



# PENSION & BENEFITS QUARTERLY

## Feature Article

# Wells Fargo Retirement Study: A Few Years Makes a Big Difference

While only a few years separate working Americans ages 55-59 from those in their 60s, there are sharp differences in the savings they have amassed and steps they have taken to prepare for retirement. That's one finding of Wells Fargo & Company's annual Retirement Study released October 22, 2015, during National Save for Retirement Week. The median savings of working Americans age 60 or older is \$50,000 against a retirement savings goal of \$300,000. Working Americans age 55-59 have saved three times as much as those age 60 or older, having amassed \$150,000 toward a retirement savings goal of \$500,000. The study also found that working Americans age 60 or older started saving for retirement at an average age of 37, whereas those ages 55-59 started saving at an average age of 31. On behalf of Wells Fargo, Harris Poll conducted a total of 1,251 telephone interviews between July 13 and August 10, 2015, with 851 workers age 40 or older who are currently employed and 400 retirees.

"This study shows what a tremendous difference a few years can make when it comes to retirement savings," said Joe Ready, head of Wells Fargo Institutional Retirement and Trust. "Those who are not yet retired and working past age 60 started saving at age 37, six years later in life than those in their late 50s. The fact that people in their late 50s have three times the savings of those age 60 or older shows that starting early and saving consistently are key to retirement saving."

### **Planning to Save Later, Earn More and Work Longer?**

Many working Americans put off saving because they assume they'll have more time and money to save later in life. A third of working Americans age 55-59 say they "plan to save for retirement later in order to make up for not saving enough now,"

**50-somethings started saving earlier and have three times as much saved as those age 60-plus. Over half of working Americans age 60-plus plan to work until "at least 70."**

as compared to 21% of those who are 60 or older with those same plans. In addition, 63% of those ages 55-59 and half (49%) of those 60+ say they "hope to earn more money in the future to save enough for retirement."

Over half (54%) of the working 60-plus group say they will work until "at least 70" in order to have enough savings for retirement as compared to 40% of those ages 55-59. However, working longer may not be the solution, as nearly half of the retired respondents (49%) say they retired earlier than planned. Many did so as a result of conditions beyond their control: 37% because of health, and 21% because of an employer decision.

Only 7% retired earlier than planned because they had adequate savings.

"Half the retirees in this study retired earlier than expected for reasons beyond their control. People who think working longer – perhaps into their 70s or later – is a retirement plan should realize they may not be able to work longer. Unforeseen circumstances crop up, and this is really important for people to recognize," said Ready.

The cost of healthcare in retirement is another area that people may not predict correctly. Half (51%) of the retired respondents in this study say they are spending "more than they expected" on healthcare in retirement.

### **The Upside of Consistent Saving**

Slightly less than half of the of retirees (47%) and those 40 or older and still working (45%) say they had/have saved for retirement consistently since the first day they started working, making these individuals "consistent savers."

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Interestingly, income level is not necessarily a factor to being a consistent saver, as 31% of those currently working with less than \$50,000 in household income say they have consistently saved since they began working. The median retirement savings accrued by working Americans 40 years or older who have consistently saved is \$160,000, compared to \$60,000 saved by those who did not consistently save.

Consistent saving breeds a more optimistic outlook about the future: 71% of working Americans 40 or older who are consistent savers believe they will have enough saved to live comfortably through their retirement years as compared to 48% who are not consistent savers.

Consistent savers are also less likely to forecast a drop in their standard of living in retirement:

- 61% of working Americans 40 or older who are not consistent savers think their standard of living will drop in retirement as compared to 37% of consistent savers.
- About half (49%) of retired Americans who were not consistent savers did say their standard of living went down as compared to 28% of retired consistent savers.

“Consistently saving from the start of one’s working life is the key to creating retirement savings. The more we can get this message across to younger generations, the better off they will be,” Ready said. “If people are in their 50s, they can start to save more aggressively. They should contribute the maximum amount allowed to the 401(k) plan, which is \$18,000 in pre-tax dollars this year, as well as make catch-up contributions to help make up some ground. People can also leverage a health savings account, which is a good tool for amassing savings to be used for health care costs in retirement.”

## The 401(k) Difference

Access to a 401(k) or equivalent plan makes a big difference in retirement savings. Seven in ten (69%) workers 40 or older have access to a 401(k) plan or equivalent.

- Three-quarters (73%) of those with access say they wouldn’t have saved as much for retirement if they did not have it.
- Consistent savers with access to a 401(k) plan have saved four times as much for retirement (\$200,000 median) as compared to consistent savers without access (\$50,000 median).

- A majority of workers with access (84%) feel more secure about their retirement because they are contributing to it.
- Six in ten (61%) workers with access say they will be able to save enough through their 401(k) to live comfortably in retirement.

Participating in a 401(k) plan is becoming the equivalent to a formal retirement plan:

- Four in ten workers (38%) say participating in a 401(k) plan is their current retirement plan
- 30% say that their plan for retirement is a comprehensive savings and investment plan constructed with a financial professional.
- 17% say their retirement plan is Social Security.

“The power of the 401(k) comes across in this data, and it’s clear that people get the most benefit when they utilize it right at the start of their working life,” said Ready. “Access to payroll deductions for automatic saving, institutionally-priced investments, and education helps participants achieve positive results for their retirement.”

Satisfaction with 401(k) plans is high as 72% of workers 40 or older, regardless if they currently have access to a 401(k), are satisfied with the 401(k) as a retirement savings vehicle. However, there is interest among workers in getting more help with their 401(k) plans, with half (53%) of workers with access saying they would like more help from their 401(k) plan to make sure they’re making the best choices for their retirement. When asked what they would do with it if they were to leave their job in the next 12 months, 68% of workers enrolled and contributing to a 401(k) would roll it over and 30% would leave it alone. Just 1% of workers say they would cash it out.

