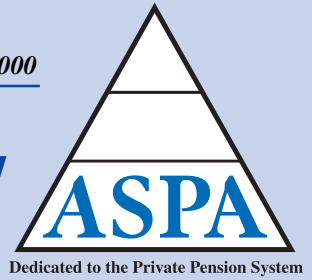


PensionActuary



WASHINGTON UPDATE

Don't Forget About Pension Reform

by Brian H. Graff, Esq.

With all the recent focus on the new comparability debate, it is easy to forget that significant pension reform provisions continue to make their way, albeit slowly, through Congress. On March 9, 2000, the House of Representatives passed minimum wage legislation that was coupled with a package of small business tax incentives including pension reform legislation. Late last year, the Senate passed a similar package of pension reform proposals along with an increase in the minimum wage, which was added to bankruptcy reform legislation. A summary of the House and Senate passed pension reform provisions is listed in this article.

The real question right now is "Where do these bills go from here?" Unfortunately, the answer is extremely unclear. One major obstacle is the fact that the Senate pension reform provisions were attached to the bankruptcy reform legislation. Under the U.S. Constitution, revenue bills must originate in the House. Since the Senate pension reform provisions were

Continued on page 10

How Much Do TPAs Need To Do When the Trustee is A Crook?

by C. Frederick Reish, APM, Esq., and Joseph C. Faucher, Esq.

The United States Ninth Circuit Court of Appeals has clarified ERISA's rules in a way that is beneficial for third party administrators (TPAs). The case is *CSA 401(k) Plan v. Pension Professionals, Inc.*, 195 F.3d 1135 (9th Cir. 1999). The case is important because it draws a bright line between plan fiduciaries and service providers. It also gives instruction to federal courts, which often have difficulty in differentiating between an ERISA Plan "Administrator" – a fiduciary and typically the plan sponsor or a plan committee composed of corporate officers – and third party administration firms. This distinction is important because courts are largely unfamiliar with the pension world in general and with the services provided by third party administrators in particular. Since plaintiff's lawyers often try to label third party administrators as ERISA fiduciaries, it is critical that courts recognize the distinction.

IN THIS ISSUE

1998-1999 Presidential Review **3** • The All New 1999 Form 5500 & EFAST Hit the Street **4** • New Flexibility in 401(k) Safe Harbor Plans Adds Appeal for Employers **6** • Dobrow, Donovan, Hiltunen, Piper, and Stroud Elected to ASPA's Board of Directors **8** • Nominations Open for ASPA's Board of Directors **9** • Welcome New Members **14** • 2000 ASPA Summer Conference **18** • 2000 Northeast Area Employee Benefits Conference **19** • Best of the Business Leadership Conference **19** • New Additions to the JBEA **20** • New Comparability Plan Survey **21** • Nominations Open for the 2000 Harry T. Eidson Founders Award **21** • Focus on ASPA's Committees **22** • ASPA Benefits Councils' Calendar of Upcoming Events **23** • Focus on ABCs **24** • Focus on PERF **25** • Focus on E&E **26** • Calendar of Events **27** • PIX Digest **28**

The facts of the case may sound familiar to most TPAs. Pension Professionals, Inc. (“PPI”) began providing administrative services for the Computer Software Analysts, Inc. (“CSA”) 401(k) plan in 1991. Within six months, PPI noticed discrepancies between the funds withheld from employee paychecks and the amounts deposited in the trust for the 401(k) plan. PPI suspected that the plan trustee and CSA’s CEO, Levi Carey (“Carey”), was not depositing the employees’ deferrals into the trust. PPI notified the plan trustees (including Carey) that the failure to deposit deferrals into the trust violated ERISA and DOL regulations and could be considered both a fiduciary breach and a prohibited transaction under ERISA. After consulting with counsel, PPI agreed to continue providing its services for CSA on the conditions that (1) Carey would adhere to a repayment schedule that he proposed in a letter to PPI, and (2) PPI would include language

in participant account statements indicating that 401(k) assets had not been deposited in the trust account, in violation of the ERISA requirements.

Carey eventually requested a modification to the repayment schedule, and PPI threatened to resign if the payment schedule were modified. Later, when PPI received what it believed to be falsified financial statements from CSA, PPI resigned. Carey ultimately pleaded guilty to criminal charges of embezzling the missing plan assets.

As the saying goes, “no good deed goes unpunished”. . . several former CSA employees – plan participants – sued PPI, seeking to recover the funds Carey had embezzled. (The decision does not mention whether the participants sought to recover the embezzled funds directly from either CSA or Carey, although we assume that, by that point in time, neither CSA nor Carey had any remaining assets. As a result, the participants probably saw PPI as the only source for recovery.)

Continued on page 12

Corrections

Correction to the January/February issue

On page 19 of the January/February 2000 issue of *The Pension Actuary*, the final line under Step 3 of the 401(k) Hardship Withdrawals Checklist should read, “Amount of Hardship Withdrawal (lesser of A or B).”

Correction to the 2000 ASPA Yearbook

On page 18 of the *2000 ASPA Yearbook*, the representatives to the Actuarial Board for Counseling and Discipline (ABCD) should read Ruth F. Frew and Howard M. Phillips. We sincerely regret any inconvenience caused to Mr. Phillips and apologize for our error.

The Pension Actuary is produced by the executive director and the Pension Actuary Committee. Statements of fact and opinion in this publication, including editorials and letters to the editor, are the sole responsibility of the authors and do not necessarily represent the position of ASPA or the editors of *The Pension Actuary*.

The purpose of ASPA is to educate pension actuaries, consultants, administrators, and other benefits professionals, and to preserve and enhance the private pension system as part of the development of a cohesive and coherent national retirement income policy.

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

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American Society of Pension Actuaries, 4245 North Fairfax Drive, Suite 750, Arlington, Virginia 22203

Phone: (703) 516-9300, Fax: (703) 516-9308, E-mail: aspa@aspa.org, Website: www.aspa.org

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1998-1999 Presidential Review

by Carol R. Sears, FSPA, CPC



My Presidential year was eventful and inspiring. ASPA is an incredible, caring, important organization of human professionals. Thank you for permitting me the opportunity to serve as your president. Following is a short list of a few of your organization's memorable events and accomplishments during 1999:

- Employee Benefits Research Institute (EBRI) invited ASPA, for the first time, to participate in their annual forum. I was able to speak and participate on behalf of ASPA on a panel of retirement experts.
- The Council of Presidents and Presidents-Elect (COP/COPE) engaged in three important sharing and planning meetings. The topics included NAFTA, the Code of Conduct applicable to actuaries, Strategic Plan components, professional global issues, and more. The five USA-based actuarial organizations plus those of Canada and Mexico participate in this consortium. Additionally, those ASPA volunteers involved in our intersocietal activities had a great influence and accomplished many important forward-thinking steps this year.
- Your Board of Directors participated in focus point setting for their particular areas of responsibility. They considered their goals, talked with their constituents, created their focus based upon their findings and analysis, and were consummate leaders. Next time you talk to a Board member, please thank them!
- The Board, Executive Committee, Chairs, and Directors of our National Office staff spent a productive weekend retreat, under the direction of a professional facilitator, identifying areas of consensus for the path ASPA should take on behalf of today's and tomorrow's members. We learned a lot about our philosophies, our visions, and ourselves. We set goals and methods of implementation.
- You may be aware that very influential agency meetings take place during ASPA's annual Government Affairs Committee (GAC) March meeting as well as throughout the year, as needed.

I can tell you, because I was there, ASPA is an essential resource on Capitol Hill for the private pension perspective. ASPA has achieved a prominent, respected position because of the diligent, honest, practical efforts of the hard-working member volunteers on this committee and support from our Executive Director, Brian Graff. During the year, I was able to tag along on visits to Capitol Hill and to various agencies. Each time ASPA's voice and opinion were sought out deliberately. I testified on behalf of ASPA before the House Ways and Means Committee about the bright points in the Portman Cardin bill. What an experience! Our opinions matter, and it was great fun to be one of our messengers.

- The ASPA PERF (ASPA Pension Education Research Foundation) permitted me the honor of bestowing a scholarship upon an actuarial student who showed promise as a pension actuary. In the process of choosing and honoring the recipient, I was able to guest lecture at my alma mater, the University of Illinois. ASPA PERF promotes pension and

Continued on page 15

The All New 1999 Form 5500 & EFAST Hit the Street

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



On February 2, 2000, the final version of the 1999 Annual Return/Report (Form 5500) was published in the Federal Register¹. This release is the product of a multi-year, joint project of the DOL, IRS, and PBGC (the Agencies) to streamline the filing and processing of the annual return/report. Form 5500 is filed by employee benefit plans, welfare benefit plans, fringe benefit plans, and direct filing entities (DFEs). The newly released, computer scannable forms are to be filed for plan years beginning in 1999 and for DFE years ending in 1999.

Informational copies of the new forms, including instructions, can be downloaded from either the IRS website (www.irs.gov/forms_pubs) or the PWBA's new EFAST website (www.efast.dol.gov). Forms are also available on ASPA's website (www.aspa.org).

DOL Takes Over for 1999 and Introduces EFAST

Starting with the 1999 Form 5500, the DOL's Pension and Welfare Benefits Administration (PWBA) has taken over processing of the annual return/report and is implementing the ERISA Filing Acceptance System (EFAST) to do the job efficiently. EFAST is a high-tech computerized processing system designed for processing the 1999 5500 Series forms. The 1999 annual return/report forms, whether filed electronically or on paper, will be processed by EFAST.

Scannable Forms

For 1999, filers may choose between two computer scannable formats – *machine print* or *hand print*. The questions are the same, only the layout is different on the two formats. The hand print forms usually require more pages to report the same information. (Hint: It may take less time to download the machine print format.)

Most practitioners are already accustomed to using software to generate the 5500 Series forms and will want to use the machine print format. Computers are finicky, so, whichever format you use, be sure to follow the instructions and enter numbers **without** commas, dollar signs, or decimal points; for a negative number, enter a minus sign “-” to the left of the number.

The DOL announced in a recent telephone press conference that

photocopies will (reluctantly) be accepted for 1999 plan years even though the 1999 instructions state otherwise. Thus, you should use a scannable form for all of your filings. But if you have no other way to meet your filing deadline, do not delay filing for lack of a scannable form as there are significant penalties for filing late.

The IRS began its annual mailing to plan sponsors in late February, which included the hand print forms with special green ink. Additional copies of the hand print version may be ordered 24 hours a day, 7 days a week, by calling the IRS toll free at 1-800-TAX-FORM (1-800-829-3676).

The hand print forms must be handwritten in black or blue ink or typewritten. Handwritten forms may have only one character or number entered in each green box – no overlapping characters. For typewritten forms, ignore the green vertical lines and type over the boxes, but do not type more characters than the number of boxes². Hand print forms are filed with the PWBA by mail or private delivery service.

Machine Print Forms

The machine print forms must be prepared using EFAST-approved software. The PWBA is currently working with private sector companies who are developing software compatible with EFAST. The PWBA anticipates that software developers will offer

approved software for sale by April. A list of approved software vendors will be posted on the EFAST website.

Machine print forms may be filed either on paper or electronically. Paper filers print on standard 8.5 x 11 inch paper using a laser printer. Electronic filers may use 3.5 inch diskettes, 4mm DAT, 8mm DAT, CD-ROM, 3490 Tape, 9-Track Tape, or file via modem. Machine print forms may be filed with the PWBA via mail or private delivery service, or electronically via modem.

