MILLENNIUM ISSUE

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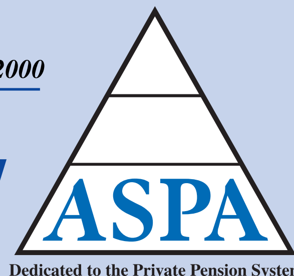
THE PensionActuary



WASHINGTON UPDATE

More Debate on Cash Balance Plans

by Brian H. Graff, Esq.

Congress went on recess over the holidays. Unfortunately, the firestorm over cash balance plans continued to rage on. Congressional staffers and interested groups, including ASPA, continued to have meetings to discuss issues surrounding the cash balance plan controversy throughout December and January. In addition, ASPA worked with the Academy of Actuaries to develop an ad for Capitol Hill newspapers responding to criticism received by the actuarial profession for its role in the development of cash balance plans and clarifying that the profession supports full and meaningful disclosure to all participants. A copy of this ad is reproduced at the end of this article.

Frankly, from a substantive standpoint, disclosure is just the beginning of the story. In my view, any pension legislation enacted this year would have to contain a package of provisions addressing the cash balance controversy. At this point, it is almost taken for granted that the package will include a provision significantly enhancing the notice requirements under section 204(h) of ERISA. As various versions of these disclosure bills have

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Retirement Plans, Then and Now, You and ASPA

by John P. Parks, MSPA

MILLENNIUM FEATURE

Held together by cellophane tape and often stretching upwards of six feet, those green twelve column Accounting Work Sheets were symbolic of the actuarial valuation of Defined Benefit Plans of thirty-something years ago. (I'll not be too specific here.) They required days of manual calculations. Those same calculations are now done in a fraction of a second on my laptop computer which probably represents more computing power than existed in the entire world at that time. Then, annual statements for profit sharing plans, typically were delivered three to six months following the plan year end. Now daily-valued 401(k) plans provide, most typically, quarterly hard copy statements sent to the participant's home within a few business days of the quarter end; these plans often also allow participants to optionally create their own statement everyday via access to their account information over the Internet.

Technology and the financial industry have revolutionized the basis upon which this country accumulates reserves for retirement. Over thirty years ago, Pensions 101 taught us that the ultimate in an employer retirement program was a simple Defined Benefit Plan providing

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guaranteed benefits. Upon that was superimposed a profit sharing plan providing additional opportunities stemming from company successes and investment gains. For the past 10 years, Defined Benefit Plans have been replaced at an alarming rate by Defined Contribution Plans, especially the 401(k) variety. And in many cases plans simply have not been established. On the surface, this trend may not appear to be a scenario of great concern. It has made business more competitive; it now gives employees more control over their retirement destiny, and there is a natural euphoria when looking at an account balance statement that has shown the kind of investment result we have seen for the past 10 years. The problems are, on the other hand, that: (1) The market will make downward-adjustments, that is certain, it's just a matter of when. (2) Accumulations under 401(k) plans are too readily available to the participants prior to retirement – loans, hardship withdrawals, distributions upon termination of employment, etc. (3) For Baby Boomers (those born during the years 1947 to 1965), the accumulations may just be too small to produce that standard replacement ratio of 70% to 80% of pre-retirement income. In a *Chicago Tribune* Internet Addition article on January 12th by Melanie Trottman, it was pointed out that "Very few Boomers have saved enough to pay for a regular span of retirement, much less a far longer one. The result is that the old three-legged stool of retirement-income planning – Social Security, pensions and savings – has been replaced by a new, four-legged model. The fourth leg: work." The longer span of retirement referred to results from increasing longevity due to the tremendous recent medical advances.

I believe there are multiple reasons to question the viability of the fourth leg as an effective solution. One is, will we really retire as late as we think? If we take a look at The Ninth Annual Retirement Conference

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ASPA NEEDS YOUR HELP

The DOL Committee, an ASPA Government Affairs Committee, needs to talk with anyone who has received a subpoena of its records as part of a DOL service provider audit within the last five years.

As soon as possible, please contact
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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.

ASPA members are retirement plan professionals in a highly diversified, technical, and regulated industry. ASPA is made up of individuals who have chosen to be among the most dedicated practicing in the profession, and who view retirement plan work as a career.

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EFAST: A New Acronym to Remember

by Gary R. Saake, VP/Systems DATAIR Employee Benefit Systems, Inc.

Question: What do you get when you combine the transfer of the 5500 program from the IRS to DOL, outsourcing the project to a private sector contractor, and then subcontracting it to seven other vendors?

Answer #1: The ERISA Filing Acceptance System, a.k.a. "EFAST."

Answer #2: A lot of confusion.

Background…

As John Helms, the DOL's EFAST Project Director, put it, "For 24 years the IRS has been trying to fit the 5500 program into a system designed to handle 1040s, and it just didn't work very well." So, in 1993, the DOL began the campaign to take over responsibility for the 5500 program from the IRS. After a false start or two, the DOL is now in control, beginning with 1999 plan year filings.

Rather than design, publish, and process the forms internally, the DOL decided to outsource the process to the private sector and held a competitive bidding process where two companies, National Computer Systems, Inc. (NCS) and Wang Federal Systems, received contracts to create mock-up proof-of-concept systems. The winner of that competition was NCS, who was then awarded a contract to provide forms and processing services for the next 5 years.

While NCS is the primary contractor, they have subcontracted it to seven additional companies; the most notable being Nelco, Inc., which is responsible for form design, and development of tools, specifications, and procedures for electronic filing and marketing of the EFAST program.

Two types of forms…

Because of the desire for highly automated processing, there will be two different types of forms created each year, hand-print and machine-print.

Hand Print (HP) Forms:

These are forms that will be completed by a manual process such as pen, pencil, or typewriter. They are printed with blue drop-out ink so that they can be optically scanned. Only original forms may be used. No photocopies or downloaded forms may be used because of the blue ink. The DOL is expected to mail the filing packages with the hand-print forms to plan sponsors in mid-February 2000.

Machine Print (MP) Forms:

These are forms that are completed by special computer software, such as DATAIR's Pension Reporter/Windows and Peak 1's Hyperprep Windows software. These forms include a two-dimensional barcode that contains all of the data on the forms. Rather than the actual letters and numbers printed on the form being read, the data are read by scanning the barcode. In tests, NCS has found that the accuracy of reading the barcode is virtually 100%. That really matters as they are processing 1.2 million 5500 returns, consisting of over 20 million pages each year. The DOL released the first phase of specifications in mid-January to software developers. They expect to deliver the balance of the specifications between now and early April 2000.

Two ways to file…

In addition to the traditional paper form filing, the NCS is also

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MILLENNIUM FEATURE **TIMELINE**

1966

ASPA incorporates as non-profit corporation under the statutes of the State of Texas. Col. Harry T. Eidson, CLU, is founding President of ASPA. First ASPA office opens in Ft. Worth, Texas.

1967

Harry T. Eidson writes ASPA's first publication, *Actuarial Calculations of the Auxiliary Fund in Pension Plans Utilizing Whole Life Insurance*, and donates it to ASPA.

1968

Eidson's 1967 publication receives copyright and is mailed to members, colleges and universities, which starts the process of many people seriously studying to become pension actuaries.

Required Minimum Distribution Transitional Rules

by Warren T. Marshall, J.D., LL.M.

SBJPA modified the definition of the "required beginning date" ("RBD") by which a plan participant must commence qualified retirement plan distributions.[1] After 1996, for a participant other than a "5% owner" (see discussion below) of the employer, the RBD is the April 1 of the calendar year following the calendar year in which occurs the *later of* separation from service *or* attainment of age 70½. A plan which the sponsoring employer has not updated for the SBJPA law changes still may contain the pre-1997 RBD definition. Under the pre-1997 RBD definition, the plan had to commence distributions no later than April 1 following the calendar year in which an employee attained age 70½, even if the employee continued working for the employer. During the "GUST" remedial amendment period for SBJPA and other law changes, an employer has some flexibility with respect to the timing of commencement of distributions after age 70½ but before the "new" post-1996 RBD. The remedial amendment period currently ends for most employers on the last day of the 2000 plan year.[2] An employer does not need to amend its plan before the end of the remedial amendment period to reflect the post-1996 RBD definition. However, if the employer wishes to limit distribution options to post-age 70½ employees, the employer may want to amend the plan before the end of the remedial amendment period. Practitioners have continued to raise questions regarding the application of the post-1996 RBD definition. This article discusses several options an employer has with respect to distributions after a participant attains age 70½.

Postponing commencement of distributions until an employee's "new" RBD

An employer may apply operationally the post-1996 RBD definition to employees (other than 5% owners) who attain age 70½ after 1995 and have not retired, notwithstanding that the plan's terms currently require distributions to commence no later than the April 1 of the calendar year following the employee's attaining age 70½.[3] The employer maintains the plan's qualified status by operating the plan in accordance with the new RBD definition and ignoring the plan's more restrictive mandatory distribution provision, and then amending the plan no later than the last day of the remedial amendment period to incorporate the new RBD definition.

Example #1. Corporation X maintains a qualified 401(k) plan. X has not amended the plan for SBJPA law changes, including the change in the RBD definition. X wishes to permit employees who continue employment past age 70½ the flexibility to delay commencement of plan distributions as long as possible. X need not amend its plan before the last day of the remedial amendment period, and may apply operationally the new

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1969

James (Kirk) Kirkpatrick is appointed the first Chairman of ASPA's Educational Committee. ASPA holds its first annual conference at Purdue University with approximately 39 attendees. The United States puts the first man on the moon. The Intel Corporation is formed.

1970

ASPA's membership reaches approximately 280 members. Computer-to-computer communication expands as Dept. of Defense establishes four nodes on the ARPANET, paving the way for development of the Internet.

1971

ASPA authorizes the use of the standardized abbreviations to appear after the name of Member (MSPA) or Fellow (FSPA). Intel develops first microprocessor; IBM team invents the first 8 inch floppy disk.

ASPA ASAPs Continue To Inform

by Kevin J. Donovan, APM, CPA

As we enter the year 2000, we enter the 5th year of the *ASPA ASAP* service. As 1999 came to a close so did another successful year for the program. Our intent is to keep you up-to-date with late breaking pension developments. My intent here is to summarize the *ASAPs* that were produced during 1999 and to thank the authors for their time and efforts in making the service one of the best information services on the market today. The following is a discussion of the 1999 *ASAP*s.

1999-1, authored by Fred Reish and Bruce Ashton, was a discussion of the "Best Practices" Memo for Walk-in CAP issued by the IRS;

1999-2, authored by ASPA's Executive Director Brian Graff, was an update on the DOL activity in the area of small plan reporting requirements;

1999-3, authored by Cheryl Morgan, discussed Notice 99-5, the Service's transition rule for hardship distributions' status as eligible rollover distributions;

1999-4 contained Brian Graff's synopsis of the pension provisions contained in the President's fiscal year 2000 budget proposal;

1999-5, authored by Theresa Lensander, was a discussion of Revenue Procedure 99-13, which included an enhancement of the TVC program for 403(b) plans;

1999-6, by Kathryn Smith, discussed the court case of *Sea Ray Employees' Stock Ownership and Profit Sharing Plan et. al. v. Daniel Robinson, et. al.*, a case involving a potential partial termination;

1999-7, authored by Brian Graff, summarized the proposed pension reform legislation known as the Portman-Cardin bill;

1999-8 was our quarterly rate chart. Each quarter our subscribers receive a chart showing relevant PBGC and IRS rates for the preceding 15 months;

1999-9 was authored by yours truly and summarized the restructuring of the EA exams as set forth in Announcement 99-25;

1999-10 was authored by Robert Richter and contained an analysis of Revenue Procedure 99-23, in which the IRS extended the GUST remedial amendment period to the last day of the 2000 plan year;

1999-11, authored by Brian Graff, was an explanation of the USA Account proposal as announced by President Clinton (see *ASAP* 2000-3 announcing the death of this proposal);

1999-12, authored by the Reish-Ashton team, summarized various activities at the DOL, including deposits of 401(k) deferrals and 401(k) fees;

1999-13 was our rate chart for the second quarter;

1999-14, again by Theresa Lensander, explained the 403(b) audit guidelines as published in the Employee Plans Examination Guidelines Handbook;

1999-15, authored by Brian Graff, served as an update on pension reform;

1999-16 by Derrin Watson, discussed the latest in the Microsoft temporary/leased employee cases;

1999-17, again by Brian Graff, contained a summary of the pension

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1972	1973	1974
ASPA's membership reaches approximately 640. First 5 FSPA designations are earned. The first e-mail message is sent via the ARPANET, utilizing @ for addresses.	Original ASPA logo design (central theme of an abacus) is registered with Patent Office. This abacus logo contains the imbedded numeric solution to ASPA's first "one question" exam problem originally developed to obtain membership into ASPA.	ERISA. The actuarial certification process and the "Enrolled Actuary" status are created. ASPA's annual conference at the Mayflower Hotel in Washington, DC is attended by approximately 800 people; the conference theme: "ERISA – A Whole New Ballgame!"

Hardship Withdrawals

by Richard Levesque, Milliman & Robertson

The IRS Restructuring and Reform Act of 1998 (RRA '98) modified certain aspects of the rules regarding hardship distributions from 401(k) plans. As a result, hardship withdrawals of elective contributions from a 401(k) or 403(b) arrangement will no longer be considered an eligible rollover distribution. Therefore, they are no longer eligible for rollover into an IRA, and they are exempt from the 20% mandatory withholding tax that applies to eligible rollover distributions. The primary reason for this change was to prevent participants from avoiding the 10% early withdrawal penalty tax by rolling over their hardship distributions into an IRA. The change became effective for any hardship distribution made after December 31, 1998; however, subsequent to the change in the law, the IRS released Notice 99-5, which provided transition relief until January 1, 2000. As a result of Notice 99-5, sponsors and recordkeepers had the option to process hardship distributions during 1999 using either the old or the new rules. This was to give practitioners sufficient time to update their procedures and systems.

