



# Schneider Downs 2018 Employee Benefits Forum

March 22, 2018

Big Thinking. Personal Focus.

# Agenda

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- Employee Benefit Plans Legislative Update, Jason Lumpkin – SDARS Shareholder and Scott Rain, Senior SDARS
- Employee Benefit Plan Accounting, Audit and Reporting Update - Jeanne Barrett, Shareholder Audit and Assurance Advisors and Todd Lucas, Senior Manager, Audit and Assurance Advisors
- Upcoming Changes to Form 5500 - Anthony Margiotta – SDARS Senior Manager
- Affordable Care Act Pay or Play Mandate - Jamie Leary, Steptoe & Johnson
- Employee Benefit Plans and Cybersecurity - Eric Fair – Manager, Internal Audit Technology

# Professional Credits

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- 2.5 CPE credits
- 2.5 HRCI credits
- 2.5 SHRM credits
- All certificates will be available at the end of the seminar.
- Please complete your evaluation.

# ERISA Plan Audit Universe

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- 81,387 plan audits
- 6,294 CPA firms performing audits
- 126 million participants covered
- \$7.5 trillion in plan assets subject to audit

# Schneider Downs ERISA Practice Overview

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- One of a small number of firms auditing more than 250 plans on an annual basis
- Perform audits of defined contribution and benefit plans, health & welfare plans, 403(b) and 401(a) plans, 11ks and ESOPs
- Member of the AICPA Employee Benefit Plan Audit Quality Center

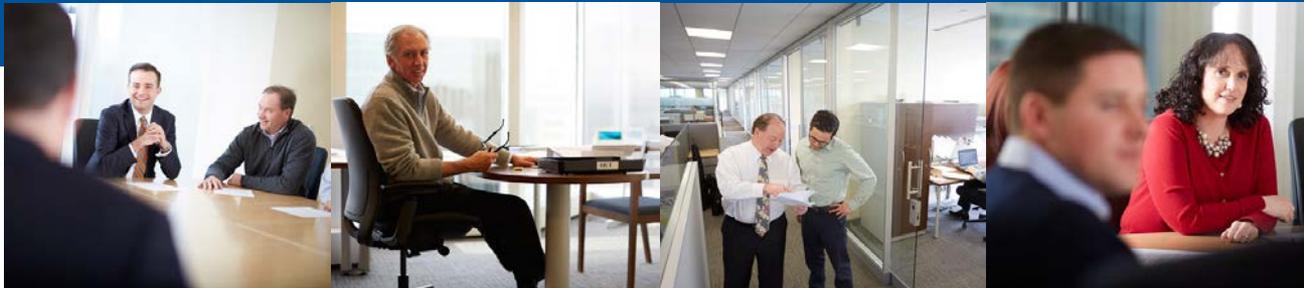
# SDARS Practice Overview

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- SDARS provides the following services:
  - Investment Advisory Services
  - Fiduciary Consulting Services
  - Plan Fee Benchmarking
  - Open Architecture Recordkeeping Platform
  - Compliance Testing and Form 5500 Preparation
  - Plan Design Consulting
  - ESOP Recordkeeping and Consulting
- “Full-service” Clients as of December 31, 2017
  - 92 Plans Covering over 10,000 Employees
- Retirement Plan Assets Under Advisement as of December 31, 2017
  - \$650,000,000 (\$1.4b between personal and retirement plans - SDWMA)
- ESOP Services
  - 12 Plans Covering over 5,000 Employees



# 2017-2018 Retirement Plan Regulatory Update



Schneider Downs & Co., Inc.  
SD*Advantage* Retirement Solutions, LP

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# DOL Fiduciary Rule

- The Department of Labor issued a final rule that delayed the implementation of the enforcement mechanisms of its fiduciary duty regulation until the middle of 2019.
- The rule would postpone, from January 1, 2018, to July 1, 2019, the applicability of prohibited-transaction exemptions.
- Effective June 2017, financial institutions are required to act in the best interest of investors
- During the 18-month transition period, the DOL said it "will not pursue claims against fiduciaries working diligently and in good faith to comply" with the impartial conduct standards that are already in place.
- SEC ?



# Tax Cuts and Jobs Act

The Act had minimal impact to 401(k) and other tax qualified plans. The significant provisions include:

- **Extended Rollover Period for Rollover of Plan Loan Offset Amounts**
- **Relief from Early Withdrawal Tax for “Qualified 2016 Disaster Distributions”**
- **Repeal of the Rule Allowing Recharacterization of IRA Contributions**



# Tax Cuts and Jobs Act

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## Extended Rollover Period for Rollover of Plan Loan Offset Amounts

- Under the Act, the period during which a qualified plan loan offset amount may be contributed to an eligible retirement plan as a rollover contribution would be extended from 60 days after the date of the offset to the due date (including extensions) for filing the Federal income tax return for the tax year in which the plan loan offset occurs.



# Tax Cuts and Jobs Act

## Relief from Early Withdrawal Tax for “Qualified 2016 Disaster Distributions”

- The relief would provide an exception to the 10% early withdrawal penalty for up to \$100,000 of “qualified 2016 disaster distributions.”
- These distributions are defined as distributions made between Jan. 1, 2016 and Jan. 1, 2018, to an individual whose principal place of abode at any time during calendar year 2016 was located in a declared disaster area and who has sustained an economic loss.



# Tax Cuts and Jobs Act

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## Repeal of the Rule Allowing Recharacterization of IRA Contributions

- The Act would repeal the rule that allows the reversal of an election to recharacterize IRA contributions to one type of IRA (either traditional or Roth). For example, under the Act, an election to convert a traditional IRA to a Roth IRA during a tax year can no longer be recharacterized as a contribution to a traditional IRA.



