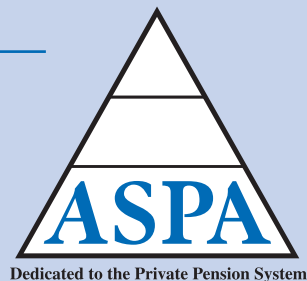


# THE PENSION ACTUARY

Vol. XXIX, Number 6 November-December 1999



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## DCS/DBS Membership Vote Recap

by Carol R. Sears, FSPA, CPC

One of the most important events that occurred during my year as ASPA president was the interactive, entire membership vote regarding the expansion of ASPA designations to include Defined Contribution Specialist and Defined Benefit Specialist. I am pleased to report that more than 42% of the eligible membership participated in the vote. This represents a tremendous response! The final results were 61% not in favor and 39% in favor of adding the designations.

This vote was put before the membership by ASPA's Board of Directors in order to gather membership direction and insight into if and when we should expand membership rights and ASPA services to those pension professionals who deal exclusively in either DC or DB plan arenas. We appreciate all the thoughtful comments that were submitted along with a vote. We learned that most of you believe that ASPA's future probably should include an early, separate education track for retirement plan professionals who specialize in certain types of plans. This track may be the stopping point for some ASPA members and may be the first step toward a

more advanced, albeit ERISA comprehensive, designation.

The ASPA leadership has listened to you. A task force, made up of members representing both sides of the issue, has been established to review and discuss the comments we received. The task force welcomes further comments. Please submit yours in care of *The Pension Actuary*, ASPA, 4245 North Fairfax Drive, Suite 750, Arlington, VA 22002 or e-mail [aspa@aspa.org](mailto:aspa@aspa.org). Also, watch future issues of *The Pension Actuary* for updates on their discussions.

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*Carol R. Sears, FSPA, CPC, EA, MAAA, is the immediate past 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.*

## WASHINGTON UPDATE YEAR IN REVIEW

### Capitol Hill

by Brian H. Graff, Esq.

#### Social Security

What started as a promising year for retirement policy fizzled like virtually all of the congressional agenda. At the start there was significant enthusiasm, albeit unrealistic, for significant and meaningful reforms of the Social Security system. Politics quickly overtook such childish aspirations and when the dust settled the only debate was over which

*Continued on page 6*

# Final 403(b) Audit Guidelines

by Theresa Lensander, CPC, QPA and Amiram J. Givon, APM, Esq.

The ASPA Tax-Exempt and Governmental Plans Committee was invited to participate in an IRS training session on 403(b) plan operation and compliance. At the meeting, ASPA representatives Theresa Lensander and Amiram J. Givon were provided advance copies of the final version of the IRS audit guidelines for 403(b) plans.

The final version of the guidelines retain the basic content of the proposed guidelines, and reorganize the presentation into an easy-to-read outline format with information bullets and examples. In addition, new sections have been added to include the voluntary correction programs under the Tax Sheltered Annuity Voluntary Cor-

rection (“TVC”) Program, the Administrative Policy Regarding Self-Correction (“APRSC”) and Audit CAP for 403(b) plans.

The final version of the guidelines takes into account legislative changes made by the Taxpayer Relief Act of 1997, the Small Business Job Protection Act of 1996 (“SBJPA”), and the 1994 Uni-

formed Services Employment and Reemployment Rights Act of 1994 (“USERRA”). References to the 401(k) regulations are included in the guidelines often enough to suggest that 403(b) plans are similar to 401(k) plans in certain aspects of plan operation.

This article summarizes the more significant features of the final audit guidelines.

## General Requirements

The guidelines note that 403(b) plans date back to 1958, when they existed more as individual arrangements, but that since the 1986 Tax Reform Act (“TRA ‘86”), 403(b) plans have become more like quali-

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

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

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fied plans. The changes made by TRA '86 and subsequent legislation requiring 403(b) plans to comply with certain non-discrimination and coverage rules under IRC Sections 401(a)(4), 401(m), and 410(b), ensure that elective deferrals do not exceed the 402(g) limit, conform to the minimum distribution rules of 403(b)(10), and provide each participant with a meaningful opportunity to elect a direct rollover to an eligible retirement plan.

### **General Characteristics**

A 403(b) plan is defined as a retirement plan under which a public school or an organization described under IRC Section 501(c)(3) and exempt from tax under IRC Section 501(a), purchases annuity contracts or contributes to custodial accounts for its employees. It also includes a retirement income account under which contributions are made by or on behalf of certain ministers.

Contributions may consist of salary reductions, non-salary reductions, after-tax employee contributions, or a combination of these. In a salary reduction 403(b) plan, an employer gives participants a choice between receiving an amount in cash or having the employer contribute that amount to the 403(b) plan (much like a 401(k) plan). These contributions are generally not includible for income tax purposes until distributed, even if participants had the ability to receive the contributions as taxable wages.

Generally, participants are required to pay FICA tax on salary reduction contributions at the time of the contribution. Certain governmental and church employers and employees may be exempt from FICA. Distributions from a 403(b) plan are taxable under IRC

Section 72, relating to taxation of annuities. There are two examples in the audit guidelines which illustrate how 403(b) plans may involve both employer and individual tax matters. If it is found on audit that a plan is not a 403(b) plan, then, for all open years under the statute, contributions are includible in an employee's gross income to the extent that the employees are or become vested. Employees are responsible for FICA taxes, the employer may be responsible for income tax and FICA withholding, and the employer must pay FICA employment taxes.

### **403(b) Plans and Qualified Plans**

The guidelines identify several differences between 403(b) plans and qualified plans. Some of the more important of these differences are: Only certain types of tax-exempt employers, governments, and ministers may contribute to a 403(b) plan; suitable funding vehicles are limited to annuity contracts, custodial accounts, and retirement income accounts for churches; the exclusion allowance is unique to 403(b) plans and is a limit in addition to modified IRC Section 415 and 402(g) limits; salary reduction contributions are subject to special non-discrimination requirements and not an ADP test like that under IRC Section 401(k)(3); there is no special averaging for lump sum distributions; and a participant may not roll over a distribution from a 403(b) plan to a qualified plan. Also, unlike qualified plans, 403(b) plans are not subject to the requirements of a definite written program unless they are pension benefit plans under Title I of ERISA. There is no ERISA Title II requirement that a 403(b) plan operate in accordance with its terms. However, certain Code requirements must be re-

flected in the annuity contracts or custodial account agreements: the non-transferability requirement for 403(b)(1) annuity contracts under IRC Section 401(g), direct rollover requirements under Treas. Reg. Section 1.403(b)-2, and the 402(g) limit.

### **ERISA Title I**

The first three examples in the audit guidelines illustrate the differences between a 403(b) plan that is subject to ERISA Title I and a 403(b) arrangement that may not be subject to Title I. In general, a 403(b) plan that provides only salary reduction contributions and under which the employer is minimally involved in selecting the funding vehicles is not an employee benefit plan subject to Title I. A special note reminds us that a 403(b) plan is always subject to Title II (relating to the Code), even if it is not subject to Title I, the labor law of ERISA.

### **IRS Correction Programs**

The three IRS voluntary correction programs that apply to 403(b) plans are: APRSC, the TVC Program and Audit CAP for 403(b) plans. (See Rev. Proc. 99-13 and Rev. Proc. 98-22).

APRSC is designed to further the IRS voluntary compliance initiatives by providing a self-correction process for 403(b) plans. Under APRSC, an employer that has established compliance practices and procedures (either directly or through the insurer or custodian) which are reasonably designed to facilitate overall plan compliance, may correct operational failures within two years following the plan year of the failure. The audit guidelines further point out that eligible employers may also correct insignificant operational failures at any time, and that

*Continued on page 8*

FOCUS ON GAC

# IRS, DOL, and PBGC Meetings

In October, members of ASPA's Government Affairs Committee (GAC) met in Washington, D.C., to assess the activities of the past and to set goals for the future. In conjunction with these meetings, teams of GAC members visited the offices of the Internal Revenue Service, Department of Labor, and Pension Benefit Guaranty Corporation for face-to-face discussions with top agency officials. These meetings create an effective forum for retirement plan professionals to review, with people inside the government, how the regulations function in practice. Following are summaries of the meetings prepared by GAC members in attendance.

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## IRS and Department of Labor Meetings

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

During the ASPA Annual Conference in October, members of ASPA's Government Affairs Committee (GAC) met with officials from the IRS and from the Pension and Welfare Benefits Administration (PWBA) of the Department of Labor. These were part of our semi-annual conferences with the regulators to discuss a range of issues of importance to ASPA members.

### IRS Meeting

#### *IRS Restructuring*

Much of the IRS' current focus is on restructuring. The first of the IRS divisions to be affected is the Employee Plans/Exempt Organiza-

tions Division, which becomes the Tax Exempt and Governmental Entities Division (TEGE) in early December, with Evelyn Petschek as the first TEGE Commissioner. The following items have fallen into place:

1. The determination letter processing will continue to be in Cincinnati, but the IRS officials acknowledged that it was unlikely the Service will be able to process all applications there for favorable determination letters. As a result, a substantial number of the applications will be sent to other offices for review. (It is our understanding that a high percentage of the individually-designed plans and

complicated applications will be reviewed in offices other than Cincinnati.)

2. The prototype program, which is being consolidated into one program, will be handled initially out of the D.C. office of TEGE, but will be transferred to Cincinnati at some point.
3. The remedial programs (the Employee Plans Compliance Resolution System or EPCRS) will continue to be managed in the D.C. office, but all individual cases will be processed in the field. The importance of this is that VCR cases will now be handled in the field offices, like Walk-in CAP, with a national coordinator in D.C. This is a change that GAC has urged for some time. Audit CAP and APRSC will continue to be field office programs administered through the Employee Plans auditing (or examination) function of TEGE.
4. TEGE will review whether there needs to be a distinction between VCR and Walk-in CAP. In response to their comment, we pointed out that VCR and Walk-in CAP should be consolidated into a single program because employers want to correct a "problem" with their retirement plans and are not concerned with the nature of the problem (*i.e.*, whether it is in operation or in form) and what program in which

to resolve it. We pointed out that, where IRS supervision of the correction is required, ASPA favors a global resolution of problems through a single program.

