

THE ASPPA Journal

ASPPA's Quarterly Journal for Actuaries, Consultants, Administrators and Other Retirement Plan Professionals



SPECIAL FEATURE

**Thomas J. Finnegan,
MSPA, CPC, QPA,
Elected 2010-2011
ASPPA President**



In This Issue:

Washington Update

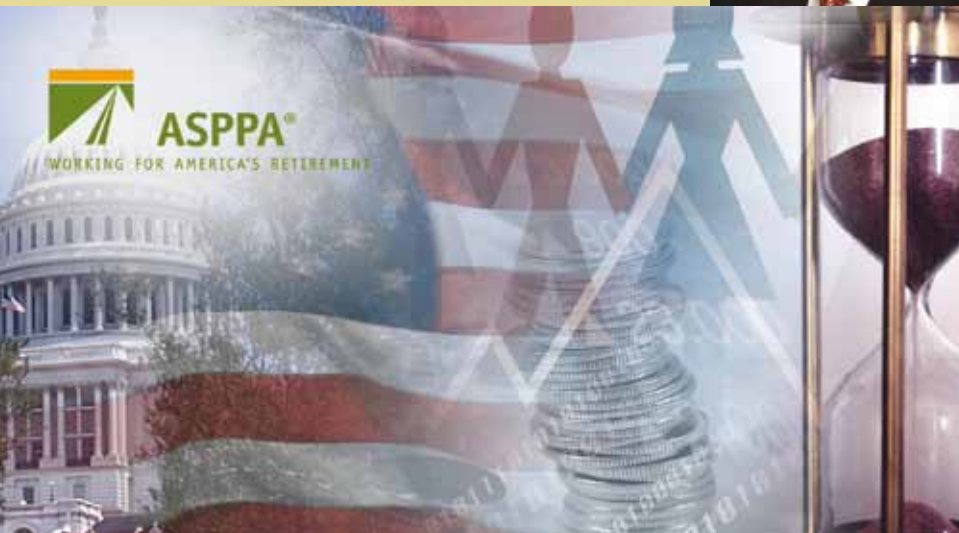
Is Your 403(b) Plan Covered by ERISA, Must it Be—and Does it Matter?

A Comprehensive Look at Intricate RMD Issues

Guaranteed Income Feature Can Play Key Role in Today's Retirement Plans

Compliance—A Year in Review—January to December

Consequential Damages: A Wide-ranging Impact



by Troy L. Cornett

In July, ASPPA's Board of Directors elected Thomas J. Finnegan, MSPA, CPC, QPA, as ASPPA's President for the 2010-2011 term. His term begins at the close of the 2010 ASPPA Annual Conference. Tom is a principal of The Savitz Organization in Philadelphia, PA.

Tom holds a bachelor's degree in mathematics from St. Joseph's University. He is an actuary with more than 25 years experience working with all types of qualified and non-qualified retirement plans. Prior to joining The Savitz Organization, Tom served as a senior actuary for a major employee benefits consulting firm and as the director of retirement plan services for a mid-sized regional consulting firm.

Tom serves as Senior Advisor to the DB Subcommittee of ASPPA's Government Affairs Committee. He is also a member of the

Continued on page 4



ASPPA®

WORKING FOR AMERICA'S RETIREMENT



www.autorollovers.com

6 Rhoads Drive, Suite 7
Utica, NY 13502-6347
1.866.401.5272 x 6941

**Stop by our booth at the
ASPPA Annual Conference
to get more information and
to participate in the
AutoRollovers Poker Run.**

Rollovers of designated Roth accounts
accepted at no additional cost

Give us your AUTOROLLOVER business, and we'll throw you a bone!

TPAs are paid \$25* for every account that
is rolled into the AUTOROLLOVERS Program!

Could it be any simpler?

In addition to paying you \$25 for each IRA account*,
signing up for AUTOROLLOVERS provides
Plan Sponsors with the following benefits:

- ◆ A fully compliant Safe Harbor rollover solution
- ◆ Reduced Plan expenses
- ◆ Easy to sign up: one contract covers all rollovers
- ◆ No cost to Plan Sponsor nor to TPA
- ◆ Eliminate need to track former employees
- ◆ Avoid lost participants upon Plan termination

Participants enjoy:

- ◆ Low-cost IRA account
 - No account set-up fee
 - Low annual maintenance fees
- ◆ High yielding default investment
 - Eleven additional mutual fund offerings
for account diversification

TPAs have earned over \$365,000 to date

\$ 365,000



*\$25 paid for rollovers that exceed \$200

Editor in Chief

Brian H. Graff, Esq., APM

The ASPPA Journal Committee

William C. Grossman, QPA, Co-chair
James T. Comer
Kim A. Cooley, QKA
Kimberly A. Flett, QPA, QKA
Catherine J. Gianotto, QPA, QKA
William G. Karbon, MSPA, CPC, QPA
Barry Kozak, MSPA
Michelle C. Miller, QKA
Mary L. Patch, QKA, QPFC
Peter K. Swisher, CPC, QPA
Nicholas J. White
David J. Witz

Editor

Chris L. Stroud, MSPA

Associate Editor

Troy L. Cornett

Production Manager

Troy L. Cornett

Technical Review Board

Michael Cohen-Greenberg
Barry Kozak, MSPA
Marjorie R. Martin, MSPA
Robert M. Richter, APM
Nicholas L. Saakvitne, APM

Advertising Sales

Dawn Frappollo

Design and Layout

Lynn A. Lema



ASPPA OFFICERS (2010 - 2011)

President

Thomas J. Finnegan, MSPA, CPC, QPA

President-Elect

Robert M. Richter, APM

Senior Vice President

Barry Max Levy, QKA

Vice President

Kyla M. Keck, CPC, QPA, QKA

Vice President

Robert L. Long, APM

Treasurer

David M. Lipkin, MSPA

Secretary

Adam C. Pozek, QPA, QKA, QPFC

Immediate Past President

Sheldon H. Smith, APM



“Flying” Off the Handle

by Chris L. Stroud, MSPA



Flying off the handle recently brought overnight fame to flight attendant Steven Slater. Although his great escape via an emergency chute, with bags and beers in hand, landed him in jail, he became somewhat of a working-class hero. Why?

My guess is that the average person realizes that working harder and longer due to corporate layoffs, decreased compensation, overcrowded airplane cabins and increased airport security have not only taken a toll on the general public, but have also impacted flight attendants. After all, they have to put up with us when we are at our worst—stressed to the max, wary of yet another delayed flight with no food, no legroom, etc.—and we fight back with no manners!

One brave flight attendant took the time to answer the question she'd been hoping someone would ask, “What can a passenger do to annoy a flight attendant?” (www.lemondrop.com) The following is her list of the 10 Most Annoying Passenger Habits:

10. Frowning faces
9. Misuse of overhead compartments
8. Creating obstacles in the aisle
7. Rolling your eyes when the flight attendant can't help you hoist your carry-on into the overhead bin
6. Not paying attention to the exit-row briefing
5. Leaving your headphones on while ordering (“Whaaaaat?”)
4. Telling a flight attendant what his or her job is
3. Complaining about the limited food supply
2. Being handed dirty diapers (“Ewwwww!”)
1. Being poked to get my attention

She also gives us some bonus information. “Bring any kind of candy for a crew member, and you are pretty much getting special treatment from that point on.”

The same Web site also shared insights from passengers as to what annoyed them most about other passengers. Here's that top 10 list:

10. Late passenger who ruins your dream of an empty seat next to you
9. Everyone in first class

8. Passenger in the aisle seat who fastens seat belt while plane is still boarding—then groans when someone needs in
7. Passenger who doesn't admit bag is too large for overhead bin
6. People with neck pillows
5. Guy who snores the entire flight (I'd add “drools” also!)
4. Any passenger in coach who reclines seat
3. Chatty person in the next seat who can't figure out you don't want to talk
2. Lavatory hogs
1. Shutterbugs who have to document the whole flight on their camera

Perhaps people are more tolerant of children than rude adults, since screaming babies and children who kick the back of your seat weren't on the list.

As you prepare for your next flight, maybe a little humor will help improve your mood.


Tip #1: Determine how many references to “no smoking” are made (*e.g.*, announcements about tampering with smoke detectors, no smoking status on your ticket, etc.). Then, seek out and note how many ash trays you find on the plane (*e.g.*, seat arms, lavatory, etc.). Ironic?

Tip #2: Google “Extrago Sherpa Shirt.” It's JetBlue's way of poking fun at Spirit Air for charging for carry-on luggage. Well worth the Google!

Tip #3: Make it a habit to search for lice on your headrest and bedbugs in your seat—and make sure you let everyone around you know what you're doing. (If you find any, be sure to poke the nearest flight attendant and complain!)


Tip #4: Strike up a conversation with the person next to you. “Hey, did I see something crawling on your headrest?”

Tip #5: Remember that authorities claim that air travel between two points is much safer than travel by automobile. (Of course, I believe that all their studies were based on flights from California to Hawaii. Think about it!)

As I prepare for my next flight, I promise I will not “fly off the handle” and that I will do my best to stay off the “most annoying” lists. I'll check my bag, smile—and bring candy for the flight attendant. I hope you'll do the same! 

CONTINUED FROM PAGE 1

ACOPA Leadership Council. In addition to his involvement with ASPPA, he is a fellow of the Conference of Consulting Actuaries and a member of the American Academy of Actuaries (Academy). For the past two years, Tom has represented ASPPA/ACOPA on the Council of US Presidents (CUSP) and the North American Actuarial Council (NAAC). He also serves on the Board of the Academy.

Tom was the recipient of ASPPA's Educator's Award in 2008. He is a frequent speaker at regional and national benefit and actuarial conferences and has authored articles for national actuarial publications as well as regional newsletters. Tom has also taught semester-long EA exam preparatory classes at Temple University as well as ASPPA exam courses. 



Troy L. Cornett is the Office Manager and Board of Directors Liaison for ASPPA. He is also the Production Manager and Associate Editor of The ASPPA Journal and manages the human resources functions for the ASPPA staff. Troy has been an ASPPA employee since July 2000.
(tcornett@asppa.org)

The other ASPPA officers for 2010–2011 are:

President-Elect

Robert M. Richter, APM

Senior Vice President

Barry Max Levy, QKA

Vice President

Kyla M. Keck, CPC, QPA, QKA

Vice President

Robert L. Long, APM

Treasurer

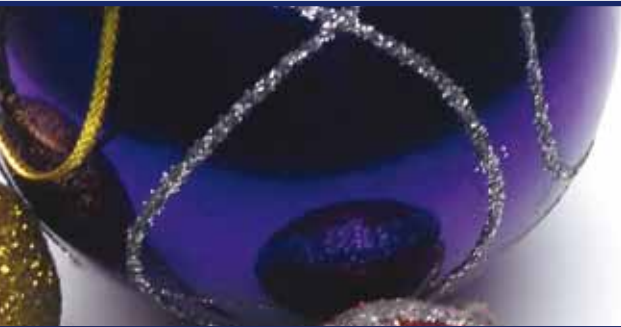
David M. Lipkin, MSPA

Secretary

Adam C. Pozek, QPA, QKA, QPFC

Immediate Past President

Sheldon H. Smith, APM



*Happy Holidays
& Happy New Year*

contents

5 Washington Update	28 2010 Edward E. Burrows Distinguished Achievement Award Presented to Bob Schramm	33 David MacLennan Wins Hanson Memorial Prize	46 Profile on Lincoln Financial Group
8 Is Your 403(b) Plan Covered by ERISA, Must it Be—and Does it Matter?	29 Thank You to All of the Western Benefits Conference 2010 Participants!	34 Compliance—A Year in Review—January to December	47 GAC Corner
14 A Comprehensive Look at Intricate RMD Issues	30 2010 Educator's Award Presented to Robert L. Long, APM	39 ASPPA Launches Online Newsroom	48 Continuing Professional Education Changes for ASPPA Members
23 Guaranteed Income Feature Can Play Key Role in Today's Retirement Plans	31 Martin Rosenberg Academic Achievement Award	40 Consequential Damages: A Wide-ranging Impact	51 The ABC Leadership Conference—How ASPPA's Local Chapters are Growing!
27 2010 Harry T. Eidson Founders Award Presented to Curtis E. Huntington	32 Annie Voldman to Lead ASPPA College of Pension Actuaries for 2010 - 2011	42 From the President	52 Welcome New Members and Recent Designees
		44 Report on June 2010 GAC Agency Visits	53 Calendar of Events
			54 Fun-da-Mentals




WASHINGTON UPDATE

SEC Issues Proposed Rules on Mutual Fund Distribution Fees

by Kara Getz, APM

On July 21, the Securities and Exchange Commission (SEC) proposed significant changes to the framework for mutual fund distribution fees, including 12b-1 fees. These proposed changes would have a significant impact on our industry. Therefore, ASPPA government affairs staff is currently reviewing the proposed rules and gathering input from ASPPA members. ASPPA will be submitting comments on the rules to the SEC in the fall.



SEC Rule 12b-1 permits a mutual fund to use fund assets to pay broker-dealers and others for distribution expenses, such as marketing and selling costs. Under the rule, service fees, such as fees paid to retirement plan administrators, can be included as part of the distribution expense. Asset-based sales charges are currently capped at 100 basis points under NASD rules.

The ASPPA Journal is produced by The ASPPA Journal Committee and the Executive Director/CEO of ASPPA. Statements of fact and opinion in this publication, including editorials and letters to the editor, are the sole responsibility of the authors and do not necessarily represent the position of ASPPA or the editors of *The ASPPA Journal*.

The American Society of Pension Professionals & Actuaries (ASPPA), a national organization made up of more than 7,000 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.

© ASPPA 2010. All rights reserved. Reprints with permission. ASPPA is a not-for-profit professional society. The materials contained herein are intended for instruction only and are not a substitute for professional advice. **ISSN 1544-9769.**

To submit comments or suggestions, send an e-mail to theasppajournal@asppa.org. For information about advertising, send an e-mail to dfrappollo@asppa.org.



4245 North Fairfax Drive, Suite 750
Arlington, VA 22203
P 703.516.9300 F 703.516.9308
www.asppa.org

Restructuring Asset-based Distribution Fees

The SEC has proposed repealing Rule 12b-1 in its entirety. In its place, the proposed rules provide for two types of fees: a marketing and service fee and an ongoing sales charge.

Marketing and Service Fees

The SEC would create a new Rule 12b-2 that would permit funds, with respect to any class of fund shares, to deduct a fee of up to 25 basis points annually from fund assets. This “marketing and service fee” could be used for any distribution related expenses, including service fees. The SEC release states that funds may use the proceeds of the fee for paying “retirement plan administrators for the services they provide participants.”

Ongoing Sales Charge

Under the proposed rules, funds also would be permitted to deduct asset-based distribution fees in excess of the marketing and service fee, provided that the excess amount is considered an “ongoing sales charge” (OSC) subject to certain sales charge restrictions. A fund can deduct an OSC to finance distribution activities at a rate established by the fund, provided that the cumulative sales charge the investor pays on any purchase of fund shares does not exceed the amount of the highest front-end load that the investor would have paid had the investor invested in another class of shares of the same fund. There is a 6.25% cumulative cap if there is no share class with a qualifying front-end load.

Issue for Retirement Plans—OSC Conversion Provisions

Under the proposal, funds would have to convert to a class without an OSC in the month that the cumulative charge is met. The provision would work as follows: Assume that a fund offers a class A share with a six percent front-end load and no OSC. The same fund also could offer a class of C shares with an annual OSC of 0.75%, provided that:

- The class C shares convert to class A shares in 96 months or earlier, and;
- The class C shares do not impose any other loads.

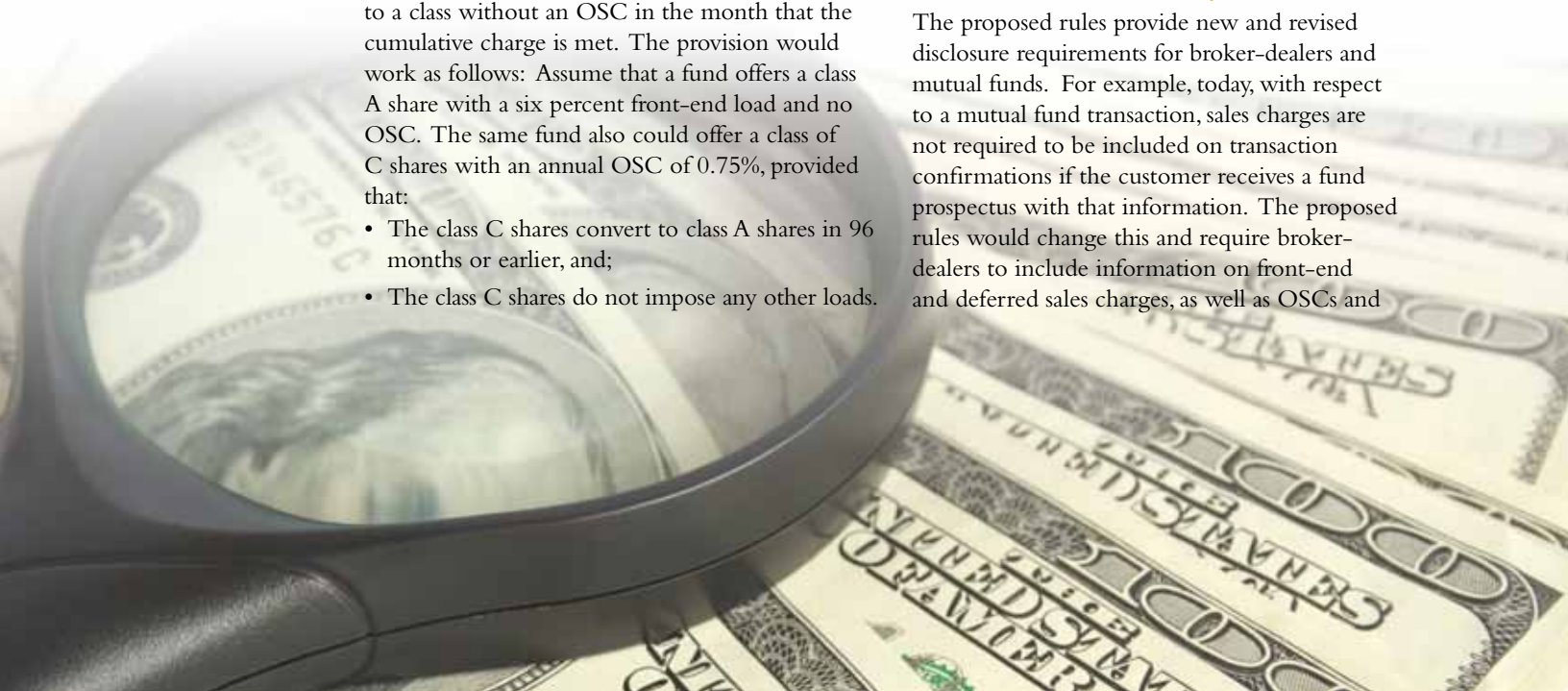
Presently, most retirement systems are not designed to manage share conversions. This fact is even acknowledged by the SEC. The SEC states in its release that, “if a retirement plan offers fund classes that deduct an ongoing sales charge, the proposal would require such shares purchased by plan participants to eventually be converted to a class that does not deduct an ongoing sales charge. This conversion requirement would create costs for retirement plan recordkeepers because we understand that currently, most recordkeepers do not maintain individual participant share histories. Recordkeepers for plans that offer shares classes with an ongoing sales charge would need to begin tracking the date of purchase of each share lot for each participant and tie that share history to the appropriate conversion date.” ASPPA government affairs staff is working to obtain some relief from the conversion provisions.

Account-level Sales Charge Alternative

The proposed rules also provide mutual funds with an alternative approach to distributing fund shares through broker-dealers. Under the proposed elective provision, a fund (or a class of the fund) could issue shares without a sales load, and broker-dealers could impose their own sales charges based on their own schedules and in light of the value investors place on the dealer’s services. The rule would allow dealers to assess their own “wrap” charges for sales and distributions, which would not be subject to the 25 basis points cap. The fund could still charge a marketing and service fee as well (but could not impose an OSC with respect to that share class).

Revised Disclosure Requirements

The proposed rules provide new and revised disclosure requirements for broker-dealers and mutual funds. For example, today, with respect to a mutual fund transaction, sales charges are not required to be included on transaction confirmations if the customer receives a fund prospectus with that information. The proposed rules would change this and require broker-dealers to include information on front-end and deferred sales charges, as well as OSCs and



marketing and service fees associated with mutual fund transactions, on confirmations. Current rules permit quarterly reporting for transactions involving investment company plans (including retirement plans). The proposed rules would require such quarterly statements involving mutual fund transactions to include disclosure of sales charges consistent with the new proposed rules for other confirmations.


Effective Date

The rules would become effective within 60 days of the SEC adopting the proposed rules. For sales of new shares, restrictions would go into effect no earlier than 18 months after the effective date (the "compliance date"). Restrictions would have to be applied to existing shares within five years of the compliance date.

Potential Issues

ASPPA's government affairs staff is in the process of analyzing the new proposed rules and has

identified a number of potential issues. For example, there appears to be redundancies between the 408(b)(2) fee disclosures required for plan investments and the proposed new broker-dealer disclosures. There likely will be discrepancies with the participant fee disclosure regulations as well, which we expect to be issued in the fall. Another issue is whether the conversion provisions for OSCs (where shares would have to convert to a class without an OSC at the end of the month in which the cumulative charge is met), as discussed above, would work for retirement plans.

ASPPA's government affairs staff will certainly keep you apprised as they continue to analyze and comment on these proposed rules. 

.....
Kara Getz, Esq., APM, is the former Director of Congressional Affairs of ASPPA. Prior to joining ASPPA, Kara worked as Tax Counsel for Senator Gordon H. Smith and the US Senate Special Committee on Aging.

The SEC has proposed repealing Rule 12b-1 in its entirety. In its place, the proposed rules provide for two types of fees: a marketing and service fee and an ongoing sales charge.



Enrolled Retirement Plan Agent (ERPA) Exam Preparation Tools

Winter 2011 Examinations: January 6 - February 17
Registration closes January 5, 2011.

ERPA Study Guide
Expanded syllabus that complements the official exam syllabus with cite references to *The ERISA Outline Book*.

Practice Examinations
Downloadable PDFs containing 75 questions each and answer keys. Test your knowledge today!

Online Review Courses
Overview of the most challenging topics covered on the corresponding exam parts.
For additional information, visit www.airellc.org.



**American Institute
of Retirement Education**
A Partnership of ASPPA & NIPA

ERPA preparatory tools can be ordered at
www.airellc.org.

Register for the Enrolled Retirement Plan
Agent-Special Enrollment Examination
(ERPA-SEE) at **www.erpalexam.org**.

