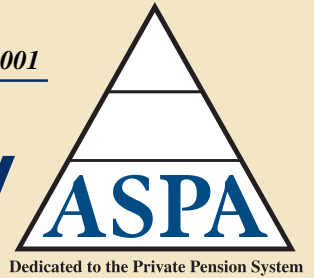


# PensionActuary



## DOL Scrutinizes Plan Expenses for Settlor Functions but Approves the Use of Plan Assets to Pay Qualification Costs



### WASHINGTON UPDATE

#### New Comparability Round Two

by Brian H. Graff, Esq.

As you know, this past October the Department of Treasury and the Internal Revenue Service (IRS) issued proposed regulations that would significantly change the nondiscrimination rules applicable to new comparability plans. If made final, these rules would be effective beginning with the 2002 plan year. An article in the last issue of *The Pension Actuary* summarized these proposed rules in detail.

The regulations were issued after numerous meetings between Treasury, the IRS, and ASPA representatives, the Small Business Council of America, and the U.S. Chamber of Commerce. ASPA also engaged in an extensive Capitol Hill education and lobbying effort to help put pressure on

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by R. Bradford Huss, Esq., APM

In a major victory for ASPA's Government Affairs Committee, the Department of Labor's Pension and Welfare Benefits Administration has dramatically retreated from its recent aggressive position concerning the use of plan assets to pay the expense of maintaining plan qualification. The PWBA has been conducting an initiative concerning the payment with plan assets of fees charged by service providers that may involve so-called "settlor functions." In investigations, the DOL is taking the position that some types of expenses are related solely to settlor functions, which include

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the establishment, amendment and termination of a plan, and must be paid entirely by the employer and not from plan assets. Of particular importance, the DOL was also asserting, incorrectly in the view of ASPA, that expenses relating to maintaining the qualified status of a retirement plan must be allocated between the employer sponsoring the plan and the plan itself on the basis that the plan's tax qualification provides benefits to both the employer and the plan participants. Expenses of this nature being reviewed by the DOL include nondiscrimination testing, determination letter applications and amendments required to preserve plan qualification.

The Government Affairs Committee (GAC) believed that the position taken by the DOL in the settlor expense initiative, that plan qualification expenses must be allocated between the employer and the plan because the employer receives benefits from plan qualification, was incorrect under a proper analysis of both the tax impact of plan disqualification and

the fiduciary aspects of plan qualification. In meetings with the DOL, ASPA's GAC expressed its concern that the DOL's settlor expense initiative was undertaking enforcement action in an area in which there has not been adequate formal guidance. GAC also met with key Congressional staff to explain the situation and was successful in having them convey

their concerns to the DOL. In addition, GAC informally submitted to the DOL written arguments that qualification expenses are properly payable with plan assets.

Immediately before press time, the DOL changed its opinion and issued new guidance reflecting that the expenses of maintaining plan qualification can generally be paid with plan assets.

### **The Kansas City Regional Initiative**

The program started as a regional initiative of the Kansas City office of the PWBA for its fiscal year beginning October 1, 1999 and is continuing there for the current fiscal year. Investigations have focused on determining whether service provider fees were, in the opinion of the PWBA's Kansas City office, improperly paid with plan assets. The Kansas City office has been reviewing fee invoices dating back several years and, in

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

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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# Presidential Year in Review

by John P. Parks, MSPA



It was, without a doubt, a year filled with excitement, challenge, impossible schedules, cherished memories, and even occasional frustration. But, most of all, it was a year filled with honor, the greatest honor of my professional life.

Of course, the accomplishments of the year did not occur in isolation. They were a culmination of efforts of Presidents past, Executive Committee, Board of Directors, National Office professional staff, and hundreds of other passionate volunteers along with our Executive Director, Brian Graff, Esq. The brightness of the limelight mirror is but a brilliant reflection of the tireless efforts of many other talents.

Reviewed in this article are some of the year's past accomplishments and some prognostications for what lies ahead. To set the stage, here are a few "quick facts" of historical and personal perspective:

- 1875, American Express adopted the first formal corporate pension plan. It was for old and worn out employees and you had to be both old and worn out to participate.
- 1945, my grandfather retired as a Maintenance Engineer and received a gold watch for over 30 years of dedicated service. He received a pittance from Social Security, which had begun only 12 years earlier.
- 1970, Studebaker went under and many workers lost their pensions.
- 1974, ERISA came along, bringing sweeping changes to address the issues of our national retirement system.
- 1975 – 200,000 DC plans; 100,000 DB plans. Ratio 2 to 1.

- 1997 – 640,000 DC plans; 50,000 DB plans. Ratio 13 to 1.

ASPAs focus has been and continues to be in the small plan arena to create an environment where small plans of all types can flourish. For the past 125 years, continuous changes have occurred in the world of retirement plans. A safe wager is that the past 25 years have aggregated greater change than the previous one hundred years. With these thoughts in mind, let's very quickly look at what is happening at ASPA and then speculate as to what lies ahead.

## Education and Examination (E&E)

- This year, our membership approved the QKA [Qualified 401k Administrator] designation. This designation is in direct response to the changing tide of our business and will serve to educate a widely expanded population of retirement plan professionals.
- Along with the QKA designation, the beginnings of a plan to restructure E&E are underway. This process will take about three years and is being designed to meet both the candidate's and industry's needs in the changing retirement plan world.
- Tremendous progress has occurred toward the "windowed" exams concept. Beginning this

year, there are going to be two six-week-long windows, one from April 15 to May 31 and the second from October 15 to November 30, during which exams will be given. Students will have instant results, indicating a passing or a failing mark.

Thanks to Gwen O'Connell, CPC, QPA, and her tireless E&E Committee.

## Membership

- We have attained the 4,000 member mark this year with 400 new members added. This is in addition to the well over 7,000 students that are taking ASPA exams.
- The ASPA Benefits Councils (ABCs) are continuing to grow. The latest city was Pittsburgh where the Western Pennsylvania ABC was just established.

Thank you Les Klein, APM, and our Membership Committee.

## National Office

- E&O Insurance Report. As a membership service, we are providing educational materials to assist ASPA members in choosing which professional liability insurance policy is best for them. Brian Graff, ASPA's Executive Director, prepared these materials. Check our website [www.aspa.org](http://www.aspa.org) for more information.
- Our new database, iMIS, went "live" the first week in January, giving us greatly expanded information capabilities for our members and adding web interfaces that allow

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# More Visibility = More Business

by Catherine N. H. Lewis

**T**o be successful in marketing retirement plan services or products, you have to develop a strong identity in your community. You want your name to be one that people recognize and associate with all types of retirement plans and plan services. You want your company to be the one that referral sources think of and recommend when they are suggesting benefit consultants or plan administrators. But, to become known as *THE retirement planning expert* in your community, you need to spend time promoting yourself and your services.

If you are not advertising now, you should be. It's time to **turn the light on your business** – time to tell the community clearly and repetitively about your services and products. While there are many types of advertising available, this article will focus on several elements of a basic print campaign.

Start your print campaign by identifying those magazines, business journals, newspapers, community newsletters and program booklets that are read by your target markets. Get copies of each. Find out their circulation, the demographics of their subscribers and the cost of repeated ad placements. Designate a block of time in the next several weeks to develop a complete year's advertising campaign for your business. Decide where you want to advertise and organize 12 months of ads. Creating the ads and selecting placements early in the year will help you avoid time crunches and missed deadlines throughout the year.

Create a format (form or computer spreadsheet) to plan and record each month's projected advertising. List the month, publication, ad description, audience, cost, contact person with telephone and fax numbers, and a space to record the inquiries that result from each ad. Just like prospecting, advertising should be done on a consistent and regular basis, and should be carefully planned and monitored.

As you plan your advertising, look at the total dollars you can spend and try to get as much mileage as possible from those dollars. Research shows that a repetition of the same ad on a weekly or monthly basis is much more effective than a once-a-year full-page ad. Why? Because readers forget very quickly, and those you want to reach might not even open the paper or magazine that has your once-a-year ad.

## The Ad Rules

Start looking for ads that you like in local publications. It is critical that you find an agency or

marketing group that can understand your business and create the ad you need. Contact local businesses with ads you like and find out which agency (and which designer within the agency) created them. Select several agencies to visit and discuss your business and your advertising objectives.

While some readers will be governed by institutional and NASD requirements, others may enjoy more creative license. Within the parameters of NASD regulations, good taste and reasonable cost, you can create a powerful and effective ad if you remember these rules:

- Simple is best.
- Avoid clutter in design, words and borders.
- Fewer words are more effective than many.
- Do not list all your services and your shoe size.
- Short words are better than long ones.
- Humor and a personal touch are very effective.
- Use graphics that enhance your message.
- Use only one or two readable type styles.
- Create drama with angles, reversed black and white, and odd sizes.
- Focus on solving a problem for the reader. Answer the "How can you help me?" question.

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# The Changing Face of Plan Administration

by Amy Cavanaugh, QPA, QKA



**R**etirement plan administration has changed dramatically over the past few years. The two most significant contributors to these changes have been the financial services industry and the Internet. As more and more ways of handling plan administration have come onto the scene – independent TPA firms providing customized services, bundled arrangements with financial institutions, and now with “do-it-yourself plans” via the Internet – it is increasingly important that we effectively communicate to our clients what is involved in sponsoring a plan, steps to be taken to ensure a plan is properly administered, and why it is important for certain pension plan professionals to be involved in the process.

**This article is the first in a series of articles designed to address the changing face of plan administration.** During 2001, *The Pension Actuary* will run a series of articles with respect to the various aspects of the ongoing maintenance required in a qualified plan. These articles will provide a comprehensive overview of the annual administration process and the ongoing fiduciary and technical responsibilities that a plan sponsor inherits when a qualified plan is adopted. While the focus of this series is self-directed 401(k) plans, much of the material presented would be applicable to any type of qualified plan.

Recently there has been a great deal of focus on do-it-yourself 401(k) plans. These plans and their related services are available over the Internet and are offered by many reputable financial institutions touting low fees and ease of administration. In some cases, a client’s needs

can be met using these services, and for that segment of qualified plan sponsors, Internet 401(k) plans have the potential to offer significant cost savings. However, industry professionals both on the compliance-side and the investment-side worry that these do-it-yourself 401(k) plans can give plan sponsors a false sense of security.

The concept of a do-it-yourself 401(k) plan can be related to using a self-service gas station. As long as someone continues to check the oil and tires, and the car is serviced periodically, the car should run fine; however, absent servicing from time to time, problems will most likely arise. Periodic servicing of a plan by a pension or investment professional, much like a mechanic servicing a car, can save aggravation and expense in the long run.

In the past, plan sponsors turned to pension professionals as a matter of course. Now, with the tools to

design and administer plans readily available to anyone with access to the Internet, plan sponsors may lose sight of the fact that pension professionals do not merely operate the tools, but more importantly, they supply the knowledge and expertise to assure that the plan is being properly administered, is kept in compliance with the law, and meets the needs of the plan sponsor. The Internet and other electronic services can enhance the overall value of a retirement plan, but it is dangerous for a plan sponsor to think that a computer program can take the place of highly trained professionals. Just consider the recent IRS report on data compiled from 427 audited 401(k) plans indicating that 44% of the plans had violations. (Refer to ASPA ASAP 2000-39.) Both the IRS and DOL actively audit plans for compliance. Key areas of focus include coverage, timing of salary deferral deposits, as well as operational compliance with both the plan document and all applicable federal laws.

Before a plan is implemented, it is imperative that the plan sponsor be well aware of all of the obligations inherited once the plan is adopted. These obligations include annual reporting and disclosure, a myriad of coverage and nondiscrimination tests, and a host of fiduciary obligations. It is also important that the plan sponsor develop a team of professionals to provide services and perform certain tasks with respect to the overall operation and administration of the plan. Many

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# ASPA's ASAP Service Turns Five

by G. Neff McGhie, III, MSPA

**T**he ASAP service turned five years old at the end of 2000 and has had a great young history under the guidance of Kevin J. Donovan, MSPA, CPA. The GAC had an original goal of producing 24 ASAPs per year to inform its membership of any new information "as soon as possible." Kevin was the original chair and increased the number of ASAPs published each year from 29 in its first year to 43 issued in 2000. Thank you, Kevin, for your time and efforts. Of course, the success of this program wouldn't have been possible without many volunteers. There have been volunteers along the way to write short articles for publication, while others have put in time reviewing these articles and preparing them for publication. We extend our sincere gratitude to these people for their contributions of time and talent, especially the members of the committee, including Larry Starr, Bill Taylor, and Ed Snyder. And a special thank you to Chip Chabot at the ASPA office for preparing the files for publication and arranging the many conference calls and broadcast faxing. We continue to welcome from anyone short articles on recent events that would be important to the membership.

I would like to take this opportunity to review the ASAPs that were issued during 2000:

ASAP 2000-1, written by Craig Hoffman, reviewed IRS Notice 2000-3, which made a number of significant changes to the 401(k) safe harbor rules.

Robert Richter and Michele D. Lellouche authored ASAP 2000-2, a synopsis of Rev Proc 2000-20, which set forth the new prototype program for GUST.

Brian Graff reported in ASAP 2000-3 that USA accounts [a previous proposal by Pres. Clinton for

universal 401(k) coverage] were officially declared dead.

In ASAP 2000-4, Fred Reish, Bruce Ashton, and Nick White authored a short article on the changes made to EPCRS when the IRS released Rev Proc 2000-16.

Topics concerning the many changes made to the Form 5500 for 1999 plan year filings became the subjects of many ASAPs in 2000. Valerie Stevens kept us up-to-date on the changes made to the 1999 Form 5500 in ASAP 2000-5. ASAP 2000-13 was a reprint of a DOL press release that

explained the blanket extension given to all calendar year filings. Fred Reish, Bruce Ashton, and Gail Reich reviewed ERISA 404(c) compliance and the impact of selecting a certain Plan Characteristic Code on the new Form. ASAP 2000-32 was authored by Janice Wegesin and discussed the DOL's position on late filings. Brian Graff reported in ASAP 2000-37 that although ASPA had continued to pressure the DOL for a further extension of the filing date, this was not going to occur, but that any reasonable cause letter attached to the late filings should be accepted.

