ASPA
Dedicated to the Private Pension System

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Form 5500: What Do You Want The Answer To Be?

The Latest from IRS and DOL; Small Plan Audit Rules; Plan Mergers and Other Common Questions

by Janice M. Wegesin, CPC, QPA

THE TRUE BEAUTY OF THE FORM 5500 IS ITS FLEXIBILITY. REALLY. GIVE TWO PREPARERS THE SAME SET OF FACTS AND ASK THEM TO PREPARE FORM 5500. THE FILINGS MAY NOT BE IDENTICAL, BUT BOTH MIGHT PASS MUSTER WITH EFAST AND, MORE IMPORTANTLY, COULD BE ACCURATELY DISCLOSING INFORMATION ABOUT THE PLAN. THE PRICE FOR THIS FLEXIBILITY IS THE ONGOING CONTROVERSY SPARKED BY VARIOUS INTERPRETATIONS OF THE OFFICIAL INSTRUCTIONS.

Recent guidance issued by the Internal Revenue Service (IRS) and the Department of Labor (DOL) brought both relief and surprises for plan sponsors and practitioners.

IRS Notice 2002-24

IRS wisely delayed issuing Notice 2002-24 until April 4 – none of us would have believed it had it appeared on April 1! Effective with the release of this notice, the IRS formally suspended the need to file Form 5500 for fringe benefits plans under IRC Sections 125 (cafeteria plans), 127 (educational assistance programs), or 137 (adoption assistance programs). The relief applies **to all plan years for which returns have not been filed**, which means this year, last year, or five years ago. This Notice effectively eliminated any potential late filing issues associated with these fringe benefit plans.

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Washington Update

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Enron Pension Legislation Could Impose Severe Burdens On Small Business Retirement Plans

by Brian H. Graff, Esq., CPA

Background

The demise of Enron certainly had a tragic effect on Enron plan participants. It is reasonable for Congress to examine pension laws in light of Enron's collapse. However, it is critically important that any legislative response to the Enron tragedy be carefully measured. ASPA's Government Affairs Committee is very concerned that Congress may impose rules that will result in reduced retirement plan coverage. In particular, we are lobbying Congress aggressively to ensure that they carefully consider any new burdens that may be imposed on small businesses that are already struggling to provide retirement benefits to their employees.

Retirement plans are currently subject to numerous regulatory requirements. The costs associated with these regulatory requirements are a significant burden on small business. In fact, the administrative costs associated with maintaining a retirement plan are one of the chief reasons small businesses do not offer retirement plans for their employees. Presently, only 25 percent of small business employees are covered by a retirement plan. Although legislation passed last year by Congress should increase small business retirement plan coverage, new administrative burdens on retirement plans currently being considered by Congress could have the opposite effect.

Enron Proposals That Could Hurt Small Business Retirement Plan Coverage

Quarterly Benefit Statements – On April 11, the House of Representatives passed pension legislation in response to the collapse of Enron. You can find a detailed summary of this legislation at **www.aspa.org**. In addition to other provisions, the House passed bill would impose a requirement on all defined contribution plans to give participants a quarterly benefit statement. This would apply

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From the Editor

ASPA's "Fountain of Youth"

by Chris L. Stroud, MSPA

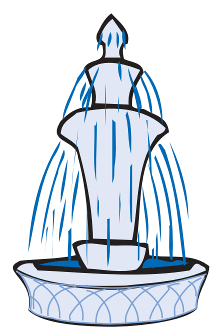
OH, TO BE YOUNG AGAIN AND KNOW WHAT I KNOW NOW! IF YOU NOTICED MY PICTURE, YOU ARE PROBABLY WONDERING EXACTLY WHERE MY FOUNTAIN OF YOUTH IS LOCATED, SO YOU CAN ALSO ENJOY ITS BENEFITS. THE BAD NEWS: THERE IS NO *REAL* FOUNTAIN OF YOUTH. THE GOOD NEWS: ASPA DOES HAVE A *VIRTUAL* FOUNTAIN OF YOUTH, AND YOU *ARE* ENJOYING THE BENEFITS! ONE OF THE REASONS THAT ASPA THRIVES AS AN ORGANIZATION IS THE STEADY INFLUX OF "YOUTH" – OUR NEW MEMBERS. IN THIS ISSUE OF *THE ASPA JOURNAL*, WE **SALUTE OUR NEW MEMBERS** – THE "YOUTH" OF ASPA. (OKAY, MAYBE NOT *ALL* OF OUR NEW MEMBERS ARE *YOUNG*, BUT THEY CERTAINLY PUMP *NEW BLOOD* INTO THE ORGANIZATION!)

ASPA's education and examination program serves as a *virtual* fountain of youth – a training ground for many individuals who have chosen to enter the retirement planning profession or who wish to further their current knowledge of the industry. The success of our designation programs encourages many in our profession to join our organization and strive for recognition by achieving valued ASPA credentials. As someone who entered this profession when ERISA was a *baby*, I certainly empathize with those now entering the profession who must unravel and attempt to understand the *generations* of legislation that have evolved since ERISA. ASPA's courses allow individuals to tackle this information in a logical, orderly fashion. ASPA's exams help these individuals measure their success in mastering the material, and ASPA's designation program offers a means for the industry to recognize those individuals who have achieved specific levels of competency.

ASPA's most recent designation, the Qualified 401(k) Administrator, was created to recognize the importance of 401(k) plans in today's environment and to support the educational needs of the individuals whose primary jobs are focused on 401(k) plans. For those of you following the Enron debacle (and who hasn't these days?), you might have heard 401(k) plans being referred to as "America's Retirement Plan." This statement may be tough for some to swallow, especially you actuaries out there (Yes, I had to accept it too!), but it is the reality of today's world and it underscores the need to raise the level of professionalism of those individuals who deal with 401(k) plans. The QKA is one of the many ways ASPA is helping to fulfill this need. ASPA's many continuing education opportunities ensure that QKAs and other professionals always stay up-to-date with new legislation and industry happenings. (See the *Focus on CE* article on page 16.)

While we are on the topic of "youth," we thought it would be interesting to take a look at some statistics. Since the inception of the QKA in August 2000, 1,136 have achieved the new QKA designation. During the same period of time, 126 achieved the CPC designation, 404 achieved the QPA designation, 38 achieved the MSPA designation, and 2 achieved the FSPA designation. (Note: Some of those achieving new designations may already hold other ASPA designations.) In addition, 57 joined ASPA as APMs and 256 joined as Affiliates during the same timeframe. Within the next year, ASPA will welcome its 5,000 member – now that's worth celebrating! (See page 17 to read about the upcoming celebration.)

Just for fun, in our final **salute to youth**, let's revisit the youth of many of our past ASPA leaders who helped ASPA *grow up* and become the powerful organization that we all enjoy today. Go ahead – sneak a peek at our Fun-da-Mentals (see page 26) for a fun-filled "blast from the past!" ▲



ASPA salutes our New Members

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

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.

To submit comments or suggestions, send an e-mail to **theaspajournal@aspa.org**.

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Letters to the Editor

KUDOS FOR THE ASPA JOURNAL!

I personally want to congratulate you on the superior job you are doing with *The ASPA Journal*! You have accomplished soooooooo much and the publication is greatly improved as a result! We now have a more professional (in both image and content) and informative publication of which we can certainly be proud! I particularly enjoyed your editorial in this most recent issue. My only comment would be that our mailing house (or postal system??) is apparently delaying things a bit, since the issue to which I am referring is described as the March-April 2002 issue, but did not reach my mailbox until May!

As "one who has been there before" knows, the time and commitment of our ASPA leadership is indeed marvelous and overwhelming simultaneously and, unfortunately, often not properly appreciated! I, however, do **appreciate and applaud you** for being willing to make the commitment and then spending the countless hours required to help carry out ASPA's Statement of Purpose and, in so doing, to enhance significantly our Society! Thank you!

Ruth Frew, FSPA, CPC (ASPA Past President)

Thank you for the kudos. Everyone involved on The ASPA Journal Committee and the ASPA staff are to be commended. Many hours of work went into the Journal's *redesign, and it's nice to know that people are enjoying it. We continue to work together to come up with ideas to keep future issues of* The ASPA Journal *interesting, informative, and fun. All suggestions and comments are appreciated!*

As for the delayed mailing issue, we have found that since September 11, bulk mail has become significantly slower. We are working to move our production dates up by a couple of weeks to help allow for the extra delay. Each new issue is also posted on ***www.aspa.org*** *(in PDF format) as soon as it goes to print.*

And by the way, Ruth – we loved your picture! (Find Ruth on the Fun-da-Mentals page!) – Chris

GETTING ONE'S FAIR SHARE?

In the March-April 2002 issue of *The ASPA Journal*, there was an article by Carol J. Ringwald titled "Share Accounting vs. Unit Accounting." The article discusses how dividends are allocated to participants when using the share accounting method. Basically, if the participant takes a distribution or transfers to another fund between the record date and payable date, this participant does not receive a dividend allocation. This article brought up many very good points; however, I am a little confused based on other readings I have completed. In ASPA's Daily Valuation course, for example, it is explained that the participant will receive a dividend allocation if that participant owned shares on the record date or ex-date. This seems to contradict *The ASPA Journal* article. Should a participant receive a dividend allocation if that participant held shares on the record date, but does not hold shares on the payable date? Are there any regulations or codes that back up a certain method?

Thanks.

Kevin Kelch, QPA, QKA

There seems to be no right or wrong answer to this issue, and there is currently no guidance available. Although participants might argue, and some practitioners might agree, that "in theory" the participant "deserves" the dividend allocation, practical application often causes problems – like allocating fractional shares to an account that has already been paid out due to a termination, or allocating fractional shares to an account that has been "emptied out", while the participant's prior balance of that fund has already been transferred to other investment funds. Since the participant doesn't really "own" the investment (the trust does), it is up to the trustees to determine the dividend allocation method. Methodology should be described in either the plan document or a policy statement and followed accordingly. – Chris

NEW MATH LESSON

The 1st article on the cover page of the March-April edition regarding the new Credit has an error. If the participant's AGI is $32,000, deferred $2,000 and filing jointly, then the tax credit would be $400 (not $1,000). Meaning that the cost of contributing $2,000 was actually $1,300 (not $700), which is still a pretty good return. Let me know if my calculation is incorrect.

Jim LaMancusa, QPA, QKA

In the example given in the "Credit the New Math of 401(k)" article, the "gross income" was $32,000. Therefore, the "adjusted gross income" (AGI), although not specifically stated in the article, would be $30,000 – considering the $2,000 deferral. Your math would be correct, if the "adjusted gross income" actually had been $32,000 instead of $30,000. – Chris

A Primer on Taxable Business Entities

by S. Derrin Watson

GENERALLY, TAX LAW RECOGNIZES FOUR MAJOR TYPES OF TAXABLE BUSINESS ENTITIES: CORPORATIONS, PARTNERSHIPS, ESTATES/TRUSTS, AND INDIVIDUALS. EACH TYPE HAS DIFFERENT TAX ATTRIBUTES, WHICH CAN HAVE SIGNIFICANT RETIREMENT PLAN CONSEQUENCES.

