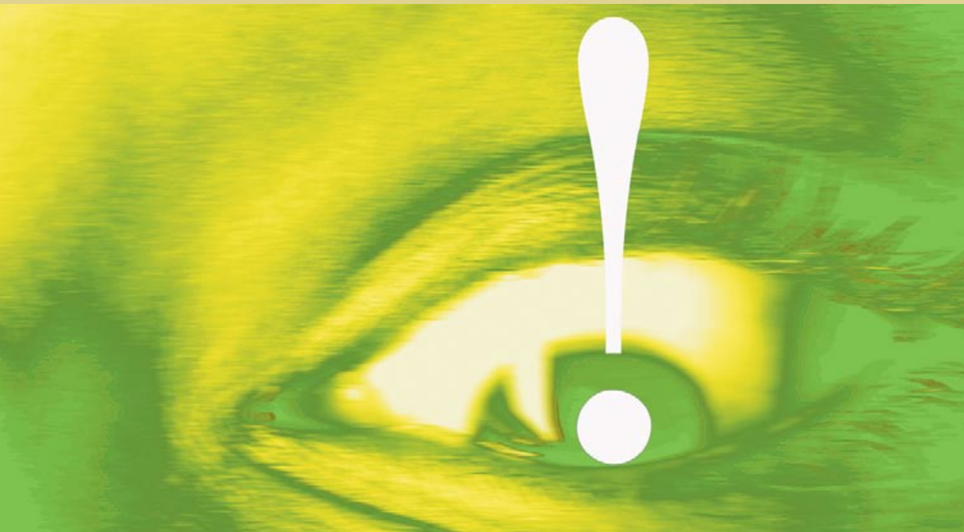
SUMMER 2008 :: VOL 38, NO 3

THE ASPPA Journal

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

FEATURE ISSUE

Impact of the Proposed 408(b)(2) Regulations on TPAs



by Bruce L. Ashton, APM, Debra A. Davis, APM, and C. Frederick Reish, APM

The US Department of Labor (DOL) has issued a proposed regulation under ERISA section 408(b)(2) that would require certain service providers to employee benefit plans, including third party administrators (TPAs), to provide written disclosures to plan fiduciaries before they enter into, renew or extend agreements to provide their services. Putting the proposed regulation in context, ERISA section 406(a) prohibits persons from providing services to plans unless an exemption applies. ERISA section 408(b)(2) provides an exemption if:

1. the services are necessary for the establishment or operation of the plan;
2. the arrangement between the service provider and the plan is reasonable; and
3. the compensation paid to the service provider for the services is reasonable.

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FROM THE EDITOR

What's in a Number?

by Chris L. Stroud, MSPA

We spend our working lives helping people accumulate money for their retirement—hopefully, enough money so that they don't outlive what they have accumulated. Of course, the burning question on everyone's mind these days is, "How much is enough?"

In pursuit of an answer to this nagging question, I recently read *The New York Times* Bestseller, *The Number,* by Lee Eisenberg. A starburst containing a glowing endorsement from *The Detroit News* appears on the front cover, touting "A great book that should be required reading for the 76 million baby boomers in this country. Make that, anyone over the age of 30." I would add that anyone in our industry should read this book and recommend it to all their clients.

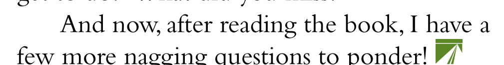
I can't say that I found the exact answer that I was looking for, because there is no way to predict the unpredictable. However, I gained tremendous insight into issues to be considered. This book shares the views of many authorities related to how to calculate the "number"… and much more!

Retirement today looks much different than retirement of the past—including not only how we fund it, but also *how we live it*. With company pensions diminishing and Social Security seemingly less "secure," we have moved from a "paternal" environment to today's world where, as the book points out, we are "captain and crew of our own ship." New concepts like phased retirement and reverse mortgages are here to stay. The book encourages you to think of life as a teeter-totter, with one side representing your younger years where you accumulate more than you spend, and the other side being your later years where you spend more than you accumulate. Yes, it's a delicate balancing act to keep the second side from slamming to the ground because you are out of money! The "number" must take into account a whole host of risks—some you control (Do you floss? Wear sunscreen?), some you don't (your genetics; accidents)—and some you "sort of" control (like how healthfully you live). Retirement can sometimes be about trade-offs. If your "number" can't support the lifestyle you had envisioned, then maybe you need to change your values and revise your expectations—which leads us to the issue of "how we live it."

I found the most thought-provoking parts of the book were those that delved into the true meaning of retirement and the related emotional issues for which we need to be prepared. Although many of these issues are directly related to the "number," they are typically not taken into account in our calculations. Some suggestions in the book purported that the time has come for a more total "life planning consultant" to help lead us through the financial *and the emotional* sides of retirement.

What are the most pressing emotional issues we face related to retirement? Outliving our money, market and economy volatility, "boomerang" kids coming back home and stressing our finances, healthcare costs, uncertainty of health, fear of boredom, having enough hobbies, finding a passion, where to put roots down, friendship and camaraderie—and leaving a footprint. Yes, that last one is a whopper! The book detailed George Kinder's theory of "the seven stages leading up to full money maturity… that end in gaining the assets that you need—the 'Number'—to achieve the life you really want." Kinder's stages are "Innocence, Pain, Knowledge, Understanding, Vigor, Vision and Aloha." These stages aren't necessarily sequential, and in fact, they often overlap—and you may not experience all of them. Vision and Aloha speak to that "footprint"—they are about "giving back." Kinder's approach to "life planning" is to ask three questions—questions you likely have already heard. But have you really thought about how you would answer? (1) If you had all the money you needed, what would you do? (2) If you just found out that you had a rare illness—you'll feel great but you only have five to ten years to live—what would you do? (3) If you had only 24 hours to live, what did you not get to do? What did you miss?

And now, after reading the book, I have a few more nagging questions to ponder!



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SPECIAL FEATURE

The proposed regulation interprets the "reasonable arrangement" requirement. Service providers that are covered by the proposed regulation will need to comply with its provisions, once finalized, in order to be paid for the services they provide to plans.

This article focuses on the likely impact of the proposed regulation on TPAs. It does not address recordkeeping or producing TPAs or TPAs that are affiliated with brokers, unless specifically mentioned. This article focuses on 401(k) plans, although all types of ERISA pension and welfare benefit plans, including ERISA covered private sector 403(b) plans, will be impacted similarly.

Overview

General Implications of Proposed Regulation

The proposed regulation defines the requirement in ERISA section 408(b)(2) that arrangements with service providers must be "reasonable" in order to avoid being prohibited transactions. In general, the proposed regulation, once finalized, would require TPAs to have written contracts that obligate them to make the written disclosures—before the decision to hire the TPA is made by the fiduciary—related to the services provided, all direct and indirect compensation and any potential conflicts of interest they may have. Compensation is defined very broadly for this purpose and includes all "money or any other thing of monetary value (for example, gifts, awards and trips) received, or to be received, directly from the plan or plan sponsor or indirectly…by the service provider or its affiliate in connection with the services to be provided…" Furthermore, service providers must comply with the terms of the contract in order to rely on the exemption under 408(b)(2).

Impact: TPAs who receive indirect compensation or do not currently have written contracts will need to make significant changes in order to comply with the proposed regulation. Indirect compensation is defined as amounts received from persons other than the plan or the plan sponsor as a result of the service provided to the plan. For example, indirect compensation would include payments from mutual fund complexes and insurance companies to the TPAs they work with. On the other hand, TPAs who receive only direct compensation and already have written agreements will be impacted in a more limited way. In any event, all TPAs will need to have their agreements reviewed to make sure they comply.

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The proposed regulation provides that it will be effective 60 days after the final version of the regulation is published. However, based on discussions with DOL officials, the regulation will likely be effective as of January 1, 2009, for new clients. It appears as though there will be a transition period for existing clients.

Strict Liability for Prohibited Transactions

A person providing services to a plan is presumed to have engaged in a prohibited transaction under ERISA section 406(a) unless he or she can prove that there was an exemption for the transaction (*e.g.*, the services and the compensation for those services). Thus, the burden will be on the service provider to show that it complied with the final regulation.

The failure to fulfill the written agreement and disclosure obligations in the regulation will cause the service provider's engagement to be a prohibited transaction. Consequently, the service provider will have to restore to the plan the "amount involved."

Impact: Although it may vary based on the type of disclosures that were not made, the amount involved will likely be all of the compensation received by the TPA. An excise tax may also be imposed under the Internal Revenue Code. Although it is possible that the DOL may modify the proposed regulation to add a "substantial compliance" or overall "materiality" standard that would change what seems to be a harsh penalty, there has been no indication thus far that the DOL is planning to do so.

Applicability of Proposed Regulation

Covered Service Providers

If adopted as proposed, the regulation will apply to any service provider who:

1. is a fiduciary under ERISA or the Investment Advisers Act of 1940 (the "'40 Act");
2. provides banking, consulting, custodial, insurance, investment advisory, investment management, recordkeeping, securities or other investment brokerage, or third party administration services; or
3. receives indirect compensation and provides accounting, actuarial, appraisal, auditing, legal or valuation services.

The proposed regulation distinguishes between third party administration and consulting services. We anticipate that the use of the term "third party administration" refers to services such as testing, answering questions about plan operations and preparation of Form 5500s, and the term "consulting" refers to services such as plan design, operational improvements and correction of plan defects. These distinctions may not matter, except that compensation needs to be disclosed with respect to each service (that is, with respect to third party administration and consulting services). As a practical matter, most TPAs provide significantly more detail about their services and the direct compensation they receive relative to the services they provide than merely grouping their services into administration and consulting services. As a result, we do not anticipate that TPAs will need

The failure to fulfill the written agreement and disclosure obligations in the regulation will cause the service provider's engagement to be a prohibited transaction.

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To the extent a TPA knows that an affiliate is acting as a fiduciary, the TPA would need to disclose it.

to make significant changes to their engagement agreements to satisfy this requirement.

Impact: Many TPAs will be covered by the proposed regulation both as third party administrators and consultants. We have used the term "TPA" because it is the more traditional term used for these types of services.

Fiduciary Status

The proposed regulation would require a service provider to disclose whether it or an affiliate will provide any services to the plan as a fiduciary as defined under either ERISA §3(21) or the Investment Advisers Act of 1940. The preamble indicates that this disclosure requirement applies to both named and functional fiduciaries.

Impact: Our experience is that most TPAs do not serve as fiduciaries. However, plaintiffs' attorneys may try to characterize TPAs as fiduciaries (as they have previously done). Thus, we recommend that TPAs who are not fiduciaries should affirmatively state that they are not serving as fiduciaries. Although most TPAs avoid fiduciary status, they may be affiliated with other service providers who are fiduciaries. To the extent a TPA knows that an affiliate is acting as a fiduciary, the TPA would need to disclose it. For example, a TPA may be affiliated with a financial adviser or with an RIA who provides investment advice.

Written Contract

The proposed regulation requires covered service providers to have a written contract or arrangement with the fiduciary with the authority to cause the plan to enter into, extend or renew the contract on behalf of a plan (referred to by the DOL as the "responsible plan fiduciary"). The "contract or arrangement" would not have to be signed by either a fiduciary of a plan or the service provider. However, in most cases, it is preferable to have a signed agreement. (Generally, in this article we use "contract" to refer to a written agreement, while we use "arrangement" to refer to an unsigned agreement. For ease of reference, we use the term "contract" instead of the proposed regulation's use of "contract or arrangement" in this article.)

The disclosures required in the written contract must be made *before* the plan fiduciary agrees to hire the service provider or to renew or extend their contract. For contracts with fixed terms, such as those that expire every year, service providers would need to make these disclosures every time they enter into a new contract or renew the existing contract.

Impact: TPAs will need to make sure that they enter into contracts with the responsible plan fiduciary, as well as the plan sponsor. The responsible plan fiduciary is identified as the person or entity who has the authority to make decisions about the hiring of service providers, such as the TPA, on behalf of the plan. Typically, that would either be the company acting as the primary plan fiduciary (that is, as the plan administrator) or, if the company has appointed a committee, it would be the committee (or one of its members). Furthermore, all of the disclosures (of revenues and of conflicts of interest) need to be made to the responsible plan fiduciary. However, TPAs may also want to have the company sign as the employer, because certain fees, such as plan design, cannot be paid by the plan (because they are settlor expenses). Additionally, some plan sponsors prefer to pay for the plan's expenses rather than have the expenses reduce participants' account balances. Even in those circumstances, however, the responsible plan fiduciary will need to receive the disclosures and be a party to the agreement.

Many TPAs already use written agreements and will only need to modify them to comply with the changes imposed by the regulation. Others will need to have contracts drafted to comply with the regulation. In any event, TPAs will need to make sure that all of the necessary disclosures are made in writing before entering into a contract. As a result, most TPAs will want to make the disclosures as part of their proposal to the responsible plan fiduciary and not wait for the preparation and signing of the contract.

Additionally, we recommend that TPAs use contracts that continue indefinitely until terminated by either of the parties so they do not have to provide disclosures every time the contract renews or is extended or they need to enter into a new contract because the prior contract expired.

Services and Compensation

Disclosure of Compensation for Services Provided

The proposed regulation requires both that the contract obligate the service provider to make various disclosures in writing and that the disclosures are in fact made before the contract is entered into, extended and renewed. The disclosures must be made to the "best of the service provider's knowledge."

The service provider must disclose:

- all services to be provided under the contract;
- for each service, the direct and indirect compensation to be received by the service provider and its affiliates;
- the manner of receipt of compensation; and
- the method for calculating and repaying any prepaid compensation if the contract terminates.

The proposed regulation does not specify how the services are to be described. However, in both the preamble and the proposed regulation, the DOL generally uses the term "services" broadly.

The definition of compensation includes both money and "any other thing of monetary value (for example, gifts, awards and trips)." Compensation also includes amounts received directly from the plan or plan sponsor and amounts received indirectly (that is, from a source other than the plan or the plan sponsor). So, for example, indirect compensation would include any payments received by the service provider from other parties related to the plan or calculated with reference to the plan.

Finally, compensation also includes amounts received by any of the service provider's affiliates. The proposed regulation defines affiliates as "any person directly or indirectly (through one or more intermediaries) controlling, controlled by, or under common control with the service provider, or any officer, director, agent, or employee of, or partner with, the service provider."

The DOL indicates in the preamble that the written contract may incorporate other materials by reference. In order to use this option, the other materials must be adequately described and explained. Thus, TPAs who want to use multiple documents to make the disclosures may do so, if the proper explanations are given.

Service providers must disclose how compensation is calculated. For example, this would include whether compensation is a fixed amount, a formula, a percentage based on plan assets, per participant charge, etc. Arguably, an hourly charge or transaction-based fee would be included in a broad definition of a formula. The information about the calculation of fees must be specific enough that the responsible plan fiduciaries can determine whether the fees are reasonable.

Service providers must disclose the manner of receipt of compensation. That is, they must indicate whether the service provider will bill the plan, deduct fees from plan accounts or reflect a charge against the plan's investments. They must also disclose how any prepaid fees will be calculated and refunded if a contract terminates.

Impact: TPAs could probably describe their services as consulting and third party administration services. As a practical matter, most TPAs will want to provide greater detail regarding their services. In fact, we encourage TPAs to describe not only the services they will provide, but also specifically state the services they will not provide so that there is no misunderstanding with the plan fiduciary regarding the services to be performed. For example, TPAs who will not evaluate controlled group issues or perform top heavy testing unless specifically requested to do so should state this in their contracts. We recommend that TPAs list all of the potential services that they may provide so that those additional services are covered by the contract (that is, so that new contracts, and disclosures, are not required as additional services are provided).

Notice of ASPPA's Annual Business Meeting

The ASPPA Annual Business Meeting will be held during the 2008 ASPPA Annual Conference at the Hilton Washington in Washington, DC, on Sunday, October 19, 2008, from 3:00 p.m. to 4:00 p.m.

The Annual Business Meeting will include an address by ASPPA's 2007-2008 President, Sal L. Tripodi, APM, and a look toward the future by ASPPA's incoming President, Stephen L. Dobrow, CPC, QPA, QKA, QPFC.

All ASPPA members are strongly encouraged to attend this important meeting.

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Ability to Affect Compensation

Service providers would also need to disclose whether they and/or their affiliates would be able to affect their compensation without the prior approval of an independent plan fiduciary. The DOL provides as examples "incentive, performance-based, float, or other contingent compensation." If the service provider can affect its compensation without prior approval, it would need to describe that fact and the nature and amount of the compensation.

Impact: A TPA's contract often permits the TPA to change the fees or hours rates periodically, usually by giving written notice of a change in fees to clients. Unless the TPA obtains approval of the change in fees before the change goes into effect, such as by using the process described in the DOL's Aetna Advisory Opinion, this condition would likely be violated. In the Aetna Advisory Opinion (AO 97-16A), a service provider (1) gave advance notice of a change; (2) gave the plan fiduciaries 60 days in which to object to the change; (3) provided in the agreement that, if the fiduciaries did not object, they were deemed to have approved the change; and (4) provided that, if the fiduciaries did object, they could change providers without any penalty and would have an additional reasonable time period to do so. Note that the failure to obtain prior approval for an increase in fees also implicates other prohibited transaction rules for which there is not an exemption.

Potential and Actual Conflicts of Interest

Interests in Transactions

TPAs will need to disclose whether they and/or an affiliate will have any financial or other interest in any transaction to be entered into by the plan in connection with covered services. In the event the TPA has an interest, it would need to provide a written description of the transaction and its participation or interest in the transaction to the responsible plan fiduciary. For example, the preamble provides "if a service provider will be buying (or advising on the purchase of) a parcel of real estate for the plan, and an affiliate of the service provider owns an interest in the real estate, the service provider will have to state that it has an interest in the transaction and describe its affiliate's ownership of the real estate." The preamble then explains that the fiduciary would have the opportunity and the duty to evaluate the conflict when analyzing the service provider's recommendations.