It is important to note that the change in the law applies to elective contributions to 401(k) and 403(b) plans only. Any hardship distributions of employer nonelective contributions under a profit sharing plan or stock bonus plan (including any employer match) are still considered eligible rollover distributions and, as a result, are subject to mandatory withholding and are eligible to be rolled over to an IRA. [Note: There is an exception for qualified nonelective contributions (QNECs) and qualified matching contributions (QMACs).]

Since RRA '98 has brought our attention to the administratively burdensome task of processing hardship withdrawals, it may be a good time to review the hardship rules in general.

The first consideration when processing a hardship withdrawal is whether the participant qualifies for a hardship distribution. This determination is made based on both the specific terms of the plan and any written hardship procedure, as well as the regulations in this area. With respect to hardship withdrawals of elective amounts, the regulations provide that a distribution may be made provided it satisfies the following factors:

1. The withdrawal must be on account of a participant's immediate and heavy financial need.
2. The withdrawal must be necessary to satisfy the need.

When determining if these standards are met, the regulations [Treas Reg 1.401(k)-1(d)(2)] offer two acceptable determinations. Either of the following methods can be applied to each of the two standards. The acceptable determinations are:

- Relevant facts and circumstances test and
- The safe harbor test.

Under the facts and circumstances test, the determination of the immediate and heavy financial need is based on all relevant facts and circumstances being considered. A plan that uses this method should establish guidelines as a basis for what they would consider an acceptable hardship. The criteria for determining whether a hardship request is an immediate and heavy financial need should be precise, nondiscriminatory, and in

1975	1976	1977
ASPA moves its office from Fort Worth, Texas to Washington, DC. Joseph P. Leary, Esq., serves as the first Executive Director of ASPA. ASPA's CPC curriculum is developed and the CPC program begins. Bill Gates and Paul Allen form Microsoft.	ASPA's membership reaches 1,350. The United States celebrates the "Bicentennial." The first computerized word processor is introduced by Wang Laboratories – price: $30,000.	ASPA offers the first Business Techniques seminar.

writing. The regulations specifically note that the need to purchase material objects such as a boat would not meet this standard.

When applying the facts and circumstances determination, whether the withdrawal is necessary to satisfy the need is also determined by considering all relevant facts and circumstances. When making this determination, all financial resources available to the employee should be considered. This would include financial resources from a spouse and/or children, as long as they are readily available to the employee. A determination would need to be made that the need cannot be satisfied from these sources. Since this determination would involve personal insight into the employee's finances, the regulations allow for a written statement from the employee as an acceptable alternative. The written statement should state that the need could not be satisfied through any of the following means:

1. Reimbursement or compensation by insurance or otherwise;
2. Liquidation of the participant's assets;
3. Ceasing of elective and/or voluntary contributions under the plan;
4. Other distributions or nontaxable loans from the plans in which the employee participates; or
5. Borrowing from commercial sources on reasonable commercial terms.

Under the safe harbor test, the determination of the immediate and heavy financial need can only be satisfied if the hardship is as a result of one of the following reasons:

1. Payment of medical expenses incurred by the participant, the participant's spouse, or any of the participant's dependents, as well as expenses incurred in obtaining medical care;
2. Costs related to the purchase of the participant's principal residence (excluding mortgage payments);
3. Payment of tuition, related educational fees, and room and board expenses for the next 12 months of postsecondary education for the participant or the participant's spouse, children, or dependents; or
4. Payment of amounts necessary to prevent the eviction of the participant from the participant's principal residence or foreclosure on the mortgage of the participant's principal residence.

When testing the necessity standard under the safe harbor test, the standard is satisfied only if all of the following requirements are met:

1. Amount of distribution does not exceed the amount necessary to relieve the financial need;
2. All other distributions available to the participant, including nontaxable loans from all plans maintained by the employer have been made;
3. All plans maintained by the employer provide that the maximum amount of elective deferrals the participant may make in the taxable year following the taxable year in which a hardship occurred is reduced by the amount of elective contributions made in the taxable year in which the hardship occurred; and
4. The participant is suspended from making elective contributions and/or voluntary contributions to all plans of deferred compensation, whether or not qualified, maintained by the employer for at least 12 months after the hardship occurred.

If a participant is suspended from making elective contributions as described above, they would still be considered an eligible employee for purposes of the actual deferral percentage (ADP) test if they would be eligible to defer if the suspension were not in place [Treas. Reg. 1.401(k)-1(g)(4)(i)].

The plan sponsor may adopt either methodology for either test. For example, if the plan sponsor wants flexibility in stating the available guidelines for hardships but wants to avoid a personal review of the employee's finances, the plan should adopt the facts and circumstances test for the determination standard and the safe harbor test for necessity standard.

Unlike money purchase pension and defined benefit plans, profit sharing plans and stock bonus plans can allow for hardship distributions. However, non-401(k) hardship distributions (including distributions of matching amounts

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1978

Employee Benefit Research Institute (EBRI) is established as a non-profit, non-partisan organization committed to economic security and employee benefits. The 5 ¼ inch floppy disk becomes the standard medium for personal computer software.

1979

After several Executive Directors have served ASPA for short terms, ASPA hires Chester (Chet) J. Salkind, Esq., bringing stability to the office. VISICALC software hits the market to automate spreadsheet calculation and sells over 10,000 copies in one year.

1980

ASPA hosts its annual conference in New Orleans; this is the last year the annual conference is held at a site other than Washington, DC. Seagate Technology creates the first hard drive for microcomputers.

IRS Releases GUST Restatement Procedure For Prototype Plans

by John P. Griffin, J.D., LL.M. and Charles D. Lockwood, J.D., LL.M.

The wait is over! The Internal Revenue Service finally has issued the much-anticipated procedure for the submission of prototype retirement plans for all GUST law changes. Revenue Procedure 2000-20 also addresses the opening of the volume submitter program. While Rev. Proc. 2000-20 does not specifically address the submission of individually-designed plans, it indicates that the IRS will open the determination letter program "in the near future."

The highlight of the procedure is the special extension of the remedial amendment period that IRS provides to employers that use prototype and volume submitter plans for their GUST restatements. This extension is discussed in detail later in this article.

New "Unified" Prototype Approach

Rev. Proc. 2000-20 consolidates the national prototype program and the regional prototype program into a single "unified" program.[1] Any organization (a financial institution, a law firm, an accounting firm, an actuarial firm, a third party administrator, etc.) that wishes to sponsor a prototype plan for use by its clients will use the procedures outlined in Rev. Proc. 2000-20. The IRS will administer the unified program out of its national office in Washington, DC.

The unified prototype program generally will utilize the terminology from the old national prototype program. For example, all prototype sponsors will receive "opinion letters" (rather than "notification letters" previously issued to regional prototype sponsors) on their approved plans. IRS will refer to entities that sponsor prototype plans as "M&P sponsors."[2]

"Best of both worlds" approach

The unified procedure generally incorporates the best features of the prior national and regional prototype procedures. For example, employers will have the ability under any nonstandardized prototype plan to amend certain trust provisions relating to the plan. Also, the ability to "pair" a standardized defined benefit plan together with a standardized defined contribution plan is available for all M&P sponsors.

The procedure retains the prior format for M&P plans. Thus, an M&P plan will consist of a basic plan document and associated adoption agreements. The basic plan document contains the non-elective provisions of the plan, while the adoption agreement provides for the employer elections with respect to specific plan options. Adoption agreements may be designed in the form of standardized, nonstandardized or nonstandardized safe harbor agreements.

M&P document requirements

The revenue procedure outlines in detail document requirements for M&P plans. Among these requirements are:

- Uniformity requirement.

  Generally, all allocation and benefit formulas in an M&P plan, including a nonstandardized plan, must be uniform for all participants. Exceptions are provided for Davis-Bacon plans, top-heavy provisions, and uniform points plans. One consequence of this requirement is that an M&P plan cannot provide for a "cross-tested" allocation formula,

1981	1982	1983
ERTA. IBM introduces first PC, utilizing MS DOS as the operating system.	TEFRA drastically changes the small plan market. Concept of "top-heavy" is introduced. ASPA offers Business Technique seminars on both East and West coasts for the first time.	The Internet is born, as ARPANET is split into military and civilian sections.

including a "new comparability" or age-weighted formula.[3] Sponsors wishing to utilize a cross-tested formula for their clients will be required to sponsor a volume submitter plan or draft individually-designed cross-tested plans.

- GUST operational compliance provisions.

  An M&P plan must include provisions that allow an employer to specify the method of operational compliance during the GUST remedial amendment period. These provisions can take the form of a "snap-off" section of the adoption agreement. The entire GUST operational section of the adoption agreement may be "snapped off" for employers that do not need to restate retroactively for the GUST law changes.

- Same testing method in 401(k) M&P plans.

  Prospectively, all 401(k) M&P plans must use either the current year testing method or the prior year testing method for both the ADP and the ACP tests. However, throughout the GUST remedial amendment period, an adopter of an M&P plan need not have been consistent with its ADP and ACP testing methods. (For example, for any plan year within the GUST remedial amendment period, an employer using an M&P plan could have used the prior year method for ADP testing, but the current year method for ACP testing, or vice versa.) The GUST restatement will need to reflect the specific testing methods used during the remedial amendment period.

- Safe harbor 401(k) M&P plans.

  An M&P plan may allow the adoption of safe harbor 401(k) features, which generally allow employers to avoid some or all ADP and ACP testing. A nonstandardized plan may allow an employer to make the safe harbor contribution in another plan. However, a standardized plan may allow the employer to make the safe harbor contribution in another plan only if it is a "paired plan."

- No application of family aggregation or Code §415(e) limitation.

  An M&P plan may not allow the continued application of family aggregation or the Code §415(e) limitation. However, special accommodation is made for plan operation during the GUST remedial amendment period.

- Special rule for standardized plans in merger and acquisition situations.

  Generally, a standardized plan must cover all "nonexcludable" employees of an employer. Now, standardized plans may utilize the special transition rule under Code §410(b)(6)(C) and avoid possible plan disqualification for failure to cover all nonexcludable employees following certain mergers and acquisitions.

Timing of Plan Submissions to the IRS

IRS will begin accepting M&P plans for review of all GUST provisions after a "blackout" period. "Mass submitters" may submit plans for opinion letters beginning on April 7, 2000. Non-mass submitter M&P sponsors may submit plans for opinion letters beginning May 7, 2000. Volume submitter plan sponsors may submit specimen plans for advisory letters beginning on March 8, 2000.[4]

A mass submitter is an organization (CORBEL, McKay Hochman, Universal Pensions, etc.) that markets plans for use by M&P sponsors (banks, insurance companies, law firms, third party administrators, etc.). M&P sponsors that utilize a mass submitter plan need not have any minimum number of employers that will adopt the plans. However, an M&P sponsor that does not use a mass submitter document must represent to the IRS that one of the sponsor's basic plan documents will be adopted by at least 30 employers.

For M&P sponsors that use a mass submitter plan, the mass submitter **must** submit applications for opinion letters on behalf of the M&P sponsor. This includes "minor modifiers" of a mass submitter's plan. Mass submitters will likely contact current clients in the near future to explain the submission process.

A practitioner that wishes to take advantage of the lower user fees under the volume submitter program must certify at the time of filing its specimen plan for an IRS advisory letter that at least 30 employers will adopt plans that are substantially similar to the specimen plan. A volume submitter plan may use an adoption agreement format.

Extension of GUST Remedial Amendment Period for Adopting Employers

The GUST remedial amendment period is scheduled to expire on the last day of the 2000 plan year

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1984

REA. ASPA establishes initial consulting agreement with John Erlenborn, who will become one of ASPA's spokesmen for legislative and regulatory issues. Microsoft ships Windows 1.0; Novell introduces Netware; the 3 ½" diskette wins widespread acceptance.

1985

ASPA is first organization to begin formal continuing education program for its actuaries. ASPA establishes the Washington Office Committee to begin automating the ASPA office and to work together with the Long Range Planning Committee to develop a staffing plan.

1986

TRA'86. Microsoft becomes a public corporation.

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Washington Update

been developed, ASPA's Government Affairs Committee (GAC) has expressed concern about the potential impact on already stressed small business defined benefit plans. Fortunately, we have been successful in persuading the authors of the major disclosure bills to apply the most burdensome disclosure requirements only on plans with more than 100 participants. Nonetheless, all plans regardless of size will surely have some increased notice requirements under ERISA section 204(h) when such plans are amended to significantly reduce future benefit accruals. These plans will likely be required to provide affected participants with a general summary of the plan amendment providing more detail on the impact of the amendment than the limited notice required under current law. Under these proposals, plans with more than 100 participants will have to provide even greater disclosures to participants, potentially including individual benefit statements showing the impact of the amendment on the individual participant over a certain number of years using appropriate assumptions. Under a proposal introduced by both Democrats and Republicans in the House and Senate, which is supported by Treasury, the assumptions used in preparing these statements would have to be approved by an Enrolled Actuary. ASPA GAC will continue to work with Congressional staff to make these disclosure proposals as effective and workable as possible.