## Addressing Retirement Anxiety

High levels of anxiety about retirement permeate the landscape with eight in ten (81%) workers 40 and older and seven in ten (70%) retirees saying that retirement in America is in a “crisis state.” Even workers who are consistent savers share this feeling, with three in four (76%) agreeing with this sentiment.

Thirty-four percent of workers ages 60-plus believe they would need to win the lottery to survive financially in retirement, compared to 21% of the 55-59 set. One-third

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of workers age 60-plus believe they will never retire and will work until they die or are too sick to work, versus 19% of workers ages 55-59.

## Tips for Retirement Saving

- Get started saving today. If you have the option to join your employer's 401(k) plan, consider enrolling today and defer savings at a pre-tax rate up to \$18,000 per year; participants age 50 and older can make up to \$6,000 in additional catch-up contributions each year. Pay yourself first and defer as much of your salary as you can on a pre-tax basis. If you do not have access to a workplace retirement plan, consider setting up an automatic savings program and make systematic contributions of up to \$5,500 if you are under age 50, or \$6,500 if you are age 50 or older, through regular contributions to a Roth IRA (with after-tax dollars) or a traditional IRA (with pre-tax dollars) if you meet eligibility requirements.
- Get the company match if it's offered. If you are contributing to a 401(k) plan, find out if there's a company match. If there is, consider taking full advantage of it. Remember that the money your employer contributes on your behalf can be added to the amount you're contributing, and combining the two contributions helps give your overall savings goal a boost.
- Increase your rate of savings. Research shows that the #1 factor in saving for retirement is your contribution rate, along with regular contribution rate increases. Find out if your employer's plan offers the option to increase your contribution amount automatically and on a regular basis. That's one less thing to remember, and it can be an easy way to help you gradually save more in preparation for retirement. You can always change the increase rate or limit for your automatic retirement plan contributions.
- Leave your savings alone. It may be tempting to spend your savings if you change jobs or have an unexpected expense pop up, but it is important to consider keeping these assets growing in a tax-favored retirement account. Withdrawing money from your employer-sponsored plan can erode your retirement savings to the point where you may jeopardize your financial security in retirement. Keep your money working for you!

## About Wells Fargo

Wells Fargo & Company (NYSE: WFC) is a nationwide, diversified, community-based financial services company with \$1.8 trillion in assets. Founded in 1852 and headquartered in San Francisco, Wells Fargo provides banking, insurance, investments, mortgage, and consumer and commercial finance through 8,700 locations, 12,800 ATMs, the internet (wellsfargo.com) and mobile banking, and has offices in 36 countries to support customers who conduct business in the global economy. With approximately 265,000 team members, Wells Fargo serves one in three households in the United States. Wells Fargo & Company was ranked No. 30 on Fortune's 2015 rankings of America's largest corporations. Wells Fargo's vision is to satisfy our customers' financial needs and help them succeed financially. Wells Fargo perspectives are also available at Wells Fargo Blogs and Wells Fargo Stories.

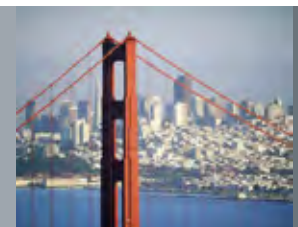
## About the Study

On behalf of Wells Fargo, Harris Poll conducted 1,251 telephone interviews of 851 working Americans 40 or older and 400 retired Americans, surveying attitudes and behaviors around planning, saving and investing for retirement. The survey was conducted from July 13 – August 10, 2015. Working Americans are age 40 or older, working full-time or at least 20 hours if they are working part-time or self-employed. Retired Americans self-identified as retired regardless of age. The median annual household income reported by working Americans varies by age: 40 – 49 years olds (\$87,000); 50 – 54 year olds (\$91,000) 55 – 59 year olds (\$100,000); 60+ year olds (\$70,000).

Data were weighted as needed to represent the population of those meeting the qualification criteria. Figures for education, age, gender, race, ethnicity, region, household income, investable assets, and number of adults in the household were weighted where necessary to bring them in line with their actual proportions in the population.

## Link to the original source article:

[https://www.wellsfargo.com/about/press/2015/few-years-difference\\_1022.content](https://www.wellsfargo.com/about/press/2015/few-years-difference_1022.content)



# PRESIDENT'S LETTER



Happy Holiday! I think many of us might be in a daze. How is 2015 coming to a close? Another year has come, and almost gone. Since Thanksgiving has just past and we are now into the December holiday blitz of celebrations of all beliefs, I personally have so much to be thankful for. I trust you do, too!

It has been a quiet year. Said differently, not much got done. Our industry may not have changed too much – some excitement came when the President gave us a shout out at an AARP meeting, myRA was born (but should it have been?), momentum with state run plans got started, and we even got SCOTUS taking a peek at what we do and how we do it. To no one's surprise, the fiduciary rule is still in a washing loop (or tail spin?)— and healthcare is constantly on the chopping block. So, we do have a potentially more exciting 2016 shaping up?

We do have some progress to celebrate. Even though health care is still a hot topic, bringing coverage to millions of uninsured is a great benefit - but perhaps we have to retool some more? Marriage equality and equal benefits show us slow progress is better than no progress. Retirement confidence is still lower than we would like, but we should be appreciative of the steadfast and unwavering commitment of so many professionals that continue to educate plan sponsors and participants on the need to save and invest prudently for retirement. We have been working diligently for decades on this particular initiative and there is still much work to be done. There is no shortage of innovative ideas so it will be exciting to see how this develops even more.