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This requirement appears to be very broad. That is, if a service provider engages in any transaction or co-invests with a plan, it would seem to fall under this item and would need to be disclosed.

Impact: TPAs will need to disclose information about any transactions that could involve a client's plan. However, our experience is that this will not be an issue for most TPAs.

Material Relationships with Other Service Providers

The proposed regulation requires a service provider to disclose whether it and/or an affiliate has any material financial, referral or other relationship or arrangement with a money manager, broker or other service provider to the plan that creates or may create a conflict of interest in performing services for the plan. The disclosure requirement only applies to "material" relationships or arrangements. The preamble provides guidance about when a relationship is material. It states, "If the relationship between the service provider and this third party is one that a reasonable plan fiduciary would consider to be significant in its evaluation of whether an actual or potential conflict of interest exists, then the service provider must disclose the relationship." That is, the concept of "materiality" is based on what might be important to the fiduciaries of a plan, not what is material to the business of the service provider. Given that reasonable minds can disagree, service providers should err on the side of disclosure.

The proposed regulation does not state that the disclosure must specifically describe the relationship as creating potential or actual conflicts of interest. As a result, it appears as though a service provider would not be required to state that the relationship is a conflict of interest. However, the disclosure must be detailed enough that a reasonable fiduciary could identify and evaluate the nature and extent of the conflict.

Impact: TPAs who have material relationships will need to disclose this in writing to the responsible plan fiduciary. For example, a broker may refer material amounts of work to a TPA. Similarly, a relationship where an insurance company or mutual fund complex makes payments to a TPA based on the cases the TPA administers using their products should be disclosed, with adequate information to enable the responsible plan fiduciary to evaluate the conflict.

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Policies to Address Conflicts

The proposed regulation requires disclosure of whether a service provider and/or an affiliate have any policies or procedures that address actual or potential conflicts of interest. If they have these types of policies or procedures, the contract or related materials must explain them to the responsible plan fiduciaries and describe how they address conflicts of interest or prevent an adverse effect on the plan. As an example, the preamble says that a procedure for offsetting revenue sharing or other indirect payments would need to be disclosed under this provision. Note that service providers are not required to develop any such policies or procedures if they do not already have them.

Impact: Many TPAs have procedures for offsetting their direct charges by all or a portion of the indirect compensation they receive, if any. TPAs who offset their fees in this way may not recognize this as a policy that addresses a conflict of interest and thus may not disclose it as such. That said, if the procedure for offsetting is disclosed in the portion of the TPA's written materials that describes its compensation, we believe this should be sufficient even if it is not identified under this item as such.

Ongoing Requirements

Disclosure of Material Changes

The terms of the contract must require that the service provider will disclose (and the service provider must actually disclose) any material change to the responsible plan fiduciary not later than 30 days from the date on which the service provider acquires knowledge of the material change. The preamble indicates that material means information that a reasonable plan fiduciary would view as "significantly altering the 'total mix' of information made available to the fiduciary, or as significantly affecting [the] fiduciary's decision to hire or retain the service provider."

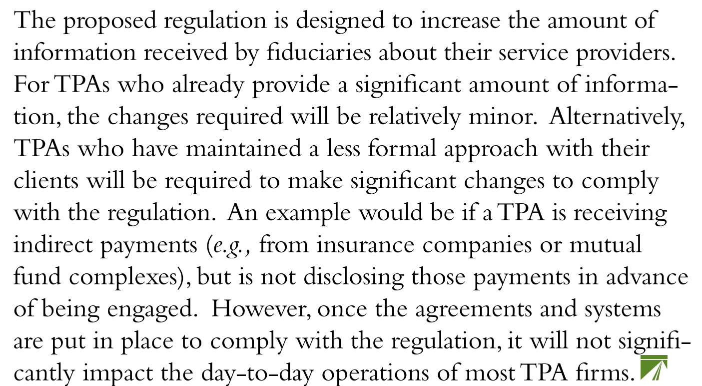
Impact: The short time period for notifying clients of a material change could be problematic. In comments we have made to the DOL on the proposed regulation, we recommended that the time frame be extended to longer than 30 days. For smaller firms, this requirement may also prove to be difficult because it may make a decision to change its services or enter into a new relationship but may not have procedures in place for notifying all clients of the change. This requirement could become a trap for the unwary.

Continued Reporting Assistance

The proposed regulation also requires a service provider to disclose "all information related to the contract and any compensation received thereunder" if it is requested by the responsible plan fiduciary or plan administrator in order to comply with ERISA's reporting and disclosure requirements. This would arise most frequently in the context of reporting information on Schedule C to the Form 5500 for large plans (*i.e.*, as a general rule, plans with 100 or more participants). Apparently, the failure to provide the requested information will cause the relationship to prospectively become a prohibited transaction.

Impact: TPAs may want to establish a procedure to promptly address requests for information. On the other hand, as applied to other service providers, this requirement will likely provide significant assistance to TPAs who need information to prepare the Form 5500 for the plan.

Conclusion



The proposed regulation is designed to increase the amount of information received by fiduciaries about their service providers. For TPAs who already provide a significant amount of information, the changes required will be relatively minor. Alternatively, TPAs who have maintained a less formal approach with their clients will be required to make significant changes to comply with the regulation. An example would be if a TPA is receiving indirect payments (*e.g.*, from insurance companies or mutual fund complexes), but is not disclosing those payments in advance of being engaged. However, once the agreements and systems are put in place to comply with the regulation, it will not significantly impact the day-to-day operations of most TPA firms.

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WASHINGTON UPDATE

Letters—We Send Letters…

by Judy A. Miller, MSPA

2008 has been an especially busy year for ASPPA's Government Affairs Committee's Defined Benefit Subcommittee (DBSC). The IRS ended 2007 with two major sets of proposed PPA regulations—one on hybrid retirement plans and one on funding. The result was two defined benefit comment letters due almost simultaneously (March 27 and March 31, respectively) and just before the first PPA Adjusted Funding Target Attainment Percentage (AFTAP) certifications were due on April 1.

Despite the challenging timing, a core group of volunteers, led by the subcommittee's chair, Thomas J. Finnegan, MSPA, CPC, QPA, got the job done. As with the comment letter on the benefit limitations proposed regulations submitted in November 2007, the comment letters were a joint effort between ASPPA and the College of Pension Actuaries (COPA).

Proposed Hybrid Retirement Plan Regulations

Proposed regulations regarding the hybrid defined benefit pension plans were issued by the IRS and Treasury on December 28, 2007 (REG - 104946-07). ASPPA, in cooperation with COPA, submitted comments on the proposed regulations on March 27, 2008.

Recommendations in the letter included:

- Conversions. The proposed regulations determine the effective date of a conversion on a participant-by-participant basis—not with respect to when the amended terms of the plan apply, but when any transition relief provided by the amendment, usually in the form of a "greater of" benefit, no longer applies. Final regulations should remove the "participant-by-participant" determination of conversion date and provide a more explicit definition of a "pre-June 29, 2005 amendment." Final regulations should also permit an alternate means of satisfying the "A+B" conversion requirements involving establishing an opening account balance, without requiring subsequent comparison to the pre-conversion plan benefit.
- Transition relief for changes in interest crediting rates. Final regulations should not make transition relief available for changing the interest crediting rate from one of the rates in Notice 96-8 to any other permissible rate less generous than relief available for changing the interest crediting rate from an above-market rate to a market rate of return.

- Safe harbor interest crediting rates. The proposed regulations provide that the third segment rate is a safe harbor interest crediting rate. Any of the segment rates, or the highest of the three rates, should be deemed safe harbor rates. The safe harbor should explicitly be available to 417(e) as well as 430(h) segment rates.
- Market rate of return. Final regulations should permit an interest crediting rate equal to the greater of 4% or a safe harbor (non-equity) rate without further adjustment. The IRS also should consider permitting a cumulative floor of a reasonable (such as 4%) fixed rate of return with no adjustment to any otherwise permitted market rate of return.
- Annuity payments and variable interest crediting rates. A number of compliance issues require determination of the annuity payable at retirement, including application of the 133 1/3 percent rule, 401(a)(4) testing and disclosure in the relative value regulations. Final regulations should provide guidance on determining the amount of an annuity payable at retirement age, and the methodology for determining "greater of" benefits, when the interest crediting rate is a variable rate.
- Volume submitter program. Hybrid retirement plans should become eligible for the Volume Submitter program when regulations on hybrid retirement plans are finalized.

In preparing these comments, ASPPA was represented by Jeffrey J. Berends, MSPA; Mark K. Dunbar, MSPA; Charles J. Klose, FSPA, CPC; Mark L. Lofgren, APM; Marjorie R. Martin, MSPA; and George J. Taylor, MSPA. COPA was represented by Larry Deutsch, MSPA, and Kevin J. Donovan, MSPA. Judy Miller represented ASPPA at a hearing on the proposed regulations on June 6, 2008.

Proposed Funding Regulations

Proposed regulations regarding the measurement of assets and liabilities for pension funding purposes under Internal Revenue Code (Code) §430 were issued by the IRS and Treasury on December 31, 2007 (REG -139236-07). On March 31, 2008, ASPPA, in cooperation with COPA, submitted comments on the proposed regulations. Recommendations in the letter included:

Coordination of IRC §§430 and 436

The interplay of the minimum funding and benefit limitation rules needs to be clarified and improved. For example:

- Double-counting of liability for benefit increases enabled by §436 contributions. A sponsor of a plan that is less than 80% funded must pay for the increase in funding target that would result from an amendment for the amendment to take effect. The funding target for the Minimum Required Contribution (MRC) purposes must also reflect the amendment if a §412(d)(2) election is made. Final regulations should include the discounted value of any §436 contribution made as a result of a plan amendment for which a §412(d)(2) election is made in the market value of assets for purposes of §430. Similarly, the discounted value of §436(e) contributions should be included in the market value of assets for purposes of §430.
- Recognition of §436 restrictions for purposes of §430. Under proposed regulations, §436 restrictions are not to be recognized for funding purposes. Some restrictions are fleeting – that is, the restriction will be lifted automatically when funding improves – and should be ignored. However, some restrictions are permanent (absent an amendment to restore restricted accruals). Final regulations should provide that fleeting restrictions are not recognized, and permanent restrictions are recognized for §430 valuation purposes. In addition, final regulations should provide examples of how a restricted amendment applies when a plan's Adjusted Funding Target Attainment Percentage (AFTAP) exceeds 80% several years after the amendment's adoption and effective dates.

§430 Recognition of Mandatory Changes During Transitional Relief Period

Many plan sponsors will not adopt changes to the new segment rates or other PPA requirements (such as changes to the rules for hybrid plans) until the end of the 2009 plan year. A §412(d)(2) election will not be available for 2008 because the amendment would be adopted more than two and a half months after the end of the plan year. Final regulations should align funding interest and mortality rates with the operational rates used by the plan and specifically carve out an exception in §1.430(d)-1(f)(4)(iii)(C) for temporary minimum benefits. PPA changes, other than interest and mortality that can be implemented operationally, should be treated as if adopted within the §412(d)(2) timeframe.

Recognition of Remedial Amendments

Remedial amendments can be adopted years after the effective date of the amendment. Final regulations under §§430 and 436 should confirm that remedial amendments are subject to

§412(d)(2) and illustrate the interplay with §436(c). Remedial and corrective amendments reaching back prior to PPA should not be subject to §436(c) while such amendments for benefit improvements that are subject to §436(c) should be evaluated as of the date adopted.

Insured Plans

Final regulations should clarify, if only by reference to other guidance, how the "value" of an insurance contract is to be determined. Final regulations also should clarify that an insurance contract is not "irrevocable," and thereby eligible for special exceptions, if the plan trustees have the right to surrender the contract for cash.

Safe Harbor for Valuing §417(e) Forms of Payment

Final regulations should provide that the use of the §430(h)(2) rates on the valuation date to value §417(e) benefits is a safe harbor, not a mandate.

Safe Harbor for Projecting Variable Interest Credits

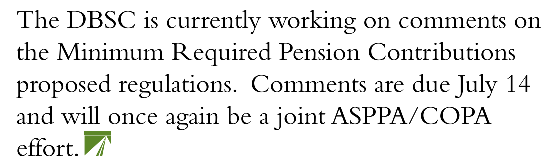
Final regulations should provide "reasonable assumption" safe harbors for future variable interest credits under cash balance and other hybrid plans for §430 purposes. Safe harbors should include the assumed continuation of the most recent annual interest credit rate as well as the plan termination rule (*i.e.,* the average of the five most recent annual rates).

Funding Method Issues

- Automatic approvals for funding method changes. The proposed regulations provide for automatic approval of changes in actuarial funding method which are not inconsistent with §430 in the first year in which §430 applies. Future guidance should provide additional automatic approvals for funding method changes mandated by PPA, mandated by final regulations, mandated by demographic changes and due to a change in actuary.
- Zero funding target AFTAP. Final regulations should provide that in any situation in which the plan's funding target is zero, the plan's Funding Target Attainment Percentage (FTAP) is 100%.
- Changes in method and assumptions. Clear guidance is needed on how to handle changes in method and assumptions during the year. Final regulations should confirm that current year changes to funding method, such as the asset valuation method, do not mandate changes to the prior year determination of the AFTAP; allow the plan's administrator broad reliance on certifications and funding target determinations prepared by an actuary who is replaced by a second actuary who completes Schedule SB; and provide that, for plans not required to file Form 5500, the plan's assumptions and methods will be deemed established nine and a half months after the end of the plan year.

In preparing these comments, ASPPA was represented by Thomas J. Finnegan, MSPA, CPC, QPA; David M. Lipkin, MSPA; Maureen J. DeSensi, QPA; Marjorie R. Martin, MSPA; Karen Nowiejski, MSPA; and Kurt F. Piper, MSPA. COPA was represented by Larry Deutsch, MSPA, and Howard P. Rosenfeld, MSPA. Tom Finnegan represented ASPPA at the hearing on the proposed regulations on May 29, 2008.

More Proposed Funding Regulations



The DBSC is currently working on comments on the Minimum Required Pension Contributions proposed regulations. Comments are due July 14 and will once again be a joint ASPPA/COPA effort.

★ ★ ★

These comment letters, and others issued by the Government Affairs Committee since 1998, can be viewed on ASPPA's Web site at **www.asppa.org/government/gov_comment.htm**.

Judy A. Miller, FSA, MSPA, Chief of Actuarial Issues, joined the ASPPA staff in December 2007. Prior to joining the ASPPA staff, Judy served as senior benefits advisor on the staff of the US Senate Committee on Finance from 2003 to November 2007. Before joining the congressional committee staff, Judy provided consulting and actuarial services to employer-sponsored retirement programs for nearly 30 years. A native of Greensburg, PA, she enjoyed living in Helena, MT from 1975 until she moved to Washington, DC in 2003. Immediately before leaving Montana, she was a shareholder in Anderson ZurMuehlen & Co., providing consulting services through its affiliate, Employee Benefit Resources, LLP (EBR). Prior to joining EBR, she was vice president of Hendrickson, Miller & Associates, Inc. for 15 years. Judy is a fellow of the Society of Actuaries, an MSPA with ASPPA and an Enrolled Actuary. She received her Bachelor's degree in Mathematics from Carnegie Mellon University in Pittsburgh, PA. ***(jmiller@asppa.org)***

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You Wanted EPCRS, We Got EPCRS!

An Interview with Joyce Kahn

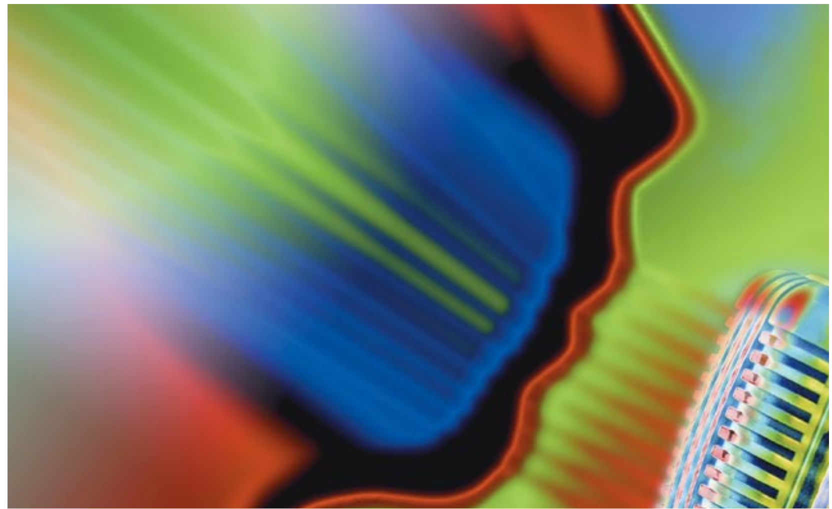
by Benjamin F. Spater, APM

In early April 2008, on an evening before another out-of-town presentation to industry practitioners at ASPPA's Great Lakes Benefits Conference, Joyce Kahn graciously agreed to speak with me over the phone from her hotel room. Joyce answered all of my questions in the spirit of cooperation, to promote compliance in a reasonable manner, that has developed between employee benefits practitioners and the Employee Plans division of the IRS.

Joyce Kahn, of the Internal Revenue Service, is one of the most knowledgeable, experienced and influential individuals working in the area of plan corrections. Joyce joined the IRS in 1987 as a tax law specialist in the Employee Plans (EP) group and became the Manager of the Voluntary Compliance Resolution Program in 1995. In 2000, Joyce was promoted to Manager of EP Voluntary Compliance, the highest supervisory position dedicated to plan corrections.

Ben: What are your responsibilities as Manager of Voluntary Compliance?

