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Small Pension Plan Design and Funding After the Demise of 415(e)

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Summary: How will the elimination of Code Section 415(e) affect small defined-benefit pension plans? Can we prefund for the resulting increase in benefits? What are effective ways to design plans under the new law?

Mr. Donald E. Segal: Our featured speaker is Jim Turpin, the president of Turpin & Associates in Albuquerque, New Mexico. Jim is very active in the profession. He is on the Pension Committee of the Actuarial Standards Board, and he is vice-chairperson of the American Academy of Actuaries Pension Committee. He's a Fellow of the Conference of Consulting Actuaries, a Member of the Academy, an Enrolled Actuary, and a Member of American Society of Pension Actuaries.

Mr. James E. Turpin: I would like this session to be an interactive session. I own my own firm, so I guess my opinion does represent the opinion of my firm. The things we're going to talk about are things we actually use in terms of plan design issues. We'll discuss what the effect of the demise of 415(e) will be.

Plan design is more of an art than it is a science because I think we need to be sensitive to how a client deals with what the law says. I think you have to have a sixth sense for what makes plan design work.

One of the things that's important in looking at 415(e) is where 415(e) has come before it goes away all together. Part of what I want to talk about is what has happened to 415(e) over the years.

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Let's go back first to the Employee Retirement Income Security Act of 1974 (ERISA). Let's also say I've been working for an actuarial firm since 1971, so I was there when 415(e) was codified as part of ERISA. We're talking about what was a 1.4 rule. We were dealing with up to 100% of compensation in a defined-benefit plan subject to the dollar limitation. Then you'd have a typical application on top of that. It would be like a 10% money-purchase plan to get you that 40% because 10/25 would be the 40% that you're dealing with. This was not an unusual arrangement, as I say, and one of the reasons why it wasn't an unusual arrangement was because of the dollars involved. If you go back prior to the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), you must remember what the limitations looked like. You had $136,000 maximum dollar limitation for defined-benefit plans, and $136,425, payable at age 55. It doesn't take much to figure out that you can create a huge contribution in a small plan—a large benefit at that level. Add to it a 10% money purchase plan. If you have somebody who's making $400,000 or $500,000 before the 401(a)(17) limitation or the TEFRA limitation on key employees went into place, they're conceivably able to contribute $45,000 to a money-purchase plan. In dealing with the 1.4 rule, obviously you weren't going to put the full $45,000 in, but you're able to shove a great deal of money into a plan for a key employee, particularly one who is well compensated. This is where things started out some 20 years ago.

Now, the first major assault on 415 occurred with TEFRA which was applicable to plan years after 1983, and actually adopted in 1982. The 1.4 rule essentially still exists, but it applies only to the percentages, not to the dollar limitations. They introduced this new concept, the 1.25 rule, which applied basically to the benefit, or the contributions, when they were based on the dollar limitation. Now you have a very convoluted way of having to calculate this. You run this on multiple pages with six to eight columns on a page trying to figure out where you're actually going to be. As a result, what did we wind up doing? There's much for some small plans because one of the tricks that the law asked us to perform was this. New currency to most small plans were top-heavy.

We're talking about small plans. What constitutes a small plan? There are two things that are important when you're defining what a small plan is. It's not specifically standard operating practice because everybody believes it must be small. You're dealing with the people who run the plan, that is, the stakeholders, if you want to call them that, which is the new nomenclature. The people who have the most involvement with the plan are accessible. If you talk to people at GM about their pension plan, they will not be accessible, but if you want to talk about XYZ business, the business owner makes himself accessible to talk about the plan. That is generally typical of a small plan. The second thing has to do with the concentration of benefits, and that's what top-heavy was looking at. We're looking

at a 60% or greater concentration of benefits to key employees, so you're talking about benefits vesting or being earned by a relatively small group— maybe one, two, or three out of ten or twelve total employees.

What happened with the top-heavy requirements and why was there was such a sharp contraction in benefits? We had the lower dollar limitations that went into place with TEFRA, which obviously causes a contraction. The other thing was, if you were top-heavy but not super top-heavy, 60% or more of the benefits, but not more than 90%, were going to key employees. You could increment back into the 1.25 rule by increasing your benefit rate from 2% to 3% or increasing your contribution rate from 3% to 4% as your minimum top-heavy requirement. Add to this the problem with your super top-heavy plans. That's 90% or more. Heretofore, if we had a one-person plan or set of plans covering just one person, you could have a 100% defined-benefit plan plus the 10% money-purchase plan. Now you can't because what essentially happened was with the super top-heavy plan, you shut down the ability of the very large contributions, the large level of benefit, through the one-person plan by virtue of this super top-heavy requirement.

After 1986, with the passage of tax reform in 1986, there really weren't any substantial changes, and there were some changes that were meant to be more of a scare tactic. We lowered the total benefit amount, but we're moving it up from the $75,000 that was there beginning at age 55. That was done away with, and we're up to the dollar limitation. We also coupled the defined-contribution and the defined-benefit limitations together for the first time. They were direct coupling. Of course, they keep changing this, and now it has been decoupled.

The August 1996 legislation is the first piece of legislation since 1982 that does something positive in plan design. Everything that has happened from 1982 through 1995, was a take-back. It reduced what was available to the key people. What happens with the repeal of Section 415(e)? It's effective January 1, 2000. In the meantime they have suspended the 4980A tax.

They didn't talk about the excise tax. They suspended the excise tax. We're talking about active plan design right now, but the one thing that's out there is 4980A has two components to it. One is the excise tax on current distributions, that is, the 15% excise tax on distributions above, for 1997, $155,000. The second component to it is there's an additional estate tax that's applicable under 4980A(d) and that is applied in the event of the death of a participant where the present value of the current annual rate is going to be less than the total value of their account or benefit in the plan, and that's an estate tax. That has not been suspended. We're really talking about an opportunity. One of the things you might talk with clients about if you're dealing with this issue, is whether they want to take some money out now?

Our general concern is that if people get to the age of 70 with more than about $2.5 million, or a maximum of about $3 million, they're going to have a long-term problem of trying to keep between the minimum distribution requirements beyond 70.5 because almost all the people we're dealing with are owners. Five percent or more are owners, and this does apply to them. They're going to have to deal with that. Then they have this narrowing range in which they can take money out. It's important that you consider that as part of your planning, and as part of the plan design, we must make sure we're not accumulating too much money.

