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# LAW FIRM PARTNERSHIP & BENEFITS *Report*®

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## Time For a New Definition of Competence?

By Phyllis Weiss Haserot

At a program I recently attended, I heard a psychiatrist and performance coach say that the “system” (the work world) is designed to make people “appear competent” rather than, in my words, versatile or interesting or curious. He said that most people are not comfortable with their humanity and vulnerability, and are not ready when opportunity appears.

On balance, is this state of affairs emphasizing data and technical expertise a benefit or hindrance to successful professional services talent and business development? I see the positive side as emphasizing capabilities, depth of experience and a focused approach. However, the downside is that it discourages people from pursuing outside interests and making contributions that will fulfill them, leading to wanting to do and accomplish more. It makes them narrow individuals who don’t have places to hang out and talk with prospective clients. And it makes it more difficult to develop trusting relationships, which tend to be based on the whole person.

Does the innate need to appear “competent” help or hinder a professional’s ability to develop business, develop future talent and give superior service to clients? Competence is undoubtedly good, but do we need a new definition of “competence”? And

*continued on page 4*

## Social Security Facts and Strategies

By Richard Stieglitz and Asal Mirsalimi

**S**ocial Security is the biggest retirement system in the United States and its benefits play an important role for retiring Baby Boomers. Millions of Americans depend on their monthly benefits, the amount which can be affected by various factors, most importantly the age at which you retire.

### RETIREMENT AGE

The normal retirement age, also known as the Full Retirement Age, is currently 66, which applies to anyone born between the years 1943-1954. Full Retirement Age is deferred by two months for each year born after 1954, and is age 67 for anyone born after 1959. Beneficiaries can delay their retirement up until age 70, and receive an increase in their benefits of approximately 8% for every year they wait. There is also a permanent monthly benefit reduction of up to 25% if the beneficiary chooses to retire early, currently as early as age 62.

If the beneficiary chooses to continue working while receiving benefits prior to the month he/she reaches Full Retirement Age, he/she will be subject to an earning limitation. The earning limitation is \$14,640 prior to the year they reach Full Retirement Age; \$1 is withheld for every \$2 earned above the limit. In the year in which they reach Full Retirement Age, the earning limit is \$38,880 and for every \$3 above the limit there will be \$1 benefits withholding. The withholdings only apply to the benefits taken prior to the month the beneficiary reaches Full Retirement Age. Once the beneficiary reaches Full Retirement Age, he/she is no longer subject to any earnings limitation.

### SOCIAL SECURITY BASICS

For 2012 the taxable earnings base and FICA tax rate are \$110,100 and 6.2%. Amount of earnings required to earn one Social Security credit in 2012 is \$1,130. Forty credits must be earned with a maximum of four credits per year in order to be fully insured. Each year, Social Security benefits are increased by a percentage based on inflation, also known as the Cost of Living Adjustment (COLA). The 2012 COLA is 3.6%.

### STRATEGIES

As previously mentioned, the age the beneficiary chooses to retire plays the most important role in determining his/her Social Security benefits. Choosing the

*continued on page 2*

### *In This Issue*

Social Security Facts And Strategies.....	1
A New Definition of Competence .....	1
FCPA Investigation Costs: Are You Covered? .....	3
New Regulations for Pension Plans .....	5

## Social Security

continued from page 1

right strategy could increase benefits by hundreds of thousands of dollars over a couple's lifetime. Various factors must be taken into account when choosing the age to retire, including: marital status, the age difference between a married couple, the married couple's projected life span, general health, financial resources, potential future personal/medical needs, inflation and increasing cost-of-living, and investment interest rates. There are various strategies that can help properly plan retirement in order to maximize these benefits. Married couples should also consider taking advantage of spousal benefits. Social Security allows a spouse with a lower earnings history to apply for Social Security benefits based on a higher earner spouse's earnings history. Currently, the spousal benefit is approximately 50% of the benefits of the spouse with the higher earnings history.

