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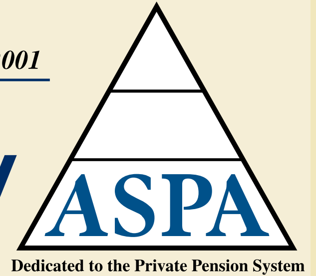
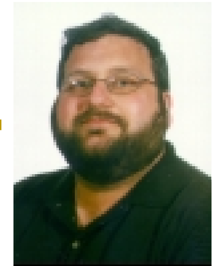
THE Pension Actuary



Proper Beneficiary Designations Under the New Required Minimum Distributions Regulations



by Barry Kozak, MSPA

The Department of Treasury has issued new proposed regulations on required minimum distributions from qualified plans and IRAs.[1] On the surface, they represent the Department's attempt to finally simplify the process of calculating the annual required minimum distributions for individuals who have attained age 70½. However, a more thorough reading provides clarification in the naming of designated beneficiaries, whether as individuals or through a trust document. This article is targeted towards benefits professionals who advise plan administrators on the proper operation of their plans, rather than towards estate planners who advise their clients on how to use

WASHINGTON UPDATE

Senate Pension Reform Legislation Introduced

AARP Endorses Legislation

by Brian H. Graff, Esq.

The first week of April, Senators Grassley (R-IA) and Baucus (D-MT), along with over a dozen other members of the Senate Finance Committee, introduced the Retirement Security and Savings Act of 2001 (S. 742), the companion legislation to the Portman-Cardin pension reform legislation (H.R. 10) introduced in the House of Representatives in March. The bill is virtually the same as the bill that was unanimously reported out of the Senate Finance Committee last September. However, there are some significant changes. The legislation contains dozens of ASPA-supported provisions designed to expand and enhance the private pension system, particularly in the small business sector. A summary of

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plan assets for wealth distribution upon death. This article can help such benefits professionals understand the importance of proper beneficiary designations and explain how the new proposed regulations offer comprehensive guidance to help plan administrators identify beneficiaries properly. First, the article provides a brief summary of the method of calculating annual required minimum distributions, as directed by Congress and as interpreted by the Department of Treasury through the original 1987 proposed regulations and now the new proposed regulations, which totally replace previous guidance. Finally, the article analyzes the new proposed regulation's treatment of beneficiaries, multiple beneficiaries, and contingent beneficiaries, especially in respect to Qualified Terminable Interest Property (QTIP) trusts.

Minimum Distributions in General

Statutory Requirements

One of the requirements for plan qualification under IRC §401(a)[2] is that each plan participant[3] receive his respective benefit from the plan[4] either: in full by his required beginning date; or, in installments starting on his required beginning date, continuing for his life (or the joint lives of himself and a designated beneficiary) or a period which is not greater than his life expectancy (or joint life expectancy), calculated *in accordance with regulations.*[5] The required beginning date is defined, for any participant, as the April 1 following his attainment of age 70½; however, a participant who is not a 5% owner may postpone distributions until the April 1 following the year in which he retires.[6] There are statutory definitions of "life expectancy" and "designated beneficiary,"[7] even though they arguably do not convey the full Congressional intent. Incidental death benefits must also meet these minimum distribution requirements.[8]

Congress instructs that if a plan participant starts receiving his required minimum distributions and then dies, the balance of his benefits must continue to be distributed at least as rapidly as under the method used while he was alive.[9] However, if the participant dies before his required beginning date, then his entire interest in the plan

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

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

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Focus on GAC

PBGC, IRS, Treasury, and DOL Meetings

In March, members of ASPA's Government Affairs Committee (GAC) met for a full day in Washington, DC, to discuss pension related activities on Capitol Hill, assess the current state of regulatory activities, and establish plans for the future. Following the GAC meeting, teams of GAC members returned for their semiannual visit to the offices of the Pension Benefit Guaranty Corporation, Internal Revenue Service, Treasury, and Department of Labor for face-to-face discussions with top agency officials. These meetings continue to create an effective forum for ASPA to review with the agencies how the regulations function in practice and for the government officials to discuss current issues with practicing retirement plan professionals. Following are summaries of the PBGC, IRS, Treasury, and DOL meetings prepared by GAC members in attendance.

Pension Benefit Guaranty Corporation

by Kurt F. Piper, MSPA

Representatives of ASPA's GAC met on March 19, 2001, with representatives of the Pension Benefit Guaranty Corporation. This was our semiannual conference to discuss a range of issues of importance to ASPA members.

The first item of discussion was cash balance plans. The PBGC has been trying to cope with the termination (and anticipated termination) of underfunded cash balance plans. As part of the termination process, it is necessary to estimate the present value of benefit liabilities. This calculation does not just affect the money that a sponsor may owe the PBGC. It can also affect what the participants receive under ERISA Section 4044. ASPA has recently provided comments to the PBGC on these and related issues. A copy of this comment letter can be found on ASPA's website.

As ASPA pointed out in the comment letter, problems in valuing benefits arise not just for the PBGC under a Distress Termination, but also for a plan sponsor under a Standard Termination. Building upon earlier discussions and the comment letter, Ed Burrows discussed the various possible solutions and possible objections to the solutions.

A good solution to the problem would be to require defined benefit pension plans to include provisions which, on termination of the plan, provide for conversion from a floating interest rate to a fixed rate. Preliminary conversations with the IRS suggested that the IRS might consider it an impermissible forfeiture for a new plan, and a 411(d)(6) cutback to amend a plan, to have such a provision. Ed suggested that the PBGC reopen discussion with the IRS on the point that Notice 96-8 could provide some basis for allowing a fixed rate to be deemed equivalent to a floating rate.

The PBGC was concerned as to who could determine these equivalence rules: PBGC, IRS, or Congress. Ed's opinion was that the PBGC and the IRS could together establish equivalencies to be in plan documents.

PBGC raised a fundamental question: why do we need to do this? Ed's reply was that indexes within plans will continue to become more and more complicated. Suppose the index in the plan was a common stock index. Would the PBGC want to administer that plan? Furthermore, at some point an employer might want to (or have to) walk away from a plan by terminating it and purchasing annuities, but what insurance company would want to sell an annuity which uses a common stock index?

At this point, Ed introduced an even more urgent reason for the PBGC and IRS to act. It is possible to use the hypothetical interest rate to do more than value the benefit; it can be used as a tool to shape the plan. For example, assuming a very high interest rate can provide a locked-in pattern of future benefit accruals if compared to the same plan with a lower interest rate. The important question for the PBGC is whether the PBGC wants to guarantee the locked-in pattern of future

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SECOND ARTICLE IN A SERIES

Helpful Guidelines for the Implementation of Daily Valuation Services

by Carol Ringwald

According to Deloitte & Touche Human Capital Advisory Services' *2000 Annual 401(k) Benchmarking Survey*, 89% of 401(k) plans are administered on a daily basis. Daily processing has been available in some form since the mid-1980s, but has evolved significantly in the past five or six years.

Editor's Note: In the last issue of *The Pension Actuary,* we began a series of articles designed to address the changing face of plan administration. This article is the second in the series, focusing specifically on daily valuation issues.

There are several options available today that provide plan sponsors access to daily services. One option is using a bundled provider that offers multiple fund families via an allocated insurance product. These programs include access to voice response, internet, statement processing, trustee services and self-directed brokerage accounts. Another option is to use a single mutual fund product that also provides access to the internet and voice systems, but may be limited in the number of funds available to the plan sponsor. For many benefits professionals, offering a bundled product is the best solution for their clients. However, the marketplace in your geographic location often demands that you be able to offer total services on a more localized basis.

It is now possible to implement a fully automated in-house daily solution in your office that provides your clients with more investment choices, daily access to account balances and daily trading, along with the standard compliance and consulting services. Today's plan administration and recordkeeping systems, along with the mutual fund trading platforms, provide the mechanisms available for you to successfully implement daily processing for your 401(k) plans. Unfortunately, there is a perception that providing in-house daily services is the equivalent of being skinned alive! While providing daily in-house services has its challenges, many of the horror stories can be avoided by following some basic guidelines.

Begin with evaluating your business. Are you losing existing clients because you don't offer daily services? What does your current client base look like today? If the majority of your clients have non-401(k) plans, do you really want to get into the daily valued 401(k) business? Do you have the expertise to support these types of plans? You must take the time to define your current market niche. To whom will you be providing daily services? Existing clients? New clients only? Both? Answering these questions is one of the most critical steps in the process, and without a blueprint of what the new daily business will look like, your overall success in providing in-house daily services can quickly be jeopardized. As the saying goes, "*people don't plan to fail, they fail to plan.*"

Treat adding daily services as a full-time project. The old adage "less is more" does not fit in the daily environment. You should allow a minimum of four to six months to implement a daily program. Until they get a few daily plans up and running to help pay for additional staffing, many firms expect that the existing staff can manage the extra workload. Nothing could be farther from the truth. Failing to assign the appropriate resources can doom the implementation of daily services right from the start. By taking short-cuts up front, you may jeopardize the overall success of your business altogether. What needs to be done? Start with a review of your current

recordkeeping system to determine its ability to administer daily valued plans. You may need to upgrade your existing system, including adding web access and an interactive voice response system. Allow at least two to three months to install any new hardware and software.

You may also need to create new marketing and enrollment materials for the plan sponsor and participants describing your daily services. Also, don't forget to review your existing service agreement or engagement letter. It is essential that you implement a service agreement that will outline in detail the daily services you are providing. It should indicate the services you will perform, along with those services for which the plan sponsor will remain responsible. In conjunction with the service agreement review, consider implementing a detailed client manual that outlines how and when financial transactions will be processed. The client manual should also provide a calendar of events that will occur during the year, including the dates your office will be closed and the dates mutual funds trading will not be available. The manual will help your client to understand and appreciate the benefits of using your products and services. Ultimately, it should save you both time and money.

Create a marketable and profitable product. It is critical that the sales, marketing and administration personnel all agree on the product that is to be sold and administered for your daily clients. You may jeopardize your profitability if you do not standardize your product. Many administration firms believe they cannot compete with the large bundled providers due to the cost involved in providing daily services. It may not be possible for your firm to compete with the larger bundled providers, such as insurance companies and mutual fund companies, from a cost standpoint. However, many employers choose to use a local service provider because of their presence in the community and the exceptional service provided. Price is only one factor, albeit an important one. Concentrate on creating a product that provides 10-12 core investments, a self-directed brokerage account option, voice response and web access, and outstanding technical plan design and compliance. As indicated in the movie *Field of Dreams*, "If you build it, they will come." Also, it is not necessary for you to provide daily services for all your clients. Create a specific client profile based on asset size, number of participants, and technical savvy, and provide daily services to only those clients that meet your criteria. You must learn to walk away from those situations that do not fit your specific profile and concentrate on those clients who will provide you with the greatest profitability.

Create a specific client profile based on asset size, number of participants, and technical savvy, and provide daily services to only those clients that meet your criteria.

You should also conduct a search for an appropriate trading platform to match your business needs. Give careful consideration to the automation available with your recordkeeping system. The trading platform may provide adequate revenue sharing with the mutual fund companies it offers, but it may lack the appropriate automation for handling trade execution and reconciliation. Automation is essential in providing in-house daily services. Your recordkeeping system should provide automated trade placement, trade confirmation, price updates, account balance updates, account reconciliation, and earnings distributions. Manual trading causes many errors and is very time consuming and cumbersome to manage effectively. Without automation, you soon may be telling your own horror stories. After reviewing the trading platforms available, create a shortlist of two or three for further due diligence review. Create a questionnaire that you can provide to each platform so you can compare each using the same criteria. Also, consider visiting with other administration firms that use the specific trading platforms you are reviewing so you can see how the two firms interact with one another.

Finally, implement administration guidelines. The administrative guidelines should indicate your expectations when the employer sends financial transactions to you for processing. For example, when sending payroll data, you expect that the total amount included on the payroll file will equal the total amount listed on the check. Unfortunately, this is not always the case. The administrative guideline should indicate that you cannot process

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How to Use the Internet in Your Business

by Donald Stone

How can you use the internet to support your business and your customers? How can you compete against larger service providers who have millions (or even tens of millions) to spend on development? What should you expect to achieve by using the internet for your business? This article is designed to address each of these questions, and to provide a road map for you to successfully exploit the internet.

Too often we tend to focus on the technology of the internet and risk getting hung up on technical details rather than thinking about how we want to grow our businesses and service our customers. We should think of technology as a means to an end, the enabler, if you will. From a business perspective, the internet is about how we grow, build and run our businesses in the future. This article focuses on the most significant opportunities and threats for administrators, particularly in the small to mid-size segments of the markets: customer service, distribution, partner integration, end-to-end processing, and disruptive technologies.

Customer Service

The United States, perhaps more than anywhere else in the world, is a self-service country. While historically self-service might have been associated with cutting corners and a general lack of service (Remember when service stations washed your car windows and checked your car's oil?), self-service has been redefined to mean convenience, speed and accessibility. Why wait for the post office to deliver a paper statement 10-15 business days after the end of the quarter when it can be posted on your website for the customer to access at their convenience? In fact, why wait for a quarterly statement at all? Why not just check your balance at the end of the business day … or maybe several times during the day?

The internet is made for self-service, and where self service is viewed as an enhancement, the internet can expand the ability to service customers quickly, efficiently and cost effectively. This is where the internet is important to your business, because the core business of recordkeeping is a commodity business. Customers have access to similar and substitutable services from numerous providers, and new features or functionality are quickly commoditized. A sustainable competitive advantage comes only from serving the customer.

But before we go further, *who is the customer?* For administrators, the customer includes plan sponsors, participants, and terminated participants. Your business profile might also include registered investment advisors, brokers, and other distribution partners as customers. For each of these groups, the web offers the opportunity to deliver a great customer experience by providing each customer the means to access you when, and how, they choose. And it can allow your team to always have a 360° view of each customer, knowing everything about the customer in real time.

Attracting

The internet allows the administrator to attract customers and build relationships with them, rather than simply having interactions associated with discrete transactions such as distributing quarterly statements, gathering 5500 data, and performing testing. Depending on your business model, your firm might serve as a portal for various human resource functions or simply provide fresh, frequently updated information that customers can use. Distribution partners will be attracted to a site which offers convenience and information that will help them develop, grow and sustain their business.

Informing

In the past, much of our communication with customers was limited by costs and timing considerations. Providing monthly paper statements to participants is prohibitively expensive – providing them via the internet is not only cheap but a great way to touch customers with relevant information. Plan sponsors can be offered online usage history for plan participants and demographic reports. Calculators and applets (which are easily licensed) give sponsors and participants a reason to come back to the site again and

again. What if you offered your RIA distribution a tool to forecast their revenue from you? Would that bring them back and build loyalty? Of course it would, and because the data resides on your server, changing their clients to another administrator is difficult.

