WESTERN PENSION & BENEFITS COUNCIL
San Francisco

# Pension & Benefits Quarterly

Spring 2017

## Legislative & Regulatory Update

### Qualified Retirement Plans

***Proposed Regulations Regarding QMACs and QNECs (Permitting Use of Forfeitures to Fund Safe Harbor Contributions):*** On January 18, 2017, the Internal Revenue Service ("IRS") issued proposed rules that have the effect of permitting the

*Continued pg. 6*

## Inside this edition



## January Chapter Meeting

At the January 19, 2017, Chapter Meeting, a distinguished panel provided a legislative update regarding legal issues affecting employee benefit plans. The event was interactive and included many questions and comments from attendees.

**Ben Spater**, a Director at Trucker Huss, spoke about several recent legal developments that affect administration of

*Continued pg.3*

## March Chapter Meeting

### The Hottest Topic at the Right Time!
### ACA Update: *Implications of Repeal and Replace*

The San Francisco Chapter held its Chapter Meeting at the Charles Schwab offices on Fremont Street on March 16, 2017.

*Continued pg. 5*

> "Our industry seems to be active with change. Some changes have been hovering over us for what seems like an eternity."

*President's Letter - Pg 2*

# PRESIDENT'S LETTER

Happy New Year! It's my thing this year. I've decided to wish everyone a Happy New Year – all year if I am seeing someone for the first time. I bet I've seen many of you by now, but just in case, I'm covering my bases with everyone at WP&BC!

With the recent time change – the words time and change struck me like lightning. Time. Change. Two simple yet powerful words when we take a step back and consider how they impact us. But along with the two time change events each year, and the phrase "time change," we also have "time is money," "time after time," "time and again," "don't waste time," "time for change" and so on…. All these expressions about such a simple, yet perhaps complex concept?

The time now politically is calling for change. Many look at the November election results as such an indicator that the country wanted change. "We" were ready for change. Or were we? Maybe we were, but now that we have it, maybe we don't want it? Or still do, but it's not what we wanted? Change typically brings stress, and that can cloud our judgement and emotions. But change requires time to experience the results, and we all know hindsight is 20/20.

Our industry seems to be active with change. Some changes have been hovering over us for what seems like an eternity. Fee disclosure seemed to hover for a considerable amount of time. But now that we've had it for a few years, all seems to have ended well. More information is available to make informed decisions for both sponsors and participants. The fiduciary rule seems like it's been around a "long time!" And it has. And now it may be time for even more change. Maybe more time is needed to improve it or maybe we needed to see it in the market place before it should be changed? Time will tell.

Healthcare and immigration have long been third rail political topics. Yet we now see both front and center on our political stage. The Affordable Care Act (will always be known as Obamacare) isn't perfect, but enough time passed that we got used to the changes. Perhaps, now with an all-time record high coverage level, a few credible surveys show that people do not want the ACA to go away? Ironic, because it has been under attack from since nearly day one. Yet changes to healthcare are coming. What will they be? Who will benefit? What will it cost? What really needs to be changed? Whether or not a new law is enacted, this first proposal will be known as Trumpcare, and only time will tell if it is good or bad. Or if the ACA needed to be changed and how.

I think I can for the first time guarantee people are happy about current market performance. Just today there is a change to our fiscal policy. An interest rate increase is coming. Likely more as well. How will markets react and perform? Will this change be good? Once again, time will tell.

So, it feels like the concepts of time and change have a lot of power. And they do. But the real power comes from the choices we make. As an industry, what changes are we fighting for? Why? And when should any change take place? Change is hard for people. Time is hard for people to manage. It's like managing feral cats: it goes by too quickly and most likely can't be effectively managed. But with skill, patience, passion for the job and good information to manage time, the stray wild cats can be managed!

I feel like the need for change has never been stronger. We see positive change come from frequent and dynamic human interactions, advocacy based on fact, credible and accurate information shared and consumed, and passionate involvement from all. It is with these values that I continue to urge all of us to be a voice for change – in and outside of our industry. Make the world a better place – for today and tomorrow. Just like retirement planning, doing today what will make tomorrow better can be a challenge. Make the time to think about what you want, create the plan, and take the time every day to work for that change you want to see. I am confident our industry will create the necessary change to make the quality of working and post-working life better for all. It's just a matter of time.

We have our events of the year to do all of the above and more. Our membership continues to thrive on the networking opportunities available when we take the time to change our schedules, mix it up a bit, sacrifice something on the calendar, and come on out and learn from those who are passionate, well informed, and ready and willing to continue advocating for the best outcomes for our industry. That means change!

You are the reason we have such a terrific Chapter and make our industry better each and every year! And be ready for a "Happy New Year" wish if I am seeing you for the first time in 2017! The time is always right to make something different - it's the very definition of change! Thank you and see you all soon.



# January Chapter Meeting

retirement plans, including updates to the Employee Plans Compliance Resolutions System, Form 5500 Instructions and proposed Pension Benefit Guaranty Corporation regulations regarding missing participants. Mr. Spater also discussed the elimination by the Internal Revenue Service of the cyclical determination letter program and provided recommendations for how plan sponsors can stay on top of required plan amendments to maintain their retirement plan's tax-qualified status.