Marjorie Martin wrote about Rev Rul 2000-8 in ASAP 2000-6 concerning the IRS guidance regarding automatic, or negative, elections in 401(k) plans.

In ASAP 2000-7, committee member Bill Taylor reminded everyone that the deadline for nonqualified plan FICA contributions was quickly approaching.

One of the more serious issues tackled by ASPA membership this year was the notice published by the IRS concerning their review of new comparability plans. This notice was quickly reviewed by Brian Graff and he let ASPA membership know of this in ASAP 2000-8. He continued to keep membership informed of the developments in ASAP 2000-10. ASAP 2000-12 was a further update on discussions with Treasury regarding possible compromises surrounding new comparability plans, along with a request for the membership to gather information regarding

their plans for support of our positions. Brian reported in ASAP 2000-14 that the effective date for any changes made to the nondiscrimination regulations would not be effective before January 1, 2002. Finally, in ASAP 2000-36, Brian relayed the proposed changes to the regulations under IRC Section 401(a)(4). Thank you, Brian, for your diligence in this fight to preserve some form of new comparability plans for our clients and for your willingness to keep us informed of the process with numerous timely communications.

In ASAP 2000-9, Bradford Huss wrote about the results of the CSA 401(k) Plan v. Pension Professionals, Inc. case and its impact on service providers.

ASAP 2000-11 was the year's first installment of the quarterly government rate chart that includes the various PBGC rates, GATT rate, current liability ranges, and federal mid-term rates for the previous two years. This was updated in ASAP's 2000-22, 2000-34, and 2000-43.

I had the privilege of writing ASAP 2000-15 which discussed the impact of Rev Rul 2000-20, the IRS guidance on how defined benefit plans using a spread gain funding method are to deal with amortization bases established due to the OBRA full funding limit.

Fred Reish and Bruce Ashton informed us of the DOL's efforts to target service providers in investigations of retirement plans in ASAP 2000-16.

ASAP 2000-17 was authored by Kevin Donovan and detailed the relaxation of the same desk rule applicable to 401(k) plans.

Derrin Watson contributed two ASAP's during the year, the first concerning plan language that could be used to exclude certain

groups of individuals later found to be common law employees (ASAP 2000-18), and the second regarding the issue of employment status surrounding staffing firms (ASAP 2000-20).

ASAP 2000-19 was written by Craig Hoffman and Robert Richter and relayed information regarding the applicability of the extension of the GUST remedial amendment period to all types of plans.

Benjamin Spater and Bradford Huss reported in ASAP 2000-21 on the release of Rev Proc 2000-27, which officially extended the



GUST remedial amendment period and opened the determination letter program.

ASAP 2000-23, by Robert Unger, detailed the decision in Harris Trust & Savings Bank v. Salomon Smith Barney, Inc. and its effect on a nonfiduciary's participation in a prohibited transaction.

Theresa Lensander and David Pratt combined to provide two articles for publication. The first (ASAP 2000-24) discussed how a Private Letter Ruling allowed for other governmental agencies, besides the original plan sponsor, to also adopt their 401(k) plan. The second (ASAP 2000-27) reviewed the IRS position on the availability

of automatic enrollments for 401(k), 403(b), and 457 plans.

Kevin Donovan contributed another ASAP (No. 2000-28), which reviewed the repeal of the lookback rule for involuntary distributions.

ASAP 2000-30 by Robert Turkel and Michael Cotter, reported on the finalization of participant loan regulations.

Ralph Paladino provided us with a summary of the guidelines for receiving a GUST II determination letter in ASAP 2000-31.

ASAP 2000-33 was co-authored by Fred Reish, Bruce Ashton, and Martin Heming, which reported that the proposed IRC section 411(d)(6) regulations, that allowed for the elimination of certain optional forms of benefit, had been finalized.

Fred Reish, Bruce Ashton, and Nicholas White once again combined to inform us of the results of two different studies. The first was from a study of the IRS programs for audit CAP, walk-in CAP, and VCR and can be found in ASAP 2000-35. The second was a report of the results of the IRS 401(k) audit program and can be found in ASAP 2000-39.

ASAP 2000-38, by Bradford Huss, informed ASPA membership about the final regulations issued by the DOL requiring small plans to meet additional requirements in order to remain exempt from having an annual audit of the plan.

ASAP 2000-40 was our annual pension COLA summary chart that reported the adjusted limits for the following year, along with a summary of the limits for the current and prior eight years.

ASAP 2000-41 detailed some of the changes made by the PBGC to simplify the calculation of premiums applicable to covered plans

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## Washington Update

Treasury. It was initially Treasury's position that new comparability plans should no longer be permitted because, in their view, they disproportionately favored highly compensated employees. In response, we argued strenuously that new comparability plans provided valuable benefits to rank-and-file small business employees when, in many cases, they would receive no retirement benefits otherwise. A survey conducted by ASPA, in which many of you participated, showed that 50 percent of new comparability plans were plans adopted by small businesses that previously had no retirement plan coverage. Almost half of these plans provided a minimum nonelective contribution of at least five percent of compensation. Compared to retirement benefits typically provided by larger firms, a five percent benefit is clearly attractive.

Over time, and with some pressure from Congress, Treasury backed away from their initial position of eliminating new comparability plans. Over the course of several months and countless meetings, the rules applicable to defined contribution plans began to develop, ultimately resulting in the creation of the five percent minimum contribution (or, if less, one-third of the highest HCE contribution percentage) gateway and the "broadly available allocation rates" rules. However, during those meetings there was never any discussion about potential rules applicable to defined benefit plans. In fact, private conversations between Treasury and IRS officials and individuals in the benefits community suggested that the proposed regulations would not apply to defined benefit plans.

Consequently, it was quite a surprise when the regulations proposed last October included a completely different set of rules for combination defined benefit/defined contribution plans. It should be no surprise, however, since Treasury did not discuss these rules with the benefits industry before their issuance, that they are particularly horrendous. The preamble to the proposed regulations states the rules governing combination defined benefit/defined contribution plans are intended to prevent circumvention of the five percent minimum contribution gateway through adoption of a combination plan. If you accept the premise of a five percent minimum, then ASPA's Government Affairs Committee recognizes this intent as legitimate. But the rules proposed go well beyond this intent. Ultimately, ASPA believes these rules, if finalized in their current state, would cause businesses to abandon their defined contribution plans to the ultimate detriment of rank-and-file small business workers.

Under the proposed regulations, if a small business adopts a combination plan approach, it would not be unusual for the small business to be required to make defined contribution plan allocations between 15 to 20 percent of pay, and sometimes more. This would often triple or quadruple the cost of maintaining the defined contribution plan, and would be an unsupportable expense for most small businesses. Following is a fairly typical example of how this could happen.

Consider a plan that previously had a benefit formula of 1% of average pay per year of service. If

the plan formula is now increased to 1.5% of average pay per year of service, the impact could be significant. Consider an employee who always earned \$100,000, was born 12/31/1940 and receives service credit from 1/1/1986.

**Example:** On 12/31/2004 the accrued benefit (under the old formula) would be 19 years x 1% x 100,000, or 19,000. On 12/31/2005 the accrued benefit (under the new formula) would be 20 years x 1.5% x 100,000, or 30,000. The equivalent accrual rate would be  $(30,000 - 19,000) \times 8.41 / 100,000$ , or 93%. Because 93% exceeds 25% by 68%, the minimum aggregate allocation gateway for the combination plan would be **19%**.

It is important to emphasize that examples like this would **not** be unusual. Rather, their occurrence would be expected and, given their likelihood, consultants might advise their clients to avoid a combination plan approach given its potential excessive cost.

Typically, small businesses adopt defined benefit plans because such plans are an effective way to permit longer-service employees to catch-up with respect to their retirement savings. These longer-service employees have previously not been covered by a retirement plan because the small business has been devoting its resources to developing the business. Younger workers, on the other hand, prefer retirement benefits through a defined contribution plan because of their portability. A combination defined benefit/defined contribution plan approach allows the small business to catch-up the retirement savings of longer-service workers while providing retirement benefits



to younger workers that they appreciate.

Unfortunately, if the proposed rules applicable to combination plans are finalized, it is extremely unlikely that any small business would ever adopt a combination plan approach. Instead, the small business will adopt a stand-alone defined benefit plan that, although satisfying the needs of the longer service workers, does not address the needs of younger workers. This is particularly problematic given today's tough labor market and the need for small businesses to attract younger workers. Simply put, as a matter of retirement policy, encouraging this change in behavior makes no sense.

Instead, in its comments, ASPA has proposed an alternative that will protect against circumvention of the 5% minimum contribution gateway without discouraging the adoption of combination plans. In

general, the proposal suggests a gateway for the defined benefit plan similar to the proposed gateway for a stand-alone defined contribution plan. Employees covered only by the defined benefit plan would have to receive a minimum accrual equal to the lesser of (a) one-third of the highest accrual rate provided under the plan or (b) a 2% accrual rate. Employees covered only by the defined contribution plan would generally receive the same minimum contribution as if they were covered by a stand-alone defined contribution plan. However, in no case would these employees receive less than a 5% minimum contribution.

ASPA, along with the other small business groups in the coalition, met with Treasury in February to stress our concerns. We will also be meeting with the Bush Administration Treasury appointees as soon as they are in place. Further, we have been meeting with

key Capitol Hill staffers to make them aware of the serious problems associated with the proposed rules on combination plans.

#### **Update on 5500 Forms**

ASPA's Government Affairs Committee is very aware of the severe hardships endured by administrators last year during the protracted 5500 filing season. We are having conversations with both the Department of Labor and vendors on ways to improve the process for this year, as well as future years. We recognize the frustration you are feeling, and we are doing our best to weed through the government bureaucracy in order to make the process as fair and painless as possible. ▲

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*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.*



## **ASPA Announces...**

### **A New Educational Program and Professional Certification: Qualified 401(k) Administrator (QKA)**

ASPA is a trusted leader in the pension industry, offering education and professional credentials for actuaries (MSPA, FSPA), pension consultants (CPC), pension administrators (QPA), and other benefits professionals (APM). In an effort to meet the changing needs of the industry, we have recently added a new program that recognizes retirement plan professionals who work primarily with 401(k) and related defined contribution plans – the Qualified 401(k) Administrator (QKA).

Qualified 401(k) Administrators come from a variety of professional disciplines and assist employers

and consultants with the recordkeeping, nondiscrimination testing, and administrative aspects of 401(k) and related defined contribution plans. The QKA designation requires successful completion of five examinations (PA-1 A and B, Daily Valuation, C-1, C-2(DC)) and submission of evidence of two years' practical pension experience.

Once you successfully complete the required exams, you should submit an ASPA Designated Membership Application with two letters of recommendation and a dues payment of \$315. If you are already an ASPA member and have paid your dues for the year, no dues

payment is necessary, but you must submit a Membership Addition/Upgrade Application and two letters of recommendation.

The QKA designation is also available to all current QPAs and CPCs who take additional exams as follows: QPAs must complete the Daily Valuation exam and CPCs must complete the PA-1A, PA-1B, and Daily Valuation exams. Both the Daily Valuation and PA-1 exams are self-study exams you can take at home.

For more information, contact ASPA's membership department today at (703) 516-9300 or visit our website at [www.aspa.org](http://www.aspa.org).

## DOL Scrutinizes Plan Expenses for Settlor Functions

some circumstances, requesting service providers to supply detailed information about the nature of services. If adequate information cannot be provided, the Kansas City office asserts that the plan fiduciary has not sustained its burden of showing the expense was proper for payment with plan assets.

The Kansas City office reportedly was taking the position that the plan sponsor must bear a portion of plan related expenses if the service provided any benefit to the plan sponsor, including the benefit of good relations with employees. It has also been reported, but not confirmed, that the Kansas City office was challenging the use of plan assets to pay for benefit calculations beyond those specifically required by ERISA, including providing more than one benefit statement per year and benefit calculations under early retirement window programs. The DOL does confirm that the Kansas City office did require or permit plan qualification related expenses to be allocated 50% to the employer and 50% to the plan. The regional ini-

tiative focused on large defined benefit plans, and a number of the investigations apparently involved reimbursement to the plan by the employer. It appears that these cases were resolved without the imposition of the 20% penalty under ERISA §502(l) on amounts recovered by the DOL by settlement or court action on behalf of a plan due to a fiduciary breach. Also, none of the cases to date have resulted in litigation.

### Expansion of the Initiative

The DOL confirms that three more PWBA Regional Offices, San Francisco, New York and Atlanta, are now conducting similar plan expense investigations, but the DOL does not currently plan to expand the program further. In response to concern in the practitioner community about the initiative, senior DOL officials have asserted it is not a new policy direction or new theory of liability but only involves questions that are routinely asked by the DOL as part of a long standing enforcement issue.

The payment of expenses with plan assets is also reaching the

popular consciousness. Two recent *USA Today* articles have discussed the issue, with one focusing on the DOL settlor expense initiative and reporting that the Kansas City office investigated fee payments by 100 companies and found a 65% violation rate. Another article on the DOL initiative appeared online at *MSN Money Central*.

### Types of Expenses Under Scrutiny

Representatives of the DOL's Kansas City office have distributed at seminars several versions of a list of the types of expenses being reviewed under the program. The lists have been labeled as being for discussion purposes only and not as representing the official position of the DOL. The items on the lists are apparently presumed to be settlor expenses that cannot be paid by a plan except where there are specific references to allocation between the sponsor and the plan. One list distributed in January 2000 sets forth the following items:

1. Plan design for new plan or amendment not required to comply with ERISA (*e.g.*, cash balance redesign).
2. Expenses related to maintenance of tax-qualified status (allocated between plan and sponsor based on benefit to plan and sponsor).
3. Determination of FASB 87, 88, 106 and 112 liabilities and expenses for financial accounting purposes:
  - FASB 87 – Employers' Accounting for Pensions,
  - FASB 88 – Employers' Accounting for Settlements and Curtailments of Defined Benefit Pension Plans and for Termination Benefits,

## ASPA's Requests for Proposals

In addition to notifying members through this newsletter, all ASPA requests for proposals are posted on the ASPA Members Only part of the ASPA website ([www.aspa.org](http://www.aspa.org)). If you are interested in responding to an ASPA RFP, please check the site.

