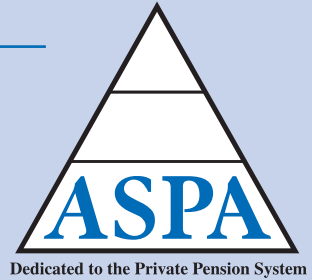


THE PENSION ACTUARY

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Is There A "Roth 401(k) Or 403(b)" In Your Future?

by Steven Oberndorf, Esq. and Richard Hochman, APM, Esq.

Senate Finance Committee Chairman William V. Roth, Jr. (R-DE) is hard at work again. The father of the popular Roth IRA and proponent of increased saving for retirement wants to give individuals the option of paying taxes on their contributions to 401(k) plans. In return for paying taxes up front on the contributions, the 401(k) plan would resemble a Roth IRA. This results in earnings being sheltered from current taxation and being withdrawn tax-free upon distribution. Tax-sheltered 403(b) arrangements also will be eligible to take advantage of the Senator's proposal that he titled the "Retirement Savings Opportunity Act of 1999" (another hard to pronounce acronym – RSOA '99).

Other Highlights of the "Retirement Savings Opportunity Act of 1999"

Other changes that the Senator from Delaware would like to see include:

- increased annual pre-tax contribution limits for 401(k) plans, 403(b) plans, SIMPLE plans, and IRAs;

WASHINGTON UPDATE

March Madness

by Brian H. Graff, Esq.

The phrase doesn't just apply to college basketball. Now that the impeachment trial is over, Members of Congress from both sides of the aisle are chomping at the bit to introduce legislation affecting pensions. In addition, the Federal agencies are soon expected to release a flurry of important guidance. There is a lot going on, and you can be

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- catch-up contributions to qualified plans and IRAs for older Americans;
- elimination of the 415(c) 25% compensation limit for defined contribution plans;
- liberalization of the Roth IRA eligibility and promotion of IRA contributions to employer plans; and
- increase of the full funding limit for defined benefit plans.

Thrift Plans with a Twist: The Roth 401(k) and Roth 403(b)?

The Senator's description of the "Retirement Savings Opportunity Act of 1999" provides that employers would have the option to let participants in employer-sponsored 401(k) and 403(b) plans decide whether they want to make their contributions on a before or after-tax basis. If the decision is to allow after-tax contributions, the plan would operate much like an old-fashioned thrift plan but with a new twist. (Remember, many of the earliest 401(k)

plans had their roots as after-tax thrift plans.) Taxes on earnings would not merely be deferred until distribution, but they would *never* be taxed. This effectively creates a "Super" Roth IRA, because the higher qualified plan limit (\$10,000 in 1999), instead of the IRA annual limit (\$2,000), determines the maximum annual contribution the individual personally may make.

Unlike a Roth IRA, however, the qualified plan rules will continue to apply to these plans, and this raises more questions of how to administer the plan than it answers. [See "Washington Update" for answers to some of these questions.] For example, the bill's summary notes that the minimum required distribution rules will continue to apply to the Roth 401(k) and 403(b) plans, but does not give details about which other qualified plan rules also will continue to apply. These rules may prevent employees from making their maximum employee contribution for a given year, unless the antidiscrimination rules are adjusted for the shift from

pre-tax to after-tax contributions. Other questions, such as the following, need to be answered: Will the ADP and ACP tests, as currently applied, continue to limit how much highly compensated participants will be able to defer? Will testing provisions and procedures be modified to accommodate significant shifts of contributions from the ADP to the ACP test? While the proposal infers that existing plan distribution rules will continue to apply, can this be the case? In profit-sharing plans after-tax money may be withdrawn without a holding period. Does this mean that the after-tax 401(k) contributions will be immediately eligible for withdrawal, or will a holding period similar to a Roth IRA ultimately be required? May participants complete a Roth 401(k) "conversion" of current elective deferrals and earnings? If so, how can this be effected within the context of a qualified plan? (This may prove an especially thorny issue to quantify because of the meth-

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

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

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FOCUS ON GAC

Developing a Relationship with a Congressional Member

by Sarah E. Simoneaux, CPC

Over one year ago, Senator John Breaux (D-Louisiana), a member of the Senate Finance Committee, was appointed to a bipartisan commission studying retirement issues. He designated one of his newer staffers, Michelle Prejean, to be responsible for the qualified plan issues raised by the commission. Brian Graff called and asked me to speak with Michelle about qualified plans in general and ASPA's point of view specifically.

Before I spoke to Michelle, I asked Brian to give me some political background on Breaux. As a registered Republican with conservative leanings, I wanted to make sure that I did not alienate Senator Breaux, a moderate Democrat, or his staffer. Brian noted that Senator Breaux was supported by unions, lower to middle income families, public employees and women.

I then asked Brian for information on what Michelle might want to know and how I should represent ASPA's position. He gave me the GAC summary of the differences between SAFE and SMART and said that I should emphasize qualified plans over IRAs, repeal of top-heavy and the 25% limit, and SAFE as a small plan DB alternative.

In my first conversation with Michelle, I told her about the local businesses, which I represented, and

that I "worked with small business retirement plans". I tried to avoid jargon, and even such words as "pensions" or "qualified plans". We also spoke about where she came from in Louisiana and how my husband and I fit into Louisiana, to try to develop a personal tie, so that she would remember me the next time she called.

I then asked if she had any specific questions about retirement issues being raised by the commission and Senator Breaux. She admitted that she was new to the area, but had read up on qualified plans. She wanted to know about how "we" (not meaning ASPA specifically, but really small businesses in Louisiana) felt about adding "catch up" provisions to qualified plans and "giant IRAs" instead of expanding qualified through SAFE/SMART or 401(k) modifications.

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Marching to the Hill

by Edward H. Thomson, III,
MSPA, QPA

It is that time of year again. The October 15 deadline has passed and (hopefully) all the December 31, 1997 cases have been shipped out the door to the plan sponsors for signatures. And, yes, it's ASPA time. This means two things - it is time for our annual conference and time for the hearty few to march to the Hill to speak with their respective Member of Congress. I have been fortunate to have had the opportunity to be a part of the last four or five trips to the Hill and have found them to be at the least, interesting, and at best, a lot of fun.

The first question is "What's the point?" To start with, the "Point" is to begin a relationship with the Member. Whether it's your Representative or Senator, you want to have someone to contact when important pension issues arise. All of the Members have a staff person assigned to employee benefit issues. You are most likely to meet with that person when you go to the Hill. "Why is the staffer important?" Without the staffer, you go nowhere. With all the people that are vying for the Member's time, as well as all of the issues he must review and consider, the most important person to know is the staffer assigned to your issue. The staffer is the filter through which all information flows. The easiest way to get your issue to the top of the pile is through your relationship with that staffer. The Member is probably not going to be in Washington when we are there for our conference. He is usually back in his

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Trends in Pensions – Hybrid Pension Plans

by Raymond J. Lee, MAAA and William P. Bishop, MSPA, CPC, QPA, FCA

The current generation of hybrid pension plans offers many defined benefit plan sponsors the opportunity to successfully redesign their current retirement program without terminating their defined benefit plan. Many benefits professionals have touted these new plan designs as the biggest development in the pension world in years, while others have characterized them as a veiled attempt to recoup excess plan assets without terminating the plan.

Today, it has been reported that more than 300 large employers have switched from a traditional defined benefit plan to a hybrid design. Among the more recent converts are Bell Atlantic and the California State Teachers Retirement System.

- What exactly is a hybrid pension plan?
- Which employers are the best candidates for these types of plans?
- Do hybrid plans make sense for smaller employers?

This article answers these questions, and discusses potential problems that may be encountered when transitioning from a traditional plan to the hybrid design.

What are Hybrid Pension Plans?

Simply put, a hybrid pension

plan is a defined benefit pension plan that defines a single sum cash balance instead of a monthly benefit payable at retirement. By changing the nature of the promise, or obligation, hybrid plans take on the look and feel of a defined contribution plan to plan participants. However, the investment risk remains with the plan sponsor, and there are no individual accounts.

When we discuss hybrid plan design, we are referring to either a **Cash Balance** or **Pension Equity** plan.

A cash balance plan is analogous to a career-average defined benefit plan – each year, it provides participants with a specified percentage of pay (or, in some cases, a specified dollar amount), together with an annual investment return on the existing “account balance.” The annual accrual can vary based on age, service or both.

Example

The ABC Company’s cash balance plan provides each participant with an annual benefit accrual equal to 4.0% of pay. In addition, the plan provides a guaranteed investment return of 5.0% per year.

On January 1, 1998, Mary, a participant in the ABC Plan, has an account balance of \$10,000, and she earns \$35,000 during 1998. In accordance with the terms of the plan, Mary’s account balance is credited with \$1,900 (a \$1,400 accrual, plus an earnings credit of \$500). Thus, as of December 31, 1998, Mary’s account balance is equal to \$11,900.

The cash balance plan was first introduced in the mid-1980s, and many of its supporters hailed the new design as the savior of the defined benefit plan. Since its initial debut, the basic cash balance design has undergone several generations of change, primarily in response to regulatory concerns and the changing needs of plan sponsors.

The pension equity plan works more like a final pay plan, and was conceived in response to problems faced by some employers in convert-

ing their final pay plans to account balance defined benefit plans. In general, a pension equity plan defines each participant's account balance as the product of points earned during the participant's career and a specified percentage of his or her final average pay at termination. Like a cash balance plan, the points earned under a pension equity plan can vary based on age, service or both.

Example

Under the XYZ Company's pension equity plan, each participant's account balance is defined as 10% of high five-year average pay, multiplied by the points accumulated in accordance with the following schedule:

1 point per year of service up to 10, plus

2.5 points for each year of service in excess of 10.

John, a participant in the XYZ Plan, has 18 years of service and final average pay of \$35,000. His account balance is equal to \$105,000.

Target Market

Initially, the adoption of hybrid plan designs was limited to large employers in the finance and health care industries. However, as the hybrid design has matured and become more mainstream, its target market has become defined more by the goals and objectives of the individual sponsor rather than by industry or plan size. Today, aside from the obvious employer goals to attract and retain employees, we believe there are several compelling reasons to introduce this concept to smaller employers – even those with 100 or fewer employees.

Desire to manage interest rate risk

We are all well aware of the asset growth experienced by most re-

tirement plans due to the excellent returns in the equity markets over the past several years. During this period, however, defined benefit plan liabilities have also increased substantially due to falling interest rates¹. Some plans that provide single sum distributions have been faced with restrictions on these distributions to restricted employees, while others have had to face unexpected increases in their minimum cash contribution as a result of the deficit reduction contribution requirements. Most plans have incurred higher PBGC premiums.

For the typical rank-and-file employee, the significant drop in interest rates has been an unappreciated windfall. Most employees are not even aware of how valuable their pension benefit is or how its value changes until they actually leave employment and apply for benefits. Compare this indifference with the attention paid to 401(k) plans.

The predictable response from employers is "Why bother with the financial uncertainties of maintaining a defined benefit plan when no one pays much attention to it anyway?"

The hybrid plan design allows plan sponsors to mitigate the interest rate risk inherent in traditional plans by defining the single sum amount rather than the monthly annuity. The hybrid design also lends itself to easier communication of the benefit to participants.

Desire to eliminate early retirement subsidies

Another example would be the employer that originally established its plan with significant early retirement subsidies, perhaps with the founders of the company in mind or as a means to turn the workforce over without forcing out the older, long service employees. Times have changed. Retirements are being post-

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Cash Balance Briefing on Capitol Hill

By Lisa Bleier, Esq.

On February 16, 1999 ASPA jointly hosted a briefing on Capitol Hill to explain the basic workings of a cash balance plan in response to several unfavorable articles in the press. Carol Sears, President of ASPA, spoke about the benefits of a cash balance plan option for small businesses. (**A copy of her speech is provided on page 26.**) Also speaking to the Congressional staffers were Ronald Gebhardtsbauer and other experts.

Some Senators and Representatives are contemplating legislation which would require enhanced disclosure in the case of a plan amendment reducing future benefit accruals under a defined benefit or money purchase plan, including conversions to a cash balance plan. One option currently being considered would be to amend ERISA section 204(h) to require the employer to provide each affected employee with an individual statement showing specifically how his or her benefits would be affected. A second option being considered would be to require illustrative examples of how various employees at different ages and with varying years of service with the employer would be affected by the plan amendment.

A second part of the legislation being considered would be to adjust the timing of the advance notice before a plan amendment reducing future benefit accruals takes effect. Currently, an employer need only provide 15-day advance written notice to employees. Senators and Representatives are contemplating increasing the notice period to 30, or possibly even to 60 days.

The Government Affairs Committee is continuing to work with

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IRS “Best Practices” Memo Provides Guidance on EPCRS

by C. Frederick Reish, APM, Bruce L. Ashton, APM, and Nicholas J. White, APM

The IRS formally established the Employee Plans Compliance Resolutions System (EPCRS), by consolidating APRSC, VCR, Walk-in CAP and Audit CAP as integrated programs in March 1998 (Rev. Proc. 98-22). In December 1998, the IRS issued a “best practices” memo as additional informal guidance on: (1) plan document failures under Walk-in CAP (*i.e.*, the failure of plan documents to comply with current qualification requirements—also known as “nonamenders”); (2) plan document qualification failures discovered during the determination letter process; (3) IRS examinations of plans submitted under Walk-in CAP; and (4) treatment of certain excise taxes under Walk-in and Audit CAP. (A copy of the IRS best practices memo may be obtained from the authors’ website at <http://www.benefitslink.com/reish>.)

