

Designing Plans after EGTRRA

by Kevin J. Donovan, MSPA, and Joan A. Gucciardi, MSPA, CPC



THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 (EGTRRA) HAS PROVIDED PENSION PRACTITIONERS WITH A WHOLE NEW BAG OF TRICKS TO USE IN DESIGNING PLANS FOR THEIR CLIENTS. WITH INCREASED DEFINED BENEFIT DOLLAR LIMITS, INCREASES IN THE DEDUCTIBLE LIMIT FOR CONTRIBUTIONS TO PROFIT SHARING PLANS, AN INCREASE IN THE COMPENSATION LIMIT, AND OTHER CHANGES, CLIENTS CAN SUBSTANTIALLY INCREASE THEIR RETIREMENT PLAN CONTRIBUTIONS. BUT BE CAREFUL – IT ALL EXPIRES AT 12/31/2010, AT WHICH POINT WE GO BACK TO PRE-2002 LAW!

THE DEMISE OF MONEY PURCHASE PLANS

We begin with the 25% Simplified Employee Pension Plan (SEP). The deduction limit under Code Section 404(a)(3) for profit sharing plans has increased from 15% of compensation to 25% of compensation. This change also applies to SEPs. [IRC §404(h)(1)(C)] Note, however, that there is currently a limitation that provides for inclusion in income of SEP allocations of more than 15% of pay. [IRC §402(h)(2)] Technical corrections may be needed before these plans can be implemented.

Example: Gil sponsors a money purchase and profit sharing plan. He has contributed the maximum of

25% of pay each year. After technical corrections, Gil could eliminate both plans and institute a SEP.

There may be a good reason for *not* using a SEP. For example, the employer may desire a vesting schedule or may want to implement a Code Section 401(k) arrangement. In the past, an employer often needed a money purchase plan as well as a profit sharing plan to achieve its goals; particularly when there were elective deferrals involved. In addition to increasing the profit sharing limit to 25%, EGTRRA provides that 415 compensation (and not taxable compensation) is

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WASHINGTON UPDATE



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Fallout from the Enron Blackout

by Brian H. Graff, Esq.

UNLESS YOU HAVE BEEN COMPLETELY IGNORING THE NEWS (AND IF YOU HAVE, I AM TOTALLY ENVIOUS), YOU KNOW THAT THE TOP STORY, OTHER THAN AFGHANISTAN, HAS BEEN THE ENRON BANKRUPTCY. ONE OF THE MAIN STORIES SURROUNDING ENRON HAS BEEN THE TRAGIC IMPACT OF THE BANKRUPTCY ON THE RETIREMENT SAVINGS OF ENRON'S EMPLOYEES. THOUSANDS OF ENRON EMPLOYEES HAVE LOST A SUBSTANTIAL PORTION, IF NOT ALL, OF THEIR RETIREMENT SAVINGS AS A RESULT OF ENRON'S DEMISE. DUE TO THE VARIOUS LAWSUITS PENDING, AS WELL AS THE ONGOING US JUSTICE DEPARTMENT INVESTIGATION, IT MAY TAKE MONTHS, OR EVEN YEARS, BEFORE WE HAVE A MORE COMPLETE SENSE OF WHAT HAPPENED. HOWEVER, WHAT IS CLEAR IS THAT THE ENRON CASE HAS BECOME A SIZABLE POLITICAL FOOTBALL AND PENSION ISSUES ARE FRONT AND CENTER. ASPA'S GOVERNMENT AFFAIRS COMMITTEE HAS ALREADY HAD SEVERAL MEETINGS WITH SENIOR STAFFERS ON CAPITOL HILL AND WITHIN THE BUSH ADMINISTRATION TO DISCUSS PENSION POLICY ISSUES SURROUNDING THE ENRON BANKRUPTCY.

The President of the United States has gotten involved in the issue. At a news conference on January 10, he asked the Secretaries of Treasury, Labor, and Commerce to convene a working group “to analyze pensions, rules and regulations, to look into the effects of the current law on hard-working Americans, and to come up with recommendations on how to reform the

system to make sure that people are not exposed to losing their life savings as a result of a bankruptcy.” Whenever the President of the United States speaks directly about any issue, the political bar is raised substantially. This case will be no different, and both

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Catch-Up Contribution Guidance is Released

by Robert M. Kaplan, CPC, QPA

ONE OF THE MOST TALKED ABOUT PROVISIONS IN THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 (THE "ACT") IS "CATCH-UP" CONTRIBUTIONS. SECTION 631 OF THE ACT AMENDED THE INTERNAL REVENUE CODE BY ADDING CODE §414(v), WHICH CREATES AN OPPORTUNITY FOR PARTICIPANTS WHO ARE AGE 50 OR OLDER TO MAKE ADDITIONAL PRE-TAX ELECTIVE DEFERRAL CONTRIBUTIONS. THE INTENT OF THE PROVISION IS TO ALLOW WORKERS WHO ARE NEARING RETIREMENT AGE TO MAKE UP CONTRIBUTIONS FOR YEARS IN WHICH THEY WERE EITHER OUT OF THE WORKFORCE OR DID NOT MAXIMIZE THEIR ABILITY TO DEFER. WHILE CONCEPTUALLY CATCH-UP CONTRIBUTIONS SEEM RATHER STRAIGHTFORWARD, THERE ARE A HOST OF COMPLEXITIES THAT NEED TO BE ADDRESSED BEFORE A CATCH-UP PROVISION IS IMPLEMENTED.

Plans are not required to provide the opportunity for participants to make catch-up contributions. Instead, catch-up contributions are implemented via plan amendment if the Plan Sponsor chooses to do so. Under the new law, catch-up contributions can be made effective January 1, 2002, and are applied on the basis of the employee's taxable year regardless of the plan year. The maximum catch-up contribution limits increase annually. The limits for §401(k), §403(b), §457 eligible government plans, and Salary Reduction Simplified Employee Plans (SARSEPs) are as follows:

SARSEPs	Year	Catch-Up Limit
	2002	\$ 1,000
	2003	\$ 2,000
	2004	\$ 3,000
	2005	\$ 4,000
	2006	\$ 5,000

The Catch-up limits for Savings Incentive Match Plans for Employees (SIMPLEs) are as follows:

SIMPLEs	Year	Catch-Up Limit
	2002	\$ 500
	2003	\$ 1,000
	2004	\$ 1,500
	2005	\$ 2,000
	2006	\$ 2,500

Adding the catch-up provision to the Internal Revenue Code left practitioners with a host of unanswered questions. In response, the Internal Revenue Service (IRS) released proposed regulations [Prop. Reg. §1.414(v)-1] in October 2001. These regulations become effective for the tax year that begins on January 1, 2002. The proposed regulations clarify many questions regarding the operation and administration of these newly established catch-up contributions. A general overview of these provisions and clarifications follows.

ELIGIBILITY

The proposed regulations clarify that a participant who turns 50 *at any time* during the taxable year (*i.e.*, calendar year) is deemed to have been age 50 as of the first day of that year. This makes it simpler for the plan administrator to identify the catch-up eligible participants because the year of birth is the only information needed. For example, any participant born in 1952 or earlier would be catch-up eligible under a plan that allows for catch-up contributions in 2002.

The age-50 rule in the proposed regulations leads to several scenarios where a participant who has not attained his/her 50th birthday will be entitled to take advantage of the catch-up provisions even though he/she is no longer employed by the employer sponsoring the plan. Consider the following:

- A participant who terminates employment or who dies in the year he/she would attain age 50, but prior to attaining age 50, would be eligible to take advantage of the catch-up rules.

Example: Jim turns 50 on December 1, 2002. He is deemed to be age 50 as of January 1, 2002. He contributes his limit of \$11,000 plus \$1,000 (intended to be catch-up contributions) to the plan by November 15, 2001. He terminates employment in November. He is allowed to use the \$1,000 as his 2002 catch-up contribution. Jim was able to take advantage of the catch-up even though his employment status changed prior to his 50th birthday.

- A participant in a non-calendar year plan would be eligible to use the catch-up provisions for the plan year that ends in the year that they turn 50.

Example: Jim is considered a Highly Compensated Employee (HCE) in his employer's 401(k) plan. The plan year begins July 1, 2001, and ends on June 30, 2002. The plan fails ADP testing and Jim is due a \$1,000 refund. He leaves employment on August 15. He is not yet 50 (he turns 50 on December 1).

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FROM THE EDITOR

The Changing Nature of Our Business

by Chris L. Stroud, MSPA

ONE OF THE REASONS THAT MANY OF US ARE DRAWN TO THE RETIREMENT PLANNING INDUSTRY AS A PROFESSION IS THE CONSTANTLY CHANGING NATURE OF THE BUSINESS. OUR INDUSTRY DOES NOT ONLY CHANGE WITH EACH PASSAGE OF NEW LEGISLATION, BUT IT IS ALSO CONSTANTLY INFLUENCED BY CHANGES IN TECHNOLOGY AND INDUSTRY TRENDS. NEW PLAYERS ENTER THE MARKETPLACE, NEW PRODUCTS AND SERVICES HIT THE MARKET, AND INNOVATIVE SYSTEMS ARE DESIGNED TO MEET THE CHALLENGES OF THE CHANGING INDUSTRY. FLEXIBILITY, ADAPTABILITY, AND INNOVATION ARE CERTAINLY DESIRED QUALITIES FOR SUCCESSFUL PROFESSIONALS AND FIRMS IN OUR INDUSTRY.

