THE ASPPA Journal

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

In This Issue:

Presidential Year in Review

by Sheldon H. Smith, APM

Immediate Past President Sheldon H. Smith, APM (left), passes leadership to ASPPA's 2010-2011 President, Thomas J. Finnegan, MSPA, CPC, QPA.

In looking back on ASPPA's 2010 year, the conclusion is obvious: 2010 was the year ASPPA became an "adult" professional society. Hard-working, devoted and capable staff members and volunteers took the organization to heights never before attained.

In fulfilling its mission, ASPPA's accomplishments in 2010 were significant. The Government Affairs Committee (GAC), with strong direction from Robert M. Richter, APM; David M. Lipkin, MSPA; Jim Paul, APM; Judy A. Miller, MSPA; and Craig P. Hoffman, APM, succeeded in getting beneficial legislation such as the in-plan Roth conversion passed, and more importantly, GAC prevented some legislation destined to harm the system from getting passed.

Throughout 2010, our GAC subcommittees impressed the various agencies with thoughtfulness and judgment in providing comment letters and other assistance in helping to frame the regulations that guide our world. Our GAC subcommittees presented

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With all the changes 2011 and 2012 will entail, now is an *ideal* time to find a partner in the retirement plan business.

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FROM THE EDITOR

It's Tax Season: Don't Worry—Be Happy!

by Chris L. Stroud, MSPA

After basking in the glow of the holiday season, most folks in our industry now face the busiest time of the year. Testing season, tax season—whatever you call it, it usually translates into lots of work and long hours. It can often be a stressful time, but it doesn't have to be.

Webster's definition of stress is "a specific response by the body to a stimulus, as fear or pain, that disturbs or interferes with the normal physiological equilibrium of an organism." One would assume that anything that messes with our equilibrium is not a good thing. A related definition by Webster says that "the amount of stress is usually measured in pounds per square inch." In our industry, I think it's more likely to be measured in client and/or plan files per square inch of our desks!

Although we tend to think that stress is created by external forces that are beyond our control, the reality is that our own personal stress is actually caused by *how we react* to those external forces. That is exactly why different people respond differently to the same situation. Some choose to be happy in spite of the external forces; others allow those forces to get the best of them and trigger personal stress. So what is the best way to avoid stress? Laugh and be happy!

During testing/tax season, many offices have special rules because of the large workload. Some do not allow vacations during that time and some require extra hours. If you think some of your company's policies are unfair, take a look at the Crazy Workplace Rules in the next column (**www.work-at-home-forum.com**). Laugh and be happy that these rules don't belong to your company!

As Robert Louis Stevenson once said, "There is no duty we so much underrate as the duty of being happy." Take time to give yourself a reason to be happy. Enjoy your surroundings and find something pleasant that makes you smile. If you need some extra encouragement during this busy season, check out **www.happiness-project.com**. You can find topics like "Seven tips for making yourself happier IN THE NEXT HOUR" and "12 Ways to Turn Around a Terrible Day."

Don't Worry—Be Happy!

Crazy Workplace Rules

SICK DAYS: We will no longer accept a doctor statement as proof of sickness. If you are able to go to the doctor, you are able to come to work.

SURGERY: Operations are now banned. As long as you are an employee here, you need all your organs. You should not consider removing anything. We hired you intact. To have something removed constitutes a breach of employment.

DRESS CODE: It is advised that you come to work dressed according to your salary. If we see you wearing $350 Prada sneakers and carrying a $600 Gucci bag, we assume you are doing well financially and therefore you do not need a raise.

PERSONAL DAYS: Each employee will receive 104 personal days a year. They are called Saturday and Sunday.

VACATION DAYS: All employees will take their vacations at the same time every year. The vacation days are as follows: January 1, July 4 and December 25.

OUT FROM YOUR OWN DEATH: This will be accepted as an excuse. However, we require at least two weeks notice as it is your duty to train your own replacement.

RESTROOM USE: Entirely too much time is being spent in the restroom. In the future, we will follow the practice of going in alphabetical order. For instance, all employees whose names begin with "A" will go from 8:00 to 8:20, employees whose names begin with "B" will go from 8:20 to 8:40 and so on. If you're unable to go at your allotted time, it will be necessary to wait until the next day when your turn comes again. In extreme emergencies employees may swap their times. Both employees' supervisors must approve this exchange in writing.

LUNCH BREAK: Skinny people get an hour for lunch as they need to eat more so that they can look healthy. Normal size people get 30 minutes for lunch to get a balanced meal to maintain their average figure. Fat people get 5 minutes for lunch because that's all the time needed to drink a Slim Fast and take a diet pill.

Thank you for your loyalty to our company. We are here to provide a positive employment experience.

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ASPPA positions with integrity and a thorough analysis no matter how complex. As a result, ASPPA is thought of very highly in the agencies. 2010 was a year where it seemed that the regulators were as busy as ever, and GAC responded in exemplary fashion. We received many wonderful kudos about ASPPA's work from high level agency officials.

On the education side, our Education and Examination (E&E) Committee, headed by Sue Perry, CPC, QPA, QKA, and Kim L. Szatkowski, CPC, QPA, QKA, performed extraordinarily. CPC modules were all put online in 2010. E&E educated thousands of members and non-members and hundreds of new, meaningful ASPPA credentials were awarded. In 2010, E&E was able to adjust our continuing professional education (CPE) requirements (after lots of hard work by Lynn M. Young, MSPA, and her task force), and along with our Technology Committee, led by Larry Silver, QKA, and Vincent Huckle, formatted a solid electronic CPE reporting structure.

Our publications are well received, from Sal Tripodi's *The ERISA Outline Book* to *The ASPPA Journal* and *ASPPA asaps*. Volunteers led by Chris L. Stroud, MSPA, Kimberly A. Flett, QPA, QKA, and Ed Snyder primarily staffed the membership publications and did a superb job in 2010.

The ASPPA College of Pension Actuaries (ACOPA), ASPPA's actuarial arm, also grew up this year. In the third year of the ACOPA structure, ACOPA demonstrated strength among the American actuarial organizations. With the leadership of Mary Ann Rocco, MSPA, Judy A. Miller, MSPA, and the entire ACOPA Leadership Council, ACOPA took great strides in 2010 to enhance its volunteerism, its voice nationally and its role in ASPPA. ACOPA, with the direction of Pat Byrnes, MSPA, has developed a mission statement that will enhance ACOPA membership for all pension actuaries. The structure that many ACOPA members and ASPPA Past President Sal L. Tripodi, APM, created three years ago is working and, like ASPPA itself, became an "adult" in 2010.

Early in 2010, the National Tax Sheltered Accounts Association (NTSAA) became part of the ASPPA family. This 400-member organization has added greatly to the breadth and depth of the ASPPA experience by bringing 403(b) and 457(b) plans into our framework. In response, the ASPPA membership in 2010 amended the ASPPA Bylaws to reflect that ASPPA is not just the professional organization for those who work in the "private" retirement system, but for everyone in the "employer-based" retirement system. The ASPPA mission and that of NTSAA are sympathetic, resulting in a very rapid integration of NTSAA and a gracious welcome from ASPPA members to NTSAA members, all of whom now belong to ASPPA.

ASPPA now conducts 15 conferences each year. That is amazing. Under the direction of Adam C. Pozek, QPA, QKA, QPFC, and Joanne Lawrence Smith, we had great success with our conferences this past year. Attendance was back to pre-2008 levels. The quality of programming and locations was typically exceptional. We continue to provide our members with a great combination of face-to-face and Web meetings, symposia and conferences. Our ability to educate the benefits world through conferences is unparalleled, even by much larger organizations. 2010 was the Year of Return for ASPPA conferences, yet another step in demonstrating that ASPPA has truly grown up.

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Membership Development, under the direction of John Phillips and Heidi J. Cook, CPC, QPA, QKA, reached new heights this year. As many professional societies either lumbered along with a lack of growth or actually shrunk in size due in no small measure to economic conditions, ASPPA's membership grew at an exceptional rate. ASPPA now has more than 7,500 members (an increase of almost 1,000 members over 2009) and continues to grow. These figures demonstrate how well our Membership Development Committee represents that ASPPA adds value and that ASPPA membership is worthwhile to professionals in our industry.

Laura S. Moskwa, CPC, QPA, John Phillips and their Marketing Committee had a great 2010 promoting ASPPA. Many of the successes identified above began with the hard work of this committee. Marketing efforts, design, promotion and, of course, the new face of the ASPPA Web site all demonstrate how this committee grew up in 2010 and helped ASPPA do the same.

The ASPPA Benefits Councils (ABCs) were rejuvenated in 2010. By imbuing the ABCs with a new sense of their especially important role as the grassroots base of ASPPA, the ABCs have grown in membership, provided quality education to members and have provided leaders who are now leaders at ASPPA. The ASPPA Board of Directors in 2010 set out specific guidelines and Bylaws for the ABCs to follow so that our ABCs share uniformity of mission and structure. ASPPA has better identified and provided needed services to its ABCs. This structure is working well throughout the ABC universe. And finally, late last year, new ABCs came into existence.

ASPPA's Executive Director/CEO, Brian H. Graff, Esq., APM, and its CFO, Tom Hopkins, provide the organization with skills and direction needed to be successful. They, along with the committed and passionate members of ASPPA's Board of Directors, provide the kind of leadership needed to achieve all that was accomplished in 2010. There were many other wonderful successes throughout ASPPA in 2010, but space is limited, and I cannot list all of them.

It was a wonderful year for me as President to have the opportunity to work with everyone identified above and the many staff members and volunteers whom I could not list for lack of space but who made my 2010 satisfying and memorable and who so ably assisted ASPPA to achieve so many successes in one year. To all of you, thank you very much.

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

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WASHINGTON UPDATE

Retirement Policy and the 2010 Election Results

by Brian H. Graff, Esq., APM

It was a long night (especially for Democrats) with Republicans making gains in all sectors throughout the country. In fact, the Republicans gaining more than 60 seats in the House was an increase the size of which has not occurred for more than 60 years. Ultimately, as predicted, the House flipped and the Senate remains in Democratic control, but with a much smaller majority.

As for the impact on retirement policy and the prospect for legislation, it will really depend on the willingness of both sides to work together. John Boehner has a long history of deal making. For example, he reached across the aisle to work with the late Senator Kennedy to create the No Child Left Behind Act when he was Chairman of the House Education and Labor Committee when Republicans were previously in control of the House. His speech on election night would suggest that he believes that House Republicans cannot simply stand still for the next two years. Of course, that won't get very far unless the President demonstrates a willingness to compromise as well.

Retirement issues have traditionally been handled in a bipartisan manner. PPA passed the Senate with more than 90 votes, so it's very conceivable those issues could be used as a bridge by both sides to demonstrate the capacity to compromise.

The need to address some critical issues certainly exists. Retirement plan coverage rates are stuck at approximately 50 percent, where they have hovered for decades, and the Auto-IRA proposal would jump that number up significantly. The proposal was originally a joint project between the Heritage Foundation and the Brookings Institution, conservative and liberal think-tanks, respectively; so the proposal clearly has bi-partisan roots. But, since the proposal was included in the President's budget and was introduced by only Democrats in the last Congress, it is currently perceived as a Democratic proposal in some circles.

That perception will have to change if it is to go anywhere, and that will likely require some creativity around the perceived "mandate" issue, something on which we are currently working. For example, in contrast with a mandate, incentives may be added, such as enhanced tax credits, to strongly encourage small employers to adopt the program.

In addition to Auto-IRAs, there will be special focus on the promotion of small business plans, which could be a good thing. For example, a proposal to provide top-heavy relief to deferral-only plans could be revived. On the other hand, proposals to create super-IRAs with much higher limits, perhaps equal to the 401(k) limit, will likely resurface. Obviously, if adopted, such a proposal would devastate small business retirement plan coverage by effectively removing all of the incentives for a small business owner to adopt a plan.

Of course, there is a revenue cost associated with such proposals. Many of the new Republicans ran on a platform of fiscal discipline. Consequently, any new proposals with added cost will face an even higher hurdle than before. Further, the deficit commission report due out by the end of 2010 may question the effectiveness of the tax expenditures associated with retirement savings. The report may lead to some proposals to cut back contribution limits as opposed to increasing them.

Unfortunately, policymakers who make these proposals are ignoring the simple fact that the current tax expenditure analysis, as it applies to incentives for retirement savings, is completely wrong. The analysis done by the Treasury Department and the Joint Committee on Taxation ignores the fact that these incentives are deferrals, not exclusions like the mortgage interest deduction, by comparison. ASPPA has commissioned a study to evaluate the real cost of retirement savings incentives, which we expect to be substantially less than what the government reports. We will report those results in a future issue.

Funding relief for DB plans, yet again, could be a possible driver for retirement legislation. Larger companies are already raising concerns about the funding pressure they will face as the PPA funding rules become fully effective in 2012. The situation for many multiemployer plans remains woeful, and they will certainly be asking for special relief.

In order to make retirement policy soup, there will need to be ingredients that attract both Democrats and Republicans. There certainly seem to be enough issues floating around that would be of interest to both sides. The key will be whether the right ingredients can be cobbled together.

An interesting aside is the possible effect that the return of Portman-Cardin could have. With Rob Portman's election to the Senate, the Portman-Cardin band is back together. Given the pressing need to demonstrate some bipartisanship, you could see them playing an active role, given their history, regardless of whether they are on the relevant committees of jurisdiction.

Finally, one unfortunate note needs to be made. Earl Pomeroy lost his reelection bid. Regardless of how you felt about his views on other issues, he was a stalwart supporter of the private retirement plan system. He was especially a great defender of cross-tested plans, and his willingness to fight that battle will be sorely missed.

Needless to say, it's never boring in DC.

*Brian H. Graff, Esq., APM, is the Executive Director/CEO of ASPPA. Before joining ASPPA, he was pension and benefits counsel to the US Congress Joint Committee on Taxation. Brian is a nationally recognized leader in retirement policy, frequently speaking at pension conferences throughout the country. He has served as a delegate to the White House/Congressional Summit on Retirement Savings, and he serves on the employee benefits committee of the US Chamber of Commerce and the board of the Small Business Council of America. (**bgraff@asppa.org**)*

Impact of the 408(b)(2) Regulation on TPAs

by Bruce L. Ashton, APM, and Fred Reish, APM

On July 16, 2010, the US Department of Labor (DOL) issued an "interim final" regulation under ERISA Section 408(b)(2) that requires most service providers to ERISA-governed "pension"[1] plans to provide written disclosures to plan fiduciaries before they enter into, renew or extend contracts or arrangements to provide their services.[2] As described in more detail later in this article, the new regulation applies to third party administrators (TPAs) unless their compensation is received only from the plan sponsor or the plan. That is, if a TPA receives indirect compensation, it is a "covered" service provider.

To put the new regulation in context, ERISA section 406(a) prohibits the provision of services to plans unless an exemption applies. An exemption is available under section 408(b)(2) if:

- the services are necessary for the establishment or operation of the plan;
- the arrangement between the service provider and the plan is reasonable; and
- the compensation paid to the service provider for the services is reasonable.[3]

The purpose of the new regulation is to provide guidance on what steps a service provider must take in order for its arrangement with a plan to be considered reasonable and thus not a prohibited transaction.

This article focuses on the impact of the regulation on covered TPAs that do not provide recordkeeping services, are not producing TPAs or are not affiliated with brokers, unless specifically mentioned. These are referred to as "independent" TPAs.

Discussion of the New Regulation

The 408(b)(2) regulation requires "covered service providers" that provide services to "covered plans" to disclose the terms of the arrangement in order to give the "responsible plan fiduciary" sufficient information to determine whether the arrangement is exempt from the prohibited transaction restrictions.[4] A person providing services to a plan is presumed to have engaged in a prohibited transaction under ERISA section 406(a) unless he or

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1 For practical purposes, under ERISA, "pension" plans include all private sector tax qualified retirement plans that cover at least one common law employer. In addition, that includes any private sector 403(b) plan that is subject to ERISA's provisions.

2 For the sake of simplicity, we will refer to these as "arrangements," since the statutory exemption and the regulation relate to service arrangements and do not require formal contracts between the parties.

3 There are parallel provisions in the Internal Revenue Code, but for the sake of simplicity, this article focuses on the ERISA provisions.

4 ERISA Section 406(a)(1) says that a "fiduciary with respect to a plan shall not cause the plan to enter into a transaction, if he knows or should know that such transaction constitutes a direct or indirect…(C) furnishing of goods, services or facilities between the plan and a party in interest." Section 408(b)(2) provides the exemption from this prohibition. Even though the focus is on the fiduciary, under the new regulation, the party charged with engaging in the prohibited transaction for failure to make adequate or proper disclosure is the service provider.

