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IN THIS ISSUE

Washington Update

by Brian H. Graff, Esq.

Several ASPA members have suggested that I write a short column for each issue of the *Pension Actuary* updating the membership about the goings-on here in Washington. Here is the first installment. Hopefully, there will be enough going on in our nation's capitol relating to pensions to warrant a column for every issue.

Continued on page 17

A. Haeworth Robertson Discusses Social Security

A Haeworth Robertson, chief actuary of the U.S. Social Security Administration from 1975 to 1978, resigned in order to more effectively focus national attention on Social Security's long-term problems. His landmark books *The Coming Revolution in Social Security* (1981) and *Social Security: What Every Taxpayer Should Know* (1992) earned critical acclaim for their in-depth examinations of Social Security. Currently president of the Retirement Policy Institute, a nonprofit retirement policy research and education organization in Washington, D.C., Robertson has written a new book on Social Security: *The Big Lie*.

Theresa Lensander, CPC, QPA, and Paul S. Polapink, MSPA, of the National Retirement Income Policy Subcommittee of ASPA's Government Affairs Committee, interviewed Robertson about his new book, about Social Security's problems, and about what ASPA members can do to help solve the problems.

Lensander:

Mr. Robertson, in your book, you discuss various myths about Social Security, as well as deception of the public with regard to Social Security. This deception makes more sense if we can appreciate the way it has been communicated to the public from an historical perspective, as you also point out in your book. For example, how did the terms *earned right*, *trust fund*, *contributions* and *insurance program* come to be accepted with regard to Social Security?

Robertson:

When the Social Security Act was passed in 1935, the government feared that it would be viewed as a mandatory national insurance program — and thus unconstitutional — if there were a connection between taxes and benefits. Therefore, taxes and benefits were placed in separate

sections of the law, and the government maintained that they were not connected. But after the Supreme Court ruled the arrangement was constitutional, the government decided to consider Social Security to be a national insurance program in which benefits *were* related to taxes.

The question then became: "How should this new program be described — and sold — to the public?" It was natural to borrow terminology from the insurance and banking institutions — not only for convenience but also for the credibility that such terminology would bestow. The rhetoric went something like this:

Social Security is an "insurance" program under which you have an individual "account" and you and your employer pay "contributions" into a "trust fund" and thereby build up an "earned right" to receive benefits when you become ill or disabled, die, or retire.

After 40 years of this rhetoric, repeated in one form or another, people began to believe that they were buying and paying for their own benefits. This misunderstanding was crucial to the acceptance of Social Security in its early years, for two reasons.

First, from the standpoint of the beneficiary: In the 1940s many people would not accept pensions that they considered to be a dole or a handout from the government. And it was obvious in the early years that this was exactly what Social Security was. So, propaganda was concocted to convince people that they had an "earned right" to these benefits because of their "contributions," thus making the program morally acceptable.

Second, from the standpoint of the taxpayers: It was much more palatable to make "contributions" to a national "insurance" program under which "earned rights" to pension benefits were being built up than it was to pay taxes for a welfare or income redistribution program. All of this rhetoric may have seemed harmless at the time but its inappropriateness is now coming back to haunt us as we seek to reform the system.

Polapink:

Please discuss the myth that retirement will continue to occur in a person's early 60s. You advise individuals to find a career they enjoy, because they may be working longer than expected. In reality, retirement age may be more like 70 or higher for baby boomers. Explain why this is a fact that baby boomers need to face.

Robertson:

The trend toward retirement in a person's early 60s was caused by the confluence of several events after World War II:

1. A period of unusual productivity, economic growth, and general affluence from 1946 until the early 1970s, which enabled individuals to buy housing and accumulate other savings.
2. The increased availability of retirement benefits from both Social Security and employer-provided pensions, in both the private and public sectors.

Continued on page 14

The Pension Actuary is produced by the executive director and Pension Actuary Committee. Statements of fact and opinion in this publication, including editorials and letters to the editor, are the sole responsibility of the authors and do not necessarily represent the position of ASPA or the editors of the *Pension Actuary*.

The purpose of ASPA is to educate pension actuaries, consultants, administrators, and other benefits professionals, and to preserve and enhance the private pension system as part of the development of a cohesive and coherent national retirement income policy.

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FOCUS ON GOVERNMENT AFFAIRS

Legislation Proposes *Qualified Staffing Firms*

by S. Derrin Watson, APM

Recently proposed legislation (H.R. 1891) attempts to clarify the quagmire of uncertainty engulfing leasing organizations and their qualified plans. While the bill probably will not pass this year, it points out important issues affecting the qualified status of plans maintained by leasing organizations and their clients.

The real uncertainty revolves around the familiar question, "Who is the employer?" as it affects staffing firms. These are firms that typically bring all of another company's employees onto their own payroll. At first glance, the employees appear to be leased employees. They receive a paycheck and a W-2 from the leasing organization, but they continue to perform services for, and remain under the primary control of, their former employer, known in Internal Revenue Code section 414(n) parlance as the "recipient" of their services.

However, closer analysis has lead courts to opine that the recipient is still the true employer. The reality of the situation is that the recipient has control over hiring, firing, training, and related personnel functions, and the staffing firm is really providing the recipient with little more than a glorified bookkeeping function.

If the staffing firm is actually the employer, then the employee can be covered under the staffing firm's plan. Moreover, the employee would be a leased employee of the recipient, assuming the substantially full-time employment test (generally 1,500 hours in one year) of section 414(n) is met. That means that the leased employee is treated as an employee of the recipient, and the recipient treats compensation and contributions paid by the staffing firm as though the recipient had paid them.

However, if the staffing firm is not the employer, then the employee cannot be covered under the staffing firm's plan. Doing so would violate IRC section 401's exclusive benefit rule. Moreover, the workers would be true employees of the recipient and entitled to coverage according to plan terms even if they did not meet the substantially full-time requirement. Presumably, benefits provided by the staffing firm would be ignored in determining the qualified status of the recipient's plan, because section 414(n) would not combine the two under this scenario, and the staffing firm's plan is not qualified in any event if it covers people it doesn't employ.

This problem was recently highlighted by the Tax Court decision in *Lozon v. Commissioner*. Allstate had covered in its qualified plan some casualty agents that were actually independent contractors. The Internal Revenue Service treated the affected contractors' benefits as immediately taxable. The court gave the IRS a backhanded victory. The court ruled that the IRS couldn't go after the contractors for their benefits directly. Rather, they had to disqualify the whole plan for everyone because of failure to satisfy the exclusive benefit rule.

Some staffing firms have attempted to sidestep this problem by establishing multiple employer plans with their recipient clients. That way, one entity or the other is the employer, and the exclusive benefit rule is satisfied. Such a strategy, though cumbersome, works fine for nonintegrated money purchase plans, but still leaves problems for 401(k) plans, because there is uncertainty on whether testing is done across the board (assuming the staffing firm is the employer) or on a recipient-by-recipient basis (assuming the recipients are the employer).

Continued on page 20

A Short Lived Concept?

Contributions of Stock Options

by Robert M. Richter, APM

Many employers and benefit practitioners have focused their attention on the developments surrounding a recent Internal Revenue Service private letter ruling which held that an employer could deduct the value of stock options contributed to its 401(k)/profit-sharing plan. Unfortunately, the IRS has had second thoughts about the ruling and has announced that it is reconsidering its decision. Since it is possible the IRS may change its position, future developments in this area will need to be monitored.

Private Letter Ruling 9712033 was issued to Travelers Group Inc. in response to various issues it raised concerning the contribution of employer stock options to its 401(k)/profit-sharing plan. The design of the plan was very similar to a typical stock option plan that might be established as a stand-alone arrangement. The existing 401(k) plan was amended to permit a contribution of stock options. The number of shares of Travelers stock which would be subject to an option is equal to 10 percent of an eligible employee's compensation divided by the exercise price of the option. Compensation for this purpose is generally equal to the employee's compensation for the prior calendar year, not to exceed $40,000. The exercise price of the option is equal to the closing price of the stock on the trading day prior to the date of the grant of the option.

For example, assume an eligible employee's compensation for the prior year was $40,000 and the price of the stock on the day before the grant of the option was $50. The number of shares subject to an option allocated to the employee's account is 80 (($40,000 × 10%)/$50). Thus, the employee has an option to purchase 80 shares of stock for $50 per share within the plan.

The options allocated to the plan accounts of eligible employees are fully vested. However, they are only exercisable at a rate of 20 percent in each year beginning one year after the grant of the options. This means that the employee in the previous example will only be able to purchase 16 shares of stock (80 shares × 20%) after each year following the grant. In addition, there are numerous other restrictions which limit the time and manner of exercise. The options expire 10 years after being granted and, except in the case of retirement, death, or disability, may only be exercised while the individual is an employee of Travelers or one of its subsidiaries. In addition, to facilitate a "cashless" (or "sell to cover") exercise of the options, Travelers would agree to advance to the plan the total securities to be bought through exercise of the options as needed. The plan would then sell enough of the advanced securities to pay the exercise price. The remainder of the borrowed shares would be allocated to the participant's account.

The IRS ruled favorably on each of the six points that Travelers had requested be addressed in the ruling. The essence of the letter ruling was that the contribution of stock options would be treated by the IRS just like any other contribution of property to a profit-sharing plan. The six specific rulings which were made by the IRS were as follows:

1. The employer may deduct the fair market value of the options contributed to the plan at the time of their contribution in accordance with Internal Revenue Code section 404;
2. The fair market value of the options will be considered annual additions for purposes of section 415 of the Internal Revenue Code at the time of the contribution;
3. The exercise of the options will not create unrelated business taxable income to the trust since any gain on the exercise of the options would be investment income;
4. The options will not be taxable to the participants when contributed

to the plan nor when exercised by the participants;

5. The tax liability of participants will be determined in accordance with the normal rules which apply to distributions from qualified retirement plans; and
6. Neither the lapse nor the exercise of the options will constitute a reversion to the employer.