There are various strategies that revolve around taking advantage of spousal benefits. One strategy is for a spouse with the lower earnings history to claim benefits at 62, giving the spouse with the higher earnings history the option to apply for spousal benefits. The higher earner spouse will switch to his own benefits when he reaches age 70, collecting higher benefits than if he took benefits on his own record at Full Retirement Age (66+).

Another way to take advantage of spousal benefits is for a higher earner spouse to claim benefits at her Full Retirement Age (66+), which allows the lower income earner spouse to claim spousal benefits at age 62. The higher earner spouse will then suspend her benefits and reclaim at age 70, thus receiving higher benefits. The advantage of this strategy

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is that the higher earner spouse can delay retirement up to age 70, while the lower earner spouse can receive spousal benefits without waiting for the higher earner spouse to start receiving benefits.

Claiming and repaying Social Security benefits has been a commonly used strategy throughout the years. Prior rules permitted beneficiaries to withdraw their application for any reason. Beneficiaries would take advantage of this rule through two strategies: claiming an Early Retirement benefit at age 62 and repaying at age 70; or claiming benefits each year and repaying them at the end of the year. Either of these strategies would provide the beneficiary, in effect, with an interest free loan. The new regulations, effective as of December, 2010, end these strategies by providing a 12-month window for beneficiaries to withdraw their application and also limit the re-filing to one per lifetime. The new regulations also limit the suspension of benefits. Beneficiaries are now only allowed to suspend future benefits beginning after the month in which the request for suspension is made. Beneficiaries can no longer claim suspension for benefits they have already received.

### SURVIVOR'S BENEFITS

A widow(er) can apply for survivor's benefit, which is 100% of their deceased spouse's benefits. The surviving spouse can claim benefits as early as age 60; however, applying prior to Full Retirement Age will result in smaller monthly benefits, as the total benefits are obtained over a longer period of time. The surviving spouse can switch to their own benefits at age 62 if their own benefits are higher. If the surviving spouse is younger than Full Retirement Age and continues to work while receiving benefits, their benefits will be reduced if the earnings exceed \$14,640. The surviving spouse cannot claim survivor's benefit if she remarries before age 60, however remarriage after age 60 will not prevent her from collecting benefits based on her former deceased spouse's record.

### TAXABILITY OF SOCIAL SECURITY

The taxability of Social Security benefits depends on the amount of

continued on page 8

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# FCPA Investigation Costs — Are You Covered?

By **Ethan D. Lenz**  
and **Max Chester**

Much has been written recently about the unprecedented growth in the number of enforcement actions brought under the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1 *et seq.* (FCPA). Settlements of enforcement actions in the tens of millions of dollars have become commonplace, and settlements in the hundreds of millions of dollars not unheard-of. The enforcement authorities (the Securities and Exchange Commission [SEC] and the Department of Justice [DOJ]) have made it clear that continued aggressive enforcement of the FCPA is and will continue to be one of their top priorities.

The enormous size of the FCPA enforcement actions settlements as well as the outsized cost of investigating and defending FCPA actions has led the insurance industry to offer new FCPA insurance products, which are intended to offset the FCPA investigation and settlement costs. These products, however, should be reviewed carefully by the companies to determine their utility in light of the companies' FCPA exposure, existing insurance, and, of course, cost.

## THE 'ANTI-BRIBERY' PROVISIONS

The FCPA "anti-bribery" provisions forbid payments of money or anything else of value made corruptly to influence any act or decision of a foreign official, political party or political party official, or candidate for political office, in his official capacity or to induce the official to use his influence to affect a government act

or decision so as to assist a company in obtaining or retaining business or directing business to any person or to secure any improper advantage.

The Act defines "foreign official" to include any officer or employee of a non-U.S. government or any instrumentality of the government, or any person acting in an official capacity for or on behalf of the non-U.S. government or its instrumentality. The enforcement agencies take the position that employees of foreign state-owned companies are also "foreign officials." Even if a company is not wholly owned by the state, it may be considered an "instrumentality" of a government if the government exercises substantial control over the company.