Entity Types and Classifications

Today there are many other types of business entities, including limited liability companies (LLCs), limited liability partnerships (LLPs), joint ventures, and other unincorporated associations. Regulations under §301.7701 determine how these somewhat round pegs fit into the square holes of the Code.

Entities incorporated under state law are taxed as corporations and cannot elect out of that status. Some corporations can choose to be taxed as S Corporations, thereby avoiding the possibility of double taxes, but that is their only choice. They cannot have the flexibility of being taxed as a partnership, for example.

Estates and trusts are taxed under similar rules. Tax is paid by the beneficiaries if income is distributed, or by the trust if it is retained. A major exception to this rule is a grantor trust, such as a trust that the settlor (grantor) can revoke. The typical "living" trust is a grantor trust where the settlor is alive. Tax law generally ignores grantor trusts and treats the grantor as though he or she still owned the trust's property.

All other business entities are put in an "everything else" category. This includes sole proprietorships, partnerships, LLCs, LLPs, business trusts, joint ventures, and virtually all other unincorporated business entities. These entities can choose to be taxed as corporations. To do so, they must make the election on Form 8832 and file it within 75 days of the date the election is to be effective.

If such a business chooses not to be taxed as a corporation (and relatively few do), how it is treated depends on how many owners it has. If it has more than one owner, it is taxed as a partnership. This means it files a partnership return and all income is taxed to the partners, whether or not that income is distributed. If it only has one owner, you disregard its existence as a separate entity. Consider these examples:

- A new LLC is formed May 15, 2001. The owners wish to have it taxed as a corporation from its inception. They must complete and file Form 8832 before July 29, 2001 (75 days after formation). They must also attach Form 8832 to their first corporate return.
- Same facts as prior example, except the LLC wishes to be taxed as a partnership. The LLC does not need to take any action, since it is treated as a partnership, unless it elects otherwise.
- George has a sole proprietorship. While he does not wish to have the formality of an actual corporation, he wants to have his proprietorship taxed as though it were an S Corporation. He can file Form 8832 to have it taxed as a corporation, and Form 2553 to have it taxed as an S Corporation.
- Mary forms an LLP; she is the only member. She does not elect to have it taxed as a corporation. The LLP is disregarded as an entity and is treated for all tax purposes as a sole proprietorship. She reports its income on Schedule C of her 1040.
- Same facts as prior example, except another member joins the LLP. When the new member enters, the LLP starts to be taxed as a partnership. Mary does not need to take any action for this to happen.
- Clothz, Inc. runs a chain of clothing stores. It forms CI LLC to operate a shoe store. Clothz is the only member of the LLC. The LLC does not elect to be taxed as a corporation. The LLC's existence is disregarded. Its income is reported on Clothz's 1120, just as though it were a division of Clothz.

In practice, few LLCs, sole proprietorships, and similar entities elect to be taxed as corporations. Virtually all sole proprietorships are taxed as such, and most all partnerships, LLCs, and LLPs with more than one owner are taxed as partnerships.

Consequences of Entity Status

Generally, an organization that is taxed as a partnership should be treated as a partnership for all tax purposes. Thus, attribution rules for the entity are based on partnership attribution rules. Owners who work in the business are treated as partners and self-employed individuals, and are subject to self-employment tax.

Partnership attribution rules cause remarkable confusion for some practitioners. Many flounder when presented with an LLC, for it is "neither fish nor fowl" and does not have its own set of rules. But that is the

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even if participants in the plan do not have the right to direct investments in their account. Such a requirement would be a huge burden on small businesses, significantly increasing the cost of administering the plan. Producing these quarterly statements will be expensive, particularly if the plan contains assets that are not publicly traded and will have to be independently valued. Small business retirement plans should be exempted from the proposal, or the proposal should be limited to plans that allow participants to direct investments in their account.

ASPA's Government Affairs Committee has had several meetings with the Department of Labor and congressional staff expressing concerns about this provision. Fortunately, the Senate Health Education Labor and Pension (HELP) Committee bill, reported out by the Committee last month, limits its quarterly benefit statement requirement to plans that permit participants to direct investments. The Senate Finance Committee, currently working on its Enron pension legislation, is expected to follow the approach taken by the HELP Committee.

Investment Education Notices – The House passed bill also requires all defined contribution plans to give participants an investment education notice along with their quarterly benefit statement. Again, this requirement applies even though the plan does not allow participants to direct investments in their account. Although the House bill allows the notice to be delivered electronically, many small businesses still deliver information by paper, which is an administrative burden. This provision should only apply where participants have the right to direct investments in their account. Further, small businesses should have the right to give the information only once a year if it is provided in written form.

Changes to ERISA Section 404(c) – Small business owners are protected from liability under ERISA Section 404(c), which provides that plan fiduciaries will not be liable for investment losses resulting from a participant's investment choices. Legislation originally introduced in the House provided that ERISA Section 404(c) would not apply during a lockdown or blackout (*i.e.,* when the right to direct investments is suspended for a short period). In fact, the press reported that the provision was intended to impose liability on plan sponsors for all investment losses during a lockdown. Such press has already had a chilling effect on the small business retirement plan marketplace. 401(k) plans have become popular with small businesses because business owners will not be liable for investment losses. Small businesses have been afraid to change investment options or improve plan services because they will need to lockdown the plan and they do not want to be potentially liable for any investment losses during the lockdown period. Congress was considering imposing this potential liability even though small business plans, unlike Enron's plan, typically do not contain any employer stock.

ASPA's Government Affairs Committee worked hard to improve the legislative language in the House bill that ultimately passed. It provides that 404(c) will continue to apply to any losses during a lockdown resulting from a participant's investment election prior to the lockdown. We also worked on committee report language (*i.e.,* legislative history to the House bill) that explains in more detail how this works. Basically, if a lockdown results from a change in investment options – the most common reason for a lockdown – ERISA Section 404(c) will continue to apply during the entire lockdown period if, prior to the lockdown, the participant is informed of the new investment options and given the option of electing from among the new investment options and having account assets transferred accordingly. Alternatively, if the participant fails to affirmatively elect from the new investment options, the plan could map the participant's account to investment options of a similar type (*e.g.,* large cap to large cap) to those previously selected by the participant, provided the participant is notified the account will be mapped in the absence of an affirmative election. The committee report language makes clear that plan sponsors will continue to be covered by 404(c) during a lockdown if they follow this "negative" election procedure.

We are presently working with the Senate Finance Committee on a similar approach, possibly including a specific safe harbor in the legislation making clear how you can retain 404(c) protection during a lockdown necessitated by a change in investment options.

Changes to ERISA Remedies – The bill reported out by the Senate HELP Committee would significantly expand the remedies provisions in ERISA. The bill creates a new ERISA section specifically allowing DC plan participants to sue plan fiduciaries. Although ASPA believes participants should have this right, concerns have been raised that the language in the bill will allow participants to sue for losses arising outside the plan and to potentially sue for consequential or even punitive damages. If changes are made in this area, it must be made clear that participants can only sue for losses in their account resulting from a fiduciary breach, and that they cannot sue for any consequential or punitive damages.

Mandatory Fiduciary Insurance – The Senate HELP Committee bill mandates that all 401(k) plans with more than 100 participants obtain fiduciary insurance coverage. The proposal does not state the extent of coverage required, leaving it up to DOL regulations. Potentially, it could require coverage for the total amount of assets in the plan. For a larger small business (*i.e.*, a small business with more than 100 participants), this could be a significant burden. As you know, insurance rates have recently been increasing rapidly as a result of the September 11 tragedy. One major carrier that provides fiduciary insurance coverage quoted $8,200 per year for a plan with 110 participants (assuming coverage of 50 percent of plan assets).

Joint Trusteeship of DC Plans – The Senate HELP committee bill also requires that all 401(k) plans with more than 100 participants be jointly trusteed by a board comprised of an equal number of employer and employee representatives. DOL would issue regulations for elections and resolving ties. (Stick them in a room with no food and water, I guess.) Employee representatives could not be HCEs. This seems to be more of a political message piece unlikely at this point to survive the legislative process, although it sure has gotten the attention of the Chamber of Commerce.

These are the major issues we are currently facing, although no doubt there will be others. ASPA Government Affairs Committee will stay actively involved to ensure that any proposals that possibly emerge will be as sensible as possible. However, at this point it is entirely unclear whether Congress will actually enact pension legislation in response to Enron or whether the debate will be wrapped up with election-year politics and lead to nothing. ▲

Brian H. Graff, Esq., CPA, is Executive Director of ASPA. Before joining ASPA, Brian was legislation counsel to the US Congress Joint Committee on Taxation.

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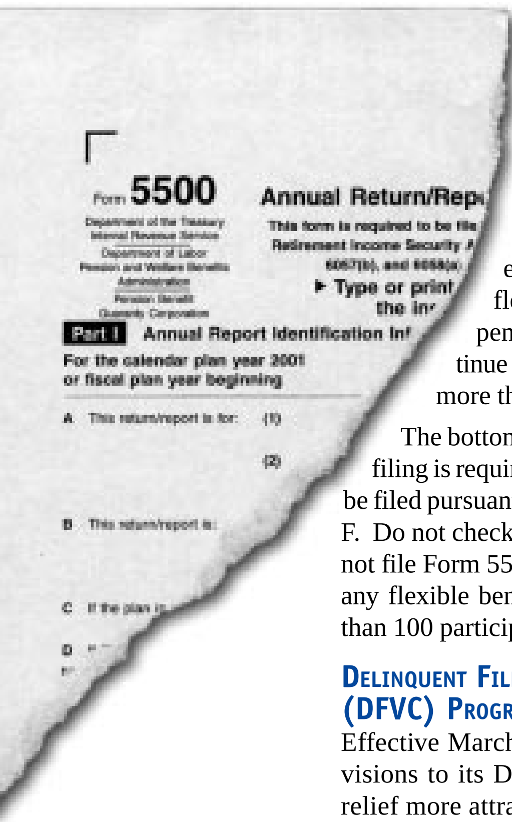
Form 5500: What Do You Want The Answer To Be?

Schedule F (Fringe Benefit Plan Annual Information Return) was introduced with the 1992 reporting year to provide the information return required under IRC §6039D for certain fringe benefit plans. The instructions for completing the schedule have always been very sketchy, causing confusion for plan sponsors and preparers, so the elimination of this data gathering and reporting is welcome.

