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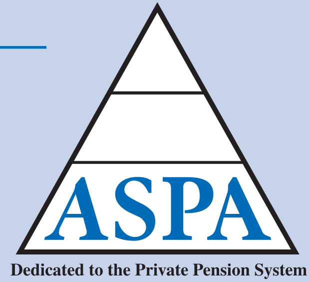

In this Issue

EBRI Forum Addresses Social Security Issues 3
Attorney-Client Privilege.... 4
Avoiding and Locating Lost Participants 6
IRS Remedial Program Statistics 8
Presidential Review 10
Focus on ASPA PERF........ 15
ASPA ASAPs in Review ... 16
Annual Conference Wrapup 22
Focus on E&E 29
Calendar of Events 31
PIX Digest 32

IRS Issues 401(k)/(m) Safe Harbor Guidance

by John P. Griffin, J.D., L.L.M. and Charles D. Lockwood, J.D., L.L.M.

Beginning in 1999, a plan sponsor may avoid performing the actual deferral percentage (ADP) test under Code §401(k) and the actual contribution percentage (ACP) test under Code §401(m) by adopting a "401(k) safe harbor" plan. The Internal Revenue Service recently issued Notice 98-52 which provides guidance for employers that wish to utilize the 401(k) safe harbor plan design. This explanation provides a summary of the IRS guidance and makes observations that one should consider as they assess the use of a 401(k) safe harbor plan design.

In General

A 401(k) safe harbor plan allows an employer to avoid running the ADP and ACP tests for a plan year, provided the employer is willing to make a rather generous matching contribution or nonelective contribution to participants under the plan. By adopting a 401(k) safe harbor plan, an employer can eliminate the annual administrative costs of performing the ADP/ACP tests and can avoid the problems commonly associated with the ADP/ACP tests, such as having to limit the deferrals for Highly Compensated Employees (HCEs) or having to make unwanted refunds to HCEs.

Observation: *Employers that already provide a generous match or nonelective contribution should seriously consider the 401(k) safe harbor plan design. The requirement to perform ADP/ACP testing can be avoided completely in most situations. However, an employer must be aware that: (1) a 401(k) safe harbor plan must provide 100% vesting for the safe harbor contributions; (2) the employer may not impose a last day of employment rule or a 1,000 hour of service requirement as a condition to receive the safe harbor contributions; (3) the employer must*

Washington Update

ASPA Works to Promote Defined Benefit Plans

by Brian H. Graff, Esq.

Notwithstanding the current distractions here in Washington, ASPA's government affairs committee continues to pursue legislative initiatives to expand and reform the private retirement system. In particular, ASPA has recently been working with the Pension Benefit Guaranty Corporation on a series of initiatives to make defined benefit plans more attractive to employers. Led by its Executive Director, David Strauss, the

Continued on page 24

*decide before the beginning of each year that the plan will provide, **under its terms,** fixed safe harbor contributions (safe harbor contributions may not be discretionary); and (4) the employer must provide participants with a written notice of the safe harbor provisions each year.*

ADP Test Safe Harbor

A 401(k) plan will satisfy the ADP safe harbor if: (1) the employer provides either a Safe Harbor Matching Contribution or a Safe Harbor Nonelective Contribution; (2) the employer provides a Safe Harbor Notice (discussed below) to all eligible participants; and (3) the plan meets all the other requirements in the IRS guidance.

Safe Harbor Matching Contribution: An employer may provide a Safe Harbor Matching Contribution under a "basic matching formula" or an "enhanced matching formula." Under either formula, the Safe Harbor Matching Contribution must be 100% vested when made to the plan and may not provide a greater rate of matching contribution for HCEs than for non-HCEs at any rate of elective deferrals.

- A plan satisfies the **basic matching formula** requirement if it provides a 100% match on each non-HCE's elective deferrals up to 3% of compensation and then a 50% match on elective deferrals from 3% to 5% of compensation.
- A plan satisfies the **enhanced matching formula** requirement if it provides a matching contribution on each non-HCE's elective deferrals that at any rate of deferral will provide an aggregate matching contribution that is at least equal to that provided under the basic matching formula. In addition, the enhanced matching formula may not provide for a greater rate of match as an employee's elective deferrals increase. For example, the following formulas are enhanced matching formulas: (1) a 100% match on each participant's elective deferrals up to 4% of compensation and (2) a 150% match on each participant's elective deferrals up to 3% of compensation. In both cases, an employee would receive a matching contribution equal to or greater than the amount he/she would receive under the basic matching contribution formula, no matter how much the employee defers.

Safe Harbor Nonelective Contribution: An employer may provide a Safe Harbor Nonelective Contribution by making a nonelective employer contribution of at least 3% of compensation for each eligible non-HCE. The Safe Harbor Nonelective Contribution must be 100% vested when made to the plan and must be made for all eligible non-HCEs, regardless of whether they defer under the plan.

Observation: *An employer that has, and expects to continue to have, a top-heavy 401(k) plan should consider making a Safe Harbor Nonelec-*

Continued on page 26

The Pension Actuary is produced by the executive director and Pension Actuary Committee. 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 Pension Actuary*.

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.

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Focus on GAC

EBRI Forum Addresses Social Security Issues

by Carol R. Sears, FSPA, CPC

The Employee Benefit Research Institute (EBRI) sponsored a policy forum on December 2, 1998. The forum was to present various ideas and perspectives about—*Beyond Ideology: Are Individual Social Security Accounts Feasible*?

EBRI has held two policy forums per year since 1990. Their goal is to bring together a cross-section of EBRI sponsors, congressional and executive branch staff, benefit experts, academics, interest groups and labor to examine public policy issues. This is the first forum at which ASPA was asked to be a speaker.

The session titles were as follows:

1. Sensitivity of Individual Account Performance to Administrative Costs
2. Basic Administrative Tasks and Theoretical Constructs
3. Employer and Government Roles in Collecting Contributions and Crediting Social Security Accounts
4. Lessons from Abroad
5. Defined Contribution Plan Administrators
6. Panel Discussion

Other speakers included several renowned EBRI researchers; the Deputy Commissioner of the Office of Policy, Social Security Administration; Senior Fellow at the Urban Institute; representatives of the American Payroll Association; State Street Bank as well as Fidelity Investments directors; two former Commissioners of Social Security; and more.

I participated in Session 3. My challenge was to discuss the differences and drivers of administrative costs in employment-based defined contribution plans, relating this research to the current Social Security individual account debate. EBRI was particularly interested in describing and analogizing the "nuts and bolts" to attendees who may be unaware of actual day-to-day administrative activities.

The message I attempted to impart was where, why, and how do errors occur during the recordkeeping process in the private plan world, and how might privatized Social Security accounts manage errors/corrections?

Continued on page 12

Speech for EBRI Forum

by Carol R. Sears, FSPA, CPC

My name is Carol Ruth Sears. I am President of the American Society of Pension Actuaries, an Enrolled Actuary, a Fellow in the American Society of Pension Actuaries, a Certified Pension Consultant, and a Vice President of a third party administrative, recordkeeper and actuarial firm in Peoria, Illinois that serves small business pension plans. We provide professional service to over 1,100 small business private pension plans covering about 100,000 participants. About 225 plans are daily-valued Defined Contribution plans.

My major theme for today is drivers of cost with an emphasis on where do, why do and how costly are errors in the private plans and how might errors be handled in privatized Social Security Accounts because any of the proposed schemes will naturally have to handle errors.

Each of the routine cost drivers listed are hugely more costly when an error has to be corrected—each of these drivers have multiple responsible parties communicating to make funding flow into the plan or out of the plan correctly. Cost is two-fold and includes human effort to fix as well as deposit to make a plan "whole". Cost is two-fold as it includes human effort plus the "fix it" cost.

Privatized Social Security Accounts will be record-kept by a similar group that would include Participant, Employer, Recordkeeper and Fund. Plus, Government could be involved. Each relies on the other in the private world and as such will be the case in the privatized Social Security world, too. If any one party makes a mistake—correction requires:

- Discovery

Continued on page 13

The Attorney-Client Privilege Is Not Absolute in ERISA Matters: Beware of the Fiduciary Exception

by Jeffrey A. Rich, JD, CPA

Recent case law has focused attention on the problem of the potential for loss of the attorney-client privilege for communications in the ERISA context. The court-made, ERISA fiduciary exception to the attorney-client privilege and the multiple parties involved in the ERISA context, heighten the significance of identifying which party the attorney is advising and in which capacity the party is acting. The rule which may be distilled from the cases that deal with the issue of an employer's privilege is: If the attorney's advice is given to an employer acting in its capacity as the ERISA plan's sponsor and/or the ERISA trust's settlor, the advice generally will be covered by the privilege; if, on the other hand, the attorney's advice is given to an employer acting in its capacity as an ERISA plan fiduciary, the advice will likely not be covered by the privilege.

This article discusses the common law background of the fiduciary exception to the attorney-client privilege, the application of the fiduciary exception in federal question cases, and the application of the fiduciary exception in the ERISA context. The article then discusses recent case law, which refines the fiduciary exception by focusing on the employer's role relative to the legal advice rendered.

The Fiduciary Exception to the Attorney-Client Privilege

Common Law Background

The fiduciary exception to the attorney-client privilege is based upon common law fiduciary duties owed by a trustee to his beneficiaries. Generally, under American common law, trust beneficiaries are entitled to have access to legal advice rendered to a trustee concerning matters which affect trust property[1]. The derivation of this doctrine is discussed in a Delaware decision, *Riggs National Bank of Washington, D.C. v. Zimmer:*[2]

> Initially, and most importantly, it must be noted that the trustees have substantive fiduciary duties to the beneficiaries. The special relationship puts this case in an entirely different context than a simple motion for discovery against a claim of privilege. Incredibly, counsels agree that American case law is practically nonexistent on the duty of a trustee in this context. But our treatise writers have not been silent. Thus, Professor Scott writes:
>
> > 'A beneficiary is entitled to inspect opinions of counsel procured by the trustee to guide him in the administration of the trust.'
>
> II Scott on Trusts, 3d Ed., §173. The trustee has been described as a mere representative whose function is to attend to the disposition and maintenance of trust property so that it may be enjoyed by the

beneficiaries in the manner provided by the settlor.[3]

The Application of the Fiduciary Exception under Federal Law

The seminal case applying the fiduciary exception under federal common law is *Garner v. Wolfinbarger*.[4] In *Garner*, shareholder-plaintiffs brought a class action against a corporation and its officers for management improprieties based upon, *inter alia*, alleged violations of federal securities laws.[5] The Fifth Circuit, persuaded by English trust law, decided that the shareholders' right to obtain attorney-client communications directed to the corporation outweighed the corporation's right to the privilege:

> The District Court relied upon two English cases . . . . Both cases treat the relationship between shareholder and company analogous to that between beneficiaries and trustees, a basis which the defendants in the present case say has no viability for American corporations. Though not binding precedents, these English cases are persuasive recognition that there are obligations, however characterized, that run from corporation to shareholder and must be given recognition in determining the applicability of the privilege.[6]

The Application of the Fiduciary Exception in ERISA Cases

The statutory basis for the application of the fiduciary exception in ERISA cases is found in ERISA Part 4, Title I, wherein the common law of personal trusts is incorporated (to the extent appropriate).[7] In *Donovan v. Fitzsimmons*,[8] the fiduciary exception was first applied in ERISA litigation. In *Fitzsimmons*, the good cause rationale (i.e., the fiduciary exception) under *Garner* was applied despite the fact that the plaintiff in that case was the Department of Labor, rather than the plan participants:

> Indeed, the only really close question raised by the briefs is whether the Secretary's status is sufficiently similar to the beneficiaries of the pension fund so as to enable him to invoke the *Garner* analysis. In this court's view, there exists such a sufficient identity of interests. In §502(a) of ERISA, 29 U.S.C. §1132(a), the Secretary has been delegated specifically the authority to sue in the interest of pension plan beneficiaries. The legislative goal was to ensure more effective enforcement of the statutory standards governing pension plans and plan fiduciaries than could be obtained through reliance only on private beneficiary actions.[9]

In *Washington-Baltimore Newspaper Guild, Local 35 v. The Washington Star Company*,[10] former plan participants sued the plan's sponsor and trustees for breach of fiduciary duties over a plan amendment, which had the effect of reverting plan assets after plan termination to the sponsor, rather than to the participants.[11] The issue presented in *Washington Star* was whether the plaintiffs were permitted to file an affidavit of a former counsel to the plan in support of their motion for summary judgment. The defendants objected to the filing of the affidavit, arguing that the affidavit was privileged under the attorney-client privilege.[12] Citing *Fitzsimmons*, the District Court in *Washington Star* resolved the issue of whether the plan sponsor was properly viewed as DiFilippo's client for purposes of the attorney-client privilege:

> When an attorney advises a fiduciary about a matter dealing with the administration of an employees' benefit plan, the attorney's client is not the fiduciary personally but, rather, the trust's beneficiaries.
>
> . . .
>
> The Act [ERISA] established, in clear and unmistakable terms, that a pension fund is an independent entity, separate from the employer. To safeguard pension assets, ERISA includes elaborate rules concerning the identity of the fiduciary, the standards of care to which he must adhere, the scope of permissible transactions with regard to plan funds, reporting and disclosure requirements, and criminal and civil liability for violations of these standards.
>
> . . .
>
> One commentator has stated that "the concept of the pension plan as a separate entity under ERISA may be difficult for some attorneys to accept since they formerly provided advice for a plan as a consequence of their services for the employer." . . . However, as "difficult" as that concept may be for the *Star* to accept, the *Star* should have secured separate legal counsel had it sought to maintain confidentiality in its communications about the Plan.[13]

The applicability of the fiduciary exception depends upon the nature of the attorney's consultation provided to the employer.