Caution: The data on each machine print page are encrypted in a barcode to be decoded later. This means all entries must be made with the software and never by hand or typewriter, because any data NOT in the barcode will not be read when the form is scanned. Service providers, who may have been in the habit of sending *partially* completed forms to their clients to finish, will be forced to use the hand print forms or to obtain complete information *before* releasing the machine print form.

EFAST Help

In the near future, the PWBA will announce a telephone number for the EFAST help desk to assist individuals who either need assistance in responding to correspondence from the EFAST system or who have general questions about EFAST. Until then, the EFAST website directs inquiries to (202) 219-8770. Also, the PWBA suggests you visit the EFAST website regularly for updates.

The More Things Change...

There are a lot of changes for the 1999 plan year, but many things stayed the same or were clarified. Of course, there is no substitute for a thorough reading of the instructions, but since there are 59 pages of small print, we offer the following summary to get you started. Let's begin with what hasn't changed and build on that:

- The same filing deadlines, extensions, and exemptions exist – including the well known “80-120 exception.”
- Form 5500-EZ and the same “\$100,000 exemption” are still available for “one-participant” plans.
- The normal extension procedures are the same: (1) file Form 5558 *with the IRS* or (2) rely upon the extended due date of the plan sponsor's Federal income tax return. Note: Form 5558 should not be filed for any 1999 Form 5500 due **on or before** July 31, 2000. On March 22, 2000, PWBA granted an automatic extension to October 16, 2000 to file such returns.
- If properly filed, approval of Form 5558 is automatic to extend the deadline to file a Form 5500 or 5500-EZ, but IRS approval is needed for an extension to file Form 5330.
- When filed, Form 2848 (“Power of Attorney”) must be filed *with the IRS* for processing. The IRS will send weekly transmissions to EFAST.
- Finally, many of the questions are the same or similar and require collection of the same data, while some questions were revised and are easier to answer (really).

So What is New?

The Agencies redesigned Form 5500 to provide identifying information and serve as a checklist to guide each filer to the detailed schedules which must be attached to the filer's specific type of plan. Preparer information may be reported (line 5), but is not required. There are new “plan characteristics codes” (lines 8a and 8b).³

Form 5500-C/R was eliminated. Unless eligible to file Form 5500-EZ or exempt, all filers complete the abbreviated Form 5500 and attach all

applicable schedules and any other required attachments.

There are now 13 schedules, instead of 8 – which sounds worse than it is – and some new attachments may be required, depending upon your plan's situation⁴. Schedules A, C, and G were revised. Schedule B had minor updates for 1999 requirements. Schedules E, F, P, and SSA had no material revisions. Schedules D, H, I, R, and T are new.

For 1999, a plan is classified as either being a “large” or “small” plan. Generally, “small plans” have under 100 participants and “large plans” have 100 or more participants at the beginning of the plan year – this number is reported on Form 5500, line 6. A plan may use the “80-120 exception” when it applies. (e.g., A plan that had less than 100 participants at the beginning of the previous year and 110 participants at the beginning of the current year is considered a small plan.) Small plans complete less than large plans, and so-called “one-participant” plans may complete Form 5500-EZ and fewer schedules than a small plan.

Form 5500-EZ requires a plan to report assets and liabilities at the *beginning*, as well as at the end, of the plan year. Preparer information is optional (line 5). Unrealized gains/losses are still *excluded* from other income (line 10g), but *included* in the asset values (line 11a). Certain “Specific Assets” are reported in line 12 – the same categories that are in line 3 of the new Schedule I (“Financial Information - Small Plan”).

DFE: A New Name for an Old Concept

The DOL has given an old concept, “Investment Arrangements Filing Directly with the DOL”, a new name, “Direct Filing Entity” (DFE), and standardized how DFEs file information.⁵

Under a Special 1999 Transition Rule, even if the common/collective trust (CCT) or pooled separate account

Continued on page 16

New Flexibility in 401(k) Safe Harbor Plans Adds Appeal for Employers

by Angel Crawford

When SBJPA '96 introduced design-based 401(k) Safe Harbor Plans, it offered a method of automatically satisfying ADP/ACP Testing. However, employers had to commit to make a Safe Harbor contribution and had to face some administrative difficulties. As a result, the 401(k) Safe Harbor Plan design was not widely used as a plan design technique. However, the recent release of IRS Notice 2000-3 alleviates some of those issues and ultimately offers a more attractive 401(k) Safe Harbor Plan.

The Rules in the Beginning

401(k) Safe Harbor Plans first became available for the 1999 plan year. SBJPA '96 amended Code Section 401(k) to provide the Safe Harbor alternative that was clarified under the guidance of IRS Notice 98-52. As proposed, employers were excused from performing ADP and/or ACP testing if they met all of the requirements set forth in the Code and the Notice. These requirements included choosing one of two contribution methods with respect to an allocation made on behalf of all eligible Non-Highly Compensated Employees (NHCEs), providing certain notices to employees, and fully and immediately vesting the Safe Harbor contribution. Employers were given the choice to contribute to all eligible NHCEs a 3% nonelective contribution or alternatively, a basic matching contribution of 100% of the first 3% of compensation and 50% of the next 2% of compensation,

or employers could choose an enhanced matching formula that is at least equal to or greater than the basic matching formula. When using the enhanced matching formula, the rate of matching contributions cannot increase as an employee's rate of elective contributions increases.

The notice requirement required that employees receive a notice within a reasonable time period before the beginning of the plan year. The notice must be designed to inform employees of their employer's commitment to one of the Safe Harbor contribution methods (either the nonelective contribution or the match) for the upcoming plan year. IRS Notice 98-52 also set forth specific limitations on withdrawals and in-service distributions of these contributions.

Employers who considered 401(k) Safe Harbor Plans for the 1999 plan year may have felt locked-in under the original 401(k) Safe

Harbor rules. With the issuance of IRS Notice 2000-3, employers will now have additional versatility in deciding their retirement plan needs and in changing their minds should deferral rates be sufficient to pass requisite testing.

The Revised Rules

IRS Notice 2000-3 contains many significant enhancements to 401(k) Safe Harbor Plan design. We will look in detail at the changes and discuss the additional features that will ultimately make administration a little easier.

The first of many important changes outlined in IRS Notice 2000-3 is that plan sponsors of existing 401(k) Safe Harbor Plans can now wait until 30 days before the end of the plan year (December 1st for a calendar year plan) to decide if they will elect to make a 3% employer nonelective contribution for that plan year. This means that if an employer determines that the elective deferrals of the NHCEs are sufficient to pass one of the two ADP tests, the 3% qualified nonelective contribution could be avoided. The clear advantage of this change is that employers can decide after mid-year test results whether or not they will need to make a 3% nonelective contribution. If it appears they are in jeopardy of failing the ADP test, rather than reducing the salary deferrals of Highly Compensated Employees (HCEs) in

order to achieve a passing result at the end of the plan year, they can instead decide to make the 3% Safe Harbor contribution during the plan year. Full and immediate vesting still applies to any Safe Harbor nonelective contribution made. This feature will also be beneficial for employers with existing 401(k) plans that are interested in adopting a Safe Harbor Plan to provide relief for ADP/ACP, but do not want to make the commitment every plan year. Another benefit of this change is that the plan sponsor will not be required to continue to use the 3% nonelective contribution method for the following plan year and will not be limited to the number of years they can change their election.

Prior to IRS Notice 2000-3, sponsors of a 401(k) Safe Harbor Plan were required to distribute a notice to eligible employees at least 30 days prior to the beginning of the plan year committing to a contribution for the following year. Regardless of whether or not they could achieve passing ADP or ACP test results, they were committed to making the contribution.

In order to take advantage of the change under IRS Notice 2000-3 allowing the employer to delay the decision to make the 3% Safe Harbor contribution, the plan sponsor will need to provide a notice to eligible employees before the beginning of the plan year stating that the Plan is considering Safe Harbor status and may be amended during the plan year to provide a 3% qualified nonelective contribution. If it is determined that the Plan is to be amended, a second notice needs to be given to eligible employees at least 30 days prior to the end of the plan year informing them of the contribution. For administrative ease, the second notice can be provided separately or included with the Safe Harbor notice for the next plan year.

The second important change under IRS Notice 2000-3 applies to plan sponsors interested in adopting a 401(k) Safe Harbor Plan for the first time in 2000. IRS Notice 2000-3 provides transition relief in order for employers to take full advantage of the changes in the Notice. For a plan year that begins on or after January 1, 2000 and on or before June 1, 2000, the plan sponsor has until May 1, 2000 to provide the required notice to employees. This applies to a new 401(k) Safe Harbor Plan and to established 401(k) Plans converting to a Safe Harbor Plan. Prior to IRS Notice 2000-3, the required notice would have needed to be distributed within a reasonable time period before the beginning of the plan year, which meant that for a calendar year plan, the deadline is long past.

It is important to note, however, that a Plan that uses this transition relief must fulfill the 401(k) Safe Harbor requirements for the entire plan year. This means that the employer contribution (nonelective or matching) must be in the same amount as if the contribution method had been in effect from the beginning of the plan year rather than based only on compensation earned after May 1st.

The third important change to 401(k) Safe Harbor Plans set forth in IRS Notice 2000-3 is that matching contributions can now be made each payroll, month, or quarter as specifically provided in the plan document. This alleviates the burden on employers of calculating a "true up" match at the end of the plan year. Prior to IRS Notice 2000-3, matching contributions made throughout the year were required to be "trued up" at the end of the year so that a participant's full year of compensation would be taken into account. If the plan uses the payroll, monthly, or quarterly method, all matching contributions made

after May 1, 2000 must be made by the last day of the plan year quarter following the plan year quarter to which they relate.

The fourth important change is that to the extent a plan provides the Safe Harbor Matching Contribution, this match can actually be reduced or discontinued for the remainder of the plan year, provided that the ADP and/or ACP test is performed for the entire plan year. In order to discontinue the match, a notice must be given to all eligible employees informing them of the amendment, the effective date of the change, and whether the change will result in a reduction or total discontinuation of the Safe Harbor Matching Contribution feature. This allows employees an opportunity to change their salary deferral election in response to the plan change. The effective date of the reduction or elimination of matching contributions must be no earlier than 30 days after the later of the date eligible employees are given their notice and the date the amendment is adopted by the Plan.

There are a number of other changes to 401(k) Safe Harbor Plans outlined in IRS Notice 2000-3 worth mentioning:

- A plan can now require that an employee's elective contributions be made in whole percentages or whole dollar amounts and still satisfy the 401(k) Safe Harbor Plan requirements. Previously these restrictions could not be imposed, causing employers or TPAs some frustration when calculating the matching contributions. This new option simplifies the matching contribution and eases the administration of the plan.
- A 401(k) Safe Harbor Plan will now be permitted to send required notices to employees electronically. In order to more clearly

Continued on page 17

Dobrow, Donovan, Hiltunen, Piper, and Stroud Elected to ASPA's Board of Directors

Stephen L. Dobrow, CPC, QPA; Kevin J. Donovan, APM; Scott E. Hiltunen, CPC; Kurt F. Piper, MSPA; and Chris L. Stroud, MSPA, were elected in October to serve on ASPA's 2000 Board of Directors.

Stephen L. Dobrow, CPC, QPA, is President of Primark Benefits in Burlingame, CA. A San Francisco native, Stephen holds a degree in Management from Golden Gate University.



