WPBC
WESTERN PENSION BENEFITS COUNCIL
San Francisco

PENSION & BENEFITS QUARTERLY

Field Trip – San Francisco City Hall

Looking for something to do in San Francisco? Look no further than to stroll on down to City Hall and take a tour. Once again **Lori McKenzie** as "Field Trip" coordinator has struck San Francisco Gold!

We learned so much about our own city's history, wished many soon-to-be wed couples good luck, sat in on a public meeting (we also didn't exactly follow protocol – now we know what to do), popped into the Mayor's office, and photobombed a newlywed couple with quite the extraordinary photoshoot taking place (they had a book and were replicating very complicated poses!).

Afterward, we enjoyed not one but two nice bottles of wine at the building that served as City Hall during the post-1906 earthquake rebuilding process, now The Hotel Whitcomb. These trips really bring out the benefit of people and networking that our Chapter offers all of us! Look for more information for the next event where we will have a fun tour of the city in the Fall – on a "garbage" truck!

S.F.'s official first City Hall took 27 years to build at a cost of $6 million. Fnished in 1897, it was totally destroyed in the 1906 earthquake. In an estimated 28 seconds, it went from this ...

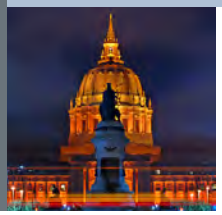
to this .

Construction on the new builing took 2.5 years, plus ten months for interior work. The cost was $3.5 million. From the ashes rose the building we are so familiar with.

Following are several of the progressive construction images, from digging the foundation to the finished building and the original City Hall Plaza.

IN THE SUMMER 2016 ISSUE:

President's Letter



It is the season of FINALS! NBA Championship for the Warriors. Stanley Cup Playoff for the Sharks (we know how this one ended), and maybe Kaepernick's final days with the Niners? And, the final newsletter of the WP&BC's 2016 year!

I am once again awestruck at how quickly time flies. For this issue, and for two reasons, I contemplated naming all the great volunteers who not only hold the Chapter together, but make it the tremendous success that it is. First, everyone deserves the shout out and credit. Second, it would make my job of writing this column easier. It is a challenge to pen an enlightening message to an already-enlightened group of professionals, friends, peers, and industry influencers! Because it is important, I do encourage you to not only read this edition as many people work diligently to bring you all these industry updates, but to be sure you get to the last page where we do list all of the Board Members, Committee Chairs, and sponsors. We are everything due to their support!

I do want to specifically thank **Bertha Minnihan** for leading the Program Committee. We will see a change of the guard with two veteran volunteers stepping up. **Gary Shipper** (Wells Fargo) and **Allen Knott** (The Principal Financial Group) will take the reins and lead the Program Committee for the next two years. The Spring Conference was also a success and we have **Mike Zelda** (Moss Adams) and his Committee to recognize and thank for this great event! Since our Chapter is about education and networking, I for one can say I've learned a lot from each program this year – including the fact that the 49ers have mandatory employee benefit meetings! And, I have very much enjoyed getting to know many new people. Some new to the organization, some just new to me. And I trust the learning and networking will continue in Seattle for the Annual Summer Conference sponsored by WP&BC and ASPPA. Several of our members have worked tirelessly to produce another all-star event. I hope to see many of you there! It will be at the Sheraton in downtown Seattle July 19-22.

July 1 starts our new membership and sponsor year, too, so be on the lookout for links to renew. We appreciate you all and encourage you to spread the word to others in your network to join the Chapter.

So it is with a little sadness, yet relief, that my first year of having the honor of being President is coming to an end. We are already well underway planning for 2016-2107. Since we are in full swing Presidential campaigning mode, I hope my approval ratings are better than Congress's right now. We are always open to your ideas and opinions. I hope you share them candidly and often – with the Board, Jenifer and her chapter administrative team, or when responding to event surveys. We take your input very seriously and do all we can to help the Chapter continue to improve.

As we set sail into summer, I wish you some fun in the sun, and safe travels. Be sure to join us for the first monthly event in September for next year, where we will also give out the awards from our Member Appreciation Event in April where the meeting contest was: 1. Will the fiduciary rule be over-turned (or move along as passed); and, 2. Who will win the NBA Championship! I am already thinking world's most fascinating traveler may be the monthly contest – so plan to share some pictures!

With gratitude and friendship, thanks for another productive year here at the San Francisco Chapter of the WP&BC!

Tina Alexander Chambers
tchambers@sageviewadvisory.com

Meet Board Member
Matt Gouaux

Name: **Matthew Gouaux**

Company: The Permanente Medical Group, Inc.

Title: Counsel

Education: University of the Pacific, McGeorge School of Law

Years in the industry: 11

Please tell us about your first "real" job: I've been working since I took on a newspaper route at age 12. My first real job in this field was as a benefits lawyer at Trucker◆Huss, an ERISA and employee benefits specialty law firm in San Francisco.

BUSINESS BACKGROUND

Nature of your work: I am an ERISA and employee benefits attorney for The Permanente Medical Group, Inc. Before coming to TPMG, I spent 10 years practicing with Trucker◆Huss, representing a wide variety of clients on a very diverse range of qualified retirement plan matters. I also worked on benefits-related tax issues, non-qualified retirement plans and health and welfare plans.

How you got into the field: I had a background in tax and economics before law school and focused on tax during law school. My tax background ultimately led me employee benefits law.

What you like about the field: I love how employee benefits law is constantly changing. Nothing in our line of work stays the same for long and that keeps it interesting.