**Karla Maschmeier**, Director and Corporate Counsel at Charles Schwab, provided an excellent presentation regarding the requirements of the Department of Labor's new fiduciary rules. She also discussed a topic on many plan sponsors' minds – what will be the effect of the Trump presidency on the looming effective date of these rules. Ms. Maschmeier stated that in light of all the work financial advisors and investment managers had already taken to comply with the new fiduciary rules, she was not sure how they would be able to take the position with plan sponsors that those duties were no longer required if the rules were delayed or repealed.

**Andy Schreiner**, Senior Vice President of Public Policy at Fidelity Investments, provided his knowledgeable perspective regarding the new policy landscape in Washington after the presidential and Congressional elections. Top benefit policy issues on the docket include tax changes, retirement savings policy and changes to the Affordable Care Act.

The event was held at the Wells Fargo Penthouse, and a reception followed in the Wells Fargo Museum, where attendees got to experience some aspects of California history, including sitting in an original, 19th century Wells Fargo stagecoach. A special thanks to the entire Wells Fargo team and the co-sponsor Moss Adams.


WP&BC Western Pension & Benefits Council San Francisco

Spring 2017

4

## BASICS

- Full Name: **Kelsey R. Blegen**
- Company: Buffington & Aaron, ALC
- Title: Associate Attorney
- Education: B.A., History, UC Berkeley; J.D., UC Davis
- Years in the industry: Three
- Please tell us about your first "real" job: I was a waitress at a pizza parlor the summer after I graduated from high school. The experience made me appreciate everyone who works in customer service.

## BUSINESS BACKGROUND

- Nature of your work: I advise clients on ERISA and estate planning matters, specializing in preparing qualified plan documents and submissions to the IRS under the Employee Plans Compliance Resolution System.
- How you got into the field: After a demanding application process, I obtained a position at Buffington & Aaron as a Legal Assistant immediately after I graduated from college. I worked for the firm for one year before going to law school. After trying my hand at a few different areas of the law, I realized that I had the most fun and faced the greatest intellectual challenges with the ERISA and estate planning law I engaged with at Buffington & Aaron.
- What you like about the field: I love the variety of challenges each new issue presents and I enjoy navigating the nuances of the Internal Revenue Code and ERISA. I also enjoy assisting clients with finding creative solutions to complex problems. I am motivated by the fact that my work helps more individuals retire in a sustainable way.

## PERSONAL

- Ways you spend free time: I like to travel to locations that provide me with new cultural perspectives, such as Cuba or Japan. I also like to bike, swim, hike and volunteer my time as a Board member of The Buck Scholars Association, which provides mentorship and funding to low-income high school students.
- Guiding philosophy: Be kind. Be wise.
- Favorite charities: The Buck Scholars Association, California Rural Legal Assistance Foundation, and KQED.
- Last books read: *Nothing to Envy: Ordinary Lives in North Korea* by Barbara Demick; *The Life-Changing Magic of Tidying Up* by Marie Kondo.
- Restaurant recommendations: Al's Place and Kusakabe
- What will you do when you retire: Travel to new places, volunteer for causes I am passionate about and enjoy time with family.



A great crowd of interested plan sponsors and professionals attended this event that was sponsored by BlackRock.

The speakers discussed the ACA repeal and replace legislation then being debated on Capitol Hill. Proposals from the House, Senate, and the President were also discussed.

The discussion included information on the very latest proposals and the impact they would potentially have on the overall health insurance marketplace.

The speakers provided a comprehensive section-by-section summary of the American Health Care Act (AHCA) and also reviewed the proposed plan by Speaker Ryan, Secretary Price, and a Hybrid Vision that would be a mix of the Ryan and Price plans.

# Implications of ACA Repeal/Replace

## Top Three Items You Need to Know for 2017

**Key Points to Remember:**

**A** The ACA as we know it likely will not exist in the future. That likely means no more employer mandate pay or play rules, and no more ACA reporting. But the "replace" picture is far less clear. All we know for sure is that everyone seems committed to keeping age 26 coverage and the prohibition of pre-existing conditions.

**B** Trump's campaign "replace" proposal was skeletal. Look to the GOP's far more detailed "A Better Way" and subsequent "House GOP Blueprint" proposal to find details on a proposal that can gain traction. Speaker Ryan champions this structure, which includes some features similar to the ACA (tax credits, cap on exclusion), and some different (HSA expansion, sale across state lines).

**C** A durable replacement will likely need 60 votes in the Senate, and therefore some Democratic support. Trump's significant child care reform proposals could be key. This includes a very large tax deduction, a new savings account, more employer on-site care, and even a federal paid maternity leave program.

use of plan forfeitures to fund qualified matching contributions ("QMACs") and qualified nonelective contributions ("QNECs") under a safe-harbor Internal Revenue Code ("Code") section 401(k) plan. *https://www.federalregister.gov/documents/2017/01/18/2017-00876/definitions-of-qualified-matching-contributions-and-qualified-nonelective-contributions*. The proposed regulations do so by amending the definitions of QMACs and QNECs to allow employer contributions to serve as QMACs or QNECs if they satisfy applicable nonforfeitability and distribution requirements at the time they are allocated as QMACs or QNECs, even if they didn't satisfy those requirements when originally contributed to the plan. The proposed regulations may be relied upon pending their finalization. To the extent that the final regulations are more restrictive, they will not be given retroactive effect.