Plan Document Failures Under Walk-in CAP

The memo states that, in the case of a plan document failure, if the plan sponsor corrects the violation by the adoption of a model amendment or a standardized master or prototype plan, the plan sponsor is not required to apply for a determination letter ruling. However, if the plan document failure cannot or is not corrected by a model amendment or standardized document, the plan sponsor must submit a determination letter application with the appropriate user fee. This means that the determination letter application should

not be filed in Cincinnati, as is the usual case. The determination letter application will be processed by the local Walk-in CAP Coordinator or the local Revenue Agent who handles the Walk-in CAP application. At the conclusion of the case, the closing agreement and the favorable determination letter will be issued together.

Under ordinary circumstances, a plan is not required to obtain a favorable determination letter from the IRS in order to be a qualified plan. The memo’s requirement of a determination letter runs contrary to this rule and effectively conditions relief

from plan disqualification under Walk-in CAP on applying for a determination letter (unless a model amendment or standardized document is used).

These procedures will become increasingly important as plans are reviewed and amended for the provisions of GATT, USERRA, SBJPA and TRA ‘97 (“GUST”). Presumably, non-amenders will be discovered in the course of preparing the GUST amendments. Under the new procedures, in order to correct the plan document failure, the sponsors of such plans will have to submit filings for Walk-in CAP, and those filings will need to include determination letter applications — unless the failure can be corrected by adopting model amendments or an approved prototype plan document.

Plan Document Failures Discovered During The Determination Letter Process

The IRS memo also discusses the situation where a plan document failure, for which no Walk-in CAP request has been filed, is discovered during the course of a determination letter review. The memo instructs Revenue Agents that the procedures to be used in this case depend on who discovers the failure.

If the IRS discovers the failure, it will be resolved under Audit CAP; therefore, the sanction structure in

Section 15 of Revenue Procedure 98-22 will apply (that is, a negotiated sanction based, at least partially, on the taxes due if the plan were disqualified). This is not new. What is new, however, is a previously unrecognized type of plan document failure—a “minor” failure and the amount of the sanction for a “minor” failure. The memo states that, if the plan document failure is “minor,” there will be a ceiling on the amount of the Audit CAP sanction of “no higher than the presumptive amount that would apply if the Walk-in CAP Compliance Correction fees were applied.” Thus, for “minor” violations, the sanction will be limited to a relatively small amount, depending on the size of the plan. (For a plan, which covers no more than 10 participants, the maximum sanction would be \$2,000.)

Unfortunately, the memo fails to define or give examples of a “minor” defect. Based on our experience, we believe that a failure to timely amend a plan which has been updated for TRA '86, but not for UCA '92 or OBRA '93, would be treated as minor. This belief is based on informal conversations with IRS officials.

If the plan sponsor discovers the plan document failure and voluntarily discloses it to the IRS (*i.e.*, to the Revenue Agent reviewing the determination letter application), the case will be handled under Walk-in CAP. Section 11.01(2) of Revenue Procedure 98-22 states the general rule that a submission under Walk-in CAP “may not be made as part of a determination letter application.” The memo changes this rule to allow the plan sponsor to “perfect” the determination letter application into a Walk-in CAP submission by following the procedures set forth in Section 12 of Revenue Procedure 98-22. (The memo is not entirely clear about where the Walk-in CAP application

is to be filed; however, it would appear to be with the Revenue Agent who is reviewing the determination letter application.) This is a significant departure from prior practice, since it permits, on a voluntary basis, the immediate disclosure of qualification failures during the determination letter process without first filing a Walk-in CAP submission – although, of course, a Walk-in

Plan sponsors who have filed determination letter applications can resolve a later-discovered qualification failure under Walk-in CAP.

CAP application must thereafter be submitted.

This change makes it possible for plan sponsors who have filed determination letter applications to resolve a later-discovered qualification failure under Walk-in CAP, where they can take advantage of the reduced Compliance Correction Fees. As part of this, the memo places a premium on careful review of the plan document—even after filing a determination letter application—in order to identify and correct qualification failures. Not doing so may result in the IRS discovering the qualification failure, and imposing a substantial sanction under Audit CAP.

Audit Matters Under EPCRS

With respect to plan audits, the memo instructs Revenue Agents that “neither a full nor limited scope examination should be conducted on Walk-in CAP cases.” This instruction is significant, because we are aware of cases in the past where plans which had filed a Walk-in CAP application were subjected to audits as

part of the application process. This was particularly likely to occur in the IRS' Northeast District (Brooklyn). The memo now precludes this practice and specifically acknowledges that “routine examinations of Walk-in CAP cases would have a negative impact on voluntary compliance.”

The memo does advise Revenue Agents to “review” (not examine) Forms 5500 to “confirm that there are no additional significant problems not identified in the submission (*e.g.*, a violation of the coverage requirements).” And the memo gives two examples of “limited circumstances” in which audits under Walk-in CAP should be made. These are: (1) where the IRS finds “an unrelated qualification failure from the face of the Form 5500 submitted with the application”; and (2) where the IRS and “the plan sponsor cannot reach agreement with respect to the correction of any [qualification] failure(s) or the amount of the compliance correction fee.” Initiating an audit under these circumstances is not new; it is consistent with existing IRS practice.

Finally, the memo discusses the disclosure of compliance audit reports during an IRS audit. These reports are internal audit documents, generally prepared for larger plans or multiemployer plans, where a lawyer, accountant, consultant or third party administrator has reviewed the documentation and operation of the plan for compliance with the qualification rules. The IRS memo instructs Revenue Agents to “not request copies of a plan sponsor’s compliance audit report.” (Apparently, in some IRS field offices, Revenue Agents have been routinely requesting copies of any compliance audit report.)

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ASPA's Interprofessional Activities – Are They Worth It?

by Karen A. Jordan, CPC, QPA

ASPA devotes a significant amount of its resources (both monetary and human) to its interprofessional activities with the other North American actuarial organizations. The purpose of this article is to explain what ASPA's interprofessional activities entail, and to hopefully demonstrate how this time, effort and money benefit the ASPA membership. As you read this article, keep in mind that this is from the perspective of a non-actuary and represents only one person's opinion.

If you are neither an actuary nor on ASPA's board of directors, you might not even be aware of the extent that ASPA is involved in these activities. You could begin by opening up your latest Yearbook and reviewing the following sections:

- ASPA Representatives on Intersocietal Groups
- Council of Presidents
- Code of Professional Conduct for Actuaries
- Working Agreement

The first thing you should look at is the Working Agreement, which is located toward the end of the Yearbook. This document sets forth the cooperative goals of the North American actuarial organizations. As explained in its preamble, the Working Agreement is intended to facilitate the participating organizations' efforts to increase the quality and

variety of educational and professional opportunities available to North American actuaries. Its other purpose is to eliminate unnecessary duplication of activity between the various organizations, thereby making more efficient use of the participating organizations' resources.

The Working Agreement also explains the role and makeup of the Council of Presidents. By the way, this organization is often referred to as COP/COPE because it includes the presidents-elect of each organization, as well as the respective presidents. If you review the section on the Council of Presidents in the ASPA Yearbook, you will see a short description of each organization that is included in the Working Agreement. You might be rather amazed to see that there are, in fact, nine actuarial organizations in North America. Five of them are in the United States.

Besides the commitments that are defined by the Working Agreement, ASPA is also directly involved with the American Academy of Actuaries (AAA). Each ASPA president and president-elect (along with the counterparts of the other U.S. actuarial organizations) sits on the board of the AAA, as Special Directors. Furthermore, each actuarial organization has certain AAA committee slots that the organization is expected (or encouraged) to fill. If you look in the Yearbook section titled "ASPA Representatives of Intersocietal Groups," you will see which committees ASPA is currently staffing. The ASPA president appoints some of these positions, and the chair of the respective committee appoints others, usually with input from ASPA's president. If you are interested in learning more about the various AAA committees, the best place to gain information is to locate an AAA Yearbook. If you want even more information, you should feel free to contact the ASPA committee representative listed in our Yearbook.

Also, as a result of our involvement with the AAA, there is usually at least one ASPA member serving on the Actuarial Board for Counseling and Discipline (ABCD) and on the Actuarial Standards Board (ASB). The presidents and presidents-elect of the participating orga-

nizations appoint these board members. ASPA always lists members who are on these two boards and who also are members of ASPA. So, if you have questions about the ABCD or the ASB, you could contact these individuals.

ASPA's commitment to these interprofessional activities is significant in both financial resources and human resources. In fact, there have been critics of our involvement who feel that a major drawback is the amount of time that ASPA leaders have to spend on these activities. These critics argue that this involvement draws our leaders away from other activities that would be more beneficial to ASPA. It is also argued that the financial commitment (that is, paying the expenses of committee members who have been asked to serve on behalf of ASPA) is too large. I have been asked countless times by actuaries, as well as non-actuaries, if I felt that it is worth this expenditure of our limited resources.

After my two years of participating in Academy board meetings and two years of COP/COPE meetings, my opinion is that this involvement is extremely valuable for ASPA's actuarial members. I also believe that this involvement has brought value to the organization as a whole, which indirectly benefits ASPA's non-actuarial members. But, I also feel very strongly that the leaders of ASPA must continue to be vigilant in monitoring the accompanying costs of these commitments and continuously work to keep the costs reasonable.

OK, so what value does all of this bring to ASPA and its members?

For our actuaries, it brings significant value, such as:

- Involvement with the development and maintenance of the Actuarial Code of Professional Conduct.

- Valuable input into the workings of the ABCD and the ASB.
- A way to demonstrate the value of our organization to the actuarial profession.
- Participation in the public relations efforts on the part of the actuarial profession.
- Coordination with the AAA in the pension public policy area.

I sincerely feel that without this interprofessional involvement, ASPA would not be as good a society as it is, and the cost has been minimal in comparison.

- Improved relations with the SOA in our shared duties with respect to the Enrolled Actuaries examinations and the Joint Board.
- Input into the formation of Actuarial Qualification Standards.
- International representation through the International Actuarial Association.
- Methods to resolve cross-border disciplinary actions.

However, as I stated above, the benefits are not just for our actuarial members. The COP/COPE meetings act very much like our own Business Leadership Conference, in that they are great forums to share information on how to run successful professional societies. I found the meetings to be extremely valuable in helping us make ASPA a better society. These meetings included comparing and sharing information about:

- computer software,
- administrative systems,

- education activities,
- strategic planning, and
- investing reserves.

But, there are other benefits too. The COP/COPE meetings also include the executive directors of the various societies, and they have found the time they have been able to spend together to work on their common problems as very helpful.

We also have discovered areas of mutual cooperation that have helped us with various education and examination issues. Finally, ASPA has been able to gain first hand experience with the workings of the ABCD and the ASB, through our members who have served on these boards and our leaders' involvement on the AAA board of directors. I believe this will be invaluable as we explore whether we, as a society, are ready

to venture into the area of professional standards for non-actuarial benefits work, and the resulting discipline process.

So, is it worth the time and expense? Well, each person looking at this issue will come up with a different answer I'm sure, but no one can deny that there are both benefits and costs to this commitment. How valuable are the benefits, in relation to the costs? I would equate this analysis to trying to decide if public relations efforts are "worth it." The answer cannot be made on a purely objective basis, but I sincerely feel that without this involvement, ASPA would not be as good a society as it is and the cost has been minimal in comparison.

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

Developing a Relationship with a Congressional Member

Instead of getting into specifics on SAFE/SMART or 401(k)s, I first talked about how IRAs are used by higher income taxpayers and rarely used by lower income constituents, especially by single mothers and working women. I also spoke about how unions and public employees continue to support qualified plans over IRAs, viewing IRAs as not favorable for rank and file members. I then spoke about the most important issue for us and for Breaux: expanding retirement coverage among lower income workers and women, especially those who leave the workforce for a time or are single parents. I explained that qualified plans, especially DB-type employer-paid plans like SAFE, are great for lower income workers and women who need to "catch up" after leaving the workforce to raise children or take care of aging parents. "Catch up" provisions are part of SAFE and are also a reason for getting rid of the 25% limit. I explained that the 25% of pay limit also hurt part-time workers and second income, lower paid workers (i.e., women).

Had I been talking to a conservative Republican member's staffer, I would have emphasized how SAFE was good for small business owners and the necessity to preserve the qualified plan tax deduction for small businesses. I would also have noted the

Qualified plans, especially DB-type employer-paid plans like SAFE, are great for lower income workers and women who need to "catch up" after leaving the workforce to raise children or take care of aging parents.

unfairness of the top-heavy rules and the need for more simplification (i.e., get rid of the multiple use test, although I would not have used those words) in the overall qualified plan rules.

Michelle was extremely grateful for my input and has since called me

regularly when qualified plan issues come up. Since she often would need information as Senator Breaux was heading to a meeting, I gave her my home and cell phone numbers, as well as my e-mail address, and encouraged her to call me any time. I was always willing to drop whatever I was doing to talk to her and that gave me a good deal of influence. If time permitted, I would call Brian to get the ASPA viewpoint before I called Michelle.

During every call, I would also bring her up-to-date on local happenings to cement the personal side of the relationship and always tried to give Breaux's constituent viewpoint on a particular issue. She agreed to try to see me if she got to New Orleans, and I planned to visit her in Washington, DC.

I recently spoke to Michelle, at Brian's request, about the potential DOL regulation requiring institutional trustees for small plans. I explained that ASPA had drafted a letter to the DOL from Congressional members, and I would like Breaux's support and his signature on the letter. Before I even had a chance to outline the issue, she said, "If you tell me that Senator Breaux needs to sign this letter, just send it over and I will have him sign it." The relationship that I had developed with her meant she

ASPA GAC Issues a Comment Letter on IRS Notice 98-52



Be sure to check the web site for the recent letter sent from ASPA regarding our comments on the issuance of Notice 98-52. This notice contained guidance on safe harbor 401(k) plans. The ASPA letter sent to Roger Kuehnle of the Employee Plans Division of the IRS proposes several changes to the guidance, including the flexibility to choose the safe harbor option annually, a more simplified notice to plan participants, the removal of the 4% cap on discretionary matching contributions, and several other provisions.

didn't need details; she trusted ASPA's viewpoint dovetailed with Senator Breaux's.

