

## H. C. FOSTER & COMPANY

Retirement and Welfare Plan Actuaries

P.O. Box 99, Belle Rive, Illinois 62810 ■ (618) 244-1850  
hcfoster@mvn.net ■ www.hcfoster.com ■ Deliveries to 8252 North Program Lane

### EA Meeting Topics – Spring 2016

The 41st Annual Enrolled Actuaries (EA) Meeting was held in Washington, DC during April 2016. The Meetings are sponsored by joint boards of the American Academy of Actuaries and the Conference of Consulting Actuaries with industry specialist, IRS, DOL, and PBGC representatives presenting their unofficial sides of current regulatory issues, and not representing the Meeting sponsors. Enrolled actuaries from across the nation regularly attend these Meetings to obtain their continuing educational credits and information directly from governmental officials. This year's more notable topics included the following:

*Multiemployer plans* – a PBGC representative predicted the largest of the multiemployer pension plan takeovers are yet to come. PBGC assumes the benefit payment liabilities for both private and collectively bargained plans when it sees emerging unfunded liabilities not likely to be funded due to insufficient contribution levels as occurs when union employment levels decrease. This is a negative economic indicator foreshadowing the failure of more large single employer pension plans because if employers are not hiring workers, then employers can not produce marketable goods for profits that fund their privately sponsored pension plans.

*FASB follies* – investors, lenders, and others depending on corporate financial statements should know that the reported pension liabilities may be overstated for 2014 and 2015 employer fiscal years. The Society of Actuaries issued the RP-2014 Mortality Tables during 2014 to update the RP-2000 Mortality Tables along with updates to the mortality improvement factors, more recently the MP-2014 and MP-2015 tables. The Financial Accounting Standards Board (FASB) guidelines suggest FASB valuations be based on the latest available mortality tables, but tailored to each employee group's specific experience. Many accounting firms interpreted the FASB guidance to mean the RP-2014 tables should be applied with full mortality improvements through age 120 without modifications producing very large pension liabilities compared to liabilities under other measurements at the same valuation interest rates where IRS recognizes only one year's mortality improvements each year. Actuaries are required to disclose when assumptions prescribed by an outside source produce unreasonable results as may occur when mortality improvements are projected through age 120. This situation was addressed in several discussions at the Meeting.

*Fiduciary matters* – as reported in our Spring 2015 Newsletter, the ERISA fiduciary requirements were finally codified by DOL nearly 39 years after ERISA. A *fiduciary* is defined generally as any "person", i.e., individuals or institutions, exercising discretionary authority or control over a plan's management. Employers as plan sponsors can not escape fiduciary responsibility that extends well beyond plan matters. The fiduciary regulations primarily target investment matters that ERISA allows employers to delegate to professional investment managers. A primary concern of accountants, attorneys, and actuaries is that they do not inadvertently incur fiduciary status via advice that implies discretionary authority and/or control over plan matters. One speaker opined that a non-fiduciary's silent nod of the head in response to an employer's question could make him or her a fiduciary. Plan sponsors can minimize possible fiduciary errors by: (a) timely distributing employee disclosures; (b) being available and willing to meet with employees to discuss their benefit plan questions with extra copies of Summary Plan Descriptions, welfare plan booklets, and other disclosures to show as informational sources; (c) maintaining up-to-date investment policies for retirement plan investment strategies as required under ERISA; and, (d) documenting all communications with plan participants. The lesson for advisors is to report the options and facts, but avoid any decision making responsibility.

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*Investment and administrative fee disclosures* – this topic, also discussed in our Spring 2015 Newsletter, appeared notably absent from the discussions about fiduciary requirements. The U.S. Senate recently voted to nullify the fiduciary rules. Agendas, including the U.S. Chamber of Commerce, fighting to preserve commission income from Section 401(k) plan investments want to limit the expanded fiduciary and investment fee disclosure requirements under the guise these requirements increase plan Sponsors' administrative expenses - contrary to the fact that greater scrutiny should reduce these charges. A 2.0% reduction in net investment returns from 7.0% to 5.0% for sales commissions and expenses reduces annually compounded total investment returns about 26% over a 25 year period. See also the 401k helpcenter.com website for a list of the many lawsuits against Section 401(k) plan sponsors.

*Cash balance plans(CBP)*s – CBPs received a fair amount of attention at this year's Meeting, due in part to the new final and proposed regulations IRS issued for hybrid plans on September 14, 2014. CBPs pay the greater of a hypothetical account balance accumulated at specified investment return rates or the actuarially equivalent accrued pension benefit under defined benefit pension plan provisions with a Lump Sum Distribution option permitted. These plans are treated as defined benefit plans requiring annual Form 5500 Schedule SB certifications by an enrolled actuary. Their appeal in recent years stems from the individual account concept that appears more readily understandable by plan participants and others, but actually requires rather complicated calculations to administer and determine benefits. Anyone connected with a CBP should review their plan for the latest compliance requirements.

*Court cases affecting benefit plans* - this session is always one of the most interesting of all the topics at the Annual EA Meetings. Below are the cases cited in the 2016 Meeting litigation session copied in the format presented. We believe it informative for plan sponsors to find these cases on the Internet and review them for insights to their benefit plan practices. Court cases are a matter of public record, so non-attorney advisors are permitted to disseminate this type of information in an administrative support role.

- Fleming Cardiovascular, P.A. vs Commissioner, TC Memo 2015-224
- Durand v. The Hanover Insurance Group, Inc. (2015, CA6) 2015 WL 6760548)
- Resilient Floor Covering Pension Trust Fund Board of Trustees v. Michael's Floor Covering, Inc., (2015, CA9) 2015 WL 5295091
- Laurent v. PricewaterhouseCoopers LLP, (2015, CA2) 2015 WL 4477191
- Boxell v. The Plan for Group Ins. of Verizon Communications Inc., (2015, N.D. Ind.) 2015 WL 4464147
- William Lee v. Verizon Communications, Inc. (2015, CA5) 2015 WL 4880972
- Jeffrey Perelman v. Raymond Perelman (2015, CA3) 2015 WL 4174537
- Vee's Marketing, Inc., v. Commissioner (2015, DC WI) 114 AFTR 2d 2015-756
- Reilly v. Continental Casualty Co. (2015, CA7) 2015 WL 2081418)
- Paul, John Jr. v. Detroit Edison Co. (2015, ED Mich) 2015 WL 1469314
- In Board of Trustees of the IBT Local 863 Pension Fund v. C & S Wholesale Grocers, Inc., Woodbridge Logistics, LLC, (3rd Cir. 2015) 2015 WL 5438539
- Addendum – additional cases referenced Church Plan cases as numerous cases have been brought, mostly or all the same law firm, against hospitals associated with various churches, including the Roman Catholic Church, that sponsor pension plans.
- Admin Comm of Northrup Grumman Savings Plan v. Lankford, 2015 BL 118595 (D. Colo. Apr. 23, 2015).

Please e-mail any questions or comments.