### ***EPCRS***

With respect to the remedial programs themselves, we provided the IRS with the following suggestions:

5. On APRSC, we asked that the IRS give us additional guidance on the differences between insignificant, significant, and egregious failures. The purpose of the request is to bring greater certainty to which defects can be corrected on audit or after the two-year period under APRSC; which defects must use VCR after the two-year period or can only be corrected under Audit CAP on audit because they are significant; and which defects will require the payment of a sanction if caught by the IRS because they are egregious. We pointed out that in the absence of clear guidance, there can be a lack of uniform treatment for taxpayers nationally. Our primary concern is that some Revenue Agents may have a much more restrictive reading of the rules, and we would like to avoid problems for our members because of potential adverse findings by those Revenue Agents.
6. We asked the IRS to expand the definition of substantial correction. Under Rev. Proc. 98-22, this is an important concept, because it means that completion of correction can occur (i) after the end of the two-year APRSC significant defect correction period or (ii) after the plan receives an audit notice. But the current definitions of "substantial correction" are mechanical and difficult (if not impossible) to fall within. Thus, we recommended that the definition of substantial correction under APRSC be expanded from its

current limited (and quantitative) definition to permit Revenue Agents to use their judgment beyond the "safe harbor" provided for in Rev. Proc. 98-22.

7. We provided the IRS officials with the results of a survey on APRSC corrections made in 1998 (which our law firm had conducted). The survey shows that APRSC has proven to be a successful program for correcting defects in the operation of qualified plans. However, we also pointed out that the survey shows the need for a safe harbor correction method where ineligible employees have been incorrectly included in a plan.
8. The IRS officials indicated that the Group VCR/Group CAP concept is being worked on by the Service. These programs are designed to assist service providers in correcting "systemic" errors, such as, for example, where a large number of plans have (i) top heavy violations due to the failure to collect or analyze the appropriate data, (ii) a failure to obtain spousal consents for distributions where required, or (iii) a failure to timely amend a number of plans due to systems defects. (GAC has previously provided the IRS with comments on the structure of these programs.) We understand that this is viewed as a major piece of guidance. However, this guidance will not be issued in the near future.
9. Also in the works are a fleshing out of the "Reformation CAP" concept (which permits a plan to be amended through Walk-in CAP to conform the document to operations), formalizing the "John Doe" application process in VCR and Walk-in CAP and a consolidation and re-write of all of the guidance which has been issued on EPCRS (including Rev. Proc. 98-22, Rev. Proc. 99-13, Rev.

Proc. 99-31 and various "best practices" memos). The Service contemplates an annual Revenue Procedure on the correction programs (similar to the annual guidance on the determination letter process), though we may not see this in 2000.

### ***Plan Document Issues***

The IRS indicated that they were very close to issuing guidance on opening up the determination letter program and that it would be issued before the end of the year. They stated that the guidance was substantially drafted and that it would permit both prototypes and volume submitters to be adopted by employers within 12 months of the approval date of the lead document, even if that extended beyond the remedial amendment period that would otherwise apply to an employer.

In discussing the amendment and restatement process, we pointed out that, because the guidance needed to open the program has been slow in coming out, it may be necessary for the IRS to extend the remedial amendment period another year (*i.e.*, to the end of the plan year beginning in 2001). The IRS was not receptive to that suggestion.

We also urged that cross-testing be permitted to be included in prototype documents.

Finally, on the amendment and restatement process, we suggested that the IRS not require that all testing elections for 401(k) plans be included in the plan document. In substance, we suggested that the best approach would be operational compliance in accordance with statutory and regulatory requirements rather than the requirement that all testing decisions be written into the document. We pointed out that this will be especially cumbersome and troublesome given the extended re-

*Continued on page 16*

## Washington Update

party could more securely “lock up” the projected (but not yet realized) future budget surpluses for Social Security. What were we thinking? When was the last time Congress ever solved a problem thirty years prior to the problem materializing? (According to a recent Social Security Trustees’ report, the Social Security System will remain solvent until approximately 2032.) Even more amusing (or tragic), Congress and the Administration could not even manage to really “lock up” the projected budget surpluses. They were “forced” to use some of the surpluses for “national emergencies,” some of them genuine and short term, like aid for the Carolina flood victims. However, it seems a stretch to view the five-year extension of the research and developmental corporate tax credit as a national emergency, unless of course you are a lobbyist for the pharmaceutical industry.

There should not be as much debate on Social Security Reform next year, given most politicians’ desire to avoid such weighty issues during an election year. However, the issue will likely surface as part of the presidential elections. The Democratic nominee will likely threaten that his opponent will reduce retirees’ benefits if elected by reducing colas or raising the retirement age, etc. In response, the Republican nominee will quickly disassociate himself from proposals that could arguably be seen as reducing future benefits while claiming his opponent is incapable of making the really hard choices. Yada yada yada. In the end, the only guarantee is that the Social Security reform debate, like the benefit, will remain in the form of a life annuity.

### Pension Reform

As the year progressed, there seemed to be an inverse relationship between the prospects for Social Security reform and the prospects for pension reform. As the prospects for Social Security reform dimmed, more and more policy makers became interested in pension reform at least in part as a substitute for Social Security reform. In the end, well over 100 members of Congress co-sponsored the Portman-Cardin legislation, which included numerous ASPA-supported pension reform initiatives. The pension reform package was included in the \$792 billion tax bill, which was ultimately vetoed by the President. More significantly, the issue of pension reform showed its staying power when the pension reform package was selected for inclusion in a package of tax breaks developed by Republicans to be combined with a proposal to increase the minimum wage, similar to what occurred with the 1996 Small Business Job Protection Act. Better yet, even the Democratic minimum wage alternative included a more modest pension reform package. That’s right, Senator Kennedy was on the Senate floor offering a package of generally positive pension reform proposals, including some top heavy changes, like no longer requiring minimum accruals for frozen top heavy defined benefit plans. Of course, he did this to obtain the support of Senator Bob Graham (D-FL), a long supporter of pension reform, for his minimum wage bill. Nevertheless, we will be sure to remind Senator Kennedy of his interest in positive pension reform when the appropriate time comes.

Speaking of Senator Kennedy, we heard that the Democratic Policy Committee, which includes Senator Kennedy and sets the Democratic political agenda, met recently and discussed the possibility of making pensions a more political issue. Because of the recent media interest in cash balance plans, some Democrats believe they can successfully politicize pension policy similar to what occurred with health policy. In other words, they can draw a “positive” distinction between themselves and Republicans by portraying themselves as protecting participants’ versus Republicans’ desire to protect the interests of plan sponsors. It remains to be decided whether this strategy will actually materialize, but what is very clear is that pension issues will become increasingly political over the next few years, if, for nothing else, because baby boomer constituents care more and more about the issue of retirement security. Consequently, it is likely that core retirement issues like vesting, participation, spousal rights and non-discrimination are likely to be reexamined in the upcoming years.

As for next year, we remain cautiously optimistic about the prospects for enacting pension reform legislation. The likely vehicles would still be either a minimum wage bill or a deal on prescription drug benefits for Medicare recipients. Ironically, the issues surrounding cash balance plans somewhat increase the chances. A significant number of policy makers would like to address this issue legislatively, and it would be easier to do that as part of a larger pension package. (ASPA is working hard to ensure that any such legislation is limited to cash balance plan conversions and does not harm traditional defined benefit plans. The debate over cash balance plans will be discussed in more detail in the next issue of *The Pension Actuary*.)

Similarly, the desire by unions to obtain some section 415 relief for multiemployer plans should help fuel pension reform next year. Vice President Gore apparently promised to work for the enactment of such provisions as part of the deal to obtain union endorsement of his presidential candidacy. In fact, the unions and the White House attempted to get their relief as a stand-alone provision in the final days of the congressional session. ASPA GAC and other groups argued strenuously that it would be inappropriate to pass pension reform for only certain types of plans. Fortunately, we were successful in making our case and in the end the provisions were not included.

However, the unions still very much desire their section 415 relief and hopefully the rest of the pension reform package can go along for the ride.

#### Plan Limits

Attached is a chart of next year's various qualified plan limits, etc. It comes courtesy of our friends at the American Academy of Actuaries. Although most of you have already seen these numbers, what is interesting is that at an actuary at Buck Consultants, Inc. has been keeping track of the unrounded numbers. As you can see, if he is accurate, the section 415(c) dollar limit should increase to \$35,000 next year. For those policy makers critical of the limit increases

contained in the pension reform package, these unrounded numbers certainly make you wonder what all the fuss is about. Frankly, a proposal to increase the section 415(c) limit to \$40,000 beginning in 2001 seems relatively modest in light of this, as is the case with some of the other proposed limit increases. I will certainly be carrying a copy of this chart with me around Capitol Hill. Have a great holiday and happy New Year!

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

## IRS Pension Limits for 2000

The official IRS 2000 pension limits are based on the 1999 third-quarter CPI-U. Unrounded amounts for 2000 were calculated by Andrew Eisner of Buck Consultants, Inc., and are provided for reference only.

Principal Limits		Limits		To Project Future Values		
		1999 Rounded	2000 Rounded	2000 Unrounded	Next Increment	Increase Needed
IRC §	Limit					
415(b)(1)	Defined benefit plan limit	\$130,000	\$135,000	\$136,287	\$140,000	2.7%
415(c)(1)	Defined contribution plan limit	30,000	30,000	34,419	35,000	1.7
401(a)(17)	Limit on includable compensation*	160,000	170,000	172,095	180,000	4.6
402(g)(1)	Limit on 401(k) elective deferrals	10,000	10,500	10,600	11,000	3.8
414(q)	HCE definition	80,000	85,000	85,016	90,000	5.9

Other Limits		Limits		To Project Future Values		
		1999 Rounded	2000 Rounded	2000 Unrounded	Next Increment	Increase Needed
IRC §	Limit					
402(g)(4)	Limit on 403(b) tax-deferred annuity	\$10,000	\$10,500	\$10,600	\$11,000	3.8%
457(b)	Limit on nonqualified deferrals	8,000	8,000	8,422	8,500	0.9
409(o)(1)(C)	ESOP payouts, 5-year limit	735,000	755,000	757,150	760,000	0.4
409(o)(1)(C)	ESOP payouts, additional 1-year limit	145,000	150,000	151,430	155,000	2.4
408(k)(2)(C)	SEP pay threshold	400	450	454	500	10.1

\*Governmental plans have special rules for eligible participants as defined in OBRA '93.

