



PENSION & BENEFITS QUARTERLY

President's Letter



That well-known harbinger of spring, the first Chapter newsletter of the year, is here! We hope you enjoy **Tim Shortt's** discussion of retirement planning, a look back at Chapter history by one of our past presidents, our ongoing regulatory update, and a photo celebration of our Past President's Reception in January. I also want to bring everyone's

attention to the exciting Chapter programs coming up, and touch on several initiatives we are undertaking.

Past Presidents Column

As the pictures attest (see page 13), our Past Presidents Reception in January was a rousing success. To follow up on connecting us to our history, we asked **Barbara Creed** to review the highlights of her participation in and presidency of the Chapter. Barbara was president from 1981 to 1983, and guided many changes to our programs and governance during that time. Thank you, Barbara!

Silicon Valley Conference – March 19th

Please mark Wednesday, March 19th on your calendar for the Silicon Valley Spring Conference. Four sequential sessions: Investment, Legal, Retirement, and Healthcare Reform will be presented. We have a new location this year – the Orrick offices in Menlo Park. This will be an exciting and engaging conference! We hope to see you there.

Commonwealth Club – April 7th

Our Chapter will partner with the Commonwealth Club to present “Money for Life” with **Steve Vernon**. This program will address retirement planning challenges for working people, and is geared to a broad audience of retirement plan sponsors, individual savers and investors, service providers, and policy makers.

This event is **Monday, April 7th** at the Commonwealth Club (595 Market). Registration opens at 4:45 PM, with the formal program beginning at 5:15 PM. Please check our website (www.wpbcsanfrancisco.org) for more details.

Field Trips

We will be kicking off an exciting series of “field trips,” where we combine an informal discussion of pension and benefit challenges with a hosted tour. We'll learn about a related benefits topic, and then tour the facilities. Please watch email and our LinkedIn page for more information.

LinkedIn Presence

Western Pension has now saturated social media! Well, we're on LinkedIn, and we hope you are connected with us. Please look up the Chapter's group and join us for updates, notes about upcoming meetings, and social media connections with your fellow members! LinkedIn groups also exist for other chapters and the Council as a whole.

Webinars!

The Western Pension & Benefits Council now sponsors webinars. The series opened last fall with sessions on DOL investigations and DOMA. December brought us a timely Ethics session. Upcoming – on **Tuesday, March 25th** – is “Behavioral Perspectives in Plan Design Consultation.” Presenters will combine behavioral research with plan design considerations in the formation and maintenance of effective retirement plans. Please see the WP&BC's website (www.westernpension.org) for more details.

Spring Conference – May 22nd

The real harbinger of spring – the Chapter's annual Spring Conference – will be held on Thursday, May 22nd at The Palace Hotel. Our agenda and programs are shaping up to be fantastic. Please note our Conference in your planner, and we'll see you there.

Annual Conference – Las Vegas!

Our Annual Conference will run July 27th to July 30th at the Bellagio in Las Vegas. Please mark your calendars and plan to attend!

Thanks for your support,
Andrew Ferguson
aferguson@altmancronin.com

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Past President's Column



My first WP&BC Annual Meeting was in San Diego in 1972. I remember being astounded at the closing dinner as the San Diego chapter held a raffle for small appliances and even TVs! The conference had been so successful it resulted in a huge surplus – and they were giving it away in kind!

Several of the chapter presidents thought that such a surplus might be put to work for the good of the Conference, and this was the inspiration for the Conference to create a more robust structure for planning for annual meetings. As president of the San Francisco Chapter, I joined with the presidents of all the other chapters to form the Joint Council of Presidents. We organized this group to make sure that annual meeting programs would be of high quality and financially sound.

During my tenure as president of the San Francisco Chapter (1981 to 1983) we also made some changes designed to make the work of the chapter more accessible to all members. We revised the format of the monthly meetings to a late afternoon program followed by light refreshments, making it easier for members with families to attend and get home at a reasonable hour. We also introduced a half-day seminar (designed to bring high quality programs to members who were not able to attend the longer Conference-wide annual meetings) and a newsletter to bring news of programs, events and members to the membership at large. At this time the San Francisco chapter also retained paid administrative support for the first time.

Throughout its 60-year history, from its founding in 1954 by attorney Joe Seligman, accountant Barrett Coates, and actuary Jim Zischke, the San Francisco Chapter of the WP&BC (originally the “Western Pension Conference”) has brought

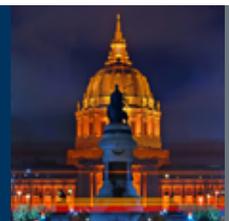
together all of the disciplines that are active in the employee benefits world, including accountants, actuaries, attorneys, administrators, trust officers, investment professionals and plan sponsors. The original vision, which continues to be valid today, was that this organization would provide a forum in which the various disciplines would meet to become better informed about the current issues in the employee benefits world and to support each other in their work. I am proud of my long association with the WP&BC.

