A publication of the American Society of Pension Actuaries *Vol.XXX, Number 5* *September-October 2000*

THE PensionActuary

ASPA
Dedicated to the Private Pension System

WASHINGTON UPDATE

Cash Balance Debate Heats Up

by Brian H. Graff, Esq.

In the midst of the effort to enact the most significant pension legislation since ERISA, the debate over the future of cash balance plans has intensified and potentially may threaten the bipartisan atmosphere surrounding pension reform. Along the way, traditional defined benefit plans may be forced to accept additional regulatory burdens due to the brouhaha surrounding their controversial cousins.

The debate over cash balance plans has been simmering for almost two years since the *Wall Street Journal* began its not-so-subtle assault on the plan design. Since then, most of the legitimate legislative discussion has centered on enhanced disclosure and addressing the so-called "wearaway" problem. However, behind the scenes, a fairly brutal debate over the very future of the plan design is focused mainly on whether cash balance plans inherently violate the Age Discrimination and Employment Act. The actors in this play include trial lawyers representing participants in several lawsuits against cash balance plan sponsors throughout

Continued on page 6

Taylor Named as ASPA President

George J. Taylor, MSPA, EA, has been named ASPA's President for the 2000-2001 term, which begins at the close of the 2000 Annual Conference. Mr. Taylor is Senior Vice President of ARIS Pension Services (APS), a division of ARIS Corporation of America. He has over 30 years of experience in the administrative, actuarial, and technical aspects of maintaining qualified retirement plans and provides technical expertise and training to APS's staff, as well as consulting and actuarial services to APS clients.

Mr. Taylor was elected to ASPA's Board of Directors in 1994, served as Vice President in 1996, 1997, and 1999, and as President-Elect in 2000. He has been active on the Conferences Committee and co-chaired the ASPA Annual Conference in 1999. Mr. Taylor has been very active on ASPA's Government Affairs Committee since 1992, serving as a co-chair for five years (1995-1999). In that capacity, he has had numerous meetings with the IRS, Treasury, the U.S. Department of Labor, the Pension and Welfare Benefits Administration, and the executive committee of the Pension Benefits Guarantee Corporation. He has also met with legislators and their staffers to present positions that would enhance the private pension sector.

Mr. Taylor chaired a committee that drafted ASPA's Pension Reform Proposals. Part of this proposal, the Secure Assets for Employees (SAFE) Defined Benefit Plan, has been introduced in the House and the Senate.

IN THIS ISSUE

He also chaired a committee that developed ASPA's Pension Expansion and Simplification Amendments (PESAS). Many of these amendments were included in the Small Business Job Protection Act of 1994.

Mr. Taylor is a graduate of William Patterson College and has completed post-graduate studies in actuarial science, corporate and individual taxation, and health and individual insurance. Mr. Taylor lives with his wife, Betty, in Muncy, Pennsylvania, on property that has been in the family for generations. Many family members, including his grandson, live nearby.

Mr. Taylor is part owner in a raquetball and fitness club, plays raquetball as much as possible, and also jogs three times a week. In the fall, he keeps fit by refereeing football games for area high school students.

The other members of the 2001 Executive Committee include:

President-Elect
Craig P. Hoffman, APM
Jacksonville, FL

Vice Presidents
Stephen Dobrow, CPC, QPA
Burlingame, CA

Joan Gucciardi, MSPA, CPC
Wauwatosa, Wisconsin

Stephen H. Rosen, MSPA, CPC
Haddonfield, NJ

Secretary
Gwen S. O'Connell, CPC, QPA
Eugene, Oregon

Treasurer
Scott D. Miller, FSPA, CPC
South Salem, New York

Immediate Past President
John P. Parks, MSPA
Pittsburgh, Pennsylvania

Ex-Officio Member of the Executive Committee
Bruce Ashton, APM
Los Angeles, CA ▲

Notice of Annual Business Meeting

ASPA's Annual Meeting will be held during the 2000 ASPA Annual Conference on Monday, October 30 from 7:30 a.m. to 8:00 a.m. We invite all ASPA members to attend and participate in the discussion of membership business. Credentialed members of ASPA are encouraged to attend the meeting and vote for new members of ASPA's 2001 Board of Directors.

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

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

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.

American Society of Pension Actuaries, 4245 North Fairfax Drive, Suite 750, Arlington, Virginia 22203
Phone: (703) 516-9300, Fax: (703) 516-9308, E-mail: aspa@aspa.org, World-Wide Web: **www.aspa.org**

Must the Investment Options in a 401(k) Plan be Tailored to the Workforce?

by C. Frederick Reish, APM, Esq., and Bruce L. Ashton, APM, Esq.

ERISA imposes a duty on the investment fiduciaries of a 401(k) plan, who are typically the plan committee members, to prudently select and monitor the investment options offered to the participants.

While there is little in the way of specific guidance to help fiduciaries fulfill those duties, the DOL has stated the general requirement that a participant-directed 401(k) plan must have a "prudent and well-diversified portfolio." The regulations under ERISA Section 404(c) require that the plan offer a "broad range" of options – defined as investments that "in the aggregate enable the participant, by choosing among them, to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the participant. . . ." While 404(c) offers a "safe harbor," or defense, for fiduciaries, rather than guidelines for fiduciary compliance, the broad range requirement may well become the general standard for measuring fiduciary performance in participant-directed plans.

The investment options, which satisfy the broad range requirement, are known as the "core" options. The core options, together with the noncore investment alternatives that are selected – or "designated" – for participant direction, must be prudently selected and monitored by the fiduciaries in order to provide participants with suitable vehicles for investment direction. That is, in a participant-directed plan, the fiduciaries are responsible for providing well-selected and properly maintained investment options, and the participants assume the responsibility for the asset allocation among those options.

Suitability Requirement

The requirement to select and monitor investment options is commonly seen as the primary duty of investment fiduciaries. But, is there another equally important duty . . . that is, a duty to select investment options that are suitable, considering the investment abilities of the participants?

ERISA does not have a specific requirement that investment fiduciaries consider the investment abilities of employees. However, the general fiduciary requirements of ERISA are worded broadly enough that they could be interpreted to include such a requirement. For example, ERISA requires that the investment fiduciaries select the investment options "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims." Would a prudent fiduciary designate only investments that participants are capable of properly using? Further, the fiduciaries must fulfill their duties ". . . for the exclusive purpose of providing benefits to participants . . ," that is, in a participant-directed 401(k) plan, the fiduciaries must select investments consistent with the purpose of providing retirement benefits for participants.

In addition, in the preamble to the 1987 proposed regulations under Section 404(c), the DOL stated its view of the responsibility of investment fiduciaries:

> "...[T]he independent fiduciary generally would discharge his oversight duties by prudently selecting the investment funds (or investment managers), periodically evaluating their performance, and determining, based on that evaluation, whether the funds should continue to be available as participant investment options. **In making these decisions the fiduciary would, of course, consider the special characteristics**

Continued on page 8

Farewell to Section 415(e)

by Margery F. Paul, MSPA, MAAA, EA

For most plans, the long awaited repeal of Code Section 415(e) has taken place. Effective for limitation years beginning after December 31, 1999, this repeal is resulting in a resurgence of defined benefit plans. Practitioners, puzzled by the complex rules described in IRS Notice 99-44, have spent a considerable amount of time attempting to determine the maximum benefits that can be provided in defined benefit plans after 1999.

This article will discuss the impact of the repeal as it affects (1) former plan participants who no longer participate in a defined benefit pension plan and are either receiving annuity payments from the plan or who received a distribution of the total amount of benefits to which they were entitled, (2) participants who were covered under both a defined benefit plan ("DB plan") and a defined contribution plan ("DC plan") prior to the repeal of Code Section 415(e) and received a distribution of their benefits from the DB plan when it was terminated, and (3) participants who were covered under both a DB plan and a DC plan prior to the repeal of Section 415(e) and who have not received a distribution from the DB plan that is still in existence.

This article will also discuss which employers and participants stand to benefit most from the repeal of 415(e) and provide some examples of possible contribution levels after the repeal.

1. Former plan participants, not currently covered by a DB plan:

As stated in IRS Notice 99-44, a DB plan can provide for benefit increases to reflect the repeal of Section 415(e) only for former participants who accrue additional benefits under the plan on or after the effective date of the repeal. These benefits must be benefits that can be accrued without regard to the repeal.

This provision of Notice 99-44 (Q&A-3) is intended to provide relief to plan sponsors from having to provide additional benefits to former participants whose distributions from the plan were limited by Section 415(e), and to current employees who are no longer participating in the DB plan. However, all employees who are eligible to accrue additional benefits under the plan and who will do so either because of an increase in the plan's benefit formula or due to cost of living increases in the Section 415 dollar limits, will benefit from the repeal of Section 415(e). Their future benefit accruals will not be limited by their old DC fractions that no longer exist.

Example: Dr. Jones had sponsored both a DB plan and a DC plan prior to the effective date of TRA '86. Before the effective date of the Section 415 provisions of TRA '86 (January 1, 1987), Dr. Jones terminated the DB plan and received a distribution of his maximum allowable lump sum benefit taking into account the Section 415(b) and Section 415(e) limits at the date of distribution. Dr. Jones continued to make contributions to the DC plan.

As of January 1, 2000, the effective date of the repeal, Dr. Jones and his partner, Dr. White, establish a new DB plan. This plan covers Dr. Jones, Dr. White, who is Dr. Jones' younger partner, and several employees. Normal Retirement Age ("NRA") under the plan is age 63. Normal form of benefit is life annuity. The definition of actuarial equivalence in the new plan is as follows: Pre-retirement Mortality: None; Post retirement Mortality: '83 GAM Unisex; Pre- and Post-Retirement Interest: the applicable interest rate under GATT which, for the year 2000, is defined by the plan to be 6.35%.

Dr. Jones asks if he can accrue additional benefits in the new plan, especially since Section 415(e) has been repealed.

Scenario 1: Assume Dr. Jones who is currently age 63 (born in 1937) had completed two years of participation in the old DB plan prior to the date it was terminated. NRA under the plan was age 55. Since Dr. Jones had 10 years of service as of the effective date of TRA '86, and the plan provided the

Continued on page 11

Leased Employees, the Plot Thickens

by S. Derrin Watson, APM

The concept of "leased employees" was added to the Internal Revenue Code eighteen years ago. In the nearly two decades that have followed, there remains substantial confusion about what a leased employee really is. This confusion stems from uncertainty over who is the "real" employer of someone working under a leasing agreement.

