ASPA
Dedicated to the Private Pension System

The ASPA Journal

Sep–Oct 2004
Vol 34, No 5

Stephen H. Rosen Elected ASPA President

by Troy L. Cornett

Stephen H. Rosen, MSPA, CPC, has been elected ASPA President for the 2004-2005 term, which begins at the close of the 2004 ASPA Annual Conference. A graduate of Rutgers University, Steve continued his education at the Wharton School and the University of Iowa. He is the founder and Past President of the ASPA Benefits Council of the Delaware Valley and continues to serve as one of its Board members. He has also served on ASPA's Conferences, Membership, ABC and Government Affairs committees during his 30 years of volunteering.

Steve founded Stephen H. Rosen & Associates in 1982, which is located in the quaint, historic town of Haddonfield, NJ (adjacent to Philadelphia). His team of 25 dedicated employees is responsible for administering about 750 retirement plans.

Steve is married to Mary Jo, and together they are blessed with five children. Although five of them are now "on their own," Steve assists in coaching his 12 year old daughter's traveling soccer team. In his spare time, Steve enjoys tennis and spending time with his family, especially at the Jersey Shore.

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Washington Update

The LAPP Dance, Part II

by Brian H. Graff, Esq., APM

IMMEDIATELY PRIOR TO THE AUGUST RECESS, FOUR MEMBERS OF THE HOUSE WAYS AND MEANS COMMITTEE (TWO REPUBLICANS AND TWO DEMOCRATS) INTRODUCED, AT THE BEHEST OF THE VARIABLE ANNUITY INDUSTRY, THE RETIREMENT SAVINGS FOR LIFE ACT (HR 4849). HR 4849 PROVIDES A 50 PERCENT EXCLUSION ON THE TAXABLE PORTION OF NONQUALIFIED ANNUITY DISTRIBUTIONS. THE MAXIMUM ANNUAL EXCLUSION IS $20,000. THE PROPOSAL EXPLICITLY EXCLUDES ANNUITY DISTRIBUTIONS FROM QUALIFIED RETIREMENT PLANS. A COMPANION BILL MAY BE INTRODUCED IN THE SENATE BEFORE THE ELECTION.

You may remember a similar proposal being pushed by the variable annuity industry a couple of years ago. That proposal, which was called the Lifetime Annuity Payout Proposal, or "LAPP," would have applied capital gains tax rates to the taxable portion of nonqualified annuity distributions. It also did not apply to annuity distributions from qualified retirement plans and, consequently, was opposed by ASPA. (See *The ASPA Journal*, March-April 2002, page 1.)

Although HR 4849 takes a different approach than the original LAPP, the practical effect is exactly the same. The 50 percent exclusion provided under HR 4849 is economically similar to the application of capital gains rates proposed under LAPP. As a result, the same concerns that ASPA had with LAPP equally apply to HR 4849. Specifically, we have grave concerns that small business employers will abandon their retirement plans unless lifetime payouts from retirement plans are given equal treatment.

Under current law, the portion of a nonqualified annuity payment that represents the unrealized gain from investment in the annuity is taxed at ordinary income rates (the "exclusionary rule" under IRC Section 72), which are the same tax rates applicable to retirement plan distributions. However, even though qualified retirement plan contributions are deductible as compared to contributions to a variable annuity, to some degree nonqualified variable annuities already have some advantages over qualified retirement plans from the perspective of the small business owner.

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From the Editor

Two Ps or Not Two Ps?

by Chris L. Stroud, MSPA

BY NOW, MOST OF YOU ARE AWARE THAT WE HAVE A NEW NAME—THE AMERICAN SOCIETY OF PENSION PROFESSIONALS AND ACTUARIES. IT IS DIFFICULT TO GIVE DUE CREDIT IN WORDS FOR THE MANY HOURS OVER MANY YEARS THAT WERE SPENT TO COME UP WITH A NAME THAT BETTER DESCRIBES OUR CURRENT MEMBERSHIP WHILE PRESERVING OUR CORE ACTUARIAL COMPONENT. AFTER BRAINSTORMING SESSIONS, FOCUS GROUPS, SURVEYS AND MUCH MEMBER INPUT, THE NEW NAME SEEMS TO BE A GREAT CONCLUSION TO THE LONG SAGA. THE ACCEPTANCE OF THIS NEW NAME IS UNDERSCORED BY THE FACT THAT 77% OF THE MEMBERS WHO VOTED SUPPORTED THIS NEW NAME, WITH 66% OF THE ELIGIBLE MEMBERS VOTING. HOWEVER, BEFORE THE NEW NAME WAS PRESENTED TO THE MEMBERSHIP FOR A VOTE, AN INTERESTING DILEMMA PRESENTED ITSELF.

Since the inception of our organization, we have been known as "The American Society of Pension Actuaries," and we have used the acronym "ASPA." Our organization has changed and grown over the years, and it is now an impressive combination of pension professionals and pension actuaries—and the new name grew out of that recognition. So… what was the dilemma? *Two Ps or Not Two Ps? That was the question!* Whether to continue to use the acronym "ASPA" with the new name—or to change it to "ASPPA" to more accurately represent each word in the new name.

There is no correct answer to this question, and there were compelling lists of pros and cons for each alternative. However, since the decision was ultimately made to use the "Two Ps" approach, let's discuss the advantages that we will all enjoy because of the related changes taking place. First and foremost, retirement Plan Professionals and the Public outside our organization will most definitely notice the name change because we have simultaneously changed the acronym and the logo, too. The industry and the Public will now better understand what our organization is about and who our members are. The changes are also a great way for us to get Publicity. We can blast the Press with releases and bring our organization into the limelight. Our Potential impact on Policy and the industry in general will increase as more People understand who we are.

This added exposure will Provide opportunities to Promote our designations and communicate our strategic Plan inside and outside of our industry.

As we bid a fond farewell to the acronym ASPA and welcome the new acronym ASPPA on November 1, 2004, let's think about everything that the extra "P" represents. Officially, it recognizes the Pension Professionals who, along with our Pension Actuaries, have helped to make us the great organization we are today. But in reality, ASPPA has a long line of "Ps" in our history. Our Purpose has always included Preserving and Protecting the Private Pension system. Our emphasis has always been on Professionalism. Our organization is Progressive and we have been able to adapt and grow as our industry has changed over the years. Our recently developed strategic Plan states that our envisioned future is to become the "Premier educator and the Preeminent voice" for the employer-based retirement system.

Most importantly, we are Passionate—about the organization, about its members, about its activities, and about the industry and the work we do. We are Proud to be members of such a great organization. We should wear our new P with Pride. After all, think about it. ASPPA—it might look a little different, but it still sounds the same. And we're still the same great organization—one big haPPy family! ▲

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.

ISSN 1544-9769

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Satisfying the Minimum Gateway Test

by Charles D. Lockwood

WITH THE 2001 PUBLICATION OF ITS CROSS-TESTING REGULATIONS, THE IRS OPENED THE "GATEWAY" FOR DEFINED CONTRIBUTION PLANS TO SATISFY NONDISCRIMINATION TESTING ON AN ALLOCATION OR BENEFITS BASIS. WHILE THE ISSUANCE OF THE MINIMUM GATEWAY RULES HAS PROVIDED SOME MUCH NEEDED CERTAINTY IN THE DESIGN OF QUALIFIED PLANS, IT HAS ALSO CREATED SOME CONFUSION AS TO HOW THE GATEWAY RULES APPLY, ESPECIALLY WHEN PLANS ARE DRAFTED TO INCLUDE ALLOCATION CONDITIONS OR DIFFERENT ELIGIBILITY PROVISIONS. THROW A COMBINATION DEFINED CONTRIBUTION/DEFINED BENEFIT PLAN INTO THE MIX, AND THE GATEWAY RULES BECOME EVEN MORE COMPLICATED.

In this article, we will examine the various gateway rules as they apply to defined contribution plans and to combination defined contribution/defined benefit plans and will discuss some of the common misconceptions and problems that have arisen in trying to apply the gateway rules.

CROSS-TESTING

The nondiscrimination rules under Code §401(a)(4) and the regulations therein permit an employer to test its defined contribution plan on the basis of allocation rates or equivalent benefit rates. (An employer also may test its defined benefit plan on the basis of benefits or equivalent allocation rates. However, this article focuses on the effect of the gateway rules on defined contribution plans.) If an employer wishes to test its defined contribution plan on the basis of equivalent benefit rates, the employer must convert the allocations under the plan into equivalent benefit rates and run a general rate group nondiscrimination test. The practice of converting allocations under a defined contribution plan into equivalent benefit rates for purposes of applying the nondiscrimination requirements is referred to as "cross-testing."

In order to ensure that a plan utilizing cross-testing to satisfy the nondiscrimination requirements under Code §401(a)(4) is providing fair benefits to non-highly compensated employees (NHCEs), the IRS issued regulations requiring that, effective for plan years beginning on or after January 1, 2002, plans using cross-testing must first satisfy a "gateway" test. See Treas. Regs. §§1.401(a)(4)-8(b)(1), 1.401(a)(4)-9(b)(2) and 1.401(a)(4)-9(c)(3). Different gateway rules apply depending on whether the plan being tested is a stand-alone defined contribution plan or is a combination defined contribution/defined benefit plan. This article discusses both types of gateway tests.

NEW COMPARABILITY PLANS

Although any defined contribution plan can use cross-testing to demonstrate compliance with the nondiscrimination requirements under Code §401(a)(4), one common plan design that utilizes cross-testing is a "new comparability" defined contribution plan. A new comparability defined contribution plan is a defined contribution plan that is designed to take advantage of the ability to cross-test by providing different levels of contributions to different employee groups which, when tested on the basis of equivalent benefit rates at the plan's testing age (*e.g.,* normal retirement age), satisfies the nondiscrimination requirements under Code §401(a)(4). This article examines some of the unique problems associated with the gateway test under new comparability plans [and new comparability plans combined with a safe harbor 401(k) plan].

SATISFACTION OF MINIMUM GATEWAY TEST

As discussed above, to use cross-testing to demonstrate compliance with the nondiscrimination requirements of Code §401(a)(4), a plan must satisfy the minimum gateway test. Thus, satisfaction of the minimum gateway test is not a means of demonstrating compliance with the nondiscrimination rules; rather, satisfaction of the minimum gateway test merely provides an avenue to use cross-testing to demonstrate compliance with the nondiscrimination requirements.

To satisfy the minimum gateway test, a plan must satisfy a broadly available test or a minimum allocation test. Most new comparability plans use the minimum allocation test to satisfy the gateway. Thus, this article focuses on the issues that arise with respect to the minimum allocation gateway test.

Under the minimum allocation gateway test, all benefiting NHCEs must receive the lesser of:

- One-third of the highest allocation rate received by any HCE (highly compensated employee) or
- 5% of compensation.

Thus, for example, if the highest allocation rate for an HCE is 15% of compensation or above, all benefiting NHCEs must receive an allocation of at least 5% of compensation. If the highest allocation rate for any HCE is less than 15% of compensation, all benefiting NHCEs must receive an allocation of at least one-third of the HCE's allocation rate.