Joyce: As the Manager of Voluntary Compliance (VC), I'm responsible for all aspects of the Voluntary Correction Program (VCP) end-to-end. The employees who work in VC report to managers who in turn report to me. That's the Voluntary Compliance, Voluntary Correction Program, but I'm also in charge of the administration of the other programs: the Audit CAP (the Audit Closing Agreement Program) and SCP (the Self-Correction Program), on a national level. That requires coordination with other functions within EP, such as determinations and exams. My role is to ensure that Audit CAP and SCP, as applied in exams, are administered in accordance with the Rev Proc [2006-27]. I'm also responsible for the update and content of the Employee Plans Compliance Resolution System (EPCRS) Rev Proc. I'm not solely responsible for that because we work with employees in Chief Counsel and Treasury, but from EP, that's my responsibility. And then I also play an active role in the development and delivery of products, that is, education and outreach products that enhance the efficiency or the understanding of EPCRS; and there I work with CE&O, our Customer Education and Outreach function.



Ben: What kind of outreach products have you worked on recently?

Joyce: One recent example is the 401(k) Fix-It Guide. It's on our Web site, the Employee Plan's Retirement Plan Web site, and we've gotten a lot of really good feedback on it (**www.irs.gov/pub/irs-tege/401k_mistakes.pdf**). It has 11 failures commonly found in 401(k) plans and talks about how to find the failure, how to fix it and how to avoid it. 401(k) failures are the first ones, but we're working on creating others as well. They're already in process. It's just that the 401(k) was completed first.

Ben: More specifically about the EPCRS program, is it a success?

Joyce: We definitely think it's successful – all aspects of it. Of course, we only hear anecdotally about SCP, but what we hear is that it's used widely and, of course, we see the use of our Voluntary Correction Program and the increased usage of it. I think the entire culture today is much different from what it was before the advent of our correction programs. There's a lot of positive energy out there and people are using our programs to do the right thing – to correct the errors. Once, when I was on a panel, one of my co-panelists, a practitioner, said something that really struck me. He said that, "the IRS had deputized the practitioner community to perform its audits," and I was very much struck by that statement because a whole industry has sprung up of people conducting these employer self-audits. So I think there are a lot of positive things going on. Now having said that, I also should mention that I have heard indirectly that there may be some practitioners or plan sponsors out there who are bringing into VCP their failures that are easy to correct and leaving out the failures that are more difficult to correct or more difficult to find – with either the hope or expectation that if they are later examined, they'll be in a better position. I just wanted to mention that if these actions are happening, we take a very dim view of them. But I think that's really the exception to the rule. All in all, it's been very successful.

Ben: Perhaps as evidence of its success, EPCRS continues to evolve. What changes are in store for EPCRS?

Joyce: We are close to issuing a new Rev Proc, an updated EPCRS, and it should be out in the next month or two. I don't feel comfortable talking about what it contains specifically, but I can talk generally about some of the changes that we're making. We're expanding the scope of the self-correction program in a few ways. We're not adding new correction methods this go-around, but we are expanding some of the correction methods that are currently in the appendices to other situations. For example, in the new Rev Proc, we treat certain 415 excesses the same way as we would other excesses. But until the Rev Proc becomes effective, the correction methods in the 415 regulations continue to apply. We're also going to expand the income and excise taxes that the Service may exercise discretion to not pursue. And we're doing a significant expansion of the streamline procedures in our current Appendix F, our streamline procedure for interim non-amenders. So we're leveraging the success of that Appendix into other areas, other failures.

Ben: Are any of the changes to EPCRS a response to Congress' mandate in PPA that the IRS continue to improve EPCRS by increasing employer awareness of the program, considering the special needs of small employers, extending the duration of self-correction for significant failures, expanding the availability of SCP to correct insignificant failures during audit and assure that penalties under EPCRS are not excessive and bear a reasonable relationship to the severity of the failure?

Joyce: We are certainly considering these changes as required by PPA. The Fix-It Guide is partially in response to this. It's geared to the smaller employer and to the practitioners who just aren't familiar

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with employee benefits. We've also made some modifications to SCP in our new revenue procedure. We're also considering extending the durations of self-correction periods.

Ben: The next question concerns correction by retroactive amendment to conform to plan operation. Does the IRS still consider requests for plan reformation as an acceptable correction method for operational violations and, if so, what are the requirements for correction by plan reformation?

Joyce: Yes, we are continuing to permit retroactive correction of operational failures, through retroactive amendment, to reflect the actual operation. But, certain conditions must exist. Certainly, the easier case is where the operation of the plan is more liberal than the plan itself. We still, in that case, would want to ensure that the operation was non-discriminatory. But that's the easier case. In certain situations we also have permitted employers to amend plans to eliminate benefits, but in those cases there has to be a strong showing through convincing evidence that what the plan document says does not reflect the intent of the employer. In addition to looking at the intent of the employer, we're looking at the expectation of employees. Therefore, we would look at the SPD and we would look at different employee communications that have been issued. It's really a totality of the situation and very factual.

Ben: How does the IRS treat missing or destroyed plan documents under EPCRS?

Joyce: We do see that. It comes up not infrequently and there are different ways to approach it. Reasonable estimates can be used. There can be rules of convenience to project compensation and contributions. If there's a pattern of contributions or a pattern of compensation, you can project back. So generally that's the way we handle it.

New Department of Labor regulations target small company 401(K) plans with increased ERISA bonding requirements. While providing ERISA bonds is not compulsory for TPAs, ignoring these new regulations can have a significant financial impact on the administration of a 401(K) plan.

The Employee Retirement Income Security Act (ERISA) of 1974 was initially enacted to protect employees from being defrauded of their pension funds. While instances of fraud have been rare,

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EPCRS

Ben: There does not seem to be any direct guidance under EPCRS for correcting what I call "early distributions." These are distributions to a participant before he or she is entitled to a payment under the terms of the plan or the law. As examples, a plan may make erroneous refunds in connection with an improperly performed ADP test, or an employer may make erroneous distributions to participants in connection with a corporate acquisition or merger, or a participant fails to qualify for a hardship distribution, but receives one nonetheless. These errors seem somewhat analogous to "overpayments" under EPCRS. However, these amounts technically are not overpayments as defined under EPCRS because the early distributions are not in excess of the participant's plan benefit. How would the IRS suggest plans correct these types of early distributions?

Joyce: I think you've analyzed this correctly. In all those situations that you mentioned we would just require a reasonable correction, perhaps that the employer request a return of the early payment. We generally don't address in the Rev Proc what is reasonable under these circumstances because it's more of a fiduciary issue under Title 1 of ERISA.

Ben: Occasionally, an employer may fail to comply with a 401(k) plan participant's deferral election. Can the employer treat the employee as an improperly excluded participant and make a contribution at the rate of 50% of the deferral election, or to make the participant whole, should the contribution be equal to 100% of the participant's deferral election?

Joyce: We treat this situation as analogous to the exclusion of the employee's situation and would permit a 50% contribution of his or her deferral election. The 50% number is designed to reflect the notion that this was an error but the participant typically shouldn't be entitled to both the cash payment and the deferral.

Ben: Can you please give us some examples of appropriate cases under which the IRS will waive the excise tax under §4974 applicable to plan participants in connection with a §401(a)(9) violation?

Joyce: In the case of employees other than 10% owners, if an employer requests it, we automatically waive it. In the case of a 10% owner, then we need some justification. With a 10% owner, you're talking about someone who has some control over the plan and so we don't want to waive this excise tax where someone had control, understood their requirements and purposely didn't distribute the minimum.

Ben: Can a violation of the safe-harbor notice rules, whether a content or timing failure, be corrected under EPCRS?

Joyce: I would generally say yes. I think that we can always come up with a reasonable correction method, but it really would depend on the content of the notice and how far a field it is, or when the notice was provided. Perhaps we would treat the employee as an excluded employee altogether, and follow our correction method for that. I think you really need to look at all the facts and circumstances.

Ben: Does the IRS plan on revising EPCRS to permit correction of loan violations under SCP?

Joyce: Not in the short term. The relief given in [Revenue Procedure] 2006-27 for these loan failures is significant and is granted in appropriate circumstances. At this point, we feel more comfortable seeing what those circumstances are in order to grant that relief. For example, systemic errors where in the totality the employee is not at fault. So, I won't rule out expanding SCP for loan corrections in the future, but, as of now, we don't have that comfort level. However, in the new Rev Proc, we're making it easier to use this correction method under VCP.

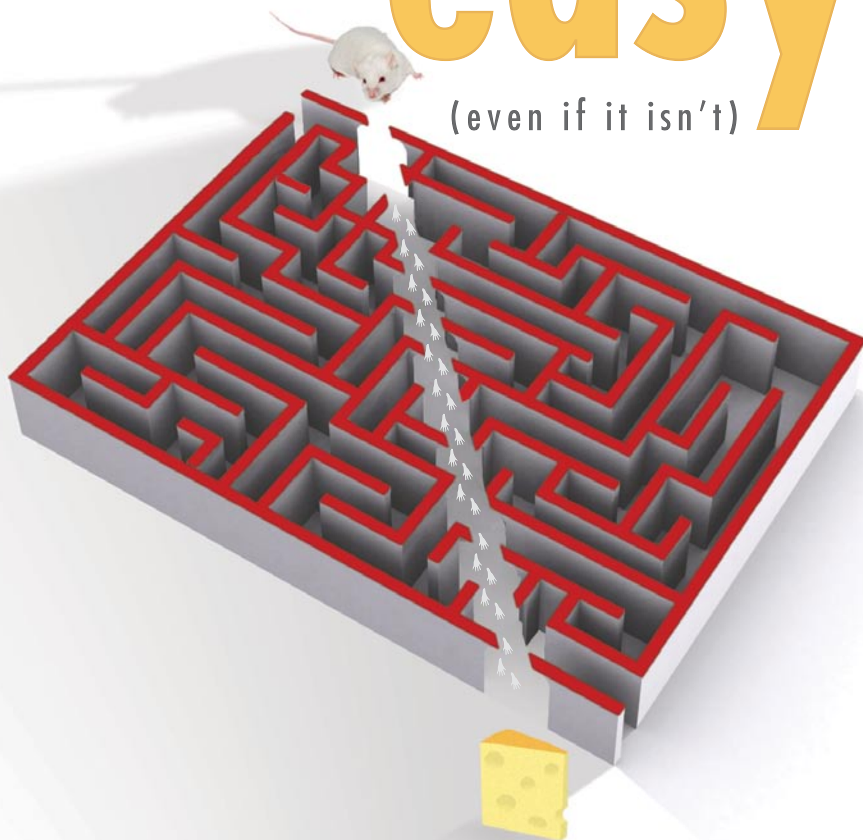
Ben: Can employers expect further guidance on the appropriate reporting of corrections under SCP?

Joyce: Not in the short term, but it's an issue that we have to address. It would take a lot of coordination with other parts of the Service and it's really more a resources issue at this point.

Ben: I want to thank you very much for participating in this interview.

Joyce: I would like to thank you, too, for the opportunity to talk about EPCRS. The development of EPCRS has always been the result of a partnership between practitioners and practitioner groups such as ASPPA with the IRS, and I look forward to continuing that partnership. I think the comments that we received from the users of the program have definitely contributed to a better program and I hope to see that continue.

*Benjamin F. Spater, APM, is a director at Trucker Huss in San Francisco, CA. Ben serves on the board of directors and was a past president of the San Francisco Chapter of the National Institute of Pension Administrators (NIPA), the board of directors of the Bay Area Chapter of the Society of Financial Service Providers (SFSP) and the Department of Labor Subcommittee of ASPPA's Government Affairs Committee. He is also a member of the Western Pension & Benefits Conference (WP&BC), and he has served for many years on the Steering Committee for the Los Angeles IRS/Practitioners Benefits Conference. In addition, Ben served on ASPPA's Internal Revenue Service Enforcement Committee and WP&BC's Program Committee. Ben regularly gives speeches and conducts educational presentations for various professional organizations on cutting-edge topics in the areas of retirement plans, executive compensation and ERISA. Ben is a member of the State Bar of California, the Bar Association of San Francisco and the American Bar Association. (**bspater@truckerhuss.com**)*



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Plan Design for Professional Groups

by Norman Levinrad, FSPA, CPC

Plan design is like art—there is no way to define what is good, and people will disagree on the quality based on their own preferences. However, "good" plan design will always satisfy certain principles.

First and foremost, the plan design will meet the objectives of the client in the simplest way possible. Second, it must be cost-effective for the owners of the practice. Third, the design should be flexible enough to prevent surprises in later plan years and, to that extent, should be stable if the demographics of the practice changes slightly. Fourth, it should not be so complex that it becomes error prone and impossible for the client and/or the third party administrator (TPA) to understand and administer. Fifth, it should be flexible enough to avoid the need for frequent "tweaks" and amendments. And last, it must be able to withstand any challenge by the IRS and it should not be so aggressive that its legality could be questioned.

This article will discuss various general plan design options for professional groups that follow the above principles. It will assume the following:

- The group has more than one shareholder or partner, who we will refer to collectively as "owners" for the rest of the article; and
- The owners' goals are to achieve deductible contributions in excess of the defined contribution (DC) annual addition maximum of $46,000.

"Combo" Plan Designs

Combination plan designs, often referred to as "combo" plans, combine two or more types of plans together to form a "combined" design. Combo plans are frequently used because they provide the flexibility to meet goals such as the ones identified previously according to the principles outlined in the introduction. Combo plans can accomplish objectives in ways that a standalone defined benefit or a standalone profit sharing plan cannot. This article will show how combo plans can be used effectively for professional groups.

Profit Sharing/401(k) Combo Designs, Cross-testing and Safe Harbor

Inevitably, the goals of our typical group (as described previously) will be accomplished by using a profit sharing (PS) plan with a 401(k) feature as part of the design. Generally, this plan should have the following features:

- The PS allocation should generally be "cross-tested," ideally with individual allocation groups to provide the greatest flexibility because:
  - — This type of design allows the practice to make different contributions for the owners and for different job classes or employees. It also allows the firm to provide bonuses as plan contributions, generally eliminating the FICA taxes that would be paid if those bonuses were paid as salary.
  - — This design avoids the need for corrective amendments under Treasury Reg. 1.401(a)(4)-11(g) to pass testing because all required contributions can be made per the allocation provisions.

Note: Prototype plans generally will not be able to use individual groups in the EGTRRA restatements.

- Generally the (k) feature will be a safe harbor (SH) plan with the 3% non-elective PS contribution. [Because there is usually a cross-tested formula, the 3% SH contribution does triple duty as the SH contribution, the required top heavy (TH) minimum and as part of any required gateway contribution.] The SH feature allows all owners to defer the maximum amount possible without Average Deferral Percentage (ADP) testing, and the employer contribution to maximize them at the $46,000 annual addition maximum is reduced to $29,500, putting less pressure on 401(a)(4) and gateway testing.

  Note: Low earning spouses or children of owners who defer the maximum 401(k) amounts can hurt the ultimate testing result because of the impact on the average benefits percentage test. Projected nondiscrimination testing should be run before employees in this category are given the go-ahead to defer the maximum.

In law and accounting practices, the issue of associates must be considered, as with the treatment of hygienists in dental practices. Consider my Associate Principle: "The willingness of professional firms to provide any employer-funded benefits to associates decreases with the size of the practice." Generally we see that:

- Firms usually allow associates to make 401(k) deferrals and are willing to pay the administrative expenses associated with a 401(k) plan covering only the associates.
- Associates are usually highly compensated employees (HCEs), but are always non-key employees, so if the firm's plans are deemed top heavy (TH), then there is a required TH contribution if associates are allowed to defer. *Note: This result can be undesirable for owners.*
- The above outcome can be avoided by putting associates in a separate, deferral-only 401(k) plan that is tested separately under 410(b). Note, however, that if the owners' plan relies on the plan for the associates to pass 410(b), then the plans become part of the required aggregation group for top heavy purposes, and the associates must receive TH minimums.

DB/DC Combo Designs, Deductible Limits and Top Heavy Minimums

When the owners want deductible contributions in excess of the $46,000 maximum, as outlined in our original goals, an additional DB plan will also be adopted. The rules under 404(a)(7) will determine how the employer contributions between the DB and the PS plan are coordinated.

The combined deduction limit under 404(a)(7) applies when the employer contributes to both a DB and a DC plan for the same fiscal year and at least one employee is an active participant in both plans. The basic rule is that the deduction limit is the greater of 25% of compensation in the fiscal year; or the minimum required contribution for the DB plan. Prior to the Pension Protection Act of 2006 (PPA), the effect of this rule was that it was often not possible for a firm making large DB contributions to provide any PS contributions, because the DB contribution already exceeded 25% of pay.

PPA modified the rule under 404(a)(7) to say that the 404(a)(7) limit *does not apply* if the PS contribution does not exceed 6% of compensation for the participants benefiting in the PS plan. This modification now allows for designs where the PS plan is designed to keep the employer contributions to the PS contribution under 6% and to maximize on the DB side. The IRS has further clarified that the effect of the rule is that the 25% limit effectively becomes a 31% limit, because the first 6% of pay is always deductible as a PS contribution.

Combo plans can accomplish objectives in ways that a standalone defined benefit or a standalone profit sharing plan cannot.

One significant impact on professional firms as a result of this change is the way in which TH minimums can be provided. As a quick primer, remember that when a DB/DC combo plan contribution is top heavy, the employer can provide the TH minimum in the DB plan, as a 5% of pay contribution in the DC plan, or can use

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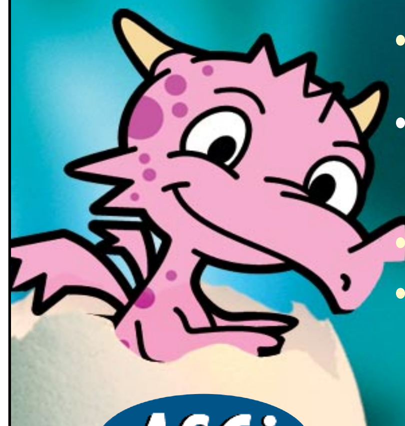

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comparability or offset approach between the two. It is always best to provide TH minimums in the PS plan because these contributions are age neutral and almost always significantly cheaper than the cost of funding DB TH minimums, where the cost is dependent upon age.

