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THE ASPPA Journal

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

WASHINGTON UPDATE

The Next Generation of Retirement Policy

by Brian H. Graff, Esq., APM, ASPPA Executive Director/CEO, and Sal L. Tripodi, Esq., APM, ASPPA Government Affairs Committee Co-chair

In the midst of the ongoing debate over pension reform, it will likely seem strange to many of you to discuss the next generation of retirement policy. Nonetheless, Washington think tanks and some members of Congress have already begun to move on to the next debate.

For those of you out there in the real world (*i.e.*, outside the Beltway), it probably appears next to impossible to get Republicans and Democrats to work together to deal with the critical issues facing this country. Inside the Beltway, it is even more unheard of for liberal and conservative policy think tanks to work together; however, recently the impossible did happen respecting a major

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FROM THE EDITOR

The Zany World of Zero

by Chris L. Stroud, MSPA

Mathematicians, actuaries and other curious folks have long recognized that zero makes the world—or at least the mathematical, scientific and financial aspects of the world—go round. The invention of zero allowed the feasibility of calculating with large numbers and paved the way for the concept of negative numbers. There is a strange mystical aura about zero that is quite intriguing and it seems to stem from the fact that zero is not only an interesting number, but it is also a fascinating concept.

You are probably wondering why I chose zero as the topic for my editorial. While recently in Mexico, I visited Chichen Itza, home of the Mayan ruins. Our guide pointed out that the Mayans were obviously a math-oriented culture. The Pyramid of Kukulcan has 91 steps on each side and a platform on top, constituting a total of 365 steps—the number of days in a year. The pyramid was crafted in a way so that, during the spring and autumn equinox at around 3:00 p.m., seven isosceles triangles form in the sunlight along the steps, imitating the body of a serpent creeping down to the bottom of the stairway and joining with the serpent's head carved at the base. Cool stuff, I agree, but I was equally as fascinated when our guide told us that the pre-Columbian Mayans, on their own, invented zero as a placeholder for their own culture. I found myself wondering how one must feel after inventing something like zero. (Son: "Ma, come quick! I just invented something. Zero. Zilch. Nothing!" Mom: "Hmmm.") Compare this to a more tangible invention, like the thermos, for example. (Son: "Wow, check this thermos out that I just invented, Mom! It keeps things hot *or* cold." Mom: "Wow, Son, that's awesome! Now we can drink either *hot* coffee or *cold* lemonade out of the same container! By the way, how does it know?")

Zero as a number is like black as a color. Zero is actually the absence of any other number just like black is the absence of any other color. Zero is meaningless when it stands alone. It needs at least one other number to give it "life." Zero as a placeholder takes on meaning, even though it is simply indicating that there is nothing in that place.

There is often debate among mathematicians as to whether zero is an even number, an odd number—or neither. Does it really matter? It could in some cases. Consider this story (proclaimed true by an Internet reference). There was a smog alert in Paris, and the city leaders announced that only cars with license plates that ended in an odd number would be allowed to drive that day; cars with license plates ending in an even digit were to stay home. Some drivers whose license plates ended in zero were not sure which group they were in, because they didn't know if zero was even or odd—or neither, and those "0" folks who actually drove that day were not fined, because the police did not know the answer either!

Zero can signify the beginning or the end (*e.g.,* a compass), or sometimes it is a directional separator between two sides (*e.g.,* positive and negative numbers or Celsius temperatures). Consider the term "ground zero." Most think of it as a starting point, and yet the military uses it to indicate an ending point. In numbers, zero comes before one. On a calculator or phone pad, zero is placed at the bottom, after one through nine.

Even zero as a word is interesting. It starts with the *last* letter of the alphabet. It can be a noun (*e.g.,* the symbol "0," nothing or naught), a verb (*e.g.,* to zero time something, or to zero something out) or an adjective (*e.g.,* zero population growth). Think about the many ways the word zero is used in our daily lives—zero gravity (physics), zero-coupons (finance), zero defects (production quality control), social zero (social), absolute zero (science), zero hour (military), etc.

Mind boggling, isn't it? I think it's time to relax, ponder a little more and have a candy bar. Make that a Zero, of course! ▲

Letter to the Editor

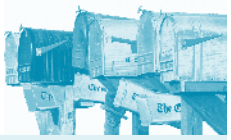
Clarification Needed to Recent Article

In the November-December 2005 edition of *The ASPPA Journal*, Lisa A. Scalia, CPC, QPA, QKA, did a great job of describing the impact of changes to nondiscrimination testing [Welcome to 2006 in the 401(k) World] due to the now-effective, final 401(k) regulations. However, there is one confusing section to the 401(m) regulations that was partially omitted. Under 1.401(m)-2(a)(4)(ii)(A)(3), the parameter established is the product of two times the plan's representative matching rate *and the employee's elective deferrals for a year* (the italicized portion being the omitted piece).

In my interpretation, this sentence seems to create a limit that is two times the defined match rate, plus the elective deferral additions for the individual—establishing an individual benchmark, as well as a plan rate. Another way to look at it could be the plan's representative matching rate, not to exceed each individual's elective deferrals for the year.

Would it be possible to hear what Lisa's or any other ASPPA resource's take is on this, please? I find it to be confusing, to say the least.

Thank you!



Francis "Frank" A. Novio, QPA
MFS Retirement Services, Inc.

RESPONSE:

Thanks to ASPPA Member S. Derrin Watson, APM, we offer you this response:

Let's turn to the regulations themselves. The correct cite is 1.401(m)-2(a)(5)(ii)(A)(3) which states that the third possible limit is "the product of two times the plan's representative matching rate and the employee's elective deferrals for a year." So, if the representative match rate is R and the employee's elective deferrals are D, the formula is 2 X R X D. There is no "plus" or "added to" or "increased by" in that sentence. The only mathematical operator is "product," which indicates multiplication. There is an example showing it handled just this way at 1.401(m)-2(a)(7), Example 5.

—*Chris*

contents

WASHINGTON UPDATE

CONTINUED FROM PAGE 1

retirement savings proposal. This past February, the liberal Brookings Institution and the conservative Heritage Foundation announced a joint proposal (Think Tank Proposal) designed to "expand dramatically retirement savings in the United States."

After serious consideration, the ASPPA Board of Directors decided at a March meeting to endorse, in principal, legislation introduced in March by Senator Max Baucus (D-MT) (Baucus Proposal) that is based on the Think Tank Proposal, with one important caveat discussed below. Because of the significant nature of this proposal, we wanted to explain the Board's reasoning.

Background on the Baucus Proposal

There are two key components to the proposal. The first is that employers (with at least five employees) that currently do not offer a qualified retirement plan would be required to offer workers the opportunity to save from their pay for retirement through a payroll-deduction IRA. Employees who are at least age 18, have worked three months and are expected to earn at least $5,000 would be eligible for the payroll deduction IRA. Employers with no more than 25 employees would be given a tax credit up to $250 ($25 per employee) to offset the cost of initially setting up the payroll-deduction IRA program. Importantly, there is no requirement under the proposal for employers to make any of their own contributions to the program.

ASPPA's support for the proposal was conditioned on it being made clear that if an employer sponsors a qualified retirement plan, they would not have to also maintain a payroll-deduction IRA for those workers not eligible for the plan.[1] ASPPA believes it is critically important that employers, particularly small businesses, should not have to maintain two separate retirement savings programs. ASPPA believes it is vital to continue to encourage employers to offer qualified retirement plans for their workers, which will provide more substantial retirement benefits for workers than payroll-deduction IRAs because of the operation of the nondiscrimination rules. Forcing small businesses to maintain two separate programs would discourage such businesses from forming or "graduating" to a qualified plan.

Another key component of the proposal is the major expansion of the current law SAVER's credit. Under the Baucus Proposal, the SAVER's credit (up to 50 percent on the first $2,000 of contributions made by an individual to an IRA or retirement plan) would now be available for married households with an adjusted gross income

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The American Society of Pension Professionals & Actuaries (ASPPA), a national organization made up of more than 6,000 retirement plan professionals, is dedicated to the preservation and enhancement of the private retirement plan system in the United States. ASPPA is the only organization comprised exclusively of pension professionals that actively advocates for legislative and regulatory changes to expand and improve the private pension system. In addition, ASPPA offers an extensive credentialing program with a reputation for high quality training that is thorough and specialized. ASPPA credentials are bestowed on administrators, consultants, actuaries and other professionals associated with the retirement plan industry.

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up to $60,000. Further, the credit would be transformed into a government match by requiring that the SAVER's credit be deposited directly into the taxpayer's IRA or the taxpayer's account in an employer-sponsored retirement savings plan if the employer would be so willing.[2] In effect, small businesses now required to offer a payroll-deduction IRA will be given a government-subsidized matching program for lower income workers. For employers already with a plan, or who choose to install a plan in lieu of a payroll-deduction IRA program, they will now be able to provide a double match (a government match on top of any employer-provided match) for lower income workers.

The Anti-Tax Reform

The employer-sponsored retirement plan system is often criticized for its lack of coverage. Depending on what data you look at, somewhere between 40-50 percent of the nation's workforce is not offered a qualified retirement plan by their employer. This lack of universal coverage is often cited as a chief reason to propose new and/or expanded individual savings accounts as part of various tax reform proposals. For example, most of you are familiar with the Bush Administration's proposal to create Lifetime Savings Accounts (LSA) and Retirement Savings Accounts (RSA), which would allow individuals to save more outside of an employer-sponsored retirement plan. The President's Tax Reform Commission, in its report released this past fall, proposed accounts very similar to LSAs and RSAs, called Save for Family and Save at Work accounts, which would allow individuals to save even more on their own.

The Baucus Proposal, if enacted, would in many respects undermine the basis for the Bush Administration's and Tax Reform Commission's proposals. Now, virtually all American workers would have access to an employer-based retirement savings program. Why would we need LSAs and RSAs if almost all Americans could save in a tax-preferred way at the workplace? Additionally, for lower income workers, those most at-risk respecting retirement savings, the expanded SAVER's credit would offer those workers an enhanced incentive to save. This greater, targeted incentive will likely produce much more savings by lower income individuals than savings through new individual vehicles under tax reform. Also, and not insignificantly, the Baucus Proposal would serve to institutionalize the employer-based model for delivering retirement benefits, making it that much harder for critics of the system to suggest scrapping it entirely (and believe us, there are some that do).

Alternative to Social Security "Add-on" Accounts

As you know, the President proposed to substantially overhaul our nation's Social Security system to allow individuals to allocate a portion of their Social Security taxes into private accounts. This reform effort has totally stalled and is unlikely to be revived anytime soon. Nonetheless, the debate over the fate of our Social Security system continues. Most recently, a few policymakers in Washington have been suggesting that if we cannot do private accounts as the President suggests, we should instead do so-called "add-on" accounts. With "add-on" accounts, workers could contribute a percentage of their pay on top of Social Security to an account maintained by the federal government.

Naturally, many of us are concerned that such a proposal would undermine employer-based retirement savings plans like 401(k) plans since it could reduce the amount otherwise available to contribute to such plans, particularly by lower income workers. It would thus put added pressure on the nondiscrimination rules, making it harder for business owners to save and consequently making the qualified plan less attractive.

Enactment of the Baucus Proposal would greatly weaken the arguments for "add-on" accounts, particularly the need for a government-run savings program. Almost every working American would now have access to a retirement savings account through a private financial institution where they could contribute a percentage of their pay. The proponents of the "add-on" proposal argue that a government-run program would reduce per participant costs. Although we would certainly dispute such an argument and believe the market already is and will become even more competitive, the whole issue would become moot if almost everyone already had access to an IRA (or other employer plan) through the workplace. There would be no sensible reason to duplicate what the private system is already providing with a new government program.

Expanded Small Business Market

Whether you agree with the proposal or not, it will require tens of thousands of businesses, most of them smaller businesses, to have to consider offering a retirement savings program for their

workers. The ASPPA Board concluded that this would represent an opportunity for ASPPA's membership. If all of these businesses are faced with having to provide the benefit, it is possible that many of them could be persuaded to take the further step of offering a qualified plan, such as a 401(k) plan, where the business owners can save even more. Further, even if businesses do not initially step up to a qualified plan, the fact that they would then be familiar with offering a retirement savings program (*i.e.,* the payroll-deduction IRA) will make it more likely that they will be willing to move up to a qualified retirement plan. Ultimately, the proposal will dramatically expand the market of businesses needing retirement plan services, and that clearly is a net positive for ASPPA members.

Consistent with ASPPA's Mission

ASPPA's Board adopted a new strategic plan for the organization in 2004. That strategic plan reaffirmed ASPPA's core purpose: to educate all retirement plan professionals and to preserve *and enhance the employer-based retirement plan system.* A core value of the organization is to have the courage to always take the high road in terms of policy and to do what is right for the system and for participants. The Board determined that one measure of success for the organization (measured over a 10-30 year horizon) would be a substantial increase in the percentage of working Americans covered by the employer-based retirement plan system. The Baucus Proposal clearly fell in line with this mission.

A more immediate goal for the organization (with a 3-5 year horizon) is for the Administration and Congress to consistently rely on ASPPA to provide input when developing retirement policy. This is critically important especially when dealing with a policy initiative of this magnitude. By supporting this concept in principal, we will be in a prime position to offer input to refine and improve the proposal as it is developed over the next few years.[3]

Conclusion

We recognize that many of you are uncomfortable with the notion of an employer mandate. We note that employers are already subject to a retirement benefit mandate—namely Social Security—and this could be viewed as merely an extension of that. We were further comforted with the Baucus Proposal by the fact that there is no requirement for employer contributions and there is a tax credit to help defray some of the administrative costs. Whether or not you accept these arguments, we want to emphasize that the Board recognized the seriousness of this issue and did not take it lightly in making its decision. In the end, the Board decided that based on the analysis outlined above, the spirit and intent of our mission and strategic goals requires us to support this initiative.

If you have any comments or questions, please feel free to contact either one of us at **bgraff@asppa.org** or **cyberisa@aol.com**. ▲

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.

