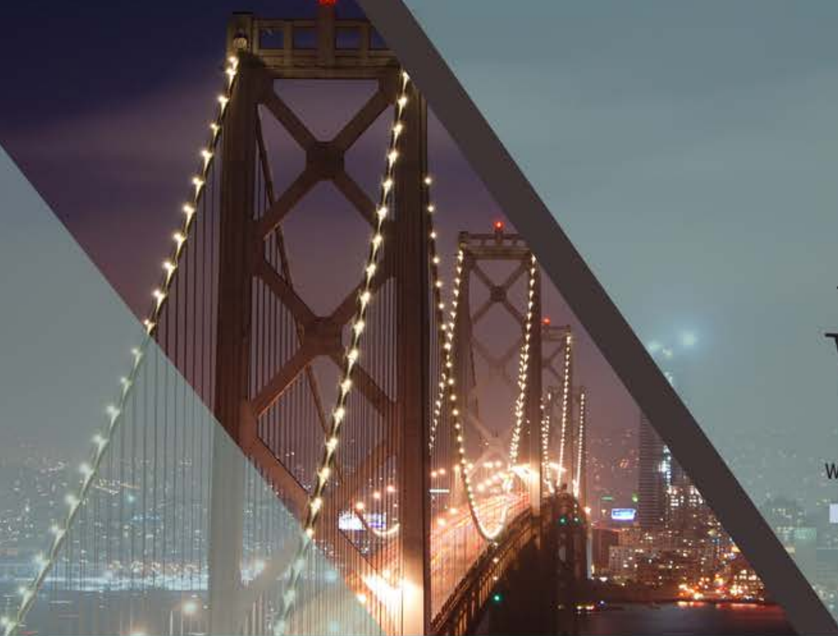


WPBC
WESTERN PENSION & BENEFITS COUNCIL
San Francisco

Pension & Benefits Quarterly

September 2021

Inside this edition

Qualified Retirement Plans Updates

Ami Givon | GCA Law Partners LLP

EPCRS Update: On July 16, 2021, the Internal Revenue Service (IRS) issued Revenue Procedure (Rev. Proc.) 2021-30, which updated the IRS's Employee Plans Compliance Resolution System (EPCRS), the comprehensive system of programs to correct compliance failures of Internal Revenue Code (Code) section 401(a) plans, tax-sheltered annuities, SEP IRAs and SIMPLE IRAs. Rev. Proc. 2021-30 modifies and supersedes Rev. Proc. 2019-19, the most recent prior consolidated statement of the correction programs under EPCRS.

Continued pg. 11

"I am honored and humbled to start my first term as President of the San Francisco Chapter (effective July 1, 2021) and look forward to charting our path ahead in these unusual times."

Victoria Fung

President's Letter - Pg 2

President's Letter

"However long the night, the dawn will break" – African Proverb

As we endure continued uncertainty with a longer-lasting pandemic than many expected, I remain hopeful that "the dawn will break," and we will come together once again as soon as we are safe to do so. In the meantime, I hope you spent the summer with close family and friends. Most of all, I hope you are taking good care of yourselves and making your happiness a priority!

I am honored and humbled to start my first term as President of the San Francisco Chapter (effective July 1, 2021) and look forward to charting our path ahead in these unusual times. My goal over the next two years is to continue to develop innovative ways to expand our programming and networking opportunities for members. And, leading our San Francisco Chapter's transition out of the global pandemic as an even stronger community than the strong base we are blessed with. A heart felt thank you to our Past President, **Karen Mack**, who led us through turbulent times and worked hard to successfully adapt our organization in a virtual environment at the tail end of her term. In addition, many thanks to **Karen Casillas**, **Yana Johnson**, and **Sarah Kanter** for their hard-work and dedication as Program Committee Co-Chairs and Newsletter Editor, respectively.

I am incredibly fortunate to serve this Chapter and work towards our goals with an esteemed and dedicated Board. I am pleased to announce your leadership team for 2021-2022. Vice President is **Robert Gower**, Treasurer is **Brad Wall** and Secretary is **Michon Caton**. Remaining Board members are **Karen Mack, Lori McKenzie, Karen Casillas, Alison Wright, Sandy Purdy, Bill Berry, Ami Givon,** and **Matt Gouaux**. I am also pleased to welcome our new Program Committee Co-Chairs, **Virginia Sutton** and **Marc Fosse**, Newsletter Editor, **Bryan Card**, and retain Brown Bag Lunch Coordinator, **Sandy Purdy** and Field Trip Coordinator, **Lori McKenzie**. Together, we look forward to working with **Jenifer McDonald** and **Terri Fulton**, our Chapter administrators.

We still have exciting new opportunities to get involved in helping lead and grow this Chapter! We are currently looking for leaders and members for our committees. Our most high-profile open seat is the Chair of the Membership Committee. This important role offers an opportunity to help take the groundwork we laid over the past year and springboard into expanding and reenergizing our membership. If you are interested in the leadership role or being a member of the committee, please reach out to any Board member. We are also seeking to expand our Program committee and welcome fresh new perspective and involvement.

