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THE ASPPA Journal

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

WASHINGTON UPDATE

There is Still a Chance for Cash Balance Plans

by Brian H. Graff, Esq., APM

We are all very aware of the trend away from defined benefit plans that has occurred over the last several decades. According to Boston College's Center for Retirement Research, more than 60 percent of full-time workers were covered by a defined benefit plan in the late 1970s. Today, only slightly more than ten percent of full-time workers are covered by a defined benefit plan.

Many factors are cited as contributing toward this trend—an overly complex set of government-mandated pension rules, competitive pressures to keep labor costs low and an increasingly mobile workforce that fails to appreciate a traditional defined benefit plan based on final average pay. Further, and particularly with respect to publicly-traded companies, the inherent funding uncertainties with such plans is becoming unattractive to corporate

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In This Issue:

Our hearts are with our Gulf Coast members who suffered losses as a result of Hurricane Katrina. We encourage all ASPPA members to support hurricane relief efforts.

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WORKING FOR AMERICA'S RETIREMENT

FROM THE EDITOR

It's About Time!

by Chris L. Stroud, MSPA

As part of the recently-passed energy bill, Daylight Saving Time (DST) will be extended four more weeks in future years. Experts claim that extending DST will help conserve oil, decrease crime and traffic accidents and increase the opportunity for outdoor activities. However, since we are conditioned to do what our clocks tell us to do, DST does come with a price.

It is difficult to "lose" that hour at the beginning of DST each year. In 2007, when the new DST provisions will most likely take effect, we will "spring forward" on the second Sunday in March, just before March 15. Doesn't Congress realize that's when we need *more* hours, not fewer? The press release was entitled "Here Comes the Sun…" and quoted the famous Beatles song. Perhaps Congress could consider the same tune with an eye toward EGTRRA's "sunset" provisions!

"I hate changing to Daylight Saving Time."

Imagine the opportunities if we could each select our own personal moment to lose and add back the DST hour. One nice spring day, you might exercise your right to "lose" your hour at 4:00 p.m. on Friday, advance your clock to 5:00 p.m., starting your weekend early. And perhaps one busy fall day, you find yourself unable to meet a client's deadline—and then, yippee! You realize you can invoke your extra hour at that moment, "fall back"—and finish the proposal with a few minutes to spare.

Unfortunately, history has proven that DST must be handled in a more orderly fashion. Prior to the Uniform Time Act of 1966, localities could decide "at will" whether or not to use DST. The result was a patchwork of chaos. In one 35-mile stretch, bus drivers traveling from Moundsville, WV to Steubenville, OH had to reset their watches seven times! In a given year, Iowa alone had 23 different sets of DST start/end dates/times. The Act (and the 1986 amendment) fixed the dates/times of DST for all states that chose to adopt. The 2:00 a.m. "switching hour" was also standardized in an effort to create the least confusion. It would never cause a change in date to occur, and the change in time would also be completed across the entire nation before the normal workday begins for anyone.

Today, only minor confusion remains, mostly resulting from the few states and regions that have chosen not to adopt. (Yes, Arizona, we understand that you already have so much daylight it hurts!) However, the 2:00 a.m. timeframe can still generate some confusion, including questions like "When does a bar close on the DST spring "switch" day, if the normal closing time is 2:00 a.m.?" After careful research (*i.e.*, cruising the Internet), it seems that bars really close at 1:59 a.m., so there's no extra hour of drinking as is often believed. I have personally pondered the dilemma created if a woman gave birth to twin boys on the fall "switch" day—the first boy arriving at 1:58 a.m. and the second one ten minutes later. Would the birth time of the second twin be recorded as occurring before the first? Interesting. And, what if that woman were married to a king and previously childless…?

Our former countrymen only had to worry about bus and train schedules and changing their clocks and watches for DST. We now have to worry about airline schedules, as well as changing the time in our cars, TVs, VCRs, computers, computer programs, PDAs, telephone answering machines, cameras, copiers, appliances, etc. So…as our fall end-of-DST date approaches, get ready to enjoy that extra hour you lost earlier in the year. Hopefully, the entire hour won't be wasted changing the time on your electronic devices! ▲

Letter to the Editor

Service Crediting Rules—Clarification

I just read the article "Back to Basics—Service Crediting Rules" from the March-April 2005 issue of *The ASPPA Journal*, Volume 35 #2. I want to clarify that the rehired employee referred to in the article (page 16, "Rehired Employees") was already a participant in the plan prior to termination and therefore enters the plan upon rehire. Otherwise, a terminated employee under the same circumstances who had met the eligibility requirements and terminated before his or her entry date would enter the plan on the later of the plan entry date on which he or she would have entered the plan had he or she not terminated employment or the date of re-employment.

The articles in the Journal are always very helpful.

James L. Carnes, Jr., QPA
DST Systems, Inc.

ANSWER:

Thanks, Jim, for pointing out the clarification. I'm glad you enjoy the articles in *The ASPPA Journal*, and I must say that our readers are also very helpful!

—Chris

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WASHINGTON UPDATE

executives who are more and more having to focus on short-term financial results over long-term performance. Traditional defined benefit plans, due to their funding requirements, inherently pose a greater risk of an unanticipated negative short-term financial statement impact as compared to defined contribution plans. This enhanced risk will likely be made worse due to more stringent funding requirements currently being considered by Congress as well as potentially more stringent financial accounting rules for pensions.

Whether you like it or not, cash balance plan designs, or the more "politically correct" term "hybrid" plans, represent the best hope for the future of the defined benefit plan system. Why? Because cash balance plan designs can address many of the criticisms lodged against traditional defined benefit plans by both employers and employees. Since the benefit is expressed in terms of an account balance, the benefit is more understandable to employees and thus appreciated more, particularly by younger workers. The "account balance" provided by a cash balance plan is also perceived to be more portable to workers, which is an attractive feature as today's workers more frequently change jobs. Employees who are increasingly frustrated with their responsibility to manage their own 401(k) plan accounts and the accompanying risk due to market volatility also like the fact that their cash balance plan benefits increase each year by a guaranteed rate of return.

From an employer's perspective, the cash balance plan design can lend itself to more predictable and manageable funding requirements. Depending on the rate of return provided under

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the terms of the plan, assets can be placed in products that greatly minimize, if not eliminate, the investment risk to employers. The cash balance plan design may be especially well-suited for small and mid-sized businesses that have not previously had a guaranteed benefit plan and/or have waited too long to establish any retirement plan at all. Depending on the employer's demographics, older owners/executives of the firm can benefit from the catch-up possibilities associated with a cash balance plan while still providing an attractive plan to all workers. In fact, a number of consultants have been suggesting combination traditional defined benefit/cash balance plans, which can provide a traditional benefit for older owners and senior managers while providing a cash balance benefit for younger workers.

It is, of course, the legal uncertainties surrounding cash balance plans that have prevented their utilization and growth in the marketplace. It is an understatement to suggest that both employers and the government have severely mismanaged the cash balance plan issue. Employers, particularly the larger ones who first converted to a cash balance plan from a traditional defined benefit plan, failed to appreciate the employee animosity that would be generated by the conversion and the effectiveness of employee campaigns in stimulating a political reaction. Many political experts cite the cash balance issue as the first successful use of a grassroots e-mail campaign by workers. To their credit, most employers have learned from the mistakes of those earlier conversions and have generally taken steps to address the concerns of older workers.

To this point, the government has not dealt with the issue any better than those employers who converted early on. Treasury and the IRS have attempted several times to issue guidance clarifying the legality of cash balance plans as well as deal with conversions. Notwithstanding the policy merits of these attempts, the issue became so politicized on Capitol Hill that Congress, as part of the annual budget process, actually prevented Treasury and IRS from doing any further work on cash balance plans. By not permitting the regulators to work on the issue, only the courts and Congress were left to address the fate of cash balance plans. The courts have been painstakingly slow and extremely inconsistent. The politics of the issue have completely handcuffed Congress from acting. Keep in mind that the issue has been around for more than five years. In the meantime, employers with cash balance plans have had to deal with the anxiety of their unclear legal status, and many of those considering such plans for their workers have been forced to wait. The state of this issue has been entirely unacceptable from a retirement policy standpoint.

It is, of course, the legal uncertainties surrounding cash balance plans that have prevented their utilization and growth in the marketplace.

There may be some light at the end of the tunnel. Over the last year, several key leaders in Congress have come to recognize that the cash balance plan issue must be dealt with. In various public forums, important retirement policymakers such as John Boehner (R-OH), Chairman of the

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The American Society of Pension Professionals & Actuaries (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 reason for some optimism is that both the House and Senate pension reform bills include cash balance plan provisions, albeit only prospectively to clarify the legality of such plan design.

House Education and the Workforce Committee, and Senators Grassley (R-IA) and Baucus (D-MT), Chairman and Ranking Member respectively of the Senate Finance Committee, have indicated that Congress has a responsibility to address the cash balance plan design question. In fact, at the Senate Finance Committee markup of the legislation to reform the rules governing the funding of defined benefit plans [National Employee Savings and Trust Equity Guarantee Act of 2005 (NESTEG), S 219], Senator Baucus, discussing the cash balance plan provision that was included, stated "Congress can no longer bury its head on this issue and must answer the open questions surrounding cash balance plans."

The reason for some optimism is that both the House and Senate pension reform bills include cash balance plan provisions, albeit only prospectively to clarify the legality of such plan design. (Legislative information on both provisions is set out on the following pages.) Although it would be preferable for Congress to provide retroactive relief (and ASPPA GAC will be working toward that end), such relief may not be politically possible because Congress generally is very reluctant to interfere with existing litigation. Further, the Senate provision includes some requirement for prospective conversions. Committee reports are expected to include strong "no inference" language so as to not affect any prior conversions. Congressional members in both Houses of Congress and on both sides of the aisle recognize that the provisions may not be perfect, but that it is important to start this process.

Notwithstanding the lack of perfection in these provisions, they represent an important first step to making the cash balance plan a viable tool for ASPPA members to convince clients to once again consider the possibility of offering employees a guaranteed benefit plan. That is a policy objective that cannot be lost in the noise and political rancor generated by the controversy surrounding conversions. It is unfortunate that much of what Congress is focusing on in terms of defined benefit plan funding reforms may, in fact, make traditional defined benefit plans less attractive to employers. Hopefully, there can be some roses among the thorns, and this legislation can be used as a vehicle to finally give cash balance plans a chance.

House Bill Language

SEC. 701. IMPROVEMENTS IN BENEFIT ACCRUAL STANDARDS

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) RULES RELATING TO REDUCTION IN ACCRUED BENEFITS BECAUSE OF ATTAINMENT OF ANY AGE.—Section 204(b)(1)(H) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(b)(1)(H)) is amended by adding at the end the following new clauses:

"(vii)(I) A plan shall not be treated as failing to meet the requirements of clause (i) if a participant's entire accrued benefit, as determined as of any date under the formula for determining benefits as set forth in the text of the plan documents, would be equal to or greater than that of any similarly situated, younger individual.

"(II) For purposes of this clause, an individual is similarly situated to a participant if such individual is identical to such participant in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

"(III) In determining the entire accrued benefit for purposes of this clause, the subsidized portion of any early retirement benefit (including any early retirement subsidy that is fully or partially included or reflected in an employee's opening balance or other transition benefits) shall be disregarded.

"(viii) A plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant shall not be treated as failing to meet the requirements of clause (i) solely because interest accruing on such balance is taken into account.

"(ix) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides allowable offsets against those benefits under the plan which are attributable to employer contributions, based on benefits which are provided under title II of the Social Security Act, the Railroad Retirement Act of 1974, another plan described in section 401(a) of the Internal Revenue Code of 1986 maintained by the same employer, or under any retirement program for officers or employees of the Federal Government or of the government of any State or political subdivision thereof. For purposes of this clause, allowable offsets based on such benefits consist of offsets equal to all or part of the actual benefit payment amounts, reasonable projections or estimations of such benefit payment amounts, or actuarial equivalents of such actual benefit payment amounts, projections, or estimations (determined on the basis of reasonable actuarial assumptions).

"(x) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) of the Internal Revenue Code of 1986 are met.

"(xi)(I) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides for pre-retirement indexing of accrued benefits under the plan.

"(II) For purposes of this clause, the term 'pre-retirement indexing' means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized index or methodology so as to protect the economic value of the benefit against inflation prior to distribution."

(2) DETERMINATIONS OF ACCRUED BENEFIT AS BALANCE OF BENEFIT ACCOUNT.—Section 203 of such Act (29 U.S.C. 1053) is amended by adding at the end the following new subsection:

"(f)(1) A defined benefit plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant shall not be treated as failing to meet the requirements of subsection (a)(2) and section 205(g) solely because of the amount actually made available for such distribution under the terms of the plan, in any case in which the applicable interest rate that would be used under the terms of the plan to project the amount of the participant's account balance to normal retirement age is not greater than a market rate of return.

"(2) The Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of paragraph (1) and for permissible methods of crediting interest to the account (including variable interest rates) resulting in effective rates of return meeting the requirements of paragraph (1)."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to periods beginning on or after June 29, 2005.

Senate Bill Description

In General

The proposal provides rules that apply on a prospective basis to address issues surrounding cash balance plans and other similar hybrid plans with respect to: (1) application of the prohibition on age discrimination; (2) determination of minimum lump-sum benefits; and (3) requirements for conversions to a cash balance plan design. In addition, the proposal includes interest credit and vesting requirements that apply to cash balance plans and other similar hybrid plans on a prospective basis.

Age Discrimination

Under the proposal, a cash balance plan or other similar hybrid plan does not violate the prohibition on age discrimination merely because, for younger employees, front-loaded interest credits apply over a longer period than for older employees, provided that the rate of pay credit or interest credit under the plan does not decrease because of the participant's attainment of any age.

Lump-sum Distributions

Under the proposal, a cash balance plan or other similar hybrid plan may provide that the lump-sum benefit payable to a participant is the balance of the participant's hypothetical account balance, provided that the plan does not provide for interest credits at a rate that exceeds a market rate of return. The Secretary of the Treasury is authorized to issue regulations as to what constitutes a market rate of return for this purpose. It is intended that interest credits will not be treated as provided at a rate that exceeds a market rate of return merely because a plan provides interest credits at a rate required under the proposal as discussed below (*i.e.*, not less than the applicable federal mid-term interest rate).