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Even if an independent TPA is providing plan administration services, they will be covered by the regulation only if they receive indirect compensation.

she can prove that there was an exemption for the transaction (*e.g.*, the services and the compensation for those services). That is, the burden will be on the service provider to prove that it complied with the regulation, and the failure to fulfill the disclosure obligations in the regulation will cause the service provider's engagement to be a prohibited transaction. Consequently, the service provider will have to restore to the plan the "amount involved," plus interest.

Impact: Although it may vary based on the type of disclosures that were not made, the amount involved will likely be all of the compensation received by the TPA. An excise tax may also be imposed under the Internal Revenue Code, and if the DOL recovers the money for the plan, an additional 20% penalty may be imposed.

Applicability

Covered Plans

The regulation applies to "covered plans" (*i.e.,* all ERISA-governed retirement plans other than SEP IRAs and SIMPLE IRAs). (Individual retirement accounts are excluded since they are not ERISA plans.) Thus, 401(k) plans, ERISA-covered 403(b) plans, defined benefit pension plans and non-participant directed profit sharing plans, among others, are subject to the regulation. [Generally, this article will focus on the application of these rules to participant-directed 401(k) and ERISA-covered 403(b) plans.] It appears that non-ERISA tax-qualified plans, such as plans that cover only the business owner and his or her spouse, are not covered plans.[5]

Comment: While several categories of plans are not covered by the regulation, such as governmental and non-ERISA 403(b) arrangements and plans subject to the Internal Revenue Code that are not subject to ERISA, service providers—even non-covered service providers—may find that the new regulation becomes a standard for all of their clients. There are several reasons for this effect:

- First, the ERISA and Code statutory prohibitions apply to plans, service providers and circumstances even if they are not covered by the regulation—but other than the new regulation, there is no guidance for disclosure in non-covered cases. Thus, even though the specific requirements of the new regulation do not apply, courts may apply some or all of its criteria in determining whether a prohibited transaction exists to non-covered situations.
- Second, service providers that serve multiple markets may find it more cost-effective and efficient to establish one disclosure regimen rather than trying to determine when the disclosures are required and when they are not.
- Third, the disclosures required by the new regulation could become the expectation of consultants and fiduciaries in all cases, regardless of whether they are covered by the regulation.
- Finally, in the case of government plans, the laws of some states are virtually identical to ERISA, and it is not hard to imagine that a state court might look to ERISA and the regulations under ERISA to determine compliance with the state law.

Covered Service Providers

The regulation applies to "covered service providers" that reasonably expect to receive $1,000 or more in direct or indirect compensation (apparently over the life of the contract, though this is not altogether clear) and that provide "covered services." Among the covered services are administration services to plans so long as the service provider receives indirect compensation (discussed later in this article). Even if an independent TPA is providing plan administration services, they will be covered by the regulation only if they receive indirect compensation. (This provision assumes that the TPA is not serving in a fiduciary capacity, which is generally not the case.)

Impact: The final regulation reflects a significant change from the proposed regulation. Under the original proposal, all TPAs would have been required to comply with its requirements regardless of the source of their compensation. Under the final regulation, only those that receive indirect compensation must comply. Since, in our experience, many TPAs do receive indirect compensation, this change may not be a material change and they will still need to comply with the new rules.

Specific Requirements

Disclosure Must Be in Writing

The regulation requires a covered service provider to disclose specified information to the "responsible plan fiduciary" (a defined term) in writing. While the proposed regulation specified that there had to be a written contract or arrangement between the plan and the service provider, the "contract" requirement has not

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5 Such plans are not covered by Title I of ERISA under DOL Regulation Section 2510.3-3(b).

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The final regulation requires that covered service providers comply with the disclosure requirements for all covered plans by July 16, 2011, even if the arrangement is entered into prior to that date and even if it is not being extended, renewed or modified.

been carried over into the final regulation. That said, there is still a requirement for providing the required disclosures in writing, and it may be sensible for covered service providers to use a written contract to do so.[6]

Impact: In our experience, most independent TPAs already use a written service agreement. Adding the required disclosures to the contract may be an effective way to provide the disclosures rather than developing a separate written disclosure notification. In addition to the elimination of having to track two separate pieces of documentation, the TPA will be better able to prove compliance if the disclosures are in the contract signed by the client. Further, a written service agreement detailing the services the TPA will provide, describing any limitations on those services, spelling out their compensation and specifying remedies and limitations on their liability for errors would be prudent from a risk management perspective.

Timing of Disclosures

The disclosures required by the regulation must be made to the responsible plan fiduciary *before* the fiduciary agrees to hire the service provider or to renew or extend its contract. For contracts with fixed terms, such as those that expire every year, service providers would need to make these disclosures every time they enter into a new contract or renew the existing contract. The one exception to this rule is for existing clients between now and the effective date of the regulation—what we refer to as the "transition period." For those clients, the disclosures need to be made no later than the effective date.

Impact: The responsible plan fiduciary is identified as the person or entity that has the authority to make decisions about the hiring of service providers, such as the TPA, on behalf of the plan. Typically, that would either be the plan sponsor with capacity as the primary plan fiduciary (that is, as the Plan Administrator) or, if the plan sponsor has appointed a committee, it would be the committee (or one of its members).

Compliance Effective Date

The proposed regulation applied only to new, renewed or extended arrangements entered into after the effective date of the rule. The final regulation requires that covered service providers comply with the disclosure requirements for *all* covered plans by July 16, 2011, even if the arrangement is entered into prior to that date and even if it is not being extended, renewed or modified. Thus, there are no "grandfathered" clients to whom the disclosures will not need to be made, and covered service providers will need to give the disclosures to all of their clients, in addition to establishing procedures for complying in the future for new clients.

Impact: Because the disclosures must be made to all clients no later than July 16, 2011, the new regulation effectively creates a "transition period"—that is, the period between now and the compliance effective date. Thus, TPAs will need to decide on the approach for how to comply for the clients to which they provide services as of the effective date (*i.e.*, the "transition" plans) and, potentially, a second approach for new clients acquired after the effective date.

One approach may be to prepare a disclosure notice to be given to transition plan clients and have a modified service agreement for use in the future. Another, possibly more efficient approach may be to develop a new service agreement containing the disclosures now and begin using it with all clients. In that way, they may convert all of their clients to the new regime before the July 16, 2011 deadline. Further, even if all of those clients do not sign and/or return the new service agreements, they will nonetheless have been given the written disclosures (because of the delivery of the proposed agreements). Some of our TPA clients have elected this latter approach and will be sending the new agreement out to all existing clients when they request the year-end data for their clients' plans.

Services

The regulation requires the covered TPA to describe the services it will provide under the contract. The regulation does not specify how the services are to be described, indicating only that the level of detail will vary depending on the needs of the responsible plan fiduciary. The format of the disclosure is not specified, though the DOL has requested comments on whether it should amend the regulation to require service providers to give a short (*i.e.*, one or two-page) summary disclosure to serve as "a roadmap for the plan fiduciary describing where to find the more detailed elements of the disclosures required by the regulation." (*See* Preamble to the interim final regulation.) For TPA clients who want to take a conservative approach, we have added a summary and roadmap to their new service agreements. This summary and roadmap can be used as a cover page for the agreement.

6 While the regulation is silent on whether electronic disclosures satisfy the "written" requirement, there is language in the preamble supporting the use of electronic communication.

Impact: TPAs could probably describe their services as consulting and third party administration services. In our experience, TPAs that currently use service agreements already spell out their services in considerable detail. Indeed, from a risk management perspective, we believe this is important to describe what services the TPA will provide—and the services that it will not provide. For example, TPAs who will not evaluate controlled group issues or perform top heavy testing, unless specifically requested to do so, should state this in their contracts.[7]

Note that if a TPA provides certain other services (*e.g.*, recordkeeping or brokerage services) in addition to its administration services, additional disclosures would be required. Discussion of these items is beyond the scope of this article.

Compensation

The covered service provider must describe the direct and indirect compensation to be received by the service provider and its affiliates and subcontractors. Direct compensation means "compensation" (*i.e.*, anything of monetary value, such as money, gifts, awards and trips, but excluding non-monetary items of $250 or less received during the term of the contract or arrangement) that is received directly from a plan. Indirect compensation is "compensation" that is received from any source other than the plan, the plan sponsor, the covered service provider, an affiliate of the service provider or a subcontractor of the service provider.

Note that compensation paid by the plan sponsor is neither direct nor indirect and thus is not technically required to be disclosed.

For indirect compensation, the regulation also requires identification of:

- the services for which it will be received; and
- the payer of the indirect compensation.

The latter requirement—identification of the payer of the indirect compensation—is a new requirement, not found in the proposed regulation. Effectively, this requirement partially replaces the somewhat unworkable provision of the proposed regulation to disclose relationships and describe conflicts of interest.

Note that the definition of compensation includes both money and "any other thing of monetary value." For non-monetary items, the proposal does not specify how to disclose the value or cost. However, as a general premise, service providers must disclose compensation as a dollar amount, a formula based on plan assets, a per participant charge or all of the above. Note, too, that the requirement includes compensation received by affiliates and subcontractors of the service provider.

The regulation also requires that a service provider disclose the manner of payment (*e.g.*, whether it will bill the plan, deduct fees from plan accounts or be charged against the plan investments).

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7 We have successfully defended TPAs against negligence claims based on the explicit limitation of services in their service agreements.

Finally, there is a requirement to disclose any compensation the service provider reasonably expects to receive in connection with termination of the contract (*e.g.*, a surrender charge) and how prepaid amounts will be calculated and refunded upon termination of the contract (for example, if a TPA charges in advance for the year and the arrangement is terminated before all services have been provided).

There are a number of additional disclosures applicable to recordkeepers, brokers and certain plan fiduciaries (that manage certain types of investments in which a plan may invest), but those requirements would not ordinarily be applicable to independent TPAs and are not discussed in this article.

Impact: The new regulation is somewhat schizophrenic in its requirements regarding the disclosure of compensation. On the one hand, a TPA is a covered service provider only if it receives indirect compensation. On the other, once it is considered a covered service provider, it must disclose all of its compensation, both direct and indirect, as well as the manner of receipt (*i.e.,* whether the plan will be billed, the payment will be taken out of plan assets or whether it will be paid by a third party) and, in the case of indirect compensation, the source of the funds (*i.e.,* the payer) and the other items outlined above.

In our experience, TPAs that use a service agreement do a good job of describing their direct compensation and the services to which it applies. Indeed, many contracts are extremely detailed in the listing of fees for specified services. The impact of the new regulation will most likely be found in connection with the indirect compensation they receive—often in the form of payments from providers or investments based on new business or persistency of existing business, regardless of how the payments are labeled. While many TPAs may disclose the receipt of "revenue sharing" in a generic way, they may not provide the detail required by the new regulation. That is, they will now need to describe the services for which the compensation is being received, the amount or formula for determining the amount of the compensation, and the source (*i.e.*, the payer) of the payment with respect to the specific plan to which they are providing services. Indeed, if the compensation is contingent on meeting certain goals, the TPA will likely need to disclose the criteria for determining whether they will become eligible for the compensation. (While the regulation specifically permits formulas to be used to describe compensation, it also requires that the disclosure enable the responsible plan fiduciary to evaluate the reasonableness of the compensation. As a result, it is possible that the qualification criteria and the formula for compensation could be so vague or produce such a great range of compensation that it failed to satisfy that standard.)

While the regulation requires only disclosure of indirect compensation, as a practical matter a plan fiduciary may, once they understand the payments are derived from their plans, want the indirect compensation offset against the TPA's bills to the plans. It is possible that this change will lead TPAs to bill those clients under the regular fee schedules and then apply the revenue sharing against those bills on a dollar-for-dollar basis.

In our experience, the requirement regarding termination payments and prepaid amounts will have varying impacts, because most TPAs do not impose a termination charge, but some receive advance payment for their administration services. Under the new regulation, there is no problem with receiving payment in advance, but TPAs who use this approach will need to include a description of the proration and refund of the advance payment if the contract is terminated before the entire advance payment is earned.[8]

Fiduciary Status

The regulation requires a service provider to disclose whether it, or an affiliate or subcontractor, will provide any services to the plan as a fiduciary as defined under ERISA § 3(21)(A) or as an investment adviser registered under the '40 Act (or state law). If both, then both must be disclosed.

Impact: Since the services provided by TPAs rarely give rise to fiduciary status, independent TPAs (and even those that provide non-fiduciary recordkeeping or brokerage services) will not need to comply with this requirement. However, in our view, from a risk management perspective, TPAs should specifically state that they are *not* fiduciaries in order to clarify the nature of the relationship at the outset and avoid confusion in the mind of the client.

Changes in Information

A service provider must disclose any change to the required information as soon as practicable, but in any case no later than 60 days from the date on which the service provider acquires knowledge of the change. Note that there are two changes in this requirement from the proposed regulation:

- the requirement that the change must be "material" has been dropped; and
- the time period has been extended from 30 to 60 days.

There is a provision that allows for additional time in extraordinary circumstances, but probably should not be relied upon unless absolutely necessary.

Impact: This requirement should have little impact on TPAs except in two contexts. The first is when a TPA wants to change fees. In those cases, a TPA will need to take steps to disclose the change in their fee structure within 60 days of deciding to make the change. The second is in the case of indirect compensation that may be paid only if the TPA meets an eligibility requirement. TPAs would appear to have two alternatives to complying in this case. One way would be to wait to disclose, that is, to wait until they qualify and then make a change disclosure regarding the additional compensation they will receive under the 60-day rule. The drawback to this approach is that it will require additional disclosures and administrative attentiveness—a failure to give the change notice can cause the arrangement to become a prohibited transaction. Further, this approach might not comply with the requirements of the regulation, since it requires that the service provider disclose

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8 It is not clear that the regulation requires a refund of prepaid amounts, though the wording seems to contemplate that refunds will be made. This interpretation is possibly because under Section 408(b)(2), a service provider's compensation must be reasonable, and if unearned amounts are retained, the overall compensation might not be considered reasonable.

amounts it reasonably expects to receive. The second approach is to disclose the conditions and the formula in advance and then provide a change disclosure once the TPA qualifies.

In the context of changes to their fee structure (or other changes to the contract), TPAs need to exercise caution. The concern here is based on a position taken by some DOL officials that if a service provider can set its own compensation, it is exercising control over the plan or plan assets and is thus a fiduciary (at least to that extent). That status gives rise to a host of other issues and potential problems for the TPA. To avoid this situation, a TPA might send out a proposed amendment to its service agreement and ask that the client sign and return it. If the client fails to return the amendment, the change in fee structure would not go into effect. Alternatively, a TPA could build into its service agreement and make use of the "Aetna" process, which is derived from DOL Advisory Opinion 97-16A. Under this approach, the TPA would provide notice of the change to the client 60 days in advance of the effective date of the change and advise the client that unless the client objects to the change within that time, it will be deemed to have approved the change. With this approach, the TPA avoids setting its own compensation because the client has effectively approved the change through its failure to consent.

Reporting and Disclosure Information

The regulation requires a service provider to disclose, upon written request, any other information relating to compensation received in connection with the arrangement, if it is required for the plan to comply with the reporting and disclosure requirements of ERISA and its regulations, forms and schedules. The information must be provided not later than 30 days after receipt of a written request from the responsible plan fiduciary or plan administrator (unless the disclosure is precluded due to extraordinary circumstances beyond the service provider's control). In that case, the information must be disclosed as soon as practicable. This situation would arise most often in the context of reporting information on Schedule C to the Form 5500 for large plans (*i.e.*, plans with 100 or more participants), but the requirement is not limited to that Schedule or Form.

Impact: This condition should have little impact on TPAs that serve the small plan market, but it could affect TPAs that work with larger plans.

Disclosure Errors

The final regulation includes a welcome addition: it specifies that no arrangement will be considered unreasonable (*i.e.*, a prohibited transaction) solely because the service provider makes an error or omission in disclosing the information, so long as two requirements are met. First, the service provider must have been acting in good faith and with reasonable diligence; second, the service provider must disclose the correct information to the responsible plan fiduciary as soon as practicable, but not later than 30 days from the date on which the service provider knows it made the error or omission. This will protect service providers from innocent mistakes that otherwise could have caused their arrangement to be a prohibited transaction.

Conclusion

The regulation is designed to increase the amount of information received by fiduciaries about their service providers. For TPAs who already use service agreements and who provide information about indirect compensation to plan sponsors, the changes will be relatively minor. Alternatively, TPAs who have not used service agreements or disclosed indirect compensation will be required to make significant changes to comply with the regulation. However, once the agreements and systems are put in place to comply with the regulation, the new rules should not have a significant impact on the operations of TPA firms.

