WP&BC
WESTERN PENSION & BENEFITS COUNCIL
San Francisco

PENSION & BENEFITS QUARTERLY

Field Trip – Wells Fargo History Museum

On June 2, 2015, WP&BC members gathered at the Wells Fargo History Museum to explore the rich past of Wells Fargo and catch up with old friends and meet new ones over hosted drinks and appetizers.

The main event was a private, curated tour of the Museum. The tour provided greater insight into the formation and evolution of Wells Fargo and its role in the American West. The company began as an express, mail delivery and banking company. While a staple of San Francisco banking today, the two founders, Henry Wells and William Fargo, actually met in New York City in 1852. In July of 1852, Wells Fargo opened offices in San Francisco and Sacramento before expanding to 10 other offices that year. Through its services, Wells Fargo connected the American West with the Atlantic Coast.

During the tour, we were challenged to guess whether a piece of "gold" was truly gold. While the nugget looked and felt like one would expect, many of us were duped by the fool's gold. After trying our hands as gold examiners, we then were able to handle genuine gold coins.

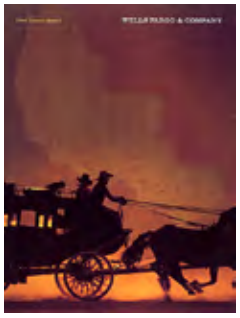
The Museum houses an authentic Concord stagecoach that was used by Wells Fargo in the 1860s. Next to the stagecoach is a camera with printing capabilities that visitors can use to take photographs in front of the stagecoach. While we were not allowed to sit in the authentic stagecoach, we were able to sit in a replica equipped with modern technology that emulated the movement of an actual stagecoach. True to Mark Twain's description, the stagecoach felt like a "cradle on wheels."

After the tour, we had the opportunity to wander through the Museum, which includes two floors of artifacts, information and interactive activities. One of the Museum's most interactive features is a working telegraph. The telegraph not only connects to another telegraph in the Museum, but to telegraphs in other Wells Fargo museums. The Wells Fargo History Museum in San Francisco is one of 11 Wells Fargo museums throughout the country. Other locations include Anchorage, Alaska; Charlotte, North Carolina; and, Phoenix, Arizona. Each museum represents a different part of American history and Wells Fargo's place in that history.

WP&BC members had a fun and enlightening experience at the Wells Fargo History Museum. Many thanks to the Wells Fargo History Museum and to **Tim Shortt** and **Dee Moore** for spearheading this enjoyable and educational field trip.

Our thanks to Kelsey Blegen of Buffington & Aaron, ALC for this article.

Post-1906 earthquake in San Francisco.



1916 ad for Wells Fargo Messenger.

IN THE FALL 2015 ISSUE:

President's Letter and Past President's Column

I want to welcome everyone back to another season of WP&BC! I thought long and hard on a catchy opening statement, and "are you ready for some pension updates" just doesn't have the same ring as "are you ready for some football." Yet, here we are, kicking off another season!

Just like the NFL, many people were hard at work this summer. The Program Committee, Newsletter Editor, and Silicon Valley Program Committees all reported on time to training camp and have made significant progress in planning the entire fall lineup of programs, including our half-day program in Silicon Valley.

However, much like the NFL, our industry has some interesting controversy that will spill into our programming this year. More will come on healthcare, the controversial debate on who is a fiduciary, and what are the best solutions to help employees plan and save for a successful retirement—just to name a few. Each of these hot topics, and many more, will have an impact on plan sponsors and service providers.

I look forward to hearing from all the speakers throughout the year as we all work diligently to help move our industry forward to benefit so many hard working people. I am excited to continue to work with everyone to learn more about how the Chapter can best meet your professional needs.

The NFL kicked off September 10 and we kick off our first game on September 15. The lineup is a senior economist who will give us a review of current market trends and an update on the economy – a timely topic given the recent market excitement and volatility. But, it's still preseason so it's anyone's guess how things will shape up. So, here's to another successful year, and may your favorite sports teams also be successful! (Go Niners & Giants!)

Finally, I'd be remiss if I didn't thank our past president here to my right. I owe my involvement with WP&BC to Lee, and a beautiful lunch at the City Club, well, many years ago. And, like wine, I think we are all aging well!

Tina Chambers
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When I was asked to write this column I immediately thought back, lo those many years ago, to my first introduction in 1977 to the Western Pension Conference (WPC), as it was then known. In searching for a law firm position, I was introduced to Tom Terry, who was then Chair of the WPC. Tom, always the most generous of souls, had me as his guest at a WPC meeting. I remember sitting there fantasizing that I would be a member someday, and perhaps even be an officer. And much to my amazement, many years later I first became Program Chair and eventually President.

In Barbara Creed's March 2014 Past President's column she related the pertinent history of the WPC. In addition to that history, I think about the relationships developed through our organization. For example, I moderated a presentation by Barbara on a very involved new regulation, as only she could do so perfectly. Luckily for me, Barbara later became my friend and partner. Through the WPC and an ERISA lunch group Gary Blank and Brad Huss formed, I met Brad and, of course, my now wife Henni Cohen. Talk about fortunate meetings!