PERSONAL

Ways you spend free time: I spend a lot of time doing whatever my two boys are interested in doing. Cub scouts, camping, racquetball, swimming.

Restaurant recommendations: Brown Sugar Kitchen in Oakland has the best chicken and waffles ever.

Quarterly Legislative & Regulatory Update

Qualified Pension Plans

Normal Retirement Age in Multiemployer Collectively Bargained Plans: On February 23, 2016, the Internal Revenue Service ("IRS") Tax Exempt and Government Entities Division published a memorandum for Employee Plans Determinations and Examinations employees on interim administrative guidelines for reviewing multiemployer collectively bargained plans that provide for a normal retirement age ("NRA") that is earlier than age 62, but not earlier than age 55. Generally, qualified plans must set forth a NRA that is not younger than 62 unless the facts and circumstances demonstrate that the NRA is "reasonably representative of the typical retirement age for the industry in which the covered workforce is employed." The NRA shall be considered a permissible NRA if the following conditions are satisfied: (1) the plan is maintained pursuant to at least one collective bargaining agreement (i.e., a bona fide agreement between employee representatives and one or more employers); and, (2) the plan is a multiemployer plan as defined in Internal Revenue Code ("Code") Section 414(f).
http://www.irs.gov

Guidance on the Uniformed Services and Reemployment Rights Act ("USERRA") and the Soldiers' and Sailors' Civil Relief Act of 1940 ("SSCRA"): On March 8, 2016, the IRS published additional guidance concerning the re-employment of veterans and the restoration of retirement plan benefits. Employers must fund pension benefits that a re-employed participant did not receive due to qualifying military service. The Spring 2003 Edition of the IRS Employee Plans News described USERRA and SSCRA, and included several frequently asked questions. The additional guidance covers employer and employee contributions, participant loans, and W-2 reporting. USERRA is administered by the Department of Labor, through the Veterans' Employment and Training Service.
http://www.irs.gov

Form 5500, 5558 or 5500-EZ Filing Notices: On March 10, 2016, the IRS published guidance regarding the following notices: (1) CP 403/406 (delinquency notices for Form 5500-series returns); (2) CP 216F, G or H (notices related to Form 5558 (application for extension of time to file an employee plan return)); and, (3) CP 214 (filing requirements reminder notice). The guidance outlines the purpose of each notice, what action to take in response to each notice, additional resources, and common questions and answers.
http://www.irs.gov

Annual Financial and Actuarial Information Reporting: On March 23, 2016, the Pension Benefit Guaranty Corporation ("PBGC") published a final rule amending its regulation on Annual Financial and Actuarial Information Reporting. Section 4010 of ERISA requires certain underfunded plans to report identifying, financial and actuarial information to the PBGC. The amendments modify how underfunding is determined for purposes of the existing reporting waiver for companies with total aggregate underfunding of $15 million or less. In addition, the amendments create three new reporting waivers and provide alternative methods of compliance with calculations. The amendments codify guidance regarding the impact of recent legislation (MAP-21, HATFA, and the 2015 Bipartisan Budget Act) on reporting under Section 4010 of ERISA, and make other minor technical changes. The regulation is applicable for information years beginning on or after January 1, 2016. The e-4010 application will be updated by the end of 2016, and the first filings will be due April 17, 2017.
http://www.pgbc.gov

Request for Approval of Arbitration Procedures: On March 23, 2016, PBGC published the November 2015 request made by the American Arbitration Association ("AAA") for approval of the 2013 Fee Schedule in connection with its Multiemployer Pension Plan Arbitration Rules for Withdrawal Liability Disputes. The Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA") requires disputes between an employer and a multiemployer pension plan concerning a withdrawal liability determination to be resolved through arbitration. The MPPAA directed the PBGC to promulgate procedures for the conduct of an arbitration. The PBGC may approve alternative arbitration procedures on its own initiative by publishing an appropriate notice, or the sponsor of an arbitration procedure may request approval of its procedures by submitting an application to the PBGC. The fee schedule for handling AAA arbitrations that was approved by PBGC in 1986 applied until 2013, when the AAA adopted the 2013 Fee Schedule. The 2013 Fee Schedule provides for increases to the initial filing fee, establishes two different fee arrangements, the standard and flexible fee schedules, adds a final fee under each schedule, and adds a separate fee to

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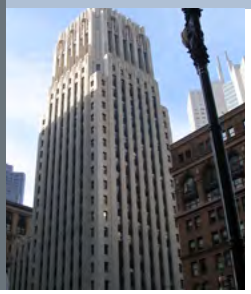

proceed with the administration of the arbitration and appointment of the arbitrator(s) under the flexible schedule. Comments were due on May 23, 2016.
http://www.pgbc.gov

Correcting Failure to Timely Adopt a Pre-approved Plan: On April 4, 2016, in Employee Plans News Issue No. 2016-5, the IRS provided a new option that permits financial institutions or other service providers to submit proposals for umbrella closing agreements that cover individual employers affected by the failure to update their plans by the deadline. Pre-approved plans are purchased from a financial institution, advisor, or similar provider. Previously, the only way an employer could correct not signing a pre-approved defined contribution ("DC") retirement plan by the deadline was to complete a submission under the Voluntary Correction Program ("VCP"). The new alternative would be similar to a group submission under the VCP, but under the umbrella closing agreements the organization does not need to have made a systemic error. If a restated DC plan document is not signed by the deadline, the plan is no longer entitled to tax-favored treatment. This may reduce deductions for contributions to the plan, and make it harder for employees to save for their retirement and make tax-favored rollovers of distributions to other plans or individual retirement accounts.
http://www.irs.gov

