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INTEGRATION

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- o How have plan sponsors and actuaries been dealing with the newly permitted disparity regulations?
- o Does Section 401(a)(4) help?

MR. HAROLD A. LOEB: I am a Senior Vice-President with Hay/Huggins Company and Manager of their Los Angeles Office. First I would like to introduce our panel. Our first speaker will be Richard Schreitmueller. Dick has been with A. Foster Higgins since 1988 as their Research Actuary and Managing Consultant. Our second speaker will be Rich LaBombarde. He is a research actuary in the Employee Benefits Research Department of Milliman and Robertson in Washington, D.C. Our final speaker will be Phil Seelinger, Retirement Plans Manager of Levi Strauss and Company.

In November 1988, a month and a half before the compliance deadline for calendar year plans, the IRS issued proposed regulations for integrating qualified retirement plans with Social Security. Seven months later, in June 1989, the IRS issued additional guidance in Notice 89-70. The regulations were required by the changes in Code Section 401(l) that were included in the Tax Reform Act of 1986. The broad intent of those changes was to narrow the permitted social security integration. The new proposed rules are effective the first day of the plan year beginning in 1989. Because it was virtually impossible to comply in the short time allowed between the date the regulations were released and the end of 1988, the IRS published Notice 88-131 in December 1988 and Notice 89-92 in July 1989, allowing employers to implement the new rules when they amend their plans to comply with the Tax Reform Act 1986 sometime before the end of 1991. Until then, employers can use the model amendments in Notice 88-131. In general, once the plan is fully amended for the Tax Reform Act 1986, the new rules will be retroactive to the first day of the 1989 plan year.

The proposed regulations reflect the changes made in the Code in that they eliminate plans that are based solely on compensation in excess of the Social Security taxable wage base and narrow the difference in benefits or contributions above and below the integration level.

However, they may well have gone beyond the scope of existing law by requiring different reductions in integrated benefits at early retirement depending on employees' birth dates, eliminating offset plans as we know them, eliminating the fractional rule for the accrual of benefits, and prohibiting early retirement supplements; that is, not permitting offsetting Social Security benefits until the attainment of the employee's normal retirement age.

The proposed regulations have drastically shifted the allocation of costs among employee groups for plans that were previously integrated. Lower paid employees can no longer be integrated out by eliminating benefits below the integration level. Employers that are sensitive to the cost of their retirement benefits will be forced to reduce the benefits of higher paid employees. Conversely, employers attempting to maintain benefit levels for higher paid employees will incur significantly increased costs for lower-paid employees. Employers, therefore, must creatively revise their benefit formulas if their goal is to achieve the same income replacement ratios.

However, maintaining benefits under the new integration regulations can be accomplished in a variety of ways. Dick will speak of the various ways in which plans can be integrated with Social Security. Phil will tell us how one employer studied the issue and subsequently amended the plan to comply with the proposed regulations.

An additional concern is the relationship between integration and the general nondiscrimination rules under Code Section 401(a)(4). Although a retirement plan may satisfy the proposed integration regulations, it may still be considered discriminatory. Conversely, a nondiscriminatory plan may still fail to comply with the integration rules. This issue and the relationship between the integration regulations and other plan requirements will be discussed by Rich.

MR. RICHARD G. SCHREITMUELLER: My job is going to be to give you integration 101. The way that I want to proceed is to begin by talking about why we have integration in the first place, what it's expected to accomplish, and then what are the rules under Tax Reform Act 1986 in Section 401(l), which they call permitted disparity, and finally, what does this do to existing plans.

The place to begin our discussion of integration is with a brief description of Social Security. If we didn't have Social Security, we wouldn't have integration. Those of you who have looked at the Social Security primary insurance amount formula, know that it starts at a 90% rate. Then it slows down a tad to 32%; then it goes down to 15%.

So if you convert the benefits to a percent of pay and graph them, you get a line that slopes downward as pay increases. The policy analysts refer to this as the Social Security tilt; meaning that it is not a flat percentage of pay. I suppose there are still some folks who think it is flat, but any actuary would know that it's a decreasing percent of pay. It's a mixture of adequacy and equity, as they say, and it is that tilt which gives rise to integration.

So if you take the tilted Social Security formula and you add on to it a pension benefit which is not integrated, what do you get? For the sake of argument, let's say you have a flat 35% of pay plan. The combined benefits would have the very same tilt. When you look at the combined percentages, at the low end, where you would have a fair number of folks retiring, you would be giving them 80-90% of pay. At the high end, you would be giving them between 50-60% of pay, which is quite a range. People who have studied adequate retirement benefits would tend to say that a better answer would be somewhere in between. So if you use this type of a plan, a nonintegrated plan, what you get is something which either does too much at the low end or not enough at the high end

or maybe a little of each and so your costs and benefits are not where the employer would like them to be.

I'm sure many of us here have had the opportunity to speak to employers and they say, "Well, let's just give them 70% of pay minus Social Security," and then you have to explain that you can't do that. They say, "Well, why not? It doesn't make sense." Well, it's because we have rules. The rules say you can go only so far.

Chart 1 is intended to represent an integrated plan designed more or less according to what the rules will provide. What it does is it gives you something which still has a tilt, but only about half as much. So what you get is something which has a little lower replacement percentage for lower paid folks and a littler higher replacement percentage for higher paid folks. It still does have some inadequacy built into it, but not as much, so it's worth going through all of the things that you have to for integration.

Looking at it from the IRS point of view and the tax code's point of view, they've got several things that govern the whole integration process. First, they have a general nondiscrimination rule, 401(a)(4), something we will be hearing a lot about. It says, very simply, thou shalt not discriminate in favor of highly compensated employees. Well, there's a lot of things that you can say to fill in the details of what that means, but one thing you are allowed to do is to recognize the fact that you have a tilted Social Security benefit formula, and therefore, you can do something about part of that tilt through what they call permitted disparity or integration. It is okay to do integration within the limits of 401(l). It doesn't say that in 401(a)(4), but you have another subsection, 401(a)(5), which does. The 401(a)(5) is a little stepping stone which gets you from 401(a)(4) over to 401(l) and it says even though thou shalt not discriminate, it's okay to do it provided you comply with 401(l).

So that gives rise to a lot of rules. The handout has several columns on it because we have separate rules for defined contribution plans, defined benefit excess plans, and defined benefit offset plans. All those rules on the handout came out of two government pronouncements. One was the proposed set of regulations that were in the federal register on November 15, 1988, and the other was Notice 89-70, which came out on June 2, 1989.

