Bryan, Pendleton, Swats & McAllister, LLC *July/August 2015*

Developments

RECENT DEVELOPMENTS IN EMPLOYEE BENEFITS

IRS Eliminates Five-Year Restatement Cycle for Individually Designed Plans

by David R. Alderson

The wheels have fallen off the Internal Revenue Service's remedial amendment cycle and determination letter program. For some time, the Service has been trying to balance the staggered five-year cycle for individually designed plans (IDPs) and the IDPs' demand for determination letters, against budget cuts and dwindling resources. The crash came with the recent issuance of IRS Announcement 2015-19.

Background

Under the remedial amendment cycle program, individually designed qualified retirement plans are to be restated every five years. A plan falls under either Cycle A, B, C, D, or E, with the cycle generally determined by the last digit of the sponsor's employer identification number.

Under the staggered five-year cycle, an IDP is restated to incorporate required legislative and regulatory changes that have occurred during the prior four years, along with any discretionary amendments adopted by the plan. Ideally the restatement takes place during the last 12 months of the IDP's cycle. To make sure the restated plan satisfies the IRS document requirements, the restatement could be submitted for a determination letter before the end of the cycle's fifth year. An IDP that filed for a determination letter during the last 12 months of its cycle was said to be "on-cycle." An existing plan that filed any time other than during the last 12 months was "off-cycle." Over the past several years, the IRS has limited—and generally discouraged—off-cycle filings.

Announcement 2015-19

An immediate change to the five-year cycle is, as of July 21, 2015, the IRS stopped accepting all off-cycle filings.

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Beginning January 1, 2017, the staggered five-year remedial amendment cycle will be eliminated, and the IRS will no longer accept determination letter applications based on the cycles (except for Cycle A plans, as explained below). After that date, IDPs will be able to file for a determination letter only for initial plan qualification and at plan termination. The IRS may allow filings for certain other limited circumstances, but has not indicated what those circumstances will be. The IRS intends to request comments periodically from the public regarding those other limited circumstances and will identify those circumstances in published guidance.

By eliminating the five-year remedial amendment cycle, an IDP's deadline to adopt a remedial amendment for IRS-required changes will be, generally, the same date the sponsoring employer must file its tax return for the year in which the change becomes effective. The IRS intends, however, to provide temporary relief by extending the remedial amendment period for IDPs to a date no earlier than December 31, 2017.

It is important to note that Announcement 2015-19 does not affect the six-year cycle for prototype and volume

Also in this issue:

submitter users, nor does it apply to the circumstances under which a volume submitter user may apply for a determination letter.

What does this mean?

For those sponsors whose experience with qualified plans predates 2004, the elimination of the five-year cycle seems to indicate a return to the days when plans were constantly being amended—seemingly once a year, at least—to incorporate all the mandatory, potentially disqualifying changes Congress, the IRS, and other agencies routinely issue. This time, however, an IDP will no longer have the ability to obtain a determination letter to assure that an amendment is technically accurate and timely adopted. Now plan sponsors, trustees, and administrators will have no assurance that a plan document is in compliance.

Whether we return to the days of frequent amendments or the IRS creates another cycle program, without the safety net of a determination letter program, the burden for making sure a plan document is in compliance will fall to the plan sponsor, its counsel, and its consultants. To avoid this risk, many IDPs will want to consider moving to a prototype or volume submitter document. Prototype users have reliance on the prototype sponsor's opinion letter but cannot request a separate determination letter for a unique provision. Volume submitter users have reliance on the volume submitter sponsor's advisory letter and, in some cases, can request a determination letter for provisions that may not "fit squarely" within the volume submitter plan. The IRS recently announced its intention to expand the prototype and volume submitter programs to allow ESOPs and cash balance plans, but, as of yet, these types of plans have not been approved. Furthermore, there are no preapproved options for multiemployer plans, and there are some design limitations for governmental plans that are not permitted on preapproved documents.

A plan sponsor that wants to stay with an individually designed plan will likely want some assurance from its legal counsel that the plan document is compliant. Some clients may ask their attorneys for a legal opinion, while others may go as far as seeking private letter rulings from the IRS.

Immediate impact

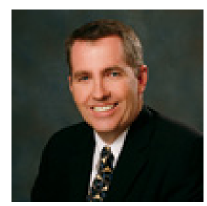
Currently, we are in Cycle E for individually designed plans. The cycle ends January 31, 2016, and includes many governmental plans that elected to accept a one-time extension from Cycle C. The current Cycle E is not affected by Announcement 2015-19. These plans still have until January 31, 2016, to restate and file for a determination letter.