Final Fiduciary Rule and Exemptions: On April 8, 2016, the Department of Labor ("DOL") published a final rulemaking package defining who is a "fiduciary" of an employee benefit plan under ERISA as a result of giving investment advice to a plan or its participants or beneficiaries. The Final Rule describes the kinds of communications that would constitute investment advice and then describes the types of relationships in which those communications would give rise to fiduciary investment advice responsibilities. The fundamental threshold element in establishing the existence of fiduciary investment advice is whether a "recommendation," as defined in the Final Rule, is provided in exchange for a "fee or other compensation" with respect to plan or individual retirement account ("IRA") investments. Services or materials that would not rise to the level of a recommendation and therefore would not constitute a fiduciary investment advice communication are:

- education about retirement savings and general financial and investment information;
- general communications and commentary on investment products;
- marketing or making available a menu of investment alternatives;
- recommendations made to fiduciaries with financial expertise in an arm's length transaction where there is generally no expectation of fiduciary investment advice;
- advice rendered to the employer by employees of the plan sponsor if the employees receive no fee or compensation in connection with any such recommendation beyond their normal compensation; and,
- communications and activities made by advisers to ERISA-covered employee benefit plans in swap or security-based swap transactions if conditions are met.

The Best Interest Contract Exemption ("BICE") permits financial institutions to continue to rely on certain compensation and fee practices as long as they act in the best interest of their customers and adhere to conflict mitigation policies and procedures. The BICE generally permits fiduciaries with respect to employee benefit plans and IRAs to receive variable rate compensation as long as impartial conduct standards are adhered to, the participant's or IRA holder's best interests are observed and under certain circumstances, a written contract is entered into. The DOL also amended an existing exemption, PTE 84-24, which provides relief for insurance agents and brokers, and insurance companies, to receive compensation for recommending fixed rate annuity contracts to plans and IRAs. Further information is available on the DOL regulatory impact analysis, fact sheets, FAQs, and a chart illustrating changes from the 2015 Proposal to the Final Rule. The Final Rule became effective June 7, 2016, and is applicable after April 10, 2017.
http://www.dol.gov

Premium Penalty Relief: On April 27, 2016, PBGC published a proposal to amend its premium payments regulation. The penalty for late payment of a flat or variable rate premium is a percentage of the amount paid late multiplied by the number of full or partial months the amount is late, subject

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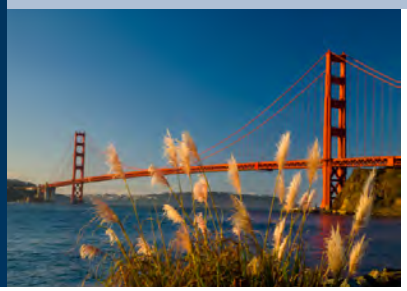

to a floor of $25 (or the amount of premium paid late, if less). Under the proposal, late payment penalties would be reduced by 50%, and the floor would be eliminated. In addition, for plans with good compliance histories that promptly correct an underpayment after a notification from the PGBC, the PBGC would waive 80% of the penalty if certain conditions are satisfied. The proposal applies to both single-employer and multiemployer plans. The rule is proposed to apply to late premium payments for plan years beginning after 2015. Comments are due by June 27, 2016.
http://www.pgbc.gov

Suspension of Benefits under the Multiemployer Pension Reform Act of 2014 ("MPRA"): On April 28, 2016, the IRS published final regulations on the suspension of benefits under a multiemployer defined benefit pension plan. Under MPRA, the plan sponsor of a plan in "critical and declining status" is permitted, by plan amendment, to reduce the pension benefits payable to plan participants and beneficiaries if certain conditions and limitations are satisfied. The final regulations largely adopt the temporary and proposed regulations issued in June and September 2015 setting forth the requirements to apply for a suspension of benefits, the processing of an application, and provisions relating to the administration of the participant vote. On April 26, 2016, the IRS issued Revenue Procedure 2016-27, which updates the application procedures in Revenue Procedure 2015–34, and replaces the model notice. The final regulations became effective on April 28, 2016, and apply to suspensions for which the approval or denial is issued on or after April 26, 2016. The final regulations do not contain final action on proposed regulations issued in February 2016 regarding the specific limitation on a suspension of benefits under any plan that includes benefits directly attributable to a participant's service with any employer that has, prior to MPRA, withdrawn completely from plan, paid its full withdrawal liability, and pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries equal to any benefits reduced due to the financial status of the plan. On May 6, 2016, the Department of the Treasury published correspondence explaining the denial of the Central States Pension Fund's application for approval to reduce benefits under MPRA. The Treasury concluded that the application failed to meet the requirement to demonstrate that the proposed benefit reductions are reasonably estimated to allow the plan to avoid insolvency, the requirement that reductions be equitably distributed, and the requirement to provide notices that are understandable to the average plan participant.
http://www.irs.gov

Voluntary Correction Program Submission Kit: On April 30, 2016, the IRS published online guidance for plan sponsors that maintain a pre-approved defined contribution plan but failed to adopt a new plan document by April 30, 2016, and are correcting the failure by adopting a pre-approved defined contribution retirement plan that reflects the provisions of the Pension Protection Act. The guidance outlines the items to be submitted, instructions for completing required forms, figuring the user fee, procedures for mailing the submission, and the review process and issuance of the compliance statement.
http://www.irs.gov

