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BENEFITS REPORT

The 2020 Must-Do List for Qualified Retirement Plans

CRAIG P. HOFFMAN AND KEVIN E. NOLT

FEBRUARY, 2020

Qualified retirement plans are subject to a number of administrative changes, document requirements and other deadlines effective with or during the 2020 calendar/plan year, especially in light of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE). The following article summarizes these changes impacting both defined benefit pension plans and defined contribution plans (e.g., 401(k) and 403(b) plans).

403(b) Plan Restatement Deadline

A sponsor of a 403(b) plan who wants to adopt a preapproved prototype or volume submitter plan document and obtain retroactive reliance on the plan's Internal Revenue Service (IRS) opinion letter or advisory letter, as applicable, must adopt a preapproved document that complies with the requirements of Section 403(b) of the Internal Revenue Code (the "Code") and the applicable IRS regulations by March 31, 2020. Preapproved 403(b) documents have been available since the IRS opened up the determination letter program for 403(b) plans in 2013.

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The March 31, 2020 deadline also represents the end of the "remedial amendment period" during which a plan sponsor may self-correct plan provisions that violate the 403(b) rules by adopting either a compliant individually designed document or a preapproved document. To take advantage of the remedial amendment period, the plan sponsor must have adopted a good faith written 403(b) plan by December 31, 2009 (or by the effective date of the plan, if later).

Plan sponsors may only self-correct plan document failures during this remedial amendment period (not operational failures). An example would be a failure to include language limiting the participants' annual additions to the Code Section 415(c) limit. A plan sponsor who doesn't meet the March 31, 2020 deadline will be able to correct a plan's violations only through the IRS's Voluntary Correction Program (VCP), which is a part of the Employee Plans Compliance Resolution System (EPCRS) described in Revenue Procedure 2019-19.

Defined Benefit Plan Restatement Deadline

If a plan sponsor previously adopted a preapproved prototype or volume submitter defined benefit plan document, or wants to adopt one now, it must adopt a restated document by April 30, 2020 to be covered by the IRS's second six-year remedial amendment period.

In the spring and summer of 2018, the IRS issued opinion and advisory letters for preapproved defined benefit plans that were restated for changes in plan qualification requirements listed in Notice 2012-76 (2012 Cumulative List). A plan sponsor using a preapproved plan document to restate a plan during this second cycle will be required to adopt the plan by April 30, 2020. This is also the deadline for a sponsor to submit an individual determination letter request for its defined benefit preapproved plan document if a change was made to the model language.

The IRS also announced, in Revenue Procedure 2020-10, that the third six-year remedial amendment cycle for preapproved defined benefit plans will begin on May 1, 2020, and will end on January 31, 2025. Preapproved plan providers will have from August 1, 2020 to July 31, 2021 to submit their documents to the IRS for the third remedial amendment cycle. The IRS will announce at a later date the deadline for plan sponsors to adopt the approved plans.

Cash Balance Plan Determination Letter Application Window

The IRS reopened its determination letter program for statutory hybrid plans (e.g., cash balance plans) on a temporary basis from September 1, 2019 until August 31, 2020, as set forth in Revenue Procedure 2019-20. The IRS determination letter program allows sponsors of qualified retirement plans to obtain a ruling that the form of their plan document is in compliance with the qualification provisions of the Code. While not required, obtaining an IRS determination letter has been, historically, a recommended best practice for all individually designed qualified retirement plans. The IRS discontinued the determination letter program for individually designed plans effective January 1, 2017, except for initial qualifications, plan terminations and other circumstances as determined by the IRS.

The IRS has now determined that special circumstances warrant opening the program for cash balance plans. The IRS is offering this limited window in recognition that cash balance plans were unable to obtain a determination letter that takes into account final hybrid plan regulations issued in 2014 and 2015. Revenue Procedure 2019-20 also provides that the IRS will not impose any sanctions for plan document failures, relating to implementation of the final hybrid plan regulations, that are discovered by the IRS in reviewing a determination letter application submitted during this period. If the IRS discovers any other plan document failures, a reduced sanction equal to the applicable user fee under EPCRS will apply (e.g., $3,500 for larger plans) as long as the amendment that resulted in the failure was adopted timely and in good faith.

