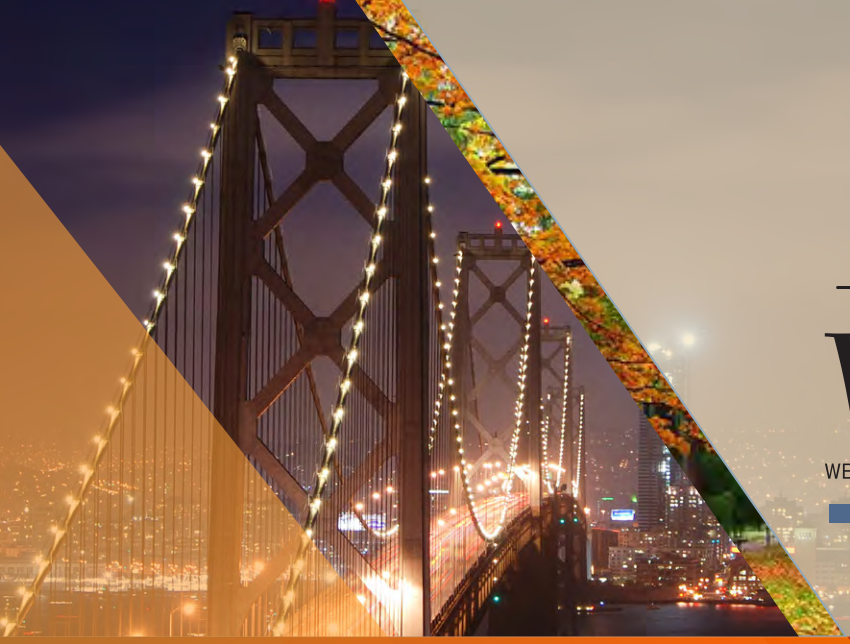

WESTERN PENSION & BENEFITS COUNCIL
San Francisco

Pension & Benefits Quarterly

Fall 2019

Inside this edition

> "We want to take a moment to express our condolences to those impacted by the California fires"
>
> **Karen Mack,**
> *Altman & Cronin Benefit Consultants*

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Qualified Retirement Plans Updates

By Ami Givon | GCA Law Partners LLP

Final Hardship Distribution Regulations: On September 23, 2019, the Treasury Department and the Internal Revenue Service (IRS) issued final regulations modifying the hardship distribution provisions applicable to Internal Revenue Code (Code) section 401(k) plans. The final regulations include, among other modifications, changes directed by the Bipartisan Budget Act of 2018.

The final regulations, like the proposed regulations issued in November 2018, include the following:

- Modification of the safe harbor list of expenses for which distributions are deemed to be made on account of an immediate and heavy financial need by:

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PRESIDENT'S LETTER

President's Letter

WP&BC Western Pension & Benefits Council San Francisco

FALL 2019

Happy Fall 2019!

Welcome back to our newsletter. I hope everyone is having a great Fall filled with football, foliage, and Halloween candy. We want to take a moment to express our condolences to those impacted by the California fires in Southern California and right in our backyard here in Northern California – both the families impacted by fire and those homes and businesses impacted by the blackouts. We are grateful to the brave firefighters working hard to contain the fires.

This time of year is typically a very busy time for benefits professionals and also for us here at the WP&BC SF Chapter. Our 2019/2020 program season is off to a great start. Thanks to the sponsors, Board Members, Committee Members and our Members who have made it happen.

We kicked off the program year with a member networking event on October 1st held at Orrick in San Francisco. **Caleb Fritz of T. Rowe Price** spoke about the U.S. Equity markets and provided perspective on value versus growth investing in today's challenging economic environment. A big thanks to **Orrick** for hosting the event and to our membership committee of **Robert Gower, Kelsey Blegen, Aimee Hendershott** and **Laurie Cross** for planning the festivities, which included Fall-themed beers and Halloween cookies.

We held our first Brown Bag lunch session on October 28, 2019, which is a free benefit to members of our organization. **Brad Wall** of Moss Adams presented "2018 Employee Benefit Plan Audit Debrief – Lessons Learned/ Best Practices." Thanks to our Brown Bag coordinator **Sandy Purdy** for organizing and moderating the session and to **Hanson Bridgett** for hosting the location and providing refreshments. Those of us who attended can attest that the conversation was lively.

On November 12, 2019, we hosted a panel discussion on CalSavers. The session featured **Mark Iwry** of the Brookings Institution, **Katie Selenski** of CalSavers and **Perry Bacon** of Marine Street Financial. The session was moderated by **Virginia Krieger-Sutton** of Johnson & Dugan. The event was held at **Jackson Lewis**. It was an incredibly interesting and informative discussion.

Our next event will be December 5, 2019, so please mark your calendars! Our program committee, co-chaired by **Karen Casillas** and **Yana Johnson**, is working hard to develop our upcoming sessions, so please let us know if you have ideas you would like to add for consideration.

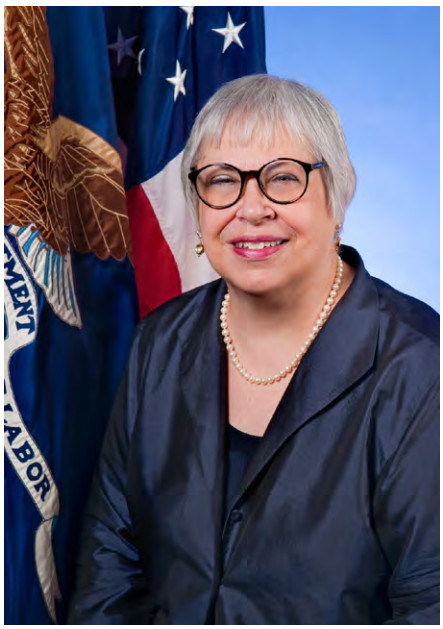
The Governing Board has agreed to partner with NIPA again this program year for the annual NAFE Conference in Nashville on April 26-29, 2020. Please mark your calendars and get ready to enjoy all that Nashville has to offer.

This organization exists to benefit its members and we need your continued support! If you haven't renewed your membership, please do so at your earliest convenience. Encourage your colleagues to join us. We are excited when we meet new members and see new relationships being forged at our events. We are committed to this marketplace and encouraging new benefits professionals to start their own networking groups. These are the future leaders of our industry and they are meeting and fostering their relationships through WP&BC.

I hope to see you at our December 5th Chapter meeting!

Karen Mack, FSA, EA, MAAA
Altman & Cronin Benefit Consultants

Industry Leader Profile: Phyllis C. Borzi



Current Position: Member of the Institute for the Fiduciary Standard's Board of Advisors; Member of the Board of Directors of Edelman Financial Engines; Member of the Bloomberg BNA Compensation Planning Advisory Board and an independent consultant.

Prior Positions: Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA).

Research Professor in the Department of Health Policy at George Washington University School of Public Health.

Of Counsel, O'Donoghue & O'Donoghue, LLP.

Pension and Employee Benefit Counsel for the U.S. House of Representatives, Subcommittee on Labor-Management Relations of the Committee on Education and Labor.

Years in the industry: More than 40 years.

INDUSTRY LEADER PROFILE

AT WORK

What has been the nature of your work? My work ran the gamut. I did legislative and regulatory work on the Hill from 1979 to 1995. While on the Hill, I worked on any legislation involving ERISA, including the Multiemployer Pension Plan Amendment Act of 1980 and employee discrimination legislation which included the Age Discrimination in Employment Act.

In private practice, I primarily advised multi-employer plans regarding compliance. I was a research professor in the School of Public Health and Health Services at George Washington University (GW), where my research primarily focused on legal and policy barriers to use of electronic medical records, expanding health coverage and reducing costs and medical malpractice. I also taught graduate level courses at GW, including a course on managed care and one on regulation of insurance. I've done guest lectures on ERISA and other public health related issues, as well as a lot of speaking and writing on these topics generally.

At the Labor Department, I was in charge of administration, enforcement and outreach for the EBSA (with the best staff anyone could have possibly wanted). We oversaw the implementation of many aspects of the Affordable Care Act (ACA), and developed various pension regulations, including those requiring fee disclosure to plan sponsors and participants and the Conflict of Interest rule.