Conversions

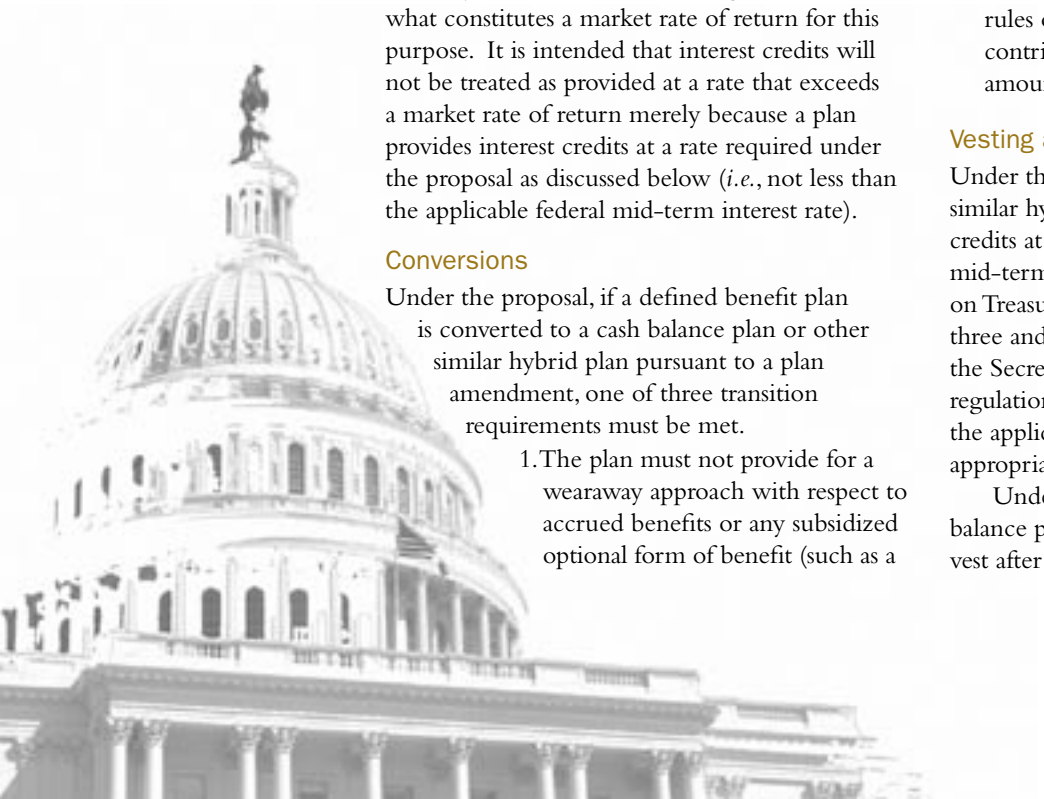
Under the proposal, if a defined benefit plan is converted to a cash balance plan or other similar hybrid plan pursuant to a plan amendment, one of three transition requirements must be met.

1. The plan must not provide for a wearaway approach with respect to accrued benefits or any subsidized optional form of benefit (such as a subsidized early retirement benefit). In addition, either (1) for at least five years after the conversion, the plan provides all participants who were covered by the plan before the conversion with the greater of accruals under the old formula or under the new formula; or (2) in the case of participants who, at the time of the conversion, were at least age 40 and had combined age and service of at least 55 (or such lower age and combined age and service as provided under the plan), after the conversion, the plan provides such participants with (a) the greater of the benefits determined under the old formula or under the new formula or (b) the right to elect either benefits determined under the old formula or under the new formula.
2. After the conversion, the plan provides all participants who were covered by the plan at the time of the conversion with (1) the greater of the benefits determined under the old formula or under the new formula or (2) the right to elect either benefits determined under the old formula or under the new formula.
3. The plan provides additional credits or additional opening account balances in amounts substantially equivalent to the benefits that would be provided in order to satisfy one of the two preceding requirements, as determined under regulations issued by the Secretary of Treasury. It is intended that additional amounts necessary to satisfy this requirement shall not cause the plan to violate the nondiscrimination rules or the limits on benefits, and that contributions required to provide such additional amounts are deductible.

Vesting and Interest Credit Requirements

Under the proposal, a cash balance plan or other similar hybrid plan generally must provide interest credits at a rate not less than the applicable federal mid-term interest rate (*i.e.*, the interest rate based on Treasury obligations with a term of more than three and not more than nine years). In addition, the Secretary of Treasury is directed to issue regulations that provide alternatives to the use of the applicable federal mid-term interest rate in appropriate circumstances.[1]

Under the proposal, benefits under a cash balance plan or other similar hybrid plan must fully vest after three years of service.



Definition of Hybrid Plan

Under the proposal, a cash balance is defined as a defined benefit plan under which the accrued benefit is based on the balance of a hypothetical account determined by reference to annual pay credits and interest credits. In addition, the Secretary of the Treasury is directed to define by regulations other similar hybrid plans to which the proposal applies.

Effective Date

The proposals relating to the age discrimination rules and minimum lump-sum distributions are effective July 26, 2005. The proposal relating to conversions is effective for conversions made pursuant to a plan amendment adopted and effective after July 26, 2005. In addition, in the case of a conversion pursuant to a plan amendment adopted before July 26, 2005, but effective after that date, the employer may elect to apply the proposal to the conversion. The proposals relating to interest credits and vesting are effective for plan years beginning after December 31, 2006. No inference is intended to be drawn from the proposal as to the treatment of cash balance plans (and other hybrid plans) or conversions under present law. ▲

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.

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1 For example, in the case of pension equity plans, the interest credit requirement may be applied on the basis of a fixed rate of return of three percent, which may be reflected in the benefit formula using age groupings of up to five years.

Sarah E. Simoneaux, CPC, Elected 2005-2006 ASPPA President

by Troy L. Cornett

Editor's note: Fortunately, Sarah's home received only minor damage in Hurricane Katrina. However, since her children's schools are not currently operational, she and her two children have set up temporary residence in Houston so that her children can attend school until their schools back home are functional again.

In June, ASPPA's Board of Directors elected Sarah E. Simoneaux, CPC, as ASPPA's President for the 2005-2006 term. Her term begins at the close of the 2005 ASPPA Annual Conference. Sarah is a vice president of Actuarial Systems Corporation (ASC) and is responsible for qualified plan compliance software for institutional clients.

Over the years, Sarah has held a variety of positions with ASPPA, serving as a member of the Executive Committee and Board of Directors and as the chair of the Conferences, Membership and Government Affairs Communications committees. Sarah's goal for her Presidential year is inclusiveness. "ASPPA is the inclusive, not the exclusive, society providing benefits and opportunities for all professionals involved in the retirement industry, in partnership with other benefit organizations wherever possible."

Sarah is active in her community, most notably at her children's schools and with the Boy Scouts. In her spare time, when not working for ASC or ASPPA, driving carpools or helping her husband settle into his new office, Sarah enjoys jogging, cooking and spending time with her family and friends.

Sarah lives outside of New Orleans in Mandeville, LA, with her husband of 16 years, Peter, who is a dermatologist specializing in Mohs skin cancer surgery. Her son, William, 14, a sophomore, and daughter, Nicole, 13, a freshman, attend high school in New Orleans.

The other members of ASPPA's 2005-2006 Executive Committee are:

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Chris L. Stroud, MSPA

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Sheldon H. Smith, APM
Sal L. Tripodi, APM

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Stephen L. Dobrow, CPC, QPA, QKA

Immediate Past President

Stephen H. Rosen, MSPA, CPC

Troy L. Cornett is the Office Manager for ASPPA and an Associate Editor of The ASPPA Journal. *Troy has been an ASPPA employee since July 2000. In his time away from the National Office, Troy enjoys seeing the latest movie releases, driving his VW bug and sipping lattes with his friends at Starbucks.*

Notice of ASPPA's Annual Business Meeting

The ASPPA Annual Business Meeting will be held during the 2005 ASPPA Annual Conference in Washington, DC, on Sunday, November 6, at 4:00 p.m.

Items on the agenda will include two voting items:

(1) The election of the proposed 2006-2009 Board members.

(2) Proposed changes to the ASPPA bylaws to clarify and update the bylaws in accordance with the membership approvals of the ASPPA name change and the QPFC designation. (Note: The bylaws will now refer to all designated members by the corresponding initials of their designation. FSPAs who need to use the full designation name for other purposes should use "Fellow, Society of Pension Actuaries." Similarly, MSPAs should use "Member, Society of Pension Actuaries.")

Proposed Bylaw Changes

Article 2. B. currently reads:
"Membership in the category of Credentialed Member shall be awarded to those persons who qualify for the designations offered by the Society under the rules prescribed by the Board of Directors. Only Credentialed Members shall be entitled to vote in the conduct of the business affairs of the Society. Those designations shall be Fellows, Members, Certified Pension Consultants, Qualified Pension Administrators, Qualified 401(k) Administrators and Associated Professional Members.

The proposed change to Article 2.B. is to change the last sentence as follows:
"Those designations shall be FSPA, MSPA, CPC, QPA, QKA, QPFC and APM."

Article 2. D. currently reads:
"Only Credentialed Members shall be entitled to use the name of the Society, or the respective designations FSPA, MSPA, CPC, QPA, QKA and APM in conjunction with their own names, and only so long as in accordance with rules promulgated by the Board of Directors."

The proposed change to Article 2. D. is to change the sentence by inserting "QPFC":
"Only Credentialed Members shall be entitled to use the name of the Society, or the respective designations FSPA, MSPA, CPC, QPA, QKA, QPFC and APM in conjunction with their own names, and only so long as in accordance with rules promulgated by the Board of Directors."

The Business Meeting will also include an address by ASPPA's 2004-2005 President, Stephen H. Rosen, MSPA, CPC, and a look toward the future by ASPPA's incoming President, Sarah E. Simoneaux, CPC. All ASPPA members are strongly encouraged to attend this important meeting.

The New World of Automatic Rollovers

by Peter E. Preovolos

Since the inception of ERISA, only *one* thing in the vast world of processing benefit distributions from qualified plans has remained constant…change! The application of the laws and regulations governing the pension industry has been a constantly evolving and growing production. Most recently, there has been a significant change in pension legislation that now grants plan sponsors the wondrous and mystical ability to partake of "*automatic rollovers*"!

Actually, to be fair, the ability to enact these types of rollovers has always been permitted. The interesting thing is that virtually no one in the country was utilizing this method as a tool to solve the perplexing issue of how to deal with non-responsive or missing participants. This most recent legislative change, however, has now made this method mandatory for certain distributions! And thus begins the massive scramble of pension professionals to understand and equip themselves to deal with this new (now mandatory) provision in the law and search for vendors that will help accommodate these new requirements.

Background

Let us take a closer look at exactly what led us to this new change in the distribution process. To understand this change, we need to look to IRC Section 411(a) for the genesis of how these new rules were developed and perhaps the reasoning behind them. Code Section 411(a) permitted a plan to involuntarily cash-out a former employee's benefit without the employee's (or their spouse's) consent provided the benefit was $5,000 or less (prior to TRA '97, it was only $3,500 or less). However, before the benefit could be paid, the employee had to be provided with a special notice about the tax consequences of receiving the contribution and about his or her ability to defer income tax liability by rolling the distribution over to another eligible retirement plan or an individual retirement account (IRA). Prior to the effective date of the new rules (March 28, 2005), if the employee did not affirmatively elect to roll the distribution over within 30 days after receiving the notice, the distribution could have been paid directly to the employee after withholding the appropriate minimum tax payments.

Congress, in developing the new legislation, wanted to take a more proactive position on the long-term investment of these retirement benefits.

Congress, in developing the new legislation, wanted to take a more proactive position on the long-term investment of these retirement benefits. They sought to increase the likelihood that these retirement benefits would still be available when a former employee reached retirement. Hence the enactment of EGTRRA, which amended the Code and ERISA to require that:

> *Qualified retirement plans containing an involuntary "cash-out" provision automatically roll cash-outs with a vested accrued benefit between $1,000 and $5,000 over to an IRA unless the employee affirmatively elects to receive the distribution as cash, or otherwise directs the funds to be rolled over to an IRA of their choosing or another eligible qualified plan.*

The content of these new provisions would not become law, however, until the Department of Labor (DOL) issued final regulations on how they were to be adopted and implemented. The DOL was given three years from the date of the enactment of EGTRRA to do so. By September 28, 2004, nearly three years exactly from the enactment of EGTRRA, the DOL issued its final regulations. Then, in December 2004, the IRS issued Notice 2005-5 providing guidance for plan amendments and employee notices enacting the new changes to the law.

In implementing these final regulations the DOL established a compliance "safe harbor" for the administration of the new provisions under EGTRRA

to shield plan administrators and other fiduciaries from liability under ERISA. This safe harbor includes protection from liability arising from the selection of an IRA provider or the selection of investment alternatives for the IRA.

The DOL Safe Harbor Protection

The DOL regulations covered the conditions that would satisfy the safe harbor by setting forth specific prohibited transaction class exemptions that determine what actions the employer must take and what duties a fiduciary of a terminating defined contribution plan has with respect to locating a "missing participant" and distributing his or her account balance in the absence of his or her affirmative instructions.

Let us now examine specifically how the safe harbor requirements can be satisfied and what a plan fiduciary must do:

1. The present value of the cash-out must not exceed $5,000, excluding rollovers from previous plans.
2. The distribution must be rolled over directly to a safe harbor IRA.
3. Both the plan fiduciary and IRA provider must enter into a written agreement that provides that:
   a.) The distributable amount must be invested in a product designed to preserve principal and provide a reasonable rate of return that is consistent with liquidity.
   b.) The investment product that will qualify must be a money market, interest-bearing savings account, Certificate of Deposit or stable value product.
   c.) The investment product must be offered by a state or federally regulated financial institution (*e.g.,* a bank or savings association, a credit union, an insurance company or an investment company).
   d.) Fees and expenses charged for the IRA must not exceed the fees and expenses charged by the provider for comparable traditional IRAs established directly by a participant versus the plan fiduciary.
   e.) The participant must have the right to enforce the terms of the agreement, as if he or she had established said IRA directly.
4. Plan sponsors must furnish each participant with a summary plan description or summary of material modifications that describes or sets forth the following:
   a.) The qualified retirement plan's automatic rollover provisions;
   b.) The nature of the investment product in which the funds will be invested;
   c.) A statement indicating how attendant fees and expenses will be allocated (*i.e.,* Will they be charged to the individual's account or shared by the entire plan or paid by the plan sponsor?); and
   d.) The name, address and telephone number of a plan contact who can provide further information concerning the automatic rollover provisions, the IRA provider and the applicable fees and expenses.

The DOL issued an addition to the safe harbor regulations regarding the class exemptions to permit a bank or other financial institution that is the sponsor of a retirement plan to perform the following tasks:

1. Select itself or an affiliate as an IRA provider to receive automatic rollovers from its own plan;
2. Select its own funds or investment products; and/or
3. Receive related fees.

It should be noted that there is a way to avoid the automatic rollover provision altogether. A plan sponsor is free to amend their plan(s) and lower the involuntary cash-out threshold in their plan(s) to $1,000. This amendment would allow a plan sponsor to cut a check, withhold the appropriate taxes and mail it to the last known address of the participant according to the provisions of the "old rules" (before automatic rollovers became mandatory). Some believe this approach is a bad idea for two reasons: 1) A plan sponsor eliminates the ability to remove all the former participants in their plan(s) who fall in the $1,000 - $5,000 range, and 2) If a check goes uncashed, it continues to be a liability of that plan indefinitely. Now that the government has established rules that allow certain participants to be deemed eligible to receive involuntary cash-outs, why would a plan sponsor want to amend their plan(s) to eliminate the offering of this feature to approximately 80% of these participants? These participants instead must remain on the books while the plan sponsor continues to retain a fiduciary responsibility for them—and all of this at a continued cost to administer.

Missing Participants

Perhaps one of the most positive revelations to come out of this entire change was the decision on the part of the DOL to also address the perplexing problem of how to deal with "missing participants" in terminated (or terminating) plans. After issuing its safe harbor regulations with respect to automatic rollovers, the DOL took the initiative of addressing the missing participant issue by releasing Field Assistant Bulletin 2004-02, which outlines the duties that a fiduciary of a terminating defined contribution plan has with respect to locating a missing participant and distributing that participant's account balance in the absence of his or her affirmative directions. The guidance given by the Field Assistance Bulletin outlines the steps that must be taken to locate (search for) such participants.

1. Send a letter to each participant's last known address using certified mail, return receipt requested.
2. Search all employees' records with respect to the plan in question, any other plans, such as group health plans, and the records of third party administrators and other recordkeepers.
3. Contact each participant's designated beneficiary, assuming such a designation exists.
4. Use either the IRS or a Social Security letter forwarding service (note: only one must be used, not both).

In addition to these mandatory steps, the DOL suggests that it may be prudent to use a commercial locator service. The cost of the search should be relative to the size of the account of the missing participant, and thus most likely will be the determining factor as to whether or not this additional step is taken.

