WESTERN PENSION & BENEFITS COUNCIL
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Inside this edition

Qualified Retirement Updates

By Ami Givon | GCA Law Partners LLP

Proposed Regulations Eliminating "One Bad Apple" Rule for Defined Contribution Multiple Employer Plans (MEPs): Under current Treasury Regulation section 1.413-2(a)(3)(iv) (sometimes referred to as the "one bad apple" or "unified plan" rule), the tax-qualified status of a MEP for purposes of section 413 of the Internal Revenue Code (Code) is determined with respect to all employers maintaining it, and thus the "the failure by one employer maintaining the plan . . . to satisfy an applicable qualification requirement will result in the disqualification of the . . . plan for all employers maintaining the plan."

On July 3, 2019, the Internal Revenue Service (IRS) issued proposed regulations that would eliminate this rule for defined contribution

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"I want to thank Kevin for his leadership, dedication, and friendship over the past two years of his term as President."

Karen Mack,
Altman & Cronin Benefit Consultants
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President's Letter

Happy summer 2019!

I hope everyone is having a great summer so far. I can't believe how quickly the summer months have flown by and hope you have made the most of yours.

This is my first newsletter as President of the San Francisco Chapter (effective July 1, 2019) and I'm excited to take the mantle from Kevin Nolt who did a fantastic job as President for the past two years.

My primary goal over the next two years is to continue our efforts in providing quality programming and networking opportunities to our members. In addition, we are committed to ensuring that our chapter continues to be successful in future years by encouraging attendance, leadership, and networking for the next generation of our colleagues.

This chapter has a very strong and dedicated board. The leadership team for 2019-2020 includes Brad Wall as Treasurer and Michon Caton as Secretary. We are pleased to add three new board members – Karen Casillas as Program Chair, Sandy Purdy as Brown Bag Coordinator, and Robert Gower as our Membership Board Liaison. They will join our other continuing board members, including Bill Berry, Victoria Fung, Ami Givon, Matt Gouaux, Lori McKenzie, and Alison Wright. Our newsletter editor is Sarah Kanter.

And finally, our immediate Past President is Kevin Nolt. I want to thank Kevin for his leadership, dedication, and friendship over the past two years. During Kevin's tenure, we held many successful events and increased participation and engagement. Luckily Kevin will continue to be very involved at the governing board level, which adds to the strength of our chapter. Thank you, Kevin!

Looking back over the past year, there are a many highlights that we will look to build upon. One was our annual member appreciation event, held at La Mar on June 18th. The event provided an opportunity for the organization to give back to our members with refreshments and the opportunity to spend time with others in our community. We also had many lucky winners walk home with raffle prizes including bottles of wine and chocolates. Another successful event was the second year of our partnership with the National Institute of Pension Administrators (NIPA) for an annual three-day benefits conference – the NIPA Annual Forum & Expo (NAFE) conference, which took place this spring in San Diego. The conference went well and featured speakers from WP&BC, including the San Francisco Chapter's own Brad Huss and Craig Hoffman. Next year's conference will be held in Nashville, so please mark your calendars for April 26 - 29, 2020 and consider attending. Finally, last month was another of our unique and successful "field trips" available only to members, where we took a walking tour of the financial district, which focused on publicly available private spaces.

Looking forward, we want to assure you that during the summer break, the board has been working to set the stage for a successful year. We plan to continue our membership drives and appreciation events, our regular program sessions, invigorate our brown bag series, and offer new and exciting field trips. Be on the lookout for an announcement about the October 1st membership event, which will also feature some programming.

Most importantly, we are working to ensure that the organization continues to meet the current and future needs of our marketplace. To that end, the involvement and feedback of members is critical. So please - Get involved! Raise your hand! Give feedback! And encourage younger members of our organizations to come to sessions, too.

Thank you and here's to a successful FY19-20 program year!

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

Qualified Retirement Updates, continued

MEPs that satisfy certain conditions. The proposed regulations are unrelated to the relief from the "one bad apple" rule that would be provided by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) passed by the House of Representatives earlier this year.

To qualify for the relief provided under the proposed regulations:

