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THE ASPPA Journal

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

WASHINGTON UPDATE

The Politics of Social Security Reform

by Brian H. Graff, Esq., APM

By the time you read this, the debate over Social Security reform may be essentially over. Many people in Washington believed it was over before it began. Regardless, the severe politics surrounding this issue make it extremely unlikely that you will see any meaningful changes to our nation's Social Security system this year or anytime soon.

President's Uphill Battle

Whether or not you like the idea of "private" or "personal" accounts[1], the President certainly has his hands full with this one. To begin with, interest among Congressional Republicans in Social Security reform is fairly lukewarm. Frankly, the issue simply does not resonate with the core constituent base of conservative Republicans.

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FROM THE EDITOR

Testing, Testing...1, 2, 3

by Chris L. Stroud, MSPA

ASPPA has always played a vital role in educating our industry's professionals and in establishing standards of professionalism through its credentialing program. I never served on ASPPA's Education and Examination (E&E) Committee, and I was not totally aware of all the work that went into developing courses of study and creating exams. I have recently discovered one thing about the process, however—test development has gotten much more complex.

I recently had the honor of observing the E&E Committee firsthand at its January meeting in Sunny Isles, FL. It quickly became apparent to me that when ASPPA committed to deliver certain exams electronically and offer a "window" to take these exams, life became more complicated. I learned that exam preparation had evolved into an incredible science, and great pains had been taken to deliver quality and fair exams.

The E&E Committee recently restructured to meet this challenge more effectively, breaking the work down between paid Technical Education Consultants (TECs) and volunteer Subject Matter Experts (SMEs). The education program is now coordinated with the University of Michigan. The committee is also in search of a Chief of Pension Education (CoPE) to serve as the visionary for ASPPA's E&E program. The January meeting was the first meeting under the new E&E structure, and the energy and expertise that filled the room was quite impressive. Equally as impressive was the process behind how a question ended up on a candidate's exam.

First, there are study guides and course materials. In some cases, existing texts are used, but in many instances, both the study guides and texts are developed jointly by the TECs and the SMEs. From the materials, learning objectives are written for each concept that the committee decides should be tested. One might think that the next step would simply be to write a question to test that specific concept, but that would be too easy. First, there are rules about how to write a good question that have to be considered, and there is a whole series of "do's and don'ts" for the committee to follow. But, I want to focus more on the process. Remember, these are electronic exams and are given continuously throughout a window of time. Thus, to protect the integrity of an exam, the same exam with exactly the same questions cannot be given each day to different candidates. Instead, multiple questions testing the same concept must be developed and stored in an "exam bank." Questions testing the same concept are grouped together in the bank and are randomly chosen for each test given. To satisfy one learning objective, numerous questions must be developed so they can be randomly distributed on candidates' tests.

The method of tracking the questions in the exam bank is equally as fascinating. A question is "coded" to indicate the year it was placed in the bank, the group number (each learning objective defines a group), the question number within the group and the study guide chapter it corresponds to. As candidates take the exams, statistics are gathered, and the Society of Actuaries, one of ASPPA's sister actuarial organizations, prepares the results for ASPPA at the end of each exam cycle. The analysis indicates such items as how many candidates received each question, the answers chosen, the correct answer and the level of difficulty. Questions are reviewed, and tweaked or removed as needed, to ensure quality and fair tests. New questions are cycled onto an exam first as "ungraded" questions. Each candidate's test contains five ungraded questions, and if the statistics gathered on an ungraded question are good, then the question is moved into the applicable group as a "graded" question for the next exam.

ASPPA members can be proud of our quality education program and testing procedures. Kudos to past and current E&E Committee members and the ASPPA staff for rising to the challenge, adapting and innovating in order to harness technology and advance our education and examination program! ▲

Letters to the Editor

Fun with Earned Income

I just read Michael Cohen-Greenberg's article on calculating earned income. <*The ASPPA Journal, Nov-Dec 2004 issue*>

Would you please check his calculations on page 6 of the article? His calculations do not seem to follow Schedule SE. On Schedule SE, the net Schedule C income is first multiplied by .9235 and the self-employment tax is calculated on that number, not on the net Schedule C income.

…Please let me know what you find out.

Stephen R. Pauley, MSPA
Martin & Pauley, Inc.

More Fun with Earned Income

I am writing to correct the "Net Earnings from Self Employment" income calculation presented in the "Fun with Earned Income" article in *The ASPPA Journal* Nov-Dec 2004. In the last sentence of the last paragraph of the left column, Mr. Cohen-Greenberg writes:

> *"If his or her income exceeds the wage base, then reduce the line 31 amount by the sum of (1) $6,724.35 and (2) 1.45% of his or her income in excess of the wage base (see the example that follows)."*

Mr. Cohen-Greenberg's formula does not apply the ".9235" factor to the Medicare (2.9% tax rate) portion of the self-employment taxes.

The self-employment taxes are calculated on Schedule SE of Form 1040. Step 4 of Schedule SE shows that the ".9235" factor is applied to the entire Medicare tax rate of 2.9% in the calculation used to determine the deduction for one-half of the self-employment tax, and in the calculation of Net Earnings from Self Employment for pension plan purposes. A portion of Schedule SE, with a sample calculation, is included in Chapter 5 of IRS Publication 560, *Retirement Plans for Small Business.*

…I hope you find my comments useful.

Ben Feller, MSPA
Pension Review Services

Because several readers brought this issue to our attention, we checked with the author and his response follows. As always, thanks for the feedback—and keep those comments and suggestions coming!

—Chris

Response from Author:

First of all, I appreciate the feedback. I've spent more time trying to limit the length of the response than it took me to write it....and I learned a few more things along the way. One of the more interesting is that Schedule SE is not meant to calculate earned income. It is meant to calculate the self employment tax. Which is why it does not produce the same result as the earned income calculation—it is not supposed to.

My statement "If his or her income exceeds the wage base, then reduce the line 31 amount by the sum of (1) $6,724.35 and (2) 1.45% of his or her income in excess of the wage base" is somewhat unclear, in that the term "income" is not defined. Income is not even an especially relevant term, in a technical sense, since it encompasses both earned and unearned income. For the purpose of making the above quoted statement clearer, I should have inserted the word "adjusted" before the word "income," and explained that "adjusted income" means the line 31 income, multiplied by .9235.

For comparison purposes, let's start with a Schedule C, line 31 amount of $95,181.38. Not an arbitrary number, as we'll see in a minute.

The Schedule SE instructions allow for two methodologies with regard to calculating the deduction for one-half of the self employment income.

The first applies if the amount on line 4 does not exceed the taxable wage base (TWB). We arrive at the Schedule SE line 4 amount by multiplying the Schedule C, line 31 amount by .9235. So, the calculation in our example is:

$95,181.38 x .9235 = $87,900—which is the TWB for 2004.

Schedule SE says we can calculate the deduction for one-half of the self employment income by multiplying the $87,900 in our example by 7.65% (15.3% x 50%) which produces $6,724.35.

If we were to do the (Schedule SE) calculation as if the line 4 amount is more than the TWB, it would look like this:

$87,900 x .029 =	$2,549.10
	+ $10,899.60
	$13,448.70
	x 0.5
	$6,724.35

Which is, of course, the same result as under the first method.

Next, we run through the same calculation, using a higher starting amount. Say (for example) the Schedule C line 31 amount is $100,000.

CONTINUED FROM PAGE 1

The calculation looks like this:

Line 31	$100,000.00	
Adjustment (.9235)	92.35%	
Adjusted line 31 amount	$92,350.00	
Medicare tax (2.9%)	$2,678.15	$2,678.15
TWB	$87,900.00	
Social Security (so called) 12.4%	$10,899.60	$10,899.60
Self employment tax		$13,577.75
One half of self employment tax		$6,788.88
Income	$100,000.00	
One half of self employment tax	-$6,788.88	
Earned income		$93,211.13

Earned income is defined (in IRSpeak) as income after all ordinary and necessary business expenses, less one-half of the individual's self-employment tax and less the plan contribution. Earned income includes salaries, wages, tips and professional fees. It also includes taxable scholarship and fellowship grants. Earned income can include payments such as property royalties from books or inventions as long as the payments represent the individual's personal effort. Earned income can also include net earnings from selling or otherwise disposing of property, but it does not include capital gains. It includes income from licensing the use of property other than good will.

As used under a qualified plan, earned income must be reduced by one-half the individual's self-employment tax, and the deduction allowed for contributions to a qualified retirement plan, including the contributions allocated to the self-employed individual.

Michael Cohen-Greenberg
Technical Answer Group, Inc.

WASHINGTON UPDATE

This interest is in stark contrast to other Bush Administration proposals, like the first-term tax cuts, which benefited from enormous support from conservatives. The President is asking Congressional Republicans to take on a hugely controversial, potentially politically dangerous issue that the party faithful are not that particularly excited about. In fact, most House Republicans I talk to aren't really interested in discussing Social Security reform. They would much rather talk about tax reform, I can assure you.

Further, a significant block of conservative Republicans are becoming increasingly concerned with the burgeoning deficit and the accompanying amount of government borrowing. With respect to Social Security (and this fact may come as a shock), payroll tax receipts are not socked away in a trust fund. Instead, amounts collected in excess of current disbursements to Social Security retirees are used for general expenditures (*e.g.,* government payroll). Consequently, if personal accounts are carved out of current Social Security tax receipts without any concomitant increase in payroll taxes, or without a reduction in general government expenditures (a highly unlikely scenario in Washington, DC), it will be necessary for the government to borrow in order to fund the personal accounts. Some estimates suggest that such additional borrowing could reach approximately $2 trillion over ten years. Certainly not something the Republican deficit hawks are particularly enthusiastic about. Additionally, Democrats are, not surprisingly, focusing in on the needed borrowing in their criticism of the President's proposal. All 45 Senate Democrats recently sent a letter to the White House stating that it would be "immoral" to borrow in order to carve out personal accounts from the current Social Security system.

So, the President is asking somewhat reluctant Congressional Republicans to take on the tough subject of Social Security reform in the face of stiff political opposition, not just from Democrats, but also from politically important interest groups, such as the AARP. AARP has made a commitment to spend millions of dollars fighting any proposals to carve accounts out of the current Social Security system. AARP is particularly targeting key members of Congress in their home districts/states with local media/print campaigns criticizing those members who support the President's proposal and thanking those who are opposed to the proposal. This media/print campaign will make it that much more risky for those undecided members—both Democrats and Republicans—to vote in favor of personal accounts.