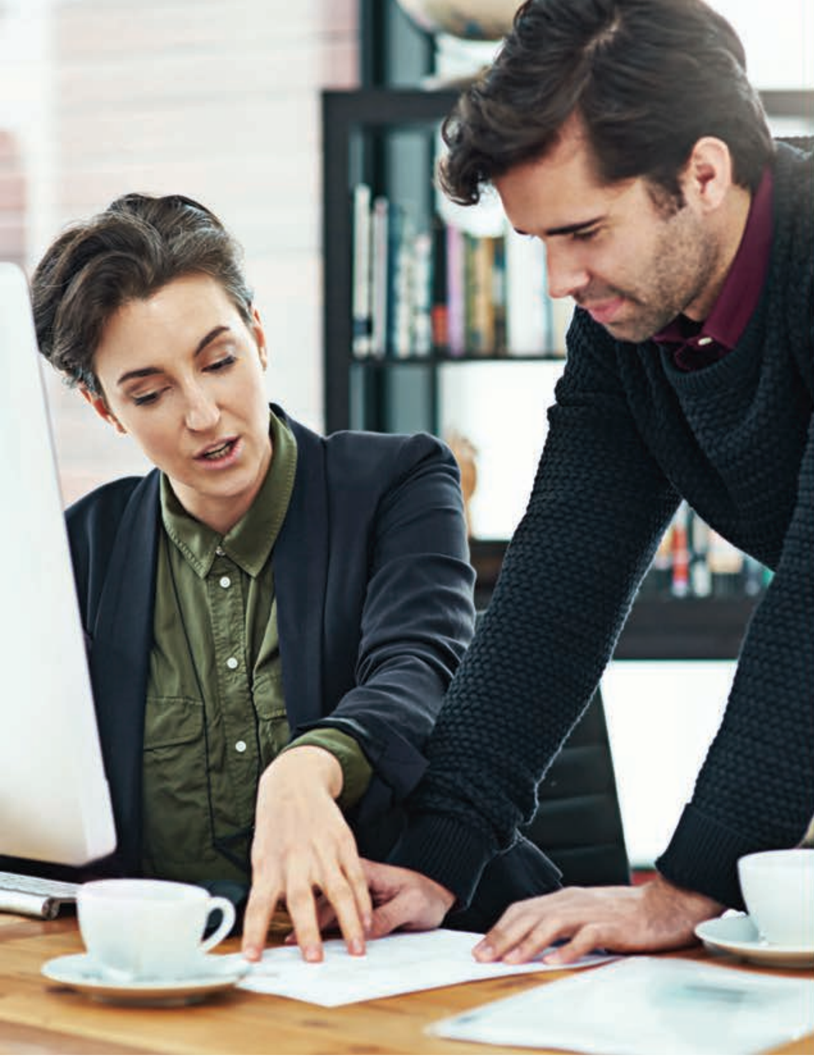
During the summer break, the Board and committees have been working to set the stage for a successful year and will be delivering a fulfilling calendar of educational events virtually. As an example, incorporating our commitment to diversity and inclusion, we have an exciting fall event focused on "Women in Investing" – this hot topic has many facets, which we will tackle in partnership with Women in Pensions Network (WiPN). Be on the lookout for details on this event!

Program Year 2021/2022 – Reminder to renew your membership. If you know someone that is considering becoming a member, please encourage them to join and please keep us in mind for 2021/2022 sponsorship as you are setting budgets. Through the generosity of our sponsors, we can deliver valuable programming and networking opportunities for our benefits community. I hope to see or hear from you at our upcoming events!

Sincerely,

Victoria Fung, President

Victoria Fung
Vice President, Senior Defined Contribution Specialist
T. Rowe Price Associates, Inc.
333 Bush Street, Suite 2550
San Francisco, CA 94104



In appreciation of our members!

Since we are unable to meet in person this year for our annual membership appreciation event, we have made a charitable contribution in your honor.

The following charities received a donation from the Western Pension & Benefits Council, San Francisco Chapter on your behalf.

- **Asian Pacific Fund / Solidarity Fund** - The Solidarity Fund will provide grants to organizations working to address the persistent anti-Asian racism, including supporting the physical and mental health of survivors, ensuring the safety of seniors, and advocating for racial justice across racial lines. ***https://asianpacificfund.org/make-an-impact/solidarity/***

- **St. Vincent De Paul of San Francisco Multi-Service Center South**
  San Francisco's Largest and Most Extensive Homeless Shelter
  https://svdp-sf.org/what-we-do/msc-shelter/

WP&BC
WESTERN PENSION BENEFITS COUNCIL
San Francisco

Citi - Thought Leadership

PENSION PLAN INFORMATION FOR THE AM LAW 200 FIRMS

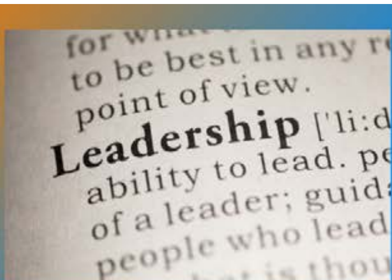
Author: Pierre Couture, Head of Retirement Plan Solutions, ***Law Firm Group Citi Private Bank***

Citi Private Bank Law Firm Group collected information about the pension plans sponsored by the largest 200 law firms for their employees using data from the Form 5500 for the 2019 plan year (most recent available) for each of their pension plans as posted on the U.S. Department of Labor Employees Benefits Security Administration's website (https://www.efast.dol.gov/portal/app/disseminatePublic?execution=e1s1)

Key Findings:

1. About 76% (143 of 189) of pension plans sponsored by the AM Law 200 firms in 2019 are for partners only.
2. About 61% (116 of 189) of pension plans sponsored by the AM Law 200 firms have a cash balance-type formula.
3. The total amount of pension plan assets was $17.1 billion as of 12/31/2019 for the AM Law 200 firms.
4. Close to 60% (47 of 79) of the pension plans sponsored by the AM Law 1-50 firms have at least $75 million in assets as of 12/31/2019.
5. About 89% (103 of 116) of the cash balance pension plans sponsored by the AM Law 200 firms have an interest crediting formula based on the market rate of the return of plans' assets.
6. The AM Law 1-50 firms with cash balance pension plans have a more aggressive asset allocation, in average, than the AM Law 51-200 firms.