ASPA as an organization helps effect many changes and continues to reshape and retool its functions in response to the changing landscape. ASPA's Government Affairs Committee (GAC) and ASPA's Political Action Committee (ASPA PAC) strive to educate and influence our nation's leaders so that they will enact responsible and effective legislation. (Be sure to check out our feature article about plan design with EGTRRA. EGTRRA was certainly one of ASPA's GAC and PAC recent victories.) ASPA's Education and Examination Committee and a related task force are in the process of restructuring ASPA's exam series to better reflect today's retirement planning environment and the need for education at various levels of expertise. ASPA's Conference Committee continues to deliver excellent conferences and webcasts with meaningful topics and well-received speakers. The Conference Committee is trying different venues, designing new conferences, and also delivering conferences directly to your desk by way of webcasts. Other ASPA committees are also working for you in order to meet the challenges of our ever-changing industry and growing membership.

It is the challenge of the ASPA Journal Committee to keep our newsletter evolving in a manner that will appeal to our broad base of readers. It is also our duty to keep you informed regarding the various activities of ASPA's committees. Beginning with this issue, we have changed the name of our publication from *The Pension Actuary* to *The ASPA Journal* to acknowledge the broad spectrum of professionals that make up ASPA's membership. (You will find our membership

statistics on page 16 – learn more about your fellow ASPA members.)

We hope you will enjoy our new look, and we will do our best to bring you a creative newsletter filled with interesting articles and useful information. If we have your e-mail address on file, we will also inform you when each issue is available online in case you just can't wait to receive your hard copy version.

We always welcome your ideas and suggestions. Please send your comments to me at theaspajournal@aspa.org. Help us make your newsletter even better! ▲

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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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Washington Update

Democrats and Republicans on Capitol Hill are already positioning themselves to take political advantage and to prevent political damage, respectively, regarding the issue. The political rancor over potential pension changes will no doubt be further fueled by allegations of connections between Enron officials and senior members of the Bush Administration and members of Congress. All in all, it is a political soup that could come out tasting very sour.

Several committees in both the House and Senate have made it clear that they intend to hold hearings to examine the pension issues surrounding the Enron bankruptcy. They include the Senate Health, Education, Labor and Pension Committee, chaired by Senator Kennedy (D-MA), the Senate Finance Committee, chaired by Senator Baucus (D-MT), and the House Education and Workforce Committee, chaired by Representative Boehner (R-OH). Further, additional committees, such as the House and Senate Commerce Committees, are expected to consider the issue even though they do not normally consider retirement policy issues and have no staff with pension expertise. This is a likely recipe for some unusual, and probably undesirable, proposals.

A number of bills addressing the Enron situation have already been introduced in Congress. The three most prominent bills so far (and there will likely be many others) are “The Pension Protection and Diversification Act,” introduced by Senators Boxer (D-CA) and Corzine (D-NJ), “The Pension Protection Act,” introduced by Representatives Deutsch (D-FL) and Green (D-TX), and “The Retirement Account Protection Act,” introduced by Representative Bentsen (D-TX).

The Boxer-Corzine bill would place a 20 percent limit on the amount of employer stock that can be held in any participant’s defined contribution account. Further, a participant would have the right to diversify any company stock contributed to his or her account after 90 days, once the participant is fully vested. Finally, any corporate tax deduction attributable to the contribution of employer stock would be cut by 50 percent. Importantly, these proposals would not apply to ESOPs. In the case of ESOPs, the only change proposed by the bill would be to lower the diversification threshold from 55 years old and 10 years of service to 35 years old and 5 years of service.

The Deutsch-Green bill also limits the amount that may be invested in employer stock. In this case, the limitation is 10 percent. Although the statutory language is ambiguous, it would appear the limitation only applies to elective deferrals, not employer contributions.

The Bentsen bill addresses a completely different issue. As many of you have probably read or heard, last October Enron employees were unable to change their investment selections and diversify from Enron stock because of a “blackout” or “lockdown” period allegedly due to a change in service providers. There is some dispute over how long this period actually was – some say it was only a week while others argue that it lasted the month. Nevertheless, the circumstances of the lockdown have raised a number of questions leading members of Congress to examine the issue. The Bentsen bill takes an extreme approach. It would prohibit any lockdown unless the Plan Sponsor first obtains an exemption permitting the lockdown from the Department of Labor. Even if the exemption is granted, the lockdown could not occur until 90 days after the Plan Sponsor first notifies employees of the impending lockdown.

ASPAs’ Government Affairs Committee is clearly concerned about the direction that the Enron debate is potentially taking and the possible proposals that are being considered. ASPA does believe it is sensible to reexamine the rules regarding the ability of participants to diversify the investments in their individual accounts. Specifically, it may be appropriate to require, after some reasonable period of time, that participants be allowed to diversify elective deferrals and/or matching contributions that are contributed in the form of employer stock. However, ASPA has some concern about proposals that would artificially limit the amount that any individual participant can choose to invest in employer stock. Millions of American workers have become very wealthy investing in employer stock and in many cases it may make perfect sense for a participant to invest a higher percentage of 401(k) plan assets in employer stock. For example, if an employee is covered by both a defined benefit plan and a defined contribution plan, investing a higher percentage of defined contribution assets into employer stock may be an entirely rational investment decision due to the existence of the valuable and guaranteed defined benefit. The point is that each individual participant’s practical risk tolerance is going to be different, depending on his or her financial situation. Thus, it is the participant, not Congress, who is in the best position to make the investment decision.

Most significantly, ASPA is seriously concerned about any proposals to regulate the ability of a plan sponsor to lock down a plan for various reasonable administrative reasons, including changing service providers. Certainly, it is appropriate that there be

some disclosure to participants in advance of a lockdown. However, ASPA strongly opposes any proposal to require a DOL exemption in order to lockdown a plan. Such a requirement would add another unnecessary expense to already burdened small business retirement plans. ASPA is also very concerned about any proposals limiting the number of days a plan can be locked down. Such a limit would likely be too narrow, especially for small business retirement plans where a longer period of time is sometimes necessary due to problems gathering records.

There is an old lawyer's maxim – "bad facts make bad law." And in this case, really tragic facts could make really tragic laws. For those of you who remember, ERISA rose from the Studebaker bankruptcy and the default of the defined benefit plan. Is Enron the Studebaker for defined contribution plans? Obviously, it is too early to tell, but given the politics and

the media attention this case has already garnered, it is certainly within the realm of possibility.

It is fair to assume at this point that the Enron case will result in some legislative and/or regulatory changes to the private retirement system. However, it is important to make sure that such changes do not overreach and end up discouraging retirement savings. The vast majority of retirement plans in this country, particularly plans maintained by small to mid-sized companies, do not contain employer stock. Rest assured, ASPA's Government Affairs Committee will fight every step of the way to ensure that any legislative and/or regulatory changes resulting from the Enron case do not do more harm than good. ▲

Brian H. Graff, Esq., is Executive Director of ASPA. Before joining ASPA, Brian was legislation counsel to the US Congress Joint Committee on Taxation.

WELCOME NEW MEMBERS

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

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Designing Plans after EGTRRA

used in determining the deductible limit *and* it removes elective deferrals from the definition of employer contributions in determining the amount of contributions subject to the limit. [§404(a)(12) and §404(n) as added by EGTRRA]

Example: An employer employs three nonexcludable employees whose compensation (before reduction for elective deferrals) totals \$220,000. Elective deferrals total \$20,000. Prior to EGTRRA, the maximum deductible profit sharing contribution would be \$10,000, computed as follows:

Total (415) Compensation	\$220,000
Less elective deferrals	(20,000)
Taxable Compensation	<u>200,000</u>
15% of Taxable Compensation	30,000
Elective deferrals	(20,000)
Remaining deductible amount	<u>\$10,000</u>

A money purchase plan could be added to reach the maximum deductible amount of \$50,000 (25% of taxable compensation net of elective deferrals).

Under EGTRRA, the maximum deductible profit sharing contribution is \$55,000, which is 25% of Code Section 415 compensation. This is over and above the elective deferrals. The \$25,000 additional amount comes from two sources. First, elective deferrals are now included in compensation, thereby increasing the compensation upon which the deduction is determined by \$20,000. This provides an additional \$5,000 in deductible amount.

Secondly, the \$20,000 in elective deferrals is no longer considered employer contributions in determining the deductible amount. Under EGTRRA, the addition of a money purchase plan would provide for no additional opportunity for deductible contributions.

REPEAL OF THE MULTIPLE USE TEST

EGTRRA repealed the multiple use test. [IRC §401(m)(9)] The multiple use test applies in nondiscrimination testing of a 401(k) plan when both the ADP and ACP test make use

of the alternative limit, *i.e.*, the 2% spread test. Assume that a 401(k) plan that is *not* top-heavy is started in 2002. The plan provides for matching contributions of 100% of the first 5% of elective contributions (subject to 2/20 vesting schedule). This is *not* a safe harbor 401(k) plan under Code Section 401(k)(12). The employee census and test results are as follows:

Name	Compensation	Elective Contributions	Match
HCE #1	\$200,000	\$10,000	\$10,000
HCE #2	200,000	10,000	10,000
NHCE #1	50,000	2,500	2,500
NHCE #2	50,000	2,500	2,500
NHCE #3	40,000	0	0
NHCE #4	20,000	0	0
Totals	\$560,000	\$25,000	\$25,000

	Actual Results	Deemed Results
HCE ADP	5.0%	
NHCE ADP	2.5%	3.0%
HCE ACP	5.0%	
NHCE ACP	2.5%	3.0%

With the first year rule of Code Sections 401(k)(3)(E) and 401(m)(3), the ADP and ACP tests are separately deemed to pass. However, the multiple use test would fail and refunds or QNECs would be required. Beginning in 2002, the multiple use test no longer applies and the plan passes ADP and ACP testing without refunds or QNECs. [EGTRRA §666(a) amending Code §401(m)(9)]

TOP-HEAVY AND 401(k) PLANS

Suppose that the plan in the preceding paragraph is top-heavy. Assume the HCEs are also the key employees and the NHCEs are the non-keys. Prior to 2002, the solution would be to provide 3% employer contributions to *all* non-key participants. For 2002 there are two possibilities.