Continued on page 18

Avoiding and Locating Lost Participants

by Amy L. Cavanaugh

All qualified retirement plans will, from time to time, encounter a lost participant. Lost participants generally have small account balances, (which is generally why they have not come back looking for money). However, the size of the benefit does not mitigate the plan sponsor's fiduciary responsibility to locate missing participants and/or their beneficiaries and pay benefits which are due. Failure to do so results in a breach of fiduciary responsibility. In addition, the plan may have difficulty terminating or making mandated required minimum distributions at age 70-1/2 when former participants remain at large.

The purpose of this article is to address the issue of lost participants, specifically focusing on administrative practices designed to limit the number of participants who disappear off the radar screen and to offer rational, yet effective methods of locating participants whom, for whatever reason become unlocatable.

Today's workforce is more mobile then ever. Marriage and divorce result in name changes, and postal forwarding eventually expires. Often, workers may leave without a formal exit interview thus failing to update their former employer as to address changes after they leave. The problem is augmented when a plan terminates. Before a plan can be considered completely terminated, all trust assets must be distributed. If the plan is covered by the PBGC, the PBGC will, after an initial search on the part of the plan sponsor, assume responsibility for the location process. However, for plans which are not covered by the PBGC (which includes all defined contribution plans, as well as plans for local governments, churches and small professional corporations), assistance is not available from the PBGC. Ongoing plans, as well as non-PBGC plans that are terminated, must use other methods to locate these individuals. These methods include, but are not limited to, letter forwarding programs sponsored by the IRS and the Social Security Administration, hiring a private locator service, using the Internet, public notice in local newspapers and/or certified mailings with return receipt requested.

There is no one method sanctioned as a safe harbor for fulfilling this fiduciary duty. The course of action to be taken will be dictated by the monetary amount involved, the number of lost participants, the type of plan and the available information regarding the lost participant. The responsibility to locate someone with a significant benefit would need to be more exhaustive than for a participant with a small balance. Nonetheless, regardless of the size of the benefit, the plan is required to take responsible steps to locate lost participants. Failure to do so is considered a violation of the exclusive benefit rule, a key requirement of all qualified retirement plans. Failure to make required minimum distributions at age 70-1/2 results in penalties and the possibility of plan disqualification. Additionally, a plan that fails to pay benefits to a participant could be considered to have violated IRS vesting rules resulting, in the worse case scenario, with plan disqualification.

Before discussing the process of locating missing participants, it is important to address the issue of minimizing the number of participants who get lost. Locating lost participants can be expensive and time consuming, and there is no clear cut guidance as to how much of the expense can be passed on to the missing participants. Maintaining balances for former participants is costly. A small balance in a plan where fees are assessed on a per par-

ticipant basis, will erode quickly by plan expenses. This is unfair and imprudent. Even if the sponsor is paying expenses, it is not cost-effective to keep small balances in the plan since the time and expense of periodic processing adds up quickly.

It is essential that the plan maintain current and accurate records and requests. Current address information should become a standard section on all participant forms, including correspondence and the VRU. Plan related mail which is returned undeliverable should be researched and resolved immediately. The Trustee should periodically report to the administrator with respect to uncashed checks. Again, the sooner these matters are addressed, the easier they are to resolve. Coordinating information with other aspects of human resources can also help assure that current data is available. It is important to alert a terminating employee that there is a balance in the plan being held on his behalf, or, if none, obtain a signed release from the participant at the time of termination or shortly thereafter.

Plan design can also be useful in reducing the number of lost participants. Years ago, it was common to withhold distributions until the occurrence of an event which would otherwise result in a distribution from the plan (death, disability or the attainment of early or normal retirement). The rationale for keeping the money was part benevolence on the part of the employer (to assure these assets were used for retirement) and perhaps some fear that large balances could be used to start up competing operations. From a participant's perspective, taking a distribution could mean losing out on favorable investment opportunities that may not be available outside a qualified plan. However, times have changed. Mutual funds are more widely available, and many plans, in contemplation of a more mobile workforce, include a rollover provision that can be taken advantage of upon employment (even before any eligibility requirements have been satisfied). Rollover IRA accounts are also readily available.

On the defined benefit side, cash outs are not as prevalent. However, when the cost of ongoing PBGC premiums is considered along with the time and expense of keeping track of former participants, a cashout provision may be prudent, particularly if the amount involved is small. But, remember a participant cannot be forced to take a distribution if his balance ever exceeded $5,000. For the most part, the greater the dollar amount held in the plan, the greater the chances of the participant staying in contact with the plan. Amending a plan to include an automatic cashout provision for amounts not in excess of $5,000 is not considered the elimination of a protected right, benefit or feature. Such an amendment can be effective in removing small account balances from the plan. As a result, the per participant plan expenses are reduced, and this assures that the money is distributed before the participant moves or otherwise becomes unlocatable.

Plan design can be useful in reducing the number of lost participants.

The new GATT rates for valuing cashout distributions only serves to increase the number of participants who fall below this threshold, and quite frankly, a participant may get more value by taking a cashout and investing wisely than from a meager annuity payable in the distant future. In addition to taking advantage of design techniques limiting the number of missing participants, plans should include a specific clause addressing the consequences of lost or missing participants and beneficiaries. The plan should follow this action in the event an individual remains unlocatable.

As a part of RPA '94 (GATT), the PBGC established a missing participant program. Under this program, the PBGC will assume responsibility for locating lost participants. This program is only available to terminating plans insured by the PBGC and only after the plan has conducted its own diligent search for the lost participant. The PBGC considers a search to be diligent if:

1. It begins no sooner than six months prior to issuing an intent to terminate the plan and is timed so distributions can be made by a designated distribution date;
2. It includes contact with any beneficiaries of the participant or alternate payees whose names and addresses are known to the plan; and
3. A commercial locator service is used.

The primary advantage of the PBGC program is that once the plan has undertaken a diligent search, the PBGC will assume responsibility for locating the lost participant. This permits a terminating plan to wrap-up its operations without having to wait until the missing participants are located. Benefits in excess of $5,000 must be invested in an annuity. Presuming the data on the participant is current and includes a Social Security number, the advantage of an annuity is that the insurance carrier will assume the responsibility of locating the individual. It is often difficult or impossible to find an insurance car-

Continued on page 20

A Statistical Look at the IRS Remedial Programs

by C. Frederick Reish, APM and Bruce L. Ashton, APM

The ASPA Government Affairs Committee (GAC) has ongoing liaison meetings with the IRS to represent our members' views to the IRS and to learn their concerns and priorities. Inevitably, a significant part of the discussions focuses on IRS audits of qualified plans and the administration and development of the remedial programs, such as VCR, CAP and APRSC. Because of our input at these meetings, it appears that GAC has been instrumental in the initial development of the VCR program and in the recent expansion of self-correction under APRSC.

In addition to the meetings, we periodically ask the IRS for its statistics on plan disqualifications, VCR applications, APRSC corrections and closing agreements under CAP. A copy of the IRS' most recent response is reprinted in the adjacent column.

An analysis of those statistics, as compared to their prior responses, is revealing.

Changes made to the remedial programs by Revenue Procedure 98-22 (as well as changes in the enforcement attitude at the IRS, which now stresses correction and remediation rather than punishment) have lead to a dramatic increase in the use of APRSC and a slowing of the number of VCR applications being filed.

For example, by December 29, 1997, the IRS had received 5,149 VCR applications. In the first nine months of 1998, that number had grown to 5,806—or an increase of 657. However, in the two years from the end of 1995 to the end of 1997, the number of VCR applications grew by 2,256 or an annual rate of growth of 1,128.

If you annualize the 657 VCR applications filed in the first nine months of 1998, the annual rate of filings has slowed to 876. Thus, it appears that the number of filings in 1998 will be at least 20% less than the average for the preceding two years.

Interestingly, during the first nine months of 1998, the IRS has closed 1,142 VCR cases. This is approximately one-fourth of the total number of cases closed during the history of the program. We believe this accelerated rate of closing cases reflects growing experience at the IRS with the more common qualification failures. That is, once the IRS has seen similar errors on a number of occasions, it resolves the correction methodology for those types of defects and, as a result, VCR applications are processed more efficiently. It may also reflect increased sophistication by benefits practitioners in filing more complete requests with appropriate corrections.

At the same time, the number of APRSC cases identified by the IRS has grown from 201 on June 30, 1997 to 1,940 as of September 30, 1998. (Since the IRS only sees APRSC corrections in cases which they audit, this may only be the tip of the iceberg in terms of the numbers of plans actually using APRSC to self-correct qualification defects.) Obviously, the APRSC program has proven popular with IRS Revenue Agents—and perhaps just as obvious, plan sponsors are jumping at the opportunity to self-correct under APRSC in audit situations.

Finally, the number of plans being disqualified has dropped dramatically from an average of 192 per year (for 1990, 1991 and 1992) to 50 per year (for 1995 through 1998, annualizing 1998). This suggests that both the IRS and plan sponsors are more willing to use the remedial programs to resolve and correct disqualifying defects through APRSC and audit CAP.

C. Frederick Reish, Esq., APM, is a founder of and partner with the Los Angeles law firm Reish & Luftman. He is a former cochair of ASPA's Government Affairs Committee and currently chairs the GAC Long Range Planning Committee. Bruce L. Ashton, APM, a partner with Reish & Luftman, is cochair of the Government Affairs Committee and serves on the ASPA Board of Directors.

Mr. Reish's Letter from the IRS

Department of the Treasury
Internal Revenue Service
Washington, D.C. 20224

C. Frederick Reish, Esq.
Reish & Luftman
11755 Wilshire Boulevard
Los Angeles, CA 90025-1516

Dear Mr. Reish:

This is in regard to your letter dated June 24, 1998, in which you requested statistics regarding the Employee Plans Remedial Programs. We have delayed responding to your request in order to provide you with statistics through September 30, 1998.

As of September 30, 1998, a total of 5,280 cases have been completed under the Closing Agreement Program (CAP) resulting in negotiated amounts received of $129,401,569. The typical CAP negotiated amount per case is much smaller than the total indicates due to several large cases in the program. These agreements involved 2,338,231 participants. The CAP numbers provided herein are less than those previously provided to Ms. Lynn McGee of ASPA in our letter dated February 4, 1998, due to a record keeping error.

The Voluntary Compliance Resolution (VCR) Program statistics as of September 30, 1998, are as follows:

1. Applications received 5,806
   Not eligible for the Program 398
2. Compliance Letters issued 4,739
   Number of Participants 10,929,840

In regard to your request concerning the number of plans disqualified in each fiscal year since 1990, we are providing you with the number of plans per year that had their tax exempt status revoked through the Employee Plans Examination Program. The numbers are as follows:

1990 - 143
1991 - 211
1992 - 221
1993 - 75
1994 - 133
1995 - 55
1996 - 65
1997 - 42
1998 - 28

Since January, 1997, when the Administrative Policy Regarding Self-Correction (APRSC) succeeded the previous APRS Program, through September 30, 1998, 1,940 cases have been resolved using APRSC.

If you have any questions regarding this, you may contact me at (202) 622-8310.

Sincerely,

Richard A. Westley
Executive Assistant
Employee Plans Division

RETURNING TO DOWNTOWN CHICAGO...

The 7th Annual Midstates Benefits Conference

Mark your calendars for April 29-30, 1999. The downtown Chicago Fairmont Hotel will be this year's location for the Midstates Benefits Conference. Join your fellow ASPA members, colleagues, government representatives, and exhibitors for new information and the latest updates on topics such as: *Changes to the 1999 Form 5500 Series; Design Options for Defined Benefit Plans After the Repeal of IRS Section 415(e)*; and *Cross Testing Your Defined Contribution Plans*, to name just a few. In addition, come hear the latest updates from the IRS and DOL.

The registration fee for the conference is $350 until April 7th and $440 after April 7th. Watch your mailboxes for a complete brochure. For more information on attending or exhibiting, contact Piper J. Deuschl, CMP, Assistant Director of Meetings, at **piperd@aspa.org**.

1997-1998 Presidential Review

by Karen A. Jordan, CPC, QPA

It has been both a pleasure and an honor to have served as ASPA's president this past year. It is an experience that I will cherish and remember with fondness for the rest of my life. And this has been a wonderful year for ASPA. Our theme for the year was "Building for Tomorrow" and much was accomplished to prepare ASPA for many tomorrows.

