



Action Items

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Seven Thoughts on Retirement Plans during our Recession

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The world is changing. As owners and managers of businesses we must assure that our businesses survive. Unfortunately in many businesses that has meant layoffs. It is painful to those who are laid off and it is challenging to the business both in terms of loss of talent and having to do more with less. The employer funding of Profit Sharing/401(k) plans and defined benefit or cash balance plans are at risk and so is the culture of our businesses.

We have all read the papers, scoured the internet, listened to the radio, and talked to our co-workers, friends and people in the elevator. We all have a fundamental choice to view these issues with either a glass half full or a glass half empty attitude. I joke with my friends that I have an intense curiosity to see how all this works out. I would like to be a fly on the wall watching it happen...but there is a caveat that there is no bail-out for fly-swatter manufacturers!

This is a time to hold ourselves and others to a higher standard. If done correctly with proper internal measures, everyone tied to the success of the company, a positive culture and esprit de corps, we can come out of all the chaos with better cultures than we began with.

Retirement Plans can play their role in this dynamic. Here are a few focus points for consideration.

Defined Contribution Plans

1. All defined contribution prototype or volume submitter plans need to be restated to integrate the provisions of EGTRRA before April 30, 2010. It may be a good time to examine the purpose of your plan. If the purpose has been to offer a savings vehicle to your employees, you may want to examine the plan and its potential to become more strategic in your company. This may be to focus your employees on the profitability of your com-



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pany by tying employer contributions to that profitability. It could be part of a program to not just tell your employees that you are making decisions so that the company survives, but thrives. And that you are willing to share that profitability through the plan.



Defined Benefit Plans

2. If you sponsor a cash balance or traditional defined benefit plan, now is the time to understand the funding obligations under the Pension Protection Act of 2006. The new rules and funding requirements should be matched with your ability to fund these plans. If you have a plan for example that operates on a calendar year and wish to cut back on the contributions for 2009, you can freeze or reduce the formula as long as you comply with the amendment and participant notification rules before anyone incurs at least 1,000 hours of service in 2009. Congratulations to defined benefit plan sponsors that also sponsor 401(k) plans. You are sharing the responsibility of retirement with your employees.

Plan Operation

3. Do not under any circumstances delay the deposit of 401(k) deferrals and loan repayments into the plan. The Department of Labor (DOL) is getting lots of complaints. The DOL standard is the lesser of the number of days that you historically deposit the deferrals into the plan and 7 business days following the payroll for plans of less than 100 eligible participants. If the DOL does investigate they are likely to involve the IRS as well. It would be better to cease deferrals by an amendment than getting the government agencies involved. The DOL can and will bring civil and/or criminal actions if the situation warrants.

4. In order for a plan to be qualified it must operate under its terms and be consistent with ERISA. One of the biggest operational errors is not using the plan's definition of compensation. It is better to find this error yourself and correct it under the Voluntary Compliance Resolution System which may not involve notifying the IRS if done within the last 2 years than having this come up during an IRS audit.

5. We continue to see violations of the Controlled Group/Affiliated Service Group/Management Company and Leased employee rules. If you ignore employees in any of these situations it is expensive to fix unless the plan can qualify under certain "coverage" rules. We see these issues occurring in entrepreneurial, professional,

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private equity and businesses that acquire companies for financial rather than strategic reasons.


6. If layoffs or plant closures result in more than 20% of the plan participants leaving, it is the IRS presumption that the plan has incurred a "partial plan termination". The result of this is that those who have left may be 100% vested. The rules are tricky. We would raise questions to you about this issue if the year-end data indicates that the terminations are greater than 20% of the plan participants.

Become a Responsible Fiduciary

7. In times of layoffs participants are much more focused on how their retirement plans are doing. As a fiduciary to your plan make sure:

- You understand your roles and responsibilities
- Properly have your plan committee members appointed by Board Resolutions or Memorandums of Partners
- Hold meetings with Agendas
- Have signed contracts with service providers that spell out all the services they provide and the direct and indirect compensation they receive
- Have an Investment Policy
- Do your investment due diligence and
- Document your decisions

We wish you good wisdom and great luck as you configure your way to success. And don't forget, no flyswatters! 

ACI can provide analysis and value in all these areas. We would be happy to have a brief discussion with you on any of these matters. 

Considering HSA's

By Kevin Carlin,
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The 111th Congress and President Barack Obama have decided to make health reform a major priority as we enter 2009. Despite a flagging economy and a severely challenging fiscal climate from a federal perspective,

many politicians (and citizens) believe that the time has come to change the way our nation finances health care.

