

THE ASPPA Journal

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



WASHINGTON UPDATE

An Insider View from Capitol Hill



by Chris Robichaux

Recently, two new ASPPA staff members had a discussion about what it is like to work on Capitol Hill. ASPPA's Director of Media Relations, Chris Robichaux, a ten-year veteran of work in the US House of Representatives, spoke with Judy A. Miller, MSPA, ASPPA's Chief of Actuarial Issues and Director of Retirement Policy, about her experiences serving on the Senate Committee on Finance. The following is a reprint of that interview:

Chris: In general, how was your experience working on a Senate committee staff?

Judy: I was on Capitol Hill for four and a half years. I can't imagine it's like anything else a person can do. Well, you know, because you

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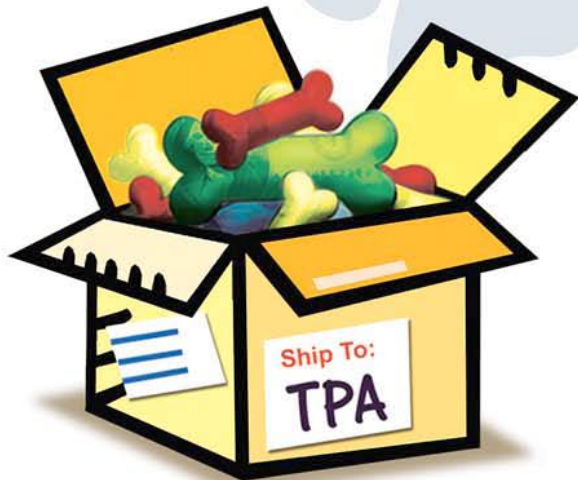
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FROM THE EDITOR

The Dilemma of the Dueling Keypads

by Chris L. Stroud, MSPA



Many devices we use today require some sort of interaction with numbers. Did you ever wonder why two of the things we use the most—a phone and a calculator—have “dueling keypads?”

Both the touch-tone phone keypad and the all-transistor calculator keypad were developed in the 1950s and made available to the general public in the early 1960s. Phone keypads were arranged with “1-2-3” in the top row; calculators were arranged with “7-8-9” in the top row. Interestingly enough, both layouts put zero on a special bottom row. There does not seem to be any single reason as to why these keypad layouts, developed around the same time, evolved to be virtual opposites. Let’s explore some of the theories.


First, consider the forerunner to the phone keypad—the rotary phone dial. One might think that a good model for a “rotary” concept would have been the clock. The numbers on a clock start with “1” in the top right and increase in a *clockwise* order to “12”. Contrarily, the numbers on the rotary phone start with “1” in the top right and increase in a *counter-clockwise* order to “9”. Hmmmm. The rotary phone then complicated things further by having “0” follow “9”. Why? Resources indicate that placing zero at the end (back then, zero was used to call the operator and to report emergencies) was preferable to avoid the accidental dialing of zero. Some believe that the touch-tone keypad was designed to mimic the rotary dial, with “1” on top and the larger numbers, followed by zero, at the bottom. It also seems that early phone company research on a variety of keypad designs concluded that the current phone keypad was easiest to use and the layout helped eliminate dialing errors. The “1-2-3” on top also followed the logical rules of reading—left to right and top to bottom. Lastly, it made the association of the alphabet to the numbers easier to follow, again starting at the top with “A-B-C.”

Now let’s take a look at the adding machine, the predecessor of the calculator. Adding machines were designed with rows of

zeros at the bottom, and the numbers increased as they went upwards to rows of nines at the top. When calculators came into being, the decision to keep the higher numbers at the top prevailed. However, there does not seem to be any history of extensive testing of design for speed or accuracy, and the layout appears to have been somewhat arbitrary. (Since our industry boasts many “ten-key” wizards, the creators must have done something right!) Computer number keypads later followed this same pattern in order to mimic a calculator.

One interesting story suspected to be true is that Bell Labs actually contacted the leading calculator manufacturers to find out why they had chosen to put the low numbers at the bottom instead of at the top. Since Bell Labs got no clear answer and they could not convince the calculator manufacturers to change the order of the numbers on the calculator, phones and calculators were introduced to the public with the “opposing” keypads that still exist today. Others contend that ergonomics may have played into the design of both keypad designs. For example, an adding machine or a calculator is often located beyond the current work area, so when reaching out or “up” for the calculator, the user would encounter “1” more easily at the bottom. Conversely, the phone is often located below eye level and the normal work focus. Thus, grabbing the receiver and moving to the phone keypad, the eyes and fingers travel logically to “1” at the top.

Technology has shown a preference to the phone keypad, which is the layout used in ATMs, security devices, remote controls, microwave ovens, etc. Only the calculator industry remains defiant today (perhaps proving the theory that accountants and actuaries march to the beat of a different drum).

Personally, I think Bluetooth is the answer to the dilemma of the dueling keypads. When making a call, I now can simply say “call” and the nice lady who lives inside my cell phone listens as I say the phone number out loud, and she repeats it and then dials it for me. I think I will ask her if she has any friends who would like to move into my other devices—and then, no more keypads for me! 



WASHINGTON UPDATE

worked there before also. Before joining the Finance Committee staff, I worked with private employers on their retirement plans for many years. That was invaluable experience for me on the Hill, not only the actuarial aspects, but the experience in both small business and in the pension world.

Brian Graff called me one day and said, “Would you be interested in working on the Senate Finance Committee?” I really had no idea what I was getting into, and when I actually joined the Committee, it took me about a year to feel like I had a good sense of what I was doing. Things are always changing, whether it’s close to a presidential election or an interim election. There are always things going on. When I first joined the Committee staff, there had been a temporary interest rate relief for funding purposes, so we were working on getting that relief extended and ultimately the larger pension bill. It was a very fascinating time for someone in the pension field to be there. I also got there in time to work on the tax part of the Medicare bill. One of the first conferences that I got to sit in on as a staff person was the tax part of the Medicare Prescription Drug conference, when HSAs were created, so that was interesting. And, of course,

you sit there the first time in awe of everybody you have seen on TV and realizing that you never thought you would actually be sitting in the same room. I thoroughly enjoyed working for Senator Baucus and he liked having someone from Montana. It was a perfect situation.

I think, especially in the benefits area, having someone with an actuarial background was helpful. There were many, many attorneys, a few economists and more attorneys. I think it helped to have another perspective. I felt like I contributed both from the actuarial standpoint and from the small-business standpoint.

Chris: Was it an advantage being the only actuary working on Capitol Hill?

Judy: I think it was. I think it did help give me, wandering in from Montana, credibility with other staff. For most of that time we were in the minority, but on the Senate side in the Finance Committee—it’s as bipartisan as it can be up there. Still, I believe it did give me credibility that was definitely very useful. Most of the people who go to work there are younger, and having a good bit of life experience was very helpful, too.

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Chris: It's not really a place to obtain gain and glory on staff or even make much money, or necessarily get the credit, is it?

Judy: No, no, no. Any time you are on a panel or other public forum, you start off saying, "not for attribution; I can't speak for the committee," and ideally, as a staffer, you are nameless. You are really there in a totally supportive role. And I think that, in a way, it's similar to when you are running your pension business – you are working for the clients and their best interests. When you are a staffer, you are working for the ranking member, or chairman by the time I left, an elected official. It's your job to serve them well. And so, you give them the best counsel you can and then they make the decision. And, whether it is the decision you would have made or not, it's your job to implement it as best you can. Fortunately, I didn't really feel like I was in a position where I had to compromise with what I would prefer to do. With rare exceptions, it was a comfortable fit.

So, it's an unbelievable high going to work there and being in the middle of everything and sitting off the floor and going home and saying, "Oh, Barack Obama said hello to me today." Or to be in a room where Sen. Baucus is talking with Sen. Kennedy and sometimes you are even participating in this discussion. So, it's an experience that I am thrilled to have had.

Chris: What was the most challenging aspect of work in the Legislative Branch?

Judy: Probably patience. Things change so frequently, and there would be an absolute crisis, so you would have to spend days getting very little sleep, getting something together because something might happen. And then, all of the sudden the focus shifts and it's just sitting there and you may or may not ever pick it up again. And, you have to be willing to run full speed ahead in whatever direction you have been told to run, and not waste much time feeling badly about it when, all of the sudden, that turns out to be a total dead end. Like with the pension bill when I first got there, in 2003, the committee marked up a version of what was then called "Nest Egg." I don't think that was the first version. Then we did another version in the next Congress before the pension bill finally was enacted.

Every once in awhile an idea comes up and things get done right away. But, generally speaking, things come up over and over again until they finally move ahead. You go there and you think, "I've got all of these brilliant ideas," and then you find out that somebody had the idea before and even if it's not in this bill, you find out that it was in a previous one. There are a lot of extremely bright people there, which is one of the interesting things about it. There is just a very fun intellectual atmosphere and a tremendous sense of camaraderie. But, you

You go there and you think, "I've got all of these brilliant ideas," and then you find out that somebody had the idea before and even if it's not in this bill, you find out that it was in a previous one.

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can't have a huge ego because it doesn't serve you well. If you are going to do a good job, you have to stay focused on the task at hand.

Chris: I know you mentioned some of the positive aspects of working on Capitol Hill. What was the most rewarding?

Judy: It probably was seeing PPA signed into law. I know that probably a lot of our members might be grinding their teeth on that a little bit. But, when you work on it for several years, and you have invested hours and days and weeks and gone through all sorts of compromises, it's quite something when you see it finally enacted.

Chris: What will be the challenges for the new Congress and the new President in the subject area of financial security for the future for Americans retiring from the baby boom generation?

Judy: I think one of the biggest issues is coverage. There's been, over time, a shift in the types of plans that people have, but the coverage rate has been relatively constant for people who have employer-sponsored retirement plans. So, I think that's why there is all this interest in payroll deduction IRAs. Chairman Baucus had a bill to try to bring payroll deduction savings to workers without employer-sponsored plans, while at the same time trying to get more employers involved in the private retirement system. ASPPA supported that bill. It's a challenge to do that in a way that brings more employers into the system instead of removing employers from the system. Hopefully, for most people, there is an awareness of that and I think that is one of the biggest challenges that lies ahead.

Chris: Do you think it will be for encouragement or mandate?

Judy: Most people are sensitive to government-imposed burdens. But you have to ask: "mandate what?" That employers offer payroll deduction? Or that employees have contributions deducted? I know there are proposals out there that would have a payroll tax type system and for that the question is: "How's the money going to be invested?" I think there is currently a lot of support for trying to expand the

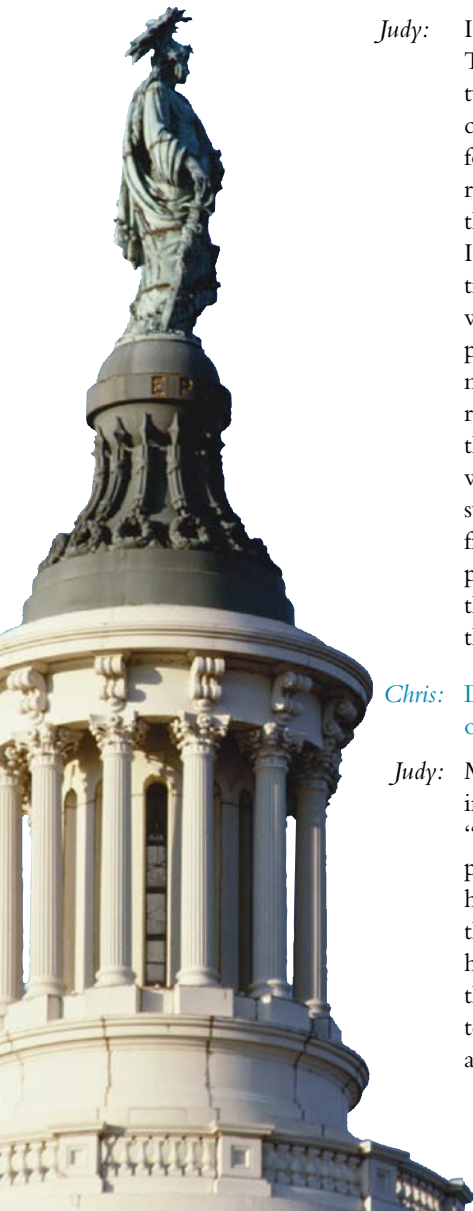
private system as opposed to creating another mandatory, public one. Obviously, we will have to see, but I think people shy away from mandates.

Chris: Will there be common ground to adjust or reform the Social Security program?

Judy: We will hear about that, but I don't know how much. If you look at the retirement program that is facing the most immediate fiscal challenge, it's Medicare, not Social Security. Really, both Medicare and Social Security would be helped if people would work a little longer, save more and put off collecting Social Security until a later age. So, I think there will be some efforts to encourage people to work part-time and stave off the use of some of the benefits. I think there are different ways that can be approached, but my guess is we will see serious talk about Medicare before we will see much effort on the Social Security front. But it's hard to say what's going to happen.

Chris: So, the pending retirees can help with program longevity. What about the younger generation? A lot of them say they are never going to see any benefits from Social Security?

Judy: I am not one who thinks that Social Security will just disappear. I think that too many people are depending on it and, as I said, our problems are really more severe with regard to health care, post-retirement, than they are Social Security. But, even if Social Security survived as is, which is unlikely because there probably will be some changes, most of us wouldn't want to have to live off that. And, whether or not Social Security is going to be around, young people need to save as much as they can as early as they can. I think we are all aware of the power of compound interest and I think that there is enough talk about it lately and about the need to start saving young. Hopefully, more people will start saving and automatic enrollment arrangements will get more young people signed up. If you start saving, even a modest amount when you are young, then we won't have these issues. Definitely save early and try to keep your hands off of it and save it for retirement.





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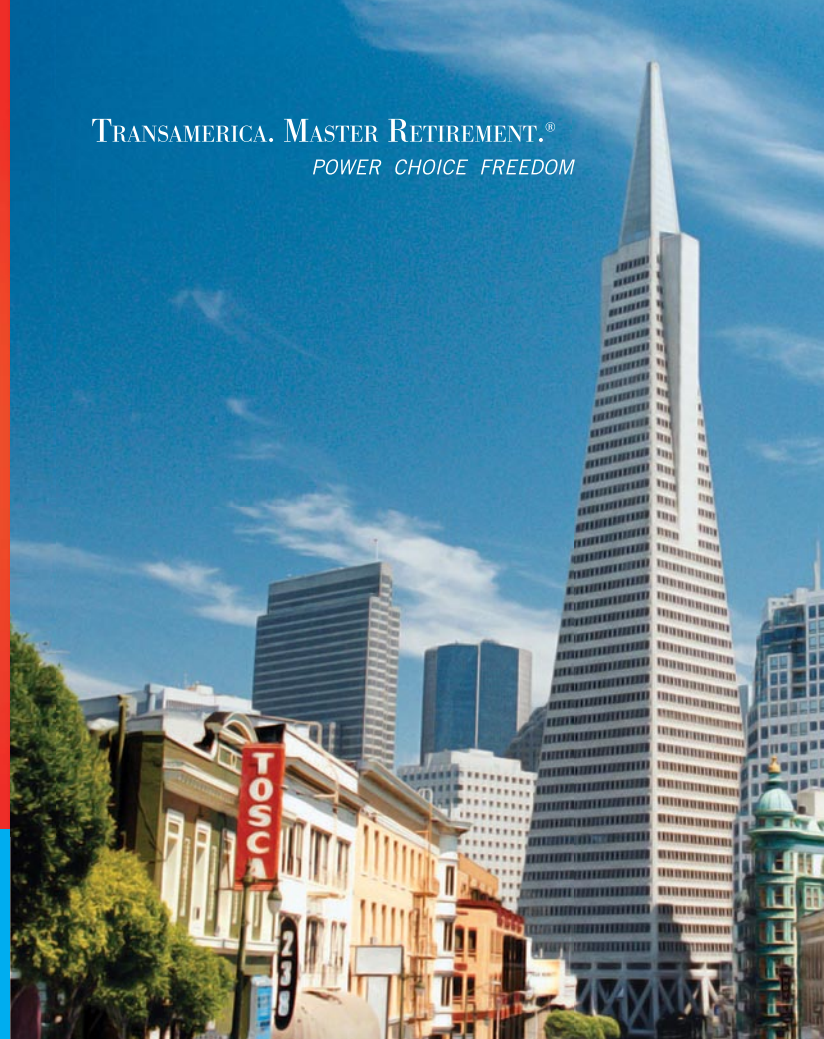
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Chris: What was the most interesting event during your time on Capitol Hill?

Judy: Oh, that's a tough one. I hadn't been there very long when I went over to the House side for the Ways & Means markup of the pension bill, and that was when the Democrats walked out and Bill Thomas called the Capitol Police. That was the first markup I'd ever seen – it was quite a show and was my introduction to the process. And, of course, on the Finance Committee and probably in the Senate in general, markups are very different anyway because there are far fewer members there so it's a much different process. But that markup was memorable anyway.

Every conference was very interesting just to see members interacting with each other and to see how they handle themselves in those circumstances, because some people are better at giving a rousing speech on the floor and some people are better at negotiating in the committee room.

Chris: Does Congress get a bad rap? Is it working?

Judy: I feel like, even in the brief time I was there, it became more partisan, but with the shift in power and the upcoming presidential election, I think it probably cycles all of the time. One thing I would say is that there is this perception when you hear the Senate is in recess that the members are not working. I think that Congress may be having some trouble getting some things done right now, but it's not for lack of work hours on the members' part. I observed the Senate, not the House, and primarily Chairman Baucus, but it is a ruthless work schedule. One thing I learned is how much they have on their plate, the breadth and depth of the ground they need to cover. They work an incredible amount and hardly ever get a day off. I think the public doesn't really understand how much effort is given, and I often feel defensive when

I hear some attacks. On the other hand, it has gotten to be pretty deadlocked, and you feel like if there were a little bit of fresh air and an election was not in the foreseeable future, maybe more could get done.

