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# PLAN CONSULTANT

WINTER 2019

# NOW WHAT?

## LIFE AFTER THE DOL FIDUCIARY RULE

- 3(16) services: loans and distributions
- Why nonqualified plans can help your practice
- ASPPA annual conference wrapup

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## Now What?

Life after the DOL fiduciary rule.

BY DEAN J. SCOULAR

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# What's Keeping TPA Owners Up at Night?

## By all accounts, the first TPA Business Development Conference was a resounding success.

This issue includes our customary wrap-up of last year's ASPPA Annual Conference, on page 36. The 2018 conference featured a new wrinkle: a special sales track for TPA business owners and managers.

The inaugural "TPA Business Development Conference" was essentially a conference within a conference, offered the last two days of the four-day Annual Conference, in the same National Harbor hotel. The event was restricted to owners of small and mid-sized TPAs and their salespeople, and featured a special agenda dealing with something with which many TPAs struggle – sales and marketing.

In conjunction with that elite gathering of key business leaders, we reached out to gather their insights into the current and future competitive landscape, their views on the key challenges and opportunities for this crucial industry at this critical time, and their perspective on what lies ahead. The result was first-ever *TPA Insider* report that's included with this issue of the magazine.


A wide range of experience and target-market focus is represented in the survey data — and yet, through it all, a remarkable consistency emerges. Among the key findings:

- Cybersecurity looms large as the biggest external environmental issue.
- Despite cost pressures and concerns about fee compression, compared with two years ago, most TPAs are charging more for the same service(s).
- TPA owners view service as their primary value proposition to plan sponsors, and the ability to help with plan innovation as their primary value proposition to plan advisors.
- The biggest concern of plan sponsors is the cost of plan administration.
- The most over-hyped trend in the industry: MEPs.
- About 40% are consistently tracking profitability on a per plan basis, and another 17% are doing so "sometimes."

By all accounts, the first TPA Business Development Conference was a resounding success — just one of many changes and new features added in the last few years as part of a long-term effort to deepen and enrich the ASPPA Annual experience.

Got a bright idea for a future column or feature story? Email me at jortman@usaretirement.org!

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BY JIM NOLAN

# Education, Education, Education — and Volunteers

## Our profession cannot perform as well without our volunteers.

Before I dive into the subject of my first column as ASPPA President, I want to say a few words about me and the people into whose shoes I am stepping.

First, I am the Chairman of the Board of The Nolan Company, a fee-only provider of retirement plan design and administration services, mostly to small businesses and professional practices. We work with more than 800 plans a year, both DC and DB. The Nolan Company employs approximately 27 bright and beautiful people dedicated to the competent administration of small retirement plans — we only have one client above 100 lives and only a few above 25 lives.

I officially came into the business a year before the enactment of ERISA, so I have done plan administration for more than 40 years. Yes, I was one of those people who were counting commas on FDP back in the '70s.

Second, I want to thank Adam Pozek for his admirable job as ASPPA President during 2018. I learned a lot and thoroughly enjoyed working with him during the year. All ASPPA members are fortunate to have had Adam giving countless hours of his time for their benefit. Missy Matrangola will be following me next year, and is already working hard on our behalf.

Now to the topic at hand.

During my 12 months as President Elect I have pondered the function of ASPPA (and ARA) quite a bit. From these ponderings came the title of this column.

### EDUCATION, PART 1

First and foremost, ASPPA and ARA educate our federal legislators and regulators on the probable effects of edicts they are contemplating issuing. Often they are unaware of the unintended consequences of their actions. And increasingly we are advocating on behalf of our participants and plan sponsors at the state and local level. Until about 10 years ago, the state and local level was rarely a topic for our discussion.

Brian Graff, the ARA Government Affairs Committee, Craig Hoffman and many other members of the ARA staff are very helpful in this process. Many members volunteer their time to interact with our legislators and regulators to make sure they hear our side of the story. I have personally done quite a bit of advocacy/education over

> It is in your interest to help with whatever you can so that we as a group can continue our mission to help Americans have a financially sufficient retirement."

the years, and I think this personal interaction on our behalf is very important.

### EDUCATION, PART 2

Once we receive the edicts from on high, we turn to educating our members about the substance of the law or regulations. This takes place via written communication and emails, as well as in webinars and conferences. Many hours of staff and volunteer efforts are required to put together these communications, conferences and webinars, to present and moderate the webinars and conference sessions, and on and on.

Another very important part of this is the education and examination process. Countless staff and volunteer hours go into preparing the exams, reimagining the exam format, and continually updating them to make sure they are relevant.

### EDUCATION, PART 3

The third level is what we do for our business advisor friends, plan sponsors and plan participants. Our role in communicating what starts out in Washington — or Sacramento or Boston or Seattle — is vital to the carrying out of the legislative intent. I have been in many meetings where I had to delicately advise an accountant or other advisor that their understanding of pension law was not totally accurate. (I expect that all of my colleagues who are members of ASPPA have had similar experiences.) For me, the first two parts of education described above are invaluable in helping me provide the third part.

How does all this get done? First and foremost, the ARA staff is a vital part of the process.

However, this process cannot be completed without *volunteer participation*! Each conference has a volunteer component to the committee that is responsible for setting up and running it. We have volunteers who speak and moderate at conferences. We have volunteers who help with education and examinations, and with advocacy. We have volunteers to help with every aspect of ASPPA and ARA, including governance of the organizations.

Not surprisingly to many of you, we now get to my "ask" — to *volunteer*! Our profession cannot perform as well without our volunteers. It is in your interest to help with whatever you can so that we as a group can continue our mission to help Americans have a financially sufficient retirement.

For those of us in ASPPA, we are in this together; we need to help each other, and we need to make it better.

In the accompanying sidebar you'll find a list of all the ASPPA committees that depend on volunteers — and contact information for more information. So, just as many before us have done, please **volunteer, volunteer, volunteer**! You will be rewarded.

Thanks for your interest and time. PC

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*James R. Nolan, QPA, is the founder and CEO of The Nolan Company, an independent TPA providing recordkeeping, administration, actuarial and plan design services serving clients in 49 states. He serves as ASPPA's 2019 President.*

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*For information about volunteering to serve on a committee, please email customercare@asppa-net.org.*

BY BRIAN H. GRAFF

# A Change for the Better?

## The prospects for positive retirement plan legislation might have just brightened.

The congressional mid-term elections are over and the Democrats took back control of the House for the first time since 2010, while the GOP slightly expanded its hold on the Senate majority. Believe it or not, while the talk outside the Beltway has largely focused on the prospects for even more gridlock, the prospects for positive retirement plan legislation might have just brightened.

Rep. Richie Neal (D-MA), now the ranking Democrat on the House Ways & Means Committee, and the man in line to become chairman of that powerful committee in January, has already cited several priorities on which he even thinks he might align with President Trump, and two of them — increasing retirement savings and protecting multiemployer pension plans — deal with retirement. Neal has long been focused on retirement issues and has, in just the past year, introduced his signature piece of retirement legislation, the Automatic Retirement Plan Act (ARPA), to address the retirement plan coverage gap.

ARPA would require all but the smallest employers to maintain at minimum a deferral-only 401(k) or 403(b) plan with a requirement to automatically enroll workers into the plan.

We have been in active discussions with Rep. Neal and his staff for months on sensible modifications to this legislation for the next Congress. He and his staff have shown a sincere willingness to work with us to address our concerns while still achieving their core policy objective of reducing the coverage gap.

At the same time, Sen. Rob Portman (R-OH) and Ben Cardin (D-MD), fathers of 2001's EGTRRA legislation when they both served in the House, are once again teaming up on retirement security legislation, this time in the Senate. The dynamic pension duo is considering provisions to encourage small plan startups, while encouraging automatic enrollment and re-enrollment practices, expanding employer matching contributions for student loan repayments, and providing portability of lifetime income options, expanding the Saver's Credit, and reforming the required minimum distribution requirements, among other things.

> "Congress could address bipartisan improvements to the retirement system along the lines of RESA."

The recent decision by Sen. Charles Grassley (R-IA) to return as Chairman of the powerful Senate Finance Committee following Sen. Hatch's retirement also bodes well. Grassley has previously been a sponsor of comprehensive retirement legislation, including the Graham-Grassley legislation that formed the basis (along with the Portman-Cardin bill in the House) for the EGTRRA retirement reforms. He was also Chairman of the Finance Committee when Congress enacted the Pension Protection Act in 2006.

Beyond that, the Senate Finance Committee that he will now chair in 2016 unanimously approved the Retirement Enhancement and Savings Act (RESA), which would allow for "open" multiple employer plans (MEPs), facilitate in-plan lifetime income options and disclosures, and other key changes. The House version of that bill had 85 cosponsors in the House.

Of course, in addition to the changes on Capitol Hill that point toward retirement reforms on the legislative front, there are several initiatives that have been undertaken by the Trump administration: The President's executive orders on Association Retirement Plans, RMDs and e-delivery; the need for clarity on the fiduciary implications when advisors service retirement plans and advise participants on rollovers (a remnant concern of ours due to the DOL's vacated fiduciary investment advice rule); and the emerging interest of individual states in crafting their own fiduciary standards.

All in all, 2019 is looking like it may turn out to be an important year for those who serve workplace retirement plans. PC

*Brian H. Graff, Esq., APM, is the Executive Director of ASPPA and the CEO of the American Retirement Association.*

PENCHECKS TRUST

# WHAT TO DO WITH MISSING PLAN PARTICIPANTS

**BY PETER PREOVOLOS**
CHAIRMAN AND CEO PENCHECKS TRUST™

Employer-sponsored retirement plans involve many time-consuming compliance issues. One in particular represents a growing problem for plan sponsors – missing plan participants. In today's highly mobile workforce, employees change jobs far more often than in the past. Unfortunately, when employees leave a company they often leave behind their retirement accounts, which can increase plan costs and create administrative headaches for plan sponsors.

The inability to locate a former employee doesn't absolve you from properly managing their retirement account. If you fail to do so, it can potentially result in regulatory penalties, including fines. The obvious solution, from the plan sponsor prospective, is to find the "missing" participant, pay them out and remove their account from the plan. This enables you to meet your fiduciary obligations, reunite employees with the benefits they earned and clean up your plan. However, this solution is often easier said than done.

## REASONABLE SEARCH STEPS

When terminating a plan, plans sponsors are required to make a reasonable effort to locate all missing participants.[1] This includes four mandatory location steps:

1. Using certified mail
2. Checking related plan and employer records
3. Checking with designated beneficiaries
4. Using free electronic search tools

If these steps fail to locate the participant, "suggested" steps include using paid electronic search tools, credit reporting agencies or fee-based databases.

Though not required with active plans, these steps can still be useful when attempting to locate former employees. On the other hand, they do require a lot of staff time that could be better spent serving your customers.

Fortunately, there are companies that can provide specialized missing participant search services for you. (PenChecks Trust was one of the first to offer this type of service, and currently offers one of the most comprehensive Missing Participant Programs in the U.S.) In most cases, outsourced search services do little more than conduct the required search steps for you. Our Missing Participant Program does a lot more.

We query more than 10,000 public record databases and the U.S. Postal Service National Change of Address (NCOA) database, among many others. We register missing participants in the National Registry of Unclaimed Retirement Benefits Database, which is searchable online by a former participant anytime. We will be responsible for generating and distributing participant notices. And if participants are located, we'll take care of paying them out – including handling the tax withholding, remittance and reporting requirements.

More important, when our best efforts to locate a missing participant fail, our program takes care of establishing an Automatic Rollover IRA for the former employee. This can help lower plan administration costs and reduce your fiduciary exposure by allowing you to remove the account from your plan. It also protects the deferred tax status of the retirement account until the missing participant comes forward to claim it.

As long as former employees leave accounts behind and don't keep you up to date on their current contact information, missing participants will remain a problem. PenChecks Trust has been helping plan sponsors resolve this problem in a timely and cost-effective manner for almost 25 years. Call us at 800-541-3938 or visit *www.penchecks.com* to learn more.

[1] Department of Labor Field Assistance Bulletin (FAB) 2014–01

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# Compensation for MEP Sponsors, Part 1

## Handling such compensation and expenses without engaging in a prohibited transaction is… complicated.

BY FRED REISH, BRUCE ASHTON & JOSH WALDBESER

There is a public policy concern about 401(k) coverage. More specifically, the concern is that many employees work for companies that don't offer deferral-based plans to their employees. As a result, both the Department of Labor and Congress are working on proposals to encourage multiple employer plans (MEPs ) — including "open" MEPs that any employer can join.

In response, there is a growing interest in the TPA and advisory communities about the sponsorship and administration of both open and "Association" MEPs. However, there are complex issues about the payment of compensation and expenses for those services, including:

- Can MEP sponsors make a profit, or would that be a prohibited transaction?
- Can they be reimbursed for costs?
- Can the compensation or reimbursements be paid from plan assets?

This is the first of two articles addressing these and similar questions. In Part 1, we discuss the background of MEPs. In Part 2, we'll delve into the details about compensation and expenses.

### BACKGROUND

MEPs are plans adopted by a number of unrelated employers; that is, employers that are not part of a common or controlled group. Why would companies want to do this? MEPs offer some potential for lower costs through economies of scale, but a more significant incentive for an employer to participate in a MEP is the reduction of administrative burdens and fiduciary responsibilities and potential liability.

This seems simple enough, except that there are different types of MEPs, arising out of differences between the tax and ERISA rules. Under the Internal Revenue Code, MEPs are treated as a single plan. Under ERISA, they may be considered a single plan or an aggregation of individual plans. Using these distinctions, there are three common types of MEP (note that these are common names for these types of entities, not legal designations):

- **Association MEP.** This is treated as a single plan for ERISA purposes, so long as the participating employers meet a "commonality" test, i.e., they are part of a group or association that exists to promote common business interests, but was not formed solely for the purpose of providing employee benefits. An Association MEP files a single Form 5500, has a single fidelity bond and, if a financial audit is required, it is a single audit of the aggregate MEP assets.
- **Open MEP.** This is treated as an aggregation of individual plans because the commonality test is not met. For example, a TPA sponsors a plan and the only common factor among participating employers is that they are clients of the TPA. A Form 5500 is filed for each participating employer's portion of the plan; financial audits are done on an individual basis; and each participating employer plan must have its own fidelity bond.
- **PEO MEP.** This is sponsored by a staffing firm or "PEO," in which only the PEO's employer-clients participate. Whether a particular PEO MEP constitutes one ERISA plan (i.e., a single employer plan) or a group of ERISA plans (i.e., an open MEP) will depend on facts and circumstances.

When we refer to the MEP "sponsor," we mean the entity that takes on the fiduciary responsibility and administrative duties of running the plan. Its employees may participate in the plan, but generally do not. In an Open MEP, the sponsor is often a TPA, although it could also be a recordkeeper, investment advisory firm or other entity. In a PEO MEP, the "sponsor" is the PEO itself. Association MEPs have a variety of structures. The association is rarely the sponsor, since it does not wish to take on the fiduciary role. In many cases, it will engage a third party to serve as the sponsor, somewhat like the Open MEP, but occasionally the first employer that adopts the plan would take on the title of sponsor.

Generally, the sponsor engages the MEP's other service providers, such as a recordkeeper, investment manager, accountants or others. In this respect, the sponsor takes on the fiduciary responsibility for prudent selection and monitoring of those providers.

## PROVIDER COMPENSATION: ERISA PRINCIPLES

We use the term "compensation" to refer to a traditional fee-for-services. "Direct" compensation refers to specified amounts paid out of plan assets or by a participating employer. Commonly, the amount is a set percentage of assets or a specified dollar amount plus a per participant fee. "Indirect" compensation refers to amounts received by the sponsor from third parties, generally in the form of revenue sharing. Reimbursement of expenses refers to the sponsor's direct, out-of-pocket expenses (not including overhead) incurred in providing plan-specific services that are not paid by the plan or effectively subsumed in the sponsor's fee.

MEP sponsor compensation is subject to several principles under ERISA and the Code. It's important to understand these before getting into the specific items of compensation.

1. Compensation of service providers must be reasonable. There are two parallel "reasonableness" requirements under ERISA. The first is the requirement that fiduciaries act for the exclusive purpose of providing benefits to the participants and "defraying reasonable expenses." In addition, all service providers, including fiduciaries that are compensated for that service, are considered "parties-in-interest" under ERISA. Service arrangements between a plan and a service provider are prohibited transactions unless they satisfy the exemption in Section 408(b)(2). (There are parallel provisions in the Code, but for the sake of simplicity, we have focused on the ERISA rules.) Section 408(b)(2) imposes a "reasonableness" requirement on all service and compensation arrangements. The "reasonableness" of compensation can be determined in a variety of ways, but is most often assessed using benchmark information that compares industry data.

   Section 408(b)(2) also requires that the amount of compensation be disclosed to a "responsible plan

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> All service providers, including fiduciaries that are compensated for that service, are considered 'parties-in-interest' under ERISA."

fiduciary." In the MEP context, the employers engage the MEP sponsor, and the MEP sponsor engages service providers. Since the 408(b)(2) regulation didn't explicitly contemplate that scenario, the safest course may be for the MEP sponsor to provide the disclosure to each participating employer when it elects to join the MEP. In turn the service providers would need to make their disclosures to the MEP sponsor (which is obligated, as the responsible fiduciary, to evaluate the reasonableness of their compensation and services).

2. Fiduciaries cannot set or influence their compensation. Under ERISA Section 406(b), a fiduciary engages in a prohibited transaction if it uses its fiduciary authority to cause itself (or another entity in which it has an interest that might affect its best judgment) to receive additional compensation for plan services. The 408(b)(2) exemption does not cover this prohibition.

3. Service provider compensation must be approved by an independent fiduciary. The DOL and courts have said that a provider can negotiate its compensation with potential plan clients without engaging in self-dealing, assuming it is an "arms-length" negotiation. This is because the provider is not acting in a fiduciary role when negotiating in a business capacity. (This is sometimes referred to as the "hire me" concept.) For example, a provider proposes contract terms to the sponsoring employer of a single-employer plan, and it is the employer that evaluates the proposal and decides whether to enter into the arrangement on behalf of the plan.

