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THE ASPPA Journal

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

WASHINGTON UPDATE

Tax Reform Could Undermine Long-Term Retirement Savings

by Brian H. Graff, Esq., APM

Last January, the President asked an advisory panel to propose an improved tax system. Their report is expected to be released this summer. Most concerning to ASPPA is that many of the reform options under consideration could have a detrimental effect on benefits provided by employer-sponsored retirement plans. Although we recognize that improvements to our tax system are certainly needed, many existing provisions in the Internal Revenue Code have helped achieve positive results and deserve to be retained. Retirement savings incentives for Americans of modest means have been extremely successful and should be continued.

A tax reform plan that reduces or eliminates the incentives for long-term savings would erode both sponsorship of and participation in employer-sponsored retirement savings plans,

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FROM THE EDITOR

A Day in the Park

by Chris L. Stroud, MSPA

Clepsydra Geyser, Yellowstone National Park

It is that time of the year again when many of you start planning your annual trek to Washington, DC, for the ASPPA 2005 Annual Conference. The lucky ones add on a little extra time to do some sightseeing and enjoy some of their favorite tourist sites around town like the National Mall and Memorial Parks. Meanwhile, other folks are busy planning summer vacations, which often include sightseeing in other areas of the country and visits to other historic parks and monuments. We should all consider ourselves very fortunate to have access to such wonderful places throughout the country, and we should recognize and appreciate the significance of Founder's Day, which is being celebrated this year on August 25.

Founder's Day celebrates the creation of the National Park Service, which was established by Congress on August 25, 1916, to protect some of our nation's greatest treasures. The original purpose of the agency still guides it today—"…to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for future generations." Each year on Founder's Day, many parks will waive admission fees in observance of the anniversary. I got interested in Founder's Day and wanted to learn more about it when I noticed a publication in a nearby marina in Miami. (Many of you may not realize that some of our country's parks are actually in the water, and I'm lucky enough to live near several of them, including Biscayne Bay National Park.)

National parks have been called "the best idea America has ever had." The United States was the first country to set aside great parks for "ordinary people." Other countries limited access to such places to the ruling class. These parks helped our country develop a sense of pride and a sense of history, as well as a national identity. These special places have been said to be our answer to the castles and cathedrals of Europe. In the words of Franklin Delano Roosevelt, "There is nothing so American as our national parks…The fundamental idea behind the parks…is that the country belongs to the people, that it is the process of making for the enrichment of the lives of all of us."

Originally, the army looked after some of the first parks to be established, but as the park system grew, Congress recognized the need to create a National Park Service to care for the expanding National Park System. Amazingly enough, the National Park Service now manages 388 national historic sites and monuments. The first national park, Yellowstone, was established in 1872.

The National Mall and Memorial Parks in Washington, DC, was officially established in 1965, and it contains some of the oldest protected parklands in the National Park Service. There are actually over 1,000 acres of National Park Service managed land within the Nation's Capital. The National Park System includes not only landmarks and things we traditionally think of as "parks," but it also includes glaciers, volcanoes, geysers, coral reefs, lighthouses, caves, battlefields, cemeteries…and the list goes on.

These days, you might hear debates over whether our parks are being managed properly or whether too much money is being allocated toward promoting tourism and too little toward preservation. However, one thing seems clear—we are much better off because of the fact that our Nation's past leaders recognized the value of these national treasures and created an entity to help watch over them. If you are interested in learning more about the National Park System or the National Park Service, or even if you just want to see a list of all the National Parks in a certain area, check out **www.nps.gov** or **www.cr.nps.gov**. You might even find yourself planning your next vacation! ▲

Letters to the Editor

Spring "Cleanup"

I was reading through Compliance Reviews—"Spring Cleaning" in the Retirement Planning World (*The ASPPA Journal,* May-June 2005) and had two questions about the content:

(1) On page 9, under the subheading Eligibility and Coverage, there is a statement toward the bottom of the first paragraph which reads:

"*Furthermore, if the profit sharing portion of a plan is a design-based safe harbor, participants who receive only the top heavy minimum contribution for the year are not considered to be 'benefiting'.*"

From a coverage perspective, this statement would not appear accurate. Perhaps it would be better suited under Nondiscrimination as a determinant of whether or not a plan could be considered a design-based safe harbor.

(2) Also, under the Loans subheading (page 13), the first sentence of the second paragraph indicates: *"The plan must permit loans….."* Providing loans is mandatory?

Erin D. Patton, CPC, QPA, QKA
Actuarial Consulting Group, Inc.

ANSWER:

(1) After checking with our technical experts, we understand the issue that you raise but we think the wording is acceptable because it refers to a "design-based safe harbor" plan. Technically, someone getting the top heavy minimum is treated as benefiting under 410(b). But, because the top heavy benefit could end up violating the uniformity requirement of a 401(a)(4) safe harbor design, there is a special rule stating the uniformity requirement is not violated if you treat the people only getting the top heavy minimum as not benefiting. Thus, you continue to have a safe harbor plan design if you can pass 410(b) by treating these people as not benefiting.

(2) Agreed—no plan is required to provide for loans. (Looks like we needed a little "cleanup" of our own!)

Thanks for bringing these issues to our attention.

—Chris

More Spring "Cleanup"

I have a question on the QDRO section in Ms. Froberg's comprehensive article on Compliance Reviews. The second paragraph states that "charges to a participant's account to qualify a QDRO" would be unreasonable. It is my understanding that the Department of Labor Field Assistance Bulletin 2003-3 allows such charges, and that many plans are now charging in that manner.

Marvin Snyder
Marvin Snyder Associates, Inc.

ANSWER:

Your understanding is correct—and thanks for your timely letter. In the DOL Bulletin you mention, the DOL did an about face in their position regarding charging an individual participant's account for the fees related to a determination of the validity of the participant's QDRO. Prior to the 2003 directive, plans were permitted to pass QDRO determination expenses *to the plan as a whole* but not directly to the account of the participant involved in the QDRO. According to the 2003 directive, plans are now permitted to allocate reasonable expenses associated with QDRO determinations directly to the participant's account. (Note: Plans may need to be amended, if not amended already, to include specific provisions for the allocation of expenses. In addition, plans should include information in the summary plan description concerning any expenses that could be charged against a participant's account.)

—Chris

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WASHINGTON UPDATE

threatening employees' future financial security and leading to greater wealth disparities. The possibility of this unfortunate outcome is analyzed in the recent report commissioned by ASPPA's Pension Education and Research Foundation (PERF) entitled "Savings Under Tax Reform: What is the Cost to Retirement Savings?" An Executive Summary of this report is provided below. The full report can be found at **www.asppa.org**.

President Bush has said that current tax code provisions encouraging home ownership and charitable giving should be protected. A new federal tax system without such incentives would be a step backward. The ASPPA PERF report focuses on the crucial need for continued long-term savings incentives through the employer-sponsored retirement plan system. The current employment-based retirement plan system is the backbone of an "ownership" society, which has made middle-income Americans significant investors in the stock market.[1] Thus, a strong case should be made for retaining retirement savings initiatives.

The number of Americans covered by a retirement plan has been gradually rising for decades, but there is still more to be done. America is not a nation of savers. Approximately one-third of today's workers are not saving for retirement and many who are saving have retirement accounts that are inadequate to fund a comfortable retirement. Concern over the future of Social Security makes this problem particularly acute. One goal of tax reform should be to expand coverage under the employer-sponsored retirement plan system because households covered by an employer-sponsored retirement plan are more than twice as likely to achieve retirement income adequacy.

Much of today's savings is spurred by retirement savings plans offered by employers. In many cases, because of employer matching contributions, a dollar contributed by a worker grows immediately, even before earnings are added. For example, $1 contributed by a worker today can result in an immediate deposit of $1.50 or more, assuming a 50% employer match.

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ASPPA, a national organization made up of more than 5,400 retirement plan professionals, is dedicated to the preservation and enhancement of the private retirement plan system in the United States. ASPPA is the only organization comprised exclusively of pension professionals that actively advocates for legislative and regulatory changes to expand and improve the private pension system. In addition, ASPPA offers an extensive credentialing program with a reputation for high quality training that is thorough and specialized. ASPPA credentials are bestowed on administrators, consultants, actuaries and other professionals associated with the retirement plan industry.

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Research shows that many Americans wouldn't save at all if not offered employer-sponsored retirement plans.

Putting money in an employer-sponsored plan is also much easier than saving independently. Low- to moderate-income workers are 11 times more likely to save when covered by a workplace retirement plan, in part due to the convenience of payroll deductions, the culture of savings fostered in the workplace and the incentive of the matching contributions provided by the employer.[2] The workplace retirement plan has been shown to be the only effective means to get these workers to save.

Eliminating or reducing these existing underlying tax incentives for long-term savings would be a step in the wrong direction. Today's workers could face a much bleaker retirement. Indeed, radical reform that would eliminate the current tax incentives for long-term savings could virtually destroy the existing system. This observation is not a blanket defense of the status quo. The federal tax system is imperfect. Its retirement savings provisions could be changed for the better. History strongly recommends continuation of the following priorities embedded in the existing tax system:

- The opportunity for individual retirement savings tied to employment should remain. Research shows that many Americans would not save at all if not offered employer-sponsored retirement plans.
- The system should maintain nondiscrimination rules to assure maximum coverage of all workers.
- The system should favor long-term savings, thereby discouraging savers from withdrawing funds prior to retirement.
- The system should acknowledge the priority of retirement savings plans by assuring that their incentives are more attractive than other savings incentives.

Small employers hesitate to offer retirement plans for several reasons, including the administrative complexity and cost and the unpredictability of their company's financial condition. These hurdles are offset partly by the knowledge that the small business owner cannot maximize personal retirement savings without providing a plan for workers as well. Any changes that allow small business owners to meet their retirement savings goals on an individual basis outside of a qualified plan would inevitably threaten the future of the plans they provide their workers.

High-income earners are more likely to have retirement savings than those who earn less. The largest group of workers without access to an employer-sponsored retirement plan is comprised of those receiving modest wages employed by small firms. The good news is that coverage for this segment of workers has been steadily rising. Tax reform ought not to reverse this positive trend.

Many proponents of tax reform share the goal of increasing savings. No one opposes that priority. But there's a need to focus on who is saving and how they are saving. The question is not solely how to get society to save more, but also how to encourage low-income workers who are often not saving to save for retirement.