IRS and DOL were deluged with calls following the release of the Notice because it was unclear whether the suspension applied only to the filing of Schedule F or to the entire Form 5500. The welfare features of Section 125 plans must continue to be reported on Form 5500, and therefore, IRS in its guidance could not completely rule out a Form 5500 filing requirement for every cafeteria plan. For example, a flex plan that includes a medical expense reimbursement feature must continue to file Form 5500 if that feature covers more than 100 participants.



The bottom line: do not file Form 5500 unless a filing is required under ERISA. If Form 5500 must be filed pursuant to ERISA, then do not file Schedule F. Do not check the box at line 8c or at line 10c. Do not file Form 5500 for premium only plans (POP) or any flexible benefits plan that does not cover more than 100 participants.

Delinquent Filer Voluntary Company (DFVC) Program

Effective March 28, 2002, the DOL announced revisions to its DFVC program, hoping to make the relief more attractive by reducing the penalties that apply to voluntary submissions of late Form 5500 filings. The IRS chimed in by posting Notice 2002-23, thereby making formal its practice of not imposing its own late-filing penalties on plan sponsors who file under the DFVC. Section 5.03 of the new DFVC program confirms that PBGC has likewise agreed to forego penalties under ERISA §4071.

Background – The Secretary of Labor has the authority under ERISA §502(c)(2) to assess civil penalties of up to $1,100 a day against plan administrators who fail or refuse to file complete and timely Form 5500 reports. The IRS may separately assess penalties for late filing of Form 5500 under IRC §6652(e) of $25 per day, up to $15,000. Both agencies could waive or abate those penalties if the plan sponsor can establish "reasonable cause" for the late filing.

The DFVC program was originally adopted by DOL on April 27, 1995, in an effort to encourage delinquent filers to voluntarily comply with the ERISA reporting requirements without the need to establish reasonable cause. Since then, the program has been used primarily by large plan sponsors, due in part to the penalty structure associated with the program.

The DFVC program contains these basic rules:

- Eligibility for the program continues to be limited to plan administrators with filing obligations under Title I of ERISA. Filers of Form 5500-EZ or Form 5500 for plans without employees [as described in 29 CFR 2510.3-3(b) and (c)] are not eligible.
- The plan sponsor must not have received written notice from DOL regarding a failure to file the Form 5500.
- All late filings must be submitted to PWBA in Lawrence, KS, for each year that relief is requested. Simplified rules apply to "top hat" plans and apprenticeship and training plans. Line D of the 2001 Form 5500 must be checked to identify plans filing under the DFVC program. Plan sponsors may either file the Form 5500 that would have been used if the filing had been timely, or simply use the most current Form 5500 showing the information for the plan year that is being filed late.
- The plan administrator is personally liable for the DFVC penalty and it may not be paid from plan assets. The penalty must be remitted to the DFVC Program, PWBA, P.O. Box 530292, Atlanta, GA, 30353-0292, along with a paper copy of the Form 5500 (but without attachments and separate schedules). As noted above, the complete Form 5500, including all schedules and attachments, is sent to Lawrence, KS.

New Penalty Structure – The most visible changes to the DFVC program are the lower penalties on either a "per day" or "per filing" basis:

- The $50 per day penalty is reduced to $10 per day for delinquent filings.
- The $2,000 penalty cap for a small plan has been reduced to a $750 "per filing" limit.
- Large plans are subject to a $2,000 "per filing" cap rather than the $5,000 ceiling under the prior program.

The revised program introduces a "per plan" limit, probably its most attractive feature. Any plan sponsor with more than two years of late filings for the same plan can grab a bargain. The "per plan" cap limits the penalty to $1,500 for a small plan and $4,000 for a large plan, regardless of the number of late annual reports being filed for the plan at the same time. Special concessions have been made for small plans sponsored by IRC §501(c)(3) tax-exempt organizations, authorizing a $750 "per plan" limit.

In addition, the penalty for "top hat" plans and apprenticeship and training plans is reduced to $750. Sponsors of such plans are required to file an annual Form 5500 unless the appropriate registration statement was filed with DOL; however, the ongoing Form 5500 obligation can be eliminated if the appropriate filing is made under the DFVC program. It seems an easy decision – pay the $750 to get out from under the annual filing requirement.

There is no "per administrator" or "per sponsor" cap under the revised DFVC program. So, if a single employer has late filings for more than one plan, the penalty for each plan is separately calculated.

Reasonable Cause – The revisions to the DFVC program and IRS's formal announcement regarding its intention to forego penalty assessment on plan sponsors who file under DFVC are not signals that "reasonable cause" submissions will be rejected. Both agencies are required to consider reasonable cause for late filings and will continue to do so. What has changed are the practical considerations and cost/benefit analysis, now that DFVC penalties are lower:

- What fees will be incurred to construct "reasonable cause" attachments to late filings?
- Are there compelling reasons for the late filing, such as death or disability of the preparer or person authorized to execute the filing, destruction of records, or reliance on the advice of a competent tax professional?
- Does the plan sponsor seek absolute assurance that the matter is behind them?

None of the author's clients – both large and small plan filers – have used the DFVC Program since 1995. Instead, reasonable cause letters were submitted along with each late filing resulting in no penalties being imposed by either IRS or DOL. That picture could change. There are situations where fees for drafting reasonable cause letters, including review by an ERISA attorney, may exceed the new DFVC program penalties. Such plan sponsors may be better served to simply file under DFVC.

The bottom line: the DFVC program warrants serious consideration, but do not rule out "reasonable cause" solutions. If the plan sponsor decides to go the reasonable cause route, the letter should be submitted with the original late filing to PWBA.

Small Plan Audit Regulations

By now, most plan consultants are familiar with the requirements for small pension plans to be audited for plan years beginning after April 17, 2001. It should be fairly easy for most small pension plans to qualify for a waiver of the audit requirement; however, that assumes there is universal agreement on whether certain types of investments are *qualifying plan assets*.

Qualifying plan assets, as defined in the regulations, include:

- Any plan asset held by any of the following regulated financial institutions:
  - A bank or similar financial institution as defined in 29 CFR 2550.408b-4c;
  - An insurance company qualified to do business under state law;
  - An organization registered as a broker-dealer under the Securities Exchange Act of 1934; or
  - Any other organization authorized to act as a trustee for individual retirement accounts under IRC §408.
- Shares issued by an investment company registered under the Investment Act of 1940 (*e.g.*, mutual funds);
- Investment and annuity contracts issued by any insurance company qualified to do business under state law;
- Qualifying employer securities, as defined in ERISA §407(d)(5);
- Participant loans meeting the requirements of ERISA §408(b)(1); and
- In the case of an individual account plan, any assets in the individual account over which the participant or beneficiary has the opportunity to exercise control, and with respect to which a statement is delivered, at least annually, to the participant or beneficiary from a regulated financial institution (as first referred to above) describing the assets held or issued by the institution, and the amount of such assets.

This last category, the self-directed account, is being interpreted inconsistently by practitioners. Some consultants believe that any investment that is held as a result of participant self-direction meets the definition of *qualifying plan asset*. The DOL uses language in its regulations that is distinct from the rules for disclosing five percent reportable transactions on Schedule H (see instructions to line 4j of Schedule H), where the relief applies to any investment resulting from participant-direction. To identify *qualifying plan assets*, however, the DOL requires the assets under self-direction to be "held or issued by" the financial institution furnishing the annual statement.

Relief from the Audit Requirement – A small pension plan will qualify for a waiver of the audit requirement if it meets the following conditions:

- At least 95% of the plan assets are *qualifying plan assets* as of the end of the preceding plan year; or
- Any person who handles assets of the plan that do not constitute qualifying plan assets is bonded in accordance with ERISA §412, provided the amount of the fidelity bond is not less than the value of such non-qualifying plan assets.
- In addition to the fidelity bond requirement, the plan administrator must expand the plan's summary annual report to include (a) the name of each regulated financial institution issuing or holding qualifying plan assets and the amount of such assets as of the end of the plan year; (b) the name of the surety company issuing the fidelity bond if the plan has more than 5% of its investments in non-qualifying assets; (c) a notice that participants and beneficiaries may have access to evidence of the required bond and copies of the statements from the regulated financial institutions describing the qualifying plan assets; and (d) a notice that participants and beneficiaries can contact the PWBA Regional Office if they are unable to examine or obtain the copies just mentioned.

The determination of whether or not the plan qualifies for waiver of the audit requirement is based upon the facts as of the first day of the plan year; however, the additional disclosures on the summary annual report relate to the facts as of the last day of the plan year.

The DOL is currently formulating a series of questions and answers (Q&A) about the small plan audit rules, including the fidelity bond requirements and summary annual report disclosures. Some issues the Q&A will address:

- If non-qualifying plan assets exceed $500,000, then the amount of the fidelity bond coverage must be at least equal to the amount of the non-qualifying plan assets. The $500,000 cap contained in the ERISA §412 rules applies only when the small pension plan has at least 95% of its investments in qualifying plan assets.
- Plans filing Form 5500-EZ are not subject to the small plan audit rules. Similarly, there is no audit requirement for a plan filing Form 5500 (and reporting code 3G at line 8a) because the plan covers only owner-employees but is aggregated with another plan of the employer for nondiscrimination testing.
- A plan that has at least 95% of its investments in qualifying plan assets as of the first day of the plan year can use the traditional summary annual report format at the end of that plan year. There is no need to disclose institutions holding qualifying plan assets or to provide information about the fidelity bond in this situation.
- A contribution that is receivable as of the first day of the plan year is not taken into account in determining what portions of the plan's assets are qualifying plan assets. It is neither a qualifying nor a non-qualifying plan asset, although someone is bound to raise an issue regarding participant contributions or loan repayments that have not been transmitted within the time periods described in 29 CFR 2510.3-102.
- Is a checking account considered a qualifying plan asset? Does the check-writing feature on a brokerage account affect its classification as a qualifying plan asset?
- The plan sponsor has a "reasonable period" after the first day of the plan year to calculate the value of plan assets and to secure adequate fidelity bond coverage to qualify for the audit relief. The DOL may interpret a "reasonable period" to be as long as two to three months after the start of the plan year.
- The most common errors in fidelity bond coverage are (a) that the "named insured" is the employer (the named insured should be the plan, not the sponsor of the plan), and (b) that a deductible feature is in force (the coverage should provide "first dollar" recovery).

The bottom line: most small pension plans can easily qualify for the waiver by maintaining the appropriate fidelity bond coverage and making the proper summary annual report disclosures (if any). Watch for informal guidance from DOL in the form of Q&As. Evaluate your clients' plans early in the plan year so that there are no surprises when it comes time to prepare Form 5500.

Reporting Plan Mergers

The enactment of EGTRRA may encourage the merger of a plan sponsor's money purchase and profit sharing plans. It may be useful to examine the most efficient means of reporting such activity on Form 5500.