***New Guidelines on Substantiation for Hardship Distributions:*** In a memorandum issued on February 23, 2017, the Department of Treasury ("Treasury") issued substantiation guidelines for Employee Plans examiners for determining whether a hardship distribution made from a Code section 401(k) plan was made "on account of a deemed immediate and financial need" as required under the safe harbor standards set out in the 401(k) regulations. *https://www.irs.gov/pub/foia/ig/spder/tege-04-0217-0008.pdf*. Although the guidelines are not official guidance to taxpayers and may not be cited or relied upon, they effectively permit a plan to satisfy the substantiation guidelines without obtaining source documents (such as estimates, contracts or bills).

Under the guidelines, examiners are to inquire whether the employer or plan administrator obtained either source documents that support the need or a summary of the information contained in source documents. If source documents are provided, the examiner is to determine if they support the distribution. In the case of a summary, the employer or plan administrator is to be asked if prior to the distribution the participant was provided with a notice with specified contents regarding hardship rules and the need to retain source documents. The examiner then must review the notice for completeness. If the notice was incomplete, the examiner may ask the employer or plan administrator for source documents. If the notice was complete but participants have received more than two hardship distributions in a year for which there is no adequate explanation, the examiner may, with managerial approval, request the employer or plan administrator to provide the source documents. If a third-party administrator ("TPA") obtains a summary of the source documents, the examiner is to determine if the TPA provides the employer with a report or other access to supporting data, at least annually, describing the hardship distributions made during the plan year.

The new guidelines were effective on the date of issuance and will be incorporated into the Internal Revenue Manual section 4.72.2 by February 23, 2019.

On March 7, 2017, Treasury announced that the same substantiation guidelines would apply to safe harbor hardship distributions from Code section 403(b) plans, effective on the date of issuance of that memorandum. ***https://www.irs.gov/pub/foia/ig/spder/tege-04-0317-0010.pdf.*** The section 403(b) guidelines will be incorporated into the Internal Revenue Manual section 4.72.13 by March 7, 2019.

***Required Amendments List:*** In connection with its curtailment of the determination letter program for individually designed plans, the Treasury and the IRS are to issue each year a list ("Required Amendment List," or "RA List") of statutory and administrative changes to qualification requirements that are first effective during the plan year in which the list is published that may require amendments to an individually-designed plan in order for it to maintain qualified status. Required amendments must be adopted by the end of the plan's remedial amendment period, which is December 31 of the second calendar year following the calendar year in which the RA List is issued (a longer period may apply to a governmental plan).

On December 27, 2016, Treasury and the IRS issued the first such list (the "2016 RA List") in Notice 2016-80. *https://www.irs.gov/irb/2016-52_IRB/ar14.html*. The only changes the 2016 RA List identifies are the restrictions on accelerated distributions from underfunded single-employer, collectively-bargained defined benefit plans in employer bankruptcy under Code section 436. Those changes were enacted by the Highway and Transportation Funding Act of 2014.

***IRS Operational Compliance List:*** Also in connection with its curtailment of the determination letter program for individually designed plans, the IRS is to issue annually an Operational Compliance List that identifies changes in qualification requirements that are effective during a calendar year. The list is provided to assist plan sponsors in achieving operational compliance with the Code's qualification requirements. The first such list was issued

*Continued pg. 8*



## *Retirement/401(k) Relationship Manager*

Wells Fargo & Company (NYSE: WFC) is a nationwide, diversified financial services company with $1.7 trillion in assets. Founded in 1852, Wealth and Investment Management (WIM) is one of the company's four main divisions. WIM businesses build enduring client relationships through sound, thoughtful and objective advice. We help our clients by developing individualized plans for everything from retirement goals to business succession planning, to family legacy intentions. Services include comprehensive planning and advice, investment management, brokerage, private banking, estate planning strategies, trust, insurance and both individual and institutional retirement.

Wells Fargo Retirement is a top retirement provider to institutional customers across the U.S. Wells Fargo ranks second in annuity distribution, sixth in IRA assets and eighth in retirement recordkeeping. The company also administers custody assets, provides investments and executive benefits to institutional clients.

The Relationship Manager will be responsible for driving client loyalty for the largest, most complex accounts, including defined contribution and defined benefit products. The Relationship Manager develops and executes strategies to maximize client satisfaction, relationship growth and retention. The Relationship Manager leads consultative conversations with clients to convey best practices and alternative solutions, leveraging their deep industry, product and institutional retirement knowledge and engaging internal partners in development of ideas and solutions that meet both the customer and business needs. This position is also accountable for managing profitability, utilizing all pricing/benchmarking tools to monitor pricing and leading value discussions with their clients.

Delivers intentional messaging focused on desired outcomes. The Relationship Manager is a team member with dynamic presentation skills for current and prospect client meetings, with the ability to quickly adapt to the direction of any client conversation. The Relationship Manager knows our business story and can modify their message to emphasize what is important to a client, or incorporate with finesse additional information as needed. Salary commensurate with experience

***Required Qualifications***

- 5+ years of institutional retirement servicing experience, bundled 401(k), trust plan servicing experience, or a combination of both

***Desired Qualifications***

- Experience interacting effectively with internal and external clients and service providers
- Excellent verbal, written, and interpersonal communication skills
- Solid knowledge and understanding of product and services
- Strong presentation skills
- 3+ years of client services experience

***Please call or send your resume to:***

Tim G. Shortt, CRSP

California Regional Director

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415-537-7303

on February 27, 2017 at https://www.irs.gov/retirement-plans/operational-compliance-list and includes the following:

**Changes effective in 2017:**

- Proposed regulations regarding QMACs and QNECs (explained above);
- Extension of temporary nondiscrimination relief for closed defined benefit pension plans;
- Final regulations regarding partial annuity distribution options for defined benefit pension plans;
- Final regulations regarding cash balance/hybrid plans; and
- Application of benefit restrictions for certain defined benefit plans.

