WESTERN PENSION & BENEFITS COUNCIL
San Francisco

Pension & Benefits Quarterly

Fall 2017

Inside this edition

October Meeting HSA Panel

The Convergence of Health and Wealth - Unlocking the Power of Health Savings Accounts (HSAs)

At the October 10, 2017, Chapter meeting, a distinguished panel discussed a number of issues regarding the growing use of Health Savings Accounts (HSAs). As healthcare costs rise, many employers are shifting greater responsibility to employees to save for expenses using tax-advantaged HSAs. The event was extremely interactive and included many questions and comments from attendees that dealt with issues affecting participants, plan sponsors, and advisors.

The program featured a panel discussion with three HSA experts: (1) Ken Forsythe, Assistant Vice President for Product Strategy from Empower Retirement; (2) Bart Ballinger, Vice President of Sales for Perspective Partners,

Continued pg.12

"Our Chapter therefore will be making a donation to a North Bay fire relief fund."

Kevin Nolt
Trucker Huss

President's Letter - Pg 2

PRESIDENT'S LETTER

President's Letter

It has been a difficult few months since our last Newsletter. Our hearts go out to all who have been impacted by the North Bay fires and Hurricanes Harvey, Maria and Irma. It will be a long and challenging road for many. As described in the legal update of this Newsletter, the government has responded with some benefits and tax-related relief. But more is needed. Many of us have family, friends, colleagues or clients impacted by the North Bay fires. Our Chapter therefore will be making a donation to a North Bay fire relief fund.

Fall is a busy time for many benefits professionals. However, with the October 15th Form 5500 deadline over and open enrollment for many employers coming to a close, we hope you can take the opportunity to enjoy what this season has to offer, including football, Fall colors, maple lattes and hopefully some much needed rain.

Our 2017 - 2018 events are off to a great start. As discussed in this Newsletter, our first Chapter meeting was on Health Savings Accounts. It was a very interactive session which became a fascinating dialogue (and in some cases a debate) between the audience and the panel of speakers. It reminded me again of some of the key benefits of this organization – in-person discussions and, of course, networking.

Our goal of providing these opportunities is furthered by our two November events. First was our field trip on November 8 to the San Francisco Opera House for a backstage tour. This was a social gathering to meet other members and foster those important industry relationships. Second is our Brown Bag lunch on November 14 on the new mortality tables (see further below in this Newsletter for the meeting details). This is a round-table discussion with your peers on an important topic for anyone who sponsors or advises on a defined benefit pension plan. These events are at no cost to our members. Another perk of membership!

Speaking of membership, please keep a look out for details on our new membership drive event scheduled for early 2018. The purpose of this event is to both increase membership and show appreciation for our current members. This organization is about its members, and thus we need your continued support. If you are reading this and have not renewed your membership or have never been a member, please consider attending this no cost event in early 2018. It is sure to be an informative and fun event! It has been very exciting to see new members joining our Chapter and to witness new benefits professionals starting their own networking groups. These are the future leaders of our industry and they are meeting and fostering their relationships through WP&BC.

There is a lot of uncertainty in our industry. This includes attempts to unwind the Affordable Care Act, the continued challenges to the final fiduciary rule and the potential impact of tax reform on retirement plans. What is certain is that the WP&BC San Francisco Chapter is here to support its members.

I hope to see you at our December Chapter meeting which will be a practical discussion of the final fiduciary rule followed by a festive holiday party.

Kevin Nolt, Director

Trucker Huss, APC

Executive Compensation Update

Anjuli M. Cargain,
Sedgwick LLP

Pay Ratio Rule: On September 21, 2017, the Securities and Exchange Commission ("SEC") published interpretive guidance on the pay ratio disclosure requirement mandated by Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which requires that covered companies disclose the following:

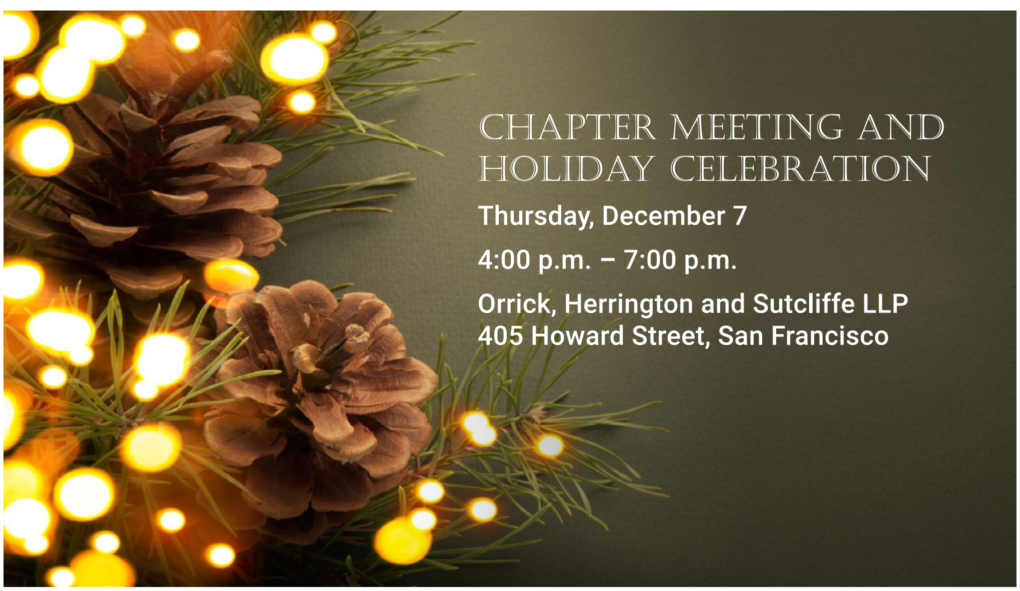
(A) the median of the annual total compensation of all employees of the company, except the chief executive officer (or any equivalent position) of the company;

(B) the annual total compensation of the chief executive officer; and

(C) the ratio of the amount in (A) to the amount in (B).

