THE ASPPA Journal

ASPPA
WORKING FOR AMERICA'S RETIREMENT

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

In This Issue:

FEATURE ISSUE

Robert M. Richter, APM, Elected 2011-2012 ASPPA President

by Troy L. Cornett

In August, ASPPA's Board of Directors elected Robert M. Richter, APM, as ASPPA's President for the 2011-2012 term. His term begins at the close of the 2011 ASPPA Annual Conference. Robert is a vice president at SunGard Relius in Jacksonville, FL.

Robert manages the consulting department, which is responsible for drafting and supporting qualified retirement plans, cafeteria plans and self-funded health plans. He is a frequent lecturer and author on topics related to cafeteria plans and qualified retirement plans.

Robert has served on numerous ASPPA committees and currently serves on the Board of Managers of AIRE, LLC. He is a Fellow of the American College of Employee Benefits Council and is a member of numerous associations including The Florida Bar and NIPA.

Robert received his B.S.B.A. degree (major in finance) from the University of Florida. He received his Juris Doctor (J.D.) from Florida State University and his Master of Laws in Taxation (LL.M.) from the University of Florida.

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Troy L. Cornett is the Director of Office and Human Resources for ASPPA. He is also the Board of Directors Liaison and the Production Manager and Associate Editor of The ASPPA Journal. *Troy has been an ASPPA employee since July 2000. (tcornett@asppa.org)*

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FROM THE EDITOR

A Fond Farewell

by Chris L. Stroud, MSPA

It is with mixed emotions that I write this editorial, which will be my last. For more than a decade, I have had the honor and privilege to serve as the Consulting Editor of *The ASPPA Journal* (and formerly, *The Pension Actuary*). It has been a wonderful ride – challenging, fun, and certainly educational.

I appreciate the many comments and suggestions we have received over the years, which helped us continuously improve the publication and bring you the types of articles you were interested in reading. ASPPA recently sent a survey to the membership to seek input regarding *The ASPPA Journal* in order to determine the future direction of the publication. I'm sure you are in store for some great changes!

Just as *The ASPPA Journal* has matured and improved in the last decade, so has ASPPA. ASPPA has increased significantly in outreach and diversity of membership and now supports a number of newsletters, electronic and hard copy, which serve to keep our members and stakeholders "in the know." As I step down from the part-time editor position, ASPPA has created a full-time editor position to oversee all of ASPPA's newsletter publications. I welcome Steve Sullivan, who has accepted the new editorial position, and I wish him the best in his endeavors. (Some of you may remember him from his former work on the American Academy of Actuaries "Contingencies" publication.)

It has been extremely rewarding to work with the energetic volunteers and staff who served on The ASPPA Journal Committee over the years, helping to generate a vibrant and diverse list of authors and topics. I have enjoyed getting to know many of the industry's professionals who have volunteered their time and talents by authoring quality articles. I would especially like to acknowledge two people who have been by my side in this endeavor and without whom my job would have been much more difficult and much less rewarding – Troy Cornett, Production Manager and Associate Editor (ASPPA staff) and Lynn Lema, Graphic Artist (consultant). Although Lynn Lema will be stepping down when I do and ASPPA will provide in-house graphic support for the publication going forward, fortunately for all of you, Troy will remain involved and you will continue to benefit from his impeccable editing talents and his great organizational skills. I extend a heartfelt thanks to everyone I have worked with over the years who helped to make *The ASPPA Journal* what it is today.

Those of you who know me personally know that I live in Marco Island, FL and love boating. There are many amusing sayings about boats (*e.g.*, BOAT – Break Out Another Thousand), but one I have always enjoyed and experienced personally is "The two happiest days in a boater's life are the day you buy – and the day you sell." It occurs to me I feel the same way about leaving *The ASPPA Journal*. It was a happy day when I started this job – and it's a happy day as I leave. Although I will enjoy the luxury of found time and I am excited about having more time to devote to my consulting practice, what I will miss the most is writing the editorials and receiving the great comments I would get from many of you when I touched on a subject you enjoyed or sparked your sense of humor or curiosity. If you would like to continue to follow me, please go to www.scs-consultants.com and "subscribe" to our firm's free newsletter. I'll still be writing and editing – just different venues. I bid you a fond farewell – and hope to see you at future ASPPA events.

Chris Stroud, MSPA, MAAA, EA, is president of Simoneaux & Stroud Consulting Services, a firm specializing in strategic planning, business planning, education, training, and professional development for the retirement services industry. Chris has been the consulting editor for The ASPPA Journal *for more than 10 years, and she currently co-authors a regular column in* Journal of Pension Benefits *on "Business Best Practices." Her professional designations include Member, Society of Pension Actuaries (MSPA), a member of the American Academy of Actuaries (MAAA) and Enrolled Actuary (EA). Chris served as President of ASPPA in 2006-2007 and she currently serves as an ASPPA Education Programs Advocate.*
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Washington Update

by Judy A. Miller, MSPA

When Congress and the White House reached their 11th hour deal to raise the debt ceiling, the clock started on a new Joint Select Committee on Deficit Reduction. The bill created this 12-member committee with equal representation from senators and representatives, Democrats and Republicans. The committee is on a tight timeline. The assignment is to report out legislation that reduces the deficit by at least $1.5 trillion over 10 years by November 23. The proposal would then be considered by the House and Senate under expedited rules by December 23.

Joint Committee members were appointed by House and Senate leadership. The co-chairs are Senator Patty Murray (D-WA) and Representative Jeb Hensarling (R-TX5). The chairmen of the tax writing committees will also participate—Max Baucus (D-MT) of the Senate Finance Committee and Dave Camp (R-MI4) for House Ways and Means. Other committee members are Senators Kerry (D-MA), Kyl (R-AZ), Portman (R-OH), and Toomey (R-PA), and Representatives Upton (R- MI6), Clyburn (D-SC6), Van Hollen (D-MD8), and Becerra (D-CA31).

With the committee named, speculation and debate has moved from "who will serve" to "what will they accomplish." Can the committee possibly report out legislation? And if so, will it include tax provisions?

Given the recent atmosphere in Congress, no one will be surprised if the committee fails to get the majority vote needed to report out legislation. It's tempting to think of the joint committee as another doomed exercise, similar to the president's Deficit Reduction Commission that failed to get the 14 (of 18) votes necessary to issue formal recommendations last December, but there are some important differences. The commission was

contents

created by the president. Even if the commission had reached agreement, there would have been no guarantee Congress would consider its recommendations. The joint committee is a creation of Congress, and the law creating the joint committee includes features intended to encourage the committee to act, and to require Congress to consider its product.

Unlike the commission, the joint committee will require only a simple majority of its members to report out legislation. Given the even split of Republicans and Democrats, that will still be challenging. However, the debt ceiling agreement includes a big stick to encourage agreement among the committee members, and expedited procedures for floor consideration that would make it difficult to block any legislation the committee is able to produce.

- If the committee reaches agreement, and Congress passes the proposed legislation, the president will be able to raise the debt ceiling by another $1.5 trillion. However, if the committee fails to report out a bill that will produce at least $1.2 trillion in deficit reduction over 10 years, or the committee acts but Congress fails to pass the committee's legislation, the only way to raise the debt ceiling would be through across-the-board spending cuts that, combined with any reductions the joint committee has achieved, result in deficit reduction of at least $1.2 trillion. These cuts would be evenly split between defense and non-defense spending with only Social Security, Medicaid, veterans' benefits, and military pay exempt from the cuts. The threat of cuts to military spending on the one hand, and Medicare on the other, could be the stick needed to move the committee to action, and to get the votes to approve the legislation in both the House and the Senate.
- If the committee reports out legislation, parliamentary maneuvers that can sometimes stall legislation would not be available. The bill would be considered by both houses of Congress, subject to an up or down vote.

President Obama has made it clear that he believes tax reform that raises revenue should be part of the $1.5 trillion deficit reduction package to be developed by the committee. Although Republicans have consistently opposed "tax increases," both Democrats and Republicans have voiced support for tax reform that "broadens the base" and lowers the rates. "Broadening the base" is another way to describe reducing exclusions and deductions, so we are understandably wary of what that might mean in practice.

The fact that the chairmen of the Senate Finance and House Ways and Means Committees are on the joint committee doesn't necessarily mean taxes are on the table; both committees also have jurisdiction over Medicare and Social Security as well as tax policy. However, their presence means taxes will probably be part of the discussion. ASPPA will be following the discussion closely. Whether tax reform comes through this joint committee, or through regular order in the committees of jurisdiction, our message is the same: Employer-based retirement savings works for millions of working Americans.

Judy A. Miller, EA, MSPA, FSA, Chief of Actuarial Issues/Director of Retirement Policy, joined the ASPPA staff in December 2007. Prior to joining the ASPPA staff, Judy served as senior benefits advisor on the staff of the U.S. 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, Mont. from 1975 until she moved to Washington, D.C. 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)

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The American Society of Pension Professionals & Actuaries (ASPPA), a national organization made up of more than 7,500 retirement plan professionals, is dedicated to the preservation and enhancement of the private retirement plan system in the United States. ASPPA is the only organization comprised exclusively of pension professionals that actively advocates for legislative and regulatory changes to expand and improve the private pension system. In addition, ASPPA offers an extensive credentialing program with a reputation for high quality training that is thorough and specialized. ASPPA credentials are bestowed on administrators, consultants, actuaries and other professionals associated with the retirement plan industry.

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The Need for Enrolled Retirement Plan Agents (ERPAs)

An Interview with Monika A. Templeman, Esq. by Bill Grossman, ERPA, QPA

Monika A. Templeman, Esq., Director, Employee Plans Examinations, IRS, Baltimore, Md., was gracious to provide me with an interview for *The ASPPA Journal* on a subject near and dear to her heart, the Enrolled Retirement Plan Agent program. Monika has championed this program since its inception and her support was instrumental in bringing the program to fruition. In addition, Ms. Templeman and I have served on the ERPA Conference Committee for two years.

BG: How did the IRS Restructuring and Reform Act of 1998 change the ground rules for representing clients before the IRS?

MT: When the IRS Restructuring and Reform Act of 1998 was enacted, there were concerns about IRS employees speaking about specific taxpayer issues with individuals who weren't appropriately authorized to represent the taxpayer. In the past, individuals had to meet certain criteria in order to represent taxpayers before the IRS. Specifically, they had to be a certified public accountant, an attorney, an enrolled agent, or an enrolled actuary.

In the employee benefit arena, other individuals (qualified and not) would often represent employers, even though the individuals didn't fall into these categories. Whether or not it was appropriate, wide use was made of the "unenrolled return preparer" category (Box H) on the Power of Attorney, Form 2848. On April 1, 2004, the IRS issued a new Form 2848 to be used immediately. The instructions to the form make it clear that use of the "unenrolled return preparer" category will be limited. Specifically, practitioners who don't fall into one of the four approved categories were no longer permitted to represent employers in negotiations on determination letter submissions. Additionally, the IRS agreed that, unless the practitioner is a member of one of the four approved categories, he or she is not authorized to sign the employer's Form 5558.

It soon became apparent, however, that there was a need for relief because of the myriad retirement plans represented by third-party administrators and benefit consultants who were not members of one of the four approved categories. This is primarily the result of the tremendous growth of defined contribution plans over the past 30 years. Because of the intensive recordkeeping involved, 401(k) plan sponsors in particular have come to rely on third-party administrators and benefit consultants to prepare Form 5500 and represent the sponsors before the IRS. The "unenrolled preparers" had also included the people who handled the financial end of the plan and the recordkeeping; and they were a vital part of the determination letter (DL) and voluntary correction program (VCP) processes.

Unenrolled preparers could not practice except on the limited Form 8821. Although the IRS provides Form 8821 for service providers to receive mail from the IRS and provide information on their plans, these same providers are still prohibited from being involved in plan qualification or plan reviews in an audit.

The Solution: The Enrolled Retirement Plan Agent (ERPA)

The IRS Advisory Committee on Tax Exempt and Government Entities (ACT) performed a comprehensive analysis of the situation and proposed the creation of a new category of practitioner that would be permitted to represent qualified retirement plan sponsors before the IRS. Practitioners met with ACT members to discuss current practices in retirement plan administration, explain the key role that practitioners play in representing employers' plans, and outline the problems caused by the change in Form 2848.

ERPA Testing, Continuing Education, and More

The title for the new category of practitioner is Enrolled Retirement Plan Agent (or ERPA) under Circular 230. ACT made a proposal to the IRS that would create a testing and approval process for individuals to pass in order to attain ERPA status. Status renewal procedures and continuing education requirements would parallel those required for enrolled agents.

IRS Examination

Generally, ERPA candidates would be tested on their knowledge of all types of retirement plans, including defined contribution, defined benefit, and

ESOPs. Ethical, procedural, and practical testing elements mirror the enrolled agent examination.

Scope

ERPAs would be able to:

- Prepare and file initial, amendment, and termination determination letters;
- Prepare and file Form 5500 and extensions;
- Prepare and file excise tax returns such as Form 5330;
- Represent qualified retirement plans in audits by the IRS and other U.S. agencies; and
- Prepare and file or assist Employee Plans Compliance Resolution System (EPCRS) programs, i.e. self-correction program (SCP), voluntary correction program (VCP), and audit cap.

Knowledge of Code Sections

ERPAs would be required to have knowledge of the Internal Revenue Code Sections applicable to qualified retirement plans, specifically Sections 72, 401, 402, 403(a), 404, 404(a)(2), 408, 410 through 417, 512, 513, 514, 4972, 4973, 4974, 4975, 4978, 4979, 4979A, 4980, 6057, 6058, 6652(e), 6652(f), and 7805(b). Detailed knowledge of actuarial concepts would not be included.