Of course, very little of the accomplishments of the year had anything to do with me being the president, and it had all to do with the committed executive committee, the board of directors, the volunteer committee members, Brian Graff, our executive director, and a highly professional staff at the national office. They are the ones that made it all happen. All ASPA members should be extremely thankful to these committed individuals for all of their hard work and loyalty to ASPA during this past year.

Highlights of the year include:

Communications

- A new and improved web site. Don't forget to visit it often at **www.aspa.org**.
- Timely, frequent and informative ASPA ASAPs.
- Bi-monthly issues of *The Pension Actuary* with useful technical articles and important information about the society.

Education

- More individuals going through our education programs than ever before - ASPA administered over 7,000 examinations - a new record.
- Work on the quality of ASPA's education materials continued.
- Alternative methods to deliver education are being explored, such as specialized weekend courses and courses through the Internet.
- Developed classroom kits for C-1, C-2(DB) and C-2(DC) instructors.
- A new and improved Pension Education Research Foundation was further developed (formerly known as the James L. Kirpatrick Foundation). This foundation is involved with promoting pension and actuarial education and research. It supports our Martin Rosenberg awards for outstanding achievement in ASPA's examinations. It also supports actuarial scholarships and in 1998 made a major contribution to the SAVER Summit. The Foundation has many more worthwhile projects than funds to support them, and a generous contribution would be appreciated this year from all ASPA members.
- A waiver of the 8-year sunset provision on credentialing examinations was instituted, if the candidate can demonstrate that he/she has completed at least 40 credit hours of continuing education for the past two years.

Government Affairs

- Continued efforts to work with the various government agencies to help promote meaningful and workable guidance, not the least of which included major input which helped the formation of the new Employee Plans Compliance Resolution System (EPCRS). Currently, ASPA is working with the Department of Labor to ensure that any new regulations do not unnecessarily increase fees for small business retirement plans.
- Work has continued on promoting favorable pension legislation such as the SAFE plan, the elimination of the onerous top-heavy rules, and other provisions which affect small business pension plans. Many of these provisions are included in various bills introduced both in the House and in the Senate. We also continued to work to prevent harmful legislation by educating the Congress and their staff on the effects of certain proposed legislation on small business pension plans.
- Testimony was provided at various Congressional hearings.
- The ASPA Political Action Committee (ASPA PAC) was formed to provide financial support to political candidates, who are sup-

portive of legislation that is favorable to small business pension plans or which protects the private pension system, during the tax reform debates.

Conferences

- The biggest ASPA annual conference ever was held, along with two regional conferences, and a number of local one-day programs in communities around the country.
- Very successful IRS benefits conferences were held in Chicago, Los Angeles, and in the Northeast Key District.
- ASPA organized the White House/Congressional National Summit on Retirement Savings (the SAVER Summit) attended by the President, Vice President, and Congressional leaders.

Professionalism

- Improved relations and expanded activities with the other actuarial organizations were achieved. This particularly took place in the professionalism area and in our public interface functions with the American Academy of Actuaries.
- Began exploring the extent to which ASPA should be involved in setting standards of practice for non-actuarial professional practices.

Membership

- Services were improved by creating a membership department at the national office, and by devoting two directors to membership services and marketing.
- Creation of local ASPA Benefits Councils (ABCs) were continued in locations around the country where local continuing education services are needed. ABCs now account for over 700 members.
- An incredible retention rate in excess of 93% was achieved.

These are just the highlights of the hundreds of activities that ASPA was involved with during the year. Even though we are constantly looking for ways to improve and add to the services offered to our members, we are also very diligent in making sure that the current level of service that our members expect and appreciate is maintained and nurtured. All of this, I hope, demonstrates that your membership dollars are being put to good use in attaining our multi-faceted mission of educating pension actuaries, consultants, administrators and other pension professionals, and preserving the private pension system.

One of the most gratifying aspects of being involved with ASPA is to be associated with so many intelligent and talented professionals (volunteer members and staff) who are so passionately committed to accomplishing our mission. The success we have accomplished is directly related to that commitment and passion. Yes - we do not always do things right, we sometimes make mistakes, and sometimes it takes us longer to accomplish our goals than we would like. But that passion keeps us striving for perfection in providing the best service, on all levels, to our members.

Karen A. Jordan, QPA, CPC, is the immediate past president of ASPA and is co-owner of Alaska Pension Services, Ltd., of Anchorage, Alaska.

EXPANDED Northeast Key District Employee Benefits Conference

New Jersey ▪ May 20-21, 1999

NEW LOCATION

Get ready for the third annual **Northeast Key District Employee Benefits Conference** co-sponsored by ASPA, the Northeast Key District of the Internal Revenue Service, and its Pension Liaison Group. The conference is tentatively scheduled to be held May 20-21 in Iselin, New Jersey. Plans are to rotate the conference location between northern New Jersey and White Plains, New York.

MORE WORKSHOPS

The conference has been extended to two days, offering more workshops and general sessions covering topics such as: *the Small Business Job Protection Act; Recent Litigation; Form 5500 Preparation; IRS and DOL Updates*; and a lot more. This is a great opportunity to earn up to 14 continuing education credits.

MORE CE CREDITS

A brochure will be in your mail box this spring. Plan to register before April 26 and take advantage of the "early" registration fee of $325.

MORE NETWORKING OPPORTUNITIES

The Northeast Key District Employee Benefits Conference continues to attract more and more pension professionals each year.

For more information call Janet Kamvar, Meetings Coordinator, at (703) 516-9300, or e-mail **jkamvar@aspa.org**.

CONTINUED FROM PAGE 3

EBRI Forum Addresses Social Security

I told the audience all the parties involved in communicating, causing, and reporting a deposit into or withdrawal from a plan. I described the "Communications Loop" that occurs to successfully cause a routine 401(k) plan deposit. The *in loop* would include investment directions and deferral amount selection from Participant to Employer.

> Individual Social Security Accounts would certainly be privy to all these same error opportunities and require human effort to discern and correct.

- ➢ The Employer sends investment directions and payroll data to Recordkeeper and at same time, ACH's gross deposit to a holding fund.
- ➢ A holding fund confirms deposit to the Recordkeeper.
- ➢ The Recordkeeper ties out payroll data to the holding fund confirm.
- ➢ The Recordkeeper tells the holding fund what pieces of the gross deposit to send on to the plan investment fund. The deposit report loop goes backwards down the same chain ultimately allowing the Participant to "hear" that his/her account is updated via a voice response unit or similar access.

I pointed out that at any of the above communication junctures an imbalance or error might be discovered and cause the process to halt until human effort, which is costly and tedious, analyzes and corrects. The whole deposit is hung up even though an error might be with one participant. I told them that electronic communication was far speedier and accurate — if accurate at the source. But errors can still occur such as: switched deferrals, negative contributions, misplaced decimals, dropped data, or unforwarded investment selection changes. Many such errors require Participants to notice them. Can all the Social Security System Participants accept this responsibility?

Individual Social Security Accounts (IAs) would certainly be privy to all these same error opportunities and require human effort to discern and correct. Plus, if IAs rely on the employer in the administration loop, then small business might be ill-equipped to take care of its primary business while becoming technologically and technically capable to handle their added responsibility. Certainly, small business is less likely to have a qualified plan at all—let alone a plan that is daily-valued.

Questions I posed for further consideration before jumping into any IA program included the following:

- What are appropriate service expectations for any party in the loop?
- Who deposits "fix it" money—the culprit? The employer? The Government? Or does the Participant forgive it?
- How will participants be inspired to actively manage their own retirement if errors are beyond their control with little protection?
- Won't irritating small business employers or undertraining participants completely miss the program's objective?

I hope ASPA made a practical impact on the conversation surrounding a crucial issue. One is tempted to say eventually—do not try to fix what is not broken! Why not prefund the existing defined benefit program (modified to fit the needs of the new retiring, longer living generations) which ***is*** the ***only*** way to provide ***Security Socially***?

AND…

Why not let the IA system already in the marketplace—which is within private plans—work too? The structure is already there and accessible.

I believe we can accomplish larger, longer-term social needs with far less disruption and small business irritation this way.

EBRI presented an outstanding issue brief—*Individual Social Security Accounts: Issues in Assessing Administrative Feasibility and Costs.* This article also begs the question—Is this to be a Social program or a Social ***Security*** Program? Shouldn't we be concerned about our society's constantly increasing longevity and the looming risk coming our way? A defined benefit approach is the only way to pool risk and deliver benefits to those who incur the risk, not to mention, those who need it most.

I very much enjoyed participating in such a diverse and high level panel. It is clear to me that ASPA adds value to these discussions. We can listen and debate the ideas and vision that scholars and politicians offer while adding the practical view that often seems missing. The GAO has already asked me for a copy of my talk. *(The printed text of the speech starts on page 3.)* They want to think through the logistics before

Continued on page 14

CONTINUED FROM PAGE 3

Speech for EBRI Forum

- Analysis of when and where it occurred
- Calculation of account without error
- Money to make "it so"
- Or forgive, if participant is money ahead

Note: Correction means to have appropriate shares or units after correction. This can be quite different than basing on cash.

Who pays what it takes to make it so?

- In the private world, it is usually the culprit—so any of the above.
- In a privatized Social Security world, the group could also include the Government.
- **But** errors should be *expected* and *corrected timely* — How can participants be personally inspired to manage an important piece of their retirement income needs if not protected?

A plan needs many checks and balances before any trading into or out of plan funds occurs so accuracy can be obtained. But, a plan cannot have so many checks and balances that they slow down the processing abnormally. Otherwise, you create an error due to a Participant just by not timely investing or exchanging. Private plan daily valuation service guarantees usually are 24-48 hours from receipt of data in good order. Participants expect gains to be replenished and lost losses to be forgiven—leaving the worst of both worlds for any of the responsible parties.

Let me give you a concrete example that can occur in the private plan world. A Participant makes a change in selected funds for future deposits—for whatever communication glitch reason, this switch is not electronically coded—time goes by—even an average participant's fund fix can run into thousands of dollars. There are lots of similar examples.

I would like to expand on the practical details of a few of these Cost Drivers and analogize same to Privatized Social Security Accounts.

The first four - a Participant's ability to direct, whether each money source can be independently directed, how many funds can be chosen, do these funds "talk to each other" through a common clearinghouse or trading platform, does the employer submit data electronically - are connected. In the private daily plan world, a routine "deposit loop" looks like this:

- Employer or its payroll provider sends money per source and per participant electronically to recordkeeper *AND* ACH's (electronically sends) gross deposit to a holding fund at the common clearinghouse.
- Clearinghouse sends deposit confirm to recordkeeper (electronically).
- Recordkeeper receives both payroll data and confirm; ties out the sources of deposit subtotals (salary deferral, loan payments, etc.) to the clearinghouse confirmation. If it ties, recordkeeper sends "buy order" to the clearinghouse (in their required format) to send money from holding fund into plan's selected investment funds according to participant investment choices recordkeeper maintains.
- If it doesn't tie—recordkeeper works with payroll provider to identify which is wrong — data or deposit? Although the possibility is less electronically than manually, errors still occur, such as decimal point slips or negative amounts; and human interaction is needed which is costly and slow. Keep in mind, all money waits even though only one person may be the root of the error.

Once a supposed accurate buy occurs, the clearinghouse sends a confirmation of the number of shares purchased per investment fund in the plan to the recordkeeper. The recordkeeper updates the participant accounts by source and fund and refreshes VRU/WRU (i.e., trade is "settled"—new account can be heard by participant.) VRU = Voice Response Unit; WRU = Web Response Unit

Errors can still have happened if the deposit was posted to the wrong Social Security number or if the deposit was improperly broken down by source, but such errors may require the Participant to notice them eventually — they expect to have unlimited time to discover and report and still be made whole!

In a privatized Social Security world, the opportunity for errors in any above step is hugely exacerbated — especially for small business employers who are more often than large employers ill-equipped to handle their end of this kind of "daily" valued plan now and so do not have one — as is their choice — *someone* has to oversee the checks and balances — figure out what does not tie — and still be ready to figure out what might have been mis-deposited when later discovered. What will be appropriate service standards in privatized Social Security accounts? 24 hours? The more time that goes by until an error is noticed creates more opportunity for the lost "market" appreciation to increase and

more deposits to contain similar errors.

Electronic communication is an absolute must by all parties if only to isolate possible error sources…small businesses may not be equipped. With privatization, who will deposit the "fix it" money—the employer? Will the participant forgive it? Will the recordkeeper want to be in the business if possibly responsible? Will the government? How is the participant protected?

Another set of Cost Drivers is VRU/WRU availability and frequency of trades within a plan. In an ideal daily recordkeeping plan, participants make fund exchange requests, loan requests, and any inquiries exclusively in VRU. The unit produces an electronic file that the recordkeeper sends to the clearinghouse. The trade is posted—confirmed—settled—updated and then heard in T-1 to T-3 (1-3 days). The unit also prints out a written confirmation of their request that is snail-mailed or faxed to the participant the following morning. Participants have the responsibility of reviewing the confirmation to make sure they placed the request they really wanted or to realize they have received no confirmation, and, therefore, they did nothing.