# Federal Budget Agreement

The two-year budget agreement that Congress passed includes several tax policy changes affecting retirement plans, including:

- Remove six-month prohibition on contributions to retirement plans after a hardship withdrawal
- Allow QNECs, QMACs and profit-sharing contributions to be included in a hardship withdrawal
- Special disaster-related rules and relief for use of retirement funds for individuals impacted by the California wildfires



# Disability Claims Procedures

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On December 19, 2016, the Department of Labor (the DOL) published final rules amending the claims procedures under ERISA as they relate to disability benefit determinations for group health plans and retirement plans.

The changes are designed to make the procedures for disability claims more like the procedures required for group health plans, with the goal of ensuring a full and fair review.

# Disability Claims Procedures

For example, the rule:

- Ensures that disability claimants receive a clear explanation of why their claim was denied as well as their rights to appeal a denial of a benefit claim and to review and respond during the course of an appeal.
- Requires that a claims adjudicator cannot be hired, promoted, terminated or compensated based on the likelihood of denying claims.



# 2018 Retirement Plan Limits

## Chart of Select Limits

### 401k Plan Limits for Year

	2018	2017	2016	2015	2014	2013	2012
401k Elective Deferrals	\$18,500	\$18,000	\$18,000	\$18,000	\$17,500	\$17,500	\$17,000
Annual Defined Contribution Limit	\$55,000	\$54,000	\$53,000	\$53,000	\$52,000	\$51,000	\$50,000
Annual Compensation Limit	\$275,000	\$270,000	\$265,000	\$265,000	\$260,000	\$255,000	\$250,000
Catch-Up Contribution Limit	\$6,000	\$6,000	\$6,000	\$6,000	\$5,500	\$5,500	\$5,500
Highly Compensated Employees	\$120,000	\$120,000	\$120,000	\$120,000	\$115,000	\$115,000	\$115,000

### Non-401k Related Limits

403b/457 Elective Deferrals	\$18,500	\$18,000	\$18,000	\$18,000	\$17,500	\$17,500	\$17,000
SIMPLE Employee Deferrals	\$12,500	\$12,500	\$12,500	\$12,500	\$12,000	\$12,000	\$11,500
SIMPLE Catch-Up Deferral	\$3,000	\$3,000	\$3,000	\$3,000	\$2,500	\$2,500	\$2,500
SEP Minimum Compensation	\$600	\$600	\$600	\$600	\$550	\$550	\$550
SEP Annual Compensation Limit	\$275,000	\$270,000	\$265,000	\$265,000	\$260,000	\$255,000	\$250,000
Social Security Wage Base	\$128,400	\$127,200	\$118,500	\$118,500	\$117,000	\$113,700	\$110,100

# IRS Revenue Procedure 2018-01

The IRS also reports that for 2018, it has modified the fees for voluntary correction program (VCP) filings, as well as other user fees.

## Changes to Fees for VCP Submissions

The IRS modified the user fee structure for VCP submissions so they are now as follows:

- \$1,500 for plans with assets of \$500,000 or less;
- \$3,000 for plans with assets of over \$500,000 to \$10,000,000; and
- \$3,500 for plans with assets of over \$10,000,000.
- The IRS made no changes to the user fee for group submissions, nor to the special fee waiver for terminating orphan plans.

# Hardship Distribution documentation

According to an IRS Memorandum for Employee Plans Examinations, if certain requirements are met, a plan can be treated as meeting the hardship substantiation requirements without obtaining and retaining the source documents. The four requirements are as follows:

- The participant must receive a notice about certain hardship rules and agree to retain and make available upon request the source documents.
- The third party administrator must obtain from the participant a summary of information contained in the source documents.
- The third party administrator must have a process by which it annually provides or gives the employer access to data on hardship withdrawals.
- The plan must have a procedure in place whereby participants do not receive more than two hardship withdrawals per year.



# Revenue Procedure 2017-41

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- In 2015, the IRS let it be known that as of this January it would change the determination letter landscape by eliminating the ability to obtain favorable determination letters for amendments or subsequent restatements of individually designed plans that had previously received a favorable determination letter.
- This Revenue Procedure changed the rules and procedures applicable to the third six-year pre-approved restatement cycle.



# MyRA Program Terminated

- After a review of the program and its cost-effectiveness, the Treasury Department announced July 28, 2017 that it will begin winding down the myRA program.
- Treasury said that a thorough review of the myRA program found that demand for myRAs has been extremely low, and the cost to taxpayers cannot be justified by the assets in the program.



# Form 5500 Penalties

The Department of Labor's Employee Benefits Security Administration has increased the civil penalties for failure to file the Form 5500.

- The maximum per-day penalty under ERISA Section 502(c)(2) for 2017 will be \$2,097; that is \$34 higher than the maximum rate for 2016 of \$2,063 per day.
- The adjustments for 2017 apply to violations occurring on or after Nov. 2, 2015.

# IRS Proposed Regulations

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The regulations amend the definitions for qualified matching contributions (QMACs) and qualified nonelective contributions (QNECs) in order to permit the use of forfeitures to fund such contributions in defined contribution plans, including ADP test safe harbor contributions.



# The Retirement Plan Modernization Act

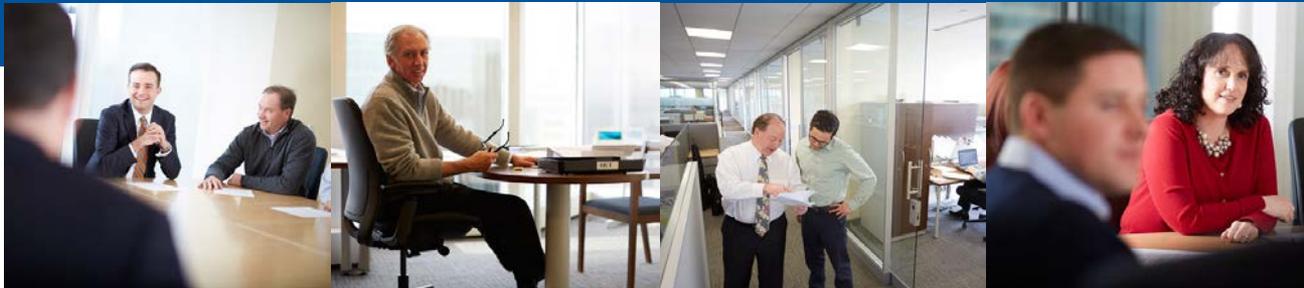
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- Legislation has been introduced that would increase the automatic IRA rollover limit for retirement plans.
- The Act would raise the automatic IRA rollover limit, based on the rate of inflation, from \$5,000 to \$7,600, and allow for future increases to be indexed for inflation.