Since I retired, I continue to work with states and other advocates to save the ACA and to preserve the focus of attention on conflicts of interest on the pension side. I've conducted training programs for various consumer and participant advocates. I'm currently an expert witness in two cases, one involving a health and welfare plan and one pension.

One of my proudest moments was when I was invited to the White House about a week before the Inauguration to be a part of what President Obama called his "eight year club" – those of us who had served in the Administration since

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Industry Leader Profile continued: Phyllis C. Borzi

its beginning, two of the things he talked about as being some of the proudest accomplishments of his Presidency were the ACA and the Conflict of Interest rule (which he referred to as the most important retirement initiative of his Presidency and the most significant development since the passage of ERISA). I am immensely proud of the hard work of the career staff at EBSA, but especially on those two significant initiatives and couldn't wait to share President Obama's praise of our work with my staff.

What attracted you to join the employee benefits industry? It was really quite serendipitous. I had been a high school English teacher before I went to law school and I waited to go to law school until I had paid off all my debts from college and graduate school. But while in law school, I realized I still needed to earn some money and get a part time job. I answered an ad on the bulletin board outside the law school's placement office for a writer/researcher position at a consulting company. At the time, I didn't know anything about ERISA as it had just been passed. My job was to go around to the different agencies, and pick up the alerts they would send out regarding ERISA compliance issues, and then translate these issues to plain English. When I graduated from law school, I had a lot of potential offers. I took an offer specifically because it allowed me to work in the ERISA area.

My job on the Hill turned out to be serendipitous as well. A friend of mine told me about this job, asked for my resume, and then dropped it off for me. One of the reasons I got the job was because I was in the right place at the right time and I was willing to work cheap. I took a salary cut to work on the Hill, and I never expected I would stay for 16 years. When I speak at career day for law students and undergrads I always tell them, "life is not a straight line" – when opportunities present themselves you sometimes have to be bold and take them.

What has been the most surprising thing about your roles in the employee benefits industry? On the policy side (including both regulations and legislation), what surprised me is how incredibly difficult it is to get something done. It is very easy to block things. It is enormously more difficult to get something accomplished, even when there is a broad consensus to get something fixed. One of the things I've had to learn over the course of my life is patience. I'm willing to settle for an incremental change, rather than the whole ball of wax at once. Part of that is that if you really want a good product you have to take time to get input from all the stakeholders, listen to what they say and try to come up with a good solid balance — a good piece of legislation or a regulation that will move the ball forward. It is even harder now than when I worked on the Hill. I've also learned that there is genuinely more common ground than you would think on most issues (not all). If people are able to put aside the hats they wear, there is a lot more consensus than you would think from the political discussion.

What advice do you have for individuals new to the employee benefits profession? Number one is to find a mentor; someone in your firm or the community that can help you navigate the ropes. A great way to find a mentor is to get involved in professional organizations and go to training programs. By and large people are generous with their time. One of the things that strikes me about the ERISA area is how specialized and niche-like people's practice can be. I think specialization is important when you are first starting out. You need to start with a very solid grounding in one area. Advice I give to rookie ERISA lawyers is to learn how your specialty fits in the context of the whole employee benefits area. One of the things that has always attracted me to this field is the multi-disciplinary aspect. Become aware of what is going on, even if it isn't directly related to your practice area. You often can never tell what kind of issues you will be faced with. I also tell people to network, network, network.

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Industry Leader Profile continued: Phyllis C. Borzi

What significant changes do you predict for the employee benefits industry in both the near future and the long term? In the near future one of the things that worries me is that, like the population in general, the benefits world is aging. We need to figure out a way to bring younger folks along to be able to step up to leadership positions in the future. I find it very hard to predict what areas of law or policy are going to be the issues of the future. I do think conflicts of interest in the investment world are going to continue and perhaps accelerate being of great importance. One of the things we did with regards to the Conflict of Interest rule is we put the spotlight on a real problem, and forced it to become part of the conversation. Those kinds of issues on the pension side are going to be important issues in the future.

Presumably at some point Congress is going to grapple with the financial challenges of multiemployer plans, and until or unless they do, that is going to be an important issue for the future. We need to do everything we can to make sure that people who were promised benefits get those benefits. That is the dilemma in the multiemployer world. The lifeblood of any multiemployer plan is new contributions, and these plans are facing a shrinking contribution base. Many funds have not recovered from the 2008 recession and you can't invest your way out of a hole. There are real advantages to multiemployer plans, they provide a level of portability that most other plans don't provide and they are worth saving. We need to figure out a solution but I don't have a silver bullet.

Another longer term issue is the gig economy. The gig workers right now are a tiny percentage of the workforce, so now is the time to figure out if there is some new retirement plan structure that would allow these workers to get the same tax advantaged status as traditional common law employees. That was a project we worked on in the Obama Administration, we had a working group that looked at how to expand coverage in the gig economy. It is very complex.

AT PLAY

When you are not working, what is one thing you enjoy doing? I love reading, cooking, visiting museums and going to the theater. Mostly just visiting with my friends. One of my big regrets, even though I spent so many years in public service, I often did not have the opportunity to get together with friends and family due to the pressures of work. All my life I've had to meet other people's deadlines. I really feel on a personal level, I have some wonderful friends and they have always tried to be there for me too. My number one priority when I retired was to reconnect with my family and friends. I also love to cook, I have an entire wall of bookshelves, two-thirds of which are cookbooks. I collect cookbooks. Whenever I travel to a city, I try to go to a museum. The most memorable museum I've visited is the Anne Frank House in Amsterdam — being there was an indescribable and moving experience.

What is the most interesting place you have visited and why? A little over a decade ago I went on safari to Tanzania. It was fascinating. We were close enough to really see the animals and their natural habitats. At one point, I woke up in the middle of the night to my cot moving because there was an elephant outside munching on the grass outside our tent. More recently, in January and February 2018, I went to Southeast Asia with several friends. We went to Vietnam, Laos, Cambodia and Thailand. We did a Mekong river cruise that was a week long and had different excursions along the way. That was fascinating. It was very memorable because I had just watched the Ken Burns documentary series on PBS about the Vietnam War, and I had lived through the war. What struck me when we got to Hanoi — and for all the money and time

