

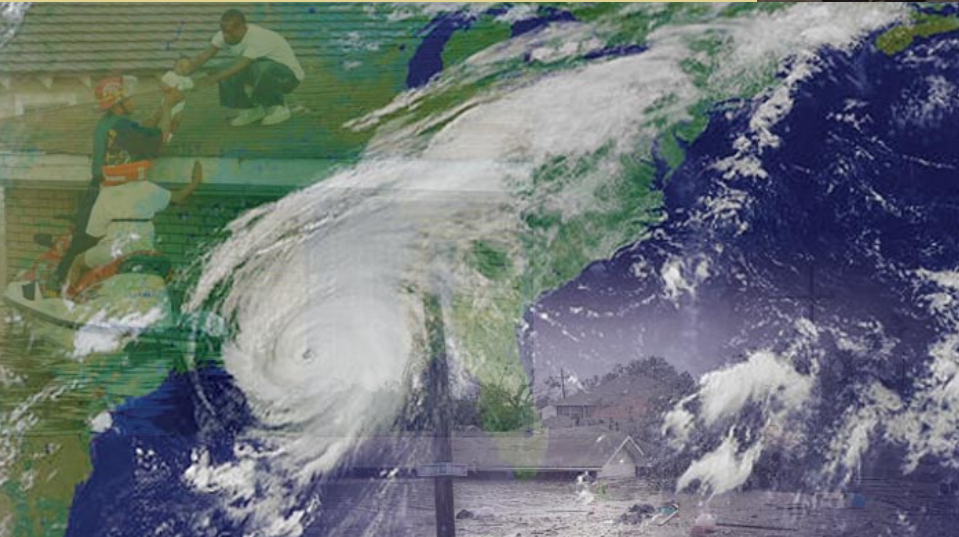
THE ASPPA Journal

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



SPECIAL FEATURE

Hurricane Relief for Retirement Plans



by Richard A. Hochman, APM

With the 2006 hurricane season upon us, it may help to look back to our experience with the 2005 season. While the Internal Revenue Service (IRS) has previously granted limited relief in response to disasters, both manmade and natural, the 2005 hurricane season stands out regarding the type and scope of relief granted.

Not only were the IRS and the Department of Labor (DOL) quick to respond to the need for storm relief, but Congress also got into the act. The type of relief and who could take advantage of it varied between the agencies and Congress. While the IRS relief was directed at those taxpayers most directly impacted by the

Continued on page 4

In This Issue:

Washington Update

Planning for the Unexpected


The 2006 Makeover for EPCRS

Comparison of MSAs, HSAs, FSAs and HRAs for 2006



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Stuff Happens

by Chris L. Stroud, MSPA


Stuff happens. Good stuff, bad stuff—even life-changing stuff. And when stuff happens to ASPPA's President, Sarah Simoneaux, CPC, and ASPPA's President-Elect, yours truly, there is a good chance that you are going to read about it in *The ASPPA Journal*!

Since June 1 marked the beginning of the 2006 hurricane season, The ASPPA Journal Committee chose to dedicate this issue to planning for and recovering from disasters. Sarah and I also felt an obligation to increase awareness by bringing this topic to the forefront. In addition to experiencing recent hurricanes first-hand, we also both work for industry software vendors and are acutely aware of how significantly disasters can impact businesses.

This issue of *The ASPPA Journal* contains a summary of the Katrina legislation that is in effect today and a summary of things to consider in developing a Business Continuity Plan. In addition, you will benefit from Sarah's heart-felt advice in her President's letter. And, of course, for "plan disasters," you will even find an update on the new EPCRS provisions. It is our sincere hope that every ASPPA member will recognize the importance of being prepared, and perhaps some will even learn tips or make changes to processes along the way. Although you can never anticipate *everything* that could possibly happen, you can certainly prepare your family and your business for the fact that *something* might possibly happen.

Since we live in a world of technology, never underestimate the power of the tools you have at your fingertips. Categorize the things, both business and personal, that you can capture with technology—and then capture them. Although it is time consuming now, it could prove well worth the time later to have important documents, family photos, favorite articles, etc., available electronically. For those of you who have not known anyone who

has experienced a total loss of possessions, try this exercise. What if right now you had to make a list of everything you own, from memory? Could you do it? How many things would you forget? That is precisely why it is common practice in disaster-prone areas to have electronic photos or videos of each room of a house or business, including closets, etc. If the unthinkable happens, the electronic record will serve as a reminder that will help you give a more complete list to your insurance company. (In addition to keeping a copy for yourself, send a backup copy to a friend or family member across the country.)

My last advice to you is to ask you to perform a "gut check." Think about the things, in addition to family and friends, that mean the most to you today in your personal life. You no doubt have items that are special to you—things that, if they were lost, would make you feel like you had been "kicked in the gut." Your mother's locket, your deceased father's war mementos or the construction paper birthday card your child made for you. Take the time to make a complete list of these items and secure a waterproof container large enough to hold all of them. If you don't have these items on display, you should keep them packed in a safe place. If ever you have a warning of an impending disaster where you need to evacuate, take this container with you if you can. In the unfortunate event that everything else is lost, these are the things that will give you comfort. These are also the things that you will miss the most if you do not take the time to protect them now. Insurance money can replace lost electronics, furniture and even houses; however, precious reminders of happy times and loved ones are truly priceless. This lesson was the most powerful one I learned from dear friends who experienced great losses in disasters—some of whom will be reading this editorial and who I admire for their strength and tenacity to move forward and rebuild their lives. 

SPECIAL FEATURE

storms and even extended some rights to their family members living outside of the area to assist them, Congress worked statewide without regard to the severity of the storm's impact.

Hurricane Katrina

In late August 2005, the State of Florida first felt the impact of Hurricane Katrina. Katrina hit Florida without causing significant damage and the area impacted by the storm was not very large, especially when compared to the rampage the year before caused by a series of storms (Charley, Frances, Ivan and Jean). (See Notice 2004-62 dealing with relief for hurricanes Charley and Frances.) After taking a turn above the warm waters of the Gulf of Mexico, Katrina hit again and this time the impact on Louisiana, Mississippi and Alabama was far more severe. The city of New Orleans, after seemingly dodging the bullet, was hit by devastating floods that will forever impact the Crescent City and its citizens. Large swaths of the Mississippi and Alabama coasts were washed away, leaving little evidence that whole communities had stood there previously.

Employers in the area were impacted in numerous ways, some seeing their businesses in total ruins, others, with their businesses just partially damaged, had to contend with a workforce dispersed perhaps hundreds of miles away and unable to report to work. Many employees were left with nothing but the clothes on their back or maybe a few additional possessions. Without essential services, people had to find new ways to just survive. Some staying in hotels or evacuation shelters miles (sometimes hundreds of miles) from home were trying to find ways to regroup and get on with their lives. Access to cash or other assets became an important issue as people were displaced from their houses and jobs. While people tried to assess what they did and did not have, it became evident that they needed access to money quickly. Where were those assets and how could they be made available?

Possibly the biggest asset most people have other than their homes (many of which were made uninhabitable by the storm) is their retirement plan. Depending on the kind of plan their employer offered, loans or hardship distributions might be available. The issue then became how could the employers assist their participants and quickly make plan assets available? What rules and regulations would get in the way and possibly have to be overcome? Responding to this pressing need, the IRS, among other government agencies, acted quickly to help those in the hardest hit areas. The IRS realized that there was a need for speed and the formalities could be addressed later.

The Relief Begins

The IRS pronouncements of relief came in different forms of guidance: Notices, Announcements and Information Releases. A string of guidance was issued over the months following Hurricane Katrina. Ultimately, some of the guidance was extended to cover victims of hurricanes Wilma and Rita.

The DOL's Employee Benefits Security Administration (EBSA) and the Pension Benefit Guarantee Corporation (PBGC) also joined the effort to bring relief to those affected by the hurricane. This article will concentrate primarily on the relief brought about by the IRS and Congress.

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|--|---|---|
| 1 Hurricane Relief for Retirement Plans | 29 Welcome New Members and Recent Designees | 38 ASPPA Calendar of Events |
| 3 From the Editor | 30 From the President | 40 The ABC of New England Opens Its Doors |
| 13 Washington Update: Budget Games | 32 A Day in the Life of a GAC Volunteer | 41 ASPPA Welcomes a New ABC—The ASPPA Benefits Council of Detroit! |
| 17 Planning for the Unexpected | 34 Insurance for Your Business | 41 ABC Meetings Calendar |
| 25 The 2006 Makeover for EPCRS | 35 The Joint Board for the Enrollment of Actuaries | 42 Fun-da-Mentals |
| 28 Comparison of MSAs, HSAs, FSAs and HRAs for 2006 | 37 Meet ASPPA's Newest Chiefs! | |

Hardship and Loan Relief From The IRS

Under the existing law at the time of the hurricanes, many defined contribution plans, primarily “cash or deferred” 401(k) arrangements, allowed for so-called “hardship withdrawals” for specified reasons. The reasons were usually defined as buying one’s home or preventing eviction therefrom. Substantial repairs were not on the approved list. This fact was especially true for plans using the IRS “safe harbor” rules. Hardship withdrawals once taken could not be repaid to the plan, but instead had to be included in the participant’s taxable income, and if the participant was under age 59½ an excise tax applied. The plan participant had the burden of proof to show the amount of the need and that other resources were not available to meet the need. Without access to their homes and financial records, getting the necessary documentation was an insurmountable burden. Loans might have been available under an employer’s plan; however, no mechanism existed for a deferral of the repayments, based upon when the employee was again drawing compensation against which repayments could be made. Yet still the participants needed immediate access to their money.

On September 15, 2005, just over two weeks after the storm struck the Gulf Area, the IRS issued Information Release (IR) 2005-105. The release stated that “For the first time ever, the IRS and the Departments of the Treasury and Labor are providing broad-based relief to retirement plan participants affected by a major disaster.” “401(k) and similar employer-sponsored retirement plans can make loans and hardship distributions to victims of Hurricane Katrina and members of their families.”

Retirement plans can provide this relief to employees and certain members of their families who live or work in the disaster area. To qualify for this relief, hardship withdrawals must have been made by March 31, 2006.

The IRS is also relaxing procedural and administrative rules that normally apply to retirement plan loans and hardship distributions. As a result, eligible retirement plan participants will be able to access their money more quickly and with a minimum of red tape. In addition, the six-month ban on 401(k) contributions that normally affects employees who take hardship distributions will not apply.

This broad-based relief means that a retirement plan can allow a Katrina individual to take a hardship distribution or borrow up to the specified statutory limits from his or her retirement plan to repair or replace a home or for some other purpose. It also means that a person who lives in another part of the country can take out a retirement plan loan or hardship distribution and use it to assist a son, daughter, parent, grandparent or other dependent who lived or worked in the disaster area.

Plans will be allowed to make loans or hardship distributions before the plan is formally



“For the first time ever, the IRS and the Departments of the Treasury and Labor are providing broad-based relief to retirement plan participants affected by a major disaster.”

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amended to provide for such features. In addition, the plan can ignore the limits that normally apply to hardship distributions, thus allowing the money, for example, to be used for food and shelter. If a plan requires certain documentation before a distribution is made, the plan can relax this requirement. The amendment date the IRS provided was the end of the first plan year beginning after 2005.

On the same date, the IRS released Announcement 2005-70 further explaining the expanded guidelines for hardship withdrawals and loans.

A qualified employer plan will not be treated as failing to satisfy any requirement under the Code or regulations merely because the plan makes a loan, or a hardship distribution for a need arising from Hurricane Katrina, to an employee or former employee whose principal residence on August 29, 2005, was located in one of the counties or parishes in Louisiana, Mississippi or Alabama that have been or are later designated as disaster areas eligible for Individual Assistance by the Federal Emergency Management Agency because of the devastation caused by Hurricane Katrina or whose place of employment was located in one of these counties or parishes on such date or whose lineal ascendant or descendant, dependent or spouse had a principal residence or place of employment in one of these counties or parishes on such date. Plan administrators may rely upon representations from the employee or former employee as to the need for and amount of a hardship distribution, unless the plan administrator has actual knowledge to the contrary, and such distribution is treated as a hardship distribution for all purposes under the Code and regulations. For purposes of this announcement, a qualified employer plan means a plan or contract meeting the requirements of §401(a), 403(a) or 403(b), and, for purposes of the hardship relief, which could, if it contained enabling language, make hardship distributions.

A profit-sharing or stock bonus plan that currently does not provide for hardship or other in-service distributions may nevertheless make Katrina-related hardship distributions pursuant to this announcement, except from QNEC or QMAC accounts or from earnings on elective contributions. A defined benefit or money purchase plan, which generally cannot make in-service hardship distributions, may not make hardship distributions pursuant to this announcement, other than from a separate account, if any, within such plan containing either employee contributions or rollover amounts.

If the plan does not provide for loans or hardship distributions, the plan must be amended to provide for loans or such emergency distributions no later than the end of the first plan year beginning after December 31, 2005. To qualify for the relief under this Announcement, a hardship distribution must be made on account of a hardship resulting from Hurricane Katrina and be made on or after August 29, 2005, and no later than March 31, 2006. In the case of plan loans made pursuant to this announcement, such loans must satisfy the requirements of Code §72(p).

As referenced above, the possibility existed for not only impacted individuals to obtain funds from their employer retirement plans, but also for their immediate family members living outside the area to similarly obtain funds from their own plans. Accordingly, someone in a plan in the Northeast could obtain retirement funds to send to someone in the impacted area, if the employer wanted to amend their plan to allow for such distributions.

The areas that the IRS applied the relief to were only those counties or parishes that were eligible for “individual assistance” under the Federal

Disaster Declarations. The Federal Emergency Management Agency (FEMA) determines which areas are eligible for higher levels of disaster relief. Areas can either be eligible for “public” assistance or “private” assistance. Public assistance only involves infrastructure repair, while individual assistance allows for direct assistance to individual taxpayers.

None of the Florida counties impacted by Hurricane Katrina were declared “individual” assistance areas. Thus, the new rules outlined above did not apply to any portion of Florida. Congress would later change and liberalize some of the rules for the impacted individuals. It applied its rules to all declared disaster areas, whether eligible for public or individual assistance, thus allowing the Florida counties’ residents individual assistance, but did not include out-of-area family members. The congressional changes will be discussed later.

Other IRS Relief

In IR 2005-96 (9/8/05), the IRS announced that victims of Hurricane Katrina had until January 3, 2006, to file any returns, pay any taxes or make any deposits due. This relief applies to any return, tax payment or tax deposit with an original or extended due date that fell on or after August 29, 2005. *For Florida residents, the effective date began August 24, 2005.* Later in September, responding to Congressional action, the IRS extended the deadline. In IR 2005-112 (9/28/05), the IRS announced a further extension of the filing deadlines. Taxpayers affected by Hurricane Katrina then had until February 28, 2006, to file tax returns and pay any taxes due following legislation approved by Congress and signed by the President.

The Katrina Emergency Tax Relief Act of 2005 (KETRA, HR 3768), signed on September 23, 2005, postponed deadlines for affected taxpayers to file tax returns, pay taxes and perform other time-sensitive acts until February 28, 2006. Taxpayers affected by the hurricane may be eligible for tax relief, regardless of where they live.

For taxpayers located in the areas hardest-hit by Katrina—those counties or parishes designated by FEMA as “individual assistance areas”—the tax relief is automatic, and taxpayers will not need to do anything to get the extensions and other relief available.