The first thing we'll talk about is the rules for defined contribution plans, which are really pretty simple. There are three basic rules. First, what is the integration level? The answer is it can be any dollar amount up to the Social Security wage base. The proposed regulations said it had to be the Social Security wage base, but people weren't content to have such a rigid rule, so in Notice 89-70, the IRS said you could use any integration level up to the Social Security wage base. Above the integration level, you can step up the contribution rate. In general, the excess contribution rate can be 5.7% of pay. However, if the integration level is below the Social Security wage base, you can't go that far. The most you can use is 4.3%. It varies depending on the integration level. There is a table in Notice 89-70 that shows the percentages.

Finally, there is a two-for-one rule, which says that the excess contribution rate can only be twice as much as the base contribution rate. Now, I'm going to give you an example

CHART 1

OUTLINE OF PRINCIPAL INTEGRATION RULES

Proposed by IRS Including Notice 89-70 (June 2, 1989)

	DEFINED CONTRIBUTION PLANS	DEFINED BENEFIT EXCESS PLANS	DEFINED BENEFIT OFFSET PLANS
DEFINITIONS 1. Social Security Retirement Age (SSRA)		Year of Birth: Before 1938 — SSRA: 65 Year of Birth: 1938 - 1954 — SSRA: 66 Year of Birth: 1955 & after — SSRA: 67	
2. Covered Compensation		Average social security wage base over the 35 years ending with the Social Security Retirement Age, assuming no future increases in the wage base.	
3. Average Annual Compensation		Average annual pay over the 3 or more highest consecutive 12-month periods. (Career-pay formula basing current-year accruals on current-year pay satisfies this rule.)	
4. Final Average Compensation			Average pay in 3 consecutive 12-month periods ending with or within the plan year, excluding pay in any year above that year's social security wage base.
5. Integration Level	Level at which the contribution rate steps up.	Level at which the benefit rate steps up.	Dollar limit on the Final Average Compensation counted in computing an offset.
6. Disparity in employer contributions or benefits	Rate of employer contributions and forfeitures on pay above Integration Level, less rate on pay up to Integration Level.	Rate of employer-provided benefits on Average Annual Compensation above plan's Integration Level, less rate on Average Annual Compensation up to Integration Level.	Rate of employer-provided benefits on Final Average Compensation up to plan's Integration Level, to be offset against employer-provided benefits based on total Average Annual Compensation.
BASIC LIMITS (Maximum disparity in employer contributions or benefits): 1. Annual Limit	5.7% of pay.	0.75% of Average Annual Compensation.	0.75% of Final Average Compensation, or Average Annual Compensation if less, up to Covered Compensation.
2. Cumulative Limit		0.75% of Average Annual Compensation times years of credited service, maximum 26.25%.	0.75% of Average Annual Compensation times years of credited service, maximum 26.25%.
3. Two-for-One Rule	Excess percentage is limited to two times the base percentage.	Excess percentage is limited to two times the base percentage.	Dollar amount of offset is limited to 1/2 of gross dollar benefit (before applying offset) with respect to the employee's Average Annual Compensation up to the lesser of Final Average Compensation or Covered Compensation.
INTEGRATION LEVEL (Alternatives available):	Any amount up to social security wage base.	A. Covered Compensation. B. Flat percentage of Covered Compensation, over 100%, not above the wage base. C. Uniform dollar amount, if plan satisfies test 1 or 2 below: 1. Integration Level does not exceed $10,000 or 1/2 of Covered Compensation for employee reaching SSRA in current plan year, or 2. Attained ages of non-highly compensated employees pass a mathematical test showing that average age is not too high, and plan satisfies either test below. (a) Integration Level exceeds 150% of Covered Compensation of an employee reaching SSRA in current plan year, or (b) Pay of non-highly compensated employees passes either of two mathematical tests showing that their pay is not too low relative to pay of highly compensated employees. 3. Uniform dollar amount not above the wage base, without demographic tests. (Integration limit is reduced to amount in IRS table for high Integration Level or 80% of the standard limit if less.) D. Frozen Covered Compensation table, if updated every 5 years. (Accrued benefits must be protected from reduction at update.)	
OTHER TESTS OR ADJUSTMENTS	**Low Integration Level:** If Integration Level is below wage base, maximum disparity may need to be reduced to 5.4% or 4.3%, based on IRS table.	• **High Integration Level:** If Integration Level is above Covered Compensation, maximum disparity is reduced by IRS table. • **Early Retirement Benefits:** For benefits commencing before SSRA, maximum disparity is further limited by IRS table. Basic limit is 0.65% for benefits commencing at age 65 and SSRA of 67. Offsets are further limited so that the gross benefit percentage minus the offset percentage does not decrease as an employee gets older. • **Employee Contributions:** Contributory plan may use uniform factor to attribute benefits to employee contributions if plan passes either of two tests showing that ages of non-highly compensated employees are not too low relative to ages of highly compensated employees.	

or two that may make all this clearer. In going through it, we should remember that we're talking about employer contributions and forfeitures.

Suppose the client had a defined contribution plan with an employer contribution of 6% of pay and they wanted to integrate it using an integration level equal to the Social Security wage base. This would mean that the client would be permitted to contribute 11.7% of pay above the Social Security wage base. So you'd have 6% at the low end and 11.7% at the high end; a difference of 5.7%. This is the permitted disparity. The 5.7% is as high as you can go and you can do it only because the integration level is the Social Security wage base.

Now let's take a slightly different example. Suppose the base percentage was not 6% but only 5%. Now you'd no longer be allowed to use 5.7%, because now the two-for-one rule would come into play. The most you could use is 10%. So it would be 5% at the low end and 10% at the high end. Finally, if you have employee contributions, you must back them out.

Now let's look at defined benefit plans. The first concept you get into on defined benefit plans is something called Social Security retirement age, and under IRS regulations, there are three Social Security retirement ages -- 65, 66, and 67. These ages were defined originally in a 1987 Notice issued in connection with Section 415. Its important to understand that these are not the ages that are in Section 415 of the Internal Revenue Code, nor are they the ages that are in the Social Security Act.

The next point that we want to cover is a technical term called covered compensation. This is a very important term because all the rules for defined benefit plans are built around covered compensation. It's a 35-year average of Social Security wage bases and it ends with the year the individual will reach Social Security retirement age. So each year when the Social Security wage base goes up, the whole table must be refigured. The IRS has not published a 1990 table yet. An unofficial table appeared in the Enrolled Actuaries Report for November 1989. Covered compensation for folks reaching age 65 in 1990 is $18,312 and it is $51,300 for a young individual for whom all 35 wage bases are $51,300.

