

# Administration Finance

## **e-*communiqué***

**Spring 2004**

### **From the Chair**

*By Fred Parker*

We escaped winter with a small amount of snow and ice, along with some warnings that caused a few businesses and schools to close prematurely. The A&F Section Council has been busy, and the Management & Technology Show Planning Committee is moving full speed ahead with plans for the Section-sponsored show at the 2005 midyear meeting in Salt Lake City. You will be kept apprised of developments throughout the year.

Those who attended the midyear meeting in San Antonio experienced first hand how large a convention center could be, and attended the outstanding programs that the NABE Program Committee developed. While

I was unable to attend the BLI in Chicago, a number of Section members did.

Speaking of meetings, the registration forms for the annual meeting in Atlanta are on the NABE website. The NABE Program Committee will again provide a schedule of events that you will not want to miss. Register early and come to 'Hotlanta' for personal development, seeing other Section members and friends and networking.

Look at the Section's pages on the NABE website to see our new look. We can all thank Jill Werner and Brian Myers on the DBS staff for assisting with this facelift. Please pass any comments or suggestions on to Greg Derwart.

The NABE dues statements were recently sent in the mail. The opportunity to meet your fellow bar execs, make new friends and attend the excellent personal development programs are just three of the many reasons to renew. Also, do not forget to renew as an Administration & Finance Section member and take

advantage of the member benefits such as this newsletter, participating in the Section's listserv, and attending the 2005 Management & Technology Show at member rates.

In closing I wish to thank the Bar Staff and especially Jill Werner for their help this year; and Julie Armstrong, Craig Combs, Greg Derwart, Helen Druce, Janis Jerman, Allen Kimbrough, Charlie Lorenzetti, Monica Mackie, and Colleen McManus who comprise the M&T Show Planning Committee.

- Fred



*We look forward to visiting Diane O'Steen and her friends in Atlanta this summer.*

#### **Section Leadership 2003-2004**

Fred Parker, *Chair*  
Helen Druce, *Vice-Chair*  
Allen Kimbrough, *Secretary*  
Greg Derwart, *Treasurer*

#### **Council Members**

Dana Collier Smith (2004)  
Trudy Levindofske (2004)  
Judith Dugar (2005)  
Monica Mackie (2005)  
Colleen McManus (2005)

Craig Combs, *Immediate Past Chair*

# The Successful Interview Process:

## Tips for Development & Administration

By Colleen J. McManus, SPHR

### 1) Know the Job for Which the Interview is Being Conducted

This is one of the most critical steps in the interview process, but is often overlooked due to time constraints and or assumptions about the day-to-day activities in the job. Prior to undertaking an interview process, the hiring authority should review and update the job description and any job-related documentation.

With careful preparation at this step, the hiring authority is better able to advertise and articulate the job's requirements and candidates are better able to understand

and speak to those requirements.

### 2) Determine the Type(s) of Interview Questions to be Used

Interview questions about job related situations, past behavior and/or important job knowledge have been shown to have a high degree of validity. "Validity" is a term that simply means the questions measure what they are supposed to measure.

Many organizations jumped on the behavioral interviewing bandwagon several years ago.

Behavioral questions are helpful in a



process, but research reflects that a combination of different types of questions is more successful in identifying qualified candidates for most job situations. What follows is information on several types of interview questions:

**Behavioral:** Based on the theory that past behavior is the best predictor of future behavior, these types of questions ask candidates to recall and describe past situations that are similar to the types of situations they might encounter in the job for which they are being interviewed.

*Example: This position involves extensive phone contact with clients on a regular basis. Tell me about a time in your previous work experience when you were successful in handling a high volume of phone contact with others.*

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### Under the Wire

The deadline for the ABA Partnership Awards Program has been extended to April 7<sup>th</sup>, so you still have a chance to submit entries. The program recognizes efforts by bar associations to increase diversity in the legal profession. Winners will be featured at the NCBP meeting in Atlanta and at the joint lunch Friday, August 6<sup>th</sup>. You can download the application from the Bar Services Web site at <http://www.abanet.org/barserv>.

