THE ASPPA Journal

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

WASHINGTON UPDATE

# ASPPA President-Elect Testifies on PPA Technical Corrections

*by Sal L. Tripodi, APM*

On May 3, 2007, I had the privilege of representing ASPPA before the House Committee on Education and Labor Subcommittee on Health, Employment, Labor and Pensions regarding technical corrections and other modifications needed to the Pension Protection Act of 2006 (PPA). In my written testimony, I set forth an analysis of ten significant issues emerging from PPA of relevance to small and medium-sized businesses. The issues addressed were: (1) the duplicative and burdensome participant disclosure requirements; (2) PPA effective dates; (3) timing of employee benefit statements for trustee-directed defined contribution plans; (4) calculation of vested benefits with respect to employee benefit statements for participant-directed plans; (5) plan valuation issues

*Continued on page 6*

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FROM THE EDITOR

# Perspectives of a Centenarian

*by Chris L. Stroud, MSPA*

Centenarians (people living to 100 and beyond) represent one of the fastest growing age groups of the American population, according to the Society of Actuaries (*Living to 100 and Beyond*). In the course of the last four decades, the number of people reaching 100 has increased almost tenfold. As a result, the Social Security Administration recently extended the life expectancy tables to age 119. In addition to giving credence to topics related to longevity, these statistics reveal that your own chances of knowing a centenarian (or becoming one!) are increasing. If you happen to meet one along the way, be sure to take advantage of the unique opportunity to get a valuable history lesson.

Esther Stern was born in Dorchesther, MA, on April 8, 1906. She was married to her husband, Al Stern, for 57 years before he passed away. Last year, I had the distinct honor of attending Esther's 100th birthday celebration—a "big bash" with approximately 75 friends and family members. A few months ago, I had the even greater honor of being part of the intimate group of nine who attended Esther's 101st birthday celebration. (By the way, I found the perfect gift—a small stuffed dalmatian. Our card to her read "101 candles and dalmatians—Happy Birthday!) We were all thoroughly amused as two 80+ years "young" gentlemen from the assisted living facility vied for Esther's attention as we encouraged her to tell us stories from her past.

Esther fondly remembered the time when she was a young girl and one of the boys in her class got a radio. She and her friends would go over to his house every day and listen raptly to this wonderful invention. Years later, she recalled the excitement at the delivery of her family's own first RCA Victor—a black and white monstrosity called a television. Her favorite shows were the Ed Sullivan Show and the Milton Berle Show. Esther was encouraged by an agent to try out for the movies, but her parents discouraged it. It was not "proper" in those days. (Apparently, she was quite pretty in her youth—and I must say, she was ravishing at 101!)

*Esther Stern at her 101st birthday celebration.*

Esther vividly described memories of watching soldiers boarding the trains as they were going off to fight the wars—World War I and World War II. She also did not mind pointing out that she was not happy with the current administration and did not believe that we should be in Iraq. Right or wrong, even at 101, she still had her opinions. She also was not sure who she would vote for in the upcoming presidential election, but she mused that the choices are "quite interesting" and that things have certainly come a long way!

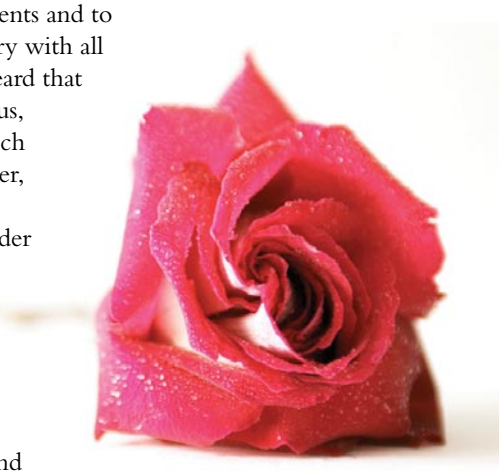
Before her three children were born, Esther worked as a secretary for Dodd Mead, a publishing company in Manhattan. Later, as a stay-at-home mom, she wrote short stories. She tried, without luck, to get them published, but she admitted that she still enjoyed the experience. Esther and Al lived outside New York City for many years and enjoyed regular visits to museums, shows, concerts and the opera. On Sundays, the record player always had classical music playing. Her most cherished song was "Always," which Al had sent to her when he was in the Army. It starts out "I'll be loving you, always." Esther and Al were

fortunate enough to travel all over the world, and her most memorable trips were to Paris and Japan.

Esther outlived her three sisters, who lived to 100 ½, 96 and 81, and one of her daughters. She never really thought she would live past 100 herself, but fortunately, outliving her money was never an issue. When asked if she had any advice for baby boomers, she answered "Save, Save, Save!" She and her husband never had debts and always lived comfortably and within their means. Credit cards were only a luxury used later in life, but she never abused the privilege. Her husband did not believe in investing and was afraid to take risks with their money, but he did provide adequately for her. He left her with three pensions (Social Security, Army and a City of New York pension). After his death, Esther invested their savings to provide income and growth. She tripled her money in 20 years and she never touched the principal.

An avid reader throughout her life, even at 100 she was still reading two books a week. She loved to read romance novels and John Grisham books and often would discuss the plots in depth and critique the latest work. She also would spend hours on the computer keeping up with financial and world news and e-mailing her two remaining children, her ten grandchildren and her nine great-grandchildren.

I had hoped that Esther would be able to read this tribute to her own life, but fate would have it otherwise. By the time you read this editorial, I will have joined Esther's family and friends to participate in the final celebration of her life—her memorial. I would like to thank her daughter, Lisa Hammond, my close friend and former ASPPA member, for allowing me to share in these wonderful life events and to share Esther's story with all of you. I have heard that among the Hindus, when people touch the feet of an elder, they are often blessed by that elder with the saying "May you live a hundred years." Although I did not touch her feet, I did hold Esther's hand—and she truly touched my heart. My life is far richer for having known her. May each of you "live a hundred years," or at the very least, may you have the opportunity to meet someone who did.



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# Letters to the Editor

## E-mail Etiquette Revisited (Editorial; Spring 2007 issue)

Dear Chris:
I would suggest adding one item to the list of Don'ts:

"Do not forward an e-mail to anyone who did not originally receive it without the author's permission." (Common violation: I receive an e-mail from person A, I reply to person A and copy person C on my response. It then turns out that an earlier e-mail in the chain has something uncomplimentary about Person C, but I hadn't read that far.) This practice helps prevent third parties from seeing things they were never intended to see.

Of course, you should always write your own e-mails assuming that the whole world will eventually see them, but if you follow the above rule, at least you won't be the one who is showing private e-mails to the rest of the world.

Thanks for the list. I will post it on our bulletin board for employees to read and (hopefully) follow.

*Regards,*
*David M. Teitelbaum, MSPA*
*Consulting Actuaries Incorporated*

*Dear David:*
*We're glad you enjoyed the article, and thanks for passing on the extra tip to our readers.*

Dear Chris:
Great article on E-mail Etiquette. I am using it at our next staff meeting! Maybe you can do phone etiquette next time—that would also be helpful!

*David M. Lipkin, MSPA*
*Metro Benefits, Inc.*

*Dear David:*
*I'm glad to see that people actually read the editorials. I will certainly take your suggestion into consideration.*

## Qualified Plan Comparison Supplement (Supplement; Spring 2007 issue)

Can you let me know what the cost is to get "Paper Copies" of the 2007 Spring Summary Comparison of Qualified Plans, IRAs and TSAs 2007? I would potentially order 200 copies from ASPPA. Nationwide is a corporate sponsor of various ASPPA events and my "Nationwide Employee" customers enjoy this piece!

*Patty Matthews*
*Nationwide Financial Retirement Plans: Product Specialist*

*Dear Patty:*
*Thank you for your request. Extra copies can be purchased by contacting Troy Cornett at the ASPPA office (**tcornett@asppa.org**). The price is $3.00 per copy, plus shipping.*

## Sudoku Super-sleuth (Fundamentals; Spring 2007 issue)

Dear Chris:
I had the 7 and 8 in columns 3 and 7 left to fill in, and it appears they could go either way.

*Keith Hartsough, MSPA*

*Dear Keith:*
*Hmmm—very interesting. You are correct, and you have found an alternate solution to the one that was originally posted. We have now posted both versions. Thanks for letting us know.*

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

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## WASHINGTON UPDATE

for small plans with respect to benefit restrictions under new Internal Revenue Code §436; (6) the IRS interpretation of the "6% cushion" added by PPA to the combined deduction limit under Code §404(a)(7); (7) the interest rate used to compute maximum lump sum distributions under Code §415(b); (8) the scope of the "DB(k)" provision added by PPA; (9) the application of ERISA preemption to automatic enrollment features; and (10) the status of Indian tribal government plans.

I was allotted only five minutes for oral testimony, making it impossible to discuss all of these topics. Accordingly, my testimony was confined to the first issue regarding disclosure burdens. One of my last acts as an ASPPA Government Affairs Committee (GAC) Co-chair was to launch a review of the participant disclosure requirements in light of the many additional requirements that were added by PPA. A special task force of GAC compiled a chart showing the scope of the disclosure rules just for defined contribution plans, which we included as an attachment to the written testimony. The result serves as a daunting reminder of what plan sponsors and third party service providers are up against in complying with the rules. And, more importantly, the inundation of information is arguably harming, rather than benefiting, participants. So, ASPPA made its case for using a legislative review of PPA as an opportunity to launch a comprehensive review of the participant disclosure requirements with an eye toward more user-friendly and instructive information. Included in our recommendation is the creation of a Plan Operating Manual (POM) that would serve as the primary document for essential information needed for an active participant. Periodic communications would be able to focus on the critical information and direct the employee to the POM for more information. You can read the oral testimony on page 7. A full text of our written testimony is available at **www.asppa.org**.

I am grateful to Brian H. Graff, Esq., APM, ASPPA's Executive Director/CEO, for making this opportunity happen. Although I speak at many venues, the experience of appearing before a Congressional committee was completely different. I must admit it was a bit unnerving at first. But, as some of you know, once I get started, I don't seem to have much trouble talking! My sense is that our points were heard, and the Chair of the subcommittee, Rob Andrews (D-NJ), and the ranking minority member, John Kline (R-MN), appeared interested in the issue and in starting a dialogue. Having this wonderful opportunity to testify is another way that ASPPA is able to exercise its influence with respect to important legislative initiatives and demonstrates ASPPA's commitment to a strong, employer-based retirement system.

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

# ORAL TESTIMONY

I am Sal Tripodi, President-Elect of ASPPA, the American Society of Pension Professionals & Actuaries. ASPPA has more than 6,000 retirement plan professionals as members, who provide consulting and administrative services for plans covering millions of American workers. I also am the founder of TRI Pension Services, an employee benefits consulting firm that provides ERISA-related technical training around the country.

ASPPA applauds the committee's leadership in working to fashion necessary corrections to the Pension Protection Act, or PPA, and appreciates this opportunity to testify. Improving the PPA is crucial to strengthening working Americans' retirement security. We stand ready and willing—and are uniquely qualified—to help accomplish our mutual goals as the PPA modification process moves forward.

I will restrict my comments today to the duplicative and burdensome participant disclosure requirements under current law. However, in our written statement, we have identified nine other important issues, including a number of critical issues involving the PPA's benefit statement provisions that plan sponsors and administrators are struggling with, a deduction rule correction to encourage full funding of defined benefit plans, and the need for delayed effective dates for some PPA provisions.

PPA resulted in what ASPPA describes as the Great Flood of 2006; a deluge of new disclosure rules that make victims of the millions of retirement plan participants who are already overwhelmed with information. As participants drown in this sea of disclosure, plan service providers paddle upstream to fulfill these new mandates. A strong employer-sponsored retirement savings system requires informed, engaged plan participants. We argue that current disclosure rules hinder rather than help in attempts to achieve this.

We are not saying that Congress should scrap all of the current rules. For example, no one would argue that employees in automatic enrollment 401(k) plans should not receive advance information on this feature. Employees with self-directed 401(k) accounts need periodic account value and allocation information. Retiring participants need adequate information about their distribution options.

So, we agree with the need for participant disclosures. But, we question the rules on how and when the information is provided.

ASPPA has created a Participant Disclosure Chart—it is attached to our written statement—that details the breadth and complexity of the current disclosure rules. The chart is a powerful reminder of how burdensome the disclosure rules have become.

A cornerstone of plan transparency is the summary plan description or SPD. The SPD was intended to be the central document through which participants would learn about the key features of their retirement plan. SPDs must be periodically updated so that participants need not wade through multiple separate documents to understand the plan.

But, the ERISA disclosure requirements have multiplied, without regard to whether the participant already receives the information in the SPD. This means many disclosures are redundant and are contained in unnecessarily lengthy, complicated documents. Many plan participants typically react to a disclosure document that is too long or too complex by ignoring it. This, of course, completely undermines the disclosure's basic purpose.

Further, the overwhelming majority of plans rely on third-party services to comply with these rules, making third-party service providers responsible for compiling disclosures for thousands of plans. The need for repetitive or lengthy disclosures makes it more difficult to ensure that each disclosure is appropriate for a particular plan and is suitable for its participants. And worse, the cost to plan participants has increased. This is particularly true with respect to small business plans, where each participant bears a higher proportion of the plan's fixed administrative costs.

For example, assume a 401(k) plan with ten participants. A single disclosure would easily cost $6 per participant. The PPA-mandated quarterly benefit statements plus an annual vesting statement—a total of five annual disclosures—would cost $30. If the plan uses the 401(k) nondiscrimination safe harbor, automatic enrollment and a qualified default investment alternative, there are three more disclosures, raising the cost to $48 per participant. For a participant making $40,000 per year who saves 5% ($2,000) of pay in a 401(k) plan, this adds up to almost a 2.5% charge just for disclosures. This doesn't make sense.

To solve this problem, ASPPA recommends that Congress consider the development of a standard document—a plan operating manual or POM—to serve as a single source for relevant plan information. The POM would contain all the information that an employee needs to effectively participate in the plan and would be written so that an average participant can easily understand it. When a targeted disclosure is needed, participants would be notified and referred to the relevant sections of the POM for review, rather than getting a full-blown notice.

To further reduce the cost of plan administration, ASPPA suggests that the Department of Labor be directed to produce model POM language that most plans would use.