Typical allocation provisions often found in a PS plan, including a last day of employment requirement and a 1,000 hours of service requirement to receive a PS contribution, need to be carefully considered when the PS plan is designed to provide the TH minimum. The DB/DC gateway requirement (which will be discussed in more detail later) also requires consideration, as it affects the allocation requirement. Any employee who receives the SH contribution must then receive a TH minimum and then becomes subject to the DB/DC gateway; therefore, employees who work fewer than 1,000 hours must also receive a contribution even if they have terminated employment. The PS plan design that provides the greatest flexibility to deal with all of these issues uses individual allocation groups as mentioned before, *but with no end of year employment and no hours requirement*. The employer can then provide PS contributions as desired based on the practice objectives, and the employer has the flexibility to satisfy the SH, the TH and the DB/DC gateway with no corrective amendments and no confusion between these contributions and the PS plan allocation provisions.

Special Considerations Regarding PBGC Coverage

Larger firms that are subject to Pension Benefit Guaranty Corporation (PBGC) coverage (they have or have had more than 25 active participants) are subject to an additional loosening of the effect of 404(a)(7) in their 2008 plan year. For such entities whose plans are covered by PBGC, the 404(a)(7) limit does not apply at all *regardless of the level of PS contributions*. As a result, these plan designs can allow maximum PS contributions and a maximum DB design for owners of larger professional firms, while focusing the remaining design on the minimum contribution necessary for the NHCEs to pass the general test. In past years, it was often preferable to design plans that avoided PBGC coverage; there will have to be real consideration in 2008 as to whether to try to bring in enough employees to become covered by PBGC if the firm would normally be excluded from coverage using the statutory exclusions. The inability to waive benefits for a PBGC standard termination if there are no majority owners (for example, if there are four 25% owners) is the key issue to consider as you review this option.

Cash Balance Designs as an Alternative Approach

When a DB plan is added to provide larger contributions than the DC plan allows, consideration must be given as to whether to use a traditional DB plan or a cash balance (CB) plan. The CB plan has generally become the design of choice for professional firms because:

- It allows a direct tracking of contributions to ultimate benefits paid (because contributions are normally funded out of the owner's compensation package, this approach is desirable).
- It allows age-neutral contributions to employees.
- The contributions and benefits are transparent, so everyone has a much better understanding of their benefits than the benefit under the traditional DB plan.

Nondiscrimination Testing for DB/DC Combo Plans

When a firm has a DB and PS plan that are tested together for nondiscrimination purposes, there are additional rules above and beyond the general test. These rules were created several years after the 401(a)(4) regulations were passed. At that time, the IRS looked at designs that satisfied the regulations, but determined that naughty practitioners were taking too much advantage of the rules and that contributions were being too heavily skewed in favor of owners. As a result, in addition to passing the general test, the plans must now satisfy one of the following requirements:

- The DB plan must be primarily DB in character. This requirement is met if more than 50% of the NHCEs benefiting under the plan have a normal accrual rate under the DB plan that exceeds their normal benefit accrual rates under the DC plan.
- The plans must be broadly available separate plans. This requirement is met if the DC plan and the DB plan would each pass 410(b) and 401(a)(4) if each plan were tested separately.
- The plans must satisfy the minimum allocation gateway. This requirement is met if each NHCE's combined normal allocation rate (*i.e.,* the sum of the NHCE's allocation rate under the DC plan and the NHCE's equivalent allocation rate under the DB plan) is not less than a minimum percentage, based on the highest HCE rate.

These rates are determined by calculating the hypothetical contribution to fund the DB benefit plus the PS allocation. If the DB plan is designed to fund for maximum benefits for owners, then this percentage is usually 7.5% of pay. The use of this DB/DC gateway on top of the general test essentially provides that a DB plan tested with a PS plan has to be tested for non-discrimination purposes on the basis of both benefits and contributions. In most DB/PS combination designs for professional firms, this approach is the most common because the plans are almost always designed in a way that the other two requirements cannot be satisfied.

With a design subject to the DB/DC gateway, one must remember that since the gateway is a combination of the hypothetical contribution to fund the DB increase plus the PS allocation, the amount of gateway provided to NHCEs by their DB benefit will differ based on their age. For example, a cash balance credit of 7.5% of salary does not necessarily satisfy the 7.5% of pay gateway for all participants.

Special Considerations for Cash Balance Plan Designs

At the design stage, a key consideration is how to design the cash balance credits for owners. It is critical not to sell a CB plan as a glorified PS plan, and owners should not be surveyed to determine how much of a contribution they "want" each year, as operating in this manner could effectively create a cash or deferred arrangement.

In designing the cash balance credits, keep in mind the "similarly situated" employee requirement of PPA, which says that cash balance plans *are not age-discriminatory if a participant's accrued benefit determined under the terms of the plan would be equal to the accrued benefit of any* ***similarly situated, younger individual*** *(in every respect):*

- *Period of service;*
- *Compensation;*
- *Position;*
- *Date of hire; and*
- *Work history.*

The proposed regulations on this issue are still fairly vague as they pertain to how credits for owners can be structured. They do make it clear that if you use different crediting formulae for different classes of employees, you test within that class to determine if this requirement is met.

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Let's consider various ways to define credits for owners and discuss whether they satisfy the requirement:

Example 1: Equal credits as a flat dollar amount or as a percentage of pay. This approach is often used where the cash balance plan "tops-up" an existing PS/(k) plan and the owners want identical contribution levels. Clearly there is no similarly situated employee issue with this approach. A good design tool when using flat dollar credits is to limit the credit to a percentage of salary (*e.g.,* $92,000, but not to exceed 40% of compensation), so that if an owner's compensation decreases (*e.g.,* a year in which the owner leaves the firm) he or she is not faced with an onerous cash balance credit.

Example 2: Credits by name.

Mr. Huey	$ 50,000
Mr. Dewey	$ 20,000
Mr. Louie	$ 125,000
All other participants	$ 1,250

It is not clear if this example satisfies the similarly situated employee requirement. A reading of the proposed regulation suggests that each named individual could be considered a separate formula, which would then result in this design being acceptable.

Example 3: Maximum credits—where the goal is to maximize owners in the cash balance plan. There are various ways to accomplish this goal:

- *Absolute maximum approach:* With this approach, the cash balance credit for owners is defined as the amount of annual credit that provides a cash balance account as of the last day of the plan year that is equal to the maximum lump sum under Section 415 that can be distributed as of that date. This design guarantees that the owner always has a cash balance account that is the maximum amount that can be distributed. There is no possible similarly situated employee issue using this approach.
- *Age band approach:* With this approach, the cash balance credits for owners is defined based on a table, where each owner's age at the time he or she first enters the plan is based on the age band he or she is within. You set the amount for each band as the amount that will accumulate to the 415 maximum lump sum at retirement age, based on the *lowest age* in that age band, and you can use as many or as few age bands as you see fit. For example, if we used the age band table below, the result would be that a participant who enters between age 40 and 45 will forever receive a credit of $48,000, where $48,000 is the estimated level annual amount that would accumulate to the 415 maximum lump sum at age 62.

Age at First Entry	Annual Credit
Under 40	$ 34,000
40 to 45	$ 48,000
46 to 50	$ 78,000
51 to 55	$ 129,000
56 and over	$ 174,000

If you use the age band approach to target the 415 maximums for all ages, it is important for the owners to understand that their credit is *forever* determined by their age as of first entry into the plan. They do not move into the higher credit level as they get older! There is no possible similarly situated employee issue using this approach.

A Close-up Look at a "Generic" Combo Design

As this article points out, there is no one cookie cutter design for professional groups. Obviously there are an infinite number of plan designs that can be used. However, to the extent there is a generic approach, it would look similar to the design shown below:

	Age	Compensation	Cash Balance Credit	Profit Sharing Contribution	Profit Sharing Contribution as a Percent of Pay	401(k) Deferral	Total
Principal A	56	$ 230,000	$ 180,000	$ 13,100	5.70%	$ 20,500	$ 213,600
Principal B	50	$ 230,000	$ 140,000	$ 13,100	5.70%	$ 20,500	$ 173,600
NHCE 1	40	$ 50,000	$ 1,200	$ 3,500	7.00%	?	$ 4,700
NHCE 2	25	$ 50,000	$ 1,200	$ 3,500	7.00%	?	$ 4,700
NHCE 3	28	$ 40,000	$ 1,200	$ 2,800	7.00%	?	$ 4,000
Totals		$ 600,000	$ 323,600	$ 36,000	6.00%	$ 41,000	$ 400,600

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Designs using this approach operate as follows:

- The plans are tested together for 410(b) and 401(a)(4) purposes;
- The firm may choose to carve out non-owners from the DB plan for it to pass 401(a)(26)—for example, in the above group a DB that covered the owners only would pass 401(a)(26), or in smaller firms may cover all eligible employees to avoid instability in the design or to avoid the confusion of having some employees covered in one plan and not the other;
- The cash balance credits are designed to meet the goals of the owners;
- The 401(k) plan is a safe harbor plan to ensure that the owners can defer the maximum;
- The PS plan uses individual allocation groups or a group allocation to allow different contribution as a percent of pay for owners and other employees;
- The PS contribution to the NHCEs satisfies the dual plan top heavy minimum—5% of salary;
- The NHCEs receive enough of a PS contribution in excess of the TH minimum such that the DB/DC gateway is satisfied in combination with their cash balance credits;
- The combination of the benefit provided by the cash balance plan and the PS allocation is tested on a benefits basis under 401(a)(4); and
- The owners receive a PS contribution such that the total PS contribution does not exceed 6% of pay.

Conclusion

While there are a variety of plan design options, many of the approaches used for professional firms follow the generic combo design. In your own practice, you will, of course, tailor each approach to your own preferences and the specific goals of the client.

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The 401(k) Retirement Income Risk

by David Hand, MSPA, and Frank Sortino

In the last few years there has been a push from the DOL, IRS, SEC and proposed legislation by Congress to change 401(k) plans from savings plans at the full discretion of the employee to retirement plans with legislative requirements to target retirement income. Many practitioners are saying we are moving quickly to a 401(k) plan that looks like a "defined benefit plan at the participant level." In effect, everything is changing except the participant must accept the risk. These changes put a burden on all parties to understand and manage the true risks involved.

The Qualified Default Investment Alternative (QDIA) provisions set new fiduciary standards that allow plan sponsors to default participants into certain types of investment options under the safe harbor protection of section 404(c). This article will look at the "true risk" and the high points of current and pending legislation affecting 401(k) plans related to QDIAs, age 50 catch-up provisions and plan fees.

Background

The basic problem is that too many employees are waiting too long to start investing, investing without the proper knowledge and putting too little aside each month to fund a decent level of retirement income. According to a DOL report on retirement adequacy, US workers retiring in the 2050s will have saved only enough money in their 401(k) style accounts to replace an average of 22% of their pre-retirement income, and 37% will have no savings at all. Representative George Miller has said, "Unless we act now, too many workers just starting their careers today will unfortunately face a less secure retirement than did many of their parents."

These facts led Congress to pass the Pension Protection Act of 2006 (PPA). "The PPA directed the Department of Labor to issue a regulation to assist employers in selecting default investments that *best serve the retirement needs of workers* who do not direct their own investments."[1] While the final regulation issued by the DOL provides

the conditions that must be satisfied in order to obtain safe harbor relief, it offers no advice on how one should go about determining the "best" option from those available. As part of the congressional effort to encourage more individual savings, companies may automatically enroll employees in the employer 401(k) plan, starting with a minimum of 3% of gross income, increasing to 6% after three years. The DOL estimates that the QDIA could result in $134 billion in additional retirement savings by 2034.[2]

QDIA Options

There are three types of long-term QDIAs:

1. Target maturity funds, sometimes called target dated funds or life cycle funds;
2. Risk-based or lifestyle funds (including balanced funds); and
3. Managed accounts.

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The preamble to the regulation states, "The Department believes that each of these qualified default investment alternatives is appropriate for participants and beneficiaries who fail to provide investment direction; accordingly, the rule does not require a plan fiduciary to undertake an evaluation as to which of the qualified default investment alternatives is the most prudent for a participant or the plan."[3]

The regulation *does not require* an evaluation as to which type is best, but neither does it preclude an evaluation. Indeed the regulation goes on to say, once a type is chosen, the fiduciary must engage in a prudent process to select and monitor the QDIA. Why then wouldn't it be prudent to engage a consultant to evaluate the different types of QDIAs before making a selection?

The GAO report on retirement adequacy released on December 11, 2007, noted that many economists and financial advisors only consider retirement income adequate if it replaces 65 to 85 percent of pre-retirement income. The Harken & Kohl bill (H&K), now pending, provides a clear path to achieving that objective by requiring the plan administrator to provide a quarterly notice of "the estimated amount that the participant needs to save each month to retire at 65".[4] The Aon Consulting/Georgia State University's "income replacement ratio" is an example of the growing recognition that this example is the proper investment objective for 401(k) participants. For this reason, we believe retirement income replacement should be a criterion for evaluation of QDIAs.

Goals and Objectives

Much has been written about goals, objectives and investment policy and there is very little agreement on what these terms mean. What some call goals, others call objectives, and there are some who use them interchangeably.[5] The Pension Research Institute (PRI) offers the following:[6]

- The goal is the end toward which effort is directed. It is the broadest generalization of what one is trying to accomplish.
- The objectives translate the goal into more specific language leading to a definite and measurable standard of performance. The objective must support the goal so that, if the objectives are achieved, the goal will be accomplished.

PIMCO executives have called for plan sponsors to look beyond the asset only based approach of modern portfolio theory and move toward a "needs based" optimization to maximize the probability of an income replacement ratio.[7] This concept agrees with the GAO reference above that retirement with dignity is related to replacing some percentage of pre-retirement income. In 1995, Andrew Rudd, co-founder of BARRA, the leading proponent of the Capital Asset Pricing Model applications, founded Advisor Software (**www.advisorsoftware.com**) to offer a new, goals-based software program that considers both assets and liabilities. Dr. Rudd said, "What clients really want is to know that they are able to meet a range of financial goals, given their current and future assets and liabilities." He went on to say that risk budgets should be "determined by the potential impact of a shortfall on goals."[8] Sortino Investment Advisors (**www.sortinoia.com**) takes a similar approach, but measures risk and reward relative to a Desired Target Return (DTR) needed to achieve a desired retirement income. All of the above discuss goals and objectives in terms of an asset and liability framework. Therefore, we believe that *the goal of retirement with dignity and the investment objective of replacing pre-retirement income are reasonable and appropriate.*

Potential Conflicts

The goal for an individual 401(k) participant is not the same goal that portfolio theory would claim is proper for investors as a whole under certain restrictive conditions. It also may not be the same goal a money manager has. Therefore, it is important to recognize potential conflicts of interests.

- Portfolio theory describes how investors who make their decisions based solely on expected return (the mean or average return) and volatility (standard deviation) should make rational choices. Each investor chooses a portfolio from the efficient frontier[9] based on their tolerance for risk. Text books in finance do not discuss goals. Instead, they assume everyone has the same investment objective, to maximize expected return for an acceptable level of risk (risk is measured as volatility around the mean). The Capital Asset Pricing Model (CAPM), proposed by William Sharpe, extends the portfolio theory of Harry Markowitz to say if there exists a risk-free asset, then everyone should want some combination of the risk-free asset and the market portfolio. Risk becomes the risk of being in the market and is called Beta. In equilibrium, one should not be able to beat the market. Neither the Markowitz nor the Sharpe models recognize cash outflows in the future as a liability that must be dealt with. They are asset management models, not asset/liability models. How does portfolio theory fit the PRI definition of goals and objectives? It is possible to earn the highest return for a given level of

The goal for an individual 401(k) participant is not the same goal that portfolio theory would claim is proper for investors as a whole under certain restrictive conditions. It also may not be the same goal a money manager has. Therefore, it is important to recognize potential conflicts of interests.

The critical question for a participant at any point in time is: am I on the path, below the path or above the path to my goal?

volatility or beta and not accomplish the goal of retirement with dignity. Also, one could beat a market index but not accomplish the goal of retirement with dignity. The concept of "market indexes" being a standard for 401(k) plan investment performance is reinforced by recent bills proposing all investment options have an index for comparison. One bill even mandates a low cost index fund as an investment fund of choice. Indeed, even those who beat the market index between 2000 and 2004 lost a substantial part of their income producing assets and may have had to postpone retirement. *Therefore, neither beating a market index nor maximizing expected return for a given level of volatility are proper investment objectives for a 401(k) participant.* 401(k) plans are not about how everyone in general should invest to get the highest expected return for a given level of risk. They are about how each individual participant should invest to achieve his or her investment objective of replacing a specified percentage of his or her salary at retirement.