The final pay ratio disclosure rule affords significant flexibility to companies in determining appropriate methodologies to identify the median employee, and calculating the median employee's annual total compensation, which could potentially lead to imprecision. The interpretative guidance states that if a company uses reasonable estimates, assumptions, and methodologies, the resulting pay ratio and related disclosures would not provide the basis for an enforcement action unless the disclosure was made or reaffirmed without a reasonable basis, or was provided other than in good faith.

The guidance clarifies that a company may use existing internal records such as tax or payroll records in determinations about the inclusion of non-U.S. employees and in identifying the median employee. Lastly, the guidance states that any widely recognized test to determine whether workers are "employees" (e.g., guidance published by the Internal Revenue Service with respect to independent contractors) can be used for purposes of compliance with the rule. The SEC Division of Corporate Finance published further guidance and hypothetical examples of the use of sampling and other reasonable methodologies. Additionally, the SEC updated its compliance and disclosure interpretations under the rule. Companies must provide pay ratio disclosures in early 2018.



MEMBER PROFILE

Member Profile

BASICS

1. **Full Name:** Robert Gower
2. **Company:** Trucker Huss, APC
3. **Title:** Director
4. **Education:** J.D. and B.A., University of California, Davis
5. **Years in the industry:** 9
6. **Please tell us about your first "real" job:** Believe it or not, my first full-time job was as an attorney with Trucker Huss!

BUSINESS BACKGROUND

7. **Nature of your work:** I provide clients with assistance in a wide array of qualified plan design and compliance issues. I also counsel plan sponsors on fiduciary responsibility, and work with service providers to navigate ERISA's disclosure and prohibited transaction rules.
8. **How you got into the field:** In law school I enjoyed the nuances of tax law, but wanted a legal career that would provide me the opportunity to work collaboratively with other professionals, and have a direct and meaningful impact on people's lives. Employee benefits law turned out to be the perfect fit.
9. **What you like about the field:** I enjoy practicing in an area that has a significant impact on people's lives. As health technology improves, and cost of living continues to move upward, meaningful and competitive retirement savings plans are critical to our future. The challenges and great potential for the industry make it an exciting time to practice in employee benefits.

PERSONAL

10. **Ways you spend free time:** I love to travel, try new restaurants, and eat adventurous food. But more than anything, I love exploring the Bay Area backroads with my husband and our dog, Olive.
11. **Guiding philosophy:** Success is getting what you want. Happiness is liking what you get.
12. **Favorite charities:** Friends of the Urban Forest, Equal Rights Advocates
13. **Last books read:** *Screw Business as Usual* by Richard Branson, *Astrophysics for People in a Hurry* by Neil deGrasse Tyson, *The Changeling* by Victor Lavalle
14. **Restaurant recommendations:** Al's Place, Tartine Manufactory
15. **What will you do when you retire:** Anything that involves being on a beach!

Tributes to Jill Kleiner – Former Chapter President

Jill Kleiner, a long time Chapter member, has served our organization in several roles, including as President during the 2011-2013 term, Vice President during the 2009-2011 term, and Immediate Past President in the winter of 2013. We are very grateful for Jill's contributions and wish her well in her next phase, retirement. Two Chapter members who have had the pleasure to work with Jill over the years provide their own thoughts below.

Tribute from Jon Chambers

I am honored to be writing on behalf of our Chapter to recognize Jill Kleiner. I am touched but also a little speechless. Jill is way too young to retire! I am also inspired. Jill is one of my oldest friends and an industry peer. Our friendship precedes our professional associations. We were friends at Cal Berkeley – graduating in a year when the Miami Vice theme song was a hit. We began our professional affiliation when a mutual friend from Berkeley led us to Coopers & Lybrand (Coopers), where we were "Staff B" consultants - eager to move up the ranks as rapidly as possible. It's amazing to reflect that the Coopers' Actuarial, Benefits and Compensation Consulting Group that launched the careers of many WP&BC members would eventually be one of the many casualties of industry consolidation.

Jill and I remained friends during those early years at Coopers. We were "cube mates", sitting diagonally across from each other. Given the close proximity and long hours, we got to know each other pretty well. Jill's work ethic and attention to detail was always impressive. She set high standards for the whole team, whether we liked it or not

A few years later, Jill left Coopers to take a similar position with another benefits consulting firm in her native Southern California. I was sad to see her leave, but understood her desire to relocate. I didn't expect her return to her "non-native" half of California, and I didn't know when—or if—our paths would cross again.

Since Mark Zuckerberg hadn't yet created Facebook (and I think we may have only been about 10 at this time), a few years later I was surprised but pleased to learn through a WP&BC colleague that Jill had returned to Northern California. Proving that the world is a small place, both of our families were now living in Moraga (a small, quiet cow town)! Soon after Jill's return, she jumped right back into things by becoming active in WP&BC.

After attending a Chapter program that admittedly could have been better, Jill shared some much appreciated honest feedback with me, since I was Chapter president at the time. Using the positive recruitment psychology approach I'd learned from my predecessor, Ian Altman, I replied something to the effect of "we can use more of your insight and guidance" and what better way to improve programs than to be a member of the Program Committee. Jill graciously accepted the invitation to help and quickly moved into the role of Program Chair. This is by far the most challenging and thankless role in WP&BC, although the Chapter has done a tremendous job of thanking all Program Chairs over the years. With Jill's technical acumen, organizational skills, and desire to see programs run smoothly, the Chapter produced an excellent series of programs.