Currently, there is an RFP for the consulting editor position of *The Pension Actuary* and an RFP from Conferences for instructors of the Advanced DC workshops. These proposal responses are due at the ASPA office by February 28, 2001. These functions are compensated through the budget process. Additional RFPs will be posted as they become available.

- FASB 106 – Employers’ Accounting for Post-retirement Benefits Other Than Pensions, and
  - FASB 112 – Employers Accounting for Post-employment Benefits.
4. Determination of maximum deductible employer contribution.
  5. Study to decide to terminate plan.
  6. Analysis of assets recoverable on plan termination.
  7. Consultation on establishment and design of successor to terminated plan.
  8. Asset/liability forecasting relating to plan design or financial accounting issue.
  9. Financial forecasting – financial liability – tax implications.
  10. CAP, DOL and IRS sanctions or penalties.
  11. DOL delinquent filer program fee.
  12. Nondiscrimination testing (allocated between plan and sponsor).
  13. Developing and defining employer’s benefits/health care strategies (e.g., benefit design, employer contribution policy).
  14. Modeling the impact of proposed legal/regulatory changes on benefit plans and their administration.
  15. Preparing for and conducting union negotiations.
  16. Any expense for which an employer could reasonably be expected to bear the cost in the normal course of the employer’s business or operations.
  17. Expenses for which there is more than an incidental benefit to the employer (allocated ex-

pense to employer to the extent of the employer’s benefit).

A more recent list distributed by the Kansas City office includes an additional item for expenses associated with the outsourcing of plan administrative functions when the plan sponsor previously paid all plan expenses. This version of the list also combines items 5, 6 and 7 above into a single item for plan termination expenses. (The DOL’s Israel letter, see below, discusses the payment of termination expenses.) This later list also provides that it may not include all potential settlor type fees.

While not conceding the settlor nature of all the other expenses on the DOL list, ASPA’s GAC specifically questioned the DOL’s assertion that a portion of expenses related to maintaining plan qualification must be allocated to the plan sponsor. In particular, ASPA believed that items 2, 12 and, to some extent, 14 of the above list were appropriate for payment with plan assets. These expense items, as well as some of the others on the Kansas City office’s list, are the subject of the DOL’s new guidance, as is discussed below.

#### **ERISA Provisions on the Payment of Plan Expenses**

As an initial matter, ERISA expressly provides that plan assets can be used to pay expenses for plan administration. The key statutory provision is ERISA §403(c), which provides both that plan assets shall never inure to the benefit of an employer and that plan assets can be used for “defraying reasonable expenses of administering the plan.” ERISA §408(b)(2) further provides that it is not a prohibited transaction to pay reasonable compensation to a party in interest for “legal, accounting, or other ser-

vices necessary for the establishment or operation of the plan.” DOL Regulation §2550.408b-2(b) states that a service is necessary for the establishment or operation of a plan if the service is appropriate and helpful to the plan obtaining the service in carrying out the purposes for which the plan is established or maintained.

Neither the statutory nor the regulatory provisions of ERISA specifically cover expenses related to plan qualification. The express statutory authorization for payment of compensation for services necessary for the establishment of a plan, however, could easily be interpreted to include matters such as preparing a plan document meeting qualification requirements and the submission of an application for a determination letter. Indeed, this portion of ERISA §408(b)(2) calls into question the basic DOL position that expenses relating to the establishment of a plan, perhaps including plan design issues, cannot be paid with plan assets because of their settlor nature.

#### **Supreme Court Decisions on Settlor Functions**

There is strong support for the DOL position that certain plan related actions involve settlor type functions. In *Lockheed Corp. v. Spink*, 517 U.S. 882 (1996), the U.S. Supreme Court held that employers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate employee benefit plans and that when plan sponsors undertake those actions, they do not act as fiduciaries but are analogous to the settlors of a trust. The Supreme Court found that this rule is rooted in the text of ERISA’s definition of fiduciary because “only when fulfilling certain defined

functions, including the exercise of discretionary authority or control over plan management or administration,” does a person become a fiduciary under ERISA §3(21)(A). The Court further stated that because the functions specified in the definition of fiduciary under ERISA do not include plan design, an employer may decide to amend an employee benefit plan without being subject to fiduciary review. The Court in Spink also referenced its previous statement in Varity Corp. v. Howe, 516 U.S. 489 (1996) that “it may be true that amending or terminating a plan ... cannot be an act of plan ‘management’ or ‘administration’.”

The Supreme Court has affirmed that, as a general rule, when plan sponsors decide to create, amend or terminate a plan, they do so in their capacities as settlors, rather than as fiduciaries. In Hughes Aircraft Co. v. Jacobson, 525 U.S. 432 (1999), the Court held that, in general, an employer’s decision to amend a pension plan concerns the composition or design of the plan itself and does not implicate the employer’s fiduciary duties which consist of such actions as the administration of the plan’s assets. The Court went on to state that ERISA’s fiduciary duty requirement simply is not implicated where a plan sponsor, acting as the plan’s settlor, makes a decision regarding the form or structure of the plan such as who is entitled to receive plan benefits and in what amounts, or how such benefits are calculated.

### **Prior DOL Interpretation of Settlor Functions and Expenses**

#### *1. The Erlenborn Letter Recognizes Settlor Functions as Not Being Fiduciary in Nature*

In an Information Letter to John N. Erlenborn, dated March 13,

1986, the DOL examined questions regarding the extent to which ERISA’s fiduciary duty rules would apply to the decision to terminate a pension plan and activities undertaken pursuant to that decision. The DOL concluded that, in light of the voluntary nature of the private pension system governed by ERISA, there is a class of discretionary activities which relate to the formation, rather than the management, of plans. These so-called “settlor” functions include decisions relating to the establishment, termination and design of plans and are not fiduciary activities subject to Title I of ERISA. In prior Congressional testimony, the DOL had consistently taken the position that the decision to terminate a pension plan is a settlor, or business, activity and is therefore not subject to ERISA’s fiduciary duty requirements. The DOL further stated that, although the decision to terminate is generally not subject to the fiduciary responsibility provision of ERISA, activities undertaken to implement the termination decision are generally fiduciary in nature.

The DOL further found that the decisions whether to establish a successor plan after a termination, and if so, the type of such a plan, are clearly business decisions not subject to Title I of ERISA. As in the case of the decision to terminate, the decision to establish a successor plan involves the exercise of wholly voluntary settlor functions. Similarly, decisions about the design of any successor plan are not subject to Title I.

#### *2. The Maldonado Letter States That a Plan Cannot Pay for Services Related to Settlor Functions*

In an Information Letter to Kirk F. Maldonado, dated March

2, 1987, the DOL examined the application of ERISA to a retirement plan which specified that it could pay certain expenses incurred in the operation of the plan which included, among other expenses, attorneys fees incurred in connection with amending the plan to comply with legislative, case law and regulatory developments. The DOL was asked whether the expenses authorized by the plan constituted “expenses of administering the plan” within the meaning of ERISA. Because the inquiry involved factual considerations with respect to which the DOL will not provide an opinion, the letter provided only general guidance with respect to the issues raised in the request.

The DOL stated that the use of plan assets to pay fees and expenses incurred in connection with the provision of services would not be a reasonable expense of administering a plan if the payments are made for the employer’s benefit or involve services for which an employer could reasonably be expected to bear the cost in the normal course of such employer’s business or operations. The DOL further stated that, in this regard, certain services provided in conjunction with the establishment, termination and design of plans, so called “settlor” functions, relate to the business activities of an employer and, therefore, generally would not be the proper subject of payment by an employee benefit plan.

#### *3. The Israel Letter Requires Allocation for Termination Expenses Related to Plan Qualification*

The only precedent known to the author for DOL’s original position in its settlor expense initiative, that expenses related to the maintenance of the tax-qualified

status of a plan must be allocated between the employer and the plan, is an advisory opinion of the DOL itself. DOL Opinion Letter 97-03A, addressed to Samuel Israel, concerns the application of ERISA to the payment of certain plan termination expenses by qualified retirement plans administered by the Insurance Commissioner of the State of California in its capacity as liquidator of insolvent companies which sponsored the plans. On occasion, the Commissioner takes over insolvent insurance companies that have tax-qualified pension or profit sharing plans, where the insurance companies themselves are no longer operating and have terminated employment of all their employees. Frequently, plan participants request that the Commissioner take all necessary steps to terminate the plans and distribute their benefits.

In connection with terminating a plan, the Commissioner engages outside legal counsel and pension administration firms to (i) amend the plan to comply with legislative case law and regulatory developments; (ii) audit the plan where applicable; (iii) prepare and file annual statements; (iv) prepare benefit statements and calculate accrued benefits; (v) notify participants and beneficiaries of their benefits under the plan; and (vi)

seek a determination letter from the IRS concerning the status of the plan in connection with its termination. The applicant inquired of the DOL whether the various fees and expenses for services engaged by the Commissioner in connection with terminating a plan would be appropriate for payment by the plan.

The DOL noted its position that there is a class of discretionary activities which relate to the formation, rather than the management, of plans and that these settlor functions include decisions relating to the establishment, design and termination of plans and, except in the context of multiemployer plans, generally are not fiduciary activities under ERISA (citing the Erlenborn letter). The DOL further noted that expenses incurred in connection with the performance of settlor functions would not be reasonable plan expenses as they would be incurred for the benefit of the employer and would involve services for which an employer could reasonably be expected to bear the cost in the normal course of its business or operations (citing the Maldonado letter).

The DOL further stated that, while the decision to terminate a plan is a settlor function, activities undertaken to implement the plan termination decision are gen-

erally fiduciary in nature. Accordingly, reasonable expenses incurred in implementing a plan termination would generally be payable by the plan. This would include expenses incurred in auditing the plan, preparing and filing annual reports, preparing benefit statements and calculating accrued benefits, notifying participants and beneficiaries of their benefits under the plan, and, in certain circumstances, amending the plan to effectuate an orderly termination that benefits the participants and beneficiaries.

With regard to expenses attendant to amending a plan to maintain its tax-qualified status and to obtaining a determination from the IRS concerning the status of the plan in connection with termination, the DOL stated in the Israel letter that, while ensuring the tax-qualified status of a plan confers significant benefits on the plan sponsor, maintenance of tax-qualified status may also be in the interest of plan participants. In the case of a plan that was intended to be maintained as a tax-qualified plan and that permits the payment of reasonable expenses from the assets of the plan, the DOL stated its view that a portion of the expenses attendant to these activities may constitute reasonable expenses of the plan. The DOL further asserted that where there are benefits to be derived by both the plan sponsor and the plan, and where the plan sponsor is acting in both a settlor and a fiduciary capacity on behalf of the plan's participants and beneficiaries, it would generally be necessary, in order to avoid violations of ERISA sections 406(b)(1) and 406(b)(2), to have an independent fiduciary determine how to allocate the expenses attributable to those benefits.

## **ATTENTION ASPA EXAM CANDIDATES!**

Early Registration Deadline for Spring 2001: March 15

Due to the new "windowed" exams, administered in a "window" from April 15 to May 31, the early registration deadline is March 15. Late registration continues until April 30, when all exam registrations for this spring must be received in the ASPA office.

For more information, contact ASPA at (703) 516-9300 or [educaspa@aspa.org](mailto:educaspa@aspa.org) and request a 2001 Program Catalog, or visit our website at [www.aspa.org](http://www.aspa.org).

The only guidance provided by the DOL in the Israel letter as to how to allocate plan qualification expenses between the plan sponsor and the plan was the statement that the amount payable by a plan is to be in proportion to the benefit conferred on the plan relative to the benefit conferred on the plan sponsor. The letter does not specify the benefits considered to be received by the plan sponsor nor does it specify the benefits received by plan participants. The Israel letter does state that the use of plan assets alone to terminate a plan, and to maintain its tax-qualified status as terminated, may be consistent with ERISA if the plan sponsor has no assets to be subject to claims of the IRS that would result from disqualification of the plan and, therefore, any benefit conferred by maintaining the tax-qualified status of the terminating plan would inure only to the plan participants. This statement indicates that the main benefit the DOL believed is received by the sponsor of a qualified plan is not having to pay taxes that would be incurred by the employer if the plan were to be disqualified.

#### **Analysis of the DOL's Original Position on Plan Qualification Expenses**

The author believes that the DOL's analysis behind its original assertion that plan qualification expenses must be allocated between the employer and the plan was subject to question on several grounds. A review of the tax effects of plan disqualification shows weaknesses in the DOL's position in the Israel letter that a plan sponsor inherently receives a benefit from the qualification of a plan by avoiding payment of taxes to the IRS that would be in-

curred upon plan disqualification. The only tax impact of disqualification that directly impacts an employer sponsoring a plan is the potential loss of a tax deduction for the contributions made to the plan. An employer, however, will generally lose its deduction only to the extent that contributions to the plan are not fully vested for participants. The other negative tax aspects of plan disqualification – the current taxation of vested contributions to plan participants and, at least as to defined contribution plans, taxation of plan trust earnings – fall solely upon plan participants. An additional nega-

tive tax impact of plan disqualification, the inability of a participant to roll over an eligible distribution into an individual retirement account or another qualified plan, also solely affects plan participants.

The position of the DOL in the Kansas City initiative concerning plan qualification expenses also failed to take adequately into account the fiduciary aspects of maintaining plan qualification. Even in the Israel letter, the DOL stated that expenses incurred in undertaking fiduciary aspects of plan administration, such as the implementation of a settlor decision to terminate a plan, can be paid with plan assets. A DOL Information Letter to Gary Henderson, dated July 28, 1998, states that, as a general rule, reasonable expenses of administering

a plan include direct expenses properly and actually incurred in the performance of a fiduciary's duties to the plan.