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A Fresh Look at Coverage Testing

by William C. Grossman, QPA

COVERAGE IS AN ASSURANCE THAT THE RETIREMENT PLAN IS PROVIDING REASONABLE BENEFITS TO A LARGE PROPORTION OF A COMPANY'S NON-HIGHLY COMPENSATED EMPLOYEES (NHCEs) ESPECIALLY IN COMPARISON TO THE NUMBER OF HIGHLY COMPENSATED EMPLOYEES (HCEs) IN THE PLAN. THE FEDERAL GOVERNMENT FOREGOES A SIGNIFICANT AMOUNT OF REVENUE DUE TO THE TAX SHELTERING OF RETIREMENT PLAN CONTRIBUTIONS AND EARNINGS. CONGRESSIONAL INTENT IS TO ALLOW A COMPANY TO ESTABLISH A RETIREMENT PLAN WITH FAVORABLE TAX TREATMENT FOR THE COMPANY, PROVIDED THE COMPANY FAIRLY OFFERS RETIREMENT PLAN BENEFITS IN A NONDISCRIMINATORY FASHION WHEN COMPARING THE HCEs TO THE NHCEs. CONGRESS DOES NOT WANT TO SEE A PLAN ESTABLISHED FOR THE PREDOMINANT PURPOSE OF ENRICHING THE HIGHLY PAID EMPLOYEES. NONDISCRIMINATION IS DEMONSTRATED BY COMPARING THE CONTRIBUTIONS AND BENEFITS PROVIDED TO THE HCEs WITH THOSE PROVIDED TO THE NHCEs TO ASSURE THAT THE NHCEs ARE RECEIVING EQUITABLE TREATMENT.

To assure fairness, tests have been developed to measure the ratio of NHCEs to HCEs who are *benefiting* under the plan. An individual is considered to be benefiting if the individual receives a contribution or accrues a benefit from the retirement plan, or, in the case of a 401(k) plan, is eligible to make elective deferrals. The coverage requirements may be tested with the ratio percentage test on a daily, quarterly or annual basis. The magic number to remember with the ratio test is 70%. If the plan does not pass the 70% ratio test, Congress provides an alternative test such that if the plan passes, coverage is satisfied. The alternative test is the average benefits test, which is a much more complex two-part test that can be administratively more expensive to run. This article will focus on the ratio percentage test.

WHO MUST BE CONSIDERED FOR THE COVERAGE TEST?

For purposes of the coverage requirements, all employees of the employer must be considered, including leased employees and those employed by a controlled group or affiliated employers.

WHICH EMPLOYEES MAY BE EXCLUDED FROM THE COVERAGE TEST BY REGULATION 1.410(b)-6?

1. Employees who have not met the statutory age (21) or service requirements (one year of service based on 1,000 hours in a 12-month period). Plans that benefit such employees are permitted to test them as a separate group. (This group is known as the "otherwise excludable" group.)
2. Terminated participants who have not completed more than 500 hours of service.
3. Employees who are part of a collective bargaining unit under which retirement benefits have been the subject of good faith bargaining.
4. Non-resident aliens with no US source of income.
5. Employees of an employer that is part of the controlled group but is considered a separate line of business.

MAY A CLASSIFICATION OF EMPLOYEES BE EXCLUDED?

In a standardized prototype plan, only the statutory exclusions may be made, and thus a standardized prototype plan will generally pass coverage automatically. The statutory exclusions are those employees under age 21, those with less than one year of service, nonresident aliens and collectively-bargained employees who have had retirement benefits be part of their collective bargaining process.

Keep in mind that other employees may be excluded in a non-standardized or custom designed plan, provided that the exclusion is not discriminatory and provided that the plan can pass coverage by including the excluded class in the test. The typical ways exclusions are designed are by job category, geographic location or hourly/salaried classification.

THE 70% RATIO TEST—STEP BY STEP

1. In general, first separate all excluded employees from the eligible employees. Identify which employees are eligible to participate in the plan and are benefiting as defined above, and separate them from the employees who may be excluded.
2. Next, take the eligible employees and divide them into two groups: the highly compensated employees (HCEs) and the non-highly compensated employees (NHCEs).
3. Divide the number of NHCEs participating in the plan by the total number of eligible NHCEs.
4. Divide the number of HCEs participating in the plan by the total number of all eligible HCEs.
5. Divide the NHCE percentage from Step 3 by the HCE percentage from Step 4 above. If the answer is 70% or greater, the coverage test is passed. If less than 70%, it fails.

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A Guide to Paying Plan Related Expenses

by William D. Whitman

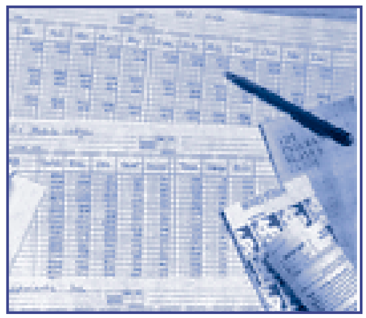
RECENTLY, BOTH THE DOL AND IRS ISSUED GUIDANCE RELATING TO THE PAYMENT OF PLAN EXPENSES FROM PARTICIPANT ACCOUNTS (DOL FIELD ASSISTANCE BULLETIN 2003-3 AND IRS REVENUE RULING 2004-10).

Many practitioners have focused on the issues of:

(1) Which expenses can be paid by the plan and

(2) Which expenses the plan sponsor must pay.

The table on page 7 categorizes plan related expenses based on the type of expense and designates who is a proper party to pay the expense. In some cases, the employer alone must bear the expense (*e.g.*, "settlor expenses" related to the plan design). In other cases, more than one party may pay the expense. Where the law permits a choice as to who may pay a particular plan expense, the plan administrator still must act in accordance with the plan, the SPD and any plan expense policy or other controlling documentation. The table should only serve as a guide. For example, in some cases expenses may be paid out of general plan assets or may be paid from particular participant accounts based on usage (*e.g.*, the cost of processing loans).



Note: The Plan Related Expenses table is for general reference only. The context in which a particular fee or expense arises, such as plan installation or plan termination, may alter the result. All expenses that a plan pays must be reasonable in amount and are subject to other limitations, including the prohibited transaction rules. ▲

The Plan Related Expenses table was prepared by William D. Whitman, JD, LLM, with the assistance of other SunGard Corbel attorneys. The chart was prepared for the ERISA Forms Guide*, which is a volume in the SunGard Corbel Pension Library. Bill is an attorney with SunGard Corbel where, in addition to consulting services, he is a speaker at numerous SunGard Corbel educational programs.*

Plan Related Expenses

Who may pay	Employer	Plan (pro rata or per capita[1])	Participant (based on usage)
Design[2]			
Plan design proposals and financial projections	X		
Nondiscrimination, other testing re: proposed design	X		
Union negotiations	X		
Plan termination decision	X		
Analysis of required amendments	X		
Drafting[3]			
Plan document—initial process	X		
Loan policy	X	X	
Distribution, beneficiary and other administrative forms	X	X	
Amendment ongoing plan—required (ERISA/qualification)	X	X	
Amendment terminating plan—required (ERISA/qualification)	X	X	
Amendment—discretionary	X		
Determination letter filing (excluding IRS user fee)	X	X	
Investments			
Trustee fees	X	X	
Investment management fees	X	X[4]	X
Investment advice to individual participants	X	X	X
Commissions		X	X
Self-direction fees/expenses	X	X	X
Valuation of trust assets	X	X	
Preservation, protection of trust assets	X	X	
Reporting and disclosure			
Form 5500	X	X	
Required auditor's report	X	X	
Form 5300 series determination letters (excluding user fee)	X	X	
SPD, SMMC, SAR, benefit statements	X	X	
Investment education	X	X	
Section 404(c) disclosure	X	X	X
Other communication with plan participants	X	X	
Administration/recordkeeping			
Testing	X	X	
Accounting, benefit computation	X	X	
Distributions	X	X	X
Loans	X	X	X
QDRO status	X	X	X
Deduction limit computation	X		
Actuarial fees	X	X	
Required fidelity bond	X	X	
Assets purchased to perform administration	X	X	
Government imposed amounts			
Determination letter user fee	X	X	
EPCRS compliance fee	X		
PBGC premium and termination fee	X	X	
Plan related penalties, fines	X		

Endnotes:

1 A plan may charge reasonable (non-settlor) expenses to participants pro rata relative to their account balances. A plan also may be able to charge such expenses equally to participants (per capita) provided the charges are fixed expenses not determined on the basis of participant account balances. A plan may charge to a *terminated* participant's account a pro rata share of the plan's reasonable administrative expenses, even if the employer pays those expenses with respect to current employee participants. Rev. Rul. 2004-10; DOL FAB 2003-3.

2 The employer must pay "settlor expenses," which include plan design expenses.

3 A plan may pay expenses associated with the *implementation* of a settlor decision.

4 The DOL may challenge a per capita allocation of fees determined on the basis of the participant's account balance as arbitrary. DOL FAB 2003-3.

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Washington Update
The LAPP Dance, Part II

For example, purchasers of nonqualified annuities may invest an unlimited amount of money in their annuities. Further, nonqualified annuities are not subject to any nondiscrimination or top heavy rules. Significantly, like qualified retirement plans, variable annuity holders may exchange investments without tax consequence.

Nonqualified annuities will have a significant economic advantage over qualified retirement plans if only nonqualified annuities qualify for the proposed exclusion from taxable income. This preferential treatment would adversely affect middle income workers, especially those employed by America's small businesses, the fastest-growing segment of the US economy.

Small business owners would naturally view the back-loaded tax advantages of annuities (the exclusion from taxable income of up to 50 percent of the annual lifetime payment, after a tax-deferred accumulation period) as very attractive when compared to fully taxable payments from qualified retirement plans, which are also subject to costs deriving from nondiscrimination rules and administrative requirements. Thus, nonqualified annuities would become so much more attractive that many small business owners would forego the establishment of employer-sponsored retirement plans. Instead, they would invest their retirement money in the now extra-tax advantaged nonqualified annuity, where they would not confront administrative rules and nondiscrimination requirements to contribute on behalf of employees in order to receive the benefit themselves.

A real-life rather typical example clearly demonstrates how this scenario could occur. Assume a small business with two owners and 13 employees. In order for both of the owners to save the maximum annual amount allowed in their qualified retirement plan, each owner contributes $41,000 on his or her own behalf. They contribute another $34,751 on behalf of their employees in order to satisfy the nondiscrimination rules. Annual plan administration costs total $2,000 for a total retirement plan cost of $118,751.

Now, compare the yields available to these owners if they use that amount to each purchase an individual nonqualified deferred annuity rather than establishing and contributing to a qualified retirement plan. Assuming annual interest at 8%, 40% in tax liability and a normal retirement age of 65, the owners will earn an after-tax lifetime annuity monthly payment of $7,834 if the contribution is invested in a nonqualified annuity. The after-tax monthly yield for a lifetime payment from contributions to a qualified plan totals only $6,296. Multiply the $1,538 differential by 12 months per year, and you see that choosing a qualified retirement plan would cost each owner $18,456 per year, or $276,840 over 15 years, assuming the owner is receiving a life annuity and lives until age 80.

In many cases, small business owners would not be able to pass up the clear economic advantage inherent in an individual annuity that qualifies for the proposed exclusion from taxable income. Consequently, fewer workers in America's small businesses would benefit from employer-sponsored retirement plans. These workers are most often middle class, lower-paid employees whose opportunities for significant savings for retirement are limited. Diminution of the employer-based system, especially among small businesses, will most certainly lower the overall retirement savings rate among small business workers.

Data clearly shows that employer-sponsored retirement plans are the most effective way to encourage small business workers to save. According to the Employee Benefit Research Institute's most recent data, only 7.1 percent of America's eligible workers earning between $30,000 and $50,000 annually contribute to a traditional IRA. By contrast, 77.9 percent of that same class of workers participates in their employers' 401(k) plans. Clearly employer-sponsored retirement plans—due to the power of the employer match and the convenience of payroll deductions—make a profound difference to the retirement security of our nation's workers.