As we head into 2016, let's all keep doing what we do best. Be patient, diligent, and innovative in our efforts to bring solutions designed to improve the lives of all Americans in the workplace. Noble cause, right? Easy? Maybe. Maybe not. I am privileged to know so many who take this challenge head on every day in their businesses and through their thought leadership with the Chapter and entire industry. And for that, I am also thankful. Our efforts are making a difference, now and for the future.

May next year be filled with new opportunities, lessons to be learned, issues to be resolved, and relationships to be formed. Our Chapter has always prided itself on relationship-building and I look forward to seeing you all at the meetings and events

to continue this valued aspect of membership. As Connie notes in her letter (page 5), many of us have indeed developed “warm and valued friendships.”

Wishing you and yours all the best for a wonderful holiday season and Happy New Year.

Cheers,

**Tina Chambers**

*tchambers@sageviewadvisory.com*

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# PAST PRESIDENT'S COLUMN: CONNIE HIATT



I began my legal career in 1988 after spending a little over six years as a CPA, then law school. I was hired to join the Employee Benefits group at what was then Pillsbury, Madison and Sutro (now Pillsbury Winthrop Shaw Pittman) after the firm discovered my law school classes included a graduate

tax class in qualified retirement plans. Although I had some tax expertise regarding retirement plans, I had little understanding of how all the pieces of plan administration, compliance and governance fit together. As a junior associate, I was encouraged by the head of the practice group, Barbara Creed, and others to join the Western Pension and Benefits Conference. At the time, attending the meetings involved an afternoon educational session followed by drinks and hors d'oeuvres.

The educational sessions were fairly in-depth and at first, much went over my head. (What was a 204(h) notice?) One of the hot topics at the time was Internal Revenue Code section 89, which was enacted as part of the Tax Reform Act of 1986 and required nondiscrimination testing for health care and other fringe benefits. This complicated law was helpfully repealed in 1989. WP&BC offered a place for new members to broaden their knowledge about such topics.

By better understanding the roles of the plan sponsor and key providers, I learned more about how the legal requirements applied to the various functions served by those parties. Attending WP&BC programs offered a way to enhance what I was learning while practicing law by hearing about the broader picture of employee benefit plans.

Over time, I became more involved in WP&BC and served on various committees and programs. I had the honor of serving as President from 2005 until 2007. During that time, we introduced "brown bag" lunches, which were less formal gatherings to bring your lunch and discuss specific topics that may not have appealed to a larger group. I point this out as a reminder that WP&BC is constantly evolving, as the

industry matures and our membership is renewed by the recent entrants to the industry. New legislation, new mediums for communications, and new technologies all introduce opportunity for change and WP&BC continues to offer members a platform to share these developments.

I've benefited from WP&BC during my career both as a practicing attorney and as a consultant. Many of my fellow members were always willing to take my call to discuss a thorny issue. I have developed warm and valued friendships with many of my fellow WP&BC members, which only underscores how fortunate I was to have joined the employee benefits world.

Currently I am a partner at Altman & Cronin Benefit Consultants, LLC, which is a firm specializing in retirement plan consulting and actuarial services. I have enjoyed learning new ways to utilize my expertise to assist clients in solving problems and offering attractive retirement plans to their employees. I also enjoy my continued membership in WP&BC!

**Connie Hiatt**

*chiatt@altmancronin.com*



# MEMBER PROFILE

## Sandy Purdy



**Name:** Sandy Purdy  
**Company:** Lindquist LLP  
**Title:** Senior Manager  
**Education:** B.S. in Accounting, Metropolitan State College of Denver  
**Years in the industry:** 16

**Please tell us about your first “real” job:** My first real job was in high school at the local movie theatre, which had the added bonus of being caught up with all the current movies.

### BUSINESS BACKGROUND

**Nature of your work:** I am a CPA responsible for managing my teams for 401(k), pension, and health and welfare plan audits, which often include the preparation of the related tax filings, for both single employer and multi-employer plans. I also serve not-for-profit clients.

**How you got into the field:** I was recruited during my last semester of college by Ernst & Young to begin my accounting career with them. It was during my first summer that I worked on a couple of employee benefit plans and found I enjoyed this type of audit work and asked to do more. As my career progressed, I spent more and more time working on employee benefit plans and was soon the office-designated practice leader.

**What you like about the field:** I enjoy knowing that I am helping to ensure employee benefit plans operate as they should on behalf of the participants. I also feel good being able to provide suggestions on how to improve the operations of the plans I audit. I work with many knowledgeable professionals, both within and outside of Lindquist, and enjoy the interactions of discussing the issues that matter to us in the benefit plan arena.

### PERSONAL

**Ways you spend free time:** I enjoy getting together with family and friends, and usually there is some good food involved.

**Guiding philosophy:** Think the best of others and be an encourager.

**Favorite charities:** Boy Scouts of America—I was very involved while my boys were growing up. I currently volunteer my time on the media team with my church organization and also serve in outreach opportunities with holiday gifts, clothing and food drives.

**Last books read:** I keep up with books written by Karen Kingsbury, my favorite fictional author, as I find them to be very inspiring and encouraging.

**Restaurant recommendations:** I have been exploring restaurants in the area and recently enjoyed some well-prepared meals at Amber Bistro and the Basil Leaf Café in downtown Danville.

**What will you do when you retire:** I plan to move to Southern California to be near my brother and his family. They live ten minutes from Disneyland and are frequent visitors, so I’m looking forward to tagging along with them.