Currently I am Of Counsel to Trucker♦Huss, an employee benefits law firm, and I serve as vice-chair of the 25-member board of trustees of the Church Pension Fund, a \$10B organization that provides pensions, health coverage, life insurance, annuities and other benefits for the clergy and lay employees of the Episcopal Church. (We sponsor one of those rare things: a comfortably-funded defined benefit plan!) We also have several property and casualty companies and a publishing company. Serving as a trustee has given me new insight into the importance of relying on advisers who are well informed and well connected – which is what the WP&BC is all about. I’m also president of my college class, working on plans for our 50th reunion in 2016. Retirement is great!

My hope is that the WP&BC will continue to prosper and fulfill its mission for many years to come!

Best wishes ~

Barbara B. Creed, President 1981 – 1983





Can You Still Pay Bills And Save For Retirement?

By: Tim G. Shortt
Regional Director, Wells Fargo & Company



It's clear that middle-class Americans (based on those surveyed ranging between the ages of 25 and 75 interviewed by phone in July and August by Harris Interactive) are overwhelmed with trying to meet today's obligations and consequently are putting off saving for their future. Four in 10 say it is not possible to pay the bills and save for retirement at the same time.

So with many not saving now, it's not surprising that 48 percent of middle-class Americans aren't confident they will have saved enough for retirement. Instead, 34 percent say they plan to work until at least age 80 because of that savings shortfall. This is a jump from 25 percent in 2011. Another 37 percent agree they "won't retire."

The Plan Effect

Our retirement research over the past few years has shown that having a written plan makes a big difference for middle-class Americans. This year is no exception. Of those surveyed, 70 percent of those with a written plan told us they felt confident about their future retirement. Only 44 percent of those without that plan echoed that same confidence. In addition, those with a plan said they had more willpower (91 percent) to stick to a savings plan than those without a plan (75 percent).

The higher confidence and willpower that come with a plan also translate to more savings. Those with a written plan have saved three times as much towards their retirement savings goal. The median savings goal for middle-class Americans between the ages of 40-59 was \$200,000. Individuals aged 40-59 with a plan in place said they'd saved \$63,000 or 32 percent of the goal. People between ages of 40-49 not working from a plan had only saved \$20,000.

'Not For Me'

Our research revealed a perception problem among middle-class Americans when it comes to both financial planning and investing in the stock market. Many told us that neither one applies to them because of their financial situation.

When asked the reason for not having a plan, a plurality (45 percent) says they don't have a written plan because they had "so few financial assets." Everyone can benefit from a plan. A simple starting place is to outline a budget that includes putting some money into savings. Consistent saving is the foundation for creating a nest egg for retirement. Small amounts can make a difference over time.

The stock market is also viewed as something that is for "other people." Among middle-class Americans, 45 percent stated that "the stock market doesn't benefit people like me." I believe there are mixed emotions related to investing, but certainly fear is holding people back. Fifty-two percent say they don't invest in the market because they fear losing their nest egg in the rise and fall of the market.

What is middle-class America still depending on for retirement income? According to the research, the answer for many is Social Security. One-third agreed Social Security would be their intended "primary" source of income in retirement. Almost half (48 percent) of those making less than \$50,000 annually considered Social Security to be their "primary" source of income as they move into retirement. Fear plays a role when it comes to middle-class Americans' view of Social Security and its long-term viability for workers. When rating top financial concerns, 37 percent indicated that the "loss or diminishment of Social Security" was their biggest concern, second only to "a large unexpected healthcare expense" (40 percent).

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Feature Article: Can You Still Pay Bills and Save for Retirement?

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This is especially true for women, with 46 percent saying their top financial fear was a loss of or diminished amount of Social Security, compared to 29 percent of men voicing this fear. Fewer women, however, are afraid of losing their nest egg in the stock market (46 percent vs. 58 percent of men).

Realism In Their 30s

We surveyed a wide range of ages in our middle-class survey, breaking out findings by decade to spot trends. This year, we found people in their 30s to be the most prepared and realistic about what's needed when saving for retirement.

For example, those from 30-39 are saving a median of six percent of their annual income for retirement, a higher percentage than those in their 20s or 40s. Estimating the amount for their retirement – a median of \$500,000 – is also more in line with what many financial experts use for guidance. Those over 40 only estimated needing \$200,000.

More than a third (34 percent) – the highest among all age groups – have a written retirement plan. And 30 percent have confidence in investing in the stock market for retirement – again the highest among other ages. We're encouraged that this group, while still needing to make strides to achieve their long-range goals, is focused on the right variables when it comes to being successful at saving for retirement.

Every age group can make a difference in their long-term financial future by creating a plan for how to build the retirement nest egg they will need. Clearly our research demonstrates the importance of having a plan.

WE APPRECIATE OUR SPONSORS 2013-2014

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Wagner Law Group



MEMBER PROFILE

Melissa Mayhew



Name: **Melissa Mayhew**
Company: Sedhom & Mayhew, PLLC, A Bespoke Law Firm
Title: Co-Founder and Member
Education: B.A., the Pennsylvania State University; J.D., the Dickinson School of Law
Years in the industry: 17

Please tell us about your first "real" job: My first real job after law school was as an advisor to a division of Citibank. We helped small employers (less than 100 employees) enter the 401(k) market by offering low administration fees and a prototype document platform.

BUSINESS BACKGROUND

Nature of your work: Until November of 2013, I worked as an attorney and a consultant, focused on employee benefits compliance issues. In November, a former co-worker and I started our own law firm, with offices in San Francisco and New York. The majority of our practice focuses on the legal needs of small businesses. That allows me to continue doing what I love – employee benefits – while giving me the opportunity to expand my practice.