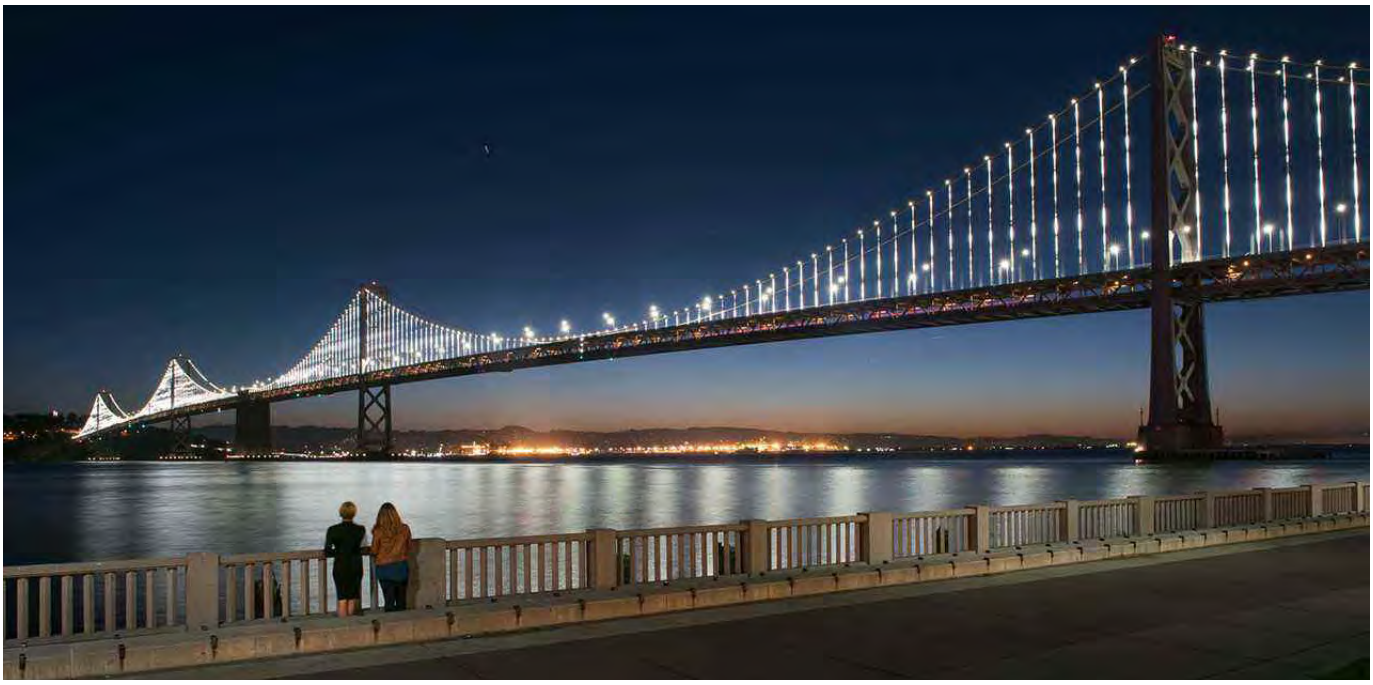
Continued pg 6

Industry Leader Profile continued: Phyllis C. Borzi

that has elapsed in helping the Vietnamese people rebuild — there were still large parts of the city that were completely bombed out. Everywhere we went the people were enormously vibrant, hardworking and welcoming. And despite what went on, they were thrilled to see Americans. They were warm, generous, and poor. But what they had they valued, and they were more than happy to reach out to us. From Vietnam we sort of moved up the economic ladder in terms of the countries. You knew you were moving up the economic ladder by the numbers of cars you saw on the road. Vietnam was mainly bicycles, Thailand had lots of cars. It was an amazing experience.

What movie or play do you recommend and why? I love musicals, particularly older ones like Westside Story and Oklahoma, but I should put in a plug for the 2019 Tony-award winning Best Musical Hades Town. I haven't seen it yet but the director is the daughter of a dear friend and she too won a Tony this year for Best Director. A recent movie I enjoyed was A Star Is Born. Lady Gaga's performance completely blew me away. She was wonderful, she really aced that performance.

If you could have dinner with a person (dead or alive) that you greatly admire, who would that be and why? This might be a surprising answer, but I would love to have dinner with Meryl Streep. She is an unbelievable actress. She has had so many different roles, and yet there is this mystery about her. We don't hear a lot about her family or her husband, and so the questions I would have for her really have to do with how she has managed to be such a consummate professional, at the same time managing to have what appears to be a happy marriage and good family. I hate to use the cliché, but I'd be interested to know how she has managed to "have it all." Of course, I'd love to be able to have dinner with Michelle and Barack Obama because they are wonderful people, and I respect them immensely, but there is something about Meryl Streep that just fascinates me. She's an activist, yet she hasn't alienated people on a political level. Her work speaks for itself. You can't wrap your arms around so many divergent roles without having something very special about you.



Qualified Retirement Updates, continued

o Adding "primary beneficiary under the plan" as an individual for whom qualifying medical, educational and funeral expenses may be incurred;

o Clarifying that for purposes of the principal residence casualty hardship, the casualty does not have to have occurred in a federally declared disaster area; and

o Adding a new type of expense to the list, relating to expenses incurred as a result of certain disasters. This new safe harbor expense is similar to the relief given by the IRS after certain major federally declared disasters. However, the preamble to the final regulations clarifies that this new safe harbor expense differs from the relief provided in disaster-relief pronouncements in three main respects. First, only disaster-related expenses and losses of an employee who lived or worked in the disaster area (but not, as under the disaster-relief announcements, those of the employee's relatives or dependents) will qualify for the new safe harbor expense. Second, unlike the disaster-relief announcements, there is no specific deadline by which the distribution request must be made, nor any specific authority to relax plan procedural requirements for the distribution. Third, there is no extended deadline to adopt disaster-related distribution provisions to the plan; a plan sponsor who chooses to amend the plan to add this new safe harbor only after a disaster occurs must do so by the end of the plan year in which the amendment is first effective.

- Elimination of the requirements that the participant be prohibited from making elective contributions and employee contributions after receipt of a hardship distribution, and the requirement to take plan loans prior to obtaining a hardship distribution.
- Replacement of the current rule under which the determination of whether a distribution is necessary to satisfy a financial need is based on all the relevant facts and circumstances with a general standard for determining whether a distribution is necessary. Under this general standard, a hardship distribution may not exceed the amount of the participant's need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution), the participant must have obtained other available distributions under the employer's plans, and the participant must represent that he or she has insufficient cash or other liquid assets to satisfy the financial need. A plan administrator may rely on such a representation absent actual knowledge to the contrary.
- Expansion of the sources of hardship distributions to include elective contributions, QNECs, QMACs, safe-harbor contributions and earnings on these amounts, regardless of when contributed or earned. However, plans may limit the type of contributions available for hardship distributions and whether earnings on those contributions are included. Safe harbor contributions made to a plan described in Code section 401(k)(13) also may be distributed on account of a participant's hardship.

The final regulations apply to hardship distributions from elective contributions under Code section 403(b) plans. However, only QNECs and QMACs in a 403(b) plan that are not in a custodial account may be distributed on account of hardship.

The new rules are effective for plan years beginning after December 31, 2019, subject to the following:

- The prohibition on suspending elective contributions and employee contributions as a condition of obtaining a hardship distribution is mandatory for distributions made on or after January 1, 2020 (rather than, as in the proposed regulations, to distributions made in plan years beginning after December 31, 2018), and may be applied to distributions made in plan years beginning after December 31, 2018, even if the distribution was made in a prior plan year.

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Qualified Retirement Updates, continued

- If the plan chooses to apply that prohibition to distributions made before January 1, 2020, the new rules requiring an employee representation and prohibiting a suspension of contributions may be disregarded with respect to those distributions.
- The revised list of safe harbor expenses may be applied to distributions made on or after January 1, 2018.

Individually designed 401(k) plans that are required to or may apply the new rules must be amended accordingly by the end of the second calendar year that begins after the issuance of the applicable Required Amendments List. Consequently, the amendment deadline will be no earlier than December 31, 2021. Pre-approved 401(k) plans must be amended by the due date (including extensions) of the employer's tax return for the tax year that includes January 1, 2020, even if the amendment is effective before that date.

The amendment deadlines for pre-approved and individually designed section 403(b) plans is March 31, 2020, although the Treasury Department and IRS are considering providing for a later amendment deadline for the amendments relating to the final regulations in separate guidance

2020 Cost-of-Living Adjustments: In Notice 2019-59, the IRS announced the cost-of-living adjustments to the dollar limits that are effective in 2020 on a wide variety of tax-favored benefits.

Key 2020 adjustments for plans are:

- The elective deferral exclusion limitation under Internal Revenue Code (Code) section 402(g)(1) (for elective deferrals under Code section 401(k), 403(b) and 457(b) arrangements) is increased from $19,000 to $19,500.
- The contribution limitation for defined contribution plans under Code section 415(c)(1)(A) is increased from $56,000 to $57,000.
- The defined benefit plan annual benefit limitation under Code section 415(b)(1)(A) is increased from $225,000 to $230,000. For a participant who separated from service before January 1, 2020, the limitation under Code section 415(b)(1)(B) is computed by multiplying the participant's compensation limitation, as adjusted through 2019, by 1.0176.
- The annual compensation limit under Code sections 401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii) is increased from $280,000 to $285,000.
- The dollar threshold under Code section 416(i)(1)(A)(i) in determining whether an officer is a key employee under the top-heavy rules is increased from $180,000 to $185,000.
- The limitation used in the definition of highly compensated employee under Code section 414(q)(1)(B) is increased from $125,000 to $130,000.
- The dollar amount under Code section 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a five-year distribution period is increased from $1,130,000 to $1,150,000, while the dollar amount used to determine the lengthening of the five-year distribution period is increased from $225,000 to $230,000.
- The elective deferral limitation under Code section 408(p)(2)(E) for SIMPLE retirement accounts is increased from $13,000 to $13,500.
- The threshold used to determine whether a multiemployer plan is a systemically important plan under Code section 432(e)(9)(H)(v)(III)(aa) is increased from $1,097,000,000 to $1,135,000,000.

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Qualified Retirement Updates, continued

- The dollar limitation under Code section 414(v)(2)(B)(i) (other than for a plan described in Code sections 401(k)(11) or 408(p)) for "catch-up contributions" for individuals age 50 and over is increased from $6,000 to $6,500.