The USA Patriot Act

As if all of this was not enough, we also must now consider the effects of the USA Patriot Act. Until now, qualified money was not affected by the Patriot Act. Prior to this Act, qualified money was not subject to the rigors of "identifying ownership of funds" that is now required by the Patriot Act. However, there seems to be some confusion with regard to the application of this Act on automatic rollovers.

While examining the Patriot Act, it would appear the establishment of an IRA account by a plan fiduciary is prohibited, since the Act requires specific customer identification procedures be observed by all financial institutions in order to track money. Conversely, the federal regulators have determined that the customer identification programs and procedures specific to the Patriot Act are not required for the establishment of these automatic rollover IRAs. However, once the former employee first contacts the financial institution to assert ownership and exercise control over the account, then the funds *do* become subject to the standards of the Patriot Act and the custodian must conform to those requirements.

Automatic Rollovers—A Good Idea?

This article is not intended to be a definitive analysis of the new cash-out provisions, but will hopefully serve as an overview and provide you highlights of the more salient points of the new provisions pertaining to automatic rollovers. Now that you understand the historical development and functionality of the new rollover provisions, you may still be asking yourself, *"Are the automatic rollover provisions a **good** idea or **bad** idea for plan sponsors and practitioners?"*

Many feel that these new automatic rollover provisions will be an extremely positive tool for the pension industry. Jim Norman of The Pension Group, who has a persistent ability to drive certain points home, outlines the following nine noteworthy reasons why the ability to process automatic rollovers has excellent value.

Automatic Rollovers—A Good Idea?

1. **Good for Plan Participants**
   The purpose of qualified retirement plans is to accumulate funds for retirement. Automatic rollovers should help cut down on cash out distributions where participants pay full income taxes and penalties and do not preserve the funds for retirement.
2. **Plan Sponsors Preferences and Market Competition**
   Plan sponsors don't like to see plan reports that, year after year, show accounts for former employees. These accounts are an annoyance to them and an added cost of maintaining the plan. It is also a risk to business retention. In the market, plan sponsors with a number of former employee accounts may be vulnerable to takeover by a firm that offers automatic rollovers.
3. **Free Up Forfeitures**
   Plans typically forfeit non-vested amounts upon distribution or the fifth break-in-service, whichever occurs first. Suppose a participant is 40% vested in $5,000, he or she is due a $2,000 distribution. If this participant does not consent to a distribution, the plan using an automatic rollover will be able to cash out the participant anyway, freeing up $3,000 to reduce or supplement ongoing contributions, or perhaps pay plan fees, rather than waiting five years to access the forfeiture.
4. **Disclosure Requirements**
   Former employees who remain in the plan must receive ongoing benefit statements, Summary Annual Reports, Summary Plan Descriptions, Summary of Material Modifications, blackout notices, etc. These requirements are a difficult area of compliance, as most small plan practitioners provide these things to the plan sponsor to distribute. How well are these being distributed to former employees?
5. **Minimize Lost Participants**
   Former employees with small accounts are the most likely to move, not update the plan sponsor with their addresses or otherwise go missing. Cashing out participants with smaller accounts as soon as possible decreases the chances of them disappearing and saves the cost of trying to find them.
6. **Avoid Large Plan Filing and Audit**
   For plans creeping up to 120 participants, it is a struggle every year to get former employees' accounts distributed. The 121st participant imposes a significant expense to a plan sponsor who is now required to obtain an ERISA audit. For a plan administration firm, this issue is a lose-lose proposition. We are too often the messengers, bringing bad news to our clients. If the plan sponsor looks at the participants and asks why there are ten small accounts of former employees still in the plan, you don't want the reason to be that your firm does not handle automatic rollovers!
7. **404(c) Issues**
   For plans providing self-directed investments to participants and intending to comply with 404(c), it is difficult to ensure that former employees are receiving all of the same information and attending the same plan meetings available to current employees. This issue can increase the plan sponsor's fiduciary liability to former employees who make bad investment choices. An automatic rollover that meets DOL safe harbor requirements actually eliminates ongoing fiduciary liability for the distributed accounts.
8. **Plan Termination**
   Dealing with lost participants often becomes the most time intensive aspect of a plan termination. DOL Field Assistance Bulletin 2004-2 spells out the steps that a plan fiduciary must take to locate missing participants. They are required to use either the IRS or Social Security Administration letter-forwarding program. How long must they wait for a response from this request—three months, six months? For a plan sponsor going out of business and trying to wrap up its affairs, it is too long. Also, for missing participants who are not fully vested, if they have not yet been cashed out, they become fully vested at plan termination, an additional expense to the plan sponsor. It is a far better situation if small accounts have been dealt with all along and there are no missing participants.
9. **Business Opportunity**
   Certainly, automatic rollovers add an extra step to the plan distribution process. But once the systems and procedures are in place, for most distributions it will mean nothing more than an additional piece of paper to go with the already required 402(f) notice. The automatic rollover will only apply to those participants who fail to respond in a timely manner. Also, in 2003, the DOL published Field Assistance Bulletin 2003-3, permitting plans to charge participant accounts for certain plan expenses, including accounts of separated, vested participants. With proper disclosure to the participant, their account can be charged for the fees necessary to implement the automatic rollover. This guidance permits administration firms to charge a reasonable fee for their services related to the automatic rollover and to be paid from the participant account, not by the plan sponsor. The fee disclosure to the participant will also serve as a strong motivator for them to respond in a timely manner to their distribution notice, avoiding the need for an automatic rollover.

Conclusion

Although implementing automatic rollovers requires some forethought and additional procedures, once established, they are effective tools for plan sponsors and for the administrative firms that offer them. ▲

Peter E. Preovolos is the president of PenChecks, Inc., the nation's largest independent distribution service provider in the country. PenChecks, Inc., specializes in employee benefit distributions from all types of qualified and non-qualified plans and was the first nationally recognized firm to establish a qualified Missing Participant IRA Rollover Program. Peter has over 39 years of experience in the benefits consulting industry. He has worked for Wells Fargo Bank, California First Bank (now Union Bank) and now owns his own employee benefits consulting firm, Alpha & Omega Financial Management Consultants, Inc., in San Diego, CA. Peter is a Registered Investment Advisor (RIA) and holds the Accredited Pension Advisor (APA) and Accredited Investment Fiduciary Auditor (AIFA) designations.

PBGC—Past, Present, Future . . .

by Harold J. Ashner, APM

These are extraordinary times for the Pension Benefit Guaranty Corporation (PBGC). It faces a declining insured universe, a dramatically increasing workload and serious financial difficulties.

Employers, plan participants, taxpayers and legislators are paying considerable attention to the PBGC's woes as the "save the PBGC" legislative debate rages on. This article provides a brief overview of the challenges facing the PBGC, with a focus on its single-employer plan termination insurance program.

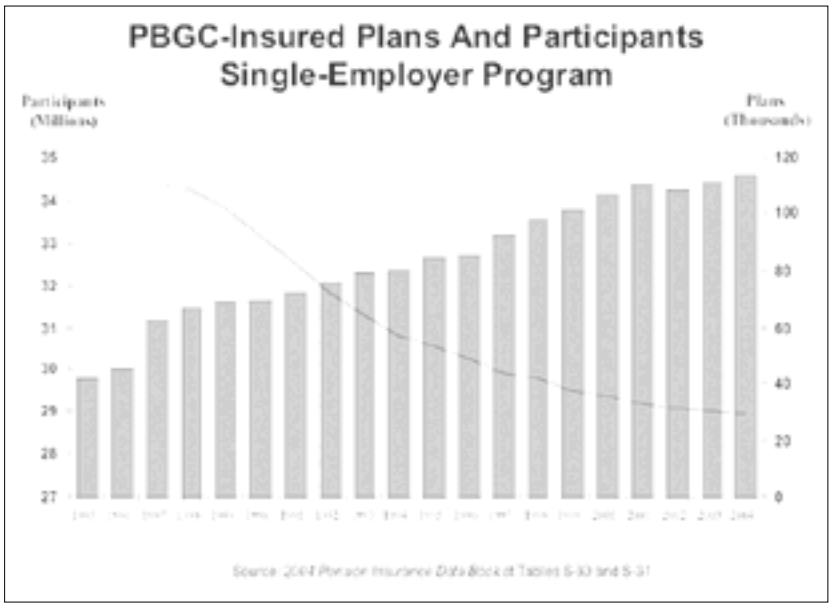
The PBGC was created in 1974 by ERISA to protect pension benefits in covered defined benefit pension plans. In carrying out its responsibilities, the PBGC has three statutory purposes: (1) to encourage the continuation and maintenance of voluntary private pension plans, (2) to provide timely and uninterrupted payment of pension benefits, and (3) to keep pension insurance premiums at the lowest levels consistent with its statutory responsibilities. Established as a federal corporation, the PBGC is governed by a Board of Directors consisting of the Secretary of Labor, who chairs the Board, and the Secretaries of Treasury and Commerce.

The PBGC protects pension benefits worth $2 trillion. At the end of FY 2004 (September 30, 2004), its insurance programs covered over 44 million participants and beneficiaries in over 31,000 private-sector defined benefit plans—about 35 million people in nearly 30,000 single-employer plans and nearly 10 million people in about 1,600 multiemployer plans. Also at the end of FY 2004, the PBGC was responsible for paying current and future retirement benefits to over 1 million people in nearly 3,500 terminated plans.

Although the PBGC is a government corporation, it is not funded by general tax revenues. Instead, its funding comes from four sources: mandatory insurance premiums paid for all covered plans, assets of the plans it takes over, its recoveries from employers in bankruptcy (which are generally only cents on the dollar) and earnings on its invested assets. The PBGC does not enjoy the "full faith and credit" of the US government. Thus, as a legal matter, if the PBGC were to run out of money, taxpayers would not be responsible for bailing it out. Of course, as a political matter, taxpayers may well have to foot such a bill and are, therefore, understandably concerned about the PBGC's future.

The Insured Universe: Declining Coverage

It is certainly no secret that, since the early 1980s, there has been a shift away from defined benefit pension plans in the private sector. The number of PBGC-insured single-employer defined benefit plans peaked at about 112,000 in 1985. By 2004, that number had dropped to less than 30,000. But as the number of covered plans has been sharply declining, the number of covered participants in those plans has been steadily increasing—from about 30 million in 1985 to about 35 million in 2004.



How can this be? It is because the decline in the number of plans has not been proportional across plan size categories, but rather has been concentrated primarily in the small plan universe. Plans with fewer than 100 participants experienced the biggest drop, from about 90,000 plans in 1985 to about 18,000 plans in 2004. At the other end of the size spectrum, the number of mega-plans with 10,000 or more participants nearly doubled, from 354 plans in 1985 to 628 plans in 2004.

The PBGC is concerned about frozen plans and, based in part on a recommendation by the General Accountability Office, is gathering additional data about them.

Is this increase in the number of covered participants good news for the health of the program? Unfortunately, no. The increase represents growth only in the number of retirees, surviving spouses and separated vested participants. The number of active participants actually dropped during this time period. In 1985, active participants represented about 72% of the PBGC's universe of covered participants; today, active participants represent less than 50% of that universe. In 1985, the PBGC's single-employer program covered almost 25% of private-sector wage and salary workers; by 2002 (the most recent year for which data are available), the covered percentage had dropped to 15%.

The bleak picture painted by these data is, in a sense, still rosier than the reality. The data do not take into account what appears to be a growing trend toward freezing plans. Yes, it is possible for a frozen plan to "thaw" and resume accruals. But realistically, the stronger likelihood is that at least most of these freezes are nothing more than "rest stops" on the way to plan termination, with the sponsor hoping for good investment experience to boost assets and higher interest rates to reduce liabilities. The PBGC is concerned about frozen plans and, based in part on a recommendation by the General Accountability Office, is gathering additional data about them.

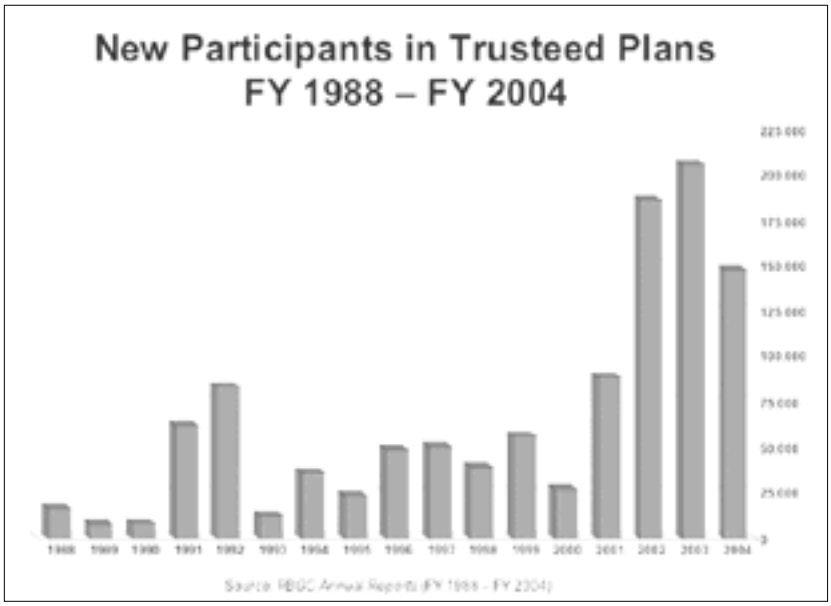
Will the move toward cash balance and other hybrid designs help to reverse the decline in the PBGC's covered universe? Perhaps it is not too late to stem the tide, assuming that the many legal uncertainties are resolved in the near future. As of 2003 (the most recent year for which data are available), only about 5% of PBGC-covered single-employer plans had a hybrid design. However, that percentage was far greater for large plans than for small plans, and these hybrid plans therefore represented a much larger percentage—about 25%—of the PBGC's single-employer participant base. The question is whether and to what extent there will be future growth in hybrid plans, particularly in new plans rather than just conversions of existing plans.

The PBGC-Trusteed Universe: Dramatic Growth

In contrast to the decline in the PBGC's covered universe, the universe of underfunded terminated plans the PBGC has taken over as successor trustee has been growing. Over the 30-year period from the PBGC's creation in September 1974 to the end of FY 2004, the PBGC had taken over 3,469 single-employer plans—an average of about 116 plans per year. Recent years have been much busier than average, with 144 PBGC trusteeships in FY 2002, 152 in FY 2003 and 178 in FY 2004.

What really drives the PBGC's workload, however, is not primarily the number of plans it takes over, but rather the number of participants in those plans. Recent years have seen explosive growth in the PBGC's in-house participant population. In FY 2001, the PBGC took in 89,000 new participants, an all-time record for the agency. Then, in FY 2002, the PBGC took in 187,000 new participants, more than doubling the previous year's all-time record. FY 2003 was yet another record-breaking year, with 206,000 new participants. The streak ended in FY 2004, when the PBGC took in "only" 150,000 new participants.

Each one of these additional participants represents additional work for the PBGC. When the PBGC takes over a plan, it continues paying retirees their benefits without interruption, subject of course to any necessary adjustments in estimating their entitlements under the insurance program. And the PBGC puts people in pay status at estimated levels as soon as they become eligible and apply for benefits. However, it can take some time for the PBGC to provide everyone in the plan with final benefit determinations telling them what they are entitled to under the



What really drives the PBGC's workload, however, is not primarily the number of plans it takes over, but rather the number of participants in those plans.

insurance program. This process requires the PBGC to perform many tasks, including gathering and reviewing plan records, making determinations about the values of bankruptcy recoveries, valuing the plan's assets and liabilities, and ultimately determining the levels of benefits that are guaranteed or funded and thus payable under the termination insurance program. Back in 1994, the PBGC was still issuing final benefit determinations for plans with termination dates as far back as 1974.