Code §414(n)(2) begins its definition, not by telling us who a leased employee *is*, but by specifying whom it *is not*: "…the term 'leased employee' means any person who is not an employee of the recipient." Once a worker crosses that threshold, then and only then do we ask if the affirmative requirements of leased employee status are met:

- Performance of services under an agreement between a leasing organization and the recipient;
- Performance of services on a substantially full-time basis for one year; and
- Performance of services under the recipient's primary direction and control.

Unfortunately, there are many practitioners and clients who have the mistaken view that "If you're not on my payroll, you're not my employee." Therefore, anyone who is on the payroll of a staffing firm is presumably a leased employee if they have satisfied the substantially full-time requirement. Nothing could be further from the truth! Going back to the early 1970s, case after case has found that workers on the payroll of staffing firms are common law employees of the companies for which they are performing services. While there are rulings going the other way, they involve situations in which the staffing firm had significant supervisory authority. If the recipient is the common law employer, then it must treat workers obtained through a staffing firm exactly as it does other common law employees. Depending on the terms of the plan, this may mean they are entitled to coverage under the plan, although in appropriate situations a well-drafted provision can exclude them.

Professional & Executive Leasing

A classic case dealing with these situations is Professional & Executive Leasing (PEL). PEL "hired" professionals and business owners to work for it. PEL then "leased" these people back to their own businesses. PEL charged those businesses the same amount they were paying in salaries and benefits, plus a percentage to cover bookkeeping and profit. PEL covered these "employees" under generous pension and other benefit plans and argued that they did not need to provide comparable plans for the recipient businesses.

The arrangement was clever. If it had worked, it would have allowed a business owner to cover himself under a plan (by signing up with PEL), but not provide any benefits for his employees (who were not "employed" by PEL).

PEL filed a petition for declaratory relief to receive a determination that its plans were qualified. The IRS argued that the plans violated the exclusive benefit rule because the professionals and owners were not truly employed by PEL under common law rules. The Tax Court and Court of Appeals agreed, finding that PEL's "right to control . . . was at best illusory."

In light of this decision, it is remarkable that there are still companies that put their owners on the payroll of staffing firms in order to cover them under the staffing firm pension plans. There is no credible argument that the owners are actually employees working under the control of the staffing firm. Such an arrangement could disqualify the entire plan, as it did PEL's plan, for failure to satisfy the exclusive benefit rule. The only way around this is to have the staffing firm's client, the recipient company, cosponsor the plan. The parties must recognize for

Continued on page 14

CONTINUED FROM PAGE 1

Washington Update

the country, participant rights groups enjoying newfound attention as a result of the controversy, and groups representing businesses and retirement plan professionals. This, of course, includes ASPA, which believes that cash balance plans are an effective plan design providing quality retirement benefits for employees that should be allowed to continue. Further, ASPA believes that, if any remedial legislation is deemed necessary, it should be carefully tailored to do no harm to traditional defined benefit plans.

The only legislation resulting from the cash balance controversy to actually pass either chamber of Congress has been limited to disclosure. A provision included in the House-passed version of pension reform requires affected participants to be given written notice of any plan amendment significantly reducing future benefit accruals within a reasonable period of time (to be defined in Treasury regulations) before the amendment takes effect. The notice would have to provide sufficient information (as defined by Treasury) to allow participants to understand the effect of the amendment. Failure to comply with the notice requirement would subject the employer to an excise tax equal to $100 per day per failure, up to $500,000. This proposal would not apply to plans with 100 participants or less. This provision is effective on the date of enactment and good faith reliance applies until Treasury regulations are issued.

The House provision passed uneventfully. In fact, virtually nothing was said about the cash balance controversy during the debate over the pension reform bill on the House floor. This will not be the case in the Senate. The pension reform bill, approved by the Senate Finance Committee on September 7, includes a much more detailed and rigorous disclosure regimen and also addresses "wearaway." Under the Senate bill, affected participants would have to be given written notice of any plan amendment significantly reducing future benefit accruals within 45 days before the amendment takes effect. The notice must include: (1) the effective date of the amendment; (2) a statement that the amendment is expected to significantly reduce the rate of future benefit accruals; (3) a description of the classes of employees reasonably expected to be affected; and (5) notice of each participant's right to request an annual benefit statement.

In the case of a conversion to a cash balance plan, no less than 15 days before the effective date, affected participants would have to be given a "benefit estimation tool kit" to enable participants to figure out the effect of the amendment on their benefits. For this purpose, a cash balance plan is a defined benefit plan where the accrued benefit is expressed in terms other than as a single life annuity (e.g., an accumulation account). Treasury would be given the authority to expand this definition to include other similar hybrid plans.

The penalty structure would be the same as the House bill. However, the Senate provision would apply to plans with 100 participants or less. The provision would be effective for amendments taking effect after the date of enactment. In response to concerns raised by ASPA, both Senate Republicans and Democrats are considering delaying the effective date of the provision for plans with 100 participants or less until after final Treasury regulations are published so that smaller plans have the guidance needed to comply.

As noted, the Senate bill also addressed "wearaway" in the context of a conversion to a cash balance plan. Under the Senate provision, the accrued benefit under a converted cash balance plan could not be less than (1) the benefit accrued for years of service prior to the date of the conversion (without regard to any subsidies), plus (2) any benefit accrued for years of service after the date of conversion under the cash balance plan benefit formula. If participants' opening account balances equal the present value of the old plan benefit as of the effective date of the conversion, the plan would always be deemed to satisfy this requirement. Alternatively, the old plan benefit could be provided in a lump sum separate from the cash balance plan benefit using the interest and mortality tables in effect as of the date of conversion. The Senate provision would also address the so-called "whipsaw" problem that sometimes results in the payment of a lump sum benefit out of a cash balance plan that is different than the amount in a participant's accumulation account.

The Clinton Administration has also finally weighed into this debate, calling for a complete elimination of wearaway in the context of cash balance plan conversions, including eliminating wearaway of early retirement subsidies.

Needless to say, the provision has been highly controversial, provoking a very negative article in the *Wall Street Journal* and a public condemnation from the American Association of Retired Persons and the Pension Rights Center. These groups argue that early retirement subsidies should also be protected, although they provide no specifics on how this would be accomplished. However, underlying their efforts is a desire to prevent any legislation that legitimizes the concept of cash balance plans. They, along with trial lawyers attacking the viability of the design, are afraid that a statutory definition of cash balance plans will interfere with current litigation. In other words, many of them would really prefer no legislation, even if it eliminates wearaway, despite public suggestions to the contrary.

It is far from clear how these political games will play out. Unfortunately, it is clear that no matter the result, pension policy will suffer. ▲

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.

Welcome New Members

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

FSPA

Howard L. Polivy

MSPA

William A. Dreher
Andrew C. Martin
Laura L. Mitchell-Vela
Kevin J. Morris
Eric Waldschmidt

CPC

Edwin O. Akwenuke
Linda S. Badilo
Kevin A. Bergdorf
Steven A. Blom
Rajean M. Bosier
Joni J. Castle
Marie F. Dawson
John R. Dean
Karen F. Dixon
Daniel E. Fisher
Sarah R. Gilmore
Tamara L. Grover
Gene M. Gutschenritter
Margaret C. Hiller
Martin D. Jantzen
Ronald E. Kanar
Robert M. Kaplan
Terry P. Kelly
Puamana C. Koerlin
Hans F. Kraabel
Steven M. Loseff
David Pasternack
Howard L. Polivy
Renee C. Richmond
David S. Rowe
Russell D. Smith
Robert S. Wilder
Paul H. Young

QPA

Brian A. Ahrens
Roberta C. Kress Angelo
Robert Stan Anthis
Kevin A. Bergdorf
David S. Bewie
Samuel Brandwein
David K. Campbell
Milan J. Capela
Elena J. Daniell
Patricia A. Daniels
Karol Digmann
Eric C. Droblyen
Phyllis A. Ellison
Eileen D. Fabiano
Jennifer Garvin
Minerva A. Guinn
Ronald A. Hall
Margaret A. Hofstaedter
Anna M. Hunter
Christina M. Jacobson
Aaron J. Juckett
Peter A. Kneedler
Annette R. Lane
Valerie A. Lange
Dolores C. Lombardi
Nancy J. Manary
Bradley S. Markins
Renee E. Mayne
Thomas J. Meyer
Lori L. Orczykowski
Elizabeth A. Palmer
Tami M. Plummer
Shane P. Primmer
Regina R. Rayos
Kelly E. Renno
Kristi L. Rosseland
Frank D. Saia
Christopher T. Samos
Gregory N. Schedler
Hans C. Schemmel
Jeffery A. Seed
Jennifer A. Self
Jeffrey S. Stoltzfus
Richard H. Thompson
David J. Turpin
Cheryl A. VanDenHandel
Mittie T.C. Watkins
Wendy L. Wilson
Ichabod Yu

APM

Dianne L. Hart
Darren R. Telford
William Edgar Turco

Affiliate

Alieze A. Austin
John Barron
Angela Berry
Denise R. Bolger
Robert L. Christiansen
Lisa A. Crowell
Bert M. Deardorff
Maria Delin-Pellish
Belinda L. Fairbanks
Barton G. Fleming
Janice A. Forbing
Kristin L. Francis
Jason Fu
Terry Gensler
Anne Hannon
Amy R. Harren
Elizabeth A. Herman
Kimberly A. Hlavacek
Christine Hulbert
June Jacobs
W. Clain Jaques
Patricia Cooper Jones
Gary Keener
Karen Kirkland
Jayme Lealtad
James A. Lynch
Cameron MacLeod
Michael Mallon
Dennis Miceli
Brenda S. Mijal
Laura Gene Miller
Susan L. Miner
Christopher S. Moore
Melissa F. Neely
Norman J. Nicolay
Michael S. Ouellette
Dee Ann Pederson
Bea Perry
John M. Petrosky
Apolonia Rehill
Diana L. Ricker
Peter K. Riggins
Carol J. Ringwald
Gerald R. Rowe, Jr.
G.R. Sanidad
Joan E. Scherer
Linda Schirmer
Jeffrey S. Skinner
Tim Slavin
Jodina Snyder
Kelly F. Somoza
Tommy M. Stringer
Debra L. Sullenbarger
Doris Takieddine
Cynthia J. Taylor
Christi Thompson
Robert J. Toth, Jr.
Michael E. Tripodi
LoriJo S. Turner
Nancy E. Twitchell
Susan A. Whittle
Raymond W. Williams
Tim Wright
Dennis E. Zobell

CONTINUED FROM PAGE 3

Investment Options in a 401(k) Plan

of ERISA Section 404(c) [*i.e.*, participant-directed] plans." (Emphasis added.)