The IRS also reopened the determination letter program for plans that are merged in connection with a corporate merger, acquisition, or other similar business transaction involving two or more entities that were previously unrelated. This opportunity to request a determination is not subject to a limited window period, but will be ongoing. Plan sponsors wishing to take advantage of this opportunity should consult with counsel as the deadline for submission is subject to strict timing rules based on the date of the merger, acquisition or similar transaction and the date the plans were merged.

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Updated Mortality Rates Applicable to Defined Benefit Plans

The IRS has updated the mortality improvement rates and static mortality tables for single employer defined benefit pension plans for 2020 in Notice 2019-26, released on March 22,2019. These updated mortality improvement rates and static tables apply for calculating the funding target and other items under Code Section 430(h)(3)(A) of the Code and ERISA Section 303(h)(3)(A). Notice 2019-26 also includes a modified unisex version of the mortality tables for use in determining the lump sum minimum present value under Code Section 417(e)(3) and ERISA Section 205(g)(3) for distributions with annuity starting dates that occur during stability periods beginning in the 2020 calendar year. Note that the IRS also has updated the mortality improvement rates and static mortality tables for 2021 in Notice 2019-67, released on December 11, 2019. Plan sponsors should work with their actuaries to understand the impact of these updated rates on their plan funding requirements.

Required Hardship Distribution Changes

The Bipartisan Budget Act of 2018, which was signed into law on February 9, 2018, made some significant changes to the hardship distribution rules applicable to Code Section 401(k) and 403(b) plans, and it directed the IRS to issue regulations. The IRS issued the final regulations on September 23, 2019. While certain changes are optional (e.g. the addition of earnings on pretax deferrals as an eligible source and the elimination of the requirement to first take a loan from the plan), there are two mandatory changes that must be administered for hardship distributions taken on and after January 1, 2020. This means that plan sponsors and service providers must take immediate action and that participant communications should be updated as soon as possible.

The first required change is that an employer may no longer suspend an employee who has received a hardship distribution from contributing to the plan (or any other retirement plan) for 6 months. The final regulations clarify that the elimination of the suspension is not intended to apply to nonqualified deferred compensation plans. Thus, it appears that a plan sponsor may continue to suspend employee contributions to any nonqualified plan, subject to the requirements of Code Section 409A.

The second required change is that an employee must represent (in writing or by an electronic medium, including, for example, an online application or recorded phone line or other forms as prescribed by the IRS) that he or she has insufficient cash or liquid assets "reasonably available" to satisfy the financial need. The final regulations clarify that assets earmarked for another purpose, such as mortgage payments, are not considered reasonably available to the participant. A plan sponsor or administrator may rely on this representation unless it has actual knowledge to the contrary.

These changes could have been implemented in 2019 (and likely were for many plans). They are mandatory for hardship distributions made on and after January 1, 2020. The deadline for amendments to individually designed plans reflecting these required changes (and any optional amendments) is December 31, 2021. While amendments to preapproved plans initially had a due date of the plan sponsor's tax filing deadline, plus extensions, for the 2020 tax year, the IRS extended the due date to December 31, 2021 in Notice 2019-64.

The SECURE Act

In addition to those new rules and deadlines, 2020 will also bring with it a number of significant law changes that were contained in SECURE, which was added to last year's budget bill and signed into law on December 20, 2019. Many of the new law's provisions became effective on January 1, 2020. Consequently, immediate action may be required by participants, plan sponsors, and their service providers.

The changes made to the required minimum distribution rules could prove to be problematic for many plan administrators and recordkeepers. Under SECURE, the age at which required minimum distributions must begin is moved back from 70½ to 72. However, it only applies to individuals attaining age 70½ after December 31, 2019. In addition, individual account plans (like 401(k) and 403(b) plans) and IRAs will have to distribute all amounts held by the plan or IRA within 10 years of the plan participant's or IRA owner's death. An exception is provided for an "eligible beneficiary," i.e., a surviving spouse, minor child, a disabled or chronically ill individual, or any other beneficiary who is no more than 10 years younger than the participant or IRA owner. This aspect of the new rules is generally

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effective with respect to individuals who die after December 31, 2019. However, governmental plans have a December 31, 2021, effective date, and collectively bargained plans will apply the new rules to participants dying in calendar years beginning after the expiration of the current collective bargaining agreement or December 31, 2021, if earlier.