To summarize:

1. Establish a personal relationship based on common ground locally. Talk about local people, businesses or local events.
2. Give a brief background on who you represent locally; numbers of participants in the plans you administer is always impressive.
3. Make sure you know the political interests of your Member so you can emphasize those interests as they relate to ASPA qualified plan issues.
4. Get background from the GAC Congressional Outreach Committee or the ASPA office on ASPA's

positions; it is important that we represent ASPA members and their clients.

5. Talk simply. Try not to ever use Code section numbers. Some suggested "translations" are in the box below.

Sarah E. Simoneaux, CPC, is Vice President of Actuarial Systems Corporation, an employee benefits software firm. She currently serves on the ASPA Board of Directors, is an ex-officio member of the Executive Committee, and also is a member of the Congressional Outreach Committee and the Membership and Admissions Committee.

Technical Term	Political Term
plan sponsor	small business
qualified plan	retirement savings
non-HCEs	low to middle income workers
HCEs	small business owners
top-heavy	rules that discriminate against small business and family members
415 or annual additions	contribution or benefit limits
multiple use test	complex, duplicative 401(k) requirement
ADP/ACP	401(k) plan nondiscrimination test
past service credit	catch-up provisions
full funding limit	arbitrary pension funding limits
415(e)	duplicative combined plan limits
plan participation	retirement plan coverage
defined benefit	traditional retirement plan
	Democrat: employer-paid; no cost to lower paid
	Republican: allows older small business owners to save the same for retirement as younger employees
401(k)	401(k)
401(a)(17)	arbitrary pension compensation limit that duplicates the reasonable compensation rules in the Internal Revenue Code

Dates and Locations Finalized for 401(k) Workshops!

Bringing ASPA to you! The American Society of Pension Actuaries and its ASPA Benefits Councils (ABCs) located in Philadelphia, Cleveland, and Atlanta are proud to cosponsor six 401(k) Workshops around the country.

Janice M. Wegesin, CPC, QPA, ASPA's 1998 Educator's Award winner, will be the featured speaker at each workshop. At each location, she will be accompanied by a local speaker. Some of the topics to be covered include: *Safe-Harbor Plans; Testing 401(k) Plans; Participant Loans; and Tricky Eligibility and Compensation Issues.*

These one-day workshops offer up to seven ASPA continuing education (CE) credit hours, and up to seven non-core JBEA credit hours. These intermediate workshops are designed for pension and retirement benefits professionals with two or more years of experience.

Six locations to choose from:

Philadelphia, PA	April 19
Adam's Mark Hotel	
Houston, TX	May 14
Crowne Plaza-Galleria	
Cleveland, OH	June 10
Cleveland South Hilton	
Atlanta, GA	June 21
Hilton Atlanta and Towers	
Boston, MA	July 16
The Seaport Hotel	
Seattle, WA	July 28
Crowne Plaza Hotel - Seattle	

For ASPA members, ABC members, and co-operating sponsors, including, AAA, CCA, NIPA, SOA, and WEB, the "early" registration fee is \$200. The "early" nonmember fee is \$250. The "early" registration deadlines are approximately three weeks prior to each workshop. For more details, call Ken Morton, ASPA Meetings Department, at (703) 516-9300 or e-mail: meetings@aspa.org to request a brochure.

Is There A "Roth 401(k) Or 403(b)" In Your Future?

ods for calculating basis recovery under Code Section 72(e). An even bigger issue is how the taxes will be paid. Will the participant be allowed to pay

Senator Roth proposes to remove the Section 415(c) 25% limit, leaving only the \$30,000 limit.

the taxes with assets outside the trust thus allowing the participant to preserve more assets within the retirement trust?) How much additional cost and related administrative burdens will be created for employers and service providers by the addition of Roth 401(k) and 403(b) accounts?

A potential Achilles heel is the revenue loss the Roth 401(k) may create for the Federal government in future years. Although participants will pay taxes currently, the government will forego a potentially much larger "cut" at the time distributions occur. Imposing taxes at the front-end instead of at distribution requires a complete reversal of 90 years of federal retirement and income tax policy assumptions. Another important, but unanswered, administrative question is how to coordinate reporting of distributions that include contributions made under both the old and new rules. This may become extremely complicated when the minimum required distribution rules also come into play.

Increased Contribution Limits for 401(k)s, 403(b)s, and SIMPLEs

For those who still prefer pre-tax contributions to 401(k) and 403(b) plans, the bill increases the annual

limit on elective deferrals and salary reduction contributions from \$10,000 to \$15,000. Individuals over age 55 who took time off to raise children get an even better deal because they would be allowed to contribute up to \$22,500 annually. This latter proposition is not new, and it may receive significant support from individuals who lost years of savings opportunities because of family priorities. The Uniformed Services Employment and Reemployment Act of 1994 provides ample precedent for such catch-up contributions, and the potential lobbying group is certainly larger in this instance.

Contributors to SIMPLE IRAs and SIMPLE 401(k)s also get higher annual contribution limits to preserve the differential between the contribution limits that apply to qualified plans and the SIMPLE plans. The annual limit on contributions to any SIMPLE would increase from \$6,000 to \$10,000 under the proposal.

The chief resistance to higher annual contribution limits again will be based on revenue considerations and a perception that only the highly compensated will be able to take full advantage of the increase. However, the secondary family wage earner might have an incentive to increase retirement saving contributions under the plan. Existing 401(k) plans may see a decrease in elective deferrals and ADP testing failures without revision of the antidiscrimination rules because of a shift to after-tax contributions. This result may be unavoidable unless plans adopt safe harbor contribution formulas.

Elimination of the Section 415(c) 25% of Compensation Limit

The maximum amount that may be contributed to a defined contribution plan in a limitation year is the lesser of 25% of compensation or \$30,000. The \$30,000 limit is subject to a cost-of-living increase in multiples of \$5,000. In reality, the \$30,000 limit applies to highly compensated employees but does not affect nonhighly compensated employees. Instead, the 25% of compensation limit has a dramatic impact on the lower paid. The 25% usually results in lower employee and employer contributions for these individuals. The Senator would remove the 25% limit, leaving only the \$30,000 limit. The \$30,000 limit would continue to be adjustable for inflation.

There has been support for the repeal of the 25% limit in the past. Repeal may allow some lower paid participants to maximize elective deferrals and employer contributions. Since the beginning of the 1998 plan year, compensation for this purpose includes elective contributions made by the individual to 401(k), 403(b), 457, and Section 125 cafeteria plans. However, repeal does not resolve the inherent conflict created by the Code's definition of compensation for annual additions as gross compensation and definition of compensation for employer deductions as compensation net of elective contributions. In order for this change to have its desired result, the definition of compensation for deductions under Code Section 404 will need to be changed. Otherwise, the employer may not be able to deduct all the employee elective deferrals and will be reluctant to provide them.

IRA Improvements

IRA owners get to keep pace, too. Senator Roth noted that the \$2,000 maximum annual contribution limit has never been adjusted for inflation since IRAs were created in

1975. If the law had provided for indexing, the current annual limit would be \$4,930 or \$2,970 more than the current limit. The bill would address this perceived inequity by allowing annual contributions of up to \$5,000. To make up for the lack of cost-of-living adjustments, workers age 50 and over get an increased contribution limit of up to \$7,500. In addition, all income limits that prevent individuals covered under an employer's plan to make a full contribution to a traditional IRA or limit their eligibility to have a Roth IRA would be abolished. To encourage more Roth IRA conversions, the bill dramatically raises the current \$100,000 adjusted gross income limit. As modified, any individual with adjusted gross income of less than \$1 million would be allowed to convert an existing traditional IRA to a Roth IRA.

As a means of encouraging employee saving, Senator Roth's proposal authorizes employer plans to accept IRA contributions to employer plans, and encourages employers to establish payroll deduction programs for these contributions. The Clinton Administration has made similar proposals in the past. The rationale for including this in the bill is that employees would benefit from economies of scale and lower administrative costs by investing their funds through their employer's plan. This coincidentally revives the concept of the qualified voluntary employee contribution, a type of contribution repealed by TRA '86.

These provisions are particularly vulnerable to the critics' arguments that they give too much to upper-income Americans at too high a revenue cost. This is because the proposal essentially destroys most of the current income limits on IRA eligibility. One reason given in 1986 for placing income limits on the abil-

ity to have deductible IRAs was a belief by some members of Congress that the IRA was mostly a "tool for the wealthy." Is this really a valid concern? A revenue loss may not in fact occur since theoretically the individual doing the conversion is in a higher tax bracket at the time of the conversion than he or she will be at the time of distribution. Thus, Uncle Sam realizes more tax revenue sooner, with a higher present value.

More troubling to some practitioners, however, may be the blurring of the lines between qualified plans and IRAs. This could be counterproductive, as employers would be more apt to accelerate the trend of shifting administrative costs to the accounts of participants. Ironically, those for whom this reform is intended may reap the reward of lower returns.

Full Funding Limit for Defined Benefit Plans

Currently, employers maintaining defined benefit plans have limitations on what they deduct as contributions to such plans. Contributions may not be deducted if they exceed 150% of the plan's current liability. The bill would remove the 150% limit because it fails to take into account the plan's projected pension benefits.

This change would have the effect of reintroducing stability to the funding of defined benefit plans. However, since the 150% limit basically was imposed as a way to limit deductions, resistance can be expected from those who believe that the government would forego too much tax revenue.

Roth's Other Idea: Personal Retirement Accounts

In addition, Senator Roth has renewed his call for using a portion of the budget surplus to create personal retirement accounts. The Senator introduced legislation in the last Con-

gress to create these accounts, and reintroduced it this year as the "Personal Retirement Accounts Act of 1999."

Under this proposal, Americans who have earned a minimum of four quarters of Social Security coverage would receive a minimum of \$250 annually over the next five years (2000 to 2004). This contribution would be used to fund individually-owned personal retirement accounts. The amount received will vary based upon the amount of payroll taxes paid by the individual. The monies dedicated for this program could not be used for any purpose other than retirement benefits and associated administrative expenses. Although the personal retirement accounts would exist apart from the Social Security System, it is envisioned that they are the first step in the process of creating permanent private Social Security Accounts.

The Senator describes this proposal as a means to rebate regressive payroll taxes to workers. For example, an individual earning the current minimum wage (\$12,980 in 1999) would have, over the life of the program, \$1,853 or 35% of his or her payroll taxes deposited into the personal retirement account. An average wage earner (approximately \$28,840 in 1999) would see an effective rebate of \$2,589 or 22%. A worker earning more than the Social Security taxable wage base (\$72,600 in 1999) would see an effective rebate of \$4,561 or 16% during the same period. Assuming a 7.5% return, by 2039 these hypothetical accounts are projected to grow on a tax-deferred basis to \$26,930, \$37,537, and \$65,980, respectively.

The accounts created under this bill are modeled after those provided under the Federal Thrift Savings Plan. An independent board appointed by the President and Con-

gressional leaders, subject to Senate confirmation, would oversee the program. The members of the board would be subject to prudent fiduciary rules similar to those contained in ERISA. Initially, three investment choices would be provided, but expanding the list of permissible investment funds would be an option. The initial investment funds include a stock index fund, a fund investing in corporate bonds and other fixed income investments, and a fund that invests exclusively in US Treasury bonds. The account owner would direct how much of his or her account will be invested in the available investment choices. To insulate equity investments from political concerns, the stock fund would be managed by private sector managers who would have the exclusive authority to vote proxies. Benefits, which are fully taxable, become payable at the time the individual begins to collect Social Security payments. The individual may choose to receive benefits either as an annuity or as an annual payment based upon life expectancy.

The major difference between the Roth proposal and similar initiatives launched by the Administration is the greater reliance on the individual making investment decisions rather than the government. The use of an independent board to administer the program and limiting the available investment funds may allow it to serve as an attractive middle way between those demanding complete privatization of the Social Security system and those rejecting any privatization of the system. However, based on the history of certain investments made by state retirement funds, it would be very interesting to watch how investment decisions and proxy votes are made when election season draws near.

Conclusion

Because of the potential negative impact on future government revenues and assertions that the Senator's proposal disproportionately favors wealthier Americans, it is not certain that either of the Senator's proposals will become law. However, Senator Roth is a determined proponent of retirement savings by individuals. For example, when President Clinton entered office in 1993, who actually believed that the Roth IRA had a reasonable chance of enactment? Republicans and Democrats certainly pay attention to the Senator, and have been known to borrow an idea or two. Witness this year's State of the Union Address where President Clinton proposed dedicating \$15 billion of the budget surplus as seed money for

creating voluntary retirement savings accounts, albeit with considerably more governmental control. Perhaps the best thing about the Senator's proposals is that it may at last provoke serious discussion and selection of a rational retirement policy for the next century. Apparently, the "powers that be" in Washington are finally starting to take note of the need to do something about the Social Security shortfall.

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

DEFINED BENEFITS WORKSHOPS IN 1999

MARK YOUR CALENDAR!!

THE DEFINED BENEFITS WORKSHOPS ARE COMING SOON !!

Newark - Dallas - San Francisco

DB workshops will be offered in three cities in 1999.

- Newark, New Jersey – May 11
Early registration deadline:
April 18
- Dallas, Texas – May 24
Early registration deadline:
May 3
- San Francisco, California – July 10
(preceding ASPA's new Summer Conference)
Early registration deadline:
June 21

The Defined Benefits Workshops will cover topics on safe harbor plan design; aggregating DB and DC plans for testing; actuarial cost methods and funding, and a lot more. The Workshops will also offer five case studies in designing a new plan, and

strategies for dealing with overfunded DB plans.

Learn from two experienced and knowledgeable speakers: Joan A. Gucciardi, MSPA, CPC, President, Gucciardi Benefit Resources, Inc.; and Norman Levinrand, FSPA, CPC, President, Summit Benefits & Actuarial Services, Inc.