Most importantly, strongly-held constituent views present the most serious risk to Congressional members. According to a late February Gallup poll, 63 percent of voters age 50 and over thought

Strongly-held constituent views present the most serious risk to Congressional members.

personal accounts were a "bad idea." Not only is the view negative, but the view is held by the most important voting block. Although the same poll revealed that 49 percent of workers under 30 thought personal accounts were a "good idea," this age group historically has not voted in strong numbers and their views are thus significantly discounted by politicians.

All this said, at this point it is hard to see a scenario where the President will be able to garner the support necessary in Congress to enact these fundamental Social Security changes. This dilemma is particularly apparent in the Senate, where 60 votes are needed to stop a filibuster, which means that at least five Democrats will need to change their present view (not including a few moderate Republicans who have already expressed some public reservations about the proposal).

Notwithstanding these imposing obstacles, no one should count this President out. He has a proven record of succeeding legislatively against surprisingly tough odds. If you remember, no one thought he had any chance of passing a $1 trillion tax cut bill just five months after his first inauguration. However, Social Security reform is an even higher hill to climb.

Possible Democratic Alternative

Senate Democrats are working on their own possible alternatives to stimulate greater retirement savings by low-to-moderate income workers. Some ideas involve add-on accounts on top of the current Social Security system. Such proposals may necessitate a perceived "increase" in payroll taxes. Other alternative proposals being considered by Democrats build on the current private retirement plan system. For example, some are thinking about requiring firms without a qualified retirement plan to offer at least a payroll deduction IRA option (with perhaps automatic enrollment). This approach could also be coupled with a significant expansion of the current-law SAVER's credit, including transforming the credit into a possible government match deposited directly into the taxpayer's IRA. Such ideas are certainly interesting and bold, and perhaps will get some future consideration, even if the Social Security reform debate goes away.

ASPPA's Views on Social Security Reform

ASPPA presently does not have a formal position on the proposal to permit the carving out of personal accounts from the current Social Security system.[2] There are two reasons for not taking a position at this time. First, it is

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unclear whether ASPPA could get a clear majority consensus among our membership on this subject. Second, given the present likelihood that this issue will not be moving through Congress in any truly meaningful way, the ASPPA Government Affairs Committee (GAC) does not believe it makes sense to expend the significant political capital that would be necessary in order to take a firm position on this issue.

That said, GAC is playing a role in this debate. In particular, GAC has concerns about the possible impact of any Social Security reforms on the private retirement plan system. We have been strongly emphasizing this point with all parties involved.

Naturally, we will closely follow this debate to make sure that the concerns about the potential impact on the private retirement plan system continue to be considered. This effort will, of course, be ratcheted up if it turns out some Social Security reforms appear to be moving through the legislative process.

In the meantime, ASPPA is also focusing on tax reform. Many people in Washington believe that the Bush Administration will quickly turn to tax reform if it is determined that Social Security reform is not moving forward. We can assure you that GAC will be involved with all aspects of this issue, which will be discussed in further detail in future issues of *The ASPPA Journal*. ▲

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

▲ ▲ ▲

1 Although the Administration originally referred to the accounts as "private accounts," subsequent polling revealed a negative view of that term. Instead, polls show the term "personal accounts" is viewed much more favorably. Consequently, the Administration and supporters in Congress now only use this new term.

2 For those interested in more details and analysis surrounding various Social Security reform proposals, the American Academy of Actuaries, which also has no formal position on the issue, has some excellent materials at **www.actuary.org**.

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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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The New Rules for Deferred Compensation Plans

by Barry Kozak, MSPA

Before this new law, deferred compensation was governed under long-standing Code provisions, some IRS and Treasury guidance published over several decades and judicially developed tax doctrines. As of 2005, however, that has all changed.

Late in 2004, Congress passed a tax law that has far reaching implications for many employee benefit plans that allow for the deferral of income (excluding qualified pension and profit sharing plans). While many ASPPA members might not currently advise clients on the legal and income tax effects of these nonqualified plans, the new rules, which are generally effective as of January 1, 2005, can open new opportunities that might have been overlooked in the past. However, as with all aspects of benefits consulting, advising a client about deferred compensation plans requires a thorough understanding of all of the rules, exceptions and pitfalls. This article is only meant to provide a cursory overview of this complicated area of consulting.

Congress has added a new section to the Code, Section 409A, which sets forth many specific rules governing the timing of federal income taxation. Before this new law, deferred compensation was governed under long-standing Code provisions, some IRS and Treasury guidance published over several decades and judicially developed tax doctrines. As of 2005, however, that has all changed. This new law, the American Jobs Creation Act of 2004, is the ultimate result of hearings that started in both houses of Congress immediately following the Enron collapse and other corporate scandals. Initially, it was hoped that these provisions would be passed during the spring of 2004, so the January 1, 2005, effective date would not have been too problematic. However, these provisions were ultimately tacked onto the tax legislation that Congress passed on October 3, 2004, which was not signed by President Bush until October 22, 2004. Thus, the January 1, 2005, effective date has become very problematic. Treasury has already provided some relief through published guidance allowing employers to act in good faith until December 31, 2005.

Congress has added a new section to the Code, Section 409A, which sets forth many specific rules governing the timing of federal income taxation.

Background: The Old Deferred Compensation Plan Rules

Under Code Section 61, an employee will generally include in gross income (and pay taxes on) any compensation in the tax year he or she receives it. Compensation includes the value of any property or service received by the employee from the employer. Under Code Section 162, the employer will generally get a corresponding deduction for reasonable salary paid in the tax year that the salary is included in the employee's gross income. Over the years, Treasury and the courts developed three basic tax doctrines based on the statutory language in Sections 83 and 451:

1. The economic benefit doctrine: *What is taxable as compensation?*
2. The constructive receipt doctrine: *When is an amount deemed compensation?*
3. The transfer of property doctrine: *Who is taxed on the compensation?*

The constructive receipt doctrine is the most important in regards to deferred compensation, since the typical high-wealth employee is usually trying to hold off paying taxes on a portion of compensation until a future year. In 1978, Congress imposed a moratorium on Treasury and prohibited them from issuing any further guidance that would make the economic benefit doctrine more restrictive. Therefore, from 1978 until 2005, the already loose set of rules governing deferred compensation basically remained stagnant.

The general understanding of these "old" rules was that an employee could make an election to defer income any time in the year before the year in which he or she performs services for such compensation. Plans could allow for a whole host of times or circumstances that the employee could elect

to receive some of the deferred compensation, and employees could change their minds before actual receipt and elect to further defer the compensation into a future tax year. Under the old rules, these benefit promises needed to remain "unfunded," meaning that at all times the executives had no greater right to receive their money than any other creditor of the employer. Many plans, however, contained provisions that allowed "haircut" distributions, which basically allowed some of the key executives, the very ones who would likely know the financial health of the business and whether it might be filing for bankruptcy, to take an accelerated distribution of a portion of his or her promised benefit. (*e.g.,* If the haircut penalty was 20%, an executive could take 80% of his or her benefits immediately and forever forfeit the balance.)

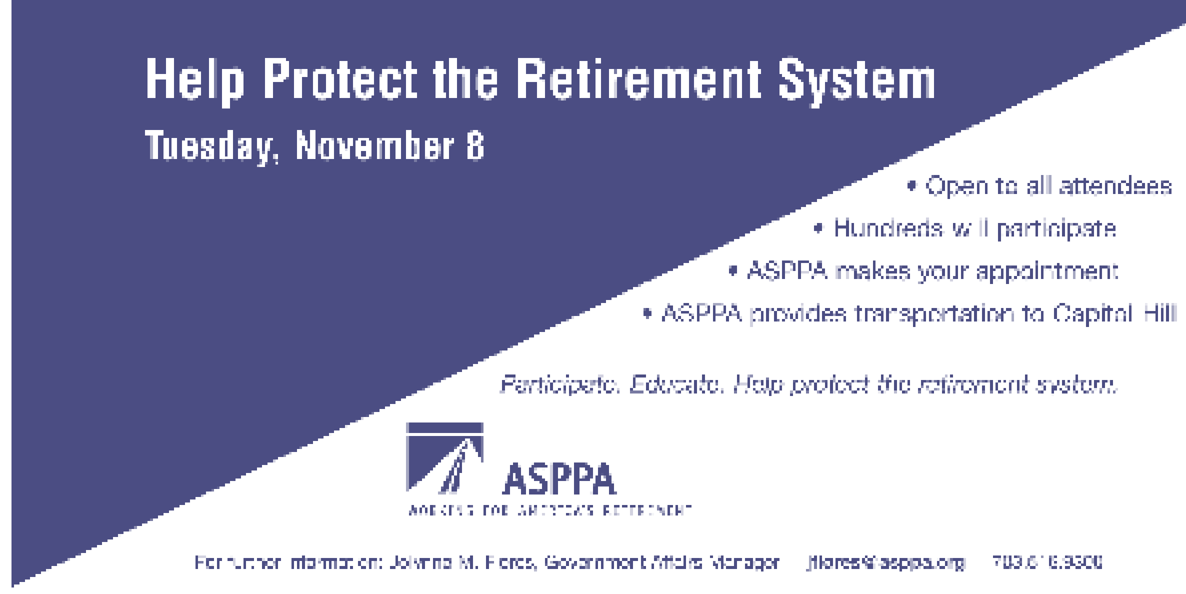
Additionally, plans under the old rules could allow for a distribution to employees upon separation from service, disability, an unforeseen emergency or a change of control in the ownership of the business. While these events seem like reasonable times to allow an immediate distribution to the employee, each employer had the opportunity to determine the applicability of any of these conditions in a very loose and inconsistent manner.

Section 409A: The New Rules

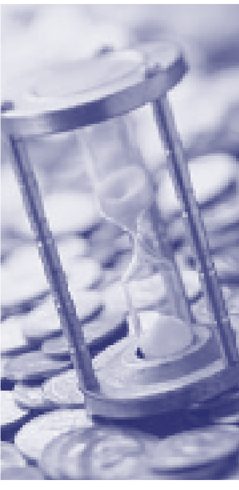
Under the rules of new Code Section 409A, which are effective for deferrals made for services performed on or after January 1, 2005, haircut provisions are totally prohibited. Either the Code or forthcoming Treasury regulations will provide specific definitions for separation from service, disability, an unforeseen emergency and change of control. In addition to these events, the new rules only allow distributions pursuant to a specific time (*e.g.,* a deferral of 25% of 2006 salary which will be paid "as a lump sum on May 15, 2020") or pursuant to a specific schedule (*e.g.,* a deferral of 25% of 2006 salary which will be paid "in five equal annual installments, with the first installment paid on May 15, 2020"). If a distribution is due to the new definition of separation from service, then actual disbursement of the benefits must be delayed for at least six months for key employees in a publicly traded corporation. Any distributions of up to $10,000, however, will be deemed *de minimis* and can be paid in any tax year.

