ASPA
Dedicated to the Private Pension System
THE ASPA JOURNAL
Mar–Apr 2004
Vol 34, No 2

Contents

3 From the Editor
4 Avoiding Investment Advice Hazards
5 401(k) Products: Investment and Cost Basics
10 Available Webcast Recordings
11 2003 Transamerica Small Business Retirement Survey Key Findings
18 Focus on the Board of Directors: Letter from the President
19 Presidential Year in Review: Accepting the Challenge
20 Focus on the Board of Directors: Latest Additions to the Board of Directors
21 Focus on Task Forces: Board Recommends Education Program for Sales Professionals
25 Focus on Continuing Education: CE Deadline is Just Around the Corner
26 Focus on Technology: How Recent Rulings Affect You—And What You Can Do
27 ABC Calendar of Events
29 Welcome New Members
30 FUN-da-MENTALs
32 Calendar of Events

SPECIAL INSERT! 2004 UPDATE SUMMARY COMPARISON OF QUALIFIED PLANS, IRAS AND TSAS

Workers to Employers: Give Us More Retirement Advice

by Transamerica Center for Retirement Studies[SM]

AFTER THREE YEARS OF MARKET VOLATILITY, EMPLOYEES ARE NOW RE-ENGAGING WITH THEIR RETIREMENT PLANNING AND, IN TURN, ARE ASKING THEIR EMPLOYERS FOR MORE GUIDANCE IN ACHIEVING THEIR RETIREMENT GOALS, ACCORDING TO THE LATEST SURVEY COMMISSIONED BY THE TRANSAMERICA CENTER FOR RETIREMENT STUDIES[SM]. THE SURVEY, CONDUCTED BY HARRIS INTERACTIVE®, INCLUDED 300 SMALL BUSINESS EXECUTIVES AND 600 FULL-TIME SMALL BUSINESS EMPLOYEES AGES 18 AND OLDER.[1]

Even though 79% of employees somewhat or strongly agree that they are very involved in managing their investments, nearly three quarters of respondents (71%) agree that they don't know as much about investing as they should. Only approximately one in three workers trust themselves to manage their retirement savings more than they trust their employer or an outside financial company (31% agree strongly). In fact, the 2003 Transamerica Small Business Retirement Survey shows that employers sense a *decrease* in the number of employees preferring to manage their own retirement savings rather than having it managed by their company or some other outside financial institution (50% in 2003 vs. 63% in 2002).

Among the areas where employees have greater desire for outside guidance:

- **Plan information:** Employees are hungry for educational resources, with only half (54%) strongly agreeing that their employer gives them enough information on their plan.
- **Company funded plans:** A more subtle shift shows a slight rise in workers who prefer to have someone else take on the burden of retirement planning, with more employees (28%) favoring company funded (defined benefit) plans than in years past (21% in 2002).

"It was revealing to find that employees feel the responsibility of retirement guidance lies with

Continued on page 9

WASHINGTON UPDATE

Promoting Retirement Savings by Low-to-Moderate Income Workers (SAVER's Credit on Steroids)

© 2001 Bill Petros
© 2002 PhotoDisc, Inc.

by Brian H. Graff, Esq.

One of the major criticisms of our current retirement savings system is that it does not effectively encourage savings by low-to-moderate income workers—those American workers who probably need the greatest encouragement. According to the Congressional Research Service, only 25 percent of households with family incomes of $25,000 or less have any amount of money invested in a tax-favored retirement savings vehicle [*e.g.,* IRA or 401(k)-type plan]. This percentage increases to only 52 percent of households for family incomes ranging between $25,000 and $50,000. As greater numbers of Americans reach retirement age, issues respecting the retirement savings rates of low-to-moderate income workers will become increasingly important to policymakers in Washington, DC, particularly given the fact that there seems to be less public confidence in the Social Security system.

As part of EGTRRA in 2001, Congress enacted the SAVER's credit with the intent of stimulating greater savings by low-to-moderate income workers. However, the SAVER's credit is generally viewed as ineffectual for a number of reasons, and current estimates suggest that it is only being used by four to five million Americans. The main complaints about the current law SAVER's credit are (1) it is not

Continued on page 7

Pressures change daily, but your investment portfolio stays well-adjusted.

Must be Victory Diversified Equity.

Keeping a portfolio stable and productive requires a slight twist here and a confident turn there to adjust to the changing flow of the marketplace. It's a highly disciplined process. And it defines the consistent management style that makes Victory Diversified Equity such a solid investment choice. From the rigorous screening process that channels our stock selection to the stringent risk controls that sustain it, Victory Diversified Equity is managed to deliver superior long-term risk-adjusted performance. Regardless of market pressures.

Victory Diversified Equity is available in either a separately managed account or a mutual fund through numerous retail and retirement plan platforms.

Responsible risk. Remarkable returns.

For additional information, call the Victory Financial Professional Line at 1-800-423-0898 or visit VictoryConnect.com.

Victory Capital Management is a Registered Investment Advisor and a member of the Key Financial Network.

©2004 KeyCorp

FROM THE EDITOR

The View From the Top is Worth the Climb

by Chris L. Stroud, MSPA

MOUNTAIN CLIMBERS TRAIN LONG AND HARD TO REACH THEIR TARGETED SUMMITS. SCORES OF BOOKS HAVE BEEN WRITTEN ATTESTING TO THE FACT THAT THE VIEW FROM THE TOP IS ALWAYS WORTH THE CLIMB, NO MATTER HOW MANY OBSTACLES HAD TO BE OVERCOME TO GET THERE. AS A MATTER OF FACT, THE KEYNOTE SPEAKER, ALAN HOBSON, AT ASPA'S 2003 401(k) SALES SUMMIT—WHO, BY THE WAY, HAD CLIMBED MOUNT EVEREST—EXPLAINED HOW HIS PERSEVERANCE OF THE PURSUIT OF HIS GOAL HELPED HIM IN MANY OTHER ASPECTS OF LIFE, INCLUDING HIS BATTLE WITH CANCER. NOT ONLY DID HE "ENJOY THE VIEW" FOR THE SHORT TIME HE WAS AT THE TOP OF MOUNT EVEREST, HE LEARNED NUMEROUS LESSONS ALONG THE WAY.

I just came home from the 2004 401(k) Sales Summit. I was amazed at the overwhelming success of this conference. In only its third year, the 401(k) Sales Summit has surpassed expectations once again with nearly 1,000 attendees and is clearly ASPA's second largest conference. Quite a while back, Stephen Dobrow, CPC, QPA, QKA, current ASPA Vice President and former ASPA Conference General Chair, had the foresight to envision the concept of this type of conference. Stephen struggled for several years to get others to agree to make his concept a reality. Once the concept was approved, we (yes, I had the pleasure of being part of the original planning group) chose to use the term "Summit" in the name because of the possibilities it gave us for phrases and imagery—a "peak," a "pinnacle of success," a "meeting of the minds," "reaching the top," etc. With the help of many talented ASPA members over the years, including Fred Reish, APM; Chris Chaia; Mark Davis; Kris Coffey, CPC—and other volunteers who spent countless hours on each of the past three conferences, the 401(k) Sales Summit is now enjoying the "view from the top." There have been hurdles to overcome, and there will surely be more hurdles in the years to come—but it has been a worthwhile venture for ASPA as well as for all of the attendees.

What makes this conference truly different from most is the unique mixture of sales professionals and TPAs who attend. Sessions are designed to offer advice on how to sell and service 401(k) plans, often combining technical knowledge with sales techniques. "Trade secrets" are shared and motivational tips are often given. After the first conference, it was clear to ASPA that sales professionals were "hungry" for more education and did not feel that anyone was addressing their needs appropriately. The comments from the first conference survey said loud and clear—"We loved the conference. What else can you do for us?" Since ASPA's purpose includes educating benefits professionals, it seemed logical to consider designing an education program for sales professionals. After extended research and surveys over the next few years, an educational program for sales professionals is becoming a reality. (See "Focus on Task Forces," page 21.) Another mountain is about to be climbed….

ASPA has several mountains to climb as we continue to grow and evolve. ASPA's leadership is focused on goals that will take ASPA to new heights. If we truly want to fulfill our "envisioned future" (see January-February 2004 issue, page 25)—to be the premier educator of all retirement plan professionals and the preeminent voice and advocate for the employer-based retirement system—we have a lot of work to do. Embracing sales professionals, offering them a quality education program and encouraging them to join ASPA gets us closer to our mountaintop. Changing our name (see November-December 2003 issue, page 1) to better reflect our membership will take us another step closer. There will be setbacks along the way and there will be hurdles to overcome. The way to the top is never easy, but as they say, the view from the top is worth the climb! ▲

THE ASPA JOURNAL

Editor in Chief
Brian H. Graff, Esq.

The ASPA Journal Committee
Robert M. Richter, APM, Chair
Amy L. Cavanaugh, CPC, QPA, QKA
Constance E. King, CPC, QPA
Barry Kozak, MSPA
Amy J. Maggs, APM
Sheila L. Parker, QPA
Erin D. Patton, CPC, QPA, QKA
Chris L. Stroud, MSPA
Kim L. Szatkowski, CPC, QPA, QKA

Editors
Chris L. Stroud, MSPA
Jane S. Grimm

Associate Editors
Jolynne M. Flores
Troy L. Cornett

Technical Review Board
Lawrence Deutsch, MSPA
Barry Kozak, MSPA
Marjorie R. Martin, MSPA
Duane L. Mayer, MSPA
Nicholas L. Saakvitne, APM

ASPA OFFICERS

President
Bruce L. Ashton, APM

President-Elect
Stephen H. Rosen, MSPA, CPC

Vice Presidents
Stephen L. Dobrow, CPC, QPA, QKA
Chris L. Stroud, MSPA
Sal Tripodi, APM

Secretary
Cathy M. Green, CPC, QPA

Treasurer
Sarah E. Simoneaux, CPC

Immediate Past President
Scott D. Miller, FSPA, CPC

Ex Officio Member of the Executive Committee
Joan Gucciardi, MSPA, CPC

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.

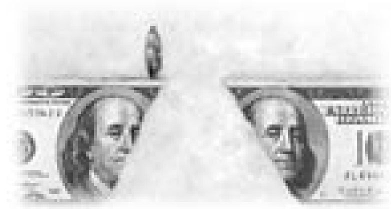
ASPA members are retirement plan professionals in a highly diversified, technical, and regulated industry. ASPA is made up of individuals who have chosen to be among the most dedicated practicing in the profession, and who view retirement plan work as a career.

© ASPA 2004. All rights reserved. ASPA is a non-profit professional society. The materials contained herein are intended for instruction only and are not a substitute for professional advice. **ISSN 1544-9769**

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**

Avoiding Investment Advice Hazards



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

THERE IS A GROWING BODY OF EVIDENCE THAT MOST PARTICIPANTS DO NOT KNOW HOW TO MANAGE THE INVESTMENTS IN THEIR PARTICIPANT-DIRECTED RETIREMENT ACCOUNTS. (SEE SURVEY INFORMATION SIDEBAR.) AS A RESULT, PLAN SPONSORS AND PROVIDERS ARE INCREASING THE INVESTMENT SERVICES FOR PLANS AND PARTICIPANTS, INCLUDING INVESTMENT ADVICE.

Survey Information

Hewitt Associates[1]: 41% of the participants invested in only one or two investment options.

Investment Company Institute[2]: "Most plan participants did not actively manage their plan assets after making initial investment decisions. Three-fifths had not reallocated their contribution or plan assets since joining the current plan." Additionally, the survey showed that approximately 60% of 401(k) plan participants had no investments other than those in employer plans.

Mutual of Omaha Companies[3]: Over half of 401(k) participants spend five hours a year or less reviewing investment returns, studying investment options or reviewing their 401(k) plans.

Morningstar, Money Magazine and Dalbar: Mutual fund investors and plan participants under-perform the average mutual fund.

American Express[4]: 46% of participants want more advice and assistance in choosing among their investment options.

However, plan sponsors, investment advisors and providers must be careful to avoid running afoul of the nondiscrimination and prohibited transaction rules in the Internal Revenue Code and in Title I of ERISA.

WHEN DO THESE ISSUES ARISE?

There are typically two kinds of investment services for participants that give rise to these issues. The first is investment advice where guidance is provided to the participant. The participant decides whether to accept the advice and is responsible for taking action to implement it. The second is investment management, where the account is actively managed for the participant—that is, the participant selects an investment manager to make and implement investment decisions for the participant's account. In the second type of service, the participant usually makes the decision to use the investment management service, though some plans provide an investment management service as a default.

Both investment advice and investment management, as described above, are covered by ERISA's definition of fiduciary investment advice. ERISA provides that "a person shall be deemed to be rendering 'investment advice'…if: (i) such person renders advice to the plan as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing or selling securities or other property; and (ii) such person…has discretionary authority with respect to purchasing or selling securities…or renders any advice on a regular basis pursuant to a mutual…understanding…that such [advice] will serve as a primary basis for investment decisions…and that such person will render individualized investment advice to the plan based on the particular needs of the plan…." [Labor Reg. §2510.3-21(c).]

Under ERISA Sections 3(38) and 405(d), if a plan appoints an "investment manager," as that term is defined, the plan's primary fiduciaries are relieved of responsibilities for the investment results—so long as the investment manager is prudently selected and monitored. Section 3(38) provides that "[t]he term 'investment manager' means any fiduciary…who has the power to manage, acquire or dispose of any asset of a plan; who is registered as an investment [advisor]…is a bank…or is an insurance company…and has acknowledged in writing that he is a fiduciary with respect to the plan."

The issues discussed in this article are applicable to both investment advisors and investment managers. For ease of reading, we will use the phrases "investment advisor" and "investment advisory services" throughout to refer to either or both investment advice and investment management.