Remember my earlier comments about Jill's work ethic and attention to detail? They really paid off for our Chapter. Jill also became Chair of the Spring Conference and WP&BC's liaison to the annual Western Benefits Conference,

Continued pg.6

Tributes to Jill Kleiner, continued

putting on terrific conferences. No small deed goes unnoticed. I hope this is true as it relates to Jill's dedication and commitment to the Chapter, fellow volunteers, and members. Additionally, Jill gave back to our hometown community as an active member of the Moraga Juniors.

The next steps were obvious. Jill was nominated chapter Vice President, and as tradition goes, became President. In each role, Jill served with verve and distinction and we are a better organization today because of her.

Personally, I am privileged to also have had the opportunity to get to know her husband John (although he spells his name incorrectly)! We have had fun at various functions and events around town, especially our summer park converts where the wine flows as generously as Jill's contributions. I am thrilled that she will now bask in the glory of retirement days with John and do those things I'm sure she told us she would do in our Summer 2011 Newsletter: "Hopefully work at a winery, get caught up on scrapbooking, get in fabulous shape, read all the books on my book shelves, sleep in, and spend more quality time with friends and family. Also, I can't wait to go to all the Opens, the U.S. (which I've been to a few times), the French, the Australian, and Wimbledon, preferably all in one year with my dad."

There aren't many people who can say they've been colleagues and professional collaborators over a period of decades. I'm proud to consider Jill Kleiner a friend as well. Her professionalism and dedication will be sorely missed, but please join with me in wishing her all the best as she enters into a well-deserved retirement. And if I know Jill, she will continue to give back and serve others, so I hope she finds the perfect balance in her well-earned "non-working" years.

Tribute from Lori McKenzie

I remember meeting Jill more than 15 years ago at one of our Chapter meetings, back when they were held at the Ferry Plaza Building. Jill was considered an industry expert and lived up to that description in every way. Her client list included an impressive array of tech giants and other Fortune 100 companies.

Jill has a deep knowledge and a passion for our industry and a true desire to learn. She has always been open and eager to explore and stay current in the ever evolving world of retirement plans. Her commitment to our business has been evident in her dedication and support of her clients and the WP&BC (especially our Chapter). Her integrity, knowledge and enthusiasm will be missed.

We will also miss Jill's wonderful sense of humor, her easy laugh and her love of wine. It is has been an honor and a pleasure to work with Jill in so many capacities throughout her tenure with Willis Towers Watson and the WP&BC.

I imagine that Jill will be enjoying more weekend wine trips and long afternoons filled with scrap booking. But we want her to know that if she ever needs a fix of her WP&BC friends that she is welcome to join our Chapter field trips anytime.

We wish her all the best in the next chapter, retirement, which is what we are all striving for and truly why we are all in this business. It is always a pleasure to see one of our own achieving this milestone. I admit to being a wee bit jealous that Jill is off on this next adventure already and at such a young age. Kudos to Jill!

Health and Welfare Updates

Elizabeth M. Harris
Orrick, Herrington & Sutcliffe LLP

Senate Refuses to Vote on GOP Health Care Bill

On September 26, 2017, Senate Republicans officially abandoned the latest plan to repeal the Affordable Care Act (ACA), tabling a vote on the measure and effectually admitting defeat in their last attempt to fulfill a central promise of President Trump and Republican lawmakers. The decision came shortly after a crucial Republican senator, Susan Collins of Maine, declared her opposition to the repeal proposal.

Democrats have spent the better part of 2017 fighting to defend the ACA, a law that is a pillar of President Barack Obama's legacy. Democrats responded to the latest bill by calling for the reopening of bipartisan negotiations to stabilize health insurance markets. Republican leaders suppressed those talks as the latest repeal plan, the "Graham-Cassidy bill", written by Senators Lindsey Graham of South Carolina and Bill Cassidy of Louisiana, gained momentum.

The decision by Senate Republican leaders to pull the proposal may prove to be a breakthrough in the lengthy fight over health insurance in the United States, suggesting that the ACA had gained at least a reprieve and perhaps some degree of political acceptance.

The Trump administration has taken numerous steps that have challenged the operations of the health law, and millions of Americans who purchase health insurance on their own face high increases in premiums next year.

"We haven't given up on changing the American health care system. We are not going to be able to do that this week," Majority Leader Mitch McConnell told reporters on September 26, 2017. "But it still lies ahead of us and we haven't given up on that."

It remains to be seen what the next steps will be by Republicans, but health care is sure to be an issue in next year's midterm elections.

White House Decides to Stop ACA Cost-Sharing Subsidies

On Thursday, October 12, 2017, the White House announced that President Donald Trump would end cost-sharing reduction payments, a move that could damage the ACA's individual insurance exchanges and sharply increase healthcare costs for many Americans.

The administration said it would cease reimbursing insurers for discounts on the payments and deductibles that they are required by law to offer to low-income consumers. The reimbursements are known as cost-sharing reduction payments, or CSRs.

Insurance companies still have to provide the discounts to low-income customers. So if the government doesn't reimburse the insurers, they will have to make up the difference in cost by charging higher premiums for coverage.

The subsidy cut was not the first swipe by the White House at the ACA insurance markets in what many critics classify as a deliberate campaign to destabilize them in hopes of forcing Congress to repeal the law.