BG: Why be an ERPA?
MT: ERPAs have not only the ability to practice as professionals before the IRS but they also help the private retirement industry. Specifically, ERPAs help small employers sponsoring complex plans to stay compliant. Further, as the retirement field continues to grow, ERPAs continue to keep up with it through continuing professional education. There are those doing this behind the scenes, but why not step out from behind the scenes to represent your client as an ERPA?

If you're an expert in the field, yet you're unable to practice before the IRS, it can be an impediment to serving your client when they're most in need of your representation. Being an ERPA allows you to fully serve in the retirement field.

BG: How will ERPAs help employers achieve better results in compliance and examinations?
MT: ERPAs are the compliance minded group whose due diligence, knowledge, and client skills have kept small-employer plans compliant for years before there was even an ERPA designation. This, plus the Circular 230 requirements, will continue the tradition of compliance as the major goal in helping small employers keep their plans qualified.

BG: What are some more reasons ERPAs are so important to the IRS?
MT: ERPAs work closely with small-business owners to choose and maintain the plan that works for the small employer. In addition:

- ERPAs are closer to the recordkeeping and financial end of the plan and thus can provide a self-audit ability for the small-employer plan.

ERPAs have not only the ability to practice as professionals before the IRS but they also help the private retirement industry.

- The IRS is involved in small-business outreach this year and ERPAs are an intricate part of this.
- The IRS has prepared enhanced Fix-It-Guides with videos that the ERPA can use to self-audit plans. The IRS is also currently working on a 403(b) Plan Fix-It-Guide.

BG: What else does the ERPA opportunity present?
MT: Put succinctly, becoming an ERPA is for those who love the retirement field and want to help their clients.

Some see being an ERPA as an excellent career option for those interested in retirement law versus becoming a full attorney. Of course, as an attorney, the practice of law would be available to the individual; and no one other than an attorney may practice law. For those who aren't interested in practicing law, but who wish to represent their clients on approved matters before the IRS, this is an excellent opportunity. Of course, those wishing to pursue a career in law would also be able to represent the client as one of the approved groups. Either way, having the availability to become an ERPA adds a career opportunity.

BG: What is the relationship between the IRS and ERPAs?
MT: The IRS has a tremendous respect for the ERPA designation and we take a great pride in ERPAs. The IRS Tax-Exempt Government Entities division (TEGE) has a longstanding history with individuals who are now ERPAs. ERPAs do a great job of keeping plans in compliance and have a special role in the small-business arena. ERPAs are filling the void created by the change in the Form 2848 Power of Attorney Form.

A rewrite of Circular 230 was necessary and with that came the Circular 230 controls needed to offer the ERPA program. Since a third-party administrator could no longer be an "unenrolled preparer," Circular 230 was re-written with a team of IRS and Treasury individuals, including me, and it was released on September 26, 2007 with the ERPA program included as a recognized professional, with limited areas under ERISA.

BG: Why are ERPAs important?
MT: ERPAs are important as they remove the wall from being able to practice before the IRS. ERPAs can represent all retirement matters, except actuarial issues. TEGE retirement practitioners have the ability to be professional and knowledgeable already. So, to become an ERPA under Circular 230 is the right thing to do. Most of the other four credentialed groups can't do what an ERPA does because they don't have the specialized knowledge an ERPA has.

Some see being an ERPA as an excellent career option for those interested in retirement law versus becoming a full attorney.

BG: How hard is it to become an ERPA?
MT: Many potential ERPAs already have the knowledge to be an ERPA. Someone in the business as a practitioner would just need to review the material, which is available from a number of sources, and to study Circular 230 in order to pass the two-part ERPA special enrollment exams (ERPA-SEE). You can even purchase prior year's examinations so you can test yourself and see if you're ready to take the actual exam.

BG: Where do I get information on becoming an ERPA?
MT: The IRS awarded the American Institute of Retirement Education, LLC (AIRE) the contract to conduct the examinations for the ERPA program. The ERPA website serves as the one-stop portal for all information relating to obtaining the ERPA designation. **https://erpaexam.org**

BG: Why a test and who is AIRE?
MT: In order to get ERPAs under Circular 230, a test was needed. A test was also needed to verify the retirement knowledge achieved. This is a very complex area that is constantly changing, and ERPAs need this type of proficiency test to demonstrate their level of knowledge.
AIRE is a joint venture of the National Institute of Pension Administrators (NIPA) and ASPPA. The two groups are not in competition, but work together jointly to administer the program. The IRS believes in the need to test an individual's competency before he or she is allowed to practice before the Service.

BG: Why weren't any of the existing designations acceptable to be an ERPA?
MT: Designations from other organizations in existence before the ERPA, such as ASPPA's Qualified Pension Administrator (QPA), weren't able to be grandfathered into an ERPA because they weren't seen as creditable without being under Circular 230. Without an IRS-approved creditable designation, there would be a real risk for the entire program. Keep in mind that none of the existing designations are under Circular 230, nor did they test the requirements under Circular 230. The IRS didn't want to have a weak exam program.

BG: Why is defined benefit knowledge part of the ERPA-SEE?
MT: Defined benefit knowledge is included on the ERPA-SEE in order for the ERPA to be well rounded in retirement knowledge. The ERPA will have clients who have both defined benefit and defined contribution plans and in order for ERPAs to serve such clients, they need a knowledge that includes an understanding of defined benefit plans. Of course, ERPAs don't require an actuarial level of knowledge, but they should know enough to work with the client.

BG: Why do ERPAs need 72 hours of continuing professional education (CPE) per three-year cycle?
MT: Circular 230 requires it. The retirement field constantly changes every year as a result of various law changes and new or updated regulations. As such, the number of CPE hours required needed to be commensurate with such a constantly changing arena. The number of CPE hours is parallel to what an enrolled agent is required to complete, and in building the ERPA's CPE to that level, the ERPA designation was able to be approved under Circular 230.

BG: How can I get CPE inexpensively?
MT: The IRS offers free phone forums, which enable ERPAs to earn 1 CPE credit for each one-hour forum they attend. There are also many web classes and conferences. Both the IRS and AIRE have a great deal of information about CPE. The ERPA Conference trains ERPAs and provides up to 16 hours of CPE credit, including 2 CPE hours of ethics.

BG: Why should ERPAs be under Circular 230?
MT: Everyone from ACT to the IRS and Treasury felt it was the right thing to launch ERPA under Circular 230. Circular 230 requires a test and a background check to become an ERPA to make sure the individual doesn't have a criminal record and is in good tax standing (which may include being on a payment schedule). Further, the IRS office of professional responsibility can sanction any individual who doesn't follow the rules of Circular 230.

BG: How does the IRS raise the awareness of the ERPA designation?
MT: Most people know what an attorney or actuary is, but they don't know what an ERPA is. We at the Service want more ERPAs, so employers need to understand their value. The IRS is attempting to accomplish this through newsletters and conferences.

BG: Do ERPAs need to obtain a preparer tax identification number (PTIN)?
MT: The IRS made the decision to exempt Form 5500 from needing a PTIN. However, all ERPAs must obtain a PTIN as part of the process of becoming an ERPA. For more information on PTINs, go to: **www.irs.gov/taxpros/article/0,,id=227719,00.html.**

BG: Will the IRS continue to train ERPAs at an annual ERPA conference?
MT: Yes, the IRS sees the ERPA Conference as a key part of the continuing education for ERPAs. It's dedicated to teaching the ERPA how to work with the IRS and what the IRS expects of the ERPA when negotiating with the IRS. It uses a number of training techniques, from case studies to role-playing, to educate ERPAs effectively. The conference is a joint effort of the IRS and practitioners from AIRE, NIPA, and ASPPA. The ERPA Conference so far has been in Chicago in 2010 and in Los Angeles in 2011. We're in the process of deciding where to hold it for 2012 so that it's local for as large a number of ERPAs as possible.

BG: When is the next ERPA-SEE examination window period?
MT: The Winter 2012 window is next and it's open from January 6 to February 17, 2012. Each of the two parts of the ERPA-SEE is three hours long, consists of 75 questions, and is held at a computerized testing center. Visit the following website for more information: **https://erpaexam.org/ERPA_exam.aspx**.

Cash Balance Plan Crediting Rates: A Review of the New Regulations

by Norman Levinrad, FSPA, CPC; Kevin J. Donovan, MSPA; and Andrew W. Ferguson, MSPA

What the recently issued final and proposed regulations allow, what they don't allow, and what problems exist that require future guidance.

It's important to understand some fundamental rules for cash balance plans, as laid out by the Internal Revenue Service in Notice 96-8. The principles laid out in 96-8 are the foundation for all subsequent guidance from the IRS, including the recent regulations. These four basic principles are:

1. A cash balance plan that conditions future interest credits on future service typically will not satisfy any of the accrual rules in Section 411(b)(1)(A), (B), or (C);

2. A participant's accrued benefit is based on the cash balance account at normal retirement age (NRA), including future interest credits to that age;

3. The plan must prescribe the method for reflecting future interest credits in the calculation of accrued benefits and the method and assumptions must preclude employer discretion;

4. The projection methodology and assumptions cannot understate the expected value of future credits.

Nothing in the Pension Protection Act of 2006 (PPA) and the subsequent new final and proposed regulations has changed these basic principles, so we'll refer back to them as we discuss the new regulations.

Notice 96-8 also laid out a table of standard indices and associated margins that a plan could use and not be subject to 417(e) whipsaw. Since a variable rate could be no greater than the rate on 30-year Treasury bonds, most cash balance plans used the 30-year T-bond rate as their interest credit.

Now let's review two key provisions of PPA

relevant to this discussion. PPA says:

1. A statutory hybrid plan is age discriminatory if its interest crediting rate exceeds a market rate.

2. PPA introduced a "protection of principal" rule, which says that if a plan uses a variable crediting rate, such rate can be negative and the value of the account can decrease but the account paid to participants at their annuity starting date can never decrease below the sum of the principal credits.

The final and proposed regulations expand the menu of rates that are deemed not to exceed a market rate as follows:

A. The final regulations expand on Notice 2007-6, which allowed the use of the 3rd segment funding rate as a market rate, to allow either the funding or 417(3) rate to be used. They further clarify that a plan can also use the first or second segment rate [again, either the funding or the 417(e) segment rate for this purpose] as well as the third segment rate.

B. The final regulations clarify that a plan may limit a compliant rate in a way that ensures it won't exceed a market rate. For example, a plan can use a crediting rate of the 2nd segment rate less 25 basis points, since this can never exceed a market rate. But it couldn't use a rate of the 2nd segment rate plus 25 basis points, since this could exceed a market rate.

C. The proposed regulations say that a plan that uses any bond yield rate can apply an annual (or more frequent) minimum crediting rate than is not in excess of 4 percent. For example, a plan can use an annual crediting rate of the 30-year Treasury bond, but not less than 4 percent.

D. The proposed regulations state that a plan may use a fixed rate of 5 percent. Combined with item B above, this means that a plan may use a fixed rate that is not in excess of 5 percent.

E. The proposed regulations allow a plan to use its actual rate of return on assets (ROR) as the crediting rate, but only if the plan assets are diversified in order to minimize the volatility of returns.

F. The proposed regulations suggest that a plan can use the return based on the rate of regulated investment company (RIC) as long as that RIC is reasonably expected to not be significantly more volatile than the broad U.S. equities market, or a similarly broad international equities market. But only equity rates are addressed. Why? Can a plan use an RIC that employs a different asset class such as a broad-based income fund given that it isn't expected to be more volatile than the broad U.S. equities market? Or must a plan use only an equity-based RIC? Can a plan use a blend of RICs, not all of which are equity-based? The regulations, as written, are unclear on these points.

G. The final regulations provide that a plan that uses actual ROR or an RIC rate may apply a cumulative minimum crediting rate of up to 3 percent. Note that in the same way as the protection of principal rule applies, a cumulative rate applies only at the annuity starting date (ASD)! It doesn't function in the same way as an annual minimum. This will require maintenance of two accounts for each participant — one account used to track the balance of the annual ROR or RIC credit, and a second account to track the cumulative minimum. For example:

- A plan used the actual ROR as its crediting rate, with a 3 percent cumulative minimum.
- Tom Pepsi's cash balance account as of Jan. 1, 2011 is $150,000.
- His 2011 principal credit is $10,000.
- The cumulative amount of his principal credits with the 3 percent cumulative minimum as of Jan. 1, 2011 is $100,000. So as of Dec. 31, 2011, the cumulative amount of his principal credits with the 3 percent cumulative minimum is $113,000 ($100,000 x (1.03) + $10,000).
- In 2011, plan assets lose 50 percent of their value.
- As of Dec. 31, 2011, the value of Tom's account is $85,000 ($150,000 decreased to $75,000 due to the 50 percent investment loss, plus his $10,000 principal credit for 2011). This $85,000 value as of Dec. 31, 2011 is then used to adjust his balance for 2012 based on the plan's ROR on assets for 2012.
- However, were Tom to terminate and be paid out with a Dec. 31, 2011 ASD, he could not be paid less than $113,000.

While some plan sponsors may like the idea of using ROR or RIC rates in their cash balance plans, there are technical issues that raise practical challenges to this application. This is especially the case in the small-plan market where 415 limits come into play, and where the cash balance plan is frequently tested together with a profit sharing plan for non-discrimination purposes.

Keep in mind the four basic principles described above in the initial discussion on Notice 96-8. On top of these principles, for the past 20 years IRS policy has required that plan documents that provide for a variable rate must specify that the most current rate is to be used for projecting future credits for determining the accrued benefit at retirement. While it's no more reasonable to assume today's 30-year Treasury bond rate will be the same over the next few decades than assuming this year's actual ROR will be the same in future years, the extra volatility in ROR and RIC rates creates special administrative problems in the following areas: 415(b); 401(a)(26); 401(a)(4); accrual rules under 411; and restricted benefits for HCEs.

It's fairly easy to understand the problems created by a volatile ROR or RIC rate for testing under these sections. We know that the accrued benefit is determined at NRA by a projection forward of the crediting rate, and if the current rate is to be used for projecting forward, the volatility in these rates will cause extreme volatility in testing results.