In areas where FEMA has determined damage is more isolated—designated as “public assistance areas”—or for other taxpayers outside the hardest-hit areas whose books, records or tax professionals are located in the affected areas, people will need to identify themselves to the IRS as hurricane victims.

IR 2006-30 (2/17/06) again extended the deadline. Individual and business taxpayers in the most severely damaged parishes and counties of Louisiana and Mississippi automatically have through August 28, 2006, to file returns and make certain tax payments that had a due date or extended due date on or after August 29, 2005, and on or before August 28, 2006. The automatic postponement applies to taxpayers in the following Louisiana parishes: Cameron, Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles and St. Tammany. The postponement also applies automatically to taxpayers in the following Mississippi counties: Hancock, Harrison and Jackson.

The IRS also gives affected taxpayers through August 28, 2006, to perform other time-sensitive actions described in Treas. Reg. §301.7508A-1(c)(1) and Rev. Proc. 2005-27, 2005-20 IRB 1050, that were due to be performed on or after August 29, 2005, and on or before August 28, 2006. This relief includes the filing of Form 5500 series returns, in the manner described in Section 8 of Rev. Proc. 2005-27. The postponement of time to file and pay does not apply to information returns in the W-2, 1098, 1099 or 5498 series. Each of the information releases provided a list of those counties and parishes eligible for additional relief by self-identification.

To qualify for this relief, affected taxpayers should put the assigned "Disaster Designation" in red ink at the top of the return, except for Form 5500, where filers should check Box D in Part 1 and attach a statement, following the form's instructions. Individuals or businesses located in the disaster area—or taxpayers outside the area that were directly affected by this disaster—should contact the IRS if they receive penalties for filing returns or paying taxes late.

Congressional Action

Following the lead of the IRS, Congress enacted KETRA and then, after Hurricanes Rita and Wilma, enacted the Gulf Opportunity Zone Act (GOZA) to expand relief to individuals impacted by those hurricanes.

It is important to note that while much of the IRS relief discussed above went to those living or working or whose business records or service providers were in the most impacted areas eligible for "individual" assistance, the laws as enacted are applicable to the entire disaster area. The Hurricane Katrina Disaster Area covers the entire states of Florida, Louisiana, Mississippi and Alabama, while the Hurricane Rita Disaster Area covers the states of Louisiana and Texas. The Hurricane Wilma Disaster Area covers the entire state of Florida.

Qualified Hurricane Katrina Distributions

The following guidelines are specified in Notice 2005-92, recapping the provisions of KETRA.


Special Tax Treatment for Qualified Hurricane Katrina Distributions

KETRA Section 101 provides for special tax treatment for a Katrina distribution. It provides an exception to the 10% additional tax under Code §72(t) and allows the distribution to be included in income ratably over three years. It also provides that the distribution will be treated as though it were paid in a direct rollover to an eligible retirement plan if the distribution is eligible for tax-free rollover treatment and is recontributed to an eligible retirement plan within three years of the date of the distribution. KETRA Section 101 also permits special treatment for Katrina distributions under employer retirement plans. It is important to note that the receiving plan need not be that of the original employer or even located in a disaster area state. Thus, plans anywhere in the country can be impacted by the recontribution rules.


Definition of Qualified Individual

A qualified individual is an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area as defined in KETRA Section 2(1) and who has sustained an economic loss by reason of

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Hurricane Katrina. For purposes of the relief provided under KETRA, the term “Hurricane Katrina disaster area” as set forth in Section 2(1) means the entire states of Louisiana, Mississippi, Alabama and Florida. It is important to remember that this definition is for relief provided under KETRA only and does not apply to relief granted by the IRS, such as the ability of family members to obtain distributions.

Definition of Katrina Distribution

KETRA Section 101(d)(1) defines a Katrina distribution as any distribution from an eligible retirement plan made on or after August 25, 2005, and before January 1, 2007, to a qualified individual. KETRA Section 101(b) limits the amount of distributions that can be treated as Katrina distributions to no more than \$100,000.

A qualified individual is permitted to designate a distribution described above as a Katrina distribution. This designation is permitted for any distribution that would meet the requirements of a Katrina distribution without regard to whether the distribution was on account of Hurricane Katrina. Thus, periodic payments and required minimum distributions received by a qualified individual from an eligible retirement plan on or after August 25, 2005, and before January 1, 2007, are permitted to be treated as Katrina distributions. Similarly, any distribution received by a qualified individual as a beneficiary can be treated as a Katrina distribution. Thus, the following amounts are not Katrina distributions: corrective distributions of excess contributions under §415, excess elective deferrals under §402(g), excess contributions under §401(k) and excess aggregate contributions under §401(m); loans that are treated as deemed distributions pursuant to §72(p); dividends paid on applicable employer securities under §404(k); and the costs of current life insurance protection.

The definition of a Katrina distribution under KETRA Section 101(d)(1) does not limit the designation of a Katrina distribution to amounts withdrawn solely to meet a need arising from Hurricane Katrina. Thus, even though a qualified individual is required to have sustained an economic loss, Katrina distributions are permitted without regard to the qualified individual’s need and the amount of the distribution is not required to correspond to the amount of the economic loss suffered by the qualified individual. This provision exists because participants may not be able to correctly identify the actual amount of their loss.

An employer retirement plan is also permitted to treat a plan distribution described above as a Katrina distribution. It is possible that a qualified individual’s designation of a Katrina distribution

may be different from the employer retirement plan’s treatment of the distribution. This different treatment could occur, for example, if a qualified individual has more than one plan distribution that meets the requirements of a Katrina distribution. This different treatment could also occur if a qualified individual has distributions from more than one eligible retirement plan.

Certain Katrina Distributions are Permitted to be Recontributed

Subject to certain exceptions, distributions from an eligible retirement plan that satisfy the requirements of a Katrina distribution are permitted to be treated as Katrina distributions. Such distributions may be included in income ratably over three years and are not subject to the 10% additional tax under Code §72(t). Only a Katrina distribution that is eligible for tax-free rollover treatment under §402(c) and 402(e)(6), 403(a)(4), 403(b)(8), 408(d)(3) or 457(e)(16), however, is permitted to be recontributed to an eligible retirement plan, and such retribution will be treated as having been made in a direct rollover to that eligible retirement plan.

In the case of a distribution from an eligible retirement plan other than an IRA, only a Katrina distribution that is an eligible rollover distribution within the meaning of §402(c)(4) is permitted to be recontributed to an eligible retirement plan. Thus, periodic payments [for a period of at least ten years, or the life or the life expectancy of the employee (or the lives or joint life expectancies of the employee and the employee’s designated beneficiary)] and required minimum distributions are not permitted to be recontributed to an eligible retirement plan even though those distributions are permitted to be treated as Katrina distributions if they satisfy the requirements. In the case of a distribution from an IRA, only a Katrina distribution that is eligible for rollover treatment under §408(d)(3) is permitted to be recontributed to an eligible retirement plan. Thus, required minimum distributions are not permitted to be recontributed to an eligible retirement plan. Any Katrina distribution (whether from an employer retirement plan or an IRA) paid to a qualified individual as a beneficiary of an employee or IRA owner (other than the surviving spouse of the employee or IRA owner) cannot be recontributed.

In general, a distribution from an employer retirement plan made on account of hardship is not an eligible rollover distribution. If such a distribution, however, satisfies the requirements of a



Katrina distribution, then the distribution is not treated as made on account of hardship, thus, any portion of the distribution is permitted to be recontributed to an eligible retirement plan.

Definition of Principal Place of Abode

An individual's principal place of abode is where the individual lives unless temporarily absent due to special circumstances. A temporary absence from the household due to special circumstances (*i.e.*, as illness, education, business, vacation or military service) will not change an individual's principal place of abode. If an individual's principal place of abode was in the Hurricane Katrina disaster area immediately before August 28, 2005, and the individual evacuated because of Hurricane Katrina, the individual's principal place of abode will be considered to be in the Hurricane Katrina disaster area on August 28, 2005.

Katrina Distributions are Generally Treated as Satisfying Certain Plan Distribution Restrictions

An employer is permitted to expand the distribution options under its plan to allow an amount attributable to an elective, qualified nonelective or qualified matching contribution under a qualified cash or deferred arrangement to be distributed as a Katrina distribution even though the distribution is before an otherwise permitted distributable event, such as severance from employment, disability or attainment of age 59½.

A qualified plan that is a pension plan (*e.g.*, a money purchase plan) is not permitted to make in-service distributions merely because the distribution, if made, would qualify as a Katrina distribution. Further, a pension plan is not permitted to make a distribution under a distribution form that is not a qualified joint and survivor annuity without spousal consent merely because the distribution, if made, could be treated as a Katrina distribution.

Direct Rollover and 20% Withholding Requirements Not Applicable to Katrina Distributions

If a distribution is treated as a Katrina distribution by an employer retirement plan, the rules for eligible rollover distributions under Code §§401(a)(31), 402(f) and 3405 are not applicable with respect to the distribution. Thus, the plan is not required to offer the qualified individual a direct rollover with respect to the distribution. In addition, the plan administrator does not have to provide a §402(f) notice. Finally, the plan administrator or payer of the Katrina distributions is not required to withhold an amount equal to 20% of the distribution, as is usually required under §3405(c)(1). A Katrina distribution is subject to the voluntary withholding requirements of §3405(b) and §35.3405-1T of the Temporary Employment Tax Regulations.

Treatment of Distributions as Katrina Distributions

An employer is permitted to choose whether to treat distributions under its plans as Katrina distributions. Further, the employer (or plan administrator) is permitted to develop any reasonable procedures for identifying which distributions are treated as Katrina distributions under its retirement plans.

Distribution Limits on Katrina Distributions

The total amount of distributions treated by an employer as Katrina distributions under its retirement plans with respect to a qualified individual is not permitted to exceed \$100,000. For purposes of this rule, the term "employer" means the employer maintaining the plan and those employers required to be aggregated with the employer under §§414(b), (c), (m) or (o). A plan, however, will not fail to satisfy any Code requirement merely because a qualified individual's total Katrina distributions exceed \$100,000, taking into account distributions from IRAs or other eligible retirement plans maintained by unrelated employers.

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Reliance on Reasonable Representations

In making a determination that a distribution is a Katrina distribution, a plan sponsor or plan administrator of an employer retirement plan is permitted to rely on reasonable representations from a distributee with respect to the distributee's principal place of abode on August 28, 2005, and whether the distributee suffered an economic loss by reason of Hurricane Katrina, unless the plan sponsor or plan administrator has actual knowledge to the contrary.

An employer retirement plan will be treated as operating in accordance with its terms if certain requirements are satisfied. The IRS will be issuing guidance in the future relating to plan amendments for KETRA. An employer retirement plan will not be treated as failing to operate in accordance with its terms merely because the plan implements the provisions of KETRA Sections 101 and 103, if the plan sponsor amends its plan by the applicable dates described below. For employer retirement plans other than a governmental plan, the date by which any plan amendment to reflect KETRA is required to be made will not be earlier than the last day of the first plan year beginning on or after January 1, 2007. For governmental plans under Code §414(d), the date by which any plan amendment to reflect KETRA is required to be made will not be earlier than the last day of the first plan year beginning on or after January 1, 2009. (Note that this date is different from the date specified for employers wishing to take advantage of the IRS provisions, such as loans for hardships for family members. Plans amending for both potentially have two different amendments with two different deadlines.)

Tax Reporting on Katrina Distributions

An eligible retirement plan must report the payment of a Katrina distribution to a qualified individual on Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. This reporting is required even if the qualified individual recontributes the Katrina distribution to the same eligible retirement plan in the same year. If a payor is treating the payment as a Katrina distribution and no other appropriate code applies, the payor is permitted to use distribution code 2 (early distribution, exception applies) in box 7 of Form 1099-R. However, a payor is also permitted to use distribution code 1 (early distribution, no known exception) in box 7 of Form 1099-R.

Income Inclusion for Katrina Distributions

There are two methods for a qualified individual to include in income the taxable portion of a

Katrina distribution. First, a qualified individual who receives a Katrina distribution is permitted to include the taxable portion of the amount in income ratably over a three-year period that begins in the year of the distribution. Second, the individual is permitted to elect out of the three-year ratable income inclusion and include the entire amount of the taxable portion of the Katrina distribution in income in the year of the distribution. All Katrina distributions received in a taxable year must be treated consistently (either all distributions are included in income over a three-year period or all distributions are included in income in the current year). If the individual uses the three-year ratable income inclusion method, such method cannot be changed after the timely filing of the individual's tax return (including extensions) for the year of the distribution.

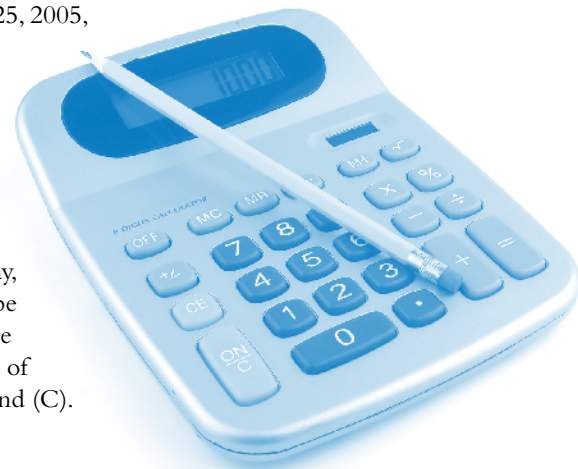
Increase in the Allowable Loan Amount

Special rules apply to a loan made from a qualified employer plan [as defined in §1.72(p)-1, Q&A-2] to a qualified individual on or after September 24, 2005 (the day after the date of enactment of KETRA), and before January 1, 2007. For these loans, KETRA Section 103(a) changes the limits under Code §72(p)(2)(A). In applying §72(p) to a plan loan, the \$50,000 aggregate limit in §72(p)(2)(A)(i) is increased to \$100,000 and the rule in §72(p)(2)(A)(ii) limiting the aggregate amount of loans to one half of the employee's vested accrued benefit is increased to 100% of the employee's vested accrued benefit.

Suspension of Payments and Extension of Term of Loan

A special rule applies if a qualified individual has an outstanding loan from a qualified employer plan on or after August 25, 2005. KETRA Section 103(b) provides that for purposes of §72(p), in the case of a qualified individual with a loan from a qualified employer plan outstanding on or after August 25, 2005, if the due date for any repayment with respect to the loan occurs during the period beginning on August 25, 2005, and ending on December 31, 2006, such due date shall be delayed for one year. In addition, any subsequent repayments for the loan shall be appropriately adjusted to reflect the delay and any interest accruing for such delay, and the period of delay shall be disregarded in determining the five-year period and the term of the loan under §72(p)(2)(B) and (C).

If a distribution is treated as a Katrina distribution by an employer retirement plan, the rules for eligible rollover distributions under Code §§401(a)(31), 402(f) and 3405 are not applicable with respect to the distribution.



With forecasts for the forthcoming hurricane season predicting another year of heavy and severe storms, the question becomes, how will the relief granted in 2005 be applied in 2006?

Thus, an employer is permitted to choose to allow this delay in loan repayments under its plan with respect to a qualified individual, and as a result, there will not be a deemed distribution to the individual under §72(p).