How you got into the field: I went to law school thinking I'd end up as an auditor for the Department of Labor. My third year, I took a seminar in pension and employee benefits. I was hooked and never really looked back.

What you like about the field: When I first got started, I loved it because there always seemed to be an answer – buried somewhere in the Internal Revenue Code or ERISA. Now I love it because I know there is rarely a "right" answer.

PERSONAL

Ways you spend free time: From February until June, it's all about little league baseball. When the season's over, I enjoy trips to Napa and Sonoma, and going to the movies.

Guiding philosophy: Just because you can, doesn't mean you should.

Favorite charity: Camp Kindle, which provides summer camp opportunities for children who are infected with or affected by HIV and AIDS.

Last books read: Maria Semple's "Where'd You Go, Bernadette?" A friend at work recommended it and I read it cover to cover on a cross-country flight.

Restaurant recommendations: Speisekammer Restaurant (Alameda). The outdoor patio on a sunny afternoon is not to be missed.

What will you do when you retire: Finish all the projects that I've put off. There are quite a few!

We would like to thank Melissa for her untiring work over the past four years as Editor of the San Francisco Chapter newsletter. Melissa is happily moving into a new and exciting future, and will be replaced by Katuri Kaye.





Qualified Retirement Plans

Guidance on In-Plan Roth Rollovers Issued: On December 11, 2013, the Internal Revenue Service (the “Service”) issued Notice 2013-74, which addresses the expanded availability of in-plan Roth rollovers within plans qualified under Sections 401(k), 403(b), 457(b) of the Internal Revenue Code of 1986, as amended (the “Code”), and certain other enumerated plans, after December 31, 2012. The guidance relates to the expansion of these rollovers under new Code Section 402A(c)(4)(E), as added by Section 902 of the American Taxpayer Relief Act of 2012 (“ATRA”). Notice 2013-74 is presented in the form of questions-and-answers (“Q&As”), and addresses various matters relating to in-plan Roth rollovers, including the following:

- The application of Notice 2010-84 after ATRA, including amounts eligible for in-plan Roth rollovers, the effect of such rollovers on an employee’s designated Roth account, and the inapplicability of withholdings under Code Sections 3405 and 3402(p);
- The deadlines for plan sponsors to adopt an amendment to a plan providing for in-plan Roth rollovers of otherwise non-distributable amounts in order to be effective for a plan year; and
- Additional rules that apply to all in-plan Roth rollovers.

SOURCE: <http://www.irs.gov>

Cumulative List of Changes for Cycle D Plans Issued: On December 11, 2013, the Service issued Notice 2013-84, which includes the 2013 Cumulative List. The 2013 Cumulative List is the list of statutory, regulatory, and guidance changes that the Service will look for when reviewing individually designed plan documents submitted for favorable determination letters during the Cycle D submission period. The 2013 Cumulative List is to be used by plan sponsors and practitioners submitting determination letter applications for plans during the period beginning February 1, 2014 and ending January 31, 2015. Plans using this Cumulative List will primarily be single employer individually designed defined contribution plans and single employer individually designed defined benefit plans that are in Cycle D, and multiemployer plans as described in Code Section 414(f). Generally, an individually designed plan is in Cycle D if the last digit of the employer identification number of the plan sponsor is 4 or 9.

SOURCE: <http://www.irs.gov>

Temporary Nondiscrimination Relief for Certain Closed Defined Benefit Plans Provided: On December 13, 2013, the Service issued Notice 2014-5, which permits certain employers that sponsor a closed defined benefit plan, also referred to as a plan in a “soft freeze,” and a defined contribution plan to demonstrate that the aggregated plans comply with the nondiscrimination requirements of Code Section 401(a)(4) on the basis of equivalent benefits, even if the aggregated plans do not satisfy the current conditions for nondiscrimination testing on that basis. Notice 2014-5 describes possible alternatives that would allow for combined testing on the basis of equivalent benefits. The Department of the Treasury (the “Treasury”) and the Service are considering whether the regulations under Code Section 401(a)(4) should be amended to provide additional alternatives that would allow a plan to demonstrate satisfaction of the nondiscrimination in amount on the basis of equivalent benefits, and has requested comments on several possible alternatives, and modification of the rules to make it less burdensome for employers who wish to freeze defined benefit plans and provide comparable benefits to new employees through defined contribution plans. The deadline to submit comments on the possible permanent changes to the nondiscrimination rules under Code Section 401(a)(4) was February 28, 2014.

SOURCE: <http://www.irs.gov>

Service Releases Revised Form 5300, Form 5310, and Form 5330: On December 20, 2013, the Service released revised versions to Form 5300 (Application for Determination for Employee Benefit Plan) and Form 5310 (Application for Determination for Terminating Plan), and accompanying instructions. On January 2, 2014, revised Form 5330 (Return for Excise Taxes Related to Employee Benefit Plans) was released, but there are no revisions to the form’s 2009 Instructions.