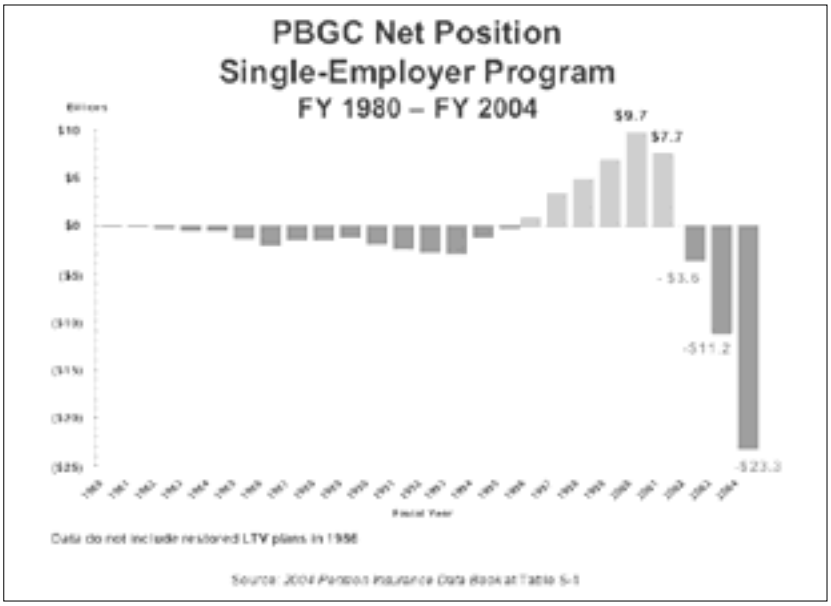
The PBGC has made a commitment to issue its final benefit determinations within one to three years after taking over a plan, and it has been making good on that commitment in recent years. In 1995, the PBGC streamlined its operations with a view toward stepping up its production. It went from issuing about 20,000 final benefit determinations each year through the early 1990s to issuing at least 60,000 each year since 1995, moving that number up to 75,000 in 2001, 82,000 in 2002, 92,000 in 2003 and 137,000 in 2004. The PBGC has also shifted in recent years from doing its administrative work *after* it has taken over a plan to doing a good deal of it *before* stepping in—working with the parties in advance to gather data and to identify and resolve issues up front. As a result of its various efforts to improve its operations, the PBGC has virtually eliminated its backlog of benefit determinations that are more than three years old. In FY 2003 and FY 2004, the PBGC averaged 2.2 years between the date of trusteeship and the date of the final benefit determination. The PBGC now faces a tough challenge: to continue to make improvements in this area, or at least to maintain its current timeframes, in spite of its sharply increased workload.

The PBGC's Finances: Good Times, Bad Times

The PBGC spent its first 21 years in a deficit position under the single-employer program, with the deficit peaking in FY 1993 at nearly $3 billion. Then, from FY 1996 through FY 2001, the program enjoyed a surplus position, with the surplus reaching $9.7 billion in FY 2000. So what led to the surplus? It was a combination of excellent investment experience in a decidedly up market (at a time when the PBGC was more heavily invested in equities than it is now) and the absence of any large underfunded terminations.

Things started to change during FY 2001, as the PBGC's surplus diminished from $9.7 billion to $7.7 billion. Then, during FY 2002, that

$7.7 billion surplus quickly turned into a $3.6 billion deficit—a loss of $11.3 billion in just one year, more than five times larger than any previous one-year loss in what was then the PBGC's 28-year history. FY 2003 saw the deficit more than triple to $11.2 billion, and in FY 2004 it more than doubled to $23.3 billion.



What led to this growing deficit? In part, it resulted from the PBGC having been forced to weather the same "perfect storm" that its insured plans have been dealing with in recent years—the poor market returns and declining interest rates that combined to increase the gap between its assets and its liabilities. But the major cause—resulting to some extent from that same perfect storm—was a few very large claims. The PBGC's financial position is heavily dependent on what happens to a relatively small number of companies and plans. Of the nearly 3,500 single-employer plan terminations that made up the PBGC's claims history through FY 2004 the companies representing just the top ten claims accounted for nearly 55% of its claims experience.

Is the PBGC running out of money? Not yet, at least. Yes, it is true that the PBGC's annual benefit payouts have seen a steep increase in recent years—from under $1 billion per year for all years through FY 2001 to $1.5 billion in FY 2002, $2.5 billion in FY 2003 and more than $3 billion in FY 2004. And it is true that the PBGC's FY 2004 liabilities of over $62 billion in FY 2004 far exceed its FY 2004 assets of $39 billion. But the liabilities,

which represent the present value of future benefits, are paid out over many years, largely because the PBGC pays non-*de minimis* benefits only in annuity form. The PBGC's FY 2004 annual report noted that "the Corporation's more than $39 billion in assets enable it to continue paying participants their guaranteed benefits for a number of years."

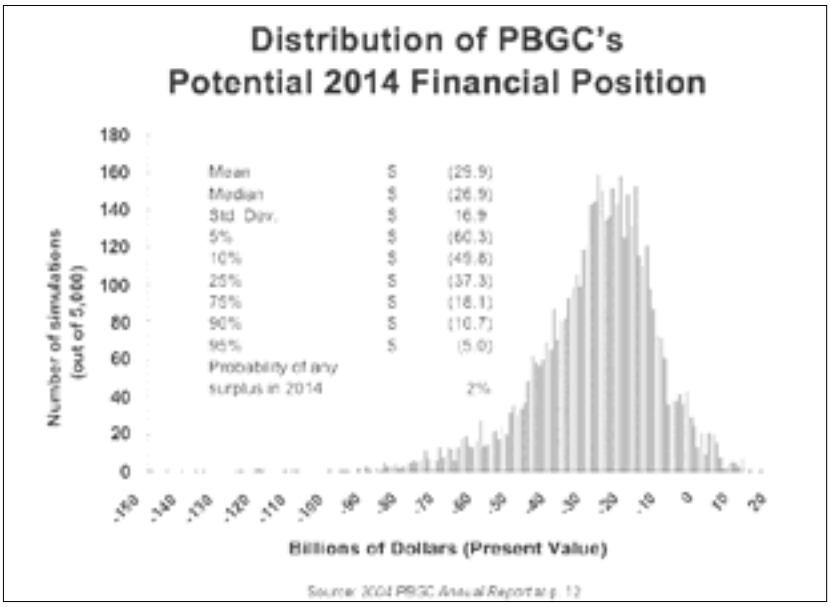
Although there is no immediate liquidity crisis at the PBGC, there is much concern about the future of the PBGC's financial position. Clearly, there is significant exposure that could cause the PBGC's current $23.3 billion deficit—reflecting only completed and "probable" plan terminations—to grow. Total underfunding throughout the PBGC's entire covered single-employer universe reached an all-time high in FY 2001 of $150 billion. By FY 2004, after some tough "perfect storm" years, that number had tripled to more than $450 billion. Of course, much of this total underfunding is in plans maintained by healthy companies that are unlikely to default on their pension debt. But the PBGC also tracks the portion of this total underfunding that is in plans maintained by non-investment-grade companies. That exposure, which the PBGC refers to as its "reasonably possible" exposure, has also been setting records. In FY 2002, the PBGC's reasonably possible exposure hit an all-time high of $35 billion, only to be eclipsed in FY 2003 and FY 2004 by successive all-time highs of $85 billion and $96 billion.

Outlook for the Future

So what is the future of the PBGC's deficit, putting aside the effects of possible future legislative changes? The closest thing the PBGC has to a crystal ball is its Pension Insurance Modeling System ("PIMS"), a stochastic model. Although PIMS cannot predict the future, it is designed to assign probabilities to various potential future loss levels by running thousands of simulations. The resulting probabilities are sobering. Starting with the FY 2004 deficit of $23.3 billion, PIMS tells us that the probability of the PBGC enjoying a surplus of any amount in 2014 is only 2%; that the probability of the PBGC having either a surplus of any amount or a deficit of $10.7 billion (expressed in 2004 dollars) or less

Of course, the future of the PBGC depends on factors far beyond the legislative framework under which it will operate. The economy will play a major role, as will demographic trends.

in 2014 is only 10%; and that there is also a 10% probability the deficit will then be $49.8 billion *or more*.



Like PIMS, I cannot predict the future of the PBGC. There are many variables involved, not the least of which is the resolution of the ongoing legislative debate on how best to shore up the PBGC and the defined benefit plans it insures. Questions abound, particularly about where to strike the balance between various competing considerations. How much can the funding rules be strengthened without causing employers to fail (leading to distress or involuntary terminations) or to exit the defined benefit system (through standard terminations)? How much of the cost of the termination insurance program should be borne by employers sponsoring well-funded plans versus those sponsoring poorly funded plans? Should employers with below-investment-grade credit ratings be subject to tighter premium or funding rules than other employers? Should troubled plans, however defined, be subject to restrictions on benefit improvements, benefit accruals and forms of benefit and, if so, what should those restrictions be? Should reporting and disclosure obligations for such plans be increased? If so, how? Should shutdown benefits continue to be permitted as part of a defined benefit plan and, if so, under what circumstances and to what extent should they be funded or guaranteed? Should the rules build in greater flexibility for the various stakeholders to negotiate a plan "workout" that could avoid the need for plan termination? The list goes on.

Of course, the future of the PBGC depends on factors far beyond the legislative framework under which it will operate. The economy will play a major role, as will demographic trends. Perhaps most important to the long-term viability of the PBGC, however, is the question of whether defined benefit plans will become extinct or, perhaps with the help of hybrid plan designs, enjoy a revival.

Despite the many challenges the PBGC is facing, one can argue that the PBGC has in some ways been an amazing success story. Over the years, the PBGC has successfully replaced most or all of what would otherwise have been lost pension benefits for over a million American workers and their beneficiaries. And it has provided valuable assurance for tens of millions more in ongoing plans. But there is clearly room for at least some improvement in the rules governing the PBGC and its insured universe. Fortunately, attention is now focused on how best to make such improvements.

Author's note: The data reported in this article come from a variety of PBGC sources, including in particular the *2004 Annual Report* and the *2004 Pension Insurance Data Book*, both available on the PBGC's Web site at **http://pbgc.gov/publications/default.htm**. ▲

Harold J. Ashner, APM, is a partner with Keightley & Ashner LLP, a Washington, DC-based law firm specializing in Pension Benefit Guaranty Corporation matters. He previously served as Assistant General Counsel for Legislation and Regulations at the PBGC. In early 2005, he left the PBGC to form Keightley & Ashner LLP with James J. Keightley, the PBGC's General Counsel, and William G. Beyer, the PBGC's Deputy General Counsel.

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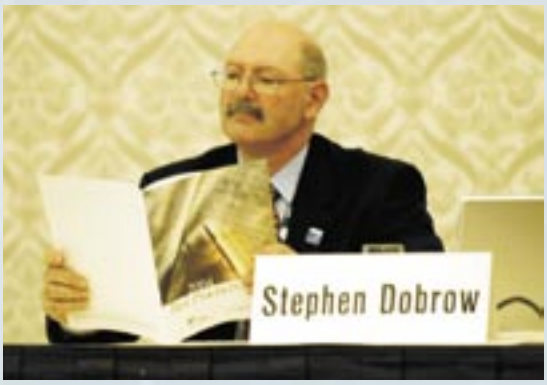
Stephen H. Rosen, MSPA, CPC, ASPPA President, 2004-2005, addresses attendees at the WP&BC/ASPPA joint conference.

Ian H. Altman, FSA, EA, WP&BC President, 2004-2005, welcomes attendees to Meeting Midway.

IRS representatives James E. Holland, Jr., and Lisa Mojiri-Azad, Esq., answer questions from the audience during the Actuarial Q&A.

Jane Berry, Meeting Midway conference co-chair, introduces the comedy troop Capitol Steps, who performed at one of the luncheons.



Stephen L. Dobrow, CPC, QPA, QKA, reviews the 2004 Best Practices Survey, a part of his session on Discussion of Financial Survey Results.

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Meeting Midway attendees give their full attention during the Opening General Session.

Vincent K. Snowbarger, of the PBGC, presented important statistics about retirement plans.

Meeting Midway attendees enjoy their time at the San Diego Zoo.

Denise E. Calvert, ASPPA Director of Membership, is greeted by one of the many characters at the San Diego Zoo.

Photos courtesy of Chip Chabot

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2005 Meeting Midway Speakers

Ian Altman
Betty Barnett
Avaneesh K. Bhagat, QPA
William Bortz
Laura Boyd
Alex M. Brucker, Esq., APM
Edward E. Burrows, MSPA
Nancy Campbell, Esq.
Amy L. Cavanaugh, CPC, QPA, QKA
Jeffrey C. Chang, Esq., APM
Greta E. Cowart, Esq.
Melanie Curtice
Scott A. Czaja
Mark A. Davis
Ronald Dean, Esq.
Lawrence Deutsch, MSPA
Stephen L. Dobrow, CPC, QPA, QKA
Anthony Eppert
David B. Farber, MSPA
Ilene H. Ferenczy, CPC
Thomas J. Finnegan, MSPA, CPC, QPA
David E. Gordon, Esq.
Brian H. Graff, Esq., APM
A. Kent Greene, Esq.
Cynthia A. Groszkiewicz, MSPA, QPA
Ann Habernigg, Esq.
Sara C. Hart
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Charles Hay
Nell Hennessy
Constance M. Hiatt, Esq.
Craig P. Hoffman, Esq., APM
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William G. Karbon, MSPA, CPC, QPA
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Norman Levinrad, FSPA, CPC
W. Walden Lloyd, Esq.
Harold A. Loeb
John E. Lucas, JD, CPC
Tom McCormick
Bertha Minnihan
Lisa Mojiri-Azad
Cheryl L. Morgan, CPC, QKA
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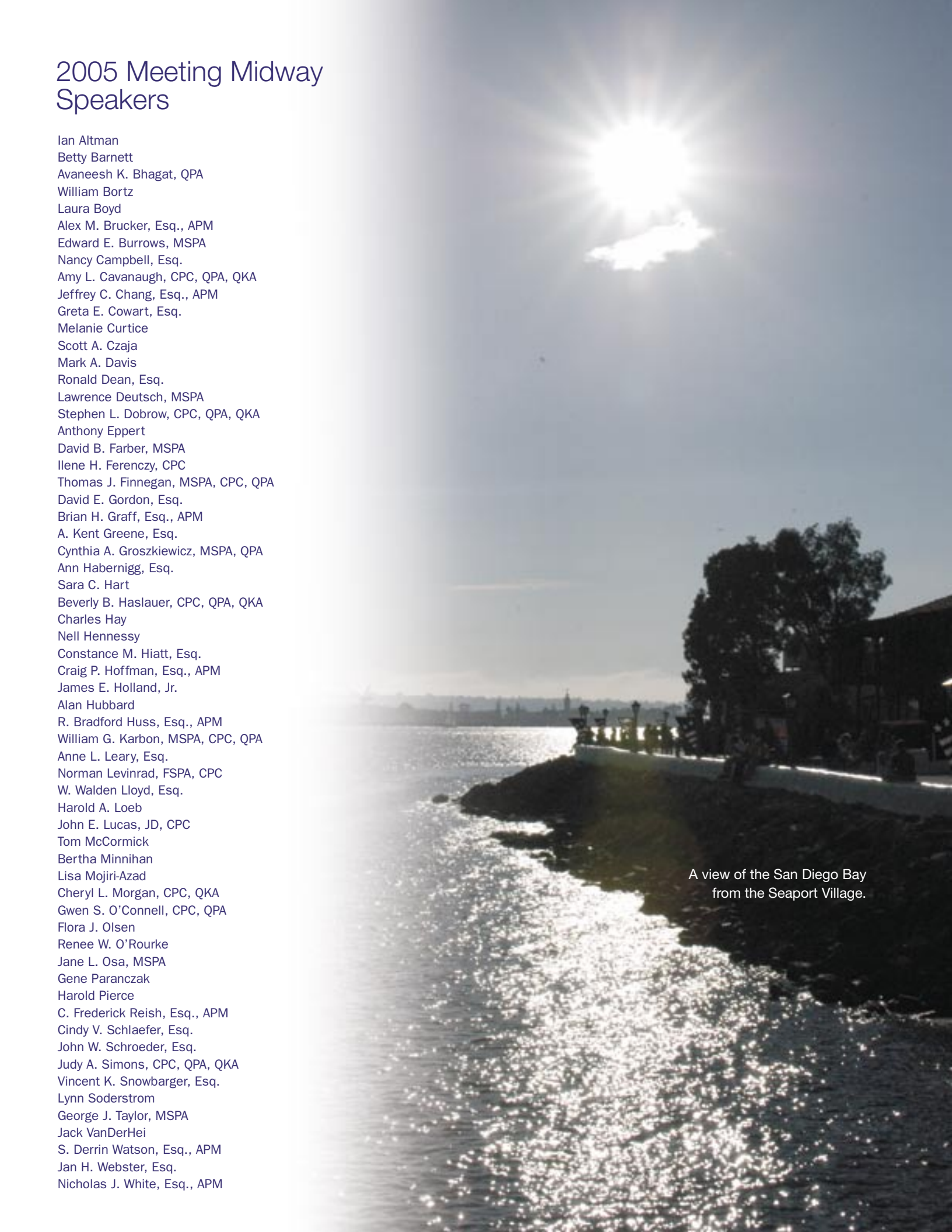
C. Frederick Reish, Esq., APM
Cindy V. Schlaefer, Esq.
John W. Schroeder, Esq.
Judy A. Simons, CPC, QPA, QKA
Vincent K. Snowbarger, Esq.
Lynn Soderstrom
George J. Taylor, MSPA
Jack VanDerHei
S. Derrin Watson, Esq., APM
Jan H. Webster, Esq.
Nicholas J. White, Esq., APM