ASPPA would be happy to assist in these efforts, which we submit will leave participants with a clearer vision of the retirement road ahead. And that's a win for everyone.


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# Catch-up Contributions Create "Catch-22" for ADP Test

*by Barry P. Dorfman, QPA*

There are two provisions in pension law applicable to salary deferral plans that individually seem like good ideas. One is the two-step leveling method for correcting a failed nondiscrimination test through corrective distributions. The other is the availability of catch-up contributions to individuals age 50 and over. But the manner in which these two provisions interact can create some unintended, disastrous results.

This subject has received little, if any, attention up to this point, perhaps because catch-up contribution limits have only in recent years become large enough for their impact on the ADP test to be noticed. Here is a detailed look at the problem along with some recommended solutions.

## Background of the Leveling Method

Salary deferral plans have been around for more than 25 years. Out of concern that these plans might only be utilized by business owners and/or their top paid employees, restrictions were established limiting the amount of deferrals by such employees. A nondiscrimination test was established so that the average deferral percentage (ADP) of the owners and highly paid employees, collectively called "highly compensated employees" (HCEs), does not exceed the ADP of the non-highly compensated employees (NHCEs) by a significant margin.

There are a few methods for correcting a failed ADP test after the plan year ends, including the employer making a qualified non-elective contribution (QNEC) that would cause the test to pass. But the most common method is through corrective distributions of excess contributions, adjusted for earnings/losses.

Originally, HCEs with the highest deferral percentages were required to take back their deferrals in excess of the maximum ADP allowed under the test. This approach makes perfect sense, since the test is based on percentages, and those

HCEs caused the test to fail. An example of required corrective distributions under the original method follows:

**ADP for the NHCEs = 3%; Maximum ADP for the HCEs = 5%.**

| | Comp. | Deferral | Deferral % | Excess % | Refund |
|---|---|---|---|---|---|
| HCE #1 | $ 100,000 | $ 9,000 | 9% | 3% | $ 3,000 |
| HCE #2 | $ 200,000 | $ 12,000 | 6% | – | – |
| HCE #3 | $ 120,000 | $ 3,600 | 3% | – | – |
| | | | 18% | 3% | |

The ADP test failed because the average deferral rate for the three HCEs exceeded 5% (18% divided by 3 = 6%). Since HCE #1 had the highest deferral percentage, he receives the refund.

The ADP test correction method was modified by the Small Business Job Protection Act, effective as of 1997, which created a two-step leveling method. First, the excess amounts are determined based on the excess percentages. In step two, these excess amounts are required to be distributed not to those

whose deferral percentages created the excess, but to those who deferred the highest dollar amounts. A contribution dollar limit for the HCEs is thereby established, corrective distributions are made and the test is deemed to pass. An example of this method, using the same data as earlier, follows:

| | Comp. | Deferral | Deferral % | Excess % | Excess Amount | Required Refund |
|---|---|---|---|---|---|---|
| HCE #1 | $ 100,000 | $ 9,000 | 9% | 3% | $ 3,000 | – |
| HCE #2 | $ 200,000 | $ 12,000 | 6% | – | – | $ 3,000 |
| HCE #3 | $ 120,000 | $ 3,600 | 3% | – | – | – |
| | | | 18% | 3% | | |

Although HCE #1 deferred the highest percentage, resulting in a 3% ($3,000) excess above the ADP test limit, HCE #2 deferred the highest dollar amount. Under the two-step leveling method, $9,000 becomes the HCE contribution limit and therefore HCE #2 must take back $3,000.

The rationale for the correction method change was that the HCEs with the highest deferral percentages were causing the test to fail, not because they deferred the most money, but because they had lower salaries. For example, someone deferring $10,000 from a $200,000 salary is deferring 5%, while someone deferring $6,000 from a $100,000 salary is deferring 6%. It was determined to be more equitable for the HCE who deferred more dollars to receive a refund rather than the HCE who deferred fewer dollars but had a higher percentage. This rationale has some degree of legitimacy, as it gives all HCEs an opportunity to defer the same dollar amount. It is true that this amount represents a smaller percentage of compensation for the higher paid HCEs. But since those HCEs tend to be the owners, at least in smaller companies, and typically have other financial resources and are less in need of retirement savings, one could argue that the new correction method is fair.

## The Creation of Catch-up Contributions

Now let's fast forward to 2001 and the passage of the Economic Growth and Tax Relief Reconciliation Act (EGTRRA), which provided many new retirement savings opportunities. Among them was the opportunity for individuals age 50 and over to make additional "catch-up" contributions beginning in 2002.

The legislative intent behind catch-up contributions, as stated in Section 631 of the Committee Reports, was as follows:

- "...as a practical matter, many individuals simply do not focus on the amount of retirement savings they need until they near retirement."
- "In addition, many individuals may have difficulty saving more in earlier years (*e.g.*, because an employee leaves the workplace to care for a family)."
- "Some individuals may have a greater ability to save as they near retirement."
- "The Committee believes that the pension laws should assist individuals who are nearing retirement to save more for their retirement."

Code Section 414(v)(3), as added by EGTRRA, states that a plan that allows catch-up contributions "shall not be treated as failing to meet the requirements of [S]ection 401(a)(4), 401(k)(3) [the ADP test] . . .by reason of the making of (or the right to make) such contributions." The Committee Reports for this section provide that "[c]atch-up contributions made under the conference agreement are not subject to any other contribution limits and are not taken into account in applying other contribution limits. In addition, such contributions *are not subject to applicable nondiscrimination rules*." (Emphasis added.)

The intent of the law seems clear. Catch-up contributions were supposed to provide a new opportunity for older participants to save money for retirement without affecting any other limitations or nondiscrimination rules already in place.

At first glance, the catch-up rules appear to be simple and straightforward. But then the question arises, at what point, or under what circumstances, is a deferral considered to be a catch-up contribution? The regulations provide that a deferral will be classified as catch-up if it exceeds any one of the following limitations:

- The annual deferral limit ($15,500 for 2007, $10,500 for Simple Plans);
- The Code Section 415(c) annual additions limit ($45,000 for 2007);
- Any plan imposed deferral limit; or
- The ADP test limit.

The dollar limit for catch-up contributions began at $1,000 for 2002, and increased by $1,000 each year until reaching $5,000 in 2006, where it currently remains, subject to future cost-of-living increases.

The one limitation that has created the controversy in defining a catch-up contribution is the ADP test limit, as discussed below.

## Impact of Catch-up Contributions on the ADP Test

IRS Notice 97-2, as well as final regulation 1.414(v)-1(b)(1)(ii), make it clear that a plan's ADP limit is the highest dollar amount that an HCE can retain in the plan after application of the excess contribution correction method of Section 401(k)(8)(c) (the leveling method). Contributions by HCEs above the ADP limit can be reclassified as catch-up contributions, but only after the leveling method is applied. And that's where the problem is created.

As illustrated by the examples that follow, having to delay the determination of catch-up contributions via the ADP limit until *after* performing the corrective distribution leveling method can result in unintended and often negative consequences for certain HCEs. These consequences are completely contrary to both the content and the spirit of Code Section 414(v).

*The makeup of the HCE group, as well as employment terminations within this group, can be determining factors in the outcome of the test.*

Here are two simple examples of unintended consequences of catch-up contributions in the ADP test:

**Example 1:** Using the prior year testing method, the maximum ADP for the HCEs is 5%. HCE #2 deferred 5% and HCE #1 deferred 10%—5% plus an additional 5% ($5,000) since he is over age 50.

| | Age | Comp. | Deferral | Def. % | Excess % | Excess Amount | Refunds | Catch-up Portion | Req'd. Dist. |
|---|---|---|---|---|---|---|---|---|---|
| HCE #1 | 55 | $ 100,000 | $ 10,000 | 10% | 5% | $ 5,000 | $ 2,500 | $ 2,500 | – |
| HCE #2 | 45 | $ 200,000 | $ 10,000 | 5% | – | – | $ 2,500 | – | $ 2,500 |

The additional $5,000 deferred by HCE #1 was intended to be a catch-up contribution and should have had no impact on the ADP test. Other than this amount, he stayed within the 5% testing limit. But under the leveling correction method, each HCE is subject to a $2,500 refund because the test failed and they deferred the same dollar amount. Since HCE #1 is over age 50, his refund will be reclassified as catch-up and remain in the plan. HCE #2 becomes a victim of the unintended consequence of this correction method, having to take back $2,500 although his deferrals were within the testing percentage limit.

**Example 2:** Similar circumstances as above, except that the compensation rate for both HCEs is the same and HCE #1 terminated employment during the fourth month of the plan year.

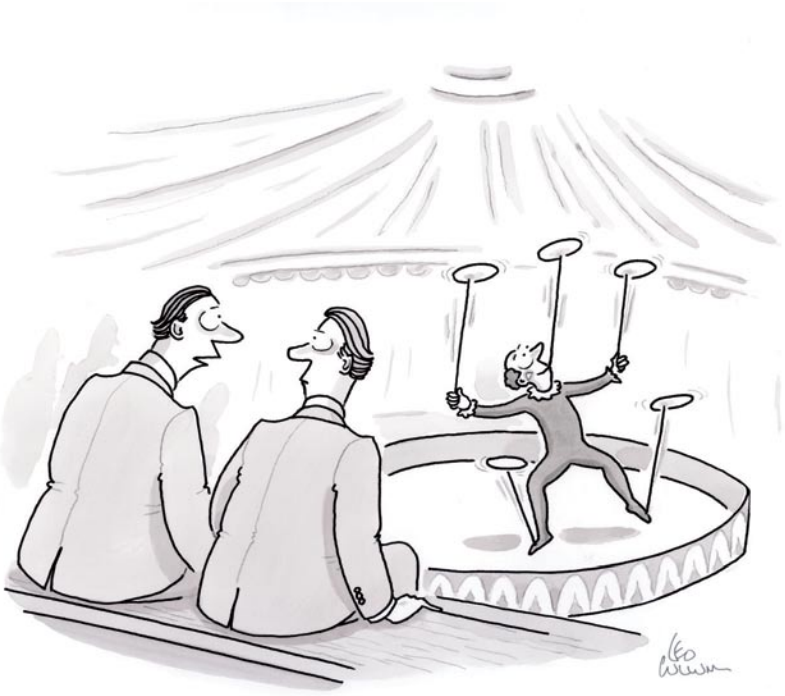
| | Age | Comp. | Deferral | Def. % | Excess % | Excess Amount | Refunds | Catch-up Portion | Req'd. Dist. |
|---|---|---|---|---|---|---|---|---|---|
| HCE #1(T) | 55 | $ 30,000 | $ 3,000 | 10% | 5% | $ 1,500 | – | – | – |
| HCE #2 | 45 | $ 100,000 | $ 5,000 | 5% | – | – | $ 1,500 | – | $ 1,500 |

In this case it wasn't the difference in compensation levels but the fact that one HCE terminated during the year that resulted in a required distribution. In other words, if HCE #1 had remained employed for the full year and continued deferrals at the same rate, all of his excess deferrals would have been reclassified as catch-up and no refunds would have been required. But in this example, since HCE #2 is under age 50, his required refund cannot be reclassified as catch-up. Therefore, it must be distributed to him. And none of HCE #1's deferrals are considered catch-up, since they do not exceed the $3,500 ADP limit established by the test that HCE #2 is allowed to retain in the plan.

*Note that in the above scenarios, additional contributions made by one participant over age 50 pursuant to the catch-up rules resulted in reduced contributions for another participant, which clearly is contrary to the intent of the catch-up provisions.* While these illustrations include only two HCEs for simplicity purposes, similar results can occur with larger numbers of HCEs in the plan.

## Advance Planning Can Be Difficult and Inaccurate

The benefit of using the prior year testing method is the ability to advise clients early in the year of the ADP limit for HCEs. Since it is based on NHCE deferrals from the prior year, it is presumed to be an accurate determination of what HCEs can defer in the current year. But with the impact of catch-up contributions as described above, even clients whose HCEs adhere to the limit may fail the test and require refunds. That makes the plan administrator and/or third party administrator appear to be incompetent. If an HCE asks if he or she can make a $5,000 catch-up contribution without adversely affecting the ADP test, the most appropriate answer in many situations is "maybe." The makeup of the HCE group, as well as employment terminations within this group, can be determining factors in the outcome of the test. It is nearly impossible to explain the complexities of these rules to the typical client, and if not for this controversy, no explanation would be required.



*"Apparently, he used to manage employee benefits plans."*

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*…I urge ASPPA's Government Affairs Committee, as well as all ASPPA members, to lobby for the necessary regulatory changes that would resolve this catch-up dilemma.*

## Impact of a Plan Imposed Limit

The other non-statutory limitation for determining catch-up contributions is a plan imposed limit, which raises the question of whether or not such a limit for HCEs could alleviate the ADP test catch-up problem. The short answer to this question is yes, it could, in many situations, since deferrals above the plan limit would automatically be classified as catch-up (where appropriate). But establishing a plan limit can have its own negative consequences and administrative burdens. A plan limit is applied on an individual basis, whereas the ADP limit is a group average. Getting one limit to coordinate with the other can be a challenge, especially if HCEs change their deferral rates during the year. It is important to keep in mind that it was not the intent of the law that a plan would have to adopt a restrictive deferral limit in order for the catch-up provisions to be fully utilized without interfering with other plan provisions. The intent was simply to establish a non-intrusive option for additional contributions by older workers.

