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Get involved and volunteer today!

Check out this issue's ASPA Volunteer Application insert!

Scott D. Miller Elected ASPA President



SCOTT D. MILLER, FSPA, CPC, MAAA, FCA, EA, HAS BEEN ELECTED ASPA PRESIDENT FOR THE 2002-2003 TERM, WHICH BEGINS AT THE CLOSE OF THE 2002 ASPA ANNUAL CONFERENCE. SCOTT IS A PRINCIPAL OF ACTUARIAL CONSULTING GROUP, INC., AN EMPLOYEE BENEFITS CONSULTING FIRM WITH OFFICES IN NY AND IL. WITH OVER TWENTY YEARS OF EXPERIENCE IN THE EMPLOYEE BENEFITS AND COMPENSATION CONSULTING FIELD, HE IS A FELLOW OF ASPA, A FELLOW OF THE CONFERENCE OF CONSULTING ACTUARIES, A MEMBER OF THE AMERICAN ACADEMY OF ACTUARIES, A CERTIFIED PENSION CONSULTANT, AND AN ENROLLED ACTUARY.

An ASPA member since 1982, Scott was first elected to ASPA's Board of Directors in 1994. Over the years he has also served as ASPA's Treasurer and Vice President, General Chair of ASPA's Education and Examination Committee, and Chair of ASPA's Pension Education and Research Foundation, Inc. Scott is currently serving as a member of the American Acad-

emy of Actuaries' Board of Directors. Scott has been a course instructor for ASPA and is a local and national lecturer on pension, actuarial, and employee benefits topics. He is also an editor of two actuarial textbooks published by ASPA.

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WASHINGTON UPDATE

Bankruptcy Reform Could Protect Pension Assets

by Brian H. Graff, Esq.



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IN THE MIDST OF ALL OF THE ENRON-INSPIRED PENSION LEGISLATION THAT CONGRESS IS CONSIDERING THIS FALL, IT IS POSSIBLE THAT CONGRESS MAY ALSO ENACT SOME VERY SIGNIFICANT PROTECTIONS FOR PENSION ASSETS. RIGHT BEFORE CONGRESS LEFT FOR ITS SUMMER VACATION IN AUGUST, A SURPRISING CONFERENCE AGREEMENT WAS REACHED ON THE LONG-AWAITED BANKRUPTCY REFORM LEGISLATION. INCLUDED IN THIS LEGISLATION ARE PROVISIONS SUPPORTED BY ASPA THAT WOULD PROTECT PENSION ASSETS IN BANKRUPTCY. THESE PROVISIONS ARE SUMMARIZED BELOW.

The hope is that the conference agreement will be passed by Congress this fall and sent to the President for his signature. The President has already indicated his support for the conference agreement. Perhaps the bill will already be law by the time you read this. However, given the already crowded legislative calendar, including the creation of a new Homeland Security Department and the Enron pension legislation, it is doubtful they will be able to get to it before October. The upcoming elections will no doubt further complicate matters. Many members of Congress, especially Democrats, will be reluctant so close to an election to support bankruptcy reform that is opposed by a number of consumer groups. Nonetheless, hope springs eternal. This legislation has been languishing in conference for more than a year.

PROTECTION OF RETIREMENT ASSETS IN BANKRUPTCY

The bill excludes from the bankruptcy estate (*i.e.*, exempts from the claims of creditors) retirement plan assets held in qualified plans, 403(b) annuities, 457 plan arrangements, and IRAs. The provision also applies to SIMPLE and SEP plans. The bankruptcy protections extended by the provision applies to both federal and state bankruptcy laws.

In the case of a qualified plan, the protection from bankruptcy applies if the plan received a favorable determination letter that was in effect on the date of the bankruptcy case. If the legislation passes, we will need clarification from the IRS that reliance on a prototype document opinion letter qualifies for

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From the Editor

Thinking Outside The Booth

by Chris L. Stroud, MSPA

IT IS THAT TIME OF THE YEAR WHEN MANY OF US ARE LOOKING FORWARD TO ASPA'S ANNUAL CONFERENCE. WE MAKE PLANS TO CATCH UP ON CONTINUING EDUCATION CREDITS, INDUSTRY HAPPENINGS, AND THE LIVES OF OUR FELLOW ASPA MEMBERS. WE PACK OUR BAGS AND MAKE OUR WAY TO DC, AND IF WE ARE LUCKY ENOUGH TO ARRIVE EARLY, WE SPEND A LITTLE TIME WALKING AROUND THE SMITHSONIAN MUSEUMS OR THE MONUMENTS. WHEN THE CONFERENCE SESSIONS BEGIN, WE ARE READY TO LISTEN AND LEARN. WE ALSO MINGLE AND CHAT WITH OUR FRIENDS AND COWORKERS DURING THE BREAKS IN THE EXHIBIT HALL, AND HOPEFULLY, WE VISIT OUR FAVORITE VENDOR-PARTNERS. SPEAKING OF VENDORS...

...During the late hours of the previous night and the wee hours of the morning before the Conference begins (or perhaps while you're touring those local sites), the vendor-partners show up for work in an Exhibit Hall full of crates and boxes. Once they've located their space and counted their boxes (and hopefully, ended up with the same number of boxes and crates shown on their shipping order), they begin to assemble their booths and hope that no parts are missing. Next, they cross their fingers while they check out their computers and electronic equipment to ensure that everything survived the journey. Finally, they organize their materials for you to take – especially those fun giveaways that you take home to the kids (or keep for yourself!) and those that help you to stay awake during those sessions just following lunch. The Conference begins and magically all of the vendor-partners are there to greet you when the Exhibit Hall opens...and they are still there each evening when the Hall closes.

For many years, I have enjoyed the experience of working in a booth during conferences. It is a great experience to meet your customers—associating faces with names – and get to know them better. Of course, it is also quite rewarding to see those familiar faces that I've come to know over the years, making time to visit and bring each other up-to-date on family and business. A smile and a hug from a long-time friend does wonders for a tired vendor who has been standing in a booth all day. (My husband teases me that I go to ASPA's Annual Conference each year just to get my year's dose of hugs from all my ASPA friends.) Equally exciting is the chance to make new acquaintances

and meet prospects, laying the groundwork for new business relationships and searching for ways that you can help an attendee successfully meet a business need. The days behind the booth are long, the hours are grueling, the floors are hard, and your feet get tired – but the attendees who take the time to stop by make it all worthwhile!

As a Conference attendee and an ASPA member, it is important that you realize that the vendor-partners who stand behind the booths eager to greet you each day also help you and the other attendees in many ways throughout the Conference. The money that they spend for exhibits and sponsorships helps ASPA offer you quality speakers, premium locations, a variety of entertainment, and several days of food, beverage, and fun. The contributions from these vendor-partners help ASPA battle rising hotel and function costs and keep your registration costs down. Even if you're not attending ASPA's Annual Conference this year, as you're reading this copy of *The ASPA Journal*, notice that a few vendor-partners are now advertising in our publication, helping us to defray the rising costs of printing and postage.

So, from now on, make it a point to "think outside the booth." Notice the signs honoring exhibitors and sponsors that are all around you at conferences. Please say "thank you" to the vendor-partners as you enjoy any ASPA conference or any other benefit they have helped to provide. Reward these special businesses for their dedication to ASPA by considering them first as you shop for new products and services. And, by the way...have you hugged your vendor today?!? ▲

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.

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

ASPA

4245 North Fairfax Drive
Suite 750
Arlington, Virginia 22203
Phone: (703) 516-9300
Fax: (703) 516-9308
E-mail: aspa@aspa.org
Web: www.aspa.org

Letters to the Editor

'TIMELY' PRAISE

Just a "thank you" to the editors, contributors, and all involved in putting out the latest *The ASPA Journal*.

The Jul–Aug edition was particularly packed with timely and useful information.

A special "tip of my DC hat" to Lorraine Dorsa for her outstanding article on DB basics for we DC folk! I've always had a "basic" understanding of DB plans, but Lorraine's article was exceptionally clear and well presented.

Keep up the great work — and Happy ERISA Anniversary!

—Steve Brown

ACCESSING THE ASPA JOURNAL ONLINE

I love receiving your publication. I forward it to members of my staff with articles of interest marked and enjoy having it as a current piece to thumb through and think about. However, I struggle with what to do with all the interesting articles that may be useful as I hit situations down the road.

I could and often do clip, organize, and store. But we all fight the increasing mounds of paper around us. Is there a chance these articles are available on the Web site for future use accompanied by a search engine to locate by topic? If not, can my request be added to a future enhancement list?

Thanks and keep up the good work!

—Kyla K Myers, QPA, QKA, CEBS

Thanks for your nice comments. You're in luck! Each issue of The ASPA Journal is posted on ASPA's Web site in PDF format as soon as it goes to print. We keep past copies there also, and although we don't yet have an actual "search" mechanism (but would like to add this sometime in the future), we do have indexes that can help you. You can access a Topic Index, an Author Index, or a Topic by Date of Issue index. To access the Journal on the Web, go to the "Members Only" section. After you log in, select "Newsletter" from the left column. If you scroll to the bottom, you can see the Index selections.

—Chris

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Scott D. Miller Elected ASPA President

Scott has been involved in consulting with the Joint Board for the Enrollment of Actuaries of Department of Labor and Department of Treasury (JBEA) regarding the evaluation and refinement of the governmental program for the testing and accrediting of actuaries. He has been recognized by the Executive Director of the JBEA for his assistance and commitment to the actuarial profession.

Scott recently testified on ASPA's behalf before Congress during the House Committee on Ways & Means, Oversight Subcommittee hearing entitled "Retirement Security and Defined Benefit Pension Plans." In his testimony, he emphasized the need to expand and reform the private pension system.