Telling your customers about new procedures, new services, better response times, etc., is a natural use of the internet. How many times have you done something to enhance the customer experience but didn't effectively let your customers know (and get credit for it) because it would take too much time to call all of them or it would cost too much to create a piece and put it in the mail? Now you don't have to! An e-mail from you is appreciated by your customers. It is relevant information.

The internet is a great tool to use with participants as well. Think beyond pushing statements to them via the internet. Think beyond providing advice with one of your partners (although that is a good use of the web). Imagine providing participants with promotional information based on segmentation of the data you already have (age, balances, etc.). Going beyond segmentation, you can offer participants the opportunity to "opt in" or "subscribe" to messages for useful services you offer, such as finding out their rollover options.

Enabling

Self-service is appreciated in America, so take advantage of it. Those tasks that are time-consuming for you, such as enrollment, census updates, address changes, etc., can be done by plan sponsors and participants. A template to explain how design changes affect the plan, and the advantages and disadvantages of each, can educate your customers and create a more informed consumer for your consulting services.

Trouble and problem notification is a task that the internet does very well. Customers can raise issues with you and you can respond to them quickly and efficiently. Auto responders let customers know that you received their request and are working on their problem. Likewise, through the use of intelligent electronic agents, certain data can be checked before you accept it and sent back to the customer for reconciliation, saving your staff from costly manual edit checks.

And soon, you will be able to present your bill via the web and receive payment via ACH Paypal or any of a number of internet-based payment systems.

Maintaining Contact

While nothing replaces face-to-face contact with your customers, e-mail is cheap and effective, because face-to-face and telephone contact are not always feasible or cost effective for many routine communications. And snail mail is simply too slow.

Build or Buy

How do you do all of this and effectively compete with the mega players in the retirement marketplace? There is a misperception that good websites cost millions of dollars. An effective, functional site can be built for a reasonable cost by buying or licensing much of what you need versus building it from scratch. For example, consider content for your site. Yes, you could create all proprietary content, but you will be better off licensing articles. Want tools? Calculators? Don't build them when someone else has already done it better. License them.

Distribution

The internet is the biggest thing to happen to distribution since the telephone. Really! It not only offers opportunities to be more cost effective, but actually opens up new distribution opportunities (and threats).

Traditional and Not So Traditional Sales Opportunities

As the retirement market has matured, administrators are searching for more effective ways of finding and selling new customers. Your website is a great way to tell your story and differentiate your business from competitors. But how does a plan sponsor find your site? They may do a search for 401(k) or retirement vendors, or they may go to online publication sites such as Smartmoney.com. In order for plan sponsors to find you, it is important to have your site linked to as many other related sites as possible and to be in as many search engines as possible. Otherwise they will find your competitors and not you.

Another way to find business through the web is by using one or more of the online pricing services that bring plan sponsors and administrators together by providing comparisons of services. While these services are still simplistic and often reduce differentiation to price, they will get better. Perhaps, most importantly, you can use these sites to gain intelligence on what competitors are doing, what is important to plan sponsors and how your current positioning compares to your competition. In other words, they are great tools for your business even if you never gain new business directly through these channels.

Think of business developed through the internet as enhanced distribution. This happens in two ways. First, anyone who finds you through the web, whether through your own site, a link, or one of the comparison sites, is probably business you would not have found through traditional means. Second, if the plan sponsor asks you to respond to their request for information, they may be a more qualified prospect since they already

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Washington Update

the more significant provisions contained in the bill is set out below. The provisions in the bill are generally effective for plan years beginning after December 31, 2001. A complete side-by-side comparison of the House and Senate pension reform bills can be found at www.aspa.org.

Schedule for Consideration This Year

The House Ways and Means Committee is expected to take up the House version of pension reform right after the Easter recess, the last week in April. The Senate schedule is less clear. Unlike the House, only one tax bill is expected to emerge from the Senate. That bill would be part of Congress' annual budget reconciliation exercise. The reason for this is that a tax bill under budget reconciliation is subject to limited amendments and limited debate time. By contrast, a stand-alone tax bill could be filibustered. Consequently, it is critical that pension reform be included in this single tax bill.

The good news is that the tax bill in the Senate will be crafted in the Senate Finance Committee. The lead sponsors of the pension reform legislation, Senators Grassley and Baucus, are the chairman and ranking member of the committee, respectively. The White House, however, continues to maintain the position that they do not want to make changes to the President's package of tax cuts, which does not include pension reform. This position appears to be driven by the concern that if pension reform is included, other interests will pursue their own agendas, potentially busting the budget. This concern is echoed by Trent Lott (R-MS), the Majority Leader in the Senate and also a member of the Senate Finance Committee. Consequently, from a strategic standpoint, we need to distinguish the pension reform legislation from the myriad of corporate tax breaks being pursued. In particular, we need to demonstrate that pension reform is an issue of critical importance to working Americans.

Grassroots Efforts in Support of Pension Reform

To that end, ASPA has spearheaded the development of a website, www.passpensionreform.org, to generate grassroots public support for the passage of pension reform legislation. ASPA developed the site and has been joined in this effort by a large number of other members of the Retirement Savings Network. PassPensionReform.org will prepare a national electronic petition that will be submitted to Congress and President Bush urging them to enact legislation to expand retirement savings this year. It's easy to use. All you need to do is visit the site and add your name to the list.

You can help with this effort by promoting the site to your employees, your clients and their employees. We e-mailed all ASPA members sample communications that can be used by your clients (and plan participants) to promote PassPensionReform.org. Included in this e-mail were graphics that you can put on your website linking your website to PassPensionReform.org. If you have not received the e-mail, or need another copy, please contact Jolynne Flores (jflores@aspa.org), Government Affairs Manager, at the ASPA National Office.

Given the current competition over budget dollars, this grassroots initiative is an important part of our efforts to make pension reform a priority for Congress and the President. The success of this grassroots initiative depends on your participation. Thanks in advance for your support.

AARP Endorses Senate Pension Reform

Another factor that will help demonstrate popular support for the pension reform legislation is AARP's endorsement of the Senate pension reform bill. AARP agreed to endorse the bill after the tax credits for lower income savers were expanded from last year's bill, a provision requiring that involuntary cashouts be rolled over to an IRA in the absence of an affirmative election otherwise was added, the cash balance disclosure provisions from last year's bill were retained, and the provisions eliminating family attribution in determining who is a key employee and deeming the matching safe harbor as satisfying top heavy were deleted. Although these changes, particularly the top heavy changes, are not easy to accept, Congressional staff thought the deal was necessary to stimulate the momentum for this legislation in the Senate, particularly given the uncertainty surrounding a 50-50 Senate. Ultimately, with AARP's endorsement, the pension reform bill has become the most bipartisan tax bill in history and has the endorsement of the business industry, the financial services industry, the unions, and now AARP. All that is left is enactment, and soon, we hope.

Highlights of the Retirement Security and Savings Act

Limits on Retirement Plan Contributions and Benefits

The bill would raise all of the significant dollar limits as follows:

- 401(a)(17) compensation limit to $200,000, and then indexed in $5,000 increments
- 415(b) annual benefit limit to $160,000, and then indexed in $5,000 increments
- 415(c) contribution limit to $40,000, and then indexed in $1,000 increments
- 402(g) and 457 elective deferral limits to $15,000 over five years in $1,000 increments, and then indexed in $500 increments
- SIMPLE elective deferral limit to $10,000 over four years in $1,000 increments, and then indexed in $500 increments
- IRA contribution limit (for all IRAs) would be increased to $5,000 over three years in $1,000 increments, and then, for the first time, indexed in $500 increments

In addition, any actuarial reduction of the 415(b) dollar limit would be required only for benefits commencing prior to age 62, and an actuarial increase of the dollar limit would begin after age 65 (not after Social Security retirement age).

Catch-up Contributions for Older Workers

Individuals who are age 50 or older would be allowed to make an additional $5,000 contribution to a 401(k), 403(b), 457, SIMPLE, or other salary reduction plan. This additional contribution would be subject to applicable nondiscrimination rules.

Participant Loans for Small Business Owners

The prohibited transaction rules would be modified to allow for participant loans to sole proprietors, partners, and subchapter S corporation shareholders.

Modifications of Top-Heavy Rules

A number of changes would be made:

- The definition of "key employee" would be modified to delete the "top 10 owner" rule, provide that an employee will not be treated as a key employee based on his/her officer status unless the employee earns more than $150,000, and eliminate the four-year look-back rule for identifying "key employees."
- Matching contributions would count toward satisfying the top-heavy minimums.
- The five-year look-back rule applicable to distributions (other than in-service distributions) would be shortened to one year.
- A frozen top-heavy defined benefit plan would no longer be required to make minimum accruals on behalf of non-key employees.

Repeal of 150% of the Current Liability Full Funding Limit

The limit would be phased-up in 5% increments beginning with the 2001 plan year. For plan years beginning after December 31, 2003, the current liability for full funding limit would be completely repealed. Also, code section 404(a)(1)(D) would be changed to allow funding up to unfunded termination liability rather than unfunded current liability, and would be available to all plans regardless of size, provided the plan is covered by the PBGC insurance program.

Roth 401(k) and 403(b) Plans

401(k) and 403(b) plans could permit participants to elect a tax treatment for their deferrals similar to Roth IRA contributions. Such after-tax contributions would be tested along with pre-tax deferrals as part of the ADP test. The 402(g) limit would apply to the combined amount of pre-tax and after-tax Roth 401(k) or 403(b) contributions. Because of their special tax treatment (*i.e.,* distributions, including earnings, exempt from tax), these contributions would have to be accounted for separately. Further, like Roth IRAs, in order to receive this special tax treatment, five years must elapse from when a participant first makes a Roth 401(k) or 403(b) contribution to when a distribution is made. Roth 401(k) and 403(b) contributions (and earnings) can be rolled over to a Roth IRA.

Repeal of 25% of Compensation Limitation

The 25% of compensation limitation under 415(c) would be repealed. Instead, the limitation would be 100% of compensation. The dollar limitation would also apply.

Changes to the Deduction Limit

Three significant changes would be made to the section 404 deduction limit: (1) elective deferrals would no longer be considered employer contributions for purposes of the limit; (2) elective deferrals would be included in the definition of compensation for purposes of the limit; and (3) the limit for profit-sharing plans would be increased from 15 to 20 percent.

Eliminate IRS User Fees for New Plans

The IRS user fee for a determination letter would be waived with respect to any new retirement plan.

Expanded Portability

The bill would permit rollovers from the various types of defined contribution arrangements (*i.e.,* 401(k), 403(b), and governmental 457) to each other without restriction. Further, taxable IRA amounts

(whether or not from a conduit IRA) could be rolled over to a qualified plan, 403(b) plan, or governmental 457 plan.

Faster Vesting for Matching Contributions

Employer matching contributions would have to be vested under a maximum three-year cliff or six-year graded vesting schedule. In the case of graded vesting, vesting would have to begin with the employee's second year of service.

Repeal Multiple Use Test

The bill would repeal the multiple use test.

Small Business Pension Start Up Tax Credits

The bill would help small businesses defray the administrative costs of starting a retirement plan by offering a partial tax credit. The bill provides an additional credit for small employers who make employer contributions into a new retirement plan for the benefit of their non-highly compensated employees.

Notice of Significant Reductions in Future Plan Benefit Accruals

The bill increases the notice requirements where there is an amendment to a defined benefit plan that significantly reduces future benefit accruals. In the case of a significant restructuring of the plan benefit formula, affected participants would have to be given a benefit estimation tool kit, allowing participants to easily determine how their individual benefits will be changed.

Rollover of Automatic Distributions

A plan may provide for the automatic distribution of participants' vested accrued benefits that do not exceed $5,000. Plans that do this would have to directly transfer such distributions to a qualified retirement vehicle unless the participant affirmatively elects to receive the distribution directly. This proposal would not apply to distributions of $1,000 or less. A plan would be permitted to send the distribution to a designated financial institution.

Reduced PBGC Premiums for New Plans of Small Employers

This proposal would set the premium for a small employer plan at $5 per participant for the first five years of a plan. Any applicable variable rate premium would be phased in over a six year period as follows: 0% for year one; 20% for year two; 40% for year three; 60% for year four; 80% for year five and 100% for year six. A cap would also be added on the variable rate premium of small plans. ▲

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Proper Beneficiary Designations

must be: fully paid within five years of death; paid to a non-spouse beneficiary over the life or life expectancy period of such beneficiary beginning within one year of death (or a later date if regulations allow); or paid to his surviving spouse over her life or life expectancy period, beginning by the participant's required beginning date as if he had survived to that date.[10] Thus, as will be demonstrated later in this article, there are certain advantages for the surviving spouse to be named as the sole beneficiary, rather than just one of multiple beneficiaries with the shortest life expectancy, unless the benefit can be successfully partitioned into separate shares.

Old Proposed Treasury Regulations

In 1987, the Department of Treasury issued proposed regulations that explained the procedures on how a taxpayer can comply with the general required minimum distribution rules as well as the minimum distribution incidental benefit rules.[11] Although proposed regulations are normally finalized after a public comment period expires, these regulations, issued 13 years ago, have never been finalized. Therefore, arguably, taxpayers do not need to observe them.[12] The newly issued proposed regulations (discussed below) replace the 1987 proposed regulations (and the proposed amendments thereto issued in 1997).[13]

New Proposed Treasury Regulations

A running theme through these new regulations is the concept that the beneficiary of a plan participant is not known or identified until after the participant has died. This is a stark difference from the previous guidance, which mandated an irrevocable selection of beneficiary by the required beginning date of distributions (even if the participant was still alive). This new concept of determining a beneficiary after a participant's death also applies to trusts that are designated as beneficiaries. In the new guidance, an entire section is

devoted to determining exactly who is a beneficiary. Plan administrators can use the new guidance to more accurately determine who the participant's designated beneficiary is after the participant dies. An estate planner can use the new guidance to distribute an individual's assets accumulated in qualified plans and IRAs more efficiently in estate planning and wealth succession planning.