Here's some general information for clients. I remember seeing, in the late 1970s and the early 1980s, clients who were so concerned about paying taxes. They were bending over backwards to put money in the plan. In that era, when you had maximum tax rates on earned income of 70%. I live in a state in that has state income tax, so you're talking about almost 80% potential taxation at that level for these folks. They were looking at any way to hide money from taxation. My friend probably says it best (and I think this is probably characteristic of what's happened in the pension arena for the last 25 years, certainly in the post-ERISA era), and that is everything has been driven by congressional tax planning as opposed to what's best for retirement income planning. I think it is important that we be able to nurture and maintain small pension plans. With the problems in Social Security there's a great deal of pressure in almost all the new, small businesses that are created. As a result, we do a little bit different kind of tax planning to help us out with this. How many people deal with defined-contribution plans on a regular basis? I asked the same question a decade ago at an actuarial meeting, and I got a show of about 5% of the hands as opposed to about 70% of the hands raised here. There was a study in *USA Today* or perhaps *The Wall Street Journal*. It doesn't consider 401(k) a pension plan, and I think maybe that's another problem for the populace in general. They look at 401(k) as a way to save money. Why is it so popular with corporations? It's because it costs them less.

I had a small company for a client. It was putting 15% into the profit-sharing plan. It was putting 10% into the money-purchase plan, because that was the way the company had set it up. It was putting 25% away for employees, and they were clamoring for a 401(k) plan. They needed a savings vehicle, so they were clamoring for this 401(k) plan. The owner talked to me, wanting to know what to do? We took the money-purchase plan, and we redid it as a target benefit plan. They're getting 3% now instead of 10% because we were pushing him towards the maximum. We gave him the 401(k). We gave him a 5% profit-sharing plan. They wound up getting 8% instead of 25%, and they were happy as clams. I think the problem is the employees have a real short viewpoint of what's going on. They're looking at this year only. They don't know that they've taken what was really a great set of plans, with huge contributions, and they gave it away. They thought this

was great. I have 401(k) now. My compliments go to whomever is doing all the marketing for 401(k) plans because it seems to be working.

One of the things we're going to look at is an age-based profit-sharing plan because that may be one of the things we need to consider in 415(e). Again, you're talking about plan design. You're dealing directly with the principals of that business, and what maximizes it to the principal. Nine out of ten times, the objective of the principal is determining how much money he gets. The owner wants to know what is the minimum amount he or she has to contribute for the employees? He or she trickles down only what's absolutely necessary. One out of ten times there will be an employee benefit that they want to offer, but more often than not it's a trickle-down situation.

As an example, you'll typically find an anesthesiology group might have four, five, or six doctors. All the services are provided by the hospital. They simply come in and pump gas. This might apply to radiology too.

Remember that there is an exception. These types of professionals want to know how to do a profit-sharing plan. They don't want to put 15% in. Remember when designing defined-contribution plans (and this is not necessarily unique to 415, per se, but it may be an adjunct to the 415 issue) if you don't have nonhighly compensated employees, the average deferred percentage (ADP) test doesn't apply. We design a 401(k) plan that has a nine-to-one match. You put $1 in, and $9 is a match. What that does in today's environment, is it means if you'll put in a 3.75% money-purchase plan, it's OK. That gives you $6,000 in today's $160,000 compensation basis. That leaves $24,000 that can be put into the profit-sharing plan. That $24,000 happens to be 15% of the $160,000. If you put $2,400 in as a salary deferral, or $200 a month, the corporation then matches it, essentially, nine-to-one, so you get your $24,000. What you have then is a real narrow range of dollars, from $0–2,400. If this case was a physicians' group, individual practitioners can select and have absolute control over how much money they're ultimately going to have going into that plan. Just try to get four guys with egos about as big as this room to agree on the level of contribution to be made.

The other problem with that is you may have two people who are in their 50s and two people in their 30s who have entirely different economic needs right now. Younger people are maybe paying for kids and a new house. But you still have the fixed contribution rate. What you wind up with is locking the lower people into a lower one-time contribution rate. Someone needs money this year for a down payment.

Keep in mind that you must have a definitely determinable allocation formula, and the problem with that is in order to get them down this year, then you have to go back next year and amend it to bring it up. What if you have one 30-year-old who wants to do something different than the other 30-year-old? You still have the same problems in terms of getting everybody at the same level. I'm looking for something that gives them true individual selection.

The law firms are probably the easiest to use as an illustration because they can distinguish attorneys. Most law firms that we do work with do not want the associates to get any benefit. They're providing benefits to staff. They provide virtually nothing to associates and everything to shareholders—either limited or full shareholders. They define them that way. Then you have benefits accordingly. In this particular instance, the associate attorney has zero. They don't get a contribution, but you can set the formulas up that way because it is a definitely determinable formula and everybody fits into a category. You have to make sure when you do that, their personnel policies, their procedure manuals, or whatever, correspond to what you're doing. Make sure you are not calling them one thing in the pension plan and something different in the personnel manual. They need to always be referred to on a uniform basis because problems typically arise when we're making up as we go along, so to speak, what everybody's going to be called.

Remember that when you have this kind of scenario, people in a compensation agreement, are looking at aggregate dollars. They have some agreement internally about how they split income. If my production is a million dollars, I get a half-a-million dollars' worth of compensation. They internally will apply various expenses to their total compensation. When I talk about compensation, it's total available dollars to them as a result of employment. It might be that before they ever get a bonus or anything else, certain things are taken out of that formula. Perhaps their cost to the pension plan is taken out of the formula.

From the Floor: Like a car?

Mr. Turpin: Perhaps their car or professional travel. One group has a bunch of slides they make, and I don't know what it is they're making slides of, but they have many slides they make, and that's a big factor.

None of it's based on post-tax dollars. It's all pretax dollars. At the corporate level, they allocate expenses, and the plan is an expense. If I elect a $2,400 salary deferral, I have a $21,600 matching cost. That's a cost to the corporation that they're going to apply to that formula saying that my direct compensation (my W-2 type compensation), is going to be lower because those dollars are not available to pay me compensation.

From the Floor: Is it dollar for dollar?