### On the Move

Bubble wrap abounds in the Division for Bar Services. Staff is preparing for the ABA's upcoming move from offices on Lake Shore Drive and Fairbanks Court to 321 N. Clark St. The official moving day is May 13<sup>th</sup>. Our new address will be 321 N. Clark St., 20<sup>th</sup> Floor, Chicago 60610. All phone and fax numbers will remain the same. Any Section members who find the packing process an irresistible, exhilarating experience are invited to stop by and lend a hand.

### News You Can Use

The 2004 State and Local Bar Association Membership Dues and Mandatory Fees Survey—now available online—contains information and rankings on the dues and fees of all state bar associations and more than 100 local bar associations. This publication also contains data on the most recent dues increase of each responding bar along with information on dues waivers or discounts, membership benefits offered, and much more. To read the table of contents or order this publication, click this link: <http://www.abanet.org/barserv/pubs/epubs.html>

## DBS Corner

## Interviewing Tips

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*Describe how you prioritized multiple calls and responded to your callers.*

**Situational:** These types of questions identify important situations that candidates might encounter in the job for which they are being interviewed. Questions describe the situation, and ask candidates how they would respond. These questions often include follow-up probes to obtain more specific information.

*Example: You have noticed that one of the employees you supervise has consistently been coming in late to work. Additionally, you have also noticed that his job performance has declined during the last three months. This employee's performance has been satisfactory in the past; however, the reports he has submitted lately have been incomplete and contained errors. Please describe how you would handle this situation and why.*

*Possible Probe: What specific actions would you take with the employee to improve job performance?*

*Possible Probe: Assume I am now this employee. Please role-play and tell me what you would say to me as this employee.*

**Technical/Job Knowledge:** These types of questions ask candidates to describe important elements of knowledge, techniques, or procedures used on the job. Before using this type of question, it is important to ensure that the job knowledge is used in the performance of important job tasks. It is also important to consult with a subject matter expert when necessary, to ensure accuracy in the question and interpretation of candidate responses.

*Example: Please describe the important elements that should be included in a request for proposal process.*

*Example: Please describe the steps one should take in order to address a member complaint.*

*Example: Please tell us how you would complete the set up of a budget spreadsheet in Excel.*

### 3) Develop Interview Questions and Scoring Criteria

Developing good interview questions is an art, but science can help! The science of testing, a.k.a. psychometrics, reflects that the effectiveness of interviews hinges on the structure built into the process.

In terms of *development of the interview questions*, more structure can be achieved by basing the questions on a job analysis; designing the questions to produce behavioral responses rather than opinions or value judgments;

ensuring that the questions don't give away the desired answer (e.g., This position requires someone with outstanding written communication skills, so tell us about your communication skills); and asking the same questions of each candidate. There is no "right" answer as to the ideal number of questions to use in the process, but a good range to keep in mind would be 8 – 12 questions.

In terms of *scoring*, more structure and reliability can be achieved by using detailed scoring criteria; rating each answer; training raters in the interview process; using multiple raters; and having thorough documentation. What follows is a sample interview question, including desired responses and scoring criteria.

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### Example Format for Question & Scoring Criteria

**Interview Question:** One of the main responsibilities of this position is to prepare statistical reports using the computer. Please give me (us) an example of a statistical report you have prepared on the computer and tell me (us) the key steps you took to complete this report.

#### Desired Responses:

- Candidate identified an actual report of a statistical nature and described the purpose and format of the report.
- Candidate indicated the report was prepared on a computer and demonstrated the necessary level of knowledge of applicable software program(s).
- Candidate completed necessary research of pertinent information, procedures, etc.
- Candidate independently wrote the report.
- Candidate took into account the audience who would read the report, ensuring that the style and level of writing was appropriate to the reader(s).
- Candidate prepared a draft report and carefully checked it for accuracy, proper grammar and spelling, and clarity of information before producing the final version.