Payments, authorizations, promises or offers to any other person are also prohibited if there is knowledge that any portion of the payment is to be passed along to a foreign official or foreign political party, official or candidate for a prohibited purpose. "Knowledge" is defined very broadly and is present when one knows an event is certain or likely to occur; even purposely failing to take note of an event or being willfully blind can constitute knowledge

## ENFORCEMENT ACTIONS

Between 2004 and 2010, FCPA enforcement actions initiated by the DOJ and SEC increased nearly fifteen-fold, from five to 74. The pace of enforcement actions slowed somewhat in 2011, but the apparent slowdown is attributable to the fact that there were multiple FCPA jury trials as well as multiple criminal cases working their way through the system. The enforcement agencies recently reported that there are currently more than 150 open FCPA investigations.

Aside from the breathtaking multi-million dollar FCPA settlements (for example, Siemens paid over \$800 million and Halliburton paid \$559 million), the costs of simply conducting an internal investigation into a potential FCPA violation can be astronomical. For example, Avon has reported that its FCPA-related investigative costs in 2009-2010 were nearly \$130 million. Reportedly, the investigation costs for Siemens were in excess of \$850 million. A routine FCPA investigation can often cost

millions of dollars in attorney and accountant fees. For a whole host of reasons (not the least of which is the recently enacted whistleblower provision of the Dodd-Frank law), internal investigations of FCPA issues are often a necessity. The significant costs of investigation are incurred regardless of whether an actual violation is found.

These substantial investigative costs naturally lead those in charge of compliance and risk management to ask obvious questions: Are these costs covered under any of our company's existing insurance policies? Are there policies available that might help our company more effectively manage the risk associated with these issues?

## WHAT COMPANIES SHOULD DO

Companies should start by looking at their existing Directors and Officers (D&O) liability policies. Companies that carry "D&O" liability insurance may already have some limited protection for the costs of an FCPA investigation and related fines/settlements. The scope of coverage for the costs of an FCPA investigation will likely vary from one D&O policy to the next. The actual coverage for costs will depend on the policy's definition of "claim" as well as the definition of "securities claims" (for many publicly traded companies, the coverage for the entity is limited to only claims related to the offering and sale of the company's own securities). While a D&O policy might be the most likely source of some coverage for FCPA investigations, it must be closely scrutinized to determine the exact scope of that coverage.

In response to the potential gaps in coverage for FCPA investigations, new insurance products are beginning to come to market that may cover at least some of this exposure. For example, Chartis is now offering an "FCPA Investigation Extension," which states that the "corrupt practices" exclusion contained in the Chartis' standard investigations response policy no longer applies. The "FCPA Investigation Extension" applies to any investigation of any actual or suspected bribery of foreign government officials located in any identified country in violation of the FCPA, or in violation of that portion

*continued on page 4*

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## FCPA

*continued from page 3*

of any similar foreign law that prohibits bribery of foreign government officials. The “FCPA Investigation Extension” does not appear to cover, however, any amounts characterized in the settlement documents as fines, penalties, interest or disgorgement. The limit of coverage under the “FCPA Investigation Extension” also appears rather modest compared to the significant costs of a worldwide FCPA investigation (although it can be reasonably inferred that higher limits can be negotiated).

Marsh has also introduced a branded “FCPA Corporate Response” product, which is stated to provide worldwide coverage for both the organization and individuals for FCPA investigations and acts as primary insurance to a D&O policy. Based on the product’s fact sheet, similar to the “FCPA Investigation Extension,” it does not appear that the “FCPA Corporate Response” reimburses companies for any fines or penalties assessed in connection with an FCPA violation.