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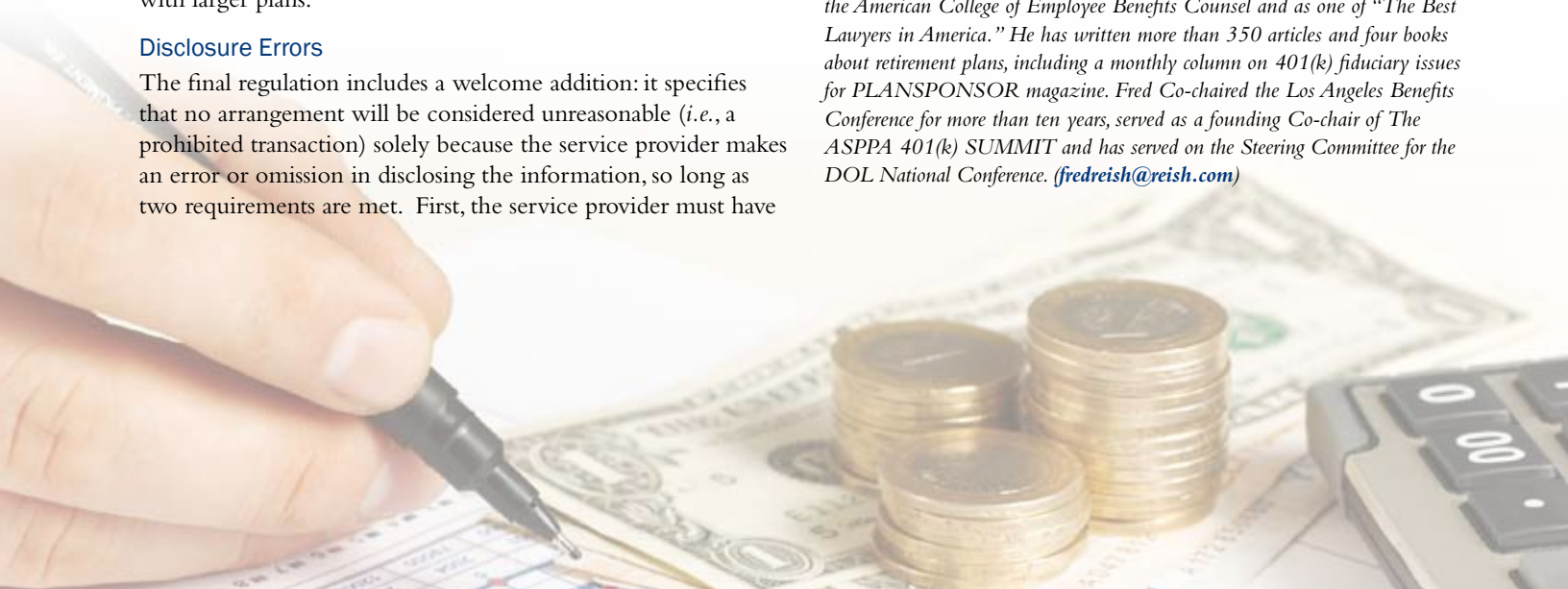

Partial Plan Terminations of Qualified Plans

by Marcia S. Wagner and Jon C. Schultze

The economic downturn that grew in late 2008 and continued during 2009 and into 2010 required many companies to reduce costs, which frequently involved suspending new hiring, not filling vacated positions, implementing reductions in force and freezing benefit accruals. By taking these actions, an employer may have unwittingly triggered a "partial plan termination" with respect to its qualified retirement plan.

A partial plan termination can occur for many reasons, including a plan amendment that adversely affects the rights of employees to vest in benefits under the plan or that excludes a group of employees who previously were covered by the plan, the reduction or cessation of future benefit accruals that results in a potential reversion to the employer or, the most common cause, employer-initiated severances from employment, which is the focus of this article.

Whether a partial plan termination occurs is based on a facts and circumstances test. The general rule of thumb in the context of employer-initiated severances from employment is that a partial plan termination occurs if such employer-initiated severances from employment result in a 20% or more decrease in the number of plan participants. If a partial plan termination occurs, affected participants must be made fully vested to the extent their benefits are funded as of the date of the partial plan termination.

In addition, employer-initiated severances from employment may cause a "reportable event" to occur if the number of active plan participants in a defined benefit pension plan insured by the Pension Benefit Guaranty Corporation (PBGC) falls to less than 80% of the number of active plan participants at the beginning of the plan year or less than 75% of the number of active plan participants at the beginning of the prior plan year. If a reportable event occurs, a notice generally must be filed with the PBGC within 30 days of the event.

Background of Partial Plan Terminations

Neither the Internal Revenue Code nor the regulations issued thereunder define what is meant by a partial plan termination. Regulations provide that "whether or not a partial termination of a qualified plan occurs shall be determined by the Commissioner with regard to all the facts and circumstances in a particular case."[1] For a partial plan termination to have occurred, the number of severed employees must be substantial when compared to the number of total plan participants.[2]

In 2007, the Internal Revenue Service (IRS) issued Revenue Ruling 2007-43 to explain its position regarding certain circumstances under which a partial plan termination occurs with respect to a defined contribution plan.[3] The IRS takes the position that when employer-initiated severances from employment reduces the number of plan participants by 20% or more, a partial plan termination is presumed to have occurred, regardless of the vested

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1 Treas. Reg. §1.411(d)-2(b).
2 IRM §7.12.1.2.7.1(5).
3 Although the Revenue Ruling involves a defined contribution plan, most of the analysis is equally applicable to a defined benefit plan.

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Neither the Internal Revenue Code nor the regulations issued thereunder define what is meant by a partial plan termination.

status of the participants.[4] Several courts also have held there is a presumption that a 20% or greater reduction in the number of plan participants constitutes a partial plan termination.[5]

Calculation Methodology

Performing these calculations is not always straightforward because various determinations must be made and there is only limited guidance.

As a preliminary matter, the vested status of a participant is irrelevant when determining whether a partial plan termination has occurred.[6] One famous case from the early 1990s held the proper methodology was to calculate the ratio of the number of non-fully vested employer-initiated terminations to the total number of non-fully vested plan participants.[7] Thus, fully vested participants were removed from the numerator and the denominator on the theory that fully vested employer-initiated terminees were not affected by a partial termination. Although two other cases originally held fully vested participants should be excluded from the numerator but not the denominator, in both cases this methodology was ultimately overruled in favor of the IRS methodology.[8] Thus, the recommended approach for determining whether a partial termination has occurred is to follow the IRS methodology, which does not take into account the vested status of the participants.

Whether a partial plan termination has occurred requires three significant determinations:

Which employees are taken into account?

All employer-initiated severances from employment are taken into account when determining whether a partial plan termination has occurred. An employer-initiated severance may be the result of internal events, such as a restructuring, or external events, such as poor economic conditions.

Certain severances from employment do not have to be taken into account. For example, severances from employment on account of death, disability or retirement on or after normal retirement age do not have to be included. An employer may be able to show that an employee's severance was purely voluntary (and exclude the employee) through such items as information from personnel files, employee statements and other similar documentation.

In addition, facts and circumstances could show there is routine turnover for an applicable period, which would favor excluding those employees, especially if the employees were replaced by new employees who performed the same functions, had the same title or job classification and received comparable compensation.

Finally, employees who have a severance from employment can be excluded if they continue to be covered by a plan that is a continuation of the plan under which they were previously covered (*i.e.,* the portion of the plan covering those employees is spun-off and maintained by a new employer).

An unresolved question is whether employees who are terminated "for cause" must be included. The argument against including such employees is that they were fired for doing something wrong and they should not unfairly benefit by being made fully vested. However, the IRS's presumption is that *all* employer-initiated severances should be included in the calculations, and the IRS has not stated that a severance for cause is a basis for excluding employees when determining whether a partial plan termination has occurred and who, as a result, must be made 100% vested.

The underlying concern is that an employee's severance from employment "for cause" should not be a subterfuge for a reduction in force. For example, severing an employee for sub-par performance could be "for cause" and unrelated to any other events, but such severance could be a workforce reduction if a department is required to sever one person and the decision is made based on the poorest performer in the department (thus, "performance" is not an independent basis for the termination). In this case, a former employee's exclusion from full vesting in a partial plan termination could be defended by showing he or she was replaced.

Ultimately a severance "for cause," such as illegal behavior, is the kind of "fact and circumstance" that could justify excluding the employee and not providing 100% vesting because, conceptually, the employee caused his or her own severance from employment. The risk is that the plan is at some point audited, an affected employee sues or initiates a complaint with a government agency or a conclusion is later reached that an employee should not have been excluded and should have been made 100% vested. At that time the employee might have to be made fully vested if the decision to exclude the employee cannot be defended.

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4 Rev. Rul. 2007-43; IRM §7.12.1.2.7.2(2).
5 See Matz v. Household International Tax Reduction Investment Plan, 388 F.3d 570 (7th Cir. 2004); Halliburton Co. v. C.I.R., 100 T.C. 216 (1993).
6 Rev. Rul. 2007-43.
7 In re Gulf Pension Litigation, 764 F.Supp. 1149 (S.D.Tex. 1991).
8 See Matz, 388 F. 3d. 570; see also Weil v. Retirement Plan Administration Committee of the Terson Co., Inc., 933 F.2d 106 (2d. Cir. 1991).

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What is the total number of participants?

The total number of participants is the number of active participants at the beginning of the applicable period plus the number of participants added during the period.[9] For a 401(k) plan, the term "active participants" includes those employees who are eligible to, but do not, make salary deferral contributions to the plan.

What is the applicable period?

The applicable period generally is the plan year. For a plan year that is less than 12 months, the applicable period is the short plan year plus the immediately preceding plan year.[10] The applicable period may be a longer period if there is a series of related events that occur over multiple years.

When there is a series of related events, it is not clear whether the "longer period" begins on the date of the first severance from employment in a series or on the first day of the plan year in which the first severance from employment in a series occurs. To be consistent with the method of determining the applicable period for a plan year that is less than 12 months, it is reasonable to take the position that the determination is made beginning on the first day of the plan year in which the first event occurs.[11]

The question whether there is a series of "related severances from employment" has been addressed in several court cases. For example, in *In Re Gulf Pension Litigation*, the court found that a series of layoffs resulting from the merger of Gulf and Chevron were related even though they occurred over multiple years,[12] and in *Matz*, the court determined that terminations that occurred over three plan years were the result of sales of subsidiaries and assets that were closely related in time and "had the same motives" (*i.e.*, the company underwent a multi-year reorganization after it was acquired).[13]

However, in *Admin. Comm. of the Sea Ray Employees' Stock Ownership and Profit Sharing Plan,* the court did not overturn the district court's and plan administrator's distinction between the decrease in plan participants due to the general economic downturn in the small boat industry and the decrease in plan participants due to a new luxury tax on large boats resulting in a downturn in luxury boat sales.[14] The court concluded the determination that the two events were not related, did *not* have to be aggregated and were *not* arbitrary and capricious.

Thus, a series of related events that occur over more than one year generally must be aggregated and considered as a single event for purposes of determining whether a partial termination has occurred.[15] Therefore, the applicable period may be longer than one year if a series of related severances occur.

If, after making these three determinations, the ratio of the number of employer-initiated participant severances to the number of total plan participants is 20% or more, a partial plan termination probably has occurred. If the ratio is less than 20%, a partial plan termination probably has not occurred.

Subsequent events must be reviewed to determine whether they must be treated as part of the same series of events. If a partial plan termination occurs due to later related events, participants who were affected by an earlier event that was determined not to be a partial plan termination will be retroactively affected.

Vesting Requirement

Participants affected by a partial plan termination have to be made fully vested in their benefits to the extent funded as of the date of the partial plan termination.[16] For a defined contribution plan with individual accounts, the balance in the affected participants' accounts should be made 100% vested. If any of the affected participants were not fully vested upon termination and previously received a distribution of his or her vested balance, each such participant should receive a distribution of the additional portion of the account that was not vested when the distribution was paid. For those participants, the administrator generally may follow the participants' original distribution elections to process the additional payments.

For a defined benefit pension plan, calculating the amount to which affected participants may be entitled is more complicated. The accrued benefits of the plan's participants and the market value of the plan's assets are determined as of the date of the partial termination. The plan's assets are then allocated among participants in the order in which the assets of a terminated pension plan are to be allocated under Section 4044 of the Employee Retirement Income Security Act of 1974, as amended (ERISA).[17] The benefits of nonvested participants vest only after the plan's assets have been allocated in this manner and to the extent there are

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9 Rev. Rul. 2007-43; IRM §7.12.1.2.7.2(1).

10 Rev. Rul. 2007-43.

11 This interpretation should result in a larger denominator because the number of active participants at the beginning of the plan year plus the number of participants added during the period will include those participants who may have terminated employment prior to the event that are not employer-initiated severances from employment.

12 In re Gulf Pension Litigation, 764 F.Supp. at 1167-68.

13 Matz v. Household International Tax Reduction Investment Plan, 227 F.3d 971, 977 (7th Cir. 2000).

14 Admin. Comm. of the Sea Ray Employees' Stock Ownership and Profit Sharing Plan v. Robinson, 164 F.3d 981, 987-988 (6th Cir. 1999).

15 Rev. Rul. 2007-43; Matz v. Household International Tax Reduction Investment Plan, 388 F. 3d 570 (7th Cir. 2004). We should note that a decision made in one circuit court is not binding on a different circuit court.

16 Code §411(d)(3)(A).

17 This methodology is acceptable under Treas. Reg. section 1.411(d)-2(a)(2)(ii) and was used by at least two federal courts (see Freeman v. The Central States, Southeast and Southwest Areas Pension Fund, 32 F.3d 90 (4th Cir. 1994); see also Burstein, M.D., v. Retirement Account Plan for Employees of Allegheny Health Education and Research Foundation, 2002 WL 31319407 (E.D.Pa. 2002)).

any assets remaining to fund those benefits. Thus, nonvested participants who are affected by a partial plan termination may not become fully vested in their accrued benefits. An employer might wish to provide full vesting of the accrued benefits of such participants, depending on the cost of such vesting, employee relations and administrative complexity.

PBGC Reporting

When the number of active plan participants in a defined benefit pension plan insured by the PBGC reduces to less than 80% of the number of active plan participants at the beginning of the plan year or 75% of the number of active plan participants at the beginning of the previous plan year, a reportable event has occurred.[18] Thus, employer-initiated severances from employment can result in a reportable event.

The PBGC must be provided with notice within 30 days of a reportable event unless a waiver or extension applies.[19] Failure to provide this notice may result in the PBGC assessing penalties of up to $1,100 per day for each day the required notice is late.

PBGC Form 10 is used to provide the PBGC with notice of a reportable event, and it includes a statement explaining the reason for the reduction. The PBGC notice requirement may be waived in certain situations; for example, notice is waived if:

- There is no variable rate premium (this premium is paid by PBGC-insured single-employer plans with unfunded vested benefits);
- There is less than $1 million in unfunded benefits; or
- The fair market value of the plan's assets is at least 80% of the vested benefits amount *and* the active participant reduction is not reportable as a result of the cessation of operations at one or more facilities.

If a PBGC Form 10 is filed to report an active participant reduction for a plan year and the number of active participants on the first day of the subsequent plan year is less than 75% of the number of active plan participants at the beginning of the prior plan year (the trigger for the initial notice), another reportable event will have occurred and another PBGC Form 10 will have to be filed because each plan year begins a new reporting cycle.

Finally, if an employer implements a reduction in force at a particular facility or with respect to a specific operation affecting 20% or more of the plan's participants, a cessation of operations may have occurred.[20] In addition to potentially causing a partial plan termination and a reportable event, such an event can lead to additional funding liability; an explanation of this liability is beyond the scope of this article.

Conclusion

Determining whether a partial plan termination has occurred with respect to a plan can be complicated. When a partial plan termination occurs, affected participants have to be made fully vested to the extent their benefits are funded. If subsequent events occur, such events must be reviewed to determine whether the subsequent event should be aggregated with earlier events and treated as part of the same series of events, or whether the events causing such terminations are unrelated and do not have to be aggregated. Thus, it is important that employers keep their legal counsel and other advisors apprised of such events as they occur.

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18 ERISA §4043.

19 The PBGC notice may be extended to the latest of: (i) 30 days after the PBGC Form 1 due date for the event year, (ii) 30 days after the plan's Form 5500 due date if the reportable event was the cessation of operations at a facility, and (iii) the due date for PBGC Form 1-ES for the plan year following the event year if the reportable event was the cessation of operations at a facility.