## Proposed Solutions

There are two simple solutions to the ADP test catch-up dilemma:

1. Rather than defining a catch-up contribution as a deferral in excess of the ADP limit calculated after the corrective distribution leveling method, the classification should take place prior to step two of this process. It should be based on the maximum deferral "percentage" allowed in step one of the leveling method. In that way, HCEs who defer more than the test allows because they are over age 50 would have these amounts properly classified as catch-up, and other HCEs would not be subject to unnecessary refunds. This type of classification appears to be the intent of the law, and it is only the corrective distribution method that creates contrary results. An example of how the ADP test would be performed if this change were implemented follows:

| | Age | Comp. | Deferral | Deferral % | Excess % | Excess Amount | Catch-up Portion | Refunds |
|---|---|---|---|---|---|---|---|---|
| HCE #1 | 55 | $ 100,000 | $ 10,000 | 10% | 5% | $ 5,000 | $ 5,000 | – |
| HCE #2 | 45 | $ 200,000 | $ 10,000 | 5% | – | – | – | – |

2. Eliminate the two-step leveling method for corrective distributions and return to the prior one-step method. Perhaps this issue should now be revisited in light of the impact of catch-up contributions. Even without catch-ups, the method is controversial. As previously mentioned, it generally favors lower paid HCEs as opposed to higher paid ones, who tend to be the owners. However, lower paid HCEs are usually younger than higher paid HCEs. Do we really want a retirement system that provides fewer savings opportunities the older an employee gets and the more money he or she makes? This situation is exacerbated when the company employs owners' children, who are considered HCEs by stock attribution. Is it fair for these children to have the same deferral dollar limit under the ADP test as other HCEs who may be twice their age and earn three times the compensation? These questions represent policy considerations that are difficult to answer, but they certainly should be reconsidered in light of the sentiments expressed in the Committee Reports supporting catch-up contributions for older employees.

For the reasons outlined above, I urge ASPPA's Government Affairs Committee, as well as all ASPPA members, to lobby for the necessary regulatory changes that would resolve this catch-up dilemma. It is an oversight that needs to be addressed.

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# Averting the Retirement Income Crisis

*by Carol R. Sears, FSPA, CPC, and Scott D. Miller, FSPA, CPC*

An actuarial train wreck is fast approaching. The wreck will occur when the dearth of defined benefit pension plans, coupled with the lack of adequate retirement savings, collides with ever-improving life expectancies of our nation's baby boomer and future retiree generations. We foresee a time in which our elderly will be out of income options and devoid of income protection insurance.

Legislative or other initiatives have yet to address this very real problem. Legislators try to apply band-aids to the current broken defined benefit pension and Social Security systems, but that is not the answer. Actuaries and other pension professionals need to define the real problem and use their combined intellect and experience to build the best forward-thinking retirement program system that truly protects our changing elderly population.

## Retirement Today and Beyond

Retirement has traditionally been viewed as a cliff transition from working one day to not working the next day. Today's world is teaching us that this well-defined transition no longer holds true. Longevity has and will continue to improve, and the ability to work longer is improving at the same or similar rate. Already a significant and growing percentage of individuals over the age of 65 continue to work.

Retirement savings rates in our country, coupled with the demise of traditional pension plans, have resulted in retirement income that is dismally inadequate to maintain living standards after complete work stoppage at customary retirement ages.

Traditional retirement plans are being frozen or terminated because:

- Most employees don't appreciate the value of defined benefit pension plans and offer little resistance to plan terminations or the ceasing of future benefit accrual.
- Pension Protection Act of 2006 will require annual funding targets that are difficult to predict.

- FASB 87, 88 and 132 obligations and disclosures are too unpredictable and their effects too draconian. Existing FASB rules truly impact, often negatively, the ability to run a business well.
- Ever-increasing longevity has made providing full benefits for individuals starting at age 65 for their remaining lifetimes too expensive.
- Post-retirement accrual rules make it financially unattractive for companies to retain workers beyond age 65 in traditional defined benefit pension plans because additional accruals at high ages significantly impact FASB and real costs in a negative way. This situation creates a strong disincentive to let trained, older employees remain employed, while at the same time these individuals are becoming more and more interested in continuing to work on a gradually diminishing basis. This disincentive is not logical when we know that these valuable older workers are healthy enough to continue working, want to continue working at least part-time and often can't afford to fully retire at traditional ages anyway. In addition, due to a shrinking available workforce, employers have a need to retain these committed and productive employees.

*Our culture needs to change to accommodate retirement income packages that don't have to pick up full income needs until full work cessation.*

More and more people are accepting that there must be a transition period from full work to full retirement. Our culture needs to change to accommodate retirement income packages that don't have to pick up full income needs until full work cessation. This diminishing need for full financial support during the transition period can be recognized in a new type of retirement program design and help make it feasible for an employer to help provide for long-term retirement benefits that are really needed after the individual is no longer working.

Since account based retirement savings programs would no longer have to last a lifetime, their goals can be finite and determinable. Workers need to be relieved of significant fears and stress associated with worrying about the adequacy of their retirement savings and be more comfortable about prudently spending down their accounts in retirement. Nobody knows for sure how long he or she will live, so it is impossible to predict how much money he or she needs to maintain in retirement.

## A Perspective

Just as we do for health, life and disability, perhaps it is time to treat longevity as an insurable event. What does this mean? Insurance is, in its most basic form, a pool of money accumulated to pay benefits only to the premium payers who suffer the fundamental risk (*e.g.,* sickness, death, disability). Generally, people choose to insure life contingent risks that would throw their lifestyle into financial crisis. Those financial outflows that can be predicted and/or sustained by current financial income and savings do not need to be insured. Ideally, savings should cover all predictable expenses. It is the unpredictable or catastrophic expenses that need to be insured.

Purchasing individual insurance policies are generally more expensive and less efficient than buying policies as a group. Employer-sponsored benefit programs have worked well as vehicles to offer this pooled insurance coverage for our working population by offering group health, life and disability insurance. A worker's true level of compensation is usually considered to be a combination of wages, contributions to retirement and other savings programs and other employer-paid benefit expenses (such as insurance). While workers expect that they will receive each dollar of an employer's contributions to benefit programs such as 401(k) plans, through deposits into their accounts, workers accept that dollars spent on insurance programs are returned only to the people who have the applicable benefit claim. For example, even though the employer may pay $10,000 in health insurance premiums for an employee, if that employee only has $2,000 of medical expenses, that is all they will receive—the remaining $8,000 stays in the insurance pool to pay the insured benefits of others. In contrast to wages and savings programs, the average worker understands that insurance program expenses are not person-specific and knows not to expect a dollar for dollar credit for employer-paid premiums.

## Redefining Retirement

The urgent need for catastrophic financial protection for those who live a long life cannot be met by an employer-sponsored program under today's tax laws. A new essential benefits program should be created to insure the risk that a person could outlive other retirement savings. This program would pay a stream of gradually increasing life contingent annuity benefits.

In addition, the program may optionally cover permitted breaks from the workforce before retirement. Protecting the risk of outliving income resources in old-age is emerging in everyone's awareness as equal in importance to covering other traditional catastrophic life-contingent risks such as medical care, death and disability.

It is time to redefine retirement and to educate the US public about the need to insure major or catastrophic risks while saving for other predictable and affordable income needs. It is also time to teach the US public about financial mathematics – why and how to save enough and the interrelationship of different benefit programs.

In mathematical terms, benefit programs are supposed to be exclusive subsets of the universe of major life contingent risks. Their elements of intersection should be minimal. Because no one person or family experiences all forms of risk, no one enjoys all forms of benefits. But everyone receives the benefits they need because of the risks they experience. Comparison to thy neighbor is not possible. Some receive more than their proportionate share of the health care insurance risk pool because they're sicker than predicted. Others receive more than their proportionate share of the life insurance risk pool because they die earlier than expected. And still others survive and receive more than their proportionate share of the retirement risk insurance pool.

Our concept is similar to the growing trend in health care. Health care programs are well on their way to adjusting to the concept of saving for the predictable in tandem with insuring the unpredictable and catastrophic. Health Savings Accounts (HSAs) for day-to-day and predictable medical costs, used in connection with high-deductible health plans for catastrophic medical costs, can work for individuals who have the proper attitudes. Retirement programs should follow this lead by using 401(k) or other account balance accumulation type plans as the savings accounts for expected or desired retirement expenses, while a new type of employer-sponsored program protects income against unpredictable events (such as living too long) that cause current savings programs to be inadequate.

## Why Now?

Think back to the actuarial environment when Social Security was introduced in the mid-1930s. It was then that the concept of working full-time until complete work cessation at age 65 started. In the past 70 years, longevity has significantly increased, and individuals generally remain vital and healthy for a much longer time. Studies have shown that most families today are dual-income, and an ever increasing percentage of people work beyond age 65. A recent AARP survey of 1,200 baby boomers found that more than 80 percent expect to work at least part-time in their retirement years.

This post-customary retirement age work gradually decreases as the individual ages. Cessation of all work-based income doesn't occur until perhaps the early 70s or later for a fast-growing percentage of the retirement-age population. The three-legged stool of retirement income (personal savings, Social Security and income from employer-sponsored retirement programs) has become a four-legged stool with the addition of continued part-time employment income.

Current post-retirement accrual, existing funding requirements and Financial Accounting Standards Board (FASB) accounting rules make it nearly impossible for an employer to afford a traditional defined benefit pension program. Our

*Studies have shown that most families today are dual-income, and an ever increasing percentage of people work beyond age 65.*

*No one type of program can meet all retirement income needs.*

Social Security program is suffering similarly. Recently enacted legislation only exacerbates the funding problems.

This predicament is particularly vexing because the future workforce is not large enough to replace the baby boomers. Keeping employees who have advanced training, continue to have a desire to work and can offer their valuable experience becomes crucial. Employers need to find a way to entice dedicated, skilled workers to continue to work past customary age 65 retirement.

Equally as important, retirees need to continue to be as productive as possible. Studies have shown that continuing to work promotes health and personal satisfaction. Also, because longevity for many 65-year-olds will soon exceed 40 more years, not very many people will be able to afford to completely retire and just live off of accumulated savings.

Thus, retirement in today's culture has already ceased to be a single event. But because careers and work may continue for more than 50 years in the new working world, it is important to build career-enhancing and family life care needs income into the retirement programs of the future.

Let's recognize and embrace this cultural change and design an affordable program that provides benefits in a time of crisis, whether for short periods of work cessation during one's career or during the periods of later-age work slow-down and final cessation. We further suggest that providing work/life balance income during advanced education and training, or approved philanthropic ventures (that could both be valuable to the employer and the employee) or periods when there is a need to take care of sick or elderly family members, be accepted as a form of temporary retirement and be an important part of our proposed retirement program of the future.

## Retirement Program of the Future

No one type of program can meet all retirement income needs. Based on what we have learned from our retirement plan experiences, and keeping in mind the actual emerging income needs of our nation's retirees, we suggest that where possible, employers sponsor a multi-plan retirement program to meet the retirement income needs of their employees.

At a minimum, all employers should be strongly encouraged to sponsor a new kind of plan, the Retirement Income Security Plan (RISP), in addition to whatever 401(k) and/or defined benefit pension plans fit their unique business goals. The RISP is intended to provide reasonable, affordable and essential income needs-only protection which is missing today and will be tomorrow's social crisis without such plans.

Savings plans are the next most important type of plan in the retirement program of tomorrow. Employers need to sponsor 401(k) plans. These plans provide employees with a vehicle to take responsibility for their retirement by encouraging them to save personally. In addition, employers have another plan that allows them to add to employee's retirement savings through employer contributions.

Employers should also be encouraged to adopt and sponsor supplemental traditional or hybrid defined benefit pension programs. Employers will continue to benefit from these types of plans because they can grow with their business and suit their unique business objectives, while providing employees with additional retirement income. Cost volatility can be contained because plan benefits are merely supplemental.

It must be remembered that savings, while hugely important, is not crisis protection. Adequate savings, accompanied by a RISP, supplemented by traditional or hybrid defined benefit pension plans where possible, can provide retirees with the maintenance of their living standards and peace of mind.

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## What Do RISPs Look Like?

RISPs are not intended to replace current qualified retirement plans. Rather they are to be companion, catastrophic-coverage-only plans. Features we suggest include:

### Benefits

- A formula of .5%, 1%, 1.5% or 2% of final average compensation times years of service would be used.
- Years of service can include up to five years of past service from effective date.
- Final average compensation is at least an average over five consecutive years, but may be any number of years including career average.
- Compensation used must be gross compensation as defined for maximum benefit purposes under IRC Section 415.
- No optional benefits, even if actuarially equivalent, should be offered. Allowing smooth benefit payments or lump sums would undermine the purpose of these plans and interfere with new proposed funding rules that apply to RISPs.
- The form of benefit provided under the RISP will be an annuity payable for life, with 50% of the benefit continuing to the surviving spouse, if married, or a single life annuity if the participant is not married at benefit commencement.
- All benefit payments will commence at age 65, regardless of employment status.
- Benefits will be payable in gradually increasing increments; 25 percent of the full benefit formula from ages 65 through 67, 50 percent from ages 68 through 71, 75 percent from ages 72 through 74, and 100 percent starting at age 75.
- RISP annuity benefits are calculated as of the earlier of termination of employment or age 65, with no increases to the benefit level after 65 due to additional service or compensation. At each of the subsequent tiered benefit increase ages (68, 72, 75) the plan will allow the annuity benefit to increase for cost of living only (*e.g.,* consistent with how Social Security benefits have increased over the same period).
- Pre-retirement death benefit is the minimum Qualified Pre-Retirement Survivor Annuity (as per existing Qualified Pre-Retirement Survivor Annuity rules).
- No early retirement subsidies or options are available.
- No subsidized disability benefits are provided.
- The plan sponsor may reduce, increase or freeze future benefit accruals, depending upon their business needs.
- Plan eligibility rules should follow existing minimum statutory rules.
- Controlled groups may sponsor a single RISP.

### Mid-career Benefit Payouts

- These payouts would be available for a limited period of time.
- These payouts might occur for such work-cessation occasions as an approved work-related academic/training sabbatical, pressing family care need or approved philanthropic venture.
- These mid-career payouts might be permitted once every "x" number of years, or perhaps only a certain number of times prior to retirement benefit commencement. The participant would need to be unemployed during these mid-career payout periods.

### Funding/FASB

- Assumptions:
  - Interest rate assumptions must equal the yield curve rate or other prescribed rate (*e.g.,* as defined in PPA).
  - All other actuarial valuation assumptions (*e.g.,* pre-retirement turnover, disability, mortality, cost of living, mid-career benefit, marital status probabilities) are to be chosen at the discretion of the plan's Enrolled Actuary, based upon the best estimate of future experience.
- The funding method must be "level percent of pay" or "level dollar" Entry Age Normal, with entry age calculated as of the date of the first year of service credit (which can be no more than five years prior to plan adoption).
- Each tier of annuity benefit will be funded for separately, that is:
  - 25 percent of the full annuity benefit due to commence at age 65 will be funded from entry age to age 65.
  - An additional 25 percent of the full annuity benefit (with assumed cost of living increase), which commences at age 68, will be funded from entry age to age 68.
  - The same will occur for the 25 percent benefit increases (with assumed cost of living increases) at ages 72 and 75.
- All amortization bases, including past service bases, may be funded immediately or over no more than five years, at the annual election of the plan sponsor.