There is a bright spot in our health care system, and one that has gone largely unreported in the print media. Health Savings Accounts, or HSA's, have shown some promise in reigning in runaway costs, while giving employees the ability to save money for the future, especially for medical expenses when they retire.

HSA's were signed into law by President Bush on December 8th, 2003, as a mere footnote of the Medicare Modernization Act (MMA), which brought us prescription drug benefits for seniors. Republican lawmakers, who in general opposed the MMA, held out their support until the establishment of HSA's were allowed through the same legislation.

In order to open a Health Savings Account, an individual must obtain an "HSA compatible" High Deductible Health Plan, or HDHP. An employee covered under this plan will use funds in the Health Savings Account to pay for current medical costs, and if unused, the funds accrue and carry over into the next year.

HSA's are the purest form of what is known as consumer directed health care, or CDHC. The hope and intent behind these plans is that once there is a clear financial incentive for the consumer, they will begin to shop more rigorously for health care and explore cost savings options whenever possible, bringing competitive pressure to the marketplace.

There are over 6.1 million people with HSA/HDHP coverage as of January 2008 (up from 4.5 million in 2007 and 3.2 million in 2006). This represents 35% growth year over year, a startling number. According to Diamond Cluster Research, as many as 15-25 million HSA's are expected by the end of 2010.

But more importantly, how are HSA accountholders behaving? Are they accessing health care in the same manner as their conventionally insured coworkers? Are they spending their dollars frivolously, or saving for the future, as was the intent of HSA's?

A five year study from health insurer AETNA showed some promising findings:

- HSA participants spent 20% **more** on preventive care;
- Maintained their utilization of drug therapies for chronic conditions, such as asthma, and their levels of diabetic testing;
- Use generic drugs more frequently;
- Are twice as likely to explore online information;
- 95% of HSA members carried over some or all of their fund into the next year.

A McKinsey study showed that HSA participants are more cost conscious when it comes to health care expenses. This is positive news indeed for beleaguered employers, who have seen their insurance premiums explode over the past decade.

There are some significant challenges for employers to consider when it comes to offering HDHP/HSA offerings to their workers:

- **Education.** Many employees who have grown up with HMO's will need to be introduced to the concepts of deductibles, claim forms, and coinsurance.
- **Seeding of accounts.** If a company offers the HDHP that allows employees to open HSA's, yet doesn't offer any employer contribution, the employees may react poorly.
- **Change.** Employees tend to resist change with regard to their employee benefits, so the employer must be prepared to explain why the company is moving towards an HDHP/HSA approach.
- **Provider issues.** Doctors, hospitals and other health care providers are ill prepared for pricing medical care as a simple commodity, like gasoline or bread. The entire system is complex and will need to become far more transparent before the consumer, even a determined one, would be able to bring any competitive pressures to the marketplace.

While there are some concerns, the benefits to an employer group are compelling. Consider:

- **Engaged employees.** Employers will see their workers mindset shift, from a passive to an active consumer, and one that has a vested interest in being more sensitive to health care costs.

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- **Lower claims costs.** Several studies have shown that HDHP plans have a lower rate of annual increase than their conventional HMO and PPO counterparts. When coupled with disease management and wellness programs, the HSA/HDHP approach has shown to be a powerful tool against health care inflation.
- **Giving their workers the ability to save for the future.** With Medicare's future viability in question, HSA's give workers the potential to save for their retirement. Some employers feel guilty about shuttering pensions or retirement plans, and feel that HSA's at least give employees the potential, if not the guarantee, to save money specifically for medical expenses in their retirement years.

From an employee perspective, there are both negative and positive factors to consider:

- **High deductible too imposing.** A major negative with HSA's is that they are tied to High Deductible Health Plans, which often result in higher out-of-pocket costs for employees.
- **Need for education.** It is a daunting task to convert an employee from a managed care/HMO, which has generally allowed an employee to consume health care with little or no regard for cost, and introduce them to the unfamiliar world of deductibles, claim forms, and coinsurance.


The benefits for an employee, however, are considerable, and worth further inspection:

- **Triple tax advantaged vehicle.** There is no product more tax advantaged than an HSA. Deposits are tax free (federal), the assets grow year over year tax free, and the account can be accessed for tax free withdrawals, as long as the funds are used for HSA eligible expenses. For a complete list, please reference <http://www.treas.gov/offices/public-affairs/hsa>
- **Portable.** If an employee is laid off or leaves a company, the funds in the HSA are portable. In order to continue contributing, an employee must find HDHP coverage that is HSA compatible.
- **Expansion of coverage.** While there are some who assert that HSA accountholders have lesser coverage, HSA accountholders can use their funds for Lasik surgery, chiropractic, orthodontia, dental, and a host of other items. In addition, COBRA premiums can be financed with HSA funds, as can Long Term Care (LTC) insurance.