## Qualified Pension Plans

*Guidance on Cooperative and Small Employer Charity Pension Flexibility Act ("CSEC Act"):* On August 28, 2015, the Internal Revenue Service ("IRS") issued Notice 2015-58, which addresses certain issues relating to the application of the CSEC Act (enacted in April 2014) and specifies minimum funding requirements and related rules that apply to certain defined benefit pension plans maintained by groups of cooperatives and related entities, and groups of charities. Notice 2015-58 contains seven questions and answers on the following topics: (1) rules for CSEC plans; (2) election to cease to be an eligible charity plan beginning in 2014; (3) extended amortization election; and (4) reporting requirements.  
<http://www.irs.gov>

*Procedures for Benefit Suspensions for Eligible Multiemployer Plans:* On August 31, 2015, the IRS issued temporary regulations on the administration of a multiemployer plan participant vote on an approved suspension of benefits. The Multiemployer Pension Reform Act of 2014 permits sponsors of plans that are projected to become insolvent (referred to as plans in "critical and declining status") to reduce pension benefits payable to plan participants and beneficiaries if certain conditions are satisfied. A suspension of benefits is not permitted to take effect prior to a vote of the plan participants with respect to the suspension. A participant vote requires that: (1) a package of ballot materials is distributed to eligible voters; (2) the eligible voters cast their votes and the votes are collected and tabulated; and (3) the Treasury Department (in consultation with Pension Benefit Guaranty Corporation and Department of Labor) determines whether a majority of the eligible voters has rejected the proposed suspension. The temporary regulations provide further guidance and procedures relating to the administration of the vote. The temporary regulations became effective on September 2, 2015, apply on and after June 17, 2015, and expire on June 15, 2018.  
<http://www.irs.gov>

*Determination of Minimum Required Pension Contributions:* On September 9, 2015, the IRS published final regulations on the determination of minimum required contributions for single-employer defined benefit pension plans, and the excise tax for failure to satisfy the minimum funding requirements. The regulations finalize the rules proposed in REG-108508-08 (published April 15, 2008) and cover the following: (1) determination of the minimum required contribution and

interest rates used to determine present value; (2) payment of minimum required contributions; and (3) imposition of tax for a failure to meet minimum funding requirements. The regulations also make changes relating to elections with respect to a plan's prefunding balance and funding standard carryover balance and benefit restrictions. The regulations became effective on September 9, 2015, and apply to plan years beginning on or after January 1, 2016. Guidance on certain generally applicable regulatory deadlines is expected.  
<http://www.irs.gov>

*Reportable Events Final Rule:* On September 10, 2015, the Pension Benefit Guaranty Corporation ("PBGC") published a final rule amending its regulation on reportable events and certain other notification requirements. Section 4043 of ERISA requires that plan administrators and sponsors notify the PBGC of the occurrence of certain events that may signal problems with a pension plan or business. Reportable events include such plan events as missed contributions, insufficient funds, and large pay-outs and such sponsor events as loan defaults and controlled group changes. The PBGC issued regulations, technical updates, and other guidance about these events. On April 3, 2013, the PBGC published a proposed rule to amend Part 4043 to accommodate statutory changes made by the Pension Protection Act of 2006, establish risk-based safe harbors that would exempt most companies and plans from reporting, and make other changes. Reportable event filings enable the PBGC to take steps to encourage plan continuation or, if plan termination is called for, to maximize recovery of the shortfall from all possible sources. The final rules provide increased flexibility to determine whether a waiver from reporting will apply. Specifically, reporting will be limited plans and sponsors that pose the greatest risk of defaulting on their financial obligations. The PBGC also published a press release and FAQs.  
<http://www.pbgc.gov>

*Mandatory Electronic Filing for Multiemployer Plan Notices to the PBGC:* On September 17, 2015, the PBGC published a final rule that amends its multiemployer regulations to require electronic filing of certain multiemployer notices. Electronic filing with the PBGC is required for the following multi-employer plan filings: (1) notices of termination under part 4041A; (2) notices of insolvency and of insolvency benefit level under parts 4245 and 4281 (following mass withdrawal); and (3) applications for financial assistance under part 4281

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(following mass withdrawal). The final rule affects only notices to the PBGC and does not involve the Multiemployer Pension Reform Act of 2014. The PBGC will grant case-by-case exemptions if good cause is demonstrated. The final rule became effective October 19, 2015, and will be applicable for filings made on or after January 1, 2016.

<http://www.pbgc.gov>

*Revised IRS Forms 8950 and 8951:* On September 21, 2015, the IRS issued revised versions of (1) Form 8950, Application for Voluntary Correction Program (“VCP”) under the Employee Plans Compliance Resolution System and Instructions; and (2) Form 8951, Compliance Fee for Application for VCP and Instructions. A VCP submission includes Form 8950, Form 8951, a compliance fee, and all of the other required items stated in Revenue Procedure 2013-12, section 11, as modified by Revenue Procedure 2015-27. Form 8950 now requires the plan sponsor’s North American Industry Classification System (“NAICS”) business code used in filing the employer’s tax return to be listed. The IRS will accept prior versions of Form 8950 and 8951 through January 1, 2016, as long as the NAICS business code for the plan sponsor is listed in the cover letter. IRS Employee Plans Voluntary Compliance may also request additional information or clarification for applications filed on prior versions.