First, the vesting schedule on the match could be changed to 100%, making the plan a safe harbor 401(k) plan. Under new Code Section 416(g)(3)(H), safe harbor 401(k) plans are not considered to be top-heavy, and thus top-heavy minimum contributions are not required.

Alternatively, a 3% employer contribution could be made for NHCEs 3 and 4. Under Code Section 416(c)(2), as amended by EGTRRA, the matching contributions made on behalf of NHCEs 1 and 2 will count towards satisfying the top-heavy minimum requirement.

SECTION 415 AND DEFINED CONTRIBUTION PLANS

Effective for limitation years beginning after 2001, the percentage of compensation limit of Code Section 415(c)(1)(B) has been increased from 25% to 100%. Additionally, the defined contribution dollar limit has been increased from \$35,000 to \$40,000.

Consider the following cross-tested plan with a limitation year beginning January 1, 2002:

Effective for limitation years beginning after 2001, the percentage of compensation limit of Code Section 415(c)(1)(B) has been increased from 25% to 100%.

Name	Age	Compensation	Contribution	% of Comp.
HCE1	50	\$100,000	\$40,000	40.00%
NHCE1	25	20,000	1,250	6.25%
NHCE2	27	20,000	1,250	6.25%
NHCE3	33	20,000	1,250	6.25%
NHCE4	47	24,000	1,500	6.25%
Total		\$184,000	\$45,250	

Note that this plan design passes the new 5% gateway imposed under the revamped 401(a)(4) regulations. Prior to EGTRRA, HCE 1 would have been limited to 25% of compensation, or \$25,000. Furthermore, to reach the \$25,000 limit (prior to EGTRRA), a contribution in excess of 15% of pay may have been required to reach the annual additions limit for HCE 1. The company may have had to adopt a money purchase plan to assure that HCE 1 reached the maximum annual additions limit. Note that Code Section 404(a)(3) limits the deduction to 25% of plan compensation, even where a money purchase plan is used. [§404(a)(3)(v) as added by EGTRRA] This may not be a concern, however, where the employer is a tax-exempt entity.

Example: Linda is the executive director of ABCC, a nonprofit organization that has never been subject to taxation. The board has decided to reward Linda for her 20 years of service. She has been working for a below-market rate of compensation. The board decides to create a money purchase plan for her.

Name	Compensation	Contribution	% of Pay
Linda	\$50,000	\$30,000	60.0%
Ben	20,000	600	3.0%
Carl	20,000	600	3.0%
Darla	10,000	300	3.0%
Totals	\$100,000	\$31,500	

Because Linda is not a highly compensated employee (and there are no HCEs), the allocation is nondiscriminatory. There is not a deduction issue because of the non-profit status. If ABCC had previously been subject to tax such that the 25% deduction limit *did* apply, a 403(b) plan could be used. EGTRRA put 403(b) plans on par with qualified plans by eliminating the maximum exclusion allowance computation such that the \$30,000 annual additions for Linda need only be tested under Code Section 415. [EGTRRA §632(a)(2)]

DEFINED BENEFIT PLANS ARE BACK

Certainly the repeal of Code Section 415(e) started the comeback of defined benefit plans. EGTRRA will only speed up this process.

To begin with, the defined benefit dollar limit of Code Section 415(b)(1)(A) has been increased from \$140,000 to \$160,000. Additionally, actuarial reductions of the dollar limit for early retirement only occur where retirement is before age 62. Under the old rules, this reduction occurred for benefits commencing before Social Security Retirement Age. Also, in-

creases for late retirement take place after age 65, in contrast to Social Security Retirement Age under the old rules. Finally, these changes take place for limitation years *ending* after 2001.

These assumptions are used in the following examples:

Pre-retirement interest: 6.00%
 Post retirement interest: 5.54%
 Post-retirement mortality: GAM '83 (50/50 blend)

Example: Joseph, age 52, with average compensation of \$160,000, wants to retire in 10 years. He wants to establish a defined benefit plan providing for the maximum benefit. Joseph may substantially increase his benefits and deductions.

Limitation Year	Annual Benefit	Estimated Lump Sum	Deduction
12/31/02	\$160,000	\$1,973,933	\$141,281

DEFINED BENEFIT PLANS AND 401(k) PLANS

As indicated above, new Code Section 404(n) removes elective deferrals from the definition of employer contributions for determining deductible limits. This change now allows employers with rich defined benefit plans to institute 401(k) plans. Previously, Code Section 404(a)(7) precluded such employers from having a 401(k) plan, because the maximum deductible contribution between the two plans is the greater of the minimum required contribution to the defined plan or 25% of compensation. [At the 2001 ASPA Annual Conference, IRS officials indicated that such a plan would still be subject to Code Section 404(a)(7).]

Example: Employer X has three nonexcludable employees with compensation totaling \$200,000. Employer X maintains a defined benefit plan that required a 2001 contribution of \$75,000. Employer X would like to adopt a 401(k) plan. However, Code Section 404(a)(7) does not permit this. Because the defined benefit minimum exceeds 25% of compensation (\$50,000), there is no room for deductible contributions to the 401(k) plan. After 2001, Employer X can have a 401(k) plan on top of the defined benefit plan.

Example: Joe, age 55, is a real estate broker, and has Schedule C income of approximately \$100,000 per year. After talking to the actuary, it is determined that Joe can contribute about \$60,000 per year into a defined benefit plan. Generally, this would preclude the adoption of a DC plan, due to the 25% deductibility limit under Code Section 404(a)(7). However, Joe could institute a 401(k) plan and defer \$11,000 into the plan in 2002, plus a catch-up contribution of \$1,000. [§414(v) as added by EGTRRA]

Note that there would still be no room to deduct employer contributions to the 401(k) plan where the 25% limit of 404(a)(7) is exceeded by the defined benefit minimum contribution. Accordingly, failed ADP tests will need to be corrected by making corrective distributions, not by the use of QNECs.

Example: Anna is a 52 year-old doctor making \$200,000 per year. Bob, her husband, age 55, works two days per week for the corporation and earns \$40,000. Anna has no other employees. Here are some options for Anna to consider after EGTRRA:

Option 1: A profit sharing plan for 12/31/02:

Name	Anna	Bob	Totals
Compensation	\$200,000	\$40,000	\$240,000
Contribution	\$30,000	\$30,000	\$60,000

Note: This approach stays within the new deductible limit of 25% of pay for a profit sharing plan.

Option 2: A profit sharing plan with a 401(k) feature for 12/31/02:

Name	Anna	Bob	Totals
Compensation	\$200,000	\$40,000	\$240,000
Profit Sharing	30,000	30,000	60,000
401(k)	10,000	10,000	20,000
Catch-up	1,000	1,000	2,000
Total			
Contribution	\$41,000	\$41,000	\$82,000

Option 3: A defined benefit plan for 12/31/02:

Name	Anna	Bob	Totals
Compensation	\$200,000	\$40,000	\$240,000
Annual Benefit	160,000	40,000	200,000
Est. Lump Sum	1,839,597	459,899	2,299,496
Annual			
Contribution	\$91,911	\$32,917	\$124,828

Note: The costs are calculated under the Individual Aggregate funding method.

Option 4: A defined benefit plan with a 401(k) plan for 12/31/02:

	Plan	Contribution
Defined Benefit		\$124,828
401(k)		22,000
Catch-Up		2,000
Totals		\$148,828

Note: This plan is designed to take advantage of the non-inclusion of 401(k) deferrals for 2002 fiscal years and thereafter.

DEFINED BENEFIT/DEFINED CONTRIBUTION COMBINATION PLANS

EGTRRA increases in defined benefit and defined contribution limits have also enhanced the opportunities for DB/DC combination plans. At the same time, the new cross-testing regulations increased the complexity of this plan design. Some of the opportunities for DB/DC design are illustrated in the case study below.

A professional corporation with four owners and four employees has the following census:

Employee	Age	Compensation
HCE #1	60	\$200,000
HCE #2	57	200,000
HCE #3	37	200,000
HCE #4	35	200,000
NHCE #1	51	60,000
NHCE #2	49	60,000
NHCE #3	24	40,000
NHCE #4	26	40,000
Total		\$1,000,000

Design 1: A cross-tested profit sharing plan could be designed to allocate 20% of pay to each of the four owners:

Employee	Compensation	Contributions	% of Pay
HCE #1	\$200,000	\$40,000	20.0%
HCE #2	200,000	40,000	20.0%
HCE #3	200,000	40,000	20.0%
HCE #4	200,000	40,000	20.0%
NHCE #1	60,000	5,100	8.5%
NHCE #2	60,000	5,100	8.5%
NHCE #3	40,000	3,400	8.5%
NHCE #4	40,000	3,400	8.5%
Total	\$1,000,000	\$177,000	17.7%

This cross-tested design will satisfy the 5%/1/3 rule gateway contained in the new regulations.

Design 2: A single defined benefit plan could be designed for the group if HCE #1 and #2 are interested in the financial accumulation possibilities offered by a defined benefit plan. If a defined benefit plan was designed using the Section 415 maximum benefit for all HCEs, the benefits and approximate cost breakdown is shown below:

Employee	Projected Monthly Benefit	Normal Cost
HCE #1	\$6,667	\$163,169
HCE #2	10,667	148,693
HCE #3	13,333	26,844
HCE #4	13,333	23,269
NHCE #1	2,750	18,055
NHCE #2	2,750	14,779
NHCE #3	2,750	2,299
NHCE #4	2,750	2,616
Total		\$399,723

The above is a general-tested design [*i.e.*, the general nondiscrimination test under Treasury Regulations Section 1.401(a)(4)-3(c) is used]. While this approach will likely be favored by HCEs #1 and #2, it will not maximize the ultimate retirement accumulation for HCE #3 and HCE #4.

