



PENSION & BENEFITS QUARTERLY

Past President's Column – Jon Chambers

As we all contemplate the elevation of the former first lady to the post of President, we all have questions about the former President's role. What are his thoughts on his wife's priorities? What advice will he give? To answer these questions, we caught up with Jon Chambers, former SF Chapter President (2003-2005) and spouse of incoming President Tina Chambers (2015-2017):



Plus ça change, plus c'est la même chose.

This 1849 quote, from French novelist Jean-Baptiste Alphonse Karr translates literally as: "The more it changes, the more it's the same thing." And I think this is true of the benefits industry in general, and the people that make the industry work.

It's hard to believe that it's been a decade since I completed my term as President of the San Francisco Chapter of the Western Pension & Benefits Conference—and that my wife and business colleague, Tina, will soon be assuming the same role leading a talented group of dedicated board members, committee chairs, and other dedicated volunteers.

As I think back on my term as President, I'm struck by the many similarities to today's environment. For example, a hotly debated topic when I became President in 2003 was the Pension Security Act (HR 1000), sponsored by John Boehner, then Chairman of the House Committee on Education & the Workforce. HR 1000 would have created a new prohibited transaction exemption using model conflict disclosures to permit a 401(k) plan's investment managers to advise participants on how to invest their accounts. Despite support from President George W. Bush and the Department of Labor (DOL), HR 1000 faced fierce opposition from Senate Democrats and some Senate Republicans. Today, we debate a similar DOL regulatory proposal defining how advice to retirement accounts should be provided. The DOL proposal would create new prohibited transaction exemptions, and require the use of model conflict disclosures. The proposal is supported by President Barack Obama, but is opposed by Senate Republicans, some Senate Democrats, and Speaker of the House John Boehner. *Plus ça change, plus c'est la même chose.*

One of the big challenges WP&BC faced a decade ago was managing the annual Summer Conference, a traditional highlight dating back to 1954. I became Chapter President at the 2003 meeting, hosted by the San Francisco Chapter in Monterey. Larger Chapters, like SF, were able to manage these events, but Salt Lake City (a smaller Chapter) had struggled to host the 2002 event. At the Monterey meeting, the Joint Council of Presidents decided to co-sponsor the Summer Conference, with the American Society for Pension Professionals & Actuaries (ASPPA). The first co-sponsored Conference, held in San Diego in 2005, marked the end of my tenure as President. The San Diego Conference, aptly themed "Meeting Midway," in reference to both the famous aircraft carrier, and the compromises inherent in a co-sponsored Conference, kicked off a decade of cooperation and partnership between WP&BC and ASPPA. This summer, the San Francisco Chapter will be hosting the 10th annual co-sponsored Conference, under the theme "Past, Present and Future," and Tina will be starting her term as Chapter President. *Plus ça change, plus c'est la même chose.*

In discussing *similarities*, we should be careful not to lose sight of *change*. Our benefits industry is dynamic, constantly morphing, evolving, and reinventing itself, in response to legislative and regulatory initiatives, shifting corporate priorities, and changing employee demographics. Benefits plans constantly adjust to meet the needs of an ever-changing workforce and implementing change requires cooperation and collaboration from a diverse group of professionals—actuaries, accountants, attorneys, compliance specialists, investment managers, and administrators. That's why WP&BC plays such an important role. We bring these professionals together in educational and social forums, to foster greater collaboration among the disparate disciplines. Cooperation was essential a decade ago; it's just as necessary today. *Plus ça change, plus c'est la même chose.*

Personally, I continue to actively advise a diverse cross-section of retirement plan sponsors, including many of the same clients I worked with a decade ago. Today, I'm privileged to work with my wife at our office in Orinda, instead of downtown San Francisco, which makes for an easier

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PRESIDENT'S LETTER and JON CHAMBERS

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The end of my Western Pension Presidency is fast approaching. Come July 1st, **Tina Chambers** will be San Francisco Chapter President. While this transition is full of exciting opportunities for Tina and the Board, I want to end on a few words of thanks.

First, I'd like to thank the Board for bringing in **Jenifer McDonald** as our new Chapter administrator. I know I speak for many members when I say that she has provided terrific service to our Chapter. This was not an easy process to start or to carry on. My thanks especially go out to **Jill Kleiner**, **Tina Chambers**, **Kevin Nolt** and **Bill Berry** for running the search process. There is no doubt about the success of our results.

Our hard-working programming chairs also deserve enormous thanks. First **Steve Kjar**, and then **Bertha Minnihan**, have provided top-notch, innovative programs to our Chapter over the past two years. I am excited to see how Bertha and the program committee will fashion the upcoming year's SF events. Also outstanding is **Ami Givon**, who for years has brought excellent programming to Silicon Valley; we are lucky to have his calm, deliberative leadership. All of us who've been to Spring Conference for the past three years know that **Brad Wall** and his committee have been outstanding.

If I had to pick an area which best exemplifies Western Pension, it would be our Brown Bags. **Alison Wright** has brought us a wide range of topics, some emerging, some persistent, some niche, some broad, some nerdy (mortality tables, anyone?), and all fascinating. The back-and-forth open sharing of expertise, experience, doubts, fears, and successes, all at a no-cost and friendly forum, is quintessentially Western Pension.

A close second is our Field Trips. My sincere thanks to **Lori McKenzie** and **Tim Shortt** for developing this concept. These networking events have been a great way to meet and connect with fellow employee benefits professionals, and to learn more about iconic Bay Area organizations. Please, please, please consider attending these events, as they are wonderful!

I want to recognize **Matt Gouaux** for his years leading the membership committee. Matt and his committee have worked hard to expand the efficiency and the success of our member services, and was key in bringing us the membership night at Sens. Matt would want me to remind you to renew your membership for 2015/2016.

No public utterance would be complete without a plug for our summer conference (July 19-22, SF Hyatt Regency). **Steve Kjar**, who succeeded **Lori McKenzie** in this role, has helped develop interesting and educational programming at our summer conference.

Lastly, I am very fond of this newsletter and the people who put it together. **Mikaela Habib** is our hard-working and dedicated editor, and has done an excellent job in succession to **Katuri Kaye**. Every quarter, **Anjuli Cargain** brings us up-to-date on legal and regulatory matters, which is no easy feat, given the enormous changes we see in our industry. And finally, our wonderful graphic designer, **Janie Waters**, is terrific! Janie has worked for us for more years than any of us know, and has served many WP&BC boards and presidents. We truly appreciate her work, and I am delighted with each newsletter issue we've published.