Speaking of relationships, I am presently chairing the S.F. Bar Association's 401(K) Investment Committee. When we needed to add to the Committee, I reached out to Connie Hiatt, and later we reached out to Alison Wright to join us. Both are benefits colleagues and it is a delight to have the two of them associated with me on the Committee. Additionally, Jon Chambers is our investment advisor, another colleague met through the WPC. Our work is particularly interesting because it places us benefits attorneys in a different position, as plan fiduciaries rather than advisors. And yes, we have insurance!

Of course I am still with Trucker◆Huss as Counsel and am very proud of the Firm and its folks. However, living in Napa does not lend itself to frequent trips to SF. Since moving here, though, I have revised the bylaws of two non-profits, served on two boards, I teach literacy at the Library and assist in a citizenship program. Henni chairs two organizations and each week preps those who are going to take the citizenship test. But come up and visit us anyway, the wine is fine and so far so are we, too.

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Qualified Retirement Plans

Delinquent Filer Relief Penalty Program Becomes Permanent: On May 29, 2015, the Internal Revenue Service ("IRS") issued Revenue Procedure 2015-32 which makes permanent the one-year pilot program providing relief from penalties imposed for failure to timely comply with the annual reporting requirements under Internal Revenue Code ("Code") Sections 6652(e) and 6692. The pilot program established in Revenue Procedure 2014-32 was scheduled to expire on June 2, 2015. Penalty relief is provided to plan administrators and plan sponsors of "one-participant plans" and certain foreign plans, which are not subject to annual reporting requirements under ERISA and thus are not eligible for the penalty relief under the Department of Labor's Delinquent Filer Voluntary Compliance program. The permanent program generally follows the requirements of the pilot program, but some changes have been made to reflect the comments received and payment is now a requirement with all submissions. No penalty is imposed if the proper procedures are followed and the failure to timely file is due to reasonable cause. Revenue Procedure 2015-32 became effective June 3, 2015.
http://www.irs.gov

IRS Expands Its Pre-Approved Plan Program: On June 8, 2015, the IRS published Revenue Procedure 2015-36, which updates existing guidance on master and prototype and volume submitter plan applications for opinion and advisory letters. Important changes in the new Revenue Procedure include: (1) extending the application deadline for pre-approved defined benefit plans from June 30 to October 30, 2015; (2) opening the pre-approved plan program to cash balance plans for submission by October 30, 2015; and (3) expanding the pre-approved plan program to employee stock ownership plans ("ESOPs") during the defined contribution application period beginning February 1, 2017. Concurrently, the IRS released sample language (Listings of Required Modifications) for pre-approved cash balance plans and ESOPs. Guidance is also provided on converting individually designed plans into pre-approved plans.
http://www.irs.gov

Guidance on Multiemployer Plan Benefit Suspensions: On June 17, 2015, the IRS issued Revenue Procedure 2015-34, which prescribes the application process for approval of a proposed benefit suspension and provides a model notice that plan sponsors may use to satisfy the content and readability requirements. Revenue Procedure 2015-34 was issued in conjunction with temporary and proposed regulations and a notice of public hearing. The Multi-employer Pension Reform Act of 2014 ("MPRA") amended the Code and ERISA to permit the sponsor of a multiemployer defined benefit plan in "critical and declining status" to suspend benefits in certain situations. The MPRA requires the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Department of Labor, to approve a plan sponsor's proposed suspension if the plan satisfies criteria for insolvency and statutory requirements. Revenue Procedure 2015-34 does not affect the standards that will be applied in reviewing an application for a suspension of benefits. Applications for a suspension of benefits will be accepted after June 19, 2015, however, it is expected that applications will not be approved prior to the issuance of final regulations. A correcting amendment to the temporary regulations regarding the requirement to provide adequate time for processing of an application was published. Technical corrections were made to the temporary and proposed regulations, which became effective on August 6, 2015. Comments were due on August 18, 2015, and a public hearing on the proposed regulations took place on September 10, 2015.
http://www.irs.gov

Interim Final Rule on Partitions of Multiemployer Plans: On June 19, 2015, the Pension Benefit Guaranty Corporation ("PBGC") issued an interim final rule regarding the application and notice requirements for partitions of eligible multiemployer plans under the MPRA. The MPRA outlines the conditions and notice requirements for the PBGC to approve a plan partition of financially troubled multiemployer plans. Under the interim final rule, eligible plans may apply to the PBGC for financial assistance (a partition) to fund a portion of their benefit liabilities in order to remain solvent. The interim final rule states the process for submitting an application for partition, the information required to be included in an application, notice requirements, including the form and manner of the notice, the notification process for PBGC decisions on applications for partition, the content of the partition order, and the scope of the PBGC's continuing jurisdiction under the partition order. The interim final rule became effective on June 19, 2015 and comments were due

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on August 18, 2015. The PBGC also published a news release and a set of FAQs further explaining the interim final rule. *http://www.pbgc.gov*

Alert Guidelines, Explanations & Plan Deficiency Paragraphs: On June 22, 2015, the IRS published Alert Guidelines updated for the Cycle E submission period (February 1, 2015 through January 31, 2016). The packages are intended to be used by IRS Employee Plans Specialists when reviewing retirement plan documents, but plan sponsors can also use them as a review tool before submitting a determination letter application to the IRS. Each subject matter is packaged as a publication and two forms. Each package contains: (1) Explanation that provides guidance in the law and legal citations; (2) Alert Guidelines (Worksheets) to review retirement plans. Generally, a "Yes" answer to a question indicates a plan is in compliance with applicable law; and (3) Plan Deficiency Paragraphs (Checksheets) containing pre-approved wording that, if used by plan sponsors, will satisfy the applicable Code requirements. *http://www.irs.gov*