The merger document must be carefully scrutinized to identify whether or not the merger date is linked to the physical transfer of assets. Most ERISA practitioners prefer to effect the merger as of a specific date without regard to the administrative issues relating to the transfer of plan assets. Suppose Plan A is merged with Plan B effective as of the close of the 2001 calendar plan year, and that Plan A is the surviving plan. Effectively, the merger documents legally transferred to Plan A all assets and liabilities of Plan B immediately after the close of the 2001 plan year. As of

January 1, 2002, Plan B has no assets or liabilities. The 2001 Form 5500 for Plan B, the disappearing plan, must be prepared so the EFAST system expects no further filings for Plan B. In essence, Plan B is terminated December 31, 2001, as far as EFAST is concerned.

The preparer of the filing for Plan B's final return will check box (3) at Line B on Form 5500, and show a zero participant count at lines 7a through 7g. Further, the asset values as of the last day of the plan year, as reported on either Schedule H or Schedule I, must be zero. In some cases, it is appropriate to show the full amount of plan assets as a payable on these schedules in order to reduce the assets to zero. Also, be sure the information reported on Schedule SSA is up-to-date, including the reporting for those terminated participants who were previously reported and whose benefits were distributed prior to the plan merger.

Lines 4k and 5a of Schedule H and lines 4j and 5a of Schedule I (relating to plan termination) must be completed as though the plan was terminated. At line 5b of either schedule, report the transfer of assets to Plan A.

In contrast, the 2001 Form 5500 for Plan A will reflect nothing relating to the merger. Instead, Plan A records the transfer of assets and liabilities as of the first day of its 2002 plan year and also reports on its 2002 Schedule SSA any previously terminated participants with vested benefits from Plan B whose deferred benefits have been transferred to Plan A. Reporting in this fashion is consistent with what appears on the report of an independent accountant for large plans. Some preparers, nonetheless, are uncomfortable with Plan B reporting a transfer of assets to Plan A without a corresponding entry on Plan A's filing in the same year. In those circumstances, it may be appropriate to use a footnote on Plan A's Schedule H or Schedule I to disclose the merger.

Important note: the reporting suggestions above must **not** be used to report a traditional plan termination. If the plan is terminating, then a Form 5500 must be filed each year until all plan assets have been distributed. The final Form 5500, including any required report of an independent accountant, is due seven months after the end of the month in which the assets are fully distributed.

Schedule D – Direct Filing Entities (DFEs)

Schedule D was first introduced for the 1999 filing year, and it has been the source of much confusion and misinformation. Schedule D requires direct filing entities to present information about plans that invest in the DFE, while plan sponsors report their investments in DFEs. Ideally, these reports should be mirrors of each other. To date, the DOL has not initiated any programs to compare data reported by DFEs and plan sponsors.

Here are tips for preparing Schedule D:

- Do not use an attachment. Each pooled separate account must be reported individually and cannot be grouped by an insurance company in the same way that they are reported on Schedule A. The same is true for any other investments in DFEs.
- Even though the rules have been in place for several years, some DFEs fail to provide adequate information about whether they are filing Form 5500, and if not, what the breakdown of underlying assets is for reporting on Schedule H. The DOL is aware of the problem and advises to report whatever information is available. For example, a DFE advises the plan sponsor that it did not file Form 5500, but fails to provide any information about the plan's share of the underlying assets. Insert "000" as the plan number on Schedule D; however, on Schedule H, report the value of the DFE on line 1c(9), (10), (11), or (12), as appropriate.

Schedule SSA – Reporting Separated Participants

Schedule SSA is used to report terminated participants with *deferred vested benefits*. This phrase has multiple uses in our industry and it may be appropriate to clarify its use with regard to Form 5500 preparation.

Some practitioners have mistakenly interpreted the instructions to apply only to those situations where a participant may not request an immediate distribution of the vested benefit. For Schedule SSA, a participant has a *deferred vested benefit* if the participant has terminated employment and has not received his or her vested benefit. It does not matter whether the plan is a defined benefit plan or a defined contribution plan, or if the participant has a right to apply for an immediate distribution of the benefit.

> For Schedule SSA, a participant has a *deferred vested benefit* if the participant has terminated employment and has not received his or her vested benefit.

The instructions generally permit plan sponsors to delay reporting a participant on Schedule SSA until the end of the year following the plan year in which the participant terminates employment. Although it is not required, it is considered a "best practice" to report on Schedule SSA those terminated participants who were previously reported, but who have subsequently received, or begun to receive, their benefit payments. The Schedule SSA is the basis for notifying participants of possible benefits available from a former employer's plan when the individual applies for Social Security. If the Schedule SSA data has not been updated, it may result in a tremendous administrative burden at some future date to prove to a participant that he or she has, indeed, previously received the benefits to which he or she is entitled.

Schedule T and Multiple Employer Plans

IRS controls the content of this schedule and the agency has made improvements to either the form or the instructions each year. Unfortunately, not all of the confusion has been eliminated for preparers.

Here are some simple guidelines:

- Never file more than one Schedule T for a single employer plan. If all of the disaggregated portions of the plan cannot be reported at line 4, create an attachment as described in the instructions.
- Schedule T must be filed by every pension plan every year unless the plan meets the guidelines of Revenue Procedure 93-42, which sets forth criteria for the quality of data used in performing nondiscrimination tests and the timing of such tests. As a practical matter, very few plans rely on the substantiation guidelines of the revenue procedure.
- When filing for multiple employer plans, file a separate Schedule T for each participating employer. One exception: use an attachment to list all employers that qualify for the same exception on line 3.
- If a participating plan sponsor withdraws from a multiple employer plan, discontinue filing Schedule T for that sponsor. Report the transfer of assets to another plan on line 5b of Schedule H or Schedule I.

Conclusion

The Form 5500 continues to challenge preparers because it is not a one-size-fits-all filing with instructions that apply to every plan all of the time. Use that ambiguity to produce a filing that best discloses the operation of the plan. ▲

Janice M. Wegesin, CPC, QPA, specializes in compliance and reporting and disclosure matters associated with ERISA plans. She is the author of the Form 5500 Preparer's Manual for 2001 Plan Years *(Panel Publishers). You can visit her Web site,* ***www.form5500help.com****, for answers to other common questions.*

Continued from page 5

A Primer on Taxable Business Entities

whole point. Determine how the entity is taxed and all the rules applicable to that status apply to that entity.

- Holy Rolls Donuts is an LLC. Sidney and Fred are its members. It maintains a 401(k) plan. Holy Rolls timely elects to be taxed as a corporation. Sidney works in the business, but Fred does not. Since the business is taxed as a corporation, it withholds taxes from Sidney's pay and treats him as an employee. Sidney receives a W-2 at the end of the year. Holy Rolls can cover Sidney under its plan, just as it could any other employee. Since Fred does not work for the business, he is not an employee and cannot be covered. The business files a corporate tax return. To apply attribution rules and determine the status of the business under IRC 414(b), (c), and (m), treat Holy Rolls as a C Corporation.
- Same facts as the prior example, except Holy Rolls is taxed as a partnership. Sidney and Fred are treated as partners. Taxes should not be withheld from Sidney's pay nor should he be issued a W-2. Instead, a partnership return should be filed to report its income, which passes through to Sidney and Fred on Form K-1. Sidney is a self-employed individual because he has earned income from the business. Fred is not a self-employed individual, because his services are not a material income producing factor. As a self-employed individual, Sidney can be covered under the 401(k) plan. Holy Rolls is treated as a partnership for all plan purposes.
- Same facts as the prior example, except Holy Rolls has only one member, Sidney. Its status as a separate entity is disregarded. Accordingly, it is treated as Sidney's sole proprietorship. Its income is reported on Sidney's Schedule C. Sidney is a self-employed individual with regard to the business and can be covered under its plan.

Arrangements That are Not Entities

There are other business entities that are not treated as separate entities for tax purposes. The regulations say that expense sharing arrangements and simple co-ownership of property do not create separate taxable entities. A few examples will clarify this:

- John and Anne own an apartment building. They hire an outside management firm that collects the rents, finds tenants, calls the plumber, and does the other routine tasks of running the building. John and Anne each report half of the income, depreciation, and other expenses of the building on Schedule E of each of their 1040s. No return is filed for their joint ownership.
- Same facts as the prior example, except they own a functioning motel. Motels routinely provide services (such as maid service) and are regarded as a business. Accordingly, their co-ownership is a taxable entity and will be treated as a partnership unless they file Form 8832 to elect corporate status.
- Bud and Lou are doctors. Each has a separate practice. They share an office suite. They do not share income or hold themselves out as a partnership. They have a common account that pays joint expenses, such as rent, utilities, and the receptionist's salary. This is an expense sharing arrangement and not a partnership. It is not taxed as a separate entity. Bud and Lou each report his share of joint expenses on his own return. Staff members working in such an arrangement are likely shared employees.

Expense sharing or co-ownership arrangements, because they are not treated as separate organizations, cannot sponsor a plan, and should not be treated as separate organizations under affiliated service group rules.

- Same facts as prior example. Bud and Lou set up a 401(k) plan to cover the receptionist. It is a multiple employer plan sponsored by both doctors, rather than a single-employer plan sponsored by the expense sharing arrangement.

Employee Status of Owners

Entity status profoundly affects how retirement plans treat owners. Retirement plans treat owners of corporations who work in the business as common law employees. By contrast, owners of partnerships or sole proprietorships cannot be treated as common law employees and should not receive a W-2 form. Instead, owners who work in the business pay self-employment tax and are treated as self-employed individuals by retirement plans. To be more precise, there are three ways to be treated as a self-employed individual with respect to a particular business and tax year.

- Generally, a self-employed individual is someone who has earned income from the business during that year. Earned income is net earnings from self-employment (see page 14) from a trade or business in which the individual's services are a material income-producing factor. The mere fact that a man has a K-1 showing he has self-employment income does not end the question. If his work has not materially contributed to that income, he is not a self-employed individual. Generally, limited partners do not participate in the business and their partnership income is not subject to self-employment tax. Thus, it is not earned income. However, if a limited partner receives guaranteed payments for working in the business, those payments would be net earnings from self-employment and could be earned income if the limited partner's work materially contributed to the income of the business.

- If someone would have been a self-employed individual had the business shown a profit, that person is nonetheless treated as a self-employed individual.
- If someone has previously been treated as a self-employed individual, they remain so.

The definition of self-employed individual is illustrated by the following examples:

- In 2000, Sally starts a bookstore as a sole proprietorship. She actively manages the store. In 2000, the store shows a profit of $10,000. Therefore, she has earned income from the store, and her efforts are a material income producing factor. Sally is a self-employed individual for 2000 with regard to the store.
- Same facts as the prior example, except in 2000 the store loses $5,000. Sally is nonetheless a self-employed individual, since she would have had earned income if the store had been profitable.
- Same facts as the prior example. In 2001, Sally stops running the store herself and leaves its management to hired help. The store is profitable in 2001. Sally does not have earned income in 2001 because her services were not a material income-producing factor that year. (Thus, her compensation for plan purposes is zero.) However, Sally is a self-employed individual in 2001, because she previously was a self-employed individual.
- Same facts as the prior examples, except Sally never worked in the bookstore. She is simply a passive investor. While she reports her bookstore income on Schedule C of her return, it is not earned income and she is not a self-employed individual.