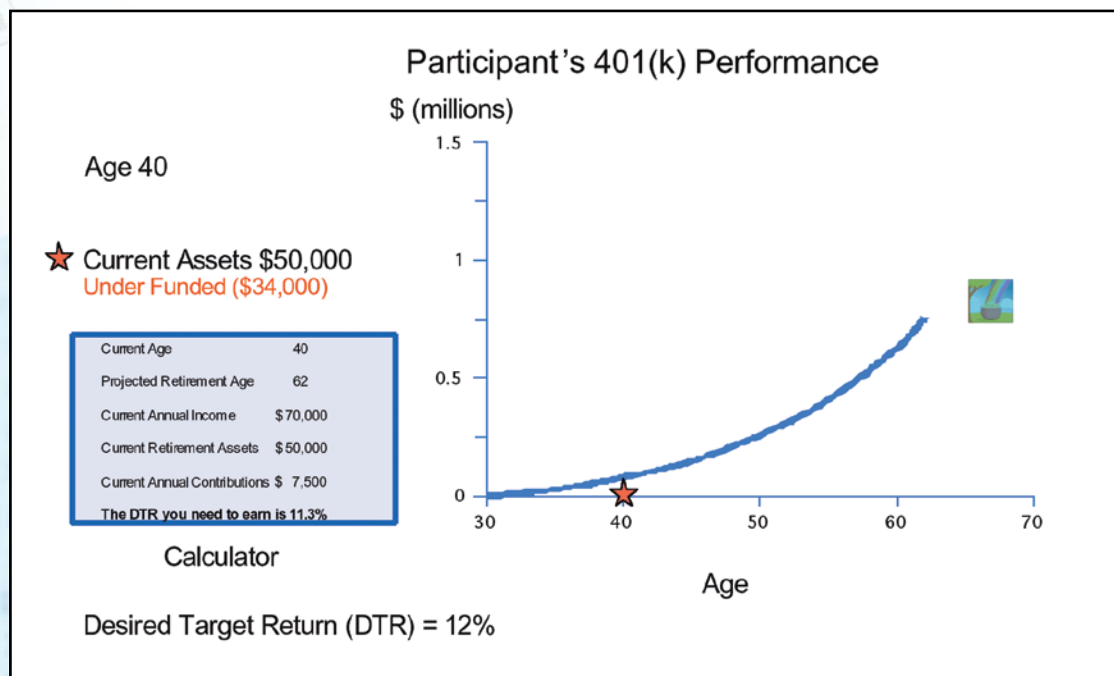
- The future income stream of participants is not on most money managers' radar screens and is, therefore, not the investment objective of most money managers. Money managers are usually hired based on their demonstrated ability to "beat the market" on a risk adjusted basis – to do what theory says they cannot do in the long run. *Their goal is to get hired.* If they beat the market, they promote that fact in the expectation of being hired. Therefore, *the investment objective of most money managers is to beat the market index.*

Performance Measurement

Performance measurement of money managers is different than measuring the performance of a 401(k) participant's portfolio. Whether the participant's portfolio beats some index or some other participant's portfolio is irrelevant. The critical question for a participant at any point in time is: am I on the path, below the path or above the path to my goal? An employee who has not been putting in enough money monthly and has 25 years to go should not compare portfolio performance with an employee who has five years to retirement and is over funded.

If beating an index is not the objective, then it is also not the proper benchmark to use for performance measurement of 401(k) plans. *The participant's performance should be related to the funding status of the individual participant's account balance and future savings for secure retirement income.* This task can be accomplished in the traditional manner of showing the present value of the liabilities versus the present value of the assets. We think it is helpful to view retirement as a future cash flow problem. The question to be answered is: what rate of return do I need to earn on my contributions (cash inflows) into the future in order to accumulate a level of assets that will provide a desired retirement income (cash outflows)? This Desired Target Return (DTR) could be estimated and used in a similar manner to the assumed actuarial return for DB plans. The DTR could then be used as a benchmark (see graph below).

The example in the graph below depicts a DTR of 10% when the participant was 30 years old.



Returns above the DTR would be desirable and provide the potential to exceed the desired income at retirement. Returns below the DTR (see ★ at age 40) would incur risk of not achieving the investment objective. *That breakpoint is the True Risk!* The participant's portfolio in this example has declined and now requires a new DTR of 11.3% to achieve the investment objective of 75% of pre-retirement income projected to age 65. The participant should be made aware that he or she is below the path. To maintain the current equity exposure, the participant should be allowed to make a catch-up contribution. *If a DB plan is required to increase contributions when under funded, why shouldn't a participant be allowed the same opportunity?* The current position of the participant's 401(k) plan (★) is shown relative to the original DTR of 10%. All that is needed to calculate the DTR is shown in the blue box to the left and is readily available from the recordkeeper.

QDIA Evaluation

The DOL, by not allowing fixed income funds to be used as a long term QDIA, implicitly recognized that short term fixed income funds are not a risk-free investment. Interestingly enough, money market funds are currently the most popular default option in 401(k) plans! This action on the part of the DOL also implicitly recognizes that the goal is not preservation of capital, but retirement with dignity because *investing everything in a money market or stable value fund literally guarantees an insufficient income stream at retirement for most participants.*[10]

Let us now examine each QDIA option and see how well they meet the basic criterion of future income replacement.

Target Dated Funds

The single determinant for selecting the optimal target dated fund is the participant's age. Is that all that is needed to determine the future cash flow that is needed? Doesn't the participant need to know how much to contribute each month? Doesn't the proper contribution schedule depend on the participant's salary and how much money is currently invested? Target dated funds are a simplistic way of getting participants to invest for their future without regard to adequacy. *In short, target dated funds ignore anything to do with the replacement of pre-retirement income.*

Lifestyle Funds

Ask a participant how much risk they want to take and they will probably say, "as little as possible." This typical response tells us why so many participants default into fixed income or stable value funds. They don't realize that preservation of capital is not the goal. To have some chance at retiring with dignity, they will have to take some loss of principle risk in order to reduce the true risk of failure to achieve the goal. How much risk they need to take depends on their financial profile not their risk profile. *The same argument about target dated funds ignoring future cash flows applies to lifestyle funds.*

Managed Accounts

Many managed account services provide some type of financial planning tool that attempts to project future cash inflows to the 401(k) plan and subsequent cash outflows at retirement. On that basis alone, *the managed account option holds the greatest promise of achieving a participant's goal.* It then behooves the plan sponsor to find the managed account service that best fulfills this goal of income replacement.

Recommendations for Regulators

We believe regulators are on the right track in their efforts to improve retirement results for 401(k) participants. However, much of the proposed legislation on plan fees contains significant legislation on plan investments, index funds, benchmarking and additional required plan administration and employee communications that need to be reviewed carefully. Another area for consideration in future revisions is to provide a new catch up provision to participants who can show they will be less than 65% funded at age 65. The way the law currently reads, a participant 50 years old would be allowed to make catch up contributions of $5,000 per year. Unfortunately, this age is right at the time that the "glide path rule" encourages the QDIA to be reducing equity exposure resulting in lower and lower returns. Research shows that most participants are not contributing enough and the younger they are the worse it is. If participants were aware of their current funding status and what it would take to get them back on a fully funded path, a new "catch up provision" for them could allow the power of compound interest to work wonders in their behalf.

For example, most baby boomers now in their mid 50s would be defaulted under the QDIA and typical "lifestyle" fund into a fund earning a lower rate of return, say 7%. This move would reduce the risk of loss of principle in ten years but increase the risk of not achieving the desired retirement income (see graph on page 34). True, a participant, say age 55, could be allowed under the "catch up provisions" to make an additional $5,000 contribution per year in the 401(k) plan to offset the lower return. However, the combination of lower return, a relatively short time to invest and only $5,000 per year still yields a lower retirement income than desired.

If participants were aware of their current funding status and what it would take to get them back on a fully funded path, a new "catch up provision" for them could allow the power of compound interest to work wonders in their behalf.

Yet, take that same $50,000 total investment for a participant age 30 and only contributions of $2,000 for 25 years with the opportunity to be defaulted into an investment product with higher returns, say at 11%, then significant retirement income can be obtained. True, the risk of loss of principle is increased in any given year, but the true risk of not achieving a desired retirement income is actually reduced over a 35 year interval.

In the above examples [given the same $50,000 investment in a 401(k) plan], the difference is outstanding. The age 55 baby boomer has only approximately $74,000 at retirement and the age 30 participant has more than $700,000, nearly ten times the dollar amount at retirement and, adjusting for inflation, more than four times the retirement income.

From a tax policy point of view it is less costly to allow "catch up provisions" at early ages at lower amounts. Yet, this concept would provide the longer term retirement security so greatly needed to ensure the success of 401(k) plans.

Recommendations for Plan Sponsors

Plan sponsors should adopt a policy statement for their 401(k) plan that clearly states the goal and investment objectives in terms of income replacement. They should hire a consultant to evaluate all available QDIA options and provide this information to all participants. Plan sponsors should make participants aware of the different types of risk they must manage.

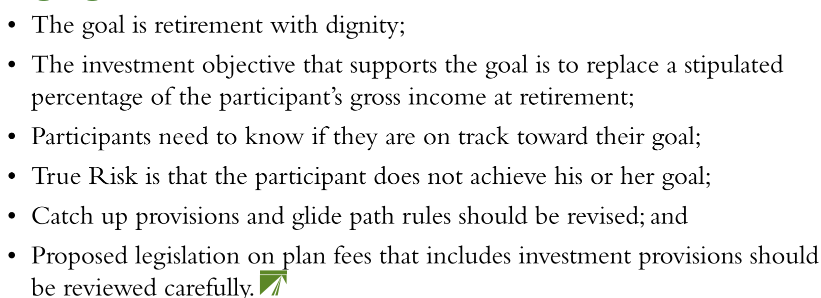
Recommendations for Consultants

Consultants should develop new performance measurement standards that specifically take into consideration the liability element of future income replacement for participants. They should consider both assets and liabilities when making asset allocation recommendations.

Summary and Conclusions

We believe that a 401(k) default option should be constructed for the sole benefit of the participant and for the exclusive purpose of providing retirement benefits. This idea necessitates an investment strategy affecting future cash inflows in the form of contributions prior to retirement followed by cash outflows sufficient to provide a desired retirement income. The result may be thought of as a personalized defined benefit plan, where the participant assumes the role of the plan sponsor. This white paper has attempted to develop guidelines for plan sponsors desiring to establish the best default option for their 401(k) plan. *The single most important criterion for selecting a default option is the potential to replace a designated percentage of the participant's income at retirement.*

Highlights



- The goal is retirement with dignity;
- The investment objective that supports the goal is to replace a stipulated percentage of the participant's gross income at retirement;
- Participants need to know if they are on track toward their goal;
- True Risk is that the participant does not achieve his or her goal;
- Catch up provisions and glide path rules should be revised; and
- Proposed legislation on plan fees that includes investment provisions should be reviewed carefully.

Editor's notes:

*(1) The authors have asked that comments or suggestions related to this article be sent to David Hand at **dhand@bpah.com**.*

(2) On April 29, 2008, the DOL released technical amendments to the final regulations on QDIAs. See ASPPA asap *No. 08-14.*

*William (David) Hand, MSPA, MAAA, is CEO and president of Hand Benefit & Trust in Houston, TX. He is also executive vice president of BPAH. David is an Enrolled Actuary (EA), a Member, Society of Pension Actuaries (MSPA), a Member of the American Academy of Actuaries (MAAA), a Registered Securities Representative and a Registered General Securities Principal. David has served previously as Chair of the ASPPA Business Owners Conference and on ASPPA's Board of Directors, and he currently serves on the Board of Directors for CIKR [Council for Independent 401(k) Recordkeepers]. David frequently speaks before professional organizations on topics related to the impact of legislative and regulatory changes in the public and private pension and employee benefit industry and the impact of technology on the delivery of benefit services. (**dhand@bpah.com**)*

Frank Sortino, Ph.D., is finance professor emeritus at San Francisco State University and Director of the Pension Research Institute, which he founded in 1981. For ten years he wrote a quarterly analysis of mutual funds for Pensions & Investments *magazine and he co-authored the book,* Managing Downside Risk in Financial Markets*, with Professor Stephen Satchell at Cambridge University. Dr. Sortino serves on the Advisory Board of The Foundation for Fiduciary Studies. Dr. Sortino has spoken at many conferences in the US, Europe, South Africa and the Pacific Basin. His research papers are posted on **www.sortino.com**. (**f.sortino@comcast.net**)*

1 DOL Fact Sheet relating to QDIAs. October 2007. (Italics is authors' insertion.)
2 DOL Fact Sheet, Regulation Relating To Qualified Default Investment Alternatives in Participant-Directed Individual Account Plans, October 2007.
3 DOL Issues the Final QDIA Regulation, Fred Reish and Stephanie Bennett, November 2007 Bulletin.
4 Harkin and Kohl, pg. 18, section (ii).
5 The Pension Research Institute has published several articles on this subject.
6 These definitions are based on research carried out at PRI and the text book, *Principles of Management*, Harold Koontz and C. O'Donnell, Mcgraw-Hill 1968.
7 PIMCO DC Dialogue, October 2007.
8 Keynote address at the World Series of ETFs Conference, March 31, 2005.
9 The efficient frontier consists of those portfolios with the highest expected return for a given level of standard deviation.
10 The preamble states, "It is the view of the Department that investments made on behalf of defaulted participants ought to and often will be long-term investments and that investment of defaulted participants' contributions and earnings in money market and stable value funds will not over the long-term produce rates of return as favorable as those generated by products, portfolios and services included as qualified default investment alternatives, thereby decreasing the likelihood that participants invested in capital preservation products will have adequate retirement savings."

A New Trend in 401(k) Education

by Elizabeth A. Buscher

Many companies offer their employees 401(k) investment education, yet few measure its effectiveness. In order for a 401(k) plan to effectively operate as a retirement savings vehicle, employees must understand how the plan works and how to invest their assets. A new trend in 401(k) education is emerging, which focuses on obtaining the employer's commitment to offer a more meaningful and robust education and communication campaign.

In the retirement services world, we have seen many trends come and go. Many of them come in response to the climate of today's business world. Over the past few decades a noticeable shift has occurred in the way that organizations have provided retirement benefits to employees:

- Twenty years ago, most employees approaching retirement could look forward to a traditional pension. Today, the 401(k) plan or defined contribution plan is becoming the dominant retirement savings tool available to workers.
- 401(k) plans are different than traditional pension plans that dominated in the past. Employers hired professionals to manage those pension plans and determine savings rates in order to meet guaranteed benefits. With the 401(k) plan, most workers have to manage their own investments.
- Saving in a 401(k) plan used to be relatively easy. You put money in, and watched it grow. Today, workers are finding the job of managing their investments to be more and more complicated. Most workers don't understand the basic concept of investment risk or how investments work, leaving them unprepared to manage their retirement portfolios successfully by themselves.
- According to a Hewitt Associates study, 2007 Trends and Experience in 401(k) Plans, the vast majority of employers are providing investment education to employees.

The Problem

According to a 401(k) benchmarking study conducted by Deloitte Consulting in 2007, employers say the biggest barrier to success is "lack of employee understanding" and "ineffective employee communications." What this tells us is that what we've been doing isn't working. Employees need education tools that allow them to learn about their options.

Most workers don't understand the basic concept of investment risk or how investments work, leaving them unprepared to manage their retirement portfolios successfully by themselves.

Employers have stepped up and are offering more education and investment advice. It is important to remember, however, that what works for one organization may not work for others. The big question is: How can we make sure employees will make the most of those efforts? The answer depends on the approach that employers take. The typical 401(k) plan participant is willing to devote 20 minutes a month to learn about or review their plan. (Source: Hewitt Associates) Yikes!

If you only have 20 minutes a month to get your employees' attention, how are you going to craft a well-designed communication and education campaign? How do you prompt people to participate in the 401(k) and make the most of their employee sponsored benefit? How can you help them be fully prepared to live the retirement of their dreams? The best motivators for adult learners are interest and personal benefit.

The Solution

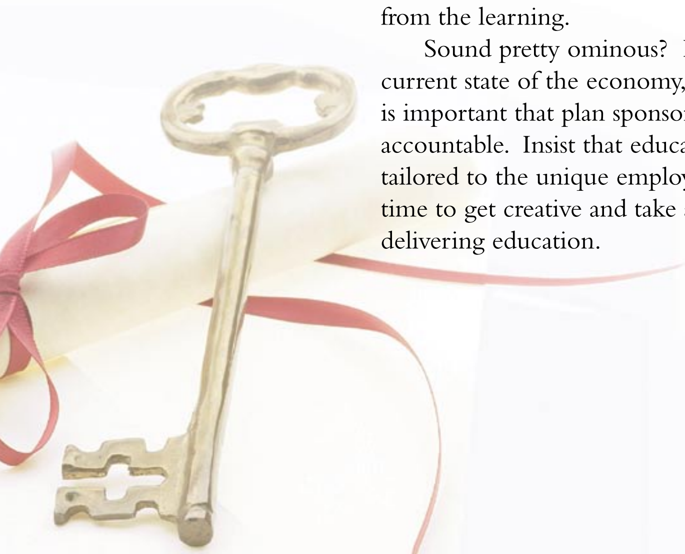
Begin by working with the employer to create a well-designed plan that includes a communication and education campaign directed at the needs of an adult learner. Recognize that, compared to children and teens, adults have special needs and requirements as learners.

- Actively involve participants in the learning process. Adults are self directed and autonomous. They need to be free to direct themselves. Guide participants to their own knowledge rather than supplying them with the facts.
- Tell participants explicitly how the education will be useful to them. Adults are goal oriented and need to be shown how learning will help them reach goals.
- Help adults connect their learning to other life experiences and knowledge. To help them do so, draw out participants' history that is relevant to the topic.
- Provide value. Adults are relevancy-oriented. They must see a reason for learning something.
- Present materials in such a way that stimulates as many senses as possible. People learn at different speeds and in different ways. Cover the bases of visual, audio and hands-on learning.

Think about the type of education you are offering. Does it meet the needs of an adult learner? If not, use the above guidelines to create campaigns and programs that engage adults and achieve the desired results.

Beware of barriers that prevent employees from participating in the learning. Common roadblocks include lack of time, confidence or interest, lack of information about opportunities to learn and scheduling conflicts. The best way to motivate adult learners is to enhance their reasons for wanting to learn and minimize the barriers. It is important that you understand what motivates your employees to participate in the learning. It is also crucial to understand what is preventing them from the learning.

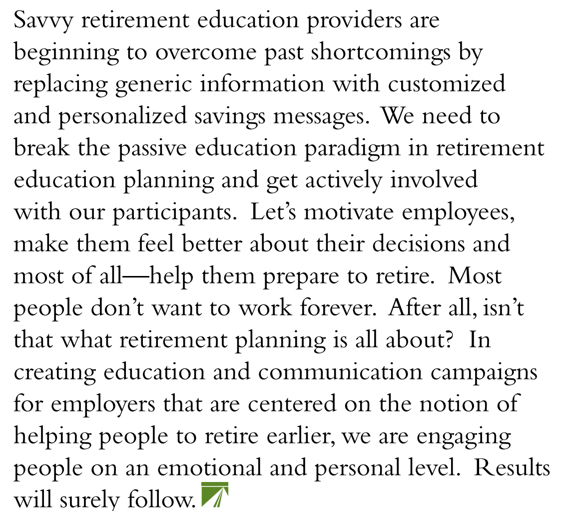
Sound pretty ominous? It can be. With the current state of the economy, budgets are tight. It is important that plan sponsors hold their providers accountable. Insist that education messages be tailored to the unique employee population. It is time to get creative and take a different approach to delivering education.