In ASPA's view, it is essential that if Congress grants an exclusion from taxable income for up to 50 percent of the taxable portion of lifetime payments from a nonqualified annuity, the exclusion must be equally available to lifetime payments from qualified retirement plans. Making all forms of lifetime payout options from retirement savings vehicles equally eligible for an exclusion would avoid tilting the competitive balance away from employer-sponsored plans, especially in the case of small business. It is crucial to avoid such a tilt in order to avoid hurting middle class workers whose principal source of retirement income derives from a combination of Social Security and employer-provided retirement benefits.

It is important to emphasize that ASPA is in no way opposed to annuities. Quite the contrary, we believe it is important to promote annuitization since, for many retirees, it will be the most sensible and prudent distribution approach. In this regard, ASPA's Government Affairs Committee is presently working with members of Congress on an alternative proposal that would equally provide incentives for annuitization from both nonqualified annuities and qualified retirement plans. We hope to have our proposal introduced either before the election or early next year. ▲

Brian H. Graff, Esq., APM, is the Executive Director/CEO 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.

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Stephen H. Rosen Elected ASPA President

The other members of ASPA's 2004-2005 Executive Committee include:

President-Elect
Sarah E. Simoneaux, CPC

Vice Presidents
Stephen L. Dobrow, CPC, QPA, QKA
Sal L. Tripodi, APM
Nicholas J. White, APM

Secretary
Joan A. Gucciardi, MSPA, CPC

Treasurer
Chris L. Stroud, MSPA

Immediate Past President
Bruce L. Ashton, APM

Ex-Officio Member of the Executive Committee
Susan J. Chambers, FSPA

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 VW bug and sipping lattes with his friends at Starbucks.*

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Satisfying the Minimum Gateway Test

(See "Definition of Compensation," on page 11, for a discussion of the compensation definitions that apply for purposes of the minimum gateway tests.)

"BENEFITING" EMPLOYEES

The minimum gateway test is satisfied if all NHCEs who are "benefiting" under the plan receive the minimum gateway contribution. If an NHCE is not benefiting for a plan year, that NHCE need not receive the minimum gateway contribution. For this purpose, a benefiting employee is determined under the same rules as apply under the Code §410(b) coverage rules. Thus, to be benefiting with respect to employer contributions (and forfeitures) under a new comparability plan, an employee must actually receive an allocation of the employer contribution (or forfeiture).

The requirement that all benefiting NHCEs receive the minimum gateway contribution has resulted in some unique problems for new comparability plans.

Allocation Conditions

One issue with respect to new comparability plans and the gateway test is the effect of allocation conditions, such as the last day employment condition or 1,000 hours of service allocation condition. Two specific situations have arisen with new comparability plans that have caused problems with the use of allocation conditions.

Top heavy contribution. Many new comparability plans are top heavy plans since they tend to provide a higher level of contribution to key employees. If a plan is top heavy, it generally must provide a 3% top heavy minimum contribution to all non-key employees who are employed at the end of the year. If a plan imposes a 1,000 hours of service condition to receive the employer contribution, any non-key employee who completes less than 1,000 hours of service during the plan year, but is employed at the end of the plan year, will receive only the 3% top heavy minimum contribution. An employee who receives only the 3% top heavy minimum contribution is "benefiting" for purposes of the minimum gateway test. Therefore, unless the plan is drafted to permit an additional contribution to NHCEs who receive only the top heavy minimum contribution, the plan will not be able to use cross-testing to demonstrate compliance with the nondiscrimination rules.

Safe harbor 401(k) plan contributions. Many practitioners have drafted new comparability plans that contain a safe harbor 401(k) feature. A plan may not impose a 1,000 hours of service or last day employment condition to receive a safe harbor nonelective contribution or a safe harbor matching contribution under a safe harbor 401(k) plan. If a safe harbor 401(k) new comparability plan that provides the 3% safe harbor nonelective contribution requires employment on the last day of the plan year or completion of 1,000 hours of service to receive an allocation of the new comparability contribution, any NHCE who does not receive a new comparability allocation still will be benefiting for purposes of the gateway requirement because he/she will have received a safe harbor nonelective contribution under the plan. Therefore, unless the plan is drafted to permit an additional contribution to NHCEs who receive only the safe harbor nonelective contribution, the plan will not be able to use cross-testing to demonstrate compliance with the nondiscrimination requirements if the safe harbor nonelective contribution does not satisfy the minimum gateway requirement. [This problem does not apply if the plan satisfies the 401(k) safe harbor requirements by providing a safe harbor matching contribution since employees who receive only the safe harbor matching contribution are not treated as "benefiting" for purposes of the gateway test.]

If a new comparability plan is drafted without special provisions to satisfy the gateway test for those eligible NHCEs who receive only a 3% top heavy minimum contribution or receive only a 3% safe harbor nonelective contribution, the plan will not be able to use cross-testing to demonstrate compliance with the nondiscrimination rules for any year in which a NHCE benefits, but does not receive the minimum gateway contribution. There are plan design options practitioners can use to limit the problems associated with the use of allocation conditions under new comparability plans.

Retroactively amend the plan after the end of the plan year. Treas. Reg. §1.401(a)(4)-11(g) permits employers to amend their plans within 9½ months after the end of the plan year to correct a coverage or nondiscrimination violation. If a NHCE does not receive the minimum gateway contribution due to the application of a service condition or a last day employment condition, the employer could amend the plan within the 9½ month correction period to provide for an additional contribution for that employee.

Eliminate allocation conditions. Practitioners may wish to consider plan design options to limit the possibility of failing the minimum gateway test. One obvious solution is to eliminate any service conditions, such as a 1,000 hours of service condition, from all new comparability plans. Since most new comparability plans are, or could become, top heavy, the advantages of a 1,000 hours of service condition are outweighed by the potential nondiscrimination problems should a NHCE work less than 1,000 hours of service and receive only the 3% top heavy minimum contribution. Similarly, practitioners may wish to eliminate the last day employment condition from new comparability safe harbor 401(k) plans that provide a safe harbor nonelective contribution to avoid the possibility of a NHCE receiving only the 3% safe harbor nonelective contribution. Alternatively, a plan could be drafted to provide for a safe harbor nonelective contribution that satisfies the gateway test (*i.e.,* 5% of compensation).

Establish additional employee groups. Another plan design option is to create additional employee groups for those eligible NHCEs who receive only a minimum top-heavy contribution or only a safe harbor nonelective contribution. These additional groups would override the allocation conditions otherwise applicable under the plan. This approach would give the employer the flexibility to give any NHCE who would not otherwise satisfy the minimum gateway test an additional contribution if needed to satisfy the gateway test.

Different Eligibility Conditions

Another issue that has come up with respect to the gateway requirement is the situation where a new comparability plan [usually with a safe harbor 401(k) feature] provides for different eligibility conditions for different sources of contributions under the plan. For example, the plan may provide for immediate eligibility to make elective deferrals under the 401(k) portion of the plan, but a year of service eligibility requirement for the safe harbor nonelective contribution and the new comparability contribution. An employee who has not satisfied the one year of service eligibility condition will not be eligible for an employer contribution under the plan, but, if the plan is top heavy, the employee will be entitled to a top heavy contribution (if the employee is a non-key employee and is employed at the end of the year). Normally, if an employee receives a top heavy allocation, that employee is benefiting and must receive the gateway contribution. However, in this example, the plan can be disaggregated pursuant to Treas. Reg. §1.410(b)-7(c) to treat the portion of the plan benefiting the "otherwise excludable employees" (*i.e.,* those employees who have not satisfied the plan's eligibility conditions) as a separate plan. By disaggregating the portion of the plan benefiting the otherwise excludable employees into a separate plan, the employer does not need to cross-test that portion of the plan. Generally, the only employees covered under that portion of the plan are NHCEs and, therefore, the nondiscrimination test is automatically passed. Since the disaggregated portion of the plan is not being cross-tested, the otherwise excludable employees benefiting under that portion of the plan do not need to receive the gateway contribution. Only the cross-tested portion of the plan (*i.e.,* the portion of the plan covering those employees who have satisfied the eligibility conditions) needs to satisfy the gateway test.

DEFINITION OF COMPENSATION

For purposes of applying the gateway test, the definition of compensation used to calculate the minimum gateway contribution will vary depending on whether the plan is satisfying the "one-third" gateway or the "5% allocation" gateway. The plan need not define compensation for the gateway test as long as the plan satisfies the gateway test requirements in operation.

"One-third" Gateway Test

For purposes of applying the one-third test, the plan must compare the allocation rate for the NHCEs with the highest allocation rate for any HCE. In making this comparison, the plan compares the allocation of the NHCEs (based on the plan's definition of compensation used for determining allocations under the plan) to the HCE allocation rates (again using the plan's allocation definition of compensation.) The plan may use any definition of compensation for this purpose, provided the definition of compensation is nondiscriminatory under Code §414(s). If the plan's definition of compensation does not satisfy Code §414(s), the allocation rates of the NHCEs and HCEs would have to be recalculated using a nondiscriminatory definition of compensation in order to apply the one-third gateway test. See Treas. Reg. §1.401(a)(4)-2(c)(2).

"5% Allocation" Gateway Test

For purposes of applying the 5% allocation gateway test, the plan must use a Code §415 definition of compensation. Code §415 compensation is generally total compensation, grossed up to include all elective deferrals under a 401(k) and 403(b) plan, all pre-tax contributions to a Code §125 cafeteria plan and pre-tax contributions used to purchase transportation fringe benefits under Code §132(f)(4). If a plan uses a definition of compensation other than a Code §415 definition of compensation (*e.g.,* the plan uses net compensation to determine allocation or excludes types of compensation, such as overtime or bonus), then the 5% allocation safe harbor will have to be determined on the basis of a Code §415 definition of compensation, even if the plan's definition of compensation satisfies Code §414(s). If a plan is not using a Code §415 definition of compensation, merely providing NHCEs with a 5% allocation will not be sufficient to satisfy the 5% allocation gateway test if the allocation to any benefiting NHCE is less than 5% of Code §415 compensation.

Using Partial Year Compensation in the Gateway Test

The final cross-testing regulations clarified that a plan may use partial year compensation (*i.e.*, compensation while an individual is a participant under the plan) in applying both the one-third gateway test and the 5% allocation gateway test. Thus, as long as the underlying definition of compensation satisfies Code §414(s) (for purposes of the one-third gateway test) or Code §415 (for purposes of the 5% allocation gateway test), the plan may apply the gateway test using partial year compensation. For example, if an employee becomes a participant in a calendar year plan on July 1, 2004, in determining whether the plan satisfies the 5% allocation gateway test, the employee's allocation would have to be at least 5% of Code §415 compensation from July 1, 2004, through December 31, 2004. [Of course, the allocation the participant receives is still determined under the terms of the plan. The gateway test is simply the minimum contribution level that must be met to use cross-testing. Thus, if the plan provides for an allocation on full year compensation (regardless of when an employee becomes a participant), the allocation under the plan would have to be based on the plan's definition of compensation, even though for the 5% allocation gateway test, the plan is using partial year compensation to determine if the employee's allocation exceeds 5% of compensation.]

DB/DC COMBINATION PLANS

A special gateway test applies if an employer maintains both a defined benefit plan and a defined contribution plan and is permissively aggregating those plans for purposes of coverage and nondiscrimination testing. Under this special gateway rule, if the combination DB/DC plan is being tested on the basis of benefits (*i.e.*, the allocations are converted to equivalent benefit rates and tested in conjunction with the normal accrual rates under the defined benefit plan), the plans must:

- Satisfy a minimum aggregate allocation gateway requirement;
- Be primarily defined benefit in character; or
- Consist of broadly available separate plans.