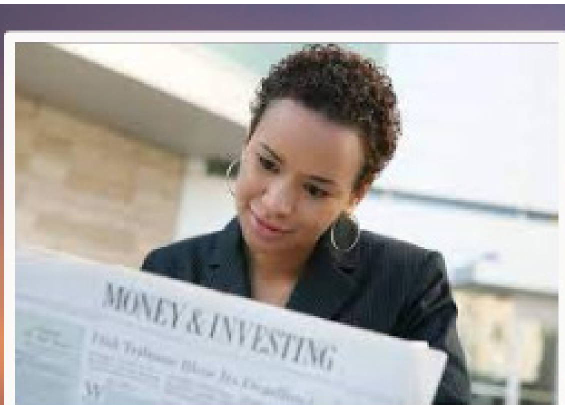
Sources: AM Law 200 firms' Form 5500 filings with US Department of Labor for the 2019 plan year; Retirement Plan Solutions Team as of 11/24/2020



Join us!

Help grow our Chapter by serving on a Committee!

To learn more - email us: terri@wpbcsf.org



Coming in October!

October Chapter Meeting (Virtual)

Women In Investing

Details will be sent out soon!

Schwab - Thought Leadership

Brian Bender, head of Schwab Retirement Plan Services, *dives into the research and its impact on employers and their participants*.

On demand-at work, at home, and anywhere in between-retirement education when and where you want it.

New data from Schwab Retirement Plan Services shows that not only are more people seeking retirement education and advice, but the increased availability of virtual and on-demand sessions is sparking more enthusiasm for these programs than ever before.

Workers' confidence about achieving retirement goals has risen sharply since last year according to a new survey from Schwab Retirement Plan Services, and so has their appetite for financial advice. The annual nationwide survey of 401(k) plan participants finds that more than half (53%) say they are very likely to achieve their retirement goals, compared to 37% in 2020.

See the full results from our 401(k) survey here: *https://www.aboutschwab.com/schwab-401k-participant-survey-2021*

MEMBER PROFILE

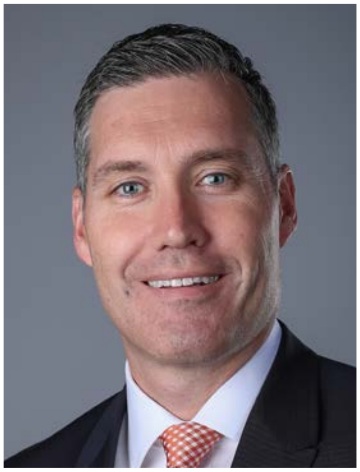
Member Profile:
Danny Carr

Company: Voya Financial.

Title: Account Executive.

Education: BS in Business Administration, Weber State University.

Years in the industry: 26 Years.



Please tell us about your first "real" job: I started as a dishwasher at a local Italian restaurant when I was 14 years old and later moved up to clear tables. I worked with my Mom, she was a server at the same restaurant, every Tuesday and Friday night until I graduated High School. It was tough work, but I learned I could do hard things. It was also the beginning of how I learned how to save money.

BUSINESS BACKGROUND

Nature of your work: I work with Plan Sponsors and Retirement Plan Consultants to help provide solutions that make administering 401(k) plans easier while providing cutting edge tools and resources to participants to help them save for retirement.

How you got into the field: Shortly after I was married, my wife and I were ready to start our family and she said I needed to get a job with benefits. At the time, I was living in Utah going to college and waiting on tables to pay my way through school. I had some friends who had graduated college and were working at Fidelity Investments. I applied and ended up getting a job in the call center of the retirement division (401(k)/403(b)) of Fidelity. That was the first of many roles that I have had over the course of my career and I have loved every minute.

What you like about the field: I have always enjoyed helping people. There is no better way to help someone than to teach them the skills they need to save for retirement so they can enjoy a safe and secure retirement that they can enjoy with their family.

PERSONAL

Ways you spend free time: If I'm not watching my girls playing competitive soccer, you will probably find me at the beach with my family.

Guiding philosophy: Always do the right thing.

Favorite charities: Best Friends Animal Society.

Last books read: "Good to Great" by Jim Collins

Restaurant recommendations: Baja Fish (shrimp tacos are the best I've ever had).

What will you do when you retire: My wife wants to travel, so it looks like I will be traveling. All kidding aside, I am looking forward to traveling however, I would like to teach a benefits course to college graduates so they understand how to take advantage of the benefits that are offered by their employer so they can start off better prepared to make those decisions.

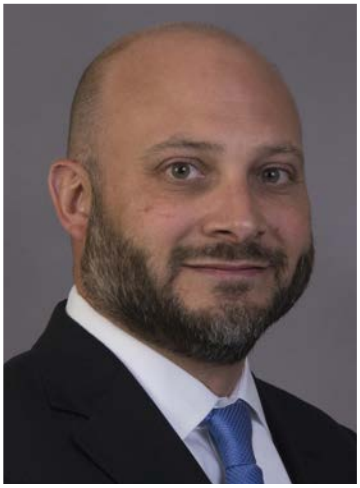
Member Profile: Jason Waltonen

Company: Empower Retirement

Title: Senior Relationship Manager

Education: B.A., Communications, Rhode Island College / M.B.A., Baker University

Years in the industry: 22



Please tell us about your first "real" job: In a "prior life" I worked for my parents at their hardware store. I actually did this from a very young age—when I started I was cleaning shelves for .25 cents a day, and by the time I left for the Midwest at age 26, I was managing the business. I was able to translate a number of skills over to my work in the financial services industry once I began my "real" career.