- The MEP plan administrator must have established practices and procedures (formal or informal) that are reasonably designed to promote and facilitate overall compliance with applicable Code requirements, including procedures for obtaining information from participating employers.
- The MEP plan document must include language describing the procedures to be followed to address participating employer failures, including the procedures that the MEP plan administrator would follow if, after receiving notice from the MEP plan administrator, an unresponsive participating employer (UPE) fails to take appropriate remedial action or initiate a spinoff from the MEP in accordance with the regulations.
- The MEP is not under examination as of the date that the first notice (described below) is provided to the UPE.
- The MEP plan administrator must provide up to three notices regarding the compliance failure(s) to the UPE, with the third notice, if applicable, also being provided to participants who are UPE employees (which the proposed regulations define to include both current and former employees), their beneficiaries and the Department of Labor (DOL). The first notice must describe the participating employer failure(s), as well as the remedial actions the UPE would need to take to remedy those failure(s), and its option to initiate a spinoff. The first notice also must explain the consequences under the plan terms if the UPE takes neither action, including the possibility of a spinoff of plan assets and its employees' account balances into a separate single-employer plan followed by a termination of that plan. If the UPE does not take either action within 90 days of the first notice, the MEP plan administrator must provide a second notice within 30 days of the end of that 90-day period. The second notice must include the information required to be included in the first notice, and must inform the UPE that if it fails to either take appropriate remedial action or initiate a spinoff within 90 days after the second notice, a notice describing the participating employer failure and the consequences of not correcting that failure will be provided to participants who are UPE employees, their beneficiaries and the DOL. If, by the end of the 90-day period following the date the second notice is provided, the UPE still does not take either action, then no later than 30 days after the expiration of that 90-day period, the MEP plan administrator must provide a third notice to the UPE, to participants who are UPE employees, their beneficiaries and the DOL. The third notice must include the information required to be included in the first notice, the deadline for UPE action, an explanation of any adverse consequences to participants in the event that a spinoff-termination occurs, and state to whom the notice also is being provided.
- The UPE may, by no later than 90 days following the third notice, either initiate a spinoff in accordance with the proposed regulations or take remedial action to correct the compliance failure(s). If the UPE takes neither action within that 90-day period, there must be a spinoff of the plan assets and account balances held on behalf of UPE employees that are attributable to their employment with the UPE to a separate plan, followed by a termination of that plan.
- The MEP plan administrator must report to the IRS any spinoff or spinoff-termination.

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Qualified Retirement Updates, continued

When a plan is spun off by either the UPE or the MEP plan administrator, any qualification failure will be a failure only with respect to the spun-off plan (and not the MEP). If the MEP plan administrator initiates a spinoff/termination, distributions made from the spun-off plan would not lose eligibility for rollover treatment solely on account of the compliance failure(s).

The regulations will apply on the date specified in their publication as final regulations in the Federal Register, and may not be relied upon prior to that date.

The comment period for the proposed regulations ends October 1, 2019.

Final DOL Regulation Regarding Sponsorship of ERISA Multiple Employer Plans:

On July 31, 2019, the DOL issued its final regulation clarifying which persons may serve as an employer within the meaning of ERISA section 3(5) in sponsoring a multiple employer defined contribution pension plan under Title I of ERISA.

Under the final regulation, a bona fide group or association of employers (such as a chamber of commerce) or a professional employer organization (PEO) would be permitted to sponsor such a plan, subject to satisfying requirements specified in the final regulation.

To qualify as a plan sponsor, a bona fide group or association of employer must have a formal organizational structure with a governing body and have at least one substantial business purposes unrelated to offering the plan's coverage of employee benefits. Its employer members participating in the plan must have at least one employee who is a participant and must have a "commonality of interest" (such as being in the same line of business or geographical area) with each other. The group or association may not be a bank, trust company, insurance issuer, broker-dealer, other financial services firm (or subsidiary or affiliate of any of them), pension recordkeeper or third-party administrator.

A PEO seeking to serve as a plan sponsor must be a human-resources company that contractually assumes and performs (with adequate records) certain employment responsibilities for its employer clients. The PEO must have control and responsibilities over the plan's functions and activities as detailed in the regulations, and be the plan administrator and a named fiduciary for ERISA purposes, with continuing obligations to participants after their employer no longer contracts with the PEO.

The final regulation is effective September 30, 2019.

Securities and Exchange Commission (SEC) Regulation Best Interest: On June 5, 2019, the SEC issued its "Regulation Best Interest" (RBI) establishing a standard of conduct for broker-dealers (and their associated natural persons) when they make a recommendation to a retail customer (defined to include only natural persons who use the recommendation primarily for personal, family, or household purposes and their legal representatives) of any securities transaction or investment strategy involving securities.

Although the RBI is not directed toward employee retirement plans and does not set fiduciary standards of conduct for purposes of ERISA, it does impact tax-favored accounts in some respects, such as investment and rollover recommendations to individual plan participants (including governmental plan participants, and investment recommendations made for a health savings account, Coverdell education savings account, Archer Medical Savings account, qualified tuition programs as well and Code section 529 plans). Also, the anticipated (later this year) proposed new version of the DOL's fiduciary rule is expected to include elements similar to and consistent with the RBI.

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Qualified Retirement Updates, continued

The RBI imposes four affirmative obligations on broker-dealers:

- Disclosure Obligation. Before or at the time of the recommendation, the broker-dealer must furnish a "Client Relationship Summary" (Form CRS), disclosing all material facts of the relationship, including identifying itself as a broker-dealer and not as an investment adviser, the costs of the relationship, the services provided, and all conflicts of interest that may be connected to the recommendation.
- Care Obligation. The broker-dealer must act with reasonable diligence, care, and skill when making a recommendation, as more fully detailed in the RBI.
- Conflict of Interest Obligation. The broker-dealer is required to establish, maintain, and implement written policies and procedures reasonably designed to identify, and disclose or eliminate, conflicts of interest associated with recommendations.
- Compliance Obligation. The broker-dealer must establish, maintain and enforce written policies and procedures reasonably designed to achieve compliance with the RBI.

