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ASPA
Dedicated to the Private Pension System

IN THIS ISSUE

Parks Named ASPA President

John P. Parks, MSPA, EA, has been named ASPA's President for the 1999-2000 term. Mr. Parks is president of MMC&P Retirement Benefit Services in Pittsburgh, Pennsylvania. He has 37 years of experience in the actuarial and employee benefits field.

Mr. Parks was elected to ASPA's Board of Directors in 1993 and served as vice president in 1997, treasurer in 1998, and president-elect in 1999. He has also been active on ASPA's Technology and Business Leadership Conference committees.

Mr. Parks received his B.S. in mathematics at Juniata College in Huntingdon, Pennsylvania. He is an enrolled actuary and has been active in the American Academy of Actuaries, the Conference of Consulting Actuaries, the American College of Chartered Life Underwriters, and the National Association for Employee Ownership.

Mr. Parks resides in the North Hills of Pittsburgh with his wife, Iris, and daughter, Heidi. His hobbies include backpacking, Appalachia and Habitat building projects, computer technology, and woodworking. He has also been active with the Philmont Scout Ranch for the past eight years.

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WASHINGTON UPDATE

Pension Reform – Where Do We Go From Here?

by Brian H. Graff, Esq.

Congress left for its annual August vacation. However, as reported in *ASPA ASAP* 99-21, before departing Congress passed legislation providing $792 billion in tax cuts, including a substantial package of pension reform provisions. To the surprise of nobody, the legislation passed on a substantially partisan basis. Only a handful of Democrats voted for pas-

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An Interview with ... Patrick McDonough

by Sally J. Zavattari, FSPA, CPC, EA

Patrick who? Patrick McDonough is currently the Director of Practice and the Executive Director of the Joint Board for the Enrollment of Actuaries. He has been with the Office of Director of Practice of the IRS since 1981, most recently as Supervisory Attorney. On December 23, 1998, he was appointed Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries. He received B.S., M.A., and J.D. degrees from Boston College, as well as an L.L.M. in taxation from the Georgetown University Law Center. He is a member of the Massachusetts Bar. He is also a colonel in the USMC Reserves; his areas of expertise are war crimes investigations and NATO rules of engagement.

What does the Director of Practice do? The Director of Practice oversees the enforcement of regulations in Circular 230, which governs all practice before the IRS. In addition, my office administers the examination program for Enrolled Agents, has cognizance over the Power of Attorney program (when one is needed, what is necessary for a legal POA, IRS publications for practitioners on POA issues) and handles appeals for electronic license holders whose renewal applications have been rejected. Also, we have been getting involved in granting special permission situations for law students, where the students provide services to clients at low income tax clinics under the auspices of a professor. This is done so that the students can represent the client before the IRS, even though not otherwise allowed to do so under the general Circular 230 requirements.

What does it mean to "Practice before the IRS"? Generally, this is the

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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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An Update on the PWBA's Investigation of 401(k) Fees

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

The inquiry by the Pension and Welfare Benefits Administration (PWBA) of the U.S. Department of Labor (DOL) into 401(k) fees and costs is almost two years old. During that time, the PWBA has held hearings on 401(k) fees, initiated approximately 50 investigations of 401(k) plans related to their fees, published a booklet for employees concerning 401(k) fees and costs, published a brochure for employers on 401(k) fees, and worked with representatives of the insurance, mutual fund, and banking industries to develop uniform criteria for reporting and evaluating fees and costs for 401(k) plans.

At this point, it is appropriate to ask…What results have these efforts produced, and what remains to be done?

In response to the first question, the PWBA's focus on 401(k) plan fees and costs has dramatically heightened the awareness of those expenses and their impact on investment results, among the media, plan sponsors, fiduciaries, advisors to plans, and, of course, plan participants. That heightened awareness is resulting in increased scrutiny of the fees being charged in 401(k) investment products and, as a consequence, is increasing the level of competition among investment providers. Inevitably, that increased awareness and competition will result in lower fees and higher benefits for 401(k) plan participants.

The History of the PWBA's Inquiry

On October 16, 1997, the PWBA announced that it was holding hearings for the purpose of learning more about the fees and costs being charged to 401(k) plans and about the reasons for, and consequences of, those fees. Specifically, the PWBA Notice of Public Hearing stated that the purpose of the hearings was to answer the following questions:

1. In selecting and monitoring service providers, are employers/plan sponsors being furnished with sufficient information to evaluate whether the fees and expenses associated with plan investments, investment options, and administrative services are reasonable? If not, what additional information should be provided to or requested by plan sponsors, and is it readily available? What steps are plan sponsors taking to ensure that the fees and expenses charged to the individual accounts of the participants are reasonable?
2. Are plan participants being furnished with sufficient information about the fees and expenses associated with the investment options offered under their plan to make informed investment decisions? What additional information should be provided to or requested by participants, and is it readily available?
3. Is the information regarding services, fees, and expenses that is disclosed to participants regarding their accounts provided in a manner understandable to most participants? Is the disclosure automatic or upon request? If automatic, how often is the disclosure provided and to whom is it provided (plan sponsor and/or participants)?
4. How are the services and the respective fees included in a bundled fee arrangement disclosed? How are the fees and expenses with respect to each of the covered services in a bundled arrangement determined?
5. What actions, if any, should the DOL take to improve consideration

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Professionalism – It's Up to Us!

by William J. Falk, FSA, FCA, MAAA, EA

Professionalism has become one of the most frequent topics for recent discussions among actuarial leaders. It has been the topic of several of the president and guest president editorials in *The Actuarial Update.* Recent events have served to heighten the leadership's concerns about professionalism. But concerns about the professionalism of actuaries can only be addressed effectively if the entire profession is involved, and everyone takes professionalism to heart in their day-to-day activities.

The recent unfavorable publicity about actuaries' roles in assisting companies with changing their defined benefit pension plans to cash balance formulas has led to concern by some that actuaries are not fulfilling their professional responsibilities to the public. Yes, we can argue very convincingly among ourselves that employee communications are not the actuary's responsibility. And we can argue that statements, even laughter, taken out of context from a session at a professional meeting are not a true reflection of the actuaries' position regarding employee communications. But, the fact remains that some members of the general public and many lawmakers have taken this issue as cause to question the professional behavior of actuaries.

Even the belief that actuaries are professionals is under attack. The American Academy of Actuaries recently submitted an *amicus curiae* brief in a Michigan lawsuit filed by a client against an actuarial consulting firm. The Academy's brief addressed the question of whether actuaries are professionals subject to the Michigan professional malpractice statutes rather than the general negligence statutes, as the plaintiffs claim. The Academy's answer was a definite yes, supported by several court decisions. In one of the decisions cited, the Supreme Court judged actuaries to be "a recognized professional discipline." According to the Supreme Court of Nebraska, a profession is identified with "the long and intensive program of preparation to practice."

Everyone in leadership agrees with the conclusion that actuaries are professionals. Certainly we all complete a rigorous course of study and examination before becoming qualified. The real question is, do we all act professionally? Put another way, do we all accept and fulfill the responsibilities of a professional? Among these are the responsibility to act in the best interests of the profession's publics and the responsibility to uphold the image and reputation of the profession.

The actuarial profession in the United States and Canada has embodied these responsibilities in the Code of Professional Conduct (U.S.) and Rules of Professional Conduct (Canada). These documents set forth the principles that all actuaries must uphold in order to meet our responsibilities.

With our professionalism under suspicion, at least in the U.S., the Code of Professional Conduct has become an even more important part of our professional self-regulation. The Joint Committee on the Code of Professional Conduct is working to create an improved Code for the future. As the CCA's representative on this Committee, I have been involved in several discussions that led to the exposure draft sent to all members in May. The task force's primary goal is a Code that is clearer and more easily applied to the situations in which actuaries find themselves. The basic intent and content of the current Code are being preserved.

Through June 26, as I am drafting this article, we received only twenty-nine comments on the exposure draft from a population of about 16,000 actuaries in the U.S.

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Top-Heavy Plan Rules: A Review and How They Will Change in 2000

by Steven Oberndorf, Esq. and Richard Hochman, APM

The concept of a top-heavy plan did not exist until ERISA was amended by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). To address perceived abuses in small retirement plans, TEFRA introduced the concept of the top-heavy plan by adding §416 of the Internal Revenue Code (Code). The obligation to provide minimum contributions or benefits was further explained by guidance, provided in the form of questions and answers, that was issued by the Internal Revenue Service (IRS) as Treasury Reg. §1.416-1 in December 1984.

Comment: Concerned with budget deficits and the effect of the tax subsidy provided to qualified retirement plans, Congress mandated that a qualified retirement plan provide at least minimal benefits for all participants. This was especially true of qualified plans where owners and officers were receiving most of a plan's contributions or benefits. Thus, the need for the top-heavy requirements was considered extremely important in the context of smaller retirement plans maintained by professional corporations. Because of plan demographics and other nondiscrimination rules, it is extremely unlikely that top-heavy requirements mandated to be in all qualified retirement plan documents would ever go into effect in most plans with more than 100 participants. The requirements of Code §416 continue to have considerable impact on plan designs that favor owners and other key employees and whose effects are magnified in the small plan situation. For example, the minimum contribution requirement must be observed by top-heavy profit-sharing plans using age-weighted and new comparability plan designs, and 401(k) plans with participant deferrals. This assures that eligible non-key employees in these defined contribution plans receive allocations that are at least 3% of compensation.