Mr. Turpin: Yes, it's dollar for dollar. They go down dollar for dollar because, at that level, they're looking at the total cost to the corporation of having that person in the organization. You have a couple of other opportunities that you need to take into consideration. Of course, you have the money-purchase pension plan or target benefit pension plan. Typically, the target benefit pension plan is something you'd want to look at. However, with compensation having risen to $160,000, it's becoming less economically viable to do a pension plan as opposed to some sort of age-weighted profit-sharing plan because the dollars are so close together. When you look at the cost of administering a second plan in conjunction with just being able to do another $6,000 or so in contributions, it doesn't make as much sense, particularly if this is going to carry with it minimum costs directly associated with the employees being in that plan, that are in addition to the profit-sharing plan.

One thing to remember when you're talking about small plans is, there's some opportunity there with employee stock ownership plans (ESOPs). It is occasionally an advantage for the plan to own some employer stock. Generally speaking, I don't recommend it unless there are some good reasons for doing it. The way we set a couple of them up is people have gotten large rollovers from various sources. They will have two corporations running parallel. They'll have a corporation that basically is not much—there's not much in the way of operations. It sponsors the ESOP. The corporation running next to it may be an S corporation. It's an operating entity. It could own a restaurant, a gas station, or whatever. But what they do is roll those funds into the ESOP and have the ESOP buy 100% or some majority of the stock in this corporation. We have to look at both corporations together for plan purposes because we have a controlled group situation. There's a direct relationship between the principals in both businesses, plus there is ownership attributed to the beneficiary which is the person with the rollover. When you look at them together, you're not making any contributions to the plan at this level, or you're making very nominal contributions. What you have then is cash sitting in this corporation that you pulled out by virtue of that sale of stock which can be loaned to a third party such as the other corporation to provide opportunity for working capital without having to go to the bank. It's a way of using rollover dollars without actually doing it. In the S corporation the operating corporation pays back that loan which, in turn, in a dividend fashion pays the money back into the ESOP. Ultimately, the ESOP gets the results of the loan. That's one of the things to look at when you have somebody that says I have a rollover. What can I do with it? We've had a couple of those work very successfully.

Defined-benefit plans. There's nothing unique after 415(e) in terms of design issues that you shouldn't be otherwise aware of. We're still dealing with the issues of

compensation, service, and retirement age. Keeping in mind whether it's a small or a large plan, we still have the 401(a)(4) issues.

Nontraditional plans are something we're seeing more in a smaller arena, and I say smaller, this is less than a hundred lives, not necessarily the real small ones of three or four lives. One example is the floor offset feature. How many work with law firms? I use them as an example. How many of those law firms have nonqualified deferred compensation agreements for senior shareholders? We've done this about four or five times now and it has been successful. There are ways of taking that nonqualified deferred compensation and putting it into a defined-benefit plan that has no benefits for other employees and still getting it to work. What you then have is the ability to prefund, to deduct the contributions, and also provide those employees with Pension Benefit Guarantee Corporation (PBGC) coverage for their benefit. Those things combined tend to make it more attractive. The reason why the law firms have problems down the road is they suddenly start having to pay all this money out with after-tax dollars. They are either accumulating it in a rabbi trust with after-tax dollars, which doesn't make much sense tax-wise, or they're paying them out when the attorneys are gone and there's no productivity there to replace that expense.

There's nothing unique in 415. We still have nondiscrimination testing going on. Whatever we come up with for 415, without 415(e), we still have to be aware of this. This is just an illustration of the things that are around. One thing that's critical is 415(b). Remember that now we no longer have 401(a)(26) requirements for defined-contribution plans. We only have it for defined-benefit plans. That means you can go back to having an individual plan, a defined-contribution plan. I have many clients who have been scratching their head over that. We typically solve the problem under 401(a)(26) by having subtrusts so everybody's money is truly allocated out. You had the same kind of investment opportunity for all employees, but it's a little bit different. Keep in mind that when you're testing, you have comparable rights and features to deal with in some instances.

The new comparability plan is basically super integrated. There are all kinds of names for them. What you're essentially going to do is cross-test. We're going to test the ultimate—test the contribution. What it will buy at retirement is a accrual rate against the highly compensated employees versus the nonhighly compensated employees and you're going to run this in rate groups. A good point to make is that in a 401(k) plan, in the setting we were talking about before, you could have a discretionary profit-sharing plan, the 401(k) salary deferrals, and the 401(m) matches. The plan, by definition, must be mandatorily disaggregated between those three components and tested. Matching is going to be tested only under the average contribution percentage test for 401(m). You cannot use it anywhere else.

You cannot use it for minimum top-heavy purposes. The same thing is true of 401(k). You're dealing there solely with the 401(k) (ADP) test.

Remember when you're doing that testing, if any key employee says I have a different definition than highly compensated employee, and if any highly compensated employee is putting money in and the plan is top-heavy, you have an obligation to make contributions on behalf of non-key employees. I think this is where there's a great deal of failure in many plans. A comment that was made at one point—that 90% of summary reduction, simplified employee pensions (SEPs) do not comply. Why? They complied the first year because somebody explained to them what the first year rules were. No one reviewed them in the second, third, fourth, fifth, and tenth years. No one has seen the numbers again. The two people at the top are putting money in left and right, and no one else has ever contributed. They simply aren't in compliance.

The same kind of problems can occur in a 401(k) plan. I met with somebody recently who had an old defined-benefit plan they terminated. Seventy-five percent of the benefits were going to key employees, so, it was clearly a top-heavy plan. They have a new 401(k) plan. Guess what? The 401(k) plan is also deemed to be top-heavy because of the existence of the defined-benefit plan. We won't get away from the defined-benefit plan for another five years. When we get into talking about replacement plans (going back and picking up old plans and bringing things forward) remember the top-heavy rules apply, and you need to look at the aggregation of plans for top-heavy purposes because there's mandatory aggregation. In most of these cases, there's mandatory aggregation of those plans for determining whether the new plan is top-heavy.

In the age-weighted case, you're simply dealing with the age-based units that you generate. In the cross-tested plan you have some traditional formula. Example: 6% of compensation up to the wage base, 25% of the compensation above the wage base. That is not an unusual formula because it will produce a $30,000 contribution for the $150,000–160,000 range employee. The objective is to push it so that the formula works. How does it not work? It doesn't work if that will push it to the point where the people who are highly compensated employees will not pass the 410(b) coverage test or the average benefits test. You're running an average benefits test and checking coverage within each rate group when you're doing that. You need to keep that in mind.

If your age-weighted profit-sharing plan is set up correctly, and your factors lie between the safe harbor limits of 7.5–8.5%, then it should automatically pass, if you do it right. The one thing you must remember to do if this plan is top-heavy, is make sure no one falls below 3% because, generally speaking, you're trying to get a

contribution well above 3% to the person at the top. Make sure that the plan doesn't do that.