ERISA §404 requires that a fiduciary act with the care, skill, prudence and diligence that a prudent person acting in a like capacity and in similar circumstances would use. The author believes that the prudent person rule of ERISA requires the fiduciary of a plan that is intended to be tax-qualified to, in general, maintain the tax-qualification of the plan. Indeed, this was the specific holding in the case of Wright v. Nimmons, 641 F. Supp. 1391 (S.D. Texas 1986), in

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## **On January 18, 2001, the PWBA issued both Advisory Opinion 2001-01A,... and a related set of hypothetical fact patterns concerning a variety of plan expense issues.**

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which the court found that a plan fiduciary violated the prudent person standard under ERISA §404(a) by his grossly negligent conduct, in failing to respond to IRS requests and in failing to bring the plans into compliance with IRS requirements, which directly caused the plan's loss of qualified status. Specifically, the fiduciary in Wright failed to restate the plan document to comply with the changes enacted by ERISA and failed to comply with a request by the IRS for corrective amendments and data necessary to entitle the plan to relief under the IRS's former ENCEP program, which was designed to permit the IRS to qualify a plan retroactively. The holding in Wright is based on fiduciary duty under ERISA §404 and is distinguishable from cases such as Reklau v. Merchants National

Bank, 808 F.2d 628 (7 Cir. 1986) which hold that a plan participant does not have a cause of action to enforce Internal Revenue Code §401.

If the ERISA duty of prudence requires that a fiduciary operate a plan intended to be tax-qualified so that it remains qualified, then the expenses of doing so are fiduciary, rather than settlor, in nature and can be paid with plan assets under the DOL's analysis in the Israel and Henderson letters.

Many qualified retirement plan documents contain statements to the effect that the employer intends the plan to be tax-qualified and that the plan shall be administered and interpreted to meet the requirements for qualification under the Internal Revenue Code. A plan document may also provide that any modification or amendment of the plan shall be made if necessary or appropriate to maintain tax qualification. In these situations, the plan sponsor has made a plan design decision that the plan will be qualified and will be administered so as to remain qualified, including any amendments necessary to comply with changes in the law. While this decision may be of a settlor nature, action taken to implement that decision is fiduciary in nature and the cost of that action is appropriate for payment from plan assets. Such an analysis is consistent with the Israel letter in which the DOL states that, even though the decision to terminate a plan is a settlor function, actions undertaken to implement the termination of the plan are fiduciary in nature and can be paid with plan assets. In addition, ERISA §404(a)(1)(D) requires that a plan fiduciary act in accordance with the documents and instruments governing the plan to the extent they are consistent with ERISA. If

the plan document directs the fiduciaries to administer the plan so as to maintain tax qualification, including making necessary amendments, then a fiduciary's duty to act in accordance with the plan documents requires the fiduciary to administer the plan so as to remain qualified. Again, actions to carry out this duty are fiduciary and not settlor in nature, and the costs of such action should be eligible for payment with plan assets. This analysis is consistent with the Henderson letter which says that plan assets can be used to procure services that are "a helpful and prudent means of carrying out ... fiduciary duties, including the duty under ERISA 404(a)(1)(D) to operate the plan in accordance with its terms."

#### **DOL Issues New Guidance on Plan Qualification Expenses**

On January 18, 2001, the PWBA issued both Advisory Opinion 2001-01A, which was a letter addressed to Carl J. Stoney, Jr., and a related set of hypothetical fact patterns concerning a variety of plan expense issues. The DOL says the guidance was issued to answer questions that have been raised during the recent settlor expense initiative concerning the extent to which a plan may pay costs attendant to maintaining qualification. The letter is intended to clarify the views of the DOL and to respond to what the DOL calls a "misunderstanding" regarding its opinions on plan expenses.

The DOL begins the Stoney letter by repeating its long-standing position that expenses incurred in connection with settlor functions, including decisions relating to the establishment, design and termination of plans, are not reasonable expenses of a plan as they

are for the benefit of the employer and involve services for which an employer could reasonably be expected to pay in the normal course of business. The DOL then distinguishes direct expenses incurred in the performance of a fiduciary's duties to a plan, which are proper for payment by the plan, from expenses related to settlor functions which, except in the context of multiemployer plans, are not fiduciary activities governed by ERISA. The DOL also notes that reasonable expenses incurred in connection with the implementation of a settlor decision are generally payable by a plan. The DOL next states its view that the Israel letter has been misinterpreted as requiring an apportionment between the plan and plan sponsor of all tax qualification related expenses.

As discussed above, the Israel letter took the position, without, in the opinion of ASPA, any prior authority, that only "a portion" of plan qualification expenses may constitute reasonable expenses of the plan because the tax-qualified status of a plan confers benefits upon both the plan sponsor and the plan. Based on the Israel letter, the PWBA's Kansas City office, in the settlor fee initiative, had been requiring that plan qualification expenses be allocated 50% to the employer and 50% to the plan.

In what is actually a rewriting, rather than a clarification, of the Israel letter, the DOL now states in the Stoney letter that it believes a fiduciary does not have to take into account the benefit a plan's tax-qualified status confers on the employer. The DOL's new opinion is that the benefits to the employer of tax qualification should be viewed as an integral component of the

incidental benefits received by a plan sponsor from offering a plan. The DOL acknowledges the Supreme Court has specifically held that it is permissible for plan sponsors to receive incidental benefits, such as attracting and retaining employees, by virtue of offering an employee benefit plan. The Stoney letter further states that the mere receipt of such benefits by plan sponsors does not convert a settlor activity into a fiduciary activity or convert an otherwise permissible plan expense into a settlor expense.

The DOL continues to assert that the formation of a plan as a tax-qualified plan is a settlor activity for which a plan may not pay, but the Stoney letter now recognizes that implementation of a settlor decision to have a tax-qualified plan may require plan fiduciaries to undertake activities to maintain the plan's tax-qualified status for which the plan may pay expenses, so long as they are reasonable in light of the services rendered. The Stoney letter specifically states that implementation activities payable by a plan might include drafting plan amendments required by changes in the tax law, nondiscrimination testing, and requesting IRS determination letters, which are the same qualification related expenses that were identified on lists distributed by the Kansas City office as requiring allocation between the plan and the employer. The Stoney letter goes on to assert, however, that expenses incurred in analyzing the options for amending a plan to maintain tax qualification, from which the plan sponsor makes a choice, are settlor expenses.

#### **Analysis of the DOL Factual Examples on Plan Expenses**

Accompanying the Stoney letter, the DOL issued six hypotheti-

cal fact patterns in an effort to address frequently raised questions. The examples present the DOL's view on the payment of plan related expenses in the following fact settings: (1) the sale of a business segment and transfer of plan assets; (2) a reduction in force with a defined benefit plan early retirement window program; (3) the amendment of a plan to comply with tax law changes and to add a participant loan program followed by a request for a determination letter; (4) the analysis of options for qualification compliance amendments, nondiscrimination testing and an amendment to comply with Title I of ERISA; (5) the distribution of individual benefit statements and preparation of an overall benefit description booklet; and (6) the outsourcing of plan administration.

A review of the factual hypotheticals provides some guiding principles of the DOL and specific expense determinations as follows:

1. Plan design expenses, such as plan design studies and projections of the financial impact of a plan change on the plan sponsor, are settlor expenses that cannot be paid with plan assets.
2. The costs of activities that take place in advance of a plan change, or in preparation for a plan change, such as union negotiations, benefit studies and actuarial analyses, are normally settlor expenses.
3. The costs of analyzing a plan sponsor's options for compliance with changes required by the law are plan design/settlor expenses.
4. Activities undertaken to implement a settlor decision, including those done after a plan amendment, are fiduciary in

nature and the costs of such implementation activities are permissible plan expenses.

5. The costs of plan administrative functions, such as calculating the actual benefits to which participants are entitled under a plan, are permissible plan expenses.
6. When a plan is intended by the plan sponsor to be maintained as a tax-qualified plan, plan amendments to comply with tax law changes are permissible plan expenses.
7. The costs of obtaining an Internal Revenue Service determination letter are permissible plan expenses as an implementation activity.
8. The costs of nondiscrimination testing are permissible plan expenses, unless the testing is a plan design expense incurred in advance of a plan change.
9. The costs of amending a plan to comply with Title I of ERISA, or other applicable federal laws, are permissible plan expenses as a fiduciary is obligated to ensure that the administration of a plan complies with the law.
10. The costs of complying with ERISA's disclosure requirements (such as furnishing and distributing summary plan descriptions, summary annual reports and individual benefit statements provided in response to individual requests) are permissible plan expenses.
11. The costs of communicating plan information, including information beyond that specifically required by ERISA, are normally permissible plan expenses and plan administrators and fiduciaries are to be



afforded substantial latitude in the method and style of their communications.

12. When expenses proper for plan payment are incurred jointly by more than one plan, each plan must pay its proportionate share of the expenses.
13. A plan amendment providing for the spin-off of plan assets in a corporate transaction is a plan design/settlor expense but the costs of determining plan assets to be transferred following the decision to spin off a portion of a plan are permissible plan expenses as implementation activities.
14. A plan amendment to establish an early retirement window program is a plan design/settlor expense, but the costs of communicating information on the program to participants and the costs of calculating the benefits for those electing the program are normally permissible plan expenses as implementation activities.

15. A plan amendment to add a participant loan program is a plan design/settlor expense but the costs of operating the loan program once it is established are permissible plan expenses as implementation activities.

16. Expenses for FASB Statement compliance are settlor expenses.

17. Start up fees and ongoing administrative fees incurred with respect to outsourcing plan administration are permissible plan expenses to the extent they are necessary for the administration of the plan.

### Practical Implications and Conclusion

The new DOL analysis of plan expenses properly focuses on whether the activity involved is settlor or fiduciary in nature and ignores any incidental benefit received by the plan sponsor. As acknowledged by the DOL in the Stoney letter, the Supreme Court held in both the Spink and

Jacobson cases (see above) that it is permissible under ERISA, and is not a prohibited transaction, for an employer to receive incidental benefits, such as attracting and retaining employees, from the use of plan assets in accordance with the terms of the plan. Although the DOL has backed off from its aggressive position on plan qualification expenses, ASPA's GAC will monitor any further DOL activities regarding plan expenses and will make sure that ASPA's concerns continue to be understood.

In light of the increased scrutiny by the DOL, plan sponsors, fiduciaries and service providers may want to assess their policies and procedures concerning the payment of expenses with plan assets. One practical step that service providers can take to assist their clients is to provide a clear allocation on invoices for the costs of the different services provided. Particular attention should be paid to identifying costs related to the establishment, amendment and termination of plans, the settlor func-

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tions, as well as the costs of implementing such actions which may be permissible for payment by the plan. The DOL's hypothetical examples on plan expenses, and the analysis provided above, provide substantial guidance as to which expenses are permissible, in the view of the DOL, for payment with plan assets. Because of the DOL's recent pronouncement that plan qualification expenses can be paid with plan assets, service providers should also provide their clients with specific information as to qualification costs. One of the DOL's examples on plan expenses sets forth a situation where a single

prohibited transaction issues involved. In evaluating the payment by a plan of any particular expense, a fiduciary must first examine the language of the plan documents. If the expense is permitted under the terms of the plan documents, then the fiduciary must determine whether payment of the expense with plan assets would be consistent with ERISA, including whether the amount being paid is reasonable with respect to the value of the services received. Plan fiduciaries must be able to explain their decisions concerning payment of expenses and document the costs involved.

fiduciaries should inform themselves of the rules in this area, use procedural prudence in the payment of expenses and be able to document the basis for their decisions. ▲

Editor's Note: Please refer to ASPA ASAPs 2000-42 and 2001-04 for more details on these issues.

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## Although service providers are best able to provide information on the nature of their services, the decision whether an expense is appropriate for payment with plan assets is a fiduciary action.

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charge is made for expenses for both plan design/settlor activities (amending a plan to establish an early retirement window) and implementation activities (obtaining an IRS determination letter). The DOL states that the plan fiduciary would be required to obtain from the service provider a determination of the specific expenses attributable to the fiduciary's implementation responsibilities, in obtaining an IRS determination letter, prior to payment by the plan.

Although service providers are best able to provide information on the nature of their services, the decision whether an expense is appropriate for payment with plan assets is a fiduciary action. Clients who ask which expenses can be paid from plan assets should be advised to consult their attorney because of the fiduciary and

Even though the use of plan assets to pay expenses is initially a fiduciary issue, the improper receipt of plan assets by a service provider in payment of its fees can create problems for the service provider. Under the recent decision by the Supreme Court in Harris Trust & Savings Bank v. Salomon Smith Barney, Inc., 530 U.S. 238 (2000), nonfiduciary parties in interest with respect to a plan, such as service providers, who participate in a prohibited transaction are subject to suit under ERISA. The excise tax for a prohibited transaction may also fall on the party, such as a service provider, who is involved in the transaction with the plan.

With the DOL focusing on plan expenses, and with the potential for participant claims based upon plan expenditures, plan sponsors and

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

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A special thanks to all of you who took the time to complete *The Pension Actuary* survey that was in the last issue. Watch for articles on many of the topics you asked for in upcoming issues!

## Registration Process for 2001 "Windowed" Exams

**The C-1, C-2(DB), and C-2(DC) Exam Window is April 15-May 31.**

Registration deadlines are quickly approaching for spring 2001 exams. The early registration deadline is March 15; the late registration deadline is April 30.

Candidates registering for the C-1, C-2(DB), and/or C-2(DC) exams will continue to submit their registration forms to the ASPA office. **Please note: Your registration form must be completed to reflect the same name format as that listed on the form of ID you will be using at the Prometric Testing Center.** Any variations in name format between the registration name and ID name will result in cancellation, without refund, of the exam.

After the registration form is processed, the candidate will receive a confirmation letter from ASPA. This confirmation letter will include information on how to proceed with scheduling the exam date, time, and location. Candidates will call the Prometric

Candidate Services Call Center directly to schedule an appointment. **Testing locations fill up quickly. It is in the candidate's best interest to schedule examinations as soon as possible to ensure the best selection of dates and times. The ASPA staff cannot assist with scheduling examinations.**

To change the date, time, or location of your appointment within the testing window, notify the Prometric Testing Center where your appointment is scheduled.

If you are unable to take an examination within the window (April 15-May 31), it may be postponed to another testing window. You must then cancel the existing appointment with Prometric and submit an Examination Postponement Form to ASPA by the deadline date. Examination Postponement Forms may be found in the *ASPA 2001 Education & Examination Program Catalog* or on the ASPA website ([www.aspa.org](http://www.aspa.org)).

ASPA examination fees are nonrefundable.