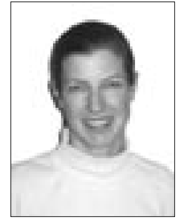
RESTRICTIONS ON INVESTMENT ADVICE MAY VIOLATE THE NONDISCRIMINATION RULES

Some investment providers impose significant charges or require minimum account balances that may violate the nondiscrimination requirements of Section 401(a)(4) of the Internal Revenue Code (Code). For example, a mutual fund company might require a minimum account balance of $10,000 for a participant to use its investment advice service. As a result of the minimum account balance, it is likely that the availability of these providers' services will be proportionately skewed towards the HCE population. This, of course, raises the concern that a plan using this service would discriminate in favor of HCEs—in violation of Code Section 401(a)(4). An analogous nondiscrimination violation would exist where a plan imposes a minimum account balance to use the stock brokerage service offered by the plan. That is, the effect of the plan-imposed minimum must be tested for compliance with the nondiscrimination

Continued on page 12

401(k) Products: Investment and Cost Basics

by Virginia Krieger Sutton



AS ASSETS IN DEFINED CONTRIBUTION PLANS EXCEED $2.1 TRILLION,[1] THE 401(k) MARKETPLACE IS COMPLEX BUT ATTRACTIVE TO MANY COMPANIES. MOST THIRD PARTY ADMINISTRATORS (TPAs) HAVE A STRONG GRASP OF ERISA AND UNDERSTAND 401(k) PLANS FROM A REGULATORY PERSPECTIVE. WHILE TPAs HAVE TRADITIONALLY FOCUSED ON THE COMPLEXITY OF EVER-CHANGING QUALIFIED PLAN RULES, MOST INVESTMENT COMPANIES HAVE FOCUSED ON HOW TO USE 401(k) PLANS TO INCREASE THEIR ASSETS UNDER MANAGEMENT. THESE COMPANIES HAVE CREATED PACKAGED 401(k) PRODUCTS AND HAVE MARKETED THEM TO EMPLOYERS AS AN EASY WAY TO IMPLEMENT A RETIREMENT BENEFIT PROGRAM.

Insurance companies, mutual fund companies, brokerage houses and third party administrators have all developed 401(k) products. Popular products typically offer daily valuation and allow participants unlimited phone or Internet access to their account balances for information or trading. The employer must choose the array of specific investment options for their individual plan from a "universe of funds" offered by the product provider. Some companies will offer a 401(k) program that bundles the compliance, recordkeeping and investment options. Other products offer investments and recordkeeping services, but will partner with a separate TPA for compliance.

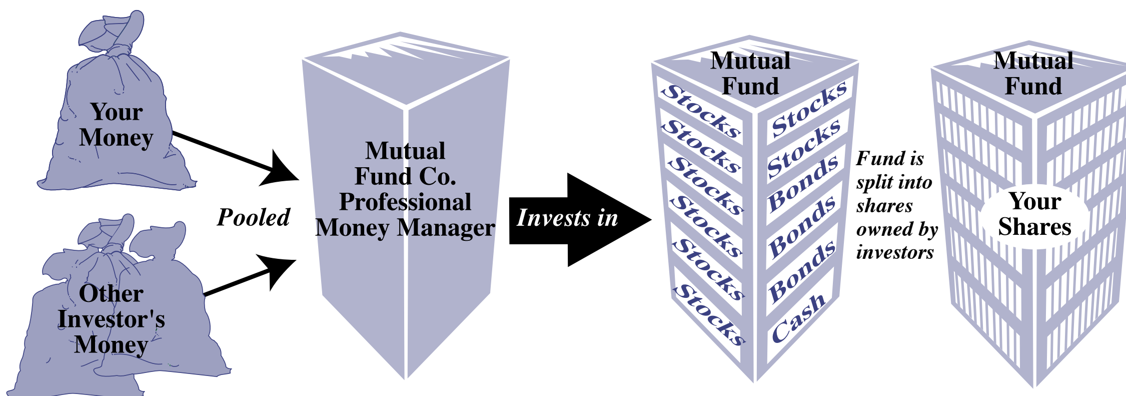
Many service providers will charge an annual flat fee as well as a "per participant" fee for the plan. These charges are most often billed to the employer. However, most insurance companies, mutual funds and brokerage houses make their money as a function of the 401(k) plan's assets. In fact, in combination with the investment management charges, asset-based investment charges can constitute 75%-90% of a 401(k) plan's total expenses.[2] Unfortunately, most plans are only sold and compared by their billed charges. It is common for 401(k) programs' asset fees and investment expenses to go unexamined or even unnoticed.

To understand how asset charges within "turn-key" 401(k) plans work, particularly for products that target the "small 401(k)" marketplace, it is important to look to how specific products' investment options are designed and how the insurance and mutual fund industries are regulated.

Mutual fund companies, or "open-end trust companies," are investment companies that gather assets on behalf of individuals and invest the pooled assets in market-based securities, like stocks and bonds. When an individual invests money with a mutual fund, he/she is issued shares of the fund. As an "open-end trust company," a mutual fund can raise an unlimited amount of capital by continuously issuing and selling new shares. In turn, when an investor wishes to sell his or her position in the fund, the mutual fund must buy back the investor's shares. The amount of assets and value of the mutual fund's shares rises and falls with the net amount of money in its pooled account and the market performance of its underlying securities.

Through pooled buying power and professional money management, a mutual fund provides an individual investor with potentially greater diversification of investment options, and hopefully better returns and risk management, than what the investor could have otherwise done for him or herself. A mutual fund company charges a fee, taken as a percentage of the pooled assets, for their investment services. (See "Mutual Fund X," page 6.)

Along with most other market-based securities, mutual funds came under specific regulatory control in the 1930s and 1940s. Mutual funds, as well as the sale and



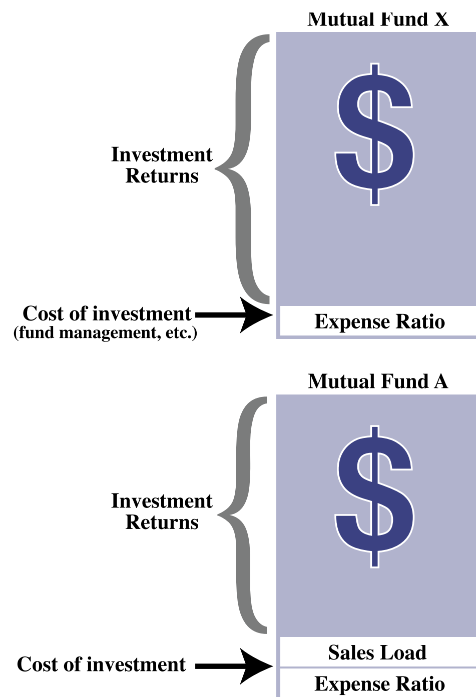
distribution of mutual funds, are regulated federally through the Securities and Exchange Commission (SEC), state by state and by self-regulatory entities, such as the National Association of Securities Dealers (NASD) and the national exchanges [New York Stock Exchange (NYSE) or the American Stock Exchange (AMEX)]. Mutual funds are required by law to file, among other things, a description of the fund's investment objective, the pricing of the fund and the risks associated with investing in the fund. This information is contained in the funds' prospectus. A single mutual fund might have several different share classes that reflect different cost structures, but each different cost structure must be identified in the fund's prospectus.

The purpose of a mutual fund is to make its shareholders' invested money grow into more money. The excess returns the fund makes over its expenses is the fund's profit, and this is what increases shareholder value. How well the fund performs is a function of the underlying investments and how well the fund company manages its expenses. While a fund manager can overcome high expenses through great stock picks, it is often noted that a fund's performance will benefit if the fund's expenses are as low as possible.

The expense of a mutual fund (see "Mutual Fund X") is often expressed as a percentage of the mutual fund's assets. This is the fund's expense ratio, and it typically covers the cost of the fund's management (management expense), the cost of marketing and distribution of the fund (a 12b-1 fee) and any other expense (often labeled as "other expense"). When a fund posts its performance at the close of the market, it has taken into account the fund's expense ratio. A mutual fund must then divide its total fund worth by the number of shares that have been issued by the fund. This net cost per share is the fund's net asset value price, or NAV share, price and it is calculated prior to any sales charges.

Mutual funds that distribute themselves through outside broker/dealer sales channels will typically offer three different share classes. "A" class shares will charge an up front sales commission or "load" upon the purchase of the shares (see "Mutual Fund A"). This load is in addition to the fund's internal expense ratio. The maximum sales load for any mutual fund is 8.5% of the price per share. Because there is a sales load up front to pay the commissions of the broker, the internal expenses of the A share at NAV is often relatively low.

"B" class shares will charge a sales load upon the sale of the fund. This load is known as a contingent deferred sales charge (CDSC) or "back-end" sales load. The internal expenses of B shares can be greater than the internal expense of A shares. Often the B share's CDSC will decline over a period of five to



eight years, so that if an investor holds his shares long enough, they will revert to A shares at NAV.

"C" class shares are also known as "level-load" funds. These funds have higher internal expenses, but the back-end charge is often only one year. Recently, mutual fund companies, especially those who offer bundled 401(k) products, have created special retirement plan shares. These "R" shares have been priced with no up-front or back-end sales loads, but the internal expense ratio is greater to offset the expense of recordkeeping and compliance.

Mutual funds that seek to do their own advertising and do not pay commissions to brokers are often considered "no-load" fund families. However, they may or may not have internal expenses that are less than or just as expensive as funds with their loads waived. Oftentimes the 401(k) products from no-load fund families will have high asset requirements to offset their lower NAV pricing.

Because mutual funds must "register" their expense structures with the SEC, the performance of each share class can be independently verified in a variety of different sources. Most funds post annualized performance, assuming that $10,000 was invested on January 1 and the subsequent performance is noted on a calendar or annualized basis.

Mutual funds have traditionally targeted very large 401(k) plans, but many have created 401(k) products for smaller plans in order to increase their market share. Since assets under management drive their revenue, most fund companies require a minimum amount of plan assets for their products.

Continued on page 16

Continued from page 1

Washington Update
Promoting Retirement Savings by Low-to-Moderate Income Workers (SAVER's Credit on Steroids)

available to those individuals with no tax liability (*i.e.,* if you do not pay taxes, you are entitled to the credit); (2) the level of the credit is phased out using very steep income cliffs; and (3) there is really little incentive for either financial institutions or plan sponsors to market the credit given the small amounts involved.

Under current law, married taxpayers, for example, with a combined adjusted gross income of $30,000 or less, are eligible for a 50 percent tax credit on up to $2,000 in contributions to an IRA or 401(k)-type plan. This credit drops to 20 percent if the same such taxpayers have one dollar more than $30,000 in combined adjusted gross income, to ten percent if the same such taxpayers have $32,501 in combined adjusted gross income, and to zero when the combined adjusted gross income is $50,001. As indicated above, regardless of income, if the taxpayers owe no tax liability—they might have a large number of dependents, for example—they would not be entitled to any credit. These issues, and the lack of a real push from financial institutions and plan sponsors alike, have resulted in relatively little participation in the current law credit.

Representatives Portman (R-OH) and Cardin (D-MD), longtime retirement policy leaders in Congress, have been seriously considering a major policy initiative to significantly reform the current law SAVER's credit. ASPA's Government Affairs Committee has been very involved in working with them on the details and mechanics of this possible proposal.

As it currently stands, the proposal being considered would transform the current law SAVER's credit into a government matching program. Eligibility for the SAVER's match would still be dependent on the taxpayer's adjusted gross income (combined in the case of married taxpayers). However, the income phase-out would be smoother and the maximum limit increased. So, for example, the match would be 50 percent on contributions up to $2,000 for married

2004 ASPA Summer Conference

Plan now to attend an educational opportunity that pension professionals can't afford to miss! Mark your calendar for **ASPA's Summer Conference, July 18–21, 2004, in San Francisco, CA at The Palace Hotel**.

ASPA's 6th Summer Conference offers five concurrent workshops designed with all retirement plan professionals in mind. Private sector experts and government officials will share their knowledge and skills, as well as solicit your input on a variety of issues. You will have the opportunity to learn from the best in the business and to share your experience with your peers on topics of interest to you. Find out about the latest developments in our industry and stay ahead of the curve!

Early registration, received by June 26, 2004, is $790 for ASPA members and $970 for non-members. Room rates at The Palace Hotel are $215 single or double.

Watch your mail this spring for the conference brochure, or check out the ASPA Web site for all the latest information and updates.

For more information, contact ASPA's Meetings department at (703) 516-9300, by e-mail to **meetings@aspa.org** or visit our Web site at **www.aspa.org**.

taxpayers making a combined adjusted gross income up to $35,000, which would then be ratably phased out (reduced by two percent per $1,000 in additional adjusted gross income) up to $60,000 in combined adjusted gross income. The actual brackets will naturally be dependent on revenue considerations. However, it is quite likely that more than half of all American households will be eligible for some level of SAVER's matching contribution.

Most significantly, instead of a reduction in a taxpayer's tax liability, the new SAVER's match would be deposited directly into the retirement account [*i.e.,* Roth IRA (or RSA, if it replaces the Roth IRA) or 401(k)-type plan account] of the taxpayer pursuant to the taxpayer's instructions. The ability of any taxpayer to direct his or her SAVER's match to an employer plan account would be subject to the willingness of the plan sponsor to accept such match amounts. In other words, this feature is optional for employer plans, *not* mandatory. The new SAVER's match proposal contemplates that a taxpayer eligible for a SAVER's match would provide the IRS with account and routing information to enable the Treasury to direct the match to the retirement account of the taxpayer.