Voluntary Correction Program Submission Kit for Plan Sponsors: On June 23, 2015, the IRS published a kit for plan sponsors who failed to make timely required contributions to money purchase pension plans ("MPP") or target benefit pension plans (defined contribution plans). Money purchase pension plans and target benefit plans are subject to the minimum funding standards of Code Section 412. The tax-favored status can be restored by correcting the failure under the Employee Plans Compliance Resolution System ("EPCRS"). Submissions can be made by using the Voluntary Correction Program ("VCP") to fix the operational failure. The specific details of EPCRS can be found in IRS Revenue Procedure 2013-12. The topics covered in the new kit include: (1) the items to submit; (2) completing IRS Forms 8950, 8951, 2848 or 8821, and 14568; (3) figuring the VCP fee; (4) mailing the VCP submission; (5) FAQs that include guidance on self-correction without contacting the IRS; and (6) additional resources. *http://www.irs.gov*

Future Amendment to Required Minimum Distribution Regulations: On July 9, 2015, the IRS issued Notice 2015-49, which proposes an amendment to the required minimum distribution regulations under Code Section 401(a)(9). The regulations, as amended, will provide that qualified defined benefit plans generally are not permitted to replace any joint and survivor, single life, or other annuity currently being paid with a lump sum payment or other accelerated form of distribution. Notice 2015-49 explains that the addition of a right to convert a current annuity into an immediate lump sum payment has been treated as an increase in benefits which undermines the intent of the regulations. The proposed amendment will not apply to an acceleration of ongoing annuity payments that is in association with a plan amendment specifically providing for implementation of a lump sum risk-transferring program ("Pre-Notice Acceleration") if: (1) adopted prior to July 9, 2015; (2) with respect to which a private letter ruling or determination letter issued prior to July 9, 2015; (3) with respect to which a written communication to affected plan participants stating an explicit and definite intent to implement the lump sum risk-transferring program was received by those participants prior to July 9, 2015; or (4) adopted pursuant to an agreement between the plan sponsor and an employee representative (with which the plan sponsor has entered into a collective bargaining agreement) specifically authorizing implementation of such a program that was entered into and was binding prior to July 9, 2015. In light of the pending guidance, any private letter ruling or determination letter involving a plan that provides for a lump sum risk-transferring program will generally include a caveat expressing no opinion as to the federal tax consequences of the lump sum risk-transferring program. However, the IRS may determine that the addition of a right to make a Pre-Notice Acceleration is an increase in benefits that is described in the current regulations. *http://www.irs.gov*

Annuity Selection and Monitoring under the Safe Harbor Rule: On July 13, 2015, the Department of Labor issued Field Assistance Bulletin ("FAB") 2015-02, which clarifies the scope of fiduciary obligations with respect to annuity selection under defined contribution plans ("Safe Harbor Rule") and the application of ERISA's statute of limitations to actions by participants and beneficiaries against plan fiduciaries relating to annuity selection. The Safe Harbor Rule describes actions that plan fiduciaries can take to satisfy their ERISA fiduciary responsibilities in selecting an annuity provider for benefit distributions, including appropriately concluding that, at the "time of the selection," the annuity provider is financially able to make all future payments under the annuity contract and the cost of the annuity contract is reasonable in relation to the

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benefits and services to be provided under the contract. FAB-2015-02 clarifies that the "time of the selection" means: (1) the time that the annuity provider and contract are selected for distribution of benefits to a specific participant or beneficiary; or (2) the time that the annuity provider is selected to provide annuities as a distribution option for participants or beneficiaries to choose at future dates. FAB-2015-02 addresses the fiduciary duty of prudence regarding periodic reviews of annuity providers. If a "red flag" comes to the fiduciary's attention between reviews, the fiduciary would need to examine the information to determine whether an immediate review is necessary. Regarding ERISA's statute of limitations, FAB 2015-02 states that, consistent with ERISA Sections 502(a)(9) and 413, an action cannot be brought against a fiduciary after the earlier of six years after the date of the last violation or three years after the earliest date on which the plaintiff had actual knowledge of the violation.
http://www.dol.gov

Revisions to the Determination Letter Program: On July 21, 2015, the IRS published Announcement 2015-19, which describes changes to the Employee Plans determination letter program for qualified retirement plans. Effective January 1, 2017, these changes will eliminate the staggered 5-year determination letter remedial amendment cycles for individually designed plans and will limit the scope of the determination letter program for individually designed plans to initial plan qualification and qualification upon plan termination. Announcement 2015-19 also provides a transition rule with respect to the remedial amendment period for certain plans currently on the 5-year cycle. Additionally, effective July 21, 2015, through December 31, 2016 the IRS will no longer accept off-cycle determination letter applications, except for determination letter applications for new plans and for terminating plans. Comments on specific issues relating to the implementation of the changes to the determination letter program outlined in Announcement 2015-19 are due by October 1, 2015.
http://www.irs.gov