Thanks again for all your support.

Andrew Ferguson
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Past President Column

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commute, but boring dinner conversations! Tina and I still get to San Francisco regularly, for client meetings, WP&BC events, and other activities. And it's always great to catch up with other WP&BC professionals who have been friends and colleagues for well over a decade.

Plus ça change, plus c'est la même chose.

Across its 60+ year history, Western Pension & Benefits Conference has had several name and organizational changes, and many Chapter Presidents. I'm proud to have served as President, and know that I've received enormous benefits from my affiliation with the Chapter. I'm looking forward to another great decade with WP&BC.



MEMBER PROFILE

Justin Chilcote



Name: Justin Chilcote
Company: Transamerica Retirement Solutions
Title: Regional Vice President
Education: Bachelor of Science
Years in the industry: 16

Please tell us about your first "real" job:

I started in the industry working for Fidelity Investments in their "brokerage" department. It was 1998 and the stock market was on fire! Being a naive newly-graduated college student working in "brokerage" I thought I was going to be a big shot trading stocks for Fidelity, somewhat of a Charlie Sheen in *Wall Street*. While a very valuable experience and a great way to get my feet wet in the industry it was far from the images that I envisioned as I was working in a call center working all the overtime Fidelity could offer me and experiencing firsthand how individuals make decisions in a bull market which soon became a vicious bear market. The volatility of the market and the experiences of this time in my career have impacted greatly my perspective on risk, investment decisions, and the way in which I interact with my clients.

BUSINESS BACKGROUND

Nature of your work: I am responsible for business development for Transamerica Retirement Solutions. We provide recordkeeping and administration for Defined Contribution, Defined Benefit and Non-Qualified retirement plans. I work closely with plan sponsors of retirement plans and their subject matter experts including their retirement plan advisor or consultant, investment consultants, plan auditors, and actuaries as we work to improve retirement plan results for the organizations and participants we serve.

How you got into the field: After being in the financial services industry for two years the bear market of 2000-2002 hit. I realized during this incredibly difficult time that the hardest and most unfortunate victim was the average American saver who's primary savings was their Defined Contribution plan. It was during this crisis that I sought a position within the institutional retirement space and never looked back.

What you like about the field: I truly enjoy the opportunity I have to influence the plan design, communication strategies and the direction plan sponsors utilize as they look to improve the probabilities that their employees will be able to retire with dignity. The decisions and improvements that are made to the retirement plan sponsors I work most often have positive impacts on the employees and participants of these plans for many years to come. The work is fulfilling and impactful on individual lives and families within this community, state and country.

PERSONAL

Ways you spend free time: Growing up I really enjoyed playing soccer and still attempt to play when I can. More of my soccer experience at this stage is spent coaching my nine-year old and five-year old, which I have enjoyed. I also enjoy spending as much time as I can near water whether that includes boating, water skiing, wake boarding, surfing or just hanging playing on a beach. Last, I volunteer my time within my church organization to help lead religious discussions and service opportunities.

Guiding philosophy: Always assume the best in people. The alternative is just . . . depressing.

Favorite charities: Boy Scouts of America and Humanitarian Experience for Youth. Both organizations have provided great service opportunities for several nieces, nephews and youth with whom I have been acquainted.

Last books read: I am a huge fan of Audible.com with the Kindle Whisper Sink feature as this is a great way to continue a book in the car, at home or on a plane. The last book I finished was *The Power of Habit* by Charles Duhigg, which I highly recommend. The science behind habits is fascinating but the success stories provided were impactful in my own life.

Restaurant recommendations: I have recently become a huge fan of Shakewell in Oakland. It is a must try restaurant!

What will you do when you retire: Retirement is a changing concept. Due to the increasing longevity as well as changes to social trends I picture retirement as a change of careers. As funny as this may sound I would like to become a math teacher at a high school and potentially help coach the soccer team. Both of these roles would be enjoyable to me and I would hope come with a different type of stress that would be enjoyable as a choice during "retirement."



BOARD MEMBER PROFILE

Ami Givon



Name: **Ami Givon**

Company: GCA Law Partners LLP

Title: Partner

Education: University of California at Berkeley (A.B. in Philosophy); University of California, Hastings College of the Law (J.D.); Golden Gate University (LL.M. in Taxation)

Years in the industry: 28

Please tell us about your first "real" job: Working a summer job at a tannery in New Hampshire. A real job with real salt-of-the-earth people.

BUSINESS BACKGROUND

Nature of your work: I work in all aspects of retirement and deferred compensation plans, ERISA fiduciary duties and IRAs. Much of the work is in of an advisory or compliance nature, but I often become involved in adversarial matters, be it involving a government regulator or between private parties.

How you got into the field: I pursued an LL.M. in taxation after being out of law school for several years, and decided to focus on ERISA - it seemed to be fit for what I believe is my skill set.

What you like about the field: I like the analytical aspect of ERISA and benefits law. I find learning new rules (there are always new ones) and applying old rules to new or unique scenarios to be stimulating.

PERSONAL

Ways you spend free time: Spending quality time with my wonderful wife. I cycle. I enjoy reading historical and narrative nonfiction as well as fiction. Ballroom dancing (no, I am not going on Dancing with the Stars) is an activity my wife and I have taken up in recent years. Enjoying the performing arts.

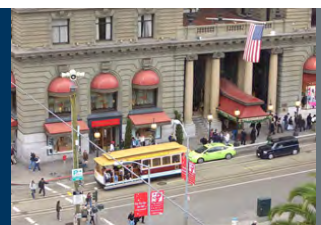
Guiding philosophy: Be honest and be the best you can be.

Favorite charities: Doctors Without Borders; several food banks and organizations.

Last books read: The Sympathizer; Dead Wake; The Good Lord Bird; The Short and Tragic Life of Robert Peace.

Restaurant recommendations: The Artisan Bistro in Lafayette.

What will you do when you retire: Becoming involved in some interesting or helpful volunteer work; traveling and improving my home improvement skills (not at the same time, of course).





