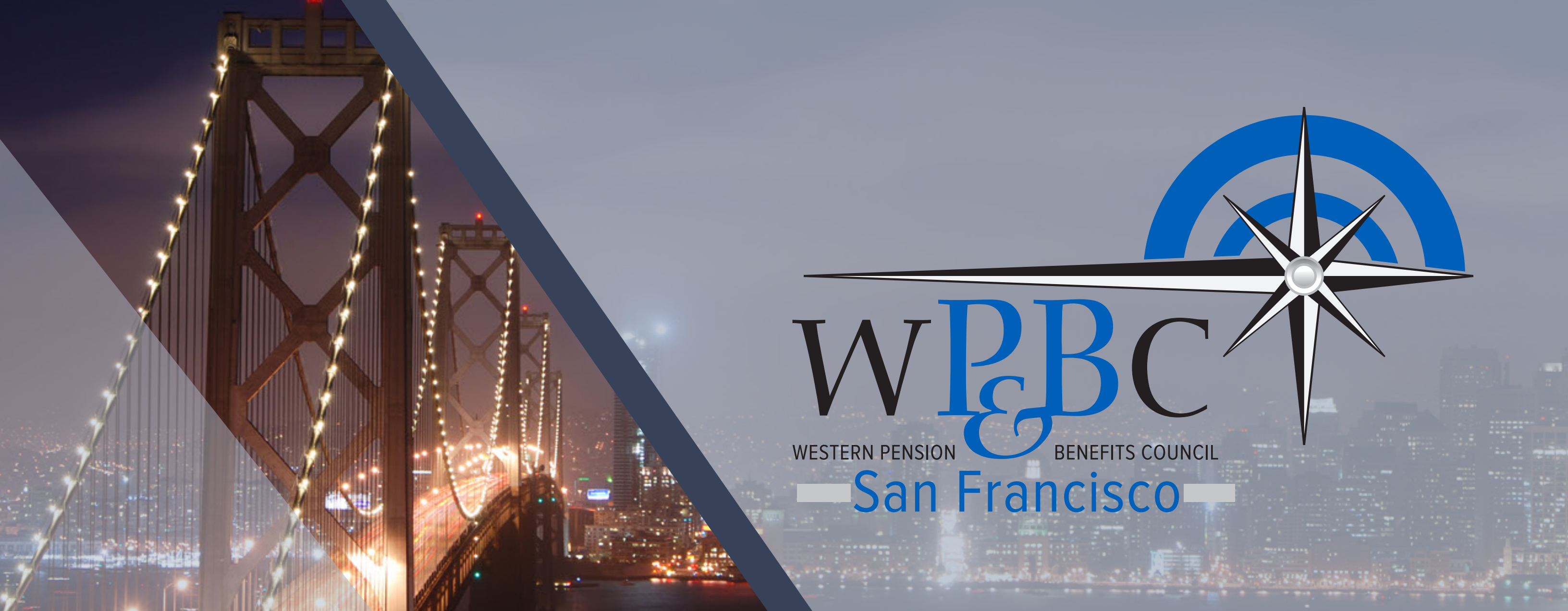

Pension & Benefits Quarterly

Winter 2018

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December Meeting *(Fiduciary Rule & Tax Reform)* and Holiday Celebration

At the December 7, 2017, Chapter Meeting and Holiday Celebration, we had two presentations providing updates on the ever-changing Department of Labor Fiduciary Rule and how the then proposed tax law would impact compensation and benefits. The event was interactive and included many questions and comments from attendees, especially discussion related to where the speakers felt the tax law would ultimately land. Brad Wall of Moss Adams served as the moderator for the discussions.

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"WP&BC is partnering with the National Institute of Pension Administrators (NIPA) for an annual 3-day benefits conference."

Kevin Nolt
Trucker Huss

President's Letter - Pg 2

PRESIDENT'S LETTER

President's Letter

Happy 2018!

As we turn the page on 2017 and look toward the future, we are excited about the events planned for the remainder of this year.

As described more in this newsletter, we held our first complimentary industry networking event on February 1st. The event was designed to increase membership in the organization while showing appreciation for our current members. The event was a success on many levels. Information was shared, connections were made, delicious wine was tasted and new members joined the organization. A special thank you to our Membership Committee consisting of **Robert Gower, Kelsey Blegen, Katie Gardner** and **Andrew Ferguson** and to our administrator McDonald Association Management for all their hard work.

Another exciting development is that WP&BC is partnering with the National Institute of Pension Administrators (NIPA) for an annual 3-day benefits conference – the Annual Forum & Expo. We are very pleased to add our own WP&BC track to NIPA's robust retirement-focused tracks. This new partnership will provide the opportunity to connect with your peers from the other WP&BC chapters and to make new connections with NIPA members. The conference will be at The Cosmopolitan in Las Vegas from May 20th to 23rd. Please keep a look out for more details.

Due to the timing of the Annual Forum & Expo this year, we have moved our Spring Conference to June and are calling it our Spring into Summer Conference. The committee is hard at work planning this half-day event which is scheduled for Tuesday, June 19. We are trying something new this year by starting at lunch, having the sessions in the afternoon and ending with a happy hour networking reception. Please mark your calendars for this event.

And these are just the new events we have planned. We are having our regular Chapter meetings in March and April. March 7th is our annual legislative and regulatory update, always a well-attended event. April 19th is an "Ask the Retirement Experts" session, where you will have the opportunity to ask questions of an attorney, auditor, investment advisor and record-keeper. We expect this to be an informative and lively discussion.

The benefits landscape is constantly changing and evolving. The San Francisco Chapter of WP&BC is here to help you navigate that landscape by providing quality programs and a sense of community where knowledge can be shared and connections made. If you want to get more involved with the organization, please reach out to any Board Member or Committee Chair. We are always looking for new members to join the leadership teams.

Thank you for your continued support. I wish you all a happy and healthy 2018.

Kevin Nolt, Director

Trucker Huss, APC

OPERA HOUSE FIELD TRIP

Opera House Field Trip Report

by Tina Chambers, *SageView Advisory, Chapter Past President*

"I have lived for art, I have lived for love."

Giacomo Puccini (composer of *La Boheme, Tosca* and *Madama Butterfly operas*)

Just like all good operas, the Chapter's tour of the War Memorial Opera House was filled with music, romance, political intrigue, etc.

Well, okay, the tour was amazing but not dramatic like most plots in opera. We learned a tremendous amount about San Francisco history again (as we have on all other recent tours). The War Memorial Opera House, which is home to both the San Francisco Opera and the San Francisco Ballet, is a gem in San Francisco's architectural crown. As one of the city's most beautiful public buildings, the War Memorial Opera House hosted two historic events: the drafting of the 1945 United Nations charter and the 1951 ceremony where the United States restored sovereignty to Japan.