The potential advantages of these new products are at least two-fold: 1) they specifically cover the costs

of FCPA investigations, largely taking away the questions that routinely arise under the typical D&O policy as to the exact scope of coverage and when it is triggered; and 2) they leave the D&O policies limits intact for other claims. Insurance buyers should nevertheless carefully review these and similar products and evaluate whether the specific purchase of an FCPA cover is needed in the circumstances of the company’s business. For example, a company should evaluate whether FCPA investigation cost insurance is already included in the D&O policy. It should also consider its FCPA risk profile, paying special attention to where in the world it does business, how it goes to market in high FCPA risk countries, and who its customers are. Furthermore, the company should evaluate whether the FCPA coverage provides meaningful protection based on available limits and premiums charged. As part of that analysis, the company should determine whether the product covers only investigations against the company, or whether the product also covers investigations against individual employees, officers, and directors

### CONCLUSION

The insurance industry’s efforts in offering meaningful and innovative

products that protect the companies against the risk of FCPA-related investigative costs represent a positive development. In the era of increased enforcement activity relating to the FCPA compliance, companies would benefit from a clear pronouncement that any FCPA-related investigative costs are covered. The FCPA investigative costs insurance should eliminate the questions that often arise under a typical D&O policy on whether expenses incurred either in connection with an informal investigation by an enforcement agency or an internal corporate investigation are covered. That said, potential purchasers of these products must carefully scrutinize the products and perform a cost/benefit analysis to determine if the new coverage would be beneficial to them. Last, the potential purchaser should evaluate its own risk profile and assess whether its internal compliance policies are sufficiently robust to make sure that FCPA insurance is not viewed as a substitute for corporate culture prohibiting corrupt payments or a signal to the enforcement agencies that the company has a subpar compliance program.



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## Competence

*continued from page 1*

do you think this is a discussion that young professionals and business executives would benefit from hearing and contributing to?

### THE MEANING OF COMPETENCE

The business world is changing. “We used to believe that competence meant you knew all the answers relating to your craft, whatever that was,” said a Canadian law firm marketing director. “Over the years, however, the average consumer is realizing that it is a far more human condition to be expert, but not know it all,” she added. “This is because the world around us is extremely dynamic ... circumstances can change in almost an instant.” The world’s knowledge base is multiplying quickly. Under those conditions, how can anyone honestly say they have all the answers? And are all the necessary answers to be found in books or with a Google (Bing, Yahoo, YouTube, etc.) search? Of course not. Many compe-

tence components are human performance (also known as “soft”) skills.

Those who appreciate this reality, those who are not afraid to declare that they don’t necessarily have all of the answers, but are willing to continue to learn and grow and make an educated guess, are more likely to be considered credible today by an increasingly skeptical marketplace. This shift in expectations is indicated by all the client surveys responses saying essentially “I wanted a trusted adviser — someone who knows my business and understands the conditions in which I must seek solutions.” They don’t necessarily expect all the technical answers to be in the head of one person. Knowing where to find the answers and being responsive is another aspect of competence.

Consider the example of Gen Y/Millennials (and Gen Xers in their mid-30s) who tend to turn to their “community” network for input when they don’t have an answer at the ready. Between their collaborative education — previous to law school — and

general digital orientation, this is the natural approach to them. They think they “know everything” because they draw on a network.

### CHANGING EXPECTATIONS

Another marketing director reported to me a conversation with the general counsel of her firm’s largest client. He made an interesting observation. When he had been in private practice, he frequently did not call a client back immediately because he didn’t know the “answer” and didn’t want to appear incompetent. Now that he is on the other side, he said, “I just want the lawyers to call me and let me know they are working on it and when they expect to have the answer/recommendation for me so I can let my CEO and other executives know the status.” (He also made the observation that male attorneys are more likely to avoid/postpone the call until they know something than females. Are women more likely to admit they don’t know something than men? Is it gender or personal

*continued on page 7*

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# New Regulations Will Enhance Disclosure For Your Pension Plans

By Frank Armstrong, III

It's time for pension plan sponsors to get serious about their fiduciary obligations. Simply put, the employer's obligation for a plan doesn't end when it writes the check. It begins.

Without any thought or planning, the 401(k) has become America's pension plan. The days of guaranteed retirement income for life are long gone, and along with them the financial security that the traditional pension plan provided.

However, to date the 401(k) solution is deeply flawed. The widespread failure of 401(k) plans to provide adequate retirement income security for American workers has caught the attention of the courts, regulators, the administration, Congress, academics and participants.