## ASPA Membership Benefit

All active members of ASPA can now subscribe to the BNA online publication, *Pension & Benefits Daily*, at a 30% discount.

*Pension & Benefits Daily* links news reports to full source documents to help you find official answers and solutions even faster. Subscribers will receive daily e-mail highlights that link instantly to the full text of any *Pension & Benefits Daily* article.

This online publication is a resource for news reports, source documents, and expert analysis covering the following: IRS, Labor Department, and Pension and Benefit Guaranty Corporation rules and regulations; coverage of age discrimination, multi-employer plans, executive compensation, health cost containment, and collective bargaining; announcements, notices, letters, and rulings concerning employee benefit matters; and full text decisions.

For more information or to subscribe, contact BNA Customer Relations at (800) 372-1033. Identify yourself as an ASPA member and provide the ASPA discount code: **ASPA901**.

## Form 5500 for 2000 Webcast – March 16, 2001

12:00 p.m. – 1:40 p.m. Eastern  
11:00 a.m. – 12:40 p.m. Central  
10:00 a.m. – 11:40 a.m. Mountain  
9:00 a.m. – 10:40 a.m. Pacific

ASPA opens the 2001 Webcasting Series with "Form 5500 for 2000," presented by Janice M. Wegesin, CPC, QPA. Utilizing your web browser and phone, learn about the latest developments with the 5500 forms.

This webcast will cover changes to the way the forms are produced and sent to EFAST, as well as changes to the instructions on the forms and schedules. Also covered will be the processing status of the 1999 forms, the DOL small plan audit rule that takes effect April 17, and ways to handle letters from the DOL. You can even forward questions to the speaker prior to the webcast, helping to shape the content!

To find out more about the "Form 5500 for 2000" webcast, check out [www.aspa.org/webcast/](http://www.aspa.org/webcast/). Prepare for the new 5500s now by attending this popular webcast.



## Presidential Year in Review

such things as conference and exam registration and web access to your individual information such as continuing education credits, etc. Thanks to Jane Grimm for her stellar efforts and, as a matter of fact, for all her efforts in her position as Administrative Director at the National Office.

### Technology

- ASPA's website continues to grow in both information and usefulness thanks to Chip Chabot, Webmaster, at the National Office, and Technology Committee Chair Mike Bain. We now have well over 1,000 pages of useful information on that site.
- We added a Government Affairs Action Page to assist you in communicating with your Congressional representatives and other government officials.
- For the second year, the CD-ROM is now the primary source of Annual Conference information, and this year we had 100% participation from the speakers!
- This year we had two successful 5500 webcasts (with a few technical bumps in the road), reaching 750 sites (who knows exactly how many people). Many more are planned for 2001.

### Government Affairs (GAC)

The Government Affairs Committee, co-chaired by Bruce Ashton, APM, Craig Hoffman, APM, and Brad Huss, APM, along with Brian Graff, our Executive Director, has been extremely active this past year and continues to be active. Some of the issue include:

- Cash Balance Plans.
- New Comparability/Cross Testing Regulations.
- Investment Policy Issues.
- October 19, the DOL issued final regulations proscribing rules for exempting small business retirement plans from a full scope audit requirement.
- Pension Reform Bill.
- The list of the accomplishments and the energy of this group goes on and on. Thanks to the Co-Chairs, Brian, the Senior Advisors, the subcommittee chairs, and the many dedicated committee members.

### Political Action Committee (PAC)

- With a slow start of a few thousand dollars, we now have over \$50,000 in the bank.
- PAC Report was sent several times this year to all contributors.
- Our success on the Hill is aided by the existence of this now successful PAC.

Thanks Karen Jordan, CPC, QPA, and committee members.

### Conferences

- Thanks to Steven Dobrow for the outstanding job he has done as our Conference General Chair. His tenacious energy continues to have wonderful results with the Summer Academy, the BLC, Great Lakes TE/GE Conference, Northeast Key District Employee Benefits Conference, and the LA Benefits Conference, along with numerous workshops. And some new ones are being added. Stay tuned.

Special thanks also to Beverly Haslauer, CPC, QPA, Janet

Eisenberg, MSPA, and Maureen Thomas, APM, for this year's outstanding Annual Conference attracting over 1,500 attendees.

### Interprofessional Relationships

- At the October Board of Directors meeting, we approved a revised uniform Code of Professional Conduct for all U.S. based actuarial organizations to provide a consistent code between the organizations, to avoid potential conflicts for actuaries.
- As you are perhaps aware, we are working with the Conference of Consulting Actuaries (CCA) on a survey of 8,000 actuaries. It is designed to elicit input in assessing the training needs of our actuaries in the consulting area. If a need is ascertained, the goal will be to work with the CCA to fill this area of training.
- During this past year, we established a Relationship Task Force chaired by Steve Rosen, MSPA, to look at how we could better interact with other related professional societies. The purposes are many, including avoidance of duplicative efforts, potentially expanding other services to our members, offering our services to an even greater number of professionals, etc. This is a new world of alliances, and so it is with ASPA.
- The task force of Cooperative Activities was formed with the CCA.
- ASPA ASAPs are now available to ABC and CCA Members.
- The Business Leaders Conference will be co-sponsored this year by ASPA and the CCA.
- We will be working with the Society of Actuaries on continuing education credits in the retirement area for both their members and ours.

## Governance Task Force

- A Governance Task Force headed by Karen Jordan, CPC, QPA, was created this year to look at how we govern ourselves. In this time of rapid change and accelerated technological advancement, it is important to be certain that the methodology by which we lead, appoint our leaders, and make decisions is still valid. They may still be okay, but it's good to take a look now and then.

## The Future

What does the future hold? Well, of course, I don't really know, but what is certain is that the speed of change will continue and will probably accelerate. It has been only the last 25 or so years that computers have truly changed the way we live. They will continue to have a dramatic impact on our personal and business lives, including our retirement profession. One technological development currently underway will perhaps illustrate this concept.

There is a recent concept called Data or Account Aggregation. Right now, you can go to a website and find your 401(k) account balances. Depending upon your particular bank, you might be able to look up your checking and savings account balances and perhaps even pay your bills over the Internet. You get your frequent flyer miles by visiting your favorite airline's website. Underway

now is a push to make this information available under one web portal. You go to one place to find it all. Your 401(k), IRA, your mortgage balance, your personal stock and bond accounts, checking, savings, awards programs, your Defined Benefit Statement, your company's overall benefit statement, perhaps even your medical history. Account Aggregation is not very far off. The concept of Screen Scraping, the early methodology by which this was accomplished, is under refinement. Right on the heels of having this data available at one portal over the Internet will be the ability to receive it on your cell phone or Palm Pilot. (Not sure of the practical value here, but it's coming.)

The possibilities and uses are mind-boggling. But what is the impact on you, the ASPA professional, and what does ASPA need to do for you? The answers are direct in both cases. You need to adapt and form alliances. One major financial institution will be spending \$1.8 billion this year alone on technology. Individually, we cannot duplicate that effort, but collaboratively and through associations, we can utilize the efforts in a manner where everyone can win. ASPA needs to continue to provide for you a forum through which you can stay informed and meet the demands of the changing marketplace. Secondly, ASPA needs to continue to educate the benefits professional, and

to preserve and enhance, through our Government Affairs activities, the private pension system as part of the development of a cohesive and coherent national retirement income policy. If that sounds familiar, that's because it is part of our Mission Statement.

I became a member of ASPA about a quarter century ago. At that time there were a few hundred members struggling with a multitude of issues, not the least of which was existence. The challenges continue, but the mission is better defined and now recognized by government and industry players. We stand on the shores of a vast economic and technological future alive with opportunity. ASPA has always taken the high road; let us continue to do so as we weave our way through the changing landscape of retirement plans in this country. ▲

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*John P. Parks, MSPA, EA, is president of MMC&P Retirement Benefit Services in Pittsburgh, PA. Mr. Parks also serves as a client consultant and is an Enrolled Actuary with 34 years of experience in the actuarial and employee benefit field. He is currently ASPA's Immediate Past President. He has also served as ASPA's Treasurer and was Chair of the Technology Committee when the new website ([www.aspa.org](http://www.aspa.org)) was designed and implemented.*

## The Future is Coming... and You Need to be Ready!

Starting April 1, ASPA's website will be changing and growing. Taking advantage of the latest web technologies, you will be able to do more than ever before on ASPA's website.

However, to take advantage of the new features, you will need to have the latest generation of

browsers. Make sure that you are using at least a fourth generation web browser, such as Netscape Navigator version 4 or Internet Explorer version 4.

To learn more, visit [www.aspa.org](http://www.aspa.org). If you are using an older browser, you will see a



warning window advising you to upgrade your browser to a newer version. Take the time to install these free upgrades now so you won't miss a thing.

The future is coming – get ready now!



## More Visibility = More Business

- Develop and maintain a look and/or theme that will be readily identified with your business.
- Include your web address in all your advertising.
- Use the same ad repeatedly to increase recognition and keep costs down.
- Hire the best talent you can find to create the ad. It's better to have one excellent ad than several mediocre ones.

**Key:** Create a simple, dramatic, clear ad and use it repeatedly.

### Program Booklet Advertising

If you need a tool for cost-effective and efficient advertising, consider a program booklet advertising campaign. This means advertising your plan services in the program booklets of your community's cultural, scholastic, athletic and charitable events that are attended by the business owners and advisors you want to target.

Why program booklets? Because they offer you a high-end, captive audience. To understand *captive*, think about your situation when you go to local symphony, theater, athletic or fund-raising events. You get there early to get a good seat or because your spouse doesn't want to be late, so you are sitting there well ahead of the event.

What do you do when you get there? You wiggle, look around, nod to your friends, and then you read the program. You look to see which of the donors and contributors you know. You look at the ads. Ah . . . that's it, you see. Advertising in program booklets gives you a focused and captive audience,

and that's very unusual in today's advertising world.

Now, don't expect the phone to ring because of this or any other advertising. It won't necessarily happen. Rather, consider program advertising a marketing tool to publicize your skills and services with the attendees. Use it to develop name recognition and a positive perception of your firm as a contributor to community events. The board and committee members responsible for the event are often the money movers and shakers of the community. Use program advertising to increase your visibility with them.

### Creating a Website

The newest advertising and visibility challenge is that of the Internet. Just a year ago most local retirement service providers weren't thinking about putting up web pages about their services. Today, you're probably asked for your URL or e-mail address as often as you are asked for a company brochure.

You need to stay with or ahead of this cyberspace curve. Having a website not only improves your credibility, but also shows that you have a contemporary and up-to-date practice. A website allows prospects to gather information about you and your services anonymously and at their convenience.

Start paying attention to the websites of other local businesses. Find several that you really like and find out who created them. Contact these designers for their advice, ideas and help. Hire the designer who can best understand, portray and promote your business. Start the process of developing your company's website as soon as you possibly can. As you work with the design of your website, remember that it should:

- Be professionally designed.
- Load quickly.
- Be interesting, fun, clear and uncluttered.
- Offer useful information.
- Have your contact information (e-mail, phone, fax, address) on every page.
- Be updated at least monthly to encourage return visits.



- Be checked regularly to be sure that all of the buttons and links are working.

### Your Next Steps

As you start this year, take the time to carefully review your financial and sales data from the previous year. With this data, project revenues and establish specific billing and business goals for 2001. Develop a detailed marketing plan to achieve these goals. As part of your marketing analysis and planning, determine how you will advertise your business and its services over the next 12 months. Pay attention to program booklet advertising and start developing a company website. Plan and execute a 12-month print campaign to become more visible and known within your community and target market, or as put in even simpler terms by Ted Turner, "Early to bed. Early to rise. Work like hell and advertise."

### About the (k)artoon

(k)arl, the prospecting pro who turns up in the most amazing places, is a featured character at [www.benefitsmarketing.com](http://www.benefitsmarketing.com). You're invited to follow him on a new marketing adventure each month. ▲

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*Catherine N.H. Lewis, Principal of Benefit Services in Santa Fe, NM, and principal of Benefits Consortium, is a management and marketing consultant to the retirement plan industry. She has more than 20 years of experience in the employee benefits field and since 1985 has authored 13 plan training and marketing books. This article is partially excerpted from her newest book, The Plan Sales System: a blueprint for building your 401(k) and retirement plan business, currently available from Benefit Services and at [www.benefitsmarketing.com](http://www.benefitsmarketing.com).*

## IMPORTANT ASPA CE ANNOUNCEMENT!

Effective for the Current 2001-2002 Cycle

**All ASPA Members are Required to Meet ASPA CE Requirements.**

Dear Credentialed Member,

As a professional society, ASPA emphasizes the importance of the continuing professional and educational development of all its members. To this end, in July 2000, ASPA's Board of Directors voted that beginning with the 2001-2002 Continuing Education (CE) cycle, all ASPA designated members will be required to comply with ASPA CE requirements.

While you may have met ASPA's CE requirements on a voluntary basis, the requirements have not been mandatory for credentialed members who received their designation(s) prior to 1990. On January 1, 2001, all credentialed members will need to begin accumulating CE for the 2001-2002 cycle, regardless of when they received their designation(s). All designated members will be required to submit a 2001-2002 CE reporting form in January 2003 showing that they have earned at least 40 continuing education credits for the two-year cycle.\*

There are numerous ways in which to meet ASPA CE requirements, including attending ASPA conferences and taking ASPA exams. You can also obtain CE credits through non-ASPA seminars and exams, in-house training, study groups, instructing a course, or by speaking at any professional meeting. Acceptable subject matter includes anything pension/retirement plan related.

For more detailed information about how to earn ASPA CE credit, please refer to the CE reporting forms and guidelines in the CE section of the *2000 ASPA Yearbook* or visit our website at [www.aspa.org](http://www.aspa.org). You will receive the guidelines for the 2001-2002 cycle as soon as they are printed.

We thank you for your efforts to maintain your professional designation. We encourage you to contact us with any questions or concerns. For more information about ASPA's CE program, please contact ASPA's membership department at (703) 516-9300.