The RBI is effective September 10, 2019, although compliance is not required until the "compliance date," which is June 30, 2020.

In an interpretation accompanying the issuance of the RBI, the SEC has clarified the standard to which investment advisers must adhere.

DOL Field Assistance Bulletin Relating to Annual Reporting Requirements for MEPs Subject to ERISA Section 103(g): On July 24, 2019, the DOL issued Field Assistance Bulletin (FAB) 2019-01 providing guidance and temporary penalty relief related to certain Form 5500 and Form 5500-SF Annual Return/Report requirements for MEPs subject to Title I of ERISA.

FAB 2019-01 reported that, although ERISA section 103(g) requires such MEPs to file complete and accurate lists of participating employers with their Forms 5500 or 5500-SF, the DOL's Employee Benefits Security Administration has found that a substantial number of MEP filers were not in full compliance with that section.

In light of the possibility that some plan fiduciaries may have misunderstood that annual reporting requirement, the DOL is providing transition relief to MEP plan administrators who voluntarily comply with the annual reporting requirements in section 103(g) and commence filing complete and accurate participating employer information. Specifically, the DOL will not reject a Form 5500 or Form 5500-SF filed on behalf of a MEP for the 2017 plan year, or any prior plan year, or seek to assess ERISA civil penalties against the MEP plan administrator under ERISA section 502(c)(2) with respect to those filings on the basis of noncompliance with section 103(g), provided that the annual reports filed for the plan for the 2018 and following plan years comply with the requirement section 103(g) and the related annual return reporting instructions. In addition, in light of the July 31, 2019, due date for calendar year plans to file their 2018 Form 5500 or Form 5500-SF, the DOL is granting MEPs a special filing extension of up to 2½ months to file their 2018 annual report.

Health and Welfare Updates

By Elizabeth M. Harris
Orrick, Herrington & Sutcliffe LLP

New Final Rule Allows Employees Use HRAs to Buy Health Insurance

A newly issued regulation could transform how employers pay for employee health care coverage by allowing employers to use pretax dollars to subsidize employee premiums in the individual health insurance market.

On June 13, 2019, the U.S. Departments of Health and Human Services, Labor and the Treasury issued a final rule allowing employers of all sizes that do not offer a group coverage plan to fund a new kind of health reimbursement arrangement (HRA), or an individual coverage HRA (ICHRA).

Starting January 1, 2020, employees will be able to use employer-funded ICHRAs to buy individual-market insurance, including insurance purchased on the public exchanges initiated under the Affordable Care Act (ACA).

Under previous IRS guidance (IRS Notice 2013-54), employers were effectively prevented from offering stand-alone HRAs that permitted employees to purchase coverage on the individual market.

Joe Grogan, Director of the White House Domestic Policy Council noted that by "using an individual coverage HRA, employers will be able to provide their workers and their workers' families with tax-preferred funds to pay all or a portion of the cost of coverage that workers purchase in the individual market. The departments estimate that once employers fully adjust to the new rules, roughly 800,000 employers will offer individual coverage HRAs to pay for insurance for more than 11 million employees and their family members, providing them with more options for selecting health insurance coverage that better meets their needs."

The new rule "is primarily about increasing employer flexibility and worker choice of coverage," Brian Blase, Special Assistant to the President for Health Care Policy stated. "We expect this rule to particularly benefit small employers and make it easier for them to compete with larger businesses by creating another option for financing worker health insurance coverage."

The final rule is in response to the Trump administration's October 2017 executive order on health care choice and competition, which also resulted in both: (1) an earlier final rule on association health plans that is now being challenged in the courts; and (2) a final rule allowing low-cost short-term insurance that provides less coverage than a standard ACA plan.

New Types of HRAs

Existing HRAs are employer-funded accounts that employees can use to pay out-of-pocket health care expenses. However, they may not use such accounts to pay insurance premiums. Unlike health savings accounts (HSAs), all HRAs, including the new ICHRA, are exclusively employer-funded, and, when employees leave the organization, their HRA funds go back to the employer. This differs from HSAs, which are employee-owned and portable when employees depart from their employers.

The proposed regulations keep the kinds of HRAs currently permitted (e.g., HRAs integrated with group health plans and retiree-only HRAs) but would recognize two new types of HRAs:

1. Individual coverage HRAs: Employers would be allowed to fund ICHRAs only for employees not offered coverage through a group health plan.
2. Excepted-benefit HRAs: These would be limited to paying premiums for vision and dental coverage or similar benefits exempt from ACA and other legal requirements. These HRAs are only permitted if employees are offered coverage under a group health plan sponsored by the employer.