The restatement window for the next cycle, Cycle A, will open February 1, 2016, and close January 31, 2017. This group is also not affected by this announcement. Though Announcement 2015-19 eliminates the five-year cycle program beginning with January 1, 2017, it designates Cycle A as the last group to operate under the program. Cycle A plans will be allowed to file for determination letters through January 31, 2017.

Apparently, based on the IRS's statement in the announcement, all other IDPs will not be required to restate their documents until December 31, 2017, at the earliest. How that restatement will be accomplished and what it will contain is yet to be determined. The IRS indicated that it may expand the use of model amendments and allow more provisions to be incorporated by reference.

The full consequences of the cycle's elimination will not be known until the IRS issues additional guidance. The IRS is seeking comments for modifying its current rules on interim amendments, conversion of an IDP to a preapproved plan, the Voluntary Correction Program and Self-Correction Program, and other programs that rely on the five-year cycle rolling merrily along.

David R. Alderson



David joined BPS&M's Technical and Research Department in 2000. He advises clients on compliance matters relating to plan documentation, disclosure, corrections, and other issues relating to IRS and DOL regulations and guidance. David oversees the firm's prototype and volume submitter program, its filing of IRS determination letter requests, and the submission of EPCRS applications. He is currently a member of IRS' Determination Letter Liaison Group, a roundtable consisting of IRS representatives and members from the employee benefits private sector. With a background in business law, municipal government, and public finance, David has 25 years of experience in governmental compliance and document drafting. David received a JD from San Joaquin College of Law and a BA in Journalism from California State University, Fresno. He is a member of the California Bar and a member of the National Association of Public Pension Attorneys. David is a consultant in our Nashville, TN office.

IRS Improves Plan Compliance Resolution Program—Again

by Jacob Guinn

Let's face it, very few institutions take more criticism in this country than the IRS, which makes it all the more important to compliment the Service for creating and improving programs like the Employee Plans Compliance Resolution System (EPCRS). The IRS introduced the EPCRS program in the 90s, and since then it has provided a number of updates that have improved and expanded the program. With each modification, the Service has made the EPCRS program less expensive and easier for plan sponsors to use when correcting errors within their retirement plans. The most recent of these improvements came earlier this year in the form of Revenue Procedures 2015-27 and 2015-28. A brief overview of these welcome changes follows.

> With each modification, the Service has made the EPCRS program less expensive and easier for plan sponsors to use when correcting errors within their retirement plans.

Revenue Procedure 2015-28

Rev. Proc. 2015-28, effective April 2, 2015, provides revised safe harbor correction methods for two common plan issues: failing to start participants' automatic contributions and failing to implement participants' elective deferral elections. The new guidance clarifies the self-correction requirements, provides for longer discovery and correction periods, and reduces compliance fees.

Automatic contribution corrections

Previously, when a plan sponsor failed to implement an automatic contribution feature for a newly eligible plan participant in accordance with the terms of the plan, the plan sponsor was required to make a corrective contribution to the plan equal to 50% of that participant's missed deferral opportunity plus any required matching contributions and investment earnings.

Under the new guidance in Rev. Proc. 2015-28, if the participant's salary deferrals begin within 9½ months after the end of the plan year in which the failure occurs (or, if notified by the participant, the first payroll period after the end of the month the participant notified the plan sponsor), the plan sponsor is only required to make a contribution equal to the matching contribution plus investment earnings that would have been made had the automatic deferrals commenced on time. Since this correction is to an automatic contribution arrangement, missed investment earnings are based on the plan's default investment returns. The corrective contribution must be made by the last day of the second plan year following the plan year in which the automatic enrollment failure occurred.

Notice requirements: Plan sponsors are now required to provide proper notice to participants affected by the plan error no later than 45 days after the date on which corrections begin. The notice to the participant must include:

- An explanation of the plan error
- How the plan error was corrected
- A statement that a corrective contribution was made to compensate the participant for any missed matching contributions
- A statement that the participant may increase his or her deferral election to compensate for missed deferrals
- Plan contact information for any questions or comments regarding the matter

If affected participants have not made an investment election at the time of the correction, the earnings attributable to missed contributions may be calculated based on the plan's default investment alternative (if one exists).

Correcting missed elective deferrals

Rev. Proc. 2015-28 introduces two new safe harbor correction methods regarding missed elective deferrals. If the plan fails to execute a participant's salary deferral election, the plan sponsor may correct the failure by implementing the participant's deferral election. If this correction is made within three months from the date the deferrals were supposed to begin, no plan sponsor contribution is required. If the failure is corrected after three months but before the end of the second plan year following the year of the failure, the plan sponsor must make a corrective contribution of 25% (previous guidance required 50%) of the missed deferrals. The plan sponsor must also make a contribution of the full amount of any missed matching contributions. This total contribution must be adjusted for lost earnings (based on the plan's default investment if the participant has not made an investment election). The notice requirements described in the previous section apply to these safe harbor correction methods as well.