BUSINESS BACKGROUND

Nature of your work: In a nutshell, my job is to make sure our clients are satisfied with Empower. When we say we'll improve your retirement plan, get results for your employees and make life easier for the benefits team, we mean it. And, I'm responsible for seeing that we make good on those commitments. Whether it's better plan design, leveraging the latest technology, or strategic planning—if it will help improve our relationship with a client and deliver on our promises, that's what I strive to do.

How you got into the field: I had a friend from New England who worked in the retirement industry and he liked what he did, so it always interested me. After moving to Kansas City, I was searching the newspaper (yes, the newspaper) for jobs and saw an opening for a phone representative at a local-based provider and thought I would give it a try.

What you like about the field: I really feel like I'm making a difference in people's lives and helping them build a better future. My family never really focused on retirement. My father, in particular, was ill-prepared for retirement, so I've seen first-hand the importance of saving for tomorrow. Plus, being so involved in the industry has obvious side benefits of ensuring I'll be ready for retirement as well.

PERSONAL

Ways you spend free time: Spending time with my family, working around the house, bike riding, watching movies.

Guiding philosophy: Be humble. This works in all facets of life, but particularly well at the office. This is a complex business and no one person has all the answers. Treating each person as a peer or a partner helps to build the relationships that are essential to success in this field.

Favorite charities: I've been involved with Boy Scouts for the past 11 years with both of my sons and I am a regular blood donor. I started donating blood in honor of my wife's late grandfather who donated something like 50 gallons over his lifetime. We also support Children's Mercy Hospital.

Last books read: "The Residence" by Kate Andersen Brower. When I read, I tend to do it to unwind, so I pick something that is usually completely unrelated to my everyday world.

Restaurant recommendations: Anchorage area: Double Musky Inn has huge New Orleans portions in the Great Northwest. Kansas City: Z-man sandwich from Kansas City Joe's. Rhode Island: Iggy's Chowderhouse, and then Aunt Carrie's for some amazing homemade pies.

What will you do when you retire: Travel. I enjoy that aspect of my role and have found so many interesting places to visit along the way. There is so much to see out there, I can't imagine staying anchored down in any one place forever.

Qualified Retirement Updates, continued

The changes made by Rev. Proc. 2021-30, which are effective July16, 2021, except as otherwise noted below, include:

- The correction period under the Self-Correction Program (SCP) for significant failures has been extended from two years to three years. This extension has the result of extending the safe harbor correction method for employee elective deferral failures lasting more than three months but not beyond the extended SCP correction period for significant failures.
- The threshold for certain de minimis amounts for which correction is not required has been increased from $100 to $250.
- The VCP anonymous submission procedure has been eliminated, and an anonymous, no-cost pre-submission conference to discuss a potential VCP submission has been created, both effective January 1, 2022.
- The sunset of the safe harbor correction method available for certain employee elective deferral failures associated with missed elective deferrals for eligible employees who are subject to an automatic contribution feature in a 401(k) plan or 403(b) plan has been extended by three years (from December 31, 2020, to December 31, 2023).
- The previous condition for correction under SCP through a corrective plan amendment increasing a benefit, right or feature that the amendment apply to all eligible plan participants has been eliminated.
- Options for correcting overpayments have been expanded for both defined benefit and defined contribution plans. Plan sponsors may provide overpayment recipients the option of repaying an overpayment in a single sum payment, through an installment agreement or through an adjustment in future payments.
- Two new overpayment correction methods for defined benefit plans have been added. Under the "funding correction method," corrective payments are not required for a plan subject to Code section 436 (relating to benefit accrual and payment restrictions when the plan's adjusted funding target attainment percentage (AFTAP) falls below a specified percentage), provided that the plan's certified or presumed AFTAP applicable to the plan at the date of correction is equal to at least 100 percent (or, in the case of a multiemployer plan, the plan's most recent annual funding certification indicates that the plan is not in critical, critical and declining, or endangered status determined at the date of correction). Future benefit payments to an overpayment recipient must be reduced to the correct benefit payment amount. For purposes of EPCRS, no further corrective payments from any party are required, no further reductions to future benefit payments to an overpayment recipient, or any spouse or beneficiary of an overpayment recipient, are permitted, and no further corrective payments from an overpayment recipient, or any spouse or beneficiary of an overpayment recipient, are permitted.
- Under the "contribution credit correction method," the amount of overpayments required to be repaid to the plan is the amount of the overpayments reduced (but not below zero) by: (A) the cumulative increase in the plan's minimum funding requirements attributable to the overpayments (including the increase attributable to the overstatement of liabilities, whether funded through cash contributions or through the use of a funding standard carryover balance, prefunding balance, or funding standard account credit balance), beginning with (1) the plan year for which the overpayments are taken into account for funding purposes, through (2) the end of the plan year preceding the plan year for which the corrected benefit payment amount is taken into account for funding purposes; and (B) certain additional contributions in excess of minimum funding requirements paid to the plan after the first of the overpayments was made. The reduction amount is referred to as a "contribution credit." Future benefit payments to an

Continued pg 12

Qualified Retirement Updates, continued

overpayment recipient must be reduced to the correct benefit payment amount. For purposes of EPCRS, if the amount of the overpayments is reduced to zero after the contribution credit is applied, no further corrective payments from any party are required, no further reductions to future benefit payments to an overpayment recipient, or any spouse or beneficiary of an overpayment recipient, are permitted, and no further corrective payments from an overpayment recipient, or any spouse or beneficiary of an overpayment recipient, are permitted. However, if a net overpayment remains after the application of the contribution credit, the plan sponsor or another party must take further action to reimburse the plan for the remainder of the overpayment.