Scott lives in Quogue, NY, with his wife Bari, two sons Jesse and Cody, two dogs, and four cats. ▲

Other members of ASPA's 2003 Executive Committee include:

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To take the exam online, just go to the eASPA section of ASPA's Web site at www.aspa.org and complete the login and registration procedures. Once registered, you are ready to take the exam!

Immediately after completing the exam, you will receive a score and feedback report. If you pass the online exam, you will receive a certificate in the mail within a few weeks of taking the exam.

In an ongoing effort to use the most up-to-date technology and meet the need for convenience, speed, and reduced expense, ASPA will continue to expand online educational opportunities in the future.

We hope you will take advantage of this e-learning opportunity! If you have any questions, contact our education department at (703) 516-9300 or email us at educaspa@aspa.org.

Washington Update

purposes of this rule. We have already discussed this issue with senior IRS officials, and they have informally indicated that they think prototypes should be covered.

Under the provision, qualified plan assets may still be protected in bankruptcy, even in the absence of a current favorable determination letter, if the debtor can demonstrate to the bankruptcy court that no prior unfavorable determination has been made by any court or the IRS, and that the plan is in substantial compliance with the qualification rules. Further, even if the retirement plan fails to be in substantial compliance, plan assets are protected in bankruptcy if the debtor can show that he or she is not materially responsible for such qualification failure. All that said, the preferred route would clearly be to have a current favorable determination letter.

Although not clear, for retirement assets held in plans or arrangements not eligible for a determination letter [e.g., 403(b)s, SEPs, and SIMPLEs], it would appear that, for the bankruptcy protection to apply to those assets, the debtor would have to demonstrate to the court that no “unfavorable determination” with respect to the plan or arrangement has been made by any court or the IRS. It is not certain what an “unfavorable determination” would mean in this instance. Further, the debtor would have to demonstrate that the plan or arrangement is either in substantial compliance with applicable Code rules or, if not in substantial compliance, that the debtor is not responsible for such noncompliance. Such rules could make the bankruptcy protection for assets held in such plans or arrangements more questionable.

In the case of the retirement assets held in an IRA (other than pursuant to a SEP or SIMPLE plan), the bankruptcy protection accorded by the provision is capped at \$1 million (increased annually for inflation). However, this cap does not apply to amounts attributable to eligible rollovers from a qualified plan or a 403(b) annuity (and earnings thereon). Even if the cap applies, the provision gives the bankruptcy court the authority to increase the cap in the interest of justice.

The provision also protects amounts in the process of being rolled over between retirement vehicles if the rollover has not been completed when the bankruptcy case commences. The protection from bankruptcy also applies to the amount of outstanding plan loans, provided the loan meets the requirements of Section 72(p). However, the terms of the plan loan cannot be materially altered for the protection to apply, and the plan loan would not be discharged in bankruptcy (*i.e.*, the debtor would still be required to repay the loan). The loan protection also extends to amounts withheld from compensation to repay the loan.

The provision in the bankruptcy reform bill protecting pension assets would be effective for bankruptcy cases beginning 180 days after the date of enactment. ▲

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



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Minimizing Liability with a Properly Drafted Administrative Services Agreement

by Jane E. Armstrong

JUST AS INSURANCE COSTS ARE RISING, RECENT CASE LAW HAS MADE THIRD PARTY ADMINISTRATORS AND OTHER SERVICE PROVIDERS MORE VULNERABLE TO LITIGATION AND CLAIMS. UNFAVORABLE MARKET RETURNS AND NEWS OF QUESTIONABLE BUSINESS PRACTICES LEAVE MANY PLAN PARTICIPANTS AND SPONSORS READY TO SEEK REDRESS FROM ANY AVAILABLE PARTY. ONE EFFECTIVE WAY TO MANAGE EXPECTATIONS AND CONTROL A SERVICE PROVIDER'S LIABILITY IS THROUGH A PROPERLY DRAFTED ADMINISTRATIVE SERVICES AGREEMENT.

MANAGING LITIGATION RISK

A majority of the administrative services claims arising are traditional state law claims for breach of contract or negligence. These claims are ordinarily brought by a plan sponsor and resolved in state court by a jury trial. Remedies may include any loss actually sustained by the plan, the plan sponsor, or a participant, and any additional damages in the unlikely event that fraud or bad faith is established. Equitable remedies, such as injunction or specific performance, may also be available. A properly drafted administrative services agreement can anticipate the risks and costs of state court litigation in a number of ways:

- An agreement can specify that arbitration, instead of litigation, will be used to resolve state law disputes. Arbitration is gaining popularity because it is generally less costly and time consuming, and the results are not a matter of public record. If all or a portion of any settlement is likely to be covered by insurance, however, care must be taken to ensure that the insurer consents to arbitration.
- Because state law claims between service providers and plan sponsors are not preempted by ERISA, the agreement should state that the law provision chosen should be used to establish the substantive state law that will be applied to resolve controversies.
- When a plan sponsor and service provider reside in separate jurisdictions, an agreement can specifically provide that the parties consent to personal jurisdiction in a designated forum. This agreement ensures that the matter will be resolved in a local court, which may be favorable to the service provider and reduce litigation costs.
- In contract litigation, each party bears its own attorneys' fees and costs, unless the agreement expressly provides to the contrary, or the underlying legal claim involves fraud or bad faith. Any contractual agreement to award fees and costs, commonly found in an indemnification clause, or an agreement to allocate fees and costs in another manner, should be approved by the service provider's insurer to ensure coverage.

In addition to state law, a service provider can be liable under ERISA (either based upon its status as a fiduciary or as a result of participation in a prohibited transaction or similar action). These claims can be brought by a plan sponsor, another plan fiduciary, or by plan participants. Fiduciary breach and similar claims must be resolved in federal court by a judge trial; an arbitration clause in a services agreement will not govern the resolution of these matters. Damages are not available. Instead, recovery is limited to equitable relief, which may include the return of any profit or fees obtained from the plan, or nonmonetary relief, such as an injunction or specific performance.

Status as an ERISA fiduciary is determined using a functional test, based upon an analysis of the duties and services actually performed in the course of the services relationship. The standard used is whether a service provider has actually exercised or possesses discretionary plan administration or disposition of asset authority, or whether the services are simply "ministerial" in nature. Although contract terms will not be dispositive, explicit documentation of crucial elements will serve to establish the clear intent of the parties with respect to fiduciary status. The contract should include a list of the specific services to be performed, documents to be provided, and an express statement that the service provider is not intended to be a fiduciary as a result of the performance of services under the agreement.

To fully manage litigation risk, all administrative services agreements should include provisions about the ownership, retention, and disposition of business records. These clauses commonly provide that business records are the property of the plan sponsor (except that any proprietary information included in the records remains the property of the service provider). When the service provider retains business records, the agreement should provide for access to the records by the client or its agent during normal business hours. Any record retention or document destruction policy should be included in the agreement. The document

Continued on page 12



Recent Developments and Proposed Regulations Make 457 Plans More Attractive

by Theresa Lensander, CPC, QPA, Amiram Givon, APM, and David Pratt, APM



THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 (EGTRRA) MADE SUBSTANTIAL CHANGES TO THE RULES GOVERNING GOVERNMENTAL AND TAX-EXEMPT EMPLOYER DEFERRED COMPENSATION PLANS, UNDER SECTION 457 OF THE INTERNAL REVENUE CODE. IN ADDITION, ON MAY 8, 2002, THE IRS ISSUED THE LONG-AWAITED SECTION 457 PROPOSED REGULATIONS ("REGULATIONS"; 67 FED. REG. 30826), WHICH PROVIDE BROAD GUIDANCE ON ELIGIBLE DEFERRED COMPENSATION PLANS AND CLEAR STANDARDS FOR THEIR ADMINISTRATION AND OPERATION. THE REGULATIONS REFLECT CHANGES TO SECTION 457 ENACTED SINCE 1986, MAKE TECHNICAL CHANGES, AND CLARIFY THE EXISTING FINAL REGULATIONS PUBLISHED IN 1982. THE REGULATIONS ALSO INCORPORATE PRIOR GUIDANCE UNDER NOTICE 98-8 ON THE AMENDMENTS ENACTED IN 1996 AND 1997.



The current rules for 457 plans maintained by state and local government employers ("governmental plans") differ in many significant respects from the rules governing 457 plans maintained by private tax-exempt employers ("private plans"). In this article, any reference to a "plan" or "457 plan" refers to a plan that satisfies the requirements for an eligible deferred compensation plan [Code Section 457(b)], unless the context indicates otherwise. The proposed regulations, which primarily provide guidance for the maintenance of governmental plans, define "ineligible plans" as either those plans that are maintained by an eligible employer and do not comply with the regulations or as plans that are "private plans."

THE EGTRRA CHANGES

The EGTRRA changes make 457 plans substantially more attractive. First, the annual deferral limit is increased from \$8,500 in 2001 to the same elective deferral limit under 401(k) and 403(b) plans (\$11,000 for 2002, increasing to \$15,000 in 2006). Second, the 457 plan limit is no longer reduced by elective deferrals under a 401(k) or 403(b) plan. For instance, an executive of a tax-exempt hospital who is covered by both a 403(b) plan [or a 401(k) plan] and a 457 plan may defer \$11,000 in 2002 under the 403(b) or 401(k) plan and an additional \$11,000 under the 457 plan. Third, participants in a governmental 457 plan may make additional catch-up contributions (up to \$1,000 for 2002) if they are 50 or older by the end of the year. Fourth, for distributions made on or after January 1, 2002, tax-free rollovers can now be made to and from governmental 457 plans. Finally, in certain cases, amounts can be transferred from a 457 plan to a governmental defined benefit plan to purchase additional benefit credits under the defined benefit plan.