For each of these new safe harbor arrangements, if the plan sponsor is notified of the deferral failure by the affected participant, then the plan must begin correct deferrals no later than the first payroll made on or after the last day of the month following the month the participant notified the plan sponsor.

Revenue Procedure 2015-27

The IRS issued Rev. Proc. 2015-27 on March 27, 2015, and while plan sponsors were free to adopt the revisions for future filings from that date forward, the changes were not officially effective until July 1, 2015. The main focus of Rev. Proc. 2015-27 is to clarify the rules for correcting overpayment failures and streamlining Voluntary Correction Program (VCP) filing fees for loan failures and missed required minimum distributions (RMDs).

Overpayment rule revision

The current version of EPCRS (Rev. Proc. 2013-12) created confusion among users as to whether plan sponsors were required to collect overpayments from plan participants (or other beneficiaries). The IRS clarifies that issue in Rev. Proc. 2015-27 by stating that, depending on the circumstances of the plan failure, the plan sponsor or another representative party may make a contribution (with interest) to the plan in place of seeking repayment from the participant. Rev. Proc. 2015-27 also provides for a retroactive plan amendment to account for any overpayment.

VCP filing fee revision

The IRS reduced the filing fee for VCP submissions relating to two specific failures: plan loan failures and required minimum distribution failures.

Plan loan failures

Previously, the filing fee schedule for plan loan failures was 50% of the regular filing fee, which was based on the total number of participants in the plan. This latest revision allows plan sponsors to make plan loan failure VCP corrections at a much lower rate than previously allowed by EPCRS. For example, the largest fee for a plan loan failure based on the previous schedule was $12,500.

Under the revised procedures, if the plan loan failure that is the subject of the VCP submission affects less than 25% of the plan sponsor's total plan participants in the year in which the failure occurs, and the loan failure is the only failure addressed in the VCP submission, then the plan sponsor may use the following filing fee chart:

Number of participants with loan failures	Compliance fee
13 or fewer	$300
14 to 50	$600
51 to 100	$1,000
101 to 150	$2,000
Over 150	$3,000

This rate change should reduce plan loan failure correction costs across the board, and it makes practical sense to base fees on the actual number of plan participants affected instead of basing fees on the overall number of participants in the plan, whether affected by the correction or not.

Required minimum distribution failures

Before Rev. Proc. 2015-27, RMD failures only qualified for a reduced filing fee if the failure involved 50 or fewer plan participants. Rev. Proc. 2015-27 revises the filing fee for RMD plan failures by making the lower filing fee available to a larger number of affected participants. If the RMD failure involves up to 150 participants, the VCP filing fee will be $500; if the RMD failure involves 151 to 300 participants, the VCP filing fee will be $1,500.

Section 415 failures

Internal Revenue Code Section 415(c) limits the amount of contributions that can be allocated to a plan participant's account in a defined contribution plan (2015 limit is the lesser of $53,000 or 100% of the plan participant's compensation.) Thanks to Rev. Proc. 2015-27, plan sponsors now have more time to correct a Section 415 failure in EPCRS. Rev. Proc. 2015-27 extends the time allotted to plan sponsors to correct excess annual additions from 2½ months after the end of the year to 9½ months after the end of the year.

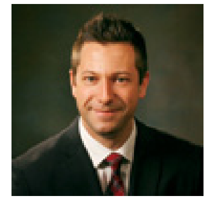
Miscellaneous changes

There are a couple of additional notable changes to the EPCRS brought about by Rev. Proc. 2015-27. Regarding the standard model VCP documents, plan sponsors are put on notice that they are no longer to use the previous model documents (these documents have been removed from the official IRS website). Instead, future VCP correction submissions are to use the forms currently provided on the official IRS website (Form series 14568) until further guidance is provided. The IRS also revised its determination letter filing requirements when submitting a VCP filing during on-cycle corrections.

Conclusion

The EPCRS has been one of the most successful and well-received IRS programs in recent memory. By expanding options and providing streamlined correction mechanisms, the IRS is exhibiting its willingness to work with plan sponsors. When mistakes happen, plan sponsors should look to the ever-evolving EPCRS program for ways to correct those mistakes.