Some tax reforms under consideration would provide greater tax advantages to individuals investing in stocks, mutual funds and other capital investments through a reduced tax on capital gains and dividends. These tax incentives potentially would create a significant disadvantage to investing through the employer-sponsored retirement plan system, where such savings are generally "locked-up" until retirement. If retirement savings no longer enjoys a special tax advantage, low- to moderate-income workers would save less for retirement. Instead, if they save at all, it will likely be in a short-term savings vehicle that they will have access to, making it more likely that any savings will be spent well before retirement.

From a retirement perspective, the most important and daunting goal involves convincing the low- to moderate-income workers to increase their retirement savings. The political and policy challenges lie in ensuring that any plan retains these critically important retirement savings incentives. As the tax reform debate accelerates, it is important to acknowledge, protect and extend the positive impact that tax policy has had on the individual retirement security of millions of Americans through employer-sponsored retirement plans.

▲ ▲ ▲

1 As of July 2003, an estimated 36.4 million US households, or almost half of all US households owning mutual funds, held mutual funds in employer-sponsored retirement plans. Investment Company Institute, US Household Ownership of Mutual Funds in 2003, Vol. 12, No. 4 (October 2003).

2 According to the Employee Benefits Research Institute (EBRI), 77.9 percent of workers making from $30,000 to $50,000 and covered by an employer-sponsored 401(k)-type plan actually saved in the plan, while only 7.1 percent of workers at the same level of income, but not covered by a 401(k)-type plan, saved in an individual retirement account.

Executive Summary of ASPPA PERF Report

Savings Under Tax Reform: What is the Cost to Retirement Savings?

More than any other issue, a reform of the federal tax system represents a significant threat to the tax incentives available for long-term savings provided through the employer-sponsored retirement plan system. Any reform to the federal tax system that would diminish these incentives would jeopardize the individual economic security currently achieved through the employer-based retirement plan system.

The President has established a tax reform commission that is exploring various ways to simplify the current tax system. Its findings are due to the Treasury Department by July 31, 2005. Among the proposals under consideration are major reforms such as consumption-style taxes or targeted approaches, such as those that eliminate the tax on capital gains and dividend income. This report focuses on the crucial need for continued long-term savings incentives through the employer-sponsored retirement plan system. It illustrates the potentially devastating effect certain potential tax reform solutions could have on savings into qualified retirement plans. It concludes that any reform to the federal tax system must continue the current policy of providing tax incentives for long-term savings through the employer-sponsored retirement plan system.

Highlights

The Need for Long-Term Savings

- On their own accord, American workers do not save adequately for their retirement and other long-term financial needs. While 63 percent of Americans are saving to some extent for retirement, more than one-third of the working population is not.
- Demographic shifts illustrate a growing retiree population. Approximately 85 million Americans will be 65 or older in 2050 compared to 36 million in 2000.
- The growing retiree population also reflects increased longevity, with the number of people aged 85 or older expected to increase five-fold in 2050 over the 2000 population.
- Our current tax system provides the strongest incentive for taxpayers to accumulate assets for long-term savings through the employer-sponsored retirement plan system by providing for an exclusion from income for contributions made to a qualified retirement plan or IRA.
- Any reform to the tax system that does not provide incentives for long-term savings would inherently favor short-term savings choices, which provide current access to such savings.
- The policy implications of reduced long-term savings by working Americans could be substantial, particularly given the projected shortfalls in Social Security and the need for current and future retirees to supplement their Social Security benefits with personal savings.
- The current employment-based retirement plan system is the backbone of an "ownership" society, which has made middle-income Americans owners in the stock market.

Employer-Sponsored Retirement Plans

- Employer-sponsored retirement plans are heavily dependent on federal tax incentives and are clearly the most effective method for encouraging savings by low- to moderate-income workers.

- According to the Employee Benefits Research Institute (EBRI), 77.9 percent of workers making from $30,000 to $50,000 and covered by an employer sponsored 401(k)-type plan actually saved in the plan, while only 7.1 percent of workers at the same level of income, but not covered by a 401(k)-type plan, saved in an individual retirement account. In other words, low- to moderate-income workers are 11 times more likely to save when covered by a workplace retirement plan.
- This striking disparity is due to the convenience of payroll deductions, the culture of savings fostered in the workplace, and the incentive of the matching contributions provided by the employer.
- The likelihood of retiring with adequate savings depends upon whether an individual participated in an employer-sponsored plan. Overall, 55 percent of households covered by employer-sponsored retirement plans will have adequate savings, as compared to 24 percent of those not covered.
- Suggested approaches to tax reform, including consumption-style taxes and/or the elimination of tax on capital gains and dividend income, would tend to encourage savings outside of qualified plans since access to such savings is not restricted.
- Employers—particularly small employers—would be able to accomplish their savings objectives outside of a qualified retirement plan and would be unlikely to incur the cost and potential liability associated with establishing or maintaining a qualified plan.
- As a result, low- to moderate-income workers, now not covered by a work place plan, will save less for retirement, impairing their future economic security.

Tax Reform Must Accommodate Retirement Policy

- While some level of reform is needed given the complexity of the tax code, tax reform proposals must strive for higher savings rates for all American workers across all income classes, not just to increase savings in the aggregate.
- Providing favorable tax treatment for individual savings outside of the employer-sponsored retirement plan system will erode both sponsorship and participation in qualified retirement savings plans, threatening financial security for many Americans and leading to greater wealth disparities.
- A switch to a consumption tax system, which would only tax amounts consumed and not saved, could result in an alarming reduction in individuals' retirement savings as employers would choose not to establish or maintain qualified plans.
- Reductions in capital gains and dividend tax rates would provide greater tax advantages to individuals investing in stocks, mutual funds and other capital investments, which would create a significant disadvantage to investing through the employer-sponsored retirement plan system.
- Prudent retirement policy suggests that the most efficient and effective tax retirement policy system must continue to provide long-term tax incentives to employers to establish and maintain retirement plans for their workers.
- It would be unacceptable to risk the retirement security of working Americans by creating a tax system that fails to recognize the need to encourage long-term retirement savings over short-term individual savings vehicles (*e.g.*, mutual funds held outside of a plan). ▲

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

ERISA's Record Retention Requirements: How Long is Long Enough?

by Robert F. Schwartz, APM, and Kevin E. Nolt

ERISA plans, and the multitude of paper and electronic records that necessarily come with them, create significant storage burdens for plan sponsors, service providers and employers that participate in multiemployer plans. Clients often ask: "How long do we have to hold on to this stuff?"

As with many things pertaining to ERISA, there is not a simple answer to the question above. ERISA does prescribe a six-year retention requirement for certain types of records, and another section of ERISA suggests that certain types of documents must be maintained indefinitely, or at least as long as there is any possibility that the records might be needed to determine eligibility for, or the amount of, a benefit. Wholly apart from the legal requirements, there is the additional consideration of what might happen if the records are not there when they are needed to support a particular defense in litigation. The absence of such documents under these circumstances—even if not required to be kept by law—can have unfortunate consequences.[1]

The ERISA Record Retention Provisions

There are two basic record retention provisions under ERISA. Section 107 of ERISA requires anyone who must file a report (such as a Form 5500) or certify any information under Title 1 of ERISA to maintain sufficient records to verify, explain or clarify the information contained in such reports. Such records include vouchers, worksheets, receipts and applicable resolutions, and they must be maintained for six years after the filing date of the report (or the date the report would have been filed but for a filing exemption). Thus, plan sponsors, administrators and service providers who are required to certify information contained in a report are subject to this six-year records retention requirement.

In addition, Section 209 of ERISA requires every *employer* to maintain records necessary to determine the benefits due or that may become due to each of its employees.[2] Proposed DOL

Section 209 of ERISA requires every employer to maintain records necessary to determine the benefits due or that may become due to each of its employees.

regulations issued in 1980 provide that individual benefit records must be retained "as long as a possibility exists that they might be relevant to a determination of the benefit entitlements of a participant or beneficiary." [29 CFR §2530.209-2(d).] Although the DOL issued a notice in 1993 indicating that it anticipated withdrawing the proposed regulations and publishing revised statutory amendments that may incorporate reasonable time limits on record retention, to date it has not issued any follow-up guidance. [PWBA Notice 12/27/1993.] As a result, employers should assume that records regarding plan benefits must be maintained indefinitely, either in their original form or, under certain conditions, electronically.[3]

In addition to the two basic requirements discussed above, the Pension Benefit Guaranty Corporation (PBGC) requires that each sponsor and administrator of a plan terminating in a standard termination or in a distress termination must maintain all records necessary to demonstrate compliance with the plan termination provisions of Section 4041 of ERISA. The records must be retained for six years after the date when the post-distribution certification is filed with the PBGC. (*See* 29 CFR §4041.5.)

The Scope of ERISA Sections 107 and 209

In the absence of regulations defining the types of records required to be maintained under Sections 107 and 209, the DOL and the courts have looked for guidance to ERISA's predecessor, the Welfare and Pension Plan Disclosure Act (WPPDA), which contained a record retention provision nearly identical

to Section 107. DOL regulations that originated from a 1963 DOL bulletin interpreting the provision provided that with respect to the types of records to be retained:

- Such records include (but are not limited to) resolutions and matters relating to the plan for which a description or annual report is or may be required to be filed, journals, ledgers, checks, invoices, bank statements, contracts, agreements, vouchers, worksheets, receipts, claim records and payrolls which would tend to support information required in any report under the Act.
- Records maintained shall also include, where appropriate, information certified to the administrator by an insurance carrier or service or other organization. Other records such as payroll records from contributing employers, which the reporting person, trustee or organization obtains in the regular course of its operations (to the extent such records may be used for said verifying or checking), shall also be retained.

[29 CFR §486(3)(c) (removed 1985).]

In a 1983 letter to a plan administrator requesting clarification of the record retention requirements, the DOL stated that its interpretive bulletin of the WPPDA was still applicable, and that the principles enunciated in the bulletin should also serve as a general guide in determining what records must be retained pursuant to Section 209 as well. The DOL stated that the following records were required to be retained for the requisite six-year period under Section 107:

- Copies of the Form 5500 and its related schedules and reports;
- Claim files;
- Pension and medical claim checks;
- Contractor report forms, employer reporting and remittance forms;
- Reciprocity transfer requests and transmittals; and
- Eligibility reports.

In addition, the DOL stated that the types of records that might constitute records contemplated under Section 209 include:

- Eligibility record cards;
- Individual census data;
- Employee work history;
- Contractor report forms;
- Employer reporting and remittance forms; and
- Reciprocity requests and transmittals.