Proposed Rule on ERISA Section 4010 Reporting Regulations: On July 27, 2015, the PBGC published a proposal to amend its regulation on annual financial and actuarial information reporting to codify guidance provided in Technical Updates 12-2 and 14-2 regarding provisions of the Moving Ahead for Progress in the 21st Century Act and the Highway Transportation and Funding Act of 2014, and related guidance that affect reporting under ERISA Section 4010. ERISA Section 4010 requires that sponsors of certain single-employer underfunded qualified defined benefit pension plans provide specified financial and actuarial information to the PBGC annually. The proposal would modify the existing reporting waiver for companies with total under-funding of less than $15 million in all their plans and where the aggregate number of participants in all defined benefit plans maintained by the controlled group is fewer than 500. This change is intended to better align the regulation with the original intent of generally limiting reporting relief to smaller plans. The proposal would also add two new reporting waivers and make other minor technical changes. Comments are due by September 25, 2015.
http://www.pbgc.gov

Updated Static Mortality Tables for Defined Benefit Pension Plans for 2016: On July 31, 2015, the IRS issued Notice 2015-53, which provides updated static mortality tables to be used for defined benefit pension plans. The updated tables apply for purposes of calculating the funding target and other items for valuation dates occurring during calendar year 2016. Notice 2015-53 also includes a modified unisex version of the mortality tables for use in determining minimum present value for distributions with annuity starting dates that occur during stability periods beginning in the 2016 calendar year.
http://www.irs.gov

IRS Employee Plans Office Email Questions: On July 31, 2015, the IRS announced that, effective October 1, 2015, its Employee Plans Office will no longer answer technical questions by email, including questions forwarded from customer account services. The Employee Plans Office is responsible for ensuring that plan sponsors, individuals, and benefits practitioners understand and comply with the tax law governing retirement plans and Individual Retirement Accounts. Customer service employees can be reached by phone, and will continue to help with account-specific questions, basic information about forms, and the status of pending applications. The IRS reiterates private letter rulings can still be requested in accordance with Revenue Procedure 2015-01.
http://www.irs.gov

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Health & Welfare Plans

Guidance on Limitations on Cost-Sharing and Provider Nondiscrimination: On May 26, 2015, the Departments of Health and Human Services ("HHS"), Labor, and the Treasury (the "Departments") issued FAQs about Affordable Care Act Implementation (Part XXVII). In previously issued guidance (HHS Notice of Benefit and Payment Parameters for 2016), HHS clarified the self-only maximum annual limitation on cost sharing applies to each individual, regardless of whether the individual is enrolled in self-only coverage or in coverage other than self-only. The Departments received questions regarding the application of the clarification to self-funded and large group health plans. The Departments have confirmed that the self-only maximum annual limitation on out-of-pocket costs applies to each individual, regardless of whether the individual is enrolled in self-only or other than self-only coverage. Moreover, it applies to all non-grandfathered group health plans, including high-deductible health plans. The clarification will be applied only for plan or policy years that begin in or after 2016. In light of the issues identified in the comments to various regulatory interpretations of the provider nondiscrimination requirements under Public Health Service Act Section 2706(a), the Departments will not take any enforcement action against a group health plan, or health insurance issuer offering group or individual coverage as long as the plan or issuer is using a good faith, reasonable interpretation of the statutory provision.
http://www.dol.gov

Final Rules on Summary of Benefits and Coverage and Uniform Glossary: On June 16, 2015, the Departments issued final regulations on the summary of benefits and coverage ("SBC") and uniform glossary for group health plans and health insurance coverage in the group and individual markets. The regulations amend the final regulations published on February 14, 2012 (2012 final regulations) based on comments received on the proposed rules issued in December 2014. The final rules are designed to improve access to important plan information so that customers can make informed choices when shopping for and renewing coverage, as well as to provide clarifications that will make it easier for health insurance issuers and group health plans to comply with the requirement to provide this information. The final rules include provisions: (1) to require online access (internet web address) to the individual underlying policy or group certificate; (2) to reduce unnecessary duplication; and (3) to require certain disclosures by qualified health plan issuers. HHS published a news release and fact sheet summarizing the final rules. The final regulations became effective on August 17, 2015.
http://www.hhs.gov

Interim Guidance for Expatriate Health Plans: On June 30, 2015, the IRS published Notice 2015-43, which provides interim guidance on the application of certain provisions of the Affordable Care Act to expatriate health insurance issuers, expatriate health plans, and employers in their capacity as plan sponsors of expatriate health plans, as defined in the Expatriate Health Coverage Clarification Act of 2014 ("EHCCA"). EHCCA was enacted on December 16, 2014, and generally applies to expatriate health plans issued or renewed on or after July 1, 2015. EHCCA provides that the Affordable Care Act does not apply to expatriate health plans, employers with respect to expatriate health plans (but solely in the employer's capacity as a plan sponsor of the expatriate health plan), and expatriate health insurance issuers with respect to coverage offered by such issuers under expatriate health plans. Interim guidance contained in Notice 2015-43 includes a special rule for the Patient-Centered Outcomes Research Institute ("PCORI") fee and for groups of similarly situated individuals. The PCORI fee is imposed only with respect to individuals residing in the United States. Enrollment in an expatriate health plan is generally limited to "qualified expatriates," which includes an individual who is a member of a "group of similarly situated individuals" under the EHCCA. Until further guidance is issued and except as otherwise provided in Notice 2015-43, employers and plan sponsors are permitted to apply the requirements of the EHCCA using a reasonable good faith interpretation of the law. Notice 2015-43 applies to policies issued or renewed on or after July 1, 2015, and plan years starting on or after July 1, 2015. Comments on the statutory definitions of the terms "expatriate health plan" and "qualified expatriate," as well as the interaction of the EHCCA with existing relief for expatriate health plans, are due by October 19, 2015.
http://www.irs.gov