Further, in 1992 in the preamble to the final 404(c) regulations, the DOL stated its view that, in selecting and monitoring the investment options, the fiduciaries were required to determine that the options were "suitable and prudent investment alternatives for the plan."

Could those general responsibilities of ERISA fiduciaries require that the investment skills of the workforce be considered in selecting appropriate 401(k) investment options; that is, is there a "suitability" requirement? Should a prudent fiduciary consider the investment knowledge of a plan's participants in the process of selecting the 401(k) investment options? Apparently the DOL thinks so.

At the 1999 ASPA Annual Conference, representatives of the Pension and Welfare Benefits Administration (PWBA) of the U.S. Department of Labor (DOL) were asked a general question about compliance with Section 404(c) of ERISA. While the direct answer may not surprise you, the comment volunteered by the PWBA at the end of its response is eye-opening:

> **Question:** What is the Department's view of the extent of ERISA Section 404(c) compliance? What problems has the Department seen in the 404(c) compliance area in conducting its investigations?
>
> **Response:** In general, compliance with the ERISA Section 404(c) regulations is not reviewed by the Department, as this is viewed as mainly a defense for the fiduciary. There may be an issue if a fiduciary is representing to plan participants that the plan is a 404(c) plan, but the fiduciary is clearly not complying with the 404(c) regulations. In general, enforcement by the Department is focused on the mandatory requirements imposed by ERISA but not on the voluntary aspects, unless it rises to the level of misrepresentation to plan participants. **The Department does have a concern with the broader issue of whether a 404(c) plan is appropriate given the nature of a particular employer's workforce.** (Emphasis added.)

A reasonable reading of the answer is that the DOL believes that, for employers with employees who lack the knowledge and sophistication to manage the investment of retirement funds, it could be a breach of fiduciary duty to permit participant-directed investments, or, at the least, that the employer in that case would not be entitled to 404(c) protection. If this reading is correct, then by logical extension it would equally be a breach of fiduciary duty to offer participants investment options that were inappropriate, taking into account their investment knowledge and abilities. For example, under this line of reasoning, if the employee population were relatively unsophisticated about investing, the employer and the plan fiduciaries would be obligated to limit the investment options (perhaps both the number and type) to those that could be understood and prudently managed by the employees.

Selecting Investment Options

But, what if an employer wants to offer more fund options – because, for example, the workforce includes some employees who are sophisticated in investment matters?

The employer should be able to do that if the program is designed in a prudent matter with an eye to the employees' needs. (In the discussion that follows, we mention various investment strategies. In doing so, we do not mean to suggest that any given strategy is legally required.) For example, as a basic investment program for employees who are not knowledgeable in investing, the plan could offer a range of lifestyle funds, with well-designed questionnaires to assist employees in picking the right fund for their performance goals and risk tolerances. In addition, with a limited selection of individual funds – for example, one in each of the appropriate asset classes and styles – we believe the plan could satisfy the DOL's interpretation of ERISA's fiduciary requirements, if the participants were offered an investment education program designed and delivered in a manner appropriate for the options offered and for the level of investment knowledge of the employees. Since the funds in this example are limited to one in each asset class and style, the educational efforts could focus on asset allocation issues rather than specific fund selection. If the plan were to offer more than one fund in an asset class or style, then the investment education program would need to cover both asset allocation and investment selection. Additionally, the program would need to educate the employees on how to select among the investment options in a given category (*e.g.*, large capitalization U.S. equities).

As the number of investment options increases, the fiduciaries

should consider adding an investment advisory service. Depending on the characteristics of a particular workforce, the employees may not be able to manage a larger and more complex array of investments with only educational programs. Under the DOL's reasoning, prudent fiduciaries would, at that point, need to add investment advice to their plan's package of investment products and services. Of course, that advisory service must be prudently selected and monitored by the fiduciaries.

But, what if the employer wants to offer options that have the potential for greater gains and greater losses, for example, sector funds – like a technology fund or a health care fund?

As a part of the regular investment education/advice program, and perhaps as a part of the plan's summary plan description (to ensure that the participants received the information), a cautious fiduciary would provide the employees with clear communication about the volatility of those investments and about the potential for larger losses and greater gains. The employer/fiduciaries should tell the participants in writing that, if they are not knowledgeable about such investments, they are assuming a high degree of risk by selecting them. The investment education program should have a segment on the more volatile options designed to assist employees who want to participate in those options. Further, the fiduciaries should offer an investment advisory service to the participants. While ERISA imposes a burden on plan fiduciaries to prudently select and monitor the providers of investment advice, the risk of not providing that advice, particularly with an investment menu that includes diverse and volatile options, is greater than the burden.

Nondesignated Investment Options

Finally, what if an employer wants to offer virtually unlimited investment options, such as a brokerage window or a mutual fund window with 1,000 or more mutual funds?

The ERISA Section 404(c) regulations divide investments into two categories: (1) those which are "designated" by the investment fiduciaries and (2) a universe of investments which constitutes all of the investments administratively feasible for the plan to offer (or "nondesignated" investment options). DOL Reg. §2550.404c-1(e)(4) defines a "designated investment alternative" as "a specific investment identified by a plan fiduciary as an available investment alternative under the plan." The preamble to the 404(c) regulations defines the nondesignated category as "those plans which permit investments in any asset which it is administratively feasible for the plan to hold and do not specifically describe any investment alternative." The consequence of an investment option being considered "designated" or "nondesignated" is that plan fiduciaries must prudently select and monitor – and, where required, remove – the designated investment options. Such removal, at least for 404(c) compliance, is not required for the nondesignated options. While it is easy to conclude that a limited list of funds is a set of designated options and that a virtually unlimited number of investments is nondesignated, it is difficult to know exactly where the transition from designated to nondesignated occurs as a plan moves from a limited number of funds to an unlimited universe.

Although the 404(c) regulations are not entirely clear on this issue, the brokerage windows would arguably be considered "nondesignated." That is, since such a large body of investments is being offered, they would likely be considered to be all the options that are "administratively feasible" for the plan to offer. However, it is less clear whether the funds in the mutual fund window would be considered "designated." The preamble to the 404(c) regulations defines the "nondesignated" category as one that does "not specifically describe any investment alternative." Theoretically, any mutual fund window can "describe" the funds it contains, so the application to a mutual fund window is less than clear.

If funds are not designated – that is, if the plan offers all the investment options that are administratively feasible for the plan to hold, the employer and the investment fiduciaries are not considered to have selected the individual investments. Thus, while the fiduciaries' duties would cover the "process" of making sure that the "window" is working as it should, those duties would not require that the specific investments be prudently selected and monitored by the fiduciaries. In that case, it is advisable for the fiduciaries to inform the participants that they have not selected the individual investment options in the brokerage or mutual fund window and that they are not monitoring them. It should be clear to the participants that they are not protected by the selection and monitoring process, as they are for the designated options. That explanation should be in writing (perhaps in the SPD), and it should be regularly distributed or made available to the participants. Further, the participants should be told that the appropriate use of the window requires investment expertise, that they are proceeding at their own risk, and that investment options in the window have the potential for

greater volatility and for greater losses. The DOL's position on "suitability" could arguably require that, for employees who lack the knowledge to prudently invest in a mutual fund or brokerage window, the fiduciaries offer appropriate investment education, and advice programs. With the appropriate combination of communication, investment education, and advice, fiduciaries should be able to satisfy the DOL's position that the 401(k) investments be suitable for the workforce.

Conclusion

If the DOL's reading of the law is correct, then employers and investment fiduciaries need to consider the "suitability" of the 401(k) investments for their workforce. There are a variety of ways to design the investments to match the workplace, taking into consideration the number of funds, the types of funds, the complexity and volatility of the investments, the programs in place for investment education and advice, and communication about the risks and the degree of fiduciary oversight. But the key criteria is that the investment options, the investment abilities of the participants, and the education, advice, and communication programs be coordinated to enable the participants to intelligently choose and allocate among the options. ▲

C. Frederick Reish, APM, Esq., is a founder of and partner with the Los Angeles law firm Reish & Luftman. He is a former cochair of ASPA's Government Affairs Committee and is currently the chair of GAC's Long Range Planning Committee. Bruce L. Ashton, APM, Esq., a partner with Reish & Luftman, is cochair of the Government Affairs Committee and serves on ASPA's Board of Directors.

New BNA Subscription Discount Program

ASPA and BNA are working together to provide ASPA members with a discount on the BNA web publication, *Pension & Benefits Daily*. This on-line publication is a resource for news reports and source documents in the pension and benefits industry. The daily news service updates subscribers on pension and tax legislation and regulation; significant case law developments; tax policy and guidance; IRS revenue rulings and procedures; ESOPs; fiduciary responsibilities; deferred compensation; multi-employer plans; plan terminations; …and more! Subscribers receive daily e-mail highlights that link instantly to the full text of any *Pension & Benefits Daily* article.

Through mid-October, ASPA members were able to access this on-line publication free of charge. Full text articles of the *Pension & Benefits Daily* were available at **http://web.bna.com/alpha.htm** by entering ASPA's temporary Username: **aspatrial** and Password: **aspa**.

ASPA and BNA will assess the success of the program, and given sufficient interest, all active members of ASPA will be able to subscribe to the *Pension & Benefits Daily* at a 30% discount. We hope to introduce this discount program at ASPA's Annual Conference on October 29 , 2000.

Both ASPA and BNA are confident that this new member benefit is one that will be invaluable to all benefits professionals! For comments, questions, or for more details, please contact Amy Iliffe, Director of Membership, at (703) 516-9300 or e-mail ailiffe@aspa.org.