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- Mid-career benefits would be funded actuarially, as would any other ancillary benefit, and it would be considered as part of the Entry Age Normal Accrued Liability during the first retirement benefit age tier (age 65) funding period.
- Contributions must be adjusted by the required funding interest rate assumption from date of valuation to dates of deposit.
- FASB disclosures are based upon Entry Age Normal Accrued Liabilities and FASB net periodic pension costs equal actual contribution obligations (*i.e.,* the Enrolled Actuary's funding actuarial valuation matches the FASB disclosures and amounts).

## What Needs to Change for RISP?

### Legislative Changes other than for Funding

- Compensation should be required to equal IRC Section 415 compensation.
- IRC Section 415 maximum benefit limits need to be set especially for these plans. These limits do not become a reduction to traditional plan maximum benefit limits.
- Top heavy rules should not be applicable to RISPs since every participant is covered by the same benefit formula.
- IRC Sections 401(a)(26), 410(b) and 401(a)(4) (minimum participation, minimum coverage and nondiscrimination rules) will not apply to RISPs because their objectives are reached via plan design requirements for RISPs.
- Post-retirement accrual rules need to be eliminated.
- Automatic rollovers rules are not applicable since there are no lump sum distributions.
- Since benefit distributions automatically commence at age 65, there is no need for IRC Section 401(a)(9) minimum benefit distribution requirements.

### Legislative Changes for Funding

- Required contributions must be adjusted from the valuation date to the actual date of deposit, even if they are made after the end of the plan year, by the required interest for funding that year.
- Quarterly contributions will not be required.
- Due to the limited benefit levels of the RISP, the maximum annual deduction limit for a 401(k) plan should not be limited because of the RISP. The maximum annual deduction limit for the RISP should be equal to the full actuarially determined annual contribution requirement.
- PBGC coverage should be required; the Entry Age Normal Accrued Liability as required for funding RISP plans should also equal the variable premium threshold.

### Non-legislative Changes

- FASB rules need to be amended to reflect new actuarial funding standards as required for RISPs.
- Annuity products need to be offered to accommodate these plans.

## The Final Question

*Why would an employer add the RISP to their retirement program package?* If the US population is to enter its later years of life with financial security and peace of mind, employers must take on the responsibility of adding this type of guaranteed catastrophic retirement income benefit to their benefits program.

The three "Rs" of wage and benefit programs never change—Recruit, Retain and Reward. Our proposed type of retirement program helps to support this. As employees begin to understand that survival beyond one's means is a distinct probability, they will be attracted to employers who offer this type of benefits program. Retention and appreciation would improve. The RISP plan design, along with new smoother funding and appropriate FASB rules, will make these types of plans much more affordable and much less volatile than today's qualified defined benefit pension programs that are quickly becoming extinct.

It is time to redefine retirement. Let our industry be leaders in this area, and together let's build a better, more secure US retirement program.

*Editor's Note: Similar versions of this article have previously been published in the* Journal of Pension Benefits *(Issue 12.3; Spring 2005) and in* Contingencies *(May/June 06).*

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# Cash Balance Plan Basics

*by David H. Ferrare, MSPA*

There has been renewed interest in cash balance plans recently. After years of negative publicity and lawsuits over conversions of traditional defined benefit plans, age discrimination and "whipsaws," the Pension Protection Act of 2006 (PPA) and some favorable court rulings have rekindled interest in these plans. This article will discuss some of the basic features of a cash balance plan.

A cash balance plan can most generally be described as a defined benefit plan that looks like a defined contribution plan. The plan benefits are presented to the participant as a current account balance rather than a monthly annuity benefit commencing at retirement age. The cash balance account is hypothetical. Each year, the account is credited with a contribution, usually a flat dollar amount or a percentage of compensation, as well as an interest credit. The interest credit can be based on a fixed or variable rate, but the basis must be stated in the plan document in order to satisfy the definitely determinable requirements of a defined benefit plan. The plan may also consider past service credits so that a new plan can have non-zero opening balances. The accounts are hypothetical because the balances are not affected by the actual investment performance of the plan assets. (Note that under PPA, defined benefit plans that define the accrued benefit as the balance of a hypothetical account or an accumulated percentage of a participant's final average compensation are referred to as "applicable defined benefit plans.") The plan must contain provisions for converting the accounts to annuity benefits payable at retirement age.

As a defined benefit plan, the cash balance plan is subject to the minimum funding rules of Section 412 of the Internal Revenue Code (IRC). Minimum required plan contributions are computed actuarially taking into account actual asset values and will usually not match the total contributions to the hypothetical accounts. The employer bears the investment risk and will be required to increase contributions if the investments fall short of expectations. Conversely, contributions will decrease if the investment performance exceeds expectations. Assets are invested on a plan-wide basis and are not self-directed by the participant. (While a cash balance plan could possibly be designed to allow participants to select the variable rate of return to be used in crediting their accounts, they do not have any control over the actual investment of the plan assets.)

Let's look at a simple example:

An employee, who is 35 on January 1, 2007, is a new participant in a cash balance plan that will make an annual end of year contribution of 5% of salary each year to their hypothetical account. Interest is credited to the account at 6% each year. Based on a salary of $45,000, the 2007 contribution is $2,250 and that is the theoretical account value at the end of the first year. If the salary increases to $50,000 in 2008, the contribution for that year would be $2,500. There would also be an interest credit of $135, which is 6% of the first year ending balance, leaving a theoretical account value of $4,885 at the end of 2008. This amount is the amount payable to the participant upon termination of employment or retirement, subject to vesting. Prior to PPA, a cash balance

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plan may have had to pay lump sums greater than the theoretical account balance. This situation, commonly referred to as "whipsaw," would occur if interest was credited at a rate greater than the rate required to determine minimum lump payouts from defined benefit plans under IRC Section 417(e). To avoid a "whipsaw" problem, the interest credit rate had to be set equal to the lower IRC Section 417(e) rate. PPA allows the plan to define the 417(e) payout to be the hypothetical account balance.

Another type of hybrid plan frequently mentioned with cash balance plans is the pension equity plan (PEP). Rather than expressing benefits as a hypothetical account balance, the benefit is expressed as an accumulated percentage of the participant's final average compensation, usually based on years of service. For example, a PEP may provide for a lump sum at termination equal to 7% times final average compensation times years of participation.

Using our first example, the account balance is $3,150 (7% x $45,000 x 1) at the end of the first year and $6,650 [7% ($45,000+$50,000)/2 x 2] at the end of the second year.

## Why Choose a Cash Balance Plan?

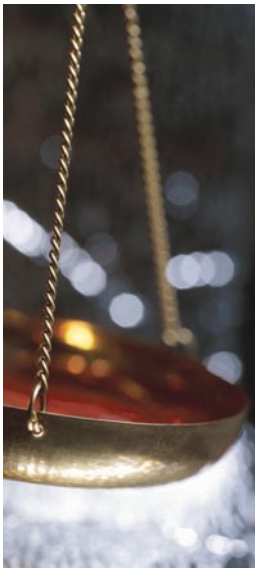
A cash balance plan or PEP has the advantage of providing benefits that are easily communicated to participants. Since the plan is a defined benefit plan, the benefits are also guaranteed. The benefits are more meaningful for younger employees and more portable. For older participants, the annual contribution to the hypothetical account can exceed the annual addition limits under IRC Section 415(c) for defined contribution plans. If certain conditions are satisfied, new cash balance plans and PEPs (effective on or after June 29, 2005) will not be found to be age discriminatory and the theoretical account values will generally satisfy IRC Section 417(e). Unlike a traditional defined benefit plan, the value of lump sum benefits are known at any point in time.

## How a Cash Balance Plan Operates

Since a cash balance plan is subject to the minimum funding rules under IRC Section 412, the plan will require actuarial certification and a Schedule B. It will also be subject to the new PPA funding rules for plan years beginning in 2008. The plan may also be covered by the PBGC, requiring annual premium payments.

Currently, cash balance plans can only be set up using an individually designed plan document.

Cash balance plans generally satisfy the accrual rules of IRC Section 411 using the 133-1/3% accrual rule. To help satisfy this rule, a participant's hypothetical account is credited with interest each year until payout, even if no service is performed for the year.



*A cash balance plan or PEP has the advantage of providing benefits that are easily communicated to participants.*

Since the plan is a defined benefit plan, the IRC Section 416 top heavy minimum requirements, if applicable, must be satisfied using the defined benefit rules. The theoretical account balance must be converted to a life annuity benefit at retirement age and compared with the required life annuity benefit equal to 2% of average compensation for each year of top heavy service, up to ten years.

Using our original cash balance example, at the end of the first year, the top heavy minimum monthly benefit at age 65 is a life annuity of $75 ($45,000/12 x 2%). The account balance of $2,250 at the end of the first year would accumulate at 6% interest for 29 years to $12,191. Assuming a monthly annuity purchase rate at 65 of $130.39 based on plan provisions for converting to annuity benefits, the plan provides the participant with an equivalent life annuity benefit at 65 of $93.50, which exceeds the top heavy minimum benefit. If the participant chooses a lump sum distribution, the present value of the top-heavy minimum using the 417(e) rules would presumably be required as a minimum.

Maximum benefits under IRC Section 415 are determined by converting the account balance to a life annuity and comparing it with the maximum annuity benefit payable. Also, the account balance payable cannot exceed the maximum lump sum payable under IRC Section 415(e). [The application of IRC Section 415(e) to a cash balance plan is beyond the scope of this article.]

Cash balance plans and PEPs must fully vest participant accounts after three years of service. This new rule is effective for distributions made on or after the date of enactment of PPA, August 17, 2006. For plans in existence as of June 29, 2005, the new vesting requirement is effective for plan years beginning in 2008 or later.

Cash balance plans and PEPs must satisfy IRC Sections 401(a)(26) (minimum participation) and 410(b) (minimum coverage).

Traditional defined benefit plans that are converted to cash balance plans where the conversions are adopted or effective after June 29, 2005 can no longer use the wear-away method. The plan must provide accrued benefits that are not less than the accrued benefit under the old

plan plus the accrued benefit under the new plan based on years of service after the conversion.

## Nondiscrimination Testing

Regulation 1.401(a)(4)-8(c)(3) provides safe harbor rules for cash balance plans. The regulations allow for a design based safe harbor and a modified safe harbor requiring annual comparisons of hypothetical allocations. The rules also require that the interest crediting rate is either based on 417(e) rates, a "standard" interest rate or a variable rate listed in the regulation (a variety of rates based on various Treasury rates). A safe harbor plan will automatically satisfy the nondiscrimination requirement as to the "amount" of benefits provided by the plan. These rules do reflect the pre-PPA "whipsaw" requirement. It is anticipated that the regulatory safe harbor will be modified at some point to reflect the PPA approach to cash balance plans.

Cash balance plans and PEPs that do not satisfy the safe harbor rules must satisfy the nondiscrimination rules through the general test, using rate groups based on defined benefit accrual rates. As with all general tested defined benefit plans, rate group testing must be done using normal and most valuable accrual rates. These plans may also be "cross-tested" by converting accrual rates to equivalent allocation rates.

## Choosing an Interest Rate

The interest rate used for crediting interest to a hypothetical account can be a fixed or a variable rate as long as the rate is not greater than a market rate of return. A plan can also use a minimum guaranteed rate or a rate that is the greater of a fixed or variable rate. The IRS has not yet defined the market rate of return, but expects to do so in 2007. IRS Notice 2007-6 does list safe harbor rates for the market rate of return, including the rate of interest on long-term investment grade corporate bonds, 30-year Treasury securities and the sum of any of the standard indices and the associated margins listed in IRS Notice 96-8.

PPA contains a provision for preservation of capital, where an interest credit that is less than zero cannot cause a participant's account balance to be less than the aggregated amount of all contributions credited to the account.

If a plan that uses a variable rate terminates, accrued benefits under the plan are determined using a rate that is the average of the rates used under the plan during the five-year period ending on the plan termination date.

Other issues that will be addressed in future IRS guidance include how to apply the minimum rate of return rules, how to apply the preservation of capital rules and how to apply the anti-cutback rules of IRC Section 411(d)(6) when the plan's interest crediting rate is amended.

## Issues for Pre-PPA Plans

IRS Notice 2007-6 announced that the Service was beginning to process determination letters and examination cases involving traditional defined benefit plans that were amended into cash balance plans. These processes were suspended under IRS Announcement 2003-1. The IRS does not plan to review plans that had been converted before June 30, 2005 as to whether the conversion satisfied the pre-PPA age discrimination requirements. Thus, determination letters for such plans cannot be relied upon for age discrimination issues, which must continue to be resolved in the courts.

Most of the age discrimination issues involve cash balance plans that were converted from traditional defined benefit plans prior to PPA using "wear-away" provisions under which some older employees did not receive additional benefit accruals until benefits under the new plan exceeded the benefits under the old plan. Although most of the recent court cases have resolved age discrimination issues in favor of the plan, the potential for lawsuits in pre-PPA plans still exists and the outcomes for such lawsuits remain uncertain.

PPA resolved the "whipsaw" issues caused by IRC Section 417(e) for plans in existence prior to June 29, 2005 that payout after that date, but such plans are provided no relief for age discrimination issues prior to June 29, 2005.

## Conclusion

The Pension Protection Act has made significant changes to cash balance plans. There are still many unanswered questions and hopefully we will have some answers in the next few months. The IRS has recently released its semiannual regulatory agenda, which stated that they will be drafting proposed regulations regarding vesting, payment of benefits and age discrimination rules for hybrid defined benefit plans. It is clear that sponsors of cash balance plans will now have much better estimates of plan liabilities. PPA has also made cash balance plans more attractive for designing plans with secure retirement benefits that are portable and meaningful to participants.

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# Tips to Avoid Common Schedule B Reporting Issues

*by Steven C. Scudder, APM*

In recent discussions between ASPPA representatives and Pension Benefit Guarantee Corporation (PBGC) representatives, it was noted that there are a number of common reporting errors on Schedule Bs. While not all ASPPA members may agree with all of the positions taken by the PBGC, the following information provides insight into the items likely to attract the attention of reviewers.