Chris: What interested you in the Chief of Actuarial Issues position at ASPPA?

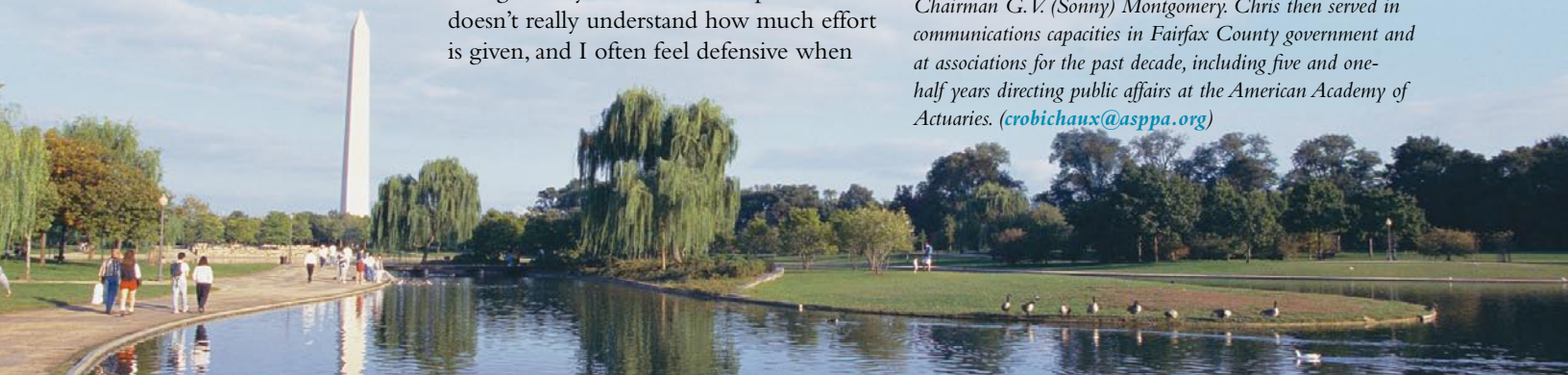
Judy: Most of the time I was on the Hill, I thought I wouldn't leave until I retired, but I realized that I just needed a change. I really hadn't thought of myself as being a lobbyist or being with an interest group, because I feel like I need to believe in what I am doing and that sounded hard to me. I realized that I really wouldn't have that problem with this organization because I do believe in the private pension system; I believe in small businesses' right to have a good retirement plan; and this is really where I came from. It was that background that served me well while I was on the Hill. It occurred to me in talking with Brian that the ASPPA position was a job in which I would be not just comfortable, but excited about, moving to.

Chris: What do you think about Ron Gebhardt's succeeding you at the Senate Finance Committee?

Judy: He is so excited. He is a wonderful guy. I would like to have had another actuary there while I was there. They are eager to have him and I think it is great that we will still have an actuary there. ↗



Chris Robichaux, ASPPA Director of Media Relations since November 2007, is a veteran Capitol Hill staffer and originally from Southwest, LA. He served as press secretary, legislative assistant and communications director for ten years for various members of the US House of Representatives, including service at the House Veterans' Affairs Committee under Chairman G. V. (Sonny) Montgomery. Chris then served in communications capacities in Fairfax County government and at associations for the past decade, including five and one-half years directing public affairs at the American Academy of Actuaries. (crobichaux@asppa.org)



The “New” Investment Policy Statement

Plan Guidelines for Selecting and Monitoring Managed Accounts, Lifestyle or Lifetime Funds and Self-directed Brokerage Accounts

by Mary L. Patch, QKA, QPFC

While ERISA does not require a plan to create an Investment Policy Statement (IPS), it does state that a plan must “provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan.” Unfortunately, the devil is in the details of what exactly the IPS should include. Many are boilerplate; they do not specifically address the inner workings of the employer’s retirement plan. As the plan changes, the impact on the IPS is sometimes overlooked.

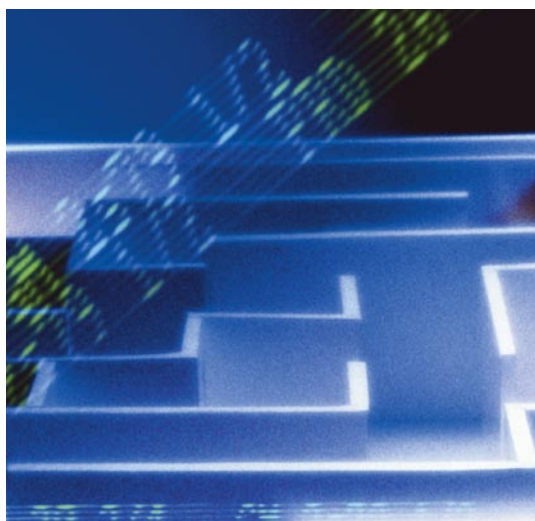
With the popularity of Managed Accounts, Lifestyle or Lifetime Funds and Self-directed Brokerage Accounts within a retirement plan, it is important to cover the selection of these investments within the framework of the IPS. Policies, objectives and reporting requirements should be identified within the IPS, along with any additional criteria for monitoring and reviewing existing investments.

Managed Accounts

An advisor may create a Managed Account comprised of stocks, bonds, exchange-traded funds, mutual funds or other investments. Management service can also be outsourced to a separate account manager providing for institutional money management at reduced account minimums. The underlying investments are subject to the same standards applied to other investments utilized by the plan.

Managed Accounts, whether managed by an advisor or by a separate account manager, are used to provide a lower cost investment alternative. By eliminating the marketing and distribution costs of traditional mutual funds, the Managed Account should have better performance as a result of the reduced expense. Many large qualified retirement plans utilize professional institutional money managers for this reason.

When developing the criteria used to monitor a Managed Account, the following should be considered: long-term risk-adjusted



By completing a questionnaire, an employee can be directed to a predetermined allocation of investments that matches his or her risk tolerance and time horizon.

performance, risk objective, time horizon for the investment, liquidity needs for distributions, strategic and tactical allocation objectives, correlation to a specific style, total assets under management and organizational stability of the management company. The IPS should establish clearly defined benchmarks for monitoring each of these areas.

When working with an advisor who recommends the use of a separate account manager, it is important to review the advisor’s fee. In some cases, the cost effectiveness of using a separate account manager can be overshadowed by this additional cost. Determining an appropriate fee for this service can be difficult.

Lifestyle and Lifetime Funds

Employees are no longer required to build their own investment portfolios. By completing a questionnaire, an employee can be directed to a predetermined allocation of investments that matches his or her risk tolerance and time horizon.

There are two different types of strategies; one is based on a combination of risk tolerance and time horizon (Lifestyle Funds) and the other is based strictly on time horizon (Lifetime Funds). Many mutual fund companies have created one or the other style, or both, to compete in this increasingly popular participant option. This type of fund offers an employee a tremendous amount of simplicity. As a result, many qualified plans have added or will be adding Lifestyle or Lifetime Funds to their fund lineup.

Lifestyle or Lifetime Funds can be in the form of a pre-packaged mutual fund or comprised of a group of funds. While a mutual fund requires registration with the Securities Exchange Commission, a new brand of "Fund of Funds" alternative does not. An advisor can create a "recommended allocation strategy" comprised of virtually any investment the advisor deems appropriate. A "Fund of Funds" can consist of mutual funds, stocks, bonds or even exchange traded funds. The advisor selects the appropriate percentages allocated to the different investments, monitors the holdings and rebalances the fund as necessary.

When establishing the criteria to monitor Lifestyle or Lifetime Funds, the underlying investments must be reviewed separately and as a whole. These funds can have a varying degree of risk associated with them. Since industry standards do not currently exist for appropriately benchmarking these types of investments, monitoring the funds within a qualified plan can be challenging. Standards should be set within the IPS to specify the allocation between bonds and stocks within each Lifestyle Strategy. The IPS should also address the periodic review and monitoring of the holdings of the funds to determine if the proper weighting between stocks and bonds exists. The level of risk associated with each fund should also be analyzed and identified.

By way of example, a conservative Lifestyle Fund may hold any percentage of stocks and bonds the fund company or the advisor feels is appropriate for a conservative investor. Without any set standards, funds may add more exposure to equities in an effort to increase performance of their fund. This tactic could result in additional risk for the investor and underscores the need for the IPS to address such standards.



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Fees can also be a concern for Lifestyle and Lifetime Funds. Some funds charge a “wrap” fee in addition to the expense ratio of the underlying mutual fund while others do not. Reviewing the expenses listed in the fund prospectus will help determine the underlying investment expenses as well as any additional fees that may exist.

Another area of concern with respect to Lifestyle and Lifetime Funds is finding funds that have an established performance track record. Since many of these funds have been created within the last few years, it can be difficult to find funds having significant performance history. Most Investment Policy Statements are written to specifically eliminate funds that have shorter than a five-year track record. Careful consideration should be given to ensure the IPS addresses this issue.

Self-directed Brokerage Accounts

Allowing participants to utilize Self-directed Brokerage Accounts can significantly increase the complexities of the retirement plan. If highly compensated employees are afforded this option, it must be made available to all other

employees in a non-discriminatory fashion. This requirement may create a problem, as even the most unsophisticated investor will have the ability to purchase virtually any investment available in the marketplace.

There are two different schools of thought regarding the availability of Self-directed Brokerage Accounts. One line of thought is that by providing every option available, none of the employees could complain they did not have access to a specific fund. The second line of thought contends there is significant risk to the fiduciary because the employees can now purchase any investment on the open market, whether appropriate for them or not.

While the first thought is somewhat of an accurate assumption, the difficulty the fiduciary will face is educating the employees on the options now available to them. By opening up the entire investment universe to the employees, providing effective education on every mutual fund, stock, bond and exchange traded fund would be virtually impossible. It should be noted, however, that the 1992 Preamble to the 404(c) regulations regarding “Disclosures Made to All

New Department of Labor regulations target small company 401(K) plans with increased ERISA bonding requirements. While providing ERISA bonds is not compulsory for TPAs, ignoring these new regulations can have a significant financial impact on the administration of a 401(K) plan. The DOL now requires annual independent audits for virtually all 401(K) plans that are without complying ERISA bonds on the first day of their plan year. Most TPAs are responsible for the plan and are not previously exempt if they are not a TPA. GRS 104-46 and April 17, 2001, pension plan assets held outside a bank or financial institution must be insured by an ERISA bond. The exemption is still in place for SA bonds.

The Employee Retirement Income Security Act (ERISA) of 1974 was initially enacted to protect employees from being defrauded of their pension funds. While instances of fraud have been rare, the Department of Labor has moved to require all companies to have ERISA bonds.

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As the investment universe continues to evolve, the criteria for monitoring the investments should also evolve.

Participants” provides:

In the case of plans which permit participants and beneficiaries to invest in any asset administratively feasible for the plan to hold, a general statement so apprising participants and beneficiaries would be adequate, although participants and beneficiaries should be encouraged to obtain and review materials relating to potential investments prior to making such an investment.

The second thought addresses the additional liability the employer may have by allowing employees access to a self-directed brokerage account. In the Morningstar article *Fiduciary Focus: Risk of Self-Directed Brokerage Accounts in 401(k)s*, written by W. Scott Simon, the author raises a valid point of concern. It is not so much that the employee is allowed to buy whatever investment he or she wants; what happens in the event of dissolution of marriage or the death of the participant? The spouse may challenge that the employee was allowed to purchase investments without regard to “suitability” for the account, thereby making the employer liable for any losses the employee incurred.


In order to protect the employer, it may be necessary to construct a “hold harmless” agreement, to be signed by the employee as well as the spouse, that outlines the risks of utilizing a self-directed brokerage option. This practice has not

been tested in the courts, but may provide for some relief in the event of a lawsuit.

Another hurdle the employee will face is not having sufficient payroll deposits to reach the purchase minimums of many mutual funds. The result may be that the employee purchases individual stocks instead and pays the stock-trading fee. Alternatively, the employee’s payroll may be invested in a money market sweep investment until the sweep account has sufficient funds to purchase a mutual fund. With the latter approach, it could take an employee an entire year to accumulate enough to make one mutual fund purchase.

The IPS should be customized to clearly define the use of self-directed brokerage accounts within the qualified plan. The types of investments allowed within the brokerage environment should also be documented; for example, some plans only allow employees to purchase mutual funds within the brokerage window. Common restrictions on brokerage accounts include related party investments (prohibited transactions), unlisted securities, loans, real estate, general partnership interests, investments that could result in Unrelated Business Taxable Income (UBTI), etc. The IPS should detail the review process of these accounts and list the individual(s) responsible for monitoring the holdings and enforcing any restrictions.

Conclusion

By providing Managed Accounts, Lifestyle or Lifetime Funds and Self-directed Brokerage Accounts, a plan sponsor can provide the participants with a diversified list of investment opportunities. However, it is imperative that the IPS matches the objectives set by the fiduciaries of the plan. As the investment universe continues to evolve, the criteria for monitoring the investments should also evolve. As a standard practice, the plan sponsor should review the IPS at least on an annual basis to ensure compliance with the procedures established by this document and, if necessary, to update the IPS to address any additional issues or new investment trends. 

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Mary L. Patch, QKA, QPFC, is the director of retirement plan services for Steele Capital Management, a Registered Investment Advisory and third party administration firm specializing in investment management, retirement plan design and daily valuation plan administration. Mary has more than 16 years of industry experience and is Series 6, 63 and 65 Securities licensed. She is also a member of The ASPPA Journal Committee. (mary@stelecapital.com)

ESOPs from a Financial Planning Perspective

by Rick Scruggs

Most entrepreneurs, according to Michael Gerber, end up in business because of an “entrepreneurial seizure,” not because of a well-thought-out business plan. Twenty years later they wake up to find that they have a high net worth with little liquidity, a profitable enterprise and a core group of loyal employees who matter very much to them. Yet they have done no long-term strategic planning.

Business succession and continuity planning is extraordinarily complicated. It requires a team effort by a group of advisors led by a qualified “quarterback,” and it is about the emotions, fears and hopes of the owners and their families more than it is about money. The advisory team’s job is to get to the bottom of those emotions, fears and hopes, and turn them into as much money as possible for the right people at the right time. ESOPs can be a powerful tool in this process.

I became interested in retirement plans the first day of my career because my father died seven days before ERISA was passed in 1974. The retirement benefits he toiled for years to accumulate died with him, and my newly widowed mother was left with nothing. A rule we now take for granted—the joint and survivor annuity—did not exist for my family.

I love ESOPs because they strike me as representing the exact opposite of what happened to my mother. ESOP employees get a real stake in the business they work for, tend to have richer benefits packages than at non-ESOP companies (source NCEO.org) and retire with significantly more money than they ever would have without the ESOP. My firm’s client roster includes 47 ESOP companies with valuations averaging between \$2 million and \$15 million (smaller, in other words, than what some expect would be the ESOP threshold), and the increased financial well-being of the 3,000+ employees of these companies due to the ESOPs is remarkable. ESOPs are good for employees, and being good for employees makes them good for communities.



But the ESOP, first and foremost, must be about the owner. Before an ESOP can do good things for employees and communities, the owner must benefit or the ESOP will never happen. Determining an optimal strategy for benefiting the owners is remarkably complex, yet is often simplistically represented as being a question of tax deferral. The reality is not so simple. The purpose of this article is to put a human face on business succession and continuity planning with ESOPs through the use of real-life case studies.

The Value of an ESOP: Smith Fabricators Company (SFC)

Bob Smith founded SFC in 1978 and built it into a successful commercial fabricator company. In 1987 he put an ESOP plan document in place and began warehousing cash to fund it. In 1992 Bob wanted out. He was tired. His business was worth \$6 million, but that represented virtually all of his net worth—if anything happened to the company, he and his family would have little to show for it.

Bob sold 75% of the company to the ESOP in 1992 for \$3.5 million via

an installment note (no bank loan) and began the process of turning over the reins of the company to his three sons. He paid the capital gains and put the remainder into a diversified mix of investments. As of 2007, those investments were worth nearly \$20 million. His family's remaining 25% stake in the company was worth about \$3 million. Both Bob and his sons consider it highly unlikely that the family would have fared so well if Bob had not started the ESOP.

How did the employees do? Despite being in a cyclical business, the company continues to thrive and profit. The employee benefits package is one of the richest in the region. Average retirement plan contributions throughout the past 15 years have been more than 15% of compensation—25% in most years, zero in the inevitable bad years. Employee retention is more than 90% despite the fact that a more typical turnover rate in the industry is 50%. In short, it seems hard to credit that any of the parties involved—the company, the owners or the employees—would have been better off without the ESOP.

Some Key Financial Concepts

Tax Deferral on Gains

The typical explanation of the benefits of an ESOP begins with the fact that it creates a market for an otherwise illiquid investment and an exit strategy for the business owner—so far, so good. To avoid tax on the sale (Sec 1042), the owner invests his sale proceeds (within 12 months) in qualified replacement property (QRP—qualified individual stocks and bonds of US companies), thereby deferring taxation until the sale of the QRP. The corporation must be a C Corporation and the owner must sell 30% of the stock to the ESOP. The explanation usually ends there.

This view is overly simplistic. In actual practice, business owners often find QRP too restrictive and prefer to pay the (currently minimal) capital gains taxes and have complete investment freedom. Today more companies are S Corporations, so Sec 1042 cannot be the only game. Furthermore, the reality of the financial planning process for the owner goes far beyond the simple question of liquidity and deferral. A full discussion of these complexities is beyond the scope of this article, but following are a few of the more important considerations.

C Corporations vs. S Corporations—(Tax-exempt)

C Corporations are subject to double taxation; S Corporations are not. The key point to understand about C versus S is the tax treatment on corporate profits. When a C Corporation has an ESOP, the corporation still pays 100% of the tax. This tax is before deciding about paying dividends (after tax) or building retained earnings. Few C Corporations pay dividends. In an S Corporation, the tax is paid by the shareholder(s), so the ESOP would be including profits. K-1 allocations of earnings are made to the shareholders based on their ownership percentage. The distribution of earnings to pay the tax normally required by the individual shareholder also triggers a pro-rata distribution to the ESOP, a tax-exempt entity.