We experienced firsthand what being back stage is all about. Here's a tip too: the best seats for sound are in the top balcony, middle section. We are so grateful for the time **Michael Simpson** (Chief Financial Officer of the San Francisco Opera) and **Ryan O'Steen** (Associate Technical Director) took out of their busy day to show us "the ropes." And ropes, curtains, staging, wigs, costumes, and so much more were seen. Michael and Ryan's energy and passion for the opera and art was infectious. The love of art is clearly a passion for the San Francisco Opera. And may we all live with love, joy, and happiness in our lives.

Come join us on our next adventure. Our field trips bring members together and create new and exciting memories to cherish from our beloved city.

MEMBER PROFILE

Member Profile

Winter 2018

BASICS

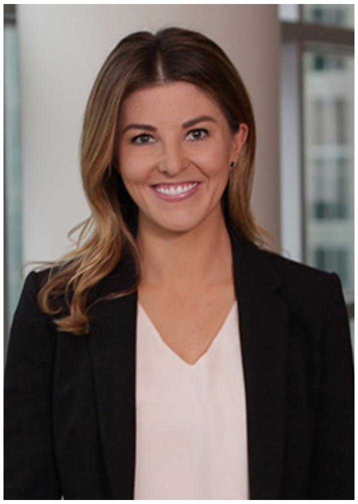
Full Name: Elizabeth M. Harris

Company: Orrick Herrington & Sutcliffe LLP

Title: Associate Attorney

Education: Boston University (B.S.), American University Washington College of Law (J.D.), Georgetown University Law Center (L.L.M., Taxation)

Years in the industry: Two



Please tell us about your first "real" job: I was a paralegal for several years after college. The experience solidified my decision to go to law school and pursue a more corporate focused area of law rather than litigation.

BUSINESS BACKGROUND

Nature of your work: I work with public and private companies on a range of employee benefit matters including tax-qualified retirement plans, health and welfare plans and non-qualified deferred compensation plans. I also assist on the administration and implementation of equity compensation arrangements, including severance arrangements, stock option plans and executive employment agreements.

How you got into the field: My interest in employee benefit law was piqued after I took a course on Executive Compensation and Employee Benefits while getting my L.L.M in tax law. I enjoyed the course and decided that I wanted to continue to learn more in that area of the law.

What you like about the field: I enjoy the client contact and the fact that employee benefit law is constantly changing. In addition, working in the area of employee benefits can be very creative; drafting plans to solve unique situations. I was interested in tax law but also wanted an area that incorporated contracts and planning.

PERSONAL

Ways you spend free time: I enjoy trying new restaurants, traveling, wine tasting (especially in the Russian River Valley), staying active (hiking, scuba diving, barre classes), and spending time with family and friends.

Guiding philosophy: People will forget what you said, people will forget what you did, but people will never forget how you made them feel.

Favorite charities: Those organizations that promote and encourage women to achieve their goals and organizations that further the education of women.

Last books read: *All the Light We Cannot See* by Anthony Doerr and *Killers of the Flower Moon: The Osage Murders* and the *Birth of the FBI* by David Grann.

Restaurant recommendations: Al's Place, Atelier Crenn, Vive le Tarte, and Zachary's Pizza.

What will you do when you retire: Travel and, when not traveling, live by the ocean!

Executive Compensation Updates

By Anjuli M. Cargain
Duane Morris LLP

2017 Tax Act

On December 22, 2017, the President signed into law the Tax Cuts and Jobs Act ("Tax Act"). The Tax Act amends several sections of the Internal Revenue Code ("Code") of 1986, and includes significant new and modified rules affecting executive compensation programs.

- **Deductibility of Executive Compensation:** Code Section 162(m) places a $1 million limit on the amount of deductible compensation that a company can pay to their CEO and other three most highly paid executives. The Tax Act eliminates the exceptions to the Section 162(m) deduction cap for performance-based and commission pay, expands the scope of covered corporations and employees (to now include CFOs, former employees, and beneficiaries), and provides that once an individual is covered by Section 162(m) for any taxable year after December 31, 2016, they remain covered in future years, including payments to beneficiaries after termination or death of the employee. A transition rule applies for binding contracts in effect prior to November 2, 2017, which was not materially modified on or after such date.
- **Deferral of Equity Compensation:** The Tax Act adds Section 83(i) to the Code, which allows eligible employees of private companies to elect to defer, for a period of up to five years, the income attributable to compensatory stock options or restricted stock units (RSUs) on or after January 1, 2018. To qualify for the deferral, the stock must be received in connection with the performance of services as an employee and during the year that the company was eligible. Deferrals are not permitted if the stock can be converted to cash. Corporations are eligible if the company has not issued stock during any preceding year, and not less than 80% of all employees are granted stock options or RSUs, with the same rights and privileges to receive qualified stock. Employees excluded from the deferral option under Section 83(i) are 1-percent owners of the corporation, CEOs or CFOs (or individuals acting in such a capacity), and any one of the four highest compensated officers during the applicable time periods. Section 83(i) includes the timing rules for making an election with respect to qualified stock, and applicable limitations.
- **Excise Tax on Tax-Exempt Organizations:** The Tax Act imposes a 21-percent excise tax on tax-exempt organizations for remuneration in excess of $1 million and large parachute payments to highly compensated employees. Tax exempt status is determined by the qualification standards in the Code, including but not limited to Section 501(a). A covered employee is defined as any one of the five highest compensated employees of the organization for the taxable year, or for any year after 2016, unless an exception applies. The new excise tax applies in the following circumstances:
  - Remuneration by a tax-exempt organization in excess of $1 million to a covered employee for the taxable year. Remuneration generally includes all amounts treated as wages and to be included in gross income under federal law, but does not include designated Roth contributions.
  - Certain large separation payments ("excess parachute payments") paid by a tax-exempt organization to a covered employee. Parachute payments are considered excessive if the payment exceeds three times the employee's average compensation over the preceding five years.