The "early" registration fee is \$250 for ASPA members and \$320 for nonmembers. More details are outlined in the brochure that you will receive in the mail in the middle of March.

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

Deutsch, Haslauer, and Rosen Elected to ASPAs Board of Directors

Lawrence Deutsch, MSPA, Beverly B. Haslauer, CPC, QPA, and Stephen H. Rosen, MSPA, CPC have been elected to serve on ASPA's Board of Directors for the 1999-2001 term.

Larry Deutsch, MSPA is an Enrolled Actuary and a member of the American Academy of Actuaries. He has been practicing as an actuary since 1976. Larry is chair of ASPA's Standards Committee and currently serves on ASPA's Government Affairs Committee and the Principles, Practices and Risk Management Committee. Also, he is a technical reviewer for *The Pension Actuary*. He is a frequent author for technical articles in professional journals and a frequent speaker at professional meetings.



As president of Larry Deutsch Enterprises, of North Hills, CA, Larry is responsible for running the corporation and for maintaining the actuarial programs that are used by his clients. In addition, he provides consulting services to clients on both actuarial and pension matters. Larry has a bachelor's degree in mathematics from the University of California at Irvine.

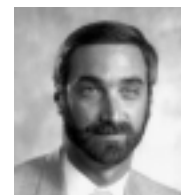
Bev Haslauer, CPC, QPA is the president of Haslauer, Husley & Hall, Inc., a retirement plan consulting and

administration firm in Metairie, Louisiana. In addition to serving as an ASPA Board member, Bev is the chairman of the Publications Committee of the Education and Examination Committee and a member of the Annual Conference Committee. She is a past president of the Association of Employee Benefit Planners of New Orleans, a past president of the Women's Professional Council, and a member of the New Orleans Estate Planning Council. Bev is a frequent speaker at conferences and seminars, has published many articles on the subject of qualified retirement plans, and is a co-author of the *Life Insurance Answer Book*.



Bev was raised in New Orleans, Louisiana. She has been married for over 21 years and has three children between the ages of 11 and 26. She and her husband will become grandparents for the first time this summer. Bev is vice president of the Cleary Playground Booster Club and has been a coach there from time to time.

Steve Rosen, MSPA, CPC is an independent consulting actuary specializing in the design and implementation of employee benefit plans. His firm, Stephen H. Rosen and Associates, Inc., is located in Haddonfield, New Jersey. Steve is an Enrolled Actuary



(EA) as well as a member of the American Academy of Actuaries. He serves as chair of the ABC Committee, vice chair of ASPA PERF and as a regional coordinator on GAC's Congressional Outreach Committee. Also, he has served as program co-chair for the Annual Conference and co-chair for two Eastern regional conferences.

Mr. Rosen is a past president and current board member of the ASPA Benefits Council of the Delaware Valley. Steve co-authored a book on the Tax Reform Act of 1984 and published articles in *Taxation for Accountants* and the *Pennsylvania CPA Journal* on the 1986 Tax Reform Act. In addition, Steve served on the faculty at The Institute of Employee Benefits in Pennsylvania and is co-author of *Accountants Guide to Employee Benefit Plans*. Steve is also co-founder of The Haddon Strategic Alliances (HSA), a Haddonfield firm that forms alliances with insurance companies and mutual fund families to provide daily valuation capabilities to retirement plans. HSA brings to its clients the ability to have "state of the art" benefit programs while benefiting from a local investment advisor, with coordinated administrative services provided by Stephen H. Rosen and Associates, Inc.

Steve was raised in Camden, New Jersey. He has a wife, Mary Jo, and 5 children ranging from 7 to 20 years of age. Steve coaches soccer in his spare time and also enjoys the seashore.

What Are You Missing?

BLC UPDATE

To All Prospective Attendees:



The Business Leadership Conference is an incredible opportunity to spend four value-packed days helping your business. This conference offers you the opportunity to hear nationally recognized speakers as well as to network with a group of your peers. I have the honor of chairing the 11th annual Business Leadership Conference, the "BLC." The BLC is much more than a conference, it has become a valuable resource to our businesses. It is a resource that has spawned new business relationships, helped initiate new lines of business, and provided support when businesses really needed it.

This year's conference theme is *Skills and Strategies for the New Millennium*. With the theme in mind, an excellent line-up of speakers and facilitators have been gathered to prepare conferees for the coming business challenges the new millennium will bring.

This conference is designed to benefit retirement and pension professionals who have attained a position in their organization where their decisions impact their business' lifeblood, including presidents, principals, owners, vice presidents, and key managers.

New for 1999: Previously open only to ASPA members, the BLC is available to members of cooperating sponsor organizations, including the American Academy of Actuaries, the Conference of Consulting Actuaries, and the Society of Actuaries.

The BLC is divided among **Interactive Workshops, Peer Networking Groups, and Featured Speakers**. Our outside speakers will address a variety of topics from service issues (Malcolm Baldrige Implementation), to the changing skyline of our industry (Alliances, Mergers, and Acquisitions), and finally to the lifeblood of running our businesses (Strategic Planning).

The Interactive Workshops were expanded this year so that attendees will have a forum to ask about specific issues rather than hearing how to handle general problems. Some of the current topics include Human Resource Issues such as attraction, retention, and motivation of employees. They will also address office automation including software and hardware; revenue sharing and disclosure; and on-going daily and balance forward issues.

Add Peer Networking Groups to this dynamic mix, and you will understand why this conference has become so special to attendees. I hope to see you in Boca for the 1999 BLC.

Sincerely,

Bryan J. Smith
1999 BLC Chair

Conference Dates:

May 2 - 5, 1999

Conference Location:

Boca Raton Resort & Club
501 East Camino Real
Boca Raton, FL 33431-0825
Hotel Reservations:
(561) 447-3000

There are five types of rooms to choose from:

Villa Room	\$180
Cloister Room	\$215
Addison Court	\$215
Tower Room	\$270
Boca Beach Club	\$330
Oceanfront	

Hotel Reservation Cut-Off Date:

April 2, 1999

Continuing Education Information:

The BLC is worth 10 ASPA CE credit hours.

For CPAs in Arkansas, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wisconsin: ASPA is registered with the National Association of State Boards of Accountancy as a sponsor of continuing education on the National Registry of CPE sponsors. In accordance with the standards of the National Registry of CPE sponsors, CPE credits will be granted on a 50 minute hour. ASPA recommends up to 20 CPE credits for this conference. On this basis, state boards of accountancy have the final authority on the acceptance of courses. Complaints regarding registered sponsors may be addressed to NASBA, 150 Fourth Avenue North, Suite 700, Nashville, TN 37219, (615) 880-4200. No course information may be obtained at this number.

ASPA is willing to apply for other types of credit if the application and fee are not prohibitive. Please call ASPA and request a "Continuing Education Checklist."

Marching to the Hill

home state either campaigning for himself, or helping one of his colleagues.

The next question is "What do I do when I get there?" Don't be nervous. Staffers are usually young and eager to learn from you about the private pension system. The better job you do of educating, the bigger friend you will make. Remember, you are making this person a star in the eyes of their boss. If you should get an older staffer, they are a delight to talk with. They have been around the track

Relationships do not happen over night. It takes all of us, year after year, to go back up to the Hill to fight for the private pension system.

a few times and will make your meeting very relaxed. And, they are very interested in retirement. You will have fifteen to thirty minutes, so be brief, to the point, and know what you want to cover while you are there. Since you will most likely have folks with you, share the presentation; and SOMEONE should take notes of any questions asked and follow-up on any information to be sent.

The last question is "What do I do when it's over?" Start by leaving. Make sure to thank him for his time and get his card. Someone should do a follow-up letter thanking him again, indicating any information that is either enclosed or will be forth coming and noting that you will be contacting him from time to time. You also should make it part of your follow-up

to continue to contact the Member's staff in case a staffer should leave. You want to know who took the place of the departing staffer. (Life expectancy of a staffer is about three to six years.)

Given that this past year was an election year and Congress was not in session during the ASPA annual conference, our marchers met with their representative's legislative staffer. The 30 appointments, which encompassed about twenty states, included 13 Representatives and 17 Senators. I would like to sum up the "Hill Experience" with some of the feed back comments from this year's march.

Our New York group, Alan Nahoum, Roger Ramsay, Michael Hoffman and Tara Donovan who met with Senator Moynihan's staffer Stan Fendley, reported:

"He was very interested in the National Retirement Policy. He was puzzled at the reason for the decline in pension coverage. He was knowledgeable and attentively taking notes. By the way, he was age 50 and is actively saving for retirement."

Paul Donovan of Pennsylvania, who met with staffer Michelle Kitchen from Senator Rick Santorum's office, said:

"The staffer seemed well receptive to our meeting. In fact, she took extensive notes and had even prepared questions for discussion."

Calvin Nystrom of Florida who met with Caroline Berver and Russell Sullivan, staffers for Senator Bob Graham, reports:

"This is an interesting and

enjoyable experience. I met Russell at our Florida retirement summit, and we hit it off well. They are eager to learn from us (ASPA), and it is encouraging to be listened to."

Finally my group, which consisted of Gerry Gebauer, Sheila Hickey, Sandi Thomson and I, met with staffer Matt Tenellan, from Senator Bob Torricelli's office. I'll just share one of our member's closing comments which sums up our encounter perfectly:

"We shortened our presentation somewhat to prevent the staffer from sinking into a coma!!"

Don't let my latest experience discourage you. I have had many more good than bad experiences, all equally important. Relationships do not happen over night. It takes all of us, year after year, to go back up to the Hill to fight for the private pension system. I see the tide starting to turn in our favor. My closing comment to my staffer did wake him up....

"Do you realize that there will be more people retiring over the next 15 to 20 years as a percentage of the U.S. population, than there ever has been in the history of our country? By the way, without private pensions who's paying for it??? You are !!!"

Edward H. Thomson, III, MSPA, QPA is the President of E.H. Thomson & Co., Inc., of Sea Girt, New Jersey. He is also the Vice Chair of GAC's Congressional Outreach Committee. Mr. Thomson is a Trustee of the Public Employee Retirement System of New Jersey and a member of the Actuarial Selection Committee for the Pension System of the State of New Jersey.

Hybrid Pension Plans

poned, and many employees now view early retirement subsidies as “penalties” for retiring early. Many employers are also finding that the replacement workforce is not always available, and question whether a fully trained workforce will be available in the 21st century. As a result, we have seen a trend away from permanent early retirement subsidies in favor of strategic incentives (early retirement windows).

A properly designed hybrid plan can, over time, effectively eliminate the early retirement subsidy, yet keep the availability of an early retirement incentive program within the plan.

Desire to provide supplemental executive benefits

Another instance where a hybrid plan may be attractive to smaller employers is where they are looking to maximize the benefits payable to a select group of employees through the qualified plan. Think of a hybrid defined benefit plan as a defined contribution plan without the \$30,000 annual addition limitation. In this light, we have found hybrid plans to be a very attractive means of providing benefits to older, highly compensated employees.

These are just a few instances where a hybrid plan design might satisfy an employer’s needs and objectives. However, it represents a major change in benefit delivery. Thus, one should proceed with caution when discussing the concept and perhaps avoid introducing the concept to an employer that already has a plan that is working well.

Establishing the Basic Plan

The starting point in moving to a hybrid plan design is to decide if the organization wishes to provide a benefit based on final average pay (pension equity) or career average pay (cash balance). Certainly, all else being equal, the pension equity plan

In moving to a hybrid design, the organization needs to decide if they wish to provide a benefit based on final or career average pay.

will be a higher cost plan. If they currently sponsor a final pay plan, it will be easier to move to a pension equity plan. But if their goals and objectives are to reduce costs, the cash balance plan would be the proper choice.

Once the basic plan design is settled upon, then they must decide what benefit level will be provided to employees who are career employees, and if the ultimate cost of the plan will be within their budget. An analysis of the benefit provided by the plan throughout a “typical” employee’s career will illustrate the adequacy of the benefit – one may want to compare the accruals under the current plan and the proposed plan to allow the plan sponsor to better understand this concept. A straight valuation of the normal cost of the hybrid plan, using the current population, will provide the sponsor with the ultimate cost of the plan – assuming that the employee demographics will not change over time.

When considering a formula that increases with age and/or years of service, one has to test the accrual pattern to be certain that the formula is not back loaded (should look to pass the $133\frac{1}{3}\%$ test). Although this is a relatively easy test to pass, it is also just as easy to overlook. Since the interest accumulation factors need to be included in the accrual rate test, one should have wide latitude within the accrual rate. For example, if you are looking to offer a 2% accrual rate before age 30 and a 4% annual interest accrual rate, you can provide an accrual rate of $12\frac{1}{2}\%$ at age 60 and still meet the accrual rules. Remember that the Age Discrimination in Employment Act (ADEA) will not allow you to reduce the accrual rates at specific ages. Therefore, if the accrual rates grow too high as

the employee population attains retirement age, it may be difficult to get them to retire.

We often recommend that the hybrid plan offer a single sum payment option at termination and/or retirement. However, there may be individual instances when the sponsor will not want to pay benefits at either point; for example, the employer may view single sums as too costly, or single sums conflict with the plan’s sponsor paternalistic nature. Of course, benefits must be provided in the form of a qualified joint and survivor annuity for all participants who are offered payment options, and options must be offered to all employees with a lump sum value in excess of \$5,000.

Grandfathering Provisions

Once the basic plan is established, one will want to demonstrate the effect the plan will have on the plan sponsor’s current employee

group. We refer to this as the “winners vs. losers” analysis. This analysis compares the benefits each employee would receive at retirement under a given set of assumptions under both the current plan and the proposed plan. If costs are to remain constant and some participants will be better off under the hybrid plan (short service employees), some participants will not fare as well. We use this demonstration to assist the sponsor with deciding which group and how many employees can be protected from a cutback in benefits within the sponsor’s cost parameters. This protected group is the “grandfathered group” under the plan.