Stephen entered the retirement field in 1976 and then went on to obtain executive experience in Silicon Valley before returning to Primark Benefits to lead the management team in 1990.

Stephen is General Chair of ASPA's Conferences Committee and a member of ASPA's Continuing Education and Technology committees and serves on the Strategic Planning and Implementation Team. He is a frequent speaker at ASPA's conferences and has instructed ASPA's C-1 and C-2(DC) courses.

He formerly served as a chapter officer for the National Institute of Pension Administrators (NIPA), in which he has achieved the designation of Accredited Pension Administrator.

Stephen is married to Donna Whyte Dobrow, who works at

Primark as a benefits administrator. Their hobbies include food, wine, travel, and reading.

Kevin J. Donovan, APM, is the owner of Tucson Pension Consultations in Tucson, AZ. Kevin is Chair of the ASPA ASAP Committee and serves on the 401(k)/SIMPLE Subcommittee of ASPA's Government Affairs Committee. He also serves on the ASPA Summer Conference Committee. Kevin is a Contributing Editor to the *Journal of Pension Benefits*, a technical advisor to *The Pension Actuary*, a co-author of the *Life Insurance Answer Book for Qualified Plans and Estate Planning*, and a contributor to the *Executive Compensation Answer Book; Forms and Checklists*.

Kevin serves as an instructor for PPD/Corbel and is a regular speaker at ASPA-sponsored events. Kevin is licensed as a CPA in Arizona and New York, and has recently completed the exams required for enrollment before the Joint Board for the Enrollment of Actuaries.



A former tax partner of a major CPA firm, Kevin was born and raised near Albany, New York, and graduated from Syracuse University in 1980. He has been married for over 20 years, and has three children ranging in ages from eight to thirteen. Kevin is an avid baseball and softball fan, and throughout the year coaches or assists coaching all three of his children's teams.

Scott E. Hiltunen, CPC, is a shareholder in the law firm of Brucker Morra & Hiltunen, a Professional Corporation in Los Angeles. The firm's exclusive practice is to prevent and solve tax and ERISA problems of employee benefit plans. Scott is the firm's 401(k) and merger and acquisition specialist.

Before Scott was admitted to the California Bar, he was a pension administrator and consultant for ten years with one of the largest pension plan administration firms in Los Angeles. In addition to serving on ASPA's Board of Directors, Scott currently is the Education Chair of ASPA's Educational & Examination Committee. He also serves on ASPA's Membership Committee. He has been an instructor for pension consulting classes and is a frequent speaker on such retirement issues as mergers and acquisitions,



distribution planning, qualified domestic relations orders, and problem solving for plan qualification issues for numerous professional organizations.

Scott received his Bachelor of Arts degree from the University of Michigan and his Juris Doctor degree from the University of Southern California Law Center.

Scott lives in Santa Monica with his wife and daughter.

Kurt F. Piper, MSPA, graduated from Lowell High School in 1972 and from the University of California, Berkeley, in 1976 with a degree in Mathematics and Rhetoric. Kurt is a Member of the American Society of Pension Actuaries, a Member



of the American Academy of Actuaries, an Associate of the Society of Actuaries, and an Enrolled Actuary. He is a past President of the Los

Angeles Actuarial Club and has spoken at meetings of ASPA, the American Academy of Actuaries, the Society of Actuaries, the National Association of Pension Administrators, and other organizations. In September 1990, he testified before a Treasury Department committee with respect to proposed regulations under IRC Section 401(a)(4). Currently, Kurt is chair of the

Regulations Committee, a subcommittee of ASPA's Government Affairs Committee.

From August 1978 to January 1994, Kurt was a consulting actuary with the Los Angeles office of National Associates (later named Dun & Bradstreet Pension Services). His title was Senior Vice President and Chief Actuary of National Associates (Vice President and Chief Actuary of D&B Pension Services). From 1987 to 1992, Kurt managed the Benefit Planning Division of National Associates, specializing in small employer plans. From 1987 to January 1994, Kurt also managed the Data Processing Department. From January 1993 to January 1994, Kurt managed the Regulations and Compliance Department.

In February 1994, Kurt established his own company, Piper Pension & Profit Sharing, dedicated to providing quality actuarial consulting and administration services to qualified plans of small to medium size employers.

Chris L. Stroud, MSPA, has worked for FDP Corp. in Miami, FL since 1978. At FDP, she has served in a variety of roles, including Manager of Actuarial Services, Software Training Coordinator, Vice



President of Pension Marketing, Vice President of Pension Sales, member of FDP's Executive Committee and various support, customer service, programming, system design, consulting, sales, and marketing roles. She is currently Vice President of Pension Sales for the FDP Pension Group, which recently became a division of Corbel.

Chris received her enrolled actuary (EA) designation in 1982, and is currently a Member of the American Society of Pension Actuaries (MSPA) and a Member of the American Academy of Actuaries (MAAA). Chris has been a speaker at trade organization meetings and FDP users' meetings. She has also authored articles for various trade publications. Chris has performed various duties for ASPA and is currently the chairman of *The Pension Actuary* Committee. Chris was formerly the Vice President of the South Florida Actuarial Club.

Chris was born in New Braunfels, Texas. She graduated Summa Cum Laude from the University of Texas at Austin in 1976 with a B.A. in Mathematics and a minor in Education. Prior to her job at FDP, she taught Mathematics for two years in Arlington, Texas. Chris is married and has one stepson. Her favorite hobbies are boating, fishing, diving, snorkeling (and anything else where water is involved!), reading, and traveling. ▲

Nominations Open for ASPA's Board of Directors

For ASPA to continue to be the effective pension organization that it is, active participation by all of our credentialed members is essential. Our Board of Directors operates using a team approach, and every designation (FSPA, MSPA, CPC, QPA, and APM) is represented on our Board. We need strong people with differing perspectives to help lead our organization.

To be considered for a Board position, a member's name must be submitted to the Nominating Committee by two voting members at least 60 days prior to the annual business meeting.

If you or someone you know would be a valuable addition to our Board, now is the time to get the nomination process started. A form for this purpose is included with this copy of *The Pension Actuary*, or you may access the form on the Members Only portion of our website, www.aspa.org.

Washington Update

attached to the bankruptcy bill, the pension reform provisions, along with the other small business tax incentives, will not be accepted by the House unless the Ways and Means Committee and the House parliamentarian determine that the bankruptcy bill can be classified as a "revenue" bill. This generally means that the bill affects the ability of Treasury to collect revenue typically through the tax code. Apparently, there are some provisions in the bankruptcy bill which make this a tough call, and a decision has not yet been made.

If the bankruptcy bill is not deemed to be a revenue bill, the minimum wage and pension reform legislation passed in the House will have to run through the Senate again. However, this time most Senate staffers say the bill would have difficulty getting off the floor of the Senate because it would be open to amendment. If the House deems that the bankruptcy bill is a revenue bill, the House and Senate could then proceed to conference on minimum wage and the small business tax provisions, including the pension reform provisions. If this occurs, the President has already said he would veto the bill because of the estate tax relief provisions contained in the House version of the bill.

So, where are we headed with all of this? My guess is that it will be some time before the Republican leadership decides on a strategy for handling the minimum wage legislation. I would be surprised if any conference on this legislation begins before May. Further, it is unclear whether Republicans will ever actually send the President a bill, particularly if it is clear that he will veto

the measure. Instead, it is possible that minimum wage and the accompanying pension reform package will hang around until the end of the session and perhaps be folded into an omnibus budget reconciliation measure negotiated with the President. Hopefully, negotiations between the President and Republicans would also include some of the pension reform measures. Stay tuned. A lot can happen over the next six months before Congress goes on recess for the elections.

Limits on Retirement Plan Contributions and Benefits

The House and Senate bills would raise all of the significant dollar limits as follows:

- 401(a)(17) compensation limit to \$200,000, and then indexed in \$5,000 increments.
- 415(b) annual benefit limit to \$160,000, and then indexed in \$5,000 increments.
- 415(c) contribution limit to \$40,000, and then indexed in \$1,000 increments.
- 402(g) and 457 elective deferral limits to \$15,000 over five years in \$1,000 increments and then indexed in \$500 increments. The House bill actually only raises this limit to \$14,000 because of revenue issues. It is expected, however, that it will be raised to \$15,000 in conference.
- SIMPLE elective deferral limit to \$10,000 over four years in \$1,000 increments, and then indexed in \$500 increments.

In addition, any actuarial reduction of the 415(b) dollar limit would be required only for benefit commencement prior to age 62, and an

actuarial increase of the dollar limit would begin after age 65 (not after Social Security retirement age).

Catch-up Contributions for Older Workers

Individuals who are age 50 or older would be allowed to make an additional contribution to a 401(k), 403(b), 457, SIMPLE, or other salary reduction plan of an amount equal to the applicable percentage times the elective deferral limit in effect for the year. The applicable percentage would be 10% in 2001; 20% in 2002; 30% in 2003; 40% in 2004; and 50% in 2005 and thereafter. The catch-up contributions would not be subject to nondiscrimination testing. Note that the House passed bill stopped at 40% in 2004 because of revenue issues. It is anticipated that it will be increased to 50% in 2005 in conference.

Participant Loans for Small Business Owners

The prohibited transaction rules would be modified to allow for participant loans to sole proprietors, partners, and subchapter S corporation shareholders.

Modifications of Top-Heavy Rules

A number of changes would be made here:

- The definition of "key employee" would be modified to delete the "top 10 owner" rule, provided that an employee will not be treated as a key employee based on his/her officer status unless the employee earns more than \$150,000, and would eliminate the four-year look-back rule for identifying "key employees."
- Family attribution in determining who is a key employee would be repealed.
- Matching contributions would count toward satisfying the top-heavy minimums.

- The matching contribution 401(k) plan safe harbor would be deemed to satisfy the top-heavy rules.
- The five-year look-back rule applicable to distributions would be shortened to one year. However, the five-year look-back rule would continue to apply to in-service distributions.
- A frozen top-heavy defined benefit plan would no longer be required to make minimum accruals on behalf of non-key employees.

Repeal of 150% of the Current Liability Funding Limit

The limit would be phased-up in 5% increments beginning with the 2001 plan year. For plan years beginning after December 31, 2003, the current liability full funding limit would be completely repealed. Also, code section 404(a)(1)(D) would be changed to allow funding up to unfunded termination liability rather than unfunded current liability, and would be available to all plans regardless of size, provided the plan is covered by the PBGC insurance program. In other words, funding up to unfunded termination liability would not be available to plans of professional service employers with fewer than 25 participants. ASPA's Government Affairs Committee (GAC) is concerned with the precedent of this provision and will work to try to eliminate this restriction on plans of professional service employers. However, it will be an uphill battle since this group typically does not generate much sympathy on Capitol Hill.

Roth 401(k) and 403(b) Plans

401(k) and 403(b) plans could permit participants to elect a tax treatment for their deferrals similar to Roth IRA contributions.

Such after-tax contributions would be tested along with pre-tax deferrals as part of the ADP test. The 402(g) limit would apply to the combined amount of pre-tax and after-tax Roth 401(k) or 403(b) contributions. Because of their special tax treatment (i.e., distributions, including earnings, exempt from tax), these contributions would have to be accounted for separately. Further, like Roth IRAs, in order to receive this special tax treatment, five years must elapse from when a participant first makes a Roth 401(k) or 403(b) contribution to when a distribution is made. Roth 401(k) and 403(b) contributions (and earnings) can be rolled over to a Roth IRA.