Civil Monetary Penalties Interim Final Rule: On May 13, 2016, the PBGC published an interim final rule amending two information penalty regulations (29 C.F.R. parts 4071 and 4302) to implement changes required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which requires agencies to adjust civil monetary penalties for inflation and publish the adjustments in the Federal Registrar. The regulations specify the maximum daily amount of penalties that may be assessed when plans fail to provide the PBGC with certain required information (e.g., reportable event filings, 4010 filings, certain multiemployer plan notices). The new law requires all government agencies to increase such rates to account for inflation. The new maximum amounts are $2,063 per day for penalties imposed under ERISA Section 4071 and $275 for penalties imposed under ERISA Section 4302. PBGC takes many factors into account to determine the amount of penalty to assess (e.g., plan size, whether the failure to report was "willful", whether the information was time-sensitive, the length of delay), and may assess a penalty for an amount less than the maximum permitted by regulation. The amendments are effective August 1, 2016.
http://www.pbgc.gov

Removal of Allocation Rule for Roth Disbursements: On May 18, 2016, the IRS issued final regulations eliminating the requirement that each disbursement from a designated Roth account that is directly rolled over to an eligible

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retirement plan be treated as a separate distribution from any amount paid directly to the employee and therefore separately subject to the rule in Code Section 72(e)(2) allocating pretax and after-tax amounts to each distribution. If disbursements are made from a taxpayer's designated Roth account to the taxpayer and also to the taxpayer's Roth IRA or designated retirement plan Roth account in a direct rollover, then pre-tax amounts will be allocated first to the direct rollover, rather than being allocated pro rata to each destination. Also, a taxpayer will be able to direct the allocation of pre-tax and after-tax amounts that are included in disbursements from a designated Roth account that are directly rolled over to multiple destinations, applying the same allocation rules to distributions from designated Roth accounts that apply to distributions from other types of accounts. The final rules are similar to the proposed regulations, but express the rule differently to better reflect the ongoing rule and the transition rule. The final regulations apply to distributions made on or after January 1, 2016, and for such distributions taxpayers are required to follow the allocation rules described in Notice 2014-54 (issued on October 6, 2014). The regulations preserve the separate distribution rule for distributions made prior to the January 1, 2016, applicability date, except that a taxpayer is permitted to choose not to apply the separate distribution rule to distributions that are made on or after September 18, 2014, and before January 1, 2016.
http://www.irs.gov

Health and Welfare Plans

Phase 2 of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Audit Program: On March 21, 2016, the Department of Health and Human Services ("HHS") announced its 2016 Phase 2 HIPAA Audit Program as part of its continued efforts to assess compliance with the HIPAA Privacy, Security and Breach Notification Rules. The HHS Office for Civil Rights ("OCR") will review the policies and procedures adopted and employed by covered entities and their business associates to meet selected standards and implementation specifications. The 2016 audit process begins with verification of an entity's address and contact information. An email is being sent to covered entities and business associates requesting that contact information be provided to OCR in a timely manner. OCR will then transmit a pre-audit questionnaire to gather data about the size, type, and operations of potential auditees; this data will be used with other information to create potential audit subject pools. If an entity does not respond to OCR's request to verify its contact information or pre-audit questionnaire, OCR will use publicly available information about the entity to create its audit subject pool. Therefore, an entity that does not respond to OCR may still be selected for an audit or subject to a compliance review. OCR will post updated protocols on its website closer to conducting the 2016 audits.
http://www.hhs.gov

Calculating Full-Time Employees: On April 6, 2016, the IRS issued Health Care Tax Tip 2016-41, which provides guidance on calculating the number of employees for employers that have close to 50 employees, or whose workforce fluctuates throughout the year. If an employer has fewer than 50 full-time employees, including full-time equivalent employees, on average during the prior year, the employer is not an applicable large employer for the current calendar year. Therefore, the employer is not subject to the Affordable Care Act's employer shared responsibility provisions or the employer information reporting provisions for that year. To determine its workforce size for a year, an employer adds its total number of full-time employees for each month of the prior calendar year to the total number of full-time equivalent employees for each calendar month of the prior calendar year, and divides that total number by 12. The guidance also provides information on the small business health options program and the small business health care tax credit.
http://www.irs.gov

Summary of Benefits and Coverage Template and Glossary: On April 6, 2016, the Departments of Health and Human Services, Labor, and Treasury (the "Departments") released the final 2017 summary of benefits and coverage ("SBC") template and sample completed SBC, along with instructions and an updated uniform glossary of health coverage and medical terms. The new template includes more information about cost sharing, such as enhanced language to explain deductibles and a requirement that plans address individual and overall out-of-pocket limits in the SBC. Health plans and issuers that maintain an annual open enrollment period will be required to use the SBC template and associated documents beginning on the first day of the

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first open enrollment period that begins on or after April 1, 2017, with respect to coverage for plan years (or, in the individual market, policy years) beginning on or after that date. For plans and issuers that do not use an annual open enrollment period, the SBC template and associated documents is required beginning on the first day of the first plan year (or, in the individual market, policy year) that begins on or after April 1, 2017. The Centers for Medicare and Medicaid Services updated its coverage examples cost sharing calculator.
http://www.dol.gov