Failure to apply the new rules as of their effective date could lead to problems for the plan administrator or IRA custodian. For example, a person who attains age 70½ in 2020 and receives a cash-out of his or her account balance would be entitled to rollover the entire distribution. Under the old law, a portion of the cash-out distribution would have been classified as a required minimum distribution that is ineligible for rollover. If the plan were to apply income tax withholding to the distribution using the old rules, the amount withheld would be less than is required. This is because the withholding rate for eligible rollover distributions is 20% while the withholding rate on amounts ineligible for rollover is 10%.

The IRS has indicated that they are aware of compliance challenges presented by the short time period between the enactment of the law and its effective date. IRS Notice 2020-6 indicates they are considering issuing guidance to provide some measure of relief in this area. Nevertheless, plan procedures (and software) should be immediately updated to reflect the new rules to avoid mistakes.

Another 2020 change that may be problematic is a new exemption from the 10% early distribution excise tax for distributions to an individual made during the 1-year period beginning on the date a child of such individual is born or legally adopted. A plan sponsor who wishes to offer in-service distributions for this purpose may do so, but that is not required by the new law. We understand that service providers are still working on the administration of this change and that it may not be made readily available by all providers at this time.

Once again, the manner in which the new law is applied could affect the amount withheld from a qualifying distribution. This is because the new law classifies a qualifying distribution as an "ineligible rollover distribution" (even though the distribution may be "repaid" to an IRA). As previously pointed out, this means a 10% withholding rate would apply rather than the normal 20% rate. It is not entirely clear at this time how the IRS will apply the new law. It is possible that documentation will have to be provided by the participant. The IRS is aware of this issue, and their hope is that some type of clarifying guidance and interim relief will be provided.

Plan sponsors should be aware that a number of other changes in SECURE were effective on its enactment date or in 2020. They include:

- Elimination of the requirement to give an annual "safe-harbor notice" for 401(k) plans that meet the ADP test safe harbor requirement by making non-elective employer contributions (the annual notice must still be given to satisfy the ACP test safe harbor);
- Permitting a 401(k) plan to be amended mid-year to become a safe harbor plan if a 3% qualified non-elective safe harbor contribution is made (or 4% if the amendment is adopted within the period beginning 30 days prior to the end of the plan year and ending on the last day of the next plan year);
- Increasing the limit on the maximum automatic enrollment percentage for a Qualified Automatic Contribution Arrangement (QACA) from 10% to 15%;
- Prohibiting plan loans to participants if made through the use of a credit card;
- Nondiscrimination relief for defined benefit plans which are closed or frozen;
- A new safe harbor that fiduciaries can rely on in doing their due diligence in selecting an annuity provider for their plan; and
- A significant increase in the late filing penalties for Form 5500 and Form 8955-SSA.

2020 is going to be a busy year for plan sponsors and their service providers. There is sure to be much coming in the way of guidance from IRS and DOL, both as a result of SECURE as well as the normal push by federal agencies to finish regulatory projects as a four-year presidential term comes to a close. Hang on, it may be a bumpy ride.

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Groundhog Results Are In: An Early Spring Means It's Time for Health and Welfare Spring Cleaning!

GISUE MEHDI and CATHERINE L. REAGAN

FEBRUARY 2020

1. Thought You Were in the Clear? CA's Individual Mandate Replaces the ACA Individual Mandate for CA Taxpayers

Although the federal government effectively removed the individual mandate under the Affordable Care Act by setting the penalty to zero (effective January 1, 2019 under the Tax Cuts and Jobs Act of 2017), California decided to pick up the slack and create its own individual mandate. On June 27, 2019, California passed Senate Bill 78 ("SB 78"), which created the "Minimal Essential Coverage Individual Mandate," generally applicable for all California residents who are required to file a state tax return, and their dependents, effective January 1, 2020. S.B. 78, 2019 Leg. 2019-20 Sess. (Cal. 2019). Similar to the federal individual mandate, California's new law requires each resident to be enrolled in health plan coverage that is considered "minimum essential coverage" starting on January 1, 2020, or pay a penalty generally equal to the lesser of 2.5% of the individual's adjusted gross household income or $695.