Repeal of 25% of Compensation Limitation

The 25% of compensation limitation under 415(c) would be repealed. Instead, the limitation would be 100% of compensation. The dollar limitation would also still apply.

Exclusion of Elective Deferrals from Deduction Limit

Elective deferrals would no longer be considered employer contributions for purposes of the section 404 deduction limits.

Definition of Compensation for Purposes of Deduction Limits

The definition of compensation for purposes of the deduction rules would include elective deferrals treated as compensation under section 415.

Eliminate IRS User Fees for Small Plans

The IRS user fee for a determination letter would be waived with respect to any retirement plan maintained by an employer with 100 or less employees during the first five years of a plan's existence.

Expanded Portability

The bill would permit rollovers from the various types of defined contribution arrangements (i.e., 401(k), 403(b), and governmental 457) to each other without restriction.

Rollover notice rules would be extended to distributions from governmental 457 plans, and distributions from such plans would be subject to the 10% early withdrawal tax to the extent the distribution consists of amounts attributable to rollovers from another type of plan.

After-tax employee contributions could be included in an eligible rollover distribution to a qualified plan or an IRA.

Further, taxable IRA amounts (whether or not from a conduit IRA) could be rolled over to a qualified plan, 403(b) plan, or governmental 457 plan. Also, surviving spouses would be permitted to roll over distributions to a qualified plan, 403(b) plan, or governmental 457 plan.

Finally, IRS would be given authority to extend the 60-day rollover period where failure to comply is due to casualty, disaster, or other events beyond the reasonable control of the individual.

Faster Vesting for Matching Contributions

Employer matching contributions would have to be vested under a maximum three-year cliff or six-year graded vesting schedule. In the case of graded vesting, vesting would have to begin with the employee's second year of service.

Repeal Multiple Use Test

The House and Senate bills would repeal the multiple use test. ▲

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.

How Much Do TPAs Need To Do When the Trustee is A Crook?

ERISA §3(21)(A) provides in part that “. . . a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, or . . . (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.” The plaintiffs alleged that PPI became a fiduciary to the 401(k) plan when it imposed conditions on CSA for continuing to provide administrative services. The theory was that, in imposing these conditions (that is, if the deferrals were not deposited according to Carey’s proposed schedule, PPI would resign), it exercised discretionary authority or control over the timing of deposits to the plan trust.

The court rejected the plaintiffs’ argument. It noted that the functions performed by PPI “. . . included the preparation of quarterly and annual financial reports based upon information provided to PPI by CSA, both of which are ministerial tasks that do not give rise to fiduciary liability.” The conditions PPI imposed for its agreement to continue providing services likewise did not give rise to a fiduciary relationship: “[T]he conditions that PPI proposed were designed to assert control over its own engagement, and not to exercise discretionary authority or control over the Plan’s management or administration.” In support of this argument, PPI had produced a letter it wrote to CSA noting that it had “no authority, nor the ability, to make the needed changes to the CSA 401(k) Plan; that is your responsibility.” The court

seized on this evidence, and recognized that PPI’s role did not fit ERISA’s functional definition of fiduciary. PPI’s decision to clearly describe where its “authority” ended should serve as a lesson to any TPA facing a similar dilemma. The court also noted that PPI had no authority or control to require Carey to honor his repayment plan. Since PPI had no authority or control, it could not be found to be a fiduciary. Since PPI was not an ERISA fiduciary, it had no fiduciary duty, and could not be held liable under ERISA to replace the embezzled funds.

The Department of Labor regulations interpreting ERISA provide general guidelines regarding the services that TPAs can perform without crossing the fiduciary line:

“Q: Are persons who have no power to make any decisions as to plan policy, interpretations, practices or procedures, but who perform the following administrative functions for an employee benefit plan, within a framework of policies, interpretations, rules, practices and procedures made by other persons, fiduciaries with respect to the plan:

1. Application of rules determining eligibility for participation or benefits;
2. Calculation of services and compensation credits for benefits;
3. Preparation of employee communications material;
4. Maintenance of participants’ service and employment records;

5. Preparation of reports required by government agencies;
6. Calculation of benefits;
7. Orientation of new participants and advising participants of their rights and options under the plan;
8. Collection of contributions and application of contributions as provided in the plan;
9. Preparation of reports concerning participants’ benefits;
10. Processing of claims; and
11. Making recommendations to others for decisions with respect to plan administration?

A: No. Only persons who perform one or more of the functions described in section 3(21)(A) of the Act with respect to an employee benefit plan are fiduciaries. Therefore, a person who performs purely ministerial functions such as the types described above for an employee benefit plan within a framework of policies, interpretations, rules, practices and procedures made by other persons is not a fiduciary because such person does not have discretionary authority or discretionary control respecting management of the plan, does not exercise any authority or control respecting management or disposition of the assets of the plan, and does not render investment advice with respect to any money or other property of the plan and has no authority or responsibility to do so.” (29 C.F.R. §2509.75-8.)

In this instance, PPI’s correspondence made it clear to the court that its services were limited to those described in the ERISA regulations defining non-fiduciary conduct.

The plaintiffs’ second theory was that PPI had a duty to report its suspicions directly to plan participants. The theory relied upon

case law imposing a broad duty upon fiduciaries to investigate suspicious activity of another fiduciary's management activities that threaten funding of retirement benefits. The court dispensed with that argument as well: "While it is true that an 'ERISA fiduciary has an affirmative duty to inform beneficiaries of circumstances that threaten the funding of benefits,' . . . CSA can point to no case holding that non-fiduciaries have a similar duty . . . PPI never did incur fiduciary status because it failed to exercise control or discretionary authority of the Plan, and, therefore, had no duty to warn the Plan Participants." Had the court determined that PPI was a plan fiduciary, PPI could have been found liable for breach by a co-fiduciary under ERISA §405. Once it is established that a person is a fiduciary and that he has knowledge of a breach by another fiduciary, the person has a duty under ERISA to make reasonable efforts to remedy the other fiduciary's breach.

Several factors weighed in PPI's favor on this aspect of the claim. First, other courts have held that non-fiduciaries have no duty to warn participants directly of any threat to funding of their benefits. For instance, courts have held that insurers are not required to warn healthcare plan participants that their employer was failing to pay premiums. [See *Coleman v. Nationwide Life Insurance Company*, 969 F.2d 54 (4th Cir. 1992), cert denied, 506 U.S. 1081, 113 S.Ct. 1051 (1993).] Second, the language of ERISA itself only purports to impose that duty on the plan administrator, that is, the ERISA Administrator – generally the employer or the plan committee – and not on non-fiduciary third parties. Finally, PPI's service agreement – an agreement between CSA and PPI – did not mention any obligation to communicate directly with plan

participants, and the communications which it did make were to be reviewed by CSA. The court concluded that "PPI did not have the authority to notify the Plan Participants directly, and did fulfill its responsibilities by insisting on a disclosure notice in the Plan material stating that '[c]ontrary to the requirements of the [DOL] and the [IRS], a portion of the 401(k) benefits have not yet been received by the trust.' As a non-fiduciary, PPI's duty to warn ended there."

The case provides several lessons for TPAs who will invariably face similar problems to those faced by PPI in this case. The first lesson, and the greatest benefit of the decision (especially for those who practice in the states covered by the Ninth Circuit Court of Appeals, which encompasses Alaska, Hawaii, California, Oregon, Washington, Montana, Idaho, Nevada, and Arizona) is this: for TPAs confronted with the same dilemma, the court clearly held that it is enough to insist that the plan sponsor disclose the failure to deposit plan assets with the trust. In other words, insisting on the disclosure provides a defense against any claim by the plan participants, provided that the participants cannot otherwise establish that the TPA is a fiduciary. If the TPA is found to be a fiduciary, of course, it will be found to have a greater duty to the participants than PPI was found to have in this case. Those TPAs (e.g., TPAs who provide investment advice, or TPAs who exercise discretionary authority or control over plan administration) should consult with experienced ERISA attorneys to determine how to respond to similar situations.

Second, the case underscores the importance of having a properly drafted engagement letter. In this case, one of the reasons that the court found PPI was not a fiduciary was because its engagement agreement

did not obligate PPI to communicate directly with the plan participants. It also defined the relationship as one between the TPA and the plan sponsor, not the TPA and the plan participants. The engagement letter should also describe the TPA's actual role vis-a-vis the plan, and state that the TPA is not a named fiduciary of the plan, and is not performing any fiduciary function. In other words, it should clearly state that the TPA only performs the functions described in the Department of Labor Regulation. These types of disclaimers will not be dispositive of the issue of whether the TPA in fact performs fiduciary functions, but it makes for good evidence in court in the event of litigation.

Third, the case demonstrates the wisdom of hiring an attorney when presented with a problem client, as PPI did when it began to suspect Carey of embezzling from the plan. Unethical clients rarely create problems only for plan participants – service providers and advisors tend to get ensnared in the web their deception creates. We have handled more than one case in which plan participants sued a service provider after plan trustees loot the plan. In PPI's case, PPI was able to chart an effective middle course. It took steps to require the plan trustee to do the right thing and disclose the failure to fund the trust, and at the same time protected its own interest, and ensured its eventual victory in the litigation. Perhaps no amount of planning could have prevented PPI from being targeted as the "fall guy" in this transaction, since Carey and his fellow trustees were apparently incapable of repaying the plan, but PPI and its lawyers succeeded in preventing PPI from being successfully labeled a fiduciary, and having to make good the losses that Carey caused.

While the case is good news for TPAs and other benefits professionals,

it is not completely effective unless those same professionals take the lessons it teaches to heart before trouble arises. If you do not have a comprehensive engagement letter, get one. If you have an engagement agreement that does not address the TPA's relationship with the plan sponsor (and clear up any question about the TPA's duties), modify the letter. Make sure that your engagement agreements are signed by the client – the plan sponsor. Review your promotional materials. Do they include any statements that are inconsistent with the conclusion that you are a non-fiduciary service provider? If they do, or if it is questionable, consider deleting the questionable references, or at least consider having an attorney review your promotional materials in advance of publishing them. Periodically review your

client list, and determine from your employees whether you have any problem clients. Work with your lawyer to determine whether you need to take any action with respect to any clients that fall into that category, and contact your insurance carrier to determine if the carrier will assist in payment of the attorney's fee if you suspect a problem. In either case, do not hesitate to retain an attorney experienced in representing plan service providers. The cost to do so is minimal compared with either the cost of litigation, or the cost of having to restore benefits to the plan. If you can do the right thing and still avoid fiduciary status, do the right thing. Doing the right thing may range from requiring the plan sponsor to make a disclosure to participants, to notifying the Department of Labor of suspected criminal

activity, and possibly to notifying the participants and beneficiaries.

Above all else, avoid the temptation to make your client's problem your own problem. Consider that anything you do to assist a dishonest trustee without at least requiring the trustee to disclose the problem to participants, may result in your becoming a fiduciary in the eyes of a court. ▲

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 is currently the chair of GAC's Long Range Planning Committee. Joseph C. Faucher, Esq., is also a partner with Reish & Luftman, and chairs the firm's ERISA Litigation practice.