In addition, the new guidance eliminates all of the old "recalculation" rules and elections by collapsing the minimum distribution incidental benefit rules into the general determination of required minimum distributions.[14] Most of the concepts are the same as in the old proposed regulations, but the new guidance creates some new terms: "applicable distribution period" is the divisor used for defined contribution plans,[15] and "payment interval" is the measuring criteria for annuity payments from defined benefit plans.[16] Additionally, the new guidance contains a new default provision for a plan participant who dies before reaching his required beginning date. If the plan document is silent, then the distributions will follow the beneficiary's life expectancy method if the plan participant has named a beneficiary, or the five-year method if the plan participant has not named a beneficiary.[17] The plan, however, may set its own default and the plan does not need to have the same method of distribution for all employees.[18] Additionally, the plan may allow the participant to affirmatively choose (obviously, while still alive) either the five-year method, or the beneficiary's life expectancy method, to be used upon his death.[19]

There are still separate rules for the calculation of required minimum distributions from defined contribution plans (where benefits are represented by individual accounts) and from defined benefit plans (where benefits are paid in the form of an annuity).[20] For defined contribution plans, the required minimum distribution for any distribution calendar year equals the account as of the last valuation date in the preceding year divided by the applicable distribution period.[21] If the spouse is the sole beneficiary, then the divisor *can* be the greater of the applicable distribution period or the actual joint life expectancy of the employee and the spouse.[22] After the plan participant dies, the divisor becomes the designated beneficiary's life expectancy factor (which is determined in the year *after* death, based on the tables in §1.72-9, and is then reduced by 1.0 in each successive distribution calendar year).[23] If there are multiple beneficiaries, then the shortest life expectancy becomes the term for post-death distributions.[24] The minimum distribution incidental benefit rules of IRC §401(a)(9)(G) are automatically met for defined contribution plans.[25]

For defined benefit plans, generally, a non-decreasing annuity which includes all benefits accrued by the last day of the participant's first distribution calendar year will satisfy the minimum required distribution rules.[26] The minimum distribution incidental benefit rules of IRC §401(a)(9)(G) are automatically met if the normal form of the annuity is either a life annuity or a joint and survivor annuity where the spouse is the second life.[27] If, however, the participant elects a joint and survivor annuity with a non-spouse beneficiary, then a table indicates the maximum amount of benefit allowed to be paid to such beneficiary upon the participant's death.[28] Distribution of any benefits accrued after the participant's required beginning date must commence beginning with the first payment interval in the calendar year following the year accrued. Administrative delays are respected as long as payments are caught up by the end of that calendar year.[29] There are special rules for actuarial increases,[30] and there is a provision that allows the actual annuity starting date to replace the required beginning date if the participant irrevocably elects to start receiving an annuity prior to his required beginning date.[31]

The new proposed regulations are scheduled to be effective for required minimum distributions for calendar years beginning on or after January 1, 2002. However, plan administrators are advised that they can rely on these new proposed regulations for distributions made for the 2001 calendar year if the plan is properly and timely amended.[32] A model amendment is included in the preamble, which can be adopted by qualified plans.[33]

Determination of a Participant's Designated Beneficiary After the Participant Dies

As the new guidance directs, the life expectancy of the designated beneficiary sets the term for the balance of distributions after the death of a defined contribution plan participant.[34] While most plans permit participants to select their beneficiary, plan provisions control where there is no such designation. Using the participant's selection or the plan's default rules, the plan administrator identifies the designated beneficiary controlling the maximum payout period on December 31 of the year *following* the year of the participant's death.[35] Under the new proposed regulations, the designated beneficiary must be an individual if the lifetime distribution periods are to be used,[36] but the individual may be named through a valid trust.[37] The designation of the beneficiary must satisfy the Qualified Pre-retirement Survivor Annuity and

Qualified Joint and Survivor Annuity rules of IRC sections 401(a)(11) and 417(e),[38] the Qualified Domestic Relations Order rules of IRC §414(p),[39] and state laws for the definition of spouse,[40] but need not satisfy the plan participant's resident state's interstate rules.[41]

Contingent Beneficiaries in General

Contingent beneficiaries will not be deemed as multiple beneficiaries if the contingent beneficiary is only entitled to the plan participant's benefit upon the death of the primary designated beneficiary.[42] The new proposed regulations offer two examples of how the naming of a designated beneficiary and a contingent beneficiary will *not* be deemed as having named multiple beneficiaries.

Under the first example described below, the participant is deemed as only designating a single beneficiary, even though *he* names both a primary and a contingent beneficiary:[43]

- C is a plan participant (of Plan W);
- Since C is unmarried, C designates D (sister) as a beneficiary;
- Additionally, C names E (mother) as contingent beneficiary if D dies before C's entire interest is paid to D;
- C dies in 2001;
- Plan W (through its plan administrator) must identify C's designated sole beneficiary or multiple beneficiaries by the end of the year following the year of C's death (*i.e.,* 12/31/2002);
- Since E only has a right to C's benefit upon D's death, then the plan administrator of Plan W totally disregards E and identifies D as A's designated sole beneficiary;
- Therefore, D's life expectancy is calculated once at 12/31/2002 and that factor, which is reduced by 1.0 in each future year regardless of when D dies, sets the term for the required minimum distribution of the balance of C's benefit upon his death.

Under the second example described below, the participant is still deemed as only naming a single beneficiary, even though the *beneficiary* names her own successor beneficiary. (Italics in the following example represent the difference from the first example.):[44]

- C is a plan participant (of Plan W);
- Since C is unmarried, C designates D (sister) as a beneficiary;
- *D, while doing her estate planning, designates E (mother) as her beneficiary to take C's balance, if any, upon her death*;
- C dies in 2001;
- Plan W (through its Plan Administrator) must identify C's designated sole beneficiary or multiple beneficiaries by the end of the year following the year of C's death (*i.e.,* 12/31/2002);
- Since E only has a right to C's benefit upon D's death, then the plan administrator of Plan W totally disregards E and identifies D as A's designated sole beneficiary;
- Therefore, D's life expectancy is calculated once at 12/31/2002 and that factor, which is reduced by 1.0 in each future year regardless of when D dies, sets the term for the required minimum distribution of the balance of C's benefit upon his death.

Designated Beneficiaries in Any Trust

The statute and regulations only set the outside parameters for minimum distributions, but the actual plan documents can limit the distribution options and the manner in which a beneficiary may be named. A small employer, therefore, might determine that it is too costly to allow plan participants to name a trust as a beneficiary since the plan administrator might be required to read the trust documents and decipher its terms. In such a case, the plan document must be drafted to specifically exclude trusts being named as beneficiaries. A plan participant with a large account balance who desires to name a trust as beneficiary, but who is precluded from doing so by the plan document, must take a distribution as an eligible rollover, if allowed to do so, and roll it over into a qualified plan or IRA (which does allow the naming of trust beneficiaries). It seems that any plan document which is silent on the issue will be read to allow trusts as named beneficiaries.

The rules for naming a trust as a beneficiary are:[45] (1) the trust is valid under state law; (2) the trust is irrevocable; (3) the beneficiaries of the trust are identifiable; and (4) the trust is properly communicated to the plan administrator. If the plan participant reaches his required beginning date, then he may either provide a copy of the entire trust or just a list of beneficiaries (with specific certifications) to the plan administrator.[46] Alternatively, if the plan participant dies before reaching his required beginning date, then the trustee of the individual's trust may either provide a copy of the entire trust or just a list of beneficiaries (with specific certifications) to the plan administrator by the end of the year following the year of the participant's death.[47] The individual beneficiary named in a trust with the shortest life expectancy will be the designated beneficiary for purposes of the required minimum distribution rules.[48] If the trust names a class of individual beneficiaries which can expand or contract (such as children), then the class member identified as having the shortest life expectancy will be the designated beneficiary.[49] Therefore,

unless the trust is a special type of trust (like a properly designed QTIP trust), all individuals named in the trust document will be identified as the participant's designated multiple beneficiaries, even if one of the individuals is the participant's surviving spouse.

Designated Beneficiaries in a QTIP Trust

A Qualified Terminable Interest Property (QTIP) trust will generally satisfy the statutory requirements for a marital deduction[50] if, after the individual dies, his surviving spouse is entitled to all income for the remainder of her life and no person has the power to appoint any part of the property to anyone other than the surviving spouse.[51] The IRS has held that QTIP trusts are valid beneficiaries for purposes of the required minimum distribution rules.[52] However, there has not been clear guidance to help plan administrators identify which named beneficiaries of a QTIP trust are designated beneficiaries. Similarly, there has been a lack of clear guidance to assist the estate planner in properly drafting a QTIP trust so that the plan administrator properly identifies the surviving spouse as the participant's sole beneficiary. Since there are certain advantages of naming the surviving spouse as the sole beneficiary (*i.e.,* deferring the required minimum distributions until the participant would have attained his required beginning date), the new proposed regulations offer, through examples, an outline of necessary provisions of QTIP trusts which will allow the surviving spouse to be treated as the sole beneficiary.

Basically, in both examples, the participant creates a QTIP trust during his life so that, upon his death, the trust will distribute income to his wife if she survives him and then it will distribute the principal to his children upon his wife's death. The participant's defined contribution account balance is only one of his assets that will fund the QTIP trust (however, we are only concerned with such qualified plan account balance because it is subject to the required minimum distribution rules). In the first example, the QTIP trust is drafted in such a way that part of the required minimum distributions *might* not be paid to the surviving spouse while she is still alive; whereas, in the second example, the QTIP trust is drafted in such a way that the surviving spouse receives *all* of the required minimum distributions while she is alive.

Under the first example, the plan participant designates a valid QTIP trust as a beneficiary, but the terms of the QTIP create a possibility that a portion of the required minimum distribution will not be paid to the surviving spouse while she is alive but will, instead, accumulate in the QTIP trust and paid to the children upon the surviving spouse's death.[53]

- A is a plan participant (of defined contribution Plan X, which only invests in productive assets);
- A designates QTIP trust P (a testamentary trust) as a beneficiary (which satisfies all requirements of the new proposed regulations for designating a trust as a beneficiary);
- State law allows QTIP trust P, upon A's death, to become a valid instrument to distribute his estate to his named beneficiaries;
- A dies in 2001;
- By 12/31/02, the Plan Administrator of Plan X determines that QTIP trust P is the designated beneficiary – however, the Plan Administrator must determine, based entirely on the written provisions of QTIP trust P, whether B, the surviving spouse, is the sole beneficiary, or whether the surviving spouse and children, collectively, represent multiple beneficiaries and

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thus the surviving spouse is merely the beneficiary with the shortest life expectancy;

- Under the terms of QTIP trust P, all income earned in the trust is payable annually to B, and then all principal is paid to A's children upon B's death;
- Under the terms of QTIP trust P, B has the power to compel its trustee to withdraw from Plan X the greater of the interest earned over a 12-month period on A's account balance or the required minimum distribution for that year;
- Under the terms of QTIP trust P, its trustee will deposit such distribution into the trust, but can only pay the interest earned on A's account balance to B during her life;
- Thus, if the required minimum distribution is greater than the account balance income for any given year subsequent to A's death, the balance will remain in QTIP trust P as principal and will ultimately be paid out to the children upon B's death;
- Since the possibility exists that the children might take part of A's account balance while B is alive (even if such distribution to the children is deferred until after B's death), the Plan Administrator of Plan X must conclude that A actually designated multiple beneficiaries for purposes of required minimum distribution;
- Therefore, the identified designated beneficiary on 12/31/02 is the individual with the shortest life expectancy (in this case, the surviving spouse) and required minimum distributions must begin by the calendar year following the year of A's death (*i.e.,* 12/31/02).

Under the second example, however, the terms of an alternate QTIP trust eliminate any possibility that a portion of the required minimum distribution will not be paid to the surviving spouse while she is alive (Italics in the following example represent the difference from the first example.):[54]

- A is a plan participant (of defined contribution Plan X, which only invests in productive assets);
- A designates QTIP trust P (a testamentary trust) as a beneficiary (which satisfies all requirements of the new proposed regulations for designating a trust as a beneficiary);
- State law allows QTIP trust P, upon A's death, to become a valid instrument to distribute his estate to his named beneficiaries;
- A dies in 2001;
- By 12/31/02, the Plan Administrator of Plan X determines that QTIP trust P is the designated beneficiary – however, the Plan Administrator must determine, based entirely on the written provisions of QTIP trust P, whether B, the surviving spouse, is the sole beneficiary, or whether the surviving spouse and children, collectively, represent multiple beneficiaries and thus the surviving spouse is merely the beneficiary with the shortest life expectancy;
- Under the terms of QTIP trust P, all income earned in the trust is payable annually to B, and then all principal is paid to A's children upon B's death;
- Under the terms of QTIP trust P, B has the power to compel its trustee to withdraw from Plan X the greater of the interest earned over a 12-month period on A's account balance or the required minimum distribution for that year;
- Under the terms of QTIP trust P, *its trustee will immediately pay such amount to B*;
- Thus, *no portion of A's account balance will be held in QTIP trust P while B is still alive*;
- Since *there is no possibility that the children might take part of A's account balance while B is still alive, the Plan Administrator of Plan X must conclude that A actually designated B, his surviving spouse, as his sole beneficiary*;
- Therefore, the identified beneficiary on 12/31/02 *is B, his surviving spouse and required minimum distributions must begin by 12/31/2018 (the calendar year following the year that A would have reached his required beginning date as if he had survived to such date, and, according to the facts in the example, A is 55 upon his death in 2001).*[55]

Conclusion

The new proposed regulations simplify how each participant must receive his required minimum distributions. Contained within the new guidance are rules and examples, which clarify how beneficiaries are identified for participants in a defined contribution plan. The intent of this article is to help benefits professionals understand how the new guidance helps them assist plan administrators in identifying designated beneficiaries and how they can adequately educate estate planners on how to properly draft a QTIP trust so that a surviving spouse is the sole beneficiary upon the participant's death. Please re-read the new proposed regulations after reading this summary for a more comprehensive understanding of the guidance and the minutia of all rules and requirements, which cannot be adequately communicated through this article. ▲

Editor's Note: Refer to *ASPA ASAPs* 2001-03 and 2001-08 for more information on the new proposed minimum distribution regulations.

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[1] Proposed Treasury Regulations §§ 1.401(a)(9)-1, *et. seq.,* (revised 01/17/01), 1.401(a)(9)-2, *et. seq.,* (revised 01/17/01), and newly added Prop. Treas. Regs. §§ 1.401(a)(9)-3, *et. seq.,* through 1.401(a)(9)-8, *et. seq.,* all published at 66 FR 3928. See similar required minimum distribution rules for §403(b) annuities and IRAs at Prop. Treas. Regs. §§ 1.403(b)-2, *et. seq.* (revised 01/17/01) and 1.408-8, *et. seq.* (revised 01/17/01), respectively, published in the same Federal Register on January 17, 2001. Also published in the same Federal Register are new proposed regulations for determining the 50% excise tax imposed upon the participant who fails to take a proper minimum distribution; Prop.Treas. Regs. §54.4974-2, Q&A-8 (revised 01/17/01) keeps the old rule that the Department of Treasury may waive this excise tax if reasonable cause (as defined therein) can be proved and adds a new automatic waiver provision if a sole beneficiary receives the entire balance of the participant's plan benefit within 5 years of his death regardless of whether the intended distributions were to be paid over such beneficiary's life expectancy but any or all of the first four distributions after the participant's death failed to meet the required minimum distribution rules.