Failure to satisfy one of these requirements will require the DB/DC combination plan to be tested on the basis of allocations (*i.e.*, the accruals under the defined benefit plan would have to be converted to equivalent allocation rates and tested in conjunction with the allocations under the defined contribution plan). If the plans are tested on the basis of allocation rates, no gateway rules apply since the defined contribution plan is not being cross-tested. [Generally, the gateway rules apply when a defined contribution plan is being tested on a benefits basis to ensure NHCEs receive a sufficient allocation under the defined contribution plan (or DB/DC combination plan). If a defined contribution plan or DB/DC combination plan is not being tested on a benefits basis, no gateway rules apply.] See Treas. Reg. §1.401(a)(4)-9(b)(2)(v).

The DB/DC combination plan gateway rules will not apply if the only reason a defined benefit plan and defined contribution plan are being aggregated is to satisfy the average benefits percentage portion of the average benefits coverage test (*i.e.*, the plans are not being permissively aggregated for coverage or nondiscrimination, except as provided for under the average benefits coverage test) or the plan is a floor offset plan that satisfies the nondiscrimination safe harbor under Treas. Reg. §1.401(a)(4)-8(d).

Primarily Defined Benefit in Character

If a DB/DC plan is primarily defined benefit in character, the plan is deemed to satisfy the gateway requirements. This result is because the gateway rules are designed to ensure that defined contribution plans being cross-tested on the basis of benefits are providing sufficient allocations to NHCEs. If the DB/DC combination plan is primarily defined benefit in character, there is no need to apply a gateway test if the plans are being tested on a benefits basis. A DB/DC plan is primarily defined benefit in character if more than 50% of the NHCEs benefiting under either the defined benefit plan or defined contribution plan have normal accrual rates under the defined benefit plan that are higher than their equivalent benefit rates under the defined contribution plan.

Broadly Available Separate Plans

A DB/DC combination plan also is deemed to satisfy the gateway test if the defined contribution plan and defined benefit plan are considered broadly available separate plans. To be considered broadly available separate plans, both plans must be able to satisfy coverage and nondiscrimination on their own without applying the average benefits percentage portion of the average benefits coverage test. Thus, if the plans can satisfy coverage and nondiscrimination separately (without regard to the average benefits percentage test), the plans can be permissively aggregated for coverage and nondiscrimination purposes and be tested on a benefits basis without regard to the DB/DC combination gateway rules.

Minimum Aggregate Allocation Gateway

If a DB/DC combination plan is not able to satisfy either the primarily defined benefit in character test or the broadly available separate plans test, as described above, the plans will have to satisfy a minimum aggregate allocation gateway test in order for the plans to be tested on a benefits basis. The minimum aggregate allocation gateway prescribed by Treas. Reg. §1.401(a)(4)-9(b)(2)(v)(D) is similar to the gateway rule described above for defined contribution plans tested on the basis of equivalent benefit rates. Thus, before being able to cross-test the defined contribution plan and test the DB/DC combination plan on a benefits basis, the plans must be able to demonstrate that they are providing employees with a sufficient allocation to justify using cross-testing to convert the defined contribution allocations to equivalent benefit rates. For this purpose, the equivalent allocations under both plans are taken into account in applying this special gateway test.

To satisfy the minimum aggregate allocation gateway test, the highest combined allocation rate for any HCE under both plans (*i.e.,* the allocations under the defined contribution plan plus the equivalent allocation rates under the defined benefit plan) must meet the following requirements when compared to the aggregate allocation rates of the NHCEs:

Highest Aggregate Allocation Rate for Any HCE	Minimum NHCE Allocation Rate
<15%	1/3 of HCE rate
15% - 25%	5%
26% - 30%	6%
31% - 35%	7%
>35%	7½%

Thus, if any HCE has an aggregate allocation rate under both plans in excess of 35%, the aggregate allocation rate for all NHCEs benefiting under either plan must be at least 7½% of compensation.

Definition of compensation. In determining a participant's aggregate allocation rate under the plans, the participant's allocation under the defined contribution plan plus the equivalent allocations under the defined benefit plan are divided by compensation. For this purpose, the plan may use any definition of compensation that satisfies Code §414(s). As discussed in "Using Partial Year Compensation in the Gateway Test" on page 12 with respect to the defined contribution gateway test, the plan may use partial year compensation in applying the minimum aggregate allocation.

Averaging of NHCE equivalent allocation rates. In applying the minimum aggregate allocation gateway, the plan may treat each NHCE who benefits under the defined benefit plan as having an equivalent allocation rate equal to the average of the equivalent allocation rates of all NHCEs benefiting under the defined benefit plan. This approach can be extremely helpful in testing a DB/DC combination plan.

Example: Suppose the highest aggregate allocation rate for any HCE under a combined DB/DC plan is 18.75%. Under the minimum aggregate allocation gateway test, all benefiting NHCEs must have an aggregate allocation rate of 5% (see previous chart). Suppose further that all NHCEs participate under the defined contribution plan (which provides a 3% allocation) and under the defined benefit plan (which provides a 1% annual accrual rate). After converting the 1% annual accrual under the defined benefit plan to equivalent allocation rates, each NHCE has the following equivalent allocation rates:

NHCEs	Age	DB Allocation Rate	DC Allocation Rate	Total
1	60	5.91%	3%	8.91%
2	45	1.74%	3%	4.74%
3	35	0.77%	3%	3.77%
4	25	0.34%	3%	3.34%

Under the facts in the above table, the plan would not satisfy the minimum aggregate allocation gateway because NHCE-2, -3 and -4 do not have an aggregate allocation rate of at least 5%. However, if the plan averages the DB allocation rates for the NHCEs, the average DB allocation rate is 2.19% [(5.91% + 1.74% + 0 .77 + 0.34) / 4]. Using 2.19% as the DB allocation rate for all NHCEs, the plans are now able to satisfy the minimum aggregate allocation gateway test.

NHCEs	Age	DB Allocation Rate	DC Allocation Rate	Total
1	60	2.19%	3%	5.19%
2	45	2.19%	3%	5.19%
3	35	2.19%	3%	5.19%
4	25	2.19%	3%	5.19%

Of course, the plans still would have to be tested for nondiscrimination under Code §401(a)(4) and the regulations therein. Satisfying the minimum aggregate allocation gateway test merely allows the plans to be tested together on the basis of equivalent benefits.

CONCLUSION

It is important if you are going to utilize the cross-testing provisions under the nondiscrimination regulations that you understand how the gateway rules work. While satisfaction of the gateway tests does not guarantee that a plan will satisfy the nondiscrimination rules, it does allow the employer to take advantage of the cross-testing rules to maximize the disparity allowed under the regulations. While the gateway tests may require the employer to make additional contributions to employees and add another layer of complexity to the already complex nondiscrimination rules, most practitioners would probably agree that those disadvantages are outweighed by the level of certainty the gateway tests provide in allowing new comparability plans to meet the requirements of the IRS. ▲

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Continued from page 5

A Fresh Look at Coverage Testing

EXAMPLES OF THE RATIO PERCENTAGE TEST

Scenario 1: A medical employer has 14 employees: 4 doctors (HCEs) and 10 NHCEs.

If all 4 doctors are participating, the HCE ratio would be 100%. If all 10 NHCEs were participating, the NHCE percentage would be 100%. The ratio of 100% over 100% would be 100%. The plan passes coverage.

Scenario 2: If in the same example, 3 NHCEs did not participate because they did not meet the plan's requirement for an allocation (*e.g.*, because the plan had a last day rule and they were not there on the last day or because the plan had a 1,000 hours requirement to receive an allocation and they did not work 1,000 hours), the NHCE percentage would be only 70% (7/10), which would then be divided by the 100% for the HCEs. The plan passes the coverage test.

Scenario 3: If instead, only 6 NHCEs participated, then the test would fail because the NHCE ratio of 60% divided by the HCE ratio of 100% would yield 60%, thus failing the ratio percentage test.

Scenario 4: Using the same company, if only 3 of the 4 doctors participated, then the HCEs ratio would be 75%. 70% of 75% would be 52.5%, so the number of NHCEs that would need to participate would be 6. (*i.e.*, the NHCE ratio of 60% divided by the HCE ratio of 75% = 80%.) If there were only 5 NHCEs benefiting under the plan, the ratio test would fail, since 50% divided by 75% = 66.7%.

IF AN EMPLOYER HAS MORE THAN ONE PLAN, WHICH PLANS MUST BE KEPT DISAGGREGATED?

An employer who maintains more than one plan may elect to aggregate more than one plan for coverage testing, unless aggregation is prohibited. The following plans, or parts of a plan, must be disaggregated for coverage testing:

- Plans containing elective deferrals, matching contributions and discretionary contributions.
- Plans containing an ESOP feature (except with respect to the average benefits test).
- Plans benefiting employees represented by a collective bargaining agreement.
- Plans benefiting employees of unrelated employers.

ARE THERE PLANS THAT WILL AUTOMATICALLY PASS COVERAGE?

Yes, such as:

- Plans maintained by employers that have no non-highly compensated employees.
- Plans that do not benefit any highly compensated employee.
- Plans benefiting only collectively bargained employees.
- Plans that do not accrue a benefit for any participant for a plan year.
- Plans established under the terms of a standardized prototype.

CONTROLLED GROUP COVERAGE TESTING

The lines of business ownership continue to become increasingly complicated in the 21st century. This complexity may have a significant impact on the ability of employers to maintain separate retirement plans due to nondiscrimination requirements. Let us now explore how coverage testing is performed when an employer is a member of a controlled group.

A Controlled Group Adopting a Prototype Plan

The employer members of a controlled group may adopt a single prototype plan. To do this, each employer must sign the adoption agreement as a participating employer. Unrelated employers may not be participating employers in the same prototype plan. Alternatively, they can either each adopt a prototype plan on a single employer basis or they may collectively adopt an individually designed plan document, commonly known as a Multiple Employer Plan.

One Plan per Company vs One Plan for the Entire Controlled Group

The principal advantage of having separate plans for a controlled group is that each member has the option to maintain a retirement plan with its own distinct benefit structure. Conversely, adoption of a single plan offers economies of scale and the potential for using profits of the more profitable members to fund plan benefits across-the-board. In prototypes, if separate plans are desired, this task is accomplished by the use of a nonstandardized adoption agreement, with appropriate eligibility exclusions for the other members of the group. However, this approach will only work if each plan can pass coverage requirements separately when that plan's demographics are compared to the demographics of the entire group. Passing the test generally requires at least a 70% coverage ratio in each plan.

Performing Coverage Testing for a Controlled Group

Testing is done by comparing the group of highly and non-highly compensated employees covered by

Example of coverage for a two company controlled group when one company is excluded

The following illustration is a coverage example in which Company A and Company B are a controlled group, but only Company A has a plan

		A	B	TOTAL
1.	Total Employees	512	200	712
2.	Highly Compensated Employees	32	8	40
3.	Highly Compensated Employees Benefiting	32	0	40
4.	Employees Ineligible by Statute			
	a. Age	20	12	32
	b. Service	40	20	60
	c. Union	20	0	20
	d. Non-resident Aliens	0	0	0
5.	Base Total for Test (Subtract 2, 4a, b, c, d)	400	160	560
6.	Other NHCEs Not Benefiting*	80	160	240
7.	NHCEs Benefiting	320	0	320

Results:

The percentage of HCEs benefiting is 80%. This result is arrived at by dividing the Company A total benefiting from line 3 (32 HCEs) by the total of all HCEs (40) in both companies A and B (32/40 = 80%). The next step is to perform the same test for the NHCEs. Divide the Company A NHCEs benefiting (320 NHCEs, line 7) by the total of all NHCEs in both companies A and B (560, line 5 total) to arrive at 320/560 = 57% of NHCEs participating. The final step in the coverage test is to divide the percentage of NHCEs benefiting by the percentage of HCEs benefiting. If the result is 70% or greater, the coverage test is passed. In our example, divide 57% (NHCEs percentage) by 80% (HCEs percentage) to arrive at a result of 71%, which passes.