2000 Educator's Award Recipient

ASPA's Education and Examination Committee's divisional chairs have selected Cheryl L. Morgan, CPC, as the recipient of the 2000 Educator's Award. Cheryl currently delivers pension education on the Internet and is a frequent speaker and author on retirement plan topics. She served as a member of the Education and Examination Committee and as ASPA's director of technical education.

Cheryl has been involved in ASPA's education program for over 19 years. On the basis of her many achievements, ASPA is proud to honor and present Cheryl with the 2000 Educator's Award.

Past recipients of the Educator's Award include Charles J. Klose, FSPA, CPC; Janice M. Wegesin, CPC, QPA; and David Farber, MSPA, EA, ASA.

CONTINUED FROM PAGE 4

Farewell to Section 415(e)

maximum allowable Section 415 benefit after 10 years of service, he was fully accrued in his DB plan annual benefit of $75,000 payable at age 55. Assume Dr. Jones' DC fraction as of December 31, 1986 was .5. Therefore, Dr. Jones' accrued DB plan benefit limited by Section 415(e) was $75,000 x .5, or $37,500. Dr. Jones, who was 49 at the plan termination date, was paid the present value of the $37,500 annual benefit as a lump sum on December 20, 1988. This amount was $395,000.

The plan's actuary determined that, as of December 31, 2000, Dr. Jones would have two years of participation in the old plan and one year of participation in the new plan. For purposes of Section 415, the old plan and the new plan are aggregated. Therefore, Dr. Jones' total years of participation as of December 31, 2000 is three years. Since NRA in the new plan is age 63, the maximum accrued benefit to which Dr. Jones would be entitled in the new plan, under current Section 415(b) limitations, [(3/10 x $135,000 x .8667 (the reduction for NRA less than 65)], is $35,100. This is less than the $37,500 benefit he had previously accrued in the old plan, even before his old plan benefit is adjusted to an actuarially equivalent benefit at age 63. Under Notice 99-44, Dr. Jones is not eligible to accrue a benefit in the new plan **unless and until he is able to accrue an additional benefit without regard to the repeal of Section 415(e).** This is a different result from the one that would be obtained if Notice 99-44 had said that, effective in the year 2000, the 415(e) limitations would be treated as though they had never existed. If this approach had been taken, Dr. Jones' accrued annual benefit as of December 31, 1986 might have "popped up" to $75,000, allowing funding of the portion that was not paid.

Conclusion: Dr. Jones is not eligible to accrue a benefit in the new plan. He would have to be credited with several years of participation before the current 415(b) limit would exceed the amount he was previously paid.

2. Participants who were covered by both a DB plan and a DC plan, who received a distribution from the DB plan and who accrue additional benefits in a newly established DB plan in 2000:

Scenario 2: The facts are the same as in Scenario 1 except that Dr. Jones had 10 years of participation in the prior plan at the time it was terminated. Effective January 1, 2000, Dr. Jones and his partner, Dr. White, establish a new DB plan.

Dr. Jones again asks if his prior accrued benefit, which was limited by Section 415(e), can be restored.

The plan must determine if Dr. Jones will be able to accrue additional benefits under the DB plan due to cost-of-living increases in the Section 415(b) limits. If yes, Dr. Jones' maximum allowable Section 415(b) benefit in the new plan will be calculated without regard to any prior DC fraction.

To determine whether Dr. Jones can accrue additional benefits, Dr. Jones' maximum Section 415(b) benefit in the new plan must be reduced by the actuarial equivalent of the benefit he received from the old DB plan. For this purpose, actuarial equivalent is determined based on the new plan's definition of actuarial equivalence at the time the calculations are performed.

The following calculations are performed:

Dr. Jones' lump sum payout at age 49 was $395,000. The actuarially equivalent benefit under new plan assumptions is determined as follows: $395,000 x $(1.0635)^{14}/11.3172$ which equals $82,639. Since the Section 415(b) limit in the year 2000 at NRA=63 is $117,000, i.e., $135,000 x .8667 (the reduction factor for NRA less than 65), Dr. Jones is able to accrue additional benefits under the new plan. Therefore, his accrued benefit under the new plan is no longer limited by Section 415(e). In fact, since Dr. Jones has attained NRA under the new plan (age 63), he is now fully accrued in the 415(b) limit at age 63 which is $117,000. Therefore, additional funding of ($117,000 - $82,639) x 11.3172 which equals $388,870 will be required to fully fund Dr. Jones' plan benefits. Depending on the plan's funding method and actuarial assumptions, it is possible that this contribution

would be required for the 2000 plan year.

Note: A plan sponsor who does not wish to provide this "pop-up" in DB plan benefits, should amend the plan prior to the end of the remedial amendment period to limit the increase due to the repeal of Section 415(e). Of course, if the plan incorporated the Section 415 limits by reference, as stated in Notice 99-44, an amendment would need to have been made prior to the beginning of the 2000 year.

A new plan should include any such limits at the time of its adoption.

3. **Participants who were covered under both a DB plan and a DC plan prior to the repeal of Section 415(e) and who have not received a distribution from the DB plan:**

Scenario 3: Mr. Smith has participated in both a DB plan and a DC plan for more than 10 years. The plan year is a calendar year. NRA under the plans is age 65 and the DB plan's benefit formula is 100% of pay. Mr. Smith's high 3-year average compensation is $160,000. Assume that the normal form of benefit under the plan is a life annuity and that Mr. Smith was born in 1940. Also assume that as of December 31, 1999, Mr. Smith's DC plan fraction is .6. Therefore, his maximum projected annual annuity benefit under the DB plan is $126,000 [($135,000 x (1-.06667)] x .4, or $50,400. Effective January 1, 2000, the plan is no longer required to limit Mr. Smith's benefit due to the application of Section 415(e). This means that Mr. Smith's maximum projected annual benefit under the Plan as of January 1, 2000 is $126,000, i.e., an increase of $75,600. If Mr. Smith's lump sum benefit is to be fully funded at age 65, the additional funding requirement at age 65 is $75,600 x 10.8221, which equals $818,151 based on the '83 GAM Unisex Table and 6.35% interest. Depending upon the plan's actuarial assumptions and methods, this amount funded over five years would require an annual contribution of more than $100,000. Assuming Mr. Smith's benefits in the plan were fully funded prior to the repeal of Section 415(e), the annual contribution required to fund his normal retirement benefit increases from zero to more than $100,000.

See the note in Scenario 2 above regarding plans that do not want to provide this type of "pop-up."

Who Will Benefit the Most?

The repeal of Section 415(e) will provide most executives who, at any time, participated in a DC plan with the opportunity to accrue substantial benefits in DB plans. Nonhighly compensated participants will also benefit from the rebirth of the DB plan because employers will be required to make larger contributions on their behalf.

We expect the greatest benefits to inure to professional firms and closely held businesses with older partners, owners or shareholders. Because of TRA '86, many companies terminated their DB plans due to the impact of Section 401(a)(26), which requires a DB plan to cover the lesser of 40% of eligible employees or 50 employees and reduced Section 415 limits. Most of these plans were terminated prior to the end of 1989. They were generally replaced by 401(k) profit sharing and money purchase pension plans. After TRA '86 was passed, many employees under the age of 45, when given the choice, participated in DC plans because they could accrue larger benefits in a DC plan than in a DB plan. However, with the aging of the population (those 40 year old employees in 1989 are now in their fifties), substantial benefits can now be accrued in DB plans. In addition, many employers can continue to sponsor their popular 401(k) profit sharing plans.

Just as companies with existing DC plans can now set up DB plans, companies that currently sponsor DB plans can now establish DC plans. In addition, many employers who sponsored overfunded or fully funded DB plans that were terminated and were precluded from setting up DC plans for their owners, partners and shareholders because of the limitations of Section 415(e), can now establish DC plans.

Caution: If any participant benefits from both a DB plan and a DC plan of the same employer, Section 404(a)(7) limits the employer's maximum deductible contribution to the greater of 25% of the pay of all eligible employees, or the required minimum contribution to the DB plan.

The above limitation dictates that a company that sponsors both a DB plan and a DC plan for its sole shareholder employee will be limited to a maximum deductible contribution for the year 2000 of $42,500 (i.e., 25% of $170,000). If a $30,000 contribution is made to the DC plan, the maximum deductible contribution to the DB plan is $12,500. In this situation, the employer will most likely opt not to set up the DB plan. However, if the sole shareholder is in his or her mid-forties or older, the DB plan will often require a contribution in excess of $42,500 which will make the DC plan unnecessary. While

there are ways to use the rules regarding the timing of contributions to increase the total deduction when an employer maintains both a money purchase plan and a DB plan, these techniques are beyond the scope of this article.

The repeal of Section 415(e) is also helpful in dealing with overfunded DB plans (i.e., plans in which there are excess assets that cannot be distributed to participants without creating a reversion of these excess assets to the employer). Sponsors of these plans can now set up qualified replacement DC plans, transfer at least 25% of the DB plan excess assets to the newly established plan, and allocate maximum contributions under Section 415(c) to the plan participants to use up as much of the excess assets as possible. Prior to the repeal, it was not possible for a participant who had accrued maximum benefits in a DB plan (i.e., their DB fraction was 1.0), to receive additional allocations in a DC plan sponsored by the same employer.

The power of an employer being able to sponsor both a DB plan and a DC plan is best illustrated by the table below. It shows the maximum annual contributions that can be made on behalf of participants of various ages at plan inception in both a DB plan and a DC plan and at the assumed normal retirement ages specified below.

The amounts shown below may vary somewhat due to the actuarial assumptions, the funding method utilized, and the rates on 30-year treasury bonds which now limit lump sum payouts from a defined benefit plan. These calculations were based on 7% interest and the '83 GAM Unisex Table post-retirement; no pre-retirement mortality is assumed. The plan's definition of actuarial equivalence is based on the same mortality assumptions and 5% interest.

In order to support this level of contributions for owners and shareholders, we would expect the employer contribution required to provide benefits for nonhighly compensated employees to range from 5% to 10% of pay, depending on company demographics. Had Section 415(e) not been repealed, it is likely that the employer would not have established a DB plan. In that case, contributions for nonhighly compensated employees would probably have ranged from 3% to 5% of pay. Therefore, both highly compensated and nonhighly compensated employees will benefit from the repeal.