Jacob Guinn



Jacob is a consultant in the technical and research department and he has five years of corporate transactional experience. Jacob specializes in regulatory compliance and design consultation for retirement and health and welfare plans. Jacob received his BBA in Accounting from East Tennessee State University, his MBA from Middle Tennessee State University, and his JD from the University of Tennessee. Jacob is an attorney licensed to practice in Tennessee. Jacob is a consultant in our Nashville, TN office.

Redefining the OPEB Obligation for Governmental Plans

by Lauren N. Chrisman

Note: Employer specifically means a government entity.

In June 2015, the Governmental Accounting Standards Board (GASB) issued two new Statements designed to give greater transparency to OPEB (Other Postemployment Benefits) in the financial reports of state and local governmental plans. The new rules will give a government's employees, tax payers, and current and potential bond holders a clear picture of its financial outlook by incorporating OPEB obligations (i.e., liabilities and expenses) in its financial statements.

The gray area of OPEB liabilities

What is an OPEB liability? More simply, what is a liability? As the GASB defines it in Concepts Statement No. 4, "Liabilities are present obligations to sacrifice resources that the government has little or no discretion to avoid." The latter part of this definition exposes the gray area of OPEB liabilities.

OPEB obligations are promises employers make to their employees to pay for nonpension benefits after retirement (such as life insurance, health coverage, disability insurance, etc.). Generally, employers are not legally required to provide such benefits, leading some government entities to believe they hold absolute discretion about whether to keep their promises to employees after retirement. Since governmental OPEB benefits often lack the protections provided to governmental pension plan benefits, the projected costs of providing OPEB have never fully satisfied the GASB's concept of a liability.

> Statement No. 74, which is effective for fiscal years beginning after June 15, 2016, applies to the OPEB plan. Statement No. 75, which is effective for fiscal years beginning after June 15, 2017, applies to employers that report under Generally Accepted Accounting Principles.

In response to growing concerns about the extent of the financial obligations governments face for providing OPEB, GASB Statements No. 43 and 45, released in 2004, require these benefits to be recognized. The two new statements, which redefine OPEB promises explicitly as liabilities, are GASB Statements No. 74 and 75, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans* and *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*, respectively. Statement No. 74, which is effective for fiscal years beginning after June 15, 2016, applies to the OPEB plan.Statement No. 75, which is effective for fiscal years beginning after June 15, 2017, applies to employers that report under *Generally Accepted Accounting Principles*. The new statements serve to strengthen the accountability employers assume for non-pension benefits promised to their employees. The major changes for OPEB accounting and financial reporting follow the changes made in 2012 to the pension standards: GASB Statements No. 67 and 68 and in 2015, GASB Statement No. 73.

What's changing?

Requirements under the new statements depend on whether the OPEB plan is administered through a trust that meets the following criteria:

• Contributions are irrevocable

• Assets are set aside specifically to pay for OPEB

• OPEB plan assets are legally protected from creditors

For the purposes of this article, under both Statements No. 74 and 75, OPEB plans that meet the above three criteria will be referenced as *funded plans* and those that do not meet the criteria will be referenced as *unfunded plans*.

Major changes to accounting and financial reporting for OPEB liabilities include: (1) stipulating a single actuarial cost method be used for valuation of OPEB liabilities, (2) reporting an OPEB liability on the face of the financial statements, (3) changing the way the discount rate is calculated, (4) enhanced note disclosures and Required Supplementary Information (RSI), (5) accelerated recognition of liability changes and (6) the separation of funding and accounting. The following table provides an overview of the changes brought about by GASB Statements No. 74 and 75.

Single actuarial cost method

For employers with fewer than 200 employees, the *Entry Age Normal Level Percent of Salary* actuarial cost method is now required to be used at least every two years in conducting actuarial valuations. Prior to Statements No. 74 and 75, employers with fewer than 200 employees had the option of having valuations every three years. There is significant financial concern for those employers with fewer than 200 employees, which the GASB alluded to in its discussion; yet, the GASB affirmed that measurement of OPEB liabilities does not vary in importance based on the size of the company.

The GASB also confirmed that the way in which OPEB cost is allocated should not vary between employers for financial reporting purposes. This means all employers not currently using the Entry Age Normal Level Percent of Salary actuarial cost method will have to collect salary data for each employee to provide to the actuary. Employers may see an increase in costs related to gathering data for actuarial valuations under this new standard. Also, changing to this cost method from either the *Projected Unit Credit* or *Entry Age Normal Level Dollar* methods may cause a one-time increase in OPEB liability. As a minor exception, a less costly alternative measurement method is available under the new standards for employers with fewer than 100 employees.

Reporting an OPEB liability

GASB now requires employers to report a liability for OPEB benefits on the face of their financial statements.