W E L C O M E N E W M E M B E R S

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

CPC

Richard L. Anderson
Ernest J. Guerriero
Lisa L. Jones
Gregory S. Metzler
Stacey Miller
Melissa J. Morgan
Lisa Rose Park
Scott A. Pemberton
Diane L. Putzer
Teena M. Sarkissian
Abigail M. Stanton
Sharon D. Wiley

QPA

Babette L. Blickenderfer
Steven A. Blom
Jeffrey D. Cain
Michele M. Caldwell
Stacy M. Coffee
Lori E. Crews

Nancy M. Day
Casey J. Donnelly
Kevin N. Falcone
Timothy J. Feusner
Susan V. Flynn
Tanya Forte
Cheri L. Greenstreet
Janet L. Hanson
John A. Harlan
Christy J. Heflin
Ami L. Hill
Pegene S. Howell
Kristina G. Kananen
Arlene R. Karczewski
Bradley G. Kuebler
Bryan Leslie Lee
Kim M. Luna
Mona K. Mast
Bharat G. Mistry
Steven G. Ogden
Yulie S. Palenapa

Robert Parmely
Richard S. Peck
Erik A. Pienkos
Karen S. Sanchez
Lee Silverman
Jane E.M. Soura
Wendy E. Strand
Clinton H. Takahashi
Jeffrey A. Thomas
Roger E. Tucker
James J. Walker
Cynthia D. Webb
Carol C. White
Cindy L. Wilson
Denice M. Wright

APM

Gregg H. Andonian
Raymond W. Liden
Nicholas L. Saakvitne

Affiliate

Fasola S. Adekunle
Ogunnusi G. Adeleke
Kristi L. Allen
Sharon A. Clarke
Tracy A. Curtis-Ashley
Kalyn M. Deegan
Joseph T. Donahue
Donald S. Gabrielaitis
Wanda Sue Gregory
Lisa Guzman
Carmen Lee
Robyn C. Morris
Afolabi Olayinka
Joyce A. Peters
Philip D. Simpkins

1998-1999 Presidential Review

actuarial education and research. This committee has worked hard to promote ASPA PERF's mission by funding appropriate events and opportunities.

- ASPA's conferences continue to be the most timely, essential, and useful conferences for our industry. I attended and spoke at several ASPA sponsored conferences, including Midstates, Business Leaders Conference, our first-ever Summer Conference, LA Benefits Conference, and the ASPA 1999 Annual Conference.
- Watch for big innovations and continued improvements in delivering important and useful education at the time you need it. I attended the July Education and Examination Committee meeting. These volunteers definitely care about the quality and scope of administration, consulting, and actuarial private pension education. One of their current initiatives is to seek efficient and more expansive ways to deliver computer-based testing. Watch for updates on their progress in future issues of *The Pension Actuary* or in the Committee's newsletter, *The Candidate Connection*.
- Membership services continued to expand and improve. I hope you will plan to attend a nearby ASPA Benefits Council (ABC) meeting. These councils are growing and maturing and bringing ASPA to you on a local level. The Membership Committee also developed, implemented, and maintains a volunteer database and placement program. You are encouraged to select your area(s) of interest and get involved through this coordinated process. Please visit the ASPA website for access to your volunteer goals.
- The Technology Committee selected several state-of-the-art initiatives across several committees. Examples of the use of technological innovation includes: The first-ever CD-ROM for the Annual Conference; first-ever Virtual Study Groups (formed for exam candidates, under the eye of a professional facilitator, to share problems and solutions and to network over e-mail); Y2K strategic planning; fresh and friendly organizational website; electronic delivery of ASPA ASAPs; and more.
- There were always opportunities to be involved with organizational management. These included moving the National Office, assisting with staffing issues, the budget process, and sundry interviews and appearances.
- Finally, thank **you** for voting and for caring and for letting us know your visions. I was amazed at the efficacy and the ability to gather comments about ASPA's future as the

leaders put the idea of a DC-based designation before our members for a vote. Expect to see more details and implementation of your ideas in upcoming refinements to this vision.

And this is a short list! I can't begin to show my gratitude amply enough to all the volunteers and staff. I hope each of you realizes that volunteering is important to our organization. Please participate! For those of you who are already involved, thank you! I was honored to be your chief representative and manager for a year. Let's work together to keep steering this industry in the direction it should go! ▲

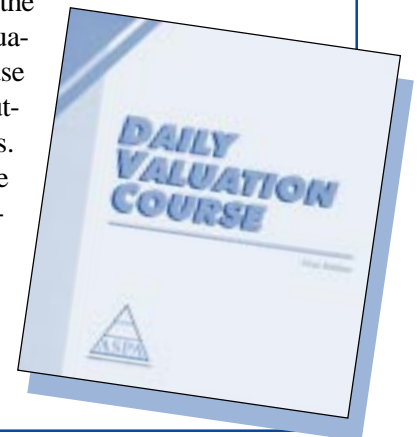
Carol R. Sears, FSPA, CPC, EA, MAAA, is a partner with Actuarial Consulting Group, Inc., in Morton, IL. She is ASPA's immediate past president and currently ASPA's technical education consultant. In addition to her extensive ASPA committee involvement, Ms. Sears served on the Education and Examination Committee for 12 years, most recently as the General Chair during 1996 and 1997.

Daily Valuation Course – The Right Tools!

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.

Most service providers today who 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 a mail-in exam, and upon successful completion, candidates will earn a Daily Valuation Certificate.



1999 Form 5500 & EFAST

(PSA) does not file as a DFE *for the 1999 reporting year*; plans and DFEs participating in CCTs or PSAs can report on such investments *in the aggregate*, rather than break out and report the plan's proportionate share of the underlying assets and liabilities of the CCT or PSA.⁶

File with PWBA

File the 1999 Forms 5500 and 5500-EZ with the PWBA⁷ in Lawrence, Kansas, at one of two addresses or via modem.⁸ The street address must be used when filing via one of the approved private delivery services. Unless filing via modem, other filers should use the post office box.

Electronic Filing

Before filing, electronic filers must obtain an electronic signature and, if filing via modem, a transmission encryption key. You can file via modem if you are an approved EFAST transmitter or you may use an approved EFAST transmitter to submit for you.

As of mid-February, the EFAST application form and the "Electronic Filers Users Guide" and other details on electronic filing are not yet available. According to the PWBA, the application and guide will soon be available on the EFAST website. PWBA will send the applicant more information about the electronic filing procedures after the application is processed. PWBA wants to encourage electronic filing and welcomes feedback from practitioners.

File Form 5558 and Prior Years' 5500s with IRS

The IRS continues to process Form 5558 ("Application for Extension of Time to File Certain Employee Benefit Plan Returns"),

even though the 1999 5500 Series forms are filed with the PWBA. However, a 5500 Series form for a plan year beginning prior to 1999 (that is, beginning in 1998 or before), whether it is an amended, late⁹, or timely filing, *should be filed with the IRS until further notice.* The IRS addresses are unchanged and are found in the instructions for Form 5558 and the 1998 Form 5500.

Short Plan Year, Short on Forms

For a short plan year which began in 1999, in order to meet their filing deadlines, some plans filed (with the IRS) using modified 1998 forms – before the 1999 forms were available. The PWBA has informally confirmed that it was proper to do this if you filed in accordance with the instructions for the 1998 5500 Series form. Generally, those plans which have already filed should NOT need to file again on the 1999 scannable forms.

What about filing Form 5500 for a short plan year beginning in 2000 – e.g., January 1 - 31, 2000? The instructions are silent. Presumably further guidance will be provided well before August 31, 2000, which is the first possible filing deadline for a short plan year beginning in the year 2000.

Filing Amended 1999 Returns

It may be too early to think about filing an *amended* 1999 form, but when the time comes, you'll need to know what to do. The instructions refer electronic filers to the EFAST website for information on electronic filing of amended 1999 returns/reports. (At mid-February, there's no info there yet on amended returns.)

For other filers, there's good news: filing amended 1999 scannable forms should be easier, because you only need to complete Form 5500 and attach the *corrected* schedules. For details on filing an amended 1999 Form 5500 refer to the 1999 instructions on page 6.

Other Resources

In addition to the websites and telephone numbers above, the IRS has a help line for retirement plans, including questions on Schedules B, F, H, I, P, R, SSA, and T. You can reach the IRS at a toll-free number (1-877-829-5500) Monday through Friday from 8:00 a.m. to 9:30 p.m. EST.

Space prevents us from reviewing all the changes. For a comprehensive discussion of the 1999 forms, please join me at the 5500 session during the ASPA 2000 Summer Conference, which will be in San Francisco from July 16 - 19, 2000 – and bring your unanswered questions. See you in San Francisco! ▲

Valeri L. Stevens, APM, is pension manager of Main Street Benefits Inc., in Torrance, CA. Ms. Stevens serves on the ASPA Government Affairs Committee as chair of the Reporting and Disclosure Committee.

¹ For more about the Agencies' project to revise the 1999 5500 Series forms, see the Federal Register Vol. 65, No. 22, Wed 2/2/2000, pages 5025 to 5035.

² There seem to be plenty of boxes. For example, there are 140 boxes for the plan name, which is twice the limit allowed on the prior year's forms.

³ Welfare benefit plans which vacillate between being exempt from filing and being required to file should check out codes 4R and 4S.

⁴ For example, the instructions for the new Schedule T ("Qualified Pension Plan Coverage Information") describe attachment(s) which may

401(k) Safe Harbor Plans

be required if your plan: (a) has participating employers (line 1); (b) benefits employees in a QSLOB (line 2d); or (c) if your plan has more than four disaggregated parts (line 4e). Also, coverage information is no longer required where the employer employs only Highly Compensated Employees.

- ⁵ For definitions and filing requirements for DFEs, including CCTs, PSAs, MTIAs, 103-12 IEs, and GIAs, see the 1999 instructions, pages 4 through 10, and the instructions for Schedules D and H.
- ⁶ Also for 1999, plans participating in a CCT or PSA are not required to attach the CCT's or PSA's statement of assets and liabilities to its 1999 Form 5500 – according to information published in the 2/2/2000 Federal Register.
- ⁷ Although the 1999 forms are addressed to PWBA, they will actually be processed under a 5-year contract with National Computer Systems, Inc. (NCS), a publicly-traded company (NASDAQ: NLCS), which is developing and operating the computerized system, EFAST – see *The Pension Actuary*, February, 2000, “EFAST: A New Acronym to Remember”. According to the NCS website (www.ncs.com), NCS is a global information services company providing software, services, and systems for the collection, management and interpretation of data.
- ⁸ For the PWBA addresses and a list of the approved private delivery services, see page 5 of the 1999 instructions. If you want the plan sponsor to authorize you, as a third party, to receive questions about content on the Form 5500 or 5500-EZ, then you must file a valid Form 2848 with the IRS at least 2 weeks before the annual return/report is filed. The IRS will send a weekly tape with an updated list of active 2848s to the EFAST processing center.
- ⁹ If your return is being filed late, you should consider using the DOL's Delinquent Filer Voluntary Compliance Program, established in 1995. For more information on the late filer program, contact PWBA's DFVC Hotline at 1-202-219-8776 (this is not a toll-free number).

define this, the IRS is reviewing the legality and procedures that should be used. However, with the issue of this guidance, a Plan may now satisfy notice requirements by using an electronic medium. The electronic medium must be reasonably available to employees and must be presented in such a way that it is as comprehensible to the employees as if it were a paper document. The employee must also be advised that they can request a paper document free of charge. In addition, the requisite notices can cross-reference the plan's Summary Plan Description. This serves to greatly simplify the information that needs to be provided in the notices.