SOURCE: <http://www.irs.gov>

Proposed Rule Regarding Multiemployer Plans, Valuation and Notice Requirements Issued: On January 29, 2014, the Pension Benefits Guaranty Corporation (the “PBGC”) proposed amendments to its multiemployer regulations to make the provision of information to the PBGC and plan participants more efficient and effective and to alleviate the burden on plan sponsors. The amendments would reduce the number of actuarial valuations required for certain small terminated but not insolvent plans, shorten the advance notice filing requirements for mergers in situations that do not involve a compliance

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determination, and remove certain insolvency notice and update requirements. The amendments are a result of the PBGC's regulatory review under Executive Order 13563 (Improving Regulation and Regulatory Review). Specifically, the PBGC proposes to (1) allow valuations every three years, instead of annually, for plans that are terminated by mass withdrawal but are not insolvent, where the actuarial value of the plan's non-forfeitable benefits is \$25 million or less; (2) eliminate the requirement to provide annual updates to a terminated plan's notice of insolvency; and (3) shorten the notice period for multiemployer plan mergers from 120 to 45 days. Comments on the proposed rule are due to the Regulatory Affairs Group, Office of the General Counsel, PBGC, by March 31, 2014.

SOURCE: <http://www.pbgc.gov>

Proposed Rules on UBTI Calculation Issued: On February 5, 2014, the Service issued proposed regulations regarding how certain organizations that provide employee benefits must calculate their Unrelated Business Taxable Income ("UBTI"), and withdrawing the notice of proposed rulemaking relating to UBTI published on February 4, 1986. Organizations that are otherwise exempt from tax under Code Section 501(a) are subject to tax on their UBTI under Code Section 511(a). Code Section 512(a) generally defines UBTI of exempt organizations and provides special rules for calculating UBTI for organizations described in Code Section 501(c)(7) (social and recreational clubs), voluntary employees' beneficiary associations described in Code Section 501(c)(9) ("VEBAs"), supplemental unemployment benefit trusts described in Code Section 501(c)(17) ("SUBs"), and group legal services organizations described in Code Section 501(c)(20) ("GLSOs"). The proposed regulation applies to VEBAs and SUBs, which are covered entities under the proposal, but no longer applies to GLSOs. The new proposed rule retains the UBTI calculation formula from the 1986 guidance, with modifications. Before this proposed regulation is adopted as a final regulation, consideration will be given to any comments that are submitted to the Service by May 7, 2014.

SOURCE: <http://www.irs.gov>

Guidance on Fixing Common Safe Harbor 401(k) Plan Notice

Mistakes Issued: As part of the February 24, 2014, issue of the Retirement News for Employers Newsletter (the "Newsletter"), the Service outlined the requirements under a safe harbor plan qualified under Code Section 401(k) for employers to provide

timely notice to eligible employees, the appropriate correction for a late notice, the available correction programs described in Revenue Procedure 2013-12, and tips for finding and avoiding mistakes. A safe harbor plan requires an employer to provide timely notice to eligible employees informing them of their rights and obligations under the plan, and certain minimum benefits to eligible employees either in the form of matching or non-elective contributions. The safe harbor notice includes information such as employer contributions, compensation and salary deferrals and elections, withdrawal and vesting provisions, and how to obtain additional information about the plan. The Newsletter states that in general, notice is timely if plan sponsors provide the notice to eligible employees from 30 to 90 days before the beginning of each plan year. For employees that become eligible to participate after this time period, sponsors must provide the notice sometime in the 90 days leading up to and including the employee's eligibility date.

SOURCE: <http://www.irs.gov>

Upcoming Employee Plans Guidance Phone Forum: On March 13, 2014, the Service's Employee Plans Technical Guidance will discuss the list of changes plan sponsors and practitioners must make to a plan before submitting determination letter applications beginning February 1, 2014 (Notice 2013-84). Cycle D filers (single employer individually designed defined contribution plans, single employer individually designed defined benefit plans and Code Section 413 multiemployer plans) should use this list to determine if a plan has been updated for all current laws. The deadline to submit questions for this phone forum to the Service was February 28, 2014.

SOURCE: <http://www.irs.gov>

Health and Welfare Plans

Restrictions on SHOPS and Explanations Regarding Reinsurance

Contributions Issued: On December 11, 2013, the Centers for Medicare and Medicaid Services ("CMS") issued guidance, in the form of two sets of frequently-asked-questions ("FAQs"), on its Technical Assistance Portal, restricting the application of minimum participation requirements to small employers purchasing coverage through a Small Business Health Option Program ("SHOP"). SHOPS are the Exchanges through which small employers can offer qualified health plans ("QHPs") to their employees. On December 19, 2013, the CMS published new FAQs explaining the transitional reinsurance fee applicable to health insurers and self-insured group health

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plans providing major medical coverage. The new FAQs state that retiree-only health reimbursement accounts (“HRAs”) will not be required to pay the reinsurance contribution as long as the retiree-only HRA covers fewer than two participants who are current employees because retiree-only HRAs will reimburse medical expenses only until the account balance is exhausted, and thus, is not considered a retiree-only HRA to provide major medical coverage. Starting in 2014, health insurers and self-insured plans providing major medical coverage must make contributions to a reinsurance program. The new FAQs state that reinsurance contributions may be excluded solely with respect to employees that actually receive primary coverage from Medicare.