As I mentioned, we're really talking about shifting the cross-tested plan. You're going to look at this by the highly compensated employee accrual rate, and you look at all the employees. They have higher accrual rates than the HCE for each cell. It's a cumulative test; that's how the average benefit test works. Essentially, you're trying to pass. This is what you do. You say, OK, we come up with this great formula. Now does it pass? Well, the easier way to do it is to do an age-weighted plan and see what you have to have as a minimum to pass. Then you can work backwards to generate the formula. It's not difficult to determine a formula that will pass. One of the drawbacks to cross-tested plans as opposed to an age-weighted plan is that it is more likely to fail because of a change in demographics. I had a discussion just the other day with someone from the IRS and found out that this is an area that it might look at. The IRS will look at who submitted Demonstrations 6s and 7s or their determination letter. That gives them a real narrow group to look and determine whether to audit these people and see if subsequent years they passed.

I have my argument for not testing, and I heard the argument for testing. The argument for submitting a test is that you get the IRS to at least pass muster on the way you're doing the test. If the group changes, it changes next year from where it was last year. Obviously the test results are going to change; therefore, that snapshot you submitted to the IRS isn't of much value in subsequent years, except for the methodology. Our opinion is it's a waste of money. I have had the same conclusions drawn by other actuaries in our firm. It's a waste of money to submit a test that doesn't have any value after you submit it, except for the mechanics of it. You're probably going to submit the same mechanics you would use anyway. I'm not too sure that submitting it gives you much value. I'm talking about this marketplace. This is a small plan marketplace. There are other reasons for submitting it for larger groups where there are other problems.

From the Floor: Were you suggesting not submitting?

Mr. Turpin: You must submit the general test as part of your determination letter process. Don't pay the extra fee for a cross-tested plan: you pay another $500 as a fee, and you have to submit the test, and you do the demonstrations, so forth. I've got this test. I'm going to submit it as part of the demonstrations attached to the Form 5300 filing. It's only a snapshot of the moment you ran that particular test. It has no real validity in subsequent years because the data change.

From the Floor: How are you getting a determination letter if your relying on the general test to get your determination letter?

Mr. Turpin: The determination letter has a caveat in it specifically with regard to that.

From the Floor: Qualified doesn't mean it passed.

Mr. Turpin: That's right. They say the language of the document itself, in and of itself, is acceptable, but the issue (and the problem) is that of facts and circumstances. In any given year, you must run the test and determine whether the test makes this work or not.

From the Floor: A small plan doesn't increase the cost.

Mr. Turpin: When you have only five or six employees, a change to one or two employees has a real serious impact on the result of that test.

Clients tend to be sensitive cost-wise to the wrong thing. They'll pay you a fortune to do annual work but they don't want to pay you anything to submit this test to the IRS. Part of it is they just have this feeling of not wanting to spend any more money on the IRS than absolutely necessary. You go from a $700 to a $1,200 filing fee. You mean it costs me more to submit this to the IRS than it did to have the document done?

It's all of relative value to the client, but the most important aspect is how comfortable the client feels when it gets all said and done.

Let's discuss new comparability discriminatory or nondiscriminatory testing. We have two participants who are paid identical salaries. Why are they getting different dollars? At age 35, it's a $250 contribution. At age 55, it's going to be an $1,150 contribution on an age-weighted basis. The accumulated benefits at 65 are virtually identical. One's $2,500, and the other is roughly $2,480. The problem that we always have is the employees don't understand. In some instances, the 55-year-old, depending on what they're doing, may have less skills because he or she could be behind on technology, depending on the business they're in. Well, this is one of those things you watch for when you're talking about designing something that is not straight across the board because these employees get very sensitive to that, particularly the younger ones. They'll ask, "Why am I not getting as much as the older one? I've been here ten years, and he or she has been here five years." When you're into a profit-sharing plan, you're not dealing with service. You're only dealing with age and compensation in that demonstration.

Since the 401(a)(4) regulations were finalized, we've gone away from having a sense of what is fair. What we have now is this bright line test that puts you on one side. It's a good deal. That's a drawback to the way the profession is viewed now by the regulators: they created regulations to give us bright line tests. Then they object to the fact we use the bright line test to the benefit of our clients. That's sort of a catch-22 that, as professionals, we're stuck with.

Let's discuss target benefit pension plans. Fewer than 5% of all the determination letter requests the IRS receives are for target benefit plans. I mean it's not a very big market in terms of total plan members. Target benefit plans are a hybrid between a defined-benefit plan and a money-purchase pension plan. It operates on all fronts, with the exception of the calculation of the contribution, so it's a defined-contribution plan. For example, it's 25% of pay, with a $30,000 limitation. The only thing that's unique about it is how the contribution is calculated, which is a function of this target benefit plan. The rules for target benefit plan calculations changed dramatically post-1986 because you're now into the radical reserve approach to calculating the contribution arrangement. One of the problems with them is they're not as straightforward. It used to be if you had a contribution and the benefit went up $10, you increased the contribution to cover the additional $10. It's now much more complicated as you're now dealing with this theoretical reserve approach.

It sounds like everybody has at least one time or another talked to the IRS, whether you want to or not. If you're enrolled and you have a problem, you can't tell the IRS what you really think because you're not allowed to be abusive to a representative of any regulatory agency that governs enrolled actuaries, no matter how much you want to be. You're not required to submit the determination letter request. One of the things that I explain to clients is that this is not required. However, you may feel more comfortable if you do. In many instances, you want that kind of protection.

Let's discuss an age-weighted profit-sharing plan versus a target benefit pension plan. The first problem you have is 15% of compensation. Where we found that the target benefit of the money-purchase plan was essential is that we just don't have enough compensation to work with. I have one individual who's making $160,000, and two others making $20,000 each. There's only $30,000 of available contribution limit unless the plan has been around a long time and you have some pre-1986 credits. That's one of the reasons why we cannot get them to $30,000. There's just not enough compensation available to drive it there, or there are other kinds of problems. This is a component of a 401(k) plan, and they're making contributions. Salary deferrals are out there that affect the 15% available for the employer to contribute.