HSA's may not be the "silver bullet" to transform our health care system, but they have shown great promise by encouraging people to become engaged and more price sensitive. Given the lack of accountability with our current 3rd party payor system, where an indifferent consumer shrugs as an insurance company foots the bill, all that may be necessary to save our private health care coverage is to unleash the power of the American consumer upon our system and watch the results.



Companies like Whole Foods, Wendy's Restaurants, Fujitsu, Hewlett Packard, Intel, Amazon, and Northrop Grumman have introduced HSA's to their benefit programs in recent years with stellar results.

Will they work for your company? Ask your insurance broker or consultant for a quote and strategy session at your next renewal. 

Have an Idea for an Article?



Action Items is provided to our clients and their advisors with articles that address relevant, timely issues. If you have a particular topic that you would like us to address, a question you would like answered, or if you would like to submit an article for publication, please let us know. We welcome your feedback and input.

DC Technical Corrections & changes for 2009 ADP/ ACP Testing

By Tobi Cogswell
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Technical Corrections

Whenever a law such as the Pension Protection Act is passed, there are always specific provisions in the law that need additional guidance. Sometimes that guidance comes in the form of Technical Corrections, i.e., the intent was in the law but the application was awkward and not as intended.

There have been a few technical corrections with regard to defined contribution plans. The biggest has to do with Automatic Contribution Arrangements (ACA's). PPA established a framework for automatic contribution arrangements and established provisions for participants to withdraw their contributions within 90 days after the first affected payroll period. Originally this provision was only available in plans that used a Qualified Default Investment Alternative (QDIA) as their default investment fund.

Under Technical Corrections, a permissible withdrawal no longer depends on whether a QDIA was the default investment fund. It clarified that these withdrawn contributions do not count toward the participant calendar year maximum deferral of \$16,500 (in 2009) and it clarified that these withdrawals are available from SARSEPS and SIMPLE IRAS as well as qualified plans.

There was a provision in the Eligible Automatic Contribution Arrangement (EACA) rules that allowed 6 months to make refunds to correct for ADP/ACP failures. Originally a EACA required the default fund to be a QDIA. Technical Corrections has clarified that a EACA has until 6 months after the plan year to make test refunds even if there is not a QDIA as the default investment.

PPA permitted non-spouse direct rollovers of inherited benefits to IRA's, but for plan years beginning in 2010 Technical Corrections will require that qualified plans, 403(b) and governmental 457(b) plans be permitted to accept the direct rollovers as well.




Changes for 2009 ADP/ACP Testing

For plan years prior to 2008, if a corrective distribution was made within 2 ½ months after the plan year

end, it was taxable in the prior year. While this avoided a 10% penalty to the corporation, it also had the ability to cause grief among the HCE's who may have already filed their taxes, and now had to amend them.

For plan years beginning on or after January 1, 2008 all corrective distributions will be taxable in the year in which they are received. Note: the 10% penalty to the corporation still applies for distributions made later than 2 ½ months after the plan year end, but individuals will not be put in the position of having to amend their prior year tax return.

With regard to EACA's as discussed above, there is a special rule regarding when the 10% penalty applies. Because a corrective distribution can be made up to 6 months after the end of the plan year, the 10% penalty is assessed on corrective distributions made more than 6 months after the end of the plan year rather than 2 ½ months. This is also effective for plan years beginning on or after January 1, 2008.

GAP period earnings are no longer required to be calculated on corrective distributions made for ADP/ACP test failures. A GAP period earning is gain calculated from the last day of the plan year to the date of the actual distribution. There are some specific formulas that can be used to calculate this. Originally it was required to be calculated only for plans that had this in their document. The IRS then came out with a requirement that GAP period earnings must be calculated for corrective distributions effective with the plan year beginning on or after January 1, 2006. The Pension Protection Act eliminated the requirement to calculate GAP period earnings on corrective distributions, and The Worker, Retiree and Employer Recovery Act of 2008 clarified that this was also not required for distributions due to excess deferrals (refunds of contributions in excess of \$16,500 in 2009). So now today, a refund contribution does include earnings, but only through the end of the plan year for which the refund is required. 



ACI IN THE NEWS

Annual Holiday Family Adoption a Success Again!

Every year for the Holidays ACI has worked with the Torrance Children Center to adopt a family in need. Last year we were again lucky enough to be given a great family which was made up of a single mom and 4 girls. With the current state of the economy we really wanted to make things special for the family and both ACI and its employees generously donated toys, school materials, gift cards, food and clothing. Although we know there are many needy families in our community and we cannot help them all, we firmly believe that what counts is **making a difference** to just one person or one family and that is what is important to us.



