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ENROLLED ACTUARIES REPORT

HAL TEPFER

Back to School for Multiemployer Actuaries

ALBERT EINSTEIN ONCE SAID, “Education is what remains after one has forgotten what he learned in school.”

Much like the freshmen who now are being dropped off at college campuses around the country, multiemployer actuaries were dropped—a few years ago—into Pension Protection Act (PPA) calculations. Like freshmen encountering a new world that is vastly different from their old surroundings, multiemployer actuaries discovered that what they’d learned through 2008 needed to be revised because of the new law.

But now, like upperclassmen who no longer walk wide-eyed around campus, multiemployer actuaries have grown comfortable enough with PPA to take the time to get a better understanding of what is required of them. And, like returning students, multiemployer actuaries can see a light ahead: not graduation but the sunset of certain provisions of the law in 2014.



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DON FUERST

De-risking Pension Plans

AVOIDING UNCERTAINTY and increasing the predictability of financial results have become the mantra for many pension plan sponsors—even if doing so comes at a somewhat greater cost.

During Session 301 at the Enrolled Actuaries Meeting, Evan Inglis and I discussed some of the techniques actuaries and plan sponsors are using to limit risk in pension plans. The main drivers of uncertainty in pension plans are interest rates, equity investments, and plan demographics and design. An organization’s interest in limiting risk often varies inversely with the size of its pension plan relative to the size of the organization. The organization’s structure also influences risk

tolerance—with publicly traded firms generally more sensitive to risk than privately held or not-for-profit organizations.

De-risking strategies vary based at least in part on a plan’s funded status. Poorly funded plans frequently want to retain equity risk as a potential means to improve funding levels. Plans with higher funded ratios often are more interested in eliminating equity risk to protect any potential surplus. This is especially true for frozen or closed plans that are more likely to develop a trapped surplus.

Lump sum payments to participants offer sponsors a way to remove pension obligations

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BRUCE C. GAFFNEY

Oops! Now What Do We Do?

ADMINISTERING qualified defined benefit and defined contribution plans has become incredibly complex and time-sensitive. And no matter how diligent plan administrators, plan sponsors, and actuaries are, errors in plan administration inevitably occur from time to time. Such errors can jeopardize the qualified status of a plan and have the potential for loss of tax advantages to plan sponsors and participants as well as monetary penalties.

Over the past 20 years, fortunately, the Internal Revenue Service (IRS) has developed a robust program that allows plan sponsors voluntarily to correct errors in administration when they arise with reasonable (or even no) penalties. The Employee Plans Compliance Resolution System (EPCRS) is outlined in [Revenue Procedure 2008-50](#).

In Session 803 of the 2012 Enrolled Actuaries Meeting, Alden Bianchi, partner and chair of the employee benefits and executive compensation practice at Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo in Boston, and Scott Feldman, group manager for the IRS Northeast/Mid-Atlantic Voluntary Compliance Group, reviewed the EPCRS and gave examples of actual situations encountered.

The EPCRS allows a plan sponsor to correct operational failures—instances in which a plan is not operated according to its terms (for example, if vesting services were calculated incorrectly). It also allows a plan sponsor to correct plan document failures that can occur if a plan is not amended on a timely basis to reflect applicable law or guidance (for example, if a plan is not amended to include the qualified optional survivor annuity form of payment by the deadline specified in the Pension Protection Act). The EPCRS covers a number of other failures, such as when a plan does not satisfy the required nondiscrimination tests.

The EPCRS offers three levels of correction:

- The **Self-Correction Program** allows plan sponsors to correct certain operational failures (generally insignificant failures or failures that have occurred in the past two years) unilaterally without paying a fee or notifying the IRS.

- The **Voluntary Correction Program (VCP)** allows plan sponsors to pay a limited fee (based on the size of the plan population) and receive IRS approval for the proposed correc-

tion of an operation, plan document, or other type of failure. The plan sponsor must submit a VCP application to the IRS and receive a compliance statement indicating IRS approval. In the case of certain common failures—such as failure to adopt an amendment required under new legislation—the IRS has established streamlined VCP filing processes that have reduced paperwork and lowered fees.