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## Final 403(b) Audit Guidelines

APRSC now permits correction of operational failures relating to contributions in excess of the limitation under IRC Section 415 or the maximum exclusion allowance limit. APRSC is not available to correct significant operational failures if either the plan or the employer is under examination.

The TVC Program generally allows an employer to correct any operational, demographic, or eligibility failure in its 403(b) plan that is within its jurisdiction of the EP-EO division of the Key District Office. An employer enters into a closing agreement with the IRS that specifies the types of failures, the agreed method of correction, the applicable fee, and the effect the agreement has on the potential tax liability of the participants and the employer.

Audit CAP is available for 403(b) plans to correct operational, demographic, or eligibility failures other than a failure that has been corrected under APRSC or TVC or is eligible for correction under APRSC. Under Audit CAP, an employer and the IRS enter into a

closing agreement specifying the form of correction and the sanction amount.

### Plan Documentation

The final guidelines, like the proposed guidelines, include provisions allowing for extensive requests for documentation during a plan examination. Records to be examined include documents that determine the employer's tax status, the plan document and amendments, summary plan descriptions, annuity contracts, custodial account agreements, salary reduction agreements, employment contracts, and other communications with employees. The guidelines note that annuity contracts and custodial account agreements must include language relating to IRC Section 402(g) limits, direct rollover requirements, and the non-transferability requirement for annuity contracts, but that the plan is not required by the Code to have a plan document. It is clearly stated that faulty plan language may indicate operational defects. The documentation provisions thus warn us that all documents, salary

reduction election forms, employment contracts, and communications to employees should be carefully drafted.

### New or Updated Provisions in the Guidelines

#### Eligible Employers

Examination steps in the guidelines take note that because determining employer eligibility is so basic, it is easy to overlook. There are only four types of tax-exempt employers that are eligible to sponsor a 403(b) plan: (1) a state, political subdivision of a state, or an agency or instrumentality of any one or more of these for employees who perform services for a public education organization; (2) a non-profit organization described in IRC Section 501(c)(3) which is exempt from federal income tax under IRC Section 501(a); (3) a grandfathered Indian tribal government; and (4) beginning after December 31, 1997, a minister described in IRC Section 414(e)(5)(A). A new section in the guidelines points out that an ineligible employer may enter into a closing agreement with the IRS in accordance with Rev. Proc. 99-13.

#### Contract Limits

The guidelines note that the 402(g) limit is a *contract* limit rather than a plan limit (reflecting a change to IRC Section 402(g) made by SBJPA). This limit is the only limit of the three limits that is the employer's responsibility to monitor and correct. Section 402(g) limits all elective deferrals of a participant, even if the elective deferrals are made with respect to plans of separate employers. Section 403(b)(1)(E) imposes a contract requirement that limits the amount of elective deferrals under annuity contracts purchased by a single employer. A

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failure to satisfy this requirement results in the loss of 403(b) status of the annuity contracts.

### ***Contract Terms (Called Plan Terms in the Proposed Guidelines)***

Under IRC Section 403(b)(1)(E), a contract purchased by an employer must comply with the requirements of IRC Section 401(a)(30), which requires a qualified plan to provide that the amount of elective deferrals under the plans of the employer will not exceed the limit under Section 402(g). Thus, in order to be a valid contract under Section 403(b), the contract by its terms must preclude the making of excess deferrals. Section 403(b) contracts must be amended to reflect the 402(g) limit no later than the first day of the plan year beginning on or after January 1, 1998. This is the first documented guidance from the IRS that this deadline was intended to apply to 403(b) contracts (as opposed to 403(b) plans).

### **A Comparison to 401(k) Plans**

There are important similarities between the 401(k) regulations and the 403(b) audit guidelines. The guidelines state that salary reduction contributions under a 403(b) plan are defined as contributions made by an employer as a result of an agreement with an employee to take a reduction in salary or forego an increase in salary, bonuses, or other wages. Salary reduction contributions are made pursuant to a salary reduction agreement. Salary reduction contributions made to a 403(b) plan are similar to voluntary deferrals under a cash or deferred arrangement described in Section 401(k). Many of the rules applicable to cash or deferred elections under Section 401(k) apply to salary reduction contributions under a 403(b) plan.

The guidelines point out that a 403(b) plan, like a 401(k) plan, is now neither required to permit, nor precluded from permitting, an employee to make multiple salary reduction agreements in a single taxable year. A 403(b) salary reduction agreement applies to compensation that is not currently available to the employee at the effective date of the agreement. A special note reminds the reviewer that under prior law, employees were limited to only one salary reduction agreement in a 403(b) plan per taxable year, and the agreement could only apply to amounts not yet earned at the effective date of the agreement. Examination steps direct the agent to check sample salary reduction election forms to determine whether the agreement applies only to amounts not yet currently available to the employee at the time the agreement is effective.

It is noted that salary reduction contributions made pursuant to a one-time irrevocable election at initial eligibility to participate in the salary reduction agreement, or pursuant to certain other one-time irrevocable elections to be specified in regulations and pre-tax contributions made as a condition of employment, are treated and tested as non-salary reduction contributions.

Examination steps in the new guidelines refer to the 401(k) regulations for the rules applicable to hardship distributions.

### **Contribution Limits**

#### ***402(g) Limit on Elective Deferrals***

For plan years beginning after December 31, 1987, elective deferrals are subject to the limitation under IRC Section 402(g), as indexed for COLAs. The limit, as so in-

dexed, is \$10,000 for 1998 and 1999.

There is a new note about the interaction of IRC Section 457 plans and the elective deferral limits applicable to 403(b) plans. The effect of Section 457(c)(2) is that an individual who defers compensation under both an eligible Section 457 plan and a 403(b) plan is limited to a total combined deferral of \$8,000 annually (for 1998). If the combined deferral exceeds this amount, the amounts are treated as excesses in the eligible 457 plan and are taxable currently under Section 457. The coordination applies to plans of all employers rather than to each employer. However, an individual who does not defer any compensation under the Section 457 plan may defer the full Section 402(g) amount under a 403(b) plan.

### ***Maximum Exclusion Allowance***

The guidelines explain that the exclusion allowance is an integral part of the 403(b) plan requirements. The exclusion allowance both permits contributions that would otherwise be excludable in the employee's gross income to be made to a 403(b) plan on a pre-tax basis and establishes a maximum limit on such contributions.

The employer is generally the common law employer for purposes of applying the exclusion. The same desk rule applies in determining if there has been a change in the employer. The guidelines provide an example in which Hospital A is merged with Hospital B to form Hospital C. Employees of Hospitals A and B work at the same location and perform substantially the same services as they did prior to the merger. Under the "same desk" rule, employees of Hospital C may determine years of service, includible compensation,

and amounts previously excludable with respect to services performed for all three hospitals.

### ***Definition of Includible Compensation***

Changes made to the definition of includible compensation, which are effective for years beginning after December 31, 1997, specify that elective deferrals are to be included.

### ***Amounts Previously Excludable***

Amounts previously excludable for purposes of the exclusion allowance calculation are defined to include all contributions (including salary reduction) to a 403(b) plan of the employer that were excludable from gross income in prior taxable years. They also include all contributions under a qualified plan (vested or not vested), an eligible deferred compensation plan under IRC Section 457(b), a qualified bond purchase plan, certain non-qualified retirement plans, and a 403(b) plan in excess of the 415 limit.

Unlike the proposed guidelines, the final guidelines identify amounts which *are not* included in the definition of amounts previously excludable. These amounts include contributions to a 403(b) plan that were not includible in the employee's gross income because they were not vested, and prior amounts in excess of the exclusion allowance (except also to the extent in excess of IRC Section 415). To calculate amounts previously excludable in a defined benefit plan, all contributions made by the employer for the benefit of the employee are included. If the employer's contributions to the defined benefit plan are not known, the amounts excludable in prior years under the plan are determined under any method utilizing recognized actuarial principles which are

consistent with the plan's provisions and the employer's method for funding the plan, or under the safe harbor method in Treas. Reg. Section 1.403(b)-1(d)(4). The safe harbor method is described.

### ***Reasonable Estimates***

The guidelines authorize the reviewer to make reasonable estimates in the absence of prior year contribution data.

### ***Section 415 Limits***

IRC Section 415 limits on contributions that apply to qualified plans generally also apply to 403(b) plans. A 403(b) plan is treated as a defined contribution plan for the 415 contribution limits. In the absence of a special election, contributions may not exceed the lesser of 25 percent of compensation or \$30,000. Also, the guidelines explain that unlike the exclusion allowance, the 415 limit applies to contributions made to a 403(b) plan with respect to the limitation year, regardless of whether they are vested.

Examination steps specifically direct the reviewer to determine whether a participant in the 403(b) plan has his or her own medical practice (such as a medical clinic or consulting firm) which maintains a Keogh plan. Contributions under the qualified plan may need to be aggregated with the 403(b) contributions. The guidelines instruct the agent to check plan documents, as well as funding vehicles, and remind the agent that, although plan language is not required, faulty plan language may indicate an operational defect. If the employer has more than one 403(b) plan, the reviewer is to check how the plans interrelate. Also, if the employer has a qualified plan, the reviewer should check if combined

contributions are within the 415 limit for participants who may have elected the special C election.

The guidelines indicate that special elections made under IRC Section 415(c)(4) are irrevocable only with respect to the employer who sponsors the plan with respect to which the election is made.

### ***USERRA Contributions***

Contributions made under USERRA are treated as made in the year to which they relate.

### ***Non-Discrimination Testing***

It is noted that there are currently no non-discrimination regulations under IRC Section 403(b)(12). It is further noted that non-discrimination requirements may be violated if the employer fails to properly characterize the contributions.