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Health and Welfare Updates, continued

Under the new HRA rule, employers can now do the following:

- either offer an ICHRA or a traditional group health plan but may not offer employees a choice between the two.
- create classes of employees around certain employment distinctions, such as salaried workers versus hourly workers, full-time workers versus part-time workers, and workers in certain geographic areas, and then offer an ICHRA to certain classes while providing traditional group coverage for other classes.
- those that offer an ICHRA must do so on the same terms for all employees in a class of employees, but they may increase the ICHRA amount for older workers and for workers with more dependents.
- maintain their traditional group health plan for existing enrollees, with new hires offered only an ICHRA.

If an employee buys individual health insurance outside an ACA exchange and the HRA doesn't cover the full premium, the employer could permit the employee to pay the balance of the premium for the coverage on a pretax basis through its cafeteria plan, subject to other applicable regulations, according to the agencies' FAQs. However, the tax code states that an employer may not permit employees to make salary reduction contributions to a cafeteria plan to purchase coverage offered through an ACA exchange.

Forthcoming Safe Harbor

With ICHRAs, employers still must satisfy the ACA's affordability and minimum value requirements, just as they must do when offering a group health plan. However, "the IRS has signaled it will come out with a safe harbor that should make it straightforward for employers to determine whether their ICHRA offering would comply with ACA coverage requirements," John Barkett, Director of Policy Affairs at consultancy Willis Towers Watson noted.

Last year, the IRS issued Notice 2018-88, which outlined proposed safe harbor methods for determining whether individual coverage HRAs meet the ACA's affordability threshold for employees, and which stated that ICHRAs that meet the affordability standard will be deemed to offer at least minimum value.

The IRS indicated that further rulemaking on these safe harbor methods is on its agenda for later in 2019.

Sixth Circuit nonqualified deferred compensation plan decision highlights importance of IRS Code Section 409A compliance and ERISA claims procedures

A question that often comes up is whether different types of bonus plans and nonqualified deferred compensation plans (NQDC plans) are subject to ERISA. Even if it is questionable whether an NQDC plan is subject to ERISA (i.e., because it arguably does not provide retirement benefits or covers only one person), sometimes it makes sense to include ERISA claims procedures and file a top hat letter. In a recent case (Wilson v. Sateflite Group, Inc., No. 18-3408), the Sixth Circuit held that ERISA preempts state contract and tort law claims, and illustrates the benefits of being an ERISA plan.

This case was particularly noteworthy because it also involved violations of Internal Revenue Code Section 409A and related guidance (Code Section 409A). While the issue in the case was whether the plan was subject to ERISA, there are two other important items that may not as easily be noted. One is the limits of a Code Section 409A "savings clause" in an NQDC plan. The other is the importance of following ERISA claims procedures with respect to NQDC plans.

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Health and Welfare Updates, continued

Code Section 409A Savings Clauses

Most NQDC plans contain what is generally called a Code Section 409A "savings clause." It is a section of the NQDC plan that provides that the NQDC plan is intended to comply with Code Section 409A. Code Section 409A imposes penalties on participants in NQDC plans if the NQDC plan document or administration does not comply with strict payment and election timing rules. Those penalties include immediate recognition of deferred income, an additional 20 percent tax on those amounts, and interest equal to the underpayment rate plus one percentage point on the tax deficiency that resulted from not recognizing the deferred income originally. The intended purpose of the savings clause is to make sure that any ambiguity is resolved in favor of a pro-Code Section 409A interpretation.

Unfortunately, such "savings" clauses will not necessarily save you money under Code Section 409A. While IRS officials and most practitioners recommend these savings clauses, the IRS still requires that the substantive terms comply with Code Section 409A, and if a term is ambiguous or not clearly defined, a savings clause may tip the balance in favor of a Code Section 409A-compliant interpretation. If, however, a required Code Section 409A term is omitted; a term in the NQDC plan arguably contradicts Code Section 409A; or if the administration of the NQDC plan violates Code Section 409A, a savings clause (in the IRS's view) will not override those violations. The IRS likely will still assess penalties, and most of those penalties fall on the participant.

Therefore a case was ripe to answer the question: if an NQDC plan contains a savings clause that suggested that the NQDC plan complied with Code Section 409A, and either the document or plan administration violated Code Section 409A, could an executive sue his or her employer for breach of contract or a tort in order to recover the penalties?

NQDC Plans and ERISA

Dan Wilson, Safelite's former President and CEO, tried to answer this particular question in the case, Dan Wilson v. Safelite Group, Inc., 18-3408 (6th Cir. 2019). He participated in Safelite's nonqualified plan for several years, and when he terminated service with Safelite, his account balance was $9,111,384. The IRS audited Safelite's NQDC plan and found that Mr. Wilson's elections under the plan had violated Code Section 409A. Mr. Wilson attempted to sue Safelite for breach of contract and mismanagement of the plan because Mr. Wilson was assessed IRS penalties despite the plan's language that suggested it was compliant with Code Section 409A.

The District Court held that because the NQDC plan at issue was an ERISA pension plan, ERISA preempted these state law claims and the Sixth Circuit affirmed that decision. The Sixth Circuit decision held that an NQDC plan whose default payment timing was retirement, but also allowed earlier in-service payments, was an ERISA pension plan that could provide retirement benefits. The fact that payments could be made before retirement did not qualify the plan for the bonus program exception to ERISA.