As I said before, you're dealing with benefit accruals that are typically not based on age, whereas for the target benefit pension plan, you do have the advantage of using both age and service in constructing the mechanics of the contribution because you may have service as a component of the benefit structure. The other thing is that with the age-weighted profit-sharing plan, there's the cross-discipline with sort of a unit-credit approach. Snapshot is a general rule. We do have a year-to-date or accrued-to-date type approach to doing the testing, but generally it's going to be done on an annual basis with a unit-credit approach. We're looking only at what this year's contribution will buy at whatever the retirement age you selected for testing versus the theoretical level premium reserve approach for the target benefit plan and that makes it a little different.

We're dealing with post-415(e). We no longer have the 1.4 rule. We no longer have the 1.25 rule. What do we do? A couple of things are important. You go back and determine whether you have terminated a defined-benefit plan in years past for this particular client. Did you terminate it particularly between 1986 and 1988 where the reason for terminating it had to do with 401(a)(26)? Therefore, maybe they don't have full accruals. As you go into 415, an era in the year 2000 without 415(e), you can go back and look at what benefits were accrued. Unfortunately, most clients don't keep records that far back, and you may have a little bit of trouble with it, but I think that would be one of the things to look at because you may be able to take that plan, the benefit in that plan, and say, we haven't fully funded or fully accrued the maximum 415 benefit if the plan was terminated for 401(a)(26).

From the Floor: What method do we use if the employers have no records?

Mr. Turpin: How many have ever submitted a plan in which you had the wrong plan number on it? They kick it back, and this can't be Plan 002. You already have a Plan 002. The record center in St. Louis has millions of boxes of this stuff, and they apparently have it all on computer. Back in the era when we might have had individual plans, we might have had eight or nine plans. We're going to be dealing with Plan ten as opposed to Plan A, and that's one of the things that will trip it up. Beyond that there isn't any way to go wrong.

From the Floor: So if the employer has no files, there's no way of tracing it?

Mr. Turpin: Yes, then we're going to have a tough time tracing it. This is one of those issues where compliance is really in the hands of the employer in terms of what he or she has done in the meantime? Let's say that plan was sponsored by a proprietorship, as an illustration, and they're now incorporated. They've only had a profit-sharing plan as a corporation. There may be absolutely no way for them to

trace it directly. You have to be careful about responding on an audit, and about what you're offering to the IRS on audit.

From the Floor: Then if they do, that’s just one way to catch you?

Mr. Turpin: They only catch you if you have the same employer identification number, and they say what happened to Plan 001 and 002 because this is now Plan 003, or you volunteer the information in response to a direct question as a part of the audit, and you answer that question correctly. Your other problem may rest with the control group, the responses of the control group on Form 5500. Are you answering those questions accurately? Are you dealing with successor plan sponsors or successor entities on a plan sponsored basis, or are you dealing with a control group of two different entities that happen to overlap a very short period of time?

From the Floor: Looking at terminated defined-benefit plans, you may be able to update the accrued benefit or they would terminate on day 26 and have to be updated. By updating do you mean adopting a new defined-benefit plan with an additional benefit?

Mr. Turpin: That's correct. You talk about a new plan. What I'm saying is you go back to some of those terminations that occurred in the mid-to-late-1980s, that did not have full benefits accrued. Many people are saying, well, I terminated an old defined benefit, and I can't have another one. You need to go back and look. Have you really exhausted 415 with the defined-benefit side?

With the accrued benefit, you may have a less conservative normal retirement age. There are all kinds of things you're looking at, and if you're talking about small plans, the concern is how much money you are going to have in the bank when you are ready to retire? They are worried about the mechanics of the plan.

From The Floor: How are you going to solve the 401 (a)(26) problem?

Mr. Turpin: Well, you don't have a 401(a)(26) problem because you're talking about creating a new plan that covers all employees. From a 401(a)(26) standpoint, it's not a problem.

When you're dealing with small plans, particularly when we're talking about post-415(e), we need to focus on a couple things. I'm doing some work on one of these. It's an old plan somebody needs some tactical advice on. Go back and look carefully. There were a few plans created that were the reverse of what we typically think under the 1.4 rule. There’s an opportunity to go in and fix that. It's a 25%

money-purchase plan with a 36% defined-benefit plan. The defined-benefit plan was funded at ten years certain and life. That's a 1.4 situation. You might find a few of those out there. They're a good candidate because now you no longer have to worry about the relationship there. You can take that 36% or 40% benefit and kick it up to 100%. You have a much bigger piece there to work with.

One thing to worry about is Item 2. Keep in mind that in small plans the principal has a great deal of past service, and the employees have zero to three or four years of past service at best. You have a safe harbor in 401(a)(4) to the five years of past service, and that is one of the ways to deal with this. You needed to watch past service. There's normal retirement age, and early retirement age. How many people have clients that can't effectively perform their profession after age 45? They're baseball players. They're football players. They're race car drivers, or whatever. There's a limitation there. In my best illustrations (in which I have 20 or 30 plans subject to the small plan actuarial audit) I fortunately lost none of them.

I had an orthopedic surgeon, who had a disease that was causing him to go blind. The IRS was insisting that he would work until he's 65. I said not on me. It took a while to convince the agent that this guy really wasn't capable of performing surgery anymore and that his medical career might very well be over once he truly became blind. That's one of the things to look at here. One of the issues in the example we'll go to shortly is talking to your client about what their expectations are about retirement and getting it documented. An important point of the audit program was about looking at retirement ages, so everyone gets uniform protection.

From the Floor: All the employees are eligible?

Mr. Turpin: You're typically dealing with 100% of the high three averages, your maximum benefit here or the dollar limitation. Remember that you can fully subsidize that early retirement. You might have somebody retiring at 45 with a fully subsidized early retirement benefit. You can design the plan so that it is equal to the 415 level at age 45. It may not be that much more than $30,000 goes in, but there's a reason for looking at it. You might have a resulting $35,000–40,000 contribution for that individual. On the other employees you're talking about a 2% benefit accrual that you're funding for that first ten years, not—in terms of the minimum they've got to have under the top-heavy rules. If you have the right kind of scenario, this will work very well.

I have a reminder, and this does not go away with the demise of 415(e). This is going to sharply limit your ability to have both plans running simultaneously. You can't have the defined-contribution and the defined-benefit plans running. This does not go away because 415 goes away, and that is the 25% of pay limitation

subject to the minimum funding for the defined-benefit plan when you have multiple plans. The thing is, if you have enough compensation, 25% of pay may work because you're talking about an aggregate 25% of pay limitation. This is that old adage of the drawing on the wall. I have my contribution and my deduction. How do I allocate it?