IRS Notice 2005-92 provides the following safe harbor for satisfying KETRA Section 103(b). Under the safe harbor, a qualified employer plan will be treated as satisfying the requirements of §72(p) pursuant to KETRA Section 103(b) if a qualified individual's obligation to repay a plan loan is suspended under the plan for any period beginning not earlier than August 25, 2005, and ending not later than December 31, 2006 (suspension period). The loan repayments must resume upon the end of the suspension period and the term of the loan may be extended by the duration of such suspension period. If a qualified employer plan suspends loan repayments during the suspension period, the suspension will not cause the loan to be deemed distributed even if, due solely to the suspension, the term of the loan is extended beyond five years. Interest accruing during the suspension period must be added to the remaining principal of the loan. A plan satisfies these rules if the loan is repaid thereafter by amortization in substantially level installments over the remaining period of the loan (*i.e.*, five years from the date of the loan, assuming that the loan is not a principal residence loan, plus the suspension period). If an employer, under its plan, chooses to permit a suspension period that is less than the suspension period described above, the employer is permitted to subsequently extend the suspension period, but not beyond December 31, 2006.

The loan shall be appropriately adjusted to reflect the delay and any interest accruing for such delay. The period of delay shall be disregarded in determining the five-year period and the term of the loan under §§72(p)(2)(B) and (C). Thus, an employer is permitted to choose to allow this delay in loan repayments under its plan with respect to a qualified individual, and as a result, there will not be a deemed distribution to the individual under §72(p).

A qualified employer plan will be treated as satisfying the requirements of §72(p) pursuant to KETRA Section 103(b) if a qualified individual's

obligation to repay a plan loan is suspended under the plan for any period beginning not earlier than August 25, 2005, and ending not later than December 31, 2006 (suspension period). The loan repayments must resume upon the end of the suspension period, and the term of the loan may be extended by the duration of such suspension period. If a qualified employer plan suspends loan repayments during the suspension period, the suspension will not cause the loan to be deemed distributed even if, due solely to the suspension, the term of the loan is extended beyond five years. Interest accruing during the suspension period must be added to the remaining principal of the loan. A plan satisfies these rules if the loan is repaid thereafter by amortization in substantially level installments over the remaining period of the loan (*i.e.*, five years from the date of the loan, assuming that the loan is not a principal residence loan, plus the suspension period). If an employer, under its plan, chooses to permit a suspension period that is less than the suspension period described above, the employer is permitted to subsequently extend the suspension period, but not beyond December 31, 2006.

Pandora's Box

With forecasts for the forthcoming hurricane season predicting another year of heavy and severe storms, the question becomes, how will the relief granted in 2005 be applied in 2006? Was KETRA a one-time provision or will it morph to reflect 2006 storms? For example, the relief provided under KETRA was later applied to Hurricanes Rita and Wilma and was expanded to Texas under GOZA. Only time will tell. 



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He supervises a team of attorneys and consultants in the design, drafting and support of prototype and custom documents for financial institutions, brokerage firms, insurance companies, pension consultants and plan sponsors. On behalf of clients, Rich also provides written commentary and testimony in Washington, DC, on regulatory issues relating to qualified retirement plans. He has published tax analysis for use by attorneys, accountants and consultants on a broad range of topics. (rhochman@mhco.com)



Budget Games

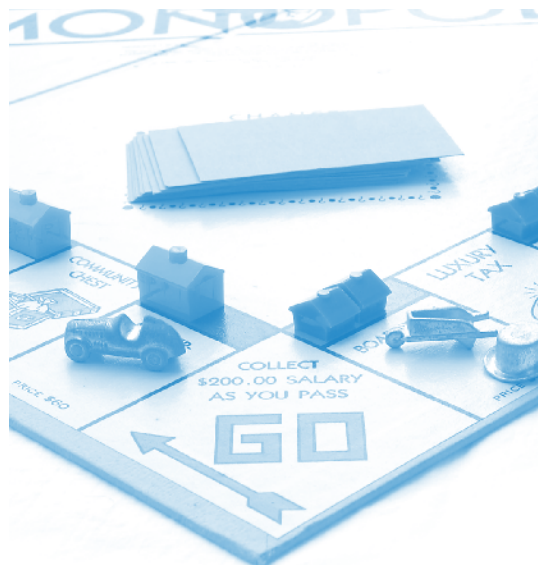
by Brian H. Graff, Esq., APM

President Bush signed the 2006 Tax Reconciliation bill into law on May 17. The legislation includes a provision to extend the 15 percent maximum tax rate on capital gains and dividends. Putting aside the arguments for and against the extension,¹ as reported in *ASPPA asap 06-15*, the extension was partially paid for with a new IRA conversion provision.

Specifically, beginning in 2010, taxpayers with amounts in pre-tax IRAs will be allowed to convert an unlimited amount of dollars into an after-tax Roth IRA. Further, unlike the conversion permitted when the Roth IRA was enacted in 1997, there would be no eligibility limitations based on a taxpayer's adjusted gross income. In other words, regardless of income, taxpayers will now be able to make these conversions and avoid paying any tax on subsequent earnings.

Significantly, if the conversion occurs in 2010, the amount of the conversion is included in taxable income over a three-year period, with zero included in 2010, 50 percent included in 2011, and the other 50 percent included in 2012. That's a three-year spread with no tax in the first year—a pretty darn good deal. If you have clients who will be able to make in-service distributions (e.g., they will be age 59½) by 2010, you should think about advising them to consider a rollover to a pre-tax IRA, which would allow them to take even further advantage of this provision. Do not forget that Roth IRAs, unlike traditional pre-tax IRAs, are not subject to the minimum required distribution rules, which creates estate planning opportunities as well.²

Whether you think this is good retirement policy or not, it is a clever use of the budget rules. As one admittedly frustrated Democratic staffer put it, “only Republicans could manage to pay for a tax cut for the wealthy (i.e., reduced capital gains taxes) with another tax break for the wealthy (i.e., income inclusion over three years with nothing in the first year).”



A budget usually authorizes tax cuts (and tax increases, although it has been a long time) over a five- or ten-year budget window.

So how does something like this happen? The reason is the way Congress puts together a budget and how provisions affecting tax revenue are “scored.” A budget usually authorizes tax cuts (and tax increases, although it has been a long time) over a five- or ten-year budget window. Within this window, provisions that affect tax revenue, such as retirement savings provisions, are “scored” on a static cash basis. In other words, the only thing that matters is whether a provision affects tax revenue inside the budget window. If it reduces or increases tax revenue outside the budget window—it does not matter, regardless of the economic realities.

So, for example, the conversion provision in this last tax bill raises money in the window because taxpayers will be paying tax on the conversion in the window. When they eventually take the money out without having to pay tax on the subsequent earnings, the associated foregone tax revenue is lost outside the budget window, and thus does not matter for purposes of the budget. The converse is equally true. When we increase the 401(k) elective deferral limit, we are also reducing tax revenue due to increased deductions, which

The current budget scoring rules have had a negative impact on retirement savings policy to the detriment of American workers.

is consequently a “revenue loser” in the budget window. The fact that many years down the road the account will be distributed, and that lost revenue will effectively be recouped on a present value basis, is simply irrelevant. This inequity is the unfortunate reality of our current federal budget scoring rules.

I recognize that to many ASPPA members, many of whom have impressive financial backgrounds, this discussion may seem a bit absurd. ASPPA’s Government Affairs Committee (GAC) members agree. We further believe that the failure of the current budget scoring rules to properly reflect the true economic costs (or more likely, non-costs) of retirement savings provisions has led to distorted policy decisions. It is impossible to have a sound national retirement income policy without factoring in the real present value cost of provisions designed to promote retirement savings. Until we do, it is likely that Congress will continue to promulgate rules that are, unfortunately, motivated as devices to get around the budget rules rather than solely promoting sound retirement policy.

This problem is certainly not a new one. Many of the provisions that have been enacted by

Congress since the passage of ERISA that have left ASPPA members scratching their heads in bewilderment can be traced to the defects in the current budget rules. Primary examples were the many reductions in qualified retirement plan limits that were used as “revenue raising” provisions to pay for other tax cuts under the guise that they were addressing perceived abuses in the employer-sponsored retirement plan system.

Since budget scoring is a continuing policy problem, GAC has decided to do something about it. We are sponsoring a research project that will analyze the negative impact that the current budget scoring rules have had on retirement savings policy over the years. The project will be partially funded by the ASPPA Pension Education and Research Foundation. We have also made a request for funding from the Actuarial Foundation. The current budget scoring rules have had a negative impact on retirement savings policy to the detriment of American workers. We hope the report issued as a result of this research will serve to educate lawmakers of these effects and hopefully lead to some positive changes. A more detailed outline of this research project follows.

Notice of ASPPA’s Annual Business Meeting



The ASPPA Annual Business Meeting will be held during the 2006 ASPPA Annual Conference at the Washington Hilton and Towers in Washington, DC, on Sunday, October 22, at 3:45 p.m.

The Business Meeting will include an address by ASPPA’s 2005-2006 President, Sarah E. Simoneaux, CPC, and a look toward the future by ASPPA’s incoming President, Chris L. Stroud, MSPA.

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

Research Project

Revenue Scoring on Legislation Affecting Retirement Policy: The Need to Include Long-Term Economic Effects

Overview

There is a need to educate Congress and the public on the fact that the current ten-year revenue scoring (budget) window, used by the various federal offices to score the revenue impact of legislation, provides a misleading and distorted economic picture for various tax incentives; in particular to the tax incentives currently provided through the employer-sponsored retirement plan system. Because the ten-year revenue scoring window fails to take into account the long-term effects of workers retiring and paying taxes on their retirement accounts, policymakers do not receive an accurate estimation of certain tax and retirement provisions and their actual impact on the federal budget. The resulting distortions significantly undermine the viability of the employer-sponsored retirement system. ASPPA is committed to sponsoring economic research to provide transparency and clarity on this very significant policy matter.

Background

Every piece of legislation reported out of a Congressional committee must provide a revenue score of its potential impact on government revenues and outlays (revenue scoring). Three federal offices prepare these estimates on a regular basis. The Joint Committee on Taxation (JCT) scores a bill's estimated change to federal revenue and distribution of tax burdens, while the Congressional Budget Office (CBO) scores a bill's spending projections and cost estimates. Treasury's Office of Tax Analysis (OTA) provides revenue estimates for the White House, and also works with Congress through JCT and CBO. These estimates are very important to policy discussions regarding the impact of proposed tax changes, making it crucial that policymakers receive the most accurate and complete assessment of a tax bill's likely effects.

Revenue estimates on tax proposals become important at different stages of the legislative process. In making revenue estimates, the OTA uses "conventional analysis," which accounts for the fact that taxpayers respond to changes in tax law, but not how behavioral changes affect the overall economy. In general, OTA estimates are most important when the President's budget is being prepared or when a tax proposal is being readied by Treasury for submission to Congress.

JCT provides official revenue estimates for all House and Senate tax legislation (including legislation affecting retirement policy). JCT estimates can often make or break congressional support for legislation. JCT estimates are especially to tax legislation, especially if the tax-writing committees are required to adhere to congressionally-mandated budget targets.

Many people have criticized the revenue scoring process for its failure to take into account the impact of human behavior. In general, conventional revenue estimates are "static" when they do not incorporate their impact on revenue. The estimates are "dynamic" if they incorporate the effect on total economic output, inflation, unemployment or other variables

(macroeconomic responses). Currently, JCT and CBO revenue estimates of proposed tax changes are neither fully static nor dynamic. They incorporate the revenue effects of certain microeconomic behavioral responses, but they do not include macroeconomic responses. Not surprisingly, different modeling strategies yield varying estimates.

Congress has enacted several "Blue Ribbon Panels" to assess and improve the tax scoring process over the past decade. As a result, a number of budget reforms, which include taking into account more economic feedback and improved "distributional" estimates to show the impact of tax changes by income class, have been enacted in an attempt to eliminate the uncertainties in the revenue scoring process. Even with guidelines in place to ensure that analysts score bills on a consistent basis, the scoring rules themselves remain controversial.

In particular, revenue scoring on all legislation is confined to a ten-year revenue window that lessens the emphasis of long-term economic effects. This revenue period gives an inaccurate and misleading picture of a bill's budgetary impact, making it impossible for policymakers to adequately consider the full economic effect of certain tax incentives that provide for capital accumulation.

For legislation affecting retirement policy, the ten-year revenue scoring window fails to take into account the long-term impact of people retiring and paying taxes on their retirement accounts, which results in long-term revenue losses being much lower than what is actually scored. This is a crucial element of retirement policy that must be addressed if workers are to continue to have available tax incentives that allow them to adequately save for their retirement.

Effects of Retirement Policy in Ten-Year Revenue Scoring

Important distortions result using a ten-year time horizon to gauge the ultimate effect on revenues resulting from retirement policy. For example, consider the present value of the revenue loss associated with a traditional IRA (where contributions are currently deducted from current taxable income). Under reasonable assumptions, the revenue loss should be the same as the loss from a Roth IRA, where deposits are not deductible but the income generated over the life of the account is never taxed. However, because the revenue costs calculated by JCT and CBO of Roth IRAs are all back-loaded (*i.e.*, paid for up-front), Roth IRAs actually cost less for the first ten years. Ten-year revenue scoring fails to take into account the long-run positive budgetary effects of retirees receiving distributions from their traditional IRAs and paying a tax on the distribution. This inaccurate result can clearly distort the desirability that certain retirement vehicles have on the budget.

A prime example of revenue implications is the recent recommendations made by the President's Advisory Panel on Federal Tax Reform (Advisory Panel). The Advisory Panel's

A longer time horizon would give a truer perspective to the aggregate budgetary effects of legislation affecting retirement policy.

final report, issued November 1, 2005, offered two different reform options to simplify the tax code. The two options, the Simplified Income Tax Plan and the Growth and Investment Tax Plan, differ significantly in the way workers can contribute to a workplace retirement plan.

The Growth and Investment Tax Plan incorporates back-loaded, “Save at Work” accounts, which would permit taxpayers to make after-tax contributions to their 401(k) and 403(b) accounts. Under this approach, there are no up-front revenue costs because contributions are included in taxable income and most deductions would be shifted outside the ten-year budget window. While these accounts have a favorable effect on tax revenues within the next ten years, it does so at the expense of revenues in future years.


In contrast, the Simplified Income Tax Plan would provide pre-tax “Save at Work” accounts (similar to current law), and would provide a deduction for contributions and tax all withdrawals as ordinary income. These accounts would have up-front revenue costs as the taxes on these accounts are collected; they would accrue for as long as the assets are held in these accounts but would reduce government revenues for a longer time period, in many cases as long as three decades.³

In addition to skewed results, the ten-year horizon creates other problems. By assuming all temporary tax provisions expire as scheduled, and by assuming that obvious problems—such as the alternative minimum tax—will not be addressed, the US budget creates huge incentives for budget gimmicks. For example, a proposal to delay the effective date of a tax provision until year 11 would have significant long-term costs, but cost virtually nothing in the ten-year budget window. Likewise, causing certain tax provisions to expire within a certain time period also skews their long-term budgetary impact.

The Research Project and Goals

ASPPA’s proposed research and education activities are designed to shed light on the significant threat the employer-sponsored retirement system faces from the current ten-year revenue scoring window. The audience for this research and educational activities will include national policy makers, their staffs, government officials, journalists, business and labor leaders, scholars and analysts.