Final Rules and Guidance on Preventative Services Coverage: On July 10, 2015, the Departments published final regulations and guidance in the form of a Fact Sheet and Frequently Asked Questions regarding coverage of certain preventive services

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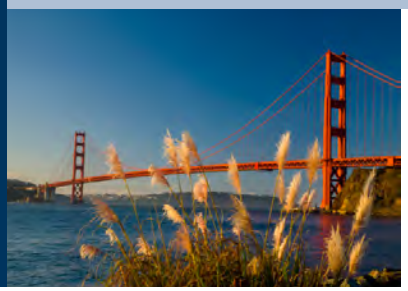

under the Affordable Care Act. The Affordable Care Act requires coverage without cost sharing of certain recommended preventive health services by non-grandfathered group health plans and health insurance coverage. This includes covering all FDA-approved contraceptive services for women with reproductive capacity. The regulations finalize provisions from three rulemaking actions: (1) Interim final regulations issued in July 2010 related to coverage of preventive services, (2) interim final regulations issued in August 2014 related to the process an eligible organization uses to provide notice of its religious objection to the coverage of contraceptive services, and (3) proposed regulations issued in August 2014 related to the definition of "eligible organization," which would expand the set of entities that may avail themselves of an accommodation with respect to the coverage of contraceptive services. The final rules address coverage of recommended preventative services, and exemption and accommodations in connection with coverage of preventative services. Specifically, the final rules outlines the process an "eligible organization," as defined in the regulation, uses to provide notice of its religious objection to the coverage of contraceptive services, and the definition of a closely held for-profit entity. The final rules are effective on September 14, 2015, and are applicable beginning on the first day of the first plan year (or, for individual health insurance coverage, the first day of the first policy year) that begins on or after September 14, 2015.
http://www.hhs.gov

Excise Tax on High Cost Employer-Sponsored Health Coverage: On July 30, 2015, the IRS issued Notice 2015-52, which supplements Notice 2015-16 (issued in February 23, 2015) and further explains the regulatory framework regarding the excise tax under Code Section 4980I. Code Section 4980I applies to taxable years beginning December 31, 2017. Under this provision, if the aggregate cost of applicable employer-sponsored coverage provided to an employee exceeds a statutory dollar limit, which is adjusted annually, the excess benefit is subject to a 40 percent excise tax. Notice 2015-52 is not intended to be guidance upon which taxpayers may rely on. Rather, Notice 2015-52 addresses additional issues under Code Section 4980I, including the identification of the taxpayers who may be liable for the excise tax, employer aggregation, costs of applicable coverage, age and gender adjustment to the dollar limit, and notice and payment of the applicable tax. Comments on Notice 2015-52 and Notice 2015-16 are due by October 1, 2015.
http://www.irs.gov

Guidance on Substitute Forms and Statements for Information Reporting: On August 11, 2015, the IRS released a draft version of Publication 5233, which establishes the 2015 requirements for preparing acceptable forms and statements to recipients if IRS official forms (i.e. 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C) are not used. Publication 5233 defines key terms and explains the rules pertaining to electronic delivery of recipient statements, including electronic recipient statements, consent by the recipient, and format, posting and notification requirements. The guidance outlines the specifications and content of substitute forms and exhibits are included. Failure to adhere to the specifications in Publication 5233 may result in delays in processing and penalties. Inquiries can be submitted to the IRS Information Returns Branch by phone or email. Letters requesting clarifications pertaining to Publication 5233 may be submitted to the IRS Substitute Forms Program. The IRS has also released draft Instructions for 2015 Forms 1094 and 1095 reporting, and provided both new and updated Q&A guidance on the reporting requirements for applicable large employers (also known as "ALEs") under Code Sections 6055 and 6056.
http://www.irs.gov

Guidance on Transparency Reporting Requirements: On August 11, 2015, the Departments published FAQs about Affordable Care Act Implementation (Part XXVIII). The Departments intend to propose transparency reporting for non-qualified health plan ("QHP") issuers and non-grandfathered group health plans in the future. The proposed reporting requirements may differ from those prescribed in the August 11, 2015 HHS proposal under Section 1311(e)(3) of the Affordable Care Act, and will take into account differences in markets, reporting requirements already in existence for non-QHPs (including group health plans), and other relevant factors. The Departments also intend to streamline reporting under multiple reporting provisions and reduce unnecessary duplication. The Departments intend to implement any transparency reporting requirements applicable to non-QHP issuers and non-grandfathered group health plans only after reasonable notice and comment, and after giving those issuers and plans sufficient time, following the publication of final rules, to come into compliance with those requirements.
http://www.dol.gov