   The requirement of independent fiduciary approval applies to changes in compensation. It means that the service provider cannot monitor or increase its own compensation. If a service provider wishes to change its compensation arrangement (and it is impracticable to obtain affirmative consent from all participating employers), the DOL recognizes the concept of "deemed" consent.

   The leading "deemed consent" guidance is DOL Advisory Opinion 1997-16A, often called the "Aetna Opinion." There, the DOL held that a recordkeeper which was compensated from mutual fund revenue sharing could change the fund lineup, which affected its compensation, without engaging in a prohibited transaction. To achieve this result, it had to give each employer reasonable (e.g., 60-day) advance notice. During that time, an employer could approve or object to the change, but if the employer said nothing, it would be "deemed" to have approved the change, thus making the decision that of the employer and not the recordkeeper.

In Part 2, we will apply these principles to MEP sponsor compensation and expenses. PC

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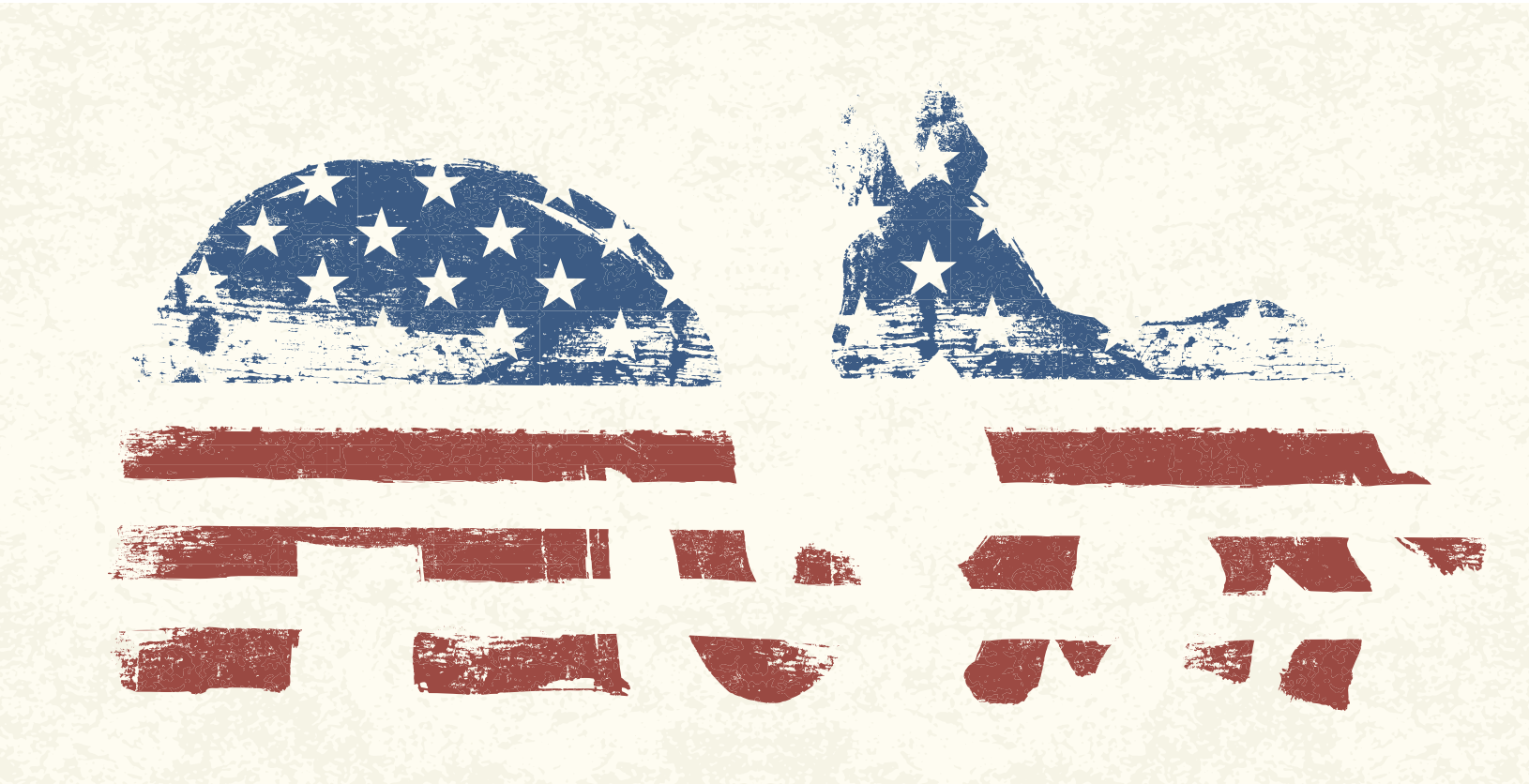
**FOOTNOTES**

[1] See DOL Advisory Opinion 2012-04A.
[2] ERISA §404(a).
[3] ERISA §406(a)(1)(C).
[4] *See* Internal Revenue Code Section 4975.
[5] *See* ERISA Regulation §2550.408b-2; see also Code Section 4975(d)(2).



# Midterm Fallout: The Impact on Retirement Issues

## The prospects are good that retirement policy legislation will be front and center in the 116th Congress.

BY TED GODBOUT

As many expected, the November midterm congressional elections left Democrats in control of the House of Representatives for the first time since 2010, portending what's likely to be a major shift in focus for retirement policy issues.

When the dust settled, the Democrats had gained 42 seats in the House, and the GOP had gained two seats in the Senate. This, as the 116th Congress convenes this month, the party affiliation in the House stands at 235 Democrats and 200 Republicans. In the Senate, the breakdown is 53 Republicans and 47 Democrats (including two independents who caucus with the Democrats).

In something of a surprise, some veteran lawmakers on the key retirement policy committees were ousted, including four Republican members of the House Ways & Means Committee and three members of the Senate Finance Committee, including two Democrats.

The Ways & Means Republicans who will not be back in the next Congress include Peter Roskam (IL), who chaired the tax policy subcommittee, Carlos Curbelo (FL), Erik Philip Paulsen (MN) and Mike Bishop (MI). In the Senate, former

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Finance Committee members Claire McCaskill (D-MO) and Bill Nelson (D-FL), along with Republican Dean Heller (NV), were defeated.

Regarding retirement policy in the House, the changes are rather significant, as Democrats will now lead the committees and set the legislative agenda.

## NEW HOUSE WAYS & MEANS COMMITTEE CHAIR

With the change in control of the House, Rep. Richie Neal (D-MA), the ranking Democrat on the House Ways & Means Committee during the 115th Congress, will become chairman of that tax-writing committee. Neal has long been a champion of retirement policy, having authored two ambitious bills that sought to shore up retirement savings.

Neal's Retirement Plan Simplification and Enhancement Act (RPSEA) included numerous changes that sought to encourage small businesses to offer plans as well as simplify the existing rules for employer-sponsored plans. Among those changes were modifying the current automatic enrollment safe harbor and establishing a new automatic safe harbor, including changes to minimum default contributions, matching contributions and a special tax credit.

Neal's Automatic Retirement Plan Act (ARPA) would require employers above a certain size to have or establish a 401(k) or 403(b) plan that covers all eligible employees — and would expand the definition of eligible employees beyond ERISA's current standards to all employees who are 21 or older, including new, part-time workers. However, certain employees would not be required to be covered, such as those subject to a collective bargaining agreement, nonresident aliens or seasonal workers employed for less than three months. Additionally, small employers, governments, churches and businesses not in existence for three years would be exempt. The bill also allows for expanded access to MEPs and increases the start-up credit for small employers.

Neal has acknowledged that his ARPA proposal does include a mandate, but he has said that while that provision can be a hard sell for both caucuses, he believes the parties are amenable to moving in that direction. Neal has also shown an interest in addressing the funding crisis currently facing multiemployer pension plans.

In the House Education and the Workforce Committee, Rep. Bobby Scott (D-VA) will likely take over from current chair Rep. Virginia Foxx (R-NC). Scott has been strongly critical of the 5th Circuit's ruling vacating the 2016 fiduciary rule — and some think he may focus on regulation of 401(k) and IRA fees and conflicts of interest.

## SENATE FINANCE CHANGES

Sen. Charles Grassley (R-IA) has decided to return as chairman of the Senate Finance Committee in the new Congress, replacing the retired Sen. Orrin Hatch (R-UT). Grassley, 85, will step down from his position as chairman of the Judiciary Committee to take on the Finance role. This will be Grassley's third stint as Finance Committee chairman. He chaired the committee in the early-to-mid 2000s, when the Pension Protection Act of 2006 was signed into law. Many of that law's provisions originated and advanced through the committee under his leadership.

Grassley was also a key sponsor of the retirement reforms (along with the Portman-Cardin legislation in the House) that formed the basis of the provisions that were enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and later made permanent in the PPA '06. Those reforms included higher 401(k) and IRA limits, catch-up contributions for workers age 50 and older, a permanent Savers' Credit and a wide array of other savings initiatives.

Grassley has been somewhat quiet over the past two years with respect to retirement security initiatives, but he has been supportive of the Retirement Enhancement and Savings Act (RESA) sponsored by Sen. Hatch and he is a strong proponent of the Tax Cuts and Jobs Act. Grassley also previously expressed alarm over the Labor Department's now-vacated fiduciary regulation.

## LIKELY FOCUS OF FUTURE LEGISLATION

Momentum has been building for quite some time on both sides of the political aisle that an update is needed to the Pension Protection Act of 2006 to build on the successes of that law — now in its second decade — as well as to address some of the law's perceived shortcomings.

Policymakers are looking to build on the success of automatic contribution arrangements, lifting both the floor and ceiling established by the PPA's automatic enrollment safe harbor, as well as ways to make it easier to offer lifetime income alternatives and reduce plan leakage through mechanisms such as auto-portability. The past year has seen legislation that would expand multiple employer plans (MEPs), address the issues with lifetime income offerings, expand and enhance auto-enrollment and auto-escalation, and address employees' reluctance to save because of student loan debt.

In the Senate, Finance Committee members Rob Portman (R-OH) and Ben Cardin (D-MD), who have worked together on retirement policy issues going back to their days in the House more than 20 years ago, are drafting legislation that could be one of the most sweeping pieces of retirement security legislation since the PPA.

Areas their legislation would address include expanding coverage and increasing retirement savings, preserving income, simplifying and clarifying retirement plan rules, defined benefit plan reforms, reforming plan rules to harmonize with IRA rules, and phased retirement. PC

# Repay Student Loans or Save in a 401(k)? Why Not Both?

Many employees feel too squeezed to both pay off their debt and save for their future. A recent PLR opens the door for employers to help them.

BY JOEL SHAPIRO

This year, the unemployment rate has reached lows not seen in more than a decade. For college graduates, the unemployment rate is less than 2.5%. This means finding a job is no longer the primary driver of the nation's workforce.

Equally impressive (but far less hopeful) is that over the past few years the average student loan debt for college graduates is estimated to be somewhere between $28,000 and $39,400. According to the New York Federal Reserve, more than two million student loan borrowers have student loan debt greater than $100,000, with approximately 415,000 of them carrying student loan debt in excess of $200,000.

What do these numbers mean for an employer? They mean that debt repayment is typically an employee's foremost priority. It is not just the newly minted graduates, either — typically, student loan repayment is stretched over 10 years with close to an 11% default rate.

In this climate, employers should not be surprised when a desired prospective or current employee inquires how the employer can help them with their primary priority: debt

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reduction. Nor should employers be surprised when they find that their debt-burdened employees are not using the savings opportunity of their retirement plan. Many employees feel too squeezed to both pay off their debt and save for their future. Those employees are frustrated not only by their lack of opportunity to save early, as is prudent, but also because they frequently miss out on employer matching contributions in their retirement plans.

Some employers are attempting to solve these issues. On Aug. 17, 2018, the IRS issued Private Letter Ruling (PLR) 201833012. The PLR addressed an individual plan sponsor's desire to amend its 401(k) plan to include a program for employees that were making student loan repayments. The form of this benefit would be an employer nonelective contribution (a student loan repayment contribution, or "SLR contribution").

The design of the plan in the PLR would provide matching contributions being available to participants equal to 5% of compensation for 2% of compensation deferred. It includes a true-up. Alternatively, employees could receive up to 5% of compensation in an SLR contribution in the 401(k) plan for every 2% of student loan repayments they made during the year. The SLR contribution would be calculated at year-end. The PLR states that the program would allow a participant to both defer into the 401(k) and make a student loan repayment at the same time, but they would only receive either the match or the SLR contribution and not both for the same pay period. Employees who enroll in the student loan repayment program and later opt out without hitting the 2% threshold necessary for a SLR contribution would be eligible for matching contributions for the period in which they opted out and made deferrals into the plan.

The PLR asked the IRS to rule that such design would not violate the "contingent benefit" prohibition under the Tax Code. The Code and regulations essentially state that a cash or deferred arrangement does not violate the contingent benefit prohibition if no other benefit is conditioned upon the employee's election to make elective contributions under the arrangement. The IRS ruled that the proposed design does not violate the contingent benefit prohibition.

All that said, it is important to note that a PLR is directed to a specific taxpayer requesting the ruling, and is applicable only to the specific set of facts and circumstances included in the request. That means other cannot rely on the PLR as precedent. It is neither a regulation nor even formal guidance. However, it does provide insight into how the IRS views certain arrangements. Thus, other plan sponsors that wish to replicate the design of the facts and circumstances contained in the PLR can do so with some confidence that they will not run afoul of the contingent benefit prohibition.

Companies are increasingly aware of the heavy student debt carried by their employees, and are exploring a myriad of programs they can offer to alleviate this burden. This particular design is meant to allow employees who cannot afford to both repay their student loans and defer into the 401(k) at the same time the ability to avoid missing out on the "free money" being offered by their employer in the 401(k) plan (by essentially replacing the match they miss by not deferring with the SLR contribution they receive for participating in the student loan repayment program). This design is not meant to help employees accelerate their debt payoff. If that's the employer's goal, it would have to do so directly into the student loan repayment program — there is no conduit to do so through the 401(k).

While the IRS ruled in regard to the contingent benefit prohibition, the PLR states definitively that all other qualification rules (testing, coverage, etc.) would remain operative. Thus, plan sponsors wishing to pursue adding such provisions to their 401(k) plans must take care as they undertake the design.

The facts provided in the PLR were very basic, and the plan design is very basic in that it requires deferral/student loan repayment equal to 2% for a 5% employer contribution (either match or SLR contribution) with no gradations. This is important because gradations could create separate testing populations for each increment of the SLR contribution plan, since it is a nonelective contribution, not a matching contribution. This could become a nightmare scenario for nondiscrimination testing and administration.

Alternatively, to avoid the potential nondiscrimination testing issues, the benefit could be designed to exclude highly compensated employees. However, that still doesn't alleviate the potential administrative burden placed on the employer's payroll and human resources teams. Most of the debt repayment programs are not yet integrated with 401(k) recordkeepers. That means that administering some of the interrelated elements of the two plans would have to be undertaken in-house by the employer.

There are more than a few consequential elements that employers should be wary of while exploring opportunities to assist their employees and employment targets. In all cases it is recommended that employers involve their 401(k) plan's recordkeepers, advisors and even — in some sophisticated design scenarios — outside counsel to make certain they: (1) don't inadvertently create qualification issues, (2) understand the potential for additional testing and perhaps additional financial considerations of the design; and (3) are prepared for any additional administration the program may require. PC

*Joel Shapiro, J.D., LL.M. is senior vice president of ERISA Compliance at NFP.*

# Concerns About PEOs (Part 2)

## There are good reasons to be wary when Professional Employer Organizations sponsor 401(k) plans for their clients' employees.

BY BARRY SALKIN

*Editor's Note: This is the second of a two-part article. Part 1 appeared in the fall 2018 issue.*

Professional Employer Organizations (PEOs) can be useful to employers in a number of different ways, such as providing employee benefits that would otherwise be unavailable and guiding them through the labyrinth of regulations that businesses must address, thereby allowing the owners of these businesses to focus on their core competencies.

However, employers must be wary of situations that may produce disadvantageous results in dealing with PEOs. This two-part article focuses on one of those areas: employee benefits. In Part 1 we provided some background, addressed the concept of co-employment and explained how multiple employer plans (MEPs) fit in. In Part 2, we focus on PEO-sponsored 401(k) plans.

### ADVANTAGES OF PEO 401(k) PLANS

There are certainly advantages for a small employer in participating in a 401(k) plan sponsored by a PEO. Most of the plan functions are carried out by the PEO. For example, the PEO is responsible for plan design and will likely be designated as the named fiduciary of the 401(k) plan. The named fiduciary of a 401(k) plan is responsible for plan administration (for example, benefit determinations), plan investments (for example, selecting a line up of mutual funds, variable annuities or other investments in which participants may invest in a self-directed plan), and the selection of service providers. A single IRS form is filed with the DOL on behalf of the plan and the plan is subject to a single audit by a certified public accountant (assuming that the plan has more than 100 participants and therefore is subject to DOL's audit requirements). The role of the participating employer is limited to determining whether or not to become a participating employer and to provide data and contributions to the named fiduciary and plan trustee. Effectively, the participating employer in a PEO 401(k) plan has outsourced the provision of retirement benefits.

### ISSUES WITH PEO 401(k) PLANS

A potential PEO client will be informed of all of these benefits of participating in a 401(k) plan, but may not be advised of the potential drawbacks. The first such concern is the one-bad-apple rule under the Code, which means that if there are operational errors with respect to one of the participating plans, the entire plan is potentially disqualified. (That rule would be modified under several bills currently pending in Congress.) The IRS is not seeking to disqualify tax-qualified plans, so this worst case scenario will rarely occur, but even a settlement with the IRS of a disqualifying defect with respect to a participating employer in the 401(k) plan with whom the client had no relationship can prove costly.

A second concern is the scope of a participating employer's duty under ERISA when becoming a participating employer in a PEO's 401(k) plan. As explained by the DOL's Advisory Council, when a participating employer makes the decision to participate in a multiple employer plan such as a PEO's 401(k) plan, a question arises as to whether the employer is acting as a fiduciary or a settlor and, if it is acting as a fiduciary, to what extent.