Through this research, ASPPA will help to increase the understanding of policymakers and key advisors in the private sector on the resulting economic distortions that occur when the long-term effects on the federal budget are not taken into account when dealing with certain long-term tax incentives affecting retirement policy and scored using a ten-year revenue scoring window.

Most economic analyses conducted show that capital accumulation takes place over a period of decades. A longer time horizon would give a truer perspective to the aggregate budgetary effects of legislation affecting retirement policy. It would also permit policy makers to accurately compare the fundamental consequences of different types of tax and spending changes. 



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. (bgraff@asppa.org)

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- 1 For what it is worth, ASPPA’s Government Affairs Committee felt strongly that the revenue dollars would have been better spent, and would have actually generated greater new savings, had the retirement savings provisions in EGTRRA been permanently extended instead.
 - 2 As some commentators have noted, the legislation provides that this conversion feature also applies to amounts held in nondeductible IRAs. So, in theory, because there are no income limits on contributions to nondeductible IRAs, wealthier taxpayers not otherwise eligible for contributions to a pre-tax IRA may want to consider making contributions to a nondeductible IRA over the next several years and then make the conversion in 2010. Since earnings will only have accumulated for a few years, the tax liability at the point of conversion will likely be minimal. All subsequent earnings post-conversion, however, will be free from tax, and again, not subject to the minimum required distribution rules.
 - 3 See Chapter 4 of the Final Report of the President’s Advisory Panel for Tax Reform, November 1, 2005.

Planning for the Unexpected

by Chip D. Moore and Chris L. Stroud, MSPA

Recent events like 9/11 and major hurricanes have brought Business Continuity Planning and Disaster Recovery to the forefront. Financial services industries are especially vulnerable when disasters strike because of our heavy reliance on technology and the often complex interdependencies on various resources, systems and processes.

Every organization is vulnerable and should have some sort of plan in place in case the unexpected happens. Even small businesses, especially Third Party Administration (TPA) firms, need to consider the welfare of their employees, their customers and their customers' employees. TPAs need to keep in mind the amount of money that they are in control of for those employees, customers and participants when disaster strikes. Doing the necessary background work and formalizing a plan enables you to make informed decisions at critical times and helps mitigate the impact of a disruptive event.

It is easy to take for granted the day-to-day operations of a TPA firm and take pride in the way the business runs under normal circumstances. Unlike large financial institutions that must have complex detailed disaster planning and recovery plans in place, not all TPAs are convinced that they need to do the same. And even those firms who believe they should have a plan often do not know where to begin, or they develop a plan and fail to keep it maintained and updated. The purpose of this article is to increase awareness of the need to have a plan and to offer some preliminary guidance on how to get such a plan started or updated. After all, the management of any organization has a responsibility to its employees and its customers to plan for and recover from any incident as timely and efficiently as possible—and that plan needs to be well-documented, communicated and maintained. In today's highly informed and technological business world, it is not uncommon for questions about your business continuity program to be posed in Requests for Proposals (RFPs) from your prospective customers, and sometimes having a good plan might make the difference in acquiring an influential account.



Unlike large financial institutions that must have complex detailed disaster planning and recovery plans in place, not all TPAs are convinced that they need to do the same.

Like any industry, the disaster planning and recovery industry has a language of its own. You will probably come into contact with terms and abbreviations like enterprise risk management (ERM), disaster recovery (DR), business continuity (BC), availability services (AS), incident management (IM), impact analysis (IA), operational resilience (OR) and crisis management (CM). Learning these terms will not be too challenging, as many of them mean exactly what the words indicate. There are organizations that provide professional services to lead you through the terminology maze and assist you in the creation of your plan or audit of your existing plan.

Beginning the Process

Whether you are attempting to develop your own plan or enlisting the help of a professional, you will need to identify a top management team to be responsible for the plan's development. This team needs to be familiar with all functional areas of the organization. Once this management team is in place, the most likely starting point is to make a list of possible events that could

Events to Consider

Weather-related Disasters

- Hurricane
- Flood
- Tornado
- Snow or ice storm
- Heavy rain or hail
- Electrical storms
- Heavy wind

Environmental Disasters

- Earthquake
- Fire
- Landslides
- Contamination
- Environmental hazards (gas leak, explosion, etc.)

Interruption of Services or Equipment Failure

- Power outage
- Loss of fuel supply
- Loss of water supply
- Loss of waste management services
- Loss of third party vendor services
- Air conditioning failure
- Sprinkler system malfunction
- IT system/hardware failure
- Transportation system failure

Other Potential Disasters

- Computer virus
- Cybercrime
- Loss of records or data
- Security breach
- Water leaks
- Workplace violence
- Personnel problem
- Legal problem
- Pandemic
- Theft
- Arson
- Bomb
- Terrorism
- War

affect your organization and determine the likelihood of each one occurring. Since unpredictable events can always occur, the assumption should be that you will never have an all-inclusive list, but hopefully many of the details for preparation and actions will be the same for various types of disastrous events.

We have provided a list of some common events to consider. Some of these events (*e.g.*, weather-related events) can be anticipated. In those cases, if the likelihood is strong that one of these events might occur in your area, it is wise to have a special section in your plan outlining specific issues related to that type of event (*e.g.*, a hurricane section).

Considering the Potential Impacts

Once you have made your comprehensive list of possible events, the next exercise should be to consider the probability of each event happening and analyze the potential risk of disruption to normal business operations if such an event occurred. You may even want to assign a probability rating and/or develop a point system to indicate the severity of the potential impact.

While you are assessing the various impacts related to specific events, you should also determine the desired timeframe that a system or service should be up and running after a disaster. It should be expressed in terms of minutes, hours or days after a specific event occurs, and it should be less than or equal to the maximum time your business can afford to be without that specific system or service. Where a system requires specific data, you also need to consider the desired data recovery point, which will determine the “age” of the data that will be restored. This recovery point is expressed in terms of minutes, hours or days before a specific event occurred, and it should be representative of the maximum tolerable period of time that data or transactions could be lost while still undertaking a successful recovery of business.

Developing the Plan

There are many details involved in developing a complete plan to suit your specific business needs. There is no way that a single article can do this topic justice. You can educate yourself by referring to online resources (just “Google” any of the terms listed earlier in this article), access the FEMA Web site (www.fema.gov/business) or consult with a professional who is knowledgeable about business continuity planning and disaster recovery.

As you begin developing your plan, be sure to recognize that your employees are one of your most valuable assets. In addition to planning contingencies for critical business functions like systems and processes, make sure you give plenty of attention to taking care of your employees. You need to consider things like emergency services available, communication issues, contact information, meeting places, available cash, etc. You need to specify immediate actions and procedures for on-site unforewarned events (*e.g.*, a fire) as well as pre-disaster preparations for events that can be anticipated (*e.g.*, a hurricane). And of course, much of the plan will detail post-disaster recovery teams and actions.

Incident Management Teams

The primary Incident Management Team is responsible for the overall coordination before and after an event. If there is a warning, the team will make the determination of when to activate the pre-disaster plan. They will make sure all contact information is up to date, and they will ensure that clear communication and notifications to employees, customers and other stakeholders occur according to the plan. After an event, this team is usually responsible for activating the disaster recovery plan as well as tracking employees and determining their personal statuses, assessing the current environment and evaluating damage to the facility. In a small office, this same Incident Management Team might be responsible for coordinating

all aspects before, during and after an event. A larger office may need to create multiple teams to perform various recovery duties (*e.g.*, facilities recovery team, IT recovery team, HR recovery team, finance recovery team, telecommunications recovery team, customer service recovery team, etc.), and the primary Incident Management Team would often provide the central coordination of all the teams. Keep in mind that often in disasters, employees or their family members may suffer personal injuries or damage to their own property. Some employees may also relocate temporarily out of the area prior to an event (*i.e.*, with the issue of a hurricane warning or evacuation order) or after an event (*i.e.*, in the case of a devastating loss of property), so team activation after an event will be subject to the limitations of the specific situations of the individuals involved.

Systems, Processes and People

Since every business is unique, all of your internal business operations and all of the external dependencies and relationships will need to be considered when developing your plan. Where hardware and software is concerned, systems should be categorized as business-critical or secondary in nature so that priorities can be established for post-disaster recovery. Tasks and contingencies for immediate strategies, short-term strategies and long-term strategies will need to be developed.

Here is a sample list of important considerations:

- Employee contact information and specification of “teams”
- Available emergency services
- IT systems and Web applications back-up and recovery
- Temporary relocation of business operations
- Alternative business process handling
- Customer service and administration back-up and recovery
- Record retention and recovery
- Human resource processes
- Financial, accounting, banking and payroll processing
- Insurance coverage
- List of key suppliers, contractors and customers
- Inventory of items and equipment required for your business
- Off-site storage and recovery of records and data
- Backup power supplies and phone systems

A good example of pre-event preparation and documentation applies to areas prone to tropical storm and hurricane conditions. Detailed instructions can be documented as to what to

Business: Retirement Strategies Group, LLC,
New Orleans, LA

Disaster: Hurricane Katrina 2005

Scenario

Hurricane Katrina ravaged the area and the levees failed. The office building was not damaged or flooded, but after the storm there was no building access and no electrical power anywhere in the area. The TPA firm’s servers were unharmed, but were trapped in a building that had no power and would not be accessible for some time. The most critical matter was getting the administration/recordkeeping system and Web applications running. Although backup tapes were available and had been kept safe from the storm, there were no machines available to load them onto and no power. In addition, the firm’s employees were scattered all over Louisiana and Texas (several of the employees had lost their homes and others could not get back into their homes). Desperate to find a solution, Bob called his administration software vendor, who worked diligently with him to get him up and running on their ASP (Application Service Provider) software, which was exactly the same software he used in his office on a PC network. His data was loaded, his employees could access the system remotely from wherever they were—and even his participant Web site was up via the ASP within a day. Since the firm’s phone system was down, phone calls could not be forwarded. Therefore, to enable clients to contact employees, clients were sent disaster recovery notices with alternate phone numbers and e-mail addresses. Certain company data (Excel spreadsheets, contact information, etc.) had been backed up onto a DDS5 storage device, but unfortunately there was nowhere in town to get the data read. Getting these secondary support systems back online proved to be much more challenging.

The Good News

Although there was no incoming revenue for approximately two months, the firm continued to pay its employees. The firm retained all of its employees and only lost about 5% of its clients. The office later reopened and they shifted their administration system back to their PC network from the ASP in a day’s time. They now subscribe to the recovery services of their administration software vendor and now send backups to their vendor every night across the Internet.

Advice to Others

- (1) Do not rely on backup tapes or disks. Use an online backup service so that it can be restored from any location and also utilize offsite backup storage.
- (2) Make sure you have online banking and online access to the payroll and accounting systems. Make sure it is all set up properly in advance.
- (3) Have access to extra firm checks and deposit slips, since local banks may not be available.
- (4) Have a line of credit available to ensure payroll can be met and critical payments can be made, even when cash flow is an issue.
- (5) Establish systems and workflow processes that will work even if many of your employees have relocated out of the area.
- (6) Carefully consider the strength of your vendor partners and rethink systems and procedures to make sure they can be relied on in extreme circumstances.

Special thanks to Robert “Bob” Guidry for sharing his experience.

Business: Unified Trust, Lexington, KY

Disaster: Presidents Day Weekend Ice Storm 2003

Scenario

It was the worst ice storm ever to hit the area. Power was out everywhere. Because it was winter, people had no heat. Residential areas would receive priority for restoring power. The CEO was out of state on a family emergency. After much coercion, the Incident Management Team finally convinced the CEO of the magnitude of the storm and the disaster recovery plan was put into effect, probably about 24 hours later than it should have been activated. Since the firm is subject to the 72-hour rule for executing trades and moving money, timing was critical.

The company's disaster recovery vendor sent a trailer to the location—full of equipment and ready to be loaded with their systems. Since the building was not damaged (it was without power but accessible), the Incident Management Team determined that it would be more efficient to run cables and power from the trailer into the building to hook up to the servers. The 1,000 square foot trailer housed the workstations that the employees would use. Although there were 30 staff members, only 16-18 could work from the trailer at one time. The bank across the street, which was also out of power, was their trading partner. Unfortunately, the bank did not have a backup generator. The firm had to get the bank set up with a generator so their trades could be settled. In the interim, firm employees drove to a bank in another city and manually settled trades. One dilemma was that the company had no backup cell phones and the regular phone system was not working. Another dilemma was that without power the security system in the office building was not working, so the company had to buy chains to secure the office. Probably the most difficult situation was all those people working under less than desirable conditions—and no coffee machine!

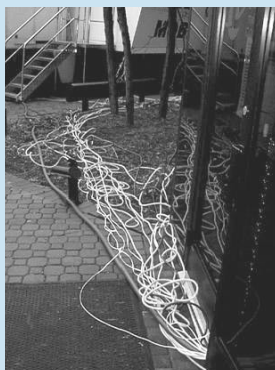
The Good News

All trades were settled on time and the company did not miss any deadlines. A sister company processed payroll timely until the firm was back up and running. The company quickly secured a company cell phone to be used, and the phone company was able to redirect calls to the cell phone so phone service ran smoothly. For the most part, the disaster recovery plan was followed and worked effectively.

Lessons Learned

- (1) Stock up on flashlights and heavy gauge 100-foot extension cords.
- (2) Take ice storm warnings very seriously.
- (3) Have a backup cell phone for company use if the phone systems go out.
- (4) Check out your critical vendor partners' business continuity plans.

Special thanks to Tim Wisner and Michele Hardesty for sharing their experience.



do when a “watch” is issued, when a “warning” is issued and when conditions are “imminent.” Even parts of the post-hurricane phase can be outlined in significant detail, as many conditions can be anticipated, such as power and phone outages, gasoline shortages, etc. A pre-hurricane supply checklist can be provided, and before each hurricane season, supplies can be replenished as needed. Business generators should be serviced and spare fuel should be acquired and stored in a safe location. Establish your business policies regarding such things as time off (with or without pay) for employees to tend to personal losses, making cash available if banks are unavailable or payroll cannot be processed, etc.

For events that have no warning, it is critical that your plan contain emergency evacuation instructions, including how to exit the building, where to meet once outside the building and assigning personnel to check common areas (*e.g.*, lunch rooms, restrooms) to make sure all people are aware of the event so that they can exit safely.

Evaluating Possible System Contingency Arrangements

As with any business venture, creating a business continuity plan must be affordable and effective. Since a TPA's biggest vulnerability is likely to be disruption of administrative, recordkeeping and Web applications, one of the primary concerns is how your business will be able to resume these functions if a disaster strikes. There are numerous solutions to address this concern, and each comes with a price. Probably the first place to start is to see what business recovery services your current software vendor(s) offer. It is not necessary that you have a single solution that meets all of your needs; you may have multiple solutions, each tailored to specific critical functions. With the popularity of Internet solutions and ASPs (Application Service Providers), some vendors offer hosted solutions that can be accessed from virtually anywhere that you can obtain an Internet connection.