Think about this. Let's assume you take somebody who has $160,000 of compensation, and other employees have another $100,000 of compensation. Your total limitation, what you can contribute, is $40,000 plus another $25,000 for the employees. You have $65,000 available. If you have the right demographics, that older employee with the defined-benefit plan, and you're meeting your top-heavy minimums there, the 2% benefit which is essentially the way to do it, and then you have the defined-contribution plan sitting over here. You may very well be giving that guy $50,000 out of the $65,000. By putting one plan first and assuming we're going to do something later on, you may be able to do both and satisfy them and give them some flexibility which is what they're looking for.

From the Floor: I don't understand. I understand it in terms of the dollars, but in terms of what he or she is effectively going to receive at age 65, there's no reason to put that defined-benefit plan into effect until age 55 so he or she gets the full ten years for the 415 limit. In the meantime, I sock away whatever I can in the defined-contribution plan for my client. He or she could put away more if they put it in the defined-benefit plan, but you're just going to get it later on and it's more cost effective if you don't have to pay administrative costs on defined-benefit plans.

Mr. Turpin: That's true. You do have the advantage of not paying for two plans at the same time. My adage on that is, do you want to bet on what Congress is going to do ten years from now? You have a window to put dollars in. If it's not cost effective, are you going to put another $5,000 in for them? The cost of running the second plan is certainly not worth it, but if you're talking about putting another $20,000 or $25,000 in for them, then the cost of that second plan is worth it because what I found is if I can get it into the trust, it's the only way I can keep it.

Taxing trusts has certainly been an issue that comes up periodically, and it is politically unpalatable to enough people that I don't think it'll ever occur. This is a real easy example. If you put $1,000 in now for the next 25 years at any reasonable interest rate, or you take $1,000 home and pay taxes on it, even if you pay the same tax rate 25 years from now as you pay today, you will have twice as much money to spend. If they're talking about saving dollars, get it into the trust because it's the most economical vehicle in which to invest the money.

From the Floor: Aren't the tax rates going to go up?

Mr. Turpin: The studies we've done say tax rates must double in order for it to be break-even.

Our problem with a 4980A tax is not the penalty on current distribution. Our problem is the estate tax. The second half of it is where your real risk is. If you're sitting there at age 70 with $3 million, your additional estate tax is $120,000 at that point. If this benefit is paid to a nonspouse, at the upper end your taxes can exceed 100% because if you have a big enough estate, like $3 million in a plan, we're talking about a 55% estate tax rate.

From the Floor: Federal?

Mr. Turpin: Federal. There's also the state rate. A rate of 60% is not unusual between state and federal at this level. It's also going to be paid out over five years because you have a nonspouse beneficiary. You're talking about a 39.6% federal income tax rate on that money in many instances. You're now up to 99.6%.

Your biggest problem is you're assuming they have proper estate planning and they have been properly taxed on this. I think that's where our biggest concern is. Someone has a hole in this, and the estate is paying taxes. The beneficiaries of the retirement plan are paying taxes, and that didn't get coordinated. That's really where it falls apart. Then you wind up with this 100%—because by the time they're figuring out they've paid the wrong estate tax, they're beyond the point where they can fix it, and they're still paying income tax on this money.

It conceivably gets above 100%, which is where the concern is. A little planning makes a huge difference. What we're suggesting to clients is basically that they figure out where they need to be at age 70.5 in terms of the dollars that will not generate any estate tax. If they have the window before age 70.5 to take some money out, because that gives them more flexibility in terms of what they can do with that money to avoid estate taxes. We're talking about 55–60% estate taxes. That's a big bite. I don't care what else is going on. That alone is worth trying to avoid.

Most advice I'm giving in this area tends to be for New Mexico residents for whom I have a pretty good feel for estate law. When we get outside of that, we're probably a little more cautious because we don't know them. We also bring a tax attorney in. We tell our clients they need to go talk to a good tax attorney about their options because that really makes a big difference. That's true wherever we are. We try and get somebody else involved who has somebody else's errors and omissions carrier on the hook.

From the Floor: What's the difference between now and the year 2000?

Mr. Turpin: Between now and the year 2000 planning is the first thing. The further you get away from records, the harder they are to find. Well, now is the time to see if you can find any of those old records I was talking about. Do you have an old defined-benefit plan? Do you have any records on it? Do you have an old defined-contribution plan that was terminated a number of years ago? Any of those kinds of things help you get ready for the year 2000. Because of my past experience with the government, making changes tends to be better because if we start talking today about changes that are going to happen three years from now, more often than not something changes in the law or the regulations between now and then that leaves us without quite as much. We would have more liberal rules, or whatever it happens to be. Delaying planning has some advantages. I think what you do now is talk conceptually about what we are doing. If we have only a defined-benefit plan sitting here, you want to figure out whether we can accelerate accruals beyond the year 2000 and get it as funded and then go back to the defined-contribution plan where we're not dealing with the 25% of pay issue except from a defined-contribution plan. It's a matter of what steps should be taken. Do we have records of all old plans? Do we know what went on, why were they terminated, and so forth? Because you're talking about stuff that may be a decade old at this point, it may be hard to find.

The second thing then is to look at whether you want to accelerate funding now given that 415(e) goes away and you have far more options. One of the things we found is that if a defined-contribution plan has been gone long enough, and if you've done anything for four or five years, then typically 415(e) didn't have that much impact, or we had an older defined-benefit plan which terminated. Want to do the defined-contribution plan now? They didn't have nearly the impact that people thought they would. It took a window of about four or five years for those numbers to come together. You're looking three years from now without having to worry about 415(e). Where should you be? Do we want this plan more funded then so we can walk away from it and say, OK, I have my 100% of pay funded in the defined-benefit plan. Just keep in mind that 404(a)(7) is a funding issue. It's a limitation on dollars going in right now. Can I accelerate funding in the defined-benefit plan so I have enough dollars in that plan in the year 2000 that I will not have to contribute to it in the future? There's essentially no minimum funding. You have overfunded the plan at that stage for termination purposes, but it will not be overfunded once the benefit fully accrues. You have this continuing accrual after the year 2000 that you've already prefunded. Now you can go back and look at 25% of pay as your funding limitation with this. You might want to keep the defined-benefit plan around so that you can maintain a larger contribution.