- The **Audit Closing Agreement Program (Audit CAP)** allows plan sponsors to correct failures identified by the IRS during an audit. Under the Audit CAP, the plan sponsor is subject to a sanction that is intended to bear a reasonable relationship to the extent and severity of the failure but will always be more than the fee that would have been assessed under the VCP.

Each program has various requirements that must be satisfied as outlined in Revenue Procedure 2008-50. The rules should be reviewed each time a plan sponsor seeks to correct a failure, as the requirements can be complicated. Corrections must address all tax years in which the failure occurred, regardless of whether such years are closed. To the extent possible, the correction should restore the plan and participants to the position they would have been in had the failure not occurred. The correction should be reasonable, appropriate, and consistent with the Internal Revenue Code. It also should keep assets in the plan when feasible. Full correction may not be required if it is unreasonable, and estimates may be allowed.

Revenue Procedure 2008-50 includes many examples and model corrections for commonly occurring failures, including errors in administration of plan loans under defined contribution plans and errors related to the actual deferral percentage/actual contribution percentage test.

The EPCRS offers plan sponsors a straightforward and cost-effective way to correct mistakes in plan administration or plan documentation. Actuaries can help their clients navigate these correction programs. ▲

BRUCE GAFFNEY is a principal and consulting actuary with the Benefits Consulting Group of Ropes & Gray LLP in Boston and a member of the Joint Program Committee for the Enrolled Actuaries Meeting.

Mad Men—Dealing With ERISA

IF IT IS 8 A.M. ON WEDNESDAY at the annual Enrolled Actuaries Meeting, it must be time for the Tonya and Don show. For several years, Tonya Manning, president-elect of the Society of Actuaries (SOA) and a member of the Academy's Pension Practice Council, and Don Segal, past president of the SOA and a past pension vice president of the Academy, have teamed up to lead one of the first sessions of the meeting's final day—in an effort to entertain as well as inform the early-rising crowd.

This year was no different. The duo's presentation, "Mad Men—Dealing With ERISA," used the popular cable television program to examine issues associated with the Employee Retirement Income Security Act (ERISA) of 1974.

The real purpose of the session, Segal said half-jokingly, was to review the numerous "gotchas" that enrolled actuaries have to face when dealing with certain statutes and regulations. Manning and Segal shared many potential traps that enrolled actuaries should be on the lookout for when doing ERISA-related work. They also described the Pension Protection Act (PPA) of 2006 as "one big gotcha" that requires enrolled actuaries to be particularly on guard.

Before getting into the intricacies of the myriad statutory and regulatory requirements, the presenters reminded the audience about the overarching requirements of the Code of Professional Con-



duct and in particular Precept 13, which under some circumstances requires an actuary to report another actuary to the Actuarial Board for Counseling and Discipline if there has been a material violation of the Code. Failure to make such a report may itself be considered a violation of the Code. Making a mistake is not a violation of the Code, Manning and Segal said, but

failing to correct that mistake after you become aware of it could be a violation.

Manning cited several issues that every enrolled actuary should have on the radar when considering what constitutes a change in method under ERISA. Problems could arise from changes in interest rate methodology, asset method, or even software. Manning also highlighted potential funding requirements when making plan amendments under Section 436 of the Internal Revenue Code. If the adjusted funding target attainment percentage (AFTAP) is over 80 before the amendment but the amendment causes the AFTAP to drop below 80, additional funding will be required to get back to the 80 percent level. Manning also reminded attendees that, under Section 415 of the revenue code, an update in limits is considered a plan amendment.

Manning and Segal provided many other helpful tips for practitioners. They noted, for example, a change in the Social Security Administration instructions under Internal Revenue Code Section 6057(e) on statements to participants regarding communication of benefits. They also pointed out that there are coverage and nondiscrimination testing issues when a defined benefit plan undergoes a "soft freeze" as opposed to a partial plan termination. ▲

KEITH JONES is the Academy's general counsel and director of professionalism.

