ASPPA-College partnership and course descriptions can be found at **www.asppa.org/cffp**.

Up, Up and Away… for ABC of Western Pennsylvania

by Aaron B. Moody

The ASPPA Benefits Council (ABC) of Western Pennsylvania continues to grow and is working hard to support that growth.

We had a very successful 2009 program year, culminating in a wonderful holiday gathering complete with Bob Kaplan, CPC, QPA, National Training Director at ING, who provided a legislative update. Our chapter sought to make use of member and local business resources for programming on creative plan design and investment management as well as quality 5500 completion and sponsor support.

Programming for 2010 will focus on audits, deductions and EFAST. Our chapter continues to work to encourage membership from throughout the local retirement plan community. We are also bridging communication between the ASPPA community and local plan sponsors via events providing access to DOL and IRS plan experts. These fun, interactive sessions have been successful with other ASPPA chapters and we are hoping to learn from their experience.

The ABC board of directors is integrating the ASPPA National Operational Handbook into our local chapter's functioning. The structure of the board, meeting announcements, membership/meeting fee schedule and chapter Web site have all been brought into compliance. Future stability of leadership has been secured with an ABC president-elect and a subsequent ABC president, as well as solid teamwork in all officer and director positions.

For more information about the ASPPA Benefits Council of Western Pennsylvania, please contact Stephanie Hepler, CPC, QPA, QKA, at **shepler@dbzinc.com**.

Aaron B. Moody is the retirement plan specialist with Fragasso Financial Advisors. His practice focuses on providing quality solutions to business owners seeking to improve their qualified and nonqualified plan offerings. Aaron works with a variety of actuaries and third party administrators in the Pittsburgh area. (amoody@fragassoadvisors.com)

The ABC of Western Pennsylvania is led by the following board members:

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Board Member
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GAC Corner

ASPPA Government Affairs Committee Comment Letters and Testimony since October 2009

January 22, 2010
ASPPA and ACOPA submitted comments to PBGC on the proposed rule relating to reportable events and other notice requirements.
www.asppa.org/document-vault/pdfs/ACOPA/2010-Comments/PBGCPropComm.aspx

November 20, 2009
ACOPA submitted comments on JBEA proposed amendments to the regulations relating to performance of actuarial services under ERISA.
www.asppa.org/document-vault/pdfs/ACOPA/asppa-copa-jbea.aspx

October 28, 2009
NAIRPA submitted comments for the record to the Senate Special Committee on Aging's hearing entitled, "Default Nation: Are 401(k) Target Date Funds Missing the Mark?"
www.asppa.org/document-vault/pdfs/gac/aging-testimony.aspx

For all GAC filed comments, visit **www.asppa.org/comments**.
For all GAC testimony, visit **www.asppa.org/testimony**.

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Calendar of Events

ASPPA

Date*	Description	CPE Credits**
May 11 – 12	NTSAA 403(b) Compliance Summit • Chicago, IL	12.4
May 12	Final registration deadline for spring examinations	
May 13 – Jun 25	Spring 2010 examination window (TGPC-2, PFC-1, PFC-2, DC-1, DC-2, DC-3 and DB)	
May 13 – 14	Benefits Conference of the South • Atlanta, GA	15
May 19	Postponement deadline for CPC examination	
May 24 – 25	Mid-Atlantic Benefits Conference • Philadelphia, PA	15
May 26	CPC examination	
Jun 2 – 4	Women Business Leaders Forum • San Antonio, TX	16.2
Jun 10 – 11	ACOPA Advanced Actuarial Conference • Chicago, IL	15
Jun 11	Postponement deadline for spring TGPC-2, PFC-1, PFC-2, DC-1, DC-2, DC-3 and DB examinations	
Jun 15	Registration deadline for 2nd quarter CPC modules testing period	
Jun 16 – 17	Great Lakes Benefits Conference • Chicago, IL	10
Jun 17 – 18	ERPA Conference • Chicago, IL	10
Jun 30	2nd quarter CPC module submission deadline	
Jul 1 – Sep 30	CPC modules 3rd quarter testing period	
Jul 12	Northeast Area Benefits Conference • Boston, MA	8
Jul 13	Northeast Area Benefits Conference • New York, NY	8
Jul 18 – 20	Western Benefits Conference • Los Angeles, CA	17
Aug 13 – 14	ACOPA Actuarial Symposium • Las Vegas, NV	15
Sep 15	Registration deadline for 3rd quarter CPC modules testing period	
Sep 20 – 21	DOL Speaks: The 2010 Employee Benefits Conference • National Harbor, MD	15
Sep 27	Early registration deadline for fall examinations	
Sep 30	3rd quarter CPC module submission deadline	
Oct 1 – Dec 30	CPC modules 4th quarter testing period	
Oct 17 – 20	ASPPA Annual Conference • National Harbor, MD	24

* Please note that when a deadline date falls on a weekend, the official date shall be the first business day following the weekend.
** Please note that listed CPE credit information for conferences is subject to change.

ABC Meetings

April TBD
ABC of Atlanta
Form 5500 Update
Janice M. Wegesin, CPC, QPA

April 27
ABC of Greater Cincinnati
DOL Updates: Including Final Deposit Regs and Fee Disclosure
Speaker TBD

May TBD
ABC of Atlanta
ESOPs for Beginners
Speaker TBD

May 25
ABC of Greater Cincinnati
Topic TBD
Michael F. Kraemer

June TBD
ABC of Atlanta
403(b) Plan Audits
Speaker TBD

June 22
ABC of Greater Cincinnati
EPCRS—How to Correct Operation Errors
John P. Stebbins, QPA, QKA

July 27
ABC of Greater Cincinnati
Topic TBD
S. Derrin Watson, APM

August TBD
ABC of Atlanta
Administrative Issues Associated with Rehires
Robert M. Richter, APM

August 17
ABC of Greater Cincinnati
Current Issues Facing the IRS
Mikio Thomas

September TBD
ABC of Atlanta
Investment Advice and ERISA Section 408(b)(2)
Speaker TBD

AIRE & ERPA

Apr 1 – Jun 30
Renewal Cycle for ERPAs Enrolled in 2009 with SSN Ending in 0, 1, 2 or 3

Jun 17 – 18
ERPA Conference • Chicago, IL

Jul 6
Registration Deadline for ERPA–SEE Summer 2010 Examination Window

Jul 7 – Aug 31
ERPA–SEE Summer 2010 Examination Window

Aug 13
ERPA–SEE Examination Postponement Deadline

Fun-da-Mentals

Sudoku Fun

Every digit from 1 to 9 must appear:

- **In each of the columns,**
- **in each of the rows,**
- **and in each of the nine mini-boxes**

						3	7	
9			5					
7			9		6		4	
		4		1	2			6
			8					
2					3			
		2				6	8	
	9							1
4	8		6		7	2		

Level = Moderate

Answers will be posted at www.asppa.org/taj.

MCHUMOR.com by T. McCracken

Word Scramble

Unscramble these four puzzles—one letter to each space—to reveal four pension-related words.

DATE POD ☐ _ _ _ ☐ ☐ _

A RIOT ☐ _ ☐ ☐ _

LUNAR MICE ☐ ☐ _ _ _ _ ☐ ☐ ☐

BOAT LUCK ☐ _ _ ☐ ☐ _ ☐ _

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

Mystery Answer:

Isn't there an "_ _ _ _ _ - _ _ _ _ _ _ _ _ _ _ _ _ _ _."

Answers will be posted at www.asppa.org/taj.

What the actuary's son asked when his father told him his allowance was being reduced.

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