While many people try to find an exemption to being subject to ERISA, given the complex rules that prohibit highly compensated employees from benefiting disproportionately compared to non-highly compensated employees, funding requirements, fiduciary rules, and vesting requirements, if a plan is a "top hat" plan, however, being an ERISA pension plan may actually be beneficial for three key reasons:

- A "top hat" plan—one whose participation is limited to a select group of management or highly compensated employees—is exempt from many ERISA requirements, such as funding, nondiscrimination in coverage and benefits, vesting and fiduciary rules.
- A top hat plan is still subject to reporting requirements, but the plan sponsor may satisfy these requirements simply by filing a one-time letter with the Department of Labor.

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Health and Welfare Updates, continued

- A top hat plan is still subject to ERISA's claims procedures requirements, which requires an internal review and appeals procedure before a participant may take the claim to litigation. Further, discovery generally is limited to the administrative record developed during the review, and courts tend to be deferential to the internal determinations.

In short, being a top hat ERISA pension plan provides another line of defense for plan sponsors. Mr. Wilson may still recover some or all of the penalties he incurred, but the process would have been easier for him in state court than under the ERISA procedures.

Plan Administrator's Decision to Deny Long-Term Disability Claim Subject to De Novo Review Due to Failure to Issue a Timely Decision

The Seventh Circuit held that a plan administrator's decision to deny a claimant's long-term disability (LTD) benefits was not entitled to a more deferential standard of review because the plan administrator failed to comply with ERISA's deadline for issuing a decision regarding the claimant's LTD claim. As a result, the court vacated and remanded the case with the order to apply the de novo standard of review to the plan administrator's decision. (Fessenden, Donald v. Reliance Standard Life Ins. Co, (7th Cir. 2019).)

By way of background, Donald Fessenden worked for Oracle USA until January 2008, when he stopped working due to fatigue and severe, chronic migraine headaches. He applied for short-term disability benefits through Oracle's employee welfare benefits plan. Reliance Standard Life Insurance Company (Reliance) was the insurer for the plan. Fessenden's request was approved, and Fessenden received benefits through May 11, 2008. Oracle terminated Fessenden's employment shortly thereafter.

In March 2014, Fessenden submitted a claim to Reliance for LTD benefits dating back to his last day of work in 2008. His submission included medical records from 2006 to 2014, as well as statements from multiple doctors which supported his diagnosis of Chronic Fatigue Syndrome.

Reliance denied his claim by letter, which stated that it would notify Fessenden in writing of its final decision within 45 days of the date that it received a request for review, unless special circumstances existed. In that event, Reliance would notify him of the final decision no later than 90 days from the date that it received the request.

On April 24, 2015, Fessenden submitted his request for review, complete with additional medical records and physicians' statements. However, Fessenden sent it to an address different from the one included in the instructions, and Reliance did not confirm receipt of it until May 8.

On June 17, Reliance notified Fessenden that it needed an additional 45 days to make its determination, and on August 27, it entered its final decision denying Fessenden's claim for LTD benefits. The parties disagreed on when exactly Reliance's 90 days were up, but they all agreed that Reliance made its final decision after the window had closed.

Before the final decision was issued, but after the deadline had passed, Fessenden sued Reliance and Oracle under ERISA, arguing that he qualified for disability benefits under the plan.

The district court denied Fessenden's motion to determine the standard of adjudication, and granted Reliance's motion for summary judgment. Fessenden appealed. On appeal, the Seventh Circuit held that Reliance had forfeited the application of a deferential standard of review by failing to comply with the deadline for issuing a decision regarding Fessenden's LTD claim. Therefore, the court vacated the district court's summary judgment decision and remanded the case for further consideration consistent with its opinion.

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In reaching its conclusion, the court noted that when a plan administrator fails to make a final decision under ERISA's claim procedures, it can affect the standard of review applied.

The court noted that courts generally apply the arbitrary and capricious standard of review to benefits denial cases where a plan administrator has been granted discretionary authority under the plan to determine the claimant's eligibility for benefits. However, according to the Seventh Circuit, when a plan administrator fails to render a final decision, there is no valid exercise of discretionary authority to which the court can defer, and as a consequence, the court applies the de novo standard of review.

Here, the court found that Reliance had issued a final decision, but the decision was not timely under ERISA's claim procedure regulations. Reliance argued that the court should excuse its untimely decision under the substantial compliance doctrine. Fessenden disagreed, asserting that the court should abandon the substantial compliance doctrine altogether.

The court refused to address whether the substantial compliance doctrine remained valid, and instead decided the case on narrow grounds by concluding that the substantial compliance doctrine does not apply to the violation of regulatory deadlines. Since the plan administrator lacked the discretion to take longer than the regulations permit, its delayed decision was not entitled to deference, the court said.