SBJPA Brings Changes to the Top-Heavy Rules

The rules for top-heavy plans essentially remained unchanged from TEFRA's enactment until the passage of the Small Business Job Protection Act of 1996 (SBJPA). Two changes involving top-heavy plans were made by SBJPA. The first, effective for the 1998 plan year, modified the definition of compensation found in Code §415, which is used in determining top-heavy contributions or benefits. The definition was changed to include amounts deferred by a participant on a pre-tax basis into a §401(k), §125 cafeteria, or flexible benefits plan. Including these pre-tax dollars generally will result in an increase in the minimum contribution or benefit provided, since it increases the amount of compensation on which the top-heavy contribution or benefit is based. In 401(k) plans, this means non-key employees who make pre-tax contributions are not penalized for the deferral. The second change, effective for the 2000 plan year, repealed the Code §415(e) benefit limitation that applies to individuals covered under both a defined contribution and a defined benefit plan maintained by the same employer. This latter change generally should result in a decrease in the percentage

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Focus on GAC

Impact of IRS Reorganization on Remedial Programs

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

Since the beginning of the IRS' restructuring process, officials of the Employee Plans Division have sought input from practitioners on the most effective way for the employee plans function to be organized. Recently, Fred Reish participated in a session arranged by Joyce Kahn, who heads up the VCR program at the IRS, to discuss the structure of the qualified plan remedial programs after the restructuring is complete. The session included five benefits practitioners who work actively in the remedial programs, all of whom are lawyers (though one, Mike Pruett, owns a pension administration firm in Anchorage, Alaska). During the session, they discussed the following issues:

1. Should the voluntary correction programs be handled by the IRS in the field or in a centralized location? All of the practitioners agreed that they should be handled in the field. Our best guess is that the programs will have a national coordinator, and perhaps a few personnel, in Washington, D.C. Each region will have a CAP Coordinator who will work with revenue agents in the field. Those revenue agents will be dedicated to the remedial programs and will not have any other duties.
2. Should all of the voluntary correction programs be combined in a single program? That is, should Walk-in CAP, VCR, SVP and APRSC be, in effect, a single program? All of the practitioners agreed that it should be, although some reservations were expressed. One reservation was that the National Office should not manage the program in great detail. That is, the field should have some discretion in handling the unusual and complicated cases. A second reservation was that, notwithstanding the local working of the cases, there was a desire for national uniformity, especially for corrections.
3. Should the remedial programs be placed in the Examinations Branch or in the Rulings Branch? Generally speaking, the feeling was that they should be placed in the Rulings Branch; however, those opinions were not strongly held. The sentiment seemed to be that, if the programs were placed in the Rulings Branch, it would give the best appearance of fairness and would eliminate the appearance of audit risk to plan sponsors. Based on speeches by IRS officials, it appears the IRS may be leaning in the direction of placing the program in the Rulings Branch.

   Interestingly, one of the advantages of placing the function in the Examination Branch would be that the Audit CAP and Audit APRSC programs would be administered by the branch which handles plan examinations, and, thus, all of the programs would be better coordinated with greater uniformity.
4. Should Walk-in CAP (or perhaps all of the programs) continue to have a John Doe or "no names" feature? Fred Reish argued that it should, pointing out that there are specific cases in which John Doe discussions are very valuable. Examples are: reformation CAP (because the IRS has retained broad discretion to reject cases with complex fact situations); cases where the correction methodology is not clear; and so on. While not entirely clear, it seemed that the practitioners agreed on this issue. But, it is difficult to tell what the IRS' thinking is on this point.

The final direction the new Tax Exempt and Government Section (which replaces the Employee Plans/Exempt Organizations Division) will take on these issues is unclear. What is abundantly clear, however, is that the IRS remains committed to the voluntary correction programs, and that is good news for practitioners and their clients.

C. Frederick Reish, APM, Esq., 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, Esq., a partner with Reish & Luftman, is cochair of the Government Affairs Committee, and serves on ASPA's Board of Directors.

Withholding Ain't That Hard – Here's How To Do It!

by Lawrence C. Starr, CPC, EA, CEBS

The Unemployment Compensation Act of 1992 (UCA) changed the world for the plans of most of our small business clients. Prior to this law, withholding on pension distributions was voluntary. An employee receiving a distribution from his or her plan could elect to **not** have withholding apply. Of course, they would still be required to pay taxes on any income that was not properly rolled over, but withholding at the plan level was rarely invoked as employees receiving distributions were "encouraged" to elect **no withholding** and simply file estimated tax returns to cover the liability (if any). This was particularly useful because employees generally had 60 days to decide if they would pay taxes or defer by rollover to an IRA within that 60 day period.

In those situations where we could not "convince" the participant to forgo the withholding at the plan level, Announcement 84-40 gave a number of options for how the withholding could be handled and reported. In those days, we commonly suggested that clients should select the option where the withholding was reported under the employer's own Employer Identification Number (EIN). The employer aggregated the withholding from the plan with the withholding from wages for its own employees and reported it on the same tax return (the Form 941) that was used to report tax withheld on such wages. By using this option, we could generally just refer the client to "whoever does your payroll" to figure out how to get the withholding into the IRS. In other words, **withholding just wasn't our problem!** Oh, for the good old days!

UCA changed all that. In what many consider an absurd fiscal maneuver, withholding became mandatory withholding and was somehow to be used to finance increased unemployment compensation. Of course, no one has ever explained how an increase in withholding (which is **not** an increase in actual taxes) could provide additional dollars to fund increased unemployment benefits when, at best, all it would do is accelerate the payment of the taxes due by a few months. Nevertheless, Congress in its infinite wisdom saddled our clients (and us) with this new complicating wrinkle.

The new mandatory withholding rules meant that our clients would now have to deal with withholding from lump sum distributions on a much more frequent basis. More importantly, it meant that we could no longer push the responsibility for the withholding off to someone else because the new rules separated out payroll withholding from non-payroll withholding, with retirement benefits coming under the latter category. We also got a new IRS form (Form 945) that would be used to report and reconcile withholding from retirement plans. It is interesting to note that the Form 945 is also used to report several other withheld taxes, including those on gambling, retirement pay for service in the U.S. Armed Forces, and backup withholding under IRC Section 3406.

So, the new law required that if a participant was getting a distribution that was eligible to be rolled over, but was not **directly** rolled, that distribution would be subject to a withholding rate of 20%. More importantly, there is no allowance for claiming exemption from this withholding, even if the employee's liability for taxes would actually be something less than the 20%, or even nothing at all. When the trustee(s) of the plan make that distribution,

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Washington Update

sage, and, surprisingly, a few Republicans voted against the bill.

In the face of a certain veto, Republicans chose not to send the bill to the President, but rather, hold it until they return in September. This was done to prevent the President from gaining a political advantage by vetoing the bill in a public ceremony while Republicans are not in town to respond.

Meanwhile, Republicans have been trying to drum up support for the tax bill back in their home districts. They have been highlighting the major themes covered by the tax bill. One of the major themes being emphasized is the pension reform provisions. In fact, on August 14th Representative Rob Portman (R-OH) gave the national Republican radio address and discussed the importance of enacting the pension reform provisions in order to enhance retirement savings opportunities for working Americans. This is the first time since ERISA was enacted that either the Republican or Democratic leadership has placed so much emphasis on employer-sponsored retirement plans. It is a testament to the years of effort by ASPA's Government Affairs Committee (GAC) and other members of the Retirement Savings Network educating members of Congress on the dire need for pension reform.

When Congress returns, it is unclear whether they will send the tax bill to the President or hold it pending possible negotiations. In the meantime, Congress will turn its attention to federal appropriations and Medicare. Believe it or not, there is some concern that we may be heading for another government shutdown, although in my view that is ultimately unlikely. Everyone generally agrees that the key to a deal on tax cuts is a deal on Medicare, including some kind of prescription drug coverage. However, given the short time frame, (the government's fiscal year ends September 30), the most popular scenario right now is for Congress and the Clinton Administration to reach a short-term deal to extend government operations until early next year. This deal might include some minor tax changes such as the extension of certain expiring tax provisions (e.g., the R&D tax credit). During this extended period, the hope would be that a deal on Medicare could be arranged, allowing for the opening of negotiations on tax cuts with the complete deal being finalized next spring.

This is, of course, only one of several different possible scenarios. By next week the popular consensus could easily change. ASPA GAC will certainly keep you posted.

If and when serious negotiations on the entire tax bill begin, it would appear all but certain that pension reform will be an important part of these negotiations. You can find a complete side-by-side summary of all the pension reform provisions that will be considered in the "What's New" section of ASPA's web site (**www.aspa.org**). Some of these provisions are likely to be the subject of some intense negotiations. Treasury has already informally raised objections regarding the following provisions:

- Treasury is concerned about all of the limit increases, in particular the increases in the section 401(a)(17) compensation limit and the section 415(c) dollar limit.
- The fact that the catch-up contributions for older workers are exempt from the nondiscrimination rules (i.e., ADP/ACP tests).
- Certain changes in the top-heavy rules, namely the repeal of family attribution and the provision deeming the matching contribution 401(k) safe harbor, as satisfying the top-heavy rules.
- Treasury would prefer raising the 25% of compensation limitation to 50% of compensation instead of 100% of compensation as provided in the tax bill.
- Treasury has raised concerns about the provisions providing for Roth 401(k) and Roth 403(b) plans.
- Treasury presently objects to repealing the multiple use test.

These are viewed as the major differences right now, but others are certain to develop during the negotiations. ASPA GAC will be fighting to keep as many of these provisions as possible in any final negotiated tax package. However, it will be an uphill battle, and we need your help. You should be receiving shortly (in fact, you may have already) an e-mail describing how you can contact your Congressional representatives and let them know how important pension reform is for the retirement security of working Americans. Your participation will make a difference and will be greatly appreciated!

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

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Withholding Ain't That Hard

they are now required to withhold 20% of it and, somehow, get that money into the taxing authorities on a timely basis. Failure to make payment of withheld taxes on a timely basis can result in substantial penalties and personal liability to those who are charged with making those payments.

The vast majority of our clients do not do their own payroll processing; they use various payroll services to take on the responsibilities of making sure the withholding is properly handled and deposited with the government. How could they manage this new, irregular withholding process? Their payroll companies were not involved with the payment of retirement plan distributions and generally did not want to hear about non-periodic withholding responsibilities that did not derive from the payroll process. Our client clearly had to deliver the withheld retirement money to the Feds, but the method of getting withheld taxes into the IRS is anything but simple. You can't just send it to the IRS! (Actually, you can, but this would be foolish because you will incur a penalty if you pay the IRS directly.) Our clients looked to us to make this problem go away - to simplify the process so that even they could handle it.

The process that we developed and which I am about to explore with you is one particular solution that was developed to make dealing with retirement plan withholding as simple as possible for clients who are not themselves sophisticated in this area. Large employers will have a personnel, or human resources, or accounting department that would be able to handle this process as a routine procedure. But the small businesses that many of us represent often have a personnel, accounting, and human resource department all wrapped up in one person, who is usually also responsible for buying the donuts and making the morning coffee! I'm sure this is not the only methodology that will make our lives bearable, but it is the one that we developed and has been used successfully for 7 years now by us and many other pension firms around the country.