Distributions Are Often Tied to Taxes

Acme, Inc. has \$2 million in profits. 80% of the company is owned by the ESOP. The 20% of the profits attributable to owners outside the ESOP equals \$400,000, on which the tax burden is roughly \$160,000. These outside owners do not have nor want to come up with the cash to pay the taxes, so the company makes a distribution of 40% of its profits, or \$800,000. \$640,000 goes to the ESOP tax free as its pro-rata distribution, and the remaining \$160,000 goes to the outside owners to enable them to pay the taxes. The remaining \$1.2 million of profit, on which taxes have now been paid, is retained in “Triple-A” (Accumulated Adjustments Account), with pro-rata ownership.

When the ownership percentage in the ESOP reaches 80% plus, then distributions may not have to be paid to the natural shareholder for taxes, therefore profits are retained on the balance sheet of the company in Triple-A. 100% ESOP ownership might be ideal.

These funds can be used to strengthen the balance sheet, buy equipment, fund the repurchase obligation and fund non-qualified deferred compensation benefits to attract and retain key employees.

Dividends Can Turbocharge the Retirement Plan Contributions

Let's drill a little deeper with the S Corporation and dividends. Suppose Acme, Inc. from our example above is already making a 25% ESOP contribution—the maximum deductible amount. Total payroll is \$4 million, and the ESOP contribution is therefore \$1 million. The \$640,000 dividend distribution to the ESOP does not count toward the deductible limit. Total additions to the ESOP for the year are therefore \$1,640,000, or

41% of pay, yet the company has not exceeded the 25% deductible limit.

Subsidies from Uncle Sam

Orca, Inc. (S Corporation) is owned 40% by mom and dad, 60% by son and daughter. The company makes an annual profit sharing contribution of 15%. Dad is ready to retire and wants to sell the business; son and daughter want to keep the business but need to come up with \$5 million to buy it. To come up with the \$5 million, they need \$10 million of pre-tax earnings, including the interest cost, or else dad is not going away. The company only makes \$1.2 million per year, so this deal does not seem very good to son and daughter, who love dad but are not in love with the tax burden.

Mom and dad therefore sell their shares to an ESOP for \$5 million and retire to the Bahamas, returning frequently to offer advice of the sort that inclines son and daughter to daydream about early mortality. Since 40% of the company is now owned by the ESOP, \$480,000 of profits are allocated to the ESOP, a tax-exempt entity. When the ESOP receives its pro-rata distribution of

\$180,000 per year, that's an additional cash flow that can go toward payment of the note. The net effect is that Uncle Sam subsidizes 30% of the purchase price in the recovery of S-dividends alone.

Subchapter S ESOP Tax Rules

With all good things there can be abuse. So shortly after Sub S ESOPs were introduced, Congress enacted 409(p) regulations to shut down Sub S abuses. (This topic is beyond the scope of this article.)

Control

Anyone familiar with business financial planning knows that control can be a deal maker and a deal breaker. Business owners are accustomed to being in control and do not like to give control away. The overwhelming urge to remain in control often overpowers the owner's concerns about liquidity, diversification and tax savings. Furthermore, owners who establish an ESOP and leave grown children in charge of the company often experience a second layer of concern over control, wherein the children yearn for a 51% stake. This perception that the family must own 51% to

The overwhelming urge to remain in control often overpowers the owner's concerns about liquidity, diversification and tax savings.



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control the company is misplaced.

Obelisk, Inc. is owned 60% by its ESOP, 40% by the Obelisk family. The Obelisk children fear the notion that they may lose control of the management of the company—including, perhaps, their managerial roles. They want to know how to buy back the company.

On the one hand, they have options:

- Buy out the ESOP 100%—after tax, normally a 2x cost factor.
- Buy down the ESOP—to 51%+ after tax, same as above.

On the other hand, do they really need to be worried? Probably not. The trustees of the ESOP (60% owner) are the owner, key employees and the Obelisk kids. The trustees are appointed by the board of directors. So while it is certainly true that the Obelisk family has less control with its 40% stake than it would with 51%, the notion that the family needs majority ownership to retain control is largely false.

There are seven events that would trigger a pass-through vote to the employees of the ESOP that could call the ownership of 40% into question, plus 409(p) must be researched. So maybe they do nothing because 60/40 is fine or they go beyond and sell the balance to the ESOP and still retain control.

ESOP Costs


ESOPs do have more costs than a normal 401(k)

profit sharing plan. First, the plan document is a custom individualized design. ERISA legal expertise plus CPA and advisor collaboration is critical. There is an annual business valuation, complex recordkeeping, employee communication, repurchase studies and more.

Managing the Repurchase Obligation

Managing the repurchase obligation (the “put” option whereby the employer is required to provide a means for terminating employees to sell their shares) is a fiduciary duty of the shareholders, the board and the trustees. Recent DOL activity and questionnaires to ESOP companies are bringing the ESOP governance role to the front burner. FASB does not currently require the ESOP repurchase to be booked as a liability, but prudent trustees are commissioning repurchase studies and developing the strategies to anticipate and fund the repurchase. There are employee diversification events at 55 and 60 that require funding in addition to dealing with pre-retirement deaths and disabilities. ESOP governance requires a careful balancing act between the best interests of the company, the ideal rate of company growth and the ability of the company to fund the repurchase.

Conclusion

As I tell clients, I have a selfish motive for liking ESOPs—I live in my community and believe that private and family businesses are the backbone of that community. When those businesses fail, the effects ripple across the community; when those businesses thrive, they reward their employees and the benefits likewise benefit the entire community. (See Jack Stack’s, *The Great Game of Business*.) So while ESOPs are not for every company—they are complex, require a high level of expensive expertise and call for heightened vision and planning by management—they are a powerful component of the business succession and continuity discussion. 



Rick Scuggs, CLU, ChFC, founded Financial Designs in 1983 in Lynchburg, VA. Financial Designs is a strategic financial advisory firm that works with private and family businesses to create financial infrastructure for the business, its owners and its employees. Rick is the creator of the Vision Advocate Experience™, a unique process that creates a financial vision and plan to propel the growth of a business. Rick is a past president of the Lynchburg Estate Planning Council, and he is a member of numerous industry related organizations, including the Association for Advanced Life Underwriting (AALU), the National Association of Insurance & Financial Advisors (NAIFA) and the National ESOP Association. He is a Chartered Life Underwriter (CLU) and a Chartered Financial Consultant (ChFC). (rscuggs@financialdesigns.com)



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**Nomination Deadline:
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If you would like to nominate a credentialed ASPPA member to serve a term on ASPPA's Board of Directors, visit www.asppa.org/forms/boardnomform.htm, complete the nomination form and submit it to the Chair of the Nominating Committee, Immediate Past President, Chris L. Stroud, MSPA, and the Board of Directors Liaison, Troy L. Cornett.

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

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

If you know a forward-thinking ASPPA credentialed member (FSPA, MSPA, CPC, QPA, QKA, QPFC or APM) with admirable leadership skills, please check to see if he or she would be interested in having his or her name submitted for nomination to the Board of Directors. If he or she is interested, now is the time to begin the nomination process.

The Nominating Committee's Review Process

Many criteria are considered in choosing potential members of the Board of Directors, including the current makeup of the Board and the number of open slots. There are always more nominations than open seats on the Board of Directors, so not everyone nominated will be elected; however, you will know that you have done your part by participating in the process.

The goal of the selection process is to select new Board members such that the Board of Directors in total includes individuals with diverse backgrounds and characteristics that effectively represent the entire organization. It is not simply a choice of who is the "best" candidate, but more often it is a function of what issues the Board is currently dealing with and what individual qualities and experience are needed at the time. When evaluating a nominee, the Nominating Committee considers a number of characteristics, including:

- Professional credentials;
- Ability to meet ASPPA's core values of strategic thinking, responsiveness, courage and dedication;
- Willingness to serve in a leadership capacity;
- Activities within ASPPA, including demonstrating leadership in more than one area;
- Ability to represent the organization as a whole;
- Time available for volunteer activities;
- Geographic location; and
- Current employer and type of firm.

Nominations must be received by ASPPA no later than 60 days prior to the Annual Business Meeting (which is held each year in conjunction with the ASPPA Annual Conference in Washington, DC) in order to be considered for the upcoming year. In order for a nominee to be considered for the 2009 ASPPA Board of Directors, nominations must be received by August 20, 2008.

The Selection Process

The Nominating Committee's work begins in the spring and continues into the summer. They review the current Board, noting whose terms are expiring, how many open slots there will be and what characteristics are currently needed. The Nominating Committee keeps nomination forms on file from previous years for candidates who did not become Board members. (The committee, however, appreciates updated information on any candidate who is still interested in serving on the Board. Updated information on previously nominated candidates can be e-mailed to the Board of Directors Liaison, Troy L. Cornett, at tcornett@asppa.org.) The Committee begins reviewing candidates as nominations are submitted or updated information on prior nominees is provided. Prior to the ASPPA Annual Conference, the Nominating Committee submits a slate of prospective Board members to the Board. This slate is then presented to the ASPPA membership for a vote at the Annual Business Meeting that takes place during the ASPPA Annual Conference.

Comparability Testing for Health Savings Accounts (HSAs)

by Kimberly A. Flett, QKA

Health Savings Accounts (HSAs) are becoming increasingly more popular as a consumer-driven health plan option throughout the United States. As more and more employers are looking for ways to save on enormous increases in medical plan costs, HSAs are being utilized as effective cost-cutting tools. Encouraging employees to save, they also can serve as an employee retention tool when employers actually contribute a portion of the funding. This article examines testing issues for Health Savings Accounts when an employer makes contributions to the HSAs on behalf of its employees.

Many practitioners are familiar with the nondiscrimination testing requirements applicable to employer contributions to qualified retirement plans and cafeteria plans. It should, therefore, not be a surprise that employer contributions to HSAs are subject to a type of nondiscrimination requirement—specifically, a requirement that contributions made on behalf of eligible employees be comparable. Failure to satisfy the comparability requirement will result in adverse tax consequences.

Background

Often referred to as the IRA of health plans, an HSA is a tax-exempt account established to receive contributions on behalf of individual taxpayers. (Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, added Section 223 to the Internal Revenue Code to permit eligible individuals to establish HSAs for taxable years beginning after December 31, 2003.) The accounts are funded, and accumulated amounts can be used to pay qualified medical expenses, similar to expenses paid in a cafeteria plan's health flexible spending account. Both employer and employee contributions can be used to fund the plans. Employer contributions are excludable from the employee's gross income; employee contributions are deductible from gross income. For 2008, the



Often referred to as the IRA of health plans, an HSA is a tax-exempt account established to receive contributions on behalf of individual taxpayers.

maximum contributions from both employer and employee contributions are \$2,900 for individuals with single coverage and \$5,800 for family coverage. Individuals between the ages of 55-65 can also fund a catch-up contribution of \$900.

The main requirement for an individual to be HSA-eligible is enrollment in health coverage solely through a high deductible plan. The individual cannot be receiving Medicare payments, be claimed as a dependent on someone else's tax return or be covered under any health plan that is not considered a high deductible health plan.

Plan Funding

An employer may open an HSA for all eligible employees and make contributions for them. Such contributions, whether employer- or employee-funded, are restricted by the annual limits and are deductible as a business expense. These contributions are excluded from an employee's income, are

not subject to withholding and are also reported on Form W-2 as an employer contribution to prevent employees from receiving a contribution deduction on their own Federal Form 1040.

For example, in 2008, an individual is a participant in an employer's high deductible health plan. The employer contributes \$1,000 on behalf of the employee. The employee may fund \$4,800 for a total contribution of \$5,800 for 2008. The employee may deduct \$4,800 and exclude the \$1,000 employer contribution from gross income. The employer may deduct \$1,000 for tax purposes.

Comparability Testing

An employer must make comparable contributions to the accounts of all comparable participating employees, should the employer elect to fund the plan. Comparable participating employees are those who are eligible for HSA contributions under Internal Revenue Code (Code) Section 223 rules. Simply put, the classifications are based on either the type of deductible coverage or the employee category classification. The high deductible categories are self-only, family or self plus family. The employee categories consist of current full-time, current part-time or former

employees. These groups and categories are defined in detail under the final regulations in the Federal Register (71 FR 43056), (Treasury Reg. 138647-04) dated July 31, 2006. The rules are effective for that date and apply to employer HSA contributions made after December 31, 2007. The testing period is the calendar year. Note that employer contributions are not mandatory and can be adjusted at the employer's discretion. Employers contributing to the HSA may have different funding policies for the categories mentioned, provided there is no differentiation within the groups. For example, the employer may not discriminate in favor of management vs. staff or among various company locations. The only exception is that union employees may be disregarded for comparability testing. Also, the employer does not need to include employees who are not covered under the employer-sponsored high deductible plan. Failure to pass comparability testing results in a 35% excise tax required to be paid by the employer. The amount taxed is based on the total employer contributions for the year.

The following examples illustrate comparability for employer funding:

Example 1: Joe Smith Corp. has 25 comparable participating employees. All employees have family-only coverage with a \$3,500 annual deductible. For 2008, Joe Smith Corp. contributes \$1,500 to the HSA of each of the employees. This scenario passes the comparability testing. Under this arrangement, the employees may opt to put in an additional \$4,300 for 2008 into their own HSAs.

Alternatively, assume the employer decided to fund \$1,500 to five management staff members and \$1,000 to the 20 other employees. This arrangement would cause the plan to fail the comparability requirements.



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The Internal Revenue Service penalty would be 35% of all employer contributions, meaning the excise tax would be a whopping \$9,625.

Example 2: For 2008, Acme Corp. makes a contribution of \$2,000 for employees with family-only coverage and a \$4,500 deductible. It also makes contributions to employees with single (or self-only) coverage and a \$3,000 deductible of \$2,000 for employees in the Northeast Division and a \$2,500 contribution for employees with the same deductible in the Southwest Division. This scenario fails the comparability testing. The employer needs to fund the same amount to the employees with the single coverage.

Matters get more complicated when there are various types of coverage options under the self plus family options. For example, coverage may vary among self-only, self plus one, self plus two or self plus spouse with any number of additional family members. It is important to recognize the various categories when funding the plans.

The categories are grouped together based upon the total number of individuals covered

under the policy. For example, the employer contribution must be the same for individuals who have self plus one coverage and individuals who have self plus spouse coverage. Self plus two and self plus spouse plus one categories must be grouped together.

Overall Plan Design

A plan will automatically fail the comparable contribution requirement if:

- HSA contributions are tied to a matching contribution arrangement based on the amount an employee contributed to the HSA;
- Contributions to the HSA are conditioned on employees participating in a wellness program; or
- HSA contributions are based on length of service.

Section 125 Involvement

HSA employee contributions are made on an after-tax basis. In order for these contributions to be made pre-tax through payroll deductions, it is necessary to incorporate the HSA as part of a Section 125 cafeteria plan. Under a combination

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design with Section 125/HSAs, the Section 125 discrimination testing rules apply. Under these rules, plans must not discriminate in favor of highly compensated individuals or key employees. Employers should pay close attention to the cafeteria plan rules as they relate to HSA funding.

Proposed Regulations in 2007

In June 2007, the Department of the Treasury issued proposed regulation 143797-06 addressing the comparability issue for employees who have not established an HSA by the end of the year. The regulation also addresses the acceleration of employer contributions as follows.

The employer may, for any calendar year, contribute amounts to cover qualified medical expenses an employee may have incurred if these expenses exceed what the employer has already funded into the HSA. The main rule regarding this provision is that the contributions must be available on a uniform basis to all eligible employees throughout the calendar year. The employer must be consistent with these contributions and apply uniform methods and requirements among employees. The employer is not required to provide interest with this funding. This type of funding will not cause the comparability testing to fail if employees who receive accelerated payments have received a greater contribution than employees who do not incur such expenses, as long as all employees receive the same uniform contribution throughout the year.

In order to meet the requirements for comparability for employees who have not established or chose to fund an HSA, the employer must comply with a notice requirement and a contribution requirement. To meet the notice requirement, by January 15 of the following calendar year, the employer must provide written notice that each eligible employee who establishes an HSA by the last day of February will receive employer contributions. The employer will have until April 15 to fund these amounts. The employer must consider each month the employee was a comparable participating employee and the employer contribution must include interest. The proposed regulations contain the sample notice.


Special Rules for Contributions by Sole Proprietorships, Partnerships and S Corporations

Employer contributions for sole proprietors, partners in a partnership or limited liability corporations taxed as a partnership are treated

differently. These individuals are not considered employees and therefore may contribute to their own HSA and also exclude employees from receiving contributions. Under the partnership rules, the contributions are treated as either guaranteed payments or cash distributions under the partnership. More than 2% shareholders in an S Corporation are treated in a similar manner to partners and the HSA contributions are excluded from comparability testing. However, any employee contributions to these entities are subject to comparability testing.

Although there is no guidance prohibiting employers from offering high deductible plans to certain classes of employees, it is expected that there will be IRS guidance on this matter in the future. Presently there are some aggressive plan designs that allow discrimination in the sense that only certain classes of employees are offered the high deductible plans. Employers may want to keep in mind that although these designs pass the letter of the law now, at some point the IRS may deem these types of designs as not passing the spirit of the law as far as comparability testing is concerned.

Conclusion

Comparability testing is simple to pass if handled correctly. With the proper plan designs, employers can avoid excise taxes while providing a comprehensive consumer-driven health plan for employees. 



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Under a combination design with Section 125/HSAs, the Section 125 discrimination testing rules apply.

When is a Domestic Relations Order a Qualified Domestic Relations Order?

by David C. Newman, QPA, QKA, and Sal L. Tripodi, APM

One of the often overlooked important responsibilities of plan administrators is determining whether domestic relations orders (orders or DROs) are *qualified* domestic relations orders (QDROs).