The Seventh Circuit noted that even though Reliance's decision was only eight days late, at the time Fessenden filed suit, he and the court lacked a sufficiently clear understanding of Reliance's position to permit an effective review. Thus, the court refused to permit Reliance's late decision to undercut the benefits of exhaustion for Fessenden.

The Seventh Circuit acknowledged that the Third, Ninth, and Tenth Circuits have been willing to apply the substantial compliance doctrine to missed deadlines, but disagreed with those decisions, creating a split in the Circuits. The Court reasoned that many of the Circuits applying the exception to missed deadlines relied on precedent that predated the 2002 version of the regulations. When the 2002 regulations were amended, they provided for more detailed and balanced provisions on timing and tolling, the Court ruled.

Thus, the Seventh Circuit held that late decisions were both foreclosed by the 2002 regulations and incompatible with the substantial compliance doctrine.

Observation: Plan administrators should be mindful of the deadlines applicable to claims and appeals if they want to avail themselves of a deferential standard of review. As such, there now exists a split in the Circuits regarding whether a plan administrator's decision is entitled to deference where regulatory deadlines are missed.


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MEMBER PROFILE

Member Profile: Stephen Drake

Company: Altman & Cronin, a division of Gallagher Benefit Services

Title: Senior Actuary

Education: MA Applied Mathematics, UC Santa Cruz; BSc Mathematics, University of Sheffield, UK

Years in the industry: 24 years

Please tell us about your first "real" job: I was born and grew up in England. For four or five summers when I was a teenager, I was an official scorer at a local cricket club. I used to get paid part cash, part drinks at the bar after the game. It gave me the opportunity to watch a lot of cricket, which helped as I started playing as well. A club level game can last five or six hours and there is a definite rhythm to it, which I got to understand pretty well. It's one of the things I still miss about being there.

BUSINESS BACKGROUND

Nature of your work: I manage several client accounts in our actuarial consulting practice. I work with those clients to help them understand the financial and risk issues related to their pension plans, and make sure they are funding the plans adequately and meeting all the required standards and compliance deadlines.

How you got into the field: My degree was in math and I was good at taking tests, so when I found out about the actuarial profession it seemed like a natural fit. I cold-called the reception desk at Coopers & Lybrand to ask for an informational interview and was put through to the practice leader! He said he didn't have time to talk and was about to hang up on me, so I quickly asked if there was anyone who I could speak to, and he put me in touch with their internal recruiter. Eventually, I was hired and that turned out to be my workplace for 22 years.

What you like about the field: The most rewarding days for me are ones where either I am able to help clients with a problem that they couldn't have got through on their own, or I am able to help participants understand more about their pension. We don't work directly with participants very often but, ultimately, our work is all about having them understand and get the most out of the plan.

PERSONAL

Ways you spend free time: Hiking, playing soccer, doing yard work, geocaching, watching sports, hanging out with family (not necessarily in that order).

Guiding philosophy: Give your best in everything you do.

Favorite charities: Room to Read in SF. They help children in low income areas around the world learn to read and work to improve girls' graduation rates in secondary school programs.

Last books read: "The Martian" by Andy Weir. Every bit as good as the film (maybe even more so because you only have to imagine the disco music).

Restaurant recommendations: White Elephant Thai Restaurant in South San Francisco. Everything there is good.

What will you do when you retire: Travel, relax with family, repeat.

Member Profile: Brian Gilmore

Company: ABD

Title: Lead Benefits Counsel

Education:
University of California, Berkeley, 2006
University of San Francisco School of Law, 2009

Years in the industry: 12

Please tell us about your first "real" job: My first semi-real job was as paperboy for the weekly local newspaper in town called the Piedmonter. Then a competitor arose called the Piedmont Post, and I jumped at that route too. I delivered for both at the same time because being a paperboy was as close to my original dream job of being a mailman that I could get! Plus, it helped pay for baseball cards and videogames.

BUSINESS BACKGROUND

Nature of your work: I work at a broker/consulting firm as the in-house ERISA attorney consulting with clients on a wide variety of employee benefits compliance issues.

How you got into the field: At the public interest job fair during law school, I spoke to someone at the EBSA who ran the Benefits Advisor team. They're essentially the customer service department (as they joke) for the public when it comes to general ERISA questions. The boilerplate SPD Statement of Rights section directs participants to call them if they need assistance. My lucky break was when I got an EBSA interview because the rep I spoke to liked my background of teaching tennis to kids during high school and college. True story: She thought the experience of explaining tennis to kids would be useful to apply in teaching the public about ERISA. I spent the summer in 2007 at the EBSA, got some great training from the Benefits Advisor team, and by the end knew that I had stumbled into exactly the right field. I spent several years after that at Trucker Huss where I really learned the field from the attorneys who work there.