A view of the San Diego Bay from the Seaport Village.

ASPPA
WORKING FOR AMERICA'S RETIREMENT

2006 Conference Calendar

Check www.aspa.org for updates on these and all of our other educational opportunities!

January

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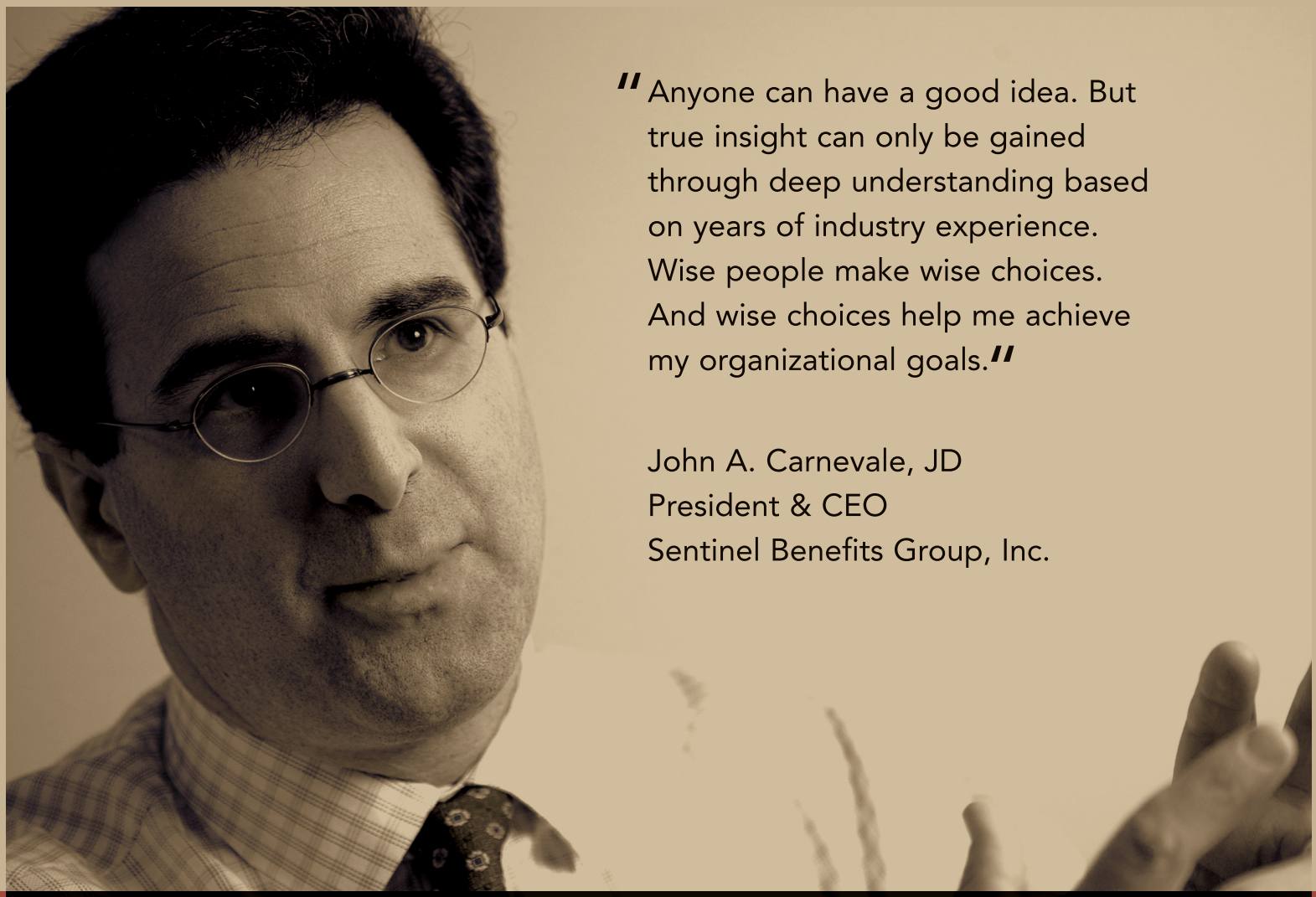
Save the Dates for 2006!

Jan 26-27	Los Angeles Benefits Conference • Los Angeles, CA
Feb 26-28	The 401(k) SUMMIT • Orlando, FL
Apr 24-25	DOL Speaks: 2006 Employee Benefits Conference • Washington, DC
May 8-9	Mid-Atlantic Area Benefits Conference • Philadelphia, PA
May 15-16	Great Lakes Benefits Conference • Chicago, IL
Jun 7	Northeast Area Benefits Conference • Tarrytown, NY
Jun 8	Northeast Area Benefits Conference • Boston, MA
Jun 9-10	The Advanced Actuarial Conference • Boston, MA
Jul 16-19	ASPPA Summer Conference and Western Pension & Benefits Conference Annual Conference • Las Vegas, NV
Oct 22-25	2006 ASPPA Annual Conference • Washington, DC



"Anyone can have a good idea. But true insight can only be gained through deep understanding based on years of industry experience. Wise people make wise choices. And wise choices help me achieve my organizational goals."

John A. Carnevale, JD
President & CEO
Sentinel Benefits Group, Inc.

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Benefits, Rights and Features

by Thomas E. Poje, CPC, QPA, QKA

Benefits, Rights and Features (BRFs) provided by a plan must be available on a nondiscriminatory basis.

In order for a plan to pass these BRF requirements, all benefits, rights and features must pass both the current availability test and the effective availability test. The guidelines are found in Treas Reg §1.401(a)(4)-4. Below is a summary description of BRF requirements.

Definitions

Optional Benefits [1.401(a)(4)-4(e)(1)]

The regulations define optional benefits as those distribution alternatives (including the normal form of benefit) that are available under the plan. These alternatives also include early retirement benefits, any early retirement subsidies or QSUPPs (Qualified Supplemental Social Security Benefits), if available. Different optional forms of benefits exist if they are not payable on substantially the same terms as other benefits. These different optional forms may arise as a result of certain characteristics or requirements of the benefit:

- Payment schedules (*e.g.,* annuity rather than lump sum);
- Timing (*e.g.,* termination of employment rather than a particular age);
- Commencement (*e.g.,* immediate rather than after a five-year break in service);
- Medium of distribution (*e.g.,* cash rather than stock); or
- Eligibility requirements (*e.g.,* a distribution option only available to a particular division).

These above types of optional benefits are protected, which means once accrued they cannot be eliminated; however, not all differences are subject to the optional benefit rules. There are, of course, exceptions to the rule:

- Different benefit formulas [These are tested under the nondiscrimination rules (*e.g.,* cross-tested plans)];
- Uniform normal retirement age (*e.g.,* normal retirement of age 65 and five years participation would not be considered an "optional benefit" merely because some people have a retirement age other than 65.); and

- Distributions that use a lower interest rate, if the present value of the accrued benefit is less than $25,000. [This situation commonly arises in defined benefit plans due to involuntary cash out minimums that are less than $5,000. This issue would seem to be a moot point anyway, since more than likely there would be few HCEs with Present Values of Accrued Benefits (PVABs) less than $25,000 as compared to NHCEs with less than $25,000.]

Ancillary Benefits [1.401(a)(4)-4(e)(2)]

If you look at the type of benefits that are covered under this section, maybe they should be referred to as "anc-ill-ary." These benefits include Social Security supplements (but not QSUPPs), life insurance, disability benefits, death benefits, pre-retirement death benefits and shutdown benefits.

Other Rights and Features [1.401(a)(4)-4(e)(3)]

"Other rights and features" are not defined specifically in the regulations, but they simply refer to those rights that are not considered to be optional forms or ancillary benefits, as described above. The following are examples, but rights and features would not be limited to this list:

- Loan provisions;
- Right to direct investments (*e.g.,* If one must have a $5,000 balance to direct his or her investment, the right is not currently available to participants with balances less than $5,000.);
- Right to a particular form of investment;
- Right to make deferrals or after-tax contributions;
- Right to each rate of deferrals or after-tax contributions;
- Right to each rate of matching contribution;

It is important to remember that you can permissively aggregate groups if one benefit, right or feature is inherently equal to or greater than another benefit, right or feature.

- Right to make rollovers to (even before meeting a plan's eligibility requirements) and from the plan; and
- Right to purchase additional retirement or ancillary benefits (*e.g.,* life insurance).

Once the different benefits, rights and features have been determined, they are tested for both "current availability" and "effective availability".

Current Availability [1.401(a)(4)-4(b)]

The current availability test is satisfied if the group of employees tested satisfies 410(b), disregarding the average benefits percentage test. In other words, only the nondiscriminatory classification test needs to be passed. An individual is considered benefiting only if the BRF is currently available to that employee.

Recall that there are two parts to the nondiscriminatory classification test:

1. Reasonable classification [As long as the plan does not make a BRF available to a group of employees by name (or a classification that might be construed as having the same effect), this test will be passed.]
2. Nondiscriminatory classification (This test is the mathematical test. As long as the percentage of NHCEs as compared to the HCEs is greater than the employer's safe harbor percentage, the plan passes this test.)

Example:

A plan provides for different rates of matching contribution, based on years of service as per the schedule below.

<5 years	50% of deferrals
≥ 5 years and <10 years	75% of deferrals
≥10 years	100% of deferrals

	<5	5 – <10	≥10	Total
NHCE	45	20	5	70
HCE	0	6	2	8

Since the rate of match is different for the participants, this right must be tested for nondiscrimination purposes (in addition to the ACP test).

The first step under the nondiscrimination classification test would be to determine the nonhighly compensated employee concentration percentage. This result would be the number of NHCEs divided by the total number of employees in the testing group (70/78 = 89.74%). The safe harbor percentage for a plan with 89% NHCE concentration (always round down) is 28.25%.

The percentage of NHCEs receiving at least a 100% match as compared to the HCEs at 100% match is (5/70)/(2/8) = 28.57%. Since this result is greater than the safe harbor percentage of 28.25%, the group of NHCEs receiving 100% match is deemed to be nondiscriminatory. A similar test must be performed for each level of match.

It is important to remember that you can permissively aggregate groups if one benefit, right or feature is inherently equal to or greater than another benefit, right or feature. Thus, those participants who have received a 100% match are also treated as benefiting. The test for employees receiving the 75% match can include those receiving the 100% match. (25/70)/(8/8) = 35.71%. Therefore, this group also passes the nondiscrimination classification test.

Age and service conditions are disregarded in determining whether or not an optional benefit is *currently available*. Thus, for example, a lump sum that is available for employees who terminate on or after age 55 with ten years of service is considered currently available to all employees. It does not matter if the employee is currently only age 48 or if the employee is age 57 with one year of service. Age and service conditions do apply, however, to ancillary benefits, rights and features. For example, if an individual must be age 55 in order to direct investments, the age condition cannot be disregarded since this requirement is not an optional benefit but a right and feature instead. In addition, if the age and service conditions must be completed within a time-frame (*e.g.,* attainment after age 55 and 10 years of service and before 12/31/2005), then only those employees who could satisfy those conditions by 12/31/2005 would be considered to have the BRF as being currently available.

In addition to age and service conditions, there are other conditions that are disregarded for BRFs testing. Most of these conditions can be found in Treas Reg §1.401(a)(4)-4(b)(2)(ii)(B). Unlike age and service conditions, these BRFs exceptions apply to ancillary benefits as well as optional benefits. Conditions that apply to participants related to the following items can be ignored for BRFs testing purposes:

- Attaining a specified vesting percentage (*e.g.,* an option is only available to those employees who are at least 50% vested);
- Termination of employment (*e.g.,* distribution is available only if you quit);
- Death;
- Satisfaction of specified health condition;
- Disability;

- Hardship;
- Family status (*e.g.,* It is not necessary to provide a QJSA to an unmarried individual.);
- Default on a plan loan;
- Execution of a covenant not to compete;
- Having to file an application for benefits or similar ministerial act;
- Requiring an election of benefit form;
- Execution of a waiver of rights under the Age Discrimination in Employment Act or other similar law, or absence from service, etc.;
- Mandatory cash outs (or other similar BRFs) that require less than a certain amount (Logically, it would make sense that this would be deemed to be currently available to all participants since, as a general rule, a greater percentage of NHCEs would fall into this group. Obviously, the reverse would also be true—if the plan required a minimum amount, such as $25,000, to self direct funds, then the plan would need to perform additional discrimination testing.);
- Loan provisions of the plan requiring a loan amount to be at least $1,000; and
- 70½ minimum distributions (see Notice 97-75).

Effective Availability [1.401(a)(4)-4(c)]

There is no math involved in the effective availability test. It is simply based on all facts and circumstances—the BRF must not substantially favor HCEs. In most cases, this test might best be summed up as a "smell test." Was the BRF communicated to all employees? If an option is currently available to all employees, but all HCEs take advantage of it and only a few NHCEs take advantage of it, then it might be surmised that the BRF was not made known to all employees. Therefore, to be on the safe side, it might be advisable to have employees sign something indicating they have been informed of the benefit, right or feature in question. Similarly, one of the reasons for the requirement to issue a notice to participants related to safe harbor 401(k) plans was the government's concern that management would take advantage of the free ride on the ADP test and simply not inform employees that the plan even existed.