Beyond disclosure, members of Congress and their staff are seriously reviewing the issue of "wearaway." As you know, "wearaway" is a common method of prospectively applying a plan amendment. However, when a traditional defined benefit plan is converted to a cash balance plan, "wearaway" can effectively result in certain longer service employees not accruing new benefits under the plan for a certain period of time. A number of members of Congress have expressed concern about this phenomenon, and the Equal Employment Opportunity Commission is investigating whether age discrimination issues under the Age Discrimination in Employment Act are raised. Proposals are presently being discussed to eliminate the use of "wearaway." (In case you are wondering, Congress does not seem to care about the fact that "wearaway" was used to apply reductions in limits (e.g., the reduction in the section 401(a)(17)) previously enacted by Congress – trust me, I have tried.) Under most of these proposals, any plan amendment significantly reducing future benefit accruals would have to be applied under a so-called "A plus B formula." Under such a formula, the "A" component of a participant's benefit consists of the old plan benefit (which, in the case of a cash balance plan, can be expressed in the form of a lump sum calculation using 417(e) rates) plus "B"— the benefit earned under the newly amended plan.

ASPA GAC has had some success convincing policymakers that the elimination of "wearaway" should only apply to cash balance plan conversions so as not to harm traditional defined benefit plans. However, this issue is still being hotly debated. If ASPA members are aware of situations where eliminating "wearaway" in regular defined benefit plans could actually hurt participants, please let me know at bgraff@aspa.org.

In addition, the impact of these amendments on early retirement subsidies is being reviewed. Issues and proposals being considered include:

- Whether it would be mandated that early retirement subsidies must attach to benefits earned under the newly amended plan despite the amendment prospectively eliminating the subsidy. This would in effect prohibit plan sponsors from eliminating early retirement subsidies.
- Whether the previously earned early retirement subsidy needs to be available in the form of a lump sum under the new cash balance plan even though the previous subsidy was only available when an annuity form of benefit was elected.
- A more stringent version of the previous concept would require that a participant's opening account balance in the cash balance plan reflect any previously accrued early retirement subsidy regardless of whether the participant has grown into the subsidy.

A related proposal also currently being discussed would adjust the old plan benefit (the "A" component) upon termination to reflect final pay. It has not yet been determined whether this adjustment would only be available if the participant elected to receive the "A" component of his or her benefit in the form of an annuity. A more extreme version of this idea would not only require that the lump sum opening cash balance account be recalculated on termination to reflect final pay, but would

1987

OBRA'87. Current liability calculations are established. ASPA hosts first Business Owners Conference. ASPA presents its first national telecast to over 500 viewers. ASPA is asked to join the Task Force on Strengthening the Actuarial Profession.

1988

TAMRA'88. ASPA's program for QPA designation is completed. ASPA is asked to join Council of Presidents (COP) for North American actuarial organizations. The first "worm" is sent through the Internet, disabling 6,000 of the 60,000 hosts on the network.

1989

OBRA'89. 2,000 actuaries gather in Washington, DC in June to attend the Centennial Celebration of the North American actuarial profession. Microsoft ships Word for Windows.

also require the "B" component of a participant's benefit (i.e., namely the interest and pay credits under the cash balance plan) to be recalculated to take into account the now higher opening account balance.

Needless to say, the debate on cash balance issues is extremely dynamic, and new ideas are constantly being developed. Because of the potential impact of this debate on traditional defined benefit plans, ASPA GAC will continue to stay actively involved. ▲

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

American Workers Deserve to Know

A Message about Pension Benefits from the U.S. Actuarial Profession

AS EXPERTS ON FUTURE COSTS, actuaries make sure that insurance and pension benefits will be there when we need them. As professionals, actuaries work in the public interest.

OVER THE PAST FEW MONTHS, the actuarial role in cash balance pension conversions has come under scrutiny. For the record, actuaries are bound by their code of professional conduct to act honestly and perform services with integrity and are subject to counseling and discipline when they fail to meet the code. Actuaries also believe that American workers should have access to meaningful information about their pension benefits.

EMPLOYEES SHOULD:

- ▲ Receive clear and understandable information about their pensions.
- ▲ Know if pension changes are expected to reduce future benefits.
- ▲ Be able to compare options and understand the consequences of their choices.
- ▲ Be able to request information about their specific situation.

WE STAND READY TO WORK WITH CONGRESS to ensure that workers obtain information to plan for a secure retirement and that America's successful, voluntary private pension system is strengthened.

For more information, contact:

American Academy of Actuaries
Rick Lawson, Executive Director

American Society of Pension Actuaries
Brian Graff, Executive Director

Casualty Actuarial Society

Conference of Consulting Actuaries

Society of Actuaries

This ad was a collaboration between the American Academy of Actuaries, American Society of Pension Actuaries, Casualty Actuarial Society, Conference of Consulting Actuaries, and Society of Actuaries.

WELCOME NEW MEMBERS

Welcome and congratulations to ASPA's new members and recent designees.

MSPA

Francis M. Conway
Lamberto de la Cruz
Barry Kozak
John Parkinson

CPC

Antonio Blasini
John A. Feldt
Michael J. Gardyasz
Kathryn E. Hill
Pamela A. Johnson
Robert J. Kent
Scott A. Keswick
Michael A. Lauhon
Robert L. McNulty
Kerry L. Oetting
Sandra A. Vallinino

QPA

Christopher W. Belcher
Ellen G. Block
Laura J. Brauer
James K. Bryson, Jr.
Sean M. Buck
Joelle Calandra
Ning-Hsing Chang
Ya Ling Sandra Chao
Colleen D. Chiavaras
Ann M. Christian
Kimberly J. Cochrane
Nancy A. Cunningham
Margaret Ann Eliason
Scott J. Fisher
Rebecca L. Fleming
Lisa R. Giles
William R. Hackler
Margaret M. Heffernan
Brian S. Hermann
Christine Hinson
Brian D. Lehmer
Ronald P. Lewis
Marco Marangio
Kimberly A. Musick
Mary Ann Phelan
Kevin P. Rettler
Adrienne L. Robertson
Kim L. Robertson
Heidi L. Routh
Kevin T. Rusch
Hilary S. Shaw
Rita M. Szymanski
Stephen Z. White
Donna M. Woerner
Linda M. Wolff
Scott G. Young

APM

Larry F. Boord
Lawrence J. Eisenberg
Alan B. Golden
Steven Greenbaum
Ralph Paladino
Debe Pennington
Kimberly S. Penny
Theodore G. Reeder, III
Richard A. Rogers, Jr.
Donald Whitmire

Affiliate

Dee Birschel
Matthew Brown
Tracy Brown
David M. Carmichael
Xiaohong Chen
Kristine J. Creighton
James De Rubertis
Edith Dorsey
Stephen S. Evans
Brant J. Griffin
Karen Harbour
Jeanne M. Harrington
Rebecca Harris
Charley Kennedy
Stephen R. Kern
Maryann Klimezek
Lorinda B. Madison
Erick Markey
Peter J. Marriott
Erin D. McCrary-Patton
Nancy A. Murphy
James E. Slater, II
Robin L. Snyder
Mona Van Cleef
Leon J. Wessels
Christopher L. Wildenhaus
Barbara A. Wuertz

1990

ASPA's membership reaches approximately 3,000. Over 1,200 people attend ASPA's annual conference. ASPA promotes use of computerized bulletin board. ASPA signs a Working Agreement with 5 other actuarial organizations of North America.

1991

ASPA Task Force recommends a "tag line" (subsequently adopted) to clarify the nature of the membership – "Actuaries, Consultants, Administrators and other Benefits Professionals." ASPA changes the name of the Business Techniques seminar to the Regional seminar.

1992

UCA'92. IRS creates VCR program, largely as a result of ASPA's comments concerning the harshness of CAP program. ASPA's E&E Committee prepares restructured education program. Actuarial Board for Counseling and Discipline (ABCD) is established.

CONTINUED FROM PAGE 3

EFAST: A New Acronym to Remember

developing an entirely revamped electronic filing system that allows the return to be electronically filed through a modem-to-modem connection, internet File Transfer Protocol (FTP), or various diskette and tape magnetic media formats. The IRS also accepted 5500s electronically, but if you ever tried to use that antiquated system, you quickly learned it was a futile effort since the paper forms still had to be filed because of the legal requirement that the filings be signed.

Electronic filing is the one area that's probably the least well-defined at this point in time. There will be an EFAST-1 form that will need to be completed to receive PIN numbers and encryption codes that will be used to electronically "sign" the filing. Unfortunately, the form is still in internal development and will have to be published in the Federal Register and undergo a 60 day public comment period. This means that it's unlikely to be available before April or May. Nelco is also developing tools that software developers will use to encrypt and transmit the files, however, they aren't expected to be available until April. Since it will take time for the PIN applications to be processed, and there are test filings that need to be done, it's really unlikely that this will get off the ground for 1999 filings in my estimation.

There's also a user guide in development that's aimed at everyone from plan sponsors to developers that contains information on the electronic filing process, application, testing, and specifications. Unfortunately, it's not expected to be available until April 4th.

The contractor receives a bonus for each plan filed electronically, and it is less-costly to process electronic submissions, so there is a big push in this direction. Although no one has said it directly, look for this to be the only way you can file in a few years.

In addition to the EFAST-1 problem, there are also some security and logistical hurdles to jump so that multiple parties at different locations can sign their part of the filing (plan administrator, sponsor, and actuary) using their unique PIN numbers, yet have a third party file the 5500 without being able to alter the data or obtain the PIN. The contractors and the DOL are still on a learning curve when it comes to understanding what happens outside Washington DC, so it's going to take time for them to learn the ropes. Hopefully, they'll develop a system as friendly as the IRS's 1099 electronic filing process in the end.

Notice of errors…

For electronic filing, the filing will go through a preliminary check, and gross errors will be reported directly to the transmitter (i.e., the TPA). By law, content errors for any type of filing have to be directed to the Plan Sponsor, Plan Administrator, and anyone who has an active 2848 on file for the plan. The IRS will continue to process 2848s but will send a weekly tape to NCS with an updated list of 2848s that are active. If a TPA wants to be notified of errors on the forms they file for their clients, they must have a 2848 on file at least one or two weeks prior to filing the 5500. (Get your 2848s in now!!!)

Points of interest…

When using the machine-print forms, note that it will no longer be possible for the TPA to send a partially completed form to the plan sponsor for them to complete the missing data and file the form. Data not included in the barcode when the form is printed will be seen as missing data. Thus, it is imperative that TPAs request all data that will be necessary to complete the forms in their anniversary data requests.

It should also be noted that it is no longer acceptable to place notes on the forms in other than the provided data entry fields. Because both types of forms are scanned and data are entered into a database, anything outside of the expected fields is ignored. All notes must be in the form of attachments, which will be separately processed.

The DOL also stressed at the ASPA Annual Conference, and again at the EFAST Developer's Conference, that it wants filers to file on time, even if necessary information is missing, such as the Accountant's Report, to avoid late filing penalties. They will notify you within 30 days of anything that was missing and give you a period of time to file the missing items. Now, your mind may be spinning the way mine did when hearing this initially, but I wouldn't push it to the extreme and file blank forms just to beat the filing date. There are still those laws about

1993

OBRA'93. ASPA offers One Day 401(k) workshops. Microsoft ships Windows NT.

1994

RPA'94. USERRA.

1995

Edward E. Burrows, MSPA, receives ASPA's first Harry T. Eidson award. GAC establishes ASPA's *ASAP* service. Microsoft ships Windows 95.

knowingly submitting frivolous filings.

Another point that might be of interest is that, at least currently, they will accept mixed hand print and machine print filings, but will not accept mixed electronic and paper filings. However, it's something they hadn't considered originally, and may prohibit mixed filings in the future.

Marketing…

Some would wonder why a government program to file tax returns needs marketing, but the contract with NCS dictates a marketing program. Nelco is responsible for marketing EFAST and will attend trade shows, work with benefits organizations, place ads, and do direct mailings. They will also operate the EFAST web site (tentatively http://www.efast.dol.gov), which should be operational in April.

What's ahead?…

Software vendors began receiving specifications for the final forms in mid-January, and the DOL contractors have promised delivery of the tools to create the two-dimensional barcodes no later than April 1. Software vendors such as ourselves are now working feverishly to incorporate the almost 50 pages of forms into their government forms packages as quickly as possible. Once the forms are incorporated into the systems, along with the 2D barcode, vendors will be required to undergo acceptance testing through the DOL to make sure they are compliant with their requirements. While it's difficult to project exactly when vendors will be able to deliver their 5500 forms packages, one thing is certain… it will be a lot later than it has been over the past few years, and that will hurt a lot of TPAs who bill their clients upon completion of the 5500.

There has been no mention of extending the filing deadline, although we've suggested that the DOL entertain that possibility if their schedules continue to slide. ASPA is also keeping on top of this, so be sure to voice your concerns so that they can keep up the pressure on the DOL to keep the process on track.

It's pretty evident at this stage that we'll all end up with a pretty user-friendly 5500 filing program in the end… but it's going to be a bit "sporting" for the 1999 filing season. ▲

Gary Saake is Vice President of Systems for DATAIR Employee Benefit Systems, Inc. where he oversees product design, development, technical support, and operations. Mr. Saake has been with DATAIR for 11 years, and is an affiliate member of ASPA.

Attention All Designated ASPA Members! Eidson Nominations Now Open!

Nominations are now open for the 2000 Harry T. Eidson Founders Award.

The Harry T. Eidson Founders Award recognizes exceptional accomplishments that contribute to ASPA, the private pension system, or both. The award is given in honor of ASPA's late founder, Harry T. Eidson, FSPA, CPC.

The following criteria are used to determine the nominee:

- The contribution must be consistent with the ASPA mission statement and should have a lasting, positive influence on ASPA or the private pension system.
- The contribution may be current, one that spanned many years, or one made years ago from which ASPA or the private pension system benefit today.
- The contribution should be a result of time devoted above and beyond reasonable expectations, not a result of time spent primarily for personal gain.
- The contribution may be one recognized on a national basis or one more local in nature. Publicity is not a criterion.