In the case of contributions to an employer plan, such contributions would be batched like payroll contributions (with identifying taxpayer identification numbers) so amounts could be properly allocated to the accounts of participants. The contributed match amounts would be treated as after-tax contributions [Roth 401(k) contributions under Section 402A, in the case of matches made to an employer plan], but would not count against any contribution limits. (We recognize that there are some serious bugs to be worked out with all of this in the employer plan context, and we have already begun consulting with ASPA members involved with recordkeeping systems.) However, as an incentive for employers to take on the burden of accepting the SAVER's match, and also in the hope that employers will promote it to their employees, we have been proposing that the SAVER's match will count toward satisfying the ADP test like a QNEC, subject to certain limitations.

The proposal may also suggest the creation of a new form of Treasury savings bond—the "R" bond—which is essentially a series "I" (inflation-indexed) bond, but with distribution restrictions that would prevent the bondholder from redeeming the bond until age 59½, death or disability. For taxpayers entitled to a SAVER's match, but whose employer is unwilling to accept the match into their plan, they could receive the amount of their match in the form of an R bond without having to set up a Roth IRA, which may be difficult given the small amounts involved. Further, the R bond could be used as a substitute primary savings vehicle for those low-to-moderate income taxpayers who are not covered by an employer plan and who are also uncomfortable with establishing a Roth IRA at a financial institution. It is also expected that R bond amounts could be redeemed and rolled over to a Roth IRA or employer plan, if willing.

Obviously, this proposal is a fairly dramatic policy undertaking. However, given the importance of promoting retirement savings by low-to-moderate income working Americans, we think it is an initiative seriously worth exploring. Of course, a major proposal like this will take some time, so do not expect anything significant to happen this year. Stay tuned—things certainly never stay still here in Washington, DC. ▲

Brian H. Graff, Esq., is the Executive Director of ASPA. Before joining ASPA, he was pension and benefits counsel to the US Congress Joint Committee on Taxation. Brian is a nationally recognized leader in retirement policy, frequently speaking at pension conferences throughout the country. He has served as a delegate to the White House/Congressional Summit on Retirement Savings, and he serves on the employee benefits committee of the US Chamber of Commerce and the board of the Small Business Council of America.

The legal aspects and administration of retirement plans can be complex, but you're not alone.

To find out how we can help, contact your regional pension sales manager or call 1-800-321-6064 (press 4 then press 1).

- Ranked No. 1 recordkeeper based on number of Defined Contribution plans[1]
- More than $46 billion in total defined contribution assets under management[2]
- More than 2.5 million defined contribution participants[2]
- Recognized by the American Institute of Certified Public Accountants (AICPA) as the preferred provider of retirement plans for CPA clients[3]

Nationwide Financial

Continued from page 1

Workers to Employers: Give Us More Retirement Advice

the employer," said Catherine Collinson of the Transamerica Center for Retirement Studies. "Moving forward, it will be interesting to see how this issue plays out, considering that President Bush's Retirement Savings Accounts and Lifetime Savings Accounts proposal would place an even greater burden on workers to manage their savings without guidance or assistance from employers."

WORKPLACE RETIREMENT BENEFITS REMAIN UNSCATHED

While the economic downturn has forced many employers to make tough decisions regarding employee compensation and benefits, retirement savings plans have come through the last 12 months relatively unscathed. The survey found that while many employers have resorted to salary freezes (24%), downsizing (32%) and the elimination of bonuses (18%) over the last year, only 5% report reducing or eliminating their retirement benefit.

"While it's no secret that workplace retirement benefits are an essential tool for helping workers plan and save for their retirement," said Catherine Collinson of the Transamerica Center for Retirement Studies, "it is encouraging to see small business employers treating the benefits as a priority and not a perk."

That's good news for employees, particularly since a company-sponsored plan is the only vehicle many use for retirement planning. Sadly, the number of workers who save outside of a work-related retirement plan is steadily decreasing, from 61% in 2001 to 52% in 2003. Workplace retirement benefits continue to be very important to employees. The number of workers rating retirement benefits as very or somewhat important was 91% this year (90% in 2002), still a very close second to health insurance (96%).

DISCONNECTS REMAIN BETWEEN EMPLOYERS AND EMPLOYEES

However, a disconnect remains between employers and employees about the importance of retirement benefits. More than half of employees (51%) said they would be more likely to accept a job offer that only meets their minimum salary requirements but offers excellent retirement benefits, compared to one that offers excellent salary but poor retirement benefits. And while nearly three out of four employers (74%) believe employee-funded retirement packages are very or somewhat important in attracting new workers, fewer than one-third (30%) thought that employees would choose the job with the excellent retirement benefits over one with a higher salary and less favorable benefits.

One area where workers and employers appear to be on the same page is the type of retirement plan they prefer. Company-matched 401(k) plans are preferred by 65% of workers and 64% of employers, while a company-funded pension plan is preferred by 28% of workers and 29% of employers.

WORKERS RE-ENGAGING WITH RETIREMENT PLANNING

As employees sought additional information and guidance, they showed other signs of becoming re-engaged with their retirement planning:

Involvement in monitoring and managing: Workers are more involved in monitoring and managing their retirement savings than in previous years (79% in 2003 vs. 67% in 2002).

Plan enhancement recommendations: One in eight workers (12%) actually suggested to their employer new investment options or features for their plan.

Not putting it off: Less than one third (31%) either strongly or somewhat agreed that they prefer not to think about or concern themselves with retirement planning until they get closer to retirement.

Though many workers are becoming more engaged, there is a surprising percentage of workers who have stopped participation altogether over the past three years. Reported participation has dropped from 80% in 2000 to 61% in 2003.

STRUGGLING ECONOMY HAS LITTLE EFFECT

The survey also revealed that the struggling economy has not caused employees to make many changes to

> ***"It is encouraging to see employees starting to take control of their retirement planning again," said Collinson. "Greater involvement and a willingness to think about their retirement now will alleviate a lot of concern and anxiety in the future and help employees meet their retirement goals. However, there is clearly a need to re-engage the people who have stopped participating in their retirement plans altogether and educate them on the benefits of long-term investing."***

their retirement investments. This behavior, similar to 2002, may again be due to a lack of expertise in retirement investing, conceded by the majority of employees (71%). These observations were made over the last year:

Delaying retirement: Due to the economic downturn, more than one third (38%) of employees think their retirement age will be further away than it was two years ago.

Asset allocation: 81% of workers did not change their asset allocation within their employee-funded retirement plan.

Contribution levels: 70% of workers held contributions to their retirement plans constant over the last year, only 6% reduced and just 3% stopped their contributions. ▲

About the Transamerica Center for Retirement Studies℠

The Transamerica Center for Retirement Studies is charged with monitoring and analyzing employer and employee-related retirement issues in the small business retirement market, ranging from emerging retirement trends to new legislation. Prior to 2002, this survey was conducted through Transamerica Retirement Services. The survey was conducted by telephone between August 12 and September 3, 2003, and included 300 small business executives and 600 full-time small business employees (ages 18+). The companies varied in size from ten to 500 employees. The current and past surveys are available on the Center's Web site at **www.ta-retirement.com/thecenter**.

About Harris Interactive®

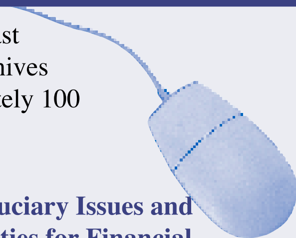
*Harris Interactive (**www.harrisinteractive.com**) is a worldwide market research and consulting firm best known for The Harris Poll®, and for pioneering the Internet method to conduct scientifically accurate market research. Headquartered in Rochester, NY, Harris Interactive combines proprietary methodologies and technology with expertise in predictive, custom and strategic research. The company conducts international research through wholly owned subsidiaries—London-based HI Europe (**www.hieurope.com**) and Tokyo-based Harris Interactive Japan—as well as through the Harris Interactive Global Network of local market and opinion-research firms, and various US offices.*

Footnotes

[1] With a probability sample of this size, one can say with 95 percent certainty that the results for the employer sample have a statistical precision of plus or minus 5.7 percentage points of what they would be if the entire small business employer population had been polled with complete accuracy. For the employee sample, at 95 percent certainty, the statistical precision is plus or minus 4.0 percentage points. Employer data were weighted based on employee size distributions reported by Dun & Bradstreet within the 10-500 employee size range. The worker data were weighted using standard Harris Interactive demographic targets, including gender, age, education, ethnicity, region, household size and number of telephone lines in the household; the worker sample was also weighted to reflect the distributions of employees in US firms of the target sizes.

Available Webcast Recordings

Missed a recent ASPA webcast? Need two extra ASPA CE credits? Check out the list of webcast recordings that are available on ASPA's Web site at **http://www.aspa.org/webcast/**. These archives are available for access at your convenience, any day, any time. Each webcast runs approximately 100 minutes in length. Visit the Web site to register online!



The following webcast recordings are currently available:

2003 Form 5500
Valeri L. Stevens, APM
Available until March 31, 2005

Washington Update
Brian H. Graff, Esq.
Available until February 28, 2005

QDRO Administration
Linda R. Morra
Available until November 30, 2004

IRS/ASPA 401(k) Update
Lisa Mojiri-Azad
Janice M. Wegesin, CPC, QPA
Available until October 31, 2004

Deemed IRAs
Charles J. Klose, FSPA, CPC
Available until August 30, 2004

IRS Voluntary Correction—Easier, More Flexible, AND Lower Fees
James C. Paul, APM
Joyce Kahn
Available until July 30, 2004

How Much is That Required Minimum This Year?
Richard Hochman, APM
Available until July 30, 2004

401(k) Fiduciary Issues and Opportunities for Financial Consultants
Fred Reish, APM
Available until June 30, 2004

2002 Form 5500 and Related Compliance Issues
Valeri L. Stevens, APM
Available until April 30, 2004

Cost: $125 for Members, $225 for Non-members

2003
Transamerica Center for Retirement Studies℠ Small Business Retirement Survey
Key Findings

THE 2003 TRANSAMERICA SMALL BUSINESS RETIREMENT SURVEY IS THE SECOND SURVEY RELEASED BY THE TRANSAMERICA CENTER FOR RETIREMENT STUDIES℠ AS PART OF ITS ONGOING MISSION TO MONITOR AND UNDERSTAND RETIREMENT ISSUES FACING THE SMALL BUSINESS COMMUNITY. THE SURVEY WAS CONDUCTED BY TELEPHONE BY HARRIS INTERACTIVE® BETWEEN AUGUST 12 AND SEPTEMBER 3, 2003, AND INCLUDED 300 SMALL BUSINESS EXECUTIVES AND 600 FULL-TIME SMALL BUSINESS EMPLOYEES (AGES 18+).[1] THE COMPANIES VARIED IN SIZE FROM TEN TO 500 EMPLOYEES.

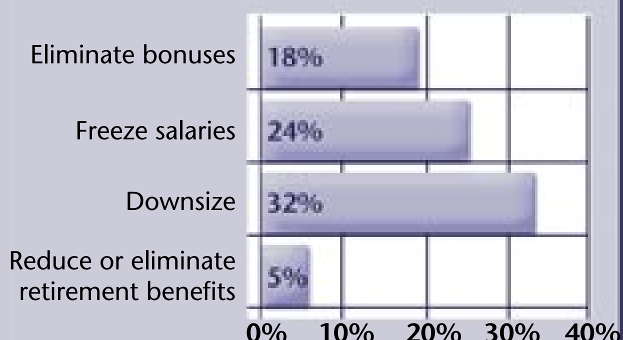
RETIREMENT BENEFITS CRUCIAL FOR RECRUITMENT AND RETENTION

- Nearly three-fourths (**74%**) of employers feel employee-funded retirement benefits are very/somewhat important in attracting employees, up from **67%** in 2002.
- **75%** of employers feel employee-funded retirement benefits are very/somewhat important in retaining employees, compared to **72%** in 2002.
- Retirement benefits continue to be very important to workers: the number of workers rating retirement benefits very or somewhat important was **91%** this year (**90%** in 2002), a very close second to health insurance (**96%**).
- Just over half of workers (**55%**) agree strongly/somewhat that they could work until age 65 and still not save enough to meet their retirement needs. **90%** of employers feel their workers will not have saved enough by age 65.

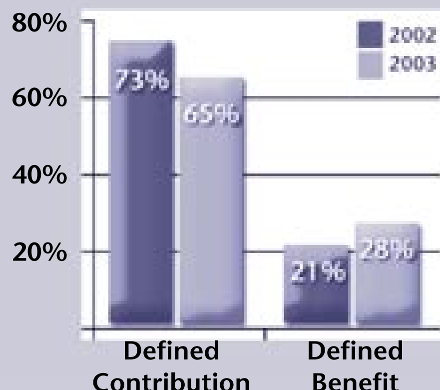
WORKERS ARE LOOKING FOR GUIDANCE

- Three-fourths of workers (**71%**) believe strongly/somewhat that they "do not know as much about investing as they should."
- Employers perceive that the number of workers who feel it is better to manage their own retirement savings rather than have it managed by outside experts has declined significantly since 2002 (**50%** versus **63%**).
- The number of workers who report saving for retirement on their own, outside any work-related retirement plan, has declined again (**52%** in 2003 vs. **59%** in 2002 and **61%** in 2001).
- A shifting preference toward defined benefit plans shows an increasing number of employees are looking toward employers to shoulder the burden of retirement planning (see chart at right).

Over the past 12 months, just 5% of employers report reductions in retirement benefits offered, in spite of needing to make other difficult choices.



Though defined contribution plans are favored by most workers, defined benefit plans are gaining in popularity.