Another important definition is average annual compensation. This is used in all integrated defined benefit plans. Average annual compensation is supposed to be averaged over three or more years. It can be any number of years from three on up. The years are supposed to be the highest consecutive years and they should be selected from the employee's entire earnings history. There's been some talk at the IRS that it may not enforce this too rigidly. It may allow you to disregard years that are further back than say the last 10 years because it's too hard to keep track of the entire history, but for now, the law says you must use the highest consecutive out of all the years of employment.

In Notice 89-70, we got an exception which said that since this definition does not allow a year-by-year career average type of plan, where each benefit is figured independently based on that year's pay, they would deem that sort of a plan to meet this rule even though it doesn't. This is a good, practical interpretation and a lot of folks who use

career average plans were very glad to see it. So it's a little bit off the precise definition, but it's close enough that the Service is satisfied with it.

Then we have another definition called final average compensation, something we've heard about for many years. In the context of integration, it has a very narrow, specific meaning. The averaging period must be over the previous three years, which may or may not be the highest years, and it must be three years. It can't be more or less than three. It also excludes pay over the Social Security wage base. And what do you use it for? Well, you use it to define the offset. More on that later.

Another important definition is integration level. We referred to it earlier when we talked about defined contribution plans. It is the point where the benefit rate steps up in a defined benefit plan, or where the contribution rate steps up in a defined contribution plan.

So that's known as the integration level. In an excess plan it's pretty easy to see that it's where the rate steps up. You don't really have that exact same concept in an offset plan, because you're talking about a gross benefit minus an offset. But what it really means in that context is that it's the amount of pay where you no longer use it in computing the offset. For example, if had step rate plan of 1% of pay up to the integration level and 1.5% above, a difference of .5%, that same plan expressed as an offset plan would be a 1.5% gross benefit. You'd have an offset of .5% and that offset would be related to pay up to an integration level in somewhat the same sense as under an excess plan. You'd have to figure it in a slightly different way, but it's a good way to think of an excess plan and an offset plan as being comparable.

There's another important concept called uniformity. Much has been made of this concept by the Internal Revenue Service. Those of us who read the Code in 1986 or 1987 had never heard of uniformity, because we were not able to find it in the Code. This concept seems to have originated on Constitution Avenue. It says that the difference between the excess and the base percentages must be the same for everyone. You cannot vary it from one individual to another. The only exception they give you is because Social Security works differently at the different Social Security retirement ages. Thus, you are allowed to vary the percentages to tie into the early retirement factors in the regulation. If you do something other than that, it would not be allowed under 401(l).

The immediate effect of this is that, on its face, it outlaws a primary insurance amount (PIA) type of plan, because as we saw previously, the PIA does not vary uniformly by pay. That means that a PIA offset would not vary uniformly and it would violate this rule.

We've gone through all the definitions and concepts. Let's go through the rules quickly. First, what can we do with an integration level under defined benefits plan? Well, we have about a half a dozen ways that we can do it. First, the integration level could be covered compensation for everyone. This means that you must change the table of covered compensation amounts every year. It commits you to protecting accrued benefits. When you go from December 31-January 1, the employee cannot suffer a

reduction in benefits, even though the integration level has gone up. It means that you get the full benefit of the percentages that are allowed in the rules.

Another thing you can do is use a flat percentage of covered compensation as long as it is more than 100%. I don't know if this is being used very widely, but it's available as an alternative. Under this alternative you take a reduction in the disparity percentage and you no longer can have the full amount of integration. There is a table in the 401(l) regulations that shows you how to reduce it. Also, the integration level can not be higher than the wage base.

The third alternative is to use a flat dollar amount, and there are several ways you can do that. One way to do it is to use anything up to $10,000 or half of the covered compensation for an employee who's currently at the Social Security retirement age, which currently would be around $9,000. In a few years, that number is expected to pass $10,000. So, at the moment, the number is $10,000 if you're using this rule.

Another way you can do it is to test the plan for nondiscrimination. There are some demographic tests that are set out in great detail in the 401(l) regulations. If you think you can live with them and you're comfortable with testing every year or every few years, you can use a flat dollar amount higher than $10,000 without taking a reduction in the permitted disparity percentage.

Finally, you can disregard the demographic tests. The price that you pay for this is a reduction in the permitted disparity percentage. You reduce it to 80% of .75%, which gives you .6%. Finally, you can use a frozen covered compensation table, updating it every five years. This might be more convenient than updating it every year. So there are a lot of alternatives on integration level.

Another important rule is the one about optional forms and features, which simply says that any form or feature above the integration level must be offered below it as well. The simplest and most obvious examples are lump sum options, early retirement benefits, and in that context, we mean both the availability of those benefits and the factors that you use to develop them.

With all of that as a preliminary, we're finally ready to talk about the basic limits for excess plans. You have an annual limit on integration of .75% of average annual compensation. A second limit that comes into play is that over the employee's career, the integration percentage for all years cumulatively cannot be more than 35 times the yearly limit, which comes out to 26.25%. Some people have interpreted that to mean that there's no integration allowed after 35 years. Well, in many cases that's true, but that's not always the case. For example, if you were using only .6%, you could certainly do that for 40 years because when you multiply .6% by 40 years, you get 24%, which is below 26.25%. So the 35-year rule comes into play only if you're up to the maximum on a year-by-year basis.

Finally, you have the two-for-one rule, which works the same as it does for defined contribution plans. A 1-1.75% plan is okay. A 8.75-1.5% plan is okay. A .5-1.25% plan would not be okay because it violates the two-for-one rule. So, if the base percentage is

.5%, then the excess percentage could be 1% -- no more than that. Again, this is a limit on employer paid benefits.

Offset plans basically use the same rules. Very little is different. You have the .75% annual limit and the 26.25% cumulative limit. You also have the two-for-one rule. You interpret it a little differently. It's based on dollar amounts. Looking at the dollar amount of offset, you may not take away more than half of the gross benefit and you use the lowest of those three dollar definitions to figure out how that limit comes into play. But they're the same basic rules. So it's a matter of whether you look at the glass as half empty or half full. There's no real basic difference in the two types of plans.