Consider a new cash balance plan for a professional practice designed as follows:

- The plan uses the ROR as its crediting rate.
- The cash balance credit for the partners is $100,000 each, and the credit for all other participants is $2,000 each.
- The plan is tested together with a profit sharing

plan for 401(a)(4) purposes, and assuming an 8.5 percent testing rate in year one, with profit sharing contributions of 7.5 percent of salary for all participants, the two plans together will satisfy 401(a)(4).

- The cash balance plan will provide meaningful benefits to at least 40 percent of the participants and so will satisfy 401(a)(26).
- In year two of the plan, however, pretend the plan's ROR is 40 percent. If we're obliged to use 40 percent as the projection for the accrued benefit at NRA, the combined eligible automatic contribution arrangements (EBARs) for the partners will be very high relative to the combined EBARs for the non-highly compensated employees (NHCEs).
- The testing rate for the PS plan is capped at 8.5 percent, even if the PS plan assets are invested in the exact same portfolio as the cash balance plan.
- The plan will fail 401(a)(4) unless a significantly higher profit sharing contribution is made to the NHCEs.

That doesn't make for a happy client. Similarly, if the plan were to lose 40 percent of its value, the accrued benefits at NRA may now not be sufficient for the plan to pass 401(a)(26).

In all the areas we mentioned previously—415(b); 401(a)(26); 401(a)(4); accrual rules under 411; and restricted benefits for HCEs—the same dynamics will wreak havoc for volatile ROR and RIC crediting rates if the IRS continues to insist that the current rate be used for future projections.

Everyone knows that assuming a current ROR or IRC rate will continue decades into the future is unreasonable. The only thing we do know for sure is that it won't be the same. But what would a reasonable approach be?

1. Cap the future rate at 8.5 percent? Limit the rate to 0 percent?
2. Allow an average of rates over the past few years to be used?
3. Assume a 5 percent rate is reasonable as a long-term projection?
4. Or something else?

Relief or No Relief?

The next major issue the regulations address is 411(d)(6) relief. Generally there's no 411(d)(6) relief when a cash balance plan amends its crediting rate. The old crediting rate (which may be a variable rate) is forever preserved with respect to the account balance and every feature associated with the account balance, at the effective date of the amendment. However, the regulations provide for 411(d)(6) protection to the extent required when a plan amends from a non-complaint rate to a compliant rate. This is best illustrated by several examples:

1. A plan uses the 30-year Treasury bond rate, and amends to a fixed rate of 5 percent. Does it get 411(d)(6) relief? No, because the 30-year Treasury bond was a compliant rate.
2. A plan uses a fixed rate of 8 percent, and amends to a fixed rate of 4 percent. Does it get 411(d)(6) relief? No, because 4 percent is less than the maximum compliant rate (5 percent). However, an amendment to the 5 percent fixed would receive the relief.
3. A plan used a fixed rate of 7 percent and amends to the 30-year Treasury bond rate. Does it get 411(d)(6) relief? Must it amend to the highest possible fixed rate (5 percent) for this relief? Nobody knows. We presume that future guidance will allow relief to apply to this type of amendment, but only time will tell.

The next question regarding 411(d)(6) relief is when a plan must be amended to obtain this relief. Because of the delay in the IRS issuing regulations, the deadline has been pushed back since PPA first said the amendment must be adopted by the end of the 2009 plan year.

The current deadline for these amendments is now the first day of the plan year after the proposed regulations are finalized, which in itself raises a question: If a plan is amended now based on the proposed regulations (from a 7 percent flat rate to 5 percent) and it's later determined that this amendment wasn't necessary (the final regulations provide that the maximum flat rate is 5.5 percent) the amendment would not receive 411(d)(6) protection.

Like everything in pensions, what should be fairly simple becomes ridiculously complex after the IRS attempts to clarify the law via regulations. This area of market RORs is of keen interest to sponsors, and the ROR and RIC rules provided by the IRS will create a buzz once they percolate into the general consciousness.

Remember the standard Spy vs. Spy cartoon from Mad Magazine, where a bomb is wrapped in a gift box? We hope these rules aren't the gift box.

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Administrative Issues When Using an ESOP in Mergers and Acquisitions

by Ann M. Kim and Thomas Roback, Jr., QKA

ESOP experts can provide advice and alternatives so that administrative concerns fit within the overall corporate strategy.

An employee stock ownership plan (ESOP) is a company-sponsored retirement plan that invests primarily in employer stock. In a typical ESOP, the employer's cash outlay for the ESOP benefit occurs when ESOP participants receive a distribution. That's when the ESOP will either distribute stock and the employer will purchase that stock or the employer will make a cash contribution to the ESOP to fund a cash distribution. This contribution and/or distribution and purchase are the "repurchase obligation."

Because the repurchase obligation is delayed, an ESOP can be a tax-efficient corporate financing tool for mergers and acquisitions. When using an ESOP in a merger or acquisition, it's important to consider certain administrative issues that influence the cost of the transaction and the ongoing combined company responsibilities and culture.

Issue One: Crediting Past Service

In a merger of two ESOP companies and their plans, prior service and vesting must be credited for all participants. When a non-ESOP company and ESOP company combine, the surviving company may discontinue or retain the ESOP. When the ESOP survives, participants cannot lose the years of vesting and eligibility service they earned prior to the acquisition.

If employees of the non-ESOP company become eligible to participate in the ESOP, the sponsoring company should consider whether such employees' service before the acquisition should count toward eligibility and vesting. Granting past service credit is attractive because it gives current employees an immediate benefit—potentially a fully vested benefit—and this benefit, if communicated well, can increase morale after a transaction. In addition, providing past credit service will reduce the benefit disparities between the different employee groups.

The downside to providing past service credit is that, as the vested ESOP benefit increases, the repurchase obligation is accelerated and the employer's cash outlay for the ESOP benefit will be greater sooner.

Issue Two: Changes to the Vesting Schedule

As mentioned above, the faster an ESOP benefit vests, the greater the employer's repurchase obligation becomes. If an ESOP continues after a merger or acquisition, the ability to extend the vesting schedule is limited. For any participants at the time the vesting schedule is changed, the new vested percentage at each year of service must be at least equal to the old vested percentage at each such year of service.

For example, if, under the original vesting schedule, a participant is 100 percent vested after three years of service, under the new schedule, all individuals who are participants on the date the vesting schedule is amended must be 100 percent vested after three years of service. In addition, the governing tax rules provide a minimum vesting schedule.

When an ESOP is terminated, whether in conjunction with a merger or acquisition, the law mandates that all actively employed participants, and all formerly employed participants who have not yet received a full distribution of their vested balance or incurred a five-year break in service, must become fully vested. It's often necessary for your ESOP attorney to make amendments to the distribution provisions of the plan document before the plan is terminated.

For example, the ESOP could be amended to accelerate distributions to encourage distributions to partially vested terminated employees before the ESOP is actually terminated.

Issue Three: Minimum Coverage Transition Exemption

All qualified plans, including ESOPs, must cover a minimum number of employees. This compliance test is required individually for each qualified plan. In a merger and acquisition context, this test could cause unintended consequences.

Fortunately, a provision in the law grants a grace period before newly combined companies must deal with coverage testing on a combined entity basis. The grace period allows plans to postpone coverage testing based on the newly combined enterprise until the first day of the second plan-year following the transaction.

To take advantage of the grace period, the qualified plans must have individually met the coverage requirement before the acquisition and the coverage must not have significantly changed during the grace period. If multiple plans are involved, and if they have different plan-year ends, the first plan-year end after the transaction determines the end of the grace period.

Issue Four: Annual Additions Testing

The tax laws also require companies to test their qualified plans, such as ESOPs, on a combined basis. When ESOP companies are bought out, allocations may be accelerated and the annual additions limits may be exceeded. Luckily, the IRS issued a Technical Advice Memorandum (TAM) 9624002 on June 6, 1996. Under this TAM, the allocation of these excess amounts will not be considered an annual additions violation. The plan document usually outlines how these excess amounts should be allocated.

Issue Five: Special Warnings

In all mergers and acquisitions, it is important to anticipate the transaction's impact on various rules and compliance tests. Corporate transactions will usually affect ownership percentages, and any new synthetic equity award grants to key employees will change compliance testing results. For S corporations, it is crucial to run a Section 409(p) anti-abuse compliance test before the transaction. This complex compliance test is one that plan sponsors cannot fail, so including your TPA early on is essential.

If a seller defers taxation by electing Section 1042 treatment, the ESOP must retain the stock for at least three years from the date of sale, and the ESOP may not be terminated during that three-year window. If the plan is terminated within three years, the employer must pay a 10 percent excise tax on the fair market value of the stock acquired in a 1042 transaction.

Conclusion

Several ESOP administration issues arise as a result of a merger or acquisition. These issues should be considered when structuring the transaction and the repurchase obligation, but such issues should also be kept in perspective. ESOP experts, including plan administration firms, have experience in dealing with these issues and can provide advice and alternatives so that the ESOP administrative concerns fit within the overall corporate strategy.

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How "Stable" is Your Stable Value? Evaluating Stable Value Options

by Aruna Hobbs

Stable value investments have long been a staple in defined contribution plans, representing almost one-third of 401(k) assets at the end of 2009.[1] Even through times of market upheaval, stable value has been one of the few defined contribution investment options that continues to provide positive returns to participants.

All stable value funds are conservative investments designed to protect principal and deliver stable, consistent returns that are generally above money market returns.[2] While the broad benefits are the same, the delivery of those benefits varies by the stable value tool that's employed.

It's important to remember that not all stable value contracts are created equal. For instance, the ownership structure of assets and levels of guarantees vary by contract. The rate reset mechanism may be different. Some finite term contracts guarantee a fixed rate until the contract expires; in others the rate is guaranteed for a fixed period before it's reset. Often there are guaranteed minimum floors that may be meaningful in today's low-rate environment.

Each structure has its own relative merits and a set of tradeoffs. Plan sponsors and their financial advisors have a fiduciary responsibility to understand and differentiate among the various prevailing forms of stable value. Conducting a thorough due diligence when evaluating a plan's stable value option is therefore a critical function.

However, this is often easier said than done because of the variety of stable value instruments and the broad universe of issuers from which to choose. Comparing structures on an apples-to-apples basis poses a challenge. Understanding the nature of guarantees is important, and so is knowing who is standing behind such guarantees. Proper due diligence isn't simply a matter of comparing declared interest rates or underlying managers. It's more complex—but some of the complexities can be simplified by knowing what to ask. Following is a list of considerations for every fiduciary evaluating an existing or new stable value option:

Guarantees and Guarantor

What is the level of guarantee being provided?
Principal safety may be provided with only a 0 percent floor rate or a minimum guaranteed rate higher than 0 percent, usually ranging between 1 percent and 3 percent, or a fixed rate locked in at inception for the term of the contract. A minimum floor above 0 percent generally constitutes a higher level of guarantee; a guaranteed fixed rate locked in for the term of the contract is a highest level of guarantee, but this is usually not available as an entire stable value option to plans.

How complete are the guarantees?
It's good to be aware of any general conditions that may cause the issuer to write down the guaranteed obligation. For example, certain events or credit defaults may allow the fund manager to write down the promised book value obligation to the participant.

How strong is the guarantor or issuer promising these guarantees?
The long-term stability, creditworthiness, and capital held by the issuer are fundamental to the strength of the guarantees. These contracts are often evergreen in nature, making the long-term commitment and financial health of the issuer a key consideration.

Where does the contract fall in the capital structure of the issuing company?
Typically, a contract guaranteed by an insurance company provides policyholder status to the purchaser or contract holder. The status of a policyholder is senior to debt holders in the capital structure of the firm, unlike non-insurance guarantees.

Is stable value a core competency of the provider?
The issuer's years of experience, reputation and presence in the marketplace, and breadth and depth of resources are key considerations for assessing the issuer's commitment and expertise.

Termination and Liquidity

What are the termination provisions for plan sponsors (fees and/or penalties, etc.)?
Most contracts allow for exiting at-market value immediately and at-contract value over an extended period. It's always good to check if there are deferred sales charges, penalties, etc.

What are participant liquidity provisions?
Most qualified withdrawals for participants should be covered at contract value (which is principal plus accrued interest). It's good to be familiar with what's not covered and whether it's non-standard to the industry.

How portable is the product?
Is the option available only on a full-service basis or can it be offered as an investment-only option?

Can the guarantor terminate the contract for any reason?
Certain clauses for an issuer's exit may exist in particular types of contracts and it's important to be familiar with the circumstances under which those clauses may be invoked.

Investments

What are the underlying investments? Is the investment management process solid?
Stable value contracts are usually backed by conservative fixed-income assets of high average credit quality. It's good to be familiar with the issuer's management style, credit history, investment process, and risk management practices.

How transparent are the investments? Is that consistent with the industry for such products?
While this is important, transparency of assets can come at a tradeoff with the level of guarantees or rate of return. Most insurance general account assets are commingled and therefore difficult to separate by individual liabilities. A general account contract holder is buying into the claims-paying ability and credit rating of the guarantor, somewhat analogous to an illiquid bond. Separate accounts and synthetics may offer more transparency, but may not offer the same level of guarantees or rates of return.

What is the current and historical crediting rate and is it consistent?
Stability in the crediting rate is a key tenet of stable value. Stable value rates are designed with a "no surprises" orientation. Huge volatility during rate resets warrants closer examination and further questioning.

Proper due diligence isn't simply a matter of comparing declared interest rates or underlying managers. But the complexities can be simplified by knowing what to ask.

Other Considerations

What are the ongoing fees and are they disclosed?
Fees, expense loads, revenue-sharing arrangements (if any), and minimum size mandates are important to know upfront and plan sponsors should be notified of any changes that occur at a later date.