We have seen some sponsors who have grandfathered all current employees in the existing plan, while others have grandfathered no one. Of course, the key question is where to draw the line. Generally, those most negatively impacted by the plan change are those who fall just short of the protected group. We constantly have to remind our clients that there is no free lunch, and that as they extend the grandfathered group deeper and deeper into the employee population, the short-term cost of the plan will continue to grow. The grandfathering provision also adds a certain cost to administering the plan.

There are a number of ways to mitigate the need to grandfather benefits under the current plan. If the current plan is well funded, the sponsor can use some of the surplus assets to provide an enhanced cash balance at transition. Of course, this alternative leaves the plan sponsor open to the risk of granting windfalls to participants who terminate soon after the plan is converted. Our favorite option is to provide a “kicker benefit” to all current employees who have attained a specific age and service level. This allows the sponsor

to provide greater benefits to a manageable group of employees while keeping the same general plan design – you should never lose focus of trying to keep the plan design as clear and concise as possible.

Communication and Recordkeeping

Though not often uttered from the mouths of actuaries, we must stress that communicating the plan after it has been designed is most important. If the plan remains misunderstood, the employees will have no greater appreciation of this plan than the old plan.

We also feel that the plan sponsor should be up front with the participants. Glossy charts and graphs, if done well, can convey a wealth of information. But, if they are misleading, the employees will eventually view the entire program with skepticism. If the employer must reduce the costs of the defined benefit plan to remain competitive, or to afford an increase in the match to a 401(k) plan, let the employees know the truth. Employers must be counseled that if they attempt to hide something, their employees **will** find out, and the plan may become the subject of a lead story in a local or national newspaper.

Keep in mind that any hybrid plan will require more recordkeeping and administration than a traditional final pay plan. Whether maintaining a hypothetical account balance throughout employees’ careers (including special awards and interest compounding) or counting points based on age and/or service, the organization probably will not be equipped to handle the task. We never go into a hybrid plan design assignment without being prepared to offer our client either an outsourcing solution to recordkeeping

or software that allows them to administer the plan in-house. Mid-size and smaller clients (under 1,500 active lives) can be easily administered using spreadsheet technology (e.g., Excel or Lotus 123). However, larger clients may require more robust databases. If a selling point of the plan is its similarity to a 401(k) plan, then the client should be ready to provide annual or quarterly statements as timely as 401(k) statements are produced.

Endnotes

¹This is due to the fact that the benefits promised by traditional plans behave like bonds: as interest rates fall, the value of the obligations increase, and vice versa).

Raymond J. Lee, MAAA, is a Vice President and Chief Technical Actuary with The Savitz Organization in Philadelphia, PA. Mr. Lee has over 20 years of experience in the pension field, and has assisted clients in analyzing the benefits of hybrid pension plans since 1987. William P. Bishop, MSPA, CPC, QPA, FCA, is the President of the Savitz Organization. Mr. Bishop has over 15 years of experience in the pension field. He provides actuarial and consulting services to both single employer and multiemployer groups and is a frequent speaker on employee benefits topics at both regional and national seminars and conferences.

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

The Pension Actuary welcomes your views!
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or e-mail to aspa@aspa.org

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IRS "Best Practices" Memo Provides Guidance on EPCRS

Although Revenue Agents cannot ask to see the compliance audit report, there may be circumstances under which it would be advantageous for the plan sponsor to *voluntarily* provide it to the IRS, such as, for example, if the information contained in the compliance audit report can be used by the plan sponsor as an equity to reduce the sanction under Audit CAP, or to establish that the plan had in place "practices and procedures" as required under APRSC. In these instances, the plan sponsor should seriously consider sharing all or part of the report with the Revenue Agent. However, plan sponsors should recognize that providing the IRS with the compliance audit report may expand the audit beyond the initial scope of review. Therefore, care should be taken in determining the extent to which the report should be disclosed to the IRS.

Excise Tax Issues

Section 6.04 of Revenue Procedure 98-22 indicates that EPCRS is only available to correct plan qualification failures; therefore, it cannot be used to resolve other problems, such as excise taxes. However, for several years, the Western Key District of the IRS has allowed certain excise taxes to be compromised under a procedure similar to Walk-in CAP, known as Delegation Order 97. (Delegation Order 97 is an internal IRS memorandum under which the Commissioner of Internal Revenue has delegated authority to officials in the Key Districts to enter into agreements to resolve tax issues.) Under a "DO 97" closing agreement, the

IRS would collect an amount equal to 75% of the excise tax due on a pro-

The best practices memo is an important and helpful document, since it clarifies some of the procedures for handling qualification failures, while making certain changes under EPCRS.

hibited transaction, funding violation or other matter for which an excise tax is reportable on Form 5330. All interest and penalties were effectively waived.

The "best practices" memo eliminates the use of the DO 97 program for excise taxes. It states that the excise taxes reported on Form 5330 cannot be resolved as part of a closing agreement and should be paid in full, including all accrued interest. However, the penalties for late filing and late payment can be waived. The memo instructs the Revenue Agent handling a Walk-in or Audit CAP case to obtain all Forms 5330 and then forward them to the appropriate Service Center with a recommendation on whether to waive any applicable penalties. The memo specifically states that the recommendation to waive penalties is at the Revenue Agent's *discretion*. Therefore, plan sponsors and practitioners should be certain to fully discuss with the Revenue Agent any arguments they may have in support of waiving the

penalties, *before* the Forms 5330 are forwarded to the Service Center.

The memo's elimination of the Western Region's DO 97 program is unfortunate because plan sponsors have lost an opportunity to come forward and resolve excise taxes under favorable circumstances; this may have a negative impact on voluntary compliance. At the same time, the memo makes a welcome change concerning the 50% excise tax imposed under Code section 4974 for failing to make a minimum required distribution (MRD). The failure to distribute MRDs is an "operational" qualification failure which can be corrected under the Standardized VCR Procedure (SVP), VCR and Audit CAP; if there is also a plan document or demographic failure, it may be corrected under Walk-in

CAP. The memo provides that, where a voluntary correction program has been used to correct the MRD failure, Revenue Agents "should routinely recommend waiver" of the section 4974 excise tax, except for those failures involving an owner-employee. And, even in the case of an owner-employee, the Revenue Agent still has the discretion to recommend that the Service Center not assess the excise tax.

Conclusion

The best practices memo is an important and helpful document, since it clarifies some of the procedures for handling qualification failures, while making certain changes under EPCRS designed to promote self-audit and voluntary compliance. The new procedures for handling plan document failures under Walk-in CAP (especially those failures discovered during the determination letter process) will become increasingly significant as plan sponsors review their plans, amend them for GUST, and file with the IRS for determination letter rulings. The creation

of the new “minor” qualification failure concept will be helpful when small plan document failures are discovered by the IRS during the determination letter process.

It is unfortunate that the IRS chose to eliminate, rather than expand, the use of DO 97 to resolve excise tax matters (which had been urged by the ASPA Government Affairs Committee). At the same time, it comes as good news that the IRS is predisposed to grant a waiver of the 50% excise tax under Code section 4974 for those cases in which the MRD failure is corrected using a voluntary program.

Finally, the memo protects a plan sponsor’s compliance audit report under all of the EPCRS correction programs by prohibiting Revenue Agents from requesting to see it. However, plan sponsors may want to provide the report on a voluntary basis to establish either an equity, which

would reduce the sanction under Audit CAP or “practices and procedures” as required under APRSC.

C. Frederick Reish, APM, is a founder of and partner with the Los Angeles law firm Reish & Luftman. He is a former cochair of ASPA’s Government Affairs Committee and currently chairs the GAC Long Range Planning Committee. Bruce L. Ashton, APM, a partner with Reish & Luftman, is cochair of the Government Affairs Committee and serves on the ASPA Board of Directors. Nicholas J. White, APM, specializes in all aspects of employee benefits law. Before joining Reish & Luftman, Mr. White served as a Tax Law Specialist for the Western Key District Office of the Employee Plans and Exempt Organizations Division of the Internal Revenue Service.

New ABCD Bylaw and Rules Adopted

The actuarial profession established the Actuarial Board for Counseling and Discipline (“ABCD”) through Article X of the Bylaws of the American Academy of Actuaries, effective January 1992. Amendment of Article X, which also delineates ABCD responsibilities, is by Academy membership vote. The Academy exposed to the profession in 1997 a proposed amendment of Article X. The ABCD considered comments that the profession submitted regarding the draft and proposed a revised Article X amendment to the Academy in January 1998, which, in turn, submitted the proposal to ASPA as well as the Casualty Actuarial Society, the Conference of Consulting Actuaries, and the Society of Actuaries.

From September 1 through November 15, 1998, Academy membership voted on and passed the proposed Article X amendment. In accordance with Academy Bylaws, the approved amendment took effect 10 days following the vote deadline, i.e., on November 25, 1998.

Pursuant to Article X, the ABCD is responsible for establishing Rules of Procedure. In January 1998, the ABCD presented proposed revised rules of procedure through the Academy to the participating membership organizations. The ABCD considered comments submitted to it, made further revisions, and formally exposed to the profession proposed rules revisions September 1 through November 15, 1998. In December 1998, the ABCD adopted revised Rules of Procedure, effective January 1, 1999.

Both Article X and the revised rules are available via the ABCD’s Web page (with Acrobat Reader) at <http://www.abcdboard.org>. A printed booklet of the rules is also available upon request.

Attention EAs! Updated Information!

Notice from the Joint Board for the Enrollment of Actuaries

Enrolled Actuaries are advised that:

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

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

The renewal forms (sometimes referred to as the #5434-A) are currently being mailed. You should be receiving yours shortly. If you have had a change of address and have not informed the JBEA directly, you must do that. A change of address with ASPA or the SOA will not update the JBEA records. Inquiries should be directed to Darryl Carter at (202) 694-1854 to do this.

Patrick W. McDonough, Esq., has been appointed the executive director of the Joint Board. The Joint Board’s address is JBEA, Internal Revenue Service, Attention: C:AP:DOP, 1111 Constitution Avenue, N.W., Washington, DC 20224. The phone number is (202) 694-1891 and fax (202) 694-1804.

Nominations Open for 1999 Harry T. Eidson Founders Award

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

The following criteria are used to determine the nominee:

The contribution must be consistent with the ASPA mission statement and should have a lasting, positive in-

fluence on ASPA or the private pension system.

The contribution may be current, one that spanned many years, or one made years ago which ASPA or the private pension system benefit from today.

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. Publicity is not a criterion.

ASPA's Membership Committee will make the recommendation for the award after considering a broad base of nominations drawn from the range of ASPA's membership. If you know someone you believe meets the criteria, please fill out the nomination form enclosed with this issue and return it to ASPA.

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 and the winner's name is engraved on a plaque in the ASPA office.

Previous winners: 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 14.

REGISTER NOW TO SAVE!

April 29-30, 1999

**Midstates Benefits Conference
Chicago, IL**

Don't miss the premier educational conference on benefits issues in the Midwest! The annual Midstates Benefits Conference, jointly sponsored by ASPA and the Internal Revenue Service, consistently receives rave reviews from attendees for its unsurpassed combination of timely topics, expert speakers, and convenient location.

Our featured luncheon speakers include Scott F. Turow, an attorney and best selling author, and David M. Strauss, Executive Director of the PBGC. Other topics and speakers include: *IRS Regulatory and Legislative Update* with Richard Wickersham; *Leased Employees and the Independent Contractor* with Derrin Watson; *401(k) Plan Design and Compliance* with Joan A. Gucciardi and Richard Nelson; *IRS and DOL Litigation Review* with Sherwin Kaplan; *Major Changes to the 1999 Form 5500* with Janice M.

Wegesin; *IRS Voluntary Compliance Programs* with Joyce Kahn; and *Paperless Communications-The New Wave of Employee Disclosures* with Frank Roque, plus many more.

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

The early registration fee is \$375. Early registrations must be received by April 7th. The late fee for registrations received April 8th and later is \$475.

For more information or to receive a brochure please call Piper J. Deuschl, CMP, in ASPA's meetings department or visit our website at www.aspa.org.

ASPA MEMBER **ASAP**

ASPA is pleased to announce that effective immediately we will be offering the *ASPA ASAP* via e-mail.

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



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

You're Invited...to ASPA's First Ever Summer Conference!

Make your plans now to attend ASPA's first Summer Conference-*Education for the Millennium* to be held in San Francisco at the Fairmont Hotel from July 11-14, 1999.

The conference begins Sunday, July 11, with an informative GAC and DOL update to bring you up-to-date on legislative matters. Sal Tripodi, APM, one of ASPA's most



popular speakers, will close the conference on Wednesday with his session, *Keeping Current*. The conference offers three concurrent sessions covering topics such as *Cross-Tested Plans from Design to Document to Administration*; *Consulting: Building Loyalty and Profits by Giving Clients Ideas*; *ESOPs for Subchapter S Corporations*; *EPCRS for the TPA*; *QDROs and the TPA*; and much more. Earn up to 20 hours of continuing education credit. It won't be all work and no play...Enjoy the *Pension Comedy Hour* with popular speaker and author Derrin S. Watson, APM, and attend the welcome reception Sunday evening, July 11, for a taste of California cuisine.

The new Summer Conference also offers exhibits. Get a sneak peak at what's new from your software vendor! Learn about the new financial products from insurance and investment firms and see the latest tools that

will help you do your job more efficiently and better satisfy your clients.

Education and Relaxation

Surely San Francisco is one of the world's most exciting and entertaining cities. From the clang of the bright red cable cars to the sights and sounds of Chinatown and Fishermans' Wharf; San Francisco offers a bounty of sightseeing, dining, and museums. Visit the landmark Golden Gate Bridge, motor boat across the bay to intriguing Alcatraz prison, or explore Sausalito - the quaint artists' colony. Bring your family and hit the Exploratorium, where the exhibits are built so children can experience science "hands-on." Or schedule a trip into nearby Gold Rush Country. The City by the Bay has something to offer everyone!