Under the new rules, distributions cannot be accelerated, but they can be further postponed. The election to postpone must be made in the tax year before the distribution was to otherwise have been made, and the distribution must be postponed for a period of at least five years. The problem caused by the new rules is that employees must now make elections on how and when they want to receive their distributions in the tax year *before* the compensation is even deferred (as opposed to qualified plans, where the election is made at the time that distributions will begin).

Code Section 409A specifies that the election must be made by the end of the tax year before the tax year in which the compensation is earned. If an employee is hired midyear, he or she generally has 30 days after becoming a participant to make an election to defer compensation. The election to defer performance-based compensation (such as performance bonuses) must be made on or before the six-month period ending at the term of the service period.



If any compensation deferred on or after January 1, 2005, is pursuant to a plan that does not comply with Code Section 409A, the total amount of compensation previously deferred will be taxable to the employee in the year of noncompliance.



These new rules also clarify what constitutes a nonqualified deferred compensation plan. Any plan, agreement, method or arrangement that offers the opportunity for an employee to defer the receipt of compensation into a future tax year is considered to be a nonqualified deferred compensation plan. Many individual employment contracts and negotiated agreements will fall under this new regime. In the guidance that Treasury has already issued, Notice 2005-1, there will be three general types of nonqualified deferred compensation plans subject to Code Section 409A:

1. Account balance plans (similar to defined contribution plans in the qualified world);
2. Non-account balance plans (similar to defined benefit plans); and
3. Equity-based compensation plans.

Finally, although Rabbi Trusts are still available as funding vehicles, there are clear prohibitions from a trust investing in offshore assets and from a trust containing a provision that funds an executive's benefit based on the financial health of the employer.

Why These New Rules are Important

If any compensation deferred on or after January 1, 2005, is pursuant to a plan that does not comply with Code Section 409A, the total amount of compensation previously deferred will be taxable to the employee in the year of noncompliance. The executive will also be required to include the appropriate accrued interest in his or her income, and he or she must then pay an additional 20% penalty tax (presumably to negate the tax benefits the individual enjoyed because of the deferral of income taxes). Notice 2005-1 indicates that all similar-type plans that an individual participates in (all account balance plans, all non-account balance plans or all equity-based compensation plans) will be aggregated to determine the total compensation that the individual must include in income and to determine the appropriate 20% penalty tax. Thus, if an employee participates in several account balance deferred compensation plans with his or her employer, and if one of the plans fails to comply with Section 409A, then all of his or her accounts in the other employer plans will be deemed to also violate Section 409A. All such deferred compensation will immediately become taxable. The statute indicates that this failure is determined on an individual basis, but if the failure is because the document does not comply with the law, then the plan will fail for all participants. Unfortunately, there are currently no determination letter or self-correction programs for Section 409A plans as exist for qualified plans.

The statute clearly indicates that these new rules apply to deferrals on or after January 1, 2005. However, in Notice 2005-1, Treasury provided transition relief for deferrals of 2005 compensation in that election forms that otherwise should have been made by December 31, 2004, can be made by March 15, 2005. Additionally, employers have until December 31, 2005, to amend their plans, assuming that the employer operates the plan in good faith throughout 2005. The Notice provides that pre-2005 deferrals can be grandfathered and will remain subject to the plan provisions as they existed on October 3, 2004. By December 31, 2005, employers have to choose one of two paths:

1. Freeze the old plan document for pre-2005 deferrals and draft a new document for post-2004 deferrals, or
2. Maintain a single document with clear provisions for pre-2005 deferrals and for post-2004 deferrals and specify a method to clearly segregate the accumulation of pre-2005 deferrals from post-2004 deferrals.

The new rules could pose timing problems for any individual employment contracts and collectively bargained contracts that will be subject to the new rules but that might not be easily renegotiated by December 31, 2005.

Interaction of Nonqualified Deferred Compensation Plans and Qualified Retirement Plans

This article is intended to introduce ASPPA members to the new Section 409A rules and to point out how employer decisions about nonqualified deferred compensation plans might impact their qualified plan designs. Currently, under the old rules, many employers that sponsor qualified defined benefit plans for the rank and file also sponsor mirrored defined benefit plans for a select group of highly paid employees that supplement the otherwise limited benefits from the qualified plans. These nonqualified plans are commonly referred to as Supplemental Employee Retirement Plans (SERPs). The plan documents would generally be identical, except that the SERP would not have a Section 401(a)(17) limit on compensation taken into account, a Section 415(b) limit on the amount of annual benefit or other

such limiting requirements of qualified plans. The benefit formulas and distribution options would generally be identical in both plans, with the possible exception of a provision found in many SERPs that the total benefit promised is offset by the benefits paid from the qualified pension plan.

Under the new Section 409A rules for SERPs, irrevocable distribution election forms must be made *before* the year that the services are performed that merit the compensation from the employer. This requirement will now be opposite of how distribution elections are made in the qualified pension plan. At a minimum, employers will need to track payment options from the nonqualified plan that were made years before payment begins, and they will also need to track the payment options in the qualified pension plan that the employee elects within 30 to 90 days before his or her annuity starting date. If the two options are not identical, then any offset provision will require the normalization of benefits from each plan so that an apples-to-apples comparison can be made. Additional problems might include different definitions of separation from service, disability, an unforeseen emergency or change in control. (Remember, new Section 409A has specific definitions of all of these terms for nonqualified deferred compensation plans; whereas the qualified plans might have different definitions based on specific business goals or negotiation.)

Many employers that maintain a qualified cash or deferred arrangement [*i.e.,* a 401(k) plan] also maintain a supplemental nonqualified deferred compensation plan for a select group of management that mirrors the qualified plan but allows deferrals that exceed the IRC Section 402(g) deferral limit. In addition to the problems listed above for supplemental defined benefit plans (the difference in the timing of the elections for distributions, and the potential different definitions for separation from service, disability, an unforeseen emergency or change in control), there could potentially be a problem with the election to defer. Under the old rules, many employers gave their executive employees a single deferral election form, and either: the full deferral would be deposited in the nonqualified plan, and after the ADP tests are performed, each executive's individual 402(g) limit (or reduced amount, if applicable) would be transferred into the qualified 401(k) plan; or, the deferrals would be deposited into the qualified plan, and when the ADP tests were completed, the excess deferrals that exceeded the respective 402(g) limits would be transferred into the nonqualified plan. It seems that under the new rules of Section 409A, such practices might put the nonqualified plans in jeopardy of noncompliance, thus potentially subjecting the nonqualified salary deferrals to immediate taxation plus a 20% penalty. Treasury has indicated that this issue will be the subject of further guidance to be issued sometime later in 2005.

Conclusion

The rules of new Code Section 409A apply to elections to defer compensation for services performed on or after January 1, 2005. Treasury quickly issued Notice 2005-1, which gave some clarification of the rules. Most importantly, the Notice provided for the grandfathering of pre-2005 deferrals and for good faith compliance until December 31, 2005. Officials from Treasury have been hitting the speaking circuit and assure us that they understand the outstanding questions and concerns. They say they are diligently working on additional guidance so that employers will have time to make informed decisions by the end of the year. (Although issued in the form of a Notice, Treasury indicated that they are welcoming public comments.) Now is the optimal time to become acquainted with the new rules in order to take them under consideration as you advise your clients on any or all of their retirement programs. ▲

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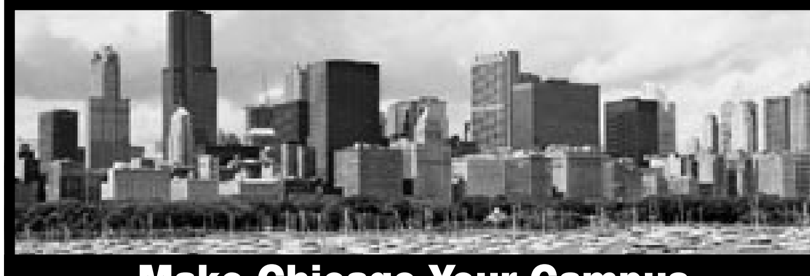

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Back to Basics—Service Crediting Rules

by John P. Griffin, APM

"So what?" you may say. "What's the worst that could happen? So we miscount hours and fail to put someone in the plan on a timely basis. So what if we treat rehired employees as new employees." Well, the worst that can happen can be pretty devastating to a plan sponsor.

It seems so basic—crediting service for various qualified plan purposes. In fact, service crediting is one of the most fundamental concepts of plan administration. The principals apply to plan eligibility, vesting and sometimes the right to accrue a benefit. Yet some persons who administer qualified plans often misapply these "basic" concepts. They either never learned the rules or have misinterpreted them.

"So what?" you may say. "What's the worst that could happen? So we miscount hours and fail to put someone in the plan on a timely basis. So what if we treat rehired employees as new employees." Well, the worst that can happen can be pretty devastating to a plan sponsor. Plan disqualification is a potential effect, but a severe IRS penalty is more likely. Unfortunately, the IRS is well aware of the lack of care taken in the "service crediting" area. IRS agents find these errors in their audits and when investigating the telephone calls they get from unhappy plan participants.

Here it is—a primer on the basics of "service crediting" for plan eligibility purposes. This article also will touch on the break in service rules, "dual eligibility" and special concerns arising from "rehires." Of course, similar service crediting rules apply for vesting and benefit accrual purposes. In an article of this length, I will only touch on the basic service crediting rules affecting eligibility and point out specific problem areas. If some of this peaks your interest, I suggest following up with a more comprehensive resource, such as *The ERISA Outline Book*, authored by Sal L. Tripodi, APM, and published by ASPPA.

Minimum Service Conditions for Plan Eligibility

A qualified plan must specify how and when an employee becomes eligible to participate under the plan. For example, a plan may require employees to satisfy certain minimum age and/or service requirements to participate under the plan.

With respect to the minimum service requirements, ERISA mandates the application of special service crediting rules. Generally, a plan may not require more than one year of service as a condition of participating in the plan. A plan can establish more liberal or even no service conditions. Under a special rule, if a plan provides for immediate vesting, it may impose a condition of two years of service for participating in the plan. However, a 401(k) plan may not use the two-year eligibility requirement with respect to elective deferrals under the plan. Thus, a 401(k) profit sharing plan can require two years of service for eligibility for matching contributions and employer nonelective contributions but only one year of service for eligibility to make elective deferrals.

Measuring a Year of Service

A plan generally measures a year of service by counting an employee's hours of service during an *eligibility computation period*. Often, a plan will require that the employee's actual hours of service be counted. Alternatively, a plan can use the equivalency method or the elapsed time method for crediting service. The plan document must state the method of counting hours of service. Please note that a plan document can have three different definitions for a year of service: for eligibility purposes, for vesting purposes and for benefit accrual purposes.