We also have some rules about early retirement. They're a little bit complicated. It's hard to describe them except through use of a table, so there is one in the handout. It comes from Notice 89-70, and it shows how the gross percentage less the offset percentage is not supposed to decrease as the employee gets older. There were a couple of numerical examples at the end of the Notice. This was unexpected, but it's something that has to be worked around when you're designing early retirement benefits.

If you're using integration at covered compensation, then you can have the full limit of .75%. If you're using something more than covered compensation, you take a reduction, and at the highest point, it would reduce your .75% all the way down to .42%. At the same time you're not allowed to go above the wage base, so you would be paying a very heavy price up at that level for having a high integration level; but there are circumstances where it might be a useful thing to do.

The early retirement percentages in Notice 89-70 follow the 1/15th, 1/30th rule for the first 10 years before the Social Security retirement age and use actuarial reductions before that. So in your typical plan where you have people with all three Social Security retirement ages, in effect you have to use .65% as the integration percentage. It becomes your practical long-term limit on integration rather than the .75%. This was not entirely clear from the Code, but the regulations make it clear that this is the way it's being interpreted. So it's a further reduction in the integration that we used to be able to have.

There's another set of adjustments that you make if employees contribute. The regulations give us a table for backing out the employee contributions based on an average entry age, and then whether you're averaging pay over five years or more than five, you get a number which ranges from 20-75%. In other words, if you have a group that has long careers, hired under age 30, and with a long averaging period, then you attribute 75% of the employee contributions as buying benefits. The problem is that after you are done backing out the employee contributions, you may have a problem with the two-for-one rule.

Okay, we're almost done here. We have some transition rules for existing integrated plans. One important rule is that you're supposed to freeze accrued benefits at the end of the 1988 plan year as if the individual terminated at that time. So you are not allowed to count future pay or service under the old formula. Then you have two ways you can go forward. You may either apply the new rules prospectively and deduct the

pre-1989 years from the 35 years in the cumulative integration limit; or you may go back and fix the old plan so that all years comply with the new set of rules using the frozen benefit as a minimum. This may mean that some low paid individuals will get a benefit increase at that point in time and that may concern you if you have frozen employee contributions. It may be difficult or inconvenient or both to test those frozen employee contributions under this new set of rules. But on its face, that's what the proposed regulations say at the moment. There's been some talk that we may get a more lenient set of rules when the next batch of rules come out.

What does all this mean? Obviously it means we have less integration than we used to have and we have more rigidity than we used to have. A second effect is that we no longer have what we call design based limits. In the old days, pre-Tax Reform Act of 1986, we were in a situation where you could look at the plan's benefit formulas and tell if the plan was properly integrated, and unless the plan was amended, it was good forever. Well, that's no longer true because you've got many plans that don't conform to the standard model, and therefore, you have to go into demographic tests and other things, which are uncertain from year to year. Unless the plan can pass those tests, it is deemed to be guilty of discrimination, even though it may have passed initially.

Finally, some offset plans may no longer remain as offset plans because they do not have as many advantages as they did before. On the other hand, some of these rules are easier to communicate under an offset plan than they used to be.

Finally, we have some open issues. We have identified five or six of them. I'm sure we'll be talking about some of them. Concerning the frozen employee contributions, pre-1989, it's not too clear how to test those. Second, concerning your cash balance plans, we heard at the IRS session that they don't expect to have any rules for us very soon on how those work. Regarding early retirement, where your offset is deferred to age 62 or 65, that seems to be difficult to do under 401(l). Concerning your whole 401(a)(4) test, which many people are looking upon as a backstop, a way to get around some of these rules, no one quite knows how those are going to work and so that means that primary insurance amount offsets are kind of a question mark. You also have other possible liberalizations on things like transition rules.

So we're in a situation where even though this law has been on the books for several years and the effective dates are well behind us, we still don't really know what we can do and so it's a challenge to all of us to keep our clients satisfied and maintain their confidence in us and our profession.

MR. A. RICHARD LABOMBARDE: As Dick commented, 401(l), as it stands, should be understood in the context of 401(a)(4). 401(a)(4) requires that benefits and contributions in a plan should not discriminate in favor of highly compensated employees. In an integrated plan, the benefits or contributions do discriminate in favor of highly compensated employees, but 401(l) via 401(a)(5) fashions out a safe harbor. Now, part of this struggle that we're having with the uniformity provision and with the complexity of 401(l) is partly because, since it's a safe harbor, the Service is making it very explicit that in order to get in that safe harbor, in order to say that although I discriminate in favor of highly compensated employees for benefits or contributions, it's an integrated plan that

satisfies 401(l) and therefore it's okay, the IRS is going to get very, very picky about which plans fit in the safe harbor. Hence, there are the uniformity provision and some of the other provisions in 401(l).

The 401(l) is a safe harbor, but in order to satisfy that safe harbor, we're going to see some things under 401(a)(4) and we're going to see further requirements under 401(l) that I think will help to bring it into sharper focus. In other words, when the new regulations come out there will be some new rules in 401(l). They will not soften the blow of 401(l) much. If you are looking at 401(l) right now and it looks too tight for you because you've got a primary insurance amount offset plan or because of the uniformity provision or for some other reason, I don't think you're going to get further relief. As a safe harbor goes, I think we've seen most of the rules in 401(l). From here on out, changes to 401(l) will primarily be refinements. As I'll comment in a minute, that doesn't mean you're dead. You may be able to go back to 401(a)(4), but the rules are still going to be pretty tight under 401(l).

Of course, we know that 401(l) is only a safe harbor with respect to the plan features that are addressed by 401(l). For example, if you've got a plan that discriminates in favor of highly compensated employees for plan loans, you could meet every other feature under 401(l) and you would still have a discriminatory plan. So it's only a limited safe harbor. I think that would make common sense anyway, but certainly the IRS makes that point in its proposed regulations.

The 401(l) safe harbor is intended only for a single plan with a single formula or a single set of formulas, that applies to all participants in the plan, where that plan is not relied upon for aggregation under 410(b) with another plan with a different formula. So if you've got an employer with two different plans and Plan A integrates fine under 401(l) and Plan B does not or maybe doesn't even integrate, if Plan A has to be aggregated with Plan B in order to pass 410(b), then 401(l) doesn't work for you for the first plan. In other words, when you're sitting down to determine if your plan satisfies 401(l), look through 410(b) first before you come to 401(l); because it's a waste of time to even look at 401(l) if the plan is going to be aggregated under 410(b) later.