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

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1 For example, an employer with a defined benefit plan or a profit-sharing plan would not have to deal with the payroll-deduction IRA, even if the coverage under such a plan was not identical to the group of employees that otherwise would have to be covered under the payroll-deduction IRA. In the case of an employer with only a 401(k) plan, the employer would not have to offer a payroll-deduction IRA if they use 500 hours as opposed to 1,000 hours to define a year-of-service for eligibility. Employees made eligible due to this rule would not need to be counted for top heavy purposes and could be disaggregated for nondiscrimination testing purposes. ASPPA's Government Affairs Committee continues to talk to congressional staff about the details surrounding this issue.

2 We recognize that the seemingly daunting administrative issues surrounding the contribution of a SAVER's credit by the government on behalf of a participant. One of the reasons the Board chose to support the proposal generally was to allow us to be in a position to help make the proposal practical from an operational standpoint. This aspect of the proposal will obviously require a great deal of such work.

3 Although a major proposal like this one will likely take years to develop and will certainly have its detractors, the fact that it already has bipartisan think tank support has not gone unnoticed. There have already been articles about the proposal in *The Wall Street Journal, The New York Times,* and *The Washington Post*. It also got the attention of the Bush Administration, which was briefed on the proposal per their request.

Roth Contribution Programs—Boon or Boondoggle?

by Michael J. Finch, CPC, and Jonathan P. Yahn, CPC

Over the past year we have been flooded with guidance on the new designated Roth contribution arrangement, and hundreds of articles have either touted or dismissed its benefits. However, the question remains: Are Roth contribution programs a "boon" or a "boondoggle"?

Some folks believe that Roth 401(k)[1] contributions represent the single most important opportunity to ensure a secure retirement since 401(k) plans were first introduced. Others feel that Roth 401(k) contributions further confuse participants who are befuddled by too many investment options, and worry that employers and recordkeepers who cannot accommodate the separate accounting requirements are headed for disaster. Certainly both statements contain elements of truth. As the debate about Roth 401(k)s continues, employers and practitioners will want to approach the Roth decision with their eyes open.

Will the IRS Rules Stop Roth Contribution Programs Dead In Their Tracks?

Designated Roth contributions to employer-sponsored plans differ from Roth IRAs. Ideally, those making contributions to either type of arrangement will avoid touching their Roth assets until they can enjoy the principal benefit: tax-free distributions of their earnings. But in the real world, plan participants often take hardship distributions and loans long before they retire. And as they change jobs throughout their working years, they may roll over Roth contributions from other employer plans. Even if some plans do not permit hardship distributions, loans or rollover contributions, service providers must create the capacity to support these transactions.

With a few pages of text in the proposed Roth distribution regulations, the IRS has dealt an unwitting blow to the viability of Roth contribution arrangements. Unless the IRS addresses the administrative burdens it has created—or plan administrators restrict their plans substantially—Roth contribution programs may be dead on arrival.

With a few pages of text in the proposed Roth distribution regulations, the IRS has dealt an unwitting blow to the viability of Roth contribution arrangements.

In this article we will attempt to provide a dispassionate view of the benefits and pitfalls surrounding Roth contribution arrangements. The first portion will provide background material and point out some of the important features of these programs; the latter portion will focus on several of the challenges created by the proposed Roth distribution regulations.

Final Regulations Provide Some Help

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) authorized "qualified Roth contribution programs," effective for taxable years beginning after December 31, 2005.[2] Presumably, part of the rationale in delaying the effective date was to allow federal agencies enough time to fully address the complexities of this new program before it was actually permitted in 2006. As we know, total clarification has not happened. Many questions remain.

Fortunately, we do have some answers. The IRS released proposed regulations in March 2005 to address (primarily) Roth 401(k) contribution issues. After considering public comments, final regulations[3] were issued on December 30, 2005—just before Roth contribution programs were permitted to operate. These final regulations define designated Roth contributions as elective contributions under a cash or deferred arrangement (CODA) that are:

1) Designated irrevocably as Roth contributions by the participant at the time of the CODA election;
2) Treated by the employer as includible in the participant's wages at the time the participant would have received the contributions in cash if not contributing them to the plan; and
3) Maintained in separate accounts.

The separate accounting rules require employers to credit and debit all Roth contributions (including rollovers), distributions, gains, losses and other charges to separately maintained designated Roth accounts. Practically, employers must further separate Roth deferral accounts from Roth rollover accounts because different events typically trigger distributions for these two kinds of assets. For example, many employers allow participants to distribute their rollover assets at any time. This requirement—to separately account for multiple Roth contribution sources—can create an accounting nightmare. Although Roth rollover assets may be distributable when other Roth contributions are not, the distribution may be treated for taxation *as if* a pro rata portion is coming from the non-rollover account (more on this later). In addition, employer matching contributions, forfeitures and other non-Roth contributions must not be allocated to a designated Roth account. The employer must also maintain a record of basis in the plan until the designated Roth account is completely distributed.

The regulations treat Roth contributions just like pre-tax elective deferrals for most purposes. Specifically, Roth contributions are: (1) non-forfeitable, (2) included as deferrals when performing the actual deferral percentage (ADP) test and (3) subject to the required minimum

distribution (RMD) rules and other restrictions that apply to deferrals. The regulations also clarify that designated Roth contributions may be treated as catch-up contributions and may serve as the basis for a participant loan.

The final regulations restrict direct rollovers from a designated Roth account. Such distributions generally may be directly rolled over only to another like plan [401(k)-to-401(k) or 403(b)-to-403(b)] or to a Roth IRA. The final regulations also retain the rule that allows a highly compensated employee (HCE) to distribute excess contributions from either the pre-tax deferral account or the designated Roth account. Thus, if an HCE must distribute current-year contributions that exceed those permitted by the ADP test, the plan may allow the HCE to choose whether to debit his or her separate Roth account or his or her pre-tax elective deferral account. The final Roth regulations contain other miscellaneous provisions, but none provided much-needed guidance on Roth distributions and taxation.

Proposed Regulations on Distributions and Taxation

On January 25, 2006, the IRS released proposed regulations[4] that filled the guidance gap created by the final regulations. This guidance, however, failed to deliver what many of us had hoped for: easy-to-administer rules that would help employers establish Roth contribution arrangements.

Yet many of the requirements are straightforward. For instance, qualified Roth distributions must satisfy two rules, which nearly mirror the Roth IRA rules: first, they must meet the five-taxable-year requirement, and second, distributions must be made after the participant has attained age 59½, has died or has become disabled. If a distribution is "qualified," earnings in the Roth account are not subject to taxation.

The proposed regulations follow the Roth IRA five-year rule closely by defining the period as the

> *5 consecutive taxable years that begins with the first day of the first taxable year in which the employee makes a designated Roth contribution to any designated Roth account established for the employee under the same plan and ends when 5 consecutive taxable years have been completed.*

Other five-year period rules diverge from the Roth IRA rules.

1) The five-taxable-year period is generally determined separately for each plan.
2) In the case of a direct rollover from one designated Roth account to another, the five-taxable-year period is the earlier of the two plans' five-year periods.
3) If a participant takes a distribution from a designated Roth account, only the pre-tax portion may be indirectly rolled over to another designated Roth account. In this case, the five-taxable-year period under the distributing plan does not carry over to the receiving plan.
4) Employers—not participants—are responsible for tracking each participant's five-year period and basis.

Many designated Roth accounts will eventually end up in Roth IRAs. Both the distributing and receiving entities should become well versed in these rules:

1) Participants may roll over designated Roth 401(k) and 403(b) assets to Roth IRAs even if they are ineligible to contribute (or convert Traditional IRA assets) to a Roth IRA.
2) If a nonqualified distribution is rolled over from a designated Roth account to a Roth IRA, the nontaxable and taxable rollover amounts are still tracked, but the Roth IRA five-taxable-year period applies.
3) If a distribution is only partially rolled over, the taxable portion is deemed rolled over first.
4) If a qualified distribution from a designated Roth account is rolled over, the entire amount of the rollover contribution is considered basis in the Roth IRA, regardless of whether the participant has met the Roth IRA five-taxable-year period rule.
5) Once the rollover is complete, the Roth IRA distribution ordering rules always apply.
6) Rollovers from Roth IRAs to designated Roth accounts are prohibited.

The proposed regulations contain several new reporting requirements for plans offering Roth 401(k) contributions.

1) Separate Forms 1099-R, *Distribution From Pensions, Annuities, Retirement of Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, must be used to report designated Roth account distributions and distributions of other types of plan assets.
2) An employer making a direct rollover distribution must provide a statement to the receiving plan within 30 days of the direct rollover. The statement must either indicate the first year of the five-taxable-year period and the portion of the distribution that represents basis, or state that the distribution is qualified.
3) An employer making a distribution from a designated Roth account to a participant must provide a statement to the participant within 30 days of the participant's request. The statement must include either the amount of basis in the distribution or a statement that the distribution is qualified.
4) An employer receiving an indirect rollover contribution must report this to the IRS by February 28 of the year following the year of the rollover contribution. The report must include the participant's name and Social Security number, the amount rolled over, the year in which the rollover contribution was made and any other information that the IRS may require.
5) Distributions of designated Roth assets representing excess deferrals, excess contributions (ADP test), excess aggregate contributions (ACP test), excess annual additions (415 test), deemed distributions (on defaulted loans), PS 58 costs and dividends paid on employer securities cannot be reported as qualified Roth distributions. These distributions are subject to the current taxation rules for such contributions.

Certainly the IRS will provide much more detail on these (and other) reporting requirements when it releases Form 1099-R instructions for the 2006 tax year.

Amendment Deadlines

The IRS has clearly stated that employers adopting designated Roth contribution programs must amend their plans by the end of the plan year for which the Roth provisions were adopted.[5] Consider, for example, an employer operating a plan with a plan year end of June 30. If this employer adopted the Roth provision when first permitted—January 1, 2006—the employer would have to amend the plan by June 30, 2006. Many employers with non-calendar year plans, therefore, may consider waiting until their new plan year to adopt a Roth contribution feature. By waiting until July 1, 2006, to adopt a Roth contribution provision, this employer could not only reap the benefit of allowing service providers more time to respond to the concerns created by the IRS' last-minute guidance, but could also delay amending until June 30, 2007.

Basis Recovery Rules

As discussed above, the definition of a Roth 401(k) "qualified distribution" matches the Roth IRA definition of qualified distribution in Internal Revenue Code (IRC) Sec. 408A(d)(2)(A), except that it excludes the first-time home purchase provision that applies to Roth IRAs.[6] Unfortunately, when determining the taxation of Roth 401(k) nonqualified distributions, the similarity to Roth IRAs ends. While Roth IRA distributions are subject to straightforward "ordering rules," nonqualified Roth 401(k) distributions follow an entirely different set of rules: the basis recovery rules under IRC Sec. 72(e)(8). Now this fact, by itself, should not create too much concern. After all, the seemingly benign taxation scheme outlined in IRC Sec. 72 has been around for a while—and has created very little stir. Even the example that the IRS gives us in the preamble to the proposed regulations lulls us into premature acceptance of the simplicity of the distribution rules.

> *For example, if a nonqualified distribution of $5,000 is made from an employee's designated Roth account when the account consists of $9,400 of designated Roth contributions and $600 of earnings, the distribution consists of $4,700 of designated Roth contributions (that are not includible in the employee's gross income) and $300 of earnings (that are includible in the employee's gross income).*

But figuring the taxable portion of a nonqualified Roth 401(k) distribution is not simply a matter of determining the ratio of deductible or nondeductible contributions to the total account balance and multiplying that ratio by the distribution amount. No, not at all. Under IRC Sec. 402A, Roth contributions must be separately accounted; further, despite the common recordkeeping practice of segregating rollover contributions from other types of assets, the taxation rules for nonqualified Roth 401(k) distributions under IRC Sec. 72 require aggregating all Roth contributions. As we will demonstrate, the unintended complexity that results from applying IRC Sec. 72 rules to Roth 401(k) distributions can be staggering. Yet, in fairness to the

Nominations Open for ASPPA's Board of Directors

Nomination Deadline—August 15, 2006

For ASPPA to continue to be the effective organization that it is, active participation by all of its credentialed members is essential. One of the ways that you can take action is to understand and participate in the Board of Directors nomination process. It is important that the ASPPA Board of Directors be made up of a broad mix of individuals so that the needs and concerns of all constituencies and stakeholders are effectively represented.

If you know a forward-thinking ASPPA credentialed member with admirable leadership skills, please check to see if he or she would be interested in having his or her name submitted for nomination to the Board of Directors. If he or she is interested, now is the time to begin the nomination process. Many criteria are considered in choosing potential Board members, including: professional credentials, historical involvement on ASPPA committees, prior input into ASPPA committees and industry activities, leadership abilities, commitment to ASPPA and the industry and time available for volunteer activities. There are always more nominations than open Board seats, so not everyone nominated will be elected; however, you will know that you have done your part by participating in the process.

Nominations must be received by ASPPA no later than 60 days prior to the Annual ASPPA Business Meeting (which is held each year in conjunction with the ASPPA Annual Conference in Washington, DC) in order to be considered for the upcoming year. In order for a nominee to be considered for the 2007 ASPPA Board of Directors, nominations must be received by August 15, 2006.

If you would like to nominate a credentialed ASPPA member to serve on ASPPA's Board of Directors, visit **www.asppa.org/forms/boardnomform.htm**, complete the nomination form and submit it to the Nominating Committee and Board Liaison.

ASPPA will send a confirmation when a nomination has been received. If confirmation is not received, please e-mail the Board Liaison at **tcornett@asppa.org**.

Scenario 1

This scenario assumes the simplest facts: the participant has only one contribution source in his or her individual account—Roth deferrals. Because of the interplay among the Roth distribution rules, what once was a basic calculation is now more involved. Rather than simply distributing the requested $25,000 hardship payout from a pre-tax deferral source and reporting the entire amount as taxable, the employer must account for the distribution differently for two purposes. The actual distribution is still considered paid from the deferral source only and not from earnings. But for reporting and taxation purposes, the accounting must reflect the basis recovery rules under IRC Sec. 72(e)(8). Remember, this example could become much more complicated in a hurry. Add several more contribution sources, including Roth rollover assets with different distribution triggers, and stir in the many variations in payroll and distribution processing, and you have a recipe for an administrative headache.