ASPA's Membership Committee will make the recommendation for the award after considering a broad base of nominations drawn from the range of ASPA's membership. If you are a voting member of ASPA and know someone you believe meets the criteria, please fill out the enclosed nomination form and return it to ASPA.

The recipient need not be an ASPA member. If no deserving candidate is found, no award will be given.

The award is presented at the ASPA Annual Conference, and the winner's name is engraved on a plaque at the ASPA office.

Previous winners: Howard J. Johnson, MSPA, in 1999, Andrew J. Fair, APM, in 1998, Chester J. Salkind in 1997, John N. Erlenborn in 1996, and Edward E. Burrows, MSPA, in 1995.

Nominations will be accepted until **May 15**. You will find a nomination form in this issue of *The Pension Actuary*.

1996

SBJPA'96. SIMPLE plans introduced. Atlanta establishes first ASPA Benefits Council (ABC). Brian H. Graff, Esq., succeeds Chester (Chet) Salkind as Executive Director of ASPA. The web site **www.aspa.org** is born.

1997

TRA'97. Uruguay Round Agreements Act '97 (GATT). Roth IRAs are established.

1998

RRA '98. ASPA's Political Action Committee (PAC) is formed. IRS established Employee Plans Compliance Resolutions System (EPCRS), consolidating APRS, VCR, Walk-in CAP and Audit CAP. ASPA introduces new Internet-based e-mail system.

CONTINUED FROM PAGE 4

Required Minimum Distribution Transitional Rules

RBD definition. When X amends its plan, the plan amendment must be consistent with the plan's operation. The amendment must be effective retroactively to the date X began applying the new RBD definition.

Eliminating the option of post-age 70½ in-service distributions

The pre-1997 RBD definition currently in most plan documents creates an in-service distribution option for participants who continue working beyond the pre-1997 RBD (i.e., April 1 following the calendar year in which the employee attains age 70½). The SBJPA transitional rules for required minimum distributions permit an employer to eliminate this in-service distribution option for participants other than 5% owners, provided the employer satisfies certain conditions (discussed below). An employer that considers restricting plan distributions to distributions required under the post-1996 RBD definition must take into account other distribution features currently in the employer's plan. For example, many defined contribution plans provide for an in-service distribution at normal retirement age or at some other stated age such as 59½. Since this in-service option already permits distributions earlier than the distribution date under the pre-1997 RBD definition, the employer with such an in-service distribution option would not amend its plan to eliminate the post-age 70½ in-service distribution option. However, the sponsor of a defined benefit plan may not wish to provide for an in-service distribution option. The employer only may eliminate the post-age 70½ in-service distribution option by a plan amendment which does not violate the anticutback rule.

The anticutback rule generally prohibits an employer from eliminating an optional form of benefit with respect to accrued benefits existing on the later of the adoption date or the effective date of the amendment. However, the Revenue Service has authority to permit, by regulations, amendments to eliminate an optional form of benefit without violating the anticutback rule.[4] An amendment to eliminate an existing post-age 70½ in-service distribution option will not violate the anticutback rule, provided: (1) the amendment only applies to benefits with respect to employees who attain age 70½ in or after a calendar year, specified in the amendment, that begins after the later of December 31, 1998, or the adoption date of the amendment; (2) the plan preserves the same optional forms of benefit (e.g., lump sum, installments, etc.) the employee would be able to receive if the employee had retired in the calendar year in which the employee attained age 70½; and (3) the employer adopts the amendment no later than the last day of the remedial amendment period.[5]

Example #2. Corporation Y has maintained a qualified defined benefit plan since 1992. The plan generally permits distributions only after separation from service, but includes the pre-1997 RBD definition. The pre-1997 RBD definition creates an in-service distribution option in post-1996 years. Y has permitted employees who attained age 70½ during 1997, 1998, and 1999 to receive in-service distributions. During November 1999, Y decides to eliminate the option to receive in-service distributions and to apply prospectively the post-1996 RBD definition. Y amends the plan during December 1999 to eliminate post-age 70½ in-service distributions for employees (other than 5% owners) who attain age 70½ *after December 31, 1999*. The amendment is valid, provided the plan preserves the distribution options available to any employee who would have retired during the employee's age 70½ year.

Example #3. Assume in Example #2, employee B, a non-owner, attains age 70½ during the year 2000 but continues employment with Y until 2003. The December 1999 amendment to the Y plan prevents B from receiving a distribution before her new RBD, unless she separates from service with Y. However, when B reaches her RBD, B must be eligible for the same

1999

ASPA's theme for annual conference is: "ERISA – The First 25 Years and Into the New Millennium." First CD ROM is offered for ASPA's annual conference materials. ASPA's E&E Committee offers Virtual Study Groups (VSGs) for exams with online and live review sessions. ASPA combines Eastern and Western Regional Seminars into first larger Summer Conference in San Francisco.

2000

ASPA's membership exceeds 3,800. ASPA offers the new Daily Valuation course. Rev Proc. 2000-20 is issued, outlining opening of GUST amendment/restatement program submissions for prototypes and volume submitter plans. The world celebrates the dawn of the new millennium (although many ASPA members know it's really next year!). The fear of Y2K subsides...

optional forms of benefit she would be able to elect had she retired during her age 70½ year, except for the difference in the timing of commencement of distributions.

Normally, the amendment described in Example #2 would violate the anticutback rule with respect to the benefits accrued as of the later of the adoption date or the effective date of the amendment. As Example #3 illustrates, the permissible amendment takes from B the option to begin distributions at age 70½, since B continues employment. However, the amendment may not eliminate any distribution options B would have been able to receive if B had retired in 2000, the calendar year B attained age 70½.

Commencing distributions under the plan's pre-1997 terms

In lieu of applying the post-1996 RBD definition, the employer may continue to apply the pre-1997 RBD definition, *requiring* each employee to begin distributions on the April 1 of the calendar year following the attainment of age 70½ even if the employee is still working for the employer.[6] To adopt this approach, the employer simply continues to follow the plan's pre-1997 age 70½ distribution provision, and then incorporates the same pre-1997 RBD language into its plan restatement during the remedial amendment period. If the employer adopts this approach, the plan determines both the employee's designated beneficiary and whether the employee will apply recalculation of life expectancy based on any election in effect on the *plan's* required distribution date and without regard to the post-1996 RBD definition. Furthermore, if the employee dies after the plan's required beginning date, the plan must treat the employee as dying *after* the required beginning date for purposes of applying the "death distribution" rules. An employer will not choose this approach if it wishes to provide maximum flexibility to employees regarding the timing of distributions.

Example #4. Corporation X maintains a qualified 401(k) plan. X decided during 1996 to continue to apply the plan's requirement to commence distributions to all employees no later than the April 1 of the calendar year following the calendar year in which an employee attains age 70½. The plan permits an employee to elect, not later than the plan's required beginning date, whether to recalculate the life expectancy of the employee and of a spousal beneficiary, if any. Employee C is not an owner of X and has named her husband as her designated beneficiary. C attains age 70½ on December 1, 1999, but continues employment with X. The plan, under the plan's required distribution provision, must commence distributions to C no later than April 1, 2000, notwithstanding C's continued employment with X. C must elect, not later than April 1, 2000, whether to recalculate her and her husband's life expectancies.

Permitting an employee who commenced required distributions under the pre-1997 RBD definition to discontinue distributions

An employer may permit an employee who attained age 70½ before 1997 but did not retire before January 1, 1997, to discontinue the distributions at any time until the employee's new RBD. The employee's election to stop and recommence distributions is subject to the joint and survivor requirements if the plan otherwise is subject to the joint and survivor requirements, and is subject to the terms of any applicable QDRO.[7] Presumably, an employer that has continued to make distributions under the plan's pre-1997 provisions may decide during the remedial amendment period, for example during 2000, to permit any employee to discontinue distributions.

A special transition rule applied to a plan that failed to make required distributions between August 20, 1996 (the enactment date of SBJPA), and December 31, 1997, to an employee who attained age 70½ during 1996 and who did not retire by the end of 1996. This transition rule required, not later than December 31, 1997, either make up distributions or the employee's election to defer distributions.[8]

Rollover eligibility of post-age 70½ distributions

A plan distribution is eligible for rollover unless the distribution falls within one of a few exception categories.[9] One of the exception categories is a required minimum distribution after an employee reaches his/her RBD. For purposes of determining whether a distribution to an employee who did not retire before January 1, 1997, is a required minimum distribution, the plan applies the post-1996 RBD definition.[10] Therefore, even if the plan continues to apply the pre-1997 RBD definition, distributions *before* the employee's RBD under the post-1996 RBD definition are *not* required minimum distributions. However, post-age 70½ distributions to an employee who has not retired still may not be eligible for rollover. A distribution is not an eligible rollover distribution if the distribution is one of substantially equal periodic payments made at least annually for a period of at least ten years, or for the life or life expectancy of the

employee, or for the joint lives or joint life expectancies of the employee and a designated beneficiary. For example, life expectancy distributions to an employee, other than a 5% owner, who attains age 70½, but who has not retired from employment with the employer, are not eligible for rollover, even though the distributions are not required minimum distributions.

Five percent owner rule

The SBJPA change in the RBD definition does *not* apply to a 5% owner of the employer.[11] An employee is a 5% owner if the employee has the required ownership interest on any day during the plan year ending in the calendar year in which the employee attains age 70½. The required ownership interest is *more than* 5% of the outstanding stock or of the total voting power of all stock of a corporation (taking into account the ownership attribution rules of Code §318) or *more than* 5% of either the capital interest or the profits interest in a partnership.[12] Therefore, an employee who is a 5% owner of the employer before or after, but not during the applicable plan year, is not a 5% owner for purposes of the required distribution rules. However, if an employee *is* a 5% owner under the definition described in this paragraph, distributions to the employee must continue even if the employee ceases to be a 5% owner in a subsequent year. Also note that the five-year lookback rule for determining key employee status does not apply for this purpose.

Example #5. During 1996, M, the founder of corporation Y, sold 100% of the corporation Y stock to an unrelated corporation when M was age 68. M attained age 70½ during 1998 but remains a Y employee and a participant in Y's calendar year profit sharing plan. The Y plan applies the post-1996 RBD definition. M has not reached his RBD. The 5% owner rule does not apply to M because he was not a 5% owner during the 1998 plan year, the plan year ending in M's age 70½ calendar year. M need not commence distributions prior to separation from service.

No change in IRA required distribution rules

The SBJPA change in the RBD definition does *not* have any effect on required distributions from an individual retirement account ("IRA"). An individual's RBD with respect to his/her IRAs *remains* April 1 of the calendar following the calendar year in which the individual attains age 70½.[13] Employment with any employer does not affect the RBD with respect to an IRA. Therefore, an individual must begin taking required IRA minimum distributions even if the individual has not reached his/her RBD with respect to an employer's plan.

Conclusion

SBJPA liberalized the required distribution rules by eliminating the requirement for an employee, other than a 5% owner, to begin distributions from a qualified plan prior to retirement. Since most plans currently include the pre-1997 RBD definition, requiring distributions to commence no later than the April 1 of the calendar year following an employee's attaining age 70½, an employer by now should have chosen whether to retain the pre-1997 rules or to apply the more flexible post-1996 RBD definition. If the employer wishes to eliminate in-service distributions for post-age 70½ employees who are not 5% owners, the employer still may do so, but only prospectively. When the employer restates its plan for SBJPA and other law changes during the "GUST" remedial amendment period, the plan's provisions must reflect the plan's operation. ▲

Warren T. Marshall, J.D., LL.M., is an attorney with Pension Publications of Denver, a division of CORBEL. Mr. Marshall is a PPD ERISA seminar presenter and is a contributing author to the PPD Pension Library.

1 Code §401(a)(9). The minimum distribution requirements also apply to a 403(b) plan (see Code §403(b)(10)) and to a 457 plan (see Code §457(d)).

2 See Rev. Procs. 97-41 and 99-23.

3 Announcement 97-24.

4 Code §411(d)(6)(B)(ii), flush language.

5 Treas. Reg. §1.411(d)-4, Q&A-10. A special adoption date applies in the case of an electively-bargained plan. See Treas. Reg. §1.411(d)-4, Q&A-10(b)(3)(ii).

6 Notice 97-75, Q&A-10.

7 See Notice 97-75, Q&A-7.

8 See Announcement 97-70.

9 Code §402(c)(4).

10 Notice 97-75, Q&A-9.

11 Code §401(a)(9)(C)(ii)(I).

12 Code §401(a)(9)(C)(ii)(I) and 416(I)(1)(D)(i)(I).

13 Code §401(a)(9)(C)(ii)(II).

Notice

ASPA is currently soliciting bids from firms interested in developing a multimedia course for the PA-1 exam. Anyone interested should contact Kevin Scott, ASPA's Director of Education Services, at (703) 516-9300 and ask for a Request for Proposal.