Design 3: A separate DB and DC plan could be provided for the business by splitting the employees between plans as shown below:

DB Plan	DC Plan
HCE #1	HCE #3
HCE #2	HCE #4
NHCE #3	NHCE #1
NHCE #4	NHCE #2

Under this approach, both of the plans pass the minimum coverage requirements under Code Section 410(b) by passing the ratio percentage test. Each plan uses a safe harbor formula. The advantage of this approach is as follows:

1. The Code Section 404(a)(7) deduction limits do not apply. In other words, because no single employee is covered by both a DB and a DC plan, the deduction limit of 25% of pay (or the minimum funding requirement in the DB plan) does not apply.
2. The DB/DC combination rules under the new cross-testing regulations do not apply. The cost breakdown is shown below:

Employee	DC Contributions	DB Cost (Individual Aggregate Funding Method)
HCE #1		\$163,169
HCE #2		148,693
HCE #3	\$40,000	
HCE #4	40,000	
NHCE #1	9,960	
NHCE #2	9,960	
NHCE #3		2,299
NHCE #4		2,616
Totals	\$99,920	\$316,776

This approach may very well fit the needs of all four owners, but the younger NHCEs may be disappointed participating in a defined benefit plan.

Design 4: It would be possible to set up both a DB plan and a profit sharing plan for the 2001 plan year. This approach, known as the flip-flop method, will permit the plan sponsor to take two defined benefit deductions in a single year and two profit sharing plan contributions in the following year. The deduction for the profit sharing contributions would be limited to 25% of pay under the new EGTRRA rules. The DB plan would be designed as shown in Design #2 and the profit sharing plan would be cross-tested as shown below:

Employee	Compensation	Profit Sharing Contribution
HCE #1	\$200,000	\$13,500
HCE #2	200,000	13,500
HCE #3	200,000	40,000
HCE #4	200,000	40,000
NHCE #1	60,000	5,100
NHCE #2	60,000	5,100
NHCE #3	40,000	3,400
NHCE #4	40,000	4,400
Totals	\$1,000,000	\$125,000

For this approach to work, the annual profit sharing allocation cannot exceed 12.5% of pay, as deducting two years worth of profit sharing contributions in a single year is limited to 25% of pay. It also assumes that pay will be increasing, as a decrease in pay could decrease the deductible amount. Some consultants believe a money purchase plan should be substituted for a profit sharing plan in this scenario.

The methodology of the flip-flop method depends upon the cooperation of the actuary, the administrator, the accountant, and the client. Two issues are critical:

1. The corporate return must be filed on a timely basis each year (*i.e.*, it may *not* be extended).
2. In the off-year, the DB must be funded after the due date of the corporate return, but within six months of the due date of the corporate return and the PS plan must be funded after the due date of the corporate return, but within 30 days of such due date.

The deduction pattern for four years is shown below:

Plan Year	Date Corporate Return Filed	Funding Date of PS Contribution	PS Fiscal Year Deduction	Funding Date of DB Plan	DB Fiscal Year Deduction
2002	3/15/2003	4/14/2003	2003	3/15/2003	2002
2003	3/15/2004	3/15/2004	2003	9/15/2004	2004
2004	3/15/2005	4/14/2005	2005	3/15/2005	2004
2005	3/15/2006	3/15/2006	2005	9/15/2006	2006

As can be seen by the examples in this article, there are numerous design opportunities presented by EGTRRA for the plan sponsor looking to increase retirement plan accumulations. It is the authors' belief that EGTRRA will serve to enhance the development, maintenance, and improvement of small business retirement plans. ▲

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Catch-Up Contribution Guidance

He is allowed to characterize the \$1,000 refund as a catch-up contribution even though he is no longer employed by the employer on his 50th birthday.

LIMITATIONS

There are three general limits that, if exceeded, give rise to the ability to make catch-up contributions – plan limitations, ADP limit, and statutory limits.

Plan Limitations – By virtue of plan design, an employer may have imposed certain limits on how much any eligible participant may defer. This limit may be expressed as a specific dollar amount (no eligible participant may contribute more than \$5,000 in any plan year) or as a percentage of compensation limit (no participant may contribute more than 10% of eligible compensation in any plan year). The regulations are clear that any limit needs to be set forth in the plan document and, at this time, it appears that a clause in a document that states that the Plan Administrator has the right to impose a limit on the deferrals of HCEs is not sufficient. Hopefully, additional guidance will provide practitioners with some clarity in this area, since it is a common practice to declare a limit outside of the plan once mid-year testing is performed.

ADP Limit – To the extent a participant is limited on how much can be contributed because of a failure of the Actual Deferral Percentage test, then the amount of the Excess Contribution (failure amount) is characterized as a catch-up contribution to the extent that it does not exceed the applicable catch-up limitation for the year and is not distributed. Only elective de-

ferreds made by HCEs can be treated as catch-up contributions by reason of the ADP limit.

Statutory Limits – Once a participant has reached the maximum deferral amount allowed by law [the 402(g) limit], or violates the maximum annual addition limitation in a given year, a catch-up contribution can be made.

Catch-up eligible participants may make deferral elections during the year in anticipation of exceeding a statutory or plan limit. However, contributions are not actually characterized as catch-up contributions until the end of the year. This is true regardless of whether the participant formally designated any portion of his or her elective deferrals as catch-up. In other words, a designation by a participant is irrelevant in determining whether elective deferrals are catch-up contributions, and such a designation is neither required nor encouraged by the proposed regulations. Ultimately, none of the participant's elective deferrals will be treated as catch-up contributions unless a statutory limit, plan limit, or ADP limit is exceeded. Thus, it is possible for a contribution to be designated as a catch-up contribution when initially made (because it exceeded a limit as applied on a payroll basis), but the contribution is ultimately characterized as normal elective deferrals at year-end. This might happen, for example, when a participant in a plan that limits elective deferrals to 15% of compensation begins the plan year by deferring 20% per payroll period, in anticipation of taking advantage of the catch-up limit, but by midyear reduces the deferral percentage to 3%. To determine whether elective deferrals for the plan year exceed a plan limit, the regulations permit various limits applied throughout the plan year to be applied using a weighted average based on the number of years the limit is in effect.

TOP-HEAVY TESTING

The proposed regulations clarify that any contributions made in the current testing year that are deemed catch-up contributions are disregarded in applying top-heavy rules (e.g., catch-up contributions by key employees will not trigger a top-heavy contribution for the non-key employees). However, in subsequent years, the catch-up contributions will be included as part of the account balance in the top-heavy determination. This prevents the need for separate record keeping of catch-ups for top-heavy purposes because the value of catch-up contributions never has to be separately tracked.

COVERAGE TESTING

If a plan is using the Average Benefits Test for coverage testing, then similar to the top-heavy rules, a plan

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ignores the catch-up contributions in the current year, but includes them as part of the account balance in subsequent years.

AGGREGATION OF CATCH-UP AMOUNTS

Whether a participant participates in more than one plan of the same employer or multiple plans under different employers, the participant will be limited to one overall catch-up contribution total for the year (\$1,000 in 2002, for example).

UNIVERSAL AVAILABILITY

If an employer [determined on a related-group basis under IRC §414(b), (c), (m), and (o)] sponsors more than one plan that allows for elective deferrals and has a catch-up provision in one of the plans, then all plans must allow for the catch-up. However, Notice 2002-4 provides a transition rule for 2002 under which plans maintained by the same employer will be treated as satisfying the universal availability test, even though the plans' catch-up provisions have different effective dates in 2002, so long as no effective date is later than October 1, 2002. An exception is also provided in Notice 2002-4 for a plan that is qualified under Puerto Rico tax law. Since Puerto Rico law does not recognize catch-up contributions, a plan that allows catch-up contributions will not be treated as failing the universal availability test merely because another plan maintained by the employer under Puerto Rico tax law does not include a catch-up provision.

As for other tests, once the catch-up contributions are eligible on a nondiscriminatory basis, then they do not have to be considered as an annual addition under IRC §415, as part of the Actual Deferral Percentage Test, as part of the applicable deferral limit for the year under IRC §402(g), or for purposes of the deduction limits under §404.

Catch-up contributions are an elective plan provision. If a plan intends to use them, then they must be included as part of the EGTRRA good faith model amendments released under IRS Notice 2001-57. In addition, communicating the new plan provisions and limitations to participants, payroll vendors, and recordkeepers must be completed in a timely manner.

Employers who acquire plans as part of a corporate transaction have up to two years to add a catch-up contribution provision to the acquired plan. In addition, if a plan sponsor permits catch-up contributions for nonunion employees, it must eventually allow them for employees subject to collective bargaining. Recognizing the difficulty of changing a plan subject to collective bargaining, employers may delay allowing catch-up contributions from bargained employees until the plan year that begins after the termination of the collective bargaining agreement in effect on January 1, 2002.

REPORTING CATCH-UP CONTRIBUTIONS

In addition to the proposed regulations, Announcement 2001-93 advised employers how to report elective deferral catch-up contributions beginning after December 31, 2001. For 2002, employers are required to report participants' elective pension deferrals on Form W-2 in box 12 using Codes D through H and S. For employees' qualified catch-up contributions after 2001, employers must report the elective deferral catch-up contributions in the totals reported for Codes D through H and S.

GOING FORWARD

In spite of the administrative considerations that must be addressed before catch-up contributions can be offered to participants, the ability to make catch-up contributions is an attractive and valuable benefit. Considering the sunset provision contained in EGTRRA, plan sponsors should make decisions regarding catch-ups as soon as possible. Plans that will be offering catch-up contributions should use the model amendment to implement this provision. The model must be adopted by the end of the plan year in which the provision is to become effective. ▲

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New Rollover Opportunities: Be Cautious

by Michael C. Greenberg, QPA

CONGRESS HAS (FINALLY) AMENDED THE RULES RELATING TO ROLLOVERS BETWEEN QUALIFIED PLANS, 403(b)s, IRAs, AND 457 PLANS, EFFECTIVE FOR DISTRIBUTIONS MADE AFTER 2001. HOORAY!