The DOL further noted that records and reports might serve multiple purposes and that while a record might be disposable under Section 107, it still may need to be retained under Section 209.

The courts have also looked to the WPPDA in determining the scope of Sections 107 and 209 of ERISA. For example, in *Combs v. King*, 764 F.2d 818, 824 (11th Cir. 1985), the Eleventh Circuit cited to the WPPDA and held that, under Section 209, an employer has a duty to maintain time cards or similar records of hours worked by employees to enable multiemployer plan trustees to determine the accuracy of an employer's contributions to the funds. [*See also Brick Masons Pension Trust, et al. v. Industrial Fence and Supply, Inc.,* 839 F.2d 1333, 1338 (9th Cir. 1987) (following *Combs* and holding that Section 209 places a duty on the employer to maintain adequate records regarding the number of hours worked by its employees).] In addition, in *Medoy v. Warnaco Employees' Long Term Disability Plan*, 43 F.Supp.2d 303, 311 (EDNY 1999), the court looked to the WPPDA and concluded that ERISA Section 107 requires an employer to maintain claims review and denial records, even though such records are not specifically enumerated in the statute. [*See also United States v. Sarault,* 849 F.2d 1479, 1483-1485 (9th Cir. 1988) (holding that a letter containing non-financial information was required to be retained under ERISA Section 107 based on reading of the

regulations under the WPPDA); *United States v. S & Vee Cartage Co.*, 707 F.2d 914, 917 (6th Cir. 1983) (holding that ERISA Section 107 includes monthly contribution reports and employee billing forms based on the WPPDA).]

Courts have also looked to the legislative history of Sections 107 and 209 in determining the scope of the records requirements. In *Combs*, for example, the Eleventh Circuit stated that ERISA's legislative history demonstrated that it was enacted, at least in part, to increase the information and data available to participants, and that interpreting Section 209 as requiring the retention of records containing the number of employee hours worked is consistent with this legislative history as well as with the underlying policy of ERISA to protect the interests of participants. (*See* 764 F.2d at 822.)

Another factor the courts have considered in determining whether certain records must be kept is whether the records constituted the primary or sole source of the data relied upon by the plan. Thus, both the Sixth Circuit in *S & Vee Cartage* and the Eleventh Circuit in *Combs* relied in part on the fact that the records at issue were the primary source, if not the sole source, of the data, in holding that they were required to be maintained. (*See* 707 F.2d at 917; 764 F.2d at 823-824.) Applying the same analysis, however, a court concluded that an employer was not required to maintain daily time records because they were not the primary source of the data incorporated into the trust fund's benefit contribution reports. [*Dugan v. Palumbo Bros., Inc.,* 1991 WL 28206 at 3 (N.D.Ill.,1991).] In that case, the primary records were computerized records maintained by the employer, and the daily time records were destroyed in the employer's daily course of business. (*Id.*)

Penalties

There are no specific monetary penalties associated with the record retention requirement under ERISA Section 107. However, failing to retain such records may subject the plan sponsor to significant costs and fees associated with defending itself in litigation. A plan participant may bring a cause of action under ERISA §502(a)(3) for equitable relief in the form of an injunction requiring the plan sponsor or other entity to maintain records for six years. [*See Medoy v. Warnaco Employees' Long Term Disab. Plan*, 43 F.Supp.2d 303, 311-312 (EDNY 1999).] Further, at least one court has held that a plan sponsor has a fiduciary duty to retain the requisite records. [*Shaver v. Operating Engineers Local 428 Pension Trust Fund*, 332 F.3d 1198, 1202 (9th Cir. 2003) (holding that trustees violated their fiduciary duty by failing to keep adequate records and that plaintiffs were entitled to injunctive relief).]

Section 209(b) of ERISA provides that a plan sponsor that fails to retain the records under Section 209 must pay to the Secretary a civil penalty of $10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause.

Other Consequences

Plan sponsors and other entities may experience other unfortunate, unforeseen consequences if they do not retain adequate records pursuant to either Section 107 or 209. In *Medoy*, the Court held that the plaintiff—who was seeking reinstatement of long-term disability benefits—was excused from the usual requirement that she exhaust available administrative remedies under the plan prior to filing suit, because her claim records had been destroyed, thus making an appeal under the plan's procedures "futile." (43 F.Supp.2d at 309.) Similarly, the destruction of claims files may prevent a plan from determining when a participant's cause of action for benefits under ERISA §502 accrued, thus eliminating its ability to invoke the applicable statute of limitations in defending a lawsuit.[4]

The failure of an employer to maintain records pertaining to the hours and/or type of work performed by its employees may also result in the employer's inability to defend itself in a contributions action brought by a multiemployer trust fund. A number of courts have held that, once a trust fund raises a genuine question about the accuracy of the employer's records and the contributions the employer made to the trust fund, the burden shifts to the employer to prove that the contributions were calculated correctly. [*See Combs*, 764 F.2d at 826 (evidence offered by trust fund, which included affidavits of accountant and employees, was enough to shift burden to employer); *Trustees of Michigan Labors' District Council Pension Fund v. Van Sullen Constructions, Inc.*, 825 F.Supp.165, 169-171 (E.D.Mich. 1993) (holding that employer was not entitled to summary judgment and remanding for determination of whether employer had evidence to prove that trust fund's calculations were unreasonable); *Brick Masons Pension Trust v. Indus. Fence & Supply*, 839 F.2d at 1338 (9th Cir. 1988) (failure of employer to keep accurate records or come forward with evidence at trial entitled trust fund to judgment as matter of law).]

While the above cases are all in the multiemployer context, a single employer plan's ability to defend a claim for benefits may also be hampered by the destruction of records—even where the destruction was entirely lawful. We are aware of one case in which a single-employer, defined benefit plan lawfully terminated *in 1985* and produced a certification from the plan's actuary that all accrued benefits had been paid out in connection with the termination, but still was unable to prevail on a motion to dismiss the plaintiff's claim—filed nearly 20 years after the plan termination—that he was entitled to a benefit but never received one. The court held that the plan's destruction of records relating to the plan termination approximately six years after the termination was lawful pursuant to 29 CFR §4041.5(a)(2), but that the plaintiff's allegations that he had never received a benefit adequately stated a claim under ERISA §502(a)(1)(B). Records obtained from the PBGC were inconclusive, and, faced with no way to demonstrate unequivocally that the plaintiff's allegations were untrue, the defendant—the former plan sponsor, determined by the court to be a "successor in interest" to the plan committee—had no cost-effective option other than to settle. By contrast, we are aware of another employer who, in response to former long-time employees' claims that they worked sufficient hours each year to become participants in the employer's pension plan, was able to produce many years of payroll records contradicting the former employees' claims. While this matter also settled—primarily because the former employees were able to cast some doubt on the accuracy of the payroll records, the employer was in a much stronger bargaining position by virtue of the fact that it had the records at all.[5]

Conclusion

ERISA §§107 and 209 impose certain record retention requirements on ERISA plan sponsors and certain service providers. These requirements should be viewed as the minimum that sponsors and service providers should do to preserve records. In addition, ERISA plan sponsors and service providers should consider whether certain records might nevertheless be important in potential future litigation, even if they may lawfully be destroyed under ERISA.

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1 This article discusses document *retention* requirements under ERISA. It does not discuss document *destruction* policies or the various statutes that criminalize document destruction under certain circumstances, and which helped bring about the downfall of accounting giant Arthur Andersen, LLP. *See U.S. v. Arthur Andersen, LLP,* 374 F.3d 281 (5th Cir. 2004). Such a discussion is beyond the scope of this article.

2 Section 209 also imposes duties on plan administrators to furnish participants with benefit statements and, in the case of plans adopted by more than one employer, to maintain the records necessary to prepare such statements. *See* ERISA §209(a)(1)-(2).

3 The DOL recently issued final regulations establishing a "safe harbor" for the use of electronic records to satisfy the requirements of ERISA Sections 107 and 209. *See* 29 CFR §2520.107-1. The rules, which became effective on October 9, 2002, and apply to all ERISA pension and welfare benefit plans, include conditions for ensuring continuation of the accuracy, integrity and accessibility of plan information that has been transferred to electronic form. They allow a plan to dispose of original paper records once they have been transferred to an electronic recordkeeping system, unless the resulting electronic record would not constitute a duplicate or substitute record under the plan's terms and federal or state law.

4 ERISA does not prescribe a statute of limitations for actions under Section 502 and as a result, courts look to the statute of limitations for the most applicable state law cause of action. For benefit claims courts generally apply the state statute of limitations period for breach of written contract actions. *See, e.g., Wetzel v. Lou Ehlers Cadillac Group Long Term Disability Insurance Program*, 222 F.3d 643, 546 (9th Cir. 2000). In many states, this period exceeds six years. *See, e.g., Wyo. Stat. Ann. §1-3-105(a)(i) (10 years); R.I. Gen. Laws §9-1-13(a) (10 years); Iowa Code Ann. §614.1-5 (10 years).*

5 How ERISA §§107 and 209 might apply to "orphan plans"—plans for which there is no longer a plan administrator or employer—and the persons who step in and take over wrap-up administrative duties for such plans is not entirely clear. However, the DOL has opined that, in those cases where the identity of the plan administrator cannot be determined by the application of ERISA §3(16), the "administrator" is the person or persons actually responsible, whether or not under the terms of the plan, for the control, disposition or management of the cash or property received by or contributed to the plan. *See DOL Advisory Opinion 83-43A.* This opinion suggests that, at the very least, an independent fiduciary who takes over the administration of an orphan plan may become subject to the recordkeeping requirements of ERISA §107 [and, to the extent applicable to administrators, the recordkeeping requirements of ERISA §209(a)(2)].

A Lesson in SAS 70 Audits

by Michelle L. D'Amico

The term "SAS 70" audit originates from the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards (SAS) number 70, "Reports on the Processing of Transactions by Service Organizations," which was issued by the Auditing Standards Board in April 1992.

SAS 70 is applicable to the audit of the financial statements of an entity that obtains either or both of the following services from another organization: (1) executing transactions and maintaining the related accountability and/or (2) recording transactions and processing related data.