Is Your 403(b) Plan Covered by ERISA, Must it Be—and Does it Matter?

A Slight Twist in the 403(b) Plan Kaleidoscope Provides Another Picture

by James H. Culbreth, Jr. and Russ Dempsey

The market for retirement arrangements that qualify for favorable income tax treatment under Internal Revenue Code (IRC) Section 403(b) [a “403(b) plan”] has experienced considerable legal development in recent years. The Internal Revenue Service (IRS) and Department of Labor (DOL) have been active with regulatory action and administrative guidance for 403(b) plans. Significantly, the legal changes may impact whether a plan is subject to the Employee Retirement Income Security Act of 1974 (ERISA), as amended.

A critical first step for 403(b) plan sponsors and service providers is to determine whether the plan is an ERISA or non-ERISA plan. Some employers are statutorily exempt from ERISA, other organizations may desire ERISA coverage and yet others may inadvertently take actions causing such entities to unintentionally fall under the purview of ERISA. Understanding the applicable legal framework is necessary for compliance, as well as expense management and forecasting.

Eligible Plan Sponsors under the IRC

Employers eligible to sponsor a 403(b) plan include public education institutions, select governmental employers and IRC Section 501(c)(3) organizations.¹ Examples of employers eligible to sponsor 403(b) plans include public schools, colleges, universities, county hospitals, charitable and religious organizations, community service organizations and hospitals.

Overview of 403(b) Plans

Historically, 403(b) plans functioned more like a group of individual annuity contracts than a single plan. This lack of centralized control and responsibility kept employers from assuming the



“ownership” role towards the 403(b) plan that the IRC requires for benefit plans qualified under IRC Section 401, such as 401(k) plans. Consequently, compliance in 403(b) plans often was less monitored by both the employers and the IRS. This era effectively ended with the Final Regulations under IRC Section 403(b), which became effective January 1, 2009 and represented a significant transition by requiring, among other things, a written plan document and more involvement by the plan sponsor with 403(b) plan administration.

Application of ERISA to 403(b) Plans—The DOL Safe Harbor

In general, ERISA applies to employee pension benefit plans established or maintained by an employer, unless specifically excluded from the statute.



¹ As such organizations are defined in the Internal Revenue Code. Further, State, political subdivisions of a State, or agency or instrumentality of the State or political subdivision that are educational organizations described in 26 U.S.C. §170(b)(1)(A)(ii) are eligible.

However, the terms “established” and “maintained” are not defined in ERISA. In an effort to clarify the application of ERISA to 403(b) plans, the DOL issued a safe harbor regulation in 1979.²

According to the DOL regulatory safe harbor exemption, 403(b) plans funded solely through salary reduction agreements or agreements to forego an increase in salary are not “established” or “maintained” by an employer and are thus exempt from ERISA provided that:

- Participation of employees is completely voluntary;
- All rights under the annuity contract or custodial account are enforceable solely by the employee or beneficiary of such employee, or by an authorized representative of such employee or beneficiary;
- Involvement of the employer is limited to certain optional specified activities, such as permitting annuity contractors to publicize products to employees, offering reasonable funding choices and summarizing or compiling information regarding funding products, and;

- The employer receives no direct or indirect compensation in cash or otherwise other than reasonable reimbursement to cover expenses properly and actually incurred in performing employer’s duties.³

Employer involvement, including employer discretion, is a critical factor in the analysis of whether the plan is an ERISA or non-ERISA plan.

Governmental entities and public education institutions are statutorily exempt from ERISA, so such eligible 403(b) plan sponsors need not be concerned with the regulatory safe harbor exemption. Religious organizations have a different status, in that these organizations may *elect* ERISA coverage, an option that is not available to governmental entities and public education institutions.

Complying with the DOL Safe Harbor

The additional plan sponsor involvement required by recent regulatory changes makes compliance with the ERISA safe harbor exemption much more difficult for plan sponsors.



² 29 C.F.R. §2510.3-2(f).

³ Id.

Coverage at your fingertip

**ERISA/Fidelity Bonds
Fiduciary Liability Insurance
Errors & Omissions Insurance**

Coverage for Advisors and Third Party Administrators

Direct insurance for pension professionals and plan sponsors.
Complete online transaction start to finish.
Colonial Surety Company...get direct!

50 Chestnut Ridge Road Montvale, NJ 07646 1.800.221.3662 www.colonialdirect.com



On the surface, complying with the safe harbor exemption appears to be as simple as avoiding discretion with respect to administration of the plan. Practically, however, a sponsor must balance the reasonable choice obligation regarding funding products against the duty to avoid any discretionary activity in plan administration.

Consistent with the safe harbor, a plan sponsor may adopt a written plan document, comply with the benefit terms of the contracts, process payroll contributions, coordinate administration among different contract issuers and address tax-driven nondiscrimination requirements, such as universal availability. Plan sponsors seeking to maintain the exemption must use caution not to have responsibility for, or make, any discretionary determinations regarding plan administration. The DOL has been clear that discretionary determinations such as authorizing plan-to-plan transfers, processing distributions, satisfying qualified joint and survivor annuity requirements and having discretion over hardship distributions, qualified domestic relations orders (QDROs), and eligibility or administration of loans will place a plan sponsor squarely outside of ERISA's safe harbor exemption and place the 403(b) plan under ERISA.⁴

On the surface, complying with the safe harbor exemption appears to be as simple as avoiding discretion with respect to administration of the plan. Practically, however, a sponsor must balance the reasonable choice obligation regarding funding products against the duty to avoid any discretionary activity in plan administration. The requirement means that plan sponsors must offer participants a reasonable choice as to funding products and annuity contractors in order for the sponsor to be viewed as not to have established or maintained a plan. Plan sponsors must select providers that will accept the discretionary decisions related to loans, hardship requests, QDROs, distributions, etc., while at the same time not materially impacting reasonable choice.

Recent Clarifications on the DOL Safe Harbor

Recently, in Field Assistance Bulletins (FAB) 2009-02 and 2010-01, the DOL provided some clarification on these matters. Although welcomed, the FABs do not resolve all questions related to reasonable choice. The DOL confirmed that reasonable choice applies to both administrative service providers and investment products used by 403(b) plans. The DOL further emphasized that the facts-and-circumstance analysis takes into account whether the choice of providers and investment products is reasonable. The size of the employer is a relevant factor, since the expense of facilitating contributions to multiple providers

and the administrative burdens of compliance may weigh more heavily on small employers. Without specifying a number of providers that must be offered, the DOL stated that there may be facts-and-circumstances that would justify the selection of a single provider if employees are permitted to transfer or exchange their interest in the plan to another provider.⁵

In the DOL's view, an employer may allocate discretionary determinations to an annuity provider, but may not directly delegate discretionary authority to a third party administrator (TPA).⁶ The rationale for this position is that an employer seeking to comply with the safe harbor exemption may not have any discretion regarding the administration of the plan. Thus, an employer has no ability to delegate that which it may not possess (*i.e.*, an employer may not have discretion, therefore may not delegate discretionary activities). Interestingly, a provider may engage a TPA to perform services on behalf of the plan, including discretionary activities related to the administration of loans and hardship distributions.

Practical Considerations for Plan Sponsors of 403(b) Plans Covered by ERISA

A 403(b) plan that is not covered by ERISA avoids the rules governing the reporting and disclosure of employee benefit plans, as well as the ERISA fiduciary rules, all of which are contained in Title I of ERISA. Part 1 of Title I of ERISA is the source of the annual reporting and disclosure requirements, and Section 4 of Title I contains the rules regulating fiduciary conduct. Thus, a 403(b) plan that for any reason falls under ERISA's jurisdiction [*e.g.*, by providing employer contributions or having the plan sponsor too involved in administering the 403(b) plan] must comply with ERISA's mandates concerning annual reports and fiduciary conduct. Coverage under ERISA requires a plan sponsor to take additional steps in order to protect plan participants (and thereby avoid liability) in the operation of the 403(b) plan. Among these considerations are:

Form 5500 Audit for Large 403(b) Plans Covered by ERISA

Any 403(b) plan that is subject to ERISA must file an annual report using Form 5500 and its schedules. Beginning with the 2009 plan year,

4 Department of Labor Field Assistance Bulletin No. 2007-02.

5 Department of Labor Field Assistance Bulletin No. 2010-01.

6 *Id.*



Keane

Transform Risk Into Reward

Retirement Services



Retirement Plan Experts Profit from Keane's Expertise

Third-party administrators, record keepers, and retirement plan sponsors trust Keane to quickly, accurately and cost-effectively optimize plan participant data.

Keane can save you or your clients time and money by expediting resolution of missing participants, quickly locating beneficiaries of deceased participants, and reducing audit risks.

Keane can protect you from fiduciary and regulatory risks by providing auditable, best-practice solutions.

Keane can even save clients money and resources by completing plan terminations in six months or less.

Keane can protect you from risk but, more importantly, we help leading retirement plan professionals like you... **Transform Risk Into Reward.**

To receive our FREE article on How to Streamline Plan Terminations and our FREE white paper on How to Optimize Plan Participant Data, simply log onto www.StreamlineYourPlan.com/ASPPA.

Teachers Across the Country Thank You

"Thank you for your generous donation. Your support of our school and community is recognized and truly appreciated."
Morton High School (IL)

"Thank you for the generous support to educate our students in the areas of personal finance."
North Community High School (MN)

"Because of your generosity, I am able to provide my students with resources that will enhance the information that I provide. I thank you and appreciate your kindness."
Riverdale High School (TN)

"We are very grateful for your gift. As you know, having our students grasp the essential of personal finance is crucial in today's world and your support of us is very meaningful."
Somers High School (CT)

The **THIRST** Remains



Today, teenagers spend 30% of their income on debt repayment, doubling the percent spent in 1992.

You can stop this cycle and give them a lifetime of *fiscal responsibility* by sponsoring a classroom with our *Building Your Future* financial literacy curriculum.

Thanks to your donations through our successful **QUENCH THE THIRST** campaign, The Actuarial Foundation has already provided the *Building Your Future* curriculum to 2,500 teachers who reach more than 62,000 students.

The **THIRST** remains! We have a waiting list of 750 teachers who want to bring this curriculum to their students. Make a difference this "back to school" season. For just \$250 you can bring the *Building Your Future* curriculum to a teacher on our waiting list or even sponsor your alma mater, a local school or a school attended by a child or grandchild. Any teenager can benefit from these sound financial skills.

QUENCH THE THIRST for knowledge today. Go to www.ActuarialFoundation.org/donate/quench.shtml



475 N. Martingale Road, Suite 600 • Schaumburg, IL 60173-2226
phone: 847.706.3535 • web: www.ActuarialFoundation.org

Because the 403(b) plan requirements under the IRC may be satisfied by using multiple documents for service providers, the SPD for an ERISA 403(b) plan may require a new document in order to contain the specific information necessary under ERISA.

403(b) plans with 100 or more participants on the first day of the plan year are required to have an annual audit of the plan's financial statements. Under ERISA, the audit must be made by an independent party and is required each year in which the 403(b) plan has 100 or more participants. FAB 2009-02 provides guidance on how a plan sponsor can align its duty to produce an annual report with the unique character of 403(b) plans [*i.e.*, the likelihood that many plan assets may be held by financial service providers that no longer are part of the 403(b) plan]. This relief does not eliminate the need for large ERISA-covered 403(b) plans to obtain and file the audit as part of the Form 5500 annual report, but it permits the auditor to certify that "grandfathered" annuity contracts are not reported in the audit.

The Need for a Summary Plan Description (SPD) and Other Disclosures

Even though the IRC now requires all 403(b) plans to have a written plan document, ERISA-covered 403(b) plans must also produce an SPD of the 403(b) plan and distribute it to participants within 120 days of coverage under the plan. Because the 403(b) plan requirements under the IRC may be satisfied by using multiple documents for service providers, the SPD for an ERISA 403(b) plan may require a new document in order to contain the specific information necessary under ERISA.⁷ Periodic amendments to a 403(b) plan under ERISA must be reported to participants through a summary of material modifications within 210 days of the change.

ERISA's Fiduciary Requirements

The increased emphasis on a plan sponsor's fiduciary duties regarding investment of plan assets under ERISA is well known, along with the heightened risk of participant complaints and possible litigation related to plan fees. A plan sponsor of an ERISA 403(b) plan is subject to ERISA's standards for fiduciary conduct, including performing their duties solely in the interests of plan participants:

- for the exclusive benefit of providing benefits and defraying the plan's reasonable costs;
- with the care, skill and diligence of a prudent person acting in like capacity and familiar with such matters would use;
- by diversifying investments to minimize the risk of large losses; and
- in accordance with the plan documents.⁸

Also, a fiduciary must prudently invest assets by considering the facts and circumstances relevant to each investment.⁹ This responsibility has been the focus of a number of DOL regulations and some participant litigation. The plan sponsor of an ERISA 403(b) plan must carefully consider and document the process used in all steps of plan administration, none more important than the selection of the annuity or custodial account providers used by the plan. Failure to comply with ERISA's fiduciary standards can lead to liability for plan sponsors and other plan fiduciaries.

Although deferral-only 403(b) plans generally are not subject to ERISA, the transfer of employee deferrals to the service providers under an ERISA 403(b) plan must be made under the DOL's interpretation of 29 CFR §2510.3-102 (requiring that such transfers occur as soon as practical after the deferrals are segregated) that generally the funds must be transferred within three business days, or seven days for small employers. This timeframe is shorter than the time permitted under the IRC 403(b) Final Regulations, which has a similar rule but uses 15 days in the example provided.¹⁰

Practical Considerations for Plan Sponsors of 403(b) Plans Not Covered by ERISA

A plan sponsor of a 403(b) plan that avoids mandatory ERISA coverage (*e.g.*, all governmental plans, plans with only employee deferrals and other plans satisfying ERISA exemptions discussed earlier) must still comply with legal requirements, often without the clarity of ERISA's fully-developed regulatory framework. Thus, while there is no need for a plan sponsor of an exempt plan to provide an SPD or file annual reports, such plan sponsor must follow applicable state laws concerning fiduciary conduct and the rights of beneficial owners of assets managed by a third party.

This lack of clarity may become an issue in several ways. Unlike ERISA, which clearly states that the plan sponsor must either use only appropriate investments or delegate that duty to an investment advisor, the sponsor of an exempt plan must first look to state law to determine its fiduciary duties. Case law and state statutes are relatively undeveloped in this area when compared to ERISA, and the consequence is less clarity for a plan sponsor regarding fiduciary duties and legal obligations. For example, a plan sponsor's

7 29 C.F.R. §2520.102-3 et seq.

8 29 U.S.C. §1101(a).

9 29 C.F.R. §2550-404a-1(b).

10 26 C.F.R. §1.403(b)-8(b).

selection of investment alternatives or service providers may be a fiduciary function under state law. However, state fiduciary laws developed over time, primarily in situations where one party is responsible for maintaining or investing assets for the benefit of another party (e.g., in general to regulate investment responsibilities in trusts and similar private interests). Unfortunately, such case law provides little guidance where a group of funds is selected by a fiduciary and the beneficial owner makes the actual allocation of assets, as occurs in a 403(b) plan.

If the plan sponsor is a fiduciary under state law for such decisions, state laws concerning prudent investment by fiduciaries do not follow the ERISA standard but instead codify (fully or in modified fashion) the “prudent investor rule” found in Section 227 of the American Law Institute’s Third Restatement of Trusts. Moreover, not all states have adopted the Uniform Trust Code, which further describes the investment standards. As a result, plan sponsors of exempt 403(b) plans should consult with advisors who are familiar with the nuances of state laws concerning fiduciary standards for investments when selecting or limiting the plan’s investment alternatives (as permitted under the DOL safe harbor).

In addition, issues with participants arising under exempt 403(b) plans will be handled in state court, since the access under ERISA to federal courts is not automatically available. The consequences of a state law forum vary because the claims will depend upon the available statutes, which may include state labor and compensation laws, contract laws and tort laws. As a result, plan sponsors of exempt plans may be liable for punitive damages under state law (i.e., pain and suffering). In contrast, punitive damages are generally unavailable under ERISA as damages are primarily limited to the actual losses. Also, unlike the laws in most states, ERISA permits claims for attorney fees to successful litigants, a fact that may be helpful (or a deterrent) to sponsors of a 403(b) plan. Finally, state courts are not required to use the extensive DOL guidance and ERISA regulations when calculating losses for imprudent investments or late transmittal of salary deferrals, and this may affect the damages under state law litigation.

Conclusion

As a result of the DOL’s structure for providing a useful but narrow avenue to avoid having a 403(b) plan covered under ERISA, a plan sponsor seeking to avoid ERISA coverage should focus on two broad criteria:

DATAIR Employee Benefit Systems, Inc. **DB System**

The Best Defined Benefit Valuation Software with...

- Yield Curve with option to discount payments annually or monthly
- At-risk calculations
- Funding for combination of optional forms
- Automatic look-up of segment rates and yield curve
- Analysis of discounting of contributions including
 - ◊ deemed reductions
 - ◊ application to MRC
 - ◊ application to quarterlies
- Updating of COB and PFB
- Transfer of data to DATAIR's EFAST2 (5500) System
- Cash Balance valuation and administration
- Multiple plan testing

Mention this ad for a special discount!

www.DATAIR.com (888) 328-2474

- Do not place employer contributions in the 403(b) plan; and
- Maintain minimum administrative involvement in the plan.

A plan sponsor whose 403(b) plan is subject to ERISA (intentionally, unintentionally or unavoidably) must comply with significant parts of ERISA’s regulatory structure and must comply with annual reporting requirements, disclosure mandates and heavily-regulated fiduciary standards. While these produce additional burdens on operating the 403(b) plan, they also offer predictable regulation and protect the plan sponsor from claims under state laws that may prove more costly due to ERISA’s preemption of state law. Plans exempt from ERISA avoid the extensive federal regulatory framework, but such plan sponsors are required to follow applicable state laws in the operation of the 403(b) plan. ↗



James H. Culbreth, Jr. is a partner in the employee compensation and benefits practice group in the Charlotte office of Shumaker Loop & Kendrick, LLP. For nearly 30 years, Jim has advised public, private, tax-exempt and governmental clients on employee benefits and executive compensation law matters of all types and has lectured on employee benefits and fiduciary issues at the National Trust School and the Southeastern Trust School. Jim is a member of the Bar in North Carolina, Virginia and the District of Columbia, and he was named a 2009 North Carolina Law Impact Leader by Business Leader Magazine. (jculbreth@slk-law.com)



Russ Dempsey serves as vice president & chief legal officer for United Retirement Plan Consultants. Prior to joining United Retirement Plan Consultants, Russ served as assistant general counsel for Nationwide Financial Services, where he advised the company on ERISA, IRS, DOL and SEC regulations and related employee benefit laws. Russ has also been general counsel to privately held companies. He began his career with the IRS as a Tax Law Specialist for the Employee Plans division. Russ currently serves as a Subject Matter Expert for the Education and Examination Committee of ASPPA. (rdempsey@nivm.com)

A Comprehensive Look at Intricate RMD Issues

by William C. Grossman, QPA

Required minimum distributions (RMDs) under Code Section 401(a)(9) have seen a number of changes over the years—from the very complex required minimum distribution days of the 1987 proposed regulations that had the force of final regulations until roughly 2003, to the regulations issued April 17, 2002.

From the old male/female joint life expectancy tables to the current uniform lifetime table, RMDs may seem simpler. Don't let these changes fool you. RMDs are still a specialized area with its own depth of rules, rule exceptions and special buzzwords and acronyms. This article will cover a broad range of topics related to RMDs.

Excise Tax on Underpayment of RMD

A participant or beneficiary who does not receive a full RMD for a distribution calendar year is subject to an excise tax of 50% on the underpayment under Code Section 4974. For example, the RMD is calculated to be \$3,200 for 2008. The participant receives only \$2,000. The underpayment (*i.e.*, \$1,200) is subject to the 50% penalty—not the entire RMD of \$3,200. So, a penalty of \$600 is to be added to the individual's taxes due for 2008. The \$1,200 is still to be withdrawn, subject to income taxes (assuming the entire distribution consists of pre-tax funds). Due to its significance to this subject, the applicable Section 4974 is presented in its entirety at right.

Internal Revenue Code Section 4974

(a) General rule

If the amount distributed during the taxable year of the payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in Section 457 (b)) is less than the minimum required distribution for such taxable year, there is hereby imposed a tax equal to 50 percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year. The tax imposed by this section shall be paid by the payee.

(b) Minimum required distribution

For purposes of this section, the term "minimum required distribution" means the minimum amount required to be distributed during a taxable year under Section 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), or 457(d) (2), as the case may be, as determined under regulations prescribed by the Secretary.

(c) Qualified retirement plan

For purposes of this section, the term "qualified retirement plan" means:

- (1) A plan described under Section 401(a) which includes a trust exempt from tax under Section 501(a),
- (2) An annuity plan described in Section 403(a),
- (3) An annuity contract described in Section 403(b),
- (4) An individual retirement account described in Section 408(a), or
- (5) An individual retirement annuity described in Section 408(b).

(d) Waiver of tax in certain cases

If the taxpayer establishes, to the satisfaction of the Secretary, that:

- (1) The shortfall described in subsection (a) in the amount distributed during any taxable year was due to reasonable error, and
- (2) Reasonable steps are taken to remedy the shortfall, the Secretary may waive the tax imposed by subsection (a) for the taxable year.



Asking for Waiver of the 50% Penalty Due to Reasonable Cause

Regarding payment of the 50% penalty, the Form 5329 must be completed and attached to the individual's tax return. If there has been a reasonable error that was the cause of the failure to take the RMD, the individual may ask for the penalty to be waived due to the reasonable error. Below is the Form 5329 Instruction section on applying for the waiver of the penalty.

Individual Waiver Method

The IRS can waive part or all of this tax if you show that any shortfall in the amount of distributions was due to reasonable error and you are taking appropriate steps to remedy the shortfall. If you believe you qualify for this relief, attach a statement of explanation and file Form 5329 as follows.

- Complete lines 50 and 51 as instructed.
- Enter "RC" and the amount you want waived in parentheses on the dotted line next to line 52. Subtract this amount from the total shortfall you figured without regard to the waiver, and enter the result on line 52.
- Complete line 53 as instructed. You must pay any tax due that is reported on line 53.

The IRS will review the information you provide and decide whether to grant your request for a waiver.


Automatic Waiver for Certain Beneficiaries

If the individual is the sole beneficiary of participant's benefit or of a separate share, and the amounts are payable under the life expectancy method and a payment is missed during the first five years, the excise taxes are waived if the total death benefit is paid under the five year rule.