Presentations at a glance for Pat Byrnes

- 2009 LPL Retirement Plan Symposium – **“The Color of Retirement Plan Money”**
January 16, 2009
- Western Pension & Benefits Conference – **“Enhancing 401(k) Benefits through Plan Design”**
December 9, 2008

If you would be interested in having Pat Byrnes come speak at a function or would like to learn more about one of the presentations please contact me at: Yariel.Chiong@acibenefits.com



Here we grow Again

During the end of 2008 - one of the busiest times of the year for our company, ACI underwent some extensive technological and hardware upgrades to bring our company forward. This is part of a continuous effort to bring our ACI family of clients and advisors the best quality service.

What these upgrades mean to you:

- State-of-the-art technology
- Faster, cost-effective service
- Documents delivered efficiently
- Improved resources

EXCITING CHANGES UNDERWAY FOR ACI...

ACI is very excited to be working on updating our website and look, bringing a breath of fresh air to the company.

Those of you who have been to our website know that it's not the prettiest of sites and we are not afraid to admit it. On a serious note, we look forward to offering you a pleasant experience in the near future when you visit our website. The re-design of our website will be enhanced with relevant resources and easy to use features to better serve your needs.

The purpose of our company remains the same and we are committed to serving you; We think that you'll be happy with the new and improved changes that are underway.



ACI Client Education Seminars



BASIC TRAINING SEMINARS:

The Introduction to 401(k) Plan Operation is an educational presentation that covers items such as non discrimination testing, employee deferrals and employer contributions, loans and distributions and payroll issues.

Understanding Annual Plan Administration was added last year to help members of your staff understand the process of plan administration in general. This seminar will cover issues such as employee communication, distribution requirements, tax reporting (945, DE6, DE7 & 1096), year-end data packages, setting up timelines and expectations and changes in company structure.

The seminars will briefly cover how your plan is affected by the Pension Protection Act of 2006 (PPA06).

The seminars are open to anyone who would like a better understanding of their plan(s). The seminars will be held at our Torrance location. There is a \$25 fee for each seminar. **This fee is waived for all ACI clients.** SEATING IS EXTREMELY LIMITED.

You can contact Yariel Chiong, Marketing Coordinator, to reserve a seat at yariel.chiong@acibenefits.com or (310) 212-2600, ext. 204. \$25 fee must be received prior to seminar date in order to confirm your reservation.

Below is the 2009 schedule:

Plan Administration & 401(k) Basic Training Seminars

Tuesday	May 5
Wednesday	May 20
Tuesday	August 5
Wednesday	August 20
Tuesday	November 4

Plan Administration Seminar is from 9 AM to 12 PM
401(k) Basic Training Seminar is from 12 PM to 4 PM

Strategic Sourcing: Finding Quality Candidates

To each individual client of Strategic Sourcing, LLC, a partner firm of ACI, this term can have several different meanings. In today's tough economic climate, companies cannot afford to waste time and resources with the wrong match.

What does the term "*quality candidates*" mean to our clients? Many factors contribute to this meaning, which include the following:

- Qualified, screened and tested to meet job requirements
- Accurate, current resumes
- Availability to start either ASAP or within 2 weeks
- Professional appearance
- Local hire or willingness to relocate
- Positive references
- Excellent communication skills paired with good interpersonal abilities
- Demonstrated strong qualifications, alongside sample documentation
- Prepared to perform well in an interview as well as in their assigned role

At a high level, we assess qualified candidates by focusing on two areas within the recruitment process. The *first area*, includes efforts that ensure that we have screened, verified and qualified a good candidate. These include employment testing, personality profiling, interviewing and other skill-related activities. A solid recruitment process that is valid and reliable will consistently help deliver our end-goal. With a quality candidate at hand, this takes us to the *second important area*...to ensure that our candidates will present well to the client.

Ultimately, the resumes and candidates Strategic Sourcing submits represent the quality of our work upon which Strategic Sourcing is judged and stands by. Our candidates are selected to reflect excellence in the workforce which is what we strive for!

Strategic Sourcing, LLC provides top talent within the Accounting, Finance and Actuarial Arenas. Please contact Jim Halyard for more information: jhalyard@socalsourcing.com, 310-542-1841.

Circular 230 Disclosure: In accordance with recently issued Treasury Regulations, which became applicable to all tax practitioners as of June 20, 2005, please note that the advice given herein (including any attachments) is not intended or written to be used and cannot be used by any taxpayer for the purpose of (1) avoiding tax penalties under the Internal Revenue Code, or (2) promoting, marketing or recommending to another party any matters addressed herein.