\* *Enrolled actuaries with "Active" Joint Board status automatically meet ASPA's CE requirements and only need to provide an enrollment number. Additionally, those who qualify for "Retired" status can request to have CE requirements waived.*

Sincerely,

Cathy Green, CPC, QPA, CE Committee Co-Chair  
Marissa Pietschker, QPA, CE Committee Co-Chair

## The Changing Face of Plan Administration

service providers imply that all of a plan's needs can be met through a single service or service provider. It is critical that a plan sponsor understand exactly what tasks will be performed by whom, even when a bundled provider is being used. Many bundled providers are large enough to offer a full spectrum of retirement planning professionals as a part of their services. Other providers, especially many of the new online providers, have significantly streamlined many of the tasks to be performed annually. This streamlining and recognizing economies of scale in certain circumstances can result in significant cost savings benefiting the plan sponsor. On the other hand, if the overall operation of a plan is not carefully monitored on an annual basis, this streamlining and cost saving can become more costly in the long run. While ERISA charges fiduciaries with minimizing fees and expenses, this cannot be done at the expense of the plan's overall operation. Ideally, providing a service agreement identifying what tasks will be performed and, in addition, outlining what significant tasks *will not* be performed, will help alert the plan sponsor to fill in any specific gaps.

Plan administration is a daunting task, and in no way can one presume that complete administration will be successfully performed simply by downloading some census data and pushing a few buttons. Qualified plans operate in a highly technical environment. Compliance and reporting is not just a matter of ferreting out details. Missing information is as important as the information provided. Almost any error, no mat-

ter how insignificant, can result in the plan sponsor having to spend a significant amount of time and money to correct the problem. The longer the problem goes undetected, the more time and money it will cost to fix. **Pension professionals make a point of understanding every plan and every plan sponsor.** They are trained to ask the right questions. Plans and plan sponsors may look a lot alike, but each has unique demographics and issues that significantly affect the overall operation of each plan. Care and attention to seemingly irrelevant details can keep a plan qualified and keep a plan sponsor from being sued. One of the important tasks a pension professional takes very seriously is the review of data. Dates of hire, dates of termination, salaries and deferral rates are all very important. Inaccurate or incomplete data can give false results.

The systematic evaluation and annual review of a plan done by a pension professional, as a part of the annual administration process, can catch potential problems before they become significant and can allow for the timely correction of any mistakes which have occurred. While both the IRS and DOL offer compliance programs where plan defects can be fixed, the availability of these programs is contingent to a large extent on self discovery and early correction.

Expertise is also required on the investment side of the plan's operation. The plan sponsor is a fiduciary, and as such, is ultimately responsible for the overall investment of the plan. Today's investment culture is complicated, and a road map is needed. This road map is the plan's invest-

ment policy statement. **It is important that this investment policy be developed with the assistance of a competent investment advisor** who is experienced in working with plan sponsors to determine the types of investments that are most suited to the need of participants. Investments are not stagnant and need to be actively monitored; failure to do so effectively could result in participant claims against the plan. Similarly, from a fiduciary perspective, there are important obligations that must be met each year. Included in this list of responsibilities is ensuring that there is a sufficient fiduciary bond and that the investment of the plan's assets are carried out in accordance with the plan's objectives. In order for a plan's assets to be managed appropriately, there must be timely collection of contributions, prompt deposit of cash, proper safeguarding of investments and appropriate diversification.

Another important area of responsibility is participant communications. Proper communication entails much more than handing out SPDs and employee statements. Particularly in a self-directed plan, participants must be given sufficient information to make prudent investment choices among a broad range of investment alternatives. Participants must be given information with regard to the investment objectives, risk and return of the investment alternatives, information concerning voting rights, and a description of all fees or charges that may be assessed against the participant's account. The investment alternatives offered must give a broad range of investment styles and have materially different risk and return characteristics. Failure to communicate this information can set the stage for participant claims against the plan when investment values



drop. To date, the DOL has been very employee-friendly in the disposition of these claims. Due to the complexity involved, **it is important that investment decisions are made with the assistance of a qualified investment professional.**

An attorney does not always prepare the plan document and other paperwork required to operate a qualified plan; however, **it is essential that attorneys review documents not drafted by attorneys.** Of equal importance is that documents drafted by attorneys be reviewed for administrative and operational compliance. Likewise many 5500 forms are not actually prepared by a client's CPA; however, **the CPA should certainly review the 5500 especially with respect to matters of compensation and deductions.**

ASPA has long recognized the need for a variety of backgrounds and expertise in the operation of a qualified plan. In no place is that more evident than in ASPA's membership. A perusal of the annual yearbook will show that ASPA's membership spans the full spectrum of actuarial science, accounting, consulting, law and financial services. Additionally, professionals in other

fields often pursue ASPA's CPC, QPA and QKA designations in order to exhibit a specialization in the qualified plan arena. ASPA's membership is as broad as the retirement industry itself.

Reading through the Code of Professional Conduct in the 2000 ASPA Yearbook is an interesting exercise. For example, the Qualification Standards state: "An ASPA member shall render opinions or advice, or perform services only when qualified to do so based on education, training or experience." This standard of conduct highlights the need for a variety of pension professionals including attorneys, accountants, consultants and investment advisors. A properly operated plan often needs a team of professionals, and while this team may not be involved in every aspect of the plan's overall operation, it is critical that all of a client's professional providers including their attorney, their CPA, and their investment advisors be consulted when appropriate. A spirit of cooperation is also set forth in ASPA's Code of Professional Conduct. In the section entitled "Courtesy and Cooperation," the guidelines clearly state that an

ASPA member shall perform professional services with courtesy and shall cooperate with others. Acknowledging that differences amongst the different professionals may arise, the review of one professional's work by another should be conducted objectively and with courtesy.

Communicating the need for professional services is a challenge facing pension professionals today. It is hoped this series of articles will assist individual pension professionals, ASPA and the pension industry as a whole, to better explain to plan sponsors and the general public the complexities involved in administering retirement plans and the necessary role various pension professionals play in protecting retirement security. ▲

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*Amy Cavanaugh, QPA, QKA, is an employee benefits consultant with the actuarial and consulting firm of Milliman & Robertson in Albany, NY. She has over 18 years experience in matters of plan design, compliance, and administration. Ms. Cavanaugh currently serves on The Pension Actuary committee.*

## CONTINUED FROM PAGE 7

### ASPA's ASAP Service Turns Five

and was authored by yours truly. (It seems I always get to do the boring actuarial articles. I'll have to return the favor sometime.)

In ASAP 2000-42, Bradford Huss reported that the DOL is trying to expand the definition of settlor expense, expenses they believe should only be paid by the employer. (Note: See the related article, p.1)

Once again, I want to thank Kevin Donovan for the many

hours he volunteered in providing this service to ASPA membership, and for his willingness, and that of the other committee members, to continue volunteering their time.

The ASPA ASAP service is a valuable cost-effective way to stay informed. If you are not a current subscriber and would like to find out more about this service, please contact Cherie Newell at the ASPA office at 703-516-9300, or cnewell@aspa.org. ▲

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*G. Neff McGhie, III, MSPA, is chairman of the ASPA ASAP Committee. Mr. McGhie is owner and operator of Sierra Pension Services in Sparks, NV, an actuarial consulting and pension administration company specializing in creative design work for business owners and provides actuarial consulting to other pension administration firms. He is the author of the Defined Benefit Answer Book, Second Edition, and has been a contributing author to various other publications.*

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## WELCOME NEW MEMBERS

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

### MSPA

John C. Baratka  
Mark G. Beilke  
Lawrence S. Butcher  
Frederic Fenster  
Karen Nowiejski  
Howard J. Small

### CPC

Tamara L. Bowman  
Daniel R. Casella  
Ann M. Christian  
Lisa A. DesMoine  
Barbara N. Fields  
Cheri L. Greenstreet  
Laurie A. Haas  
Heather L. Hackney  
Robert A. Hartnett Jr.  
Christopher R. McDonald  
Joyce E. Yaccarino

### OPA

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Kent R. Christiansen  
Mark W. Clark  
Denise L. Coderre  
Rick J. Dhabalt  
Margaret E. Eickhoff  
Manny G. Erlich  
James E. Farley  
Victoria G. Feehan  
Sherry A. Firestone  
Matthew D. Gagnon  
Susan M. Grant  
Deborah Boyce Greene  
Helene Grumbach  
George R. Halter  
John W. Han  
Kimberly Massie Hatcher  
Michael J. Hofmann  
Matthew D. Hutcheson  
Angela C. Jee  
Rick K. Johnson  
Patricia D. Kirby  
Michael D. Locascio

Jodi L. Long  
Scott B. Marin  
Pamela W. Moose  
Karin E. Peterson  
Karen R. Poole  
William J. Roy  
Bonnie E. Sexton  
Susan M. Steed  
Scott D. Warshaw  
Cynthia A. Way  
Lori L. Wenzl  
Dennis R. Wiley Jr.  
Katherine Willard

### QKA

Mary Arcand  
Amy Lynn Arnold  
Christina Arruda  
Bonnie A. Ashling  
Mary C. Bebow  
Mary M. Bennett  
Dawn V. Birk  
Mary Virginia Boggs  
Shelli M. Bourque  
Timothy Breedlove  
Randall J. Broscius  
Brandon E. Brown  
Deanna G. Brown  
Judy K. Brown  
Barbara R. Bryant  
Jeffrey D. Cain  
Carolyn A. Campbell  
Ricky G. Canipe  
Kathleen M. Cantlay  
Rebeccah L. Cardillo  
Dean W. Carey  
Betty Carnes  
Janet M. Carter  
Amy L. Cavanaugh  
Cheryl M. Christ  
Sharon A. Clarke  
Susan J. Cobb  
Jo Ann Collier  
Carol S. Conley  
Theresa S. Conti

Heidi J. Cook  
Joyce E. Coon  
John F. Corporon  
Karen A. Crawford  
Lori E. Crews  
Diana Davini  
Linda M. De Ridder  
David G. Deckelman  
Jacqueline Delia-Figueiredo  
Timothy J. Derks  
Bridgette K. Detoro  
William L. Dettmers  
Linda J. Diamanti  
Karol Digmann  
Alex R. Dimuro  
Stephen L. Dobrow  
Sheryl R. Dorton  
Karen M. Dubinski  
Sean M. Duggan  
David R. Dunsire  
Elizabeth L. Eberly  
Brett N. Eisberg  
Paul F. Eisenhardt  
Elizabeth M. Evans  
Sylvia B. Fabian  
Alison A. Farrin  
Cynthia E. Feldt  
Anthony R. Feora  
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Michael K. Fischer  
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Sebastian C. Fogle  
Karen Flynn Fortin  
John N. Fowell  
Shirley A. Fox  
Marcia L. Fraley  
Colette B. Gallian  
James E. Gasaway  
Joanne R. Gilbert  
Allen F. Gipson  
Philip A. Giuffre  
Julie A. Glodowski

Becky M. Goddard  
Ginny Gribble  
Amy L. Griffith  
Tamara L. Grover  
Anne E. Gruzca  
Terri M. Gulliver  
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Eric J. Hackbarth  
Robin B. Hadley  
Kimberlyn D. Hall  
Lynne M. Hamilton  
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Julie R. Harris  
Russell Scott Harrison Jr.  
Penny Sue Hatcher  
Linda Hatfield  
Barbara A. Hazard  
Patricia A. Hellenbrand  
Brian S. Hermann  
Jill A. Hermansader  
Irene L. Hilgers  
Patricia K. Hines  
Tom A. Holbert  
Annette L. Hollis  
Pegene S. Howell  
Amy E. Irvine  
Donna M. Isherwood  
Gregory S. James  
Steven J. Johnson  
Christina R. Jones  
Lynn C. Jones  
Sharon D. Jones  
Tina M. Jonson  
Michelle L. Judge  
Glenn S. Kakely  
Susan Kaltenbaugh  
Richard Kaplan  
Alan J. Karazia  
Lu Anne G. Kern  
Carol S. Kettering  
Douglas J. Kilchenman  
Gary A. Kiss  
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Frank W. Lodato  
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Louise E. Maderos  
Nancy D. Magnet  
John Maher  
Phyllis W. Maley  
Bonny Mannina  
Richard G. Martin  
Matthew D. Marty  
Diana L. McCance  
Audrey M. McCarey  
Connie L. McCarthy  
Paula S. McCord  
William R. McDonnell  
Ronica C. McGovern  
Jill S. McLaughlin  
Ann B. Megan  
James R. Mersfelder  
Brenda S. Mijal  
Darla E. Miller  
Grey C. Mitchell  
Kelly J. Moen  
Lisa B. Mora  
Julia L. Moyer  
Kris A. Mullihan  
Vicky Neill  
Kirk P. Nellans  
Beth A. Oates  
Patricia A. Olson  
Michael F. Ostuni Jr.  
Jeffery A. Papineau  
Perry L. Pappelardo  
Christine M. Pastor  
Erin D. Patton  
Linda D. Peck  
Donald J. Pitterle  
Karen N. Pless

Nancy S. Prakel  
Victoria J. Prenger  
Shane P. Primmer  
Janice Purdum  
Lindsey A. Raddatz  
David Scott Reichard  
Randel P. Renegar  
Patrick J. Rieck  
Karlene J. Rivers  
Kelly Robison  
Lisa D. Rose  
Richard M. Rosenfeld  
Heidi L. Routh  
Jack L. Sanborn  
G.R. Sanidad  
Jay Thomas Scholz  
Robert N. Schuessler  
Melissa L. Schwartz  
Anne M. Shaul  
Alexander B. Shokrian  
Shannon C. Silva  
Christine D. Sitko  
John C. Smith  
Jane E.M. Soura  
C. Elaine Specht  
Shauna M. Stanzel  
Paula M. Steinhart  
Pamela S. Stobnicke  
Alan B. Svedlow  
Jeffrey Ten Haken  
Joanne M. Tomczak  
Maria A. Topacio  
Christopher J. Trenta  
Joanne L. Trompeter  
Douglas L. Trott  
Catherine F. Tyson  
Dianne R. Van Daele  
Amy C. Wallace  
Jeanne M. Weiler  
Robert M. Weinheimer  
Michael T. Wendler  
Brad Wexler  
Karen A. Wilt  
Linda A. Wimmer

Lisa Baiocchi Witt  
Angela R. Wojtaszek  
Kiley Wood  
Joseph F. Wrobel III  
Rinda S. Wyman  
Laura M. Yamamoto  
Debra K. Zipp

#### APM

Christian P. Bodle  
Nancy D'Agostino  
Theresa M. Kolish  
Bruce Lahti  
Megan A. McCabe  
Lynne E. McKelvey  
Katherine Walker

#### Affiliate

Linda F. Berman  
David Allen Boyd  
Margaret Brady  
Robert A. Ernst  
Jonathan S. Geller  
Lori Griffin  
Belinda B. Henning  
Dorothy Hess  
Harold H. Hopkins  
Bryan K. Jacobson  
Kenneth A. Kent  
Terri Kotyuk  
Dolores P. Lawrence  
Theresa J. Marquez  
Jeffrey T. Marzinsky  
Patrick W. McNulty  
Mark A. Melnychuk  
Jessica Passante  
Craig A. Smith  
Timothy J. Snyder  
John Stoffel  
Kerri C. Sumlinski  
Sandra J. Uzdivinis  
Stephen Valenta  
Martha D. Walker  
Michael E. Wenger

## HAVE YOU ALREADY COMPLETED THE PA-1(A&B), C-1, AND C-2(DC) EXAMS?

Then you are only one exam away from completing the requirements for ASPA's newest certification program!