ERISA and the Internal Revenue Code do not permit plan benefits to be assigned or alienated. One limited exception to this rule provides for the assignment of benefits through QDROs. A QDRO is a domestic relations order that creates or recognizes the right of someone other than a participant to receive all or part of the participant's plan benefits. The non-participating party is usually the former spouse of the participant, but it can also be the current spouse, child or other dependent of the participant. These individuals are called "alternate payees."

Plans are neither permitted nor required to follow the terms of domestic relations orders purporting to assign plan benefits unless they are QDROs. Upon receiving a DRO, the administrator must determine its *qualified* status. Every qualified plan is required to establish written procedures for determining whether domestic relations orders are QDROs and for administering distributions under QDROs. There are many statutory requirements, all of which must be met for an order to be *qualified*.

The summary that follows addresses the main reasons why a DRO is, or is not, a QDRO. A more comprehensive QDRO checklist addressing many of the principles relating to QDROs appears at the end of this article. This checklist has been reproduced from *The ERISA Outline Book, 2008 Edition* by Sal L. Tripodi and includes Code references as well as references to other sections in *The ERISA Outline Book* where more detailed information can be found.

- The order must relate to child support, alimony or marital property rights. While an order must meet federal requirements to be a QDRO, the order must be issued by a state court (or other appropriate state authority) with the jurisdiction to issue judgments, orders, decrees or to approve property settlement agreements, pursuant to



A QDRO is a domestic relations order that creates or recognizes the right of someone other than a participant to receive all or part of the participant's plan benefits.

state domestic relations law (including community property law). That seems straightforward; however, we often see agreements from attorneys and signed by both marital parties, but not issued by any of the above entities. This state issuance requirement is perhaps the most important aspect of a QDRO. The mere fact that a property settlement is agreed to and signed by the parties will not, in and of itself, cause the agreement to be a QDRO.

- A QDRO can apply to multiple plans of the same or different employers, as long as each plan and the assignment of benefit rights under each plan are clearly specified.
- A QDRO may be part of the divorce decree or court-approved property settlement. There is nothing in ERISA or the Code that requires a QDRO to be issued as a separate judgment, decree or order.
- There is no requirement that both parties and/or the judge in a marital proceeding sign or otherwise endorse or approve an order. A DRO stamped by a circuit judge with a stamped date, but no signature or court seal, may be acceptable. If there is any doubt as to the legal sufficiency of the order, the plan administrator should contact the clerk of the court to determine if it is valid without a signature.

- The plan administrator is not required to determine whether the issuing court or agency had jurisdiction to issue an order, whether state law is correctly applied in the order, whether service was properly made on the parties or whether an individual identified in an order as an alternate payee is in fact a spouse, former spouse, child or other dependent of the participant under state law.
- A QDRO must contain the name and address of the participant and alternative payee, the amount or percentage of benefits that the plan is to pay the alternate payee and the manner in which the amount or percentage is to be determined, the number of payments or period time and each plan to which the order applies.
- An incorrect plan name is very common. It is especially troublesome when the participant is covered by more than one of the employer's plans and the plan name in the order is a combination of two plan names. However, incorrect or incomplete plan, participant and alternate payee(s) names subject to the order do not necessarily cause the order to be invalid. The plan administrator does not have to reject such an order as defective if the correct names are within the plan administrator's knowledge or easily obtainable by the administrator. Likewise, addresses of participants or alternate payees may be missing, but such data may be retrieved by the administrator's records. In such a case, the plan administrator should supplement the order with the appropriate information, rather than rejecting the order as not qualified.
- A QDRO must not require the plan to provide additional benefits not otherwise provided in the plan. We have seen orders requiring lump sums from defined benefit plans that don't permit lump sum payouts, even for QDROs. Such a DRO must be rejected. A QDRO must not require the plan to pay an amount greater than the participant's accrued benefit. (This situation could happen due to recent investment losses, recent distributions or a partially vested balance.) Such a QDRO is not valid. Furthermore, the asset valuation date should be clearly defined; otherwise the order is vague and ambiguous.
- The order must not require a plan to pay benefits to an alternate payee that are required to be paid to another alternate payee under a previously issued QDRO.
- A QDRO may provide for payment to the guardian of an alternate payee. If an alternate payee is a minor or is legally incompetent, the order can require payment to someone with legal responsibility for the alternate payee.
- An order for a participant with a designated Roth account in a salary deferral plan should say how the Roth account is to be divided, for the plan to correctly account for the basis (Roth contributions) included in the alternate payee's benefit. Note that the basis must be allocated in the same manner as the designated Roth account. In other words, the regulations mandate the proportionate allocation of the basis, even if the parties would prefer to do otherwise.

If the DRO meets all of the above requirements, it is a bona fide QDRO. Anything less must be rejected in order for the plan to conform to the assignment/alienation exception.

In conclusion, under Federal law, the plan administrator of a plan that provides benefits affected by a domestic relations order is responsible for determining whether the order is a QDRO. An incorrect determination could cause a violation of the anti-assignment and alienation rules, which could result in disqualification of the plan and fiduciary liability under ERISA with respect to the improper payment of benefits. Furthermore, since an in-service distribution can only be made under the terms of the plan document, an erroneous QDRO distribution could violate those terms, providing another potential cause for disqualification. To be recognized as a QDRO, an order must be inspected very carefully for the above criteria and according to the plan's written procedures.

In the checklist that follows you will also find other issues relevant to the implementation of QDROs under a qualified plan. ↗

An incorrect determination could cause a violation of the anti-assignment and alienation rules, which could result in disqualification of the plan and fiduciary liability under ERISA with respect to the improper payment of benefits.

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Pension Services provides numerous in-house seminars for financial institutions, administration firms and other pension service providers throughout the country, and also publishes a quarterly newsletter (ERISAViews). For more information about TRI Pension Services, visit www.cyberERISA.com. (cyberERISA@aol.com)

Chapter 15—Section IV: Part H., QDRO checklist

(excerpt from Chapter 15 of *The ERISA Outline Book, 2008 Edition*, by Sal L. Tripodi)

This checklist identifies the principle issues relating to qualified domestic relations orders. These issues relate to plan qualification, plan operation and fiduciary responsibility. The primary information on QDROs is contained in the [QDRO](#) definition in Chapter 1. However, there are items throughout the book relating to QDROs. The checklist cross-references you to sections of the text where the highlighted issues are discussed in more detail.

1. **Statutory requirements for qualifying a domestic relations order**

Definition of alternate payee. The alternate payee under a QDRO must be a spouse, a former spouse, or a child or other dependent of the participant. See IRC 414(p)(8)/ERISA 206(d)(3)(K) and the QDRO definition in Chapter 1.

Court orders only. A QDRO must be issued by a court and must relate to child support, alimony, or marital property rights. See IRC 414(p)(1)(B)/ERISA 206(d)(3)(B)(ii) and Part A.1. of the QDRO definition in Chapter 1.

Domestic relations orders only. A QDRO must be issued pursuant to state domestic relations law (including community property law, if applicable). See IRC 414(p)(1)(A)/ERISA 206(d)(3)(B)(i) and Part A.2. of the QDRO definition in Chapter 1.

Identifying information that must be in a QDRO. A QDRO must identify the [name and address](#) of the [participant and the alternate payee\(s\)](#), and the [name of the plan](#). See IRC 414(p)(2)/ERISA 206(d)(3)(C) and Part A.3. of the QDRO definition in Chapter 1.

Amount awarded must be specified. A QDRO must specify the amount awarded to the alternate payee(s). See IRC 414(p)(2)(B)/ERISA 206(d)(3)(C)(ii) and Part A.4. of the QDRO definition in Chapter 1. This amount may be a specified dollar amount or a percentage of the participant's accrued benefit. The order also might express the award as a portion (dollar amount or percentage) of the benefit payments distributable to the participant (known as a shared payment award).

- a. **Valuing the defined contribution plan account balance.** If the award is for a percentage of the participant's accrued benefit in a defined contribution plan, the administrator must determine the value of the account balance that will be used to determine the alternate payee's share. See Part A.4.d. of the QDRO definition in Chapter 1 for a list of some issues relating to the valuation of the account balance.
- i. **Designated Roth account.** If the participant has a designated Roth account under the plan, the QDRO should address what portion of such account is being awarded to the alternate payee, so that the plan may make an appropriate accounting of the basis (*i.e.*, Roth contributions) included in the alternate payee's portion of the accrued benefit.
- b. **Defined benefit plan subsidies.** If the plan is a defined benefit plan which offers subsidized benefit, check to see if the QDRO awards the alternate payee a portion of the subsidy upon the participant's qualifying for that subsidy. See Part A.4.c.2. of the QDRO definition in Chapter 1.

Payment term must be specified. A QDRO must specify the [number of payments](#) or the period for which the order applies. See IRC 414(p)(2)(C)/ERISA 206(d)(3)(C)(iii) and Part A.5. of the QDRO definition in Chapter 1.

- a. **Discontinuance of payments upon specified event.** If the QDRO provides for payments to cease to the alternate payee upon the occurrence of an event (*e.g.*, child reaches majority, former spouse remarries), make sure that notice and substantiation that the event has occurred is required.

Only authorized forms of payment permitted. A QDRO may not provide for payment in a form that is not authorized by the plan and may not require payment of increased benefits. See IRC 414(p)(3)(A) and (B)/ERISA 206(d)(3)(D)(i) and (ii) and Part A.6. of the QDRO definition in Chapter 1.

Order may not conflict with prior QDROs. A QDRO may not require payment of benefits which are required to be paid to another alternate payee under a previously issued QDRO. See IRC 414(p)(3)(C)/ERISA 206(d)(3)(D)(iii) and Part A.7. of the QDRO definition in Chapter 1.

2. **Fiduciary/disclosure requirements relating to QDROs**

Written procedures. The plan must have written QDRO procedures. See IRC 414(p)(6)(B)/ERISA 206(d)(3)(G)(ii). Also see Part C. of the QDRO definition in Chapter 1 and Part C.1.i. of Section II of Chapter 13B.

Notification requirement. When an order is received, the administrator must notify the participant and the alternate payee(s) of receipt of the order. The acknowledgment also must include a copy of the plan's QDRO procedures. See IRC 414(p)(6)(A)(i)/ERISA 206(d)(3)(G)(i)(I) and Part C. of the QDRO definition in Chapter 1.

Separate accounting requirement. Pending determination of whether an award is qualified, the plan administrator must make a separate accounting of the alternate payee's interest. See IRC 414(p)(7)/ERISA 206(d)(3)(H) and Part C.2. of the QDRO definition in Chapter 1.

Determination period for qualifying the order. The administrator must determine whether the order is a QDRO within **18 months** of the date the [first amount would be payable](#) under the QDRO. See IRC 414(p)(7)(E)/ERISA 206(d)(3)(H)(v) and Part C.2. of the QDRO definition in Chapter 1.

Summary plan description (SPD). Provide a copy of the SPD to the alternate payee no later than 90 days after benefits become payable to the alternate payee. See ERISA 104(b)(1) and Part A.2. of Section IV of Chapter 13A.

ERISA 204(h) notice. If the plan is a pension plan, and an amendment is being adopted that will substantially reduce the future rate of benefit accrual, determine whether any alternate payees are entitled to the ERISA 204(h) notice. See ERISA 204(h)(8)(A)/IRC 4980F(f)(1) and Part D.4. of Section X of Chapter 3B.

Notice of minimum funding violations. If the plan is a pension plan, and the employer fails to make a required installment or other payment required under the minimum funding standards, a notice of such failure must be given to each participant and beneficiary, [including an alternate payee under a QDRO](#). See ERISA 101(d) and Part F.1. of Section IV of Chapter 13A.

PBGC termination procedures for defined benefit plans. If the plan is a defined benefit plan that is terminating under the PBGC termination procedures, alternate payees under QDROs entered against the plan are [affected parties](#) and must receive appropriate notices. See PBGC Reg. 4001.2 and Part J.2. of Section IV of Chapter 13A. Also see the PBGC's booklet, *Divorce Orders & PBGC*, which is available at the PBGC website.

Standing to sue under ERISA. Alternate payees have standing to bring suit under ERISA. See ERISA 502 and Part B.2. of Section III of Chapter 13B.

3. **Disbursing funds under a QDRO**

Limits on when distribution can be made to alternate payee might require postponement of distribution. If the QDRO is requiring distribution (or permitting the alternate payee to elect distribution) while the participant is still working for the employer, determine if the plan allows for QDRO payments before the participant reaches his earliest retirement age. If not, then the administrator may not authorize distribution to the alternate payee unless the participant has reached the earliest retirement age. See IRC 414(p)(4)(A)(i) and (B)/ERISA 206(d)(3)(E)(i)(I) and (ii) and Part B. of the QDRO definition in Chapter 1.

Only vested benefits may be paid. If the participant is partially-vested, determine whether the award is for more than the presently vested amount. If it is, payment of the nonvested portion may not be made to the alternate payee until the participant has become vested in that amount. See IRC 414(p)(3)(A) and (B)/ERISA 206(d)(3)(D)(i) and (ii) and Part A.6. of the QDRO definition in Chapter 1.

Special vesting formulas may need to be applied to participant. If payment is made to the alternate payee from an account balance in a defined contribution plan which, at the time of the payment, is less than 100% vested, the administrator must take into account the distribution in calculating the participant's vested portion of the account balance that remains. The participant's vested interest must be calculated in accordance with the formulas described in Treas. Reg. 1.411(a)-7(d)(5). See Chapter 4, Section III, Part A.6.

Alternate payee's consent to distribution generally not required. The alternate payee's consent is not required in order to pay the benefit awarded under the QDRO, unless the QDRO provides otherwise. See Part B. of Section VI of Chapter 6.

Eligible rollover distributions. If benefits are payable to the alternate payee in a form that is eligible for rollover, the rollover notice prescribed by IRC 402(f) must be provided to the alternate payee. See Part B. of Section VI of Chapter 6. The alternate payee must be the spouse or former spouse of the participant in order to be eligible for rollover. See IRC 402(e)(1)(B) and Part B. of Section XV of Chapter 7. If benefits are eligible for rollover, 20% mandatory federal income tax withholding applies to any portion of the taxable benefit that is not directly rolled over. See IRC 3405(c) and Part C. of Section XV of Chapter 7.

Satisfying minimum distribution requirements. If the participant has reached his required beginning date under IRC 401(a)(9), make sure the QDRO benefits are properly taken into account in satisfying the minimum distribution rules. See Treas. Reg. 1.401(a)(9)-8, Q&A-6, and Part O. of Section VII of Chapter 6.

- a. Participant election to stop minimum distributions. If participants who commenced minimum distribution under the pre-SBJPA rules are allowed to stop distributions until they reach the redetermined "required beginning date" under the SBJPA-amended version of IRC 401(a)(9), make sure the discontinuance of payments is not contrary to a QDRO. See IRS Notice 97-75 and Part B.4.a. of Section VII of Chapter 6.

Restricted benefit payments under IRC 436(d). If the limitation on the payment of accelerated benefits is in effect under a defined benefit plan, pursuant to IRC 436(d), the unrestricted amount, if any, is allocated among the alternate payee and other persons in the same manner as the benefit is allocated, unless the QDRO provides otherwise. See Section VIII, Part K, of Chapter 3B.

4. **Other administrative issues**

Possible "holds" on participant's rights. When an order is received, check the plan's QDRO procedures (see item 1. of this checklist) to determine whether a "hold" is placed (and if so, when and for how long) on the participant's right to direct investments, the participant's right to request distribution, and the participant's right to request

a loan. Also determine whether the alternate payee has any right to direct investments or to request loans on the alternate payee's separate share of the account. See Part C.1.c. of the QDRO definition in Chapter 1.

Availability of loans from plan. If the plan allows loans, determine whether alternate payees are eligible for loans. If yes, information about the plan's loan program should be disclosed to the alternate payee. See Part B.2.a.2. of Section II of Chapter 14. (Note that many plans limit loans only to parties-in-interest. Alternate payees are not automatically parties-in-interest. See ERISA 3(14) and the party-in-interest definition in Chapter 1.)

Top heavy issues. When identifying key employees for top heavy testing purposes, an employee's accrued benefit includes any portion of the benefit that has been awarded to an alternate payee under a QDRO. See Treas. Reg. 1.416-1, T-12, and Part A.5. of the top heavy plan definition in Chapter 1.

Payment of QDRO-related expenses. If plan assets are used to pay for QDRO-related expenses, the DOL's position is that the expenses are permitted under Title I of ERISA to be charged solely to the participant that the QDRO relates to. In other words, the expenses would not have to be "spread out" as a general plan expense. See Field Assistance Bulletin 2003-3 (overruling Advisory Opinion 94-32A) and the discussion in Part B.5. of Section XII of Chapter 3B.

IRC 415(b) limit under defined benefit plan. If payments are made to an alternate payee from a defined benefit plan, make sure the determination of the maximum benefit payable to the participant under IRC 415(b) takes into account the benefits paid to the alternate payee(s). See IRS Notice 87-20, Q&A-20 and Part E.4. of Section III of Chapter 5.

5. **Tax issues**

Tax liability. If the alternate payee is a spouse or former spouse, the alternate payee is the taxpayer, a proportionate amount of basis must be allocated to the alternate payee, and the Form 1099-R is issued to the alternate payee. If the alternate payee is anyone else, the participant is the taxpayer and is issued the Form 1099-R. See IRC 72(m)(10) and IRC 402(e)(1), and Part A. of Section XV of Chapter 7.

6. **Death benefits**

Death of the participant. If the participant dies after a QDRO has been issued against the participant's accrued benefit, determine whether the alternate payee is treated as the surviving spouse with respect to all or any portion of the death benefit payable. See IRC 414(p)(5)/ERISA 206(d)(3)(F), Part D. of the QDRO definition in Chapter 1 and Part A. of Section VI of Chapter 6.