20 ERISA §4062(e).

Employee Benefits in Mergers and Acquisitions: Buyer Beware

by Andrea L. Bailey and Nicholas C. Tomlinson

Imagine this scenario: You are the vice president of human resources for your company. One Friday morning, you awaken, go through your usual routine and, on your drive into work, you take a moment to think about the day ahead. It is not open enrollment, year end or 5500 season. So, not expecting anything unusual, you look forward to the weekend's start. Mid-morning, a call comes down from your boss. "Get ready," he says. "We are in negotiations to acquire XYZ, Inc., and their employees are coming, too."

Hearing this news, your easy Friday just got much more stressful. Immediately, you think about the additional employees who will need your services. You look ahead on the calendar for dates for new employee orientations. You even place a call to a temp agency for short-term help because your department cannot complete the work ahead in the short period with your current staffing levels.

Alas, you have already forgotten a crucial piece of this acquisition's puzzle. What are you going to do with XYZ, Inc.'s employee benefit plans?

Nature of the Transaction

Before deciding how to manage the due diligence process (the review of the selling company's employee benefit plans) and the target company's employee benefit plans, a buyer must understand the nature of the transaction through which the target will be acquired. Businesses are acquired through one of two ways:

- Stock purchases; or
- Asset purchases.

Stock Purchases

A stock purchase occurs when the buyer purchases the target's outstanding stock.[1] The target's shareholders may receive cash or buyer stock in exchange for their target stock. Absent termination prior to the transaction's closing, by operation of law, the target's employees and benefit plans will continue post-transaction as liabilities of the buyer.

Although the purchase agreement may indemnify the buyer for liabilities due to events occurring prior to the transaction's closing, for purposes of the government [*e.g.*, the Internal Revenue Service (IRS)] and plan participants, the buyer is the responsible party. Therefore, due diligence is especially critical in stock purchases so that the buyer may be fully apprised of any problems or hidden liabilities with respect to the target's benefit plans.

Asset Purchases

An asset purchase occurs when the buyer purchases some or all of the target's assets. Where the majority of a business is being acquired or even a line of business, frequently the target's affected employees will be terminated on the closing date and subsequently hired by the buyer. The target's employee benefit plans generally remain under the sponsorship and control of the seller post-transaction, unless the parties agree otherwise. The key advantage that buyers enjoy in asset purchases is that, with only a couple of exceptions, they

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1 Stock acquisitions may also occur in the form of mergers, which, for purposes of this article, will be treated the same as stock acquisitions.

may choose which of the target's liabilities, if any, they wish to assume. As set forth more fully below, even if the buyer does not assume the target's plans, applicable law may subject the buyer to liability for pension underfunding for "multiemployer" plans and for continued health coverage for certain "M&A Qualified Beneficiaries" under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (COBRA).

Due Diligence Checklist

Employee benefit plans are important negotiating points in acquisitions. A buyer should require the target to disclose all information about various benefit plans during the due diligence process in order to determine whether it is necessary to continue those benefit plans post-closing and identify risks or outstanding issues that need to be corrected pre-closing or indemnified by the target if problems arise in the future. Employee relations also play a role, as the buyer will want to manage the target employees' expectations as they concern employee benefits.

This article is intended to highlight critical areas from an employee benefits standpoint pertaining to the acquisition of another business' stock or assets. Because every acquisition is unique and will require individualized assessment, this article is intended to serve as a starting point for such an assessment and, depending upon the responses or the information provided, further questions may be generated or further information may be necessary. However, as a starting point, items and information the buyer should generally request for each employee benefit plan include the following:

1. Identify any employment related agreements, whether oral or written, such as:
   - — Employment Agreements;
   - — Independent Contractor Agreements;
   - — Consulting Agreements; and
   - — Union or Collective Bargaining Agreements (CBA) (including side letters or letters of understanding).
2. Identify every employee benefit plan [within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (ERISA)] (*e.g.,* pension, profit sharing, 401(k), non-qualified deferred compensation, executive benefit, SERP, medical, dental, EAP, LTD, AD&D, life, short-term disability with insured benefits, cafeteria plan/flexible spending account plan, dependent care reimbursement account plan, health care reimbursement account plan, etc.).
3. Request for each plan identified in Item 2 above, where applicable, the trust instruments and plan documents and any amendments thereto, summary plan descriptions, summaries of material modification, IRS favorable determination letter (only applicable to tax-qualified retirement plans), most recent three years of Form 5500 filings, including all schedules and audit report and actuarial report, if applicable.
4. Identify any benefits-related complaints filed with any federal, state or local agencies [*e.g.,* United States Department of Labor (DOL), IRS, Office for Civil Rights] during the last three years or which remain unresolved.
5. Have the target confirm whether it has been a signatory or successor to any CBA and whether the target participated in any multiemployer pension plan within the past six years and, if so, has there been any assessment of withdrawal liability by any multiemployer pension plan within the past six years?
6. Have the target provide a schedule of the wages, benefits and obligations of the target to its officers and other key personnel and identify any contracts, written or oral, with those personnel or engagement letters that could be construed to be employment contracts.
7. Have the target identify any change of control agreements which provide for additional payment or accelerated vesting of certain benefits upon contemplated transaction.
8. Request copies of administrative forms for all benefit plans identified in Item 2, including COBRA and the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA) administration forms, where applicable.
9. Identify all individuals who are "qualified beneficiaries" for purposes of COBRA, their qualifying event date, COBRA election date and premium history.
10. Request all information, both formal and informal, concerning benefit entitlements to retirees existing during the last five years.
11. Request the identity of any employees presently on any type of leave of absence, along with a statement of the type of leave and its duration.
12. Have the target verify whether any type of temporary agency, employment agency, contract labor provider or other alternative to traditional employment arrangements has been used in the last three years and the identity of such provider.

Because every acquisition is unique and will require individualized assessment, this article is intended to serve as a starting point for such an assessment and, depending upon the responses or the information provided, further questions may be generated or further information may be necessary.

Analysis of past regular distributions, loans, withdrawals and hardship distributions is necessary to determine proper reporting through IRS Form 1099-R has occurred, necessary taxes were properly withheld and the plan complied with all rollover rules.

Assessing the Due Diligence

Once the buyer has received responses to its requested due diligence, it will begin the process of analyzing the potential risks and costs associated with the target's benefit plans. The remaining portion of this article addresses the diligence concerns by considering each of the three types of benefit arrangements:

- Tax-qualified retirement plans;
- Health and welfare plans; and
- Executive deferred compensation and benefits.

Tax-qualified Retirement Plans

Tax-qualified retirement plans are traditional company retirement plans that are available to most, if not all, employees. They come in three forms:

- Defined contribution plans;
- Defined benefit plans; and
- Multiemployer plans.

Defined Contribution Plans

Defined contribution plans are the most prevalent retirement plan form. Their name derives from the concept that the retirement amount a participant receives is defined by the contribution amounts the participant, or the company on the participant's behalf, makes to the plan during the participant's years of service to the company. Profit-sharing plans, 401(k) plans, employee stock ownership plans (ESOPs) and stock bonus plans are defined contribution plans. Participants receive benefits from defined contribution plans through one time lump sum distributions, installments or annuities.

Defined Benefit Plans

Defined benefit plans are aptly named because the participant's target benefit at retirement defines the contribution amount the plan must receive annually over the participant's years of service. Traditional pension plans, cash balance plans and simplified employee pension plans (SEPs) are types of defined benefit plans. Benefits are usually paid in joint and survivor annuities for married participants and single life annuities for single participants. These plans must meet minimum funding obligations annually and may incur significant liabilities if the plan's obligations come due all at once.

Multiemployer Plans

Multiemployer plans are sponsored by labor unions, not employers. They are usually pension plans and cover more than one company's employees. Contribution obligations for each employer are determined through collective bargaining. With multiemployer plans, the target remains liable for its portion of the plan's unfunded liabilities. The target, therefore, generally wants the buyer to assume liability on its behalf.

Retirement Plan Document Review

Any retirement plan review should begin with the current IRS determination letter, the IRS' confirmation that the plan qualifies under the Internal Revenue Code of 1986, as amended (the Code) requirements. The buyer should review the current plan document and any required amendments to ensure compliance with current laws and regulations. It should audit each plan's operations to ensure the operations comply with the written plan document.

Plan Operations

Analysis of past regular distributions, loans, withdrawals and hardship distributions is necessary to determine proper reporting through IRS Form 1099-R has occurred, necessary taxes were properly withheld and the plan complied with all rollover rules. The reviewer should verify that participant 401(k) deferrals and employer contributions were timely deposited into the trust account. For plans permitting participant loans [commonly found in 401(k) plans], the review should identify those loans which are outstanding at closing. In addition, the buyer should determine whether the loans will be continued post-closing, treated as participant distributions or become immediately due and payable at the closing. The buyer should ensure the plan passes nondiscrimination testing and no participant has contributed, nor has the company contributed on the participant's behalf, more than the allowable contribution limits.

Fiduciary Obligations

The review should examine the plan's fiduciary standards compliance. In doing so, the plan's trustees, investment managers, administrators and investment committee members must be identified. Any fiduciary liability insurance should be examined, and the buyer should confirm the necessary individuals are bonded. Each retirement plan should have an investment policy statement available for review, along with investment committee meeting minutes, to substantiate that the committee's members properly exercised their fiduciary obligations by reviewing investments before making selections and, thereafter, monitoring such investments' performance. The buyer should confirm that there were no

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Winners of the Martin Rosenberg Academic Achievement Award with award presenter Sue Perry, from left: Alex Petrenko, QKA; Jason Frey, QKA; Amy Oullette, QKA; Robin Young and Sue Perry, CPC, QPA, QKA.

George Will wows the crowd with his take o politics and American li

Curtis E. Huntington, APM, COPA, FSA, MAAA, recipient of the Harry T. Eidson Founders Award, grins with presenter Joan Gucciardi, MSPA, CPC.

ASPPA flags line the streets of the Gaylord National Hotel & Convention Center complex.

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ual Conference 2010 Participants!

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Ilene H. Ferenczy, CPC, and S. Derrin Watson, APM, lead their "Keeping Current" general session.

PA Executive Director/CEO H. Graff, Esq., APM, assists s Koumantaros, CPC, QPA, , in awarding door prizes at the PA PAC Reception.

Attendees quiz workshop presenters with informative, often entertaining, questions!

iPad drawing winner Eric Bildt of TD Ameritrade poses mightily with Jeff Hoffman of ASPPA (left) and Michael Jewer of John Hancock.

Throngs of "ASPPA-holics" make their way to the registration area and the exhibit hall, the heart of the ASPPA Annual Conference!

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Bruce L. Ashton, APM
Merl W. Baker
Avaneesh Bhagat
Richard A. Block, MSPA, COPA
William K. Bortz
Phyllis C. Borzi
Alex M. Brucker, APM
M. Kristi Cook, TGPC
Michael P. Coyne
Lawrence Deutsch, MSPA, COPA
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Kevin J. Donovan, MSPA, COPA
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Withdrawal liability can flow through to the buyer of a former contributing employer, even for asset purchases. Therefore, if the target has contributed to a multiemployer plan, careful calculations must be performed to determine what, if any, withdrawal liability may be assessed.

prohibited transactions among the plan, target company or plan fiduciaries, such as a loan from the plan to the company. Finally, the review should determine that the plan is not currently subject to an IRS or DOL audit, nor is it engaged in any threatened or filed lawsuits.

Plan Funding for Defined Benefit Plans

Defined benefit plan reviews require steps in addition to those above. Defined benefit plans are required to maintain certain funding levels. As such, the buyer should review actuarial reports to ensure defined benefit plans are adequately funded, with no current or past due contributions. The review should confirm compliance with all PBGC filing requirements and premium payments and that potential union plan withdrawal liability was considered.

Funding Issues for Multiemployer Plans

Multiemployer plans are created through collective bargaining between employers and unions. Covered employees are generally hourly wage earners, and contributions are typically made on a per unit of work basis, such as a specified amount per hour of work or per employee per month. Benefits are generally based on length of service and hours of work, rather than being pay related. Contributions are made to an entity distinct from the contributing employers and unions—the plan's trust fund. The plan trustees oversee the investment of plan assets, and administrative expenses are paid from these assets. Usually, the plan is governed and administered by a joint board of trustees, with equal representation appointed by the employers and the union(s). When a contributing employer leaves a multiemployer plan, the employer is liable to the plan for a share of its unfunded vested benefits. The law sets out rules for determining the withdrawing employer's liability, with special provision for industries, such as construction, where employers may come and go as they start and complete projects, without impairing the plan's financial base. Various provisions limit withdrawal liability, including a *de minimis* rule and special limits for employer liquidations. Withdrawal liability can flow through to the buyer of a former contributing employer, even for asset purchases. Therefore, if the target has contributed to a multiemployer plan, careful calculations must be performed to determine what, if any, withdrawal liability may be assessed.

Options for the Target's Retirement Plans

Once due diligence is complete, the buyer may utilize various strategies for the target's retirement plans.

Representations and Warranties: The buyer will want the target to make representations and warranties based on the due diligence findings. The target should affirm that all retirement plan documents and information requested was made available for review. The target should warrant that it will indemnify the buyer for undisclosed liabilities that arise over a certain period subsequent to closing. Potential liabilities discovered during due diligence are typically separately negotiated in the purchase document or are accounted for in the sales price.

Plan Adoption: In addition to negotiating responsibility for potential liabilities, the buyer must decide if it will continue the target's retirement plans. In some cases, the buyer may be able to adopt the plans as they are in effect with the target.

For asset purchases, the buyer usually assumes the liabilities incurred post-closing; therefore, strong indemnification provisions for pre-closing liabilities may be required. For defined benefit plans, the parties should delineate the responsibility of each party for that year's funding obligations. For any retirement plan, the target company often remains responsible for contributions up to the closing.

In stock purchases, the buyer will be responsible for the plan's pre-closing operations, making indemnification provisions even more important than in asset purchases. The buyer is normally responsible for all contributions in the acquisition year, and this should factor into the purchase price. If, after conducting due diligence, the buyer determines that the plan's risks and liabilities are too numerous, it may consider requiring the plan's termination pre-closing.

Plan Spin-offs: In asset purchases, buyers often do not acquire the entirety of the target's business. The buyer may, instead, acquire only a certain division or operation of the target. Here, the parties may split the target's plan into separate plans so the buyer assumes the plan's operations for the acquired employees, while the target remains responsible for the remaining employees. Spin-offs are fairly straightforward for defined contribution plans. However, for defined benefit plans, the buyer must carefully consider the actuarial calculations as both plans resulting from the spin-off must meet minimum funding obligations.

Plan Merger: For administrative ease, buyers, regardless of transaction type, often merge the target's plans into their own. This merger combines assets of both plans, making due

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Potential liabilities discovered during due diligence are typically separately negotiated in the purchase document or are accounted for in the sales price.

diligence critical because, if the target plan's operations jeopardize its tax-qualified status, a merger will taint the buyer's plan assets, jeopardizing its tax-qualified status also. When mergers occur, certain aspects of both plans must be preserved, and, for defined benefit plans, participants must be guaranteed certain benefits if the plans are terminated within five years of the merger.

Plan Termination: Regardless of transaction type, the parties may agree to terminate the target's retirement plans. Often, termination occurs when the buyer, after conducting due diligence, determines the target plan's potential liabilities are too great or the target's plans are outside the scope of the buyer's current plans. In either case, these terminations are best done pre-closing, as current regulations limit the ability to terminate plans post-closing. Additionally, retirement plans must fully vest all participants upon termination.

Partial Termination: When the buyer purchases a target's division or operation or when a certain number of the target's employees (usually 20% of the employees not fully vested) is terminated, a partial termination occurs. Here, all participants terminated must be fully vested in the plan. Additional liabilities due to increased benefit obligations may result.

Health and Welfare Plans

Along with retirement plans, health and welfare plans play an important role in a company's benefit package. Most consider the medical and prescription coverage (often referred to collectively as the "health plan") the centerpiece of a health and welfare plan package. However, companies increasingly offer other health and welfare benefits, including dental and vision coverage, life insurance, disability insurance, cafeteria plans containing health care and dependent care flexible spending options, medical expense reimbursement plans (MERPs), employee assistance programs (EAPs), long-term care insurance and specialty insurances covering certain diseases like cancer. Some companies also provide retiree medical insurance.

Fully Insured Plans

A company's health plan may be fully insured or self-funded. Fully insured health plans are insured by an insurance company. The insurance policies are not subject to ERISA, but, instead, must comply with various state insurance laws where the insurance company operates. Grandfathered plans (plans in effect prior to enactment of health care reform on March 23, 2010) that are fully insured are not required to pass nondiscrimination testing, but plans established after health care reform's enactment must pass such testing.