CONTINUED FROM PAGE 5

ASPA ASAPs Continue To Inform

legislation that was included in the House of Representative's Tax Bill;

1999-18, authored by Sal Tripodi, summarized several positions the IRS had publicly taken regarding 401(k) plans and safe harbor 401(k) plans. Many of these issues were clarified in Notice 2000-3 (see *ASAP* 2000-1);

1999-19, by the Reish-Ashton, team discussed the DOL's release on disclosure requirements for 401(k) fees;

1999-20 was Brian Graff's discussion of pension reform legislation in the Senate Finance Committee, and 1999-21 was a discussion of what made it into the conference bill;

1999-22 discussed Revenue Procedure 99-31, the Service's long awaited correction examples under EPCRS;

1999-23, by J. Michael Pruett, analyzed PLR 199931047 regarding certain issues revolving around the termination of a 401(k) plan and the ability to make distributions;

1999-24, by Kurt Piper, explained Notice 99-44, the Service's long awaited guidance on the repeal of Section 415(e);

1999-25, by Bruce Ashton and Joseph Faucher, discussed the DOL's attempt to label a TPA a fiduciary where the TPA operated a voice automated telephone system for 401(k) participants;

1999-26 contained our 3rd quarter rate chart;

1999-27, written by yours truly, announced the cost-of-living adjustments contained in IRS News Release 99-80 and clarified a couple of questions in connection with such COLAs;

1999-28, by Craig Hoffman, discussed the status of the GUST updating procedure after statements from government officials at ASPA's annual conference;

1999-29, by *ASAP* Committee member G. Neff McGhie, explained Revenue Procedure 99-45, the Service's modification of the requirements for funding method changes;

1999-30, by R. Bradford Huss, was an explanation of the proposed DOL regulations for small plans, including the new requirements for waiver of plan audit;

1999-31 was our rate chart for the 4th quarter;

1999-32 was our annual 10-Year COLA Summary; and

1999-33, by Fred Reish and Joe Faucher, examined the DOL's case against Time-Warner for alleged misclassification of employees.

All of the above for only $55. Delivered to your fax machine or e-mail address "as soon as possible." Again, I'd like to thank each of the authors above, the ASPA staff, and my fellow committee members: Neff McGhie, Larry Starr, Bill Taylor, Ed Snyder and Chris Trapatsos. ▲

Kevin J. Donovan, APM, CPA, is Chairman of the ASPA ASAP Committee. Mr. Donovan owns and operates Tucson Pension Consultations, a pension consulting firm in Tucson, Arizona. He is a member of ASPA's Board of Directors, a member of the SIMPLE/401(k) subcommittee of the Government Affairs Committee, and is Asst. Chair of the 2000 Summer Conference in San Francisco. Mr. Donovan is a frequent speaker at ASPA events, and serves on the Technical Review Board for The Pension Actuary.

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Hardship Withdrawals

from a 401(k) plan) are not subject to the same restrictions that apply to elective deferrals. By law under Regulation 1.401-1(b)(1)(ii), the rules governing non-elective contributions are not as restrictive, however, many plans apply the same standards as are applied to 401(k) and or 403(b) amounts for administrative ease. In general, Revenue Ruling 71-224 provides that a plan (other than a pension plan) may distribute all or a portion of a participant's vested account balance provided the following three standards are met:

1. Hardship is defined in the plan;
2. Uniform and nondiscriminatory rules are followed in determining whether a hardship exists, and the amount of the distribution is necessary to alleviate the hardship;
3. The amount of the hardship distribution does not exceed the participant's vested interest under the plan.

Note, however, that any qualified nonelective contributions (QNECs) and qualified matching contributions (QMACs) are not eligible for hardship distribution under a plan. An exception does exist, however, if the plan allows for any QNECs and/or QMACs (plus earnings) that were used to satisfy the ADP and ACP tests as of December 31, 1988 or the end of the last plan year ending before July 1, 1989.

Determining the exact amount available for hardship presents an administrative challenge to the sponsors of 401(k) plans. Not only do they need to maintain the participant's current account balance, but they also need to

keep track of the elective deferrals (net of earnings) as well as any additional permissible amounts (i.e., pre-1988 elective deferral earnings and to the extent the plan provides, pre-1988 QNECs and/or QMACs (including earnings)). It may be a good idea to review recordkeeping procedures to determine if the hardship basis is being adequately tracked.

In general, the amount distributed must not exceed the amount of need. However, the distribution may be grossed up by amounts necessary to pay federal, state, or local income taxes as well as any penalties resulting from the distribution [Treas. Reg. 1.401(k)-1(d)(2)(iv)(b)(1)]. This is the case even though under the new rules, there is no longer immediate withholding. Remember, these distributions are still subject to the 10% early withdrawal tax in most cases.

In light of these new rules, a plan may need to maintain more than one set of hardship distribution forms, or clarify that certain aspects do not apply to certain amounts. For example, because these distributions are no longer eligible for rollover, the sponsor is not required to provide the participant with a special tax notice regarding plan payments. However, this notice is applicable to non-401(k) hardship withdrawals even if the more restrictive 401(k) rules are being applied to determine the validity of the request. Non-401(k) hardship withdrawals are still considered eligible rollover distributions. Therefore, they are subject to the 20% mandatory withholding if not rolled over into an IRA.

As a result of the remedial amendment period, a plan may have conflicting language with respect to hardship distributions. If applicable, plans must adopt the new rule under the GUST remedial amendment period, pursuant to section VI of Notice 99-5 and Rev. Proc. 99-23. Notice 99-5 refers to the remedial amendment period ending on December 31, 1999. However, Rev. Proc. 99-23 extends this deadline to the last day of the 2000 plan year. (Note: The recent Rev. Proc. 2000-20 extended this deadline again.) The effective date of the amendment must be retroactive to the later of January 1, 1999 or the first day the plan operates under the new rules.

Although the regulations regarding hardship distributions are complex, allowing for the availability of hardships in plans is an attractive feature when trying to encourage non-highly compensated employees to participate. With well-documented procedures and guidelines such as those described above, plan sponsors should feel confident that this plan feature is being administered in compliance with the regulations and at the same time should be well understood by the participants. ▲

Richard Levesque is a senior plan administrator with the actuarial and consulting firm of Milliman & Robertson in Albany, New York.

401(k) Hardship Withdrawals Checklist

Participant Name ___________________________

Reason for Hardship _________________________

Has written documentation verifying reason for hardship been obtained? ❑ Yes ❑ No (If yes, proceed; if no, request it)

Step 1: Immediate and Heavy Financial Need

Select and complete the method the Plan uses to determine a hardship's Immediate and Heavy Financial Need:

❑ **Safe Harbor**

Does the reason stated above qualify under the safe harbor test? [Medical Expenses (participant, spouse, or dependant); Principal residence (excluding mortgage payments) (participant); Tuition, fees & boarding expenses for the next 12 months of postsecondary education (participant, spouse, children, or dependents); or Eviction or foreclosure (participant)] ❑ Yes ❑ No (If yes, proceed to Step 2. If no, refuse request.)

❑ **Facts and Circumstances**

Does the reason stated above qualify under the facts and circumstances test? [Qualifies under the plan's written guidelines (considering all relevant fact and circumstances) for determining an immediate and heavy financial need] ❑ Yes ❑ No (If yes, proceed to Step 2. If no, refuse request.)

Step 2: Necessary to Satisfy the Need

Select and complete the method the Plan uses to determine if a hardship is Necessary to Satisfy the Need:

❑ **Safe Harbor**

In order to qualify under the Safe Harbor Method, all of the following must be satisfied:

❑ Distribution is not in excess of the amount of need (including amounts necessary to pay taxes &/or penalties);

❑ All possible plan distributions from all participating plans have been made;

❑ All nontaxable loans from all participating plans have been made;

❑ All participating plans maintained by the employer provide that the maximum amount of elective deferrals in the taxable year following the taxable year in which a hardship occurred is reduced by the amount of elective contributions made in the taxable year in which the hardship occurred; and

❑ Participant is suspended from making elective contributions and/or voluntary contributions to all plans maintained by the employer for at least 12 months after the hardship occurred.

Does the need qualify as necessary under the safe harbor test? ❑ Yes ❑ No (If yes, proceed to Step 3. If no, refuse request.)

❑ **Facts and Circumstances**

Select and complete the method the Plan used to determine the facts and circumstances test:

❑ Financial Evaluation

❑ Financial resources available to the employee including resources from their spouse and/or children (if readily available to the employee) cannot satisfy the need;

Does the need qualify as necessary under the facts and circumstances test? ❑ Yes ❑ No (If yes, proceed to Step 3. If no, refuse request.)

❑ Written Statement – states that the need could not be satisfied by any of the following means:

❑ Reimbursement or compensation by insurance or otherwise;

❑ Liquidation of the participant's assets;

❑ Ceasing of elective and/or voluntary contributions under the plan;

❑ All possible plan distributions from all participating plans have been made;

❑ All nontaxable loans from all participating plans have been made;

❑ Borrowing from commercial sources.

Does the need qualify as necessary under the facts and circumstances test? ❑ Yes ❑ No (If yes, proceed to Step 3. If no, refuse request.)

Step 3: Amount Available for Hardship

The amount of hardship withdrawal must not exceed the amount of need plus any amounts needed to pay federal, state, or local income taxes and penalties.

Amount Needed $_______

Other distribution and loan offset:

Less other forms of distributions (as required under Step 2) $_______

Less any loans (as required under Step 2) $_______

A. Balance qualifying for hardship $_______

Amount of elective deferrals available for hardship withdrawal:

Cumulative elective deferral contributions (net earnings) (post-1988) $_______

Plus elective deferral account (including earnings) (pre-1989) $_______

Plus applicable QNECs or QMACS (including earnings) (pre-1989 only) $_______

Total $_______

Other sources available for hardship withdrawal:

Matching Contributions $_______

Profit Sharing or Stock Bonus amount $_______

Rollover $_______

Total $_______

B. Grand Total available for hardship $_______

Amount of Hardship Withdrawal (greater of A or B) $_______

Step 4: Distribution and Taxation of Hardship Withdrawal

Amount ineligible for Rollover:

Total elective deferrals (stated in Step 3) $_______

Tax – no 20% withholding required

Amount available for Rollover:

Total other sources (stated in Step 3) $_______

Tax – 20% withholding applies to all amounts not distributed as a rollover distribution

Form of Distribution (i.e., lump sum, rollover, etc.): _______________

Qualified Joint and Survivor:

Does plan provide for qualified joint and survivor annuities? ❑ Yes ❑ No (If yes, proceed.)

❑ Waiver received if distribution is elected in an alternative form

❑ Spousal consent received if distribution is elected in an alternative form

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IRS Releases GUST Restatement Procedure For Prototype Plans

(e.g., December 31, 2000 for calendar year plans). However, pursuant to Rev. Proc. 2000-20, employers that wish to use an M&P plan for their GUST restatement will be given a special extension of the time to amend their plans and file for determination letters, if necessary. For employers using M&P plans, the GUST remedial amendment period will be extended **until the end of the 12th month following the issuance of the M&P sponsor's opinion letter.**[5] Employers using volume submitter plans will receive the same 12-month extension from the date of the advisory letter. At this time, the IRS has not provided any additional extension of the remedial amendment period beyond the end of the 2000 plan year for individually-designed plans.

In order to receive the special extension of the remedial amendment period, an M&P sponsor must file for its GUST opinion letter by December 31, 2000. In addition, an adopting employer must: (1) adopt an M&P plan by the end of the 2000 plan year, or (2) execute with the M&P sponsor a written certification that it will adopt that sponsor's M&P plan by the end of the 2000 plan year. Option (1) includes an employer currently using a pre-GUST national or regional prototype plan. This means that employers who currently use a pre-GUST national or regional prototype plan generally will not need to take any action by the end of their remedial amendment period to receive the 12-month extension. Option (2) will normally be used by an employer wishing to convert its individually-designed plan to an M&P plan for the GUST restatement.

If an employer adopts an M&P plan by the end of the 2000 plan year, but later decides to switch to the M&P plan of a different M&P sponsor, the 12-month period will run with reference to the date of the opinion letter of the original M&P sponsor. Alternatively, the employer could execute a certification with the different M&P sponsor by the end of the 2000 plan year.

If an employer has amended its prototype plan into an individually-designed plan during the GUST remedial amendment period, the employer still will receive the 12-month extension, provided the employer adopts a GUST document by the end of the extended remedial amendment period. (See Example 5 below.)

While the 12-month extension provides welcomed relief, practitioners must carefully assess the situation for particular clients. Failure to amend timely could result in plan disqualification or the need to use the walk-in CAP correction procedure. The following examples illustrate the special 12-month extension of the remedial amendment period.

Example 1. ABC Corporation, an employer, maintains a pre-GUST nonstandardized regional prototype plan sponsored by Consulting Firm, a third party administration firm. ABC Corporation's plan has a calendar plan year. The normal GUST remedial amendment period would end December 31, 2000. Under Rev. Proc. 2000-20, Consulting Firm's regional prototype plan is now an M&P plan. In July, 2000, Consulting Firm submits its GUST M&P plan for an IRS opinion letter. The IRS issues the opinion letter for the M&P plan in October 2000. Because the ABC Corporation had adopted an M&P plan by December 31, 2000, the remedial amendment period for the ABC Corporation plan is extended under the special 12-month extension until October 31, 2001.

Example 2. Assume in Example 1 that Consulting Firm purchased its pre-GUST regional prototype plan from Mass Submitter X. Consulting Firm's GUST M&P plan was purchased from Mass Submitter Y. ABC Corporation still is entitled to the 12-month extension because, by the end of its 2000 plan year, it had adopted Consulting Firm's pre-GUST document. The fact that Consulting Firm has changed mass submitter providers is irrelevant.

Example 3. Assume in Example 1 that ABC Corporation decides to make its GUST restatement by adopting the M&P plan of Bank Y. Until the adoption of Bank Y's M&P plan, ABC Corporation continues to maintain the pre-GUST document of Consulting Firm. Under the 12-month rule, ABC Corporation may restate its plan to comply with GUST by adopting Bank Y's GUST document after the end of the 2000 plan year. However, the 12-month period is determined with respect to the date of Consulting Firm's opinion letter, not the date of Bank Y's opinion letter. If ABC Corporation signs a certification with Bank Y by the end of the 2000 plan year, the 12-month extension would be measured from the date of Bank Y's opinion letter.