- a. One-year marriage rule. If the plan imposes a one-year marriage rule on survivor benefits, a QDRO may not treat an alternate payee as the surviving spouse if the couple was not married for at least one year.
- b. Beneficiary designation naming former spouse. If a participant's beneficiary designation still names a former spouse, the plan administrator should consult legal counsel regarding the validity of that designation, and whether the divorce decree waived the former spouse's rights to the benefits that are subject to the beneficiary designation. See Part B.3.d. of Section V of Chapter 6.

Death of alternate payee. If the alternate payee dies before the awarded benefits have been fully distributed, the administrator must determine whether the benefits are: a) payable to the alternate payee's beneficiaries, b) payable to a contingent alternate payee named in the order, or c) revert back to the participant (or to the participant's beneficiaries, if the participant has died). See Part G. of the QDRO definition in Chapter 1.

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At the General Session on "Forward Thinking: How Today's Trends Will Shape Your Practice," The ASPPA 401(k) SUMMIT Committee Co-chair, Steff C. Chalk, introduces panelists Marcy L. Supovitz, CPC, QPA; Ann L. Combs; C. Frederick Reish, APM; and Stephen D. Wilt.



Keith Ferrazzi (left) gives a General Session on "Relationships for Revenue Growth" and asks audience members to have conversations and network (below).





ASPPA 401(k) Leadership Award finalists Brian Hubbell and George Fraser join presenter John Rekenhale, vice president, research, Morningstar, Inc., 2008 award recipient William R. Chetney, and Brian H. Graff, Esq., APM, ASPPA Executive Director/Chief Executive Officer, following General Session 6.

ASPPA affiliate member Robert D. Sipprell gets acquainted with a three-foot long alligator, one of four wild animals, including a Kinkajou and exotic birds, to enliven the exhibit hall.



John Kline discusses the new ASPPA recordkeeper certification process at the CEFEX exhibit booth.



Ron Wyant, sales support, Nationwide, greets attendees at his exhibit booth.



Stephen L. Dobrow, CPC, QPA, QKA, QPFC, ASPPA President-Elect; Brian H. Graff, Esq., APM, ASPPA Executive Director/Chief Executive Officer; Sal L. Tripodi, APM, ASPPA President; and Ralph DelSesto, national director, TPA strategy, ING, in the exhibit hall.

Speakers

Robert A. Benish
 Chris Bidwell
 Chad O. Breunig
 Kent Buckles
 Elizabeth A. Buscher
 Ronald L. Bush
 Dorann Cafaro
 Louis J. Campagna
 Jon C. Chambers
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More than 150 exhibitors and 1,500 attendees network in the exhibit hall.



Workshop on "Disclosure and Presentation of Fees—How the Providers Present and Explain Fees to Financial Advisors."

The ASPPA 401(k) Leadership Award

Congratulations to William R. Chetney, president and chief executive officer of National Retirement Partners, Inc. (NRP), Capistrano Beach, CA, recipient of the first ASPPA 401(k) Leadership Award.




William R. Chetney, president and chief executive officer of National Retirement Partners, Inc., Capistrano Beach, CA, accepts the ASPPA 401(k) Leadership Award.

A panel of three finalists discussed the 401(k) industry and their techniques for success at a special general session held on Monday, February 11, 2008, at The ASPPA 401(k) SUMMIT in Orlando, FL.

“Bill was chosen for this award for his longtime commitment to helping investors plan wisely for their retirements,” said Brian Graff, ASPPA Executive Director/Chief Executive Officer. “Most recently, in his role as head of NRP, he advised a network of retirement plan sponsors and their participants on affecting positive change in the industry,” Graff said. Chetney recently was described as one of the few “rock stars” of the 401(k) industry by one news media source, and yet another listed him as one of the true mentors of the select rising stars in the industry.

The ASPPA 401(k) Leadership Award will be presented every year at The ASPPA 401(k) SUMMIT, acknowledging a specific accomplishment or contribution by an individual or group of professionals working in the 401(k) industry. Sponsored by Morningstar, Inc., a leading provider of independent investment research, the award recognizes leadership, innovation and significant influence in the retirement industry. The recipient is selected for directly providing Americans with the ability to build a successful retirement, especially through employer sponsored plans.

The nomination process will open June 1, 2008, for the 2009 ASPPA 401(k) Leadership Award. The award will be presented at The ASPPA 401(k) SUMMIT in San Diego, CA, on March 23, 2009. Additional details are coming soon. 

The Harry T. Eidson Founders Award

Submit nominations by **May 1, 2008** for the 2008 ASPPA Educator's Award.

The Harry T. Eidson Award was established to honor the memory of ASPPA's founder, Harry T. Eidson, FSPA, CPC. This award is designed to acknowledge individuals who have made significant contributions to ASPPA and/or the private pension industry and is awarded annually.

Visit www.asppa.org/harryeidson to submit a nomination.



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2008 ASPPA Educator's Award Call for Nominations

Submit nominations by **June 1, 2008** for the 2008 ASPPA Educator's Award.

ASPPA's Educator's Award recognizes outstanding educators from ASPPA's membership who have made significant contributions to retirement plan education.

Visit www.asppa.org/educatorsaward to submit a nomination for this prestigious award.



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EDUCATION³

Youth Education

Introduction

The Actuarial Foundation's mission is to develop, fund and execute education and research programs that serve the public by harnessing the talents of actuaries. We believe that actuaries have a unique opportunity to enhance communities by using their skills, their knowledge and their professional expertise.

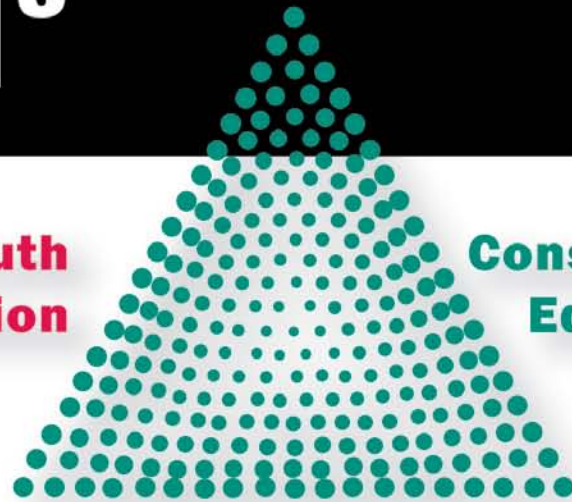
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Actuaries help inspire and educate millions of students around the country through our math programs:

- **Advancing Student Achievement**, a school based math mentoring program bringing actuaries into classrooms as mentors.
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- **Expect the Unexpected with Math – Lines, Bars & Pies, a graphing program**, our second major turnkey program to reach over 1 million students is scheduled for release in October 2007.
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Consumer Education

Products contribute to the public understanding of today's most important social issues. Our most recent efforts include:

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The Business Plan: Your Company's Roadmap for Success

by Sarah E. Simoneaux, CPC, and Chris L. Stroud, MSPA

Think about it. You wouldn't plan a trip across the country without a roadmap, so it makes good sense to have a roadmap for the "trip" your company will be taking over the next few years. One of the critical tools for ensuring success in today's rapidly changing environment is an up-to-date written business plan. A business plan creates a pathway to get your company from where it is today to where you want it to be—identifying milestones, obstacles and desired routes along the way.

An effective business plan helps you address expected and unexpected changes in all aspects of your business. Developing the plan requires you to think about your business and express your ideas in a systematic way. Thus, having the finished product in hand is not the only advantage—the act of planning itself helps you to think things through thoroughly, to study and research areas to determine the relevant facts and to give your ideas and goals a fresh review.

Do I Really Need a Business Plan?

If you've been operating a profitable business without a business plan, you are probably saying to yourself: "I've done fine without a business plan in the past, so I certainly don't need one now!"

Before you close your mind to the possibility, ask yourself these questions:

- Can I clearly state the vision of why our business exists?
- Do our employees share that vision?
- Do our customers understand our vision?
- Do I (and our employees) have a clear picture of where I want our company to be in three years and how we are going to get there?
- Do I (and our employees) understand the strengths and weaknesses of our operations?
- Do I (and our employees) know how our business stacks up against the competition?
- Do I (and our employees) know what motivates our customers to buy our products and services?



Your plan should communicate your vision and your strategies, what things you intend to do and how you intend to do them.

- Have I adequately considered what opportunities in the marketplace we could pursue and what threats we might face?
- Am I certain that our business conforms to the industry best practices established for businesses similar to ours?

If you answered "No" to one or more of the preceding questions, a business plan would bring clarity to the issue(s). The last bullet is especially interesting. The ASPPA task force, working in conjunction with CEFEX to establish best practice criteria for ASPPA's new recordkeeper certification, has determined that having a written business plan is a best practice that must be complied with in order to achieve ASPPA's recordkeeper certification. The argument for having a business plan just got even more compelling! (Refer to articles in the Fall 2007 and Winter 2008 editions of *The ASPPA Journal* for more on the new firm level ASPPA recordkeeper certification.)

A business plan can serve many purposes. In addition to serving as the roadmap for your business, a plan contributes to the success of your firm

in many ways. For example, developing and maintaining a business plan:

- Helps you and your employees get more involved in setting goals and objectives;
- Encourages you to learn all you can about your customers;
- Requires you to take a close look at your competition and determine your own competitive advantages;
- Prepares you for the uncertainties of the future by giving you a means to formulate and communicate alternative strategies;
- Provides a framework for you to create and analyze financial projections;
- Helps you create a culture that supports your vision and helps your employees feel more a part of the company; and
- Provides a forum for brainstorming and generating ideas so you can get even better at what you do best!

What are the Main Components of a Business Plan?

Many people think of their budget as their business plan, but it most certainly is not! In reality, a major portion of your business plan should contain all the work that you need to do *before* you prepare your budget. It should document the upfront analysis to ensure that your financial decisions and your budget are in synch with your goals.

Think of your business plan as a means to help you “*Begin with the End in Mind*.” (Habit 2, *The 7 Habits of Highly Effective People*, Stephen R. Covey) You know where your company is now—and most likely you know where you would like your company to be in the future. How you plan to get there is the “heart” of your business plan. Your plan should communicate your vision and your strategies, what things you intend to do and how you intend to do them. Many formats have been used over the years for business plans, and typically one format is just as effective as another. A typical business plan runs 20 to 30 pages (excluding the Appendix) and incorporates the following essential elements described below.

Executive Summary

Although this summary is typically the first item in your business plan (other than a Table of Contents, perhaps), it is usually the last thing to be written. It highlights the major points from each section of your business plan.

Company Overview

This section should include information on the history of your company, type of ownership and

all locations and/or divisions. It should state why you are in business (your mission and values) and identify your primary goals and objectives.

Description of Products and Services

Describe your current products and services and indicate any future products and/or services you are anticipating. Explain briefly the type of customers you serve and how your products and services benefit them.

Market and Competitor Analysis

Define your business environment. This section should include an industry overview, a description of market segments, market trends and information on your competition.

Company Strategies

This section should outline the various strategies that your company will use to carry out your plan. At a minimum, it should address the positioning of your products and services, as well as strategies for marketing, sales, technology and business continuity. Don't forget to point out your competitive advantages.

Management and Personnel

The key personnel and management team(s) should be identified. This section should also include information on the overall organizational structure, as well as any gaps in management or personnel and how these issues will be resolved. Efforts to recruit and retain employees should also be outlined.

Financial Review

The financial information should include current and projected information covering a period of at least six years (three historical and three projected). Include Income Statements, Balance Sheets and Cash Flow Analysis and provide an overview of the assumptions that went into the projections in order to support your projected growth.

ASPPA Recordkeeper Certification

“An ASPPA task force developed practices against which certification assessments will be conducted. During the development phase, we asked the Centre for Fiduciary Excellence (“CEFEX”) to assist us. Initial assessments will be conducted by Roland|Criss, which is qualified to conduct assessments. CEFEX will be the registration body for ASPPA certification.”


Brian H. Graff, Executive Director and CEO
American Society of Pension Professionals & Actuaries


Now, more than ever, retirement plan recordkeepers are under pressure and looking for peace-of-mind. With proposed federal oversight programs enforced by the Securities and Exchange Commission (SEC), recordkeepers are seeking effective ways to mitigate risk and pre-empt intrusive regulations.

The recordkeeper industry is dedicated to pre-empting federal oversight by promoting self-regulation and conforming to the highest standard of practices through the ASPPA Recordkeeper Certification.

Roland|Criss uses the CEFEX process. It is based on the seventeen critical practices that define fiduciary support competencies for the retirement plan industry. The certification process mirrors the ISO 19011 audit methodology for testing quality management systems. The practices are approved by ASPPA. Sanctioned by CEFEX and fi360, this is the only process that strives to obtain the highest level of recordkeeper excellence.

Contact Roland|Criss today to learn how you can join other recordkeepers already operating with the peace-of-mind that only comes from ASPPA certification.





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Appendix

The appendix serves as a tool for you to place important information that does not belong in the main body of the business plan. Common items include biographies of key personnel, company accreditations, news articles, etc.

Who Will Read My Business Plan?

Before you begin the business planning process, it is important that you identify all the reasons *why* you are creating a business plan so that you can anticipate your potential audiences. Who are the “stakeholders” who might have an interest in what your company does and how it operates, and which groups are likely to have the greatest impact on your success? Different audiences might be looking for specific things to be outlined in your business plan, and you will want to address those individual needs. (It is not uncommon to create different versions of a business plan for different audiences.)

Potential audiences include:

- You;
- Your management team(s);
- Current employees;
- Prospective employees;
- Bankers;
- Lenders;
- Accrediting entities;
- Current and prospective customers; and
- Potential business partners and strategic alliance partners.

Earlier in this article, we indicated that one audience might be auditors for the ASPPA recordkeeper certification, in which case you will want to ensure that your business plan outlines relevant details about your business practices that might otherwise be difficult for them to determine. If you are seeking financing from a bank, you would want your plan to outline how the funds would be used. Alternatively, you might be looking for investors, who have a different perspective from bankers. Investors will focus more on expected growth and return on investment, so focus on the financials and how the funds will help the company achieve growth.

One of the most important audiences for your business plan is your company’s employees. Remember that your business plan is your company’s roadmap – so use it to communicate the company’s goals and objectives. Generate some excitement when you present the plan to them so they will want to “hop on the bus” and help your company get to its destination.

How Do I Get Started?

Step One

Assemble your planning team. Select a group of owners, managers and/or employees to help with the project. The group should include at least three and no more than eight people. You can bring in others later as needed for specific sections.

Step Two

Decide if you want to hire a planning consultant. There are many factors to be considered in the decision of whether or not to hire a consultant, but the three most relevant factors are time, energy and money. Many business owners would never tackle the job of creating a business plan if

they did not have a consultant to guide them along the way. However, if you choose to take on this task yourself and you have the time to do all the research and the energy to keep the project moving, there are numerous resources available for business planning ideas (books, magazines, Web articles, Chamber of Commerce resources, SBA resources, etc.). If you choose to use a consultant, be sure that the consultant clearly defines what services are included in the agreement and what the estimated fees will be. An additional advantage of using a consultant is that he or she will view your company through fresh eyes, with a perspective more like that of your customers – from the outside looking in. The consultant will help you describe and clarify new ideas as well as things you already know.

Step Three

Set up a framework for strategic discussions. Outline the basic steps you will go through, including research, meetings, drafts and reviews and set a timeline with milestones for completion. Gather all collateral materials currently in use, as these should be reviewed as part of the planning process.

Step Four

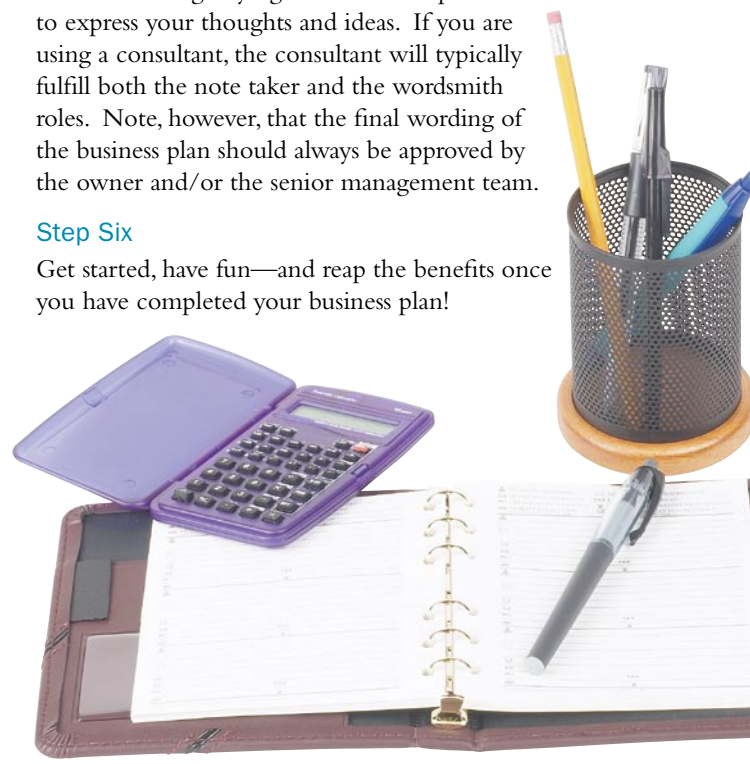
Put one person in charge to organize and keep things moving. If you are using a consultant, the person you assign will be your “point person” for all activities and will coordinate with the consultant and with the others on the team as needed.

Step Five

Appoint a note taker to take notes during business planning meetings. Also appoint a wordsmith to fill in the fine details and to make your document readable and interesting so that you do not spend valuable time in meetings trying to choose the perfect words to express your thoughts and ideas. If you are using a consultant, the consultant will typically fulfill both the note taker and the wordsmith roles. Note, however, that the final wording of the business plan should always be approved by the owner and/or the senior management team.

Step Six

Get started, have fun—and reap the benefits once you have completed your business plan!



Are We Done Yet?

A business plan is never “done”. Even if your business is on track, you still need to review your plan periodically and make modifications as necessary, usually at least once a year. If you experience any significant changes in your business environment, you should immediately review your plan and strategize to determine what impact the changes might have and how you should prepare accordingly. Then update your plan to revise your goals and objectives and alter the relevant sections as needed to pursue the alternative strategies you have identified.