# ??? QUESTIONS ???



Scott R. Rain, J.D.  
Jason M. Lumpkin, QKA, AIF®

Big Thinking. Personal Focus.



# Employee Benefit Plan Accounting, Audit and Reporting Update

March 22, 2018

Big Thinking. Personal Focus.

# Agenda

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Accounting and Reporting Update

Form 11-K Reporting (PCAOB standards) Update

On the Horizon – Proposed EBP Audit Standard

Determination Letter Program

Mortality Tables

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# ACCOUNTING AND REPORTING UPDATE

# ASU 2017-16 – Employee Benefit Plan Master Trust Reporting

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Clarifies the presentation and disclosure requirements for an employee benefit plan's interest in a master trust. Amendments do not affect sponsor accounting.

Does not affect the statements of net assets or changes in net assets

Effective for fiscal years beginning after December 15, 2018 (early adoption permitted)

Retrospective application

Must adopt the master trust amendments and the 401(h) amendments at the same time, if both are applicable

# ASU 2017-16 – Employee Benefit Plan Master Trust Reporting (continued)

## What's Clarified

- Reporting a plan's interest in a master trust and the change in the value of that interest as separate line items on the plan's financial statements
- Disclosing the master trust's investments by general type of investment.

## What's New

- Disclosing the master trust's other assets/liabilities.
- Disclosing the dollar amount of the plan's interest in the master trust's investments (for each general type) and other assets/liabilities.

# ASU 2017-16 – Employee Benefit Plan Master Trust Reporting (continued)

## What's the Same

- Net appreciation (depreciation) in the fair value of master trust
- Investment income of the master trust
- Description of the basis used to allocate net assets and total investment income to plan
- Percentage interest in the master trust for plans with undivided interests

## What's Eliminated

- Percentage interest in the master trust for plans with divided interests
- Providing investment disclosures in the H&W benefit plan relating to the 401(h) account assets

## ASU 2015-07 - Disclosures for Investments in Certain Entities That Calculate NAV per Share (or It's Equivalent)

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- Effective for fiscal years beginning after December 15, 2016 (2017 plan year ends) with early adoption permitted.
- Eliminates the requirement to categorize investments for which fair values are measured using the net asset value per share practical expedient.
- Also limits disclosures to investments for which the entity has elected to measure the fair value using the practical expedient.

# Readily Determinable Fair Value (RDFV)

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- The conclusion reached regarding RDFV is important because it determines whether an investment is eligible to estimate fair value using the NAV practical expedient.
- Inconsistencies exist in practice when evaluating certain types of investments (i.e., common collective trusts, stable value funds, etc.) for NAV or RDFV.
- If an investment has RDFV, it **cannot** be measured using the NAV practical expedient and would be subject to the fair value measurement disclosures including the requirement to categorize the investment within the fair value hierarchy.
- Clarifying guidance issued by the FASB.

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# FORM 11-K REPORTING UPDATE

# Form 11-K Reporting (PCAOB standards) Update

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- In June 2017, PCAOB Release 2017-01 – The Auditor’s Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion was issued.
- Requires the auditors to make the following modifications to the audit report
  - Add auditor tenure
  - Add a statement that the auditor is required to be independent
  - Enhance standardized language
  - Move the opinion to the first section of the report and include section titles
  - Communication of critical audit matters (CAMs) **NOT** required for employee benefit plans
- Effective for audits of fiscal years ending on or after December 15, 2017.

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# ON THE HORIZON

# Proposed EBP Auditing Standard

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- Revision intended to enhance audit quality and provide better insight into responsibilities of management and the auditor.
- Comment period on exposure draft ended September 2017.
- Proposed effective date for years ending after December 15, 2018 (2019 plan year end audits).
- EBP Task Force has been formed to review comments received and where applicable, suggest changes to the proposed standard.

# Proposed EBP Auditing Standard (continued)

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- Proposed standard initially included:
  - Changes to the form and content of an unmodified opinion (full scope audit)
  - Required audit procedures and new opinion for ERISA limited scope audits
  - Required audit procedures and reporting requirements relating to specific plan provisions
  - Inclusion of internal control related matters and findings in audit report
  - Required procedures relative to the Form 5500

# Proposed EBP Auditing Standard (continued)

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- Significant deliberations by EBP Task Force at meetings in October 2017 and January 2018
  - Focused on issues and feedback from exposure draft
    - Most significant change was the removal of audit findings from report
- Next steps.

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# MORTALITY TABLES

# Mortality Tables

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- The Society of Actuaries released new mortality tables in October 2014 called the RP-2014 tables
  - Subsequent improvement scales released in October 2015, 2016 and 2017
- Plan funding assumptions use different mortality tables but IRS is now conforming them, beginning in 2018.