Qualified Pension Plans

Internal Revenue Code Section 403(b) Plan Listing of Required Modifications and Information Package: On March 9, 2015, the Internal Revenue Service (“IRS”) issued an updated listing of required modifications, which provide sample language that satisfies certain requirements of Internal Revenue Code (“Code”) section 403(b) and the regulations thereunder. The package contains sample plan provisions appropriate for Code section 403(b) prototype plans that do not accept contributions other than elective deferrals, and sample provisions for Code section 403(b) prototype plans that accept contributions other than elective deferrals. The purpose of the package is to assist sponsors who are drafting Code section 403(b) pre-approved plans (prototype and volume submitter plans), and to accelerate the review and approval of the plans. The IRS noted that insurance companies and custodians generally may also look to the language of the sample provisions in drafting the terms of annuity contracts and custodial accounts that are required by Code section 403(b).
<http://www.irs.gov>

Pension Benefit Guaranty Corporation Publishes 2015 Premium Filing Instructions: On March 9, 2015, the Pension Benefit Guaranty Corporation (“PBGC”) announced that premium filings for plan years starting 2015 may be submitted. My Plan Administration Account (“My PAA”) is a secure web-based application that enables electronic submission of premium filings and payments to PBGC in accordance with PBGC’s regulations. PBGC’s mandatory e-filing requirements apply to all types of filings, including both original and amended filings. PBGC has modified the certification method for filings uploaded via My PAA to require that plan administrator and enrolled actuary certifications be made on paper copies of filing information before uploading. Small plans are now subject to the same due dates as other plans. The payment instructions have been updated for paying via Electronic Funds Transfer (ACH or Fedwire) outside of My PAA. The PBGC has published further guidance (demos and FAQs) on its “Online Premium Filing with My PAA” webpage.
<http://www.pbgc.gov>

Extension of Temporary Nondiscrimination Relief for Closed Defined Benefit Plans: On March 19, 2015, the IRS published Notice 2015-28 which extends the temporary nondiscrimination relief for certain closed defined benefit pension plans (i.e., defined benefit plans that provide ongoing accruals but that have been amended to limit those accruals to some or all of the employees who participated in the plan on a specified date) that was provided in Notice 2014-5 for one year so that a closed defined benefit pension plan may continue to use the

temporary relief for a plan year that begins before January 1, 2017, if the conditions of Notice 2014-5 are satisfied. During the period of the extension, the remaining provisions of the nondiscrimination regulations, including the rules relating to the timing of plan amendments, continue to apply. The extension is provided in anticipation of the issuance of proposed amendments to the Code section 401(a)(4) regulations that will be finalized and apply after the relief under Notice 2014-5 and Notice 2015-28 expires.
<http://www.irs.gov>

Final and Proposed Rule and Temporary Enforcement Policy on Timing of Participant-Level Fee Disclosures: On March 19, 2015, the Department of Labor (“DOL”) announced a direct final rule that provides a two-month grace period for participant-directed individual account plans (e.g., 401(k) plans) to provide annual investment and plan-related information to participants. The direct final rule changes the requirement that annual disclosures be made at least once in any 12-month period to at least once in any 14-month period. The information that is currently required to be disclosed remains unchanged. The direct final rule was published simultaneously with a notice of proposed rulemaking that serves as a notice of proposal to amend the 2010 regulation. If significant adverse comments are received during the comment period (ended on April 30, 2015), the DOL will withdraw the direct final rule and then address the comments in a subsequent final rule. The direct final rule is otherwise effective on June 17, 2015. Under the temporary enforcement policy, the DOL will treat a plan administrator as satisfying the current 12-month rule if annual disclosures are made within the new 14-month deadline, provided that the plan administrator reasonably determines that doing so benefits the plan’s participants and beneficiaries. The enforcement policy expires on the effective date of the direct final rule without notice or any other action by the DOL. A fact sheet and news release was published on the DOL’s website.
<http://www.dol.gov>

New Revenue Procedures Update the Employee Plans Compliance Resolution System (“EPCRS”): On March 27, 2015, the IRS published Rev. Proc. 2015-27, which modifies specific sections of Rev. Proc. 2013-12 (the most recent restatement of EPCRS). The EPCRS sets forth a comprehensive system of correction programs for sponsors of retirement plans that are intended to satisfy the requirements of the Code, but that have failed to meet those requirements for a period of time. The components of EPCRS are the Self-Correction Program (“SCP”), the Voluntary Correction Program (“VCP”), and the Audit Closing Agreement Program. EPCRS permits plan sponsors to

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correct failures and thereby continue to provide employees with retirement benefits on a tax-favored basis. Changes under Rev. Proc. 2015-27 include:

- Clarification of correction rules for overpayments made to participants and requests public comments on recoupment of plan overpayments;
- Modifications to the SCP for Code section 415(c) failures;
- Lower compliance fees for certain VCP submissions;
- New acknowledgement letter form and other VCP model document changes; and
- Miscellaneous modifications to correction rules and revision of citations and cross-references.

Rev. Proc. 2015-27 is generally effective July 1, 2015, but plan sponsors may elect to apply the provisions after March 27, 2015. Rev. Proc. 2015-28, issued on April 2, 2015, provides a new safe harbor correction method for failures arising from automatic contribution arrangements in plans described in Code sections 401(k) and 403(b), including those with escalation clauses, and special safe harbor correction methods for plans (including those with automatic contribution features) that have failures that are of limited duration and involve elective deferrals. The safe harbor sunsets December 31, 2020, although the IRS may decide to extend the safe harbor correction method.

<http://www.irs.gov>

Proposed Rule on Mandatory E-filing for Multiemployer Plans: On April 3, 2015, the PBGC published a proposed rule that would amend PBGC's multiemployer regulations to require electronic filing of certain multiemployer notices, starting 2016. Under the proposed rule, the following notices must be filed electronically with the PBGC: (1) notices of termination under 29 C.F.R. part 4041A; (2) notices of insolvency and of insolvency benefit level under 29 C.F.R. part 4245; and (3) notices of insolvency and of insolvency benefit level and applications for financial assistance under 29 C.F.R. part 4281 (following mass withdrawal). Case-by-case exemptions to the e-filing requirement in appropriate circumstances for filers that demonstrate good cause for exemption may be granted by the PBGC. On May 20, 2015, PBGC announced that it had received inquiries about whether its proposed rule would affect notices to participants, and stated the proposed rule only affects notices to the PBGC. Comments were due by June 2, 2015.