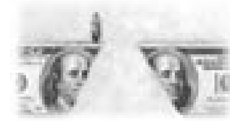


Footnotes

[1] With a probability sample of this size, one can say with 95 percent certainty that the results for the employer sample have a statistical precision of plus or minus 5.7 percentage points of what they would be if the entire small business employer population had been polled with complete accuracy. For the employee sample, at 95 percent certainty, the statistical precision is plus or minus 4.0 percentage points. Employer data were weighted based on employee size distributions reported by Dun & Bradstreet within the 10-500 employee size range. The worker data were weighted using standard Harris Interactive® demographic targets, including gender, age, education, ethnicity, region, household size and number of telephone lines in the household; the worker sample was also weighted to reflect the distributions of employees in US firms of the target sizes.

Continued from page 4

Avoiding Investment Advice Hazards



requirements.

WHAT DO THE NONDISCRIMINATION RULES REQUIRE?

Qualified plans must make benefits, rights and features (BRFs) available in a nondiscriminatory manner.[5] The definition of BRF includes all optional forms of benefits, ancillary benefits and *other rights and features* available to any employee under the plan.[6] The term *other rights and features* generally means "any right or feature applicable to employees under the plan."[7] There is an exception for rights or features that "cannot reasonably be expected to be of meaningful value to an employee (*e.g.*, administrative details)."[8]

The opportunity to receive investment advice is not specifically listed as a right or feature. However, the Treasury regulations do include, in the definition of rights or features, the analogous right to direct investments and the right to a particular form of investment. The regulations also state that the list is not exclusive.[9] Further, the right to use an investment advisor does not appear to fit within the "no meaningful value" exception, as evidenced by what participants are charged for investment advice services. As a result, there seems to be little question that investment advice services would be an *other right or feature*, subject to the qualification requirements for nondiscrimination.

As such, if a plan offers investment advice, access to that service must be both currently and effectively available to employees. Treas. Reg. §1.401(a)(4)-4 provides a safe harbor for the current availability requirement—satisfying the ratio percentage test (*i.e.*, the percentage of NHCEs to whom the BRF is available equals or exceeds 70% of the HCEs to whom the BRF is available). However, there is no safe harbor for the effective availability requirement.

HOW DOES A PLAN SATISFY THE EFFECTIVE AVAILABILITY REQUIREMENT?

A determination as to whether the effective availability requirement has been met (*i.e.*, the right does not substantially favor HCEs) is based on the "relevant facts and circumstances."[10] While the regulation does not provide any further detail as to which facts and circumstances will be considered relevant, the regulation includes examples that offer some guidance. In two of the examples, the IRS found that the BRFs did not satisfy the effective availability requirement where the only employees who were likely to receive any benefit were HCEs.[11] One of these examples involved a two-week retirement window about which non-highly compensated employees (NHCEs) were not notified. The other example provided for such narrow eligibility (*i.e.*, terminating employment between July 1, 1999, and January 1, 2000, due to a specific type of disability) that it did not reasonably cover anyone but a particular HCE. In another example, all of the HCEs, but only a few NHCEs, were eligible for the BRF.[12] Although these examples stated that the ratio percentage test was satisfied, the IRS found that the BRFs were not effectively available as only HCEs would be likely to receive the benefits.

Some investment advisors require minimum account balances or impose significant fees in order to receive the advice. An argument can be made that the use of such an advisor by an HCE will not violate the nondiscrimination rules if a particular requirement is externally imposed (*i.e.,* the plan permits the use of investment advisors generally and, as a result, each participant may select his own advisor, but an HCE participant selects an advisor with a high minimum.) For example, under this argument, even if the advisor's restriction on its face is discriminatory, there is no violation of Code Section 401(a)(4) because the plan itself does not impose the restriction.

Examples of external restrictions are impositions placed on participants from sources other than a plan or its fiduciaries, whereas internal restrictions are impositions placed on participants by the plan document or a fiduciary through the operation of the plan. External restrictions could include minimum dollar amounts imposed by the investment provider (*e.g.*, for a stock brokerage account), a minimum amount for a particular investment or a minimum balance to use a particular investment advisor. For example, the requirement of a $100,000 minimum investment by a hedge fund would be an external restriction. Some ERISA attorneys believe that the availability of investments with externally imposed restrictions would not cause a plan to violate the nondiscrimination rules.[13] Although the IRS has not provided any definitive guidance on this matter, some IRS officials have taken the position that the IRS does not agree with this conclusion.[14]

If a plan selects an investment advisor for participants that requires a minimum balance of $10,000, it may not be considered an external restriction. As a practical matter, it may be considered a plan-imposed or

internal restriction, if that is the only investment advisor available to the participants. For example, suppose the plan is a typical plan in which many NHCE's account balances do not exceed $10,000. A recent EBRI study indicated that 45% of 401(k) participants have account balances of less than $10,000—and presumably these accounts are primarily held by NHCEs.[15] If all of the HCEs have account balances of at least $10,000, but only 45% of NHCEs have account balances of at least $10,000, the plan would not pass the safe harbor (*i.e.,* the ratio percentage test) for effective availability. As a result, the plan would need to demonstrate, based on facts and circumstances, that the right to use the investment advisor was both effectively and currently available to NHCEs. As indicated above, the examples provided in Treas. Reg. §1.401(a)(4)-4(c)(2) stated that the BRFs used in the examples were not currently available, even though the plan passed the ratio percentage test with respect to these BRFs. Thus, it appears as though the plan would have considerable difficulty proving that the right to use the investment advisor was both effectively and currently available to NHCEs.

UNREASONABLE FEES MAY CAUSE THE PLAN TO VIOLATE THE NONDISCRIMINATION RULES

Similarly, if a plan charges an unreasonable fee for the advice, it may violate the Code's nondiscrimination requirements. For example, a nondiscrimination issue could arise if the plan required a fee of 25 basis points for investment advice with a minimum of $2,500 per year. If this amount was a plan-imposed limit, then the fee would likely be so high that it precluded most NHCEs from being able to use the service. As a result, the advice service would probably not satisfy the Code's nondiscrimination rules regarding current and effective availability.

AVOIDING POTENTIAL DISCRIMINATION PROBLEMS

An argument can be made that the selection by the plan of an investment advisor that requires a minimum account balance or imposes a significant fee does not violate the nondiscrimination requirements. Those who subscribe to this argument take the position that participants are not required to use the investment advisor designated by the plan; instead, they may select their own investment advisor without even notifying the plan.

However, where the plan sponsor designates an investment advisor who imposes minimum account balances or significant fees and does not expressly allow the use of other investment advisors by participants with smaller balances or advisors with lower fees, it may, as a practical matter, effectively impose the minimum requirements of the selected investment advisor as plan restrictions. Although any participant can hire his or her own investment advisor, that would require him or her to pay the investment advisor out of his or her own pocket and to take the investment advisor's advice and implement it personally.

Assuming there is a discrimination issue, we see three ways to avoid the problem:

1. ***Allow participants to use any outside investment advisor.*** So long as the plan allows participants to use any outside investment advisor, the plan will not violate the nondiscrimination rules, even if a particular advisor is not available in a nondiscriminatory manner. Thus, any limitation imposed by an outside advisor—such as a $10,000 account balance requirement imposed by the investment advisor—would be an external, not an internal, restriction. The plan should not provide any particular advisor with any preferential treatment in terms of connectivity or communication.
2. ***Monitor demographics.*** If an investment advisor is currently and effectively available to NHCEs in a nondiscriminatory manner, then the investment advisor does not have to be available to every NHCE. But, the plan would need to satisfy the Code's discrimination testing requirements. However, this option is probably not available for most plans (because of the high proportion of non-HCEs with small account balances).[16] And, as a practical matter, few plans would want to take on this additional testing burden or the risk of failure.
3. ***Choose an investment advisor that does not require a minimum balance.*** If a plan offers the services of an investment advisor that is available to all participants (*i.e.*, not conditioned on a minimum balance or a high minimum fee), the nondiscrimination rules will be automatically satisfied.

We believe that most plans are satisfying the nondiscrimination requirement by selecting investment advisors that impose a relatively small charge (so that all participants can afford it) or, alternatively, the plan sponsor or the investment provider is covering the cost so that it is nominally free to the participants.

THE PROHIBITED TRANSACTION ISSUE

ERISA's prohibited transaction rules prohibit a fiduciary from providing conflicted investment advice, that is, advice that results in additional compensation to the fiduciary. Since, as explained earlier in this article, investment advisors are ERISA fiduciaries, they are subject to the restrictions of the prohibited transaction rules found in ERISA Sections 406(b)(1) and 406(b)(3), which prohibit an investment advisor from dealing with plan assets for its own interest or account and from using its authority to cause the plan to pay it an additional fee. A corresponding DOL regulation states "a fiduciary may not use the authority, control or responsibility which makes such a

person a fiduciary to cause a plan to pay its additional fee to such fiduciary."[17]

These prohibited transaction issues typically arise when an investment advisor is giving advice on investments that can affect its own income. For example, some mutual fund companies and their affiliates ("mutual fund providers") receive income from investment advisory fees from the mutual funds they manage. Additionally, some insurance companies, banks and trust companies (collectively "alliance providers") may receive revenue sharing from their multi-fund family offerings. Mutual fund and alliance providers may give advice on their investments without violating the prohibited transaction rules under certain circumstances. Their options are described below.

Offsetting Revenue Sharing Amounts By Fees. The DOL determined in an advisory opinion, known as the "Frost Opinion" (http://www.reish.com/pa/benefits/op97-15atext.cfm), that a fiduciary did not engage in a prohibited transaction where it offset the amount of compensation it received from third parties against the fees it charged a plan. [18] Although Frost gave investment advice on funds for which it received revenue sharing, it offset its fees by amounts it received from revenue sharing. To the extent any revenue sharing amounts exceeded the fees charged by Frost, the plan was entitled to the excess amount.

Thus, for the revenues received from the investments, the provider could rely on the Frost Opinion if it offset its fees by the amounts it received from revenue sharing (and, for funds it managed, by its investment management fees). To do so, it would need to enter into an agreement to that effect with an independent plan fiduciary. (Arguably, such an explicit written agreement might not be required if the conditions of the Frost Opinion were being observed in practice, but we believe the safer course—and one more consistent with a strict reading of the opinion—would be to formalize the arrangement.)

Leveling the Revenue Sharing Received on the Investment Options. While ERISA prohibits mutual fund and alliance providers from giving advice on investments that can affect their own incomes, it does not prohibit them from giving advice where their income is not affected. Thus, if an investment advisor will receive the same amount of revenue regardless of which investment it recommends, the investment advice will not cause it to engage in a prohibited transaction. In order to ensure that they will receive the same amount of revenue for each investment, mutual fund and alliance providers should only provide advice on funds that provide the same level of revenue sharing. For example, some investment providers give advice on their proprietary product (for which each fund generates the same level of revenue sharing), but will not provide advice on the retail funds they offer.

Using an Independent Investment Advisor. The DOL determined in an advisory opinion, known as the "SunAmerica Opinion" (http://www.reish.com/pa/benefits/2001-09a.pdf), that a fiduciary did not engage in a prohibited transaction where it arranged for an independent advisor to give investment advice to participants in plans for which it provided investments.[19] The DOL states "Whether a party is 'independent' for purposes of the subject analysis will generally involve a determination as to whether there exists a financial interest (*e.g.,* compensation, fees, etc.), ownership interest or other relationship, agreement or understanding that would limit the ability of the party to carry out its responsibility beyond the control, direction or influence of the fiduciary."[20] In the SunAmerica Opinion, the following facts were provided as evidence that the investment advisor was independent: (1) the fees received by the investment advisor from SunAmerica did not exceed 5% of its annual gross income; (2) the fees paid were not affected by the investments made by participants based on the investment advice given; (3) neither the choice of the investment advisor, nor any decision to continue or terminate the relationship would be based on the fee income to SunAmerica; (4) there were no other relationships between SunAmerica and the investment advisor; and (5) SunAmerica was obligated to use the investment methodology and output developed by the independent investment advisor—that is, neither SunAmerica, nor its affiliates, were able to change or affect the output of the computer programs. Mutual fund and alliance providers may utilize an independent investment advisor, in accordance with the SunAmerica Opinion, in order to avoid these types of prohibited transactions.

Pending Legislation to Remove Prohibited Transaction Provisions. There is currently legislation that would remove this prohibited transaction issue—known as the Boehner bill. The Boehner bill would create a prohibited transaction exemption for investment advice on their own products by registered investment advisors, banks, insurance companies or registered broker/dealers if certain disclosure requirements are met. These disclosure requirements are satisfied if, near the time the advice is initially provided, the participant is given notice of: (1) all fees and/or commissions to be paid to the investment advisor; (2) the relationship between the investment advisor and the investments offered; (3) any limitation on the scope of the advice; (4) the types of service offered by the investment advisor; (5) that the investment advisor is a fiduciary; and (6) that participants can hire their own independent investment advisors at their own cost. Disclosures

required by applicable securities laws would also have to be made. Additionally, any fees and commissions paid to the advisor would have to be reasonable and any sale of investments by the investment advisor would have to be at fair market value. The House of Representatives passed the bill on April 11, 2002, and it is currently being considered by the Senate. The DOL has expressed support for the bill.

Prohibited Transaction Class Exemption. The DOL issued a prohibited transaction class exemption, PTCE 77-4 (www.reish.com/pa/benefits/ptce77-4.cfm) that provides relief from ERISA Section 406(b)(1) if certain requirements are met. The class exemption provides that an investment advisor for participants, who is also an investment advisor to a mutual fund, may make recommendations to the plan about funds, including the fund it advises, so long as:

- No commission is paid in connection with the plan's purchase of the mutual funds (which eliminates broker-sold investments);
- No redemption fee is paid upon sale of the mutual funds, unless it is only paid to the fund and the investment advisor does not share in the fee;
- An independent fiduciary (*e.g*., the plan committee) approves the selection of the investment advisor and approves its compensation; and
- The investment advisor offsets the advisory fee it receives from the mutual fund against the fees it charges the plan participants for investment advice services.