The provisions of the Tax Act described above apply to taxable years beginning after December 31, 2017. SOURCE: www.congress.gov

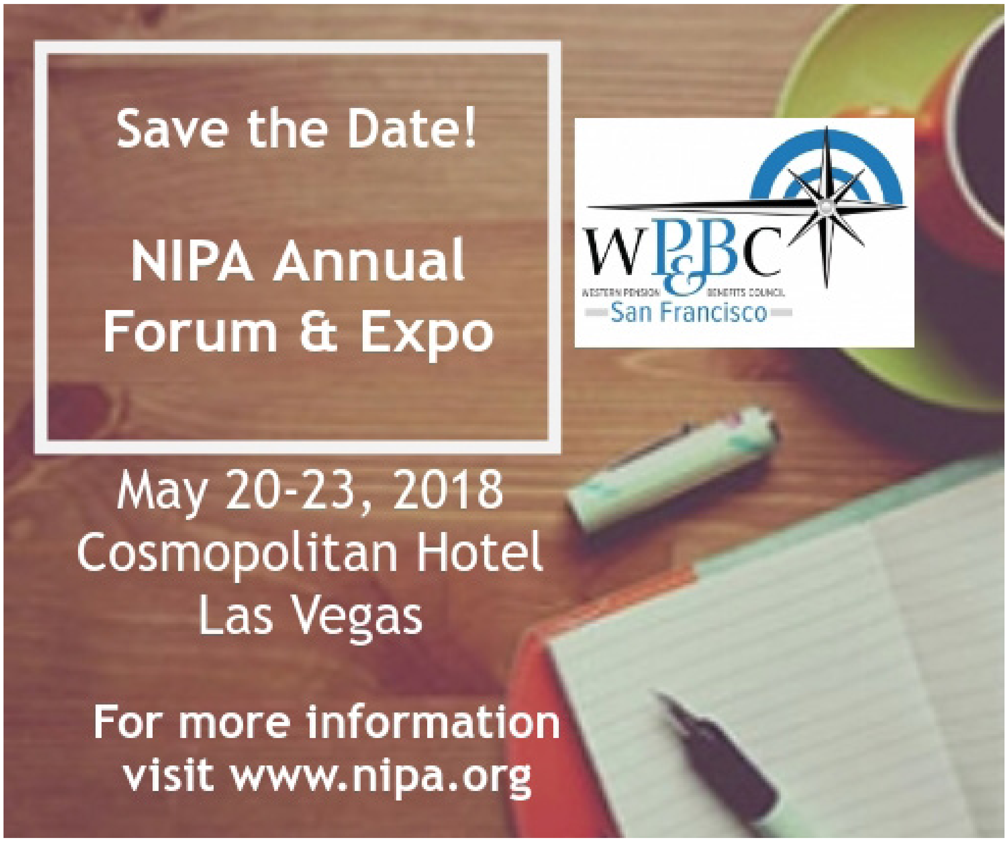
Continued pg.6

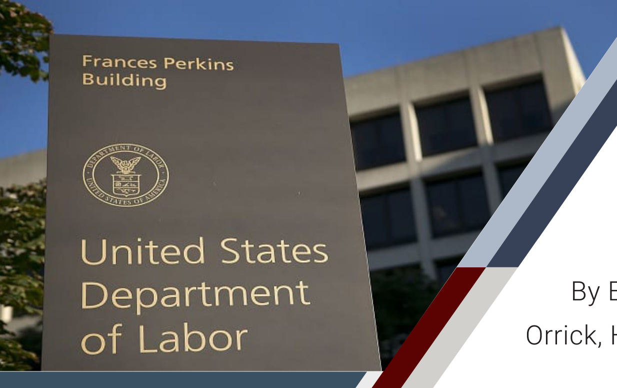
Executive Compensation Updates, continued

2018 Withholding Tables

On January 11, 2018, the Internal Revenue Service published Notice 1036, which updates the income-tax withholdings tables for 2018, and a set for Frequently Asked Questions providing guidance on the tables. Notice 1036 provides information on the employer withholding percentages for supplemental wages of $1 million dollars or less during the calendar year. Section 7 of IRS Publication 15 (Employer's Tax Guide) states that "supplemental wages" include, but are not limited to, bonuses, commissions, overtime pay, payments for accumulated sick leave, severance pay, awards, prizes, back pay, retroactive pay increases, and payments for nondeductible moving expenses.

Pursuant to Notice 1036, effective January 1, 2018, if a supplemental wage payment, together with other supplemental wage payments made to the employee during the calendar year, exceeds $1 million, the excess is subject to withholding at 37% (or the highest rate of income tax for the year). If supplemental wages paid to the employee during the calendar year are less than or equal to $1 million, and such wages are either paid separately from regular wages or identified separately from regular wages (if made in the same payment), the flat percentage withholding rate of 22 % may be used. Notice 1036 states that employers should implement the 2018 withholding tables no later than February 15, 2018. SOURCE: www.irs.gov





Health and Welfare Updates

By Elizabeth M. Harris
Orrick, Herrington & Sutcliffe LLP

DOL Proposes Changes to Allow for Expanded Availability of Association Health Plans

In a proposed rule released on January 4, 2018, the Trump Administration is allowing more employers, including those that are self-employed, to use association health plans (AHP). The proposed rule will let small employers and sole proprietors offer plans to their employees that are subject to the less-burdensome Obamacare rules governing large group health plans. Currently, AHPs are subject to Obamacare's more stringent small group market requirements; in particular the requirement that they provide "essential health benefits".

The proposed rule is the result of the President's October 12, 2017 executive order directed at the Department of Labor ("DOL") to issue regulations or revise guidance to allow more employers to join AHPs.

There are two significant changes under the proposed rule that increase the number of employers who can now join AHPs. First, the proposed rule permits organizations to band together solely for the purpose of providing health care to their employees. Second, the proposed rule allows sole proprietors to join AHPs which is not allowed under current law.

The DOL is also proposing to broaden the "common interest or nexus" requirement for the formation of AHPs. The proposed rule would allow a nexus to be established by geographical area or by industry. The geographic nexus can simply be a state or a smaller area. For example, that means that a group of businesses in a city could form an AHP or a group of industries could form an AHP even if the AHP crossed state lines. The issues raised with respect to broadening the availability of AHPs is that such a relaxation of the rules would cause irreparable harm to Obamacare's small business marketplace by segregating the healthier individuals and leaving the existing plans to cope with the older, sicker populations – eventually causing rising costs and fewer coverage options. However, there are nondiscrimination protections included in the proposed rules that should prevent the marketplace from imploding. The nondiscrimination provisions prevent the AHPs from discriminating based on health factors.

Health Taxes Delayed Again

On January 22, 2018, Democrats and Republicans postponed a government shutdown by passing legislation that provides for $31 billion in tax cuts, including a temporary delay in implementing three health care-related taxes. The bipartisan deal includes delaying the "Cadillac" tax on high-cost employer-sponsored health plans until the year 2022.

The postponement of the health care taxes are not offset by any spending cuts or tax increases and therefore will only add to a federal budget deficit that is projected to increase in the coming years as the tax cuts take effect. The health care taxes were imposed as part of the Affordable Care Act (ACA), where they were designed to offset the cost of expanding insurance coverage to low income Americans and those with pre-existing conditions. The various health care taxes have been the subject of constant debate by Congress since ACA was passed.