SOURCE: <http://www.cms.gov>

Regulations Introduced Addressing Enrollment for Exchange Coverage:

On December 12, 2013, the Department of Health and Human Services (“HHS”) issued interim final regulations and a Fact Sheet addressing a number of issues designed to ease the transition to Exchange coverage for individuals and small employers. These regulations allow additional enrollment opportunities for qualified individuals and employers seeking Exchange coverage beginning January 1, 2014, and provide the following:

- An Exchange must ensure a January 1, 2014, coverage effective date for plan selections received by December 23, 2013 (in contrast to the previous date of December 15, 2013). HHS encourages insurers to allow individuals who signed up after December 23, 2013, to get coverage on January 1, 2014.
- Insurers are required to provide coverage beginning on January 1, 2014, if an individual pays by December 31, 2013. HHS encourages insurers to allow individuals who signed up by December 23, 2013, but didn’t pay until sometime in January 2014, to get coverage starting on January 1, 2014, and to allow individuals who pay part but not their entire premium to have their coverage start on time.
- Insurers are encouraged to take added measures to ease transitions to Exchange coverage, such as facilitate the continuity of care by treating out-of-network providers as in-network for acute episodes at the start of the plan year, and by refilling prescriptions covered under previous plans without imposing prior authorization requirements.

- There is an extension of pre-existing condition insurance plan coverage through January 31, 2014, if a new plan has not been selected.

SOURCE: <http://www.hhs.gov>

Supplemental Post-Windsor Guidance for Certain Health and Welfare Plans Issued: On December 16, 2013, the Service supplemented prior guidance with the release of Notice 2014-1, written in a Q&A format with examples. Notice 2014-1 clarifies several issues for plan sponsors and administrators on the application of the rules under Code Section 125 relating to cafeteria plans, including health and dependent care flexible spending accounts, and Code Section 223 relating to health spending accounts (“HSAs”), as those two provisions relate to the participation by same-sex spouses in certain employee benefit plans following the Supreme Court decision in *United States v. Windsor*. The notice amplifies the previous guidance provided in Revenue Ruling 2013-17 by extending the relief available to employees who have purchased health coverage for a same-sex spouse by permitting a mid-year cafeteria plan election change. Notice 2014-1 is effective as of December 16, 2013 and covers the following:

- mid-year election changes under cafeteria plans (including change of marital status, significant change in cost of coverage, and effective date);
- pre-tax premium payments for spousal health coverage;
- contribution limits for HSAs and dependent care assistance programs; and
- written plan amendments applicable to cafeteria plans.

SOURCE: <http://www.irs.gov>

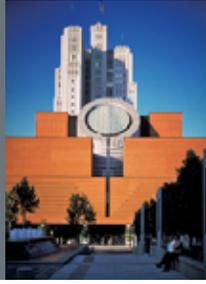
Proposed Changes to Excepted Benefits Rules Released: On December 24, 2013, the Departments of Labor (the “DOL”), HHS, and the Treasury (collectively, the “Departments”) issued proposed regulations adding two new types of excepted benefits and removing one of the conditions for self-insured dental, vision, or long-term care (“LTC”) coverage to be treated as excepted benefits under the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”) and health care reform. Excepted benefits are generally exempt from the health reform requirements under HIPAA. Under HIPAA, limited scope vision or dental benefits, and benefits for LTC are excepted if they are limited in scope and are either: (1) provided under a separate policy, certificate, or contract of

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insurance; or (2) otherwise not be an integral part of a group health plan, whether insured or self-insured. The regulations propose the following:

- The elimination of additional premiums or contributions for limited-scope dental or vision;
- The provisions that wraparound coverage would only qualify as excepted benefits under limited circumstances; and
- The addition of Employee Assistance Programs (“EAPs”) that do not provide significant medical care as excepted benefits. The proposed regulations set forth four criteria which must be met for an EAP to qualify as an excepted benefit beginning January 1, 2015.

The Departments invited comments on these proposed regulations which were due on February 24, 2014. Until rulemaking is finalized, through at least 2014, the Departments will consider dental and vision benefits, and EAP benefits meeting the conditions of these proposed regulations to qualify as excepted benefits. To the extent final regulations or other guidance with respect to vision or dental benefits or EAPs is more restrictive on plans and issuers than these proposed regulations, the final regulations or other guidance will not be effective prior to January 1, 2015.

SOURCE: <http://www.dol.gov/ebsa>

Proposed Regulations on HIPAA's Electronic Transaction Standards

Issued: On January 2, 2014, HHS proposed regulations to implement the statutory requirement for health plans to certify compliance with HIPAA's electronic transaction standards and operating rules. As background, HHS has adopted standards that health plans (and other HIPAA-covered entities) must use when conducting specified transactions electronically. Under the proposed rule, a controlling health plan (“CHP”) would be required to submit information and documentation demonstrating that it is compliant with certain standards and operating rules adopted by the Secretary of HHS under HIPAA. This proposed rule would also establish penalty fees for a CHP that fails to comply with the certification of compliance requirements. Comments regarding the proposed regulation were due to HHS on March 3, 2014.