However, PTCE 77-4 does not apply to any alliance funds of an investment advisor, since the class exemption is limited to the situation of an investment advisor acting as a fiduciary for the selection of mutual funds for which it also serves as the fund advisor.

CONCLUSION

There has been considerable debate over the last several years about the permissibility and advisability of "conflicted investment advice"—that is, investment advice offered by a mutual fund investment advisor on its own products. No one seriously questions the need for participant investment advice, but the proper way to deliver it—and by whom—has been an ongoing concern. Included in this debate is the issue of cost. In order to provide advice, some advisors impose significant charges or require minimum account balances. As a result, the nondiscrimination requirements may be violated. However, by properly structuring investment advice, mutual fund and alliance providers may offer investment advice without violating the nondiscrimination and prohibited transaction rules. ▲

Footnotes

[1] Research Report: How Well Are Employees Saving and Investing in 401(k) Plans, 2002 Hewitt Universe Benchmarks, Hewitt Associates LLC, p. 54.

[2] 401(k) Plan Participants: Characteristics, Contributions and Account Activity, Investment Company Institute; similar results were reported from surveys by Fidelity Investments and Mutual of Omaha Companies.

[3] 401(k) Participant Preferences Study, Mutual of Omaha Companies; nearly identical results were reported in a survey by John Hancock.

[4] Press Release, American Express 401(k) Participant Survey Reveals the Growing Effects of the Down Market, December 2002 (summarizing results from the American Express Retirement Services' 2002 Participant Satisfaction Survey).

[5] Treas. Reg. §1.401(a)(4)-4(a).

[6] Treas. Reg. §1.401(a)(4)-4(a).

[7] Treas. Reg. §1.401(a)(4)-4(e)(3)(i).

[8] Treas. Reg. §1.401(a)(4)-4(e)(3)(ii)(C).

[9] Treas. Reg. §1.401(a)(4)-4(e)(3)(iii).

[10] Treas. Reg. §1.401(a)(4)-4(c)(1).

[11] Treas. Reg. §1.401(a)(4)-4(c)(2), Examples 2 and 3.

[12] Treas. Reg. §1.401(a)(4)-4(c)(2), Example 1.

[13] *See,* American Bar Association, Section of Taxation Letter to Commissioner Rossotti, IRS dated January 27, 1999.

[14] American Bar Association, Section of Taxation, Committee on Employee Benefits, Questions and Answers from May 9, 2003, meeting with IRS, Q&A 9.

[15] EBRI's (Employee Benefits Research Institute) 2002 Retirement Confidence Survey.

[16] See text above at note 15.

[17] DOL Reg. §2550.408b-2(e)(1).

[18] Advisory Opinion 97-15A.

[19] Advisory Opinion 2001-09A.

[20] Advisory Opinion 2001-09A, Footnote 11.

C. Frederick Reish, APM, is a founder of and partner with the Los Angeles law firm Reish Luftman Reicher & Cohen. Fred is a former Co–chair of ASPA's Government Affairs Committee. He is also a former Chair of the LA Benefits Conference and the 401(k) Sales Summit.

Bruce L. Ashton, APM, is a partner with Reish Luftman Reicher & Cohen. His practice focuses on all aspects of employee benefits issues, including representing plans and their sponsors before the IRS and DOL's EBSA. Bruce currently serves as ASPA's President. He has served on ASPA's Board of Directors and as Co–chair of ASPA's Government Affairs Committee.

Debra A. Davis, Esq., is an employee benefits attorney with the Los Angeles law firm of Reish Luftman Reicher & Cohen. She is a member of GAC's DOL subcommittee and 401(k) Fiduciary Task Force.

Continued from page 6

401(k) Products: Investment and Cost Basics

Those plans with more plan assets will get higher levels of service and attention. However, mutual funds have readily used technology to furnish inexpensive 401(k) products for employers, thus the "Internet 401(k) plan solution."

Most mutual fund 401(k) programs will also require all of the 401(k) assets to remain under their control and be invested in their own proprietary funds. Since their revenue is contingent on assets under management, fund families do not make as much money if plan assets do not stay invested in their own funds. A common trade-off with small 401(k) products offered by mutual fund families is that a participant can independently verify share prices, but must invest only in the fund family's own proprietary funds.

Mutual fund companies have realized that many plan sponsors prefer different fund families to be represented in their 401(k) plan. This market pressure has forced the mutual fund companies to partner with other fund companies to offer outside investment options within their 401(k) products. However, the fund company will design the 401(k) product to require a specific percentage of assets to be invested in their own funds as well as require a certain level of revenue sharing from the outside fund company.

Insurance companies have a longer history of "turn-key" 401(k) products, especially for smaller employers and smaller plans. When 401(k) plans came into existence, insurance companies realized one of their existing products, a group variable annuity, was a suitable and readily adaptable vehicle for 401(k) assets and their recordkeeping. A group variable annuity is a contract that accepts "premium" payments over periodic intervals of time. That premium is invested into market-based securities that are held in separate accounts, and at a specified end of the contract period, the account balance can be liquidated or "annuitized" into periodic benefit payments. These benefit payments are based upon the lifetime of the premium payer or his or her spouse. The annuities' separate accounts are segregated from the general assets of the insurance company and are independently accounted for on the insurance company's financial statements.

Insurance companies are regulated on a state-by-state basis. An insurance company must file its group annuity contract in each state that it wishes to sell the product. The product is then marketed to the end user [the company that sponsors the 401(k) plan] via the insurance company's distribution channels. In some cases, the insurance company employs agents to directly sell its 401(k) products. In other cases, the insurance company employs a representative to distribute the 401(k) product to independent insurance agents and brokers who are appointed with that insurance company to sell their products. An insurance agent or broker must be individually licensed in each state to sell the insurance company's products.

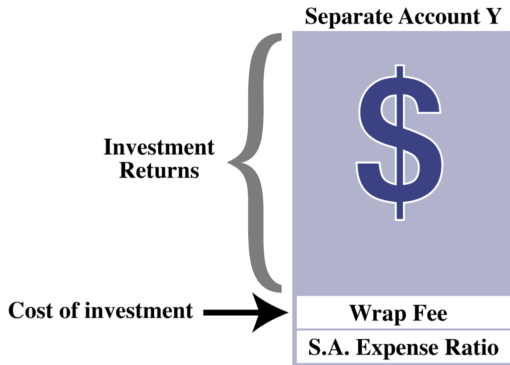
The pricing of insurance group variable annuity 401(k) products is based upon the revenue generated from the underlying separate account investments. An asset manager employed by the insurance company can manage separate accounts, or a separate account can be managed ("sub-advised") by an outside asset manager. When a separate account is managed in this fashion, it operates almost identically to a mutual fund. One major difference, however, is that separate accounts, as insurance company products, are exempt from SEC registration and other reporting requirements. However, many insurance companies will publish simplified documents outlining the separate account's investment objective and pricing.

If the insurance company manages the separate account, then it directly makes revenue from the management of the assets. When the management and other expenses of the separate account are calculated, they are often expressed as a percentage of the separate account. This "expense ratio" can take on many different names, depending upon the insurance company. The separate account "unit price" reflects management expenses, but there may be additional embedded expenses. Like mutual fund 401(k) products, the revenue from the separate account fees may offset recordkeeping or compliance administration expenses.

Often within insurance company 401(k) products, the separate accounts will be created and then wholly invested in outside "name-brand" mutual funds. Although the name of the separate account may reflect the mutual fund's name, it is important for a 401(k) participant and plan sponsor to realize that they are investing in the separate account, not the mutual fund itself. The management fee and expense ratio of the registered mutual fund may or may not match the separate account expense ratio. In almost all cases, the net asset value share price of the underlying mutual fund will not match the unit price of the separate account. These differences can cause

great confusion among participants, so education regarding investment pricing is critical.

In order to profitably offer the diversity of different fund managers or "name-brand" mutual funds to small 401(k) plans, insurance companies will price their 401(k) product with an asset based charge and may negotiate revenue sharing agreements with the funds that they wish to use in their 401(k) product. (See "Separate Account Y.")



The asset charge in insurance company products is commonly called a "wrap fee" because it "wraps" around all of the plan's assets. The wrap fee has a direct impact on the investment's performance because it is in addition to the underlying mutual fund expense ratio. Revenue sharing is the agreement between a mutual fund company and an insurance company to share in the "revenue" produced by the money raised by the mutual funds' investment management charges. Depending upon the level of revenue sharing, the insurance company may offset the amount of their asset-based fee. Other insurance companies might add some additional fees to "make up" for those mutual funds that offer no revenue sharing.

Typically, the level of the wrap fee will decrease as plan assets increase. However, the plan sponsor and participants must be aware of the impact of the wrap fee on their investments' performance. Participants should also be aware that data analysis services, like Morningstar, are not reliable sources of information of 401(k) funds that are invested in separate accounts. While Morningstar might provide useful information about the underlying fund's management or investment style, any Morningstar analytics, like star ranking or modern portfolio statistics that measure risk and return, will not be accurate because they have not have taken into account the separate accounts' wrap fee and its impact on performance.

Through regulatory and market pressure, investment companies have started to provide more direct and simplified disclosure of asset-based charges. However, many plan sponsors do not know the right questions to ask in order to determine the potentially hidden costs of their 401(k) programs. By raising the level of awareness of how investment companies structure their 401(k) products, plan sponsors can become more savvy consumers, participants can make better investment decisions and TPAs can become more proactive in advising their clients about 401(k) opportunities. ▲

Footnotes

[1] ICI report: Mutual Funds and the US Retirement Market in 2002 (PlanSponsor.com July 1, 2003).

[2] DOL: Pension & Welfare Benefits Administration Study on 401(k) Plan Fees & Expenses April 13, 1998.

Virginia Krieger Sutton is the pension account executive at Johnson & Dugan Insurance Service Corporation and is responsible for new business acquisition and client service. Specializing in 401(k) defined contribution plans, Virginia consults with clients regarding all phases of their qualified retirement programs, including plan design, investment selection and review, compliance, vendor assessment, plan conversions, employee education and mergers and acquisitions. Virginia is the Chair of ASPA's Government Affairs 401(k) Plans Subcommittee. She has guest lectured on 401(k) plans for the University of California extension program, and she is an invited speaker on 401(k) plans for Lorman Education Services. Virginia holds her insurance license, and she is an investment advisory representative and registered representative with Securian Financial Services.

Letter from the President

by Bruce L. Ashton, APM

Dear Fellow Members:

The IRS released its long-anticipated guidance on 412(i) plans and valuation of insurance on Friday the 13th. We'll never know whether the irony was intended. Regardless, we now have rules that are reasonably clear, rules you can use in planning and advising clients. (Admittedly, there are issues that Treasury and the IRS haven't addressed, but we're much further ahead in having useful guidance than we were on February 12.)

Don't worry—I'm not going to discuss the substance of the new rules—you've already been bombarded with analyses. My point is much simpler: these new rules are another example, in a long list of examples, of the partnership between ASPA and the government, a partnership which benefits our members in a host of ways.

Over the years that I was involved in the ASPA Government Affairs Committee (GAC) and now as ASPA's President, I've had the privilege of getting to know many of the regulators at the IRS, Treasury, DOL and PBGC and some of our representatives in Congress and their staffs. I've discovered that when we share information, thoughts and concerns, we in the private sector are better able to help shape the rules under which we and our clients operate. Obviously, we don't always agree. And equally obviously, we don't always like the rules the regulators promulgate or the laws that Congress passes.

But I've discovered that when we work together with the regulators and Congress, the results, most of the time, are positive. Consider, for example, the revised LSA/RSA/ERSA proposals, the DOL's emphasis on fiduciary education, the IRS rules and pronouncements cracking down on tax shelters and other abuses involving qualified plans; and there are many others. I, along with Brian Graff, Esq., ASPA's Executive Director, and the leadership of GAC, have worked diligently to get our message heard when we need new guidance, when proposed guidance doesn't make sense or when proposed legislation may be harmful to the creation or maintenance of retirement plans.

What's the point? Because we've been effective in partnering with the government, we've been able to help shape good public policy for the employer-based retirement system. More Americans can now retire with dignity. Also, folks who comply with the rules—ASPA members—have a better chance of competing with folks who don't. Your ASPA membership is made all the more valuable because of our partnership with the government. ▲

Bruce L. Ashton, APM, is a partner with Reish Luftman Reicher & Cohen. His practice focuses on all aspects of employee benefits issues, including representing plans and their sponsors before the IRS and DOL's EBSA. Bruce currently serves as ASPA's President. He has served on ASPA's Board of Directors and as Co–chair of ASPA's GAC.

Weekend Classes—ASPA Consulting Exams

Weekend prepatory classes for ASPA's consulting exams are being offered on April 24 and April 25, 2004, in Philadelphia, PA. The five classes (DC-1, DC-2, DB, C-3 and C-4) will be presented by instructors who have previously taught ASPA weekend and semester-long courses. For more information or a registration form, go to www.savitz.com/weekendclass or contact Bill Karbon at **bkarbon@optonline.net** or (609) 712-3351.

The announcement of these weekend courses does not constitute endorsement by ASPA. In order to preserve the integrity of the examination process, measures are taken by ASPA to prevent course instructors from having any access to information that is not available to the general public. Accordingly, the students should understand that there is no advantage to participation in these courses by reason that they are publicized by the sponsor of the examinations.