What you like about the field: Working with benefits professionals who are in the trenches making a good faith effort to comply with the vast array of legal requirements. This field has piled laws on top of laws since 1974, and particularly in the past decade since the ACA. My observation in recent years is that the sheer volume of requirements has unfortunately made it nearly impossible for employers with best intentions to operate—even with a plain vanilla approach to benefits—without significant outside adviser assistance. Here in the Bay Area, most employers are trying to be far more generous than the basic baseline offerings, which typically adds additional layers of complexity. My favorite part of the job is working with the in-house practitioners, who make this whole field function in practice, to understand the law, strategize on best practices, and generally interact in a way that can take us from the high-level to the weeds without the eyes glazing over.

I'm also an advocate for consumer-driven health care, particularly HSAs. My license plate is "HDHP HSA". I've had it for several years now, and I get almost no recognition (positive or negative) for it on the road—and I'm on the road at lot! So disappointing. Please honk and wave if you see me on the San Mateo Bridge.

Continued pg. 14

MEMBER PROFILE

Member Profile continued:
Brian Gilmore

PERSONAL

Ways you spend free time: Trail running, listening to podcasts, playing wiffle ball with my boys.

Guiding philosophy: "The greatest enemy of the good is the dream of the perfect." When I was a new associate, Brad Huss loaned me one of his copies of Jack Bogle's famous Little Book of Common Sense Investing and told me to read it on BART. It was exactly what I needed. That quote was the guiding principle of Bogle's investment philosophy, but it's also useful in just about every other aspect of life. When he died in January, I did some research and learned the quote is derived from similar quotes by Confucius, "Better a diamond with a flaw than a pebble without," Voltaire "The best is the enemy of the good," Carl von Clausewitz. "The enemy of a good plan is the dream of a perfect plan," and Alexander Pope "Hope springs eternal in the human breast; Man never is, but always to be blessed."

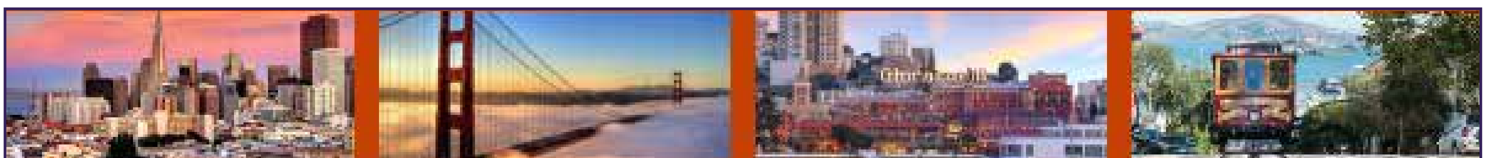
Favorite charities: Semper Fi Fund, Fisher House Foundation.

Last books read: "Conspiracy: Peter Thiel, Hulk Hogan, and the Anatomy of Intrigue

In the First Circle;" "The History of the Future: Oculus, Facebook, and the Revolution that Swept VR Altered Carbon."

Restaurant recommendations: Stay home and use Uber Eats.

What will you do when you retire: Go with my boys to games at all the significant Major League Baseball and college football stadiums around the country!



Save the Date and Register Now!

WPBC-SF MEMBERSHIP NETWORKING EVENT

Tuesday, October 1, 2019

4:00 - 7:00 PM

Orrick • 405 Howard Street

Complimentary!

Visit www.wpbcsanfrancisco.org to register!

Would you like to be more involved in the San Francisco Chapter?
We need volunteers to serve on our Membership Committee.

Contact Robert Gower for more information:
rgower@truckerhuss.com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Field Trip: SF City Guides Walking Tours

On Thursday, July 25, 2019, we hosted a field trip with SF City Guides walking tours. Our guide was Reed Rahlmann and he did a fantastic job of showing us the city scapes and public places in downtown right in the heart of the Financial District.

The description was "Discover hidden parks, rooftop gardens, modern and colorful history and distinctive architecture of San Francisco's financial District." And that we did!

We met at the Native Sons Monument on the corner of Montgomery and Market streets, and in just about five blocks we saw three rooftop gardens, amazing architecture, artifacts dug up during construction; walked through an underground tunnel from one building to another; and so much more. It was an educational and fun experience.

Most of us have worked in downtown San Francisco for years and years and never noticed what was right in front of us. It pays to look up, and have someone show you these amazing sites that we take for granted. We all enjoyed it and highly recommend City Guides as an awesome way to get to know our very own city, and enjoy time with old and new WP&BC colleagues.

Check out the tours on your own sometime. They host multiple tours on many days of the week. The schedule can be found at: SFcityguides.org

Chapter Membership Appreciation Event

Pensions and Pisco

On June 18, Chapter Members and recent session attendees enjoyed a networking reception and Member Appreciation Event at La Mar Cebichería Peruana on San Francisco's beautiful Embarcadero waterfront. Members and prospective members enjoyed passed appetizers and drinks (including Peruvian traditional Pisco Sours!) while discussing industry trends, business development, plan sponsor needs, and summer plans. A large poster board was utilized to collect session topic suggestions in preparation for the exciting year ahead. This annual Membership appreciation event capped off a year of great programming, and sent our members into the summer excited for another year of Chapter activities to come. Many thanks to the Chapter Membership Committee, who works hard every year to plan both membership drives and chapter appreciation events. The Membership Committee is continuing to look for volunteers to help grow the Chapter. Please contact Chapter President, Karen Mack if you would like to help out. You are needed!