**Changes effective in 2016:**

- Relief for plans that make loans and hardship distributions to victims of Hurricane Matthew;
- Relief for plans that make loans and hardship distributions to victims of the Louisiana Storms;
- Mid-year changes to safe harbor 401(k) plans;
- Proposed regulations regarding nondiscrimination testing under section 401(a)(4);
- Proposed regulations regarding normal retirement age for governmental pension plans;
- Extension of temporary nondiscrimination relief for closed defined benefit plans; and
- Restrictions on distributions in bankruptcy for collectively-bargained single-employer defined benefit plans.

***Changes Affecting Determination Letter Applications:*** A revised Form 5300 (Application for Determination for Employee Benefit Plan) has been issued, and the submission instructions have been changed, for applications made on or after February 1, 2017. *https://www.irs.gov/pub/irs-pdf/f5300.pdf; https://www.irs.gov/pub/irs-pdf/i5300.pdf; https://www.irs.gov/irb/2017-01_IRB/ar10.html#d0e11635*. Many of the revisions and changes result from the curtailment of the IRS determination letter program. Other changes reflect that employers that maintain individually designed plans may no longer request determination letters on whether a plan sponsor is part of an affiliated service group. In addition, the cover letter for a defined benefit plan application must state whether the plan provides for lump-sum risk transfers described in IRS Notice 2015-49.

Also, the IRS has issued Notice 2017-1, relating to the user fee exemption for determination letter applications for certain small plans. *https://www.irs.gov/pub/irs-drop/n-17-01.pdf*. The exemption is available if the application is made by the last day of the plan's fifth year or the end of the plan's "qualifying open remedial amendment period." Notice 2017-1 provides that the IRS will treat a plan as being filed within a "qualifying open remedial amendment period" if the plan was first in existence no earlier than January 1 of the tenth calendar year preceding the year the application is filed. An application that does not satisfy the ten-year rule may still qualify for the exemption if it includes a statement describing how the exemption requirements are satisfied.

***End of 403(b) Remedial Amendment Period:*** The IRS announced in Revenue Procedure 2017-18 *https://www.irs.gov/pub/irs-drop/rp-17-18.pdf* that the period during which Code section 403(b) plan documents must be brought into compliance with the written plan requirements in the section 403(b) regulations will be March 31, 2020.

***Covered Compensation Tables Announced:*** In Revenue Ruling 2017-5 *https://www.irs.gov/pub/irs-drop/rr-17-05.pdf*, IRS released its covered compensation tables to be used for the 2017 plan year for purposes of determining permitted disparity under a defined benefit plan.

***Updated Static Mortality Tables for Defined Benefit Plans for 2017:*** IRS Notice 2016-50 *https://www.irs.gov/pub/irs-drop/n-16-50.pdf* provides updated static mortality tables to be used for calculating the funding target and other items for defined benefit plans for valuation dates occurring during calendar year 2017. The notice also includes a modified unisex version of the mortality tables for use in determining minimum present value under Code section 417(e)(3) and the Employee Retirement Income Security Act ("ERISA") section 205(g)(3) for distributions with annuity starting dates that occur during stability periods beginning in the 2017 calendar year.

***Proposed Changes to Minimum Present Value Calculations:*** On November 25, 2016, the IRS proposed regulations updating minimum present value calculations under defined benefit plans. *https://www.federalregister.gov/documents/2016/11/25/2016-27907/update-to-minimum-present-value-requirements-for-defined-benefit-plan-*

*Continued pg. 10*

# 2017 Save the Dates!


Thursday, April 13

***Field Trip to DaDa Bar and Gallery***

Free to Chapter Members


Thursday, April 26

***San Francisco Chapter Meeting***

***The Impact of a Non-Retirement Ready Workforce***

SPUR, 654 Mission Street

Thursday, May 18

***San Francisco Chapter Spring Conference***

8:00 a.m. – 1:00 p.m.

One Kearny Club, 23 Geary Street

**Keynote:** ***Engaging Across the Ages***

Michael Lynch, Hartford Funds

**Breakouts:** Regulatory Update
Affordable Care Act (ACA)
Target Dates
Actuarial Hot Topics

**Visit www.wpbcsanfrancisco.org to register!**

*distributions*. The proposed regulations would update the minimum present value rules to reflect interest rates and mortality tables under the Pension Protection Act of 2006, clarify when preretirement mortality is to be used, and set out how minimum present value rules are to apply to Social Security level income options. The changes are proposed to apply to distributions with annuity starting dates in plan years beginning on or after the date the regulations are finalized. In the interim, taxpayers must continue to apply existing regulations relating to Code section 417(e), modified to reflect the relevant statutory changes and related guidance of general applicability.