# Mortality Tables (continued)

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- Mortality Improvement Scales (MP-2017)
  - Released October 20, 2017
  - Incorporates mortality data from the Social Security Administration, which indicates that deaths are occurring at rates slightly higher than assumed in 2016 mortality improvement scale (MP-2016)
  - Reflects a decrease in the rate of improvements in life expectancies in the United States compared with the data in the MP-2016
  - SOA did not update the RP-2014 base mortality tables

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# DETERMINATION LETTER PROGRAM

# Determination Letter Program

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- Elimination of 5-year amendment cycle for individually designed plans (IDP) effective January 1, 2017.
  - IRS will accept applications for initial plan qualification, termination and special exceptions
- Does not impact prototype or volume-submitter plans
- IRS will publish Required Amendment List annually (October 1)
  - An IDP must be amended to retain its qualified plan status for each item on the list by the end of the 2nd calendar year following the year the list is published
- Discretionary amendments are required by the end of the plan year in which the amendment is operationally put into effect.

# Determination Letter Program (continued)

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- Creates significant challenges for plan sponsors.
- Plan sponsors and those charged with governance should:
  - Obtain and review IRS Required Amendment List
  - Document process for determining which amendments are applicable and updating of determination letter
  - Carefully consider any and all voluntary amendments to the plan
  - Consult ERISA counsel



# Upcoming Changes for Form 5500



Presented by: Anthony J. Margiotta

Big Thinking. Personal Focus.

# Form 5500 Background

## What is a Form 5500?

The Form 5500 is an annual filing required by the Department of Labor and Internal Revenue Service for qualified retirement plans and certain health & welfare plans

Beginning with plan years starting January 1, 2009, Forms 5500 have been required to be electronically filed via the DOL's EFAST2 system

Forms 5500-EZ can still be filed using a paper version

# Form 5500 Background

## Due Date:

- Without filing and extension, 7 months following last day of the plan year
- Filing an extension via the Form 5558, Plan Sponsors are given an automatic 2½ months to E-File
- Only one extension can be filed

# Which Plans have a Form 5500 Filing Requirement?

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401(k) Plans

Profit Sharing Plans

ESOPs

Defined Benefit Plans

Certain Health & Welfare Plans

# What' New on the 2017 Form 5500?

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- **Form 5500/5500-SF – Plan Name Change**
  - Part II, Line 4 now requires that Plan Name Changes be listed in addition to any Plan Sponsor, EIN and Plan Number changes
- **Administrative Penalties**
  - There has been an increase in the penalties for Plan Sponsors who fail or refuse to file a complete or accurate Form 5500
  - Under the Employee Retirement Income Security Act of 2015, the maximum penalty has increased to \$2,097/day, up from \$2,063/day
  - Other potential penalties remain the same for 2017
- **Form 5500-SF – My PAA Confirmation**
  - For Defined Benefit Plans filing a Form 5500-SF, Part II, Line 6c was added requesting the Plan Sponsor's "My PAA" Confirmation Number related to their PBGC Premium filing
  - For 2016, this was only required for Form 5500 Schedules H/I
- **IRS-Only Questions**
  - IRS-Only questions on the Form 5500-SF, Form 5500 Schedule H/I/R have been removed

# Schedule H/I - Trust Information

**5c** If the plan is a defined benefit plan, is it covered under the PBGC insurance program (See ERISA section 4021.)? .....  Yes  No  Not determined  
If "Yes" is checked, enter the My PAA confirmation number from the PBGC premium filing for this plan year. [redacted] (See instructions.)

<b>Part V</b>	<b>Trust Information</b>
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<b>6a</b> Name of trust [redacted]	<b>6b</b> Trust's EIN [redacted]
<b>6c</b> Name of trustee or custodian [redacted]	<b>6d</b> Trustee's or custodian's telephone number [redacted]

# Form 5500-SF

<b>Part VIII</b>	<b>Trust Information</b>		
<b>14a</b>	Name of trust	<b>14b</b>	Trust's EIN
<b>14c</b>	Name of trustee or custodian	<b>14d</b>	Trustee's or custodian's telephone number
<b>Part IX</b>	<b>IRS Compliance Questions</b>		
<b>15a</b>	Is the plan a 401(k) plan? If "No," skip b.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>15b</b>	How did the plan satisfy the nondiscrimination requirements for employee deferrals under section 401(k)(3) for the plan year? Check all that apply:	<input type="checkbox"/> Design-based safe harbor	<input type="checkbox"/> "Prior year" ADP test
		<input type="checkbox"/> "Current year" ADP test	<input type="checkbox"/> N/A
<b>16a</b>	What testing method was used to satisfy the coverage requirements under section 410(b) for the plan year? Check all that apply:	<input type="checkbox"/> Ratio percentage test	<input type="checkbox"/> Average benefit test <input type="checkbox"/> N/A
<b>16b</b>	Did the plan satisfy the coverage and nondiscrimination requirements of sections 410(b) and 401(a)(4) for the plan year by combining this plan with any other plan under the permissive aggregation rules?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>17a</b>	If the plan is a master and prototype plan (M&P) or volume submitter plan that received a favorable IRS opinion letter or advisory letter, enter the date of the letter ___/___/___ and the serial number _____		
<b>17b</b>	If the plan is an individually-designed plan that received a favorable determination letter from the IRS, enter the date of the most recent determination letter ___/___/___		
<b>18</b>	Defined Benefit Plan or Money Purchase Pension Plan Only: Were any distributions made during the plan year to an employee who attained age 62 and had not separated from service?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>19</b>	Was any plan participant a 5% owner who had attained at least age 70 ½ during the prior plan year?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