There is a big difference between a disastrous event that affects just your office and a regional or national event that affects a large area. You need to have contingency plans for both. You might be able to keep things running by simply being prepared to allow all of your employees to work from home remotely. Another possibility is to have a “buddy arrangement” with another local business where you mutually agree that you can each provide office space and computer hardware as needed if an event affects just one of you. Alternatively, you might have a relationship with a “friendly local competitor” who uses the same software system that you do who would be willing to enter into a mutual arrangement to share

space and access to the software system until the other's business is back up and running. These same types of "buddy" arrangements can also be established for a regional or national disaster. You just need to find one or more businesses in other parts of the state or country that might be willing to offer the same type of mutual arrangement and where, hopefully, the parties involved would not be affected by the same disaster. (Note: ASPPA's Katrina message board was instrumental in helping ASPPA members establish those type of arrangements post-Katrina with other ASPPA members who were willing to offer office space, systems, etc.)

A disaster might be just a simple hardware failure, in which case backups, additional hardware or redundant systems can be the key to getting your operation back in business quickly. As your needs become more complex, you may need to turn to a true business continuity professional who can consult with you about various services available, including secure remote off-site storage, "hot sites" to run your operation, portable mobile units with equipment to run your entire operation, etc.

Testing the Plan

Once the plan has been created and documented, it is imperative that management communicates the plan to all employees, notifies the appropriate individuals of their responsibilities and trains the necessary individuals for their tasks. Once these steps are taken, testing can begin by actually putting parts of the plan in place during one or more "mock" disasters and performing disaster recovery drills. Activate call-trees, test alternative telecommunications methods, load back-ups and make sure they can actually be restored, etc. Ideally, testing procedures and results are documented and used to provide feedback on whether established procedures are effective or need to be further refined.

Since many testing scenarios have to be pre-planned, there are always limitations on how effective the same procedures would be if the element of surprise and unanticipated complications are factored in. For this reason, it is good practice to have an outside business continuity professional audit your plan and look for points that may have been overlooked in the design of the plan, especially if your plan was developed using your own internal resources. A cheaper alternative is to seek out other businesses who have a plan and compare your plan to theirs, looking for obvious omissions.

Maintaining the Plan

Do not fall into the common trap of thinking that now that you have a business continuity plan and it is well documented, all of your work is done. What you have created is simply the first version of your plan. Someone must be assigned to make sure that the plan is maintained properly and updated regularly and that changes are communicated effectively. The plan is a living document and needs to be revisited at least annually for changes in your business, changes in business partnerships or outside vendors, changes in your working environment, changes to your regional area, changes to personnel that affect incident management—and most importantly, changes to address failures that occurred in any real disaster that your business experienced. A debrief after a disaster, once all business aspects are stabilized, is a critical step in providing feedback to adjust and refine procedures and processes as needed to improve your business continuity plan.

Additional Considerations

Service Level Agreements (SLAs)

In today's environment, most of our businesses are dependent upon products and services provided by others. For instance, a TPA firm is heavily dependent upon administration software providers, network consultants, Internet providers, trading partners, building landlords, etc. Since any chain is only as strong as its weakest link, it is not only important to get your own business continuity programs in order, but it is also important that you understand—and possibly have in writing contractually—certain aspects of the business continuity programs of your critical business partners.

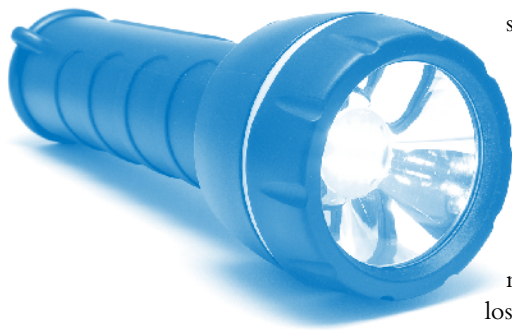
Similarly, your contracts with your customers might have implied liabilities regarding services you have committed to perform. Be sure you have allowed contractually for the contingencies or exceptions that might occur if a disaster strikes.

Business Insurance

Most businesses carry one or more types of insurance to cover them for typical property hazard damage, theft, errors and omissions, liability, etc. You may want to consider additional coverage, often referred to as "business interruption" or "umbrella" insurance. This type of policy extends beyond the normal coverage and increases the coverage limits provided by your normal policies. You can also be reimbursed for lost earnings for a period of time if your business is forced to shut down due to a disastrous event. If you opt for this type of coverage, it is critical to have a proper plan and procedures in place. It is likely

Do not fall into the common trap of thinking that now that you have a business continuity plan and it is well documented, all of your work is done.





There are certainly costs involved in creating and instituting any business continuity program, but the cost of doing nothing can be devastating if disaster does strike and your business is not prepared.

that in order to collect from such a policy after a disaster, you will need to provide proper documentation (e.g., historical sales records, tax returns, expenses related to your losses). Familiarize yourself with what type of documentation you would need to provide if such a loss should occur and make


sure your plan includes adequate protection of these important records before, during and after an event.

Real Life Experiences

It is prudent to assume that life will be chaotic afterwards for days, weeks or even months. In many instances, you will not be able to navigate across town to check on a location due to debris. You may not be able to get gas, because gas pumps require electrical power. Communicating will be your most difficult challenge! In Dade and Broward counties, we were pleasantly surprised that immediately following Hurricane Wilma's landfall, which resulted in massive power outages, telephone "land lines" stayed in working order for most of our co-workers. (Cell phone operation, however, was very erratic and often non-existent.) Thankful to have land lines, it then came as a surprise when approximately six hours later the battery backups to the telephone relay equipment went dead since there was no power to recharge them. Land lines slowly died all over the area. Fortunately, by that time, we had contacted all employees and determined that all were safe and we had compiled their personal damage assessments. For several days, communicating was erratic as we all attempted to keep in touch with each other locally using unreliable cellular technology. The saving grace, however, was a "hot line" (which sometimes can feel more like a "life line" when your reality is turned upside down) that was established at our main office in another city, which provided a means for our employees to gather information, receive communication and status updates, deliver information to a central network of individuals regarding their own personal losses and specific situations and coordinate the activation of the disaster recovery plan. Due to overloaded circuitry, it was actually easier to call someone out of the area than it was to call someone just across town!

We learned that it is critical to have multiple ways to contact key people and to distribute information. You never know which method might work at any given time. For example, text messages often worked from cell phones even though the cell phone calls would not go through. E-mail messages were able to be sent and retrieved from PDAs. Do not rule out the use of walkie-talkies and satellite phones, as both can be valuable in certain circumstances.

Conclusion

We have come a long way from the days when having a backup of data and software systems on tape or disks stored in a safe place was enough to make us feel safe should a disaster strike. Our industry is heavily dependent on technology and on people and processes, which can all be severely affected when a disaster strikes. There are certainly costs involved in creating and instituting any business continuity program, but the cost of doing nothing can be devastating if disaster does strike and your business is not prepared. 



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The 2006 Makeover for EPCRS

by Kathryn J. Kennedy

The revenue procedure for the IRS's correction program (better known as Employee Plans Correction Resolution System, or EPCRS) was updated on May 5, 2006, just a week before the ASPPA/IRS Great Lakes Benefits Conference. The conference was a fitting platform for the IRS' newly appointed Employee Plans (EP) Director of Rulings & Agreements, Joseph Grant, to introduce the changes to the attendees. Joining Mr. Grant were Alexander Dorevitch, the EP Great Lakes Coordinator VC Group; Les Klein, APM, a partner with the law firm of Sonnenschein Nath & Rosenthal, LLP; and myself. Following is a summary of the update provided at the conference, along with some prominent questions and answers woven into the discussion.

As an introduction, Mr. Grant noted that he entered EP Rulings & Agreements with an inventory of 2,700 cases under EPCRS. Last year, 1,500 cases were closed within a 420-day cycle, which was simply too long. Mr. Grant's goal is to close each voluntary correction program (VCP) case within 120 days. Due to the increased case volume, the IRS has been borrowing agents from other areas, such as Determinations and Technical. Mr. Grant hopes that the revenue procedure's recent changes and the improved changes in the processing of cases will speed production. He stressed the importance of the IRS partnering with the private sector in expanding the correction program, but conceded that more enforcement was necessary to attain compliance.

The most recent version of EPCRS is found in Rev. Proc. 2006-27, available at www.irs.gov/pub/irs-drop/rp-06-27.pdf. For first-time readers, comprehending the revenue procedure appears to be a daunting task, at 116 pages in length with a variety of appendices. Fortunately, the changes made by the new revenue procedure are not as voluminous when compared to its predecessor (Rev. Proc. 2003-44), but they are nevertheless important. The new Rev. Proc. also signals the IRS' commitment to have the program grow and evolve over time. As was the case with the prior revenue procedure, the IRS requested comments on new areas, indicating possible improvements that may occur in future revenue procedures. To make the comparison



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between the prior and current revenue procedure more manageable, the IRS has prepared a chart, which can be found at www.irs.gov/pub/irs-tege/rp0627_summary.pdf.

Before summarizing the changes made by the new revenue procedure, a quick review of the existing EPCRS may be helpful. As a teacher, I try to use a variety of visuals to explain concepts to students. The EPCRS programs can be viewed as providing three doors—a revolving door, an opening door and a trap door. The self correction program (SCP) permits a plan sponsor to self correct certain defects, other than failures relating to diversion or misuse of plan assets and egregious operational failures. Such self correction has a two-year window period and, if corrected, no fee or IRS involvement is required (thus the revolving door picture).

If SCP is not available, the voluntary correction program (VCP) may be used to correct plan failures for a modest fee. The IRS revenue procedure sets forth model correction methods for certain plan failures, penalties for VCP submissions and reliance of EPCRS. VCP ends with a Compliance Statement and the payment of a fee (thus the opening door picture). Plans with defects that do not take advantage of SCP or VCP face the prospect of being audited (the trap door picture) and having such failure being corrected under Audit CAP, which results in a higher user fee penalty.

Thus, the revenue procedure is structured in terms of SCP, VCP and Audit CAP, as well as model correction methods and permissible retroactive plan amendments. The new revenue procedure is cumulative in nature—adding new changes to the previous Rev. Proc. 2003-44. I found it helpful to categorize the new revenue procedure into five different areas.

Coverage

The first category was coverage—what failures could not be corrected under EPCRS and what plans can take advantage of EPCRS. The prior revenue procedure identified that SCP was not available for egregious failures and that SCP, VCP and Audit CAP would not be available for failures relating to diversion or misuse of plan assets. As a result of its campaign to go after abusive tax avoidance transactions (better known as ATATs), the IRS now prohibits failures relating to ATATs to be corrected under EPCRS. The revenue procedure states that the SCP is not available to correct any operational failures related to ATATs, and if an ATAT is raised upon VCP, the issue will be referred to an IRS EP Tax Shelter Coordinator. Unrelated failures can continue to be processed under VCP, but any compliance statement will not apply to any ATAT failures. ATAT failures may be referred to examination.

The IRS also expanded the use of EPCRS to orphan plans. If an “eligible party” can demonstrate that the plan sponsor no longer exists, cannot be located, is unable to maintain the plan or is deemed to have abandoned the plan per the Department of Labor (DOL) regulations, failures can be corrected through VCP and Audit CAP. An eligible party includes a court appointed representative; a person determined by the DOL as having responsibility to distribute and terminate the plan; or a surviving spouse of a plan that was never covered under ERISA Title I because the owner was the sole participant.

Expand

The second category was to expand the model correction methods and permissible retroactive plan amendments. Model methods and retroactive plan amendments are extremely important as a plan sponsor must rely on such for SCP and for negotiating in VCP for alternative correction methods. The new revenue procedure added the following three new model correction methods to the current list and one new retroactive plan amendment:

- For eligible §401(k) participants who were excluded from participation and therefore did not make any salary deferrals, the new correction method requires the employer to make a qualified nonelective employer contribution (QNEC) equal to 50% of the ADP percentage rate relating to the

employee’s group (NHCE or HCE) applied to the employee’s compensation, as opposed to the prior correction method of 100%. For after-tax employee contributions that should have been made but were not, the correction method permits a QNEC of 40% of the average rate of such contributions. Such contributions are referred to as *missed deferral opportunity* or *missed opportunity for making after-tax employee contributions*. For example, if NHCE ADP was 3% and a NHCE participant with \$50,000 in salary was erroneously excluded from participation, the employer would be required to make a QNEC equal to 50% of [3% × \$50,000], or \$750. This correction is in contrast to a failure to implement an employee actual deferral election. For example, if the employee made an election to defer 10% of pay but the deferral was never made, the full amount (*i.e.*, 10% of the employee’s compensation) would have to be contributed by the employer, not 50% of the ADP rate applied to compensation.

- For failure to obtain spousal consent, the procedure expands the correction methods by allowing the spouse to obtain a lump sum payment equivalent to the survivor annuity, in lieu of the survivor annuity.
- For failure to comply with the participant loan requirements in the plan, operational failures and plan document failures can now be cured through VCP and/or plan amendment. If the plan permitted participant loans but the loan was in excess of the statutory dollar limit of IRC §72(p) (*i.e.*, lesser of \$50,000 or 50% of the vested account balance) or if the loan did not satisfy the duration (*i.e.*, five-year repayment schedule) and/or level amortization period (*i.e.*, level repayment amounts of payments not less frequently than quarterly), such operational failures can be corrected through VCP as long as the statutory terms have not expired. For example, if the plan made a loan with a six-year repayment schedule, but discovered the error in the second year of repayment, it could correct the repayment over the remaining three-year statutory period. Such correction means that there is no deemed distribution, thereby eliminating the Form 990 and an excise tax penalty. Unfortunately, if the error was discovered after the five-year statutory period expired, the participant has a deemed distribution and income must be reported.

In contrast, if plan loans were made but were not authorized by the terms of the plan, the plan is permitted to make a retroactive plan amendment thereby correcting the problem. This correction can be made under SCP, VCP or Audit CAP.

Fee Schedule

The third category relates to the fee schedule. The existing VCP fee schedule remains in tact. Changes include:

- The IRS has discretion to waive the fee in the context of orphan plans.
- The fee is reduced to \$500 in the case of §401(a)(9) failures (*i.e.*, minimum distribution payments) if the violation affected 50 or fewer participants. Also, possible relief from the excise taxes under IRC §§4972 (nondeductible contribution) and 4979 (excess contributions) may be granted. The waiver of excise taxes will be discretionary and will generally be available

in inadvertent situations (e.g., testing for ADP was done on a timely basis but the data was faulty).

- A new fee schedule is added to the procedure for late amenders discovered during the determination letter process (e.g., plans that were not amended for the GUST changes but submitted for a determination letter). These cases are not considered to be VCP submissions, which is why there is a separate fee schedule. Like the VCP fee schedule, it is based on the number of plan participants, but it also increases by the number of legislative changes that were ignored by the late amender. For example, if amendments were not made for TRA '86 changes, the user fee for TRA '86 is assessed. This change is a welcomed addition to EPCRS and should encourage sponsors to apply for a determination letter even if defects are later discovered during the application process. Under VCP, however, the fees for failure to amend for EGTRRA good faith amendments, IRC §401(a)(9) amendments and interim amendments, are a flat \$375. According to Al Dorevitch, the revenue procedure will likely be clarified to indicate that the fee is applicable to each failure, not for each year of failure.
- The VCP compliance fee for IRA/SIMPLE IRA plans is reduced from \$500 to \$250.

Streamlining and Simplifying

The fourth category relates to streamlining and simplifying the VCP application process.