Again, an important caveat to the above amounts, however, is that the maximum deductible contribution for an employer who sponsors both a DB plan and a DC plan is 25% of the pay of all eligible employees, but not less than the minimum required contribution to the DB plan. Therefore, for a plan with contribution levels as shown in the table below, whose sole participant is age 55, the maximum deductible contribution would be $90,000, the DB plan minimum required contribution. Also keep in mind that the DB plan must satisfy Section 401(a)(26).

Older participants are not the only ones who can benefit from a DB plan. For example, a younger executive, age 35, may have a contribution of $30,000 allocated to the 401(k) profit sharing plan account and have an additional $20,000 amount accrued in a DB plan for a total of $50,000.

In conclusion, the repeal of Section 415(e), together with the increased use of the general test under Section 401(a)(4), has made it possible for pension professionals to offer exciting new plan designs to their clients. Indeed, all sponsors of qualified retirement plans should be encouraged to review their current plan designs to see if they can be improved. ▲

Age	Assumed Retirement Age	Maximum Annual Contribution to a DB Plan	Maximum Annual Contribution to a DC Plan	Total
35	55	$20,000	$30,000	$50,000
40	55	$30,000	$30,000	$60,000
45	60	$40,000	$30,000	$70,000
50	60	$70,000	$30,000	$100,000
55	65	$90,000	$30,000	$120,000
60	65	$110,000	$30,000	$140,000

Marge Paul, MSPA, is a consulting actuary with the law firm of Reish & Luftman, where she specializes in consulting on plan design, correction of plan defects, overfunded defined benefit plans, pension distributions, PBGC plan terminations, and mergers and spinoffs. Ms. Paul has more than 25 years of experience in the design and administration of retirement plans. She has also served on ASPA's Board of Directors.

CONTINUED FROM PAGE 5

Leased Employees, the Plot Thickens

testing purposes, that the owners, and almost certainly all the rest of the workers, are employees of the recipient, not the staffing firm.

Of course, it isn't just the owners that are a problem. Most cases in which this issue has been reviewed have concluded that the staff members are also common law employees of the recipient. (For a complete discussion of this issue, see Chapter 4 of *Who's the Employer, a Guide to Employee and Aggregation Issues Affecting Qualified Plans*, by S. Derrin Watson.)

Dual Employers

Some companies have felt that the solution to this issue lies in strengthening the employee relationship between the worker and the staffing firm. They reasoned that if they could show that the worker is an employee of the staffing firm, then they show the worker is not the employee of the client. The 9th Circuit Court of Appeals dashed that argument last year in its decision in Vizcaino v. Microsoft.

Microsoft had moved many of its "permatemps" over to staffing firms. The workers claimed they were still common law employees of Microsoft, and hence entitled to coverage. The Court held that these workers could be Microsoft employees, even if they were also employees of the staffing firm. Thus, it raised the possibility that someone might have dual employers for plan purposes. Employee status of the workers was to be determined by general common law principles, under which Microsoft was clearly *an* employer, if not *the* employer. Either way, the workers were entitled to coverage as common law employees.

While we have not seen a court decide that a dual employer arrangement actually exists in a staffing firm situation, the court's holding means that, as far as a staffing firm's client is concerned, all that matters is the degree of control that client has over its workers. The existence or nonexistence of an employee relationship with the staffing firm is irrelevant in determining whether the worker is a common law employee of the recipient.

Direction and Control

Congress compounded this problem in leased employee cases when it adopted SBJPA of 1996. SBJPA amended IRC §414(n) to provide that a leased employee must operate under the primary direction and control of the recipient. Therefore, the recipient of a leased employee has to have enough control to make the worker a leased employee, but not enough control to make them a common law employee. This creates a narrow window indeed.

The committee reports to SBJPA recognize the problem:

> "As under present law, the determination of whether someone is a leased employee is made after determining whether the individual is a common-law employee of the recipient . . . .The fact that a person is or is not found to perform services under primary direction or control of the recipient for purposes of the employee leasing rules is not determinative of whether the person is or is not a common-law employee of the recipient."

The 9th Circuit Court of Appeals agreed with the committee reports in its case of Burrey v. Pacific Gas and Electric. PG&E had argued that when IRC §414(n) insisted that a leased employee not be the recipient's employee, it must mean something other than common law employee, because most workers who are under the recipient's primary direction and control are its employees. The Court disagreed, noting that direction and control is just one (albeit a very important one) of the factors indicating employee status. It directed the District Court to determine if people providing services to PG&E were their common law employees.

Exclusion Clauses

PG&E had sought to exclude these workers from their plans. Their plan excluded all persons found to be leased employees under IRC §414(n). The Court of Appeals pointed out that this clause was practically worthless in this situation. If the workers were the common law employees of PG&E, then by definition they are not leased employees under IRC §414(n).

A case in the 11th Circuit demonstrated how these workers could be excluded. In the case of Wolf v. Coca-Cola, Coke's plans excluded people who were not "regular employees" of the company. Included among the "irregular" employees were people on the payroll of a staffing firm. By avoiding the statutory definition of leased employee, and basing the exclusion entirely on who writes the paychecks, Coke was able to exclude a disgruntled worker from a staffing firm.

The author suggests using the following clause to exclude staffing firm workers:

> "Persons who are on the payroll of another company, and are not on the payroll of the Employer [or an Affiliate of the Employer] are not eligible to participate in this plan. The purpose of this provision is to exclude from participation in the plan all persons who may be working for the Employer pursuant to a staffing or leasing relationship with another company. They are to be excluded, regardless of whether they are common law employees of the Employer, or are

leased employees of the Employer as defined in Code §414(n)."

The chief advantage to such a clause is that it excludes workers whether they are common law employees or leased employees. However, it is important to remember that, with very few exceptions, all common law employees and leased employees who meet the age and service requirements are counted in determining if the coverage tests of IRC §410(b) and the participation tests of IRC §401(a)(26) are satisfied. Thus, such an exclusion clause can be used effectively only if employees make up a relatively small portion of a company's total non-highly compensated workforce.

Safe Harbor; Offsets

One of the exceptions that allows a company to disregard its leased employees for retirement plan purposes is if they are covered by a safe harbor lease. However, this exclusion is only available to companies who lease no more than 20% of their non-highly compensated workforce. Moreover, it applies only to true leased employees. It does not affect at all common law employees who may be covered under a lease.

It is also important to remember that since common law employees are not leased employees; there is nothing in the Internal Revenue Code that allows the recipient company to offset benefits provided by the staffing firm to its common law employees. Unless the workers are true leased employees, and not common law employees, the only way the recipient can offset staffing firm contributions (which ultimately the recipient is paying for) is to cosponsor the staffing firm's plan.

Proposed Legislation

Much of the uncertainty regarding leased employees could be resolved with passage of the Professional Employer Organization Workers Benefits Act, a bill proposed last year in the House, and very recently introduced in the Senate. The bill would establish a category of staffing firms, Certified Professional Employer Organizations, which would automatically be considered the employer of its "work-site employees."

Although the clarifications of this bill would be valuable, it has been subject to serious opposition and its immediate prospects are not bright. This is unfortunate, because the intent behind the bill, bringing clarity to a growing industry and its customers, is worthwhile, and Congress alone has the power to bring that clarity.

Conclusion

Truly, recent court decisions have highlighted the need for caution in determining whether a worker is a common law employee or a leased employee. Certainly, a client's characterization of someone as a leased employee cannot be taken at face value. Recent decisions also demonstrate the need in many plans for a well-drafted exclusion clause. Ultimately, the confusion in this area is a signal for the need of Congressional action to clarify the rules affecting a growing number of employers and workers. ▲

S. Derrin Watson, APM, is a tax attorney in Santa Barbara specializing in employee, leased employee, and aggregation issues, and is the author of a book dealing with those issues, Who's the Employer? *He is the managing sysop of the Pension Information eXchange (PIX). He lectures and tells jokes frequently for ASPA.*

ABC Events

Date	Location	Event
September 14	Chicago Speaker: Lanning R. Hochhauser, APM, of Datair Systems	Plan Restatement Process
September 28	South Florida Speakers: Attorneys Roger Rovell and Brett Hamlin	PEOs; EPCRS
October 4	Atlanta Speakers: John R. Hickman and David Godofsky	Who is an Employer Workshop
October 18	North Florida Speaker: Lorraine Dorsa, MSPA	Defined Benefit Plans
October 19	Cleveland Speaker: Mike Olah	Fiduciary Responsibilities
November 9	Atlanta Speaker: Richard Carpenter, The Technical Answer Group	Technology Trends for Retirement Plans
November 14	Central Florida Panelists: TBA	Topic: TBA
November 29	Western Pennsylvania Speaker: Brian H. Graff, Esq., ASPA Executive Director	Government Affairs Update

Wrap-up on the ASPA Summer Academy – Kevin Donovan Big Winner, Virtually

by S. Derrin Watson, APM

Participants at ASPA's Second Summer Conference last July, were treated to a game show "Who Wants to Be a Millionaire Pension Guru?" Host Derrin Watson grilled contestants Alex Brucker, APM, George Taylor, MSPA, and Kevin Donovan, MSPA, on all facets of pension law and pension lore.

Kevin Donovan came out on top, correctly answering the $250,000 question, and missing only a very difficult $500,000 question. Alex Brucker came in second, winning $32,000 (but missing the next question). George Taylor also did well, meeting his Waterloo at a $16,000 attribution question.

Although there was plenty of laughter and applause from the audience, perhaps the biggest ovation came when Derrin announced that ASPA dues would not be raised to pay the prize money!

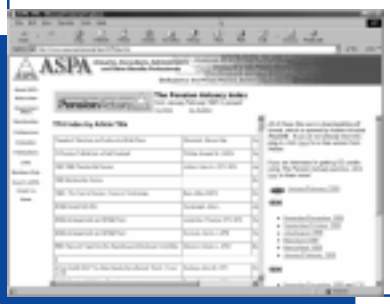
Try your hand at the final question and see if you could have helped Kevin: **Which of these are not related parties for 414(n)? Fred and Mary are husband and wife.**

- ❑ A: Fred's wholly owned C Corp and an S Corp with Mary as 60% shareholder.
- ❑ B: Two non-grantor trusts Mary set up, one for her niece and one for a charity.
- ❑ C: Fred's sole proprietorship and a charity controlled by Fred's family.
- ❑ D: Two C Corporations with 11 equal, identical shareholders in both.