These changes are helpful to private tax-exempt employers that seek to provide competitive compensation packages to their executives. However, some caution is required. First, some of the most attractive new rules (including the rollover rules) are available

only to governmental plans. Second, a private employer (unlike a governmental employer) must limit participation in a 457 plan to a "select group of management or highly compensated employees" in order to avoid an irreconcilable conflict between the participation, funding, and ERISA fiduciary requirements and the Code's tax requirements.

GENERAL PROVISIONS FOR ELIGIBLE PLANS

The regulations include a general overview of Section 457, which applies to most nonqualified deferred compensation plans maintained by private tax-exempt employers (other than churches) and state and local government employers. An eligible employer may maintain an eligible plan, which must satisfy Section 457(b) in form and operation, or an ineligible plan. The Section 457(b) requirements for eligible plans (*e.g.*, the annual deferral limits) apply to both elective contributions and other contributions (such as employer matching contributions).

An eligible plan must be in writing, must include all material terms governing benefits under the plan, and must be operated in compliance with the regulations. In some cases, it would be easier to incorporate statutory requirements by reference, rather than setting them out in full in the document. It would be helpful if the final regulations were to include guidance on the extent to which incorporation by reference is allowed.

Under a governmental plan, all amounts must be set aside in a trust, custodial account, or annuity for the exclusive benefit of participants and beneficiaries. A private plan must be unfunded, and all assets must remain subject to claims of the employer's creditors.

DEFERRALS

Section 457 includible compensation now includes amounts excluded from gross income under Sections 402(g), 125, 132(f), and 457, such as elective deferrals to an eligible plan. Thus, for 2002, the normal deferral limit for an eligible plan is the lesser of \$11,000 or 100% of includible compensation (including deferrals).

Section 457(f) of the Code provides that, if any amount deferred under an ineligible 457 plan is subject to a substantial risk of forfeiture, then the deferral is taken into account (adjusted to reflect gain or loss allocable to the deferred amount) in the year when that risk lapses. Section 457(b) does not apply this rule to deferrals under eligible plans. Nevertheless, the proposed regulations would extend the rule to eligible plans. We suggest that this is not appropriate. Deferrals under an eligible plan should be taken into account in the year deferred, regardless of whether they are vested. This rule would be much simpler to administer and would reduce the risk of the plan inadvertently becoming ineligible. For example, assume that beginning in 2002, a private tax-exempt employer deposits \$5,000 per year on behalf of an employee under a 457 plan that has a 5-year cliff vesting schedule. The employee's account becomes fully vested in 2006. Under the proposed regulations, the entire \$25,000 deposited to date (plus earnings) would be taken into account in 2006. This exceeds the maximum deferral (\$15,000) allowed in that year, so the entire plan becomes ineligible [see Prop. Reg. Section 1.457-4(e)(3)]. Besides being difficult to administer, the rule in the proposed regulations is not consistent with the Section 415 rules, applicable to qualified plans and 403(b) plans, under which annual additions are taken into account even if they are not vested.

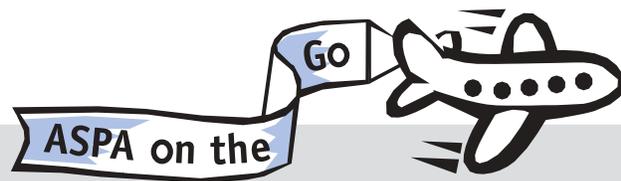
Under a defined benefit plan, the annual deferral for a taxable year is the present value (determined using reasonable actuarial assumptions) of the increase in the participant's accrued benefit that is not subject to a substantial risk of forfeiture.

The regulations discuss the EGTRRA catch-up limit, for participants aged 50 or older, which is available under governmental plans, but not private plans. The catch-up limit (\$1,000 for 2002) applies to all plans maintained by the same employer, as if all plans were a single plan.

Any 457 plan may permit use of the special Section 457 catch-up limit, for one or more of the last three years ending before the participant's normal retirement age under the plan. The Section 457 catch-up limit is the lesser of (1) twice the basic annual limit (\$22,000 for 2002), or (2) the basic annual limit plus the amount by which the participant, in all prior years, has deferred less than the maximum amount. In determining the underutilized amount, salary reduction contributions under 401(k), 403(b), SARSEP, and SIMPLE IRA plans must be counted for years before 2002, which may cause recordkeeping problems.

If, for any year, a governmental plan participant satisfies the separate eligibility rules for both catch-up provisions, he or she can use the rule that produces the higher limit for that year.

The plan can specify or allow the participant to choose the normal retirement age, which can be any age between (1) the earlier of age 65 or the age at which the participant is first entitled to unreduced benefits under the employer's basic pension plan, and (2) age 70 ½. Qualified police and firefighters may use an earlier age, but no earlier than age 40. Code Section 457(b)(3) refers only to the participant attaining "normal



On September 18, 2002, Carol R. Sears, FSPA, CPC, ASPA's 1999 President, was honored at the "25 Women in Leadership" award luncheon in Peoria, Illinois. Carol was recognized for her hard work as a volunteer and as a successful business woman and for her leadership in her community. The award luncheon was sponsored by the Peoria Chamber of Commerce and WEEK, a Central Illinois TV station. Carol was commended for successfully balancing her business, home life, and community involvement. Two of her nominators, Scott Miller, FSPA, CPC, ASPA's President-Elect, and Jane Grimm, ASPA's Managing Director, were on hand to personally congratulate Carol and enjoy the festivities. Join us in congratulating Carol for this special recognition!

With renewed interest in DB plans in light of 401(k) plan concerns, ASPA has been contacted more frequently by the media for comment. On Wednesday, August 14, 2002, ASPA's Executive Director, Brian Graff, Esq., appeared on CNBC's *Squawk Box*. On September 4, 2002, an interview with Brian aired on *Marketplace*, National Public Radio's (NPR) program on business and finance.

In his CNBC interview, Brian emphasized that the pension benefits of defined benefit plan participants are not at risk and that these benefits are guaranteed by the employer and if the company fails, the PBGC. He also stated that pension funding is a long-term proposition and, from time to time, it is expected that pension plans will shift from a surplus to a deficit position depending on the state of the economy.

In his NPR interview, Brian was asked whether or not Americans rely too heavily on 401(k) plans. He emphasized that 401(k) plans should not be abandoned and added that ASPA supports a new type of pension plan allowing employees to take the benefits with them from job to job, combining both employee 401(k) savings and an employer contribution with a guaranteed rate of return. Brian quipped that with all of the attention on pension plans, "All of a sudden, it is cool to be a pension professional and people want to talk to you at cocktail parties!"

retirement age under the plan” and does not specify any minimum age. The final regulations will hopefully be brought into conformity with the statute.

A plan may permit a participant to defer accumulated sick pay, accumulated vacation pay, and back pay, if (1) the participant makes the deferral election before the first month in which the amount could be paid in cash and (2) the deferral does not cause the 457 deferral limit to be exceeded.

EXCESS DEFERRALS

Governmental employers may correct excess deferrals by distributing the excess (and income) as soon as administratively practicable. According to the proposed regulations, if excess deferrals are not distributed, the plan will become an ineligible plan [Prop. Reg. Section 1.457-4(e)(2)]. Under the Code, however, a governmental plan does not become an ineligible plan unless and until the employer fails to correct a defect within a specified period following receipt of notification by the IRS [Code Section 457(b), flush language; see also Prop. Reg. Section 1.457-9]. The final regulations will hopefully be brought into conformity with the statute.

If an excess deferral arises under a private plan, the plan is not an eligible plan [Prop. Reg. Section 1.457-4(e)(3)]. The proposed regulations

do not allow any opportunity for correction. To be consistent with the IRS enforcement policy for retirement plans, the final regulations should allow a reasonable opportunity for correction.

In determining if there is an excess deferral, all plans in which an individual participates by virtue of a relationship with a single employer are treated as one plan.

If an individual who participates in two or more plans has, in the aggregate, an excess deferral, but does not have an excess deferral under any one plan taken alone, then the excess may, but need not, be distributed.

MINIMUM DISTRIBUTION REQUIREMENTS

EGTRRA eliminated the special minimum distribution rules for eligible plans. The proposed regulations generally incorporate by reference the requirements of Section 401(a)(9) and the regulations thereunder.

LOANS

Under the proposed regulations, a loan from a private plan would be an impermissible distribution, in violation of Section 457(b). Loans from a governmental plan are allowed if (1) the loan is bona fide and (2) the loan is for the exclusive purpose of benefiting participants and beneficiaries. According to the preamble, the IRS will not issue rulings on plans that allow loans until the regulations are finalized. The regulations clarify that Code Section 72(p) applies to such loans.

DISTRIBUTIONS FROM ELIGIBLE PLANS

Under EGTRRA, amounts held under a governmental plan are not included in gross income until actually distributed. Distributions made before age 59 ½ from a governmental plan are now subject to the 10% additional income tax {to the extent that they are attributable to rollovers from a qualified plan, 403(b) plan or IRA [Code Section 72(t)(9)]}. Participants who are currently entitled to benefits may modify previously irrevocable payment elections. Most distributions will be eligible for rollover distributions, subject to the direct rollover and rollover notice rules. Notice 2002-3 contains a model safe harbor notice for eligible rollover distributions from a governmental plan.

Distributions from private plans are generally still taxable when paid or made available and may not be rolled over. The Section 457 unforeseeable emergency rules are more restrictive, and less well-developed, than the hardship rules for 401(k) plans. Harmonization of the rules for 457 plans and 401(k) plans would promote simplification. Under the proposed regulations, an unforeseeable emergency includes foreclosure on, or eviction from, the participant’s principal residence, medical expenses, funeral expenses, and a beneficiary’s financial hardship. Except in extraordinary circumstances, it does not include the purchase of a home or tuition payments.



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For more information, or to submit your outline of ideas, contact Jane Grimm at (703) 516-9300 x106 or jgrimm@aspa.org.