<http://www.irs.gov>

*Hardship Waiver Guidelines:* On September 28, 2015, the IRS published Revenue Procedure 2015-47, which outlines procedures for plan administrators and plan sponsors to request a waiver of the electronic filing requirement due to economic hardship relating to Form 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits, or Form 5500-EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan. The IRS may waive the electronic filing requirement in cases of undue economic hardship. The principal factor in determining economic hardship will be the amount, if any, by which the cost of filing the registration statement or return electronically exceeds the cost of filing the registration statement or return on paper or other media. A separate written request must be submitted for each plan for which a waiver is requested. Revenue Procedure 2015-47 provides guidance on the following aspects of the hardship waiver procedures: (1) elements of written requests for waiver providing the filer’s particular facts and circumstances; (2) time

for submitting requests and place of filing; and (3) contents of the IRS response to waiver requests. Revenue Procedure 2015-47 became effective on September 28, 2015.

<http://www.irs.gov>

*Pension Plan Limitations for 2016:* On October 21, 2015, in IR-2015-118, the IRS announced the pension plan limitations for 2016. In general, the pension plan limitations will not change for 2016 because the increase in the cost-of-living index did not meet the statutory thresholds that trigger their adjustment. However, other limitations will change because the increase in the index did meet the statutory thresholds. IR-2015-118 explains the limitations that changed from 2015 to 2016, and those limitations that remain unchanged.

<http://www.irs.gov>

*Fiduciary Standard for Selection of Economically Targeted Investments (“ETIs”):* On October 26, 2015, the Department of Labor (“DOL”) issued an Interpretive Bulletin (“IB”) on the application of ERISA’s fiduciary rules to pension plan investments selected because of the collateral economic or social benefits they may further in addition to the investment return to the employee benefit plan investor. ERISA sections 403 and 404 require plan fiduciaries to act prudently and to diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. These sections of ERISA require that a fiduciary act solely in the interest of the plan’s participants and beneficiaries and for the exclusive purpose of providing benefits to their participants and beneficiaries. The DOL has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. The DOL issued a regulation (29 C.F.R. 2550.404a-1) interpreting the prudence requirements of ERISA as they apply to the investment duties of fiduciaries of employee benefit plans. The IB states that other facts and circumstances relevant to an investment or investment course of action would include consideration of the expected return on alternative investments with similar risks available to the plan, and the fiduciary standards applicable to ETIs are no different than the standards applicable to plan investments generally. Therefore, if the requirements are met, the selection of an ETI, or engaging in an investment course of action

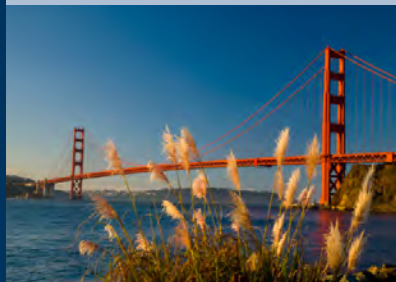
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intended to result in the selection of ETIs, will not violate ERISA sections 403 and 404.

<http://www.dol.gov>

*Maximum Monthly Guarantee Tables:* On October 28, 2015, the PBGC published maximum monthly guarantee tables for single-employer plans. The PBGC announced that the annual maximum guaranteed benefit for a 65-year-old retiree in a single-employer plan is remaining at \$60,136 for 2016. A table showing amounts for other ages is available on the PBGC's website. The PBGC maximum guarantee for participants in single-employer plans is determined using a formula prescribed by federal law that calls for annual increases. The limits represent the cap on what the PBGC guarantees, not on what the PBGC pays. In some cases, the PBGC pays benefits above the guaranteed amount.

<http://www.pbgc.gov>

*2016 Premium Rates:* On November 6, 2015, the PBGC updated its Premium Rates webpage to reflect changes to premium rates in accordance with the Bipartisan Budget Act of 2015 ("2015 Budget Act"). The per-participant flat premium rate for plan years beginning in 2016 is \$64 for single-employer plans (up from a 2015 rate of \$57) and \$27 for multiemployer plans (up from a 2015 rate of \$26). For plan years beginning in 2016, the variable-rate premium ("VRP") for single-employer plans is \$30 per \$1,000 of unfunded vested benefits, up from a 2015 rate of \$24. For 2016, the VRP is capped at \$500 times the number of participants (up from a 2015 cap of \$418). Plans sponsored by small employers (generally fewer than 25 employees) may be subject to a lower cap. Multiemployer plans do not pay a VRP. The PBGC published a chart summarizing current and historical information (from 2007 through 2016) and scheduled increases for 2017 through 2019 pursuant to the 2015 Budget Act. For certain distress or involuntary terminations, a special termination premium must be paid to the PBGC for three years.

<http://www.pbgc.gov>

## Health and Welfare Plans

*Authorized Representative Verification Requirement Removed for Retiree Drug Subsidy ("RDS") Payment:* On August 15, 2015, the Centers for Medicare & Medicaid Services ("CMS") announced that new or existing Authorized Representatives that are assigned to an application are no longer required to be verified in order for a plan sponsor to receive payment.

Previously, in order to receive a RDS payment, plan sponsors were required to submit an Authorized Representative Verification Form to CMS to verify that the Authorized Representative listed on the application has the legal authority to bind the plan sponsor to the terms of the Plan Sponsor Agreement.

<http://www.cms.gov>

*Minimum Value of Eligible Employer-Sponsored Health Plans:* On September 1 2015, the IRS published a supplemental notice of proposed rulemaking on determining whether health coverage under an eligible employer-sponsored plan provides minimum value. Notice 2014-69 set forth proposed regulations providing that plans that fail to provide substantial coverage for inpatient hospitalization or physician services do not provide minimum value. The proposed rule incorporates regulations issued by the Department of Health and Human Services in 2013 and provides that an eligible employer-sponsored plan provides minimum value only if the plan's share of the total allowed costs of benefits provided to an employee is at least 60 percent and the plan provides substantial coverage of inpatient hospital and physician services. The new rule is proposed to apply for plan years beginning after November 3, 2014. Under a transition rule, the new definition of minimum value will not apply before the end of a plan year beginning no later than March 1, 2015, provided that the employer entered into a binding written commitment to adopt, or had begun enrolling employees in, a plan with noncompliant plan terms before November 4, 2014. Transition relief does not apply to an employer that would have been subject to the employer shared responsibility (Code section 4980H) penalty, regardless of the change in definition of minimum value. Comments were due on November 2, 2015.