These failures include outrageous costs that bear no resemblance to value provided, deeply embedded conflicts of interest, sustained underperformance of underlying investment vehicles, inadequate disclosure, inappropriate investment menus, defective plan design, insufficient participant education, and flawed default provisions. Cumulatively, these defects do all but guarantee the failure of the participant's outcome.

While there are many excellent plans, far too many are so expensive and perform so poorly that participants are often better served to invest their retirement savings elsewhere or at least invest no more than necessary to capture matching contributions.

It isn't unusual to find 401(k) plans with total costs paid by the participant

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exceeding 3% of account total annually, with investment choices limited to subpar proprietary funds, and with payments to the various providers not related to services rendered. Confusion about who provides what service, how much is their direct and indirect compensation, and whether or not the various parties are acting in a fiduciary capacity is the rule. The combined impact on participant accounts and retirement funding is devastating.

Despite a number of significant shortcomings, 401(k) plans are the backbone of the American retirement system, and we know that families that have 401(k) plans have a great deal higher net worth than those without access. So, it's critical to improve this vital retirement funding component.

## NEW REGULATIONS

After years of study, thousands of hours of congressional testimony, hundreds of hearings and uncountable public comments, the Department of Labor ("DOL") issued Reg 408(b)2 and 404(a) (Who makes up these names, anyway?) designed to force better disclosure. With this better information, it is hoped that both plan providers and participants will make better decisions, leading to improved retirement preparation for America's workers. While the industry has been successful in delaying implementation, it appears that the changes will become effective in second quarter 2012. The DOL has recently released new rules regarding the ERISA 408(b)(2), ERISA 404(a), and electronic delivery. The 408(b) (2) regulations become effective April 1, 2012, while the new 404(a) participant disclosure rules become effective May 31, 2012.

The regulations expand the definition of fiduciary investment advice, and cause many consultants who are not currently fiduciaries to be considered fiduciaries. By mandating significantly higher levels of disclosure, the regulations will give previously unavailable key information to decision makers.

The flurry of enacted and proposed band-aid fixes will go part of the way toward improving the retirement landscape. But regulations, legislation and the threat of court action

can only go so far. The various fixes provide information and guidance to plan fiduciaries, but by themselves can't make them better fiduciaries. The plan sponsor must either develop fiduciary practices and procedures or delegate them to someone who can.

Attorneys practice law and deliver services. Acting as a fiduciary and developing appropriate procedures and practices is generally outside their skill set, and a distraction from their primary interest of running a successful business. Frankly, few law firms rise and fall based on the quality of their 401(k) plan.

I'm not suggesting for a moment that they don't care. Nobody wants to have a crummy retirement plan. Most employers would want for their employees to receive maximum benefits for each dollar set aside. But wishing won't make it so. And leaving it to a product pusher that "takes care of it all" is unlikely to generate a quality plan.

The Employee Retirement Income Security Act ("ERISA") requires that plan sponsors enter into only agreements with "reasonable" fees, and decisions must be made exclusively in the interest of the participant. However, absent disclosure requirements, plan sponsors had no feasible ability to determine the reasonableness of their fees, or the parameters for the decision-making process. In particular, the "bundled product" solution was appealing, but lacked any clarity. If the plan provider was not acting as a fiduciary, then the entire responsibility for the plan choices falls to the plan sponsor, the ultimate fiduciary.

## BACKGROUND

As background, when ERISA became effective in 1974, the pension world changed dramatically, and for the better. But reporting and record keeping became so complex that only giant institutions had or could afford the mainframe computer capacity to manage the accounts. Large insurance and mutual fund companies stepped up and provided the technology and systems, which enabled them to become the dominant players in the field. Remember, in 1974 computer time was more

*continued on page 6*

## Pension Plans

continued from page 5

valuable than gold, and the machines filled giant warehouses.

For a while the giant institutions had the field all to themselves. The pitch was simple: We will do it all, record keeping, tax returns, compliance, participant education, investments and advice. And it's free! Well, free was a pretty compelling price point, and relieving plan sponsors of all those headaches was invaluable.