Background

Many entities use outside service organizations to accomplish tasks that affect the entity's financial statements. Service organizations may provide services ranging from performing a specific task under the direction of an entity to replacing entire business units or functions of an entity. Over the years, there has been a significant increase in the use of outside service organizations. Because many of the functions performed by these organizations affect an entity's financial statements, auditors performing audits of financial statements may need to obtain information about the services provided by the organization, the related service organization's controls and their effects on an entity's financial statements.

SAS 70 relates to SAS 55, "Consideration of the Internal Control Structure in a Financial Statement Audit." SAS 55 indicates that an auditor should obtain a sufficient understanding of each of the elements of an entity's internal control

Although a SAS 70 report may be used by other interested parties, its primary purpose is to provide information to auditors of user organizations and their auditors.

structure to plan the audit. This understanding should include knowledge about the design of policies, procedures, and records, and whether they have been placed in operation by the entity. If an entity uses a service organization, certain policies, procedures and records of the service organization may be relevant to the user organization's ability to record, process, summarize and report financial data consistent with information embodied in the entity's financial statements. Therefore, in order for the auditor to obtain a proper understanding of a user organization's internal controls when a significant

Definitions

- **User organization**: The entity that has engaged a "service organization" and whose financial statements are being audited.
- **User auditor**: The auditor who reports on the financial statements of the user organization.
- **Service organization**: The entity or segment of an entity that provides services to the user organization.
- **Service auditor**: The auditor who reports on the processing of transactions by a service organization.
- **Service organization's controls**: Controls at a service organization that may affect a user organization's internal control in the context of an audit of the user organization's financial statements.
- **Control objectives**: Generally refers to financial statement reporting control objectives, but also may encompass compliance or operational control objectives.

amount are processed or maintained by a service organization, the auditor will need to obtain an understanding of the service organization's internal controls. The most efficient way to obtain this understanding is through review of the SAS 70 report, which is also referred to as the "service auditor's report." Although a SAS 70 report may be used by other interested parties, its primary purpose is to provide information to auditors of user organizations and their auditors.

Transactions Processed by Outside Service Organizations

Service organizations providing such transactional services include banks, trust departments or insurance companies that invest and hold assets for employee benefit plans; third party administrators that maintain participant accounts for retirement plans; banks or insurance companies that issue benefit disbursements to participants (often from a defined benefit plan); mortgage bankers that service mortgages for others; and electronic data processing (EDP) service centers that process transactions and related data for others.

Most employee benefit plans use service organizations to process transactions, maintain plan records and for recordkeeping. Many plans allow participants to initiate transactions by telephone or electronic means, such as the Internet. With a trend toward daily valuation of 401(k) plans, more benefit plans are using service providers to initiate, execute and perform the accounting processing of transactions on behalf of the plan administrator. Often times the plan sponsor does not maintain independent accounting records of such transactions. For example, many plan sponsors no longer maintain participant enrollment forms detailing the contribution percentages or the investment fund allocation options, and many times loans are being processed via the Internet. The understanding of controls in these significant audit areas can be efficiently achieved by utilizing the SAS 70 report.

Types of SAS 70 Reports

The type of SAS 70 audit to be performed and the related report to be prepared should be established by the service organization. When circumstances permit, discussions between the service organization and the user organization are advisable to determine the type of report that will be most suitable for the user organization's needs.

Type I Report

A Type I Report is performed at a certain point in time (*i.e.,* December 31, 2004) and will provide an understanding of internal controls. This report includes a description of the control objectives and the control procedures followed by the service organization. Testing of controls is not performed. Therefore, the controls operating effectiveness is not known. The service auditor will prepare a Type I Report exclusively based on tests of design of controls, which is generally limited to observation and inquiry of management.

Type II Report

A Type II Report is performed for a period of time, with a minimum of six months but typically for one year, and includes all of the information that a Type I Report includes, such as tests performed by the service auditor on the control procedures, and reports the results of those tests. A Type II Report can usually help to *reduce* the user auditor's testing. A common misconception in various professions is that an auditor can eliminate testing of internal controls relating to the tests performed in a Type II SAS 70 Report. It should be noted that the user auditor can *reduce, but not eliminate* substantive testing, based on the Type II Report.

For example, in an employee benefit audit, the auditor may be able to reduce the extent of tests of participant data by relying on the Type II Report. The reason is because entities issuing such reports for the recordkeepers often test certain participant

data, such as contributions, interest and dividends, appreciation/depreciation in value of investments, investment fund options and forfeiture allocations. (See example of Type II Report following.)

Sections of a SAS 70 Report

Contents of each type of report are described in the following table

	Section Content	Type I Report	Type II Report
1.	Independent Service Auditor's Report (*i.e.*, audit opinion)	Included	Included
2.	Service organization's description of controls/ control objectives	Included	Included
3.	Information provided by the independent service auditor; includes a description of the service auditor's tests of operating effectiveness (test of controls) and the results of those tests	Optional	Included
4.	Other information provided by the service organization	Optional	Optional

The description of "policies and procedures" and "control objectives" may be prepared by the service organization. If the service auditor prepares the description of the policies and procedures and control objectives, the representations in the description remain the responsibility of the service organization. (See further discussion of representations following.)

The control objectives may be designated by the service organization or by outside parties, such as regulatory authorities, a user group or others.

Service Organization's Responsibilities

The service organization is responsible for:

- Preparing the description of controls;
- Determining which services, business units, functional areas or applications the service auditor will be engaged to report on;
- The completeness, accuracy and method of presentation of the description of controls; and
- Specifying the control objectives, unless they are established by a third party.

In a Type II SAS 70 Report, the service organization specifies which control objectives will be tested for operating effectiveness. The service organization's description of controls should provide sufficient information for user auditors to understand the service organization's processes. For example, it should describe the classes of transactions that are processed, but not necessarily each individual transaction type. The description of controls may be presented in various formats such as narratives, flowcharts, tables and graphics. The description should also indicate the extent of manual and computer processing utilized.

Service Auditor's Responsibilities

The service auditor should read the description of controls. The service auditor should perform procedures to determine whether the description presents fairly, in all material respects, the relevant aspects of the service organization's controls that had been placed in operation. To determine whether the description of controls is fairly presented, the service auditor should gain an understanding of the services provided by the service organization. Procedures performed to gain this understanding may include the following:

- Discussions with management and other personnel;
- Review of contracts with user organizations;
- Observation of the procedures performed;
- Review of service organization policy and procedure manuals, flowcharts and narratives;
- Walk-through of selected transactions and controls; and
- Determine the predominant type(s) of user organizations and if user organizations are regulated by governmental agencies.

When obtaining a description of the service organization's controls, the service auditor will obtain an understanding of the control environment factors, such as:

- Integrity and ethical values;
- Commitment to competence;
- Board of directors of audit committee;
- Management's philosophy and operating style;
- Organization structure;
- Assignment of authority and responsibility; and
- Human resource policies and practices.

The service auditor will also need to know the means the service organization uses to communicate individual roles and responsibilities.

Although it is not the objective of a service auditor's engagement, a service auditor may develop recommendations to improve a service organization's controls.

This knowledge may include the method for reporting exceptions to an appropriate higher level within the service organization and to user organizations.

Although it is not the objective of a service auditor's engagement, a service auditor may develop recommendations to improve a service organization's controls. The service auditor and the service organization should agree as to how these recommendations will be communicated.

A service auditor may become aware of illegal acts, fraud or uncorrected errors attributable to the service organization's systems, management or employees, that may affect one or more user organizations. Unless clearly inconsequential, the service auditor should determine from the appropriate level of management whether this information has been communicated to the affected user organizations.

User Auditor's Responsibilities

After reading the entire SAS 70 report, the user auditor assesses which controls are operating with sufficient effectiveness to allow the auditor to reduce the assessment of "control risk" below the maximum for certain audit areas. ("Control risk" is the risk that a material error in a balance will not be detected.)

The following are examples of areas where the user auditor will realize the benefits and value of an adequate SAS 70 report. Effective use of the SAS 70 report will assist in reducing testing in areas for both a limited scope (audit of ERISA plan in which the auditor does not perform any auditing procedures with respect to investment information certified by a bank or insurance carrier) and full-scope audit (audit of ERISA plan which is in accordance with generally accepted auditing standards), and increase the efficiency of the audit by:

- Lowering the sample sizes;
- Performing only analytical procedures (in certain areas); and
- Limiting necessary testing in areas such as investment trading and participant data testing.

If a user organization or user auditor determines that specific areas have not been tested during a Type II Report that could assist the user organization or user auditor, then the user

organization should request that these tests be performed in future SAS 70 audits.

Written Representations of the Service Organization's Management

Regardless of the type of report issued, the service auditor should obtain written representations from the service organization's management. The following are a few examples of these representations that management will be asked to verify:

- Acknowledge management's responsibility for establishing and maintaining appropriate policies and procedures relating to the processing of transactions of user organizations.
- Acknowledge management's responsibility for establishing and maintaining an effective internal control environment.
- State that management has disclosed to the service auditor any illegal acts, irregularities or uncorrected errors attributable to the service organization's management and employees that may affect one or more user organization.
- State that management has disclosed to the service auditor all design deficiencies in policies and procedures of which it is aware, including those for which management believes the cost of corrective action may exceed the benefits.

What if a SAS 70 Audit is not Performed for a Service Organization?

Service providers are generally not required to furnish SAS 70 reports. However, the Sarbanes-Oxley Act of 2002 requires any service organization servicing a public company to provide the public company's auditor with a SAS 70 Type II Report, if requested, or the user auditor will be required to test transactions at the service organization's location. In addition, federal banking regulations require that certain banks obtain a SAS 70 audit.

If a SAS 70 report is not available, the user auditor is recommended to consider information available at the user organization (for an audit of an employee benefit plan, this would be the plan sponsor) about controls at the service organization, which could include user manuals, system overviews, technical manuals and reports from the service organization or the user organizations internal auditors. If the user auditor concludes that the available information is not adequate, additional procedures must be performed by the user auditor.

Generally auditors find that there is insufficient or no information at the plan sponsor's location relating to the internal controls of the service organization, or the user auditor determines that reading user manuals to determine the service organization's controls is not cost-effective. Therefore, a visit to the service organization or a conference call is normally performed by the user auditor.