Register Early and Save

Save \$50 by registering for the conference prior to June 11, 1999. The cost to attend the conference is only \$550 for ASPA members (before June 11). The second registrant from the same firm, same location, pays only \$500. For more information about attending or exhibiting at ASPA's first ever Summer Conference, contact Piper Deuschl, CMP, at piperd@aspa.org or visit ASPA's web page: www.aspa.org.

See you in San Francisco!

WELCOME NEW MEMBERS

Welcome and congratulations to ASPA's new members and recent designees. January-February 1999.

MSPA

Michael R. Greenstein
Dane C. Mitchell
Michael Mojzack
Martin Weiss

CPC

Thomas D. Borkowski
Margaret E. Cox
Alicia M. Wiley

QPA

Richard L. Anderson
Kimberly K. Boyle
Timothy R. Cinalli
Mary Ann Crossey
Lisa A. DesMoine
Barbara I. Elbert
Daniel E. Fisher
Allen F. Gipson
James E. Hawk
Cynthia L. Kamuf
Robert J. Kent
Michael J. King
John E. Larem
Kerry L. Oetting
Scott A. Pemberton
Laura L. Small
John T. Wickline
Robert G. Williams

APM

James Patrick Ingold
Jack Lawless
William F. Lee
Lorence Wheeler
George T. Wilcox

Affiliate

Richard A. Anderson
Michael W. Beecher
Raymond T. Farabaugh
Susan E. Goetzinger
Donna Grenon
Connie M. Knox
Karen M. Kozminski
Pamela A. Margenau
Ann Sandefer
Peggy Jo VonSeggern

1999 ASPA Annual Conference -- *It's Educational, It's Fun, and You Should Attend*

Preparations are being made for the 1999 ASPA Annual Conference to be held in Washington, D.C., October 24-27, at the Grand Hyatt Hotel.

Conference Theme Selected: Congratulations to Cynthia Barker, FSPA, CPC, QPA, for suggesting the theme for the 1999 ASPA Annual Conference. The Annual Conference Planning Committee selected Cindy's theme to acknowledge the 25th anniversary of ERISA. *ERISA - The First 25 Years and Into the New Millennium* won Cindy a free registration to the 1999 ASPA Annual Conference. We thank Cindy for her creativity.

Expanded Exhibit Hall: The Exhibit Hall will be expanded to bring you more providers of products and services that will help you succeed throughout the next millennium. With this expansion, more workshops will be held nearby at the Marriott Metro Center, located across the street from the Grand Hyatt. If you want a change of pace, try the Marriott Metro Center for your sleeping accommodations (202) 737-2200. The rate is \$173 for both single or double occupancy.

Embracing Technological Innovations: Conference materials will be provided to all conference attendees on CD-ROM as part of the conference registration package, in addition to the binders of materials. We have

also upgraded the audio/visual arrangements for the conference.

More IRS Q&A: The IRS Q&A has been expanded to 200 minutes, scheduled before and after lunch on Monday. Conferees will be able to ask IRS representatives questions directly to help them understand the IRS's regulatory interpretations. Look for your advance Q&A form in the July/August issue of *The Pension Actuary* and use it to submit your questions.

Extended Tuesday Reception: Conferees were having so much fun last year that the Tuesday Reception has been extended until 12:00 midnight! You will have more time to network with your peers and/or dance the night away.

Hotel arrangements: The Grand Hyatt Washington's rates for 1999 are \$180/single and \$195/double. Please call the hotel directly to make your hotel reservations (202)797-1234. The Grand Hyatt typically sells out three to four weeks prior to the cut-off date, which is Friday, September 24.

You will receive a 1999 ASPA Annual Conference brochure, complete with all the details, early this summer, but can check out the preliminary information on the ASPA web site now -- www.aspa.org.

ASPA's March on the Hill Rides in Style!

Join other ASPA members as they march on Capitol Hill to discuss the latest pension proposals with their Senators and Representatives as part of the annual conference in October! More details to come later!



Drawing Winners!

Everyone who responded to the 1998 Membership Survey was eligible for our free conference registration drawing. The Membership Committee would like to congratulate our two winners! The lucky ASPA members are Tom Gatenby, of Greenwood & Associates, Inc. in Fayetteville, Arkansas and John ('Jack') J. Wade, QPA of Rehmann Robson in Grand Rapids, Michigan. Tom and Jack have won a free registration to either the 1999 ASPA Summer Conference or the 1999 ASPA Annual Conference. Please join us in congratulating our winners!

December 1998 ASPA Exam Results Posted Online

Exam results for the December 1998 C-1, C-2(DB), C-2(DC), C-3, C-4, and A-4 exams are now posted alphabetically by name at www.aspa.org/aspaedu.htm. A list of candidates who earned the Pension Administrators Certificate effective August 31, 1998 is also available at the site.

Third Annual Northeast Key District Employee Benefits Conference

Iselin, New Jersey

May 20-21, 1999

The **Northeast Key District Employee Benefits Conference** is co-sponsored by:

The Northeast Key District of the Internal Revenue Service and its Pension Liaison Group, and ASPA.

- 2-Day Conference
- New Location
- More Workshops
- More CE Credits - Earn Up To 14 CE Credits
- More Networking Opportunities

Plan to attend!! The Northeast Key District Employee Benefits Conference will cover topics such as distribution planning; fiduciary concerns; employee plans compliance resolution system; changes in welfare benefits plans; IRS, DOL, PBGC updates; and a lot more.

This year the conference will be held at the Sheraton Woodbridge Place, located at 515 Route 1 South, Iselin, NJ 08830. To make reservations and get the special conference rate of \$136 plus tax, call the hotel directly at (732) 634-3600 and mention the conference. To receive this special rate, contact the hotel by April 29. After that, registrations will be made if space is available, but the rate is not guaranteed.

Plan to register before April 26 and take advantage of the "early" registration fee of \$325. Late registration (after April 26) is \$405. For more information call Janet Kamvar, Meetings Coordinator, at (703) 516-9300, or e-mail jkamvar@aspa.org.

ASPA and IRS to Offer Best of Midstates Workshops for a Second Year

ASPA is teaming up with the Internal Revenue Service to offer three workshops that will take six topics from the IRS/ASPA Midstates Benefits Conference and present them in Kansas City, Mo.; Minneapolis, Minn.; and Milwaukee, Wisc. The workshops are tentatively scheduled for the last two weeks in July.

The topics covered at the 1999 Workshops include:

1. Plan Amendments and Restatements During the Remedial Amendment Period
2. 401(k) Plan Design and Compliance - Emphasis on 401(k) Safe Harbor Plans
3. Fiduciary Responsibilities, Prohibited Transactions, Plan Expenses
4. IRS Voluntary Compliance Programs

5. Cross Testing Your Defined Contribution Plans
6. A session with local members of the IRS.

These interactive workshops use pension professionals from these areas to provide a local flavor to each topic. If time and budget concerns make it impossible to attend the Midstates Benefits Conference, this is a workshop you do not want to miss! The best topics are presented to you in an inexpensive, one day format.

Look for the brochure to arrive in your mailbox in mid-May.

For more information, contact Ken Morton, ASPA Meetings Coordinator at (703) 516-9300 or e-mail meetings@aspa.org.

www.aspa.org

Check out the Meetings Webpage to download information, brochures and registration forms on the upcoming conferences, including the Midstates and the Business Leadership Conferences.

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

How?

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



Cash Balance Briefing on Capitol Hill

Capitol Hill and will keep you informed of future proposals.

Lisa J. Bleier, Esq., is the Government Affairs Manager at ASPA. A graduate of the University of Pittsburgh School of Law, she has most recently worked for Congresswoman Marge Roukema (R-NJ) as her legal counsel and legislative assistant for all issues arising from the Education and the Workforce Committee, including ERISA.

Carol's Speech

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

There are advantages of Cash Balance even to small businesses because they are DB Plans. These include:

- Market volatility is spread over the group and over time.
- Benefit adequacy for early retirees, employees hired late in their careers, and employers who establish a plan after investing years into building and solidifying their business can be accommodated via past service credit and final benefits based on current average pay.

- Employers are concerned that employees may misuse regular DC plan account balances—early withdrawal, lump sum expenditures rather than continued savings, improper investment choices, etc. There tends to be some employee perception that DC plans are savings plans for spending and not for lifetime income needs.
- There is funding flexibility—DB funding can anticipate turnover, amortize gains/losses, provide a contribution range, and generally achieve a level percent of payroll cost to be budgeted and managed.
- Maximum Section 415 limits are based on ultimate benefits and are more appropriate, economic and inflation based limits, as a result.
- Can provide opportunity for “window”, disability, enhanced death, and other benefit enhancements.
- Forfeitures are spread over future contributions—again, allowing for more contribution predictability into the future.
- Encourage annuity benefit options, which eliminate risk of out-living retirement assets.
- Provides PBGC protection.
- Has minimum funding obligation based on future benefit expectations.
- Creates environment for use more often of professional investment management which has been shown to out perform marketplace more often than individuals who direct their own retirement assets.

The Cash Balance DB Plan can deliver an easy-to-understand, par-

ticipant friendly “account balance” program while enjoying all the advantages mentioned above. A Cash Balance Plan can also embrace the strengths of a DC Plan. Some of these strengths include the following:

- flatter benefit accrual rather than back loaded accrual
- participant appreciation and comprehension even in the early, young years of service
- frequent benefit statements which maintain visibility and participant appreciation
- more portability

Such a concept does “play in Peoria”. With our agricultural and manufacturing industries in particu-

There are advantages of Cash Balance even to small businesses because they are DB plans.

lar, there are scores of tag-along start up small businesses to receive outsource business from the manufacturers and farmers. Examples are:

- Implement Dealers
- Metal Fabricators
- Mortgage Brokers
- Seed Distributors
- Fertilizer Companies
- Specialty Engineering Consultants
- Trucking Firms
- And more

Economic, weather, demographic, and international vagaries play a huge part in the sustenance of these unique firms. Their immediate concern over the first several years of their company is to invest in the company’s future. Only if they

successfully find and secure a toe-hold in their niche, do they add any benefit programs at all.

A Cash Balance Plan is a convenient way to have a single plan (or perhaps a single Company plan with a companion salary deferral 401(k) plan) which both rewards the staff that invested in the company's future, while working "plan-less", and also attracting new employees who are more often comfortable with account balances than deferred monthly benefits. Even small business likes this plan option because:

- Use of a single plan keeps plan upkeep costs lower
- There is great appeal to be able to give employees a statement of account balance based on safe, reasonable interest accumulations.
- The fiduciary onus to select fund choices that are secure and defensible to every participant, every day, regardless of the participant's financial comprehension level goes away.
- The fiduciary onus of either a participant declaration of inadequate investment management education or not enough, not the correct and too many fund choices goes away. That is, the investment return expectations are communicated in advance, guaranteed, and cannot be fodder for participant disillusionment.

In small business, where everyone knows, works, lives, in the same community as everyone else, it is extremely important to have an atmosphere of trust and loyalty to each other.

There is incentive to utilize professional investment managers. These professionals would tell you that they could outperform the market more often than not. The employer incentive to outperform the

market to support interest credit to participant accounts fosters participant account or benefit protection. The overperformance creates employer contribution reduction. Underperformance leads to extra employer contribution obligation. This risk leads to plan protection and security.

The use of floor benefits, which considers past service and final average pay permits benefits appropriate to long-term employee com-

mitment and to the economy at the time of retirement.

Believe me, a small business will utilize Cash Balance Plans more and more if the fuzzy parts become clear. It is an idea whose time has come.

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

CONTINUED FROM PAGE 1

Washington Update

sure that ASPA's Government Affairs Committee is right in the middle of it.

- **Roth 401(k) and 403(b) plans** – As described in the accompanying article on page one, Senator Roth (R-DE), Chairman of the Senate Finance Committee, is introducing legislation allowing

In order to avoid non-discrimination testing problems, ASPA GAC suggested testing Roth 401(k) contributions with pre-tax deferrals as part of the ADP test.

401(k) plan participants to elect a tax treatment for their deferrals similar to Roth IRA contributions. This is an exciting new proposal, which will make 401(k) plans more competitive with IRAs. Following are some details. In response to an ASPA GAC suggestion, in order to avoid nondiscrimination testing problems, after-tax Roth 401(k) contributions will be tested along with pre-tax

deferrals as part of the ADP test, not with other after-tax deferrals and matching contributions which will still be tested under the ACP test. Under the proposal, the 402(g) limit would still apply to the combined amount of pre-tax and after-tax Roth 401(k) contributions. However, Senator Roth's bill would increase the 402(g) limit to \$15,000. Because of their special tax treatment (i.e., distributions, including earnings, exempt from tax), Roth 401(k) contributions, and allocable earnings, would have to be accounted for separately. Further, like Roth IRAs, in order to receive such special tax treatment, a 5-year holding period would apply. In other words, the special tax treatment applies if five years have elapsed since the participant first made Roth 401(k) contributions. In response to another ASPA GAC suggestion, Roth 401(k) amounts can be rolled over to a Roth IRA. The proposal currently has no provision allowing for conversion of existing 401(k) amounts to Roth 401(k) contributions.

- **Modifications to top-heavy rules** – Groups of Republicans and

Democrats in both the House and the Senate are working on legislation, which ASPA GAC helped to develop, to significantly relax the top-heavy rules.

1. Definition of key employee –

The definition would be modified to: (1) eliminate the 4-year look-back rule; (2) change the income threshold for officers to \$80,000; and (3) delete the top-10 owner rule.

2. Repeal family attribution –

Family members would not be deemed key employees solely because of stock attribution.