Self-funded Plans

Self-funded health plans are those for which the company is responsible for the payment of claims, though an insurance company commonly administers the plan. Companies with self-funded plans usually maintain stop/loss coverage to cover a participant's claims that rise above a certain level in a plan year. (Note that a plan is self-funded even if it has a stop-loss or reinsurance policy.) Self-funded plans are subject to ERISA and must pass nondiscrimination testing regardless of their grandfather status.

Health and Welfare Plan Review

A health and welfare plan review (including reviews of cafeteria plans and MERPs) should begin with the plan documents and SPDs to ensure compliance with all laws, including older laws like COBRA and HIPAA and newer laws like the Genetic Information Nondiscrimination Act (GINA) and the Mental Health Parity Act. Depending on the plan year and grandfather status, health plans must comply with various health care reform provisions at different times, and any review should determine the plan's compliance with such requirements.

For self-funded plans and cafeteria plans, the buyer should confirm the plan has passed all nondiscrimination testing and the Forms 5500 have been filed, as necessary. A fiduciary review is necessary to ensure no fiduciary breaches, like prohibited transactions, exist. In a self-funded arrangement, the buyer should confirm timely deposit of employee contributions. Any operational audits or dependent eligibility audits should be analyzed to ensure benefits were adequately paid or denied, as applicable. The buyer should also determine that the target did not improperly deny any claims.

For all plans, including those outside the health plan scope like specialty care insurance and EAPs, all insurance contracts and service provider contracts must be reviewed to ascertain each contract's obligations. Some contracts will require the other party's (*e.g.,* the insurance company or the administrator) consent before the buyer

assumes the contract. This is a particular concern in asset purchases because the buyer assumes the contract in its name, while the same company would continue the contract in a stock purchase.

Retiree Medical Coverage

If the health plan provides retiree medical coverage, the buyer should ensure reporting compliance. The buyer should determine whether the plan allows the employer to terminate the retiree medical coverage. If the transaction is an asset sale, negotiation of these liabilities is important as the target will want the buyer to continue the coverage, while the buyer will want to limit its liability.

COBRA Rights

COBRA rights should be examined for the target's employees who are terminated prior to, or in connection with, the acquisition. Their individuals and their covered dependents are referred to as "COBRA M&A Qualified Beneficiaries." For stock purchases, the buyer must offer COBRA to such employees if the target terminates all health plans due to the transaction. In asset purchases, the buyer must extend COBRA coverage if the buyer is a "successor employer" (a company that continues the target's business) and neither the target nor any member of its controlled group of companies maintains any group health plan. The party responsible for providing COBRA coverage may be negotiated in the purchase document. Also, to the extent the buyer will be assuming COBRA coverage for M&A Qualified Beneficiaries, it may want the target to escrow funds to reimburse the buyer for the difference between the COBRA premiums and the actual medical expenses by the buyer's health plan.

Disability Benefits

For companies providing disability benefits, the buyer must determine the extent of the benefits provided. Often, parties will negotiate to share disability claims through a certain period because disabilities may, at least partly, arise due to the target's operations.

Options for Target's Health and Welfare Plans

A buyer's options for the target's health and welfare plans are minimal. The buyer may continue the target's health plans and allow the acquired employees to continue to participate, or it may have the target's health plans terminated and allow participation in its own health plans. COBRA coverage may be required in certain circumstances. The buyer will not jeopardize its grandfather status if it admits the acquired employees into its health plan. Other considerations with respect to the target's health and welfare plans include whether to provide credit to the target's employees for year-to-date deductible and out-of-pocket medical expenses and how to handle health care reimbursement account amounts.

Executive Benefits

Many agreements contain deferred compensation. Golden parachutes, supplemental executive retirement plans (SERPs), change-of-control agreements and employment and severance agreements are common for executives and management-level employees. Stock option plans, phantom equity plans and other equity grants are deferred compensation arrangements available to particular employee classes or certain hand-picked employees. Deferred compensation is not subject to nondiscrimination testing, but must meet strict requirements imposed by Code Section 409A. These arrangements are unfunded, payable only from the employer's general assets.

Deferred Compensation

Deferred compensation arrangements are not necessarily concentrated in single plans. Instead, these arrangements may be in numerous contracts between the company and single employees. The buyer should review all these contracts.

The most significant issue for deferred compensation arrangements concerns Code Section 409A. The buyer should review such arrangements to evaluate potential liability or indemnification provisions for arrangements that are not Code Section 409A compliant. Additionally, key employees of public companies are subject to a waiting period before they may receive compensation. The examination should consider any arrangements that provide for a change-in-control, as either transaction type may cause a change-in-control to occur and trigger payment provisions.

The buyer should also confirm that top hat plans (those deferred compensation plans for a select group of management or highly compensated employees which seek to be exempt from Title I of ERISA) meet the DOL's top hat filing requirements. For public companies, financial statements should be reviewed to determine whether executive compensation is properly accounted for under FAS 87 and FAS 88.

Typically, a company's human resources professionals are the in-house experts on the operations of the buyer's plans, and they can aid in the process of determining how similar the target company's benefits are and identifying potential pitfalls.

Options for Target's Deferred Compensation Arrangements

The buyer's options for the target's deferred compensation arrangements are limited. Often, change-of-control provisions will trigger payments when the transaction closes, terminating such agreements. In stock purchases, the buyer should consider the arrangements that may continue post-closing and negotiate the purchase price accordingly.

Other Executive Benefits

Aside from deferred compensation arrangements, many executives receive additional benefits and protections, such as payments upon a "change in control," stock options, long-term incentive or bonus plans and restricted stock. All agreements between the target and its executives should be examined to determine if the contemplated transaction will trigger additional payment or accelerated vesting of options or restricted stock. There are also two serious tax complications to consider. First is Code Section 280G which contains "golden parachute" provisions. Target corporations may not deduct excess change in control payments made to executives and Code Section 4999 imposes a 20% excise tax, in addition to ordinary income tax, on the executive who receives the payment. Many change-of-control agreements contain "gross up" provisions whereby the company agrees to gross up the executive for any parachute payment excise taxes. Both the parachute payment and the gross ups can be costly items which the buyer should consider in evaluating the price of the target.

The other serious tax consideration for executive payments applies only to public companies. Code Section 162(m) limits deductible compensation to $1 million for each of the five most highly compensated officers, unless the compensation is considered "performance-based." As a general rule, performance goals may not be changed during the performance period. It may be possible to change performance goals for stock-based compensation in connection with the transaction, but there is no such authority for other types of performance-based compensation. Additionally, Section 162(m) requires certain aspects of performance-based compensation to be approved by shareholders and the buyer will want to carefully consider how those shareholder approval requirements apply to the transaction.

Conclusion

To be sure, human resources are important for integrating new employees resulting from an acquisition. However, it should serve an important role in the due diligence process and negotiation of the acquisition. Typically, a company's human resources professionals are the in-house experts on the operations of the buyer's plans, and they can aid in the process of determining how similar the target company's benefits are and identifying potential pitfalls. Therefore, human resources personnel, particularly at the director level, should be involved in an acquisition as early as possible.

Andrea L. Bailey is of counsel in the Birmingham office of Baker Donelson Bearman Caldwell and Berkowitz PC. She concentrates her practice in the area of employee benefits and executive compensation. A graduate of the University of Virginia School of Law, Andrea is experienced in all aspects of executive compensation and employee benefits matters, including the design and administration of qualified plans, health and welfare benefit plans and non-qualified plans.

Andrea frequently speaks to national audiences for the Society for Human Resource Management, WEB, Worldwide Employee Benefits Network, Lorman Educational Services and private groups. She has been published in Corporate Counsel *magazine and the* Birmingham Business Journal. ***(abailey@bakerdonelson.com)***

*Nicholas C. Tomlinson is a tax attorney in the New Orleans, LA offices of Entergy Services, Inc. (**ntomlin@entergy.com**)*

Latest Addition to the ASPPA Board of Directors

by Troy L. Cornett

Karen Nowiejski Smith, MSPA, has been elected to ASPPA's Board of Directors and will serve a first full term expiring in 2013.

Karen is the president and a partner of Nova 401(k) Associates in Texas. Karen earned her BS from the University of Texas with a major in mathematics. She earned her JD from the University of Houston Law Center. She is an Enrolled Actuary, Fellow of the Society of Actuaries and a licensed attorney.

Karen currently is Co-chair of ASPPA's Government Affairs Defined Benefit Subcommittee and serves on the ACOPA Leadership Council. She also chairs the American Academy of Actuaries Committee on Qualifications.

Karen and her husband Cooper Smith have a two-year-old son and reside in Houston, TX.

In addition to the new member on ASPPA's Board of Directors, Richard A. Hochman, APM, has been elected to serve a second full term, and Martella A. Joseph, MSPA, and Marcy L. Supovitz, CPC, QPA, QKA, have been elected to serve partial terms.

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**)*

It's a Whole New World!

by Kristine J. Coffey, CPC

New Regs! New Clients! New Techniques! New Partners! New Challenges! New Industries! New Economic Realities! New Groups! New Financial Solutions! New Educators! New Credentials! New Communications! New Opportunities! New Results!

Know NTSAA? No, not the Navajo word, nor the Hmong word, but the National Tax Sheltered Accounts Association—the nation's only independent, non-profit association dedicated to the 403(b) and 457 plans' marketplace. The NTSAA mission is to provide high quality related education, technical support and information resources, as well as to offer a professional networking forum. Membership is open to anyone with a strong interest in the issues and opportunities in the 403(b) and 457 plans' marketplace.

NTSAA was formed in 1989 and has grown to include practitioners, agencies, corporate and employer members. Effective in January 2010, NTSAA combined operations with ASPPA. This new partnership venture joins the NTSAA in-depth knowledge of the public and non-profit retirement marketplace with ASPPA's organizational strength, credibility, advocacy and national reach. Amazing results have happened in just the first quarters of action together. Action that has:

- driven the NTSAA Annual Conference to new heights of success;
- represented this specialized retirement marketplace with proactive, effective legislative advocacy;
- fostered a high level of credentialed education;
- brought out the industry's first magazine; and
- made a difference each day in people's lives.

"I couldn't be more pleased with how the NTSAA and ASPPA teams have come together to accomplish so much for the NTSAA producer membership," said Christopher M. DeGrassi, President of NTSAA; AVP Education Market, The Security Benefit Group of Companies, Topeka, KS.

NTSAA Annual Conference

"The roots of NTSAA involved the exchange of ideas," proclaims S. Bruce Allen, Old Dominion Insurance/Investments, Inc., Winchester, VA, NTSAA Leadership Council and Chair of the 2011 NTSAA Annual Conference. The NTSAA Annual Conference is the premier 403(b) and 457 forum for a new focus on educating and providing sales ideas for producers, providers, agents, broker/dealers, sales and marketing managers, office staff, plan sponsors and other business officials. This gathering of retirement professionals will meet at the Omni Orlando Resort at ChampionsGate February 2-5, 2011, under the banner: "It's a Whole New World."

2011 planning began the moment the 2010 conference closed down the January before. This advance planning worked because "for the first time the agenda and speakers were all known before registration opened," stated Allen. Registrations soared in obvious recognition of all the work of his dedicated group hailing from all over the country, representing nine different states. "Yes, we'll start planning 2012 right away again this year. Be ready for announcements early this summer!" Allen promised.

"It's critical to have something for everybody, from the producers to the attorneys and technicians. We did it! It worked! And, we're delighted with the outcome," boasted Allen. "This is why I came to NTSAA Annual in the first place—to exchange ideas. I went back to work balanced and energized this year. Our goal worked to return to our effective roots, while building our value proposition with internationally-recognized keynote presentations and meaningful opportunities for dialogue and networking."

As this article is being written, the committee is expecting a full-scale successful conference. David Pearce Snyder is scheduled as a keynote speaker with a captivating "Instant Pre-play of the Next Five Years in America." On the closing day, Ross Shafer will present "New Insights! New Ways! New Successes!" posing the challenge, "Are you relevant?" and sending the attendees forward to capture success.

A new event is planned this year: Table Talk. Each day will begin with small group dialogues, first with Industry Partners and vendors, then the next morning with the speakers, and finally the last morning with matched peer groups. Scintillating discussions are predicted around the challenging questions provided and surely these discussions will continue via e-mails and ASPPA's LinkedIn site.

The conference is expected to draw a record-setting number of financial advisors and professionals, third party administrators, product and service providers, plan sponsors and all professionals in the 403(b), 457 and related retirement plans' marketplace—and forward-thinking 401(k) professionals as well—all getting continuing education credits and success-producing sales ideas. In fact, this year there will be a new benefit—a complimentary downloadable recording of audio and presentation materials for all sessions, perfect for commutes!

The conference exhibit hall is predicted to set new records in its expansion and diversity of new and seasoned industry supporters, making the venue a true educational experience, improving everyone's bottom line. All you ever wanted to learn about, in one place at one time.

Legislative Advocacy

Last fall, ASPPA General Counsel/Director of Regulatory Affairs, Craig Hoffman, JD, APM, listed out the major 2010 advocacy activity in this space. See **www.asppa.org/Main-Menu/govtaffairs.aspx** for all the current works, actions and results.

Below is a list of the comment letters and testimony we have done on behalf of NTSAA. NTSAA has also had involvement with other general Government Affairs Committee comment letters on the Department of Labor regulations as well as our comments on the RFI on lifetime income distributions. We also expect the Internal Revenue Service to release guidance on issues associated with the termination of a 403(b) arrangement as well as a master and prototype program for pre-approved 403(b) plan documents.

October 8, 2010: ASPPA and NTSAA submitted comments to the Department of Labor requesting relief with respect to the 2009 Form 5500 filing process for 403(b) plans and associated independent audits. The reason for the request relates problems that have been uncovered as the data collection process for the 2009 plan year has unfolded.

August 31, 2010: M. Kristi Cook, of the Law Offices of M. Kristi Cook PC, testified on behalf of ASPPA and NTSAA before the US Department of Labor Advisory Council on Employee Welfare and Pension Benefit Plans on the subject of pension plan auditing, "limited scope" audits and financial reporting models in the context of 403(b) plans and arrangements.

June 25, 2010: ASPPA and NTSAA submitted a comment letter to the Internal Revenue Service to request limited relief with respect to hardship distributions from certain 403(b) contracts. Due to the recent economic downturn, there has been a significant increase in the number of requests for financial hardship distributions from contracts issued by "de-selected" 403(b) providers under Revenue Procedure 2007-71. Compliance with the final 403(b) regulation standards to process a hardship distribution is problematic for "de-selected" contracts. Consistent with marketplace practices prior to the final 403(b) regulations, the letter recommends that hardship distributions from "de-selected" 403(b) contracts be permitted upon a participant's certified statement as to the existence of the financial hardship provided certain other requirements are satisfied.

June 22, 2010: ASPPA and NTSAA filed a comment letter with the Internal Revenue Service asking for guidance with respect to the termination of an IRC §403(b) plan. There is much confusion with respect to the manner in which a liquidating distribution is made when a 403(b) plan is

This new partnership venture joins the NTSAA in-depth knowledge of the public and non-profit retirement marketplace with ASPPA's organizational strength, credibility, advocacy and national reach.

NTSAA 2011 Industry Partners

David Blask, CPC, TGPC	Lincoln Investment
Russell M. Childs	The Legend Group, Inc.
Thomas J. Cosgrove, CLU, ChFC, RHU	Horace Mann Insurance Company
Christopher M. DeGrassi	Security Benefit
Richard H. Ford	PlanMember Securities Corporation
Joanne Henderson, TGPC	Symetra Financial
Steven Klinefelter, FLMI, ACS	Midland National Life
John Malcolm, CFP®, CEBS, TGPC	VALIC
Walter McBay	GWN Securities, Inc.
Ty Minnich	MetLife Resources
Peter Moore	The Hartford
Edna Russo, CLU	AXA Equitable
Roger Seeman	AUL/OneAmerica
Renee Srock-Dhein	Ameriprise Financial Services, Inc.
Teresa M. Ward, TGPC	OppenheimerFunds, Inc.
Keith Young	LSW: Member of The National Life Group

terminated. Several common examples of liquidating distributions are included in the letter. ASPPA and NTSAA requested that guidance be issued to clarify the Service's position in this area.

March 18, 2010: ASPPA and NTSAA filed comments with the Department of Labor regarding the "limited involvement" safe harbor exemption from Title I of ERISA for certain 403(b) arrangements offered by 501(c)(3) organizations. Relief was requested for arrangements which may now be subject to Title I as a result of the guidance provided by FAB 2010-01.

February 3, 2010: ASPPA and NTSAA filed comments with the Department of Labor requesting clarification of the application of the exemption from ERISA coverage for certain 403(b) arrangements using an "open architecture investment platform."

What would we ever do without such qualified, proactive leadership?