Of course, it wasn't free, and the "bundled product" solution provided cover for obscene charges paid by the participants and the perfect environment for breeding conflicts of interest. Additionally, bundled product providers seldom acknowledged fiduciary responsibility for their recommendations, leaving the entire liability for their decisions on the plan sponsors. Meanwhile the plan sponsors were led to believe that the provider was acting as a fiduciary. Disclosure ranged from opaque to nonexistent. Many plan sponsors and participants are simply stonewalled when requesting relevant information.

Long experience indicates that plan sponsors can't rely on the payroll service/insurance company/brokerage house/or fund company to overcome their deeply embedded conflicts of interest to fix their plans. Those sales entities have little interest and strong disincentives to fiduciary behavior. Most of them absolutely prohibit their agents from accepting fiduciary responsibility.

A number of unsavory practices quickly emerged:

- Restricting the investment choices to funds that shared management fees with the provider;
- Use of proprietary funds where better performing, lower cost alternatives existed;
- Mortality and expense charges with no economic benefit to the participants;
- Special class funds with additional fees over and above retail costs;
- Use of retail funds where lower-cost institutional class funds were available;
- Per account and per position fees assessed at each participant level; and

- Termination fees that effectively locked in plan sponsors from changing providers.

Individually and cumulatively these fees may easily exceed "reasonable" standards, and the decisions often violate the requirement to be in the participants' sole best interest.

Today, of course, your iPhone has more computer capacity than NASA had when it put a man on the moon. So most PCs could easily handle record keeping for hundreds of plans, and the Internet provides infrastructure for seamless communications between remote providers. The stranglehold that the giant institutions had on the market is effectively broken, and many excellent providers exist that can dramatically lower costs and improve every aspect of plan design.

However, without critical information, comparisons and informed decision making are impossible. The new regulations fix that.

Even the best intentioned, most diligent retirement plan sponsors and participants may have had difficulty extracting critical information from plan providers. That's about to change. The new DOL Disclosure Regulations could greatly benefit both plan sponsors and participants.

### WHAT TO EXPECT

So, what can you expect?

If you are a plan sponsor, each service provider must supply you with a revised service agreement that provides you with:

- A complete description of the services it provides;
- A full disclosure of the cost of each service;
- A disclosure of any direct or indirect compensation it receives from associated providers;
- Whether it assumes fiduciary responsibility for each function. (Hint: If the service agreement does not specifically assume fiduciary responsibility for a function, it is unable or unwilling to assume that liability.);
- Any potential conflicts of interest and how they are managed and mitigated.

You must in turn share most of this information with your plan participants.

The expectation is that better information will lead inevitably to se-

lection of better plans provided to the workforce.

But the benefits of disclosure are conditional on the willingness to actually review the provided information and take appropriate action on it. Be aware that as a plan sponsor you are a fiduciary, and reviewing the quality of your retirement plan is not optional. Failure to comply with the many detailed requirements of ERISA generates personal liability for the plan sponsors/fiduciaries.

Unfortunately, the new regulations suggest no appropriate benchmarks other than "reasonable" for costs and a general prohibition against undisclosed or unresolved conflicts of interest. So fiduciaries must either occasionally "test the market" through an open RFP process, or hire an independent fiduciary adviser to do it for them.

### RED FLAGS

Red flags might include:

- A total cost for all services including investment advice, record keeping/administration, fund fees, transaction costs, custody or trustee fees, and any mortality and expense charges that exceed 1.5%;
- Any single fee disproportionate to services rendered or economic value;
- Direct or indirect compensation between the parties that might cause conflicts of interest;
- Revenue sharing not fully accounted for and credited back to the plan;
- Failure to specifically assume fiduciary status by investment advisers, consultants, and other plan providers; and
- Use of retail class fees rather than the lower cost institutional shares.

### OUTSIDE ADVISERS

Fortunately, plan sponsors can delegate much of their responsibilities and shed most of their liability to an outside independent investment adviser that will accept fiduciary status in writing (technically ERISA 3(38)

continued on page 8

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## Competence

continued from page 4

style? That's another conversation!)