Campaign Toolkits Deliver Objective Information

TO SUPPORT ACTUARIES from all practice areas who want to bring their unique skill set and the profession's objective application of actuarial principles to public policy questions, the Academy has assembled campaign toolkits to ensure that the actuarial voice is part of the discussion. To date, the Academy has released toolkits on Social Security, Medicare, and health care reform.

The toolkits are designed to equip members across all prac-

tice areas to deliver objective information about important issues within their own communities. The toolkits include a range of resources: voters' guides, sample slide decks, notes to assist with crafting public presentations, issue briefs, and other policy statements that can be handed out or used to enhance a presentation.

Visit [Campaign 2012 Toolkits: Delivering Objective Information on Public Policy Issues](#) to download the toolkits and learn more about the Academy initiative. ▲



ELLEN FOGARTY

The Making of a Good QDRO

WHAT ARE THE ELEMENTS of a good qualified domestic relations order (QDRO)? James Turpin, president of the Turpin Consulting Group, Inc. in Albuquerque, N.M., and Alex Brucker, a partner at Brucker and Morra in Los Angeles, tackled this question during Session 303 at the 2012 Enrolled Actuaries Meeting.

Early Retirement Subsidy

While an alternate payee's entitlement to any early retirement subsidy generally is a function of the plan, many plans don't address this issue—significantly complicating the administration of a QDRO. A QDRO generally provides benefits payable to an alternate payee at the earliest retirement age, but it can't provide any early retirement subsidy unless the participant has retired and is receiving such a subsidy. Unless it is required by the plan, a domestic relations order does not necessarily fail to be qualified if any employer subsidy is not taken into account when determining an alternate payee's early retirement benefits. When drafting an order it is important to understand how the parties want to handle any early retirement subsidy present in the plan, the panelists advised.

Death Benefits

Death benefits in QDROs often are not drafted well. For example, a common feature of QDROs is to name a former spouse as the surviving spouse for a qualified preretirement survivor annuity (QPSA) so that benefits are not forfeited upon a participant's death. The parties involved, however, may not fully understand how various features of the QDRO interact with the provisions of the plan. Death benefits can be particularly complicated in the case of a future remarriage or multiple alternate payees. When drafting the death benefit provisions, it's critical that the parties' intent is understood so that the QDRO can be executed properly.

Administrative Issues

Because of the generic nature of model orders, these boilerplate templates often cause administrative problems. Models are most

effective if they are created specifically for a plan. Common pitfalls include draft orders for forms or features that are unavailable. Difficulties also may arise when there are multiple orders in place. New orders must be reviewed in relation to any existing orders to ensure that they are coordinated appropriately.

To avoid future litigation or uncertainty in administration, the QDRO should specify which party is responsible for the repayment of loans when plan entitlements are determined. Actuaries are further cautioned to be aware of existing orders at the time of plan takeovers, to minimize future administrative issues.

QDRO Procedures

Plans need to have clear and well-defined procedures for reviewing QDROs to determine if the domestic orders are qualified. The review period may take up to 18 months. Actuaries should consult Actuarial Standard of Practice (ASOP) No. 34, *Actuarial Practice Concerning Retirement Plan Benefits in Domestic Relations Actions*, for definitions, issue analysis, and recommended practices. If the client is not the plan administrator or sponsor, ASOP No. 17, *Expert Testimony by Actuaries*, also may be relevant.

Case Law

Case law often lends interesting perspectives in the QDRO administration process. The panelists recommended that actuaries be aware of recent controversial decisions in various states, which have addressed subjects such as the definition of spouse, anti-alienation rules, and fiduciary errors/overpayment. ▲

ELLEN FOGARTY is a senior manager at Deloitte Consulting in New York.