The proposed regulations do not include any safe harbor provisions for determining whether an unforeseeable emergency exists. It would be very helpful if the final regulations include safe harbor rules similar to the 401(k) rules for determining hardship.

PLAN TERMINATIONS AND PLAN-TO-PLAN TRANSFERS

An eligible plan may allow distributions on plan termination. A plan is terminated only if all amounts held under the plan are distributed as soon as administratively practicable. Otherwise, the plan is only frozen and must continue to comply with the requirements for an eligible plan.

In certain circumstances, a governmental plan may transfer assets to another governmental plan, and a private plan may transfer assets to another private plan. However, transfers from one type of plan to the other are not allowed. A direct transfer is allowed if (1) the participant terminates employment with the sponsor of the transferor plan and is employed by the sponsor of the transferee plan, and (2) if a governmental sponsor ceases to be a governmental entity. Transfers between governmental plans are allowed only if the plans are in the same state.

The regulations also address transfers to a governmental defined benefit plan to obtain past service credit. The regulations add two restrictions that are not in the statute: the transfer must be from a governmental plan

and must be made to a defined benefit plan in the same state. Such a transfer is not treated as a distribution, so it may be made while a participant is still working. Any other direct transfers between qualified plans and 457(b) plans are prohibited, but the same result can often be achieved with a direct rollover.

The regulations also discuss the consequences if an employer ceases to be an eligible employer and the plan is not terminated [Prop. Reg. Section 1.457-10(a)(2)(i)].

QUALIFIED DOMESTIC RELATIONS ORDERS

The regulations provide that an eligible plan may honor the terms of a QDRO without affecting its eligible status.

ROLLOVERS

EGTRRA allows rollovers to an eligible governmental plan (but not to a private plan) if the plan maintains the rollover amount in a separate account.

CORRECTION PROGRAM

According to the regulation's preamble, EPCRS will be expanded to include correction procedures for eligible plans. In Rev. Proc. 2002-47, the IRS stated its interest in receiving comments on Section 457 correction procedures. (ASPA plans to submit such

Continued on page 20

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Minimizing Liability with a Properly Drafted Administrative Services Agreement

retention term should be consistent with the provisions of ERISA (which generally require a six-year retention term), and consistent with any applicable state law statutes of limitations for contract or tort claims. If documents are to be destroyed at the end of the retention term, the agreement should specify whether notice would be provided to the plan sponsor prior to actual destruction.

SPECIAL SERVICES AND CONCERNS

Defined contribution plans are frequently intended to comply with ERISA Section 404(c), shifting the risk of loss for investment performance from plan fiduciaries to participants. Compliance with ERISA Section 404(c) includes both plan design and document requirements, which ordinarily fall within the services arrangement, and ongoing operational requirements, which usually fall outside the scope of the arrangement. Since the provision of administrative services alone cannot guarantee the availability of protection afforded under ERISA Section 404(c), an appropriate disclosure should be made to the plan sponsor in the services agreement.

Compliance with ERISA Section 404(c) does not operate to relieve a plan sponsor or other fiduciary from liability arising from the selection and monitoring of available investment options. Again, the agreement should clearly specify that the service provider has no liability for the performance of these functions.

If a service provider is to be paid, in whole or in part, by alliance fees or from asset charges, a prohibited transaction may result. One method that may avoid the prohibition is to obtain the approval of an independent fiduciary after disclosure of the fee amounts and the manner in which the fees will be paid. The administrative services agreement should be used to disclose the amount and source of the fees and charges to provide authority for the increase or modification of fees and charges with advance written notice, and to establish the independence, authority, and fiduciary status of the plan sponsor or other signatory.

A service provider ordinarily participates in plan design and furnishes plan and ancillary documents, but these services are not intended to substitute for independent legal and/or accounting advice. Caselaw suggests that clear, repeated, affirmative statements advising the plan sponsor to seek appropriate legal or accounting advice may be sufficient to avoid liability

for claims arising from document error. The statements should be included in the agreement initially and also later in any correspondence used to transmit plan documents and ancillary forms.

INDEMNIFICATION AND HOLD HARMLESS PROVISIONS

Given the increased risk of litigation, both parties to an administrative services agreement now customarily seek indemnification or hold harmless protection. Well-structured indemnification provisions that bind a service provider should consider at least these three critical issues:

- Ensure that any liability arising from the indemnification will be covered by the service provider's insurance.
- Determine what standard of care will trigger the service provider's liability under the indemnification provision. Common formulations of this standard are "gross negligence and willful misconduct" or "negligence and willful misconduct." Commonly excluded from the definition of negligence are inadvertent or good faith clerical errors promptly corrected after discovery.
- Determine what limitations to impose on the scope of the indemnity. Standard "carve outs" that operate in favor of a service provider include the liability exclusion arising from implementing instructions from the plan sponsor or its designees, from services performed before the commencement of the relationship or after its termination, from the plan sponsor's failure to timely act on the advice or recommendations of the service provider, from the sponsor's breach of the agreement, and from the timeliness, accuracy, completeness, or transmission of information to the service provider from generally accepted sources.

Indemnification provisions in favor of service providers usually "mirror" the plan sponsor's indemnification. For example, a mirror indemnity will provide the service provider coverage for liability arising from an action or omission taken in reliance upon the instructions of the plan sponsor or its agents and designees. Similarly, the plan sponsor's failure to act on the advice of the service provider or the plan sponsor's breach of the agreement are also situations justifying indemnification provisions in favor of the service provider. Additional indemnity may be appropriate to address unusual situations, such as plans with ongoing litigation matters or plans with unresolved EPCRS submissions.

THE BOILERPLATE

All agreements should include the traditional contract clauses that document the basic understandings among the parties. At a minimum, these clauses should include:

- An “entire agreement” clause that limits the types of documents and statements that can be considered to resolve disputes about the agreement’s meaning. Using an “entire agreement” clause negates any promises, marketing statements, promotional materials, and similar statements, whether written or oral, that are not expressly included in the agreement.
- A severability clause that ensures that each provision will be separately enforced and that invalid or unenforceable provisions will not otherwise adversely affect the validity of the entire agreement.
- A survival provision that specifies the rights and obligations that survive the termination of the agreement. This provision is critical if indemnity is available under the agreement, since it ensures that the obligation to indemnify will continue after the agreement ends.
- A “force majeure” or “act of God” clause that prohibits liability in the event the promised services cannot be performed on account of a failure outside the control of the service provider. For example, under this type of clause, no liability will arise if investment directions are not timely implemented on account of the failure of a voice response

unit due to circumstances outside the control of the service provider.

- An amendment clause that requires any changes to the agreement to be made in writing and signed by both parties.
- A termination clause that describes the procedural rules for the termination of the agreement, data transmission obligations arising at the conclusion of the relationship, and any fees or charges to be paid due to termination.

CONCLUSION

Administrative services agreements can minimize a service provider’s liability. The provisions described address the most common claims and disputes, but additional clauses and limitations may be appropriate in some situations. ▲

Jane E. Armstrong, Esq., is a partner of Phelps Dunbar, LLP, a regional law firm headquartered in New Orleans. She is a Louisiana State Board Certified Tax Attorney and a member of the New York bar. Jane has practiced exclusively in the areas of retirement planning, executive compensation, and employee benefits for over 20 years. She has been listed in all editions of the Best Lawyers in America. Jane served for over five years as the co-chair of the American Bar Association, Section of Real Property, Probate and Trust, Committee on Plan Administration, Investment and Litigation. Jane is a national speaker on the subjects of executive compensation and employee benefits and has written numerous articles.



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Highlights from the ASPA 2002 Summer Academy

Information, Education, and Fun—all in a beautiful setting!



Information — The Academy's Exhibit Hall was packed with vendors providing valuable information to attendees about products and services that will enhance their retirement plan business.



Fun — Stephen Dobrow, CPC, QPA, OKA, Conferences General Chair, Steve Rosen, MSPA, Treasurer, and Carol Skinner, Chair of the ABC Committee, enjoy the Academy's Kick-Off Reception.



Fun — David Petrone provided entertainment. Dig that zoot suit!



Information — Everybody's favorite panda enthusiast, Larry Starr, CPC, co-chair of ASPA's Political Action Committee (ASPA PAC), did become serious long enough to tell attendees about the importance of ASPA PAC in informing Congress about the impact of proposed legislation on retirement plan policy and on the industry.



Information — Brian's ever-popular and always informative Washington Update is enhanced by key government staff members, Bill Sweetnam, US Treasury Department, and Shahira Knight, Committee on Ways & Means, and GAC's co-chair, Bruce Ashton, APM.



Education — Mike Preston, MSPA, a favorite conference speaker, presented his topic, *Designing and Administering DB Plans after EGTRRA*.



Fun — Todd Brost, Director of Meetings, and Chip Chabot, Webmaster and Multimedia Manager, find a moment to relax.



Fun — Two friends with ASPA's presidency in common... Karen Jordan, CPC, QPA, 1998, and Craig Hoffman, APM, 2002, explored the famous San Diego Zoo during the trip sponsored by The Hartford, ING, AETNA, and Manulife.



Education — Kurt Piper, MSPA, an ASPA Board member, explained the intricacies of underfunded DB plans to workshop attendees.