Actual Hours Counting Method

Under the actual hours counting method, an employee generally will earn a year of service if he/she completes at least 1,000 hours of service during an eligibility computation period. The plan may require less than 1,000 hours for a year of service.

A plan generally must credit an employee with *all* service with the employer, even service before the plan is established. In certain situations, a

Read the Plan Document!

The importance of reading the plan document cannot be overemphasized. Although often difficult to read, the plan document contains all the applicable service crediting rules. Plans can take numerous approaches to crediting service to comply with the regulatory requirements. Failure to follow the terms of the plan can result in disqualification or the imposition of penalties. Too often administrators depend on summaries or plan specifications coded into software rather than the plan document itself. It cannot be emphasized enough—READ THE PLAN DOCUMENT.

plan may disregard service under the break in service rules.

Eligibility Computation Period

The eligibility computation period is a period of 12 consecutive months, as defined in the plan document. An employee need not be employed continuously during the 12-month eligibility computation period or be employed on the last day of the computation period to receive credit for a year of service.

- **Initial period.** The first eligibility computation period always begins on the employee's employment commencement date (ECD). For example, if an employee's ECD is January 17, 2005, the first eligibility computation period runs from January 17, 2005, through January 16, 2006. An employee's ECD is the first day he/she receives credit for one hour of service with the employer.

- **Subsequent periods.** After the initial period, the plan may define the eligibility computation period either as the plan year (shift-to-the-plan-year method) or as the 12-month anniversary period of the initial eligibility computation period (anniversary year method). No other method is acceptable.

  — *Shift-to-the-plan-year method.* If the plan uses the shift-to-the-plan-year method, the second eligibility computation period begins with the first plan year that begins after the ECD.

  — *Anniversary year method.* If the plan uses the anniversary year method, the second eligibility computation period will begin on the anniversary of the employee's ECD.

Equivalency Methods

The regulations provide short-cuts known as equivalency methods that a plan may use to determine an employee's hours of service, rather than counting an employee's actual hours of service. The plan document must set forth the equivalency method. This method works especially well for salaried employees because payroll departments might not accurately track actual hours worked.

The most common equivalency method is based on periods of employment. Under this method, hours are credited based on a unit of time. If the employee is credited with at least one hour of service during that unit of time, a fixed number of hours are credited for that unit. The

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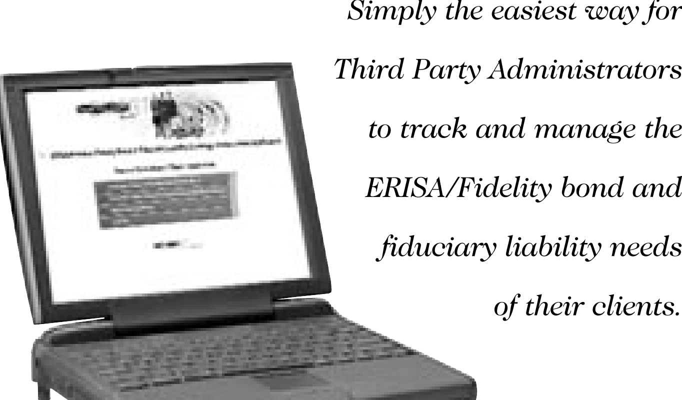

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Plan Design Tip

The shift-to-the-plan-year method generally is considered simpler to administer because after the initial eligibility computation period, all employees are tracked on a plan year basis. Under the anniversary year method, each employee has his/her own unique subsequent eligibility computation period.

units of time that may be used are days, weeks, semi-monthly payroll periods and months. The hours credited for these units are ten hours for a day, 45 hours for a week, 95 hours for a semi-monthly payroll period and 190 hours for a month. The employee's actual hours worked for that unit of time are irrelevant. Other equivalency methods are based on working time or earnings.

Elapsed Time Method

As an alternative to counting an employee's actual hours of service or using an equivalency method, a plan may credit service based on the employee's periods of employment under the "elapsed time" method. The elapsed time method looks to the amount of time that has elapsed between the employee's commencement date and his/her severance date. The elapsed time method is a regulatory attempt to ease administration.

When a plan uses the elapsed time method, the employee's actual hours are not determined and will not affect the outcome. For example, if an employee is credited with less than a 12-month period of service under the elapsed time method, he/she does not satisfy a year of service requirement even if he/she would have been credited with at least 1,000 hours of service if the plan had used an hours-of-service crediting method.

When Do You Credit a Year of Service?

Generally, an employee who satisfies the conditions for receiving a year of service is credited with such year *at the end* of the applicable 12-month eligibility computation period. For example, if the initial computation period begins September 17, 2004, and ends September 16, 2005, the employee receives credit for one year of service as of September 16, 2005, if he/she is credited with the required number of hours of service during that 12-month period. The year of service is credited on September 16, 2004, regardless of when the employee actually completes the 1,000th hour of service.

Plan Entry Date

Once an employee satisfies the minimum age and service requirements, an employee must become a participant within certain statutory timeframes. Of course, a plan may exclude an employee from the plan for reasons other than age and service.

Unless excluded from the plan for reasons other than age or service, an employee who satisfies the plan's minimum age and service conditions must enter the plan on the appropriate entry date, as defined under the plan. The plan's entry date must guarantee that once an employee

Leave of Absence Exceptions

The law requires service credit for maternity and paternity leave and for Family and Medical Leave Act (FMLA) leave. If an employee is on an unpaid leave of absence due to maternity or paternity reasons, the plan must credit the employee with hours of service during that absence (up to a maximum of 501 hours). The credit for hours of service under this rule is solely for determining whether the employee has incurred a break in service. These hours are not counted toward a year of service. Similarly, the FMLA allows employees to take job-protected unpaid leave for up to 12 weeks, within any 12 months, because the employee needs to care for a family member with a serious health condition, or because the employee's own condition makes the employee unable to perform the functions of his/her job. Any period of unpaid FMLA leave is not treated as a break in service for determining one's eligibility to participate in a plan.

satisfies the plan's minimum age and service conditions, the employee will enter the plan by the earlier of:

- The first day of the next plan year; or
- Six months following the date the employee satisfies the age and service requirements.

Probably the most common design is for a plan to use semi-annual entry dates so that an employee's participation will never be postponed beyond the statutory entry date rule. Semi-annual entry dates usually are defined as the first day of the plan year and the first day of the seventh month of the plan year. For example, semi-annual entry dates under a calendar year plan would be January 1 and July 1. Under a September 30 plan year end, the semi-annual entry dates would be October 1 and April 1. Generally, under the

semi-annual entry date approach, an eligible employee becomes a participant on the semi-annual entry date immediately following (or coincident with) his/her completion of the age and service requirements.

A plan may be designed with any alternative entry date system that satisfies the statutory requirements. Some plans use more frequent entry dates than semi-annual, such as quarterly, monthly or even daily. All of these alternatives would be permissible because an employee will become a participant no later than the date required under the statutory entry date rules. A plan can always have more liberal entry rules in favor of the employee.

Service Requirement of Less Than One Year

Be careful with plans that require less-than-one-year of service to become a participant. Little regulatory guidance is available in this situation. When a plan imposes a less-than-one-year of service condition with an hours-of-service requirement, the plan must be carefully drafted so that the plan does not violate the minimum statutory standards of one year of service. Some plans will use a "fail-safe" type provision under which an employee who otherwise might "fall through the cracks" under the less-than-one-year service provision will still timely participate if he/she satisfies the statutory one year of service requirement.

Break in Service Rules

In some cases, a plan may disregard service for eligibility purposes if an employee incurs a "break in service." There are three separate break in service rules—the "one-year break in service" rule; the "rule of parity;" and the "two-year eligibility break in service" rule. A plan is not required to contain break in service rules for eligibility purposes. READ THE PLAN DOCUMENT!

A break in service generally is an eligibility computation period during which the employee is credited with 500 or fewer hours of service. A termination of employment is not necessary to incur a break in service. For example, an employee's work schedule may change so that during an eligibility computation period the employee is credited with 500 or fewer hours of service. The employee would have a break in service for that period.

"One-Year Break in Service" Rule

Under the one-year break in service rule, if an employee incurs at least *one* break in service, the plan may *temporarily* disregard the employee's prior service for eligibility purposes. The employee will receive credit for that prior service only if he/she completes another year of service. This rule sometimes is referred to as the "one-year holdout rule."

If a plan uses the one-year holdout rule, the employee must complete a year of service following his/her return to employment in order to enter the plan. The rules for measuring a year of service following a one-year break in service are the same as those used to determine a year of service under the normal eligibility rules. The first computation period is the 12-month period following *re-employment*. If the employee fails to complete a year of service in that initial 12-month period, the plan measures future periods on the anniversary year method or the shift-to-the-plan-year method, as provided

Retroactive Entry Can Be an Administrative Burden

The one-year break in service rule always results in retroactive entry if the employee completes the additional year of service. The retroactive entry rule can be administratively burdensome. An employee rehired late in the plan year (*e.g.,* December 1 in a calendar year) may have to be re-entered into the plan on a retroactive basis and share in allocations for that year (*e.g.,* top heavy minimum).

The use of the one-year break in service rule in a 401(k) plan also can be problematic. How do you let someone make deferrals retroactively? Presumably, a plan can apply the one-year break in service rule only to the non-401(k) portions of the plan. The plan document should provide administrative guidance on this issue.

in the plan document under its normal eligibility computation periods.

If the employee completes another year of service following the re-employment date, the plan must re-credit the prior service as of the first day of the computation period in which the employee completes the additional year of service. Thus, the employee will retroactively enter the plan.

Rule of Parity

Under the so-called "rule of parity," the employee loses the prior service for eligibility purposes on a *permanent basis* following the break in service period. As a result, the employee must start over in satisfying the service requirement, as if he/she were a new employee. For the rule of parity to apply:

1. The employee must be a plan participant when the break in service period begins;
2. The employee generally must incur a minimum of five consecutive breaks in service; and
3. The employee must be *zero percent vested* in his/her accrued benefit under the plan.

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Reentry of Rehired Employees

The failure to allow immediate re-entry is a common administrative error that can jeopardize the qualification of the plan. Many plan administrators will delay plan re-entry of a rehired employee until the next plan entry date. This delay is not permissible unless a break in service rule applies or the employee has not satisfied the eligibility requirements. If the employee had not satisfied the eligibility requirements before his/her termination, the employee would first have to complete those requirements before he/she becomes a participant in the plan. Therefore, plan administrators must weigh the pros and cons between the administrative burdens of using the break in service rules, which might require a retroactive date of participation, and the administrative burdens of immediate participation upon being rehired.