Accepting the Challenge

by Scott D. Miller, FSPA, CPC

I HAD THE HONOR OF SERVING AS ASPA'S PRESIDENT FOR 2003. WHAT ONE HAS TO REALIZE AS PRESIDENT IS THAT ONE PERSON CANNOT CHANGE AN ORGANIZATION BY HIMSELF OR HERSELF AND THAT COMPLETE CHANGES DO NOT HAPPEN OVERNIGHT—OR OVER ONE YEAR'S TIME, FOR THAT MATTER. IN AN ORGANIZATION SUCH AS ASPA, TEAMWORK AND SHARED VISION ARE IMPERATIVE TO SUCCESS.

ASPA is an organization with a budget in excess of $7.5 million and over 5,000 members, with at least an equal number of individuals going through ASPA's education and examination program, attending conferences and webcasts and participating in our ASPA Benefits Councils across the country. These statistics are something to be proud of. This success, along with the dedication of our volunteers, is what helps to make ASPA the preeminent organization in the retirement industry.

In 1999, ASPA's Board of Directors started moving toward strategic leadership. The move was to recognize that it was the Board's responsibility to envision the future of our organization, to map out that future and charge our individual committees with implementing programs to nurture and support those visions.

Much was accomplished between 1999 and 2002 in setting the future direction of ASPA. Much soul searching was done to clearly recognize and identify what ASPA as an organization is all about and what the needs of our current and future members are. Much was done to strengthen our existing programs.

During my term as President, the Board was challenged to:

- Move forward on our vision.
- Continue to be strategic.
- Explore our organizational structure and consider changes and refinements to that structure.
- Make sure that the identity of our organization recognized the diversity of our current and future membership and that of our industry as a whole.
- Determine if there was a need to reach out and embrace more professionals in our industry, and if so, how.
- Let everyone know that ASPA is the preeminent organization to educate and to represent individuals in the retirement industry.

I can look back at 2003 and report to you that the ASPA Board of Directors accepted my challenges. ASPA continues to build on our impressive history, continues to be vital and continues to be a strong representative influence in the retirement industry.

Recognizing that while ASPA may have originally started out as mainly an actuarial organization, due to the diversity of our current membership, we are now an organization with a much more broad focus. Due to this recognition, ASPA's Board is now researching the best way in which our organization's name and identity should be changed. These changes are being explored through the use of membership and industry focus groups, as well as communications to the membership through articles in *The ASPA Journal* and membership surveys. Any final decisions on our organizational change will ultimately belong to you, the ASPA membership. Be assured that care is being taken not to lose the recognition and reputation that ASPA has built over the years.

The ASPA Board is currently researching, analyzing, discussing and debating how to better serve those individuals selling retirement programs to employers across the country. It is the Board's belief that by providing better education to the sales and marketing sides of our industry, in addition to the technical sides, we will serve to expand and strengthen retirement coverage for American workers. As we go down this road, it is important that we recognize the unique position that ASPA is in to be able to set the bar for professionals in our industry, to challenge individuals in our industry to reach for those bars and to give the public a means to be able to identify appropriately trained professionals.

Recognizing that ASPA does not exist in a vacuum within the retirement industry, ASPA's Board has been exploring ways of expanding working relationships with other organizations that have common interests. Our exploration has included discussions to encourage more joint programs with organizations such as the Western Pension & Benefits Conference, the Conference of Consulting Actuaries and NIPA. As an outcome from the discussions that we had with

Continued on page 27

Latest Additions to the Board of Directors

by Troy L. Cornett

Ilene H. Ferenczy, CPC, and Nicholas J. White, APM, have been elected to ASPA's Board of Directors and will each serve a three-year term from 2004-2006.

Barry Max Levy, QKA, has been elected to fill a partial term for 2004, and Laura S. Moskwa, CPC, QPA, has been elected to fill a partial term from 2004-2005.

Ilene H. Ferenczy, CPC, a member of the employee benefits community since 1977, is a partner of the firm Powell, Goldstein, Frazer & Murphy LLP, in Atlanta, Georgia. She specializes in qualified pension and profit sharing plans, nonqualified plans, employee stock ownership plans and tax-sheltered annuity plans for tax-exempt organizations. Her expertise includes the design and implementation of retirement plans, consulting with clients on retirement plan issues in relation to mergers and acquisitions, representing companies and plans under audit by the IRS, Department of Labor, and PBGC and consulting with clients regarding a myriad of planning, taxation and fiduciary liability issues.

Ilene received a BA degree, magna cum laude, from the University of California at Los Angeles in 1989, a JD, summa cum laude, from the Western University College of Law in 1992 and a JD, summa cum laude, from the Georgia State University College of Law in 2002. Prior to going to law school, she was a vice president of a southern California pension administration company. Afterwards, she specialized in ERISA at a Los Angeles firm that is nationally recognized for its benefits expertise. She has also worked in the benefits practice of a "Big Five" accounting firm and at a local Atlanta law firm.

Ilene has earned the designations of Certified Pension Consultant (CPC) from ASPA and Accredited Pension Administrator (APA) from the National Institute of Pension Administrators (NIPA). She is a nationally known speaker and has authored more than 40 articles on benefits topics for various national journals. In addition to serving on ASPA's Board of Directors, she is also the Chair of ASPA's Administration Relations Committee of the Government Affairs Committee (GAC).

Nicholas J. White, APM, is a partner of the law firm Reish Luftman Reicher & Cohen, specializing in all aspects of employee benefits law. Before joining the firm, Nick worked for the IRS in the Employee Plans and Tax Exempt Organizations Division, where he served on the technical review staff as a senior reviewer for both determination and examination cases, as well as a technical resource for the Division. He then became the coordinator of the IRS' Western Region Walk-in Closing Agreement Program, now known as the Voluntary Correction with Service Approval Program or VCP. Prior to joining the Technical Review Staff, Nick worked primarily in the IRS' Employee Plans determination letter program, and he served as an occasional instructor for the Division's continuing education program.

Nick graduated from Loma Linda University in 1981 with a BA in History. In 1986, he earned his JD from the University of Southern California Law Center. He has lectured at various conferences for ASPA, NIPA, the Western Pension & Benefits Conference and the American Institute of Certified Public Accountants. He also co-authors a quarterly column regarding IRS remedial programs for the *Journal of Pension Benefits* and is the author of numerous other articles. Nick is also frequently quoted by the pension media.

In addition to serving on ASPA's Board of Directors, Nick is a member of GAC, where he chairs the IRS Subcommittee. He is also a past chair of the ASPA Summer Conference and a past member of the Executive Committee for the Los Angeles IRS Benefits Conference.

Barry Max Levy, QKA, is a pension consultant and president of Levy & Associates. A graduate of the University of Maryland, he has been a guest on financial talk radio and a featured speaker on qualified retirement plans. He has been recognized in both the federal and the state courts as an expert in the area of qualified retirement plans. He joined the predecessor organization, Leo Levy & Associates, in 1989.

Barry is designated by ASPA as a Qualified 401(k) Administrator (QKA). In addition to serving on ASPA's Board of Directors, Barry is currently president of ASPA's Benefits Council (ABC) of South Florida and Chair of ASPA's national committee on Benefits Councils. He is a member of both ASPA's Government Affairs Committee (GAC) and Strategic Planning and Implementation Team.

Continued on page 24

Board Recommends Education Program for Sales Professionals

by Chris L. Stroud, MSPA, and Jane S. Grimm

LAST YEAR DURING HIS ASPA PRESIDENCY, SCOTT D. MILLER, FSPA, CPC, ESTABLISHED SEVERAL TASK FORCES TO RESEARCH SOME TIMELY TOPICS IMPORTANT TO THE FUTURE OF ASPA. ONE OF THE TASK FORCES HE ESTABLISHED, THE SALES PROFESSIONALS TASK FORCE, WAS TASKED WITH THE FOLLOWING ASSIGNMENT: *TO EXAMINE WAYS TO ENCOURAGE RETIREMENT PROGRAM SALES PROFESSIONALS, LIKE 401(k) SALES SUMMIT ATTENDEES, WHO ARE NOT ASPA MEMBERS TO BECOME MEMBERS, INCLUDING THE DEVELOPMENT OF A NEW EDUCATION, EXAMINATION AND DESIGNATION PROGRAM FOR THESE RETIREMENT PLAN SALES PROFESSIONALS.* THE SALES PROFESSIONALS TASK FORCE HAS WORKED DILIGENTLY TO RESEARCH THE RELATED ISSUES, TO UPDATE THE BOARD OF DIRECTORS ON ITS FINDINGS AND TO MAKE RECOMMENDATIONS. THE TASK FORCE IS CURRENTLY OPERATING UNDER THE DIRECTION OF BRUCE L. ASHTON, APM, ASPA'S CURRENT PRESIDENT, AND TASK FORCE CHAIR, CHRIS L. STROUD, MSPA.

WHY SALES PROFESSIONALS?

As many of you know, ASPA's second most successful and fastest-growing conference is the 401(k) Sales Summit. This year, nearly 1,000 people attended the conference.

The success of the 401(k) Sales Summit has shown that this industry segment is eager for education and that ASPA has a great initial audience of Summit attendees for launching a new education program. Many Summit attendees this year and in the past two years have expressed, either verbally or in written comments on conference surveys, that they would like ASPA to offer an educational track that meets their needs. They do not fit the "administrator" or "technical consultant" mode, so the QKA, QPA and CPC programs are not appealing to them. ASPA's APM designation, for those sales professionals who qualify, has no meaning in the financial world and does nothing to help these professionals further their knowledge or distinguish themselves in the retirement planning arena.

TASK FORCE FINDINGS

Numerous phone calls and a face-to-face meeting allowed the Task Force to examine many issues—and the work is not over yet. The Task Force's charges included profiling the typical candidate, confirming a need and an interest in the marketplace, identifying primary topics and the type of education program needed and considering the impact upon ASPA's current members and the organization itself if such an education program were established. Members of the Task Force conducted many personal interviews with sales professionals and institutional representatives, broker-dealer representatives and current ASPA members to obtain viewpoints and observations to determine the viability and support of such a program. Written surveys were also distributed and evaluated.

After careful consideration of all gathered information, the Task Force recommended that ASPA be proactive in order to create a unique program that would be viewed by the marketplace as the education program of choice, allowing sales professionals and sales support professionals to distinguish themselves from their competition. The goal of this education program should be to "raise the bar" by increasing the level of expertise of sales/investment professionals practicing in the retirement planning marketplace.

It was clear to the Task Force that the creation of a sales professional education program was in line with ASPA's current mission statement "to educate… other benefits professionals." In addition, educating and strengthening the expertise of sales professionals who often have direct interaction with plan sponsors serves to "preserve and enhance the private pension system," which is in line with ASPA's stated purpose. The newly adopted ASPA Strategic Plan (See *Letter from the President*, page 24 in the January-February 2004 issue of *The ASPA Journal*.) states ASPA's goals of enhancing professionalism and providing education to all involved in the retirement plan industry. Attracting sales professionals to ASPA would further these goals, and the sales professionals pursuing higher education are an important element of ASPA's envisioned future.

Given that the financial industry is very fragmented, and in order for ASPA's new education program to be noticed and to be successful, the Task Force stressed that a significant marketing effort would need to be launched to give credibility to this new program. The Task Force further recommended that

proper marketing and industry recognition of ASPA's entire array of education programs, including this new program, would be in line with the long-term goals of ASPA's Strategic Plan, and that efforts made to promote ASPA's education programs as the industry's best would be critical to the success of the new education program in order to distinguish it from other less rigorous programs currently available in the industry. The Task Force also noted that ASPA will need to develop strong distribution channels to help promote and support the new education program and to help ASPA penetrate the broad spectrum of sales professionals and sales and marketing support professionals.

THE TARGETED CANDIDATES

The Task Force defined the targeted candidates as people who sell, or influence the sale, of 401(k) or other qualified plans, and/or who support the sales and marketing efforts of those people. Within that group, those who want to distinguish themselves and raise their level of education would be interested in an ASPA-provided education program. Many of these professionals are already Registered Reps, RIAs, insurance brokers/agents, wholesalers, mutual fund reps and some hold the CFP, CHFC, PFS, AAMS, AEP, CFA or similar designations. These professionals are also interested in ongoing education, networking, keeping current on legislative issues and government affairs, continuing education and having a "home" in an influential organization within the retirement planning industry. ASPA has changed and grown as the industry has changed, and since sales professionals play a vital role in retirement planning, it seems logical that ASPA should provide that home.

THE EDUCATION PROGRAM

The Task Force recommended that a certificate program be considered, consisting most likely of two take-home exams. A full designation and ASPA-issued credential could be achieved after passing these take-home exams and most likely at least two additional proctored exams, once a two-year experience requirement in the retirement planning industry is met. Final determination as to the type and number of exams will be determined upon finalization of topics and learning objectives. (Note: The development of learning objectives is currently under way within the Task Force.)

Continuing education credits and ASPA membership would be required to maintain the designation. The designation would be designed for those sales professionals who wish to demonstrate proof of expertise in the qualified plan area and who wish to distinguish themselves in the qualified plan marketplace by demonstrating a level of qualified plan knowledge and understanding of investments and products as they relate to retirement plans. Task force research concluded that this type of education program (especially the certificate program) might also be of interest to institutions looking for basic training materials for their internal staffs and back offices.