Lifeline: Check IRC 267 *Correct answer on page 23*

The Pension Actuary on the Web

Faster and easier!



Go to the Members Only section on the ASPA website at

www.aspa.org/memonly/ASPAmemonly.htm

and check out the TPA on the web – indexed by author and article title for easier referencing.

Attention FSPAs, MSPAs, CPCs, QPAs, and APMs!

The deadline for completing and submitting your Continuing Education Reporting Form for the 1999-2000 CE cycle is Monday, January 8, 2001. All ASPA members who received a designation after December 31, 1990 must satisfy continuing education requirements in order to retain their designation(s). These CE requirements also apply to those who received an additional designation or had a designation reinstated after December 31, 1990. Most designated members must earn 40 continuing education credits, however, the number of credits required are prorated for those who earned a designation in the middle of the current CE cycle.

Members subject to CE who do not complete and return a reporting form, and those who do not meet the CE requirements, will have their designation suspended and will not receive recognition for satisfying the requirements in the 2001 *ASPA Yearbook*.

Please submit your form by mail or fax to the ASPA office at (703) 516-9308 as soon as possible. If you misplaced your reporting form, you can visit the ASPA website (**www.aspa.org**) to download the form or e-mail ailiffe@aspa.org with your request. Please include your fax number.

Call For Papers: Society of Actuaries

Retirement Implications of Demographic and Family Change

ASPA and the Society of Actuaries, in cooperation with other actuarial, employee benefits, government, and research organizations, are sponsoring a call for papers to encourage and expose new ideas and fresh insights on the retirement implications of demographic and family change. Retirement and family patterns have changed considerably since the U.S. and Canadian Social Security systems were instituted, and further change is likely. A significant number of individuals are working part-time or intermittently before completely leaving the workforce. Further, the proportion of divorced and single people in the population has increased and the median length of marriage before divorce has gone down. Two-earner families have also become the norm rather than the exception. While some revisions have been made to the social insurance systems to handle the new patterns, several issues still remain. Moreover, some of the reform solutions being discussed related to strengthening the solvency of social insurance systems may worsen the problems presented by new retirement and family structures.

These demographic and lifestyle changes are creating a need for re-examination of the structure of social insurance systems and employer retirement benefit programs. With this call for papers, we hope to encourage a deeper exploration of these issues as they apply to the U.S. and Canada, as well as to other countries. We also want to promote an integrated view, whereby the impact of reform in the social insurance system on employer pension and other retirement benefit systems (and vice-versa) under the stimulus of changing demographic and family patterns can be examined. We hope for the development and sharing of ideas by our members and other professionals. Prizes will be awarded for the best papers.

The deadline for submitting abstracts for proposed papers is November 30, 2000. We anticipate that the papers will be presented and discussed at a conference in autumn 2001. We encourage you to review the complete call for papers which you can download from the Society of Actuaries' web site at **www.soa.org/research/ridfc.html** or order from:

Sandy Rosen
Society of Actuaries
475 North Martingale Road
Suite 800
Schaumburg, IL 60173-2226
Attention: Call for Papers
Phone: 847-706-3587
Fax: 847-706-3599
E-mail: srosen@soa.org ▲

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

American College of Employee Benefits Council Welcomes Six ASPA Members

The American College of Employee Benefits Council, established by the American Bar Association, was established to recognize employee benefits attorneys who have made significant contributions to the benefits community.

ASPA members Jeffrey C. Chang, APM; R. Bradford Huss, APM; Harry V. Lamon, Jr., APM; David R. Levin, APM; C. Frederick Reish, APM; and Roger C. Siske, APM, were inducted as "Charter" Fellows of the American College.

The new Charter Fellows met the following criteria:

a) Twenty years' experience as an employee benefits practitioner following admission to the practice of law, in the private sector, government, or academics

b) A demonstrated, sustained commitment to the development and pursuit of public awareness and understanding of the law of employee benefits through activities such as writing, speaking, participating in public policy analysis, public education or public service and representation projects, and leadership in the employee benefits activities of bar associations or other professional organizations

c) Consistent exemplary character and ethical behavior

d) Recognition by their peers for expertise in the field and intellectual excellence

Congratulations to these ASPA members on their accomplishments!

2000 Eidson Award Recipient

ASPA is pleased to announce that Leslie S. Shapiro, J.D., has been selected as the 2000 Harry T. Eidson Award recipient. Mr. Shapiro is currently President of the Padgett Business Services Foundation, a foundation dedicated to the enhancement of small business through education, research, and scholarship.

Mr. Shapiro began his career in 1964 as Attorney Advisor for the U.S. Department of Treasury. In 1973, he was appointed Director of Practice and also served as Executive Director of the Joint Board for the Enrollment of Actuaries until 1995. Mr. Shapiro subsequently served as General Counsel for the National Society of Accountants until joining the Padgett Foundation in 1998.

In his position as Director of Practice and as Executive Director of the Joint Board for the Enrollment of Actuaries, Mr. Shapiro contributed a great deal to the education of enrolled actuaries by enforcing standards of professionalism imposed by the regulations, which he, among others, was instrumental in writing.

Mr. Shapiro worked tirelessly to help ASPA gain credibility among other actuarial organizations in the United States. When the Joint Board Advisory Committee was created, ASPA was granted equal representation with the Society of Actuaries, thanks in large part to Mr. Shapiro's involvement in the deliberations.

Mr. Shapiro will be presented with the award at the 2000 ASPA Annual Conference. The 2000 nominees represented a group of well-deserving candidates, and ASPA would like to thank all of those who submitted nominations.

The Harry T. Eidson 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. Previous winners of the Eidson award are as follows: 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.

ASPA Announces the Martin Rosenberg Academic Achievement Award Winners

ASPA proudly recognizes three recipients of the Martin Rosenburg Academic Achievement Award for the December 1999-June 2000 academic year. This award goes to candidates who score a minimum of 9 on the C-1, C-2(DB), C-2(DC), C-3, or C-4 exam and meet other performance criteria determined by the ASPA Education and Examination Committee. Pamela A. Johnson, CPC, QPA, won the award for her performance on the December 1999 C-4 exam. Jeannine M. McAllister, QPA, won the award for her performance on the December 1999 C-2(DB) exam. Teena M. Sarkissian, CPC, won the award for her performance on the December 1999 C-4 exam.

Pamela A. Johnson, CPC, QPA, is a Plan Administration Manager in the Defined Benefit Division of AAS Pension Services. She is currently preparing to take the Enrolled Actuary Exams in 2001. Ms. Johnson works for AAS Pension Services, which is a division of American Express Tax and Business Services.

Johnson completed her degree in Business Administration at the University of Phoenix in 1992. She obtained her Series 7 and 63 securities licenses in 1993. After several years as a Defined Benefit Unit Leader, she entered the Marketing and Plan Design Division. She considers the last four years the most rewarding and creative of her career. She received her QPA designation in April 1999 and her CPC designation in February 2000.

Jeannine M. McAllister, QPA, is a pension plan analyst with Straub, Young & Stout, Inc., a benefits firm in Syracuse, NY. She has worked as a pension administrator in the Syracuse area for over eleven years.

Ms. McAllister received a BA in actuarial science from Utica College of Syracuse University in December of 1987. In May of 1989, she completed the paralegal certification program with an emphasis in employee benefits from The Philadelphia Institute for Paralegal Training. She received her Qualified Pension Administrator (QPA) designation from ASPA in April 2000.

Teena M. Sarkissian, CPC, has worked for The Epler Company in San Diego, California for over ten years. She is responsible for all aspects of defined benefit plans and manages defined contribution administration including plan asset review, compliance testing, actuarial valuations, allocations, annual filings for the Internal Revenue Service (IRS) and Pension Benefit Guaranty Corporation (PBGC), and the design and preparation of employee benefit statements.

Ms. Sarkissian graduated from San Diego State University with a BS in mathematics with distinction in her major. She has passed seven actuarial exams sponsored by the Society of Actuaries. She received the Certified Pension Consultant (CPC) designation from ASPA in March 2000.

E&E Seeks Technical Education Consultant

ASPA's Education and Examination Committee is taking applications from pension professionals interested in working part time on editing study guides, reviewing examinations, and providing technical education support. Deadline: October 26, 2000.

If interested, send resume and a cover letter expressing how you can help to Jamie Swank, Dir. of Ed. Svcs, 4245 N. Fairfax Dr., Ste. 750, Arlington, VA 22203.

www.aspa.org

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

2000 ASPA Annual Conference Highlights

October 29 - November 1

The 2000 ASPA Annual Conference promises to provide both the latest, most important information in the pension industry and lots of opportunities for networking with your colleagues. Program highlights include updates from Capitol Hill, *Keeping Current* with Sal Tripodi and over 50 interactive workshops on pension topics including:

- Plan Terminations
- 401(k) Testing
- Cross-testing
- Cash Balance Plans
- Multiple Employer Plans
- Plan Design
- New Form 5500
- Mergers & Acquisitions

There will also be an exhibition of more than 50 booths displaying the tools and information you need to make your job easier, faster, and technologically cutting edge.

In addition, we have several special events planned that will help to make this year's Conference a particularly memorable one. With the Presidential election only a week after our Conference, we have taken advantage of our Washington locale and secured timely, provocative entertainment.

On Monday, attendees are in for a pre-Halloween treat when Helen Thomas, former White House correspondent for United Press International, joins us for lunch to share some tales from her rich history covering eight Presidents since November 1960. Helen will provide us with an overview of her years in the White House and share some anecdotes from her recently published memoir, *Front Row at the White House: My Life and Times*. In addition, she will give her insider's viewpoint on the upcoming election and take questions from the audience.

On Tuesday, the political theme continues with a return performance by the Capitol Steps, the enormously popular political satire group, who will regale us with their unique, offbeat view of life inside the Beltway. The group played to a standing room only crowd at last year's Annual Conference and we are thrilled to have them back! They are likely to have a trick or two up their collective sleeve, but the performance is sure to be a treat!