Continued pg.8

Health and Welfare Updates, continued

The three health care taxes, as with almost any tax, remain unpopular. The tax on medical devices, which was to begin this year was postponed until 2020. The "Cadillac" tax, which taxes employers who offer extensive and expensive health insurance plans was particularly unpopular by both parties. The purpose of the "Cadillac" tax was to incentivize employers to reduce spending on insurance. However, this tax impacted many large employers, especially those that employ unionized workers.

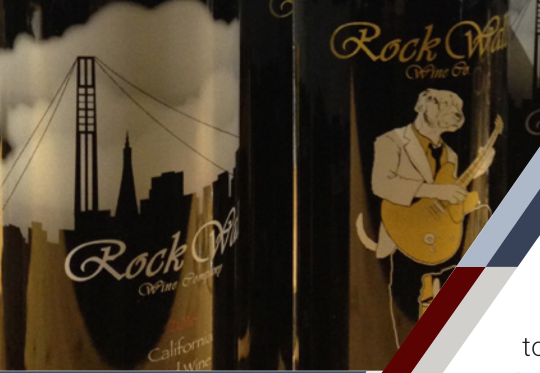
The third tax, known as the health insurance tax, is applied to all health plans and has been the bane of the insurance industry, which argues that the tax only increases the cost of health insurance for everyone. This claim has actually been supported by independent actuaries and analysts. This tax has been postponed until 2020.

Budget Brings Health Care Relief

On February 9, 2018, President Trump signed the Bipartisan Budget Act of 2018 into law. The bill creates a two-year budget that increases the caps on spending for domestic and military programs. The Act also funds the government through March 23, which provides Congress with roughly six weeks to pass an omnibus appropriation package. The bill includes a few changes in the health arenas. In fact, the Act makes no changes to the ACA tax provisions nor does it include provisions related to market stabilization. It does, however, make key changes to Medicare and provides funding for a number of popular domestic health programs.

Arguably the most significant health provision contained in the bill is the reauthorization of the Children's Health Insurance Program (CHIP) for an additional four years. This adds to the six year reauthorization for the program just two weeks ago in the bill that ended the January shutdown. This new budget agreement means CHIP now has full funding for a decade through fiscal year 2027.

The bill eliminates the Independent Payment Advisory Board, a never-used spending oversight panel created under the ACA. The bill also requires pharmaceutical companies to pay 70% of drug costs for seniors, who reach the so-called "donut hole". The bill includes a number of structural reforms to Medicare and its reimbursement methodologies for home health, outpatient therapies, and skilled nursing benefits. Finally, the bill (a) provides funding for community health centers, the National Institutes of Health, and Veteran Affairs hospitals, and (b) increases the funding for fighting the opioid crisis.



INDUSTRY NETWORKING EVENT

Industry Networking Event

On February 1, 2018, the Chapter hosted a well-attended, industry networking event at SPUR Urban Center. Members were encouraged to invite non-member guests to the event to expose them to the benefits of Chapter membership. On arrival, each attendee received sparkling wine in a complementary novelty glass from Rock Wall Wine Company. Attendees then had the opportunity to network before the presentations got underway.

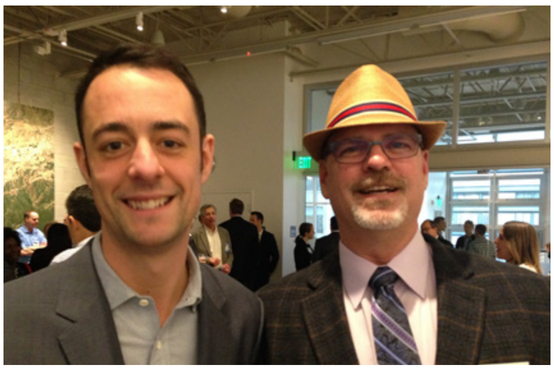
Chapter president, Kevin Nolt, first discussed the many benefits of Chapter membership, including networking with other industry professionals and the education that Chapter meetings and conferences provide on relevant topics, such as, the engaging program on health savings accounts (HSAs) held in October 2017. Kevin also announced the WP&BC's new partnership with the National Institute of Pension Administrators (NIPA) for an annual conference in Las Vegas on May 20-23, 2018.

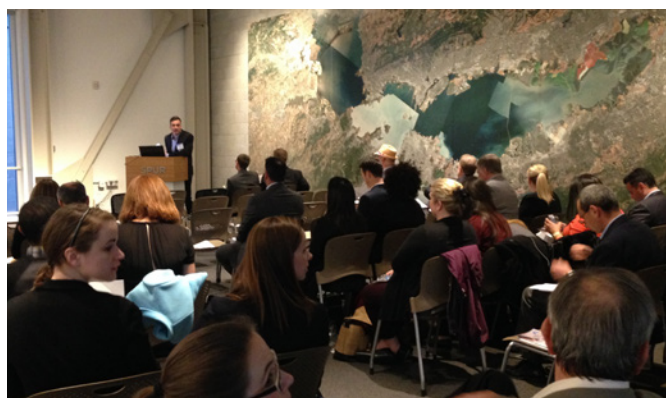
After Kevin's presentation, **Terry Dickens** and **Aaron Tompkins**, senior managers from Moss Adams, gave stimulating and informative presentations on the Tax Cuts and Jobs Act (TCJA). Terry's presentation focused on the individual provisions of the TCJA, such as, the new personal income tax brackets and the elimination or reduction of many personal deductions. Aaron focused on the new business provisions of the TCJA, including the business income tax rates and accounting methods, as well as changes to fringe benefits and entertainment expenses.

The evening continued with a hosted reception in which attendees mingled with each other and enjoyed delicious snacks and wines from Alameda-based winery Rock Wall Wine Company. One highlight of the reception was the raffle, from which many lucky winners took home bottles of wine. To earn entry into the raffle, attendees were encouraged to meet professionals outside of their areas of expertise and seek raffle tickets from Board and Membership Committee members.

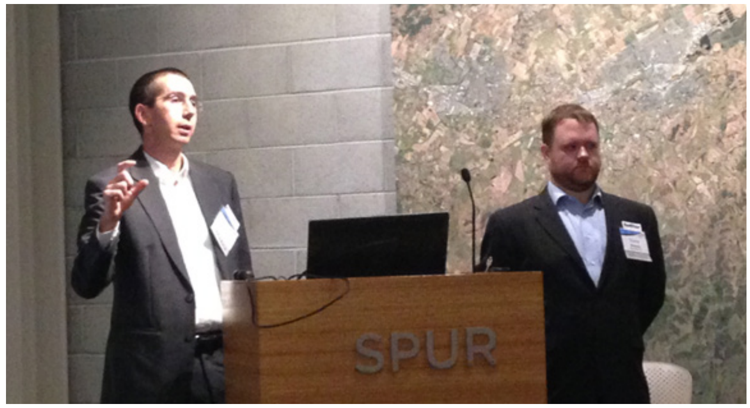
The event was a fun and informative way for the Chapter to kick off 2018 and recruit new members. A special thank you to our members and their guests, Chapter sponsors, the Chapter Board, the Membership Committee Chair, **Robert Gower**, and the other members of the Membership Committee, **Andrew Ferguson**, **Katie Gardner** and **Kelsey Blegen**, for making this event a success.