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Speakers

William N. Anspach, Jr., Esq., CPC

Much Shelist Freed Denenberg Ament & Rubenstein, PC, Chicago, IL

Bruce L. Ashton, Esq., APM

Reish Luftman McDaniel & Reicher, Los Angeles, CA

Michael L. Bain, MSPA, ASA, MAAA, EA

CMC, Glendale, CA

Richard A. Block, MSPA

Block Consulting Actuaries, Inc., Manhattan Beach, CA

Lauren Bloom

American Academy of Actuaries, Washington, DC

Alex M. Brucker, APM

Brucker Morra & Hiltunen, APC, Los Angeles, CA

Edward E. Burrows, MSPA, EA

Independent Consulting Actuary, Boston, MA

Lawrence Deutsch, MSPA, EA, MAAA

Larry Deutsch Enterprises, Fallbrook, CA

Lorraine Dorsa, MSPA, MAAA, CEBS, EA

Lorraine Dorsa & Associates, Inc., Jacksonville Beach, FL

Ilene H. Ferenczy, Esq., CPC, APA

Powell, Goldstein, Frazer & Murphy LLP, Atlanta, GA

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Universal Pensions Inc., A BISYS Company, Brainerd, MN

Thomas J. Finnegan, MSPA, CPC, QPA, FCA

The Savitz Organization, Inc., Philadelphia, PA

Brian H. Graff, Esq.

ASP, Arlington, VA

Lawrence Grudzien, JD, LLM

Buck Consultants, Inc., Chicago, IL

Joan A. Gucciardi, MSPA, CPC, EA

Gucciardi Benefit Resources, Inc., Wauwatosa, WI

Craig P. Hoffman, Esq., APM

SunGard Corbel, Jacksonville, FL

James E. Holland, ASA, EA

Employee Plans Division, Internal Revenue Service, Washington, DC

Robert M. Kaplan, CPC, QPA, CFP, APA

McKay Hochman Inc., Butler, NJ

William G. Karbon, MSPA, CPC, QPA

CBIZ Benefits & Insurance Services, Inc., Plymouth Meeting, PA

Norman Levinrad, FSPA, CPC

Summit Benefit & Actuarial Services, Inc., Eugene, OR

G. Neff McGhie, III, MSPA

Sierra Pension Services, Reno, NV

Cheryl L. Morgan, CPC

Morgan Consulting Services, San Francisco, CA

Richard A. Nelson, Esq., APM

Faegre & Benson LLP, Minneapolis, MN

Gwen S. O'Connell, CPC, QPA

Summit Benefit & Actuarial Services, Inc., Eugene, OR

Richard M. Perlin, Esq., QPA, QKA

ERISA, Inc., Skokie, IL

Kurt F. Piper, MSPA, MAAA, ASA

Piper Pension & Profit Sharing, Venice, CA

Peter E. Prevolos, APA

PenChecks, Inc., La Mesa, CA

Michael B. Preston, MSPA, MAAA, EA

Preston Actuarial Services, Inc., San Ramon, CA

Frederick Reish, Esq., APM

Reish Luftman McDaniel & Reicher, Los Angeles, CA

Paul T. Shultz, Esq.

Employee Plans, Rulings and Agreements, Internal Revenue Service, Washington, DC

Lawrence C. Starr, CPC, EA, CEBS

Qualified Plan Consultants, Inc., West Springfield, MA

Valeri L. Stevens, APM, FLMI, CEBS, APA, EA

Main Street Benefits, Inc., Torrance, CA

William F. Sweetnam, Jr., Esq.

Associate Benefits Tax Counsel, US Department of Treasury, Washington, DC

S. Derrin Watson, JD

PIX, Goleta, CA

Janice M. Wegesin, CPC, QPA

JMW Consulting, Inc., Palatine, IL

Nicholas J. White, Esq.

Reish Luftman McDaniel & Reicher, Los Angeles, CA

Richard J. Wickersham, Esq.

EP Technical Guidance and Quality Assurance, Internal Revenue Service, Washington, DC

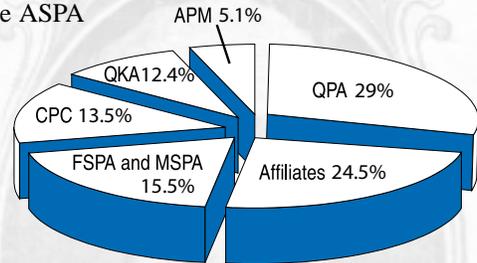
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"I've been an ASC user for almost 20 years! The design of ASC systems allow for almost immediate changes. ASC released its EGTRRA updates well before the law's effective date"

Michael Preston, M.S.P.A., M.A.A.A., E.A.
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Technology and Examinations

By Michael Bain, MSPA

ASPA'S EDUCATION & EXAMINATION (E&E) TEAM IS COMMITTED TO TAKING ADVANTAGE OF CHANGES IN TECHNOLOGY, WHILE MAINTAINING EXAMS AND EDUCATIONAL PROCESS OF INTEGRITY AND QUALITY. THE RESULT? WE ARE DEVELOPING A ROSTER OF ONLINE EXAMS THAT CAN BE TAKEN ON DEMAND. HERE'S WHAT WE HAVE DONE SO FAR:

- In 2000, we created an online course for our introductory PA-1 series for students wishing to access course material wherever they are. We expect hundreds of students to have taken advantage of the course this year. By the time you read this, we will have also introduced the PA-1 exams over the Internet. That means that candidates will be able to sign up and take the exams online and receive their scores immediately. These results will also be immediately recorded in ASPA's database. Special billing arrangements are also being made for large companies to allow their students to take exams this way as well.
- In 2001, we introduced immediate pass/fail results on the online C-1 and C-2 exams. This has been an extremely popular improvement in the testing process.
- In fall 2002, we worked with Prometric (the firm that administers these C-1 and C-2 exams) to get the full grade report (not just the pass/fail report) printed at the exam site for the C-2(DB) exam. We expect to expand that process to the other two exams next spring. This major step has required waiting for Prometric to release their new testing engine. It has also required a lengthy and tedious data conversion project for the E&E team. The end result is that we will be able to make modifications to our exams more easily in the future and have more flexibility and better control over how the exams are presented to candidates.
- Future: Prometric's new testing drivers should allow us to administer the C-3 and C-4 exams at the Prometric sites in the near future as well. We are currently reviewing whether they can provide all of the features that our candidates need in order to author essay exams on the computer. We hope to have more information on these exams before the year is over. We will keep you updated. ▲

Michael L. Bain, MSPA, is president of CMC in Glendale, CA. Mike is ASPA's Technology Committee chair and general co-chair on the E&E Committee. He has been involved with technology and systems integration since the outset of his career, including working for several pension software firms.



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Recent Developments and Proposed Regulations Make 457 Plans More Attractive

comments to the IRS.) Meanwhile, submissions will be accepted on a provisional basis outside EPCRS. The IRS will probably also issue audit guidelines.

PLANS THAT ARE NOT SUBJECT TO SECTION 457

Unfortunately, the proposed regulations do not provide specific guidance on arrangements that are not subject to Section 457, such as bona fide death benefit and severance plans [see Section 457(e)(11)]. Guidance would be helpful, as there is considerable uncertainty as to the scope of some of these arrangements. For instance, many employers have adopted programs funded with large amounts of cash value life insurance, relying on advice that these programs are exempt as death benefit plans. To the disinterested observer, however, they often look more like deferred compensation arrangements.

A second issue arises from a glitch in the statute. SEPs and SIMPLE IRAs clearly are not intended to be subject to Section 457, but the statute does not specifically exempt them. Pending enactment of a technical correction, it would be helpful to have guidance from the IRS clarifying that SEPs and SIMPLE IRAs will not be subject to Section 457.

INELIGIBLE PLANS AND SECTION 83

The regulations do not provide comprehensive guidance on Section 457(f). There is one significant change from the 1982 regulations: when deferred compensation under an ineligible plan is no longer subject to a substantial risk of forfeiture, and thus is taxed under Section 457(f), the earnings on that amount are also taxed [Prop. Reg. Section 1.457-11(a)(2)]. Under the 1982 regulations, earnings were not taxed until paid or made available to the participant. The final regulations will hopefully reinstate the 1982 rule, as it is consistent with the legislative history of the Revenue Act of 1978, which enacted Section 457 (see the Joint Committee on Taxation, General Explanation of the Revenue Act of 1978, at page 73).

Under the proposed regulations, Section 457(f) applies if the date on which there is no longer a substantial risk of forfeiture (the “vesting date”) is before the date on which there is a transfer of property subject to Section 83 (the “transfer date”). Section 457(f) does not apply if the vesting date is on or after the transfer date. This rule is clearly intended to eliminate mutual fund option plans and similar arrangements and applies to options granted after May 8, 2002.

EFFECTIVE DATE

The proposed regulations are generally effective for taxable years beginning after 2001. Employers may rely on them for tax years beginning after August 20, 1996. Section 457 plan amendments to reflect EGTRRA and to comply with the regulations are not required until guidance is issued on that topic or, if later, the date on which final regulations are issued.

ASPAs INVOLVEMENT

Members of ASPA's Tax-Exempt and Governmental Plans Subcommittee participated, at the IRS's invitation, in an IRS training conference on 457 plans earlier this year. The Subcommittee has since drafted comments on the proposed regulations on behalf of ASPA, and the comment letter, when finalized, will be available on ASPA's Web site. ▲

Theresa Lensander, CPC, QPA, is president of The American Pension Company, an administration firm specializing in design, consulting, and administration services for pension, profit sharing, and 403(b) plans. Her corporate office is located in Santa Barbara, CA. Theresa is founder and former chair of the ASPA Tax-Exempt and Governmental Plans committee. She is a member of the executive subcommittee for the Los Angeles Benefits Conference, as well as founder and past president of the Western Pension & Benefits Conference Chapter in Santa Barbara.

Amiram J. Givon, APM, is a partner at the San Francisco law firm of Sideman & Bancroft LLP. Ami presently serves as co-chair of ASPA's Tax-Exempt and Governmental Plans subcommittee. He has published and spoken on ERISA and benefit matters and has been the principal author of several ASPA comment letters to the Internal Revenue Service and the Department of Labor.