Kevin Nolt, Trucker Huss and Lori McKenzie, Schwab

Karen Mack, Altman & Cronin

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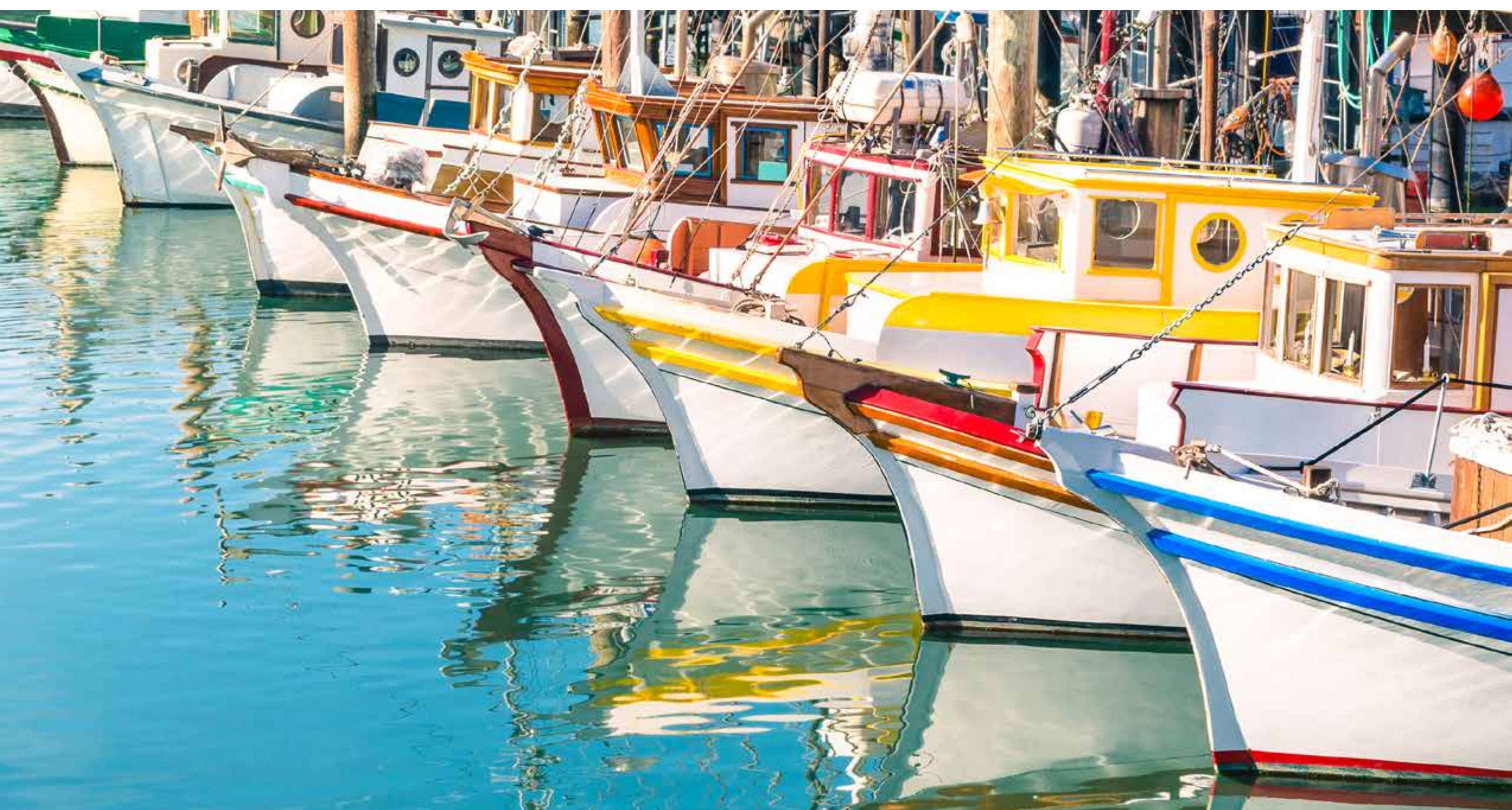
Chapter Membership Appreciation Event, continued

MEMBERSHIP APPRECIATION EVENT

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CHAPTER INFO AND BOARD OF DIRECTORS

Want to get involved in the San Francisco Chapter?

Contact Karen Mack to volunteer!

SUMMER 2019

EMPLOYMENT OPPORTUNITIES

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

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.

WESTERN PENSION & BENEFITS COUNCIL
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Membership in the WP&BC San Francisco Chapter is open to individuals who are productively, substantially and continuously engaged in work in the field of employee benefits. Any individual who has been engaged in work in the field of employee benefits may become a member upon submission of a completed membership application, payment of dues, and approval by the Chapter Board of Directors. To join, visit www.westernpension.org