<http://www.irs.gov>

*Proposed Rule on Nondiscrimination under the Affordable Care Act:* On September 8, 2015, the Department of Health and Human Services ("HHS") issued a notice of proposed rulemaking on Section 1557 of the Affordable Care Act ("ACA") ("Section 1557"). Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. The proposed rule harmonizes existing federal civil rights laws and clarifies the standards HHS would apply in implementing Section 1557. The proposed rule addresses some of the populations that

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have historically been subject to discrimination, and includes prohibitions on gender identity discrimination as a form of sex discrimination, enhances language assistance for people with limited English proficiency, and requires effective communication and accessibility to facilities and technology for individuals with disabilities. The proposed rule applies to health programs or activities that receive HHS funding, health programs or activities administered by HHS, and health programs or activities administered by an entity created by Title I of the ACA, including the Marketplaces. HHS issued FAQs and a Fact Sheet explaining the proposed rules. Comments were due on November 9, 2015.

<http://www.hhs.gov>

*Information Reporting under the Affordable Care Act:* On September 16, 2015, the IRS published final versions of Forms 1094-B and 1095-B, Forms 1094-C and 1095-C, and corresponding instructions for information reporting in 2016 (for coverage in 2015). All Applicable Large Employers (generally employers with 50 or more full-time employees -including full-time equivalent employees- in the previous year) are required to file Forms 1094-C and 1095-C for 2015. Filers are entitled to an automatic 30-day extension of time to file by completing Form 8809 (Application for Extension of Time To File Information Returns), which was revised in September 2015. Under certain hardship conditions an additional 30-day extension may be granted. Publication 5223 was revised in October 2015. The publication explains the requirements for using official forms, preparing acceptable substitutes of the official forms, and acceptable substitute forms to furnish information to recipients.

<http://www.irs.gov>

*Federally-Facilitated Marketplace's ("FFM") 2016 Employer Notice Program:* On September 18, 2015, CMS published a set of frequently asked questions. The ACA and implementing regulations require each Health Insurance Marketplace to notify any employer whose employee was determined eligible for advance premium tax credits ("APTC") and cost sharing reductions because the employee attested that he or she was neither enrolled in employer sponsored coverage nor eligible for employer coverage that is affordable and meets the minimum value standard. Starting in 2016, the FFM will notify, via mail, certain employers whose employees enrolled in Marketplace coverage with APTC. The FFM will send notices to employers if the employee received APTC for at

least one month in 2016 and if the FFM has a complete address for the employer. An employer has 90 days from the date of the notice to request an appeal. The IRS will independently determine any liability for the employer shared responsibility payment without regard to whether the Marketplace issued a notice or the employer engaged in any appeals process.

<http://www.cms.gov>

*Reinsurance Program Updates:* On October 1, 2015, HHS announced that the 2015 ACA Transitional Reinsurance Program Annual Enrollment and Contributions Submission Form ("2015 Form") became available on [www.pay.gov](http://www.pay.gov). The deadline to submit the 2015 Form and schedule reinsurance contribution payment(s) was November 16, 2015. New web-based training on completing the 2015 Form and the supporting documentation is available. The ACA established a transitional reinsurance program to stabilize premiums in the individual insurance market. The program collects contributions from contributing entities to fund reinsurance payments to issuers of non-grandfathered, ACA-compliant reinsurance-eligible individual market plans, the administrative costs of operating the program, and the General Fund of the U.S. Treasury for the 2014, 2015 and 2016 benefit years. The announcement defines who is a contributing entity and also provides payment options, key deadlines, and additional resources.

<http://www.hhs.gov>

*Adjusted Patient-Centered Outcomes Research Institute ("PCORI") Fee:* On October 9, 2015, the IRS issued Notice 2015-60 which establishes that the applicable dollar amount for policy and plan years ending after September 30, 2015, and before October 1, 2016, is increased to \$2.17. Notice 2015-60 reflects an increase from the prior amount of \$2.08 (applicable for policy and plan years ending after September 30, 2014, and before October 1, 2015). The IRS and the Department of the Treasury issued final regulations the PCORI fee in 2012. The fee helps fund the PCORI, which will help patients, clinicians, purchasers and policy-makers make informed health decisions by advancing clinical effectiveness research. Additional information is available on the IRS PCORI page which includes questions and answers and a chart summary. IRS Form 720, Quarterly Federal Excise Tax Return, was revised to provide for the reporting and payment of the

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PCORI fee. Although Form 720 is a quarterly return, for PCORI, Form 720 is filed annually only, by July 31. If corrections are necessary after filing the annual Form 720 for PCORI, IRS advises that “Amended PCORI” should be written at the top of the second filing. Notice 2015-60 became effective on October 1, 2015.

<http://www.irs.gov>

*Coverage of Preventive Care Services, Wellness Programs, and Mental Health Parity Implementation:* On October 23, 2015, the Departments of Labor, Health and Human Services, and the Treasury (the “Departments”) published FAQs about ACA Implementation (Part XXIX) and Mental Health Parity Implementation. Section 2713 of the Public Health Service Act requires non-grandfathered group health plans and health insurance coverage offered in the individual or group market to cover certain preventative services without cost-sharing. The FAQs clarify rules on the following preventative services:

- Prenatal and postnatal lactation counseling and equipment rental;
- Weight management services for adult obesity;
- Specialty consultations prior to screening for colonoscopies and services performed in connection with a preventative colonoscopy; and
- Breast Cancer Susceptibility Gene (“BRCA”) screening, genetic counseling, and testing.

