



Action Items

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IN THIS ISSUE

CHAOS— OR JUST A LOT OF CHANGE HAPPENING AT ONCE?

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These are Interesting Times

Perspective

The answer to the titled question depends on your perspective.

Plan Administrators

For those in the business of designing, installing, administering and consulting on qualified retirement plans, it sure feels like chaos.

The Pension Protection Act of 2006 (PPA) brought in massive change in the funding of defined benefit plans, made a significant number of changes in the defined contribution environment, and addressed more squarely certain fiduciary issues. As with any massive tax bill, the writers got some critical portions of it wrong from a technical point of view and, as such, practitioners are awaiting the passage of a Technical Corrections Bill.

Developing administrative software and systems to handle the massive change in defined benefit plan funding, maximum benefit payments and newly added benefit restrictions provisions is an enormous undertaking that is not only extremely time consuming, but highly stressful because of all that is at stake.

The guidance that has been issued by the Department of Labor (DOL), Treasury and the IRS, is unclear at best and much of it is in proposed form. This leaves the practitioner with deadlines, replete with new disclosures and participant notice requirements, looming at every turn.

In the middle of all of this, the new 5-year and 6-year approach to the restating of all retirement plans will likely open on April 1, 2008 for all defined contribution plans on prototype or volume submitter document formats. So yes, it feels chaotic.

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Government

For those governmental agencies tasked with the interpretation of the rules, it is certainly chaos.

The agencies are struggling to get out enough thoughtful guidance in critical areas in order to fill the mandates as set forth in the PPA. Getting it right is drastically slowing down the process. Virtually no guidance has been issued on time.

The agencies are hoping the Technical Corrections Bill will eventually make their jobs easier so they don't have to draft awkward interpretations around flawed and ambiguous law.

The IRS is hoping for a smooth transition in the plan restatement project and also hoping to broaden its outreach of education to plan sponsors on what they need to do to comply with the myriad of rules. They are also stepping up their compliance and auditing functions which have fallen to less than 1% of returns filed.

Their "hot list" topics for exploration in 2008 include the following:

1. Failure to amend a plan timely (this is difficult given the restatement project, as well as amendments that need to be in place before certain changes available under the PPA can be implemented);
2. Failure to follow the terms of the plan (the IRS continues to find plans purporting to follow the law but not the plan document thus creating plan qualification issues);
3. Failure to include the right participants in the plan (while this is an outgrowth of not following the terms of the plan, it is a hot button for the IRS since failing to include participants not only has an effect on plan qualification, but also is often very expensive to correct once discovered);
4. Withdrawals from plans and the process surrounding the proper calculation of benefits, vesting, withholdings, spousal consents, etc.;
5. A subset of withdrawals are minimum distributions required when certain participants reach age 70 ½. The calculation of these benefits and the proper form of payment are now being looked at more carefully;

6. Employer eligibility ranging from whether a 403(b) plan is adopted by an entity that has the legal right to do so, to the controlled and affiliated service groups that are abounding in complex business structures;
7. Top-heavy minimum benefits, which are perennially missed in many plan situations (a top-heavy minimum benefit or contribution is required for non-key employees when the key employees account balances exceed 60% of the total);
8. In defined contribution plans, allocating in excess of maximum limits and in defined benefit plans the funding or payment of benefits in excess of the maximum benefits allowed under the law.

Investment Advisors

Those whose business is primarily advising retirement plan sponsors on investing plan assets are either in chaos or bliss.

Business models will change as investment brokers, managers and registered investment advisors are required to have written contracts with the plan or plan sponsors in 2009. This is based on proposed regulations that were issued on December 13, 2007. (Reference: ERISA Section 408(b)(2). See section on **New Written "Reasonable Contract" Requirements for "Covered Service Providers"** below)

Fiduciary liability is now becoming clearer to those advisors who were acting in the fiduciary capacity, either without knowledge they were doing so, or without the blessing of their broker dealer if they were operating in a brokerage capacity.

Vendors

401(k) platform vendors and product developers are trying to capitalize on the new automatic contribution arrangements. This at a minimum involves the software and processes to handle the auto enrollments and re-tooling their investing products to meet the new qualified default investment alternatives (QDIA). They view each of these new law elements as a chance to differentiate themselves (or at least not get left in the dust).

Further vendors are intently following the DOL's process in finalizing proposed regulations on the "reasonable contract" rules. Some are arguing against fee disclosure and the fear that their representatives may in fact be acting in a fiduciary capacity. PPA also allows for participant level advice under some very strict restraints; none the least of which is the requirement of having the provider of this advice declared a fiduciary.

This is a very confusing chaotic time for this sub-sector of the

financial services world.