You might be surprised that the constant availability of VRU/WRU and 24 hour access to fund transfer requests, etc. actually reduces churning. For example, when the market suffered in August—the VRUs received 5 to 10 times as many inquiry calls as usual—BUT maybe only 1 1/2 or 2 times as many fund exchange requests.

I believe it essential that any privatized Social Security system would have to have the VRU/WRU (or whatever is cutting edge access) to participants. *However*, the maintenance of such a system, coupled with the communication to all the parties, would be a huge endeavor. Also, the participants would have to be educated and able to take on their responsibilities.

In summary, if Social Security does embrace some element of privatization, a massive education and clear assignment of responsibility effort must occur first. Initially, employers and ALL participants will need extensive training—trial and <u>error</u> period will follow—the <u>error</u> part will be very prevalent. Expectations of all relevant parties in terms of timing of their function would have to be clear. Avoiding hard feelings for missing a market opportunity if within pre-determined service standards is essential.

Also, small business employers simply cannot run their primary business and be expected to first understand and then to properly administer benefit programs. Lack of desire coupled with lack of ability is an opportunity for a privatized Social Security system to be unappreciated or even cursed and will cause certain irritation. Believe me, employers who are irritated or overwhelmed by the process and their administration involvement in daily–valued plans move back into the traditional private pension world today. This occurs more frequently with small business. I hope I have clarified at least some of the effort needed to make "privatized" accounts in our nation's current private pension system work today. Please use caution in demanding such effort within Social Security. The error potential and participant disillusionment potential could be huge.

This speech was presented on December 2, 1998, at a forum sponsored by the Employee Benefit Research Institute.

Continued from page 12

offering advice themselves. I am hopeful that ASPA stays in the loop as an advisor for real life issues that small business faces. We certainly act as such a resource now.

Carol R. Sears, FSPA, CPC, EA, MAAA, is the current president of ASPA. Ms. Sears served on the Education and Examination Committee for 12 years, most recently as the General Chair during 1996 and 1997.

Summer Conference

Mark July 11-14 as the dates for the first ASPA Summer Conference. Join your ASPA colleagues and industry vendors for the educational opportunity of the summer. The conference will cover issues including: *The New Safe Harbor 401(k) Guidance; Updates on Document Compliance; The New 5500s Explained; Practical Business Sessions for Owner-Operated TPAs*; plus much more.

The location of the 1999 Summer Conference will be the Fairmont on Nob Hill in San Francisco. The Fairmont is a legendary hotel, site of the ABC-TV series "Hotel." At the crest of Nob Hill and the intersection of three cable car lines, the hotel is two blocks from Chinatown and four blocks from Union Square and the Financial District.

The cost to attend is $550 for ASPA members who register by June 11. Take advantage of extra savings and bring additional colleagues for only $500 each. Watch your mailboxes this spring for a brochure detailing speakers and topics. For more information about attending or exhibiting at the Summer Conference, e-mail Piper J. Deuschl, CMP, Assistant Director of Meetings at **piperd@aspa.org**.

Focus on ASPA PERF

ASPA Presidential Scholarship Announced

by Curtis E. Huntington, APM

The ASPA Pension Education and Research Foundation Inc., or ASPA PERF, is a not-for-profit 501(c)(3) corporation formed to foster excellence in pension education and to promote scholarly research in the pension education field. It is supported by tax-deductible member contributions.

In support of our educational objective, ASPA PERF is pleased to announce the introduction of a new ASPA Presidential Scholarship. Each year, ASPA's president will be invited to designate a college or university to receive a one-time $2,000 ASPA PERF Scholarship to be awarded to an outstanding junior.

It is our intention that the president work closely with an academic at the chosen institution in identifying a qualified recipient of this Scholarship. In addition, we anticipate that the president will be invited to present the Scholarship at the college or university and also to guest lecture to a class.

The Scholarship will also include a copy of ASPA's Pension Administrator's Course, PA-1 (Parts A and B), and ASPA will waive any applicable associated examination fees.

ASPA PERF hopes that this new Scholarship offers ASPA presidents the opportunity of becoming more deeply involved with a college or university and provides information about ASPA to an audience of interested undergraduate students.

Carol Sears, ASPA's president for 1998-99, has indicated that she will be working with the University of Illinois (Urbana-Champaign) in awarding this first ASPA Presidential Scholarship.

If there is an activity in your local community that you would like considered for possible funding by PERF, please let us know. Although we have limited funding available, we are always looking for new and creative ways to support our mission.

Curtis E. Huntington, APM, is a professor of mathematics and director of the actuarial program at the University of Michigan (Ann Arbor). He is a member of ASPA's board of directors, serves as the quality control chair of ASPA's Education and Examination Committee, and serves on the ASPA PERF Committee.

New Government Affairs Manager

On January 4, ASPA was fortunate to have Lisa Bleier, Esq., join ASPA's staff as the government affairs manager. She is a recent graduate of the University of Pittsburgh School of Law. Lisa completed her undergraduate work at the University of Michigan.

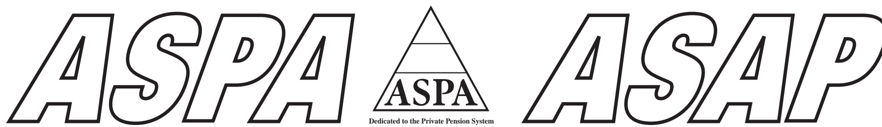
Lisa was the legal counsel in the office of Congresswoman Marge Roukema (R-NJ), who is on the ERISA Subcommittee of the House Education and the Workforce Committee. This committee has jurisdiction over Title I of ERISA. Lisa staffed the committee for the Congresswoman.

Lisa can be reached at the ASPA office by e-mailing lbleier@aspa.org.

Actuarial Research Conference

The annual Actuarial Research Conference (ARC) provides an opportunity for academics and practitioners to meet and discuss actuarial problems and their solutions. The theme of this year's conference is “Building Bridges Between Theory & Practice”-. The conference will be held in Des Moines, Iowa on August 8 and 9, 1999. Additional information is available on the web at **http://www.drake.edu/cbpa/ARC/arc99.html** .

The Society of Actuaries has cosponsored these conferences with the other professional actuarial organizations. Again this year, ASPA will be listed as a sponsor of this event.



ASAPs in Review

ASAPs Continue to Inform

by Kevin J. Donovan, APM, ASAP Chair

1998 represents the third full year of the *ASPA ASAP* service. Since the service was instituted, we have pledged to keep our subscribers informed on major pension-related developments at least 24 times a year. In 1996, the ASPA ASAP Committee produced 29 ASAPs. This was followed by 32 ASAPs in 1997 and 39 in 1998. We are proud of our accomplishments and pledge to continue to keep you up-to-date, up-to-the-minute.

For those of you who do not receive the service, our goal is to monitor current developments in the pension area and to have a concise analysis to you "as soon as possible." We also keep you informed of the various interest rates used in the pension area including the GATT and current liability rates, the PBGC rates, and the applicable federal rates.

The following paragraphs summarize the 39 ASAPs that have been issued in 1998. I would be remiss, of course, if I did not thank the authors of each, as well as thank the ASPA office for their assistance with layout and the broadcast fax.

ASAP 98-1 kicked off the year with an analysis of Revenue Ruling 98-1, the Service's interpretation of post GATT Section 415(b), by Mr. 415 himself, Kurt Piper.

Yours truly authored ASAP 98-2 on the second set of regulations on participant loans and Section 72(p).

Marge Martin gave us her analysis of Notice 98-1 in ASAP 98-3. This notice provided much needed guidance regarding the use of prior year testing for 401(k) plans.

ASAP 98-4 was our quarterly chart summarizing the various monthly rates for the past 24 months. These are the rates ASPA provides each month and include the PBGC rates for valuing benefits in terminating defined benefit plans and the variable rate for computing plan premiums, as well as the other rates described above.

ASAP 98-5 was authored by Jo Ann Petroziello and gave us an analysis of Revenue Procedure 98-14, the Service's limited opening of the determination letter program for GUST (GATT, USEERA, SBJPA, and TRA 97) amendments.

GAC co-chair Craig Hoffman authored ASAP 98-6, which alerted us to the fact that Revenue Procedure 98-6, the Service's annual update of the determination letter program, included language stating that cross tested language by itself no longer took a plan out of volume submitter status.

Attorney Stewart McGough, authored ASAP 98-7 on the 6th Circuit case of *Borda v. Hardy, Lewis, Pollard and Page, P.C*. This very important case involved vesting of previously terminated participants on plan termination.

GAC co-chair Bruce Ashton, and his partner, former GAC chair Fred Reish, gave us their analysis of Revenue Procedure 98-22 in ASAP 98-8. As you are probably aware, 98-22 gave us EPCRS – the Employee Plan Compliance Resolution System. EPCRS consolidated the previous correction programs, provided additional guidance concerning correction principles, and gave us a fee schedule for walk-in CAP.

ASAP 98-9 was our quarterly interest rate chart through March 31, 1998.

ASAP 98-10, written by Robert Richter and Craig Hoffman, gave us good news concerning the Service's position on cross-tested allocations and plans that use groupings of employees. The ASAP cites a letter from the director of the Employee Plans Division of the IRS to the chief of the EP/EO Cincinnati KDO stating that such plan does not violate the definitely determinable allocation requirement under the 401 regulations.

The master of leased employee and related employer issues, Derrin Watson, gave us ASAP 98-11 on the 10th Circuit case of *Bronk v. Mountain States Telephone*. The 10th Circuit reversed a very bad district court decision, which had held that leased employees could not be excluded from an employer's retirement plan.

ASAP committee member Neff McGhie, authored ASAP 98-12 on the final 417(e) regulations.

Brian Graff, ASPA's executive director, authored ASAP 98-13. This ASAP provided a summary of the provisions of H.R. 3788, the Retirement Security for the 21st Century Act.

ASAP 98-14 was written by yours truly, and concerned the Tax Court case of *Garcia v. Commissioner* (TCM 1998-203), a case involving taxation of participant loans.

Fred Reish brought us ASAP 98-15, a summary of Notice 98-29, the Service's request for comments on the elimination of certain forms of benefit in profit sharing plans.

GAC Communications chair Larry Starr authored ASAP 98-16, an analysis of Revenue Ruling 98-30, the Service's official pronouncement that negative election 401(k) plans can work.

ASAP 98-17 was our quarterly interest rate chart through June 30, 1998.

ASAP 98-18 was authored by the Reish and Ashton tag-team, and addressed the proposed "Group VCR" program.

The author of ASAP 98-19 chose not to take credit for her authorship. This ASAP announced the sending of the 1999 Form 5500 to the Office of Management and Budget, and provided an analysis of the totally revised report on a schedule-by-schedule basis.

Craig Hoffman again jumped in and gave us ASAP 98-20. This ASAP provided a summary of Revenue Procedure 98-42, the Service's official word that money purchase plans can ignore family aggregation language for funding purposes.

ASAP 98-21, by Brian Graff, provided an analysis of the IRS Restructuring Act of 1998.

ASAP 98-22 was written by Larry Starr and discussed Letter Ruling 9823051, a ruling concerning terminating defined benefit plans and qualified replacement plans.

ASAP 98-23, by Brian Graff, discussed pension legislation that had been introduced in the Senate.

ASAP 98-24, by Robert Richter, disclosed that the Service was willing to accept pre-GUST volume submitter plans after April 27, 1998, contrary to Rev. Proc. 98-14. This was later made official by Rev. Proc. 98-53.

ASAP 98-25, by Bill Taylor, discussed Letter Ruling 9833020. In this ruling, the IRS held that a distribution from a Canadian retirement plan could not be rolled over into a US plan.

ASAP 98-26, also by Bill Taylor, addressed the proposed regulations on Roth IRAs.

ASAP 98-27 gave us the quarterly rate chart through September 30, 1998.

ASAP 98-28, by the Reish and Ashton team gave us some input on the restatement process and prototype plans based on comments made by the IRS at the Western Region IRS/Practitioner Benefits Conference.

ASAP 98-29 was authored by Derrin Watson, and provided some insight on leased employee issues in light of the most recent Microsoft decision.

ASAP 98-30, also by Derrin Watson, discussed the recent settlement between Allstate Insurance and the IRS regarding coverage of certain of its casualty agents, previously found to be independent contractors, in its retirement plans.

ASAP 98-31, by Brian Graff, alerted us to the DOL's efforts to further regulate small plans by requiring either a plan audit or an institutional trustee.

ASAP 98-32, also by Brian Graff, discussed benefits legislation and the budget agreement.

ASAP 98-33 discussed the safe harbor 401(k) guidance issued in Notice 98-52.

ASAP 98-34 continued Derrin Watson's vigilance in keeping us informed about leased employee issues, with an analysis of the recent case of *Burrey v. Pacific Gas and Electric*.

ASAP 98-35 was authored by ASAP Committee member Bill Taylor, and discussed the Roth IRA guidance in Notice 98-50.

ASAP 98-36 represented our annual COLA chart, which contains the pension related dollar limits for each of the last 10 years.

ASAP 98-37, by Brian Graff, gave us some insight into the DOL's recent program regarding Y2K compliance by plan sponsors.

ASAP 98-38 gave us the quarterly rate chart through December 31, 1998.