The following comments are organized in the order that the issues appear on the Schedule B. While, when possible, the remarks reference specific lines on the 2006 Schedule B[1], some of the issues raised by the PBGC go beyond the four corners of the form and reflect PBGC views on the required methodology for certain actuarial calculations.

## 2006 Instructions

In any given year, the actuary should always read the Schedule B instructions for that year's Schedule B form prior to completing any forms for submission. Specifically regarding the 2006 Schedule B Instructions, if you downloaded the instructions prior to December 13, 2006, you may need to download them again and review them for any PPA changes.

## Schedule B, Page 1, Box F: 100 or Fewer Participants in Prior Plan Year

Small plans (100 or fewer participants on each day of the preceding plan year) are exempt from the additional funding requirements of IRC Section 412(l).[2] To determine the number of participants, all defined benefit plans sponsored by the employer, or any member of a controlled group that includes the employer, are treated as a single plan, and all participants in all such plans are taken into account.[3] The following example illustrates the application of the rule.

> Assume A and B are members of a controlled group of trades or businesses.
>
> In each instance, the number of participants is the highest number of participants during the preceding plan year.
>
> A sponsors the Salaried Plan (25 participants) and the Hourly Plan (50 participants).
>
> B sponsors the Other Plan (40 participants). Although neither of the individual plans covered more than 100 participants on any day during the preceding year, neither qualifies for the exemption because, together, the two plans covered 115 participants.

Some preparers fail to combine plans and participants, as required by the preceding rules, and incorrectly conclude that the exemption applies.

## Schedule B, Line 1(d)(1): Amount Excluded from RPA Current Liability[4] for Pre-Participation Service

New plans providing credit for past service may disregard some of that service[5] in calculating RPA current liability.[6] As a result, the impact of the past service credit on RPA current liability is phased in over five years, according to the following table:

| Years of Participation | % of Past Service Taken Into Account |
|---|---|
| 1 | 20 |
| 2 | 40 |
| 3 | 60 |
| 4 | 80 |
| 5 or more | 100 |

The amount attributable to past service excluded from RPA current liability is entered on line 1(d)(1). According to the PBGC, errors in calculating that amount are common, though no details were provided.

## Schedule B, Lines 1(b)(1) and 2(a): Current Value of Assets

Some preparers improperly include one or more of the following in plan assets:

- Contributions made more than eight and one-half months after the end of plan year;
- Funding waiver balances;[7] and
- Funding deficiency amounts.

Overstating the assets increases the funded percentage used to determine whether quarterly contributions are required and may result in missed or late contributions.

## Schedule B, Lines 1d(2)(a) and (c): RPA Current Liability

The rate of interest used by the plan to calculate the RPA current liability entered on line 1d(2)(a) must be not less than ninety percent nor more than one hundred percent of a four-year weighted average long-term corporate bond rate.[8] The maximum permitted rate must be used to calculate the RPA current liability amount entered on line d(2)(c). Since a lower interest rate produces a larger liability, if the first current liability calculation uses an interest rate lower than the maximum, that amount should exceed the second entry (for which the maximum rate must be used). Some filings show the same entries on lines 1(d)(2)(a) and (c), despite the fact that the first calculation was not based on the maximum rate.

Also, note that the 1983 GAM mortality table published in Revenue Ruling 95-28[9] must be used to calculate RPA current liability for non-disabled lives.

## Schedule B, Lines 1d(3) and 2b(1): Expected Distributions

If the RPA current liability for retirees and beneficiaries in pay status entered on line 2b(1) is greater than zero, the expected disbursements amount entered on line 1d(3) also should be greater than zero.

## Schedule B, Lines 5(d) and (g): Use of Aggregate and Individual Aggregate Funding Methods

The PBGC believes that it is not appropriate to use either Aggregate or Individual Aggregate funding for plans with no active participants. It has encountered what it describes as "severely underfunded small plans" for which the Schedule B shows no required contribution, as the remaining working life of the participants and normal cost are both zero.



## Schedule B, Line 9l(1): ERISA Full Funding Limit

The 2006 Instructions for the above-mentioned line read "Instructions for this line are reserved pending published guidance." Apparently, at least one practitioner has taken the position that, in the absence of instructions for line 9l(1), it can be left blank. Not surprisingly, the PBGC disagrees.

The next few items identified by the PBGC relate to immediate gain/loss (entry age normal, accrued benefit/unit credit or individual level premium) method calculations.

## Equation of Balance

For plans using an immediate gain/loss method (Individual Level Premium, Entry Age Normal or Unit Credit methods), there is an Equation of Balance that reconciles the Unfunded Liability with the Outstanding Amounts of the Bases created for Section 412 purposes and the Credit Balance. The Equation is as follows:

Unfunded Liability =
[Line 1c(1) – Line 1b(2)]

Outstanding Balance of Bases
[Line 9c(1) + Line 9c(2) – Line 9j]

+ Funding Deficiency
[Line 9a (adjusted for interest to the valuation date)]

– Credit Balance
[Line 9h (adjusted for interest to the valuation date)]

– Reconciliation Account
[Line 9q(4)]

Forms have been received on which the equation did not balance.

## Schedule B, Lines 7, 9c and 9j: Schedule of Funding Standard Account Bases

When using an immediate gain/loss method, the gain/loss base should be calculated first. Other bases, such as those reflecting changes in assumptions, effect of plan amendments and effect of change in funding method, can be set up in any order thereafter.

When a plan reaches the ERISA full funding limit, all bases are reduced to zero as of the first day of the following year, including bases established in the year the plan reached the ERISA full funding limit. Some filers fail to adjust the bases properly when the ERISA full funding limit is reached. One filer erroneously created a new base (equal to the difference between the RPA full funding limit and the ERISA full funding limit).

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Also noteworthy is the fact that the Schedule of Funding Standard Account Bases for a plan using the Frozen Initial Liability funding method should not include gain/loss bases, since this method is not an immediate gain/loss method. This method only requires that an initial Unfunded Liability be established and amortized.

## Schedule B, Line 9h: Credit Balance

The credit balance entered on line 9h normally would be equal to the credit balance shown on line 9o of the 2005 form. If the amounts are different, the discrepancy must be explained in an attachment.

## Schedule B, Lines 3 and 9i: Contributions

Some filers inadvertently have credited a single contribution (made after the end of the plan year) as a contribution for the year to which it actually relates (the prior plan year) and also as a contribution for the year in which it actually was deposited.

## The "Wish List"

Although there are no specific requirements for reporting the items below, the PBGC has indicated that the following items would be useful during the review process:

- When a dollar multiplier for a benefit formula changed during the plan year, document thoroughly what dollar rate is used to calculate the active Current Liability. Is it based on the multiplier at the beginning of the year, the end of the year or a pro-ration?
- If an expense amount is included in the Current Liability Normal Cost, document the amount of the expense in the attachments to the Schedule B.

It is the hope of ASPPA and the PBGC that this article will help actuaries avoid common Schedule B mistakes in the future. ASPPA would sincerely like to thank Jane Pacelli at the PBGC for helping to identify these issues.

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▲ ▲ ▲

1 The references are to the 2006 form, though the issues raised by the PBGC relate to forms from earlier years.
2 IRC Section 412(l)(6)(A).
3 2006 Instructions for Schedule B, p 23; *Janice M. Wegesin*, 5500 Preparer's Manual (Aspen Publishers 2007) pp. 8-3 and 8-4.
4 The exclusion does not apply for purposes of calculating the IRC Section 412(c)(7) full funding limit. See IRC Section 412(c)(7)(B).
5 The text refers to new plans, because the PBGC identified application of this provision to new plans as a recurring reporting problem. The application of the provisions of IRC Section 412(c)(7) is not limited to new plans, however. Note that a plan sponsor may elect to take all past service into account, but may not change that election without the consent of the Secretary of the Treasury. [IRC Section 412(l)(7)(D)(iv).] Past service may be disregarded only if, on the first day of participation, an employee has service in excess of the minimum required to participate, first becomes a participant during a plan year beginning after December 31, 1987 and has not accrued any other benefit under any defined benefit plan sponsored by the employer (including terminated plans) or any member of a controlled group that includes the employer.
6 IRC Section 412(l)(7)(D).
7 For further information, refer to the instructions for lines 8a, 9c and 9m of Schedule B.
8 IRC Sections 412(b)(5)(B)(II) and 412(l)(7)(C)(iv) describe the range applicable for plan years beginning after December 31, 2003, and before January 1, 2008.
9 1995-1 C.B. 74. An optional table for disabled lives can be found in Revenue Ruling 96-7 (1996-1 C.B. 59).

# Simple Protection—Perfect Simplicity: Wrap Plans are the Way to Go

*by Tara C. DeVore*

Most employers offer at least one type, and some offer an entire assortment, of welfare benefits. Employers interested in recruiting and retaining top talent provide these types of benefits in order to stay competitive in the market place, and rightfully so.

The most common types of welfare benefits consist of medical benefits, income replacement for disability, life insurance protection or accidental death and dismemberment coverage. As with most employer provided benefits, the employer's direct cost for providing such benefits is never the only cost associated with the provision of such benefits. One of the largest expenses is the cost of complying with the laws and regulations that govern welfare benefits. At a minimum, these benefits are subject to, among others, ERISA, the Internal Revenue Code, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act and the Americans with Disabilities Act. Compliance not only substantially increases the overall cost of providing the benefits, it also exposes an employer, oftentimes unbeknownst to the employer, to risks for failure, intentional or not, to comply with any one of them. Value can be added to welfare benefits by minimizing the risks and costs associated with the various mandates and legal requirements involved in the provision of welfare benefits. One way to do this is by providing welfare benefits in conjunction with a wrap plan document.

*One of the largest expenses is the cost of complying with the laws and regulations that govern welfare benefits.*

## Proper Documentation is Critical

One of the specific ERISA requirements is that an employee benefit plan, including a welfare benefit plan, be in writing. Most employers assume that the insurance policy or other booklets or summaries provided by the insurance company are sufficient to meet the written plan document requirement. Although these materials generally describe the benefits available or provided in detail, they generally will refer back to the employer, the employer's plan document or otherwise avoid pertinent issues such as eligibility and coverage dates. Thus, these documents often fall short of constituting a written plan document for ERISA purposes.

Employers not only fail to consider the requirements of having a written plan document, they tend to believe that the insurer, through their own documents, will not only comply with all of the legal requirements, but that the insurer will also be certain the employer and the employer's plan will comply. Although most insurers provide adequate disclosures and notices and follow federally compliant claims procedures and applicable HIPAA regulations, the insurer typically is not going to step up to the plate if there is a problem with insufficiency, inconsistency or an outright compliance failure. In fact, most policies, summaries and other documentation produced and distributed by an insurer generally specify that the employer is the plan sponsor, plan administrator, agent for service of process and the named fiduciary. Thus, it will inevitably be the employer brought to the plate to answer and be held accountable for any failures or compliance issues.

## Reporting Requirements

Another significant and costly requirement is that welfare benefit plans with at least 100 participants are required to file a Form 5500 annually and individually for many of the welfare benefits. (Unfunded, fully insured and combination unfunded/insured welfare plans covering fewer than 100 participants at the beginning of the plan year that meet certain requirements are exempt from filing an annual report.) The Form 5500 for a welfare plan can be a daunting and expensive task for employers due to the various schedules and information required to be filed with the return, not to mention the actual forms that must be printed on vendor-approved software complete with bar coding.

## Advantages of an Effective Wrap Plan

The complexity of the legal requirements, the written plan document requirement, the annual reporting requirements of filing multiple Forms 5500 and the requirement to provide adequate notices and disclosures can all be eliminated or alleviated by implementing a wrap document. A wrap document is a master plan document that "houses" all of the welfare benefit plans provided by an employer. Often times the benefits within the wrap document are referred to as benefit programs in an effort to promote clarity and eliminate confusion. The wrap plan is usually designed to incorporate all of the welfare programs' policies, summaries and other documentation produced by an insurer by reference, thereby eliminating the need to include all of the intricate details about each program in the wrap document. This enables the wrap document to be drafted as a clean and streamlined shell document.

A wrap plan will not only meet the written plan document requirement of ERISA, it will also address applicable laws and regulations and will often provide a default methodology compliant with the law for dealing with various issues. For instance, HIPAA can be addressed within the wrap document and can be pointed to in the event it is missing from any other welfare benefit plan, summary or other document produced describing the particular benefit. The claims procedure in a well-drafted wrap document should be in full compliance with federal regulations, and the plan can provide that it is the claims procedure within the wrap document that applies if any other claims procedure is inadequate. The wrap plan can be drafted in a way that allows it to govern the provisions of the benefits only when there is an inconsistency between the plan and one or more of the programs, or when one of the programs' procedures or compliance standards is not in compliance or is otherwise not feasible under the applicable law. In that regard, the wrap plan can be designed so that administrative changes to any of the benefit programs such as employee cost, coverage amounts or insurance carriers can be changed without a formal amendment to the underlying benefit plan. This strategy leaves only substantive amendments dealing with legislative and regulatory changes to be made to the wrap plan by a formal amendment. With regard to formal amendments, the drafter of the wrap plan can often be engaged to provide ongoing services to watch and update the plan for any legislative and regulatory changes, providing ongoing compliance protection. This type of design generally provides substantial administrative convenience to the employer's human resource or benefits department by allowing administrative changes to be made internally while having the security of the plan being monitored by the drafter for any formal amendments that become necessary due to changes in the law.

One of the biggest advantages from a financial standpoint of implementing a wrap system is that by pulling all of the welfare benefit programs offered together under one document, only *one* welfare benefit plan exists, as opposed to multiple plans that exist absent the wrap document. This consolidation immediately reduces an employer's annual reporting requirement to one Form 5500, as opposed to a Form 5500 being required for each of the benefits offered. The immediate savings realized by the reduction of preparing and filing only one annual return can often make up the cost of having the wrap document prepared in the first year alone, and the future savings for the employer in this regard can be significant.