Assumptions	Actual Participant Balance—Starting	Roth Accounting (1099-R)
1. Plan permits hardship distributions at any age if hardship criteria are satisfied. Loans are not permitted, nor are other distributions until the later of separation from service or attainment of normal retirement age. 2. Participant's account consists solely of Roth deferrals and earnings. 3. Participant satisfies hardship criteria before separating from service and takes a $25,000 hardship distribution.	$ 80,000 Roth deferrals (basis) + 5,000 Roth deferral earnings $ 85,000 Roth balance	*
$25,000 Hardship Distribution Calculations	**Actual $25,000 Hardship Distribution**	**$25,000 Hardship Distribution—1099-R**
Roth Accounting/Reporting $ 80,000 (basis) / $ 85,000 (balance) x 25,000 = $ 23,529 (deemed Roth basis) + 1,471 (deemed earnings) $ 25,000 $80,000 - $23,529 = $56,471 Remaining Roth basis $5,000 - $1,471 = $3,529 Remaining Roth earnings $56,471 + $3,529 = $60,000	$ 80,000 Beginning Roth deferral (basis) - 25,000 Actual Roth deferral distribution $ 55,000 Remaining Roth deferral (basis) $ 55,000 + 5,000 Remaining deferral earnings $ 60,000 Remaining Roth balance	$ 80,000 Beginning Roth basis - 23,529 Deemed Roth deferral distribution $ 56,471 Remaining deemed Roth basis $ 5,000 Beginning Roth earnings - 1,471 Deemed Roth earnings distribution $ 3,529 Remaining deemed Roth earnings $ 56,471 + 3,529 $ 60,000 Remaining Roth balance

* The gray shaded area indicates the additional processing for proper reporting of Roth distributions.

Note that the left-hand column contains the assumptions and calculates the basis recovery, the middle column shows the actual reduction in basis and the right-hand column indicates what must be reported to the IRS and the participant for tax purposes.

IRS, the provisions of IRC Sec. 402A do not appear to provide any latitude for the IRS to summarily adopt the "ordering rules" approach that is used for Roth IRAs. Our hope in presenting the detailed examples is that employers, service providers and policy makers will begin to understand the traps that await the unwary and will respond to these pitfalls. We also hope that Congress may be encouraged to authorize the IRS to present a more palatable taxation framework for Roth 401(k) distributions.

Examples

The two scenarios included herein illustrate some of the practical difficulty of administering Roth 401(k) distributions, particularly when various contribution sources must be treated differently for distribution purposes and for accounting (or reporting) purposes. Three specific regulatory requirements help create potential accounting challenges for those employers who offer a Roth 401(k) feature. First, hardship distributions are generally limited to the deferrals made to the accounts, and (with minor exceptions) cannot include earnings on the deferrals.[7] Second, "[t]here is no relationship between the accounting for designated Roth contributions as investment in the contract for purposes of Section 72 and their treatment as elective deferrals available for a hardship distribution under Section 401(k)(2)(b)."[8] Third, when determining the taxability of a nonqualified Roth distribution, "there is only one separate contract for an employee with respect to the designated Roth contributions under a plan."[9] These three rules interact to create a potential accounting morass.

Coordinating the basis recovery rules under IRC Sec. 72 with the hardship distribution requirements under the final and proposed Roth 401(k) regulations clearly creates a challenge, particularly when you introduce the added burden of separately tracking Roth rollover contributions. Employers who permit loans from Roth accounts may enter an equally puzzling maze.

Scenario 2

The second scenario adds a dash of complexity by distributing the entire $18,000 rollover portion of the participant's balance, without actually dipping into the deferrals. Yet, because of the current rules, the employer must report the transaction as if some of the Roth deferral basis had been distributed, even though the plan does not permit it.

Assumptions	Actual Participant Balance	Roth Accounting (1099-R)
1. Plan allows distribution of deferrals at age 65 and distribution of rollover contributions at any time. 2. 55 year-old participant takes $18,000 distribution from rollover (R/O) account.	$ 80,000 Roth deferrals (basis) + 5,000 Roth deferral earnings + 15,000 Roth R/O basis + 3,000 Roth R/O earnings $ 103,000 Roth balance	*
$18,000 Distribution of Separate R/O Account—Calculations	**$18,000 Distribution – Actual**	**$18,000 Distribution—1099-R**
Actual Participant Balance $ 18,000 Roth R/O balance - 15,000 Roth R/O basis distribution - 3,000 Roth R/O earnings distribution $ 0 Roth R/O balance remaining **Roth Accounting/Reporting** $ 95,000 / $103,000 x $18,000 = $16,602 (deemed Roth basis) + 1,398 (deemed earnings) $18,000 Total amount reported	$ 103,000 Beginning Roth balance - 18,000 Roth R/O (entire balance) $ 85,000 Remaining Roth balance $ 80,000 Roth deferrals + 5,000 Roth deferral earnings + 0 Roth R/O (entire basis distributed) + 0 Roth R/O (all earnings distributed) $ 85,000 Remaining Roth balance (Entire separately accounted rollover account is distributed: $15,000 basis and $3,000 earnings.)	$ 95,000 Roth basis - 16,602 Deemed Roth basis distribution $ 78,398 Remaining deemed Roth basis $ 8,000 Roth earnings - 1,398 Deemed Roth earnings distribution $ 6,602 Remaining deemed Roth earnings $ 78,398 Remaining deemed basis + 6,602 Remaining deemed earnings $ 85,000 Remaining Roth balance ($16,602 deemed basis reported as distributed, which is more than total basis in R/O account.)

* The gray shaded area indicates the additional processing for proper reporting of Roth distributions.

Although loans are not generally considered distributions until a participant defaults, administrators still must plan to accommodate the nearly inevitable deemed distribution that occurs upon nonpayment of a loan obligation. Unless the IRS provides relief through additional Roth distribution guidance, employers may simply decide not to allow participants to borrow from Roth contribution accounts at all. This limitation may not result in too much of a problem, however, because loan amounts available to participants could still be based on Roth account balances, even if an employer elects to pay the loan amount to the participant from non-Roth sources.

Conclusions

Since they were first available in 1998, Roth IRAs have been wildly popular, especially among those who were previously only eligible for nondeductible Traditional IRA contributions. Now, with the advent of Roth 401(k) contributions, the universe of eligible individuals is expanding. The same basic principles apply to both: pay tax on your Roth contribution when you contribute, do not touch the assets for a long time and *voilá*—then you can distribute the entire amount tax-free. Here are some of the traditional situations that may lead savers to contribute to a Roth IRA or Roth 401(k):

- Current tax rate is lower than expected tax rate at retirement.
- Individual is younger, with many years to accumulate earnings before retirement.
- Roth saver believes that taxable distributions from a Traditional IRA or pre-tax CODA would create Social Security benefits that are taxable.
- Estate planning considerations lead an individual to favor Roth benefits: No required minimum distributions (RMDs) from Roth IRAs, taxes already paid, more left to beneficiaries, etc.

Now that similar benefits are available through an employer's retirement plan, Roth 401(k)s could become even more popular than Roth IRAs. Here's why:

- Participants who earn too much to contribute to a Roth IRA can contribute to a Roth 401(k) because there are no income limitations with Roth 401(k)s.
- Eligible Roth 401(k) distributions can be rolled over to a Roth IRA, thus avoiding RMDs.
- Participants who currently contribute to their CODA can easily shift some or all of their contributions to after-tax Roth deferrals—without opening a separate Roth IRA.

The complexities created by the proposed regulations threaten to increase costs for service providers, who will likely have to raise fees to employers.

Of course, the popularity of a designated Roth contribution arrangement will depend on whether employers, payroll providers and recordkeepers can overcome significant impediments. The complexities created by the proposed regulations threaten to increase costs for service providers, who will likely have to raise fees to employers. This fact alone has caused many employers to put off a decision on Roth contributions; others simply will not add this feature until the IRS makes it easier. We hope that the IRS provides relief from some of the burdens created by the proposed regulations, some of which we discussed above. And we believe that the IRS can make the rules easier to implement within the current statutory framework. If it does not craft the final Roth 401(k) regulations to give the needed relief, employers will face tough decisions. Employers may:

- Limit hardship distributions and loans to non-Roth assets;
- Prohibit rollovers into the plan (or at least make sure that rollover triggering events mirror Roth contribution triggering events—to avoid multiple accounting problems); or
- Decide to forgo a Roth contribution arrangement entirely.

Until the very end of the four years between EGTRRA's enactment and its effective date, very little guidance was provided on running a Roth contribution program. And no guidance was given on the toughest issues: taxation and distributions. Now, after Roth contributions are already permitted, the IRS has delivered guidance that discourages retirement savings. The proposed regulations prevent employers from providing a straightforward Roth contribution option. Fortunately, the IRS can craft the final Roth 401(k) regulations to remove many of the roadblocks that impede the widespread adoption of Roth contribution provisions. If the IRS does not correct the current complexity, Congress may have to respond with technical corrections legislation. However the improvements come about, most professionals in the retirement planning industry seem to think that designated Roth arrangements are worth improving. ▲

Michael J. Finch, CPC, is the director of research and technical compliance for BISYS® Retirement Services. In his position, Mike serves as BISYS' liaison to the IRS, DOL and to key congressional offices and committees that impact retirement plans. He monitors all legislation, regulatory pronouncements and industry developments affecting retirement plans and insures that these developments are reflected in BISYS' products and services. Mike is also Chair of ASPPA GAC's Plan Documents Subcommittee.

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▲ ▲ ▲

1 Qualified Roth contribution programs can be adopted by either IRC Sec. 401(k) plans or 403(b) plans. For simplicity, we refer to 401(k) plans throughout this article.
2 EGTRRA Sec. 617 codified qualified Roth contribution programs in new IRC Sec. 402A.
3 26 CFR Parts 1 and 602; [TD 9237].
4 26 CFR Part 1; [REG-146459-05].
5 See IRS Rev. Proc. 2005-66 and Notice 2005-95.
6 IRC Sec. 402A(d)(2)(A).
7 Treas. Reg. Sec. 1.401(k)-1(d)(3)(ii).
8 Prop. Treas. Reg. Sec. 1.402A-1, Q&A-8.
9 Prop. Treas. Reg. Sec. 1.402A-1, Q&A-9. The proposed regulations provide for additional separate contracts (or accounts) if a portion of the participant's balance is payable to an alternate payee under a qualified domestic relations order (QDRO).

USERRA Final Regulations (or Nobody Doesn't Like "USERRAly")

by Harvey Shifrin

On December 19, 2005, the Department of Labor (DOL) published final regulations under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Organized in question and answer format, the regulation boasts a preamble about 1½ times the length of the regulation itself.

USERRA establishes certain rights and obligations for both employees and employers when employees are involved in service in the uniformed services. Uniformed services means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency. In addition, service as an intermittent disaster response appointee of the National Disaster Medical System (NDMS) when federally activated or attending authorized training in support of their federal mission is deemed "service in the uniformed services."

USERRA applies to all public and private employers in the United States, regardless of size, as well as to foreign employers doing business in the United States.

USERRA applies to all employees regardless of rank. There is no exclusion for executive, managerial or professional employees. USERRA rights are not diminished because an employee holds a temporary, part-time, probationary or seasonal position.

Protection from Employer Discrimination and Retaliation

An employer must not deny initial employment, reemployment, retention in employment, promotion or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service or obligation for service in the uniformed services. In addition,

employers may not retaliate against any individual who takes any action to further his or her rights under USERRA.

The individual has the burden of proving that a status or activity protected by USERRA was one of the reasons that the employer took action against him or her. If this burden is met, the employer has the burden to prove the affirmative defense that it would have taken the action anyway.

Eligibility for Reemployment

In general, if the employee has been absent from a position of civilian employment by reason of service in the uniformed services, he or she will be eligible for reemployment under USERRA by meeting the following criteria:

1. The employer had advance notice of the employee's service. This notice may be either written or verbal and does not need to follow any prescribed format. While there is no specific minimum period of notice, the employee should give notice as far in advance as is reasonable under

the circumstances. The final regulation notes that Department of Defense regulations suggest employees give at least 30 days notice when it is feasible to do so.

The employee is excused from giving advance notice when doing so is prevented by military necessity or is otherwise impossible or unreasonable under all the circumstances.

2. The employee has five years or less of cumulative service in the uniformed services in his or her employment relationship with a particular employer with the following exceptions:
   a. Service that is required beyond five years to complete an initial period of obligated service;
   b. If the employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period and the inability was not the employee's fault;
   c. Service performed to fulfill periodic National Guard and Reserve training requirements or to fulfill additional training requirements determined and certified by a proper military authority as necessary for the employee's professional development or to complete skill training or retraining;
   d. Service performed in a uniformed service if he or she was ordered to or retained on active duty under:
      i. Involuntary active duty by a military retiree (10 USC 688);
      ii. Involuntary active duty in wartime [10 USC 12301(a)];
      iii. Retention on active duty while in captive status [10 USC 12301(g)];
      iv. Involuntary active duty during a national emergency for up to 24 months (10 USC 12302);
      v. Involuntary active duty for an operational mission for up to 270 days (10 USC 12304);
      vi. Involuntary retention on active duty of a critical person during time of crisis or other specific conditions (10 USC 12305); or
      vii. Six different categories concerning duty in the Coast Guard.
   e. Service performed in a uniformed service if the employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or Congress.
   f. Service performed in a uniformed service if the employee was ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 USC 12304.
   g. Service performed in a uniformed service if the employee was ordered to active duty in support of a critical mission or requirement of the uniformed service.
   h. Service performed as a member of the National Guard if the employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection or the inability of the President with regular forces to execute the laws of the United States.
   i. Service performed to mitigate economic harm where the employee's employer is in violation of its employment obligations to him or her.
3. The employee timely returns to work or applies for reemployment.
   a. If the period of service is less than 31 days or the employee was absent for a period of any length for the purpose of an examination to determine his or her fitness to perform service, the employee must report back to work not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the employee's residence.
   b. If the period of service is more than 30 days but less than 181 days, he or she must submit an application for reemployment with the employer not later than 14 days after completing service.
   c. If the period of service is less than 181 days, he or she must submit an application for reemployment not later than 90 days after completing service.
   d. If the employee fails to timely report for or apply for reemployment, he or she does not automatically forfeit entitlement to USERRA's reemployment and other rights and benefit. Rather, the employee becomes subject to the conduct rules, established policy and general practices of

the employer pertaining to an absence from scheduled work.

4. The employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

Initial Hiring Decisions

Because USERRA's definition of "employer" includes an entity that has denied initial employment to an individual, an employer need not actually employ an individual to be his or her "employer" under the Act.