Example 4. Assume XYZ Company maintains a pre-GUST individually-designed plan (with a calendar plan year) drafted by Law Firm. Law Firm is a sponsor of a pre-GUST regional prototype plan. Law Firm submits its GUST M&P plan for an IRS

opinion letter in June 2000 and receives its opinion letter in November 2000. If XYZ Company executes a written certification by December 31, 2000 that it intends to adopt the Law Firm's M&P plan for its GUST restatement, then XYZ Company will have until November 30, 2001 to formally adopt its GUST restatement.

Example 5. Suppose one of Law Firm's clients, Medical Practice, originally had adopted the Law Firm's regional prototype plan in 1995, but modified the plan to incorporate a "cross-tested" formula in 1998. This amendment caused Medical Practice's plan to become an individually-designed plan in 1998. However, under Rev. Proc. 2000-20, the plan is still treated as an M&P plan for purposes of the 12-month extension. Therefore, Medical Practice has until November 30, 2001 to formally adopt its GUST restatement. Assuming Medical Practice will continue to use the cross-tested formula, it will need either to adopt an individually-designed plan or a volume submitter plan that accommodates its formula.

Expanded Reliance on Opinion Letter for Standardized Plans

Under the prior procedures, an adopting employer could rely on the opinion letter issued for a standardized plan (and not submit the plan for an IRS determination letter), if the employer did not at any time maintain another plan (except for a "paired plan"). Rev. Proc 2000-20 expands the reliance on standardized plan opinion letters. An employer that adopts an approved standardized M&P plan may rely on the plan's opinion letter, even though the employer maintained a prior defined contribution plan or a prior defined benefit plan,[6] provided (1) the prior plan was terminated before the effective date of the new standardized plan; (2) in the case of a defined contribution plan, no annual additions were allocated to that prior plan during a limitation year of the new standardized plan; and (3) in the case of a defined benefit plan, the new standardized defined contribution plan must be effective after the repeal of Code §415(e).

Rev. Proc 2000-20 clarifies that the restatement of an existing plan using a standardized plan is not treated as the maintenance of a prior plan, provided the plan being restated is the same type (i.e., profit sharing plan being restated into a profit sharing plan).

M&P Sponsor Duties

Rev. Proc. 2000-20 sets forth more specifically the duties of an M&P sponsor. Among the duties are:

- An M&P sponsor must maintain a list of all employers that have adopted its plan. The list must include the employer's name, business address, and taxpayer identification number. The sponsor is required to provide this list to the IRS **upon request.** The sponsor is **NOT** required to provide an annual notice to adopting employers that the sponsor continues to maintain the M&P plan.
- If the M&P sponsor believes that an adopting employer's plan is no longer a qualified plan, the sponsor must notify the employer of this concern, advise the employer of the adverse tax consequences that may result, and inform the employer about the availability of the IRS correction programs.
- An M&P sponsor's adoption agreements must include the sponsor's address and telephone number for inquiries from adopting employers regarding the adoption of the plan, the meaning of plan provisions, and the effect of the opinion letter.
- The M&P sponsor must provide each adopting employer with copies of the approved plan, any subsequent amendments, and the most recently issued opinion letter.
- The M&P sponsor must notify the IRS if the sponsor changes its name.
- An M&P sponsor is required to make reasonable and diligent efforts to ensure that each adopting employer amends its M&P plan when necessary.
- An M&P sponsor must notify the IRS in writing of an approved M&P plan that is no longer used by any employer and which the sponsor no longer intends to offer for adoption.
- An M&P sponsor must notify adopting employers if the sponsor intends to abandon the plan and inform the adopting employers of the consequences of this action.

Conclusion

Now that the IRS has issued the procedure for M&P and volume submitter plans, practitioners can start to gear up for the GUST restatement process. Our understanding is that the IRS will issue another revenue procedure dealing with the determination letter process shortly. Surely, the review process at the IRS will take time, and it is likely opinion letters on M&P and volume submitter plans will not be issued until summer or fall. In the meantime, legislation affecting qualified plans is pending on Capitol Hill. If enacted, the impact on the GUST restatement process is uncertain. Unfortunately, it is difficult to plan with this uncertain future. IRS has informally indicated that passage of new pension legislation could (but may not) cause

an extension of the GUST remedial amendment period. However, IRS realizes the operational and compliance problems that will be caused for employers and M&P sponsors should the GUST restatement process be delayed. Only time will tell. ▲

John P. Griffin, J.D., LL.M., and Charles D. Lockwood, J.D., LL.M., are partners with Global Benefit Advisors, LLC in Englewood, Colorado. Each has over 15 years experience in the employee benefits area. Their practice specializes in qualified plan drafting, employee benefit seminars and compliance consulting. They are currently drafting a new mass submitter M&P plan for FDP Corp. (now affiliated with CORBEL). *The authors wish to express their appreciation to Sal Tripodi, APM, of TRI Pension Services for his assistance with this article.*

[1] Rev. Proc. 2000-20 replaces Rev. Proc. 89-9 relating to the national prototype program and Rev. Proc. 89-13 relating to the regional prototype program.

[2] The M&P stands for master and prototype. In a master plan, the assets of all adopting employers are invested in a single funding medium (such as a master trust). In a prototype plan, the assets of each adopting employer are invested in a separate funding medium. Prototype plans are more common. This article uses the term M&P plan to describe both master and prototype plans.

[3] The government's internal discussions of whether to allow cross-tested M&P plans apparently was a reason for the delay in the issuance of the procedure. IRS had indicated informally that it planned to allow for cross-tested M&P plans. However, the final version of Rev. Proc. 2000-20 clearly prohibits cross-tested M&P plans. This outcome is unfortunate for M&P sponsors since they will now need to take an alternative approach for their many cross-tested plans.

[4] Mass submitters and non-mass submitter M&P sponsors will mail applications to: Internal Revenue Service, Employee Plans Rulings and Agreements, Attention: T:EP:RA:T:ICU, P.O. 14073, Ben Franklin Station, Washington, DC 20044. Volume submitters will mail applications to: Internal Revenue Service, P.O. Box 2508, Cincinnati, OH 45201, Attention: VSC Coordinator, Room 4106.

[5] The IRS may approve an extension of the 12-month period in specific circumstances.

[6] Assume the prior plans were not "paired plans."

The ABCD's Commitment to High Standards

Note: An edited version of the following letter was published November 26 by the Wall Street Journal. *The letter, from Henry K. Knowlton, vice chairperson of the Actuarial Board of Counseling and Discipline (ABCD), responded to the newspaper's October 29 article reporting that the Labor Department planned to examine actuarial firms' roles in helping employers convert to cash balance pension plans from traditional plans. The article reported that from its 1992 inception through 1998, the ABCD had disciplined "only" seven actuaries.*

November 18, 1999

Dear Sir:

In her October 29 article in the *Wall Street Journal*, Ellen Schultz made reference to the Actuarial Board for Counseling and Discipline. As a member and former chairperson of the ABCD, I was more than disappointed by the dismissive tone of Ms. Schultz's comments.

The ABCD is a volunteer board that takes its responsibilities to the actuarial profession and the public very seriously. The number of actuaries who have been disciplined may seem relatively small in the abstract, but it must be remembered that the actuarial profession itself is minuscule compared to other professions. There are fewer than 18,000 actuaries in the entire United States. By contrast, there are more than 40,000 lawyers admitted to practice law in the District of Columbia alone.

Ms. Schultz's article fails to report that, from its inception, the ABCD has considered more than 150 cases that could have resulted in disciplinary action. Where the complaints were without merit, the ABCD dismissed them. In many cases, however, the ABCD offered specific guidance directing actuaries to improve their practices. Ms. Schultz also ignores the more than 100 instances where conscientious actuaries have voluntarily contracted the ABCD requesting guidance on how to deal with thorny professional issues.

The ABCD is committed to maintaining the high standards of conduct, practice, and qualification of the actuarial profession. I would urge Ms. Schultz not to be so quick to dismiss the valuable service that the ABCD provides to the actuarial profession and the public.

Sincerely,

Henry K. Knowlton, Vice Chairperson
Actuarial Board for Counseling and Discipline

Focus on ABCs

Chicago and Delaware Valley

by Rachel G. Veltman, Chicago and Jonathan S. Corle, CPC, Delaware Valley

Winds of Change in Chicago

After building a solid foundation of membership and program interest, the original officers of the ASPA Benefits Council of Chicago (ABCC) took on new roles in the organization and welcomed new members to the Advisory Board. The new Board will carry on the tradition of providing informative programs in a forum conducive to networking with individuals representing a variety of interested professions.

In keeping with this goal, the December 2, 1999 program "Year-End Planning Opportunities" featured Aaron Venouziou, MSPA (President of DATAIR Employee Benefit Systems) addressing the implications that the repeal of Code Section 415(e) has for professionals as well as for our clients. Upcoming programs are still in the planning stage, but they will continue to be held at the East Bank Club, feature speakers on timely topics, and conclude with the opportunity to greet and meet over cocktails and hors d'oeuvres.

The new ABCC President is Mark A. Yahoudy of American Express Pension Consulting Services. Other new appointments include: Rachel G. Veltman of Profit Planners, Inc., Vice- President; Terri R. Michelsen, CPC, QPA, of American Express Pension Consulting Services, Secretary; Gerald P. Cleary, Jr. of Northern Trust Company, Treasurer; Ben Neiburger of Baker & McKenzie, Membership Chair; and Valerie L. Miller of Hewitt Associates, Board Member. Past President Leslie A. Klein, APM, of Sonnenschein, Nath & Rosenthal is remaining active on the Board as the Government Relations Chair. Past Vice-President Maureen M. Thomas, APM, of Maureen M. Thomas, Ltd. is now the ASPA Liaison and Janet S. Eisenberg, MSPA, of Eisenberg Associates, Ltd. is Chair of Continuing Education.

For information about upcoming ABCC meetings, please contact Meetings/Committees Chair Lori Anne Ward at law@sonnenschein.com or (312) 876-2574.

Strong Finish/Strong Start in Delaware Valley

Under the leadership of its second president, Marcia Hoover, QPA, of PNC Bank, the Delaware Valley ABC in Philadelphia had a banner year. During 1999 ABC membership and financial resources grew beyond expectation to provide a solid foundation for programs in the Year 2000.

The Council's first president, Stephen H. Rosen, MSPA, CPC, remains active as the ASPA Liaison on the Delaware Valley Board.

A series of well-received programs were presented in 1999. These included nationally known speakers such as Bob Bildersee, Esq., and Ed Burrows, MSPA, as well as local experts. The Council's August meeting featuring William Sweetnam, Esq., Benefit Tax Counsel for the U.S. Senate Finance Committee, was very well attended. Accompanying Mr. Sweetnam was ASPA's own Executive Director, Brian Graff, Esq. Bill and Brian presented a Washington Update on pending pension reform followed by a lively question and answer discussion. This informative program was also covered by the local press.

At our first meeting of this year, scheduled for February 28, a panel of local experts will cover the new 5500 Form. Additional programs are in the planning stages. For more information on upcoming events, please contact Promotions Chair Jon Corle at jcorle@tycor-benefit.com or (610) 251-0670. ▲

Rachel G. Veltman is a consultant with Profit Planners, Inc., a pension benefits consulting firm in Chicago, Illinois and the Vice President of the ASPA Benefits Council of Chicago. Jonathan S. Corle, CPC, is president of TYCOR Benefit Administrators, Inc., a pension and employee benefit consulting firm he founded in 1980. Mr. Corle was a founding member of the ABC of the Delaware Valley and currently serves as an ABC board member and publicity chair. He also received his CPC designation from ASPA in 1983.

CONTINUED FROM PAGE 2

Retirement Plans, Then and Now

Survey (RCS)*, we see that nearly half of today's workers expect to retire at age 65 or later, and 5 percent expect they will never retire. In contrast to these expectations, however, most retirees report actual retirement ages younger than age 65.

The Ninth Annual Retirement Conference Survey
Expected and Actual Retirement Age

	Expected (% of workers)	Actual (% of retirees)
Age 54 or younger	5%	20%
Age 55 to 59	13	16
Age 60	13	6
Age 61 to 64	13	29
Age 65	30	14
Age 66 or older	17	12
Never retire	5	n/a

For many retirees, this earlier retirement was not by design – more than 4-in-10 of today's retirees say they retired earlier than planned (43 percent). The youngest retirees – those born in 1933 or later – are especially likely to report retiring before age 60 or retiring earlier than expected.

The shift from Defined Benefit to Defined Contribution plans and a general lag in the adoption of new plans of any kind has been most notable in the small plan area. According to the Pension Benefit Guaranty Corporation Pension Insurance Data Book 1998, the number of Defined Benefit Plans peaked in 1985 at about 112,000. Since then, there has been a sharp decline to about 42,000 plans in 1998. Of special significance to the ASPA practitioner is that the reduction has not been proportional across all plan sizes. Plans with fewer than 100 participants have shown the most marked decline, from about 90,000 in 1985 to about 27,000 in 1998. There also has been a sharp decline for plans with between 100 and 999 participants. In 1985, there were more than 18,000 plans in this size range but, by 1998, only about 11,000 were operating, a reduction of about 40 percent. Technology, investment sizzle, competition, government regulation, and employee appreciation (or lack of appreciation for Defined Benefit plans) all played a role. One might postulate that there are an equal number of Defined Benefit plans that were never established for the same reasons. This has left us with the challenge that the retirement plans of today, considering both coverage of participants and benefit levels, are inadequate for the needs of the future. There are 10,000,000 Americans today who do not have health insurance, but they are to be provided health care by virtue of federal mandate. Beyond Social Security, there is no parallel in the retirement plan arena. If your employer does not have a retirement plan, you receive no retirement income.