A self-employed individual's compensation for plan purposes is their earned income, whether that income is paid to them or not. By contrast, the compensation of a corporate shareholder is generally the amount reported on Form W-2. Practitioners frequently ask if retirement plans treat S Corporation deemed dividends as compensation. There is no authority for that position. A shareholder's compensation is based on his or her wages, not the corporation's net profits.

Net Earnings from Self-Employment

What are net earnings from self-employment (NESE)? Since NESE are the basis of "earned income," they are fundamental to determining whether an owner is a self-employed individual, and if so, what his or her compensation is for plan purposes.

NESE are net income from a trade or business conducted as a sole proprietorship by the individual, or a partner's distributive share of income from a partnership. Service as an employee does not give rise to NESE, except in rare circumstances.

There are some important clarifications and exclusions. Income from rental property generally is not NESE, unless services are provided with the property. Dealers in real property, who have a business of buying property with the intent of selling it (as opposed to being a mere speculator), derive NESE.

Interest and dividends are not NESE, except for a securities dealer, and neither are capital gains and losses.

A sole proprietorship generates NESE only if it is a trade or business under Code §162. The question of whether an activity is a trade or business can be quite involved and frequently requires careful research focusing on the particular business.

Obviously, there are many factors involved in determining whether a business generates NESE, and therefore whether its owner is a self-employed individual. Incorporating, or electing to be taxed as a corporation, can avoid many of these difficulties, and possibly allow a plan contribution where one could not otherwise be made.

- Frances owns an apartment building. She actively manages the property, and spends 15 hours per week doing so. However, because the rental income is not NESE, Frances is not a self-employed individual. She cannot establish a retirement plan for herself.
- Same facts as the prior example. Frances forms a corporation and contributes the apartment building to the corporation. The corporation pays her a reasonable salary for her services. The corporation can set up a plan and cover Frances, without regard to the source of the income used to pay her salary.

Treatment of Self-Employed Individuals

A self-employed individual of a particular business is treated as though he or she were an employee of the business with compensation equal to the owner's earned income. This is crucial because it permits owners to be covered by plans maintained by that business.

- Peter is a self-employed fisherman. Peter is a self-employed individual for his fishing business. If he sets up a retirement plan for the business, the plan treats him as an employee.

- Aaron and Betty form the BA Limited Partnership. Betty is the general partner and runs the business. Aaron is a limited partner, a passive investor who does not work in the business and has little say in its management. He can remove Betty as general partner, but that is all he can do. Betty is a self-employed individual of BA Limited Partnership and Aaron is not. If the partnership establishes a plan, it can cover Betty as it would any other employee. It cannot cover Aaron without violating the exclusive benefit rule.

Note that the "employer" of a partner is the partnership. A partner cannot set up a plan for himself or herself. Only the partnership (or entity taxed as a partnership) can.

The Code assures self-employed individuals that contributions meeting the limits of IRC §404 are deductible as ordinary and necessary business expenses or income production expenses if they do not exceed earned income and are not allocated for purchasing insurance. If plan contributions are used to buy insurance for a self-employed individual, they are not deductible under 404(a).

Attribution Rules

Entity status is very important in applying attribution rules to determine who is a highly compensated employee (HCE) or key employee. It also affects whether or not an organization is part of an affiliated service group (ASG). Consider the following examples:

- Companies A and F are both service organizations providing consulting services. A is an owner or shareholder in F and regularly performs services for F. F is an LLC taxed as a partnership. This is a classic A-Org style ASG.
- Same facts as the prior example, except that F is a corporation. According to the proposed regulations, F cannot be a first service organization because of the professional service corporation exemption. On these facts alone, an ASG does not exist.
- George owns 4% of L LLC, and C Inc. He is an employee of C and C wants to determine if George is an HCE by virtue of being a 5% owner. L owns 30% of C, and is taxed as a partnership. George is deemed to own his pro rata share of L's stock in C. This gives him an additional 1.2% of C, giving him 5.2% total, enough to make him an HCE.
- Same facts as the prior example except that L is taxed as a C corporation. In determining HCE status, only 5% or more shareholders in C corporations are deemed to own their pro rata share of stock held by the corporation. Accordingly, there is no attribution from L to George and George is not a 5% owner of C.

Conclusion

This has been an overview of the ways entity status affects qualified plans. Although the principles stated here are generalizations, they demonstrate both the complexity of the legal landscape and the need for careful review of each factual situation. ▲

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Focus on E&E

C-2(DB) Exam Tests New Grade Delivery Method in Fall 2002!

ASPA's Education and Examination Committee (E&E) is piloting a new delivery system at Prometric that allows grades and grade reports to be given upon completion of exams. The benefit to ASPA exam candidates is that candidates will immediately receive their actual grade (not just a pass or fail) and also a grade report, listing the chapters and areas in which the candidate needs to improve.

If the pilot program goes well, it is anticipated that the C-1 and C-2(DC) exams will also use the new delivery system in spring 2003. For fall 2002, C-1 and C-2(DC) candidates will receive a pass or fail upon completion of their exams at a Prometric site and will receive their grade and grade report within 12 weeks of the close of the fall 2002 exam window, which is November 30, 2002.

It's not too early to register for the fall 2002 exams! The early registration deadline is September 30 and the final registration deadline is October 31. The fall 2002 exam window is November 1 through November 30.

E&E is committed to providing candidates with the benefits of technology on an ongoing basis. ASPA has worked with Prometric to improve exam services and to address candidates' suggestions and concerns. E&E welcomes comments from employers and candidates, which can be submitted to **educaspa@aspa.org**.

Sales Opportunity: "Acquiring Mergers"

Merging a Money Purchase Pension Plan into a Profit Sharing or 401(k) Plan

by E. Thomas Foster, Jr.

THIS YEAR, CHANGES TO EMPLOYER DEDUCTION LIMITS PROVIDE PRODUCERS AND FINANCIAL PLANNERS ATTRACTIVE OPPORTUNITIES WITH WHICH TO APPROACH THEIR SMALL BUSINESS OWNER CLIENTS AND CONTACTS.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) raised the employer deductible limit for profit sharing plans from 15% of compensation to 25% of compensation, aligning the limits with those for money purchase pension plans. With this change, it is expected that few, if any, new money purchase pension plans will be established.

One option available to employers with an existing money purchase pension plan is merging the plan with their existing profit sharing plan or converting it into a profit sharing plan. Doing so may enable employers to eliminate expenses associated with the dated, and often costly, money purchase plans. However, many employers remain unaware of the options available to them, or the benefits and considerations of implementing a change.

There are a number of benefits to an employer with both a money purchase pension plan and a profit sharing plan (including a 401(k) plan) who wishes to merge the money purchase pension plan into the profit sharing plan. Where there is no profit sharing plan, a money purchase pension plan may be converted into a profit sharing plan, including a 401(k) plan. Whether merging or converting the money purchase plan into a profit sharing or 401(k) plan, the employer eliminates the money purchase plan's expenses, and generally, there is no need to change a participant's vesting.

While the money purchase pension plan must be amended for GUST prior to its termination, there is no need to update the money purchase pension plan prior to a merger or conversion, provided that the merged or converted plan is updated before the end of the GUST amendment period.

Employers interested in merging or converting their money purchase plan should take into account the following considerations. Each participant in the new plan must have the same accrued benefits following the merger or conversion as he or she did immediately before the action. Also, distribution restrictions and annuity and spousal consent rights required of money purchase pension plans must continue to apply under the profit sharing plan, at least with respect to the old money purchase pension benefits. Employers should consider the administration of these rules, and whether to apply them to all of the benefits under the new plan, or maintain separate administrative procedures for the old money purchase pension benefits and all other benefits under the new plan.

Before money purchase pension plan contributions cease, participants must be notified within 15 days of the effective date of the adopted plan amendment (according to the Internal Revenue Code 204(h) notice requirement).

When an employer opts to terminate, merge, or convert a money purchase plan, any benefits that have accrued up to the date of such action must still be funded. Consideration should be given to the timing of such action in light of this rule and the IRS notice requirement. For example, it is common for a money purchase pension plan to require employment on the last day of the plan year as a condition for receiving a contribution. It is also common for contributions to be made to those participants who retire or die during the plan year. If a merger or conversion action is taken during the plan year, the employer must determine whether any participant is eligible for a contribution, and if eligible, the employer must make that contribution to the plan.

Finally, whether an employer merges or terminates, a Form 5500 annual report must still be filed for the money purchase pension plan. ▲

E. Thomas Foster, Jr, JD, is The Hartford's national spokesperson for group qualified retirement plans. Tom, a former ERISA attorney, has 27 years of defined contribution plan experience, including product development, training, marketing, and relationship management with wholesalers and broker-dealer firms. He is an acknowledged industry expert in retirement plan legislation, regulation, and compliance testing.

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ASPA's 5,000th MEMBER CELEBRATION

ASPA is pleased to announce that it will soon welcome its 5,000th member. In recognition of this momentous milestone, ASPA's 5,000th member will receive a complimentary ASPA conference registration, a voucher good for one year's annual dues payment, and an official ASPA polo shirt.

ASPA members are encouraged to participate in this celebration by referring new members. You know the benefits of membership – now inspire your colleagues to join ASPA. If you refer the 5,000th member, you will receive a complimentary ASPA webcast and ASPA polo shirt.

For complete membership details, call (703) 516-9300 or visit **www.aspa.org**.

This issue of *The ASPA Journal* **salutes our new members...**

Welcome New Members

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

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The ASPA CE Deadline is Fast-Approaching!

by Marissa Pietschker, QPA

AS A PROFESSIONAL SOCIETY, ASPA EMPHASIZES THE IMPORTANCE OF THE CONTINUING MEMBERS' PROFESSIONAL AND EDUCATIONAL DEVELOPMENT. AS YOU ARE AWARE, ASPA HAS A MANDATORY PROGRAM OF CONTINUING EDUCATION THAT AFFECTS ALL DESIGNATED MEMBERS – FSPAs, MSPAs, CPCs, QPAs, QKAs, AND APMs. THE CONTINUING EDUCATION (CE) PROGRAM IS DEDICATED TO HELPING MEMBERS STAY ABREAST OF DEVELOPMENTS IN THE QUALIFIED RETIREMENT PLAN ARENA.

This program for continuing education now applies to *all* designated members regardless of when you originally received your designation(s). The current cycle for earning credits began on January 1, 2001, and will end on December 31, 2002. *Continuing Education Reporting Forms* are due by January 8, 2003.