ASAP 98-39 contained the text of a PBGC press release regarding the new filing deadline for premium filings.

The ASPA ASAPs are available as a subscription service through ASPA's membership department. If you are interested in receiving them, contact Amy Emery, Director of Membership Services, at (703) 516-9300.

Kevin J. Donovan, CPA, APM, is Chairman of the ASPA ASAP committee. He owns and operates Tucson Pension Consultations, a pension consulting firm in Tucson, Arizona. He is a member of the SIMPLE/401(k) subcommittee of the Government Affairs Committee, and is Asst. Chair of the 1999 Summer Conference in San Francisco. Donovan is a frequent speaker at ASPA events, and serves on the Technical Review Board for The Pension Actuary.

CONTINUED FROM PAGE 5

The Attorney-Client Privilege Is Not Absolute in ERISA Matters

The Refinement of the Fiduciary Exception in ERISA Cases

Recently, the fiduciary exception, as applied in *Washington Star*, was refined in *re Long Island Lighting Company*.[14] There, in a case of first impression, the Second Circuit was required to resolve "whether an employer waives the attorney-client privilege with respect to all communications regarding a plan covered by ERISA by seeking advice as a plan fiduciary and as a non-fiduciary from the same attorney."[15] The Second Circuit held in that case, that the fiduciary exception did not apply to attorney consultations on plan non-fiduciary matters, notwithstanding the fact that the employer also consulted the same attorney on plan fiduciary matters. The Second Circuit disagreed with the District Court's reliance upon *Washington Star* in ruling that the attorney-client privilege did not apply:

> The sound proposition that may be drawn from *Washington Star* is that when the same lawyer gives advice to the employer (i) as employer, on matters that are non-fiduciary under ERISA, and (ii) as plan fiduciary, the privileged consultation on non-fiduciary matters does not defeat the fiduciary exception that allows beneficiaries to discover the otherwise privileged communications on fiduciary matters. The district court relied on *Washington Star* for another proposition: that the lawyer's consultation on fiduciary matters expands the fiduciary exception to justify discovery as to all the consultations about the plan, fiduciary and non-fiduciary alike. This second proposition is not a corollary of the first.[16]

Based upon *Long Island Lighting*, the applicability of the fiduciary exception will depend upon the nature of the attorney's consultation provided to the employer. As the Second Circuit stated: "The employer's ability to invoke the attorney-client privilege to resist disclosure sought by plan beneficiaries turns on whether or not the communication concerned a matter as to which the employer owed a fiduciary obligation to the beneficiaries." [17] [18]

There is no method to absolutely assure the maintenance of the attorney-client privilege for legal advice in connection with non-fiduciary matters.

Possible Steps to be Taken to Maintain the Attorney-Client Privilege for Non-Fiduciary Legal Advice

There is no method to absolutely assure that the attorney-client privilege for legal advice in connection with non-fiduciary matters be maintained. Utilizing separate counsel for fiduciary matters versus non-fiduciary matters would appear to be the method yielding the greatest likelihood of success. However, retaining separate counsel is not always feasible.

Other, simpler (and less costly) steps can be taken to increase the likelihood that the privilege will be maintained. For example, the employer can:

1. Maintain separate files for non-fiduciary plan matters;
2. Utilize labels or legends for all documents concerning non-fiduciary plan matters, indicating that the document concerns such matters, and if the document is a confidential attorney-client communication, include such information on the label or in the legend; and
3. Utilize separate committees for fiduciary versus non-fiduciary plan matters so that, among other things, discussions with legal counsel at the non-fiduciary committee meetings may be privileged without the application of the fiduciary exception.

Conclusion

The fiduciary exception to the attorney-client privilege presents a trap for the unwary. Employers, who sponsor employee benefits plans subject to ERISA, should be aware that attorney advice concerning plan matters, except those pertaining solely to non-fiduciary matters, would be subject to discovery in actions brought by either plan participants or the DOL. Preservation of the attorney-client privilege concerning non-fiduciary matters may likely depend in part upon the employer's segregation (e.g., by using separate attorneys and/or separate files) of attorney communications as between fiduciary and non-fiduciary matters.

Endnotes

1 California law is contrary to the majority view. See *Moeller v. Superior Court*, 16 Cal.4th 1124, 1129

(1997). However, for actions arising under federal law (e.g., under ERISA), federal common law, rather than state law, determines the applicability of an evidentiary privilege. *U.S. v. Bauer*, 132 F.3d 504, 510, n.4 (9th Cir. 1997).

2 355 A.2d 709 (Del.Ch. 1976).

3 *Id.* at 712.

4 430 F.2d 1093 (5th Cir. 1970).

5 Id. at 1095. Because *Garner* was a federal question case, the Court applied federal common law concerning the applicability of the attorney-client privilege. *Id.* at 1098.

6 *Id.* at 1101.

7 *Donovan v. Cunningham*, 716 F.2d 1455, 1464 (5th Cir. 1983), *cert. denied*, 467 U.S. 1251 (1984).

8 90 F.R.D. 583 (N.D.Ill. 1981).

9 *Id.* at 586.

10 543 F.Supp. 906 (D.D.C. 1982).

11 *Id.* at 907.

12 *Id.* at 907-908. Specifically, the defendants argued that the plan's former counsel, Fernando DiFilippo ("DiFilippo"), a former associate of the law firm of Verner, Liipfert, Bernhard & McPherson ("Verner Firm"), was covered by the attorney-client privilege based upon the facts that: (1) while DiFilippo worked for the Verner Firm, the firm acted as the general counsel to the plan's sponsor and the sponsor's owner; (2) DiFilippo, while working for the Verner Firm, provided legal services to both the plan and its sponsor; (3) the Verner Firm performed work for the plan and the sponsor with no separation of legal services; and (4) the plan/trust documents were created by the employer-sponsor and the plan was funded entirely by the employer-sponsor. *Id.* at 908.

13 *Id.* at 910.

14 129 F.3d 268 (2d Cir. 1997).

15 *Id.* at 270-271. In the discovery dispute below, the Magistrate Judge ruled that the documents in dispute were subject to the attorney-client privilege because they concerned amendments to the plan and, therefore, under *Siskind v. Sperry Retirement Program*, 47 F.3d 498, 505 (2d Cir. 1995), the employer was not acting in a fiduciary capacity. On appeal to the District Court, the Magistrate Judge's ruling was reversed. *Becher*, 129 F.3d at 270.

16 *Id.* at 272.

17 *Id.* at 271.

18 An employer does not generally act as a fiduciary in connection with the design, amendment or termination of a single-employer plan. See *Lockheed Corp. v. Spink*, 116 S.Ct. 1783, 1789-1790 (1996). However, where the employer exercises administrative discretion related to such functions, the employer will be deemed to be acting as a plan fiduciary. See *District 65, UAW v. Harper & Row Publishers, Inc.*, 696 F.Supp. 29, 33 (S.D.N.Y. 1988).

Jeffrey A. Rich is Of Counsel in the Weintraub Genshlea & Sproul law firm's Business Counseling Section. His practice focuses on tax planning and controversy, with an emphasis in qualified employee benefit plans, executive compensation and tax-exempt organizations. Mr. Rich holds a Master of Science in Taxation degree and formerly practiced as a Certified Public Accountant with a "Big Five" accounting firm. Mr. Rich is a member of the Taxation Section of the California State Bar, the Taxation Section of the Sacramento County Bar Association, the American Association of Attorney-Certified Public Accountants and the California Society of Certified Public Accountants.

Editor's Note: The issues discussed in this article are applicable to Enrolled Actuaries with respect to the new privilege granted to them under the IRS Restructuring and Reform Act. See the July-August 1998 issue of *The Pension Actuary*.

-Brian H. Graff, Esq.

ASPA and IRS Offer 4 Best of Midstates Workshops

ASPA is once again teaming up with the Internal Revenue Service Midstates Key District Employee Plans/Exempt Organizations Division to offer four workshops that will repeat six topics from the Midstates Benefits Conference and offer them in Kansas City, Missouri; Minneapolis, Minnesota; Milwaukee, Wisconsin; and Tulsa, Oklahoma.

The tentative agenda provides up to eight ASPA continuing education credit hours and will include topics such as 401(k) design and testing, a Q&A session with local IRS officials, and mergers and acquisitions. The speakers will include local pension professionals and IRS representative(s).

These intermediate level workshops are designed for people with two to five years of plan and benefits administration experience, including: actuaries, consultants, in-house administrators, lawyers, recordkeepers, accountants, and others. Watch your mailbox this spring for a complete brochure.

Ideas? Comments? Questions?

The Pension Actuary welcomes your views! Letters to the editor may be sent to:

The Pension Actuary
Letters to the Editor
ASPA, Suite 820
4350 North Fairfax Drive
Arlington, VA 22203-1619

or email to **aspa@aspa.org**

or fax to (703) 516-9308

CONTINUED FROM PAGE 7

Avoiding and Locating Lost Participants

rier to accept assets without the participant's signature. If this is the case, the PBGC must be notified by filing Schedule MP with PBGC Form 501. If an annuity cannot be purchased, the payment is remitted to the PBGC by using a payment voucher.

Upon plan termination, the adverse consequences of lost participants become more pronounced. First of all, any participant who has not incurred 5 consecutive one-year breaks in service or received a complete distribution will fully vest. This means that short-serviced employees who, absent the plan termination, would be zero percent vested, fully vest. The action of full vesting will probably create lost participants. Alternatively, the plan could be drafted to provide a "deemed" cash out of zero percent vested participants. Secondly, in order for the plan to be considered qualified upon plan termination, benefits must be distributed as soon as administratively feasible. This criteria will not be met if there are undistributed assets.

If a plan is not covered by the PBGC, or, the plan is not terminated, the plan still must conduct a reasonable search for the missing individual. There are no specific guidelines as to what constitutes a thorough and diligent search; rather, the number of participants who are missing, the amount of benefits involved, and the cost will dictate the appropriate action. There are several alternatives. The Internet has proven to be a valuable new tool in the search for lost participants. Individuals can be located by name, city, state, Social Security number and telephone number. Some online directories are available at no cost; others charge nominally for their services. If there are only a few missing participants, this is the place to start. If larger numbers of participants are involved, it may make more sense to use one of the formal programs discussed later in this article, or a commercial locator service.

> Both the IRS and the Social Security Administration sponsor lost participant programs.

Commercial locator services can be retained to find missing participants. The cost of this service will vary based on the number of research hours involved; however, the databases used are more refined than a general search on the Internet. As a result, the cost may seem reasonable when compared to embarking on the search using internal resources.

Both the IRS and the Social Security Administration (SSA) sponsor lost participant programs. The IRS program was set forth in Revenue Procedure 94-22. The IRS is the agency most likely to have current information on an individual (remember death and taxes). While the IRS will not embark on an exhaustive effort to located missing participants, they will forward a letter to the address currently on file for the individual. This service is available for all *humane* situations and is not limited to retirement plans. The cost depends on how many people are involved. If there are 49 or fewer individuals, there is no charge. For 50 or more participants, the fee is $1,750 plus .01 for each person and .50 per letter forwarded. The letter can be no more than three pages. It appears that the plan would need to write a letter for the IRS to forward stating that the plan is holding assets and who to contact, as opposed to a complete distribution package. The IRS also sets forth suggested language explaining the letter-forwarding program. The disclaimer should read as follows:

> *"In accordance with current policy, the Internal Revenue Service has agreed to forward this letter because we do not have your current address. The IRS has not disclosed your address or any other tax information and has no involvement in this matter."*

Requests for less than fifty letters should be sent to the Disclosure Officer at the nearest IRS District Office. Requests for more than fifty potential recipients are to be sent to:

Internal Revenue Service
Director, Office of Disclosure
CP:EX:D Room 1603
1111 Constitution Ave., NW
Washington, DC 20224

Similarly, the SSA will forward letters if it is has a *strong, compelling reason* to do such. In order to use this Program, a valid Social Security number is needed. Here again, the importance of complete and accurate records for all plan participants is essential. The fee charged for this service is $3 per letter for up to 200 letters. The request should include the participant's name, Social Security number, and reason for the letter. The SSA will not confirm that the participant has received the notice, nor will it provide the

participant's address; it will merely forward the benefit notification letter. Requests are to be made in writing to:

Social Security Administration
Freedom of Information Branch
4th Floor Annex Building
6401 Security Boulevard
Baltimore, MD 21235

Once a participant's benefit is vested, it cannot be forfeited. Regulation Section 1.411(a)-4(b)(6) permits the forfeiture of accrued benefits for participants who cannot be found, as long as the benefit is reinstated if the participant or beneficiary later submits a claim. The forfeiture is provisional since the employer remains obligated to reinstate the participant's benefit if later claimed.

Informal discussions with the IRS seem to indicate, that if a plan specifically states that this is the approach to take only after a reasonable search effort, and the plan has a valid determination letter, it is safe to assume that it will be acceptable. However to date, it is not clear that the DOL agrees.

Transferring the money to the employer, even for "safekeeping," would clearly violate the reversion restrictions set forth in the Internal Revenue Code. Assets can revert in a defined benefit plan only after all benefit obligations have been met. If a plan has lost participants, clearly there are outstanding benefit obligations.