**Scoring:** Award up to two points for each desired response mentioned by the candidate in his/her response.

## Interviewing Tips

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Many hiring authorities find that developing scoring criteria is more challenging than developing the interview questions. Sometimes it helps to think of an outstanding performer in the job and develop criteria based on what he/she does (or did). It can also be helpful to think of a problem performer and the behaviors that made him/her unsatisfactory, and identify the opposite behavior, which would presumably be the preferred or ideal behavior.



### 4) Administer the Interview

In terms of administration of the interview process, hiring authorities should consider the following:

- Scheduling
- Preparing the candidates
- Physical Environment
- Security and confidentiality of materials

Regarding *scheduling*, there is no “ideal” time frame for the interview because processes, interviewers and applicants differ; however, a good rule of thumb is to allow 30 – 45 minutes per interview for support positions and 45 – 60 minutes per interview for professional and management positions. Interviews should also be scheduled so as to avoid rater/interviewer fatigue, a typical rater error that can occur, potentially skewing the results of the process.

In *preparing the candidates*, the hiring authority should ensure that all candidates receive the same general information about the position and the interview process, including the name(s) and job title(s) of the individual(s) conducting the interview. This information can be provided to

candidates in writing in advance of the interview, over the telephone when scheduling the interview, or just prior to or during the interview, such as when an information sheet might be provided.

In terms of the *physical environment*, hiring authorities should ensure that interviews are conducted in a professional setting that is quiet and free from interruptions and other distractions for interviewers and candidates alike. The room should be arranged neatly and comfortably. If possible, a setting that allows all participants to be at the same table is preferable to a setting in which a desk between interviewer and candidate might be perceived as a barrier.

In terms of *security and confidentiality*, remember that the interview is actually a test. Therefore, it may be important to ask that candidates keep the content of the interview confidential, a particularly important consideration when there are internal candidates who know or associate with one another.

### Other tips to keep in mind:

- Establish rapport with neutral questions and set the candidate at ease.
- **Do NOT ask questions regarding age; race; ethnic origin; sex; religion; medical conditions; pregnancy; disability.**
- Advise the candidate how you plan to conduct the interview and approximately how many questions you have (e.g., “I have 8 initial questions I’d like to cover today, and I’ll be taking notes as we go along.”). This lets candidates better know what to expect and to plan their time accordingly.
- Whenever possible, ask the interview questions of each candidate in the same

order, and document responses as thoroughly as possible.

- In recording interview documentation, stick to the facts. Record actual statements and behaviors, as opposed to value judgments or interpretations of those statements or behaviors. Direct quotes make for excellent documentation of the candidates’ responses.
- Provide an overview of the position and its duties and responsibilities at the end of the interview. This prevents candidates from being overly influenced by this information and reduces the likelihood that their responses have been framed based solely on what they think the interviewer wants to hear. This also gives the candidates the opportunity to demonstrate what they have already learned about the job.
- When scoring is used, assign scores based on the rating criteria, preferably during or immediately following the interview.

### 5) Evaluate the Candidates

With the interview process completed, the hiring authority should carefully review the interview documentation against the factors being evaluated. If structured questions and solid rating criteria have been used, there will be a job related and more valid basis on which to compare candidates and their suitability.

### 6) Consult With Human Resources

Remember that Human Resources professionals can assist you prior to, during, and following the interview process. In enlisting this assistance, hiring authorities will ensure that their selection processes are job related, valid and professional.

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## Don't Shred This Document!

By Janis C. Jerman

As a result of the Sarbanes-Oxley Act, document retention has taken on a whole new meaning. Entities not subject to Sarbanes-Oxley are finding that the heightened standards of the Act may affect the way they do business. In the case of bar associations, the volunteer leadership, made up of lawyers, may be attuned to the heightened standards of the Act and may expect the association to live up to the higher standard in order to maintain credibility and fiduciary obligations.