The primary benefit of the arrangement addressed by the IRS letter ruling is that it permits an employer to take a current deduction for the value of stock option contributions without requiring the participant to immediately recognize any income. This may be an attractive alternative to a traditional type of nonqualified stock option plan where an employer is only entitled to a deduction when an employee exercises the options. However, the employer deduction in a nonqualified stock option plan is typically greater than the deduction which might be taken if the options were contributed to its qualified retirement plan. This is because the deduction for the nonqualified stock option plan would be based on the difference between the stock's fair market value at the time of exercise and the exercise price of the option rather than being based on the actual value of the options. Employers would need to compare the benefits of a smaller current deduction against a larger deduction which may be available in a later year. In addition, the contributions of options to the qualified retirement plan would be subject to the nondiscrimination rules which would apply to a qualified retirement plan. Thus, the contribution of stock options to a plan would not be a viable alternative where an employer only wants to make options available to upper management who would be classified as highly compensated employees. The plan established by Travelers limited compensation to $40,000 and excluded certain highly paid officers subject to the reporting requirements of section 16(a) of the Securities and Exchange Act of 1934.

As previously mentioned, in Announcement 97-45 the IRS stated that the private letter ruling is being reconsidered. It has been reported that two of the reasons for the official decision to reconsider the ruling relate to the fact that the options are only exercisable at a rate of 20 percent per year. It is not clear whether this would violate the vesting requirements of section 411 of the Internal Revenue Code particularly because the ability to exercise outstanding options is forfeited at termination of employment. In addition, the IRS may prohibit a deduction for the full value of the options since some of the options may never be exercisable. One could distinguish this from a contribution of cash or other property where even though an individual may never be vested in the cash contribution, the employer has given up something of value which will remain in the plan and ultimately benefit other participants. On the other hand, the options granted to a particular participant may never be exercisable by anyone in the plan if, for example, a participant were to quit within one year of the grant of the options.

The primary benefit of the arrangement addressed by the IRS letter ruling is that it permits an employer to take a current deduction for the value of stock option contributions without requiring the participant to immediately recognize any income.

There are several other issues which did not appear to be adequately addressed by the ruling. First, the stock options could be construed as an employer obligation. In prior guidance both the IRS and the U.S. Supreme Court have held that an employer cannot deduct contributions of its own promissory notes. (Revenue Ruling 80-140 and *Don E. Williams Co. v. Comm.*, 429 U.S. 569 (1977).) This would mean that the ruling regarding stock options may be inconsistent with the prior rulings. In addition, Travelers asserted that the fair market value of the options would be determined using a "reasonable method." However, there is no clear guidance on what would be considered a reasonable valuation method. If the valuation issue is left unaddressed by the ruling, then the contribution of stock options could later be questioned by IRS auditors who could challenge the methods used to value the options.

The contribution of stock options also has prohibited-transaction and other ERISA implications. In this regard there are two areas of concern. The first issue relates to ERISA section 407 which prohibits a plan from holding any employer securities which are not "qualifying employer securities." In addition, there is a prohibited transaction if the fiduciary responsible for the management and control of the assets (the trustee) holds any employer securities other than "qualifying employer securities." Since an option is not a "security," the trustee will have engaged in a prohibited transaction by holding the options in the plan.

Continued on page 19

ARE WE ANY CLOSER TO THE MYTH?

403(b) Arrangements and 401(k) Plans

by Theresa Lensander, CPC, QPA, and Kevin J. Donovan, APM

This article is intended to illustrate many of the differences that continue to exist between 403(b) arrangements and 401(k) plans and to discuss opportunities now open to 501(c)(3) organizations, as a result of the Small Business Job Protection Act of 1996. The myth reference is to the article published in the October 1994 *Pension Actuary* entitled "The Great 403(b) Myth," which presumes that 403(b) plans are 401(k) plans for nonprofit organizations.

The 1996 Small Business Job Protection Act has expanded the universe of qualified retirement plans available to tax exempt organizations. Under SBJPA, tax-exempt organizations (other than state and local governments) can once again sponsor 401(k) cash or deferred arrangements. (Internal Revenue Code section 401(k)(4)(B)(i) as amended by section 1426 of SBJPA.)

As a result of this change, organizations described in IRC section 501(c)(3) are now in the unique position of deciding to adopt a new 401(k) plan, continuing to sponsor a 403(b) plan or arrangement, or both. Although it is significant that 403(b) has been preserved with the SBJPA changes, the new legislation also attempts to bring 403(b) more closely in sync with 401(k) plans. Notably, despite these changes, many differences continue to exist.

403(b) and 401(k) Elective Deferrals

Both 403(b) plans and arrangements and 401(k) plans are subject to the annual limit on elective deferrals ($9,500 for 1997) imposed by IRC section 402(g). (IRC sections 403(b)(1)(E) and 401(a)(30).) However, as a result of SBJPA, the penalty for failure of section 402(g) appears much less onerous for a 403(b) plan than for a 401(k) plan. If a single participant in a 401(k) plan exceeds the 402(g) limit, and such excess is not corrected by April 15 of the following calendar year, the entire plan could be subject to disqualification. (Treasury Regulation sections 1.401(a)-30(a) and 1.402(g)-1(e)(1)(i).) Conversely, in a 403(b) plan, as a result of a change to IRC section 403(b)(1)(E) by section 1450(c) of SBJPA, only the employee who exceeds the 402(g) limit suffers the consequences, which is considered a contract-level defect. This means that the employee is taxed on all amounts deferred during such year under such employee's individual contract. (Announcement 95-33, Examination of 403(b) Plans at V.A.2.b and Rev. Proc. 95-24, Tax Sheltered Annuity Voluntary Correction Program.)

Another important advantage of 403(b) plans in the 402(g) area is the catch-up provision allowed under IRC section 402(g)(8) to qualified employees of qualified organizations. A qualified employee is an employee with at least 15 years of service with the employer. A qualified organization is an educational organization, hospital, home health service agency, health and welfare agency, church or convention, or association of churches (but *not* other 501(c)(3) organizations). Under this rule the 402(g) limit may be increased up to $12,500, by the least of three amounts:

1. $3,000;
2. $15,000 less previous amounts excluded under this special rule; or
3. The excess of (a) $5,000 times the employee's years of service with the employer over (b) the total salary deferrals for all years with

the employer under all salary deferral plans (*i.e.*, 401(k), 457, and 403(b) plans and SARSEPs) of the employer. (IRC sections 402(g)(8)(A)(iii) and 457(c)(2).)

Annual Contribution Limits

An entire article could be written on 403(b) plans and IRC section 415. In general, for purposes of the limits on contributions and benefits imposed by section 415, a 403(b) plan is considered to be maintained by the *participant* and *not* the sponsoring tax-exempt employer. (Treasury Regulation sections 1.415-7(h)(1)(i) and 1.415-8(d)(1).) Therefore, where such employer maintains a defined benefit plan, defined contribution plan, or both, qualified under IRC section 401(a), the 415 limits for such plans are unaffected by the 403(b) plan, *including* any nondeferral amounts contributed to the plan by the employer.

An exception to this general rule applies in any year in which the participant makes the special election under IRC section 415(c)(4)(C). Under this section, an employee of a qualified employer (as defined above) may elect to have the maximum exclusion allowance (MEA) of IRC section 403(b)(2)(A) *not* apply and instead have only the limits under section 415 apply for a given year. When such an election is made, the 403(b) plan is considered to be maintained (for section 415 purposes) by both the employee and the sponsoring tax-exempt employer. Therefore, any other qualified plan of the sponsoring employer is aggregated with the 403(b) plan when testing the limits under IRC section 415. (Treasury Regulation sections 1.415-8(d)(2) and 1.415-7(h)(2)(ii).)

The fact that a 403(b) plan is considered to be maintained by the individual participant and not by the employer is especially pertinent when such participant controls (*i.e.*, owns more than 50 percent of) another entity. Under IRC section 415(h) and Regulation section 1.415-8(d)(2), the contributions to the 403(b) plan must be aggregated with the contributions (or benefits provided under a defined benefit plan) under the plan of the controlled entity for purposes of applying the limitations on benefits and annual additions under IRC sections 415(b), (c), and (e).

Employer and Employee Obligations

It is important to emphasize that employer and employee obligations are shared in a 403(b) plan. In fact, the level of employer responsibility can be significantly less in a 403(b) plan than in a 401(k) plan, and the extent to which this is true depends on whether or not the 403(b) arrangement is considered to be a plan subject to Title I of ERISA.

For example, employees, and not the employer, are responsible for monitoring their individual contribution limits under IRC sections 402(g), 403(b)(2), and 415 in a 403(b) plan. Operational defects that occur as a result of exceeding these limits simply cause adverse tax consequences to the individual and do not disqualify the entire 403(b) plan. (Announcement 95-33, Examination of 403(b) Plans, section XI(B)(3), section 1450 of SBJPA.) In a 401(k) plan on the other hand, exceeding the 402(g) limit (within the employer's plans) or exceeding the 415 limit may cause plan disqualification.

Maximum Exclusion Allowance

One limitation — and significant complexity — applicable to 403(b) plans (but not 401(k) plans) is the maximum exclusion allowance of IRC section 403(b)(2). With certain exceptions, the MEA applies in addition to the limits of IRC sections 402(g) and 415 previously discussed. The MEA limits the annual tax-deferred contribution to the individual's 403(b) account to the amount obtained under the following formula:

1. Twenty percent of the participant's "includible compensation" multiplied by his or her years of service, minus

2. Tax-deferred amounts (including amounts determined under the 415 exception discussed above) contributed to all tax-qualified plans of the employer for all prior years. (IRC section 403(b)(2)(A).)