As I said earlier, you can't just send the withheld funds to the IRS. In fact, payment of withheld funds is made to an "authorized financial institution" (AFI) **or** a federal reserve bank. In this process, we will make the payments to the financial institution. I would note that if the total liability for the year is less than $500, the amount due **can** be sent with the filing of the Form 945. However, for reasons to be explained later, we still recommend that you deposit the funds with the financial institution anyway.

All payments are made to the AFI using a Federal Tax Deposit (FTD) Coupon - Form 8109 or 8109-B. The FTD coupon **must** be an IRS original - photocopies are **not** acceptable. They are optically scanned forms printed in a special color ink. You might think that you can order blank FTD Coupons from the IRS forms "800" number; you would be wrong! The Service tends to guard these forms and makes it difficult to get blank ones. But there is a way to get a quantity of the blank forms (which is specifically the 8109-B). You can write to the IRS Eastern Area Distribution Center for small quanti-

Sample Letter Requesting 8109-B Forms

Pension Plans, Inc.
123 Any Street
Any Town, MA 01101
(555) 555-5555

Date

IRS Eastern Area Distribution Center
P.O. Box 85074
Richmond, VA 23261-5074

RE: Form 8109-B

Please send us 50 copies of Form 8109-B. Our firm assists clients in the preparation of their tax returns. Please send the forms to the above address.

If there are any questions feel free to contact us.

Sincerely,

Joe Pension Administrator

ties of Form 8109-B (See sample letter).

Deposits to the AFI are supposed to be made using the IRS generated, pre-printed FTD Coupon (8109). The 8109-B (**B** stands for **blank**) is supposed to be used **only** to start the process the first time. Local IRS offices will send out an 8109-B after you give them the information for the IRS to produce a pre-printed book of 8109 FTD Coupons.

The IRS uses an outside contractor to produce 8109 coupon booklets under a system known as AUTOGEN - The Automated Generation of FTD Coupons. The 8109 booklets are designed to automatically trigger production and mailing of new booklets as the old ones are used up. We have been told by the head of the IRS national office **FTD Team - Return Processing** that the submission of an 8109-B also triggers the AUTOGEN system if there was not a recent coupon book produced. Therefore, the submission of an 8109-B will produce an 8109 coupon book. Keep this in mind, since it is important to consider where these coupon books will be sent and what will happen to them. I will discuss recommendations for handling this later in this material.

OK, so now you have a properly filled out 8109 or 8109-B. Now you need a check for the withholding payment. The authorized depository (where you take the FTD Coupon) must accept cash, a postal money order drawn to the order of the depository, or **a check or draft drawn ON AND TO THE ORDER OF the depository.** You can deposit taxes with a check drawn on another financial institution **only** if the depository is willing to accept that form of payment. Generally, they are **NOT!** The Feds get their money the evening of the deposit, so the bank can't wait for the check to clear through the normal banking processes. If you have a checking account in the name of the plan with the depository, that is the logical account to use for the withholding check.

Most clients do not have a checking account, or it is not with the depository. Often, if there is a checking account, it is a mutual fund account with check writing privileges.

The withholding is, by law, the obligation of the plan administrator. Where the employer is the named plan administrator (which is the way all of our plans are set up), the employer is obligated for the withholding. Therefore, I believe the following example gives you a process that makes life easiest and works best:

> **Example:** A lump sum distribution of $10,000 with 20% withholding ($2,000) is to be made. The trustee orders two checks from the mutual fund; one for $8,000 made payable to the participant (or trustee, if desired or required by the fund), and one for $2,000 made payable to the trustee. The trustee endorses the withholding check **to the employer** (yes, TO THE EMPLOYER!). The employer then deposits that check and concurrently writes out a company check (written on an account acceptable to the depository) which is deposited with the FTD coupon.

Some might wonder if the depositing of a plan check in the employer's account would give rise to a prohibited transaction. I am convinced that the answer is **no**. Remember, the employer is, **by law**, responsible for the withholding. When the trustee endorses the check over to the employer, the employer is taking that money as the agent of the government and must deposit it with the depository within the appointed time frame. That money does not belong to the plan at that point but rather to the Feds; thus, there is no dealing with plan funds by the employer.

The deposit is due at the depository either on a monthly or semi-weekly basis. Generally, if you report $50,000 or less of withholding per year, you are and will remain a monthly depositor. Distributions subject to the 20% withholding would have to exceed $250,000 during the year for the plan to flip over to semi-weekly reporting status. The vast majority of our plans will be on a monthly deposit schedule. Most small plans will withhold less than $50,000 and thus will be monthly depositors, even if the plan sponsor is a semi-weekly depositor, as long as the EIN used by the retirement trust when paying the tax is different from the EIN of the employer. The IRS Publication Circular E has detailed instructions that should be reviewed, particularly for larger client plans, to make sure you are on the correct schedule.

Monthly depositors must deposit (using the FTD Coupon) taxes withheld on payments made during a calendar month by the 15th day of the following month. Semi-weekly depositors must deposit taxes withheld on payments made on Wednesday, Thursday, and/or Friday by the following Wednesday. Amounts accumulated on payments made on Saturday, Sunday, Monday, and/or Tuesday must be deposited by the following Friday. (If the deposit day is not a banking day, you have until the close of the next banking day to make the deposit.)

There is also a special $100,000 One-Day Rule. Once you accumulate $100,000 in withholding, it is due by the close of the next business day.

When the year is over, Form 945 must be filed by January 31 to reconcile the payments withheld and made using the FTD Coupons. However, if you made deposits on time in full payment of the taxes for the year, you may file by February 10. The form is very easy to fill out since it needs only one line filled out showing the income tax withheld and the summary schedule showing

each month for which payment was made and the amount for each period. If the plan is a semi-weekly depositor, Form 945-A must also be filled out. This is simply a larger schedule showing the monthly tax liability on a day-by-day basis.

The administrative procedure that we use that allows the client to get a FTD Coupon is quite simple. When we do the distribution forms for a participant, we include in the employer's package a Federal Withholding Deposit Coupon Request form. This simple form is filled out by the client and faxed to us whenever they are making a distribution where withholding is being done. On the form, the employer identifies the month and year of the distribution and lists the participants for whom withholding will be deposited, along with the exact amounts of the withholding. From this form, our administrative staff will produce an 8109-B FTD Coupon and mail it to the client, usually the same day that we get the fax. The coupon is completely filled out, including the name of the plan, but the address that we use is always in care of our company with our address. We do this so that when the 8109-B is processed by the Service, any 8109 coupon books that are produced will be sent to us. There is no other address provided. We do not want coupon books for the plans being sent to the clients. It is much too easy for them to either use those coupons with their own employee withholding (which will royally mess up everything) or to simply fill out their own coupon incorrectly and bypass our tracking system for purposes of making sure that the Form 945 is prepared in the following year. The cover letter that goes with the 8109-B explains again to the client how the check to the depository is to be handled and reminds them that we will be preparing the Form 945 for them early the following year.

Adopting this process has allowed us to make the withholding requirement much less onerous on our clients. We can walk them through the withholding process over the phone in just a few minutes and refer them to the material that they have been sent with the participant distribution packages. Many pension firms have adopted these same procedures and modified them as appropriate for their operations with equal success. If you have found that walking your clients through the withholding process has been a real time consuming ordeal, I would suggest that you might want to try the process explained above and see if that does not give your clients and you some needed relief from Congress' legacy of funding extended unemployment benefits in 1992.

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ASPA's First Summer Conference Receives Rave Reviews

It was a sell out crowd at ASPA's first Summer Conference! The Conference, a combination of the former Eastern and Western Regional Seminars, proved to be a great success. The July 11-14 Conference coincided with Northern California's summer heat wave, and attendees found themselves in the midst of unanticipated 90 degree heat in San Francisco, the City by the Bay. The weather did not, however, keep ASPA members away; over 300 attendees were on hand for the continuing education, learning, and networking opportunities.

The Conference included an opening session that provided insight into the status of pension and social security reform legislation in the current Congress. Another highlight was the "Ask the Experts" general session on Tuesday that provided attendees with a chance to have their questions answered by experts in the legal, TPA, and actuarial fields. The bulk of the conference consisted of 30 concurrent workshops on a variety of topics including *EPCRS for the TPA*, *401(k) Audits*, *Participant Loans*, *Y2K*, and the *DOL Enforcement Proceeding*. Also featured was a vendor exhibition of 20 booths displaying the latest technology and products for the industry.

All in all, the 1999 ASPA Summer Conference was a welcome addition to the ASPA program calendar. Mark your calendars now for the 2000 ASPA Summer Conference scheduled for July 16-19, 2000 in San Francisco.

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An Interview with Patrick McDonough

ability of an individual to represent a client before the IRS on tax matters, with or without the taxpayer's presence and prepare and file necessary documents with the IRS on behalf of a taxpayer. Circular 230 grants this right to all attorneys and CPAs, and to Enrolled Actuaries with respect to certain sections of the Internal Revenue Code. In addition, the IRS has an Enrolled Agents program, where an unlicensed individual can take an exam administered by my office and apply for an Enrolled Agent status.

What is your role in the Joint Board as its Executive Director? There are various areas that I am responsible for with respect to the Joint Board.

First of all, I oversee the administration of the Joint Board, such as the writing of documents governing the operations of the Joint Board, compliance with the Federal Advisory Committee Act with respect to the Advisory Committee (volunteers who actually prepare the EA examinations), and act as the representative of the Joint Board at meetings of pension actuaries, professional actuarial organizations, and agencies of the federal government.

I also advise the Joint Board on legal aspects of commonly encountered situations, usually involving actions, which may result in an actuary's not being able to practice. It could be denial of an application for enrollment, late filing or not meeting requirements for reenrollment, reinstatement of a disenrolled actuary and questions on exams, such as when an answer is not in accord with an IRS position.

What role do you play with respect to disciplinary cases? In the case of actuarial disciplinary cases, my office acts independently of the Joint Board, at least in the first three phases - discovery, discussion with the actuary, and representation before the administrative law judge. The full Joint Board only gets involved in the fourth phase, which is appeal.

As Director of Practice, my office is involved in all disciplinary cases, not just those involving actuaries. Usually, disciplinary case referrals come to us from field agents, and involve issues like a practitioner falsifying or backdating documents, or the biggest area for disciplinary action, non-filing of tax returns by practitioners. The law says you have to be in compliance with your own tax and filing obligations to represent clients before the IRS. You would be surprised at how many cases we get where practitioners are not in compliance.