I say a single formula or a single set of formulas. There are some exceptions that are provided under 401(l) regulations themselves. The most obvious one is if you have carved out different formulas for people whose Social Security retirement age is 65, 66, or 67. Those are three different benefit formulas for three different sets of participants. Of course, that is a carve out within the regulations themselves, so that plan is not considered to have different sets of formulas. But if you've redesigned the formulas in such a way that all participants who became participants before a particular date have one particular formula and another formula that applies to new participants who come in after that date, you're not going to be able to rely on 401(l) even if you seem to satisfy all of the 401(l) rules. If you have two separately integrated plans and each one of those plans individually passes 401(l) and you have to aggregate them under 410(b), then you may have a problem.

Now, that's the bad news side of the safe harbor issue of 401(l) in the context of 410(b). I suppose the good news, and this is good news with a question mark, because it's not as

though this is going to be easy good news, but the good news is if you've struggled with 401(l) and the proposed integration rules and you say this is just too tough for me, I can't have my primary insurance amount offset plan, this uniformity provision is driving me up a wall, there are other problems that I'm coming up with -- take heart. If you can be patient and wait until the 410(a)(4) regulations come out, your plan may be fine. It may succeed in passing the basic discrimination rules.

The 401(a)(4) is going to be talking imputed disparity and we don't know much about this yet, but every time the IRS does talk about it, either privately or publicly, they indicate that we may see under 401(a)(4) a significantly different form of disparity than what we see under 401(l). The imputed disparity rules are going to be a whole different ballgame.

Of course, the most significant, practical problem is we're waiting for the 401(a)(4) regulations to come out and plan sponsors are really at the point right now of using a sedative, via the model amendments or Alternative IID under Notice 88-131, to put off making the amendments. There's a sedative under the Notice 88-131 that allows you to put off those amendments, but in the meantime you're freezing your accruals or you're running under the old benefit formula. As long as you're waiting, you've got a problem when you're paying off benefits for people who have already retired and those benefits may not be the final benefits so the pain is still there. In other words, the Notice 88-131 is no more than a sedative to help you put off those necessary amendments. An employer still has to start taking a good hard look at the problem.

If a plan doesn't cover or never will cover a highly compensated employee, this seems somewhat obvious, and you don't have to worry about 401(l). We have seen this question come up in some plans, particularly in collectively bargained units or public employers where the plan doesn't cover any highly compensated employees and they're grappling with the 401(l) regulations and it's not necessary. You don't need to look at 401(l) and the integration rules for that kind of a plan because 401(l) is a safe harbor from non- discrimination. If the plan doesn't cover highly compensated employees, it's impossible for it to be discriminatory. Of course, the big "if" on that, again, comes back to 410(b). You must have a plan that does not need to be aggregated with another plan in order to pass 410(b).

Again, if you have multiple benefit formulas or you have trouble passing the uniformity requirements, 401(a)(4) may offer you some relief. An example is a plan under which the integration for nonhighly compensated employees may be less than the integration for highly compensated employees. Obviously that plan, if you look at it under 401(l), appears as though it's more generous to the nonhighly compensated under 401(l) than 401(l) would permit. So it would seem that once we get the 401(a)(4), that kind of a plan would be okay, even though under 401(l) regulations it would violate the uniformity requirement.

Another example is a plan that provides a nonintegrated benefit payable prior to Social Security retirement age and it defers the offset until Social Security retirement age. Clearly under the proposed regulations, as issued up to this point and the IRS clear intention for the final regulations, this plan would not satisfy the requirements for the

safe harbor. It's hoped that when they get to imputed disparity under 401(a)(4) versus permitted disparity under 401(l), that plan should be okay; because it would seem that with this kind of a plan it would be rather difficult to design a plan where it would turn out to be discriminatory in favor of highly compensated.

Another one that gets questioned a lot, and we come back to 401(a)(4), is a plan that offsets on the basis of primary insurance amount or on something other than what's provided under 401(l). Yes, as has been stated over and over again by treasury and IRS officials, such a plan may succeed in passing under 401(a)(4). However, I think a lot of the trade press, when they report sessions where this is talked about, put a period there instead of a comma; because the comma or the semicolon that always comes is don't expect too much. The permitted disparity under 401(l) is not just a safe harbor, as I've been describing it, but in a certain conceptual sense it's supposed to be looked upon as though this is the most integration that you would normally be able to get unless the facts and circumstances of your case would permit something else. Yes, 401(a)(4) will permit a primary insurance amount offset plan, but no, your typical primary insurance amount offset plan will not succeed under 401(a)(4); because a typical primary insurance amount offset plan would fail 401(l), not just because of the nonuniformity, but because it offsets too much.

Now, what if you put something in your plan and you design it in such a way so that you use the two-for-one rule and you don't offset the benefits by anything more than what 401(l) would have allowed, but you still offset based on the primary insurance amount. Well, you're getting into a plan benefit formula that has multiple benefit formulas and you may not pass 401(l). Yes, you may be able to pass that through 401(a)(4), so some plan sponsors have been sitting and waiting because they like the primary insurance amount offset design and they recognize they may have to put a floor in that's a 401(l) type floor, but they're willing to accept that and take a look at it.

I think, from things I've heard, that it may be a little rougher than that. There may be an administrative hassle with testing these plans every single year. Of course, you've already got a lot of that in 401(l) as it is, so maybe a lot of sponsors will look at it and say, "Hey, we can handle that." I guess I'm more of the pessimist. I think the plans will be allowed, but I think a lot of plan sponsors, when they see what's allowed, are not going to like it and they're going to have to take a look at something else.

Another requirement I want to address is under 414(q), the definition of a highly compensated employee. The definition of a highly compensated employee, of course, is primarily for purposes of 401(a)(4) -- nondiscrimination in favor of the highly compensated employee. The particular trick that comes through in integration is when you get to family aggregation. Of course, family members of a highly compensated employee have to be aggregated for purposes of both benefits and contributions, as well as salary, for any specific code provisions that refer to the 414 definition of highly compensated employee.

There is a little exception that is written into the code. If you come under the 414(q) definition of family aggregation, you'll see a little exception that refers to integration, and small employers in particular, have been grieving over this. I think even large

employers may have a family member working for it, so it can be a problem there as well. I would advise you to take a close look at this if you have not already done so.