In order to retain one's ASPA designation, designated members must earn 40 continuing education credits during the January 2001-December 2002 cycle (and in all future two-year cycles). For the initial CE cycle, the number of CE credits required is prorated based on the date of admittance or designation within the two-year CE cycle as follows:

- First six months of the cycle — 30 CE credits
- Second six months of the cycle — 20 CE credits
- Third six months of the cycle — 10 CE credits
- Fourth six months of the cycle — 0 CE credits

There are a variety of interesting and educational ways to earn CE credits, many of which are outlined below. Keep in mind that topics must be pension/retirement plan related. One way to obtain ASPA credit is by attending an **educational program** or **course**.

In addition, credit can be obtained by attending a **non-ASPA sponsored seminar** or educational program. Credits for these programs are based on a one credit per 50-minute credit hour with a maximum of 15 credits per program. Retention of attendance records and written outlines is the responsibility of the credentialed member.

ASPA sponsored exams are another way to earn credit. Credentialed members can use the C-1, C-2(DC), C-2(DB), C-3, C-4, and A-4 exams that lead to an *additional* designation. Exams taken to obtain your first designation do not provide CE credits, but rather earn the designation. Credits will be applied to the cycle in which the score is *received*. You will receive 20 credits for a passing grade and 15 credits for a failing grade (no less than a score of 5).

In addition to exams, courses, and educational meetings, one can obtain credit by attending a qualified **in-house training** program sponsored by the company for which one is either an employee or a representative, or by participating in a qualified **study group** program. Successful completion (*i.e.,* a passing grade on an exam) of a **non-ASPA sponsored**

Program/Course	CE Credits
Annual Conference, Summer Academy, and Business Leadership Conference	20 each
One-Day Workshops (2001 only)	7 each
401(k) Summit (2002 only)	15
Great Lakes TE/GE	16
Best of Great Lakes	8
Mid-Atlantic Benefits Conference	16
Northeast Key Conference	8 each
Los Angeles Benefits Conference (2002 only)	15
C-1, C-2(DB), C-2(DC) Virtual Study Groups (2001 only)	20 each
C-1, C-2(DB), C-2(DC), C-3, C-4, EA Weekend Courses	15 each
Pension Administrator's course (PA-1A & PA-1B)	5 each
Daily Valuation Course (DV)	10
The ASPA Journal/*Pension Actuary* Quiz	1 per quiz
Webcasts	2 each
ASPA Benefits Council (ABC) meetings	Credits depend upon the length of the meeting and are based on a one credit per 50-minute credit hour.

self-study program covering acceptable subject matter also qualifies for credit. Credit for in-house training, study groups, and self-study is calculated based on a one credit per 50-minute credit hour. Keep in mind that there is a 15 credit maximum for **self-study programs**, and at least one ASPA member must be present in order to receive credit for a **study group**. Refer to the enclosed *Continuing Education Guidelines and Forms* for more detailed information.

And that's not all! Members can also receive credit for **speaking** at a professional meeting or by **instructing** a course either sponsored by ASPA or by a college, university, or another professional organization. Credit can also be obtained by serving as a **panelist** at a professional meeting or for **publishing** an article on acceptable subject matter. Refer to the *Continuing Education Guidelines and Forms* for more detailed information.

The opportunities to earn CE credit are endless! It is important to start now and plan how you will earn your CE credits before the end of this cycle. Designated members who do not meet ASPA's CE requirements will have their designation suspended until the CE credits are obtained and an application for reinstatement of the suspended designation is submitted.

For more information about how to earn CE credits, refer to the enclosed *Continuing Education Guidelines and Forms*. You can also contact ASPA's Membership Department at (703) 516-9300 or go to the Continuing Education section of ASPA's Web site at **www.aspa.org**. ▲

Marissa Pietschker, QPA, works for Suncoast Pension and Benefits Group, Inc. in Tampa, FL, and has worked in the pension field since 1982. Marissa is chair of the Continuing Education Committee and has been an ASPA member since 1990.

The current cycle for earning credits began on January 1, 2001, and will end on December 31, 2002. *Continuing Education Reporting Forms* are due by January 8, 2003.

Need More ASPA CE?

Check Out ASPA's Webcast Recordings library!

Need a few more ASPA continuing education credits for this cycle? Take a look at the webcast recordings available online at **http://www.aspa.org/webcast/**. Each webcast is worth two ASPA CE credits, and all you need to do is view a 100-minute webcast over the Internet.

Presentations currently available include:

- **Update on Potential Pension Legislation in Response to Enron**
  Originally presented May 9, 2002 – Available until April 30, 2003
- **2001 Form 5500 and Related Compliance Issues**
  Available starting March 18, 2002 – Available until March 30, 2003
- **Deduction Issues After EGTRRA**
  Originally presented December 5, 2001 – Available until December 1, 2002
- **Designing Plans After EGTRRA**
  Originally presented on November 15, 2001 – Available until November 15, 2002
- **What You Need to Know About Catch-up Contributions**
  Originally presented November 7, 2001 – Available until November 15, 2002
- **Best of EGTRRA**
  Originally presented on October 24, 2001 – Available until November 1, 2002
- **First GUST, the EGTRRA, and Finally a Completed Plan Document**
  Originally presented on October 11, 2001 – Available until October 1, 2002
- **New Comparability**
  Originally presented on August 1, 2001 – Available until September 1, 2002
- **Pension Reform**
  Originally presented on June 19, 2001 – Available until July 1, 2002

Check back often. Additional webcast recordings will become available periodically! To learn more and to register, check out **http://www.aspa.org/webcast/**.

2002 Membership Satisfaction Survey Results

by Kerry Boyce, CPC, QPA

ASPA's membership committee would like to thank all of our members who responded to the 2002 membership satisfaction survey. Your feedback is appreciated and will assist us in continuing to improve the services we offer our membership. Twenty five percent of ASPA's members responded to the e-mail survey. The following is a summary of the results.

Overall Opinion

Overall, ASPA members have positive opinions about ASPA. In fact, 98% of those who responded stated that their general attitude toward ASPA is either very positive or positive.

Programs and Services

In terms of our programs and services, members assigned the highest satisfaction ratings to ASPA's publications and to the ASPA government affairs program. 96.5% of respondents are either very satisfied or satisfied with ASPA's publications (*i.e.*, the *ASPA ASAP* and *The ASPA Journal*), 2% have no opinion, and about 1% are either dissatisfied or very dissatisfied. 85% of respondents are either very satisfied or satisfied with the government affairs program, 14% have no opinion, and less than 1% are dissatisfied or very dissatisfied.

Members also responded that they are satisfied with ASPA conferences, education programs, and Web site. 84% of respondents are either very satisfied or satisfied with ASPA's conferences, 14% have no opinion, and 2% are dissatisfied. In terms of ASPA's educational program, 84% are either very satisfied or satisfied, 13% have no opinion, and 3% are either dissatisfied or very dissatisfied. 80% of respondents are either very satisfied or satisfied with ASPA's Web site, 18% have no opinion, and 2% are dissatisfied.

ASPA Continuing Education Program

44% of respondents believe that the Continuing Education program requires an appropriate number of continuing education hours. 9% indicated that too many hours are required, and 1.5% indicated that too few hours are required. 18.5% responded that it is too expensive to attend programs to obtain hours and 12% responded that it is too difficult to find time to attend programs in order to obtain credit.

ASPA Exams

77% of respondents agreed that ASPA's exams have effectively prepared them for work in the retirement plan field. Only 5% disagreed with this statement and the remaining respondents indicated that they are not currently participating in ASPA's exam program.

ASPA Communications

Most respondents (70%) approve of receiving ASPA brochures and newsletters via e-mail rather than through the regular mail. 13% have no opinion, and 17% stated that they react negatively or very negatively to receiving these items via e-mail.

Additionally, 76% of respondents indicated that they would respond positively to receiving promotional announcements via e-mail. 15% have no opinion and only 9% responded negatively to this question.

ASPA Benefits Councils Calendar of Events

Date	Location	Event	Speaker
June 5	Northern Indiana	Safe Harbor 401(k) Plans, "Getting Under the Hood," How to Correctly Apply the New Top Heavy Rules, and How to Properly Handle Catch-up Contributions	Sal Tripodi, APM
June 27	Western Pennsylvania	Takeovers and Compliance Issues	Cheryl L. Morgan, CPC
July 18	Atlanta	Legislative Update and What's Happening in the World of Retirement Plans	Brian H. Graff, Esq., CPA
Sept 2002 TBA	Atlanta	Annual Meeting	TBA
Fall 2002 TBA	Atlanta	Plan Investments, Fiduciary Liability, and How to Determine Underlying Fees	TBA

Primary Membership Organization

More than 85% of respondents indicated that ASPA is their "primary" membership organization. Of the 15% who indicated otherwise, responses included: CPA Society 23.5%; NIPA 17%; SOA 16%; AAA 13%; Bar Association 9%; WEB 1%; SPARK 0.50%; and Other 20%.

Professional Organization Comparison

In terms of comparing ASPA to other professional organizations, the majority (over 70%) of respondents gave ASPA an *excellent* comparison rating for keeping members up-to-date with industry changes and for advocacy. Most of the remaining respondents gave ASPA a *good* rating in these two areas.

89% of respondents rated the quality of ASPA's educational programs as either *good* or *excellent*. Only 3% rated the programs as *poor* or *fair* and the remaining respondents stated that they do not know. 85% of respondents rated ASPA's industry recognition as either *excellent* or *good* and 10% rated ASPA as *fair* or *poor* in terms of industry recognition (the remaining 5% said they do not know).

83% of respondents rated ASPA's use of the latest technology as either *excellent* or *good*. 7% rated the use of technology as *fair* or *poor* and 10% said they do not know. Almost 80% of respondents rated the quality of ASPA's conferences as either *excellent* or *good*. Only 4% rated them as *poor* or *fair*, and the remaining respondents stated that they do not know.

Utilization of Benefits

Respondents chose the *ASPA ASAP* as their most utilized member benefit, followed consecutively by *The ASPA Journal*, conferences, ASPA Web site, exams, webcasts, and the *ASPA Yearbook*. Membership benefit discounts are a significantly less utilized benefit.

Staff Responsiveness

The majority of respondents (72%) replied that the ASPA staff is either very responsive or responsive to their needs and requests. 25% have no opinion and less than 3% stated that the staff is either unresponsive or very unresponsive.

Board of Directors

Members were asked about the effectiveness of ASPA's Board of Directors in representing their interests. 68% of respondents indicated that the Board is either very effective or effective, 28% have no opinion, and less than 2% replied that the Board is ineffective or very ineffective in representing their interests.

ASPA Leadership Opportunities

Members were asked to respond to the following question: "I have as reasonable an opportunity to move into positions of influence within ASPA as other ASPA members." 40% of respondents either strongly agree or agree with this statement, 48% have no opinion, and about 12% either disagree or strongly disagree.