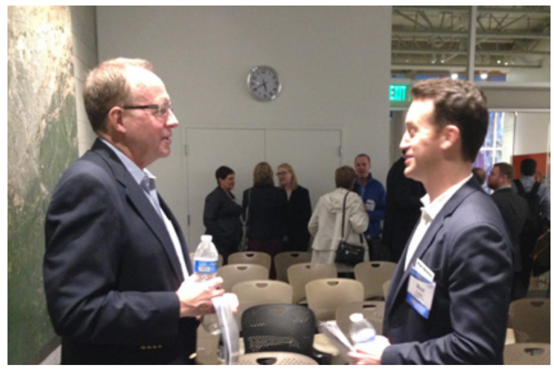
INDUSTRY NETWORKING EVENT

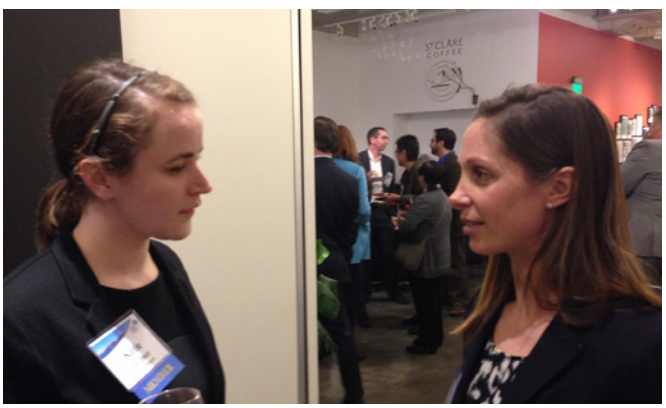




INDUSTRY NETWORKING EVENT







DECEMER MEETING

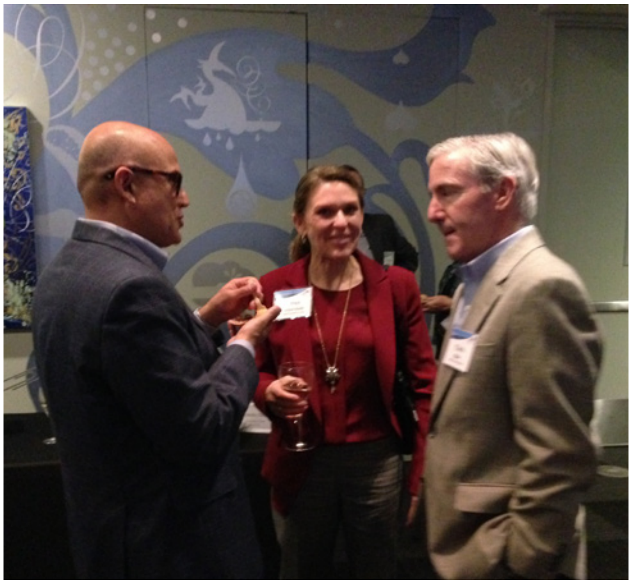
December Meeting , continued

The first session featured a discussion led by **Robert Gower** of Trucker Huss and **David Halseth** of Strategies Capital Management. Some of the highlights were:

- A refresher of the timeline of events since it was published in the federal register on April 8, 2016, to the most recent November 27, 2017, extension
- A list of provisions that have been delayed was detailed, followed by what part of the rule has not been delayed
- A reminder that good faith compliance with impartial standards has not been delayed
- Some thoughts on how the applicability of the expanded definition of a fiduciary (not delayed) may impact record-keepers and individual retirement account (IRA) advisors
- A brief discussion of plan consulting best practices, with a graphic showing how things have come full circle in the defined contribution (DC) plan environment, with the acknowledgement that plan sponsors and consultants also need to evolve

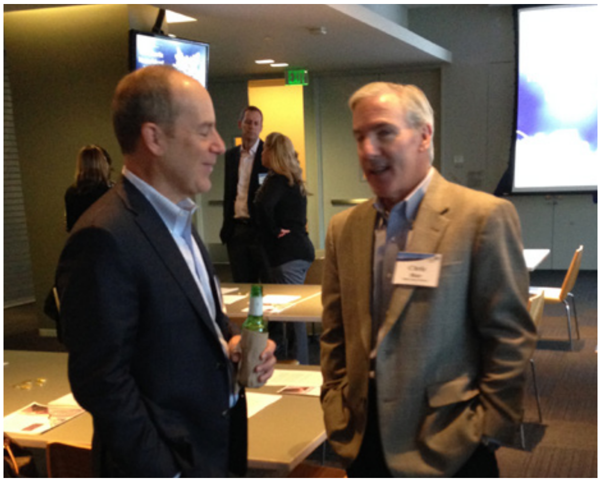
The second session featured a discussion led by **Jonathan Ocker** and **William "Bill" Berry** of Orrick. In this session, the topics of deferred compensation, deductions for excessive employee remuneration, qualified equity grants, excise tax on tax exempt organizations and other benefits provisions were addressed. For each of these items, Jonathan and Bill provided details on what was being proposed in the House bill versus the Senate bill. In some cases, a change provision only showed up in one of the bills. We appreciate the efforts made by Jonathan and Bill to be timely with the details as the bills they discussed were made available shortly before the meeting began.

The event was held in one of Orrick's large presentation rooms, with lively conversation spilling over past the program into the social hour, which included raffle prizes to celebrate the upcoming holiday season. A special thanks to Moss Adams as sponsor of the event.