Note that although the 403(b) plan, for purposes of IRC section 415, is generally considered to be maintained by the employee and therefore does not effect the annual limitations of the employer's 401(a) plans, contributions to such 401(a) plans do affect the MEA and, therefore, the ability of the employee to add to his or her 403(b) plan.

For purposes of the above computation, "includible compensation" means the taxable compensation earned from the employer for the most recent period which may be counted as one year. (IRC section 403(b)(3).) However, to the extent that taxable compensation includes contributions to the 403(b) plan that are in excess of the MEA, such compensation is not considered includible compensation.

Effective January 1, 1998, the definition of compensation for 415 purposes (but not for MEA purposes) will change to include pretax salary deferrals. This may benefit certain employees who wish to make the election under section 415(c)(4)(C) to apply the 415 limit in place of the MEA.

Years of service means the number of years the employee has been employed by the employer on a full-time basis. Years during which the employee worked part-time, and

years during which the employee worked only a portion of the year, are counted as fractional years. In addition, years during which the employer was not eligible to sponsor a 403(b) plan are not considered. (Treasury Regulation section 1.403(b)-1(f).)

In determining the prior-year contributions to all tax-qualified plans of the employer, special rules apply in the case of defined benefit plans. (Treasury Regulation section 1.403(b)-1(d)(4).) In addition, in the case of employer contributions to the 403(b) annuity that are subject to a vesting schedule, amounts are not considered for MEA purposes until vesting occurs. (IRC section 403(b)(6) and Treasury Regulation section 1.403(b)-1(d)(3)(iv).)

401(k) Nondiscrimination Testing

A major distinction between 401(k) plans and 403(b) plans is the lack of nondiscrimination testing needed for salary deferrals to 403(b) plans. 401(k) plans must pass complex nondiscrimination testing, known as actual deferral percentage testing, in order to remain qualified. (IRC section 401(k)(3)(A)(ii).) Under such testing, the amount of salary that a highly compensated employee may defer is directly dependent on the deferrals of the non-highly compensated employees. Under a 403(b) plan, the level of deferrals of the highly compensated employees is not affected by the levels of the non-highly compensated employees. ADP testing is *not* required for the SIMPLE 401(k) or safe harbor 401(k) plans added by SBJPA (however, both of these plans *require* employer contributions).

A change in the definition of highly compensated employees, to exclude treatment of the highest-paid officer as a highly compensated employee, may be advantageous to a 501(c)(3) organization that chooses to adopt a 401(k) plan. (IRC section 414(q)(5)(B) prior to repeal by section 1431(c) of SBJPA.) If there are no highly compensated employees in the group (*i.e.*, if no one earns in excess of $80,000) then ADP testing is not required.

401(k) and 403(b) Nondiscrimination Testing for Matching Contributions

Both 401(k) plans and 403(b) plans (except certain church plans) must pass the nondiscrimination requirements for matching contributions (the actual contribution percentage test) set forth in IRC section 401(m). (IRC sections 403(b)(12)(A)(i) and 401(m)(2).) There are operational difficulties due to the overlay of 401(k) regulations with section 401(m) and the application for 403(b) plans, and care must be taken to review the plan documents to arrive at a reasonable interpretation of the requirements until additional guidance is issued. In addition, 403(b) plans must satisfy the nondiscrimination requirements set forth under Internal Revenue Service Notice 89-23. Nondiscrimination testing is notably one of the few defects in a 403(b) plan which are considered to be "plan-level" defects, potentially affecting the benefits of all participants. (Announcement 95-33, Examination of 403(b) Plans, section XI., B.(2).)

Here again, the change in definition of *highly compensated employee*, effective January 1, 1997, may avoid 401(m) testing if there are no highly paid employees who earn in excess of $80,000. In addition, the safe harbor provisions of section 401(m)(11) added by SBJPA apply to 403(b) plans, as well as to 401(k) plans, and may assist with plan design to avoid the 401(m) testing requirements. (Effective for plan years beginning on or after January 1, 1999, section 1433 of SBJPA.) Many 403(b) plans, however, have been designed with more elaborate service-based matching formulas, which require additional testing under 401(a)(4), and therefore would not qualify as safe harbor plans under new section 401(m)(11).

Participation and Coverage Requirements

The participation requirements for the salary reduction portion of a 403(b) plan are a bit trickier (and perhaps less defined) than those for 401(k) plans. The latter plans are subject to the general rules of IRC section 410(a), such that, in general, eligible employees must become participants after attaining age 21 and completing a year of service. In addition, IRC section 410(b) applies to 401(k) plans, such that 401(k) plans must either pass the ratio percentage test or the average benefit test. The result is that a certain percentage of employees may be excluded and the plan may still meet the coverage requirements.

A 403(b) plan, on the other hand, may not impose age and service conditions. In addition, a 403(b) plan or arrangement must provide universal availability for the salary reduction feature, with the following exceptions (IRC section 403(b)(12)(A)(ii) and Notice 89-23, section V.B.3.):

- Nonresident aliens,
- Certain students,
- Employees working less than 20 hours per week,
- Employees making a one-time election to participate in a government plan,
- Certain visiting professors,
- Employees of a religious order who have taken a vow of poverty,
- Union employees,
- Participants in the employer's

457 plan or 401(k) plan or other 403(b) plan, and

- Employees who would defer less than $200 a year.

One issue that plan sponsors need to resolve is the application of Regulation section 1.410(b)-6(g) after the change in the 401(k) availability rules. Under this regulation, controlled groups of employers that include tax-exempt entities that could previously not sponsor 401(k) plans due to IRC section 401(k)(4)(B), may pass 410(b) using a special test. Under this test, all employees of the tax-exempt entity may be treated as excludable employees if 95 percent of the employees not prohibited from benefiting due to 401(k)(4) are eligible to defer under the plan.

With the expansion of organizations eligible to sponsor 401(k) plans, reliance on this regulation is no longer available. In Notice 96-64 the IRS did extend the relief offered by Regulation section 1.410(b)-6(f) through the 1997 plan year. After 1997, however, such controlled groups may be forced to either open up their 401(k) plans to the now eligible tax-exempt employer's employees or terminate such plans. In such situations it is likely that maintenance of both a 401(k) plan and a 403(b) plan may be the answer, particularly if the employees of the tax-exempt employer are currently participating in a 403(b) plan or arrangement.

Plan Documents and Voluntary Compliance

Although no favorable determination letter approval process is available for a 403(b) plan, a private letter ruling may be obtained for most issues (an exception being issues involving nondiscrimination). Sponsors of 403(b) plans presently have until the last day of the first plan year beginning on or after October 1, 1997, to amend their plans and still fall within the remedial amendment period for the 1986 Tax Reform Act changes, including OBRA '93 and UCA '92 (IRS Announcement 96-64, section IV(C)) and until the last day of the first plan year beginning in 1998 to amend their plans for 1996 SBJPA legislative changes. (Rev. Proc. 97-41.) Sponsors of 401(k) plans have until the last day of the first plan year beginning in 1999 to amend their plans for the 1996 SBJPA, GATT, and USERRA legislative changes.

The Administrative Policy Regarding Sanctions has recently been expanded for 401(k) plans to recognize their continued qualification and extended to 403(b) plans to recognize their continued validity with a mechanism to self-correct operational defects. Under the new Administrative Policy Regarding Self-Correction, operational defects may be cured within the 12-month period ending after the end of the plan year in which the violation occurred. Insignificant defects may be cured after such one-year period and still qualify under the APRSC program. In a 401(k) plan, this involves certain defects which may otherwise disqualify the plan, and for 403(b) plans involves violations that would result in loss of the exclusion allowance. (IRS Field Directive on Administrative Policy, issued January 7, 1997.) An example may be violation of the 402(g) limit, as previously discussed.

The voluntary correction programs (VCR and SVP) that presently exist for 401(k) plans are available for operational defects that are significant in nature that occurred beyond the one-year period indicated above. These programs both impose set user fees. In contrast, the Tax Sheltered Annuity Voluntary Correction Program for 403(b) plans and arrangements imposes a negotiated sanction amount in addition to a set correction fee. (Rev. Proc. 95-24, extended on November, 1, 1996, by Rev. Proc. 96-50 until December 31, 1998.)

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403(b) ERISA Title I Issues

403(b) type arrangements have existed for certain tax-exempt organizations since 1939, and since 1958 under IRC section 403(b). These arrangements have typically not been subject to Title I of ERISA. Such an arrangement, if funded exclusively by employee contributions, remains exempt from ERISA requirements if the following conditions are met:

1. Participation for employees is voluntary;
2. Rights under the contract are enforceable only by the participant, the participant's beneficiary, or the authorized representative thereof;

Continued on page 18

The ABCD Process

by Joseph J. Leube Jr., FSPA, CPC

As I was preparing to compose this article, I received a heavy, 2-inch-thick overnight package from the Washington office of the Actuarial Board for Counseling and Discipline. The package contained two complaints, with a ream of background information obtained by ABCD staff, for review by the ABCD chairperson and two vice chairs. The ABCD, governed by Article X of the American Academy of Actuaries' bylaws, was formed almost six years ago by the organizations representing actuaries in the United States.

The ABCD's mission is to —

- Provide counsel for guidance, as requested;
- Consider alleged violations of the actuarial Code of Professional Conduct, provide remedial counseling, and recommend disciplinary measures to the member organizations; and
- Serve as ombudsman to resolve disputes involving actuaries.

Both of the complaints I received were fairly representative of the cases received by the ABCD. The first complaint, a pension issue, dealt with a qualified domestic relations order, and the second, with a state insurance department's concerns about setting appropriate reserves. Unfortunately, we are seeing QDRO inquiries multiply. Because they arise in a litigious climate, complaints regarding the amount of ex-spousal benefits are bound to arise.