Once a participant becomes partially-vested (*e.g.*, 20% vested under the plan's vesting schedule), the only break in service rule that may apply is the "one-year break" rule discussed earlier.

Two-Year Eligibility Break in Service Rule

If a plan uses the two-year eligibility rule, it may require that the employee complete both years before incurring a break in service. If the employee has a break in service before completing the second year of service, the employee loses credit for the prior service and must start again as if he/she were a new employee.

Rehired Employees

A plan must include specific provisions that address the participation of employees who are re-employed by the employer. If an employee is re-employed, the administrator must first determine if the plan imposes any break in service rules. If there is no break in service rule that applies, and the employee had already satisfied the eligibility

Coverage Rules May Present a Problem

"Dual eligibility" plan provisions, although not a violation of the minimum eligibility standards, may create a coverage problem. As a general rule, "dual eligibility" will rarely create a coverage problem where the most restrictive requirements do not exceed one year of service. However, if the plan has allowed some employees with less than one year of service into the plan, but other employees must satisfy a one year of service requirement, coverage may be a problem if certain participants continue to fail to satisfy the one year of service requirement.

requirements, the employee must re-enter the plan on *the date of re-employment*.

Dual Eligibility

A plan may include different eligibility requirements for different groups of employees or have different eligibility requirements for different features of the plan.

When a new business sets up a plan or when an established business sets up a plan for the first time, it may wish to have very liberal entry rules for the current employees and more restrictive rules for future employees. For example, a corporation formed in 2004 might adopt a plan, effective in 2004, under which all employees hired by a certain date (*e.g.,* December 31, 2004) are eligible immediately, but future hires are subject to a one year of service requirement.

Under an existing plan, the employer might wish to amend the plan to impose more restrictive eligibility rules for future employees, but "grandfather in" the current employees under the present rules.

Some plans impose different eligibility rules for different plan features. For example, a 401(k) plan that also includes a profit sharing contribution formula might allow employees to participate in the 401(k) portion of the plan after three months, but impose a one year of service requirement for the profit sharing portion of the plan.

Conclusion

The service crediting rules generally apply to all qualified plans. The plan administrator must be aware of the specific provisions of the plan affecting how employees are credited with service and when an eligible employee will participate after satisfying the plan's service conditions. Errors are common. Plan administrators who discover mistakes need to take corrective action. The IRS' EPCRS program provides a good alternative to plan disqualification or an audit CAP sanction. ▲

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Safeguards for a Thorough Acquisition Review Process

by R. Scott Harrison, FSPA

Although a TPA firm can grow by acquiring one client at a time, a faster and often more appealing way to grow is through acquisitions. Although the motivation to acquire is usually for growth purposes, it can often be for more specific reasons—to establish a new specialty, to establish an additional location, to take over a block of business, to acquire skilled staff or simply just because a TPA firm has become available to acquire. Any acquisition can come with surprises, so doing your homework and gathering accurate information in advance can help.

Remember the old adage, "Trust your mother, but cut the cards!"

This article contains a list of important information that should be reviewed and issues that should be considered during the prospective acquisition review process. The list is extensive and requires considerable efforts by both parties.

Although the list is not intended to be all-inclusive, since every situation is different and may require additional information and issues to be considered, it does provide an excellent starting point for any acquisition review. The level of cooperation and willingness to be forthcoming with information will help you determine if you are dealing with a serious and honest seller. Remember the old adage, "Trust your mother, but cut the cards!"

Information to Gather and Issues to Consider

1. Both parties must sign a non-disclosure agreement.

This agreement will assure the potential seller that the information revealed will remain confidential, and the buyer's interest in the purchase will also be protected.

2. Will the purchase be of a block of plans or of the actual business?

Purchase of the business may bring the potential for outstanding debt, claims and legal actions. Later items on the list will deal with these possibilities.

3. What is the form of the business? Is there more than one business?

The business could be a sole proprietor, partnership, corporation, LLP, LLC or a combination. It is especially important to consult your CPA and/or attorney early in the process regarding the type of entity you are dealing with.

4. Who owns the business?

Are you dealing with the sole owner or are there other parties, either active or silent, who could have a say in the decision to sell.

5. Is there outstanding debt?

Has the debt been disclosed and will it be the responsibility of the seller? Should the debt be an offset to the purchase agreement?

6. Are there pending lawsuits?

Check for suits by clients, suppliers or government agencies.

7. Does the seller have errors and omissions (E&O) insurance?

Is the insurance on a claims-made basis or does it provide a tail of coverage? Lack of E&O insurance or insurance on a claims-made basis could expose you to future problems. Again, your CPA and/or attorney should be involved in this entire process.

8. The seller should provide three years of billing statistics.

Check on the aging of account receivables. Has there been a spike in income due to non-recurring events such as a document restatement? Has there been a recent acquisition resulting in an increase in income? How often does the seller bill for services?

9. The seller should provide three years of financials.

Has there been a growth in the organization or is it flat or declining? This information should include the payroll, bonus arrangements, lease expenses and rent expenses. Do the financials include all of the business entities that are part of the negotiations?

10. Has the seller been involved in prior acquisitions?

How recent were the acquisitions and have they been integrated completely into the business? Is there debt outstanding or legal difficulties relating to prior acquisitions?

11. A breakdown of income sources is needed.

Are the fees flat, hourly or some combination of methods? Are there override or contingency payments from insurance companies or investment providers? Is the flow of current and future insurance commissions part of the purchase? Determine specifically what income sources are being purchased. Are the clients aware of all of the income being paid?

12. The seller should provide a list of employees and independent contractors, noting position, duties, abilities and normal census information.

If possible, interview the employees to screen them for continuing employment.

13. Do you want some or all of the seller's management and employees to continue for a period of time or permanently?

This decision may help in a seamless transition. Clients will be serviced by the same persons as in the past. If clients continue, both the seller and the buyer benefit.

14. Will you require a non-compete agreement from the owners?

Is there a danger of the owners becoming competitors in the near future? Ask the sellers what they plan to do in the future.

15. Is there an employee likely to leave and take clients?

This type of event could occur if an employee was planning to leave and start his or her own firm or if an employee was planning to resign and work for a competitor. Are there non-compete agreements in place for any employees? In item #12, it was suggested that you interview the employees. Also discuss this issue with the seller, since a loss in clients could result in a lower payout to the seller.

16. Will clients resist a change?

If clients were part of a recent acquisition, they may object to another change. How often has the administrator of the plan been changed within the sellers' firm? (Check the dates of hire of administrators in item #12 in conjunction with the answer to item #10.)

17. A breakdown of the plans by type, asset size, revenue flow and number of participants is needed.

Compare this breakdown to the information in item #11 to help determine if the fees being charged are adequate and if commissions are being used to offset the fees being charged.

Acquisition Checklist

	Obtain	Done
1. Finalize non-disclosure agreement		
2. Decide to purchase plans or business		
3. Determine form of business		
4. Determine ownership of business		
5. Determine outstanding debt		
6. Review any pending lawsuits		
7. Review E&O insurance		
8. Review billing statistics for three years		
9. Review financials for three years		
10. Review prior acquisitions		
11. Analyze breakdown of income sources		
12. Review list of employees and contractors		
13. Consider continuing employment of sellers' management and employees		
14. Finalize non-compete agreement		
15. Assess risk of employees taking clients		
16. Assess risk of clients resisting change		
17. Review breakdown of plans		
18. Understand referral sources and potential impacts		
19. Consider office locations		
20. Consider software systems issues		
21. Perform random review of files		
22. Establish structure of purchase		

18. What are the sources of business coming to the seller?

Are insurance and investment brokers a referral source and will they accept a change? Are there plan trustees who have to approve a change? Do the sources feel threatened by the change?

19. Are there multiple office locations and what are the lease arrangements?

Are any of the locations to be continued and what are the terms? If locations are not going to be used, should arrangements be made to retain key employees from the location?

20. What software systems are being used?

If the seller's administration programs differ from the buyer's, are there conversion programs available? Are there fees involved to transfer licenses if systems are retained after the acquisition? How many document sources have been used?

21. A random review of the seller's files should be done.

Make a checklist of items to review and check each type of plan administered. Randomly select files from the various plan types. Watch for corrections, accuracy, completeness and timeliness.

22. How will the purchase be structured?

Will the purchase be a single payment or in installments, based on some multiple of average billings or income over a period of time?

Conclusion

Since many TPA firms are owned by baby boomers approaching retirement age, there should continue to be a steady stream of TPA firms becoming ripe for acquisition. If you are in the market for making an acquisition, be sure to include your advisors throughout the process. Once the acquisition is complete, it is difficult to change or reverse bad decisions made along the way. Performing thorough reviews and making acquisition decisions based on good information and proper advice will produce a win-win outcome. ▲

R. Scott Harrison, FSPA, along with John Klingberg, formed Polycomp Administrative Services, Inc. in 1974. Between 1974 and his retirement in 1999, Scott was involved in a number of acquisitions of blocks of business and TPA firms that were made by Polycomp. Polycomp is currently a fee for service TPA firm and also administers self-directed IRAs and Flexible Spending Accounts. Polycomp has offices in Roseville (Sacramento), Woodland Hills (Los Angeles) and San Diego, CA. Early in his career, Scott worked as a group pension and health representative with Pacific Mutual Life and as an employee benefit consultant with Johnson & Higgins. In 1970, he joined Mass Mutual in the San Fernando Valley in Southern California to establish a pension operation.

Welcome New Members and Recent Designees

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Ellen L. Kleinstuber

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David L. Davidson
Clifford A. Davis
Mark W. Fanning
Sadie A. Gensler-Hooker
Anna M. Hunter
Matthew J. Krywicki
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Lisette C. Legeai
Sharon Camille Matlack
Tracy R. Mitchell
Terrence M. Smith, Jr.
Kelley D. Stanton
Katie J. Stauffer

QPA

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Kristi L. Allen
Judith Lynn Bingler
Glenn S. Bowman
Shelli J. Brannon
Jessica L. Burnett
Kristina K. Butcher
Jiansheng Cao
Neil E. Carlsen
Francine M. Cleer
Rhonda K. Collins
Andrew J. Cooper
Kathleen H. Dyar
Scott M. Feit
Marina S. Georgiou
Igor Golubov
Teresa E. Harbin
Leslie B. Hart
Heath W. Hoobing
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April M. Summers
Kelly A. Thompson
James D. Wetzel

QKA

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Tracy Ahr
Matthew J Armentrout
Geary J. Bahorski
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Janet J. Bergeron
Linda K. Boone
Danna C. Borders
Jennifer A. Brandt
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Darbi L. Buchanan
Isaac Buchen
Sherilyn G. Cacic
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Marla Chachere
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Juliette Desiree Correa
John R. Cotterman
Lisa A. Coutts
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Rita F. Croft
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Jean M. Dailey
Aura B. Day
Martha M. Dean
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Catherine Gianotto
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Kathryn E. Schewitz
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Melissa D. Scrimager
Charles J. Seymour
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Jerry L. Slater
David J. Snyder
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Michele M. Stefanowicz
Katherine D. Stephenson
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Tracey S. Sughrue
David S. Swallow
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APM

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FROM THE PRESIDENT

More ASPPA Goals

by Stephen H. Rosen, MSPA, CPC

Expanding and encouraging our volunteer efforts continues to be one of my highest priorities during my brief term as President. In several of my previous messages, I have highlighted steps that we are taking to reach that goal. To enable us to accomplish that charge, our Membership Committee has taken the lead by coordinating volunteer efforts in all of our committees. At the same time, the Membership Committee has been working diligently to attract new members, especially within the actuarial community, and to expand our committee structure.