Funded plans should report a *Net OPEB Liability* on their balance sheet. Statements No. 74 and 75 define the Net

	GASB 43 & 45	GASB 74 & 75
Approach	Accounting equals funding	Accounting and funding are no longer linked
Annual cost	Annual Required Contribution	OPEB expense is defined as accounting expense plus unrecognized items, so that the total equals the annual change in funded status
Balance sheet recognition	Net OPEB obligation or asset measure of actual contributions versus Annual Required Contributions	Net OPEB liability
Assets	Asset smoothing allowed	Fair market value of assets
Discount rate	Expected long-term portfolio return	If plan is projected to be underfunded, a combination of long-term portfolio return and tax-free municipal bond return
Funding methods	Variety of funding methods	Single funding method

OPEB Liability as the *Total OPEB Liability* less the plan's *fiduciary net position*. The Total OPEB Liability is the portion of the actuarial present value of projected benefit payments that is attributed to past periods of service. The plan's fiduciary net position is the amount of funds set aside to pay OPEB benefits, formally defined by the GASB as assets plus deferred outflows of resources less liabilities less deferred inflows of resources. Unfunded plans must report the Total OPEB Liability on the face of their financial statements. Essentially, this means the entire *Unfunded Actuarial Accrued Liability* (UAAL) will move from the notes of the financial statements to the balance sheet. Employers in cost sharing plans should allocate the liability proportionately among each participating employer.

The following simplified financial statements illustrate the impact Statements No. 74 and 75 will have on a government's financial statements.

General Government Balance Sheet
(amounts in thousands)

	As Reported GASB 43/45	*Adjusted GASB 74/75*
Current Assets	$31,093	$31,093
Capital Assets	34,227	34,227
OPEB Assets	0	26,800
Total Assets	65,320	92,120
Long-term Liabilities Outstanding	14,371	14,371
Other Liabilities	11,465	11,465
OPEB Liabilities	0	48,503
Total Liabilities	25,836	74,339
Net Assets		
Invested in Capital Assets, Net of Related Debt	21,464	21,464
Restricted	5,635	5,635
Unrestricted	12,385	12,385
OPEB Funded (Unfunded)	0	(21,703)
Total Net Assets	39,484	17,781

Change in Net Assets

	As Reported GASB 43/45	*Adjusted GASB 74/75*
Revenues		
Charges for Services	4,025	4,025
Operating Grants and Contributions	1,452	1,452
Capital Grants and Contributions	2,299	2,299
General Revenues		
Property Taxes	9,789	9,789
Sales Taxes	9,093	9,093
Other Taxes	2,894	2,894
Miscellaneous	292	292
	29,844	29,844
Expenses		
All Departments	24,685	24,685
OPEB Expense	2,108	5,218
Community Support	297	297
Interest on Long-Term Debt	410	410
	27,500	30,610
Transfer from Business - Type	1,655	1,655
Increase in Net Assets	3,999	889

Calculating the discount rate

The discount rate for funded plans is to be calculated based on whether assets are sufficient to cover future OPEB liabilities. If assets are sufficient, the discount rate may be calculated as the single rate reflecting the long-term expected rate of return on plan assets. The assets must be valued for each future period, and must be sufficient for that period to be able to use the expected rate of return. This will require a review of the current funding policies for funded plans to determine which discount rate to use. A mixed method is available for plans that have sufficient assets in some periods but not in others.

Unfunded plans are required to use a yield or index rate for 20-year, tax-exempt general obligation municipal bonds with an average rating of AA/Aa or higher.

Note disclosures and RSI

Heightened standards for note disclosures and RSI are expected to give users of financial statements a better understanding of government entities' OPEB liabilities. In the notes to financial statements, employers should include descriptions of OPEB benefits provided, the number of employees in each class in the OPEB plan, and the source of gains/losses in the Net OPEB Liability for the current fiscal year. The RSI now requires a schedule showing each of the following over the most recent 10 years: (1) the sources of changes in the Net OPEB Liability, (2) differences between the actual and required contributions, (3) components of the Net OPEB Liability and related ratios. The ratios include the plan's fiduciary net position as a percentage of Total OPEB Liability, Net OPEB Liability as a percentage of covered payroll, and contributions as a percentage of covered payroll. Finally, employers must now disclose the Net OPEB Liability's sensitivity to changes in medical trend (+/-1%) and discount rate (+/-1%). This will result in five different Net OPEB Liability measures, which will give users of financial statements a more comprehensive look at the impact assumptions have on the government's liability.

Heightened standards for note disclosures and RSI are expected to give users of financial statements a better understanding of government entities' OPEB liabilities.