Plan Sponsors

For plan sponsors, there is some disbelief and disparity about how all of the change that is going on will really affect them in terms of actions that need to be taken and the costs associated with those changes.

2008 is the year in which many of the new defined benefit provisions of PPA become effective. Notably, for calendar year plans an actuarial certification of the funded status of that plan (known as an AFTAP) is required by April 1, 2008, or certain benefit restrictions may apply to the plan.

As mentioned in the *Plan Administrator* section above, the plan restatement program for volume submitter plans and prototypes is expected to open on April 1, 2008. Most plan sponsors are generally unaware of the need to have their plans restated in the next 24 months. These items and other decisions that need to be made with respect to the PPA include notices to plan participants which seem illogical and chaotic to the plan sponsor. That said, many plan sponsors are looking forward to re-designing their plans in a manner that would better satisfy their intended purpose.

Plan sponsors want to do the right things but with little clarity in guidance from the government which slows and conflicts the pension community in developing clear choices, clients may get frustrated.

Congress

Congress passed the Pension Protection Act of 2006 (PPA) and it is now moving on to other matters such as the elections and their aftermath; it will soon be focused on the real problem, which is the economy.

In addition to the Technical Corrections Bill, there is a bill pending in the House that would require participant level fee disclosures for a vast majority of 401(k) plans that offer participants a choice of investment alternatives.

The Courts

The courts are now moving beyond the class action suits of the Enron-esque “stock” cases and the newer “fee” cases.

The latest is a new Supreme Court ruling in the LaRue v DeWolfe matter giving the Federal District Courts leave to allow participant lawsuits in which participants, if successful, could obtain redress in certain situations. The LaRue case involved a participant who seemingly lost money when a direction to change an investment alternative was not timely executed,

causing Mr. LaRue to lose \$150,000. Heretofore, that type of lawsuit filed by a single participant would not be allowed to go forward, as decided by the 4th Circuit prior to Supreme Court decision of February 20, 2008. This suit could have an effect, not only on failed investment direction cases, but seemingly on other cases such as fee cases. Some lawyers feel that the LaRue case may complicate participant class action lawsuits. It is generally believed that it is too soon to tell how the lower courts will deal with these matters.

The Sand Box

In essence, all those entities mentioned above are in a big sandbox called “The Private Pension System.” When someone



throws sand or the wind blows hard, we all end up with grit in our craw. By the way, the sandbox has trillions and trillions of dollars buried in it.

As a Yale librarian once said, “We are drowning in information and starving for knowledge.” So, the challenge in dealing with this abundant change or chaos is how to sort it all out.

Plan Participant Needs and the Plan Sponsor’s Response

Oddly enough, we appear to have arrived at a time when the plan participant will begin to have more choice than ever before.

This is occurring at a time when U.S. savings rates are scraping zero. Savings has been complicated by the loss of equity in real estate and erratic stock markets. Employees that have been affected by losses in the market and/or real estate, particularly the baby boomers, are beginning to face hard choices. “Do I continue to work past retirement as long as I am healthy, or do I begin a significantly different savings effort in the remaining years of my scheduled working career?” If the baby boomer is not panicked by this issue, he or she soon may be.

To borrow a slogan from Ford Motor Company, the “**Job 1**” purpose of a retirement plan is ultimately to allow participants to retire.

The employers’ response to this issue may be enhanced by some of the provisions in the PPA.

Many larger retirement plans have transitioned from defined

benefit plans to defined contribution plans, and in that process, significantly reduced or eliminated the employer contributions to the plan. In essence, they swapped out employer-funded defined benefit plans for employee-funded, deferral only 401(k) plans. These employers are now beginning to re-examine this strategy and many are planning on developing designs that teach employees to save through automatic contribution arrangements (ACA), backed up with either more significant matching contributions and/or other employer based contributions. Unfortunately, with the recessionary environment which seems to have been triggered by the sub-prime mortgage rate fiasco, it may not be the best time to make significant changes in this area.

However, employers are beginning to re-think their budgets and are viewing plan contributions as less discretionary than they did in the past.

Small entrepreneurial and professional firms are embracing more complex plan designs involving cash balance defined benefit plans and profit sharing 401(k) plans combined together. Based on the now permanent benefit limits solidified by the PPA, baby boomers will now have the ability to significantly close the gap in the funding of their retirement benefits and, as such, higher contributions will be made for staff employees as well.

New Written “Reasonable Contract” Requirements for “Covered Service Providers”

In ERISA-speak a “covered service provider” will be required to have a written contract with the “responsible plan fiduciary” beginning in 2009 (after the DOL’s proposed regulations under ERISA section 408(b)(2) are finalized).