[2] All references to the Internal Revenue Code of 1986, as amended, which is codified at Title 26 of the United States Code, will be similarly referenced.

[3] For purposes of this article, the term "plan participant" refers to a participant of any §401(a) qualified retirement plan, §457 plan, §403(b) annuity or Individual Retirement Account (described at IRC §408). For simplification purposes only, the author herein uses the masculine form for the participant and the feminine form for the spouse.

[4] For purposes of this article, the term "plan" refers to any §401(a) qualified retirement plan, §457 plan, §403(b) annuity or Individual Retirement Account. Although §457 plans are subject to required minimum distributions, no guidance in the form of proposed regulations were published in the Federal Register [even though Prop. Treas. Regs. §1.401(a)(9)-1, Q&A-1 (revised 01/17/01) advises taxpayers to "see section 457(d)(2)(A) for distribution rules applicable to certain deferred compensation plans for employees of tax exempt organizations or state or local government employees."].

[5] IRC §401(a)(9)(A) (emphasis added).

[6] IRC §401(a)(9)(C), as it currently reads. The retirement rule for non-5% owners does not apply to a participant of an Individual Retirement Account.

[7] IRC §§ 401(a)(9)(D) and (E), respectively.

[8] IRC §401(a)(9)(G).

[9] IRC §401(a)(9)(B)(i).

[10] IRC §§ 401(a)(9)(B)(ii), (iii) and (iv) (emphasis added).

[11] Prop.Treas. Regs. §§ 1.401(a)(9)-1, *et. seq.*, and 1.401(a)(9)-2, *et. seq.*, respectively, published at 52 FR 28070. Although never finalized, Prop.Treas. Regs. §1.401(a)(9)-1, D-5 and D-6 was amended, and D-7 was added, by additional proposed regulations published at 62 FR 67780. Please note such 1997 amendments to the old proposed regulations (which revised the rules regarding trusts being named as a beneficiary) have not yet been finalized either.

[12] There are two legal arguments that the old proposed regulations regarding required minimum distributions do not need to be followed by taxpayers (the author only identifies the arguments but offers no advice on whether either argument would be accepted by a court of law with proper jurisdiction). The first argument is that only final regulations, and not proposed regulations, need to be observed at all by taxpayers. Final regulations issued by the Department of Treasury are controlling in federal court unless they are "unreasonable and plainly inconsistent with the revenue statutes," Bingler v. Johnson, 394 U.S. 741, 749-50 (1960), whereas proposed regulations "merit no more weight than would an argument advanced by the government in its brief," Estate of Howard v. Commissioner, 91 T.C. 329, 337 (1998). The second argument is that the Department of Treasury overstepped its authority in issuing these regulations in the first place. Under the statute (as indicated in italics herein by the author), Congress only directed the Department of Treasury to issue regulations for the computation of the required minimum distribution and Congress allowed the Department to issue regulations for the extension of the starting date for a non-spouse beneficiary after the employee dies. Such Congressional directives constitute legislative regulations. On the other hand, any regulations issued by the Department of Treasury under its general authority to clarify statutes which are not clear on their face constitute interpretive regulations. The differentiation between the two types of regulations are important and the US Supreme Court has held that only legislative regulations automatically carry the weight of law (if they are reasonable). U.S. v. Vogel Fertilizer Co., 455 US 16, 24 (1982).

[13] See, Id., as they relate to the new proposed regulations.

[14] The table of factors, which was labeled as "applicable divisor" in original Prop. Treas. Regs. §1.401(a)(9)-2, Q&A-4 and –5, has now been relabeled as "distribution period" and moved to Prop. Treas. Regs. §1.401(a)(9)-5, Q&A-4. Similarly, the table, which was labeled as "applicable percentage" in original Prop. Treas. Regs. §1.401(a)(9)-2, Q&A-6, has been moved to Prop.Treas. Regs. §1.401(a)(9)-6, Q&A-2. According to the preamble to the proposed regulations, the life expectancy factors have not been updated for current actuarial estimates; however, since the factors represent the joint life expectancies of two individuals who are 10 years apart (based on 1987 actuarial estimates), then they are still probably more favorable than a single life expectancy (based on 2001 actuarial estimates).

[15] Id., at Q&A-4.

[16] Prop. Treas. Regs. §1.401(a)(9)-6, Q&A-1(d).

[17] Prop. Treas. Regs. §1.401(a)(9)-3, Q&A-4(a).

[18] Id., at Q&A-4(b).

[19] Id., at Q&A-4(c).

[20] Prop. Treas. Regs. §1.401(a)(9)-5 is titled "Required minimum distributions from defined contribution plans;" whereas Prop. Treas. Regs. §1.401(a)(9)-6 is titled, after technical corrections, "Required minimum distributions from defined benefit plans." However, throughout the proposed regulations, the terms "individual account plan" and "Individual Retirement Account" seemingly have the same meaning as a "defined contribution plan" and the term "annuity contracts" seemingly has the same meaning as "defined benefit plans." For minor technical corrections to the proposed regulations published on January 17, 2001, see "Required Distributions From Retirement Plans; Correction" published on February 21, 2001 at 66 FR 10981.

[21] Prop. Treas. Regs. §1.401(a)(9)-5, *et. seq.*

[22] Id., at Q&A-4(b). Since the applicable distribution period represents the joint life expectancies of a participant and a beneficiary 10 years younger than him, this option will only be used by a participant whose spouse is more than 10 years younger than him.

[23] Id., at Q&A-5.

[24] Id., at Q&A-7.

[25] Id., at Q&A-1(d).

[26] Prop. Treas. Regs. §1.401(a)(9)-6, *et. seq*.

[27] Id., at Q&A-2(a) and (b).

[28] Id., at Q&A-2(c).

[29] Id., at Q&A-5.

[30] See, Id., at Q&A-7, -8, and –9.

[31] See, Id., at Q&A-10.

[32] Prop.Treas. Regs. §1.401(a)(9)-1, Preamble (revised 01/17/01).

[33] Id. However, see corrections to such Model Amendment in IRS Announcement 2001-18, IRB citation unknown, and in "Required Distributions From Retirement Plans; Correction" published on February 21, 2001 at 66 FR 10981.

[34] See, *supra*, f.n. 24. Since the beneficiary in a defined benefit plan is simply the second life of an elected joint and survivor annuity, such designated beneficiary for a defined benefit plan participant must be identified by the annuity starting date.

[35] Prop. Treas. Regs. §1.401(a)(9)-4, Q&A-4 (emphasis added).

[36] Id., at Q&A-3.

[37] Id., at Q&A-5.

[38] Prop. Treas. Regs. §1.401(a)(9)-8, Q&A-4.

[39] Id., at Q&A-6 and –7.

[40] Id., at Q&A-5.

[41] Prop. Treas. Regs. §1.401(a)(9)-4, Q&A-1. Please note that each state has a set of interstate laws which determine who will take an individual's estate upon his death if he dies without a will valid under that state's probate laws.

[42] Prop. Treas. Regs. §1.401(a)(9)-5, Q&A-7.

[43] Prop. Treas. Regs. §1.401(a)(9)-5, Q&A-7(c)(3), at Example 1.

[44] Id., at Q&A-7(d)(2).

[45] Prop. Treas. Regs. §1.401(a)(9)-4, Q&A-5(b). The rules in the new proposed regulations are very similar to the 1997 amendments to Prop.Treas. Regs. §1.401(a)(9)-1, D-5 and D-6 and the addition of D-7. See, *supra*, f.n.11.

[46] Id., at Q&A-6(a).

[47] Id., at Q&A-6(b).

[48] Prop. Treas. Regs. §1.401(a)(9)-5, Q&A-7.

[49] Prop. Treas. Regs. §1.401(a)(9)-4, Q&A-1

[50] In order to equalize the treatment between separate property and community property states, the marital deduction was originally created by the Revenue Act of 1948 as 50% of the decedent-spouse's assets or estate. The Tax Reform Act of 1976 expanded the marital deduction to the greater of $250,000 or one half the adjusted gross estate. The unlimited marital deduction was created pursuant to the Economic Recovery Tax Act of 1981. Therefore, under the current rules, there is an unlimited marital deduction for assets passing from one spouse to another, either by a lifetime gift or through testamentary bequests. This means that no estate taxes are paid on the assets until the second death of both spouses (otherwise, estate taxes are due upon the first death). This unlimited marital deduction can be realized either through direct gifts or through certain marital trusts. The author notes that President George W. Bush is advocating the total abolition of the current estate tax system, sometimes referred to as "death taxes," thus making the issue of a proper marital deduction moot.

[51] IRC §2056(b)(7). The author chooses, for purposes of this article, not to give a full dissertation on the proper drafting of or tax ramifications pursuant to a QTIP trust.

[52] Rev. Rul. 2000-2, 2000-3 IRB (holding that a QTIP trust was a valid beneficiary for an Individual Retirement Account).

[53] Prop. Treas. Regs. §1.401(a)(9)-5, Q&A-7(c)(3), at Example 2. The facts are the same as used in Rev. Rul. 2000-2.

[54] Id., at Example 3.

[55] Although not mentioned in this example, if a QTIP trust is drafted so that the spouse is the sole designated beneficiary, and if the spouse is more than 10 years younger than the participant, then while the participant is alive, the participant should arguably be able to elect the actual joint life expectancy factor rather than the applicable distribution period. See, supra, f.n.23.

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This April, the 2001 edition of the PA-1A course and exam will be available online. This web-based course will allow candidates to study, review questions, take the exam, and receive immediate results – all online. Study at work, at home, or on the road without having to haul your books along with you.

The PA-1A exam is one of the exams needed for two of ASPA's designations, the Qualified 401(k) Administrator (QKA) and the Qualified Pension Administrator (QPA).

To register for the online course, please visit the education section of the ASPA website to download a registration form or contact the ASPA Education Department (703) 516-9300. The online course fee is $125 per person (the fee includes the exam grading cost). Once registered, you will receive a letter confirming your registration and including a user name and access code. The 2001 edition of the online course will be available to registered users until December 31, 2001.

PA-1A topics include:

- Types of plans and common features
- Professional roles and fiduciary responsibilities
- Identifications of key employees and highly compensated employees
- Allocation of contributions, forfeitures, and gains/losses
- Calculation of projected and accrued benefits
- Reporting and disclosure requirements

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Pension Benefit Guaranty Corporation

accruals or just the benefit which would have been accrued using a fixed market interest rate.

(Author's note: This locked-in pattern of future accruals masquerading as a fixed accrued benefit could also run afoul of IRS rules under §401(a)(4) and §410(b) regulations regarding accruals for highly compensated employees if the plan was frozen or if equivalencies for future accruals were fixed. For example, while regulation 1.401(a)(4)-3(f)(3) allows continued accruals past normal retirement age plus the actuarial equivalent of the accrued benefit, the increase due to actuarial equivalence must not exceed that which would be provided using a standard interest rate and a standard mortality table.)

Plans can thus be shaped with the equivalencies and be front loaded or back loaded using the hypothetical contribution rate, the hypothetical interest rate, the percentage of the hypothetical balance, and the hypothetical annuity conversion rate.

In addition to the problem of valuing the accrued benefit in cash balance plans, determining the underlying accrued benefit is a problem. However, determining which interest rates are too high or too low is not a decision to be taken lightly.

ASPA suggested that the regulatory agencies need to discuss these issues. As always, ASPA offered help where possible.

The second item of discussion concerned proposals to foster defined benefit pension plans. The current pension reform bill has a host of items, including the cap on the variable premium for small plans, paying interest on premium overpayments, the missing participant program for defined contribution plans and professional defined benefit pension plans, extending the guaranty on substantial owner benefits, the eventual elimination of the OBRA '87 full funding limit, and the "topping off rule" to allow Title IV plan sponsors to deduct a contribution needed to fully fund benefit liabilities.

Beyond the pension reform bill are other proposals. PBGC has a large surplus. The outgoing executive director suggested either a reduction in the flat per-participant premium or a premium holiday. ASPA strongly suggested that the preferred solution would be a reduction in the per-participant premium and not a premium holiday. A premium holiday would not foster new defined benefit pension plans and would disrupt administrative procedures.

ASPA also discouraged a decrease in the variable rate premium beyond that in the current pension reform bill. There was also a discussion about the premiums charged for vested terminated participants.

ASPA suggested that Majority Owners could be allowed to waive

PBGC coverage for themselves. Except for those very rare cases under a Distress Termination where a Majority Owner has no personal assets and the business has no assets for the PBGC to go after, the benefits of the Majority Owner are not really insured. Furthermore, in those rare cases, the odds are pretty good that the triple deficit might be the result of abuse.

The PBGC reiterated its position with respect to Substantial Owners, that it was all too possible that one could be coerced into a waiver of his or her benefits. With respect to Majority Owners, the PBGC considers the proposals in the current legislation to be sufficient. ASPA will continue to bring up this proposal in the future.

The third item of discussion was the PBGC's proposed rules on benefit forms. ASPA told the PBGC that ASPA had no significant problem with them and considered them helpful.

The fourth item of discussion was the PBGC's proposed rule on penalty relief. Again, ASPA stated that it thought the proposal was very helpful. ASPA strongly suggested that the PBGC consider the facts and circumstances of small employers and use flexible discretion in determining penalties. PBGC promised to be understanding of the needs and limitations of small businesses.

The fifth item of discussion was a follow-up to earlier requests for more examples of how to calculate the amount sent to the PBGC for missing participants, and a calculator program to calculate the PBGC annuity values (since many industry software programs do not). Such a program is still in the works. Hopefully it can be finished soon.

The sixth item of discussion was the PBGC-EZ for 2001. ASPA has reviewed it and found it to be of some use. PBGC's experience from focus groups is that half of the participants in these groups want the forms separated (*e.g.,* into a general rule and an alternative rule form). The other half has grown used to the existing forms and software that produces the forms, and wants to avoid having to read the new instructions each year. (The author confesses to being in the latter group – "rather the devil you know than the devil you don't.")

The seventh item of discussion was the audit program. The biggest plan termination problem with small plans and large plans is the usage of an incorrect interest rate. Two typical plan termination problems are the failure to use the correct look-back month for determining the applicable interest rate and the failure to update the age used in present value calculations to the age of distribution. The biggest premium problem is that bigger plans might not include all of the participants. This is not a problem with small plans.