Example:

- Participant dies in 2010 and son is sole beneficiary.
- Son chooses life expectancy method early in 2011.
- MRD of \$10,000 taken for 2011.
- MRD of \$12,000 taken for 2012.
- MRD of \$14,000 for 2013 not taken.


If the son takes the total balance out by December 31, 2015, then there is no excise tax on the missed MRD in 2013.



The ERISA Outline Book
by **Sal L. Tripodi, J.D., LL.M.**
2010 Edition • Order Today!


NEW! IRS guidance on the waiver of 2009 required minimum distribution
NEW! Automatic enrollment guidance from the IRS and Treasury
NEW! Guidance on discontinuing safe harbor nonelective contributions
NEW! Final regulations on PPA minimum funding rules and IRC sec. 436 benefit restrictions
NEW! EFAST2 electronic filing system and DOL guidance

Visit www.asppa.org/eob for more details or call ASPPA Customer Support at 1.800.308.6714.



PRINT
The ERISA Outline Book is both a reference book and a study guide on qualified plans, presented in outline format and fully indexed. It's also the recommended study resource for the IRS Enrolled Retirement Plan Agent (ERPA) program.

ONLINE
The ERISA Outline Book-Online Edition is a fully searchable and cross-referenced Web site, containing the same information included in the print edition. The Online Edition is available as a single subscription or multiple-use license.



Code Section 401(a)(9) is a qualification requirement that all qualified plans must meet by distributing RMDs.

Correcting RMD Failures Using EPCRS

Code Section 401(a)(9) is a qualification requirement that all qualified plans must meet by distributing RMDs. If the full RMD is not distributed, then there is a 50% penalty based on the amount of the RMD that was not distributed. The 50% penalty for missed RMD is on the participant. Complying with the required minimum distribution process is complex. The IRS recognizes the complexity of the RMD process and has seen the frequency of missed RMDs. Thus, the IRS added a reduced fee correction method to EPCRS in Rev. Proc. 2006-27.

There are many reasons that an RMD may be missed. For example: The employee's date of birth may be incorrect on the system; the employee's data may have been lost in an implementation, merger and/or acquisition; the list of the group to become age 70 ½ may have been created incorrectly, etc.

The required beginning date (RBD) is also complex. Is the employee retired or not? What is the definition of RBD in the document? Is the RBD being administered correctly? Is this the first employee to ever attain RBD in this plan and does the employer realize it?

EPCRS Procedure to Correct Missed RMDs

Rev. Proc. 2008-50, Section 12.02

The IRS EPCRS procedure for missed RMDs (originally added in Rev. Proc. 2006-27 EPCRS) states that **if there are 50 or less RMDs missed, the Voluntary Compliance Program (VCP) fee is \$500, regardless of the number of participants in the plan. This reduced fee is available for plans that file with the IRS under VCP and provided that this is the only error for which the plan is being filed under VCP.**

EPCRS Permits the Plan Sponsor to Apply for Waiver of 50% Penalty [Section 6.09(2)]

EPCRS (RP 2008-50, page 38) does not automatically waive the 50% penalty when the employer files under VCP. As part of VCP or Audit CAP in appropriate cases, the IRS may waive the (§4974) 50% excise tax applicable to plan participants. Note that the waiver is not available under the self-correction program (SCP).

Under Audit CAP, the plan sponsor must make a specific request for waiver of §4974 excise tax and provide an explanation supporting the request. The IRS will review the request/explanation and, if appropriate as part of CAP, the waiver will be in the compliance statement or closing agreement.

Under VCP, the plan sponsor, as part of VCP

submission, must request the waiver of the §4974 excise tax. This relief may be accomplished under the VCP streamline filing Schedule 8 by checking Part III, Box A which states: "The Applicant requests relief with regard to excise taxes under §4974." Where anyone subject to excise tax is either an owner-employee as defined in §401(c)(3) or a 10% owner of a corporation, then the plan sponsor must provide a written explanation to support the request. The waiver eliminates the need for relief to be requested individually by each affected participant. *If VCP is not used to waive the excise tax, then each affected individual is responsible for his or her own 50% penalty and must file Form 5329, unless there is a reasonable error, then complete the procedure described above.*

EPCRS Section 11.02(h) (Page 55)

If the plan failed to make RMDs and proposes to correct such failure using the method described above (in Appendix A, section .06), then the plan sponsor should submit Appendix F, Schedule 8 (which is on the last two pages) with the VCP application. (Note that the correction must include earnings.)

Correction Includes Distribution of Missed RMDs Plus Earnings

EPCRS Appendix A, Section .06 (Page 74-75)

In a defined contribution plan, the permitted correction method is to distribute the missed RMDs with earnings from the date of the failure to the date of the distribution. If more than one year's RMD has been missed, the amount required to be distributed for each year starting when the initial failure occurred is to be determined by dividing the adjusted account balance on the applicable valuation date by the applicable distribution period.

For this purpose, "adjusted account balance" means the "actual account balance," determined in accordance with §1.401(a)(9)-5 Q&A-3, reduced by the amount of the total missed minimum distributions for prior years. Q&A3 states that the balance to use is the value on the preceding December 31 for the applicable year's RMD. However, if the last valuation was before December 31, then adjust for contributions and/or distributions after the valuation date until December 31.

Correction of Missed DC RMD Plus Earnings— Example:

A plan missed an individual's RMDs for 2005, 2006 and 2007.

The missed RMD for 2005 would be calculated:

$$\mathbf{12-31-04 \text{ balance } \$100,000 / 25.6 \text{ (age 72)} = \mathbf{3906.25^*}}$$

The missed RMD for 2006 would be calculated:

$$\mathbf{12-31-05 \text{ balance } \$108,000 - 3906.25 / 24.7 \text{ (age 73)} = \mathbf{\$4,214.32^*}}$$

The missed RMD for 2007 would be calculated:

$$\mathbf{12-31-06 \text{ balance } \$115,000 - 3906.25 - 4214.32 / 23.8 \text{ (age 74)} = \mathbf{\$4,490.73^*}}$$

* Gains/Losses to be calculated and distributed on each RMD amount from date it should have been distributed until distribution date.

In a defined benefit plan, the permitted correction method is to distribute the missed required minimum distributions, plus an interest payment representing the loss of use of such amounts.

Required Beginning Date (RBD) Issues

The RBD is April 1 after the year age 70 ½ is reached for IRAs, 5% owners, non-5% owners retired before age 70 ½. RBD is April 1 after the year of retirement for non-5% owners who continue to work after the year age 70 ½ is attained.

5% Owner Issues

In the determination of who is a 5% owner, the stock attribution rules of Code Section 318(a) apply. For example, an individual is deemed to own stock owned by his or her: spouse, parents, children (including adopted) and grandchildren.

If the individual stops being a 5% owner after RBD, the RMDs must be continued because the individual was a 5% owner on RBD.

If the individual is still working and was not a 5% owner at RBD but becomes a 5% owner after RBD, RMDs do not have to begin until after the individual retires, because the individual was not a 5% owner on April 1 of the year after age 70 ½ was reached. Thus, the individual is still treated as non-5% owner as the rules only deal with those who are 5% owners in the year age 70 ½ is attained. The status as 5% owner or non-5% owner locks-in as of April 1 after the year age 70 ½ is reached.

TEFRA 242(b) Election

The Tax Equity and Fiscal Responsibility Act of 2002 (TEFRA) contained changes to the RBD and permitted individuals who filed a TEFRA 242(b) election which had to be signed by



Web-based Advanced Planning & Sales Platform

- | | |
|---------------------------|----------------------|
| • Immediate Plan Results | Pension Plans |
| • IRS & PPA 2006 | §412(e)(3) |
| Compliant Engine Design | DB (§415) |
| • Multiple Life & Annuity | DC/401k |
| Product Integration | DB/DC Combo |
| • Branded Web Tools & | Benefit Plans |
| Sales Illustrations | §419(e) |
| <i>Carriers</i> | §79 |
| <i>Dealer Brokers</i> | Custom Combination |
| <i>Agencies</i> | Plan Presentations |
| <i>Independents</i> | |

Partner services available for Sales Support & Administration

www.plangen.com 877.565.5926 promotions@plangen.com

December 31, 1983 to remain under the old rule. The election was available for both 5% owners and non-5% owners. The election delayed RBD until severance of employment after age 70 ½. Some firms had all their employees make the election.

Example of Existing 242(b) Election

Consider a one-person plan with an 84-year-old doctor who had never taken RMDs. He was still working. The doctor had timely filed a TEFRA 242(b) election, so although he is a 5% owner, he never retired and thus never reached RBD. Note that if there is a revocation of the TEFRA 242(b) election, the individual must make up missed payments!

Permitted Delay in RBD

Regulations list two events permitting delay of RBD. One is for an annuity payment from an insurance company involved in state insurer delinquency program; the other is if the individual is in the midst of the 18-month QDRO period.

Plans Subject to the Qualified Joint and Survivor Annuity Rules

For plans subject to spousal consent requirements, spousal consent is required for RMDs. Typically, a blanket spousal consent is acceptable (*i.e.*, one spousal consent for all future).

RBD in a Qualified Plan Involves the Plan Document Defining RBD

A document may define RBD in accordance with the regulations, permitting non-5% owners who work after age 70 ½ to wait until retiring before reaching RBD. A plan document may also define RBD as April 1 after the year age 70 ½ is reached for all individuals.

Working Non-5% Owner Request to Simulate RMD at Age 70 ½

A plan defines RBD for a non-5% owner as later of the April 1 after the year age 70 ½ is attained or after the year of retirement. At age 70 ½, a working non-5% owner wants an RMD, but he will not reach RBD until after

retirement. The Solution: the plan has a provision for in-service at age 70 ½ and thus can make a “simulated RMD payment.”

Calculate a simulated RMD amount using the prior 12/31 Fair Market Value (FMV) and the applicable divisor from the uniform lifetime table (unless there is a young spouse, then use the joint life table). Note that though the amount paid is the same amount as the RMD would have been, it is not an RMD. As an in-service distribution, this “simulated RMD” is an eligible rollover distribution, subject to 20% mandatory federal income tax withholding.

It would seem much simpler to administer a qualified plan with the RBD set at April 1 after age 70 ½ for all participants. However, to change the plan back to this after it has had the provision permitting non-5% owners who work beyond age 70 ½ to wait until retirement would be viewed as a Section 411(d)(6) cutback.

2009 Waiver Issues and the 2010 RMDs

The market plunge in 2008 negatively impacted participants in required minimum distribution status. The 2008 RMDs calculated using the high December 31, 2007 values and distributed at year end 2008 from much lower valued assets forced individuals to “sell low” when taking their 2008 RMD.

On December 23, 2008, WRERA waived 2009 RMDs for both participants and beneficiaries in defined contribution plans, 403(b), Governmental 457(b) and IRAs. It did not waive them for defined benefit plans or tax-exempt 457(b) plans. Note that IRAs with QTIP trusts should also not have waived the RMD.

The passage of WRERA on December 23, 2008 provided no time for large institutions/employers paying thousands of RMDs in monthly installments to contact and provide options to participants before the next monthly RMD installment on January 31, 2009. Thus, large institutions generally decided to continue making the RMD monthly installment payments in 2009 while seeking IRS guidance.

WRERA Created Rules for Amounts Distributed as an RMD for 2009

The RMD amount is eligible for rollover.

- No mandatory 20% withholding between 01/01/09 to 12/31/09.
- Those attaining age 70 ½ in 2009 taking RMD amount 01/01/10 to 04/01/10 were subject to the 20% mandatory withholding.
- No 402(f) notice requirement on 2009 RMD amount, though recommended to be provided.
- Voluntary tax withholding applies, but may be waived.
- Otherwise, a 10% federal tax withholding will generally apply.
- 60-day period for a participant rollover, or, if plan permits, by direct rollover.
- Plan permitted, but not required, to offer direct rollover option on the 2009 RMD amount.

Those Attaining Age 70 ½ in 2008:

Those participants attaining age 70 ½ in 2008 and thus whose *first distribution calendar year* was 2008 must still take their 2008 minimum by April 1, 2009. They can skip the 2009 amount due by December 31, 2009, but must recommence payment by December 31, 2010.

Those Attaining Age 70 ½ in 2009:

Those participants attaining age 70 ½ in 2009 need not take a minimum for that year. However, they must take a minimum for 2010 by December 31, 2010. They do not get until April 1, 2011, because their *first distribution calendar year* was actually 2009 not 2010.

Notice 2009-82 Issued September 24, 2009

This notice stated that affected plans remain in operational compliance regardless of if they paid or if they didn't pay RMDs between January 1, 2009 and November 30, 2009, or if it had made a direct rollover of an RMD amount in 2009.

The IRS extended the period to roll over RMDs received in 2009 until November 30, 2009, even if after 60 days of receipt. Although for IRAs, only one distribution per IRA will be eligible for this rollover relief due to the one-IRA-rollover-per-year rule.

Beneficiary Deadlines Extended by 2009 Waiver

The start date for life expectancy payouts for a participant who died in 2008 extended from end of 2009 to the end of 2010, including non-spouse beneficiary rollover.

Five-year Rule (Only for Death Before RBD)

The five-year rule calls for all funds to be distributed by the end of the fifth year after the year in which participant passed. This rule:

- May be a plan requirement;
- May be chosen by beneficiary, if plan permits; or
- May be required due to there being no designated beneficiary.

Do not count the year 2009 as part of the five years. Thus, there is an extension to six years in certain cases.

Example:

The participant died May 4, 2004. Under the five-year rule, count five years after the year the participant died (2005, 2006, 2007, 2008, 2009) and the deadline would be December 31, 2009. However, in this example, WRERA extends this deadline to the end of 2010 because we do not count 2009.

Participant Dies In:	5-year Period Ends	Not Counting 2009, 5-year Period Ends
2003	2008	2008
2004	2009	2010
2005	2010	2011
2006	2011	2012
2007	2012	2013
2008	2013	2014
2009	2014	2015
2010	2015	2015

The five-year rule extension affects 2009 to 2015 deadlines:

- Do not count 2009 as part of the five-year period.
- Affects participant deaths between 2004 and 2009.

Two Sample Plan Amendments Were Issued As Part of Notice 2009-82

One notice stops 2009 RMDs while the other permits RMDs; each permits the participant to elect otherwise. Each amendment was designed to be used by a custom or a pre-approved plan sponsor. The IRS stated that using their sample plan amendments (including necessary modifications) will not affect plan reliance on the written plan document's IRS approval letter. Both sample amendments also provide direct rollover of 2009 RMD option that plan sponsors can choose to offer. Plan sponsors must adopt the amendment no later than the last day of the first plan year beginning on or after January 1, 2011 (January 1, 2012, for governmental plans).

2010 RMDs for Participants

There has been no RMD waiver for 2010. RMDs are to be resumed for 2010. For those who were age 70 ½ prior to 2009 or in 2009, the RMD for the 2010 distribution calendar year RMD must be made by December 31, 2010. Note that there is no April 1, 2011 grace period for those who attained age 70 ½ in 2009. For those attaining age 70 ½ in 2010, the 2010 distribution calendar year RMD must be paid by April 1, 2011.

For all the above, use December 31, 2009 FMV to calculate 2010 RMDs and use the age on the individual's birthday in 2010 for uniform lifetime table (or joint life table for "trophy" couples).

For beneficiaries of participants who died in 2008 starting life expectancy payments in 2010, use the age on birthday in 2010 to calculate on single life table, then reduce that by one in subsequent years.

Moving Assets after the Age of 70 ½

RMD Not Eligible for Rollover

RMD payments are not eligible for rollover! The first distribution that occurs in any distribution calendar year is considered to be the RMD and, thus, may not be rolled over. If the participant wants to make a rollover out of a qualified plan, the RMD may not be rolled over.

Example 1:

John reached RBD in an earlier year. At age 72, John takes a lump sum of \$50,000 from his 401(k) plan. If the RMD amount is \$1,953 ($\$50,000/25.6$), of the \$50,000 lump sum distribution: \$9,609 mandatory withholding ($\$48,047 \times 20\%$).

- \$1,953 John keeps as RMD.
- \$38,438 paid in cash to John.
- \$48,047 is eligible for rollover (if John can come up with the \$9,609 withheld).

Example 2:

Instead, John asks for a lump sum by direct rollover to IRA.

- \$1,953 paid to John as RMD.
- \$48,047 direct rollover to IRA.

Why Are RMDs Not Eligible Rollover Distributions?

There are several reasons. First, Code Section 401(a)(31) does not permit RMDs to be rolled over as they are not eligible rollover distributions. Second, Code Section 401(a)(9) requires every qualified plan to pay the RMD. Why else? The money needs to be taxed. Further, if an RMD was rolled over, there is no way under the RMD regulations for the institution that received an RMD as a rollover to include it in the RMD calculation for that distribution calendar year.

The regulations call for the RMD to be calculated using the preceding December 31 value. The institution with the December 31 FMV is responsible for the RMD. The institution receiving the rollover is not responsible for calculating the RMD on funds not held on prior December 31.

Exception: "Outstanding Rollover" Participant Rollover

An "Outstanding Rollover" is an exception to the rule of an institution receiving the rollover not being responsible for RMD until funds on deposit in that firm on December 31. This generally involves an IRA-to-IRA participant rollover transaction, though it may be a qualified plan to IRA participant rollover transaction also.

Example:

- IRA owner takes distribution of \$90,000 on December 1, 2010; \$8,200 is RMD for 2010.
- IRA owner deposits \$81,800 in new IRA on January 12, 2011 (within 60 days).
- Receiving institution must verify if 2011 RMD was received (or not rolled in with the rollover amount) by the IRA owner prior to the January 12 rollover.
 - If not, then the receiving institution must pay 2011 RMD based on the "outstanding rollover" amount of \$81,800 as if it had been on deposit December 31, 2010.

Handling an Improper Rollover of RMD

IRA Recipient Plan

The RMD amount should be distributed as an excess IRA contribution before tax filing deadline. This treatment also avoids the 6% excess contribution penalty on amounts above the IRA traditional contribution limit. Note that if the individual is age 70 ½ or older, traditional IRA contributions may no longer be made.

Qualified Plan as Recipient Plan

If the RMD is rolled into a qualified plan as recipient, the RMD amount must be treated as an after-tax amount. If the plan does not accept after-tax contributions, the RMD amount will have to be returned, plus earnings, as a corrective distribution.

Rollover of IRA to Qualified Plan after Age 70 ½: Rev. Rul. 2004-12

The following scenario demonstrates the rule:

Fact Set

A traditional IRA owner is still working and is also a non-5% owner who participates in his employer's 401(k) plan.

The Employer 401(k) Plan:

- Accepts rollovers from all IRAs.
- Permits non-5% owners to defer RBD until the later of April 1 following year of age 70 ½ or actual retirement.

Traditional IRA Owner Rolls Traditional IRA into 401(k)

Since rollover occurred after IRA RBD, the IRA's RMD for the year is paid to the IRA owner. The balance above the RMD for the year is rolled to the 401(k). The RBD for the funds rolled in from the traditional IRA is deferred until April 1 after retirement.

Designated Roth 401(k) and Roth IRA

Roth IRA is not subject to RMD at age 70 ½.

Designated Roth 401(k) is subject to RMD rules due to Code Section 401(a)(9). However, in a 401(k) with designated Roth, the RMD may be taken from just non-Roth account assets until the designated Roth is a qualified distribution amount, although the designated Roth must be included in the calculation of the RMD. Further, the *participant can opt to have the RMD amount taken from just the designated Roth account once funds are qualified distribution, until they are exhausted.*

Is there a Way to Avoid Designated Roth RMD Payments?

Yes. Directly roll the designated Roth to a Roth IRA. If age 70 ½ or older, the RMD for the year must be taken at the time of the rollover, but thereafter, as part of Roth IRA, there are no RMDs.

Beware of the five-year clock on Roth IRA. The five-year clock rules are different if the funds are moved from a designated Roth 401(k) account to a Roth IRA. The Roth IRA has a separate tracking period and the years in the Roth 401(k) will not apply to the Roth IRA.

Rollover to Roth IRA

Example 1:

Michelle leaves employment at age 68 in 2010. She had deferred into her Roth 401(k) for 2006 and 2010. She rolls her money to a **new** Roth IRA in 2010. The five-year clock starts over again in 2010 in Roth IRA!

Example 2:

Raquel leaves employment at age 72 in 2010. She had deferred into her Roth 401(k) for 2006 and 2010. She rolls her money to a Roth IRA in 2010, less the RMD. She had opened the Roth IRA in 1999. *The five-year clock on the amount rolled into the Roth IRA has been satisfied as it picks up the Roth IRA clock, which started in 1999!*

Note: If the designated Roth dollars are a "qualified distribution," then they are considered "basis" when entering the IRA. (This event cannot happen for the first time until 2011.) If a qualified distribution is rolled into a new Roth IRA, earnings made by a new Roth IRA (after the qualified distribution is rolled in) must wait five years to be tax-free.

Level Amortized Payment RMD Method

Another method of calculating RMDs is the level amortization method. It is seldom chosen because for roughly the first half of the years of payment, the RMD payment amount is substantially more than the amount calculated by the method of dividing the preceding December 31 value by the Uniform Lifetime Table's applicable divisor. Nonetheless, since this method is available in the regulations, it will be presented here. The level payments are calculated by using the Uniform Lifetime Table's time period at age 70 or 71 (as applicable) and choosing an assumed interest rate for the entire period and running these factors through an amortization program. These programs are readily available on the Internet.

Since the goal of most individuals who attain age 70 ½ and who do not need these funds is to take as small an amount as possible, the level amortization method is not chosen because it provides a substantially larger distribution.

Level Amortized Payments Example:

Balance: \$500,000
Interest rate assumption: 10%
Payout period at age 71: 26 years
Annual level amortized amount: \$49,618
Fractional method = \$500,000/26.5 = \$18,867.92

Calculating RMD for an Off-calendar Plan Year

Retirement plans with off-calendar years present unique issues for calculating the RMD. Such plans are required to determine the previous year's December 31 account values. This information is readily determinable in a daily valuation plan. However, according to Treasury Regulation §1.401(a)(9)-5, Q&A-3(b), a balance forward plan must determine the account value based on the most recent plan valuation that occurred before December 31 of the prior year and making

adjustments for any transactions (contributions or distributions) that actually occurred after the valuation date through December 31 of that year. There is no adjustment for any amounts contributed after December 31.

Example:

Assume that a balance forward 401(k) plan has a plan year ending June 30. The account value as of December 31, 2010 of a participant attaining age 70 ½ in 2011 is calculated in the following manner. First, obtain the June 30, 2010 valuation value and add all 401(k) deferrals made by the participant from July 1, 2010 through and including December 31, 2010. In addition, add any employer allocations made after June 30, 2010 and before January 1, 2011. From this amount subtract any distributions taken after June 30, 2010 but before January 1, 2011.