* These employees do not meet the plan's eligibility requirements because of insufficient hours, termination during the year or exclusion for non-statutory classification reasons.

the plan against the total group of highly and non-highly compensated employees within the controlled group. Thus, the numerator is the group of HCEs in one company and the denominator is the group of HCEs for all companies. The NHCEs are tested the same way, that is, the numerator is the NHCEs in the company being tested and the denominator is the total of all NHCEs from all companies in the controlled group.

Coverage Transition Period for a Company Joining or Leaving a Controlled Group

Business reorganizations are occurring at an increasingly rapid pace. These events present problems for coverage testing of controlled groups. Fortunately, IRC §410(b)(6)(C) provides a transition period beginning on the date of the change of the members of a group and ending on the last day of the first plan year beginning after the date of such change. For example, if the employer has a calendar year plan and was in a transaction in the 2002 year, the employer would not have to be considered on a controlled group basis until the 2004 plan year. During this period, coverage is satisfied if coverage requirements were met immediately before such change, and the coverage under such plan is not significantly changed during the transition period, other than by reason of the change in the members of the group.

Rev. Ruling 2004-11: Clarification of the Application of IRC §410(b)(6)(C), Which Deals with the Transition Rule for Coverage When There Is a Merger or Acquisition of an Entity

Tax Code Section 410(b)(6)(C) provides that if the plan passed coverage before the entity's merger or acquisition, then a separate coverage test may be performed until the end of the plan year following the transaction. For example, if an entity was sold by its parent corporation to another corporation on June 22, 2004, and the coverage test was done immediately before that date passed, then the next coverage test to be done would be for the 2006 plan year. In this scenario, the separate plans can run concurrently. The IRS examples in the Rev. Rul. also provide that if the entity had both a DB and a 401(k) plan, and the DB plan formula was changed in 2005, then the coverage test for the DB plan would become necessary as of the date of the plan change, whereas the 401(k) plan (which remained unchanged) would be able to wait until 2006. Thus, the transition period during which separate coverage testing may be done will end as of the date that there is a change in the benefit formula.

Conclusion

There are many other facets involved in coverage, such as the definition of Highly Compensated Employee, Leased Employee, Qualified Separate Line of Business (QSLOB) and the Average Benefits Test, to name a few. Readers should familiarize themselves with the other definitions mentioned above to gain a more thorough understanding of coverage issues. ▲

BONUS CE

A detailed review of the Average Benefit Test can be accessed by using the link to the "latest issue of *The ASPA Journal*," in the Members Only section of ASPA's Web site. The article offers a bonus two-credit CE quiz.

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2004 ASPA Summer Conference Highlights

Sally J. Stresnak from Transamerica Retirement Services enjoys a conversation with Barry Max Levy, QKA, and Laura S. Moskwa, CPC, QPA.

ASPA President Bruce L. Ashton, APM, welcomes the over 400 Summer Conference attendees.

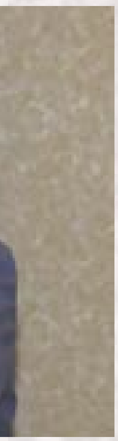
Valeri L. Stevens, APM, leads the popul
Form 5500" session through an int
question and answer session

S. Derrin Watson, APM, hosts the educational and entertaining "The ERISA Game Show" session.

James Holland
Paul Shultz and

ASPA member Richard A. Block, MSPA, actively participates in the Summer Conference during the "What You Need to Know About Completing the Schedule B" session.

Gwen S. O'Connell, CPC, QPA, leads one of the DC Cram Sessions offered prior to the Summer Conference, which many of the session attendees were using to prepare for an upcoming ASPA exam.



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An attendee enjoys the reception with the antics of reception guest "Jamie Hendrix" during the Summer Conference that celebrated 1974 and the birth of ERISA.

l, Craig P. Hoffman, APM, Lawrence C. Starr, CPC,
l George J. Taylor, MSPA, ponder a question during the IRS Q&A session.

Beverly L. Haslauer, CPC, QPA, illustrates examples during her "Using SIMPLEs & SEPs to Make Your 401(k) Sale" session.

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Victory Diversified Stock Fund was awarded the Lipper Fund Award 2004 in the Large-Cap Core category. Lipper presents the award annually to the fund in each Lipper classification that achieved the highest Consistent Return scores. A fund's Consistent Return score evaluates its risk-adjusted returns, adjusted for volatility, relative to peers, for the overall period ended December 31, 2003. The fund was chosen from among 808 funds. Lipper Fund Awards are not intended to predict future results, and Lipper does not guarantee the accuracy of this information.

The Victory Funds are distributed by Victory Capital Advisers, Inc., which is not affiliated with KeyCorp (NYSE: KEY) or its subsidiaries. Victory Capital Management Inc. is the investment advisor to the Victory Funds and receives a fee from the Funds for performing services for the Funds.

An investor should consider the fund's investment objectives, risks and charges and expenses carefully before investing or sending money. This and other important information about the investment company can be found in the fund's prospectus. To obtain a prospectus, please call 1-800-539-FUND or visit VictoryConnect.com. Please read the prospectus carefully before investing.

Letter from the President

by Bruce L. Ashton, APM

Dear Fellow Members:

You're busy. You've got too many filings, too many ADP tests to run and not enough help. Plus, the kids need to go to soccer, ballet, whatever. Life is hectic. We've all been there, done that. In this environment, it's easy to lose sight of the importance of what we do.

But make no mistake, our work is important. It's important because it affects, more or less directly, hundreds or even thousands of people—people we probably don't even know. It affects how well those people will live when they retire.

There are, of course, lots of important aspects of our jobs: keeping the boss happy so we continue to get paid; keeping the clients happy so the company we work for gets paid; doing a good job so we don't get sued; doing a good job simply because we take pride in what we do. I certainly don't mean to ignore or minimize any of these factors, but there is another factor, an overriding reason for doing a good job: we are retirement plan professionals. As such, it is our job to ensure that the retirement plans we serve accomplish their objective. And the objective of a retirement plan is to produce meaningful benefits for people to enjoy when they retire.

One day, most of us will stop working. We'll have to live on our savings or other accumulated assets, on Social Security and, if we're lucky enough, on our private retirement savings—the old three-legged stool. How well most people will live depends a great deal on their own self-discipline (*i.e.,* how well they were able to save), on the wisdom of our political leaders (*i.e.,* whether and how they fix Social Security) and—this leg is the one where you and I come in—on whether their employer-sponsored retirement plan produces for them. And this, of course, assumes that they even have an employer-sponsored retirement plan *to* produce for them. (That's one of our most important jobs and one of the most important jobs of ASPA—to encourage and to promote the employer-sponsored retirement system.)

I encourage you to stop and think about this issue from time to time. The first time it really occurred to me was when a client retired and had a significant nest egg to live on. It struck me then that I—and other ASPA members—had helped him do that, and it made me feel good. So next time you're doing a funding calculation, a coverage test, an ADP test or a top heavy analysis, think about the folks who are relying on you to help them live a better life 10 or 20 or 30 years from now. Are the employees getting everything they're entitled to, everything that's been promised to them? Consider this next time you're helping the fiduciary deal with plan investments. Are the employees going to be better off with these investments? Because how well the participants get to live later on when they stop working is what our jobs are ultimately all about.

In saying that, I'm not suggesting that we ignore all the other reasons for doing what we do. You have to make money, or *you* won't have a secure retirement. But I strongly believe that we have a special obligation—a privilege of sorts—to help our clients help themselves and their employees to a secure retirement.

Hopelessly idealistic? Not at all. Rather, I think this view of our profession is quite realistic because it focuses on the end result of what we do rather than the technical weeds we work in every day. I believe that with a view to the end result, we'll all do better jobs today and fulfill the inherent promise we make to the beneficiaries for tomorrow. ▲

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.

Notice of ASPA's Annual Business Meeting

The ASPA Annual Business Meeting will be held during the 2004 ASPA Annual Conference on Sunday, October 24. Refer to the 2004 ASPA Annual Conference brochure for a full Conference schedule, or visit the ASPA Web site at **www.aspa.org** for more information.

All ASPA members are encouraged to attend and participate in the Business Meeting discussion. Credentialed members will vote on the new members of ASPA's 2005 Board of Directors.

ASPA Online CE and Reporting Services Now Available!

ASPA DESIGNATED MEMBERS CAN NOW ACCESS, VIEW AND REPORT THEIR CONTINUING EDUCATION CREDITS ONLINE. THIS NEW CONVENIENT SERVICE ALLOWS DESIGNATED MEMBERS TO LOG ON TO THE MEMBERS ONLY SECTION OF ASPA'S WEB SITE AND VIEW THEIR ASPA CE CREDITS FOR THE CURRENT CE CYCLE, AS WELL AS TO COMPLETE AND SUBMIT THEIR CONTINUING EDUCATION REPORTING FORM ONLINE.

ASPA designated members who have fulfilled their continuing education requirements through ASPA sponsored events will be automatically notified, via e-mail, to log on to the ASPA Web site and sign off on their reporting. This action will complete the requirements for the reporting cycle.

Designated members who have completed all CE requirements for the cycle and who have non-ASPA sponsored credits to report can complete and submit the new online CE reporting form. Upon receipt and approval, ASPA will e-mail program completion confirmation.

HOW TO USE THE ONLINE SERVICE

Log on to the ASPA Members Only section of ASPA's Web site using your member login and password. From there, select the CE Reporting Form link on the left hand side of the page to access the online CE reporting form.

The form will outline the number of CE credits required for the current cycle, the number of ASPA-sponsored credits already earned and the balance of credits still required. Continue scrolling down to view additional credit details and to complete and submit your reporting form. Please note that your reporting form cannot be submitted online unless the total number of CE credits required for the cycle have been recorded.

All ASPA designated members are required to submit a continuing education reporting form in order to retain their designations.

Log on and take a look today! ▲

Remember the CE Reporting Form submission deadline for the 2003-2004 continuing education cycle is January 10, 2005.

ASPA Benefits Councils Calendar of Events

Date	Location	Event	Speakers
September 7	Chicago	Washington Update	Craig P. Hoffman, APM
September 9	Delaware Valley	Important Technical and Compliance Issues	Sal L. Tripodi, APM, and Brian H. Graff, Esq., APM
September 10	Western Pennsylvania	Pertinent Issues Regarding Plan Audits	Local IRS Representative (TBD)
September 16	Great Northwest	Current Developments Affecting Qualified Plans	Sal L. Tripodi, APM
September 21	Northern Indiana	Legislative Update	Brian H. Graff, Esq., APM
September 22	Texas Gulf Coast	Employee Notices and Disclosures	Robert M. Kaplan, CPC, QPA
November 10	Dallas/Ft. Worth	EPCRS, Recent Court Cases, Prohibited Transactions, Late Deposits and Other Timely Topics	Michael Roach, IRS, Washington, DC, Greg Nix and Lorettta Dollar, IRS, Dallas, TX
November 16	Texas Gulf Coast	Washington Update	Brian H. Graff, Esq., APM
November 30	North Florida	ASPA Annual Update and Holiday Mixer	Craig P. Hoffman, APM
December 2	Chicago	Audits—What is the IRS and DOL Up To?	Monica Templeton, IRS, and Stephen L. Haugen, DOL
December 7	Western Pennsylvania	Who's the Employer?	S. Derrin Watson, APM

2004 ASPA Benefits Council (ABC) Leadership Conference

by Cristina S. Belen

THE ABC COMMITTEE HOSTS AN ANNUAL ABC LEADERSHIP CONFERENCE THAT PROVIDES AN OPPORTUNITY FOR ABC LEADERS FROM DIFFERENT AREAS TO MEET AND SHARE IDEAS, DISCUSS ISSUES AND CREATE SOLUTIONS UNIQUE TO THEIR ABCs. IT ALSO PROVIDES A FORUM TO REVIEW AND REINFORCE THE COLLABORATIVE EFFORT BETWEEN THE ASPA NATIONAL OFFICE AND THE ABCs WHILE LEARNING WHAT IS NEW AT ASPA.