Let me give you an example. Let's look at the 1989 plan year for a defined contribution plan with a highly compensated employee earning $240,000 and a spouse earning $80,000. Of course, under 414(q), the $240,000 has to be combined with the $80,000 and that family, for purposes of nondiscrimination, has to be looked upon as a single individual earning $320,000. Similarly the benefits and contributions of the family unit have to be treated as though it were a single individual. We've got a $200,000 salary limit that applied in 1989 and let's say we allocate it in proportion to the employees' salaries. So for the $200,000, we're going to treat it as though the highly compensated employee was the highest earning one; actually technically both of these would be highly compensated employees in their own right. But we're going to assume the highest earning one was earning $150,000 and the other one $50,000.

Say this defined contribution plan in 1989 integrated around $48,000, providing .5% below and 1% above. The key to 414(q) is that you can not allocate the integration level. In other words, you could not say that of the $48,000 integration level, $32,000 is for the first person and $12,000 is for the second. If you did that, you would get the same result as if this were truly one individual earning $200,000; because if you had one individual earning $200,000, you would get a contribution of $1,760. In fact, for this purpose alone, for the integration in this plan, we would go back to these two people and separately take the $150,000 and use an integration level of $48,000 for person number one and take person number two's $50,000 and use an integration level of $48,000. So it's as though this hypothetical, single person earning $200,000 now had an integration level of $96,000 instead of $48,000. The result of that is that the two individuals together would have a contribution of $1,520 instead of $1,760.

What are the solutions to this? Well, first I talked about allocation of the salaries on the basis of a proration based on earnings. That apparently is not going to be necessary unless you're using the model amendments. If you're using the model amendments, the model amendments require that you do a proration of the $200,000 to limit amongst the different family members in proportion to their salaries. If you're not using the model amendments, apparently you could allocate the entire $200,000 to that first person and then it would be $200,000 to the first person using a $48,000 integration level and they would get the full $1,760 that a single individual would get. Of course, the second individual in this case doesn't get an allocation, but the spouse presumably would get the benefits either through continued marriage with the person, a QDRO or something of that type. On the other hand, note that if you use this solution, your plan document should include the allocation method.

Also I'll mention that if you don't use a model amendment and you use an alternative basis of allocation, you cannot allocate anything more to the person than they actually earned. If person A was only earning $180,000 and person B was earning $60,000, you would be able to allocate $180,000 to Person A and the other $20,000 to Person B; but you could not allocate the entire $200,000 to Person A and I guess that makes sense.

Another possible solution to this problem is you may be able to use 401(a)(4) because, again, the provision under 414(q) on the family aggregation only refers to the integration level that's taken into account for 401(l) purposes. So if we were to look at this under 401(a)(4), that family aggregation unit is treated as one individual employee. I personally believe that once 401(a)(4) comes out, it may be possible that the entire $1,760 would be allocable to this family aggregation unit under the code as written without having to do something hokey, such as allocate all the salary to one individual. I suppose that remains to be seen, but if you have family aggregation problems before you start rewriting your plans to do tricky allocation procedures of the salaries, you should wait until the 401(a)(4) regulations come out.

The final comments I want to make are simply an aside about some of the other issues that you can get into during this interim period while you're waiting for the rules to come out; because during this interim period, most employers are operating under Model Amendment 2 or 3 and a fair number are operating under Alternative IID. The relief provided by Alternative IID is that it permits you to continue with the old benefit formula, the pre-Tax Reform Act benefit formula, until you do the remedial amendments.

That sounds like relief, like we can just keep on keeping on until the IRS tells us what we're supposed to do. Well, it's easier said than done. As an example of that, I would point to plans that refer to covered compensation. Now, as Dick mentioned, not a whole lot of plans did that in the past. A fair number of plans were using a particular frozen integration level, but if you have a plan that used a covered compensation table that changed each year, then, in addition to all of the complexity that Dick has already talked about, we've added another layer here.

If you're under the new rules, the proposed regulations gave us a particular way to calculate the covered compensation. Of course, that's not what the law says. So then Notice 89-70 came out and recognized what the law said, so here's another method for computing covered compensation. Also, you have two additional ways beyond that, because you can freeze either one of those for five years. In addition, each of these covered compensation tables can be rounded to the nearest dollar or the nearest $600.

So we've already got a fair amount of complexity to give our clients when they are looking at different covered compensation tables. In addition, if they are operating under Alternative IID, they are operating the plan right now under the pre-Tax Reform Act benefit formula. The pre-Tax Reform Act benefit formula must include the old covered compensation tables. So if they are operating a plan like that for 1989, you have to calculate a 1989 covered compensation table using the pre-Tax Reform Act method of calculating covered compensation grading up to 35 years.

Also for funding, be aware that if you're operating under Alternative IID, your funding, both minimum and maximum, has to recognize the pre-Tax Reform Act benefit formula until you come up with a new benefit formula. My presumption is that the same thing applies for accounting. I'm not sure if the accountants are apprised of all the intricacies of the new accounting rules, as well as the intricacies of Model Amendment 3 or Alternative IID.

In very many respects I think we'll actually find that although the integration rules cut pretty sharply into the way in which we can integrate the plan, the effect on the accounting numbers, in many cases, is going to be immaterial anyway. So most employers, in fact, all of the employers that I've had occasion to deal with, are simply continuing to account for it under the same formula that they're using for the funding purposes.

MR. PHILIP B. SEELINGER: The views that I'm going to express are my own and not my employer. I'm going to talk about a company named Mystico Industrial Founding Factory Environmental Design or MIFFED.

MIFFED has approximately 7,500 international employees and those employees, of course, are not part of this discussion. MIFFED is headquartered in the United States. MIFFED has about 2,500 salaried employees, all of whom are covered under a single set of plans. The plans consist of a final pay, Social Security offset, defined benefit plan and a savings plan that consists of both employee voluntary contributions, matching employer contributions and an employer profit sharing contribution. One-third of the salaried employees are highly compensated employees.

MIFFED has about 20,000 hourly-rated employees spread across the United States. These employees are evenly split between union and nonunion. All of these hourly rated employees are covered under another set of plans, separate from the salaried plans. The hourly employees are covered under a flat dollar defined benefit plan. They are also covered by a recently instituted employee savings program with an employer match.

What are the problems and design issues of MIFFED? As I commented, MIFFED has a large nonunion, hourly population. MIFFEDs merchandisers are always on management's case about the fact that MIFFED must be competitive. If MIFFED is not competitive, then some plants will need to be closed and the production will go offshore.

MIFFEDs problems really are threefold. It is faced with three key issues, and one of those is permitted disparity. But along with permitted disparity we must look at the average benefit percentage test under 410(b), which is the main bugaboo that MIFFED is facing.