- The Compliance Statement does not have to be signed by the plan sponsor unless material changes have been made to the application. This change should speed up the processing time.
- The IRS will acknowledge receipt of a submission if the identifying information is submitted on the Acknowledgement Letter (contained in Appendix E of the revenue procedure) and included in the submission.
- Appendix D provides a revised sample format for the VCP submission, in an effort to expedite the process.
- A sample format for interim amenders is provided in Appendix F.

Miscellaneous

The fifth category involved miscellaneous changes.

- In group submissions, each master and prototype from a sponsor is considered a separate submission.
- For VCP and Audit CAP, the plan sponsor is not required to distribute or forfeit excess amounts of \$100 or less, per participant.
- Under Audit CAP, the sanction imposed on a late amender discovered during exam will be greater than the sanction imposed on a late amender discovered during a determination letter submission.
- VCP is not available for plans “under examination.” The definition of “under examination” was expanded to include: being under exam for Form 5500, EO exam for Form 990 or investigation by the Criminal Investigation Division of the IRS; verbal/written notification from EP or EO of an

impending exam or referral for exam; plan sponsor submitted a determination letter request and the IRS discovers possible qualification failure; determination letter submission is withdrawn after agent raises a qualification failure; and plan has been under an EP exam and is in appeals or in litigation for issues raised in an exam.

- A determination letter is a prerequisite for using SCP on significant operational failures. This requirement will be satisfied if (1) the plan has a favorable determination letter, opinion letter or advisory letter that considers GUST; (2) the plan is initially adopted or effective after 12/31/01 and the sponsor submits a timely application for a determination letter or it adopts an approved master/prototype plan or volume submitter plan within the plan’s remedial amendment period; (3) the plan is terminated prior to the GUST remedial amendment period and amended to reflect GUST changes; or (4) the plan is terminated prior to the expiration of the EGTRRA remedial amendment period and the plan was amended to reflect EGTRRA.

• • •

The new revenue procedure is generally effective September 1, 2006. Employers have the option of applying some sections immediately, while other sections are immediately effective regardless of the employer’s choice. While the three-year delay between revenue procedures was unfortunate, the new revenue procedure demonstrates the IRS’ commitment to have qualified plans come into compliance in an efficient and expedited fashion. The cumulative effect of EPCRS as noted in this recent revenue procedure signals the IRS’ goal to make corrections more available and more cost-effective, especially if used by plan sponsors on a voluntary basis. Practitioners should encourage plan sponsors to conduct internal audits not only to self correct on-going failures, but to eliminate the potential for future failures. This suggestion is simply “best practices” for the on going maintenance of a qualified plan. Just as we take for granted the submission of a determination letter for approval of the plan document, use of the IRS’ correction program simply makes sense to keep the plan in compliance during operation.

Finally, May was a busy month for regulatory initiatives. The DOL’s Employee Benefits Security Administration (EBSA) updated its Voluntary Fiduciary Correction Program (VFCP) with a May 19, 2006, effective date and issued final regulations regarding abandoned plans. Other than for purposes of correcting participant loans, use of the IRS’ EPCRS does not forgo the need to pursue relief under the DOL’s correction programs. But alas, that is the subject of another article! [↗](#)



Kathryn J. Kennedy is a professor of law at The John Marshall Law School in Chicago, IL, and director of the graduate Tax and Employee Benefits Programs. Katie is currently a member of the DOL Advisory Council and a member of the IRS TE/GE Great Lakes Advisory Council. She is active with the American Bar Association Section of Taxation, is past chair of the Illinois Bar Association Employee Benefits Section Committee and vice chair of the Chicago Bar Association Employee Benefits Committee. (7kennedy@jmls.edu)

Comparison of MSAs, HSAs, FSAs and HRAs for 2006

by Robert M. Richter, APM

Many people utilize consumer driven health plans as a means of reducing and/or controlling spiraling health care costs. These plans include Medical Savings Accounts (Archer MSAs), Health Savings Accounts (HSAs), Health Flexible Spending Accounts (FSAs) and Health Reimbursement Arrangements (HRAs). The following chart provides a general comparison of these health plans.



Robert M. Richter, APM, JD, LLM, is a vice president at SunGard Relius in Jacksonville, FL. Robert is a member of ASPPA's Board of Directors and the Finance and Budget Committee. He also serves on The ASPPA Journal Committee and Chair of GAC's Administration Relations Committee. (robert.richter@relius.net)

	Medical Savings Accounts (Archer MSAs)	Health Savings Accounts (HSAs)	Health Flexible Spending Accounts (Health FSAs)	Health Reimbursement Arrangements (HRAs)
Is any employer eligible?	No, only small businesses (under 50) and self-employed may establish.	Yes	Yes, but the following cannot benefit: partners, sole proprietors and more than 2% shareholders of S Corp or members of LLC.	Yes, but the following cannot benefit: partners, sole proprietors and more than 2% shareholders of S Corp or members of LLC.
Are individuals required to have other health coverage?	Yes, must be covered by HDHP: The minimum deductible must be: • \$1,800 - \$2,700 for self-only coverage; • \$3,650 - \$5,450 for family coverage. Max out-of-pocket: \$3,650 (\$6,650 if family coverage)	Yes, must be covered by HDHP: The minimum deductible must be: • \$1,050 for self-only coverage; • \$2,100 for family coverage. Max out-of-pocket: \$5,250 (\$10,500 if family coverage)	No	No
Are there limits on other health coverage that can be maintained?	Yes. Only certain excepted benefits may be maintained (e.g., dental, vision, accident insurance, etc.).	Yes. Only certain excepted benefits may be maintained (e.g., dental, vision, accident insurance, etc.).	No	No
What is the maximum annual contribution?	65% of deductible for self-only coverage; 75% of deductible for family coverage	Lesser of (1) 100% of deductible; or (2) \$2,700 for self-only coverage or \$5,450 for family coverage	No statutory limit. It depends on plan design.	No statutory limit. It depends on plan design.
Can older workers make "catch-up contributions"?	No	Yes. Those age 55 and older can contribute an extra \$700 (increases by \$100 until \$1,000 in 2009).	N/A. There are no maximum contribution limits.	N/A. There are no maximum contribution limits.
Who can contribute to the account?	The individual or employer, but not both. Cannot be offered through a cafeteria plan.	Individuals and/or employers. Can be offered through a cafeteria plan.	Individuals and/or employers. Typically offered through a cafeteria plan.	Employer only. Cannot be offered through a cafeteria plan.
What is a qualified medical expense for purposes of tax-free distributions?	IRC §213(d) expenses (which includes OTC drugs) that are not deducted or reimbursed by other plans. However, only certain insurance premiums qualify as medical expenses (e.g., COBRA and long-term care).	IRC §213(d) expenses (which includes OTC drugs) that are not deducted or reimbursed by other plans. However, only certain insurance premiums qualify as medical expenses (e.g., COBRA and long-term care).	IRC §213(d) expenses (which includes OTC drugs) that are not deducted or reimbursed by other plans. Insurance premiums do not qualify as medical expenses. Also, the plan may limit expenses that qualify.	IRC §213(d) expenses (which includes OTC drugs) that are not deducted or reimbursed by other plans. May include insurance premiums. Also, the plan may limit expenses that qualify.

	Medical Savings Accounts (Archer MSAs)	Health Savings Accounts (HSAs)	Health Flexible Spending Accounts (Health FSAs)	Health Reimbursement Arrangements (HRAs)
Can unused amounts be carried over to a later year?	Yes	Yes	No	Yes, depending on plan design
Is claim adjudication required?	No	No	Yes	Yes
Is plan funded (i.e., are funds required to be in separate account or trust)?	Yes	Yes	Not required to be funded	Not required to be funded
Are there nondiscrimination rules that apply?	If the employer contributes, then contributions must be "comparable" for participating employees.	If the employer contributes, then contributions must be "comparable" for participating employees. If offered through a cafeteria plan, IRC §125 rules may apply (e.g., 25% concentration test).	If the employer contributes, IRC §105(h) rules apply. If offered through a cafeteria plan, IRC §125 rules apply (e.g., 25% concentration test).	IRC §105(h) rules apply.
What is the tax treatment of distributions that are not for medical expenses?	Taxable and may be subject to 15% excise tax for certain early distributions	Taxable and may be subject to 10% excise tax for certain early distributions	N/A Distributions must be for medical expenses.	N/A Distributions must be for medical expenses.
Is plan subject to COBRA?	No	No	Yes, depending on size of plan	Yes, depending on size of plan
Is plan subject to ERISA?	No	Generally no, but could be if there is enough employer involvement	Yes	Yes

Welcome New Members and Recent Designees

▲ CPC

Aric D. Allen
Donal K. Ford
Carrie L. Petersen
Tamara M. Vaughn

▲ QPA

David J. Fiszer
Sarah Elizabeth Griffith
Brenda M. Kurowski
Matthew W. MacDougall
Stephanie K. Mullenbach
Patricia A. Olson
Len Sorokin
Greg A. Writebol

▲ QKA

Kristine Berger
Mary A. Berk
Chad E. Blech
Mary Alice Brown
Randy O. Cater
Kelly J. Christensen

Kimberly R. Coulam
Nina Cowart
Barbara R. Crittenden
Gregory J. Davis
Nikki J. Felten
Megan A. Fincher
David J. Fiszer
Elizabeth L. Goodrich
Susan Gorsky
Timothy W. Haugen
Kathryn D. Henderson
Jerrilyn R. Johnson
Bruce J. Jones
Lisa Jordan
Angie Karstens
Matthew S. Kosinski
Brenda M. Kurowski
Tom Lastuvka
Lori A. Leeman
Anna Liu
Matthew W. MacDougall
Julie B. Martin
Ignacio Martinez

Kenneth F. McCabe
Judy K. Mesecher
Francesca Elizabeth Messano
Karen E. Miller
Andrea J. Millonig
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Sandra Lynn Patterson
Tim L. Ross
Kristin Stankus
Lena M. Stumper
John B. Sullivan
Roberta B. Sunkel
Anne M. Takacs
Tamara M. Vaughn
Marsha Walls
Karen L. Wood
Thomas J. Woodford
Janey Y. Yim

▲ APM

W. Todd Lehmann
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D'Andre R. Murray
Scott Price
Michael J. Rogers
Leslie K. Thomson
Kimberly D. Wilcoxon



What if Katrina Happened to You?

by Sarah E. Simoneaux, CPC

With hurricane season upon us, post-Katrina New Orleans is a city of contrasts. When someone asks, “Are things getting back to normal yet?”, the honest answer is, “No, no way, no how.” We lost “normal” on August 29, 2005.

And yet...100 year-old houses are getting much needed (albeit subsidized) facelifts, charter schools are replacing moribund public schools and grassroots efforts have replaced the complacency of *laissez les bons temps rouler*. Overhearing one of my cell phone conversations as I was trying to describe this city where despair and hope live side by side, my daughter read me the following passage from her English class assigned novel:

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way.

Never has Charles Dickens seemed so relevant to a bunch of eighth graders, or for that matter, to their parents. We have lived through our version of the worst of times, and while we hope for the best to return, we aren’t taking any chances. We learned the hard way how to prepare our businesses, our homes and our families for disaster. Although most of you probably don’t live below sea level, how would you fare if a water heater broke and flooded your office? Or if an ice storm shuts down power for two weeks? Or if an earthquake of Katrina’s magnitude strikes without warning?

Sit Down Right Now, Think, Read and Write.

Experienced at running from hurricanes, we had an evacuation box containing all of our important papers, computer backup CDs, school books and our wedding album (the only photos that we had not yet scanned into the computer). Expecting

to be back in a few days, a week at most, we were woefully unprepared for the length of time we had to be away. I had looked at my wedding pictures more recently than my homeowner’s policy. We didn’t even have a copy of my husband’s (Peter) casualty insurance with us. We had immunization records, but no academic records. We had no plan as to how we would get in touch with dispersed family members or with Peter’s employees.

So, stop waiting for tomorrow to plan. Think first about how you would contact everyone. If you have a larger employee group, set up a phone tree. Plan who will contact clients and have a plan for allowing employees to work remotely. Decide who will be the main contact person for the family. Make sure you have current contact information on everyone who matters to you. Now that you have thought about it, write it down and send it to everyone. They will think you are paranoid until disaster strikes, and then you will look like a genius.

Pull out and read your business and homeowner’s policies. Call your insurance agent even if you think you know what the policies say. What is the difference between water and wind damage? What is the coverage for fire? What is the definition of business interruption due to a loss? As a small business owner, Peter had business interruption insurance that covered his and his employees’ payroll. We had no idea that it even existed until a colleague mentioned that his policy contained it.

Cash and Fuel Are King, but You Can’t Get Either When the Power is Out.

ATMs and gas pumps only work when the electricity does, and both will run out quickly if everyone has advance notice of the outage. During the northeast blackout a couple of years ago, residents dug for stray change in their furniture, because restaurants and stores couldn’t take debit or credit cards. Have several hundred or even one thousand dollars stashed and untouchable except in the event of an emergency. Unfortunately, you can’t really safely stockpile gasoline, but we fill our cars when they hit the halfway mark during

hurricane season. If power at your office or home is important to you shortly after disaster strikes, consider a natural gas generator with a gas line or underground storage tank (depending upon which works best and is more reliable in your situation). Although they cost several thousand dollars, and must be professionally installed, they can run all or part of an office or a home indefinitely.

Don't Panic After a Disaster, but Start Dialing. First Come, First Served.

My friend (and former ASPPA President), Carol Sears, FSPA, CPC, once said to me, "Nothing is worth worrying about that can be solved by a phone call or a check or both." Once the worry about everyone's safety is alleviated, it is time to pick up the phone. Call your casualty insurer for both home and office and ask for an adjuster to visit and evaluate them, even if you aren't there or if you don't yet have any idea of the damage. The bigger the disaster, the more important it is that you are first in line with the insurance company. If you suspect damage, and you know a reliable contractor, call him or her *before* the insurance company. They will be in bigger demand than the insurance adjusters.

Technology is a Mixed Blessing.


After a disaster, cell phones might not work, but, oddly, text messaging might. E-mail and the Internet are lifesaving—consider investing in a mobile broadband card for one or more laptops. If you use a local bank, electronic payroll deposits and auto bill pay may or may not work. When we evacuated, we brought personal checks but no corporate checks with us. Peter's employees needed to be paid, so we had to pay them personally and then unwind the mess when we got home. Peter also resolved to pay all the employees, including those who were hourly, until the business reopened. Without the employees, you don't have a business. Nine months after Katrina, Burger King is still hiring 15 year-olds and paying them ten dollars an hour.

Lots of Paper is Bad.

Paper records are extremely vulnerable to water and fire. New Orleans' property records were all in massive files on the ground floor of a city office building. They were in the process of converting them to electronic records before Katrina, but the majority of the records were not converted and disintegrated under three weeks of submersion in the storm's brackish water. When Peter started his business three years ago, he made the investment in

paperless recordkeeping. It was worth every cent, and more. He had access to all his records for the entire post-Katrina journey, through the backup drive of the office server and his laptop. Begin the process now of scanning in plan documents, client files, insurance records, mortgage records, tax returns (remember that your CPA's office is just as vulnerable as yours), and even photographs. Peter had off-site backup as well, which allowed his office manager to get at critical files while he was in North Carolina and she was in Texas.

So Have We Followed Our Own Advice?