Health Savings Account Limits: On April 28, 2016, the IRS issued Revenue Procedure 2016-28 providing the inflation adjusted amounts for health savings accounts as determined under Code Section 233 for calendar year 2017. The annual limitation on deductions under Code Section 223(b)(2)(A) and (B), respectively, for an individual with self-only coverage under a high deductible plan is $3,400; and for an individual with family coverage under a high deductible plan is $6,750. For 2017, a "high deductible health plan" is defined under Code Section 223(c)(2)(A) as a health plan with an annual deductible that is not less than $1,300 for self-only coverage or $2,600 for family coverage, and for which the sum of the annual deductible plus annual out-of-pocket expenses (such as co-payments or other amounts, but not premiums) does not exceed $6,550 for self-only coverage or $13,100 for family coverage. Revenue Procedure 2016-28 is effective for calendar year 2017.
http://www.irs.gov

Nondiscrimination in Health Programs and Activities: On May 13, 2016, HHS issued a final rule implementing Section 1557 of the Affordable Care Act ("Section 1557"). Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. The final rule prohibits the denial of health care or health coverage based on an individual's sex, including discrimination based on pregnancy, gender identity, and sex stereotyping, and requires covered health programs and activities to treat individuals consistent with their gender identity. For individuals with disabilities, covered entities must make all programs and activities provided through electronic and information technology accessible; ensure the physical accessibility of newly constructed or altered facilities; and provide appropriate auxiliary aids and services for individuals with disabilities. Covered entities are prohibited from using marketing practices or benefit designs that discriminate on the basis of disability and other prohibited bases. Reasonable steps must be taken to provide access to individuals with limited English proficiency, and language access plans should be developed and implemented. Notification and other procedural requirements as well as enforcement mechanisms (recordkeeping, compliance reports, conducting compliance reviews and complaint investigations, and providing technical assistance and guidance) is explained. HHS issued FAQs and a Fact Sheet. The final rule is effective July 18, 2016, and is applicable beginning on or after January 1, 2017.
http://www.hhs.gov

Final Rules for Wellness Programs: On May 17, 2016, the Equal Employment Opportunity Commission ("EEOC") issued final rules on how workplace wellness programs can comply with Title I of the Americans with Disabilities Act ("ADA") and Title II of the Genetic Information Nondiscrimination Act ("GINA") consistent with provisions in HIPAA, as amended by the Affordable Care Act. Employers may provide limited financial and other incentives (in the form of a reward or penalty) in exchange for an employee answering disability-related questions or taking medical examinations, or for an employee's spouse providing information about his or her current or past health status, as part of a wellness program, whether or not the program is part of a health plan. If a wellness program is open only to employees and family members enrolled in a particular plan, then the maximum allowable incentive an employer can offer is 30 percent of the total cost for self-only coverage of the plan in which the employee is enrolled. This is the incentive limit under HIPAA regulations that applies to health-contingent wellness programs that require employees to perform an activity or achieve certain health outcomes. Wellness programs must be reasonably designed to promote health or prevent disease. The final rule prohibits employers from denying access to health insurance or any package of benefits, or retaliating against any employee whose spouse refuses to provide information about his or her current or past health status to an employer wellness program. Employers are prohibited from requiring employees (or employees' spouses or dependents covered by the employee's health plan) to agree to the sale, exchange, transfer or other distribution, or waive the confidentiality, of their genetic information as a condition

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for receiving an incentive or participating in a wellness program. EEOC issued a press release, documents for small businesses, and comprehensive Q&As. The final rules are effective July 18, 2016, and are applicable beginning January 1, 2017.
http://www.eeoc.gov

Supreme Court of the United States

Gobeille v. Liberty Mutual Insurance Company: On March 1, 2016, the Supreme Court held, in a 6-2 decision, that ERISA pre-empts a Vermont law requiring certain entities, including health insurers, to report payments relating to health care claims and other information relating to health care services to a state agency for compilation in an all-inclusive health care database. Respondent Liberty Mutual Insurance Company's health plan ("Plan") maintained an "employee welfare plan" under ERISA, and used Blue Cross Blue Shield of Massachusetts, Inc. ("Blue Cross") as a third-party administrator. Blue Cross was ordered to transmit its files on eligibility, medical claims, and pharmacy claims for the Plan's Vermont members. Respondent instructed Blue Cross not to comply and filed a suit seeking declaration that ERISA pre-empts application of Vermont's reporting statute and regulation to the Plan, and an injunction prohibiting Vermont from trying to acquire data about its Plan or members. The District Court granted summary judgment to Vermont, but the Court of Appeals for the Second Circuit reversed, concluding that the Vermont law is pre-empted by ERISA. The Supreme Court affirmed, and held that ERISA pre-empts Vermont's statute as applied to ERISA plans. ERISA § 514(a), 29 U.S. C. § 1144(a) expressly pre-empts "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan." This clause pre-empts a state law that has an impermissible "connection with" ERISA plans i.e., a law that governs or interferes with the uniformity of plan administration. The Supreme Court considered ERISA's objectives in mandating a uniform plan administration system, and held that pre-emption was necessary to prevent multiple jurisdictions from imposing differing or parallel regulations related to reporting, disclosure, and recordkeeping. Furthermore, the Secretary of Labor, not the separate States, is authorized to decide whether to exempt plans from ERISA reporting requirements or to require ERISA plans to report data such as that sought by Vermont. The Supreme Court noted that ERISA's pre-existing reporting, disclosure, and recordkeeping provisions maintain their pre-emptive force regardless of whether the Patient Protection and Affordable Care Act's new reporting obligations for employer-sponsored health plans also pre-empt state law.
http://www.supremecourt.gov

