DOL Proposed regulations on small pension plan security amendments

February 2, 2000

Robert J. Doyle
Director of Regulations and Interpretations
Room N-5669
Pension and Welfare Benefits Administration
U.S. Department of Labor,
200 Constitution Avenue, NW
Washington, DC 20210

Re: DOL Proposed regulations on small pension plan security amendments

Dear Mr. Doyle:

ASPPA is a national organization of approximately 3,700 members who provide actuarial, consulting, administrative, legal and other professional services for about one-third of the qualified retirement plans in the United States, the majority of which are maintained by small businesses. ASPPA's mission is to educate pension actuaries, consultants, administrators and other benefits professionals and to preserve and enhance the private retirement system as part of the development of a cohesive and coherent national retirement income policy. Its large and broad based membership gives it unusual insight into current practical problems with ERISA and qualified retirement plans, with a particular focus on the issues faced by smaller employers.

On December 1, 1999, the Department issued proposed small pension plan security amendments to existing regulations (the "Proposed Regulation"). ASPPA believes the Department has done an excellent job in drafting these proposed regulations of reconciling two vital concepts of the small plan private pension system - the need to assure that funds held for participants are secure; and the need to keep the cost of plan administration as low as reasonably possible. We note that the actual incidence of embezzlement or misappropriation of pension assets has been extremely small as a percentage of total plan assets. However, we recognize that in any specific instance embezzlement or other misappropriation of pension assets can have serious adverse impact on the affected participants; and that, therefore, it is appropriate to take steps to minimize this risk.

We applaud the thoughtfulness and effort put into the Proposed regulations by the Department. While we are generally supportive of the concepts presented in the Proposed Regulations, there are a few items of clarification which we believe should be addressed in the final regulations.

1. The requirement of disclosure of specific information with respect to plan assets to participants is unnecessary. Instead "boilerplate" language could be inserted in the summary annual report and/or the summary plan description which would notify participants of their right to obtain, at no cost, copies of the information described in the proposed regulations, specifically including the required information from financial institutions, evidence of a bond and the amount of the existing bond. Adding significantly more information to that already required to be given to participants is likely to be confusing to many participants, rather than helpful. At the same time, giving participants specific information on the additional documents which are available to them at no cost will permit those participants who have any interest in reviewing these materials the knowledge that the documents are available and can be readily obtained at no cost.

2. The requirement of disclosure to participants of the assets held by each institution at the end of the plan year may cause a loss of privacy for certain plan participants. It is not uncommon in small plans to permit participants to have their assets held and invested by a financial institution of their choosing. If only one participant (or only several) has chosen to have a particular financial institution hold his or her portion of the plan assets, revealing the details of that information would likely result in a loss of privacy as to that participant. This loss of privacy would not result in any advantage to those participants affected, because routinely they receive copies of financial reports on their own accounts prepared by the financial institutions at least as frequently as the plan trustee. Further, normally only the affected participants are permitted to direct their accounts as to investment of their funds or they direct the trustee as to those investments, so that the risk of loss through an action of anyone other than the affected participant is minimal.

There are several possible ways of addressing this concern. The suggestions set forth below represent one set of alternatives which you may wish to consider. We would be happy to discuss with you other possibilities.

(i) The summary annual report be allowed to contain the category of "Other Financial Institutions Which Hold Only Assets of Participant Directed Accounts", or the like, and that no dollar amounts need be shown in this category, which instead says "the amounts in this category have not been shown at the request of the affected participant(s), but such information has been provided to the affected participant(s)";

(ii) To place assets in the category described in (i), the plan must obtain the written consent of the affected participant; and

(iii) The participant consent in (ii) should also reflect the fact that the affected participant is receiving reports from the financial institution regarding his/her own account at least annually, which reports provide the information which would otherwise be made available more explicitly in the summary annual report.

3. If the plan chooses to fully bond 100% of the value of its assets, the only required disclosure should be the information already shown on the Summary Annual Report, which is presently required to state the value of total plan assets, and information relating to the existence and amount of the bond. Making this change would permit plans to avoid the need for the additional compliance otherwise required by the Proposed Regulations, and would give the plan participants adequate protection.

4. Clarification is needed as to whether a loan which exceeds $50,000 will be treated as failing to qualify as a loan meeting the requirements of ERISA Section 408(b)(1). Will a loan which is in default be treated as a loan meeting the requirements of ERISA Section 408(b)(1). (See Prop. Treas. Reg. Section 1-72(p)-1. Q&A -10 which requires that a loan be treated as being in default if payments are delinquent for one calendar quarter.)

A key part of the increased bonding requirements working efficiently is that the administration and enforcement of these requirements continue in the same manner as they have in the past.

If you have any questions with regard to this matter, please feel free to address them to any of the undersigned.

Very truly yours,

Michael J. Canan, APM, Chair ASPPA Department of Labor Subcommittee	Brian H. Graff, Esq. ASPPA Executive Director
Bruce Ashton, APM, Co-Chair ASPPA Government Affairs Committee	Craig Hoffman, APM, Co-Chair ASPPA Government Affairs Committee
R. Bradford Huss, Co-Chair ASPPA Government Affairs Committee	Theresa Lensander, CPC, QPA, Chair ASPPA Administration Relations Committee