Sections 641, 642, and 643 of EGTRRA allow for rollovers from and to most of the arrangements listed above. The chart on page 13 lists what rollovers are permissible for 2001 and what will be permissible after 2001. Please read the footnotes – they are important to understanding the chart.

Be careful, full portability is not yet a reality. There are still some rollovers that are *not* permissible, even in the Wonderful World of EGTRRA. (Yes, we are working on a theme song!)

For instance, it should be noted that the changes under EGTRRA that allow rollovers between 457 plans and other retirement arrangements do not affect non-governmental 457 plans. Rollovers will still be impermissible with regard to those arrangements.

Some other interesting facts that will amaze and impress your friends include:

- Distributions attributable to after-tax contributions from a qualified plan may be rolled over to another qualified plan or IRA. However, distributions attributable to after-tax contributions may not be rolled over to a 457 plan – governmental or otherwise [Code Section 457(e)(16)(B)].
- The rollover of after-tax contributions from a qualified plan to a qualified defined contribution plan may only be executed through a direct trustee-to-trustee transfer. [Code Sec. 401(a)(31), Code Sec. 402(c)(2)(A)]
- A qualified defined contribution plan must separately account for any transfer of after-tax contributions, including any related earnings. [Code Sec. 402(c)(2)] IRAs, however, are not required to separately account for after-tax contributions.
- After-tax IRA contributions may not be rolled over to anything except another IRA. [Code Sec. 408(d)(3)(A)(ii)]

Here's one of my personal favorites, in its original government speak:

Clause (i): If a distribution is made from an individual retirement plan, and a rollover contribution is made to an eligible retirement plan described in section 402(c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution, then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying Section 72.

Clause (ii): In the case of a distribution described in clause (i) –

Section 72 shall be applied separately to such distribution, notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under Section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and appropriate adjustments shall be made in applying Section 72 to other distributions in such taxable year and subsequent taxable years.

Translated into English, that means if a distribution from an IRA that has post-tax money in it is rolled into a qualified plan, the distribution will be deemed to have been made from pre-tax money first, regardless of the proration normally required. Since after-tax IRA contributions cannot be rolled into qualified plans, this allows for the full pre-tax balance of an IRA to be rolled over.

Under Code Sec. 401(k)(11)(B)(i)(III), amounts received under a SIMPLE 401(k) plan may not be rolled over to another SIMPLE 401(k) plan because a SIMPLE 401(k) plan may only receive elective and matching contributions. When Congress wrote EGTRRA, it could have amended Code Section 401(k)(11)(B)(i)(III) to allow rollovers to SIMPLE 401(k) plans. Congress did not make that amendment. Further, Revenue Procedure 97-9 limits contributions to SIMPLE plans to employee and employer SIMPLE contributions seemingly precluding rollovers. However, the model amendment in Appendix A of Rev. Proc. 97-9 appears to specifically allow for rollovers. IRS may have exceeded its authority in Revenue Procedure 97-9 allowing plans to adopt a provision that is not permissible under the Code. In light of these discrepancies, these rollovers bear some risk. (Refer to footnote 5 for details.)

Remember, there are a lot of rollover opportunities, as well as some pitfalls. Be careful! ▲

Michael C. Greenberg, QPA, is the vice president of the Technical Answer Group, Inc. (www.tagdata.com). Michael has been involved in pension administration and consulting for over 24 years. He has earned the QPA designation from ASPA as well as the paralegal certification in ERISA from Long Island University.

ROLLOVER TO FROM	IRA		SIMPLE IRA		Roth IRA		SEP		SIMPLE 401(k)		Safe harbor 401(k)		403(b)		Govern- mental 457		Qualified plan	
	'01	'02	'01	'02	'01	'02	'01	'02	'01	'02	'01	'02	'01	'02	'01	'02	'01	'02
IRA	Y	Y	N	N	Y ¹	Y ¹	Y	Y	N	N ⁵	N	Y	N	Y	N	Y	N	Y
SIMPLE IRA	Y ²	Y ²	Y	Y	Y ¹	Y ¹	Y ²	Y	N	N ^{2,5}	N	Y	N	Y	N	Y	N	Y ²
Roth IRA	N	N	N	N	Y	Y	N	N	N	N	N	N	N	N	N	N	N	N
SEP	Y	Y	N	N	Y ¹	Y ¹	Y	Y	N	N ⁵	N	Y	N	Y	N	Y	N	Y
SIMPLE 401(k)	Y	Y	N	N	N	N ⁴	Y	Y	N ⁵	N ⁵	Y	Y	N	Y	N	Y	Y	Y
Safe harbor 401(k)	Y	Y	N	N	N	N ⁴	Y	Y	N ⁵	N ⁵	Y	Y	N	Y	N	Y	Y	Y
403(b)	Y	Y	N	N	N	N ⁴	N	Y	N	N ⁵	N	Y	Y	Y	N	Y	N	Y
Governmental 457	N	Y	N	N	N	N ⁴	N	Y	N	N ⁵	N	Y	N	Y	Y	Y	N	Y
Qualified plan	Y	Y	N	N	N	N ⁴	Y	Y	N ⁵	N ⁵	Y	Y	N	Y	N	Y	Y	Y
After-tax contributions in qualified plan	N	Y	N	N	N	N ⁴	N	Y	N	N ⁵	N	Y ³	N	N	N	N	N	Y ³
After-tax contributions in IRA	Y	Y	N	N	N	N ⁴	N	N	N	N	N	N	N	N	N	N	N	N

Note: A surviving spouse may roll over distributions into a tax-qualified retirement plan, 403(b) plan, or governmental 457 plan. Hardship distributions cannot be rolled over. The rules relating to non-governmental 457 plans have not been changed by EGTRRA.

1. Only if the taxpayer's adjusted gross income (AGI) for the tax year does not exceed \$100,000, and the taxpayer is not married filing separately. [Code Sec. 408A(c)(3)(B)]
 2. Only after the individual has participated in the SIMPLE plan for two years. [Code Sec. 408(d)(3)(G)(ii)]
 3. Only through direct trustee-to-trustee transfer.
 4. However, a distribution that is rolled over to a traditional IRA may then be rolled over to a Roth IRA, if the individual otherwise could roll over from the traditional IRA to a Roth IRA.
 5. Under Code Sec. 401(k)(11)(B)(i)(III), amounts received under a SIMPLE 401(k) plan may not be rolled over to another SIMPLE 401(k) plan because a SIMPLE 401(k) plan may only receive elective and matching contributions.
 - 401(k)(11)(B) Contribution requirements. –
 - 401(k)(11)(B)(i) In general. – The requirements of this subparagraph are met if, under the arrangement –
 - 401(k)(11)(B)(i)(I) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage of compensation of the employee but which in no event exceeds \$6,000,
 - 401(k)(11)(B)(i)(II) the employer is required to make a matching contribution to the trust for the year in an amount equal to so much of the amount the employee elects under subclause (I) as does not exceed 3 percent of compensation for the year, and
 - 401(k)(11)(B)(i)(III) no other contributions may be made other than contributions described in subclause (I) or (II).
- Under Code Sec. 401(k)(11)(B)(i)(III), amounts received under a SIMPLE 401(k) plan may not be rolled over to another SIMPLE 401(k) plan because a SIMPLE 401(k) plan may only receive elective and matching contributions.
- 401(k)(11)(B) Contribution requirements. –
 - 401(k)(11)(B)(i) In general. – The requirements of this subparagraph are met if, under the arrangement –
 - 401(k)(11)(B)(i)(I) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed

as a percentage of compensation of the employee but which in no event exceeds \$6,000,

401(k)(11)(B)(i)(II) the employer is required to make a matching contribution to the trust for the year in an amount equal to so much of the amount the employee elects under subclause (I) as does not exceed 3 percent of compensation for the year, and

401(k)(11)(B)(i)(III) no other contributions may be made other than contributions described in subclause (I) or (II).

Further, Rev. Proc. 97-9 says, "Generally, no contributions may be made during a year to a plan using the 401(k) SIMPLE provisions, other than those contributions described in section 2.03 below.

.03 Under a plan containing the 401(k) SIMPLE provisions, each employee may elect to make salary reduction contributions for a year of up to \$6,000. The employer must make either a matching contribution equal to the employee's salary reduction contributions, limited to 3% of the employee's compensation for the year, or a nonelective contribution for all eligible employees equal to 2% of the employee's compensation for the year. All amounts contributed under 401(k) SIMPLE provisions must be nonforfeitable at all times."

However, the model amendment in Appendix A of Rev. Proc. 97-9 appears to allow for rollovers:

SECTION III. CONTRIBUTIONS

3.3 Limitation on Other Contributions

(a) General rule – No employer or employee contributions may be made to this plan for the year other than salary reduction contributions described in section 3.1, matching or nonelective contributions described in section 3.2 and rollover contributions described in §1.402(c)-2, Q&A-1(a) of the Income Tax Regulations.

When Congress wrote EGTRRA, it could have amended Code Section 401(k)(11)(B)(i)(III) to allow rollovers to SIMPLE 401(k) plans. Congress did not make that amendment.

IRS appears to have exceeded its authority by allowing a plan to adopt a provision that is not permissible under the Code. Until there is some clarification or further guidance, it appears that the Code does not actually permit such a rollover.