The administration's decision to stop the payments to insurers shook the insurance marketplaces and sparked an immediate legal challenge from nearly 20 state attorneys' general. Officials responded to the administration's move by filing their opposition in a federal appeals court.

Continued pg.8

Health and Welfare Updates, continued

The decision will most directly affect middle-class families who purchase individual health insurance policies without financial help from the government. Americans who earn more than 400% of the federal poverty level (an individual with income of about $48,000 or a family of four that makes more than $98,400) will likely see their costs for coverage rise next year by an average of about 20% nationwide.

People with lower incomes will be unaffected since the ACA provides government subsidies (in the form of tax credits) that ensure their out-of-pocket insurance costs remain stable. So when premiums rise, those tax credits rise in tandem.

Ironically, according to the Congressional Budget Office, the decision to end the $7 billion-a-year cost-sharing payments is likely to cost the federal government more than making them - nearly $200 billion over a ten year period. The reason is because the ACA requires that premiums don't exceed a set percentage of an individual's income. So as premiums set by insurance companies rise over time, the government must increase its tax credits so the cost to the consumer remains the same.

The decision to end the cost-sharing payments came hours after President Trump signed an executive order hoping to make it easier for individuals and small businesses to purchase less expensive health insurance policies through trade groups and professional associations. The policies would likely offer fewer benefits and appeal to healthier, younger individuals.

The two moves could split the health care market. People with low incomes or expensive medical conditions would stay in the ACA marketplace, while healthier, more affluent people could go elsewhere for coverage. The result would be greater costs for people who need health care the most.

The move and response surrounding the decision could tamper with the ACA open enrollment that begins November 1st. Some insurers and state regulators have struggled to reconsider rates for next year and the uncertainty is sure to make the enrollment period even more challenging.

GOP Offers More Conservative Bill to Fund ACA Payments

On Tuesday, October 24, 2017, Republicans announced plans to introduce a bill to fund the ACA's cost-sharing payments to insurers along with rolling back the health law's mandates. It is unclear whether the new proposal would have any Democratic support because it restricts funding for abortion services and would undermine the stability of the ACA by rolling back its mandates.

The proposed bill would fund the ACA's CSR payments for two years, increase the use of health-savings accounts, and retroactively exempt employers from penalties for not providing their employees with health insurance. The bill would also release individuals from penalties for not having health insurance.

DOL Proposes Delay in Application of Rules for Disability Claims Procedures

On October 10, 2017, the Department of Labor (DOL) proposed a 90-day delay in the application of the Final Rule amending the claims procedure requirements for ERISA-covered employee benefit plans providing disability benefits. The DOL will publish its proposal in the Federal Register on October 12, 2017 and proposes to push back the application of the Final Rule to April 1, 2018.

The Final Rule was published in the Federal Register on December 19, 2016; became effective on January 18, 2017; and was originally planned to apply to all claims filed on or after January 1, 2018. Among other requirements, the Final Rule enforces additional disclosures to be included in benefit denial notices, improved

Continued pg.9

Health and Welfare Updates, continued

rights of review, independent and impartial claims reviews and culturally and linguistically suitable notices.

Shortly following the publication of the Final Rule, critics argued that it would not only drive up disability benefit plan costs, but also cause an increase in litigation and impair workers' access to disability insurance benefits. According to the DOL, critics believed the DOL underestimated the costs of the changes, and had the DOL more accurately estimated the costs, it would have found that those costs outweighed the benefits.

The potential delay grants a brief reprieve to those who need to update their claims procedures to ensure compliance with the Final Rule.

Contraceptive Exemption Expanded to More Employers

On October 6, 2017, the Trump administration released two interim final rules that expand the universe of employers eligible to opt out of providing contraceptive coverage under the Affordable Care Act.

The rules (T.D. 9827, T.D. 9828) significantly expand the religious exemption from the Affordable Care Act's (ACA) birth control requirements to include a broader group of nonreligious and for-profit employers. Further, the regulations include language exempting entities with strong "moral convictions" from the ACA's contraceptive coverage requirements.

The regulations were issued together by the Internal Revenue Service (IRS), the Employee Benefits Security Administration, and the Centers for Medicare and Medicaid Services through the departments of Treasury, Labor, and Health and Human Services.

The interim final rules are part of an expansive initiative to provide greater protections of religious freedom. The Trump administration said the U.S. has long provided "conscience protections" in the context of health regulations based on religious belief and moral principles.

The list of "objecting entities" that are entitled to the exemption include: a church, a convention or association of churches, or a religious order; a non-profit organization; a closely held for-profit entity; a for-profit entity that is not closely held, and any other non-governmental employer.

According to the Trump administration, approximately 200 employers have sued the federal government over the requirement to provide contraception coverage and would likely take advantage of the new rules.

Fees for Patient-Centered Research Expected to Rise

The Affordable Care Act (ACA) created the Patient-Centered Outcomes Research Institute (PCORI), a nonprofit, nongovernmental organization, to help patients, clinicians, payers and the public make informed health decisions by advancing comparative effectiveness research. PCORI's research is funded, in part, by fees paid by the health insurance issuers and sponsors of self-insured health plans.

PCORI fees will be increasing by $0.13 for the upcoming year. According to the IRS, the new fee of $2.39 took effect October 1, 2017. The fee applies to policy or plan years ending on or after October 1, 2012 and before, October 1, 2019.