Consider this example. A plan has one HCE who is age 40 and has 15 years of service and one NHCE who is age 50 and has five years of service. The plan is amended to provide an early retirement subsidy for those employees who reach age 55 and have 20 years of service. Recall that age and service are disregarded for purposes of current availability, so the plan passes this portion of the test. However, at age 55, the NHCE will only have ten years of service. Thus, the plan fails the effective availability test. Ignoring age and service only applies to current availability.

Special Rules [1.401(a)(4)-4(d)]

Mergers and Acquisitions

Disregard the transition rules that a plan gets a free ride until the last day of the first plan year following the year of the merger found in Code Section 410(b)(6)(C). Thus, if one of the groups has a BRF that includes a greater percentage of HCEs, it might be necessary to eliminate that BRF or expand the group of employees having that BRF.

Example:

Company A acquires Company B.
Company A maintains a 401(k) plan with pooled investments.
Company B had a 401(k) plan with self-directed investments.

If the employees of Company B are allowed to continue to self-direct their investments, this option must be tested for discrimination purposes.

Frozen Participants

Those employees who are not currently benefiting are tested separately from active employees. Current availability is satisfied if the nondiscrimination tests were only available to frozen participants or the right would satisfy the nondiscrimination tests if frozen and current participants were tested together.

As a general rule, you must test in the year that an amendment of a BRF to a frozen participant is first effective. If it "smells bad" (*i.e.,* favors an HCE), then it probably is bad.

Early Retirement Windows

Early retirement windows can be disregarded if they satisfy 1.401(a)(4)-3(f)(4)(iii).

Unprotected Contingent Events

Test unprotected contingent events (disregarding age and service conditions) as if the event has actually occurred.

ESOP Diversification

By law, an ESOP is required to permit a participant who has reached age 55 and has at least ten years of participation to diversify the stock into other core investments. The plan is automatically considered to pass both the current and effective availability tests.

Catch-up Contributions

Example:

The plan limits deferrals to 15% of pay each payroll.

HCE-1 is age 50 and makes $210,000. In 2005, HCE-1 would be able to defer $14,000 plus an additional $4,000 in catch-up contributions.

NHCE-1 is age 52 and makes $20,000. With the 15% cap on deferrals, NHCE-1 will only be able to defer $3,000 for the year. The plan *must* allow this participant the option of being able to defer an additional $4,000 in catch-up contributions.

Note: One possible workaround suggested in the regulations is to permit catch-up eligible employees to increase their deferrals over the plan's deferral limit by a pro-rata share of the catch-up limit. Assuming 52 payroll periods for 2005, the participant could contribute an extra $76.92 per payroll ($4,000/52).

There are some special rules that apply regarding catch-up contributions. These rules are addressed in 1.414(v)-1(e). For example, only participants age

There is no math involved in the effective availability test. It is simply based on all facts and circumstances—the BRF must not substantially favor HCEs.

50 or older may make catch-up contributions. In some plans, a significant number of employees would therefore be unable to make catch-up contributions. This specific situation would not be considered discriminatory. However, there could be problems if a plan limits deferrals to a certain percentage of pay each payroll, if that limitation prohibits some catch-up eligible participants from the opportunity to make additional catch-up deferrals.

Example

The plan limits deferrals to 75% of pay.

NHCE-2 is age 55 and makes $18,000. His spouse makes sufficient income that his compensation is really only "supplemental" income. However, if he defers the maximum, the resulting deferral would only total $13,500. Thus, he was not able to take advantage of the catch-up availability. Nevertheless, the plan is still deemed to be nondiscriminatory in regards to catch-up contributions.

A plan that limits deferrals to 75% of compensation or more is deemed to be limiting deferrals to "available cash" and does not need to permit employees to make additional contributions.

Correcting a Failure

There is no remedy for correcting an effective availability failure, except under the correction program. To correct a current availability failure, the plan would need to expand the availability of the BRF to other employees. The plan amendment must be in place within 9½ months after plan year end.

In some cases, it might be possible to eliminate a BRF to avoid testing problems (*i.e.,* the "I can see it coming, so let's fix now" approach). With this approach, changes must be made by the last day of the current plan year, since a plan cannot eliminate something that has already been accrued.

Protected Benefits

As a general rule, optional forms of benefits or any early retirement benefits are protected and cannot be eliminated retroactively. In 2000, the regulations were modified to permit defined contribution plans to be amended to eliminate optional forms of benefits (*e.g.,* life annuity), provided that a lump sum option was in place that was *otherwise identical* to the optional forms of benefits that were eliminated. *Otherwise identical* requires timing of payments to be retained, and no additional eligibility requirements. Such amendments would not apply to those participants within 90 days of their annuity starting date. Effective January 25, 2005, the regulations were further modified to eliminate this 90-day requirement. However, such amendments can only apply to distributions with annuity starting dates after the amendment is adopted, and cannot apply to those distributions that have already commenced. It should be noted that while some optional forms of benefits can be eliminated, the joint and survivor options that apply to money purchase plans are still required.

Conclusion

Ensuring that the BRFs of a plan are provided on a nondiscriminatory basis is an important step in the plan design and administration process. Although some of these rules are well-defined, the fact that some situations require a more subjective analysis underscores the importance of having an overall understanding of the scope and substance of these requirements. (Note: For those candidates pursuing ASPPA's QKA credential, one's knowledge of BRFs is tested as part of the DC-3 exam.) ▲

Thomas E. Poje, CPC, QPA, QKA, is a principal and director of technical compliance at Dorsa Consulting, Inc. in Jacksonville, FL. Tom has been an instructor for several courses within the ASPPA education program. He also co-authored the Coverage and Nondiscrimination Answer Book. *Tom is also a frequent lecturer at employee benefits seminars and conferences.*

FROM THE PRESIDENT

Hail to the Chiefs

by Stephen H. Rosen, MSPA, CPC

On June 4, 2004, ASPPA's Board of Directors adopted a new management structure to help carry out our optimistic strategic plan. The model was developed by adding a new level of upper management in our National Office, staff Chiefs. Each staff Chief is responsible for the management of a specific area within ASPPA. This new model, which has been in place for only a short period of time, has been praised by organizational consultants as dynamic and progressive. I am pleased that our Board is so forward-thinking.

One of ASPPA's greatest challenges has been to expand our volunteer workforce without creating unreasonable time commitments and pressures on our members who do step up and volunteer. By adding the staff Chiefs, we are better able to meet that goal and manage all of our activities in an efficient manner. We are also better positioned for expected future growth and new endeavors.

We are very proud of our Chiefs and the high caliber of professionalism that each of them brings to our organization. They partner with our volunteers as co-chairs of our major committees and take full responsibility for implementation of projects developed by those committees. Also, while sitting on the "AMT" (ASPPA Management Team) with their volunteer partners, our Chiefs coordinate projects that may cross over more than one committee. I'm sure that you will share our excitement after learning more about their impressive qualifications.

(Left to right) Bunny Wing Fernhall, Chief of Pension Education; Pecanne A. Jennings, Chief Marketing Officer; Jane S. Grimm, Chief Programs Officer; Thomas Hopkins, Chief Financial Officer and Teresa T. Bloom, APM, Chief of Government Affairs.

Chief of Government Affairs: Teresa Turyn Bloom, APM

Teresa Turyn Bloom, APM, Chief of Government Affairs, has been with ASPPA since September 1, 2004. Prior to joining ASPPA, Teresa worked for more than 13 years as a pension law specialist at the Department of Labor's Employee Benefit Security Administration (EBSA) in Washington, DC, in both the Office of Policy and Research (OPR) and the Office of Regulations and Interpretations (ORI).

Teresa served as pension team leader for OPR's legislative analysis division, where she analyzed technical policy issues relating to pension and employee benefits. While at OPR, Teresa served on a multi-agency task force on defined benefit reform and wrote legislative summaries, side-by-sides, expert testimony and in-depth analyses on a variety of politically sensitive and precedent-setting national legislation and regulatory proposals from various government agencies.

Between appointments at DOL, Teresa worked at the Employee Benefit Research Institute (EBRI) in Washington, DC, as the Government and Industry Liaison with Congress. While there, she presented several briefings to Hill staffers on pension-related issues, participated in the writing and coordination of all EBRI congressional testimony and other EBRI publications and served as the technical expert on ERISA issues for EBRI members and the press.

Teresa also spent close to ten years working in EBSA's ORI in the Division of Fiduciary Interpretations and Regulations where she wrote advisory opinions, information letters, technical advice and assistance memoranda regarding the application and interpretation of Title I of ERISA to pension benefit issues. Her prior work experience also includes working at the Internal Revenue Service's Employee Plans Division in Washington, DC, during law school, as well as

several years of marketing 401(k) plans in Kentucky and West Virginia between her undergraduate and law school years.

Teresa received her Juris Doctor from the George Mason University School of Law in Arlington, VA. She has a Bachelor's degree in Business Administration from the University of Kentucky. Teresa is a member of the District of Columbia bar.

Teresa lives in DC with her husband, Marc, and her two stepchildren, Sam, age 17, and Ellen, age 14. Her husband Marc works as the Director of Facilities Operations for the Food and Drug Administration. Teresa enjoys spending time with their two dogs, a 4½ year-old sheltie, Ebay, and one year-old miniature poodle, Andy, as well as their two cats, Ali and Becka. She is also an accomplished pianist and has studied and played the piano for over 30 years.

Chief of Pension Education: Bunny Wing Fernhall

Bunny Wing Fernhall, Chief of Pension Education, joined ASPPA in March of this year. Bunny's background is with a Fortune 500 corporation, a major university, a national trade association and includes professional career experience in executive management, strategic planning, program development, higher education administration and fiscal management. With more than 20 years of experience in a variety of arenas, Bunny has proven herself to be a skilled executive, visionary entrepreneur and an adroit trouble-shooter and growth expert. She has earned a reputation for providing skilled advice and implementing proactive policy and operational changes to position organizations for growth and program success. Her diverse experience also includes financial management, corporate real estate management and newspaper publishing.

With her CFP education and tax and financial consulting background, Bunny hit the ground running enhancing the Education and Examination (E&E) programs at ASPPA. She immediately engulfed herself in the development of the new Qualified Plan Financial Consultant (QPFC) program, engaging ASPPA volunteers, E&E Leadership and Technical Education Consultants (TECs) in an intense and fast-paced exercise in program design and curriculum development. As an employee of the University of Michigan through an arrangement with ASPPA Pension Education and Research Foundation (PERF), Bunny's unique background and perspective on lifelong learning provides a distinct advantage as ASPPA strives to be the preeminent educator for all retirement professionals.

A specialist in institutional advancement, Bunny previously served as executive director of medical center advancement at The George Washington University Medical Center. There she directed her team to realize its record-setting campaign goal of $175 million. Her propensity for bringing key stakeholders together created opportunities for volunteers to engage and stimulate new prospects in university activities and areas of potential growth. Bunny also served as the director of strategic planning and administration at GWU, developing new program initiatives and streamlining fiscal responsibility. Serving most recently as a credential specialist for a national trade association, Bunny engaged in marketing and building their association credentialing program. In this capacity Bunny expanded their professional program to record participation and revenue results.

Bunny earned her MBA in Financial Management from the Pace University Lubin School of Business, and her undergraduate degree is in Mathematics and Economics.

Bunny is a self-proclaimed "foodie" who enjoys gardening, gourmet cooking, eating what she grows and cooking and dining with friends. She lives in Reston, VA.

Chief Programs Officer: Jane Grimm

Jane Grimm, Chief Programs Officer, joined ASPPA on September 1, 1997. Jane's outside-of-the-home work experience began in 1982 when, after having done extensive PTA and school volunteer work, she took a part-time job at her children's elementary school doing the school finances and eventually became the principal's secretary. After a brief stint as the Finance Officer at the local high school, Jane was lured by her school board member into working for the local elected supervisor of the now Braddock District in Fairfax County. Jane later joined the International Communications Industries Association (ICIA) as their director of membership. Jane worked at ICIA for nearly five years and then served as the public relations director for the Arts Council of Fairfax County, the organization that puts on the International Children's Festival each year.

Jane was hired by ASPPA as the exam assistant and she served in that position for only one day and then became the course coordinator in the Education and Examination (E&E) Department. In January 1998, Jane became E&E director. Jane has also served as Director of Administration and Education for ASPPA and she served as Managing Director prior to ASPPA's new management structure.

Jane is a true product of Fairfax County, attending Washington Irving Intermediate,

Woodson High School and George Mason College—when it was still part of the University of Virginia. Jane still lives in Fairfax County with her husband of 35 years, Courty, a mortgage banker. They have given "roots and wings" to two boys, David, 33, and Blake, 28, and have one wonderful daughter-in-law, Stacey. Courtland Jacob Grimm, six years old, is the only grandchild so far, but Jane has high hopes for more—possibly a little someone to dress in pink, not that boys aren't great, too.

Jane enjoys people in general, her friends and family in particular, cooking, reading, the beach, traveling just about anywhere at anytime, shopping (anywhere and anytime), going to the movies and tending to the townhouse where she and Courty have lived for 30 years.

Chief Financial Officer: Thomas Hopkins

Thomas Hopkins, Chief Financial Officer, joined ASPPA on April 15, 2004. Tom began his nascent career in accounting after receiving his BS in Economics from UMBC (the University of Maryland Baltimore County) as a staff accountant in the public accounting arena. Tom explains that it was not really an arena, more like a small cube without windows. It did have a desk and a weird contraption called a ten-key adding machine which, by the way, has more than ten keys.

Despite this stark setting, he persevered and later joined the Phillips Corporation as an assistant controller, which offered a job with an office, but no windows. Among the various assignments at the Phillips Corporation was the opportunity to work with the leasing subsidiary and another strange gadget called an HP-12C, which had several keys with all sorts of initials like PV, FV and PMT. The complexities of these functions notwithstanding, he found time to study and pass the CPA exam.

From the Phillips Corporation, he moved into the Biotech industry by becoming the controller for a division of Perkin Elmer (NYSE: PKI) called Wallac, Inc. This position came with an office with a window (actually two windows!), a credenza and an even more sophisticated contraption called a laptop computer that had even more keys. Eventually, Tom became the VP, Finance for this organization, which included responsibilities for HR, IT and distribution. By a strange twist of fate, the distribution department did not have a catchy acronym.

After his tenure at Perkin Elmer, he opened his own consulting business and returned to school to get his MBA degree. With MBA firmly in hand, he returned to the biotech industry as the director of finance and administration with MSD, (Meso Scale Discovery), a joint venture with IGEN International (NASDAQ: IGEN).

In between reading, studying and writing research papers, he also met the future Mrs. Hopkins, Tricia, also a CPA, at graduate school. In addition to sharing professions, Tricia also shares Tom's hobbies of running, golfing and solving crossword puzzles. Tom and Tricia reside in Old Town Alexandria. They each have two adult daughters, share one grandchild and a grand-dog.

Chief Marketing Officer: Pecanne Jennings

Pecanne Jennings, Chief Marketing Officer, joined ASPPA's staff on January 1, 2004.

With over 15 years of experience in marketing, Pecanne's industry/client experience is very diverse, from marketing cruise excursions to biotechnology to her most recent experience at the US Department of State where she served as a marketing consultant to market the foreign service/diplomat careers. Throughout her career, Pecanne has continually explored different ways to apply her specialized knowledge and skill set to a wide range of clients.

One of Pecanne's earliest jobs was as a media planner, where she learned media "math" and bought television and radio time for local advertisers. Realizing that media planning was just one aspect of the whole marketing mix, she moved to a subsidiary of a large multi-national (SODEXHO) where she spent ten years broadening her knowledge base, learning about sales and marketing and the operations of the cruise industry. After several promotions and completing her MBA studies, Pecanne moved to the Washington, DC, metro area to begin the consultancy phase of her career.