Your document retention policy should promote efficiency and reduce costs. A good policy will leave you confident that necessary documents are available, and able to be located, when needed. A good policy will also ensure that unnecessary or outdated documents are safely destroyed. Proper destruction of documents protects private information and saves on storage and retrieval costs. Retention and destruction must be covered in your policy to ensure efficiency.

The basic policy will define 1) the types of documents covered, 2) the retention period for each type of document, 3) the manner of document destruction, 4) the manner of storage of retained files, and 4) procedures for retention in the event of a lawsuit or regulatory investigation. Your policy should also include guidelines for enforcement and an audit procedure. Be sure to review the policy regularly to ensure compliance with any changes in the law or changes in business needs.

The policy's definition of the term "document" should include electronic documents and digital data. Electronic documents can be very expensive to

produce in litigation or a regulatory investigation. In addition, production of electronic documents or digital data can interfere with the efficient functioning of the business if the computer system is tied up in discovery. (In Connecticut, a judge recently ordered a party to not access her computer at all pending discovery of the computer's contents.) Include your technical expert in creation of the electronic document policy to ensure proper terminology and procedures.

It is also a good idea to coordinate your electronic document retention policy with an e-mail use policy. Your employees may think of e-mail as a substitute for a phone call more than they think of it as a substitute for a mailed letter. People write things in e-mails that they would never put in a written letter. Help your employees understand proper use of e-mail and that their e-mail messages may later be recovered and subject to scrutiny.

The document retention policy must be communicated to all staff and must be enforced consistently and uniformly to be effective. In addition, consistent enforcement will help you avoid the Arthur Andersen problem. Arthur Andersen didn't enforce their document retention policy until after learning of the SEC investigation. The document shredding was viewed as fraudulent destruction of documents,



not as the regular implementation of a policy.

The policy, and enforcement, should apply not only to the original document but also to any copy of the document, including photocopies or microfilm. Communication and staff training are critical elements to proper enforcement of the policy. Your association's volunteer leadership may also be subject to some provisions of the policy. Include the policy and information about their responsibilities under it in your bar leaders manual.

The specific policy adopted by your organization will depend on several factors, including the type of organization, your state of incorporation, the type of business, the type of records maintained, and applicable federal and state laws. Many statutes govern record keeping. Know

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## Document Retention

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which statutes you are subject to and consider those rules, as well as applicable statutes of limitations, when creating or updating your policy. Statutes that may affect your retention period include: the Internal Revenue Code, the Family and Medical Leave Act, Americans' with Disabilities Act, Employee Retirement Income and Security Act of 1974, the Health Insurance Portability Accountability Act of 1996, and the Fair Labor Standards Act. Many federal statutes have state counterparts - make sure that you comply with both.

See the additional resources, below, for more information and for sample policies.

### **Additional resources:**

If you have already have a document retention policy, or when you do create one, please forward it to DBS Information Coordinator Brian Myers ([MyersBW@staff.abanet.org](mailto:MyersBW@staff.abanet.org)) for

inclusion in the NABE online policy library.

The NABE document retention policy is available in the online policy library at [http://www.abanet.org/nabe/policy\\_lib.html](http://www.abanet.org/nabe/policy_lib.html).

Visit the ABA Division for Bar Services Web site at <http://www.abanet.org/barserv/infoclr.html> or contact DBS Information Coordinator Brian Myers for more information about document retention policies.

Document Retention and Destruction: Issues in a Post Sarbanes-Oxley World (November 2002) - <http://www.cdhlaw.com/pdf/LHirsch1.pdf>

NonProfitLaw.com – The Internet Site for Tax-Exempt Organizations: <http://www.nonprofitlaw.com/retention.shtml>

Links to record retention policies: [http://www.willyancey.com/electronic\\_evidence.htm#Records\\_Retention](http://www.willyancey.com/electronic_evidence.htm#Records_Retention)

Search the Web sites of major law firms in your area. Many attorneys have written articles on this topic and have included their articles, along with sample policies, on the firm Web site.