Continued pg.10

Health and Welfare Updates, continued

ADA Claims Advance Against Employer that Modified Health Plan to Exclude Autism Treatments

A district court in the Fifth Circuit held that a claimant adequately established a prima facie case for discrimination and retaliation under the American with Disabilities Act of 1990 (ADA) against an employer that modified its health plan to exclude certain autism treatments after having denied coverage for the claimant's son who was diagnosed with autism. (Whitley, Amy v. Dr. Pepper Snapple Group, Inc., 2017, DC TX) 2017 WL 1739917).

Amy Whitley was employed by Dr. Pepper Snapple Group, Inc., and participated in the Dr. Pepper Health Plan (the "Plan"), along with her minor son, "LKW". LKW was diagnosed with autism spectrum disorder, however, Whitley was told that the Plan did not cover applied behavioral analysis (ABA) treatment for her son's condition. When Whitley initially inquired as to whether the Plan covered ABA treatment, she was told the treatment was excluded under certain general Plan exclusions. Shortly thereafter, Whitley was informed that Dr. Pepper would be adding an explicit exclusion for ABA treatment under the Plan.

Whitley brought a claim against Dr. Pepper, claiming that the addition of a specific exclusion soon after her probe about the coverage constituted prohibited discrimination and retaliation under the ADA. Dr. Pepper filed a motion for summary judgment in its favor.

The district court denied Dr. Pepper's summary judgment motion. The court noted that the ADA prohibits discrimination against employees on the basis of its relationship or association with another individual that has a disability and found that Whitley had supplied adequate evidence to demonstrate that she had suffered adverse employment action because of her disabled son.

The court pointed out that a provision in a health plan may violate the ADA if it singles out a particular disability. The court found that Whitley had amply shown that the Plan was modified to deny coverage for autism after Dr. Pepper had become aware that her son was diagnosed with that condition.

UPCOMING EVENTS

Upcoming Events

Brown Bag

Tuesday, November 14

11:45 a.m. – 1:00 p.m.

Topic: *We're Saving you a Seat at the Mortality Table – Part II*

Hanson Bridget LLP
425 Market Street, San Francisco

CHAPTER MEETING AND HOLIDAY CELEBRATION

Thursday, December 7

4:00 p.m. – 7:00 p.m.

Orrick, Herrington and Sutcliffe LLP
405 Howard Street, San Francisco

STAY TUNED FOR A NO-COST EVENT EARLY IN 2018!

October Meeting HSA Panel, continued

and (3) Anne LaWer, an employee benefits attorney with GCA Law Partners. The panel was moderated by Gary Shipper of Wells Fargo Asset Management.

The three panelists shared insights and perspectives on a number of topics including:

- What plan sponsors should be aware of if they take a more active role in making the HSA a cornerstone of their benefits program rather than an afterthought
- Communicating to employees and encouraging their participation even though some may still be confused about how an HSA compares to a 401(k) account
- How to deal with a whole new set of participant decisions that must be made regarding an HSA
- The investment options available to HSAs along with fiduciary concerns and other special considerations
- Integration with retirement, especially what are the different levels of integration, why it's important and what are the challenges and benefits of such integration

Ms. LaWer also gave updates on how likely it is to have HSA legislation end up in tax reform, the status of stand-alone HSA proposals, and how legislation might evolve from current proposals. She also described the implications of the HSA sidecar proposal which would allow for HSA contributions to be commingled with retirement plans.

The event was held at the Conference Center, 4 Embarcadero, with lively HSA conversation spilling over past the program into the social hour. A special thanks to Wells Fargo as sponsor of the event.

OCTOBER MEETING HSA PANEL

Qualified Retirement Updates

Ami J. Givon,

GCA Law Partners LLP

2018 Cost-of-Living Adjustments: In Notice 2017-64, the Internal Revenue Service (IRS) announced the cost-of-living adjustments to the dollar limits on a wide variety of tax-favored benefits that will take effect in 2018.

Key 2018 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 $18,000 to $18,500.
- The contribution limitation for defined contribution plans under Code section 415(c)(1)(A) is increased from $54,000 to $55,000.
- The defined benefit plan annual benefit limitation under Code section 415(b)(1)(A) is increased from $215,000 to $220,000. For a participant who separated from service before January 1, 2018, the limitation under Code section 415(b)(1)(B) is computed by multiplying the participant's compensation limitation, as adjusted through 2017, by 1.0197.
- 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 $270,000 to $275,000.
- 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 5-year distribution period is increased from $1,080,000 to $1,105,000, while the dollar amount used to determine the lengthening of the 5-year distribution period is increased from $215,000 to $220,000.
- 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 $1,012,000,000 to $1,087,000,000.

The following limitations will remain at their 2017 levels for 2018:

- The dollar limitation under Code section 414(v)(2)(B)(i) for "catch-up contributions" for individuals age 50 and over remains at $6,000.
- The limitation used in the definition of highly compensated employee under Code section 414(q)(1)(B) remains at $120,000.
- 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 remains at 175,000.
- The elective deferral limitation under Code section 408(p)(2)(E) for SIMPLE retirement accounts remains at $12,500.
- The dollar limitation under Code section 414(v)(2)(B)(ii) for "catch-up contributions" to SIMPLE retirement plans for individuals age 50 and over remains at $3,000.
- The compensation amount under Code section 408(k)(2)(C) applicable to simplified employee pensions remains at $600.

Continued pg. 15

QUALIFIED RETIREMENT UPDATES

Qualified Retirement Updates, continued

- The limit on annual contributions to an IRA remains at $5,500. (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 2017-64 also lists the adjusted gross income limitations applicable in 2018 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.