# Schedule R

Part VII	IRS Compliance Questions
<b>20a</b> Is the plan a 401(k) plan? If "No," skip b .....	<input type="checkbox"/> Yes <input style="margin-left: 150px;" type="checkbox"/> No
<b>20b</b> How did the plan satisfy the nondiscrimination requirements for employee deferrals under section 401(k)(3) for the plan year? Check all that apply: .....	<input type="checkbox"/> Design-based safe harbor <input style="margin-left: 100px;" type="checkbox"/> "Prior year" ADP test <input type="checkbox"/> "Current year" ADP test <input style="margin-left: 100px;" type="checkbox"/> N/A
<b>21a</b> What testing method was used to satisfy the coverage requirements under section 410(b) for the plan year? Check all that apply: .....	<input type="checkbox"/> Ratio percentage test <input style="margin-left: 50px;" type="checkbox"/> Average benefit test <input style="margin-left: 50px;" type="checkbox"/> N/A
<b>21b</b> Did the plan satisfy the coverage and nondiscrimination requirements of sections 410(b) and 401(a)(4) for the plan year by combining this plan with any other plan under the permissive aggregation rules? .....	<input type="checkbox"/> Yes <input style="margin-left: 150px;" type="checkbox"/> No
<b>22a</b> If the plan is a master and prototype plan (M&P) or volume submitter plan that received a favorable IRS opinion letter or advisory letter, enter the date of the letter ___/___/___ and the serial number _____	
<b>22b</b> If the plan is an individually-designed plan that received a favorable determination letter from the IRS, enter the date of the most recent determination letter ___/___/___	

# Possible Changes for the 2019 Form 5500

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## Why are these changes being proposed?

- Make the reporting of financial information more modern
- Collect more information for group health plans
- Improve Fee Reporting
- Improve IRC and ERISA Compliance
- Mineability of Data
- Proposed changes represent the most significant modifications to the Form 5500 since the 2009 version

# Possible Changes for the 2019 Form 5500

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- Financial Reporting
  - Adding categories of investments and transactions to the Schedule H (Derivatives, Hedge Funds, Commodities, etc.)
  - Provides additional disclosure for more complex investment vehicles
- Additional Compliance Questions
  - Additional questions could be related to previously-introduced sections (unused 2015/2016 Form 5500 compliance categories)
  - Hardship distributions, uncashed checks, investment offerings, additional participant information

# Possible Changes for the 2019 Form 5500

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- Welfare Plans
  - Elimination of the exception of filing a Form 5500 for welfare plans under 100 participants
  - Introduction of the Schedule J
    - More extensive reporting for Welfare Plans
    - Could include questions about participants/beneficiaries, plan offerings, funding arrangement, Employer/Participant Contributions
    - This schedule will be used to gather more detailed information on welfare plans compared to current version of the Form 5500
- Enhanced Fee Disclosure
  - Could add more questions about the types of fees paid by the plan on Schedule H
  - Changes and Improvements to fee reporting on the Schedule C, including for small plans

# Possible Changes for the 2019 Form 5500

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- Other Possible Changes
  - Additional Plan Characteristic Codes for Form 5500, Part II, Lines 8a-8b
    - Safe Harbor Provisions
    - Roth Contributions
  - Schedule E could return to the Form 5500 (ESOP Information)
    - Removed from the Form 5500 through the 2009 revision
  - New Participant Data Questions
    - Number of participants with account balances at the beginning of the year?
    - Number of participants that made contributions during the year?
    - Number of employees who terminated employment during the year who had their entire account balance distributed?

# Possible Changes for the 2019 Form 5500

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Impact of possible Form 5500 changes:

- Plan Sponsors must make sure that all Plan Document Information is in compliance
- Plan Sponsors must use extra caution to ensure that all questions are answered accurately
- Form 5500 preparers must be ready to request and gather additional detailed information
- Possible new filings for welfare plans
- The good news...still plenty of time to prepare
  - 2019 Forms 5500 will not need to be filed until 2020

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# Questions?

# ACA Play or Pay Enforcement

**Jamie L. Leary**  
Steptoe & Johnson PLLC

*These slides were current as of January 2018, reflect proposed and/or interim guidance, and state general rules that may not apply in all situations. Conditions, exceptions, and qualifications may apply. You should not rely upon these materials. You should seek the advice of experienced benefits counsel for advice pertinent to you.*

Mail no one wants  
with a 30 day clock  
that started running  
when the IRS wrote it.



Department of the Treasury  
Internal Revenue Service

Taxpayer Name  
Taxpayer Address  
City, ST Zipcode

Date:  
02/13/2018  
Tax year:  
YYYY  
Employer ID number:  
#####  
Person to contact:  
Contact Name  
Employee ID number:  
#####  
Contact telephone number:  
(###) ###-####  
Contact e-fax number:  
(###) ###-####  
Response date:  
03/05/2018

Dear Taxpayer:

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.

**Proposed ESRP \$0.00**

Our records show that you filed one or more Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, and one or more Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS. Our records also show that for one or more months of the year at least one of the full-time employees you identified on Form 1095-C was allowed the premium tax credit (PTC) on his or her individual income tax return filed with the IRS. Based on this information, we are proposing that you owe an ESRP for one or more months of the year.

You generally owe an ESRP for a month if either:

- You did not offer minimum essential coverage (MEC) to at least 100% of your full-time employees (and their dependents) and at least one of your full-time employees was certified as being allowed the PTC; or
- You offered MEC to at least 100% of your full-time employees (and their dependents), but at least one of your full-time employees was certified as being allowed the PTC (because the coverage was unaffordable or did not provide minimum value, or the full-time employee was not offered coverage).

This letter certifies, under Section 1411 of the Affordable Care Act, that for at least one month in the year, one or more of your full-time employees was enrolled in a qualified health plan for which a PTC was allowed. Based on this certification and information contained in our records, we are proposing that you owe an ESRP of \$0.00.

**What you must do**

Review this letter carefully. It explains the proposed ESRP and what you should do if you agree or disagree with this proposal. You must tell us whether you agree or disagree with the proposed ESRP by the Response date on the first page of this letter.

The following items are included:

- An explanation of the employer shared responsibility provisions in Internal Revenue Code (IRC) Section 4980H, which are the basis for the ESRP. See **About the ESRP**;
- An **ESRP Summary Table** itemizing your proposed ESRP by month;
- An **Explanation of the ESRP Summary Table**.