3. Exclude elective deferrals from top-heavy rules –

At the election of the employer, elective deferrals and allocable earnings could be excluded in determining whether a plan is top-heavy (i.e., the 60% test), and elective deferrals made by a key employee would not trigger top-heavy minimum contributions.

4. Matching contributions count toward top-heavy minimum –

Employer matching contributions would count toward satisfying top-heavy minimum contribution requirements.

5. 401(k) safe harbors exempt from top-heavy –

A 401(k) plan adopting the matching contribution safe harbor formula would be deemed to satisfy the top-heavy rules, just like those plans utilizing the 3% nonelective contribution safe harbor formula.

6. Revise 60% test - The 60% test would be based only on current year contributors rather than total plan assets.

7. Repeal 5-year look back rule – Previous distributions made

to key employees would no longer have to be considered in determining whether a plan is top-heavy.

8. Eliminate minimum accruals for frozen DB plans –

Frozen DB plans would no longer have to make top-heavy minimum accruals for non-key employees.

ASPA GAC would appreciate your input since we may need to prioritize these proposals. Please vote for your favorite top-heavy proposal

ASPA GAC helped to develop legislation to significantly relax the top-heavy rules. Vote for your favorite proposal.

at the government affairs section of our web site at www.aspa.org.

• **Increasing Various Limits –** There are bills in both the House and Senate to increase qualified plan limits in varying degrees. Following are some examples:

1. Increases in 415 limits – In legislation introduced by Reps. Portman (R-OH) and Cardin (D-MD) (“House bipartisan bill”), the DB dollar limit would be increased to \$180,000, and the DC dollar limit would be increased \$45,000.

2. Repeal 415(c) 25% of compensation limitation – Almost all of the major bills in the House and Senate include this provision. In addition, the provision is accompanied by a provision excluding elective deferrals from the section 404 deduction limitation.

3. Increase elective deferral limits – The House bipartisan bill

and the Roth bill would increase the 402(g) limit to \$15,000. A bipartisan group of Senators, including Senators Graham (D-FL), Grassley (R-IO), Baucus (D-MT), Jeffords (R-VT), Breaux (D-LA), and Hatch (R-UT), presently working on a pension reform package, are considering a more modest increase to \$12,000.

4. Increase compensation limit –

The House bipartisan bill increases the section 401(a)(17) to \$235,000. So far, no other members are considering such an increase.

5. Catch-up contributions –

The House bipartisan bill and the Roth bill both include provisions which increase the 402(g) elective deferral limit for persons age 50 and over. The House bill increases the limit by \$5,000, and the Roth bill increases the limit by 50%. So, if both the increase in the 402(g) limit and the catch-up contribution provisions in the House bill and Roth bill were enacted, the total elective deferral limit for persons age 50 and older would be \$20,000 under the House bill and \$22,500 in the Roth bill. Under the Roth bill, the extra catch-up contribution (i.e., the extra \$7,500) would be exempt from nondiscrimination testing. Under the House bill all deferrals would be subject to nondiscrimination testing, although the 401(k) safe harbors would still be available.

IRS guidance – As of the date of this writing, we are still waiting for the guidance governing the GUST amendment process. However, recent statements by high level government officials suggest that because of this delay it ap-

DOL Blueprint for Investment Managers

pears more likely that plan amendments will not have to be made by December 31, 1999. ASPA GAC has been arguing for such an extension, and hopefully by the time you are reading this, the official guidance will be available. We are also waiting for section 415(e) guidance, which should also be released shortly.

- **DOL guidance** – As you know, the DOL is working on revising the small plan reporting rules. The good news is that in a separate letter to concerned Members of Congress and to ASPA as well, the DOL has promised not to require a financial institution trustee or custodian in order to avoid a full scope audit. DOL appears to be leaning toward requiring that plans obtain a statement—like a trust account statement—from a regulated financial institution (i.e., bank, insurance company, broker-dealer, mutual fund company) annually verifying the existence and value of total plan assets. Other than for plans invested in “hard-to-value” assets (e.g., deeds of trust, limited partnership interests), such statements should be readily available at little cost. Those plans with hard-to-value assets may be subject to a full scope audit, however. We will continue to work with DOL on less costly alternatives such as an increased ERISA bond requirement or perhaps a qualified independent appraisal in lieu of an audit.

There is actually much more going on, but these are the highlights. As always, we will keep you posted through ASPA ASAPs with any late-breaking developments.

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.

During the Western Practitioner’s Conference last fall, one of the Department of Labor speakers mentioned that the *Arizona Carpenters Pension Trust Fund* case contained the “blueprint” that the DOL would use in determining whether a fiduciary breach has occurred in the selection and monitoring of investment managers.

ERISA requires that fund managers sufficiently diversify fund portfolios in order to avoid large losses, which could occur from a sudden downturn in any particular market. The DOL looks closely at funds that concentrate assets in real estate-related investments.

In 1994, the DOL announced that more than \$93 million would be restored to four Arizona-based pension and health benefit plans covering 31,000 workers under settlement of a case brought by the U.S. Labor Department and plan trustees. The case had been the largest recovery of its type in which the Department had been a party. The funds had been heavily invested in real estate and were neither diversified enough nor closely enough monitored to satisfy legal requirements of ERISA.

In addition to the financial settlement, it was required that the funds reduce their real estate holdings and follow departmental guidance on securing and monitoring the services of all of the funds’ investment managers. DOL suggested procedures for selecting and monitoring investment managers is provided below.

Note: The Editors would like to thank E. William Berke, APM for providing this information and suggesting that it appear in *The Pension Actuary*.

Department of Labor Suggested Procedures for Selecting Investment Managers

In selecting any Investment Manager for the Plans, the Plans, through their Trustees, shall perform, at a minimum, the following procedures:

1. For each Investment Manager position to be filled, proposed investment guidelines shall be established and/or an investment style shall be identified, for that portion of the Plan’s assets to be committed to such Investment Manager’s discretion; provided, however, that investment guidelines shall be established for any Investment Manager ultimately retained.
2. A range of candidates whose expertise is consistent with the proposed investment guidelines established and/or investment style identified for the Investment Manager position in question, shall be identified. The process by which such candidates are identified shall be documented.
3. Information necessary for the prudent selection of an investment manager shall be obtained from each of the candidates. That information shall include, but not necessarily be limited to, the types of information described below and, insofar as appropriate, supporting documentation:
 - whether the candidate qualifies as an investment manager pursuant to ERISA §3(38);
 - the business structure and affiliations of the candidate;
 - financial condition and capitalization of the candidate;
 - a description of the investment style proposed by the candidate;
 - a description of the investment process to be followed by the candidate;
 - the identity, experience and qualification of the professional who will be involved in handling the Plan’s account;
 - whether any relevant litigation or enforcement actions have been initiated within a reasonably relevant period of time against the candidate, the candidate’s officers or directors, or the candidate’s investment professionals who will have responsibility for the Plan’s account;

Continued on page 34

1998 Membership Survey

ASPA would like to thank all of our members who responded to the 1998 Membership Survey. Your feedback is greatly appreciated and will assist the Society in planning for the future. We are proud to say that we had a response rate of over 50%—an indication of the high degree of interest and concern of ASPA members! The following is a summary of the survey results.

Respondents

Not only did we have an outstanding response rate, but respondents almost perfectly represent the total population of ASPA members. ASPA membership can be described as follows: 30% QPAs; 29% Affiliates; 21% FSPAs and MSPAs; 13% CPCs; and 7% APMs. By comparison, survey respondents are as follows: 31% QPAs; 24% Affiliates; 22% FSPAs and MSPAs; 16% CPCs; and 7% APMs. We could hardly ask for a more representative sample!

Reason for Joining ASPA

By far the primary reason our members join ASPA is for professional recognition and/or to obtain a professional designation. Government Affairs efforts, employer suggestions, discounts, and publications are all secondary factors in the decision to join.

Programs and Services

In terms of our programs and services, ASPA members are the most

satisfied with our publications, *The Pension Actuary* and the *ASPA ASAP*. Most of our members also responded that they are satisfied with our Government Affairs, Conferences, and Education & Examination programs. Our membership discounts are a less significant source of satisfaction, and it appears that many of our members had not yet visited ASPA's website when the survey was distributed.

Name Change

ASPA members appear to be divided in their opinions about changing ASPA's name. There was no significant difference between personal reactions and the effect our members think changing our name would have on ASPA as an organization. About 45% of our responding members had a positive reaction to the possibility of a name change, 30% are undecided, and 25% responded negatively.

We also broke the responses down by actuarial and nonactuarial members. 50% of nonactuaries re-

sponded positively to the possibility of a name change, 30% are undecided, and 20% responded negatively. On the other hand, about 20% of actuaries responded positively, 30% are undecided, and 50% responded negatively. There are no significant differences in the opinions of Affiliates, CPCs, QPAs, or APMs about changing ASPA's name.

The Pension Actuary

Most of our members read *The Pension Actuary* for technical information. Government Affairs issues are secondary in importance, and very few read *The Pension Actuary* as a source of general information about ASPA.

Sponsorship and Advertising

Most ASPA members who responded to the survey approve of outside sponsorship and advertising at conferences. While a majority of our members either approve or have neutral opinions about advertising on the website and in *The Pension Actuary*, there is a higher rate of disapproval of advertising in these venues.

Internet/Website

Almost 70% of our members who responded to the survey are interested in seeing Internet-based education, but only 40% have a favorable opinion about offering the Yearbook on the ASPA website rather than in printed form.

March on the Hill

45% of our members who responded to our survey responded positively to setting time aside at the conference for the March on the Hill. 40% have a neutral opinion, and about 15% responded negatively to this idea.

Board of Directors

In terms of the effectiveness of ASPA's Board of Directors in repre-

Continued on page 34

FOCUS ON CE

It Is Never Too Early to Start

by Cathy M. Green, CPC, QPA

The 1999-2000 CE cycle began on January 1, 1999. Plan now on how you will earn the CE credits required to keep your designation current. If you start now and pace yourself, the next filing deadline, January 8, 2001, will be easy to meet!

In 1990, the ASPA Board of Directors adopted a mandatory program of continuing education (CE). This program affects all designated individuals, (FSPA, MSPA, CPC, QPA, APM) admitted to membership or receiving an additional designation after December 31, 1990, including reinstatements. Credentialed members admitted prior to 1991 are subject to the program on a voluntary basis and are strongly encouraged to participate.

All individuals admitted or reinstated to credentialed ASPA membership, or approved to receive an additional designation after December 31, 1990, must satisfy continuing education requirements to retain their post-1990 ASPA designation(s). The current cycle began on January 1, 1999 and will end on December 31, 2000. Each credentialed member is required to earn 40 continuing education credits in each continuing education cycle. For the initial CE cycle in which the post-1990 designation is granted, the number of CE credits required will be prorated based on the date of admittance or designation within the two-year CE cycle according to the schedule appearing in the box.

The mandatory continuing education requirements are not applicable to noncredentialed or nonvoting members admitted in the category of affiliate.

If a credentialed member admitted, reinstated, or newly designated after December 31, 1990, does not earn sufficient CE credits during any CE cycle, the use of the designation earned or reinstated after 1990 is suspended.

Credentialed members who are not subject to the mandatory program are strongly encouraged to meet these requirements on a voluntary basis. Those who do so are noted in the Yearbook as satisfying the continuing education requirements.

These topics are among the acceptable subject matter which ASPA allows:

- Accounting for Retirement Plans
- Actuarial Science
- Auditing Retirement Plans
- Business Practices of a Pension/Actuarial Firm
- Computer Systems for Retirement Plans
- Employee Benefit Planning
- Estate Planning
- Financial Planning
- Funding of Pension Programs (Annuities, Investments, Insurance)
- Health and Welfare Benefit Plans
- IRAs and SEPs
- Laws and Regulations Related to Retirement Plans
- Nonqualified Retirement Plans
- Pension and Profit Sharing Plans
- Retirement Plan Design
- Taxation of Distributions

If you have any questions pertaining to the ASPA CE program, please contact the ASPA office.

Cathy M. Green, CPC, QPA, is Vice President of CMC in Glendale, Calif. She is the chair of the Continuing Education Committee. Ms. Green, a member of ASPA's Board of Directors, also serves on the Conference Committee and is chair of the 1999 ASPA Summer Conference. She is also a member of the Ed Policy Committee.

Required Credits

If you have joined ASPA within:

first six months of the cycle	30 CE credits
second six months of the cycle	20 CE credits
third six months of the cycle	10 CE credits
last six months of the cycle	no CE requirement

FOCUS ON ASPA PERF

Mathematical Olympiad Revisited

by Scott D. Miller, FSPA, CPC

The ASPA Pension Education and Research Foundation, Inc., or APSA PERF, was chartered in the District of Columbia in 1976 as a nonprofit charitable foundation under Internal Revenue Code Section 501(c)(3).

ASPA PERF is one of 11 organizations which sponsored the 1998 USA Mathematical Olympiad, covered in the July-August 1998 issue of *The Pension Actuary*. The Olympiad organizes a series of competitions among high school students around the country and culminates in the selection of a team that represents the United States in the international competition.

The following is a letter from a grateful 1998 representative to the Olympiad, Sasha Swartz. Your generous support of ASPA PERF makes this event possible.

February, 1999

Ms. Carol Sears, President
American Society of Pension
Actuaries

4350 North Fairfax Drive, Ste. 820
Arlington, VA 22203

Dear Ms. Sears,

I would like to thank you for your organization's sponsorship of the American Mathematics Competitions. It was an honor for me to be a member of the United States team competing in the International Mathematical Olympiad in Taiwan last summer. I know that trip would not

have been possible without the support of the American Society of Pension Actuaries and the other sponsoring organizations.

I have been fortunate to have the opportunity to attend the Mathematical Olympiad Summer Program for the past three summers. The training camp for the International Mathematical Olympiad has been an incredible experience for me each summer. For me, the best thing about the camp is the chance to spend time with other students who are as interested in math as I am. Those three summer experiences have been the best times of my life.