- If provided under the Plan, 401(k) Safe Harbor Plans are now permitted to make aggregate matching contributions on both pre-tax and after-tax employee contributions. However, the matching contribution made on an employee's pre-tax contribution cannot be affected by the amount of the employee's after-tax contribution. Also, combined matching contributions made on pre-tax and after-tax contributions should be made based on the same method as matching contributions made to employee pre-tax contributions.
- The new guidance clarifies that 401(k) Safe Harbor Plans are permitted to apply a 12-month suspension on employee after-tax contributions after an in-service withdrawal has been made. This is similar to the 12-month suspension applied to employee pre-tax contributions after a hardship distribution has been taken.

- A 401(k) Safe Harbor Plan may apply the special rule under IRC Section 410(b)(4)(B) that allows an employer to apply the minimum coverage test separately to the portion of the Plan that benefits only employees who satisfy minimum age and service conditions that are lower than the greatest minimum age and service conditions that could have been required under IRC Section 410(a). IRS Notice 2000-3 clarifies that a Plan using the special rule under IRC Section 410(b)(4)(B) is treated as two separate plans and that the 401(k) Safe Harbor requirements need not be satisfied with respect to both plans. Thus, a Plan may still qualify as a 401(k) Safe Harbor Plan even if the employer does not make Safe Harbor contributions (matching or nonelective) to eligible employees who have not attained the greatest minimum age and service requirements permitted under IRC Section 410(a). In order for the Plan to use the 401(k) Safe Harbor, the Plan will have to treat those employees separately for coverage testing under IRC Section 410(b)(4), and any elective contributions made by such employees must satisfy the ADP test.
- This guidance also explains that when a plan adds a Cash or Deferred Arrangement (CODA) for the first time in a plan year, the Plan has until 3 months before the close of the plan year to amend the plan to include the Safe Harbor provisions. All Safe Harbor requirements must be fulfilled from the effective date of the CODA to the end of the plan year.

- A significant limitation in Notice 98-52 that Notice 2000-3 did not change is that employee after-tax contributions must still be tested under the ACP test.

Even prior to IRS Notice 2000-3, 401(k) Safe Harbor Plans provided many attractive features to employers. Relief from ADP/ACP testing permits HCEs to defer the maximum amount allowed under IRC Section 402(g). This feature is especially helpful for a plan containing a large number of HCEs. Full and immediate vesting eases the day-to-day administration of the plan. The employer can lay out its financial strategy already knowing the amount it will contribute to the plan. All of these attractive features are still in place, but now the Safe Harbor design offers less restrictions and more choices. With the issuance of IRS Notice 2000-3, open issues have been clarified, and employers have more options available to them. It is important to keep in mind that when matching up an employer to a 401(k) Safe Harbor Plan, they need to be a perfect match. Otherwise, employers who choose the 401(k) Safe Harbor Plan for the wrong reasons could end up with a plan design not suitable for their needs, and they may deem the plan to be too costly to achieve their objectives.

In light of the guidance set forth in Notice 2000-3, plan sponsors should reevaluate the Safe Harbor plan design options. It is important that this analysis be done quickly since the deadline for some of the transitional relief offered in the Notice is May 1, 2000. Upon review, most plan sponsors will find the Safe Harbor contingency a valuable tool in preventing excessive refunds of the deferrals of the HCEs. ▲

Angel Crawford is a 401(k) Plan Administrator with Milliman & Robertson.

2000 ASPA Summer Conference: ASPA Summer Academy

July 16-19, 2000 • The Fairmont Hotel • San Francisco, California

Join us for our 2nd Summer Conference, the ASPA Summer Academy, to learn the latest developments in the pension industry. You will have a choice of concurrent workshops on topics designed to fit the diverse needs of our industry. Topics on the agenda include the following:

- Employee Communications
- Cash Balance Plans
- Cross-Testing
- New Form 5500
- Defined Benefit Terminations
- Post NRA Accruals in a DB Plan
- Fiduciary Duties in a 401(k) Plan
- Deduction Issues
- Understanding Business Entities
- And many more topics

Sessions include updates on the latest happenings in Washington, DC that affect you and your business, plus panel discussions on defined benefit and defined contribution plans.

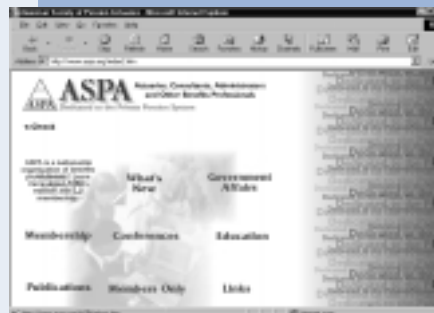
An additional Academy highlight is an exhibition with more than 20 vendors showcasing products and services essential to the pension industry. You will have the opportunity to network with the exhibitors during breakfasts, lunches, and beverage breaks. Sunday night will feature a reception to welcome you to San Francisco and include a performance by a local jazz band.



Brochures will be mailed in April, but additional conference information is available on our website, www.aspa.org. You can also contact the ASPA Meetings Department at (703) 516-9300 or meetings@aspa.org.

www.aspa.org

Check out the Meetings Webpage to download information, brochures, and registration forms for upcoming conferences.



**2000 Northeast Area
Employee Benefits
Conference –
All the Information You
Need in One Day!**

Crowne Plaza Hotel
White Plains, NY
June 16, 2000

The Northeast Area Employee Benefits Conference is cosponsored by ASPA, the Northeast Area Employee Plans, Tax Exempt and Government Entities Division and its Pension Liaison Group.

Learn what's new in the pension industry and how it will impact your business. Discuss employee benefits plans with government representatives from the IRS and DOL. Hear about the latest in the IRS restructuring directly from the source.

This year's topics include:

- Safe Harbor & 401(k) Plans
- Plan Document Updates
- EPRSC Update
- Repeal of 415(e)
- New Form 5500 and lots more...

Attend the conference and earn eight ASPA credits and up to eight JBEA credits.

The conference will be held at the Crowne Plaza Hotel in White Plains, New York.

66 Hale Avenue
White Plains, NY 10601
Tel: (800) 2-PLAINS2 or
(914) 682-0050

Group room rate: \$145
single/double

A brochure will be mailed in April. Plan to register before May 22 and take advantage of the early registration fee of \$175. For more information, call ASPA's meetings department at (703) 516-9300 or visit our website at www.aspa.org.

Best of the Business Leadership Conference

Fairmont Hotel * San Francisco, CA * July 15, 2000

Make your plans to arrive early for the 2000 ASPA Summer Conference, ASPA's Summer Academy, and attend the one-day workshop, "Best of the Business Leadership Conference." The Business Leadership Conference (BLC) is an ASPA program designed for primary decision-makers including presidents, owners, and key managers. If you aren't able to attend the BLC in San Diego, CA, May 7-10, 2000, this workshop is a great opportunity for you to learn from and network with our industry leaders and receive some of the many benefits of attending the BLC.

The workshop will be held on Saturday, July 15 at the Fairmont Hotel in San Francisco, the site of the 2000 ASPA Summer Conference. The committee for ASPA's Business Leadership Conference has carefully selected the sessions. The agenda is listed below.

8:00 am – 9:00 am	Workshop registration and continental breakfast
9:00 am – 10:40 am	<i>Operating a Pension Company in Today's Environment</i>
10:40 am – 11:00 am	Beverage break
11:00 am – 12:15 pm	Panel Discussion: <i>Daily Valuation Alliances</i>
12:15 pm – 1:30 pm	Luncheon
1:30 pm – 3:10 pm	<i>Employment Issues</i>
3:10 pm – 3:30 pm	Beverage break
3:30 pm – 4:45 pm	<i>Corporate Strategies for the New Millennium</i>

The one-day workshop is a separate registration from the Summer Academy. Registration fees are \$200/\$250 for members and \$300/\$365 for non-members. The information on the "Best of BLC" is included in the brochure for the 2000 ASPA Summer Conference, which will be mailed in April. Additional information is available on our website at www.aspa.org, or you can contact the ASPA Meetings Department at (703) 516-9300, or by e-mail at meetings@aspa.org.



The Pension Actuary on the Web

Faster and easier!

Go to the Members Only section on the ASPA website at

www.aspa.org/memonly/ASPAmemonly.htm

and check out the TPA on the web – indexed by author and article title for easier referencing.



**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

New Additions to the JBEA

February 2, 2000

*Memorandum from Patrick McDonough, Executive Director
Joint Board for the Enrollment of Actuaries*

I am pleased to announce the appointment of two new full-time members of the Office of the Joint Board:

1. Elizabeth VanOsten, Attorney-Advisor
2. Gloria Walker, Program Analyst

Ms. VanOsten, who comes to us from a position as Tax Law Specialist in the Employee Plans Division of the IRS, will work closely with me in the overall supervision and management of the office. She will also assume primary responsibility for the processing of disciplinary cases that are presented to us under the terms of the Joint Board regulations. Her telephone number is (202) 694-1855.

Ms. Walker, who was formerly a Program Analyst in the office of the National Chief of the (IRS) Appeals, will handle all the regular administrative work of the Joint Board. She takes over the functions temporarily assumed by Karen Copeland after the departure of Darryl Carter. Ms. Walker can be reached by telephone at (202) 694-1854.

Please join me in welcoming these two people to our program and feel free to call them to discuss any matters concerning the work of the Joint Board Office.

ASPA Wearables Now Available!

ASPA is selling tee shirts and sweat shirts featuring the ASPA logo. Now you can wear the ASPA logo with pride!

Item: ASPA Tee Shirt is 100% heavy weight 6 oz. cotton, with a blue ASPA logo printed on the front.

Color: White

Sizes: M, L, XL, XXL

Price: \$10.00 + shipping and handling

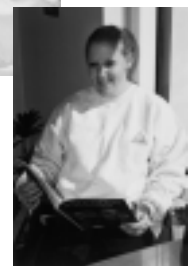
Item: ASPA Sweat Shirt is 90% cotton, 10% polyester 9.5 oz. fleece, with a blue ASPA logo embroidered on the front.

Color: Ash (grey)

Sizes: M, L, XL, XXL

Price: \$25.00 + shipping and handling

Order forms are available on our website at www.aspa.org, or you may call ASPA's membership department at (703) 516-9300 to receive an order form.



The best way to make a difference is to get involved!

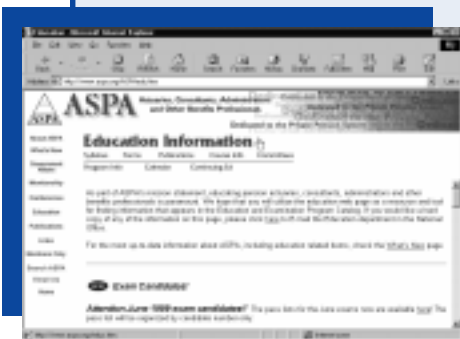
ASPAs are always looking for volunteers to assist with and/or serve on our many committees. If you or someone you know is interested in becoming more involved, please contact ASPA's membership department at (703) 516-9300. You may also complete and submit ASPA's volunteer survey on our website at www.aspa.org.

REQUEST FOR PROPOSALS

ASPAs Conference Committee is seeking proposals from presenters for various ASPA programs during 2001, including the Daily Valuation Workshops and Defined Benefits Workshops. For more information or to receive an RFP, please contact Trish Rafferty, Director of Meetings, at (703) 516-9300 or e-mail Trish at trafferty@aspa.org.