The FAQs also explain: (1) methods for relieving qualifying non-profit or closely held for-profit employers who sponsor an ERISA-covered self-insured plan from contracting, arranging or paying for contraceptive coverage and designating an ERISA plan administrator responsible for separately providing coverage for any contraceptive services to which the entity objects based on a sincerely held religious belief; and (2) group health plans that give rewards in the form of non-financial (or in-kind) incentives (e.g. gift cards, thermoses, and sports gear) to participants that adhere to wellness programs are subject to the Departments’ regulations (issued June 3, 2013). Lastly, the FAQs provide clarifications under the Mental Health Parity and Addiction Equity Act of 2008 and disclosure requirements.

<http://www.dol.gov>

*Genetic Information Nondiscrimination Act of 2008 (“GINA”) and Wellness Programs:* On October 30, 2015, the Equal Employment Opportunity Commission (“EEOC”) issued a proposed rule to amend the regulations implementing GINA relating to wellness programs. One of the narrow exceptions to GINA’s prohibition on requesting, requiring, or purchasing genetic information applies when an employee voluntarily accepts health or genetic services offered by an employer, including such services offered as part of a wellness program. EEOC’s GINA regulations state that “genetic information” includes, among other things, information about the “manifestation of a disease or disorder in family members of an individual.” The term “family members” includes spouses. The proposed rule clarifies that an employer may offer, as part of its health plan, a limited incentive (in the form of a reward or penalty) to an employee whose spouse (1) is covered under the employee’s health plan; (2) receives health or genetic services offered by the employer, including as part of a wellness program; and (3) provides information about his or her current or past health status. The total incentive may not exceed 30 percent of the total cost of the plan in which the employee and any dependents are enrolled, and may be financial or in-kind (e.g., time-off awards, prizes, and other items of value). The proposed rule prohibits employers from requiring employees (or employees’ spouses or dependents covered by the employee’s health plan) to agree to the sale, or waive the confidentiality, of their genetic information as a condition for receiving an incentive or participating in a wellness program. EEOC issued a press release, small business fact sheet, and thirteen Q&A’s. Comments are due by December 29, 2015.

<http://www.eeoc.gov>

## Windsor/Obergefell Guidance

*Proposed Regulation on Definition of Terms Relating to Marital Status for Federal Tax Purposes:* On October 23, 2015, the IRS published a notice of proposed rulemaking reflecting the holdings of *Obergefell v. Hodges*, *Windsor v. United States*, and Revenue Ruling 2013-17, and that define terms in the Internal Revenue Code (“Code”) describing the marital status of taxpayers. In *Windsor*, the Supreme Court held that Section 3 of the Defense of Marriage Act, prohibiting the federal government from recognizing same-sex marriages, was unconstitutional.

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In *Obergefell*, the Supreme Court held that state laws prohibiting same-sex marriage, or that prohibited the recognition of same-sex marriages validly performed in other states, were also unconstitutional. Revenue Ruling 2013-17 (published August 29, 2013) held that same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes. The proposed regulations provide that, for federal tax purposes, the terms “husband,” “wife,” and “spouse” will be interpreted to include both same-sex and opposite-sex spouses, and will mean individuals lawfully married to each other. Further, a marriage will be considered valid if it would be recognized by any state, possession, or territory of the United States. The proposed rule clarifies that registered domestic partnerships, civil unions, or other similar relationships are not denominated as marriage for federal tax purposes. Comments are due by December 7, 2015.

<http://www.irs.gov>

## Legislation

*Protecting Affordable Coverage for Employees (“PACE”) Act:* On October 7, 2015, the PACE Act was signed into law. The PACE Act amends title I of the ACA and title XXVII of the Public Health Service Act to revise the definition of “small employer.” The PACE Act generally defines a small employer as an employer who employed an average of 1-50 employees on business days during the preceding calendar year, but provides States the option of extending the definition of small employer to include employers with up to 100 employees. The law became effective upon enactment. On October 19, 2015, the Centers for Medicare and Medicaid Services published five FAQs addressing the impact of the PACE Act on State small group expansion.

<http://www.congress.gov>

*Bipartisan Budget Act of 2015:* On November 2, 2015, the 2015 Budget Act was signed into law. The Budget Act includes changes to rules on the single-employer plan annual PBGC fixed and variable premium rates, premium payment acceleration, mortality tables, extension of current funding stabilization percentages to 2018 and 2019, and a repeal of the ACA’s automatic enrollment provision. Specifically,

Section 611 of the 2015 Budget Act repeals Section 18A of the Fair Labor Standards Act, as added by section 1511 of the ACA, which requires employers with more than 200 employees to automatically enroll new full-time equivalents into a qualifying health plan if offered by that employer, and to automatically continue enrollment of current employees.

<http://www.congress.gov>

*myRa Launched:* On November 4, 2015, the Department of Treasury announced that myRA is now available. A myRA is a government-administered Roth Individual Retirement Account (“IRA”) authorized to hold a Treasury security which earns interest at the same variable rate as investments in the government securities fund for federal employees. Throughout 2014, the Treasury Department developed the framework for the myRA, including creating a Treasury savings bond to serve as the underlying investment for these accounts, as well as designating a financial agent to help Treasury administer the accounts and set up ways for individuals to fund their accounts through their employers. In 2015, the Treasury Department worked with employers during the initial pilot phase of myRA. myRA account holders have the option to transfer to a private-sector Roth Individual Retirement Account (“IRA”) with investment options at any time, or transfer to a private-sector Roth IRA once they reach the maximum myRA balance of \$15,000. myRA follows the same eligibility requirements, maximum annual contributions, and tax treatment of distributions as Roth IRAs. Individuals can contribute to their myRA up to \$5,500 per year (or \$6,500 per year for individuals who will be 50 years of age or older at the end of the year). Individuals can also withdraw money in their myRA accounts tax-free and without penalty. Roth IRA requirements apply to the tax free withdrawal of any earnings. Further guidance is published on [www.myRA.gov](http://www.myRA.gov).