We suggest working with the employer to create an education policy statement that includes:

- Employee education program goals and objectives
  - Tactical plan
  - Target date for completion
- List of education tools and resources
- Timeline for implementation
- Guidelines for monitoring and evaluating performance

Let's start a new trend in employee education. The ultimate goal is to attract employees to the plan, give them tools that make it easy for them to participate, and maximize their ability to achieve retirement goals. The education policy statement provides a means to deliver measurable results to the plan sponsor.



Conclusion

Savvy retirement education providers are beginning to overcome past shortcomings by replacing generic information with customized and personalized savings messages. We need to break the passive education paradigm in retirement education planning and get actively involved with our participants. Let's motivate employees, make them feel better about their decisions and most of all—help them prepare to retire. Most people don't want to work forever. After all, isn't that what retirement planning is all about? In creating education and communication campaigns for employers that are centered on the notion of helping people to retire earlier, we are engaging people on an emotional and personal level. Results will surely follow.

*Elizabeth A. Buscher is a vice president and education coordinator for Comerica Retirement Services in Detroit, MI. Liz is responsible for sales and implementation of PrepareU, Comerica's premier education solution. Her background is in organizational development, training and sales. She came to Comerica from the Inforum Center for Leadership, where she was responsible for curriculum design and program management. She also spent four years as managing director at Dale Carnegie Training in Michigan. Liz has her Executive Coaching certificate through the Hay Group in Boston. (**eabuscher@comerica.com**)*

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FROM THE PRESIDENT

Important Changes on the Horizon

by Sal L. Tripodi, APM

Ch-ch-ch-changes. I know David Bowie wasn't singing about ASPPA, but I have had that song in my head over the past few months. It's hard to believe that my term is more than half over. It has been thrilling to serve as President of ASPPA. And one of those thrills is the new development I want to discuss in this article—an important change in the way ASPPA will be serving the needs of its actuarial members. After more than 18 months of negotiations, the Boards of Directors of ASPPA and the College of Pension Actuaries (COPA) have approved a Memorandum of Intent to enter into a formal agreement under which COPA and ASPPA would combine forces. The result of this agreement, once approved, would be to transfer all of COPA's operations into ASPPA and combine all COPA members with all ASPPA actuarial members to form an entity within ASPPA called ACOPA (ASPPA College of Pension Actuaries).

An interim agreement was negotiated by three COPA representatives (Edward E. Burrows, MSPA; Richard A. Block; and Larry Deutsch, MSPA) and three ASPPA representatives (Sal L. Tripodi, APM; Stephen L. Dobrow, CPC, QPA, QKA, QPFC; and Brian H. Graff, Esq., APM). That agreement was reviewed by a Transition Team, co-chaired by G. Patrick Byrnes, MSPA, representing COPA, and George J. Taylor, MSPA, representing ASPPA. Both Pat and George are former presidents of ASPPA. Other Transition Team members were Joan A. Gucciardi, MSPA, CPC, and Michael B. Preston, MSPA, representing COPA, and Thomas J. Finnegan, MSPA, CPC, QPA, and Robert M. Richter, APM, representing ASPPA. After taking into consideration a report prepared by the Transition Team, a final agreement will be presented for formal approval by COPA and ASPPA. The final agreement will require the approval of COPA's membership, since it will involve the dissolution of COPA. The ASPPA Board of Directors will have the authority to approve the final agreement on behalf of ASPPA.

College Of Pension Actuaries
copa

Why did we undertake this effort?

I am sure many of you appreciate the growth that ASPPA has experienced over the past decade. This growth has presented some challenges because ASPPA must serve the needs of an increasingly diverse membership. One of the public faces that ASPPA has is to serve as one of the recognized US-based actuarial organizations under the North American Actuarial Council (NAAC) working agreement. In this capacity, ASPPA also participates in the Council of US Presidents (CUSP), made up of the Presidents and Presidents-Elect of the five US-based actuarial organizations. The two ASPPA leaders also serve as special directors on the Board of Directors of the American Academy of Actuaries.

The creation of ACOPA is an important strategic move for ASPPA because it will provide us a better focus with respect to our duties and responsibilities as an actuarial organization. At the same time, it will enable us to better serve the rest of our membership. I like to think that ACOPA will be a "dba" for ASPPA when it is doing business as an actuarial organization. Although ACOPA will not be a separate legal entity, it will operate as a separate unit of ASPPA that will have a fairly significant degree of autonomy in carrying out ASPPA's responsibilities as an actuarial organization. It will be governed by a Leadership Council, consisting initially of the members of the COPA Board plus one individual appointed by ASPPA who is not already a member of that Board. At the end of the initial term, successors of the Leadership Council will be determined based on the operating procedures adopted by ACOPA. Included in the Leadership Council will be a President and President-Elect of ACOPA.

Who will belong to ACOPA?

All credentialed members of ASPPA who are actuaries will automatically belong to ACOPA as part of their membership with ASPPA. There will be no extra dues or other costs associated with being a member of ACOPA. Most of the members of COPA already are ASPPA members, and those who are not will become ASPPA members when the agreement becomes effective, so they too will be members of ACOPA. I encourage all of our actuaries to get involved with ACOPA's activities and to participate in voting decisions made by the ACOPA members. It is through such involvement that ACOPA will be a unifying voice for the pension actuaries in our community.

What will ACOPA do?

ACOPA will focus on the professional development needs of the actuarial membership of ASPPA in the areas of education, conferences, government affairs and professionalism. In this regard, ACOPA, among other things, will:

- plan our conferences that are focused on actuaries;
- develop educational programs for actuaries;
- be responsible for ASPPA's A-4 exam;
- provide actuarial content for *ASPPA eNEWS* and for *The ASPPA Journal*;
- appoint volunteers with primary responsibility for drafting the content of the comment letters issued by our Government Affair Committee regarding actuarial issues; and
- maintain a bulletin board for ASPPA's actuarial members.

In addition, ACOPA will recommend candidates for the ABCD (Actuarial Board for Counseling and Discipline), the ASB (Actuarial Standards Board) and the JBEA (Joint Board for the Enrollment of Actuaries) Advisory Council, and assist ASPPA with other intersocietal functions. The details must still be worked out and the Transition Team is providing much assistance, helping those of us who negotiated this agreement to anticipate and address as many of the implementation and operational issues as possible before the final agreement becomes a reality.

Weren't we already doing these things through the Actuarial Issues Committee (AIC)?

In some ways, yes, but not completely. Although the volunteers who have worked with the AIC provided very valuable services to the organization, the AIC was simply a committee within ASPPA's structure. It did not have the autonomy that we believe is necessary to ensure that an appropriate focus remains on ASPPA's role as an actuarial organization as we continue to grow and diversify. I am confident that with the more formalized approach we are proposing for ACOPA, there will be more energy generated with respect to our actuarial activities. All of the actuaries with a commitment to ASPPA's mission, whether formerly focused on COPA activities or on ASPPA activities, will be able to address the many issues facing pension actuaries in a unified manner and with a more efficient use of resources, enabling that much more to be accomplished to promote the actuarial profession. I see no better way to remind us that we are all in this together.

More to come

As we proceed through this process of formalizing the agreement, obtaining the necessary approvals of that agreement and then implementing the agreement, we will be providing additional communications to the membership. One of those communications (posted on ASPPA's Web site on May 20, 2008) is a series of Q&As prepared by the Transition Team. I encourage all of our members to visit the Web site and read through the Q&As. If you have any questions, please contact Judy A. Miller, MSPA, ASPPA's Chief of Actuarial Issues, at **jmiller@asppa.org**.

Sal L. Tripodi, APM, JD, LLM, is the principal of TRI Pension Services, a nationally-based consulting firm in Highlands Ranch, CO. He is the author of The ERISA Outline Book. *Sal is also the President of ASPPA. TRI Pension Services provides numerous in-house seminars for financial institutions, administration firms and other pension service providers throughout the country, and also publishes a quarterly newsletter* (ERISA Views). *For more information about TRI Pension Services, visit* ***www.cybERISA.com****.* ***(cybERISA@aol.com)***

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QPFC: The "Gold Standard" for Advisors

by Sarah L. Simoneaux, CPC

ASPPA's Qualified Plan Financial Consultant (QPFC) credential offers the recognition that advisors are looking for to distinguish themselves in the qualified retirement plan marketplace. The educational program behind the QPFC is the most comprehensive program in the industry designed specifically with advisors in mind. The QPFC credential has become the "gold standard" for advisors.

An article on the www.financial-planning.com Web site (**www.financial-planning.com/asset/article/527714/daunted-designations.html?pg**) lists the myriad of retirement planning credentials available to financial professionals. The article also details what elements a credential worth pursuing should include:

- A non-profit sponsor of the credential with at least 20 years of industry education and credentialing experience;
- Required continuing education;
- A code of ethics; and
- Industry-relevant and comprehensive educational materials and exams that have earned the respect of professionals inside the industry.

ASPPA's QPFC credential meets all four of the above standards for financial professionals seeking a meaningful credential. And, as an added bonus, completion of the exams required for QPFC can help satisfy continuing education requirements for other credentials, including CFP, ChFC and CLU credentials.

QPFC Curriculum

The first step towards the QPFC credential is to complete the Retirement Plan Fundamentals courses (RPF-1 and RPF-2) and the related online on-demand exams. After that, the candidate proceeds to the more advanced PFC-1 and PFC-2 courses and related proctored exams. The textbooks and exams cover the major areas of qualified plan consulting that an advisor needs to know. They cover the administrative, compliance, distributions, fiduciary, investments and ethical facets of qualified retirement plans. The exams are updated on a regular basis to emphasize the consulting aspects of qualified plan work and include questions that reflect recent legislative or regulatory issues. Exam questions are written and reviewed by qualified plan financial advisors working in the industry. You can purchase a sample exam from the ASPPA Bookstore: **http://store.asppa.org**.

New Textbooks

New textbooks written specifically for the Qualified Plan Financial Consultant are now available through the ASPPA Bookstore. These books not only help advisors prepare for the PFC-1 and PFC-2 exams, but they are also excellent reference tools for anyone working in the retirement plan arena. You can find the publications online at the ASPPA Bookstore: **http://store.asppa.org**.

Webcourses

PFC-1 and PFC-2 webcourses are available for individual purchase or corporate subscriptions, and RPF-1 and RPF-2 webcourses will be available soon. Find out more information at: **www.asppa.org/education/ed_online.htm**.

PFC-1 and PFC-2 Immediate Grading

As with RPF-1 and RPF-2, PFC-1 and PFC-2 now offer candidates immediate grading upon completion. With these two more advanced courses, candidates will also be provided with an explanation of their grades and diagnostic indicators on performance on each topic presented on the respective syllabi as it relates to the exam.

★★★

As a final note, I'd like to share comments from Mark A. Davis, an independent financial advisor who earned his QPFC in 2007. "ASPPA's QPFC designation is the 'gold standard' for advisors working in the retirement plan industry. Let's face it… selling and administering qualified plans isn't getting

any simpler. The QPFC shows that you are a serious, committed professional in a knowledge-based industry that demands—and rewards—specialists."

To find out more about the QPFC educational program, visit **www.asppa.org/qpfc.htm**. You will find useful information about how you can benefit from QPFC and easy steps to get started earning the credential.

*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**)*

QPFC Member Profiles

Melinda and Jamie work as financial advisors in the same San Luis Obispo Morgan Stanley office. They each earned the QPFC credential from ASPPA in 2007. They look surprisingly alike, even though Melinda has been in the business for 30 years and Jamie started working in the industry nine years ago. The resemblance is no coincidence: Melinda Thomas and Jamie (Thomas) Wong are a mother-daughter team. ASPPA recently spoke with Melinda and Jamie about their QPFC credentials and how ASPPA helps them in their work with business owners and their qualified retirement plans.

Melinda started her career as the owner of an independent property and casualty insurance agency. She joined Mass Mutual in 1990, receiving her ChFC before relocating to the California central coast and joining Morgan Stanley in 1994. In addition to her ChFC and QPFC credentials, Melinda is also a Certified Financial Planner (CFP). Jamie started working with her mother in 1999, while she was still attending the University of California at Santa Barbara. After graduating in 2002, she joined Melinda full time at Morgan Stanley. The QPFC is her first qualified plan credential.

Melinda and Jamie both agreed on what prompted them to get the QPFC. "After attending The ASPPA 401(k) SUMMIT, it became clear to us how specialized the industry had become. We believe that if financial advisors are going to sell and service qualified plans they need the education that the QPFC credential provides. We feel that the QPFC is the CFP of the retirement plan world. While it takes time to earn the credential, the knowledge that you receive is invaluable." They pointed out that the QPFC has helped them attract more qualified plan clients. Melinda and Jamie both stated that the QPFC credential shows clients that they are dealing with financial advisors dedicated to mastering the complexities of the retirement plan profession.

Exposure to the profession through the ASPPA conferences has also been a significant benefit of being credentialed ASPPA members. "ASPPA's annual conferences are a major source of education for us. Networking with other pension professionals at the conferences is also key," Melinda and Jamie say. "Anyone who has taken the time to earn an ASPPA credential has a dedication to this field that matches our own. This commitment is critical to forming partnerships with other high caliber professionals."

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Professional Communications and Documentation Post-PPA

by Carol R. Sears, FSPA, CPC

The Pension Protection Act of 2006 (PPA) has created a new set of actuarial communication opportunities for pension actuaries. The Actuarial Board for Counseling and Discipline (ABCD) reminds pension actuaries to be extremely cognizant of the elegantly related chain of Code of Conduct (Code), Actuarial Standards of Practice (ASOPs) and Qualification Standards that apply to all the actuarial services you provide, including the new post-PPA services.

Having effective professionalism standards that are understood and well observed enhance the integrity of our profession. 2008 is an ideal time to focus on enhancing our communications and educating our clients and the public.

New PPA Actuarial Communications include:

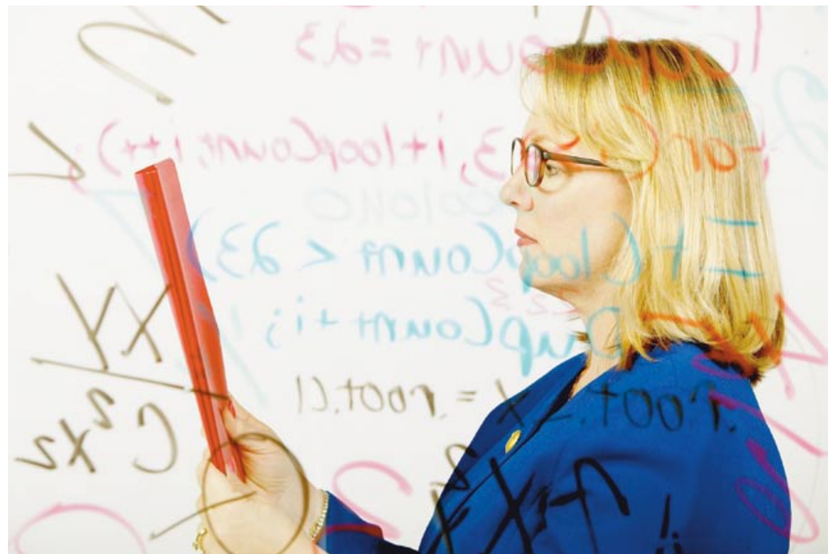
- Certifications of Adjusted Funding Target Attainment Percentage (AFTAP) & At-risk Status;
- Internal Revenue Code §436 Benefit Restrictions;
- Pure Actuarially Recommended Funding Levels;
- Minimum Funding Standards per New Internal Revenue Code §430;
- Maximum Deduction Limits per New Internal Revenue Code §404;
- Actuarially Equivalent Benefits; and
- Other Transition PPA Communications.

It is crucial to rely upon and adhere to our actuarial Code of Conduct as we modify and add to our actuarial valuations and other communications.

The Precept that tasks us with excellent communication responsibility is Precept 4.

Code of Conduct: Precept 4

- PRECEPT 4. An Actuary who issues an Actuarial Communication shall take appropriate steps to ensure that the Actuarial Communication is clear and appropriate to the circumstances and its intended audience and satisfies applicable standards of practice.



- ANNOTATION 4-1. An Actuary who issues an Actuarial Communication shall ensure that the Actuarial Communication clearly identifies the Actuary as being responsible for it.
- ANNOTATION 4-2. An Actuary who issues an Actuarial Communication should indicate the extent to which the Actuary or other sources are available to provide supplementary information and explanation.

The Precept that requires that we adhere to Actuarial Standards of Practice is Precept 3.

Standards of Practice: Precept 3

- PRECEPT 3. An Actuary shall ensure that Actuarial Services performed by or under the direction of the Actuary satisfy applicable standards of practice.
- ANNOTATION 3-1. It is the professional responsibility of an Actuary to observe applicable standards of practice that have been promulgated by a Recognized Actuarial Organization for the jurisdictions in which the Actuary renders Actuarial Services, and to keep current regarding changes in these standards.

- ANNOTATION 3-2. Where a question arises with regard to the applicability of a standard of practice, or where no applicable standard exists, an Actuary shall utilize professional judgment, taking into account generally accepted actuarial principles and practices.
- ANNOTATION 3-3. When an Actuary uses procedures that depart materially from those set forth in an applicable standard of practice, the Actuary must be prepared to justify the use of such procedures.