**IRC Section 415 limits on contributions that apply to qualified plans generally also apply to 403(b) plans.**

### ***Definition of Employer***

The final guidelines define "employer" for purposes of non-discrimination testing for non-salary reduction contributions in accordance with the aggregation rules of IRC Section 414(b),(c),(m), and (o). This definition is the same as it was in the proposed audit guidelines. The non-discrimination rules apply to all employers eligible to maintain a 403(b) plan except to churches and qualified church-controlled organizations, and the guidelines refer to IRS Notice 89-23 for more details. Until further guidance is issued, a good faith, reasonable interpreta-

tion applies in defining the employer for this purpose.

As under Notice 89-23, "employer" means the common law employer (and not the controlled group) for purposes of testing salary reduction contributions for non-discrimination.

### ***Highly Compensated Employees***

The new definition of highly compensated employee for plan years beginning after December 31, 1996 is described. However, the guidelines do not specifically note the repeal of the rule under which the highest paid officer was automatically an HCE. That rule was significant for many tax-exempt organizations, as many tax-exempt employers do not have employees earning in excess of \$80,000.

### ***Salary Reduction Contributions***

Salary reduction contributions are tested separately from non-salary reduction contributions for non-discrimination. Unlike a qualified CODA, non-discrimination with respect to salary reduction contributions is not satisfied through compliance with the ADP test. The test for salary reduction contributions generally requires "universal eligibility" (i.e., no age, service, or other requirement may be attached). Employees that may be excluded from participation are: non-resident aliens; employees who work less than 20 hours a week; collectively-bargained employees; students performing certain services; employees whose maximum salary reduction contributions under the plan would be less than \$200; participants in an eligible Section 457 plan, a qualified CODA, or other salary reduction 403(b) plan; and certain ministers described in IRC Section 414(e)(5)(C). The agent is directed to review employment records to determine which employees are eligible to make salary reduction contribu-

tions and when they can be made, and whether the salary reduction contribution feature is available to all non-excludable employees.

An employer is not required to offer a salary reduction contribution feature; however, once that requirement is available, it must be made available to all non-excludable employees. It is again mentioned that faulty plan language may indicate an operational violation.

### ***Non-Salary Reduction Contributions***

Non-salary reduction contributions are all contributions that are not salary reduction contributions, such as all non-elective employer and matching contributions. These contributions are tested separately from salary reduction contributions. Non-elective (non-match) contributions, matching contributions, and after-tax contributions are also tested separately for non-discrimination. It is pointed out that for non-salary reduction contributions, IRC Section 403(b)(12)(A)(i) requires compliance with the following provisions: 401(a)(4) non-discrimination; Section 401(a)(5) permitted disparity; the Section 401(a)(17) compensation limit; Section 401(a)(26) minimum participation; Section 401(m) match and after-tax contributions; and Section 410(b) minimum coverage.

It is noted that for IRC Section 501(c)(3) organizations, under Notice 89-23, non-discrimination requirements for non-salary reduction contributions are deemed satisfied if the employer operates the plan in accordance with a good faith, reasonable interpretation of the above IRC sections. The safe harbors in the notice are one means of satisfying the good faith reasonable interpretation test. Excludable employees are those employees who have not satisfied any permissible age and service requirements, or who may be excluded from

the 403(b) salary reduction "universal eligibility" requirement.

The examination steps direct the examiner to determine whether the employer aggregates plans to pass coverage under IRC Section 403(b)(12) and 410(b), and if the ratio percentage test or average benefits test is used. The agent is directed to consider whether the employer contributions satisfy the safe harbors, or on what basis the employer contributions satisfy a good faith reasonable interpretation. Matching contributions are to be checked to determine if they satisfy the ACP test under section 401(m).

### ***USERRA Contributions***

For purposes of the non-discrimination testing under USERRA, a 403(b) plan is not treated as failing non-discrimination or coverage requirements by reason of the making of employer or employee contributions (or the right to make such contributions) made pursuant to veterans' re-employment rights under USERRA.

### ***Distributions***

The guidelines note that the proposed regulations under Section 403(b) provide that, in applying the minimum distribution rules, 403(b) plans are to be treated as IRAs under Section 408. The guidelines review the special rules applicable to pre-1987 account balances, i.e., that current minimum distribution requirements do not apply to benefits which accrued prior to 1987, if adequate records are kept.

The guidelines also review the early distribution restrictions. Salary reduction contributions (and amounts attributable thereto) are not permitted to be distributed earlier than attainment of age 59½, death, disability, separation from service, or hardship of the employee. Similar restrictions apply to amounts held in 403(b)(7) custodial accounts.

## Types of 403(b) Failures

The term “defect” has been replaced by the term “failure.” There are three categories of failures: plan failures, annuity contract failures, and transactional failures. Plan failures affect the plan as a whole and result in income inclusion with respect to all annuity contracts purchased under the plan. Annuity contract failures generally relate to the annuity contract and result in income inclusion with respect to the affected annuity contract. Transactional failures generally arise from a transaction with respect to an otherwise valid 403(b) plan or annuity contract. They result in income inclusion with respect to a portion of contributions made to purchase the annuity contract.

The newest category, transactional failures, is a failure that does not adversely affect the plan as a whole. Examples are: contributions in excess of the exclusion allowance; excess 415 amounts; certain loans; isolated failures to satisfy the minimum distribution requirements; salary reduction agreements which are not legally binding; salary reduction agreements which apply to amounts currently available at the effective date of the agreement; participation of non-employees; and timely corrected excess deferrals.

## Conclusion

As with any other IRS audit guidelines, the final 403(b) audit guidelines are not intended to be a comprehensive or authoritative statement of the IRS’s position on any issue. They may not be relied upon by the IRS or a taxpayer as precedent or authority. Nevertheless, they are helpful because they indicate what issues are likely to be examined upon audit, the IRS’s position on technical issues, and

how the IRS will go about examining those issues.

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*Theresa Lensander, CPC, QPA, is president of The American Pension Company, an administration and consulting services firm with corporate offices in Santa Barbara, California. Ms. Lensander serves as chair of the Tax-Exempt and Governmental Plans*

*Committee and as the Administrative Relations Chair for ASPA’s Government Affairs Committee. Amiram J. Givon, Esq., APM, is a partner at the San Francisco law firm of Sideman & Bancroft LLP. Mr. Givon has been a principal author of several ASPA comment letters on 403(b) plan matters, and serves as vice chair of ASPA’s Tax-Exempt and Governmental Plans Committee.*

A Special Thanks to the Tax Exempt and Governmental Plans Committee, whose time and contributions on behalf of ASPA have become a part of the final IRS 403(b) audit guidelines:

Theresa Lensander, Chair, CPC, QPA  
Michael Devault  
Amiram J. Givon, APM  
Randy Goodman  
Gary Herzlich

Theresa Leiker, CPC, QPA  
David A. Pratt, APM

Also, thanks to past 403(b) committee members

Wes Brown, CPC, QPA  
Janet S. Eisenberg, MSPA  
Ilene Ferenczy, CPC  
Michael Pruett, CPC, QPA  
Barbara Rand, APM  
Alan Stonewall, FSPA  
David Tenenbaum, APM

## ASPA Benefits Councils’ Calendar of Upcoming Events

Date	Location	Event
December 15	New York	Members-Only Cocktail Party
December 16	Cleveland Speaker: Michael Olah	Employer Securities
January 20	Cleveland Speaker: Bruce J. Temkin	<i>To Be Announced</i>
January 27	Atlanta Speaker: Janice Wegesin, CPC, QPA	Breakfast Workshop: Form 5500
February (date tba)	Atlanta Speakers: Edward E. Burrows and Lawrence Deutsch	Workshop: Advanced Issues in Defined Benefit Plans and Testing
February 16	North Florida	<i>To Be Announced</i>
February 16	Cleveland Speaker: David Tenenbaum	Creditor Claims on Pension Assets

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

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

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

## MSPA

Maria A. Baran  
Roger R. Gray  
Theodore H. Munice  
Cedric Rohwedder  
Mark Sadoff  
Howard L. Simon  
Edward J. Vigneau  
Jeffrey Neal Wallace

## CPC

Kent A. Borglum  
Cory P. Johns  
Denise O. Matthews-Serra  
Terri R. Michelsen  
Tammy M. Nassour

## QPA

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Joseph F. Bonasera  
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Carmen R. Brunk  
Joni J. Castle  
Jacquelyn L. Clouser  
Maureen Corrigan  
Alicia A. Eckstein  
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Mary M. Grason  
Poorna M. Hegde  
Joy P. Hodgson  
Mary D. Hohman  
Steven Patrick King  
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Frank Porter  
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Sheryl L. Reed  
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Rachelle A. Schram  
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Divina S. Unson  
Shari A. White  
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## APM

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Thomas L. Coleman  
Deborah J. Ebner  
Catherine L. Heron  
Phyllis Katz  
Kevin Krantz  
Robert J. Rietz  
Robert W. Smiley, Jr.

## Affiliate

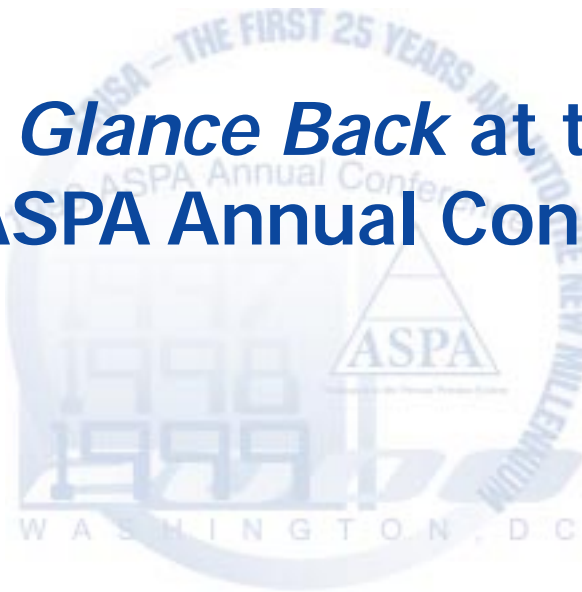
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Kristine Bachmann  
Andrew J. Bakker  
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Melanie A. Barry  
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Susalyn Bennett  
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Kathy Wielert  
Cynthia G. Williams-Homer  
Kenneth Wine  
Mark Wychulis



# A Glance Back at the 1999 ASPA Annual Conference



Attendees learn more about ASPA's education program from ASPA's director of education services, Kevin Scott.