The 2004 ABC Leadership Conference was held July 17–18 in San Francisco. This year, the ABC Committee also hosted a pre-conference cocktail reception for the ABC leaders and ASPA Board members. A "meet and greet" raffle game was held to encourage both leadership groups to meet and get to know each other better. The raffle grand prize was the 2004 edition of *The ERISA Outline Book,* and the winner this year was Lawrence Deutsch, MSPA. Congratulations, Larry!

The all-day ABC Leadership Conference, held on Sunday, July 18, included three roundtable discussions focusing on the ABCs' primary issues of board succession, membership recruitment and retention and conference/workshop program and planning. We also welcomed guest speakers Stephen H. Rosen, MSPA, CPC, President-Elect; Joan A. Gucciardi, MSPA, CPC, Ex Officio Member of the Executive Committee; and Karen A. Jordan, CPC, QPA, QKA, ASPA PAC Co-chair. Steve gave an update on ASPA's initiatives while Joan and Karen spoke on exam and education programs and ASPA PAC efforts, respectively.

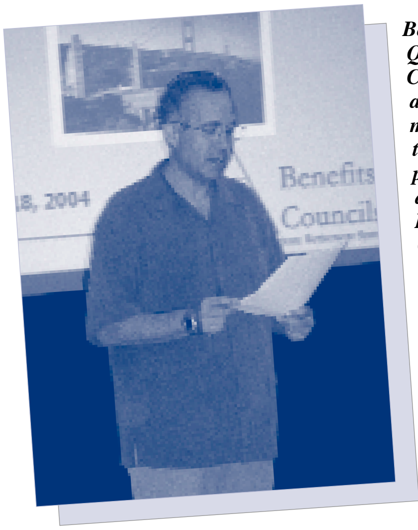
The Leadership Cocktail Reception was a great event for ABC members and the ASPA Board to meet and get to know each other.

Adam C. Pozek, President of the ABC of Atlanta and ABC Committee member, at the ABC of Western Pennsylvania table; Jacqueline A. Albee, CPC, QPA, President of ABC of Western Pennsylvania; and Board members Michael L. Bain, MSPA, and Lawrence Deutsch, MSPA.

John D. Hartness, GAC Liaison from the ABC of Atlanta, with Ilene H. Ferenczy, CPC, ASPA Board member; Bruce L. Ashton, APM, ASPA President; and Sal L. Tripodi, APM, ASPA Vice President.

In the opening presentation, ABC Committee Chair, Barry Max Levy, QKA, and ABC Committee member, Adam Pozek, discussed ABC Committee initiatives, including their financial responsibility, best practices and the new ABC Excel database project. This opening presentation provided an opportunity for the ABC leaders to share their questions and concerns.

Positive feedback was received on the roundtable format used this year, which allowed the ABC leaders more interaction with one another and an opportunity to learn and share new ideas. The roundtable facilitators were the members of the ABC Committee and Joe R. Long, CPC, QPA, from the ABC of Dallas/Ft. Worth, who



Barry Max Levy, QKA, ABC Committee Chair and ASPA Board member, making the opening presentation at the ABC Leadership Conference.

Barry Max Levy, QKA, ABC Committee Chair and ASPA Board member; with the President of ABC North Florida, Susan L. Hajek, QKA; and Past President of the ABC of Cleveland, Donna Brewster, QPA, at the Conference/Workshop Program and Planning roundtable.

volunteered to co-facilitate the conference/workshop program and planning roundtable with Barry. Thanks, Joe! The ABC Leadership Conference attendees ended their day with a casual dinner on the beautiful San Francisco waterfront.

The general feedback from the attendees stated that they enjoyed finally being able to meet their counterparts and the ASPA National Office staff, and that they walked away with good ideas to bring back to their ABCs. The ABC Committee looks forward to an even more memorable and successful conference in 2005!

ASPA Benefits Councils (ABCs) are local affiliates of ASPA and are established in 14 cities around the country: Atlanta, GA; Chicago, IL; Greater Cincinnati, OH; Cleveland, OH; Dallas/Ft. Worth, TX; Ft. Wayne, IN; Ft. Lauderdale, FL; Houston, TX; Jacksonville, FL; New York, NY; Orlando, FL; Philadelphia, PA; Pittsburgh, PA; and Seattle, WA. The ABCs are dedicated to serving local employee benefits, pension and retirement plan professionals. ABCs also offer continuing education credits and networking opportunities to their members and other interested professionals.

If your pension education needs are not being met in your geographical area and you are interested in forming an ABC, please contact the ABC Coordinator at **abc_coordinator@aspa.org** for further information. ▲

Cristina S. Belen, ASPA's ABC/Membership Coordinator, has been with ASPA since November 2003. She provides developmental and operational support to the ABCs and works closely with the ABC Committee on their initiatives and the ABC program. Cristina also works with the Membership department on marketing and recruitment efforts. She has a background in the financial services field and has held several NASD securities and state licenses.

A group shot of the attendees.

"Re-Branding" ASPA to Provide Greater Value to Members

by Pecanne Jennings

A STRONG BRAND IMAGE IS MUCH MORE THAN A NEW NAME, LOGO OR SERIES OF CLEVER ADVERTISEMENTS. THE IMAGE ONE HAS ABOUT ASPA IS BORN OUT OF INITIAL AWARENESS (MARKETING CAN HELP HERE) PLUS ACTUAL EXPERIENCE WITH THE ORGANIZATION, ITS MEMBERS AND STAFF. THE RE-BRANDING INITIATIVE CURRENTLY UNDER WAY WILL BE OFFICIALLY UNVEILED TO THE PUBLIC ON NOVEMBER 1, 2004, AND IS ASPA'S UNIQUE OPPORTUNITY TO CLEARLY ESTABLISH A COHESIVE BRAND IMAGE WITHIN A CROWDED MARKETPLACE OF INDUSTRY EDUCATORS AND ADVOCATES.

In recent years, interest in ASPA has increased largely due to the further diversification of members' specialty areas, expanded conference and credentialing programs, new conferences and amplified advocacy efforts. This diversification is good news for members, who continually look to ASPA not only for education and advocacy, but also to help build awareness among plan sponsors and other stakeholders about the importance of working with competent retirement plan professionals, like ASPA members. It is within this industry press and plan sponsor arenas that ASPA's re-branding efforts will pay off for everyone.

Beginning November 1, ASPA's Marketing Department will roll out a new logo, a new Web site, new brochures and an e-marketing initiative. The new brand image reflects ASPA's heritage and future and better reflects the highly professional nature of its members. In conjunction with this marketing campaign, ASPA will begin using its new name—The American Society of Pension Professionals and Actuaries—and new acronym, ASPPA.

This re-branding is being done for four primary reasons:

(1) To increase awareness of ASPA and its designations;

(2) To send a clear image of who ASPA is and what it represents;

(3) To support ASPA members in their business development efforts; and

(4) To move ASPA closer to its desired position in the marketplace as the *premier* educator of all retirement plan professionals and the *preeminent* voice and advocate for the employer-based retirement system.

For those coming to the 2004 ASPA Annual Conference this October, you will be among the first to preview the newly re-branded materials and observe a brief presentation about the thinking behind the new brand image. You will also see the rest of ASPA's new brand family, specifically the new ASPA PAC and ASPA Benefits Council logos. Among the newly re-branded items to be unveiled are a new look and Web address for the ASPA Web site, new ASPA logo wear and a new membership recruitment brochure.

MEMBERS HELPING WITH BRANDING

Starting in early 2005, ASPA will encourage members to use the new logo. At that time, ASPA will provide electronic logo artwork and a Logo Style Guide, which will outline allowable logo uses and identify the "dos and don'ts" of logo usage. Members will be able to use the new logo on items such as personal business cards, e-mail signatures, personalized letterhead and biographies, to name a few.

In addition to using the new logo, members will also be provided with an electronic brochure that will outline, "Why Hire an ASPA Member?"—a sales tool to educate plan sponsors and other stakeholders. ASPA logo wear, like shirts, hats and other fun "stuff," will be available for sale and will help, at a grassroots level, to build awareness of ASPA.

Your feedback and ideas are always welcome. A brand image takes time to develop and mature, but we are off to a running start with what is planned for November 1. The expression, "many hands make light work," certainly applies in this re-branding effort, and members lending a hand in re-branding will help ASPA become more widely recognized.

Pecanne Jennings, Chief Marketing Officer, joined ASPA in January 2004. Pecanne, who has more than 15 years of experience as a marketing professional, first worked with ASPA in 2001 when she served as the marketing consultant for the QKA initiative. In her quiet time, Pecanne enjoys yoga, getting settled in her new home and socializing with her friends.

Getting to Know GAC

by Ilene H. Ferenczy, CPC

NO, GAC IS NOT THE SOUND THAT YOUR CAT MAKES WHEN IT HAS A HAIRBALL (ALTHOUGH WE HAVE CONSIDERED USING BILL THE CAT AS OUR MASCOT.) GAC STANDS FOR GOVERNMENT AFFAIRS COMMITTEE, WHOSE NEARLY 100 VOLUNTEER AND STAFF COMMITTEE MEMBERS REPRESENT ASPA IN COMMUNICATING WITH THE EXECUTIVE AND LEGISLATIVE BRANCHES OF THE FEDERAL GOVERNMENT CONCERNING ASPA'S VIEWS AND POLICIES AS ESTABLISHED BY THE BOARD OF DIRECTORS REGARDING LEGISLATION, REGULATORY AFFAIRS AND OTHER MATTERS OF CONCERN TO THE MEMBERSHIP.

Committee members research issues and develop position papers and testimony for submission to these groups. ASPA GAC prides itself on making a difference in the development of the rules affecting our industry. GAC has received national recognition for the quality of its written comments and oral testimony on a myriad of pension issues.

Jeffrey C. Chang, APM, Sal L. Tripodi, APM, and George J. Taylor, MSPA, are the current GAC volunteer Chairs. GAC is also Co-chaired by Brian H. Graff, Esq., APM, ASPA Executive Director/CEO, and its new Chief of Government Affairs, Teresa Bloom, Esq. Jolynne M. Flores, ASPA's Government Affairs Manager, provides additional support to the Committee. GAC is made up of the following committees: Legislative Relations, Administrative Relations, Communications and Q&A. In addition, GAC is staffed by liaisons from other parts of ASPA, such as the ASPA PAC, the ABCs and the ASPA Board of Directors. A GAC organization chart, as of September 2004, is on page 29.

LEGISLATIVE RELATIONS: ASPA'S CONNECTION TO CONGRESS AND THE ADMINISTRATION

The Legislative Relations Committee (LRC), chaired by Martha L. Hutzelman, APM, is responsible for working with and educating the members of Congress on pension issues. The LRC and the ASPA National Office advocate and educate legislators and Treasury about pension proposals on behalf of ASPA. These relationships can be proactive, such as when ASPA has ideas about legislation that would help the benefits industry, or reactive when ASPA needs to respond to pension legislative proposals from the Administration or members of Congress.

The LRC has been quite active in three main areas over the past year: (1) pension reform (including the President's most recent pension proposals); (2) resolving the problem which ensued when 30-year Treasury securities were eliminated; and (3) the revitalization of defined benefit plans.