<http://www.pbgc.gov>

Tips to Avoid Processing Delays with Determination Letter Applications: On April 8, 2015, the IRS published guidance to help speed the review of determination letter applications. Included among the suggestions is that the submissions include a cover letter stating relevant information for the plan, including:

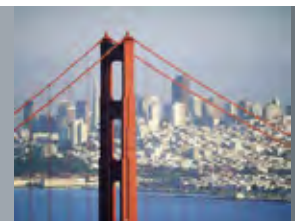
- Whether the application is being filed on or off-cycle, and if filing off-cycle, and the reason why;
- Any unique circumstances such as a "special ruling request" or urgent business needs for a request for expedited treatment;
- Whether the plan is part of a controlled or affiliated service group or multiple employer plan arrangement, or if submitted with a related plan (include the related plan's tax identification and plan numbers); and
- If the plan was involved in a merger or consolidation of plan assets.

The IRS has also set forth recommendations related to the requirement to submit plan documents, and specifies that the plan language and sections that have been modified by amendment(s) should be listed.

<http://www.irs.gov>

DOL Re-Proposes Rule Defining a "Fiduciary": On April 14, 2015, the DOL announced a re-proposal of the rule regarding who is an ERISA fiduciary when providing investment advice to a retirement plan (also known as the "conflict of interest rule"). In 2010, the DOL proposed a change to the definition of fiduciary under ERISA that would have expanded the scope of those who become fiduciaries. The new proposed definition of fiduciary investment advice generally covers specific recommendations on investments, investment management, the selection of persons to provide investment advice or management, and appraisals in connection with investment decisions. Persons who provide such advice would fall within the proposed regulation's ambit if they either (a) represent that they are acting as an ERISA fiduciary or (b) make investment recommendations pursuant to an agreement, arrangement, or understanding that the advice is individualized or specifically directed to the recipient for consideration in making investment or investment management decisions regarding plan or Individual Retirement Account ("IRA") assets. The new proposal specifically includes as fiduciary investment advice recommendations concerning the investment of assets that are rolled over or otherwise distributed from a plan. However, an adviser does not act as a fiduciary merely by providing plan or IRA investors with

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information about plan distribution options, including the tax consequences associated with the available types of benefit distributions. Several carve-outs are set forth and there is a new class exemption to the prohibited transaction rules. Comments are due by July 6, 2015. A public hearing will be held by August 5, 2015. In addition to the new proposal, the DOL is simultaneously proposing a new Best Interest Contract Exemption, revising other exemptions from the prohibited transaction rules of ERISA and the Code and is exploring through a request for comments the concept of an additional low-fee exemption. The DOL has published further guidance on its website which includes FAQs, a fact sheet, regulatory analysis, and numerous related resources containing information on the proposed rule.

<http://www.dol.gov>

Health and Welfare Plans

Final Rule on Limited Wraparound Coverage as Excepted Benefits:

On March 18, 2015, the Departments of Labor, Health and Human Services, and the Treasury (collectively, the Departments) issued final regulations that amend the regulations regarding excepted benefits to specify requirements for limited wraparound coverage to qualify as an excepted benefit. Excepted benefits are generally exempt from the requirements that were added to those laws by the Health Insurance Portability and Accountability Act ("HIPAA") and the Affordable Care Act ("ACA"). Plan sponsors can offer limited benefits provided through a group health plan that wraps around eligible individual health insurance to employees who are not full-time employees (and their dependents), or who are retirees (and their dependents), if requirements are met. Limited benefits would also be permitted to wraparound the Basic Health Program authorized the ACA. The final rule includes five requirements for wraparound coverage to qualify as excepted benefits (i.e. covers additional benefits, limited in amount, nondiscrimination, plan eligibility requirements, and reporting requirements). Plan sponsors may provide limited wraparound benefits under a pilot program with a sunset date, and under the final rules, wraparound coverage could be offered as excepted benefits if the coverage is first offered no earlier than January 1, 2016, and no later than December 31, 2018, and that ends on the later of: (1) three years after the date the wraparound coverage is first offered; or (2) the termination date of the last collective bargaining agreement relating to the wraparound coverage. The final regulations became effective on May 18, 2015.

<http://www.dol.gov>

Guidance on Information Reporting under the Affordable Care Act:

The IRS recently published numerous resources publications assist employers determine if they are subject to the employer shared responsibility provision of the ACA and the related information reporting requirements (Publications 5200, 5208, and 5196). Also, Publication 5215, an electronic brochure, provides guidance to health coverage providers on their reporting of minimum essential coverage by using Form 1095-B. On April 28, 2015, Draft Publication 5165 was published and outlines the communication procedures, transmission formats and other rules for returns filed electronically through the ACA Information Returns ("AIR") system, which should be used to develop software for use with the AIR system. On May 20, 2015, Draft Publication 5164 was released which contains testing information for use with the ACA Assurance Testing System, which is both the process and the system used to test software and electronic transmissions prior to accepting software developers, transmitters and issuers into the AIR System.

<http://www.irs.gov>

FAQs about Affordable Care Act Implementation (Part XXIV):

On March 30, 2015, the Departments published a new FAQ setting forth the timeline for finalizing changes to the summary of benefits and coverage ("SBC") regulations, templates, instructions, uniform glossary, and associated documents, which were proposed in the December 2014 notice of proposed rulemaking. These changes were proposed to apply beginning September 1, 2015. The Departments intend to finalize the regulations in the near future, which are intended to apply in connection with coverage that would renew or begin on the first day of the first plan year (or, in the individual market, policy year) that begins on or after January 1, 2016. The Departments also intend to utilize consumer testing and offer an opportunity for the public, including the National Association of Insurance Commissioners, to provide further input before finalizing revisions to the SBC template and associated documents. The Departments anticipate the new template and associated documents will be finalized by January 2016 and will apply to coverage that would renew or begin on the first day of the first plan year (or, in the individual market, policy year) that begins on or after January 1, 2017.

<http://www.dol.gov>

2016 Medicare Part D Benefit Parameters: On April 6, 2015, the Centers for Medicare & Medicaid Services ("CMS") released the 2016 parameters for the defined standard Medicare Part D prescription drug benefit which are used by group health plan sponsors to determine whether their plans' prescription drug

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coverage is creditable for 2016. Under the Medicare Part D regulations, most group health plan sponsors offering prescription drug coverage to Part D eligible individuals (including active or disabled employees, retirees, COBRA participants, and beneficiaries) must disclose to Part D eligible individuals and to CMS whether the plan coverage is creditable or non-creditable. For coverage to be creditable, its actuarial value must equal or exceed the actuarial value of defined standard Medicare Part D coverage under CMS guidelines. CMS published a corresponding fact sheet providing further guidance on the 2016 rate announcement and call letter, and policy updates for Medicare Advantage and Part D.