The following are examples of some of the controls that should be discussed by the user auditor when a SAS 70 audit report of the service organization is not available. The following examples specifically relate to audits of employee benefit plans:

- Contributions and loan repayments by participants and plan sponsors are accurately recorded to the participant and plan, and the amount of the contributions is reconciled to the dollar amounts deposited with the trustee/custodian.
- Investment transactions are recorded in the proper amounts and periods.
- Investment transactions are recorded in the proper plan and participant's account.
- Investments are valued (daily, if daily valuation plan) at fair value (market value for securities and "good faith" estimates and appraisals for non-marketable investments).
- Benefit payments (and other disbursements) are recorded in the appropriate amount (defined contribution plan agrees to value in the participant's account; defined benefit plan computed accurately in accordance with the plan document) and recorded correctly and timely in the proper plan and participant's account.

Benefits of Obtaining a SAS 70 Audit

Benefits to the Service Organization

- Reduces or eliminates the time spent with user auditors to discuss or test controls, provide information or guess what information the user auditor needs to comply with auditor requests.
- Eliminates the need for a user auditor to visit and perform work at a service organization's location.
- The service auditor may develop recommendations to assist the service organization.
- Will create a strong marketing advantage for service organizations when proposing to prospective clients.

The Sarbanes-Oxley Act of 2002 requires any service organization servicing a public company to provide the public company's auditor with a SAS 70 Type II Report, if requested, or the user auditor will be required to test transactions at the service organization's location.

Type II Report Examples

Example Without Exceptions Noted

Control Objective: Controls provide reasonable assurance that dividend income is properly posted and share prices are properly updated to reflect gains and losses.

Controls Specified by Service Organization: All income received from declared dividends are allocated into participant accounts based on the participant's average fund size and contribution percentages. System generated allocations and the totals of all funds are reconciled for completeness of processing.

Testing Performed: Reviewed the dividend income release report, noting all income received was appropriately re-invested into participant accounts and the total of all funds are reconciled for completeness of processing.

Test Results: No relevant exceptions noted.

Example With Exceptions Noted

The following exceptions are based upon the control objectives noted in the above example.

Test Results: Of the 15 items selected for testing, one re-investment of dividend income was not properly posted to the participant account.

Management Response: The manager responsible for the allocation of income to participant accounts has calculated the incorrect dividend income posting and corrected the participant account. Management is implementing an internal process in which an independent unit will review a random sample of dividend allocation postings for completeness and accuracy.

Benefits to the User Organization

- More expedient audit and assurance that plan transactions are recorded correctly and accurately at the service organization.
- Greatly assists user organization to select a service organization.
- Reduces time spent accumulating information for, and working with, user auditor.

Benefits to the User Auditor

- Reduces required testing, gives knowledge of reports that can be provided and provides adequate information in order to comply with auditing standards relating to internal controls.

Conclusion

Although in many instances SAS 70 audits are not required, a SAS 70 audit saves the service organization, the user organization and the user auditor time and, in the long run, having an audit on record may lead to expanding the clientele of the service organization. ▲

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Controlled Groups and Affiliated Service Groups

by Shannon R. Critchfield, CPC, QPA, QKA

Controlled groups… Affiliated service groups… What does it all mean? Why do we even care? Consider the following scenario.

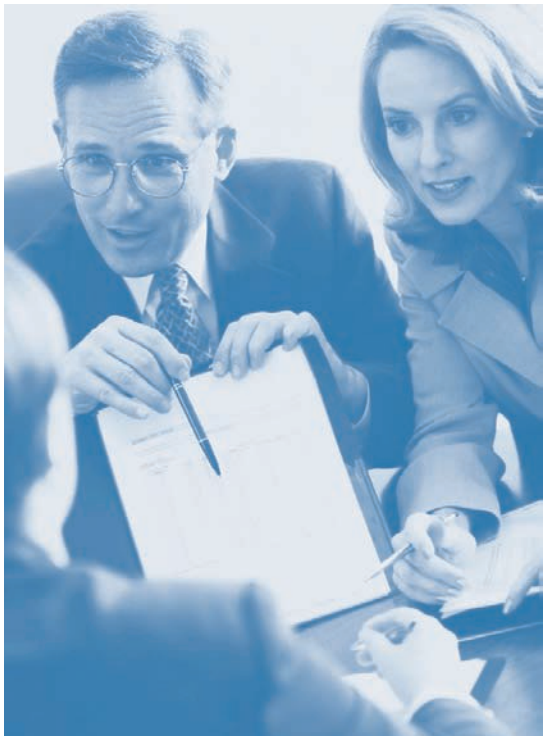
It is your third meeting with the doctor. He has come to your office to sign the plan documents and write you a check for both the installation fee and the first year's contribution. You have done your due diligence as the consultant and asked all the right questions. He has assured you that there are no other employees in his company. Then his cell phone rings. It's Amy, his nurse practitioner. Hmm… What are the details of this professional relationship? He has told you that he owns his own practice and has no staff.

You reluctantly re-ask the questions any good consultant would ask. "How is Amy paid? Do you employ her? If not, do you own the company that pays her? Does she work primarily for you? Do you own any portion of the company that employs her?" The answers he gives you this time shake you to the core, and you wish you were on that two-week vacation to…well, to anywhere but here!

Conversation with the Doctor

The doctor tells you that this company (we will call it Company A) is the company (C-Corp) from which he receives his income and that he wants to sponsor this qualified retirement plan. He tells you that he owns 100% of the shares (C-Corp) of another company that employs those working in the office (we will call it Company B). So... you take a really deep breath and count to ten. Then, you put on your best smile and in your kindest tone and voice, you begin bursting his bubble and educating him on controlled group and affiliated service group rules.

His demeanor quickly changes. "What do you mean I have to cover *those* employees?" He says it like they are aliens from outer space, a necessary evil, a means to an end. Of course, it is the means that helps to earn his $1 million in fees each year! You apologize and explain that you were under the impression there were no employees and/or no other business ownerships. After all, you had written in your notes, right there—black and white—that he told you he got paid directly by the hospital.



As retirement plan professionals, during initial plan design and through on-going annual administration, everything is greatly affected by these five little words—"controlled group" and "affiliated service group."

Why you, why now? What needs to happen next? Who has to be included in the plan?

As retirement plan professionals, during initial plan design and through on-going annual administration, everything is greatly affected by these five little words—"controlled group" and "affiliated service group." Let us take a moment to review the controlled group and affiliated service group rules and the related Code sections.

Controlled Group

A controlled group exists when one of the following two situations exist:

1. A parent-subsidiary group of corporations is connected through at least 80% stock ownership, *or*
2. A brother-sister group in which:
   a. Five or fewer people own 80% or more of the stock value or voting power (controlling interest) of each corporation, *and*

b. The same five or fewer people together own more than 50% of the stock value or voting power (effective control) of each corporation, taking into account the ownership of each person only to the extent such ownership is identical with respect to each organization.

[IRC §§414(b), 414(c), 1563(a); United States v Vogel Fertilizer Co, 102 S Ct 821 (1982)]. Please note that this definition is simplified for purposes of this article, and a complete understanding of the statute and regulations is required for an accurate determination. There are examples shown below, and the examples included in Treasury Regulations §1.414(c)-2 should be studied as well for a complete understanding of these complicated, yet essential, rules.

The best way to analyze whether or not two or more companies are a controlled group due to a brother-sister controlled group relationship is to spreadsheet the ownership of each company.

Affiliated Service Group

According to those rules, an affiliated service group consists of a "first" service organization (FSO) and one or both of the following:

1. A service organization (A-ORG) that is a shareholder or partner in the FSO *and* that either regularly performs services for the FSO or is regularly associated with the FSO in performing services for third persons.
2. Any other organization (B-ORG) if a significant portion of the business of the B-ORG is the performance of services for the FSO or the A-ORG (or for both) of a type historically performed in the service field of the FSO or the A-ORG by employees *and* 10 percent or more of the interests in the B-ORG is held by individuals who are HCEs of the FSO or A-ORG.

[IRC §414(m); Rev Rul 81-105, 1981-1 CB 256]

In general, except to the extent otherwise provided in regulations, for purposes of testing for minimum coverage under IRC 410(b), all employees of the members of a controlled group or an affiliated service group shall be treated as employed by a single employer, and thus must be included in the headcount.

Back to the Doctor

So what about the doctor and his potential "employees"? Would his situation fall under the controlled group rules or the affiliated service group rules? Let us review the specifics of his situation. The doctor owns 100% of Company A. He also owns 100% of Company B. Therefore, we clearly have a controlled group situation. What does this mean? All employees of both companies would be considered as employed by a single employer for minimum coverage purposes. Therefore, the plan might need to cover enough of the employees from Company B so that the annual testing requirements are met. This situation usually leads to some sort of public relations issue, since some of the employees in Company B are informed that they will participate in the plan while others find out they will not participate. Once minimum coverage is met, then different benefit structures may be incorporated in the plan, as long as the nondiscrimination tests are met.

Let us now assume that the facts are a little different. The doctor owns 100% of Company A. He owns 25% of Company B. There is no controlled group in existence. However, we must consider the affiliated service group rules. Consider Company A, the FSO. Company A pays Company B to

Example 1

	Company H	Company I	Identical Ownership (lesser of ownership in Company H or Company I)
Individual Z owns	50%	30%	30%
Individual Y owns	20%	40%	20%
Individual X owns	20%	10%	10%
Individual W owns	10%	20%	10%
TOTAL	100%	100%	70%

Result: Yes—it is a brother-sister controlled group because (a) five or fewer individuals collectively have actual ownership of at least 80% of both Company H and Company I; and (b) those same individuals collectively have effective control of at least 50% of the controlled group.

Example 2

	Company L	Company K	Identical Ownership (lesser of ownership in Company L or Company K)
Individual Q owns	50%	40%	40%
Individual R owns	50%	40%	40%
TOTAL	100%	80%	80%

Result: Yes—it is a brother-sister controlled group because (a) five or fewer individuals collectively have actual ownership of at least 80% of both Company L and Company K; and (b) those same individuals collectively have effective control of at least 50% of the controlled group. (Not shown are those individuals who own the remaining shares of stock in Company K, because they own no shares of Company L and therefore are not needed for this controlled group determination.)

Example 3

	Company D	Company E	Identical Ownership (lesser of ownership in Company D or Company E)
Individual M owns	40%	30%	30%
Individual L owns	45%	40%	40%
TOTAL	85%	70%	70%

Result: No—it is not a brother-sister controlled group since individuals M and L do not own at least 80% of Company E. Note that if they did, then since they effectively would own more than 50% of Company D and Company E (*i.e.,* The identical ownership), then it would be a brother-sister group. (Not shown are those individuals who own the remaining shares of stock in Company D or Company E, because under these facts they own no shares of the other company and therefore are not needed for this controlled group determination.)

provide "back-office" services for the doctor's practice. One must ask the statutory questions to determine whether or not Company B is an A-ORG or B-ORG of the FSO.