A comparison with a single employer plan illustrates the difference. In the single employer context, the adoption of a plan, whether individually designed or — as is more frequently the case with PEO clients — a prototype plan, is a settlor, non-fiduciary function. The implementation of the plan, as well as its administration, is a fiduciary function. Thus, when an employer sponsor or other named fiduciary engages service providers, selects investment funds, and administers its 401(k) plan, it is acting in a fiduciary capacity. However, in the multiple employer plan context, the line between fiduciary and non-fiduciary functions is blurred because when a participating employer elects to participate in the 401(k) plan, it accomplishes all of the tasks described in the preceding sentence. If it is a fiduciary, the adopting employer needs to be aware of its potential co-fiduciary liability under ERISA, as well as what it would mean in practice for the client company to monitor the activities of the PEO plan sponsor.

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Furthermore, there may be issues that a sponsor of an existing single employer plan may wish to consider in determining whether or not to adopt a PEO 401(k) plan. The first question is what options, if any, will the client company be advised of with respect to its existing 401(k) plan? One option which a PEO might suggest is for the company's existing 401(k) plan to be terminated, which could be a concern to the client company if the 401(k) plan were recently established, because the IRS does not look favorably upon early plan terminations.

Second, and more importantly, the potential legal difficulty with this approach is the successor plan rule under the 401(k) regulations. Those regulations provide that a distribution of assets cannot be made upon the termination of a 401(k) plan if the employer establishes or maintains another 401(k) plan. While "establishes or maintains" is not defined, it would be difficult to maintain the position that electing to participate in a PEO 401(k) plan was not the establishment or maintenance of a successor plan. The purpose of the successor plan regulation is to prevent what would in effect be in-service distributions from a 401(k) plan.

An alternative approach would be to transfer the assets of the client's plan to the PEO 401(k) plan. A PEO may be reluctant to accept this approach, for fear of bringing tainted assets into the PEO 401(k) plan, but it is an approach used by multiple employer plans outside of the PEO context. A transfer of plan assets and liabilities would not effectively be the same as a plan termination, since generally there would be terminated vested participants with account balances in the client's 401(k) plan who would not be becoming worksite employees of the PEO.

A third approach would be for the client to "freeze" its existing 401(k) plan, so that its current workforce would be participating in two 401(k) plans. This approach might not be greeted with enthusiasm by participants in the client's 401(k) plan, who would be managing assets in two plans going forward — plans that might have significantly different investment options. The same type of issues will be faced by a client company when it ceases to be a client of a PEO, whether it is switching to another PEO's 401(k) plan or establishing or unfreezing its already existing 401(k) plan. Also, the client company would still have potential fiduciary liability under ERISA, even in a plan designed to satisfy ERISA Section 404(c), because the client company would still need to monitor the investments that were offered to its plan participants. Also, some employers may be concerned that they are losing control of the plan, because they will not even be receiving the reports from service providers that they were receiving under a single employer plan.

## CONCLUSION

PEOs can be very useful to employers, especially smaller ones, in several ways because of the economies of scale and the legal and regulatory expertise they possess. Notwithstanding those benefits, clients should be aware of the issues that can arise with 401(k) plans, especially if a prospective PEO client presently maintains a 401(k) plan. PC

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# Assumption Setting for ASC 715 and ASC 960

## The financial accounting disclosure requirements for a *plan* differ from the disclosure requirements for a *plan sponsor*.

BY LAUREN OKUM

Financial Accounting Standards Board (FASB) Accounting Standards Codification 960 (ASC 960) and 715 (ASC 715) — formerly known as Statement of Financial Accounting Standards Nos. 35 and 87/88/158, respectively — describe the financial statement disclosure requirements for defined benefit pension plans. The two standards are used for different purposes and require different calculations. Plan sponsors and auditors look to pension actuaries to provide this information.

ASC 960 describes the disclosure requirements for the plan's financial statements. The primary objective of a defined benefit plan's financial statements is to provide information that is useful in assessing the plan's present and future ability to pay benefits when due. The accumulated benefits under ASC 960 may be presented as of the beginning or the end of the plan year, though an end-of-year benefit information date is considered preferable.

ASC 715 describes the disclosure requirements for the *company's* financial statements. The primary objective of an ASC 715 valuation is to determine the expense (or income) that is charged on the company's statement of net income, as well as the liability (or asset) that is reported on the company's balance sheet. The projected benefit obligations under ASC 715 are presented as of the date of the company's fiscal year-end statement of financial position.

A brief comparison of ASC 960 and ASC 715 is highlighted in the nearby table, "ASC 960/ASC715 Comparison."

Several assumptions are similar between ASC 960 and ASC 715, including the rate of return on plan assets, retirement age, and turnover assumptions. Other assumptions, such as the discount rate, mortality assumption and future salary increases, differ between the two standards. The asset valuation method also differs between them.

### INTEREST RATE/DISCOUNT RATE

ASC 960 addresses two approaches that can be used to select the interest rate underlying the liabilities:

1. The assumed rate of return should reflect the expected rates of return during the period for which payments of benefits is deferred and should be consistent with returns realistically achievable on the types of assets held by the plan and the plan's investment policy. This is the long-term expected rate of return on plan assets.
2. An acceptable alternative to the long-term expected rate of return on plan assets is to use those assumptions that are inherent in the estimated cost at the benefit information date to obtain a contract with an insurance entity to provide participants with their accumulated benefits. This is the settlement rate. It may or may not be the same as the ASC 715 discount rate.

### ASC 960/ASC 715 COMPARISON

| ASC 960 | ASC 715 |
|---|---|
| • For annual financial statements of the plan | • For corporate financial statements |
| • Reports accumulated plan benefits and assets | • Measures funded status of the plan as the difference between asset at fair value and projected benefit obligations<br>• Measures annual pension expense<br>• Reports changes that affect comprehensive income |
| • Assumptions are based on plan provisions and best estimates | • Assumptions are determined by the plan sponsor |

Since benefits are valued under ASC 960 assuming an ongoing plan, the most commonly used approach is to use the long-term expected rate of return on plan assets. This is an average rate that represents the expected earnings over the long term on the funds invested to provide future benefits. It may be determined from a "building block" approach that includes components for inflation, real risk-free return and risk premium. Often, it is calculated by summing the weighted average of the total return for each asset class. This rate is generally stable from year to year but will change when either the long-term view of the market or the plan's investment policy changes.

Under ASC 715, benefits are valued based on a settlement of liability. The discount rate reflects the rates at which the defined benefit obligation could effectively be settled. Therefore, the discount rate is not equal to the expected rate of return on plan assets. In estimating the settlement rates, it would be appropriate to use information about rates implicit in current prices of annuity contracts that could be used to settle the obligation. Alternatively, the plan sponsor may look to rates of return on high-quality fixed-income investments, such as high-quality corporate bond yields, that are currently available and expected to be available during the period to maturity of the pension benefits.

## MORTALITY ASSUMPTION

ASC 960 liabilities are often based on the mortality tables prescribed for calculating minimum funding requirements. Prior to 2018, the mortality tables were based on the tables in the RP-2000 Mortality Tables Report, adjusted for mortality improvement. Beginning Jan. 1, 2018, the mortality tables are based on the tables in the RP-2014 Mortality Tables Report, adjusted for mortality improvement.

ASC 715 requires consideration of the most recent mortality tables and projection scales through the date the financial statements are available to be used. At the time of this writing, the most recent mortality table is the RP-2014 dataset for males and females with mortality improvement scale MP-2018. The IRS updates tables annually with an additional year of longevity improvement. In deciding the mortality assumption for plans offering lump sum distributions, entities should consider whether to anticipate these future updates to the IRS-mandated mortality tables. Entities may choose not to anticipate future updates, rationalizing that the IRS's updates to its mortality tables is akin to a new law or legislation and should not be anticipated.

## FUTURE SALARY INCREASES

The assumption for future salary increases, in effect, differs between ASC 960 and ASC 715. ASC 960 reflects benefits accrued to date, while ASC 715 considers future salary increases. Therefore, ASC 960 does not reflect future compensation increases, while ASC 715 does.

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Year-to-year growth in compensation results from long-term trends in price inflation, productivity improvements, merit or promotional increases, and seniority increases. The rate is a long-term rate, not the upcoming year's budgeted pay increases.

## ASSET VALUATION

Asset values also differ between ASC 960 and ASC 715. ASC 960 includes receivable contributions, while ASC 715 only considers assets in the trust on the measurement date. Contributions shown for ASC 715 are the contributions made *during* the year, not the contributions made *for* the plan year.

The financial accounting disclosure requirements for a *plan* differ from the disclosure requirements for a *plan sponsor*. The actuary, auditor, and plan sponsor should become familiar with the general differences and should pay attention to the required assumptions. PC

*Lauren Okum, MSPA, is the founder and chief actuary of Premier Actuarial Solutions in Chicago, IL. She has more than 20 years of experience in the DB arena, including at a large HR consulting firm, a large accounting firm and a third-party administrator. She is currently President-Elect of the ASPPA College of Pension Actuaries (ACOPA).*

# $24 Million Settlement Reached in Excessive Fee Case

## After nearly four years, a settlement was announced just two weeks before going to trial.

BY NEVIN E. ADAMS. JD

After being litigated vigorously for more than three years, and nearly year of arm's-length negotiations with the assistance of a national mediator, the parties in an excessive fee suit have come to terms.

The settlement — between BB&T and a potential class of as many as 67,000 current and former workers — followed a pretrial phone conference before U.S. District Judge Catherine C. Eagles just two weeks before the suit was scheduled to go to trial.

The case is actually two lawsuits that were consolidated in November 2015 – *Burke Bowers et al. v. BB&T Corp. et al* and *Brewster Smith Jr. et al. v. BB&T Corp.*, both brought in the U.S. District Court for the Middle District of North Carolina. The suits alleged that:

- fiduciary responsibilities were breached both in causing the plan to pay BB&T excessive administrative fees and providing imprudent and unreasonably expensive investment options;
- the defendants used a BB&T company to provide plan trustee and recordkeeping services without any competitive bidding process and allowed that company

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to take excessive compensation (via revenue-sharing) from the plan at the expense of plan participants; and
- the defendants failed to monitor the amount of revenue sharing that was paid or have BB&T return to the plan such amounts as exceeded a reasonable administrative fee — "millions of dollars in excessive recordkeeping fees," according to the suit.

## MONETARY TERMS

The settlement, *Sims v. BB&T Corp.* (M.D.N.C., No. 1:15-cv-00732-CCE-JEP, motion for preliminary settlement approval 11/30/18) provides for a $24 million settlement fund, which will be used to pay the participants' recoveries, class counsel's attorneys' fees and costs, administrative expenses of the settlement, and class representatives' compensation.

The plaintiffs who brought the class action will receive $20,000 each under the terms of the settlement, while the plaintiffs' attorneys will request fees (to be paid from the gross settlement) "in an amount not more than one-third of the Gross Settlement Amount, or $8,000,000, as well as reimbursement for costs incurred of no more than $1,100,000." The plaintiffs are represented by Nichols Kaster PLLP, Schlichter Bogard & Denton LLP, and Puryear & Lingle PLLC.

Most participants will have the recovery posted directly into their 401(k) account. Those who no longer have an account will be given the option to receive their distributions in the form of a check made out to them individually or as a rollover into another tax-deferred account.

## NON-MONETARY TERMS

In addition to the monetary settlement, the BB&T plan fiduciaries have agreed to:
- engage a consulting firm to conduct a Request for Proposal for investment consulting firms that are unaffiliated with BB&T and engage an investment consultant to provide independent consulting services to the plan;
- the investment consultant will evaluate the plan's investment options and provide the plan fiduciaries with an objective evaluation of the options in the plan;
- within two years after the entering of the Final Order, the plan fiduciaries agreed to participate in a training session on ERISA's fiduciary duties;
- during the two-year period following entry of the Final Order, BB&T will rebate to the plan participants "any 12b-1 fees, sub-ta fees, or other monetary compensation that any mutual fund company pays or extends to the Plan's recordkeeper based on the Plan's investments"; and
- if, during a two-year time period following the entry of the Final Order, BB&T decides to charge plan participants a periodic fee for recordkeeping services, they will conduct a Request for Proposal for the provision of recordkeeping and administrative services.

In making the case for the settlement, the parties noted that it "provides meaningful monetary and significant non-monetary relief to each settlement class member," and that "in light of the litigation risks further prosecution of this action would inevitably entail, it is proper for the Court to: (1) preliminarily approve the proposed Settlement; (2) approve the proposed form and method of notice to the Class; and (3) schedule a hearing at which the Court will consider final approval of the Settlement."

BB&T is the latest financial company to agree to settle such claims, joining Deutsche Bank ($21.9 million), American Airlines Group Inc. ($22 million), Allianz SE ($12 million) and TIAA ($5 million). PC

## Putnam Decision to be Reviewed

A federal appellate court has ordered a review of *Brotherston v. Putnam Investments, LLC*, a decision in another proprietary fund suit that has been cited in a number of similar settlement filings similar to the one in *Sims v. BBT Corp.*

The suit was filed against Putnam Investments by plan participants who alleged that the defendants "loaded the Plan exclusively with Putnam's mutual funds, without investigating whether Plan participants would be better served by investments managed by unaffiliated companies." Putnam initially prevailed in at the district court level.

The case drew the interests of a wide-ranging number of organizations that filed friend-of-the-court briefs on behalf of both the plaintiffs (AARP, the AARP Foundation and the National Employment Lawyers Association) and the Putnam defendants (the Chamber of Commerce of the United States of America, American Benefits Council, the Securities Industry and Financial Markets Association and the Investment Company Institute).

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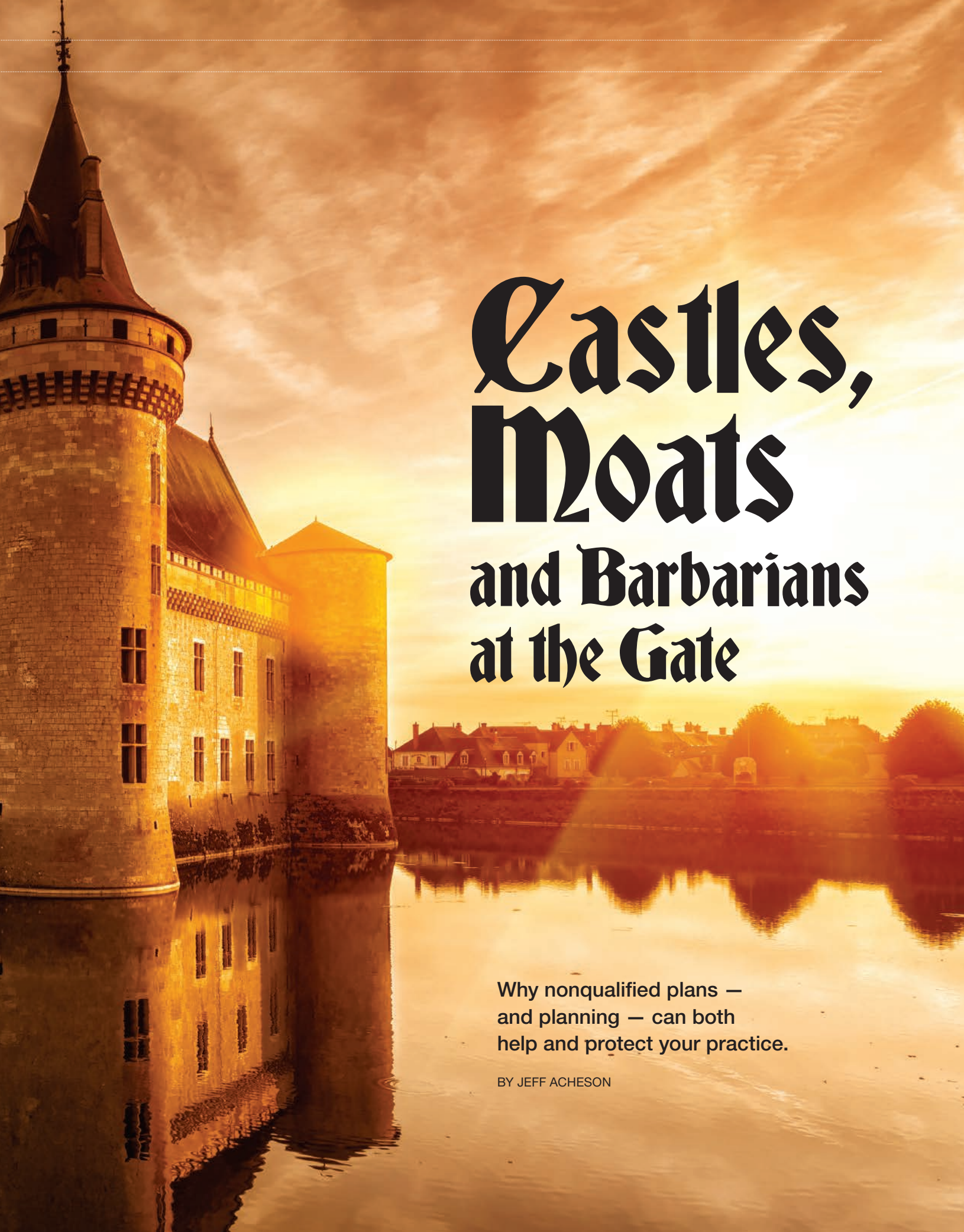

# Castles, Moats and Barbarians at the Gate

**Why nonqualified plans — and planning — can both help and protect your practice.**

BY JEFF ACHESON

The S&P 500 was introduced in 1957 as a benchmark index designed to track the value of the 500 largest companies in the United States. Today, approximately 60, or just 12% of that original 500, are still included in the index.

Bankruptcies, mergers and acquisitions certainly have taken their toll on the 440 no longer included, but the fate for many was driven by the fact they simply lost relevance, credibility or positioning in the lives of the American people, their chosen industry or on the world stage. There are some prognosticators who go so far as to predict there will be a 50% turnover in the current S&P 500 over the next 10 years.