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Extension of Time to File Certain Information Returns: On August 13, 2015, the IRS issued final and temporary regulations, as well as a notice of proposed rulemaking, that will remove the automatic extension of time to file information returns on forms in the W– 2 series (except Form W–2G). The temporary regulations will allow only a single 30-day non-automatic extension of time to file certain information returns if Form 8809 (Application for Extension of Time To File Information Returns) is filed in accordance with the regulations. The changes are being implemented to accelerate the filing of forms for use in the IRS's identity theft and refund fraud detection processes. In addition, the temporary regulations update the list of information returns subject to the rules regarding extensions of time to file and clarify that the procedures for requesting an extension of time to file in the case of forms in the 1095 series apply to information returns on Forms 1095–B and 1095–C, but not 1095–A (statement to the person with respect to whom the information is required to be reported). The final and temporary regulations become effective on July 1, 2016, and apply to information returns due after December 31, 2016. The temporary rules expire on August 10, 2018. The substance of the temporary regulations is included in the proposed regulations set forth in the notice of proposed rulemaking published on August 13, 2015. Comments are due by November 12, 2015.
http://www.irs.gov

Final Guides on Voluntary Electronic Filing of Information Reporting for 2015: In July and August 2015, the IRS issued final versions of Publications 5164 and 5165 which provide guidance and technical information for issuers (reporting entities, including employers, filing their own returns), transmitters (third parties transmitting returns on behalf of reporting entities), and software developers (entities writing origination or transmission software) for voluntary electronic filings in 2015 through the new ACA Information Returns (AIR) system. Information found in Publication 5164 (Test Package for Electronic Filers of Affordable Care Act Information Returns) includes who must test, transmitter control code registration, and criteria for passing testing. Information found in Publication 5165 (Guide for Filing Affordable Care Act Information Returns for Software Developers and Transmitters) includes communication procedures, transmission formats, business rules and validations procedures.
http://www.irs.gov

Supreme Court of the United States

Affordable Care Act Subsidies: On June 25, 2015, in *King v. Burwell,* the Supreme Court held that the Code Section 36B tax credit, added by the Affordable Care Act, is available to individuals who purchase health insurance on an Exchange whether it is created by the federal government or the state. The Supreme Court considered whether the IRS may permissibly promulgate regulations to extend tax credit subsidies to coverage purchased through Exchanges established by the federal government under the Affordable Care Act because the wording of Code Section 36B states that individuals qualify for subsidies when they buy health insurance through an Exchange "established by the State." The Supreme Court declined to analyze the issue under the two-step framework in *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U. S. 837, because it believed the tax credits are one of the Affordable Care Act's key reforms and the question had deep "economic and political significance." Rather, in reaching its decision, it considered the context of the overall statutory scheme and the purpose of the Exchanges.
http://www.supremecourt.gov

Same-Sex Marriage: On June 26, 2015, in *Obergefell v. Hodges,* the Supreme Court held that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. The two questions before the Supreme Court were: (1) Whether the U.S. Constitution, including the Equal Protection and Due Process clauses of the Fourteenth Amendment, requires all states to perform same-sex marriages; and (2) Whether the U.S. Constitution requires states to recognize same-sex marriages legally performed elsewhere. The Supreme Court answered both questions affirmatively, holding that the right to marry is a "fundamental right" and that all 50 states must license marriages between two people of the same sex and must recognize a same-sex marriage lawfully licensed and performed out-of-state. Employers and plan sponsors offering same-sex spousal benefits prior to Obergefell will not be significantly affected by the decision. However, employers and plan sponsors who did not offer same-sex benefits must now comply with the Supreme Court's decision.
http://www.supremecourt.gov

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Legislation

Trade Policy Legislation Increases Penalties for Failure to File Information Returns and Payee Statements: On June 29, 2015, the Trade Preferences Extension Act of 2015 (the "TPE Act") was signed into law. Section 806 of the TPE Act significantly increased penalties for the failure to file correct information returns and provide payee statements (Code Section 6722), and for intentional disregard of the filing requirements (Code Section 6721), as required by the Affordable Care Act. The penalty is increased from $100 to $250 for each violation of either statute. The penalty is reduced if the failure is corrected within 30 days or by August 1, and may be eliminated with a showing of reasonable cause for the failure. The maximum annual penalty is raised from $1.5 million to $3 million for both penalty sections, so the new total annual maximum for violations is $6 million. The amendments to the Code shall apply with respect to returns and statements required to be filed after December 31, 2015.
http://www.congress.gov

Highway Funding Legislation Addresses Transfer of Excess Pension Benefits to Retiree Health Accounts and Health Coverage of Veterans: On July 31, 2015, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (the "STVHCCI Act") was signed into law. Section 2007 of the STVHCCI Act amends the Code and ERISA by extending the period of time for four years for plan sponsors of defined benefit plans to transfers excess pension assets to retiree health accounts and group-term life insurance accounts. Section 4007 of the STVHCCI Act amends the Code with respect to health coverage of veterans. Specifically, the STVHCCI Act changes how the employer shared responsibility rules under the Affordable Care Act and the Heath Savings Account ("HSA") eligibility rules take into account veterans' health coverage. Individuals covered for medical care under TRICARE or the Veterans Administration are excluded from the determination of whether an employer is an applicable large employer with respect to employee enrollment in minimum essential health care coverage under an eligible employer-sponsored plan. Eligibility for HSAs is not affected by receipt of medical care for a "service-connected disability." The amendments apply to months beginning after December 31, 2015.
http://www.congress.gov