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## Bush Administration Reissues Modified Retirement Savings Proposal

*Analysis provided by CCH Incorporated, and Administaff*

President Bush's fiscal year 2005 budget, released on February 2, 2004, includes a modified reprisal of a proposal that would implement major retirement plan and IRA changes in an attempt to expand personal savings. Similar to the initiative introduced in last year's budget, which generated more controversy than support, the plan would consolidate traditional and nondeductible IRAs into Roth-like arrangements called "Retirement Savings Accounts" (RSAs). Employer-sponsored plans that utilize elective deferrals (401(k) plans, SIMPLE plans, 403(b) tax-sheltered annuities, SARSEPs, and governmental 457 plans) would be consolidated into "Employer Retirement Savings Accounts" (ERSAs). A third type of tax-deferred non-retirement savings account would be created, called "Lifetime Savings Accounts" (LSAs). In addition, the President's plan would contain changes designed to simplify the administration of defined contribution plans.

CCH Note: The impetus behind the Administration's plan is the belief that the simplification of existing retirement savings vehicles will significantly boost plan participation and increase saving. Exclusive of the future impact of the proposal on the budget deficit after initial revenue gains, critics, however, have countered that elimination of the up-front deduction would discourage saving among middle income people, who use traditional IRAs to lower their tax

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## Retirement Savings

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liability. It has also been alleged that the relatively easy accessibility of LSA funds would undermine retirement security. Benefits professionals have further cautioned that the tax-favored RSAs and LSAs would lead small employers to discontinue retirement plans that they currently maintain for their employees because the owners and their families would be able to put away significant amounts through RSAs and LSAs and bypass the complexity and expense of qualified plans. In the past Treasury officials have dismissed the charge, suggesting that sponsorship of 401(k) and other qualified plans would not decrease because business owners would still receive an upfront deduction for contributions to the plans. The revised proposal further addresses the alleged financial disincentive to the sponsorship of qualified plans posed by RSAs and LSAs by reducing the contribution limits.

### Retirement Savings Accounts

Retirement Savings Accounts (RSAs) would consolidate traditional IRAs, nondeductible IRAs and Roth IRAs into one streamlined type of account with rules similar to current law Roth IRAs, but with more generous contribution limits and no income restrictions. Under the current proposal a nondeductible cash contribution of up to \$5,000 per year could be made to an RSA per year. Note, the \$5,000 contribution limit is a significant reduction from the \$7,500 annual contribution limit contained in last year's proposal.

Catch-up contributions may not be made to a RSA. However, the \$5,000

contribution limit still exceeds the amount taxpayers may contribute to IRAs or Roth IRAs: \$3,000 (\$3,500 for individuals age 50 and older) in 2004 and \$4,000 (\$4,500 for individuals age 50 and older) in 2005. The \$5,000 RSA contribution limit would be indexed for inflation in future years.

In the case of a married couple filing jointly, RSA contributions up to \$5,000 could be made for each spouse (including, for example, a homemaker who does not work outside the home). However, the combined compensation of both spouses would need to be at least equal to the contributed amount.

Similar to current law Roth IRAs, contributions would not be deductible but earnings would accumulate tax free. In addition, tax-free distributions could be made from the account after the taxpayer attained age 58 (compared to age 59 under IRAs and Roth IRAs) or in the event of death or disability.

RSA owners further, would not be required to take minimum distributions during their lifetime.

CCH Note: As noted above, the reduced contribution limits are offset by the fact that taxpayers participating in a RSA would not be subject to the income limits that apply under IRAs and Roth

IRAs. However, similar to current law rules, an individual would not be permitted to contribute more than his or her compensation (wages) income to an RSA.

Converting IRAs to RSAs. Existing Roth IRAs would be renamed RSAs. However, the basic tax treatment of Roth IRAs would not be affected by the new rules.

A taxpayer, regardless of income, could convert an existing traditional or nondeductible IRA into a RSAs, similar to the current law requirements for Roth IRA conversions, by including the conversion amount in gross income (ratably over 4 years). IRAs need not be converted into RSAs. However, new contributions could not be made to existing IRAs after 2004. In addition, income from IRAs converted after 2005 would need to be included in income in the year of the conversion.