Newly-elected ASPA President, John P. Parks, MSPA, addresses the ASPA membership at the Annual Meeting.



Larry Starr, CPC, announces that the ASPA Political Action Committee exceeded its goal!



Conference Chair, Stephen Dobrow, CPC, QPA, welcomes attendees.

Richard Hochman, APM, discusses plan distributions during one of the 52 workshops offered this year.



*\*all photos ©1999 Bill Petros*

ASPA members participate in Visits to the Hill in record numbers.



ASPA members attend the opening general session.



## Thank You ASPA 1999 Conference Sponsors!

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The exhibit halls provide attendees the opportunity to learn about products and services that make their jobs easier.



The Capitol Steps perform for a standing room only crowd.



## IRS and Department of Labor Meeting

medial amendment period and that it could be a trap for plans which inadvertently fail to include in the document the testing decisions previously made.

We also pointed out that our members were telling us of several situations where a Revenue Agent reviewing a plan document in the determination letter process asked for changes to the document which were not related to the qualification requirements, *e.g.*, a change of the \$3,500 limit for forced distributions to \$5,000. The IRS officials indicated that they would look into this.

On miscellaneous issues, we briefly discussed the 401(k) audit program which the IRS conducted several years ago. They said that the statistics on that program should be released by the end of the year. As a preview, Dick Wickersham had mentioned at the Los Angeles Benefits Conference (jointly sponsored by ASPA and the IRS) that they had found that small 401(k) plans were generally in better compliance than large plans.

We also pointed out the value of a TEGE website for providing information to plan sponsors and advisors. Among the technical information that could be provided would be both recent and past rulings, other guidance, and audit guidelines.

### PWBA Meeting

In the meeting with officials from the PWBA, we touched on issues affecting both ASPA membership and plan sponsors. We briefly mentioned our concerns about the investigations of service providers, pointing out that it appears that, in most cases, the audits the PWBA has

conducted have not been productive from their perspective, in that they have not generally lead to recovery of significant sums for plan participants or the discovery of fiduciary breaches. Therefore, we suggested that the PWBA would be better served if it focused its investigatory efforts on other targets. We will be giving the PWBA additional information on this issue in the near future.

## The IRS found in its 401(k) audit program that small 401(k) plans were generally in better compliance than large plans.

The DOL is working on guidance on automatic enrollment for both 401(k) plans and 403(b) arrangements. Apparently, they are also taking into account the application of the same rules for health and welfare plans, like cafeteria plans.

The PWBA has also prepared a report of their 60 investigations of plan fees and expenses (fifty 401(k) plans and ten 403(b) arrangements). While a final decision has not been made, at the moment, it appears that they will issue a report based on their findings from those investigations. No litigation will be coming out of the 60 investigations, which were part of a nationwide series of "survey" investigations following up on the PWBA's hearings on plan fees and

expenses in late 1997. Unfortunately, the PWBA officials would not comment on what they have learned from these investigations.

The voluntary fiduciary correction program is imminent. The PWBA's regional offices will administer it. Apparently, the program will require disclosure to participants of the breach and correction, but otherwise should follow closely the program as outlined in proposals made by GAC.

Perhaps the most intriguing thing to come out of the meeting with the PWBA officials was a comment made by one of the officials in the context of a discussion of the need for further guidance on ERISA section 404(c). The comment was that, while the PWBA did not have a formal position on the issue, there was an informal view held by some that the selection of a stock brokerage account as a participant-directed option for a 401(k) plan was a fiduciary decision and that the fiduciary had to consider the suitability of those types of investments for the particular participants. Thus, the plan fiduciaries would need to determine that a 401(k) stock brokerage account was appropriate for the particular participants of that employer, based on issues such as their investment sophistication and knowledge.

Finally, the PWBA is close to issuing guidance on the "small plan audit" issue. This issue arises out of the Emergi-Lite case and relates to whether plans of under 100 participants will be required to be audited by an independent accountant. GAC has aggressively opposed this proposal. As we understand it, the PWBA will be issuing for comment a rule which would permit small plans to continue to be exempt from the audit requirement so long as the plan funds are invested substantially



in assets with a readily ascertainable market value and certain other requirements are met. The PWBA officials indicated that they have been sensitive to issues raised by GAC about the need to balance the protection of participants with the burdens on the plan sponsor.

### Conclusion

The Government Affairs Committee actively monitors legislative and regulatory developments in an effort to ensure that regulatory requirements are fairly imposed. Our meetings with officials from the IRS, Treasury and the PWBA are an important aspect of these efforts, in that they further our ability to have dialogue with these agencies over issues of concern to ASPA's members. We will let you know as developments occur and report further on our meetings with the agencies in March 2000.

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*C. Frederick Reish, APM, Esq., is a founder of and partner with the Los Angeles law firm Reish & Luftman. He is a former cochair of ASPA's Government Affairs Committee. Bruce L. Ashton, APM, Esq., a partner with Reish & Luftman, is co-chair of the Government Affairs Committee and serves on ASPA's Board of Directors.*

## Notice

ASPA is currently soliciting bids from firms interested in developing a multimedia course for the PA-1 exam. Anyone interested should contact Kevin Scott, ASPA's Director of Education Services, at (703) 516-9300 and ask for a Request for Proposal.

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## Pension Benefit Guaranty Corporation

by Kurt F. Piper, MSPA

Representatives of ASPA's Government Affairs Committee (GAC) met on October 27, 1999 with representatives of the Pension Benefit Guaranty Corporation (PBGC). This was our semi-annual conference to discuss a range of issues of importance to ASPA members.

The first item of discussion was the PBGC's extension of the premium form due date to the due date of Form 5500. ASPA thanked the PBGC again for this change. The PBGC suggested that ASPA express its appreciation of this change to the OMB (Office of Management and Budget) since it took two years of struggle to get this change by OMB.

The second item of discussion was Form Schedule A. The PBGC has been seeking guidance from focus groups regarding the advisability of modifying the Alternative Calculation Method (simplifying the calculation of the variable rate premium), splitting the Schedule A into two forms (one for the ACM and one for the general rule), and/or simplifying the instructions. ASPA provided comments on changes to the ACM earlier this summer (see ASPA's web site). There seem to be mixed responses regarding the splitting of the Schedule A, as many use computer software to prepare the form and would not have a problem either way. There was a general consensus that the instructions could always be made better.

The third item of discussion was the proposed cap on small plan premiums. The cap, which was in the recently vetoed tax legislation, is also in the minimum wage bill. This is a non-controversial provi-

sion and is likely to be included in any pension legislation which passes. The cap is linked to the phase-in premium for new plans.

The fourth item of discussion was a discussion of relief from premiums for Majority Owners (50% or more ownership). While the proposed premium cap for small plans would solve the vast majority of ASPA's concerns, the principle that there is virtually no risk to the PBGC for majority owner benefits ensures further discussion. The PBGC representatives did make the point that the status of a majority owner could change. While it could take some thought to carve out the uninsured benefits earned during the period of majority ownership, ASPA believes it could be done.

Part of this discussion involved the problems many substantial owners have on plan termination to satisfy the criteria for a standard plan termination when there is an underfunded plan, but no majority owners to accept being put at the end of the allocation of assets. Some years ago, the PBGC used to accept such elections by substantial owners and not just majority owners. However, the IRS/Treasury was apprehensive about the possible pressures put on minority owners and convinced the PBGC to limit this election to majority owners. Since the IRS has allowed plans not covered by Title IV to do just this by amending the asset allocation section of the plan prior to plan termination to put highly compensated employees at the end of the allocation of assets, there appears to be an incongruity between the two positions taken by the IRS.

The fifth item of discussion was the filing deadline for the Form 501. Subsequent to the previous modification to the filing deadline, the number of penalties have decreased. This is also due to the proactive use of reminder notices. While it would be more convenient for service providers to have the same filing deadline as for the final Form 5500, it would be less convenient for them if they were among the group chosen for audit, since a delay in filing Form 501 would delay the choice of plans for audit.

The sixth item of discussion was to find a way to get a premium refund for the final year in a way easier than filing a separate letter asking for a refund. Possible alternatives include having a check box on the final premium form or self calculation of the premium. The regulation says to send the money first rather than allow self calculation. Unfortunately, there may be no trust or employer to whom to return the excess premium. It is thought that many do not ask for a refund because it is too much trouble. This has been discussed in the focus groups, and it is likely that the PBGC will pose a solution to the problem.

The seventh item of discussion involved a proposed expansion of the missing participant program to be extended to non-Title IV defined benefit pension plans and, further, provide for the PBGC to be a last resort insurance company for annuities worth just over \$5,000. ASPA believes that this program provides a valuable service to both plans and ASPA members, and would like to see it expanded. The PBGC is concerned about the 411(d)(6) rights that might be lost under such a program and suggested that ASPA look into a group annuity contract for ASPA members.

The eighth item of discussion was cash balance plans. The problems with certain cash balance plans with respect to wear-away issues must not be allowed to undermine either defined benefit pension plans, especially cash balance plans, which many liberal groups believe are better for employees than 401(k) plans. PBGC (as has ASPA) has been discussing the need for not "tossing the baby out with the bath water" with Congressional staff.

In addition, the PBGC has been trying to cope with the termination (and anticipated termination) of underfunded cash balance plans. Our own Ed Burrows, MSPA, gave the PBGC the benefit of his insight on how best to value and administer the benefits of these plans. One key way to manage the problem is to have the IRS require adequate

plan language to spell out what happens to a variable index on plan termination.

### Conclusion

The meeting with the PBGC was very constructive. The PBGC is very anxious to promote the growth of defined benefit pension plans and prevent politics from destroying the incentive for employers to implement and continue defined benefit pension plans.

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*Kurt F. Piper, MSPA, is owner and Chief Actuary of Piper Pension & Profit Sharing in Los Angeles. Mr. Piper is a member of the American Academy of Actuaries, an associate of the Society of Actuaries, a Member of ASPA, and an Enrolled Actuary. He is a frequent speaker and currently serves as chair of GAC's Regulations Committee.*

## Kern Selected President of the American Academy of Actuaries

Stephen R. Kern, MSPA, CPC, associate actuary for State Farm Insurance Company in Bloomington, Illinois, has been selected as president of the American Academy of Actuaries. Mr. Kern assumed his new role in October at the Academy's Annual Meeting in San Francisco, California. Mr. Kern has been a member of ASPA since 1980 and served as president in 1995. He is currently a member of ASPA's Nominating Committee and attends ASPA's Board meetings.