Q. Is Company B a shareholder or partner in the FSO?

A. No, then Company B is not an A-ORG.

However, we still need to determine if Company B is a B-ORG to the FSO.

Q. Does Company B provide services to the FSO that are historically performed by employees?

A. Yes.

Q. Is Company B owned 10% or more by an HCE of the FSO?

A. Yes.

Since the answers to the last two questions regarding a possible B-ORG are yes, then Company B is a B-ORG to the FSO. Therefore, according to IRC §414(m), all employees of both companies are treated as being employed by a single employer and must be included in the headcounts for minimum coverage. Under this scenario, the retirement planning professional would need to consider the employees of the B-ORG in the plan design. Since compliance with the minimum coverage rules are qualification requirements under IRC §401(a), it is obviously better that this issue was uncovered now versus later.

Conclusion

Now for reflection. In the future, how could this *mis-diagnosis* have been avoided? The best preventative measure is to develop and use a well written due diligence questionnaire with a certifying statement for the client to sign. As a starting point, your questionnaire should include these specific questions:

- Do you utilize support staff for your business?
- If so, how is this support staff compensated?
- Do you have any ownership interests in other businesses? If so, please provide details including the percentage of ownership and the relationship between your primary business and this business, if any.
- Does your primary business pay another business for support staff or professional services?
- Do you have any business partners? If so, please provide details including the percentage of ownership of you and your partners for each ownership interests that are in the same business.

Finally, at the end of the questionnaire, have the client sign off on a statement: (1) certifying to the accuracy of the answers provided to the questions asked; (2) that the entity establishing the plan is not a member of a controlled group or an affiliated service group and (3) an indemnification statement holding you harmless if it is later determined that the sponsor, either knowingly or unknowingly, had not provided accurate or complete information in order to properly determine the status of the employer.

This approach may seem like over-kill, but remember the old adage—"An ounce of prevention is worth a pound of cure!" This adage is especially true with qualified retirement planning. It is much better to ask and insist on the answers to these difficult questions before the plan is designed and implemented rather than dealing with the corrections after the fact! ▲

Shannon R. Critchfield, CPC, QPA, QKA, has over 15 years experience in the retirement planning industry with positions ranging from processor, project manager, conversion consultant, account executive to pension wholesaler. Currently, Shannon is president of the Critchfield Financial Group, LLC, where she specializes in designing retirement programs for employers of all sizes. In addition to her ASPPA credentials, Shannon has also earned the following designations: APA, APR, CRSP, CEBS and FLMI. When not creating innovative solutions for her clients, she enjoys spending time with her family, scrapbooking and traveling.

FROM THE PRESIDENT

The Rewards of Inclusivity

by Stephen H. Rosen, MSPA, CPC

ASPPA's identity and role in the retirement plan industry has evolved and grown over the years. As ASPPA's network of members and its circle of influence expanded, ASPPA became "home" for many industry professionals with diverse backgrounds for a variety of reasons. Some looked to ASPPA to meet their educational needs while others enjoyed the networking opportunities at conferences and other ASPPA functions. Many looked to ASPPA for leadership and guidance in government affairs and regulatory issues. Regardless of what brought each member to ASPPA initially, ASPPA's twofold core purpose—to educate all retirement plan professionals and to preserve and enhance the employer-based retirement system—serves as the common thread that binds the diverse group of members together.

Clearly, ASPPA has been continually morphing since its inception almost 40 years ago. In the early years, ASPPA was a small elite organization, primarily comprised of pension actuaries (who were predominantly also sales professionals) who were looking for a "home" to serve their common interests. ASPPA fulfilled that need. As ASPPA grew and matured over time, it evolved into a prestigious and visible network of diverse pension-related professionals. Today, ASPPA is a unique professional society that continues to serve its membership well, which currently includes over 5,500 individuals.

Over the past five years or so, ASPPA's leadership has successfully confronted the challenge of defining ASPPA's strategic plan and goals for the future. When they looked into their crystal ball during this process, how did these leaders envision the future for ASPPA? *"ASPPA will be the premier educator of all retirement plan professionals and the preeminent voice and advocate for the employer-based retirement system. Retirement plan professionals will view ASPPA membership as essential to their success."* It is now our charge, as leaders and members of ASPPA, to embrace that strategic plan and lead ASPPA into the future.

One example of dealing with this challenge was highlighted during the process of changing ASPPA's name. Not only was the issue debated by our members for almost a decade, but meeting the sensitivities and needs of all of our members and stakeholders took a great deal of hard work. The end result was to approve a change in our name that also reinforced our strategic plan of becoming more inclusive.

Becoming inclusive means that we need to broaden the scope of our Society in order to achieve the desired "premier" status. Raising the bar to the highest possible level of professionalism cannot just apply to our long-standing actuarial members, but must also apply to all pension professionals within our industry. To achieve that goal, ASPPA needs to take full responsibility for defining, promoting and monitoring the standards that define professionalism within our industry. Who better to own that ideal than ASPPA, which has already proven that its current membership, advocacy and credentialing programs are representatives of that standard? To expand beyond our current borders requires a lot of work, courage and commitment—but ASPPA is well-positioned to take that next step.

Our high quality credentialing programs have continued to serve in setting the standard for all individuals who are committed to attaining a professional credential within the pension community. We now have the capability of supporting (through our education, examination and continuing education programs) actuaries, attorneys, accountants, consultants, financial planners, recordkeepers and administrators. And just recently, our membership overwhelmingly approved the development of the Qualified Plan Financial Consultant (QPFC) program for the investment professionals in our community. ASPPA will continue to reach out and embrace all professionals in our industry in order to accomplish our strategic goals. Our history and on-going commitment to a strong credentialing program, which is now being administered in concert with the University of Michigan, is a natural fit for this expansion.

Will this outreach model result in a dilution of our current membership? Not if we remain committed to the significance of our core strengths. It is essential that we do not abandon or detour from the traditional successes of ASPPA. Those successes need to be central to our growth and our model for the future.

The ASPPA Benefit Councils (ABCs) have demonstrated the success of an inclusive approach on a local level. The Councils continue to attract members from multiple disciplines, resulting in dynamic yet homogenous networks of pension professionals. The success of our ABCs is consistent with the direction that ASPPA is taking on a national level.

What should we expect to accomplish in our pursuit of inclusivity? Clearly, at a basic level, we will certainly attract new members, which is always a good thing for a thriving and vibrant organization. In anticipation of that growth, we have already increased and restructured the management of ASPPA, both at the volunteer and professional staff levels. More importantly, by expanding our scope, we will now be able to take the lead in coordinating the standard of professionalism that we envision for the entire industry. And not just by addressing a limited number of disciplines, but by addressing all of them.

So what are the real rewards of inclusivity? ASPPA is uniquely positioned to provide the mechanism to further the common interests of its members and to protect the integrity of our industry, all within an environment that preserves and reinforces our diversity as individual professionals. The envisioned future can become a reality if we, as members, show our commitment to the strategic plan and help ASPPA accomplish its goals. And the ultimate reward? WE ALL WIN! ▲

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

To expand beyond our current borders requires a lot of work, courage and commitment—but ASPPA is well-positioned to take that next step.

Why it Matters— Say "Yes" to a Visit to Capitol Hill

by Cynthia S. Ellner

Riding a bus to Capitol Hill to meet with one of *your* members of Congress may not seem like it matters. Packing a suit instead of just "business casual" for the ASPPA Annual Conference in Washington, DC, may seem like an inconvenience. Feeling lost in the corridors of the Rayburn House Office Building may not seem worth the effort. Reducing to sound bites the extremely complicated details of your workday may seem like a hard task. But it matters. Today it matters a great deal. The President's desire for tax reform could completely annihilate our profession.

Members of Congress face a very complex world of issues like the push and the pull of current revenues for the federal government versus the long-term retirement security for millions of hard working Americans. These issues present tremendous challenges for even the best and brightest members of Congress. We, as pension professionals, need to understand this challenge. It is not easy for us to be experts in a single section of the Internal Revenue Code—imagine what it's like for them! Members of Congress are competing for scarce dollars for current spending. Spending bills are passed and Members of Congress face pressure to find revenue to cover the spending. It is up to the private pension industry to remind Congress of the consequences and impact of their decisions on future retirees' income security. Members of Congress respond to: constituents, contributors and technical experts.

2003 Visitors to Capitol Hill exhibit enthusiasm on their way to educating their Members of Congress.

Through ASPPA and ASPPA PAC, we can offer input and have an impact on all three fronts. We know we rely on terrific staff and volunteers to communicate the technical details of legislation and changes to the Internal Revenue Code on our behalf. Many of you know that we should (and do) write out personal checks to ASPPA PAC for its campaign contribution efforts.

It is equally important to show up as constituents in numbers that matter. Our best opportunity for maximum effectiveness is during the 2005 ASPPA Annual Conference's biennial (non-election year) Visit to Capitol Hill. This year's Annual Conference will be held November 6-9, with the Visit to Capitol Hill being on Tuesday, November 8.

There are things we know and understand as private pension professionals that we must communicate as constituents. We must show up in numbers to show how much changes to the system matter. The President has created a tax reform advisory panel to propose an improved tax system. Many of the reform options under consideration could have a detrimental effect on the employer-sponsored retirement plan system. ASPPA members are needed to help communicate that some of the existing provisions of our nation's income tax system have helped achieve positive results for retirement savings and deserve to be retained.

ASPPA has a plan in place to make this effort very easy for us. Hill visits do not conflict with Annual conference sessions. The arrangements are made for us, including transportation, lunch and talking points. We literally just have to get on the bus, arrive and talk about *our* work to one of *our* members of Congress.

As Thomas C. VanDeGrift, MSPA, a 2001 and 2003 participant states: "It feels good to know that you are participating in a group activity, something important, yet when you get to the meeting, there may only be one or two of you to carry the ball with your particular Member of Congress. Plus, it is interesting just to walk through the halls of government and see what is going on there."

Scott Donnellan, CPC, QPA, QKA, another 2001 and 2003 participant writes: "I was a little nervous the first time I went to Capitol Hill, but fortunately I was on a team with several experienced ASPPA members who made it much easier. It was really interesting to go to the House and Senate office buildings and walk down the corridors where so much happens. It gives you a real feeling of the history and importance

of Washington, DC. I think that it's an experience everyone needs to have at least once in their lifetime.