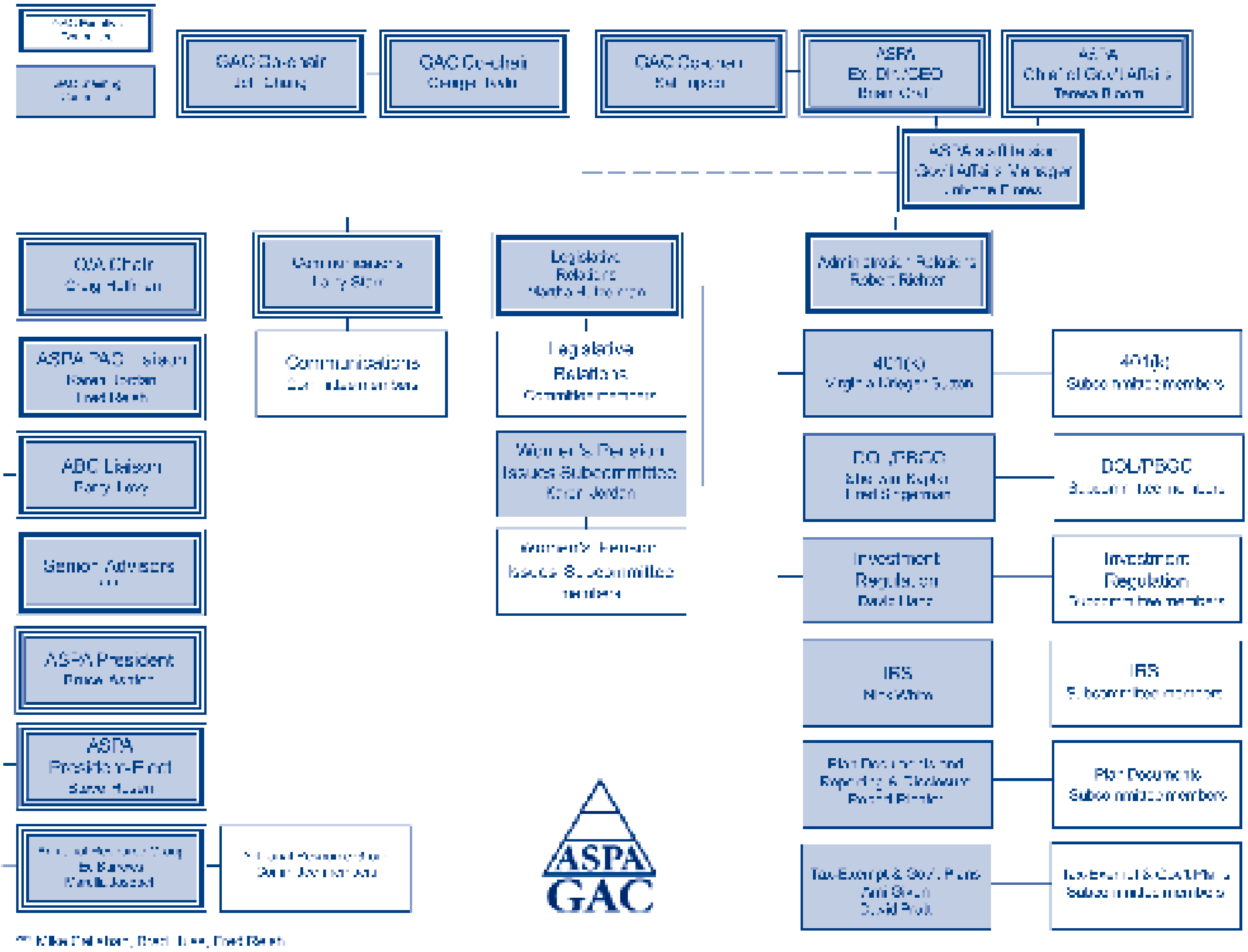
Each February, GAC's leaders hold two days of face-to-face meetings on Capitol Hill. This past February, GAC discussed how important it was that the rate for pension determinations be changed from the 30-year Treasury securities rate to a rate more reflective of reasonable funding assumptions, and encouraged legislators to look for a more stable interest rate to be used for certain IRC §415 calculations. Furthermore, GAC discussed ideas for pension reform that are being considered by Congressmen Portman (R-OH) and Cardin (D-MD).

The tenor at those face-to-face meetings was rather frustrating because they occurred while democrats and republicans could not agree on the terms under which to have joint conferences. As a result, all legislation was road blocked, much to the consternation of both us and the Congressional aides. Nonetheless, in April, the Pension Funding Equity Act of 2004 emerged and was signed into law, resolving the uncertainty regarding the interest rate to be used for plan funding.

Regarding the President's retirement plan proposals, strong lobbying with various members of Congress and the Administration led to some amount of movement from the Administration's initial January 2003 proposals. This year's proposal by the Administration did not include the high contribution limits for individual savings vehicles that would have discouraged employer-sponsored plans for small businesses, nor does it eliminate 401(k) and 403(b) plans in favor of a new deferral plan structure. The elimination of cross-testing was also deleted from the new version of the proposal.

Women's Pension Issues is a subcommittee of the LRC. Among other things, this subcommittee works with outside organizations that are active in participant rights issues.

ASPA
Dedicated to the Private Pension System



ADMINISTRATION RELATIONS: ASPA'S CONNECTION WITH ADMINISTRATIVE AGENCIES IN RELATION TO REGULATION AND OTHER GUIDANCE

The Administration Relations Committee (ARC), chaired by Ilene H. Ferenczy, CPC, is responsible for interacting with the regulatory agencies of the President's Administration: Treasury, IRS, DOL, PBGC and SEC, on behalf of ASPA, particularly in relation to regulations and other guidance that is issued. ARC is made up of the chairs of the following eight subcommittees: DB, 401(k), IRS, DOL/PBGC, Reporting & Disclosure, Plan Documents, Tax Exempt/Government Entities and Investment Regulation. When an issue arises that requires action by the ARC, it is generally assigned to one of the subcommittees, which is tasked with authoring comments to be sent to the various agencies, or with communicating on a more informal basis with agency representatives. The comment letters that are posted on ASPA's Web site are most often the product of one or more of the ARC's subcommittees.

The ARC interacts with regulators throughout the year. Additionally, ARC has face-to-face meetings with the Treasury, IRS, DOL and PBGC each June. These discussions are often opportunities to raise new issues, to brainstorm ideas about how to better the interaction with the regulators on some subject or to get input to help us with our comments on issues. On occasion, regulators ask ASPA to give them input on a specific upcoming topic. This past June, GAC's meetings with the agencies included discussions with Treasury, IRS, DOL and PBGC.

- The Treasury meeting included a discussion about some of the issues on the horizon with respect to Roth 401(k) plans.
- There were two IRS meetings. One was about the IRC Section 412(i) guidance, while the other was with the IRS group in charge of EPCRS about changes that could be made to make that program more sponsor-friendly, particularly with regard to scrivener errors.
- At the DOL meeting, we discussed the automatic rollover rules (and the problems we envision), as well as practitioner fee disclosures and what to do about orphan plans.
- At the PBGC meeting, we discussed the PBGC's new online premium filing program and how to best

communicate the program and encourage filers to utilize it.

ARC has been very active this year in writing comments on various regulations. This process, which is very labor-intensive, involves the assistance of all of our committee members. So far in 2004, GAC has commented on:

- The proposed guidance on IRC Section 412(i);
- The DOL's EFAST program and its desire to encourage electronic filing of Forms 5500;
- The SEC's proposed rules for mandatory fees on redemptions of mutual fund investments;
- The DOL's proposed regulations in relation to the automatic rollover rules for distributions in excess of $1,000 and less than $5,000;
- The IRS's proposals in Notice 2003-62 regarding mortality tables for defined benefit plan funding; and
- Rev. Proc. 2004-33 and the current EPCRS structure.

Any time an issue comes up that is defined benefit-related, the actuaries of GAC become very involved in the comment process. During 2003 and 2004, there was a separate committee, called the Actuarial Resource Group, which worked with any subcommittee on pension-related topics. For the 2004-2005 year, in anticipation of the IRS's release of new funding rules, the ARG will become the DB Subcommittee. GAC has worked hard during the past several months to attract new actuarial support to all its subcommittees, particularly from ASPA members that previously have not been involved in committee work.

ARC has also assisted ASPA's various committees in providing testimony. This year, Bruce L. Ashton, APM, testified before Treasury regarding 412(i) plans. In August, Janice M. Wegesin, CPC, testified before the DOL on Form 5500 filing requirements for health plans.

COMMUNICATIONS COMMITTEE: KEEPING ASPA MEMBERS ABREAST OF DEVELOPMENTS

GAC's Communications Committee, chaired by Lawrence C. Starr, CPC, is responsible for the many *ASPA ASAPs* you receive throughout the year. The Committee has published 28 *ASPA ASAPs* in the first half of this year, which is quite an accomplishment when one realizes how much work goes into each publication. Someone is recruited to write each *ASPA ASAP*, often within minutes of the subject matter becoming public information. That person drafts the *ASPA ASAP* within 24 to 48 hours. It is then reviewed and edited by the Communications Committee and Jolynne Flores, and then produced into the proper format. Overall, the *ASPA ASAP* is generally out to members by fax and e-mail that evening.

Q&A COMMITTEE: PUTTING THE GOVERNMENT REPS IN THE HOT SEAT

If you were at the Summer Conference, you know how hard the Q&A Committee works to produce cogent questions and answers for the government speakers at that conference, the regional conferences and the Annual Conference. This Committee, chaired by Craig P. Hoffman, APM, collects Q&As from the public (and authors questions themselves, as well), and then works with the agencies to determine which topics can be appropriately answered or discussed at a conference. Furthermore, members of the Committee are responsible for "picking the brains" of the government representatives, both before the conference in preparatory sessions and on the podium at the conferences themselves.

You can submit questions throughout the year to the committee via ASPA's Web site at **http://www.aspa.org/faq/gov.htm.**

CONCLUSION

If you have input about any government-related issues or guidance that is released, feel free to contact the GAC Chairs or the ARC or LRC Chairs with your thoughts. We welcome any input that assists us in properly representing ASPA's interests with the government. ▲

Ilene H. Ferenczy, JD, CPC, APA, is a partner in the law firm of Powell, Goldstein, Frazer & Murphy, LLP, in Atlanta, GA, where she consults on all types of employee benefit plans. Ilene focuses her practice on qualified retirement plans, executive compensation and benefits issues in mergers and acquisitions. She is a nationally known speaker on benefits issues and has authored more than forty articles for publications such as the Journal of Pension Benefits *(where she is a Senior Editor), the* Journal of Taxation of Employee Benefits, *and* The ASPA Journal. *The fourth edition of her book,* Employee Benefits in Mergers and Acquisitions, *a Panel publication, was released in October 2003.*

DOL WEB ADDRESS CORRECTION

In the July-August 2004 edition of *The ASPA Journal*, page 5, the Web address for the DOL's detailed explanation of the earnings calculation methodology should contain an underscore, rather than a hyphen. The correct Web address is:

http://www.dol.gov/ebsa/faqs/faq_vfcp.html

C. Frederick Reish, APM, Receives the 2004 Harry T. Eidson Founders Award

C. Frederick Reish, APM, was recently selected as this year's recipient of the Eidson Award. Fred was selected for this prestigious award based on the significant role he has played in advancing ASPA's interests and those of the private pension system.

Please join us in recognizing this exceptional individual at the awards presentation being held on Sunday, October 24, at 3:15 p.m., at the Washington Hilton & Towers. The awards ceremony is held in conjunction with the 2004 ASPA Annual Conference.