What Does That Mean for Employers?

The California Franchise Tax Board (FTB) will require annual reporting by "applicable entities" that provide "minimum essential coverage." That description includes insurers, employers, and other sponsors of employment-based health plans, like multiemployer plans. We expect the Form 3895, California Health Insurance Marketplace Statement will be similar to the Forms 1094/1095-B and C (according to the FTB, employers can submit the ACA reporting forms in lieu of Form 3895), and the first cycle of reporting will be due by March 31, 2021 for 2020 coverage information.

2. California Expands Its Definition of Domestic Partner

California passed Senate Bill 30 on July 30, 2019, which changes the definition of domestic partnership. S.B. 30, 2019 Leg. 2019-20 Sess. (Cal. 2019); see also CAL. FAM. CODE § 297; 298; 299 (2020). Previously, any same-sex couple that met the domestic partnership requirements could register in CA, but opposite-sex couples could only register if one of the partners was age 62 or older. The new California domestic partnership definition eliminates that age requirement for opposite-sex domestic partners, expanding domestic partnership eligibility as of January 1, 2020.

Takeaways

- For employers who offer fully-insured plans, CA law requires those fully-insured plans that offer coverage to spouses of their California employees to offer coverage to registered domestic partners on the same terms. Accordingly, there may be employees who are enrolling their newly qualified CA domestic partners under those employer plans.

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- If any employer materials (e.g., Domestic Partnership guides or forms) included the previous definition of domestic partners, then those documents should be amended as applicable.
- Finally, this is a chance for employers to revisit federal and state taxation considerations for enrolling domestic partners into their plans. The details are beyond the scope of this article, so please contact us if you have any questions about whether your payroll department is properly imputing income for the cost of domestic partnerhealth care coverage.

3. Cadillac Tax Repealed as We Cruise into 2020

The unpopular "Cadillac tax," which was supposed to impose a non-deductible 40% excise tax on high cost employer group health plans beginning in 2018 (subsequently postponed to 2020 and then to 2022), has finally been repealed. It was a part of the Further Consolidated Appropriations Act of 2020, H.R. 1865, 116th Cong. (2019), which was signed on December 20, 2019. See also 26 U.S.C 4980I (2020).

4. PCORI Fees: It's Not Just Your Clock That Springs Forward

Just when you thought they were done, the Patient Centered Outcomes Research Institute (PCORI) fee, originally set to expire in 2019, has been extended to 2029. Internal Revenue Code Section 9511, 26 U.S.C. 9511(b) (2020). For self-insured health plans, employers must calculate the PCORI fees owed each year. The PCORI fees are calculated by multiplying the average number of covered lives and the PCORI fee rate set by the IRS for that plan year. For self-insured plans, the average number of covered lives can be determined using three alternative methods: (1) the actual count method; (2) the snapshot method; or (3) using the Form 5500. See *IRS, Patient-centered outcomes Research Institute Fee*. The last fee rate (i.e., for the plan year ending on or after October 1, 2018 but before October 1, 2019) was $2.45 per covered life. No rate has yet been set for the next PCORI fee due. We will update you when the new rate is available.

5. For Employers Who Took Advantage of the Employer Credit for Paid Family and Medical Leave, You're in Luck! It Has Been Extended to 2020

If you took advantage of the short-term employer credit for Paid Family and Medical Leave granted through the Tax Cuts and Jobs Act of 2017, then that quick action paid off. The employer credit has been extended for another year! To learn more about the employer credit, see Jennifer Truong, "IRS Issues FAQs Clarifying New Employer Tax Credit for Paid Family and Medical Leave."

Trucker ✦ Huss is proud to be an Exhibitor at NAFE in Nashville April 26 to April 29. We hope to see you there.