The lesson to be learned? Innovate or evaporate — the future is promised to no one, and the retirement plan industry is no exception regardless of area of focus or expertise!

So, who among our industry's current service providers and advisors will still be deemed relevant 10 years from today? I don't have a crystal ball, but by applying a bit of wordsmithing to the title of a book in my library written by Marshall Goldsmith, let me suggest that "What got us here won't get us there." The question becomes: Where do we go from here to maintain not only business model viability, but hopefully also robust vitality leading to revenue that is fair and reasonable for services provided and sufficient to allow for an attractive profit margin?

Some industry service providers and advisors will be deemed relevant in the future due to value propositions built around cutting-edge platform and mobile technologies, offering scaled pricing discounts, delivering superior investment vehicle performance, financial wellness programs that move the needle on retirement readiness or being recognized for delivering unique fiduciary services of some kind (e.g., MEPs).

One could make a case that commoditization and fee compression will favor the deep-pocketed giants in the industry and drive consolidation, especially at the large end of the market and increasingly gobbling up market share downstream. Sounds kind of depressing for many of our members under the American Retirement Association (ARA) umbrella, doesn't it? While these are all important attributes, I would suggest they are not necessarily going to be the differentiators for success they have been in the past. Rather, I would argue that quite the opposite is possible. I believe the future is quite bright for our ARA membership across all our sister organizations if we adhere to three profound axioms:

1. We can bring value not only by "what" we know and but also by "who" we know.
2. None of us is as smart as all of us.
3. Specialization spells success.

Perhaps author Jeffrey Gitomer summarized it best when he opined, "Customer satisfaction is worthless. Customer loyalty is priceless."

## A New Service Model Value-Add

So how does anyone who is a service provider create customer loyalty when in many cases they are their own brand with limited resources and their product is a specialty service or intellectual capital that is not easily scalable? I would suggest it starts by positioning oneself as a trusted advisor who is a go-to problem solver and thought leader with a breadth and depth of professional relationships to bring to bear to address clients' issues. It could be argued that "what we know" allows us to make a living, while "who we know" is what creates customer loyalty if positioned properly.

For many retirement plan professionals, a great avenue for doing that is by getting involved in nonqualified DC plans. This is true even for professionals who don't want to expand into nonqualified plan administration and recordkeeping themselves, but choose instead to partner with industry experts and specialists.

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*None of us are as smart as all of us.* Let's say you're a TPA or recordkeeper that is focused on qualified plans and doesn't want to invest the time and money to develop the in-house expertise, technology and resources needed to support a new line of business. Under the ARA umbrella, there are many resources you can call upon to create strategic alliances for meeting the needs of clients and prospects.

Specialization spells success, and much can be said for an alliance of like-minded and independent experts collaborating to meet the needs of clients and prospects while helping each other enhance their respective value propositions. Adam Pozek, a Partner at DWC – The 401(k) Experts and immediate past president of ASPPA, shares this mindset:

> *"DWC believes delivering comprehensive retirement plan solutions and thought leadership is critical to our corporate value proposition and nonqualified plans need to be part of that holistic approach. However, we also believe we need to stick to what we do best. As a result, we partner with experts in the nonqualified space to provide our clients introductions and access to vetted relationships we trust and as importantly, know they share the philosophy and objectives of our service model."*

I proposed a similar thesis to my NAPA plan advisor brethren in several ways throughout 2018, including in an article in *NAPA Net the Magazine* in which I made multiple assertions that apply equally to TPAs and recordkeepers, albeit with perhaps a slightly different execution model. The crux of these assertions can be paraphrased as: *"Intensifying competition for 401(k) clients has driven many plan advisors' fees down lately. Advisors are asking, 'What else can I do to develop more relationships and offer more services to my existing clients to avoid being commoditized?' as similarities don't sell, differences do."* Are these issues any different for TPAs and recordkeepers than they are for advisors?

Any retirement plan professional, especially a TPA or recordkeeper, who incorporates nonqualified planning expertise into their practice, whether through in-house resources or by partnering, can add another dimension to their business model. They can bring additional and tangible value to clients and prospects with guidance about how to combine both qualified and nonqualified plans into integrated designs that not only address rank-and-file employee contribution goals from an HR and budget perspective, but also help the employer better recruit, reward and retain mission-critical employees. This integrated approach can also give those same employees enhanced opportunities to defer income and boost their savings for retirement — including having their efforts supplemented by selective and targeted employer participation.

How might this nonqualified acumen enhance implementation? How many times have beautifully designed qualified plan proposals rooted in the merits of safe harbor or cross-tested contributions, or installing a 401(k)/cash balance plan combo, gone nowhere because too much of the required contributions were allocated across too many participants from the plan sponsor's perspective? By their very nature, nonqualified plans are required to be selective and discriminatory in nature to maintain their "Top Hat" ERISA Title I exemption — and that can be very attractive to many employers who want to narrow the focus of who gets what.

Further, the more ideas you can bring to an employer and then advise them on, the less likely you are to lose that relationship to another firm that is more multidisciplinary in its offerings and uses that differentiator to garner an audience with your client about something you don't do.

Think of your clients' qualified retirement plans as your relationship "castles" that you are trying to protect.

## Non-Qualified Deferred Compensation Plans by FTEs

Question: *Do you offer a Non-Qualified Deferred Compensation or Non-Qualified Benefit program?*

| | Overall | 100 or fewer | 101-250 | 251-750 | 751-1,500 | 1,500 or more |
|---|---|---|---|---|---|---|
| Yes | 24% | 13% | 15% | 40% | 38% | 76% |
| No | 76% | 87% | 85% | 60% | 62% | 24% |
| N (number of respondents) | 421 | 209 | 85 | 65 | 12 | 38 |

*Source: Newport Group, 2018. Used with permission.*

By addressing both qualified and nonqualified plan administration, you are building a metaphorical "moat" around that castle and keeping the "barbarians" — your competitors — at the gate without a drawbridge to cross it.

## An Untapped Consulting Opportunity

From an employer's perspective, having a handle on nonqualified plans and planning can be a great resource in an improving economy and tight job market when it comes to attracting and retaining mission critical employees. Nowhere is this opportunity greater than with small and mid-sized employers competing for talent and at times with larger organizations with more resources to bring to bear. Access to individualized benefit creativity can be a great equalizer. The nearby table from a recent Newport Group survey is an example of nonqualified utilization by employer size.

The significant untapped opportunity that the table depicts in the small to mid-markets should bode well for many under the ARA umbrella, since those are the types of plan sponsors that tend to interact and engage most with independent advisors, TPAs and recordkeepers.

NAPA is so committed to the belief that the nonqualified market is a not just a viable, but in fact significant, opportunity for our advisor community that we worked with the small universe of industry providers in this space to fund and launch a three-year nonqualified plan initiative. The overall goals of the initiative are to provide:

- Access to agnostic unbiased education and thought leadership
- Exposure to best practices in business and service model execution
- Introductions to industry service providers

This initiative is built upon a two-pronged approach of: (1) an educational curriculum culminating in a certificate of completion — the Nonqualified Plan Advisor (NQPA) cerificate; and (2) an annual "best practices" conference coupled with an eight-hour bootcamp serving as one means of delivery that curriculum.

I am pleased to report that the inaugural September 2018 conference and bootcamp held in Chicago was a sellout with a waiting list, and the post-event reviews were stellar from both participants and sponsors. Next year's event promises to be bigger and better. In addition, those who prefer to pursue their certificate of completion online can now do so.

The initial feedback from the NAPA members participating in this program about the opportunities in the nonqualified plan area has been quite enthusiastic and promising.

I am convinced there is some interesting potential for the TPA/recordkeeper community as well. However,

**HOW WILL THE INNOVATIONS YOU MAKE TODAY GET YOU FROM HERE TO THERE IN PRESERVING YOUR FIRM'S RELEVANCE, CREDIBILITY OR POSITIONING?**

I don't necessarily believe those opportunities lie in administration and recordkeeping. The unique and flexible aspects of the potential plan design and compliance provisions call for subject matter expertise in administration and recordkeeping technology built for, not retrofitted to, the nuances of nonqualified plan provisions. In other words, it may be deemed a bridge too far to develop the required capabilities in-house.

Instead, the real opportunity for TPAs and recordkeepers may very well lie in the same place it lies for advisors — being a value-added consultant, especially on integrated qualified and nonqualified plan designs.

While advisors may be more focused on driving monetary remuneration for their efforts through the funding instruments associated with nonqualified plans, TPAs and recordkeepers may find their comfort zone in focusing more on fee-for-service consulting-type activities addressing plan design, data management and platform coordination, whether acting alone or in concert with a partnering firm.

Of course, that is just one type of remuneration. There are also the significant rewards attributable to a deepened relationship with a plan sponsor or advisor client and the establishment of deep and wide moats dug around your qualified plan castles.

Remember, the future is promised to no one. How will the innovations you make today get you from here to there in preserving your firm's relevance, credibility or positioning? Perhaps adding nonqualified planning and plans to your value proposition is a new arrow in your quiver you should consider! PC

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*Jeffery Acheson, CPFA, is the founder of Advanced Strategioes Group, LLC. He serves as the 2018-2019 president of the National Association of Plan Advisors (NAPA) and on the ARA's Board of Directors.*

# NOW WHAT?

## LIFE AFTER THE DOL FIDUCIARY RULE

BY DEAN J. SCOULAR

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## AFTER YEARS OF POLITICAL AND LEGAL BATTLES REGARDING VARIOUS VERSIONS OF THE DEPARTMENT OF LABOR'S FIDUCIARY RULE, THE RULE WAS VACATED

by the 5th U.S. Circuit Court of Appeals in March 2018.[1] What happens now that the rule has been vacated? Is a registered investment advisor that provides investment advice to a plan a fiduciary? Is a broker-dealer a fiduciary?

Immediately after the decision by the 5th Circuit, there was significant speculation concerning whether the defendants (the Department of Labor) would request an *en banc* hearing from the entire 5th Circuit or appeal the decision to the U.S. Supreme Court. The Department of Labor decided not to request an *en banc* hearing nor to appeal it to the Supreme Court. However, in a unique attempt to intervene, AARP, the State of California, the State of Oregon and the State of New York attempted to join the case to keep the case going. The court summarily denied their motions with one sentence denying AARP's request and another sentence denying the three states' requests.

To resolve the uncertainty created by the 5th Circuit's ruling, the Department of Labor issued a field assistance bulletin (FAB 2018-2) setting forth a temporary enforcement policy. FAB 2018-2 provides that the DOL "will not pursue prohibited transaction claims against investment advice fiduciaries who are working diligently and in good faith to comply with the impartial conduct standards for transactions that would have been exempted in the BIC Exemption and Principal Transactions Exemption, or treat such fiduciaries as violating the applicable prohibited transaction rules." It further provides that "investment fiduciaries may also choose to rely upon other available exemptions to the extent applicable after the Fifth Circuit's decision, but the Department will not treat an advisor's failure to rely upon such other exemptions as resulting in a violation of

the prohibited transaction rules if the advisor meets the terms of this enforcement policy."

In 2017, while the fiduciary rule was still in existence, the Treasury Department and IRS issued Announcement 2017-04 stating that the IRS will not apply Code Section 4975 or the reporting obligations related to transactions described in FAB 2017-01 (previous non-enforcement guidance) or subsequent related guidance. Footnote 4 of FAB 2018-2 confirms that FAB 2018-2 constitutes "subsequent guidance" for purposes of Announcement 2017-04.

FAB 2018-2 allows for the flexibility to make a good faith attempt to comply with the impartial conduct standards exempted in the BIC Exemption and (revised) Prohibited Transaction Exemptions or comply with the previous Prohibited Transaction Exemptions. Because of this flexibility, an advisor can elect to continue with contracts that were intended to satisfy BIC or the revised Prohibited Transaction Exemptions even though BIC and the revised Prohibited Transaction Exemptions no longer exist. Alternatively, an advisor can revert back to compliance with the previously existing Prohibited Transaction Exemptions.

With respect to reverting back to compliance with previously existing Prohibited Transaction Exemptions, it is crucial that if the compliance is outside of the scope of the written contract, policies, or procedures, the contract, policies, or procedures should be amended. Compliance with BIC or the revised Prohibited Transaction Exemptions are generally more rigorous than the preceding (current) Prohibited Transaction Exemptions. As such, if your contract, policies, or procedures have provisions that are more rigorous than the current Prohibited Transaction Exemptions and your intention is to merely comply with the less rigorous standard, the contract, policies, or procedures must be amended.

This is supported by a court decision, *Enforcement Section of the Massachusetts Securities Division of the Office of Secretary of the Commonwealth v. Scottrade, Inc.* (2018 Lexis 138813). In that case, the Massachusetts Securities Division charged Scottrade with violating the firm's internal procedures that were adopted to comply with the fiduciary rule. Even though the 5th Circuit has vacated the fiduciary rule, the Massachusetts Securities Division has made it abundantly clear that they will continue to prosecute this case against Scottrade. This case clearly shows that contracts, policies and procedures must be followed even if they are more rigorous than required by statutes or regulations.

## POST-VACATUR FIDUCIARY STATUS

Vacatur of the fiduciary rule does not eliminate fiduciary status for service providers that are fiduciaries as a result of exercising discretionary authority over management or control of the plan or administration of the plan such as a discretionary asset manager that maintain discretionary control over assets of the plan.

THE PROPOSED [SEC] REGULATIONS HAVE THREE PRONGS: THE CARE OBLIGATION, THE CONFLICT-OF-INTEREST OBLIGATION AND THE DISCLOSURE OBLIGATION.

The vacatur does have an impact on non-discretionary investment advisors as well as broker/dealers. Determination of fiduciary status for non-discretionary investment advisors and broker/dealers is now determined under a five-part test. A person is deemed to provide investment advice under ERISA section 3(21) if the person: (1) makes recommendations as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing, or selling of securities or other property; (2) on a regular basis; (3) pursuant to a mutual understanding; (4) that such advice was a primary basis for investment decisions; and (5) the advice was individualized to such plan.[2]

Generally, investment advisors will most likely still be a fiduciary after applying the five-part test since they are hired to provide investment recommendations and/or monitoring services on a regular basis that is particularized to the individual plan. However, unlike the fiduciary rule which covered rollovers directly, the determination of fiduciary status related to rollovers would require the five-part fiduciary test to initially determine fiduciary status. With respect to rollovers, if the advisor was already a fiduciary with respect to the plan and also provides advice to an individual regarding rollover from the plan to an IRA, he or she could

be considered a fiduciary if with respect to such advice under a 2005 DOL Advisory Opinion.[3]

On the other hand, if the advisor is not already a fiduciary to the plan and provides advice to the individual with respect to rolling over to an IRA, based on DOL Advisory Opinion 2005-23A the advisor would not be considered a fiduciary. The Department of Labor has not indicated whether its position has changed from the position taken in DOL Advisory Opinion 2005-23A; however, it appears to be reasonable that DOL Advisory Opinion is still good law post vacatur since it was good law prior to the fiduciary rule.

Broker/dealers will need to evaluate fiduciary status using the five-part fiduciary test to determine fiduciary status post vacatur of the Fiduciary Rule. Many broker/dealers will satisfy the requirements of the five-part test because they make recommendations as to the value of securities or other property or as to the advisability of investing in or selling such securities or other property, on a regular basis, based on mutual understanding, that the advice was a primary basis for the investment decision, and was directed to the plan. Broker/dealers are also involved in the IRA rollover business. Similar to investment advisors, the further analysis related to DOL Advisory Opinion 2005-23A is necessary to determine whether the broker/dealer is a fiduciary for purposes of the 2005 Advisory Opinion.

## PROPOSED SEC REGULATIONS

Even though the DOL fiduciary rule has been vacated, the Security and Exchange Commission (SEC) has issued proposed regulations regarding best interest. The regulations include some elements of the DOL fiduciary rule; however, the main impetus was the FINRA's suitability standards. The proposed regulations have three prongs: the care obligation, the conflict-of-interest obligation and the disclosure obligation.

The care obligation requires the broker/dealer to exercise reasonable diligence, care, skill and prudence to:

- understand the potential risks and rewards associated with a recommendation and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers;
- have a reasonable basis to believe that the recommendation is in the best interest of the particular retail customer based on the customer's investment profile and the potential risks and rewards associated with the recommendation; and
- have a reasonable basis to believe that a series of recommended transactions, even if in the customer's best interest when viewed in isolation, is not excessive and is in the customer's best interest when taking into account the customer's investment profile.

The conflict of interest obligation requires that broker-dealers establish, maintain and enforce written policies and procedures reasonably designed to:

- identify, and at a minimum disclose, or eliminate, all material conflicts of interest that are associated with recommendations covered by Regulation Best Interest; and

## Action Items

1. Review service contracts to determine whether the terms of the contract satisfy the current state of the law as well as reflect the services that the provider is committed to perform. This review should include an evaluation of whether to contract to accept fiduciary status as well as not accepting obligations no longer required after vacatur of the fiduciary rule.
2. Review internal policies and procedures to determine whether the policies and procedures satisfy the current state of the law as well as reflect the services the provider is committed to perform. The review should include evaluation on whether the policies and procedures overstate obligations for the provider as well as whether the policies and procedures place the provider at risk of regulators similar to *Massachusetts Securities Division v. Scottrade*.
3. Determine whether the compensation structure satisfies the current state of the law as well as reflect the compensation structure that is not overly restrictive, if desired.
4. Refresh knowledge of fiduciary requirements under the current fiduciary standards and determine whether you are a fiduciary.
5. Where it is determined that representatives will deliver fiduciary service, training should be updated to reflect the higher standard of care.
6. Obtain executed updated service contracts to the extent such contracts are amended to reflect current standards as well as reflect any revised provisions based on the different standards.
7. Provide revised disclosure to reflect current requirements.

- identify, and disclose and mitigate, or eliminate, material conflicts of interest arising from financial incentives associated with such recommendations.

The regulations provide that financial incentives are very broad. The regulations also provide that material conflicts must either be eliminated entirely or mitigated with appropriate disclosure.

