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Engagement of the Enrolled Actuary on Behalf of All Plan Participants: Where's the Engagement?

by Theodore Konshak

The provisions of a defined-benefit pension plan promise the payment of a monthly income to participants for the remainder of their lifetimes. Money is deposited into a trust fund, invested by the pension plan trustees, and, according to the instructions of the administrator, periodically withdrawn to pay the retirees their monthly benefits. An enrolled actuary operating under the requirements of the Employee Retirement Income Security Act (ERISA) impartially determines the minimum pension plan deposit.

Under the requirements of Section 103(a)(4)(A) or ERISA, the enrolled actuary is engaged by the administrator of the pension plan on behalf of all plan participants. The administrator is a fiduciary and must discharge his or her duties solely in the interest of plan participants. Under ERISA Section 3042, the enrolled actuary is an individual person and is not the actuarial consulting firm employing that individual.

Corporate pension plan actuaries and the administrators who hire them can wear more than one hat. In addition to being the enrolled actuary impartially determining the minimum pension plan deposit on behalf of all plan participants, corporate pension actuaries can also wear the hat of a consultant providing advice to the corporate sponsor of that pension plan. That employer, who is responsible for contributing the minimum pension plan deposit, can also wear the hat of the administrator.

Analyzing the engagements of enrolled actuaries can be difficult because the parties involved in that fiduciary decision can be wearing a multitude of hats. It is not always apparent which hat is being worn when the enrolled actuary is being engaged. To simplify this analysis, the studies reported in this article were restricted to those situations in which the corporate sponsor was *not* the administrator.

Previously Reported Study Results

Defined-benefit pension plans with more than 100 participants must provide an explanation for a change in enrolled actuary on the Schedule C attached to the Form 5500. A study of these Schedule C explanations was conducted and reported in the Spring 1997 issue of *Compensation and Benefits Management* [1].

If the administrator is not the corporate sponsor, the Form 5500 instructions notify the administrator of the need to apply for and use a different Employer Identification Number (EIN) on the Form 5500. Using the 1993 Form 5500 database obtained from the U.S. Department of Labor, the name of the corporate sponsor, name of the plan administrator, EIN of the corporate sponsor, and EIN of the plan administrator were reviewed to obtain the subset of pension plans legally administered by a committee or individual person with an EIN different than the one used by the corporate sponsor.

Legally designating a committee as the plan administrator is a conscious act because an application form (that is, an IRS Form SS-4) must be completed in order to obtain the EIN. In contrast to multiemployer pension plans, the pension committees of corporate pension plans generally have no employees and the members of that committee generally serve without compensation. Corporate pension plan committees do not need an EIN for income tax purposes or for any other general business purpose. The Form SS-4 is completed, and the EIN is obtained solely for Form 5500 reporting purposes.

The Schedule C explanations for a change in enrolled actuary were reviewed to determine the identity of the decisionmaker. Under ERISA Section 103(a)(4)(A), the enrolled actuary is engaged by the administrator of the pension plan on behalf of all plan participants. In situations when the decisionmaker was identifiable, only 6% of the explanations reported engagement by the administrator as required under these provisions of

ERISA. The remaining 94% reported engagement by the corporate sponsor contrary to the requirements of ERISA. The corporate sponsor was *not* the administrator.

Previously Unreported Study Results

Because the enrolled actuary is defined as an individual person under ERISA Section 3042, an explanation for the change in enrolled actuary must be provided on the Schedule C even if there is no change in the actuarial consulting firm providing those services. Using the subset of pension plans administered by a committee with an EIN different from the corporate sponsor, explanations for a change in enrolled actuary within the same actuarial consulting firm was tabulated (Table 1 on page 15).

These Schedule C explanations express various degrees of involvement in that decision. Reporting the changes as an "internal reassignment of responsibilities within the actuarial consulting firm" (84 of 121 explanations) implies the replacement was selected by the actuarial consulting firm. Explaining the change only as a termination of the prior enrolled actuary's employment (37 of 121 explanations) does not provide any information relating to that decision. None of the explanations could be interpreted as a selection by the client.