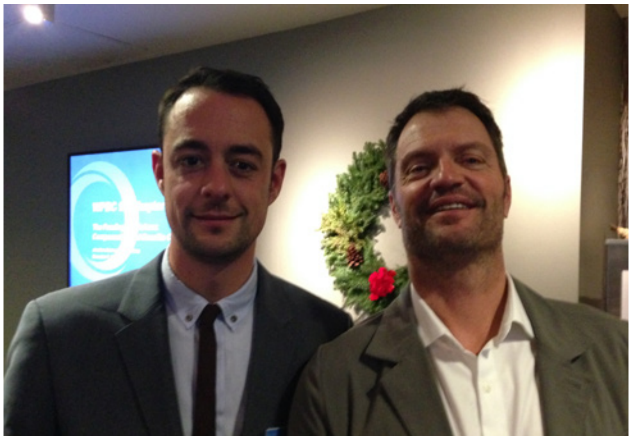
December Meeting , continued

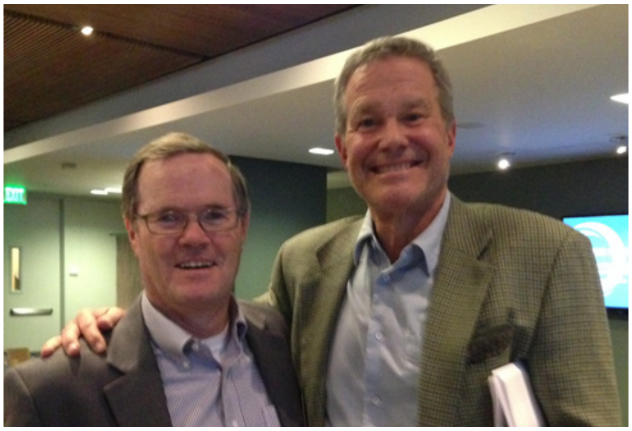
DECEMER MEETING

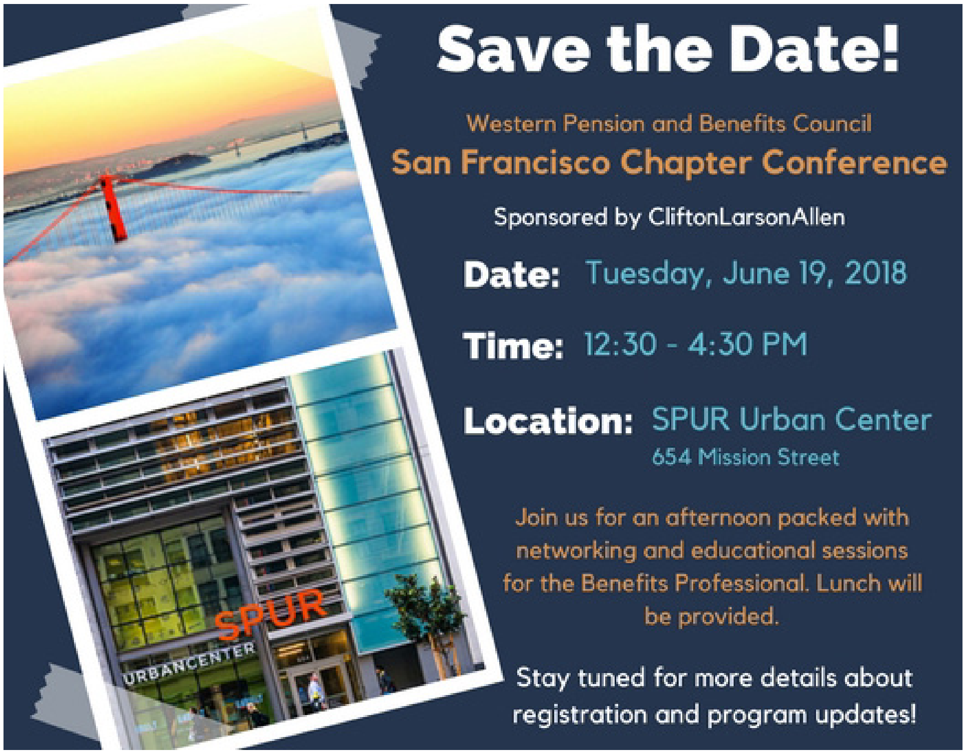


DECEMER MEETING

December Meeting , continued





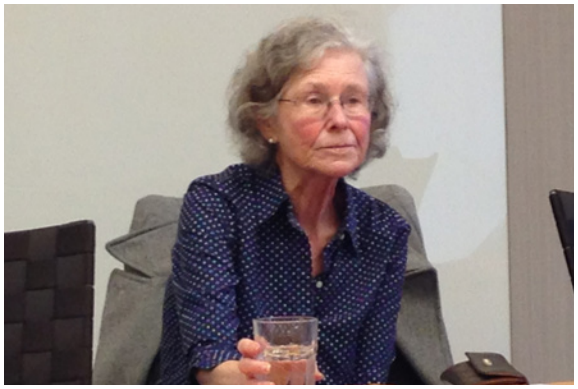


Brown Bag Lunch: *We'll Save You a Seat at the Mortality Table* – Part II

On November 14, 2017, the Chapter hosted a brown bag lunch to discuss the impact of the new Internal Revenue Service (IRS) regulations covering 2018 mortality and mortality improvement tables. In October 2017, the IRS released these regulations. The new tables impact minimum funding calculations under Internal Revenue Code section 430 and the calculations of lump sum benefits.

Julie Sachs from Altman & Cronin led the discussion, providing insight on many of the issues. The discussion was technical and lively, with a special focus on how plan sponsors are looking at their options, including taking advantage of an optional one-year delay in the application of the new regulations applicable to the minimum funding rules. The attending actuaries discussed the new rules as well as the open issues, and the non-actuaries did their best to keep up.

Trucker Huss sponsored the event, and Hanson Bridgett served as the site host. **Alison Wright**, from Hanson Bridgett and chair of the Brown Bag Lunch Committee, served as the moderator of the discussion.



Qualified Retirement Updates

By Ami Givon

GCA Law Partners LLP

Recent Legislative Changes: Two recently-enacted federal laws include changes affecting retirement plans and IRAs.

(1) **The Tax Cuts and Jobs Act** (TCJA), signed into law on December 22, 2017, included the following retirement plan and IRA provisions:

- A loan offset from a qualified plan, Internal Revenue Code (Code) 403(b) plan or governmental 457(b) plan due to a plan termination or default resulting from employment termination may now be rolled over to another eligible retirement plan or IRA by the participant's federal tax return filing deadline (including extensions) for the year of the offset. (Under prior law, the rollover deadline was 60 days from the date of the offset.) This change is effective for years beginning after 2017.
- Rollovers and conversions to a Roth IRA made after 2017 may not be recharacterized as having been made to a non-Roth IRA.
- Individuals impacted by 2016 storms may avail themselves of the following special rules:
    - o "Qualified 2016 disaster distributions" of up to $100,000 may be taken from retirement plans, without regard to the Code's otherwise-applicable restrictions on in-service distributions and mandatory 20% federal income tax withholding. A "qualified 2016 disaster distribution" is defined as a distribution from an eligible retirement plan (a 401(a), 403(b) or governmental 457(b) plan or IRA), made on or after January 1, 2016, and before January 1, 2018, to an individual whose principal place of abode at any time during calendar year 2016 was located in a 2016 disaster area declared by the President, and who has sustained an economic loss by reason of the events that gave rise to the disaster declaration.
    - o The 10% additional tax under Code section 72(t) will not be applied to up to $100,000 of a qualified 2016 disaster distribution.
    - o Income attributable to a qualified 2016 disaster distribution will be included in income ratably over three years (unless elected otherwise).
    - o The amount of a qualified 2016 disaster distribution may be recontributed to an eligible retirement plan within three years of receipt.
    - o Plan sponsors may begin operating their plans in accordance with these provisions immediately. Plans that do so must be amended to adopt these provisions before the last day of the plan year beginning in 2018 (a later date applies to governmental plans).
- Effective for years beginning after 2017, the benefit accrual limit for length of service award plans for bona fide volunteers for public safety employees under Code section 457(e) is increased from $3,000 to $6,000 (and will be indexed for future years).
- For years after 2017, cost of living adjustments to IRA contribution limits and income thresholds are to be adjusted using procedures that are used to make cost-of-living adjustments to many of the basic income tax parameters instead of the CPI-U index. (This change will not impact previously-announced 2018 limits and thresholds.)
- The TCJA temporarily modifies the deduction for casualty losses under Code section 165(h) to permit a deduction only if the loss was attributable to a disaster declared by the President. While not yet clear, this

Continued pg. 17

Qualified Retirement Updates, continued

change may result in safe-harbor hardship withdrawals from a 401(k) or 403(b) plan for repair of a principal residence being permitted only if the repair is for damages caused by such a disaster.

(2) **The Bipartisan Budget Act of 2018**, enacted on February 9, 2018, includes the following provisions:

- Treasury is directed to modify, by February 9, 2019, the 401(k) regulations to remove the required 6-month suspension of elective deferral contributions following a hardship withdrawal. The revised regulations will apply to plan years beginning after December 31, 2018.

- Code section 401(a) has been amended to (1) permit hardship withdrawals to also be taken also from qualified matching contributions, qualified nonelective contributions, contributions to profit-sharing and stock bonus plans, and earnings on those contributions, and (2) no longer require exhaustion of available loans before taking a hardship withdrawal. These changes are effective for plan years beginning after December 31, 2018.

- Individuals impacted by the California wildfires may access their retirement funds in accordance with the following special rules:
  - "Qualified wildfire distributions" of up to $100,000 may be taken from retirement plans, without regard to the Code's otherwise-applicable restrictions on in-service distributions and mandatory 20% federal income tax withholding. A "qualified wildfire distribution" is defined as a distribution from an eligible retirement plan (a 401(a), 403(b) or governmental 457(b) plan or IRA), made (a) on or on or after October 8, 2017, and before January 1, 2019, to an individual whose principal place of abode at any time between October 8, 2017 and December 31, 2017 is located in a California wildfire disaster declared by the President, and who has sustained an economic loss by reason of the events that gave rise to the disaster declaration.
  - The 10% additional tax under Code section 72(t) will not be applied to up to $100,000 of a qualified wildfire distribution.
  - Income attributable to a qualified wildfire distribution will be included in income ratably over three years (unless elected otherwise).
  - The amount of a qualified wildfire distribution may be recontributed to an eligible retirement plan within three years of receipt.
  - Participants who received a hardship distribution for a home purchase or home construction in a wildfire disaster area between March 31, 2017 and January 15, 2018, but who were unable to purchase or build because of a wildfire, may avoid taxation by repaying the amount of the distribution prior to June 30, 2018.
  - For loans to qualified individuals made between February 9, 2018 and December 31, 2018, plan sponsors may (i) increase the maximum loan amount from $50,000 to $100,000, and (ii) allow qualified individuals to take the full amount of their vested balance (up to $100,000) as a loan, rather than limiting the amount to 50%. Plan sponsors may delay the due date for certain loan repayments for one year and extend the repayment period accordingly.
  - Plan sponsors may begin operating their plans in accordance with these provisions immediately. Plans that do so must be amended to adopt these provisions before the last day of the plan year ending beginning in 2019 (a later date applies to governmental plans).

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Qualified Retirement Updates, continued

- Effective January 1, 2018, an amount (plus interest paid) that the IRS has wrongfully levied on an individual's plan account or IRA and refunded to the individual may be rolled back to the plan (if the plan accepts rollovers) or an IRA by the federal tax return filing deadline (including extensions) for the year of the refund. Amounts so rolled over will have their tax-favored status restored.

Regulatory Relief Related to Wildfires, Flooding, Mudflows and Debris Flows in California Wildfires:

Internal Revenue Service (IRS) Relief: In announcement CA-2018-01,the IRS granted relief to taxpayers in Los Angeles, San Diego, Santa Barbara and Ventura counties affected by wildfires, flooding, mudflows and debris flows that took place beginning on December 4, 2017. Among the relief granted is an automatic extension through April 30, 2018, without penalty, to file Form 5500 series returns due between December 4, 2017, and April 30, 2018.

Pension Benefit Guaranty Corporation (PBGC) Relief: Disaster Relief Number 18-01 provides relief to "Designated Persons," i.e., persons who (a) are responsible for meeting a PBGC deadline located in a disaster area for which the IRS has provided relief in CA-2018-01 in connection with filing extensions for Form 5500 series returns or (b) cannot reasonably obtain information or assistance needed to meet a deadline from a service provider, bank or other person whose operations are directly affected by the disaster. Among the relief provisions are:

- The PBGC will not assess any late payment or late information penalty, and treat as timely any premium filing required on or after the December 4, 2017, and on or before April 30, 2018, if the filing is made by April 30, 2018. Interest charges will not be waived.
- Filing and completion deadlines that fall between December 4, 2017, and on or before April 30, 2018 in connection with single-employer standard and distress plan terminations and reportable post-event notices, for requesting a review of a PBGC determination, as well as multi employer plan deadlines, are extended to April 30, 2018.

Specified other relief will be considered on a case-by-case basis.

Required Amendments List for 2017:

In Notice 2017-72, the IRS issued its Required Amendment List for 2017 (2017 RA List) identifying which amendments to an individually-designed qualified plan must be adopted by December 31, 2019, (later for a governmental plan) in order for the plan to comply with statutory and administrative changes to the tax-qualification requirements. Under the 2017 RA List:

- Cash balance/hybrid plans must be amended to the extent necessary to comply with the regulations regarding market rate of return and other requirements that first became applicable to the plan for the plan year beginning in 2017.
- An eligible cooperative plan or eligible charity plan that was not subject to the benefit restrictions of Code section 434 for the 2016 plan year that became subject to those restrictions for plan years beginning on or after January 1, 2017, must be amended accordingly. (A plan that fits within the definition of a "CSEC Plan," as defined in Code section 414(y), continues to not be subject to those rules, unless the plan sponsor has made an election to not be treated as a CSEC plan.)
- Defined benefit plans that permit benefits to be paid partly in the form of any annuity and partly as a single sum (or other accelerated form) as permitted by final Treasury regulations must be amended as needed to comply with applicable regulations.