Executive Compensation

Discriminatory Plan Designs Using Short Service: On April 4, 2016, in Employee Plans Issue 2016-15, the Internal Revenue Service published guidance clarifying that a plan that meets statutory or regulatory checklists, but primarily or exclusively benefits highly compensated employees ("HCEs") with little to no benefits for non-highly compensated employees ("NHCEs"), may still discriminate and violate Code Section 401(a)(4). The IRS has recently found discriminatory plan designs in defined contribution plans ("DC"), defined benefit plans ("DB") and DB/DC combination plans that provide significant benefits to the HCEs and a specified group of non-highly compensated employees ("NHCEs"), who work very few hours or receive very little compensation, and exclude other NHCEs from plan participation. The guidance explains numerous examples of short service plan designs. Although these designs may allow the plan to satisfy the vesting or numeric general tests for nondiscrimination and the associated regulations, they do not satisfy Treas. Reg. Section 1.401(a)(4)-1(c)(2), which requires that the provisions of Sections 1.401(a)(4)-1 through 1.401(a)(4)-13 be reasonably interpreted to prevent discrimination in favor of HCEs.
http://www.irs.gov

Withdrawal of Proposed Rule Applicable to Qualified Supplemental Executive Retirement Plans: On April 14, 2016, the Department of the Treasury and the Internal Revenue Service published Announcement 2016-16 stating that certain provisions of the proposed regulations published on January 29, 2016 ("Proposed Regulations") relating to nondiscrimination requirements applicable to qualified retirement plans under Code Section 401(a), are withdrawn. These provisions were intended to address certain qualified retirement plan designs that take advantage of flexibility in the existing nondiscrimination rules to provide a special benefit formula for selected employees without extending that formula to a classification of employees that is reasonable and

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established under objective business criteria. The Proposed Regulations also include provisions that would provide relief from the nondiscrimination requirements for certain qualified retirement plans that provide additional benefits to a grandfathered group of employees following certain changes in the coverage of a defined benefit plan or a defined benefit plan formula and would make other changes to the nondiscrimination rules, which are not affected by Announcement 2016-16.
http://www.irs.gov

Incentive-based Compensation Arrangements: On May 6, 2016, the Securities and Exchange Commission, Department of the Treasury, Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, and Federal Housing Finance Agency (collectively, "the Agencies") issued a joint Proposed Rule on incentive-based compensation arrangements applicable to covered financial institutions. Section 956 of the Dodd-Frank Act generally requires that the Agencies jointly issue regulations or guidelines: (1) prohibiting incentive-based payment arrangements that the Agencies determine encourage inappropriate risks by certain financial institutions by providing excessive compensation or that could lead to material financial loss; and, (2) requiring those financial institutions to disclose information concerning incentive-based compensation arrangements to the appropriate Federal regulator. The 2016 Proposed Rule was issued in light of developments occurring after the April 2011 Proposed Rule, which established requirements applicable to the incentive-based compensation arrangements of all covered institutions. The 2016 Proposed Rule provides background information, a summary of the 2011 Proposed Rule, section-by-section description of the 2016 Proposed Rule (with definitions), and examples of an incentive-based compensation arrangement, and forfeiture and downward adjustment review. (Comments are due by July 22, 2016.)
http://www.sec.gov

Our deepest thanks to Anjuli Cargain of Saltzman & Johnson for her continuing work on the Quarterly Regulatory Update.

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T. Rowe Price Retirement Plan Services, Inc.
Trucker◆Huss
Vanguard
Wells Fargo Institutional Retirement and Trust

Silver
Altman & Cronin Benefit Consultants, LLC
Charles Schwab
Hanson Bridgett LLP
Lindquist LLP
Morrison & Foerster LLP
Orrick, Herrington & Sutcliffe, LLP
Prudential Retirement

Bronze
Aon Hewitt
Buffington & Aaron
Burr, Pilger & Mayer
GCA Law Partners LLP
Mercer
Multnomah Group
Primark Benefits
Principal Financial Group
Transamerica Retirement Solutions

S.F. Chapter 2016 Spring Conference Recap

The annual Western Pension & Benefits Council Spring Conference took place on Thursday, May 19th at the Le Meridien. The conference provided a variety of session topics, informative speakers, and valuable industry insight.

Long Term Care Insurance

Tucker Maxwell from LTC Solutions hosted an informative session on The Current State of Long-Term Care Insurance. Tucker explained that many employees mistakenly believe that their health and disability insurance will provide for custodial care. Many employees are still completely unprepared for funding long-term care for themselves and their parents. He discussed how providing long-term care insurance is an important benefit that every employer needs to consider because it benefits both the employer and the employee by assisting employees to protect their savings as well as plan for their financial future. When a person requires assistance with two of the six defined Activities of Daily Living (ADLs) or has significant cognitive impairment, those events trigger long-term care insurance benefits. The long-term care industry continues to grow as the baby boomer generation heads quickly into retirement. Long-term care insurance provides a solution to cover the rising costs of staying in an assisted living facility or nursing home which otherwise would quickly deplete assets. The cost of having a nurse come to your home, or staying in an assisted living facility or nursing home can quickly deplete your savings. Tucker explained that currently 56% of married couples spend their income down to the poverty level after one spouse has spent just six months in a nursing home. The average annual cost of long-term care exceeds $90,000 and the average stay is about two-and-a-half years for a nursing home facility while the national average duration of long term care received at home is four-and-a-half years. The total cost of care for a nursing home alone can exceed $217,248.