David Pratt, APM, teaches at Albany Law School. He is also counsel to two law firms, co-chair of ASPA's Tax-Exempt and Governmental Plans subcommittee, and a fellow of the American College of Employee Benefits Counsel.

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Accessing the Web In a Pension Practice



by S. Derrin Watson

LET'S BREAK AWAY FROM TRADITION AND START WITH A CONTINUING EDUCATION QUESTION. CHOOSE THE BEST ANSWER: CHOOSE THE BEST ANSWER:

For a pension professional, the Internet is:

- A. A wonderful source of reference material.
- B. A great way to communicate with clients and other professionals.
- C. A valuable marketing opportunity.
- D. Potentially the worst waste of time since the invention of the water cooler.
- E. All of the above.

You receive full marks for answer E. Depending on the user, the Internet can bring all of the benefits listed in A, B, and C, and more. But, if you do not regulate the time you spend on the Internet, it can eat your life and productivity. This article focuses on the first item in the list: helping you find the pension related material you need for your practice.

When a professional looks for pension related material on the Web, he or she will seldom go wrong by starting the search at David Baker's <http://www.benefitslink.com>. In fact, spending half an hour just clicking through some of its main headings will reward the user many fold with an appreciation for how thorough a resource David has put together. Here are just some of the features available at no charge:

- A fine search engine to look for benefits related information. This can include anything he has reported, articles that have appeared on his site, or discussions on his message boards. A new feature allows users to disregard message boards and focus on articles and other postings.
- An outstanding set of links to source material, prepared in connection with Carol Calhoun's <http://www.benefitsattorney.com>. Conveniently, links to this material appear at the left of virtually every page on the BenefitsLink site, under the heading "source documents." The links are particularly useful because agencies such as the IRS frequently redesign their sites, and hence the location of publications, forms, and other materials change frequently. Thanks to BenefitsLink and benefitsattorney, you don't have to keep track of these changes. Just go to www.benefitslink.com and you can link to official material no matter where it happens to be located. These materials include:

- Internal Revenue Code
- ERISA
- Tax, DOL, and PBGC regulations and other pronouncements
- Legislative materials
- A table of inflation adjusted rates at <http://benefitsattorney.com/415.html>
- Q&A columns by experts in a host of benefits related fields
- Message boards discussing a host of topics
- Listings of continuing education seminars, webcasts, speakers, job opportunities, and online articles

One of BenefitsLink's most useful features are their daily e-mail newsletters. There is one newsletter for retirement plans and a separate newsletter for welfare benefits. Each newsletter contains links to articles, stories, columns, and other information dealing with employee benefits, along with a brief synopsis of the article. It is a great way to keep current on happenings in the industry and in the nation. The newsletters come in your choice of plain text or attractive HTML. To sign up, go to <http://www.benefitslink.com/newsletter/index.shtml>.

Incidentally, SunGard Corbel also e-mails a newsletter dealing with retirement industry news. Unlike the BenefitsLink newsletter, which comes out every business day, the Corbel pension update newsletter usually comes out only when there is something major to report, such as a key Revenue Ruling or a major IRS announcement. It is free and available to anyone. You can sign up at <http://www.corbel.com/news/subscribe.asp>.

EBIA also e-mails free weekly newsletters on several benefits topics, including 401(k) plans. Sign up at <http://www.ebia.com/weekly/freeweekly.html>.

Of course, the IRS has a wealth of material on their site at www.irs.gov. It can be frustrating to find pension related information on the IRS site and most pension professionals are well advised to start with BenefitsLink to link to the IRS site. My favorite way to access the IRS library of forms, publications, and



pronouncements is through their ftp site, <ftp://ftp.irs.ustreas.gov/pub>. I like the fact that I can find what I want quickly, without waiting for complex Web pages and wading through layers of navigation systems.

When you point your browser to the ftp site, you see a list of directories. Each directory contains individual files that

you can download. Most forms are in Adobe Acrobat format (pdf): form files are preceded by the letter “f,” instructions with “i,” and publications with “p.” For example, Form 5558 is f5558.pdf. Some key directories are:

- **irs-00** — Year 2000 forms, instructions, and publications.
- **irs-drop** — Adobe Acrobat versions of individual IRS pronouncements. Announcement 2001-77 is found at a-01-77.pdf. A similar numbering system is used for Notices, Revenue Rulings, and Revenue Procedures.
- **irs-fill** — Fill-in versions of current year tax forms. These are great for a form that you only have to do once or twice a year. You can complete them and save them in Acrobat Reader 4 or 5 (which you can download without charge at <http://www.adobe.com>).
- **irs-pdf** — Current year forms, instructions, and publications.

Individual Revenue Rulings, Revenue Procedures, Notices, and Announcements—since 1996—are also available at <http://www.unclefed.com/Tax-Bulls/index.html>. UncleFed also has current and prior year tax forms, including fill-in forms for prior years that are no longer available through the IRS site. Forms are at <http://www.unclefed.com/IRS-Forms/index.html>.

The DOL Web site for ERISA issues is at <http://www.dol.gov/pwba>, where you can link to current events. At <http://www.dol.gov/pwba/pubs/main.htm> you can download DOL publications. Advisory opinions since 1992 are at <http://www.dol.gov/pwba/programs/ori/ori.htm>. A few class exemptions are found at <http://www.dol.gov/pwba/programs/oed/oed.htm>. Benefits forms are at <http://www.dol.gov/pwba/pubs/forms/main.htm>.

The official resource for 5500 forms is <http://efast.dol.gov>. There you can download forms and instructions. Perhaps the best thing on the site is their

Troubleshooter’s Guide to the 5500, at <http://www.dol.gov/pwba/pubs/troubleg.htm>. Although it was prepared for the 2000 returns and hence does not reflect the relatively few changes for the current forms, it does have an excellent discussion of potential problem areas and advice for completing the returns. It is a useful supplement to the instructions and is frequently more helpful than the instructions.

You can find the PBGC at <http://www.pbgc.gov>. The PBGC Web site is one of the best organized government sites and it is relatively easy to find their forms and publications online.

If you are searching for a court opinion, your best resource may be <http://www.findlaw.com>. This comprehensive site has links to federal and state opinions and statutes. It is also useful for finding state tax information. The famous *Lexis* service has a free site available, <http://www.lexisone.com>, which provides an easy system to search recent opinions of the courts of appeal and the US Supreme Court.

Many readers of ASPA’s bimonthly newsletter remember the PIX Digest, which highlighted recent discussions of interest on the Pension Information eXchange online service. While PIX is still a subscription service (see <http://www.pixpc.com> for details), it also now posts publicly several major threads of interest to ASPA members. You can find those at <http://www.pixpc.com/threads.html>.

Materials dealing with controlled groups, affiliated services groups, employee/independent contractor issues, and leased employees are available in the Who’s the Employer Reading Room at <http://www.employerbook.com/Resources.html>. It includes an annotated copy of the proposed ASG regulations marked to show which sections are obsolete because of subsequent changes in the law, a cross-reference table for code and regulations on controlled groups and groups under common control, and a complete discussion of the recent Rev. Proc. 2002-21 dealing with PEOs.

ASPA’s own Web site, <http://www.aspa.org>, not only includes the membership, education, and conference information one would expect to find, but also webcasts, a searchable archive of ASPA ASAPs, downloadable copies of *The ASPA Journal*, and more. Another resource available on ASPA’s Web site is the collection of Government Affairs comment letters and white papers. The expanded eASPA section of the site is a valuable asset for ASPA members.

Other professional organizations can be found through <http://www.nipa.org>, <http://www.westernpension.org>, <http://www.soa.org>, and <http://www.actuary.org>.

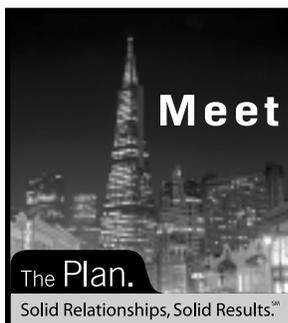
Of course, there are many other sites of interest to pension professionals. Here are a few:

- <http://www.spencernet.com/News.html> has daily summaries of news on the pension industry. More complete details are available to Spencernet subscribers.
- <http://www.benefitslink.com/articles/greatesthits.html> is David Baker's outline summarizing web resources.
- <http://www.pixpc.com> — PIX, a subscription-based service, is still the granddaddy of message boards for the pension professional.
- <http://www.freerisa.com> and <http://www.planeterisa.com> display form 5500 information.
- <http://www.reish.com/publications/content.cfm> lets you search through newsletters of Reish Luftman McDaniel and Reicher and read articles of interest.
- http://www.cyberisa.com/erisa_new_current.htm shows Sal Tripodi's updates on current events affecting retirement plans.

- <http://www.benefitslink.com/topics.shtml> has links to benefits related materials organized by topic.
- <http://www.tagdata.com> is a subscription research service. A free trial subscription is available.
- For pensions, there's BenefitsLink. For everything else, there's Google. <http://www.alltheweb.com> claims to have indexed more, but for most uses Google is still the tops. For specialized searches, try <http://www.search.com>. ▲

S. Derrin Watson, formerly the tax partner of a law firm in Beverly Hills, is now a tax attorney in solo practice in Santa Barbara, California.

Derin is also the managing partner of the Pension Information eXchange (PIX) computer BBS and has written the software used on the PIX system. He is known affectionately at PIX as "mom" since he is the creator of the PIX user software. He developed his expertise in controlled group and leased employee issues in large measure by responding to questions from PIX subscribers.



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TRS3274-0802

ASPA Uses Latest Technology to Target an Often Overlooked Audience: Corporate Trainers

by Sarah E. Simoneaux, CPC

ASPA HAS INCREASED ITS MARKETING AND PROMOTIONAL ACTIVITIES OVER THE PAST YEAR. ASPA HAS INCREASED ADVERTISING, ENHANCED PUBLIC RELATIONS EFFORTS, AND ADDED SOME PRINT AND MEDIA PROMOTIONAL TOOLS.