<http://www.cms.gov>

Guidance on Deadline for Refund Requests under the Transitional Reinsurance Program: On April 20, 2015, CMS published a memorandum on the transitional reinsurance program and deadline for refund requests. The transitional reinsurance program collects contributions from contributing entities (issuers and certain self-insured group health plans offering major medical coverage) to fund reinsurance payments to issuers of non-grandfathered reinsurance-eligible individual market plans, the administrative costs of operating the reinsurance program, and the general fund of the U.S. Treasury for the 2014, 2015 and 2016 benefit years. CMS has stated that it is aware that some contributing entities may have misreported their annual enrollment count for the 2014 benefit year due to misapplying an allowable counting method, or including individuals in their annual enrollment who are exempt from consideration for purposes of reinsurance contributions, potentially resulting in an overpayment. Contributing entities can generally correct these errors by refiling a form through Pay.gov. Where the contribution payment has already been processed, the contributing entity is generally required to refile the form with the correct annual enrollment count and CMS refunds the payment associated with the erroneous filing. For the 2014 benefit year, CMS requires that contributing entities send refund requests resulting from annual enrollment count misreporting by April 30, 2015, or 90 days from the date of their form submission, whichever is later. For the 2015 and 2016 benefit years, refund requests resulting from annual enrollment count misreporting must be submitted 90 days from the date of form submission. The deadlines do not apply when a contributing entity requests a refund because it has paid reinsurance contributions more than once for the same covered life, or a contributing entity that correctly applied one of the counting methods.

<http://www.cms.gov>

FAQs about ACA Implementation (Part XXVI): On May 11, 2015, the Departments provided guidance on several issues involving contraceptive services, as well as guidance on other preventive services required by the ACA. Section 2713 of the Public Health Service Act and its implementing regulations relating to coverage of preventive services require non-grandfathered group health plans and health insurance coverage offered in the individual or group market to provide benefits for, and prohibit the imposition of cost-sharing requirements with respect to: (1) services recommended by the U.S. Preventive Services Task Force; (2) immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, (3) preventive care and screenings for infants, children, and adolescents supported by HHS's Health Resources and Services Administration ("HRSA"), and (4) preventive care and screenings for women supported by HRSA, which, among other things, include contraceptive methods and counseling, including all Food and Drug Administration ("FDA") approved contraceptive methods (currently 18). The FAQs cover breast cancer susceptibility gene -related cancer screening, counseling, and testing, FDA-approved contraceptives, gender-specific recommended preventive services, well-woman preventive care for dependents, and colonoscopies. The Departments will apply this rule for plan years beginning on or after July 10, 2015. <http://www.dol.gov>

Wellness Programs

Health Insurance Portability and Accountability Act ("HIPAA") and Workplace Wellness Programs: On April 16, 2015, the Department of Health and Human Services ("HHS") published two FAQs on workplace wellness program privacy and security under HIPAA. The first FAQ explains that where a workplace wellness program is offered as part of a group health plan, the individually identifiable health information collected from or created about participants in the wellness program is Protected Health Information ("PHI") and protected by the HIPAA Rules. HIPAA also protects PHI that is held by the employer, as plan sponsor on the plan's behalf when the plan sponsor is administering aspects of the plan, including wellness program benefits offered through the plan. In the second FAQ, HHS addresses the ability of the employer as plan sponsor to access PHI about participants in a wellness program when the program is offered through the group health plan. Absent written authorization from the individual, the employer may have access to such PHI only to perform plan administration functions, provided that the employer, as plan sponsor, has amended the plan documents and certifies to the group health plan that it will provide certain protections

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for the PHI. Otherwise, the group health plan can disclose to the employer only information on which individuals are participating in the group health plan (or enrolled in coverage offered by the plan) and/or summary health information if requested for purposes of modifying the plan or obtaining premium bids for coverage under the plan. If a group health plan knows of a breach of unsecured PHI by the plan sponsor, the group health plan must comply with the Breach Notification Rules.

<http://www.hhs.gov>

Health Insurance Market Reforms and Wellness Programs: On April 16, 2015, the Centers for Medicare and Medicaid Services (“CMS”) issued FAQs on the wellness program exception to the rule that group health plans and health insurance issuers are generally prohibited from discriminating against participants, beneficiaries, and individuals in eligibility, benefits, or premiums based on a health factor. The ACA added new rating reforms in section 2701 of the Public Health Service (“PHS”) Act and section 1312(c) of the ACA. The FAQs address several issues that have been raised since the publication of the market reform rules and the wellness program regulations. Specifically, (1) an issuer cannot limit its offering of a wellness program in connection with a particular health insurance product to only certain employer groups enrolling in that product, such as employers in certain industry classifications; (2) the rating rules of section 2701 of the PHS Act do not prevent an issuer from offering premium discounts, rebates or other incentives for wellness programs other than those designed to prevent or reduce tobacco use; and (3) When establishing the index rate and plan-level adjustments under the single risk pool provision, an issuer cannot take into account the penalties or rewards expected to be provided under a wellness program (whether health-contingent or participatory).

<http://www.cms.gov>

FAQs about ACA Implementation (Part XXV): On April 16, 2015, the Departments issued two FAQs on wellness program issues. The first addresses the requirement that a health-contingent wellness program must be “reasonably designed” to promote health or prevent disease under HIPAA rules. A program complies with this requirement if it (1) has a reasonable chance of improving the health of, or preventing disease in, participating individuals; (2) is not overly burdensome; (3) is not a subterfuge for discrimination based on a health factor; and (4) is not highly suspect in the method chosen to promote health or prevent disease. The determination of whether a health-contingent wellness

program is “reasonably designed” is based on all the relevant facts and circumstances. Examples of programs that fail to meet the requirements are provided. The second FAQ explains that compliance with the Departments’ wellness program regulations does not necessarily mean it complies with any other provision of the PHS Act, the Inte Code, ERISA, (including the COBRA continuation provisions), or any other state or Federal law, such as the Americans with Disabilities Act or the privacy and security obligations of the HIPAA, where applicable.