Are all of the contract provisions suitable for your plan?
Simplicity of contract terms is always a plus. Several contract terms are industry norms. Attention must be paid to any non-standard provisions that are unique to the provider.

Stable value, the conservative option of choice for millions of participants, has served investors well for more than three decades through a variety of economic cycles. Stable value offers the best of both worlds — bond-like returns that are higher than money market rates, combined with the low volatility of money market funds.[3] Investors may choose this option to achieve diversification or broad asset allocation, but above all it's the overriding desire to keep their principal safe that drives investors to choose stable value.

This very expectation makes understanding the intricacies of stable value options all the more important. Because of the ongoing nature of these funds, due diligence should not be viewed as a one-time process. Ongoing monitoring and due diligence is essential to ensure that both the needs of the plan and the expectations of participants are being met.

Aruna Hobbs is head of stable value investments at New York Life Investments, a former board member and executive committee chair of the Stable Value Investment Association.

[1] Hewitt 401(k) Index TM Asset Allocation, as of December 2009.

[2] Source: Stable Value Investments Association, based on the growth of $1.00 of money market funds versus stable value investments from December 31, 1988-June 30, 2010.

[3] Source: Stable Value Investments Associations, returns data based the growth of $1.00 from December 31, 1988-June 30, 2010. Volatility of returns based on analysis of returns from December 31, 1988 – June 20, 2010.

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…But Did You Know? Secrets of ASPPA's Electronic Treasure Trove

by Ray Harmon

In "How Tweet It Is" in the Winter 2011 issue of *The ASPPA Journal*, I talked about social marketing, particularly what ASPPA has done to engage its constituents and how you might adapt our methods and tips to your own operation.

This time I want to take you on an anti-social journey. When you visit **www.asppa.org**, you're probably not coming to share news or embarrassing photographs with colleagues, but to help yourself to a heaping plate full of knowledge with only one fork—yours.

I say "heaping" because, well yes, the ASPPA website is HUGE. If it were an actual, physical place, it would be pretty easy to get lost. Perhaps there would be lots of those parents with leashes on their children walking around.

What ASPPA offers online is a broad swath of products and services unique to the industry, which is why our website is bursting at the seams. Nearly every ASPPA product has an electronic component or counterpart and there are also tons of member benefits available only in electronic form.

What ASPPA offers online is a broad swath of products and services unique to the industry, which is why our website is bursting at the seams. In addition to the brand new MyASPPA page where you can review your purchase history and CPE credits (see our ad in this issue of *The ASPPA Journal*), nearly every ASPPA product has an electronic component or counterpart and there are also tons of member benefits available only in electronic form.

Webcasts

In terms of sheer numbers, this year it seems ASPPA's webcast offerings are our most popular product. Anywhere from 100 to 300 people have been registering for each one, earning themselves two continuing professional education (CPE) credits and a terrific chunk of new information to put into practice once the hour-and-forty-minute program ends and they click the little red 'X' to close the window.

If you haven't experienced a webcast before, you should. The format is consistent: typically an hour-long audio presentation by the speaker synchronized with a slideshow right on your computer (or smartphone), and a closing Q&A session of about half an hour with the audience. If your questions weren't answered by the prepared content, you'll get your chance at "Stump the Wonk."

…But did you know?

What some members have discovered and what still surprises many others is that you'll earn the same number of CPE credits for attending either the live webcast at the scheduled time or listening to the on-demand recording later at a time of your choosing.

If you can't make Thursday at 2:00 p.m. E.D.T., but you really want to hear that "Participant Fee Disclosure" talk with Rich Hochman, just register for the on-demand version instead. On the webcast page, it'll be the button on the right that reads "Register Now for Recorded Webcast."

For a list of upcoming webcasts and recorded webcast offerings, visit **www.asppa.org/webcasts**.

The ERISA Outline Book

According to a recent survey of the membership, ASPPA members' most trusted print resource, other than *The ASPPA Journal* (also online—more below!), is *The ERISA Outline Book* by Sal L. Tripodi, J.D., LL.M.

This guy.

The ERISA Outline Book (or "EOB" as we call it around the office—not to be confused with the more common "Explanation

of Benefits") is an industry bestseller, a reference book and a study guide on qualified plans. It's also the recommended study resource for IRS Enrolled Retirement Plan Agents (ERPAs).

Can you guess the benefits of subscribing to the online version? Exactly! It doesn't weigh 5 million pounds and it's fully searchable and cross-referenced for your ease of use.

...But did you know?

If you're looking to subscribe to the online EOB, you can pick the option that works best for your needs. Get a single-user license or a package of multiple licenses—we even have a package for an unlimited number of user licenses at multiple locations if you need it!

For complete information and access to *The ERISA Outline Book* online, visit **www.asppa.org/eob**.

Consulting Modules

If you're in the consulting business, you may already know that ASPPA offers an online "module" product under the banner of the Certified Pension Consultant (CPC) credential curriculum. The user receives study materials for the given module topic, reviews the material on his or her own time, and then takes an online exam based on those materials. It's as simple a process as it sounds!

...But did you know?

The consulting modules are beneficial to everyone, whether or not you're pursuing an ASPPA credential. While the modules have traditionally been intended as a requirement toward earning the CPC credential, they're also an excellent way for individuals to broaden their consulting knowledge and pick up three CPE credits for each module successfully completed. We encourage institutions to use them to train employees as well.

If you are in pursuit of your CPC, then you'll need to complete all four core modules and two elective modules, in addition to the other requirements of the credential. ASPPA makes it easy for you by offering modules for purchase individually or in a comprehensive package of all four core modules at a discount. Additional member discount pricing is also available.

ASPPA offers a broad swath of online products and services unique to the industry, which is why our website is bursting at the seams.

For complete information and access to the consulting modules, visit **www.asppa.org/cpc-modules**.

Webcourses

ASPPA offers web-based training for nearly all of its exams through webcourses.

Each webcourse series consists of up to seven subparts focusing on particular areas of importance. Each of those sub-parts consists of an instructor presentation, the PowerPoint slides the instructor uses, a set of clarifications (errata) of the instructor's comments/slides, and an assessment quiz designed to review concepts covered in the subpart.

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Each webcourse is designed to prepare you for the respective credentialing exam. As an added incentive, ASPPA offers CPE credits for successfully completing each webcourse assessment quiz:

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DC-2: up to 8.0 credits
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TGPC-1: up to 4.0 credits
TGPC-2: up to 3.5 credits

For complete information and access to ASPPA webcourses, visit **www.asppa.org/webcourse** (singular...not a typo).

ASPPA Education Catalog

So you're looking to get started on your professional education or you're trying to wrap up work you've already started on the path to obtaining an ASPPA credential? Maybe you want to share an easy-to-digest outline of ASPPA's offerings with a colleague. The ASPPA website will give you exhaustive explanations of how to go about accomplishing your education goals.

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ASPPA's complete education catalog is now online in a single, searchable document, broken down by concentration for your convenience. You can

learn all about credential requirements, available study aids, examination details, review courses and webcourses all in one place!

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Institutional Training

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- Unlimited corporate distribution of PDF versions of *Retirement Plan Consulting for Financial Professionals, 3rd Edition*, the textbook for the first Plan Financial Consulting course (PFC-1), required for the Qualified Plan Financial Consultant (QPFC) credential
- Package pricing for classroom style webcasts and webcourse viewing
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Email **training@asppa.org** with your education and training needs and ASPPA will work with you to tailor a program specifically for your organization.

ASPPA Magazines

ASPPA publishes *The ASPPA Journal* and *403(b) Advisor*, the former aimed at retirement plan professionals from a variety of niches and the latter aimed at advisors in non-profit and public sector plans. Every ASPPA member automatically receives *The ASPPA Journal* in the mail, while *403(b) Advisor* subscribers include all members of the National Tax-Sheltered Accounts Association (NTSAA), as well as thousands of other professionals who sign up for the free subscription. Both magazines mail new issues on a quarterly basis.

...But did you know?

Both magazines are available to read online, absolutely free! You can read the current issues of each from cover to cover or review the archives for past articles on any topics of interest!

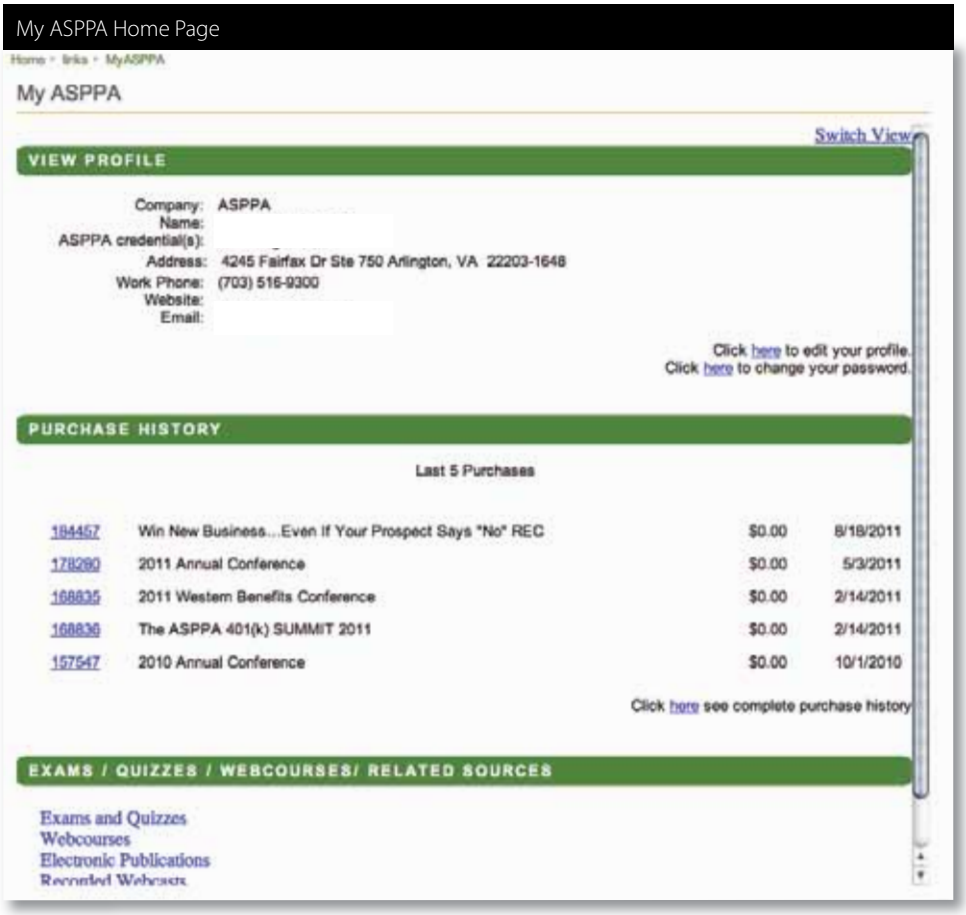
Head to **www.asppa.org/taj** and **www.403b-advisor.net** to check it out.

There is a complete index of all the articles that have appeared in *The ASPPA Journal* as well as an author index.

Conclusion

I hope I've shed at least a teeny bit of light on what you can find at **www.asppa.org** and how ASPPA does its best to give you the most bang for your buck. There's much more to discover, so if you have any questions about how any ASPPA program works, you can always chat one-on-one with an ASPPA customer support staffer toll-free at 1-800-308-6714 or send an email to **customersupport@asppa.org**. We're here for you.

*Ray Harmon is the Marketing Manager for ASPPA. He designs and programs much of the ASPPA email you receive and sits at the helm for most of ASPPA's official social media updates. Ray has been an ASPPA employee since October 2009 and is earning his law degree from the Catholic University of America as an evening student. Follow ASPPA on Facebook and Twitter and join the ASPPA group on LinkedIn. If you would like a written tutorial, email Ray to get started! (**rharmon@asppa.org**)*



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- Print your certificate of completion for the RPF and TGPC exams (proctored exams and CPC modules not yet available)
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We hope you will find all of these features helpful in managing your career advancement and that access to this information will enhance your ASPPA experience!

If you have questions or feedback about using your MyASPPA page, please feel free to contact ASPPA Customer Support at 1.800.308.6714.

Transferring Puerto Rico Participants in a U.S. Qualified Retirement Plan to a Puerto Rico Qualified Retirement Plan

by Carlos Gonzalez

Plan sponsors that don't act now could regret it later.

U.S. and international companies with operations in Puerto Rico ("P.R.") that include their P.R. employees as active participants in their U.S. qualified retirement plans should consider taking advantage of the opportunity the IRS granted in Revenue Rulings 2008-40 and 2011-1 to transfer those employees and their respective plan assets and liabilities from the U.S. qualified retirement plans to a separate set of retirement plans qualified only in P.R. and covering only P.R. employees (commonly referred to as "P.R.-only qualified plans").

By transferring their P.R. employees to a P.R.-only qualified plan, rather than keeping them as active participants in the U.S. qualified plans, these companies can simplify the administration of their U.S. qualified plans. Perhaps more important, following the transfer the P.R. employees will generally not have to pay U.S. income taxes on their retirement income. Absent such a transfer, the company's U.S. qualified plans will have to continue complying with two sets of tax qualification requirements: those of the United Stated Internal Revenue Code of 1986, as amended (the *"Code"*) and those of the P.R. Internal Revenue Code of 2011, as amended (the *"PRIRC"*). Also, the P.R. participants in the U.S. plans will have to continue paying both U.S. income taxes on a portion of their retirement income and P.R. income taxes on their entire retirement income.

The key element to keep in mind with respect to transfers between U.S. plans and P.R. plans is that they have to be completed no later than ***December 31, 2011***. Since completing such a transfer could take anywhere between four weeks and three months, companies interested in taking advantage of this opportunity need to begin taking affirmative steps in that direction no later than the 3rd quarter of 2011.