ASPAs Exam Results Posted Online

Exam results for the December 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 Administrator's Certificate effective August 31, 1999 is also available on the site.



ASPAs Needs Your Help! New Comparability Plan Survey

Please complete enclosed survey and return to ASPA.

The Department of the Treasury is currently reviewing the nondiscrimination regulations governing so-called "new comparability" plans. ASPA strongly believes that new comparability plans are an important part of the private pension system. These plans are a particularly important option for small businesses, where they provide valuable retirement plan coverage for small business employees who, in many cases, previously had no

coverage. **We need your assistance gathering information critical to our discussions with Treasury.** We have developed a survey regarding the new comparability plans administered by your firm. The survey is on the ASPA website, www.aspa.org, and is easily accessed from the Government Affairs page or contact the ASPA office at (703) 516-9300. A copy of the survey has been enclosed with this newsletter.

Attention All Designated ASPAs Members!

Nominations are now open for the
2000 Harry T. Eidson Founders Award

The Harry T. Eidson Founders Award recognizes exceptional accomplishments that contribute to ASPA, the private pension system, or both. The award is given in honor of ASPAs late founder, Harry T. Eidson, FSPA, CPC.

Previous winners include: Howard J. Johnson, MSPA in 1999; Andrew J. Fair, APM in 1998; Chester J. Salkind in 1997; John N. Erlenborn in 1996; and Edward E. Burrows, MSPA, in 1995.

Nominations will be accepted until **May 15**. For a nomination form, please contact ASPAs membership department at (703) 516-9300 or access our website at www.aspa.org.

ATTENTION ASPAs MEMBERS!



Are you or your company interested in purchasing new computer equipment at a great price?

Dell Computer Corporation has established a discounted purchase plan on computers and peripherals exclusively for ASPAs members!

For more information, call Dell at (800) 822-6069, refer to the Guardian discount program, and identify yourself as an ASPAs member.

FOCUS ON ASPA'S COMMITTEES

Strategic Planning And Implementation Team

by George J. Taylor, MSPA



Yes, SPIT for short. Carol Sears, FSPA, CPC, established SPIT during her presidency and gave the committee the directive to develop specific recommendations and/or proposals to be presented to the Board of Directors based on the conclusions or directives that were developed during the Board's Leadership Retreat. SPIT was to consist of the Chairs of the major committees of ASPA, as well as ASPA's President, Brian Graff, our Executive Director, and Jane Grimm, our Director of Administration. The Task Force was to be chaired by me, as President-Elect.

The Board of Directors had its Leadership Retreat in January, as part of its Board of Directors Meeting. The Leadership Retreat developed an open and honest dialog among the Board members, as well as several Committee Chairs, in an effort to determine the best way to service the current membership and to further our mission statement. There was no shortage of ideas. However, it became clear that ASPA, in order to accomplish its mission, must provide services to all professionals who work in the retirement plan area. In other words, ASPA needs to embrace the industry. The reports that were developed from the Leadership Retreat were turned over to SPIT, which then had to assimilate the reports and develop specific steps and recommendations for future consideration by the Board.

SPIT met on February 19 and 20, in Atlanta, Georgia. Two specific items were selected for consideration: What should be done to embrace the industry, and what could be done to better utilize and encourage the many ASPA volunteers?

It was clear from the Leadership Retreat that most felt that three things must be done in order to embrace the industry:

1. ASPA must be marketed more effectively to the general public, as well as to those who consider themselves pension professionals.
2. ASPA should consider developing relationships with other organizations that have similar goals and agree with our mission statement.
3. ASPA must reevaluate its current educational program to determine

if there are more effective and efficient ways to provide education to pension professionals.

The following were the conclusions reached by SPIT regarding the above three items:

A. It was recommended that the President form a Marketing Task Force that would consist of representatives of each major committee. The purpose of the Task Force will be to:

1. Clearly identify the needs of each committee to market their services.
2. Consider what steps ASPA should take to create greater visibility and name recognition by the general public. (We want plan sponsors to realize that they want ASPA designated professionals working on their plans.)
3. Consider which professionals should be hired in order to assist ASPA in our marketing efforts.
4. Present recommendations by September, including the budgetary impact of retaining a specialist to assist ASPA in its marketing plans.

B. It was recommended that the President establish a Task Force on Future Alliances. The Task Force was asked to take the appro-

appropriate steps necessary to fully evaluate those organizations that have a mission statement similar to ours. The Task Force would then make specific recommendations to the President as to which organizations should be considered for potential alliances that would further ASPA's mission.

C. It was concluded that ASPA must develop an educational program that provides designations based on tracks. It was also decided that there is an immediate need under the current structure to develop a designation for those professionals who work exclusively in the 401(k) area. In all cases, however, a superior level of knowledge must be demonstrated in order to attain any ASPA designation. The needs of the current membership, as reflected in last year's vote regarding the resolution to adopt DCS and DBS designations, were fully considered prior to SPIT reaching any conclusion on this issue.

D. It was recommended that the Education and Examination Committee evaluate its current programs to determine what changes should be made to develop an educational program that allows candidates to take specific tracks. However, there should be no change to the current QPA and CPC designations. The Education and Examination Committee has been asked to consider these recommendations at its next meeting and to report its findings to the Board prior to the July Board of Directors Meeting.

Our current volunteer structure, as well as how each committee acquires new volunteers, was fully discussed. Specific recommendations were given to the Membership Committee for consideration. ASPA must use the talents of its volunteers in the most effective

and efficient ways possible. We do not want our volunteers to get "burned out," and we want to, if possible, take advantage of all who have expressed a desire to volunteer their help.

I wish to thank the following for their participation in this important meeting: Gwen O'Connell, Education and Examination Committee; Cathy Green, Continuing Education Committee; Leslie Klein, Membership Committee; Stephen Rosen, ASPA Benefits Council Committee; Craig Hoffman, Government Affairs Committee; Stephen Dobrow, Conference Committee; and Michael Bain, Technology Committee for their participation in the meeting. Thanks to John Parks, our President, who gave another weekend of his life

to ASPA, and to Jane Grimm and Brian Graff, who both were, as usual, invaluable in seeing that everything went smoothly. ▲

George J. Taylor, MSPA, EA, is Senior Vice President of ARIS Pension Services, a division of ARIS Corporation of America in State College, PA. Mr. Taylor has over 30 years of experience in the administrative, actuarial, and technical aspects of maintaining qualified retirement plans. He is currently serving as ASPA's president-elect. He has served as ASPA's vice president and co-chair of the Government Affairs Committee in addition to numerous other ASPA volunteer activities.

ASPA Benefits Councils' Calendar of Upcoming Events

Date	Location	Event
April 13	Delaware Valley	Benefit Plan Design for the Millennium (What You Could Do Now That 415(e) Is Repealed) <small>Speaker: Howard M. Phillips, MSPA, EA</small>
April 17	South Florida	Government Affairs Update <small>Speaker: Brian H. Graff, Esq., ASPA Executive Director</small>
April 19	North Florida	Government Affairs Update <small>Speaker: Brian H. Graff, Esq., ASPA Executive Director</small>
May 3	New York	How to Eliminate Plan Overfunding <small>Speakers: Harvey Katz, Esq.; Steven Levine, MSPA, EA; John Lockwood; and Howard Rosenfeld, MSPA</small>
May 8-9	Chicago	ASPA Midstates Benefits Conference
June (date TBA)	New York	Form 5500 Workshop <small>Speaker: TBA</small>
June 21	North Florida	Plan Audits: What CPAs Need and How Administrators Can Prepare <small>Speaker: Robert Ennis, CPA</small>

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

FOCUS ON ABCs

Central Florida and New York

by Nadine Schaal, Central Florida and Cathy G. Waxenberg,
APM, Esq., New York

The year 2000 is off to a great start for ASPA's Benefits Councils! ABC programs, the key to a council's success, feature quality speakers and informative topics at the local level. Timely topics that have kicked off the new year include: *The New Form 5500*, *Controlled Group Issues*, *A Legislative Update*, and *Creditor Claims on Pension Assets*. Upcoming programs will cover *Benefit Plan Design for the Millennium*, *How to Eliminate Plan Overfunding*, *DOL Update*, and *Plan Audits*. These and other ABC programs provide cost-effective and convenient educational and networking opportunities to attendees.

ABC of Central Florida

Getting the New Year off to a great start, the Central Florida ABC elected and installed its new board of directors and officers. They are as follows: Philip Diamond, President; Kathy Ennis, Treasurer; Kimberly Kutlenios, Secretary; Nadine Schaal, ASPA Liaison; Kim Cooley, Social/Membership; and Mark Konzen, Speaker Chairman. Additionally, Sandy Turner is the Government Relations designate. The immediate past President, Mike Canon, continues to assist by co-chairing the speaker's committee, and Kim Szatkowski provides strong support to the new board.

We anticipate an exciting year with a variety of speakers and topics. For our March 2000 meeting, our speaker was Shannon Davis, Associate Regional Director of the Pension and Welfare Benefits Administration, Atlanta Regional Office of the Department of Labor. He discussed the guidelines and procedures the DOL employs when conducting an audit of an employer's plan or of a service

provider. Also on the agenda was compliance with DOL regulations, such as the timely deposit of 401(k) funds.

In September, our guest speaker will be the knowledgeable and entertaining Sal Tripodi, APM, who will speak about required plan amendments for qualified plans.

Future speakers will discuss cash balance plans and plan design issues and the liability that benefit professionals and third party administrators incur while performing their services. We also anticipate having our Form 5500 Workshop, which has become an annual event that is extremely informative and well attended. ▲

Nadine Schaal is an attorney with Akerman, Senterfitt, & Eidson, P.A. in Orlando, Florida. Nadine has practiced as an employee benefits attorney/consultant for over sixteen years. Her main area of practice is employee benefits, although she also practices estate planning and probate. Prior to joining the law firm, Nadine was a Vice

President in the Trust Department - Employee Benefits at a national bank and in house counsel with an actuarial benefits consulting firm.

ABC of New York

The ASPA Benefits Council of New York kicked off the New Year with a timely and well-attended meeting on January 11, 2000. The two speakers were David Pratt, APM, Esq., associate professor of law at Albany Law School, and Stephen Krass, Esq., noted author of *The Pension Answer Book*.

This first meeting of the year was definitely a success, and we anticipate three more meetings throughout the year.

David Pratt discussed "Social Security in the New Millennium," providing the audience with an excellent description of the current scheme of benefits, as well as insight into the many different reforms that have been proposed in Washington. He also presented an overview of qualified defined contribution plans, describing new law changes and current issues requiring more guidance from the IRS.

Stephen Krass discussed "Distribution Planning for Qualified Plans and IRAs." His informative and enjoyable presentation included real-life examples of the pitfalls and traps of improper or incomplete distribution planning, beginning with inappropriate or missing beneficiary designations and continuing with incorrect elections for required minimum distributions. Although his war stories offered opportunities for the audience to chuckle or gasp at the unintended results, we left the session with a better understanding of the intricacies of planning for our clients. ▲

Cathy G. Waxenberg, APM, Esq. is President of Laiken Associates, Inc., a pension consulting firm in New York City. She serves as Meetings Coordinator on the Board of Directors of the ABC of New York. Cathy has been a member of ASPA since 1989 and received her Associated Professional Member designation in 1993.