Accelerated recognition of expense

The *OPEB Expense* replaces the old *Annual Required Contribution (ARC)* and *Annual OPEB Cost*. This new expense component immediately recognizes most changes in Total OPEB Liability. Changes due to plan experience or demographic/economic assumptions should, however, be amortized over the average future service of current employees. This accelerated recognition of changes in liability will likely cause the OPEB Expense to be much more volatile than under the ARC.

The separation of funding and accounting

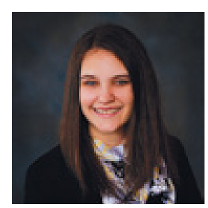
With volatility arising in the OPEB Expense, many employers with funded plans will likely want to consider developing a funding policy for their OPEB plan. With the release of the new statements, funding and accounting are officially separated. Actual funding schedules are not guided by the GASB's recently released statements. Plans that currently fund benefits on a pay-as-you-go basis could reduce their unfunded balance sheet liability by developing a funding policy.

In perspective

All of these changes to OPEB accounting and financial reporting mean that major changes are coming to the financial statements of government entities that provide OPEB. Many may experience significant increases in their balance sheet liability. Those not currently using the *Entry Age Normal Level Percent of Salary* actuarial cost method may see a one-time increase in liability when changing to this method. They may also see an increase in administrative expenses associated with gathering salary data to provide to the actuary. Others may aggregate costs associated with conducting actuarial valuations more frequently.

Even though the costs of preparing OPEB disclosures may initially increase due to implementing these changes, the costs may not increase indefinitely. Actual funding procedures may not have to change at all. It is simply the recognition and enhancement of user understanding of this liability that GASB sought to improve by implementing Statements No. 74 and 75. These changes in the accounting and financial reporting for OPEB reflect the GASB's renewed sense of an OPEB liability. The new definition reflects the fact that the GASB has officially determined that OPEB promises governments make to their employees, although not always legally or contractually binding, reflect significant liabilities at the time the financial statements are issued and should be recognized on the face of the financial statements.

For more information on changes in financial reporting and accounting standards for OPEB benefits, or to discuss the impact these changes may have, contact your BPS&M consultant.



Lauren Chrisman
Lauren joined the health and welfare team at BPS&M in 2014. She performs OPEB valuations, rate setting for self-insured plans, as well as claims repricing and network discount analyses. Lauren graduated cum laude with a BS in Psychology from Middle Tennessee State University in 2012. She also received her Master's, with Honors, in Actuarial Science from MTSU in 2014. She is currently working through the actuarial exam process and is working toward her Associate of the Society of Actuaries designation. Lauren is based in our Nashville, TN office.

Recent U.S. Supreme Court Cases

by Leah Sardiga, ASA

King v. Burwell

In its June 25, 2015 ruling, the U.S. Supreme Court (the Supreme Court) upheld a major component of the Affordable Care Act (ACA), allowing millions of Americans to continue receiving tax subsidies towards the purchase of health insurance. Despite the language of the law stating that subsidies are only available on exchanges "established by the state," the 6–3 vote preserved benefits for 6.4 million middle- and low-income individuals and families in the 34 states that opted for the federally operated exchange. Elimination of the tax credits had the potential to derail the individual insurance markets in those states. Ultimately, the Supreme Court decided that this would go against the intent of the law to improve access to affordable health care coverage. Many view the Supreme Court's decision as a turning point for the ACA, signaling that it is here to stay.

Obergefell v. Hodges

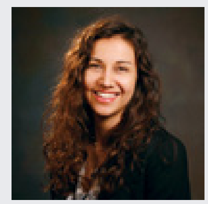
The Supreme Court followed its decision in *King v. Burwell* with another significant decision on June 26, 2015, in *Obergefell v. Hodges*. In *Obergefell*, the Supreme Court generally held that the Fourteenth Amendment to the U.S. Constitution requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out of state.

In 2013, the Supreme Court ruled in the *U.S. v. Windsor* case that certain provisions of the Defense of Marriage Act (DOMA) were unconstitutional. Subsequent IRS guidance addressed application to qualified retirement plans. In general, plan amendments may have been needed for many qualified retirement plans to comply with the IRS guidance depending on certain conditions such as the wording of the plan. The *Windsor* decision had limited application to health and welfare plans under limited IRS and DOL guidance.

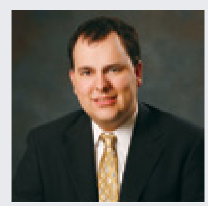
The recent decision of the Supreme Court in the *Obergefell* case does not specifically address the employee benefits implications of its holding. There are, however, potential implications, mainly for health and welfare plans.