There was a noticeable shift in the vibe at the 2012 Enrolled Actuaries Meeting from earlier meetings. The panicked “How do we do this?” coming from many of the multiemployer sessions in recent years was replaced with a more mellow “We’ve taken care of the introductory courses; how do we continue with the more arcane ones?”

Schedule MB for Multiemployer Plans

After reviewing some of the basic rules for completing the Schedule MB, Session 107 presenters Joseph Hicks, a principal at the Savitz Organization in Philadelphia; Amanda Notaristefano, a consulting actuary at the McKeogh Co. in West Conshohocken, Pa.; and Steven H. Klubock, an actuary with the Internal Revenue Service in Washington, related some of the issues that they had seen since the initial 2008 filings had been due. With Schedule MB projected on the screen, the presenters highlighted each line in the schedule as they discussed a variety of problems and questions that could come up when completing the form. They focused on topics that were of use to those of us who were long past our freshman year of completing the form, such as “What illustrations supporting funding status should be attached?” and “How does ‘reorganization’ affect the items that are to be completed?”

The panel touched on one of the few Gray Book items that affect multiemployer plans: the “switchback” of asset methods that came about under the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). (Think of this as a study abroad in the middle of a well-planned college career.)

The panel also reviewed the electronic filling process that has been an IRS requirement for all forms for a few years now, and discussed various opinions about how to sign electronic forms.

Information Notification Requirements for Multiemployer Plans

During Session 307, Joyce Mader, a partner at O’Donoghue & O’Donoghue in Washington, and I talked about some of the recurring items that actuaries and plan administrators are required to send out regularly. This session was more of a communication course that highlighted some of the non-mathematical areas that multiemployer actuaries must handle. We discussed at length the 2011 *Cigna Corp. v. Amara* decision and how that decision will—or should—affect the manner in which certain information is communicated to plan participants.

Following the trend set at earlier sessions, Joyce and I addressed a number of specific issues—such as which year’s valuation results should be used when certifying to a plan’s funded status—that were of interest to those participants with several years of experience computing results under PPA.

FASB Sessions

The Enrolled Actuaries Meeting had two accounting sessions for multiemployer actuaries: one that covered changes to the Financial Accounting Standards Board codification (a fancy word for numbering) and one that highlighted the requirements that the FASB has considered implementing for employers in multiemployer funds.

In Session 407, Accounting Standards Codification 960/965 for Multiemployer Pension Plans, Adam Condrick, an actuary at the Segal Co. in Washington, and James C. Kokolas, the managing partner of Calibre CPA Group in Washington, spoke about the impact that the recently revised codification by FASB had on actuarial calculations. It was sort of like finding out that the American Lit class you thought you were taking is really English Lit and you have to get all new textbooks. The panelists walked the crowd through what FASB is all about, why the change to the codification was done, and which plan sponsors are affected.

In Session 807, FASB Employer Disclosures for Multiemployer Pension Plans, Mariah Becker, a senior actuarial analyst at the Segal Co. in Washington, and Lawrence R. Beebe, a principal at Bond Beebe Accountants and Advisors in Washington, reviewed FASB’s discussions on disclosure of pension and postretirement medical expenses by contributing employers to multiemployer plans. At prior Enrolled Actuaries meetings, this topic generated a great deal of discussion. Not long after the 2011 Enrolled Actuaries meeting, however, FASB looked at many changes to the initial proposal, so the panelists at this year’s meeting were able to update the attendees on the final steps in the process. The panelists explained that—much like a syllabus in which an initial deadline for a term paper is pushed back after students raise concerns—the exposure draft, upon becoming a final standard, had its implementation delayed for most employers until years ending after Dec. 15, 2012.

The course of study for multiemployer actuaries is constantly changing, and the changes mandated by the FASB add another wrinkle to the many issues they must stay on top of. The 2012 Enrolled Actuaries Meeting sessions provided multiemployer actuaries with ample opportunities to do so. Because many multiemployer actuaries have advanced far beyond their freshman year under PPA, the discussions reflected practitioners’ growing comfort under the not-so-new law. But as with any educational experience, there are still many unanswered questions.