The results from our recent membership satisfaction survey have just been received, and our preliminary conclusion is that ASPPA is continuing to do an exceptional job in meeting our members' expectations. I intend to report back to you with the details of those findings in my next article.

For now, I am enthused to report to you on the progress of one of my other presidential goals. As you are probably well aware, there are a number of other benefits organizations in our industry, some of which are doing great work in areas complementary to ours. Over the last few years, our leadership has identified those organizations that have the mutual advantage of "partnering" with ASPPA in at least one area. Clearly, there are benefits available to both organizations to exploit synergies that can be developed along the way. Leveraging our mutual talents and visibilities within the industry can be a "win-win" for both organizations, and especially for ASPPA. We have been successful in not only identifying several of those organizations, but have made great progress with at least three of them. Though we are mostly in the preliminary stages with all of them, I thought that our membership would be interested in what we are trying to accomplish.

For a while now, we have been working with Western Pension & Benefits Conference (WP&BC) to combine and enhance both of our already successful summer meetings. As some of you may already know, we are scheduled to have our first joint conference with WP&BC in July of this year, in San Diego. The ability for both of our organizations to create an expanded program with a more extensive speaker network is expected to make this conference, Meeting Midway, one the most successful conferences yet for both WP&BC and ASPPA.

In an effort to offer a follow-up program to our once-popular Business Leadership Conference, we have partnered with the Conference of Consulting Actuaries (CCA) to offer a special one-day program that will accompany our Annual Conference in November. In that way, we will be offering a separate, stand-alone workshop of practice management in addition to the special track that has been included during the Annual Conference.

Our Education & Examination Committee has also been hard at work with the National Institute of Pension Administrators (NIPA) to develop a jointly sponsored professional designation to be proposed to Treasury as the most appropriate standard for the industry. With the procedural changes that have evolved at Treasury since the amendment of Form 2848, both organizations have recognized the value of joining forces to respond to the potential impact of those changes.

And last, but certainly not least, we are having continued dialogue with the CCA and the Society of Actuaries (SOA) to determine ways of enhancing services that need to be made available to our pension actuarial membership. For example, there are plans already underway for a joint conference, tentatively scheduled for Spring 2006, offering advanced actuarial topics in a symposium setting. Not only would this benefit our current actuarial membership, but it would also attract new actuarial talent from within the industry.

Though each of these projects is focused on a specific activity that is being developed jointly, it is the desire of our leadership to use these opportunities as a springboard for future synergies and relationships. ▲

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.

ASPPA congratulates our members for serving on a select committee of the Joint Board for the Enrollment of Actuaries

Patrick McDonough, executive director of the Joint Board for the Enrollment of Actuaries, announced that the following actuaries were appointed to the Advisory Committee on Enrollment Examinations for the current term which will end February 2007:

Larry Deutsch, MSPA
Janet S. Eisenberg, MSPA
Ann D. Gineo
Pamela L. Marlin
Ho Kuen Ng
Carl Shalit, MSPA
Hal S. Tepfer, MSPA
David M. Ziegler, MSPA
Carolyn E. Zimmerman

At the first meeting of the Advisory Committee, Carl Shalit was elected coordinator and Ann Gineo was elected secretary.

The Joint Board consists of three members appointed by the Secretary of the Treasury, two members appointed by the Secretary of Labor and one non-voting representative appointed by the executive director of the Pension Benefit Guaranty Corporation (PBGC). Each year, the Joint Board elects from among its members a chair and a secretary for a one-year term. The bylaws also provide for the appointment of an alternate to serve in the absence of a board member. For further information, go to **www.irs.gov/taxpros/actuaries/**.

AVAILABLE ONLY FROM ASPPA!

The 2005 Edition of *The ERISA Outline Book*

The ERISA Outline Book is a must for all pension professionals' libraries. It is on the list of required readings for ASPPA's DC-1, DC-2 and DC-3 exams.

Sal L. Tripodi, Esq., APM, a frequent and respected speaker at ASPPA conferences, is the author of *The ERISA Outline Book*. The 2005 edition includes information on:

- The Pension Funding Equity Act of 2004, the American Jobs Creation Act of 2004 and the Working Families Tax Relief Act of 2004;
- Automatic rollover rules published by DOL;
- Final §401(a)(9) regulations for DB plans;
- Final §401(k) regulations;
- DOL guidance on missing participants in terminated DC plans;
- New ruling on the application of top heavy rules to safe harbor §401(k) plans;
- New remedial amendment period procedures being launched with EGTRRA amendments;
- "Relative value" final regulations;
- New checklist on rehired employee issues;
- Recent guidance on how DC plan expenses can be charged;
- Proposed rules under USERRA;
- Guidance affecting §412(i) plans and abusive insurance arrangements;
- Guidance for S Corporation ESOPs;
- More information on nonqualified plans;
- Information on hundreds of new cases, rulings and informal guidance affecting qualified plans and other employer-sponsored retirement programs;
- Four volumes of information and a separate index;
- Fully searchable CD-ROM (all four volumes on one disk!); and
- Network licensing option.

To purchase, download an order form at **www.asppa.org/resources/res_erisa.htm** or contact ASPPA's Education Services Department at **educasppa@asppa.org**.

GAC Finishes 2004 with a Flurry of Activity

by Teresa T. Bloom, APM

Toward the end of 2004, the ASPPA Government Affairs Committee (GAC) issued a series of comment letters to various government agencies addressing a variety of technical issues relating to the administration of employer-sponsored pension plans.

As part of its periodic update to the membership on GAC activities, summarized below are some of ASPPA's most recent positions. GAC remains in the forefront of pension policy and regulation by developing and promoting the organization's formal positions on current issues facing regulators and legislators by providing comment letters, position papers and expert testimony on proposed actions.

GAC finished December of 2004 with a flurry of activity by developing and submitting a number of comment letters to the Internal Revenue Service (IRS) and Department of Labor (DOL). In these comment letters, GAC promoted ASPPA's formal policy positions on the following issues:

Clarification Request to IRS on Short Service Employee Memorandum

On December 22, 2004, ASPPA, the Profit Sharing/401(k) Council of America (PSCA) and the Small Business Council of America (SBCA) issued a letter to Carol Gold, Director of Employee Plans at the IRS, setting forth concerns and requesting clarification about certain language in the IRS' October 22, 2004, memorandum to the field entitled "Short Service Employees and Other Meaningful Benefit Schemes and Abuses."

In the letter, ASPPA, PSCA and SBCA stated that while the organizations had no objections to the provisions in the memorandum designed to curtail the use of questionable hiring practices as a device to satisfy the nondiscrimination rules, they believed that the identified language in the memorandum would render invalid a number of previously acceptable plan designs and create uncertainty among plan sponsors and retirement plan practitioners. Clarification was requested with respect to which specific types of plan designs are intended to be covered by such language and whether the language in question intended to be restrictively interpreted in light of the example that follows the language in the memorandum.

The IRS issued a response to ASPPA, PSCA and SBCA on February 4, 2005, in reply to their December 22 request for clarification. The IRS response clarified and narrowed the scope of their earlier directive by providing that "the intent of the October 22 memorandum is to focus upon plans that attempt to satisfy the nondiscrimination tests by using nominal contributions or benefits for the lowest paid non-highly compensated employees where the nominal contributions or benefits result from very short service." The response also confirms that their October 22 memorandum was not intended to suggest that plan designs that have consistently and repeatedly been approved by the IRS are now in question.

Proposed Regulations Under Staggered Remedial Amendment Period System

On December 22, 2004, ASPPA filed extensive comments in response to the determination letter program under IRS Announcement 2004-71, the Draft Revenue Procedure on the Staggered Remedial Amendment Period (RAP) System. These comments supplemented comments ASPPA had provided on September 20, 2002, to the IRS' first White Paper on "The Future of the Employee Plans Determination Letter Program, Some Possible Options" (August 8, 2001) and on September 2, 2003, to the IRS' second White

Paper on "The Future of the Employee Plans Determination Letter Program," Announcement 2003-32 (May 1, 2003).

ASPPA's comment letter on Announcement 2004-71 took the position that, among other things, pre-approved defined contribution plans should be permitted to include Roth 401(k) provisions; a rule similar to that which applied to GUST restatements should be used to determine which remedial amendment period should apply; and advance notice should be provided once the formal review process has been completed before all opinion and advisory letters for pre-approved plans are issued on or about the same date.

Proposed Regulations under Treasury Regulations §1.411(d)-3

On December 10, 2004, ASPPA filed comments with the IRS and Treasury on guidance that would permit the elimination or reduction of Code §411(d)(6) protected benefits for a defined benefit plan under specific conditions. The comment letter commended the IRS and Treasury for their efforts to simplify the Code §411(d)(6) "anti-cutback" rules applicable to defined benefit plans as a step in the right direction to help preserve the defined benefit plan as a viable retirement plan option for employers.

ASPPA's comment letter on Treasury regulations §1.411(d)-3 offered a number of suggestions to make the proposed Code §411(d)(6) rules more effective and easier to apply. ASPPA commented that, among other things, the four-year delayed effective date for the elimination of noncore options should be conformed to the 90-day rule applicable to redundant options; the standards for determining whether the value of an eliminated optional form is *de minimis* are too restrictive; and the retirement-type subsidy definition is overly broad.

Draft Revenue Procedure for Pre-Approved Plans

On December 9, 2004, ASPPA filed comments with the IRS on Announcement 2004-33, the Draft Revenue Procedure for Pre-Approved Plans. Announcement 2004-33 solicited comments regarding the Determination Letter (DL) program and the Master & Prototype (M&P) and Volume Submitter (VS) program (plans approved under these programs are collectively referred to as "pre-approved plans").