The disclosure obligation requires that prior to or at the time of a recommendation, the broker-dealer reasonably disclose to the customer, in writing, the material facts relating to the scope and terms of the relationship with the customer and all material conflicts of interest associated with the recommendation. Material facts which must be disclosed include:

- whether the broker/dealer is acting in a broker/dealer capacity;
- the fees that apply a transaction, holding, and account; and
- the type of scope of services provided by the broker/dealer, including any account monitoring services.

## IMPACT OF THE VACATUR OF THE FIDUCIARY RULE ON COMPENSATION STRUCTURES

When the fiduciary rule became applicable, the method of compensation for many providers needed to be adjusted. The BIC Exemption required the financial institution to warrant that policies and procedures do not permit the use or reliance upon quotas, appraisals, performance, bonuses, contexts, special awards, differential compensation, or other actions or incentives that are intended or could reasonably be expected to cause an advisor to make recommendations that are in the best interest of the investor. This requirement caused many companies to change the method in which compensation was paid to advisors — especially broker/dealers and their representatives.

With the vacatur of the fiduciary rule, companies can evaluate whether to revert to prior compensation structures. Complicating this decision is whether a change in the compensation structure will fit within the proposed Best Interest regulations issued by the SEC.

## PROHIBITED TRANSACTION EXEMPTIONS

The fiduciary rule provided numerous changes to various Prohibited Transaction Exemptions (PTEs).[4] The changes included placing limitations on the transactions eligible for the exemptions to adding more requirements to be eligible for such exemptions. The vacatur of the rule means that the PTEs revert back to the exemptions as they existed prior to the fiduciary rule. PC

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FOOTNOTES

[1] *Chamber of Commerce of the United States v. United States Department of Labor*, 885 F.3d 360 (5th Circuit, 2018).
[2] 29 CFR §2510.3-21(c).
[3] DOL Advisory Opinion 2005-23A.
[4] PTEs 77-4, 80-83, 83-1, 84-24 and 86-128.


A packed hall enjoyed the return of "ASPPA Squares," which provides technical updates in an engaging format.

# PENSION ‘SQUARES’

WITH SOME NEW WRINKLES AND THE ADDITION OF A TPA SALES TRACK, THE 2018 ASPPA ANNUAL CONFERENCE GETS A ‘HIP’ TRANSPLANT.


BY
**JOHN ORTMAN & JOHN IEKEL**

PHOTOGRAPHY:
**RODNEY BAILEY EVENT PHOTOJOURNALISM**

THE 1,100-plus attendees at the 2018 ASPPA Annual Conference, held Oct. 21-24 at National Harbor, MD, were treated to four days of beautiful Washington, DC fall weather — weather that tempted them away from the jam-packed program agenda, networking opportunities and camaraderie that have been ASPPA Annual hallmarks for years.

Attendees at this year's Annual Conference chose from 87 workshops in four specialized tracks — TPAs, Recordkeepers, Defined Benefit, and Business Owners and Managers — and six general sessions featuring the foremost thought readers in the industry. And at Tuesday night's concert, ASPPA Nation rocked out to classic 1980s hits from The Deloreans.

Following are some of the highlights.

## ASPPA WELCOMES NOLAN AS 50TH PRESIDENT

Kicking off the conference on Oct. 21, ASPPA welcomed James R. Nolan, QPA, as the 2019 President of the organization. Nolan is the founder (in 1979) and chairman of the board of The Nolan Company in Overland Park, KS, an independent TPA providing recordkeeping, administration, actuarial and plan design services serving clients in 49 states. He has served on ASPPA's Leadership Council since 2013.

Joining Nolan as ASPPA Officers for 2019 are:

- *President-Elect:* Miriam ("Missy") Matrangola
- *Vice President:* Frank Porter
- *Immediate Past President:* Adam Pozek

In addition, three ASPPA members were elected to open seats on the ASPPA Leadership Council:

- JJ McKinney
- Bill Presson
- Natalie Wyatt

**Graff Honors Tripodi.** ASPPA Executive Director Brian Graff took the opportunity to honor longtime ASPPA leader Sal Tripodi "for his many years of service and commitment" to the organization. Tripodi, author of the widely read *ERISA Outline Book* published by ASPPA, will be phasing out his involvement in the multi-volume resource. But Graff also revealed some good news: Robert Richter, like Tripodi a highly respected longtime ASPPA member and former President, will be joining the

Opposite page: National Harbor, MD. This page: 2019 ASPPA President Jim Nolan (hair) is welcomed by outgoing President Adam Pozek.

American Retirement Association staff and "will be taking over as the new face of the EOB beginning on Jan. 1, 2019," Graff said, adding that EOB subscribers can look forward to "a seamless transition."

## FINNEGAN: NEW SECTION 199A OFFERS TAX PLANNING OPPORTUNITIES

At this year's DB regulatory update session, Tom Finnegan, EVP at CBIZ Savitz, explained the workings of the new Code Section 199A affecting qualified business income.

Created by the Tax Cuts and Jobs Act of 2017, the Section 199A generally provides a deduction of 20% of QBI to certain owners of pass-through entities, i.e., sole proprietors, partnerships, entities taxed as partnerships like LLCs and S Corps.

Under 199A, for owners of pass-through businesses with taxable income less than $157,000 ($315,000 if filing jointly) the deduction is simply 20% of the QBI. Between $315,000 and $415,000 (or $157,500 and $207,500), the deduction phases out in an accelerated (rather than straight-line) manner. "Basically, this means that owners of specified service entities can deduct 20% of their QBI if their taxable income is $315,000 or less," said Finnegan. Also, he noted, the proposed regulations under Section 199A generally provide that QBI is determined after ordinary business expenses, including pension deductions.

After the TCJA was enacted, Finnegan noted, there was concern that for sole props and partnerships, QBI would have to be reduced by a reasonable compensation adjustment. However, there was no such adjustment specified in the proposed regs.

So what's the impact on DB professionals? Finnegan explained that at the outset there was a concern that "this was going to kill their entire small plan business" because all owners of pass-through entities, the vast majority of which are small plan sponsors, would have lower tax rates on an ongoing basis than they would at retirement because they'd have a

Attorney David N. Levine and auditor Maria T. Hurd led a workshop session on missing participants.

20% deduction on all their qualified business income prior to retirement, after which it would be taxed as ordinary income.

"Because of the limitations that were placed on it and because the deduction was only 20% as opposed to some of the higher amounts that were being thrown about, the fact was that after 3 or 4 years, the effect of this really gets worn away," he explained.

But what it has done is create an opportunity for plans for the owners of specified service entities who are above the thresholds to reduce their income below the thresholds and enjoy the full benefit of the tax deduction. "Now, bear in mind that this is not the great boon to people making more than a million dollars that some of the trade press have made this out to be," he said. "But if you do have people who are marginally, or even not so marginally, above the $315,000 limit, and they're married filing jointly, and the only source of income is QBI, this really can be a great reason to put in a cash balance plan or another DB plan with a very large deduction and get an even larger deduction by doing so."

For example, he said, "imagine an owner who makes $500,000, is married filing jointly, and the spouse doesn't work. You put in a cash balance plan that has a $150,000 deduction and a DC plan that provides more than $35,000 in deductions. Well, all of a sudden this person's QBI is less than $315,000 because the carve-out business income is determined after all ordinary business expenses, including pensions.

"One concern we did have with the regulations is that the law provides that reasonable compensation is not considered qualified business income," Finnegan noted. That's clearly an issue for owners of Subchapter S Corps, as profits from the business are considered qualified business income, and their W-2 earnings are not considered qualified business income. Said Finnegan, "The concern was whether or not for partnerships and sole props, you would first have to make an allowance for reasonable compensation inside their gross income. And the regs don't provide for that adjustment. So for sole props, partnerships, and things taxed like partnerships, you just have one pool of assets and it's all qualified business income."

## DOES YOUR FIRM'S STRUCTURE MAKE SENSE?

The structure of your organization defines the way you serve your clients. Two industry CEOs led an active discussion of what that really means at a conference workshop session.

Petros Koumantaros, Managing Director/CEO, Spectrum Pension Consultants, and Sam Mitchell, President/CEO, Sentinel Benefits & Financial Group, outlined three common types of organizational structures:

- Functional, i.e., business units for different functions, like sales, customer care, etc.
- Divisional, e.g., around products, services or geographical regions.
- Matrix, which would include aspects of both functional and divisional.

Both Spectrum and Sentinel have developed multi-channel, functional organizations, Mitchell and Koumantaros said, as seems most common in the industry.

Mitchell listed some of the benefits of the functional approach that he has noted, both at Sentinel and in other firms in the industry, including:

- Operational clarity
- Allows your business to scale and specialize
- Associate career pathing (within and between different business lines)
- Cross-discipline expertise (e.g., phone center and operations support/ management)
- Succession/replacement planning

But there are some risks associated with the functional approach as well, Koumantaros noted, including:

- A silo mentality (each group focuses only on their issues)
- Accountability (the "not my job" mentality)
- How do you monitor multi-team processing and progress?
- Weakening of cultural bonds like mission and values

**Span of Control.** Among attendees of the workshop, the number of direct reports a manager has was a major shared concern, in both growing companies and stable ones.

Koumantaros noted that a narrow span of control facilitates more direct contact between managers and subordinates, but at higher costs than at organizations with wider spans of control. Among attendees, a limit of eight direct reports seemed somewhat standard.

How can an executive best determine what span of control is appropriate? Koumantaros discussed four main considerations:

**Organizational Size.** Generally, larger organizations have a narrower span of control and smaller organizations have a wider one. This is usually due to costs, with more managers and financial resources available at larger firms. Also, communication may be slower with narrow spans if it must pass through several levels of management.

**Workforce Skills.** The complexity or simplicity of the work will affect the number of desirable direct reports, Koumantaros noted. That is, routine tasks involving repetition require less supervisory oversight allowing a wider span of control (for example, payroll data processing and plan operations), and complex tasks are best suited for a narrower span of control (for example, consulting, plan design, sales).

Brian Graff, ASPPA's Executive Director, presented the 2018 Eidson Award to Mark Iwry (right).

**Organizational Culture.** "Organizations need to determine the desired culture when designing their span of control," Koumantaros said. "Flexible workplaces usually have a wider span of control because employees are given more autonomy and flexibility in the production of their work."

**Manager Responsibilities.** Koumantaros noted the importance of reviewing whether the organization's expectations allow managers to be effective with the number of direct reports they have, and to consider individual responsibilities, departmental planning and training.

## ASPPA HONORS IWRY, OTHERS WITH 2018 INDUSTRY AWARDS

The American Society of Pension Professionals & Actuaries honored Mark Iwry with the prestigious Harry T. Eidson Founders Award during the conference's opening session.

Iwry is currently a Nonresident Senior Fellow at the Brookings Institution in Washington, DC., a Visiting Scholar at The Wharton School, and a Senior Policy Advisor to AARP. From 2009 to 2017, he served as Senior Advisor to the Secretary of the Treasury on employer-provided

With the retirement of Sal Tripodi (right), Robert Richter will take over as editor of the *ERISA Outline Book*.

retirement, health plans and tax policy. Iwry is a long-time proponent of automatic features in 401(k) plans and auto-enrollment in IRA programs.

"Thanks to ASPPA for this singular distinction," Iwry said after receiving the award from ASPPA Executive Director Brian Graff. "I can't tell you how grateful I am, and how grateful the nation should be, to ASPPA and the American Retirement Association for their efforts to protect and improve the retirement security of all Americans. No organization has done more to point out the merits of the retirement system and the need to continue to improve it."

Other awards included the following.

**Educator's Award.** The 2018 Educator's Award was presented to Margaret ("Maggie") Younis, ERPA, CPC, QPA, QKA, TGPC. Younis is a Senior Consultant with Lincoln Financial Group with more than 19 years of experience in the industry.

**Martin Rosenberg Academic Achievement Awards.** ASPPA honored three industry professionals with the 2018 Martin Rosenberg Academic Achievement Award:

- Molly Tollefson, for receiving a perfect score and outstanding performance on the DC-1 exam;
- Nita Parekh, for receiving a perfect score and outstanding performance on the DC-1 exam; and
- Lauren Akisada, for receiving a perfect score and outstanding performance on the DC-2 exam.

**PenChecks Trust/ASPPA QKA Scholarship Endowment.** Six PenChecks Trust/ASPPA QKA Scholarships were awarded to individuals interested in pursuing ASPPA's Qualified 401(k) Administrator (QKA) credential. The scholarships will cover the QKA exam registration fees, related exam publications and the awardee's first year of membership dues. The 2018 scholarship recipients are:

- Calvan Medeiros-Rice, Client Service Manager at the Hilb Group of New England
- Amy Evans, Compliance Analyst at Newport Group
- Kevin Tomek, TPA Account Executive at American Retirement Plan Services

- Grame Hansell, Retirement Plan Support Administrator at Associated Benefit Planners
- Megan Yearous, Retirement Plan Services Consultant at Paradigm Benefits
- Christina Smalls, Administrator at Midwest Pension Actuaries

## KEYS TO EXPANDING WOMEN'S ROLE IN THE RECORDKEEPING INDUSTRY

Across the financial services industry, women are commanding a greater role in key decisionmaking. Where do today's recordkeepers stand in that context? What are today's trends, and where is the industry headed tomorrow?

Two women of influence explored those questions at a workshop session: Shelia Reed, Chief Marketing Officer at Aspire Financial Services, and Kara Ardis, Director of Business Strategy, Retirement Plan Sevices, at Charles Schwab.

"Why are we having this discussion?" Reed asked as an introduction. She cited several recent studies that point to progress in achieving a greater role for women in the industry — but also a persistent pay differential. On the downside, she cited InvestmentNews data indicating that only 2% of the $12 trillion currently in mutual funds is managed by women. However, other studies show that 20.8% of board seats at public companies are held by women, and 19.8% of Director and C-Suite positions are held by women. Both show that "women are making strides," Reed said. However, "there is still a difference in terms of wages," she noted, citing a study showing that women in the financial industry earn $0.80 for every $1.00 earned by their male counterparts.

One barrier for entry-level women, Ardis said, is a lack of support from managers and senior leaders compared to men. In fact, McKinsey's 2017 "Women in the Workplace" study showed a fairly consistent gap of about 15% between how male and female entry-level staff answered questions about the support they were getting from their managers or senior leaders in areas like advancement advice and identifying opportunities for advancement, advocating for specific opportunities and providing advice on how to navigate organizational politics.

And yet, said Reed, the multifacted financial services industry "offers every single career track anyone could want to choose — every skill set can be accommodated," from call center to corporate administration. In that context, the financial services industry overall "is one of the top three industries," she said. And in the recordkeeping industry specifically, 30% of the decisionmakers are now women — a significant sign of the progress that has been made.

One significant key to maintaining that progress is to understand that "when diversity is added to a decision or a process, the outcome improves," Reed asserted. Ardis noted that it's important for recordkeepers to think about and plan for where women in general are now in terms of financial planning and how their role as investors will change, calling that perspective "a new lens on our clients." Specifically, she noted that:

- By 2030, two-thirds of Americans' wealth will be controlled by women.
- Traditional financial services experiences don't resonate with women.
- A diverse workforce "allows us to evolve our experiences" to reach women more effectively.

So for women in the recordkeeping industry, what actions can they take? "Be the solution," Reed and Ardis urged, specifically:

- Stop being defensive about what they offer and their role in the organization.


Larry Deutsch and Mary Ann Rocco led a workshop session on lessons learned in the actuarial trenches.


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- See the abundance of opportunities that exist in the industry.
- Build a strong network of mentors — "both above and below," Reed said, i.e., both for you and by you, helping young women new to the industry.
- Don't be afraid to take risks — early and often.
- Know, perform and communicate your value to the organization.
- Connect with other women, via groups like the Women in Pensions Network or by attending ASPPA's Women in Retirement conference.

## STUDENT LOAN PROGRAMS TOP LIST OF PLAN DESIGN WARNINGS

Just because you can doesn't mean you should — a premise at the heart of a workshop session argued for caution in plan design changes, including student loan assistance programs.

Plan designs can cause difficulties for administrators, employers and third party administrators, observed Susan Diehl, President of PenServ Plan Services, Inc., and Steve Riordan, Director of Testing and Reporting Services for Fidelity Investments. And they reminded attendees of the need to keep in mind that in designing a plan and adjusting it, "Better never means better for everyone… it always means worse for some."

Riordan noted that the IRS issued a private letter ruling (PLR) on Aug. 17 in which it said that a 401(k) plan can be amended to include a student loan benefit program. He included the caveat that PLRs may not be relied upon as precedent by others. PLRs do indicate, however, what the IRS is thinking about an issue and may be interesting to parties in situations similar to those a particular PLR addresses.

The IRS' stance in the August PLR, Riordan said, means that student loan repayment (SLR) non-elective contributions made to the plan run by the particular employer in question would not violate the contingent benefit rule. "Student debt is astronomical," noted Riordan, a reason that SLRs — and the PLR — have gained traction.

In such a program, once an employee enrolls in the program and makes student debt loan repayments, the employer makes SLR non-elective contributions to the 401(k) or 403(b) plan. The employee must pay at least 2% of compensation to the loan program to receive the SLR non-elective contribution of 5%. Employees participating in the program would still be eligible to defer to the 401(k) plan, but would be ineligible for the employer match.

So with popular demand, and the blessing of the IRS in the case of at least one SLR program, why is caution advisable? Riordan noted that SLR contributions are subject to all qualification requirements; however, he said that he is more concerned about coverage, nondiscrimination and contribution limits. Each component, he noted, is separately tested regarding coverage and nondiscrimination. If one population receives a match and the other receives a non-elective contribution, that increases the potential for coverage and non-discrimination failures, he warned. He also indicated that, while very few plans allow after-tax contributions, the plan the PLR addressed did allow after-tax and mentioned that will be an important consideration for coverage and non-discrimination.