Prompt Reemployment

The employer must promptly reemploy the employee when he or she returns from a period of service if the employee is eligible. "Prompt reemployment" means as soon as practicable under the circumstances of each case. Absent unusual circumstances, reemployment must occur within two weeks of the employee's application for reemployment.

Generally, the employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This provision could mean a higher position than the one he or she left or it could mean a lower one, a lay-off or a termination.

National Guard Service

Because the National Guard has dual status as both a Reserve component of the Federal Military as well as a state's military force, National Guard members may perform service under either federal or state authority. Only federal National Guard service is covered by USERRA. Many states, however, have laws protecting the civilian job rights of National Guard members who serve under state orders.

Employer Statutory Defenses

Where an employee is otherwise eligible for reemployment benefits, the employer is not required to reemploy him or her if the employer establishes that:

1. Its circumstances have changed so as to make reemployment impossible or unreasonable;
2. Assisting the employee in becoming qualified for reemployment would impose an undue hardship; or
3. The employment position vacated by the employee was for a brief, nonrecurring period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

Health Plan Coverage

USERRA defines a health plan to include an insurance policy or contract, medical or hospital service agreement, membership or subscription contract or arrangement under which the employee's health services are provided or the expenses of those services are paid. USERRA covers both ERISA and non-ERISA plans as well as multiemployer plans maintained pursuant to one or more collective bargaining agreements.

If the employee has coverage under a health plan in connection with his or her employment, the plan must permit the employee to elect to continue the coverage for a specified period which is the lesser of:

1. The 24-month period beginning on the date on which the employee's absence begins; or
2. The period beginning on the date on which the employee's absence begins, and ending on the date on which he or she fails to return from service or apply for a position of employment.

USERRA does not require the employer to establish a health plan if there is no health plan coverage in connection with the employment, or where there is a plan to provide any particular type of coverage.

If the employee performs service in the uniformed service for fewer than 31 days, he or she cannot be required to pay more than the regular employee share. If the service is for 31 or more days, he or she may be required to pay no more than 102% of the full premium under the plan.

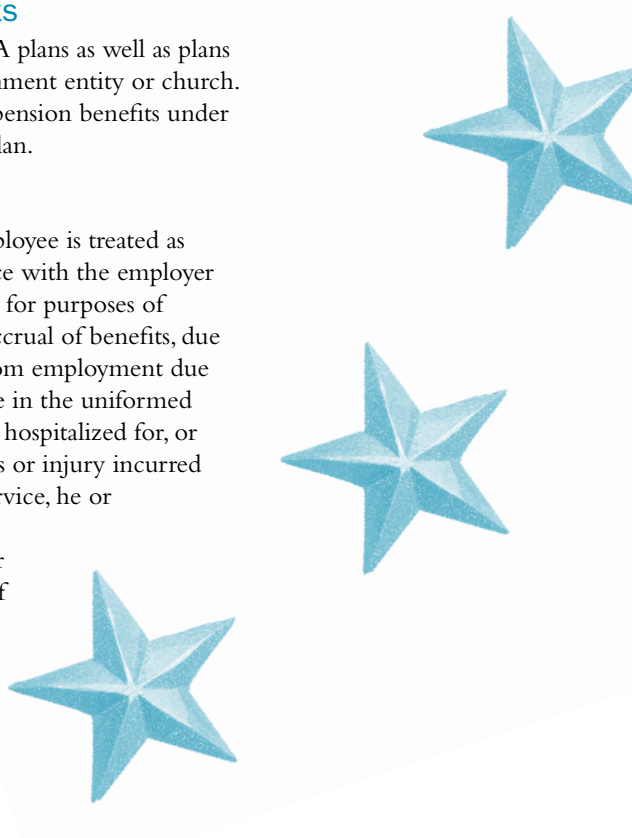
Pension Plan Benefits

USERRA covers all ERISA plans as well as plans sponsored by a state, government entity or church. USERRA does not cover pension benefits under the federal Thrift Savings Plan.

General

On reemployment, the employee is treated as not having a break in service with the employer maintaining a pension plan, for purposes of participation, vesting and accrual of benefits, due to the period of absence from employment due to or necessitated by service in the uniformed services. If the employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, service, he or she is entitled to report to or submit an application for reemployment at the end of the time necessary for him or her to recover from the illness or injury. This period,

USERRA covers all ERISA plans as well as plans sponsored by a state, government entity or church. USERRA does not cover pension benefits under the federal Thrift Savings Plan.



Employers are required to disclose the rights, benefits and obligations for both employees and employers under USERRA.

which may not exceed two years from the date the employee completed service, must be treated as continuous service with the employer when determining the participation, vesting and accrual of pension benefits under the plan.

With the exception of multiemployer plans, the employer is liable to the plan to fund any obligation of the plan to provide benefits that are attributable to the employee's period of service once the employee returns. In the case of a defined contribution plan, the employer must allocate the amount of its makeup contribution for the employee in the same manner and to the same extent that it allocates the amounts for other employees during the period of service. In the case of a defined benefit plan, the employee's accrued benefit will be increased for the period of service.

In the case of a multiemployer plan, the last employer that employed the employee before the period of service is responsible for making the employer contribution, unless the plan sponsor provides otherwise. If the last employer is no longer functional, the plan must nevertheless provide coverage to the employee. The regulation does not address from where the funds will come in this eventuality.

Contribution Timing

The employer is not required to make its contribution until the employee is reemployed. Where the employee is not required or permitted to contribute, the employer must make the contribution no later than 90 days after the date of reemployment, or when plan contributions are normally due for the year in which the service in the uniformed services was performed, whichever is later.

If the employee is enrolled in a contributory plan, he or she is allowed (but not required) to make up his or her missed contributions or elective deferrals. The time for making these contributions begins with the date of reemployment and continues for up to three times the length of the employee's immediate past period of uniformed service, not to exceed five years.

In case the employee does not make up his or her contributions or elective deferrals, he or she will not receive the employer match or the accrued benefit attributable to his or her contribution.

Where compensation is the basis for the employee's benefit or contribution, compensation is calculated using the rate of pay that the employee would have received but for the period of uniformed service. If the rate of pay is not reasonably certain (*e.g.*, commissions earned), the average rate of compensation during the 12-month (or shorter, if employment is less than 12 months) period prior to the period of uniformed service must be used.

Disclosure Requirement

Employers are required to disclose the rights, benefits and obligations for both employees and employers under USERRA. The DOL has published two sets of standard disclosures which, if posted where the employer customarily posts notices to employees, are deemed to meet the disclosure requirement. One notice is for private sector and state governmental employers (see DOL Sample Notice); the other is for federal executive agencies. The private sector notice is reproduced on the next page.

Conclusion

USERRA creates new rights and responsibilities for both employers and employees involved with the Uniformed Services. The operation of these rights and responsibilities is not always intuitive. Employers and employees must become educated with respect to their mutual duties to avoid unintended and undesired consequences. ▲

Harvey Shifrin, JD, CPA, is an attorney with the law firm Chuhak & Tecson, Ltd. in Chicago, IL. He is the Vice-chair of the ASPPA asap Subcommittee. Over the past 30 years, wearing numerous hats, he has been an innovator in plan design and administration. Harvey has spoken before the Texas Society of Certified Public Accountants and the American Association of Attorney-Certified Public Accountants.

DOL Sample Notice

YOUR RIGHTS UNDER USERRA

A. THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

B. REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- you ensure that your employer receives advance written or verbal notice of your service;
- you have five years or less of cumulative service in the uniformed services while with that particular employer;
- you return to work or apply for reemployment in a timely manner after conclusion of service; and
- you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

C. RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- are a past or present member of the uniformed service;
- have applied for membership in the uniformed service; or
- are obligated to serve in the uniformed service;

then an employer may not deny you

- initial employment;
- reemployment;
- retention in employment;
- promotion; or
- any benefit of employment.

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

D. HEALTH INSURANCE PROTECTION

- If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

E. ENFORCEMENT

- The U.S. Department of Labor, Veterans' Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.

  For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1-866-4-USA-DOL or visit its Web site at **http://www.dol.gov/vets**. An interactive online USERRA Advisor can be viewed at **http://www.dol.gov/elaws/userra.htm**.
- If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice for representation.
- You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the internet at this address: **http://www.dol.gov/vets/programs/userra/poster.htm**. *Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees.*

Highlights from **The 401(k) SUMMIT**
February 26-28, 2006 | Orlando, FL

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Joseph M. Gordon, APM, and Russell B. Smith enjoy themselves before Brian H. Graff's, Esq., APM, legislative update.

The 401(k) SUMMIT

Stephen D. Wilt, SUMMIT committee member, facilitates The Finals Presentation general session.

Many attendees were absorbed in the wealth of information provided by exhibitors.

Nevin E. Adams, of *PLANSPONSOR* magazine presents the Retirement Plan Advisor of the Year Award 2006 to Dorann Carfaro, 401(k) Advisors USA.

W. David Hand, MSPA, and Steven S. Sansone present during the Practice Management Workshop: Making Fee Transparency Work for You.

EXHIBITORS

401k ASP, Inc.
401k Coach® Program
401kDIRECT
401kExchange
ABN AMRO Asset Management, USA, LLC
AccuDraft, Inc.
ADP Retirement Services
AIG SunAmerica
AIM Investments
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AST Trust
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Bridgeway Funds
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ING
Internal Revenue Service
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Thank you to the speakers at The 401(k) SUMMIT 2006!

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Bruce L. Ashton, APM
Kenneth H. Baer
Shlomo Bernartzi
Edward F. Boulay, MSPA
Dorann Cafaro
Steff C. Chalk
Jon C. Chambers
Kristine J. Coffey, CPC
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Sarah E. Simoneaux, CPC
Edward A. Slott
Marcy L. Supovitz, CPC, QPA
Brian Ward
Peggy Whitmore
Stephen D. Wilt

Bunny Wing Fernall, Mark A. Davis, Brian H. Graff, Esq., APM, and Sarah E. Simoneaux, CPC, spell out ASPPA's newest credential, the Qualified Plan Financial Consultant (QPFC), which was officially launched during the SUMMIT.

Patrick J. Rieck, QPA, QKA, 2007 SUMMIT co-chair; Marcy L. Supovitz, CPC, QPA, 2006 and 2007 SUMMIT co-chair; and Kristine J. Coffey, CPC, 2006 SUMMIT co-chair and 2007 Conferences vice-chair, are pleased to see the conference going so well.

Jon C. Chambers and Scott A. Faris lead the investments workshop Investment Consulting for the Fee-Based Advisor: How to Support Clients Effectively and Profitably.

ASPPA continues to lead the way in educating the retirement plan community with its newest credential, the QPFC.

Attendees had over 160 booths to visit during the 2½-day conference.

Attendees had time to network and discuss business in the exhibit hall.

PHOTOS COURTESY OF STEPHEN L. DOBROW, CPC, QPA, QKA

MARK YOUR CALENDAR:

The 401(k) SUMMIT

Feb 25-27, 2007
San Diego, CA

Jensen Investment Management
John Hancock Funds
John Hancock Retirement Plan Services
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Legend Advisory Corporation
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National Retirement Partners
Nationwide Financial®
Newkirk
The Newport Group
NYLIM Retirement Plan Services
Omega Recordkeeping Group, LLC
OneAmerica
OpenGate
OppenheimerFunds, Inc.
Pacific Life Insurance Company
PAi
Parnassus Investments
Patni Computer Systems, Inc.
PenChecks Inc.
Pioneer Investments
PLANSPONSOR
The Principal Financial Group
Prudential Financial
Putnam Investments
The Reserve Solutions
The Retirement Plan Company, LLC
RolloverSystems
RSM McGladrey, Inc.
Russell Investment Group
Securian Retirement Services
The Standard
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SunGard
Symetra Financial
Technical Answer Group, Inc.
Total Benefit Communications, Inc.
Transamerica Retirement Services
TruSource
Unified Trust Company, NA
Union Central Retirement & Investment Services
UpTick Data Technologies
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Things Your Mother Never Told You About Health Savings Accounts

by Lawrence L. Grudzien

Every month, new studies indicate that more and more employers are adopting high deductible health plans (HDHPs) with Health Savings Accounts (HSAs).

This trend brings many advantages to both the employer and employee.

The Advantages

The advantages of adopting HDHPs combined with HSAs include:

- Lowering of health care premiums under the HDHP for coverage for employees;
- Lowering the employer's administrative costs;
- Providing employees an opportunity to contribute for future health care expenses under the HSA for him or herself and his or her dependents;
- Providing any employee who contributes to an HSA with a tax deduction and/or an income tax and payroll tax-free contribution;
- Precluding the employer from forfeiting any contributions made by or for the employee to an HSA;
- Providing an employer with an opportunity to contribute to eligible employees at any time and at any amount, up to statutory limits;
- Giving employees immediate access to their HSAs for any reason, even for non-medical expenses (although taxable);
- Providing for tax-free distributions at any time for health care expenses incurred, after the HSA has been established, if the expense was neither reimbursed from any other source nor deducted by the employee;
- Transferring the balance of the HSA upon death to a beneficiary who is a spouse to reimburse the surviving spouse's medical expenses;
- Providing either a trust or custodial account that accumulates earnings on a tax-free basis on the unused portion of the HSA;

- Getting the employer out of the business of substantiating health care claims;
- Avoiding the ERISA requirements (and COBRA and HIPAA) if the employer does not make participation in the HSA mandatory; and
- Giving the employees who participate in an HSA complete portability in transferring their accounts at any time.

The Dark Side of HSAs

At the same time that HSAs offer advantages, they come with a number of disadvantages that should be explained to both employers and employees. HSAs are very complex and, if not administered properly, could cause adverse tax consequences to employees. The remainder of this article discusses the complexities and disadvantages of HSAs so employers and employees will have a complete picture.

Administration of the HSA

When an employer participates in an HSA program, the responsibility for administering the account is transferred to the employee. It is the employee who decides:

- Whether he or she is eligible to make contributions to an HSA;
- The amount of the eligible contribution to the HSA for any calendar year;
- The withdrawal of any excess contributions;
- How funds in his or her HSA will be spent; and
- Whether the distributions are taxable or nontaxable.