<http://www.treasury.gov>

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



# FALL 2015 SILICON VALLEY CONFERENCE RECAP



The Silicon Valley Fall Conference took place on October 7 at Orrick Herrington and Sutcliffe's Menlo Park offices.

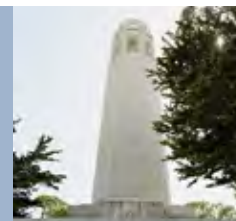
In the "Retirement Plans Legal Update" session, **Ed Bernard** of Hanson Bridgett LLP covered recent administrative developments and court cases. Ed explained key modifications to the Employee Plans Compliance Resolution Program, including the liberalization of methods to correct overpayment and elective deferral failures. Among the court cases discussed were the Ninth Circuit's decision in *Prichard v. Metro Life Insurance*, holding that a summary plan description is not the plan document, and the Supreme Court's decision in *Tibble v. Edison*, addressing a plan fiduciary's ongoing duty to monitor a plan's investment options. The potential impact on benefit plans of the Supreme Court's decision in *Obergefell v. Hodges*, (holding that state laws banning same-sex marriage and refusing to recognize valid out-of-state same-sex marriages are unconstitutional) was explained. The session also discussed the changes the IRS has announced on its determination letter program.

**Nicole Calabro** and **Tery Williams** of Baker & McKenzie LLP covered key issues and considerations in formulating "Global Equity Compliance Strategies for Multinational Companies." They identified as growing areas of risk: foreign assets requirements, data privacy, electronic delivery and acceptance and restrictive covenants and clawbacks. Nicole and Tery explained how many multinational companies successfully navigate these risks and offer equity compensation globally by taking into account the company's risk profile, understanding key countries and regions, conducting a detailed cost analysis, weighing compliance costs against risks, and taking into account the company's philosophy on equity awards. Nicole and Tery emphasized the importance of early due diligence and the clarification of roles in the process, and identification of legal and tax requirements and other key issues for consideration. The session identified the steps and elements of a comprehensive, integrated and phased implementation strategy, and concluded by identifying best practices for global equity awards.

"Cybersecurity: A Constant Challenge" was covered by **Andrew Schofield** of Charles Schwab. Andrew pointed out that the number of user devices has more than doubled since 2003 (and is projected to additionally quadruple by 2020), and described cybercrime's methods, increase and profitability. The session explained the growing regulation and oversight of cyberactivity and the roles of FINRA, the Federal Trade Commission, the Securities and Exchange Commission, and the Department of Labor in cybersecurity. Andrew pointed out the importance of, and steps in, planning a defense from cybercrime, and explained the OCIE Cybersecurity Initiative and NIST Framework for Improving Critical Cybersecurity as resources. The session closed with practical recommendations for staying safe from cybercrime, such as using strong passwords, not re-using passwords, avoiding phishing scams, authenticating callers, taking care in sharing information, and sharing safety information with others.

In the conference's final session, **Carol Malenka** of Mercer discussed "Group Health Plans -- Top Five Issues 2016." In discussing health care reform reporting, Carol enumerated potential problem areas (identifying members of control groups, contingent workforce issues, reporting vendors, affordability and reporting clarifications) and explained individual statement and IRS reporting deadlines, extensions and penalties and affordability and opt-out credits. The session then covered out-of-pocket limits, including implications for HSA-compatible high-definition health plans. Carol continued with an explanation of reinsurance fee specifics: who pays, due dates, amounts, payment manner and filing, followed by a discussion of the importance of updating plan documents and summary plan descriptions for mental health parity coverage. In her final comments, Carol identified the elements and features of the safe-harbor for excepted benefit status for supplemental health insurance, and penalties for violations of the safe harbor.

***Our thanks to Amiram Givon of GCA Law Partners, LLP for this recap of the Fall 2015 Silicon Valley Conference.***



# UPCOMING EVENTS AND REMINDERS

## SAVE THE DATE!

July 19-22, 2016  
Seattle, Washington



*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](mailto:MHabib@truckerhuss.com)*



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

**MAR 22 S.F. Chapter Meeting**  
**(Topic to be announced)**  
4:00 PM – 4:30 PM — Registration & Networking  
4:30 PM – 6:00 PM — Formal Program  
6:00 PM – 7:00 PM — Social Hour  
Charles Schwab, 211 Main St., San Francisco

**APR 26 S.F. Chapter Meeting**  
**(Topic to be announced)**  
4:00 PM – 4:30 PM — Registration & Networking  
4:30 PM – 6:00 PM — Formal Program  
6:00 PM – 7:00 PM — Social Hour  
Hyatt Regency, 5 Embarcadero Ctr., San Francisco

**MAY 19 San Francisco Spring Conference**  
**(Topic to be announced)**  
8:00 AM – Noon  
Le Meridien, 333 Battery St., San Francisco

*Check our website ([www.wpbcsanfrancisco.org](http://www.wpbcsanfrancisco.org)) for future dates for:*

*Field Trips  
Brown Bag Lunches*



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## EMPLOYMENT OPPORTUNITIES

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

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

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