By now many, if not most, of the U.S. and international companies that have operations in P.R. have already transferred their P.R. employees to P.R.-only qualified plans. This is certainly the case with regard to defined contribution plans, such as 401(k) plans. The same, however, cannot be said about defined benefit pension plans. To date only a handful of companies that offer pension benefits to their P.R. employees have transferred those employees to a pension plan qualified only in P.R.

Many of the U.S. qualified pension plans that currently cover P.R. participants are not properly complying with the relevant U.S. and P.R. income taxation rules on pension payments. Often, the distributions to P.R. retirees are subject to the payment of U.S. income taxes but not P.R. income taxes, or vice versa. It should be noted that failure to comply with the P.R. rules on the income taxation of pension benefits is a fairly easy and sure way for a company to end up in a tax controversy with the P.R. Department of the Treasury (known by its Spanish name as *"Hacienda"*) which could take substantial time and money to resolve.

Technical U.S. Tax Issues

The basic problem with completing a transfer of assets and liabilities from a U.S. plan to a P.R. plan is that for U.S. tax purposes that is considered a transfer from a qualified plan to a nonqualified plan, resulting in immediate income taxation of the transferred amounts. Depending on the relevant facts, it may even have an adverse impact on the qualification of the U.S. plan.

While the trust forming part of a U.S. qualified retirement plan (a "*U.S. Trust*") is a qualified employees' trust under Code § 401(a), the trust forming part of a P.R.-only qualified plan (a "*P.R. Trust*") is not a qualified employees' trust under Code § 401(a). Pursuant to ERISA § 1022(i)(1), a P.R. Trust is a tax-exempt trust for purposes of Code § 501(a), which basically means that a P.R. Trust can invest its assets in U.S. financial markets without having to pay U.S. income taxes on its investment income, just as a regular U.S. Trust.

Such U.S. income tax exemption on investment income, however, does not make a P.R. Trust a qualified employees' trust for purposes of Code § 401(a). P.R.-only qualified plans are not filed with the IRS for the issuance of a determination letter and they do not have to comply with several of the plan qualification requirements of Code § 401(a) [*e.g.,* top-heavy requirements of Code § 416, actual contribution percentage test of Code § 401(m), minimum required distribution rules of Code § 401(a)(9), and minimum participation requirements of Code § 401(a)(26)]. If the deemed distribution resulting from such transfer fails to meet the various Code restrictions on timing of early and permissible distributions of benefits, the transfer could even jeopardize the U.S. tax-exempt status of the U.S. Trust.

In light of these potentially adverse tax circumstances, many of the companies that would have benefitted from moving their P.R. employees to a P.R.-only qualified plan refrained from doing so and opted for dealing with the complications of having their P.R. employees participate in a U.S. qualified plan.

Advantages of a P.R.-only Qualified Plan

The main advantages of using a P.R.-only qualified plan, rather than a U.S. qualified retirement plan, for providing retirement benefits to P.R. employees are ease of plan administration and avoidance of U.S. taxes on the P.R. employees' retirement income.

Plan Administration

When a company covers its P.R. employees as active participants in a U.S. retirement plan, the plan becomes subject to two sets of tax qualification rules; the ones under the Code and the ones under the PRIRC. The Code rules apply with respect to the participation and benefits of all plan participants, including the P.R. employees. The PRIRC rules only apply with respect to the participation and benefits of those participants who are residents of P.R. While the PRIRC rules are generally modeled after the Code rules, both sets of rules are not identical. For example, there are significant differences on their respective nondiscrimination testing requirements and on the limits on employee elective deferrals and catch-up contributions to a 401(k) plan. Also, the process for qualifying a plan in the U.S. and for correcting a plan qualification failure with the IRS is fairly different from the process for qualifying a plan in P.R. and for correcting a plan qualification failure with Hacienda. In this regard, it should be noted that all qualified retirement plans that cover one or more active participants who are residents of, and render services in, P.R. have to obtain a determination letter from Hacienda and, with respect to their P.R. participants, have to be operated in compliance with the tax qualification requirements of the PRIRC. The fact that a plan is already qualified in the U.S. does not exempt it from the relevant P.R. rules.

Due to the various differences between the tax qualification rules of the Code and those of the PRIRC, a U.S. retirement plan that covers P.R. participants may end up in a situation where in operation the plan meets the Code rules with respect to all of its participants, but fails the PRIRC rules with respect to its P.R. participants, or vice versa. This could happen, for example, when a U.S. 401(k) plan that covers U.S. and P.R. participants allows all of its participants to make elective deferrals up to the limits in Code § 402(g). In that case, the corrective measures that may be needed or that the plan sponsor would prefer to implement to remedy the excess deferrals by the P.R. participants may not be allowed under the Code, thus complicating and increasing the cost of the required correction.

The key element to determine whether P.R. employees have to pay U.S. income taxes on their retirement income is the source of such income.

In addition, the participation of P.R. employees in a U.S. qualified retirement plan may require implementing certain modifications to the payroll, recordkeeping, and tax reporting systems used to administer the plan in order to accommodate the additional set of rules that applies solely to the P.R. participants. Implementing such modifications often requires the plan sponsor to spend substantial time and money.

Taxation of Benefits

Then there is the issue of the payment of U.S. income taxes on the retirement benefits of P.R. employees. Pursuant to Code § 933, bona fide residents of P.R., as defined in Code § 937, do not have to pay U.S. income taxes on their P.R. source income. Bona fide residents of P.R., however, have to pay U.S. income taxes on their income from sources other than P.R., such as U.S. source income. The vast majority of employees working in P.R. are bona fide residents of P.R. for purposes of Code § 937. The key element to determine whether P.R. employees have to pay U.S. income taxes on their retirement income is, therefore, the source of such income. If the retirement income is from sources within P.R., the P.R. employees do not have to pay U.S. income taxes on it, but if the retirement income is from sources outside P.R., U.S. income taxes would apply.

The IRS has established the following rule for determining the sourcing of retirement income:

- the portion of the income that is attributable to employer and employee contributions to the retirement plan is considered income from sources within the jurisdiction where the employee rendered the services with respect to which the contributions were made;
- the portion of the income that is attributable to investment earnings on the employer and employee contributions to the retirement plan is considered income from sources within the jurisdiction where the trust fund forming part of the plan is located [See, Revenue Ruling 79-388].

Therefore, if P.R. employees who render all of their services in P.R. are active participants in a

retirement plan that is funded through a trust fund located in the U.S., they could end up having to pay U.S. income taxes on the portion of their retirement income attributable to the trust's investment earnings. On the other hand, if P.R. employees who render all of their services in P.R. participate in a retirement plan that is funded through a trust fund located in P.R., they will not have to pay U.S. income tax on their retirement income. While a U.S. qualified retirement plan is ordinarily funded through a trust fund established in the U.S., a P.R.-only qualified plan has to be funded through a trust fund established in P.R. [See, ERISA § 1022(i)(1)]. The net result of these rules is that by having its P.R. employees participate in a P.R.-only qualified plan, an employer can help its P.R. employees legally avoid having to pay any U.S. income tax on their retirement income.

Companies that fail to complete a transfer before January 1, 2012 will have no remedy but to keep their P.R. employees as active participants in their U.S. qualified plans.

Companies that decide to keep their P.R. employees as participants in their U.S. qualified pension plans beyond 2011 need to be aware of these income sourcing rules, as the possibility of avoiding U.S. taxation of the P.R. retirees' pension income through a transfer to a P.R.-only qualified plan will not be available come January 1, 2012.

Transitional Relief

In Revenue Ruling 2008-40, the IRS confirmed that for U.S. tax purposes a transfer of assets from a U.S. qualified plan to a P.R.-only qualified plan is considered a taxable event, thus the P.R. participants would be subject to the payment of U.S. income taxes immediately upon the transfer, and the U.S. tax qualified status of the transferor U.S. plan could be adversely affected. The U.S. income tax rule in effect since 2008 is that assets cannot be transferred on a tax-free basis from a U.S. qualified plan to a P.R.-only qualified plan.

Perhaps acknowledging that in the past it had issued several private letter rulings that approved such transfers [*e.g.*, PLRs 200317042, 200352016, and 200521012], in Revenue Ruling 2008-40 the IRS granted transition relief allowing sponsors of U.S. qualified plans covering P.R. participants to transfer to a P.R.-only qualified plan the assets and liabilities of the U.S. qualified plan attributable to the accrued benefits or accounts of the P.R. participants, provided that the transfer (i) meets the requirements of Code §§ 401(a)(12) and 414(l) and ERISA § 208 (*i.e.,* immediately after the transfer, each P.R. participant has accrued benefits or an account balance in the P.R.-only qualified plan equal to or greater than the accrued benefits or account balance the P.R. participant had in the U.S. qualified plan immediately before the transfer); and (ii) the transfer is completed by December 31, 2010. In Revenue Ruling 2011-1, the IRS subsequently extended such due date until December 31, 2011. At present, there are no indications that the IRS is considering extending this due date any further. So, it seems that December 31, 2011 will be the final date for completing these transfers. Companies that fail to complete a transfer before January 1, 2012 will have no remedy but to keep their P.R. employees as active participants in their U.S. qualified plans, and learn to live with the tax and administrative challenges of operating plans qualified both in the U.S. and P.R.

The IRS also held that the portion of a subsequent distribution of benefits from a P.R.-only qualified plan that is attributable to the assets and liabilities that were transferred from a U.S. qualified plan in a transfer that meets the conditions of Revenue Ruling 2008-40 will be considered income from sources within P.R., even if such assets resulted from the investment income that the U.S. Trust earned before the transfer was completed. As a result, such distribution would be eligible for the U.S. tax exemption provided in Code § 933. This is undoubtedly the main advantage that these transfers have to offer. By moving the P.R. participants and their assets and liabilities from a U.S. qualified plan to a P.R.-only qualified plan, the retirement income of the P.R. participants automatically becomes P.R. source income. Thus, most, if not all of the P.R. participants will not have to pay U.S. income taxes once they receive their plan benefits. From an employee relations standpoint, this is pretty significant. Because of the application of Code § 933, most P.R. employees are not familiar with having to pay U.S. income taxes on their income, having U.S. taxes withheld from their income, preparing and filing IRS Form 1040, and/or requesting a refund of U.S. taxes withheld. By removing the possibility of U.S. taxation, an employer is making life substantially easier on itself and its P.R. employees, at very little cost to the employer.

P.R. Considerations

While Revenue Rulings 2008-40 and 2011-1 describe the U.S. tax consequences and provide transitional relief until December 31, 2011 on transfers of assets from U.S. plans to P.R. plans, companies interested in completing such transfers have to be mindful that the transfer also needs to meet the P.R. tax rules set forth by the PRIRC. That is, an asset transfer completed in accordance

with Revenue Rulings 2008-40 and 2011-1 is not a taxable event or a plan qualification failure for U.S. income tax purposes. Since such a transfer involves the retirement benefits of P.R. employees, it is also important that the transfer not be treated as a taxable event or a plan qualification failure for P.R. income tax purposes. Basically, this requires that both the transferor U.S. plan and the transferee P.R. plan be previously qualified in P.R., so that the transfer meets the local tax-free transfer and rollover rules of PRIRC § 1081.01(b)(2). If one of the two plans, usually the transferor U.S. plan, has not been previously qualified in P.R., for P.R. tax purposes the transfer would be treated as a transfer from a non-qualified plan to a qualified plan, which would be a taxable event and would jeopardize the P.R. tax qualified status of the transferee P.R. plan.

The author has found that an element that frequently presents unexpected complications to the efficient and timely completion of a transfer is the fact that the transferor U.S. plan has not been previously qualified in P.R. or that its determination letter from Hacienda is outdated. In either case, the solution is completing a filing for a new Hacienda determination letter as soon as administratively practicable. Among other things, this filing requires the submission of copies of the plan document and its amendments, the trust agreement, and the most recent summary plan description, plus the payment of a filing fee to Hacienda, generally in the amount of $1,500. Depending on the terms of the plan, it is also possible that the plan will have to be amended to incorporate thereto some of the tax qualification provisions of the PRIRC. Such provisions, however, would only be applicable with respect to the P.R. participants and would have no impact on the U.S. participants. For most U.S. plans, completing a filing for a new or updated Hacienda determination letter can be done in a couple of weeks and the process should cost less than $10,000.

Another thing that usually complicates matters is when the transferor U.S. plan has not operated in compliance with the tax qualification rules of PRIRC. The usual suspects in this regard are failing to perform and/or correct the local nondiscrimination tests with regard to the plan's P.R. participants [*e.g.*, the ADP Test of PRIRC § 1081.01(d)(3)], allowing P.R. participants to make elective deferrals in excess of the local limits in PRIRC § 1081.01(d)(7)(A), which is the local equivalent to Code § 402(g), and last but certainly not least, failing to withhold P.R. income taxes on distributions to P.R. participants and/or reporting such distributions to Hacienda using Form 480.7C, which is the local equivalent to IRS Form 1099-R.

Unfortunately, the solution to these sorts of operational problems is seldom as simple as filing some documents and paying a $1,500 filing fee to Hacienda. Instead, depending on the nature and extent of the problem, this may require entering into a closing agreement with Hacienda, which is more or less the P.R. equivalent of completing a VCP filing with the IRS. In light of these and other unexpected contingencies that may arise throughout the process, companies interested in completing a transfer by the December 31, 2011 due date should consider engaging early in the process a P.R. benefits professional experienced with retirement plan qualification matters.

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NAPA is for Serious, Li(k)e-Minded Plan Advisors

by Marcy Supovitz, CPC, QPA, QKA

Joining NAPA may be one of the best business decisions you'll make.

What's NAPA? No, it has nothing to do with California wine. NAPA is the National Association of Plan Advisors. It's a new sister organization of ASPPA that was created by and for retirement plan advisors. Membership is also open to other retirement industry professionals who support the interests of plan advisors.

Why is it a business decision you need to make? As a professional society, NAPA is uniquely committed to advisors serving employer-sponsored retirement plans. Membership offers three valuable benefits: advocacy, business intelligence, and networking – all designed to keep plan advisors in the forefront of the industry and help them succeed.