An interesting approach, which has yet to receive formal approval but has gained interest, is the concept of 100% withholding. Under this approach, after reasonable efforts fail to locate an individual, the plan sponsor would forward the entire account balance to the IRS. While the IRS has not formally approved this methodology, they have publicly stated that the approach is reasonable, particularly if the amount is less than the $5,000 cashout threshold. From a practical perspective, clearly this is a good use of the money since it will offset any current tax liability or make its way to the participant in the form of a tax refund. The transaction would be reported on a Form 1099-R mailed to the last known address. Nonetheless, if this approach is suggested to a client, it should be strongly caveated. Although, one would wonder how could the IRS really object?

An interesting approach, which has yet to receive formal approval but has gained interest, is the concept of 100% withholding.

Traditionally, it had been thought that state escheat laws could be applicable to lost participants; however, the DOL has long expressed the opinion that state escheat laws that treat assets of an ERISA-covered plan as unclaimed property are preempted by ERISA Section 514(a). Therefore, it is probably not a wise alternative, especially considering other available options.

Missing participants are inevitable. However, the time and expense of dealing with lost participants can be reduced significantly through a combination of effective plan design, proactive administration and creative investigation.

Amy Cavanaugh is an employee benefits consultant with the actuarial and consulting firm of Milliman & Robertson in Albany, New York. She has over 18 years experience in matters of plan design, compliance, and administration.

ASPA Presents Six 401(k) Workshops in 1999

In an effort to bring education to the local level at a price you can afford, ASPA is pleased to present six **401(k) Workshops** in cities throughout the country. The host cities include Atlanta, Boston, Cleveland, Houston, Philadelphia and Seattle.

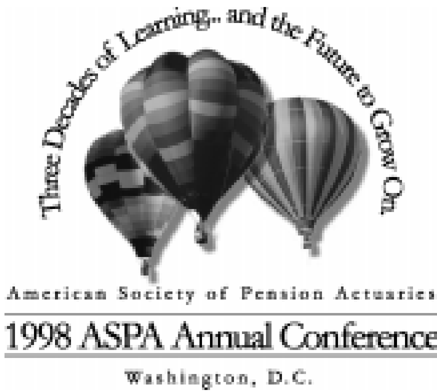
These workshops are designed for beginner to intermediate actuaries, consultants, and other benefits professionals and will offer up to seven hours of continuing education credit. Some of the topics that will be discussed include: safe harbor plans, testing 401(k) plans, participant loans, and tricky eligibility and compensation issues.

Dates and hotel sites for individual workshops are still to be determined. The workshops will be held between late April and July. The "early" registration fees for the workshops will be $200 for ASPA members and $250 for nonmembers.

Janice Wegesin, CPC, QPA, president of JMW Consulting in Palatine, Illinois, and a local pension professional, will be the featured speakers for each workshop. Wegesin, an enrolled agent, has more than 19 years of experience in the retirement plan area. ASPA presented Wegesin with the 1998 Educator of the Year award. She is on ASPA's Board of Directors, a member of the Government Affairs Committee, and she participated on both the Conference and Programs and the Education and Examination Committees. Wegesin was the original author of ASPA's *Pension Administrator's Course*, and she is co-author of the *5500 Preparer's Manual* (Panel Publishers).

We look forward to seeing you this year! For more information, contact Ken Morton, Meetings Coordinator, at **kmorton@aspa.org**.

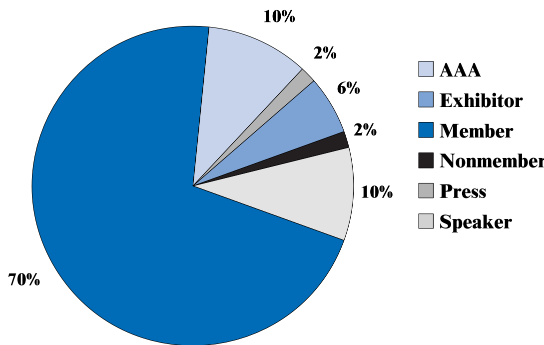
ASPA's Thirtieth Annual Conference - Biggest Ever



ASPA's 30th Annual Conference attracted more than 1,500 participants, including members, nonmembers, exhibitors, press, and speakers to the Grand Hyatt Washington this past October. This record attendance was a 7% increase over the 1997 annual conference. Of the total attendees, 70% were ASPA members.

Members Attend In Force

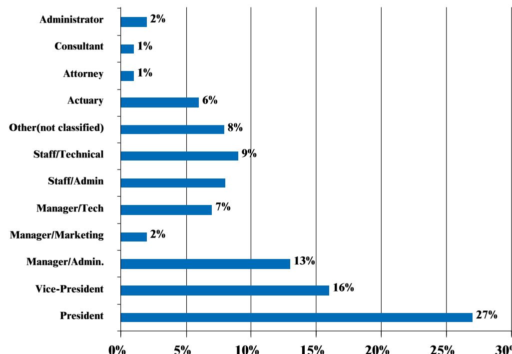
1998 ASPA Annual Conference Registration Type



According to evaluations, 89% of respondents had attended at least three or more ASPA Annual Conferences. The most influential reason cited was the attractiveness of the topics, followed by the opportunity to earn continuing education credit. Networking and speakers were also primary reasons for participation. In addition, 87% rated their overall reaction to the conference as excellent to good.

Registrants Came From Many Levels

1998 ASPA Annual Conference by Title Code

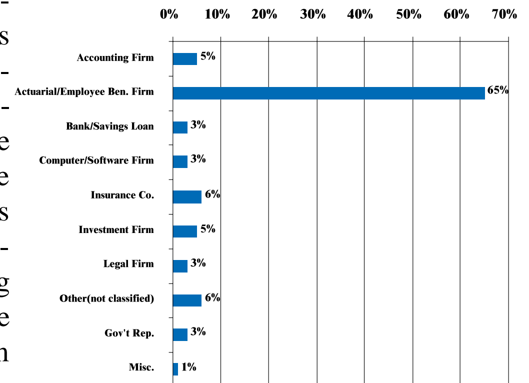


The speakers were praised as being excellent, knowledgeable, well-prepared, and very professional. A variety of comments included, "The speakers' level of preparation and expertise was better than in many other years;" "The great diversity in speakers' backgrounds was impressive;" "The wealth of information available from an incredible array of knowledgeable teachers from the entire country was really great;" "It was truly beneficial to hear from the gurus in the pension community." The presence of government representatives was another element of registrants' satisfaction according to the following comments: "The IRS Q&A was the best part of the conference;" and "Jim Holland and Kathryn Marticello in Workshop #5, *Limitations on Benefits and Contributions Under Qualified Plans - Revenue Ruling 98-1*, were very informative and gave new perspectives on several issues." Our heartfelt appreciation goes out to all the speakers who volunteered their time, effort, and expertise.

photo © Creative Images, 1998, by Bill Petros

Actuarial and Employee Benefits Firms Top the List

1998 ASPA Annual Conference by Business Code

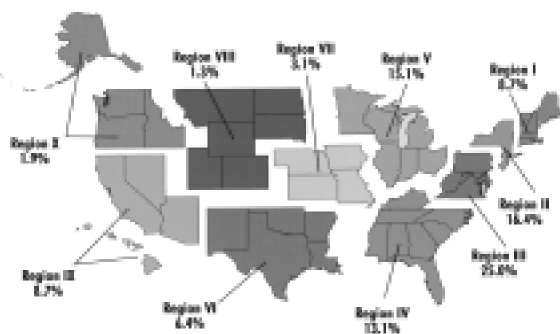


Most of the conferees hailed from actuarial and employee benefits firms primarily on the East Coast. The attendee base is becoming more balanced with 40% of the total participants women and 60% men.

As the ASPA Annual Conference is contracted at the Grand Hyatt through 2001, the Conference Committee faces some challenges in accommodating the growing number of participants. The Marriott Metro Center across the street from the Grand Hyatt has been contracted to provide additional sleeping rooms and meeting space through 2001. There were some growing pains with this addition, as participants had to adjust to a conference held at two properties. To make the change as convenient as possible, ASPA provided coffee breaks at both hotels. Some specialty food functions were also held at the Marriott, under the direction of their award winning chef. The Marriott sits atop the Metro Center subway, the main transfer point of the Metro System.

The majority of attendees reported that they spent 10 to 30 minutes in the exhibit hall, which housed 34 companies displaying products and services. Of those people who submitted the overall evaluation, 95.13% said that the exhibitors offered products and services of use to their company, and 65% said that they plan to make future purchases.

Geographic Attendance Breakdown



The March on the Hill was another rousing success with more than sixty people meeting with members of Congress and their staff. In the next issue of *The Pension Actuary*, there will be a follow-up article regarding the March including participant feedback.

Overwhelmingly, attendees enjoyed the Play to Win Reception and Quiet Chat Room. Many thanks to the sponsors, Aetna Retirement Services, Kemper Retirement Plans, and Security Capital Real Estate Mutual Funds. People were having so much fun, that it has been decided to extend the 1999 reception until midnight.

Every registrant received a comprehensive set of binders. For the first time ever, the speaker outlines were sold separately on diskette. Binders are still available at $125 and diskettes are available at $75. Call the ASPA Meetings Department at (703) 516-9300 for order forms. The diskette price is reduced, as approximately 60% of the speakers submitted their information in a format that could be duplicated on diskette.

The 1999 Annual Conference Committee is already hard at work developing the conference agenda and retaining top-notch speakers. It promises to be another information-loaded conference that will bring you back. Mark your calendars! The 1999 ASPA Annual Conference will be held October 24-27, 1999.

The ASPA Board of Directors would like to thank the Annual Conference Committee consisting of **Donald A. Barnes**, FSPA, Administrative Vice President, The Pension Boards - United Church of Christ, New York, N.Y.; **Janet S. Eisenberg**, MSPA, Eisenberg Associates, Skokie, Ill.; **Beverly Haslauer**, CPC, QPA, Haslauer, Husley & Hall, Inc., Metairie, La.; and the entire ASPA staff for their great work. Their combined efforts resulted in an informative and well-run conference.

Welcome New Members

Welcome and congratulations to ASPA's new members and recent designees. November-December 1998.

MSPA

Robert J. Bessen
Kenneth J. Fleischer
Michael I. Helmer
William W. McKee
Dreighton H. Rosier

CPC

Carolyn M. Cassetty
Anne E. Grucza
John W. Hollopetre
Suanne L. Roche
Robert L. Rooks
Catherine Teagarden

QPA

Carrie Y. Anderson
Shannon C. Bayly
Heidi K. Blehm
Laura E. Dirks
Karen S. Eustis
Wanda Macera
Brenda Lee Passwater
Michael Przygocki

APM

Richard E. Burke
Richard D. Landsberg
Virginia B. Mallonee
Francis W. Morley
Ethel Myles-Henderson

Affiliate

Ken Altvater
Mary Andersen
Vigdis Austad
Donnal Scott Avery
Rita K. Edwards
Hank Heidenreich
Nancy Hovanes
Susan Kaltenbaugh
Scott Lusher
Rosemarie M. Panico-Marino
Kenny Phan
Karin H. Roche
Ranee Rooney
Dianne Stevenson
Jeane Wechsler

CONTINUED FROM PAGE 1

Washington Update

PBGC is aggressively pushing these proposals within the Clinton Administration, hoping to have some of them included in the Administration's fiscal year 2000 budget proposal to be released toward the end of January.

It will, unfortunately, be an uphill battle for the PBGC. Other Clinton Administration agencies, namely Treasury and the Department of Labor, have generally not been too enthusiastic about some of these proposals. Nonetheless, both the PBGC and ASPA have been delivering the message that defined benefit plans continue to play a critical role in the private retirement system. In fact, it is possible that President Clinton, in the State of the Union address, may mention the importance of defined benefit plans and that steps need to be taken to make them more attractive. Such a statement would send an important message to Congress that any retirement savings legislation should include initiatives for defined benefit plans.