This self-need to “appear competent” is prevalent in all professions and can be traced back to education and compensation. Educating people in teams is relatively recent, especially for lawyers, and rewarding on the basis of teamwork is still pretty rare in the professions and academia. There is still a chasm between technical knowledge — with which students are filled to the brim — and learning empathy and sensitivity. Too many lawyers still act as if it's all about them. That's how they've been taught — and they need to “unlearn” this.

Ruth J. Simmons, president of Brown University, said, “If I'm interviewing and if they never stop talking, I will never hire them, no matter how qualified they are. If you cannot listen, you can't be the site of welcoming, nurturing, facilitating new ideas, innovation, creativity.”

### PERCEPTIONS OF PROFESSIONALISM

We assume that all professionals of all generations aspire to a reputation of professionalism as part of perceived competence. My firm, Practice Development Counsel, conducted a survey on professionalism through generational lenses in the fall of 2011. Findings (summary report available upon request) revealed the following top ranked components of professionalism:

- When asked to define the components of professionalism, the #1 component selected by all

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generations is work ethic. While work ethic definitions can vary, all generations believe diligent work is a requirement.

- Number 2 is communication and listening skills. Notably, Gen Y/Millennial respondents selected this factor the most of the four generations, although that is not known as one of their generation's strong points.
- Number three is integrity. This was the second highest choice of Boomers. Subject matter knowledge/technical expertise was ranked much lower than these by survey respondents. Perhaps that was because it was expected in order to be in the game, or perhaps they focused more on behavior than knowledge in their responses.
- The appearance and demeanor factor was selected most often by Gen X. Apparently the generation that was early on labeled the “slacker generation” noted for grunge is now concerned with appearance and professional demeanor. This reflects the importance of appearances to a generation striving for promotions and leadership. Respect and fairness for others was also ranked high by Gen Xers.

Feedback in discussions I've participated in — clearly anecdotal, not a validated survey — indicate that professionals with broader interests tend to more easily gain the confidence of their clients. There is a perception that those professionals take better care, are more responsive and go the extra mile. Competence in these instances included courage to show vulnerabilities, empathy, “soft skills,” and (diverse) cultural awareness and sensitivity.

### IMPACT OF SOCIAL MEDIA

We see the “whole person” emphasis playing out in what's perceived to be successful on social media. There are people who post mostly about their accomplishments; and there are the more successful one in developing engagement and relationships who convey diverse interests or a strong passion, curiosity and generosity to educate others. This is also an effective formula for client-attracting

website bios as well as social media profiles.

So how do we advise, coach, mentor, and train the professional rising stars? Let's go back to the mindset of how professionals and executives were perceived in “the good old days” before money became the dominant scorecard and “trusted adviser” became a new buzz phrase rather than an assumed main ingredient in a professional relationship. As the Canadian marketing director said, those who reach their potential “will be the ones who approach the world with a curious, rather than a pompous or overly confident nature.”

Different skill needs are rising to the top: communication in various media, new forms of problem-solving and critical thinking, cross-cultural (national, ethnic, generational, religious, gender and diversity of thought) and cross-functional skills and flexibility. These must be more than buzzwords, but rather, truly understood and embraced.

If senior partners and the leadership lack inspirational, role-playing, mentoring and coaching interest and capability, it will have to come from another level or outside the firm.

Those who coach junior professionals, whether the coaches are partners, managing directors, professional development or marketing staff or outside trained coaches, need to emphasize development of the whole person: interests, personality, behavior — soft skills as well as facts, process, and strategic thinking. They need to shift the definition of competence from “knowing it all” to knowing how to provide what the client needs, whatever and whoever that entails. And they need to remember that “liking” or empathy is one of the six principles of effective persuasion or influence.

We can't expect an overnight epiphany or easy shift for people exhibiting some behavior styles. But with coaching and recognition mechanisms in place, significant strides can be made which will both take the pressure off individuals to put up a front of knowing it all and neglecting their personal side. The result will be serving clients better while more comfortably attracting new ones.