NAPA Is Your Voice in Washington

First and foremost, NAPA is about advocacy. There is surprisingly little understanding among Washington policymakers regarding the role of plan advisors. The recent debates over uniform fiduciary standards, fee disclosure, and the definition of investment advice under ERISA are good examples.

While the financial services industry is well represented in Washington by a number of trade associations that weigh in on issues affecting advisors, NAPA is the only advocacy group exclusively focused on the issues that matter to retirement plan advisors. This exclusive focus is what sets NAPA apart.

Plus, NAPA will have ASPPA's political clout and expertise behind it every step of the way. If you know anything about ASPPA, you know it's renowned for its credible and authoritative voice on Capitol Hill. There is no better organization to partner with the advisor community in helping policymakers understand the impact of proposed legislative and regulatory changes on plan sponsors clients and participants.

Given these uncertain economic times and the debate about the future of 401(k) plans, it has never been more important for advisors to have a strong voice in Washington to ensure their views are clearly heard.

But That's Not All

Advocacy is only half the story. As a NAPA member, you'll also benefit from:

- Free members-only webcasts on a wide range of topics important to your business
- Newsletters to keep you in the forefront of emerging trends and best practices
- Members-only briefing calls on breaking news and issues, plus insight on what those issues mean to you and your clients
- Access to a network of industry experts and thought-leaders
- A substantial discount on registration for The ASPPA 401(k) SUMMIT, the industry's leading conference for retirement plan advisors (this discount alone nearly recoups your membership investment)

"Anyone who provides investment advice or consulting to retirement plans should consider getting involved with NAPA," says Pete Swisher, senior institutional consultant with Unified Trust Company in Lexington, Ky. "Brokers, RIAs, product vendors, recordkeepers, and even some attorneys will benefit. These are watershed times in our industry and anyone serious about retirement plans needs to stay close to the debate—get involved, hear what's going on in Washington, make your voice heard, and continually reevaluate your own service model. Think of NAPA as a source for business intelligence you can't get anywhere else."

NAPA Also Welcomes Firm Partners

Though NAPA is an individual membership organization, there's also a way that firms and organizations can participate, and that's by becoming a NAPA Firm Partner. Eligible firms include broker-dealers, RIAs, product providers, recordkeepers, and other companies that provide support and services for plan advisors.

The benefits of becoming a NAPA Firm Partner are numerous.

Firm Partners will be eligible to designate an individual to serve on the NAPA Firm Partner Council, participate in quarterly conference calls regarding NAPA activities, and receive government affairs updates from Brian Graff and the NAPA government affairs committee.

But perhaps the most visible benefit is the deep discount on membership dues that advisors and employees of Firm Partners will enjoy. They'll have the opportunity to receive all the benefits of NAPA membership for $195—that's 50% off the regular membership fee of $395.

Better yet, firms that join during 2011 and 2012 will be designated Founding Firm Partners. This will entitle their advisors and associates to FREE first year membership. After the first year, and with the firm's continued participation, members would pay only $195 annually.

Founding Firm Partners will receive additional benefits as well. NAPA will list all Founding Partners in its promotions—including recognition in a special webcast, in upcoming magazine ads, on the NAPA website, and on-site at The ASPPA 401(k) SUMMIT 2012. The entire industry will recognize the firm as a thought leader that's helping to shape retirement plan policy and supporting the interests of plan advisors. This is sure to build goodwill.

The Bottom Line

NAPA's mission is to be a leader in the evolution of the national retirement system. As Dwight D. Eisenhower said, "neither a wise man nor a brave man lies down on the tracks of history to wait for the train of the future to run over him." You owe it to your clients and your practice to take advantage of NAPA. It's an investment in the future of your business.

Marcy L. Supovitz, CPC, QPA, QKA, AIF, ChFC, CLU, is a principal of Boulay Donnelly & Supovitz Consulting Group, Inc. in Worcester, Mass. She is the first president of the National Association of Plan Advisors (NAPA). ***(msupovitz@bdsconsultinggroup.com)***

FROM THE PRESIDENT

ASPPA and Tax Reform

by Thomas J. Finnegan, MSPA, CPC, QPA

For nearly 50 years ASPPA has stood for the protection and the enhancement of the employer-provided retirement system. ASPPA has always believed that employer-provided retirement benefits represent the key leg in the three-legged stool of retirement income. The other two legs, Social Security and personal savings, while important, have been shown to be woefully inadequate in providing a secure retirement for older workers.

As Congress continues to position itself for the budget battle just ahead, ASPPA is working to ensure that the players in DC understand the importance of the employer-based system, especially as the baby boomers continue to reach retirement. We have begun reaching out to our members to help. It is very hard for those in power to ignore their constituents, especially those small employers who create jobs in their districts. Your clients have a very strong voice.

Our arguments are simple, and yet powerfully effective. The tax incentives inherent in the current system drive pension coverage in small business. Small business is the only growing business sector in the U.S. and the area where pension coverage is lacking. Limiting the tax incentives on small business will halt the establishment of new plans and spark a wave of terminations of existing plans. This will put greater stress on a Social Security system that is on unsure footing as is. Simply put, Congress will not be able to ignore older workers who cannot afford to retire.

Further, the tax incentives for retirement plans are different from most other tax incentives. The tax incentive for qualified plans is a tax deferral rather than a tax exemption. So unlike other deductions, where the tax on those items is simply lost, the tax deferral on qualified plan contributions means that taxes will eventually be paid on those contributions. Essentially, this means that by reducing the tax incentives for qualified plans, Congress would create a gain in the 10-year budget scoring window, while at the same time creating a huge loss of revenue in later years when taxes would have been paid on the additional contributions and investment earnings. At the end of the day, this is exactly the problem that tax reform is supposed to remedy, not compound.

One of the proposals being floated is to reduce the DC 415 limit to about $20,000. This proposal is supposed to effect only the "rich," since only the rich can afford to put away more than $20,000 for retirement. As practitioners, we know this is not the case as we see time and again relatively low-paid workers deferring the 402(g) limit, with catch-up, and receiving employer contributions of 3 percent or more of pay. This is true in plans of all sizes. This was the reason that the 25 percent of pay limit was removed from 415(c), to allow older, lower-paid workers to fund their retirements. Reducing the cap to $20,000 defeats an incentive for lower-paid workers that Congress created only a few years ago.

As you know, a reduction of the 415 limit to $20,000 would cause a flood of terminations among small employers. The employer's ability to shelter significant retirement savings drives the whole expense for employee contributions and administrative expenses. It is the only thing that convinces an employer to take on fiduciary responsibility toward the employees' retirement savings. At such a low benefit level, there would be little or no incentive for employers to contribute for non-owner benefits and, in many cases, the employer will simply terminate the plan, eliminating the employees' ability to save on a pretax basis through the 401(k) plan.

Some have argued that the ability to contribute to a 401(k) would simply be replaced by IRA contributions or other personal savings. It simply is not that case. It is especially flawed when discussing middle-class workers earning between $30,000 and $50,000. Studies have shown that, where there is an employer-sponsored retirement plan available, this group has significant participation rates (around 70 percent), and yet when left on their own to save for retirement, less than 5 percent contribute to an IRA.

When all is said and done, the employer-sponsored retirement system, while imperfect, is the best way to get Americans to save for and prepare for retirement. If the private retirement system does not provide adequate old-age benefits, that responsibility will fall to Congress and an over-burdened Social Security system. We must focus Congress here and encourage them to expand coverage under the current system to avoid the problems that will accompany an aging workforce that cannot afford to retire at any age and the issues of inadequate retirement accumulations in the face of ever-increasing longevity. We must do this at a time when the costs of the current system are overstated under the current budget scoring system.

The system will likely not survive unchanged. We will work to enhance growth of the system and expand coverage where possible. We will work to make sure Congress understands the trade-offs involved in restricting employer-sponsored plans and we will support reforms where reasonable and effective. We'll need your help. Whether it be the Hill march at the ASPPA Annual Conference or calling and writing your congressman or encouraging your clients to do the same … I hope we can count on you.

*Thomas J. Finnegan, MSPA, CPC, QPA, is a principal of The Savitz Organization in Philadelphia, PA, and holds a bachelors degree in mathematics from St. Joseph's University. Tom is an actuary with more than 20 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 the director of retirement plan services for a mid-sized regional consulting firm. Tom is currently serving as ASPPA President. 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. 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. (**thomasfinnegan@savitz.com**)*

2011 GAC Agency Visits

by Debra A. Davis

ASPPA's Government Affairs Committee (GAC) schedules meetings every year with government agencies in Washington, D.C. to discuss issues of importance to our members. This year, we met with the Department of Labor (DOL), the Treasury Department, and the Internal Revenue Service (IRS) on June 13, 2011.

The general purpose of the meetings is to have a dialogue with the agencies about current and proposed guidance as well as areas where additional guidance is needed. Although ASPPA has submitted comment letters on many of the topics covered, GAC views the meetings as an opportunity to provide additional details and answer any questions the agencies may have. Following is a summary of the highlights of our meetings.

Effective Date of Fee Disclosure Regulations

The DOL previously issued interim final regulations concerning fiduciary-level fee disclosure under section 408(b)(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and a final regulation concerning participant-level fee disclosure under ERISA section 404(a). On June 1, 2011, the DOL issued a proposed regulation which would have extended the applicability date of the fiduciary-level fee disclosure regulation issued until January 1, 2012. The DOL also announced that it would propose an amendment to the participant-level fee disclosure regulation which would provide a 120-day transition period (instead of 60 days) to provide the initial participant disclosures.

ASPPA and the Council of Independent 401(k) Recordkeepers (CIKR) filed a comment letter on June 15, 2011, which expressed concern that sufficient time be provided to make the necessary system changes to implement the final rules. ASPPA had noted that there is still a fair degree of uncertainty as to what will be required. ASPPA requested that an extension of the applicability date for the 408(b)(2) regulation be provided. Similarly, we indicated that the extension of the transitional rule under the 404(a) regulation is insufficient relief given the delay in finalizing the 408(b)(2) regulation as well as the ongoing review of electronic disclosure standards under ERISA. We requested that the applicability dates for these regulations be no earlier than one year after the 408(b)(2) regulation is published in final form. The comment letter filed is available at **www.asppa.org/Document-Vault/pdfs/GAC/2011/6152011-comment.aspx**.

When GAC met with the DOL, they acknowledged our concerns and indicated that they were considering the issue. On July 19, 2011, the DOL published a final rule in the Federal Register extending the applicability date of the fiduciary-level fee disclosure regulation issued under ERISA section 408(b)(2) until April 1, 2012. The DOL also announced an amendment to the applicability date of the participant-level fee disclosure regulation. Initial participant-level disclosures must now be made no later than 60 days after the first day of the plan year beginning after November 1, 2011; or if later, 60 days after the effective date of the fiduciary-level fee disclosure regulation.

Electronic Disclosures

Under current DOL regulations, disclosures to participants must generally be provided on paper unless the participant opts in to electronic disclosure. There is an exception for employees who have access to a computer as an integral part of their duties at work, but the exception is very limited.

The DOL issued a Request for Information Regarding Electronic Disclosure by Employee Benefit Plans on April 7, 2011. ASPPA recommended that the existing regulation be modified to facilitate electronic communication. In particular, we recommended that the consent and access requirements of the existing "safe harbor" be revised to permit electronic disclosure to be the default method of communication. ASPPA filed comment letters and a white paper on June 6, 2011 and June 14, 2011, available at **www.asppa.org/Document-Vault/pdfs/GAC/2011/06062011-comment.aspx** and **www.asppa.org/Document-Vault/pdfs/GAC/2011/6142011-whitepaper.aspx**.

The DOL indicated that it is currently reviewing the responses to the Request for Information.

Definition of Fiduciary Proposed Regulation

The DOL published a proposed regulation on October 22, 2010 in the Federal Register that would update the definition of fiduciary under ERISA. The proposed regulation would modify and expand the definition of fiduciary in the context of providing investment

advice to a plan fiduciary, as well as to a plan participant or beneficiary.

ASPPA, CIKR, and the National Association of Independent Retirement Plan Advisors (NAIRPA) submitted a comment letter to the DOL on January 27, 2011. Additionally, Brian Graff, Executive Director/CEO of ASPPA, testified before the DOL on March 1, 2011. The comment letter and testimony indicated the organizations' general support for the proposed regulation if IRAs are removed from the pending rule. The comment letter is available at **www.asppa.org/Document-Vault/Docs/GAC/Definition_of_Fiduciary_Comment_Letter.pdf.aspx**. The testimony is available at **www.asppa.org/Document-Vault/pdfs/GAC/2011/test-3012011.aspx**.

ASPPA reiterated our support for the proposed regulation during our meeting with the DOL, who noted that the regulation remains a high priority for them.

Lifetime Income Distributions

The Department of Labor and the Department of the Treasury issued a Request for Information Regarding Lifetime Income Distribution Options for Participants and Beneficiaries in Retirement Plans on February 2, 2010. On May 3, 2010, ASPPA responded to the Request for Information, available at **www.asppa.org/document-vault/pdfs/GAC/2010/final503.aspx**.

The DOL indicated that they have been working on guidance related to lifetime income options, including the provision of an annuity illustration on benefit statements, additional clarification regarding investment education under Interpretive Bulletin 96-1, and the fiduciary selection of an annuity provider.

Safe Harbor for 403(b) Plans

Certain tax-exempt organizations offering 403(b) plans have found themselves inadvertently subject to coverage under Title I of ERISA. ASPPA and the National Tax Sheltered Accounts Association (NTSAA) believe that many of these organizations acted in good faith and should not be penalized.