**Letter 226-J (Rev. 1-2018)**



Department of the Treasury  
Internal Revenue Service

ABC-XYX COMPANY  
22 BOULDER STREET  
Hanson, CT 00000-7253

<b>Notice</b>	CP220J
<b>Tax period</b>	December 31, 2015
<b>Notice date</b>	February 5, 2018
<b>Employer ID number</b>	xx-xxxxxxx
<b>To contact us</b>	Phone 1-800-xxx-xxxx

Page 1 of 4

We charged you an Employer Shared Responsibility Payment (ESRP)

**Amount due: \$0.00**

We charged you an (ESRP) for the tax period ended December 31, 2015, because in one or more months one of the following occurred:

- You didn't offer Minimum Essential Coverage (MEC) to at least 70% (after 2015 95%) of your full-time employees (and their dependents) and at least one full-time employee received the Premium Tax Credit (PTC).
- You offered MEC to at least 70% (after 2015 95%) of your full-time employees (and their dependents), but at least one full-time employee received the PTC.

However, you don't owe us any money, nor are you due a refund.

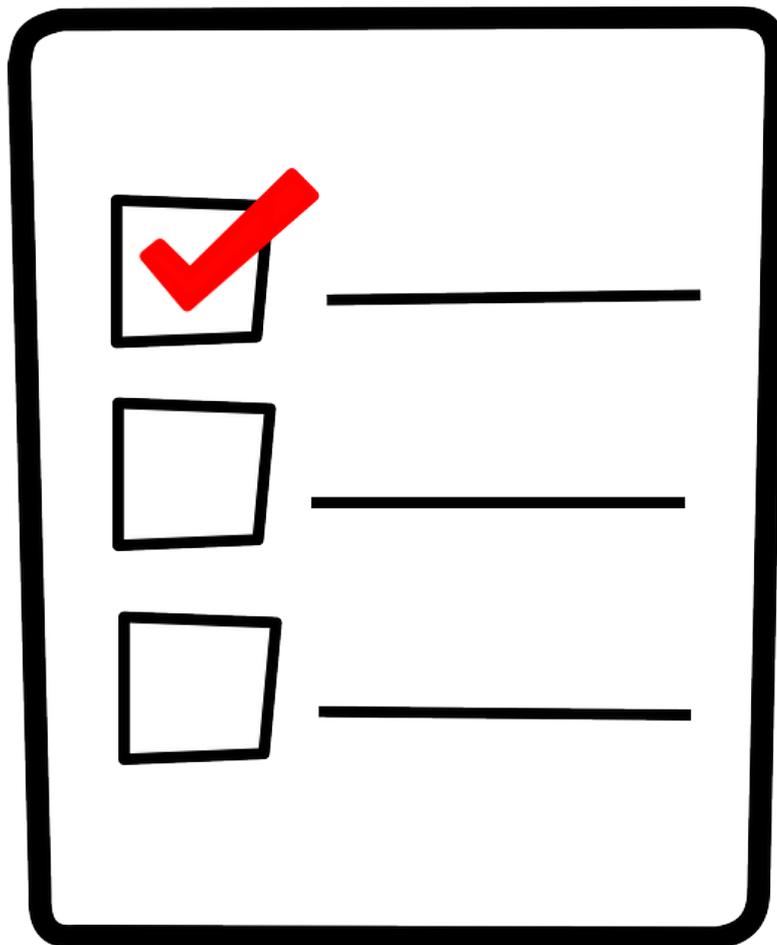
**Billing summary**

ESRP amount	
Payments and credits	
<b>Amount due</b>	<b>\$0.00</b>

# Letter 226J

- Preliminary calculation of 4980H penalty
- Contains:
  - ESRP Summary Table
  - Form 14765, Employee PTC Listing
  - Form 14764, ESRP response
  - Contact information for IRS agent
  - Serves as Section 1411 Certification

# Check Everything!



# Play or Pay Mandate

Play by offering minimum essential coverage (“MEC”) to all full-time employees and their dependents, which MEC is affordable and provides minimum value,

or

Pay a penalty if one or more full-time employee enrolls in Marketplace coverage and receives a premium tax credit

ESRP Summary Table

Month	Information Reported to IRS		c.	d.	e.	f.	g.
	a.	b.					
	Form 1094-C, Part III, Col (a)  Minimum essential coverage offer indicator offered to at least [70% or 95%]	Form 1094-C, Part III, Col (b)  Full-time employee count for ALE member	Allocated reduction of full-time employee count for IRC Section 4980H(a)	Count of assessable full-time employees with a PTC for IRC Section 4980H(a)	Count of assessable full-time employees with a PTC for IRC Section 4980H(b)	Applicable IRC Section 4980H provision	Monthly ESRP amount
Jan	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
Feb	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
March	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
Apr	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
May	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
June	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
July	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
Aug	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
Sep	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
Oct	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
Nov	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
Dec	[Yes/No]	[xxx]	[xx]	[x]	[x]	[4980H(a)/4980H(b)]	[\$xx,xxx]
						Total Proposed ESRP	[\$xxx,xxx]

# 4980H(a): Failure to Offer Coverage

- If you did not offer MEC to at least 95% of full-time employees and their dependents, and
- At least one full-time employee received subsidized Marketplace coverage,

**THEN you pay 4980H(a) penalty x (# full-time EEs - 30)**



- Penalty: \$173.33/mo in 2015

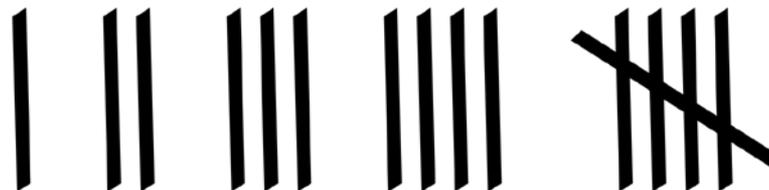
# ACA Full-Time Employees

**Full-time employee = avg 30 hrs/wk = 130 hrs/mo**

Two methods:

- Monthly measurement method
- Look back measurement method

*Did you count hours of service correctly?*



Form 1094-C (2015)

**Part III ALE Member Information – Monthly**

		(a) Minimum Essential Coverage Offer Indicator		(b) Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Section 4980H Transition Relief Indicator
		Yes	No				
23	All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24	Jan	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
25	Feb	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
26	Mar	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
27	Apr	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
28	May	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
29	June	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
30	July	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
31	Aug	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
32	Sept	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
33	Oct	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
34	Nov	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
35	Dec	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	

Form 1094-C (2015)

# 4980H(b) – Insufficient Coverage

- If a full-time employee was not eligible for your plan, or
- he was eligible for your plan, but
  - the plan was not affordable, or
  - the plan didn't provide minimum value

AND he receives subsidized Marketplace coverage, then

**you pay 4980H(b) penalty x # each such full-time EE**



- Penalty: \$260/mo in 2015

# Affordable

Affordable: Cost to EE for lowest cost self-only coverage that provides MV must not have exceeded 9.5%\* of household income

- Safe harbors available
  - Federal poverty level
  - Employee's rate of pay
  - Employee's Box 1 of W-2
- Outside the safe harbor . . .



# Minimum Value

Minimum value = Plan must cover at least 60% of the cost of benefits provided under the plan, determined via:

- Online calculator
- Safe harbor design
- Certification by actuary

# 2015 Transition Relief

- Midsize ALEs (**50 to 99 FTEs** during 2014)
  - No monetary penalties due for 4980H noncompliance
- Large ALEs (**100+** FTEs during 2014)
  - Required to offer MEC to only 70% of full-time employees
  - 80 free EEs in any 4980H penalty calculation
- Non-calendar plan year

Form **14765**  
(April 2017)

Department of the Treasury - Internal Revenue Service

### Employee Premium Tax Credit (PTC) Listing

Any month not highlighted is a month that the employee received a PTC and no safe harbor or other relief from the ESRP was applicable. The employee is an assessable full-time employee for that month.

Employer name Employer ID number Tax year

Employee Name <i>(last, first)</i>	SSN <i>(last 4 digits)</i>	All 12 months Indicator Codes <i>(Form 1095-C, lines 14 and 16 combined)</i>	Tax year												Additional Information Attached	
			Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
																<input type="checkbox"/>
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Codes from  
Lines 14 & 16 on  
Form 1095-C

ER may indicate  
corrections

# Employee PTC Listing

Who SHOULD be listed?

Employees

- For whom you filed a Form 1095-C,
- Who were allowed a premium tax credit for one or more months, and
- For whom you did not report ESRP relief

*Note: Handle this information with care.*



Form **1095-C**

Department of the Treasury  
Internal Revenue Service

**Employer-Provided Health Insurance Offer and Coverage**

► Information about Form 1095-C and its separate instructions is at [www.irs.gov/form1095c](http://www.irs.gov/form1095c)

VOID

CORRECTED

600116  
OMB No. 1545-2251

**2015**

Part I Employee						Applicable Large Employer Member (Employer)						
1 Name of employee			2 Social security number (SSN)			7 Name of employer				8 Employer identification number (EIN)		
3 Street address (including apartment no.)						9 Street address (including room or suite no.)				10 Contact telephone number		
4 City or town		5 State or province		6 Country and ZIP or foreign postal code		11 City or town		12 State or province		13 Country and ZIP or foreign postal code		

Part II Employee Offer and Coverage	Plan Start Month (Enter 2-digit number):												
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)													
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)													



Part III Covered Individuals															
If Employer provided self-insured coverage, check the box and enter the information for each covered individual. <input type="checkbox"/>															
(a) Name of covered individual(s)	(b) SSN	(c) DOB (if SSN is not available)	(d) Covered all 12 months	(e) Months of Coverage											
				Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
17			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# Who You Gonna Call?

- Who prepared Forms 1094/95-C?
- Who has copies of the Forms you filed?
- Who has enrollment and payroll data?
- Who determined ALE status?
- Who determined employee full-time status?

# Remember That 30-Day Clock?



Form **14764**  
(April 2017)

Department of the Treasury - Internal Revenue Service

**ESRP Response**

Complete both sides of this form and return it to the address below so that we receive it by . An envelope has been enclosed for your convenience. To request more time to respond, call us at .

Return form to: Department of the Treasury  
Internal Revenue Service  
Group 2219  
7300 Turfway Road, Suite 410  
Florence, KY 41042

**Provide Your Contact Information**

Name

Address (if you changed your address, make the changes below)

Primary telephone number Best time to call

Secondary telephone number Best time to call

**Indicate Your Agreement or Disagreement**

**Agreement with proposed assessment**

I consent to the assessment and collection of the of the proposed assessment of the ESRP in the amount of

Signature Date

Print name and title of the person who signed above

**Partial/Total disagreement with proposed assessment**

I disagree with part or all of the proposed assessment of the ESRP

**Indicate Your Payment Option (check allthat apply)**

Full payment using EFTPS on

Partial payment using EFTPS on

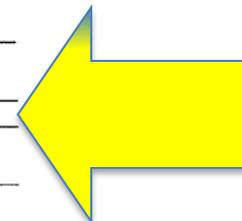
Enclosed full payment of \$

Enclosed partial payment of \$

No payment

- Write your employer ID number , the tax year and ESRP on your payment and any correspondence.
- Make your check or money order payable to the United States Treasury.