A participant has a June 30, 2010 account value of \$62,500. The participant then made deferrals of \$3,000 from July 1 through December 31, 2010. The employer contributed \$2,000 in employer contributions to the participant's account during the same time period. These amounts were accrued before June 30, but were deposited after. The participant took distributions of \$500 on November 15, 2010, and \$1,000 on January 12, 2011. The value of the participant's account as of December 31, 2010 is \$67,000 determined as follows:

\$ 62,500	Value on June 30, 2010
+ \$ 3,000	Deferrals made from July 1, 2010 to December 31, 2010
+ \$ 2,000	Employer allocations to participant July 1, 2010 to December 31, 2010
- \$ 500	Distribution taken on November 15, 2010
\$ 67,000	Account value as of December 31, 2010

The RMD is then calculated using the \$67,000 account value. The distribution made on January 12, 2011 is disregarded because it occurred after the end of the distribution valuation year. This distribution will be reflected in the 2011 minimum which is based on the December 31, 2010 account balance, which is calculated in the same method as above.

Resources

IRA Reporting Requirements: Notice 2002-27

The IRS goal was to increase compliance. A report is required to be sent to the IRA owner by January 31 of each year that either states that an RMD distribution is due and provides the RMD amount or offers to calculate the RMD amount. This report is to be sent to the IRS but does not need to include the RMD amount. This reporting requirement applies to any VDEC IRA or deemed IRA in a qualified plan.



PENCHECKS ESTABLISHES OWN TRUST COMPANY!

The PenChecks family of companies continues to grow with its newest subsidiary, PenChecks Trust Company of America (PTCA).

Visit us online at www.PenChecksTrust.com
Contact us toll-free to learn more: **(800) 541-3938**
www.PenChecks.com

Life Expectancy Tables: IRS Publication 590

- Uniform Lifetime Table (starting at 70)
- Single Life Table for Beneficiaries
- Joint Life Tables for “trophy spouse”

Regulations

- RMD Final Regs. for DC, IRA, 403(b) and 457(b) issued April 17, 2002.
- Effective for 2003, could have been used for 2002, amendment required by end of 2003.
- 2001 Proposed Regs. Optional Use in 2001 and/or 2002.
- 1987 Proposed Regs. with force of Final Regs. In use from 1987 to 2002 for DC and DB.
- DB RMD Final Regs. issued in 2004. Ended account balance method of calculating and required annuitization method.
- Generally, effective in 2004.
- Required amendment for pre-approved plans by the DB EGTRRA document deadline of April 30, 2012. ↗



William C. Grossman, QPA, ERPA, is the director of education and communications at McKay Hochman Co., Inc. in Butler, NJ. Bill is also the editor of E-mail Alert, mhco.com; Retirement Plan News; Prototype Plan News; and 403(b) Perspectives. Bill also serves as Co-chair of The ASPPA Journal Committee. (bgrossman@mhco.com)

Need to e-file 500 5500 forms by the end of the week?

Need to amend 200 documents by tomorrow?

Need to solve for New Comp. design?

Let's get it done!

Learn more about ASC's full suite of products and support.



A team of pension professionals stands behind our full suite of pension products: DC /401(k) & DB Software, Plan Documents, EFAST2 5500 System, Compliance Testing & Daily Valuation.

Everyone on ASC's Support Team is a pension professional: Actuary, ERISA attorney or was a retirement plan administrator for over 10 years before joining ASC Support. Our products & support show we understand the challenges you face and what it takes to accurately and easily administer a plan on a timely basis.



Since 1981

Contact ASC today!



The ASC Institute

info@asc-net.com

www.asc-net.com

(800) 950-2082 x1

Guaranteed Income Feature Can Play Key Role in Today's Retirement Plans

by Edward Eng

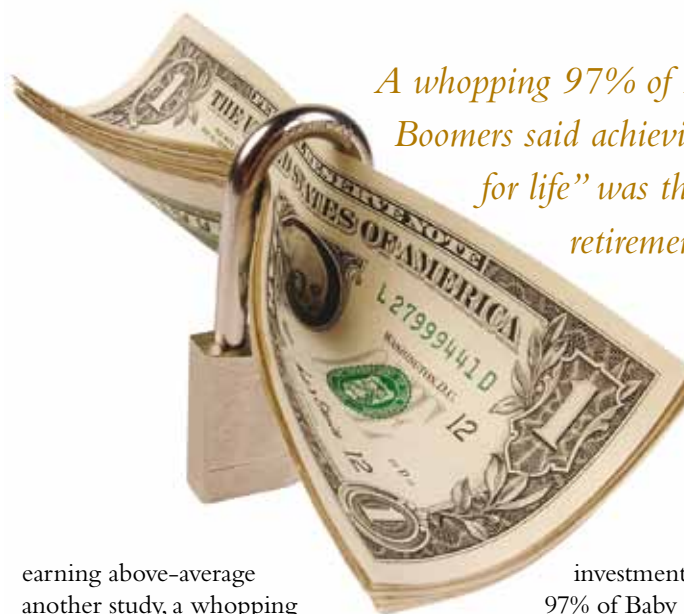
You don't need a crystal ball to know that Americans are concerned about retirement. Really concerned. As the country digs itself out of the biggest economic crater in nearly a century, millions of Baby Boomers are being forced to ask themselves some difficult questions: "Will I have enough to retire?" "Will my savings last through my retirement?" "What if something happens with the markets?"

These issues are challenging. The situation gets even more challenging when you consider that Americans' personal savings levels are at a long-time low, life expectancies are rising and health care costs continue to climb each year.

To help address their participants' concerns, an increasing number of employers are choosing to incorporate a guaranteed lifetime withdrawal benefit (GLWB) feature in their companies' retirement plans. A GLWB feature provides retirees with a source of guaranteed retirement income for the remainder of their lifetimes, affording them a measure of financial predictability and a degree of protection from volatile markets in retirement.

Turning Savings into Income that Lasts a Lifetime

While GLWBs are by no means a retirement planning panacea, it appears they may have a significant role to play in the 401(k) plans of today's participants. In a recent survey of pre-retiree investors, 85% said they placed a greater importance on guaranteed monthly income than



A whopping 97% of Baby Boomers said achieving "income for life" was their top retirement priority.

earning above-average investment gains.¹ In another study, a whopping 97% of Baby Boomers said achieving "income for life" was their top retirement priority.² And nearly half of pre-retirees (46%) said they were "very concerned" about the prospect of outliving their retirement savings.³

Indeed, given the uncertainty of the economic landscape, it seems that more participants may be warming to the idea (and the associated benefits) of a GLWB. The approach is also getting some serious consideration and

Who said there were only two certainties in life?

A guaranteed lifetime income feature can provide participants with:

- A stream of income for life
- Protection from unpredictable markets
- Upside potential to take advantage of bull markets
- Access to their market value whenever they need it



1 "Fidelity Study Shows Economy Driving Demand for Guaranteed Income Products, Yet Annuity Knowledge Remains Low." Fidelity Investments. March 17, 2009.
 2 America Speaks Out on Retirement: 2007 Investor Research Study. Plan Sponsor Magazine. June 2007.
 3 McKinsey 2006 Consumer Retirement Survey.

Participants eager for guaranteed lifetime income options:

- 65% of participants feel that a guaranteed option would increase their satisfaction with their 401(k) plan
- 43% of participants want their company to be one of the first to offer such an option
- 71% of employers feel a guaranteed option would benefit their 401(k) plan

Statistics gathered from "Opportunities for Guaranteed Income Stream Options," a John Hancock-commissioned study by Mathew Greenwald and Associates, Inc. November 2007.

support from a wide range of experts, including those at the top levels of government. In its recently-announced retirement plan initiatives, the Obama administration has called for greater use of guaranteed lifetime income features in 401(k) plans as a way to help Americans turn their hard-earned savings into lifetime income streams.

The Need is Real

When it comes to planning for a secure retirement, the Boomer generation is facing an uphill battle. On its own, the recent global recession would have been more than enough to knock some of the wind out of their financial sails. On top of this market uncertainty, however, is a growing stack of converging factors that appear to be conspiring against Boomers' financial futures.

Retirement is Lasting Longer

Thanks to medical advances and increased standards of living, Americans are enjoying longer life expectancies. In 1950, the average life expectancy of a person at retirement age was 79. For someone retiring in 2004, the average

life expectancy was 84 years.⁴ What's more, there's a one-in-three chance that at least one of a couple of healthy 65-year-olds will live past age 95.⁵ That's the good news. The challenge is that for the first time in history, our retirement plans may need to last for 30 years or more. Today's participants need real options to help finance those additional years of life.

"When" You Retire Matters

As workers approach and enter retirement, they become more vulnerable to volatile equity markets since their investments don't have as much time to recover. Losing a portion of their retirement nest egg at that critical time can have a significant impact on their savings, as well as their future retirement income. This reality has already hit home for millions of Americans. In fact, 38% of people over the age of 62 said they have actually delayed their retirement due to the 2008 recession.

The accompanying illustration shows how a bear market that occurs close to retirement can drastically impact a participant's savings. In this instance, our two participants (let's call them Mary and Steve) each had a 401(k) balance of \$400,000 five years before their respective planned retirement dates. Mary retired in 2007, just prior to the recent recession, with a balance of \$682,826. Steve retired just 12 months later with a total balance of \$458,342—that's just two-thirds of Mary's balance at retirement. That's the difference a year can make.

The situation is by no means hopeless. But it does underscore the fact that all Boomers approaching the end of their working careers would be well-served to create a reliable income stream they can depend upon in retirement.



With a GLWB, you have the flexibility to self-manage your investments, but with a component of downside protection to keep your retirement plans on track if the markets should experience a downturn.

Generating a Retirement Income Stream

There are essentially three main alternatives available to any participant who is looking to create a dependable stream of retirement income:

The "Do-it-yourself" Approach

Imagine you're driving your car along a 25-mile suspension bridge that is 250 feet in the air. By the way, this bridge doesn't have any guardrails. On a sunny, windless day, making it across the bridge is a snap. But when the wind kicks up and the thunderstorms roll in, it can be a different story. You'll need to constantly monitor the weather and road conditions and adjust your speed and positioning accordingly to make it to the other side.

4 National Vital Statistics Report, National Center for Health Statistics 2007.

5 Annuity 2000 Mortality Table, Society of Actuaries.

6 Most Middle-Aged Adults Are Rethinking Retirement Plans. Pew Research Center. May 28, 2009.

Welcome to the “do-it-yourself” approach. With this strategy, the participant manages his or her own portfolio of investments and takes regular withdrawals to fund his or her retirement. In order to provide steady income, this approach requires the owner to monitor market conditions on an ongoing basis and make appropriate adjustments to his or her investments. Perhaps the greatest challenge is to have a portfolio that is aggressive enough to ensure the money can last, but also conservative enough to provide protection from market downturns.

The “do-it-yourself” approach can be effective for the sophisticated investor who has a high tolerance for volatility. In many cases, it could also mean lower fees at the end of the day. But with no insurance component and the need to self-manage your withdrawal amount, it is definitely not for the faint of heart or novice investor.

A Traditional Annuity

Now, imagine you are driving your car through a long tunnel. There’s no need to worry about adverse weather in the safety of the tunnel. But after awhile, you notice that there are no off-ramps. You’re stuck going in one direction from point A to point B.

This analogy illustrates how the traditional income annuity works. An annuity is an insurance product that does provide a guaranteed series of payments. In other words, you will get from point A to point B. This security comes at a price, however, which means low flexibility (your money is locked in) and higher fees.

Guaranteed Lifetime Withdrawal Benefit (GLWB)

The GLWB offers the best of both worlds. To extend the automotive analogy, imagine you’re driving across a bridge, but this time, there are strong, stable guardrails to help you stay on the road until you make it to the other side—no matter how bad the weather might get.

With a GLWB, you have the flexibility to self-manage your investments, but with a component of downside protection to keep your retirement plans on track if the markets should experience a downturn. The fees associated with GLWBs are moderate (somewhere between the annuity and do-it-yourself approaches). On top of that, you’ll have access to minimum withdrawals without having to annuitize your investment.

Given the new economic realities and challenges the Boomer generation will face in years to come, allocating a portion of their portfolios to a GLWB feature today could provide the confidence and security that comes with a predictable income stream.

introducing... **PENCHECKS**
MISSING DISTRIBUTEES, LLC

“THE UN-CASHED CHECK SOLUTION”

Resolve un-cashed and stale-dated plan payments by transferring the fiduciary responsibility to PenChecks.
To learn more, visit us online at
www.MissingDistributees.com

PENCHECKS
Missing Distributees
a PenChecks, Inc. Company

(800) 541-3938
www.PenChecks.com

Benefits of Guaranteed Lifetime Income Features

In short, GLWBs provide participants with predictable growth, a stream of income they can rely on and protection from market events. The following is an overview of some of the specific benefits commonly associated with these types of plan features:

Income for Life

For many participants, income for life is by far the most attractive aspect of the GLWB—the fact that they will have access to a guaranteed withdrawal amount, no matter how long they live. And since the feature is not an annuity, the participant’s heirs will be entitled to any remaining market value after the participant’s death. This protects participants against the prospect of outliving their savings.

Protection from Unpredictable Markets

Even if a participant retires at the worst possible time (Remember our friend Steve?), the stream of guaranteed retirement income will not be affected. His or her deposits are protected.

Upside Potential

Many GLWBs have options that allow the benefit base to grow or “step up” to current market levels. These options provide a valuable opportunity for participants to participate in bull markets and to turn growth into guaranteed income they can count on.

Access to Market Value

Another aspect worth noting is that, unlike an annuity, with a GLWB, the participant’s market value isn’t locked in. This means that the participant can access his or her funds at any time (*e.g.*, in the event of an emergency or other unexpected situation).

The GLWB provides a valuable tool participants can use to add an element of certainty to their 401(k) plans.

By helping to address some of the primary concerns of today's American workers, a GLWB can go a long way toward helping participants plan for a more predictable retirement.

Some Common Misperceptions

When evaluating the merits of adding a GLWB option to a specific company's plan, it's important to make assessments based on the facts. With that in mind, here are a few of the more common misperceptions about GLWBs:

It's an Income Annuity

Actually, it's not. While both annuities and GLWBs provide recurring payments for the lifetime of the investor, there are a few key differences. With a GLWB:

- The funds are never locked in. The participant can access the money at any time.
- The participant generally has a choice of investment options.
- After the participant's death, the heirs receive the full remaining value in the guaranteed lifetime income account.
- The participant controls the withdrawal amount (up to annual maximum) rather than taking a fixed income stream from a traditional annuity.

It's Not Appropriate for a 401(k) Plan

In fact, GLWBs can be an ideal complement to a 401(k) plan. To borrow a football analogy, guaranteed lifetime income features provide protection in what's known as the "retirement red zone"—the five or ten years prior to retirement, when an investor is most at risk of the effects of a market downturn.

It's too Complicated to Administer

Some analysts have bemoaned the fact that GLWBs are too difficult for employers to understand and too onerous to implement. In reality, the newest features are virtually "plug and play." Providers have the tools to help TPAs and employers implement these features quickly, seamlessly and with ease of ongoing maintenance.

Confusion about Percentages

With a GLWB, the participant can take a 5% withdrawal of the initial principal amount every year. This percentage shouldn't be confused with a 5% guaranteed investment income from a vehicle like a GIC.

Things to Consider when Selecting a Provider

It's clear that GLWBs can play an important role in many companies' 401(k) plans—and over the course of a participant's retirement. Having said

that, it makes sense to invest the time up front to evaluate potential providers thoroughly and determine whether their respective features meet the short-term and long-term needs of your company and its employees. A comprehensive checklist should evaluate providers on a list of criteria, including the following:

- What is the guaranteed minimum withdrawal rate with the feature?
- Is there a spousal option available?
- Is there an option for taking income early?
- Is there a choice of underlying investments?
- What are the associated fees?
- Is there any lock-in period required? And if so, how long is it?
- Are there any age restrictions (e.g., a minimum age for taking money, etc.)?

It is also prudent to carefully consider the financial track record and stability of your potential providers. Since these companies will be required to back up these lifetime guarantees, you will want to ensure that you're doing business with trusted, established players who will be in a position to make good on these future financial obligations to your participants.

Conclusion

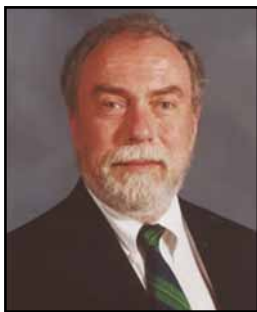
American workers are concerned about their prospects for achieving a financially-secure retirement. And with good reason. When it comes to planning for a comfortable retirement, the Boomer generation is faced with a truly unique set of circumstances and challenges. Today's retirees are living longer. There's growing uncertainty about the future of Social Security, health care costs continue to spiral upward and market volatility has become the norm.

The GLWB provides a valuable tool participants can use to add an element of certainty to their 401(k) plans. It's a way to help participants regain some sense of control over their financial destinies and to help create a dependable source of retirement income that will last throughout their entire retirement.

That's certainly a pretty good start. 🚀



Edward Eng is senior vice president of product development for John Hancock's 401(k) Retirement Plan Services division. In this role, he has overseen the development of John Hancock's 401(k) GLWB product, Guaranteed Income for Life Select. Previous positions Edward has held include CFO of John Hancock Retirement Plan Services and various senior finance roles at RBC. (edward_eng@jhancock.com)



2010 Harry T. Eidson Founders Award Presented to Curtis E. Huntington

by Troy L. Cornett

In 1995, the Harry T. Eidson Founders Award was established to honor the memory of ASPPA's founder, Harry T. Eidson, FSPA, CPC. Eidson was the initial inspiration behind the formation of ASPPA in 1966. He firmly believed in the importance of a private pension system for the United States and was committed to building an organization dedicated to preserving and enhancing such a system. The Harry T. Eidson Founders Award acknowledges individuals who have made significant contributions to ASPPA and/or to the private pension system. ASPPA honors Curtis E. Huntington, APM, COPA, FSA, MAAA, as the recipient of the 2010 Harry T. Eidson Founders Award.

Curtis is a Fellow of the Society of Actuaries (FSA – 1968), a Member of the American Academy of Actuaries (MAAA – 1972) and a Fellow of the Conference of Consulting Actuaries (FCA – 2001). He is also an Associated Professional Member of ASPPA (APM – 1990). He holds a B.A. degree in Mathematics (with distinction) and a Master's degree in Actuarial Science (also with distinction), both from the University of Michigan. He also earned a Juris Doctorate degree (cum laude) from Suffolk University.

After completing service as a Commissioned Officer in the US Public Health Service, Curtis re-joined New England Mutual Life Insurance Company (Boston), where he served from 1967 until his early retirement in 1993. At his retirement, he was Vice President and Corporate Actuary. Prior to that, he served as the Chief Auditor and had various positions in individual actuarial operations.

Since 1993, Curtis has been a Professor of Mathematics at the University of Michigan where he also serves as Director of the Actuarial Mathematics Program, Director of the Financial Mathematics Program and Executive Director of the Michigan Pension Education Training Program. He was Associate Chair for Education for the period 2004-2007, became Associate Chair again in 2009 and holds the position currently.

Curtis was involved in the Society of Actuaries' (SOA) Education and Examination Committee for the period 1971-1986 (including General Chairman from 1984-1986). He was previously elected to the SOA's Board of Governors and as a Vice President—Research. He has also served as Chair of the Education and Research Section and as Chair of the Futurism Section of the SOA.

Curtis was a member of the Actuarial Education and Research Fund from 1985 until it merged with The Actuarial Foundation (TAF) in 2003 and served as the Executive Director from 1994 to 2003. He is currently a Trustee Emeritus of TAF and Chair of its Research Committee. In addition, he is a Director of the Actuarial Foundation of Canada.

Curtis served as a Director, and then as Vice President, of ASPPA. He also was Chair of the ASPPA Pension Education and Research Foundation, an executive member of ASPPA's Education and Examination Committee and, most recently, has served as Chair of the Professional Conduct Committee.

Curtis is the Chair of the Audit and Finance Committee of the International Actuarial Association (IAA) and a member of the IAA's Accreditation, Education, Executive, Nominations and Professionalism Committees. He is also the Delegate to the IAA Council representing ASPPA. In addition, he serves as Secretary/Treasurer of the Muhanna Foundation, with headquarters in Beirut, Lebanon. He is a Fellow of the Lebanese Association of Actuaries and a Fellow of the New Zealand Society of Actuaries. Curtis also serves as Vice Chair of the Actuarial Board for Counseling and Discipline (ABCD), which serves all US actuarial organizations.

The 2010 Harry T. Eidson Founders Award will be presented to Curtis Huntington at the ASPPA Annual Conference in National Harbor, MD on October 17.

Congratulations, Curtis! 🎉



Troy L. Cornett is the Office Manager and Board of Directors Liaison for ASPPA. He is also the Production Manager and Associate Editor of The ASPPA Journal and manages the human resources functions for the ASPPA staff. Troy has been an ASPPA employee since July 2000. (tcornett@asppa.org)



2010 Edward E. Burrows Distinguished Achievement Award Presented to Bob Schramm

by Richard A. Block, MSPA, COPA

The Edward E. Burrows Distinguished Achievement Award is awarded to an actuary who, like Ed Burrows, has made a significant impact on the actuarial community. Ed Burrows was the recipient of the first award in 2008, and Joan Gucciardi received the award in 2009. This year's award recipient is Robert (Bob) H. Schramm, MSPA, COPA, FCA, MAAA.

When Bob's name was first brought up in the committee meetings, we immediately and unanimously agreed that Bob was very deserving of this award due to his many accomplishments and his impact on the actuarial community.

Bob owns and runs Retirement Systems Management Corporation in Salt Lake City, UT. In spite of this full-time job, Bob has found time to volunteer for the benefit of all retirement plan professionals. Bob has never been one to bask in the limelight; however, he has steadily and consistently served ASPPA and the actuarial community for more than 25 years without much fanfare.

Bob served on ASPPA's Board of Directors and worked on ASPPA's Executive Committee as its Treasurer. He also ran several ASPPA conferences.

The Intersector Group is an informal meeting of private sector actuaries and government officials. The group was formed as a forum to discuss pension issues and has been very successful in helping Treasury and the Internal Revenue Service shape its business plans. For more than 15 years, Bob was ASPPA's representative to the Intersector Group, serving ten of those years as the group's chair.

When you first meet Bob, you are immediately drawn to him. You are impressed by his genuineness. Bob truly likes people and this characteristic becomes apparent within minutes of first meeting him. You might call it charm or charisma, but with Bob, these words do not do justice with his impact on people. Bob has always been generous with his time. Bob has never turned down an actuary who needed his wisdom or actuarial acumen.