***Department of Labor ("DOL") Fiduciary Rule Developments:*** On March 2, 2017, the DOL formally proposed a delay of the applicability date of its final "investment advice" regulation (the "Final Regulation") for a period of 60 days from its current April 10, 2017, applicability date. The proposal would similarly delay the applicability date of related prohibited transaction exemptions, including the Best Interest Contract ("BIC") Exemption and amendments to existing prohibited transaction exemptions. *https://www.federalregister.gov/documents/2017/03/02/2017-04096/definition-of-the-term-fiduciary-conflict-of-interest-rule-retirement-investment-advice-best*. On March 10, 2017, the DOL, in recognition of the uncertainty of whether a decision on the proposal would be reached prior to April 10, 2017, issued Field Assistance Bulletin 2017-1 https://www.dol.gov/sites/default/files/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2017-01.pdf announcing a temporary nonenforcement policy, as follows: If a decision to delay the applicability date is made after April 10, 2017, the DOL will not initiate any enforcement action for a failure to comply with the Final Regulation or any related prohibited transaction exemption during the period between April 10, 2017, and the date the delay is published. If a decision not to delay the applicability date is made after April 10, 2017, the DOL will not initiate any enforcement action for noncompliance if there is compliance within a reasonable period after the decision not to delay is published. The DOL also will treat the 30-day cure period under section IX(d)(2)(vi) of the BIC Exemption and section VII(d)(2)(b) of the Principal Transactions Exemption as available for a failure to provide, by April 10, 2017, retirement investors with the disclosures or other documents described in those sections. On March 28, 2017, the IRS announced a corresponding "non-applicability" policy in connection with the Code section 4975 prohibited transaction excise tax rules. *https://www.irs.gov/pub/irs-drop/a-17-04.pdf*.

Earlier in 2017, the DOL issued its second set of Frequently Asked Questions ("FAQs") regarding the Final Regulation *https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/coi-rules-and-exemptions-part-2.pdf*. While the first set of FAQs mostly addressed the prohibited transaction exemptions that accompanied the Final Regulation, the second set, issued on January 13, 2017, provides clarifications regarding fiduciary status under the Final Regulation.

Several of the FAQs address whether certain types of communications constitute "recommendations" that may give rise to fiduciary status. In one FAQ, the DOL stated that an explanation of the terms or operation of a plan or individual retirement account ("IRA"), or of the features of an investment product or alternative, is not by itself a "recommendation." Other FAQs explain that certain internal communications between the adviser and its employees are not "fiduciary advice." FAQ 6 points out that an adviser is not responsible for client actions that are contrary to the advice given. FAQ 7 affirms that the Final Regulation does not alter the analysis in the DOL's Advisory Opinion 97-15A (commonly known as the Frost Opinion), which allows an adviser to receive revenue sharing payments if they are offset against the adviser's other fees.

With regard to the distinction between non-fiduciary investment education and fiduciary recommendations, the FAQs confirm that call center or employer communications regarding the financial benefits of increasing deferrals generally does not result in fiduciary status, nor does charging a fee for investment education (including rollover education), absent an investment recommendation or a compensated referral to an adviser. FAQ 15 explains that investments available through a brokerage window need not be referenced in the presentation of an asset allocation model in order for the "asset allocation model" education exception to apply.

The FAQs also address what types of "widely attended speeches or conferences" or other communications are general in nature so as not to be treated as fiduciary advice, as well as the "independent fiduciary" exception to the definition of investment advice. As to the latter, FAQ 26 explains that an IRA owner with more than $50 million in total IRA and non-IRA assets is not an independent fiduciary for purposes of the exception. Five final FAQs clarify what qualifies as "platforms or similar mechanisms," and how they may be marketed, so as to not constitute fiduciary advice.

*Continued pg. 12*

WPBC
WESTERN PENSION & BENEFITS COUNCIL
San Francisco

Spring 2017



# Western Pension & Benefits Council
## San Francisco Chapter
## Sponsorship Benefits
## July 2017 - June 2018

### BRONZE
**$1,250**

1 Membership (valued at $150)

**Spring Conference**

San Francisco

1 Registration (valued at $150)
+
Company name on invitation & program (differentiated by sponsorship level)

Company name on sign (differentiated)

Shared display table to offer promotional materials

**Chapter Meetings**

3 Free Guest Passes (valued at $255)

**Newsletter Listing**

Listing in every newsletter Company name on sponsor list

**Website Listing**

Listing of company name on the SF Chapter page by level of sponsorship

### SILVER
**$2,000**

Silver includes all of the benefits of Bronze

PLUS...

**Spring Conference**

San Francisco

2 Registrations (Valued at $300)

**Chapter Meetings**

3 Free Guest Passes (valued at $255)
+
2 Free Member Registrations (valued at $90)

**Newsletter Ad**

2.5 x 3.0 Display Ad (one time only)

### GOLD
**$3,500**

Gold includes all of the benefits of Silver

PLUS...

Exclusive Sponsor of

One Regular Meeting
or
Several Brown Bag Meetings

*Includes:*

Company logo on promotional flier

Company logo on signs

Acknowledgement from podium

Display table with sign (exclusive use)

**Chapter Meetings**

4 Free Guest Passes (valued at $340)
+
2 Free Member Registrations (valued at $90)

**Newsletter Ad**

3.5 x 4.5 Display Ad (one time only)

### PLATINUM
**$6,000**

Platinum memberships include all of the benefits of Gold

PLUS...