It was important to the Task Force members that the new designation provide retirement plan sales professionals with a better understanding of qualified plans, but that the dedication and the education that many of these sales professionals already had would be recognized. For instance, it is not necessary to teach them about investments; however, it is important for them to understand what types of investments are used in a qualified plan. The Task Force also recognized the need to design the education program in such a way that traditional ASPA members would be comfortable with the required knowledge level and the accreditation. The required topics for this new program were determined to relate to the following core competencies:

- Qualified plan fundamentals
- Fiduciary issues and responsibilities
- Market, product awareness, investments
- Distribution planning

DETERMINING A NAME FOR THE DESIGNATION

The Task Force gave a great deal of thought to the name of the designation and the initials of the credential. The Board of Directors asked the Task Force to present possible names at the January 2004 Board meeting, but no clear-cut decision emerged after that meeting. Two possible names under consideration are Qualified Retirement Plan Counselor (QRPC) or Qualified Plan Investment Counselor (QPIC). The Task Force is soliciting additional input regarding possible names and welcomes your comments and suggestions in this area. (Please send comments to **ChrisLStroud@aol.com**.)

Issues to be considered in determining a designation name include:

- Some broker/dealers do not allow their reps to use certain designations on their business cards.
- Is it proper to use the words "investment" or "financial" in the designation, since we are not really testing on these things? However, if we do not use one of these terms or something similar, is the designation name going to be too nebulous?
- Using "marketing" or "sales" in the name probably has a negative connotation and would not be appealing to many who view themselves as investment consultants.
- What words might have legal or professional ramifications or might be sensitive to current ASPA designated members (*e.g.,* representative, certified, financial, investment, advisor, adviser, consultant, etc.)?

Sales Professionals Resolution
Adopted by ASPA's Board of Directors
in October 2003

RESOLVED, that the Society offer courses, a certification and designation for the sales professionals in the retirement plan marketplace;

RESOLVED FURTHER, that the Sales Professionals Task Force be charged with the responsibility of determining a name for such designation and that such suggested name be presented to the Board for approval at the January 2004 Board meeting;

RESOLVED FURTHER, that following approval by the Board of the name and educational level for such designation, a bylaw amendment be presented to the membership for approval;

RESOLVED FURTHER, that the officers and Executive Director are authorized and directed to take such other actions as may be necessary and appropriate to carry out the purposes and intent of the foregoing resolutions, including without limitation the short and long-term financial implications, and exploring the feasibility of obtaining funding from outside sources to assist in the development of appropriate courses, examinations and continuing education requirements.

- How can we make the name meaningful and at the same time easily distinguish it from our other designations?

APPROVAL BY ASPA'S BOARD OF DIRECTORS

During the October 2003 Board of Directors meeting in Washington, DC, the Task Force officially recommended that ASPA move forward with the program and proceed with a certification level, which, according to ASPA's bylaws, does not require a membership vote, and then proceed with a membership vote on the designation. The Task Force also recommended that an announcement be made at the 2004 401(k) Sales Summit that ASPA is actively pursuing a certificate level education program. The target rollout for the certificate level is currently late 2005, and the target for the designation level, pending approval by ASPA's membership, would be in 2006.

ASPA's Board of Directors reviewed the Task Force's report and directed the Task Force to begin developing learning objectives for the education program. The designation will be presented to the ASPA membership as a change in the bylaws. It is expected that the Task Force will present a final report to the Board in July 2004, along with a recommended name for the designation, and that the required membership vote will occur shortly after that date. After careful consideration, the Board voted to approve the Sales Professionals Resolution. (See box above.)

NEXT STEPS

While the Task Force will be further defining the education program and working on its other charges, the future of the designation and credentialing aspects of this new program for the sales professionals will be determined by a vote of the membership and a change in ASPA's bylaws. It is hoped that the information provided in this article will give you an idea of the thought processes and diligence of the ASPA members who considered this issue in great detail.

A hearty "thank you" goes to the following ASPA members who have served or continue to serve on the Sales Professionals Task Force: Bruce L. Ashton, APM; Michael L. Bain, MSPA; Kerry M. Boyce, CPC, QPA; Chris D. Chaia; Mark Davis; David Hand, MSPA; Beverly B. Haslauer, CPC, QPA; Scott D. Miller, FSPA, CPC; Mike Peddicord; Sharon L. Severson, CPC, QPA; Carol J. Skinner, QPA; Virginia Krieger Sutton and also to ASPA staff members Brian Graff, Esq., Executive Director, and Jane Grimm, Managing Director. The Task Force has not completed its mission, but it is well on its way to announcing a new program that will embrace a larger portion of the retirement plan industry! ▲

Chris L. Stroud, MSPA, is president of Stroud Consulting Services, Inc.. Chris is an enrolled actuary and a Member of the American Academy of Actuaries. She currently serves as Vice President on ASPA's Executive Committee and as the Chair of the Sales Professionals Task Force. Chris is the Editor of The ASPA Journal*, a member of ASPA's Technology Committee, ASPA's Finance and Budget Committee and ASPA's Strategic Planning and Implementation Team.*

Jane S. Grimm, Managing Director, has been working for ASPA since 1996. She is the staff liaison to ASPA's Board of Directors and Executive Committee. Before joining ASPA, she worked as the membership director and the director of public affairs for two other associations. Jane enjoys reading, traveling and being with friends. She lives in Annandale, VA, with her husband of 33 years, has two sons, David and Blake (who also works for ASPA) and is the proud grandmother of Jacob.

Continued from page 20

Latest Additions to the Board of Directors

Laura S. Moskwa, CPC, QPA, is vice president and director of TPA services for Transamerica Retirement Services, a top-ten retirement services provider. (Transamerica Retirement Services is a member of the AEGON Group, one of the world's largest financial services organizations.) Laura is responsible for increasing production by expanding and managing third party administrator relationships to market the Transamerica Retirement Services TPA service products. She is instrumental in the development and continued enhancement of the product and services offered, as well as the promotion of Transamerica Retirement Services as a partner to TPAs that provide the local presence.

Laura joined Transamerica with 20 years of experience in the pension industry, of which 18 years were as a TPA, consulting with plan sponsors and their financial advisors in the establishment and maintenance of their retirement plans. She also has experience working in the broker dealer and CPA channels in product development and implementation, as well as assisting in the education and sales process of qualified plans. In addition to serving on ASPA's Board of Directors, Laura serves as Chair of the Marketing Committee, as an Education Divisional Chair on the Education and Examination (E&E) Committee, as Co-chair of Sales and Promotions on the Conferences Committee, and is a member of the Strategic Planning and Implementation Team.

Laura earned her BA in Economics and Finance from Douglas College, Rutgers University. She has attained the designations of Certified Pension Consultant (CPC) and Qualified Pension Administrator (QPA) upon the completion of the ASPA examination process. Laura is also a registered representative, series 7 and 63 licensed. ▲

Troy L. Cornett is the Office Manager for ASPA and an Associate Editor of The ASPA Journal. *Troy has been an ASPA employee since July 2000. In his time away from the National Office, Troy enjoys seeing the latest movie releases, driving his new VW bug, and sipping lattes with his friends at Starbucks.*

Do you want to:

- Learn the latest on pension regulations and litigations?
- Hear the opinions of IRS and DOL representatives on current topics?
- Network and exchange information with other practitioners?

2004 Northeast Area Employee Benefits Conference

Two convenient locations:

Thursday, June 10, 2004
Sheraton Framingham Hotel
Framingham, MA

Friday, June 11, 2004
Crowne Plaza Hotel
White Plains, NY

Attend the 2004 Northeast Area Employee Benefits Conference!

Co-sponsored by
ASPA and the
IRS's Northeast Area Employee Plans, Tax Exempt and Government Entities Division.

Register by May 17 and take advantage of the $275 early registration fee.

For more information, contact ASPA's Meeting department at (703) 516-9300 or by e-mail at **meetings@aspa.org**.

CE Deadline Is Just Around the Corner

by Andrew B. Ledewitz, CPC, QPA, QKA, and Denise E. Calvert

ASPA'S CONTINUING EDUCATION PROGRAM IS DEDICATED TO HELPING YOU STAY ABREAST OF DEVELOPMENTS IN THE RETIREMENT PLANNING ARENA. ASPA HAS A MANDATORY CONTINUING EDUCATION PROGRAM THAT ALL DESIGNATED MEMBERS MUST COMPLETE FOR EACH TWO-YEAR CE CYCLE. ALL ASPA DESIGNATED MEMBERS ARE REQUIRED TO COMPLY WITH THE PROGRAM REPORTING REQUREMENTS IN ORDER TO RETAIN ASPA DESIGNATIONS. CE REPORTING FOR THE CURRENT TWO-YEAR CYCLE MUST BE SUBMITTED TO ASPA NO LATER THAN JANUARY 10, 2005.

The current cycle for earning credits began on January 1, 2003, and will end on December 31, 2004. In order to keep your ASPA designation(s), you must earn 40 continuing education credits during this cycle (and in future two-year cycles). For the initial CE cycle, the number of CE credits required is prorated based on the date of admittance or reinstatement 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

The *ASPA Continuing Education Guidelines & Forms* insert in this issue of *The ASPA Journal* provides a wealth of information on qualifying CE activities, frequently asked questions and CE filing details and forms. Please take some time to review this brochure and determine your plan of action to meet the CE requirements for the two-year cycle ending this year.

LOOKING FOR SOME CONVENIENT AND INEXPENSIVE CE ACTIVITIES?

Take a few ASPA Conference CE Quizzes. Earn up to **22.5 CE credits** each cycle while listening to recordings of some of ASPAs highest-rated workshops from recent Summer and Annual conferences. Purchase the session audio cassettes or CDs from ASPA's conference recording vendor, International Recording Services, by calling (800) 556-0208. Cassettes and CDs cost either $12 or $15 each. Download session outlines and associated quizzes from the ASPA Web site at **http://www.aspa.org/conf/conf-ce.htm**. Then use the recordings and the outlines to complete the quizzes. Return your completed quizzes to ASPA with a $20 grading fee for each quiz submitted.

Answer seven of the ten True/False questions correctly and earn 1.5 CE credits. ASPA currently has 15 Summer and Annual conference quizzes available.

***Keep up-to-date and earn credits by reading* The ASPA Journal.** Earn up to **24 CE credits** each cycle by reading *The ASPA Journal* and then successfully completing the accompanying quizzes. The publications and quizzes can be viewed, downloaded or taken from the Member's Only side of the ASPA Web site at **http://www.aspa.org/conted/newsletter-ce.htm**.

Return each quiz to ASPA with the $20 grading fee. Answer seven of the ten True/False questions correctly and earn two CE credits per issue.

Take advantage of webcasts. Participate in an interactive ASPA webcast or purchase and view a pre-recorded presentation at your convenience.

Earn **two CE credits** for each ASPA webcast you view. From the latest on Form 5500 to government updates, our live and pre-recorded webcasts are another ASPA CE resource as close as your desktop.

***

Early this fall, ASPA will introduce a new online Web-based method to view your ASPA-sponsored CE credits. This new member service will also provide you with the ability to submit and verify your continuing education reporting online. Look for additional details this summer at **http://www.aspa.org/conted/index.htm**. ▲

Andrew B. Ledewitz, CPC, QPA, QKA, works for Invesmart, Inc. in their Boston, MA, office and has worked in the pension field since 1991. Andy has been a member of the Continuing Education Committee since 2003 and has been an ASPA member since 1999.

Denise E. Calvert is ASPA's Director of Membership. At ASPA, she directs membership projects, maintains, develops and implements membership benefits and services and assists the Membership Committee in marketing ASPA membership and benefits. She also serves as the ASPA liaison to the Membership and CE Committees and oversees the coordination of the ABC program. Denise joined ASPA in 2002 and has worked in association management since 1988.

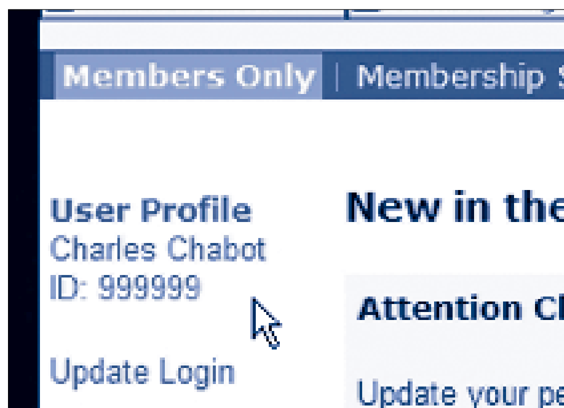
How Recent Rulings Affect You—And What You Can Do

by Chip V. Chabot

In July 2003, the Federal Communications Commission (FCC) began to finalize rulings to prevent the sending of unsolicited promotional faxes unless the sender has expressly given written permission. Close on the heels of the FCC's action, Congress passed, and President Bush quickly signed into law, the CAN SPAM Act to crack down on e-mail spamming. [The law went into effect January 1, 2004, although the regulations have not yet been written by the Federal Trade Commission (FTC).] These two actions that address the glut of unsolicited communications should be a good thing, right? Sure, until you realize that these two actions present a very real risk that ASPA will not be able to send you notices about upcoming conferences, education courses and exams or the latest in government affairs issues.

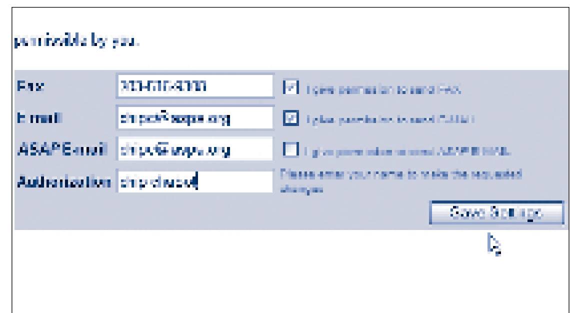
How can you avoid this communication breakdown? Easy. One of the provisions of the fax law, which goes into effect January 1, 2005, states that associations can send unsolicited faxes only if the association has the express approval to do so by the recipient. This approval is to include the fax number that can be used and the signature (actual or electronic) of the intended recipient. The e-mail spam laws follow a similar structure. Given these parameters, ASPA has designed and implemented an online approval system that can ensure that ASPA notices keep coming to you.