Here is a simple arrangement. This is typically what you're going to be looking at for defined-benefit plans. This is the characteristic target for a defined-benefit plan, if you want to call it that. We have the 50-year-old who has 15 years of past service making at least $160,000, and he or she wants to retire at age 60 with a benefit of about $80,000 which is, of course, subject to 415 limits. The contribution would be roughly $69,000–70,000 or about 40% of pay. He or she has three employees from age 25 to 35 making various levels of compensation. If you define the plan so that you can use, under the 401(a)(4), the five years of past service and only ten years of future service, in that fashion the two younger employees don't have the past service. They won't get quite the full benefit. You wind up with about $74,800 in total contributions, of which he's getting all but the $5,300, which is not too bad. So, we have almost 93% going to key employees. That's a sale in terms of the employer. The employer's going to look at it and say why not do it? Typically, if the employee was getting at least 70%, you can demonstrate it's a good deal.

One of the things is remember, too, when you're dealing with this you need to accrue the benefits over the requisite period of time. In this particular instance the benefits are high enough even for the youngest employee that you're not going to have a problem with the top-heavy minimum rule because you're talking about a benefit accrual that exceeds 2% a year in the first ten years of participation.

From the Floor: The top-heavy plan is going to give you 2% for 10 years anyway.

Mr. Turpin: Yes, you have a top-heavy minimum benefit that's 2% for 10 years. You have the safe harbor rules where you're looking at a plan in which you have to accrue it over 25 years. If you're doing anything less than that, there has to be a uniform accrual. Again it's a function of how to make it simple.

The next topic is really where the 415(e) stuff comes into play. There’s a 35-year-old who runs a restaurant, whatever it happens to be. I have two people who are making $1 million a year running restaurants. They happened to meet the right people at the right time in Santa Fe. The business is obviously successful. The employee turnover rate is high, which would be true in a lot of businesses like this. The hotel, or hospitality type industry has a high turnover rate, particularly if you're hiring younger people. Does the defined-benefit plan work? Is that something you ought to consider? I talked about retirement planning. This is one of the things that is very important in a small plan actuarial audit. It was particularly important in the case in Michigan, *Rhodes, McGee, et. al., vs. The Commissioner*. One of the big issues in that court case was had the actuary talked to the principal about when he was going to retire? The actuary hadn't talked to the principal, but neither did the IRS. From that standpoint, neither one was right, and so they said the IRS took it on the chin on their argument that it ought to be 65 as opposed to 55 or whatever.

The other thing is to ask, "Do you want to retire at 45?" Most will probably answer "Yes, that would be great." The other question is "Do you want to have the resources to retire at 45? Do you plan on retiring at 45? You must have some documented evidence about what the person wants to do. What about his or her spouse? Is the spouse working in the business? Is he or she drawing a salary? What does he or she want to do in terms of retirement? Here may be one of the situations where typically we don't recommend spouses drawing salaries because of the payroll tax issue, but 15% of payroll tax could be leveraged to a very large contribution for the defined-benefit plan. That may be a cost they're willing to incur in order to have that large contribution and large potential benefit from the defined-benefit plan. Keep in mind that with these two individuals you might have a contribution from this 35-year-old and spouse of more than $75,000 a year to a defined-benefit plan and relatively low cost for the employees because of the turnover. We went through and did a study of our small clients at one point. We went through and said, what's the average date they turn over? When are the withdrawal rates? We aggregated about 50 small clients and looked at them, and the number is around six to seven years, but the nonkey employees rarely stayed longer than six to seven years. If your client is somewhere between three and seven years, your assumption may be 100% turnover or you can assume that after five years the employees will be gone. If it's a top-heavy plan, it essentially means what you're funding for at that point, say a year to get in and then five years within the plan. You're turning over, and you're going to fund for the present value of their vested benefit after five years of participation. It might be a relatively small piece. There's another good thing in terms of funding that comes with that.

The normal retirement age is typically 65. We're talking about a fully subsidized early retirement benefit any time within 20 years preceding normal retirement age, provided you have a minimum. The reason for this is 415 and other things. There should be a minimum of ten years of participation. They don't meet the criteria for early retirement. The present value of their vested benefits is the benefit payable at 65, not the benefit payable at 45, because they don't get the early retirement benefit until they meet the criteria, whether they have ten years in or what. You're really talking about spreading that cost over three to seven years. Here's the real key on funding. This will increase by having that short period of time that you're going to fund the nonkey employees over. That will increase your overall cost, and it all is attributable to the principal. Think in terms of what happens to the present value of future salary? I only have five years for those folks. When you're doing a small plan you're talking about this 25-year-old. You're going to put in a good denominator—40 years of present value of future salary—because typically you don't look at any decrements for the small plan. You don't look at decrements for your retirement. As a result, you believe you have to put in present value of future salary for this person making $10,000 a year. That may be a $300,000 or $200,000

item into the denominator, and so you're spreading costs over it. That works to the disadvantage of the principal because his or her cost then gets spread over that. As a result, if you go the other direction and say I'm only going to have it in the plan for five years, then the present value of future salary only covers the five years. You have a much smaller denominator. You have a small benefit, and a small denominator, but when it's aggregated, you have small denominator that's going to be added on with this big benefit payable to the principal, but you are assuming the employee is going to retire at 45.

All these plans are top-heavy. I have not found where the three-year-cliff vesting works better. I mean that doesn't tend to work better than the two-to-six-year schedule. It's sort of a toss-up. If you have tremendous turnover, it's almost always going to occur within the first 18 months. The folks never get in the plan, and so it's sort of immaterial. I would say that a three-year vesting schedule works better if all your turnover is occurring fairly quickly, and you really want to hang onto some people. If they can get there and stay three years, and you want to hang onto them, you hold that out as a carrot; otherwise I'd use the two-to-six-year schedule simply because it spreads out your cost. There's less being paid out in that third and fourth year.

I've always told clients that I would rather they didn't put contributions in that had great investment return because they didn't have to work very hard for that investment return. The reversion tax is fairly prohibitive. We've not had a problem for any of our defined-benefit plans where we had a serious reversion except in one case in which a man made two $100,000 contributions in 1986 and 1987. By 1994 he had about $3 million in his trust. The guy was good at trading. In that instance we sold his corporation to a not-for-profit who paid for the corporation based on the value of the remaining assets in the plan. The not-for-profit basically bought the corporation. In order to merge that plan he paid 99% of his benefit out of the plan and left 1% in so there wasn't a determination in that situation because there was still a benefit payable. The plan didn't, in fact, terminate. Once they merged the corporations, or acquired the corporation, they merged the plans together, and in this particular instance, the not-for-profit paid him 80 cents on the dollar, and it came out to him as a capital gain with capital gains treatment for the sale of the corporation. That's what they paid him for. They get a 20% upside on the assets. He got the remaining 1% out of the deal, plus he got 80% which is far better than a reversion would have produced.