We do have a cash stash, we are putting in a natural gas generator, and I have scanned in the insurance, mortgage and kids' school records. We have a written plan for contacting everyone. The wedding album remains non-electronic and still hasn't left the evacuation box. Perhaps it represents just a little nostalgia to remind us of the days before Katrina and serves as something to ponder when we're on the road. 

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Sarah E. Simoneaux, CPC, is a pension consultant specializing in qualified plan compliance software. She is vice president of Actuarial Systems Corporation, a qualified plan system and software provider. Before joining ASC, Sarah owned a pension consulting firm in California. Sarah is the 2005-2006 ASPPA President and has served on ASPPA's Board of Directors for over a decade. She has also held the positions of President-Elect, Vice President and Treasurer with ASPPA, and has chaired the ASPPA Conferences, Membership and Marketing committees. She has lectured at ASPPA's Annual and regional conferences, as well as at the AICPA Annual Employee Benefits meetings. (ssimoneaux@asc-net.com)



A Day in the Life of a GAC Volunteer

by David M. Lipkin, MSPA

Who made these rules? How can they expect us to deal with this \$%@#* requirement? Those government types have no idea what hassles they are causing my clients! Are you sick of complaining and ready to take action? Then consider becoming a member of the ASPPA Government Affairs Committee (GAC). You can make a difference.

GAC is made up of 13 “subcommittees.” These subcommittees cover legislation, 401(k) plans, defined benefit plans, reporting and disclosure, dealings with the IRS, dealings with the DOL, plan documents and others. Just about every possible area is covered by a subcommittee. Joining one of these subcommittees may be beneficial for both you and for ASPPA.

One barrier that keeps many of us from “taking the next step” is a fear of the unknown. “Gosh, I’m not a lawyer—I probably wouldn’t be able to help too much.” “I already have 85 plans assigned to me, I’m not sure I want to take on another big responsibility.” “What if I get assigned a big project at the wrong time of the year?” These understandable concerns keep many qualified volunteers away from GAC.

The reality is that these obstacles can be overcome, and it is both (a)

feasible and (b) potentially beneficial for you to join this vital (and fun) GAC club!

First Steps—Getting on a Subcommittee

You need to let ASPPA’s Membership Department know that you may be interested in joining GAC. To do this, you can visit the Web site www.asppa.org/membership/member_vol.htm to find the Volunteer Position Application and mention your specific interest in GAC (and mention the specific subcommittee, if you have a preference). If you have questions, call Elsa Dizon, Membership Coordinator, at the ASPPA office for more information about how to sign up. Each subcommittee is chaired by an experienced ASPPA member. Most subcommittees have 8-12 members. The complete listing of all of the subcommittees can be found on page 15 of the *2006 ASPPA Yearbook*. You should be able to find one that you are interested in. Note that you need not be an expert to join one of these subcommittees. The main requirements are interest, time and enthusiasm. Every subcommittee chairperson started out by volunteering.



GAC Corner

ASPPA Government Affairs Committee

Comment Letters Recently Filed

May-Jun 2006

For all GAC filed comments, go to www.asppa.org/government/gov_comment.

May 24

GAC commented on the IRS’s 2006-2007 Guidance Priority List
Filed with: IRS
Comments: www.asppa.org/government/comment05-24-06.htm

May 10

ASPPA urged pension reform committee conferees to enact a final HR 2830 bill
Filed with: Each congressional member of the pension reform conference committee
Comments: www.asppa.org/government/comment05-10-06.htm

At least once a year, the staffing of each subcommittee is reviewed and the membership is updated. Some people want to leave the subcommittee, some move up into leadership roles and some are termed off. This shifting will often create new positions—and possibly an opening for *you!* When there is an opening on a particular subcommittee, ASPPA's Membership Committee provides names of interested volunteers to the appropriate GAC subcommittee chair, who will then review the candidates to see if there is a fit.

Admittedly, ASPPA has sometimes been accused of fostering an “old boy” network, where the next member is a personal friend of the chairperson. We have now moved to a more formal, nonpolitical process where ASPPA members with no previous connection with GAC are considered for positions (and, hence, part of the reason for this article). This process is not just an idea, it is the new reality.

Second Step—Welcome to Your New Subcommittee!

As issues arise, the chairperson will determine whether the subcommittee should get involved. Subcommittee members sometimes suggest their own issues. What is an issue? Here are just a few current examples:

- IRS regulations on Roth 401(k) plans;
- IRS regulations on 415 limits;
- DOL regulations on abandoned plans;
- Proposed pension funding reform legislation;
- New legislative ideas that you have not yet heard about.

These are important issues for us and for you!


Each subcommittee has a periodic conference call with its members. Typically, a written agenda (or a set of discussion bullets) is pre-circulated. This agenda allows for a more organized call. Most calls are once a month and typically do not exceed one hour. No one expects you to be present for every call, although a decent effort is expected. If you cannot participate in a call at least one hour per month, then you should not pursue volunteering for GAC.

In addition to the calls, “homework” assignments are sometimes given out during the month. The nature of these assignments is typically to review the proposed law or regulation to be discussed. It may involve writing proposed language, writing a letter to regulators or some other task. You will be expected to accept at least a portion of these tasks. Hopefully, you will find them both interesting and educational. (I have.)

Third Step—The Bigger Picture

Once your subcommittee decides how it thinks an issue should be dealt with, then the other parts of GAC get involved. The senior GAC members review the recommendations and determine how to proceed. Frequently, the result is a letter to a regulatory agency (such as the IRS). These letters are (obviously) carefully written. I was surprised to learn how much attention these letters get from the regulators and Congress. ASPPA has earned a lot of well-deserved credibility. GAC also schedules formal meetings with the IRS, DOL, congressional offices and other important people and agencies to keep the lines of communication open. These meetings occur every February and June. Depending upon the issues at the time, these meetings often include specific subcommittee chairs.

The point is that the work you do will make a tangible difference—your work will not be filed away and forgotten. If you find that the subcommittee where you are placed is not suitable for you, then you may be able to move to a different home. GAC leaders are looking for energetic volunteers who want to make a difference. Some of these talented people will be the future leaders of ASPPA. If done right, this results in a “win/win” arrangement for both you and ASPPA.

Please let Jolynne Flores, ASPPA's Government Affairs Manager (jflores@asppa.org), or me (david@metrobenefits.com) know if you have any questions or if you would like more information about joining GAC. We'd love to have you! 



David M. Lipkin, MSPA, is the president of Metro Benefits, Inc, Pittsburgh, PA, which he founded in 1986. David speaks on a variety of topics, including the professional responsibilities of the actuary.

He has published numerous articles. He has been selected by the US Department of Labor to serve as an independent fiduciary for several orphan/abandoned plans. David currently serves as Co-chair of ASPPA's Government Affairs Committee (GAC). He previously served as Chair of GAC's Defined Benefits Subcommittee. (david@metrobenefits.com)



The point is that the work you do will make a tangible difference—your work will not be filed away and forgotten.

Insurance for Your Business

by Gwen S. O'Connell, CPC, QPA



ASPPA PAC™
OPENS THE DOOR

For those of us who are business owners, we have to worry about many things each day. We back up our computers in case the system goes down. We cross-train in case an employee is out or leaves. We buy medical insurance, fire insurance and errors and omission insurance to cover these potential losses.

Did you ever think about buying insurance to make sure that we all stay in business? I think of my ASPPA PAC (Political Action Committee) contributions as fulfilling that need. It is my “stay-in-business” insurance. When I make a contribution each year, I am making it as a member of ASPPA to support our lobbying efforts. These lobbying efforts are critical to our survival as a pension industry and to our clients’ ability to continue to provide the meaningful retirement plans that we establish and help them maintain. With the pooled PAC contributions of many ASPPA members, the PAC can make contributions from ASPPA PAC to the campaigns of members of Congress that will ensure ASPPA a place at the table when it comes to discussing and implementing pension and retirement plan reforms.


Possibly the most interesting thing I’ve learned is that it does not take large contributions from ASPPA PAC to have an impact on what happens on Capitol Hill. ASPPA PAC makes relatively small contributions to the various campaigns and congressional leadership PACs that our own PAC feels are most beneficial to make sure our message is heard. Even our small amounts can and do provide us important favorable contact with members of the House and the Senate who have influence over the issues that are important to our membership and our clients.

After having been involved in making these connections for several years, what is most surprising to me is how much impact ASPPA really does have with these representatives and their staffs. They not only listen to us and help support our dedication to the preservation of the private pension system, they actively seek us out to help them understand the

environment we work in and how the many (many!) proposals that arise would affect our clients and the retirement security of the citizens of the country. Our contributions open the doors so that Brian H. Graff, Esq., APM (ASPPA Executive Director/CEO), Teresa T. Bloom, APM (ASPPA Chief of Government Affairs) and many other dedicated ASPPA members can educate these individuals on the impact of current and proposed legislation and can have a very real positive impact on these situations.

I cannot emphasize how important these contributions are to the successful operation of the Government Affairs Committee in meeting its objectives for our membership. Consider making a contribution in 2006, if you have not already done so. Although dollar amounts are important and large contributions are always welcome, the number of contributors also adds credibility to the PAC, so even contributions of \$50 still help us to meet our goals.

Based on the rules that apply to PAC for raising money, your contributions must be by personal check or credit card—no contributions can be accepted from a business, and the contributions are *not* tax deductible. You must also be a member of ASPPA to make a contribution.

Make a difference—contribute in 2006. Contact Jolynne M. Flores, ASPPA PAC Manager, at jflores@asppa.org on how to contribute. 



Gwen S. O'Connell, CPC, QPA, is the president of Gwen O'Connell Pension Consulting, Inc. in Eugene, OR. Gwen formally served on ASPPA's Executive Committee as Secretary and as the general chair of the Education and Examination Committee. (gwen@gopensions.com)

The Joint Board for the Enrollment of Actuaries

by Sally J. Zavattari, FSPA, CPC

What is the Joint Board for the Enrollment of Actuaries?

ERISA created the Joint Board for the Enrollment of Actuaries (JBEA) to develop and oversee the process by which a person becomes an Enrolled Actuary. ERISA also created the Enrolled Actuary (EA), an individual who is qualified (under JBEA guidelines) to perform certain calculations for defined benefit plans. ERISA also requires the JBEA to oversee the continued qualification of EAs to perform the actuarial functions required under ERISA.

What Does the “Joint” in Joint Board Stand For?

“Joint” refers to the joint jurisdiction that ERISA granted to the Department of Labor (DOL) and the Internal Revenue Service (IRS) over retirement plans. The Joint Board is made up of DOL and IRS representatives appointed by their respective agencies, and it is headed by an Executive Director. For the last few years, a representative of the Pension Benefit Guaranty Corporation, which insures the benefits of workers covered by defined benefit plans, has also been an ex-officio member of the JBEA.

How Does the JBEA Determine if an Individual is Qualified to Become an Enrolled Actuary?

The JBEA oversees the administration of a series of three examinations that an individual must pass to be enrolled as an actuary. In addition, three years of responsible actuarial experience is required. Once a candidate has passed the examinations, the candidate must submit an application to the JBEA, which must include information on the experience the candidate has had in performing responsible actuarial work.

Do the Members of the JBEA Create the Examinations?

No. The JBEA has appointed an Advisory Committee to actually prepare the examinations. The Advisory Committee is made up of Enrolled Actuaries who are representatives of ASPPA, the Society of Actuaries (SOA) and the IRS. A cross-section of actuaries with both large and small plan experience is maintained so that the examinations reflect the skills necessary for the defined benefit marketplace. ASPPA, the SOA and the IRS each submit candidates to the JBEA as their

representatives, and the JBEA selects those candidates with the skills and qualifications needed on the Advisory Committee. One member of the Advisory Committee is selected as the coordinator, who is currently Carl Shalit, MSPA.

How are the EA Examinations Written?

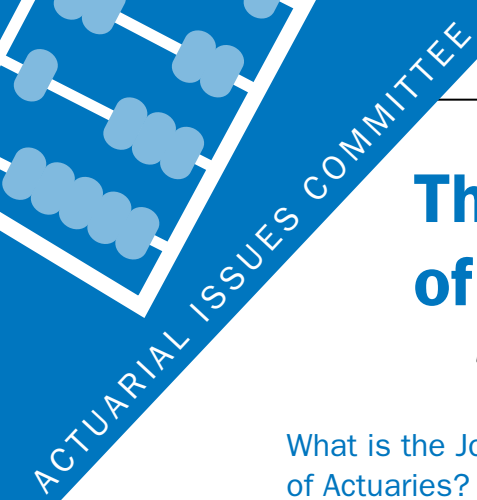
An examination committee is established for each examination. Each examination committee has a chair and vice-chair, who is alternately an ASPPA or SOA member. The examination committee members are volunteers from ASPPA and the SOA, and they write and perform a preliminary review of the questions to be submitted to the Advisory Committee for each examination cycle. Once the examination committee has prepared at least twice the number of questions needed for the examination, the chair and vice-chair submit the questions to the Advisory Committee. The Advisory Committee performs an extensive review of the submitted questions and solutions and selects the questions to be used on the examination. The question selection process involves a blueprint that has been developed for each examination to ensure coverage of the topics outlined in the examination syllabus.

Can I Volunteer to be an Item Writer on an Examination Committee?

Yes. Contact me at sally@asgpension.com if you would like to be an item (question) writer. You must be an Enrolled Actuary in good standing. The examination process starts with a conference call for the examination committee with the chair and vice-chair. Topics are assigned to each member of the committee, as well as an “exchange” partner. You will submit the completed questions (and detailed solutions) to your assigned partner for review, and you will receive her/his questions for review. Once the initial preparation and review is completed, the examination committee will meet to review and rewrite all of the questions to be submitted to the Advisory Committee. You will receive core JBEA Continuing Professional Education (CPE) credit for your work on the examination committee.

What Does the Advisory Committee Do with the Questions Submitted by the Examination Committees?

Because ERISA and the promulgations by the various government agencies are so complex, the Advisory Committee performs a thorough review of the questions



Members of the Joint Board for the Enrollment of Actuaries:

Patrick McDonough, Executive Director
 Lawrence J. Heberle, IRS
 Lawrence E. Isaacs, IRS
 Michael Roach, Office of the Assoc. Chief Counsel/TEGE, IRS
 Paulette Tino, IRS
 Rudy Nuissel, DOL
 Zenaida Samaniego, DOL
 Emmett F. Williams, DOL (Alternate)
 Joan M. Weiss, PBGC

Members of the Advisory Committee:

Carl Shalit, MSPA, ASPPA, Coordinator
 Lawrence Deutsch, MSPA, ASPPA
 Janet S. Eisenberg, MSPA, ASPPA
 Ann Gineo, SOA
 Pamela Marlin, SOA
 Ho Kuen Ng, SOA
 Hal Tepfer, SOA
 Carolyn Zimmerman, SOA
 Yehuda B. Haber (Alternate)

submitted for each examination before selecting questions to be used on the examination. The Advisory Committee has four two-day meetings each year for this purpose.

What Happens After the Advisory Committee has Selected the Examination Questions?

Because ambiguities and errors can occur even after this rigorous review process, after the Advisory Committee has selected the final questions to be part of the examination, a mock “test” is conducted using volunteers from ASPPA, the SOA and the IRS. These volunteers take the actual examination that will be taken by enrollment candidates and submit comments on the questions to the SOA and ASPPA. These “pre-testers” meet with representatives of ASPPA, the SOA, the IRS and the Advisory Committee after taking the examination to review the comments and work out any ambiguities or other problems in order to finalize the test.