The following limitations will remain at their 2019 levels for 2020:

- The compensation amount under Code section 408(k)(2)(C) applicable to simplified employee pensions remains at $600.
- The dollar limitation under Code section 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in Code sections 401(k)(11) or 408(p) for individuals aged 50 or over remains at $3,000.
- The limit on annual contributions to an IRA remains at $6,000. (The additional "catch-up contribution" limit for individuals age 50 and over is not subject to an annual cost-of-living adjustment and remains at $1,000.)

Notice 2019-59 also lists the adjusted gross income limitations applicable in 2020 under Code section 25B(b) for determining the retirement savings contribution credit, the applicable dollar amount under Code section 219(g)(3) for determining the deductible amount of an IRA contribution, and under Code section 408A(c)(3)(B)(ii)(I) for determining the maximum Roth IRA contribution amount.

Proposed Safe Harbor Electronic Delivery Rules: On October 23, 2019, the Department of Labor (DOL) proposed a new, additional safe harbor for the use of electronic media to furnish information to participants and beneficiaries of employee benefit pension plans subject to the Employee Retirement Income Security Act of 1974 (ERISA). (The safe harbor, as proposed, does not apply to employee welfare benefit plans, although the DOL may study the future application of the new safe harbor to documents required to be furnished to employee welfare benefit plan participants.) The use of the proposed new safe harbor is optional; plan administrators would be able to continue to rely on the existing safe harbor for electronic delivery, or to furnish paper documents by hand-delivery or by mail.

"Covered individuals" and "covered documents." The proposed regulation provides that "covered individuals" may be furnished with "covered documents" under the new safe harbor. A covered individual is a participant, beneficiary, or other individual entitled to "covered documents" and who, as a condition of employment, at commencement of plan participation, or otherwise, provides the employer, plan sponsor, or administrator (or designee of any of the them) with an electronic address, such as an email address or internet-connected mobile-computing-device (such as a smartphone) number. If an electronic address is assigned by an employer to an employee for this purpose, the employee is treated as if he or she provided the electronic address.

A "covered document" is any document that the plan administrator is required to furnish to participants and beneficiaries pursuant to Title I of ERISA, except for any document that must be furnished upon request. "Covered documents" include both documents that must be furnished solely because of the passage of time, such as pension benefit statements or summary annual reports, and those that must be furnished because of a specific triggering event, such as summaries of material modifications or blackout notices. The new safe harbor may be used for some, but not all, covered documents.

Notice of internet availability. Delivery under the new safe harbor requires the administrator to furnish to each covered individual a notice of internet availability for each covered document. The notice must be provided at the time the covered document that is the subject of the notice is made available on the accessible website.

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Qualified Retirement Updates, continued

The notice generally must be provided separately from any other document required to be furnished. However, a special rule allows an administrator to furnish one notice of internet availability, with respect to one or more of a subset of, as applicable: (1) a summary plan description; (2) a summary of material modifications; (3) a summary annual report; (4) an annual funding notice; (5) an investment-related disclosure under the DOL's 404a-5 regulations; (6) a qualified default investment alternative notice; and (7) a pension benefit statement. A combined notice of internet availability for more than one covered document must be furnished at least once each plan year, and, if the combined notice was used for the prior plan year, no more than 14 months following the prior year's notice.

The notice must contain a prominent statement, such as a title, legend, or subject line that reads, "Disclosure about Your Retirement Plan"; a statement that, "Important information about your retirement plan is available at the website address below. Please review this information"; a brief description of the covered document; the internet website address where the covered document is available; a statement of the right to request and obtain a paper version of the covered document, free of charge, and an explanation of how to exercise this right; a statement of the right to opt out of receiving covered documents electronically, and an explanation of how to exercise this right; and a telephone number to contact the administrator or other designated representative of the plan.

The notice must be furnished electronically to the covered individual's electronic address; contain only required content (except that pictures, logos, or similar design element may be included, so long as the design is not inaccurate or misleading and the required content is clear); and be written in a manner calculated to be understood by the average plan participant.

The system for furnishing the notice must alert the administrator of an invalid or inoperable address. If alerted, the administrator must take reasonable steps to cure the problem (such as by sending the notice to a secondary address, obtaining a new address from the individual, or treating the individual as having opted out of electronic delivery).

Internet website standards. The plan administrator must ensure the existence of a website at which a covered individual can access covered documents and must take measures reasonably calculated to ensure that: the covered document is available on the website by the date the document must be furnished under ERISA and remains there until superseded by a subsequent version of that document; the covered document is presented in a manner calculated to be understood by the average plan participant; and the document is available in a widely-available and searchable format or formats that are suitable for being read online, printing clearly on paper, and permanently retainable (such as in PDF form). The administrator also must take measures to ensure that the website protects the confidentiality of each covered individual's personal information.

Right to paper copies and to opt out of electronic delivery. Covered documents must be furnished to a covered individual, free of charge, upon request. Covered individuals must have the right to opt out of electronic delivery and receive only paper copies of some or all covered documents.

Initial notification. Prior to its reliance on the new safe harbor with respect to an individual, the administrator must provide the individual a paper notification that some or all covered documents will be furnished electronically to an electronic address, a statement of the right to request and obtain a paper version of a covered document, free of charge, and of the right to opt out of receiving covered documents electronically, and an explanation of how to exercise these rights.

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Qualified Retirement Updates, continued

Severance from employment by covered employee. Under the proposed regulation, if a covered individual who is an employee severs from employment, the administrator must take measures reasonably calculated to ensure the continued accuracy of the covered individual's electronic address, or to obtain a new electronic address that enables receipt of covered documents following the severance.

Relief from temporary unavailability of covered documents. The proposed rule provides that noncompliance with the new safe harbor will not occur if the covered documents are temporarily unavailable due to unforeseeable events or circumstances beyond the control of the administrator, provided that the administrator has reasonable procedures in place to ensure that the covered documents are available in the required manner and takes prompt action to ensure that the covered documents become available in the required manner as soon as practicable following the earlier of the time at which the administrator knows or reasonably should know that the covered documents are temporarily unavailable.

Effective date: The final version of the regulation will be effective on the date 60 days after the date of its publication, and applicable to employee pension benefit plans on the first day of the first calendar year following the publication date.

Tax and Reporting Consequences of Failure to Cash Distribution Check: In Revenue Ruling 2019-19, the IRS explained that the following are the tax consequences of a distributee's failure to cash a distribution check from a tax-qualified plan: the amount of the distribution is includible in the distributee's gross income; the plan administrator must comply with the income tax withholding provisions of Code section 3405(d) with respect to the distribution amount; and the distributee's failure to cash the distribution check does not alter the plan administrator's obligation to report the distribution to the IRS in accordance with Code section 6047(d) and IRS Form 1099-R.

Further Extension of Temporary Nondiscrimination Relief for Closed Defined Benefit Plans: In Notice 2019-49, the IRS extended through plan years beginning before 2021 the temporary nondiscrimination relief for certain closed defined benefit plans (plans that before December 31, 2013 were amended to limit future benefit accruals to some or all employees who were participants as of a specified date) that was first provided in IRS Notice 2014-5 and extended in subsequent IRS notices. Extension of relief will be provided if the conditions set out in Notice 2014-5 are satisfied.

Increase in Social Security Wage Base: The Social Security Administration has announced that the maximum amount of wages in 2020 subject to the 6.2% Social Security tax (old age, survivor, and disability insurance) will rise from $132,900 to $137,700.

Increase in Pension Benefit Guaranty Corporation (PBGC) Maximum Monthly Guarantee for Single-Employer Plans for 2020: The PBGC has announced that the maximum monthly guarantee amounts for single-employer plans have been increased for 2020. The PBGC has provided a table listing the amounts for 2020 and prior years based upon when the plan fails, whether the sponsoring employer was in bankruptcy at the time of failure, the participant's age when benefits become payable and the form of payment applicable to the participant.