Bob met his biggest challenge 20 years ago. At that time, Internal Revenue Service and ASPPA relations were at an all-time low. It was a time when rhetoric from both sides was heated and harsh. Bob rose above the issues that divided us and worked to reconcile the two groups. Bob worked tirelessly to ensure government representatives appeared at ASPPA

conferences during these turbulent times.

The Enrolled Actuaries Meeting is run by the American Academy of Actuaries and the Conference of Consulting Actuaries. Both of these organizations are dominated by large plan actuaries who historically were not supportive of the work done by small plan actuaries. Twenty-five years ago, Bob started a small plan actuarial issues session at the Enrolled Actuaries Meeting. The first sessions were informal and attracted a relatively small number of actuaries. The sessions grew in popularity until it became a general session whose audience numbered more than 1,000 actuaries. Large plan actuaries became aware of what was being discussed in these sessions, came to appreciate the professionalism of the group and recognized that while our practices differ, small plan actuaries are as professional as large plan actuaries. As a result of these sessions, the Academy appointed Bob to the EA Meeting's steering committee. Bob served ably on this committee for 15 years. Bob has worked with other members of the EA Meeting's steering committee to make certain the EA Meeting includes sessions appropriate for both large plan and small plan actuaries.

Bob has managed to make an enormous impact on the retirement plan community, but his biggest impact on me is that I am privileged to call him friend. 🏠



Richard A. Block, MSPA, COPA, ASA, MAAA, EA, is President of Block Consulting Actuaries, Inc. in Manhattan Beach, CA. Rick is a Member of the American Society of Pension Professionals and Actuaries, an Associate of the Society of Actuaries, a Member of the American Academy of Actuaries and an Enrolled Actuary. Rick served as a Director

for the American Society of Pension Actuaries 1994-2000. Rick was one of the founders of the College of Pension Actuaries (COPA) and served as its President 2007-2008. With Larry Deutsch and Ed Burrows, Rick served on the COPA negotiation team that resulted in the consolidation of COPA with ASPPA. Currently, Rick serves on the ASPPA College of Pension Actuaries (ACOPA) Leadership Council. For relaxation, Rick has been known to compete successfully in amateur automobile racing.

Thank You to All of the Western Benefits Conference 2010 Participants!



Sponsors

Platinum

Nationwide

T. Rowe Price Retirement Plan Services, Inc.

Silver

AutoRollovers

ING

Gold

Vanguard

Bronze

Stoel Rives LLP

Trucker Huss

Wells Fargo Institutional Retirement & Trust

Exhibitors

ASC

BCG Terminal Funding Company

Brown & Brown

Charles Schwab

College for Financial Planning

Colonial Surety

Datair

eFileCabinet, Inc.

IRS-Employee Plans

Janus

John Hancock Retirement Plan Services

M&I Trust Company

MassMutual

Matrix Financial Solutions

Millennium Trust Company

Newkirk Products, Inc.

OneAmerica

PenChecks, Inc.

Principal Funds

Prudential Retirement

TD Ameritrade

ThomsonReuters - AccuDraft

UNIFI Companies Retirement Plans

Wells Fargo Advisors, LLC

Wolters Kluwer Law & Business

Speakers

Gary W. Blank

Phyllis C. Borzi

Julie H. Burbank, APM

Robert K. Butterfield

G. Patrick Byrnes, MSPA

Joe Canary

Jon C. Chambers

Barbara Clark

Melanie K. Curtice

Erik Daley

Lawrence Deutsch, MSPA

Glenn Dial

Kevin J. Donovan, MSPA

Bunni Dybnis

Michelle Esser

Ilene H. Ferenczy, CPC

Andrew W. Ferguson, MSPA, COPA

Thomas J. Finnegan, MSPA, COPA, CPC, QPA

Stephen W. Forbes

Irene F. Gallagher, APM

John C. Garner

Jenisa Marie Gaskin

Brian H. Graff, Esq., APM

Bud Green

Stuart Hack

Beth K. Harrington

Thomas R. Hoecker

Craig P. Hoffman, APM

Daniel Hogans

Scott Holsopple

R. Bradford Huss, APM

Jeffrey Johnson

Robert M. Kaplan, CPC, QPA

Jill M. Kleiner

Kevin Knopf

Dean D. Kohmann

C. Todd Lacey

Michele Lee

Ellie A. Lowder, TGPC

Jay N. Luber

Steven R. Matthews, MSPA

Pamela C. Means, MSPA, COPA, QPA, QKA

Bertha Minnihan

Jerry Nickelsburg, PhD

Jeremy M. Pelphrey, APM

Tom Perry-Smith

Penny Plante

Cheryl Press

C. Frederick Reish, APM

Sheldon H. Smith, APM

William F. Sweetnam, Jr.

Peter K. Swisher, CPC, QPA

Martha L. Tejera

Sal L. Tripodi, APM

S. Derrin Watson

Janice M. Wegesin, CPC, QPA

Marcel P. Weiland

Stephen A. White

Carolyn Zimmerman

Andrew E. Zuckerman



2010 Educator's Award Presented to Robert L. Long, APM

by Catherine Williams

Robert L. Long, APM, CLU, ChFC, will receive the prestigious Educator's Award for 2010 at the ASPPA Annual Conference held at the Gaylord National Hotel & Convention Center, National Harbor, MD, on October 17 during the Business Meeting.

The Educator's Award has been presented to outstanding educators in the pension field since 1997. Presented annually at the ASPPA Annual Conference, the award recognizes and honors an ASPPA member who has made a significant contribution to retirement plan education.

Bob was selected by the ASPPA Board of Directors and the Education and Examination (E&E) Committee's leadership in honor and recognition of his tremendous contributions to ASPPA's educational programs during his long tenure as a volunteer on the E&E Committee and for his leadership in moving forward ASPPA's educational programs during his time as E&E Vice Chair and Co-chair.

During Bob's tenure as E&E Co-chair and ASPPA Management Team (AMT) member (2006–2009), Bob is credited with many fundamental education program improvements including the integration of the Qualified Pension Administrator (QPA) credential for Enrolled Retirement Plan Agents (ERPAs), the revamping of the Certified Pension Consultant (CPC) credential program, the advancement of the Qualified Plan Financial Consultant (QPFC) credential program including new Plan Financial Consultant textbooks, the development of ASPPA's new Tax-Exempt & Governmental Plan Administration Certificate and the corresponding credentialing program, the Tax-Exempt & Governmental Plan Consultant (TGPC). Bob was also a member of the first AIRE, LLC Board of Managers in 2008 and contributed greatly to the successful launch of the Internal Revenue Services' ERPA program.

Bob's leadership and guidance allowed the E&E Committee to successfully develop and deliver these programs even under tight time constraints. His support was crucial to the restructuring and enhancement of the CPC program, which has been such a resounding success. The development of ASPPA's webcourses for the credential programs has been and continues to be successful as a direct result of Bob's involvement.

Bob is product manager for Actuarial Systems Corporation (ASC) and is heavily involved in the daily valuation and trading aspects of the retirement plan industry. Working from his virtual office in the Minneapolis/St. Paul area, he is involved with systems development, training, support and sales, primarily focusing on the daily trading aspects of DC/401(k) plans. A 30-year industry veteran, Bob managed a variety of pension administration operations within the insurance industry before becoming involved with systems development. No stranger to the educational arena, he was very involved in Junior Achievement and Project Business early in his career. Bob is currently involved with a group of local professionals in creating a new ASPPA Benefits Council (ABC) in the Minneapolis/St. Paul area to further educational opportunities in that area. Bob also serves on ASPPA's Board of Directors and will serve on ASPPA's Executive Committee as Vice President for 2011.

The educational opportunities available in the retirement field would not be as strong as they are today without Bob's influence and leadership. Not only has he made significant strides in the operational aspects of ASPPA's educational programs, but his invaluable educational contributions will have far reaching effects on ASPPA's membership, continuing professional education opportunities and the next generation of retirement plan professionals.

Congratulations to Bob! 🎉



Catherine Williams is the Director of Education Services for ASPPA. Prior to joining ASPPA in August 2005, she served as the director of administration and Web services at the American Telemedicine Association, based in Washington, DC.

Martin Rosenberg Academic Achievement Award

by Catherine Williams

The Martin Rosenberg Academic Achievement Award honors its namesake, the late Martin Rosenberg, a Fellow of ASPPA. Rosenberg served as an Education and Examination Committee member from 1979 to 1985 and its general chairperson from 1985 until his death in 1987. The award, funded by the ASPPA Pension Education and Research Foundation (ASPPA PERF), annually recognizes top performing ASPPA examination candidates on credential examinations, specifically PFC-1, PFC-2, TGPC-2, DC-1, DC-2, DC-3, DB, CPC and A-4.

ASPPA will recognize each recipient of the Martin Rosenberg Academic Achievement Award with a commemorative plaque during the Business Meeting at the ASPPA Annual Conference to be held on October 17 at the Gaylord National Hotel & Convention Center, National Harbor, MD. The awardees follow:



Jason Frey, QKA, is the recipient of the Martin Rosenberg Academic Achievement Award for the fall 2009 Defined Contribution Administrative Issues—Basic Concepts (DC-1) examination. Jason has been a retirement plan professional for nine years, primarily specializing in compliance. He is a senior compliance analyst with DailyAccess Corporation in Mobile, AL and received his Bachelor of Arts degree at Spring Hill College in Mobile in 2001.

Amy E. Ouellette, QKA, is the recipient of the Martin Rosenberg Academic Achievement Award for the spring 2010 Defined Contribution Administrative Issues—Compliance Issues (DC-2) examination. Amy is a third party administrator at Jim Hallinan Pension Consulting, LLC in West Hartford, CT. Previously, she spent several years as a pension administrator at Sebach & Associates, Inc. in Norfolk, CT. Amy earned her bachelor's degree in economics at The Wharton School of the University of Pennsylvania in 2007. She has continued her education by earning the Certified Financial Planner (CFP®) certification in February 2010 and ASPPA's Qualified 401(k) Administrator (QKA) credential in July 2010.



Alex Petrenko, QKA, is the recipient of the Martin Rosenberg Academic Achievement Award for the spring 2010 Defined Contribution Administrative Issues – Advanced Topics (DC-3) examination. Alex serves as vice president of Retirement Plan Consulting Group at First Allied Securities, assisting independent financial advisors in their efforts to identify, design and implement employee benefit plans for small businesses. In addition to performing retirement plan

consulting, Alex conducts technical research and market analysis, provides continuing education, and collaborates in design of retirement accumulation and distribution strategies. He has been working in the financial services industry for ten years. Prior to joining First Allied in 2006, he was affiliated with a national financial planning firm where he assisted closely held businesses in creation of personal financial and employee benefit plans. Alex is a credentialed Qualified 401(k) Administrator (QKA) member of ASPPA.



Robin Young is the recipient of the Martin Rosenberg Academic Achievement Award for the spring 2010 Defined Contribution Administrative Issues – Basic Concepts (DC-1) examination. Robin is a senior pension administrator at American Pension Benefits, Inc., a producing third party administration firm located in Wexford, PA and Scottsdale, AZ. She has spent her entire professional career, 28 years, in retirement plan administration and with American Pension Benefits. Robin handles the administration and compliance of many types of retirement plans including defined benefit and defined contribution plans; both balance forward and daily valuation. As the senior administrator, she also manages key projects within the firm including the recent EGTRRA document restatement for all of the firm's clients. She also plays an important role in relationship management of key clients. After the 2009 ASPPA Annual Conference, Robin decided it was time to do what it takes to earn her QKA and is aggressively pursuing the credential. She will be taking ASPPA's DC-2 examination in November.

Congratulations to all! 🎉



Catherine Williams is the Director of Education Services for ASPPA. Prior to joining ASPPA in August 2005, she served as the director of administration and Web services at the American Telemedicine Association, based in Washington, DC. (cwilliams@asppa.org)



Annie Voldman to Lead ASPPA College of Pension Actuaries for 2010 – 2011

by Judy A. Miller, MSPA

Annie Brown Voldman, MSPA, COPA, was installed as President of the ASPPA College of Pension Actuaries (ACOPA) at the annual meeting held in conjunction with the ACOPA Actuarial Symposium on August 13, 2010.

This event was the second annual meeting of ACOPA held since ACOPA was formed through the joining of ASPPA and the College of Pension Actuaries. Voldman took the reins from Mary Ann Rocco.

“Mary Ann Rocco has done an outstanding job in leading ACOPA this last year—it’s been a privilege to work with her,” Voldman said. “I am excited and honored to participate in ACOPA’s leadership as President and am looking forward to working with our members and ASPPA staff who together make ACOPA such a great resource for pension actuaries.”

Voldman has been providing pension and OPEB actuarial valuation services for more than 25 years. She became an enrolled actuary in 1985, and opened her firm, Annie Brown Voldman, Consulting Actuary, PC in 1994. She was a founding member of the College of Pension Actuaries (COPA) board of directors. In addition to her membership in ACOPA, Annie is a member of the American Academy of Actuaries, a Fellow of the Conference of Consulting Actuaries, a member of the Vermont Enrolled Actuaries Club and serves on the board of trustees of her synagogue.

Beginning with the September 29, 2010 meeting of the Council of US Presidents (CUSP), Voldman and new President-Elect Joe Nichols will represent ASPPA and ACOPA at meetings of CUSP and the North American Actuarial Council (NAAC). ASPPA’s President-Elect Tom Finnegan, as the highest ranking actuary in ASPPA leadership, and Voldman currently serve as representatives. Following this meeting, we will have completed the transition to ACOPA’s President and President-Elect as representatives of ASPPA on CUSP and NAAC that was laid out in the agreement that created ACOPA.

Other newly elected officers include Vice Presidents David Lipkin and Eugene Joseph, Secretary Lynn Young, and Budget Officer Mark Dunbar. Other ACOPA Leadership Council Members elected to new terms are Andrew Ferguson, Richard Kutikoff and G. Neff McGhie, III for three-year terms and Karen Smith for a two-year term. These newly elected Leadership Council Members will join G. Patrick Byrnes, Norman Levinrad, Kurt F. Piper, Howard Rosenfeld and Clifford Woodhall on the Leadership Council, along with Past President Mary Ann Rocco and Penultimate Past President Michael Preston.

More information on ACOPA and its leadership can be found at

www.asppacollegeofpensionactuaries.org ↗



Judy A. Miller, EA, MSPA, FSA, Chief of Actuarial Issues, joined the ASPPA staff in December 2007. Prior to joining the ASPPA staff, Judy served as senior benefits advisor on the staff of the US Senate Committee on Finance from

2003 to November 2007. Before joining the congressional committee staff, Judy provided consulting and actuarial services to employer-sponsored retirement programs for nearly 30 years. A native of Greensburg, PA, she enjoyed living in Helena, MT from 1975 until she moved to Washington, DC in 2003. Immediately before leaving Montana, she was a shareholder in Anderson ZurMuehlen & Co., providing consulting services through its affiliate, Employee Benefit Resources, LLP (EBR). Prior to joining EBR, she was vice president of Hendrickson, Miller & Associates, Inc. for 15 years. Judy is a fellow of the Society of Actuaries, an MSPA with ASPPA and an Enrolled Actuary. (jmiller@asppa.org)

David MacLennan Wins Hanson Memorial Prize


David MacLennan, MSPA, is the 2010 winner of the John Hanson Memorial Prize for 2010. The John Hanson Memorial Prize is awarded by the Conference of Consulting Actuaries and The Actuarial Foundation for the best actuarial paper on an employee benefits topic.

The papers are judged on the basis of originality, appropriateness of subject, timeliness of topic and practical application to employee benefits. The award is given only when merited—on average it is given approximately every two years but there has been as long as an eight-year period without an award. David's winning paper, "Benefit Adjustments for Multiple Annuity Starting Dates," was published in 2007 in the *Journal of Pension Benefits*.

David's paper is also of great benefit to the general public. The defined benefit calculations for participants who have Multiple annuity starting dates (MASDs) are sometimes governed by these special actuarial adjustment calculations. The paper put these calculations on a sound mathematical footing

by creating a generalized form of actuarial equivalence. Use of inappropriate calculation methods can understate a participant's pension benefit, potentially by large amounts.

MASDs became a hot topic after the proposed Section 415 regulations were released in 2005. The new proposed 415 regs had a section on MASDs, but as many commentators pointed out, they led to nonsensical results under certain circumstances. The MASD rules were withdrawn in the final regs, but the IRS reserved a section for them and new proposed MASD 415 regs may be released by the IRS at some future date.

The John Hanson Memorial Prize will be formally awarded to David at the Conference of Consulting Actuaries Annual Meeting in October. 

ASPPA Certificate Programs

Retirement Plan Fundamentals and Tax-Exempt & Governmental Plan Administration Certificates

Easy to obtain. Register and complete by December 15, 2010!

ASPPA's webcourses can be used to supplement the candidate's learning experience. Webcourses now available for all certificate program examinations.

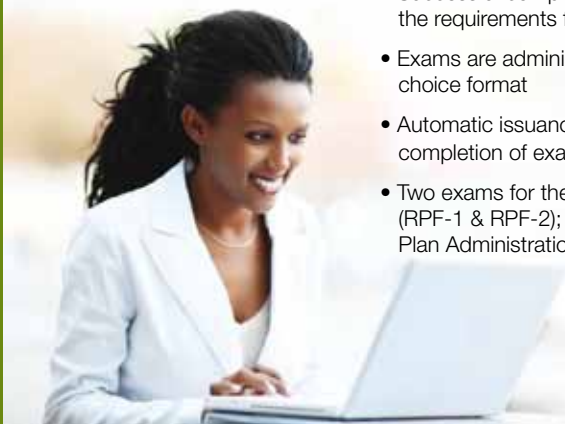
Webcourses: \$325 for up to 6 months access (new TGPC-1 webcourse: \$162.50)

RPF assessments also available (assess your knowledge before taking the examination).

For more information, please visit www.asppa.org/certificate

ASPPA has designed certificate programs to meet the needs of retirement plan professionals and those interested in the field:

- No specific education or background requirements needed
- Successful completion of a certificate program also counts toward the requirements for many of ASPPA's credentialed memberships
- Exams are administered online in open-book multiple choice format
- Automatic issuance of appropriate certificate upon successful completion of examination(s)
- Two exams for the Retirement Plan Fundamentals Certificate (RPF-1 & RPF-2); one exam for the Tax-Exempt & Governmental Plan Administration Certificate (TGPC-1).



Compliance—A Year in Review—January to December

by Lisa Scalia, CPC, QPA, QKA

In 1969, there was a movie called *If It's Tuesday, This Must Be Belgium*. The movie told the story of a group of US travelers in Europe touring seven countries in 18 days. When I first started working with retirement plans, I likened my first year of administering plans to be just like that movie! If it's January, it must be 1099-Rs; if it's February, it must be nondiscrimination testing; if it's March, it must be ADP refunds; etc. While the movie may have been a comedy, compliance with IRS and DOL regulations is no laughing matter.

So, I started developing compliance calendars for clients to help manage the process. The use of a compliance calendar can be an excellent tracking and planning tool with regard to plan operations and documenting due diligence.

Compliance events fall into two different categories:

- Those with specific completion dates; and
- Those that need to be addressed on a quarterly or annual basis but not necessarily on a specific date.

This article is organized into these two types of compliance events. While not meant to be all inclusive, the objective is to give highlights of the major events and a basis for a planning tool with clients. From the plan sponsor perspective, the calendar can serve to track key events and keep the plan in compliance. [Note: The dates in this compliance calendar are based on a January 1 – December 31 defined contribution plan year and employer fiscal year. In general, if a due date for performing an act for tax purposes falls on a Saturday, Sunday or holiday, it is delayed to the next business day. In the case of ADP/ACP refunds, the 15th day is not extended; rather it is the business day prior. There is no specific reference in the Code to this, but the industry consensus is that distributions made after the 15th would be subject to the excise tax.]



Key Calendar Year Events

January 1

Consider effect of annual increases (if any) in Internal Revenue Code Section 402(g) pre-tax deferral and 414(v) catch up contribution limits. Review IRS cost-of-living adjustments to dollar limitations applied under Sections 415(c), 401(a)(17), 414(q) and 416(i) of the Code.

January 31

The Form 1099-R (and Form 1099-DIV for ESOPs with pass through dividends) must be sent to each participant who took a distribution or had a “deemed” distribution during the previous calendar year.

March 15

If a plan fails the ADP and/or ACP tests, the refunds of excess contributions and excess aggregate contributions must be returned no later than 2½ months after plan year end so as not to cause the employer to be required to pay an excise tax of 10% on the returned contributions. For a plan that qualifies as an Eligible Automatic Contribution Arrangement (EACA), this deadline is extended to six months after plan year end.

March 15

Employer contributions for corporations (and LLCs filing as corporations) made on an annual basis must be deposited no later than the plan sponsor's tax-filing deadline for the fiscal year in which the plan year ends including extension. Partnerships, sole proprietorships and LLCs filing as partnerships have until April 15 and not-for-profit organizations have until May 15 for their return. Filing for extension generally provides for an additional six months (five months for partnerships).

April 1

Required minimum distributions must start no later than the April 1 following the later of the year the participant either attains age 70½ or terminates employment unless the participant is a 5% owner. For example, for the first year distributions for the 2010 calendar year, the distribution is due no later than April 1, 2011. As distributions are required to be made at least annually until the account is fully paid out, another distribution will be required by December 31, 2011 for the 2011 calendar year. Required minimum distributions were suspended for 2009, but that relief did not extend to 2010.

April 15

The deadline for correcting 402(g) excess deferrals is April 15 of the plan year following the plan year of the excess deferral. Failure to correct results in double taxation to the participant—taxation first of the deferrals in the calendar year the elective deferral is made and once again in the year of distribution. In the event that the excess relates to the same employer, qualification issues can arise. This deadline is one of the few that is unrelated to the plan year of the qualified plan.

July 29

The Summary of Material Modifications (SMM) must be sent to participants for any plan amendments made in the prior plan year. While the actual DOL deadline is 210 days after the plan year to which the plan amendment relates, it is not practical in many cases to wait until the deadline to notify participants of a plan change.

July 31

The Form 5500 (Annual Return/Report of Employee Benefit Plan to IRS) must be filed with the DOL's Employee Benefits Security Administration (EBSA) no later than seven months following the end of the plan year, unless the plan files for an extension. The extension period is 2½ months. In order to qualify for the extension, Form 5558 must be filed no later than the initial due date of the Form 5500.