On March 18, 2010, ASPPA and NTSAA filed comments with the DOL regarding the "limited involvement" safe harbor exemption from Title I of ERISA for certain 403(b) arrangements offered by these organizations. Relief was requested for arrangements which may now be subject to Title I as a result of the guidance provided by the DOL's Field Assistance Bulletin 2010-01. ASPPA's comment letter is available at **www.asppa.org/document-vault/pdfs/GAC/2010/403b3182010.aspx**.

The DOL indicated that they are thinking through what type of relief they may be able to issue.

Determination Letter Program

The IRS has expressed that it is considering revising its determination letter program. On June 8, 2011, ASPPA submitted comments to the IRS to provide suggestions for improving the pre-approved plans and the determination letter program with respect to defined contribution plans. ASPPA's comment letter is available at **www.asppa.org/Document-Vault/pdfs/GAC/2011/06082011-comment.aspx**. The IRS indicated that they are considering a variety of options for improving the program.

The ASPPA comment letter and testimony indicated the organizations' general support for the proposed definition of fiduciary regulation if IRAs are removed from the pending rule.

Thanks to All Our GAC Volunteers!

ASPPA appreciates the hard work of all of the members of the Government Affairs Committee, including not only the individuals who attended the agency meetings, but also those who worked on the comment letters. These letters formed the basis for our discussions and allowed us to have meaningful conversations with the agencies on the issues that matter most to ASPPA members.

Debra A. Davis, Esq., is the Assistant General Counsel and Director of Government Affairs for ASPPA. She is an adjunct professor for The John Marshall Law School and an editorial advisor for the Journal of Pension Benefits. *Prior to her employment with ASPPA, Debra was ERISA tax counsel for a Fortune 500 company and served as Co-chair of the Administrative Relations Committee of ASPPA's Government Affairs Committee. Debra has published numerous articles on employee benefits issues. (**ddavis@asppa.org**)*

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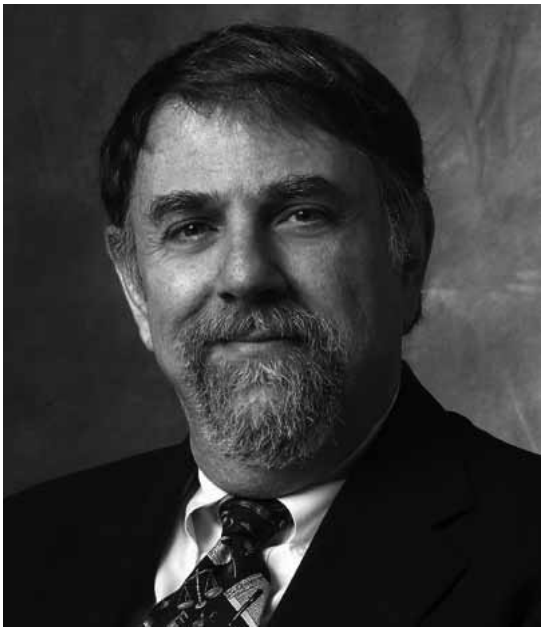
2011 Harry T. Eidson Founders Award Presented to Bruce Ashton

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 Bruce L. Ashton, APM, as the recipient of the 2011 Harry T. Eidson Founders Award.



Bruce L. Ashton, APM

Bruce Ashton is a partner in the employee benefits and executive compensation practice group of the national law firm of Drinker Biddle & Reath LLP. His practice focuses on all aspects of employee benefits issues, including representing public and private sector plans and their sponsors, negotiating the resolution of plan qualification issues under IRS remedial correction programs, advising and defending fiduciaries on their obligations and liabilities, structuring qualified plans, non-qualified deferred compensation arrangements, and health care arrangements, and representing plan service providers (including RIAs, independent recordkeepers, third party administrators, broker-dealers, and insurance companies) in fulfilling their obligations under ERISA.

Combining his employee benefits and transactional expertise, Bruce is also active in the installation and funding of employee stock ownership plans (ESOPs). Bruce served as President of ASPPA for the 2003-2004 term. From 1998 through 2002, he served as Co-chair of ASPPA's Government Affairs Committee and was a member of its board of directors from 1997 to 2007. He was a member of the board of directors of the American Academy of Actuaries during 2003-2004 and was the president of the Western Pension & Benefits Conference Los Angeles Chapter from 2008-2009.

The 2011 Harry T. Eidson Founders Award will be presented to Bruce Ashton at the 2011 ASPPA Annual Conference in National Harbor, MD on October 23. Congratulations, Bruce!

Troy L. Cornett is the Director of Office and Human Resources for ASPPA. He is also the Board of Directors Liaison and the Production Manager and Associate Editor of The ASPPA Journal. *Troy has been an ASPPA employee since July 2000. (**tcornett@asppa.org**)*

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2011 Edward E. Burrows Distinguished Achievement Award Presented to Janet Eisenberg

by Larry Deutsch, MSPA

The Edward E. Burrows Distinguished Achievement Award is awarded to an actuary for significant accomplishments that have set an example for other pension actuaries. Like the prior recipients (Ed Burrows in 2008, Joan Gucciardi in 2009, and Bob Schramm in 2010), this year's recipient more than meets this criterion.

The list of Janet Eisenberg's contribution as a volunteer and pension actuary seems endless. That list is headed by her involvement with the Joint Board Advisory Committee. Janet (along with a long list of other volunteers) toils endlessly to produce the exams necessary to become an enrolled actuary. While these exams may seem like a torture test, in reality these tests serve as the gatekeeper to maintain the minimum standard of knowledge an enrolled actuary must have. This task is a thankless one that involves well in excess of 100 hours of grueling unpaid volunteer work each year. It is grueling, because it effectively involves retaking all of the enrollment exams each year. Most volunteers involved in this process work on the committee for a few years and then resign. Janet, in contrast, has been working as a member of the Joint Board Advisory Committee for well over 15 years.

But Janet's contributions are not solely her involvement with the Joint Board. Over the years Janet's contributions include serving on the ASPPA Board of Directors, on the conference committees, as a speaker at numerous conferences, and as one of the actuaries involved in the original creation of the College of Pension Actuaries.

While on the ASPPA Board, Janet was a vocal force representing the actuarial membership of ASPPA. In leadership committees, such as the Board, it is the singular voice that defines the course of an organization, keeping it straight. Janet often played the thankless role of being that singular voice.

In the first year of COPA existence, Janet helped write COPA's comments on the proposed regulations on Internal Revenue Code §415. It was Janet who represented COPA at the hearing on these regulations. Even though there were several individuals testifying at the hearing, Janet's comments were the most quoted in the press and made COPA a recognized force in the pension community.

During the merger process, Janet's involvement at the COPA meeting discussing the potential merger helped ensure proper safeguards to protect the issues important to COPA members in the agreement with ASPPA.

Not all of Janet's accomplishments are as easily visible. Janet has personal relationships with many IRS personnel, and through these relationships has

helped to quietly make sure that the views of COPA members were heard by key IRS and Treasury personnel.

I've been honored to call Janet a friend for the past 20 years. So, I was personally very pleased to hear the reaction, without exception, of prominent ACOPA members, that Janet would be this year's recipient of the Ed Burrows award. The comments we received enthusiastically affirmed our decision to honor such a deserving enrolled actuary.

*Larry Deutsch, MSPA is an enrolled actuary and a member of ASPPA and of the American Academy of Actuaries. He has been practicing as an actuary since 1976. Larry is a frequent author of technical articles in professional journals and a frequent speaker at professional meetings. As president of Larry Deutsch Enterprises, Larry is responsible for the running of the corporation, as well as maintaining the actuarial programs that are used by his clients. In addition, he provides consulting services to clients on both actuarial and pension matters. Larry has a Bachelor's degree in Mathematics from the University of California at Irvine. (**larry_deutsch@msn.com**)*

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 & 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 23 at the Gaylord National Resort & Convention Center, National Harbor, MD.

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, D.C. (cwilliams@asppa.org)

Christopher M. Coyle QKA, QPFC

Chris is the recipient of the Martin Rosenberg Academic Achievement Award for the spring 2011 Plan Financial Consulting-2 (PFC-2) examination.

Chris is a relationship manager, currently at The Standard, with more than 15 years experience in retirement plan services, administration, and operations. He consults with clients and partners on issues ranging from plan design to investments to fiduciary compliance. Chris believes he has achieved success when the business goals of the plan sponsor for their plan are realized and participants reach retirement age prepared and confident. Chris is a Registered Investment Adviser Representative, and currently holds two ASPPA credentials: QKA and QPFC. He plans to sit for the DC-3 examination this November with an eye towards earning the QPA credential in the spring of 2012. Chris holds a Bachelor of Science degree from Tulane University in New Orleans, La.

Nicolette M. Kirchoff QKA

Nicolette is the recipient of the Martin Rosenberg Academic Achievement Award for the spring 2011 Defined Contribution Administrative Issues – Advanced Topics (DC-3) examination.

Nicolette, of Rochester, N.Y., is a supervisor in the Retirement Services Division of Paychex, Inc., a leading provider of payroll and human resource services. Since 2004, she has held various positions within Retirement Services and currently leads a team that specializes in advanced research and analysis of Retirement Service options for 401(k) clients. Her team also plays an important role in the implementation of product and system enhancements. Nicolette is a credentialed Qualified 401(k) Administrator (QKA) and is currently pursuing her QPA (Qualified Pension Administrator).

Margaret A. Younis QPA, QKA, TGPC

Maggie is the recipient of the Martin Rosenberg Academic Achievement Award for the spring 2011 Tax-Exempt & Governmental Plan Consultant-2 (TGPC-2) examination.

Maggie joined Lincoln Financial Group, based in Fort Wayne, Ind., as a plan design and technical consultant in November of last year. In her current role, she works with clients on reviewing plan design, assists in writing technical communications, and is working with ASPPA to bring education and training to department employees. With more than ten years of experience with retirement plans, Maggie had most recently served as a retirement plan analyst with Acuff & Associates, Inc., focusing on annual compliance testing, 5500 preparation, plan document design, and client reviews. In addition to the retirement plan analyst role, Maggie managed the EGTRRA restatement process along with implementing and overseeing the New Business area. Maggie holds a BA in Economics from DePauw University, the QPA, QKA, and TGPC credentials from ASPPA, and the APA designation from NIPA. She is currently serving on the NIPA Annual Forum & Expo Planning Committee.

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2011 Educator's Award Presented to Michael L. Bain, MSPA

by Catherine Williams

Michael L. Bain, MSPA, ASA, EA, MAAA will receive the prestigious Educator's Award for 2011 at the ASPPA Annual Conference held at the Gaylord National Hotel & Convention Center, National Harbor, MD, on October 23 during the Business Meeting.

Michael L. Bain, MSPA, ASA, EA, MAAA

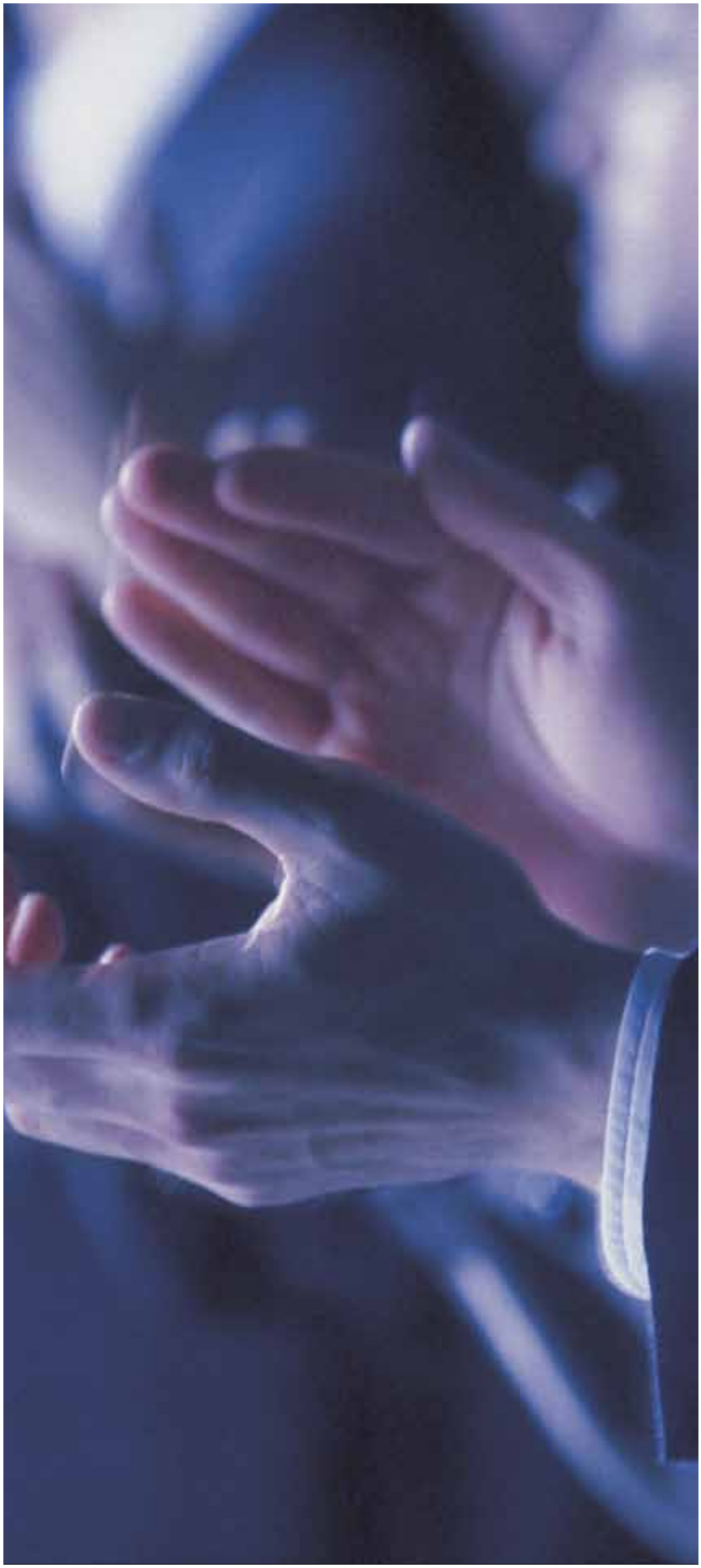
The Educator's Award has been presented to outstanding educators in the retirement plan field since 1997. Presented annually at the ASPPA Annual Conference, the award recognizes and honors an ASPPA member who has made a significant contribution to retirement plan education. Michael Bain, MSPA, ASA, EA, MAAA was selected by the ASPPA Board of Directors and the Education & Examination (E&E) Committee's leadership in honor and recognition of his tremendous contributions to ASPPA's educational programs and to the education of the retirement plan arena.