## Conclusion

Oftentimes, employers do not pay close enough attention to the various laws and regulations associated with the provision of welfare benefits. When given the opportunity to discuss an employer's various welfare benefits, it is not unusual to discover many issues and areas of noncompliance. Occasionally, it is discovered that the employer has failed to file Forms 5500 for one or multiple years for one or multiple benefit plans or that the employer has failed to provide necessary notices. There is no better opportunity to clean house before an audit than by implementing a wrap system. Not only can a service provider bring an employer into full compliance with regard to their welfare benefits by implementing a wrap plan, the potential exists to immediately reduce the administrative costs associated with the benefits as a result of reducing the number of required 5500s. Wrap plans provide simple protection and perfect simplicity for the employer—and a tremendous amount of value added by the service provider. All in all, wrap plans are a win-win situation!

*Tara C. DeVore is an attorney with McDonald Hopkins in Cleveland, OH. She focuses her practice on employee benefits matters including the design, operation and compliance of pension, profit sharing and 401(k) plans, as well as non-qualified benefit programs and executive compensation structures. Tara also has extensive experience with health and welfare arrangements, including advising clients on plan design and compliance issues related to COBRA and HIPAA. She is a member of ASPPA and the WEB Network of Benefits Professionals. Tara is also a member of the Cleveland, Ohio and American Bar Associations. (**tdevore@mcdonaldhopkins.com**)*

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FROM THE PRESIDENT

# ASPPA in Motion

*by Chris L. Stroud, MSPA*

The leaders of ASPPA continuously address issues related to anticipating and/or accommodating ASPPA's growth and diversity of membership. At the same time, the leaders recognize that it is important that ASPPA be nimble and efficient in order to deal with today's rapidly changing environment. In order to proactively address these topics, the credentialed members of ASPPA recently received an e-mail communication regarding proposed changes to the Bylaws to better structure ASPPA to meet our current and future needs. These recommended changes were the culmination of many long hours of deliberation by two ASPPA Governance Task Forces and several strategic discussions at ASPPA's Board of Directors meetings. Although the e-mail effectively noted the major issues of importance that required Bylaws changes, I wanted to fill you in on some of the additional work of the task force related to important topics that were discussed that did not require Bylaws changes.

First of all, the current Governance Task Force was formed to address issues that were identified by a preliminary task force. The four key issues were:

- To clarify roles of the Board of Directors (Board), Executive Committee (EC), ASPPA Management Team (AMT) and the Management Council (MC);
- To review and make recommendations regarding the size and makeup of the Board;
- To review and make recommendations regarding the Board member and officer selection process; and
- To ensure that the governance structure allows ASPPA to effectively deal with its diverse membership.

## Clarification of Roles

The task force and the Board agreed to the following descriptions of primary roles:

*Board*—to be the primary strategic body responsible for fiduciary oversight and making strategic and policy decisions to set the direction of the organization.

*EC*—to act on behalf of the Board between Board meetings or whenever necessary, to serve as a liaison to the AMT and to help frame issues that require Board discussion or decisions.

*AMT*—to provide a leadership forum for the MC, EC and co-chairs of major ASPPA committees to facilitate implementation of ASPPA's overall business plan and strategic goals and to foster the partnership arrangement between staff and volunteers.

*MC*—to oversee day-to-day operations, including volunteer and staff management, and to bring policy issues and strategic questions to the Board or EC for deliberation. The MC is comprised of the President, President-Elect and the Executive Director/CEO.

## Size and Makeup of the Board

In addition to the issues that were addressed in the recommended Bylaws changes, one area of significant discussion was who should be allowed to hold a position on the Board. Considerations were given as to whether non-credentialed (affiliate) members should be allowed or whether outside industry representatives should be considered. The conclusion was to only award Board slots to credentialed members; however, it was noted that advisory councils or task forces could be formed to include affiliates or outside industry representatives, and it was also determined that the Board could invite guests to any Board meeting as deemed appropriate. It was also concluded that the ASPPA staff Chiefs should participate in Board meetings (as non-voting members) so that they can understand and help carry out ASPPA's strategic initiatives.

Another topic that was discussed was whether or not the Board should have "senatorial" representation (*i.e.,* "x" slots for each credential, based on percentages of membership). The task force and the Board concluded that senatorial representation was not necessary, but that part of the criteria for selection of Board members would include adequate representation of all the various segments of ASPPA's diverse membership.

## Board Member and Officer Selection Process

The Nominating Committee traditionally has consisted of the President and the five immediately preceding Past Presidents. In many years, there was also a Screening Committee that helped review candidate nominations since often some of the Nominating Committee members were not familiar

with the candidates. The task force and Board decided to eliminate the Screening Committee and restructure the Nominating Committee so that members of the Nominating Committee were more likely to have personal knowledge about the candidates. Accordingly, the Nominating Committee structure was changed to consist of the President, President-Elect, Senior Vice President, Immediate Past President and the Penultimate Past President. The Nominating Committee is also charged with communications to members and candidates related to the nomination and the selection process.

## Dealing with the Diverse Membership

The task force and Board spent a considerable amount of time discussing the diversity issue and felt it was paramount that we not make any structural changes that could lead to fragmentation or "silos" within the ASPPA membership. Instead, it was decided that we continue to look for ways to allow discipline-specific congregation where beneficial within ASPPA's current structure (*e.g.,* discussion forums for online communication on a wide variety of topics, Actuarial Issues Committee to deal with specific actuarial issues, etc.). In order to keep the diversity issue in the forefront, ASPPA's Strategic Plan was modified so that ASPPA's activities and strategies would be periodically reviewed to ensure we are meeting the needs of ASPPA's diverse membership.

## Conclusion

The leadership of ASPPA feels that the overall structure of ASPPA, once the recommended Bylaws changes are enacted, is strong and well poised for future growth and to meet the needs of ASPPA's diverse membership. We are confident that ASPPA's mission and strategic initiatives will be carried out effectively and efficiently in the coming years.

*Chris L. Stroud, MSPA, MAAA, EA, is president of Stroud Consulting Services, Inc., in Marco Island, FL, and a principal of Simoneaux & Stroud Consulting Services. Chris has 29 years of experience in retirement planning, software and management consulting, and sales and marketing. Prior to setting up her own consulting firm seven years ago, she was employed by FDP for 22 years, a pension and insurance software firm that was purchased by SunGard. Chris now offers a variety of consulting services, including continued support to SunGard for all SunGard Relius products. Chris is the President of ASPPA and the Editor of* The ASPPA Journal. *(**chris.stroud@relius.net**)*

# Join Us for the 2007 Visit to Capitol Hill

*by A. Michael Marx, APM*

The biennial Visit to Capitol Hill, which will be held during the 2007 ASPPA Annual Conference on October 23, 2007, provides a unique opportunity to offer policy input. Every second non-election year, ASPPA members have the opportunity to visit their elected officials to discuss key retirement policy issues and let their voices be heard.

All members of ASPPA are retirement plan educators regardless of our professional training as accountants, actuaries, attorneys, financial consultants or ASPPA trained designees. Each of us has a primary function of taking the complexity of the Code, ERISA, regulations, case law and other guidance and distilling that information so we can teach it to our clients, our employees, other professionals and plan participants. While the ASPPA Government Affairs Committee (GAC) works closely on behalf of the ASPPA membership with legislators in developing key retirement policy through the legislative process, many ASPPA members typically have little or no policy input beyond voting in each election for his or her elected officials.

I attended my first ASPPA Visit to Capitol Hill on November 8, 2005. The night before the meetings, ASPPA held a pep rally and provided us with talking points on pending tax reform issues. The theme of the 2005 Visit to Capitol Hill was "Don't Take Away My 401(k)." Our meetings were focused on educating Congress about a recent report issued by the President's Advisory Panel on Tax Reform recommending that employee income tax exclusion for retirement plan contributions be eliminated. On the day of the Visit, we took buses to Capitol Hill, along with box lunches, which had been conveniently provided by ASPPA.

ASPPA had scheduled my first meeting as a one-on-one visit with the Representative for our district in Kentucky. The Congressman and his assistant were both well aware of our concerns regarding tax reform recommendations and the devastating effect they would have on the retirement security of millions of Americans. They were very glad to have this important policy input from their ASPPA constituents. Although the offices for members of Congress are relatively small, it was interesting to see that pictures of all representatives from the 6th District are displayed.

*ASPPA members gather for the 2005 Visit to Capitol Hill*

Two other Kentuckians and I also met with key staff from the office of Senator Jim Bunning (R-KY). The Senate Office Building is very impressive, with each office displaying some interesting aspects of the Senator's state. During our discussion on tax reform, we also found Senator Bunning's tax assistant to be well informed and very interested in our comments as members of ASPPA. She was very attentive and we were assured by the Senator that he supported our views.

After our meetings, we elected to walk down the Mall to the World War II Memorial. Feeling like true "Washington Insiders," we passed Senator Hillary Clinton (D-NY) and her secret service detachment. We also had the opportunity to visit the National Archives.

It was a very rewarding experience. The 2007 Visit to Capitol Hill promises to be even more exciting, as Congress has several important retirement initiatives on their plate, including the increased transparency of 401(k) fees and a technical corrections bill to the Pension Protection Act of 2006 (PPA). These visits will provide ASPPA members the opportunity to meet with their elected officials to discuss key technical issues that are very important to ASPPA membership. When registering for the 2007 ASPPA Annual Conference this year, make sure to sign up to participate in these very important Hill meetings.

*A. Michael Marx, Esq., APM, AIFA, is the Chief Operating Officer of ERAS, LLC, an independent third party administrative firm located in Lexington, KY. He has been an ERISA attorney for 20 years and is also a member of the International Foundation of Employee Benefit Plans and the National Center for Employee Ownership. (**mmarx@eras-llc.com**)*


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## 2007 ASPPA ANNUAL CONFERENCE

October 21–24, 2007
Hilton Washington | Washington, DC

# Ideas Can and Do Become Law

*by George J. Taylor, MSPA*

At last year's ASPPA Annual Conference, ASPPA's Executive Director/CEO, Brian H. Graff, Esq., APM, told the audience, when speaking about legislative changes, that it takes a lot of time and effort, but eventually the folks on the Hill see it our "ASPPA" way.

I wondered how true this statement was, so I asked a member of the ASPPA staff to search the archives and find a copy of the *Pension Expansion and Simplification Amendments.* The ASPPA "old timers" probably remember this document as "PESAS." I discovered that, just like some fairy tales really do come true, some ideas really do become laws. Persistence pays!

## Background of PESAS

It was January 1993 when the co-chairs of the Government Affairs Committee (GAC), Fred Reish, APM, and Michael Callahan, FSPA, CPC, decided that ASPA (with one "P" back then) needed to take a much more pro-active role on the Hill. At the time, GAC was simply reacting to legislation once it was enacted. They then directed the Legislation Subcommittee Chair (me) to form a committee, which consisted of a cross-section of some of the brightest people in the small qualified pension arena, to brainstorm and come up with legislative proposals. Not just suggestions on what should be changed, but to actually write the proposed changes to be made to the Internal Revenue Code. "Why me?" I asked. "I'm a hick from PA, who just joined GAC, chairing a sub-committee of the people in the industry that I admired and viewed as the experts in the business." After a lot of work and effort on the part of many people, PESAS was produced in June 1993. It was more than 40 pages in length and contained numerous changes, some quite revolutionary. It not only addressed the qualified plan area but also the Federal Government Retirement Programs. (I will tell you that story later.)

*After a lot of work and effort on the part of many people, PESAS was produced in June 1993.*

## Proposed Changes Included in PESAS

Without boring you with all the details, here is the list of some of the legislative changes, which may sound very familiar to you, that we proposed in PESAS:

- Expand the Code to allow for a safe harbor defined benefit (DB) plan based on the projected benefits, as long as the benefit is uniformly applied and based on at least 25 years of service;
- Allow state or local governments or any other organization exempt from taxes to be able to have a 401(k) plan, which would be subject to nondiscrimination testing;
- Repeal Code Section 415(b)(9) (which gave commercial airline pilots a higher 415 limit in DB plans) to create a uniform maximum benefit limitation to all participants in DB plans;
- Require plan sponsors to issue employee benefit statements;
- Eliminate the quarterly contribution notice requirements for those DB plans that are not subject to the quarterly contribution requirements;
- Add a provision to the Code which provides that absent a beneficiary designation or plan provision, the beneficiary of any death benefits payable under a qualified plan is the participant's spouse, and should there not be a surviving spouse, the participant's estate;

- Add a provision to the Code that allows for the use of the HCEs Actual Contribution Percentage (ACP) and Actual Deferral Percentage (ADP) for the prior plan year when doing nondiscrimination testing (what is now referred to as prior year testing);
- Elimination of the multiple use test in 401(k) plans;
- Provide that in the first year of a 401(k) plan, the plan may specify that the amount taken into account as the average deferral percentage of the NHCEs for the proceeding plan year would be three percent;
- Provide that the distribution of excess contributions and any income allocated to such contributions shall be treated as income by the recipient in the year of distribution and no tax shall be imposed on such amount under Code Section 72(t);
- Simplify the definition of compensation to provide that 415 compensation includes salary reduction contributions;
- Create a designation known as an Enrolled Administrator, as there is a need to create a designation, within the government, similar to an Enrolled Actuary, with respect to defined contribution (DC) plans;
- Modify the Code Section 401(a)(9) required minimum distribution rules to provide that such rules only apply to terminated employees and five percent owners;
- Simplify the definition of HCE, so that only five percent owners and those employees who earn more than 150 percent of the taxable wage base are considered HCEs;
- Simplify the existing law, which is too complex for 100 percent error-free compliance, and the penalties for noncompliance are too severe:
  - An employer should be allowed to correct any operational error, without penalty, if corrected by the due date of the Form 5500 of the year following the year the error was made;
  - A plan should be allowed to correct at any time a *de minimis* error without penalty;
  - A more equitable penalty should apply (based on the size of the plan and the extent of error), than currently in existence; and
  - Plan disqualification should be reserved only for the most abusive situations.
- Increase the deduction limit for a profit sharing plan from 15% to 25% of compensation;
- Repeal the combined DB and DC limits under Code Section 415(e);
- Repeal the family member aggregation rules of Code Section 401(a)(17) (which require that a husband and wife working for the same employer shall have their combined salary limited to the maximum compensation limit);
- Replace the full funding limit with a limit equal to the contribution necessary to have a "Termination Solvency Ratio" (looks like the PPA Target funded percent) up to 150 percent;
- Provide that plan amendments increasing benefits cannot be made until the "termination solvency ratio" is greater or equal to 80 percent;

*It took many laws and 14 years of continued efforts to get where we are today.*

# GAC Corner

## ASPPA Government Affairs Committee

### Comment Letters Recently Filed

**April–June 2007**

**April 12**
ASPPA filed a draft updated 402(f) notice to the Treasury and the IRS reflecting legal changes made to notice since 2002
**www.asppa.org/pdf_files/402(f)_notice.pdf**

**May 14**
Comments with the IRS on Q&A 9 of Notice 2007-28 relating to the updated combined plan deduction limit under Code §404(a)(7)
**www.asppa.org/pdf_files/0514_2007-27NoticeFIN.pdf**

**May 30**
Comments with the Treasury and IRS requesting consideration of a delayed effective date for final Code §403(b) regulation
**www.asppa.org/pdf_files/403bcomments.pdf**

**June 5**
Comments to the DOL recommending certain disclosure requirements with respect to forthcoming benefit statement guidance
**www.asppa.org/pdf_files/060507DOLquarterly.pdf**

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

- Increase the maximum deductible contribution to allow for a contribution that would fully fund the plan on a termination basis;
- Repeal of five year forward averaging; and
- Repeal of the $5,000 estate tax exclusion.