Additionally, the 401(a)(26) regulations may give MIFFED a little problem. One issue under 401(a)(26) is, for example, the CEO of MIFFED retired a couple of years ago at a benefit in excess of the 415 limits. The benefit was paid, of course, up to the 415 limit and the rest was picked up under a top hat plan. MIFFED has been advised that it probably can shift some of that cost from the benefit top hat plan back to the qualified pension plan each year as the maximum benefit goes up. The question is does that become a separate benefit structure under which we must cover at least 50 people.

Some additional concerns that MIFFED faces: One, the balance between a highly compensated employee and the nonhighly compensated employee. The salaried employees at MIFFED are probably okay, highly compensated or nonhighly compensated, because of the plan mix between the defined benefit and defined contribution and also because about 80% of the eligible employees participate in the voluntary savings

feature with the company match. When you combine these with Social Security, they receive a fair income replacement.

A second concern is the income replacement for the hourly-rated employees. The hourly-rated employees have a savings plan that was just recently started that has not been successful. In the planning process management optimistically assumed that the average contribution of the 10,000 nonunion employees would be about 3% of pay. In fact, at this point, only about 1% of pay is contributed by the eligible employees that are participating.

A third concern is that MIFFEDs management insists that all changes must be cost neutral.

The last concern is on the highly compensated employee side and that is what is a fair balance between qualified and nonqualified benefits for the highly compensated employees. The highly compensated employees can, of course, be made whole through nonqualified plans, but there they either go into one of these trusts that are so popularly talked about or they stay at risk of the company and there must be a balance struck there.

MIFFED plans ahead. MIFFEDs fiscal year ends November 30th and MIFFED was very smug about this because while everyone else was struggling to get in compliance as of January 1, 1989, MIFFED could wait for the regulations to come out. It felt really great, smug about that 11-month cushion. Well, it is still waiting. Late in its 1989 fiscal year, MIFFED adopted one of the model amendments.

In the meantime, some large employers that MIFFED follows did, in fact, make changes. Some employers dropped the defined benefit offset approach entirely. Beatrice Hunt Wesson was one; CPC International was another. A couple went in under the new step rate provisions. Ford Motor is one, I understand, as is Texas Instrument.

MIFFED wants to retain its offset, if possible, and the reason for that is not news to anybody. That's simply to provide as little disruption to the employees. In the real world, and I term the real world as my side of the desk as opposed to your side of the desk, we need to work with in-house people such as corporate tax and legal. We also need to effectively communicate with our employees. MIFFED wanted as little disruption as possible, primarily because the employees of MIFFED, the salaried employees were somewhat accustomed to seeing what we call the Social Security offset. They know that somehow their Social Security benefit got used, at least part of it, in determining the pension benefit.

MIFFED determined that it did not want to integrate its defined contribution plan, despite the advantages of easier employee communication. But the profit sharing plan that MIFFED retained has always been intended to be literally, a sharing of the profits across the board. So it simply kept it that way. MIFFED, like a lot of large companies, is shifting from a more paternalistic to a participatory climate; and by that I mean allowing employees to take some of their profit sharing in cash each year or defer the whole thing.

MIFFED also wanted to keep its early retirement factor of 70% at age 55. As a result, MIFFED could go to a .4% offset and keep its 70% early retirement factor.

MIFFED miserably fails the 410(b)(1)(A) and (B) tests simply because more than 30% of the employees are highly compensated. The nonunion work force at the lower, flat unit benefit, of course, will continue to deteriorate as that unit benefit stays and pay goes up. The nonunion hourly employees have no deferred profit sharing. Again, MIFFED was planning on a 3% participation rate into the newly adopted stock purchase plan. Had that happened, MIFFED would have come close to passing part of the test. With an actual 1% participation rate, it fails even more miserably.

Remember, if the benefits are raised, and this contradicts exactly what I said earlier, then the cost is passed on to you, the consumer, which means that in order to stay competitive, some plants must close. So there's a huge balancing act that must go on. If there is some sort of a profit sharing plan established or some way of getting something in there for the employees, does that then mean that the cash payments that these employees have been receiving at the end of the year go away? I don't have an answer for that one.

One thing that MIFFED did at the beginning of the 1990 plan year was it dropped the 401(k) option from its employee savings plan. The reason it dropped the 401(k) feature from the salaried plan was that initially, MIFFED was naive enough to believe that the testing under 410(b) recognized only 401(k) and employer contributions and not 401(m) contributions. So therefore, in 1990, all salaried employee contributions are going toward the 401(m) or post-tax side. If, as was eluded to at the December 7, 1989, Society seminar in San Diego, 401(m) money must count toward the 410(b) test, then MIFFED is in deeper trouble.

The goal that MIFFED set out for its actuary was to retain, if possible, a 50% of the final average pay less 50% of Social Security plan for a 25-year employee. For permitted disparity, as I mentioned earlier, they used .4%. This will cause some shifts in benefits. A higher benefit will probably go to lower-paid employees, as well as to older employees. A lower future benefit will go to bonused employees and younger employees. The bonus group begins at about $75,000. The bonus group, of course, in addition to basic compensation, have bonuses. The bonus group at MIFFED also have stock options and stock. So there are other means of making those folks whole. Over time, they should do very well. So there's not a great deal of reluctance on management's part to have to tell its highly compensated that you're not going to get quite as much from a qualified plan.

Last August, MIFFEDs outside counsel advised MIFFED that it might want to hold off on any planning until final regulations were out. At this point not only was MIFFED operating in a somewhat naive vein, but MIFFEDs counsel, MIFFEDs actuaries and MIFFEDs administrators all had faith that regulations would be coming out soon.

At that point in August 1989, everything went on hold. The December 7th Society seminar in San Diego confirmed that holding off was probably a wise thing to do. The Service gave a hint that an offset plan of some sort may still be permitted. To date,

there hasn't been anything in writing one way or the other confirming or denying it. At the EA meeting in February, it was again implied that an offset plan may be okay.

MIFFEDs goal is to keep the same offset formula with a minimum override. That may become very cumbersome. MIFFED still believes that it's desirable somehow for it, the employer, to receive some recognition for its Social Security contributions.

Some questions that MIFFED must face: One, for aggregation, how can an employer demonstrate the two plans are comparable? Two, what definitions of compensation can a plan use for benefit determination? Three, can average employee data be used for nondiscrimination testing, how often must it be done, what type of records must be maintained? Finally, four, what about a Social Security offset?