Executive Compensation

Interpretative Guidance Following Windsor: On June 19, 2015, the Securities and Exchange Commission ("SEC") published guidance to clarify how it will interpret the terms "spouse" and "marriage" in light of the Supreme Court's ruling in *United States v. Windsor* on June 26, 2013. The SEC will read the terms "spouse" and "marriage," where they appear in the federal securities statutes administered by SEC, the rules and regulations promulgated thereunder, releases, orders, and any guidance issued by the staff or the SEC, to include, respectively, (1) an individual married to a person of the same sex if the couple is lawfully married under state law, regardless of the individual's domicile, and (2) such a marriage between individuals of the same sex.
http://www.sec.gov

Proposed Rule on Property Transferred in Connection with Performance of Services: On July 17, 2015, the IRS issued a proposed regulation affecting certain taxpayers who receive property transferred in connection with the performance of services and make an election to include the value of substantially nonvested property in income in the year of transfer. The IRS has determined that many taxpayers have been unable to electronically file their annual income tax return because of the requirement that they submit a copy of their Code Section 83(b) election with their income tax return. In order to remove this obstacle to e-filing, the proposed regulation would eliminate the requirement that taxpayers submit a copy of a Code Section 83(b) election with their tax return for the year in which the property subject to the election was transferred. The proposed regulation would apply to property transferred on or after January 1, 2016. Taxpayers may rely on the proposed regulations for property transferred on or after January 1, 2015. Comments are due by October 15, 2015.
http://www.irs.gov

Final Rule on Pay Ratio Disclosure: On August 5, 2015, the SEC finalized rules requiring publicly traded companies to disclose the ratio of median compensation of all employees to the compensation of the principal executive officer. As required by Section 953(b) of the Dodd-Frank Act, the final rule would amend existing executive compensation disclosure rules to require companies to disclose: (1) the median of the annual total compensation of all its employees, except the Chief

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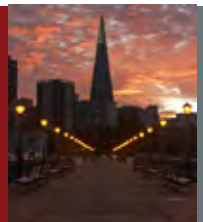

Quarterly Legislative & Regulatory Update

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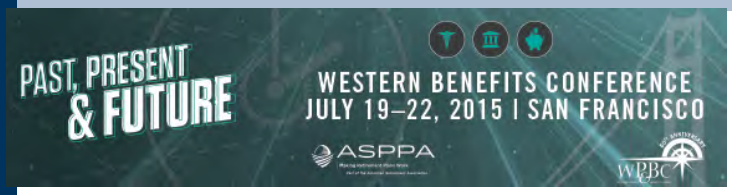
Executive Officer ("CEO"); (2) the annual total compensation of its CEO; and (3) the ratio of those two amounts. The final rule includes explanations and analysis of the following topics:

- Methodology for identifying the median employee;
- Determination of total compensation;
- Identification of employee population;
- Disclosure of methodology, assumptions, and estimates;
- Additional permitted disclosures;
- Filings where disclosure is required; and
- Companies subject to the disclosure requirement.

A company subject to the pay ratio requirement would be permitted to omit from its calculation any employees obtained in a business combination or acquisition for the fiscal year in which the transaction becomes effective. The company would be required to identify the acquired business and disclose the approximate number of employees it is omitting. Companies will be required to provide disclosure of their pay ratios for their first fiscal year beginning on or after January 1, 2017. The SEC's Division of Economic and Risk Analysis issued a memorandum to aid in the development of the final rules. The final rule is effective on October 19, 2015.
http://www.sec.gov

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

2015 Annual Meeting Recap



The annual Western Benefits Conference took place at the Hyatt Regency, Embarcadero from July 19-22. With a wide variety of speakers, including both private sector experts and government officials, the conference was a unique opportunity to learn about hot topics in retirement and health and welfare from the best in the business.

Governmental Update from the Internal Revenue Service

The conference sessions kicked off bright and early on July 20 with an exciting governmental update from the Internal Revenue Service ("IRS"). **Sunita Lough** from the Tax Exempt and Government Entities Employee Plan division broke the news that, effective with the 2017 cycle, the determination letter application program will be eliminated. Ms. Lough discussed the current IRS review process for determination letter applications, revealing that the total time an agent spends reviewing an application, including the plan document and amendments, is typically only around 3-4 hours. The IRS determined that the amount of time that an agent could spend reviewing an application was not sufficient to thoroughly examine the plan, and that the determination letter application program was therefore not time efficient. Plans will still be required to file determination letters in some circumstances, including the creation of a new plan and the termination of an old plan. The IRS is currently accepting comments on the ramifications of the program's elimination, including comments on the impact to the remedial amendment cycle and interim amendments, and changes to the Employees Plans Compliance Resolutions System ("EPCRS"). Stay tuned for further guidance from the IRS on exceptions when a determination letter application would be accepted for a plan.