<http://www.dol.gov>

Proposed Regulations on Wellness Programs and Related Guidance: On April 20, 2015, the Equal Employment Opportunity Commission (“EEOC”) issued a proposed rule on how employer wellness programs that are part of a group health plan can comply with Title I of the Americans with Disabilities Act consistent with provisions governing wellness programs in HIPAA, as amended by the ACA. The EEOC has issued ten FAQs about the proposed rule, a fact sheet, and news release. The proposed rule clarifies when a health program is “voluntary” and proposes that the maximum allowable incentive an employer can offer employees for participation in a wellness program or for achieving certain health outcomes (as well as the maximum allowable penalty an employer can impose on employees who do not participate or achieve certain health outcomes), is 30 percent of the total cost of employee-only coverage. Lastly, the proposed rule states that reasonable accommodations must be provided so that employees with disabilities have access to wellness programs. Comments on the proposed rule are due by June 19, 2015.

<http://www.eeoc.gov>

Executive Compensation

Proposed “Pay Versus Performance” Rule: On April 29, 2015, the Securities and Exchange Commission (“SEC”) released a proposed rule to implement requirements imposed on the SEC under Section 953 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposed rule would require public companies to provide a clear description of (1) the relationship between executive compensation actually paid to the named executive officers (“NEOs”) and the cumulative total shareholder return (“TSR”) of the company, and (2) the relationship between the company’s TSR and the TSR of a peer group, over each of the five most recently completed fiscal years. The proposed rules are complex and would require disclosure of the following information in a prescribed Summary Compensation Table:

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QUARTERLY LEGISLATIVE & REGULATORY UPDATE

(continued from page 9)



- The principal executive officer's ("PEO's") total compensation reported in the summary compensation table (in the company's annual proxy statement), and the compensation "actually paid" to the PEO;
- The average total compensation reported in the summary compensation table of all other NEOs, and the average compensation "actually paid" to these other NEOs;
- The company's annual TSR, and the annual TSR of the company's peer group members.

Additionally, a clear statement must be provided describing the relationship between (1) executive compensation actually paid and company TSR (for the same executives identified in the Summary Compensation Table), and (2) the company's TSR and peer group TSR. Disclosure must be provided in tagged data format using eXtensible Business Reporting Language ("XBRL"). Smaller reporting companies must disclose the relationship between executive compensation actually paid and TSR over the three most recently completed fiscal years, are not required to provide disclosure of peer group TSR, and would be required to provide the data in XBRL beginning with the third filing in which it provides pay-versus-performance disclosure. A transition rule provides that existing smaller reporting companies are required to provide two years of data, instead of three, in the first applicable filing after the rules become effective, and three years of data in subsequent proxy filings. Comments are due on or before July 6, 2015.

<http://www.sec.gov>

Final Regulations Under Code Section 162(m): On March 31, 2015, the IRS issued final regulations under Code Code section 162(m) based on comments received in response to a notice of proposed rulemaking published on June 24, 2011. Code section 162(m) precludes publicly-held companies from deducting compensation paid to covered employees in excess of \$1 million, unless certain requirements regarding performance-based compensation are met, and includes transition relief for newly-public companies meeting certain disclosure requirements. The final regulations (1) clarify that, in order to meet those requirements, equity compensation plans must include plan limits with respect to stock options and share appreciation rights that may be granted to each individual employee; and (2) include a more restrictive interpretation of the transition rule for companies that become publicly held, as it applies to restricted stock units ("RSU") and phantom stock arrangements in that compensation payable

under a RSU is eligible for transition relief only if it is paid, and not merely granted, during the applicable transition relief period. The final regulations became effective on April 1, 2015.
<http://www.irs.gov>

Supreme Court of the United States

Timeliness of Breach of Fiduciary Claims and Ongoing Duty to Monitor 401(k) Plan Investments: On May 18, 2015, in *Tibble v. Edison Int'l*, the United States Supreme Court ruled that because a fiduciary normally has a continuing duty to monitor investments and remove imprudent ones, a plaintiff may allege that a fiduciary breached a duty of prudence as long it is filed within six years of the alleged breach of continuing duty. In 2007, beneficiaries of a 401(k) Plan ("Plan") sued the Plan fiduciaries to recover damages for alleged losses suffered by the Plan from alleged breaches of fiduciary duties with respect to three mutual funds added to the Plan in 1999 and three mutual funds added to the Plan in 2002. Petitioners argued that the Plan fiduciaries acted imprudently by offering six higher priced retail-class mutual funds as Plan investments when materially identical lower priced institutional-class mutual funds were available. The District Court held that complaint as to the 1999 funds was untimely because they were included in the Plan more than six years before the complaint was filed, and the circumstances had not changed enough within the six-year statutory period to place the Plan fiduciaries under an obligation to review the mutual funds and to convert them to lower priced institutional-class funds, and the U.S. Court of Appeals for the 9th Circuit affirmed. The issue before the Supreme Court was whether statute of limitations under ERISA section 413 (29 U.S.C. section 1113) bars claims for breaches of fiduciary duty regarding investment options that were added to a plan more than six years before the suit was filed. The Supreme Court overturned the decision by the Ninth Circuit, and the case was remanded for the Ninth Circuit to consider claims that the Plan fiduciaries breached their duties within relevant six-year statutory period under ERISA, recognizing the importance of analogous trust law.

<http://www.scotus.gov>

Our deepest thanks to Anjuli Cargain of Saltzman & Johnson for her work on the Quarterly Regulatory Update.



MEMBER EVENT AT SENS AND CHAPTER SPONSORS



Enjoying our membership event April 29th
at Sens Restaurant – one of the perks of
membership in the S.F. Chapter.



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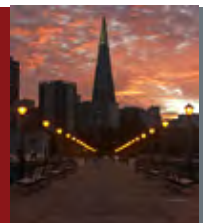
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S.F. CHAPTER SPRING CONFERENCE RECAP



The annual Western Pension & Benefits Council Spring Conference took place on Wednesday May 13th at the Hyatt Regency, Embarcadero in San Francisco. The conference was well-attended, provided a variety of session topics, and was a successful event.

Keynote Speaker

The Spring Conference was kicked off with the keynote speaker, **Pete Neuwirth**, FSA, EA, a senior consultant at **Towers Watson**. Pete drew from his experience as an actuary in both the insurance and pension industries in discussing his new book, “What is Your Future Worth,” which explains how to balance time, risk and value to make better decisions. Pete and Towers Watson were generous in providing all attendees with their own copy of his book.

Pete started the discussion by putting the decision framework under the broader heading of financial wellness and showed that, in general, many workers are still very worried about their futures. Of particular concern are the massive levels of debt, in particular student loan and mortgage debt. Debt has a psychological impact on how workers view the tradeoff of saving for retirement versus paying down debt. Pete also discussed the role that reverse mortgages can play in effective retirement planning.