Web Site Job Posting

Members were asked for their opinion regarding a potential ASPA member benefit that would allow companies to post available positions on the ASPA Web site. 80% responded either very positively or positively to this proposed benefit. Only 5% responded negatively. The remaining respondents had no opinion.

ASPA Membership

Only 5% of respondents indicated that their company *requires* them to be members of ASPA. 73% of respondents indicated that their company *encourages* them to become members of ASPA.

Value of Designations

ASPA credentialed members were asked to rate the value of their designation(s). More than 80% of respondents rated their designation as either highly valuable or valuable both as a source of industry-wide recognition and as a source of recognition inside ASPA.

More than 70% of respondents rated an ASPA designation as either highly valuable or valuable as an educational/training tool for their staff, in evaluating candidates for employment, and in assisting them with their day-to-day work. About 52% of members rated their designation valuable in the development of new business.

Conclusion

The 2002 Membership Satisfaction Survey resulted in valuable information about how we are doing, what our members like most about us, and what we can improve upon. In order to give each ASPA member the opportunity to contribute their views and ideas, we will be conducting more surveys in the future.

Again, special thanks everyone who participated! We know that you appreciate being asked your opinions and we value your continued support. ▲

Kerry M. Boyce, CPC, QPA, is president and CEO of Boyce & Associates, Inc. Kerry currently serves as ASPA's Membership & Admissions Committee Chair, also serves on the ASPA Technology Committee, and is a member of ASPA's Strategic Planning and Implementation team. Kerry's other professional affiliations include National Institute of Pension Administrators, Arizona Employee Benefits Forum, Western Pension & Benefit Conference, and the 401 Committee of the Phoenix Tax Workshop.

Survey Raffle Drawing Winners!

Everyone who responded to the 2002 Membership Satisfaction Survey was eligible to win either a free ASPA webcast or a free ASPA conference registration. The Membership Committee would like to congratulate our two winners! The winner of the free ASPA conference registration is Michael P. Kiley of Plan Administrators Inc. in de Pere, WI. The winner of the free ASPA webcast registration is Mary M. Bennett, CPC, QPA, QKA, of Key Financial Administrators in Indianapolis, IN. Congratulations!

Dynamic Programs and Student Opportunities Abound in the Delaware Valley

by David M. Burns, MSPA, CPC, and Marcia L. Hoover, QPA

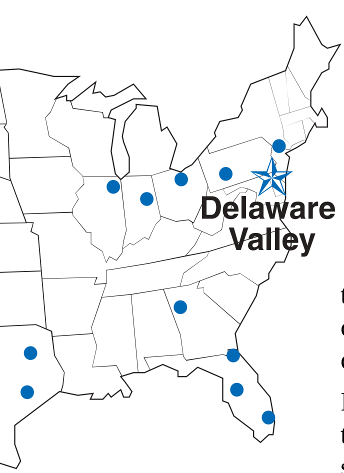
The ASPA Benefits Council of the Delaware Valley (ABCDV) has been very busy the past twelve months preparing and presenting a variety of dynamic programs. 2002 is shaping-up to be equally rewarding for our members.

A May 2001 luncheon presentation by Chuck Klose, FSPA, CPC, EA, Senior Consultant, Vanguard Group, covered **Ethics and Professional Responsibility**.

In late summer, Philadelphia-area attorneys, Arthur Bachman and Robert Bildersee, presented a very informative breakfast session detailing the changes made by EGTRRA. As fate would have it, this meeting was held on the morning of September 11 and was brought to a rather sudden and somber ending by the announcement of the World Trade Center and Pentagon tragedies. This meeting will not soon be forgotten by those in attendance.

The October 2001 meeting featured a panel discussion on **Investment Advice and Education**, which was moderated by Charles Catagnus of Aon Consulting. Participants in this thought-provoking session included a plan sponsor, an attorney, and a regional manager for Financial Engines, Inc. Attendees benefited from the keen insights offered by these representatives of three diverse perspectives.

In November 2001, attorney Joseph Hessenthaler of Towers Perrin treated attendees to a high-energy presentation on **Non-Qualified Deferred Comp Programs**.



The ABCDV tried something new for the first meeting of 2002. In early February, a free program was offered to dues-paying members. The session was a rebroadcast of an ASPA Webcast on **Catch-Up Elections and 401(k) Issues After EGTRRA**.

Dr. Olivia Mitchell from the Wharton School of the University of Pennsylvania, who recently served on the President's Commission to Strengthen Social Security, spoke about **The Future of Social Security** at our March 2002 meeting.

In May 2002, the ABCDV joined with the ASPA National Office and the Internal Revenue Service to co-sponsor the Mid-Atlantic Benefits Conference in Philadelphia. The two-day conference focused on exchanging information and educating attendees about current legislative, administrative, and actuarial topics and featured speakers from the IRS and the DOL.

2002 Scholarship Recipient

We are very pleased to announce our scholarship student for 2002. He is Yang Shen, a junior at Temple University's Fox School of Business and Management. Yang's GPA in actuarial science is 3.78, but he is more than an excellent student. He is very active in the Temple Diamond Band (a Diamond Key Award winner in 2001), is an instructor in the Temple Marching Band, and is a member of the Overbrook String Band.

Yang has shown an interest in pension actuarial science and is a member of Gamma Iota Sigma. He passed the Course 1 examination of the Society of Actuaries covering Mathematical Foundations of Actuarial Science in May of 2001. Yang has a summer internship at CIGNA.

Yang Shen also tutors students in college math and pre-calculus courses and works in the Temple University Science Libraries. In addition to knowing his way around computers, he is fluent in Chinese.

Our ABC is interested in promoting ASPA and the pension field to area universities. Joe Leube, Jr., FSPA, CPC, addressed the Temple chapter of Gamma Iota Sigma, where he spoke to over 125 members of the fraternity. We have also established a student rate of $20 for our luncheon meetings (just enough to cover our costs), with the hope that we can encourage the local students to attend. We were very happy to have three Temple students attend our last luncheon. During the next year we will be reaching out to other area universities with actuarial programs to let them know more about the pension field, ASPA, and our ABC. ▲

David M. Burns, MSPA, CPC, MAAA, is an enrolled actuary and senior consultant at The Vanguard Group in Valley Forge, PA. Dave has over 26 years of experience in the design and administration of qualified plans and currently serves as secretary on the Board of Directors of the ABCDV.

Marcia L. Hoover, QPA, is vice president and business development officer for PNC Advisors' Retirement and Investment Services Group. She has more than 25 years of employee benefit experience and is one of the charter members of the ABCDV, of which she is the immediate past president and current scholarship program chair.

International Congress of Actuaries

by Barry Kozak, MSPA

ACTUARIES FROM ALL AROUND THE WORLD CONVERGED IN CANCUN, MEXICO, FOR THE 27th INTERNATIONAL CONGRESS OF ACTUARIES FROM MARCH 17 UNTIL MARCH 22, 2002. FOUNDED IN 1895, THE INTERNATIONAL ACTUARIAL ASSOCIATION (IAA) IS A WORLDWIDE ASSOCIATION OF PROFESSIONAL ACTUARIAL ASSOCIATIONS AND INDIVIDUAL ACTUARIES, OF WHICH ASPA IS ONE OF FIVE US MEMBER ACTUARIAL ORGANIZATIONS. THE CONGRESS PROVIDED ACTUARIES OF ALL SPECIALTIES AND LANGUAGES WITH RELEVANT EDUCATION, NETWORKING OPPORTUNITIES, AND SINCE IT WAS HELD IN A SPRING-BREAK PARADISE SETTING, AN OCCASIONAL GUEST APPEARANCE ON THE 2002 EDITION OF "ACTUARIES GONE WILD."

The Congress consisted of several general interest plenary sessions, programs presented by the member organizations, education reports, and presentations of papers written by individual members. Some of the plenary sessions were: "Mathematics of the Mayan Culture," "Genetics," and "Vision of the Actuary." Some of the programs included: "Impact of Global Demographic Changes in Retirement Systems" (sponsored by ASPA in conjunction with the Conference of Consulting Actuaries, and moderated by Curtis Huntington, APM), "Pension and Health Reforms in Developing Countries," "Towards a New Global Education System," "International Accounting Standards," "Social Security," "Professionalism," "Impact of Globalization in the Actuarial Profession," and "Life Reinsurance." The presentation papers were all over the spectrum, and included such diverse topics as: "Social Security Privatization: Using a Target Benefit Approach for Funding Individual Accounts" (presented by Barry Kozak, MSPA), "How Insurers are Compensated by Government and/or Insurance Premiums for Extra Health Risks in the Netherlands," "Fitting the ASSA2000 urban-rural AIDS and Demographic Model to 10 Sub-Saharan Countries," "Designing an International Pension Program for Mobile Employees," "Testing the Stability of the Components Explaining Changes of the Yield Curve in Mexico – A Principal Component Analysis Approach," and "Pregnancy Related Risk Factors in Female Breast Cancer Incidence."

The IAA exists to encourage the development of a global profession, which is acknowledged as technically competent and professionally reliable to ensure that the public interest is served. Its objectives are to: develop the role and reputation of the profession; promote high standards of professionalism to ensure that the public interest is served; advance the body of knowledge of actuarial science; further the personal professional development of actuaries; promote mutual esteem and respect amongst actuaries; provide a discussion forum for actuaries and associations; and represent the profession with international bodies. For further information about the IAA and your participation, visit the International Actuarial Association Web site at **www.actuaries.org** or contact Curtis Huntington, APM, at **chunt@math.lsa.umich.edu**. Start making your travel plans for the 28th International Congress of Actuaries in Paris in 2006 or visit **www.ica2006.com** for more information! ▲

Barry Kozak, MSPA, is an attorney, enrolled actuary, and Chartered Financial Consultant. He is employed as a consultant to the Center for Tax Law and Employee Benefits at the John Marshall Law School and is an adjunct professor in its Master of Laws program in Employee Benefits. Barry is also employed as a legal consultant at Chicago Consulting Actuaries, LLC. Barry is very active and holds leadership roles in ASPA, the American Bar Association Section of Taxation, and the Chicago Bar Association.

Notice of ASPA's Annual Business Meeting

The ASPA Annual Business Meeting will be held during the 2002 ASPA Annual Conference on Sunday, October 27 at the Annual's new location, the Washington Hilton and Towers. Watch future issues of *The ASPA Journal* and the ASPA 2002 Annual Conference brochure, available in late summer, for the exact time.

All ASPA members are invited to attend and participate in the business meeting discussion. Credentialed members are encouraged to attend the meeting and vote for the new members of ASPA's 2003 Board of Directors.

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. We need strong people with differing perspectives to help lead our organization.

If you or someone you know would be a valuable addition to our Board, now is the time to get the nomination process started.