ASPA's QKA [Qualified 401(k) Administrator] designation recognizes retirement plan professionals who work primarily with 401(k) and related defined contribution plans. The QKA designation requires successful completion of five examinations [PA-1 A and B, Daily Valuation, C-1, C-2(DC)] and submission of evidence of two years of practical pension experience.

If you have completed the PA-1(A&B), C-1, and C-2(DC) exams, then you only need to successfully complete the take-home **Daily Valuation exam** in order to qualify for the QKA. The Daily Valuation exam is a self-study take-home exam that can be ordered and completed at your convenience. The 2001 version of the exam must be submitted by December 31, 2001.

Once you successfully complete the required exams, you should submit an ASPA Designated Membership Application with two letters of recommendation and a dues payment of \$315.

For more information about the Daily Valuation exam, contact ASPA's education department today at (703) 516-9300 or visit our website at [www.aspa.org](http://www.aspa.org).

## Eidson Nominations Now Open!

The Harry T. Eidson Founders Award, given in honor of ASPA's late founder, recognizes exceptional accomplishments that contribute to ASPA, the private pension system, or both.

The criteria used are:

- The contribution must be consistent with ASPA's mission and should have a lasting, positive influence on ASPA or the private pension system.
- The contribution may be current, one that spanned many years, or one made years ago.
- The contribution should be a result of time devoted above and beyond reasonable expectations, not a result of time spent primarily for personal gain.
- The contribution may be one recognized on a national basis or one more local in nature.

ASPA's Membership Committee will make the recommendation for the award. If you are a voting member of ASPA and know someone you believe meets the criteria, please fill out the enclosed nomination form.

The recipient need not be an ASPA member. If no deserving candidate is found, no award will be given.

The award is presented at the ASPA Annual Conference.

Previous winners: 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**. You will find a nomination form in this issue of *The Pension Actuary*.

## Midstates Benefits Conference becomes Great Lakes TE/GE Benefits Conference

Mark your calendars for April 30 - May 1, 2001. The downtown Chicago Fairmont Hotel will be the location for the Great Lakes TE/GE Benefits Conference, formerly the Midstates Benefits Conference.

Join your fellow ASPA members, colleagues, government representatives, and exhibitors for new information and the latest updates on topics such as *Defined Benefit Plans – Design Options*, *401(k) Plan Compliance Testing Issues*, *Cash Balance Plans*, *IRS and DOL Litigation Review*, and *Form 5500* to name just a few. In addition, come hear the latest updates from the IRS and DOL.

The conference provides 16 hours of ASPA continuing education (CE) credit, and it is designed to offer enrolled actuaries 16 CE hours. In addition, continuing education credit will be available for attorneys and certified public accountants (CPAs).

The cost for the conference is \$395 until April 9th and \$495 after April 9th. Watch your mailboxes in February for a complete brochure. For more information on attending or exhibiting, please check ASPA's website at [www.aspa.org](http://www.aspa.org) or contact ASPA's meeting department at [meetings@aspa.org](mailto:meetings@aspa.org).

## 2001 Northeast Area Employee Benefits Conference

**Now offered in two northeastern states:  
Massachusetts and New York.**

Thursday, June 14, 2001  
Hotel – TBD  
Boston, MA

Friday, June 15, 2001  
Crowne Plaza Hotel  
White Plains, NY

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.

This is a great opportunity to meet and discuss employee benefit issues with colleagues and government representatives from the IRS and DOL.

You will learn what's new in the pension field, and learn from industry experts on everything you need to know regarding current regulatory, legislative, administrative, and actuarial issues. All the information you need in one day!

You can earn seven ASPA credits and up to seven JBEA credits by attending this conference. CE credits for other organizations may also be available. For more information call ASPA.

A brochure will be mailed mid-spring. Plan to register before May 21 and take advantage of the early registration fee of \$195. For more information, call ASPA's meeting department at (703) 516-9300 or visit our website at [www.aspa.org](http://www.aspa.org).

[www.aspa.org](http://www.aspa.org)

Check out the Conferences webpage to download information, brochures, and registration forms for upcoming conferences.



## 2001 Business Leadership Conference: Business Leaders Convene to Plan for Growth

by Barry S. Kublin, *Benefit Plans Administrators*

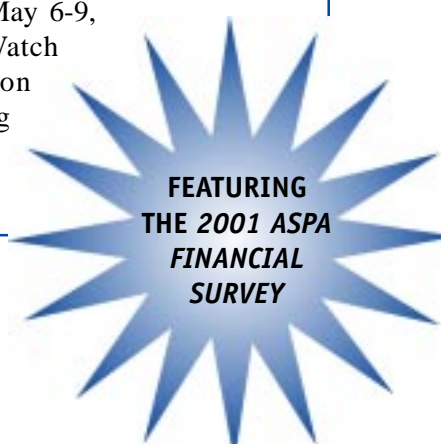
From May 6-9, 2001, business leaders from pension administration firms throughout the country will meet in Naples, Florida to discuss **“Planning for Growth and Profitability.”**

In conjunction with this year’s conference, the Business Leadership Conference Committee will be updating the financial survey that was last conducted in 1996. Attendees will be provided with survey data on salaries, fees, expense analysis, staffing ratios, and human resource policies.

Other agenda items include office automation, technology applications for plan administration, brokerage accounts, and marketing strategies.

For the past thirteen years, ASPA’s Business Leadership Conference has been devoted to helping its attendees survive and prosper in an increasingly competitive marketplace. Through the use of nationally renowned speakers, interactive workshops, and peer networking groups, attendees will be given the tools and information to critically analyze their business and develop plans to improve their operations.

The Conference of Consulting Actuaries is co-sponsoring this year’s conference. If you have responsibility for strategic business decisions within your organization, I invite you to join us for the 13th annual Business Leadership Conference May 6-9, 2001 in Naples, FL. Watch for more information on the conference or log onto our website at [www.aspa.org](http://www.aspa.org).



We invite you to participate in ASPA’s *2001 Salary and Financial Survey*. **You may download the Survey Questionnaire at [www.aspa.org](http://www.aspa.org), on or after, February 12, 2001.** Once completed, you can return to the online site and input your data. As you know, the quality of the report is dependent upon the number of participants and the accuracy of the data. **Survey data must be input by March 2, 2001.**

This year’s questionnaire is comprehensive and reflects such issues as wages, benefits, personnel policies, expense analysis, systems utilization and product pricing. A report will be distributed at the Business Leadership Conference (BLC) on May 6-9, 2001 in Naples, Florida. For those of you not attending the conference, reports will be available in mid-May at the following rates.

Participating Member .....	\$ 60
ASPA, non-participating member .....	\$200
ASPA, nonmember .....	\$350

We urge you to view the questionnaire at [www.aspa.org](http://www.aspa.org). If you are inclined to attend the BLC or purchase the report in May, your input will ultimately provide you with a vastly more meaningful management tool.

# Report from the President

by George J. Taylor, MSPA



*It is January 22, my wife Betty's birthday, at 8:00 a.m. I am sitting in the Pittsburgh Airport waiting for a flight to State College so that I can go to work. ASPA just had their Board Retreat and Board Meeting in San Diego, and my flight was late, so I spent the night in Pittsburgh (the joys of travel).*

The ASPA volunteers continue to work hard for all of you. I have been involved with ASPA for many years, but I've never stopped being amazed by the passion and dedication that our volunteers, as well as our members, have for our organization and profession. ASPA's member retention rate is in excess of 95%, which is incredible.

We now have over 4,000 credentialed members. Currently, there are in excess of 1,400 members and non-members going through the Daily Valuation Program. Our influence is growing, between our membership, our ABC non-members and our students. ASPA provides services to over 13,000 people who are involved in servicing the private pension system.

Following are some of the events that have occurred, or are currently being worked on, since the 2000 Annual Conference.

## **Board Meeting/Board Retreat**

I think the single most important item that was discussed is the role of the Board. Through the assistance of a professional facilitator, who specializes in consulting to

boards of professional associations, the Board decided to change its way of "doing business." In the future, much more time will be spent thinking about what must be done and planning ASPA's future than in discussing what has been done and how we did it. In addition, the Board intends to take a greater role in setting direction and establishing goals for our committees, rather than giving approval to the direction and goals of our committees.

It is also very gratifying when our past presidents attend Board functions, at their own expense. Thank you, Ed Burrows (who continues to be an important part of our leadership), Ruth Frew, and Curtis Hamilton for your participation. Also, thank you to our past six presidents, who comprise the Nominating Committee: Steven Kern, Michael Callahan, Richard Pearce, Karen Jordan, Carol Sears and John Parks, who also attended the meeting.

You, the Education and Examination (E&E) Committee, along with the ASPA staff, are working hard for our first on demand, or

"windows" examination cycle. Every effort is being made to make this transition as smooth as possible. However, like anything new, it is hard to plan for all contingencies. We are all keeping our fingers crossed.

In addition, the E&E Committee, as part of its restructuring, has been given direction from the Board to fully explore the following question: "How should ASPA educate pension professionals?" and to determine how these changes will impact the other areas of ASPA. The Board authorized the E&E Committee to seek the services of outside professionals, if necessary, to accomplish this goal. The Board will receive a report in July.

## **Government Affairs Committee**

The Government Affairs Committee (GAC) continues to work behind the scenes by meeting with members of Congress, the Administration, IRS, DOL, Treasury, and PBGC on matters of interest to the ASPA membership. Our Executive Director, Brian Graff, has been working hard to get Pension Simplification introduced in the House and Senate. By the time you read this, hopefully, this will have been accomplished. The GAC will meet in Washington, DC, in March and a wave of visits is being prepared.

Please visit the ASPA website ([www.aspa.org](http://www.aspa.org)) for up to date GAC activities and to see our comment

letters. Oh yes, and thank you GAC for the *ASPA ASAPs*; these things are great!

### Conferences Committee

The Conferences Committee is hard at work planning this year's conferences. They have promised that the Summer Academy, July 22-25, the Annual Conference, October 28-31, and Business Leadership Conference, May 6-9, will be better than last year. Thank you all for your participation in ASPA conferences and for your patience. We have one more year at the Hyatt for Annual, and then the conference is moving to the Washington Hilton, which will be able to accommodate our growth. Please visit our website for an update on all of our conference events. Webcasts will be planned to accommodate current events.

By the way, if you are coming to the Annual Conference, there will be a "March to the Hill." Let's all go. It is a lot of fun and serves a very important function. Please participate when asked in our letter writing and e-mail programs designed to communicate with your members of the House and Senate.

*I am now in the plane and about to take off – it is a 45-minute flight.*

The SPIT Committee (Strategic Planning Implementation Team), which consists of the chairs of all the major committees, will be meeting in a few weeks. The Com-

mittee will be discussing items that are of importance to ASPA and the impact of what we do. Craig Hoffman, President-Elect, will chair this Committee. Craig has advised me that some of the items to discuss are: better use of our volunteers; the concept of a compliance specialist; and dealing with the anticipated rapid growth of our membership and our students.

A main focus of last year's SPIT Committee was the need to market our professional designations to the end user (the client) and to make our designations more meaningful. The goal is to have clients begin requiring that ASPA professionals work on their plans. In addition, we want to make sure that all those who work on qualified plans are aware of the benefits of being an ASPA member. A taskforce, chaired by Gwen O'Connell, has selected a firm to assist us in this effort. Sarah Simoneaux has been asked to serve as Chair of the Marketing Committee, a sub-committee of our National Office, to work with this professional firm. Keep an eye out for the ASPA name.

In a few weeks, Craig Hoffman and I will be attending the Council of Presidents and Council of Presidents-Elect (COP/COPE) meeting, the first of three to be held this year. This is a meeting of the Presidents and Presidents-Elect of all the actuarial organizations of North America. In addition, Craig and I

are special directors of the Academy of Actuaries' Board of Directors.

Curtis Huntington represents us on several committees of the International Actuarial Associates. We continue to take an active role in the actuarial area. Check out our yearbook. You may be surprised. ASPA members participate in many other committees relating to the actuarial area.

You can contact me directly through the ASPA website or email me at [georget@uplink.net](mailto:georget@uplink.net). I want to hear what you have to say about ASPA. Every effort will be made to effectively deal with members' concerns.

*Well, I just got told to put up my tray, as we are landing. I have run out of time, not things to tell you. ▲*

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*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. He has served as ASPA's President-Elect, Vice President, and co-chair of the Government Affairs Committee, in addition to numerous other ASPA volunteer activities.*

## Nominations for ASPA's Educator Award

The Education and Examination (E&E) Committee is seeking nominations for ASPA's Educator Award to recognize and honor outstanding educators. Past award recipients include: Cheryl L. Morgan, CPC; Charles J. Klose, FSPA, CPC; Janice M. Wegesin, CPC, QPA; and David Farber, MSPA, EA, ASA.

If you know an ASPA member who has made a significant contribution to pension education, please forward your nomination and a few paragraphs, including nominee background information, by July 1, 2001 to: ASPA, Attn: E&E Department, Director of Education Services, 4245 N. Fairfax Drive, Suite 750, Arlington, VA 22203-1648; or fax to (703) 516-9308.