Exclusive sponsor of

Spring Conference 2017
or
Named Sponsor of all Brown Bag Lunches in 2017-2018

**Chapter Membership**

4 Memberships (valued at $600)

**Spring Conference**

San Francisco

3 Registrations (Valued at $450)
+
*Featured* display table to offer promotional materials

**Chapter Meetings**

6 Free Guest Passes (valued at $510)
+
2 Free Member Registrations (valued at $90)

**Newsletter Listing**

*Premier* listing in every newsletter

Company name on sponsor list

**Website Listing**

*Premier* listing of company name on the SF Chapter page.

**For Additional Information or to Reserve your Sponsorship**
**Contact us Directly**

Phone: (415) 730-5479

Email: info@wpbcsf.org

On January 19, 2017, the DOL proposed a prohibited transaction class exemption that would permit insurance intermediaries and allow certain insurance intermediaries and their contracting insurance agents to receive compensation in connection with fixed annuity transactions that may otherwise give rise to prohibited transactions *https://www.federalregister.gov/documents/2017/01/19/2017-01316/proposed-best-interest-contract-exemption-for-insurance-intermediaries*. The exemption conditions are similar to those for the current BIC Exemption, with some variations. The exemption may be relied upon when the Final Regulation takes effect; however, compliance with all conditions of the exemption would not be required until August 16, 2018.

***DOL Guidance on Proxy Voting and Exercise of Shareholder Rights:*** On December 28, 2016, the DOL issued Interpretive Bulletin 2016-1 ("IB 16-1") providing new guidance to ERISA fiduciaries on the voting of proxies and other exercises of shareholder rights. *https://www.federalregister.gov/documents/2016/12/29/2016-31515/interpretive-bulletin-relating-to-the-exercise-of-shareholder-rights-and-written-statements-of*. In IB 16-1, the DOL withdrew its prior proxy voting guidance, in Interpretive Bulletin 2008-2 ("IB 08-2"), and largely reinstated the language of Interpretive Bulletin 94-2, the guidance that had been modified by IB 08-2. The DOL expressed in IB 16-1 its concern that IB 08-2 had been interpreted by some to prohibit ERISA fiduciaries from exercising shareholder rights, including the voting of proxies, unless the plan first performed a cost-benefit analysis that concluded that the exercise of such rights would more likely than not result in a quantifiable increase in the economic value of the plan's investment. In IB 16-1, the DOL stated that the voting of proxies and plan activities intended to monitor or influence corporate management in environmental, social, governance or other matters is consistent with ERISA's fiduciary responsibilities if the fiduciary concludes there is a reasonable expectation that the plan's doing so, alone or in conjunction with other shareholders, is likely to enhance the value of the plan's investment, after taking into account the costs involved. A cost-benefit analysis generally is not required in most cases, but in deciding whether to purchase shares, the fiduciary should consider whether the difficulty and expense of voting is reflected in the shares' market price.

***Final Rules Extend DOL Safe Harbor for State-Sponsored Savings Program to Qualified State Political Subdivisions:*** The DOL on December 20, 2016, issued its final regulations extending to "qualified state political subdivisions" that establish savings programs for private employers the same safe harbor exemption from ERISA coverage that the DOL's final regulations issued in August 2016 provide to similar programs sponsored by states. https://www.federalregister.gov/documents/2016/12/20/2016-30069/savings-arrangements-established-by-qualified-state-political-subdivisions-for-non-governmental. A "qualified state political subdivision" is a city, county or other governmental unit of a state that:

- Has implicit or explicit authority under state law to require employers to participate in the program;
- At the time of the enactment of its program:
  - Has a population greater than or equal to the least populated state (currently Wyoming);
  - Has no geographic overlap with any other political subdivision that has enacted a mandatory payroll deduction savings program for private-sector employees and is not located in a state that has enacted such a program statewide. (Because California has enacted such a program, this requirement precludes any California political subdivision from establishing its own program.); and
  - Maintains a retirement or deferred compensation plan or program for its own employees.

The final rules clarify and strengthen the condition that states and qualified state political subdivisions assume responsibility for the security of payroll deductions by mandating that they require employers to promptly transmit wage withholdings to the payroll deduction savings program and provide an enforcement mechanism to ensure employer compliance with that requirement.

*Note: Resolutions that have the effect of rolling back the safe harbor regulations have been passed by both the House of Representatives and the Senate.*

***Increase in Statutory Penalties for ERISA Violations.*** The DOL issued its final rule providing for inflation-adjusted increases for sixteen statutory penalties for ERISA violations, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. *https://www.federalregister.gov/documents/2017/01/18/2017-00614/department-of-labor-federal-civil-penalties-inflation-adjustment-act-annual-adjustments-for-2017*. Among the increases was the maximum penalty for failure to file a Form 5500, to $2,097 per day.

*Continued pg. 14*




## *San Francisco Spring Conference*

Thank you to our San Francisco Spring Conference Committee – doing an amazing job preparing an outstanding conference for you.

Thank You!

## *Thank you!*

In recognition of the time our speakers make to prepare and present at our San Francisco Chapter Meetings and Spring Conference, the Chapter makes a charitable contribution to a local charity.

The charity for 2016-2017 is Meals on Wheels, San Francisco.