SOURCE: <http://www.hhs.gov>

FAQs Regarding the Affordable Care Act (“ACA”) Implementation and

Mental Health Parity Implementation Issued: On January 9, 2014, the Departments issued FAQs Part XVIII regarding health care

reform and mental health parity provisions, which address the following issues:

- new recommendation added to preventative service;
- the annual limit on out-of-pocket costs may be divided across multiple categories of benefits;
- health plans;
- clarifications relating to nondiscriminatory wellness programs;
- fixed indemnity coverage as excepted benefits; and
- the effect of the ACA on the Mental Health Parity and Addiction Equity Act of 2008.

SOURCE: <http://www.dol.gov/ebsa>

Final Regulations Implementing Employer Shared Responsibility

Provisions Issued: On February 10, 2014, the Service issued final regulations implementing the employer responsibility provisions under the ACA that take effect in 2015. Together, Code Sections 4980H(a) and 4980H(b) are called the “employer shared responsibility” provisions of the employer mandate. For Code Section 4980H purposes, shared responsibility applies to “applicable large employers” or “ALEs”, generally those with 50 or more full-time employees, including full-time equivalent (“FTEs”), during the prior years. Code Section 4980H imposes excise taxes on large employers that do not provide certain health plan coverage to their full-time employees. The rules address a number of questions about how plans can comply with the employer shared responsibility provisions; ensuring that volunteers such as firefighters and emergency responders do not count as full-time employees; and phasing in provisions for businesses with 50 to 99 full-time employees and those that offer coverage to most but not yet all of their full-time workers. The final rules provide that:

- The employer shared responsibility provision will generally apply to ALEs with 100 or more full-time employees, including FTEs, starting in 2015, and employers with 50 to 99 full-time employees starting in 2016. Accordingly, the final regulations provide for a one year delay for small employers. However, in order to qualify for the delay, applicable smaller employers must satisfy other requirements, including a prohibition on reduction in workforce.

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- Employers are to use an optional look-back measurement method to make it easier to determine whether employees are full-time. The final regulations also clarify the application of this method and the alternative monthly method for determining full-time status.
- Safe harbor provisions permit employers to use the wages they pay, their employees' hourly rates, or the federal poverty level in determining whether employer coverage is affordable under the ACA.
- A package of limited transition rules that applied to 2014 under the proposed regulations is extended to 2015, including methods for determining whether an employer had at least 100 full-time employees, or FTEs, in the previous year, compliance for non-calendar year plans, dependent coverage, and on a one-time basis, in 2014 preparing for 2015, plans may use a measurement period of six months even with respect to a stability period (the time during which an employee with variable hours must be offered coverage) of up to 12 months.

The Treasury and the Service are expected to issue final regulations aimed to substantially simplify and streamline employer reporting requirements. In conjunction with the final regulations, the Service issued a Fact Sheet and Q&As. This guidance clarifies the basics of the employer shared responsibility provisions and which employers are subject to the provisions, identification of full-time employees, liability and calculation of the payment, transition relief, and the basics for small employers.

SOURCE: <http://www.irs.gov>

Final and Proposed Regulations on the ACA's 90-Day Waiting Period Limit Issued: On February 24, 2014, the Departments issued final and proposed regulations generally retaining the guidance in the 2013 proposed regulations setting forth the parameters for complying with the 90-day waiting period. The final regulations include rules governing the relationship between a plan's eligibility criteria and the 90-day waiting period limitation. Specifically, the final regulations provide that being otherwise eligible to enroll in a plan means having met the plan's substantive eligibility conditions. The 90-day waiting period limitation generally does not require the plan sponsor to offer coverage to any particular individual or class of individuals. Instead, the final regulations provide that a group health plan, and health insurance issuers offering group health insurance coverage, may not apply a waiting period

that exceeds 90 days. The final rules also cover the following:

- the definition and implementation of the waiting period;
- the application of the 90-day limitation period to former employees; and
- the extent to which a health insurer may rely on eligibility information provided by an employer or plan sponsor.

The final regulations do not specify the facts and circumstances under which an employment-based orientation period would not be considered reasonable and bona fide. The Departments have proposed a rule that the maximum allowed length of any reasonable bona fide employment-based orientation period is one month. The maximum 90-day waiting period would begin on the first day after the orientation period. Comments on the proposed rules must be received by the Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, by April 25, 2014.

The applicable effective date and reliance periods related to the guidance on the 90-day waiting period are outlined in the final regulations, which apply to group health plans and group health insurance issuers for plan years beginning on or after January 1, 2015. For plan years beginning in 2014, the Departments will consider compliance with either the proposed regulations or the new final regulations to constitute compliance with ACA's 90-day waiting period limitations.

The final regulations are effective on April 25, 2014.