The current list of ASOPs that we need to refer to as we venture into this post-PPA world are:

Pension ASOPs

- **2. Recommendations for Actuarial Communications Related to Statements of Financial Accounting Standards Nos. 87 and 88** (Doc. No. 004; April 1987); **www.actuarialstandardsboard.org/pdf/asops/asop002_004.pdf**
- **4. Measuring Pension Obligations** (Doc. No. 107; September 2007) Note: This revised document is effective for any work performed on or after March 15, 2008. **www.actuarialstandardsboard.org/pdf/asops/asop004_107.pdf**
- **27. Selection of Economic Assumptions for Measuring Pension Obligations** (Doc. No. 109; September 2007) Note: This revised document is effective for any work performed on or after March 15, 2008. **www.actuarialstandardsboard.org/pdf/asops/asop027_109.pdf**
- **34. Actuarial Practice Concerning Retirement Plan Benefits in Domestic Relations Actions** (Doc. No. 066; October 1999); **www.actuarialstandardsboard.org/pdf/asops/asop034_066.pdf**
- **35. Selection of Demographic and Other Noneconomic Assumptions for Measuring Pension Obligations** (Doc. No. 110; September 2007) Note: This revised document is effective for any work performed on or after March 15, 2008. **www.actuarialstandardsboard.org/pdf/asops/asop035_110.pdf**
- **44. Selection and Use of Asset Valuation Methods for Pension Valuations** (Doc. No. 108; September 2007) Note: Effective March 15, 2008. **www.actuarialstandardsboard.org/pdf/asops/asop035_110.pdf**

General ASOPs

- **17. Expert Testimony by Actuaries** (Doc. No. 087; March 2002); **www.actuarialstandardsboard.org/pdf/asops/asop017_087.pdf**
- **21. Responding to or Assisting Auditors or Examiners in Connection with Financial Statements for All Practice Areas** (Doc. No. 095; September 2004); **www.actuarialstandardsboard.org/pdf/asops/asop021_095.pdf**
- **23. Data Quality** (Doc. No. 097; December 2004); **www.actuarialstandardsboard.org/pdf/asops/asop023_097.pdf**
- **41. Actuarial Communications** (Doc. No. 086; March 2002); **www.actuarialstandardsboard.org/pdf/asops/asop041_086.pdf**

The Precept that requires that we also adhere to Qualification Standards is Precept 2.

Qualification Standards: Precept 2

- PRECEPT 2. An Actuary shall perform Actuarial Services only when the Actuary is qualified to do so on the basis of basic and continuing education and experience and only when the Actuary satisfies applicable qualification standards.
- ANNOTATION 2-1. It is the professional responsibility of an Actuary to observe applicable qualification standards that have been promulgated by a Recognized Actuarial Organization for the jurisdictions in which the Actuary renders Actuarial Services and to keep current regarding changes in these standards.
- ANNOTATION 2-2. The absence of applicable qualification standards for a particular type of assignment or for the jurisdictions in which an Actuary renders Actuarial Services does not relieve the Actuary of the responsibility to perform such Actuarial Services only when qualified to do so in accordance with this Precept.

Additional Considerations

With these guidelines in mind, pension actuaries need to further refine their post-PPA actuarial reports to meaningfully and clearly identify "the data, assumptions, and methods used by the actuary with sufficient clarity that another actuary qualified in the same practice area could make an objective appraisal of the reasonableness of the actuary's work as presented in the actuary's report." (From 3.3.3 of ASOP 41)

Additionally, deviations from ASOPs need identification and support, as does deviation from any traditional calculations or methods. For example, since there is currently confusion as to the requirement to use pre-retirement mortality in the calculation of actuarial numbers required by new Internal Revenue Code §436, it is important to state whether pre-retirement mortality was used or not. Similarly, if in the development of the recommended funding level you choose to use a pre-retirement decrement but do not add in an actuarially cost of the ancillary benefit available upon that decrement, there should be disclosure and support for that professional choice in your actuarial valuation report. In a nutshell, you should prepare any report or communication such that your pension actuarial peers could understand how the underlying calculations were done without having to ask you personally. You should also prepare your report so that your clients understand your advice and the support for that guidance.

Following is a pertinent excerpt from new Qualification Standards effective for all actuaries in 2008:

- "**Statement of Actuarial Opinion**" is defined in the revised Qualification Standards as "an opinion expressed by the actuary in the course of performing Actuarial Services and intended by that actuary to be relied upon by the person or organization to which the opinion is addressed."
- "**Actuarial Services**" are defined in the *Code of Professional Conduct* as "[p]rofessional services provided to a Principal (client or employer) by an individual acting in the capacity of an actuary. Such services include the rendering of advice, recommendations, findings, or opinions based upon actuarial considerations."

Finally, remember to insert an Acknowledgement of Qualification on your actuarial report which satisfies the definition of a Statement of Actuarial Opinion:

> I, [*Name*], am [*Position*] for [*Company*]. I am a member of the American Academy of Actuaries [*and other organization*] and I meet the Qualification Standards of the American Academy of Actuaries [*and other organization*] to render the actuarial opinion contained herein.

Note: A qualification acknowledgment is not required on preformatted forms, such as Schedule B (Form 5500).

When your report is complete, the last facet of your responsibility is to properly document your work. Examples of what should be in your client files and proper file handling procedures include:

- A description of what was done and why;
- Sufficiently detailed work papers for another qualified actuary to review the work for reasonableness;
- A record of what the principal was told and when (failure to warn can be a separate claim);
- Proof that open questions were asked and answered;
- Abide by your ongoing document retention policy;
- Proof that you complied with applicable law and standards, especially if unique situation;
- Rough drafts of finished documents should not be kept;
- "Back of the envelope" calculations should not be in files—keep only final calculations;
- Proper documentation that important questions are asked and answers are documented; and
- Make sure errors discovered are addressed and corrections supported/documented.

Conclusion

As we develop reports services to encompass post-PPA requirements and challenges, it is prudent to return to basics and insert the proper professionalism into our reports and other communications. Excellent communication leads to excellent understanding—which leads to an excellently served public.

*Carol R. Sears, FSPA, CPC, is a principal of Actuarial Consulting Group, Inc., an employee benefits consulting firm. Carol has more than 27 years of experience in the employee benefits consulting field and is a Fellow of ASPPA (FSPA), a Fellow in the Conference of Consulting Actuaries (FCA), a Member of the American Academy of Actuaries (MAAA), a Certified Pension Consultant (CPC) and an Enrolled Actuary (EA). Carol is a Past President of ASPPA. She served on the Education and Examination Committee for 12 years, held the position of General Chair and served as ASPPA's first Technical Education Consultant. Carol was named as the 2005 recipient of ASPPA's Educator's Award. Carol currently serves on ASPPA's Task Forces for Phased Retirement and Women's Issues under the Government Affairs Committee and also on the Actuarial Board for Counseling and Discipline (ABCD). She is a frequent local and national speaker on topics relative to retirement plans and other employee benefit programs. (**csears@acg-benefits.com**)*

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U.S. Scores Grim
— The Atlanta Journal 12/10/2007

SAT Scores in Math Fall in MD – Drop Among Steepest in Nation
— Baltimore Sun 3/3/2008

Top-Achieving Nations Beat U.S. States in Math and Science
— Education Week 11/13/2007

Math Scores Disappoint
— The Times 2/28/2008

U.S. Math Scores Fail to Add Up
— Oakland Tribune 11/7/2006

U.S. Teens Trail Peers Around World on Math-Science Test
— Washington Post 12/5/2007

Other Countries' Students Surpass U.S.'s on Tests
— The New York Times (AP) 12/5/2007

U.S. Teens Still Lag Behind in Science and Math
— MSNBC/Associated Press 12/4/2007

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- ***Get to know*** your Foundation by visiting our Web site or stopping by to see us at our exhibit during an upcoming actuarial meeting.
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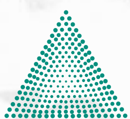

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GOVERNMENT AFFAIRS

ERISA III—Thinking Ahead

by David M. Lipkin, MSPA

ASPPA's Government Affairs Committee (GAC) held one of its periodic meetings in Washington, DC during the weekend of February 23-24, 2008. During the sessions GAC representatives discussed a variety of ongoing regulatory and legislative developments under GAC's purview for the purpose of improving the employer-sponsored retirement plan system.

In addition to dealing with the routine issues, GAC has recently been brainstorming on what types of future retirement legislation might be desirable. During the February 23, 2008 meeting, the GAC Legislative Relations Subcommittee (under the guidance of Karen Nowiejski, MSPA, Chair) constructed a list of such proposals.

Karen organized these proposals into three sections:

- Expanding coverage;
- Simplification; and
- Longevity.

Coverage issues address policy concerns that a significant portion of the workforce is not covered by a qualified plan. *Simplification* ideas attempt to make plans (especially small plans) more efficient. *Longevity* issues address a growing concern that retirees (who now live much longer) might run out of money during their retirement.

The GAC representatives debated over 50 specific proposals to see which ones should be supported further. We reviewed these proposals under the criteria of whether they would:

- Improve the private retirement plan system;
- Make sense as "public policy;" and
- Be politically realistic.

GAC Corner

ASPPA Government Affairs Committee Comment Letters and Testimony since February 2008

June 6
ASPPA testified before an IRS public hearing on proposed hybrid retirement plan regulations, addressing issues raised in the March 27, 2008 comment letter.
www.asppa.org/pdf_files/govpdffiles/060608_ASPPA_Hybrid_Hearing_Outline.pdf

June 2
ASPPA and ten other organizations released a research report, Revenue Estimates and Retirement Policy, which highlights the need for accurate federal budget scorekeeping estimates for proposed legislative changes affecting retirement savings.
www.asppa.org/pdf_files/govpdffiles/REVENUEREPORTfinal.pdf

May 29
ASPPA testified before an IRS public hearing on proposed minimum funding regulations, addressing issues raised in the March 31, 2008 comment letter.
www.asppa.org/pdf_files/govpdffiles/052908_Funding_Hearing_Outline.pdf

May 19
ASPPA testified before an IRS public hearing on proposed automatic contribution arrangement regulations, addressing issues raised in the February 6, 2008 comment letter.
www.asppa.org/pdf_files/govpdffiles/2008.0519.Automatic.Enrollment.Testimony.pdf

April 29
ASPPA submitted a comment letter to the DOL on their proposed amendment of the plan asset regulation relating to participant contributions.
www.asppa.org/pdf_files/govpdffiles/Part-Contri-Safe-Harbor-42908.pdf

April 25
ASPPA submitted a comment letter to the IRS and Treasury discussing current methods available to plan sponsors through EPCRS to retroactively correct certain document errors, and providing additional examples to assist plan sponsor and practitioners.
www.asppa.org/pdf_files/govpdffiles/Correction-Document-Errors-042508.pdf

Some of the interesting ideas we discussed included:

- Allow a deferral-only 401(k) plan to be exempt from top-heavy rules;
- Allow for a higher 415 DC limit if the employer makes supplemental contributions to NHCEs or perhaps does other "nice" things;
- Simplify (and index) the definition of key employees;
- Increase the $5,000 threshold for forced payouts to a higher level;
- Allow for NRA greater than 65 (this idea is really "free thinking!");
- Make participant disclosures more efficient (Note: This initiative is now actively being pursued by another GAC task force);
- Allow all funds (including investment income and safe harbor contributions) to be available for hardship distributions;
- Provide a waiver under 401(a)(26) for DB/DC plans where NHCEs get at least 7.5% of pay from the DC plan; and
- Establish a safe harbor for timing of 401(k) deferral deposits (mission accomplished!)

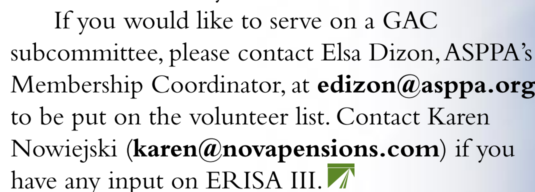
Some of these discussions became heated, as one person's "desirable" proposal may not be another's cup of tea. For example, a proposal to increase the 10% excise tax on early distributions prompted a lively discussion:

- "Have you ever been on the phone with a plan participant who wanted his or her money now?"
- "Well, that may be, but we need to minimize leakage from the system."

However, the fact that some of these discussions veered off into uncomfortable territory may not be a bad thing.

The final set of recommendations will be known as "ERISA III," at least until we come up with a jazzier name for them. ERISA III will form the blueprint for future legislative recommendations. ASPPA has a strong track record of success in this area, as several prior initiatives are already law.

If you would like to serve on a GAC subcommittee, please contact Elsa Dizon, ASPPA's Membership Coordinator, at **edizon@asppa.org** to be put on the volunteer list. Contact Karen Nowiejski (**karen@novapensions.com**) if you have any input on ERISA III.



David M. Lipkin, MSPA, is the president of Metro Benefits, Inc., in Pittsburgh, PA, which he founded in 1986. David speaks on a variety of topics, including the professional responsibilities of the actuary. He has published numerous articles. He has been selected by the Department of Labor to serve as an independent fiduciary for several orphan/abandoned plans. David currently serves on ASPPA's Board of Directors and as Co-chair of ASPPA's Government Affairs Committee. He previously served as Chair of GAC's Defined Benefit Subcommittee. (david@metrobenefits.com)

April 15
ASPPA and CIKR submitted a Letter of Support to H.R. 3185, as amended, to House Education and Labor Chairman George Miller (D-CA).
www.asppa.org/pdf_files/govpdffiles/Support.Letter.HR3185.fin.pdf

April 2
ASPPA submitted comments to Treasury and the IRS on their proposed regulations on the diversification requirements for qualified defined contribution plans holding publicly traded employer securities.
www.asppa.org/pdf_files/govpdffiles/Stock_Diversification_Comment.FIN.pdf

March 31
ASPPA and CIKR testified before a DOL ERISA 408(b)(2) fee disclosure public hearing, addressing issues raised in the joint February 11, 2008 comment letter.
www.asppa.org/pdf_files/408b2Comments033108.pdf

March 31
ASPPA, in cooperation with COPA, submitted comments to Treasury and the IRS on their proposed funding regulations, and requested revised proposed regulations be issued on both IRC 430 and 436.
www.asppa.org/pdf_files/govpdffiles/ASPPA_Funding_Reg_Comments_%20033108.pdf

March 27
ASPPA, in cooperation with COPA, submitted comments to Treasury and the IRS on their proposed regulations regarding hybrid defined benefit plans.
www.asppa.org/pdf_files/ASPPAHybridComments032708.pdf

March 11
ASPPA, CIKR and the Small Business Council of America (SBCA) submitted comments in opposition to Connecticut 401(k) plan legislation.
www.asppa.org/pdf_files/CTWrittenComments.pdf

February 11
ASPPA and CIKR submitted comments to the DOL on ERISA Section 408(b)(2) proposed regulations.
www.asppa.org/pdf_files/ASPPA-CIKR-408b2-comments021108.pdf

February 6
ASPPA submitted comments to the IRS and Treasury on the Automatic Contribution Arrangements proposed regulations.
www.asppa.org/pdf_files/ACAComments_2-6-08.pdf

For all GAC filed comments, visit **www.asppa.org/government/gov_comment.htm**.

ABC of Atlanta: 2008 Will Be Great

by John D. Hartness, Jr., APM

The ASPPA Benefits Council (ABC) of Atlanta is offering an ambitious educational program for 2008.

The format typically includes a breakfast buffet followed by announcements and the speaker's presentation, which usually lasts two hours.

Ilene H. Ferenczy, CPC, led off the new year with a program entitled "401(k) Compliance Testing and Corrections," which attracted approximately 75 participants at the Ashford Club, this year's venue for most programs.

February featured a joint presentation by ABC board members and accountants Debi Jacobs and Barry Klein. They shared the accountant's perspective on plan audits, providing a helpful list of "dos and don'ts" and answering many questions from the audience.

Perennial favorite Richard A. Hochman, APM, was the March speaker, addressing plan design pitfalls and traps. He served up numerous examples of drafting errors and explained the procedures for the EGTRRA round of plan restatements.

Remaining programs scheduled for 2008 include the following topics:

- Defined Benefit Plan Funding Issues;
- What to Do When the DOL Auditor Calls (from the DOL Perspective) co-sponsored with the Atlanta chapter of Worldwide Employee Benefits Network (WEB);
- Recent Developments in Retirement Plans for Tax-exempt and Government Entities;
- ASPPA Executive Director/CEO Brian Graff's Legislative and Regulatory Update; and
- Hot Investment Issues.

2008 saw the induction of some new ABC officers and board members. John D. Hartness, Jr., APM, is the incoming ABC president, with Joni L. Jennings-Steele, CPC, QPA, QKA, assuming the tile of past president after heading the ABC for two years. Joni will continue to serve as the ABC liaison. The ABC board applauds Joni's leadership during her term, which saw a major increase in membership and enhanced involvement in national affairs by those who live in Atlanta.

Other ABC officers for the coming year include Debi Jacobs, secretary, and Barry Klein, treasurer. Continuing ABC board members include Roger T. Weitkamp, who chairs the program committee, Jeffrey A. Groves, MSPA, who serves as the GAC liaison, Todd Lacey, who chairs the membership committee, Gina L. Farmer and Katrina Moody. The ABC board welcomes new members Lee I. Swerdlin and Kasey R. Price, QKA.

The ABC board's principal goals for 2008 include boosting membership, increasing the quality of communications to members and prospective members and ensuring the continued high quality of educational programs.

Finally, to build interest in the 2009 Benefits Conference of the South (BCOS), which will be held in January, program attendees through the year are offered the opportunity to drop their business cards into a hat at each of the programs. A drawing will be held in December to determine who will receive a free registration to BCOS.

*John D. Hartness, Jr., APM, has been practicing law in Atlanta for more than 25 years. A sole practitioner since 2001, he is active in ASPPA, currently serving as a member of the Program Committee for the ASPPA Annual Conference. (**johnhlaw@bellsouth.net**)*

2008 RPF EXAMINATION
Wrap Up

Deadline
2008 Retirement Plan Fundamental (RPF) exams must be completed by midnight, December 15, 2008

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Lunch with the ABC of Detroit: Serving Up High Caliber Speakers to Keep Plan Professionals Up-to-date

by Susan A. Shoemaker

Now well into our second year, the ABC of Detroit remains committed to keeping our members abreast of laws and conditions impacting employee benefit plans—keeping them informed so that they may continue to render the best professional services to their clients.