One actuary tried to claim he could still sign a Schedule B even though he was suspended from practice for failure to file tax returns, but that is not the case. As Roland Cross says, you have to have "clean hands" to practice before the IRS as an actuary (or an attorney, CPA or Enrolled Agent).

How do the activities of the Actuarial Board for Counseling and Discipline (ABCD) affect your office? We do not actually receive referrals from the ABCD, although the ABCD has suggested that information be exchanged on actuarial disciplinary cases. The problem is that there are confidentiality issues, for instance, if information came from the examination of a taxpayer's tax return, that information is confidential. Also, the Joint Board may take disciplinary action where the ABCD may not consider the situation actionable, such as a suspension from practice for failure to file tax returns or tax evasion, which is not an actuarial matter. In instances where the ABCD has taken disciplinary action against an actuary, and the Joint Board has requested further information for its own review, the ABCD has refused to share information and cited its own confidentiality rules.

The Joint Board recently completed the recent reenrollment cycle for actuaries. There were some problems, particularly with the timing of the return of reenrollment letters. What do you think can be done to improve the process? The Joint Board will be reviewing the reenrollment process to see what can be done to avoid the problems. Staffing for the administrative processes of the Joint Board is an issue, as we currently have limited staff to carry out all of the functions necessary. We are working on the staffing problem, but government procedures may slow this process. Also, the Joint Board will now be focusing on audit of the reenrollment forms. Once audit of the selected reenrollment forms has been completed, the Joint Board will be considering ways to improve the process.

There have been some complaints about the speed or responsiveness of the Joint Board on answering questions. Can you comment on that? Honestly, we get more questions and requests from the 4,500 Enrolled Actuaries than we do from the 40,000 Enrolled Agents. Responding to their questions is a full time job, and we currently have only limited staff to accommodate them. They are a sophisticated group, so we often have to respond to congressional inquiries on specific questions.

Circular 230 is currently in the process of revision. Why is it being revised? Circular 230 is updated every five to six years. It was last updated in 1994, so it was time to review it again. There has been new legislation, court decisions and technology which need to be reflected.

What steps have been taken so far in the revision process, and what additional steps are necessary before the final version is published? So far, preliminary notice was given to several groups, like the ABA, AICPA, the National Association of Enrolled Agents, and some government departments. These groups submitted 70 or so suggestions regarding areas of 230 which need revision.

This is clearly an unworkable amount, so a working group was formed, with Deputy Chief Counsel Marlene Gross and others, to reduce this to 15 to 20 suggestions. Some suggestions are controversial, such as defining the practice of law, but many will be incorporated. The next step is to prepare a draft for public comment, then incorporate the comments in the final draft. We would like to publish the draft for public comment in the spring of 2000, so that the final regulations can be in effect by the summer of 2000.

Currently, Circular 230 does not allow an actuary to practice before the IRS on sections 415 and 416 of the Internal Revenue Code, clearly areas which should be allowed. What can be done at this point to add these sections to the EA practice section of 230? Comments can still be submitted to me, and I will pass them on to the working group, but they should get them in here soon. Those seem noncontroversial, so there should not be a problem getting them added. In particular, 416 is not included because the section dealing with actuarial practice was written before 416 was put into the Code, and has not been revised since.

Circular 230 is a collection of the regulations on practice before the IRS. Information on Circular 230 can be found in IRS Publication 947, which may be downloaded from the IRS website at www.irs.treas.gov. The regulations contained in Circular 230 may be downloaded from the National Archives and Records Administration website at www.nara.gov/fedreg (Title 31CFR Part 10, subparts A-E).

What do you think about ASPA's proposal to have a functional equivalent to the Enrolled Actuary established for defined contribution plan certification? Congress has to act first. I do not have enough mastery of the subject matter to comment on the ramifications of this. Clearly the addition of an enrolled DC practitioner would certainly raise administrative issues.

What direction do you see for your future activities as Director of Practice and as Executive Director of the Joint Board? In the office of Director of Practice, I have created a federal advisory committee to write the examination for Enrolled Agents, modeled on the Enrolled Actuaries' examination. I want to expand the Enrolled Agent program to apply review standards like the Joint Board does for Enrolled Actuaries. One area of reform I am working on is the waiver of the Enrolled Agent examination for former IRS employees who were employed by the IRS for more than five years. Review of the area of employment needs to be done before such a waiver is granted. Such review was not always done in the past where an IRS employee requested a waiver.

On the disciplinary side, we are seeing more referrals about abuse of IRS field agents by practitioners, such as hounding an agent in and out of the office, physical abuse, body checking, throwing eggs at an agent's house or car and other unprofessional conduct. This is clearly disreputable conduct by a practitioner, and suspension is being enforced for this type of behavior.

With respect to the Joint Board, I would like to be more involved in the Joint Board activities. As an attorney, I have taken some actuarial courses with Don Grubbs and would like to be more involved in the subject matter of actuarial issues. Also, I would like to be more involved with Lauren Bloom's office (i.e., with the ABCD).

Special thanks to Paulette Tino and Roland Cross of the IRS, for their help in providing background information for this article.

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Update on PWBA's Investigation of 401(k) Fees

and disclosure of fees and expenses charged to 401(k) plans? If action is necessary, what information should be required to be disclosed? Would a uniform format for such disclosure be helpful to participants?

Shortly thereafter, the DOL initiated approximately 50 field investigations around the country for the purpose of gaining a greater understanding of the fees being charged to 401(k) plans and for discovering whether there were abusive practices in that area. While the PWBA has not announced the results of those investigations, we do know that all of the investigations have been completed and the results have been sent to the PWBA Headquarters in Washington, D.C. We believe the information learned from the investigations will soon be informally reflected in speeches by PWBA officials — and possibly in formal PWBA guidance.

On July 1, 1998, the DOL published a 401(k) fees brochure for plan participants entitled *A Look at 401(k) Plan Fees*. In addition, the PWBA released a study of 401(k) costs prepared by an outside consultant entitled "Study of 401(k) Plan Fees and Expenses." The Study is a lengthy and detailed analysis of the types of expenses charged in connection with the investment and administration of 401(k) plans. Both the booklet and the study can be found at the PWBA's website at **www.dol.gov/dol/pwba**.

In the participant booklet, the PWBA discusses the importance of fees and their impact on retirement benefits, describes the types of fees that are charged in 401(k) plans, instructs participants on where they can obtain information about fees and expenses in the plan, and provides participants with 10 questions to ask their employers about the plan's services, investments, and fees. In addition, the brochure instructs participants that their employers have fiduciary responsibilities under ERISA to understand the plan fees and to determine whether they are reasonable relative to the services purchased:

> "You should be aware that your employer also has a specific obligation to consider the fees and expenses paid by your plan. ERISA requires employers to follow certain rules in managing 401(k) plans. Employers are held to a high standard of care and diligence and must discharge their duties solely in the interest of the plan participants and their beneficiaries. Among other things, this means that employers must:
>
> - Establish a prudent process for selecting investment alternatives and service providers;
> - Ensure that fees paid to service providers and other expenses of the plan are reasonable in light of the level and quality of services provided;
> - Select investment alternatives that are prudent and adequately diversified;
> - Monitor investment alternatives and service providers once selected to see that they continue to be appropriate choices.

Thus, the PWBA places squarely on the shoulders of the employer the fiduciary responsibility for understanding the fees and costs in 401(k) investment products.

Current Developments

As a result of the testimony given at the PWBA's 1997 hearings, and of information gathered during the PWBA investigations of the expenses in 401(k) investment products, it was determined that, in addition to the guidance given to the participants through the booklet, there was a need for a standardized disclosure form to assist plan fiduciaries in understanding 401(k) fees. After discussions with representatives of the various constituencies in the 401(k) investment marketplace, the PWBA asked associations representing the insurance, mutual fund, and banking industries to collaborate in the development of a "universal" form for the disclosure of 401(k) fees and expenses. The American Council of Life Insurance (ACLI), the Investment Company Institute (ICI), and the American Bankers Association (ABA), prepared a fee disclosure form and provided it to the PWBA. On July 15, 1999, the PWBA published the worksheet, together with a brochure for employers, and a press release. Copies of all three documents can be obtained from the PWBA's website at **www.dol.gov/dol/pwba**.

The PWBA asked associations representing the insurance, mutual fund, and banking industries to collaborate in the development of a "universal" form for disclosure of 401(k) fees and expenses.

The form provides for full disclosure of all investment-related expenses including, for example, front-end loads, annual asset-based charges (such as investment management fees, 12b-1 fees, trailing commissions), and rear-end charges (such as contingent deferred sales charges and back-end loads). In addition, it calls for disclosure of other expenses associated with the operation of a 401(k) plan, such as plan document costs, annual administration expenses, compliance testing, and so on.

It is likely that the disclosure worksheet will become the industry standard. If so, that would encourage more plan sponsors to better evaluate the fees and costs in their plans, which would ultimately drive down the costs for plan investments and recordkeeping. This would be particularly true for small and mid-sized-employers who now lack the staff and the technical sophistication for identifying and analyzing the costs in 401(k) investment packages. In addition, it could provide an opportunity for third party administrators (TPAs) to provide this kind of analysis to their 401(k) plan clients.

In addition to the creation of a disclosure form, the DOL has focused on payments from 401(k) plans by revising the Schedule A for its Form 5500 for 1999. In 1998 and prior years, Schedule A, Part I, line 3, asked for "Insurance fees and commissions paid to agents and brokers." The Schedule A instructions provided:

> "Line 3 — Report all sales commissions in column (c) regardless of the identity of the recipient. Do not report override commissions, salaries, bonuses, etc., paid to a general agent or manager for managing an agency or for performing other administrative functions. Fees to be reported in column (d) represent payments by insurance carriers to agents and brokers for items other than commissions (*e.g.*, service fees, consulting fees, and finders fees)."

However, for 1999, the DOL has prepared a draft Schedule A with a significant change. The draft Schedule A moves the question to line 2 and is changed to request: "Insurance fees and commissions paid to agents, brokers, **and other persons**."

The instructions have also changed. They now read:

> "Line 2 column (d) - Fees to be reported represent payments by insurance carriers to agents, brokers, and other persons for items other than commissions (e.g., service fees, consulting fees, and finders fees). Fees paid by insurance carriers to persons other than agents and brokers should be reported here, NOT in Parts II and III on Schedule A as acquisition costs, administrative charges, etc." (The underlining was added.)