Traditional IRAs may be established to accommodate rollovers from employer plans. However, the IRA could not accept new individual contributions after 2004. Alternatively, amounts could be directly rolled over from a taxpayer's qualified plan account to an RSA. The rollover amount (excluding basis) would be included in the individual's gross income. In addition, married individuals could roll over amounts from an RSA to the RSA of their spouse.

Five-year holding period. A significant restriction that applies to RSAs, but not LSAs, is that amount converted to an RSA from an IRA or from an ERSA would be subject to a five-year holding period. Distributions attributable to a conversion from a traditional IRA or ERSA within the five-year period beginning with the year of conversion (absent attainment of age 58, disability, or death) would be subject to a 10% early distribution tax.

### Lifetime Savings Accounts

The new Lifetime Savings Account (LSA) would not be, strictly speaking, a retirement account, as it could be used for any type of saving. An LSA would allow an individual, regardless of age or income, to make a nondeductible cash contribution of up to \$5,000 a year (compared to \$7,500 per year in the



## Retirement Savings

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initial proposal). Catch-up contributions could not be made to a LSA.

However, the \$5,000 contribution limit would be indexed for inflation in future years.

Contributions to LSAs and RSAs. Individuals may maintain more than one LSA, subject to an aggregate annual contribution limit of \$5,000. However, individuals may make contributions to LSAs and RSAs. Accordingly, the Administration's proposal would allow an individual to contribute up to \$10,000 per year to RSA and LSA accounts (compared to \$15,000 under the prior proposal). Married couples could contribute up to \$20,000 per year (compared to \$30,000 under the prior proposal). Note, the RSA/LSA contributions would be in addition to contributions made under qualified plans in which the individual participates.

Age and income limits not applicable. Contributions to an LSA would not be subject to age or income limits. An individual would be permitted to make a contribution to an LSA even if that person had no wage income. Thus, contributions could be made on behalf of children or other family members. In addition, note that the \$5,000 annual contribution limit applies to the LSA owner and not the contributor. Accordingly, for example, a parent could make an annual contribution of up to \$5,000 to the separate LSAs of each of his or her four children. A married couple, however, could not make a \$10,000 contribution to the LSA for each of their children, because of the aggregate \$5,000 annual limit applicable to an account.

Penalty free distributions. Distributions from an LSA (unlike a RSA) could be made without penalty

for any purpose, at any time, and with no holding period. In addition, the minimum distributions would not be required through the account owner's lifetime.

Rollovers to LSA of spouse. Married individuals may roll over amounts from an LSA to the LSA of their spouse.

Saver's credit. The saver's credit, which allows lower and middle income taxpayers to receive a nonrefundable tax credit for contributions to a traditional or Roth IRA (up to \$2,000 per year) would continue to apply to contributions to an RSA. However, the credit would not be available for contributions to an LSA.

### Employer Retirement Savings Accounts

The proposal would consolidate 401(k), 403(b), and governmental 457 plans as well as SARSEPs and SIMPLE plans into a streamlined and simpler account, Employer Retirement Savings Accounts (ERSAs). Any employer would be able to sponsor an ERSA. However, ERSAs would not replace nongovernmental 457 plans.

Under the President's plan, employers would not have to terminate their existing plans and transfer the assets to an ERSA. All 401(k) plans would become ERSAs and continue to operate in accord with current rules, subject to the simplification measures discussed below. SIMPLE plans, SARSEPs, 403(b) plans, and governmental 457 plans could either be renamed ERSAs, subject to the ERSA rules, or continue in existence indefinitely. However, new contributions to these plans could not be made after 2005.