"I think that going to Capitol Hill is a duty, as well. So much is happening right now that will affect retirement policy, and it is up to us to educate the staffers on the real issues. If we don't take the opportunity to give Congress input, then we can't really complain about the results if they pass laws we don't like. I think it's our privilege and our duty to help Congress pass good laws by giving them the benefit of our expertise.

"After a couple of Capitol Hill visits under my belt, I really look forward to more. It's fun, it's interesting—and it really is important for us to all get involved. And you will probably get close enough to touch people that you would normally only see on the nightly news. That's pretty cool."

Changes to the private pension system should not be made by Congress in a vacuum or with insight into only one side of the story. Members of Congress must know that their actions have consequences to constituents. Who better to get this message across to them than us? Please contact Jolynne Flores at **jflores@asppa.org** and say "Yes" to a Visit to the Hill. You'll know it mattered. ▲

Cynthia S. Ellner, Esq., is president of California Pension Administrators and Consultants, Inc, Los Angeles, CA. She is the former president of California Central Trust Bank. A member of the California Bar and a recognized expert in banking, business trust and pension issues, Cindy has served as co-chair of the Employee Benefits Trust and Fiduciary Services Committee of the California Bankers Association and on the Association's State Government Relations Committee. She serves on numerous federal, state, and local bar association committees including the Los Angeles County Bar Association Pension Committee.

Saving Private Pensions

2005 Visit to Capitol Hill
November 8, 2005

Congress needs to understand what could happen to Americans' retirement security if current discussions about tax reform are carried forward—and you can help by being a messenger. Now is the time to take action for 2005. ASPPA will help you with everything—your appointment, your talking points and your transportation. Ask any of the 2003 Capitol Hill Visitors—it's fun, it's easy and it's never been more important!

Participate. Educate. Help protect the retirement system.

For more information, contact Jolynne Flores, Government Affairs Manager at jflores@asppa.org

Welcome New Members and Recent Designees

▲ MSPA

Michael B. Brady
Lee Kaminetzky
Harry W. Mandel
Gail R. Steward
Jeffrey D. Wadle
Scott G. Young

▲ CPC

David E. Ehrman
Lisa M. Eppard
Stacy M. Fisher
Sabin L. Larson
Shelly Xiuyu Li
Stacey L. Stretch

▲ QPA

Stacy M. Fisher
Faye I. Johnson
Jeffrey A. Mandell
Robert M. Ptacek
Therese M. Scheer

▲ QKA

Joseph J. Bernardo
Jeffrey A. Crowder
Joseph Demangeont, Jr.
Brenda J. Dunn
Michael P. Jewer
Pamela M. Kotis
Sabin L. Larson
Michael P. Liscio
William F. Mulkern
Kerry W. Newbert
Sydney H. Nguyen
Therese M. Scheer
Fred G. Stickney
John A. Twombly
Peter J. Valentine
Derek Carl Walling
Amy P. Wicker

▲ APM

Stephanie Napier
Jerry C. Wagner

▲ AFFILIATE

Michael L. Atchison
Frederick Todd Blue
Thaddeus F. Burzynski
Christine Farley
Joyce Fulton
Sara Martin
Andrea J. Millonig
Jennifer Piazza
Lawrence B. Raymond
Ken Simons
Janelle A. Sotelo
Steven N. Williams

ASPPA PAC

Why Should You Be Following the PAC?

by Ilene H. Ferenczy, CPC

Why, one member asked, doesn't everyone who is a member of ASPPA contribute to ASPPA's Political Action Committee (PAC)? After all, there are things going on in Congress and the Administration that could save or destroy our industry.

If legislation passes that makes company-sponsored retirement plans obsolete or impractical, we are all out of a job. Even worse, many Americans would lose their retirement security.

While those who contribute to the PAC are committed to its value, I, as a member of this committee, was at one time more skeptical. Even I admit there have been some years in which I have hesitated to contribute to the PAC, despite the good I know it does for the retirement industry and for our common interests in particular. The main reason for my hesitation was the knowledge that not everyone in ASPPA thinks politically as I do. What if, I wondered, the PAC is giving money to someone in Congress whose interests are diametrically opposite mine on a given issue, even though we agree on what is good for pensions? Perhaps you share the same concerns. This issue has become more acute for me since I became a member of the PAC committee and am in the position to vote to approve or disapprove actual contributions to the campaigns of various people in Congress.

So, why should I contribute to the PAC and let my money be used to benefit people in Congress I would not otherwise support? Here's why. You have to understand how PAC money is used and what it does. In short, it can do miracles.

The amount of money that ASPPA PAC can give to any one politician is capped at $5,000 for each primary election and $5,000 for each general election. A good portion of our donations are in the amounts of $1,000 or $2,000. Therefore, there is no way that an ASPPA PAC contribution is going to make the difference between a congressperson remaining in office or not. Our egos notwithstanding, we're not kingmakers.

What makes the difference is that most ASPPA PAC contributions go to politicians who have demonstrated a marked interest in retirement plan issues or who are in a key leadership position to make a difference. ASPPA PAC's contributions help the politicians stay in office and encourage them to spread the word and gain support for the important bills that affect all ASPPA members. For example, our contributions to Representative Boehner (R-OH), Chair of the extremely important House Committee on Education & Workforce, who introduced pension reform legislation in early June, contains many of the provisions for which ASPPA has been lobbying in the past several years.

Also, in the past few years, ASPPA PAC money went to support other politicians who have helped us in our position regarding the Administration's LSA, RSA and ERSA proposals that would have been so detrimental to our industry. These powerful allies help us to communicate to the White House about the things that interest us, and the word on the street is that the Administration is respectful of our positions and our influence.

Many of the ASPPA PAC contributions are not just mailed in an envelope, but are donated as part of a fundraising event of some type. This procedure enables ASPPA Government Affairs representatives to attend the event, meet face to face with the politician and express our views. Making friends in Congress is critical to getting our message out. And don't forget, there are thousands of other organizations and industries competing in the same way for their issues. So we have lots of competition in trying to get our message heard.

The relationships we make through PAC are reinforced by ASPPA's Government Affairs Committee (GAC), whose members meet with Members of Congress and their aides on a regular basis to put forward our concerns and agenda. A lot of what GAC does is to educate politicians and their staffs, so that they understand what the real problems are and the practical means by which they can be solved. This type of interaction requires a relationship and face-time with members and their aides, and given how complicated our industry is, it takes a lot of face-time in all kinds of venues to get our message heard and understood. Believe it or not, ASPPA PAC's relatively small dollar amounts help show how committed we are to our issues and help us develop those relationships.

So, while I might not be in favor of everything a senator or congressperson who receives ASPPA PAC money supports, I know that my contribution has been used to work with that person on specifically the issues relating to our industry. That's important and that's compelling.

If you are already a PAC contributor, thank you. If not, consider making your first contribution and help make a difference! ▲

Ilene H. Ferenczy, Esq., CPC, APA, is an attorney with The Law Offices of Ilene H. Ferenczy, LLC, in Atlanta, GA, where she consults on all types of employee benefit plans. She is a Government Affairs Committee Co-chair and serves on the ASPPA PAC Candidate Selection Subcommittee. She is a nationally known speaker on benefits issues and has authored more than 40 articles for various publications.

MEMBERSHIP

Volunteering for Your Organization—How to Get Started

by Stephen L. Dobrow, CPC, QPA, QKA, and Jane S. Grimm

ASPPA needs you! The need for willing volunteers has never been greater!

We are looking for volunteers of all types and with all kinds of interests and experience—experienced volunteers, first-timers, education-oriented, government affairs-oriented, actuarially skilled, marketing experienced, fund raising experienced and/or those who just simply enjoy the fun and satisfaction of being a volunteer.

By the time you read this article, you will have received an e-mail or two detailing the variety and seemingly endless opportunities for you to get involved with your organization. In case you missed the e-mail, you can access the Volunteer Position Application on ASPPA's Web site by going to **www.asppa.org/membership/member_vol.htm**.

ASPPA's Membership Committee has tackled a variety of projects this year, including membership campaigns to reach Enrolled Actuaries and to target attorneys at the new DOL Speaks—The 2005 Employee Benefits Conference, with the hope of adding these new members to our volunteer ranks. A subcommittee that is reviewing the ASPPA Web site in great detail has also been very active suggesting ways to make the Web site more informative for members and non-members alike.

The real focus, however, has been on developing a process to tap the great volunteer resource that ASPPA members provide and to place members in positions where their personal time commitments, talents and expertise can make the biggest impact on ASPPA, while providing the member with a sense of satisfaction, too. This perfect match of desire, talent and expertise yields the greatest result—for ASPPA and for you!

"I've Filled Out the Volunteer Position Application, Now What?" Submit your application to ASPPA and the Membership Department will acknowledge receipt. The vacancies on committees and task forces will be matched against your preferences. If there is an opening that looks right for you, you will be contacted by a member of the Membership Committee. If you are still interested in the position after you hear more about the position and the level of commitment, your name will be forwarded to the committee/task force chair. If the position is still open and your qualification and preferences fit the position, you will receive a call from him or her to discuss the position in more detail.

If you don't find an opportunity immediately, there's no need to resubmit your application unless your circumstances or preferences change. ASPPA will track your application and continue to "keep you on file." Periodically, you will be contacted to make sure that you are still interested and available. The volunteer opportunity list is a constantly changing slate of tasks, projects and needs.

This process isn't revolutionary, or even new. The real change is that the initial responsibility for filling *all* volunteer jobs now lies with the Membership Committee and not with the various committee and task force chairs. This process will, over time, give all ASPPA members a chance to serve on a committee or task force or to help out where needed. It is also intended to ensure that a member will not be overloaded and that the opportunities are spread throughout the membership. The Membership Committee is very proud of our efforts and the results during this year in placing many new volunteers in positions where they are making a difference.

There are many ASPPA volunteer jobs that are enormous, like being the co-chair of a major committee, but there are also many, many jobs that need volunteers but take little time, such as being a moderator or CE-collector at a conference. Regardless of the time involved, all tasks are important to the success of ASPPA, and your contribution will make a difference.