He then presented an actuary’s view on how to make better financial decisions by following a five-step process of clarification, imagination, evaluation, discounting, and doing the numbers. Pete stressed using the ability to clearly imagine the possible outcomes of a decision and not to disregard the outliers. In the discounting step, he encourages everyone to determine a personal discount rate and to distinguish between three time horizons – “now” vs. “later” vs. “much later.”

Pete is a great speaker and accentuated his points with helpful anecdotes and examples. One lucky participant even won \$100 by virtue of participating in a demonstration that most of us do not make textbook “rational decisions.” Even though only one person won the \$100, we all walked away with a better understanding of the actuarial process to making financial decisions.

The concurrent sessions were varied and interesting. There was something for everyone, including legal, health and welfare, plan sponsors, compensation consultants, actuaries and DC consultants.

Health and Welfare

The Health and Welfare topic was co-presented by **Julie Burbank** of **Chevron**, **Brian Gilmore** of **ABD Insurance** and Financial Services, and **Cindy Pulido**, Life and Health Program Manager at **Facebook**. The presenters covered a wide variety of current pension topics ranging from the new EEOC wellness program guidance to discussions of the “Cadillac Tax” and other ACA provisions.

The session started with an overview of the Federal laws that govern wellness programs, including HIPAA, ADA, and GINA, among others. Of particular note, it appears that the Genetic Information Nondiscrimination Act (GINA) of 2008 would prohibit an employer offering financial inducements to acquire an employee’s or family member’s (including a spouse’s) genetic information. As written, it appears as if many plan sponsors who offer such incentives may have an issue, but ADA footnotes indicate that additional guidance may come in future rulemaking. Stay tuned!

Among the Pay or Play hot topics covered was the issue of medical coverage for temps or interns from an outside staffing firm. The IRS preamble to the Pay or Play regulations states that in the typical case, a temp/intern will be common law employee of the client employer, not the outside staffing firm! Therefore, they must be included in the client’s Pay or Play determinations. A variety of approaches are being used to address this, and the presenters anticipate that this will be an evolving area.

Another interesting development is the *King v. Burwell* case, which will be decided by the U.S. Supreme Court in June 2015. This case will decide whether IRS regulations authorizing premium tax credits for coverage on the Federal exchange (healthcare.gov) do not properly implement the statutory authority of the ACA.

To conclude the presentation, Cindy gave the client’s perspective on nontraditional benefits health and welfare benefits, many of which are offered at Facebook. These include sabbatical leave, pet insurance, surrogacy reimbursement, adoption benefits, gym reimbursements, on-site medical clinic and infertility benefits. She said that many people use the Facebook onsite medical clinic and find it to be very convenient. It was great to hear the insider’s perspective from one of the Bay Area’s most famous employers.

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S.F. CHAPTER SPRING CONFERENCE RECAP

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Compensation

The Compensation program took a unique approach to executive compensation: focus on popular culture, and in particular the nationwide political shift in minimum and living wages issues, and examine their impact on firm-wide compensation planning.

Our speaker, **Fred Whittlesey** of **Compensation Venture Group, Inc.**, began by reviewing wage issues in popular culture (Patricia Arquette at the Oscars, Sarah Silverman lampooning work situations). He continued with a discussion of minimum wage changes throughout the country, and noted the links popular culture has established between these changes and executive compensation. These shifts, both in wages and in more flexible work arrangements, are escalating the compensation discussion from an HR topic to both a CFO topic and a PR topic.

Fred turned his attention to the model upon which firm governance, and its resulting compensation philosophy, has been based. In the past, companies have been driven by shareholders. Because shareholders focus on earnings and stock price, management has focused on rewards on the upper end, and efficiencies on the lower end. Fred discussed how this model has been transformed. New firm governance rests on a stakeholder model, under which employees, community, customers, and the environment will assert important demands upon business. Among several quotes displayed: “Customers are number one; employees are number two and shareholders are number three.” – Jack Ma, Alibaba.

The session concluded with a discussion of the tactical realities of this new compensation world. With minimum wage increases, salary scales will become compressed, job titles will thin out, and incentives for upward movement will diminish. Fred urged us to think both broadly (what is the firm’s compensation philosophy in this new world?) and specifically (should off-cycle promotions be eliminated, both to reduce the potential for bias and to address compressed wage scales?).

The shift in compensation consulting – from a regulatory-driven world of executive compensation, to a socially driven stakeholder model – will open up both opportunities and risks for companies and their advisors.

Retirement Readiness and Investments

Grace Lattyak, Associate Partner at **Aon Hewitt** and **Brian Montanez**, Principal at **Multnomah Group** presented the latest news and views on the current “Retirement Readiness Problem” and the latest on “Investment Menu Solutions.”

Grace began by talking about how each person’s views on retirement are different in their definition of what is adequate retirement income and how many times the retirement resources (i.e., defined contribution plans, Social Security) may not be enough to cover their retirement needs. Various charts were used to illustrate various challenges, including the fact that very few people are currently “on track” to cover their future retirement needs.

Brian then discussed how plans can be tailored to help people get to their retirement goals. One of the biggest issues is whether plans are set up to get works “to retirement” or “through retirement.” This challenges plan sponsors as the vast majority of participants (approximately 70%) delegate the investing decision making process. Many participants put their investment strategy on auto-pilot once they begin participating.

Some suggestions for helping participants become more participatory include using an auto-escalation feature and considering the addition of lifetime income products. However, for these suggestions to provide meaningful results, plan sponsors need to understand the sophistication and makeup of their populations and consider customizing education programs.

Department of Labor Update

This year, we were honored to have **Klaus Placke**, Deputy Regional Director for the San Francisco Regional Office of the **U.S. Department of Labor**, Employee Benefits Security Administration as the speaker. Klaus manages the Civil Enforcement program and the Outreach, Education and Technical Assistance program. Klaus’s insights into the current regulatory environment and frank discussions on current issues proved to make for a well-received session.

Legal Update

Patricia Anglin and **Jason Flaherty** of **Orrick, Herrington & Sutcliffe LLP** presented the annual Legal Update, with special attention given to recent developments regarding fiduciaries and fees, ACA news, and executive compensation.