Once you have a business plan, it is your job to create a culture that recognizes your company’s vision, values, and the goals and objectives in your plan and ensures that they are implemented. Refer to your business plan and goals often—in business strategy meetings, sales and marketing meetings, company meetings, employee reviews, etc. Include your mission and vision in company newsletters, employee handbooks and your Web site. Use your plan as a tool (your “trip odometer”) to measure and evaluate your programs and initiatives. Solicit feedback from everyone when you are ready to review and update your plan. If you keep the energy surrounding your business plan at a high level, then your plan will naturally stay “alive and well.”

Lessons Learned

Kenneth G. Ingham, MSPA, MAAA, EA, AIFA®, of Ingham Retirement Group in Miami, FL, recently went through the business planning process for the first time. We asked Ken to share some of his thoughts regarding the business planning process and what effects it has had on his company.


“We’ve been in business for 35 years and we knew we needed a business plan to get to the next level. We also wanted to pursue the ASPPA recordkeeper certification, so having a business plan became a priority. We knew we didn’t have the time and wouldn’t stay focused long enough to do it ourselves, so we hired a consulting firm. Going through the planning process with the objective advice of the consultant provided the framework for us to grow up and formalize our ideas. The consultant also enlightened us to new ideas we should consider and provided valuable insight as to what other firms similar to ours were doing.”

“In most companies, people at the top know where they are going—but the employees who are struggling to get the work done are often in the dark about the company direction. If you don’t tell them where you want to go, you probably

won’t get there. The plan helped us communicate our direction to the employees and also helped us find new ways to thank the employees for the good jobs they were doing.”

“As a result of establishing the written business plan, we were among the first to achieve the ASPPA recordkeeper certification, which strengthens our competitive edge in the marketplace. In addition, our business continues to improve in other ways. We held a company meeting to share the plan with our employees and to reinforce the culture we wanted to cultivate. We set up a marketing team to work on a detailed marketing plan, we strengthened our brand and updated our collateral materials, we created a new employee reward system, we refined our budgeting process and we increased responsibilities to our mid-managers for carrying out the plan’s action items. We feel we now have an even better chance at success and growth than we’ve enjoyed in the past. We understand that our plan is a living, breathing document that we will change and update as we grow.”

Conclusion

With a multitude of issues competing for your precious time, committing time to plan your company’s future may seem like a daunting task. But operating without a written business plan is even more difficult and probably more time-consuming in the long run. A good business plan helps you deal with changes effectively, which can often mean the difference between long-term success and failure. Equally as important, your business plan will help you share your vision and create excitement, inspire your employees and create and articulate an advantage in the marketplace that you can sustain. Remember: “If you fail to plan, you can plan to fail.” 



Chris L. Stroud, MSPA, is president of Stroud Consulting Services, Inc., located in Marco Island, FL, a firm offering consulting services to for-profit companies providing retirement services and to non-profit organizations. Chris also provides consulting through Simoneaux & Stroud Consulting Services, specializing in business planning, business consulting, professional development, industry research and customized skill building workshops.

She has worked in the employee benefits industry since 1978. Prior to setting up her own consulting firm, she was a vice president at Financial Data Planning Corporation (FDP), which was purchased by SunGard. Chris has volunteered her services in various capacities to assist ASPPA, and she served as the 2006-2007 ASPPA President. She is the Editor of The ASPPA Journal and a member of the ASPPA Benefits Council of South Florida. Her professional designations include Member, Society of Pension Actuaries (MSPA), a Member of the American Academy of Actuaries (MAAA) and Enrolled Actuary (EA). (chris.stroud@scs-consultants.com)



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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)

Divided We Fail

ASPPA Adds Voice to Growing Movement for Affordable, Quality Health Care and Long-term Financial Security

by *Sal L. Tripodi, APM*

The American Society of Pension Professionals & Actuaries (ASPPA) signed onto Divided We Fail, becoming one of the most recent organizations to support a movement to propel actions and solutions that provide all Americans with access to affordable, quality health care and long-term financial security, recognizing that individuals, businesses and government all have a role in developing answers and solutions.

Divided We Fail is a joint collaboration of AARP, Business Roundtable, Service Employees International Union and National Federation of Independent Business. Launched in January 2007, Divided We Fail is committed to ending gridlock and compelling our leaders to finding common-sense solutions to the problems facing health care and financial security. We believe these are not Republican issues or Democratic issues, but rather American issues, and solutions must recognize the roles and responsibilities of individuals, businesses and government.

Through AARP, Business Roundtable, SEIU and NFIB, Divided We Fail represented 53 million Americans in the fight for affordable health care and long-term financial security. Now, with ASPPA's participation, and with the 50 new national supporters announced today, Divided We Fail has the power to galvanize millions more voices for change.

"We want to thank ASPPA for endorsing Divided We Fail," said Nancy LeaMond, Group Executive Officer of Social Impact at AARP. "Their commitment to these critical issues will help us with our effort to end gridlock and propel our nation's leaders to work together to find sensible, bipartisan solutions to the health care and financial security challenges facing our nation."

"Skyrocketing health care costs and financial insecurity plague millions of Americans," said Sal L. Tripodi, APM, ASPPA President. "We have to find bipartisan solutions to the most fundamental



problems facing our nation—ensuring all Americans access to affordable, quality health care and providing hard working people the financial security they need and deserve."

Divided We Fail is calling on the next President and the new Congress to put aside partisan gridlock and address the challenges facing health care and financial security. Only together, can government individuals, non-profits, labor organizations and businesses find sensible solutions to these critical challenges.

"The new Congress and the next President must act soon before our options for dealing with health care and financial security challenges become too few and the costs prohibitive," added LeaMond. "None of us can do this alone, and that is why ASPPA's ability to bring our messages to its members is vital to the success of our effort to spur real, comprehensive change. Divided we fail, but together we can do anything."

What is Divided We Fail?

- Divided We Fail is an initiative built around the belief that all Americans should have access to affordable, quality health care and peace of mind about their future long-term financial security. It was born out of a deep frustration with the gridlock in Washington and recognition that our nation's lawmakers have been too busy playing political games to address our nation's health care crisis and the crumbling dream of retirement security.
- Divided We Fail is centered on key principles, including: strengthening Social Security; making affordable, quality health care available for all; making prescription drugs more affordable for all; creating incentives to save for retirement; and expanding job opportunities so people can keep working and contributing to society as they get older.

How Can Individual Members Get Involved In Divided We Fail?

Take the Pledge

Those who believe our leaders need to end the gridlock in Washington can join the more than 400,000 Americans who have taken the Divided We Fail pledge. By signing the Divided We Fail pledge card, individuals commit to supporting candidates who give us action and answers on health care and financial security. To sign the pledge, visit: www.capitolconnect.com/dividedwefail/reg_sign.aspx.

Share Your Story

Americans should have the peace of mind that comes with knowing that their future will be financially secure. Yet, millions of Americans worry about their health and long-term financial security. Divided We Fail is collecting the personal stories of individuals who have had experiences and challenges with the health care system and financial security. By telling your story you can help Divided We Fail work to raise awareness among policymakers and opinion leaders about these important issues. To share your story, visit: www.capitolconnect.com/dividedwefail/reg_share.aspx.

Become a Divided We Fail Volunteer

Already, all across this country, thousands of Americans have signed onto Divided We Fail to demand change in these important areas. What thousands of Americans are saying is, "It's time for a change." It's time for our leaders to stand up and address these problems. That's why it is critically important for each of us to stand up, speak out and demand action from politicians running for office. If you'd like to become a Divided We Fail volunteer, visit: www.capitolconnect.com/dividedwefail/survey.aspx.

Spread the Word

You can get friends and family involved by sending Divided We Fail video cards (V-cards) that feature celebrities Ben Affleck, Garth Brooks, Eva Mendes and Joaquin Phoenix speaking about health care and financial security. You can also send e-mail cards (E-cards) to up to five friends or family members. To pass the word about the critical need for our nation's leaders to address affordable, quality health care and long-term financial security, visit: www.aarp.org/issues/dividedwefail/get_involved/pass-the-word.html to send an E-card or V-card today.

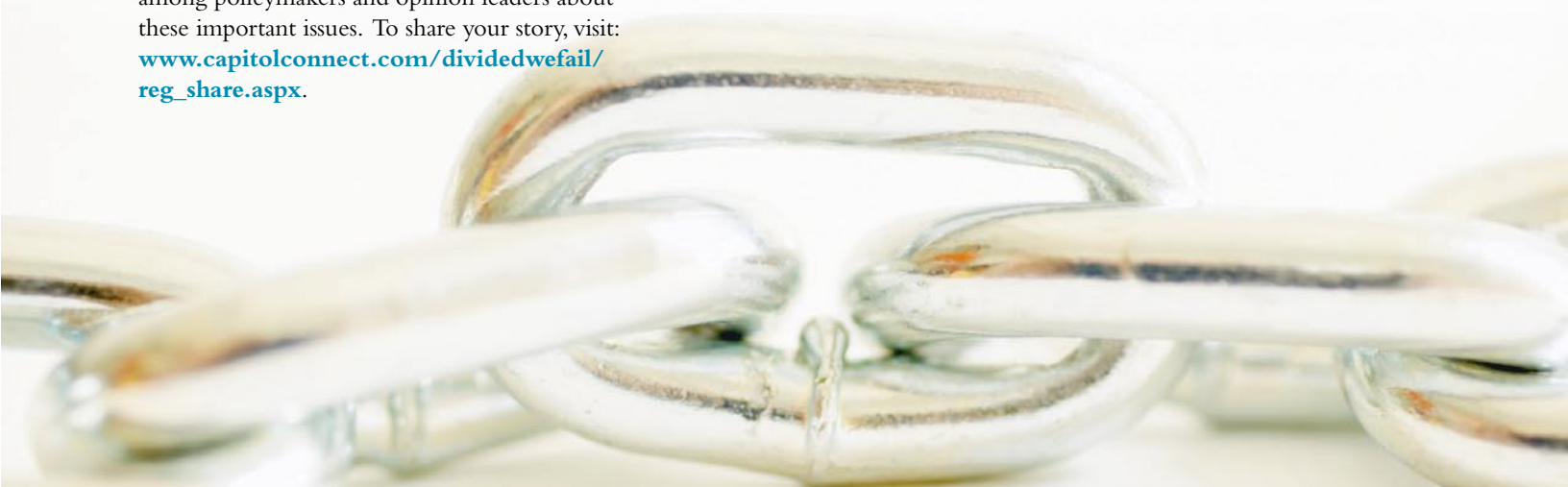


More information about these efforts can be found on the Divided We Fail Web site, www.dividedwefail.org.



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Pension Services provides numerous in-house seminars for financial institutions, administration firms and other pension service providers throughout the country, and also publishes a quarterly newsletter (ERISA Views). For more information about TRI Pension Services, visit www.cybERISA.com. (cybERISA@aol.com)



Time to Rebut a Misconception

The Hypothesis—Retirement Plan Loans are Double Taxed

by Howard M. Phillips, MSPA

The highlighted argument of those who hate participant loans in retirement plans (nationally exposed in an interview with Suze Orman on The Oprah Winfrey Show on October 31, 2007) is that the borrowed money is double taxed because the loan is paid back with after-tax dollars, and then it is taxed again when distributions occur during retirement. The argument is inaccurate.

In an ideal world, individuals would not have to borrow. Most people, however, have an occasional need to reach out for a loan. If we rank the loan resources in order of net borrowing cost, from lowest to highest, we get:

1. Home Equity Loan
2. Margin Securities Account
3. Retirement Plan Loan
4. Bank Loan
5. Credit Card Loan

If an individual does not have equity in a house (or does not own a house) and does not have a margin securities account, let's explore examples as to why a retirement plan loan would be the next best borrowing resource.

Let's examine the transaction algebraically (albeit an oversimplification). If we assign a "plus one" to the borrowed money as it comes out tax free; then, we assign a "minus one" to the after-tax money used to repay the loan; and then assign a "minus one" to the distributions that are taxed later, we achieve a net result of "minus one" (the money is taxed once). The double taxation argument ignores the fact that the funds borrowed from the retirement plan are received tax free. While it may be true that the interest paid by the borrower is double taxed, that simply reduces the net rate of return paid by the participant for the loan, and that rate may be better than he or she is earning in the account had the loan not been taken.

Oversimplified Example

Consider first that the loan is taken as liquidity security. The money is put under a mattress and, since a liquidity need never arises, the repayments come from the "mattress." In this scenario, it is clear that there is no double taxation (other than, possibly, the interest paid on the loan)—the account in five years is exactly where it would have been in five years (assuming net investment results are identical, loan versus no loan).

Conclusion: No double tax on retirement plan borrowing.

More Typical Example

Mr. X has a need for \$1,000, and he does not have the cash reserves to satisfy the need. He does not own a house (no home equity loan available); he has no margin securities account. His only resources are bank loans, credit cards and a retirement plan account:

	(A) Bank Loan	(B) Credit Card	(C) Retirement Plan Loan
Debt:	\$1,000	\$1,000	\$1,000
Borrowing Cost:	8%	18%	8%

- (A) and (C) are better than (B).
- (A) is better than (C) if the retirement plan account is earning more than 8%.
- (C) is better than (A) if the retirement plan account is earning less than 8%.
- All loan payments [(A), (B) and (C)] are made with after-tax dollars.

Conclusion: Comparison favors retirement plan borrowing.

Pure Theory Example

The \$1,000 transaction contemplated can be handled with cash reserves (*i.e.*, no need to borrow). However, we perform an exercise to determine if there is any harm in doing the transaction with a retirement plan loan.


	No Loan	Loan
Loan:	—	\$1,000
Payment:	—	Need \$29 to pay \$20/month
Account Value in 5 Years:	\$1,403	\$1,403
Enjoyment Value of Loan Purchase in 5 Years:	—	\$1,403*
Tax Loss on Loan Payments:	—	\$540**
Distributions Later (After Tax):	\$982	\$982

* This amount could be greater if the value of the transaction means more to the borrower than the interest earned in the account.

** 60 (\$9)—This amount is the additional money needed in order to have enough after tax to make the loan payments (60 payments x an additional \$9 per payment to cover the tax for the net \$20 payment).

Note: The net value of the after-tax distributions in the Loan column could be \$845 (\$982 less \$540 plus \$403). This difference (\$982 vs. \$845) (most likely attributable to a double tax on the interest paid) is more than offset in the real life example of using a retirement plan loan to extinguish credit card debt (the offset being the savings in borrowing cost, most of which may be re-directed to savings).

Not one of the nationally known financial gurus (all of whom use the double taxation argument against retirement plan loans) has encouraged people with a heavy credit card debt to transfer that debt to their retirement account. Such a transaction extinguishes an 18% (or greater) borrowing cost, payable to a stranger (the credit card company), and creates a prime rate (plus some fees) borrowing cost, payable to the borrower's retirement account.

The writings of a Nobel Prize winner in Economics, Professor Franco Modigliani, support these positives regarding retirement plan loans. His *Life Cycle Hypothesis*, which describes the borrowing phenomenon, clearly includes retirement plan loans as a good source of borrowing when it is needed. Similar observations have been made by the Center for Retirement Research at Boston College. 



Howard M. Phillips, MSPA, FSA, FCA, MAAA, EA, is an independent consulting actuary with offices in Fairfield, NJ, and Delray Beach, FL. He is the past president of Consulting Actuaries, Inc. Howard is a Past President of ASPPA, and he has served as a director of the American Academy of Actuaries and as vice-chair of the Actuarial Board for Counseling and Discipline (ABCD). He has authored many publications on pension related topics, and he is an ad hoc lecturer in actuarial science at the New Jersey Institute of Technology. Howard attained a Fellowship in the Society of Actuaries in 1967; Membership in the American Academy of Actuaries in 1967; and became an Enrolled Actuary in 1976. (hmp@askcai.com)

ASPPA Credentialing

- Qualified Plan Financial Consultant (QPFC)
- Qualified 401(k) Administrator (QKA)
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The Circle of Life

by Sal L. Tripodi, APM

*Youth, large, lusty, loving—youth full of grace, force, fascination
Do you know that Old Age may come after you with equal grace, force, fascination?
Day full-blown and splendid—day of the immense sun, action, ambition, laughter,
The Night follows close with millions of suns, and sleep and restoring darkness.*

—Walt Whitman, *Leaves of Grass*

This rumination on aging by Walt Whitman has always been one of my favorite poems. I especially like its ability to see the brilliance in all stages of life. But why cite this poem in an article from the ASPPA President? I view the work we do as retirement plan professionals as giving us the good fortune to touch people at all of the important stages of their lives, giving credence to Mr. Whitman's poem. I see the poem's message reflected within us—the *WHO* we are as ASPPA members. And I see the poem's message reflected from us—the *WHAT* we do as ASPPA members.

The WHO

ASPPA is a diverse collection of retirement plan professionals focused on a common goal—to preserve and enhance the private retirement system. That diversity is not only reflected in the kind of work we do, but in our individual, personal characteristics. Related to the theme of this article is the diversity of age within our organization. A quick perusal of any ASPPA-sponsored conference will demonstrate this fact. We have many young people in our organization. The administrative, consulting and/or advising services comprising the retirement plan field offer an interesting career path for many individuals emerging from undergraduate, graduate and professional schools in this country. It's a dynamic that keeps our organization forwarding-thinking and fresh—grace, force, fascination as Whitman would say. And evidence has shown that so many of them get involved in our organization early on. There is an incredible passion and commitment exhibited by so many ASPPA members. I see that tradition continuing in the new wave of members that have joined our ranks in the past several years.