Employees are prohibited from delegating any of the above responsibilities to either the employer or the HSA trustee or custodian. Since the employee is in control of the HSA, he or she is responsible to report all contributions and distributions to the IRS on his or her Form 1040. If the employee makes any errors, he or she must pay any additional tax or penalties to the IRS.

Eligibility to Participate

For any month, an eligible individual is defined under Code Section 223(c)(1)(A) as any individual who:

- Is covered only by a high deductible health plan (HDHP) as of the first day of such month;
- Is not also covered by any other health plan that is not a HDHP (with certain exceptions for plans providing certain limited types of coverage);
- Is not enrolled in benefits under Medicare; and
- May not be claimed as a dependent on another person's tax return.

If an employee is covered under a spouse's health plan, that coverage can affect the employee's ability to contribute to an HSA. This spousal coverage also includes reimbursements under a spouse's Health FSA. For any month that a spouse can submit an employee's expenses for reimbursement, the employee is ineligible to make a contribution to an HSA. Since a spouse's coverage can change at any time during a calendar year, it is the employee's responsibility to determine whether he or she is eligible to make a contribution to an HSA. Neither the employer nor the HSA trustee or custodian can make that determination for the employee. If an employee makes a contribution to an HSA when he or she is not eligible, then the entire contribution is considered to be an excess contribution and the employee will be penalized for this contribution, as discussed below.

Amount of Contribution for Married Couples

For married couples, if either spouse has family coverage, both are treated as having family coverage, unless the respective plans do not cover each other or their dependents, as provided in IRS Revenue Ruling 2005-25. If each spouse has family coverage under a separate health plan, both spouses are treated as covered under the plan with the lowest deductible, if they cover each other as provided in IRS Notice 2004-2, Q/A-15. The contribution limit for each is the lowest amount, divided equally between them, unless they agree on a different division.

As in determining eligibility, a spouse's coverage can affect the amount that an employee can contribute to an HSA even if the employee is not covered under the spouse's coverage. The following examples illustrate the point:

Dick and Jane are married and working for two different employers, each with HDHP coverage. Depending on their different coverages and different deductibles, they ask how much they can contribute to their HSAs for 2006. They are both under age 55.

Q1. Dick has family coverage with a $3,000 deductible, and Jane has family coverage with a $4,000 deductible. They cover each other. How much can they both contribute to their HSAs for 2006?

A1. Since they cover each other, the maximum contribution between them both cannot exceed $3,000, the lowest deductible. Therefore, if Dick contributes $2,000 to his HSA, Jane could only contribute $1,000 to her HSA.

Q2. Same facts as in Question 1 above, but Dick and Jane have family coverage which covers only their dependent children and not each other. How much can they both contribute?

A2. There is no clear answer. Some argue that Dick can contribute $3,000 and Jane can contribute $4,000. Others argue that between the two, the contribution cannot exceed the family limit of $5,450 for 2006, because the family limitation would apply. IRS guidance is needed to clarify the situation.

Q3. Dick has single coverage with a $2,100 deductible and Jane has single coverage with a $3,000 deductible. How much can be contributed to Dick and Jane's HSAs for 2006?

A3. Dick can contribute up to $2,100 to his HSA, and Jane can contribute up to $2,700 to her HSA. Dick and Jane cannot contribute the entire contribution of $4,800 in either Dick or Jane's HSA. Dick's HSA cannot accept more than $2,100 for 2006, and Jane's cannot accept more than $2,700.

Q4. Dick has single coverage with a deductible of $2,100. Jane has family coverage with a $4,000 deductible covering the dependent children and excluding Dick. How much can they contribute to their HSAs for 2006?

A4. The answer is unclear. Some argue that Dick can contribute $2,100 to his HSA and Jane can contribute $4,000 to her HSA. Others argue that HSA contributions for both Dick and Jane are limited to $5,450 for 2006.

Q5. Dick has single coverage with a deductible of $2,100 and Jane has family coverage with a deductible of $4,000 covering the dependent children and Dick. How much can be contributed to Dick and Jane's HSAs for 2006?

A5. Dick and Jane are treated as having only family coverage. They can make a $4,000 HSA contribution between the two of them. Therefore, if Dick contributed $2,100 to his HSA, Jane could only contribute $1,900 to hers.

Excess Contributions

If an employee contributes over the stated limits for the taxable year, these contributions are not deductible under Code Section 223(a). Contributions made by an employer over the limits are included in the employee's income.

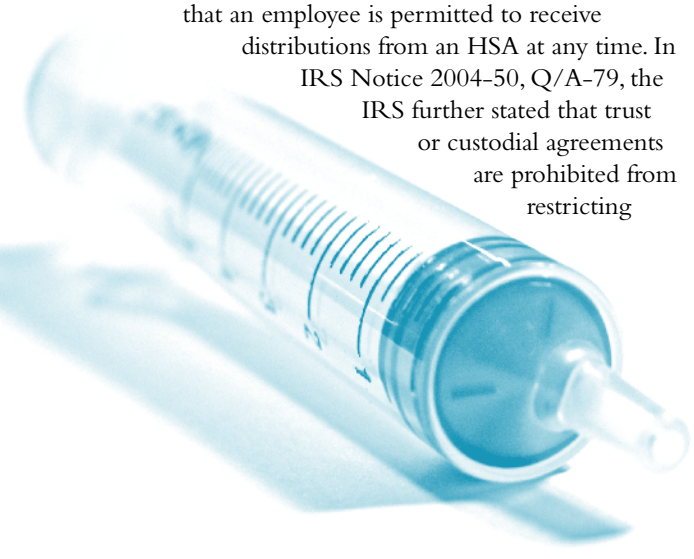
In addition, an excise tax applies to contributions in excess of the maximum contribution amount, as provided in Code Section 223(f)(3). The excise tax is generally equal to 6 percent of the cumulative amount of excess contributions that are not distributed from the HSA to the contributor, as provided under Code Section 4973(g).

If the excess contributions for a taxable year and the net income attributable to such excess contributions are paid to the individual before the last day prescribed by law (including extensions) for filing the individual's federal income tax return for the taxable year, then the net income attributable to the excess contributions is included in the individual's gross income for the taxable year in which the distribution is received; however, the excise tax is not imposed on the excess contribution, and the distribution of the excess contribution is not taxed. If the eligible individual is under age 65 and is not deceased or disabled, he or she will be subject to the 10 percent penalty tax on the earnings as provided in Code Section 223(f)(3).

Remember, it is the employee who must either report and pay the penalty or withdraw the excess to avoid the penalty. Neither the employer nor the HSA trustee or custodian can be involved in the determination of the excess or withdrawal of the excess. The employee must initiate the process.

Distributions

Since HSA contributions are nonforfeitable, it is the employee who controls when withdrawals can be made from the HSA and for what purpose. In Notice 2004-2, Q/A-24, the IRS indicated that an employee is permitted to receive distributions from an HSA at any time. In IRS Notice 2004-50, Q/A-79, the IRS further stated that trust or custodial agreements are prohibited from restricting distributions to only an employee's qualified medical expenses and confirmed that the employee is entitled to distributions for any purpose.



Withdrawals made by an employee from the HSA are nontaxable if they reimburse eligible medical expenses incurred by the employee and/or his or her dependents, after the HSA has been established, and are not otherwise reimbursed from any other source or deducted by the employee, as provided in Code Section 223(f)(2) and IRS Notice 2004-2, Q/A-25 and Q/A-26. This provision means that an employee could reimburse him or herself for eligible medical expense that occurred many years in the past. Since the employee has to report the treatment of withdrawals on his or her Form 1040, he or she must justify the treatment to the IRS if audited. Employees should be advised to keep evidence of any medical expenses incurred in the past.

Lack of Control

As indicated above, employees are in complete control of their HSAs. The employer has no control how the funds in the HSA are spent. Most HSA trustees or custodians give employees full access to their HSAs by issuing employees and their dependents checking accounts and/or debit cards. No one can stop an employee from using his or her HSA to buy chips and beer when picking up his or her prescription at the local drug store.

Under IRS Notice 2004-50, Q/A-79, an HSA trustee or custodian may place reasonable restrictions on both the frequency and the minimum amount withdrawn from an HSA. An HSA trustee or custodian may prohibit distributions for amounts of less than $50 or only allow a certain number of distributions per month.

Employee's Inability to Contribute

Some employers must realize that there will be a segment of their employee population who can never afford to contribute to an HSA on their own. Unless the employer makes contributions to such employees' HSAs, some employees will have no balances in their HSAs. If an employer does not contribute to employees' HSAs and adopts a high deductible health plan, there may come a day when an employee cannot pay his or her portion of medical expenses incurred under the employer's health plan if the employee has not contributed to an HSA. As a result, the employee may lose a house or car because of collection of unpaid bills.

Portability

Under IRS Notice 2004-50, Q/A-79, an HSA trust or custodial agreement cannot restrict the employee's ability to rollover or transfer an

Since the employee is in control of the HSA, he or she is responsible to report all contributions and distributions to the IRS on his or her Form 1040.

Before any employer establishes an HSA program for its employees, it must first communicate to its employees their new responsibilities and duties.

amount from that HSA. If an employer requires an employee to establish an HSA at a particular financial institution to either receive an employer contribution and/or contribute through payroll deduction, the employee has the ability to transfer funds to another HSA sponsored by another financial institution at any time. The first institution may make it difficult for an employee to make a transfer by imposing fees, but it cannot prohibit transfers or rollovers.

Use of Health Reimbursement Arrangements (HRAs) or Health Flexible Spending Accounts (Health FSA) with HSAs

In Revenue Ruling 2004-45, the IRS provided that an employee cannot participate in both a Health FSA or HRA and HSA at the same time, unless the employee's situation is one of the following:

- The employee's expenses reimbursed under a Health FSA and/or an HRA are limited to dental, vision and/or preventive care benefits (Limited Purpose Health FSA or HRA).
- An employee suspends participation in an HRA for the year (Suspended HRA).
- The Health FSA or HRA pays expenses above the deductible of the HDHP (Post-Deductible Health FSA or HRA). If the deductible limits of the HDHP and the HRA are different, contributions to the HSA are limited to the lower of the deductibles.
- The HRA pays or reimburses the employee's expenses incurred after the employee retires (Retirement HRA).

In adopting an HSA program, an employer must limit or eliminate the use of other devises (*e.g.,* Health FSAs) that its employees have used for many years. There could be situations where some employees could be contributing less under an HSA than they did under a Health FSA, depending on the limits that the employer imposed under the Health FSA.

Transfer Because of Divorce

Under Code Section 223(f)(7), an employee's interest in an HSA can be transferred to an HSA established for the spouse (or ex-spouse) under a decree of divorce or separate maintenance, or a written instrument incident to such decree. In the event of such transfer, the distribution is not taxable to either the employee or the spouse or subject to the 10 percent excise tax, and the spouse (or ex-spouse) becomes the account holder of the newly created HSA. An employee's interest in an HRA or Health FSA is not subject to this transfer requirement.

Uniform Coverage Rule Does Not Apply

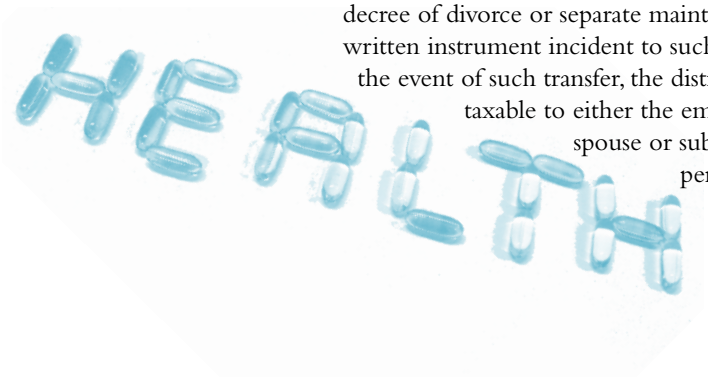
Employers are required to reimburse participants in Health FSAs for the entire amount that they elected to defer for the plan year at any time during the plan year when the claim is made, even if the balance does not currently contain the amount. This requirement is called the "uniform coverage rule" and is provided in proposed Treasury regulations Section 1.125-2, Q/A-7. This rule does not apply to HSAs. Participants may only receive reimbursement for expenses up to the balance contained in their HSA.

Under Notice 2004-50, Q/A-60, an employer may accelerate HSA funding up to the maximum amount elected by employees to cover incurred claims, so long as (a) the employee has elected to make HSA contributions through a cafeteria plan; (b) the accelerated contribution is equally available to all participating employees throughout the year and is provided on the same terms; and (c) the employee is required to repay the amount advanced by the end of the plan year.

Final Thoughts

Before any employer establishes an HSA program for its employees, it must first communicate to its employees their new responsibilities and duties. Employees should be educated to understand that they will suffer adverse tax consequences if their HSAs are not administered properly and that they cannot delegate their responsibilities under the HSA program to either the employer or the HSA trustee or custodian. ▲

Lawrence L. Grudzien, JD, LLM, is an attorney practicing exclusively in the field of employee benefits. Larry has experience in dealing with qualified plans, health and welfare, fringe benefits and executive compensation areas. He has more than 28 years of experience in employee benefit law. He is author of Simplified Employee Survivor Manual, *co-author of* Designing & Administering 401(k) & Simple Retirement Plans *and a contributing editor for the* Journal of Pension Benefits. *Larry is an adjunct faculty member of John Marshall Law School's LLM program in Employee Benefits and at the Valparaiso University's School of Law. He is also a member of Great Lakes Area TE/GE Council of the Internal Revenue Service and a member of Indiana and Illinois bars.*



FROM THE PRESIDENT

The Power of Passion

by Sarah E. Simoneaux, CPC

Recently, my family and I spent our Saturday picking up trash in our hometown of New Orleans. My teenagers initially grumbled at having to spend one of their precious weekend days retrieving old shoes, sheetrock and soda cans until they began to hear the conversations of the volunteers around them. "We lost everything, but we are so lucky. Isn't it great that we can all get together to clean up the city?" "Our house is gutted, but it is looking so much better than before—what a wonderful day to be home!" My daughter looked at me wide-eyed and whispered, "Mom, who the heck are all these people?"

I told her about a small group of New Orleanians who, dismayed by street after street of debris, litter and destruction and by the utter lack of city services to clean it up, got together to form Katrina Krewe (see the pictures at **www.cleanno.org**). This small group of volunteers started with five neighbors who went out to pick up trash, one block at a time. Now over 500 members strong, their passion for cleaning up the city shows the world that we are worth saving.