Keynote Speaker - Inspire Integrity: Chasing an Authentic Life

Corey Ciocchetti, Associate Professor of Business Ethics and Legal Studies at the University of Denver, and author of *Real Rabbits: Chasing an Authentic Life,* brought to our lunch hour entertainment, humor, and most importantly, sage advice on seeking contentment, success and happiness.

Mr. Ciocchetti is a charismatic speaker with a magnetic personality. Through a series of anecdotal tales of his own experiences, Mr. Ciocchetti explained that authentic success comes from a three step process - first, develop a strong foundation and a solid character by being true to yourself; second, develop that solid character by acting professionally, regardless of your career, learning to think and thinking in order to learn, and making the most of every minute; and third, cultivate relationships, take personal responsibility, and never fear failure. He taught us that the truly important things in life (character, personal relationships, and contentment) will outweigh more materialistic indicators of success, such as excessive wealth, prestige and popularity, and that every day you should "think, laugh, and have your emotions stirred." Mr. Ciocchetti's unique formula for achieving a successful and happy lifestyle can be found in his book, *Real Rabbits: Chasing an Authentic Life.*

Litigation Update: Who's Getting Sued in the Retirement Plan Industry?

Usually on opposite sides of the courtroom, **R. Bradford Huss**, Partner, Trucker◆Huss, APC and **Teresa Renaker**, Partner, Renaker Hasselman, LLP, came together to provide us with a litigation update and insight on how recent cases in employee benefits may impact plan sponsors, fiduciaries, and plan participants.

Mr. Huss and Ms. Renaker began their presentation with a discussion of *Tibble v. Edison,* International, where the Supreme Court held that plan fiduciaries have a continuing duty to monitor investments after they make the initial investment decisions. However, because the question presented to the Supreme Court was hedged in terms of the applicable statute of limitations, the Supreme Court did not provide any guidance on exactly what that duty to review entails, instead it remanded the case back to the Court of Appeals. Thus, although we know that plan sponsors and fiduciaries have a duty to "systematically consider all the investments of the trust at regular intervals to ensure that they are appropriate," the scope, frequency and type of review that would meet that standard are still open questions. For now, plan fiduciaries should document the reasoning behind their investment decisions and periodically review these choices.

Next, the discussion turned to the potential revival of ERISA compensatory damages following the Supreme Court's decision in *Cigna Corp. v. Amara.* In several cases following the Supreme Court's decision in Amara, various circuit courts

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2015 Annual Meeting Recap

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have acknowledged the possibility of surcharge as an equitable remedy and, therefore remanding cases back to the district level for further examination. However, no court of appeal or district court has yet to award damages to a plaintiff under the remedy of surcharge. Therefore, it is still unclear what is required for a plaintiff to bring a successful claim for surcharge.

In *Fifth Third Bank v. Dudenhoeffer,* the Supreme Court overruled the *"Moench"* presumption, which presumed that fiduciaries of plans requiring or encouraging investment in employer stock (e.g. ESOPs) were prudent. Although ESOP fiduciaries do not have to diversify the plan's assets, they still have a duty of prudence with respect to the ESOP's investments. In examining the cases post-*Dudenhoeffer*, Mr. Huss and Ms. Renaker discussed the implications of *Dudenhoeffer,* including the courts' struggle to balance ERISA's duty of prudence with the insider trading regulations of securities law.

Mr. Huss and Ms. Renaker concluded their presentation with a discussion on *Heimeshoff v. Hartford Life & Accident Ins. Co.* in which the Supreme Court held that a statute of limitations written into the plan document may start to run before the cause of action actually accrues, as long as the period is "reasonable." The Court left open the question of what is considered "reasonable," however, plan sponsors and fiduciaries should review their plan documents to ensure that any statute of limitations language is clear and unambiguous.

The conference provided a great opportunity for those practicing in any and all areas of employee benefits to discuss a wide variety of topics and issues that are prevalent in employee benefits today. We look forward to seeing you next summer in Seattle in 2016!

Our thanks to Mikaela Habib of Trucker◆Huss for this recap of the 2015 Annual Meeting.

Upcoming Events and Reminders

SEP 15 **S.F. Chapter Meeting**
Current Market Trends and Economic Outlook
4:00 PM – 4:30 PM — Registration & Social
4:30 PM – 6:00 PM — Formal Program
6:00 PM – 7:00 PM — Social Hour
Hyatt Regency, Embarcadero San Francisco

OCT 7 **Silicon Valley Fall Conference**
8:00 AM – Noon
Orrick, Herrington & Sutcliffe, Menlo Park

NOV 10 **S.F. Chapter Meeting**
DB/DC Trends
4:00 PM – 4:30 PM — Registration & Social
4:30 PM – 6:00 PM — Formal Program
6:00 PM – 7:00 PM — Social Hour
Hyatt Regency, Embarcadero San Francisco

JAN 21 **S.F. Chapter Meeting**
Legislative Update
4:00 PM – 4:30 PM — Registration & Social
4:30 PM – 6:00 PM — Formal Program
6:00 PM – 7:00 PM — Social Hour
Wells Fargo
420 Montgomery Street, San Francisco

Check our website (www.wpbcsanfrancisco.org) for future dates for:
Field Trips
Brown Bag Lunches
San Francisco Spring Conference

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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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@wpbcsf.com

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