Additional Withdrawal Options from Federal Thrift Savings Plan: The Federal Retirement Thrift Investment Board has issued its final regulation, effective September 15, 2019, permitting additional withdrawal options from the federal Thrift Savings Plan (TSP), as permitted by the TSP Modernization Act of 2017. The final regulation:

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WP&BC WESTERN PENSION & BENEFITS COUNCIL San Francisco

FALL 2019

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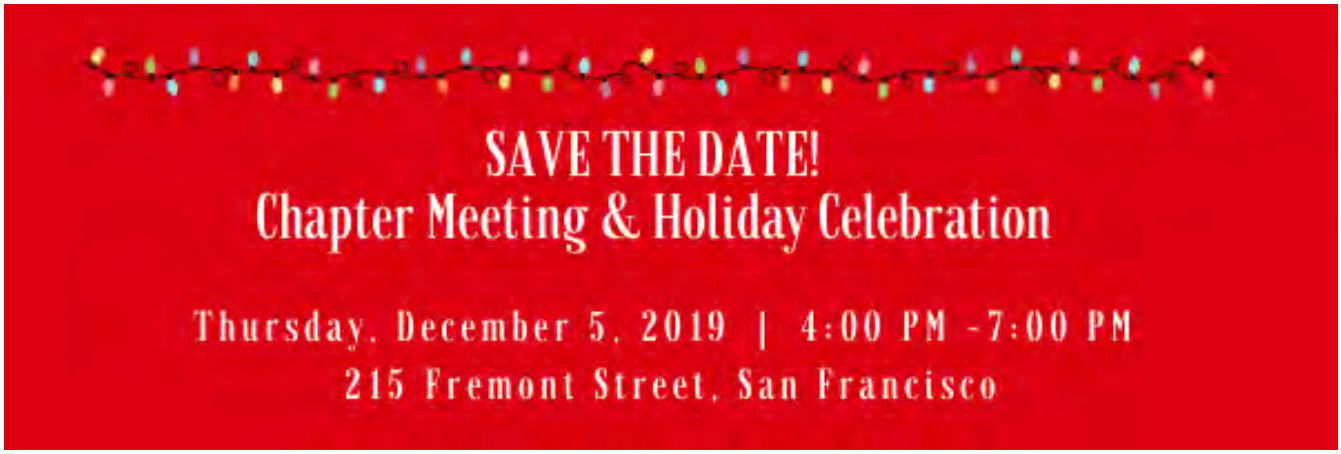
Qualified Retirement Updates, continued

- Eliminates the restriction on partial post-separation withdrawals by participants who have taken age-based, in-service withdrawals, and allows all separated participants to take as many such withdrawals as desired, subject to the condition that only one withdrawal request will be processed during any 30-calendar-day period;
- Permits participants to: elect to receive post-separation installment payments on an annual, quarterly, or monthly basis; change the amount and frequency of installment payments at any time during the year; stop receiving installment payments at any time; and elect to receive some or all of the remaining account balance in a single sum payment, annuity or a combination of the two;
- Allows participants to take up to four age-based, in-service withdrawals per calendar year, subject to the condition that only one withdrawal request will be processed during any 30-calendar-day period;
- Eliminates the six-month suspension period for TSP contributions following a hardship withdrawal;
- Allows both post-separation and age-based, in-service withdrawals to be taken from either a Roth account balance or traditional account balance, or pro rata from each, as elected by the participant;
- Updates and clarifies spousal consent requirements; and
- Eliminates the requirement that a participant elect either to receive monthly payments, purchase a life annuity, or withdraw his or her entire account balance no later than the April 1 following the year in which the participant reaches age 70½ and separates from federal service. Required minimum distribution rules under Code section 401(a)(9) will apply.

Remedial Amendment Periods for 403(b) Plans: Revenue Procedure 2019-39, issued by the IRS on September 30, 2019, sets forth a system of recurring remedial amendment periods for correcting form defects in Code section 403(b) individually designed and pre-approved plans first occurring after the Initial Remedial Amendment Period (as defined in Rev. Proc. 2019-39) that ends on March 31, 2020, and provides a limited extension of the Initial Remedial Amendment Period for certain form defects. Rev. Proc. 2019-39 also establishes a system of 403(b) pre-approved plan cycles under which a 403(b) preapproved plan sponsor may submit a proposed 403(b) pre-approved plan for review and approval by the IRS. In addition, Rev. Proc. 2019-39 sets a deadline by which individually designed and pre-approved 403(b) plans must be amended to correct form defects.



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Health and Welfare Updates

By Elizabeth M. Harris
Orrick, Herrington & Sutcliffe LLP

Failure to Provide Access to PHI Leads to $85,000 HIPAA Settlement

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) entered into a $85,000 no-fault settlement agreement and a one year corrective action plan with Bayfront Health, St. Petersburg (Bayfront Health), a hospital that allegedly failed to timely provide protected health information (PHI) in response to an individual's request. This settlement is the first case in HHS-OCR's Right of Access Initiative (the Initiative).

HIPAA generally requires covered entities to provide medical records within 30 days of a request and may only charge patients a reasonable fee, but Bayfront Hospital allegedly did not provide the records for more than nine months.

OCR noted that the request was made by a mother who sought fetal heartbeat records for her unborn child. OCR's news release indicates that a patient's right to access medical records extends to parents who seek medical information about their minor children.

In addition to the monetary settlement, Bayfront Health agreed to a corrective action plan (CAP) under which it must develop, maintain and revise its policies and procedures to comply with the access provisions of the HIPAA privacy rule. The revised policies and procedures must address: the hospital's designated record of set policy, the hospital's training protocols, sanctions against workforce members who fail to comply with the policies and procedures, a process to review business associate performance regarding access requests and consequences for noncompliance and designation of an individual responsible for ensuring that business associate contracts are properly executed.

Following HHS's review and approval, the revised policies and procedures must be distributed to workforce members, who must certify either written or electronically that they have read, understand and will abide by them. The updated access policies must be provided to HHS within 60 days of the effective date. The hospital's training materials are subject to similar review and approval by HHS and workforce members must receive training by specified deadlines.

OCR has been focused on access to PHI for numerous years and has released extensive guidance on individuals' access rights. Therefore, enforcement activity in this area is not surprising and covered entities (including health plans) and their business associates should take take note to review the guidance again.

IRS Requests Comments to Form 5558

The Internal Revenue Service (IRS) is soliciting comments on the extension of the information collection request in Form 5558, Application for Extension of Time To File Certain Employee Plan Returns. IRS said that no changes were being made to the form at this time. (IRS Notice, 84 Fed. Reg. 53831, 10/8/2019)

Form 5558 is used by employers to request an extension of time to file the employee plan annual information return (Form 5500 series) or the employee plan excise tax return (Form 5330). According to the IRS, the information provided on Form 5558 is used to determine if such extension of time is warranted.

The IRS provided that it is specifically interested in comments regarding: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

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maintenance, and purchase of services to provide information. Submitted comments will be summarized and/or included in the requests for Office of Management and Budget (OMB) approval, and will become a matter of public record.

Ninth Circuit Enforces Preliminary Injunction on Final Regulations Providing for an Accommodation from the Affordable Care Act's Contraceptive Mandate

The Ninth Circuit recently upheld a California trial court's preliminary injunction that blocked enforcement in several states of final regulations issued by IRS, HHS, and Department of Labor (DOL) (collectively, the Departments). These final regulations provide an expanded accommodation from the Affordable Care Act's (ACA) contraceptive mandate. (State of California v. U.S. Dept Of Health & Human Services, (9th Cir. 2019).)

Under the ACA, non-grandfathered, non-excepted group health plans are required to provide certain contraceptive coverage without cost-sharing. However, qualifying religious employers are exempt from this mandate, and an accommodation process was provided for certain nonprofit employers, and closely held for-profit employers with religious objections to the rule. Among other things, the regulations on the accommodation process required an eligible organization to self-certify its objection to its insurer, third-party administrator, or HHS.

However, there were legal challenges to the notice requirement on the grounds that it impermissibly burdened the impacted entities' exercise of religion by effectively compelling them to facilitate the provision of contraceptive coverage. The Departments issued FAQs in response to these concerns, explaining that no feasible approach had been identified to modify the accommodation process in a way that would resolve the competing concerns.

The Departments later issued interim final regulations related to the contraceptive mandate that expanded the accommodation process and expanded the exemption to include additional individuals and entities based on sincerely held religious beliefs or moral convictions. However, the regulations were blocked from enforcement by a nationwide preliminary injunction issued by a trial court in Pennsylvania, as well as a separate preliminary injunction with a limited geographic scope in a trial court in California.