At this point, you are probably thinking, "Here she goes again with another Katrina story... I mean, it's okay, but what does this have to do with ASPPA or retirement plans?" Well, passion is not limited to those of us here in New Orleans, and I recently found it in some surprising places outside Louisiana.

I attended two Summits in one week—one started by passionate ASPPA volunteers and the other filled with people passionate about retirement policy. Both looked at our industry with a critical eye, but from widely different viewpoints. I found these experiences to be further examples of how ASPPA embraces diverse ideas and people and puts them to work for its current and future members.

ASPPA created The 401(k) SUMMIT five years ago with a small group of enthusiastic volunteers wanting to show ASPPA how successful a conference could be that targeted the people who sold or influenced the sale of 401(k) plans. Some ASPPA members were skeptical, but most were swayed by the group's enthusiasm. The first SUMMIT drew over 300 attendees. Moving full steam ahead, The 401(k) SUMMIT Committee and the ASPPA Meetings staff assured everyone that it would be even bigger and better the following year. It was. These two groups continue to enlist the support of exhibitors and sponsors, create one terrific program after another and recruit equally enthusiastic volunteers for their committee year after year. This year, over 1,500 people attended what is now the premier 401(k) conference in the industry.

Upon leaving The 401(k) SUMMIT in Orlando (and thinking how it beats picking up trash on a weekend), I traveled to Washington, DC, for the SAVER Summit. The SAVER Summit is a biennial meeting, put on by the Department of Labor, that brings together industry and government delegates to discuss innovative policy solutions to the retirement savings crisis currently facing the country. While we had our share of effective congressional and administration (Vice President Dick Cheney, Secretary of Labor Elaine Chao) speakers, the most interesting work came out of the small group sessions. Several ASPPA members, including Eugene L. Joseph, MSPA, Alan N. Kanter and Ron E. Merolli, worked along with Brian H. Graff, Esq., APM, and me in the "Small Business Retirement Plans" group, where the objective was to find creative ways to encourage small businesses to adopt retirement plans. Eugene, Alan and Ron all played key roles in developing the ideas coming out of this group, including the importance of hybrid plans with flexible funding rules, using a "carrot" rather than a "stick" approach to encourage plan formation and a lively debate on the advantages and disadvantages of mandatory payroll-deduction IRA plans for businesses with no qualified plan at all.

Again, ASPPA volunteers' passion and enthusiasm carried the day. At the end of a long week, I flew home to the land of blue roofs, brown watermarks and sheetrock piles. Despite the discouraging landscape, I was inspired by the various people I had the privilege to meet and work with over the previous seven days. And, even better, I was back in time to do trash duty on Saturday morning. Life is good. ▲

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.

ASPPA's First Benefits Conference of the South—A Big Success!

by Adam C. Pozek, QKA

Last fall, I got a phone call from Jane S. Grimm, ASPPA's Chief Programs Officer, telling me that ASPPA and the IRS had decided to co-present a conference in Atlanta for the IRS's Gulf States Region, and they wanted me to co-chair it. The only catch was that instead of the regular ten months of planning time, we would only have five months to pull the conference together. Never one to turn down a challenge, I accepted.

Our first task was to come up with a name. After a couple of suggestions acknowledging some of the more rural parts of the region (such as Bubba Benefits Conference), everyone settled on the Benefits Conference of the South. ASPPA's Meetings staff immediately went to work to find an available hotel.

The next step was to create a committee to put together the agenda and locate speakers. I was fortunate that excellent people agreed to join the committee. William G. "Greg" Nix was the co-chair from the IRS in Dallas. The other committee members were Joni L. Jennings, CPC, QPA (Pension Financial Services in Atlanta, GA); Kyla Marie Keck, QPA, QKA (Retirement Plan Consultants in Knoxville, TN); Tod Yeslow (Winstead Sechrest & Minick in Dallas, TX); Michael J. Canan (Gray Robinson in Orlando, FL); and Gregory E. Matthews, APM (Matthews Benefits Group in St. Petersburg, FL).

The group was able to put together a tremendous lineup including many regionally and nationally known speakers from private practice. With Mr. Nix's assistance, we were able to confirm speakers from the IRS for almost every session.

The inaugural Benefits Conference of the South was held on March 20 and 21. Brian H. Graff, Esq., APM, ASPPA's Executive Director/CEO, kicked off the day with his Washington Update describing the pending pension bills and various activities on Capitol Hill. Since the Congressional Conference Committee was just beginning its work on a final pension bill that very morning, Brian finished his session just in time to hop on a plane to Washington, DC, to be close at hand as events unfolded.

The first day continued with a general session on audit and enforcement activity. Michael Julianelle (IRS, Washington, DC) and Craig Bellanger (IRS, New Orleans, LA) discussed the IRS activity in this area, and Rebecca Marshall (DOL/EBSA, Atlanta, GA) discussed some of the DOL's current initiatives. We were privileged to have Steve Miller (IRS, Washington, DC) as our luncheon speaker. The text of Steve's speech was reprinted in the spring 2006 issue of the IRS *employee plans news*. After a couple of breakout sessions, we ended the day with a cocktail reception.

The second day of the conference included several more breakout sessions and an "Ask the Experts" panel, as well as an IRS Q&A with Martin Pippins (IRS, Washington, DC), William Bond (IRS, Dallas, TX), Craig Bellanger and Lisa Mojiri-Azad (Office of Chief Counsel, Washington, DC).

Numerous attendees were very complimentary of the conference and were excited to have so many nationally known speakers from the government and private practice so close to home. Many said they were eagerly anticipating next year's conference.

All in all, the first annual Benefits Conference of the South was a great success. Special thanks go to Kim Graumann, Meetings Manager, and Meg Hammerstrom, Meetings Coordinator, from the ASPPA office for all their assistance in planning and pulling off the event. In addition, Jane Grimm and Sheldon H. Smith, APM, (ASPPA's general Conferences Co-chairs) provided great insight and support throughout the entire process. Their input was invaluable. ▲

Adam C. Pozek, QKA, is the manager of consulting services at Swerdlin & Company, an Atlanta-based TPA/consulting firm. In addition to his role with the ABC of Atlanta, Adam serves on ASPPA's Board of Directors and Government Affairs 401(k) Subcommittee. He is also Co-chair of ASPPA's ABC Committee and of the IRS/ASPPA Benefits Conference of the South.

Your GAC in Action—Capitol Hill Meetings Go Well

by Sal L. Tripodi, APM

Each February, the Steering Committee of ASPPA's Government Affairs Committee (GAC) gathers in Washington, DC, for a strategy session and to visit key congressional offices to discuss the pension issues of the day. This February was no exception.

This year's Hill meetings occurred on February 13 and 14 (perhaps a Valentine gift from ASPPA to Congress?). Representing ASPPA were the four co-chairs of GAC (ASPPA's Chief of Government Affairs, Teresa T. Bloom, APM; Ilene H. Ferenczy, CPC; David M. Lipkin, MSPA; and Sal L. Tripodi, APM), the President of ASPPA (Sarah E. Simoneaux, CPC), ASPPA's Executive Director/CEO, (Brian H. Graff, Esq., APM), and the Chair and Vice Chair of the Legislation Committee (Lorraine Dorsa, MSPA, and Joan A. Gucciardi, MSPA, CPC, respectively).

This group visited staff members of key committees involved with pension-related issues [the House Ways and Means Committee, the House Education and Workforce Committee, the Senate Health Education, Labor and Pensions (HELP) Committee and the Senate Finance Committee]. We always try to meet with Republican and Democratic staff. Not only is this practice good politics, but we also find that ASPPA members and the employer-sponsored pension system can benefit from initiatives on both sides of the aisle. The main thing is to make sure they hear what is important to ASPPA, and to make our case for certain provisions that are especially good or bad.

The 800-pound gorilla is the pending reform legislation (HR 2830 and S 1783). These bills are massive pieces of legislation. A conference committee for these bills has been appointed by both the House and Senate. By the time this article is published, there may be a final bill. The major focus is reforming the defined benefit funding rules, but the bills do much more. They include proposals that would affect defined contribution plans, too.

When ASPPA representatives meet with Congress, we present a short (one or two pages maximum) issue paper on each key issue in pending legislation. These meetings usually are only 20 to 30 minutes long, and we need to be concise and efficient with the use of the staffer's time. In any particular meeting, we might not discuss in detail all of the items on an issue paper, tailoring the discussion to the focus of the particular congressional member that the staff works for, and where we think we can influence the dialogue. Here is where the efforts of Brian Graff and Teresa Bloom are most critical. They have had countless meetings and phone calls with many of the people we are meeting with and are able to set the ground work for a meaningful discussion at these meetings.

EGTRRA Permanency

We made it very clear that the number one issue for ASPPA was that Congress adopt the EGTRRA permanency provisions from the House bill into the final conference bill. We explained the effect the looming sunset has had on the marketplace [*e.g.,* implementation of Roth 401(k)], the positive effect that EGTRRA's higher contribution limits has had on the state of retirement savings and the important administrative simplifications that were part of EGTRRA as well.

DB(k)

We recommended that the final conference bill adopt the Senate's DB(k) provision. The DB(k), which is identified as an "eligible combined plan" in the Senate bill, would allow a 401(k) arrangement to be incorporated into a defined benefit plan, under which the employer provides a minimum benefit on the DB side (a choice between a traditional benefit formula or a cash balance formula). The 401(k) arrangement in an eligible combined plan would not be subject to ADP/ACP non-discriminatory and top heavy testing. Representative Rob Andrews (D-NJ) has previously sponsored a stand-alone DB(k) bill (HR 3899). Although the House bill does not include a DB(k) proposal, the good news is that Andrews has been named as one of the conferees and we are optimistic that this will be part of the final bill. On this issue we received positive feedback from almost all of the staffers with whom we met.

Cash Balance

ASPPA believes, as do many others, that the cash balance plan design is a key component in the future success and viability of the defined benefit plan system, particularly with small- and medium-size employers. We recommended that the conference bill adopt the provisions legalizing the cash balance plan design. Although having retroactive language regarding the legality of cash balance plans would be great, ASPPA made it clear that we would support prospective-only language, and even language that was confined solely to new plans, in order to eliminate the "taint" of the cash balance plan design going forward.

One concern expressed by some groups is that a prospective effective date might create a negative inference for current cases. With respect to the "no inference" language, a law firm sent a memorandum to The Pension Coalition suggesting that "no inference" language might be interpreted by the courts as an *adverse inference* for existing hybrid plans. In response to that interpretation, ASPPA presented a memorandum refuting such a position, prepared by David A. Pratt, APM, an ASPPA Board member on GAC's Legislative Committee and a Professor of Law at Albany Law School.

Interest Rates for Maximum Lump Sum Distributions

There has been a lot of focus on the interest rates that Congress is proposing for calculating minimum lump sum distributions under IRC §417(e). The bills, however, also contain language for the interest rate used to calculate the maximum lump sum under IRC §415(b). We recommended the adoption of the Senate version, which allows for a 5.5% interest rate assumption for applying benefit limitations to lump sum distributions. This recommendation would simply make permanent the two-year "fix" adopted by the Pension Funding Equity Act of 2004, which expired at the end of 2005.

We emphasized how important stability is, particularly for smaller DB plans where certain participants are more likely to be subject to the maximum lump sum under IRC §415. David Lipkin, Joan Gucciardi and Lorraine Dorsa, the actuaries in our group, were most helpful here.

Reduced PBGC Premiums for Small/New Plans

With the enactment of the $30 flat-rate PBGC premium in the Deficit Reduction Act of 2005, some attention has been shifted from other premium initiatives contained in the bill. We took this opportunity to re-emphasize the importance of premium relief for small plans, which statistically creates minimal exposure for the PBGC, and for new plans. We believe that these initiatives will encourage the formation of new defined benefit plan programs. These initiatives are found only in the Senate bill.

Plan Disclosure Issues

There were three items that we focused on in our discussions.

Form 5500 Extensions

A rule in both bills would require DOL to consider, on a case-by-case basis, extensions of the Form 5500 beyond 285 days following the close of the plan year, and to grant such extensions only upon a showing of hardship. The 285-day rule would result in a date of October 12 (October 11 in a leap year) for calendar year plans. We emphasized the need for the present deadline of October 15 to be available without a showing of hardship, particularly in the case of calendar year sponsors (*e.g.*, sole proprietorships or partnerships) that may have their tax returns extended to October 15. Our impression of the feedback we received on this issue was that the 285-day rule was not intended to produce a general maximum deadline of October 12 and that either the conference bill will likely include appropriately modified language, or the legislative history will clarify the intention of this proposal. (285 days would result in a deadline of 9½ months following the close of the plan year if every month had 30 days!)

DB Funding Notice

The general deadline for a special funding status notice would be 90 days after the close of the year. The Senate bill contains a delayed deadline for small plans to coincide with the Summary Annual Report (SAR) due date. We made a pitch for the importance of the delayed small plan deadline, noting the additional burden (and expense) on small plan sponsors, which will result in duplicative work with respect to the plan's annual reporting and disclosure obligations.

Web Site Postings of Form 5500

A proposed Web site posting of Form 5500 would require any employer that maintains a Web site to post a copy of its most recent Form 5500 on its Web site. We explained that, particularly for smaller companies, the Web site is used solely to provide information about the business to current and potential clients, and is not used as a communication tool for employees or as a portal for plan transactions.

GAC Corner

ASPPA Government Affairs Committee

Comment Letters Recently Filed Mar-Apr 2006

April 27

GAC commented on the proposed regulations for the taxation and distribution of designated Roth accounts under IRC Section 402A

Filed with: IRS

Comments: **www.asppa.org/government/comment04-27-06.htm**

April 10

GAC commented on the proposal by the Securities and Exchange Commission to amend recently adopted Rule 22c-2

Filed with: SEC

Comments: **www.asppa.org/government/comment04-10-06.htm**

March 14

GAC commented on IRS 403(b) proposed regulations concerning the scope and application of DOL's regulations under 29 CFR Sec. 2510.3-2(f)

Filed with: DOL

Comments: **www.asppa.org/government/comment03-14-06.htm**

March 10

GAC commented on the President's proposals regarding health savings accounts on employer-provided health care coverage and addressed the impact the proposals might have on retirement plan savings

Filed with: Senate Committee on Finance

Comments: **www.asppa.org/government/comment03-10-06.htm**

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

It became clear in our discussions that the intention was to limit this rule to companies that have an Intranet. We expect that the final conference bill will include clarifying language. Peter Gould, CPC, QPA, QKA,Vice Chair of GAC's Reporting and Disclosure Subcommittee, did a lot of legwork with congressional offices in focusing attention on the burden this proposal would create for many small employers. He was instrumental in getting the Small Business Administration and the US Chamber of Commerce involved!