Thus, the broad category of "other persons" has been added to the group for which fees must be reported. While it seems that Schedule As are generally being properly prepared for insurance commissions paid to licensed brokers and agents, there appears to have been little in the way of reporting fees paid by insurance carriers to "other persons." Since many TPAs now receive payments from insurance carriers related to plans they administer, it appears that additional reporting will be required of the carriers for plan years beginning after December 31, 1998. Unfortunately, neither the question nor the instructions are complete enough to clearly define where the reporting line is drawn. However, a fair reading would require reporting of fees paid to TPAs for participating in the sales process as a finder (*e.g.*, introducing the plan sponsor to a broker) and receiving a fee or otherwise assisting in the sales process and receiving payments related to those services. The most obvious of those situations would be a fact pattern where the TPA receives a percentage of the broker's commission.

While it is not clear whether all payments to TPAs must be reported on the new Schedule A, the trend is toward greater disclosure, and there is a good chance that, in future years, full disclosure will be required.

Conclusion

The 401(k) marketplace has grown increasingly competitive for both service fees and investment expenses for plans of all sizes. As a result of that competition and of the DOL activities, the trend is toward greater disclosure of all fees and costs — and of the recipients of those fees. While that is good news for 401(k) plans and their participants, it also raises the danger that the cost of services will be given more weight than the quality of the services, which could ultimately hurt participants. For some TPAs, there are business opportunities to assist employers in selecting investment providers by evaluating the performance, services, and costs of the competing providers.

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Top-Heavy Plan Rules

of the minimum contribution or minimum benefit that must be provided in multiple plan situations. It also raises the possibility of a resurgence of small defined benefit plans. A problem for administrators is that the IRS has not updated either its regulations interpreting Code §415 or Code §416 to take into consideration these changes in the law.

Basic Concepts of Top-Heavy Plans

What is a Top-Heavy Plan?

A qualified retirement plan is top-heavy when it *primarily* benefits officers, owner-employees, shareholder-employees, partners, self-employed persons, and other employees who meet the definition of a *key employee*. A plan primarily benefits key employees if they have accumulated more than 60% of the benefits or contributions that the plan provides. There are also lookback rules, which require the inclusion of distributions from prior years.

Who is a Key Employee?

Generally, a key employee is any employee who, at any time during the current plan year or any of the previous *four* plan years, was:

- an officer earning over 50% of the dollar limit for defined benefit plans (for example, $65,000 in 1998 and 1999 [***Note***: This limit does not increment in $5,000 brackets]);
- one of the 10 employees owning the largest interest in the employer (a minimum of ½ of 1% ownership and compensation greater than $30,000 is required for this category to apply);
- an employee owning more than 5% of the employer; or
- an employee owning more than 1% who earns more than $150,000.

The ownership attribution rules of Code §318(a) apply in determining whether the spouse or family member of a key employee who has an ownership interest is a key employee. However, a key employee's compensation is *not* imputed to family members. The spouse or family member of a key employee who is a key employee only because he or she is an officer does not become a key employee by attribution or aggregation. Whether an individual is an officer is determined by the function performed, rather than the title of the position occupied. When a key employee no longer meets the definition of key employee, he or she is dropped from testing rather than being treated as a non-key employee.

When a plan becomes top-heavy, the law requires that special provisions in the plan favoring non-key employees override existing plan provisions.

When and How is Top-Heavy Status Determined?

Whether a defined contribution plan is top-heavy is determined as of the last day of the preceding plan year (*the determination date*). The determination date for a new plan is the last day of the first plan year. A defined contribution plan (*including* a 401(k) plan) is top-heavy when the aggregate account balances of key employees exceed 60% of the total account balances. A defined benefit plan is top-heavy when the present value of accrued benefits of key employees exceeds 60% of the present value of total accrued benefits determined as of the most recent valuation date that is within a 12-month period ending on the determination date. Account balances and accrued benefits include employer contributions, employee pretax elective deferrals, employee after-tax contributions (with the exception of qualified voluntary employee contributions which were allowed from January 1, 1982 to December 31, 1986), investment earnings, forfeitures, rollover contributions from a related or predecessor employer's qualified plan, and rollover contributions received from *any* qualified plan before January 1, 1984 but excluding unrelated rollovers after December 31, 1983. Distributions that occurred within five years of the determination date are included; however, account balances for former key employees and employees who did not work at least one hour during the five-year period ending on the determination date are excluded. It is important to remember that contributions made to a profit-sharing plan after the end of the plan year are not taken into consideration for top-heavy status. However, contributions to a money purchase pension plan are included, even if they are contributed after the end of the plan year. Excess deferrals, excess contributions, excess aggregate contributions, and excess annual additions are *not* included in determining the participants' account balances.

When Do Plan Aggregation Rules Apply?

In determining whether a plan is top-heavy, all plans of the employer that cover the same key employee must be aggregated. Two or more plans also must be aggregated if they cover a common key employee, and the plans

are dependent on each other to pass the coverage and nondiscrimination tests of Code §410(b) and §401(a)(4), respectively. If one plan in the mandatory aggregation group is top-heavy, all plans in the group will be top-heavy as long as they are top-heavy as a group. However, if the group does not exceed the 60% standard, none of the plans will be deemed top-heavy. The employer has the option of *permissibly* aggregating a plan it maintains that has no common key employee, if the benefits or contributions are comparable, and the aggregated group passes the 410(b) and 401(a)(4) nondiscrimination tests. Permissive aggregation may be a valuable option since it may lower the key employee percentage to less than or equal to 60%. The result in this situation is that the entire permissibly aggregated group is considered not top-heavy, and the obligation to provide a minimum contribution or benefit is avoided.

Comment: Plan aggregation is a consideration when mergers and acquisitions occur since the acquired company's plan may impact the parent's top-heavy status and *vice versa*.

What Minimum Benefits or Contributions Must a Top-Heavy Plan Provide?

When a plan becomes top-heavy, the law requires that special provisions in the plan favoring *non-key employees* override existing plan provisions. This is done so that the top-heavy plan remains qualified. The special provisions that apply are the requirements to provide minimum contributions or benefits, and, if necessary, to accelerate the plan's existing vesting schedule.

Top-heavy defined contribution plans (including 401(k) plans) are required to provide a minimum contribution for each non-key employee participant employed on the last day of the plan year, regardless of the number of hours worked. The contribution must be equal to the lesser of 3% of compensation or the highest actual percentage *allocated* to any key employee. Allocations to key employees include their own elective deferrals; however, deferrals by non-key employees are disregarded in determining whether they have received the minimum contribution.

Comment: The IRS's top-heavy regulations predated the large-scale growth of 401(k) plans. Under the regulations, since elective deferrals by key employees are considered employer-provided benefits, this has resulted in a trap for some employers. These employers are those who amended their existing profit-sharing plans into a 401(k) plan with contributions limited to elective deferrals in order to avoid making further employer contributions. If the aggregate balances of their key employees exceed 60%, and any key employee makes an elective deferral, an employer-provided top-heavy contribution will still be required. This should be a factor in designing new small plans since it may affect employer costs and the ability to make employer matching contributions. Generally, employer matching contributions may not be used to satisfy top-heavy minimums. Pending legislation might include: counting matching contributions for top-heavy minimums, reducing the five-year lookback rule to one year for distributions to former employees, removing the requirement for frozen defined benefit plans to make minimum accruals, eliminating the requirement for using the aggregation rules, and repealing the top 10 owner portion of the key employee definition.

Compensation for top-heavy contributions and benefits calculation is limited by the maximum compensation limit in effect for the year (for example, $160,000 in 1998 and 1999). This benefit must be provided to all participants who have not separated from service before the end of the plan year, regardless of the number of hours of service performed if that plan is providing the top-heavy minimums. As noted previously, gross compensation (including elective deferrals) is the current basis for determining the required top-heavy contribution.

Comment: The employment on the last day of the plan year requirement may raise allocation issues for a standardized defined contribution prototype plan. A participant who leaves before the end of the plan year after completing 501 hours of service remains entitled to receive an allocation of the employer's contribution. However, this entitlement does not extend to entitlement to the top-heavy minimum. For example, a standardized 401(k) plan may require 501 hours of service for entitlement to a matching contribution. A participant makes elective deferrals and leaves employment before the end of the plan year after completing 600 hours of service. If the plan is top-heavy for that plan year, then the employer is required to make a contribution of 3% of compensation to all non-key employee participants employed on the last day of the plan year. The participant is entitled to a matching contribution due to the completion of 600 hours of service assuming the plan allows for this. However, since the participant separated from employment before the last day of the plan year, then there is no entitlement to the employer's top-heavy minimum.

Top-heavy defined benefit plans must accrue a benefit equal to 2% of compensation for each year of service until the accrued benefit equals 20% of compensation if that plan is providing the top-heavy minimum. This minimum benefit is compared to the plan's normal accrued benefit for a given year, and the employee is entitled to the larger of the two benefits. All non-key employees in a defined benefit plan who have at least 1,000 hours of service must accrue a minimum benefit regardless of whether they are employed at year end. Where an employer maintains multiple plans, there are rules (discussed below) that coordinate which plan provides the top-heavy benefit and the amount of minimum benefit.

Top-heavy minimums may not be satisfied by employee after-tax contributions or elective deferrals by non-key employees, or employer contributions to Social Security. Employer matching contributions may not be counted, if they are used to satisfy Code §401(k) or (m) antidiscrimination testing requirements.

> **Comment**: Prototype plans are not permitted to use matching contributions to satisfy the top-heavy minimum contribution requirement. (Note: Elective contributions made by key employees are taken into account for determining the top-heavy minimum.)

An employer may satisfy the minimum contribution requirement by making a qualified nonelective contribution to non-key employees. Since the 1998 plan year, a 401(k) safe-harbor nonelective contribution of 3% of compensation made in accordance with the rules described in IRS Notice 98-52, may also be used to satisfy top-heavy requirements. Since the safe-harbor contribution goes to every non-highly compensated participant eligible to defer, it automatically meets the last day requirement. The employer need only be concerned about highly compensated non-key employees.

What Vesting Requirements Apply?

Top-heavy plans must vest more rapidly than non-top-heavy plans. Acceptable vesting schedules include 2/20 graded vesting and three-year "cliff" vesting. Full vesting is always required if a plan has a two-year eligibility requirement.