What Other Functions Does the Advisory Committee Perform?

The Advisory Committee makes recommendations to the JBEA on the content and subject matter of each examination, as well as the pass mark to be set for each examination. The Advisory Committee also assists in developing the syllabus and reading list for each examination in conjunction with representatives of ASPPA, the SOA and the IRS.


How Do I Apply to Become a Member of the Advisory Committee?

When there are openings on the Advisory Committee, the JBEA requests nominations from ASPPA, the SOA and the IRS. Since familiarity with the examination process is helpful, ASPPA nominations are often made from members of the examination committees. You may contact Susan J. Chambers, FSPA, if you would like to be considered for a nomination on the Advisory Committee. The JBEA (not ASPPA, the SOA or the IRS) actually selects the members of the Advisory Committee.

Is ASPPA’s Involvement in the Enrollment Process Limited to Having Representatives on the Advisory Committee and Examination Committees?

No. Because ASPPA has a large actuarial membership, ASPPA also sends two representatives to the Advisory Committee meetings where the examination pass marks are set and the syllabus and reading lists are updated to oversee the interests of ASPPA’s actuarial members. These liaisons also attend the pre-tester meetings. These representatives are currently myself and Howard L. Simon, MSPA.

What Other Responsibilities Does the JBEA Have?

In addition to ensuring initial qualification of candidates who are to be enrolled, the JBEA is responsible for continued qualification of Enrolled Actuaries. One way the JBEA accomplishes this task is by requiring CPE for all Enrolled Actuaries. Every third year, each EA must submit an application to the JBEA to renew her/his enrollment number. Part of the application process is substantiating that the individual has satisfied the CPE requirement for the three-year cycle. The JBEA selectively audits the applications to ensure compliance with the CPE requirements. The JBEA is also responsible for enforcement in cases where failure of an actuary to discharge her or his duties under ERISA has occurred. 



Sally J. Zavattari, FSPA, CPC, is president of Actuarial Services Group, Inc., an actuarial and retirement benefits consulting firm in Dallas, TX. She has been in the employee benefits field for 28 years and has served on ASPPA’s Board of Directors and many committees. She is an Enrolled Actuary, but her practice includes all types of retirement plans, including defined benefit, profit sharing/401(k), money purchase, ESOP, 403(b) and 457 plans (sally@asgpension.com).

Help Wanted: ASPPA Liaison Needed to JBEA

There is an immediate opening for an ASPPA liaison to the JBEA. Hobnob with the best and the brightest in the actuarial field, as well as IRS and DOL representatives, at two two-day meetings per year (January and June) and one one-day meeting for the examination pre-testing. Preparation time for each meeting is six to eight hours, depending on the meeting. If interested, please contact Bunny Fernhall at bfernhall@asppa.org.

Meet ASPPA's Newest Chiefs!

by Sarah E. Simoneaux, CPC

As reported in the September-October 2005 issue of *The ASPPA Journal*, ASPPA's Board of Directors adopted a new management structure in June 2004 to help carry out its new strategic plan. The model added a new level of upper management to the National Office, Chiefs. By adding Chiefs, ASPPA is positioned for expected future growth and is able to expand its volunteer workforce without creating unreasonable time commitments and pressures for them.



Joanne Lawrence Smith, CMP,
Chief of Conferences



Susan L. Hajek, QKA,
Chief Sales & Marketing Officer

Chiefs partner with our volunteers as co-chairs of our major committees and take full responsibility for implementation of projects developed by those committees. ASPPA has recently welcomed two new Chiefs, Joanne Lawrence Smith, CMP, and Susan L. Hajek, QKA, and I'd like to introduce them to you.

Joanne Lawrence Smith, CMP

Joanne Lawrence Smith, CMP, Chief of Conferences, joined ASPPA in October 2002 as Director of Meetings and was promoted to Chief of Conferences effective June 2006.

Joanne began her career in the meetings and convention industry with the Washington Convention & Visitors Association where she was part of a team who promoted Washington, DC, as a convention destination to trade associations all over the world. She is a Certified Meeting Planner (CMP).

Joanne then moved on to the National Association of Life Underwriters (now the National Association of Insurance and Financial Advisors, NAIFA), where she worked for the next 23 years. She began at NAIFA as an administrative assistant and ended her tenure there as vice president of meetings and conventions. Joanne oversaw a department of six who managed and executed up to 80 meetings per year. She has extensive experience in negotiating hotel and convention center contracts, budgeting, hotel logistics, audio/visual, exhibit sales and management, as well as execution of special events.

Joanne grew up in La Plata, MD, where she currently resides with her husband, RC, her puppy, Phebe, and RC's cat, Opus. RC is a

safety manager with the Smithsonian Institution. Joanne's daughter, Jessica, resides in Noblesville, IN, and works as a software engineer. Her son, Brian, is a sophomore at Salisbury State University in Salisbury, MD. Her stepdaughter, Erin, and stepson, Eric, are grown and living on their own.

Susan L. Hajek, QKA

Susan L. Hajek, QKA, Chief Sales & Marketing Officer, joined the ASPPA staff on May 8, but has been a member of ASPPA since 2000. Susan has an extensive career in the pension industry and brings a wide variety of experience to this position, which will help ASPPA to focus on the future. In addition to her Sales and Marketing duties, Susan also has oversight over the ASPPA Membership and ABC departments.

With a bachelor's degree in Finance from Truman State University and a desire to work at a brokerage firm, Susan's first position was in the retirement services department of Edward Jones. As a primary liaison between the brokers in the field and the home office, Susan gained experience in investments, operational procedure of qualified retirement plans and IRAs as well as client relationship management skills. After obtaining her MBA in Marketing and Management, Susan took a position at Mercantile Bank of St. Louis as a trust officer in the institutional custody department. This position allowed her to enhance her skills in the administrative and investment aspects of retirement plans. It was also there where she entered the sales and marketing arena.

For the past 13 years, Susan has held a variety of positions at SunGard including new business development, direct sales, marketing and staff management. As a member of ASPPA, Susan has

Recorded Webcasts

Available for Viewing:

Examining IRS Examinations and Enforcement: How to Get out of an IRS Plan Audit Alive

Available until June 30, 2007

It's Finally Here! EPCRS Updated

Available until June 30, 2007

What's New for the Form 5500

Available until May 31, 2007

Interim Plan Amendments—the New IRS Requirements

Available until April 30, 2007

USERRA—Are You and Your Clients Prepared?

Available until March 31, 2007

The Brave New World of Roth 401(k)

Available until February 28, 2007

The Updated DOL Voluntary Fiduciary Correction Program

Available until September 30, 2006


To register, visit

www.asppa.org/webcast/web_sched.htm.

been actively involved and served as president of the ABC of North Florida. Susan has also served on The ASPPA 401(k) SUMMIT Committee and as the Volunteer Co-Chair of the Marketing Committee.

In her spare time, Susan has been actively involved in a variety of organizations, including Junior Achievement, The United Way, American Cancer Society and Junior League. Holding board and executive level positions with Junior League and New Directions of the American Cancer Society, Dade County, she is in the unique position to leverage her professional work and community organization experience advantageously at ASPPA. Susan also enjoys reading, hiking, traveling and spending time with family and is looking forward to “museum roaming” on weekends in DC.

• • •

ASPPA can take pride in the caliber of our professional staff. ASPPA's Board of Directors feels confident that ASPPA is well positioned for the future. 




Sarah E. Simoneaux, CPC, is a pension consultant specializing in qualified plan compliance software. She is vice president of Actuarial Systems Corporation, a qualified plan system and software provider. Before joining ASC, Sarah owned a pension consulting firm in California. Sarah is the 2005-2006 ASPPA President and has served on ASPPA's Board of Directors for over a decade. She has also held the positions of President-Elect, Vice President and Treasurer with ASPPA, and has chaired the ASPPA Conferences, Membership and Marketing committees. She has lectured at ASPPA's Annual and regional conferences, as well as at the AICPA Annual Employee Benefits meetings. (ssimoneaux@asc-net.com)

ASPPA Calendar of Events

Date	Description	CE Credits
Sep 30	Early registration deadline for fall examinations	
Oct 22 - 25	2006 ASPPA Annual Conference • Washington, DC	20
Oct 31	Regular registration deadline for fall examinations	
Nov 1 - Dec 15	Fall 2006 examination window (DB, DC-1, DC-2, DC-3, PFC-1 and PFC-2)	
Nov 10	Postponement deadline for C-3, C-4 and A-4 examinations	
Nov 15	C-3 examinations	
Nov 15	A-4 examinations	
Nov 16	C-4 examinations	
Dec 1	Postponement deadline for DB, DC-1, DC-2, DC-3, PFC-1 and PFC-2 fall examinations	
* Dec 31	RPF 1-2 examination deadline for 2006 online submission (midnight, EST)	
2007		
Jan 25-26	Los Angeles Benefits Conference • Universal City, CA	15
Feb 25-27	The ASPPA 401(k) SUMMIT 2007 • San Diego, CA	15

* Please note that when a deadline date falls on a weekend, the official date shall be the first business day following the weekend.



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The ABC of New England Opens Its Doors

by Ellen S. Houston, QPA, QKA

At the ASPPA Annual Conference this past November, the ASPPA Benefits Council of New England (ABCNE) was officially recognized by ASPPA as its 15th ABC.

Wasting no time, we invited Adam C. Pozek, QKA, to be our inaugural speaker on February 16, 2006. The event was co-sponsored with the Massachusetts Chapter of NIPA. Between Adam's established reputation as a great speaker and the timeliness of the Roth 401(k) topic, we registered more than 50 people with a few more showing up at the door. By all accounts, the meeting was a great success. I am told it is normal to expect a less than 100% turn out, but in our case, we exceeded our expectation.


Regardless of the number of actuaries in the room, we were at standing room only—50 chairs, 57 people. My panicked state as we adjusted notwithstanding, we received great feedback on Adam's presentation. It was not only timely and informative, it was entertaining as well. I am looking forward to some new, tough legislation that will need his interpretation so that we can have him back next year.

April 26, 2006, was a red-letter day on my calendar for two reasons. Not only was it Administrative Professionals Day, but it was our second ABC meeting. Our speaker was Brian H. Graff, Esq., APM, ASPPA's Executive Director/CEO. The event was co-sponsored with WEB and also attracted over 50 registrants—and again, walk-ins. This time we were prepared and had plenty of seating. Though it took the tough New England crowd a while to warm up (it's still cold up here in April), even they could not resist Brian's dynamic presentation.

We expect to have three more meetings this year. They include an update with our DOL Regional Director in June and a session in the fall dedicated to investment professionals. For more



information on the ABC of New England, please visit our Web site at www.abcne.org.

Being involved in these meetings further clarified the importance of being part of a local chapter. Through participating, we have access and influence to those affecting our profession in Washington, DC. If there is an ABC near you, join! If not, consider starting one. Local dues support the great wealth of speakers available and provide you with inexpensive CE credits towards your ASPPA credential as well as others. For more information on ABCs, go to ASPPA's Web site at www.asppa.org/membership/member_local.htm. 



Ellen S. Houston, QPA, QKA, is a senior retirement plan consultant for Sentinel Benefits Group, Inc. in Wakefield, MA. She has over 20 years of experience in retirement plan administration and is the current president of the ABC of New England. (ellen.houston@sbg.com)

ASPPA Welcomes a New ABC—The ASPPA Benefits Council of Detroit

ASPPA is excited to introduce its newest ABC, located in Detroit, MI. The ASPPA Benefits Council of Detroit was officially approved on June 5, 2006. ASPPA's newest council will provide continuing education and networking opportunities for professionals in Detroit and the surrounding areas.

For more information on becoming a member or attending future meetings of the ABC of Detroit, please contact:

Maryliss A. Wozniacki, QPA
Creative Benefit Strategies, Inc.
 10240 Gibbs Rd
 Clarkston, MI 48348-1516
 maryliss@creben.com
 248.328.8611

The ABC of Detroit's first meeting will feature guest speaker, Brian H. Graff, Esq., APM, ASPPA's Executive Director/CEO, on September 20, 2006, presenting a Washington Legislative Update. Six additional meetings are planned for 2007.



There are currently 16 ASPPA Benefits Councils providing continuing education and networking opportunities to pension professionals on a local level. For information on ASPPA Benefits Councils, visit the Local Council section of ASPPA's Web site at www.asppa.org or contact the ABC Coordinator at abc_coordinator@asppa.org.

ABC Meetings Calendar

August 22

ABC of Cleveland
 Annual All-day Workshop
 Lorraine Dorsa, MSPA

August 22

ABC of Dallas/Fort Worth
 Increasing Participation in
 401(k) Plans
 Robert J. Cruz and Anne Boozer

August 22

ABC of Greater Cincinnati
 Hot Topic Lunch
 S. Derrin Watson, APM

August 22

ABC of Northern Indiana
 Keeping Current—All-day ERISA
 Seminar
 Sal L. Tripodi, APM

August 29

ABC of North Florida
 Current Status of Litigation
 Against Service Providers...
 or, Can Those Guys Really
 Sue Me?
 Ilene H. Ferenczy, CPC

August TBD

ABC of Great Northwest
 Fourth Annual EA Exam Review
 Colin E. Southcote-Want, MSPA

September 13

ABC of Central Florida
 Three-Person Panel on
 Investments
 William G. Talley, III, Glen
 Mather and Dr. Edward A.
 Moses

September 20

ABC of Atlanta
 5500 e-filing
 Janice M. Wegesin, CPC, QPA

September 20

ABC of Detroit
 Washington Legislative Update
 Brian H. Graff, Esq., APM

September 21

ABC of Chicago
 Executive Compensation
 TBD

September 26

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

September 29

ABC of Great Northwest
 Fifth Annual ERISA Update
 Seminar
 Ilene H. Ferenczy, CPC

October 17

ABC of Delaware Valley
 Washington Legislative Update
 Brian H. Graff, Esq., APM

October 22

ABC of Greater Cincinnati
 Discretionary Authority Brown
 Bag Lunch
 Edward Schutzman

November 16

ABC of Northern Indiana
 Annual Board Meeting

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

Fun-da-Mentals

Actuarial Humor



Question:

How can an actuary differentiate himself?

Answer:

dActuary/dx

Question:

What is the difference between an actuary and a lotto player?

Answer:

The lotto player only gets large sums of money if his numbers are correct!

Old actuaries never die – they just get broken down by age and sex.

McHUMOR by T. McCracken



"It's time for McWit to leave. He's learned all the acronyms we use."

Word Scramble

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

A STUD COIN _ _ _ _ _ _ _ _

GEAR EVA _ _ _ _

SIT DEAL _ _ _ _ _ _

ER WON _ _ _ _

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

Mystery Answer:

She didn't pass the " _ _ _ _ _ _ _ _ _ _ ."

Answers will be posted on ASPPA's Web site in the Members Only section. Log in and select the link under "Check out the latest issue of *The ASPPA Journal*." Scroll down to "Answers to Fun-da-Mentals."



Why the pension consultant wouldn't let his daughter leave the house.

AutoRollovers

By



We are ready to accept the automatic rollover of Roth 401(k) /403(b) amounts. A separate Roth account will be established to hold the Roth amounts. There will be no additional fees to handle both pre-tax and Roth dollars.

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