ASPPA's comments contained a particular emphasis on the need to expand reliance rules to adopters of volume submitter plans; not limit 401(k) safe-harbor hardship distributions to pre-approved plans with CODA provisions; and the need for a separate approval process for trust agreements.

Proposed USERRA Regulations

On December 7, 2004, ASPPA filed comments with the Veterans' Employment and Training Service at the DOL on proposed USERRA regulations. These comments were filed in response to proposed rules issued by the Veteran's Employment and Training Service of the DOL, published on September 20, 2004. These proposed USERRA regulations will affect many employers who sponsor qualified retirement plans with the anticipation of our military personnel and reservists returning home.

ASPPA's USERRA comment letter addressed, among other things, issues regarding the proposed deadlines for employer contributions, both contingent and not contingent on employee deferrals, and recommended that plans should not be required to permit employee contributions to be made on behalf of a returning service member who terminates employment prior to the end of the repayment period.

To view these and the wide range of comment letters issued by GAC since 1998, visit ASPPA's Web site at **www.asppa.org/government/gov_comment.htm**.

ASPPA GAC 2004 Comment Letters

Date	Agency	Subject
Feb 6	SEC	Late Day Trading
Feb 9	IRS	EPCRS
Feb 20	IRS	Mortality Tables
Apr 2	IRS	Code Section 412(i)
Apr 2	DOL	Automatic Rollover Safe Harbor
Apr 21	SEC	Redemption Fees
May 17	IRS	Code Section 412(i)
Jun 2	DOL	E-FAST
Sep 27	JBEA	Performance of Services
Oct 8	SEC	Redemption Fees
Dec 7	DOL	USERRA
Dec 9	IRS	Master & Prototype and Volume Submitter Plans
Dec 10	IRS	Code Section 411(d)(6)
Dec 22	IRS	Staggered Remedial Amendment Periods
Dec 22	IRS	Short Service Employees

Teresa T. Bloom, Esq., APM, Chief of Government Affairs, joined ASPPA in September 2004. Prior to ASPPA, Teresa was a lead pension law specialist in the Office of Policy and Research at the DOL's Employee Benefits Security Administration (EBSA), where she worked with senior Administration officials and congressional staff on a variety of policy and technical pension issues. Teresa also worked in the Office of Regulations and Interpretations at EBSA, where she drafted advisory opinions and other guidance interpreting Title I of ERISA.

ABC of Greater Cincinnati: Focused on Membership and Programming!

by Gary D. Blachman

Our two main goals in 2005 are to boost our ABC's already growing membership and to provide strong programming for our members.

To accomplish these goals, we've expanded our board to include six officers and five directors. We have also created new committees for Membership, Financial and Reporting, Continuing Education, Government Relations and Programming so that the entire board remains active and energized!

In January, we were fortunate enough to have Debbie F. Reiss, a member of Frost Brown Todd, LLC, share her insights regarding how the American Jobs Creation Act of 2004 changed the entire landscape for nonqualified deferred compensation arrangements.

Our Programming Committee is hard at work planning our ABC's meetings for the entire year. At present, we look forward to hearing from Janice M. Wegesin, CPC, QPA, of JMW Consulting, Inc.,

at our March meeting and from ASPPA's Executive Director/CEO, Brian H. Graff, Esq., APM, in June about what is happening in Washington, DC. On June 9-10, our ABC will again be a cooperating sponsor at the 18th Annual Cincinnati Employee Benefits Conference at the Cincinnati Westin Hotel. This sponsorship was a terrific opportunity last year for old and new members to meet one another, and we look forward to another successful conference. In the fall, we will host a half-day program with various speakers who will discuss the future of cash balance plans and the new cross-testing regulations.

In September or October, a local representative of the DOL will discuss current issues regarding plan audits. We are hoping this event will give our attendees some insight on government procedures and what types of plans and/or employers may be targeted for investigations in the near future.

With our strong programming efforts, we hope to significantly expand last year's membership rolls. Last year, our ABC had nearly 75 members and represented 26 different companies and organizations.

Be sure to follow the local councils section of the ASPPA Web site at **www.asppa.org/membership/member_local.htm** for more information on our ABC's exciting events in 2005! For more information about the ABC of Greater Cincinnati, including membership registration and upcoming events, contact Barbara (Barbie) L.Young, QPA, QKA, Membership Chair, at **byoung@fbtlaw.com** or 502.568.0314.

Gary D. Blachman is an attorney in the office of Thompson Hine, LLP, in Cincinnati, OH, which is among the largest business law firms in the United States. His practice focuses on retirement plan design, implementation and compliance with ERISA. Gary has experience with qualified retirement plans, health and welfare plans and deferred compensation arrangements. In addition, he assists plan sponsors with compliance matters involving the IRS and the DOL. Gary has been involved with the ABC of Greater Cincinnati board for the last two years.

ABC of North Florida: Jacksonville—A "Super" City!

by Peter A. Kneedler, CPC, QPA

The ASPPA Benefits Council of North Florida, located in Jacksonville, started 2005 with a bang. As you are probably aware, Jacksonville hosted the 2005 Super Bowl, which shut down most of the downtown area for almost a week. The following week, S. Derrin Watson, APM, drove up from Orlando to do a presentation on the finalized Section 401(k) regulations. If you are not familiar with Derrin's work, each presentation comes with a retirement song parody that he sings.

In May, ASPPA's Executive Director/CEO, Brian H. Graff, Esq., APM, will come to Jacksonville for his annual presentation, "Update on What's Happening in Washington." Brian's annual presentation is always educational and entertaining.

On August 23, Thomas E. Poje, CPC, QPA, QKA, will be doing a presentation on retirement plan design with some real life examples. We will finish up the year with our Annual Meeting/Holiday Party at the end of November.

Last November's Annual Meeting/Holiday Party combined socializing with a current topics presentation from our very own ABC members, Robert M. Richter, APM, and Craig P. Hoffman, APM. I cannot think of a better way to spend an evening!

For more information about the ABC of North Florida, including membership registration and upcoming events, contact Peter A. Kneedler, CPC, QPA, at 904.202.4894 or **peter.kneedler@bmcjax.com**.

Peter A. Kneedler, CPC, QPA, is the benefits manager for Baptist Health in Jacksonville, FL. He has been in the employee benefits field for 14 years, and his experience includes plan design, administration and compliance. Pete is the current president of the ABC of North Florida. He also helped found the ABC of Dallas/Ft. Worth in 2002.

ABC Meetings Calendar

April 19

ABC of Dallas/Ft. Worth
Topic: Washington Update
Speaker: Brian H. Graff, Esq., APM, ASPPA Executive Director/CEO

ABC of South Florida
Topic: All Day ERISA Seminar
Speaker: Sal L. Tripodi, APM

April 20

ABC of Cleveland
Topic: Washington Update
Speaker: Brian H. Graff, Esq., APM, ASPPA Executive Director/CEO

April 21

ABC of Northern Indiana
Topic: Legislative Update
Speakers: Robert J. Toth and David J. Kolhoff

April 26

ABC of Central Florida
Topic: 401(k) Plan Audits
Speaker: Jeanette Whitten, IRS

April 26

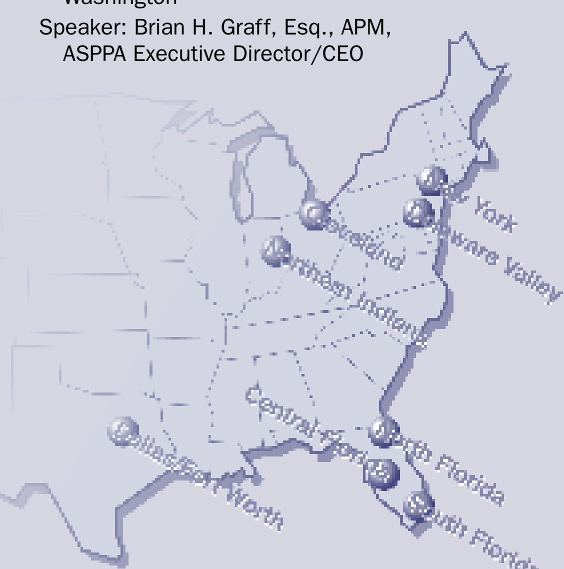
ABC of the Delaware Valley
Topic: Fiduciary Issues
Speaker: I. Lee Falk

May 5

ABC of New York
Topic: New 401(k) Regulations, Default Rollovers, RMDs and the New Six-Year Document Update and Submission Cycle
Speaker: Sal L. Tripodi, APM

May 9

ABC of North Florida
Topic: Update on What's Happening in Washington
Speaker: Brian H. Graff, Esq., APM, ASPPA Executive Director/CEO



ABC of Northern Indiana: Planning Ahead for an Exciting Year!

by Marilyn Manzer, QPA, QKA

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

We begin the year by offering continuing education credits to those who were unable to attend the ASPPA Annual Conference in Washington, DC. The ABC purchases the CDs from the Annual Conference and chooses eight of the sessions that will be of most interest to the ABC members. The ABC board members volunteer to moderate the CD sessions which take place over a two-day period in January. For the past two years, Baden Retirement Plan Services in Ft. Wayne has offered their facilities for this event to make this an affordable opportunity for all of the ABC members to receive CE credits.

The next ABC meeting of the year is a luncheon in April, and the guest speakers are our own ABC members. In 2004, Robert J. Toth and David J. Kolhoff, both ERISA attorneys with the Lincoln Financial Group, presented a Legislative Update. The duo, dubbed as the "Bob and Dave Show," held such an entertaining and spirited presentation that members overwhelmingly requested a repeat performance for the luncheon meeting in April 2005.

The June event of the year takes place when Sal L. Tripodi, APM, presents an all-day workshop, which is scheduled for June 1 at the Ft. Wayne Marriott. This year is the fourth year that Sal has been the guest speaker at our June meeting! Our ABC was the first ABC to have Sal speak at an all-day event, and now Sal has been the featured speaker for many other ABCs.

The September meeting is scheduled to be another luncheon meeting. The guest speaker at

our last September meeting was Brian H. Graff, Esq., APM, ASPPA's Executive Director/CEO, speaking on the major events taking place in the retirement plan world.

Our final event of the year is the annual dinner meeting held each year in November. This meeting provides for the election of the board for the coming year as well as a recap of the highlights of the ASPPA Annual Conference. For the past several years, Kathleen Bayes of the Lincoln Financial Group has done an excellent job of presenting the recap of the top highlights of the conference.

The retirement plan professionals of Northern Indiana have found our ABC to be a perfect vehicle to share ideas, educate members, exchange information and renew and form new professional affiliations.