Following is a summary of the more significant proposals being considered:

- **Increase Compensation Limit** – The current compensation limit of $160,000 would be increased to $235,000. ASPA has been suggesting that the limit be increased to $300,000, which would be approximately the limit today had the original $100,000 ERISA limit on Keogh plans been indexed for inflation.
- **Increase 415 Limit** – The $130,000 limit on annual defined benefit plan benefits would be increased to $140,000 (or perhaps higher depending on the revenue cost). The original dollar limit in ERISA was $75,000 at age 55. If that limit had been indexed since ERISA, the dollar limit at age 65 would be over $450,000. An alternative proposal would begin actuarially reducing the dollar limit from age 62 rather than the Social Security retirement age. ASPA has indicated its preference for increasing the overall limit as opposed to the limit for early retirees, since increasing the overall limit will be more appealing to a larger class of employers (and will also benefit early retirees).
- **Complete Repeal of Full Funding Limit** — The 150% (increasing to 170%) of current liability full funding limit would be completely repealed. In addition, deductible contributions to plans (regardless of size) would be allowed up to unfunded termination liability.
- **Allow Funding to Reflect Increases in 415 and Compensation Limits** — The funding rules would be modified to allow employers to fund plans by projecting future cost-of-living increases in the covered compensation and benefit limits.
- **Eliminate Frozen Plan Top-Heavy Accruals** — Frozen defined benefit plans would no longer have to make top-heavy accruals for non-key employees. ASPA has suggested as an alternative with broader application that the minimum accrual for all top-heavy defined benefit plans should not have to exceed the level of accrual for key employees provided in any year. This is essentially the same rule, which currently applies to top-heavy defined contribution plans.
- **Provide PBGC Premium Break for Start-up Plans** — Proposals being considered include phasing in the variable rate premium, or perhaps eliminating it altogether for the first five years of a plan. Further, a reduced flat-rate premium for the first few years of a plan is also being considered.
- **Allow Owners to Opt-Out of PBGC Coverage** — ASPA has suggested that allowing owners to opt-out of PBGC coverage with respect to their own benefits would significantly encourage adoption of defined benefit plans by small businesses. In particular, such a rule would seriously reduce the risk of a small business plan being subject to the variable rate premium.
- **Clarify Rules Applicable to Cash-Balance Plans** — The uncertainty surrounding the rules governing cash-balance plans needs to be clarified so that companies of all sizes, not just the largest ones, can fairly determine whether such a plan might make sense. In particular, the rules relating to applicability of section 417(e), the backloading rules, and the definition of accrued benefit, need to be clarified in a manner that reflects how cash-balance plans operate.
- **Eliminate Barriers Between 401(k) Plans and Defined Benefit Plans** — The proposal would allow pre-tax employee contributions to be made to a defined benefit plan. Further, the proposal would allow matching contributions into a defined benefit plan in the form of additional accruals (or credits to a cash balance account).
- **Allow Partial Retirement** — The in-service distribution rules would be modified to allow such distributions beginning at age 55. Such a change would facilitate employ-

ees' transition into retirement by permitting part-time employment while receiving pension benefits.

In support of these initiatives, ASPA met with the Clinton Administration's inter-agency task force on pensions, which consists of representatives from the PBGC, DOL, Treasury, and the National Economic Council. ASPA representatives included current ASPA President Carol Sears, FSPA, CPC, and Brian Graff, Esq. ASPA Executive Director. We were accompanied by Ron Gebhardtsbauer, MSPA, who is the Pension Fellow at the American Academy of Actuaries.

At the meeting we emphasized the importance of providing appropriate incentives to employers to encourage the establishment and maintenance of defined benefit plans. The restrictions on these plans that have been adopted in the past have directly resulted in numerous plan terminations. Ironically, this has resulted in reduced benefits for low-to-moderate income workers as many employers simply abandoned employer-sponsored plans. We provided evidence showing that defined benefit plans are extremely effective at delivering retirement savings for these groups of workers whom generally would not save for retirement otherwise.

Although we were told we made some very persuasive arguments, we recognize that many of these proposals will be a tough sell, particularly given the revenue costs involved. Nonetheless, these ideas are clearly headed in the right direction, and continue to send the signal that the past restrictions placed on plans went too far.

Y2K Enforcement Initiative

As reported in *ASPA ASAP* 98-37, the Department of Labor has initiated a Y2K enforcement program, consisting of a series of questions to be sent by letter to approximately 4000 randomly selected plan sponsors throughout the country. We reprinted one of these letters in the *ASPA ASAP*. DOL has now posted on its web site the entire list of possible questions being used by its investigators. It includes additional questions that were not included in the original letter we received. You can access this complete list through the government affairs section of our web site at **www. aspa.org/ ASPAgovt.htm** .

Brian H. Graff, Esq., is executive director of ASPA. Before joining ASPA, Graff was legislation counsel to the U.S. Congress Joint Committee on Taxation.

Vote for your favorite Defined Benefit Plan Proposal! Go to the Government Affairs section of the ASPA website at **www.aspa.org/ASPAgovt.htm** and let us know which proposal you like best. We will let government officials know what you think!

www.aspa.org

Attention members!

You can now access and search past copies of ASPA ASAPs online in the Members Only section. Check it out at **http:// www.aspa.org/memonly/aspaasapweb/ASPAasapdir.htm** .

Get your copy of ***The Pension Actuary*** early... before it is even mailed out! **How?**

Download it from the Members Only section at **www.aspa.org**!

Defined Benefit Workshops in 1999

Dallas - Newark - San Francisco

For the first time ever, ASPA is offering three **Defined Benefit Workshops** for the convenience of intermediate-level professionals with two to five years of experience in the pension field.

These one-day DB workshops will be offered in three hub cities in 1999.

- Dallas, Texas – April 23
- Newark, New Jersey – May 11
- San Francisco, California – July 10 (preceding ASPA's new Summer Conference)

Take advantage of this great learning opportunity. Watch for the complete brochure this spring. The "early" registration fee will be $250 for ASPA members and $320 for nonmembers.

For more information, call Janet Kamvar, Meetings Coordinator, at (703) 516-9300, or you can e-mail her at **jkamvar@aspa.org**.

CONTINUED FROM PAGE 2

IRS Issues Safe Harbor Guidance

tive Contribution. The contribution cost should be similar to the top-heavy minimum contribution, and the employer avoids having to perform the ADP test. One difference may be that the plan will need to provide 100% vesting, if not already provided.

Additional Rules Applicable to 401(k) Safe Harbor Plans:

- A 401(k) safe harbor plan may not condition a Safe Harbor Matching Contribution or a Safe Harbor Nonelective Contribution on employment on the last day of the plan year or the completion of a certain number of hours of service.
- A 401(k) safe harbor plan may provide additional matching or nonelective employer contributions.
- A 401(k) safe harbor plan may limit the types of compensation upon which an employee may defer in a manner that is reasonable and uniform for all employees. In addition, the employer **may** limit compensation to only compensation earned while an employee is eligible to participate in the plan.
- Safe harbor contributions may not be withdrawn for hardship.
- Generally, a 401(k) safe harbor plan must have a 12-month plan year. However, a new plan may have a plan year as short as 3 months.
- The employer must actually make the Safe Harbor Matching Contribution or Safe Harbor Nonelective Contribution within 12 months after the close of the plan year.
- Safe harbor contributions may be used for general nondiscrimination purposes (other than for purposes of permitted disparity). However, they may not be used as qualified matching contributions or qualified nonelective contributions.

Observation: *By using a safe harbor contribution approach, an employer could design a cross-tested 401(k) plan that allows the maximum Code §415 contribution for an owner at less cost than a non-safe harbor cross-tested plan.*

- Safe Harbor Nonelective Contributions, but **not** Safe Harbor Matching Contributions, may be used to satisfy the top-heavy requirements.

Observation: *Safe Harbor Nonelective Contributions can serve "triple duty," in that they can help a plan satisfy the safe harbor, top-heavy and general nondiscrimination rules.*

- A 401(k) safe harbor plan must provide employees with a reasonable opportunity to change their elective deferral elections. According to the IRS guidance, a reasonable opportunity exists if the employee has at least a 30-day period after he or she receives the annual Safe Harbor Notice (described below) to make or change an election.
- A 401(k) safe harbor plan may limit the amount of elective deferrals an employee may make during a plan year, provided such limit does not prevent employees from deferring enough to receive the maximum amount of the Safe Harbor Matching Contribution provided under the plan. A 401(k) safe harbor plan will not fail to qualify for the safe harbor merely because elective deferrals under the plan are limited to the Code §402(g) limit ($10,000 in 1999) or the Code §415 limit. A 401(k) safe harbor plan also may suspend a participant's elective deferrals because the participant received a hardship distribution from the plan.

ACP Test Safe Harbor

An employer may avoid performing the ACP test with respect to any matching contributions for a plan year if: (1) each non-HCE eligible to receive a matching contribution under the plan is also an eligible employee under a 401(k) safe harbor plan (as described above) and (2) the plan satisfies one of the following limitations.

- The plan uses the basic matching formula, and no other matching contributions are available under the plan.
- The plan uses the enhanced matching formula and the matching contributions are only made on elective deferrals up to 6% of compensation, and no other matching contributions are available under the plan.
- If neither of the above applies, the ACP test still will not apply to the matching contributions if: (1) matching contributions are not made with respect to employee after-tax contributions or elective deferrals that in the aggregate exceed 6% of compensation; (2) the rate of matching contributions does not increase as the rate of employee after-tax contributions or elective deferrals increases; and (3) HCEs do not receive higher rates of match than the non-HCEs.

Observation: *An employer that allows employee after-tax contributions must continue to perform the ACP test with respect to the after-tax contributions.*

Observation: *A 403(b) plan can also take advantage of the ACP test safe harbor if the plan satisfies the safe harbor contribution requirements, the notice requirements, and the matching contribution limitations.*

Safe Harbor Notice

To qualify for the ADP and the ACP safe harbors, each eligible employee must receive an annual written notice of the employee's rights and obligations under the plan. For plan years that begin on or before April 1, 1999, the employer must provide the notice to participants no later than March 1, 1999. Thereafter, annual notice is required between 30 and 90 days **before** the beginning of the plan year. For an employee who becomes eligible later than the 90th day before the beginning of each plan year, the notice can be given at any time up to his or her date of eligibility. For a new plan, notice can be given up to the first day of the first plan year for employees eligible as of that date. The notice must describe the following:

- The availability and amount of the Safe Harbor Matching Contribution or the Safe Harbor Nonelective Contribution under the plan.
- Any other contributions that are available under the plan (including the potential for a discretionary matching contribution) and the conditions under which such contributions are made.
- The plan to which the safe harbor contributions will be made, if different from the 401(k) plan receiving the elective deferrals.
- The type and amount of compensation upon which an employee may defer.
- The periods available under the plan for an employee to make deferral elections.
- The withdrawal and vesting provisions applicable to contributions under the plan.

Observation: *The notice requirements are quite comprehensive. (Below is a sample notice.) References to another document, such as the summary plan description (SPD), should be acceptable provided all information is readily accessible to the participants. For 1999, any good faith effort by the employer to comply with the notice requirement is acceptable. (If the SPD is used as the exclusive notice, then it must be updated and distributed each year.)*

Plan Amendments

To qualify as a 401(k) safe harbor plan, the plan must specify the type of safe harbor contribution and the formula the plan will use to qualify as a safe harbor plan. Normally, plan documentation to this effect must be in place before the first day of the plan year. However, the IRS has stated that a 401(k) safe harbor plan may utilize the remedial amendment period for recent law changes. Therefore, an employer that wishes to adopt a 401(k) safe harbor plan in 1999 will have at least until the end of the 1999 plan year to formally adopt the relevant plan provisions.

Observation: *While an employer may wait until the end of the remedial amendment period to adopt safe harbor plan provisions, the Safe Harbor Notice will require employers to decide before then which safe harbor method it wishes to use. For example, a calendar year plan must send out the Safe Harbor Notice by March 1, 1999, effectively locking the employer into a specific safe harbor method. In addition, if a plan under its current terms provides for a matching contribution or nonelective contribution which exceeds the safe harbor contributions, it would appear the employer must amend the plan before any employee earns a right to such higher benefit if the employer intends to provide only the safe harbor contribution.*

The IRS guidance contains other rules relevant to the adoption of a 401(k) safe harbor plan. Practitioners and employers should carefully weigh the advantages and disadvantages of a 401(k) safe harbor plan before acting.

Special Notice to Eligible Participants of the [Company] 401(k) Plan[1]

This Special Notice provides important information relating to your participation in the [Company] 401(k) Plan for the plan year that begins [January] 1, 1999 (called the "1999 Plan Year" in this notice). You should consider this information as you decide how much (if any) of your compensation you wish to defer into the 401(k) plan for the 1999 plan year.

Special Matching Contribution for the 1999 Plan Year

For the 1999 plan year, the Company will provide you with a **special matching contribution.** The special matching contribution will be a dollar-for-dollar matching contribution on your salary deferrals up to 3% of your compensation and then a fifty-cents on the dollar matching contribution on your salary deferrals from 3% to 5% of your compensation. You are 100% vested in this special matching contribution.

Example: Assume Mary earns $30,000 in compensation for the 1999 plan year. She elects to defer $3,000 or 10% of her compensation into the Company 401(k) Plan. The Company will provide her with a matching contribution of $1,200 (a $900 match on the first $900 she de-

fers and $300 on the next $600 she defers).

Estimated special matching contribution: If you would like to estimate how much the Company will contribute as a matching contribution for you, you can use the worksheet at the end of this Special Notice.

No other matching contribution will be made. The special matching contribution replaces the matching contribution formula that applied in prior years and that is described in your Summary Plan Description.[2]

Compensation: The amount of your compensation that the plan considers for these special contributions is the same compensation the plan uses for other contribution purposes.

Withdrawal restrictions: Generally, any special contributions made on your behalf may not be withdrawn until you separate from service, attain age 59 1/2, or become disabled.[3]

Administrative procedures: You may start or change your deferral election for the 1999 plan year by completing a new salary deferral agreement and returning it to the Plan Administrator. You may start or change an election at any time during the next 30 days, and at any other time described in your Summary Plan Description or on the election form.