On appeal of the California trial court's decision, the Ninth Circuit held that the district court had not abused its discretion when it issued the preliminary injunction against the interim final regulations. Furthermore, the Ninth Circuit ruled that the Religious Freedom Restoration Act (RFRA) likely does not authorize the religious exemption at issue in this case because, among other things, the exemption contradicts congressional intent that all women have access to appropriate preventative care, and the challengers failed to demonstrate a substantial burden on religious exercise. The court also concluded that the case is not moot despite the Third Circuit's nationwide preliminary injunction, based on an exception for "cases capable of repetition, yet evading review."

District courts in the Third and Ninth Circuits also issued injunctions blocking enforcement of final regulations. The Third Circuit upheld the district court's decision.

In the Ninth Circuit, the district court granted the request of 13 states (California, Connecticut, Delaware, Hawaii, Illinois, Maryland, Minnesota, New York, North Carolina, Rhode Island, Vermont, Virginia, and Washington) and the District of Columbia, to temporarily block implementation of the final regulations in those jurisdictions. The court determined that the states and district were likely to succeed or at least raised serious questions on the merits of their claim, that the expanded exemptions in the final regulations violated the Administrative Procedure Act, as required for entry of a preliminary injunction.

Finally, the court found that the states and district are likely to suffer substantial harm from the final regulations, and such harm is irreparable because the states and district will not be able to recover monetary damages

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Health and Welfare Updates, continued

resulting from the final regulations. This harm was not regarded as speculative, the Ninth Circuit said, since it was sufficiently concrete and supported by the record.

IRS Provides Applicable Amount for Health Insurance Providers Fee for 2020

IRS has established the applicable amount for purposes of the health insurance provider fee under the ACA for 2020. (Notice 2019-50, 2019-37 IRB.)

Section 9010 of the ACA imposes a fee on each covered entity engaged in the business of providing health insurance for U.S. health risks. This includes health insurers, but not self-insured group health plans, certain nonfprofit corporations or certain other entities. According to the statute and related regulations, the applicable amount is the aggregate fee for the year determined and is allocated among the entities subject to the fee. The fee payable by an entity is determined according to the entity's proportionate share of the applicable amount based on its net premiums written for U.S. health risks for the previous calendar year.

The fee was suspended for 2019, but, absent legislative action, will apply again for the 2020 calendar year. Notice 2019-50 explains that, for years 2014 through 2018, the applicable amount is set forth in Section 9010 of ACA. For calendar years following 2018, the applicable amount is the applicable amount for the preceding calendar year increased by the premium growth rate, which (beginning in 2020) is determined using premium growth measures set forth in HHS's annual Notice of Benefit and Payment Parameters.

Under Notice 2019-50, the methodology used to determine the 2020 applicable amount implicitly takes into account data that would have been used to determine the 2019 applicable amount had the fee not been suspended for that year. The 2020 applicable amount is $15,522,820,037.

IRS calculates each entity's proportionate share of the fee using information reported by the entity on Form 8963. Even though the fee is not directly assessed against plan sponsors, it affects premiums paid by employers that sponsor insured plans.

Portion of Ancestry Genetic Testing is Considered Medical Care

In a redacted Private Letter Ruling (PLR 201933005) issued to 23andMe, Inc., the IRS has clarified that certain genetic testing services (consisting of a DNA collection kit and health services) may constitute medical care for purposes of Section 213(d) of the Internal Revenue Code (the Code) and, thus, that portion of the costs of the services and kit is potentially deductible as expenses paid for medical care (subject to certain IRS limits) or may be submitted for reimbursement to health care flexible spending accounts (FSA) and health savings accounts. IRS left it to the taxpayer to allocate the costs of the services and kit among the medical and non-medical items and services received.

More specifically, because the genetic testing services included items that are considered medical care (such as genotyping and laboratory serivces), and items that are not considered medical care (such as general informational reports for purposes of determining ancestry), the IRS required an allocation of the price paid for the DNA collection kit and health services between medical and non-medical items and services to determine the portion that constitutes Section 213(d) medical expenses. A FSA may reimburse its owner only for expenses related to medical care as defined in Code Sec. 213. (Prop Reg 1.125-5(k)(1).)

IRS based its ruling on several prior revenue rulings which addressed the treatment under Section 213(d) of fees paid for storage of medical information in a computer data bank and fees paid for diagnostic and similar procedures and devices, such as full-body scans and pregnancy tests, performed without a physician's recommendation and without the individual having experienced any symptoms of illness or disease, which qualified as medical care. According to Revenue Ruling 2007-72, the term diagnosis encompasses the determination that a disease may

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Health and Welfare Updates, continued

or may not be present and includes testing of changes to the function of the body that are unrelated to disease. The fee paid for storage of medical information in a computer data bank is an amount paid for medical care expense because the information facilitates the diagnosis of disease (Rev. Rul 71-282, 1971-2 CB 166.)

However, Code Sec. 262 and Reg. 1.213-1(e)(1)(vi) prohibit taxpayers from deducting personal, family, or living expenses if the expenses do not fall within the Code Sec. 213 definition of medical care. An expenditure that is merely beneficial to the general health of an individual is personal and is not for medical care.

Because the lines between general health and well-being and medical care are somewhat grey, the recent guidance provides a helpful tool in determining which portion of the bundled services and items qualify as medical care. The private letter ruling may have potential application in other areas in the future, such as the use of personal electronic devices for monitoring health. While the IRS private letter rulings may only be relied upon by the taxpayer who requested the ruling, they are informative regarding the IRS's viewpoint on this issue.

Executive Compensation Updates

By Anjuli Cargain | Duane Morris LLP

Guidance on Proxy Voting Rules: On August 21, 2019, the Securities and Exchange Commission (SEC) provided guidance to assist investment advisers in fulfilling their proxy voting responsibilities. The guidance discusses, among other matters, the ability of investment advisers to establish a variety of different voting arrangements with their clients and matters they should consider when using the services of a proxy advisory firm. In addition, the SEC issued an interpretation that proxy voting advice provided by proxy advisory firms generally constitutes a "solicitation" under the federal proxy rules and provided related guidance about the application of the proxy antifraud rule (Securities Exchange Act Rule 14a-9) to proxy voting advice. Both of these actions explain the SEC's view of various non-exclusive methods entities can use to comply with existing laws or regulations or how such laws and regulations apply.

SOURCE: www.sec.gov

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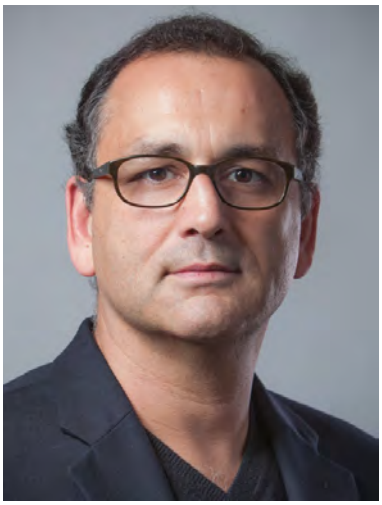
Member Profile:
Brian A. Montanez, CPC, TGPC, AIF, CPFA

Company: Multnomah Group

Title: Principal

Education: Bachelor's Degree in Economics-Finance from Bentley University, Waltham, Massachusetts



Years in the industry: 19

Please tell us about your first "real" job: I would consider my first "real job," to have been a waiter in a "White Linen" restaurant back in the late 80s, early 90s. I grew up in the Westhampton Beach, NY and served many famous and infamous personalities. Among the more famous people were numerous Manhattan socialites; NYC Mayors Koch and Dinkins; Susan Lucci; athletes, such as Mickey Mantle, Joe Klecko, Mary Lyons and Whitey Ford; artist such as Mikhail Baryshnikov and Roger Waters, who used to ask for me by name. On the infamous list, I'd put Mayor Rudy Giuliani and Jordan Belfort. I say it was my first real job because my colleagues made their living as professional waiters and waitresses, and much like any consultant, they have information that they will share with you to improve your experience. I was very fortunate to receive a formal education in food, wine and table service from cultured and experience professionals. I also learned how to handle pressure. If you think about it, waiters need to handle dozens of customer personalities, a fiery kitchen and endless stress with grace and aplomb. It was excellent training to be an investment consultant who runs retirement plan committees. But mostly, I'm grateful for that experience because it allowed me to pay my own way through a private business school. While that was about 30 years ago, I'm still friends with many of those professionals and had several attend my wedding twenty years after I last wore the black and whites.