- These two new overpayment correction methods may not be applied with respect to overpayments associated with a failure to satisfy a statutory limit (including Code sections 401(a)(17), 415(b) and 436) or with overpayments made to a disqualified person (as defined in Code section 4975(e)(2)) or an owner-employee (as defined in Code section 401(c)). In addition, to be eligible to use the contribution credit correction method, the plan may not have a funding deficiency or an unpaid minimum required contribution as of the end of the last plan year before the plan year for which the plan sponsor takes into account the corrected benefit payment amount for funding purposes (taking into account contributions made after the end of the plan year that are credited to that plan year).
- Audit CAP sanctions must be paid through the Pay.gov website (instead of by certified check or cashier's check) beginning January 1, 2022.

Further Extension of Temporary Relief from Physical Presence Requirement for Consents Under Qualified Plans: In Notice 2021-40, the IRS further extended through June 30, 2022, the temporary relief provided in Notice 2020-42 and previously extended in Notice 2021-03 through June 30, 2021, from the requirement that certain participant elections and spousal consents be witnessed in the physical presence of a notary public or plan representative. Witnessing will be deemed satisfied if made remotely via live audio-video technology in a manner that satisfies specified requirements.

IRS Operational Compliance (OC) List: The OC List identifies changes in qualification requirements that are effective during a calendar year. The IRS has updated the OC List to identify the following as changes:

- Effective in 2022:
    - o Final regulations relating to updated life expectancy and distribution period tables used for purposes of determining minimum required distributions.
- Effective in 2021:
    - o The requirement under the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) that 401(k) plans must allow long-term employees working at least 500 but less than 1,000 hours per year to participate.
    - o The extension from January 1, 2021, through June 30, 2021, under Notice 2021-03 (explained above) of the temporary relief provided in Notice 2020-42 of the requirement that certain participant elections and spousal consents be witnessed in the physical presence of a notary public or plan representative.

Final Regulations Regarding 60-Day Postponement of Certain Tax-Related Deadlines by Reason of a Federally Declared Disaster: On June 11, 2021, the IRS issued final regulations relating to the new mandatory

Continued pg 13

Qualified Retirement Updates, continued

60-day postponement of certain time-sensitive tax-related deadlines by reason of a federally declared disaster. The final regulations also clarify the definition of "federally declared disaster" for purposes of the mandatory postponement. Among the deadlines to which the postponement is applicable are: (i) making contributions to a qualified plan (within the meaning of Code section 4974(c)) under Code section 219(f)(3), 404(a)(6), 404(h)(1)(B) or 404(m)(2); (ii) making distributions under Code section 408(d)(4); (iii) recharacterizing contributions under Codes section 408A(d)(6); and (iv) making a rollover contribution under Code section 402(c), 403(a)(4), 403(b)(8) or 408(d)(3).

The final regulations are effective as of June 11, 2021, and for the Code sections listed above are applicable for federally declared disasters that are declared on or after December 21, 2019.

Proposed Regulations re Electronic-Filing Requirements for Specified Returns and Other Documents: The IRS has issued proposed regulations amending the rules for the electronic filing of specified returns and other documents in accordance with changes made by the Taxpayer First Act of 2019. Among the returns and documents covered by the proposal are Form 1099-R (Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.); Form 8955-SSA (Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits); Forms 5500, 5500-SF, and 5500-EZ (Annual Returns of Plans); and Form 5330 (Return of Excise Taxes Related to Employee Benefit Plans).

The proposal reduces the threshold by which filers must electronically file from 250 to 100 returns for the 2022 calendar year, and further reduces that threshold to 10 returns for filings required after calendar year 2022. Also, unlike the current rule under which the threshold is determined separately for each type of information return, the proposal requires all return types to be aggregated for purposes of applying the thresholds. The rules would be applicable for information returns required to be filed during calendar years beginning after the date of publication in the Federal Register of the adoption of the final regulations.

Department of Labor (DOL) Information Letter Regarding Disclosure of Audio Recording Relating to Adverse Benefit Determination: In Information Letter 06-14-2021, the DOL stated that ERISA section 503 and the claims procedure regulations at 29 CFR 2560.503-1 require the responsible plan fiduciary to provide, upon a claimant's request, a copy of an audio recording and transcript of a telephone conversation between the claimant and a representative of the plan's insurer relating to an adverse benefit determination, even though the insurer's stated purpose of the recording was "quality assurance" and the information in the recording was not relied upon in making the benefit determination. The DOL explained that under the applicable regulations, (1) the claims procedures of a plan will not provide the requisite reasonable opportunity for a full and fair review of a denied claim, unless, among other things, the procedures "provide that a claimant shall be provided, upon request . . . copies of, all documents, records, and other information relevant to the claimant's claim for benefits" and (2) the information is "relevant" if it "was … generated in the course of making the benefit determination," even if it was not relied upon in making the benefit determination.

DOL Frequently Asked Questions Regarding Lifetime Income Illustrations Interim Final Rule: On July 26, 2021, the DOL issued a set of four questions and answers regarding the interim final rule published on September 18, 2020, and effective September 18, 2021, explaining how to calculate lifetime income illustrations as directed by the SECURE Act. According to the set:

- Participant directed plans that must issue quarterly benefit statements under ERISA section 105(a)(1)(A)(i) can incorporate their first lifetime illustration on any quarterly statement up to the second calendar quarter of 2022 (ending June 30, 2022). The flexibility offered by ERISA section 105(a)(2)(B)(iii), however,

Continued pg 14

Qualified Retirement Updates, continued

would not permit a delay beyond the second calendar quarter of 2022, because the ending date of the third calendar quarter, September 30, 2022, would be after the expiration of the 12-month period in ERISA section 105(a)(2)(B)(iii).