Within that challenge also conspicuously lurks opportunity, and that is where **you** as a plan practitioner come in. First, you must fill the gap with creative solutions. There's a new board game called Tribond where you are asked questions of the type "What do the following three things have in common?" Example: What do a car, a tree and an elephant have in common? (Answer: to be found later in this article). Well, what do a Defined Benefit Plan, a Profit Sharing Plan and a Money Purchase Plan have in common? The answers here are numerous and easy, but take it a step further. If there are so many similarities, why should they be separate plans? Why not one plan document and trust singularly containing the appropriate characteristics and provisions to provide the solution for that plan sponsor, covering their entire range of goals and objectives in one vehicle? Vehicles that are understood, efficient to administer, and are capable of providing adequate retirement income to a cross section of participants are a must. Impractical, maybe or maybe not, but the point is, we must be creative in our search to find effective solutions. Why not invoke the concepts of a Disney Journey Into Your Imagination to the retirement plan challenge of our era? It might even be fun.

This challenge is also where ASPA comes in. ASPA has served the retirement plan community in a focused and distinguished manner for over thirty years. We have adapted to the changes that have come fast and furious and have met the words of our statement of purpose: The purpose of the American Society of Pension Actuaries 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.

I would like to personally thank ASPA's past presidents for the invaluable contributions they have made to our success and for paving the way to the future. They are:

Past Presidents of the Society

Carol R. Sears, FSPA, CPC	1999	A. David Degann, FSPA	1984
Karen A. Jordan, CPC, QPA	1998	Curtis Hamilton, MSPA, CPC	1983
Richard D. Pearce, FSPA, CPC	1997	Gerald D. Facciani, MSPA	1982
Michael E. Callahan, FSPA, CPC	1996	Charles W. Leggette, FSPA	1981
Stephen R. Kern, MSPA, CPC	1995	Brendan O'Farrell, Jr., FSPA, CPC	1980
Paul S. Polapink, MSPA	1994	Brian W. Kruse, FSPA, CPC	1979
Robert E. Guarnera, MSPA, CPC	1993	J. William Cloer, FSPA	1978
Ruth F. Frew, FSPA, CPC	1992	William C. Spencer, MSPA, CPC	1977
G. Patrick Byrnes, MSPA	1991	James L. Kirkpatrick, FSPA*	1976
Alan J. Stonewall, FSPA	1990	Howard J. Johnson, MSPA	1975
Howard M. Phillips, MSPA	1989	Fred R. Kissling, Jr., MSPA	1974
Eric L. Kranke, FSPA, CPC	1988	William W. Hand, FSPA*	1973
R. William Dozier, Jr., FSPA, CPC	1987	Samuel J. Savitz, MSPA, CPC	1972
Edward E. Burrows, MSPA	1986	Carl I. Duncan, FSPA*	1971
Robert D. Lebenson, MSPA	1985	Harry T. Eidson, FSPA, CPC*	1966-1970

*Deceased

Thank you each and all for guiding us though these times.

We have met the challenges of the past, and I know we will continue to meet those of the future.

Oh, by the way, the answer to the question, what do a car, a tree and an elephant have in common is a trunk. I'm sure you surmised that! ▲

**The 1999 RCS gauges the views and attitudes of working and retired Americans regarding retirement, their preparations for retirement, their confidence with regard to various aspects of retirement, and related issues. The RCS is cosponsored by the Employee Benefit Research Institute (EBRI), a private, nonprofit, nonpartisan public policy research organization, and the American Savings Education Council (ASEC).*

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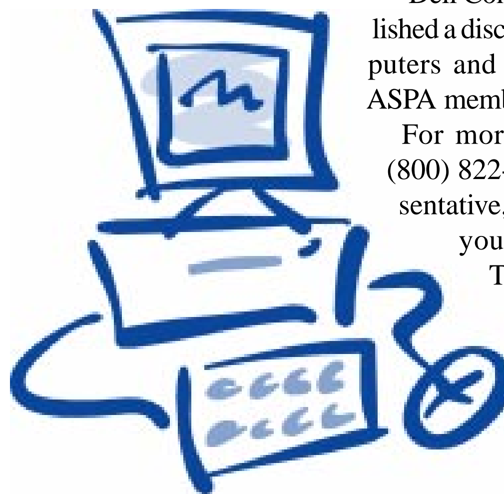
*John P. Parks, EA, MSPA, is president of MMC&P Retirement Benefit Services in Pittsburgh, Pennsylvania. Mr. Parks also serves as a client consultant and is an Enrolled Actuary with 34 years of experience in the actuarial and employee benefit field. He is currently serving as ASPA's president. He has also served as ASPA's treasurer and was chairman of the Communications & Technology Committee when the new web site (**www.aspa.org**) was designed and implemented.*

ATTENTION ASPA MEMBERS!



Are you or your company interested in purchasing new computer equipment at a great price?

Dell Computer Corporation has established a discounted purchase plan on computers and peripherals exclusively for ASPA members!

For more information, call Dell at (800) 822-6069, ask for ASPA's representative, Tiffany Leland, and identify yourself as an ASPA member. Tiffany will answer your questions and place your order.

MILLENNIUM FEATURE

ASPA Then and Now

by G. Patrick Byrnes, MSPA

In case you're interested in trivia, my year as president (1991) was the shortest in ASPA's history. We moved the presidential term off the calendar year and onto an annual meeting year. Nevertheless, the brewing issues of the day did not seem trivial at the time.

In the year 1991, we added the tag line, "Actuaries, Consultants, Administrators and other Benefits Professionals," to the ASPA logo. This change came about for two reasons. First, ASPA was seeking to brand its identity and become better represented in the pension world. Second, the change was made in response to heavy criticism from one of the member organizations of the Council of Presidents that wanted ASPA to change its name.

We joined the Council of Presidents in 1989. In 1990, as president-elect, I served on the first "Working Agreement Task Force" that was chartered to unify the actuarial profession of North America. The Council of Presidents formed the Actuarial Board for Counseling and Discipline (ABCD), which thrives to this day. ASPA signed onto the ABCD at the final 1991 Board Meeting. This action provided the impetus for our code of conduct for actuaries and the revision of the general code for non-actuaries.

During my year as president, we also began to develop a formal structure for the Government Affairs Committee. Today the Committee plays a vital role in ASPA by monitoring and proactively addressing virtually any pension-related activity occurring in the governmental arena.

Our future, while yet to be written, will undoubtedly involve enormous change. The pension industry, which itself is a growing segment of the financial services industry, has been fragmented into many parts. In our early years, the pension industry was primarily the domain of service providers and consultants, and we tended to view the "product" people as the enemy. However, over the last decade, we've seen a major shift in the pension industry. Consultants and money managers have become, in many instances, strategic partners. With only a few notable exceptions, we have learned to peacefully coexist, and in some cases, to prosper together through alliances. In many respects, ASPA members now find themselves sleeping with the enemy (or what we used to view as the enemy). I think we had better get used to this, because I believe our industry will continue to fragment and expand. Those who we now view as threats to our businesses will probably force us to continue to change and grow. We should keep in mind, though, the lessons of the past—these perceived "enemies" may eventually become our partners. Either way, I view this fragmentation as a positive force. It requires us to change the way we look at our businesses, the market we serve, and even ourselves as pension professionals. In the end, I believe both we and our clients benefit from this continued fragmentation.

I hope that ASPA will continue to play an advocacy role with governmental agencies, continue to provide stellar educational services, and continue to execute our programs flawlessly. I also hope that we will focus more closely on the forces changing both our society and the financial services industry in which we compete.

ASPA will need to not only challenge the government to do the right thing, but also challenge its members to do the right thing. Our advocacy should be to preserve and enhance the private pension system – that is ASPA's job, and we must not lose sight of it, even if this creates controversy among our membership.

Finally, we need to build the infrastructure necessary to accomplish our goals, and to build for the future. We can't be afraid to spend money, take risks, and keep our eyes open.

New Millennium – Here comes ASPA! ▲

Pat Byrnes, MSPA, is founder and president of Actuarial Consultants, Inc., an employee benefits consulting firm in Torrance, California, and a past president of ASPA. While president, Mr. Byrnes was instrumental in spearheading the organization's involvement in the IRS small plan audit program. He has testified before the IRS on Treasury Regulations and continues to work with ASPA's Government Affairs Committee. He is a founding co-chair of the Los Angeles Benefits Conference, which is held annually and is sponsored by ASPA, the IRS, and more than 20 employee benefits-oriented organizations. An enrolled actuary since 1976, Pat earned his bachelor's degree from the University of Santa Clara and his MBA from the Wharton School of Finance.

MILLENNIUM FEATURE

Reflections of a Past President

by Howard M. Phillips, MSPA, FSA, MAAA, Enrolled Actuary

It is hard to believe that more than a decade has passed since my year as president of ASPA – 1989. I thought it might be important, and of interest to the readers, to reflect on the following:

Much of my presidency in 1989 was occupied with ASPA's entry into the intersocietal affairs of the actuarial profession. Notwithstanding a legitimate resistance by some of ASPA's membership, ASPA was warmly accepted by the other societies and over the past decade has achieved a respected position among the member organizations. Even now, as I represent ASPA in many of my post presidential-appointed positions in the intersocietal community, I enjoy a respect as the "ASPA representative," notwithstanding my credentials in other societies.

In my travel as a professional, two highlights come to mind:

1. My heavy involvement with defined benefit Keogh plans (created by ERISA), leading to my published text, *All You Need to Know About Defined Benefit Keogh Plans*, and
2. The development, refinement, and utilization of the age-weighted allocation design strategy in defined contribution plans. That creativity in design for retirement programs not only revitalized the pension business, but also did something very special and very meaningful for plan sponsors and plan members utilizing it.

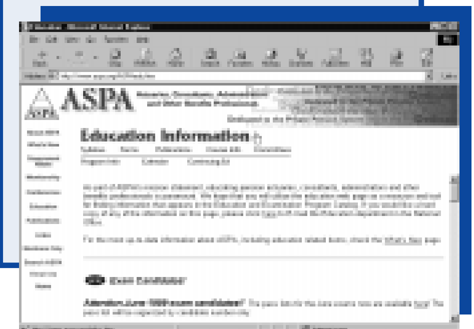
With respect to the future, several things come to mind:

- The extrapolation of the age-weighted defined contribution design into an environment, which combines it with cash balance pension designs, to be utilized by small business. All of this is embodied in what I call the "universal pension plan design" (which contains up to five deposit buckets):
  a. The pre-tax salary reduction deposit level (401(k)).
  b. The discretionary matching deposit level.
  c. The percentage of pay, across-the-board deposit level.
  d. The supplemental deposit within the defined contribution plan reflecting the new comparability deposit level.
  e. Supplemental deposits in the cash balance plan, which exceed the defined contribution plan individual limits.
- State-of-the-art electronic administration of plans, including, but not limited to, internet investing in 401(k) plans; electronic bankcard access to participant loans in 401(k) and 403(b) plans; and a more rapid, efficient, and timely benefit informational access for participants.
- The profession's working closely with the government to assist a rising number of retirees who have serious questions about their retirement plans and the calculation of same as well as the payout option decisions that must be made.
- My own distribution planning, as I near the time when I, too, will need my services. ▲

Howard M. Phillips, MSPA, was ASPA's President in 1989. Mr. Phillips is the past president of Consulting Actuaries, Inc., in Fairfield, New Jersey. He served on the board of the Academy, and currently serves on the board of the Actuarial Board for Counseling and Discipline. He is the author of one book and a multitude of articles in the employee benefit arena. He continues to lecture extensively on subjects in actuarial science and employee benefits.

ASPA Exam Results Posted Online

Exam results for the June 1999 C-1, C-2(DB), C-2(DC), C-3, and C-4 exams are now posted by candidate name at **www.aspa.org/aspaedu.htm**. A list of candidates who earned the Pension Administrator's Certificate effective August 31, 1999 is also available on the site.



Midstates Benefits Conference – Join Us in the Windy City

May 8-9, 2000 – The Fairmont at Grant Park, Chicago, Illinois

In May, ASPA and the Midstates Key District of the Internal Revenue Service will once again team up to present the 2000 Midstates Benefits Conference. Chicago is the place to be May 8-9, 2000 for pension professionals looking to exchange information, advance knowledge, and foster sound principles, procedures, and practices in the industry. The two-day conference will provide the latest information on the IRS restructuring and how it will affect you and your business. Additional topics to be covered include:

- 401(k) Plan Design
- IRS Voluntary Compliance Programs
- Cash Balance Plans
- Daily Valuation Issues
- Mergers & Acquisitions and their Effect on DB and DC Plans
- IRS Regulatory and Legislative Update
- 415(e) Repeal
- New Form 5500

The conference will be held at:

The Fairmont Hotel at Grant Park
200 N. Columbus Drive
Chicago, IL 60601
Tel: (312) 565-8000 or
(800) 526-2008
Fax: (312) 856-1032

In March, watch your mail for the conference brochure or log onto our web site, **www.aspa.org**, for more information. We look forward to your participation in the conference.

2000 ASPA BLC – Shaping Our Future

Hotel Del Coronado, San Diego, California May 7-10, 2000

The 2000 Business Leadership Conference will focus on the future of the pension industry and will feature presentations by several key service providers in the industry. Slated to speak are Don Mackanos, President of CORBEL, on *How Our Industry is Addressing the Future*; David Shah, President of Pyramid Digital Solutions, on *Integration of Technology Services*; and Kraig W. Kramers, President and CEO of Corporate Partners, Inc., who will describe the *CEO Toolbox*.