BENEFIT ADMINISTRATORS & CONSULTANTS E&O INSURANCE

Policy form written specifically for Benefits Industry

- **Covered Professional Services Include:**
 - Pension Administration & Consulting
 - Employee Benefit Admin. & Consulting
 - Third Party Administration
 - Life & Health Insurance Sales & Services
 - Financial Svcs/Products
 - Independent Contractors
- Carrier is A.M. Best rated A (Excellent) XV
- Admitted in 49 states (non-admitted in LA)
- Multiple payment plans available



Brown & Brown of CA, Inc.
Programs Division
1-800-280-7250
www.broprog.com
life@broprog.com
CA License # OB02587

July 31

If the plan sponsor is subject to penalty excise tax on certain transactions for the prior year [e.g., late deposit of 401(k) deferrals, other prohibited transactions, etc.], IRS Form 5330 "Return of Excise Taxes Related to Employee Benefit Plans" must be filed by the first business day following the last day of the seventh month after the close of the plan year. [Note: The excise tax for excess contributions and/or excess aggregate contributions due to a failed ADP/ACP test is due 15 months after the plan year end to which they relate.]

September 15

Corporations and LLCs filing as corporations that have filed for an extension of their federal tax return filing deadline must make plan related employer contributions.

September 15

If the plan sponsor wishes to rely on its corporate income tax return extension, Form 5500 and all required Schedules must be filed with the DOL's EBSA.

September 30

The Summary Annual Report (SAR) for plans that are not on extension is required to be provided to plan participants not later than two months after the filing of the Form 5500. For calendar year plans filing by July 31, the SAR is due September 30.

October 3

Plans using safe harbor testing rules [both traditional and QACA (Qualified Automatic Contribution Arrangement)], plans that utilize a Qualified Default Investment Alternative (QDIA) and plans that use any form of automatic enrollment are required to send out annual notices. All notices have the same timing requirements and may be combined for mailing purposes. Notices must be sent to all participants no earlier than 90 days prior to the start of the plan year and not later than 30 days prior to the start of the plan year.

Employers are wise to address any coverage testing issues prior to embarking on any of the requisite compliance tests.

For new participants, the initial QDIA notice must be sent at least 30 days prior to the date of plan eligibility or the first investment in the QDIA. In the event that the plan provides for the 90-day penalty-free withdrawal, then the notice may be as late as the date of eligibility. Notices for traditional safe harbor plans will be considered timely for new participants if provided by the date of eligibility. QACA plans must provide the notice for new participants to ensure that the participant has a reasonable amount of time after receipt of the notice to make an affirmative election.

October 15

Final date for calendar year plans to submit Form 5500, if on extension.

October 15

For plans that encounter difficulty satisfying coverage, the deadline to retroactively amend a plan to correct the failure is 9½ months after plan year end. Employers are wise to address any coverage testing issues prior to embarking on any of the requisite compliance tests. For employers in a controlled group who have more than one plan covering different employees, the establishment of the “plan” for testing purposes will facilitate all other tests.

December 2

The latest date to send out annual notices for safe harbor, QDIA or auto enrollment.

December 15

Summary Annual Report is due two months after the filing deadline for the Form 5500 or December 15 if plan was on extension.

December 31

With minor exceptions, this day represents the absolute last day to complete compliance tests and process any corrections. Excess ADP/ACP amounts must be returned to HCEs no later than the last day of the plan year following the plan year to which they relate. While there is no specific date in the regulations for correcting Section 415 annual additions or plan limit violations, it would be prudent to correct these as soon as possible (but do not delay past December 31). All corrections are distributed or forfeited (if applicable) with earnings.

In addition to the above testing deadlines, annual required minimum distributions must be made by December 31 for those participants in pay status. December 31 is also the determination date for the upcoming plan year for which top heavy determination under Code Section 416 is made.

Discretionary amendments must be executed no later than the last day of the plan year in which they are adopted.

Events to Plan for during the Plan Year

The administration of qualified plans includes the performance of certain tasks that are not tied to specific calendar dates and warrant inclusion in an annual compliance calendar. All of these tasks carry fiduciary responsibility and must be handled timely and in accordance with the plan document and administrative policies where applicable.

Items such as the threshold for auto cash-outs of balances upon termination, the grace period for loan defaults and the timing of when nonvested balances may be forfeited, and how those forfeitures will be utilized, will be defined in the plan document.

However, no discussion on deadlines would be complete without addressing the timely deposit of elective deferrals. The failure to timely deposit elective deferrals and/or employee contributions is a prohibited transaction and may trigger a DOL audit.

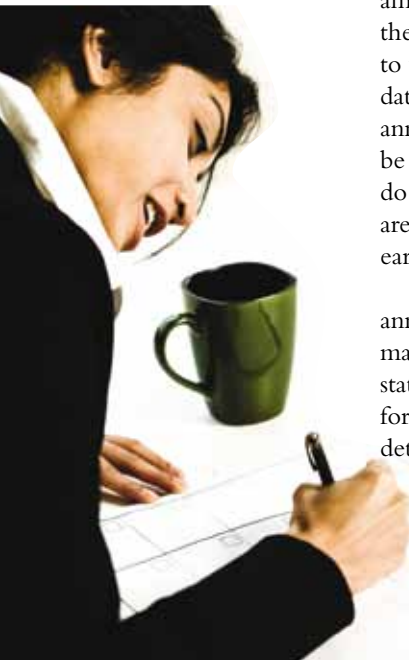
401(k) Deposits

401(k) deposits must be deposited into the plan as soon as administratively possible once withheld by the plan sponsor. On January 14, 2010, the DOL published a timing standard for small plans (< 100 participants) that is seven business days. Although there is no DOL timing standard at this time for large plans, the turnaround time should not be greater than seven business days. Note: A plan sponsor should submit 401(k) contributions in a consistent manner (example—within four business days each payroll period). In addition, if the plan sponsor is already submitting 401(k) contributions within seven business days, it should continue to follow that practice. As this area is an increasing focus of the IRS for plan audits, consistency is the key factor.

Loan Defaults

In order for a loan to be exempt from the prohibited transaction rules, as well as to avoid taxation at the time the loan is made, the loan must meet certain conditions. For example, the loan must be paid off within a five-year timeframe (unless for a home loan), and loan repayments must be made no less than quarterly. It is the plan administrator's responsibility to ensure that loan repayments are made timely and the promissory note enforced.

Most plan documents provide for a grace period that ends the quarter after the quarter of the missed payment. If a payment is missed in the first quarter and no further payments are made by the end of the second quarter of the plan year, the loan will be defaulted. It is wise to set up a process to automatically default loans that have passed the grace period to avoid any qualification issues and/or ERISA violations.



Looking for Career Success, Increased Earning Power and Savings?

Join ASPPA, Earn Your QKA and Save!

Reasons to start or complete your QKA education now:

EMPLOYABILITY: Employers seek ASPPA credentialed employees for their proven knowledge and career dedication.

EARNING POWER: ASPPA QKAs earn more on average than their non-member/non-credentialed counterparts.

ADVANCEMENT: A QKA education program makes you more valuable in your current position.

SAVINGS: Save more on exams when you register as an ASPPA member.

Pass the following examinations to obtain your QKA credential:

- Retirement Plan Fundamentals Part I (RPF-1)
- Retirement Plan Fundamentals Part II (RPF-2)
- Defined Contribution Plan Qualification and Requirements Basics (DC-1)
- 401(k) Plans and Intermediate Administration Topics (DC-2)

All-inclusive fees for QKA exams and study materials start as low as \$1,578 total.**

**ASPPA makes it easy for you by providing supplemental preparation tools:

- Online webcourse instruction (earn up to 7 CPE credits per webcourse): \$325 each
- Practice exams: \$35 each

**To join ASPPA and start your QKA education, contact Jeff Hoffman, Senior Director,
Business and Membership Development at 703.516.9300 x119 or jhoffman@asppa.org.**

Auto Cashouts

Many plans provide for the auto cashout of balances under a certain threshold. For plans that utilize the auto cashout rules, distributions of accounts under the plan document's stated threshold must be timely cashed out and terminated participants must be notified. At the very least, an annual sweep of participants should be done. This process can also be very effective in keeping small balances out of the plan and preventing issues in the future when participants need to be paid out and may have moved causing difficulty in locating them. When participants with small balances terminate and fail to take a distribution, the employer is forced to continue to send statements and provide annual notices.

Forfeitures of Nonvested Balances

On an annual basis, plans with a vesting schedule will accumulate forfeitures. Plans need to be in compliance with the timing of when forfeitures become available to the plan. Many plans provide that nonvested balances may be forfeited the later of when the participant takes an actual distribution or after five one-year breaks in service. The plan must also provide for how the forfeitures will be used—to pay reasonable administrative expenses, reduce contributions or be reallocated to participants' accounts.

Like other contributions, forfeitures should be used on an annual basis. At the end of each plan year, sponsors should review forfeiture account balances and allocate according to the terms of the plan document. Forfeitures should not be held unused from year to year or held unallocated in a suspense account unless there is a permissible reason for such action.

Summary Plan Description (SPD)

An SPD must be provided to an employee no later than 90 days after he/she becomes a participant in a plan. When a plan is significantly modified, participants and beneficiaries must be provided with a revised SPD (or alternatively, a SMM) within 210 days following the close of the plan year in which the changes were made. In any case, participants must receive a revised SPD at least every five years integrating all modifications to the plan within the five-year period. If no amendments are made to the plan during the five-year period, the SPD distribution can be delayed for up to ten years.

Sarbanes-Oxley Notice

Written notice is required for blackout periods that last three consecutive business days or more. The notice must be provided at least 30 days and

no more than 60 days before the beginning of the blackout period. This timeframe is especially relevant when making fund changes or changing vendors with regard to the operation of the qualified plan.

Participant Statements

For a defined contribution plan with participant-directed investments, benefit statements must be provided at least on a quarterly basis. In addition, the quarterly statement must be delivered within 45 days after the end of the applicable period.

Plan Document IRS Filing

Under the IRS Determination Letter Filing Program, individually-designed plan documents must be filed every five years (based on the plan sponsor's EIN) and volume submitter plan documents every six years.

It should be noted that amendments for the HEART Act are due to be adopted by plans no later than December 31, 2010 for calendar year plans, and the Required Minimum Distribution amendments need to be adopted no later than the last day of 2011.

Summary

In addition to the above referenced testing and reporting requirements, plan sponsors may want to perform an annual "plan checkup" (*i.e.*, an audit of its operational practices and fiduciary responsibilities). A plan checkup should address plan expenses, plan design considerations, participant fees and plan investments. The checkup should also confirm the plan's compliance with the terms of its document, Investment Policy Statement and the requirements of 404(c), if applicable. Such an annual review seems appropriate in light of the heightened scrutiny surrounding plan fiduciaries.

Finally, test results should be reviewed with the objective of determining if plan design changes are needed to improve testing results or eliminate testing via safe harbor. The timing may be right to add new provisions such as auto enrollment or auto increase to boost participant savings rates.

In conclusion, compliance can be a 365 day a year job! 🏠



Lisa Scalia, CPC, QPA, QKA, has more than 20 years experience in employee benefits, most recently as an ERISA consultant, second vice president with New York Life Retirement Plan Services. She counsels plan sponsors on plan design, compliance issues and fiduciary liability. She volunteers with ASPPA for the Education and Examination Committee by peer-reviewing examinations. In addition to her ASPPA credentials, she holds the Series 6 and 63 securities registrations with FINRA. (lisa_scalia@nylim.com)


ASPPA Launches Online Newsroom

Keeping current in the retirement plan industry is now easier than ever. Thanks to the launch of ASPPA's new online newsroom, you can watch a government affairs video, read a news release, view event photos or download position papers on retirement plan issues, all by visiting the ASPPA Web site and clicking on the newsroom link.

As part of ASPPA's ongoing campaign to raise greater awareness about the organization, the new and improved newsroom was created to provide 24/7 access to news and information relevant to the media, members and other external influencers.

The ASPPA newsroom is powered by the latest technology that aggregates content through one central site, allowing visitors to share news, view video and event photos, and to read policy statements from ASPPA and its affiliates, including ACOPA, NTSAA, NAIRPA, CIKR and AIRE. The technology also allows ASPPA to pull in content from social media platforms on Twitter and Facebook and to push out news to the media via RSS and other feeds to explain ASPPA's mission, purpose and activities.

As a member, you can interact with ASPPA's newsroom by taking three simple steps—(1) subscribe, (2) submit content and (3) offer feedback. To subscribe, click on the “Connect with Us” link and choose “RSS” or “email” and you'll immediately begin receiving the latest news from ASPPA. Want to interact more? Send us suggestions for topics or potential stories; volunteer to write a GAC Issue Brief, or forward a written summary of an ASPPA event you recently attended. We welcome articles from ASPPA members—like this recent contribution from Sarah Simoneaux: “Borzi Addresses Lifetime Income at Pension Conference.” If you have a suggestion or comment about the new online newsroom, please contact ASPPA's Director of Media Relations, Melinda Semadeni, at msemadeni@asppa.org.

Working together, ASPPA's online newsroom will help tell our story to the media, the industry, members and prospective members—all of which contributes to ASPPA's continued success. 



Visit the ASPPA Online Newsroom at
www.asppanews.org

Consequential Damages: A Wide-ranging Impact

by Tracey L. Matthews

When a professional undertakes an obligation to perform certain services for a client, the professional must perform his or her duties in a manner that meets the requisite standard of care and delivers the promised service to the client.

When an error occurs as the result of the professional's negligence or failure to adhere to the standard of care, the professional must often call on his or her Errors and Omissions (E&O) insurer to respond to the claim or monetary demands of the client. The client at that point morphs into a "Claimant," and the relationship can become strained and could dissolve. Thus, the professional and the company have sustained their first consequential damages from the error, which include a broken relationship and loss of income from a client. Just as the client sustains consequential damages as the result of an error, so does the professional.

There is little doubt that while an insurer can defend and indemnify a professional for errors and omissions and can take care of the consequential damages to an injured claimant, no insurer can fully indemnify an insured professional for the consequential damages he or she will suffer when an error is made.

Let's Review an Example

During the summer of 2008, the professional was retained by the client, a plan sponsor, to calculate various benefits under an early retirement package for plan participants. The initial idea presented to the professional was for a credit of five years and an offer of early retirement benefits to eligible participants. The early retirement plan eventually became a more complex offering that included a calculation of age plus service time, medical benefits, a lump sum payment outside of the plan and an enhanced payment to monthly benefits and a bridge payment for early retirees up to age 65 Social Security eligibility.

For a subset of plan participants, generally those older than age 65, the professional's calculations contained an error that artificially inflated the monthly and lump sum benefit payments. Once the plan components were finalized, there were 42 employees who fell into the eligibility criteria whose calculations were incorrect. Incorrect figures were presented only to 12 employees and before any payments were made. In addition,

once the corrections were made to the calculations, an additional 90-day opt-in period for the incentive offer had to be extended to the plan participants. As a remedy, Claimant offered an enhanced monthly benefit and an additional lump sum payment of up to \$20,000 to each of the impacted plan participants, thus driving up the anticipated costs.

Claimant is seeking in excess of \$1,000,000 for the following categories of claimed damages:

- Professional fees paid to correct the error;
- Staff resources and time expended to service the pension plan;
- Additional pay and benefits paid to employees during delay period;
- Breach of contract damages paid to employees;
- Employees' lump sum additional benefits;
- Employees' monthly additional benefits;
- Additional compensation for executive who opted-in during additional extension period; and
- Difference in actual payments versus erroneous calculations presented to participants.

The initial reaction to the exhaustive list of damages is, "How is this possible? Why is the benefit administrator responsible for these types of damages?" Such a list of damages is commonly referred to as consequential damages for the Claimant. As long as an injured party can establish proximate causation (legal cause) between the error and the claimed damages, liability for such consequential damages is established and the issue turns to the damages calculations and verification of the numbers.

It is important for benefit administrators and actuaries to understand that even where an error appears to be contained as to the actual out of pocket payments, if an employer or plan sponsor has to take certain action to protect itself or to correct the error, the costs of those actions will become a part of the E&O claim.

In this instance, the employer had communicated certain figures to plan participants that the participants relied upon to make a decision as to early retirement. The employer took action by hiring another vendor to perform the calculations. The employer had to pay for those services. Employees who opted into the early retirement plan continued to work while the correction was being worked on. The employer lost the benefit of the savings had the initial calculations been correct. Further, once the corrected figures were known, the payouts were less and the employer was faced with the real possibility that a very low number of employees would accept the corrected figures. The employer acted to preserve its long-term savings potential that could be maximized by the number of participants who accepted the early retirement offer. Further, the employer had to re-open the opt-in period based on the new calculations. During the second opt-in period, a highly compensated employee exercised the option for early retirement.

For the professional, the consequential damages are numerous. As mentioned, a client is now an adversarial Claimant. The relationship has been jeopardized and it may be next to impossible to continue the business relationship as communication becomes guarded and strained and trust becomes an issue. Of course, there is the added impact of the loss of revenue from the business generated by the relationship and the cost of the claim.

The E&O investigation shows that the professional did err in the calculations. Further, as the client retained counsel and morphed into a Claimant, the professional's E&O insurer had to likewise retain counsel for the professional as well. Experts have also been retained for both sides. For the professional, this means that regardless of the payment of damages, their sizeable deductible, usually at least \$10,000, will be paid as most policy deductibles apply to loss and claim expenses.

All professionals need to maintain adequate E&O insurance to protect their interests as disputes over services rendered can and do arise during the course of operating a business. It is a fact that claim costs along with loss payments impact the availability and price of E&O insurance. Thus, a cold hard reality is that one significant claim can have a substantial impact on the carrier's decision to renew coverage and at what rate. Thus, we arrive at the crossroads where the professional will likely lose revenue and experience an increase in operating expenses as a direct impact of an E&O claim.

Another critical loss to the professional Insured includes the amount of time that this matter has required and the countless uncompensated hours of time staff members have had to dedicate to responding to the lawyers and the experts. This time commitment drains the professional's time and staff time to deal with a matter that is not generating revenue and steals time from revenue generating activities on a daily and ongoing basis. The average life of an E&O claim is six months!

Further, the relationship with the Claimant has ended. The loss of a long-term client takes a toll on any business. The loss multiplies when it was caused by an error and the good will of the professional is impacted through word of mouth. Most clients belong to professional organizations, community organizations or know someone who does. For the Insured, the value of the consequential damages are not so easily determined, especially if word of the error leaks to current or potential clients. This Insured may never know the losses it will sustain as the result of this error.

All who perform professional services are at risk for these types of claims. All who perform these types of professional services are well served by taking great care in the delivery of services to clients who rely upon professionals for advice and services to operate and plan their business and financial future. 🏠

All professionals need to maintain adequate E&O insurance to protect their interests as disputes over services rendered can and do arise during the course of operating a business.



Tracey L. Matthews joined Pro Plus Claims Services, a subsidiary of Brown & Brown, Inc., in 2004 as a director handling E&O claims for the Property & Casualty (P&C) Unit. Tracey has also served as senior director and coverage coordinator with Lancer Claims Services and she is currently the supervisor and manages E&O claims for P&C agents, broker/dealers, financial services professionals and attorneys. Cita Insurance Services, a subsidiary of Brown & Brown, Inc., is the seventh largest insurance intermediary in the world. Cita is a managing general underwriting facility for a number of insurance carriers specializing in professional liability for benefit/pension administrators and consultants as well as other professionals.

Tracey holds a law degree from Washburn University School of Law in Topeka, KS, and she has a lengthy background in the insurance industry that began in 1988 with the Kansas Department of Insurance. Her experience includes regulatory compliance matters, claims and litigation management, Life and Health Insurance Agents Errors and Omissions, Broker/Dealer Errors and Omissions, Property & Casualty Agents Errors and Omissions, Pension Administrator Errors and Omissions, Employment Practices Liability, Commercial Liability, Products Liability, and First Party and Third Party Coverage. (tmatthews@proplusclaims.com)



ASPPA Membership is More Valuable than Ever

by Sheldon H. Smith, APM

ASPPA's vibrancy is a model for the professional associations of America. During difficult economic times, our membership has continued to increase, the attendance at many of our conferences has returned to pre-recession levels, and our educational programs are heavily utilized. In our technical, regulated industry, having a strong and effective professional society that provides so many educational opportunities together with our strong presence on Capitol Hill is needed to support ASPPA members, indirectly their clients and customers, and the employer-sponsored retirement plan industry. ASPPA membership is more valuable than ever.

As my Presidential year comes to a close, I would like to relate some observations about ASPPA and the industry. Being ASPPA President does provide one with some interesting perspectives about the organization and the industry. So here goes:

- ASPPA volunteerism is exceptional. Hundreds of ASPPA members participate regularly. It is the efforts of the many volunteers that yield substance and meaning to the work of the organization. I am very impressed by how many people volunteer time and quality effort on a consistent basis.
- Our industry as represented by our membership, irrespective of discipline, is comprised of honorable, hard working and very bright people. I have had the opportunity to meet so many of them inside the organization, in government and in related societies and associations. It is impressive.
- ASPPA needs to get more of its generation X and Y members involved in volunteering and eventually in leadership. As with most associations today, the Baby Boomers tend to dominate, but ASPPA does have a core of younger members who are very active. We need to expand that core.
- The ASPPA professional staff headed by its Executive Director/CEO and its Chiefs is exceptional. These talented people work hard and are very dedicated to ASPPA. They all enjoy meeting our members and discussing ASPPA and industry issues with them.

- ASPPA's governance structure is solid and works very well. I suspect that most members do not know the structure or how it works to make ASPPA so successful. So here's a bit of it:

The President, President-Elect and Executive Director/CEO comprise the Management Council (MC).

The MC is charged with handling internal and sometimes sensitive matters. For example, it approves certain contracts and addresses personnel issues, among many other matters. The MC meets telephonically every Monday.

The Board of Directors, consisting of 20 members including all ASPPA officers, sets ASPPA's policies and strategic objectives. There are four standing committees of the Board:

- the Executive Committee comprised of the officers,
- the Strategic Planning Committee,
- the Finance and Budget Committee, and
- the Nominating Committee.

The Board meets electronically every month except typically in April and October when it meets face-to-face. The ASPPA Board is comprised of leaders in the industry, thoughtful and insightful people, all of whom speak their minds and work diligently to achieve consensus and results. The ASPPA Board often addresses issues that are not only significant to ASPPA, but to the industry. It is not unusual for the ASPPA Board to make decisions that actually influence the social fabric of America.

The Chiefs and volunteer Co-chairs of ASPPA's primary committees and affiliates comprise the ASPPA Management Team (AMT).


The AMT is charged with implementation of the policies set by the ASPPA Board. The AMT meets electronically every month other than October and April, and like the Board, meets face-to-face those two months. The AMT is where volunteerism at ASPPA really shines.