Complaints come from many sources beyond actuaries. In fact, at times we wonder how the complainant would know of or how to find the ABCD, but find us they do. For actuaries, complaints may arise regarding alleged violations of the code made apparent due to takeover situations or by being called in to provide advisory services. Although not affecting pension actuaries, state regulators will report alleged violations as they review state insurance filings. Some complaints, especially those which are pension-related, come from dissatisfied clients.

The ABCD receives complaints and inquiries pertaining to all areas of actuarial practice. As we reported in our annual reports for 1995 and 1996, we receive more complaints and requests for guidance on pension plans than on other practice areas. Although not a large number of cases, there is a larger percentage of pension cases versus casualty, health, or life. In 1995, nine out of the 22 cases we received were pension-related. In 1996, that number grew to 20 pension-related cases out of 47 total cases received.

The process originates for most complaints with a phone call or brief letter addressed to the ABCD. ABCD staff obtain additional materials, as necessary, and forward them to the chair and vice chairs for review. With this initial information, the chairs determine whether to dismiss the complaint, refer the complaint to an ombudsman, or appoint an independent investigator to inquire further into the complaint.

Should the chairs dismiss the complaint, the case is closed. For conflicts between two actuaries, the case is referred to an ombudsman. If the chairs believe that the complaint has substantial merit and appears possibly to breach the Standards of Professionalism, (which include the Code of Professional Conduct, the Actuarial Standards of Practice, and the Qualification Standards), an investigator is appointed and the subject actuary is notified that a formal investigation has been initiated.

The investigator is an independent actuary who volunteers to serve in this capacity. The actuarial profession owes a great deal of gratitude to those actuaries who volunteer as investigators. They give a great deal of their time and energy to this process and are integral in maintaining an unbiased process for enforcing standards.

The investigator is responsible for gathering the facts of the case from all parties and preparing a written report. This report is first sent to the subject actuary, who is encouraged to prepare a written response for

inclusion in the final material submitted to the ABCD. The investigator's final package, including all information and the investigator's report, along with the actuary's response to the report, is forwarded to the ABCD. We review it and determine whether to dismiss the complaint, counsel the actuary, or schedule a formal hearing. The primary purpose of a formal hearing at this point is to enable the members of the ABCD to gather any additional information necessary to make the most informed decision possible and to provide the actuary an opportunity to be heard directly.

Following a hearing, the ABCD votes to dismiss, counsel, or recommend disciplinary action by the subject actuary's respective actuarial organization(s). Counseling can take several forms, from a letter to a face-to-face meeting with selected ABCD members. The purpose of counseling is to assist the actuary in understanding the ABCD's concerns and the profession's standards and to provide future guidance.

When an actuary has committed serious breaches of the Standards of Professionalism, the ABCD may recommend the membership organization publicly discipline the actuary. This may take any of several forms:

- Public reprimand,
- Suspension, or
- Expulsion.

Although the ABCD may recommend public discipline, it is the membership organization that determines the actual level and type of discipline, if any. Up to this point, in order to protect the subject actuary, the entire ABCD investigatory process is strictly confidential. Only if the actuarial organization determines public reprimand appropriate will the subject actuary's name and circumstances be revealed to the public.

Hopefully, most of you will never have a complaint brought against you. Should one be brought, you can be assured of equitable and fair treatment. You would be reviewed by peers who have an understanding of the nature of your work and the routine, practical situations you encounter.

Even the most well-trained and up-to-date actuary may face problems if they do not use sound business judgment and if they act in an unprofessional manner. Basic courtesy in many situations will deflate potential problems. Since our inception, the ABCD has seen a number of cases, and especially pension-related complaints, which would have never reached us if the actuary had been cooperative and responsive to client requests.

The ABCD's primary emphasis is on counseling actuaries to recognize and adhere to high professional standards. As listed within the ABCD mission statement, beyond discipline and formal complaint resolution, individual ABCD members provide informal advice on inquiries. Although the advice does not carry the full weight of the board, it does provide guidance on professional issues which many actuaries have found helpful.

Ideally, the ABCD should never have to exercise its discipline-recommendation function. By following common-sense business practices that help maintain good relations with clients, actuarial practitioners can go a long way to ensure that no client will ever request intervention by the ABCD.

Joseph J. Leube Jr., FSPA, CPC, is a vice president of Aon Consulting in Philadelphia, Pa., and is currently a vice chair of the ABCD.

1998 AERF Individual Grants Competition

The Actuarial Education and Research Fund is inviting proposals for the 1998 Individual Grants Competition. One or more grants will be available through the AERF or its sponsoring organizations to support education or research projects. The goal is the production of publications that will advance actuarial science, especially with regard to practical applications.

In defining what constitutes actuarial science, the awards committee will be guided by the current educational programs of ASPA, the Casualty Actuarial Society, and the Society of Actuaries. Thus, proposals in mathematics, statistics, and computer science must be on topics that are helpful in designing and managing financial security systems. Proposals on general topics in law, economics, and finance will not be considered, although those related to insurance and pension issues are welcome. Proposals on operations and managerial aspects of insurance companies and employee benefit plans are welcome as long as the topics are of broad interest to actuaries.

Proposals must be received at the AERF office by **December 1, 1997**. Grants will be announced by April 1, 1998. Applications are available from Paulette Haberstroh (phone: (847) 706-3584, fax: (847) 706-3599, or E-mail: phaberstroh@soa.org. Grant proposals should be sent to Paulette Haberstroh, Actuarial Education and Research Fund, 475 N. Martingale Road, Suite 800, Schaumburg IL 60173-2226.

Questions should be directed to AERF Executive Director Curtis E. Huntington, APM (phone: (313) 763-0293, fax: (313) 763-0937, or E-mail: chunt@math.lsa.umich.edu).

PENSION TRIVIA

10 Pension Tidbits from a Past President

by Howard M. Phillips, MSPA

The phrase "paying attention to detail" is widely used when defining job functions for pension actuaries, consultants, and administrators. Nothing more typifies the validity of this part of the definition than these 10 tidbits applicable to pension rules and regulations.

1. Exemption from the 10 percent pre-59½ distribution penalty

Distributions taken and not otherwise rolled over pre-age 59½ will be exposed both to taxation and to a 10 percent penalty. However, certain distributions are relieved of the penalty tax, such as distributions payable upon death or as a result of a qualified domestic relations order. In addition, one of the exemptions is a distribution from a non-IRA plan concurrent with the attainment of age 55 and with separation from employment. However, when one reads the full explanation of how this exemption works in Notice 87-13, Q-20, it becomes evident that one really does not have to attain age 55 to get the exemption. The notice reveals that as long as the distribution occurs during the calendar year that contains the attainment of age 55 and separation from employment, no 10 percent penalty is levied.

2. Deductible IRA deposits during the first year of a profit-sharing plan's existence

A deposit to an IRA is deductible for a year of reference if for that year of reference an individual is not an active participant in an employer's plan and earns income below a "threshold." Special rules exist also to void the deduction when the spouse is a participant in an employer's plan (this particular rule was eased by the 1997 Taxpayer Relief Act) and if the threshold is measured on joint taxable income. Rules published by the Internal Revenue Service stipulate that an individual is not an active participant in a profit-sharing plan unless a contribution is "made" or a forfeiture is "allocated" to that individual's account for the year of reference. In the first year of a profit-sharing plan's existence, contributions could be deferred until the following year and still be applicable and deductible for the preceding year (the first year of the plan's existence). That action alone will void all members' being considered "active participants" and therefore would possibly make them eligible for a deductible IRA even if earnings were below the income threshold).

3. IRA rollover accounts must be formed by transfers from a single source

IRAs may serve as receptacles for distributions and transfers from other tax-favored retirement accounts such as qualified plans, 403(b) plans, and other IRAs. There are some who believe that the language of PLR 8433078 indicates that qualified plan distributions that are intended to be rolled over must be rolled over into separate IRAs. Reading PLR 8433078 might lead one to such a conclusion, but practitioners and others in the business have always believed that IRAs could be the receptacle for many distributions and transfers of tax-favored retirement plan money. The known problem is that "tainted" money may not be rolled from an IRA which contains several distributions back into a qualified plan where "taint" has always been thought to mean "combining" regular and rollover IRA money in one account.

4. *Patterson v. Shumate* causes more problems than it solves

The Supreme Court's ruling in *Patterson v. Shumate* was supposed to put to bed all of the controversy pertinent to the question "can creditors attack qualified plan assets in a bankruptcy proceeding?" While their intent was to make such assets sacrosanct, the language of the opinion created the following problems:

- Plans covering one person or one person and spouse were deemed not to be covered by the opinion.
- Although the intent may have been to give the special protection granted by *Patterson v. Shumate* only to qualified plans, some bankruptcy courts have opted to rule that plans with antialienation provisions in them, notwithstanding the fact that they may not follow

the rules, are not voided of the protection granted by *Patterson v. Shumate*.

5. Contribution limits are easily violated in 403(b) plans

IRS audits have been reported to reveal widespread violations of the 403(b) plan contribution limits. There are two reasons for these violations — neither the participant nor the plan sponsor pays attention to them, and even if they do the limit is impossible to calculate. If one is to compute the contribution limit in a 403(b) plan, three computations must be made (the maximum exclusion allowance, the 402(g) limit, and the 415 limit); then certain special alternative calculations within those three calculations are to be scrutinized; and then the lowest one of all of them is to be used (with an inside limit for the employee piece of the overall contribution). There are two possible remedies to this situation — one is to simplify the formula for the determination of the contribution limit; the other is to make the penalty more severe on the plan sponsor so that the plan sponsor takes unilateral action to force the contribution limit to be tested.