Interestingly, ASPPA (then it was ASPA) was her first not-for-profit client and she worked diligently to understand the retirement plan industry and figure out how to effectively market the QKA credential. Other consulting opportunities presented themselves before Pecanne joined ASPPA as a full-time employee. Most notably, Pecanne served as the lead marketing consultant for the US Department of State's Diplomatic Readiness Initiative; the project entailed developing and implementing a new campaign to increase the number of Foreign Service Written Exam takers. A wildly successful exam campaign in 2003 yielded more Foreign Service exam takers than American Idol contestants (that was the sound bite public affairs used for buzz at the time).

In her spare time, Pecanne can be found practicing yoga, working out, enjoying ethnic dining, listening to world music, hosting soirees and traveling to new places (her last visit was to Poland in December). As a single gal, she enjoys a full social life, which includes going out salsa dancing and coaxing friends (or dates) to see quirky, independent films. Her philosophy in life includes mindfulness, gratitude, compassion and enjoying people in their "as is" form.

As you can see, when it comes to ASPPA's staff, we have lots to be proud of—not just with our Chiefs, but with all of our professional staff. Clearly, with that kind of support, we're on the road to accomplishing all of our lofty goals. ▲

Stephen H. Rosen, MSPA, CPC, is an independent consulting actuary specializing in the design and implementation of employee benefit plans. He is president of Stephen H. Rosen & Associates, Inc., a division of National Investments Managers, which is an employee benefits consulting firm in Haddonfield, NJ. Steve is 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.

2005 Eidson Award Winner: G. Patrick Byrnes, MSPA

by James Jaffe

G. Patrick Byrnes, MSPA, former ASPPA President, is the winner of the 2005 Eidson Founders Award. He has spent much of his professional career trying to bring pension professionals and government regulators together to acknowledge that they have shared responsibilities that can often be best accomplished through collaboration and cooperation rather than confrontation.

"We are the stewards" with a shared responsibility for assuring those covered by plans receive the legal protections they are entitled to—and deserve, Pat explains.

He adds, "Professional groups like ASPPA face a growing challenge in simultaneously addressing the narrow issues of the moment without losing focus on the bigger ongoing challenge of providing former workers with the income they need in retirement."

With rare exceptions, Pat notes that politicians who ultimately make policy decisions are often unschooled in the inevitable complexity of plan regulation and are dependent on reliable advice from experts who operate and regulate such plans. If the regulators and the regulated can discuss issues openly, he argues, there is a good chance that better policy will result.

Pat grew up in Pasadena, CA and Bronxville, NY. His father was a general agent for New England Life in New York City. He subsequently earned degrees from the Santa Clara University and the Wharton School at the University of Pennsylvania, realizing early in his career that he had an affinity for technical and consulting matters.

His entrance into the pension business was with a small pension company in the Los Angeles area, where he encountered a handful of plans that had run into difficulty with the Internal Revenue Service because of their failure to include vesting schedules in the plan documents. Pat has been working on compliance issues ever since.

He joined ASPPA less than a year before ERISA became law in 1974 and began his studies to become an MSPA. He became an Enrolled Actuary in 1976 when the Joint Board for the Enrollment of Actuaries first granted the designation.

In 1983, he created Actuarial Consultants, Inc., a firm that initially specialized in providing retirement related services to professional entities and entrepreneurial companies. The firm has grown steadily and clients now include publicly traded corporations, entrepreneurial and professional entities.

He joined the ASPPA Board of Directors in 1987 and became a member of the Executive Committee and Editor of *The Pension Actuary* the following year. Pat became ASPPA's first President-Elect in 1990. During that year two significant events occurred.

First, Bob Lebenson, MSPA, became Pat's mentor. "He dragged me around Capitol Hill and to every pension related governmental agency in town. I learned that these people were not the enemy, but rather essential ingredients for the health and safety of the private system." This experience sparked a keen interest in ASPPA's Government Affairs Committee.

Second, this was the year that ASPPA was invited into the Council of Presidents/Council of Presidents-Elect (COP/COPE). COP/COPE (now NACC, the North American Actuarial Council) currently has nine member actuarial organizations in the US, Canada and Mexico. Pat sat on the task force to create a "working agreement" among the then six member organizations. From that sprung the creation of the Actuarial Standards Board and the Actuarial Board for Council and Discipline. Subsequently, ASPPA adopted the common Code of Conduct for its actuaries and a similar code for its non-actuary members. As Pat recalls, portions of this process were contentious both inside and outside of ASPPA. But the result was extremely positive for the actuarial profession and the professionalism of ASPPA.

Dealing with this contention helped when Pat became ASPPA President in 1991, as the IRS and the private sector were embroiled in the "small plan audit program" that resulted in a low point in the relations between the IRS and ASPPA. Several cases were headed for Tax Court and things had become quite "nasty." Pat tried to defuse a tense situation, writing the new Assistant Commissioner for Exempt Organizations, John Burke, and suggesting peace talks. To his delight, Burke responded positively.

The two soon forged a relationship of shared personal trust that ultimately led to a

more collaborative method of airing and solving issues—the creation of the birth of the Voluntary Correction Programs and the creation of the Los Angeles Benefits Conference (LABC), which was the first ASPPA/IRS sponsored conference.

Burke personally announced the Voluntary Correction Program at the first LABC in 1992. That program has become huge and very successful. It was the first time the IRS created such a program anywhere within its massive organization.

Based on the model developed by the IRS and ASPPA in Los Angeles, the IRS and ASPPA have subsequently created other jointly sponsored conferences across the country. In addition to imparting useful knowledge, Pat says, these conferences have created a less confrontational atmosphere for all participants in the pension arena.

Also, during his year as President, Pat was supported not only by Bob Lebenson but also by Ruth Frew, FSPA, CPC, his President-Elect, who was the first ASPPA female President; Fred Reish, APM, whom Pat appointed to co-chair the Government Affairs Committee; and Chet Salkind, who was the Executive Director of ASPPA. Bob, Chet, Ruth and Fred are all prior Eidson Award winners.

Pat has an enormous respect for ERISA, which he has worked with for most of his career, noting ERISA was "brilliant and well needed, almost like our Constitution."

On the other hand, he acknowledges that pension regulation is inherently complex and defies simple reform. The ultimate challenge lies in coming up with a regulatory structure that is both tough and flexible and that does not intimidate sponsors to a point where they simply abandon their plans.

"What's at stake here is employer-sponsored plans," Pat concludes, noting that various individual plans like IRAs have not attracted larger numbers of workers. That is why he believes the continued existence of employer plans is a national policy issue.

Pat and his wife Zo live in Manhattan Beach, CA, with their eight-year-old daughter, Gaelen. Pat's son, Ted, is 29 and works in Los Angeles. ▲

James Jaffe became ASPPA's public relations consultant in June of 2005. He has written about retirement savings issues for years as an employee at two Washington think tanks that analyze such issues. Earlier he was employed by the Internal Revenue Service and the House Ways and Means Committee.

Welcome New Members and Recent Designees

▲ QPA

Terry A. Allman Jr.
Douglas Alvarez
Jason M. Carpenter
Melissa F. Childs
Suzanne S. Childs
Rupa D. Desai
Kathleen Gnash
Richard L. Green
Jaymie N. Hahn
Milton D. Heber
Daphne C. Jackson
David G. Mann
James P. Morgan
Dennis Povloski
Robin S. Self
Peter K. Swisher
Catherine L. Wallburg
Qingbo Xue

▲ QKA

Lucy C. Andreas
Janet C. Angelosanto
Melissa Baker
William S. Beckley
Melinda Boat
Regina M. Buchholz
Damien M. Callahan
Dawn Carr
Gerald S. Cathell
Melissa Claridge
Linda M. Clement
Jessica Coats
Robert W. Cosgrove
Wanda L. Couch
Gerianne DeRosa
Rupa D. Desai
Lan Ding
Vicki J. Fangmann
Frances T. Galapon
Adriana S. Glickman
Jeffrey M. Gratton
Richard L. Green
Michael M. Guzman
Gayle D. Harper
Janet Harris
Shirley L. Horner
Jeri L. Howell
Stephen T. Hulting
Michael Kurland
Ann E. Kurtz
Benly Legiman
Adam K. Leissner
Aaron J. Martin
Brian McCabe
Michele L. Noonan
Jessica R. Passante
Noel D. Phillips
Nicholas Porcaro
Dennis Povloski
Mark V. Redmond
Theodore W. Rhinehart
Kathleen H. Rice
Steve Riordan
Mary M. Roberson
Thomas J. Rouse
Carol M. Sasala
Darin K. Schartz
Rachel A. Scheiner
Sharon Scussel
Cara Bobbitt Shumate
Gerald W. Tate
Dennis Trombino
Linda M. Visage
Marie A. Williams
Siranoush S. Wilson

▲ APM

Donald J. Myers

▲ AFFILIATE

Lisa A. Atkins
Suzanne Barnett
Elizabeth A Barnier
Janice Betts
Daniel R. Burke
Patricia T. Campbell
Scott Chon
Michael Daly
Daniel J. Ebbert
Bunny Fernhall
Lura Franzella
Marilyn Hopewell
William R. Keyburn
Pamela Mayer
Katherine M. Olson
Corey R. Pride
Charles Rawl
Pamela A. Reil
Craig Rogers
James C. Scott
Mohammed Jaffer Shubber
Eric A. Stubbs
Stephan Tow

GAC Activities for the First Half of 2005

by Teresa T. Bloom, APM

GAC remains in the forefront of pension policy and regulation by developing and promoting the organization's positions on current issues facing regulators and legislators via comment letters, position papers and expert testimony on proposed actions.

For the first six months of 2005, 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. GAC sustained its high level of activity from January through June of 2005 by submitting comment letters to the Internal Revenue Service (IRS), the Treasury Department (Treasury), the Department of Labor (DOL), the Securities and Exchange Commission (SEC), the Pension Benefit Guaranty Corporation (PBGC) and the President's Advisory Panel on Federal Tax Reform. In these comment letters, GAC promoted ASPPA's policy positions.

Revisions to DOL's Voluntary Fiduciary Compliance Program (VFC)

On June 6, ASPPA filed comments on the DOL's revised VFC Program. Among other things, ASPPA recommended that the DOL clarify that the corrective actions under the VFC Program may also be used to correct similar transactions that are found as a result of an Employee Benefits Security Administration (EBSA) investigation; that there should be coordination with the Treasury and IRS with regard to loan transactions that are covered by the VFC program; and that the DOL should provide further clarification of the term "Under Investigation."

Proposed Regulations Relating to Designated Roth Contributions to Cash or Deferred Arrangements under Section 401(k)

On May 31, ASPPA filed comments with the IRS and Treasury on their proposed amendments to the regulations under Internal Revenue Code (IRC) §§401(k) and 401(m) that provide guidance regarding designated Roth contributions under 401(k) plans. Two notable ASPPA recommendations were that guidance be issued clarifying that the determination of the five-taxable-year holding period (Nonexclusion Period) be based on a calendar year rather than the plan year; and that participants should be responsible for tracking both the basis and the time at which an eligible rollover of designated Roth contributions is made into a 401(k) plan.

President's Advisory Panel on Federal Tax Reform

On May 17, the ASPPA Pension Education and Research Foundation (PERF) submitted a report entitled "Savings Under Tax Reform: What is the Cost to Retirement Savings?" to the President's Advisory Panel on Federal Tax Reform. The report concludes that any reform to the tax code that would reduce or eliminate the tax on capital gains and dividends would have a devastating effect on the employer-sponsored retirement plan system and also likely lead to abandonment of existing employer-sponsored retirement plans, leaving American workers without meaningful ways to save for retirement.

Proposed Regulation and Class Exemption on Abandoned Individual Account Plans

On May 9, ASPPA filed comments on the DOL's proposed regulations regarding Abandoned Individual Account Plans (Orphan Plans) and the accompanying Proposed Prohibited Transaction Application D-11201. ASPPA recommended, among other things, the entities eligible to serve as Qualified Termination Administrators (QTAs) be expanded to include other parties, such as former or current service providers; and that the fiduciary safe harbor and proposed Prohibited Transaction Exemption be expanded to include lifestyle, retirement date and other balanced fund options.

Proposed Rule on Mutual Fund Redemption Fees for Redeemable Fund Securities

On May 9, ASPPA filed comments with the SEC regarding their request for additional comment in connection with the adoption of Rule 22c-2, relating to redemption fee programs. Significant recommendations included urging the SEC to continue to provide fund companies and intermediaries flexibility

in determining which methods for imposing redemption fees on omnibus accounts are appropriate; clarifying the fund/intermediary written agreement requirements; and establishing uniform redemption fees rules.

Proposed Rule on Electronic Filing Premium

On May 6, ASPPA filed comments with the PBGC on their proposed rule on electronic premium filing recommending that the PBGC, rather than requiring e-filing; develop incentives that will result in the majority of filers voluntarily submitting their premium information electronically; and where the PBGC decides to move forward with mandatory e-filing, ASPPA recommended that the PBGC take steps designed to minimize any adverse effects of the new requirement on plans and plan professionals, including an exemption for small plans.

Proposed Rule on Liability Pursuant to Section 4062(e) of ERISA

On April 20, ASPPA filed comments with the PBGC on their proposed rule relating to liability pursuant to ERISA §4062(e) and recommended that the PBGC issue additional guidance on a variety of interpretive issues relating to ERISA §4062(e); and that the PBGC create a regulatory exemption from ERISA §4062(e) liability for small plans (generally, those with fewer than 500 participants).

Proposed Regulations for Distributions from a Pension Plan under a Phased Retirement Program (Comment Letter #2)

On March 14, ASPPA filed the second of two comment letters with the IRS and Treasury on their proposed regulations regarding Distributions from a Pension Plan under a Phased Retirement Program (see the summary of Comment Letter #1 on definition of Normal Retirement Age). This second comment letter raised eligibility issues. Three of the more salient recommendations were that phased retirement programs should be permitted for *all* employees; that select key employees should not be barred from participation; and that eligibility for phased retirement should be based on either: (1) a 20% reduction in hours; (2) a 20% reduction in total pay; or (3) a 20% reduction in base pay with a demonstrable reduction in hours or responsibility.

Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts

On March 10, ASPPA filed comments with the IRS and Treasury on their issuance of temporary and proposed regulations under IRC §403(b). Among other things, ASPPA provided recommendations with respect to the following issues: requirement for a written plan document; coverage under Title I of ERISA; non-statutory exceptions to universal availability requirement; year-by-year exclusion of permissible categories of employees; transfers of assets among plans and contracts; definition of compensation; timing of contributions; and controlled group and employer aggregation rules.

Disclosure of Plan Fees to Plan Participants

On February 14, ASPPA provided comments to the DOL regarding the disclosure of plan fees to plan fiduciaries charged with overseeing the administration and investments of pension plans. ASPPA strongly supported full disclosure to plan fiduciaries of all costs payable out of plan assets through a simple, easy-to-understand statement of the costs as well as a description of the services to be provided by the plan provider(s); along with a separate disclosure of the compensation to be received by the person selling or recommending the plan or plan investments, even if such a cost is included within the other cost disclosure.

Proposed Regulations for Distributions from a Pension Plan under a Phased Retirement Program (Comment Letter #1)

On February 2, ASPPA submitted the first of two comment letters to the IRS and Treasury on their proposed regulations regarding Distributions from a Pension Plan under a Phased Retirement Program. In this first comment letter, ASPPA focused on the definition of normal retirement age (NRA) and recommended that the new proposed regulatory restriction, which provided that the NRA "cannot be earlier than the earliest age that is reasonably representative of a typical retirement age for the covered workforce," not be adopted as it would have implications going far beyond issues involving the requirements of a bona fide phased retirement program.