With this surge of new (and often younger) members comes some challenges. How do we keep them engaged? How do we ensure that they are able to participate in ASPPA activities in a way that maintains their passion and commitment without “burning” them out? Many exhibit strong leadership

qualities, which gives us promise for the future of our organization. But we have to balance how we use them in their youth, while they are also building their careers, so we can tap them later on for key leadership roles in the organization. We also need to be vigilant that we don't become obsolete as an organization and find ourselves years from now unable to communicate to future generations of retirement plan professionals. We need to assess how we deliver education, conferences and information in a rapidly changing world, and we must be open to new ideas that speak to younger generations. An advertisement displaying right now at the Denver International Airport says that the ten most popular jobs 25 years from now don't exist today. We have to be thinking about where the profession is going and what it will look like 5, 10, 20 and 25 years from today. How will ASPPA evolve so that it remains relevant to the new crop of retirement plan professionals that exist in those future years? It's a challenge we need to accept and embrace.

Old Age may come after you with equal grace, force, fascination. From our more mature members, we draw wisdom and experience that comes with the territory. The passion and commitment is still there, and we benefit from it in many ways. Our long-time members find themselves in leadership roles, assisting in our government affairs activities (including the shepherding of comment letters, delivery of testimony before Congress or the agencies, or writing white papers), chairing committees, playing senior adviser roles and speaking at conferences. But it's not a vacation. Our committee structure enables the young and the experienced to work together. Our older members can (and do) serve as mentors to the next generation of pension professionals who have found a home in our organization. That is how the organization survives and grows. And through that survival and growth, we can continue to provide the services that are essential to a sound, vibrant, private retirement system.

The WHAT

Which brings me to what ASPPA members do. That, too, speaks to all phases of life—young, old, day, night. The retirement plan represents a microcosm of our lives. And ASPPA members are there to assist in all of the stages of life that plan participants experience.

For younger workers, we focus on planting the seeds for establishing a disciplined approach to savings. Many of our ASPPA members are reaching out directly to this group, in enrollment meetings and in providing investment education and financial planning services. They have to cut through the immense sun, action, ambition, laughter of youth, and help them focus on the road ahead. In many ways, the shift of the workplace retirement landscape from defined benefit plans to 401(k) plans has helped us better reach the younger workers with respect to retirement savings. Anecdotally, I see widespread interest in company 401(k) plans and similar programs among my two daughters and many of their friends. (And, yes, having both of my daughters be gainfully employed has been a plus for my retirement as well.) They like the discipline the workplace program provides them, they are attracted to the company match and they have a healthy concern about the Social Security system and relying too much on it taking care of them.

As workers age, the ongoing services provided by ASPPA members help to keep them on course, as retirement savings accumulation remains in the forefront. During the middle years, there are a number of issues that need addressing. First, many of the business leaders and business owners are in this bracket. For many of our ASPPA members, the focus is on these individuals because they are the primary clients—the ones making decisions about whether to install or continue a plan, what type of plan should be installed and what plan design changes might be needed. Second, there are the workers in this middle age group, some of whom who have been at the retirement savings game for years, but may need to be focusing their investment allocation in different ways as their financial picture changes, while others have not gotten started in any meaningful way toward saving for retirement. For this latter group, our members help show them that it's not too late, but they need to be proactive in getting it turned around. But what we also can do as members is recognize that in this group, the financial wherewithal isn't always there to make the 401(k) or similar type of savings arrangements fully serve as a retirement plan. It is here where, as professionals, we can steer the decision makers to consider plan features or other types of plans (e.g., cash balance plans) that

are funded by the employer and can help workers build an adequate retirement nest egg.

Retirement Years

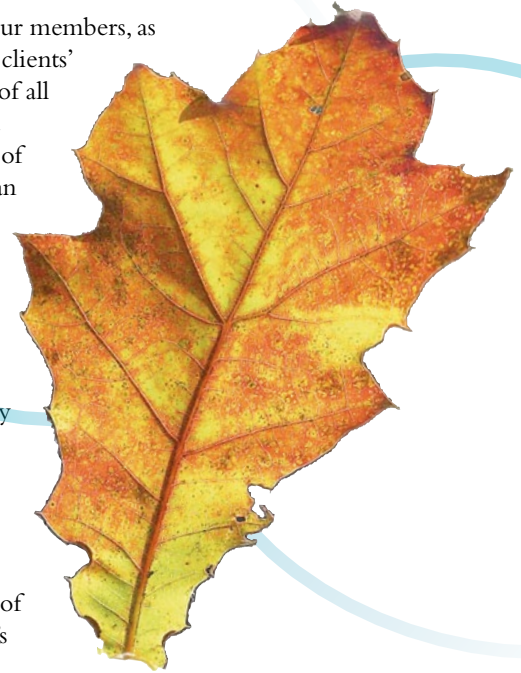
That's the payoff for many of our members, as they see their clients, and their clients' employees, reaping the reward of all of those years of savings. It is a satisfying realization to be part of that. And it is here that we as an organization need to focus more. The consumption stage of retirement (some call it decumulation, as the counterpoint to our more familiar accumulation focus) needs attention, too. Particularly as a growing number of our clients, plan participants and ASPPA members themselves, are entering their retirement years. We need to make sure we are not ignoring this phase of the retirement plan participant's life cycle. And there are many variables that play into how this phase—the approaching night with its millions of suns—resolves itself. There are health issues and the related cost of health care, family obligations that may continue into retirement years, the type of plan or plans the individual has participated in and whether job changes resulted in consumption or partial consumption of retirement savings along the way. It's a big challenge, but ASPPA members are ready to take this one on, too.

The yin and yang of it all makes for fulfilling and interesting careers as retirement plan professionals. It's what makes me proud of serving as the President of this organization. Whatever your stage of life, I invite you to participate in the process and keep our organization moving forward in addressing the challenges the circle of life brings. ↗

*And here is the best part. You have a head start.
If you are among the very young at heart.*
—Frank Sinatra

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Sal L. Tripodi, APM, JD, LL.M., is the principal of TRI Pension Services, a nationally-based consulting firm in Highlands Ranch, CO. He is the author of The ERISA Outline Book. Sal is also the President of ASPPA. TRI Pension Services provides numerous in-house seminars for financial institutions, administration firms and other pension service providers throughout the country, and also publishes a quarterly newsletter (ERISAViews). For more information about TRI Pension Services, visit www.cyberERISA.com. (cyberERISA@aol.com)



GAC Outlook for 2008

by Teresa T. Bloom, APM

2008 will be an increasingly active year for the ASPPA Government Affairs Committee (GAC), due in large to the myriad of Pension Protection Act of 2006 (PPA) regulatory guidance that is expected to be issued by the government agencies.

We will also continue to work with Congress on PPA Technical Corrections legislation and 401(k) fee disclosure issues. GAC also has several interesting policy initiatives for 2008 (described below), along with the celebration of the ASPPA Political Action Committee's (PAC) tenth anniversary (see PAC article on page 42). GAC is also pleased to welcome Judy A. Miller, MSPA, former senior pension advisor to the US Senate Finance Committee, to the ASPPA staff (see Washington Update).

ERISA III—An Eye to the Future!

One of GAC's policy initiatives in 2008 will be working on conceptual legislative proposals, called the "ERISA III" project. The end product of this project will be a "wish list" of legislative provisions that ASPPA would like to see enacted. This initiative is an important one, as the legislative process is very lengthy and this effort will serve as the guide for future ASPPA initiatives. The predecessor to this project, "ERISA II," contained numerous legislative proposals that found their way into PPA and prior legislation. GAC leaders envision the ERISA III project will be a living, evolving document that ASPPA GAC will use for many years to come.

Karen Nowejski, MSPA, Chair of the Legislative Relations Committee (LRC), will lead the ERISA III project and has organized the LRC into three "Working Groups," each with a different focus:

- **Working Group 1** – Accumulation phase (increasing retirement plan coverage, payroll deduction IRAs and women's retirement issues).
- **Working Group 2** – Simplification phase (removing barriers to employers sponsoring and administering plans).
- **Working Group 3** – Decumulation/distribution phase (increased incentives for annuitizations, longevity insurance, minimizing leakage, etc.).

Participant Communications Task Force

A second GAC policy initiative will be to examine current participant disclosure practices and to recommend solutions to avoid duplicative and onerous disclosures. The Participant Communications Task Force is being chaired by Virginia Krieger Sutton, QKA [former Chair of GAC's 401(k) Subcommittee], and has been assembled to:

- Chart current participant disclosure requirements for both defined contribution and defined benefit plans;
- Determine for which types of plans there is a significant burden on participants, plan sponsors and service providers relative to the participant disclosure that must be delivered;
- Determine interest and feasibility of alternative ways to more efficiently communicate plan information and/or provide plan disclosure to participants;
- Develop the Plan Operating Manual (POM) as a means to potentially replace or supplement the current SPD; and
- Develop the POM as a lobbying tool to stop the current trend of notice requirements that are tied to plan design options.

The Participant Communications Task Force has sent out a survey to a random segment of the ASPPA membership to determine whether ASPPA members have input as to the scope and nature of participant disclosure issues. These survey results will serve as a basis from which to develop its recommendation for the POM and other potential recommendations for improving participant communication and disclosure.

Current Comment Letter Activity

ASPPA GAC is currently working on several comment letters to proposed regulations that are due to the IRS, Treasury and DOL over the next several months. These comments will address hybrid plans, PPA

funding, effective date guidance on PPA funding regulations, disclosure of reasonable compensation under ERISA §408(b)(2) and stock diversification issues.

Comment Letters/Testimony Submitted Since November 2007

Comments on Automatic Contribution Arrangements

On February 6, 2008, ASPPA submitted comments to the IRS and Treasury on Automatic Contribution Arrangements for Code §401(k) plans. In the comment letter, ASPPA commented on issues relating to the implementation of an Eligible Automatic Contribution Arrangement (EACA) and a Qualified Automatic Contribution Arrangement (QACA) safe-harbor contribution.

Testimony Before the IRS on Proposed Benefit Restriction Regulations

On January 28, 2008, Judy A. Miller, MSPA, ASPPA Chief of Actuarial Issues and Director of Retirement Policy, testified before the IRS and Treasury on proposed benefit restriction regulations for underfunded pension plans. ASPPA's recommendations with regard to the final benefit restriction regulations included: (1) coordination of Internal Revenue Code (IRC) §§430 and 436 with regard to the funding of benefit increases to avoid benefit limitations; (2) the allowance of a non-distress termination of a plan with an adjusted funding target attainment percentage (AFTAP) of less than 80%; (3) the allowance of a minimum range certification and for the certification to remain in effect until the final certification is completed; and (4) using the current Code §417 definition of "annuity starting date" for §436 purposes.

Comments on Partial Plan Termination Guidance

On January 18, 2008, ASPPA submitted comments to the IRS and Treasury requesting clarification on partial plan termination guidance under Rev. Rul. 2007-43. In the comment letter, ASPPA requested that the IRS clarify the following issues: (1) that the rebuttable presumption of a partial termination be available for terminations of employment for cause, and (2) that only the affected employees become fully vested on a partial termination.

Comments on Scrivener's Errors

On January 18, 2008, ASPPA submitted comments and a proposal to the IRS and Treasury requesting expansion of the Employee Plan Compliance Resolution System (EPCRS) to permit the correction of innocent scrivener's errors on a limited basis. ASPPA submitted a proposal setting

forth a list of errors (with examples) that should qualify for this correction method.

End of Year Valuations

On January 2, 2008, Thomas J. Finnegan, MSPA, CPC, QPA, Brian H. Graff, Esq., APM, and Judy A. Miller, MSPA, met with representatives of the IRS and Treasury to discuss the critical need for guidance on how pension plans with end of year valuations can operate under Code §436.

Comments on Proposed Benefit Restrictions for Underfunded Plans

On November 28, 2007, ASPPA, in cooperation with the College of Pension Actuaries (COPA), submitted comments to Treasury and the IRS on their proposed regulations regarding benefit restrictions for underfunded pension plans. ASPPA requested clarification on 20 issues raised in the proposed regulation.

Comments on Mid-year Modifications of the Provisions of a Safe Harbor Plan

On November 16, 2007, ASPPA submitted comments to the IRS on mid-year modifications of the provisions of a safe harbor plan, pursuant to Announcement 2007-59. In the letter, ASPPA asked that the IRS provide a list of plan modifications that may and may not be made mid-year without affecting a plan's safe harbor status under Code §§401(k)(12) and 401(m)(11).

Comments on PPA Technical Corrections Legislation (H.R. 3361)

On November 1, 2007, ASPPA filed comments with the House Ways and Means Committee on PPA Technical Corrections legislation (H.R. 3361). The comments set forth a list of nine technical and other corrections needed to ensure that the Congressional goals of the PPA are fulfilled and that there is an efficient implementation of the provisions of PPA.



To view these and the wide range of comment letters issued by GAC since 1998, visit ASPPA's Web site at www.asppa.org/government/gov_comment.htm. 



Teresa T. Bloom, Esq., APM, Chief of Government Affairs, joined ASPPA in September 2004. Prior to working at ASPPA, Teresa was a pension law specialist in the Office of Policy and Research and the Office of Regulations and Interpretations at the DOL's Employee Benefits Security Administration, where she worked on a variety of policy and technical issues relating to Title I of ERISA. Teresa currently serves as a Government Affairs Committee Co-chair. (tbloom@asppa.org)

ASPPA PAC Needs Your Support

by Craig P. Hoffman, APM, and Danae (Dani) M. Kehoe

ASPPA PAC (Political Action Committee) turns ten this year, and the PAC needs your support this year more than ever. The legislative challenges to qualified pension plans grow more intense as the years go by.

ASPPPA PAC is among the most effective tools available to the ASPPA Government Affairs Committee (GAC) and staff as we work with Congress to shape the laws that govern our business.

The Challenges

ASPPA is geared up for both long-range and short-term activity this year, working with a number of key lawmakers on imminent and future legislative initiatives. Among these efforts are:

Tax Reform

While tax reform legislation is unlikely to work its way through the legislative process this year, the groundwork for action next year is being laid right now. Virtually every lawmaker from both parties support the idea of systemic tax reform, and that poses grave risks for qualified plans.

Whether tax reform takes the form of base broadening and rate reduction, or shifting from income-based to consumption-based tax rules, incentives for retirement savings remain critical. It is crucial that whatever the new system brings, it retains special incentives for savings locked up until retirement.

This environment is not the no-brainer that ASPPA members and other retirement savings experts know intuitively. Many previous tax reform proposals have suggested treating all savings equally—whether inside or outside of a qualified plan. This type of strategy could prove disastrous for retirement savings. If a person gets the same tax-based financial advantages for short-term easy-access savings outside of a qualified plan, why in the

world would he or she lock those savings up? Similarly, it is unlikely a plan sponsor would incur the costs of a qualified plan if it becomes possible to get the same tax advantages when saving outside of a qualified plan.

Thus, ASPPA GAC must educate lawmakers so that they understand that all types of savings are not equal. It is vitally important that tax incentives continue to apply specifically to the long-term savings provided through qualified plans. In this way, American workers will have a much better chance of reaching retirement age with sufficient retirement savings to meet their needs.

ASPPA must be ever watchful to make sure that Congress does not equalize the tax advantages for savings inside and outside of a qualified plan. ASPPA must make sure that Congress understands and supports the need for incentives that make saving through qualified plans attractive to business owners, despite the costs associated with pension plans.

Next Generation Pension Laws

The Pension Protection Act of 2006 (PPA) was a sweeping reform of the rules, especially the funding rules, associated with defined benefit (DB) plans. But much remains to be done, and key lawmakers are at work addressing matters that were left unresolved. These issues include defined contribution (DC) plan issues, issues of particular concern to small businesses and to women in the work force, lingering cash balance and other hybrid plan issues, phased retirement issues and 401(k) plan fee disclosure issues.

Pension law is complex. Two major statutes, ERISA and the Internal Revenue Code, are in play. Both are replete with important but technical detail. Even Congress' technical staff needs and benefits from the input from ASPPA experts who work with ERISA and code-based detail every day. The theory of how a rule would work, the tax policy that inspires it, the revenue implications that accompany it and then—most importantly—its potential impact in the real world—all require extensive education of the lawmakers who make decisions. ASPPA GAC works with literally hundreds of lawmakers and their staffs on a daily basis to make sure they know and fully understand the interaction of these complex laws and the proposals offered to modify them.



ASPPA PAC[™]
OPENS THE DOOR

2008 Activity

The work this year is already underway. ASPPA is hard at work winning approval of the crucially important PPA technical corrections legislation. High on our priority list is an effort to persuade lawmakers to approve a fixed interest rate (5.5%) for calculating Section 415 limited lump sum payments. Legislation to modify the “pension funding whipsaw” that comes from the use of different interest rates to calculate cash balance plan account balances as compared to plan funding obligations is another current ASPPA priority. And, among the most active of the 2008 issues that have already developed is the ongoing effort to require more disclosure of 401(k) plan fees and expenses.

These are just the current initiatives that ASPPA GAC is working on—others may (and probably will) develop as the year progresses. Congress is working under budgetary “pay-go” rules—rules that require that any new tax break be fully offset by a tax increase or spending cut someplace else. Thus, a new pension plan tax incentive often operates awkwardly, or in a limited way, because of the revenue implications that accompany it. Tax writers frequently modify a pension rule to squeeze offsetting revenue from it, or to limit revenue loss that arises from it. Further, pensions—which are appropriately but extensively tax-favored—have historically been a rich source of offsetting revenue. This means ASPPA personnel are constantly on the alert for revenue-based (and usually adverse) pension proposals.

How the PAC Works

ASPPA PAC does not lobby. Rather, it exists as a tool that can be and is used by ASPPA GAC personnel as they lobby on behalf of qualified plans. ASPPA PAC allows ASPPA lobbyists to help lawmakers whose help ASPPA GAC seeks, often on a routine basis. In short, ASPPA PAC “opens the door” by permitting a two-way helpful relationship between lawmakers and those who represent pension plan professionals.

ASPPA PAC raises money to be used as campaign contributions to those lawmakers chosen by PAC members. Recipients of ASPPA PAC contributions are lawmakers who have demonstrated particular interest in qualified plan issues and who are in a position to exert influence on pension law developments. PAC law limits PAC contributions (generally, \$5,000 per lawmaker, per election). Thus, there is no “vote buying” or “influence peddling.” Rather, the PAC bands together thousands of pension professionals’ support for lawmakers who support and understand pension law, which helps those lawmakers win election and reelection.