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The Latest in Stable Value Fund Litigation

JOSEPH C. FAUCHER and BRIAN D. MURRAY

FEBRUARY 2020

401(k) plan sponsors routinely offer stable value funds as conservative investment alternatives for their participants. Insurance companies that manage stable value funds invest in fixed income instruments, such as short- and intermediate-term government and corporate bonds and mortgage-backed securities. The funds are insured, so investors are generally protected from loss of capital or interest. In low interest rate environments, the returns offered by stable value funds are predictably low as well.

Insurance companies that offer stable value fund investment options to their plan clients typically declare, on a periodic basis, a rate that the fund will pay going forward for a specified period of time. For example, an insurer may declare on December 15 that, beginning on January 1, and for a six-month period thereafter, the company will credit all investments in the fund at a rate of 1% per annum. In that scenario, the insurance company will retain the "spread" between the earnings on its own investments and the promised rate of return. So, if the insurance company earns 2% on its investments, and its administrative expenses amount to .5%, its profit will amount to .5% (2% –1% –.5%).

This is the backdrop against which, in recent years, attorneys representing retirement plan participants who invest in stable value funds have brought cases against several insurance companies, challenging how these stable value funds are operated. The plaintiffs in these cases typically allege that the insurance companies, and not the fiduciaries affiliated with plan sponsors, effectively decide the amount of compensation that the insurance company receives. If that allegation were found to be true, plaintiffs argue, it would be tantamount to the insurance company exercising authority or control respecting management or disposition of the plan's assets — which would render the insurer a fiduciary of the plan. And if a fiduciary deals with a plan's assets in its own interest or for its own account, it breaches its fiduciary duties and engages in a transaction prohibited by ERISA.

The results in some of these recent cases appear, at least at first, to be at odds with one another. We review those decisions here, because they highlight issues that plan fiduciaries should be aware of in reviewing plan investment options.

Teets v. Great-West Life & Annuity Ins. Co.

Great-West offers a stable value fund called the Key Guaranteed Portfolio Fund (the "Key Fund"). Some 270,000 participants across many plans invest in the Key Fund. John Teets, representing a class of those participants, challenged how Great-West operates the Key Fund and receives compensation for its services.

Great-West deposits money invested by plan participants in the Key Fund into conservative investments. It then sets a "Credited Interest Rate" quarterly, and announces that rate two days before the start of each quarter. Great-West guarantees that the Credited Interest Rate will never fall below 0%. Great-West retains the difference between the total yield on the Key Fund's investments and the

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Credited Interest Rate. Plans may withdraw from the Key Fund, but if they do, Great-West reserves the right to defer payment to the plan for up to 12 months. (Plaintiffs presented no evidence in the case that Great-West ever exercised that right.) Additionally, plans doing business with Great-West may not offer any other funds with similar risk profiles. Participants may withdraw their principal and accrued interest at any time without paying a fee.

Mr. Teets claimed that Great-West exercised authority or control over plan assets by setting the Credited Interest Rate and/or by determining its own compensation, and in so doing, became a fiduciary of the plan. He focused on Great-West's contractual right to impose a 12-month waiting period on plans seeking to withdraw from the Key Fund, and the prohibition on plans offering comparable investment options to participants.

Great-West presented evidence that over 3,000 plans had stopped offering the Key Fund as a plan investment option during the relevant time period, but it had never exercised its contractual right to impose the 12-month waiting period on plans that did so. On that basis, the United States Tenth Circuit Court of Appeals found that Great-West never "exercise[d] any discretionary authority or discretionary control over a plan or its assets" by imposing a waiting period.

The Court also disagreed with Mr. Teets' argument that by restricting plans from offering comparable investment options to the Key Fund, Great-West became a fiduciary. It emphasized that Mr. Teets presented no evidence to show that even one of the 270,000 persons invested in the Key Fund through their plans were affected by that provision. (That is, there was no evidence that any plan participant would have invested in a separate stable value fund if given the option to do so.) And finally, the Court found that Great-West did not have control over its own compensation, because participants could choose to discontinue their investments in the Key Fund after Great-West announced the Credited Interest Rate. On that basis, the Court found that Great-West was not a fiduciary by virtue of its administration of the Key Fund and the compensation it received.