# Registration is Now Open

## for the SF Chapter Spring Conference and Western Benefits Conference

**Health and Welfare**

***DOL Issues New Disability Claim Rules for Welfare and Retirement Benefit Plans:***

In December 2016, the US Department of Labor's Employee Benefit Security Administration ("EBSA") released final rules on claims adjudication of disability claims under welfare and retirement plans (the "Final Rule").

The Final Rule applies to claims for disability benefits filed on or after January 1, 2018, and provides procedural protections and safeguards by requiring full and fair reviews of disability claims.

The Final Rule has seven basic elements, as listed in the EBSA fact sheet:

- Basic disclosure requirements;
- Right to claim file and internal controls;
- Right to review and respond to new information before final decision;
- Avoidance of conflicts of interest;
- Deemed exhaustion of claims and appeal processes;
- Certain coverage rescissions are adverse benefit determinations subject to the claims procedure protections; and
- Notices written in a culturally and linguistically appropriate manner.

EBSA notes that the Final Rule reinforces the need for plan fiduciaries to provide transparency regarding the administration of a plan's disability claims procedures and encourages discussion between a claimant and a plan regarding adverse benefit determinations.

Among the many requirements, the Final Rule significantly increases the duties of plan administrators and fiduciaries in reviewing and rendering decisions on disability claims. For example, it aims to combat "expert shopping" where a plan may take the advice of one reviewer who recommends denial while discounting many reviewers who suggest approval.

Regarding disclosure requirements, plans will have to provide to claimants the internal rules, guidelines, protocols, standards or other similar criteria they relied upon when making an adverse benefit determination.

*https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/final-rule-strengthens-consumer-protections-for-workers-requesting-disability-benefits-from-erisa-employee-benefit-plans_0.pdf; https://www.federalregister.gov/documents/2016/12/19/2016-30070/claims-procedure-for-plans-providing-disability-benefits.*

***Severance Arrangement Involving Limited Employer Discretion Not an ERISA Plan:***

The Western District Court of New York ruled that a severance plan was not subject to the Employee Retiree Income Security Act ("ERISA") and federal court jurisdiction because it did not have an ongoing administrative scheme. (Hall v. LSREF4 Lighthouse Corporate Acquisitions, LLC et al. 2016 WL 6651389 (WDNY 2016).)

In a dispute over severance benefits, Kenneth Hall sued his former employer, LSREF4 Lighthouse Corporate Acquisitions, LLC ("Lighthouse") in state court, and Lighthouse, claiming the plan was subject to ERISA, removed the suit to federal court. If ERISA applies, state-law claims are preempted and available remedies can be more limited.

Lighthouse's severance plan provided for severance payments to specified employees if, within two years after a change in control, their employment was terminated by the company without cause or the employee terminated employment for good reason.

To determine whether the severance plan was subject to ERISA and federal court jurisdiction, the court analyzed whether the plan had an ongoing administrative scheme in accordance with the Supreme Court's test in Fort Halifax Packing Co., Inc. v. Coyne, 482 U.S. 1 (1987).

The Fort Halifax test contains three primary factors with no single factor being determinative as follows:

1. Whether administering the plan required managerial discretion by the employer;

*Continued pg. 15*

2. Whether a reasonable employee would perceive an ongoing commitment by the employer; and

3. Whether the employer was required to separately analyze the circumstances of each individual's termination.

First, the district court concluded that plan administration only involved limited discretion because the definitions of "cause" and "good reason" were straightforward. Second, the court reasoned that employees would not perceive an ongoing employer commitment due to the specific triggering event and two-year time limitation. Under the third factor, the court recognized that each termination required analysis to determine whether it met the plan's criteria for being without cause or with good reason. The court determined that this factor alone did not create an ongoing administrative scheme.

The district court concluded that the severance plan was not subject to ERISA and returned the suit to state court.

***Improper Denial of Disability Plan Benefits:***

The Ninth Circuit found that a plan administrator improperly denied a participant's claim for long-term disability benefits because the sole basis of the plan's denial of benefits was a lack of objective medical findings. (Scoles v. Intel Corporation Long Term Disability Benefit Plan, No. 13-36167, 2016 WL 4056402 (9th Cir. 2016).)

The Court ruled that the administrator failed to provide the participant with a meaningful opportunity to provide evidence that would have satisfied the plan administrator's unexplained basis for the denial; simply stating that the evidence was insufficient or unpersuasive in the denial letter was not enough to satisfy ERISA's claims review procedures.

***House Bill to Repeal and Replace Certain Aspects of the ACA:***

On March 6, 2017, House Republicans introduced a bill called the American Health Care Act (the "AHCA") to repeal and replace the Patient Protection and Affordable Care Act (the "ACA"). On March 9, 2017, pursuing a very ambitious schedule, both the House Ways and Means Committee and the Energy and Commerce Committee approved the AHCA. Although the Republicans believe they can push this legislation through the House quickly, whether they will be able to do so remains to be seen.

Below is a list of proposals in the bill that only impact employer-provided health coverage. Most are beneficial to employers and their employees; the main proposal being the repeal of any employer tax penalties for failing to offer "minimum essential coverage" ("MEC") which effectively repeals the employer mandate. The repeal is proposed to be effective January 1, 2016.