As a long-time member of ASPPA's Education & Examination Committee, Mike chaired the Defined Benefit exam committee and served as General Chair of the committee. Mike was one of the key individuals spearheading the transition of ASPPA examinations from pencil and paper format to the Prometric testing system. His influence in developing immediate scoring, including setting standards for examination quality continues to positively impact current examination candidates. He was also instrumental in developing curriculum for ASPPA's Qualified 401(k) Administrator (QKA) and Qualified Plan Financial Consultant (QPFC) credentials.

Mike continues to dedicate his time, knowledge, and expertise to educating professionals in the industry. His presentations at conferences and other professional groups educate and train individuals preparing for examinations as well as those seeking continuing professional education. Mike's contributions to the development of ASPPA's web course and webcast delivery were instrumental to their success and are currently in use today.

He has been and continues to be a frequent educator of cram courses, webcourses (most notably E&E's Defined Benefit webcourse), webcasts, and conferences. Mike also frequently authors articles for *The ASPPA Journal* and other industry publications. He has conducted numerous seminars on the latest topics in the pension arena for accountants, brokers, and clients. In addition, he has taught various mathematics courses at community colleges and at the University of California, Riverside.

Mike is the president of CMC Pension Professionals located in Glendale, Calif. CMC provides companies with retirement, pension and other employee benefit plans and services including: plan design; installation; enrollment; administration; employee communications; compliance testing; government reporting; plan terminations; plan distributions; actuarial services; expert witness testimony; intervention with the Internal Revenue Service; and general benefits consulting.



He is an enrolled actuary and a member of the Society of Actuaries (SOA), American Academy of Actuaries, and ASPPA. He has also served on the ASPPA Board of Directors and has been very active in many of ASPPA's professional committees and programs, including:

- General Chair for Education & Examination Committee
- Chair of the Technology Committee
- Chair of the ASPPA Pension Education and Research Foundation (ASPPA PERF)
- Chair of the Annual Conference Committee
- Liaison to Academy Pension Practice Council
- ACOPA Liaison to the Joint Board for the Enrollment of Actuaries examination program

Mike's influence and tireless efforts have greatly expanded the educational opportunities available in the retirement field today. His development of the framework for many operational aspects of ASPPA's educational and examination programs and his ongoing educational contributions continue to positively impact the current and next generation of retirement plan professionals.

Congratulations to Mike!

*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, D.C. (**cwilliams@asppa.org**)*

Where Great Minds Come Together Many Things Are Possible

by Lawrence D. Silver, QKA

The adage "Two Minds are Better Than One" certainly rang true on Saturday, August 6 when representatives of the ASPPA Benefits Councils (ABCs) got together with ABC and ASPPA leadership for the annual ABC Leadership Conference. The theme of the meeting was: If two minds are better than one, then what can be accomplished with 25 minds working together? Thankfully we had actuaries in the room to inform us that if two minds are better than one, then 25 minds working together bring a power of infinity to the equation! After a quick, fun exercise to prove that theory, the real work began.

With 19 local ASPPA Benefits Councils across the country promoting ASPPA, educating the pension community, and engaging their local members to support grassroots efforts on behalf of ASPPA, there are issues affecting multiple chapters simultaneously but in differing ways. Working together, the group discussed and brainstormed ideas on ways to enhance the ABC program for existing councils and to ensure the successful expansion of the program as future councils join. Topics included the attraction of new members at the ABC level with the end result of increasing ASPPA memberships, sustaining current ABC memberships, types of educational programming best suited for the ABCs, increasing registrations for local educational programs and networking events, and managing a successful volunteer board of directors.

This meeting was incredibly fruitful. There was amazing intellect in the room as leaders came from varying backgrounds in their full-time employment and shared various methods for success at their local ABC. We had differing opinions on best practices and had incredible back-and-forth discussing the reasons why these practices could work. Each ABC leader left the meeting with a handful of new ideas to bring back to their board for discussions of immediate implementation. The leaders recognized how important a successful ABC program is for the vitality of a local ABC and to the increased membership goals of ASPPA.

I would like to take a moment to thank Jenny Cusick, Co-chair of the ABC Committee, and Gina Farmer, Vice Chair, for all of their hard work that went into making this meeting a success. Without either of them, this day would not have been possible. I would also like to thank all of the leaders and ASPPA staff who gave up a weekend to be part of the meeting.

Grassroots Efforts

A topic brought forth to the leaders was how pivotal a role the ABCs can/will play in grassroots efforts with legislatures to spread ASPPA's messaging on policy relating to the retirement plan industry. There are critical changes being proposed in Washington and the ABC members are crucial in spreading the messages that ASPPA is supporting.

Starting your own ABC

Do you have a study group, a concentration of ASPPA members in your area, or are you interested in spreading the grassroots efforts of ASPPA and want to know how you can start an ASPPA Benefits Council? Reach out to Jenny Cusick at jcusick@asppa.org or myself at the contact information below to receive more information.

*Lawrence D. Silver, QKA, is an Assistant Director of ERISA compliance for The Hartford in Boston, Mass. He has more than 14 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 currently serving as the Co-chair of the ASPPA Benefits Council Committee and as a Board member of the ASPPA Benefits Council of New England. He has previously served as the president, treasurer, and liaison of the ASPPA Benefits Council of New England. On the national level, Larry has served as the Co-chair of the ASPPA Technology Committee and the Vice Chair of the ASPPA Benefits Council Committee. (**lawrence.silver@thehartford.com**)*

GAC CORNER

ASPPA Government Affairs Committee

Comment Letters and Testimony Since April 2011

July 25, 2011
ASPPA submitted comments to the Department of the Treasury regarding its Preliminary Plan for reducing regulatory burdens. ASPPA's recommendations related to: (1) the initiative regarding lifetime income distributions; (2) relief for sponsors of safe harbor 401(k) plans who encounter financial difficulties; (3) mid-year changes to a safe harbor 401(k) plan; (4) a unified approach for electronic disclosures for retirement plans; (5) plan sponsor elections under the Pension Protection Act of 2006; (6) simplification of required employee communication items; and (7) that interim amendments only be required once every three years.
www.asppa.org/Document-Vault/pdfs/GAC/2011/7262011-comment.aspx

July 21, 2011
Kristi Cook, JD, TGPC, testified on behalf of ASPPA and NTSAA at an Advisory Council on Employee Welfare and Pension Benefit Plans hearing on 403(b) plans. ASPPA and NTSAA filed a statement for the record with the Council that addressed: (1) differences between 403(b) plans and 401(a) qualified plans; (2) the safe harbor exclusion under Title I of ERISA; (3) challenges for disclosure of fees and services under section 408(b)(2) of ERISA for 403(b) plans; (4) 403(b) plan termination and handling of custodial mutual fund accounts; and (5) audit issues and financial statements.
www.asppa.org/Document-Vault/pdfs/GAC/2011/7192011-comment.aspx

July 15, 2011
ASPPA and NTSAA submitted comments to the Internal Revenue Service regarding the termination of a 403(b) plan which is funded, in whole or in part, by 403(b)(7) custodial accounts.
www.asppa.org/Document-Vault/pdfs/GAC/2011/7152011comment.aspx

July 5, 2011
ASPPA submitted comments to the Department of Labor to request the extension of certain elements of good faith compliance provided in the Department's Frequently Asked Questions (FAQ) on Schedule C to the Form 5500.
www.asppa.org/Document-Vault/pdfs/GAC/2011/752011schc-comment.aspx

July 1, 2011
ASPPA submitted comments to the Department of Labor regarding its Preliminary Plan for reducing regulatory burdens. ASPPA's recommendation related to the use of electronic disclosure as the default option.
www.asppa.org/Document-Vault/pdfs/GAC/2011/752011-comment.aspx

June 21, 2011
NAIRPA submitted comments to the Securities and Exchange Commission in response to its request for comments on existing private and public efforts to educate investors.
www.asppa.org/Document-Vault/pdfs/GAC/2011/6212011-comment.aspx

June 15, 2011
ASPPA and CIKR submitted comments to the Department of Labor regarding the applicability dates for the requirements for fee disclosure to plan fiduciaries and participants under ERISA sections 404(a) and 408(b)(2).
www.asppa.org/Document-Vault/pdfs/GAC/2011/6152011-comment.aspx

June 14, 2011
ASPPA submitted supplemental comments to the Department of Labor in response to its request for information regarding electronic disclosure by employee benefit plans to provide the Department with a White Paper by Professor Peter P. Swire and Kenesa Ahmad entitled, "Delivering ERISA Disclosure for Defined Contribution Plans: Why the Time has Come to Prefer Electronic Delivery." ASPPA, the Investment Company Institute and other organizations had jointly supported the preparation of the White Paper.
www.asppa.org/Document-Vault/pdfs/GAC/2011/6142011-comment.aspx

www.asppa.org/Document-Vault/pdfs/GAC/2011/6142011-whitepaper.aspx

June 10, 2011
ASPPA submitted comments to the Internal Revenue Service in response to its request for comments regarding its 2011-2012 Guidance Priority List.
www.asppa.org/Document-Vault/pdfs/GAC/2011/6102011-comment.aspx

June 8, 2011
ASPPA submitted comments to the Internal Revenue Service to provide suggestions for improving the pre-approved plans and the determination letter program with respect to defined contribution plans.
www.asppa.org/Document-Vault/pdfs/GAC/2011/06082011-comment.aspx

June 6, 2011
ASPPA submitted comments to the Department of Labor in response to its request for information regarding electronic disclosure by employee benefit plans.
www.asppa.org/Document-Vault/pdfs/GAC/2011/06062011-comment.aspx

May 31, 2011
ASPPA submitted comments to the Internal Revenue Service requesting a revision of the due date for filing 2009 and 2010 Form 8955-SSA.
www.asppa.org/Document-Vault/pdfs/GAC/2011/060111-comment.aspx

For all GAC filed comments, visit **www.asppa.org/comments**.
For all GAC testimony, visit **www.asppa.org/testimony**.

Welcome New Members and Recent Designees

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Gregg Johnson, MSPA

CPC

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Joshua Coons, CPC
Krisy M. Dempewolf, CPC, QPA, QKA
Ryan E. Kettel, CPC, QPA

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Jeffrey L. Maxwell, QPA, QKA
Joe Mengel, QPA, QKA, QPFC
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APM

Candy Brower, APM
Adam M. Fleming, APM
Michael Wieber, APM
Susan Miner Wright, APM
Adam G. Zuwerink, APM

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Jason M. Whitney
Martin G. Whitney
Debra Wright

Calendar of Events

ASPPA

Date*	Description	CPE Credits**
Oct 23 – 26	ASPPA Annual Conference – National Harbor, MD	25
Oct 31	Final registration deadline for fall examinations	
Nov 1 – Dec 14	Fall examination window	
Nov 8	Postponement deadline for CPC examination	
Nov 9	EA-2A examination (administered by the Society of Actuaries)	
Nov 14 – 15	The ASPPA Cincinnati Pension Conference – Covington, KY	15
Nov 15	CPC examination	
Nov 29	Postponement deadline for A-4 examination	
Nov 30	Postponement deadline for fall examinations	
Dec 1	Registration deadline for second semester CPC modules	
Dec 8	A-4 examination	
Dec 15	Second semester CPC modules submission deadline	
Dec 15	RPF-1, RPF-2 and TGPC-1 online examinations submission deadline	
Dec 30	Second semester webcourse access period ends	

*** 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.*

ABC Meetings

November

ABC of Northern Indiana | Nov 2
½-day Seminar with Adam Pozek
Adam Pozek, QPA, QKA, QPFC

ABC of Atlanta | Nov 3
Richard Hochman presents EPCRS
Richard A. Hochman, APM

ABC of Greater Philadelphia | Nov 9
Ethics
Lauren Bloom

ABC of Central Texas | Nov 10
Legislative Update
Paul Hinderegger, CPC, QPA

ABC of New York | Nov 17
A Half-day Seminar with Craig Hoffman
Craig P. Hoffman, APM

ABC of Greater Twin Cities | TBD
Tentative Topic: Plan Design

December

ABC of Greater Cincinnati | Dec 13
Topic TBD
Richard A. Hochman, APM

ABC of North Florida | Dec 13
Washington Update with Craig Hoffman
Craig P. Hoffman, APM

ABC of Atlanta | TBD
Legislative Update – All-day Seminar with Sal Tripodi
Sal L. Tripodi, APM

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

AIRE & ERPA

American Institute of Retirement Education
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Jan 5
ERPA-SEE Winter Registration Deadline

Jan 6 – Feb 17
ERPA-SEE Winter Examination Window

Feb 2
ERPA-SEE Examination Postponement Deadline

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

Level = Moderate

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

"Whom should I call first?
911 or Technical Support?"

Word Scramble

U C RACE ☐☐☐ _ _ _

LEND BUD ☐ _ ☐ _ ☐ _ _

SHED CLUE ☐ _ ☐ _ _ _ _ ☐

SAND TEAM _ ☐ _ _ ☐ _ _ _

Clue: What the actuary's son created on the playground.

Answer: A _ _ _ _ _ _ _ _ _ _ _ _ plan.

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

Mystery Answer:

It was " _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _."

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

What the actuary's son
created on the playground

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