At the beginning of this year, ASPA's marketing team decided that ASPA needed a tool designed specifically for trainers who want more information about ASPA's credentialing program. Trainers are in a position to make decisions about what educational program a company chooses to support—they need to know about ASPA! It was also decided that this new tool would initially be used to promote ASPA's newest professional credentialing program for retirement plan professionals, the Qualified 401(k) Administrator (QKA).

The next step was to determine how to provide as much up-to-date information as possible to trainers and those in other decision-making positions. The team decided the best way to figure out what we needed was to go directly to the source. With the help of a marketing firm, we contacted trainers in the pension field around the country and asked them what they would need from ASPA in order to most effectively present the QKA program to others in their company.

The overwhelming majority told us that a CD-ROM (as opposed to print, video, or other media sources) was their preferred method of presentation. These trainers were also interviewed in depth so that we could be armed with as much information as possible about the needs of our audience. Now it was time to get down to business and deliver a high-quality product.

After months of hard work and collaboration with the marketing firm, we are pleased to announce the release of the new QKA CD-ROM! We think that you will find the CD-ROM extremely valuable as it includes an outline of the advantages of the QKA, a program overview with detailed information about the required exams, information about exam administration, frequently asked questions, and testimonials from trainers and QKAs. It is also a source of information about additional designations, the benefits of ASPA membership, and continuing education requirements.

Additionally, you can use the CD-ROM to access a Publications Order Form, an Examination Registra-

tion Form, and a Deadlines and Fees Schedule, posted on ASPA's Web site.

We hope that the CD-ROM will serve as a comprehensive tool for presenting the QKA program as well as become an invaluable source of information about ASPA. Our marketing team enjoyed putting the pieces of this project together and cannot wait to see the results of all our hard work!

If you are a corporate trainer or know someone who is, and are interested in receiving a promotional copy of this new CD-ROM, please contact ASPA's membership department at (703) 516-9300 or trainerkitqkainfo@aspa.org. We look forward to hearing from you in the future. ▲

Sarah E. Simoneaux, CPC, is vice president of Actuarial Systems Corporation, an employee benefits software firm. She currently serves on the ASPA Board of Directors as vice president and also is a member of the Congressional Outreach Committee and is EC liaison to the Membership Committee.

New ASPA CE Quiz!

Are you a few credits shy of the 2001–2002 ASPA CE requirements?

Take the new 2001 ASPA Annual Conference quiz and earn up to five credits. Just use the Annual Conference cassette tapes or a conference CD-ROM to answer 10 questions. If you answer at least seven questions correctly, you will earn one ASPA CE credit. A total of five quizzes are available. To download a quiz go to <http://www.aspa.org/conted>.

Welcome New Members

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

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James J. Lemon
Kien Liew
Vincent Yat-Ming Lui
Stanley C. Samples
Dana E. Spangher
Terrence William Van-Oss

CPC

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Sharon P. Baca
Janine Chung
Heidi J. Cook
Lori E. Crews
J. Scott Groene
Blake R. Harms
Kevin Burke Haskell
Joshua S. Keenan
Lori A. Koerber
Liping Liu
Grey C. Mitchell
Erik A. Pienkos
Tami M. Plummer
Crystal B. Smith
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OPA

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Sharon R. Beistel
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Bertis J. VanderSchaaff IV
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Eric M. Wagner
Jeff Wallace

ASPA Benefits Council “Back Home In Indiana”

by Nadia Doichinov, QPA

FORT WAYNE IS NOT A LARGE METROPOLITAN CENTER WHERE YOU WOULD EXPECT A BOOMING PENSION INDUSTRY. HOWEVER, IT CERTAINLY HAS ITS SHARE OF PENSION PROFESSIONALS! FOR YEARS, THESE PENSION PROFESSIONALS WERE TRYING TO FIND A LOCAL FORUM WHERE THEY COULD MEET REGULARLY, SHARE INTERPRETATION OF COMPLEX PENSION RULES, DISCUSS IDEAS, BENEFIT FROM TRAINING, AND GET THE REASSURANCE THAT, “I AM NOT THE ONLY ONE STRUGGLING WITH THIS!” THOSE IN THE GROUP KNEW THERE WERE SEVERAL PENSION FIRMS IN NORTHERN INDIANA AND THE SURROUNDING AREA THAT WOULD ALSO BE INTERESTED IN SUCH A FORUM.

As a result of the efforts and determination of a small group of people, we established the ASPA Benefits Council of Northern Indiana in 2001. Special “thanks” go to Kathy Bayes, Linda Fairbanks, Marilyn Manzer, QPA, QKA, Thomas Horton, Todd Sloccum, QPA, QKA, and David Kolhoff. These board members were very instrumental in establishing the council. The council officers are: Michelle M. Wyckoff, QKA, President/Chairperson; Bob Toth, Vice-President, Chair Elect; Deb Sullenbarger, Secretary; Larry O’Maley, Treasurer; Randall Crouch, QPA, Government Affairs Coordinator; Roslin McDavid, Membership Chair; Conni Tebbe, QPA, Meeting Chair; Carolyn Campbell, QPA, QKA, Continuing Education Chair; and Nadia Doichinov, QPA, ASPA Liaison.

On November 15, 2001, we conducted our first dinner/mixer “kick off” meeting. We had strong participation from pension professionals, primarily from the Fort Wayne area. We introduced the council, promoted membership, and provided a brief update of the ASPA Annual Conference.

In January 2002, the council sponsored training sessions for two half-days. We listened to tapes from selected topics addressed at the 2001 ASPA Annual Conference. Although listening to tapes may not be an attractive alternative to attending the Conference, we had good participation and were able to discuss the topics and the experience we had dealing with such issues in a casual environment.

Sal Tripodi, APM, was the speaker at our June 5, 2002 meeting. We had a tremendous response and the meeting was a great success! Over 100 people attended, which boosted our membership by nine individual and 82 corporate members. The topics included *Safe Harbor 401(k) Plans*, *Top Heavy Rules*, and *Catch-up Contributions*. Sal’s wealth of knowledge, ability to explain difficult concepts, and keen sense of humor made the day educational and fun.

For the rest of the year, our plans include a dinner meeting on November 21, 2002. During this dinner, we will elect our new board and hear a synopsis from the 2002 ASPA Annual Conference.

We would be remiss if we did not express our appreciation to Amy Iliffe, ASPA’s Director of Marketing and Development, for her guidance and support through the council’s establishment activities, as well as her assistance with the distribution of announcements for our programs.

For information about the ASPA Benefits Council of Northern Indiana, including membership and upcoming events, contact Roslin McDavid, Membership chair, at (260) 455-2804, or Conni Tebbe, Meeting chair, at (260) 455-4063. ▲

Nadia Doichinov, QPA, is assistant vice-president and director with Retirement Financial Services of Delaware Investments, a subsidiary of Lincoln Financial Group. Her pension experience in qualified defined contribution plans includes plan design, administration, and compliance. Nadia currently serves as the ASPA liaison for the ASPA Benefits Council of Northern Indiana.



Focus on ABCs

Dallas/Ft. Worth ABC Nears the End of an Inaugural Year

by Sally Zavattari, FSPA, CPC

THE ASPA BENEFITS COUNCIL (ABC) OF DALLAS/FT. WORTH WAS OFFICIALLY LAUNCHED IN JANUARY OF 2002. OVER THE PAST YEAR, MEMBERSHIP IN THE ABC OF DALLAS/FT. WORTH HAS GROWN TO SIX CORPORATE AND TWENTY-FOUR INDIVIDUAL MEMBERS. TWENTY-SIX MEMBERS ARE ENROLLED THROUGH OUR CORPORATE MEMBERSHIPS.

The 2002 elected board of directors is as follows: President, Pete Kneedler; Vice President, David Test; Treasurer, Tonia McBride; Continuing Education and ASPA Liaison, Sally Zavattari; Government Relations, Lisa McGill; Meetings, Kathy Walker; Membership, Patricia Hargrove; Secretary, Brian Prasifka; and General Board Member, Joe Long. The success of our ABC can be attributed to the hard work of the board and the member enthusiasm for this type of organization.

Our April 24, 2002, inaugural meeting was a great success! We were lucky to have Brian H. Graff, Esq., ASPA Executive Director, present an update on pension reform. Our next quarterly meeting featured Tom Foster, Esq., from Harford Insurance Company. A recently featured writer in *The ASPA Journal*, Tom provided our July 10 meeting attendees with an informative overview of *Marketing Opportunities in EGTRRA*, interspersed with his own amusing anecdotes.

The headliner for our final meeting of the year will be Sal Tripodi, APM. Sal will wow our members with his ever popular and informative presentation, *Keeping Current*, on November 13, 2002.

We have already made plans for four two-hour meetings in 2003, and have started working on a full day

seminar to be held in 2003. Our Web site will be accessible this fall, at www.abc-dfw.org.

For information about the ASPA Benefits Council of Dallas/Ft. Worth, including membership, registration, and upcoming events, please contact the individuals noted below.

Membership Chair

Patricia Hargrove, CPC, QPA
pat.hargrove@milliman.com
(214) 863-5500

Meeting/Speaker Chair

Kathy Walker
walker@simpkinsassoc.com
(972) 960-9630. ▲

Sally Zavattari, FSPA, CPC, is president of Actuarial Services Group, Inc., an actuarial and employee benefits consulting firm in Dallas, Texas. She has been in the employee benefits field for 25 years. She is an enrolled actuary, but her practice includes all types of retirement plans, including defined benefit, profit sharing/401(k), money purchase, ESOP, 403(b), and 457 plans. Sally has served on several ASPA committees, most notably the E&E Committee, where she served as chair of the Actuarial (A-4) Committee, and participated in Joint Board activities.