TGPC Educational Credential

New to professionals specializing in the public and non-profit retirement area is the Tax-Exempt & Governmental Plan Consultant (TGPC) credential and certificate program through ASPPA. This rigorous program involves 80 to 200 hours of study via webcourses for four examinations: Retirement Plan Fundamentals 1 and 2, plus TGPC 1 and 2, in addition to licensing or reference criteria. Of course, ongoing continuing professional education is a requirement as well. Seasoned professionals are rightfully proud to demonstrate their nationally-recognized expertise and experience for the benefit of their clients and their advisors. A certificate program is also available, the Tax-Exempt Governmental Plan Administrator Certificate, for those who pass the TGPC-1 exam.

403(b) Advisor Magazine

The first-ever magazine in the public and non-profit retirement marketplace, *403(b) Advisor* will be launched at the 2011 NTSAA Annual Conference. This feat was enabled by the founding sponsors, to which all financial advisors, attorneys, accountants, etc., are deeply grateful. These committed entities include:

- LSW, Member of The National Life Group
- MetLife Resources
- Security Benefit Group
- TIAA-CREF
- VALIC

Full of actionable sales ideas, immediately relevant information and strategic thinking, *403(b) Advisor* already has a loyal following, achieving their goals in new and better ways, thanks to this support.

NTSAA Industry Partners

ASPPA's traditional members profit as well from this new world of open dialogue and networking, as the for-profit and non-profit worlds share strategies brought together in these changing times. An example of a support model new to ASPPA is the NTSAA Industry Partners (IPs). Most of the IPs have been active in their professional and financial support of NTSAA for more than ten years. In fact Joanne Henderson, TGPC, Symetra Financial, was a founding member of NTSAA. Be sure to thank them for their dedication to the retirement industry.

What a wondrous new world it is for NTSAA and ASPPA members! Be active together for a future of opportunity and possibility.

Kristine J. Coffey, CPC, serves ASPPA as the Marketing Liaison to Conferences and is on the 2011 NTSAA Annual Conference Committee. As an ASPPA member since the 1980s, and now an NTSAA member, Kris was the inaugural coordinator for The ASPPA 401(k) SUMMIT and later its Co-chair, the volunteer Co-chair of Marketing leading external and internal brand awareness coordinating all diverse aspects of ASPPA, particularly through the ASPPA Management Team.

*Kris is the executive vice president and founding director of CPE Associates, Ltd., SOUTHWEST in Albuquerque, NM, and MIDWEST in Brookfield, WI, a project consulting venture, ranging from corporate finance assignments to strategic planning and coaching. She began her career at the EMJAY Corporation, a national retirement plan administration firm, as a senior technical analyst and then director of marketing for more than ten years. She then spent 15 years with the firm that is now Wells Fargo Advisors, successfully building one of the first retirement plan consulting departments in the country and then proceeded to senior management as Director of the Business Services Group, a/k/a Private Client Services. (**kcoffey826cpe@aol.com**)*

FROM THE PRESIDENT

ASPPA's Year Ahead and You

by Thomas J. Finnegan, MSPA, CPC, QPA

I want to thank all of you for the opportunity to serve as ASPPA President. I am very excited about the coming year and expect that we will be able to build on the reputation of credentialed ASPPA members as quality, ethical service providers and expand the recognition and value of those credentials to plan sponsors and their advisors.

In my first month on the job, I have had the opportunity to really look at ASPPA from 30,000 feet. It is fascinating to look at how each department drives the success of the other departments…how education drives advocacy and vice versa. Every department, every goal is tied to another…credibility drives advocacy, advocacy drives membership, membership drives education, education drives credibility.

The headline read, *"Commission Proposals Would Eliminate 401(k) Plans & Devastate Saving Rates."* I had been ASPPA President for 21 days when I first saw this headline. I said to myself, as I had countless times when the private retirement system was threatened by ill-conceived proposals, "Oh well, ASPPA will take care of it." Then I thought, "Oh wait, that's me now." So I got on the phone to the ASPPA office to tell them about this horrible proposal. But they were way ahead of me. They sent me a copy of the press release they had already issued. They had already scheduled meetings with the House and Senate finance committee staffs to explain the devastating effect the proposal would have on the Nation.

I thought about other times ASPPA has stepped up when legislative or regulatory proposals threatened to curtail the private pension system or restrict its growth. We have been remarkably successful reminding Congress and regulators of the important role that private pension plans play and will play as the baby boom generation reaches retirement.

One of the primary reasons for ASPPA's success is its credibility and the credibility of its members. We don't go into Congress or the IRS or DOL looking for unreasonable concessions. We take the time to understand the motivations behind congressional and regulatory proposals and craft or support alternate solutions that fix the perceived problems but retain the essential elements of the systems. Our "don't throw out the baby with the bath water" approach has helped us focus Congress and regulators on the fact that the private pension system, while flawed, is the most effective means of dealing with the issues which arise from an aging workforce.

ASPPA's success in working with regulators can also be attributed to the knowledge, skills, education and ethics of our members. IRS, Treasury, DOL and PBGC work every day with our members in audits, on programs, in many ways. The regulators have seen the professionalism, skill, education and ethical behavior of our members. They have seen how the overall practice in the profession has improved over the last 20 years. (I credit much of that improvement to the creation of the QPA and QKA credentials.) The regulators, because of the credibility of our membership, accepts that ASPPA proposals are generally in the best interest of the private pension system and are not the self-interested requests of a trade organization.

ASPPA's advocacy success has helped make ASPPA membership essential for most retirement plan professionals. TPAs, administrators and consultants see ASPPA as the only organization that really understands the environment in which plans operate. Attorneys, consultants and others see the opportunity to be involved in the legislative and regulatory process in a significant way. ASPPA's advocacy activities are one of the primary drivers in our consistent membership growth.

Membership clearly drives education—education toward credentials as well as continuing education. Increased membership and usage allow ASPPA to continually expand education opportunities and the quality of the programs. The better the education, the better the skills of our members. The greater the skills and knowledge of our members, the greater our credibility with legislators and regulators. So while Conferences, Education and Examination, Government Affairs and Membership Development all seem like different, independent units, they all build on each other; they have a symbiotic relationship. Each department at ASPPA is crucial to the success of every other department.

In the next year, we are going to build on the success that this interrelationship has fostered. Further, we will make sure that plan sponsors of all sizes and their advisors realize that ASPPA membership should be an essential characteristic of any administrator, actuary, consultant or advisor they engage.

*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**)*

How Tweet It Is!

by Ray Harmon

As an under-30 professional, the fact that getting email annoys me squares with growing data that my generation eschews it as a means of communication. ASPPA members of all ages are probably beginning to share that feeling. An email signals that something is being asked of me before I even begin to read it, so why should I be expected to approach it with an upbeat, positive attitude? I'm busy, jeez! My generation thinks email is too slow when compared to faster channels, like texting, instant messaging and social networking. And we're right.

Social networking in particular has rapidly become a great method of spreading information widely and quickly to a select audience, and you don't have to go through the "chore" of deleting anything irrelevant. You just ignore it until something you care about pops into your news feed.

Companies and businesses from Disney (@Disney) to the Detroit Chamber of Commerce (@DetroitChamber) have climbed aboard the social media train, using 140-character messages to promote new products, reinvigorate interest in existing business segments, reward customer loyalty (*e.g.,* I won one of 10,000 Conan O'Brien t-shirts the day of his premiere on TBS thanks to a watchful eye on @TeamCoco's updates to my personal Twitter feed), and communicate directly with their target demographics. An organization that *appears* to be responsive to its customers is an organization investing in repeat business. Using social media is the most efficient means of accomplishing that feat.

When I started working at ASPPA in October 2009, we didn't have an office-monitored presence on the social web. There was a member-administered group on LinkedIn and a member-administered group on Facebook, neither of which was optimally promoting the many opportunities ASPPA was offering professionals. Part of my job has been to change that. ASPPA has seen record attendance at some of our conferences and webcasts, and we look to be rounding out 2010 as a banner year for credentialing exams. If you haven't adopted a social media plan to grow *your* business, you should get cracking!

Where Should You Start?

The top channels ASPPA has chosen to utilize are Facebook (500 million registered users), Twitter (180 million registered users) and LinkedIn (80 million registered users). YouTube, also important for information dissemination, has a lower number of registered users (around 60 million), but many YouTube viewers enjoy the content (like our many Brian Graff video updates, wink wink) without ever logging in, so the "registered users" metric is somewhat meaningless. We looked around at where our members were already active and, in the case of YouTube, where we'd be able to easily create valuable content for them, and decided to concentrate on these four zones.

Because LinkedIn is geared to careerists and non-students, it's decidedly smaller than the other networks and its non-personal focus made it the ideal place for us to start.

In late 2009, the member-run LinkedIn group had about 500 participants. Once Robert Richter, the LinkedIn group owner, transferred some administrative privileges to me, I set about pre-approving 3,000 ASPPA members for access to the group's discussions. *(LinkedIn unfortunately caps group pre-approvals at 3,000 emails, so about 4,500 of you will have to add three pesky clicks to the join process, sorry.)* Additionally, I started regularly peppering the

group with a few items about upcoming ASPPA-sponsored opportunities to earn CPE. Content is king, after all, but with LinkedIn, the trick is not to stifle user-originated discussions by diluting them with ASPPA promos. The value proposition of LinkedIn groups is the ability for participants to engage each other and share information. Promotions disrupt that, so they have to be framed attractively and used sparingly. (*If you think we're promoting ASPPA opportunities too aggressively in the LinkedIn group, send me a message on LinkedIn or email me at* ***rharmon@asppa.org****.)*

With Facebook, we started from scratch. There were 120 people in the member-initiated group, but the "groups" feature itself on Facebook was a dying species; most businesses were beginning to set up "fan pages" instead, where users "like" the company in order to receive updates about it right in the users' personal news feeds. Facebook groups don't do this, and group members have to actually visit the group to see updates. I set up an ASPPA fan page and left a note and a link in the old Facebook group telling loyal followers how to find us. As of late fall, we had more than 400 Facebook fans.

We also started ASPPA's Twitter account from scratch. I opened the account (@ASPPA), posted a couple updates and began searching the Twitterverse for ASPPA members and similarly focused organizations to start "following." Anyone you follow on Twitter will receive notification that you have just added them to your feed and they are highly likely to return the favor. This, along with posting reliable content on a regular basis—which in turn is read by inquiring minds and shared with others—is how you grow on Twitter. For an additional boost, we utilized video screens tapped into the Internet at the ASPPA Annual Conference and posted updates throughout the day. The object was to "train" attendees to rely on @ASPPA onsite, so that hopefully they will later rely on @ASPPA offsite. After the Annual, we gained a few dozen followers, so there was some impact—we'll continue to utilize this tactic at major conferences.

What and When Should You Communicate to Your Followers?

We post news we think is important for a significant portion of our members to see, so it's vital that we make sure they all have a chance to see it, regardless of their network of choice. For example, we use our social media presence to provide convenient reminders about upcoming registration deadlines for exams, webcasts and conferences. For efficiency, I have our Facebook set to update our Twitter feed with the exact same content, which in turn adds a new discussion item to the LinkedIn group. This is a basic functionality that every site allows, but I set ours up in a chain to keep it clean.

The social media gurus at Mashable (**www.mashable.com**) recently conducted a survey on Facebook user activity and found the best times of day to reach your "fans" are right before lunch, right before the end of the workday and just after dinner. (*If you're an exception to this rule, I'm interested in chatting with you briefly, so email me at* ***rharmon@asppa.org****.)* Those are the hours when people are doing the most "goofing off," as it was perhaps once perceived. We recommend following this pattern for your company's posting schedule.

Direct marketers often insist on sending email promotions and newsletters overnight so that they are waiting for recipients in their inboxes in the mornings. I don't know about you, but I often delete these in tandem. First thing in the morning, I've got stuff to do. Work stuff. But this is apparently the accepted norm and it surely works for many organizations. Unlike email though, businesses cannot afford to send out social media posts overnight. Social networking is what I jokingly called "evaporative marketing" in a recent staff meeting: you don't have very long before your message is lost in the ether, buried under hours of other tweets and posts. You better schedule your distribution appropriately to hit your audience while they're paying attention!

Other Challenges to Expect

One challenge to effectively utilizing social media for your company's gain is devoting appropriate resources to it. Dedicate a single staffer to keep the voice consistent or share the responsibilities in a manner that makes sense to your readers and still maintains a narrative integrity. For example, in ASPPA's LinkedIn group, general ASPPA promotional items tend to come with my byline but when ASPPA does something that may generate media attention, you'll see notes from Melinda Semadeni, our Director of Media Relations. (*If you want an even more direct line to this kind of content, subscribe to Melinda's hard work at* ***www.asppanews.org****.)*

Another big challenge that we are now looking to tackle is growing our presence outside of our membership. Having nonmember followers not only provides a base of prospective customers to reach, but it also expands ASPPA's influence in the industry as an integral information resource. We put buttons in all our email promotions, event signage, etc., but we can't attract new followers without your help, so encourage your colleagues to follow us! And promote your own presence

One challenge to effectively utilizing social media for your company's gain is devoting appropriate resources to it.

With every information channel, there exists a saturation point and it's important not to reach it or you'll begin to see turnover in your followers.

through ASPPA-sponsored channels like the LinkedIn group and Twitter to tap into our shared audience.

The last challenge? Not annoying your readers. With every information channel, there exists a saturation point and it's important not to reach it or you'll begin to see turnover in your followers. Email has a low saturation point. Direct phone calls have an *exceptionally* low saturation point. A single phone message could be a total turnoff. For social networking, saturation rates vary depending on the platform. It's quite high for Facebook and Twitter (you can get away with a lot of posts in a single day), but LinkedIn group members are more hands-on and some of them receive a daily digest email, so we're always on edge about posting too many ASPPA-sponsored messages there.

That's a good rule actually: stay on edge. You'll guarantee you're taking care of your customers and responding to their needs. On the social web, the customer really is always right and they'll tell you (and everyone they know) what they think. If you pay attention, you'll see immediate results. If you don't, well…you'll see immediate results. :-)

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 much of ASPPA's 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. ***(rharmon@asppa.org)***

Follow ASPPA on Facebook and Twitter and join the ASPPA group on LinkedIn. If you would like a written tutorial, email Ray at **rharmon@asppa.org** to get started!

ASPPA's Fellowship Credential: FSPA

The highest level of achievement for actuaries practicing in the retirement plan industry!

by Norman Levinrad, FSPA, CPC

As an actuarial organization, it is important for ASPPA to offer an advanced actuarial credential. The Fellow, Society of Pension Actuaries (FSPA) credential is intended to demonstrate an advanced understanding and knowledge of the private pension system beyond what is tested on the Enrolled Actuaries (EA) examination. By attaining the FSPA credential, an actuary will have demonstrated his or her ability to practice at the highest level of the pension actuarial profession.

The FSPA examination program, which has been in existence for more than 20 years, has been recently updated. The changes reflect recommendations made by a special task force created by the ASPPA College of Pension Actuaries (ACOPA).

Among these changes will be an increased emphasis on communication skills. An FSPA candidate must pass an oral presentation to demonstrate his or her ability to effectively deliver consulting services. By testing oral communication skills, the new program demonstrates consulting readiness greater than any other actuarial examination.

The FSPA credential is valuable to actuaries interested in:

- Expanding their professional education and knowledge;
- Being recognized as consulting actuaries;
- Growing client relationships through enhanced communications and plan design opportunities;
- Becoming more marketable; and
- Developing skills that will grow business opportunities.

Having an FSPA on staff is valuable to firms interested in:

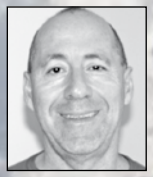
- Expanding their consulting services;
- Providing advanced consulting services;
- Marketing the strength of their actuarial consulting services; and
- Increasing their business opportunities.

In order to become an FSPA, an actuary must meet the following criteria:

- Be a Member, Society of Pension Actuaries (MSPA) and a member of ACOPA;
- Hold a Certified Pension Consultant (CPC) credential or pass the CPC proctored examination;
- Pass the A-4 essay examination; and
- Pass an oral presentation demonstrating an ability to clearly communicate a technical item.

The syllabus and set of suggested readings for the 2011 examination are available on the ASPPA Web site or at the ASPPA office. The CPC examination will be offered on June 14, 2011 and on Novmber 15, 2011. The A-4 examination will be offered on May 19, 2011 and on December 8, 2011.

If you are an actuary who is interested in achieving the highest level of recognition possible within the retirement plan industry, we urge you to pursue the FSPA credential. By doing so, you will demonstrate to clients, employers and your peers that you have the credibility to practice at the peak of your profession. If you are an employer who is interested in increasing your influence in the marketplace, we urge you to encourage your actuaries to pursue the FSPA credential.