2018 PBGC Premiums: The Pension Benefit Guaranty Corporation (PBGC) has set flat-rate and variable rate premiums for plan years that begin in 2018. The per-participant flat-rate premium for plan years beginning in 2018 is $74 for single-employer plans (up from the $69 2017 rate) and $28 for multiemployer plans (unchanged from 2017). The variable-rate premium (VRP) for single-employer plans is $38 per $1,000 of unfunded vested benefits, up from a 2017 rate of $34.

For 2018, the VRP is capped at $523 times the number of participants (up from a 2017 cap of $517). Plans sponsored by small employers (generally fewer than 25 employees) may be subject to a lower cap.

With the exception of the single-employer flat premium rate for 2019, all rates and caps are subject to indexing based on increases in the National Average Wage Index. In addition, as provided by ERISA section 4006, the 2019 flat and variable premium rates will increase by $6 and $4, respectively, for single-employer plans.

Increase in Social Security Wage Base: The Social Security Administration has announced that the maximum amount of wages in 2018 subject to the 6.2% Social Security tax (old age, survivor, and disability insurance) will rise from $127,200 to $128,700.

Department of Labor (DOL) Fiduciary Rule Developments: On August 31, 2017, the DOL proposed to extend the "Transition Period" for the Best Interest Contract (BIC) Exemption and the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (the Principal Transactions Exemption) from their currently-scheduled end date of January 1, 2018 until July 1, 2019. The proposal also would delay the applicability date of certain amendments to Prohibited Transaction Exemption 84-24 for the same period. During the Transition Period, fiduciaries relying on the BIC Exemption or Principal Transactions Exemption need adhere only to those exemptions' Impartial Conduct Standards.

In August 2017 the DOL issued its fourth set of FAQs in connection with the Fiduciary Rule. These FAQs:

1. Provide the following guidance on compliance with the DOL's 408b-2 regulations (which require, among other things, disclosure by ERISA plan fiduciaries of their status as such) by service providers who first became ERISA plan fiduciaries as a result of the Fiduciary Rule becoming applicable on June 9, 2017:
    a. An ERISA plan service provider who will continue to provide services only in a non-fiduciary capacity, or who has already effectively disclosed investment advice fiduciary status, is not required to provide additional disclosures.
    b. A service provider who has structured its service contract or arrangement so that it reasonably and in good faith believes it will not provide fiduciary investment advice is not required to disclose investment advice fiduciary status, even if it or its agent or representative has provided unauthorized and irregular communications that constitute fiduciary investment advice.
    c. During the Transition Period, the DOL not will treat a service provider who reasonably expects to provide fiduciary investment advice under the Fiduciary Rule as satisfying the 408b-3 regulations' fiduciary status disclosure requirement without expressly using the term "fiduciary" as long as the provider furnishes an

Continued pg. 16

Qualified Retirement Updates, continued

accurate and complete description of the services it will perform (including those that make it a fiduciary under the Fiduciary Rule). A covered service provider who first became an investment advice fiduciary as a result of the fiduciary rule must disclose its fiduciary status, or make a Transition Period disclosure, as soon as practicable after June 9, 2017.

2. Confirm that communications that recommend or encourage additional savings or contributions do not constitute fiduciary investment advice under the Fiduciary Rule, as long as they are not coupled with recommendations with respect to specific investment products or investment management of a particular asset.
3. Also confirm that recommendations or suggestions to a plan administrator or other plan fiduciary relating to methods to increase employees' participation or contributions to an ERISA plan will not be investment advice as long as they do not include recommendations with respect to specific investment products or investment management of a particular asset.

In Field Assistance Bulletin 2017-3, the DOL announced its enforcement policy under which it will not pursue claims against any fiduciary based on the fiduciary's failure to satisfy the BIC Exemption or Principal Transaction Exemption where the sole reason for the failure is noncompliance with those exemptions' requirement that the financial institution's contract with the retirement plan investor not include an "Arbitration Limitation," i.e., a waiver or qualification of the investor's right to bring or participate in a class action or other representative action in court. This policy will continue to apply for as long as those exemptions include the Arbitration Limitation. The Treasury Department and the IRS have confirmed that the enforcement policy also applies for purposes of applying Code section 4975 excise taxes relating to prohibited transactions.

Relief Related to Hurricanes Harvey, Irma and Maria and California Wildfires: The IRS, DOL, PBGC, and Congress each have provided plan and benefit-related relief to victims of Hurricanes Harvey, Irma and Maria (Hurricanes) and the California wildfires.

<u>IRS Relief</u>

<u>> Automatic Extension for 5500 Filings.</u> In a series of announcements (TX-2017-09, VI-2017-01, FL-2017-04, PR-2017-01, GA-2017-02, VI-2017-02, PR-2017-02, FL-2017-06 CA-2017-06, SC-2017-01 and LA-2017-03) and related news releases, the IRS granted relief to taxpayers affected by the Hurricanes (including Tropical Storm Harvey) and California wildfires. Among the relief granted is an automatic extension through January 31, 2018, without penalty, to file Form 5500 series returns due between the disaster date and January 31, 2018.

<u>> Plan Loans and Hardship Distributions.</u> A Code section 401(a), 403(a), 403(b) or governmental 457(b) plan may make loans and hardship distributions (unforeseeable emergency distributions in the case of a governmental 457(b) plan) to certain employees and former employees who, or whose family member or dependents, were adversely affected by the devastation caused by the Hurricanes and California wildfires. IRS Announcements 2017-11, 2017-13 and 2017-15.