The overwhelming majority of items in the above list were in fact enacted and/or implemented. These changes were not implemented in one piece of legislation. It took many laws and 14 years of continued efforts to get where we are today. It is my belief that the PESAS, and the continued efforts of ASPPA GAC, had a great deal to do with the enactment of the changes above and the development of the current EPCRS program.

### Items still on the "wish list":

- Repeal the top-heavy provisions of Code Section 416;
- A provision that a law or regulation shall not become effective until at least one year after the law is enacted or the final regulation is published. Each law that requires regulations shall include a time limit upon which the regulations must be completed (This item is still very much wishful thinking!);
- The creation of a National Retirement Income Policy; and
- The elimination of the Summary Annual Report.

## Summary

To be perfectly frank, at first, despite our best efforts, the folks on the Hill listened to us but did not hear what we were saying or simply ignored what we were saying altogether. This situation all changed when Brian Graff joined ASPPA. Brian added credibility to our message and knew how to make things happen on the Hill.

So, why did I decide to write this article? First, it is to thank, on behalf of ASPPA, those who created PESAS for their efforts. Second, it is to thank, on behalf of ASPPA, Brian Graff and those who have and are currently volunteering on GAC or other ASPPA committees. And last but not least, it is to encourage all of you to volunteer. You can make a difference—although it may take some time.

## Postscript

Now for the other story: There was a consensus among ASPPA GAC that the Federal Employees Retirement System was poorly funded, or, better stated, not funded at all, and that no one was addressing the issue. Michael Callahan, who had a good rapport with Congresswoman Nancy Johnson, asked that she request a report from the General Accounting Office regarding the funding status of the different retirement programs sponsored by the Federal Government.

The report was published in February 1996. The report stated that there were more than 12 million individuals covered under the federal government's pension plans. Participants in the federal government defined benefit plans had 1.2 trillion in liabilities. Some of the plans actually have trust funds, "invested in special issue Treasury security which are nonmarketable. Because the plan assets are invested in this way, whether this obligation is funded or unfunded has no effect on current budget outlays." Remember that the 1.2 trillion was as of 1993. I wonder what the unfunded liability is today. (Perhaps the Federal Government should be paying a variable rate premium to the PBGC; talk about a bailout!)

The report goes on to say: "The Treasury must obtain the necessary money" through tax receipts or borrowing to pay plan benefits to annuitants when benefits are due. This financing approach enables the Federal Government to defer obtaining the money until needed to pay the benefit.

If you would like a copy of PESAS, you can send an e-mail to me at **georget@uplink.net**. The GAO report was published in February 1996, Public Pensions Summary of Federal Pension Plan Data is GAO/AIMD96-6 Federal Pension Plans.

*Editor's Note: The members of the PESAS Legislative Subcommittee were: Edward E. Burrows, MSPA; Michael E. Callahan, FSPA, CPC; May Bertiner; Andrew J. Fair, APM; David I. Gensler, MSPA; Stephen V. Gilmore; Craig P. Hoffman, APM; Robert D. Lebenson, MSPA; Richard D. Pearce, FSPA, CPC; C. Frederick Reish, APM; Stephen H. Rosen, MSPA, CPC; Howard P. Rosenfeld, MSPA; and Lawrence C. Starr, CPC, QPFC.*

*George J. Taylor, MSPA, EA, is senior vice president of ARIS Pension Services, a division of ARIS Corporation of America in State College, PA. George also provides actuarial services to several TPA firms. He is an ASPPA Past President and a Senior Advisor to the Government Affairs Committee. (georget@uplink.net)*

# ASPPA GAC in Action

*by David M. Lipkin, MSPA*

Members of the ASPPA Government Affairs Committee (GAC) met with Internal Revenue Service (IRS), Treasury Department and Department of Labor (DOL) representatives on June 25, 2007, to discuss a variety of regulatory issues important to the ASPPA membership.

The Treasury/IRS meeting was attended by much of their senior staff. GAC's topics fell into categories of defined benefit funding issues and plan document issues. Some of the funding issues we discussed included upcoming regulatory guidance from the Pension Protection Act of 2007 (PPA), including expected guidance on cash balance plans. For example, the "small plan" exception in PPA that provides for an alternate valuation date leaves open the issue of how to measure the funding for purposes of the new PPA benefit limitations. We also explained the need to carve out a *de minimis* exception for small (< $5,000) payouts, even if a plan is impacted by PPA's funding restrictions. Our cash balance concerns included how to change interest-crediting rates without creating a §411(d)(6) accrued benefit cutback, as well as issues regarding possible "funding whipsaw" if the interest crediting rate differs from the mandated valuation rate.

Some of the plan document issues we discussed with the IRS included concerns about recent guidance on plan documents (Rev. Proc. 2007-44), how to comply with the "right to defer" notice (Notice 2007-7) and the updating of the required Code §402(f) notice. Regarding this last point, we provided the IRS (at their request) a model notice on April 12, 2007.

Perhaps the most interesting part of the IRS meeting was our discussion on "scrivener's errors," where the plan document may not always reflect the plan sponsor's intentions. Until now, the IRS has not really acknowledged the existence of such errors. (One person's scrivener's error is another person's accrued benefit!) At our February 2007 meeting, however, they asked us to compile a few examples that fell into this category. We discussed these examples in detail, emphasizing that none of our examples involved cutting back benefits for participants. Our summary was well received, and we hope that we have opened a new line of communication on this issue.

While most of us were meeting with IRS and Treasury, Virginia Krieger Sutton, GAC's Chair of the 401(k) Subcommittee, was busy meeting with DOL representatives (at the DOL's request) to give them a primer (three hours worth!) on the "hot" issue of 401(k) fee disclosure. The opportunity to provide this background information on 401(k) fees was valuable from both ASPPA's and the DOL's perspectives.

Does this sound like fun? (It is!) We have several GAC subcommittees, including:

- ASPPA *asap*
- Q/A
- Webcasts
- 401(k) Plans
- DB
- DOL
- IRS
- Plan Documents
- Reporting & Disclosure
- Tax-Exempt & Government Plans

After lunch, we joined up with Virginia and several other DOL representatives. We spent a pleasant hour discussing 401(k) fee disclosure and other issues. The DOL issued a Request for Information (RFI) on April 24, 2007, asking for information about what types of fee disclosures are currently being provided, as well as suggestions on what should be provided to plan participants. While ASPPA has a task force working on a formal response to the RFI (due date is July 24, 2007), we did discuss ASPPA's preliminary ideas conceptually. ASPPA is developing a comprehensive response to the RFI that will recommend a uniform disclosure of fees and expenses at the plan level.

We also discussed the quarterly benefit statements required under PPA. According to DOL representatives, further guidance on this issue is on hold pending review of a report from the DOL Advisory Council, who will be holding hearings in July and September on benefit statement requirements. ASPPA will testify at these hearings on both defined benefit and defined contribution benefit statement issues. Other DOL issues included questions about "mapping" and default investments.

At the conclusion of the meetings, GAC attendees did a little reflecting. We decided that the meetings generally went well, and that we strengthened our agency relationships. The reality is that the government agencies ultimately set the rules and all we can do is make them aware of ASPPA's positions. There is no doubt, however, that ASPPA continues to be a key player in formulating sound retirement policy on behalf of the public and the ASPPA membership.

If you would like to participate, please contact ASPPA's Membership department or complete a volunteer application at **www.asppa.org/about/about_vol.htm** to express your interest. Remember—GAC represents *your* interests.

*David M. Lipkin, MSPA, is the president of Metro Benefits, Inc., in Pittsburgh, PA, which he founded in 1986. David speaks on a variety of topics, including the professional responsibilities of the actuary. He has published numerous articles. He has been selected by the Department of Labor to serve as an independent fiduciary for several orphan/abandoned plans. David currently serves as Co-chair of ASPPA's Government Affairs Committee. He previously served as Chair of GAC's Defined Benefit Subcommittee. (**david@metrobenefits.com**)*

# ABC of North Florida: Working to Make it Even Better

*by Peter A. Kneedler, CPC, QPA*

Every couple of months, the ABC of North Florida board members get together for a great lunch at a restaurant on the St. John's river in Jacksonville to discuss upcoming events. I can't tell you what a pleasure it is to work with others who do such a good job and present great programs to our members.

Like many other ABCs, we are discovering the many benefits of having our lunch meetings sponsored by a group or an individual. We are really counting on the sponsorships to lower our costs so that we can then pass the savings on to our membership. So far, we've been able to secure sponsors for three of our four meetings this year.

We are fortunate to live in a city that has two great ASPPA leaders, Craig P. Hoffman, APM, and Robert M. Richter, APM. Our meetings are always lively with discussion and open forum issues. You never know what will happen. During our 2006 holiday meeting, we all had to laugh as there was a knock on our meeting room door by a hotel person asking if we could turn down the microphone as we were disrupting the meeting taking place next door. Craig Hoffman wasn't even using a microphone! (You have to know Craig to appreciate that he does not necessarily need a microphone most days.)

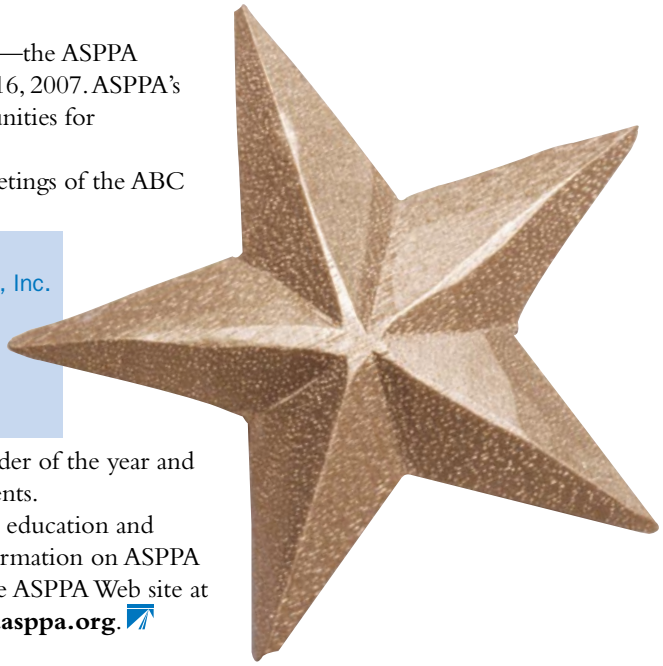
The ABC of North Florida has already held a great panel discussion this year on PPA provisions (the panel included Craig Hoffman, Robert Richter and Curtis Henson), and a really interesting presentation from Nick J. White, APM, of Reish Luftman Reicher & Cohen, titled "EPCRS Update: What's New in Correction Qualification Defects." Our August meeting, a presentation by Stan Samples from CCA Strategies to discuss what plan design for the future will look like, will be really appealing to a lot of our members. Finally, our holiday meeting and social in November will be with Brian H. Graff, Esq., APM, for a Washington Update and an ASPPA conference review.

We are currently in talks with a local human resources group to see if we can hold a joint meeting in 2008 with topics such as fiduciary responsibilities, PPA basics, plan sponsor checklists, etc. We think this venue will be a great opportunity to network and learn from each other.

For more information about the ABC of North Florida, including membership registration and upcoming events, contact Karen Cousin, at Presser, Lahnen & Edelman, at 904.296.9333 ext. 244 or **kcousin@plecpa.com**.

*Peter A. Kneedler, CPC, QPA, CPA, is the director of benefits for Blue Cross and Blue Shield of Florida in Jacksonville, FL. Pete has more than 15 years of experience in retirement plan administration and is the current president of the ABC of North Florida. (**peter.kneedler@bcbsfl.com**)*

# ASPPA Welcomes a New ABC—The ASPPA Benefits Council of South Texas!



ASPPA is excited to introduce its newest ABC located in San Antonio, TX—the ASPPA Benefits Council of South Texas. The ABC was officially formed on April 16, 2007. ASPPA's newest council will provide continuing education and networking opportunities for professionals in San Antonio, Austin and the surrounding areas.

For more information on becoming a member or attending future meetings of the ABC of South Texas, please contact:

Jay Thomas Scholz, CPC, QPA, QKA
Scholz, Klein & Friends Enlightened Retirement Group, Inc.
6102 Broadway St Ste B1
San Antonio, TX 78209-4500
**jay@scholzklein.com**
Tel: 210.829.5600

The ABC of South Texas is planning monthly meetings for the remainder of the year and information will be posted for their meetings on the ABC Calendar of Events.

Currently there are 17 ASPPA Benefits Councils providing continuing education and networking opportunities to pension professionals on a local level. For information on ASPPA Benefits Councils or starting an ABC, visit the Local Council section of the ASPPA Web site at **www.asppa.org** or contact the ABC Coordinator at **abc_coordinator@asppa.org**.