I would also like to thank you for the gifts the American Society of Pension Actuaries gave me as a winner of the United States of America Mathematical Olympiad. Receiving the gifts from the sponsoring organizations was a very special part of the award ceremonies in Washington, D. C., and I will always have wonderful memories of that time.

I am looking forward to the start of the American Mathematics Competitions this year. Thank you for making those competitions possible.

Sincerely,
Sasha Schwartz

The purpose of the foundation is to foster excellence in pension education and to promote scholarly research in the pension field. To accomplish these aims, the foundation provides endowments to educational institutions for the granting of scholarships to qualified students majoring in actuarial science who are seeking assistance with tuition and expenses. It also sponsors the development of educational materials and texts as well as research by making grants of funds for approved projects.

Members of the board include: Scott D. Miller, Chair, Stephen H. Rosen, Vice Chair, Curtis E. Huntington, Secretary/Treasurer, and Brian H. Graff, Executive Director.

Inquiries should be addressed to, and contributions will be gratefully received by, the ASPA Pension Education and Research Foundation, 4350 North Fairfax Drive, Suite 820, Arlington, Virginia, 22203. Contributions are, of course, tax deductible.

Scott D. Miller, FSPA, CPC, is president of Actuarial Consulting Group Inc. in South Salem, N.Y. Mr. Miller is chairman of ASPA PERF, one of ASPA's vice presidents, and serves on ASPA's Board of Directors and Executive Committee.

FOCUS ON E&E

ASPA Courses Take a New Direction

by Gwen S. O'Connell, CPC, QPA

The Education and Examination Committee (E&E) is exploring new ways to assist candidates in preparing for ASPA's rigorous exam program. For the past several years, as the tendency for individual firms to hold in-house classes has consistently increased, the enrollment for ASPA-sponsored semester classes has decreased. The E&E Committee realizes that many candidates already have access to local semester and weekend courses, so we are exploring and implementing methods of delivering quality instruction to our candidates, which would be otherwise unavailable. We are concentrating our efforts on ASPA weekend courses, and the newest edition to the ASPA education program, the C-2(DB) and C-2(DC) Pilot Virtual Study Groups.

These methods of instruction are quality-assured, as the instructors are long-time ASPA members with prior teaching experience. They are equally accessible to all ASPA exam candidates. These types of instruction help ASPA to avoid problems of semester-long classes such as schedule constraints for both instructors and students, the unavailability of such classes in areas of low demand, and the absence of feasible methods of quality assurance. For these reasons combined with excellent feedback on weekend and virtual study methods of instruction, ASPA courses are taking a new direction. The ASPA E&E Committee has been greatly pleased with the consistent increase of enrollment in weekend classes, and the volume of responses and registrations we have received for the Virtual Study Groups since their release has well-exceeded our expectations. We have decided to focus on these methods of course delivery.

Again this May, on the first and second, ASPA will hold C-2(DB), C-2(DC), C-3, and C-4 courses in Denver, Colorado. The courses provide intensive review and are scheduled for a month prior to the exams. The instructors for these courses are "experts" and include David B. Farber, Consulting Actuary, MSPA, EA, ASA, Soquel, California; Thomas J. Finnegan, MSPA, CPC, QPA, Senior Vice President, The Savitz Organization, Philadelphia, Pennsylvania; William G. Karbon, MSPA, CPC, QPA, National Retirement Planning, Inc., Jamison, Pennsylvania; Rebecca C. Kester, CPC, QPA, Vice President, Retirement Services Group for Summit Bank, Hackensack, New Jersey; and Norman Levinrad, FSPA, CPC, President, Summit Benefit & Actuarial Service, Inc., Eugene, Oregon.

The classes are held on a Saturday and Sunday to minimize time away from the office and to give stu-

dents an environment that allows them to focus on their studies. Tuition for the classes is \$450 for ASPA members and \$550 for nonmembers.

This spring, ASPA is piloting two Virtual Study Groups (VSG). The VSGs will be for students preparing for the C-2(DB) and C-2(DC) exams. They will begin in mid-March and will be facilitated by two top instructors, Lorraine Dorsa, MSPA, Lorraine Dorsa & Associates, Jacksonville Beach, Florida, and Norman Levinrad, FSPA, CPC, President, Summit Benefit & Actuarial Service, Inc., Eugene, Oregon.

The VSGs will be conducted via e-mail. Each VSG will have its own group, will receive "homework" via e-mail, will transmit it to the facilitator via e-mail, and will have the benefit of viewing other registrants' questions and solutions to problems.

The very special "pilot" course price is \$125 for the 10-week course.

Registration and course information for either the weekend courses or the VSG may be requested by e-mailing educaspa@aspa.org, calling the ASPA office at (703) 516-9300, or by accessing the ASPA web site at www.aspa.org.

Looking to the future, the E&E Committee foresees expanded use of the Internet and other technologies such as CD-ROMs, on-line exams such as the PA-1 and the Record Keepers Course, and faster results for our "C" exams.

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

1998 Survey Results

senting our members' interests, 66% of the survey respondents said that the Board is either effective or very effective. 31% have no opinion, and only 3% think that the board is ineffective or very ineffective in representing members' interests.



Furthermore, many (39%) respondents agree that they have a reasonable opportunity to move into positions of influence within ASPA. However, a significant number (46%) have no opinion on this question, and 15% disagree with this statement.

ASPAs. However, a significant number (46%) have no opinion on this question, and 15% disagree with this statement.

Overall Opinion

Overall, ASPA members have very positive opinions about ASPA. In fact, 95% of those who returned a survey responded that their general attitude toward ASPA is either favorable or very favorable. 4% have a neutral opinion, and less than 1% responded that they have an unfavorable or very unfavorable opinion.

Conclusion

The 1998 Membership Survey resulted in valuable information about how we are doing, what our members like most about us, and what we can improve upon. In order to give each ASPA member the opportunity to contribute their views and ideas, we will be conducting more surveys in the future.

We know that you appreciate being asked about your opinions, and we value your continued support!

DOL Blueprint

- a description of the experience and performance record over an appropriate period of time of the candidate and its investment professionals, including experience managing other employee benefit plan assets;
- whether the candidate has and would propose to utilize the services of an affiliated broker/dealer and, if so, the types of transactions for which such affiliates would be used and the financial arrangement with the broker/dealer;
- the procedures to be employed by the candidate to comply with ERISA's prohibited transaction restrictions, including whether the candidate is a Qualified Professional Asset Manager;
- whether the candidate has the bonding required by ERISA;
- whether the candidate had fiduciary liability or other insurance that would protect the interests of the

Plans in the event of a breach of fiduciary duty;

- the proposed fee structure;
 - the identity of client references;
 - the total amount of assets under the control of the candidate; and
 - any other appropriate and relevant information.
4. Where appropriate, the information provided by the candidate shall be verified with reliable sources independent of the candidate.
 5. The information provided by the candidate and information obtained by independent verification shall be reviewed and (an) investment manager(s) shall be selected based upon this information and any other relevant information.
 6. For Investment Managers currently engaged by the Plans, the Trustees shall obtain the information set forth above in order to ensure that an appropriately qualified Investment Manager has been retained. The Trustees shall be required to comply with the procedures set forth in this document upon the expiration or renewal of any

ASPA Benefits Councils Calendar of Upcoming Events

Date	Location	Event
March 25	Philadelphia	Breakfast Meeting: Document Amendments Speaker: Bob Bildersee, Esq.
March 31	New York	Breakfast Meeting: Document Updating; New Rev. Proc. on GUST Amendments; 401(k) Safe Harbor Guidance; IRS Notice 98-52 Speaker: Craig P. Hoffman, APM, Esq., Corbel
April 8	Cleveland	Members Only Breakfast
April 29	Atlanta	Breakfast/Workshop: Fee Disclosure Speaker: Jackie DiGiovanni, ManuLife
May 11	Orlando	Case Studies and Discussion: Ethical Issues in Employee Benefit Practices Speaker: Amy Mashburn, Esq., Professor of Ethics

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

presently existing Investment Management retention agreements.

1999 CALENDAR OF EVENTS

Department of Labor Suggested Procedures for Monitoring Investment Managers

In monitoring any Investment Manager for the Plans, the Plans, through their Trustees, shall perform, at a minimum, the following procedures:

1. Review, at least quarterly, the portfolio of each Investment Manager for compliance with its investment guidelines, including any guidelines set forth in the Consent Order and Settlement Agreement.
2. Review, at least quarterly, each Investment Manager's quarterly report and generally compare that report in material respects with information provided by the Plan's custodial trustee, including the custodial trustee's statement of transactions.
3. Review, at least quarterly, the basis on which the Plan's assets under each Investment Manager's control are valued.
4. Compute, on a quarterly basis, the rate of return for each Investment Manager on an overall basis, by asset class and, where investments are in more than one sector, by sector.
5. Compare, at least quarterly, the investment results of each Investment Manager with appropriate indices or benchmarks.
6. Verify, at least quarterly, each Investment Manager's fee computation.
7. Meet with each Investment Manager, at least annually, and review the Investment Manager's investment performance and any significant changes in corporate or capital structure, investment style, brokerage affiliation or practices, investment process and professional staff.
8. Establish, and review at least annually, procedures for communicating information regarding investments and investment managers among the Trustees, each Plan's staff, and each Plan's service providers (including but not limited to each Plan's attorneys, actuaries, and custodial trustees).

			<u>ASPA CE Credit</u>
	April 9-10	EA-1A classes, Chicago, IL †	15
	11-12	EA-1B classes, Chicago, IL †	15
	April 15	Early registration deadline for ASPA June examinations	
	April 16-17	EA-1A classes, Los Angeles, CA †	15
	18-19	EA-1B classes, Los Angeles, CA †	15
	April 19	401(k) Workshop, Philadelphia, PA	7
	April 24-25	EA-1A classes, Washington, DC †	15
	26-27	EA-1B classes, Washington, DC †	15
	April 29-30	Midstates Benefits Conference, Chicago, IL	16
	May 1	Final registration deadline for ASPA June examinations	
	May 1-2	ASPA Weekend Courses, Denver, Colorado C-2(DB), C-2(DC), C-3, and C-4	15
	May 2-5	Business Leadership Conference, Boca Raton, FL	10
	May 11	Defined Benefits Workshop, Newark, NJ	7
	May 14	401(k) Workshop, Houston, TX	7
	May 17	EA-1A and B examinations †	
	May 20 - 21	Northeast Key District Benefits Conference, Iselin, NJ	14
	May 24	Defined Benefits Workshop, Dallas, TX	7
	June 2	C-1, C-3, and C-4 examinations	*
	June 3	C-2(DC) examination	*
	June 4	C-2(DB) examination	*
	June 10	401(k) Workshop, Cleveland, OH	7
	June 21	401(k) Workshop, Atlanta, GA	7

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

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

Operational Error & Hardship Distributions

[Thread 71633]

401(k) plans continue to distinguish themselves as being especially prone to operational errors. The lack of perfect coordination and communication between the plan consultant, employer and payroll functions lead to the common error discussed in this thread. A plan participant took a hardship distribution pursuant to the hardship safe harbor rules, but was allowed to continue making 401(k) deferral contributions to the plan in violation of the 12-month suspension rule.

This thread discussed some of the possible methods of correcting this error and the application of APRSC. Possible "corrections" included suspending the participant's deferrals for the remainder of the 12 month period immediately, suspending deferrals for the remaining 12 months and distributing the impermissible deferrals and applicable earnings to the participant, or starting a full 12-month suspension period immediately. Several users agreed that a full 12-month suspension beginning right away would be appropriate, and one user recommended excluding the impermissible deferrals from the ADP test.

Another user pointed out that if the hardship distribution could be permitted on a non-safe harbor basis, the 12-month suspension rule

would not apply. The thread then continued as users discussed the pros and cons of a plan allowing non-safe harbor distributions. The degree to which an employer may rely on a participant's representations for evaluating the hardship need was also discussed.

To read the entire thread, Hardship Goof Up, download the file hrdship2.fsg.

Incorrect Plan Provision, Correction and Reformation CAP

[Thread 71350]

The thread started because a user took over a plan and found that the permitted disparity level used in the benefit formula in the prior valuations slightly exceeded the maximum permissible level. Further investigation found that all prior valuations, the summary plan description, and all benefit computations had been done using 0.50% of excess compensation. Unfortunately, the plan document itself specified 0.050% of excess compensation. While this was apparently a typographical error, it had not been corrected since the plan was restated, and it was submitted to the IRS for a determination letter on that basis.

Since the actual permitted disparity level in the plan is just one-tenth of that in the valuation, from a compliance standpoint the plan is

fine, in that it easily falls within the 401(I) permitted disparity limits. However, this is clearly not the formula the client intended to use and in fact has not been using it. A user suggested that the client can choose to live with the formula as it appears in the plan document, redoing valuations and benefit calculations, or may consider the IRS "Reformation CAP" program. The IRS APRSC program does not permit operational errors to be corrected by changing the plan document. However, an application can be made to the Service via the CAP program to correct by retroactive plan amendment. In the case discussed in this thread, Reformation CAP might be the best approach. Revising the benefit calculations would undoubtedly result in significant benefit reductions for some participants.

To read this thread, Incorrect Integrated Formula for 1998, download the thread badform2.fsg.

New 1999 Amortization Periods Discussed

[Thread 70856]

This thread discusses the application of Code Section 412(b)(2)(E). This section was added by TRA '97 and modifies the amortization period for credits to the funding standard account arising out of application of the current liability full funding limit. While no specific guidance has been issued by the IRS, this thread summarizes the change to a 20 year amortization period for new bases, the modification of the amortization period for existing bases, and discusses what to do when using a funding method that does not normally have bases. The discussion cites the code and committee reports.

To read the entire thread, Amortization Period Question, download the file 99bases2.fsg.