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S.F. CHAPTER SPRING CONFERENCE RECAP

(continued from page 13)

Recent fiduciary settlements by large employers, Fidelity, and Lockheed showed that fiduciary responsibility is not going away and is likely to lead to more cases in the future as new court cases are settled and laws enacted. A thorough review of the recent *Tibble v. Edison* decision was presented. ACA issues were presented, with the biggest focus on the Cadillac Tax issues. Executive compensation is likely to become a larger issue as the SEC is proposing new reporting regulations.

International Benefits

In our final session, **Karine Desruisseaux** and **Thomas Seiter** of **Mercer** provided insight into the growing field of International Benefits. With so many companies expanding overseas, the numerous laws of each country can pose significant challenges to any HR department. The fact that both speakers were born in other countries added to the authenticity and proved that the world of business may be expanding, but the world itself is a very small place.

Conclusion

In conclusion, the 2015 Western Pension & Benefits Council Spring Conference was a very successful event. Thanks to **Brad Wall** (chair of the program committee) and his dedicated committee (**Karen Casillas, Justin Chilcote, Claire Eyges, Robert Gower, Janelle Ong, Saswati Paul, and Mike Zeld**) for all of their hard work in putting this conference together. Thank you also to everyone for your participation. We hope to see you again next year!

Our deepest thanks to Brad Wall of Moss Adams LLP and Karen Mack of Altman & Cronin Benefit Consultants, LLC for this excellent recap.

2015 Annual Meeting San Francisco, July 19-22

About the Conference

The Western Pension & Benefits Council invites you to attend the Western Benefits Conference in San Francisco, the only annual, multi-day, comprehensive employee benefits conference west of the Rockies.

At the WBC, you will:

- Learn from the top thought leaders in our industry.
- Receive advanced level information.
- Have a choice of sessions that address the latest industry developments to keep you current in the ever-changing benefits industry.
- Gain practical industry leading ideas to take back to your business associates.
- Participate in highly interactive sessions.
- Expand your professional network.

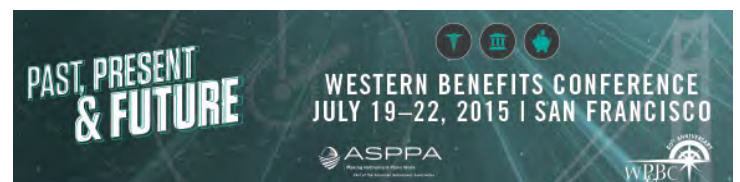
Earn CE credits for ASPPA, ERPA, JBEA, Legal and CPA.

In addition to an expansive and thought-provoking agenda and unique networking opportunities, the 10th annual WBC will feature:

- **Corey Ciocchetti**, Associate Professor of Business Ethics and Legal Studies at the **University of Denver**, with insights on how to develop character, set priorities, gain a big-picture perspective and chase an *authentic* life.
- **David Barrett**, Founder & CEO of **Expensify**, a self-described “all-around alpha geek” who started programming when he was six. He later hated expense reports so much that he created the first expense report that is highly user-friendly.

Registration Information

<http://www.westernpension.org>



TIME FOR MEMBERSHIP RENEWAL



Thank you for being an active member of the Western Pension and Benefits Council San Francisco Chapter in the 2014-2015 term!

The time has come to renew your membership for the 2015-2016 year that begins July 1.

Membership Means Community

The Chapter programs and activities allow members to network, exchange ideas, share concerns and learn new things with people who share your professional interests. Membership allows you to become a more valuable resource for your employer and a member of the employee benefits community.

Encourage your fellow employee benefits professionals to renew (or, if they are not already a member, to join). Then, plan on coming to the next Chapter meeting or Brown Bag lunch. Most of all, be prepared for an enlightening and educational year.

Your membership has enabled us to accomplish so much this year including:

- Five chapter meetings with topics ranging from Financial Wellness Programming, to How to Position Your Benefit Plans in 2015.
- Five Brown Bag lunches (which are free to members) that are always popular with lively discussions.
- Silicon Valley Fall and Spring Conferences
- San Francisco Spring Conference
- Quarterly Newsletters and Regulatory Updates
- **New to 2015:** Membership Appreciation Event at Sens Restaurant
- **New to 2015:** Chapter Field Trips (free to members) including visits to the Transbay Terminal Construction Sites, Peet's Coffee and Tea and the Wells Fargo History Museum.

All in all, with your involvement, we had almost 650 people attend WP&BC SF Chapter Events in the 2014-2015 term (over a 30% increase from the 2013-2014 term!) helping advance the education in your industry and network with other leaders in your profession.

Renew your membership today to continue receiving great member benefits that also include:

- Access to the WP&BC membership database profiles
- Free admission to Brown Bag lunches, Field Trips and discounted Chapter Meeting and Conference rates
- Quarterly newsletters and regulatory updates
- SF Chapter Fleece Wear available for purchase

Membership Options

- Individual/Professional - \$150
- 25% discount if you are Plan Sponsor (\$100) Discount code: PLANSPONSOR
- One Membership PLUS Five Regular Chapter Meetings - \$330 (five regular SF Chapter meetings for the price of four. Meeting passes are non-transferable)
- Plan Sponsor Membership (5 employees of Plan Sponsors): \$425
- \$50 for 6th and subsequent employees of Plan Sponsors

How to Renew Your Membership

Online renewal is quick and easy.

Go to <http://www.wpbc-sanfrancisco.org> and click on "Become a member" and then "Renew Membership."

If you need a paper invoice, email our Membership Services rep, Sean McDonald, at sean@wpbc-sf.org. You may also phone us and renew by phone!

Thank you again for your support of the Western Pension & Benefits Council San Francisco Chapter. Please reach out to us with any questions or suggestions on how your Chapter can better serve you!



CHAPTER INFO AND BOARD OF DIRECTORS



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EMPLOYMENT OPPORTUNITIES

If you wish to post an employment opportunity on our website, please read the following note.

Listings must comply with applicable regulations for employment advertising. Online job postings are free to WP&BC San Francisco Chapter members. Call Jenifer McDonald at the Chapter office for more information, (415) 730-5479. Email all listings to info@wpbcfsf.com

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The Newsletter is provided on the understanding that the Western Pension & Benefits Council is not engaged in rendering legal, accounting or other professional advice. If legal advice or professional assistance is required, the services of an appropriate professional should be sought.

The Newsletter welcomes contributions from its members. If you would like to submit a topical benefits-related article or compile the quarterly regulatory update for an upcoming issue, please contact Mikaela Habib at: MHabib@truckerhuss.com

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