6. Aggregating 403(b) and 401(a) plans

Many people understand that when an owner of several companies establishes a retirement plan, all of the employees of all of the companies must be tested for nondiscrimination (because of the common ownership of the companies). What is little-known and little-understood is the aggregation of the limits applicable to 403(b) and 401(a) plans when that aggregation is put upon doctors who are employees of hospitals. As employees of hospitals, they are permitted to have a 403(b) plan, and if that same physician has an outside practice with a 401(a) plan, little attention is paid to the fact that often the two plans must be aggregated for testing the maximum amount that may be contributed to both plans.

7. Determining if multiple companies must be aggregated for nondiscrimination testing

Even if there is no common control between two or more organizations (80 percent or more in common ownership), two or more organizations may still be combined for nondiscrimination testing purposes under what are called the affiliated service organization rules (section 414(m) of the Internal Revenue Code). The most widely used standard for determining affiliation is whether "there is a common ownership of at least 10 percent and the two companies service each other." What is little-known is the fact that in the professional service area, **any** joint ownership, no matter how trivial, may cause an affiliation if the two organizations join together to provide services. Finally, even if there is no common ownership, two or more organizations may be linked if one of them manages the other.

8. Truth in lending may apply to participant loans

Approximately one participant in five has a participant loan from a qualified retirement plan. What plan sponsors don't realize is that once the number of participant loans in a particular plan exceeds 25, a special truth-in-lending disclosure must be provided to the participants.

9. QDROs do not apply to IRAs

When there is to be a division of retirement plan assets between two spouses involved in a marital dissolution, a qualified domestic relations order is usually used in order to split the ownership of the qualified retirement plan asset. However, QDROs apply to qualified other than certain narrow exceptions (411(e)(2)(C) and (D) plans. Where plans needing division in marital cases are not ERISA plans, such as IRAs and governmental plans, QDROs generally do not apply. Court orders will control both of these, but have to be specially drawn. In addition, it should specifically be noted that although a distribution occurring as a result of a QDRO is exempt from the 10 percent premature distribution penalty, if that distribution occurs before age 59½, that same exemption does not apply to a distribution from an IRA account if it takes place before age 59½. But 408(d)(6) allows tax-free rollover to IRA for spouse.

10. Other special differences applicable to IRA accounts

When a nonperiodic distribution occurs from a qualified retirement plan, there is a 20 percent mandatory withholding except in those cases where there is a direct rollover to an eligible retirement plan. That withholding is inapplicable to IRA distributions. In addition to QDRO distributions being exempt from the premature distribution penalty, as are distributions from qualified plans which are concurrent with separation from employment and attainment of age 55 (see No. 1 above), there is no comparable exemption (although there are others) with respect to an IRA distribution.

Howard M. Phillips, MSPA, is an actuary and consultant in the design, implementation, and annual actuarial administration of tax-qualified employee benefit programs. An author of numerous articles on benefits, he is a past president of ASPA and of Consulting Actuaries Inc., in Fairfield, N.J.

CONTINUED FROM PAGE 2

A. Haeworth Robertson Discusses Social Security

3. The baby boom, which produced an abundant supply of workers and tended to push the smaller, preceding generation into retirement at earlier ages than usual.

These factors will not soon repeat themselves, hence a further decline in retirement ages is unlikely. On the contrary, an **increase** in the customary retirement age seems likely because of the birth dearth that followed the baby boom, the slowdown in the growth (and, in some instances, a decline) of Social Security and private pensions, and probable lower future productivity gains than realized during the 25 years following World War II. Also, life expectancy measured from age 65 is projected to increase significantly for the baby boom generation as compared with the generation retiring in the 1940s: For males, this remaining life expectancy measured from age 65 is projected to increase from 12 to 18 years. For females, such life expectancy is projected to increase from 13 to 21 years.

Because of increased life expectancies and improved health, one thing seems obvious. Old age and the related normal retirement age will be redefined — and increased by at least five years — for the baby boom and subsequent generations.

Lensander:

In your book, you maintain that the cost of Social Security benefits is projected to grow to a level that future taxpayers will not be able to support by the mid-21st century when all the baby boomers have retired. Yet we hear from other experts that a modest increase in the tax rate over the next 75 years will put income and outgo into balance. How do you reconcile these conflicting positions?

Robertson:

First, there is the definition of Social Security. In the mid-1970s when I was chief actuary of the SSA, the term Social Security included Medicare. The Health Care Financing Administration didn't exist (until 1977) and SSA actuaries handled both OASDI and Medicare (HI and SMI). In recent years, a growing number of apologists for the system have separated it into two parts to enable them to present a more favorable picture (as I'll note later).

In the 1997 Trustees Reports, the two public trustees had this to say on the subject:

> The aging of the Baby Boom generation will place heavy demands on both Social Security and Medicare, requiring substantial changes and sacrifices by some or all Americans.
>
> A key point to remember as the debates go forward is that while Social Security and Medicare are large and complicated programs which are usually considered separately, they are clearly interrelated. Together, these programs form the foundation that Americans depend upon in retirement; both are vying for the same limited resources, and in the long run the shape of both programs will be driven by the same demographic forces that are leading us to an aging society.

Further evidence of the importance of Medicare to retirees can be shown by comparing the average monthly cash annuity in 1995 ($1,215 for a retired worker and spouse over age 65) with the average monthly value of the HI and SMI benefits ($822) provided to the same couple. This "medical care annuity" is paid in kind, instead of cash, and represents about 40 percent of the retiree's total annuity value of $2,037.

Apologists for the present Social Security and Medicare system who want to give the public a false sense of security and thus forestall any significant reform, typically look at the system and say —

1. SMI is adequately financed because general revenue is infused in amounts necessary to make up the difference between participant premiums and total outlays. (Never mind that by the mid-21st century SMI outlays are projected to grow from the present level of 2 percent of payroll to 7 percent under the intermediate assumptions, and 14 percent under the high-cost assumptions, and that only 25 percent of these outlays will be met by participant premiums.)
2. HI is admittedly a problem; however, in discussing Social Security we can ignore it because it is a part of a larger medical care problem affecting both workers and the retired. (Never mind that the HI outlays are projected to grow from the present level of 4 percent of payroll to 10 percent under the intermediate assumptions and 20 percent under the high-cost assumptions by the year 2050.)
3. OASDI is accumulating and investing reserves to help pay benefits in the future. (This is not true. These Treasury bonds in the trust funds represent only the

government's promise to collect more general revenue, or borrow, to redeem the bonds. There is no saving or investment of the kind implied by the terminology being used.)

4. Look only at the intermediate assumptions or, perhaps, the low-cost assumptions. (In my view, the most likely outcome will be somewhere between the intermediate and high-cost assumptions.)

5. Admit there is a little deficit in the distant future (besides, they say, no one can know the future) and say we could spread those future deficits for the OASDI program over the entire 75-year projection period and it would require only a modest increase in tax rates. These dissembling people don't want to increase taxes now, however, they just want to take a large problem and divide it into small problems for 75 years, and then say, "See, the problem is so small and the future is so uncertain that we should wait a few years and see what happens. No action is necessary now."

When Social Security and Medicare are considered together, the total benefit outlays are equivalent to 18 percent of payroll in 1997 and are projected to grow to 35 percent of payroll by the mid-21st century (based on the intermediate assumptions) and 58 percent of payroll under the high-cost assumptions. This is not a trivial problem that can be resolved by minor adjustments in the OASDI tax rate.

Polapink:

In your book you place the blame for this impending crisis squarely on our lawmakers. What about the actuarial profession? Should we, as actuaries, have been more vocal and taken up the banner of reform years ago?

Robertson:

Yes, the actuarial profession should have played a more active role in ensuring that the system was explained properly to the public and that the long-range implications of a pay-as-you-go system were explained more clearly to both the public and the lawmakers.

Yes, the actuarial profession should have played a more active role in ensuring that the system was explained properly to the public and that the long-range implications of a pay-as-you-go system were explained more clearly to both the public and the lawmakers.

All actuaries know that a pay-as-you-go retirement system that does not include the entire retired population at the system's inception will have a low initial cost that will rise steadily as the system matures. For example, in 1940 when monthly benefits first became payable, the total outlay for benefits was less than 1 percent of taxable payroll. Today, the total outlays for Social Security and Medicare are equivalent to 18 percent of taxable payroll. As noted above, these outlays are projected to rise to between 35 percent and 58 percent of payroll by the mid-21st century (under the intermediate assumptions and the so-called high-cost assumptions, respectively). Even today, most actuaries don't seem inclined to sound an alarm about these unsustainable future costs.

Another example of what I consider actuarial culpability is the failure to recognize the trust fund assets for what they are: a statement of the government's intention to try to collect future general revenue in order to redeem the Treasury bonds as necessary to make benefit payments. Instead, actuaries give an undeserved credibility to such trust fund assets and then use actuarial techniques to determine the preferred level of such assets in relation to benefit payments. (Please note that in order to avoid confusion, I have used the same erroneous terminology that is currently employed.)

It should be noted, however, that several prominent actuaries in past years have tried to sound the alarm about the financial structure and other aspects of Social Security: W. Rulon Williamson, SSA's first chief actuary (1935-1947), and Ray M. Peterson, who submitted a paper in 1959 to the Society of Actuaries with a title that says it all: "Misconceptions and Missing Perceptions of Our Social Security System (Actuarial Anesthesia)."

Lensander:

You say it is improper and misleading for the government to state that Social Security is accumulating huge trust funds that will help pay retirement benefits to the baby boomers.

But don't the Treasury bonds in the trust funds represent valid assets? Won't these bonds be paid off just like any other Treasury bonds? Are you saying that the U.S. government's credit is no good?

Robertson:

To understand my point, it may be helpful to consider a job-related, defined-benefit pension plan — one in which employee and employer contributions are invested in stocks, bonds, and other assets that can be sold as necessary to pay benefits. This is a viable arrangement.