*Norman Levinrad, FSPA, CPC, EA, MAAA, is president and chief actuary of Summit Benefit & Actuarial Services, Inc. He is currently on the Board of Directors of ASPPA and is on the ACOPA Leadership Council. Norm is a regular speaker at actuarial conferences on plan design and other actuarial issues, and he has published many articles on various pension topics. Most importantly, he is a lifelong true-blue Chelsea fan. (**norman@summitbenefit.com**)*

EDUCATION & EXAMINATION

Profile on VALIC

Promoting Advisor Education in the 403(b) Marketplace

by Sarah L. Simoneaux, CPC

Candidates who have completed ASPPA's Tax-Exempt & Governmental Plan Administration exam (TGPC-1) learn through ASPPA's study materials that the first school district 403(b) plan in the K-12 education sector was offered by VALIC in 1964. VALIC has been a pioneer of 403(b) and 457 retirement services and products for many years. VALIC's leadership realized the need for 403(b) education for advisors working with education and non-profit employees.

Seeing the rapid changes in the 403(b) marketplace and recognizing the need to partner with an industry leader in 403(b) education, VALIC partnered with ASPPA to deliver education to advisors in a unique way with the VALIC 403(b) advisor "bootcamp."

Greg Garvin, VALIC's Executive Vice President of Independent Distribution, explains, "The independent advisor is key to educators' needs to plan for a secure retirement. Working with advisors all over the country convinced us that they needed an effective method to learn not only about new products and services, but also about 403(b) plans in general. When we came up with the idea of the VALIC 403(b) bootcamp, ASPPA was the logical choice to provide the latest technical information to our independent advisors who would attend the bootcamp."

Greg and his team worked with ASPPA's Education Program Advocates to create an intensive review session on basic 403(b) and 457 concepts as part of the 403(b) bootcamp. Fortunately, ASPPA's Tax-Exempt & Governmental Plan Administration course (TGPC-1) covered the 403(b) and 457 learning objectives the advisors needed. Even better, the training would be structured to allow the advisors to take the TGPC-1 online exam immediately following the review session, while they were still on the VALIC campus attending the bootcamp.

The VALIC team next turned to their resident expert—John Malcolm, TGPC, CFP®, CEBS, Vice President, Independent Distribution, VALIC. John works with independent advisors on behalf of VALIC nationwide and he was one of the first to earn ASPPA's Tax-Exempt & Governmental Plan Consultant credential. John has extensive speaking and teaching experience with both ASPPA and VALIC, and he worked with ASPPA's Education Program Advocates to create the intensive review session covering TGPC-1 concepts. VALIC's IT department and ASPPA collaborated to set up an on-site testing center at VALIC where more than 30 advisors could simultaneously take the TGPC-1 online exam after attending John's course at the bootcamp.

Since June 2010, more than 75 advisors have attended VALIC's 403(b) bootcamps and have taken ASPPA's TGPC-1 exam. Not only has every candidate successfully passed the exam, they have also acquired technical knowledge essential to differentiating themselves in this competitive and rapidly changing profession. As John Malcolm states, "The knowledge our bootcamp advisors gained from ASPPA's TGPC-1 exam distinguishes them as 403(b) committed career professionals. We look forward to using ASPPA's TGPC course material in our future 403(b) bootcamps."

VALIC will continue their partnership with ASPPA in 2011 and their commitment to 403(b) advisor education with more 403(b) bootcamps incorporating the TGPC-1 course and online exam.

Learn more about the Tax-Exempt & Governmental Plan Administration Certificate and the Tax-Exempt & Governmental Plan Consultant credential programs at **www.asppa.org/tgpc**.

*Sarah L. Simoneaux, CPC, is president of Simoneaux Consulting Services, Inc., located in Mandeville, LA, a firm offering consulting services to for-profit companies providing retirement services and to non-profit organizations. Sarah also provides consulting through Simoneaux & Stroud Consulting Services, specializing in business planning, business consulting, professional development, industry research and customized skill building workshops. She has worked in the employee benefits industry since 1981. Sarah was formerly vice president of Actuarial Systems Corporation (ASC). Prior to her position at ASC, she was a partner in JWT Associates, a qualified plan consulting firm in Los Angeles, CA. Sarah has volunteered her services in various capacities to assist ASPPA, and she served as the 2005-2006 ASPPA President. She currently works with the ASPPA Education and Examination Committee and she authored a book for the Qualified Plan Financial Consultant credentialing program. Sarah earned her Certified Pension Consultant (CPC) credential from ASPPA in 1988. (**sarah.simoneaux@scs-consultants.com**)*

Zen and the Art of Third Party Administration

Results from ASPPA's TPA Survey

by Thomas L. Hopkins

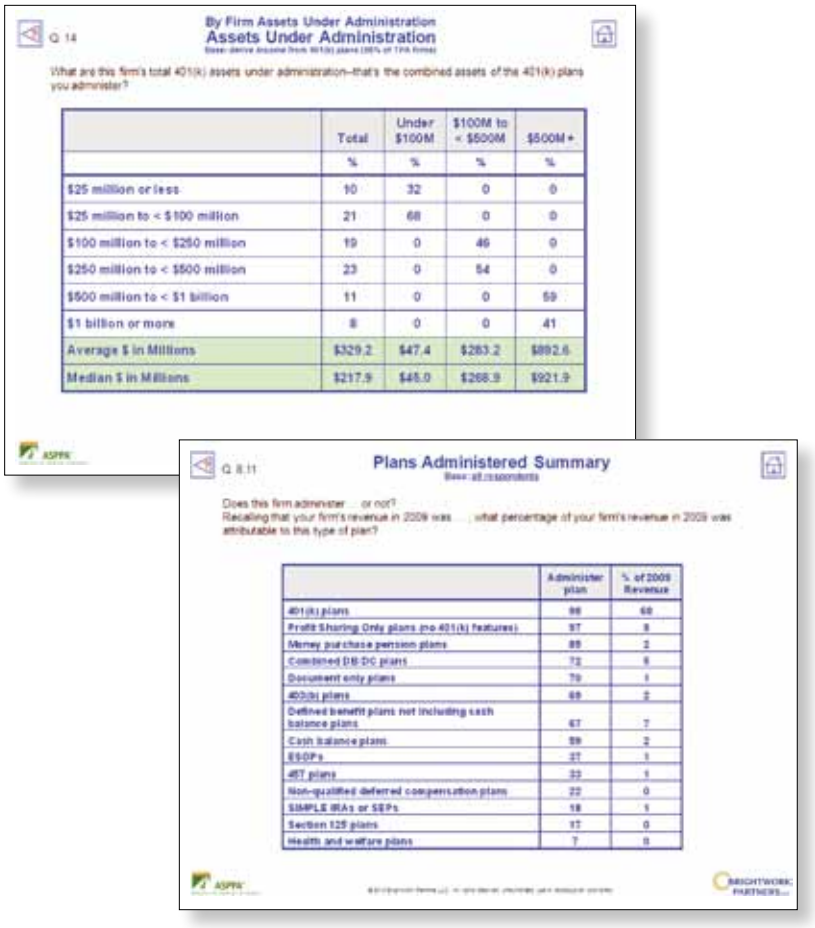
There's a scene in the film *Caddyshack* where Judge Smails (played by Ted Knight) asks Ty Webb (portrayed by Chevy Chase), "Well, how do you measure yourself against other golfers?" The reply from Ty Webb is, "By height." Unless you are a Zen-like third party administrator, similar to Chevy Chase's golfing character in the movie, and don't concern yourself with such earthly questions, you might wonder how your firm measures up to others in the industry with similar characteristics.

You might also wonder how long the average TPA firm has been in business. What is the average revenue for TPA firms in 2009? Other questions you have might include how many lives are administered in an average case and what is the average amount of assets managed? The answers to these questions and many more are contained in a single source available to ASPPA members and non-members alike (sales pitch to follow). The information shared in this article was gleaned from ASPPA's recent survey.

Survey Background

In July and August 2010, ASPPA conducted an online survey among firms whose employees were members of ASPPA. The survey was sent to 561 contacts from 511 TPA firms culled from the database of information maintained by ASPPA. ASPPA contracted with Brightwork Partners to develop, administer and compile the survey and results. The survey questions were developed in part by a special task force of volunteers from the ASPPA Plan Administrators Policy Alliance (APAPA).

Participating firms were asked about the structure, size and other characteristics of their firm clients. The survey included a comprehensive list of questions (51 in all) about number of staff, services offered, sources of new business, business development, financial results, major opportunities and concerns. Additionally, the survey also covered such areas as the number and size (assets and lives) of plans administered, types of plans administered and growth areas for new plans.



By Firm Assets Under Administration
Assets Under Administration

What are this firm's total 401(k) assets under administration–that's the combined assets of the 401(k) plans you administer?

	Total	Under $100M	$100M to < $500M	$500M +
	%	%	%	%
$25 million or less	10	32	0	0
$25 million to < $100 million	21	68	0	0
$100 million to < $250 million	19	0	46	0
$250 million to < $500 million	23	0	54	0
$500 million to < $1 billion	11	0	0	59
$1 billion or more	8	0	0	41
Average $ in Millions	$329.2	$47.4	$283.2	$892.6
Median $ in Millions	$217.9	$45.0	$268.9	$921.9

Plans Administered Summary

Does this firm administer ... or not?
Recalling that your firm's revenue in 2009 was ... what percentage of your firm's revenue in 2009 was attributable to this type of plan?

	Administer plan	% of 2009 Revenue
401(k) plans	88	68
Profit Sharing Only plans (no 401(k) features)	87	8
Money purchase pension plans	85	2
Combined DB/DC plans	72	9
Document only plans	70	1
403(b) plans	69	2
Defined benefit plans not including cash balance plans	67	7
Cash balance plans	59	2
ESOPs	37	1
457 plans	33	1
Non-qualified deferred compensation plans	22	0
SIMPLE IRAs or SEPs	18	1
Section 125 plans	17	0
Health and welfare plans	7	0

The responses tallied from the 150 firms were based on answers provided by the owner, part-owner or senior executive knowledgeable about the firm's financial performance. In fact, 94% of respondents were in some way ultimately responsible for the firm's direction and results.

Survey Highlights

The purpose of the survey was to collect demographic information as it relates to ASPPA members (their firms) and the retirement plan industry.

Business Profile

The typical (average) TPA firm has been in business for 20 years and administers $329 million in assets. Additionally, 20% of the typical firms consider themselves producing TPAs, 18% are Registered Investment Advisors (RIAs), 57% maintain a relationship with an RIA, and 30% are affiliated with a broker-dealer. As might be expected, larger firms administer somewhat larger plans on average and are more likely to be RIAs, have a relationship with an RIA or be affiliated with a broker-dealer. This information is only a small snippet of the information available in the complete survey document. Other information in the document includes number of employees, assets under administration (AUA), TPA revenue, advisory brokerage revenue and a host of other interesting characteristics. The survey further segments these results by the number of 401(k) plans administered, and producing vs. non-producing TPAs.

Segmentation of Responses

The survey results are segmented in a variety of ways. The most common is the number of plans administered, defined as up to 100, 101-250, and over 250 plans. Other segments include by number of employees at the firm and categorized as up to 5 employees, 6-15 employees and over 15 employees. This provides a glimpse, for example, of the average firm revenue per employee, which can be a nice benchmark for TPA firms. Another segment is by assets under administration and is stratified by under $100 Million, between $100 Million and $500 Million, and over $500 Million.

Selected Survey Results

Concerns and Opportunities

Another aspect of the survey was to ask the respondents about their concerns. What were the major concerns and opportunities they foresaw in the months/years ahead or, perhaps stated differently, what kept them awake at night. Of course, for the Zen-TPA this question would be nonsensical, but for the rest of the world, it's quite relevant. Not surprisingly, the majority (89%) were very concerned or somewhat concerned about achieving their profitability targets. Other concerns included succession planning, competence of third party advisors, and recruiting key talent. Certainly, these items might keep most anyone awake a night. There were 17 additional concerns listed on the survey, and the least concerning item was "consolidation among investment providers you work with." To see the remaining items and their levels of anxiety among the respondents, you will need to purchase the survey.

Perhaps one of the most important trends to consider is how other TPAs view potential opportunities. For this part of the survey respondents were asked to consider seven opportunity scenarios and rate whether they considered the opportunity major, minor or not an opportunity at all. One of the scenarios was partnering with regional payroll companies. If you were considering this scenario, would you consider it a major or minor opportunity or not an opportunity at all? If you answered, "not at all," you would be in the minority. Most respondents considered this scenario an opportunity for their firm over the next three years. The survey document further segments the responses in this area by firm size as measured by number of 401(k) plans administered.

Plans Administered

As might be expected, the majority of revenue derived by TPA firms was from 401(k) plans. And, in fact, 98% of respondents administered 401(k) plans. Perhaps the most surprising thing about this statistic is that it's not 100%. The firms also represent a wide range of other plans, including profit sharing, defined benefit, and other type plans. While you are meditating on that information, consider that respondents are reporting major increases in two specific types of plans. Again, to attain enlightenment, you will need to review the entire survey document.

Some information not in the report, but available exclusively here is the number of new 401(k) plans added in 2009. On average, a firm added 35 new 401(k) plans in 2009, 13 403(b) plans, eight 457 plans and seven Section 125 plans net of terminations. Additionally, firms added six new defined benefit plans (excluding cash balance plans) in 2009.

Services Offered

Nearly all firms offer plan design and consulting, Form 5500 preparation and compliance testing for 401(k) plans. The vast majority of the respondent firms provide all of their services via in-house personnel. However, a small number (4%) leave the Form 5500 preparation to offshore outsourcing. The only other area where offshore outsourcing is even remotely used is for Trust Accounting services, where 4% of those providing this service use an offshore provider. No other services are provided via offshore outsourcing. Additionally, 79% of respondent firms provide custom documents, and of these, 12% rely on some type of domestic outsourcing.

Revenue and Expense

In keeping with the Zen and golf analogy, we have arrived at the green! As for the future, the respondents expected 2010 revenues to be about the same as they were in 2009. The survey also describes the operating margins for the firms, the operating profit and some high level cost areas such as personnel, technology, utilities and sales and marketing. With this knowledge, it would be a simple exercise to match your income statement against the survey results to see exactly where you stand. The survey also provides insight into the composition of revenue and how it is allocated between advisory and brokerage service revenue and TPA (including asset-based fees) revenue. Other segmentation for revenue includes items such as whether the firm is a producing TPA, by RIA, assets under administration and number of employees.

Business Development

Ah yes, we are finally getting to the good stuff. How do your peers find new business opportunities? Addressed within the

survey is the respondents answer about what is their most important source of new business. Other areas include how firms generate new business and whether the firm employs internal sales people to generate new business. All of this information is contained in the survey report and much more that I haven't mentioned due to space constraints of this article.

Key Findings

The survey delves into the important subject of education, training and succession planning. While not being too specific, one of the key findings is that most firms rely on ASPPA for education and training. Not a surprising result since the survey was sent to ASPPA members. However, there are a few surprising answers as to which credentials firms require for advancement within the firm.

The Sales Pitch

As promised in the opening paragraph, here's the sales pitch: The survey is available for purchase on the ASPPA Web site at **www.asppa.org/Document-Vault/Docs/EE/2010-TPA-Survey.aspx**. The survey results are contained in an Adobe document with linking and simple navigation. The survey provides you with the opportunity to find out how your firm measures up to other firms in the industry.

So, you might ask yourself, "Why should I bother buying the survey when the information is contained here?" The answer is that the information shared here is only a tiny bit of the data available in the full blown version of the survey.

Perhaps a fitting quote from *Caddyshack* to finish this analogy is from another note-worthy character, Carl Spackler (portrayed by Bill Murray), "Gunga galunga... gunga, gunga-lagunga." To know what that means, you'll have to watch the movie.