To be considered for a Board position, a member's name must be submitted to the Nominating Committee by two credentialed members at least 60 days prior to the October 27 Annual Business Meeting (*i.e.*, August 27, 2002).

A nominations form is included in this copy of *The ASPA Journal*, or you may access the form on the "Members Only" portion of our Web site at **www.aspa.org**

Listening closely to our candidates concerns, the Education & Examination Committee has worked with Prometric Testing Centers and, beginning in fall 2002 with the C-2(DB) exams, immediate grades and chapter feedback will be available. This feature will be available in spring 2003 for the C-1 and C-2(DC) exams.

A task force formed by the Technology Committee met on May 2-3 at the ASPA office in Arlington, VA, to discuss a new format for the ASPA Web site. Under the leadership of Mike Bain, MSPA, the task force reviewed the current Web site, addressed increased functionality, and revisited the entire layout. Watch **www.aspa.org** in the months to come for our new look!

The Government Affairs Committee will meet on June 23 in Washington, DC, for the second of its three meetings to further formulate ASPA's legislative and regulatory positions. Following the meeting, many members will meet with IRS, DOL, PBGC, and Treasury officials to recommend new procedures and discuss topics of concern.

ASPA On the GO

The Leased Employee Conundrum

by Bruce L. Ashton, APM, and Nicholas J. White, APM

"Mary! thank goodness I reached you," Tom exclaimed excitedly.

"Hi, Tom. How's my favorite client?" Mary was calm. She had been an ERISA lawyer long enough to realize that there were few real emergencies in the pension world.

"I just got back from an ASPA conference and I heard someone say something like, you have to give service credit to temps who get hired as full time employees. Is that right?"

"Sure is," Mary said and paused. She knew there had to be more to the story.

"Oh, no!" Tom cried. "Are you sure? We've never done that, Mary, and I'm not even sure how we'd figure it out! Oh, Mary, this is awful. Can our plan be saved?"

"Tom! Take a deep breath – you're hyperventilating," Mary said sharply. "And calm down. There's always a way to save a plan. First, let's look at the requirement."

Mary pulled out her Internal Revenue Code and began flipping pages. "Ah, yes, here it is. Section 414(n)(4)(B). It says that an employee's years of service are determined taking into account the period he or she worked for you as a leased employee. In other words, you don't start counting their service from the date they went on the payroll, but from the date they first had an hour of service as a leased employee. I can tell you Tom, this issue has been a trap for a lot of my clients, even some really big companies. So starting today, you have to begin capturing the data. As soon as we're off the phone, you need to get the MIS people working on this."

"That's fine for the future, but what about the past?" Tom asked incredulously. "We've got a one-year wait to get into the plan and a vesting schedule on the match and company contributions. We've got 12 locations, each using a different leasing agency. I have enough trouble just getting them to deposit deferrals on time. I'll never get them to give me this information. How can I make sure people got into the plan when they were supposed to and have the right vesting?"

"Let me think." Mary sat staring at the ceiling, the phone cradled in the crook of her neck. Tom held his breath.

Finally, Mary said, "Ok, here's one approach. All the leased employees are non-HCEs, right? Assuming you can figure out who the former leased employees are, but not their start date, one approach would be to treat them as though they'd all met the one-year eligibility waiting period on the date they went on the payroll as a W-2 employee. You'd have to make a corrective contribution for the folks for that first year before they actually got into the plan – this contribution would consist of an assumed deferral amount, plus the match and the profit sharing piece. And then, because you don't really know how many years of service they've each accrued, you'd 100% vest all of them. This would require a retroactive amendment to the plan's schedule, for which we'd have to get approval from the IRS by filing an application under VCP General Procedures. We used to call this an application for "reformation CAP." Since you're only benefiting NHCEs, this isn't discriminatory, and I'm sure the Service would go along with the amendment."

"But I'm not sure our system tracks who used to be a leased employee, much less their original start date," Tom said. "We'd have to go through everyone's employment records to figure out who these people are. That's a lot of people, Mary."

"Hmm. Let's start by contacting the temp agencies. Ask them for a list of everyone they sent to you and then match that against your employment records. If they came from an agency and then went on the payroll, that's your group."

"Mary, you're so smart," Tom beamed. "Can you send me a memo outlining what we need to do to fix this? I'll need to talk to the bosses and make sure they'll go along with all this…."

"They don't really have any choice, Tom," Mary said.

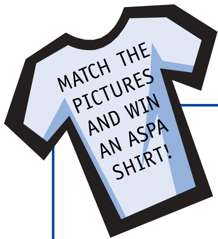
"… and, Mary, how much are you going to charge for all this?"

"Now, Tom, you know how reasonable my fees are," Mary cooed. ▲

Bruce Ashton, APM, is a shareholder with Reish Luftman McDaniel & Reicher in Los Angeles, where he specializes in all aspects of employee benefits. He is a director and secretary of ASPA and co-chair of the Government Affairs Committee.

Nicholas White, APM, is a partner of Reish Luftman McDaniel & Reicher, specializing in employee benefits. He is a vice-chair of the ASPA GAC IRS subcommittee.

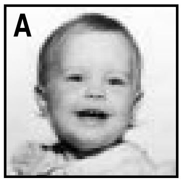
FUN-da-MENTALs



When I Grow Up, I Want to Be President (of ASPA, that is!)

Submit your guesses on the eASPA portion of ASPA's Web site at **https://router.aspa.org**. Login, go to Members Only>Newsletter, and look near the bottom. Members who identify all eight photos correctly will be entered in the Free ASPA Polo Shirt drawing to take place on July 15. Good luck!

the way they were

A


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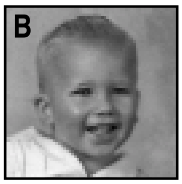

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the way they are

1

Edward E. Burrows, MSPA ______

5

Howard M. Phillips, MSPA ______

2

Karen A. Jordan, CPC, QPA ______

6

Carol R. Sears, FSPA, CPC ______

3

George J. Taylor, MSPA ______

7

Richard D. Pearce, FSPA, CPC ______

4

Curtis Hamilton, MSPA, CPC ______

8

Ruth F. Frew, FSPA, CPC ______

WORD SCRAMBLE

Unscramble these four puzzles – one letter to each space – to reveal four pension-related words. Answers will be posted on the eASPA portion of ASPA's Web site at **https://router.aspa.org**. Login, go to Members Only>Newsletter, and look near the bottom.

1. NIGHT CAM   _ _ _ _ ◯ ◯ _ ◯
2. ME LIPS   ◯ ◯ _ _ ◯ ◯
3. SIT ALIBI LIE   ◯ _ _ ◯ _ _ ◯ _ _ _ _
4. RITE SEER   _ ◯ _ _ _ ◯ _ _

BONUS: Arrange the circled letters to form the Mystery Answer as suggested by the cartoon.

Mystery Answer:

"◯◯ ◯◯ ◯◯◯◯◯◯◯◯?"

What the human resource specialist wondered about the new employee?

Bulletin Board

EDUCATION

September 30
Early registration deadline for fall exams

October 31
Final registration deadline for fall exams

November 1
Registration deadline for fall weekend courses

CONFERENCES

June 13
Northeast Key Conference
Natick, MA

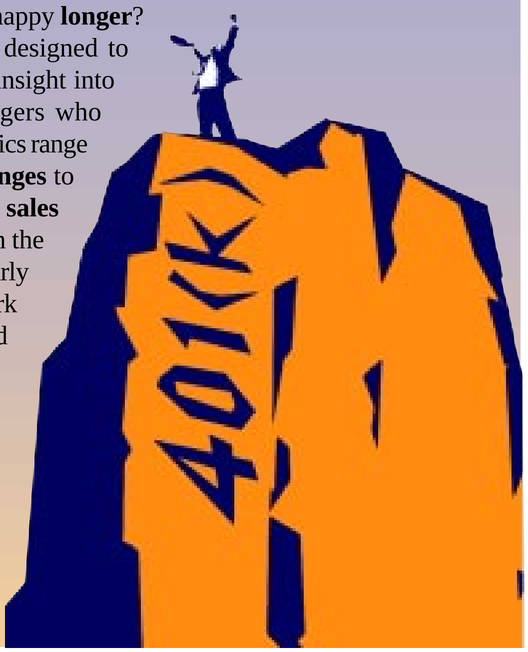
June 14
Northeast Key Conference
White Plains, NY

July 28 – 31
Summer Academy
San Diego, CA

Reach the Pinnacle of Success in 2003!

You asked for it! The 2002 event was so successful, we've planned one for 2003!

Do you actively sell, market, support, or influence the sale of 401(k) plans? Do you want to sell **more** plans? Do you want to design **better** plans? Do you want to keep your clients happy **longer**? The **401(k) Sales Summit** is designed to help the best get better! Gain insight into opportunities and meet managers who manage your clients' assets. Topics range from **trends** to **legislative changes** to **economic updates** to **proven sales techniques**, all from the best in the business. The 2002 Summit, nearly 600 strong, was a sellout, so mark you calendar for next year and get ready to reach for your best!



401(k) Sales Summit

Feb. 26 - Mar. 1, 2003

The Westin Kierland Resort and Spa

Scottsdale, Arizona

Calendar of Events

2002		ASPA CE Credit
Jun 13	Northeast Key Benefits Conference Natick, MA	8
Jun 13	Webcast: DC Plan Mergers – A Practical Approach	2
Jun 14	Northeast Key Benefits Conference White Plains, NY	8
Jul 18	Webcast: TBD	2
Jul 27-31	Summer Academy San Diego, CA	20
TBA	Three Best of Great Lakes, TBA	8
Aug 15	Webcast: TBD	2
Sep 30	Early registration deadline for fall exams	
Oct 27-30	Annual Conference Washington, DC	20
Oct 31	Final registration deadline for fall exams	
Nov 1	Registration deadline for fall weekend courses	
Nov 1-30	C-1, C-2(DB), C-2(DC) fall exam window	*
Nov 9-10	Weekend courses, Chicago, IL	15
Nov 15	Postponement deadline for fall exams	
Dec 4	C-3, C-4, and A-4 exams	*
Dec 31	Deadline for 2002 edition exams for PA-1 (A&B)	**
Dec 31	Deadline for 2002 edition exams for Daily Valuation	***
2003		
Jan 30-31	Los Angeles Benefits Conference Universal City, CA	16
Feb 26-Mar 1	401(k) Sales Summit, Scottsdale, AZ	15
Oct 26-29	Annual Conference Washington, DC	20

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

** 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 each for passing grade.

Did You Know?

The 2002 Small Employer Retirement Survey, conducted by EBRI and co-sponsored by ASPA, found that 87 percent of small-employer nonsponsors were unaware that EGTRRA allows them to take a tax credit of up to 50 percent for the start-up costs of establishing and administering a new retirement plan. When told of the new EGTRRA tax credit, 68 percent of nonsponsors said it would make it more attractive for them to offer a retirement plan.