Now, consider the same pension plan but with the trust fund assets loaned to the employer to meet its current operating expenses. The employer places IOUs in the trust fund and promises to repay them from future profits.

This latter arrangement is illegal for a private pension plan, but it is exactly comparable to the Social Security situation. The government borrows from the trust fund any employer or employee contributions not required for current benefit payments, spends these funds for current operating expenses, and places Treasury bonds in the trust funds promising to collect additional general revenue as necessary to redeem such bonds.

Another way to think of this procedure is this: The government borrows part of the Social Security's taxes to pay for today's government operating expenses and then promises to use future general revenue to pay part of tomorrow's Social Security benefits. This is not the same as "accumulating huge trust funds that will help pay retirement benefits to the baby boomers."

Polapink:

You indicate in your book that the problems defy solution, yet one way or another the problems must be resolved. Can the problems be resolved without a huge outcry from American workers?

Robertson:

In *The Big Lie*, I outline a proposed Freedom Plan that is intended to be sensible and to minimize the outcry from American workers. No matter what reforms are adopted, there will be a huge outcry. The largest outcry, however, will arise if we attempt to maintain the status quo.

Fifteen years ago we could have put Social Security income and outgo into balance with manageable social and economic disruption. There would have been adequate time (before the baby boomers start reaching age 65 in the year 2011) for complementary adjustments in job-related pensions and private saving. Today, however, any steps to balance income and outgo for the baby boomers will be extremely disruptive. If we wait another 15 years, the consequences will be awful to behold.

Lensander:

How can ASPA members begin the process of deflating the "lie" and educate plan sponsors that they and their employees need to be prepared to work longer than currently expected. Also, how can we help educate plan sponsors, and through plan sponsors, their employees, about the truth in the Social Security system?

Robertson:

Social Security (including Medicare) is the largest cost component of most employee benefit programs — with a combined employee-employer cost of 15.3 percent of covered payroll. (Additional funding is provided by SMI "premiums" and general revenue.) Yet, Social Security is less understood, and its future is less certain, than all the other parts of an employer-provided benefit program.

Most clients would appreciate having their ASPA consultant sit down with them to discuss Social Security and Medicare — the present and projected financial status, the inevitability of change, and the effect this change might have on their employee benefit programs. At the very least, this gesture would strengthen relationships with clients — not a bad thing in these competitive times.

Naturally, I think *The Big Lie* provides the kind of straight talk that ASPA consultants and their clients need. However, other sources of factual information may be available. My two prior books (*The Coming Revolution in Social Security* (1981) and *Social Security: What Every Taxpayer Should Know* (1992)) are based on straight talk but with wording that is more academic and less strident than *The Big Lie*.

Polapink:

What can I do as an ASPA member to help educate the public when I receive, let's say, a CPA news bulletin that states there is no need for concern and that Social Security is doing just fine?

Robertson:

Write a letter to the editor of the news bulletin explaining the facts. Use the news bulletin, together with your critical response, to explain Social Security's problems to others. Such clarification of Social Security issues seems consistent with ASPA's purpose, "to educate pension actuaries, consultants, administrators, and other benefits professionals, and to preserve and enhance the private pension system as part of the development of a cohesive and coherent national retirement income policy."

Lensander:

We've run out of time for this particular interview, but maybe we can do it again sometime. Meanwhile, do you have a final comment? Also, how can our readers obtain a copy of your new book?

Robertson:

Yes, I appreciate this opportunity to try to stimulate interest among ASPA members in the Social Security and Medicare issues. Actuaries are in a unique position — because of their training and experience — to evaluate the long-range conse-

Continued on page 24

CONTINUED FROM PAGE 1

Washington Update

Continuing Appetite for Pension Legislation

After enactment of the pension simplification provisions in the Small Business Job Protection Act of 1996, most pundits, both on and off Capitol Hill, insisted that it would be some time before further legislative changes would be made in the pension area. In fact, when I approached my former boss, Ken Kies, chief of staff of the Joint Committee on Taxation, early in the process about the possibility of including a small package of pension changes in this year's tax bill, he said "No chance!"

Needless to say, ASPA, along with other members of the Retirement Savings Network, pursued a small but still significant package of pension changes. With the help of key members of the Senate Finance Committee, this package was ultimately included the Taxpayer Relief Act of 1997. (Details of the package were discussed in the last issue of the *Pension Actuary*.)

How did this happen? In my view, the pundits failed to recognize Americans' growing concerns about retirement savings. Polling of constituent groups continues to show strong interest in retirement savings issues. As baby boomers are getting closer to retirement age they are becoming increasingly concerned about the adequacy of retirement income. Members of Congress and the Clinton administration recognized these political trends and realized it was important that the Taxpayer Relief Act include provisions to promote employer-sponsored retirement plans. ASPA will continue to push for further legislative changes promoting employer-sponsored retirement plans to be included in future tax bills. In fact, given next year's midterm elections in the House of Representatives, many observers expect pension issues once again to be prominent.

Focus on Top-Heavy

As many of you know, the top-heavy rules significantly discriminate against small-business retirement plans. In a recent U.S. Chamber of Commerce survey, the top-heavy rules were identified as the most significant regulatory impediment to the formation of small-business plans. ASPA has recently been working with key members of Congress to relax the top-heavy rules. Unfortunately, at this time the political will to completely repeal the top-heavy rules does not appear to exist. Nevertheless there is some momentum to reduce the negative impact of the top-heavy rules, particularly as they apply to 401(k) plans.

In fact, a bipartisan group of senators included a provision to relax the top-heavy rules in a larger pension bill called the Retirement Security for the 21st Century Act (S. 889). In that bill, the top-heavy rules would be modified such that (1) a family member could not be treated as a key employee merely as a result of stock attribution, (2) elective deferrals would not be counted for purposes of the top-heavy rules, and (3) matching contributions would count toward satisfying the top-heavy minimum. Further, the report of the Internal Revenue Service restructuring commission recommends that the top-heavy rules be modified to clarify that a plan satisfying 401(k) plan matching contribution safe harbor (a total 4 percent matching contribution) would be deemed to satisfy the top-heavy rules.

Relaxing — and ultimately repealing — the top-heavy rules remains a top priority for ASPA's Government Affairs Committee. ASPA will continue to work with members of Congress and their staffs in developing proposals to ease the harsh effects of the top-heavy rules.

Brian H. Graff, Esq., is executive director of ASPA. Before joining ASPA, Graff was legislation counsel to the U. S. Congress Joint Committee on Taxation.

Notice of Membership Meeting at ASPA Annual Conference

At a membership meeting during the ASPA annual conference (Monday, November 3, at 8:00 a.m.), credentialed ASPA members are invited to vote on the following proposed amendment to the ASPA bylaws:

> Article 5, Section A, shall be amended by adding the following sentence at the end thereof:
>
> "If a duly elected officer resigns or is otherwise unable to complete his or her term of office, the Nominating Committee shall select a replacement officer for the remainder of such term."

CONTINUED FROM PAGE 9

403(b) Arrangements and 401(k) Plans

3. The employer's involvement is limited to the following:
   (a) Permitting annuity contractors to publicize their products to the employees;
   (b) Requesting information concerning funding media, products and annuity contractors;
   (c) Summarizing the data obtained in (b) for review by the employees;
   (d) Withholding deferrals, remitting same to annuity contractors, and maintaining records of such transactions;
   (e) Holding in the employer's name one or more annuity contracts covering its employees; and
   (f) Limiting the availability of funding media, products, or annuity contractors to a reasonable choice in light of the relevant circumstances (which the regulation enumerates); and
4. The employer is not paid for performing the services outlined above except for a reasonable amount to defray expenses. (Department of Labor Regulation section 2510.3-2(f).)

With exemption from ERISA comes the loss of federal protection against the claims of the participant's creditors. A qualified 401(k) plan maintained by a tax-exempt employer would clearly be subject to the creditor protection afforded by ERISA section 206(d) and *Patterson v. Shumate*. Of course, state law may still provide such protection for assets held in ERISA-exempt 403(b) plans.

In almost every situation, 401(k) plans are employee pension benefit plans under ERISA section 3(2) and are therefore covered by Title I of ERISA. As such, these plans must have a written plan document (ERISA section 402(a)(1)), and must provide participants with summary plan descriptions (DOL Reg. section 2520-104b-2) and summary annual reports. (DOL Reg. section 2520-104b-10.) In addition, such plans must file an annual report (Form 5500 series) with the Internal Revenue Service. Also, ERISA's fiduciary standards, bonding requirements, and other rules apply.

A 403(b) plan that accepts employer contributions (other than salary deferrals) is not exempt and is therefore also subject to Title I of ERISA. A 403(b) plan with employer involvement in selection of investment choices or plan operation may also be subject to ERISA Title I. (See ERISA opinion letters 83-23, May 13, 1983, and 94-30A, August 19, 1994, and DOL Letter to IRS Re: TVC Program, dated February 23, 1996.) An employer may obtain an advisory opinion from the Department of Labor as to Title I coverage. (DOL Advisory Opinion 76-1.)

Application of ERISA Title I for 403(b) plans is not new. Reporting and disclosure requirements have existed for 403(b) plans the same as for 401(k) or other qualified plans. However, 403(b) plan sponsors are required to complete only a limited amount of information on Form 5500 and are not required to obtain an independent accountant's audit. (DOL Information Letter November 15, 1996.) ERISA Title I-covered 403(b) plans are also subject to the joint and survivor annuity requirements under ERISA section 205. (See DOL Reg. 2510.3-2(f) for description of when a 403(b) arrangement is not an ERISA plan.)