With respect to an employer that sponsors a fully insured health plan that provides only opposite-sex spousal benefits, there are issues about whether the plan may be required to offer same-sex spousal benefits depending on applicable state insurance laws and other laws. The employer should discuss the issues with its legal counsel. A private employer that sponsors a self-funded health plan providing opposite-sex spousal benefits but not same-sex spousal benefits may not be required to provide same-sex spousal benefits; however, the employer may run the risk of employment discrimination claims if it does not, and it should consider the relevant issues with its legal counsel.

CONSULTANTS *in the* LIMELIGHT



Meena Nooe



Matthew Widick

Meena Nooe and Matthew Widick (BPS&M Nashville) have earned the Chartered Enterprise Risk Analyst (CERA) designation. This designation within the Society of Actuaries requires an Enterprise Risk Management (ERM) module and an ERM essay exam in addition to the ASA designation. The CERA credential curriculum was carefully developed to:

- Encompass the most comprehensive and rigorous demonstration of enterprise risk management expertise available
- Impart both quantitative and qualitative skills
- Include the theoretical, practical and professional underpinnings of ERM
- Include the understanding of and training in actuarial approaches to risk
- Be completed within three to four years

Sarah Barnes

Sarah Barnes (BPS&M Louisville) recently received her CPC (certified pension consultant) designation from ASPPA.

For more information about our consultants, please visit www.bpsm.com.

Plan sponsors should also consult with their legal counsel on whether other welfare benefits that are available only to opposite-sex spouses, such as supplemental life and disability, should be extended to same-sex spouses to avoid potential litigation.

Prior to *Obergefell,* employers that provided health coverage to the same-sex spouses of employees who resided in a state that did not recognize same-sex marriage may have been required under state tax law to impute income to the employee on the value of the same-sex health coverage. After the *Obergefell* decision, such an employer should no longer be required to impute state income for providing health benefits to a same-sex spouse. There may be issues about the specific date on which the employer should stop imputing income for state tax purposes in a particular state.

> Now that same-sex spouses are to be treated the same way as opposite-sex spouses, some employers may choose to re-evaluate whether to offer benefits to domestic partners.

Another consideration for sponsors of health plans involves domestic partner benefits. Over the past several years, many employers began offering health coverage to domestic partners as a way to provide benefits to same-sex partners. Coverage is typically extended to opposite-sex domestic partners as well. Now that same-sex spouses are to be treated the same way as opposite-sex spouses, some employers may choose to re-evaluate whether to offer benefits to domestic partners.

There are questions about the applicable effective date for an employer to comply with the *Obergefell* decision, which an employer should discuss with its legal counsel. In addition, employers should (1) have their legal counsel review plan documents for any needed changes, (2) review payroll system procedures and systems to ensure that federal and state taxes are computed correctly, (3) consider any other changes needed to meet the goals of their organizations, and (4) stay abreast of guidance and developments in this area.

Leah Sardiga, ASA
Leah joined BPS&M in 2012 as a member of the firm's health and welfare actuarial practice. In her current role, she performs OPEB valuations, rate setting for self-insured plans, and network discount analysis. Leah received a BA in Mathematics and Economics, summa cum laude, from Case Western Reserve University. Leah is an Associate of the Society of Actuaries. Leah is a consulting actuary in our Nashville, TN office.

The BPS&M Pension Liability Index

Updated as of July 31, 2015

by Jeffrey Thornton, ASA, EA, MAAA

Interest rates are arguably the primary driver of the volatility in pension plan liabilities. BPS&M has established a set of liabilities and applied the yield curves to those liabilities in order to create the indices used to demonstrate the effect of interest rates on plan liabilities. The BPS&M Pension Liability Index tracks the percentage change in liabilities for a typical defined benefit plan under the following four interest rate standards, which are in general use:

1. The Full Yield Curve published by the IRS for minimum funding purposes under IRS Code §430.
2. The 24-month Averaged Yield Curve published by the IRS for minimum funding purposes under IRS Code §430.
3. The Adjusted Average Yield Curve reflects the impact of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Highway and Transportation Funding Act of 2014 (HATFA). HATFA extended the funding relief, which was introduced by MAP-21 in 2012. Originally, under MAP-21, the funding relief began to diminish in 2013. HATFA extends the funding relief, such that it does not begin to diminish until 2018.

4. A Corporate Financial Yield Curve used for financial statement pension liability determinations. Prior to January 1, 2014, this was measured using the Citigroup Pension Discount Curve. As of January 1, 2014, this has been measured using the Wells Fargo Pension Discount Curve (AA-rated or higher). For more information about the Wells Fargo Pension Discount Curve, please read the article titled "Introducing the Wells Fargo Pension Discount Curves" in the Jan/Feb 2014 issue of Developments.