The covered services includes banking, consulting, custodial, insurance, investment advisory, investment management, record-keeping, securities, investment brokerage and third party administration. It can also include accounting, actuarial, appraisal, auditing, legal and valuation services if any indirect compensation is received.

The contracts must contain information on all the services to be provided and the direct or indirect compensation to be received by the service provider for the services expressed as either, the amount, formula, percentage of assets or per capita charge which will assist the responsible plan fiduciary to evaluate the reasonableness of such compensation or fees. Failure to follow these rules will result in a prohibited transaction. A prohibited transaction would require the compensation to be paid back to the plan.

This is a controversial regulation and the DOL has received many comments. As a result hearings will be held on March 20, 2008. Some modifications or refinements are sure to be made. Will they be stricter or more lenient?

Due to this regulation, which also requires information on conflicts-of-interest and affiliated entities, Plan Sponsors will soon be acquiring information that will enable them to evaluate the “value” being received from the service providers. In essence the fiduciaries will be better consumers as they discharge their duties to the plan and the plan participants; at least that is the premise of the new rules.

What to do in chaotic times

Out of chaos can come catharsis. The development of thoughtful process may become the preferred methodology for dealing with all these confusing issues.

Plan sponsors may do some or all of the following:

1. Re-examine the purpose of their retirement plans. The plans may have been set up years ago when they were in a different stage of their existence. Does that purpose now contain a corporate desire to teach savings and create a budget for employer contributions that will help in that endeavor?
2. Re-design the plan(s) to better meet that purpose.
3. Choose advisors wisely and monitor the value that they are adding.
4. Pay attention to the development of prudent fiduciary processes. Make sure that the plan fiduciaries are educated in their roles and responsibilities and create a methodology to document the processes. The processes include plan operation, investment policy development and the selection and monitoring of service providers as well as investment processes.

Conclusion

We are at a critical point in the history of the private pension system. All those reading this article probably have the ability to impact a plan sponsor’s retirement plan in a positive way. I believe it is our duty to do so.

And finally, chaos occurs when you don’t have a plan and a process- and yes a lot of change is occurring right now!

ACI regularly conducts training classes on plan administration, plan design and fiduciary process. We also conduct private sessions for plan committees as they work through their charter to understand the roles and responsibilities they have to their plans. Now, more than ever, this type of learning is critical. See page 7: ACI Client Education Seminars for more details.

ACI is Growing

**Cedric T. Rohwedder, A.S.A., E.A., M.A.A.A.
Consulting Actuary**

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Cedric Rohwedder joined ACI in January 2008 with over 19 years of consulting and project management experience. As an actuarial consultant he will assist our clients on all aspects of design, implementation, and administration. He is an Associate of the Society of Actuaries, an Enrolled Actuary and a member of the American Academy of Actuaries.

Before joining ACI, Mr. Rohwedder was a senior actuarial consultant for Hewitt Associates, defined benefit practice leader for TRI-AD, and chief actuary for Greenbook Financial Services. He also served as a contracted consulting actuary for several companies including Charles Schwab & Co., TAB Products Co., and The Clorox Company.

He has consulted with sole proprietorships to Fortune 500 companies, providing the following services:

- ◆ Assisted in plan design and development of administrative procedures
- ◆ Performed annual pension funding and expense valuations
- ◆ Provided projections and analysis of funding and expense requirements
- ◆ Calculated expense and funding implications associated with benefit improvements, plant shutdowns, and early retirement incentives
- ◆ Determined retirement benefits and prepared retirement packages
- ◆ Reviewed and completed government filings
- ◆ Assisted clients in streamlining and automating their in-house pension plan administration systems
- ◆ Led training sessions for administrative staff and customer service representatives

Mr. Rohwedder holds a Bachelor of Mathematics degree from the University of Minnesota in Minneapolis and recently received a Masters Degree in Applied Mathematics from California State University.

**David Ostapeck
Administrator**

david.ostapeck@acibenefits.com

David graduated Summa Cum Laude from Biola University in 2001 with a bachelor's degree in mathematics. Although he has always been interested in actuarial science, upon graduation, he spent a few years teaching math and working in the mortgage industry. Now in the retirement services area, David is excited to be at ACI, and is looking forward to a mutually beneficial relationship with the company. Starting in plan administration, David looks forward to quickly learning the industry and is working towards becoming an enrolled actuary.