Conclusion

The meeting with the PBGC was very constructive. The PBGC is anxious to promote the growth of defined benefit pension plans and to foster incentives for employers to implement and continue defined benefit pension plans. ▲

Kurt F. Piper, MSPA, is owner and chief actuary of Piper Pension & Profit Sharing in Los Angeles. Kurt serves on ASPA's Board of Directors, is a Member of the American Academy of Actuaries, an Associate of the Society of Actuaries, a Member of ASPA, and an Enrolled Actuary. He is a frequent speaker and currently serves as chair of GAC's Actuarial subcommittee.

Internal Revenue Service

by Fred Reish, APM and Bruce Ashton, APM

Last month, members of GAC held our semiannual meeting in Washington, DC with officials from the Employee Plans Division of the IRS Tax Exempt and Governmental Entities Division (TE/GE). In addition to TE/GE officials headquartered in Washington, key personnel from the TE/GE Examination and Review section (who are responsible for auditing plans) participated by conference call from their offices in Baltimore.

Here are the key issues we discussed:

Plan Audits

We indicated that generally our membership is highly compliance-oriented and that ASPA recognizes the need for an actual audit process as there are some plan sponsors and service providers who choose to ignore the rules. At the same time, we discussed ways to improve (and perhaps simplify) the audit process for qualified plans. We suggested, for example, that the IRS target specific information or areas of concern in their audits rather than doing a "blanket" review of plan information, some of which may be relevant in a given case, but much of which may not. GAC will submit comments to the IRS on this issue and welcomes input from the membership.

We also discussed the process by which the IRS gets information from the plan sponsor or service provider. We noted that in some cases, it appears that Revenue Agents have been stymied in obtaining information needed to conclude an audit where a plan service provider in a remote location fails or refuses to assist its client in providing the information. We pointed out that this creates an imbalance in the system for those local service providers which are cooperative and do help

their clients. We were told by the IRS representatives that they were very concerned by this and would look into it.

In our article on the IRS meeting last October, we mentioned the IRS report on their audit survey of nearly 500 401(k) plans. In that survey, the IRS found violations in 44% of the plans audited (including qualification failures, prohibited transactions, deemed distributions, etc.) and that the level of non-compliance was relatively consistent regardless of plan size. The TE/GE officials indicated that they will be conducting a new audit program of 401(k) plans to refine their baseline data to determine the areas they should focus on in their audits and outreach. They indicated that as a part of this project, they will be updating the examination guidelines that are a part of the Internal Revenue Manual (which provides guidance for Revenue Agents on how to conduct audits in various areas, among other things) and will be conducting outreach on compliance with the rules applicable to 401(k) plans. (The examination guidelines are a very useful tool for practitioners in administering plans because they provide a reasonably concise review of what the IRS believes the rules are and indicate the types of data the IRS will look at in conducting an audit.)

Form 5500

Though the Form 5500 is now filed with the Department of Labor, we once again stressed to the TE/GE officials the need for early release of the forms, especially the electronic version. We pointed out that service providers are dependent on getting the software which enables our members to do the forms and get them filed timely. And the software vendors can only create the software if the electronic version of the form is released early in the year the report is due or, preferably, late the year before. This has become a consistent theme which we emphasize repeatedly to all of the regulatory agencies.

FDL Process

We discussed a number of issues regarding the favorable determination letter (FDL) process. First, the TE/GE officials said they are focusing on the volume submitter and prototype sponsor applications at this time so that the approval letters can get out and plan sponsors can begin amending their plans. We pointed out that the current GUST II remedial amendment deadline, which gives plan sponsors 12 months from the date of the last approval letter issued to a particular prototype or volume submitter sponsor to amend their plans and submit a request for an individual FDL, may create considerable confusion. It may lead to a large number of late or non-amenders. We suggested that it might be appropriate to set a specific date rather than have so many "floating" dates. Also, we suggested that requiring that the FDL application be filed by the end of the 12 months was unrealistic and inappropriate and that adoption of the plan by that date should be sufficient. The TE/GE officials said they were aware of our concerns and would take them into consideration. Do not look for any change in the deadline at this point.

We had previously discussed with the TE/GE officials the need for a process by which problems arising in the Cincinnati office can be resolved quickly and economically. We were told that the IRS would be providing an e-mail address to which problems and questions could be addressed. We will provide that to the membership when we receive it.

As several TE/GE officials have indicated in speeches around the country, the IRS is looking at whether it should continue the FDL program and, if so, whether it should be revised – for example, to provide for filing deadlines based on taxpayer ID numbers in order to spread out filings more evenly over the course of a year. This is a very long term project for the IRS and will not affect the GUST II process, nor would we anticipate that changes, if any, would be implemented within the next several years. We did urge the IRS to continue the FDL process. Nevertheless, GAC is putting together an action team to review a number of proposals and will be providing TE/GE with our input in the future. Among the ideas we may consider for ways to improve the system from both the IRS' and our members' perspectives are to have different levels of review (similar to the current 401(a)(4) methodology).

IMPORTANT RENEWAL OF ENROLLMENT NOTICE

Enrolled actuaries are required by 20 CFR 901.11(d) to renew their enrollment by March 1, 2002, in order to maintain enrollment to perform actuarial services under ERISA. Beginning in October 2001, applications for the renewal of enrollment will be mailed. **If your mailing address has changed within the past three years, please provide the Joint Board with your updated address so that you will receive the application.** You can notify the Joint Board of your change of address in any of three ways:

1. Fax the information to (202) 694-1876
2. Mail to the Joint Board for the Enrollment of Actuaries, 1111 Constitution Avenue, NW, Washington, DC 20224 (Attention: N:C:SC:DOP)
3. E-mail the information to gloria.a.walker@irs.gov

We welcome comments from the membership.

EPCRS

We thanked the IRS for the release of Rev. Proc. 2001-17, which updates, revamps, and expands the Employee Plans Compliance Resolution System (EPCRS). (Refer to *ASPA ASAP* 2001-05.) We suggested that the IRS look at several additional improvements.

First, we pointed out that especially in 401(k) plans, when employees leave employment, distributions are made promptly. And when a plan is terminated, the assets will generally be fully distributed relatively promptly after the termination. If it is later determined that the plan is a non-amender, under the current IRS position, it is impossible to use Walk-in CAP to resolve the defect because the IRS says that once all assets have been distributed, the plan can no longer be amended. A similar problem exists where the plan sponsor has gone out of business and the plan is an "orphan" plan. We urged the IRS to look at their policies in these areas so that plans can be brought into compliance without subjecting the former officers or directors of the sponsor to unnecessary personal liability.

We also suggested that the IRS consider changing the current application process for the standardized VCR process (currently called "SVP"; to be called "VCS" under Rev. Proc. 2001-17) into a reporting process. That is, in cases where the plan is not eligible for the unsupervised self-correction program, the plan sponsor would file a notification that it had corrected the operational failure using a safe harbor correction instead of filing an application for approval. Unless the IRS objected within a specified time, the plan would be deemed to be in compliance. The TE/GE officials said they had considered this approach but were spending virtually the same amount of time reviewing SVP applications as they were VCR corrections. (This suggests that plan sponsors and their advisors may not be properly using SVP. That program is available only for certain specific defects and the form of correction mandated in the Rev. Proc. must be used without modification. Properly used, such applications should require very little processing time by Revenue Agents.) Thus, they indicated that they were not inclined to adopt this approach at present.

We also urged that the IRS add more safe harbor corrections – which can be used for both the standardized IRS supervised process and for self-correction. We were told that as they gain experience with different problems, they will add other safe harbors. We have, in fact, seen this occur over the past five or six years, first with the adoption of correction examples in 1998, the incorporation of those correction examples into the safe harbors of the EPCRS Revenue Procedure in 1999, and the addition of a new safe harbor correction for inclusion of an ineligible employee in Rev. Proc. 2001-17.

The TE/GE officials indicated that for Audit CAP, they were working hard to ensure communication among the CAP coordinators around the country to improve uniformity of treatment. They indicated that they had considered the adoption of a schedule of sanctions (similar to the compliance correction fees for Walk-in CAP and VCR) but had, so far, decided against it. They were concerned that Revenue Agents would lose flexibility in imposing sanctions, either at the high end for egregious cases or the low end for cases with mitigating circumstances, if a fixed schedule was adopted.

The GAC IRS Committee, in conjunction with other GAC committees, will be commenting on these issues further within the next few months. If you have input, please contact us.

Finally, we discussed the Government Accounting Office (GAO) study of the remedial programs released last year. We asked what impact it had on the IRS' thinking on the programs. The TE/GE officials indicated that it was helpful in identifying areas of non-compliance and would be very useful in the design of IRS outreach programs.

As always, we continue to monitor IRS activities and to present TE/GE with ideas for improving the system. We welcome input from the membership on these or other issues. ▲

C. Frederick Reish, APM, Esq., is a founder and partner of the Los Angeles law firm Reish Luftman McDaniel & Reicher. He is a former cochair of ASPA's Government Affairs Committee (GAC) and is currently the chair of GAC's Long Range Planning Committee.

Bruce L. Ashton, APM, Esq., a partner with Reish Luftman McDaniel & Reicher, is cochair of the Government Affairs Committee and serves on ASPA's Board of Directors.

E&E LUNCHEON AT THE ACADEMY

While attending the Summer Academy, you will have the opportunity to have lunch with several members of ASPA's Education and Examination Committee. Come. Learn about what's new in ASPA's education program: new procedures for exams, online course offerings, publications on CD-ROM, and more! The lunch is on Tuesday, July 24 and is included with the Summer Academy registration fee.

Department of Treasury

by Jeffrey C. Chang, APM

As part of its regular spring meeting, GAC representatives met with the Office of Benefits Tax Counsel, Treasury, on March 20, 2001.

The agenda included discussions of pending and previously raised issues of interest to both ASPA and the Treasury, evolving legislative proposals and the status of the IRS/Treasury joint business plan for 2001.

Under the heading of pending issues, the participants shared their thoughts about the proposed regulations concerning cross-tested and new comparability plans. In particular, ASPA's representatives focused on the treatment of DB/DC plan combinations under the proposed regulations. There was a frank and open sharing of views over whether the currently proposed gateways were appropriate and whether certain gateway requirements would discourage small businesses from maintaining plan combinations.

The attendees then launched into a wide-ranging discussion of possible strategies for monitoring and improving compliance with the various reporting and testing rules applicable to qualified plans. Specifically, the ASPA representatives explained that with the constant evolution of larger and larger bundled service arrangements and internet based 401(k) providers, it was important for the government to make sure that there was uniform enforcement of the plan qualification rules. GAC's representatives explained instances in which certain larger service providers had seemingly made business decisions to not provide certain essential testing and compliance services to their small business customers (*e.g.,* top-heavy, section 410(b) and eligibility testing). The Treasury representatives confirmed that they planned to embark on a study of plan compliance issues and that they invited ASPA's suggestions on the subject. The participants had a fairly lengthy exchange of ideas on ways to improve and monitor compliance. Suggestions ranged from ways to better educate sponsors on their obligations to various ways to monitor whether certain service providers have been failing to comply with the rules more frequently than others.

Next, the meeting proceeded to review the status of two other items that ASPA had previously raised with Treasury. First, Treasury representatives confirmed that they were very much interested in addressing ASPA's earlier request for guidance confirming the deductibility of certain restorative payments to qualified plans. Second, the parties revisited the need for guidance concerning plan qualification problems arising in connection with the improper classification of

Hand Elected to ASPA's Board of Directors

William David Hand, MSPA, was elected to ASPA's Board of Directors and will serve a three year term, from 2001 to 2003. David is President and CEO of Hand Benefits and Trust, Inc. in Houston, TX. David graduated from Auburn University with a Bachelor's Degree in Mechanical Engineering. He is an Enrolled Actuary (EA), Member of the American Society of Pension Actuaries (MSPA), a Member of American Academy of Actuaries (MAAA), a Registered Securities Representative and a Registered General Securities Principal.

He served as Chairman of the ASPA Business Owners Conference in 1996 and he participates on ASPA committees dealing with changes in the pension industry. Currently, David is a member of ASPA's Marketing Committee and is serving on ASPA's Education Restructuring Task Force.

David lives in Houston with his wife, Laura, and two teen-aged children, Melissa, 13, and Robert, 15. He is active in the local community, serves as Trustee for Goodwill Industries of Houston, and supports various local charities. David's father, William "Bill" Hand, served as ASPA's President in 1973.

Bruce L. Ashton, APM; Cathy M. Green, CPC, QPA; Cynthia A. Groszkiewicz, MSPA, QPA; R. Bradford Huss, APM; and Leslie A. Klein, APM were each elected to a second term on the Board. Kurt F. Piper, MSPA, who filled a partial term last year, was elected to his first three-year term as an ASPA Board member. These Board terms will expire in 2003.

certain workers as independent contractors, the use of professional employer organizations (PEOs), and certain abusive staff leasing arrangements. The Treasury representatives indicated that a solution to the PEO problem may have to wait for a legislative fix.

Members of GAC also took time to explain ASPA's thoughts about two relatively new legislative proposals that were being circulated. One, the so-called lifetime annuity payout proposal (LAPP), would provide more favorable tax treatment for nonqualified individually purchased fixed and variable annuities. The other, referred to as the "phased retirement" proposal, would allow actively employed older participants to begin receiving annuity benefits from qualified pensions plans while remaining "in service."

Finally, the attendees reviewed the status of the 2001 IRS/Treasury business plan, which generally spells out the agencies' guidance priorities for the year. Although details of this year's business plan were still being finalized and could not be released, members of the Treasury team were interested in clarifying several of the items that GAC had suggested be included in the plan. ▲

Jeffrey C. Chang, APM, is a shareholder in the law firm of Chang, Ruthenberg & Long Law Corporation. Jeff specializes in profit sharing and pension plans, as well as various deferred compensation and employee benefits matters. He is the founder of the Sacramento Employee Benefits Roundtable and has taught deferred compensation and qualified retirement plans courses at McGeorge School of Law. Jeff currently serves as the chair of GAC's IRS subcommittee. Recently, he co-authored the Business Owner's Retirement Plan Survival Guide.

Department of Labor

by R. Bradford Huss, APM

Representatives of GAC met on March 20, 2001 with officials from the Pension and Welfare Benefits Administration (PWBA) of the Department of Labor to discuss matters of interest and concern to both ASPA and the PWBA.

The first topic of discussion, and a high priority for GAC, concerned the problems that have followed the shift of Form 5500 filing from the IRS to the DOL. Valeri Stevens and Theresa Lensander, both owners of service provider firms, presented comments on behalf of ASPA. Problems now occurring in the DOL's processing of 1999 Forms 5500 were discussed. GAC has received reports that, among other matters, the PWBA is sending out multiple letters if more than one error is detected in a single return.

Following up on prior meetings, the discussions covered the entire range of transition year problems for the 1999 forms, including the delay in the release of software by vendors due to delays in finalizing the forms and procedures, and the resulting compression of workload for service providers. GAC once again emphasized that these causes of delay were beyond the control of service providers and that the PWBA needs to be reasonable and flexible in its consideration of any penalties for late filed 1999 Forms 5500.