Responses to Alternative Explanations

A number of simple conclusions can be derived from these study results. However, whenever dealing with the actuarial profession, you must first dismiss the litany of alternative explanations:

- *Corporate sponsors were acting in their capacity as administrator*

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when engaging the actuarial consulting firm. In the situations being tabulated here, corporate sponsors were not serving in the capacity of administrator.

- *Long-standing judicial decisions do not preclude corporate sponsors from selecting an actuarial consulting firm or making other fiduciary decisions, on behalf of all plan participants, which may also incidentally benefit the corporate sponsor.* In the situations being studied, ERISA would preclude engagement of the enrolled actuary by the corporate sponsor. ERISA required engagement by the administrator of the pension plan. The corporate sponsor was not the administrator.
- *The corporate sponsor can delegate fiduciary responsibilities to a pension committee and retain the fiduciary responsibility for engaging the enrolled actuary.* Many pension plans are administered on this basis. The corporate sponsor is the administrator of the pension plan and delegates some, but not all, of the fiduciary obligations to a pension committee. In this situation, however, the pension committee would not be the legally designed administrator and would not apply for or obtain a separate EIN. These are not the situations being tabulated by this study.
- *There is no impropriety because the corporate sponsor's choice of an actuarial consulting firm is submitted to the corporate pension plan committee for its approval.* The terms "approval" and "engagement" are not synonymous. At best, the corporate pension plan committee could reject the actuarial consulting firm and require the corporate sponsor to engage a different one.
- *The person completing the Form 5500 and supplying the Schedule C explanation was a low-level employee not directly involved in the engagement of the enrolled actuary.* Most of these Schedule C explanations were probably written by low-level employees. These employees, however, are involved in the administration of the pension plan and would have observed the engagement process directly or indirectly through

TABLE 1
Explanations for a Change of Enrolled Actuary
within Actuarial Consulting Firms
when Committee Serves as Administrator

Reason for Change	Number
Internal reassignment of responsibilities within actuarial consulting firm	84
Termination of enrolled actuary's employment with no further elucidation	37
Explanation that could be interpreted as a selection of a new enrolled actuary	0
Total	121

those who were directly involved. These low-level employees are not very knowledgeable of the legal requirements of ERISA, and they provided a Schedule C explanation derived from their observation of the process rather than from their knowledge of ERISA.

Under penalty of perjury, the signer of the Form 5500 states that he or she has examined Form 5500 and its accompanying schedules, and to the best of his or her knowledge, the information is true, correct, and complete. The person signing Form 5500 would have been more directly involved in making the decision to change actuarial consulting firms. Most signers of Form 5500 may not have completed the form, a low-level employee having performed that task, but they would have performed at least a cursory review and would have read that Schedule C explanation for the change in enrolled actuary.

- *You haven't proven any impropriety. The corporate sponsor could have selected the actuarial consulting firm. The corporate pension plan committee may have had the opportunity to select any enrolled actuary employed by that actuarial consulting firm.* "Selection" or words that could be interpreted as having that effect rarely appear when describing a change in enrolled actuary within the same actuarial consulting firm. The explanations that do appear, "reassignment within the actuarial consulting firm" indicated the opposite. This individual was not selected by the corporate pension plan committee or the corporate sponsor. This indi-

vidual was selected by the actuarial consulting firm.

Under Section 3042 of ERISA, the enrolled actuary is an individual person and is not the actuarial consulting firm employing that individual. The enrolled actuary must be engaged by the administrator of the pension plan.

- *If another enrolled actuary must be assigned to a case, the actuarial consulting firm may recommend another enrolled actuary, but the corporate pension plan committee has the ultimate decision-making authority on whether to accept that recommendation.* If actuarial consulting firms had emphasized committee responsibility, these Schedule C explanations would have reflected that sentiment. They do not.
- *In the majority of these cases, the corporate sponsor has the authority to appoint and fire the pension committee members and has therefore retained a large measure of the fiduciary responsibility for engaging the enrolled actuary.* Members of corporate pension plan committees can be designed by a title (for example, Vice President of Corporate Finance or Vice President of Human Resources). Their meetings are normally held on company time. These individuals may not

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leave their titles at the door and may discuss administration of the pension plan within the responsibilities of their titles rather than as a fiduciary discharging duties solely in the interest of the plan participants. In such an instance, the corporate sponsor may effectively retain the ability to make the fiduciary decisions of the administrator. Buy why go through the effort of completing an IRS Form SS-4 to legally designate the committee as administrator?