Deferral limits. The amount that an employee would be able to defer under an ERSA in 2004 would be \$13,000 (increasing to \$15,000 in 2006). In addition, a catch-up contribution of \$3,000 (increasing to \$5,000 in 2006) would be available once the employee reaches age 50. The maximum total contribution (including employer contributions) that could be made to an



ERSA could not exceed the lesser of 100% of compensation or \$41,000. These limits are equal to the amount an employee may currently defer under a regular 401(k) plan, a 403(b) plan, a SARSEP or a 457 plan, but are greater than the contributions permitted under a SIMPLE 401(k) or SIMPLE IRA.

After-tax contributions. In addition, to pre-tax deferrals, after tax employee contributions or Roth contributions could be made to an ERSA. Distributions of Roth and non-Roth after-tax employee contributions and qualified distributions of earnings on Roth contributions would not be included in a taxpayer's income.

CCH Note: Both 401(k) plans and 403(b) plans are authorized by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), effective in 2006, to incorporate a qualified Roth contribution program, pursuant to which participants may elect to have all or a portion of their elective deferrals to the plan designated as after-tax Roth contributions. Qualified distributions from a designated Roth account would not be subject to tax. Similar to Roth IRAs, earnings on amounts contributed

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to such Roth 401(k) or Roth 403(b) plans would grow tax-free and would not be subject to income tax upon distribution. The Bush proposal would accelerate the effective date for Roth ERSAs to 2005.

**ERSA custodial accounts.** A new feature of the revised Bush proposal would allow employers with 10 or fewer employees who earned at least \$5,000 during the prior year to fund an ERSA by contributing to a custodial account, similar to a current law IRA. The custodial account, would provide annual reporting relief for small employers, as well as relief from most of ERISA's fiduciary requirements, comparable to that provided under current law SIMPLE IRAs.

**Nondiscrimination rules: Repeal of ADP/ACP tests.** The proposal would greatly simplify plan administration by replacing the ADP and ACP discrimination tests with a single test. Specifically, an ERSA would satisfy the nondiscrimination requirements for contributions if the average contribution percentage for nonhighly compensated employees (NHCEs) was 6% or less and the average contribution percentage for highly compensated employees (HCEs) did not exceed 200% of the average contribution percentage for the NHCEs. In the event that the average contribution percentage for NHCEs was greater than 6%, no discrimination test would apply and the average contribution percentage for HCEs could be any amount.

**Design-based ERSA safe harbor.** An ERSA would be permitted to satisfy the simplified nondiscrimination requirements by adopting a prescribed design-based safe harbor. Under the safe harbor an employer would be required to make a nonelective

contribution (excluding employee elective deferrals or after-tax contributions) on behalf of each participant in the plan equal to 3% of employee compensation. The employer contribution of 3% of compensation could include matching contributions rather than nonelective contributions. Under such circumstances, employers



could: (1) make a matching contribution equal to 50% of each employee's elective deferral, up to 6% of compensation, or (2) make a matching contribution that does not increase based on the level of an employee's elective deferrals and is equal to the amount that would be made under a 50% match (up to 6% of compensation), such as a match of 100% of each employee's deferral (up to 3% of compensation). However, the rate of matching contributions with respect to an HCE at any rate of elective contribution could not exceed that with respect to an NHCE.

CCH Note: The 2004 budget proposal contained a series of

provisions designed to simplify the administration of all defined contribution plans. Among the proposed measures were the: adoption of a single test (ratio percentage coverage test) to assure compliance with the nondiscrimination rules with respect to coverage, under which the percentage of an employer NHCEs covered under the plan would need to be at least 70% of the percentage of the employer's HCEs covered under the plan; repeal of the top-heavy rules for defined contribution plans; implementation of a uniform definition of compensation for all purposes under a DC plan as the amount reported on Form W-2 for wage withholding, plus the amount of ERSA deferrals; and adoption of a simplified definition of highly compensated employees under which all individuals with compensation for the prior year above the Social Security wage base for that year would be considered highly compensated. In addition, permitted disparity and cross-testing would be prohibited for DC plans.

The 2005 budget proposal does not contain the previously proposed simplification measures. However, the proposals may be included

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