GAC's representatives stated that the problems present last year are beginning to repeat themselves for the year 2000 forms because the software vendors have yet to release fully functioning software for the new set of forms. GAC stressed that similar delays will arise for the 2000 Forms 5500 and that the DOL should take a reasonable approach to the application of penalties for late filing.

In previous meetings, GAC has told the PWBA that there is a need to reduce the current penalties under the DOL's Delinquent Filer Voluntary Compliance (DFVC) program in order to increase utilization of the program. In October 2000, GAC delivered a written comment letter to the PWBA requesting greatly reduced penalties under DFVC for the voluntary filing of late 5500s. At the March meeting, the PWBA responded that the issue of reducing penalties under DFVC is still under evaluation, but that the change in administration with the election of President Bush requires that the new PWBA leadership be briefed and involved in any decision on DFVC.

GAC's representatives also inquired about the current status of the Voluntary Fiduciary Compliance (VFC) program, which was issued in a pilot version in March 2000. The PWBA is reviewing the comments it received, including those submitted by ASPA's GAC. Once again, the PWBA representatives stated that the new Assistant Secretary of Labor for the PWBA would need to be involved in any further evolution of VFC. In the meantime, the DOL is receiving questions concerning the operation of the VFC program and a number of VFC applications have been filed. The most common type of VFC application concerns delinquent 401(k) plan contributions, and many questions have been received concerning the

method of correction for late deposit of employee deferrals. In response to a question from the GAC representatives, the DOL indicated that it is considering the possible expansion of VFC to include fiduciary violations beyond the thirteen eligible violations specified in the pilot program.

We next discussed the status of the recently issued final Small Plan Asset Security Regulations, which impose additional requirements for a small plan to remain exempt from the need for an audit (see *ASPA ASAP* 2000-38). The PWBA indicated that, because the effective date of the regulations was prior to the Bush administration's memorandum that delays the effectiveness of certain regulations, they anticipated that there will be no delay in the application. Again, however, the PWBA representatives indicated that the effective date of these regulations would be a question for review by the new administration.

GAC's representatives also raised the potential problem in meeting any increased bonding requirement applicable under the Small Plan Asset Security Regulations due to the inherent delay in receiving plan asset information for the previous year. Under the new regulations, the amount of any increased bond has to be determined at the beginning of the plan year in order for the plan to remain exempt from the audit requirement. The DOL representatives referred to DOL Regulation Section 2580.412-19, which provides that the amount of any required bond must be fixed or estimated at the beginning of the plan year, that is, as soon after the date when such year begins as the necessary information from the preceding reporting year can practicably be ascertained. The DOL representatives further stated that the plan administrator needs to make a good faith determination of the amount of any increased bond required under the regulations and that the determination needs to be documented. GAC's representatives also discussed that the bonding regulations predate the enactment of ERISA Section 412 and are sorely in need of updating. The PWBA acknowledged that it recognizes this problem.

GAC's representatives next discussed the recently issued PWBA guidance concerning the payment of expenses with plan assets (see *The Pension Actuary*, January/February 2001). GAC complimented the PWBA on the issuance of the hypothetical questions and answers on plan expenses as providing much needed guidance in this area and thanked the PWBA for its swiftness in issuing the guidance. GAC noted that one area not addressed by the six hypothetical situations is the payment of expenses incurred to utilize the IRS remedial programs concerning plan qualification. PWBA suggested that, if any additional guidance is desired concerning plan expenses, a request should be forwarded for a further advisory opinion. GAC's representatives stated that formal guidance in the plan expenses area, such as the issuance of proposed regulations with a period for public comment, may be more desirable than further guidance in the form of advisory opinion letters.

GAC next presented a proposal that it work with ASPA to develop a program of education and outreach concerning the fiduciary responsibilities of plan sponsors, especially in the small business arena where there is a lack of adequate understanding of fiduciary duties involving matters such as plan investments. GAC suggested that an education effort in this regard would be preferable to an after-the-fact enforcement action by the PWBA. GAC indicated that it would do further brainstorming on this issue and present more developed proposals to the DOL.

The next topic of discussion was the PWBA's Orphan Plan Project, under which the DOL is attempting to help resolve the many problems caused when a retirement plan is abandoned by the plan sponsor or by the responsible fiduciaries. GAC stated that the DOL needs to have a reasonable and flexible attitude toward orphan plan situations in order for service providers and plan fiduciaries to feel comfortable in seeking PWBA assistance. In particular, GAC noted that many times an institutional trustee may continue to hold the assets of an abandoned plan in trust but lack the power of a plan sponsor to terminate or otherwise resolve the status of a plan. In order for a co-fiduciary, such as a trustee, to be willing to approach the DOL for assistance, the PWBA needs to make it known that it will handle such situations in a cooperative, and not punitive, manner.

The next discussion centered on the anticipated reintroduction in 2001 of legislation previously introduced last year in Congress, but not adopted, that provides for a relaxation of the prohibited transaction rules concerning the provision of investment advice. As with several other topics, the PWBA representatives indicated that this topic could not be discussed at the current time pending the appointment of a new Assistant Secretary of Labor. The GAC representatives stated that ASPA is concerned that an adequate level of disclosure of potential conflicts of interest needs to be made to plan participants and that GAC has drafted, and may forward to the PWBA, some initial thoughts on this point.

GAC next discussed its recent Request for Information on Disclosure Obligations of Plan Fiduciaries.

GAC reiterated its belief, as submitted to the DOL in written comments, that this subject is not susceptible to the issuance of comprehensive DOL regulations. The PWBA representatives stated that they had received a number of comments and are reviewing all of them but that comments filed by plan participant groups request the DOL to mandate more disclosure obligations.

The recently enacted Electronic Signatures Act was also discussed. The PWBA indicated that it will be looking at its proposed regulations in regard to paperless administration in light of the new law. GAC offered to assist the PWBA in this regard and will be in further contact with the DOL.

Finally, there was a discussion of several matters relating to 403(b) arrangements including, in particular, the lack of awareness by employers who have implemented 403(b) arrangements of the DOL's advisory opinion procedures for a ruling as to whether a particular arrangement is exempt from Title I of ERISA. Issues concerning the termination of 403(b) arrangements were also covered, and GAC urged the PWBA to be proactive in educating employers about the potential ERISA status and investment issues that are involved in 403(b) arrangements. ▲

R. Bradford Huss, APM, is a partner in the San Francisco, CA law firm of Trucker Huss which specializes in ERISA and employee benefits. Brad concentrates his practice on qualified pension and profit sharing plans, ERISA litigation, and IRS and DOL audits of employee benefit plans. He serves on ASPA's Board of Directors, is co-chair of ASPA's Government Affairs Committee, is a past president of the San Francisco Chapter of the Western Pension & Benefits Conference, and is a member of the American Bar Association.

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Helpful Guidelines

the payroll file and allocate the dollars to the selected investment elections unless the dollar amount received equals the dollar amount on the payroll file. If the payroll file does indeed equal the amount on the check, then you should indicate to your client when the money will be invested according to the participants' investment elections (*e.g.,* within two business days). You should provide every client with a detailed description of your administrative guidelines and expectations. Also, provide them with a supply of administrative forms or other computerized data entry tools in order to standardize your administration process.

To smooth the transition to daily processing, consider using a checklist that outlines the responsibilities for both you and your client. This checklist should establish target dates for the completion of each step in the installation process. Among the items to include are payroll provider procedures, employee education meetings and enrollment completion deadlines, conversion details for existing assets and the voice system and web access setup.

By taking the time on the front-end for developing a formal blueprint of your daily product and implementing administrative guidelines and checklists, you should be able to provide a successful and profitable daily product for your clients. Stop the horror stories before they begin! ▲

Carol J. Ringwald is Founder and President of CJR Consulting Group, Inc., in Jacksonville, FL. With more than 20 years of experience in the pension and insurance industries, Carol consults with firms transitioning from traditional balance forward valuation services to daily valuation services. Carol also conducts daily valuation and recordkeeping service seminars.

Business Practices One Day Workshop

The role of the third party administrator is changing, but certain basics remain the same. Should you sell your firm or buy one? How can you hire the best employees and also keep them?

These are just a few of the issues that will be addressed at an interactive session on business practices held on Saturday, July 21 at the Sheraton Palace Hotel in San Francisco, CA, immediately prior to the ASPA Summer Academy.

The registration fee for ASPA members is $250 until June 30. The fee includes breakfast, lunch, and two beverage breaks, a comprehensive binder of materials, and pertitent information on *Hiring Practices*, *Mergers/Buyouts/Acquisitions of TPA Firms*, *Internal Information Forms and Databases*, and *Marketing Your Services*.

Call the ASPA Meeting Department at (703) 516-9300, e-mail meetings@aspa.org, or visit ASPA's website, **www.aspa.org**, for more information.

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How to Use the Internet in Your Business

know something about your business. Third, the cost of acquisition of this business is potentially less than traditional sales channels. How is that? Your sales team gets in front of real opportunities and often later in the sales process. Their efforts are more efficient. Sales people provided with qualified leads can have a different compensation structure than those that must go out and find the leads themselves.

Access Channels versus Distribution Channels

Distribution channels are "one way" flows of interaction, as the graph below shows. *You* choose when and how to reach the customer; you even choose the customer that you want to reach. The basic "brochureware" website is an example of a distribution channel. The customer sees only what *you* choose to make available for him to see. The traditional sales process is another distribution channel. The customer sees brochures and proposals the way *you* choose to present the information.

Access channels are radically different. They allow *customers* to choose when and how to interact with your business. A potential customer may evaluate your services based on what they find on your website or on sites that contain information about you. The customer wants to access their account when and how they choose – whether by voice response or your website, whether at 3 p.m. Tuesday or 3 a.m. Saturday.

The control shifts to the customer as your business loses control of what a customer sees and how they see it ... or even if they see it at all. At the same time, the customer's expectation changes from one that understands that your business hours are 8-5 to one that assumes that you will always be there (even if only virtually).

A good example of an access channel is the live chat capability that is being associated more and more with successful websites. Live chat allows a customer to have a text-based conversation with someone in your company (usually in the call center) while they are on your site. The "one way" aspect of the early brochureware website has given way to the dynamic "two way" website, by simply reacting to the specific inputs of the user and then later by offering a richly interactive site with live agents. Customers ask for more or different information and your call center agent responds to the customers' requests. This feature presents tremendous opportunities as customers get the information they want rather than "abandon their shopping cart" and leave your site in frustration because they could not find what they wanted.

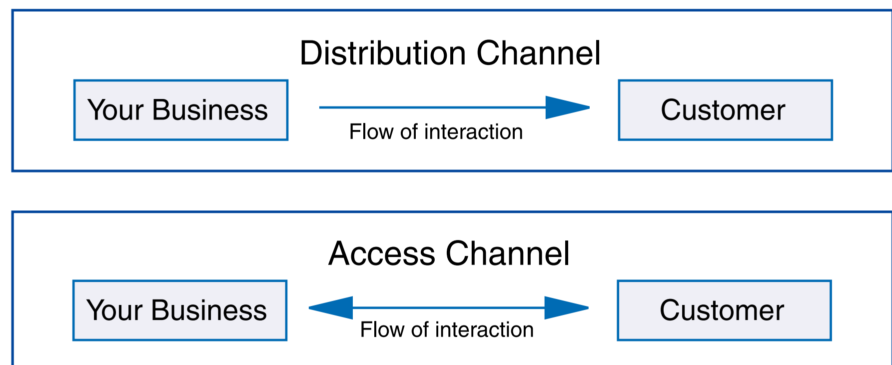
Traditional distribution will continue to play a major role in a company's business, but it is important to think about how the presence or absence of access channels will impact your business and the overall customer experience.

Geography

Plan administration originally developed primarily as a local or regional business. While there are many national full-service providers, much of the recordkeeping business is still locally focused. This tradition evolved from a logical business necessity. Creating brand recognition, marketing, and the logistics of selling often dictated a geographical focus. The internet is changing that. Perhaps your business differentiates itself through local service, in which case it might not be appropriate to expand too far. But some administrators have an expertise that can be exported effectively. If your business works with professional organizations for instance, you may be able to develop business outside your immediate geography based on that specialization. The internet is a great tool for cost-effectively making potential customers aware of your services.

Partner Integration

Often today's partnerships that provide everything from education to statements to advice to full back office services and compliance are ineffective because they are poorly linked and poorly supported. True business partner integration allows you to provide effective solutions to



your customers. The internet makes partner integration possible even for many of the smaller firms. Integration allows you and your partner to work together to gain real-time intelligence about your customers as well as perform sophisticated segmentation of your mutual customer base. It also leads to shorter cycle times, cost savings and happier customers because you collectively are more responsive to their needs.

The internet is the perfect medium for exchanging data. Standardized data formats such as XML have simplified data exchange between unrelated and legacy systems that didn't "talk to each other" in the past. Again, this makes partner integration across various business platforms much easier.

End-to-End Processing

The Holy Grail of administration is "end-to-end" processing. The internet is making this concept a reality. Think about self-service again. By providing simple templates on your website, it is possible to update census information, receive contribution data, process distribution requests, enrollments, and fund changes, etc. By utilizing electronic agents (sometimes called wizards) that guide plan sponsors and participants through the process, you can design screens that do not allow reconciliation errors. Manual intervention, particularly on the front-end can represent as much as 40% of an administrator's cost, (based upon information gathered from a series of interviews this author conducted in 1999).

Disruptive Technologies

ASPs

Many of the larger recordkeepers of 401(k) plans have, or are in the process of creating, application service providers (ASPs) that allow plan sponsors and participants to conduct total administration, including contribution processing, plan design, compliance testing and distributions, online. Other recordkeepers are licensing the technology or partnering with new firms that have developed online recordkeeping software.

What is a third party administrator to do? Recognize that much of the charm of these applications is their ability to (theoretically) reduce the cost of administration to close to zero. (The typical methodology is a zero hard dollar recordkeeping fee supplemented by a wrap fee.) These firms represent a real threat at the low end of the market. But from a middle market customer perspective (both plan sponsor and participant), the customer benefits can easily be replicated as we noted above, with the implementation of certain screens and functionality on your website.