The enrolled actuary must be engaged on behalf of all plan participants by the administrator of the pension plan. Is this a sham too? To comply with this requirement of ERISA Section 103(a)(4)(A), actuaries should determine the identity of the administrator before they are engaged. And if they solicited the identity of the administrator in order to be properly engaged, 94% of the Schedule C explanations would not have inappropriately identified the corporate sponsor as the decision-maker.

Discussion

The following explanations, provided on 1993 Schedule C filings for a change in enrolled actuary, elegantly describe the engagement process.

- *There was a change in consulting firms which therefore resulted in a change in enrolled actuaries.* The corporate sponsor, who is responsible for contributing the minimum pension plan deposit, hires an actuarial consulting firm as its advisor. The change in enrolled actuary is a mere consequence of that act.
- *The firm of William M. Mercer Inc. is engaged to provide actuarial services for the Hunter Douglas Inc. Retirement Plan. Mr. Abbazia was a Mercer employee who served as the plan's enrolled actuary. He has terminated his employment with Mercer to pursue other professional opportunities. Mercer will assign another employee to serve as the plan's enrolled actuary.* When there is a change in enrolled actuary within the same actuarial consulting firm, the corporate sponsor does not select a new enrolled actuary. Corporate sponsors initially selected the actuarial consulting firm. They did not

initially select that individual, and they are not doing so when there is a change in enrolled actuary within the same actuarial consulting firm. The actuarial consulting firm initially assigns and reassigns enrolled actuaries to the case. Engagement (or assignment) of the enrolled actuary is a fiduciary decision. That fiduciary decision is being made by the actuarial consulting firm.

ERISA does not explicitly define enrolled actuaries or actuarial consulting firms as fiduciaries. On the other hand, ERISA does not preclude enrolled actuaries or actuarial consulting firms from being a fiduciary. ERISA also does not preclude the delegation of a specific fiduciary responsibility to an actuarial consulting firm. There would be no impropriety in the second Schedule C explanation, for example, if the administrator delegated the selection of enrolled actuary to the actuarial consulting firm and the actuarial consulting firm fulfilled its fiduciary responsibilities in selecting that individual.

Enrolled actuaries are accredited and regulated by the Joint Board for the Enrollment of Actuaries, a federal board consisting of three members appointed by the U.S. Secretary of the Treasury and two members appointed by the U.S. Secretary of Labor. Under the Standards of Performance for Enrolled Actuaries published under 901.20(b) of its regulations, the Joint Board defines professional duty as follows:

“An enrolled actuary shall not perform actuarial services for any person or organization which he/she believes or has reasonable grounds for believing may utilize his/her services in a fraudulent manner or in a manner inconsistent with law.”

In the actuarial organizations in which they work, enrolled actuaries can be subordinate to account managers attempting to satisfy the needs and objectives of the corporate sponsor. If a single person is both account manager and enrolled actuary, the role of the enrolled actuary is a less important and subordinate role. Under Joint Board regulation, enrolled actuaries are prohibited from

performing actuarial services for any person (for example, account managers) or organization (for example, actuarial consulting firms) that may utilize their services in a fraudulent manner or in a manner inconsistent with the law. The actuarial organization has no policy to discourage coercive subordination of enrolled actuaries by account managers or does not actively enforce a policy created to discourage such coercive subordination. In annual performance appraisals of its employees, the actuarial consulting firm emphasizes account management rather than satisfying the duties and obligations of an enrolled actuary.

Research previously reported in *Compensation and Benefits Management* included an analysis of twenty 1992 and 1993 Schedule B attachments [2]. There were 57 changes in actuarial assumptions and cost methods that needed to be reported and justified under ERISA Section 103(d)(3). Thirty-six of these changes

“The enrolled actuary must be engaged on behalf of all plan participants by the administrator of the pension plan. Is this a sham too?”

were reported by the enrolled actuary on attachments to Schedule B. Only 13 of the 36 reported changes were justified by the enrolled actuary. If enrolled actuaries complying with their duties and obligations under ERISA was an issue of primary importance for actuarial consulting firms, these results would have never occurred.