# First "Windowed" Exams begin April 15: Early Registration ends March 15



by Gwen S. O'Connell, CPC, QPA

**A**s noted in previous articles of *The Pension Actuary* and the *Candidate Connection*, beginning this spring, there are big changes in the way that ASPA administers the C-1, C-2(DB), and C-2(DC) examinations.

Candidates will register for an examination through the ASPA office just as they have in the past. However, the registration deadlines have changed. **The early registration deadline for the spring administration is March 15.** Late registration begins March 16 and ends April 30, when the ASPA office must receive registrations.

When exam registrations are received, the ASPA staff will process the form and payment, then issue and mail the candidate an identifying number that has also been sent to Prometric (formerly the Sylvan Testing Center). This identifying number is confidential and cannot be distributed via phone, fax, or e-mail. Upon receipt of the notification with the identifying number, the candidate will call Prometric to schedule the examination. **Note: Prometric sites fill up quickly and it is in the candidate's best interest to register early in order to ensure the best selection of locations and times.**

After taking the examination and before leaving Prometric, the candidate will know whether or not the examination was passed. A "pass" or "fail" will appear on the

screen. After the window for that examination period is closed, all the data will be collected and the passmark will be set to determine if the candidate scored a "5," "6," "7," "8," or "9." Grades will be mailed to the candidate no later than twelve weeks after the close of the exam window.

The candidate may take more than one examination during the window, (e.g., the C-2(DB) and C-1), but cannot take the *same* examination twice during a window. If the C-1 examination is not passed, the candidate must wait to retake the examination during the next available window.

The C-3 and C-4 examinations will remain essay exams that are taken with a proctor on June 6, 2001. It is important to note that the registration deadlines are earlier

this year than in past years. Candidates should allow time for early registrations to be received by the ASPA office no later than March 15. **All spring 2001 examination registrations must be received in the ASPA office by April 30.**

More information regarding the spring examinations can be found on the ASPA website ([www.aspa.org](http://www.aspa.org)), in the *2001 Education and Examination Program Catalog*, via e-mail to [educaspa@aspa.org](mailto:educaspa@aspa.org), or by

### Spring 2001 ASPA Examinations

Exam Registration	March 15*	member \$150	nonmember \$175
Final Registration	April 30*	member \$150	nonmember \$225
C-1, C-2(DB), and C-2(DC) Examinations	..... April 15-May 31		
C-3 and C-4 Examinations	..... June 6		

\* Registrations must be received by the ASPA office on the dates listed. All registration forms must be received no later than April 30 for the spring exam administration.

phoning the ASPA office at (703) 516-9300.

Thank you for your support of ASPA's education program! ▲

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



FOCUS ON ABCs

# Central Florida and Delaware Valley

by Nadine Schaal and Mary T. Bruce

**A**s we begin a new year, we have a number of exciting programs lined up for our Central Florida members. During our January member meeting, we had a panel discussion on the technology trends for retirement plans, and focused on exploring the opportunities and changes in technology as they affect our industry. One of the panel members was Al Otto, APM, a member of the Atlanta ABC. This was a well-attended program and we appreciated the panel members sharing their technological insights.

To avoid the annual crunch in March, we moved the March membership meeting to February 20th. Robyn Morris, President of R. C. Morris, Inc., will discuss flexible benefit or 125 plans, focusing on the design, communications and processing of benefits for smaller employers.

Central Florida has installed their new President, Kim Szatkowski, CPC, QPA, QKA. Kim has been very active with the Employee Benefits Council over the years and we appreciate her re-joining the Board the next term of office. We have installed the following Board of Directors: Kim Szatkowski, CPC, QPA, QKA, President; Kimberly Kutlenios, Secretary; Kathy Ennis, Treasurer; Mark Konzen, Chairman for Programs/Speakers; Sandy Turner, CPC, QPA, Government Relations Designate; Paul Schreiber, Chairman of Membership and Social Events; Nadine Schaal, ASPA Liaison; Phil Diamond, Ex-Officio Director.

For more information about the Employee Benefits Council of Central Florida, contact Nadine Schaal at [nschaal@akerman.com](mailto:nschaal@akerman.com) or (407) 843-7860. ▲

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*Nadine Schaal is an attorney with Akerman, Senterfitt, & Eidson, P.A. in Orlando, FL. She 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, Ms. Schaal was a Vice President, at a national bank, in the Trust Department Employee Benefits Division, and an in-house counsel with an actuarial benefits consulting firm.*

The ABC of Delaware Valley has installed their new President, Joseph L. Leube, Jr., FSPA, CPC. Joe is a Vice President with Aon Consulting and has been active on the Board for several years. Other Board members include Robert Bildersee, Bildersee & Silbert LLP; R. Dennis

Vogt, CPA, Alloy, Silverstein, Shapiro, Adams, Mulford & Co.; Mary Andersen, CEBS, The Vanguard Group; JoAnn Massanova, CPC, Benefit Dynamics; John Van Buren, MSPA, EA, Manchester Benefits Group, Ltd; Sandy Uzdivinis, CIGNA; Arthur Bachman, Esq., Blank, Rome, Comisky & McCauley; Mary Bruce, SPHR, CEBS, GulphCreek Consultants; Stephen Rosen, MSPA, CPC, Stephen H. Rosen & Associates, Inc.; and Marcia L. Hoover, QPA, PNC Bank.

Philadelphia has several exciting programs scheduled for 2001. On January 24, Michael E. Callahan, FSPA, CPC, President and Partner of Pentec, Inc. spoke on retirement plans for not-for-profits. On March 22, Fred Reish, APM, an employee benefits attorney whose practice focuses on qualified plan compliance with tax qualification and fiduciary responsibility issues, will speak on the fiduciary responsibility of officers and directors for 401(k) investments.

For more information on upcoming events, please contact Meetings Chair Art Bachman at [bachman@blankrome.com](mailto:bachman@blankrome.com) or (215) 569-5715. ▲

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*Mary T. Bruce, SPHR, CEBS, has over seventeen years experience in all facets of human resources including the creation of practical employment policies and practices, benefit plan design and analysis, compensation, performance management, training, and work process analysis. Prior to forming GulphCreek Consultants, she was Assistant Vice President of Human Resources and Facilities Management for the U.S. reinsurance subsidiary of an international inhouse financial services organization headquartered in Philadelphia.*

Focus on GAC

# ASPA Encourages Department of Labor to Assist in Educating 403(b) Plan Sponsors



by Theresa Lensander, CPC, QPA

Last fall, ASPA's Tax-Exempt and Governmental Plans Committee submitted a request to the Department of Labor asking that they help educate 403(b) sponsors, as to whether their plans are subject to ERISA Title I requirements. In its October 27, 2000 letter to the PWBA, ASPA proposed that an information bulletin or press release be issued to remind plan sponsors about the availability of the advisory opinion process for Title I issues (ERISA Procedure 76-1).

ASPA is encouraging education so that sponsors have the necessary information to learn the rules. 403(b) sponsors often have an incorrect picture of how their retirement plans are supposed to operate. For example, if a 403(b) plan is employer funded, or the employer limits the investment selections, or is involved in hardship withdrawal decisions, the plan is considered a pension plan as defined under DOL Reg. Section 2510.3-2(f). Too much employer involvement may also result in a non-ERISA plan becoming an ERISA plan.

An audit by the IRS may alert the plan sponsor to the require-

ments; however preferably, the plan is already operating properly long before there is an IRS audit. The Department of Labor is expected to issue opinions on these issues some time this year.

Other letters that have been submitted to the PWBA include investment education for participants and its effect on ERISA Title I status for 403(b) plans, as well as plan termination issues. Please refer to the GAC section of the ASPA website for a copy of this letter to DOL, as well as other letters written by ASPA's Administration Relations Committees. ▲

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*Theresa Lensander, CPC, QPA, serves as Chair, Administration Relations for ASPA Government Affairs and Chair, Tax-Exempt and Governmental Plans Committee. She is President of The American Pension Company in Santa Barbara, CA, and specializes in administration for qualified plans and 403(b) arrangements.*

## ATTENTION ASPA MEMBERS!

Would you or your company be interested in purchasing new computer equipment at a discount?

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

For more information, call Dell at (800) 822-6069, refer to the Guardian Life discount program, and identify yourself as an ASPA member. You can also access Dell's website at [www.dell.com/eppbuy](http://www.dell.com/eppbuy) to get a list of all of the discounted items and to place an order directly online.

# PIX Digest

**T**he Pension Information eXchange (PIX) is an online service for pension practitioners. ASPA has co-sponsored the PIX Pension Forum for many years. For more information about PIX, call (805) 683-4334.

## Section 415(c) Limitation Increases to \$35,000

*[Threads 91725 & 91808]*

This thread does not cover a very complicated issue, but because it has been 19 years since the defined contribution limit last increased, it is something that practitioners have not been paying a lot of attention to.

The increase in the 415(c) limit, to \$35,000, is effective for limitation years ending in 2001. Many defined contribution administrators are used to limitations applying to plan years beginning in the calendar year. The 415 limits are different. (See §1.415-6(a)(2)).

When this was initially discussed on PIX, a number of users expressed surprise that this increased limit will be available for plan years ending in 2001. Check your plan documents for any language that differs from the regulation. To read the threads on this increase, download the [file 35k2.fsg](#).

## Disability Insurance Pays 401(k) Contribution

*[Thread 92383]*

UNUM offers a disability income policy with a 401(k) rider. If the participant qualifies for benefits under the policy, UNUM will pay the employer funds to continue the salary deferral contribution being made by the employee.

A user raised questions about how this would work with a plan

and the various limitations and tests based on compensation. Another user found that §415 provides that in the event of total and permanent disability of a non-highly compensated employee, that participant compensation is defined to mean the compensation the participant would have received if paid at the rate of pay immediately prior to the disability – so, the plan will not have a 415 violation.

However, this raises other questions relating to plan administration, matching contributions, specific plan provisions, and whether or not an employer should do this or if they must.

What if the participant was non-highly compensated when the policy was purchased but later became highly compensated prior to becoming disabled? Consider a participant who purchased a disability policy in 1997 while earning \$60,000 annually. If this participant earned \$90,000 in 2000 and is then disabled early in 2001, regardless of the 2001 earnings the participant will be highly compensated in the 2001 plan year (ignoring the top paid group election). If the employer accepts the UNUM payments and deposits them to the plan during 2001, the plan will not have the benefit of this special rule in §415 – just one more thing to deal with in the world of 401(k) plans.

To read the entire thread, download the [file unumdis2.fsg](#).

## Participant Murdered by Spouse

*[Thread 92501]*

Incredibly, this subject has come up more than once on PIX. A participant is murdered by his or her spouse, who is also the participant's beneficiary under a qualified plan. Many, if not all states have laws that prevent murderers from benefitting financially from their victims wills and insurance.

The question for the sponsor of a qualified plan is who should receive the death benefit from the plan. Should the sponsor automatically pay the secondary beneficiary if there is one so designated? Does ERISA preempt state law in this area?

In the most recent thread on this subject, the PIX user needed to advise a client who wanted to pay the secondary beneficiary. Initially it seemed straightforward to just proceed on that basis, however one user suggested that the plan interplead the distribution in court to protect itself from an action against it by the murderer/spouse. Yet another user raised the possibility that the state could come after the estate of the murderer for costs of incarceration, again subjecting the plan to risk by disenfranchising the murderer.

The final consensus of the discussion is that the plan should seek legal advice and most likely file an interpleader to protect itself. To read the entire thread, download the [file murder2.fsg](#). ▲

# Bulletin Board

Register early for spring exams: March 15!

C-1, C-2(DB), C-2(DC)  
C-3 AND C-4  
WEEKEND COURSES  
MAY 5 AND 6, CHICAGO

C-3 and C-4  
Exams  
June 6 and  
Dec. 5, 2001  
A-4 Exams  
Dec. 5, 2001

5500  
Webcast -  
March 16!  
Register  
by March 9

ASPAs Summer Academy  
July 22-25, San Francisco

APRIL 30 - MAY 1  
GREAT LAKES TE/GE  
CHICAGO

Check out  
the What's  
New page  
[www.aspa.org](http://www.aspa.org)



## 2001 Calendar of Events

		ASPA	CE	Credit
March 15	Early registration deadline for spring exams		4	5
March 16	5500 Webcast			2
April 15 - May 31	C-1, C-2(DB), C-2(DC) spring exam window			*
April 30	Final registration deadline for spring exams			
April 30	Registration deadline for spring weekend courses (C-1, C-2(DB), C-2(DC), C-3, and C-4)			
April 30 - May 1	Great Lakes TE/GE, Chicago, IL			16
May 5 - 6	C-1, C-2(DB), C-2(DC), C-3, and C-4 Weekend courses, Chicago, IL			15
May 6 - 9	Business Leadership Conference, Naples, FL			20
June 6	C-3 and C-4 examinations			*
June 14	Northeast Key, Boston, MA			8
June 15	Northeast Key, White Plains, NY			8
July - October	Registration for fall virtual study groups			
July 15	Suggested start time for fall virtual study groups			20
July 22 - 25	Summer Academy, San Francisco, CA			20
July	Three Best of Great Lakes			8
Sept. 13 - 14	Los Angeles Benefits Conference, Los Angeles, CA			16
Sept. 15	Early registration deadline for fall exams			
Oct. 15 - Nov. 30	C-1, C-2(DB), C-2(DC) fall exam window			*
October 28 - 31	Annual Conference, Washington, DC			20
October 31	Final registration deadline for fall exams			
November 5	Registration deadline for fall weekend courses (C-1, C-2(DB), C-2(DC), C-3, and C-4)			
November 10 - 11	C-1, C-2(DB), C-2(DC), C-3, and C-4 Weekend courses, Chicago, IL			15
December 5	C-3, C-4, and A-4 examinations			*
December 31	Deadline for 2001 edition exams for PA-1 (A&B)			**
December 31	Deadline for 2001 edition exam for Daily Valuation			***

\* 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.

\*\*\* Daily Valuation exams earn five hours of ASPA continuing education credits for a passing grade.