*Thomas L. Hopkins, CPA, joined the ASPPA staff as Chief Financial Officer in 2004 after spending 20 years in various private and public accounting positions. He currently oversees ASPPA's Accounting, Information Technology, Human Resources and Customer Support departments. Immediately prior to joining ASPPA, Tom worked for Meso Scale Diagnostics (MSD), a joint venture with IGEN International (NASDAQ: IGEN), where he was Chief Financial Officer overseeing the Accounting and Human Resources functions. Previous to this position, he spent ten years as controller and vice president of finance for a division of Perkin Elmer (NYSE: PKI). Tom has a Baccalaureate degree in Economics from the University of Maryland Baltimore County and a Masters Business Administration from the George Washington University. (**thopkins@asppa.org**)*

GAC Corner

ASPPA Government Affairs Committee Comment Letters and Testimony since August 2010

November 5, 2010
ASPPA filed supplemental comments with the Department of Labor with respect to a previous ASPPA proposal to create a self correction component for the late deposit of employee contributions as part of the Voluntary Fiduciary Correction Program.
www.asppa.org/document-vault/pdfs/GAC/2010/comm1105.aspx

November 3, 2010
ASPPA and CIKR submitted a comment letter to the Securities and Exchange Commission with respect to proposed amendments to the rules for mutual fund distribution fees, including changes to 12b-1 fees. The comments provide recommendations as to how the proposed amendments could be improved, including suggesting the adoption of a plan investor "safe harbor."
www.asppa.org/document-vault/pdfs/GAC/2010/12bfinal.aspx

October 8, 2010
ASPPA and NTSAA submitted comments to the Department of Labor requesting relief with respect to the 2009 Form 5500 filing process for 403(b) plans and associated independent audits. The reason for the request relates to problems that have been uncovered as the data collection process for the 2009 plan year has unfolded.
www.asppa.org/document-vault/pdfs/GAC/2010/comm100810.aspx

October 7, 2010
ASPPA submitted supplemental comments to the Internal Revenue Service with respect to proposed modifications to Circular 230, which governs the rules of practice before the Internal Revenue Service. The supplemental comments relate to changes proposed with respect to approval of programs for continuing education credit as may be required by Circular 230.
www.asppa.org/document-vault/pdfs/GAC/2010/comm10072010.aspx

October 1, 2010
ASPPA submitted comments to the Department of Labor and the Internal Revenue Service requesting an extension for filing the 2009 Form 5500 series reports due on or before October 15, 2010. The basis for this request is the substantial number of filings expected within the first two weeks of October which are later than normal primarily due to the challenges plan sponsors and administrators face in filing reports for the first time under the revised form and the new EFAST2 filing system. ASPPA also requested liberal application of "reasonable cause" waivers for reports that are filed late because of the same challenges.
www.asppa.org/document-vault/pdfs/GAC/2010/com01102010.aspx

September 16, 2010
ASPPA submitted a comment letter to the Internal Revenue Service with respect to proposed modifications to Circular 230, which governs the rules of practice before the Internal Revenue Service. In the letter, ASPPA recommends that Circular 230 be modified to provide that only a single individual be required to obtain (and potentially furnish) a Tax Preparer Identification Number ("PTIN") with respect to the preparation of Form 5500 and related schedules.
www.asppa.org/document-vault/pdfs/GAC/2010/31cfr.aspx

August 29, 2010
ASPPA and CIKR submitted a comment letter to the Department of Labor with respect to the Interim Final Regulation under ERISA § 408(b)(2) which relates to the disclosure obligations of certain service providers to retirement plan fiduciaries. The comments provide suggestions and recommendations as to how the Interim Final Regulation could be improved before it becomes effective on July 16, 2011.
www.asppa.org/document-vault/pdfs/GAC/2010/408830.aspx

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

New Year—New Name

The "ASPPA Recordkeeper Certification" Becomes the "ASPPA Service Provider Certification"

The ASPPA Service Provider Certification program (formerly named the "ASPPA Recordkeeper Certification") has been enhanced to better align with the needs of the industry. The certification, provided by CEFEX Centre for Fiduciary Excellence, continues to issue the industry's mark of excellence, representing the adherence to the Standard of Practice first introduced by the ASPPA Task Force in 2006.

The program name has been changed from the ASPPA Recordkeeper Certification program to the ASPPA Service Provider Certification program to more accurately reflect the audience for the program. The program will now offer two distinct types of registration, thereby acknowledging the operational and business differences between organizations. A firm can be assessed for Recordkeeping Certification or Administration Certification or as a combination of both types. Coincident with this revision, the assessment process was refined to better distinguish best practice criteria that applies only to recordkeeping firms from that criteria that applies to all firms. Ongoing renewals have also been streamlined, making use of an online reporting tool, which results in reduced assessment costs for subsequent years.

Because of the recent finalization of the ERISA 408(b)(2) regulation, which becomes effective in July 2011, CEFEX is developing a revision to the ASPPA certification assessment methodology in order to verify adherence to the new industry requirements related to fee disclosure.

For more information about the ASPPA Service Provider Certification and the list of qualified CEFEX analysts, visit **www.asppa.org/svcprocert**.

ASPPA Service Provider Certified Firms

Actuarial Consultants, Inc.

Alliance Benefit Group of Houston

Alliance Benefit Group of Illinois

Alliance Benefit Group of Michigan, Inc.

American Pensions, Inc.

ASPire Financial Services, LLC

Benefit Consultants, LLC

Benefit Plans Plus, LLC

Creative Plan Designs, Ltd.

Crowe Horwath, LLP

DailyAccess Corp.

ExpertPlan, Inc.

Ingham Retirement Group

Moran & Associates, Inc./G. Russell Knobel & Associates, Inc.

Pension Plan Professionals, Inc.

Pension Solutions, Inc.

Pinnacle Financial Services, Inc.

Rogers & Associates

RSM McGladrey, Inc.

SLAVIC401K.COM

Suemori & Inouye, Inc.

Summit Retirement Plan Services Inc.

TIAA-CREF

Greetings from the ABC of the Greater Twin Cities

by Robert L. Long, APM

As a new ABC on the block, the ABC of the Greater Twin Cities is pleased to join the ABC ranks along with our sister ABCs across the country. We're still learning but must admit we're having fun at it.

Our initial kickoff meeting was held on November 9 last year and was a rousing success. There was standing room only for a presentation by Brian H. Graff, Esq., APM. After just a month of open membership, we had 137 members and counting. We suspected there was a need for local ASPPA education, so it's been extremely satisfying to have gotten such a great response from the local community—particularly with corporate members.

We're currently planning our programs for 2011, bringing in new volunteers, refining our budget—and yes, breathing a sigh of relief that we've gotten so much support so early!

Was it an easy process? It's never as easy as we want it to be, but the support we received from ASPPA and the tools they currently have and are developing did make a big difference. Our initial steering committee and eventual board consisted of only five people, but we now have a great group of volunteers who have stepped up to make life much easier.

We are very excited about the educational opportunities we are planning on providing to our members in the community and look forward to a successful 2011 and beyond!

For more information about the ABC of the Greater Twin Cities, visit our Web site from ASPPA's Web site at **www.asppa.org/Main-Menu/partners/ABCs/ABCList/twincities.aspx** and feel free to contact any of our board of directors. We'd love to have you join us!

*Robert L. Long, CLU, ChFC, APM, is product manager for Actuarial Systems Corporation and is heavily involved in the daily valuation and trading aspects of the pension industry. A 30-year industry veteran, Bob managed a variety of pension administration operations within the insurance industry before becoming involved with systems development. He currently serves as ASPPA Vice President and previously Co-chaired ASPPA's Education and Examination Committee. Bob also serves as the president of the ABC of the Greater Twin Cities. (**blong@asc-net.com**)*

Welcome New Members and Recent Designees

MSPA

Andrew T. Behnke, MSPA
Mark Bierman, MSPA
Jill Casey, MSPA
Wing C. Chan, MSPA
Traci Christian, MSPA
Aaron Friedman, MSPA
James E. Holland, Jr., MSPA
Daniel Liss, MSPA
Patrick Mele, MSPA
Gary J. Mevorah, MSPA
Tom Munson, MSPA
Paul Petroff, MSPA
David A. Pitts, MSPA
Roman T. Umali, Jr., MSPA
Wei Zhao, MSPA

CPC

Osmundo A. Bernabe, MSPA, CPC, QPA, QKA
Maria I. Delin, CPC, QPA, QKA
Robert W. Griffith, CPC, QPA, QKA
Jay E. Guanella, CPC, QPA, QKA
Yannis P. Koumantaros, CPC, QPA, QKA
Jeffrey P. Mahon, CPC, QPA
Ryan J. Pate, CPC, QPA, QKA
Laurene L. Patterson, CPC, QPA, QKA
Marilyn I. Ramjohn, CPC, QPA, QKA
Jinnie D. Regli, CPC, QPA, QKA

QPA

Lisan A. Adams, QPA
David T. Banathy, QPA
Lisa L. Beckman, QPA, QKA
Andrew Brandt, QPA, QKA
Dana D. Brannon, QPA, QKA
Jordan Brown, QPA, QKA
Michael Bruneau, QPA, QKA
Scott Castiglia, QPA, QKA
Donna L. Chalupsky, QPA, QKA
Jason R. Cossette, QPA, QKA
Nina Cowart, QPA, QKA
Kimberly M. Davis, QPA, QKA
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Leah DiMartino, QPA, QKA
Kyle Dunigan, QPA, QKA
Michael Z. Eaton, QPA, QKA
Kristen W. Eckert, QPA, QKA
Tim J. Ertz, QPA, QKA
David A. Eudoxie, Jr., QPA, QKA
David K. Ewing, QPA
Linda M. Flynn, QPA, QKA
Sebastian C. Fogle, QPA, QKA
Lee E. Forehand, QPA, QKA
David Franco, QPA, QKA
Lucreasia C. Gale, QPA
Dominick Gallares, QPA, QKA
Amy M. Garber, QPA, QKA
Christopher J. Gilbert, QPA, QKA
Michelle Glassman, QPA
Jason E. Grantz, QPA
Amy L. Griffith, QPA, QKA
William D. Hackler, QPA, QKA
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N'siah C. Lebovits, QPA
Jessica R. Light, QPA, QKA
Cindy Lipka, QPA
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Skyler A. Marchand, QPA, QKA
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Beverly R. Shouse, QPA
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Amy Szurly, QPA, QKA
Marisa Teller, QPA, QKA
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Susan G. Tucker, QPA, QKA
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Jacqueline L. Villars, QPA, QKA
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QKA

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Caroline S. Gwyn, QKA
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Paula M. Horan, QKA
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Lisa Johnson, QKA
Kathryn A. Jonas, QKA
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Sharon Kavanagh, QKA
Sharon Kennedy, QPA, QKA
Kellie A. Kent, QKA
Jennifer Kienle, QKA
Nicolette M. Kirchoff, QKA
Paul Kovacsofsky, QKA
Sharon M. Kress, QKA
Christina Kukucka, QKA
George Labrinakos, QKA
Lynn E. Laible, QKA
Hai Le, QKA
Jayme Leake, QPA, QKA
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Russell Linderer, QKA
Trent Lindsey, QKA
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Kimberly A. Musick, QPA, QKA
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Carol A. Neill, QKA
Karen E. Noel, QKA
Michael Nossal, QKA
Karen M. Noyle, QPA, QKA
Jennifer Ogur, QKA
Jason M. Owens, QKA
Chris Painter, QKA
Phillip A. Pessoa, QKA
Michael D. Petti, QKA
Laura J. Ponstine, QKA
Stacey Potts, QKA
Jeremiah Prather, QKA
Jennifer S. Preston, QKA
Seth R. Priestle, QKA
Lenny Puhrmann, QKA
Christopher J. Pullman, QKA
Kerry C. Quiery, QKA
Julie Randolph, QKA
Bronwyn Ritchey, QPA, QKA
Lori Robertson, QKA
Jason A. Rogers, QKA
Melissa Rogers, QKA
Judith Rohr, QKA
Gregg Rubenstein, QPA, QKA
John Rupp, Jr., QPA, QKA
Sidney Charlene Samples, QKA
Jacob Sawmiller, QKA
Christopher B. Scharf, QPA, QKA
Laurie J. Schickendantz, QKA
Jennifer Schlei, QKA
Mary P. Schulz, QKA
Jesse M. Scott, QKA
Krystal Segovia, QKA
Jonathan Severin, QKA
Gene Skonetski, QKA
Erin Slavin, QKA
Wayne B. Smalley, QKA
JoAnna Smith, QKA
Luke Smith, QKA
Amy Szurly, QKA
Anita Tansil, QKA
Andrea Tepfenhart, QKA
Kristy Terrell, QKA
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Beth L. Tibbetts, QKA
Nina K. Trott, CPC, QPA, QKA
Linda R. Visconti, QKA
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Mark Walsh, QKA
Angela M. Weber, QKA
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Calendar of Events

ASPPA

Date*	Description	CPE Credits**
Jan 1	First semester webcourse access period begins	
Jan 12 – Jan 14	Los Angeles Benefits Conference • Los Angeles, CA	15.7
Jan 17 – Jun 30	First semester CPC Modules	
Jan 17 – Dec 15	Online examination window (RPF-1, RPF-2, TGPC-1)	
Feb 2 – 5	NTSAA Annual Conference • Orlando, FL	18
Mar 3	Early registration deadline for EA-2B review course	
Mar 6 – 8	The ASPPA 401(k) SUMMIT • Las Vegas, NV	14
Mar 22 – Apr 28	PFC-1 live online course (CFFP)	
Apr 1 – 4	EA-2B review course	
Apr 14	Early registration deadline for spring examinations	
May 5 – 6	Mid-Atlantic Benefits Conference • Philadelphia, PA	TBD
May 9 – 11	NTSAA 403(b) Compliance Resolution Summit • Irving, TX	TBD
May 11	Final registration deadline for spring examinations	
May 12 – 13	Benefits Conference of the South • Atlanta, GA	TBD
May 12 – Jun 24	Spring examination window	
May 19	A-4 examination	
May 24 – 26	Women Business Leaders Forum • Boulder, CO	TBD
May 26	Postponement deadline for CPC examination	
Jun 2 – 3	ERPA Conference • Los Angeles, CA	TBD
Jun 6 – 7	ACOPA Advanced Actuarial Conference • San Francisco, CA	TBD
Jun 10	Postponement deadline for spring examinations	
Jun 14	CPC examination	
Jun 15	Registration deadline for first semester CPC modules	
Jun 23 – 24	Great Lakes Benefits Conference • Chicago, IL	TBD
Jun 30	First semester CPC modules submission deadline	
Jun 30	First 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.

AIRE & ERPA

American Institute of Retirement Education
A Partnership of ASPPA & NIPA

Jan 6 – Feb 17
ERPA–SEE Winter 2011 Examination Window

Feb 2
ERPA–SEE Examination Postponement Deadline

Jun 2 – Jun 3
ERPA Conference

Jul 6
Registration Deadline for ERPA–SEE Summer 2011 Examination Window

Jul 7 – Aug 31
ERPA–SEE Summer 2011 Examination Window

Aug 15
ERPA–SEE Examination Postponement Deadline

ABC Meetings

ABC of Greater Cincinnati

January 25	Topic TBD – Charles Lockwood
February 22	Department of Labor Updates – Sherry Brackney
March 29	Topic TBD – Tom Collett, CPC, QPA, QKA

ABC of Detroit

January 20	Joint Breakfast Meeting with the Michigan Bar Association Washington Update & 404(a) – Craig P. Hoffman, APM
March TBD	5500 Issues, including EFTPS – Janice M. Wegesin, CPC, QPA

ABC of the Great Northwest

January TBD	Recordkeeping & Technology – Yannis Koumantaros, CPC, QPA, QKA

ABC of Greater Philadelphia

January TBD	Hybrid Plans: The New Regulations – Thomas J. Finnegan, MSPA, CPC, QPA

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

Fun-da-Mentals

Sudoku Fun

Every digit from 1 to 9 must appear:

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

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

Level = Easy

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

This is carrying the paperless work place too far."

Word Scramble

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

BIND GLEN ☐☐—☐—☐—☐—

CLUE SHED ☐☐☐—☐—☐—☐

A CUT RAY ☐☐—☐—☐—☐

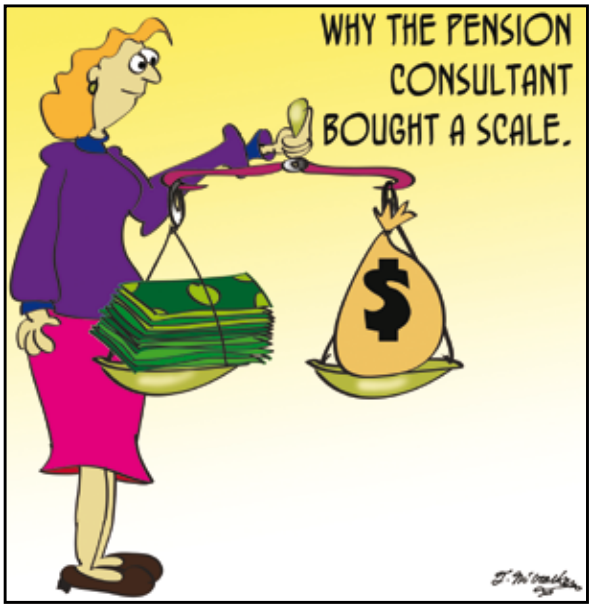
LEAP BAY ☐☐—☐—☐—☐

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

Mystery Answer:

She needed a "_ _ _ _ _ _ _ _ _ _ _ _ _ _ _."

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



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