Distributions and Rollovers

Since a 401(k) plan is qualified under IRC section 401(a), distributions from a 401(k) plan, as well as distributions from any other plan qualified under section 401(a), may be rolled over into another 401(k) plan, as well as into an individual retirement account, but not into a 403(b) plan. (IRC sections 401(a)(31) and 402(c)(8).) Distributions from a 403(b) plan may be rolled over into another 403(b) plan or an individual retirement account but not into a 401(a) plan. (IRC section 403(b)(8), Treasury Regulation section 1.403(b)-2 Q&A 1.) Therefore, an employee wishing to transfer an account balance from a previous employer's 401(a) plan would not be able to roll such amounts into a 403(b) plan and vice versa. There is an exception for Indian tribal governments who adopted 403(b) plans prior to January 1, 1997, who may roll over into and establish new 401(k) plans. (Sections 1450(b) and 1426(b) of SBJPA.)

Plan Termination

Presently, it is not possible to terminate a 403(b) plan and make distributions due to the withdrawal restrictions in IRC section 403(b)(7) and 403(b)(11). Therefore, an employer wishing to start a new 401(k) plan must continue to maintain the 403(b) plan until all participants have reached age 59½, or terminated employment, or distributions are requested due to death, disability, and under certain circumstances, upon hardship. (IRC section 403(b)(7)(A)(ii)

and 403(b)(11).) Although a private letter ruling may be obtained on a 403(b) plan termination (PLR 9652020), reporting and disclosure requirements under ERISA Title I are still required.

Conclusion

The 1996 Small Business Job Protection Act offers 501(c)(3) organizations additional strategies for retirement planning. Along with these new choices comes the need for greater employer responsibility and awareness, as well as effective planning in order to fully achieve desired goals. The options of continuing a 403(b) arrangement, updating an existing 403(b) plan, or expanding into the new world of 401(k), may be overwhelming. It is important to understand and appreciate the complexities of both 403(b) and 401(k) plans and become educated in both the old and the new requirements. It may be that the myth is still just a "myth," and that the "same old" 403(b) plan or arrangement, when updated to accommodate new legislative changes, will do just fine.

Theresa Lensander, CPC, QPA, is president of the American Pension Company in Santa Barbara, Calif. Lensander is chair of the Government Affairs 403(b) Enforcement Subcommittee and serves on the National Retirement Income Policy Subcommittee. She has assisted various ASPA Education and Examination Committees, taught and coordinated ASPA classes, and served on the ASPA Continuing Education Committee. Kevin J. Donovan, APM, owns and operates Tucson Pension Consultations in Tucson, Ariz. A certified public accountant, Donovan is chair of the ASPA ASAP Committee and serves on the IRS Enforcement and Ad Hoc SIMPLE 401(k) subcommittees of the Government Affairs Administration Relations Committee.

CONTINUED FROM PAGE 5

Contributions of Stock Options

Prohibited transaction issues also arise because of the manner in which the options were slated to be exercised by the plan on behalf of the participants. The procedure is that Travelers would advance to the plan the total securities subject to the option. The plan would then only sell enough of the advanced securities to pay the exercise cost of the option. The remainder of the advanced shares would represent the gain and would be allocable to the accounts of participants who exercised the options. In effect, it would allow the plan to make a "cashless" exercise of the option. Apparently there is concern that the exercise of the options and the transfer of cash back to Travelers has the potential to violate the provisions of the Internal Revenue Code and ERISA which prohibit a fiduciary from dealing with the assets of the plan in his own interest or for his own account.

The Department of Labor has issued a notice of proposed exemption ((Exemption Application No. D-10269) 61 FR 68794, December 30, 1996) to Travelers Group Inc. The proposed exemption is based on the specific facts which Travelers represented to the DOL. The following are some of the more significant conditions on which the DOL will base its exemption, if ultimately approved:

1. All employees (other than certain highly paid officers) will be treated in the same manner for the purpose of the allocation of stock options to the accounts of such employees;
2. The allocation of options occurs automatically each year without any action on the part of any employee (such as contributions by the employee) and is uniformly based on compensation;
3. The exercise of the options is made without the use of other plan assets (the "sell to cover" transaction);
4. The exercise of the options is solely at the option of the individual employee (other than in certain circumstances such as death);
5. An independent trustee will facilitate the sale of the stock in connection with the exercise of the options; and
6. The terms and conditions set forth in the proposed exemption are at all times satisfied.

The contribution of stock options to a qualified plan may be advantageous to both plan sponsors and participants. However, there are numerous issues involved in this type of plan design and any employer contemplating this approach should wait to see how these issues are resolved with respect to the Travelers plan. If the DOL and IRS issue favorable rulings, any employer wishing to implement this type of arrangement would be well advised to obtain its own rulings from both agencies since the rulings issued to Travelers Group Inc. may not be relied upon by other plan sponsors.

Robert M. Richter, APM, is director of technical services for Corbel & Co., a leading provider of plan document and software services to the employee benefits industry. Richter also serves as chair of the HW-1 part of ASPA's Education and Examination Committee.

CONTINUED FROM PAGE 3

Legislation Proposes *Qualified Staffing Firms*

The uncertainties extend beyond the qualified plan arena. For example, in 1995, the IRS won a case against an employer for unpaid payroll taxes for workers paid by a staffing firm. Apparently, the staffing firm did not make the tax payments. The employer apparently ended up paying the payroll taxes twice, once to the staffing firm that had failed to pay them to the government, and once to the IRS. By the way, the case was in bankruptcy court.

This uncertainty would be resolved under H.R. 1891, proposed last June. The proposed bill would define a *qualified staffing firm* (QSF). It would provide that those working for a QSF are the employees of the QSF for employment tax, qualified plan, and other employee benefit purposes. Special disaggregation rules are provided to prevent abuse.

In order to be a QSF, a staffing firm would have to meet all of the following requirements:

1. It provides staffing services to one or more customers pursuant to a contract;
2. It assumes responsibility for the payment of wages, employment taxes, and worker benefits without regard to the receipt or adequacy of payment from the customer;
3. It assumes authority to hire, reassign, and dismiss the workers independently of the customer;
4. It maintains employee records; and
5. It assumes responsibility for addressing worker complaints, claims, filings, and so on (subject to collective bargaining agreements).

At present, most staffing firms would fail both the second and the third test. In fact, the contracts of many staffing firms explicitly state that they are not liable for payment of wages, benefits, and payroll taxes unless the recipient pays them. Although this issue is not addressed in the various rulings considering employee status, it goes to the very heart of the employment relationship. If a company tries to deny responsibility for payment of wages to its workers unless it receives payment from someone else for whom they are working, how can that company claim to be the true employer?

Similar issues are raised with regard to the hiring and firing issue. How many recipients would be eager to turn valued, trained personnel over to a staffing firm if the contract provided that the staffing firm could turn around and have those employees work for the recipient's competitor if the competitor made the staffing firm a better offer? Yet, the power to hire, fire, and reassign workers is fundamental to the employment relationship, so much so that its absence makes it very likely that the recipient would be deemed to be the employer.

These are the issues that separate some of the well known temp agencies, like Kelly Services, from staffing firms. There is no doubt that the temp agencies are the true employers, for example, because they generally had a relationship with their workers before being approached by their client, and that relationship will continue after the client is gone and has no further need of the worker's services. Nobody would think that a recipient dismissing a temporary secretary would cause the Kelly Services to dismiss the secretary, but that is exactly what happens with most staffing firms.

Even if H.R. 1891 is not passed, it has been useful in pointing out these important issues relating to staffing firms. They are, for the most part, solvable issues. For example, a staffing firm could assume primary responsibility for payment of wages, without regard to payment by the client, so long as they receive a deposit, perhaps two weeks of wages, taxes, and benefits, so the staffing firm is protected. Alternatively, the staffing firm can charge a high enough fee for its services so as to be able to afford to handle the occasional nonpaying recipient. Staffing firms need to consider carefully these issues if they wish to be regarded as the true employer and maintain qualified plans.

H.R. 1891 closely resembles in some respects a proposal under consideration by the Government Affairs Committee's ad hoc legislation committee. GAC will continue to monitor this issue and will report to ASPA members about any progress. The issue will be discussed in greater detail in the author's scintillating presentation at the upcoming ASPA Pension Actuaries and Consultants Conference in Washington.

S. Derrin Watson, APM, is a tax lawyer from the Santa Barbara area. Managing sysop of the Pension Information eXchange computer bulletin board and author of its interface software, WatsOpDoc, Watson serves on the ASPA Government Affairs Committee as chair of the Internal Communications Committee.

ABCs Meet Across Country; Special Session at ASPA Conference

ASPA Benefits Councils (or ABCs) continue to meet across the country to help meet the needs of ASPA members on a local level. ABCs provide a forum for retirement plan practitioners to discuss critical issues and also to earn continuing education credit for the maintenance of ASPA designations and for enrolled actuaries. The ASPA Membership Committee plans to build on the success of the ABCs with a special informational session at ASPA's annual Pension Actuaries and Consultants Conference.

"Introduction to ASPA Benefits Councils," featuring facilitators **Steven Fishman, MSPA**, of PFR Planning Inc., of New York City, and **Cynthia A. Groszkiewicz, MSPA**, of Altman, Kritzer, & Levick, PC, in Atlanta, will be presented Tuesday, November 4, from 5:15 p.m. to 6:15 p.m. The session will provide information on how to establish or participate in an ABC in your local area.

ABC Chapters

Atlanta

Contact: H. Earle Garvin, MSPA
Pension Financial Services Inc.
Phone: (404) 728-5748 ext. 308

The ABC of Atlanta met September 16, and discussed "Advising Participants on Investments and Establishing an Investment Policy." The next meeting is scheduled for October 16. Tom Johnson of Mass Mutual and Bob Leeper of Charon Planning Corp., will speak on nonqualified deferred compensation

Chicago

Contact: Leslie A. Klein, APM
Sonnenschein, Nath & Rosenthal
Phone: (312) 876-8201

The ABC on Chicago met September 4. Janice M. Wegesin, CPC, QPA, spoke on new 401(k) testing rules. The next meeting will be December 2, from 4:30-6:30 p.m., at the East Bank Club. The topic will be amending plans for SBJPA, the Taxpayer Relief Act of 1997, and 1998 planning issues.