Additional administrative duties are another consequence of offering an SLR program, Riordan said. The administrative complexities include that employees can opt in and out of program, so they may be eligible for non-elective contributions at times and eligible for a match at other times. He also expressed concerns regarding whether a student debt payment becomes part of the annual audit.

After the SLR discussion, Diehl and Riordan discussed caution regarding eligibility as it relates to plan design. Riordan said that one way sponsors address the administrative complexities is to adjust eligibility by excluding groups from participation. In addition, he noted, applying different eligibility provisions to different groups can reduce employer cost. But the silver lining loses some of its luster with Riordan's observation that there are risks in turning to eligibility as an answer to administrative burdens: different eligibility by group may cause minimum coverage failures, and each contribution will need to satisfy either the ratio percentage test or the average benefits test. PC

Opposite page:
1. The DeLoreans brought the '80s back at Tuesday night's social event.
2. Rich Hochman (left) and Justin Bonestroo share a laugh at their workshop on Davis-Bacon plans.
3. 2015 Burrows Award recipient Larry Deutsch (right) joins a trio of ASPPA Past Presidents: Stephen Rosen (2005), Bruce Ashton (2004) and Mike Callahan (1996) (left to right).
4. ASPPA Executive Director/ARA CEO Brian Graff (left) with ARA General Counsel Craig Hoffman.

# 3(16) services

## Loans and Distributions

Why are 3(16) fiduciaries a good choice for handling money-out transactions?

By Susan Perry


JESS RODRIGUES / SHUTTERSTOCK.COM

*Editor's Note: This is the second in a series of feature articles by Susan Perry of Fiduciary Outsourcing, LLC on 3(16) services and the growing 3(16) market.*

In this second installment in our series on 3(16) fiduciary services, we'll look at the fiduciary aspects of loans and distributions. I call it "loans and distributions," but I really mean any money that leaves the plan to pay benefits for participants, beneficiaries and alternate payees in the form of distributions, withdrawals or loans.

The plan administrator named in the plan document is responsible to approve the distribution, loan or QDRO, and the trustee is responsible for carrying out the movement of money. What value does outsourcing the plan administrator's responsibility offer to plan sponsors?

Let's start by looking at the services currently being offered by various service providers:

- There are some recordkeepers where the TPA signs off on a request, but neither the plan administrator nor the trustee do so. The TPA's approval is all that is needed for the recordkeeper to issue the money to the participant.
- There are some recordkeepers where neither the TPA, the plan administrator nor the trustee is required to sign off before money can be issued to the participant.
- There are some recordkeepers that carve out complicated requests like loan refinances, hardship withdrawals or QDROS, but take responsibility to issue all other types of benefit payments without anyone else being involved.
- There are TPAs that take signing authority for a plan and approve loans and distributions.

In very few instances, the recordkeepers or TPAs assume fiduciary responsibility over the issuance of these payments.

So, why are 3(16) fiduciaries important? Let's look at a couple of examples.

## Forcing Out Small Balances

My firm was recently retained as the 3(16) administrator specifically for force-out distributions. The plan has about $600,000 in it and 250 participants with balances, of whom only 80 are active. You math wizards out there probably realize that the vast majority of the terminated participants have balances less than $5,000. This client's recordkeeper will only force participants out when specifically instructed to do so, and the client wasn't issuing the force-out instructions.

Also, the plan document did contain a requirement to force out small balances; the plan paid the CPA auditor, not the plan sponsor; and — as I'm sure you've realized by now — the CPA audit would not have been necessary if the force-out distributions had been made.

The plan sponsor had neither the time nor the education to understand what was required of them to force terminated participants out of the plan. Suggestions by the financial advisor and the TPA had gone unheeded by an overburdened payroll/HR department.

As a 3(16) fiduciary, we could step in and take care of the force-out distributions. We could use our fiduciary position with the plan to sign the recordkeeper's paperwork. We could create a process to locate the lost and missing participants. We could set up the IRAs. And, we could get these distributions processed systematically.

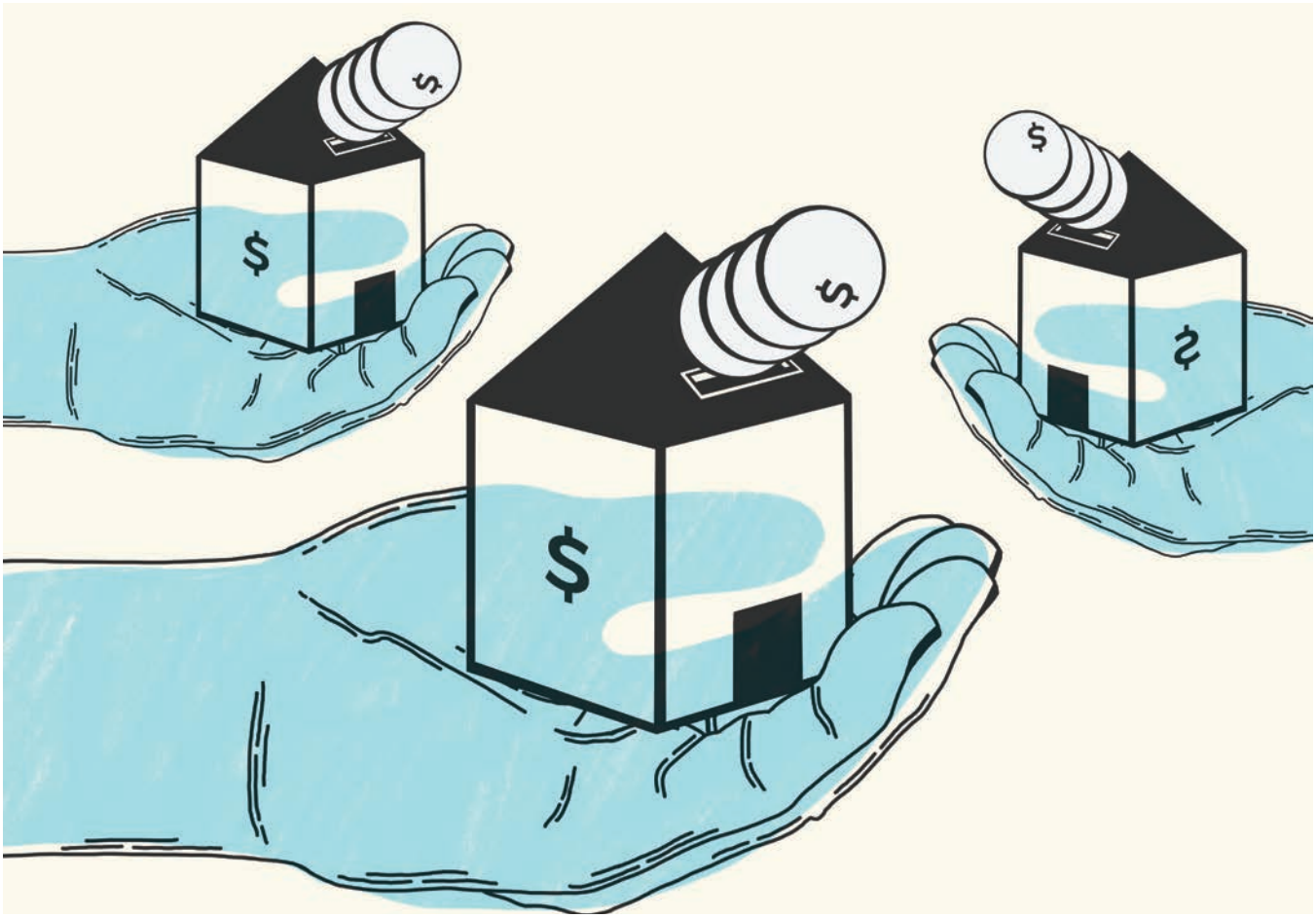
It wasn't a "hard sell" to obtain 3(16) fiduciary status over the force-out distributions for this client. As a result, the plan will not need a CPA audit for 2019, thus saving the remaining participants money on this expense.

The plan is now following its terms. And we look like a hero to the clients.

## Clients Misunderstand Plan Provisions

A while back, I was looking at those "to-do" email notifications that we all get from our recordkeepers. One of them was regarding a termination distribution to a participant. I didn't think anything of it until I called the client's office later that day and that participant, who happens to be the receptionist, answered the phone. I was calling the client about something else, so I asked to speak to the owner and began to address the issue I was calling about. While on the phone, I took a quick peek at the recordkeeper's website. Indeed, the receptionist that I had just spoken to was listed on the last payroll as terminated; her termination distribution was processed the day before.

After finishing up the business I had called the owner about, I asked about



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the distribution for the receptionist. The owner patiently explained to me that she had "fired" the participant as of close of business on the last day of the last pay date and reflected that termination date on the payroll file for that pay period. She then "rehired" the participant the next working day. You see, the participant didn't qualify for a hardship, didn't want to take a loan, and wasn't 59½. So, as you can imagine, being terminated was the only way to get the participant's money out of the plan.

I spent a few minutes explaining to the client that this wasn't okay. The participant was not terminated. She was not entitled to a distribution. Since we have 3(16) authority for this client, after I hung up, I called the recordkeeper and authorized them to stop payment on the check. Luckily,

## Why are clients willing to pay someone to be a 3(16) and take responsibility over the money-out transactions?

the check hadn't even been mailed yet. While the participant wasn't happy, the plan didn't pay out money improperly.

If we hadn't had fiduciary status with regard to the plan, could we have stopped the improper payment? Maybe. It depends on the recordkeeper. But, because we had fiduciary status, I knew we could get that payment stopped.

### Why Clients Care

Why are clients willing to pay someone to be a 3(16) and take responsibility over the money-out transactions?

- They don't have the time to understand the rules.
- The immediate need of a participant to get their hands on their money causes stress to the clients who often have no desire to enforce the rules.
- If money leaves improperly, the 3(16) may be responsible to make the plan whole rather than the client.

### Making the Plan Whole — Cyber Fraud

If you are going to get into the world of approving loans and distributions, whether as a fiduciary or not, you need to contend with the issue of making the plan "whole." The biggest concern to me isn't failure to follow plan document terms, thereby making an inappropriate distribution. It's the cyber fraud that is currently going on. So, if you are going to be a fiduciary to a plan with regard to the payment of benefits, you should consider this question: *How do you know it's the actual participant making the request?*

I have attended several TPA conferences hosted by recordkeepers this year. In each one, the issue of cyber security has arisen. Here's just one of the current scams, in broad terms, as I understand it.

Most participants never log into their recordkeeping website. If they do, it's usually at enrollment and then never again. Please keep in mind that a Social Security number and identity are something you can buy on the internet for a small fee. A cyber thief with a bit of patience identifies a participant with a balance who isn't likely to log onto their account. The cyber thief then goes to the recordkeeping website and indicates that they have forgotten their password. The recordkeeping system asks them three security questions… the answer to all three of which are easily found on the participant's Facebook page or Twitter account. The cyber thief resets the password and changes the email address.

At a later time, the cyber thief changes the participant's address on the recordkeeping website. Now, it's time to apply for the maximum allowable loan and have the proceeds sent to the cyber thief's address. All of the confirmation emails go to the cyber thief, because the cyber thief has already changed the email address. The plan sponsor gets notified to start up loan repayments by the recordkeeper… and now there's money going out of the plan fraudulently.

Yes, this really is happening.

If you are the TPA, and your service agreement is well written, this is almost certainly not your problem. You can limit your liability. You can state that there was no reason to suspect cyber fraud. You simply approved the vesting and amount of an online loan request.

If you are the 3(16), however, you may not be so lucky. Your service agreement might say, as some I have seen do, that you are responsible for all loans and distributions, without carving out any fraud situations.

I know that recordkeepers are wrestling with the issue of how to know it's the actual participant making the request. I know we have wrestled with the issue as well. If you perform 3(16) work on loans and distributions, I suspect that you have considered this issue too. Several recordkeepers have issued guarantees or warranties to make participants who are affected "whole." That's an interesting and potentially expensive precedent to have set.

### Conclusion

There are advantages and disadvantages to acting as a 3(16) fiduciary overseeing loans and distributions. It also seems possible to take care of many of the client's desires without declaring fiduciary status. But if you do decide to take on the fiduciary role, make sure your service agreement is clear about what you are responsible for — and what you are not. PC

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# Business Practice or Ethical Decision?

## Here's how to help business leaders integrate ethics into their decision-making process.

BY AMANDA IVERSON & LYNN YOUNG

At a recent industry education conference, several professionals were discussing ethics. One conversation participant stated, "That is a business choice rather than an ethical decision." This led us to consider the question, "Can one really separate any business practice from an ethical decision?" Is it possible to make a business decision without including an ethical consideration? One might argue that business leaders make business decisions every day that do not involve ethics. Others may disagree.

The Merriam-Webster dictionary defines ethics as, "the discipline dealing with what is good and bad and with moral duty and obligation." Based on that definition, can one ever make a business decision without the consideration of its ethical implications?

We believe the answer is "no." In this article, we will explain why we believe every business decision should incorporate ethical considerations and strategies to help business leaders integrate ethics into their decision-making process.

The business decision-making process will always present ethical considerations for the decision maker. When making a business decision, the individual asks, "Is this decision the right thing to do?" This question encompasses the essence of nearly every business consideration to be made. The decision maker needs to evaluate a plethora of factors when answering this question. For example, he or she may consider several

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> "The business decision-making process will always present ethical considerations for the decision maker."

questions: Is this right for our clients? Is this right for our employees? Is this right for our stakeholders? Is this right for our community? Is this right for our industry? Is this right for me?

This thought process is in line with the "Four Way Test" used by Rotarians as a moral code for personal and business relationships:

1. Is it the *truth*?
2. Is it *fair* to all concerned?
3. Will it build *goodwill* and better *friendships*?
4. Will it be *beneficial* to all concerned?

## PERSONAL AND BUSINESS ETHICS

Is there a difference between "business ethics" and "personal ethics"? Do situations or our inner voice dictate the actions we take? We assert that individual and corporate ethical values and ideals will emerge during the evaluation of business decisions. The process by which all business decisions are made is dependent on the ethics of both the individual and business culture.

We recognize that some business decision makers will not care or consider if the decision that was made included an ethical consideration. Even with the lack of consciously reflecting on ethical considerations, typically the decision maker's ethical principles will still emerge, although his or her ethical standards may vary greatly from those of others.

When the decision maker completely rejects or does not evaluate the idea of ethics as it relates to the decision, a business risk is created. In the riskiest of scenarios, when ethics is not considered, if the decision maker is completely focused on a result-driven-only decision, he or she may (unintentionally) overlook some ethical issues in the desire of a positive financial outcome. Positive financial benefits should be considered when business decisions are made, but not at the entire indifference of ethical principles.

In his book, *Ethics 101*, author John C. Maxwell believes that most all people can be categorized using five statements:

1. I am always ethical.
2. I am mostly ethical.
3. I am somewhat ethical.
4. I am seldom ethical.
5. I am never ethical.

Maxwell believes that the majority of people place themselves in the first or second category. Further, most people who put themselves in the mostly ethical category do so out of personal convenience. Conflict, practicing discipline, losing and paying a high price for success is inconvenient. And most people think that being "mostly ethical" is fine, unless they are on the losing end of someone else's lapse in ethics. However, Maxwell contends it is not enough for any of us to act ethically most of the time, but instead, we all should strive to act ethically with all of our decisions. He believes if we follow the "Golden Rule" and ask the question, "How would I like to be treated in this situation?" as we reason through our decisions, it is an integrity guideline for any situation.

One must ask: If you consider yourself an ethical person, then would you not be required to act in an ethical manner in all aspects of your life, whether business or personal? It would seem reasonable that if one does not act ethically in all aspects, then that person is not an ethical person, but rather is ethical when it is convenient to be so.

## PUT IT IN WRITING

Every business, regardless of size, should establish ethical behavior expectations in the company's written code of conduct or code of ethics. It should be read and known by all employees, decisions makers and owners. It should establish direction for every business practice decision and provide guidance for the business decision makers. The written policy should take into consideration the question, "Is it right?" It should also include the following considerations: Is it legal? Is it acceptable in our industry? Does it follow any applicable association(s) established code of ethics and/or code of conduct? It should also address the question, "Will this decision contribute to (versus oppose) our desired corporate culture and public image?"

## DECISION-MAKING CONSIDERATIONS

With a developed corporate code of ethical conduct, the evaluation of the situation will assist to help the decision maker assess the implications of the decision and the desired organizational effects. The decision maker should consider both the short-term long-term implications of the business

decision. Additionally, while it would be nice if every business practice decision were easy to make, that simply is not reality. Thus, a decision maker should have a corporate support system to help him or her evaluate the decision and its intended results. This support should include at least one or two other individuals that he or she can run the decision by prior to making a final call. Typically, other points of view will help illuminate unintentional ethical consequences that the decision causes.

Every day, business leaders face difficult decisions. They need to consider the effects of that decision on their company, bottom line, and all stakeholders. As business decision makers, one must also consider if his or her decision and business practice was presented as a headline of their city's most popular newspaper. Is this decision one that would make my partners, spouse, parents, children, employees and clients proud? If not, this decision should be reconsidered. Warren Buffett is quoted as saying, "It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently."

To ensure that your company has a strong ethical decision-making culture, we suggest that you create a corporate ethics policy, and that all employees become familiar with it. Additionally, we suggest that all business decision makers be aware of their applicable certification and association codes of conduct (including, but not limited to, ASPPA's Code of Conduct and Circular 230). We also suggest that decision makers have a corporate support system to help "bounce" decisions off other business leaders. Ultimately, we believe there is no business decision that should eliminate the consideration of ethics, period. PC

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*Lynn M. Young, EA, is a partner at Pinnacle with more than 31 years of experience in the actuarial consulting and third-party administration of qualified plans. She has served ASPPA and ACOPA in various leadership positions since 2010.*

# A Former Client Can Become Your Best Reference

## Here's how to turn a client's departure to your advantage.

BY DICK BILLINGS

We've all been there — the email (or worse, an actual *letter*) arrives. With or without any prior "heads-up," your client informs you they are moving their plan's administration elsewhere. You read it and even though your client's departure will not cause you to "close your doors," that sinking feeling in your stomach still comes about. How could your client — after all your years of faithful service — be leaving you?