The PAC is among ASPPA GAC’s most important tools. It allows ASPPA GAC personnel to “give back;” to help lawmakers who are helping us. And, as the baby boomer generation approaches retirement, more and more lawmakers are becoming interested in retirement planning issues. ASPPA GAC personnel, supported by a growing and vigorous ASPPA PAC, are forging relationships with an ever growing number of federal lawmakers who are exerting more and more positive impact on pension plan law.

Because pension law is made by both Democrats and Republicans, regardless of which party is in power at any given time, ASPPA PAC is a bipartisan entity. In the Senate, ASPPA PAC has supported 24 senators and nine of their leadership PACs, including such key pension lawmakers as Senators Max Baucus (D-MT), Ben Cardin (D-MD), Kent Conrad (D-ND), Charles Grassley (R-IA), Gordon Smith (R-OR) and Olympia Snowe (R-ME). In the House, ASPPA PAC has supported 33 congressman and 14 of their leadership PACs, including Representatives Rob Andrews (D-NJ), Jim McCrery (R-LA), Buck McKeon (R-CA), George Miller (D-CA), Richard Neal (D-MA), Adam Putnam (R-FL) and Charles Rangel (D-NY). All these lawmakers serve on the committees that act on ERISA and tax pension law and/or in the Congressional leadership. They are just a few of the many that ASPPA PAC supports.

What’s in Store for PAC Supporters

ASPPA PAC’s tenth anniversary year coincides with a particularly intense need for PAC support from you and for lawmakers in this crucial presidential election year. ASPPA GAC and ASPPA PAC volunteers challenge you to help us grow the PAC—as the PAC helps GAC grow the friendliness of the environment in which pension plans are implemented.

The PAC has a number of initiatives underway to increase both the number of ASPPA members who support it and the level of support (dollars) they give. You can visit www.asppa.org and proceed to the Members-Only section for an online contribution form.

You can support individual lawmaker fundraisers—several are in the planning stages around the country. Typically, these receptions, breakfasts or dinners gather together ASPPA members with a key lawmaker. The ASPPA member gives a campaign contribution (usually \$250) to the lawmaker, as does ASPPA PAC itself.

There will be a peer-to-peer fundraising campaign this spring. One of your colleagues will be calling you to ask you to contribute to the PAC. Please say yes and give as generously as you can.


ASPPA GAC and ASPPA PAC volunteers challenge you to help us grow the PAC—as the PAC helps GAC grow the friendliness of the environment in which pension plans are implemented.



An all-member PAC solicitation letter will be sent later this year, too. It will encourage all ASPPA members to support the PAC, at any level they can afford. Please respond to this letter yourself and also encourage your colleagues and friends to respond. If you quickly respond to the letter, you will save the time and resources of the PAC and PAC personnel in making follow-up calls to win your support. There will be several contests, with interesting prizes—ranging from special recognition at an ASPPA conference or meeting, to a US flag flown over the Capitol—for ASPPA members who raise the most money for the PAC, and/or who recruit the most new PAC members.

The ASPPA Annual Conference in October in Washington, DC will feature a PAC-based, political theme—complete with convention-like bunting and booths. While we hope you will have joined the PAC well before October, this will be another chance to support and celebrate all that ASPPA PAC does for ASPPA members, their businesses and their clients.

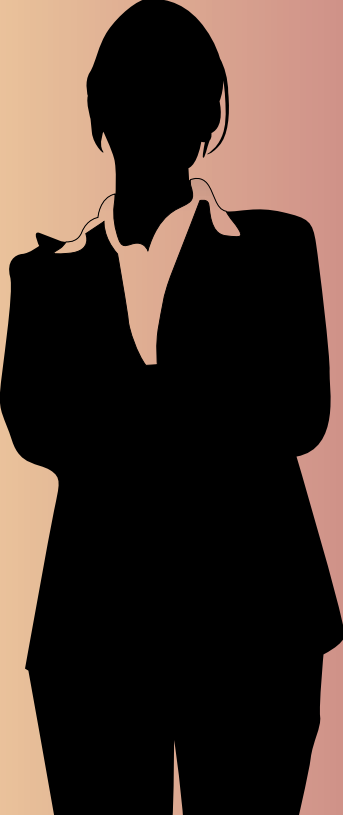
ASPPA PAC will host a special post-presidential election webcast for ASPPA PAC members only. Those who give at least \$250 will be able to participate in the webcast without paying a registration fee. The webcast will analyze election results and tie them to the elections' potential impact on ERISA and tax pension law. It is a not-to-be-missed event!

To summarize, pension plans are a creature of ERISA and tax law. Our entire business is derived from and depends on federal law. Thus, building and maintaining credible, trusted relationships with the elected officials who make pension law is a primary goal of ASPPA GAC. ASPPA PAC is an integral tool of that effort. ASPPA PAC needs your support—it needs it now and into the future. ASPPA PAC opens doors! 



Craig P. Hoffman, Esq., APM, is the vice president and general counsel of SunGard Relius LLC. He is a fellow in the American College of Employee Benefits Counsel and Past President of ASPPA, where he served as a member of the Board of Directors and as the Co-chair of the Government Affairs Committee. He was an expert speaker at the National Summit on Retirement Savings, and served as a charter member of the first IRS Advisory Committee on Tax Exempt and Governmental Entities. Craig is a frequent speaker at industry meetings and serves on the editorial boards of several pension journals. (craig.hoffman@relius.net)


Danea (Dani) M. Kehoe, Esq., serves as an outside lobbyist and PAC consultant to ASPPA, bringing 27 years of experience working with trade associations, insurance companies and firms that specialize in employer-provided benefits and executive compensation. Dani spent almost 20 years as associate general counsel, government affairs to the National Association of Insurance and Financial Planners—NAIFA—formerly, NALU, where she worked on a variety of PAC issues. (danikehoe@aol.com)



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Meet the New ASPPA Chiefs

by Chris Robichaux

ASPPA is managed on the staff level by chiefs who work with the committees composed of various membership disciplines and mission objectives. The most recent additions to the chiefs are one staff member who has been a member of ASPPA since 1989 and a new staff member who comes to ASPPA from Capitol Hill.

You may be familiar with both Kim Szatkowski, who worked with the ASPPA Education and Examination Committee and as an ASPPA course instructor, and Judy Miller, an actuary who most recently served on the professional staff of the US Senate Committee on Finance as its senior benefits advisor. ASPPA is fortunate to have the service of both of these outstanding individuals and we hope you get to know them even more as they meet the challenges of their new positions.



Kim L. Szatkowski, CPC, QPA, QKA, Chief of Pension Education, joined the ASPPA staff in July 2007. Prior to joining the ASPPA staff, Kim was the national sales and marketing director for Actuarial Systems Corporation. Kim formerly owned KLS Services, a third party administrator consulting and pension training firm. Before forming

her own company, Kim held a variety of management, plan administration, training, software development and customer service positions at Lebonson Actuarial Services, SunTrust Banks, The Weiss Organization and Financial Data Planning Corporation.

Kim attended her first ASPPA conference in 1983 and was excited to discover the robust educational offerings and support extended from ASPPA members to someone new to the industry. After becoming a credentialed member in 1989, Kim began teaching ASPPA courses to “pay forward” all the training and mentoring she had received. Her previous involvement with the ASPPA Education and Examination Committee includes participating in the development of the Daily Valuation course and examination that was initially used for the Qualified 401(k) Administrator (QKA) credential. She also has been a committee member and associate editor for *The ASPPA Journal*, and she is a founding member and past president of the ASPPA Benefits Council of Central Florida.


Originally from Green Bay, WI, Kim fondly recalls running into Packer greats Bart Starr and Vince Lombardi during her childhood. She spent her summers with her two sisters canoeing in Door County, WI, and graduated from St. Norbert College

in De Pere, WI with a degree in Mathematics and Computer Science. She currently resides outside of Orlando, FL with her husband of 25 years, Tom, their daughter, Amy, a dog and a cat. In her spare time, Kim enjoys walks in the woods, playing the flute and yoga.



Judy A. Miller, FSA, MSPA, Chief of Actuarial Issues, became a member of the ASPPA staff in this past December. Before joining the ASPPA staff, Judy served as senior benefits advisor on the staff of the US Senate Committee on Finance from 2003 to November 2007. Before joining the congressional committee staff, Judy provided consulting

and actuarial services to employer-sponsored retirement programs for nearly 30 years. A native of Greensburg, PA, she enjoyed living in Helena, MT from 1975 until she moved to Washington, DC in 2003. Immediately before leaving Montana, she was a shareholder in Anderson ZurMuehlen & Co., providing consulting services through its affiliate, Employee Benefit Resources, LLP (EBR). Prior to joining EBR, she was vice president of Hendrickson, Miller & Associates, Inc. for 15 years. Judy began her actuarial career in New York, working for what was then George B. Buck Consulting Actuaries. It was during her time there that the Employee Retirement Income Security Act (ERISA) was passed.

Judy is a fellow of the Society of Actuaries, an MSPA with ASPPA and an Enrolled Actuary. She received her Bachelor's degree in Mathematics from Carnegie Mellon University in Pittsburgh, PA. 



Chris Robichaux, ASPPA Director of Media Relations since November 2007, is a veteran Capitol Hill staffer and originally from Southwest, LA. He served as press secretary, legislative assistant and communications director for ten years for various members of the US House of Representatives, including service at the House Veterans' Affairs Committee under Chairman G.V. (Sonny) Montgomery. Chris then served in communications capacities in Fairfax County government and at associations for the past decade, including five and one-half years directing public affairs at the American Academy of Actuaries. (crobichaux@asppa.org)

The ABC of Central Florida in 2008

by Philip Senderowitz

The ASPPA Benefits Council (ABC) of Central Florida has 34 members from a variety of sources, including attorneys, banks, independent TPAs, financial advisers, CPAs and even the IRS. This diverse membership allows for spirited discussions and multiple viewpoints on the myriad of topics that are brought before the ABC membership.

The ABC of Central Florida has started off strongly in 2008, with a visit from Brenda Rickborn, Associate Regional Director of the Department of Labor’s Atlanta Region Employee Benefits Security Administration office. Brenda spent an hour with the ABC membership discussing what to expect during a Department of Labor investigation. She also enlightened us on areas that will be in focus for the DOL, including, not surprisingly, a concentration on the level of fees and their reasonableness in employee benefit plans. She reminded us that reasonableness does not mean lowest cost, but rather appropriate value for services rendered.

The chapter will have four more lunch meetings throughout the year, with the meeting in March focusing on cash balance pension plans, an area that has seen renewed popularity since the passage of the Pension Protection Act of 2006. Other meetings later in the year will cover discussions of target date versus target risk investment options within defined contribution

plans and a discussion of standards of excellence and best practices for fiduciaries of retirement plans.

If you are visiting Central Florida and would like to take the time to join us or speak at one of the ABC of Central Florida’s meetings, please contact Phil Senderowitz at phil@chepenikfinancial.com or Marci Gady, QKA, at marci.gady@suntrust.com.



Philip Senderowitz, CFA, CFP®, AIF®, is Chief Investment Officer of Chepenik Financial in Winter Park, FL. He has more than 15 years of investment experience, primarily in the corporate retirement plan market, and is currently on the board of the ASPPA Benefits Council of Central Florida. (phil@chepenikfinancial.com)

Correction Notice

In the Winter 2008 issue of *The ASPPA Journal*, an error appeared on page 24 in the article titled “Education with IMPACT—The Edu-tainment Experience”, written by Charles D. Epstein and Sue Ellen Lovejoy. The first bullet should have referenced “Interpretive Bulletin 96-1” instead of “Interpretive Bulletin 964.”

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ASPPA Calendar of Events

Date	Description	CE Credits
2008		
May 14	Final registration deadline for spring examinations	
May 15 - Jun 27	Spring 2008 examination window (DB, DC-1, DC-2, DC-3, PFC-1 and PFC-2)	
May 15	Postponement deadline for C-3 examination	
May 21	C-3 examination	
May 21 - 22	DOL Speaks: The 2008 Employee Benefits Conference • Washington, DC	10
May 22 - 23	Mid-Atlantic Benefits Conference • Washington, DC	10
Jun 10 - 11	Advanced Actuarial Conference • Boston, MA	15
Jun 12	Northeast Area Benefits Conference • Boston, MA	8
Jun 13	Northeast Area Benefits Conference • New York, NY	8
Jun 13	Postponement deadline for spring DB, DC-1, DC-2, DC-3, PFC-1 and PFC-2 examinations	
Jun 19 - 20	Women Business Leaders Forum • Atlanta, GA	15
Jul 13 - 16	Western Benefits Conference • Seattle, WA	20
Sep 19	Early registration deadline for fall examinations	
Oct 19 - 22	ASPPA Annual Conference • Washington, DC	20
Oct 31	Final registration deadline for fall examinations	
Nov 3 - Dec 12	Fall 2008 examination window (DB, DC-1, DC-2, DC-3, PFC-1 and PFC-2)	
Nov 6	Postponement deadline for C-4 and A-4 examinations	
Nov 13	C-4 examination	
Nov 14	A-4 examination	
Dec 1	Postponement deadline for fall DB, DC-1, DC-2, DC-3, PFC-1 and PFC-2 examinations	
Dec 15	RPF-1 & RPF-2 examination deadline for 2008 online submission (midnight, EST)	

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

** Please note that listed CE credit information for 2008 conferences is subject to change.

ABC Meetings Calendar

April 10

ABC of South Florida

Form 5500 Update
Janice M. Wegesin, CPC, QPA

April 11

ABC of Western PA

Everything You Wanted to Know About Cross-testing but were Afraid to Ask
Thomas E. Poje, CPC, QPA, QKA

April 17

ABC of Northern Indiana

Lunch with Presentation
David J. Kolhoff, APM, and Bob Toth

April 29

ABC of New England

Retirement Plan Industry Update
Ilene H. Ferenczy, CPC

April 29

ABC of North Florida

401(k) Fees and the New Disclosure Mandates
Craig P. Hoffman, APM

May 1

ABC of Greater Cincinnati

Form 5500—with a Twist!
Janice M. Wegesin, CPC, QPA

May 1

ABC of New York

ERISA Seminar
Sal L. Tripodi, Esq., APM

May 7

ABC of Detroit

Keeping Current
S. Derrin Watson, APM

May 8

ABC of South Florida

All-day ERISA Seminar
Ilene H. Ferenczy, CPC

May 15

ABC of New England

Form 5500 News and Update
Janice M. Wegesin, CPC, QPA

May 21

ABC of Atlanta

DB Plan Funding Issues/ Plan Design for Professional Groups
Kevin J. Donovan, MSPA

May 27

ABC of Greater Cincinnati

Membership Appreciation

June 17

ABC of Cleveland

Topic TBD
Speaker TBD

June 24

ABC of Greater Cincinnati

Testing and Reporting Regulation Update
John P. Stebbins, QKA, and Mike Kraemer

July 17

ABC of Central Florida

Changes in the 403(b) Marketplace
Diana Zubrowski

July 24

ABC of South Florida

Participant Notices and Disclosure
Robert M. Kaplan, CPC, QPA

July 29

ABC of Greater Cincinnati

Topic TBD
S. Derrin Watson, APM

August TBD

ABC of Northern Indiana

All-day Seminar
Sal L. Tripodi, Esq., APM

August 20

ABC of Atlanta

Retirement Plans for Tax-exempt and Governmental Entities
Deborah Davis

August 26

ABC of Greater Cincinnati

403(b) Plans—The Future is Now!
Robert M. Kaplan, CPC, QPA

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

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

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

Level = Medium

Answers will be posted on ASPPA's Web site in the Members Only section. Log in. Click on *The ASPPA Journal*. Scroll down to "Answers to Fun-da-Mentals."

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Why, Why, Why,

Why do we press harder on a remote control when we know the batteries are going dead?

Why do banks charge a fee on "insufficient funds" when they know there is not enough money?

Why does someone believe you when you say there are four billion stars, but check when you say the paint is wet?

Word Scramble

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

TROLL DECON _ _ □ _ _ _ □ □ _ _ _ _

SEAL ED □ □ _ _ _ □ _ _

PURER CODE □ □ □ _ _ _ _ _ □ _ _

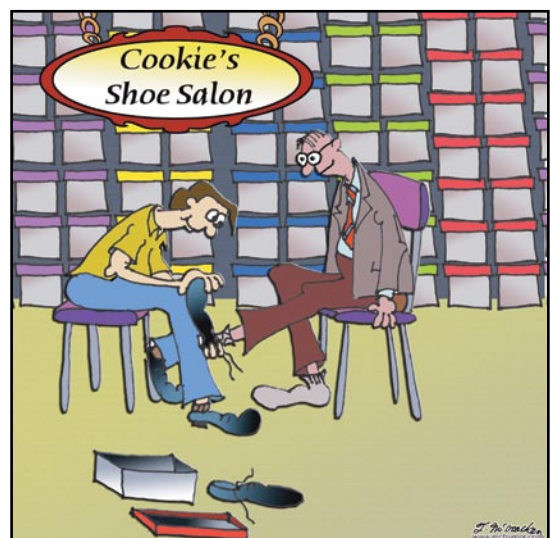
END TIPS □ □ □ □ _ _ _ _

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

Mystery Answer:

" _ _ _ _ " _ _ _ _ _ .

Answers will be posted on ASPPA's Web site in the Members Only section. Log in. Click on *The ASPPA Journal*. Scroll down to "Answers to Fun-da-Mentals."



What business entity type the shoe store owner decided would be best for his business.



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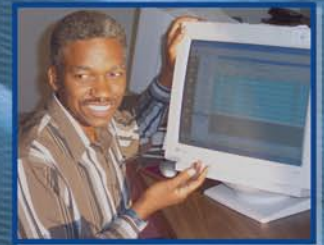
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