Some of the interesting statistics he shared included that 40% of the 13 million people receiving long term care services are younger than we might imagine: between the ages of 18 and 64. The top five causes of claims for people under 65 are cancer (over 30 percent), stroke (more than 10 percent), neurological disease, dementia, and multiple sclerosis.

Ironically many people do not have LTC insurance even though the odds of commonly insured incidents are much less (house fire: 1 in 740, auto accident: 1 in 43, disability: 1 in 8, need for long-term care: 2 in 5). Medicare (with supplement) only pays for seniors' medical insurance needs for up to 100 days of skilled care, but gives no coverage for custodial care (long-term care). Medicaid provides care for people only after depletion of their assets, and there is a five-year look-back period for asset transfers. Businesses can receive tax incentives by funding long-term care policies for their employees. Depending on the state, employees may be eligible for a tax deduction or credit if they purchase a long term care insurance policy. Employees will not have to pay taxes on benefits received. Long-term care insurance is a portable benefit which means that the employee has the option to continue coverage at the same rate on a direct-billed basis if an employee retires or leaves the company.

Tucker provided an overview of changes to the Long-Term Care Insurance Industry including discussion and perspectives of legislation, rates, evolving carrier requirements for guaranteed issue, participation requirements, employer-funding, enrollment strategies, product due diligence, changes to Medicaid, trends, and the future of LTC. He relayed best practices, market changes and how benefit professionals can position employer benefits to take advantage of current changes. This was an extremely informative and enlightening session.

DOL Regulatory and Enforcement Update

It was an honor and a privilege to welcome back **Jean Akerman**, Regional Director from the San Francisco office of the Department of Labor EBSA. She provided an update on the DOL/EBSA's latest enforcement programs with a specific focus on local issues.

The two national enforcement priorities for ERISA are the Major Case Enforcement Priority (MCEP) and the Employee Contributions Initiative (ECI). MCEP's focus is strategically aimed at professional fiduciaries and service providers that have responsibility over significant amounts of plan assets and/or administer large amounts of plan benefits. ECI, which was originally a national project focusing on investigation of delinquent employee contributions, is now a national

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enforcement priority. Jean commented that even in today's economy, EBSA still finds the delinquent employee contribution issue to be significant. There have even been rare instances where the parties involved were criminally charged.

She then briefly discussed the following National Enforcement Projects:

1. *Contributory Plans Criminal Project (CPCP)* – EBSA's first solely national criminal project which targets people who commit fraud and abuse against participants and beneficiaries of contributory plans (pension & health). The goal is to catch employers who don't pay for health benefits which can leave workers with no medical coverage in addition to the typical non-contribution of employee 401(k) contributions.

2. *Plan Investment Conflicts* – primary focus is to investigate conflicts of interest in relation to plan asset vehicles. One of the main focuses will be to investigate the receipt of improper or undisclosed compensation by Plan consultants and investment advisors.

3. *Health Benefits Security Project (HBSP)* – will examine compliance with ERISA Part 7 and ACA. They will also investigate insurance companies and claim administrators to ensure promised benefits are provided and criminal investigations of fraudulent medical providers.

4. *Rapid ERISA Action Team (REACT)* – Targets participants and beneficiaries of plans where the plan sponsor has gone bankrupt. They attempt to protect pension plan assets and welfare plan benefits.

5. *Employee Stock Ownership Plans (ESOP)* – Special focus is made when a plan buys stock, to make sure the Plan does not pay an inflated price and conversely does not receive a fair price when stock is sold.

6. *Voluntary Fiduciary Correction Program (VFCP)* – voluntary program intended to protect the financial security of workers through identification and correction of transactions that violate Part 4 of Title I of ERISA.

7. *Abandoned Plan Program (APP)* – This helps facilitate the termination of, and distribution of benefits from individual account pension plans that have been abandoned by the sponsoring employer.

Ultimately, the takeaway is that the DOL/EBSA is very active in its pursuit to protect assets and benefits of various retirement and health plans.

Update on the new Fiduciary Regulations

Nick White, Director with Trucker◆Huss; **Mark Davis**, Senior Vice President with CAPTRUST Financial Advisors; and, **Toni Brown**, Senior Vice President with Capital Group, presented their personal thoughts, overview, and response to the recent release of the DOL's Fiduciary Conflict of Interest Rule. This ruling is one of the most significant changes to retirement plans since ERISA.

Nick kicked off the meeting detailing why the DOL felt this ruling was needed and provided an insight to how the retirement plan landscape has changed over the last 40 years with new products and features creating a need for increased accountability. This increased accountability is recognized through broadening the definition of fiduciary with respect to persons who provide investment advice for a fee, significantly increasing the number of advisors who will now become fiduciaries. It is the DOL's expectation and hope that this change will result in a higher standard of advice being provided. Nick continued to provide additional thoughts and perspective on the content and intent of the new rule and potential impacts to how the rule may be interpreted. The amount and quality of information provided on this new ruling was appreciated by all attendees and a helpful resource all of us in the industry as we continue to digest and absorb this ruling.

Mark broadened our perspective on how this ruling would impact plan sponsors and their advisor relationship. Based on the changes to who will become a fiduciary, Mark speculated that there will be an increase to the number of plan sponsors who will consider an advisor for their plan, an increase to advisor benchmarking of their current advisor relationship, and a move to more fee-based pricing for advisor relationships. Mark also commented on his concerns for how advice and education could change in the future stating that this new ruling may make it more difficult for retirement plan providers to deliver an in-plan advice solution tied to a non-fiduciary record keeping platform. Discussions concerning rollovers out of a Plan will now be subject to greater fiduciary oversight than they have been in the past.