The 2001 ASPA Annual Conference – A Great First Impression

by Jay Kierman

INTRIGUING, ENLIGHTENING, AND EDUCATIONAL ARE ONLY A FEW OF THE TERMS THAT I WOULD USE TO DESCRIBE THE ASPA CONFERENCE HELD OCTOBER 28-OCTOBER 31, 2001. THE CONFERENCE TOOK PLACE IN WASHINGTON, DC AND WAS ATTENDED BY WELL OVER 1,400 PARTICIPANTS. AS A FIRST-TIME ATTENDEE, I WAS VERY IMPRESSED WITH THE OUTSTANDING AGENDA AND OVERALL QUALITY OF THE CONFERENCE.

The Conference commenced with a choice of eight sessions to attend. Since I work on a regular basis with 401(k) plans, I decided that it would be appropriate to attend the “Design Techniques for 401(k) Plans to Encourage Enrollment and Ease of Administration” session. The hundreds of attendees at this class all learned some valuable techniques to increase participation in 401(k) plans. There were three important suggestions regarding increasing enrollments: first, to implement automatic enrollment whereby if an employee did not make an elective deferral, he would be deemed to have made a 3% deferral; second, to increase the match; and third, to increase educational materials and classes. Questions were encouraged throughout the session.

Following this class, the Opening General Session took place, at which time opening introductions were made and awards were given. At this session, attendees were afforded the opportunity to meet one another in an informal manner. This session was also a good transition period to the General Ses-

sion – “Pension Reform Passes!” These sessions were well-attended and attendees were educated (and entertained!) about the new pension reform issues.

Following Monday’s breakfast, I attended the General Session: “IRS Q&A.” The group of presenters at this session explained the new IRS guidance on EGTRRA. Presenters included IRS agents and attorneys who gave us the opportunity to ask questions regarding the new laws and regulations. They also gave us guidance involving pension plans for the coming years.

The next session was entitled “GUST & EGTRRA.” A significant number of new regulations were discussed and written materials were provided for participants to read and study. The GUST remedial amendment time frame and its procedures were presented in detail.

With great enthusiasm, I attended “Resolving Form 5500 Issues.” This session was particularly exciting for me, as I have had the opportunity to work on several 5500s. At this forum, I gained tips and information on tax filings. An in-depth presentation was offered on the techniques that should be used to ensure that the 5500 forms are completed accurately and thoroughly.

Knowing when to file and where to file information on Limited Plan Reporting is crucial to an effective final document. Some of the changes for the coming year were discussed, and tips were offered regarding the filing of the form 5500 with the IRS.

I particularly enjoyed the session titled “Compliance Only Consulting in the Daily Valuation World.” This seminar gave me the tools to understand and develop consultant relationships. The presentation included insights into loyalty, compliance, design, and assistance with legislative changes. Loyalty was stressed several times. The presenter explained how loyal clients to the consulting firm are more likely to purchase additional services, and how likely they will be to recommend their consultant to other businesses. The importance of the visibility of the consulting firm vis-à-vis other businesses was also stressed. For example, visibility may include trade associations and the Chamber of Commerce. Other important relevant topics included creating a client profile, identifying one’s team, daily valuation, and transitioning to a compliance-only world.

I had the opportunity throughout the ASPA Conference to constantly be challenged. I found that the attendees were genuinely interested in learning about the new, exciting, enhanced opportunities available to us and to our clients. The new information transmitted to us included: increased deferral amounts, less compliance testing, increased contribution and compensation limits, and less restricted definitions of key employees.

I enjoyed the professional, yet informal setting. ASPA created an effective atmosphere where professionals from different backgrounds could meet and discuss their solutions to different business and pension challenges. I particularly enjoyed meeting people from all over the country and discussing their backgrounds with them.

I would be remiss if I did not comment on the ASPA Annual Conference Committee and staff and their making sure that our educational and accommodation needs were met. Their level of organization is a model that we can use in our daily business dealings. Thank you, ASPA, for a great Conference! After such a rewarding experience, I guarantee, you’ll see me again! ▲

Jay Kierman is a staff consultant at Ernst & Young LLP in New York and works in the tax area. Jay is a graduate of Yeshiva University.

MARK YOUR CALENDAR

2002 ASPA Annual Conference

October 27-30
Washington Hilton & Towers
Washington, DC

The “Personal” Side of the Visit to Capitol Hill

by Lisa Stifel, QPA, and Deborah Turner

ON OCTOBER 30, 2001, THE VISIT TO CAPITOL HILL WAS AN AMAZING EXPERIENCE FOR THESE TWO 2001 ASPA ANNUAL CONFERENCE ATTENDEES. OUR MEETING WITH REP. DONALD MANZULLO (R-IL) RESULTED IN AN EXCITING AFTERNOON VISIT TO THE CAPITOL BUILDING, WHICH CULMINATED WITH THE MEETING OF ONE OF THE MOST POWERFUL AND RESPECTED WOMEN IN AMERICAN POLITICS.

This year, ASPA had encouraged Conference attendees to sign up for meetings with their elected officials to thank them for passing EGTRRA and to “offer ourselves and ASPA as technical experts on pension issues, and build a relationship with our Congressman.” Sarah Simoneaux, CPC, a member of the ASPA Board of Directors, spoke to the attendees at Monday evening’s “Rally for the Visit to the Hill.” Sarah and Brian Graff, Esq., ASPA’s Executive Director, explained that our visits could run the gamut from a brief conversation with a staff member to an hour-long meeting with our Senator or Congressman. Our particular meeting turned into an “excellent political adventure!”

Our afternoon began with the shuttle bus dropping our group off in front of the Supreme Court. We then crossed the northeast lawn of the Capitol, where a press conference was in progress. Along with other ASPA Visit to Capitol Hill participants, we began our afternoon viewing the US government in action. Gathered in front of national television cameras for the press conference were Captain Duane Woerth, president of the Air Line Pilots Association (ALPA) and Republican Senators Olympia Snowe (R-ME), John McCain (R-AZ), John Warner (R-VA), Kay Bailey-Hutchison (R-TX), Democratic Senator John Rockefeller (D-WV), and several others. The purpose of the press conference was to lobby for the passage of the Aviation and Transportation Security Act, which was subsequently signed into law by President Bush on November 19, 2001.

Our meeting was scheduled by ASPA with Rep. Manzullo (R-IL) for 1:00 p.m. in his quarters at the Cannon House Office Building on Independence Avenue. As we made our way down the corridor we took notice of some of Rep. Manzullo’s well-known neighbors who also had offices on the second floor – Reps. Patrick Kennedy (D-RI) and Mary Bono (R-CA). Before Rep. Manzullo escorted us to his office, he introduced us to Rep. Lee Terry (R-NE) who was sharing office space since his offices in the Longworth House Building were closed due to the anthrax contamination. We thanked Rep. Manzullo, Chairman

of the House Committee on Small Businesses, for his support of EGTRRA and the Small Business Job Protection Act. We explained how the increased limitations, catch-up contributions, and saver’s credit under EGTRRA would benefit both employees and employers of small businesses in Northern Illinois. Rep. Manzullo engaged us in an amiable conversation about our positions at RSM McGladrey, Inc., where we serve many small and medium sized businesses.

Being cognizant of his schedule, we were about to depart when he offered to take us on a personal tour of the Capitol building, which had been closed to visitors since September 11. We gladly accepted his invitation. We accessed the Capitol through one of the many tunnels that connect the House and Senate office buildings. While viewing high school student artwork displayed in the hallway, we met Rep. Dennis Rehberg (R-MT), who stopped to speak with Rep. Manzullo about the snowmobile ban in Yellowstone National Park. (A proposed ban is in place to eliminate snowmobiles from Yellowstone by 2004 due to the high pollution emission levels of the machines. However, the ban would cut approximately \$16.5 million from the local economy and eliminate 400 jobs.) Reps. Manzullo and Rehberg talked about meeting in West Yellowstone, MT, to discuss this polarizing issue.

Upon entering the Capitol, Rep. Manzullo gave us an historical tour of Statuary Hall, which was the meeting place of the US House of Representatives until 1857. In the corridor between Statuary Hall and the Rotunda, we passed close by Senator McCain. We proceeded to the Senate Chamber visitor’s gallery where we briefly listened to Sen. Larry Craig (R-ID) passionately introduce legislation on fairness in mental health care coverage under Medicare. We noticed Sen. Edward Kennedy (D-MA) in chamber while Sen. Jesse Helm (R-NC) watched from the gallery. As we made our way through the halls of Congress, we passed Sen.



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photos from top to bottom:

Good friends, George Taylor, MSPA, 2001 ASPA President, and Sarah Simoneaux, CPC, Chair of the Congressional Outreach Committee, celebrate a successful Visit to Capitol Hill.

One of the groups of ASPA’s 2001 Visit to Capitol Hill participants pause before our nation’s Capitol.

The American spirit was proudly displayed at the Grand Hyatt during the 2001 Annual Conference.

Majority Leader Tom Daschle (D-SD) surrounded by reporters and staffers. Upon exiting the House of Representatives visitor's gallery, Rep. Manzullo announced "let me show you the best view in Washington." On this beautiful, sunny, fall afternoon we stepped out onto the balcony outside Speaker of the House Dennis Hastert's (R-IL) office and looked down upon the same grand view that presidents have viewed on inauguration day. Wow! As we paused to take in the glorious view of Washington, DC, past the Capitol Reflecting Pool, across the National Mall to the Washington Monument and beyond, we contemplated whether the place we stood, this cherished symbol of our democracy, was supposed to be another target on September 11.