FOCUS ON PERF

Donations are Instrumental to Reach PERF's Goals

by Curtis Huntington, APM

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

Did you notice the words “tax-deductible member contributions” in the last paragraph? They mean that any monies that you donate to your Foundation are tax-deductible on your federal income tax return for that year.

Most of ASPA PERF's money comes from members of ASPA who contribute the recommended \$35.00 that appears on their annual dues notice. This past year, more than 550 members contributed to the Foundation through this easy method.

Each of them received an acknowledgement postcard (like that shown here) from the Foundation that can be used to document the donation when completing tax returns. The card has a place to indicate the actual dollar amount donated. That is because there are other ways that members can contribute to the Foundation.

If you participate in an ASPA activity that includes having your expenses reimbursed, you may have noticed that there is a line on the expense reimbursement request form that allows you to deduct a contribution to ASPA PERF from your reimbursement. Members who put an

allocation on that line also get an acknowledgement postcard.

Other members receive honoraria for some of their services to ASPA and also contribute a portion of this to ASPA PERF. These are also acknowledged.

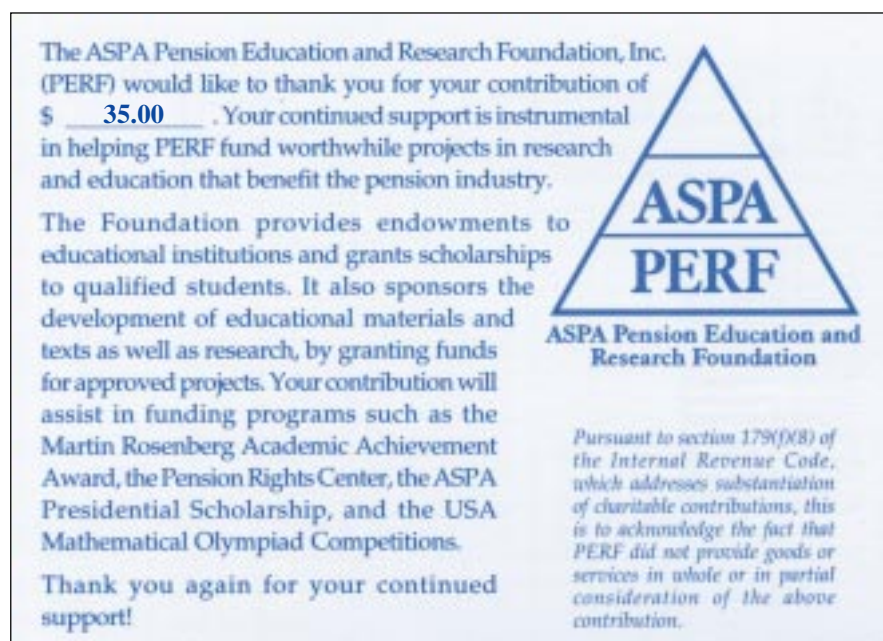
BUT, less than 20% of the membership actually supports the Foundation during any given year. The Board of Directors currently spends funds approximately equal to those received each year. With only a small

endowment, this does not allow us to consider many new projects. It also does not allow us to fund many extraordinary projects, such as last year's Saver's Summit, when they are presented.

We would like to see more of you receiving these postcards. As the card says, “Your continued support is instrumental in helping PERF fund worthwhile projects in research and education that benefit the pension industry.” And, PERF acts as ASPA's voice in these areas that are vital to our profession.

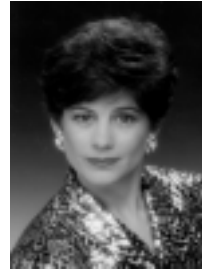
Inquiries should be addressed to, and contributions will be gratefully received by, the ASPA Pension Education and Research Foundation, 4245 North Fairfax Drive, Suite 750, Arlington, Virginia, 22203. Contributions are, of course, tax-deductible. ▲

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 the Vice Chair of ASPA PERF.



FOCUS ON E&E

Joint Board Announces Restructuring of EA Exams



by Sally J. Zavattari, FSPA, CPC

The Joint Board for the Enrollment of Actuaries has recently announced the restructuring of the Enrolled Actuary (EA) examinations. The Joint Board thinks that the restructured examinations will better reflect the knowledge necessary to demonstrate competence in both the law and the mathematics that is relevant to the performance of pension actuarial services.

The EA examinations are comprised of the basic actuarial examination and pension law examination. Under the restructured program, theory of compound interest, financial analysis, life contingencies, and demographic analysis are covered in the basic actuarial examination.

The pension law examination would be offered in two segments. The first would cover pension funding, including the law and regulations that relate to minimum funding, and deductible contributions for qualified defined benefit plans. The second segment covers the remaining relevant law and regulations. This segment would include reporting and disclosure,

qualification standards, non-discrimination, PBGC and Title IV, plan terminations, multi-employer, excise taxes, prohibited transactions, and other non-funding topics. A minimum standard of competence would be established for each segment.

Each examination would be offered once a year. The basic actuarial examination and the second segment of the pension law examination would be offered in the spring. The first segment of the pension law examination would be offered in the fall. The restructured program will take effect in the spring of 2001.

Appropriate transition credits would be afforded to persons who have successfully completed portions of the enrollment examinations before 2001. The transition credits are illustrated in the chart below:

Transition Credits

Pre-2001 examinations passed	Post-2000 examination credit given	Additional examinations necessary
EA-1(A)	EA-1	EA-2(A) and EA-2(B)
EA-1(B) and EA-2	EA-2(A) and EA-2(B)	EA-1
EA-1(A) and EA-2	EA-1 and EA-2(B)	EA-2(A)
EA-1(A) and EA-1(B)	EA-1	EA-2(A) and EA-2(B)
EA-2	EA-2(B)	EA-1 and EA-2(A)
Any other combinations except those listed above	None	EA-1, EA-2(A) and EA-2(B)

The July 2000 Joint Board Examination Program booklet will include a detailed preliminary description of all of the restructured 2001 EA examinations. Beginning with 2001, the Joint Board Examination Program booklet will be published twice a year with the syllabus for all three examinations. When it is available, ASPA will put the document on our website www.aspa.org.

ASPA supports the EA program by offering preparatory classes. EA-1(A) classes are offered in Denver, CO (April 7 and 8); Washington, DC (April 14 and 15); and Chicago, IL (April 28 and 29). EA-1(B) classes will be offered in Denver, CO (April 9 and 10); Washington, DC (April 16 and 17); and Chicago, IL (April 30 and May 1). These classes are taught by David B. Farber, MSPA, ASPA's 1999 recipient of the Educator's Award. ▲

Sally J. Zavattari, FSPA, CPC, EA, is president of Actuarial Services Group, Inc., in Dallas, Texas. Ms. Zavattari serves as ASPA's liaison to the grade setting committee of the Joint Board for the Enrollment of Actuaries. She served on the ASPA Board of Directors, the Long Range Planning Committee, and the E & E Committee.



ASPA is offering the ASPA ASAP via e-mail.

If you are currently subscribing to the ASPA ASAP and would like to receive this publication at your e-mail address, please send a request, along with your e-mail address, to asap@aspa.org.

If you begin receiving the ASPA via e-mail, you will no longer receive it via facsimile. There will be no change in the cost of the ASPA ASAP.

2000 CALENDAR OF EVENTS

		ASPA CE Credit
April 17	Defined Benefit Workshop, Denver, CO	7
April 28-29	EA-1(A) class, Chicago, IL [†]	10
April 30-May 1	EA-1(B) class, Chicago, IL [†]	10
May 1	Defined Benefit Workshop, Boston, MA	7
May 2	401(k) Daily Valuation Workshop, Boston, MA	7
May 7-10	Business Leadership Conference, San Diego, CA	10
May 8-9	Midstates Benefits Conference, Chicago, IL	15
May 13-14	ASPA Weekend Courses, Denver, CO C-1, C-2(DB), C-2(DC), C-3, and C-4	15
May 22	Defined Benefit Workshop, Indianapolis, IN	7
May 23	401(k) Daily Valuation Workshop, Indianapolis, IN	7
May 31	C-1, C-3, and C-4 exams	*
June 1	C-2(DC) exam	*
June 2	C-2(DB) exam	*
June 19	401(k) Daily Valuation Workshop, Los Angeles, CA	7
June 20	Defined Benefit Workshop, Los Angeles, CA	7
July 10	Defined Benefit Workshop, Philadelphia, PA	7
July 11	401(k) Daily Valuation Workshop, Philadelphia, PA	7
July 16-19	ASPA Summer Conference, San Francisco, CA	20
August 25	401(k) Daily Valuation Workshop, Atlanta, GA	7
August 28	Defined Benefit Workshop, Orlando, FL	7
August 31	PA-1(A) and PA-1(B) exam 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 five hours of 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.

Plan Distributions After Age 55

A user posted a question he received from a participant who had retired from his company at age 58 and was now taking distributions from the plan at the rate of \$1,500 per month. The participant is not subject to the premature distribution excise tax, as the distributions meet the exception for payment after age 55 and separation from service.

This participant now wants more control over his investment options, so he wants to roll his account to an individual retirement account (IRA), and continue taking the \$1,500 per month distributions.

Fortunately for the participant, the PIX user pointed out to him that the age 55 and separation exception to the premature distribution excise tax does not apply to IRAs. Once the account had been rolled to the IRA, any subsequent distributions would have to meet another exception, such as the substantially equal payment exception.

Since one of the allowable methods for calculating substantially equal payments is to use the same method for calculating post 70-1/2 minimum distributions, the user was wondering if the participant would be able to continue his \$1,500 monthly distribution from the IRA, and be exempt from the premature distribution penalty, since the \$1,500

exceeds the amount that would be required using the joint life expectancy of the participant and spouse divided into the account balance.

Other users pointed out that, even though the Section 401(a)(9) minimum distribution requirement is satisfied if more is withdrawn, that will not satisfy the Section 72(t) exception for substantially equal payments over life expectancy, since withdrawing more would make the period less than the life expectancy.

It was also pointed out that Notice 89-25 provides several ways to calculate substantially equal payments, and it is likely that one of these methods could produce the desired distribution, although it would have to continue for at least five years to avoid the penalty.

This thread is a good discussion of one of the important differences between IRAs and qualified plans regarding taxation of distributions. For the entire thread, download the file [substeq2.fsg](#).

Non-Deductible Contributions

[Threads 84154,84748,84836]

A PIX user has a client who made a contribution to his money purchase plan prior to the end of the plan year based on his anticipated income. Unfortunately, he

became ill and was unable to generate the income necessary for the contribution. It is further anticipated that he will not have the income in a future plan year to justify this contribution. The user is questioning what can be done with the contribution, other than leave it in the plan and continuing to pay excise taxes every year.

One user suggested terminating the plan and paying the reversion excise tax, however another user pointed out that Section 4980(c)(2)(B)(ii) provides that non-deductible amounts are not part of the reversion subject to the excise tax. Of course, this leads back to the question of who can determine whether or not a contribution is deductible. The IRS has repeatedly stated that only they can make that determination. Of course, the plan sponsor is required to determine that the contribution is not deductible for purposes of filing Form 5330 and paying the non-deductible contribution excise tax. The thread further discussed the definition of a "mistake of fact." However, without a clear procedure for determining non-deductible contributions, there is no clear resolution of the problem.

To read the entire thread, download the file [nonded2.fsg](#). ▲