A plan may so make hardship distributions to the extent it could do so consistent with its tax-qualified status, even if it does not contain the enabling language. For example, a profit-sharing contribution plan that currently does not provide for hardship or other in-service distributions could allow for such distributions, but could not make such distributions from qualified nonelective contribution or qualified matching accounts or from earnings on elective contributions. Similarly, a defined benefit or money purchase plan may make such distributions only from a separate account containing employee contributions or rollover amounts. The hardship distribution must be made by no later than January 31, 2018 (for Hurricane Harvey and Hurricane Irma victims) or March 15,

Continued pg. 17

Qualified Retirement Updates, continued

2018 (for Hurricane Maria and California wildfires' victims). Plan loans must satisfy Code section 72(p). To make a loan or hardship distribution under the relief, a plan that does not provide for them must be amended accordingly by the end of the first plan year beginning after December 31, 2017. These notices also relax some of the procedural requirements for hardship distributions (for plans and IRAs) and plan loans (for plans but not for IRAs) for qualifying for relief.

The IRS notices state that relief-related distributions are subject to the additional 10-percent tax under Code section 72(t).

However, as discussed below, the Disaster Tax Relief and Airport and Airway Extension Act of 2017 (DTRA), signed into law on September 28, 2017, expands the relief available to Hurricane victims through plan loans and hardship distributions, including by not subjecting "qualified hurricane distributions" to the section 72(t) additional tax.

The DOL has advised Treasury that it will not treat any person as having violated ERISA solely as a result of complying with these announcements' provisions.

> Funding and Other Deadline Relief for Defined Benefit Plans. In Notice 2017-49, issued on September 12, 2017, the IRS provided the following relief for defined benefit plans affected by Hurricane Harvey and Hurricane Irma:

- For affected single-employer plans, if the deadline required by the Code and ERISA for making a required contribution, making an election relating to a plan's prefunding balance or funding carryover balance, certifying the plan's adjusted funded target attainment percentage balance (or other certification in the case of a CSEC plan), or furnishing a notice required by ERISA 101(j)(1) or (2), fell between the Initial Relief Date (as defined in the Notice) and January 31, 2018, the deadline is extended until January 31, 2018. The same extended date is provided for similar deadlines for affected multiemployer plans. For any plan for which the notice extends a due date described in Code section 430(j)(1) or ERISA section 303(j)(1), contribution receipts are taken into account in determining the variable rate premium if made on or before the date the plan's premium is filed.
- The deadline for applying for a funding waiver for an affected plan also is extended until January 31, 2018.

The IRS has not (yet) provided similar relief to defined benefit plans affected by Hurricane Maria or the California wildfires.

DOL Relief. The DOL will not solely on the basis of a failure attributable to Hurricane Harvey or Hurricane Irma seek to enforce the provisions of ERISA with respect to a temporary delay in the forwarding of employee contributions or loan payments to a plan to the extent that affected employers and service providers act reasonably, prudently and in the interest of employees to comply as soon as practical under the circumstances. Also, the DOL will not allege a violation of the blackout notice requirements under ERISA section 101(i) if the failure to comply with those requirements was attributable to Hurricane Harvey or Hurricane Irma. EBSA Release Numbers 17-1216-NAT and 17-1297-NAT. It appears that similar relief will apply to similar failures attributable to Hurricane Maria. EBSA News Release17-1255-NAT.

The DOL has not (yet) provided similar relief to employers or plan administrators affected by California wildfires.

PBGC Relief. Disaster Relief Numbers 17-09 through 17-19 provide for relief relating to PBGC deadlines in response to the Hurricanes (including Tropical Storm Harvey) and California wildfires. The following is among

Continued pg. 18

Qualified Retirement Updates, continued

the relief provided to "Designated Persons," i.e., persons who (a) are responsible for meeting a PBGC deadline located in a disaster area for which the IRS has provided relief in a corresponding announcement and (b) cannot reasonably obtain information or assistance needed to meet a deadline from a service provider, bank or other person whose operations are directly affected by the disaster.

- The PBGC will not assess any late payment or late information penalty, and treat as timely any premium filing required on or after the designated disaster date and on or before January 31, 2018, if the filing is made by January 31, 2018. Interest charges will not be waived.
- Filing and completion deadlines that fall between the designated disaster date and on or before January 31, 2018 in connection with single-employer standard and distress plan terminations and reportable post-event notices, for requesting a review of a PBGC determination, as well as multiple employer deadlines, are extended to January 31, 2018.
- Specified other relief, including extending the alternative due date for filing annual financial and actuarial information, will be considered on a case-by-case basis.

Each Disaster Relief Number explains how disaster relief is to be claimed.

DTRA Relief. The DTRA includes several plan-related relief provisions for Hurricanes' victims that expand and supplement those provided by the IRS.

The DTRA permits eligible victims to receive "qualified hurricane distributions" of up to $100,000 from an eligible retirement plan, as defined in Code section 402(c)(8)(B) (i.e., a plan or IRA to which a rollover may be made) between the designated disaster date and January 1, 2019, without regard to the Code's usual restrictions on permissible distribution events. A plan permitting "qualified hurricane distributions" must be amended for that purpose by the last date of its plan year beginning on or after January 1, 2019 (unless the Secretary of Treasury prescribes a later date). All plans of an employer (applying Code sections 414(b), (c), (m) and (o)) are aggregated for purposes of the $100,000 limit, which is reduced by the amount of prior "qualified hurricane distributions." These distributions will be included in gross income ratably over three years, unless the taxpayer elects otherwise. "Qualified hurricane distributions" will not be subject to either mandatory federal income tax withholding or to the additional 10-percent tax under Code section 72(t). Also, a "qualified hurricane distribution" may be recontributed to an eligible retirement plan within three years of receipt.