Marilyn Manzer, QPA, QKA, is director of Baden Retirement Plan Services (BRPS), with offices in Indianapolis and Fort Wayne, IN. BRPS is an independent third party administration firm consisting of over 50 professionals, providing all aspects of plan design, administration and compliance. Marilyn has almost 20 years of experience as a pension professional, holds the QPA and QKA credential and is also a CPA. She has been a board member of the ABC of Northern Indiana since its inception in 2001 and is the current continuing education chair.

Why Would Anyone Want to be an FSPA?

by Susan J. Chambers, FSPA

The Fellow of the Society of Pension Actuaries, or FSPA, is the highest credential conferred to an actuarial member of ASPPA. An Enrolled Actuary must successfully complete three examinations in addition to the enrollment exams to achieve the FSPA credential.

The enrollment exams test the candidate's knowledge of basic actuarial mathematics and pension actuarial practices. These exam topics include the mathematics of compound interest and life contingencies, the selection of actuarial assumptions, cost methods, the determination of minimum and maximum pension funding and the application of pension laws to retirement plans. The enrollment exams are co-sponsored by ASPPA, the Society of Actuaries and the Joint Board for the Enrollment of Actuaries.

ASPPA sponsors the three additional examinations required for the FSPA credential—the C-3, C-4 and A-4. The C-3 and C-4 examinations are the final part of the Certified Pension Consultant (CPC) series. The A-4 exam is an advanced actuarial practice exam. Each of these exams is in essay form and is four hours in length. The questions are structured in essay form to test the candidate's ability to apply the knowledge learned to realistic consulting situations.

These consulting exams introduce the candidate to areas of practice beyond that required of the Enrolled Actuary. By completing these examinations, the candidate demonstrates that he or she is both an Enrolled Actuary, with proven pension analytical skills, and a consultant, qualified to provide actuarial and pension consulting services for all retirement plan types.

The C-3 exam tests the candidate's knowledge of the financial and fiduciary aspects of qualified plans. The essay questions require the candidate to apply the facts and concepts learned to realistic consulting situations. Covered topics include qualified plan distribution requirements, participant loans, investment of retirement plan assets, prohibited transactions and fiduciary responsibilities.

Candidates are provided the opportunity to further test their retirement plan consulting skills on the C-4 exam. The candidate is asked to analyze and solve problems based on factual situations that might be encountered in practice. The C-4 exam syllabus consists of six core topics and three non-core topics. The core topics include common control, nondiscrimination and coverage issues, 401(k) plans, defined benefit plans, plan design and IRS correction programs. The non-core topics include ESOPs, governmental, tax-exempt and nonqualified plans. The C-4 examination consists of eight questions covering six core and two non-core topics. The candidate is required to answer all six core topics and select and answer one of the two non-core topics on the exam.

The A-4 examination provides an opportunity for the candidate to demonstrate advanced knowledge and judgment in the discipline of actuarial consulting. This examination is intended to test the candidate's ability to apply the accumulated body of knowledge covered in the prior exams and his or her work experience together with the materials contained in the required readings to given practice situations. Frequently, there is no single correct answer to a question. Answers are judged based on the candidate's ability to weigh alternatives and to support any recommendations. Topics on the A-4 exam include reporting under the financial accounting standards for post-employment benefit plans, actuarial valuation in civil litigation, plan terminations, plan mergers and acquisitions, issues in ethics affecting the actuarial profession and the effect of changes in demographics and the economic environment on the cost and design of retirement benefits.

Why would anyone want to be an FSPA? Because the achievement is a source of great personal pride and satisfaction! Having this credential behind your name also demonstrates to others in the industry that you have accumulated the knowledge and mastered the skills required for ASPPA's most prestigious credential.

Still not convinced? In recent years there has been a steady decline in the number of defined benefit plans. As a result, there is less of a need for the traditional Enrolled Actuary working as a technician. The examinations leading to the FSPA credential can serve as a valuable learning tool to help the Enrolled Actuary grow from a technician into a consultant. Along the way, the actuary also expands his or her knowledge of retirement plans beyond defined benefit. In addition to the opportunity to expand services to established clients, these additional skills provide an avenue of growth for new business and enhanced career opportunities for the FSPA.

I encourage all of the Enrolled Actuary members of ASPPA to consider pursuing the FSPA credential. Especially for the more seasoned actuaries, the examinations can be a fun and challenging test of your consulting skills! ▲

Susan J. Chambers, FSPA, is president of Chambers Benefit Group, APC, in Albuquerque, NM. Sue is a member of ASPPA's Board of Directors and serves as an Ex Officio Member on ASPPA's Executive Committee. She is a member of ASPPA's Education & Examination Committee and is the former Chair of E&E's A-4 Exam Committee. Sue is also an Enrolled Actuary and a Fellow of the Society of Actuaries.

On Joining ASPPA PAC

by David B. Vail, APM

I confess to only recently becoming an ASPPA PAC supporter. Although I'd like to claim a long history of understanding the contribution that the PAC makes to our industry and the people we serve, I can't. Like many of you, I have walked past the PAC booth at the ASPPA Annual Conference, given it a few seconds' thought, and then walked on. After all, what was an apolitical group of pension professionals and actuaries doing with a political action committee? Then I got it.

At an after-work refreshment break at a recent conference, I was asked by another TPA why I didn't belong to ASPPA PAC. Then came a flash, enlightenment, self actualization, satori! I realized I had no reason, and probably never did—certainly not a good one. It's not the cost, it's not the work they do, and so what keeps us from doing what is in our best interest?

Until recently I had harbored an image of all ASPPA PAC contributions being of the large, fat-cat type. I thought ASPPA PAC members were somehow different than the average business owner. Another myth busted! The average contribution is in the low hundreds, not thousands, of dollars. Don't get me wrong, thousands are good, but modest contributions from the approximately 90% of ASPPA members not yet supporting ASPPA PAC may be more reasonable. ASPPA PAC members are hardworking people, sharing the belief that what we do makes a difference. We all want to protect our private retirement plan system, and the PAC does it by educating lawmakers. When modest contributions are made by more of us, it allows ASPPA PAC to support more of our representatives in Congress and helps them understand the importance of private plans to the economy, the workers and the future.

It occurred to me that American workers and ASPPA PAC have some strange parallels. We all know the statistic that without the structure of employer-sponsored plans only 7% of Americans contribute to their retirement security. As Americans we do not save with the degree of commitment that is needed for our retirement. Interestingly, without some similar mechanism to push ASPPA members, less than 10% of us contribute to our future security via ASPPA PAC. So we act just like those American workers who, when left to their own devices, do not act in their own best interest. Supporting ASPPA PAC is as important to our future as active participation in qualified plans is for our clients and their employees. While we might bemoan the lack of self-determinism in the American worker, we seem to exhibit that same behavior when it comes to our own industry.

I like positive spin. What the above means is that more than 90% of the 5,500 members of ASPPA have an opportunity to preserve and improve our industry! A huge untapped market! I believe that providing services to the private retirement plan industry has provided a great deal of success for many of us and for our employees, and that given the right circumstances we would want to help those working to protect and strengthen this industry. With so many ASPPA members not yet involved, the potential to have an impact on our lawmakers is great. With a modest commitment from each of us, we can better influence our future and that of our clients and their employees.

So I had my small call to action. I hope each of us gives this due consideration. Details on the ASPPA PAC are on the ASPPA Web site (**www.asppa.org/government/gov_pac.htm**), or you can contact the chairs of the ASPPA PAC, Karen A. Jordan, CPC, QPA, QKA (**karen@akpension.com**) or Fred Reish, APM (**fredreish@REISH.com**), or the ASPPA PAC Manager, Jolynne M. Flores (**jflores@asppa.org**).

ASPPA PAC is us. It works to inform and guide those who would, with all good intentions but without good counsel, do things that would weaken the private retirement system. We all benefit from ASPPA PAC and we should all contribute to it. The work is important and all of us should share in it. Sign on for the five-year plan. Make your first contribution. If you contributed in the past, re-join. But do not miss the chance to take action to protect private retirement plans; it feels so good when you do. ▲

David B. Vail, APM, CLU, has been in the pension industry since 1969. After 16 years of training at a large east coast insurance company, in 1985 he founded Penret Services, Inc., a TPA firm outside of Boston, MA.

Fun-da-Mentals

Tax Humor

—Authors Unknown

America is the land of opportunity. Everybody can become a taxpayer.

A fool and his money are soon parted. The rest of us wait until income tax time.

Nothing makes people more modest about their income than filling out a tax form.

When completing your tax return, it is better to give than to deceive.

We wonder why they call them “tax returns” when so little of it does!

Definition of Capital Punishment: Congress comes up with a new tax.

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 at https://router.asppa.org. Login, 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”.

U RARE QT	☐ __ __ __ __ ☐ __
GO SPUR	__ ☐ ☐ __ __ __
DOES C	☐ __ ☐ __ __
SING SAP	☐ __ ☐ __ __ __ __

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

Mystery Answer: Her “_ _ _ _- _ _ _ _

What the new divorcee worked on in the gym.

Do you want to:

- **Learn** the latest on pension regulations and litigations?
- **Hear** the opinions of IRS and DOL representatives on current topics?
- **Network** and exchange information with other practitioners?

Attend the 2005 Northeast Area Benefits Conference!

Two convenient locations:

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Crowne Plaza Boston-Natick
Natick, MA

Friday, June 10
Crowne Plaza White Plains
White Plains, NY

Co-sponsored by the IRS's Northeast Employee Plans, Tax Exempt and Government Entities Division, and ASPPA.

For more information:

703.516.9300
meetings@asppa.org

Calendar of Events

Date	Description	ASPPA CE Credits
Mar 17-19	The 401(k) SUMMIT • San Diego, CA	15
Mar 31	Early Registration Deadline for Spring Examinations	
Apr 25-26	DOL Speaks: The 2005 Employee Benefits Conference • Washington, DC	15
Apr 30	Final Registration Deadline for Spring Examinations	
May 1-31	Spring 2005 Examination Window	
May 5-6	Great Lakes Benefits Conference • Chicago, IL	15
May 13	Postponement Deadline for All Spring Examinations	
May 18	C-3 Examinations	
May 19	C-4 Examinations	
May 23-24	Mid-Atlantic Benefits Conference • Philadelphia, PA	15
Jun 1	Eidson Founders Award Nominations Due	
Jun 9 & 10	Northeast Area Benefits Conference Natick, MA • White Plains, NY	8 each
Jul 24-27	Meeting Midway • San Diego, CA	20
Sep 13-15	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	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/A-4 Examination	
Nov 17	C-4 Examination	
Dec 1	DC-1, DC-2, DC-3 and DB Postponement	