- Illustrations for non-participant-directed plans must be on the benefit statement for the first plan year ending on or after September 19, 2021.
- Although the SECURE Act requires plan administrators to provide participants with lifetime income illustrations that differ from the illustrations proposed in the DOL's 2013 Advance Notice of Proposed Rulemaking, the interim final rule specifically allows for additional lifetime income illustrations.
- Regarding whether the final rule will provide some transition relief if it is not issued significantly in advance of the current September 18, 2021, effective date, the DOL stated its intention to issue a final rule as soon as practicable based on feedback from comments received on the interim final rule, and expressed its appreciation of the potential burdens and challenges to plan administrators if a final rule differs materially from the interim rule without sufficient transition time for accommodating any changes to the interim rule.

Executive Order Directing Reconsideration of Rules Barring Consideration of Environmental, Social and Governance (ESG) Factors in Investment Decisions: As part of his May 20, 2021, Executive Order on Climate-Related Financial Risk, President Biden directed the Secretary of Labor to consider suspending, revising, or rescinding any rules from the prior administration that would have barred investment firms from considering ESG factors, including climate-related risks, in their investment decisions related to workers' pensions. The order also asks the DOL to report on other measures that can be implemented to protect the life savings and pensions of U.S. workers and families from climate-related financial risk, and to assess how the Federal Retirement Thrift Investment Board has taken ESG factors, including climate-related risk, into account.

Pension Benefit Guaranty Corporation (PBGC) Interim Final Rule on Special Financial Assistance (SFA): On July 9, 2021, the PBGC issued an interim final rule, effective July 12, 2021, setting forth the requirements for SFA applications and related restrictions and conditions pursuant to the American Rescue Plan Act of 2021 and new ERISA section 4262. The rule sets forth what information a plan is required to file to demonstrate eligibility for SFA and the amount of SFA to be paid by the PBGC to the plan, identifies which plans will be given priority to file applications before March 11, 2023, and provides for a processing system to accommodate the filing and review of as many applications in a limited amount of time. The rule also establishes permissible investments for SFA funds and restrictions and conditions on plans that receive SFA.

In SFA 21-02, the PBGC provided guidelines for changes to certain assumptions that plans may use for purposes of determining eligibility for SFA and the amount of SFA. Plans may, but are not required, to use the guidelines if they are reasonable for the plan. Guidelines are available for contribution base units, administrative expenses, mortality, contribution rates, new entrant profiles and investment expenses.

In Notice 2021-38, the IRS provided guidance under Code section 432(k) to sponsors of multiemployer defined benefit pension plans that are required to reinstate certain previously suspended benefits as a condition of receiving SFA. The notice also provides guidance on whether make-up payments with respect to previously suspended benefits under Code section 432(k)(2)(A)(ii) are eligible to be rolled over to another eligible retirement plan. In addition, the notice provides guidance on how to apply the rule in Code section 432(k)(2)(D)(i) under which any SFA received by the plan is not taken into account in determining contributions required under Code section 431.

Health and Welfare Regulatory Update

Soohuen Ham | Orrick, Herrington & Sutcliffe LLP

HSAs and HRAs

On June 10, 2021, the Internal Revenue Service (IRS) announced the 2022 inflation-adjusted amounts for Health Savings Accounts (commonly called HSAs) and the maximum amount that may be newly made available for excepted benefit Health Reimbursement Arrangements (commonly called HRAs).

An HSA is a trust created or organized in the U.S. exclusively for paying the qualified medical expenses of an account beneficiary. An HSA can only be utilized when an eligible individual is covered under a high deductible health plan (HDHP). An HDHP is a health plan that has an annual deductible of not less than $1,000 for self-only coverage (and $2,000 for family coverage). Also, the sum of the annual deductible amount and other annual out-of-pocket expenses cannot exceed $5,000 for self-coverage (and $10,000 for family coverage). For plan years beginning in 2022, the inflation-adjusted HDHP will remain at the same amount as it did in 2021: $1,400 for self-only (and $2,800 for family coverage). With respect to the plan years starting in 2022, the maximum annual out-of-pocket limit for HDHP will be raised from $7,000 for self-coverage (or $14,000 for family coverage) in 2021 to $7,050 for self-coverage (or $14,100 for family coverage). In addition, the annual limit to how much an HDHP participant can contribute to the trust will be raised from $3,600 for self-coverage (or $7,200 for family coverage) in 2021 to $3,650 for self-coverage (or $7,300 for family coverage). On the contrary, catch-up contributions for participants aged 55 and older will remain the same at $1,000.

An HRA, unlike an HSA, is not a trust or an account, but an arrangement by which an account beneficiary may seek reimbursement from an employer for eligible expenses already incurred. In 2022, the annual contribution limit to an HRA will remain the same as it did in 2021 at $1,800.

Cost Sharing under the Affordable Care Act

On June 6, 2021, the tri-agency departments (i.e., the U.S. Departments of Labor, Health and Human Services (HHS), and the Treasury) issued additional frequently asked questions (FAQs) regarding the implementation of the cost sharing limitations under the Affordable Care Act (ACA).