What is a Super Top-Heavy Plan, and Does This Concept Have Meaning After the 1999 Plan Year?

When the aggregate balances for the key employees exceed 90%, the plan is considered "super top-heavy." When this occurs, limits are placed on benefits that can be provided by combined defined contribution and defined benefit plans, and the top-heavy minimum contributions and benefits must be increased for non-key employees who participate in both the defined contribution and the defined benefit plans.

For plan years before the 2000 plan year, Code §415(e) coordinates situations where an employer maintains both a defined contribution plan and a defined benefit plan. Under this section, the current maximum annual benefit limit for defined benefit plans ($130,000 in 1999) and the contribution limit for defined contribution plans ($30,000 in 1999) are multiplied by 1.25 to set the combined limit on benefits and contributions. The current super top-heavy rules require the lowering of the factor to 1.0. This 1.0 limitation can be avoided only if the total cumulative benefits and accounts of key employees are not more than 90%, *and* the employer provides all non-key employees covered under both plans with either a 3% benefit (to a limit of 30%) under the defined benefit plan, or a 7.5% minimum contribution under the defined contribution plan. With the repeal of Code §415(e) after 1999, the requirements for lowering the combined plan multiple and augmented top-heavy requirements as the concept of super top-heaviness will apparently cease to have meaning going forward. However, IRS guidance is needed to explain how plans will make transitions taking into account the repeal of Code §415(e).

> **Comment**: This change may have an impact on the funding of defined benefit plans because the contribution will not be limited by either the 1.0 or the 1.25 rule. It may also affect defined contribution plans, since cutbacks were traditionally made under these plans.

Top-Heavy Coordination Where There Is More Than One Plan

How Does One Coordinate the Minimum Contribution or Benefit Requirement If There Are Multiple Plans?

Often an employer maintains more than one qualified plan. The employer need only select one of the plans to satisfy the top-heavy requirements to prevent a doubling of the top-heavy minimum. However, there are unique problems if the employer's plans have different eligibility requirements and the plan supplying the minimum contribution has the more restrictive eligibility requirement.

Which Plan Gets The Top-Heavy Minimum?

The need to coordinate top-heavy contributions occurs in situations where either the employer maintains a combination of a defined benefit plan and a defined contribution plan or multiple defined contribution plans. When two defined contribution plans are involved, it is usually a profit-sharing and money purchase pension plan

combination. The employer must designate in the respective plan documents which plan will be responsible for supplying the top-heavy minimum contribution to avoid having to provide multiple minimums. Frequently, the employer selects the defined benefit plan or the money purchase pension plan to provide the contribution. The defined benefit plan often is chosen because participant turnover and actuarial funding considerations may result in a lower cost for the employer. Where there is a profit-sharing and money purchase pension plan combination, the money purchase plan usually is selected because the employer is already legally obligated to make an annual contribution.

The regulations assume that the defined benefit minimum benefit is more valuable than the defined contribution minimum contribution, and they permit covering the top-heavy requirement with the defined benefit minimum only. In this situation, the prescribed 2% minimum accrual percentage increases to 3% until a maximum 30% accrual is reached. However, the defined contribution plan may satisfy the top-heavy minimum requirement instead. If this occurred and a defined benefit plan was the other plan, the minimum contribution percentage of 3% was required to increase to 5% or 7.5%. The 7.5% rate was required to allow the continued application of the 1.25 limitation under Code §415(e) in a plan that was not super top-heavy. The defined contribution 7.5% contribution rate and the defined benefit 3% accrual rate will apparently become unnecessary in the 2000 and later plan years due to the repeal of Code §415(e). Further IRS guidance should clarify that even the 5% rate will not be necessary in plan years after 1999.

What occurs if the plans have different eligibility requirements?

Coordination works well as long as the combined plans have the same eligibility requirements. If they do not, additional coordinating provisions must be added to the plan documents.

> **Example:** An employer maintains both a frozen defined benefit plan and a profit-sharing plan that are top-heavy in the aggregate. The defined benefit plan has no eligibility requirement, while the profit-sharing plan has a two-year eligibility provision. The profit-sharing plan was designated to provide the top-heavy minimum.

Unfortunately for this employer, the two-year eligibility provision of the profit-sharing plan will cause the plans to fail to satisfy the top-heavy requirements because frozen top-heavy defined benefit plans must provide a top-heavy benefit accrual (and fund that benefit, if necessary). Employees who had not completed the profit-sharing plan's eligibility requirement could not be provided with a top-heavy minimum under that plan, but remain entitled to a top-heavy benefit due to their participation in the defined benefit plan. (Although the defined benefit plan is frozen for benefit accruals, participants still must enter the plan if they meet the eligibility requirement. In the example, the plan had no service requirement.) In this situation, the defined benefit plan must provide the top-heavy minimum. With proper planning, each document should have been drafted with reciprocal provisions detailing how the other plan would provide the benefit for persons who had not satisfied the relevant eligibility provision.

What Occurs if a Participant Leaves Mid-Year in a Multiple Plan Situation?

When participants leave mid-year, additional complications arise for defined benefit and defined contribution combinations. Defined contribution plans must provide the top-heavy minimum to participants who were employed on the last day regardless of the numbers of hours of service completed. Defined benefit plans must provide a top-heavy minimum if the participant completes 1,000 hours of service (501 hours in a standardized plan) regardless of employment status on the last day of the plan year. Thus it appears, using the above example, that the defined benefit plan would have to supply a top-heavy minimum for a mid-year terminated participant if the hours requirement is met. This remains true even if the defined benefit plan was not frozen.

Employers who maintain a money purchase pension plan and a 401(k) plan combination can have problems, too. The most common problem occurs if the money purchase plan (which is to provide the top-heavy minimum) has a service eligibility provision, and the 401(k) plan permits elective deferrals to start earlier or even immediately. The employer's reward for its liberality is a top-heavy minimum contribution for all those eligible to make elective deferrals who are employed on the last day of the plan year. The fact that a participant was ineligible for an employer contribution or made no deferrals is irrelevant. Again, plans facing this situation must be administered properly, and reciprocal documentary language added to the affected plans so the plan in which the participant has satisfied eligibility requirements provides the top-heavy minimum.

Steven R. Oberndorf, Esq., is an attorney with, and Richard Hochman, APM, is president of McKay Hochman Company, Inc., a Butler, New Jersey, employee benefits consulting firm.

CONTINUED FROM PAGE 4

Professionalism – It's Up to Us!

Does that mean that the rest of the actuaries agree with what has been drafted? Of course not! It is, I suspect, an indication of the level of interest individual actuaries have in professional matters. Most comments discussed specific wording concerns, especially with regards to Annotation 1.3 (about convictions for criminal acts). Significantly, in light of the recent unfavorable publicity, some comments took the committee to task for eliminating specific reference to serving the public.

The Committee will review the comments we have received, evaluate them, and incorporate many of the suggestions into the next draft. But without the active support of members, the Code's effect on professionalism is far less than it ought to be. Even when the revised Code is adopted, the public's views of actuarial professionalism won't change unless we all reflect the Code in our daily actuarial activities. We must think about how our actions affect the profession. Above all we must live the code's requirement that we "perform professional services with integrity, skill and care."

I am proud to be an actuary and of the skills actuaries have that can be applied for the benefit of society. I am continually reminded of the tremendous talent existing in the profession. We must all strive to improve the public image of actuaries by acting professionally and supporting the professionalism activities of the actuarial organizations. Professionalism – It's up to us!

William J. Falk, FSA, FCA, MAAA, EA, is currently serving as the president of the Conference of Consulting Actuaries. He is a Principal with Towers Perrin in its Chicago office and is that firm's Director of Actuarial Practice for Health and Welfare. Mr. Falk graduated from Michigan State University with a BS degree in 1970 and spent his first six years working for CNA Insurance before joining Towers Perrin as a pension actuary. In addition to serving as CCA President, he is the CCA representative on the Joint Committee on the Code Of Professional Conduct that is currently working to update the Code.

Opportunity for Presenters

The Conference Committee is inviting proposals from potential presenters of our one-day workshops. If you are interested, please contact Daily Valuation workshop chair Rajean Bosier, QPA, at (512) 343-0418, or Defined Benefits seminar chair Cynthia Groszkiewicz, MSPA, at (770) 859-2552.

WELCOME NEW MEMBERS

Welcome and congratulations to ASPA's new members and recent designees. August — September 1999.

MSPA

Joseph F. Hicks, Jr.

CPC

John F. Dumont
Michael K. Fischer
Robert H. Imrie
Patricia J. Larson
Jean E. Stuart
Helen K.M. Zan

QPA

Michelle L. Adams
Jacqueline A. Albee
Lea M. Aune-Johnson
Kelly J. Bass
Dawn V. Birk
Todd R. Bleichrodt
Rebecca L. Darrow
Maureen J. DeSensi
Maureen A. Dempsey
Kelley S. Edwards
Kimberly A. Foutty
Philip J. Germani
Tamara L. Grover
Kevin Burke Haskell
Martin D. Jantzen
Carolyn D. Johnson
Susan Kaltenbaugh
Angel L. Kirby
Kristine A. Konters
Andrew B. Ledewitz
Christopher R. McDonald
Kirk P. Nellans
David S. Rowe
Paul J. Shortier
Dawn Smith
Michelle D. Stagner
Christopher R. Thixton
Miguel A. Vazquez
Carol L. Wheeler
Nancy K. Whitney
Tracey Williams

APM

Brad Arnold
William G. Davis

Affiliate

Kip Adams
Judith Lynn Bingler
James A. Black
Francis P. Gallagher
Robert D. Ganus
Robyn Giannattasio
Darrell L. Hannaway
Robert F. Johnnene
Elizabeth A. Kincaid
Ailene M. Limric
Melissa V. Meadows
Nancy M. Michael
Beth A. Oates
Clarence W. Pate
Shelly S. Richardson
Brenda M. Schachle
Michael F. Shearon

1999 – 2000 Education & Examination Program Catalog Now Available!

Contents:

- a syllabus for ASPA and EA courses
- registration forms and information about ASPA's exam and certification programs
- registration forms for ASPA's weekend and virtual study groups
- publications' information and order forms
- an ASPA education calendar
- ASPA membership benefit information and applications

All ASPA members and current exam candidates were mailed a catalog in August. If you need additional copies, please contact the ASPA office at (703) 516-9300 or e-mail educaspa@aspa.org with your request. You can also access and download portions of the catalog on ASPA's web site, **www.aspa.org**.