Please refer to the Summary Plan Description for additional information on additional Company contributions, withdrawal restrictions, and other plan features, such as how and when you may change your deferral election.

Endnotes

1 The sample notice assumes the company will provide the basic safe harbor matching contribution formula, as described in IRS Notice 98-52. If the employer will provide the safe harbor nonelective contribution or an enhanced matching formula (i.e., one that provides a match that is no less than the match under the basic formula, but which may be greater at certain deferral levels), then the notice will need to be modified accordingly. The worksheet also assumes the basic formula is being used.

2 This paragraph should be modified if the company will make an additional matching contribution. Also, if the plan's current matching formula is more generous than the safe harbor matching formula, then the plan may need to provide the more generous formula to avoid violation of the anti-cutback rules of Code §411(d)(6).

3 This paragraph should be modified if the plan does not allow in-service withdrawals at age 59 ½, or uses a later age.

John P. Griffin, J.D., LL.M., and Charles D. Lockwood, J.D., LL.M., are partners in a Colorado-based employee benefit consulting practice. Each has over 15 years of experience in the employee benefits area. Mr. Griffin's experience includes work with the IRS, the U.S. Department of Labor and 11 years of private consulting. Mr. Lockwood also has worked with the IRS and has 9 years of private consulting experience. Both have conducted numerous plan self-audits, including audits for several Fortune 500 companies as well as for small and mid-sized companies. Their practice currently specializes in plan compliance issues, and they are drafting prototype retirement plans for FDP Corporation.

Special Matching Contribution Worksheet

Estimate the amount you will defer for 1999:	______________	(A)
Estimate your 1999 compensation:	______________	(B)
Divide (A) by (B) and enter the result to two decimal places (example: $1,000/$20,000 = .05):	______________	(C)
Determine your deferral percentage (C x 100):	______________%	(D)

IF (D) IS 3% OR LESS:

Your matching contribution will equal A.

IF (D) IS MORE THAN 3% BUT NO MORE THAN 5%:

Your matching contribution will equal:

	.03 x B		______________
Plus	.5 x [C – .03] x B	+	______________
Total matching contribution		=	______________

IF (D) IS MORE THAN 5%:

Your matching contribution will equal:

.04 x B ______________

Focus on E&E

The Grading Process — Why Does It Take So Long?

by Scott Miller, FSPA, CPC

Since new exams are written for each testing cycle and neither the candidate base nor the level of the exam is consistent from cycle-to-cycle, each exam needs to have a pass mark set which fairly represents the appropriate mark for that exam and the facts in effect at that time.

A candidate's answers to the multiple choice examinations are analyzed in statistical reports which include: scoring each candidate's answer sheet by giving each correct response one point and giving each incorrect or omitted response zero points; determining the mean and the median of the above scores, as well as other overall exam statistics; determining the mean score of all candidates answering each possible response on each question; and calculating other common exam discrimination and difficulty level statistics per question.

Essay answers are sent to assigned graders, and each essay grader grades the same question for all essay candidates. The candidate's identity is kept confidential from the committee and graders.

The essay grades and statistical reports are submitted to the applicable exam committees and the exam chair, who have been trained in the utilization of current and historical exam statistics, and have an understanding of the intent of the exam. Each committee discusses and ultimately agrees on the mark ranges.

Some normal grading fundamentals currently include: the lowest passing score shall not be greater than 70 percent of the total possible score; and all questions which carry unusual statistics are carefully reviewed. Such reviews may result in omitting the question from all scores, or allowing more than one correct response. If statistics are consistent between exams, grades should also be consistent.

This entire process takes some time. The pass marks will be posted on ASPA's web site (**www.aspa.org**) as soon as they are set by the individual committees. All candidates will be notified by mail no later than February 26, 1999.

The committee keeps abreast of evolving professional exam administration philosophies and methods. We hope this explanation takes the mystique away from the grading process. It is ASPA's intent to be fair to the candidate and make the ultimate designations meaningful.

Scott D. Miller, FSPA, CPC, is a vice president of ASPA, chairman of ASPA PERF, and president of Actuarial Consulting Group Inc. in South Salem, N.Y. Miller serves as the general chair of ASPA's Education and Examination Committee.

Attention EAs!

Notice from the Joint Board for Actuaries

Enrolled Actuaries are advised that:

1. An enrolled actuary is not permitted to use the new (in this case 99-) prefix until such time as he/she has been officially notified in writing by the Joint Board of his/her entitlement to do so. See instructions of Schedule B.

2. An enrolled actuary who has not yet received official notification from the Joint Board should use the 96- prefix if he/she signs a Schedule B in the first three months of 1999. The IRS Service Center will not reject the 96- prefix for a signature date during this three-month period. The 96- prefix will be rejected for a Schedule B where the signature date is April 1, 1999 or later.

Patrick W. McDonough, Esq., has been appointed the executive director of the Joint Board. The Joint Board's address is JBEA, Internal Revenue Service, Attention: C:AP:DOP, 1111 Constitution Avenue, N.W., Washington, DC 20224. The phone number is (202) 694-1891 and the fax number is (202) 694-1854.

BUSINESS LEADERSHIP CONFERENCE

Skills and Strategies for the New Millennium

The agenda is almost finalized for the next BLC, which is to be held May 2-5, 1999.

Back by popular demand: ***Peer Networking Groups***. These sessions will include structured discussions on marketing strategies, software issues, administrative forms, and much more.

NEW for 1999: Previously available only for ASPA members, the BLC will be available to other organizations' members.

JOIN US for this unique ASPA conference!

Conference Location:
Boca Raton Resort & Club
501 East Camino Real
Boca Raton, FL 33431-0825

Hotel Reservations:
(561) 447-3000

The Boca Raton Resort is close to Miami International Airport, Fort Lauderdale-Hollywood International Airport, and Palm Beach Airport.

The resort is situated between the Intracoastal waterway and the Atlantic.

Resort Activities:

- two 18 hole golf courses
- *Golf Magazine's* Silver Medal Award of Excellence
- 34 clay tennis courts (12 lighted)

There's lots to do!

New this year: ***Interactive Workshops*** on the following issues:

- human resources, compensation, benefits, hiring and firing
- office automation, Y2K, paperless office, software, the Internet
- revenue sharing, disclosure, obligations
- daily administrative issues and balance forward administrative issues

Three ***general sessions*** that will include:

- Malcolm Baldridge implementation
- alliances, mergers, and acquisitions
- customer focus, the strategic vantage point

The BLC mission is to assist firms with addressing business issues and staying competitive in an ever-changing environment.

ASPA Benefits Councils Calendar of Upcoming Events

Date	Location	Event
January 21	Atlanta	Workshop: Retirement Planning in the Next Millennium
Speakers: Fred W. Munzenmaier, F.S.A, and Charles E. Chittenden, F.S.A.		
January 26	Philadelphia	Joint Luncheon Meeting with PEBA on IRS Self-Correction Programs
February 11	Cleveland	To be announced
February 11 *(tentative)*	New York	Members-Only Cocktail Party
February 23	Philadelphia	Members-Only Breakfast Roundtable on Fiduciary & 404(c) Issues
March *(date tba)*	Philadelphia	Luncheon on Document Updates
March 4	Chicago	Local DOL Update & Audit Issues
March 9	Orlando	To be announced
March 11	Cleveland	To be announced

For more information, please call the Amy Emery at (703) 516-9300.

CONTINUED FROM PAGE 32

PIX Digest

may have a 25% money purchase plan, because he didn't have any employees, while she might have a profit sharing plan and some eligible employees. In addition to his own business, he helps her manage her business and employees, thereby performing services for her business, for which he is paid. While arranging the wedding, getting the dress, picking out rings and getting all the relatives together, the happy couple probably overlooked item number 27 on their checklist - call a pension consultant!

After the wedding, their businesses are now a single employer, a controlled group! Not to worry, as they will be able to take advantage of the transition rule under Section 410(b)(6)(C), giving them a full plan year following the wedding to deal with the coverage and discrimination issues which may arise. However, as standardized prototypes, their plans likely include language that extends coverage to all employees of a controlled group automatically. This could be a nasty surprise especially when one of the plans is a generous money purchase pension plan. The plan language overrides the permissive transition rule of 410(b). His standardized money purchase plan has no last day or 1,000 hour requirement for contribution, causing a full 25% contribution to be due for her employees, giving a new meaning to "the marriage penalty". To read the entire thread, download the file married2.fsg.

1999 Calendar of Events

		ASPA CE Credit
Feb. 1 - Mar. 10	Registration for spring courses	
April - May *(tentative)*	Two Defined Benefit Workshops	7
April 1	Registration deadline for EA-1A and B examinations	
April 9-10	EA-1A classes, Chicago, IL †	10
11-12	EA-1B classes, Chicago, IL †	10
April 15	Early registration deadline for ASPA June examinations	
April 16-17	EA-1A classes, Los Angeles, CA †	10
18-19	EA-1B classes, Los Angeles, CA †	10
April 24-25	EA-1A classes, Washington, DC †	10
26-27	EA-1B classes, Washington, DC †	10
April 29-30	Midstates Benefits Conference, Chicago, IL	15
May - July	Six 401(k) Workshops (TBA)	8
May 1	Final registration deadline for ASPA June examinations	
May 1-2	ASPA Weekend Courses, Denver, Colorado C-2(DB), C-2(DC), C-3, and C-4	15
May 2-5	Business Leadership Conference	10
May 17	EA-1A and B examinations †	
May 20 - 21 *(tentative)*	Northeast Key District Benefits Conference	15
June 2	C-1, C-3, and C-4 examinations	*
June 3	C-2(DC) examination	*
June 4	C-2(DB) examination	*

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

† ASPA offers these courses as an educational service for students who wish to sit for examinations which ASPA cosponsors with the Society of Actuaries and the Joint Board for the Enrollment of Actuaries. In order to preserve the integrity of the examination process, measures are taken by ASPA to prevent the course instructors from having any access to information which is not available to the general public. Accordingly, the students should understand that there is no advantage to participation in these courses by reason that they are offered by a cosponsor of the examinations.

PIX DIGEST

U.S. Corporations Owned by Foreign Parent Company

[Thread 68255]

Frequently, pension practitioners are consulted about setting up a qualified retirement plan for a domestic corporation, and it turns out that it is substantially or wholly owned by a foreign parent company. These are frequently subsidiaries of European, Japanese or other Asian companies that are organized as domestic corporations. The only difference between them and any other domestic corporation is the stock ownership.

These arrangements call for careful analysis before proceeding with a qualified retirement plan. Frequently these foreign parent companies will have more than one U.S. subsidiary, possibly creating a controlled group of corporations. Furthermore, the local management of the subsidiary you might be dealing with may not even know about any other domestic subsidiaries. This raises the usual coverage concerns, but without the data, it is impossible to know if the plan will pass. Beyond the coverage problems, special plan provisions must be considered. The statutory exclusion of non-resident aliens with no U.S. source income must be used to exclude the employees of the parent company back home. However, this provision will not exclude a U.S. citizen who might be working abroad directly for the parent company (and this person would not be a statutory exclusion). Furthermore, prototype plans that automatically cover all members of a controlled group might be extending coverage to entities and employees that they do not even know about.

Another problem arises frequently, as the parent companies typically will send their own citizens to work for their subsidiaries in the U.S. for a period of time. As legal residents being paid in the U.S., they are no longer excluded under the nonresident alien exclusion. Since they are frequently not Highly Compensated Employees, they usually must be included in the plan. If it is a 401(k) plan, these employees will typically not defer, thereby hurting the ADP test results. Potentially, a bigger problem if they do defer is what to do with their account balance when they return to their own country. Typically they are still employed by the parent company. So, without a separation from service, their 401(k) deferrals are not distributable.

To read the entire thread, download the file foreign2.fsg.

Here Come Safe Harbor 401(k) Plans

[Thread 65998 69498 70059 69953 70406]

At the end of October, the IRS issued Notice 98-52 with long-awaited guidance on the implementation of 401(k) safe harbor plans. In the month following the notice, over 75 messages were posted on PIX with comments, analysis and questions regarding safe harbor plans.

A number of questions have been raised regarding the safe harbor matching contribution, as well as the requirements any other matching must meet when the employer is using the 3% non-elective safe harbor contribution. Also, questions regarding the notice requirement and a couple of sample notices have been posted.

Some of the major concerns focus on the extent of the information required in the notice, to what extent the safe harbor requirements conflict with a "per pay period" matching contribution, if a non-safe harbor match can have a "last day" requirement in a safe harbor plan using the 3% contribution, and the transition rules for 1999.

With the March 1, 1999 deadline for issuing safe harbor notices, time is short. To get up to speed on safe harbor plans, download the file safehbr2.fsg. Also, be sure to follow ongoing messages in Forum 1, as this topic is sure to continue as the March 1, 1999 deadline draws near.

Note: For further reading on this topic, refer to the cover page article titled *IRS Issues 401(k)/(m) Safe Harbor Guidance*.

The Wedding Was Perfect....

[Thread 69486]

When two people meet and fall in love, the fact that they are both self-employed (even if incorporated) is just one more thing they have in common. In fact, they may both have set up similar retirement plans using similar standardized documents. He

Continued on page 31