Catalog Number 68861Z [www.irs.gov/Form](http://www.irs.gov/Form) **14764** (4-2017)



# If You Agree With the Assessment

Return Form 14764 by the deadline and either

- Include payment or
- Seek alternative payment options

# If You Disagree With the Assessment

Return Form 14764 by the deadline:

- Include signed statement with explanation and supporting documentation

IRS's response: Letter 227

- 5 different versions

ALE may request a pre-assessment conference with Office of Appeals

# Any Questions?

**Please keep in mind that these slides are only a summary of ACA Play or Pay enforcement, and this is an area of law still evolving.**

Jamie L. Leary  
Of Counsel

Steptoe & Johnson PLLC  
1233 Main Street, Suite 3000  
Wheeling, WV 26003  
(304) 231-0471

[jamie.leary@steptoe-johnson.com](mailto:jamie.leary@steptoe-johnson.com)

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**THANK YOU!**



# Employee Benefit Plans and Cybersecurity



Eric Fair, CISA, CBCLA  
*Manager, IT Risk Advisory Services*

Big Thinking. Personal Focus.

# Agenda

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- What is Cybersecurity
- Cybersecurity Statistics
- Common Cyber Threats
- Impact of Cyber Threats
- What it Means to You
- Your Role
- Challenges
- Effective Practices
- Cybersecurity Frameworks
- Industry Initiatives / Developments
- Resiliency
- Cybersecurity Considerations



# Cybersecurity

- Technologies, processes, and practices designed to protect networks, hardware, software, and data from attack, damage, or unauthorized access.
- Will continue to be a concern within every organization in today's digitally connected world.
- Awareness and understanding potential risks and responses is critical for everyone (including vendors/suppliers) to ensure ongoing business resiliency.



# Cybersecurity Statistics

- Cybercrime damage costs are expected to reach \$6 trillion annually by 2021
  - Currently \$600 billion
  - 2014: \$450 billion
- Cybersecurity spending will exceed \$1 trillion from 2017-2021
- Cost per breach: \$7 million (legal, notification, forensics, credit monitoring, etc)
- Cost per breached record: \$221
- The industry will need 3.5 million new cybersecurity workers to help control the threats
- Organizations are under increased pressure to demonstrate their resiliency through effective processes and controls to detect, respond, mitigate, and recover from cybersecurity events

*The Center for Strategic and International Studies (CSIS) and McAfee CSO*



# Common Cyber Threats

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- Ransomware
- Phishing
- Unpatched systems
- Malware



# Impact of Cyber Threats

- Disruption of business
- Result in financial losses
- Destroy an organization's reputation

*"It's not a matter of if, but when"*

*"Expect to get hacked"*





# What it Means to You



- Protecting the privacy and security of benefit data and personal information (PII, PHI)
- Who manages / where maintained?
- Risk Assessment should include electronic plan records, as well as:
  - Involvement from plan administrators and result in:
    - Written IS policies to include encryption
    - Periodic audits to detect threats
    - Periodic testing of backup and recovery plans
    - Ownership / Responsibility for data loss
    - Cybersecurity insurance
    - Ongoing training to reinforce data security

# Your Role

- Have an understanding of potential risks to your organization
- Apply a security mindset to your daily duties to help protect data
- Understand what data you have access to, where it is stored, how it is protected and shared
- Administrative service providers are essential in the protection of PII
- Understand any extensive regulations or legal requirements to protect PII, within your industry
- The more service providers and users administering benefit plans, the likelihood of a breach increases



# Challenges

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- Limited resources
- Limited technical expertise
- Lack of clear standards
- Use of cloud-based solutions to offload cybersecurity burdens





# Effective Practices



- Any combination of the effective practices below can be accomplished by consulting with IT risk and cybersecurity professionals
  - Data Management
    - Protection, encryption
  - Technology Management
  - Service Provider Management
    - Plan administrators, actuaries, auditors, trustees, insurers and consultants
  - End User Awareness / Training



# Cybersecurity Frameworks



- NIST Cybersecurity Framework (CSF)
  - Identify
  - Protect
  - Detect
  - Respond
  - Recover
- ISO 27001
- CIS Critical Security Controls
- PCI Data Security Standard (DSS)



# Industry Initiatives / Developments

- Health Information Trust Alliance (HITRUST)
- AICPA Initiatives for SOC Reporting
  - SOC 2
  - SOC for Cybersecurity
- Society of Professional Asset-Managers and Record Keepers (SPARK)
- General Data Protection Regulation (GDPR)



# Resiliency



- Business continuity plans?
  - Few organizations regularly test the resilience and recovery of systems, let alone dedicate resources for teams to practice how to respond to a cyberattack.
  - Cyberattacks can cost an organization millions to recover, in addition to system and business disruption, lost business and reputational damage.
  - Having plans in place, tested, and regularly updated and help build resiliency and reduce the impact and overall risk.



# Cybersecurity Considerations



- Establish a Strategy
  - Understand the plan's data
    - Inventory data, data elements, "data diet"
  - Frameworks
    - NIST, SAFETY Act
  - Process considerations
    - Implementation/monitoring, testing/updating, reporting, training, access control, data retention/destruction, third party risk management
  - Strike the right balance
    - ERISA requirements, participants/beneficiaries, legal counsel, size/complexity, to determine overall risk
  - State law considerations
    - anyone dealing with employee benefit plan data should have legal counsel advise them on the applicability of such laws in the event of a breach
- Perform Due Diligence on Service Providers
  - Use service providers whose cybersecurity policies and procedures have been vetted.
  - Clearly define security obligations, setting forth which party is responsible for which security measures and of what exactly those measures will consist.
  - Breach notification and the right to audit are essential for inclusion in contracts with service providers.
- Insurance Considerations
  - Understand what cyber insurance does and does not provide and how it coordinates with other types of insurance coverage; incorporate cyber insurance into your cyber risk management strategy.



# Questions

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**Eric Fair, *CISA, CBCLA***

Manager, IT Risk Advisory Services

Schneider Downs & Co., Inc.

*efair@schneiderdowns.com*

*www.schneiderdowns.com*