- ASPPA credentialing is recognized as the industry standard. However, many members are taking basic education through ASPPA and not pursuing a credential. We need to work diligently to make certain that professionals in the industry achieve these valuable credentials. This is necessary in order for ASPPA members to maintain standing as the best trained and most capable providers of services in a complex industry.
- The constant activity in legislation and regulation keeps ASPPA very busy. The dynamism of the industry is constantly addressed in our programming and in our lobbying efforts. ASPPA does a terrific job of keeping on top of changes as they occur (and typically before they

happen) and provides valuable insight and timely education to members as changes unfold.

- ASPPA has grown rapidly. Members now represent virtually all disciplines in the employer-sponsored retirement plan industry. ASPPA has been very nimble in addressing the needs of each of these constituencies, in providing leadership, education and appropriate conferences.
- ASPPA puts on 17 conferences each year. The planning alone is monumental. The quality of the conferences, speakers, locations and the substance of the material taught at these conferences continuously rate very highly. Our conferences professional staff works in coordination with volunteers to stage each conference. It is a marvelous co-venture.
- The employer-sponsored retirement plan structure will continue to be watched and criticized. Certainly there are things that can be done to improve the system, but overall, it has proven to be the most successful avenue available for Americans to save. ASPPA members, at home and on a grassroots basis, need to be more proactive in demonstrating the value of the system for the American worker and the American family.
- ASPPA members should be commended for becoming America's financial educators. Although there are some efforts to provide greater financial education to America's youth, it is we who have been charged with educating American workers about investing, risk tolerance, diversification and all of the

other components needed to accumulate assets for a dignified retirement. Although it probably was not intended, the promulgation of ERISA Section 404(c) has brought about this result. So many ASPPA members, particularly those involved on the investment side of the industry, are now the finance and investment educators of America.

Let's keep up the good work, and let's not lose sight of the fact that ASPPA is a critical piece of the retirement machinery of our country. You should be very proud to be an ASPPA member! 

Sheldon H. Smith, APM, is a partner in Holme, Roberts & Owen LLP's Compensation and Benefits Group. Since 1980, Sheldon had been a member of either the adjunct or visiting faculties of the University of Denver College of Law. Sheldon has been a member of the Western Pension & Benefits Conference since 1986 and has served as its president and as president of the Denver Chapter. He is currently President of ASPPA and is a member of its Executive Committee and Board of Directors. Sheldon is also the president of the Colorado Regional Cabinet of Washington University in St. Louis. Sheldon is a fellow of The American College of Employee Benefits Counsel and has been selected to "Chambers USA—America's Leading Lawyers," "The Best Lawyers in America," "Who's Who in American Law," "Who's Who in American Education" and named as a Colorado Super Lawyer. Sheldon is admitted to practice before the Colorado Supreme Court, the United States District Court for the District of Colorado, the United States Tax Court, the Tenth Circuit US Court of Appeals and the Seventh Circuit US Court of Appeals. (sheldon.smith@hro.com)

Professional Credentialing Programs Fall Exam Window Offerings November 1-December 16, 2010

**Don't miss out on continuing your goals.
Last day to register is October 29!**

ASPPA makes it easy for you by providing supplementary preparatory tools including:
LIVE and recorded courses (new PFC-2 course now available)
Practice Examinations

For additional information and to register, visit www.asppa.org/exams.





Report on June 2010 GAC Agency Visits

by David M. Lipkin, MSPA

Each year, ASPPA's Government Affairs Committee (GAC) schedules "agency meetings" in Washington, DC to discuss issues of importance to our members. This year's meetings were held on June 14, 2010. We spent the morning with the IRS and the afternoon with the DOL.

Our meeting with the IRS covered a number of interesting topics. There was a healthy back and forth discussion throughout the morning. While we don't always agree, our goal is to impart to the IRS our members' perspectives on the important issues of the day. The IRS has told us that they appreciate the practical insights and real life experiences we bring to them. Highlights of what we discussed with the IRS include:

Interim Amendments

The IRS Advisory Committee on Tax Exempt and Governmental Entities (the ACT) has just issued a report with recommendations on how to improve the determination letter program and document updating procedures. While the report is by no means binding on the IRS, it is given serious consideration. (ASPPA's GAC provided comments to the ACT last fall in anticipation of the report. The comments can be read at www.asppa.org/document-vault/pdfs/gac/2009/final1125.aspx.) The ACT offered two potential solutions to the problems we all face with interim amendments—one involving "core" amendments (*i.e.*, major changes) and the other involving amendments that could result in an IRC §411(d)(6) cutback in accrued benefits [411(d)(6) amendments]. Under the ACT report, "core" amendments would need to be adopted by the end of the plan year in which they become effective. 411(d)(6) amendments would need to be done no later than year end, but even earlier if necessary to avoid a cutback in accrued benefits. Under this approach, other "non-core" amendments could wait until the end of the normal five or six-year cycle. ASPPA expressed concern over the potential difficulties in determining what is or is not a "core" amendment, and frequent amendments could still be required. ASPPA is also concerned that determining whether any particular amendment has an earlier deadline to avoid violating 411(d)(6) may be difficult without guidance from the IRS. Other options that ASPPA has supported include the elimination of interim amendments between restatement cycle deadlines or to require amendments only at the mid-point and end of the cycle.

Although many would like to see the IRS eliminate interim amendments between restatements altogether, it is unlikely the IRS would be willing to go that far. At the very least, an earlier deadline may be applicable if necessary to avoid an IRC §411(d)(6) cutback. As an alternative, ASPPA's comment letter to the ACT proposed one single "mid-term" date, where all interim amendments would then be due (whether core, cutback or technical). This alternative proposal would involve "touching" the document only once at the cycle's mid-point and again when it is restated at the end of the cycle. The IRS is studying the issue. They are themselves overburdened by voluntary corrections of late amendments, so the IRS is motivated to make some changes. We agreed to a follow-up meeting on interim amendments in the near future.

EPCRS Corrections

ASPPA recently filed with the IRS a comment letter with suggestions on how to improve the EPCRS program (www.asppa.org/document-vault/pdfs/GAC/2010/finalasppaEPCRS.aspx). Among other things, our letter suggested there be a uniform "de minimis" standard for which correction would not be necessary, as well as the addition of several new "defects" to the self correction part of the program (along with methodologies for correction), including:

- Participant loan defects;
- Untimely auto-enrollment; and
- Mischaracterization of Roth contributions.

The IRS indicated that they will consider our suggestions in their bi-annual update of these procedures.

5500 Blanket IRS Extension

In light of the changes brought about by the rollout of the EFAST2 Form 5500 processing system, ASPPA filed a request with both the IRS and the Department of Labor asking for a "blanket extension" of the deadline for filing the 2009 Form 5500. This blanket extension would have saved ASPPA members (and, indirectly, plan participants and plan sponsors) from

the needless expense of filing the extension request forms for plans that needed more time. Unfortunately, our request was not granted. The IRS was concerned about systems issues that raised the potential that late filing notices would be mailed to plan sponsors if the IRS Form 5558 was not actually filed. (As explained below, the DOL had similar reservations.)

Other 5500 Issues Discussed

Some ASPPA members are concerned that, technically, the 5558 extension form would not appear to cover a 5500 SF or the required 8955-SSA form. We were told that the intention is for the entire “5500 series” to be covered when a Form 5558 is filed.

The IRS 8955-SSA Form is not yet issued. The IRS expects to announce that this form need not be filed with the 2009 5500 form. Instead, catch up on 2009 and 2010 SSA reporting on next year’s forms.

403(b) Plans

ASPPA is working on two comment letters—one on “orphan contract” issues and the other on plan terminations. Both involve issues unique to 403(b) plans.

DOL Issues Discussed

Our meeting in the afternoon with the DOL was also collegial. There was some overlap on the issues we covered with the IRS, including a potential 5500 extension and concerns about 403(b) issues.

One of the important issues that we discussed with the DOL was voluntary self-correction of the late remittance of employee deferrals. Currently, full DOL approval can only be obtained via their Voluntary Fiduciary Correction Program (VFCP). After our last discussion with the DOL on this topic, we had summarized our conclusions and self-correction recommendations in a follow-up comment letter we delivered this year. The DOL is still considering the issue, but we believe progress is being made. One of the DOL’s remaining concerns is that they do not want plan sponsors to view self-correction as an “easy out,” where the employer would continually remit late and pay a small interest penalty. One possibility would be to limit potential relief to those applicants who indicate that they have the ability to stay within the “small plan” safe harbor (seven days) in the future. ASPPA will write a follow-up letter on this topic.

We discussed the DOL’s recent relief on allowing TPAs to assist plan sponsors on 5500 form e-filing. We expressed appreciation for the relief, particularly coming as it did after the filing season had begun. We also discussed some concerns with the relief and requested changes in the future that can avoid signatures being included in the Internet posting of the form. Beyond that, a more recent problem is that the filing TPA’s name shows up as the “plan administrator” on the e-filed 5500 Form. The DOL is doing whatever they can, within the confines of the EFAST2 system, to help us resolve this problem. They are fully aware that the filing TPA is not the plan administrator and expect to modify the 5500 instructions and the Internet display to caveat this issue. We also discussed the permission form that the plan sponsor signs off on to allow the TPA permission to file. We learned that a “standing” or “evergreen” election is not feasible. Instead, such permission must be obtained annually.

We also discussed with the DOL our recent investment advice comment letter (www.asppa.org/document-vault/pdfs/GAC/2010/final552010.aspx) and our task force report on lifetime income distribution options (www.asppa.org/document-vault/pdfs/GAC/2010/final503.aspx).

To summarize, our day of meetings was challenging, educational, productive and fun. We hope that you understand how diligently ASPPA GAC volunteers are working to represent your interests. As you can see, the work requires continuous and ongoing efforts. We appreciate your support. 🏠



David M. Lipkin, MSPA, is the president of Metro Benefits, Inc., in Pittsburgh, PA, which he founded in 1986. David speaks on a variety of topics, including the professional responsibilities of the actuary. He has published numerous articles. He has been selected by the Department of Labor to serve as an independent fiduciary for several orphan/abandoned plans. David currently serves as Co-chair of ASPPA’s

Government Affairs Committee. He previously served as Chair of GAC’s Defined Benefit Subcommittee. David currently serves as ASPPA Vice President, is on the ASPPA Board of Directors and is a member of the ASPPA Executive Committee. David is a Member, Society of Pension Actuaries (MSPA), a Fellow of the Society of Actuaries (FSA) and an Enrolled Actuary (EA). (david@metrobenefits.com)



Profile on Lincoln Financial Group

by Chris L. Stroud, MSPA

Lincoln Financial Group®, headquartered in Radnor, PA, offers a broad portfolio of products and services, including annuities; life, group life, and disability insurance; 401(k) and 403(b) plans; savings plans; mutual funds; managed accounts; institutional investments; and comprehensive financial planning and advisory services.

According to a survey released in June 2009 by *PLANSPONSOR* magazine, Lincoln Financial Group ranks among the ten largest retirement plan providers by total number of full-service plans. As of March 31, 2010, more than 1.3 million workers were enrolled in employer-sponsored retirement plans provided by Lincoln Financial Group affiliates, representing more than 24,000 plans and \$36.7 billion in assets under management.

Lincoln Financial's century of success is a strong measure of client satisfaction. Today, more than 800 Lincoln home office employees are dedicated to the retirement markets. To continue that success and deliver quality products and services, Lincoln has made a commitment to invest in the education of their employees. As Randy Crouch, CPC, QPA, QKA, assistant vice president and director of the plan design and technical consulting team, states: "Lincoln Financial Group is dedicated to ensuring that education is a priority for its employees by providing opportunities for ASPPA credentials and focusing on continuing education."

Webcourses, Exams and In-house Training

Randy joined Lincoln in 1988, and ASPPA education programs were being utilized by the firm when he arrived. Today, Lincoln is very familiar with the wide array of credentialing and continuing professional education opportunities that ASPPA offers, and they actively support and promote a broad range of ASPPA-related programs and activities. For basic education, they purchase the distributable license and make ASPPA's Retirement Plan Fundamentals (RPF-1 and RPF-2) written materials available to all employees, and they encourage pursuit of ASPPA's Retirement Plan Fundamentals certificate. Lincoln purchased an unlimited license for ASPPA's complete line of Qualified 401(k) Administrator (QKA) and Qualified Plan Administrator (QPA) webcourses (produced in conjunction with Indiana/Purdue University – Fort Wayne), including RPF-1, RPF-2, DC-1, DC-2, DC-3 and DB. Their employees in all locations can view

these webcourses individually at their own pace and/or in a classroom setting. These webcourses are extremely helpful for those employees wishing to earn ASPPA credentials, but they are equally as valuable as "refreshers" and qualified continuing professional education for those who already hold credentials.

In addition to offering webcourse learning, Lincoln holds weekly training sessions during non-peak periods to promote industry education. These sessions cover regulatory and legislative updates, impacts of changes across the organization, specific topics from various ASPPA webcourses, question/answer sessions, etc.

The 403(b) Marketplace

Most recently, Lincoln began running sessions covering 403(b) plans, and they will be supplementing these sessions with ASPPA's new Tax-Exempt & Governmental Plan Administration webcourse (TGPC-1). Several internal "TGPC study groups" have formed where employees study the ASPPA materials together in preparation for the TGPC-1 exam. Lincoln is also looking forward to utilizing the TGPC-2 webcourse when it is available. Lincoln is encouraging employees to obtain ASPPA's Tax-Exempt & Governmental Plan Administration certificate and ASPPA's new Tax-Exempt & Governmental Plan Consultant (TGPC) credential, and due to Lincoln's commitment to the 403(b), 457 and 401(a) markets, certain employees will be required to obtain the TGPC credential.


Continuing Professional Education

Lincoln relies heavily on ASPPA programs to provide technical support and continuing professional education for their employees. They utilize *The ERISA Outline Book*, by Sal Tripodi, as one of their primary technical resources. Lincoln also makes ASPPA webcasts available to their employees, and they typically send several attendees to the ASPPA Annual Conference each year. In addition, many of their employees attend the ABC of Northern Indiana for local education and networking. Individual

departments within Lincoln build continuing professional education support into their budgets, and they typically pay all ASPPA registration fees, membership dues, etc.

Looking to the Future

Lincoln will continue to use ASPPA webcourses and training materials as education resources for retirement services employees in order to remain competitive and deliver quality products and services. "Our partnership with ASPPA has provided our employees with access to top notch educational material, resources and credentials that are nationally recognized," affirms Randy. There will be an increased focus on credentials going forward, especially ASPPA's QKA and TGPC credentials. Lincoln plans to survey their employees regarding certain aspects of their jobs and specific education needs, and will use ASPPA materials and targeted in-house training to meet those needs. It is not surprising, given the commitment to education and ASPPA's education programs, that Lincoln has held a position for a number of years in ASPPA's two "Top 25" lists related to credentialing and education: (1) for number of ASPPA exams administered to employees of a

firm; and (2) for number of credentialed members in a firm. It is Lincoln's intention to remain on those ASPPA lists for years to come. 



Chris L. Stroud, MSPA, is president of Stroud Consulting Services, Inc., located in Marco Island, FL, a firm offering consulting services to for-profit companies providing retirement services and to non-profit organizations. Chris also provides consulting through Simoneaux & Stroud Consulting Services, specializing in business planning, business consulting, professional development, industry research and customized skill building workshops. She has worked in the employee benefits industry since 1978. Prior to setting up her own consulting firm, she was a vice president at Financial Data Planning Corporation (FDP), which was purchased by SunGard. Chris has volunteered her services in various capacities to assist ASPPA, and she served as the 2006-2007 ASPPA President. She is the Editor of The ASPPA Journal, an ASPPA Education Programs Advocate and a member of the ASPPA Benefits Council of South Florida. Her professional designations include Member, Society of Pension Actuaries (MSPA), Member of the American Academy of Actuaries (MAAA) and Enrolled Actuary (EA). (chris.stroud@scs-consultants.com)

GAC Corner

ASPPA Government Affairs Committee Comment Letters and Testimony since May 2010

June 25, 2010

ASPPA and NTSAA submitted a comment letter to the IRS to request limited relief with respect to hardship distributions from certain 403(b) contracts. Due to the recent economic downturn, there has been a significant increase in the number of requests for financial hardship distributions from contracts issued by "de-selected" 403(b) providers under Revenue Procedure 2007-71. Compliance with the final 403(b) regulation standards to process a hardship distribution is problematic for "de-selected" contracts. Consistent with marketplace practices prior to the final 403(b) regulations, the letter recommends that hardship distributions from "de-selected" 403(b) contracts be permitted upon a participant's certified statement as to the existence of the financial hardship provided certain other requirements are satisfied.

www.asppa.org/document-vault/pdfs/GAC/2010/403b625.aspx

June 22, 2010

ASPPA and NTSAA filed a comment letter with the IRS asking for guidance with respect to the termination of an IRC §403(b) plan. There is much confusion with respect to the manner in which a liquidating distribution is made when a 403(b) plan is terminated. Several common examples of liquidating distributions are included in the letter and ASPPA and NTSAA requested that guidance be issued to clarify the Service's position in this area.

www.asppa.org/document-vault/pdfs/GAC/2010/finalterm622.aspx

June 8, 2010

ASPPA submitted comments to the IRS with respect to the safe harbor model notice to participants under IRC §402(f). The comments provide recommendations for areas needing clarification as well as ways the model language could be improved.

www.asppa.org/document-vault/pdfs/GAC/2010/402fcomment.aspx

June 4, 2010

ASPPA submitted comments to the IRS requesting that guidance be issued with respect to the impact of mid-year plan design changes on the status of a safe harbor 401(k) plan. ASPPA had previously provided comment to the IRS on this issue on November 16, 2007.

www.asppa.org/document-vault/pdfs/GAC/2010/safeharbor642010.aspx

May 6, 2010

ASPPA submitted comments to the IRS requesting that the determination letter program for pre-approved plans using IRS Form 5307 remain open beyond April 30, 2010. The comment letter lists a number of circumstances where an adopting employer of a pre-approved plan might want or need to apply for an individual determination letter after April 30, 2010. Limiting the ability of employers using pre-approved plan documents to request an individual determination letter after April 30, 2010 will result in undue hardship for plan sponsors.

www.asppa.org/document-vault/pdfs/GAC/2010/final5062010.aspx

May 5, 2010

ASPPA submitted comments to the Department of Labor on the proposed rule relating to the provision of investment advice to participants and beneficiaries of individual account plans.

www.asppa.org/document-vault/pdfs/GAC/2010/final552010.aspx

May 3, 2010

ASPPA submitted comments to the Department of Labor and the Department of the Treasury in response to a Request for Information Regarding Lifetime Income Distribution Options for Participants and Beneficiaries in Retirement Plans issued jointly by the Agencies on February 2, 2010. The comments were prepared by an ASPPA Task Force, Chair Bruce Ashton. The members of the Task Force were: Mark Dunbar; Scott Hayes; Joan McDonagh; Robert J. Toth; and Craig Hoffman.

www.asppa.org/document-vault/pdfs/GAC/2010/final503.aspx

Continuing Professional Education Changes for ASPPA Members

by Kim L. Szatkowski, CPC, QPA, QKA

ASPPA's core mission is to educate all retirement plan professionals so that our members can preserve and enhance the employer-based retirement system. This educational goal does not stop once a member obtains a credential; ASPPA prides itself on keeping its members' education current.

With this goal in mind, the ASPPA Board of Directors met earlier this year to review ASPPA's Continuing Professional Education (CPE) policies. The following recommendations for change were considered to ensure that ASPPA's ongoing educational requirements were comparable with other professional associations for the 2011/2012 reporting cycle and beyond.

Subcommittee's Recommendations

ASPPA's Education and Examination CPE Policy Subcommittee, consisting of representatives from all ASPPA member categories, began its work in the fall of 2009 by gathering data from more than 20 similar professional associations. The Subcommittee concluded that ASPPA's Code of Professional Conduct and current CPE policy is comprehensive and similar to many other leading professional associations.

The majority of ASPPA's current CPE policy requires verification for attendance, but expanding requirements to continue to meet ASPPA members' CPE needs in some areas was deemed to be warranted. **It is important, in light of the anticipated IRS paid preparer rules, that ASPPA ensures that ASPPA CPE qualifies to meet the needs of ASPPA members subject to outside CPE requirements as well.**

After reviewing the Subcommittee's recommendations, the Board determined that all continuing professional education that promotes professional development in the retirement field will qualify for ASPPA CPE, including topics such



as social networking, communication and advanced IT training. Broad categories include topics such as:

- Qualified Plans
- Nonqualified Plans
- Tax Exempt & Governmental Plans
- IRAs
- Actuarial Issues
- Investments & Insurance
- Participant Issues
- Business Management, Operations & Development
- Personal Development
- Technology

CPE Credits and Verification

Starting with ASPPA's 2011/2012 CPE reporting cycle, 40 CPE credits will be required, with two of those CPE credits in Ethics/Professionalism topics.

The noted change in the new policy is that two credits are now required instead of the one credit in Ethics/Professionalism required for 2009/2010 (transitional cycle).

Allowable methods of obtaining CPE and the verification requirements for the 2011/2012 CPE reporting cycle and beyond are as follows:

ASPPA Conferences	<ul style="list-style-type: none"> Member must submit attendance verification form at the end of each session to obtain CPE credit. CPE granted automatically posted to ASPPA CPE online form.
Non ASPPA Conferences	<ul style="list-style-type: none"> Member must obtain written verification of session attendance from conference provider to obtain CPE credits. Written attendance verification must be retained for four years. 15 credits per conference maximum. CPE is self-reported online.
ASPPA Web-based Education (i.e., webcasts, webinars, podcasts & webcourses)	<ul style="list-style-type: none"> Member registers for CPE and completes identified CPE verification process. <ul style="list-style-type: none"> Live Web-based—Attendance verified by ASPPA and CPE granted automatically posted to ASPPA CPE online form. Recorded Web-based—Connection time tracked by ASPPA and CPE automatically added to member's record. Live streaming video from ASPPA conferences—Connection time tracked by ASPPA and CPE automatically added to member's record. Member may qualify for CPE under qualified in-house training or qualified study group rules if classroom setting purchased.
Non ASPPA Web-based Education	<ul style="list-style-type: none"> Member must complete CPE verification requirements of sponsoring provider. Sponsoring provider must provide written verification of attendance specific to member. Written attendance verification must be retained for four years. CPE is self-reported online.
ASPPA Examinations & The ASPPA Journal Quizzes	<ul style="list-style-type: none"> Successful completion of examination or quiz required (credits also available for a failing score of 5 or 6 on most ASPPA proctored examinations). CPE granted automatically posted to ASPPA online CPE form.
Qualified In-house Training (multiple employees and representatives of same company participating)	<ul style="list-style-type: none"> Detailed outline provided to attendees and retained by members for four years. Attendance verification provided to member by employer. Attendance verification and outline or PowerPoint presentation submitted electronically to ASPPA office within 60 days for all attendees. 15 credit maximum per session. CPE is self-reported online.
Qualified Study Groups & ABCs (multiple members from multiple firms)	<ul style="list-style-type: none"> Detailed outline provided to attendees and retained by members for four years. Attendance verification provided to member by event sponsor. Attendance verification and outline or PowerPoint presentation submitted electronically to ASPPA office within 60 days for all attendees. 15 credit maximum per activity. CPE is self-reported online.
Other Professional Activities (such as speaking, instructing, publishing an article or volunteering for ASPPA's E&E Committee)	<ul style="list-style-type: none"> 4 credits per 50 minutes of speaking time or instruction. 1.5 credits per 50 minutes of panel time. 1 credit per 30 minutes of preparation time. Submit proof of activity electronically to ASPPA office within 60 days. Maximum credits apply depending on type of activity. CPE is self-reported online.