After an initial "pity-party," you then go through that mental checklist — what could you have done differently that would have prevented this calamity?

Yet we all know this fact: No matter how good we are, we are *always* going to lose clients.

But as I try to rationalize each situation, going through my mental checkIist, I always make myself feel better if the client leaving us is for reasons like these:

- the company was bought out
- the plan "no longer met their needs"
- the client is going bankrupt (This makes *me* feel better, but probably not the client!)

Of course, the worst reason to lose a client is because either:

- they found a better vendor that charges less (at least in *their* mind); or
- we messed up somehow and were not able to fix it to the client's satisfaction.

But regardless of why your client is leaving, if you play your cards right, this contractual relationship you are losing could still remain as a "referral relationship" for use with future prospects. Let's discuss some tips that just might work for you.

### WHY DO — OR NOT DO — AN EXIT INTERVIEW?

If you have ever taken any Human Resources classes, one of the things they will tell you do when you lose an employee is to conduct an exit interview. If you can get your terminating employer to cooperate (and virtually all of them will if you ask nicely), you can get some very good information from a person who has no incentive to "say the right things" or "keep you happy." So it goes with a client who has decided to make that fateful decision to leave. They will tell you what you *really* need to hear.

If your client is leaving for reasons outside of your control, then there is no "blame" to discuss. In theory, there is nothing you could have done differently that would have changed the outcome.

The very same day your client has told you they are leaving is the time to determine whether to do an exit interview or not. There may be good reasons to not conduct an exit interview. Maybe the client was too insignificant to be useful. Maybe this is a client your staff is actually happy to see leave. Maybe it was just too much of a problem client. Or you messed up the client's administration somehow and you already know their reason for leaving.

Let's assume you decide to conduct the exit interview. Your departing client cooperates, and gives you a good review. What do you do now? I suggest putting departing clients in categories, like:

- Reason for leaving
- Type of business (professional, manufacturing, etc.)
- Plan size (both assets and participants)
- Date they left

This is because when you are asked someday for "references," the prospect will most likely want contacts they feel are relevant to their situation. And when you tell that prospect that a particular reference is from a former client, they will always want to know why that former client left you.

### WHO CONDUCTS THE EXIT INTERVIEW?

The answer to that question is: It depends. Unless the owner has a direct relationship with the client, I would have someone else do it. If the client's departure is not because of something your firm did, have the Account Manager conduct the Interview. Since he or she has the closest relationship with the client, it's likely the interview will be more successful.

You should provide a checklist of questions, a script, or both to the interviewer. Using a common format for all exit interviews will result in more effective and consistent responses.

If the departure is because your firm messed up somehow, the dynamics change. Should you ask for a reference from this departing client? Probably not. But you may still want to conduct some kind of exit interview.

In this case, the person to actually conduct the interview should be a VP or owner. This shows respect for the client. And as much as most of us tend to not want to own up to our mistakes and receive negative feedback, I can assure you that the conversation will be a learning experience for you and your company. It will help spur you to initiate processes and procedures to prevent this mistake from happening again. And even if you think you know all the reasons for your client's departure, trust me: You will find out other useful tidbits — maybe even some positive feedback on other aspects of your firm's employees or services.

## WHAT ABOUT AN RFP?

As a TPA myself, Requests for Proposals are typically not my favorite way to compete for a new client. But, if the client (or the advisor relationship) is significant enough, you will no doubt do your best to respond. So you look through the RFP and see that seemingly inevitable question: *"Please list contact information of at least three former clients."* Do you tell them it's confidential? Do you ignore the question? Or do you respond because you knew this day (and question) would indeed come? If you keep your data current, you will have an easy answer.

For me, an RFP is more the exception than the rule. This comes up so much more when you simply have a prospective client who happens to ask for references. Now, sometimes they do not get specific in their request, in which case you can provide either current clients or former clients. I suggest a mix of both, even if your prospect does not specifically ask for a former client. We are always trying to differentiate ourselves from our competition. You know that if this prospect is asking you for references, they are asking other vendors for the same thing. Well, if you include a reference from a *former* client (be sure to point that out!) who is willing to give you a shining reference, this tells your prospect something: that you treat all your clients with respect — even those who end up firing you. Again, this is not an expensive endeavor for you or your staff, but it's very effective prospecting for new business.

## CONCLUSION

Think about how you got your business to where it is today. How did you get to this point? Did you have to make some tough decisions along the way? I would trust that you have indeed made a few tough decisions in your business life. Compared to those tough decisions you had to make, "speaking to clients who are leaving you" does not seem to me to be that difficult — especially if you set up the process to have one of your staff do it. Again, it's not an expensive investment of time or money — with the potential for a good return on that investment.

So why *not* ask your departing clients for a reference? The worst thing they can do to you is say no! PC

*R.L. "Dick" Billings, CPC, CEBS, ERPA, is the founder, president and CEO of Billings and Company, Inc. in Sioux City, IA, an administrative and recordkeeping firm with clients in 36 states.*

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# The Price May *Not* Be Right!

## If cost is the primary factor in selecting whether to go TPA or bundled for administration services, plan sponsors should make sure that the full picture of cost is being shown and evaluated.

BY JASON BROWN

One of my favorite daytime TV shows as a child was "The Price Is Right." Who could resist the anticipation and excitement of the announcer and Bob Barker (it's Drew Carey these days) telling contestants to "Come on down" and then watching those people try to guess the price of various items in an effort to win all sorts of fabulous prizes? For a kid, this was TV entertainment at its best!

Of course, the entire premise of the game show was for contestants to guess the price of products and merchandise, with the actual cost disclosed at the end to determine whose guess was the closest. There were no ambiguities or variances on the total cost of the items, so a winner was easy to determine.

But what would have happened if the prices of the items were variable targets based on a given year in which they might be purchased? The inclusion of this variable would have made the show much more complicated, if not nearly impossible, since the contestants would not have a firm understanding of how the prices were derived. Would they be guessing on what the automobile costs today, or an escalated value based on projected cost three to five years from now?

This kind of predicament happens routinely in the retirement plan market when one is benchmarking and comparing the cost of incorporating a TPA firm versus utilizing a bundled administration arrangement offered through a given recordkeeper. The differential in how the fees are shown and paid when comparing the two administration options can be quite perplexing. So let's examine how these costs are typically shown and what a plan sponsor needs to know to truly understand the overall price of these services.

Over the years I have run into many instances where retirement plan advisors have positioned bundled administration solutions over utilizing a TPA based purely on what they thought was "cost." I have written several articles (including for PC magazine) touting the benefits, value and superiority of incorporating an "Alpha TPA" over utilizing a bundled administration arrangement. However, some retirement plan advisory firms focus primarily on the cost for services, and not necessarily the value that a service provider may offer.

I started evaluating this "positioning of cost argument" more and found that what was considered and was being illustrated as "the cost" was typically not a full picture, nor an accurate portrayal of the ultimate real long-term cost for administration services.

Now, that may seem like a confounding statement. There is no intent to get overly philosophical on this subject, but there are serious considerations regarding what something costs *today* versus what it will ultimately cost *over time*. The rest of this article illustrates how these fees are usually compared and helps determine if "the cost" shown is really "the cost" paid for administration services.

### FLAT FEE TODAY VERSUS ASSET CHARGE TOMORROW

One of the most confusing aspects for a plan sponsor to understand are variable costs (revenue driven by the growth of plan assets to cover expenses) versus flat dollar costs. When bundled and unbundled (TPA for administration services) quotes are requested from the same recordkeeper, they incorporate their cost structure (typically in the form of an asset charge) to cover their recordkeeping services, the advisor's compensation and their bundled administration cost. Of course, they back out their administration/compliance cost for the unbundled proposal since the TPA would be providing those services.

The TPA proposal (cost) then gets included with the unbundled proposal for the expense comparative/benchmark. In this review, the investment expense and advisor compensation components are not really of paramount interest, since they would be the same regardless of whether the plan utilizes a bundled or unbundled administration arrangement. Table 1 shows a commonly used summation of annual fees for these two services (recordkeeping and

administration). (Please keep in mind that any TPA revenue that could have been available/provided to the TPA by the recordkeeper was eliminated for comparative purposes.)

**Table 1: Annual Fee Comparison of Bundled and Unbundled Services**

| | YEAR 1 | |
|---|---|---|
| | BUNDLED | UNBUNDLED |
| Plan Asset Charge | 0.30% | 0.23% |
| Administration Fees | $0 | $9,000 |
| | | |
| Recordkeeping & Administration Costs | $33,000 | $34,300 |

*Assumptions: $10,000,000 in assets, $1,000,000 in annual contributions, no investment returns incorporated*

According to the comparison, it would cost the plan sponsor $1,300 more to incorporate a TPA versus simply going with the bundled offering. This is usually where the benchmarking analysis ends. However, what is not usually emphasized in these reviews is that the administration services being provided by the bundled arrangement are being covered by an asset charge (the 0.07% differential) and the administration cost is generally amortized over a period of five years or more. This nuance is important because as plan assets grow over time, the revenue generated by the applied asset charge will grow as well, meaning the cost for administration will continue to grow over time in the bundled service arrangement.

In contrast, the TPA fees are flat dollar in this example, and will become a declining percentage of assets over time as the plan assets grow. An easy way to think about this from a plan sponsor's perspective is that this service is being paid each plan year. They need to know not only how much they are paying in Year 1, but also how much they are paying in subsequent years as well. The more prudent and accurate assessment of cost should not only incorporate the initial year, but also illustrate what the fee structures look like over the projected amortization period of five-plus years (as seen in Table 2) to get a better understanding of cost for services.

As you can see, the standard one-year review still shows the initial year being more expensive for the plan sponsor to incorporate a TPA, but the flat fee advantage of the TPA's pricing actually becomes more beneficial and effectively less expensive starting in Year 3. Of course, the cost variance slants even more in favor of the TPA in subsequent years, as the TPA price will continue to become a smaller percentage of assets as the plan grows. This might not be the case in all comparisons between TPA and bundled administration expenses, but plan sponsors need to know not only what their service provider costs are today, but also what the plan assets are paying and covering tomorrow.

I am a firm believer in "cost is what you pay, value is what you get" and I am not an advocate of buying anything purely on cost (especially when it involves the complexity and expertise needed to properly administer a retirement plan). That being said, if cost is the primary factor in selecting whether to go TPA or bundled for administration services, plan sponsors should make sure that the full picture of cost is being shown and evaluated. That is the only way a plan sponsor can truly know if The Price is Right! PC

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**Table 2: Annual Fee Comparison Over Five Years**

| | YEAR 1 | | YEAR 3 | | YEAR 5 | |
|---|---|---|---|---|---|---|
| | BUNDLED | UNBUNDLED | BUNDLED | UNBUNDLED | BUNDLED | UNBUNDLED |
| Plan Asset Charge | 0.30% | 0.23% | 0.30% | 0.23% | 0.30% | 0.23% |
| Administration Fees | $0 | $9,000 | $0 | $9,000 | $0 | $9,000 |
| Recordkeeping & Administration Costs | $33,000 | $34,300 | $39,000 | $38,900 | $45,000 | $43,500 |

*Assumptions: $10,000,000 in assets, $1,000,000 in annual contributions, no investment returns incorporated*

| | | | | | | |
|---|---|---|---|---|---|---|
| 5 Year Cost Aggregation | | | | | $195,000 | $194,500 |

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Part of the American Retirement Association

# Responding to Ethics Inquiries

## Discipline complaints raise a number of issues and should not be put off or ignored.

BY LAUREN BLOOM

Paula is a pension professional and a member of ASPPA. She began her career working for Ralph, a family friend, who first hired Paula as an intern while she was in college. Paula continued to work for Ralph after graduation, rising through the ranks to become Ralph's junior partner. When Ralph retired in 2016, he proudly turned the firm over to her. Paula thinks of Ralph as a second father and remains in close touch with him.

Since Ralph retired, Paula has been going through his old files, familiarizing herself with them as her work schedule permits. She has been troubled to discover some discrepancies. In a few cases, Ralph appears to have given clients bad advice. It appears that no harm was done, but his work was shoddy at best. Immediately after the 2008 financial meltdown, Ralph engaged in aggressive marketing, making inflated promises to prospective clients. Most disturbing, Paula discovers a file of old bills showing that Ralph was padding fees, charging clients his full professional rates for work Paula did as an intern.

Paula considers confronting Ralph about his past practices but decides against it. He has retired, after all, and she doesn't want to damage their friendship. She resolves to be more professional than he was in running the firm, and to correct any issues on a case-by-case basis.

Then, Paula receives a letter from the American Retirement Association (ARA) informing her that a discipline complaint has been filed against Ralph by MCorps, a former client that hired Ralph to help terminate its defined benefit plan. MCorps asserts that, because it relied

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on bad advice from Ralph, it is now facing a lawsuit from participants challenging the legality of the termination. The letter asks Paula to respond to MCorps' claims against Ralph and to provide any additional information that could help ASPPA address the complaint.

Paula goes back to the MCorps' files and discovers that Ralph apparently did give MCorps bad advice. He also inflated MCorps' bills by approximately $25,000. A note in Ralph's handwriting on the last bill reads, "Greens fees — hooray!" It is decorated with a smiley face.

What should Paula do?

Section 13 of the ARA Code of Professional Conduct imposes obligations on members of ASPPA, NTSA, ACOPA and NAPA. It provides in pertinent part:

> A Member shall respond promptly in writing to any communication received from a person duly authorized by American Retirement Association to obtain information or assistance regarding a Member's possible violation of this Code. The Member's responsibility to respond shall be subject to Section 5 of this Code, "Confidentiality," and any other confidentiality requirements imposed by Law. In the absence of a full and timely response, American Retirement Association may resolve such possible violations based on available information.

Thus, tempted though she might be to ignore the ARA letter, Paula is obliged to respond promptly and in writing. The question then becomes how much she should say. MCorps is involved in litigation. It's not much of a leap to imagine MCorps suing Paula's firm for malpractice based on Ralph's bad advice.

Given that, Paula's first call is to her firm's attorney. The lawyer advises Paula to say as little as possible in her response to ARA, at least until the litigation is resolved. She warns Paula that the firm could be held liable for Ralph's malpractice and urges her not to admit to anything that could be held against Paula's firm in a future suit.

Paula sees the wisdom of her attorney's advice, but it troubles her. Though disillusioned by her review of his Ralph's files, Paula remains fond of him and wants to help him. She recognizes that without a reply from her, the ARA will probably resolve the complaint based on incomplete information. The results may not be good for Ralph. Then again, the MCorps file doesn't present Ralph in a flattering light. Paula is uncertain how much of the MCorps file is confidential and, therefore, not appropriate to share with the ARA.

Paula has a few options, none of which is entirely satisfying. She can follow her attorney's advice and write a letter to the ARA acknowledging receipt of the complaint but declining to respond to MCorp's allegations because the legality of the plan termination is in active litigation. She can ask the ARA to delay its investigation until the lawsuit is resolved. She can hold back at least some of the MCorps file from the ARA on the grounds of confidentiality or relevance to MCorp's complaint. Alternatively, Paula may decide to be more forthcoming, acknowledging Ralph's error while also advising that he has retired. The ARA is a professional association, not an inquisition. Paula can trust it to respond thoughtfully to the complaint and not to be unreasonably harsh with Ralph.

To manage her firm's litigation risk, Paula could ask her attorney to contact Ralph's attorney to get Ralph's side of the story or talk to Ralph herself. Depending on the amount of risk she is willing to take, Paula might even reach out to MCorps to see how her firm can assist with the litigation. A supportive approach with MCorps might protect her firm, and Ralph, from being named in a malpractice suit later.

> "A supportive approach with MCorps might protect her firm, and Ralph, from being named in a malpractice suit later."

Discipline complaints raise a number of issues and should not be put off or ignored. Paula's response should be carefully considered and timely made. A thoughtful reply is best, both for Paula's firm and, ultimately, for Ralph. PC

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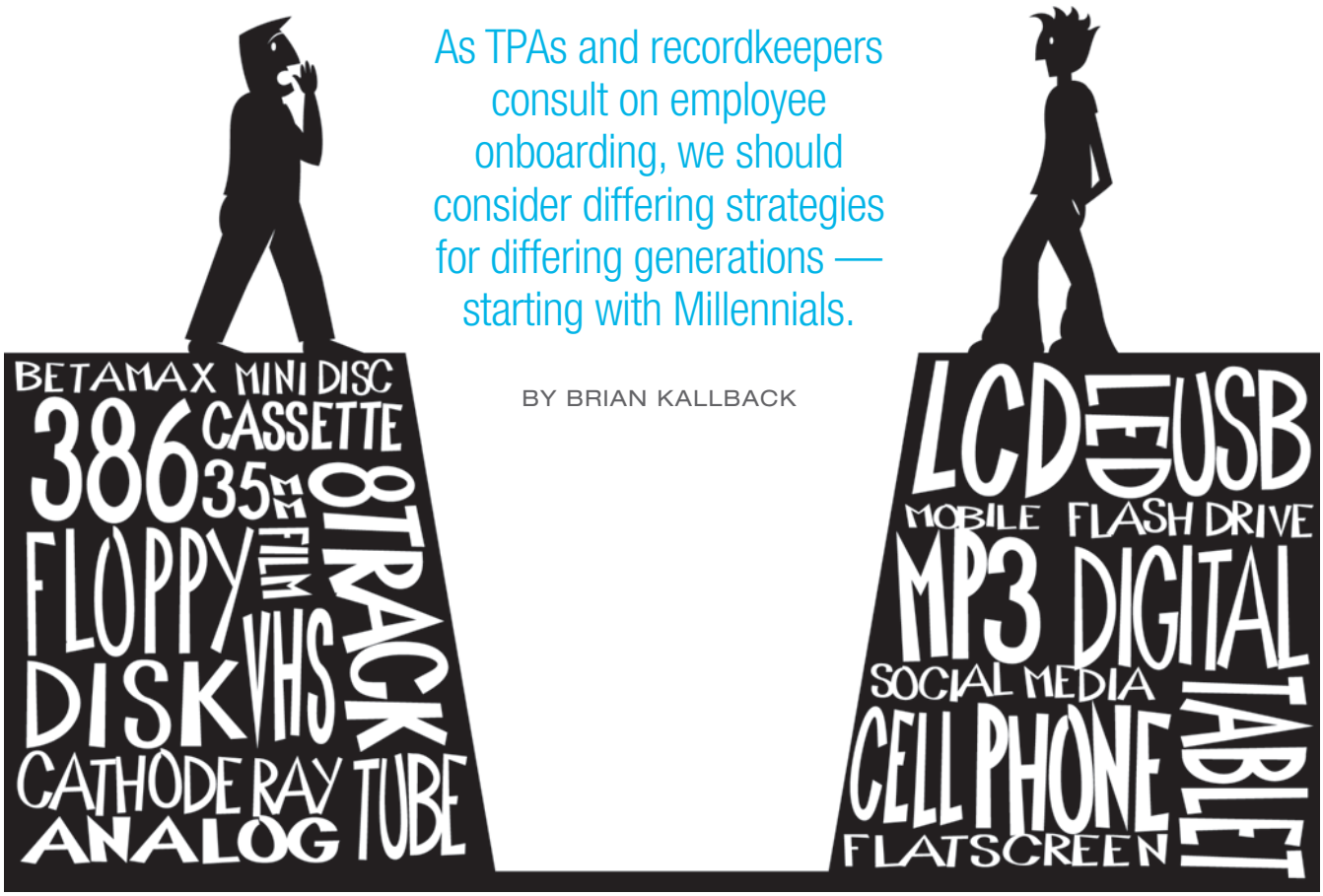
# Do We Make Smart Decisions When Drinking From a Firehose?