Tuesday night's reception will feature a special performance by The Drifters. Attendees will enjoy the timeless classics of this legendary band from the sixties including "Under the Boardwalk," "This Magic Moment," and "On Broadway." We will also have a delicious buffet in the reception area and coffee and wonderful desserts in the Quiet Chat Room.

As a special bonus, we have added a tour of the Washington monuments on Sunday evening for attendees and their guests.

For more information on ASPA's Annual Conference, visit our website at **www.aspa.org** or contact the Meetings Department by phone at (703) 516-9300 or by e-mail at meetings@aspa.org.

The Capitol Steps

Helen Thomas

The Drifters

Dear ASPA Annual Conference Attendees:

At the 1999 Annual Conference, ASPA introduced the concept of putting all of the session outlines and speaker biographies on a CD-ROM. This change proved very popular. Further, the attendees were asked if ASPA should investigate ways to improve the Conference in regard to the binder cost, weight, and size, and over 90% were in favor of making a change. There will, therefore, be some changes for the 2000 Annual Conference, and ASPA hopes that you will like the changes.

As a result, despite rising costs, ASPA found a way to keep registration fees at the same level as last year by reducing the cost of binders and handouts.

ASPA is pleased to announce the following:

A new binder set has been created. Included in the on-site materials will be a CD-ROM, on-site program, evaluation forms, speaker biographies, and a smaller binder containing all of the outlines for the general sessions. The size of the binder allows for the addition of materials collected by the attendee during the breakout sessions.

As attendees enter the room for each breakout session, a printed copy of the session outline will be provided. The CD-ROM contains a copy of each outline. The CD-ROM has an index linked to late-breaking material (sometimes called a "hot link") for certain sessions.

Attendees will no longer be forced to carry forty or fifty pounds of binders and materials.

A limited number of complete binder sets will be available on a check-out basis at the registration desk for attendees that may want to review a complete set while in their room. Attendees will be asked to limit the amount of time spent in their review to a reasonable period.

Complete Binder sets may be purchased separately and will be sent directly to your office or home after the Conference.

Shipping service is available through the hotel at the attendee's cost. Because many attendees will choose to carry their small binder home, it is no longer cost-effective to have ASPA handle any shipping.

A copy of each session outline is posted on ASPA's website. Attendees will receive a special password along with their registration confirmation that allows outlines to be downloaded to their computer prior to the Conference.

As with any new process, there are likely to be areas that can be improved. ASPA asks for your understanding while we try this new system, and we encourage your suggestions. See you at Annual!

Beverly Haslauer, CPC, QPA, Annual Conference Chair

Stephen L. Dobrow, CPC, QPA, APA, General Chair

For more information please contact:

Trish Rafferty, CMP
Director of Meetings
ASPA
tel: (703) 516-9300 x115
fax: (703) 516-9308

Focus on Government Affairs

Summary of Letters

by Theresa Lensander, CPC, QPA
Chair, Administration Relations Committee

The Administration Relations Committee for ASPA Government Affairs responds to IRS, Treasury, DOL, and PBGC notices, rulings, announcements, and regulations. The goal of the Committee is to proactively communicate the needs of ASPA's membership by writing comment letters and meeting with government officials at least twice a year.

The following is a summary of committee letters sent to-date this year:

February 2, 2000 ASPA wrote the Department of Labor regarding the proposed rule that would amend the regulations governing the circumstances under which small plans are exempt from the requirement to engage an independent qualified public accountant.

February 10, 2000 ASPA was asked to provide input to Treasury and IRS on the 2000 Priority Guidance Plan, a joint project published annually by Treasury and IRS that outlines projects and guidance to be issued for the year.

March 28, 2000 ASPA wrote to Internal Revenue Service responding to Announcement 2000-1, regarding the issuance of guidance on IRC §457(e)(11) exception for bona fide severance pay plans for certain State and Local governmental employers, including suggestions for voluntary correction of 457 plan issues.

April 15, 2000 A letter was sent to Department of Labor regarding the need for an additional extension of time for filing 1999 Form 5500 series, and also on guidance needed for filing short plan year returns.

May 18, 2000 ASPA sent a letter to Internal Revenue Service regarding comments on IRS Rev. Proc. 99-45, modifications to Rev. Proc. 95-51, and approval for changing the funding method used to determine the minimum funding standard.

May 18, 2000 Comments were submitted to IRS on IRS Notice 2000-3, including a suggestion to withdraw the multiple use test for 401(k) non-discrimination testing, and noting the need for the ability of a plan sponsor to suspend safe harbor non-elective contributions during 2000, even if notice was given to employees before the start of the plan year.

May 18, 2000 ASPA wrote to the Pension and Welfare Benefits Administration to commend the adoption of the program and to offer suggestions for promoting acceptance of the Voluntary Fiduciary Correction Program.

June 19, 2000 A follow-up letter was sent to DOL with additional comments and suggestions regarding the small plan asset proposed security regulations.

If you would like to obtain a copy of the letters, they can be accessed on the ASPA website (**ww.w.aspa.org**) under Agency Developments, or contact Beth Rago, Government Affairs Assisstant, at (703) 516-9300.

In addition to the above letters, the committees are working on comments regarding the Employee Plans Compliance Resolution System (Rev. Proc. 2000-16), proposed IRC §411(d)(6) regulations, DOL Advisory Opinion 76-1, the definition of employer for governmental and tax-exempt entities, IRC §415(e) issues, Section 72(p) proposed loan regulations, and Section 125 proposed regulations. ▲

Please contact the Committee Chairs directly if you have interest in a specific topic or would like to learn more about how you can assist the committees:

Chair	Committee	E-Mail Addresses
Michael J. Canan	DOL Committee	Mcanan@ghrlaw.com
Jeffrey Chang	IRS Committee	jcc@crl-benefits.com
Theresa Lensander	Tax Exempt & Governmental Plans	TAPC403bLink@msn.com
Kurt Piper	Actuarial Committee	kurtpiper@pixpc.com
Robert Richter	Cafeteria Plans Committee	robert.richter@corbel.com
Valeri Stevens	Reporting & Disclosure	msb@pixpc.com
Janice Wegesin	401(k) Committee	jmwconsults@juno.com

Theresa Lensander, CPC, QPA, serves as Chair, Administration Relations and Chair, Tax-Exempt and Governmental Plans for the ASPA Government Affairs Committee. She is President of The American Pension Company in Santa Barbara, CA, and specializes in administration for qualified plans and 403(b) arrangements.

Focus on ABCs

ASPA Benefits Councils: Bringing ASPA To You!

by Stephen H. Rosen, MSPA, CPC

In order to extend educational opportunities and provide a means for employee benefits professionals to benefit year-round from ASPA activities, ASPA is promoting the establishment of ASPA Benefits Councils (ABCs). ASPA currently supports nine ABCs in the following locations: Atlanta, Chicago, Central Florida (Orlando), Cleveland, Delaware Valley (Philadelphia), New York, North Florida (Jacksonville), South Florida (Fort Lauderdale), and Western Pennsylvania (Pittsburgh).

For those of you not familiar with ASPA's Benefits Councils (ABCs), these groups are ASPA's effort to bring education to pension professionals on a local level. ABCs provide a means for employee benefits professionals to acquire continuing education, keep current on the latest developments in the field, and network with other benefits professionals in their community. All of this is accomplished on a local, rather than national, level, making participation convenient and cost-effective.

Benefits to an ASPA Benefits Council and its members include: ASPA office support; ASPA member network; recognition as an ASPA group; link to ASPA's education and government affairs activities; topic and speaker suggestions; direct access to ASPA's nationally-known speakers; detailed manual with suggested bylaws and structure; organizational assistance; financial support; insurance protection; continuing education accreditation; networking with other benefits professionals; and discounts on ASPA's one-day workshops, ASPA membership, and ASPA's *ASAP* subscription service.

The requirements for establishing and maintaining an ABC are kept to a minimum to allow ABCs the flexibility needed to prosper. You do not need to be a member of ASPA in order to join or establish an ABC. All it takes to be considered as a possible ASPA Benefits Council is a minimum of 10 interested professionals, at least three of whom are ASPA members.

ASPA is currently fostering the development of ABCs in several areas around the country. The ASPA office has been contacted by benefits professionals in several geographical areas who have expressed an interest in starting a local council. Starting a council can be a great deal of work for one or two people, so they need your help in order to get started! These areas include: Denver, Colorado; Indianapolis, Indiana; North-Central, Minnesota; North and South Dakota; Austin, Texas; and Dallas, Texas. If you live in one of these areas and would like to become involved, or if you would like information on how to start an ABC in your area, please contact Amy Iliffe at the ASPA national office at (703) 516-9300 or e-mail ailiffe@aspa.org. You also do not want to miss the ASPA Benefits Council Informal Session, at ASPA's Annual Conference, on Monday, October 30, 2000. This session will provide detailed information about what ABCs are and how to establish one in your area. ▲

ANSWER FROM PAGE 16 The correct answer is D: Two C Corporations with 11 equal, identical shareholders in both.

Stephen H. Rosen, MSPA, CPC, EA, MAAA, is an independent consulting actuary specializing in the design and implementation of employee benefit plans. He is president of Stephen H. Rosen & Associates, an employee benefits consulting firm in Haddonfield, NJ. Mr. Rosen is an Enrolled Actuary and Certified Pension Consultant, is a Member of the American Academy of Actuaries, and is seated on the Board of Directors of ASPA. He also served as President and Chairman of the Board of the ASPA Benefits Council of the Delaware Valley and is the current chair of ASPA's ABC Committee. Mr. Rosen has lectured at several actuarial conferences, including the Annual Enrolled Actuaries Meeting and ASPA's Annual Conference.

Focus on E&E

ASPA Exams – Big Changes for 2001

by Gwen S. O'Connell, CPC, QPA

As noted in previous articles in *The Pension Actuary* and in *The Candidate Connection*, there are big changes underway in the way that ASPA administers the C-1, C-2(DC), and C-2(DB) exams in 2001.

These three exams will be given in two six-week "windows." The first "window" is from April 15 to May 30 and the second is from October 15 to November 30. These exams will be delivered by Sylvan Prometric and no two exams will be alike. The questions will be delivered from a "bank" that members of the E&E Committee and our technical education consultant have developed during the last eighteen months.