Mr. Kern has been an employee of State Farm since 1970. He has served as assistant actuary, actuarial associate, superintendent of Advanced Life Underwriting Pension Services, and assistant underwriting superintendent.

Mr. Kern received his M.B.A. from Illinois State University in 1980. A finance major, he received his bachelor of science degree from Indiana University in 1968. After joining ASPA, Mr. Kern earned his Certified Pension Consultant (CPC) designation in 1991.



# An Interview with 1999 Eidson Award Winner, Howard J. Johnson, MSPA

by Amy E. Emery, Director of Membership

**H**oward J. Johnson, otherwise known as ‘Bud’, is the 1999 recipient of ASPA’s most prestigious award, the Eidson. According to some reliable sources, Howard Johnson prefers to be called ‘Bud’ in order to avoid being mistakenly associated with the ‘Ho-Jo’ restaurant and hotel chain. He has gone by Bud for so long that very few would even know who he is if referred to as Howard. When initially selected as the Eidson Award recipient, I heard on several occasions, “Who is Howard Johnson? Oh, you mean *Bud* – Yeah, sure I know him!”

Bud was presented with the Eidson Founder’s Award at the 1999 ASPA Annual conference. The award is given in honor of ASPA’s late founder, Harry T. Eidson, FSPA, CPC, and recognizes exceptional accomplishments that contribute to ASPA, the private pension system, or both. Robert (Bob) Levenson, MSPA, 1985 President of ASPA and someone who has first-hand knowledge of Bud’s accomplishments, presented Bud with the award. According to Bob, “Bud played a vital leadership role in the early years of ASPA and is largely responsible for the success it has achieved. Bud has been totally unselfish in his sharing of his concepts of practice development with members of the Society and others in the benefits community. On the several occasions when my conversations with Harry Eidson turned to the early years of ASPA’s development, he would invariably cite Bud’s contributions as one of the cornerstones of the Society.”

During the 1999 annual conference, I had the pleasure of sitting down with Bud and asking him a few questions about the history of ASPA, his presidency, and his years with ASPA following his presidency. What follows are excerpts from this interview.

Bud and I began by discussing the original founding of The American Society of Pension Actuaries. According to some, ASPA was formed by a group of good ol’ boys from Texas who were unhappy about what they perceived as second class treatment directed at pension actuaries. Bud was willing to offer his interpretation of the events leading to ASPA’s formation.

“This history is not quite accurate. In the mid-60’s actuarial organizations had been trying to be recognized governmentally as a ‘profession.’ They were recognized as such on a state level and wanted this recognition on a federal level. A group of actuarial organizations went to the government and asked to be des-



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*ASPA Past President, Bob Levenson, MSPA, presents the 1999 Eidson Founder's Award to Bud Johnson, MSPA, at ASPA's annual conference.*

igned as a profession. The government officials responded to their request by explaining that there are so many different actuarial organizations with different criteria for membership that it would be impossible for them to name many different ones. So, a group of actuarial bodies got together and decided that if they formed a group called the American Academy of Actuaries (AAA) they could bring all of the actuaries in the U.S. under a single heading and have that organization recognized by the government.

Coincidentally, with the advent of ERISA, there was a movement in Washington to rewrite the pension laws. Russ Mueller, an actuary who worked for the Ways and Means Committee (and member of the SOA), talked to his boss and was able to get a provision put in the bill (i.e., ERISA) that there would be

something called an Enrolled Actuary. The Enrolled Actuary would be the person who was recognized by the government as an actuary who could certify pension plan costs for governmental purposes. His idea, and the idea of the AAA, is that they would form the AAA and have themselves recognized as the body which accredited Enrolled Actuaries, which would enable them to get the professional recognition they had been striving for.

Those trying to form the AAA realized that there were a lot of actuaries who were qualified but were not members of any actuarial organization at the time. They approached these individuals, explained that they wanted there to be only one organization for actuaries, and persuaded them to join this organization. At that time, in order to become a member of the AAA, you were required to take an exam to test your qualifications. The exam was not necessarily graded on a pass/fail basis, but rather, someone just looked at it and said, 'Yes, this person looks like an actuary'.

Consequently, a representative of the AAA was sent to interview Harry Eidson, thinking that Harry was one of the people intellectually and experientially qualified, but not a member of any organization. This representative went to Harry's office to interview him and, in Harry's opinion, treated Harry in a condescending manner. Harry, a feisty but brilliant man, was outraged. He felt that he was a much better actuary than this guy was, and said he wasn't interested in being a part of his organization. As a result of being offended by this one person, Harry started ASPA. He thought it was un-American to try and keep some people out of this new organization and wouldn't stand for being treated in what he thought was a condescending way. Harry called

a few other people that he knew and said he wanted to form a new organization of actuaries totally dedicated to pensions – and that is how ASPA started.”

Bud and I also discussed the original requirements to become a member of ASPA. He explained that the entrance requirements that Harry came up with involved solving one complex problem, the answer of which, unbeknownst to those solving the problem at the time, was contained in the abacus that was once ASPA's logo. Answering this complicated actuarial calculation correctly, and without help, would establish someone as being qualified to be an actuary. However, because of financial constraints, the problem was sent to candidates by mail rather than administered in person. As a result, candidates would have others do the problem for them. According to Bud, "Between ASPA doing this and the AAA using subjective grading, both organizations let quite a number of people in on a less than rigorous basis."

Bud has been credited with being the individual who moved ASPA away from that one-question image. Bob Levenson states that, "The program that [Bud] and his task force designed was the foundation of our ultimate recognition as a true actuarial organization." Bud, in his usual grace and humility, says this is too kind and gives Jim Kirkpatrick the credit for the original expansion of ASPA's exam program. While Bud will not take all of the credit, he *does* deserve to be recognized for his vital role in developing the current CPC program, which was created under his presidency in 1975. Bud provided a summary of the conception of this program.

“At the first ASPA Board meeting that I went to, I stood up, not knowing anyone, and said that because ASPA was made up of actuaries and consultants the one thing they should do is refer to themselves as

an organization made up of actuaries *and* consultants. In many ways the consultant is far more important to the process of plan design and administration than the actuary. As time went on, I felt more and more strongly that it was unfair for only actuaries, who did a fairly narrow part of the entire transaction, to be licensed by the government, and, therefore, officially and professionally recognized. I began talking with people in the government about how we could get the same kind of recognition for consultants. I spent a lot of time on Capitol Hill working with Rowland Cross and Les Shapiro. They both fundamentally agreed with the idea that consultants should be recognized, licensed, and should meet ethical standards set by regulation. However, at that time they were trying to get their arms around the development of the Enrolled Actuary and did not want to develop another entire program. They suggested that I go back and develop an examination program and a designation. When I felt it was time, I should then bring it to them for official recognition. ASPA, with the help of Bob Conkel, started working on the program at that time. Incidentally, the International Foundation started the CEBS program just about simultaneously.”

In the years leading up to the passage of ERISA, the Academy actively promoted the notion that its members alone be granted status in the legislation as Enrolled Actuaries. In the words of Bob Levenson, "Had ERISA contained such a provision, it would have been the death knell for ASPA as an actuarial body." In his fight to keep this from happening, Bud was not only able to get ASPA recognized as a co-equal sponsor (with the SOA) of the Enrollment Examinations, but also made sure that ASPA's actuaries

were recognized as a grandfathered class for initial enrolled status.

“When ERISA was proposed, the AAA tried very hard to make itself the only organization that was recognized. We, many others and myself, presented the idea to the government that simply because the AAA had tried to put everyone under one heading, it didn’t mean they should be the only organization recognized. The key to accomplishing this was to get ASPA named in the law as an organization whose members would be grandfathered for federal enrollment. Effectively, the government, as evidence of qualification, would accept ASPA’s exams and each and every MSPA and FSPA would be automatically enrolled. On an ongoing basis, ASPA’s exam program would be recognized as proof of qualification to be an Enrolled Actuary. In order to accomplish all of this, we had to get our exams recognized, get the organization recognized, and get joint representation on the Joint Board Advisory Committee. There had to be an equal number of representatives from ASPA and the SOA so that neither organization could brush the other one aside on an ongoing basis. I was allowed to pick two people from ASPA as our representatives and chose Charles Leggette and my business partner, Brendan O’Farrell. The SOA appointed two, and the CAS appointed one. This was not an easy process to make happen and was almost *all* I did from about 1972 to 1977. It consumed ASPA for many years because it was the future of ASPA. ASPA would not have had a viable organization if they had not been successful.”

Bud says that he is often asked to explain why ASPA was able to win this fight. His unwavering response

is, “Because it was *right*.” “The people representing the Federal Government, Donald Grubbs, Rowland Cross (both members of the SOA), and Les Shapiro (the first head of the Joint Board), showed tremendous character because they did what was right under *very* intense pressure. The fact was, it was right. The people of ASPA are every bit as qualified and ethical, and they provide a very valuable service to the public. It would have been terribly wrong to leave them out, just as it would have been terribly wrong to leave out those members of the AAA who were pension actuaries.”

Bud is not at all surprised at how far ASPA has come since its initial formation. As he explained, there needed to be an organization that was dedicated to private retirement plans. Bud says that he was not interested in being an actuary for its own sake, but was interested in being an actuary because of the education it brought about that was necessary to serve his clients. “ASPA people are people who want to help retirement plan sponsors. They are client-driven. It is critical for an organization like ASPA to exist.”

I asked Bud to tell me what he perceives as the most significant change in the organization since 1975. He responded, again without hesitation, that ASPA has made a great deal of progress in getting over its inferiority complex. According to Bud, the defining theme of his presidency was to try and get ASPA members not to think of themselves in a defensive way, but to think of themselves as highly qualified professionals who did not have to apologize to anyone for who they were or what they did. Bud names this as the accomplishment of which he is most proud.

What does Bud think about the future of ASPA? He imagines that ASPA will become a global organization 20 years from now and would like to see

the organization establish a significant presence in international markets. His advice for ASPA members is to look outward instead of inward. That is, they should focus on what they can do for clients and for the pension industry, rather than making comparisons between themselves and other professional organizations. In Bud’s poignant words, there is a “quiet confidence that comes from competence.”