ASPA Exam Results Posted Online

Exam results for the June 1999 C-1, C-2(DB), C-2(DC), C-3, and C-4 exams are now posted by candidate name at **www.aspa.org/aspaedu.htm**.

A list of candidates who earned the Pension Administrators Certificate effective August 31, 1999 will be available on the site in November.

Are you an ASPA member who is interested in becoming more involved with ASPA?

We would like to hear from you!

In an effort to expand our volunteer base and to evaluate the status of current volunteers, ASPA is conducting a volunteer survey. If you are an ASPA member and are interested in serving on an ASPA committee or subcommittee, or working as a committee volunteer doing occasional tasks, please complete the survey enclosed in this issue of *The Pension Actuary*. We are also interested in the comments of current committee members and volunteers!

You can fax or mail the enclosed survey to the ASPA office or access and submit the survey directly from our web site. The survey is available in the "What's New" and "Membership" sections at **www.aspa.org**. We will respond to every survey that is returned and will use the information to maintain an ongoing list of interested volunteers. We welcome your input and look forward to hearing from you!

We've Moved

ASPA's National Office moved across the street on September 13, 1999. Our new address is:

4245 North Fairfax Drive, Suite 750
Arlington, VA 22203-1606

Our phone number, fax number, e-mail, and website address are the same.

1999 ASPA Annual Conference... Bigger & Better Than Ever
October 24 – 27, 1999

The 1999 ASPA Annual Conference, *ERISA – The First 25 Years and Into the New Millennium*, is shaping up to be the biggest and best ever. The conference is so big, in fact, that two hotels are required to house all of the attendees, sessions, and exhibits. Sessions will be held at both the Grand Hyatt Hotel and the Marriott Metro Center Hotel. The hotels are conveniently located across the street from each other. The conference agenda includes 52 interactive workshop sessions on a diverse range of topics. In addition, the general sessions will feature the latest information on government affairs, Q&A with the IRS and Department of Labor, and an update of the activities of the Pension Benefit Guaranty Corporation.

The workshop sessions cover a variety of topics including: *Plan Documentation*; *Welfare Benefits*; *Impact of Corporate Mergers and Acquisitions*; *Pension Reform Legislation*; *Recordkeeping*; *Correction of Fiduciary Breaches; 401(k) Investment Products*; *The Impact of Technology and Electronic Communication*; and many others. The workshops are scheduled concurrently starting on Monday, October 25 in the afternoon and finishing on Wednesday, October 27 in the morning.

In addition to countless opportunities for education, this year's conference will include visits to Capitol Hill. ASPA has set aside three hours mid-day on Tuesday for attendees to meet with their representatives on the Hill to discuss the issues important to pension professionals. ASPA will make the appointments and provide transportation and box lunches, leaving participants to concentrate on this opportunity to have their voices heard.

The ASPA Annual Conference promises lots of opportunities to socialize and network with colleagues and old friends. A highlight on Monday will be the conference luncheon and a performance by the Capitol Steps. The Capitol Steps are a local improvisational troupe that satirize the inner workings of Washington and the federal government. Tuesday night will feature the ERISA 25th Anniversary Party and Reception. This is a great occasion to enjoy cocktails and hors d'oeuvres with your colleagues and dance to the music of Leggz, the enormously popular band that entertained at the 1998 conference. If you prefer a quieter atmosphere with more ability to talk and unwind after a long day of sessions, there is also a chat room available with a selection of desserts and coffees.

The newly expanded exhibit hall includes three areas of booths displaying the latest products and services needed in our industry. Coffee breaks will be held in the exhibit hall, providing ample time for vendors and conference attendees to meet and review their needs. There will also be door prizes awarded in the exhibit hall throughout the conference.

Make your plans now to attend the 1999 ASPA Annual Conference. For more information visit our web site at **www.aspa.org** or contact us at (703) 516-9300 to request a brochure.

We look forward to seeing you there!

ASPA Announces the Educator 's Award and Martin Rosenberg Academic Achievement Award Winners

David Farber, EA, MSPA, ASA has been selected by ASPA's Education and Examination Committee's divisional chairs as the recipient of the 1999 Educator's Award. Farber is currently an instructor for the jointly sponsored ASPA/SOA/JBEA courses and a speaker at ASPA conferences. He served as the exam chair for the E&E Committee and as ASPA's director of technical education. Farber made significant contributions to the *Actuarial Cost Methods, A Review* revision in 1999, and is a popular weekend instructor, helping to prepare candidates to take ASPA exams.

Farber has been involved in ASPA's education program for over 16 years. On the basis of his many achievements, ASPA is proud to honor and present him with the 1999 Educator's Award.

APSA proudly recognizes two recipients of the Martin Rosenberg Academic Achievement Award for the December 1998-June 1999 academic year, Anneli Schalock, Milliman & Robertson, Inc., Portland, Oregon; and Connie D. Husley, Haslauer, Husley & Hall, Inc., Metairie, Louisiana.

Connie D. Husley is a co-owner of Haslauer, Husley & Hall, Inc., a pension administration and consulting firm in the New Orleans area. Ms. Husley has over ten years experience in pension and employee benefits administration and oversees all pension administration operations of her firm.

Anneli E. Schalock has been employed at Milliman & Robertson, Inc. since August of 1997. She is currently working in the in the Defined Contribution Department. Ms. Schalock was born and raised in Sweden, and completed her B.A. in International Business at Linfield College in Oregon, receiving the Delta Mu Delta Scholarship for the senior with the highest GPA.

ASPA wishes to congratulate all of the winners on their hard work and excellence!

Harry T. Eidson Founders Award Recipient

ASPA is pleased to announce that Howard J. Johnson, MSPA, has been selected as the 1999 Harry T. Eidson Award recipient. Howard J. Johnson, MSPA, Vice Chairman of Merrill Lynch Group Employee Services, is past Chairman and Chief Executive Officer of Howard Johnson & Company in New York, NY. An Enrolled Actuary and a Member and past President of ASPA, Howard is a frequent speaker on benefits matters at professional meetings and has testified before Congress and regulatory agencies on pension laws and regulations.

Howard played a vital leadership role in the early years of ASPA, and is largely responsible for the success it has achieved. In the early 1970s, he was the principal architect of the entire ASPA educational program of courses and examinations — a program that became the foundation of ASPA's ultimate recognition as a true actuarial organization.

While serving as President of ASPA in 1975, Howard worked toward ASPA's recognition as a co-equal sponsor (with the SOA) of the Enrollment Examinations, and the recognition of ASPA actuaries as a grandfathered class for initial Enrolled status. He worked tirelessly toward this result, which has proven to be the crucial ingredient of ASPA's stature, not only within the actuarial community, but also in the eyes of government officials.

Mr. Johnson will be presented with the award at the 1999 ASPA Annual Conference. The 1999 nominees represented a group of well-deserving candidates ASPA would like to thank everyone who submitted a nomination.

The Harry T. Eidson Award recognizes exceptional accomplishments that contribute to ASPA, the private pension system or both. The award is given in honor of ASPA's late founder, Harry T. Eidson, FSPA, CPC. Previous winners of the Eidson award are as follows: Andrew J. Fair, APM in 1998, Chester J. Salkind in 1997, John N. Erlenborn in 1996, and Edward E. Burrows, MSPA, in 1995.

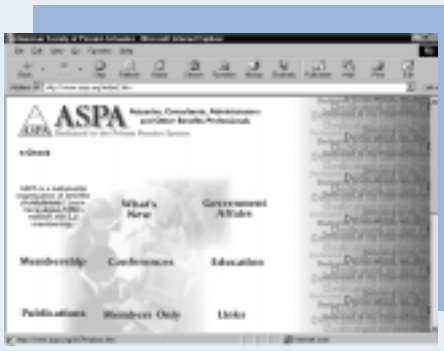
ASPA Benefits Councils' Calendar of Upcoming Events

Date	Location	Event
October 5	Atlanta	Breakfast Workshop: In the Trenches Panel: Ilene Ferenczy, LLM CPC and Cynthia Groszkiewicz, MSPA, QPA of Altman, Kritzer & Levick, PC and David Levin of Kilpatrick Stockton LLP
October 14	Cleveland	*To Be Announced*
October 20	North Florida (Jacksonville)	Meeting: Benefits Issues in Mergers & Acquisitions Speaker: Ilene Ferenczy, LLM, CPC, Altman, Kritzer & Levick, PC
November (*date tba*)	South Florida	Panel Discussion: ASPA Conference Follow-up
November 9	Central Florida (Orlando)	The Terrible Truth about Investing: How to be a Savvy Investor Speaker: Bruce Temkin, author, educator, and expert on retirement decision-making
November 11	Cleveland	*To Be Announced*
November 18	Atlanta	Luncheon Workshop: Current ERISA Developments Speaker: Brian Graff, Esq., ASPA Executive Director
December (*date tba*)	New York	Members-Only Cocktail Party

For more information or for the name of a local contact, please call the ASPA office at (703) 516-9300.

www.aspa.org

Check out the Meetings Webpage to download information, brochures, and registration forms for upcoming conferences, including the 1999 ASPA Annual Conference.



Visit the Hill and Speak Out

At the 1998 ASPA Annual Conference, more than 80 ASPA members visited Capitol Hill to meet their Congressperson or Senator and deliver ASPA's views on important legislative issues.

Here is what they had to say about the experience:

"[The staffer] was knowledgeable, attentive, and took notes. He related personally to the issues we addressed."

"Staffer was very interested in what we had to say….I plan to follow-up with her on the ASPA issues."

"Staffer seemed well receptive to our meeting. She took extensive notes and had prepared questions for discussion."

"This was an interesting and enjoyable experience. They are eager to learn from us, and it is encouraging to be listened to."

"It was just great!"

This year there are more reasons for an even larger group to take ASPA's views to the Hill! For the first time, ASPA will devote conference time to Visits to the Hill. For three hours during lunch, ASPA will arrange to have participating members bussed to the Hill. Lunch will be provided. Let ASPA take care of the details while you take care of the message!

Take advantage of the fact that the 1999 ASPA Annual Conference is in the Nation's Capitol and plan now to visit your federal legislators! More details to come!

FOCUS ON ASPA PERF

PERF Supports EBRI

by Curtis Huntington, APM

One of the activities that ASPA PERF participates on behalf of ASPA is paying the annual membership dues to the Employee Benefit Research Institute (EBRI).