We are thankful that ASPA heeded President Bush's call to America to conduct business as usual and did not cancel the 2001 ASPA Annual Conference or the Visit to Capitol Hill. Though the last two hours with Rep. Manzullo included a roster of political who's who, the day's finale was meeting a woman that we both hold in high esteem. On our departure from the building through a first floor corridor, we recognized a powerful, intelligent woman who is as well-known for her expertise in foreign policy as she is for her exquisite taste in brooches. We were awestruck when we noticed former Secretary of State, Dr. Madeleine

Albright, approaching us. Deb quickly gained the attention of the fast-moving Dr. Albright and introduced herself. This gave Lisa time to gain some composure, introduce herself as well and take notice of the spider brooch pinned to her jacket. Dr. Albright had said in a recent television interview that dignitaries would be wary of her when she wore the spider pin. With her warm smile, firm handshake, and pleasant demeanor, we can say that the pin was only chosen that day because it was almost Halloween. Our meeting Dr. Albright was the highlight of our trip to Washington, DC. Because we made a decision to adhere to President Bush's advice, as did ASPA, we had a most rewarding and unforgettable day. For us, October 30, 2001, will be a day to remember! ▲

Lisa A. Stifel, QPA, received her Bachelor of Science degree in Finance from Central Connecticut State University. Lisa works for RSM McGladrey, Inc. in Rockford, IL, supervising the compliance and administrative functions of defined contribution retirement plans.

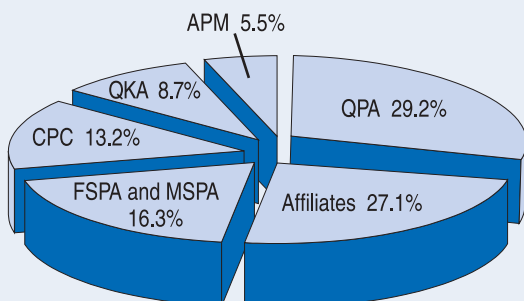
Deborah Turner is a manager in the Pension Administration and Consulting Division of RSM McGladrey. She graduated from Ohio State University with a Bachelor of Arts degree in Political Science and received a Masters in Business Administration from Pepperdine University.

JANUARY 2002 ASPA MEMBERSHIP STATISTICS

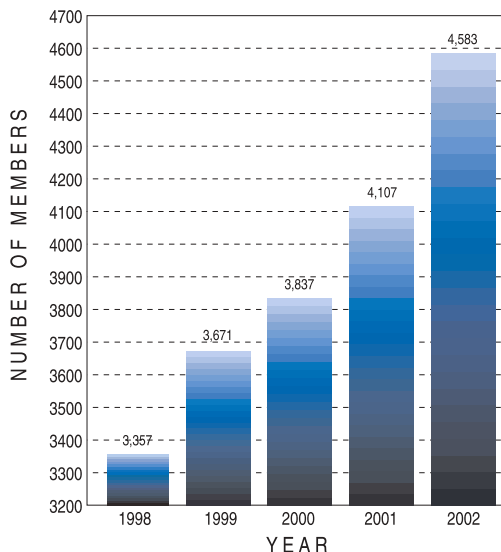
Highest Designation Held

FSPA	56
MSPA	693
CPC	603
QPA	1,338
QKA	401
APM	250
Designation Totals	3,341
Affiliates	1,242
Grand Total	4,583

Membership Composition



ASPA MEMBERSHIP HISTORY 1998-2002



Membership Count Comparison

Year	Count	Net Increase	Annual Increase
January 2002	4,583	+476	11.6%
January 2001	4,107	+270	7.0%
January 2000	3,837	+166	4.5%
January 1999	3,671	+314	9.0%

Presidential Year in Review

by George J. Taylor, MSPA



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WELL, IT'S ALL OVER. I HAVE JUST COMPLETED MY LAST OFFICIAL ACT AS PRESIDENT OF ASPA. I ATTENDED THE COUNCIL OF PRESIDENTS AND COUNCIL OF PRESIDENTS ELECT (COP/COPE) MEETING IN SCOTTSDALE, AZ. IN TYPICAL FASHION, I AM SITTING AT THE AIRPORT ON MY WAY HOME WRITING TO YOU. AS IS THE CUSTOM, I WAS REQUESTED TO PROVIDE AN ARTICLE REVIEWING MY PRESIDENTIAL YEAR. WHERE DO I START?

With great pride, throughout the rest of my professional career, I will be able to say I served as ASPA's President. ASPA overall had a good year, and I would love to take credit for that, but I can't. It was the incredible dedication and hard work of so many volunteers and the talented ASPA staff, as well as the support of all our members that made this happen. This year's success is a result of the leadership of prior years' Presidents, their Executive Committees, and talented Boards of Directors.

It is time for all ASPA members to pat themselves on the back, at least momentarily, and to take pride in this great organization. Here is the short list:

MEMBERSHIP

- Total membership reached nearly 4,600.
- There are over 850 QKAs.
- Our member retention rate is, incredibly, over 95%
- Our ABCs continue to grow. There are currently 12 ABCs and several more are planned.

EDUCATION & EXAMINATION

- The first year of window based examinations and the availability of instant pass or fail marks went well.
- The Pension Administrator's Course PA-1A is now online.
- The Education Task Force continues to work toward a restructuring plan. Hopefully, a final report will be presented to the Board this year.

CONFERENCES

- In spite of the events of September 11, this year's Annual Conference was our second largest ever. We were the first large group to visit the Hill after September 11. Our legislators really appreciated seeing ASPA members.
- We will hold our first 401(k) Sales Summit February 28-March 2, 2002.
- In May 2002, ASPA and the IRS will co-sponsor a conference in the Baltimore/Philadelphia area. This conference brings the total co-sponsored ASPA/IRS Conferences to four.
- There have been lots of webcasts and there are many more to come.
- We now have the availability to do online registrations for conferences.
- The 2001 Summer Academy was a success.

GOVERNMENT AFFAIRS

- We got Pension Reform – EGTRRA!
- GAC has met with, and will continue to meet with, the IRS, Department of Treasury, DOL, and the PBGC on matters of material interest.
- Our Executive Director, Brian Graff, Esq., continues to work with our legislators on important issues. There is a lot of "stuff" going on.
- The ASPA PAC has become an important vehicle in getting our message to the correct people.

THE BOARD OF DIRECTORS

- The Board approved new procedures that went into effect on November 1 and were adopted to handle ASPA disciplinary cases and referrals from the Actuarial Board of Conduct and Discipline.
- A decision was made to change how the Board operates. The first step in the process will be to agree on our core purpose and core values. This task was addressed at the January Board Retreat.

THE NATIONAL OFFICE

- Our marketing firm has made significant progress in assisting with the promotion of our QKA designation. Plans are underway to promote our designations to the end-user, your clients.

At the final 2001 Board Dinner, I expressed that being ASPA President was like having a brief opportunity to steer a large ship already at sea. Adjustments, of course, must be made slowly and with great care. Your time at the helm is short and the journey is long. I am thankful for having the opportunity to have been at the helm and thankful to my Executive Committee, the Board of Directors, and the ASPA staff for all of their support. They made this past year very enjoyable.

I hope that at some future point, an ASPA President writing a future article will be able to say that my presidency had something to do with the success of ASPA during his/her term. ▲

George J. Taylor, MSPA, EA, is senior vice president of ARIS Pension Services, a division of ARIS Corporation of America in State College, PA. He is currently serving as ASPA's Immediate Past President. He has served as ASPA's President, Vice President, and co-chair of the Government Affairs Committee.



FOCUS ON ABCs

One of ASPA's Newest Additions: The ASPA Benefits Council of the Texas Gulf Coast

by Jim Black

HOWDY Y'ALL. IS ASPA A GREAT ORGANIZATION, OR WHAT? MANY OF US HAVE ONLY SCRATCHED THE SURFACE!

This is our first year – six months to be exact; and thanks to our fantastic Program Committee Chairpersons, Rich Shulman, MSPA, and Sheila Jaynes, we have all enjoyed two great workshops and have two more planned. Brian Graff, Esq., ASPA's Executive Director, headlined our first workshop in October, giving an "every thumb up" presentation on EGTRRA (with only one Seinfeld imitation – we all wanted more), and Craig Hoffman, APM, ASPA's President, led a well-reviewed presentation on GUST in December. Next month we look forward to a presentation by Stuart Hack, APM, (ERISA Counsel and author) and Rob Fowler (ERISA Counsel) on "Managing Fiduciary Liabilities and Plan Costs in Your Qualified Plans," which will help our members gain valuable CE credits.

The Lone Star Council, which meets in Houston, currently has about 60 members and we are adding five to ten new members each month. These results are thanks to our active Board of Directors and especially to our Membership Committee Co-Chairs, Varleen Doyle and Asya Karpinos, QPA. I should add that the budget for the events is on target because of the outstanding work of our Treasurer, Mike Brasher, QPA, and our corporate member sponsors: Hand Benefits & Trust, Wells Fargo Bank, Deloitte & Touche, Malcolm Thompson & Associates, and Compass Bank.

But more than anybody else, our existence is a function of the outstanding support, guidance, and encouragement we received from Amy Iliffe, ASPA Director of Membership and ABC Coordinator, and Carol Skinner, QPA, Chair of ASPA's ABC Committee and Past President of the Atlanta ABC. Amy's help and Carol's mentorship and encouragement were crucial to the process.

People do not always fully appreciate the tremendous organization that ASPA is until they get actively involved. I know that I did not. ASPA's people, programs, and total commitment to professional excellence and the protection and enhancement of our private pension system are one of a kind in our industry. Without ASPA and its committed professional membership across the country, people depending on our private pension system would not be nearly as

well-served or informed. Additionally, the Lone Star Council would not exist at this time.

Because of ASPA, we were able to meet with Congressman Kevin Brady (R-TX) (the only Congressman on the House Ways and Means Committee from the Texas Gulf Coast), and with Brian Graff's encouragement and support, the office of Senator Kay Bailey Hutchison (R-TX). Staff members of Congressman Brady and Senator Hutchison indicated that the Lone Star Council would be used as a key resource as they considered introducing and/or reviewing any legislation that might impact the private pension system in the US. Congressman Brady joined Brian Graff at our inaugural meeting on October 4, 2001.