One of my final questions to Bud was in reference to a comment he made in his acceptance speech at the Opening General Session of ASPA’s annual conference. In his speech, he stated that ASPA had done more for him than he ever did for ASPA. Bud gives ASPA credit for the success he has enjoyed throughout his career. He also told me that he has never spoken to any other past president of ASPA who did not feel the same way. I think that says a great deal about this organization.

*A special thanks to Bud Johnson and Bob Lebson for their contributions to this article.*

## ASPA Exam Results Posted Online

Exam results for the June 1999 C-1, C-2(DB), C-2(DC), C-3, and C-4 exams are now posted by candidate name at [www.aspa.org/aspaedu.htm](http://www.aspa.org/aspaedu.htm). A list of candidates who earned the Pension Administrators Certificate effective August 31, 1999 is also available on the site.



# 1999 – The Year in Review

by Mike Bain, MSPA

**T**his past year has been a phenomenal year in terms of technological growth, ranging from internet presence to database management and conference materials. ASPA has begun to reach out and grasp the tools that are available in ways that affect every member, every day.

## The Web

Perhaps the single largest benefactor from the spurt of growth has been ASPA's website, located at [www.aspa.org](http://www.aspa.org). At the beginning of the year, the website consisted of just over 100 pages and averaged a total of 200 visitors a week. As of the beginning of December, the site has grown to over 520 pages and is visited on an average of 1,200 times a week, with a peak of over 4,200 visitors during the exam cycle. But the numbers tell only part of the story.

Beginning in January, ASPA began running a series of interactive polls where interested visitors were able to vote on their favorite top-heavy proposal and defined benefit plan proposal. Surveys were run for the Department of Labor regarding preparation for the Y2K conversion, and the recent DCS/DBS vote was conducted on-line. All of this was non-existent in 1998.

Over the year, as the site grew both in size and complexity, the navigation was simplified and the ability to search the site's various resources was added. Members can now search the ASPA ASAP archive on-line (two years worth!) by keyword or phrase, on top of being able to download back copies of *The Pension Actuary*. A new look was introduced in May, featuring a cleaner interface with more area for viewing documents.

We are examining e-business opportunities that will enable on-line conference and exam registration. This, doubled with improvements to the national office database, will increase the website's interactivity tenfold.

## National Office

At the outset of 1999, Brian H. Graff, Esq, ASPA's executive director, challenged the national office staff to consider this the Year of Innovation. Little did anyone realize where this would lead ASPA!

As internet e-business opportunities were researched, it became obvious that the existing database was not up to the task of keeping up with the rapid pace of growth and change. After long consideration, it was agreed that the existing database would be replaced next year. This will allow on-line activities such as registrations and the integration of newer technologies as they emerge.

## Conferences

As anyone who attends the ASPA Annual Conference can attest, the binders seem to get heavier every year. This year, however, attendees found something else in their tote bag. Nestled between the binders and loose leaf was ASPA's first conference CD-ROM!

Our webmaster, Chip Chabot, took all of the materials submitted, digitized them, organized and indexed them, and put all of the files on a CD-ROM for later reference. There is a search engine to search all of the speaker outlines by keywords or phrases and have instant access to the information. Along with the presentation outlines, speaker biographies, continuing education policy, vendor information, and contacts were also included on the disk. A photo collection of the 1998 ASPA Annual Conference was also included!

If you missed the Conference and are interested in ordering a copy of the CD-ROM, contact the ASPA meetings department at (703) 516-9300.

## Education and Examination

The E&E Committee forged new territory to offer virtual study groups for the C-1 and C-2 exams. These have been enhanced by on-line live review sessions.

## Looking Forward to 2000

The new year is going to be another year of fantastic growth and opportunity. Internet teleconferencing and virtual study groups are moving into the mainstream. The improved database interconnectivity hints at abilities that will affect the way ASPA utilizes the website. You will be able to search for members by name, city, zip code, or designation, using an interactive search engine, instead of scrolling through the alphabetized page. Registering for a conference or an exam will be as easy as visiting the website.

As 1999 comes to a close, it is easy to see the steps taken, and the steps to be taken next year. The fun is thinking about where we will be in three years!

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*Michael L. Bain, MSPA, is president of CMC in Glendale, CA. Mr. Bain is ASPA's technology chair and a divisional chair on the E&E Committee. He has been involved with technology and systems integration since the outset of his career, including working for several of the pension software firms.*

# ASPA Council Current Events

by Carol J. Skinner, QPA

**T**he past year has been quite successful for ASPA's Benefits Councils (ABCs). New ABCs have been established in southern and northern Florida, and we hope to add even more in the near future! The first ABC was started in Atlanta, Georgia in 1996. ABCs then followed in Philadelphia, Chicago, Cleveland, New York, Orlando, Ft. Lauderdale, and Jacksonville.

For those of you not familiar with ASPA's Benefits Councils, these groups are ASPA's effort to bring education to pension professionals on a local level. ABCs provide a means for employee benefits professionals to acquire continuing education, keep current on what is going on in the field, and network with other benefits professionals in their community. All of this is accomplished on a local, rather than a national level, making it convenient and cost-effective.

In an effort to keep ASPA members informed of the events taking place in all of our local councils, we will begin including information about council workshops and leadership meetings in each issue of *The Pension Actuary*. What follows is a glance at recent ABC events in Atlanta and a review of the establishment of new ABC groups.

## **Atlanta ABC Members Enjoy an Evening Under the Stars and Install a New President**

On September 15, 1999, the Atlanta ABC held their annual Members-Only meeting at the Buckhead Club, a private club in the heart of Atlanta's financial district. The early evening meeting, free to Atlanta ABC members, was designed to reward

ABC membership and facilitate an annual business meeting. The event provided a relaxed networking opportunity under a ceiling of glass in the Atrium and included heavy hors d'oeuvres, cocktails, and door prizes. The agenda included a short business meeting and a special guest speaker, Craig P. Hoffman, APM, of Corbel, who provided the attendees with a brief but engaging legislative update.

During the business meeting, Al Otto, APM, of Minnesota Life Insurance Company, was installed as the new Atlanta ABC President. Before outlining the mission statement for his two-year term, Al graciously thanked departing President Carol (Ladd) Skinner, QPA, of SunTrust Bank, for her service and the successful innovations she implemented during her term. These innovations include corporate sponsorship of workshops and the new Atlanta web site ([atlantaabc.com](http://atlantaabc.com)). Al stated that his goal as the new president is to continue developing the Atlanta ABC and maintain its flagship position among the ASPA Benefits Councils. He shared his vision for the Atlanta ABC as being "the organization of choice for retirement plan professionals in the Atlanta region." Al then

outlined specific objectives and strategies to create an action plan, one of which is to add a marketing committee to increase the visibility and stature of the ABC and its members. Al and the rest of Atlanta's board of directors are hopeful that the coming year will be a great success!

## **New ABCs on the Horizon?**

ASPA is currently fostering the development of ABCs in several areas around the country. Individuals in at least six areas have expressed an interest in starting a local council. These areas include: Indianapolis, Indiana; Cincinnati, Ohio; Pittsburgh, Pennsylvania; Dallas, Texas; Richmond, Virginia; and Seattle, Washington. If you live in one of these areas and would like to become involved in the development of these ABC groups, please contact Amy Emery at the ASPA national office at (703) 516-9300 or e-mail [aemery@aspa.org](mailto:aemery@aspa.org). Establishing an ABC requires a significant amount of work, and we welcome your involvement!

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*Carol J. Skinner, QPA, is a Vice President of SunTrust Bank in Atlanta, Georgia where she serves as Trustee and Relationship Manager for the retirement plans of the Bank's largest client. With over 20 years of experience in all areas of qualified retirement plans, Carol is Past President of the Atlanta ABC. She continues to serve on Atlanta's Board of Directors, and currently is a member of ASPA's ABC Committee.*

FOCUS ON PERF

# PERF Recognizes Rosenberg Award Winners

by Curtis E. Huntington, APM

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

PERF is pleased to be a sponsor of the Martin Rosenberg Achievement Award. This award is presented annually by ASPA in honor of the late Martin Rosenberg, who was a distinguished officer and member of ASPA's Board of Directors. The award is designed to recognize top performing candidates on the C-1, C-2(DB), C-2(DC), C-3, C-4 and A-4 examinations. These professional-level exams test candidates' knowledge of pension-related topics and generally challenge even professionals experienced in the field of pensions and retirement plans. Criteria for this award include earning a score of nine, the highest attainable on each exam and providing answers which reflect exceptional quality. This year, there were two Rosenberg Award winners, Connie Husley and Anneli Schalock.

Connie D. Husley is a co-owner of Haslauer, Husley, & Hall, Inc. This pension administration and consulting firm is located in the New Or-

leans area. Ms. Husley has over 10 years of experience in pension and employee benefits administration. She oversees all pension administration operations of her firm.

Anneli E. Schalock has been employed at Milliman & Robertson, Inc. since August of 1997. She is currently working in the Defined Contribution Department.

Ms. Schalock was born and raised in Sweden and completed her B.A. in International Business at Linfield College in Oregon, receiving the Delta Mu Delta Scholarship for the senior with the highest GPA.

ASPA PERF is pleased, once again, to support this program and joins ASPA in congratulating the winners.

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*Curtis E. Huntington, APM, is a professor of mathematics and director of the actuarial program at the University of Michigan (Ann Arbor). He is a member of ASPA's board of directors, serves as the quality control chair of*

*ASPA's Education and Examination Committee, and is a vice chair of ASPA PERF.*



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*Gwen S. O'Connell, chair of ASPA's Education and Examination Committee, presents the Martin Rosenberg Award to Anneli E. Schalock (above) and Bev Hausler (below), accepting on behalf of Connie Husley, at the 1999 ASPA Annual Conference.*



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FOCUS ON E&E

# Big Changes in Administering Exams

by Gwen S. O'Connell, CPC, QPA

**T**here are big changes in ASPA's education process and in the way we deliver and test the program. As noted in my letter in the *1999-2000 Education and Examination Program Catalog*, ASPA will no longer be selling or distributing the more recent exam booklets. This policy begins with the December 1999 exam administration and means that any exam candidate who took an exam this December will not receive his or her exam booklet.