Data Aggregation

Screen scraping, data harvesting, and data aggregation all refer to a process of capturing data from one site on the web and porting it to another site that can aggregate data from all of an individual's online accounts to provide a more comprehensive financial picture. The risk to an administrator's business is that data ported to another site and integrated into that site's asset allocation utility or other tools is the ultimate in commoditization. What is the value of your business to a participant who allows an aggregator to access his or her data on your site and never comes to your site himself or herself? What are the chances that you will capture that person's IRA rollover? Data aggregation presents a real problem for administrators who cannot realistically compete for the aggregation. This news is not all bleak, however. Data aggregation is in its infancy, and it will be several years at best before it is truly mainstream. And like all technologies, not everyone adopts them. By creating a compelling site of your own, you can build loyalty. And you may find that participants who do not aggregate are better prospects for other services you may offer, such as IRA rollover accounts.

Online Dynamic Pricing Applications

As mentioned previously, online dynamic pricing application sites are a form of distribution and can enhance your business. They also do something

Nominations for ASPA's Educator Award

The Education and Examination (E&E) Committee is seeking nominations for ASPA's Educator Award to recognize and honor outstanding educators. Past award recipients include: Cheryl L. Morgan, CPC; Charles J. Klose, FSPA, CPC; Janice M. Wegesin, CPC, QPA; and David Farber, MSPA, EA, ASA.

If you know an ASPA member who has made a significant contribution to pension education, please forward your nomination and a few paragraphs, including nominee background information, by July 1, 2001 to: ASPA, Attn: E&E Department, Director of Education Services, 4245 N. Fairfax Drive, Suite 750, Arlington, VA 22203-1648; or fax to (703) 516-9308.

else. They create transparency in the marketplace. Like every other business today, it is becoming harder and harder to rely on a business model that is based on an imbalance of information such as:

- one where *you* understand costs and the *customer* is less informed
- one where *you* know what features are available in the marketplace and the *customer* is less aware, and
- one where *you* know the kinds of metrics that set the standard for service and the *customer* does not know them.

These applications will inform potential customers about what their needs are and force administrators to be more efficient and provide higher levels of customer service.

Conclusion

Embracing the internet can provide your business with new opportunities to grow and compete in ways not possible just a few years ago. You may not be able to use every idea, but every business can use most of them. By creating a more efficient business, you can add value and profitability to your business – and your customers. ▲

Donald Stone has over 25 years of experience in the development and delivery of investment, trust, and defined contribution products, including mutual funds, software, and the internet. For the past 1½ years, Donald has consulted with companies on ways to use the internet to increase their business and has also given advice on products, market segmentation, product differentiation and overall business strategy. Donald is a frequent speaker at conferences and has published articles on investments and related topics that have appeared in national publications.

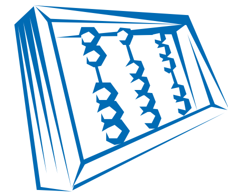
Technical Education Consultants Added to ASPA's Education & Examination Program

Michele C. Kocak, CPC, QPA

Michele has over 10 years of experience with qualified retirement plans, specifically defined contribution plans. She worked as a third party administrator with firms in Pittsburgh, PA and Phoenix, AZ before becoming an independent contractor in 1998. She was also employed as a paralegal for an ERISA attorney. Michele recently moved to Memphis, TN. She is a graduate of the University of Pittsburgh with a degree in Applied Mathematics.

Howard Simon, MSPA

Howard is an actuary with Towers Perrin in Boston, MA and is involved in all aspects of retirement plan design. He specializes in defined benefit pension plans and is involved with leading younger analysts. Howard lives in Framingham, MA with his wife, Debra, six year old son, Shane, and two dogs, Alex and Tiffany. He participates in men's competitive baseball and hardball. Howard's additional professional designations are FSA, EA, MAAA, MS, and PE.



Did you know that increasing retirement savings is a critical priority for working Americans?

PassPensionReform.org

PassPensionReform.org is a national petition urging Congress and the President to enact legislation to expand retirement savings this year.

Help us to expand retirement savings NOW by...

✓ Visiting **www.passpensionreform.org**

✓ Adding your name to the petition

✓ Sending the site information to your employees and clients

Welcome New Members

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

MSPA

John C. Baratka
Mark G. Beilke
Lawrence S. Butcher
Lynn B. Hurley
Howard J. Small
Kathleen Tompkins

CPC

Kelly J. Bass
Mary M. Bennett
Tamara L. Bowman
Victoria A. Butterfield
Daniel R. Casella
Amy L. Cavanaugh
Denise L. Coderre
Theresa T. Cones
Chat W. Cowherd
Lisa A. DesMoine
Laurie A. Haas
Heather L. Hackney
Matthew D. Hutcheson
Michael C. Leland
Mary E. McCoy
Dennis F. O'Connell
Richard W. Rausser
Maureen J. Ringo
Joyce E. Yaccarino
Scott G. Young

QPA

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David A. Cindrich
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Lisa A. Crowell
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Joseph DeMangeont, Jr.
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Gwendolyn S. Dominic
Christine Nelson Eldridge
Jeffrey D. Evers
Victoria G. Feehan
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Aracely Figueroa
Ingrid J. Fils
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Donal K. Ford
Oliver Z. Fraser
Charles R. Fridinger
April M. Fuller
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Kevin E. Glueck
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Christine K. Hamel
Tammy S. Hamilton
Patricia J. Hansen
Blake R. Harms
Kimberly Massie Hatcher
Erin R. Helmken
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Elizabeth A. Johnson
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Paul Lau
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Chad A. Moore
Teresa L. Olivier
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George C. Patterson
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Karin E. Peterson
Karen R. Poole
Victoria J. Prenger
Patricia L. Rawlings
Michael D. Robinette
Christine E. Robinson
Carla R. Ross
Sherry Salzman
Peter E. Saxton
Melissa L. Schwartz
Steven C. Semler
Bernadette Sharma
Alexander B. Shokrian
Richard A. Silva
Todd C. Slocum
Nichole M. Smith
Willard D. Smith Jr.
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Rodney W. Stortenbecker
Jarret M. Strawn
Stacey L. Stretch
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Michael J. Thomas
Christopher J. Trenta
Marla K. Ward
Cynthia A. Way
Jeanne M. Weiler
Lori L. Wenzl
Dennis R. Wiley Jr.
Lynne S. Wilf
Mark P. Winslow
John J. Wolf
Donna L. Wolfson

QKA

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Robert Stan Anthis
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Diane Paige Bellora
Mollie A. Bentley
Dawn V. Birk
Terry A. Blanton-Pastor
Babette L. Blickenderfer
Denise R. Bolger
Janice P. Bongiorno
Amy E. Brandon
Randall J. Broscious
Brandon E. Brown
Deanna G. Brown
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Kim M. Calhoun
Milan J. Capela
Rebeccah L. Cardillo
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Jeremy A. Chambers
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Patricia A. Daniels
Nancy M. Day
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David G. Deckelman
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Karol Digmann
Sheryl R. Dorton
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Sean M. Duggan
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Susan L. Iliff-Barott
Siobhan C. Irby
Amy E. Irvine
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Sharlene L. Koleno
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Thu Lai
James C. LaMancusa
Paul R. Lashkevich
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Stephen Sean Lewis
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Karla L. Nousek
William Clark Olinger
Michael F. Ostuni Jr.
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Linda D. Peck
Erik A. Pienkos
Donald J. Pitterle
Thomas E. Poje
William C. Presson
Lindsey A. Raddatz
William J. Rapp
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Jeffrey P. Reichert
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Renee C. Richmond
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Suanne L. Roche
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Christine G. Russell
Margaret Ryan-DeBonis
Jack L. Sanborn
Karen A. Sandler
Scott C. Sandus
G.R. Sanidad
Maria Saputo
Colleen Schlosser
Jennifer A. Self
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Teresa M. Shores
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David A. Shupe
Shannon C. Silva
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John C. Smith
Kathleen A. Smith
Nichole M. Smith
Toni J. Sorenson
Robert A. Sosky
Jane E.M. Soura
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Brenda P. Stanley
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Pamela S. Stobnicke
Jeffrey S. Stoltzfus
Stacey L. Stretch
Anne E. Strine
Anne M. Stuhlman
Alan B. Svedlow
Cynthia J. Taylor
Lisa A. Thorne
Carlos E. Tocabens
Maria A. Topacio
Jodi L. Tressler
Joanne L. Trompeter
Catherine F. Tyson
Dorthy M. Tzumas
Dianne R. Van Daele
Harry Veldkamp
Timothy W. Voigt
Amy C. Wallace
Ann M. Weaver
Michael T. Wendler
Katherine Willard
Duane D. Williams
Marie Wilson
Angela R. Wojtaszek
Ernst A. Wright
Barbara A. Wuertz
Natalie R.E. Wyatt
Michelle M. Wyckoff
Heidi J. Yeakley
James J. Zabinski

APM

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Juliette C. Meunier
James C. Paul
Charles H. Thulin

Affiliate

Tracy Ahr
Carl E. Burress
Stella M. Edralin
Pamela G. Frazzitta
Angie Karstens
Shawn J. Koch
James A. Koroski Jr.
Stanley Kuperstern
Corinne S. Lyon
Michelle A. Maines
Kathleen J. Manoussakis
Bob Neinken
Mary Sachse
Bryan Satterfield
Richard A. Strouse
Roman T. Umali Jr.
Darin Wassmann
Ken Weber

Eidson Nominations Now Open!

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

The criteria used are:

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

ASPA's Membership Committee will make the recommendation for the award. If you are a voting member of ASPA and know someone you believe meets the criteria, please fill out the enclosed nomination form.

The recipient need not be an ASPA member. If no deserving candidate is found, no award will be given. The award is presented at the ASPA Annual Conference.

Nominations will be accepted until **May 15**. A nomination form can be downloaded from our website at **www.aspa.org**.

ASPA 2001 Business Leadership Conference

ASPA's 2001 Business Leadership Conference (BLC), *Planning for Growth and Profitability,* is designed to benefit retirement and pension professionals whose decisions impact their businesses' lifeblood. Attendees include presidents, principals, owners, vice presidents, and key managers from all over the country. The BLC is the perfect opportunity for business leaders to plan for growth.

The BLC is scheduled for May 6-9, 2001 at the Registry Resort in Naples, Florida. This year's conference features *The 2001 ASPA Financial Survey*, providing salaries, benefits, personnel policies, expense analysis, systems utilization, and product pricing. In addition to reviewing and discussing the *Survey*, the BLC features sessions on *Technology Applications for Plan Administration, Technology Applications for Office Management, Individually Directed Accounts, Marketing Strategies,* and *Buying and Selling a TPA Practice.*

BLC attendees will have the opportunity to discuss ideas with colleagues during the peer networking groups. These breakout sessions, organized by size of the firm and market area, provide a forum for attendees to share information and gather ideas on specific issues of importance to them.

In addition to general sessions, networking groups, and interactive workshops, the agenda also allows for "downtime" to relax and enjoy the beautiful setting while doing some informal networking. ASPA has arranged area tours for attendees' guests during the day and two receptions and a dinner for both attendees and guests during the evening.

The "early" registration fee (by April 16, 2001) for members is $950, $1,200 for nonmembers, and $250 for guests. More information on the conference is available at **www.aspa.org**. ASPA's Meetings Department can be contacted at (703) 516-9300 or by e-mail at meetings@aspa.org.

Northeast Area Employee Benefits Conference

Thursday, June 14, 2001
Natick, Massachusetts

Friday, June 15, 2001
White Plains, NY

The Northeast Area Employee Benefits Conference is cosponsored by ASPA and the Northeast Area Employee Plans, Tax Exempt and Government Entities Division, Internal Revenue Service and its Pension Liaison Group. The conference provides an opportunity to discuss employee benefits issues with colleagues and local, regional, and national government employees from the Internal Revenue Service and the Department of Labor. The program focuses on exchanging information and educating attendees about current regulatory, legislative, administrative, and actuarial topics.

Topics: *DOL VFC Program, IRS Voluntary Compliance, Distributions – New 401(a)(9) Regulations, Mergers & Acquisitions Including Same Desk Rule, Document Restatements for GUST, Form 5500 and PBGC Update, 411(d)(6), IRA Planning, New Comparability Regulations, Q&A Session*

You can earn seven ASPA credits and up to seven JBEA credits by attending this conference. CE credits for other organizations may also be available.

The conference brochure will be mailed and posted on ASPA's website in early April.

For more information call ASPA's meeting department at (703) 516-9300 or e-mail us at meetings@aspa.org. Information on the conference is also available at **www.aspa.org**

Registration fees:

Early registration (until May 21)	$ 195
Late registration (after May 21)	$ 245
Government	$ 95

ASPA Summer Academy

July 22-25, 2001 · The Sheraton Palace Hotel
San Francisco, California

We're putting the finishing touches on the materials for the 3rd Annual Summer Academy in San Francisco. Each year the Academy has grown in size – in terms of the topics offered and in the number of attendees and exhibitors. This year should be no exception. Join us at San Francisco's Sheraton Palace. General sessions and four concurrent workshops have been designed to fit the diverse needs of our industry. Topics include the following:

- Mergers and Acquisitions
- Utilizing the Internet in Your Business
- Negotiating an IRS Audit
- Schedule B Preparation
- 415 Issue After 98-1
- Changing Face of Our Industry
- Evolving DC Plans to Daily Valuation
- Navigating the 5500 Maze
- Split Plans and Pseudo Offsets
- Proposed Cross-Testing Regulations
- GUST II Plan Submission Procedures and Considerations
- And much more!

In addition, we'll provide you with an update of the latest happenings on Capitol Hill and explain how these changes could affect you and your business. There will also be panel discussions on Defined Benefit and Defined Contribution plans.

As an extra benefit, on Saturday, July 21, there will be an all-day Business Practice workshop. This seminar will cover the "nuts and bolts" of running, managing, and growing a pension operation. You won't want to miss it.

The exhibition hall is always a highlight … and this year we'll have more exhibitors than ever before showcasing the products and services you need to keep abreast of the competition. The exhibit hall will be open during breakfasts, lunches, and beverage breaks. Sunday night will feature a reception with a performance by a local blues band to welcome you to San Francisco.

Brochures will be mailed soon. Additional conference information is available on our website, **www.aspa.org**. You can also contact the ASPA Meetings Department at (703) 516-9300 or meetings@aspa.org.

Plan to attend the one-day **Business Practices Workshop** on **Saturday, July 21** at the Sheraton Palace in San Francisco. Look for more information and a registration form in the *Summer Academy* brochure or visit ASPA's website.

LOS ANGELES BENEFITS CONFERENCE

Mark your calendars for the 2001 Los Angeles Benefits Conference! The Conference will be held at the Hilton Universal City and Towers in Universal City on September 13-14, 2001.

The LA Benefits Conference is sponsored by ASPA and the Western Area, Tax Exempt and Government Entities Division of the Internal Revenue Service.

Don't miss this great opportunity to meet with your colleagues to discuss employee benefit issues. Learn from many government agency and private industry presenters.