The BPS&M Pension Liability Index uses a hypothetical plan for benchmarking purposes based on "typical" pension plan features. The duration of the liabilities under this hypothetical plan is 15 years. The benchmark period for the Index starts with the effective date of the Pension Protection Act (January 2008), and the graph shows the rise and fall in liabilities due to changes in interest rates relative to that date. All other factors remain constant throughout the benchmarking period; ergo, the change in liabilities is due solely to the interest rate environment.

The trends demonstrated in the graph will generally hold true for most pension plans, but the magnitude of the percentage changes will vary depending on a given plan's demographics and benefit accrual patterns.

The table below shows the percentage changes in the indices over various periods.

Indices Changes

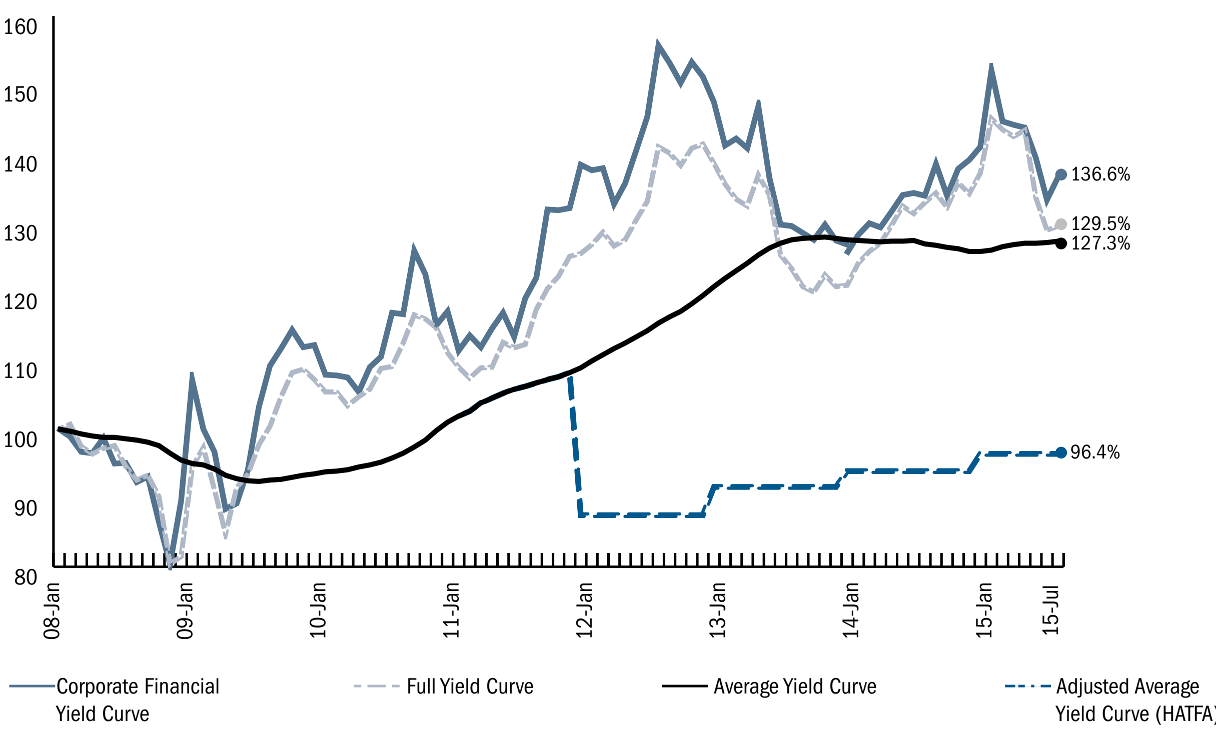
Indices	*Since Inception (1/1/08)*	*2015 Year to Date*	*Last 12 months*
Full Yield Curve	+29.5%	-5.6%	-2.6%
Averaged Yield Curve	+27.3%	+1.2%	+0.3%
Adjusted Average Yield Curve	-3.6%	0.0%	+2.7%
Corporate Financial Yield Curve	+36.6%	-3.1%	+2.0%

The BPS&M Pension Liability Index is updated regularly. If you have questions or comments concerning the BPS&M Pension Liability Index, please contact your BPS&M consultant or jeffrey.p.thornton@bpsm.com.

Jeffrey Thornton, ASA, EA, MAAA

Jeff has 10 years of actuarial experience in defined benefit plan administration. He specializes in liability studies and has provided plan-specific analyses for clients of various sizes and diverse industries. Jeff is a consulting actuary in our Louisville, KY office.

BPS&M Pension Liability Index since inception



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