To start, log on to ASPA's Web site at **www.aspa.org**. At the top of the left hand column you will find the login link. Once you have logged in, access your user profile by clicking on your name in the left column.



Above your information will be several links that allow you access to various aspects of your records—in this case, you will want to click on the "e-mail/fax approval" button.

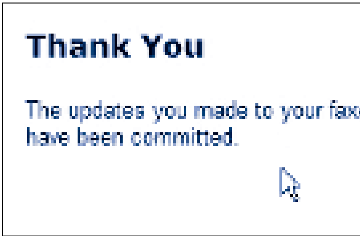
The resulting screen will show your fax and e-mail information from your record in our database. (You will also see an additional e-mail field that is used for instances where you have opted to receive *ASPA ASAP*s at a different e-mail address. In most cases, this will be empty.) You will also see a field for authorization.



If the information is correct and you want to make sure you keep receiving faxes and e-mails from ASPA, just check the "I give permission…" boxes next to the fax and e-mail information. It is very important that you do this. Without checking the boxes, we will not be able to use the related method of communication. If you wish to receive faxes, but not e-mails, just select the "I give permission…" box next to the fax field, and leave the other blank. Do not delete information if you do not want to receive anything. If we do not receive the permission check off, we will not use that method of communication. Also, if the information is wrong, please update it. The changes will automatically be updated in your record.

Once you have the information set up the way you want it, enter your name in the authorization field. Casing is not important; "john doe" works just as well as "Jonathan R. Doe." This box must be completed, or the information will not be submitted to the database.

When everything is set, click "Save Settings." You will see a thank you message upon successful updating.



This article outlines how you can give ASPA permission to e-mail or fax you information via an online submission. Soon you will see this permission request on all forms and communications from ASPA, such as in faxes and e-mails. Compliance is a major concern. To give ASPA permission to e-mail or fax you promotional information, the permission must be in writing or via the Web site. We cannot be given permission verbally via the telephone. However, if you change your mind and wish to remove permission for a form of communication, you can request that information to be changed over the phone.

It is vitally important that, as members of ASPA, you complete this information prior to January 1, 2005. Without these approvals, ASPA will not be able to send faxes or e-mails to you. What will you miss out on? Conference notices, Education and Examination information, Membership updates and breaking news from the Hill. Can you afford to miss out? ▲

Chip V. Chabot has been employed by ASPA since 1997. Starting out as ASPA's Graphic Designer, he is now ASPA's Webmaster and Multimedia Manager and designs the Web site, produces webcasts and develops CD-ROMs, among other tasks. Chip, his wife and daughter live in Leesburg, VA.

Continued from page 19

Presidential Year in Review

Accepting the Challenge

the Western Pension & Benefits Conference, there will be a conference held in July 2005 run by these two organizations.

In addition, we have been a strong force on Capitol Hill and with governmental agencies. We are sought after by these groups to help to provide input, analyze proposals, develop solutions and provide education in the ever-changing retirement industry.

These are just a few of the initiatives that were worked on last year.

2003 was an exciting year, a busy year and a successful year. I am proud to have had the opportunity to serve as ASPA's President. You should be proud of your Board's strategic initiatives and forward thinking. ASPA will be better for it.

Scott D. Miller, FSPA, CPC, is president of Actuarial Consulting Group Inc. in Quogue, NY. Scott is Immediate Past President of ASPA and serves on ASPA's Executive Committee. Scott lives in Quogue, NY, with his wife Bari, two sons Jesse and Cody, two dogs and four cats.

ASPA Benefits Councils Calendar of Events

Date	Location	Event	Speakers
April 21	Central Florida	Legislative Updates / Hot Topics	Richard A. Hochman, APM
April 27	Delaware Valley	Financial Issues in Defined Benefit and Defined Contribution Plans	Clark Frese, CPC, Mitch Welsch
May 17	North Florida	Legislative Update from Capitol Hill	Brian H. Graff, Esq.
May 24 & 25	Delaware Valley	IRS Seminar	TBD
June 16	Delaware Valley	Turning Administrative Headaches into Consulting Opportunities	Linda Loretti, Steve H. Rosen, MSPA, CPC
September 9	Delaware Valley	Topic TBD (all day seminar)	Sal L. Tripodi, APM
September 16	Great Northwest	ERISA Issues (all day seminar)	Sal L. Tripodi, APM
November 30	North Florida	ASPA Annual Meeting Review Holiday Meeting and Mixer	Craig P. Hoffman, APM

The Attorneys and Staff of

REISH LUFTMAN REICHER & COHEN

Congratulate

FRED REISH, APM

on his Receipt of the

IRS Tax Exempt & Government Entities Division

COMMISSIONER'S AWARD

January 23, 2004

The Award, the highest honor that can be bestowed by the Commissioner of the Tax Exempt & Government Entities Division of the IRS, recognizes Fred's "dedication and outstanding personal contribution" to the country's retirement system. His "extensive knowledge, energy and sound judgment" has "fostered a strong working relationship between the Service and the private sector benefits community....Perhaps the most notable outgrowth of this cooperation and dialogue has been the employee plans voluntary compliance program and its many enhancements."

REISH
LUFTMAN
REICHER
&
COHEN
ATTORNEYS AT LAW

WELCOME NEW MEMBERS!

CPC

Kim Anh T. Dang
James F. Joyner III
James I. Mahaney

QPA

Andy H. Brate
David N. Flegel
Shawna L. Floistad
Christine M. Hall
William A. Hoefling IV
Darla P. Houpt
Diane W. Kim
Marijean D. Lim
Michelle P. Miller
Vijay K. Mirpuri
Mark S. Nicholas
Michael A. Nylund
Esther S. Rosenberg
Derek Carl Walling

QKA

Rochelle L. Angel
Barbara B. Benson
Galina Birgina
Kyle D. Bonds
Debbie L. Brunson
Cori Ann Canar
Scott T. Carr
Marsha R. Cayko
David N. Cossman
Kristine J. Creighton
Russell G. Desch
Deborah J. Fink
Gail F. Freed
Lynn M. Hasegawa
Glen J. Kindness
Carla J. Martin
Carla J. McCormick
Tina M. Michaud
Kevin D. Miller
Marianne Mundy
Michael A. Nylund
Traci B. Pennell
Esther S. Rosenberg
Michele T.D. Tran
Jennifer M. Urbina
John T. Wolfe

APM

Susan B. Neethling

Affiliate

Stephen M. Acerra, Jr.
Kendell B. Adler
William E. Baldry
Stephanie A. Bendrick
Rick C. Boothby
Janice A. Brewer
Philip H. Brice
Ross K. Brown
Clifford L. Cadle Jr.
Mero J. Capo
Tina Chambers
Clarke Chase
Ron J. Church
Greg Clark
Tamara J. Clifford
Thomas M. Connolly
Kevin T. Costello
Jack B. Crandall
Bill Davies
Laura DiFraia
Lan Ding
Christopher C. Doucet
Terry T. Eisenhauer
Larry Elkan
Richard Flohr
Aimee Forehand
Susen M. Friday
Kelly Ghilardi
Joseph A. Grana
Kim L. Hansz
William S. Harmon
Leroy D. Hasen
Charles E. Holder III
John T. Jessee
Irving R. Katz
Lawerence Kavanaugh
Kathleen Kelly
Stan H. Kennedy
Linda D. Kenyon
Brian A. King
John L. Kurtz
Christopher Logue
James M. Lorenzen
Matthew R. Macaluso
Karla K. Maschmeier
Frank B. McArdle
Jeffrey P. Mellen
Karl Muller
Timothy E. Murphy
Richard J. Murray
Kimberly L. Newell
Suzanne D. Newton-Wiegand
Bill Phillips
Peter J. Ponzio
Jason A. Reesey
Maurice J. Reidy
Priscilla H. Roman
Hal R. Rose
Howard Rosenbaum
Chad Schwartz
Mark R. Sconyers
Daniel Shapiro
William G. Talley III
Robert L. Unger
Kenneth J. Vilcheck
George S. Wallace
Andrew J. Welle
John A. Westerman

FUN-da-MENTALs

Fun Quotes

"If Patrick Henry thought that taxation without representation was bad, he should see how bad it is with representation!"

"A penny saved is a government oversight."

"Boy—these new portability rules have sure been great for business"

Pension Dictionary

by Wendy C. Bicovny

GUST (noun): A centrifugal force that blows away pension professionals approximately every four years. Tends to occur in Roman numeral series, such as GUST I, II, etc.

COBRA (noun): A snake that could be lethal if not timely noticed.

HIPAA (noun): A wayward phenomenon of a bygone error focusing on delusional migration.

ERISA (noun): A female name with benefits.

Safe Harbor (noun, prepositional phrase or adjective): Just when pension professionals think it is a good time to return to the water, cloaking your plan in a safe harbor berth may sink your sense of understanding. Be advised that any pension professional entering into the Safe Harbor may not return so easily. Consult a pension professional adept at sailing before docking here.

Gateway (noun): Venturing through this is like a vacation in the Bermuda Triangle.

Restatement Period (noun): A documentary film series that will never be final.

Cash Balance Plan (noun): A true example of how deceiving names can really be.

EGTRRA (noun): Part of the pension professional's low contribution diet.

Word Scramble

Unscramble these four puzzles—one letter to each space—to reveal four pension-related words. Answers will be posted on ASPA's Web site at **https://router.aspa.org**. Once you have logged in, place your cursor over the Membership tab in the navigation dropdown menu. Move to Membership Benefits, then select on *The ASPA Journal*. The answers are located near the bottom of the page.

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

NICE FAN ❍ ❍ _ _ _ _ ❍

ND FUED ❍ _ ❍ _ ❍ _

BUST CART ❍ _ ❍ _ _ _ _ ❍

LAZE ON RIM ❍ ❍ ❍ _ _ _ _ ❍ ❍

Mystery Answer

The "_ _ _ _ _ _ _ _ _ were _ _ _ _ _ _ _."

Why the Plan Sponsor didn't have to make a contribution to the defined benefit plan.

Side Fun

WHEN YOU THINK OF ING

THINK LEADER

ING is a top 5 player in targeted Defined Contribution markets[1] and has relationships with over 1,500 TPAs.

THINK SMART

ING has a dedicated TPA Web site providing online distribution forms, same-day downloads, and online system access.

THINK COMMITMENT

Our commitment to the TPA community is unparalleled in the industry.

CONTACT YOUR LOCAL ING REPRESENTATIVE OR CALL 1.877.463.3122 TO FIND OUT MORE.

[1] Source: LIMRA (December 2001)

www.ing-usa.com www.ingretirementplans.com

Retirement plan funding programs from, and insurance contacts and annuities issued through ING Life Insurance and Annuity Company. Securities distributed through ING Financial Advisers, LLC (member SIPC) and other broker/dealers with which it has an agreement.

© 2002 ING North America Insurance Corporation C02-0321-006 (7/02) ART.C.T.MS.182

Calendar of Events

2004

		ASPA CE
Apr 30	Final Registration Deadline for Spring Examinations	
May 1–31	DC-1, DC-2 and DB Spring Examination Window	
May 14	Postponement Deadline for Spring Examinations	
May 19	C-3 Examinations	
May 20	C-4 Examinations	
May 24–25	Mid-Atlantic Benefits Conference Philadelphia, PA	16
Jun 1	Registration Available for EA Review Classes	
Jun 10–11	Northeast Area Employee Benefits Conference Framington, MA and White Plains, NY	8
Jun 30	Early Registration Deadline for Summer Examinations	
Jul 19–21	Summer Conference San Francisco, CA	20
Jul 31	Final Registration Deadline for Summer Examinations	
Aug 1–31	DC-1, DC-2, DC-3 and DB Summer Examination Window	
Aug 15	Postponement Deadline for Summer Examinations	
Sep 13–14	Central and Mountain States Benefits Conference Denver, CO	15
Oct 24–27	Annual Conference Washington DC	20

Did You Know?

Pat Byrnes, MSPA, Past President of ASPA, and Fred Reish, APM, former Co-chair of ASPA's Government Affairs Committee, have received the Commissioner's Award from the IRS for their "dedication and outstanding personal contribution" to the country's retirement system. The Award is the highest honor that can be bestowed by the Commissioner of the Tax Exempt & Government Entities Division of the IRS.

Among their many other accomplishments, Pat and Fred are the founders, and have served as Co-chairs, of ASPA's Los Angeles Benefits Conference. The LABC is jointly sponsored by the IRS and has existed for the past 12 years. The honor was bestowed in conjunction with Fred's retirement as Co-chair of the Conference.

The citations presented by Paul Shultz, Director, Employee Plans Rulings and Agreements, recognize their "sustained support" and the commitment of their "extensive knowledge, energy and sound judgment" to enhancing the relationship between the private sector and the government. In the words of the citations, this commitment has:

> *[F]ostered a strong working relationship between the Service and the private sector benefits community that serves as an example of what can be accomplished when Federal and private sector organizations unite toward a mutually beneficial goal. Perhaps the most notable outgrowth of this cooperation and dialogue has been the employee plans voluntary compliance program and its many enhancements.*

This award represents a great honor for Pat and Fred; an honor they both richly deserve for their nearly two decades of hard work and dedication to ASPA and their devotion to improving the private retirement system in which we all work. We can be justly proud to be associated with them.

Congratulations Pat and Fred!