We need to institute this policy in order to build an item bank of questions for "on demand" examinations beginning in 2001. There is a great deal of planning being done for this change in the exam administration, but we are looking forward to having the C-1, C-2(DC), and C-2(DB) exams given at Sylvan at times that are convenient for our candidates. More information about "on demand" exams will be in future issues of *The Pension Actuary*, *The Candidate Connection*, on the ASPA web site, and in other ASPA publications.

Remember that the 1999-2000 study guides will be valid through the entire calendar year of 2000 as ASPA goes from a "school-year" to a "calendar year" education schedule.

Every year, the ASPA Education Services Department is swamped

with PA-1 exams on August 31. While that is the deadline for these exams, submitting them at the end of the cycle means a delay in getting the results. This year, there were more than 4,350 PA-1 exams submitted. Nearly 2,200 of them arrived in the last two weeks of August!

The ASPA Education Services staff has done a great job in getting the results turned around as quickly as possible, but, due to the large number of exams coming in all at one time and to the pressures of the December 1999 exam administration, many candidates received their results later than we would have liked. If someone in your firm has expressed concern about this, remind them that the PA-1 exam is not a prerequisite for taking any other ASPA exam. In

fact, the exams can be taken in any order. Also, tell them that the earlier their exam is submitted, the faster they will receive their results. Companies who gather all the exams, put them in a box, and submit them with one check on August 31 will delay results.

ASPA's exam program is a huge success. The word is out. With success comes a challenge from growth. The ASPA Education and Examination Committee is working hard to address these issues and to make our program even better!

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*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.*

*David Farber, MSPA, is presented with the 1999 Educator's Award by the chair of the Education and Examination Committee, Gwen S. O'Connell, CPC, QPA, at the opening session of the 1999 ASPA Annual Conference.*

*Mr. Farber, fresh from teaching EA-2 classes, had significant contributions to the 1999 revision of "Actuarial Cost Methods, A Review" and is a popular instructor, helping to prepare candidates for ASPA exams.*



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## Technical Education Consultant Added to ASPA's E&E Program

ASPA is pleased to welcome a new technical education consultant (TEC) to assist with the technical issues and quality control for ASPA's education and examination program. Carol Sears, FSPA, CPC, began serving as ASPA's TEC on November 1, 1999. Carol has been involved with ASPA for many years, including as its 1999 president and a former general chair of the Education and Examination Committee. She has over 22 years of experience in the pension industry and offers a great deal of knowledge and insight to ASPA's education program.



Carol, a graduate of the University of Illinois with a degree in Actuarial Science and Finance, attained her enrolled actuary designation in 1983. In 1989, she received ASPA's highest designation – Fellow. She was elected to ASPA's Board as a director in 1991.

Among her duties as TEC, Carol will be reviewing and editing the technical content of E&E publications including examinations, study guides, compendiums of readings, and related text materials, and assisting instructors who teach ASPA's program.

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

*The Pension Actuary* welcomes your views! Send to:

*The Pension Actuary*  
ASPA, Suite 750  
4245 North Fairfax Drive  
Arlington, VA 22203  
(703) 516-9300  
or fax (703) 516-9308  
or e-mail [aspa@aspa.org](mailto:aspa@aspa.org)

Enclosed with this issue of *The Pension Actuary*, voting members will find a survey concerning the recent proposed amendment to ASPA's bylaws adding two new designations. This survey is designed to allow the organization to obtain input from the membership concerning their views on these designations. You are encouraged to return this survey either by mail or fax to the ASPA office as soon as possible. ASPA, 4245 N. Fairfax Drive, Suite 750, Arlington, VA 22203 or (703) 516-9308.

## IRS District Recognizes Pension Practitioners

C. Frederick Reish, APM, managing partner of Reish & Luftman, and G. Patrick Byrnes, MSPA, president of Actuarial Consultants, Inc., have received the prestigious Internal Revenue Service Los Angeles District Director's Award.



Fred Reish, APM

The award, presented by Steven Jensen, the Service's Los Angeles District Director, at the Los Angeles Benefit Conference in September, is in recognition of Reish's and Byrnes's "outstanding commitment and service to the Los Angeles Benefits Conference during the previous eight

years." The current district director has only presented the award three times.

Reish and Byrnes co-founded the Los Angeles Benefits Conference in 1992 and have served as its co-chairs. The Conference represents a partnership between the private and public sectors. It provides attendees with a unique opportunity to discuss employee benefit issues with colleagues and government agency representatives. Co-sponsored by the IRS and ASPA, the conference features prominent speakers from throughout the pension community.

In his award letters to Reish and Byrnes, Jensen says, "The Los Angeles Benefits Conference is the larg-

est of its kind in the country. It was one of the first to be held with the pension community nationwide. The



Pat Byrnes, MSPA

continued huge success of this event is directly attributable to your outstanding work and effort." In addition to their work with the LA Benefits Conference, Fred Reish works closely with ASPA's Government Affairs Committee (GAC) and is the chair of GAC's long range planning committee. Pat Byrnes served as ASPA's president in 1991. Both gentlemen frequently author articles for *The Pension Actuary*.

## Pix Digest

practical considerations of trying to get the situation resolved in order to avoid later complications, but still keeping the employer's proper role with respect to the parties involved.

To read the entire thread, download the file noqdro2.fsg.

### Plan Mergers and Forfeitures

[Thread 80759]

A frequent discussion item, what happens to forfeitures when a money purchase pension plan is merged with a profit sharing plan, where the profit sharing plan is the surviving plan?

Most money purchase plans provide that forfeitures will decrease contributions, so if the plan is merged prior to a contribution being required for a plan year, how are those forfeitures used? Should they be allocated to the money purchase participants, or used as part of the surviving profit sharing plan contribution in whatever manner is provided in that plan? Does the presence of forfeitures mean the merger is not exempt from the 5310-A filing requirement?

This thread discusses the approaches used by several practitioners. To read the entire thread, download dcmmerge2.fsg.

### PIX is now on the Internet!

The current version of the PIX message software, WOD, has been updated to incorporate internet access to the PIX message board. No more long distance phone calls to PIX. Contact PIX today at 805-683-4334 to join or get your updated software!

February 23	Grades for December 1999 released	
February 27	Deadline for spring Virtual Study Group	
March 1	Suggested start time for spring Virtual Study Groups	20
April	EA-1(A) and EA-1(B) Weekend Review Classes, Chicago, IL, Denver, CO, and Arlington, VA – Details TBA†	15
April 15	Early registration deadline for spring exams	
May 3	Final registration deadline for spring exams	*
May 7-10	Business Leadership Conference, San Diego, CA	10
May 8	Registration deadline for spring weekend courses	
May 8-9	Midstates Benefits Conference, Chicago, IL	15
May 13-14	ASPA Weekend Courses, Denver, CO C-1, C-2(DB), C-2(DC), C-3, and C-4	15
May 15	Early rescheduling deadline for spring exams	
May 24	Final rescheduling deadline for spring exams	
May 31	C-1, C-3, and C-4 examinations	15-20*
June 1	C-2(DC) examination	15-20*
June 2	C-2(DB) examination	15-20*
June 16	Northeast Key District Benefits Conference, White Plains, NY	7
July 16-19	ASPA Summer Conference, San Francisco, CA	20
August 31	PA-1(A) and PA-1(B) submission deadline	**
Sept. 14-15	LA Benefits Conference, Los Angeles, CA	14.5
Oct. 29-Nov. 1	2000 ASPA Annual Conference, Washington, DC	20

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

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

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

*PIX DIGEST*

# 410(a) Eligibility Requirements and Part Time Employees

*[Thread 81003]*

This is certainly not a new problem. An employer wants to exclude part time employees from its plan. How can this be accomplished in a way that does not cause the plan to violate the maximum statutory exclusion period in Section 410(a)?

The Internal Revenue Service has made it clear that a plan may not impose additional service-based restrictions on plan eligibility, other than those allowed in 410(a). In the context of 401(k) plans, this requirement sometimes backfires, as the employer would often prefer a short three or six month eligibility period for 401(k) deferrals, but many plan documents do not permit any sort of hours requirement to be imposed except for 1,000 hours with a 12 month eligibility. Confronted with inadvertently making part time employees (who will likely never defer) eligible for the plan and the adverse effect this will have on the ADP test, employers may opt for the longer 12 month eligibility requirement for their plans.

This thread discusses several planning options for plan eligibility. The discussion covers the use of entry dates and an hours requirement to get some employees in the plan and exclude oth-

ers. Other users offered suggestions such as dual eligibility requirements, or a per-month hours requirement with a 1 year/1,000 hours override. It was pointed out that any plan can have other hours requirements or different eligibility requirements for different groups, as long as the plan is written in a way that, regardless of these provisions, any employee who has satisfied the statutory age 21/1 year requirements is eligible for the plan.

Other issues discussed include amending the plan eligibility shortly after the plan is established and the concerns with amendment timing. Issues to disclose in the determination letter process and the potential for employee claims under Title I of ERISA are also discussed.

This is a very timely thread, since we are all looking at plan documents and reviewing our plan provisions in anticipation of the upcoming GUST plan restatement cycle. This thread covers many of the good planning options available to permit an employer to achieve its coverage objectives and still comply with the Code. Practitioners should consider more sophisticated plan eligibility provisions when deciding on their GUST

plan documents. To read the entire thread, download the file [ptelig2.fsg](#).

## QDROs (or the lack thereof)

*[Thread 80213]*

This thread started with a situation where an employer still has a terminated participant in their plan. They have been provided a copy of a divorce decree that states that the plan account is community property, but no QDRO has ever been done, nor has any legal document been served on the plan or the employer regarding this matter.

How does the plan pay the account balance? Without a QDRO, the ex-spouse is not an alternate payee, so the plan cannot pay her. The plan has no official basis to deny payment to the participant, though the employer is aware of the divorce and the community property finding.

PIX users had a variety of opinions on the situation, ranging from telling the ex-spouse to get a QDRO to just telling her that there is no QDRO on file and that the benefit is payable to the former participant. The discussion considers some of the

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