Rozo v. Principal Life Ins. Co.

In contrast to the decision in the Great-West case, the U.S. Court of Appeals for the Eighth Circuit recently concluded that Principal Life Insurance Company is a fiduciary with respect to the stable value fund that it offers as an investment option to ERISA-governed plans.

Every six months, Principal declares an interest rate to be paid during the ensuing six-month period. Principal typically declares that rate a month before it takes effect. Plan sponsors that want to reject the new rate have two options: (1) pay a 5% surrender charge, or (2) notify Principal and wait 12 months for assets invested in the fund to be released. Participants may withdraw without penalty, but they are prohibited from investing in other stable value options for the 90-day period following their withdrawal. (This is typically referred to as an "equity wash." The intent of equity wash provisions is to prevent investors from moving to competing stable value funds to obtain a higher rate of interest.) Consistent with the Tenth Circuit's decision in *Teets*, the district court held that, given these facts, Principal was not a fiduciary.

On appeal, the Eighth Circuit applied the same test that the Tenth Circuit had applied in *Teets*. Specifically, it noted that a service provider acts as a fiduciary if "(1) it 'did not merely follow a specific contractual term set in an arm's-length negotiation' and (2) it 'took a unilateral action respecting plan management or assets without the plan or its participants having an opportunity to reject its decision'." But in applying that test, the Eighth Circuit came to the opposite conclusion than the one the Tenth Circuit had reached in *Teets*. It held that in setting the interest rate to be credited to participant-investors, Principal does so "...with no specific contract terms controlling the rate" (unlike the situation in the Great-West case); and that "[w]hen Principal notifies a plan sponsor of the proposed [interest rate], the sponsor has not agreed to it."

Where *Rozo* appears to diverge from *Teets* is in the application of the second part of the test — whether plans and participants have the right to reject the insurer's declared interest rate without penalty. According to the Eighth Circuit's decision, Principal imposes the 12-month waiting period (or alternatively, the 5% surrender charge) upon plans that reject the declared interest rate. That

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would, according to the Court, also bind the plan to the new rate imposed at the next six-month period. Conversely, Great-West had the contractual *option* to impose the waiting period, but there was no evidence that it had actually ever exercised that right.

Principal argued that it was immaterial whether it imposed the waiting period on plans, because plan participants would still have the option to withdraw their own accounts' assets from the stable value fund, subject only to the equity wash provision. The Eighth Circuit concluded that it did not matter, because the test for whether a plan service provider is a fiduciary hinges on whether *either* the plan or the participants can reject the terms of the contract without penalty. According to the Court, since "... the sponsor here is impeded [from withdrawing plan assets immediately], the participant's ability to reject the [interest rate] does not negate Principal's fiduciary status."

Given the amounts invested by 401(k) participants in stable value funds, these cases are of obvious significance to the insurance company defendants. But plan sponsors should also take note of the decisions, and be aware of the restrictions placed upon them and their participants relating to these funds. Plan fiduciaries are charged with knowing and understanding the features of the investments they offer their plan participants, and the compensation that their service providers receive.

FIRM NEWS

Craig Hoffman's article, *Pension Reform 2.0 – The Next Generation, was* recently published in the Winter 2020 Journal of Pension Benefits (Wolters Kluwer). The article addresses the Retirement Security and Savings Act of 2019, which is likely to be the basis for the next generation of pension reform.

On January 22, **Angel Garrett** was a presenter at the MCLE Mini-Marathon hosted by the Asian American Bar Association of the Greater Bay Area. Angel spoke on *Ethics in the Technology Age*.

On January 23 and 24, **Joe Faucher** and **Craig Hoffman** led workshops at the LA Advanced Pension and 401(k) Conference. Joe addressed *Litigation Risks for Plan Sponsors and Fiduciaries*, during which he discussed current retirement plan litigation, along with risks and issues that plan sponsors and fiduciaries should consider. Craig spoke about *Fiduciary Developments*, and *401(k) Hot Topics*.