BUSINESS BACKGROUND

Nature of your work: As a retirement plan consultant and fiduciary investment advisor, I consider the primary nature of my work to be translation. The core of what I do is to help committee members understand ERISA, the retirement plan industry, vendor capabilities and investment fundamentals. Once I have translated the fundamental of an issue, I help committee members explore, in a prudent manner, the relevant facts and considerations to help them make an informed decision. This often involves explaining basic tenets, rules or investment fundamentals and sometimes a third-party expert, such as an auditor or attorney. So, translating our industry into a language my clients understand is the nature of what I do.

How you got into the field: After college I started working at a firm named Micropal that tracked mutual fund data on a global basis and provided technical analysis software. We were the Lipper Analytical Services for the rest of the world. There, I met a man who was a board member of a few large insurance companies. He and I got along very well and are still friends today. When I decided to move from Boston to San Francisco, I asked him for career advice. He said, "…you should look at the 401(k) industry." That, and more than a dozen years of studying ASPPA certifications, brought me to be a consultant at Multnomah Group.

Continued pg 21

Member Profile continued: Brian A. Montanez, CPC, TGPC, AIF, CPFA

What you like about the field: I like that I get to make a difference. As we all know, our field is hyper technical and complex. Honestly, what I like most about the field is that I have knowledge and insight where few people have an understanding. Being an independent investment advisor who has a strong background with the recordkeeping industry, the players involved and a better than average (for advisors) understanding of the applications of ERISA to my clients, I truly get to bring insights to complicated matters for people charged with managing their employees' life savings. And, given the gravity of what we all do, our clients focus and take the work that we collectively do, seriously. It's gratifying to make the complex comprehensible.

PERSONAL

Ways you spend free time: I am a husband, father, son, brother, coach, dog owner, homeowner and landlord. If there ever is "free time," I like to wrestle with my 10-year-old son and eight-year old daughter, play basketball with a bunch of middle age guys and "jog" in the wonderfully serene forests we have here in the Bay Area.

Guiding philosophy: I have three general ideas that I try to live by and try to teach my children. The first is to work hard, be accountable, do what is right and take care of those you are responsible for. The second is to do what you need to do before you do what you want to do. The third is to see the humor in things and laugh as much as I can.

Favorite charities: My wife and I make regular contributions to the American Civil Liberties Union, Southern Poverty Law Center, World Wildlife Foundation, East Bay SPCA and MISSSEY, Inc. While there are many good charitable initiatives, we choose to donate to organizations that help and protect those in need.

Last books read: "American on Purpose," by Craig Ferguson. It's Craig's origin story and a hysterical contrast of Scottish and American culture.

Restaurant recommendations: NIDO Kitchen & Bar on Oak Street in Oakland. Great Mexican cuisine, innovative cocktails and a cool environment. Just trust me!

What will you do when you retire: When my wife and I retire, we agree that we would like to spend a few months each year living overseas. We don't want to hop around from place to place, but to live in the same location for a month or more and let the culture seep in.

MEMBER PROFILE

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Member Profile: Joe Wraga

Company: Charles Schwab Investment Management

Title: Regional Director

Education: BS Business Administration, University of Arizona

Years in the industry: 25

Please tell us about your first "real" job: Maybe it was "real" because it was the first time I earned money but a neighbor hired me in junior high to string beads for their jewelry business. I was paid by the piece and found I could do the work while watching television, a definite win-win.

BUSINESS BACKGROUND

Nature of your work: I represent Schwab Funds with retirement consultants and advisors in the West. My efforts are primarily focused on the 401(k) market, but I also do work in the 529 space and HSA market.

How you got into the field: I originally entered financial services as a floor clerk on what was the Pacific Stock Exchange (now an Equinox gym); I later went on to become a trader. Given the changing landscape of financial services, I had to reinvent myself as opportunities in trading became quite limited. Over the last 12 years, I've worked representing investment management firms in the institutional space.

What you like about the field: It's constantly evolving and I feel like I'm always learning new things. Also, the ability to manage a person's retirement assets throughout their working careers is very rewarding. Schwab works with so many people I feel like there's always something relevant to discuss. Overall, the industry has done a great job to make retirement saving vehicles available, which is ultimately allowing for better retirement outcomes.

PERSONAL

Ways you spend free time: I enjoy swimming, mountain and road biking, hiking and occasionally golfing. I will also play any and all sports with my three active boys.

Guiding philosophy: Don't worry about things out of your control.

Favorite charities: My children's school and the American Heart Association.

Last books read: "Barbarian Days-A Surfing Life" by William Finnegan and "An Odyssey: A father, a Son, and an Epic" by Daniel Mendelsohn.

Restaurant recommendations: My go to place has always been Zuni Café in San Francisco, but also enjoy Sushi Ran in Sausalito and Burma Superstar in San Francisco.

What will you do when you retire: If I'm fortunate enough to retire, I would love to travel with my wife, spend time volunteering and finally get a dog.

Chapter Meeting, Nov. 12, 2019
CalSavers

At the November 12, 2019, chapter meeting, attendees were presented with an array of information about the CalSavers Retirement Plan Program by an incredible panel of speakers that included **Mark Iwry**, Nonresident Senior Fellow at The Brookings Institute, Visiting Scholar at the Wharton School; **Katie Selenski**, Executive Director CalSavers Retirement Savings Program; and **Perry Bacon**, Financial Advisor, Marine Street Financial, Wells Fargo Advisors. The panel was moderated by **Virginia Krieger-Sutton**, Consultant, Johnson & Dugan.

As one of our industry's most influential thought leaders, Mark shared the perspective he gained serving as a Senior Advisor to the Secretary of the Treasury and in other key roles, including the Treasury Department's Deputy Assistant Secretary for Retirement and Health Policy. Mark has been instrumental in shaping national savings policy, authoring legislative proposals, and testifying before Congress. Mark has worked tirelessly to promote the expansion of retirement savings in the U.S. by defining and promoting 401(k) automatic enrollment, acting as the architect of the Tax Saver's Credit, which endeavors to expand 401(k) and IRA coverage, promoting lifetime income, developing the startup tax credit for small businesses adopting new retirement plans, expanding savings through direct deposit of income tax refunds into IRAs and US savings bonds, and promoting payroll deduction IRAs. Known as the "godfather" of state retirement plans, Mark played a leading role in designing and advancing the nationwide initiative to adopt, in various states, automatic IRAs and other state-based programs to facilitate and expand private-sector retirement savings. Mark has been centrally involved in developing and orchestrating expansions and improvements of the nation's pension, health care, and benefits systems, laws, and regulatory framework. Mark started off the panel by providing an overview of U.S. workers' access to retirement savings, the context of broader U.S. retirement policy over the past few Presidential campaigns, considerations of other states' initiatives, and a history of automatic enrollment and escalation.

Katie provided an overview of the history of CalSavers, how CalSavers operates in practice, and an update on current participation in the program. She conveyed that over seven million Californians have an access gap with no entry to governmental or private retirement plans. These same individuals report an average annual income of $25-$35,000, with two-thirds employed by small businesses, and 69% under the age of 44. After the pilot, CalSavers was fully launched on July 1, 2019, with direct access for "gig" workers opened in October. Katie emphasized how CalSavers has been developed to complement private retirement plans, and not to compete against private retirement plans to encourage savings overall.

Katie shared the four primary features of CalSavers:

1) **Employer Requirement:** All California employers with at least five employees must either:
   - Offer a qualified retirement plan – OR --
   - Register for CalSavers and facilitate employee access through their payroll.
2) **Automatic Enrollment for Employees:** Completely voluntary for employees, but automatic enrollment if no opt-out. May opt-out and opt-in at any time.
3) **Public Private Partnership:** Professionally managed and advised by financial services companies with oversight by a public board chaired by the State Treasurer.
4) **Zero Cost to the State, Taxpayer:** Self-sustaining on saver fees with a loan from the state legislature for the initial funding.