Toni provided an even different perspective on this ruling by discussing the potential impact of this ruling to investment providers and record keepers. More time is needed to fully

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understand the potential impact on how advisors can be paid and what exemptions may be needed to be paid under current models (such as through commissions or 12b-1 fees). Toni speculated that there may be a reduction to the number of different types of share classes offered today as the compensation structures for advisors change going forward.

To add another dimension of complexity to this new ruling, there are lawsuits being filed to challenge the new regulation before it even takes effect. This is a complex topic with sweeping changes and a significant effort is underway to begin to really understand all the changes that are expected to take effect in 2017.

As the panelists described, there are many changes that will positively impact how advice is delivered, aimed at helping American workers save for a more secure financial future; however, there are significant areas where more guidance will be needed. As such, we can all expect to hear a lot more on this topic as we approach the 2017 effective date.

For all attendees, and for anyone who could not make it, we would recommend that you review the presentation materials as the materials provided are packed full of information that will help us all gain a greater understanding of the potential impacts of this ruling. As we approach the implementation date of this ruling we expect additional guidance and commentary that will help us form further conclusions of the impacts of this ruling that we will all be talking about for decades to come.

Conclusion

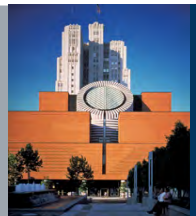
Thanks to **Mike Zelda**, Moss Adams, Chair of the Conference, and his dedicated committee: **Karen Casillas**, CapTrust Advisors; **Justin Chilcote**, Transamerica Retirement Services; **Claire Eyges**, Willis Towers Watson; **Robert Gower**, Trucker◆Huss; **Saswati Paul**; and, **Brad Wall**, Moss Adams, for all of their hard work in putting this conference together. Thank you also to everyone for your participation. We hope to see you again next year!

A Thank You to All Our Program Speakers

On behalf of the Board and all Chapter Volunteers I want to thank each and every speaker who contributed to our programs this year. Your knowledge, passion for benefits, and willingness to take time to give back to our membership is greatly appreciated. Our charitable donation thanking our speakers will be given to selected charities supporting Orlando, the LBGT Community, and the families of those who gave their lives "living" their lives. May we all continue to grow as people and professionals and do all we can to help each other in our personal and professional endeavors.

Regards,

Tina Chambers



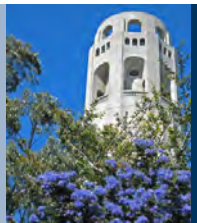
Member Appreciation Event April 26, 2016

Stepping out of our usual schedule, we combined the April Chapter Meeting and the Member Appreciation Event in one evening. The event was held at the Hyatt Embarcadero.

What we learned:

1. We have really neat members
2. In honor of the upcoming Cinco de Mayo, an open bar and guacamole and chips was really fun
3. Economic professionals are both informative and funny!
4. Negative interests rates are a real thing
5. We **can** successfully combine a Chapter meeting with a FUN event. We had raffles – about eight in all – and two people won twice!
6. Most important, we appreciate everyone who joined us for the fun.

Here is a selection of images from our March and April events.



Look to the San Francisco Chapter website for 2016-2017 programming that will bring you quality speakers, hot topics and the best networking the industry has to offer.

Our first chapter program will be in September so look for our email announcements and check the website to register.

Here are a few quotes from our meeting attendees about SF Chapter programs:

One of the best WP&BC programs I've ever attended!!!

What a great presentation!

Great member appreciation event. Love the reception and networking before and after.

Great conversation and great insight to the company's perspective.

Membership Renewal Time

It's time to renew your San Francisco Chapter Membership. Visit the website to renew or call us at 415-730-5479.

We value you and want you to value your membership in the Western Pension & Benefits Council, San Francisco Chapter.

Please contact us at info@wpbcsf.org if you have any questions or suggestions for improvement.

LinkedIn

Find the S.F. Chapter on LinkedIn and join our network.

We want to grow our reach in the San Francisco pension and benefits community. Help us by joining our network.

Go here: https://www.linkedin.com/groups/6581548/profile

Western Benefits Conference Reminder

This is the last newsletter reminder to register for the upcoming Western Benefits Conference, being held July 19-22 in beautiful Seattle, Washington.

Time is running short to secure your space at this annual, highly-informative conference. So, please take the time to do so soon, as we look forward to seeing you all in the Emerald City in July!

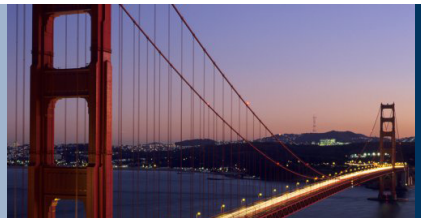
Go to the WP&BC website for more details: http://www.westernpension.org

Chapter Sponsorship Opportunity

The Chapter Board of Directors is pleased to announce that new sponsorship opportunities are now available to companies who wish to support important Chapter activities while increasing their exposure to plan sponsors and service providers in the Bay Area's professional pension and benefits community.

Sponsorships are available at four levels with corresponding benefits as detailed in the chart at right.

For additional information or to reserve your sponsorship, call Jenifer McDonald at the Chapter office, (415) 730-5479 or email info@wpbcsf.org



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The Newsletter welcomes contributions from its members. If you would like to submit a topical benefits-related article or compile the quarterly regulatory update for an upcoming issue, please contact Mikaela Habib at: MHabib@truckerhuss.com

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

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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 http://www.westernpension.org.