MR. LOEB: In the time that's remaining, we'd like to entertain questions from the floor or any comments you'd like to make.

MR. SAM H. HUFFMAN: One of the things that everybody should be aware of when you're applying the integration rules is that the years you use to calculate the step up or offset are limited to years over which benefits are accrued. There are many plans which recognize all service for the purpose of an ultimate benefit at retirement, but then accrue benefits from the effective date of the plan in order to avoid building up PBGC liability. If you have that type of a plan and you try and do 401(l), you're in for some real rude surprises because the integration really falls apart. Also there's another associated problem in 401(a)(4). Even if you successfully negotiate through the 401(l) on a single plan, you may run into a 401(a)(4) discrimination issue because typically, higher paid employees have fewer years of participation in a new plan than low paid employees. If you use an offset formula, it's highly advantageous, but you're probably going to flunk something in the 401(a)(4) regulations when they come out.

MR. F. PIERCE NOBLE: You made the comment on the 401(l) regulations that if you don't have a highly compensated employee in the plan, you don't have to worry about complying with 401(l). But what happens when an employee that's participating in the plan has enough salary increases that the employee becomes highly compensated? What do you do at that point in time?

MR. LABOMBARDE: That's the biggest problem with this approach to 401(l) that I'm aware of and we don't have an answer yet. Certainly the person cannot continue accruing a benefit. Where you may conceivably have a problem is the fact that even if you cut off accruals and freeze the benefits and toss them out of the plan, they still have an accrued benefit under the plan. Clearly that plan would continue to pass under 401(a)(4). I don't think there would be any problems there. So either way you go with this, I don't think you have to worry about 401(l) in that kind of a plan. Whether or not that solves all of the 401(a)(4) problems, or conceivably you have some 401(a)(26) problems remains to be seen.

MR. JAMES A. KENNEY: I have a disagreement with some of my fellow actuaries on application of the maximum allowable offset, which is .75% times 35 years. Is it possible

to provide, for instance, .5% for 40 years? As long as you don't exceed the product of the two, can you extend beyond the 35-year cap?

MR. LABOMBARDE: You can extend beyond, but you can't go the other way. You can't say we're going to do the offset for only 30 years, so we can give more.

MR. FRANKLIN D. PENDLETON: I wonder if any of the panelists could comment on whether you've structured any integrated plans for your clients with normal retirement dates equal to Social Security retirement ages.

MR. SEELINGER: Well, there's a problem under the code on that. You're not allowed to have a normal retirement age above 65, generally speaking, so that you just would not be able to do that. There are supposed to be some round-about ways of getting there that Jim Holland talked about at a session last year, but apparently you're kind of walking a tight rope among a whole bunch of things and it's not something that would, just on its face, be easy to do. Were you eluding to the remarks that Jim Holland made at the seminar last December? He did talk about that a little.

FROM THE FLOOR: Well, I was really just eluding to the broader concept. I heard Holland's remarks and I think he's probably on target. In fact, I think it can be done. I suspect you have to jump through some hoops regarding full vesting and benefit commencement and so forth. It seems to me that the inconvenient problem, if not the insurmountable one, is the possibility that such a plan would encounter 401(a)(26) problems, that you'd really have three plans, one for each of the normal retirement dates. That really does look insurmountable since eventually each of those age groups is going to get squeezed out by the passage of time.

MR. LABOMBARDE: It may be insurmountable under the proposed regulations of 401(a)(26) as they were originally proposed. That may be one of the things where we get some relief under the reproposed ones; because it's conceivable, from what we hear, that at least for an initial period, if not forever, they may isolate looking at benefit structures to simply different benefit formulas, as opposed to different options and different retirement dates. Under the reproposed regulations, in other words, it may not go as far as the original ones did in segregating benefit structures out.

FROM THE FLOOR: There's an interesting parallel on the current 401(l) proposed regulations and I guess it's in the tables regarding early retirement reductions, where it's specifically stated that these differences that are solely due to use of multiple or different Social Security retirement ages will not constitute separate structures under 401(a)(26). That would be a nice one for the IRS to extend to this situation.

FROM THE FLOOR: While waiting for the 401(a)(4) regulations, do you think a plan that provides a defined benefit of 50% of compensation for the highly compensated and 35% for the nonhighly compensated fulfills the 401(a)(4) test? The average benefit test for the nonhighly compensated should be at least 70% throughout the highly compensated test. If you define a plan formula in terms of highly compensated and nonhighly compensated, it fulfills the requirement of the code section. Do you see a problem in it? If so, where is the problem?

MR. LABOMBARDE: I have a comment, but I'll echo the one that Dick made. He said he wouldn't want to speculate on it. I'll speculate as to why I would not want to speculate on it. We keep hearing these little rumors that sound like 401(a)(4) is not going to be what you think it is. What you're talking about might have smelled good under 81-202 and under 401(a)(4) as we thought we understood it previously. I think it's difficult to speculate whether what you're talking about would work under 401(a)(4) because I think 401(a)(4) a month from now is going to look drastically different from what we're used to looking at it as.

FROM THE FLOOR: But, if you look at the statute as it stands, would you have a problem with such a plan?

MR. LABOMBARDE: If I look at the statute as it stands, there are a lot of plans that I wouldn't have thought had problems under 401(l) until the proposed regulations came out. From things that I've heard, I really believe that there are going to be some surprises under 401(a)(4) that will make you look at the statute in a totally new way.

FROM THE FLOOR: I keep hearing that there is a problem with permitted disparity in the way it interacts with the fractional rule for benefit accrual. Could somebody explain what the issue is there and hopefully what the solution is? In general, assuming you use the full permitted disparity, how do you accrue benefits after 35 years?

MR. SCHREITMUELLER: I'm not sure I want to take this on because I went through it a few weeks ago and it's an interaction between backloading and the 35-year limit, and when you solve the one problem, you end up with the other problem. You just can't seem to solve the two of them at the same time. This is why at the EA meeting we were told that the intention is to allow you to accrue using the fractional rule. Let's say you have an integrated benefit up to the limit for the first 35 years and then when you work the rules through, either you violate the uniformity rule or the backloading rule. You keep violating something. When you fix one problem, you go to the other problem. So the service seems to have reached a conclusion that the least evil thing to do is let you violate the uniformity rule and so that what they're going to let you do, so they say, is after the 35 years when you have to stop integrating, they'll let you have a nonintegrated benefit after that point. Now, I'll leave it as an exercise as to which rules you have the problem with up to that point.