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Chapter Meeting, Nov. 12, 2019
CalSavers - continued

She explained that although employers can register at any time, they will need to register by their enrollment deadline if they do not already offer an employer-sponsored retirement plan. The first deadline of June 30, 2020, is for employers with more than 100 California employees; the next deadline is June 30, 2021, for employers with more than 50 California employees; and the final deadline is June 30, 2022, for employers with more than five California employees. Katie explained the simple and straightforward employer enrollment process, the opt-out provision, and assistance that is available. Employers enrolled in CalSavers will not incur any program fees, will not be considered fiduciaries, will not need to manage any investments or process distributions, and will not make employer contributions. Auto-enrollment of 5% into a Roth IRA will start 30 days after the employee is added, although the employee can immediately enroll on their own. An annual auto-increase of 1% to a cap of 8% will apply unless the employee opts out. This December, employees will have the option to contribute to a Traditional IRA. The investment options include a money market fund, target date retirement series, core bond fund, global equity fund, and sustainable balanced (ESG) fund. The first $1,000 will default into the money market with additional funds then defaulting into the target date series. All funds are managed by State Street Global Advisors, except the ESG fund, which is managed by Newton Investment Management. CalSavers is employing multilingual field staff throughout the state.

If employers do not enroll by their deadline, they will be subject to penalties for noncompliance. To determine whether an employer is an Eligible Employer, an employer's number of employees is the average number of employees as reported to the Employment Development Department for the quarter ending December 31 and the previous three quarters. Only employees age 18 or older are eligible and counted. Currently the website and support is written in three languages and will be expanding to include additional languages. As of November 11, 2019, over 413 employers are registered, almost 3,000 accounts funded, and over 1,700 accounts are pending the 30-day opt-out. Current effective opt-out rate is just under 32% with an average monthly contribution of $110, with total assets exceeding $1 million. Katie shared CalSavers's ongoing developments, including pre-clearance of additional employers, technology integration, expansion of multilingual outreach, measurement of increased participation in private plans, and long-term decumulation studies. For more information, Katie pointed us to the www.calsavers.com website and mobile app.

Perry provided his perspective meeting with small employers who want to know more about the new state offering and how to evaluate starting their own retirement plans or utilizing CalSavers. In general, he recommends that employers consider starting their own plans to allow for employees to contribute in excess of the IRA limits, for employers to have flexibility to customize their plans, to allow employers the option to provide an employer contribution, and to provide employees with access to an independent advisor.

A special thank you to Jackson Lewis for generously hosting the program!

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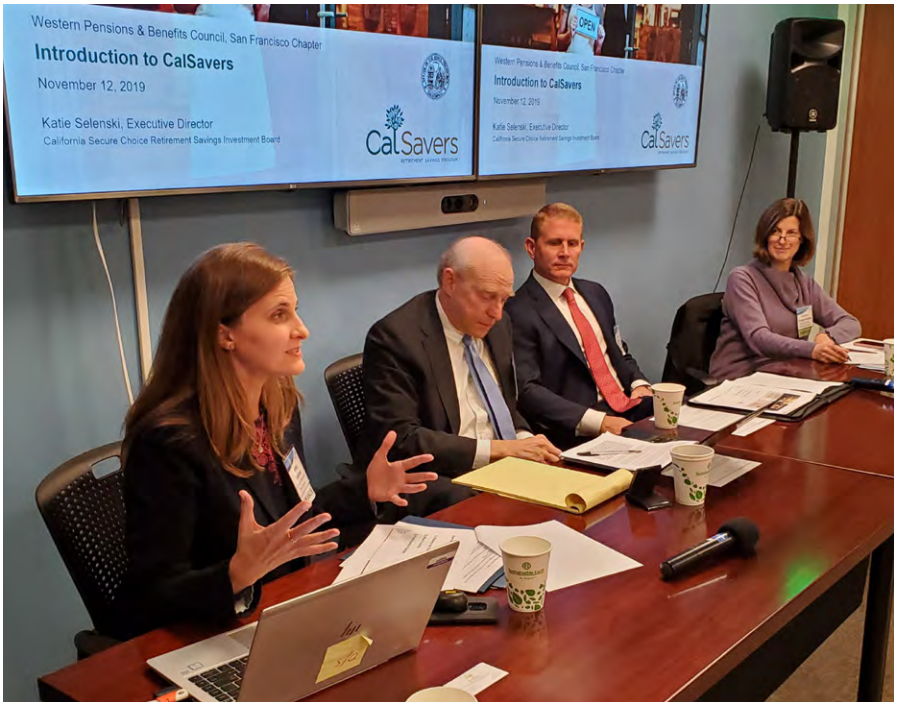
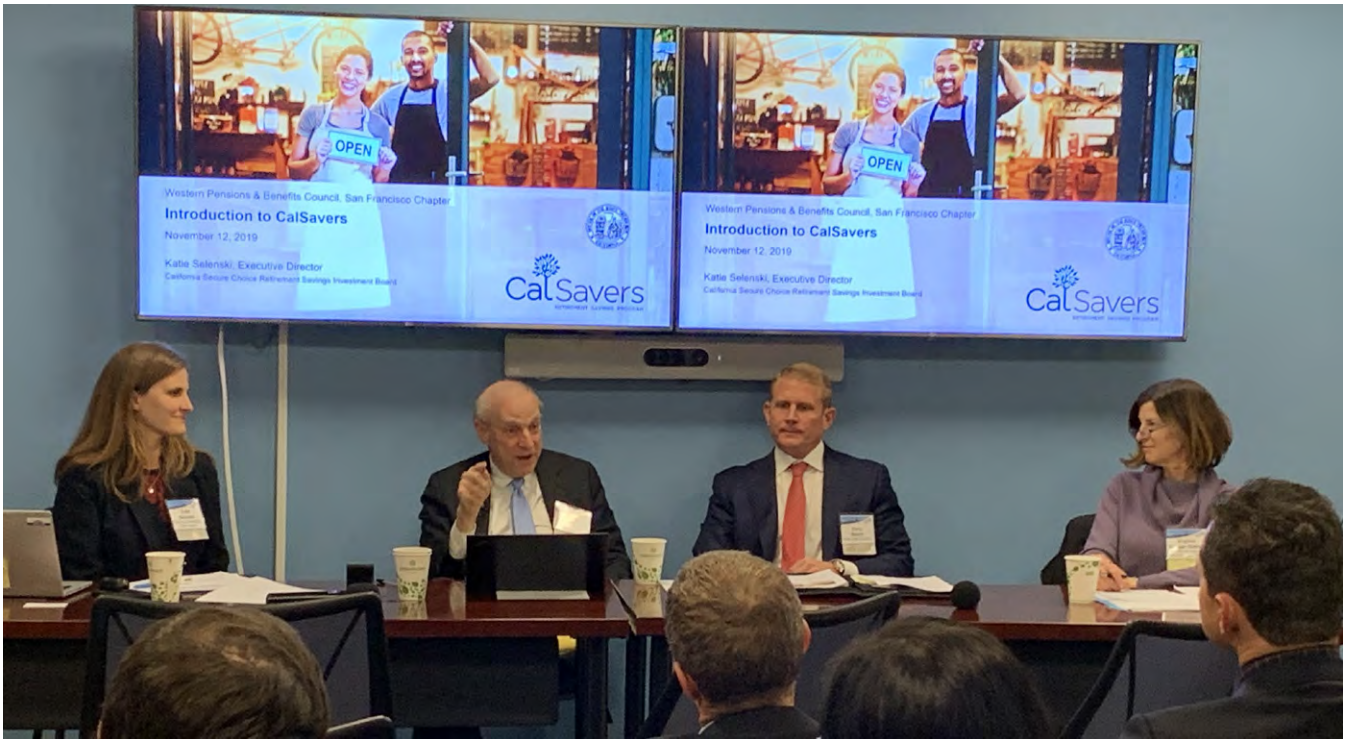
Chapter Meeting, Nov. 12, 2019
CalSavers - continued





(from left to right) Katie Selenski, Mark Iwry, Perry Bacon, Virginia Krieger-Sutton

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EMPLOYMENT OPPORTUNITIES

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Want to get involved in the San Francisco Chapter?

Contact Karen Mack to volunteer!

FALL 2019

The Newsletter welcomes contributions from its members. If you would like to submit a topical benefits-related article for an upcoming issue, please contact the chapter at info@wpbcsf.org.

Special thanks to Bryan Card for help in drafting and editing newsletter articles.

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