The DTRA also increases the Code section 72(p)(A) loan limit for eligible victims to $100,000, and disregards the "one-half of present value limit" of Code section 72(p)(2)(A)(ii) in the application of the increased dollar limit. Loan repayments due before December 31, 2018 may be postponed by one year, with subsequent repayment dates and amounts to be adjusted accordingly.

Eligible victims who received a "qualified distribution" (a hardship distribution from a plan or an IRA distribution for a first time home purchase to which the Code section 72(t)(2)(F) exception applies) between February 28, 2017 and September 21, 2017 for the purchase or construction of a principal residence in a Hurricane disaster area but which was not purchased or constructed on account of the Hurricane may recontribute, between August 23, 2017 and February 28, 2017, part or all of the distributed amount to an eligible retirement plan.

There is not (yet) similar relief to victims of the California wildfires.

Model Amendments for Defined Benefit Plan Adding Bifurcated Distribution Options: On August 18, 2017, the IRS issued Notice 2017-44, which provides for two model amendments to a defined benefit plan to add bifurcated distribution options under final regulations issued under Code section 417(e). One model amendment is to be

Continued pg. 19

Qualified Retirement Updates, continued

used for the "explicit bifurcation method" (under which the plan permits a participant to divide the accrued benefit into at least two portions, and the minimum present value rules of Code section 417(e) are applied separately to each portion), and the other is to be used for the "implicit bifurcation method" (under which the plan permits the participant to elect the payment of a single sum amount if the remaining portion of the participant's accrued benefit is no less than the total accrued benefit reduced by the actuarial equivalent of a single sum (determined using Code section 417(e)(3) actuarial assumptions)).

Extension of Temporary Nondiscrimination Relief for Closed Defined Benefit Plans: On August 31, 2017, the IRS issued Notice 2017-45, which extended through plan years beginning before 2019 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) which was first provided in IRS Notice 2014-5. The extension of relief is conditioned on the satisfaction of the conditions set out in Notice 2014-5.

IRS Update of Static Mortality Tables. On October 3, 2017, the IRS issued Notice 2017-60, setting forth the mortality table to be used for purposes of determining minimum present values under Code section 417(e)(3) and ERISA section 205(g)(3) for distributions with annuity starting dates that occur during stability periods beginning in the 2018 calendar year. This mortality table is a modified unisex version of the mortality tables specified under Code section 430(h)(3)(A), as amended pursuant to Code section 430(h)(3)(B) by T.D. 9826, for plan years beginning in 2018.

The notice also provides updated static mortality tables determined using the methodology in Treasury Regulations section 1.430(h)(3)-1 prior to its amendment by T.D. 9826. These updated tables apply for plan years beginning during 2017 with respect to valuation dates occurring during 2018 and for the plan year beginning during 2018 if the option provided under Treasury Regulations section 1.430(h)(3)-1(f)(2) is used for the plan.

Updated Revenue Procedures on Changes of Defined Benefit Funding Methods: On October 10, 2017, the IRS issued two Revenue Procedures updating earlier Revenue Procedures regarding changes in funding methods used by defined benefit plans.

Revenue Procedure (Rev. Proc.) 2017-56 provides for automatic approval of changes in funding methods for single-employer defined benefit plans subject to the minimum funding requirements of Code section 430. Automatic approval is provided for three types of valuation method changes, two valuation date changes, one type of change in the treatment of insurance-funded benefits, special situations in which there is a change in the plan's actuary, actuarial software or data elements used in the actuarial valuation, fully-funded terminating plans, and certain plan mergers. This Rev. Proc. supersedes Rev. Proc. 2000-40 and is effective for plan years beginning on or after January 1, 2018 (and may be elected to apply for earlier plan years).

Rev. Proc. 2017-57 sets forth the procedure for obtaining IRS approval of a change in the funding method of a defined benefit plan subject to Code section 412(d)(1) and ERISA section 302(d)(1). It also sets forth the procedure for obtaining IRS approval to revoke an election relating to interest rates pursuant to Code sections 430(h)(2)(D)(ii) and 430(h)(2)(E) and their corresponding ERISA sections. This Rev. Proc. supersedes Rev. Proc. 2000-41. It is effective for requests for a change in funding method submitted on or after January 1, 2018 (and may be applied for earlier requests).

EMPLOYMENT OPPORTUNITIES

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

Want to get involved in the San Francisco Chapter?

Contact Kevin Nolt to volunteer!

Fall 2017

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.

WESTERN PENSION & BENEFITS COUNCIL
SAN FRANCISCO CHAPTER
1900 Point West Way, Suite 222
Sacramento, CA 95815-4706
415-730-5479
Email: info@wpbcsf.org
Website: www.wpbcsanfrancisco.org

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

CHAPTER SPONSORS

SAN FRANCISCO CHAPTER

THANK YOU TO OUR 2017-2018 SPONSORS! (as of 11/1/2017)

PLATINUM

TRUCKER ✦ HUSS

ERISA AND EMPLOYEE BENEFITS ATTORNEYS

GOLD

Fidelity INVESTMENTS

MOSSADAMS

T.RowePrice INVEST WITH CONFIDENCE

CORPORATE

Vanguard

WELLS FARGO Together we'll go far

SILVER

ALTMAN & CRONIN BENEFIT CONSULTANTS, LLC

charles SCHWAB

HansonBridgett

LINDQUISTCPA LEADERSHIP + QUALITY

orrick

SAGE VIEW

BRONZE

BUFFINGTON & AARON

GCA LAW PARTNERS LLP

PRIMARK BENEFITS RETIREMENT ♦ PLAN ♦ EXPERTS

Prudential