Unanswered questions, of course, are just another definition of education—right? ▲

HAL TEPFER is a principal for the Savitz Organization in Newton, Mass.

IRS Releases New Segment Rates

Editor's Note: The following was taken from an Academy Alert sent to Academy members on Aug. 17, 2012.

THE INTERNAL REVENUE SERVICE issued a **notice** on Aug. 16 announcing new 25-year average segment rates and adjusted 24-month average segment rates used for pension funding. Notice 2012-55 provides guidance on the new rate structures used to compute the funding target and other

items under Section 430 of the tax code and Section 303 of the Employee Retirement Income Security Act (ERISA). The guidance reflects the changes made to the tax code and ERISA by the Moving Ahead for Progress in the 21st Century Act (**MAP-21**) that was enacted on July 6. ▲

◀DE-RISKING, FROM PAGE 1

and assets from their balance sheet. In today's interest rate environment, the payment to participants generally is comparable or possibly even less than the liability carried on the sponsor's books. Lump sums also generally are less expensive than purchasing annuities—which is another method to remove both assets and liabilities from the sponsor's balance sheet. But lump sums also introduce another risk: the risk of anti-selection against the sponsor. If lump sums are selected predominantly by less healthy participants while healthy participants who might live longer retain the periodic benefit, the eventual cost of the plan may increase.

Plan terminations are the ultimate form of de-risking. Purchasing annuities or paying lump sums to all participants and getting rid of the plan eliminates the pension-related risk for the sponsor—but usually at a cost of 110 percent or more of the pre-termination liability. In part because of this higher cost, many sponsors are looking at less drastic risk-reduction techniques such as partial annuitization buy-in contracts in which the plan retains assets and liabilities but an insurer guarantees certain investment and longevity risk. Buy-ins are more common in the United Kingdom than in the United States, but interest in these contracts seems to be increasing.

Plan design alternatives to de-risk pension plans include cash balance plans and variable annuity plans. Cash balance plans can eliminate the risks associated with early retirement subsidies and the inflation risk of final average pay plans. Cash balance plans often encourage lump sum payments to retirees, which result in transferring both the investment risk and the longevity risk from the sponsor to the retiree.

Variable annuity plans offer the opportunity to eliminate the sponsor's interest-rate risk and transfer the investment risk to the participant. The sponsor agrees to fund a lifetime benefit based on a fixed assumed rate of return. If actual investment returns are different from the assumption, the benefit is adjusted up or down to reflect the change. This adjustment in the benefit prevents gains or losses associated with changing interest rates

or investment results. The sponsor retains the longevity risk in a variable annuity plan.

Traditional pension plans can offer variable annuities as an optional form at benefit commencement. The sponsor avoids both interest-rate and investment risk for the retirees who elect the variable annuity. This option can be made more attractive to retirees by offering a choice of fixed income and equity funds to back the annuity. The purchase of an immediate variable annuity from several insurance carriers presents another option. Changing future accruals to variable benefits can reduce future risk growth for a plan sponsor, but it generally is not feasible to convert existing accrued benefits from fixed to variable. ▲

DON FUERST is the Academy's senior pension fellow.

Save the Date

Pension Webinar: Social Security: Actuarial Status and Assumptions

Nov. 27, Noon to 1:30 p.m. EST

Join members of the Academy's Social Security Committee to gain an actuarial perspective on the 2012 Social Security Trustees Report and the assumptions used in Social Security projections. Presenters include Eric Klieber, associate principal, consulting actuary at Buck Consultants; Timothy Marnell, consulting actuary at Tim Marnell Actuarial and Benefits Consulting; and Mark Shemtob, president of Abar Pension Services.

Steve Goss, chief actuary for the Social Security Administration, also will be on hand to provide additional comments and answer questions.

Look for more information in your inbox soon.