Value of Life Insurance Contracts When Distributed From a Qualified Retirement Plan

On January 20, ASPPA submitted comments to the IRS and Treasury on their proposed IRC §412(i) guidance regarding the value of life insurance contracts when distributed from qualified retirement plans. Some of the items ASPPA addressed were the definition of accrued benefit under IRC §412(i) plans; the application of the anti-cutback rules under IRC §411(d)(6) with respect to the benefits accrued under a §412(i) plan and the effect of the conversion of a §412(i) plan to a non-§412(i) defined benefit plan; and the calculation of minimum distributions under IRC §401(a)(9) with respect to §412(i) plans. In 2004, GAC also submitted two comment letters to the IRS on IRC §412(i).

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

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.

ASPPA PAC

ASPPA PAC™
OPENS THE DOOR

ASPPA PAC is proud to announce the following members of its Executives Club, Presidents Club and Leaders Circle.

Executives Club

Dale C. Rogers, CPC

Presidents Club

Michael C. Brown, CPC, QPA
G. Patrick Byrnes, MSPA
Michael E. Callahan, FSPA, CPC
Stephen L. Dobrow, CPC, QPA, QKA
James R. Feutz, MSPA
H. Earle Garvin, MSPA
Robert R. Giordano, CPC, QPA
Karen A. Jordan, CPC, QPA, QKA
John R. McCaw, MSPA
James R. Nolan
Gwen S. O'Connell, CPC, QPA
John P. Parks, MSPA
C. Frederick Reish, APM
Lawrence C. Starr, CPC
Valeri L. Stevens, APM
Edward H. Thomson, III, MSPA, QPA
Sandra S. Thomson, MSPA, QPA
Sal L. Tripodi, APM
Lynn M. Young, MSPA

Leaders Circle

Bruce L. Ashton, APM
Peter D. Austin, MSPA
Burl V. Bachman, MSPA
Kerry M. Boyce, CPC, QPA
Donna Brewster, QPA
Alex M. Brucker, APM
Robert C. Burleigh, Jr.
Rebeccah L. Cardillo, QKA
Richard N. Carpenter, CPC
Susan J. Chambers, FSPA
Nelson P. Chia
James T. Comer, III
Pamela J. Constantino, CPC, QPA
Steven D. Cooper, QPA
Lawrence Deutsch, MSPA
Craig C. Dewey, APM
Bill W. Dickerson, CPC
Kevin J. Donovan, MSPA
Cynthia S. Ellner
James E. Farley, CPC, QPA
Karen L. Franklin, APM
David M. Gelman, MSPA
Kevin E. Glueck, QPA
Joseph M. Gordon, APM
Gary Gurman, QPA
Susan Lynn Hajek, QKA
Elizabeth T. Hallam, CPC
Craig P. Hoffman, APM
Andrew C. Hoskins
R. Bradford Huss, APM
James L. Jordan, MSPA
Michael P. Kiley
Barbara A. Kollman, MSPA
Louis Kravitz, MSPA
Gerrit C. Kuechle, MSPA, CPC
Barry Max Levy, QKA
Patricia L. Marquis, QPA
Charles N. McLeod, FSPA, CPC
James R. Norman, Jr., QPA
Robert Paglione, FSPA, CPC
Margery F. Paul, MSPA
Steve J. Persons, MSPA
Kurt F. Piper, MSPA
Adam C. Pozek, QKA
Stephen H. Rosen, MSPA, CPC
Gary R. Saake
William J. Sheffler, MSPA
Bei Sheng, QPA
Sheldon H. Smith, APM
Chris L. Stroud, MSPA
George J. Taylor, MSPA
Robert G. Thurlow, APM
David B Vail, APM
Harry Veldkamp, QPA, QKA
Nicholas J. White, APM
Marylis A. Wozniacki, QPA
Sally J. Zavattari, FSPA, CPC

ASPPA PAC Executives Club members have contributed more than $10,000 cumulatively. Presidents Club members have contributed more than $5,000 cumulatively. ASPPA PAC Leaders Circle members have contributed $500 or more from January 1, 2004, through July 31, 2005. Only ASPPA members may join ASPPA PAC. Contributions to political action committees are not deductible for federal income tax purposes. Federal law requires political action committees to report the name, mailing address, occupation and name of employer for each individual whose contributions exceed $200 in a calendar year. This list is a partial listing and only includes those who have given permission to use their name.

MEMBERSHIP

ASPPA Webcasts Now Eligible for JBEA Credit

by Jane S. Grimm

ASPPA's Membership & Continuing Education Committee has come to an agreement with the Joint Board for the Enrollment of Actuaries (JBEA) to allow actuaries, after the completion of a short five-question quiz, to receive credit for participating in ASPPA's webcasts. "ASPPA-credentialed members have been able to receive two ASPPA credits, based on a 50-minute hour, for ASPPA's webcasts for years now. Providing JBEA credits for ASPPA's timely and informative webcasts is a real member service for our actuarial members," said Stephen Dobrow, CPC, QPA, QKA, Co-chair of the Membership & Continuing Education Committee.

Successful completion of the five-question quiz will provide the JBEA with the "proof" needed for the JBEA to grant credit. The quiz will be available to all registered actuaries and accessible from the ASPPA Web site and from the webcast materials. The quiz can be easily taken online and can only be taken once. A memo to the registered webcast viewer, stating ASPPA's determination as to the number and type of credit granted, will be automatically sent to registered actuaries once the webcast quiz has been successfully passed. Actuaries should keep the memo for their records. As with all other ASPPA education programs, the JBEA is the final authority in determining the number and type of credit granted.

ASPPA has made it easy to earn JBEA credits for webcasts. There are just a few simple steps to follow.

1. Register for the webcast.
2. Listen and view the webcast at the appointed time. ASPPA webcasts are normally held at 12:00 p.m., EST.
3. Access the quiz after the webcast. You can take the quiz online and receive your score immediately. There is no extra fee for the quiz, but, to meet the JBEA's requirements, an actuary must be registered for the webcast in order to take the quiz. Webcast quizzes will be available online for three months after the original webcast date.
4. Receive your "participation and passing" memo. Keep the memo for your records.
5. Include your ASPPA webcasts when you file for meeting your JBEA continuing education requirements.

JBEA credits are available starting with the very next webcast, scheduled for September 15, 2005. (See the box on this page for the current webcast schedule.) Webcasts will be archived, as usual, and you may view the archived webcasts for JBEA credits, provided that you are within the three-month timeframe that the webcast quiz is available.

The committee is discussing a "group" registration option that would allow more than one actuary to register for a webcast, view the webcast together and take the quiz individually. Watch the webcast announcements and the Web site for updated information and details related to this new group registration option.

For the latest information on webcasts and all of ASPPA's educational offerings, check out the ASPPA Web site at **www.asppa.org**. ▲

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

Upcoming Webcasts

September 15, 2005
VFC Program
R. Bradford Huss, APM
JBEA Credit: Two Core Credits

November 14, 2005
DB Reform
Brian H. Graff, Esq., APM, and David Lipkin, MSPA
JBEA Credit: Two Core Credits

Date TBA
EPCRS
Nick White, APM, and Joyce Kahn, IRS
JBEA Credit: Two Core Credits

EDUCATION & EXAMINATION

Carol R. Sears, FSPA, CPC, Receives Educators' Award

The ASPPA Education and Examination (E&E) Committee's Chair and Co-chairs have selected Carol R. Sears, FSPA, CPC, as the recipient of the 2005 Educators' Award. Carol is a principal and consulting actuary of Actuarial Consulting Group, Inc. (ACG), an employee benefits consulting firm, which has offices in her hometown of Morton, IL, and in Quogue, NY. In addition to ERISA administration, compliance and actuarial valuation work, ACG educates clients on all types of employee benefits and on alternatives to meeting their varying needs while taking industry trends into account.

Carol served on ASPPA's E&E Committee for 12 years, including two years as its General Chair. Carol was ASPPA's President in 1999 and currently serves on the Board of Directors, Nominating Committee and a Government Affairs task force dealing with women's pension issues. Carol also serves on the Actuarial Board for Counseling and Discipline and is a past member of the Advisory Committee to the Joint Board for the Enrollment of Actuaries. Carol is a frequent speaker at ASPPA and other conferences on actuarial, compliance and professionalism issues. Carol has also authored articles for *The ASPPA Journal* and the *Journal of Pension Benefits*.

Carol is currently participating, along with other retirement industry experts, in a national initiative known as "Conversation on Coverage." This group has been coordinated by the Pension Rights Center and other organizations, and sponsored in part by the Ford Foundation, to conduct a national dialogue on ways to expand retirement savings for American workers.

Carol's husband, Kevin, is the senior transaction manager for strategic investments with Caterpillar. Her son, Chuck, a graduate of University of Illinois (like his mother), is a pilot and works at an airport near the university where he doubles as a flight instructor. Daughter Jodee is a junior at George Washington University in Washington, DC, and daughter Grace is a very active sophomore at Morton High School in Morton, IL.

Recognizing Carol's commitment to education, ASPPA is proud to honor her with the 2005 Educators' Award. The award will be presented on Monday, November 7, during the 2005 ASPPA Annual Conference.

Carol joins past recipients Lawrence C. Starr, CPC; Gwen S. O'Connell, CPC, QPA; Joan A. Gucciardi, MSPA, CPC; Sal L. Tripodi, APM; Charles J. Klose, FSPA, CPC; Janice M. Wegesin, CPC, QPA; David B. Farber, MSPA; and Cheryl L. Morgan, CPC, QKA, as being recognized as leaders in meeting the education goals of ASPPA's mission statement. ▲

Calendar of Events

Date	Description	ASPPA CE Credits
Oct 31	Final Registration Deadline for Fall Examinations	
Nov 1 - Dec 15	DC-1, DC-2, DC-3 and DB Fall 2005 Examination Window	
Nov 6 - 9	2005 ASPPA Annual Conference • Washington, DC	20
Nov 11	C-3, C-4 and A-4 Postponement Deadline	
Nov 16	C-3 and A-4 Examinations	
Nov 17	C-4 Examination	
Dec 1	DC-1, DC-2, DC-3 and DB Postponement Deadline	
Dec 15	PA 1-3 Examination Deadline for 2005 Paper Submission	
Dec 31	PA 1-3 Examination Deadline for 2005 Online Submission (Midnight, EST)	
2006		
Jan 26 - 27	Los Angeles Benefits Conference • Universal City, CA	15
Feb 26 - 28	The 401(k) SUMMIT • Orlando, FL	20
Apr 24 - 25	DOL Speaks: The 2006 Employee Benefits Conference • Washington, DC	15

ASPPA Lone Star Council Houston—Expanding Our Members' Horizons

by Sadie Gensler-Hooker, CPC, QPA, QKA

They say the sky is bigger in Texas. This statement may not be *exactly* true, but it is the goal of the ASPPA Lone Star Council in Houston, TX (a.k.a. ABC of Texas Gulf Coast) to provide local programs with the highest caliber speakers, formerly accessible only by traveling to ASPPA's national and regional conferences.

The ASPPA Lone Star Council started out slowly but surely not too many years ago, and now claims almost 100 benefit professionals as members. The key to our success locally lies with our board members. We are fortunate to have a board made up of top-notch industry leaders from diverse backgrounds. This diversity has extended to our membership—where our council had originally appealed to administrators and consultants who dealt primarily with retirement plans—we are now welcoming wholesalers, brokers and plan sponsors.

The bread and butter of our council is our quarterly meetings, which have been primarily luncheons, with the occasional cocktail hour thrown in. We have held these meetings by covering a wide array of topics. Our members are always interested in hearing about the latest developments, whether new legislation or ways to do things. Over the past two years, we have held programs on the new regulations and the mutual fund scandals and fiduciary responsibility, to name just a few. The biggest crowd pleaser each year, however, is a presentation by Brian H. Graff, Esq., APM, on what's new in Washington, DC. And, something new this year, we will be offering a full-day seminar featuring Sal L. Tripodi, APM.

Although we pride ourselves on keeping our members up-to-date through our quarterly meetings, we have tried to go above and beyond just the traditional lunches to promote our membership. This year, we are exploring the possibility of offering study groups and review sessions for ASPPA exams, and we hosted our first ever members-only social in January.

For more information about the ASPPA Lone Star Council in Houston, including membership, registration and upcoming events, contact Lilia J. Pivetta, membership chair, at 713.831.4419 or **lilia_pivetta@aigvalic.com**. ▲

Sadie Gensler-Hooker, CPC, QPA, QKA, is a regional sales director for MassMutual Financial Services and the president-elect of the ABC of Texas Gulf Coast. Throughout her career, she has worked both in the administration and marketing of retirement plans. She has been involved with the ABC of Texas Gulf Coast since 2002.

ABC Meetings Calendar

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

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

September 20
ABC of the Texas Gulf Coast
Topic: All-Day ERISA Workshop
Speaker: Sal L. Tripodi, APM

September 27
ABC of Greater Cincinnati
Topic: Plan Design; Combination Cross-Tested 401(k)/Profit Sharing Plans with DB Plans
Speaker: Sally Cuni and Hans Nienaber

September 29
ABC of Delaware Valley
Topic: All-Day Seminar
Speaker: Sal L. Tripodi, APM

September 29
ABC of Atlanta
Topic: Retirement Plans for Non Profit Organizations [403(b) and 457]
Speaker: H. Earle Garvin, MSPA and John D. Hartness, APM

October 19
ABC of Delaware Valley
Topic: Washington Update
Speaker: Brian H. Graff, Esq., APM

October 20
ABC of Central Florida
Topic: Roth 401(k), Final 401(k) Regulations and 411(d)(6) Protected Benefits
Speaker: Charles Lockwood

October 25
ABC of Greater Cincinnati
Topic: Roth IRAs
Speaker: TBD

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

October 27
ABC of Dallas/Ft. Worth
Topic: 401(k) Regulations, Roth 401(k)s, FAQs from TAG and Other Hot Topics
Speaker: Ilene H. Ferenczy, CPC, and Richard N. Carpenter, CPC

November 15
ABC of the Texas Gulf Coast
Topic: Washington Update
Speaker: Brian H. Graff, Esq., APM

November 16
ABC of Delaware Valley
Topic: IRS Determination Letter Program
Speaker: Stephen W. Forbes

November 17
ABC of Northern Indiana
Topic: Annual Dinner Meeting/Recap of the ASPPA Annual Conference
Speaker: TBD

November 29
ABC of North Florida
Topic: Annual Conference Review
Speaker: Craig P. Hoffman, APM, and Robert M. Richter, APM

November 29
ABC of Greater Cincinnati
Topic: Non-qualified Plan Guidance
Speaker: Debbie Reiss

December 7
ABC of Western Pennsylvania
Topic: Full-Day Seminar (topics to be determined)
Speaker: Sal L. Tripodi, APM

December—TBD
ABC of the Texas Gulf Coast
Topic: Membership Mixer
Speaker: None

December—TBD
ABC of Greater Cincinnati
Topic: Annual Meeting
Speaker: None

Fun-da-Mentals

THINK ABOUT THIS...

This is a strange country we live in. When it comes to electing a President, we get two choices. But when we have to select Miss America, we get 50!

–Jay Leno

What's another word for Thesaurus?

–Steven Wright

Imagine if there were no hypothetical situations.

–John Mendoza

Word Scramble

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

MY SETS ___ ___ ___ □ □ □

SAP SOUL □ ___ □ ___ ___ □ ___

ER ROB K □ ___ □ ___ ___ □

MAN COPY ___ ___ ___ ___ □ □ □

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

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

Why the pension consultant came home with a headache.

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