In the future, we look forward to creating a scholarship fund to support the education of future pension professionals, supporting an intern program for students with an interest in working in the pension arena, and to creating a shadow organization which will provide timely and helpful information to our Texas Gulf Coast Plan Sponsor Community – all as we continue to grow and support our members. One of our Program co-chairs, Sheila Jaynes, was able to place an article in the Houston Human Resource Management Association (the largest in the US) monthly magazine – out of which we have already benefited from considerable additional interest in our programs.

If you are interested in membership, please contact Varleen Doyle at (713) 319-1661. For information about upcoming meetings contact Richard Shulman at (281) 453-8320. ▲

Jim Black is a National Sales and Client Service Consultant with Wells Fargo Bank Texas, NA in their Institutional Trust and Investment Services Group, Houston, TX. Prior to joining Wells Fargo seven years ago, Jim was associated with Credit Suisse as Manager of their Houston Regional Office. Jim appreciates the people, resources, and commitment to excellence that is embodied by ASPA and every active member with whom he has come in contact. As one very experienced, credentialed, and highly regarded Lone Star Council member noted, an ASPA credential is the only one that he would accept as indicating that a job candidate could actually "do the job."

PIX Digest

THE PENSION INFORMATION EXCHANGE (PIX) IS AN ONLINE SERVICE FOR PENSION PRACTITIONERS. FOR MORE INFORMATION ABOUT PIX, CALL (805) 683-4334.

EGTRRA CONTINUES TO DOMINATE PIX DISCUSSIONS

Of all the EGTRRA issues, perhaps the most frustrating issues concern various states needing to conform their tax codes with EGTRRA. While many states automatically conform to federal tax code, not all do. A preliminary list of states that may need to take separate action to conform include Alabama, Arizona, Arkansas, California, District of Columbia, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Maine, Massachusetts, Minnesota, New Jersey, North Carolina, Oregon, South Carolina, West Virginia, and Wisconsin.

For many states, conforming amendments have been a routine matter. However, with the recession, many states are finding their budgets squeezed. Since EGTRRA pension provisions are typically “scored” as tax expenditures, the political situation may make it more difficult for conforming amendments to be adopted.

PIX users have been discussing the implications of states not conforming with EGTRRA. Opinions vary, depending on the state involved, of course. It is possible that participants could be taxed on just additional amounts of contribution. However, it is also possible that plans could be “disqualified” under state tax codes, resulting in loss of full deductions. Participants taking advantage of new liberalized federal rollover rules could

have their entire rollover inadvertently taxed at their state level. It is also theoretically possible that a plan could find itself caught between federal and state requirements.

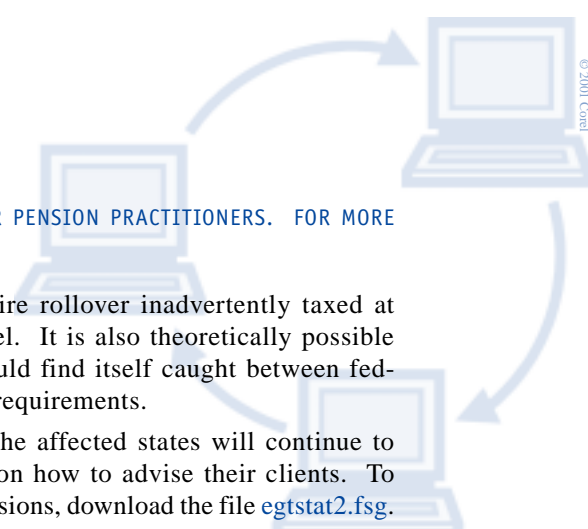
PIX users in the affected states will continue to discuss ideas on how to advise their clients. To read the discussions, download the file [egtstat2.fsg](#).

CONTINGENT SUCCESSOR TRUSTEE

This thread discusses the possibility of naming a contingent successor trustee in the event of the death of the primary trustee or trustees. This is a real concern for single participant, or husband and wife plans. There could be a significant delay in an executor or court appointing a successor trustee for a plan. The PIX user was looking for language that could be used to address this upfront, appointing the contingent trustee in the document, but in a way that this person would not be a current trustee.

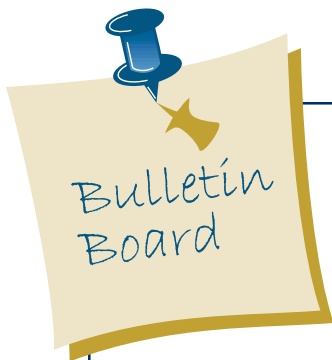
Derrin Watson, our managing sysop (and an attorney) proposed a simple sentence to handle this. “Initially, John and Mary Doe or their survivor shall be the Trustee. If both of them fail to qualify, or cease to act as Trustee, then xxxxxxxx shall become the Trustee.”

This is a timely thread with GUST restatements upon us. It may be advisable to recommend such a clause. To read the entire thread, download [contr2.fsg](#). ▲



ASPA BENEFITS COUNCILS CALENDAR OF UPCOMING EVENTS

Date	Location	Event	Speaker
February 5	Delaware Valley	What You Need to Know About Catch-Up Contributions	Janice M. Wegesin, CPC, QPA <i>(pre-recorded webcast presentation)</i>
February 5	Texas Gulf Coast	401(k) Fiduciary Issues	Stuart Hack, APM, and Rob Fowler
February 14	Central Florida	Designing Plans after EGTRRA	Joan Gucciardi, MSPA, CPC
February 20	North Florida	Show Me The Money! An Entertaining Look at the Expenses Associated with 401(k) Plans	Al Otto, APM, CLU, ChFC
February 21	Cleveland	DOL Investigations	DOL representative – TBA
March 5	Delaware Valley	The Future of Social Security	Dr. Olivia S. Mitchell



EDUCATION

April 26
Registration deadline
for spring weekend
courses

May 4-5
C-1, C-2(DB),
C-2(DC), C-3, and
C-4 weekend courses
Chicago, IL

CONFERENCES

February 28-March 2
401(k) Sales Summit
Scottsdale, AZ

May 2-3
Great Lakes TE/GE
Chicago, IL

May 4-7
Business Leadership
Conference
Lake Tahoe, NV

April 30
Final registration
deadline for spring
exams

May 1-31
C-1, C-2(DB), C-2(DC)
spring exam window

May 22
C-3 and C-4
examinations

CALENDAR OF EVENTS

2002

**ASPA CE
CREDIT**

Jan 31-Feb 1	Los Angeles Benefits Conference, Los Angeles, CA	15
Feb 28-Mar 2	401(k) Sales Summit, Scottsdale, AZ	15
Mar 31	Early registration deadline for spring exams	
Apr 26	Registration deadline for spring weekend classes	
Apr 30	Final registration deadline for spring exams	
May 1-31	C-1, C-2(DB), C-2(DC) spring exam window	*
May 2-3	Great Lakes TE/GE, Chicago, IL	15
May 4-5	C-1, C-2(DB), C-2(DC), C-3, and C-4 weekend classes, Chicago, IL	15
May 4-7	Business Leadership Conference, Lake Tahoe, NV	20
May 16-17	Mid-Atlantic Benefits Conference, Philadelphia, PA	TBA
May 17	Postponement deadline for spring exams	
May 22	C-3 and C-4 exams	*
Jun 13	Northeast Key Conference, Natick, MA	8
Jun 14	Northeast Key Conference, White Plains, NY	8
Jul 27-31	Summer Conference, San Diego, CA	20
TBA	Three Best of Great Lakes, TBA	8
Sep 30	Early registration deadline for fall exams	
Oct 27-30	Annual Conference, Washington, DC	20
Oct 31	Final registration deadline for fall exams	
Dec 4	C-3, C-4, and A-4 exams	*
Dec 31	Deadline for 2001 edition exams for PA-1 (A&B)	**
Dec 31	Deadline for 2001 edition exams 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 passing grades.
 *** Daily Valuation exams earn 10 hours of ASPA continuing education credits each for passing grade.

401(k) Sales Summit

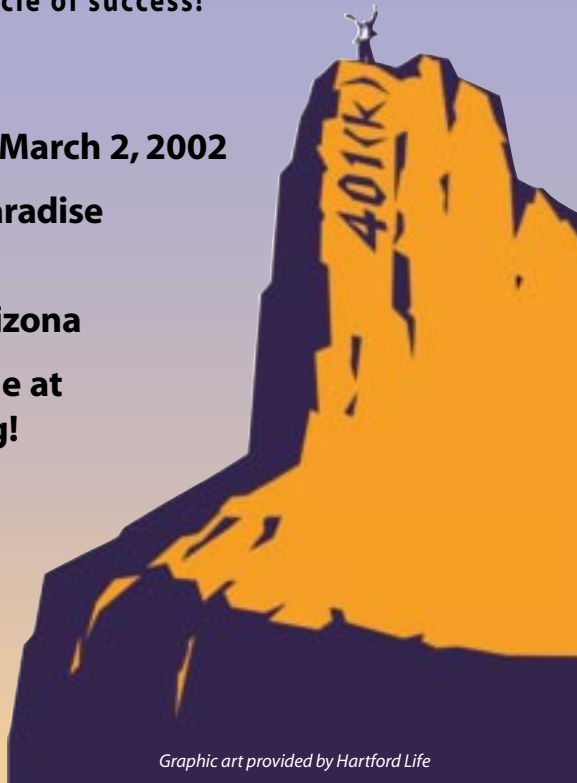
Reach the pinnacle of success!

February 28 - March 2, 2002

Doubletree Paradise Valley Resort

Scottsdale, Arizona

**Register online at
www.aspa.org!**



Graphic art provided by Hartford Life

DID YOU KNOW?

Did you know that on Friday, January 11, 2002, ASPA's very own Executive Director, Brian Graff, Esq., was a guest on CNBC's Power Lunch to discuss the Enron bankruptcy, its impact on retirement savings, and the proposed legislation to deal with the issue?