By way of background, a healthcare enrollee's annual cost sharing (i.e., the portion of a medical claim that the insured must pay, usually in the form of a deductible, coinsurance or copay, but not premiums, balance billing or expenses that are not covered by the insured's policy) is limited under the ACA. For example, for plan or policy years beginning in 2021, the maximum annual limitation on cost sharing is $8,550 for self-only coverage and $17,100 for other than self-only coverage. This means under non-grandfathered healthcare plans or policies, regardless of how much healthcare services an enrollee receives in that year, the most subsidy the enrollee would receive to cover certain out-of-pocket expenses is $8,550 for self-only coverage and $17,100 for all other coverage. It is important to note that these annual cost sharing subsidy amounts are calculated based on the enrollee's income in relation to the federal poverty level from a prior year. Tersely summarized, the less income the enrollee has, the more subsidy the enrollee would be eligible for.

For the 2022 plan year, the HHS has increased the new maximum annual limitation on cost sharing at $8,700 for self-only coverage and $17,400 for other than self-only coverage.

For more detailed information on eligibility and what cost sharing subsidy you, your family, or your client may be eligible for, please refer to http://healthcare.gov/lower-costs/save-on-out-of-pocket-costs/.

Continued pg. 17

Health and Welfare Updates, continued

The Latest Guidance on the COBRA Premium Assistance

In the previous Health and Welfare update, the article regarding the Consolidated Omnibus Budget Reconciliation Act (commonly called "COBRA"), informed that President Biden signed into law the American Rescue Plan Act of 2021 (the "ARP"), which among other things, amended COBRA to provide COBRA premium assistance to help "Assistance Eligible Individuals." Please refer to the previous article as a refresher.

On May 18, 2021, the Internal Revenue Service (the "IRS") released Notice 2021-31 (the "Q&A") providing further guidance in a question and answer format on how the temporary COBRA premium assistance provisions of the ARP should be understood and applied. While the Q&A is quite extensive with 86 Q&As covering a variety of questions the IRS received from the public, this article highlights some of the more important Q&As in the IRS guidance.

Clarification on Involuntary Termination

While the applicable provisions of the ARP allows for a temporary 100 percent reduction in the premium otherwise payable by those who elect COBRA continuation coverage for those who lost health coverage as a result of an "involuntary termination of employment," the ARP did not provide any clear definition or application of the term. In the Q&A, the IRS provides a rather comprehensive explanation as to what the term means.

The IRS generally defines an involuntary termination of employment to mean "a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services." In other words, when an employer terminates the employee without the employee's consent or request, there was an involuntary termination of employment. Then the IRS further elaborates on different examples that would constitute an involuntary termination of employment.

One way to determine whether an employee has been involuntarily terminated is by showing good reason. Good reason, for purposes of qualifying for COBRA premium assistance, can be established if the employee voluntarily terminated his or her employment "due to employer action that results in a material negative change in employment relationship for the employee analogous to a constructive discharge." One example of good reason is where an employee initiates termination of employment due to employer's material reduction in hours.

The IRS also considers that an employee has been involuntarily terminated when (1) an employer takes action to terminate an employee's employment while the employee is absent from work due to illness or disability and (2) before the employer's action, there was a reasonable expectation that the employee would return to work after the illness or disability has subsided. The IRS notes that mere absence from work due to illness or disability before the employer has taken action to end the individual employment is not an involuntary termination of employment. Whether the absence from work is a reduction in hours potentially resulting in COBRA continuation coverage depends on whether the absence from work results in a loss of coverage.

In addition, even when an employee loses health care coverage as a result of involuntary termination of employment for cause, the employee's status is deemed an involuntary termination of employment. However, the IRS notes, for the purposes of qualifying for the COBRA subsidy, the loss of coverage due to a termination of employment for gross misconduct will not result in an individual becoming a potential Assistance Eligible Individual.

Further, a material change in the geographic location of employment of an individual and a resulting resignation will be considered an involuntary termination of employment for the purposes of determining whether the individual is a potential Assistance Eligible Individual.

Continued pg. 18

Health and Welfare Updates, continued

Another way to determine whether an employee has been involuntarily terminated is be showing an employer's decision not to renew an employee's contract if the employee was otherwise willing and able to continue the employment relationship and was willing to either to execute a contract with terms similar to those of the expiring contract or to continue employment without a contract. However, if the parties understood at the time they entered into an expiring contract and their understanding remained the same throughout the contract period, the non-renewal of the contract will not be considered as an involuntary termination of employment.

No Second Chance on Retroactivity

The COBRA eligibility and subsidy assistance through the ARP allows individuals, who lost coverage and became eligible for COBRA, but declined during the initial 60-day period, to be eligible to sign up again. If those individuals chose to sign up for COBRA coverage during the "second chance," they would also have the option to receive coverage retroactively to the date they were first eligible (i.e., when they were involuntarily terminated). Now, the Q&As indicate that once an individual under these circumstances initially declines retroactive coverage but changes his or her mind, and then wants the retroactive coverage at a later time, the IRS states that such individual cannot change the initial election from having no retroactive coverage to having retroactive coverage.

The purpose of this article is to summarize some of the more important aspects of the guidance.

Carryovers or Extension of Dependent Care Assistance Programs

Under Section 129 of the Internal Revenue Code, if an employer provides to its employee any dependent care assistance benefits, such amounts can be excluded from gross income of an employee or incurred by the employer. For 2020, the exclusion amount is capped at $5,000, or $2,500 for married individuals who file taxes separately.