- *Under ERISA Section 3042, the enrolled actuary is an individual and that individual is responsible for justifying changes in actuarial assumptions and cost methods. The actuarial consulting firm is not responsible.* Under ERISA Section 103(a)(4)(A), the enrolled actuary is engaged on behalf of all plan

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participants by the administrator of the pension plan. Do corporate sponsors and actuarial consulting firms consider the enrolled actuary to be an individual person in this instance as well? The actuarial consulting firm is responsible because it is the fiduciary that engaged the enrolled actuary. Its on-going fiduciary reviews of those individuals should have included justifying changes in actuarial assumptions and cost methods as required under ERISA Section 103(d)(3).

If the Joint Board for the Enrollment of Actuaries directed its enforcement efforts only against individual enrolled actuaries, it would not necessarily discourage the activities of actuarial consulting firms with hundreds of enrolled actuaries. But what if these enforcement efforts related to all current and future enrolled actuaries employed by that firm? Enrolled actuaries are prohibited from performing actuarial services for any person (for example, account managers) or organization (for example, actuarial consulting firms) that may utilize their services in a fraudulent manner or in a manner inconsistent with the law.

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END NOTES

1. Konshak, Theodore. "Identifying the Capacity in Which the Enrolled Actuary Serves," *Compensation and Benefits Management*, Vol. 13 No. 2 (Spring 1997): 50-54.
2. Konshak, Theodore. "The Three Faces of the Corporate Pension Plan Actuary," *Compensation and Benefits Management*, Vol. 12 No. 4 (Winter 1996): 62-68.

Enrolled Actuary Credit

The Society of Actuaries is authorized by the Joint Board for the Enrollment of Actuaries to offer programs that meet the requirements for both core and noncore EA credits. Such sessions are designated in SOA brochures and meeting programs. The enrollment cycle is three years. The current enrollment cycle began January 1, 1996 and will expire on December 31, 1998. Actuaries are required to attend a total of 36 hours of continuing education credit with at least one-half being core credit hours.

The Enrolled Actuary must maintain records for the current enrollment cycle that include the name and address of the sponsor, title and description of program content, dates attended, credit claimed for core and noncore hours, names of instructors, and certificates of attendance as well as the total core and noncore hours claimed.

The SOA regularly sends attendees who have completed an evaluation form for EA credit sessions a certificate which indicates the breakdown of core and noncore hours for that session.

For those who need to meet continuing education requirements for the current enrollment cycle year and are not able to attend seminars or meetings, video and audio tapes, along with worksheets, are available to help meet credit requirements. The "Enrolled Actuary Order Form for Credit" is available in the Continuing Education area of the SOA website at <http://www.soa.org>.

Questions can be directed to Sherri Fiore at the Society of Actuaries at (847) 706-3537 or sfiore@soa.org.

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John Hanson Memorial Prize

The John Hanson Memorial Prize is given on a regular basis for the best paper on an employee benefits topic published in the *Proceedings of the Conference of Consulting Actuaries*. The author must write a paper but need not apply nor be a member of the Conference to be considered for the prize. The winning paper will be selected by an employee benefit subcommittee on the Committee on Papers. Papers are judged on appropriateness of subject material, timeliness of topic, originality, and practical application to employee benefits.

Due to lack of appropriate papers in the past year, the CCA Board of Directors has decided that the prize for 1997 will be \$2,000, and the CCA will waive its Annual Meeting fee for next year to the recipient. Thereafter, until further notice, the prize will be \$1,000 a year, and the CCA will waive its Annual Meeting fee for that year to the recipient.

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KWEL-Project Web Site Announced

Kortanek and Medvedev are pleased to announce a web site for the KWEL Project in the College of Business at the University of Iowa, Iowa City. The project focuses on the term structure of interest rates, the spot rate, and replications of thinly traded options.

The "Markets Comparison" section (previously "Coming Soon") compares estimates of daily 3MO rates in the Secondary U.S. Treasury Market with reported rates, and "Today's Forecast" is regularly updated as weekly 3MO Auction data from the St. Louis Federal Reserve Bank become available. There is also a comparison between the previous forecast with materialized 3MO U.S. Auction rates reported by the St. Louis Fed.

The web address (3MB) is: <http://www.biz.uiowa.edu/kwel/kwel/>