Interactive workshop sessions include *Running a Pension Operation*, presented by Cheryl Morgan, CPC, with Pension Edunet; *Revenue Sharing* presented by DCC&S; and *Office Automation* presented by IKON Office Solutions. The agenda for the four-day program also allows for networking in smaller groups and discussion on topics of importance to business leaders today.

This is the BLC's 12th year, and each conference gets better. The program is designed for decision-making personnel including presidents, principals, owners, vice presidents, and key managers. Brochures can be accessed on our website at **www.aspa.org**. Make it a point this year to join your fellow business leaders in this important conference and help determine the future of our industry.

The conference is scheduled for May 7-10, 2000 at the Hotel Del Coronado on beautiful Coronado Island adjacent to San Diego. In addition to general sessions, networking groups, and interactive workshops, the agenda allows for some down time when you can relax and enjoy the beautiful setting and do some informal networking with your colleagues. ASPA has also arranged area tours for your guests to attend during the day, and two receptions and a dinner in the evenings for both attendees and guests.

The Northeast Key Conference Coming to White Plains!

Holiday Inn Crowne Plaza, White Plains, New York June 16, 2000

Plan to attend the fourth Northeast Key District Employee Benefits Conference cosponsored by ASPA, the Northeast Key District of the Internal Revenue Service, and its Pension Liaison Group. The conference will be held at the Holiday Inn Crowne Plaza Hotel in White Plains, New York on June 16, 2000.

This is a great opportunity to meet and discuss employee benefit issues with colleagues and government representatives from the IRS and DOL.

You will learn what's new in the pension field, and will hear firsthand from industry experts everything you need to know on current regulatory, legislative, administrative, and actuarial issues.

You can earn seven ASPA credits and up to seven JBEA credits by attending this conference.

Hotel Information:
Holiday Inn Crowne Plaza
66 Hale Avenue
White Plains, NY 10601
Tel: (800) 2-CROWNE or
(914) 682-0050

A brochure will be in your mailbox this spring. Plan to register before May 22 and take advantage of the early registration fee of $175. For more information call ASPA's meetings department, at (703)516-9300 or visit our web site at **www.aspa.org**.

ASPA Workshops in 2000

For the 2000 calendar year, ASPA has scheduled twelve one-day workshops on two diverse topics of importance to the pension industry – Defined Benefit and 401(k) Daily Valuation. Both workshops are designed for retirement and benefits professionals with two or more years of experience in the industry. Attendees may earn up to seven ASPA credit hours. In addition, the 401(k) Daily Valuation Workshop offers seven non-core JBEA credit hours and the Defined Benefit Workshop offers seven core JBEA credit hours.

The 401(k) Daily Valuation Workshop will cover a number of pertinent topics including: understanding daily valued plans; update on safe harbor 401(k) plans; latest guidelines on remedial amendment period; administrative issues with self-directed brokerage accounts; exploring participant loans and new 5500 forms. The workshop is taught by Janice M. Wegesin, CPC, QPA, President of JMW Consulting, Inc. and Carol R. Sears, FSPA, CPC, a partner with the Actuarial Consulting Group, Inc.

Workshop Locations	Defined Benefit Workshop	401(k) Daily Valuation Workshop
Austin, Texas Sheraton Four Points Hotel		Friday April 14
Denver, Colorado Embassy Suites Downtown	Monday April 17	
Boston, Massachusetts Sheraton Commander Cambridge	Monday May 1	Tuesday May 2
Indianapolis, Indiana Hyatt Regency Indianapolis	Monday May 22	Tuesday May 23
Los Angeles, California Hilton Los Angeles Airport	Tuesday June 20	Monday June 19
Philadelphia, Pennsylvania Renaissance Philadelphia Airport	Monday July 10	Tuesday July 11
Atlanta, Georgia Crowne Plaza Ravinia		Friday August 25
Orlando, Florida Wyndham Palace Resort & Spa	Monday August 28	

The Defined Benefit Workshop will cover: repeal of IRC Section 415(e); plan termination alternatives; cash balance issues; dual plan design; and floor/offset plans. The workshop will be taught by Joan R. Gucciardi, MSPA, CPC, an enrolled actuary and President of Gucciardi Benefit Resources, Inc. and Norman Levinrad, FSPA, CPC, President of Summit Benefit & Actuarial Services, Inc.

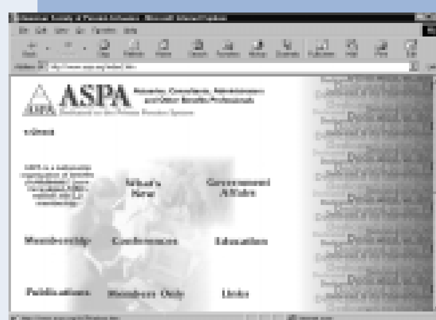
In four cities, Boston, Indianapolis, Los Angeles, and Philadelphia, the workshops will be held in the same location on consecutive days. ASPA will offer a $100 discount to attendees who register for both workshops. Please see the schedule on this page to make your plans to attend these educational workshops. For more information, watch your mail for the workshop brochure or check the ASPA website at **www.aspa.org**.

ATTEND BOTH AND SAVE!

Attend both workshops and save money! If you register for both a 401(k) Daily Valuation workshop and a Defined Benefit workshop, the registration fee is reduced by $100! Register today; Seating is limited! Registration forms are accepted on a first-come, first-served basis.

www.aspa.org

Check out the Meetings Webpage to download information, brochures, and registration forms for upcoming conferences.



Focus on E&E

Exams On-Demand: Coming in 2001

by Gwen O'Connell, CPC, QPA

ASPA examinations initially were given exclusively at paper and pencil sites. Countless hours were spent lining up proctors and examination sites a few weeks and sometimes days before the examination dates in June and December. The process was difficult to manage.

As the number of candidates increased, ASPA found it impossible to continue administering examinations at individual paper and pencil sites exclusively. The E&E Committee selected Sylvan to deliver examinations. Though the initial intention was to deliver all examinations at Sylvan, it was soon discovered that Sylvan was not able to administer essay examinations, but the C-1, C-2(DB), and C-2(DC) examinations were quite successful.

With the implementation of computerized testing, candidates are often under the impression that because the examination is being offered in an electronic format that the passing results should be available immediately. Though numerous articles and explanations have been provided to candidates about the pass mark process, in our electronic world, this is not meeting our candidates' needs. The candidates want faster, immediate results.

Beginning in the year 2001, ASPA will offer the C-1, C-2(DC), and C-2(DB) examinations on-demand. Beginning, hopefully, in February 2001, exams will be offered throughout the year with black-out periods in January and three other times. The purpose of the black-out periods is to give time for uploading the new examinations and to retool examinations at specific points during the year.

The question base will be developed on a per-chapter or unit basis. This will ensure that the exams follow the blue-printing to test each chapter/unit sufficiently. The questions for each exam will be randomly selected and delivered within the units. No two examinations will be exactly the same.

Under the on-demand structure not only do candidates get to schedule examinations for times that work better for them, but also they will be given their results upon completion of the exam. A candidate who does not pass an exam can retake the exam after a brief waiting period.

In February 2000, a task force including our Technical Education Consultant, Carol Sears, FSPA, CPC; the E&E Quality Control Chair, Curtis Huntington, APM; ASPA's Education Services Director, Kevin Scott; and ASPA's Director of Administration, Jane Grimm, will meet with Sylvan to discuss the conversion to on-demand exams.

Watch for further progress on this initiative through articles in *The Candidate Connection* and in this column of *The Pension Actuary*. ▲

Gwen S. O'Connell, CPC, QPA, is Principal of Summit Benefit & Actuarial Services, Inc. in Eugene, Oregon. Ms. O'Connell currently serves on ASPA's Executive Committee as its secretary, is a member of the Board of Directors, and is the general chair of the Education and Examination Committee.

Ideas? Comments? Questions? Want to write an article?

The Pension Actuary welcomes your views! Send to:

The Pension Actuary
ASPA, Suite 750
4245 North Fairfax Drive
Arlington, VA 22203
(703) 516-9300

or fax (703) 516-9308

or e-mail aspa@aspa.org

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Pix Digest

who had met the 21/1 criteria as of the first day of the year would be participants in the plan, even if they terminated prior to June 30. These employees could easily be overlooked in the first year of a plan. To read the entire thread, download first2.fsg.

Section 125 Plans Deferral Deposit Date

[Thread 83267]

A user questioned whether Section 125 plan contributions must be deposited in the same manner as 401(k) deferrals. Several users pointed out that this would depend on whether the plan held the benefits in trust, or paid them from general employer assets. If a trust is used, then the deposit rules do apply, as they become "plan assets." As an aside, another user pointed out that the Department of Labor relief that permits 125 plans to operate without a trust does not extend to after-tax employee contributions, such as COBRA premiums paid by an employee. If this is the case, COBRA payments could necessitate a trust for a 125 plan. To read the entire thread, download 125cont2.fsg. ▲

PIX is now on the Internet!

The current version of the PIX message software, WOD, has been updated to incorporate internet access to the PIX message board. No more long distance phone calls to PIX. Contact PIX today at 805-683-4334 to join or get your updated software!

2000 Calendar of Events

Date	Event	ASPA CE Credit
April 7-8	EA-1(A) class, Denver, CO†	10
9-10	EA-1(B) class, Denver, CO†	10
April 14	401(k) Daily Valuation Workshop, Austin, TX	7
April 14-15	EA-1(A) class, Washington, DC†	10
16-17	EA-1(B) class, Washington, DC†	10
April 17	Defined Benefit Workshop, Denver, CO	7
April 28-29	EA-1(A) class, Chicago, IL†	10
April 30-May 1	EA-1(B) class, Chicago, IL†	10
May 1	Defined Benefit Workshop, Boston, MA	7
May 2	401(k) Daily Valuation Workshop, Boston, MA	7
May 7-10	Business Leadership Conference, San Diego, CA	10
May 8-9	Midstates Benefits Conference, Chicago, IL	15
May 13-14	ASPA Weekend Courses, Denver, CO C-1, C-2(DB), C-2(DC), C-3, and C-4	15
May 22	Defined Benefit Workshop, Indianapolis, IN	7
May 23	401(k) Daily Valuation Workshop, Indianapolis, IN	7
May 31	C-1, C-3, and C-4 exams	*
June 1	C-2(DC) exam	*
June 2	C-2(DB) exam	*
June 19	401(k) Daily Valuation Workshop, Los Angeles, CA	7
June 20	Defined Benefit Workshop, Los Angeles, CA	7
July 10	Defined Benefit Workshop, Philadelphia, PA	7
July 11	401(k) Daily Valuation Workshop, Philadelphia, PA	7
July 16-19	ASPA Summer Conference, San Francisco, CA	20
August 31	PA-1(A) and PA-1(B) exam submission deadline	**

* 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.

** PA-1A and B exams earn 5 ASPA continuing education credits each for a passing grade.

† 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.

PIX Digest

What Constitutes an Hour of Service?

When is someone working? When are they not working? So much of pension administration depends on an employee's hours of service, but what exactly is an hour of service? What if someone is on call? What if someone is working a 24 hour shift, but assumed to sleep for part of the shift? These and other questions were raised in several different threads recently.

The first of these threads discussed the case of a home health care agency that has employees who provide health care and assistance to persons in their homes. The agency maintains a plan that specifies actual hours worked are to be used for plan purposes. Shifts of 24 hours are common, eight hours of sleep time is assumed, and the employees are paid for the 24 hour shift on the basis of 16 working hours. Several PIX users responded that they would consider this to be 24 hours of service. Another user posted excerpts from a court case where nurses were denied overtime pay for such hours, and excerpts from regulations under the Fair Labor Standards Act that provide that an employer and employee may agree on the amount of time excluded from pay for personal time.

The next question concerned tracking of hours for the sales staff at an automobile dealership. The obvious answer is to use one of the hours equivalency definitions in the plan. The user was further concerned that using such a definition for the sales staff (which might include highly compensated employees) and actual hours for the rest of the employees could be discriminatory. Here the regulations provide little comfort. Part 2530.200b-3(c)(3) states "(3) Notwithstanding paragraphs (c) (1) and (2) of this section, the use of a permissible equivalency for some, but not all, purposes or the use of a permissible equivalency for some, but not all, employees may, under certain circumstances, result in discrimination prohibited under section 401(a) of the Code, even though it is permitted under this section."

Since the equivalency definitions are generally far more generous than actual hours worked, using them for a group of mostly highly compensated employees could be discriminatory.

The next question considered a physician who is paid to be on call. A user posted Labor regulations that stated that just being available to be contacted, but not required to remain on the premises, is not considered working. However, in the case being discussed in this thread, the physician is in fact being paid for call duty. Another user pointed out that since there is actual payment, there is a good argument to be made that the physician is in fact "working" while on call.

The last question that arose about hours of service concerned employees paid on a piecework basis, and the employer does not want to cover these employees in the plan. Again, hours equivalencies were discussed. However, at 10 hours per day or 45 hours per week if any service is performed, the hours add up quickly. Of course, if these employees are never credited with 1,000 hours, even using these equivalencies, then excluding them is not a problem.

These threads provide good examples of various employment arrangements that do not lend themselves to actual hours recordkeeping. Practitioners should consult with their clients regarding the nature of their work and the way employees' hours of service are tracked. To read these threads in their entirety, download the file hours2.fsg.

First Day of Plan Year Entry Date

[Thread 83339]

This thread started with a user questioning what entry dates could be used in a plan with no waiting period for eligibility. Another user pointed out that 410(a)(4) provides that an employee must enter the plan no later than the earlier of either the first day of the plan year or 6 months after completing a Year of Service and attaining age 21.

Another user brought up a situation where a plan is set up at year end, retroactive to the first day of the year, with June 30 and December 31 entry dates. Because of the first day requirement of 410(a)(4), employees

Continued on page 31