Established in 1978, the Employee Benefit Research Institute (EBRI) is the only non-profit, nonpartisan organization committed exclusively to data dissemination, policy research, and education on economic security and employee benefits.

The mission of EBRI is to contribute to, encourage, and enhance the development of sound employee benefit programs and sound policy through objective research and education.

EBRI was founded with a declaration of three principles:

- Employee benefit plans serve an essential function in the U.S. economy by providing citizens with opportunities to achieve financial security.
- An ongoing need exists for objective, unbiased information regarding the employee benefit system, so that decisions affecting the system may be made based on verifiable facts.
- The members of EBRI determined that their common business interests will be furthered by having EBRI develop and disseminate such information.

EBRI has earned widespread regard as an organization that "tells it like it is," based on the facts. In addition, EBRI has declared that in all its activities, it shall function strictly in an objective and unbiased manner and not as an advocate or opponent of any position.

Membership dues, grants, and contributions fund EBRI. EBRI's financial base includes a cross section of pension funds, businesses, associations, labor unions, health care providers, insurers, banks, mutual funds, government organizations and service firms (including actuarial firms, employee benefit consulting firms, law firms, accounting firms, and investment management firms).

EBRI's comprehensive program of research and dissemination covers health, retirement, and related economic security topics. This program includes policy forums, round tables, briefings, and interviews. Major surveys include the annual Retirement Confidence Survey. The EBRI *Databook on Employee Benefits* is regularly updated as a resource, augmented by monthly *EBRI Issue Brief* studies and monthly *EBRI Notes* (which summarize major data releases, public policy activity and new studies).

ASPA PERF's Board of Directors is pleased to pay the annual membership dues so that ASPA can be a Contributing Member of this most important organization.

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 is a member of the ASPA PERF Committee.

Recent ASPA Government Affairs Comment Letters Available on the ASPA Web Site, www.aspa.org

....to the Treasury regarding the procedures for permitting restorative payments to qualified retirement plans

....in support of Carol Gold's application for the position of Director of Employee Plans

....to the Pension Benefit Guaranty Corporation regarding the proposed rule on payment of premiums, the Alternative Calculation Method.

....to the U. S. Department of Labor on the computer scannable versions of the New Form 5500

....to the IRS regarding Revenue Procedure 99-13

All these letters and information about Safe Harbor 401(k) Guidelines, 1999 Limitations Adjustments for Qualified Plans, and the DOL's response to ASPA's concerns are available on the "What's New" page.

FOCUS ON E&E

An E&E New Offering – The Daily Valuation Course

by Gwen S. O'Connell, CPC, QPA

ASPA's Education and Examination Committee (E&E) is very pleased to introduce a new ASPA course. At the 1999 ASPA Annual Conference, the Daily Valuation Course will be available for attendees to review at the E&E Booth.

The Daily Valuation Course will provide employees of all experience levels the knowledge that is needed to master the ins and outs of the daily valuation process. The manual includes information on the impact of daily trading; the processing of transactions; converting plans from the balance-forward environment to a daily valuation system; types of investments suitable for plans that are valued daily and the appropriate fees and expenses; and the fiduciary liability when participants choose their investments.

The project was spearheaded by Janice M. Wegesin, CPC, QPA, President of JMW Consulting, Inc., Palatine, Illinois. Janice won ASPA's 1998 Educator's Award, largely in recognition for her work on the Pension Administrator's Course and for her 401(k) presentations. Janice has said, "The subject matter presented in this course builds on that presented in the Pension Administrator's Course and will certainly be considered of higher difficulty. It is more likely that a pension administration firm will use this course as training material for experienced staff, including consultants and salespeople, rather than for support staff. An employee with either pension administration or recordkeeping duties, however, should be able to grasp the material if they are familiar with the concepts presented in the Pension Administrator's Course. While the Daily Valuation Course is not a companion to the Pension Administrator's Course, it might be considered to consist of topics and be written at a level that is somewhere between that of the Pension Administrator's Course and ASPA's "C" courses."

Most service providers today that work in the 401(k) environment are exposed to daily valuation issues either because they provide in-house daily recordkeeping services or work with outside daily recordkeeping service providers. This course provides valuable training for those individuals to help them understand the processes and the terminology associated with the daily recordkeeping world.

The course contains an exam, and upon successful completion, candidates will earn a Daily Valuation Certificate.

The E&E Committee is very pleased to have this new course available. We think that it will be a valuable addition to the education courses that ASPA already offers. For more information about the course or to obtain an order form, contact the ASPA office at (703) 516-9300 .

Gwen S. O'Connell, CPC, QPA, is Principal of Summit Benefit & Actuarial Services, Inc. in Eugene, Oregon. Ms. O'Connell currently serves on ASPA's Executive Committee as its secretary, is a member of the Board of Directors, and is the general chair of the Education and Examination Committee.

CONTINUED FROM PAGE 28

Pix Digest

computer selecting the returns for examination. Another user actually had called the IRS on this question and was advised that this question was not meant to apply to mutual funds.

To read the entire thread, download 20pct2.fsg

Currently in testing, PIX's exclusive software, WOD, will enable you to upload and download your messages via your regular internet connection. No more long-distance phone calls or tricky modem configuration strings. Simply establish your internet connection and tell WOD to get your messages. For users with 24x7 connections in their offices, PIX messages will be just one click away! Of course, traditional dial-up access will still be available.

The new software will also feature automatic handling of files attached to e-mail messages, faster message processing, and other improvements.

Stop by the PIX booth during the Annual Conference to get your beta-test copy of the new PIX!

Ideas? Comments? Questions? Want to write an article?

The Pension Actuary welcomes your views! Send to:

The Pension Actuary
ASPA, Suite 750
4245 North Fairfax Drive
Arlington, VA 22203
(703) 516-9300

or fax (703) 516-9308

or e-mail aspa@aspa.org

1999 Calendar of Events

		ASPA CE Credit
Oct. 7-10	EA-2 Class, Denver, CO †	20
Oct. 15	Early registration deadline for ASPA's fall exams	
Oct. 16-19	EA-2 Class, Chicago, IL †	20
Oct. 21-24	EA-2 Class, Washington DC †	20
Oct. 24-27	1999 ASPA Annual Conference, Washington, DC	20
Oct. 25	ASPA Annual Meeting and Vote on New Officers	
Nov. 1	Late registration deadline for ASPA's fall exams	
Nov. 6-7	ASPA Weekend Courses, Denver, CO C-1, C-2(DB), C-2(DC), C-3, and C-4	15
Dec. 1	C-1, C-3, C-4, and A-4 examinations	*
Dec. 2	C-2(DC) examination	*
Dec. 3	C-2(DB) examination	*

2000 Calendar of Events

May 7-10	Business Leadership Conference, San Diego, CA	10
May 8-9	Midstates Benefits Conference, Chicago, IL	15
July 16-19	2000 ASPA Summer Conference, San Francisco, CA	20
May 13-14	ASPA Weekend Courses, Denver, CO C-1, C-2(DB), C-2(DC), C-3, and C-4	15
August 31	PA-1(A) and PA-1(B) submission deadline	**

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

** PA-1A and B exams earn 5 ASPA continuing education credits each for a passing grade.

† 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

Correction of ADP, ACP and Multiple Use Tests

[Thread 78578}

This thread began with a user asking for advice in correcting a plan with failed ADP, ACP and multiple use tests, considering the post-SBJPA dollar-leveling correction method.

As pointed out in the thread, since the dollar-leveling correction methodology does not result in Average Deferral or Contribution Percentages for Highly Compensated Employees that actually pass the tests, the corrected numbers are not used for the multiple use test. Instead, the theoretical aggregate contribution refund is calculated on a percentage-leveling basis, then allocated on a dollar basis.

In the example being discussed in this thread, the plan, after corrections for ADP and ACP, still failed multiple use, so a further reduction in contributions was necessary. It was pointed out that it could be more advantageous to correct the multiple use failure entirely from the matching contributions. The plan had a matching formula of 50% on the first 6% of compensation deferred. Bringing down the deferral to correct multiple use would bring down the match pursuant to this formula. By correcting the multiple use failure from the matching side, no further reduction is necessary as the corrected matching contributions are now less than that called for by the plan.

Finally, to really complicate matters, it was pointed out that ultimately all of this will have to be spelled out in the plan document when restated for GUST.

To read the entire thread, download the thread adpmut2.fsg.

401(k) Plans & Mergers

[Thread 78361]

This thread was started by a user who had a client that was purchased during the year. The buyer plans to merge the plans as of September 30, and the sponsor's auditors have requested two ADP tests, one as of September 30 to cover the period when the plan was separate from the buyer's plan, and a second test to cover the last quarter of the year based on the merged plans.

Most of the PIX users who responded felt that one test for the year was sufficient. Another user agreed, however, he pointed out that it did not seem appropriate to do just one test for a year in which the two sponsoring entities were separate employers for a substantial part of the year.

Finally, Section 1.410(b)-7(c)(4) of the regulations was noted. This section discusses a merged plan being considered a continuation of the original plan, and allows testing on the plan based on its status at the end of the plan year. It is important, however, that the plan not be considered "terminated", or this combined testing is not available.

To read the entire thread, download the thread kmerge2.fsg.

Form 5500 Questions vs. Reality

[Thread 78849]

One of the Form 5500 questions asks if the plan has more than 20% of its assets in a single investment. If so, the amount must be entered. The appropriate answer to the question is not clear when the plan is invested in mutual funds. Presumably, the purpose of the question is to flag plans that may not be appropriately diversified. However, since a mutual fund represents shares in a generally well-diversified portfolio, many practitioners believe this question should be answered "No" even if a mutual fund is over 20% of the plan assets. However, when asked about this, the Department of Labor has indicated that this question should be answered "Yes", even if the underlying asset is a mutual fund.

Taking this to the next level, consider a plan with its investments held entirely in four mutual funds, each with 25% of the plan assets. Assuming a good choice of funds, this is probably a fairly well-diversified portfolio. However, based on the DOL's guidance, the 20% question would have to be answered affirmatively. How much does one enter for the amount? The total of all four? The instructions are silent. If one did enter the sum of all four funds, the 5500 form would then appear to indicate that 100% of the plan's assets might be in a single investment.

Several practitioners indicated that they do in fact enter the total, but typically will footnote the question on the form. Of course, footnotes do not get keypunched into the

Continued on page 27