Craig Hoffman and **Kevin Nolt** co-authored an article, *Washington Update — The 2020 Must Do List for Qualified Retirement Plans,* which was recently published in the February 2020 NIPA Strictly Business newsletter for TPA business owners.

On February 4, **Angel Garrett** participated in a Strafford Webinar, *Administering Benefit Claims: Avoiding Mishaps and Litigation, Compliance Challenges for ERISA Counsel*. The webinar addressed ERISA litigation stemming from inadequate administration of benefit claims with cases brought by plan participants and beneficiaries. The panel also discussed critical compliance and administrative challenges, and methods to effectively limit or avoid litigation.

Firm News continues on next page...

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On February 5–7, **Craig Hoffman** was a speaker at sessions of the FIS Advanced Pension Conference in Orlando, Florida. His topics included a Washington Update, DOL Proposed Regulations on E-Disclosure, MEPs and PEPs — Legal and Regulatory Update, The Making of a Regulation — the Federal Rulemaking Process, and an "Ask the Experts" Workshop.

On February 11, **Marc Fosse** participated in a panel discussion on a Strafford Webinar, *Employee Severance Agreements and Section 409A Deferred Compensation: Withstanding Heightened IRS Security*. The webinar provided guidance on structuring employee severance or separation agreements to comply with Section 409A's restrictions on deferred compensation; and the panel discussed best practices for performing compliance self-audits and taking corrective action to remedy substantive or documentary failures.

On February 24, **Craig Hoffman** led a session, *MEPs and PEPs* (Multiple Employer Plans and Pooled Employer Plans), presented by the Slavic 401(k) Client Conference in Delray Beach, Florida. The conference offered an in-depth look into effectively managing a MEP 401(k).

On February 27–28, **Katuri Kaye** participated in a panel discussion on the *IRS Practitioner's Panel* at the 2020 TE/GE Joint Council Meeting in Washington, DC.

On March 8–10, **Katuri Kaye** will be a panel speaker at the Pensions & Investments East Coast Defined Contribution Conference in Orlando, *What Plan Sponsors Need to Know About the SECURE Act.* In addition to SECURE, the panel will discuss other recent regulatory changes affecting retirement plans, along with a review of what could be ahead for retirement policy.

On March 10, join **Joe Faucher**, **Angel Garrett**, and **Brian Murray** for a Trucker Huss one-hour complimentary webinar, *Litigation Lessons and Minimizing Risks*. The presenters will discuss recent developments in ERISA litigation and tips on fulfilling your fiduciary duties.

Tuesday, March 10, 10–11 AM PDT
Registration:
https://register.gotowebinar.com/register/6744031994852914188

On March 14, **Angel Garrett** will be a presenter at the AABA's 11th Annual Pathways to Law Conference, a free, all-day conference for diverse students interested in pursuing a law degree.

On March 17, **Brad Huss**, **Clarissa Kang** and **Dylan Rudolph** will present an online webinar, *ERISA Litigation Recent Hot Issues*, sponsored by the Western Pension & Benefits Council. The webinar will cover developments in the courts in ERISA litigation matters, including the latest on 401(k) plan fee litigation, employer stock litigation, arbitration provisions in plan documents, and legal defenses to fiduciary breach litigation.

Tuesday, March 17, 10–11:45 AM PDT
Registration:
https://westernpension.org/event-3762504

On March 18, **Brad Huss** will present at the Sacramento Chapter of NIPA (National Institute of Pension Administration) on the topic of *Recent Developments in ERISA Litigation and Tips on Fulfilling Your Fiduciary Duties.*

Wednesday, March 18, 5–7 PM PDT

The Trucker ✦ Huss *Benefits Report* is published monthly to provide our clients and friends with information on recent legal developments and other current issues in employee benefits. Back issues of *Benefits Report* are posted on the Trucker ✦ Huss web site (www.truckerhuss.com).

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In response to new IRS rules of practice, we inform you that any federal tax information contained in this writing cannot be used for the purpose of avoiding tax-related penalties or promoting, marketing or recommending to another party any tax-related matters in this *Benefits Report*.

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