Cleveland

Contact: Ronald Gross, MSPA
Moskal Klein Inc.
Phone: (216) 771-4242

The ABC of Cleveland is planning its first informational meeting for January 8. Confirmed to speak is Ken Mayland, chief economist of Key Corp.

New York

Contact: Judy Lynch
Pension Design Services Inc.
Phone: (516) 937-3600

The ASPA Benefits Council of New York held its first general meeting the morning of September 24, 1997, at the Southgate Hotel . After a continental breakfast, Richard A. Hochman, APM, president of McKay-Hochman, presented a talk entitled "Document Requirements Under the Small Business Job Protection Act of 1996."

Central Florida (Orlando)

Contact: Patricia Mahar, CPC
Mahar and Associates
Phone: (407) 539-0033

The Employee Benefits Council of Central Florida met September 9. Roberta Watson, past chairperson of the Employee Benefits Committee of the American Bar Association Tax Section, presented "Join the Celebration of TRA '97 ... New IRA Options and Much More." The next meeting is scheduled for November 11. Craig P. Hoffman, APM, of Corbel, will present "Current Regulatory Developments Under SBJPA '96.

Delaware Valley (Philadelphia)

Contact: Stephen H. Rosen, MSPA, CPC
Stephen H. Rosen & Associates Inc.
Phone: (609) 795-6834

The ABC of Delaware Valley met on September 29. Dallas L. Salisbury, president of the Employee Benefit Research Institute, spoke on Benefits 2000. The next meeting is November 18, 11:30 a.m.-2:00 p.m. The speaker will be Joan Sweeny, the Brooklyn District Director of the IRS.

FOCUS ON ASPA PERF

USA Mathematical Olympiad

by Curtis E. Huntington, APM

The ASPA Pension Education and Research Foundation Inc., or ASPA PERF (formerly the James L. Kirkpatrick Foundation for Pension Actuarial Education and Research) is a not-for-profit 501(c)(3) corporation formed to foster excellence in pension education and to promote scholarly research in the pension education field. It is supported by tax-deductible member contributions.

ASPA PERF is one of nine organizations that sponsor the USA Mathematical Olympiad. The Olympiad organizes a series of competitions amongst high school mathematics students around the country that culminates in the selection of a team that represents the United States in an international competition.

This year's awards ceremony was held in Washington, D.C., June 15-16 June. Winners, and their parents, were first introduced at a reception at the headquarters of the Mathematical Association of America. On the second day, there was an awards ceremony at the National Academy of Sciences with a lecture "Mathematics and Juggling: New Insights Into an Old Pastime."

After a picture-taking ceremony at the Albert Einstein Memorial (see accompanying photograph), the activities culminated in a black-tie reception and dinner held in the diplomatic reception rooms of the U.S. Department of State.

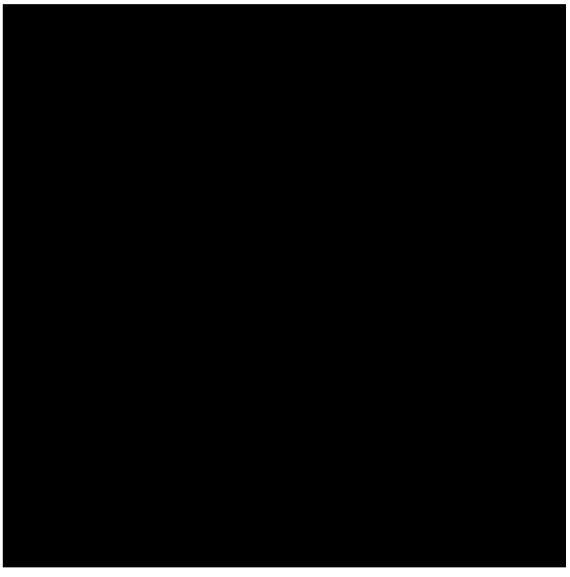
In a letter, one of the mothers thanked the sponsors for "the opportunity this program affords young people to meet, study and become friends with other people, young and old, who share a passion for mathematics."

After a one-month "boot camp" in Nebraska, the U.S. team tied for fourth place with Russia, behind China, Hungary, and Iran in the final competition held in Mar del Plata, Argentina. One of the team members won an individual gold medal.

If there is an activity in your local community that you would like considered for possible funding by PERF, please let one of the PERF directors know. Although we have limited funding available, we are always looking for new and creative ways to support our mission.

Curtis E. Huntington, APM, is a professor of mathematics and director of the actuarial program at the University of Michigan (Ann Arbor). He is a member of ASPA's board of directors and serves as the quality control chair of ASPA's Education and Examination Committee.

Curtis E. Huntington, APM, ASPA PERF vice chairman (front right), with the U.S. national team at the USA Mathematics Olympiad awards ceremony. Clockwise from front center: Nathan G. Curtis, Joshua P. Nichols-Barrer, Carl J. Bosley, Kevin D. Lacker, John J. Clyde, Davesh Maulik, Daniel A. Stronger, and Li-Chung Chen.



Join your colleagues on either coast for the

ASPA Eastern and Western Regional Seminars

Western Regional Seminar and preceding 401(k) Workshop

Workshop Date: June 28, 1998
Seminar Dates: June 29 - July 1, 1998
Location: Sheraton San Diego Hotel & Marina
1380 Harbor Island Drive
San Diego, CA 92101-1092
Hotel Reservations: (619) 692-2265

Eastern Regional Seminar and preceding 401(k) Workshop

Workshop Date: July 19, 1998
Seminar Dates: July 20 - 22, 1998
Location: The Westin Copley Place Boston
10 Huntington Avenue
Boston, MA 02116
Hotel Reservations: (617) 262-9600

The **1998 Regional Seminars** provide actuaries, consultants, administrators, and other benefits professionals the opportunity to address the current needs and interests of the pension industry.

These **three-day seminars** are *devoted entirely to interactive workshop sessions* which impart information about the administrative and technical aspects of your business.

An *intermediate-level* **401(k) Workshop** will precede both the Regional Seminars. 401(k) plans have become a prominent part of the consulting practice of many pension professionals. Some of the 401(k) issues to be presented will include:

- ADP and ACP testing, including determination of highly compensated employees and family aggregation;
- minimum participation and minimum coverage rules;
- plan asset regulations, including withholdings and deposits and prohibited transaction issues;
- 5500 issues; and much more!

Look in your mail box next spring for more information. To learn more, call Piper J. Deuschl, meetings administrator, at (703)516-9300.

CONTINUED FROM PAGE 16

A. Haeworth Robertson on Social Security

quences of retirement and other benefit promises made today. If actuaries don't begin to play a more active role in this area, the outlook for rational change does not, in my opinion, look promising.

The Big Lie is available from BookMasters at 1 (800) 247-6553 for $24.95 plus shipping.

Theresa Lensander, CPC, QPA, is president of the American Pension Company in Santa Barbara, Calif. Lensander is chair of the Government Affairs Committee 403(b) Enforcement Subcommittee and serves on the National Retirement Income Policy Subcommittee. She has assisted various ASPA Education and Examination Committees, taught and coordinated ASPA classes, and served on the ASPA Continuing Education Committee. Paul S. Polapink, MSPA, is vice president and chief actuary with Price, Raffel & Browne Administrators in Los Angeles. Polapink was president of ASPA in 1994, and currently serves on ASPA's Nominating Committee and National Retirement Income Policy Subcommittee and chairs the Education Policy Committee. A former member of ASPA's board of directors, Polapink has also chaired the Education and Examination Committee, the Screening Subcommittee, and the Public Affairs Committee and has served on ASPA's Long Range Planning Committee, Interprofessional Relations Committee, and the Council of Presidents Working Agreement Task Force.

Calendar of Events

		ASPA CE Credit
October 10-13	A-3 [EA-2] class — Washington, D.C.†	20 credits
October 15	Early registration deadline for ASPA examinations	
October 25-28	A-3 [EA-2] class — Los Angeles†	20 credits
November 2-5	1997 ASPA Annual Conference — Grand Hyatt Washington, Washington, D.C.	20 credits
November 1	Final registration deadline for ASPA examinations	
November 15-16	C-2(DC), C-3, and C-4 weekend review courses — Denver	
November 17	Jointly sponsored examination A-3 [EA-2]	
November 22-23	C-2(DB) weekend review course — Jacksonville Beach, Fla.	
December 3	C-1, C-3, C-4, and A-4 examinations	20 credits*
December 4	C-2(DC) examination	20 credits*
December 5	C-2(DB) and HW-1 examinations	20 credits*

1998

April 27-28	Midstates Benefits Conference — Chicago	15 credits
May 3-6	Business Leadership Conference — Colorado Springs, Colo.	
June 12	Northeast Key District Employee Benefits Conference — White Plains, N.Y.	7 credits

† ASPA offers these courses as an educational service for students who wish to sit for examinations which ASPA cosponsors with the Society of Actuaries and the Joint Board for the Enrollment of Actuaries. In order to preserve the integrity of the examination process, measures are taken by ASPA to prevent the course instructors from having any access to information which is not available to the general public. Accordingly, the students should understand that there is no advantage to participation in these courses by reason that they are offered by a cosponsor of the examinations.

* Exam candidates earn 20 hours of ASPA continuing education credit for passing exams, 15 hours of credit for failing an exam with a score of 5 or 6, and no credit for failing with a score lower than 5.