Candidates will register for an exam through the ASPA office. After the registration process is complete, the candidate will receive an individualized "code" that has also been given to Sylvan. Each individual candidate will be able to call Sylvan, give their code, and choose the date and time within the window during which they will take the exam.

When the candidate takes the exam, before they leave Sylvan, they will know if they passed. A simple "pass" or "fail" will appear on the screen. After the window for that exam period has closed, all the data will be collected and the passmark will be set to determine if the candidate scored a "5," "6," "7," "8," or "9." Those grades will be mailed to the candidate no later than twelve weeks after the close of the exam window.

The C-3 and C-4 exams will remain essay exams that are taken with a proctor on the first Wednesday of June and the first Wednesday of December, as they currently are offered.

The *2001 Education and Examination Program Catalog* will be available at the 2000 ASPA Annual Conference and will be mailed to members and exam candidates by the first week in November. The *Program Catalog* will contain all the registration materials and additional information about ASPA's education services. ▲

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, and is the general chair of the Education and Examination Committee.

We regret the error…

In the July-August 2000 issue of *The Pension Actuary*, page 13, in the article "ASPA's Board of Directors – Taking Care of Business," there is an error.

The last paragraph in the second column and the first paragraph in the third column should read:

> These candidates were nominated for office by the Chairman of the Nominating Committee, Carol Sears, FSPA, CPC, at the July Board of Directors meeting. The Board elected these candidates to office.
>
> George J. Taylor, MSPA, President
>
> Craig P. Hoffman, APM, President-Elect
>
> Stephen L. Dobrow, CPC, QPA, Vice President
>
> Joan A. Gucciardi, MSPA, CPC, Vice President
>
> Stephen H. Rosen, MSPA, CPC, Vice President
>
> Scott D. Miller, FSPA, CPC, Treasurer
>
> Gwen S. O'Connell, CPC, QPA, Secretary
>
> Candidates for vacant seats on the Board of Directors will be nominated by the Nominating Committee and elected by the membership at the Business Meeting on Monday, October 30 during the 2000 Annual Conference in Washington, D. C.

Focus on ASPA

ASPA Members Approve New Designation

by John P. Parks, MSPA, ASPA President

I am pleased to announce that ASPA's designated members have recently voted in favor of the proposal to add a new QKA (Qualified 401(k) Administrator) designation! Of those who voted, 71% voted in favor of the new designation. This new designation recognizes retirement plan professionals who work solely with 401(k) plans and is immediately available to those current examination candidates who have two years of applicable experience and have passed the self-study PA-1A, PA-1B, and Daily Valuation exams and the C-1 and C-2 (DC) exams.

The QKA designation is also available to all current QPAs and CPCs who take additional exams as follows: QPAs must complete the Daily Valuation self-study exam and CPCs must complete the PA-1A, PA-1B, and Daily Valuation exams.

Current members of ASPA who have paid their 2000 dues do not need to submit any additional dues payment in order to receive the QKA. ASPA members who successfully complete all of the required exams, need only to submit a membership addition/upgrade application and two letters of recommendation verifying that they have met the requirement of two years of practical pension experience. Those who have completed the exam requirements but are not current members of ASPA should submit a dues payment of $315 along with a new designated member application and two letters of recommendation. All payments received in 2000 will be applied to 2000 and 2001 dues.

Thank you for your involvement in ASPA's education program! We look forward to the expansion of ASPA's professional membership. For additional information, and all forms, refer to the ASPA website (**www.aspa.org**), contact ASPA's membership department at (703) 516-9300, or e-mail aspa@aspa.org. ▲

*John P. Parks, MSPA, EA, 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 Chair of the 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, refer to the Guardian discount program, and identify yourself as an ASPA member.

Focus on CE

The 1999-2000 Filing Deadline is Approaching

by Cathy M. Green, CPC, QPA

Every ASPA credentialed member* is required to earn 40 continuing education credits in each continuing education cycle. The current cycle is for the 1999 and 2000 calendar years. Your completed CE form is due at the ASPA office by January 8, 2001. A copy of *ASPA's Continuing Education Guidelines and Rules* was included with the July-August issue of *The Pension Actuary*. If you've misplaced your form, a blank reporting form can be found on page 35 of the *2000 ASPA Yearbook* or you may contact the ASPA office at (703) 516-9300.

Do you think you may be a few credits short of your requirement? You may not be! In addition to the many opportunities that ASPA provides (the Annual and Summer conferences earn 20 credits and taking *The Pension Actuary* quiz provided in each issue earns one credit), if you have had training or attended a seminar on any of these topics, you can earn ASPA CE credit.

- Accounting for Retirement Plans
- Actuarial Science
- Auditing Retirement Plans
- Business Practices of a Pension/ Actuarial Firm
- Computer Systems for Retirement Plans
- Employee Benefit Planning
- Estate Planning
- Financial Planning
- Funding of Pension Programs (Annuities, Investments, Insurance)
- Health and Welfare Benefit Plans
- IRAs and SEPs
- Laws and Regulations Related to Retirement Plans
- Nonqualified Retirement Plans
- Pension and Profit Sharing Plans
- Retirement Plan Design
- Taxation of Distributions

For more information on ASPA's continuing education program, contact Amy Iliffe, Director of Membership, at (703) 516-9300. ▲

Cathy M. Green, CPC, QPA, is vice president of CMC in Glendale, Calif. She is the chair of the Continuing Education Committee. Ms. Green, a member of ASPA's Board of Directors, also serves on the Conference Committee and is chair of the 2000 ASPA Summer Conference. In February, Ms. Green served on the Strategic Planning and Implementation Team.

*ASPA members who received their designation(s) prior to 1990 are not required to file. Your CE requirement will be prorated if you earned your designation mid-cycle according to the schedule below.

Application for credentialed membership approved	CE requirements
First six months of the cycle	30 credits
Second six months of the cycle	20 credits
Third six months of the cycle	10 credits
Last six months of the cycle	0 credits

PIX Digest

The Pension Information eXchange (PIX) is an online service for pension practitioners. ASPA has co-sponsored the PIX Pension Forum for many years. For more information about PIX, call (805) 683-4334.

New Form 5500 Questions Abound

As we all work toward the October 16, 2000 deadline for the first year of the EFAST 5500 Forms, questions abound regarding the intent of new questions, the format of the forms, DFEs, etc. With a complete rewrite of the forms, we lose the benefit of our years of experience with the old forms. PIX users have been burning up the wires with over 20 threads and more than 100 messages regarding the new forms. Find out what your fellow practitioners are doing and the new "industry standards" for various questions. Some of the thread discussions touch on Schedule D: Just how many pages of PSAs must you report? What are Direct Filing Entities? Should you include your information as a paid preparer? Other numerous questions and comments about individual questions on the form and related schedules can be found by downloading the file 99efast1.fsg.

Come See Us in Washington

Be sure to stop by the PIX booth while you are at ASPA's Annual Conference. See the latest release of the PIX access software, and check out the second edition of Derrin Watson's book *Who's the Employer?*

Partners, Partnership Losses, and 401(k)/Profit Sharing Plans

[Thread 88577]

A PIX user posted a question regarding a plan sponsored by a partnership, where some of partners' income was negative for the plan year. This raises various issues regarding their 415 limit, whether or not they are "benefiting" for purposes of 410(b), as well as how they are tested under 401(a)(4).

While it was easily agreed that the participants' 415 limits were zero, there was some discussion as to whether or not they should even be included in the other testing. Several users argued that, since they were clearly employed and otherwise qualified for the plan, they should be included in testing as zero. Others pointed out that without positive compensation, they are effectively not in the plan for the year and should be ignored for testing purposes.

To read the entire thread, download neginc2.fsg.

Single Plan, not a Controlled Group

[Thread 88796]

This thread started with a user taking over a plan on a standardized document. The plan was sponsored by two separate companies, each owned by a brother. While the sponsors may have thought themselves affiliated or controlled, they do not meet the definition of a controlled or affiliated service group. The thread discusses some of the issues involved with trying to unwind this and addresses 5500 filings, whether or not the document language provides for multiple employers, and how service is credited. This is a good example of the other side of a controlled group determination problem. Frequently we are concerned with discovering entities that may be under common control that should be covered by a plan. The reverse problem of assuming entities are controlled when they are not can create other problems with reporting, testing, and plan documents as well.

To read the entire thread, download the file notcont2.fsg. ▲

Bulletin Board

Early Registration Deadline for December exams – 10/15

ASPA's Annual Business Meeting – October 30 7:30 am - 8:00 am

Make hotel reservations for the Weekend Review Courses by November 10

Weekend Review Courses in Chicago – Nov. 18-19

Don't forget! Update address for 2001 Yearbook by Dec. 1

Daily Valuation Exam Submission deadline – 12/31

Filing Deadline for CE credits to maintain ASPA designation – 1/8/01

2000 Calendar of Events

		ASPA CE Credit
October 14-17	EA-2 Course, Washington, D.C.†	15
October 15	Early registration deadline for ASPA December exams	
October 20	Annual Conference late registration deadline	
October 29	ASPA Board of Directors Meeting, Washington, D.C.	
Oct. 29 - Nov. 1	2000 ASPA Annual Conference, Washington, D.C.	20
November 1	Final registration deadline for ASPA December exams	
November 10	Registration deadline for ASPA Weekend Review Courses	
November 18-19	ASPA Weekend Review Courses C-1, C-2(DC), C-2(DB), C-3 and C-4, Chicago, IL	15
November 22	Early rescheduling deadline for fall exams	
November 29	Final rescheduling deadline for fall exams	
December 6	C-1, C-3, C-4 and A-4 exams	*
December 7	C-2(DC) exam	*
December 8	C-2(DB) exam	*
December 31	Daily Valuation Exam submission deadline	**

2001 Calendar of Events

April 30 - May 1	Great Lakes TEGE Conference (formerly Midstates Benefits Conference), Chicago, IL	16
May 6-9	Business Leadership Conference, Naples, FL	10
July 22-25	ASPA Summer Conference, San Francisco, CA	20
October 28-31	Annual Conference, Washington, D.C.	20

* 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.

** Daily Valuation exams earn ten hours of ASPA continuing education credit 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.