One way to keep the information flowing is to invite high caliber, credentialed speakers to present at our luncheon series. We are happy to report that we've been tremendously successful in this endeavor. Below are just a few of the high profile speakers we've been fortunate to attract within the past year:

- In September 2007 in a joint meeting with the State Bar of Michigan and ABC of Detroit, Sal L. Tripodi, Esq., APM, provided an update on current guidance from the Departments of Treasury and Labor, the IRS and recent ERISA cases impacting the benefits arena and potential legislative changes. Sal is the founder of TRI Pension Services, a nationally based employee benefits consulting practice, and the author of *The ERISA Outline Book*.
- In November 2007, David B. Walters, Esq., spoke on 404(c) issues. David is a partner with Bodman, LLP and has extensive experience in all aspects of employee benefits and executive compensation law.
- In January 2008, Craig P. Hoffman, J.D., L.L.M., APM, spoke on 401(k) fees and new disclosure mandates. Craig is a vice president and general counsel of SunGard and a renowned industry expert.
- In March 2008, Janice M. Wegesin, CPC, QPA, spoke on Form 5500 issues and plan audits. Janice is the president of JMW Consulting, Inc., specializing in compliance and design matters associated with qualified retirement plans and employee welfare benefits programs, with an emphasis in reporting and disclosure.
- In May 2008, S. Derrin Watson, APM, spoke at our lunch. Derrin is a renowned benefit plan expert and was a recent recipient of ASPPA's Educator's Award. He's also the author of *Who's the Employer*, a detailed analysis of employee and employer issues (leased employees, controlled groups, etc.) that affect qualified plans.

ABC of Detroit Officers

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Marylis A. Wozniacki, QPA, QKA, QPFC
Creative Benefit Strategies, Inc.

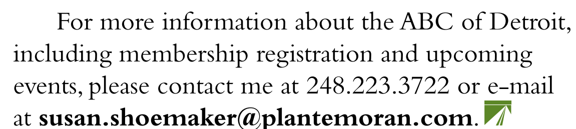
Vice President
Carol A. Tracey, CPC
Alliance Benefit Group of Michigan

Secretary
Susan A. Shoemaker
Plante Moran Financial Advisors

Treasurer
Marlene M. DeBrosse, QKA
Pulte Homes, Inc.

We all know how difficult it can be to keep up with the ever-changing rules and regulations in the employee benefits industry. That's why these luncheons are so crucial—they've proven to be a great way for retirement plan professionals to stay informed. And from what we've heard, the food's not bad either!

For more information about the ABC of Detroit, including membership registration and upcoming events, please contact me at 248.223.3722 or e-mail at **susan.shoemaker@plantemoran.com**.



Susan A. Shoemaker, CFP®, AIFA®, is a partner with Plante Moran Financial Advisors. She has more than ten years of retirement plan experience focusing on investment selection and monitoring, assisting decision makers with their fiduciary responsibilities and working with plan sponsors in meeting participant education and communication needs. Susan is currently the secretary of the ABC of Detroit. (susan.shoemaker@plantemoran.com)

The ABC of Northern Indiana—Seven Years Later

by Marilyn V. Manzer, QPA, QKA

The ASPPA Benefits Council (ABC) of Northern Indiana has been in existence since 2001. In the formative stages, many ideas for workshops, seminars, training sessions and social meetings were solicited from the potential members and discussed by the ABC board. Now that the ABC of Northern Indiana has been in existence for almost seven years, the meetings during the year have evolved into a regular format.

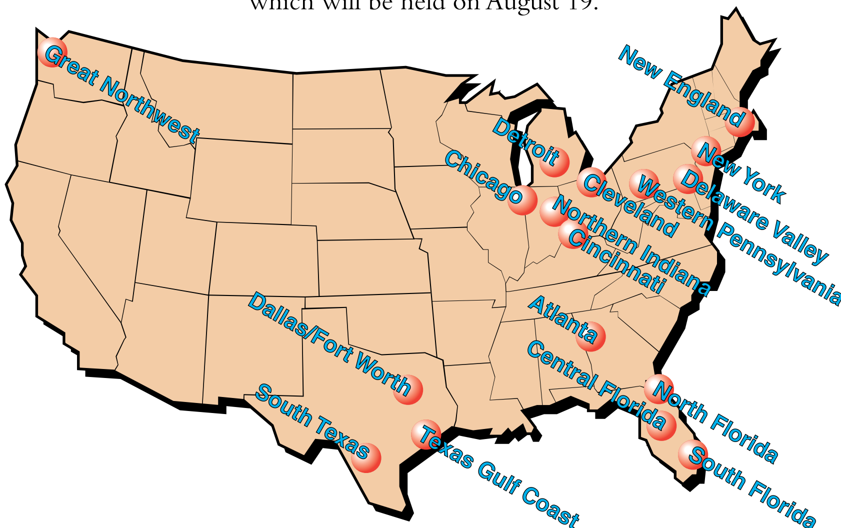
Our April ABC meeting is a luncheon in which the guest speakers are members of our own ABC. For the past several years, Bob Toth and David J. Kolhoff, APM, ERISA attorneys and ABC members, have presented a Legislative Update. Dubbed as the "Bob and Dave Show," their presentations have been so entertaining and spirited that attendees have overwhelmingly requested that the duo repeat their performance as a regular ABC luncheon meeting. They have been on the agenda for our April meeting for several years now.

The summer ABC event, held in either June or August of the year, is an all-day workshop, which has been held at the Fort Wayne Marriott for the past seven years. Sal L. Tripodi, Esq., APM, was the presenter for the first five years of our all-day workshop. Ilene H. Ferenczy, CPC, presented in 2007 and received rave reviews from the attendees. For 2008, Sal Tripodi will return and give the presentation for our all-day event which will be held on August 19.

The fall ABC meeting is another luncheon meeting and our guest speaker has been Brian H. Graff, Esq., APM, ASPPA's Executive Director/CEO, for the past several years. Brian always gives an informative summary of the major events taking place in the retirement plan world. The date for the fall luncheon with Brian has not yet been set for 2008.

Our final event of the year is a luncheon meeting held in November of each year. This meeting provides for the election of the board for the coming year, as well as a recap of the highlights of the ASPPA Annual Conference. For the past several years, the ABC members who have attended the conference have done an excellent job of presenting the recap of the conference's top highlights.

The pension professionals of Northern Indiana have found a perfect vehicle in the ABC to share ideas, exchange information and education, renew and form new professional affiliations. For more information on the ABC of Northern Indiana, please contact ABC president David J. Kolhoff, APM, at **david.kolhoff@lfg.com**.



*Marilyn V. Manzer, QPA, QKA, is director of Baden Retirement Plan Services (BRPS) with offices in Indianapolis and Fort Wayne, IN. BRPS is an independent third party administration firm consisting of more than 50 professionals, providing all aspects of plan design, administration and compliance. Marilyn has more than 23 years of experience as a pension professional and holds the ASPPA QPA and QKA credentials. She is also a CPA and has been a board member of the ABC of Northern Indiana since its inception. (**mmanzer@badenrps.com**)*

ABC of North Florida Growing in 2008

by Peter A. Kneedler, CPC, QPA

With a growing membership, the ASPPA Benefits Council (ABC) of North Florida stays very active in Jacksonville. We meet four times a year, always with a wonderful lunch, an interesting speaker and a timely topic.

Early this year, we started off with S. Derrin Watson, J.D., APM, from SunGard Corbel, with "Documented Confusion—Dealing with Documents under the Latest Guidance." With all the cycles and recent updates, it was great to know that document confusion was a "normal" feeling.

We then had Craig P. Hoffman, J.D., LL.M., APM, from SunGard Corbel, with "401(k) Fees and the New Disclosure Mandates." With all of the recent court cases and pending legislation, we were all interested to hear Craig's insight as to where this might take us in the next few years.

On August 26, 2008, we have Lorraine Dorsa, FCA, MAAA, MSPA, EA, CEBS, from Dorsa Consulting, Inc., presenting "Defined Benefit and Cash Balance Plans for Defined Contribution Administrators." We are looking forward to this topic as so many of the DC administrators encounter the defined benefit and cash balance plans, but don't take the opportunity to go after the business.

In late November or early December, we will finish off the year with an afternoon meeting discussing the ASPPA Annual Conference, followed by a Holiday Party. The year-end meeting is a great social event and is always well attended.

The ABC of North Florida membership includes accountants, TPAs, attorneys, investment advisors, consultants, actuaries and benefit analysts. We always find interesting conversations and enjoyable friendships.

For more information about the ABC of North Florida, including membership registration and upcoming events, contact Mary J. Akel, QKA, at SunGard Relius, **mary.akel@relius.net**.

Peter A. Kneedler, CPC, QPA, CPA, is the director of benefits for Blue Cross and Blue Shield of Florida in Jacksonville, FL. He has more than 16 years of experience in retirement plan administration and is the current president of the ABC of North Florida. (peter.kneedler@bcbsfl.com)

2007-2008

CE Cycle Ends December 31, 2008
Report Online

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For a complete list of remaining opportunities,
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Knowledge • Advocacy • Credibility • Leadership

And the Beat Goes On…for the ABC of Western Pennsylvania

by Aaron B. Moody

The ASPPA Benefits Council (ABC) of Western Pennsylvania has been very active since our last report in the winter of 2007. The ABC board of directors chose programs with an emphasis on decoding the new regulations coming out of the IRS and DOL. We also kept an eye on encouraging participation by our non-actuary members.

The first ABC meeting held in April featured Brian H. Graff, Esq., APM, ASPPA Executive Director/CEO. He spoke about the effects of a Democratic Congress on upcoming 401(k) fee studies as well as pending DOL fee initiatives. In June, Michael L. Pisula, FSA, EA, MAAA, founder of The Phoenix Benefits Group, Inc., spoke about defined benefit PPA funding and notice issues, providing members with valuable insight into how best to stay on the Act's good side as its rules are enacted over the next few years.

The hot summer months were broken up as ABC members headed to a reception at the Clarke Building, of Clark Bar fame, before watching our Pirates play(?) a great(?) game. Well, at least the company was great. September's meeting was well attended by ABC members and nonmembers alike. Eugene F. Maloney, vice president and corporate counsel to Pittsburgh's own Federated Investors, Inc., addressed the role of the plan fiduciary in light of PPA and in regard to plan fees and potential litigation. It was a hot topic that was well received by the audience.

Finally, it was time to party, and learn, but not in that order. December welcomed Janice M. Wegesin, CPC, QPA, EA, of JMW Consulting. She put us all in the holiday mood by reviewing our favorite, the Form 5500, and what's new and what's old on this very important document. Members and nonmembers enjoyed a different venue and a cocktail party with a raffle after the meeting.

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

President:
Stephanie M. Hepler, CPC, QPA, QKA

VP/Gov't. Affairs Coordinator:
Gary J. Gunnett

Treasurer:
Marcie Weaver

Secretary:
Molly E. Balkey, CPC, QPA

Meeting Chair Coordinator:
Peggy Kelly

CE Chair:
Michael W. Steve, QPA

Membership Chair/ASPPA Liaison:
Shelia L. McLaughlin, QPA, QKA

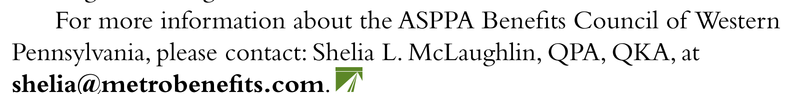
ASPPA/Task Force Liaison:
Kathy A. Schroeder, MSPA, CPC, QPA

Program Chairs:
DC: Aaron B. Moody
DB: Gregory W. Elnyczky, MSPA, CPC, QPA, QKA

Strategic Planning Officer:
David A. Pribozie, CPC, QPA, QKA

2008 is off to a great start. The board is preparing to implement those findings recommended by the ASPPA Board of Directors as a result of the ABC Task Force work. We're also looking at how best to improve the value of our meetings for members and thus encourage more nonmembers to join. Finally, we are looking at topics that appeal to and educate actuary members, but also provide valuable information to non-actuary members of our council. Stay tuned to the ASPPA Web site for more information of our upcoming meetings. Have a great 2008!

For more information about the ASPPA Benefits Council of Western Pennsylvania, please contact: Shelia L. McLaughlin, QPA, QKA, at **shelia@metrobenefits.com**.



*Aaron B. Moody is a financial planner with MetLife. 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. (**amoody1@metlife.com**)*

ASPPA PAC Opens the Door!

Join ASPPA PAC to celebrate its 10th anniversary in this important 2008 election year!

The ASPPA Political Action Committee (PAC) plays a positive role in protecting you, the ASPPA member, your clients, and practices by building and maintaining credible and trusted relationships with key lawmakers who support the private retirement system.

For the past ten years, ASPPA PAC has been a significant player in key retirement legislation (*e.g.*, EGTRRA, PPA) and ongoing legislative developments. With your support, we can continue to have an impact on these crucial efforts.

Exciting activities are planned throughout 2008 to increase ASPPA member awareness of the PAC, including a special PAC-based political theme at the 2008 Annual Conference and a post-election webcast for PAC members only!

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ASPPA Calendar of Events

Date	Description	CE Credits
2008		
Jul 13 – 16	Western Benefits Conference • Seattle, WA	20
Aug 22 – 25	EA-2A ASPPA Review Course • Washington, DC	
Sep 19	Early registration deadline for fall examinations	
Oct 3 – 6	EA-2A ASPPA Review Course • Chicago, IL	
Oct 19 – 22	ASPPA Annual Conference • Washington, DC	20
Oct 31	Final registration deadline for fall examinations	
Nov 3 – Dec 12	Fall 2008 examination window (DB, DC-1, DC-2, DC-3, PFC-1 and PFC-2)	
Nov 6	Postponement deadline for C-4 and A-4 examinations	
Nov 13	C-4 examination	
Nov 13 – 14	ASPPA Cincinnati Pension Conference • Cincinnati, OH	15
Nov 14	A-4 examination	
Dec 1	Postponement deadline for fall DB, DC-1, DC-2, DC-3, PFC-1 and PFC-2 examinations	
Dec 15	RPF-1 & RPF-2 examination deadline for 2008 online submission (midnight, EST)	
2009		
Jan 15 – 16	Benefits Conference of the South • Atlanta, GA	15
Jan 29 – 30	Los Angeles Benefits Conference • Los Angeles, CA	15
Mar 22 – 24	The ASPPA 401(k) SUMMIT • San Diego, CA	15

** 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 CE credit information for 2008 conferences is subject to change.

ABC Meetings Calendar

July 17
ABC of Central Florida
Changes in the 403(b) Marketplace
Diana Zubrowski

July 24
ABC of South Florida
Participant Notices and Disclosure
Robert Kaplan, CPC, QPA

July 29
ABC of Greater Cincinnati
Testing and Reporting Regulation Update
John P. Stebbins, QKA, and Mike Kraemer

August TBD
ABC of Dallas/Ft. Worth
Topic TBD
Speaker TBD

August TBD
ABC of Northern Indiana
All-day Seminar
Sal L. Tripodi, Esq., APM

August 20
ABC of Atlanta
Retirement Plans for Tax-exempt and Governmental Entities
Deborah Davis

August 26
ABC of Greater Cincinnati
403(b) Plans—The Future is Now!
Robert M. Kaplan, CPC, QPA

September TBD
ABC of Atlanta
Washington Legislative/ Regulatory Update
Brian H. Graff, Esq., APM

September TBD
ABC of Northern Indiana
Lunch with Presentation
Brian H. Graff, Esq., APM

September 9
ABC of Western PA
Document Issues Including EGTRRA Restatements
Richard A. Hochman, APM

September 18
ABC of Atlanta
How to Handle a DOL Audit
Brenda Rickborn

September 30
ABC of Greater Cincinnati
Washington Update
Brian H. Graff, Esq., APM

October TBD
ABC of Greater Cincinnati
President's Party

October 21
ABC of Atlanta
Investment-related Workshop
Todd Lacey

November TBD
ABC of Dallas/Ft. Worth
Plan Design
S. Derrin Watson, APM

November 12
ABC of Atlanta
Pension Protection Act Update
Adam Cohen and Rob Neis

November 13
ABC of Northern Indiana
Annual Board Meeting
ABC of Northern Indiana Board

December 13
ABC of Atlanta
Holiday Party

December 16
ABC of Greater Cincinnati
Topic TBD
Richard A. Hochman, APM

For a current listing of ABC meetings, visit **www.asppa.org/membership/member_local.htm**.

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**

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

Level = Difficult

Answers will be posted on ASPPA's Web site in the Members Only section. Log in. Click on *The ASPPA Journal*. Scroll down to "Answers to Fun-da-Mentals."

MCHUMOR by T. McCracken

"I told you we should have read the fine print when the accountant said we'd be gettng 10,000 bucks a month in our retirement."

***CORRECTION TO LAST ISSUE'S SUDOKU:**
Special thanks to our astute reader, Frank McKenna, QKA, who pointed out that we had accidentally omitted the "1" in the cell in the third column/seventh row of the Sudoku puzzle that appeared in the Spring 2008 issue of *The ASPPA Journal*. Without this "1" provided, there were actually many possible solutions to the puzzle. We apologize for the error.

Word Scramble

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

KEY LEW □ ___ ___ □ □ ___

SR PARENT ___ ___ ___ □ □ ___ □ □

PALE BAY □ □ ___ □ ___ ___ ___

SEE IN CAR □ ___ ___ ___ ___ □ □ ___

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

Mystery Answer:
Because he determined that the
"_ _ _ _ _ _ _ _ _ _ _ _ _ _."

Answers will be posted on ASPPA's Web site in the Members Only section. Log in. Click on *The ASPPA Journal*. Scroll down to "Answers to Fun-da-Mentals."

Why the actuary's son decided not to sneak out for the night.

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