List of Proposals

- Repeal assessment of penalties on employers for failure to offer MEC, effective January 1, 2016.
- Temporary repeal of the "Cadillac" excise tax on high-cost plans until December 31, 2024, at which point it reappears.
- Over the counter medications will once again be eligible for reimbursement from health flexible spending accounts ("FSAs"), health savings accounts ("HSAs"), Archer medical savings accounts ("MSAs") and health reimbursement arrangements (also known "HRAs") as excludable medical care expenses, effective January 1, 2018.
- The tax on distributions from HSAs and Archer MSAs for expenses that are not "qualified medical expenses" will be reduced from 20% to 10% for HSA distributions and 15% for Archer MSA distributions, effective January 1, 2018.
- Repeal of any monetary limit on contributions to health FSAs, effective January 1, 2018.
- Reimbursement of health expenses from an HSA established within 60 days of an employee's first date of coverage under a high-deductible health plan (also known as an "HDHP") will be allowed even if the expenses were incurred before the date the HSA was established, effective January 1, 2018.
- For retiree medical plans, employers may again claim a deduction for retiree prescription drug costs subsidized by the Department of Health & Human Services payments, effective January 1, 2018.

The above list contains most of the current tax proposals applicable to employer-provided coverage and many of the proposals will result in loss of tax revenue which Congress is required to make up elsewhere. In other words,

*Continued pg. 16*

the bill must be revenue neutral. On March 13, 2017, the Congressional Budget Office (the "CBO") released its cost estimate of the AHCA. The CBO, along with the staff of the Joint Committee on Taxation (the "JCT"), estimate that enacting the AHCA would reduce the federal deficits by $337 billion over the 2017-2026 period. The CBO and JCT also estimate that in 2018, 14 million more people would be uninsured under the AHCA than under the ACA. Many of the ACA's most popular provisions have been preserved, such as the prohibition on pre-existing conditions and covering adult children until age 26.

On Friday, March 24, 2017, the ACHA was withdrawn from submission for a House vote in anticipation of the bill being defeated. Paul Ryan, Speaker of the House, said that the United States is "going to be living with Obamacare for the foreseeable future."

**Executive Compensation**

***409A Guidance:*** On November 4, 2016, the Internal Revenue Service ("IRS") released Chief Counsel Advice No. 201645012 on the treatment of matching contributions under Internal Revenue Code ("Code") section 409A. Code section 409A generally provides that if certain requirements related to the timing of elections, distributions, and funding are not met during a taxable year, amounts deferred under a nonqualified deferred compensation plan for that year and all previous taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income. Treas. Reg. §1.409A-1(d)(1) provides that a substantial risk of forfeiture exists if the receipt of deferred compensation is conditioned on the performance of substantial future services or the occurrence of a condition related to a purpose of the compensation, and the possibility of forfeiture is substantial. The Chief Counsel Advice explains that where an employer provides a matching contribution resulting in a 25% increase in the present value of the amount deferred, the increase is material, and the amount that an employee could have elected to receive as salary may be treated as subject to a substantial risk of forfeiture. Chief Counsel Advice may not be used or cited as precedent. Rather, it provides an analysis of the issue, and the recommendation and opinion of the Office of Chief Counsel. *https://www.irs.gov/pub/irs-wd/201645012.pdf*

***Golden Parachute Payments Guide:*** On January 20, 2017, the IRS issued an Audit Technique Guide ("ATG") for large businesses. Code section 280G denies a deduction for any excess parachute payment. Code section 4999 imposes a nondeductible 20-percent excise tax on the recipient of any excess parachute payment within the meaning of Code section 280G(b). A "golden parachute examination" can occur during the examination of either the corporation's or the individual's tax return. The ATG outlines numerous items to be considered, documents to be reviewed, including online research to be performed by the examiner, and the specific steps to perform a golden parachute examination. A flow chart for determining whether Code section 280G is applicable to a public corporation is included in the ATG. While ATGs are designed to provide guidance for IRS employees, they provide useful insight for businesses and individuals that may be subject to a parachute examination. *https://www.irs.gov/pub/irs-utl/goldenparachuteatg.pdf*

***Reconsideration of Pay Ratio Rule Implementation:*** On February 6, 2017, the Securities and Exchange Commission ("SEC") announced that it will reconsider the implementation of the pay ratio disclosure rule and will determine whether additional guidance or relief may be appropriate. The SEC adopted the pay ratio disclosure rule in August 2015 to implement Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The rule requires a public company to disclose the ratio of the median of the annual total compensation of all employees to the annual total compensation of the chief executive officer. Based on comments received during the rulemaking process, the SEC delayed compliance for companies until their first fiscal year beginning on or after January 1, 2017. However, in order to better understand the unanticipated difficulties that may hinder issuers in meeting the reporting deadline, the SEC is seeking public comments on any unexpected challenges that issuers have experienced as they prepare for compliance with the rule, and whether relief is needed. Comments were due by March 23, 2017.

*https://www.sec.gov/news/statement/reconsideration-of-pay-ratio-rule-implementation.html*

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Spring 2017

17

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***If you wish to post an employment opportunity on our website, please read the following note:*** Listings must comply with applicable regulations for employment advertising. Online job postings are free to WP&BC San Francisco Chapter members. Call Jenifer McDonald at the Chapter office for more information, (415) 730-5479. Email all listings to info@wpbcsf.com

***Want to get involved in the San Francisco Chapter?***

**Contact Tina Chambers to volunteer!**

Spring 2017

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 the chapter at info@wpbcsf.org.


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