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## Pension Plans

continued from page 6

Fiduciary). As long as that adviser is prudently selected, accepts fiduciary responsibility in writing and is prudently monitored, the plan sponsor can relieve almost all of its responsibility and liability for investment design, fund selection, cost control, disclosure, resolution of any potential conflicts of interest, and participant education. Unless the plan sponsor has investment expertise and is willing to ac-

cept potential personal liability, ERISA requires that it delegate to a prudent expert.

Given that attorneys don't all practice ERISA law or have finance degrees, even with the new information, you may not feel qualified to perform a plan audit or make comparisons. However, a qualified fiduciary investment adviser will provide you with one for nominal or no cost. Hiring a competent plan fiduciary adviser will relieve you of significant personal liability while bringing discipline to the

process of providing quality benefits at reasonable costs to your workforce.

When engaging a prudent expert, your expectation should be reduced costs, improved investment results, higher participant satisfaction, plan utilization, greater accumulations, and reduced personal liability for fiduciaries.

Alternatively, the courts, your employees, the SEC and/or the Department of Labor may administer a particularly costly and painful lesson.

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## Social Security

continued from page 2

the beneficiary's other income. The sources of income included in this calculation includes taxable pensions, wages, interest, dividends, capital gains, tax-exempt income, and half of Social Security benefits. Benefits are taxable if your Modified Adjusted Gross Income is higher than \$25,000 for a single beneficiary (\$32,000 for a married couple filing jointly). Fifty percent of Social Security benefits will be taxable if your income falls between \$25,000 and \$34,000 (\$32,000 to \$44,000 for a married couple filing jointly). Eighty-five percent of the benefits will be taxed if your income exceeds \$35,000 (\$44,000 for a married couple filing jointly). Beneficiaries might consider accessing their retirement plans first and delay collecting Social Security benefits in order to lower their Modified Adjusted Gross Income, and ultimately lower the tax on their Social Security benefits.

### FINAL THOUGHTS

There are various calculators that can help estimate your potential Social Security benefits. The Social Security Administration office will also send out statements providing estimated benefits. Errors and miscalculations in Social Security statements are possible and happen quite often. Therefore, personal information and earning records should be carefully reviewed. Recent studies show that millions of Social Security numbers are shared by more than one person, and many Americans have more than one Social

Security number, due to bad record-keeping, identity theft, and careless memory of Social Security holders.

Inquiries should be made in order to correct these errors.

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## The Job Creation Act

By Richard Stieglitz and Martin Arking

On Nov. 21, President Obama signed the Job Creation Act. The Act extends and enhances tax incentives available to law firms that hire veterans. Under the old law, that was set to expire at the end of 2011, the credit applied to: 1) veterans receiving food stamps; or 2) certain veterans with service connected disabilities. The employer received a credit against income tax equal to 40% of first-year wages up to \$6,000 (\$12,000 for certain qualified veterans) per employee. Thus, the maximum credit was either \$2,400 or \$4,800. The old law also provided for a certification process in which an employer may not claim the credit unless it receives written certification from the designated local agency that the individual is a member of a targeted group.

The new law, which is effective as of the enactment date and expires Dec. 31, 2012, creates additional categories and increases the credit amounts as follows:

- Veteran receiving food stamp assistance — 40% of first \$6,000 (maximum credit is \$2,400).
- Veteran with four weeks or more of unemployment during the one year period prior to the hiring date — 40% of first \$6,000 (maximum credit is \$2,400).
- Veteran with six months or more of unemployment during the one year period prior to the hiring date — 40% of first \$14,000 (maximum credit is \$5,600).
- Veteran with a service connected disability and has been discharged within one year of the hiring date — 40% of first \$12,000 (maximum credit is \$4,800).
- Veteran with a service connected disability and six months or more of unemployment during the one year period prior to the hiring date — 40% of first \$24,000 (maximum credit is \$9,600).

The new law also provides for a fast-track qualification process for qualified veterans.

As a result of President Obama's troop withdrawal, tens of thousands of service members will be entering the job market. The service is known to train its members with attributes that are essential to the workplace, such as discipline, problem-solving and teamwork. Law firms now have a unique opportunity to hire a qualified individual and also take advantage of a generous tax break.

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