ASPA Benefits Council's Calendar of Events

Date	Location	Event	Speakers
Fall 2002	Atlanta	Plan Investments, Fiduciary Liability	TBA
November 13	Dallas/Ft. Worth	Keeping Current	Sal Tripodi, Esq., APM
November 21	N. Indiana	Board Meeting and Dinner	
December 12	Western PA	One-on-One with the Experts	TBA



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* Based on number of recordkeeping plan clients, PLANSPPONSOR, June 2002.

MKT091 (10/02)

ASPA WELCOMES A NEW ABC

Lucky Number 13 — The ASPA Benefits Council of Greater Cincinnati

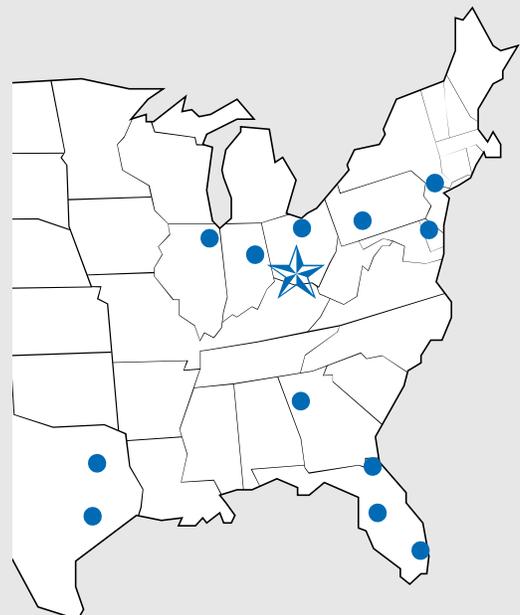
ASPA's newest ABC, the ASPA Benefits Council of Greater Cincinnati, was approved on Monday, August 5, 2002. The Council is setting up shop and recruiting members. For information on becoming a member of the Greater Cincinnati Benefits Council, please contact:

Jon H. Beveridge
Membership Chair
(859)386-3678
jon.beveridge@fmr.com

Cincinnati held its first educational meeting on October 9, 2002. Their speaker, ASPA President Craig Hoffman, APM, presented *Industry and Legislative Updates*. For information about future meetings, please contact:

David J. Turpin, QPA
ABC President
(859) 386-4931
david.turpin@fmr.com

There are now thirteen ASPA Benefits Councils providing cost-effective education and networking opportunities to pension professionals on a local level. For information on ASPA Benefits Councils, visit the Local Council section of ASPA's Web site at www.aspa.org.





PAC: The Fable

By Bruce L. Ashton, APM

LONG AGO WHEN THE WORLD WAS YOUNG, AND ELVES AND OGRES WALKED AMONG US, WHEN DARKNESS SPREAD OVER THE LAND AND MEN QUAKED IN FEAR BEFORE THE GREAT LORD CONGRESS, THE LAND WAS FILLED WITH CRIES AND LAMENTATIONS. THE GREAT LORD LAID BEFORE THE PEOPLE TERRIBLE EDICTS WITH TERRIBLE SOUNDING NAMES. HE CALLED THE LAWS THE “TAKE EVERYTHING FROM THE RICH ACT” OR TEFRA, THE “DOUBLY-TAKE EVERYTHING FROM THE RICH ACT” OR DEFRA, THE “RELINQUISH EVERYTHING ACT” OR REA, AND THE “TAX THE RICH AGAIN 86 WAYS FROM SUNDAY ACT” OR TRA 86. AND THE PEOPLE TREMBLED AND WERE AFRAID.

Among the people a great grumbling arose, and when Lord Congress uncaged his minions, the IRS, and released them into the Land, a hew and cry arose, and the people fought back. And the people rallied behind their champions, Sir Chet and Sir Fred, and the people won the battle. This became known as the Battle of the Actuarial Audit. And when the IRS were vanquished and sent back to their lair, there was great rejoicing in the Land.

And then a new leader arose among the people, dressed in tights, and he was named Sir Michael of Callahan — though some would call him Mad Dog — and Sir Michael of Callahan had a great vision. He said to the people, “We need a new champion. This new champion will be small and poor but will wield great power and his name will be PAC, the Door Opener. And you will need to support him with your charity.” At first, the people were skeptical for many of them were poor and struggling to put food on the table for their children, but in time, they agreed to permit PAC, the Door Opener, to come among them and share their bounty and their burdens. And they gave — sometimes sparingly, sometimes generously — so that PAC could survive.

One day, a great uproar occurred in the Land, for PAC had a new lady, Karen of Anchorage, also known as the Lady Jordan. Now the Lady Jordan had opposed allowing PAC among them and had spoken out against him. But as she grew used to him and witnessed his powers, she grew to love him and went to stand by his side. And she brought into her circle an old champion, Sir Fred, and the knight from the East, Squire Panda of Starr.

Small as he was, PAC was truly unafraid. PAC confronted the great Lord Congress, and in time, PAC was able to open the doors to Lord Congress’s castle so that the people could come in and discuss their concerns with their Lord. And the people found a spokesman, a youngish man who formerly served Lord Congress, and they asked him to speak for them. And with PAC opening the doors to Lord Congress’s castle and with their spokesman, Sir Brian, otherwise known as The Graff, speaking in the ear of Lord Congress, enlightenment descended on the Land, and the people were glad. Even Lord Congress saw the new light over his empire and

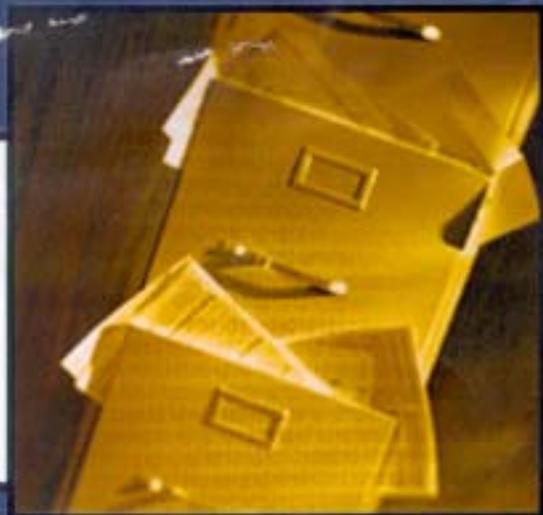
thought it good, and he gave out new edicts called the “Small But Just Provision Act” or SBJPA and the “Everyone Gets to Regain their Riches Act” or EGTRRA. And the people in the land rejoiced and shouted in glee for their new champion, PAC.

But then a new threat arose and caused Lord Congress grievous harm. The new threat was a dark cloud from the South, and it was called by a single name, ENRON. And the people remembered the terrible disaster from the Middle Earth called Studebaker and they were afraid. Lord Congress went inside his castle and closed his door and began to think of new edicts, for ENRON threatened to bring back the old darkness, which some labeled blackout, and which Lord Congress wished to outlaw. But the people’s champion, PAC, went up to the castle and demanded that Lord Congress open his doors and let Sir Brian, The Graff, be heard. And Lord Congress listened and did not issue new edicts but instead talked to the people and heard their voices. And the people realized this would not have happened without the help of PAC, the Door Opener.

Most fables would now say, “And they lived happily ever after. The End.” Not this one, for this is not the end; this fable will continue so long as Lord Congress sits in his castle and broods over the Land. But we will close with the moral of this tale: LONG LIVE PAC! ▲

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

For more information on ASPA PAC, contact Jolynne Flores, ASPA PAC Manager, at (703) 516-9300 or jflores@aspa.org. Note: Only ASPA members (credentialed and non-credentialed) may make contributions to ASPA PAC. Contributions are not deductible for federal income tax purposes. Under federal law, PACs can only accept personal contributions. Corporate contributions are not permitted.



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Bulletin Board

EDUCATION

November 9-10
Weekend courses,
Chicago, IL

December 4
C-3, C-4, and A-4
Exams

CONFERENCES

October 27-30
Annual
Conference
Washington, DC

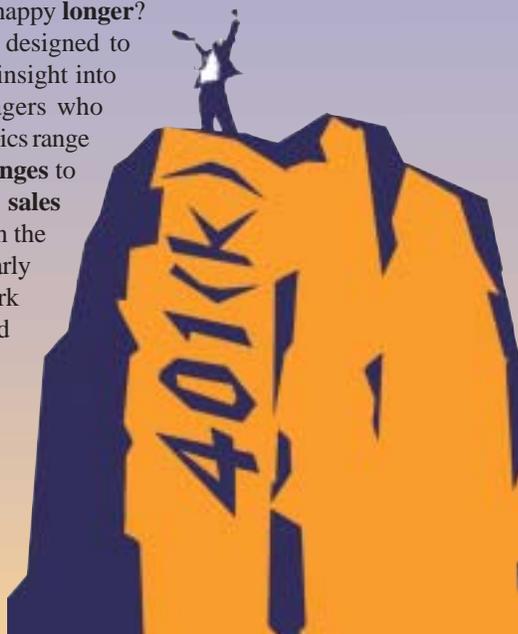
February 27-March 1
401(k) Sales Summit
Scottsdale, AZ

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Calendar of Events

2002

ASPA CE
Credit

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 27-Mar 1	401(k) Sales Summit Scottsdale, AZ	15
Jul 27-30	Summer Academy Irvine, CA	20
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?

Over the past few months, ASPA's Web site has averaged between 600-700 visitor sessions a day. Of those who visit ASPA's site, 65-75% visit once, 12-13% visit twice, and 15-20% visit more than twice in any particular week. The most requested content pages are the Education pages. The Meetings pages come in a close second and the third most requested page is the What's New page. And if that's not enough trivia for you, the most active days of the week are usually Monday and Tuesday and the most active time is from 9-10 a.m. Eastern time!