SOURCE: <http://www.dol.gov/ebsa>

Executive Compensation

Securities and Exchange Commission (SEC) Announces Its Examination Priorities for 2014: On January 9, 2014, the SEC's National Examination Program ("NEP") released a report outlining its 2014 examination priorities covering a wide range of issues at financial institutions, including investment advisers and investment companies, broker-dealers, clearing agencies, exchanges and other self-regulatory organizations, hedge funds, private equity funds, and transfer agents. The examination priorities address market-wide issues and those specific to particular business models and organizations. The Commission noted that priorities listed for 2014 are not exhaustive and may be adjusted throughout the year in light of ongoing risk assessment activities. The NEP will undertake several initiatives, including the treatment of retirement vehicles and rollovers. The report indicates that investors entering retirement are left with multiple options as to the

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treatment of their retirement plan assets held at their former employer, and investment advisors and broker-dealers may have incentives to recommend that the assets be placed with an IRA, or other alternative offered by a financial services firm. The NEP plans to examine the following:

- The sales practices of investment advisers targeting retirement-age workers to roll over their employer-sponsored Code Section 401(k) plan into higher cost investments, including whether advisers are misrepresenting their credentials or the benefits and features of individual retirement arrangements or other alternatives; and
- Broker-dealers and investment advisers for possible improper or misleading marketing and advertising, conflicts, suitability, churning, and the use of potentially misleading professional designations when recommending the movement of assets from a retirement plan to an IRA rollover account in connection with a customer's or client's change of employment.

SOURCE: <http://www.sec.gov>

SEC Outlines the SEC's 2014 Rulemaking Initiatives: On February 21, 2014, the SEC Chair outlined the progress of its goals for 2014. Although not an exhaustive list, the initiatives for 2014 included proposing executive compensation rules required by the Dodd-Frank Act and further requirements for companies to disclose how executive pay packages related to corporate performance.

SOURCE: <http://www.sec.gov>

Final Regulations on the Taxation of Property Transferred in Connection With Performance of Services Issued: On February 26, 2014, the Service issued final regulations affecting certain taxpayers who receive property transferred in connection with the performance of services under Code Section 83. These final regulations provide several clarifications regarding whether a substantial risk of forfeiture exists in connection with property subject to Code Section 83. Specifically, the final regulations clarify that (1) except as specifically provided in Code Section 83(c)(3) and 26 CFR Sections 1.83-3(j) and (k), a substantial risk of forfeiture may be established only through a service condition or a condition related to the purpose of the transfer; (2) in determining whether a substantial risk of forfeiture exists based on a condition related to the purpose of the transfer, both the likelihood that the forfeiture event will occur and the likelihood that the forfeiture will be enforced

must be considered; and (3) except as specifically provided in Code Section 83(c)(3) and 26 CFR Sections 1.83-3(j) and (k), transfer restrictions do not create a substantial risk of forfeiture, including transfer restrictions that carry the potential for forfeiture or disgorgement of some or all of the property, or other penalties, if the restriction is violated. The final regulations apply to property transferred on or after January 1, 2013.

SOURCE: <http://www.irs.gov>

Presidential and Congressional Action

President Obama Signs the Bipartisan Budget Act of 2013: On December 26, 2013, President Obama signed into law the Bipartisan Budget Act of 2013 (the "Act"). The legislation includes an increase in flat-rate and variable-rate premiums payable to the PBGC. Each sponsor of a pension plan that is insured by PBGC pays annual premiums. The PBGC collects three types of premiums: (1) a flat-rate, per participant premium, (2) a variable-rate premium based on the dollar amount of a plan's underfunding, and (3) a per-participant premium payable for three years after a defined benefit pension plan terminates. Section 703 of the Act would increase both flat-rate premiums and variable-rate premiums to reduce the deficit of the PBGC. Specifically, the flat-rate premium for single employer plans will increase to \$57 per participant for plan years beginning after December 31, 2014, and before January 1, 2016, and for plan years beginning after December 31, 2015 and before January 1, 2017, to \$64. For plan years beginning in a calendar year after 2016, the flat-rate premium is indexed to wages. The variable-rate premium cap will be increased to \$500 for plan years beginning after 2015. Subsection 703(e) of the Act provides for these provisions to be effective for plan years beginning after December 31, 2013. Section 702 of the Act includes a limitation on the amount of contractor employees' compensation costs that is allowed to be charged on federal government contracts. Compensation costs can include salary, bonuses, stock options, and employer contributions to pension plan. The new cap applies only to contracts entered into 180 days or more after enactment.

SOURCE: <http://www.congress.gov>

President Obama Introduces my Retirement Account: On January 28, 2014, during the State of the Union Address, President Obama introduced the my Retirement Account ("myRA") initiative.

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QUARTERLY LEGISLATIVE & REGULATORY UPDATE

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Under MyRA, the President has directed the Treasury to create new starter saving accounts, which are intended to be portable, available to be accessed in the event of emergencies, and backed by government bonds. The development of the accounts is to be finalized by December 31, 2014. If an employer chooses to participate, contributions will be made through automatic payroll deductions, sending the direct deposit to each participating employee's myRA, but employers will neither administer nor contribute directly to the accounts. According to the White House Fact Sheet, the accounts will be available to households earning up to \$191,000 per year. The accounts will be offered through an initial pilot program to employees who choose to participate by the end of 2014.

SOURCE: <http://www.whitehouse.gov>

Senate Passes the Cooperative and Small Employer Charity Pension Flexibility Act: On January 28, 2013 the Senate passed S. 1302, the Cooperative and Small Employer Charity Pension Flexibility Act. Introduced by Senators Tom Harkin and Pat Roberts on July 16, 2013, this legislation would make the temporary exemption from pension funding rules in the Pension Protection Act of 2006 for rural cooperative multiple-employer defined benefit plans permanent, and will be applicable to years beginning after December 31, 2013.