In 1995, ASPA established the Harry T. Eidson Founders Award to honor the memory of ASPA founder Harry T. Eidson, FSPA, CPC. Eidson was the initial inspiration behind the formation of ASPA in 1966. He firmly believed in the importance of a private pension system for the United States and was committed to building an organization dedicated to preserving and enhancing such a system. The Harry T. Eidson Founders Award recognizes exceptional accomplishments that contribute to ASPA, the private pension system or both.

Previous recipients include: Robert D. Lebenson, MSPA, in 2003; Curtis D. Hamilton, MSPA, CPC, in 2002; Ruth F. Frew, FSPA, CPC, in 2001; Leslie S. Shapiro, JD, in 2000; Howard J. Johnson, MSPA, in 1999; Andrew J. Fair, APM, in 1998; Chester J. Salkind in 1997; John N. Erlenborn in 1996; and Edward E. Burrows, MSPA, in 1995. ▲

Lawrence C. Starr, CPC, Receives Educator's Award

The ASPA Education and Examination Committee's Divisional Chairs have selected Lawrence C. Starr, CPC, as the recipient of the 2004 Educator's Award. Larry is president of Qualified Plan Consultants, a West Springfield, MA, firm that provides pension and profit sharing plan consulting, as well as administration and actuarial services. He received his Masters of Business Administration in Economics and Finance with a specialty in Insurance from the University of Hartford. In addition, he was a member of the faculty of the University of Connecticut for over 14 years where he taught courses in pension and profit sharing, Social Security and related areas. Larry has served many roles within ASPA, including Vice President of ASPA and many years on the ASPA Board of Directors, the ASPA Education and Examination Committee and the Executive Committee of the ASPA Government Affairs Committee, where he is currently the Communications Chair. He is also a fund raising chair of ASPA's Political Action Committee (ASPA PAC). Larry is a senior editor of the *Journal of Pension Benefits* and is the co-author of the *Life Insurance Answer Book for Qualified Plans and Estate Planning*.

On the basis of his dedication to education, ASPA is proud to honor and present Larry Starr with the 2004 Educator's Award. Larry will receive his award on Sunday, October 24, during the Business Meeting at the 2004 ASPA Annual Conference.

Past recipients of the Educator's Award include: Gwen S. O'Connell, CPC, QPA; Joan A. Gucciardi, MSPA, CPC; Sal L. Tripodi, APM; Charles J. Klose, FSPA, CPC; Janice M. Wegesin, CPC, QPA; David B. Farber, MSPA; and Cheryl L. Morgan, CPC, QKA. ▲

Educator's Honor Roll

The following individuals were nominated for the 2004 Educator's Award. The Education and Examination Committee is proud to recognize these individuals for their contributions to pension education:

Rajean M Bosier, CPC, QPA, QKA
Dan Brown
David M. Burns, MSPA, CPC, QPA
Dean W. Carey, QPA, QKA
Randall J. Crouch, CPC, QPA, QKA
Janet S. Eisenberg, MSPA
David B. Farber, MSPA
Thomas J. Finnegan, MSPA, CPC, QPA
George Fraser
Lisa C. Germano, APM
Anne E. Grucza, CPC, QPA, QKA
Thomas Edward Johnston, QKA
Charles J. Klose, FSPA, CPC
Gary S. Lesser
Norman Levinrad, FSPA, CPC
Lynn L. Mordan, CPC
Julie L. Munderback, CPC, QPA, QKA
Robert M. Richter, APM
Elaine A. Scott, MSPA, CPC
G. Dwayne Smith, CPC, QPA, QKA
Lawrence C. Starr, CPC
Judy R. Stevens, MSPA, QPA
Lisa Stifel, QPA, QKA
S. Derrin Watson, APM
Lawrence J. Zeller, MSPA

WELCOME NEW MEMBERS!

CPC

Timothy R. Cinalli

QPA

Jeremy L. Clark
Nichole T. Daumueller
Brian N. Graff
Heather R. Hannah
Stephanie M. Hepler
Molly E. Mokodean
Vicky C. Neill
Kimberly A. Rineer
Roxanne K. Ritter
Kathy M. Roland
Michael P. Rosandich
Jeff R. Stuhr
Nicholas J. Zapf

QKA

Neomal John Abeysekera
Jennifer L. Benson
Kerri L. Bruner
Melissa F. Childs
Thomas E. Collett
David N. Flegel
John W. Fletcher
Sharareh G. Freeman
Jenny D. Fung
Christine L. Gainer
Cindy P. Hall
Teresa E. Harbin
Dawn R. Hempstead
Stephanie M. Hepler
Margaret E. Johnson
Rebecca G. Middleton
Farhad Mirzada
Barbara J. Nakata
Allyson M. Nealis
Kevin D. Oliver
James M. Osterhaus
Leah R. Pelfrey
Terry A. Reynolds
Michael P. Rosandich
Karen H. Sarno
Matthew E. Shanks
Gary D. Smith
David W. Strom
Susan I. Taylor
Kelly A. Thompson
Heather K. Yeager

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Darold C. Brooks
Brian H. Graff

Affiliate

David A. Andrews
Lynne L. Arnold
Ruth Marie Ault
Dave T. Banathy
Lynn R. Banziruk
Steven F. Bradway
Michael John Braverman
Jon W. Breyfogle
Jan Cameron Suzuki
Anthony J. Coco
Scott R. Costi
Robert L. Croy
Michelle Eberhart
Joseph C. Faucher
Jennifer Jordan Fernandez
Masoud Ghodrati
Royce Gilpatric
Jane S. Grimm
Cynthia L. Hall
Carol R. Henry
Micheline H. Himes
Gail C. Kuhn
Geri J. Leland
Howard Mazer
Glenda K. McAfee
John E. McArthur
Susan Moore
Pete Neuwirth
Timothy J. O'Brien
Catherine J. Osa
Diana S. Peterson
Lilia J. Pivetta
Stefanie L. Preston
Gayathri Rajan
Daniel M. Reser
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Henry P. Schneider
Sharon Scussel
Samuel P. Segal
Roger A. Seim
Sherry Shultz
Anne T. Stecher
Sally J. Stresnak
Claire A. Sullivan
Stephen P. Toth
Mary Turley
Nancy J. Turner
Dolores A. Upton
David W. Venuti
Marcia S. Wagner
Charles E. Wenzel
H. McKim Wertz
Steven F. White

The Martin Rosenberg Academic Achievement Award

ASPA proudly recognizes the recipient of the Martin Rosenberg Academic Achievement Award for the fall 2003—spring 2004 academic year. Han Weixing is being honored for her performance on the fall 2003 C-2(DB) exam.

The award, funded by the ASPA Pension Education and Research Foundation and established in 1990, is presented in honor of the late Martin Rosenberg. Mr. Rosenberg, a Fellow of ASPA, served as an Education and Examination Committee member from 1979 to 1985 and as General Chair from 1985 until his death in 1987. The award is designed to annually recognize top performing ASPA examination candidates (certain minimum performance criteria are applied).

FUN-da-MENTALs

SIDE FUN

"We've got to upgrade the computer system. Downloading information on this one takes too long."

Contest Winners!

In the May-June 2004 issue, we held a contest asking readers to study the cartoon above and send us their best ideas for a caption. Here are the winning entries:

First Place

Steven K. Rabinaw, QPA, QKA
"Losing one's census"

Honorable Mention

Brian J. Schiedel
"Another recordkeeper learns of the IRS revisions to the QJSA and QPSA explanations!"

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 *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.

IN TOAD ID _ _ ❍ _ _ ❍ ❍ ❍

HEED TWIG _ _ _ ❍ ❍ _ _ ❍

SIT BUM _ ❍ _ ❍ _ ❍

RAN FRETS _ _ _ ❍ _ ❍❍ _

Mystery Answer

A change in "_ _ _ _ _ _ _ _ _ _ _ _ _ _ "

What the actuarial trainee experienced when he got his first job after graduation from college.

Bulletin Board

Conferences

October 24–27
Annual Conference
Washington, DC

January 27–28, 2005
Los Angeles
Benefits Conference

Education

October 31
Final Registration Deadline
for Fall Examinations

November 1–December 15
DC-1, DC-2, DC-3 and DB
Fall Examination Window

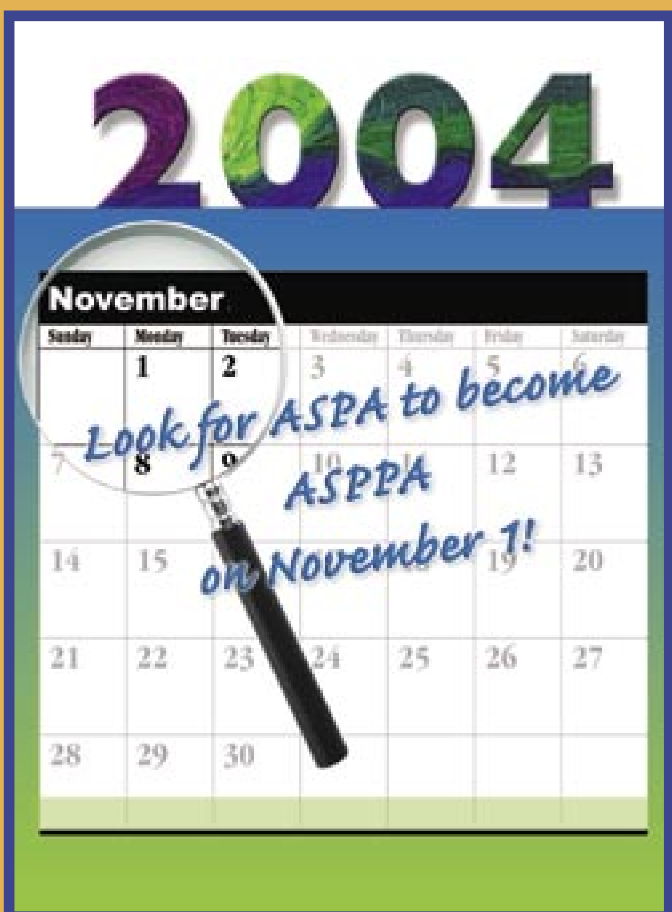
Membership

CE Reporting Form
for the 2003-2004 cycle
due January 10, 2005

Calendar of Events

		ASPA CE
2004		
Oct 24–27	Annual Conference Washington, DC	20
Oct 31	Final Registration Deadline for Fall Examinations	
Nov 1–Dec 15	DC-1, DC-2, DC-3 and DB Fall Examination Window	
Nov 12	C-3, C-4 and A-4 Postponement Deadline for Fall Examinations	
Nov 17	C-3 and A-4 Examinations	
Nov 18	C-4 Examinations	
Dec 1	DC-1, DC-2, DC-3 and DB Postponement Deadline for Fall Examinations	
Dec 15	PA 1-3 2004 Edition Paper Examinations Deadline	
Dec 31	PA 1-3 Online Examination Submission Deadline	
2005		
Jan 10	CE Reporting Forms Due	
Jan 27–28	Los Angeles Benefits Conference	TBA
Mar 17–19	The 401(k) Summit San Diego, CA	15
May 5–6	Great Lakes Benefit Conference Chicago, IL	TBA
Jul 24-27	Joint ASPA and WP&BC Conference San Diego, CA	TBA

* Note: Exam Deadlines are final. Registration and payment must be in the ASPA office by the deadline dates.



Did You Know that More Than 1,000 Members Responded to the ASPA 2004 Survey?

Thanks to all of our members that participated. In appreciation, these members will receive a certificate for a free pre-recorded ASPA webcast or Web course session.

Congratulations to our "Free ASPA Membership" grand prize winner, Shannon Y. Seiler, QKA. Two additional prize drawing winners, Kimberly M. Patty, QPA, and Tina M. Michaud, QKA, won $250 Amazon.com certificates, which were donated by Charles Schwab.

ASPA
Dedicated to the Private Pension System