Deduction Limits

Two aspects of the bills regarding deduction limits are important to ASPPA. First, although both bills provide a "cushion" in the deduction limits for defined benefit funding, allowing employers to take advantage of good economic times, the Senate bill provides the higher of the two limits. We recommended that the conference bill adopt the Senate's approach.

Second, both bills increase the combined deduction limit under IRC §404(a)(7). While both bills allow for the deduction of contributions to the defined contribution plan of up to 6% of compensation without regard to the 25% overall limit under IRC §404(a)(7), the Senate version would provide more of a cushion with respect to defined benefit funding, and exempt from the equation any defined benefit plans that are covered by the PBGC. ASPPA advocated for the Senate version.

Automatic Enrollment

Congress is betting on automatic enrollment arrangements being successful in increasing overall participation rates by employees. The bills would clarify that ERISA preempts state law when withholding from salary under an automatic enrollment feature, and would create fiduciary safe harbors for the investment of elective deferrals made by automatic enrollment. ASPPA is generally supportive of automatic enrollment initiatives, particularly if these two important issues are addressed.

Both bills would give safe harbor 401(k) plans a "break" if they include an automatic enrollment feature. By a break, we mean that the safe harbor matching contribution would be reduced (50% of the first 6% deferred in the House bill, or 50% of the first 7% deferred in the Senate bill), and, in the case of the House bill, a 2% (rather than a 3%) nonelective contribution safe harbor. However, the House bill would impose a 70% participation rate test, which would essentially turn the "safe harbor" into an "un-safe harbor" by requiring an alternative test, based on who is actually participating, over the ADP/ACP tests.

We found some offices definitely in favor of such a provision, but we cautioned them about the importance of a safe harbor option being test-free. Otherwise, the incentive to offer the program is significantly compromised.

Distribution of Excess Contributions Under the ADP/ACP Tests

The last issue we addressed involves the timeframe for making corrective distributions from the plan when the ADP test or ACP test is failed. Currently, to avoid an excise tax on the employer, the plan must make the corrective distributions within 2½ months following the close of the plan year (*e.g.,* March 15, 2007, for a calendar year plan's 2006 plan year). In addition, distributions made within this 2½ month period generally are taxed in the previous tax year. The Senate bill would extend the deadline to *six months* after the close of the plan year (*e.g.,* July 31, 2007, for a calendar year plan's 2006 plan year) and provide for the taxation of the distribution *in the year of the distribution*. This issue is of tremendous importance to plan administrators in general, including many ASPPA members. Unfortunately, the Senate bill also would condition the extended deadline on the plan containing automatic enrollment provisions. Although we emphasized that we would rather see the provision pass "as is" than not to pass at all, we made a case for the importance of including this administrative relief regardless of whether the plan offers automatic enrollment.

• • •

It was a productive two days, and we believe we made some progress in communicating our key issues to the staffers with whom we met. The bottom line is that ASPPA has developed a very close working relationship with congressional staff members on the key committees affecting pension legislation, and we have a unique opportunity to effectively impact pension legislation. We may not always get what we want, but we have had many victories and are encouraged that we will have more in the future. Even where legislation has gone against us, we often have been able to influence the adoption of important clarifications or modifications that make the provision more palatable.

GAC's efforts in the legislative arena are a unique blend of political expertise on the ASPPA staff—thanks to Brian Graff and Teresa Bloom—and technical expertise on the volunteer side (from the co-chairs, to the chairs and vice chairs of our various committees, to the volunteers who staff those committees). The level of commitment from the volunteers is awe-inspiring. GAC offers a unique opportunity to get a taste of the legislative and regulatory processes and to make a difference to the employer-sponsored retirement system and to ASPPA. Pension issues are definitely at the forefront, and may never fade into the background again. They also have become highly politicized, which does not always produce the best legislation, but is the state of affairs today. ASPPA, through the activities of its Government Affairs Committee, and the financial support of the ASPPA's Political Action Committee (ASPPA PAC), has been, is and will continue to be an important player in the process.

One final note: The co-chairs of GAC would like to extend our heartfelt appreciation to Jolynne M. Flores, ASPPA's Government Affairs Manager, who keeps us organized, prepares our handouts and arranges the Hill meetings. Her dedication is unrelenting and is very much appreciated. Thanks, Jolynne! ▲

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

ASPPA PAC™
OPENS THE DOOR

ASPPA PAC: Your Partner in the Political Process

by Lawrence C. Starr, CPC, and Teresa T. Bloom, APM

Another election year is upon us! ASPPA's Political Action Committee (ASPPA PAC) has already committed $17,000 to various congressional campaigns since the beginning of the year; and that's on top of the over $95,000 that was committed last year. The important thing to know is that the relatively small amount of money (comparatively) that ASPPA PAC commits to congressional races provides us a significant and active presence on Capitol Hill. Besides opening the doors, our PAC activity has led to the ongoing situation where ASPPA's opinion and support are actively courted in the halls of Congress.

It is imperative that ASPPA PAC continues its success, and for that, a continual flow of funds is vital. We are working toward a new goal of expanded ASPPA member involvement with the PAC. The goal for the next year is to significantly increase both the number of ASPPA members who contribute to ASPPA PAC and the overall amount that is raised. When a PAC contribution is made, the congressional recipient wants to know how many contributors ASPPA PAC represents. It is much more meaningful to say that there are "thousands of PAC contributors" than to say there are "hundreds." So, while ASPPA PAC continues to solicit and thank its larger donors, there will also be a concentration on soliciting those many members who can best afford to make smaller contributions.

Both the dollars and the number of contributors say important things. ASPPA member support to ASPPA PAC is now more important than ever as final pension reform legislation is contemplated by Congress. A conference committee consisting of 16 members from the Senate and 11 members from the House has been selected to hash out the differences between the Senate's "Pension Security and Transparency Act" (S 1783) and the House's "Pension Protection Act of 2005" (HR 2830).

While both measures bolster rules governing the funding of employer-sponsored pension plans and help strengthen the deficit-ridden balance sheet of the PBGC, there are key differences between the two bills. Key areas where these differences exist are pension funding, cash balance and investment advice, all of which are critical to ASPPA members. ASPPA PAC is crucial in communicating with key lawmakers on these important issues. We hope that all ASPPA members will make a commitment to ASPPA PAC.

The coming years expect to see proposals that would be devastating to the employer-sponsored pension industry. We are well positioned; the constant analysis and commentary provided through ASPPA's Government Affairs Committee (GAC) is well received on the Hill. Those positions, honed by the work of the various GAC committees, are what we believe to be truly in the best interests of the employer-sponsored pension system.

With your support, ASPPA will continue to be at the table as the employer-sponsored pension system is discussed and modified, and we, your chairs, thank you for that.

To join, please e-mail Jolynne Flores, ASPPA PAC Manager at **jflores.asppa.org**. ▲

Lawrence C. Starr, CPC, EA, CLU, ChFC, CEBS, is president of Qualified Plan Consultants, Inc, a West Springfield, MA, firm providing retirement plan consulting, administration and actuarial service on a fee-for-service basis. Larry is senior editor of The Journal of Pension Benefits *and also a partner and operator (Sysop) of a nationwide electronic pension bulletin board system called The Pension Information eXchange (PIX). He is currently ASPPA PAC co-chair. He is also a frequent lecturer and speaker and has participated in many seminars across the country.*

Teresa T. Bloom, Esq., APM, Chief of Government Affairs, joined ASPPA in September 2004. Prior to joining ASPPA, Teresa was a lead pension law specialist in the Office of Policy and Research at the DOL's Employee Benefits Security Administration (EBSA), where she worked with senior Administration officials and congressional staff on a variety of policy and technical pension issues. She is also ASPPA PAC co-chair and a Goverment Committee Committee Co-chair.

EDUCATION & EXAMINATION

Are You an Expert?

by Kimberly B. Martin, CPC, QPA

Has your career made you an expert on plan closings, participant loans, CODAs, compliance testing or other administrative functions? ASPPA's Education and Examination (E&E) Committee is looking for volunteers who have a strong general pension background. Your skills may be just what ASPPA's E&E Committee needs!

The E&E Committee is responsible for delivering one of the most essential purposes of ASPPA—to provide educational opportunities for all retirement professionals. E&E develops and delivers professional courses of study for specialists seeking ASPPA's QKA, QPA, QPFC, CPC, MSPA and FSPA credentials, as well as for individuals wanting to obtain new knowledge or update their comprehension of particular topics. E&E constantly updates its educational program to reflect changes in the rules, regulations and practices of the retirement profession as well as the changing academic needs of the candidates. For each course of study offered, E&E annually identifies the level of difficulty, topic weighting, learning objectives, textbooks and other reading materials, as well as develops the examinations.

Since its inception, E&E was staffed with ASPPA members like yourself. These volunteers developed ASPPA's educational materials, such as study guides and texts, along with the examination questions for the various ASPPA courses.

E&E was restructured in 2005, adopting a widely-used model for developing educational materials. To ensure the quality of its program and to make the best use of the E&E volunteers' time and abilities, the restructured committee now consists of Technical Education Consultants (TECs) and Subject Matter Experts (SMEs).[1]

Role of Subject Matter Experts

Working closely with the TECs, SMEs are individuals who exhibit a high level of expertise in a particular area—in-depth knowledge of a subject. SMEs are consultants to the TECs, guiding them and reviewing their work. They act in an expert advisor role and participate in the development and evaluation of learning objectives, program curriculum, examination questions and text material. SMEs also recommend changes and participate in discussions of the depth and breadth of topic coverage in particular examinations. In addition, SMEs are responsible for maintaining up-to-date expertise in a specific subject area so they can participate in evaluating curriculum and program material for consistency with defined learning objectives. In this capacity, SMEs are able to use their expertise and time wisely.

Some of the skills and qualifications required to be an SME include:

- In-depth technical expertise and a thorough understanding of the practical application of relevant law, formal and informal guidance;
- Excellent verbal and written communication skills;
- Highly developed interpersonal skills to handle sensitive and confidential situations;
- Continual attention to detail;
- Ability to establish priorities and meet deadlines; and
- Ability to work in a shifting environment and to juggle and prioritize multiple, competing tasks and demands.

SMEs dedicate approximately 25 hours per quarter to E&E, with a minimum two-year commitment. To assist SMEs in fulfilling their responsibilities, ASPPA sends monthly e-mails, informing SMEs of upcoming projects and reminding them of due dates. In addition, each quarter SMEs participate in a Web-based conference call for training on the upcoming task. SMEs also attend an annual meeting for additional training, guidance and support.

New in 2006: Ad-hoc SMEs

New to the committee in 2006 is the role of ad-hoc SMEs. E&E recognizes that there are pension professionals interested in working on the committee who are unable to dedicate 25 hours of volunteer time each quarter. As a result, E&E has adopted the role of ad-hoc SME. Ad-hoc SMEs help out on an "as needed" basis when an SME is temporarily unable to fulfill his/her responsibilities due to illness or job-related changes. Or, perhaps new guidance requires a complete rewrite of curriculum, text and examinations, and the time commitment to complete the project is more than a single SME can fulfill. Enter the ad-hoc SME to work with the regular SME in completing the tasks!

Because ad-hoc SMEs may be asked to fill in for a variety of topics, being an expert in one or more subjects is not required. Ad-hoc SMEs, however, must have a strong general pension background and must have the knowledge and experience to know when something is not correct or if something needs to be added. Being an expert means taking the initiative to research areas that are uncertain. Ad-hoc SMEs also receive the monthly E&E e-mails and participate in the quarterly training calls.

Benefits of Being an SME

Being an SME is a rewarding experience! You will work with other dedicated pension professionals to educate the next generation of administrators, consultants and actuaries. As an expert in a particular field, you will have the chance to develop your skills. Further, your role as an SME will force you to stay

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ABC of Atlanta—Looking Back and Looking Ahead

by Adam C. Pozek, QKA

As I write this article, I am officially the past president of the ASPPA Benefits Council of Atlanta. Looking back over my two years as ABC of Atlanta president, I am truly thankful to have had the opportunity to work with such a great group of people.

With the end of my term also comes the end of a long tenure by our secretary and CE coordinator, Ruth L. Flemister. After more than seven years on the board of directors of the ABC of Atlanta, Ruth is stepping aside to spend more time with her family. On behalf of our entire board, I would like to express my appreciation to Ruth for her years of dedicated service. One of our founding board members, Cynthia A. Groszkiewicz, MSPA, QPA, will continue to serve, but she has decided to cut back on her volunteer time to take advantage of some well-deserved rest and relaxation. Her open, honest guidance and encouragement have been invaluable.

As I look ahead, I am very excited to see what is in store for the ABC of Atlanta. Our new president, Joni L. Jennings, CPC, QPA, has some great new ideas to take us into the next two years. The main goals for 2006 are to encourage local members to join ASPPA and to provide added benefits to those ABC members who are already national members.

In March of 2006, Atlanta hosted the inaugural IRS/ASPPA Benefits Conference of the South (see page 28), giving ASPPA a co-sponsored event with the IRS in each of the five IRS regions. We were excited to be able to subsidize the registration fees for some of our ABC of Atlanta/ASPPA members who registered for this new conference.

The ABC of Atlanta is planning to offer at least one (and hopefully two) review courses during 2006 to help our members prepare for the exams to obtain their ASPPA credentials. The courses will be conducted using a combination of a live teacher/facilitator and the Web courses prepared by ASPPA's Education and Examination Committee.

Since many of our members have the QKA credential and are working toward the QPA, we hope to complete our first review course for the DB exam in time to allow attendees to take the test during the spring testing window. With the launch of the new QPFC credential, our goal is to conduct a course to allow financial professionals to take the first proctored exam toward that credential during the fall testing window.