The dependent care assistance program ("DCAP") may be provided through a flexible spending arrangement (commonly called "FSA") under a Section 125 cafeteria plan. An employee may contribute to the DCAP through salary reduction, and employees participating in the DCAP may receive reimbursement for dependent care expenses incurred during the year. Reimbursements from the DCAP can be excluded from gross income, so long as the reimbursements are within the capped limit per year. Any reimbursement beyond the capped amount will generally be includable as the reimbursed employee's gross income and wages.

On December 27, 2020, as part of the Consolidated Appropriations Act, the Taxpayer Certainty and Disaster Tax Relief Act (the "Act") allowed DCAPs to carry over unused benefits from a plan year ending in 2020 to a plan year ending in 2021 and from a plan year ending in 2021 to a plan year ending in 2022. Alternatively, the Act allows a DCAP to extend its claims period for a plan year ending in 2020 or 2021 to 12 months after the end of the plan year with respect to benefits remaining in the DCAP.

In response, the IRS issued its Notice 2021-15, which allows employers to adopt the carryover or extended period of incurring claims. It followed that while the annual contribution limits to FSAs and DCAPs continues to apply, the excludable limits to reimbursed amounts or otherwise available for reimbursement from FSAs and DCAPs would not. As a result, unused amounts carried over from prior years or through the extended period would not be taken into consideration when determining the annual excludable limit for the following year.

Then on March 11, 2021, the American Rescue Plan Act of 2021 effectively increased the DCAP income exclusion amount up to $10,500 (for joint filers and half the amount for married, but separate filers) with respect to taxable year (not plan years) 2021 only (i.e., 1/1/2021 to 12/31/2021). As a result, in the case of non-calendar year plans

Continued pg.19

Health and Welfare Updates, continued

beginning in 2021 and ending in 2022, the increased exclusion amount for DCAP will not apply to reimbursement incurred during the 2022 portion of the plan year. Accordingly, any DCAP reimbursement in excess of $5,000 that was incurred in 2021 but reimbursed in 2022 will result in taxable income.

To ease explanation of these relatively dense rules, the IRS issued Notice 2021-26 to illustrate their application. The IRS assumes in the examples (for the sake of simplicity) that the hypothetical employee is a joint filer and that the exclusion limit for the 2022 taxable year will revert back to $5,000.

Example #1 (Calendar Year Plan)

An employee elects no DCAP benefits for the 2019 plan year but elects to contribute $5,000 for the 2020 year. The employee incurs no DCAP expense in 2020. The Act allows the employee to carry over the unused $5,000 to the 2021 plan year. In 2021, the employee elects to contribute $10,500 for the 2021 plan year.

If the employee incurs $15,500 in DCAP expenses in 2021 and is reimbursed $15,500, all $15,500 is excluded from the employee's gross income because $10,500 is excluded as 2021 benefits and the remaining $5,000 is the carryover permitted by the Act and such carryover is not taken into consideration as part of the annual excludable limit, based on the IRS's Notice 2021-15.

Example #2 (Non-calendar Year Plan)

An employee's DCAP has a July 1 to June 30 plan year. The employee did not elect to contribute any DCAP benefits for the plan year beginning July 1, 2020, and there is no unused amount from the previous plan years.

<u>Taxable Year 2021</u>

The employee elects to contribute $10,500 for DCAP benefits for the plan year beginning on July 1, 2021. The employee then incurs $5,000 in dependent care expenses during the period from July 1, 2021 to December 31, 2021, and receives a reimbursement for $5,000. The $5,000 is excluded from the employee's gross income because the employee is entitled to exclude up to $5,500 from his or her gross income in 2021. The employee now has $5,500 of DCAP benefits remaining as of January 1, 2022 ($10,500 less $5,000 = $5,500).

<u>Taxable Year 2022</u>

As discussed above, the exclusion for DCAP benefits will presumably be lowered from $10,500 in taxable year 2021 to $5,000 in taxable year 2022.

The employee incurs $5,500 in DCAP expenses from January 1, 2022 to June 30, 2022, and is reimbursed $5,500 by the DCAP. The employee elects to contribute $5,000 for DCAP benefits for the plan year beginning July 1, 2022. The employee incurs $2,500 in DCAP expenses during the period from July 1, 2022, to December 31, 2022, and is reimbursed $2,500. The employee has received a total of $8,000 for the 2022 taxable year ($5,500 plus $2,500 = $8,000). Of the $8,000 received in the 2022 taxable year, the employee can exclude $5,000 from his or her gross income because $5,000 is the capped amount for the 2022 taxable year. Accordingly, the remaining $3,000 will be recognized as the employee's gross income and wages.

While there is one additional example illustrated in Notice 2021-26, it is omitted because Examples #1 and #2 in this article sufficiently explain the concept of carryovers and exemption amounts in taxable year 2021. If there are situations that are beyond the scope of this article, please speak with a benefits professional for guidance.

CHAPTER SPONSORS

GOLD

CliftonLarsonAllen

Gallagher
Insurance | Risk Management | Consulting

MOSSADAMS

T.Rowe Price

TRUCKER ✦ HUSS
ERISA AND EMPLOYEE BENEFITS ATTORNEYS

WELLS FARGO Asset Management

SILVER

charles SCHWAB

citi

EMPOWER RETIREMENT

HansonBridgett

orrick

BRONZE

GCA LAW PARTNERS LLP

LINDQUIST CPA
LEADERSHIP ✦ QUALITY

PRIMARK BENEFITS
RETIREMENT ✦ PLAN ✦ EXPERTS

Principal

CHAPTER INFO AND BOARD OF DIRECTORS

SEPTEMBER 2021

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
1540 River Park Drive, Suite 211
Sacramento, CA 95815
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 and payment of dues. To join, visit www.wpbcsanfrancisco.org