SOURCE: <http://www.congress.gov>

Bill Introduced to Amend Code Section 162(m): On January 29, 2014, Representative Lloyd Doggett introduced the Stop Subsidizing Multimillion Dollar Corporate Bonuses Act. Code Section 162(m) limits the federal tax deductibility of compensation paid to certain named executive officers of publicly traded companies. The proposed legislation would expand the reach of Code Section 162(m) to all corporations that are required to file periodic reports with the SEC. Currently, Code Section 162(m)'s deduction limit applies to any corporation that has a class of common equity securities required to be registered under Section 12 of the Securities Exchange Act of 1934 (the "34 Act"). The proposed legislation states that it would allow a publicly-traded corporation to deduct only up to \$1 million in pay per employee, closing the existing loophole by:

- Broadening the scope of corporations subject to Code Section 162(m) from publically held corporations that issue any class of common equity securities registered under section 12 of the '34 Act to any corporation that qualifies as an issuer whose securities are registered under section 12 of the '34 Act or that is required to file reports under section 15(d) of the '34 Act." The effect of this would be

to capture all corporations that file periodic reports, such as quarterly and annual filings, with the SEC for the benefit of investors.

- Broadening the number of employees from the CEO and the 3 highest compensated officers to all current and former employees.
- Eliminating the exception for commission-based remuneration and performance-based compensation.

SOURCE: <http://www.congress.gov>

Universal, Secure, Adaptable ("USA") Retirement Funds Act Proposed: On January 30, 2014, Senator Tom Harkin introduced legislation proposing to create a new type of privately run retirement plan that combines the advantages of traditional pensions, including lifetime income benefits and pooled, professional management, with the portability and ease for employers, which would be overseen by the DOL. Each USA Retirement Fund would be managed and administered by a board of qualified trustees able to represent the interests of employees, retirees, and employers. The trustees would be subject to disclosure requirements regarding the fund's performance and fees, as well as the fund's policies, procedures for providing lifetime income, and conflicts of interest policy. The funds would operate like pensions, both through the pooling of investments and lifetime retirement benefits, which would be based on a worker's total contributions and investment performance over time. The key features of the proposed legislation include universal coverage, automatic enrollment, security of lifetime income for participants with survivor benefits and spousal protections, and cost efficiency and portability.

SOURCE: <http://www.help.senate.gov>

Draft Tax Reform Legislation Released: On February 26, 2014, Representative Dave Camp released the 2014 Tax Reform Act proposing comprehensive tax reform legislation. The proposed legislation contains many provisions targeted at executive compensation laws, such as nonqualified deferred compensation, modification of limitation on excessive employee remuneration, excise tax on excess tax-exempt organization executive compensation and denials of deduction as research expenditures for stocks transferred pursuant to an incentive stock option.

SOURCE: <http://www.waysandmeans.house.gov>

Our deepest thanks to Anjuli Cargain of Saltzman & Johnson and Katuri Kaye of Trucker♦Huss for their dedicated work on the Quarterly Regulatory Updates.





Past Presidents' Reception

Wednesday, January 22, 2014



Yvonne Nyborg, Barbara Creed, Ian Altman



Sonja Gordon, Blake Williams, Anjuli Cargain

Mar 11 S.F. Chapter Meeting
4PM - Pension Nuggets: A Quick Glance at Fiduciary
7PM Liability Insurance v. Bonding, Index Funds, and
Challenges Facing Small & Mid-Size 403(b) Plans
 Sponsored by:



Location: The Palace Hotel

Mar 19 Silicon Valley Spring Conference
8AM - Employee Benefits - Today and Beyond
Noon Sponsored by:



Location: Orrick, Herrington & Sutcliffe
 1000 Marsh Road, Menlo Park

Apr 7 Joint Meeting with The Commonwealth Club
4PM - Money for Life
7PM Speaker: *Steve Vernon*, F.S.A., Consulting Research
 Scholar for the Financial Security Division of the
 Stanford Center on Longevity and President, Rest-of-Life
 Communications
 Sponsored by:



Location: The Commonwealth Club,
 595 Market Street, San Francisco

May 22 San Francisco Chapter Spring Conference
8AM - Sponsored by:
12:30PM **ALTMAN & CRONIN**
BENEFIT CONSULTANTS, LLC
 Location: The Palace Hotel



Tina Chambers, Allen Knott



George Pinto, Gary Blank



Steve Kjar, Chris Blair



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Joe Wraga

Charles Schwab

The Newsletter is always looking for contributors. If you would like to write a topical benefits-related article or compile the quarterly regulatory update for an upcoming issue, please contact Katuri Kaye at: kkaye@truckerhuss.com

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EMPLOYMENT OPPORTUNITIES

This service is provided quarterly to our readers. If you wish to post an employment opportunity, please read the following note.

We do not warrant or claim that listings are accurate as written, and we cannot guarantee their timeliness. Listings must comply with applicable regulations for employment advertising. Email all listings to info@wpbcfsf.com for a price quote. Ad cost is \$50 for every 25-word segment. The next deadline for submission is June 1 for the Summer 2014 issue. Call Jenifer McDonald at the Chapter office for more information, (415) 730-5479.

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