As TPAs and recordkeepers consult on employee onboarding, we should consider differing strategies for differing generations — starting with Millennials.

BY BRIAN KALLBACK

What is it like for a new employee? Regan, age 22, describes her experience below as she started her new position. While we may listen to her story and feel we're different, much of her experience is all too common.

"During my orientation, my company didn't explain too much about the retirement plan. They told us about the company match, but the focus was on how to fill out the enrollment form. I called my former Finance professor and he walked me through the investment options. We discussed the different stock/bond mixes, the lifecycle funds, and what would be recommended for my situation based on some Morningstar reports. Through this, we talked about the pros and cons of each option available and he walked me through the Summary Plan Description. Thus, I do feel comfortable with the investment selections I elected.

"The information I received from my company said the average contribution to a retirement plan, whether that be the company plan or other forms, is 12-15%. It was never discussed on an individual or personalized basis, but in generalities and rules of thumb.

"I did not complete a retirement projection, hear about the plan fees and expenses, and, as I previously stated, the

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investment options. In my case, I found someone outside my company to help and educate me.

"I knew a fair amount of retirement planning going into my job because of the Personal Finance class I took in college. Because of this, I was not completely lost on what was being discussed and there were only a few specific points in which I was not for sure. I was also motivated and understood the power of compound interest. A second conversation with my former professor helped with further clarification.

"Overall, my company provided an ability to enroll in the retirement plan, but it was up to me to educate myself on my personal situation. The materials offered some education support, but I chose to speak with a person in whom I knew and trusted."

We should give Regan credit — she showed initiative by reaching out to her former professor to ensure that she had a solid foundation for her retirement. Many Millennials understand their retirement decisions can be impactful for their future. Yet, they are often digging through the muck of student loans, new jobs, new geographies, and being outside of the safety of the bubble created for them in college. It is often the first time they need to make mature, responsible, adult financial decisions. And many of them yearn for unbiased, unconflicted education about their options. As TPAs and recordkeepers consult on employee onboarding, we should heed Regan's example and consider differing strategies for differing generations.

## FOCUS #1: UNDERSTAND WHERE THEY'RE AT…

Think back to the first few days on a new job — the hurried schedule from appointment to introduction to meetings to orientation. At many employers, it is like drinking from a firehose. Yet, is this rush effective and a best practice? Yes, there are some regulatory and compliance considerations, but we are asking our new employees — often fresh out of college and mentally swimming in the new life of an adult — to make life decisions in a matter of a 30-60 minute meeting or on their own.

## FOCUS #2: INCOMING FINANCIAL LITERACY

We applaud Regan for her proactivity and her respect for compound interest. However, many employees will not take similar measures and do not understand basic finance. I met with one employee who had been with a financial institution for three years. He mentioned when he started, he had a lot of forms to fill out and he was in midst of wedding plans. So he looked at his fund lineup, which was organized from top down from money markets to aggressive equities… and he put 5% on each line. He completed his form in 2009, at age 27… right as the bull market started. While it was ultimately his responsibility to elect his investments, no one stopped to ask him if he wanted to learn more.

Many of us bemoan the current state of financial literacy in America. Saving for retirement is much more than completing an enrollment form. It is a comprehensive conversation involving debt, saving, objectives and budgeting. Many employees do not budget, do not save, and do understand basic financial fundamentals. Yet, our employee onboarding programs ask them to access the higher-level financial knowledge needed to complete our forms wisely. This dichotomy is troubling.

## FOCUS #3: AUTO FEATURES

Lack of financial knowledge is a major reason for implementing auto features, such as automatic enrollment and escalation. It also explains the rise and popularity in target date or lifecycle funds. Study after study highlights how employees do not understand their retirement options. Look no further than any study that shares how some employees think their retirement plan is free. While automatic features will increase participation and contribution percentages, they are not an education crutch. They do not absolve a plan sponsor from explaining and educating. How many employees understand the strategy behind automatic enrollment?

## FOCUS #4: HELP THEM MEET THEIR FUTURE SELVES

About five years ago, Prudential Retirement released a video within their "Brain is to Blame" series concerning our future selves. In the video, a hypnotist transports a small audience into their personal future. After bringing them back to the present day, he asks them what they saw and who they were. Interestingly, these participants, on average, increased their contributions to their retirement plans. The act of "meeting" their future selves gave them compassion and empathy towards who they might be some day. Without this connection, it can be easy to rationalize our short-term needs versus ensuring that our future is funded.

For many of our new participants, our enrollment process is simply one more piece of paper to complete as they begin their adult life. Making sound, prudent financial decisions at this critical juncture can impact their future selves. How many recordkeepers and TPAs have an intentional strategy for Millennial employee onboarding? How many lump the various generations into one process? As you consider your participant services' strategy, remember that it is difficult for them to understand you over the roar of the firehose from which they're drinking. Not all of our new employees are as responsible as Regan. PC

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BY CRAIG P. HOFFMAN

# President's Executive Order to Impact Retirement Plans

## EO 13847, issued in August, will result in new rules on MEPs, e-delivery and mandatory distributions.

**Those of us who work with retirement plans** tend to think that new regulations spring from changes made by Congress. We tend to forget the important role played by the President and the Executive Branch of our government in setting retirement policy. President Obama made that evident in the work by his administration to update, through regulations, the definition of an "investment advice fiduciary" set forth in section 3(21) of ERISA.

The current administration is no different in moving forward on its own initiatives to improve retirement outcomes for American workers. On Aug. 31, 2018, President Trump signed Executive Order 13847, entitled "Strengthening Retirement Security in America." It has three policy goals:

- expand access to workplace retirement plans for American workers;
- reduce the number, complexity and costs of employee benefit plan notices and disclosures; and
- revise outdated distribution mandates which may reduce the effectiveness of a retirement plan.

Like mom and apple pie, it is hard not to be in favor of these goals. The President has specified three ways to meet these goals. The end result will be guidance projects from both the Department of Labor (DOL) and the U. S. Department of the Treasury (Treasury).

### INCREASING WORKPLACE ACCESS TO RETIREMENT PLANS

Multiple employer plans (MEPs) have been around for since the passage of ERISA. Simply put, a MEP is a retirement plan that has been adopted by employers who are not under common control. MEPs have been lauded as a way to reduce costs and expand retirement plan coverage, particularly for small to mid-sized employers.

A "traditional" MEP is one where the adopting employers, though unrelated, share some commonality beyond adopting the same plan. The degree of commonality needed has been the subject of much debate, and is very dependent on the particular facts and circumstances of each particular case. Beginning approximately 15 years ago, many providers began pushing the idea of an "open" MEP — that is, a MEP where there was very little shared commonality among adopting employers. Then, in 2012, the DOL issued Advisory Opinion 2012-04A that strictly construed the commonality requirement so that very few "open" MEPs could actually qualify to be a MEP.

The President's August Executive Order essentially directs the DOL to reconsider the analysis in the 2012 Advisory Opinion. Specifically, the order directs the DOL to issue regulations or other guidance to "clarify and expand the circumstances under which United States employers, especially small and mid-sized

businesses, may sponsor or adopt a MEP as a workplace retirement option for their employees, subject to appropriate safeguards." The order goes on to direct Treasury to issue guidance to reconsider the so-called "one bad apple rule" currently in effect under which the disqualifying actions of any one employer that adopted the MEP would void the tax qualified status of the entire plan.

The DOL released proposed regulations in late October, which are to be finalized by July 1, 2019, according to the Executive Order. In addition, Congress is considering legislation that would be more far expansive with regard to "open" MEPs than the DOL's regulatory efforts.

> "Congress is considering legislation that would be more far expansive with regard to 'open' MEPs than the DOL's regulatory efforts."

## REDUCING THE COMPLEXITY AND COST OF RETIREMENT PLAN DISCLOSURES

It is hard to take issue with the notion that retirement plan disclosures are complex and costly to distribute. The President's policy goal is to improve their effectiveness and reduce costs so as make it better for both participants and plan sponsors. The Executive Order directs the DOL and Treasury to conduct a review to consider regulations or other guidance that would "make retirement plan disclosures required under ERISA and the Internal Revenue Code of 1986 more understandable and useful for participants and beneficiaries, while also reducing the costs and burdens they impose on employers and other plan fiduciaries responsible for their production and distribution. This review shall include shall include an exploration of the potential for broader use of electronic delivery as a way to improve the effectiveness of disclosures and to reduce their associated costs and burdens."

It is expected that much of the focus in responding to the President's directive will be on updating the electronic disclosure rules for delivering employee benefit plan notices. Under DOL regulations that have been on the books since 2002, e-delivery requires participant consent unless accessing the electronic delivery system is an "integral" part of a person's job duties. IRS regulations allow e-delivery as the default method if the participant has "effective access" to the delivery system.

In 2011, the DOL solicited comments on electronic disclosure through a "Request for Information." The American Retirement Association (ARA) teamed up with the Investment Company Institute (ICI) to file comments and a "white paper" on the potential benefits to participants if e-delivery was permitted as the default method for distribution of employee benefit plan notices. Unfortunately, the DOL never moved forward on the initiative. Last year, ARA and ICI submitted an update to the 2011 white paper as well as a 2018 memo pointing out the effectiveness and participant engagement that can be achieved with e-delivery. We expect to provide additional data and comments as the DOL moves forward.

## REVISIONS TO THE MANDATORY DISTRIBUTION REGULATIONS

The last piece of the Executive Order directs the Treasury to update the life expectancy and distribution period tables for required minimum distributions under IRC Section 401(a)(9). It is expected that revised tables will reflect longer life expectancies and therefore lower the minimum required distribution amount. ARA has already filed comments supporting such a change but cautioning that time must be provided to transition from the old table to the new table.

## THE FUTURE

It is expected that these initiatives will come to fruition over the next 6-12 months. ARA will continue to provide timely input to ensure they are framed in a way that benefits participants and plan sponsors. PC

*Craig P. Hoffman, APM, is General Counsel for the American Retirement Association.*

# Work Smarter by Leveraging Cheap Technology

BY JJ MCKINNEY

## 01.

**LIFE 360**
life360.com

**The nightly news used to begin with an eerie question:** "It's ten o'clock, do you know where your children are?" Wonderful fodder for Dean Koontz or Stephen King, but the inquiry sends chills down the spine of anyone who cannot respond affirmatively. Do you have children? Do you like to stalk them? Stalking my own kids is a favorite pastime of mine too.

Life360 allows me to compare where they are with where they claimed to be going. Apple iOS 10 and up and Android 4.0.3 and up devices may download the app for free from the app store. Since most people would rather leave the house without an appendage than their phone, you have an efficient and reliable means for keeping tabs on each other. The primary user must invite potential members to their circle (hence "360") and the new member must accept the invitation. One invaluable feature is the ability to add emergency contacts and with the tap of an alert, the app will send an emergency alert with where you were and when you sent the alert.

Life360 pricing is simple; a free Basic version allows you to receive an alert for up to two places which could be places you do not want them to go or regular places they go to alert you that they arrived safely. Basic also saves up to two days of driving and location history. The PLUS version adds up to 100 location alerts, 30 days of location and driving history, crime alerts, and in-app support 24/7 for a meager $3 per month or $25 per year. Driver Protect is the most robust version that adds driving behavior, weekly driving reports, crash detection, and emergency and roadside response for $8 per month or $70 per year.

Other than microchipping your family members, Life360 provides a safe way to keep track of your loved ones while avoiding unnecessary surgical means to triangulate their whereabouts.

## 02.

**CARDSTAR**
expresscheckoutapp.com

**I truly enjoy extra keychains with chain store** loyalty cards jingling around in my pocket. Even better are the credit card-sized versions filling up my wallet enough to make George Costanza proud. All kidding aside, loyalty cards are a royal pain in the behind. Of course, I want the discounts that they offer, potential fuel points, previews of upcoming sales or events, etc., but I cannot keep up with all of the cards.

Developed by Express Checkout, LLC, CardStar is your one-stop-shop for loyalty cards and more. First, the app organizes and provides updates on offers and deals associated with the cards that you have. Second, using the locator in your phone allows the app to bring forward the card associated with the store where you are shopping. Third, the app allows you to make shopping lists within the app.

The app is user-friendly and purposeful with few screens. Add the cards you want to add and create an account. Keep adding cards as necessary and throw away the key chains and clean out the drawer at the edge of your kitchen and/or reduce the girth of your wallet or purse. PC

*JJ McKinney is Chief Operations Officer at Retirement Strategies, Inc., an Ascensus Company in Augusta, GA. He is a husband of one, father of nine, thinks HOAs are a conspiracy, is a frequent speaker, a compulsive editor, and loves to Pension Geek-Out at www.rsi401k.com.*

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**Altigro Pension Sevices, Inc.**
*Fairfield, NJ*
altigro.com

**Aspire Financial Services, LLC**
*Tampa, FL*
aspireonline.com

**Associated Benefit Planners, Ltd.**
*King of Prussia, PA*
abp-ltd.com

**Associated Pension Consultants, Inc**
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associatedpension.com

**Atlantic Pension Services, Inc.**
*Kennett Square, PA*
atlanticpensionservices.com

**Beacon Benefits, Inc.**
*South Hamilton, MA*
beacon-benefits.com

**Beasley & Company**
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bco.cc

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*Providence, RI*
unitedretirement.com

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bpcinc.com

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benadms.com

**Billings & Company, Inc.**
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billingsco.com

**Blue Ridge ESOP Associates**
*Charlottesville, VA*
blueridgeesop.com

**BlueStar Retirement Services, Inc.**
*Ponte Vedra Beach, FL*
bluestarretirement.com

**Cetera Retirement Plan Specialists**
*Walnut Creek, CA*
ceteraretirement.com

**Creative Plan Designs Ltd.**
*East Meadow, NY*
cpdltd.com

**Creative Retirement Systems, Inc.**
*Cincinnati, OH*
crs401k.com

**Delaware Valley Retirement, Inc.**
*Ridley Park, PA*
dvretirement.com

**DWC ERISA Consultants, LLC**
*St. Paul, MN*
dwcconsultants.com

**Fiduciary Consulting Group, Inc.**
*Murfreesboro, TN*
ifiduciary.com

**FutureBenefits of America**
*Arlington, TN*
futurebenefitsofamerica.com

**Great Lakes Pension Associates, Inc.**
*Farmington Hills, MI*
greatlakespension.com

**Guideline Technologies, Inc.**
*San Mateo, CA*
guideline.com

**Ingham Retirement Group**
*Miami, FL*
ingham.com

**Intac Actuarial Services, Inc.**
*Ridgewood, NJ*
intacinc.com

**July Business Services, Inc.**
*Waco, TX*
julyservices.com

**Moran Knobel**
*Bellevue, WA*
moranknobel.com

**National Benefit Services, LLC**
*West Jordan, UT*
nbsbenefits.com

**Niles Lankford Group Inc.**
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nlgpension.com

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*Plymouth, IN*
ktradeonline.com

**Pension Financial Services, Inc.**
*Duluth, GA*
pfs401k.com

**Pension Planning Consultants, Inc.**
*Albuquerque, NM*
pensionplanningusa.com

**Pension Solutions, Inc.**
*Oklahoma City, OK*
pension-solutions.net

**Pentegra Retirement Services**
*Columbus, OH*
pentegra.com

**Pinnacle Financial Services Inc.**
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**Pinnacle Plan Design, LLC**
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**Preferred Pension Planning Corp**
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sigrouphawaii.com

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*Boca Raton, FL*
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southstate401k.com

**Summit Benefit & Actuarial Services, Inc.**
*Eugene, OR*
summitbenefit.com

**TPS Group**
*North Haven, CT*
tpsgroup.com

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*as of December 13, 2018

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**For more information on the certification program, please call 416.693.9733.**

# Save the Dates

| | | |
|---|---|---|
| January 24–25 | LA Advanced Pension & 401(k) Conference | Los Angeles, CA |
| May 9–10 | Philadelphia Regional | Philadelphia, PA |
| May 16 | ASPPA Spring Virtual | Online |
| June 24–26 | Women in Retirement Conference | Chicago, IL |
| August 9–10 | ACOPA Actuarial Symposium | Chicago, IL |
| October 20–23 | ASPPA Annual Conference | National Harbor, MD |
| October 22–23 | TPA Business Development Conference | National Harbor, MD |
| November | Cincinnati Regional | Covington, KY |
| December | ASPPA Winter Virtual | Online |

# 2019 EVENTS

ASPPA ACOPA