The conference will focus on the exchange of information between regulators and practitioners, the advancement of technical knowledge, and the sharing of practical solutions to benefits questions.

Registration Fees:

Early (until August 24)	$ 450
Additional Registrant*	$ 400
Late (after August 24)	$ 550
Government Representative	$ 95

** To qualify for the additional registrant discount, additional registrants must be from the same location of the same firm, and all registration forms must be submitted together by the "early" registration deadline.*

CE Credit: The conference provides continuing education credit for ASPA designations, as well as CLE, CPE, EA, and CRSP designations.

The conference brochure will be mailed and posted on ASPA's website in early July. For more information, contact the ASPA Meetings Department at (703) 516-9300 or by e-mail at meetings@aspa.org. You can also visit ASPA's website at **www.aspa.org**.

ASPA Councils in Chicago and New York Offer a Wide Variety of Programs

by Rachel G. Veltman and Cathy G. Waxenberg, APM

The ASPA Benefits Council of Chicago (ABCC) started the new year with a bang! At our March meeting at the East Bank Club in Chicago, William N. Anspach, Jr., CPC, a partner in the law firm of Much Shelist Freed Denenberg Ament & Rubenstein, P.C., spoke to a standing room only crowd on "Required Minimum Distributions Under New Proposed Regulations." The exceptionally large attendance offered a great opportunity to greet familiar faces and meet new contacts during our post-lecture networking hour.

Although ABCC programs are customarily held in the late afternoon, last June we held our first breakfast meeting as part of the on-going effort to expand the opportunity for attendance to more members of our professional community. Ilene H. Ferenczy, Esq., CPC, APA from Altman, Kritzer & Levick, P.C, Atlanta, GA, led a program entitled, "Loan-A-Rama … Winding Your Way Through the Participant Loan Maze."

Other programs throughout the year also reflected our focus on identifying speakers with expertise in emerging retirement plan issues, so that our topics covered a wide range of interests within the field. In September, Lanning Hochhauser, APM, Esq., from DATAIR Employee Benefit Systems, Westmont, IL, examined new document requirements and deadlines, and in December, Ken Balinski, MSPA, of Chicago Consulting Actuaries, presented "Proposed Changes to Nondiscrimination Regulations."

We are looking forward to building on the success of the past year with our upcoming programs. For more information about future ABCC meetings, please contact Lori Ann Ward, Meetings/Committees Chair, at law@sonnenschein.com or (312) 876-2574. ▲

Rachel G. Veltman is a consultant with Profit Planners, Inc., an employee benefit and retirement plan consulting firm in Chicago, IL. She is currently the vice-president of the ABC of Chicago.

ASPA Benefits Councils Calendar of Upcoming Events

Date	Location	Event
May 24	Delaware Valley Speaker: Charles J. Klose, FSPA, CPC	Ethics and Professional Responsibility
June (tba)	New York	Roundtable Discussion: Section 415 and GATT Issues
June 21	Western Pennsylvania Speaker: Gary Gunnett, J.D.	Plan Document Restatements

The ASPA Benefits Council of New York has an exciting year of meetings planned for 2001. Our first meeting of the year was held in January, and we were fortunate to have Brian H. Graff, Esq., Executive Director of ASPA, and Bill Sweetnam, Counsel to the Senate Finance Committee, address the group. The topics included the new cross-testing proposed regulations and prospective pension legislation in Congress. It was very enlightening to get an insider's view of the ways things get done (or undone) on the Hill.

Our next quarterly meeting is scheduled for April 26, 2001. Bob Henn, EP Area Manager Northeast IRS, and Janet Mak, Closing Agreement Coordinator IRS, will be speaking about audit initiatives and EPRSC changes. There will be time set aside for questions and answers from the attendees, although it is requested that the questions be submitted in advance. Keep your eyes open for the meeting announcement coming by fax.

A roundtable discussion on Section 415 and GATT issues is planned for early June. We expect to host two sessions at two different locations – one in Long Island and the other in Manhattan. Since space will be limited, ABC members will be afforded priority registration on a first-come, first-serve basis. Looking forward to September, we are planning another morning meeting on the Section 401(a)(9) revised minimum distribution rules. Details on the date and place will be available this summer.

For more information about the ASPA Benefits Council of New York, membership registration and upcoming events, contact Harvey Katz, Board President, at (212) 704-0100. ▲

Cathy G. Waxenberg, APM, is on the Board of Directors of the ASPA Benefits Council of New York. She is an attorney and co-owner/president of Laiken Associates, Inc. in New York City, an employee benefits and actuarial consulting firm. She has practiced in the employee benefits field as an attorney and consultant for more than twenty years, specializing in plan design, compliance, and administration.

Update: 2001 Salary and Financial Survey

We invite you to participate in ASPA's *2001 Salary and Financial Survey*. Due to many requests, and in order to get the largest possible survey sampling, the deadline for the survey has been extended to June 15, 2001. **You may download the Survey Questionnaire at www.aspa.org, "What's New" section.** Once completed, you can return to the online site and input your data. As you know, the quality of the report is dependent upon the number of participants and the accuracy of the data. Those who complete the survey receive a "participating" discount when purchasing the survey results. **Survey data must be input by June 15, 2001.**

This year's questionnaire is comprehensive and reflects such issues as wages, benefits, personnel policies, expense analysis, systems utilization and product pricing. A preliminary report will be distributed at the Business Leadership Conference (BLC) on May 6-9, 2001 in Naples, FL. Preliminary reports are not available for purchase. For those not attending the conference, final reports will be available in mid-October at the following rates:

Participating ASPA/CCA Member or participating Non-Member .... $ 60

ASPA/CCA Member, non-participating .... $ 200

Non-Member, non-participating .... $ 350

We urge you to view the questionnaire at www.aspa.org, "What's New" section. If you are planning to attend the BLC or to purchase the report for October delivery, your input will ultimately provide you with a vastly more meaningful management tool.

Nominations Open for ASPA's Board of Directors

For ASPA to continue to be the effective pension organization that it is, active participation by all of our credentialed members is essential. Our Board of Directors operates using a team approach. We need strong people with differing perspectives to help lead our organization.

To be considered for a Board position, a member's name must be submitted to the Nominating Committee by two voting members at least 60 days prior to the Annual Business Meeting, which will be held on October 29 this year.

If you or someone you know would be a valuable addition to our Board, now is the time to get the nomination process started. A nominations form is included in this copy of *The Pension Actuary*, or you may access the form on the "Members Only" portion of our website, www.aspa.org.

FOCUS ON ASPA'S COMMITTEES

Strategic Planning and Implementation Team

by Craig P. Hoffman, APM

For the second year, ASPA's Strategic Planning and Implementation Team (yes, the acronym is SPIT) met to discuss issues strategic to ASPA's purpose and mission. The Team is made up of the President, the President-Elect, the chairs of the Conferences, ASPA Benefits Council, Continuing Education, Education and Examination, Government Affairs, Membership, and Technology committees as well as the executive and administrative directors of ASPA.

The Team met over the last weekend in February. Although this year, we did not have a specific charge from the January Board Retreat, there were several key issues to discuss. We tackled volunteerism, the compliance specialist issue, and also spent some time discussing the relationship between ASPA's leadership and our staff.

After devoting time to identifying ASPA's members' common needs, problems, and goals, we talked about our stakeholders. These stakeholders include our members and their employees, plan participants, plan sponsors, exam candidates, ABC members, vendor partners, conference attendees, governmental entities, other pension professionals, and our staff. We also determined that we have a reputation for value and a portfolio of "good stuff," an enjoyable culture based on trust and communication, and a nimble infrastructure that allows us to quickly seize opportunities to create more value. ASPA is a great professional society with a firm mission statement and great assets – our members.

Volunteerism has been a frequently discussed topic at many of ASPA's Board and committee meetings. The challenge is how to best use, without burning out, members who want to contribute their knowledge, time, and support to ASPA. It was noted that many organizations wish they had our challenge – a large contingent of eager and able volunteers!

All the SPIT members are convinced that ASPA does have several challenges using volunteers. These include a lack of succession planning within our committees and volunteer burnout. Some of our volunteers have worked too long and too hard and are called upon too frequently.

The committee also pointed out solutions, but decided that this is too large a challenge to be solved during one meeting. To that end, George Taylor, MSPA, ASPA's President, appointed a task force to explore solutions. Anna Delaney, CPC, will chair the task force. We'll be receiving their report within the next months.

The compliance specialist issue has been on the Government Affairs Committee members' minds for several years. The compliance specialist would sign 5500 statements, much as enrolled actuaries sign Schedule Bs. After a long and detailed discussion, it was the recommendation of the Team that, because this initiative was unlikely to succeed in the current regulatory environment, it should be placed on hold for the time being. However, the hope is that this idea could be brought back to the forefront if and when conditions change.

Relationships between the National Office staff and the members are good, but we talked about making them even better and stronger. ASPA's staff has a great deal of expertise in managing associations, running conferences, and taking projects from their conception to their end. Including staff in the decision-making process is a plus for ASPA. The members also share these talents. Finding the right balance between the staff and the volunteer members, and detailing the responsibilities of each party, is well-worth pursuing.

At the end of the weekend, we were one tired bunch, but energized with the possibilities we discussed and ready to tackle the challenges. ▲

Craig P. Hoffman, APM, J.D., LL.M., is vice president and general counsel of SunGard Corbel. Prior to that, he was in private practice, specializing in the areas of taxation, ERISA, and employee benefits. Craig is ASPA's President-Elect and has served as an ASPA Government Affairs Committee co-chair.

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.

Fully Insured 412(i) Defined Benefit Plans

[Thread 94395]

PIX users recently discussed the pros and cons of fully insured defined benefit pension plans. One user posted a comment regarding a situation where he estimated a defined benefit contribution of about $55,000; the client was being told he could get an $85,000 contribution using a 412(i) plan.

The discussion compared a 412(i) plan with other defined benefit plans, looking at contributions, 415 limits, application of GATT and the potential for a significant reversion to the employer. In situations where the plan contribution is significantly higher than the non-412(i) plan, it was the consensus among PIXers that there is potential for a substantial reversion in the early years of the plan, as the funding is well ahead of the GATT-equivalent 415 lump sum limits. As pointed out by one user, because of the 412(i) requirement for level funding, if such a contract was used, the plan would have to be amended to reduce future benefit accruals to avoid a reversion. If the contract were designed to target the GATT 415 lump sum at normal retirement age, the contributions are likely to be only slightly higher than a non-412(i) plan due to the lower interest of the contract guarantee.

These plans could have appeal for clients who:

- have a need for life insurance
- want to diversify and balance their personal asset portfolio with fixed income investments through the plan, and
- are looking for short-run deductible contributions now (instead of a projected 10 years or more in an uninsured plan).

The thread also discussed the possibilities of combining a 412(i) with a defined contribution plan and related deduction strategies. To read the entire thread, download the file 412i2.fsg.

New Small Plan Audit Regulations

[Thread 93917]

The newly issued small plan audit regulations are causing concern among PIX users. As one user pointed out, the regulations are effective for plan years beginning after April 17, 2001. For most small plans, this will first affect those with May 1, 2001 to April 30, 2002 plan years.

While the new regulations provide for exemptions to the audit requirements based on 95% qualifying plan assets or additional bonding, it was pointed out in the thread that the determination date for this exemption is the first day of the plan year. Since most small plan administration is done well after the end of the year, it may not be known until well into the next plan year whether or not the plan meets the audit exemption. By then, it will be too late.

To read the entire thread, download file smalaud2.fsg.

Negative Plan Assets?

[Thread 93879]

A PIX user started this timely thread regarding a client that established a new defined benefit plan in 2000. It seems the client contributed $300,000 to the plan during the year, but by year-end, plan assets had declined to $247,000 due to market losses. Traditionally when designing a new defined benefit plan, first year valuation assets are zero. This user wanted to know if it was reasonable to use zero, or if the valuation assets should be a negative $53,000.

There were PIX users doing it both ways, but the consensus seemed to be that it is most reasonable to use the negative figure, as the plan did in fact suffer the loss, and that loss should be reflected in the valuation to properly fund the plan. This also lead to tangent discussions comparing beginning-of-year to end-of-year valuation dates, as well as how to reflect negative valuation assets on a Schedule B where the forms software will not accept a negative number.

To read the entire thread, download file negasst2.fsg. ▲

EDUCATION

C-1, C-2(DB), C-2(DC), C-3, and C-4 Weekend Courses May 5 and 6, Chicago

C-3 and C-4 Exams June 6 and Dec. 5, 2001

A-4 Exam Dec. 5, 2001

CONFERENCES

ASPA's Summer Academy July 22-25, San Francisco

LA BENEFITS LOS ANGELES CONFERENCE SEPTEMBER 13 - 14

WEBSITE

Deadline for responses to the financial survey: June 15
Find it on the What's New page
www.aspa.org

2001 Calendar of Events

		ASPA CE Credit
April 15 - May 31	C-1, C-2(DB), C-2(DC) spring exam window	*
April 30	Final registration deadline for spring exams	
April 30	Registration deadline for spring weekend courses (C-1, C-2(DB), C-2(DC), C-3, and C-4)	
April 30 - May 1	Great Lakes TE/GE, Chicago, IL	16
May 5 - 6	C-1, C-2(DB), C-2(DC), C-3, and C-4 Weekend courses, Chicago, IL	15
May 6 - 9	Business Leadership Conference, Naples, FL	20
June 6	C-3 and C-4 examinations	*
June 14	Northeast Key Conference, Boston, MA	8
June 15	Northeast Key Conference, White Plains, NY	8
July - October	Registration for fall virtual study groups	
July 15	Suggested start time for fall virtual study groups	20
July 21	Business Practices Conference, San Francisco, CA	7
July 22 - 25	Summer Academy, San Francisco, CA	20
July	Three Best of Great Lakes	8
Sept. 13 - 14	Los Angeles Benefits Conference, Los Angeles, CA	16
Sept. 15	Early registration deadline for fall exams	
Oct. 15 - Nov. 30	C-1, C-2(DB), C-2(DC) fall exam window	*
October 28 - 31	Annual Conference, Washington, DC	20
October 31	Final registration deadline for fall exams	
November 5	Registration deadline for fall weekend courses (C-1, C-2(DB), C-2(DC), C-3, and C-4)	
November 10 - 11	C-1, C-2(DB), C-2(DC), C-3, and C-4 Weekend courses, Chicago, IL	15
December 5	C-3, C-4, and A-4 examinations	*
December 31	Deadline for 2001 edition exams for PA-1 (A&B)	**
December 31	Deadline for 2001 edition exam for Daily Valuation	***

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

** PA-1A and B exams earn five hours of ASPA continuing education credits each for passing grades.

*** Daily Valuation exams earn 10 hours of ASPA continuing education credits for a passing grade.