In addition to these new initiatives, we will continue to provide our regular lineup of workshops. During 2005, we invited primarily local experts to present; however, for 2006, most of our workshops will be conducted by nationally-recognized speakers. We were excited to have Sal L. Tripodi, APM, returning to Atlanta for a full-day session in April 2006. Janice M. Wegesin, CPC, QPA, will join us in the fall to discuss the DOL's proposal to mandate electronic filing of Form 5500. We are also working to confirm dates for Craig P. Hoffman, APM; Joan A. Gucciardi, MSPA, CPA; and Brian H. Graff, Esq., APM.

Furthermore, we are planning to expand our network of volunteers this year by creating some non-board committees. Some of these groups will assist with regular ABC functions such as programs and membership. However, we are also creating a committee to promote the new QPFC credential to the financial professionals in the Atlanta benefits community. These new committees will not only allow more of our members to get involved in running the organization, but they will also provide the needed resources to accomplish our goals and to identify future board members.

With all we have planned, 2006 should be a busy and exciting year for the ABC of Atlanta. ▲

Adam C. Pozek, QKA, is the manager of consulting services at Swerdlin & Company, an Atlanta-based TPA/consulting firm. In addition to his role with the ABC of Atlanta, Adam serves on ASPPA's Board of Directors and Government Affairs 401(k) Subcommittee. He is also Co-chair of ASPPA's ABC Committee and of the IRS/ASPPA Benefits Conference of the South.

Congratulations to Doris Kopp, QPA, QKA, of Redmond, Washington!

Doris completed ASPPA's recent Bulletin Board Survey and won the survey drawing for a free 2006 ASPPA webcast.

Thanks to all of our members who responded to the survey.

Reaching Out in the Great Northwest

by Gregory R. Rund

The ABC of the Great Northwest has been operating for three years now. We have focused our membership exclusively on the compliance community (actuaries and third party administration firms). With ASPPA's new Qualified Plan Financial Consultant credential (QPFC) available, we will also promote our organization and the new credential to the investment advisory community.

Our membership is approximately 50 people. We have members in Washington, Oregon, Alaska and Montana. For the benefit of easterners, the geographic region of our membership (excluding Alaska) is equivalent to New York City to central North Carolina to central Indiana.

Our board consists of very experienced professionals from the compliance community, each with uniquely different perspectives (large national compliance firm, national fund platform provider, two one-man consulting and administration firms and a medium-sized local firm), and all with 15 to 30 years of experience in the compliance community. The board has not changed much since our inception; however, we are always interested in new board members and new ideas from our membership.

We normally have three or four meetings per year, which are held in Seattle, preferably on Fridays. Our meetings are purely educational, using very highly regarded speakers, usually from the ASPPA speaker list. The speakers are not normally from our region. We hold one all-day ERISA update seminar in the fall and one all-day review of the EA-2 exam questions in June. We have one or two additional meetings covering topics of current interest to our board members.

Our meetings are held at a very nice "destination" restaurant, which is known for serving excellent meals. We usually provide our speakers and the meeting organizers with a gift certificate to the restaurant. We have also arranged for golf and baseball outings for our speakers, and we try to occupy their spare time with patronizing the great chefs in Seattle.

There are two important benefits of joining an ABC: The first is the educational experience, and the second is the peer organization connections, some of which lead to information sharing, client referrals and networking opportunities. The real benefit to working on the ABC of the Great Northwest board is watching those positive connections develop and participating in the peer organizational consulting opportunities that occur. We have opened the channels of communication available to our member firms in our broad geographic region. ▲

If you are interested in learning more about the ABC of the Great Northwest, you can e-mail me at **greg@knobel.com**.

Gregory R. Rund is the chairman of the ABC of the Great Northwest. He has been an ASPPA member since 1981 and has been practicing in the plan administration community since 1970. He graduated from Seattle University in 1968 and is the former president of G. Russell Knobel & Associates. He currently serves on the board of the American Liver Foundation, is a former Big Brother and a former Lt. with the 1st Cavalry US Army (1968 to 1970).

Are You an Expert?

Continued from page 33

current, which is essential in our swiftly changing industry! In addition, being an SME in a national association with over 6,000 members can give you a strong marketing edge. And finally, SMEs receive ASPPA CE credit each year for their work on the committee.

Volunteers Needed

ASPPA is currently looking for five to six ad-hoc SMEs. If you are interested in developing educational courses and examinations, but on a fill-in basis rather than as a full-time member of E&E, please contact Bunny Wing Fernhall, Chief of Pension Education, at 703.516.9300 or **bfernhall@asppa.org**. In addition, you can obtain more information about being an SME at **www.asppa.org/archive/education/2005/sme-desc.htm**.

Kimberly B. Martin, CPC, QPA, is a case manager at Pension Plan Professionals, Inc., in Jacksonville, FL. She is one of three vice-chairs of the Education and Examination Committee. Kim previously served on the committee as the "CODA/Safe Harbor 401(k)/ADP & ACP Testing" SME.

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1 TECs are employed by the University of Michigan to perform many of the tasks previously handled solely by volunteers, such as developing the courses and writing the examinations and study guides.

Welcome New Members and Recent Designees

MSPA

Yale Sam Wahl

CPC

Ella Aderhold
Laura R. Arnold
John R. Asmus, Jr.
Jan L. Davis
Sean M. Duggan
Scott M. Feit
Brian A. Gordon
Michael Gossard
Karen B. Johnson
Erin Lam
Laura L. Lazansky
Carol J. Lipman
Mary E. Ludlow
Sandra J. McGinty
Robert A. McKendry
Thomas W. Moss
David A. Pribozie
Christine M. Robinson
Christopher T. Samos
Nathan J. Sharp
Kristin E. Singley
Kimberley M. Sturges
Kelly A. Thompson
Lori L. Wenzl

QPA

Gabriel Amador
Rochelle L. Angel
Carla M. Bailey
Karen B. Boye
Janice Marie Brown
Alison L. Carpenter
Kim R. Collier
Jean M. Dailey
Craig O. Davis
Alicia M. Detwiler
Louis C. Fisher
Karin D. French
Ellen S. Houston
Amy L. Kennerly
Stephen R. Laracy
Manuel Marques
Adam Pagenkopf
Erin M. Russell
Margaret H. Shropshire
Wesley T. Stohler
Holly H. Tatuaca
Richard M. Tatum, Jr.
Peter J. Valentine
Justine M. Woodard

QKA

Carolyn M. Adams
JoAnne Marie Aebi
Teresa P. Alford
Anthony L. Allred
Gabriel Amador
Rebecca Anderson
Robert Arthur
Kelly K. Barlow
Jennifer L. M. Bluhm
Karina Bonilla
Ryan Boone
Lisa Bowser
Donita E. Brown
Janice Marie Brown
Margie M. Brown
Linda J. Burdick
John S. Buttrick
Kathleen Cannon
Katrina H. Carlton
Frank Casalena
Michael Cattuti
Sharon A. Cavanaugh
Deborah A. Cheney
Scott F. Colby
Barbara J. Connell
Sheila C. Cook
Sheila R. Cook
Steven C. Cowley
Nancy A. Crews
Mary Ann Turk Cummings
Ron Dagenhardt
Craig O. Davis
Jan L. Davis
Tracy L. Dean
Alicia M. Detwiler
Deena S. Dewbre
Sandra L. Eberly
Edward Elliott Eils
Kelly K. Foley
Patricia G. Fortner
Jodi E. Galante
Ronald R. Gasink
Alda Maria Goncalves
Jeanette K. Goodman
Michelle A. Grahn
Molly L. Griswold
Susan Guck
Rick E. Hancock
Donald A. Hanke
Charlene Harber
Logan Hazan
Debra A. Hill
Joy P. Hodgson
Ryan Hoffman
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ASPPA Calendar of Events

Date	Description	CE Credits
Jun 9 - 10	Advanced Actuarial Conference• Boston, MA	15
Jun 15	PA 1-3 examination deadline for 2006 paper submission	
Jun 16	Postponement deadline for DB, DC-1, DC-2, DC-3, PFC-1 and PFC-2 spring examinations	
Jun 30	PA 1-3 examination deadline for 2006 online submission (midnight, EDT)	
Jul 16 - 19	Western Benefits Conference • Las Vegas, NV	20
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)	

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

ABC Meetings Calendar

June 13
ABC of Cleveland
403(b), 457 and Plan Audit Activity
IRS Speaker

June 15
ABC of Chicago
Business Succession and Estate Planning
Steven Lifson

June 16-17
ABC of Cincinnati
Cincinnati Employee Benefits Conference
TBD

June 20
ABC of Northern Indiana
Washington Legislative Update
Brian H. Graff, Esq., APM

June 22
ABC of New York
Washington Legislative Update
Brian H. Graff, Esq., APM

July 16
ABC of Central Florida
Nonqualified Plans/New 409A Requirements
Margaret R. Bernardin

July 27
ABC of Atlanta
Plan Amendments and Other Document Compliance Issues
Craig P. Hoffman, APM

August 22
ABC of Northern Indiana
Keeping Current—All-day ERISA Seminar
Sal L. Tripodi, APM

August 29
ABC of North Florida
TBD
Ilene H. Ferenczy, CPC

August TBD
ABC of Dallas/Fort Worth
TBD

September 20
ABC of Atlanta
5500 e-filing
Janice M. Wegesin, CPC, QPA

September 21
ABC of Chicago
Executive Compensation
TBD

September 26
ABC of Greater Cincinnati
Washington Legislative Update
Brian H. Graff, Esq., APM

October 17
ABC of Delaware Valley
Washington Legislative Update
Brian H. Graff, Esq., APM

November 16
ABC of Northern Indiana
Annual Board Meeting

November 28
ABC of North Florida
ASPPA Annual Conference Update
Craig P. Hoffman, APM

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

Fun-da-Mentals

Wacky Equations

The ratio of an igloo's circumference to its diameter = **Eskimo Pi**

The time between slipping on a banana peel and smacking the pavement = **one bananosecond**

The shortest distance between two jokes = **a straight line**

8 nickels = **2 paradigms**

Half of a large intestine = **one semicolon**

365.25 days of drinking diet cola = **one lite year**

1,000 aches = **one kilohertz**

Word Scramble

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

GAVE CORE ☐☐☐☐☐___ ___ ___

AM TREK ☐☐☐___ ___☐

POLL RAY ___ ☐___ ___☐☐☐

BUS TRAIN COT ___☐ ___ ___ ___ ___ ___ ☐☐☐___

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

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

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."

The new trick that the pension consultant taught his robotic dog.

AutoRollovers

By BPA-Harbridge

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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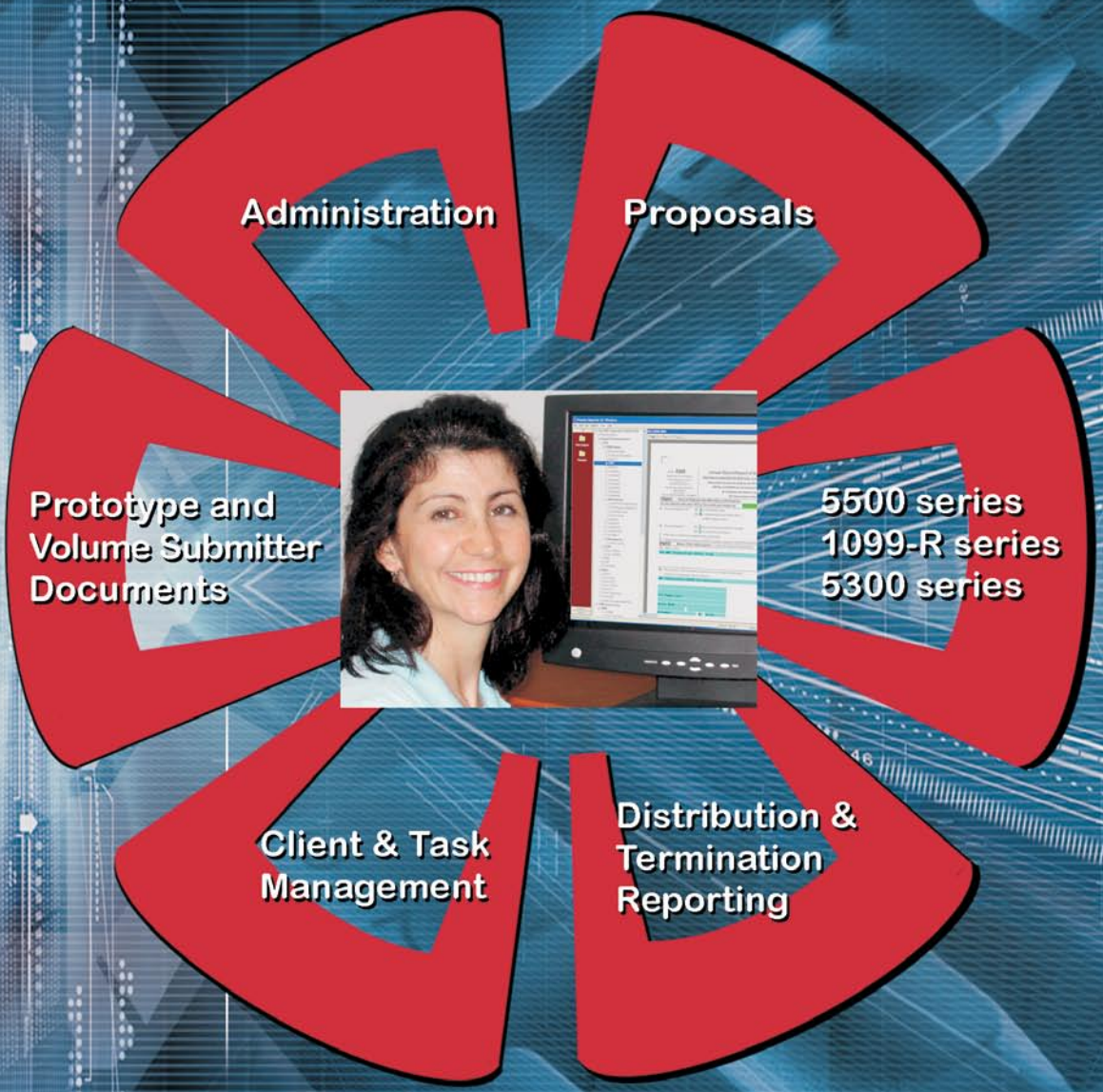

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