# ABC of New England: Defining and Measuring Success

*by Laurence D. Silver, QKA*

Success can be defined in many ways. The most common definition of success is "the achievement of something desired, planned or attempted." This definition leaves open the question of whether or not success can always be quantifiable because of the difficulty in measuring intangibles.

Using this definition of success from both a quantifiable standpoint and an intangibles standpoint, the first half of our second year as the ASPPA Benefits Council (ABC) of New England has been a great success for the organization.

We kicked off the 2007 year with a seminar in February on the topic of self-correction of qualified plans. David A. Guadagnoli, of Sullivan & Worcester, LLP, captivated the audience with his real life experiences which he commingled with his expertise on the topic. This morning meeting allowed attendees to ask questions on specific case examples on which they were working or wanted confirmation.

Continuing our path of inviting nationally recognized industry practitioners to speak to the ABC of New England's growing list of members, Sal L. Tripodi, APM, President-Elect of ASPPA, entertained and educated an enthused crowd of 70 for a full day of ERISA knowledge-sharing in April. Utilizing his expertise on a plethora of topics, Sal spoke in great detail about the Pension Protection Act and potential red flags in compliance testing and plan design. To every practitioner, these topics are vital to the day-to-day operation of defined contribution plans as all of these issues can provide hurdles in plan administration. The highlight of the day for many was the chance to be educated by Sal himself, while for a few the highlight was the afternoon break featuring ice cream bars!

The ABC of New England was able to enroll more than 30 new members that day, and we would like to thank Sal for taking time out of his busy schedule to come visit our young chapter. We would also like to say thank you to our corporate

sponsors for their support. Both Transamerica and Sun Life Retirement Services (US), Inc. provided sponsorship to offset our overhead costs and were on hand to greet the registrants and answer any questions.

Based on the title of this article, one can argue that success is not always measurable. The ABC of New England has already exceeded its 2007 target goals for both registrants per seminar and increase in membership, but that is not its only success. The positive feedback that we receive makes us successful because we are fulfilling the requirements of our members and non-member seminar registrants.

We need your help to continue to be successful. The ABC of New England can succeed only if we have members and if those members voice their opinions on what works and what does not work. So the question is, are you not yet a member of the ABC of New England? With a small annual fee, a limitless amount of topics to discuss, an abundance of industry contacts, seminars that offer continuing education credits for various professional organizations and a direct link to ASPPA, what's keeping you from joining?

*Laurence D. Silver, QKA, manages a group of ERISA compliance administrators for Sun Life Financial Services (US), Inc. in Boston, MA. He has more than ten years experience in the retirement industry and his group specializes in the non-discrimination testing and government filings of defined contribution plans. Larry is currently the president and liaison of the ABC of New England and serves on ASPPA's ABC Task Force. (silverld@mfs.com)*

# The ABC of New York Celebrates its 11th Year!

*by Judy A. Savino-Lynch, QPA*

It is hard to believe that the ASPPA Benefits Council (ABC) of New York is in its 11th year of existence with four of the original board members still on board! We started back in 1997 and quickly grew to have more than 100 corporate and individual memberships and have retained most of these members to date.

The ABC of New York's mission has been to provide continuing education on the local level. We currently schedule meetings four to five times a year, from roundtable discussions to morning meetings and the occasional one-day workshop.

Our goal is to add more roundtable discussions each year. Meetings in this format are very popular and they fill up each time. Harvey Katz, the president of the ABC of New York, offers one of his many conference rooms, with unbelievably fantastic views of the city, that adds a special spark to each roundtable.

One of the many benefits of being associated with ASPPA is that the organization has provided us with great national speakers, including: Craig P. Hoffman, APM; George J. Taylor, MSPA; S. Derrin Watson, APM; Sal L. Tripodi, APM; and Brian H. Graff, Esq., APM, ASPPA Executive Director/CEO. Each one of these speakers has drawn a large crowd with more than 100 attendees at each meeting.

While the ABC of New York's line up of speakers and meeting dates is not finalized, there are plans underway for a morning meeting in September and possibly a few additional roundtables. We have finalized a one-day workshop with Sal Tripodi that will be held on May 1, 2008.

The ABC of New York would like to take this opportunity to thank ASPPA for the tremendous support that they provide in assisting us in setting up each of our meetings, with special thanks to Denise Calvert, Director of Membership, and Brian H. Graff, Esq., APM.

For membership registration, please contact Steven Greenbaum at **steven.greenbaum@altigro.com**.

*Judy A. Savino-Lynch, QPA, has been in the pension benefit field for 26 years and is a pension consultant of Economic Group Pension Services, Inc. in New York, NY. Judy was the ABC of New York's original president and has continued to serve on the board as the treasurer. (jlynch@egps.com)*

The ABC of New York has grown to include the following board members:

**Mark Badami**
National Network of Accountants

**Adam Cantor**
Brown Rudnick Berlack Israels LLP

**David I. Gensler, MSPA**
Madison Pension Services, Inc.

**Steven Greenbaum**
Altigro Pension Services, Inc

**Harvey M. Katz**
Brown Rudnick Berlack Israels LLP

**Leslie M. Laiken, APM**
Laiken Associates, Inc.

**John A. Nicolai**
BWD Group, LLC

**Rachael Salsano-Mazza, CPC**
Actuarial Compensation Company, Inc.

**Judy A. Savino-Lynch, QPA**
Economic Group Pension Services, Inc.

**Cathy G. Waxenberg, APM**
Laiken Associates, Inc.

# Welcome New Members and Recent Designees

## FSPA

Virginia C. Wentz, FSPA, CPC

## MSPA

Stanley K. Purcell, MSPA
Anthony L. Urdahl, MSPA

## CPC

Nichole T. Daumueller, CPC, QPA, QKA
Ann M. Hubble, CPC, QPA, QKA
James J. McKinney, IV, CPC, QPA, QKA
Natalie N. Meyer, CPC, QPA, QKA
Mark S. Nicholas, CPC, QPA, QKA
Kristy S. Stone, CPC, QPA, QKA
Marla K. Ward, CPC, QPA
Jill A. Waters, CPC, QPA, QKA

## QPA

Mary A. Berk, QPA, QKA
Aaron D. Betman, QPA, QKA
David N. Bretthauer, QPA, QKA
Kevin M. Decker, QPA, QKA
Janet M. Gutting, QPA, QKA
Kevin M. Powell, QPA, QKA
Nathlie S. Ray, QPA, QKA
Joseph P. Smith, QPA
Erin M. Swanson, QPA, QKA
Michelle D. Transue, QPA, QKA
Ping Zhang, QPA, QKA

## QKA

Michael J. Abraham, QKA
Scott T. Ahneman, QKA
Lewis R. Alter, QKA
Victor Alvaro, QKA
Anita R. Anderson, QKA
Donald J. Angell, QKA
Heather Avery, QKA
Susan G. Baalke, QKA
Debbie L. Balck, QKA
Christie L. Barczak, QKA
Melinda May Barnum, QKA
Wilma Christine Barrett, QKA
Osmundo A. Bernabe, MSPA, QKA
Angie J. Bishop, QKA
Gregg Braccili, QKA
David N. Bretthauer, QPA, QKA
Patricia L. Brooks, QKA
Peter J. Bruno, CPC, QPA, QKA
Linda F. Bunton, QKA
Colleen A. Cashin, QKA
JoAnn E. Cassell, QKA
Samantha Chau, QKA
Carmen E. Conrad, QKA
Theresa A. Couch, QKA
Bruce Crow, QKA
William K. Curry, QKA
Nancy A. DaKay, CPC, QPA, QKA
Michele L. Davis, QKA
Teresa Smith Deetz, QKA
Nathan A. Deponte, QKA
Janice A. Dillon, QKA
Sherri Susanne Ellis, QKA
Belinda L. Fairbanks, QKA
Andrew G. Fleischamel, QKA
Jeffrey M. Garback, QKA
Diana Gies, QKA
Deborah L. Giesemann, QKA
Susan B. Gossett, QKA
Jennifer L. Greene, QKA
Natalie Groeger, QKA
Janet M. Gutting, QPA, QKA
Dawn W. Harman, QKA
Laura K. Hartnett, QKA
Carolyn S. Heuck, QKA
Melissa A. Holman, QKA
Christopher Jansen, QKA
Shawna Jesse, QKA
Jared Jones, QKA
Marilyn Jorden, QKA
David Kalish, QKA
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# ASPPA Calendar of Events

| Date | Description | CE Credits |
|---|---|---|
| Sep 14 | Early registration deadline for fall examinations | |
| Sep 20 - 21 | Benefits Conference of the South • Atlanta, GA | 15 |
| Oct 19 | Final registration deadline for fall examinations | |
| Oct 21 - 24 | ASPPA Annual Conference • Washington, DC | 20 |
| Nov 1 – Dec 14 | Fall 2007 examination window (DB, DC-1, DC-2, DC-3, PFC-1 and PFC-2) | |
| Nov 15 | C-4 examination | |
| Dec 3 | Postponement deadline for fall examinations | |
| Dec 31 | RPF-1 & RPF-2 examination deadline for 2007 online submission (midnight, EST) | |
| **2008** | | |
| Jan 24 - 25 | Los Angeles Benefits Conference • Los Angeles, CA | 15 |
| Feb 10 - 12 | The ASPPA 401(k) SUMMIT • Orlando, FL | 15 |
| Jul 13 - 16 | Western Benefits Conference • Seattle, WA | 20 |
| Oct 19 - 22 | ASPPA Annual Conference • Washington, DC | 20 |

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

# ABC Meetings Calendar

**August 21**
**ABC of Cleveland**
Annual All-day Summer Workshop
Speaker TBD

**August 28**
**ABC of Greater Cincinnati**
ERISA Update
S. Derrin Watson, APM

**August 29**
**ABC of North Florida**
Retirement Plan Design for the Future
Stan Samples

**September 7**
**ABC of Delaware Valley**
401(k) Plan Administration Issues Workshop
Joan A. Gucciardi, MSPA, CPC

**September 7**
**ABC of South Florida**
Top 15 Distribution Questions in Retirement Plans
Richard A. Hochman, APM

**September 11**
**ABC of Western PA**
Fiduciary Rules and Responsibilities
Eugene F. Maloney

**September 13**
**ABC Dallas/Ft. Worth**
Washington Update
Brian H. Graff, Esq., APM

**September 19**
**ABC of Greater Cincinnati**
Washington Update
Brian H. Graff, Esq., APM

**September 20**
**ABC of Detroit**
Full-day ERISA Seminar
Sal L. Tripodi, APM

**September 21**
**ABCs of Central and South Florida**
Washington Update
Brian H. Graff, Esq., APM

**September 25**
**ABC of Northern Indiana**
Washington Update
Brian H. Graff, Esq., APM

**October TBD**
**ABC of Atlanta**
Topic TBD
Speaker TBD

**October 16**
**ABC of Greater Cincinnati**
Federal Update
Barbara Bovbjerg

**November TBD**
**ABC of Detroit**
403(b) Final Regs
Lawrence B. Raymond, CPC

**November 1**
**ABC of Atlanta**
Automatic Enrollment Workshop
Adam C. Pozek, QKA, QPFC

**November 8**
**ABC of New England**
Annual Conference Highlights
Adam C. Pozek, QKA, QPFC

**November 9**
**ABC of Dallas/Ft. Worth**
Topic TBD
Craig P. Hoffman, APM

**November 13**
**ABC of Delaware Valley**
Retirement Issues
Jeff Brown

**November 13**
**ABC of Greater Cincinnati**
ABC Testing Workshop
ABC Education Chair

**November 19**
**ABC of North Florida**
Washington Update
Brian H. Graff, Esq., APM

**December TBD**
**ABC of Atlanta**
Topic TBD
Speaker TBD

**December 11**
**ABC of Greater Cincinnati**
Legal Update
Richard A. Hochman, APM

**December 13**
**ABC of South Florida**
Washington Update
Brian H. Graff, Esq., APM

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

# Fun-da-Mentals

## Sudoku Fun

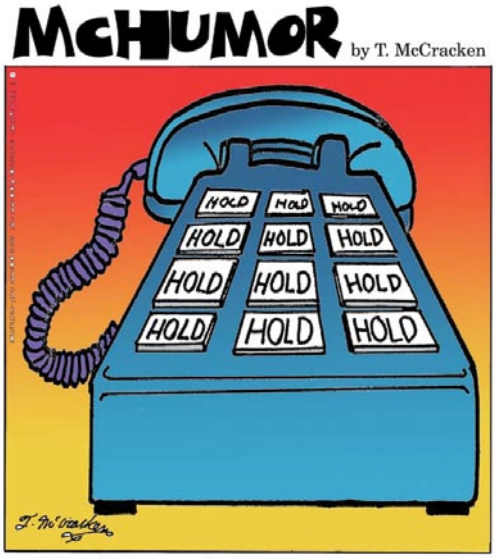
**Every digit from 1 to 9 must appear:**

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

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

Level = Difficult

**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 you imagine everyone else's phone looks like.

## Word Scramble

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

**TAP RAIL** ☐ _ _ _ _ ☐ ☐

**HERE SIR** _ _ ☐ ☐ _ _ _

**FRED PUN** _ ☐ _ _ _ ☐ ☐

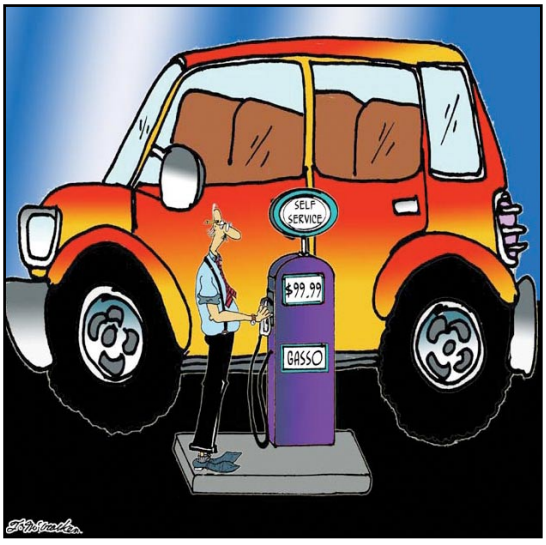
**BUSY SID** _ _ ☐ _ _ _ ☐

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

**Mystery Answer:**

**It's time for a "** _ _ _ _ _ _ _ _ _ _ _ _ **."**

**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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