Another example is selling a practice to a hospital. There are a number of ways in which a business combination results in the plan being able to be merged. People who do this are aggressively recruited.

I mentioned the supplemental executive retirement plans situation. One of the things we've done for a couple of law firms, which has worked very well was to create a floor offset plan where the benefits were really targeted for a select group of employees which typically were like the five or ten oldest shareholders. The biggest problem with this is you have all this past service you can't take into consideration because you don't have a staff with comparable past service to pass the discrimination test. We created this environment.

With a typical floor offset plan you have a defined-benefit plan's benefit offset by the present value or the actuarial equivalent of the profit-sharing plan account balance, not the 401(k) or 401(m). It's just the profit-sharing portion, plus C, but what's C? Rather than granting past service, C is a table. In the back it says Joe Blow gets x%, and Susie Smith gets y%. So their benefit is A minus B plus C. C is for the select people. A minus B is almost always zero in this plan. A may vary over and be one-half of 1% times years of service with a maximum of ten years. I think the benefit under A is 5%, but everybody is eligible, and everybody participates. Typically the profit sharing plan contribution is running at least 3% of pay because of the top-heavy issues. As a result, B is almost always going to be greater than A in terms of the benefit. The only thing we're really paying out of this plan is C. What do you do? You aggregate the profit-sharing plan and the floor offset plan together and test them together in terms of the benefit accruals. If you do it correctly, they wind up working, such that you wind up with these older shareholders not getting a bigger benefit. Oftentimes, they're on the lower end. They get a lower benefit than most of the other employees. You have many employees who are 25–35 who are putting 3% in—or getting 3%. That's generally enough to support a fairly large benefit for someone who's over age 55.

From the Floor: You're testing on a projected defined-benefit plan?

Mr. Turpin: That's correct. You can test it one of two ways. You can test the accrued today where you're looking at the cumulative profit-sharing plan account balance. This benefit on a cumulative basis may be higher and testing that works, or you're talking about testing on the annual accruals.

We've discussed with clients doing both, the floor offset as well as an age-weighted plan at the same time. Sometimes that helps. When you're talking about age-weighted plans, one of the things I want to bring out, because we did discuss briefly the cross-tests, and this age-weighted plan, the highest benefit—I mean the highest contribution here is about 5% of pay. Which is the 2206 divided by 40,000. It's about 5.5%, actually. One of the things is when you're talking about doing cross-testing in trying to design this, you need to look at an age-weighted rate to see where you have to be. I could drop down one and test at the 734 which is

about 3.5% of pay, three-and-three-quarter. I could test at that level, and my base benefit in a cross-testing plan could be there because I'd have 75% of my employees in the right category in terms of accruals, but I don't have enough employees. I have to cover all three of these. I can't drop any of them out. I can't be below that. As a result, we're talking about meeting a contribution level on the cross-tested plan of probably at least 5.5% of pay. As I said, it's not an unusual arrangement, there's maybe 6% of pay across the board plus some fairly high contribution level. We did one not too long ago in which we broke it into three components. Basically we did a step at the wage base. Then we stepped at 130% or 140% of the wage base. It's a matter of getting the formula to work and producing enough to where you have the old employees at $30,000, but their benefit accrual rate is far lower than most of the folks at the lower income levels getting 6% who are also relatively young. That's really the key to making this work, but remember when you go into 415(e) post-2000, you may want both plans running simultaneously. You may want an age-weighted plan, and you may want the defined-benefit plan at the same time because we can maximize the defined contribution at a minimum cost for employees. We can maximize the defined-benefit plan at minimum cost for employees, but keep in mind that when you're doing that, you want to try and maximize your benefits to the person at the top. I tell people who put the funding together that this has only a seven- or eight-year shelf life. For the very reason you were talking about earlier, about the investment gains and the bottom line, we said we may very well be out there at seven or eight years. We can't put any more money in the plan because you've done too well investment-wise. We're going to have a three- or four-year period before we terminate the plan in which there are no contributions. Investments have served you well in that fashion and, quite frankly, you have to work to make the money to put the contribution in, and you don't have to work very hard for the money that comes in from the stock market. You may have some sleepless nights, but that's about it.

After audits, we're not as aggressive as we used to be, but I think, quite frankly, most of our small plans are funding at the preretirement interest rates, probably around 7%. Postretirement, it depends a little bit on what you've promised them, and in most instances, what you're really looking at, is that the postretirement interest rate may not matter because what you're really doing in a small plan is probably assuming 100% lump sums. In this case, it is going to be based on what your definition of actuarial equivalence is. This all has to be typical of what you're doing within generally accepted actuarial principles, which is the GATT rates. I have a strong hope that they will fix the GATT rate problem. I don't know what somebody's going to get paid ten years from now. I ought to know what somebody's going to get paid ten years from now, otherwise funding is inconsistent. The big problem with GATT, is it's too volatile.

You can always make this year's contribution and say we want a 7% return on the money, but are only giving you about 7–7.25% on ten years, or something like that. They're not really all that different than that preretirement assumption I was talking about.

We don't have any brand new target benefit plans. Most of the ones we've had have been around for three or four years. I have not looked at the fresh-start rules recently. All I know is the more I read those rules, the less I like them. I like the old approach where you really just looked at what the difference in the benefit was and funded that regardless of what the assets were. In the current method, where you're talking about amortizing the differences in those regulations, I think those things are far more complicated than they need to be. Calculations within the statutory target benefits are far more cumbersome.

As far as I can tell, there's nothing that precludes you from doing it. For example, the 401(k) regulation made it fairly clear you can't be playing—the employee may not make an annual election in that situation, otherwise you fall into the 401(k) regulation, unless you have that one-time, irrevocable election. What we found is that you can name people in any part of the document to do different things. In a couple of occasions, we've said all employees except Joe Blow are eligible for this plan and basically wrote somebody out of the plan. That's a corporate level decision. In other words, the participant in theory does not have any direct control over that election. That would be the same thing here. The hospital's going to go in and amend the plan to name these people specifically and say this is what we're going to contribute for them. Then you do have a general test. You're now moving into general testing to make it work, but I think you can design it so it would work.