Please note: There is no ASPPA CPE awarded for self-study, such as reading new laws or regulations, ad-hoc discussions with peers on technical issues or research into client matters.

Webcast Fees


ASPPA will change its webcast fee for members from \$195 to \$105 for the first registered attendee of a firm. Additional attendees of that firm can also register for the same webcast and obtain verified CPE for \$35 each.

An ASPPA webcast provided for multiple attendees of the same firm in a "classroom type" setting qualifies as in-house training. CPE credits will be added to each member's CPE record provided the appropriate fees have been paid and other reporting requirements are fulfilled. For those who wish to obtain CPE for a larger audience (unlimited classroom attendees with a single login), that is available for \$1,000 for a single location and the qualified in-house training rules will apply.

For non-ASPPA education, attendance verification specific to the ASPPA member provided by program sponsor is required. For additional CPE opportunities, please visit www.asppa.org/cpeopportunities.

ASPPA CPE Reporting will Remain Subject to Audit and Falls under ASPPA's Code of Professional Conduct

There is an online CPE reporting form for ASPPA's 2009/2010 cycle at www.asppa.org/2010cpe, which will automatically incorporate most ASPPA-sponsored CPE events a member attends. Self reported CPE can easily be entered and stored until the current cycle form is complete and ready to be submitted. To better assist ASPPA members, for the 2011/2012 cycle and beyond, this online CPE reporting form will also track JBEA and ERPA CPE credits earned.

Please e-mail customersupport@asppa.org or contact ASPPA Customer Support at 703.516.9300 with any questions. 



Kim L. Szatkowski, CPC, QPA, QKA, ASPPA's Chief of Pension Education, has more than 25 years of technical education experience in the retirement plan industry. Prior to joining the ASPPA staff in 2007, Kim was the national sales and marketing director for Actuarial Systems Corporation (ASC). Kim has owned a consulting firm specializing in third party administration and employee training, and has held a variety of management positions. In addition to teaching retirement education courses, she participated in the development of ASPPA's Qualified 401(k) Administrator (QKA) credential. She has also served as an Associate Editor of The ASPPA Journal and is a founding member and past president of the ASPPA Benefits Council (ABC) of Central Florida. (kszatkowski@asppa.org)

ASPPA Member Feedback

Thanks to all the members who took the time to respond to our survey and offer suggestions for items that needed clarification. Below are some of the concerns that were raised regarding each of the changes, and ASPPA's response on how they will be handled.



Change #1: Do you agree with the Board's decision to improve ASPPA's CPE verification requirements for meeting/conference attendance?

Question: Won't this cause reporting difficulties?

Answer: Since the IRS has a meeting verification requirement for all its credentials, and since most other professional organizations have a requirement as well, it should not be too difficult for ASPPA members to comply with the meeting verification requirement. ASPPA's Conferences department will research the easiest, most cost-effective way if improvement is deemed warranted on the current method that is working well for JBEA and ERPA reporting. Beginning in 2011/2012, the ASPPA online CPE reporting form will also reflect JBEA and ERPA CPE credits for ASPPA sponsored events.

Change #2: Do you agree with the Board's decision to improve the enforcement of ASPPA's CPE verification requirements for Web-based education?

Question: Won't this dramatically increase the cost for CPE compliance?

Answer: For one to three attendees, the ASPPA webcast pricing has actually been lowered, and the classroom pricing is a bargain for groups of 27 or more. Professional organizations require attendance verification, and with this method, auditing of CPE can be performed much more easily.

Change #3: Do you agree with the Board's decision to expand ASPPA's CPE verification requirements for qualified in-house training and qualified study groups?

Question: Please clarify what qualifies and submission process.

Answer: As long as the in-house training is knowledge beneficial to the retirement professional, it will qualify as CPE for ASPPA purposes. In-house training does not include staff meetings, but would include marketing training. Having an ASPPA member verify attendance subjects the member to the ASPPA Code of Professional Conduct, and the auditing process is much easier if verification records reside in the ASPPA office. The submission requirement applies to ABC meetings as well. ASPPA will make the submission of attendance verification and outlines as automated and simple as possible. And submitting within 60 days after the event should be more than ample time allowed.

General Concern:

It might be difficult to comply on top of a busy workload.

Answer: There are numerous opportunities to earn CPE in a cost effective manner. These CPE changes will help the ASPPA professional keep current and not be too burdensome for those already in compliance. The ASPPA Journal quizzes are a low-cost way for members to earn three CPE credits for only \$50. Visit www.asppa.org/cpeopportunities for a current listing of upcoming events.

Sometimes credentialed ASPPA members don't realize that all the great education programs that they studied for to earn their credentials are refreshed each year and are available even if they've previously utilized them. For example, a member who became a QKA in 2005 may wish to purchase the Defined Contribution (DC-1) webcourse and brush up on a broad range of topics. For \$325, up to seven CPE credits are available by passing an online quiz at the end of the sessions.

There are numerous offerings in the marketplace that will meet ASPPA CPE, and there is no requirement that you obtain all (or most) of your CPE from ASPPA. Of course, we hope you will utilize CPE opportunities from ASPPA, but we understand the importance of affordable CPE that is a good value and high quality. ASPPA will be adding member discounts on various educational offerings in 2011 and is open to developing new CPE products that ASPPA members request.

If you have additional comments to share regarding ASPPA's CPE policy, please e-mail them to customersupport@asppa.org.

The ABC Leadership Conference— How ASPPA's Local Chapters are Growing!

by Lawrence D. Silver, QKA

Representatives from the ASPPA Benefits Councils (ABCs) attended the ABC Leadership Conference in Washington, DC in August. This event, held annually, allows the local chapters to work together in a face-to-face environment to share best practices and also to identify potential gaps while allowing each representative to see the corresponding faces to the voices they hear monthly.

Opening the meeting, Sheldon Smith, APM, ASPPA President, provided an eloquent explanation to the magnitude the local chapter program can have on expanding the reach of ASPPA while also stressing the importance of talented volunteers required to oversee their operations. Praising the leadership qualities of the various boards of directors, we were reminded that the local chapters can be the first step in attracting new ASPPA members and new volunteers.

The meeting was led by the current Co-chair, Donna Brewster, QPA, and current Vice Chair, Larry Silver, QKA, in conjunction with our ASPPA staff Co-chair, Jenny Cusick. The majority of the meeting was spent working on the ABC program's Business Plan to define our 2011 and 2012 short-term goals.


One of the most important goals we identified was to ensure that you, as ASPPA members, know that there are additional benefits you are potentially missing out on. The ASPPA Benefits Council program is planning an immediate expansion lasting the next few years to almost double the number of cities across the country with representation.

What are some of the benefits at the local level you ask?

- Obtain CPE credit. All ABC meetings offer one CPE credit per 50-minute session, and most ABCs have four to six two-hour meetings per year.
- Network with fellow pension professionals in your local area.



- Receive quality education from local and national speakers on relevant topics whether you are a seasoned professional or new to the industry.
- Take advantage of volunteer opportunities.
- Ask a question to a group of your peers.

Don't have an ABC in your local area and would like to start one? Contact Jenny Cusick (jcusick@asppa.org) for more information. 



Lawrence D. Silver, QKA, is an assistant director of ERISA Compliance for The Hartford in Boston, MA. He has more than 11 years experience in the retirement industry and his group oversees testing, reporting, plan design and consulting for defined contribution plans. Larry is actively involved with ASPPA at both the local and national level. He has served as the president and liaison of the ASPPA Benefits Council of New England and currently holds the position of treasurer. On the national level, Larry serves as the Co-chair of the ASPPA Technology Committee and the Vice Chair of the ASPPA Benefits Council program. (lawrence.silver@thehartford.com)

Welcome New Members and Recent Designees

▲ MSPA

Traci Christian, MSPA
Aaron Friedman, MSPA
Tom Munson, MSPA
Stuart G. Schoenly, MSPA
Virgil Ty, MSPA

▲ CPC

Stephanie K. Galbreath, CPC,
QPA, QKA
Kizzy Gaul, CPC, QPA, QKA
Robert W. Griffith, CPC, QPA,
QKA
Karnail S. Kooner, CPC, QPA,
QKA
Holly A. Orr, CPC, QPA, QKA
Marilyn I. Ramjohn, CPC, QPA,
QKA
Jinnie D. Regli, CPC, QPA, QKA
Apolonia Rehill, CPC
Thomas W. Shelton, CPC, QPA,
QKA

▲ QPA

Kristina L. Barron, QPA
Ryan M. Bedel, QPA, QKA
Adelinda Billingsley Becht,
QPA, QKA
Charles A. Brown, QPA, QKA
Belinda Brunko, QPA, QKA
Jared Butler, QPA, QKA
Arasely Valdez Colchado, QPA,
QKA
Jill A. Concialdi, QPA
Gary D. Cook, QPA
Candice J. Corpus, QPA, QKA
Jason R. Cossette, QPA, QKA
Wanda L. Couch, QPA, QKA
Allison E. Diamond, QPA
Travis W. Dougherty, Sr., QPA,
QKA
Kelly S. Duran, QPA, QKA
Jessica L. Earl, QPA, QKA
Paula C. Edmonds, QPA, QKA
David K. Ewing, QPA
Patricia Fuller, QPA, QKA
Dominick Gallares, QPA, QKA
Carolyn Gorman, QPA, QKA
Amy L. Griffith, QPA, QKA
Adam Guy, QPA, QKA
William D. Hackler, QPA, QKA
Laeh Hardin, QPA, QKA
Paul S. Hartwig, QPA, QKA
Kelly Marie Hurd, QPA, QKA
Michael Hyslop, QPA

Cynthia Detwiler Jackowski,
QPA, QKA
Rohin Kumar Karuppiah, QPA
Craig A. Knutilla, QPA, QKA
Aaron G. Lawrence, QPA, QKA
Lynn L. Lehmann, QPA, QKA
Amy J. Lockwood, QPA
Ellie Lytle, QPA
Derek D. Mantel, QPA, QKA
Lynnell A. Martin, QPA, QKA
Brenda M. Mitten, QPA, QKA
Caitlin Morrison, QPA, QKA
Alison L. Murray, QPA, QKA
Holly Nance, QPA
Shannon Naujock, QPA, QKA
Ingrid Nelson, QPA, QKA
Brian J. O'Neill, QPA, QKA
Matthew C. Olson, QPA, QKA
Georgia Panosellis, QPA, QKA
Jinnie D. Regli, CPC, QPA, QKA
Karyn L. Rowand, QPA
Lauren Schlueter, QPA, QKA
Tommy M. Stringer, QPA
Christopher D. Switaj, QPA,
QKA
Kristy D. Taylor, QPA, QKA
Eric Tener, QPA, QKA
Vicki Thompson, QPA, QKA
Kimberly A. Trathen, QPA
Jonathan B. Weldon, QPA
Denise T. Witt, QPA, QKA
Reid T. Yamamoto, QPA, QKA

▲ QKA

Cheryl L. Abbate, QKA
Irene Adelman, QKA
Matthew C. Albano, QKA
Heather Anderson, QKA
Jessica Auer, QKA
Karen Bartholomew, QKA
Andrea Bennett, QKA
Ruby Bollin, QKA
Chris Bolton, QKA
Chris Borthwick, QKA
Andrew Brandt, QKA
Tracy P. Brannock, QKA
Toya L. Brown-Robertson, QKA
Belinda Brunko, QPA, QKA
Cecilia M. Carlson, QKA
Lynn E. Colbe, QKA
Sheila Copp, QKA
Jason R. Cossette, QPA, QKA
Christopher M. Coyle, QKA
Jessica J. Curtin, QKA
Kathleen D. Ditch, QKA
Megan Doherty, QKA
Radu Dragan, QKA
Cheryl Estep, QKA
Dawn Eyman, QKA
Christopher J. Fahey, QKA
Jessica Foster, QKA
Karen Foster, QKA
Jason Frey, QKA
Kristi R. Fulp, QKA
Amy M. Garber, QKA
Noemi G. Gil, QKA
Brent Griffin, QKA
Caroline S. Gwyn, QKA
Kathy J. Hamlin, QKA
Brad Harrington, QKA
Robin M. Hassler, QKA
Lori Hedman, QKA
Jennifer L. Henson, QKA
Kara S. Hickie, QKA
Jared Hollands, QKA
Paula M. Horan, QKA
Lisa E. Horn, QKA
Tobey Huneycutt, QKA
Michael Hyslop, QPA, QKA
Gabriela N. Ivanova, QKA
Susan Jacobs, QKA
Lisa Johnson, QKA
Miranda L. Johnson, QKA
Craig A. Knutilla, QPA, QKA
Sharon M. Kress, QKA
Susan Kupinewicz, QKA
Mark Larson, QKA
Ann Lee, QKA
Stephen C. Maurer, QKA
Michelle D. McLaughlin, QKA
Karen M. Meixner, QKA
Andrew Mich, QKA
Steven P. Michener, QKA
Brenda M. Mitten, QPA, QKA
Marylynn Montgomery, QKA
Roxanne Morrison, QKA
Michael J. Murphy, QKA
Shane Murray, QKA
Lauren E. Nassif, QKA
Ingrid Nelson, QPA, QKA
Heather L. Newsome, QKA
Susan Norton, QKA
Amy E. Ouellette, QKA
Jason M. Owens, QKA
Chris Painter, QKA
Tonia Palmer, QKA
Matt A. Payne, QKA
Natalie Nok Phrompeng, QKA
Jennifer Preston, QKA
Seth R. Priestle, QKA
Lenny Puhmann, QKA
Clinton C. Reese, QKA
Marissa Resh, QKA
Lori Robertson, QKA

Jason A. Rogers, QKA
Judith Rohr, QKA
Ashley J. Routon, QKA
Sidney Charlene Samples,
QKA
Margaret Santos, QKA
Mark A. Sawalski, QKA
Vanessa R. Schallmo, QKA
Laurie J. Schickendantz, QKA
Jennifer Schlei, QKA
Altay R. Seymen, QKA
Vanessa Sharp, QKA
Gene Skonetski, QKA
Michael Slattery, QKA
Wayne B. Smalley, QKA
Lydia Ann Sorenson, QKA
Janelle A. Sotelo, QKA
Travis J. Stenberg, QKA
Matthew M. Stroup, QKA,
QPFC
Anita Tansil, QKA
Jessica D. Tasa, QKA
Eric Tener, QPA, QKA
Andrea Tepfenhart, QKA
Kristy Terrell, QKA
Craig N. Thompson, QKA,
QPFC
Patrick Tobler, QKA
Cristee Torres, QKA
Linda Visconti, QKA
Joanna Waldroup, QKA
Angela M. Weber, QKA
Lindsey M. Weeks, QKA
Margaret Weeks, QKA
Jennifer Westerman, QKA
Eric Wittenberg, QKA
Brian Wolenech, QKA
Beth A. York, QKA
Karla Zendejas, QKA

▲ QPFC

Janine Chung, CPC, QPA, QKA,
QPFC
Jacqueline Delia-Figueiredo,
QKA, QPFC
Brian S. Dobbis, QPA, QKA,
QPFC
Erika Ferris, QPFC
Brandon Grandbouche, QPFC
Ryan Huard, QPFC
Pamela L. Hull, QPFC
Scott J. Johnson, QPFC
William Brad Mann, QPFC
Brad W. Michels, QPFC
Jillian Perno, QPFC
William E. Stanley, III, QPFC

▲ TGPC

Tami M. Plummer, CPC, QPA,
TGPC

▲ APM

Sheri A. Baker, APM
Brad Brewer, APM
Cynthia B. Dash, APM
Elizabeth A. LaCombe, APM
Roland O'Brien, APM

▲ AFFILIATE

Gary A. Amelio
Christina L. Avant
Vadim Avdeychik
Bethany Bacci
David B. Bobbitt
Amy E. Bocklund
Tina Chambers
Carol Cypert
Shaun M. Eddy
Madeline Fennell
Paula J. Flaherty
Scott E. Galbreath
Randy Glazer
Sheryl L. Guss
Brandon Hall
Elizabeth Hayden
Carla N. Klingler
Hebert Kyzer
LaVander Landowski
Gayle P. Lyons
Tammy Mahaffey
James R. Martin
Mitzi May
Rene K. Maynard
Lisa S. Nolan
Charles Oldag
Kenneth W. Parkinson
Canita G. Peterson
Sherrie R. Pruitt
Juliet P. Saluja
Devin J. Schmelzer
Lisa C. Steinberg
Danny Streiff
Ryan C. Tzeng, Esq.
Vern Vliet
Nancy R. Walker
Kevin M. Watson
Marcel P. Weiland
Megan C. Williams

Calendar of Events

ASPPA

Date*	Description	CPE Credits**
Oct 1 – Dec 30	CPC modules 4th quarter testing period	
Oct 17 – 20	ASPPA Annual Conference • National Harbor, MD	25
Oct 29	Final registration deadline for fall examinations	
Nov 1 – Dec 16	Fall 2010 examination window (TGPC-2, PFC-1, PFC-2, DC-1, DC-2, DC-3 and DB)	
Nov 3	EA-2A examination (administered by the Society of Actuaries)	
Nov 4	Postponement deadline for CPC examination	
Nov 11	CPC examination	
Nov 15 – 16	The ASPPA Cincinnati Pension Conference • Covington, KY	13
Dec 1	Postponement deadline for fall TGPC-2, PFC-1, PFC-2, DC-1, DC-2, DC-3 and DB examinations	
Dec 9	A-4 examination	
Dec 15	RPF-1, RPF-2 and TGPC-1 examination deadline for 2010 online submission (midnight, EST)	
Dec 15	Registration deadline for 4th quarter CPC modules testing period	
Dec 30	4th quarter CPC module submission deadline	

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

** Please note that listed CPE credit information for conferences is subject to change.

AIRE & ERPA



**American Institute
of Retirement Education**

A Partnership of ASPPA & NIPA

Jan 5

ERPA—SEE Winter Registration Deadline

Jan 6 – Feb 17

ERPA—SEE Winter Examination Window

Feb 2

ERPA—SEE Examination Postponement
Deadline

ABC Meetings

October TBD

ABC of Greater Cincinnati

Annual Presidents Dinner Party

November 11

ABC of Dallas/Ft. Worth

All-day Meeting (Topic TBD)

Craig P. Hoffman, APM

November 15

ABC of Greater Cincinnati

Annual Welcome Reception for The
ASPPA Cincinnati Pension Conference

November 16

ABC of Greater Philadelphia

Ethics

William G. Karbon, MSPA, CPC, QPA

November 17

ABC of Atlanta

Representing Clients in DOL and IRS
Audits

Panel

December 12

ABC of Atlanta

Legislative and Regulatory Update

Ilene H. Ferency, CPC

December 14

ABC of Greater Cincinnati

Topic TBD

Richard A. Hochman, APM

For a current listing of ABC meetings, visit www.asppa.org/abc.

Fun-da-Mentals

Sudoku Fun

Every digit from 1 to 9 must appear:

- In each of the columns,
- in each of the rows,
- and in each of the nine mini-boxes

	6						9	5
			4					7
	9					1		
2						3	5	
1			2	5		7		8
		3						
6	3		9					
9	8		7		2			
7		4		1	5			6

Level = Difficult

Answers will be posted at www.asppa.org/taj.

MCHUMOR.com by T. McCracken



“Perhaps we could blame it on El Nino?”

Word Scramble

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

SUE SAM _____

SMILE COP _____ _____

MY FAIL _____ _____

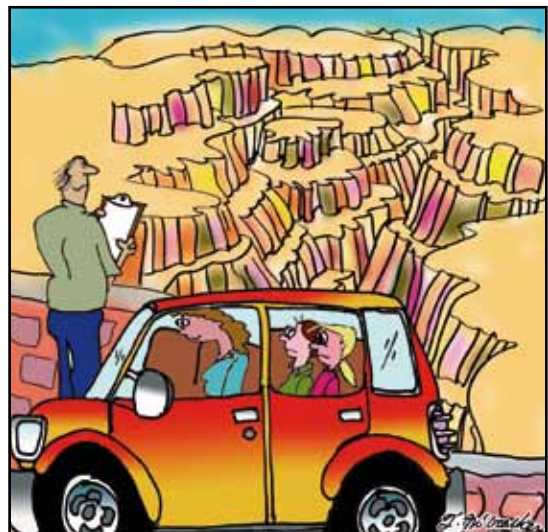
U CAGED IN _____ _____

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

Mystery Answer:

He was performing a “_____”

Answers will be posted at www.asppa.org/taj.



Why the pension consultant wasn't ready to leave the Grand Canyon.



DATAIR

Employee Benefit Systems, Inc.

Time is money...

DATAIR software saves you both!

**Pension and benefits software for
TPAs and consultants**

- Reasonably priced "pay as you grow" PC modules
- Data sharing and easy import = fast, accurate processing
- Live, expert support people to answer your questions
- On-demand free webinar training

The best software to grow your TPA practice

401(k), 403(b) Profit Sharing, Defined Benefit,
Cash Balance, and Flex Plans (125, HRA,
HSA and Transportation Reimbursement)

- Valuation, administration, proposals
- EFAST2 5500s, 1099Rs, 5300s, FAS 158
- Documents: Prototype, Vol. Sub. & IDP
- Contact and workflow management

Call today for a special discount



DATAIR

Employee Benefit Systems, Inc.

(888) 328-2474 www.DATAIR.com

ftwilliam.com

Employee benefits management, redefined.

Combining state-of-the-art technology, straight-forward user interface and easy-to-manage tools, ftwilliam.com allows you to offer more efficient and accurate ways to manage services like:

Retirement Plan Documents
Welfare Plan Documents
Non-Qualified Plan Documents
IRS Forms
5500/PBGC Forms
1099 Forms
Administration

To learn more about how our products can redefine the way you work, visit us at ftwilliam.com or call (800) 596-0714