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Qualified Retirement Updates, continued

Changes to User Fees:

On January 2, 2018, the IRS issued Revenue Procedure 2018-4, which included changes to the user fee schedules applicable to tax-qualified plans. Among the changes is a revised fee structure for Voluntary Correction Program (VCP) applications submitted on or after January 2, 2018, under the IRS's Employee Plans Compliance Resolution System. Under the new structure, fees are based on the end-of-year value of a plan's net assets as reported on its most recently-filed Form 5500 series return (instead of the number of plan participants, as under the prior structure). The new VCP application fees are: $1,500 for plans with assets of up to $500,000; $3,000 for plans with assets over $500,000 up to $10 million; and $3,500 for plans with assets in excess of $10 million. The new structure does not retain the reduced fee schedule for certain filings, such as for plan loan and required minimum distribution failures.

Revenue Procedure 2018-4 also increased the user fee for filing a determination letter application for a terminating plan (Form 5310) from $2,300 to $3,000, effective for filings made on or after January 2, 2018.

Required Minimum Distributions for Missing Participants and Beneficiaries:

In a memorandum issued on October 19, 2017, the IRS directed Employee Plans examiners to not challenge a qualified plan for a violation of the required minimum distribution rules of Code section 401(a)(9) for the failure to commence or make required minimum distributions to a participant or beneficiary if the plan has taken the following steps to locate the intended recipient:

- searched plan and related plan, sponsor, and publicly-available records or directories for alternative contact information;
- used any of these search methods:
    - a commercial locator service;
    - a credit reporting agency; or
    - a proprietary internet search tool for locating individuals; and
- attempted contact via U. S. Postal Service certified mail to the last known mailing address and through appropriate means for any address or contact information (including email addresses and telephone numbers).

If these steps have not been completed, examiners may challenge a qualified plan for a violation of Code section 401(a)(9) for the failure to make a required minimum distribution to a participant or beneficiary.

This guidance, which is not subject to use, citation or reliance, has been incorporated into the Internal Revenue Manual.

Listings of Required Modifications: In October 2017, the IRS released its listings of required modifications and information packages for use by pre-approved 401(k) plans, pre-approved employee stock ownership plans and other pre-approved defined contribution plans.

Revised Increase in Social Security Wage Base: As reported in our previous newsletter, the Social Security Administration (SSA) initially had announced that the maximum amount of wages in 2018 subject to the 6.2% Social Security tax (old age, survivor, and disability insurance) would rise from $127,200 to $128,700. On November 27, 2017, the SSA reset the 2018 maximum amount as $128,400, based on updated wage data reported to it.

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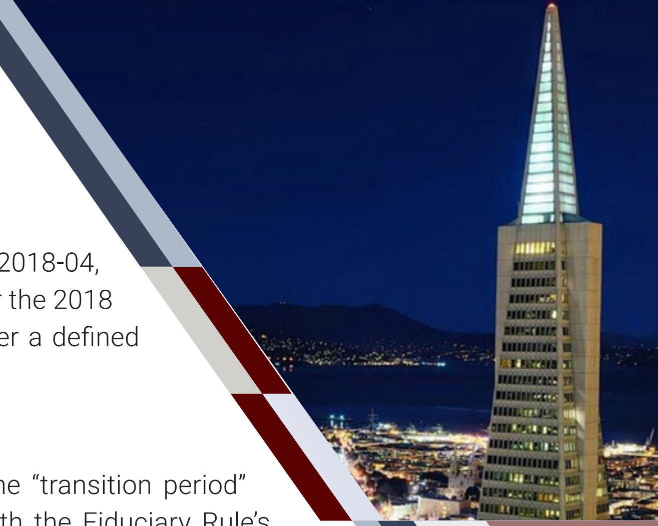

Qualified Retirement Updates, continued

Covered Compensation Tables Announced: In Revenue Ruling 2018-04, the IRS released its covered compensation tables to be used for the 2018 plan year for purposes of determining permitted disparity under a defined benefit plan.

Department of Labor (DOL) Fiduciary Rule Developments:

On November 29, 2017, the DOL extended to July 1, 2019, the "transition period" under which retirement plan advisers who seek to comply with the Fiduciary Rule's Best Interest Contract exemption or the Class Exemption for Principal Transactions need only adhere to the exemptions' "Impartial Conduct Standards" instead of satisfying the full set of exemption conditions. Those standards require advisers to act prudently and without regard to their own interests, charge no more than reasonable compensation for their services, and refrain from making material misleading statements. Prior to this extension, the transition period, which began on June 1, 2017, (the same day as the Fiduciary Rule became applicable), was scheduled to end on January 1, 2018.

Although the Fiduciary Rule, which defines who is an "advice fiduciary" to retirement plan investors, remains in effect during the extended transition period, it will be re-examined in the interim, as instructed by the presidential memorandum issued in February 2017.

The DOL also has extended to July 1, 2019, its temporary enforcement policy issued earlier this year. Under that policy, neither the DOL nor the IRS will pursue claims against fiduciaries who are working diligently and in good faith to comply with the Fiduciary Rule and its exemptions.

PBGC Expansion of Missing Participants Program: On December 22, 2017, the PBGC issued final regulations expanding its missing participants program to terminating defined contribution plans and other plans for which the program had not been available. The expanded program is voluntary for such plans, and is open to those that terminate on or after January 1, 2018. Under the expansion, defined contribution plans will have the option of transferring a missing participant's benefits to the PBGC instead of establishing an IRA at a financial institution.

Amendment of PBGC Method for Valuing Benefits of Terminating Single Employer Plans: The PBGC has amended its regulations under the Employee Retirement Income Security Act (ERISA) section 4044 by substituting a new table (Table I-18) for determining expected retirement ages for participants in pension plans undergoing distress or involuntary termination dates with valuation dates falling in 2018.

Increased Statutory Penalties for ERISA Violations: The DOL and PBGC each have issued final rules providing for inflation-adjusted increases for statutory penalties for ERISA violations, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. Among the DOL increased maximums is $2,140 per day, up from $2,097 per day, for the failure or refusal to file an annual report. The PBGC increased maximum penalty amounts include $2,140 for ERISA section 4071 penalties and $285 for ERISA section 4302 penalties.

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Winter 2018

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SAN FRANCISCO CHAPTER
1900 Point West Way, Suite 222
Sacramento, CA 95815-4706
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Email: info@wpbcsf.org
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