**Yariel Chiong
Marketing Coordinator**

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Yariel comes to ACI with a military, mortgage and marketing background. Upon graduating high school, Yariel served in the United States Marine Corps as a Work Center Supervisor and a Classified Material Manager. Immediately following Yariel went on to pursue his Bachelor of Sciences Degree in Marketing from California State University, Long Beach. He then put his marketing knowledge to use working for AEG with the L.A. Kings Hockey team in their marketing department. He worked with the planning and implementing of marketing campaigns at The Staples Center and The Home Depot Center. Yariel then branched out to gain experience in the residential and commercial real estate markets working as a Senior Account Executive for DKM Financial. Yariel comes on board to ACI undertaking a new chapter in his life and eager to be part of the ACI team as the Marketing Coordinator.



Miguel Sandoval
Operations Supervisor
miguel.sandoval@acibenefits.com

Miguel comes to ACI with a mail services and corporate operations background. Upon graduating high school, Miguel attended Pasadena City College while working for the US Postal Service satellite branch in Los Angeles. Immediately following college, Miguel worked in the mail services department for Countrywide Financial where he worked for 4 years. After working for the mail services department, Miguel transferred to the Corporate Operations department at Countrywide where he worked for 4 more years. Miguel has vast experience in corporate operations and has the motivation to keep ACI running smoothly as the Operations Supervisor.

Natalie DeBruin
Document Specialist
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ACI would like to welcome back Natalie who will be our document specialist. In 2002, she joined ACI as a receptionist. Having the ability to take on more duties she began assisting Plan Administrators in various tasks. She took legal courses and was able to achieve her paralegal certificate in 2004. Natalie held the position as Assistant Document Coordinator until 2005 when she was promoted to the position of Plan Administrator. In 2006 she left ACI for a year to work for a non profit organization. Now that she is back Natalie will be assisting Pamela Jordan in the document department. Natalie is excited to be back with ACI and once again have the opportunity to be part of the ACI team.

How Fish Can Motivate People

By Skylar Smith, Retirement Plans Consultant
skylar.smith@acibenefits.com

Last year at ACI we started an incentive program specifically designed to reward and foster kindness, helpfulness and fun in our daily lives.

Anyone can nominate anyone for an award – no questions are asked – the reward is simply given and tracked. And, yes, the awards are fish -- little plastic fish of various sizes, depending on the size of the award. We've awarded nearly two thousand fish since the program started last year.

There are categories: We Just Wanna Have Fun! I Could Use A Pick-Me-Up! Superman Factor! And the most popular, I'll Be There For You! So, let's say you give an award to the person who just made your day by making you laugh out loud at yourself. You'd e-mail the Fish program and deliver a fish little fish to the person you appreciate. The fish go into each person's fish bowl in their office.



The person who has received the most fish for the month is given the large, soft fish we've named Cheeto (he's cheeto-colored) and gets to sign that fish and keep it on their desk for the month.

Five small fish can be traded for one medium fish. Five medium fish can be traded for one large fish. Each month all the nominating statements are published in our internal newsletter – Fish Tales. And, fish can ultimately be traded for car detailing, house-cleaning, spa services, trips to Catalina and other prizes. Fish can also be turned into cash for our adopted holiday family at the end of the year.

It sounds fishy... but it works.

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 2008 schedule:

Plan Administration

| | | |
|-----------|------------|---------------------|
| Tuesday | May 6 | 9:00 AM to 12:00 PM |
| Wednesday | May 21 | 9:00 AM to 12:00 PM |
| Tuesday | August 5 | 9:00 AM to 12:00 PM |
| Wednesday | August 20 | 9:00 AM to 12:00 PM |
| Tuesday | November 4 | 9:00 AM to 12:00 PM |

401(k) Basic Training

| | | |
|-----------|------------|--------------------|
| Tuesday | May 6 | 1:00 PM to 4:00 PM |
| Wednesday | May 21 | 1:00 PM to 4:00 PM |
| Tuesday | August 5 | 1:00 PM to 4:00 PM |
| Wednesday | August 20 | 1:00 PM to 4:00 PM |
| Tuesday | November 4 | 1:00 PM to 4:00 PM |

Strategic Sourcing

We are proud to announce our joint venture with Strategic Sourcing, a staffing and consulting firm. Strategic Sourcing is a global business solutions and project management company specializing in the areas of finance, accounting and pension plan administration. This partnership allows us to expand our services and offer professional service solutions to our clients and advisors.

Attracting and retaining talented professionals is the primary concern of most, if not all, companies. Staffing firms are coping with high labor costs while trying to discover highly-skilled talent for their clients. Strategic Sourcing recruiting managers focus on emphasizing the unique qualities each position offers, balancing the selling points of pay, benefits and company stability in their recruitment efforts. Most important, it's their top priority to make sure that the right candidates are being sourced and recruited.

Please feel free to contact Colette Laurent at colette.laurent@acibenefits.com with your recruiting needs.

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.

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.