ASPPA's foundation is the strength and commitment of our volunteers. Some say that we have a contagious level of passion. There are many ways, from making a large commitment to performing small, occasional tasks, in which you can play a more active role in our dynamic and growing organization. We encourage you to fill out the Volunteer Position Application and show your commitment to help make ASPPA even stronger and better! ASPPA needs your help! ▲

Stephen L. Dobrow, CPC, QPA, QKA, is president of Primark Benefits in Burlingame, CA. Stephen currently serves as a Vice President of ASPPA, is an Executive Committee and Board member, Co-chair of ASPPA's Membership Committee and serves on the Finance and Budget and Marketing committees.

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

ASPPA Benefits Council of Central Florida—It's About Change

by Marcia A. Gady

Those of us who work with retirement plans have learned to embrace change. Well, maybe we've just learned to give it one of those insincere, one-arm hugs.

In any case, our world is one of changing regulations, which often leads to changes in procedures, materials and sometimes the systems we use.

The Employee Benefits Council of Central Florida, Inc. was conceived in May of 1982, and in November the Council was chartered. In 1997, we became an ASPPA Benefits Council. In 2005, we now have 44 members. This year, ASPA changed its name to ASPPA, and the ASPPA Benefits Council (ABC) of Central Florida, located in Orlando, is now using the new name and the new logo.

ASPPA has also assigned Donna Brewster, QPA, CPA, of Brewster & Brewster, Inc., from Mentor, OH, as a mentor to our ABC. I met Donna in March at the ASPPA Leadership Conference in San Diego. We welcome her guidance in our effort to provide a forum for the interchange of ideas, information and techniques to assist professionals in servicing their clients' needs in the area of employee benefits. If you didn't recognize it, the last part of the prior sentence was stolen directly from our Mission Statement.

One of the great benefits of being associated with ASPPA is the speakers list that ASPPA provides. In February, ASPPA's Executive Director/CEO, Brian H. Graff, Esq., APM, addressed our group with a "Washington Update." That was a great way to begin our year and inform our members. The first page of Brian's material had the following particularly poignant message: "Note—Information subject to change and constantly does."

In April, we were fortunate to have Jeanette M. Whitten, CPA and IRS Agent, speak to our group about "Plan Audits—IRS Perspective." It is always helpful to obtain information from the source about plans that may be targeted for audits. In May, we were eager to hear Michael J. Canan, Esq., one of our Council's past presidents, tell us about Roth IRAs, Roth 401(k)s and the subject of deferred comp plans. Michael, and his associate Brian Furgula, Esq., gave us some very helpful examples comparing the results of using a pre-tax 401(k) and a Roth 401(k). Our speaker on July 12 was Elaine A. Scott, MSPA, CPC, on the subject of defined benefit plans. As always, our meetings are held over lunch, but the locations change.

For more information about the ABC of Central Florida, including membership registration and upcoming events, contact Amy LaBelle, CPA, Membership Chair, at 407.540.2747 or **alabelle@cnlonline.com**. ▲

Marcia A. Gady is a vice president and retirement services relationship managerwith SunTrust Bank in Orlando, FL. She has been in the employee benefits field for 26 years. Marci has been involved with the ABC of Central Florida board since 2004.

ABC Meetings Calendar

July 12
ABC of Central Florida
Topic: Defined Benefit Plan Update
Speaker: Elaine A. Scott, MSPA, CPC

July 28
ABC of the Great Northwest
Topic: Washington Update
Speaker: Brian H. Graff, Esq., APM

August 18
ABC of Cleveland
Topic: 5th Annual 2005 Summer Workshop
Speaker: TBD

August 23
ABC of North Florida
Topic: Retirement Plan Design
Speaker: Thomas E. Poje, CPC, QPA, QKA

August 24
ABC of Dallas/Ft. Worth
Topic: Proven Marketing Methods to Build Your 401(k) Business
Speaker: Tom Foster, Esq.

September—TBD
ABC of Greater Cincinnati
Topic: Current Issues Regarding Plan Audits
Speaker: Local DOL Representative

September—TBD
ABC of Atlanta
Topic: Retirement Plans for Non Profit Organizations [403(b) and 457]
Speaker: H. Earle Garvin, MSPA, and John D. Hartness, APM

September 15
ABC of Western Pennsylvania
Topic: SEPs & SIMPLEs
Speaker: Gary S. Lesser

September 15
ABC of Northern Indiana
Topic: Washington Update
Speaker: Brian H. Graff, Esq., APM

October 26
ABC of the Great Northwest
Topic: ERISA Update
Speaker: Sal L. Tripodi, APM

Fun-da-Mentals

A MAGICAL DAY

On Thursday, May 12, 2005, I walked into the bank and addressed the teller: "I'd like to withdraw $1 from my IRA, please."

She said, "OK, but I need to warn you, in addition to the usual taxes, there is a penalty for early withdrawal."

"Not a problem," I said proudly. "I'm 59 1/2."

"No way!" she replied. "You don't look a day over 59.497."

"But I am," I assured her, having come prepared with my latest Social Security statement. "It says right here, 'Birth Date November 12, 1945.' "

"Not so fast," she said, taking out her calculator. That makes you 21731 days old. Dividing that by 365.25, you are 59.49623 years old, just as I had guessed. In fact, even tomorrow you'll only be 59.498. I'm afraid you won't reach the magical age until Saturday."

"Aha, gotcha there!" I replied. "The use of a denominator of 365.25 is based on the assumption that leap year is observed every four years. However, years that are divisible by 100 but not by 400 are not leap years. Leap year is observed 97 out of every 400 years, making the denominator not 365.25, but 365.2425. Using that formula, tomorrow I'll be 59.500195. See you tomorrow."

A man overhearing our conversation said, "I hate to make things even more complicated, but I'm an astronomer. This business of 97 leap years every 400 years is a human approximation that is off by about 1 day every 5000 years. In fact, the exact duration of the revolution of the earth around the sun isn't even a constant. The earth is very gradually slowing down, and thus every year is a teeny bit longer than the one preceding it."

"Hard to believe," I said. "In my experience, the older you get, the faster time goes."

A woman had also been listening to the conversation. "I'm a psychologist," she said, "and you're confusing objective-scientific time with subjective-experienced time."

"Never mind. I'll come back Monday," I said in disgust. "Then I'll be 59 1/2 by anybody's definition!"

—Randy Springer
SunGard Corbel

McHUMOR by T. McCracken

"Oh no. An abacus virus!"

Word Scramble

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

SEX AT ___ ___ ☐ ☐ ☐

SUE TURF ☐ ☐ ___ ___ ☐ ___ ___

DEAL IT ___ ___ ☐ ___ ___ ☐

SEA LUV ___ ☐ ___ ___ ☐ ☐

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

Mystery Answer: "_ _ _ _ _ _ _ _ _ _ _ _ _ _"

The doctor diagnosed himself with this after he suffered a huge loss in his 401(k) plan.

Conference of Consulting Actuaries 2005 Annual Meeting October 30 – November 2

The Grove Park Inn Resort & Spa • Asheville, NC

Sessions include information on:

- The most up-to-date information possible, to assist you in providing valuable services to your clients; and
- Items of great interest to consulting actuaries.

Plus, during both the sessions and the social events, you'll have plenty of opportunities for discussions with your peers.

This year, in cooperation with the International Association of Consulting Actuaries (IACA), there is an *International Track* on Tuesday, November 1, showcasing global actuarial consulting issues. It is expected that the opening general session will feature an important international speaker from the UK, who will address the global convergence of accounting standards and their relevance to the accounting treatment of pension plan expense, assets and liabilities.

A sampling of tentative session topics includes:

- Consumer Driven Health Plan Pricing & Design
- Late Breaking Developments
- What's New in Executive Compensation
- Small Plan Issues
- Prescription Drugs & Medical Reform
- International Accounting Standards
- Dialogue with the IRS
- Outsourcing Administration & HR Conversations
- Medical Malpractice
- Enterprise Risk Management
- Actuarial Opinions
- Financial Economics

Enrolled Actuaries can earn up to 18 continuing education credit hours, including a possible 2.5 credits from a special session on revisiting the "Gray Book."

The Grove Park Inn Resort & Spa is one of the South's most venerable and famous grand resorts. Asheville has long been noted as "the Paris of the South," and lives up to this billing with unique cultural, educational and gourmet opportunities. The Grove Park Inn, built in 1913 from granite stones mined from Sunset Mountain, overlooks the Asheville skyline, and provides guests with majestic views of the legendary Blue Ridge Mountains. Asheville is easily accessible through short hopper flights from Atlanta, Washington or New York City.

This meeting offers a unique chance for Conference members and guests to network with their actuarial colleagues and professionals in related fields. For more information go to the Conference Web site at **www.ccactuaries.org** or contact the Conference at 847.419.9090.

Calendar of Events

Date	Description	ASPPA CE Credits
Jul 24 - 27	Meeting Midway • San Diego, CA	20
Sep 12 - 13	Central and Mountain States Benefits Conference • Denver, CO	15
Sep 30	Early Registration Deadline for Fall Examinations	
Oct 31	Final Registration Deadline for Fall Examinations	
Nov 1 - Dec 15	DC-1, DC-2, DC-3 and DB Fall 2005 Examination Window	
Nov 6 - 9	Annual Conference • Washington, DC	20
Nov 11	C-3, C-4 and A-4 Postponement Deadline	
Nov 16	C-3 and A-4 Examinations	
Nov 17	C-4 Examination	
Dec 1	DC-1, DC-2, DC-3 and DB Postponement Deadline	
Dec 15	PA 1-3 Examination Deadline for 2005 Paper Submission	
Dec 31	PA 1-3 Examination Deadline for 2005 Online Submission (Midnight, EST)	
2006		
Feb 25 - 28	The 401(k) SUMMIT • Orlando, FL	20
April 24 - 25	DOL Speaks: The 2006 Employee Benefits Conference • Washington, DC	15
May 7 - 9	Mid-Atlantic Benefits Conference • Philadelphia, PA	15
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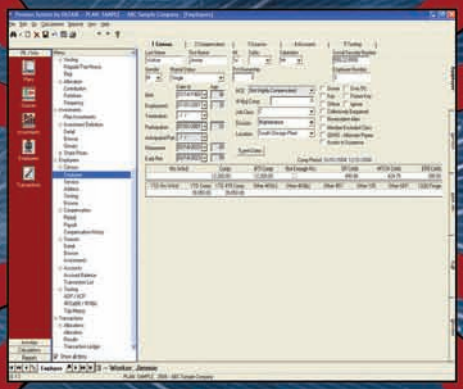

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