ABA Joint Committee on Employee Benefits

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The 16th Annual National Institute on

Health and Welfare Benefit Plans:

Responding to Change

October 27-28, 2005

The Washington Court Hotel

Washington, DC

Early Bird Registration September 28th

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Defending Liberty
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12.83 CLE Credit Hours have been requested from 60-minute states and
15.40 CLE Credit Hours have been requested from 50-minute states

THURSDAY • OCTOBER 27, 2005

7:00 **Registration and Networking Breakfast**

7:15 **The Nuts and Bolts of ERISA Health Plans**

This optional session is a basic overview of the key legal issues affecting ERISA health and welfare plans. It is designed for people relatively new to the benefits area or for those who simply want a quick refresher on the rules and legal issues.

Phyllis C. Borzi, *O'Donoghue & O'Donoghue LLP*
Richard L. Menson, *McGuireWoods LLP*

9:00 **Break**

9:15 **Welcoming Remarks from Co-Chairs**

Phyllis C. Borzi, *O'Donoghue & O'Donoghue LLP*
Susan J. Daley, *Perkins Coie LLP*
Richard L. Menson, *McGuireWoods LLP*

9:25 **Federal Legislative Update: What's Been Passed? What's on the Horizon?**

Will Congress revisit some of the issues raised in the Medicare Modernization Act? What's the latest on drug reimportation legislation? Benefit mandates? Mental health parity? Medical error and drug safety issues? Expanding coverage to the uninsured? Other proposals affecting employer-sponsored plans? Will the Supreme Court decision in *Aetna v. Davila* breathe new life into the Patients' Bill of Rights? This session teams two key Congressional health staffers for a frank bipartisan bicameral assessment of Congressional activity and inactivity of interest to employers and other plan sponsors, health plans, and consumers.

Moderator: **Phyllis C. Borzi**, *O'Donoghue & O'Donoghue LLP*
Speakers: **Dean Rosen**, *Health Policy Advisor, Office of the Senate Majority Leader, U.S. Senate*
Bridgett Taylor, *Committee on Commerce, Minority Staff, U.S. House of Representatives*

10:15 **Break**

10:30 **Department of Labor Update**

The Department of Labor is involved in many issues relating to Health and Welfare Plans. This session will cover the DOL's positions on what a plan is, how you determine what reporting and disclosure you need to do for your plans, if a vacation plan is really a vacation plan under ERISA and the preemption issues, MEWA's, and the conflict between a plan and a summary plan description along with other current issues at the DOL.

Moderator: **Richard L. Menson**, *McGuire Woods LLP*
Speaker: **John J. Canary**, *Chief, Division of Coverage, Reporting and Disclosure, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), U.S. Department of Labor (Invited)*

11:00 **IRS and Department of the Treasury Update**

This session will cover the latest guidance issued by the IRS and what guidance is expected in the upcoming months.

Moderator: **Susan J. Daley**, *Perkins Coie LLP*
Speakers: **Harry Beker**, *Branch Chief, Health & Welfare Branch, Office of Associate Chief Counsel (Tax Exempt & Government Entities), Internal Revenue Service*
T. David Cowart, *Jenkins & Gilchrist*
Kevin P. Knopf, *Attorney-Advisor, Office of Benefits Tax Counsel U.S. Department of the Treasury*

11:50 **HIPAA Insurance Reform Update**

HIPAA included pre-existing condition exclusion period limitations, special enrollment periods under certain circumstances and prohibition of discrimination against individual participants and beneficiaries based on health status. The Newborns' and Mothers' Health Protection Act, the Mental Health Parity Act and the Women's Health and Cancer Rights Act also impose specific requirements on health plans. A panel of government speakers from the three agencies dealing with these requirements will provide an update on these requirements and discuss the practical issues plans have encountered dealing with these requirements.

Moderator: **Susan J. Daley**, *Perkins Coie LLP*
Speakers: **David Mlawsky**, *Health Insurance Specialist, Private Health Insurance Group, Centers for Medicare and Medicaid Services (CMS)*
Amy J. Turner, *Senior Health Law Specialist, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration (EBSA), U.S. Department of Labor*
Russell E. Weinheimer, *Senior Attorney, Health & Welfare Branch, Office of Chief Counsel, (Tax Exempt & Government Entities Division), Internal Revenue Service*

12:40 **Luncheon Address:**
21st Century Challenges: Perspectives on the U.S. Health Care System
An update on the pressures and challenges facing Medicare and the other public health programs and the impact on the employment-based health care system. This session will include a look at retirement security issues, in general, and the important role that health coverage plays in that equation.
Speaker: **The Honorable David M. Walker**, *Comptroller General of the United States and Head of the U.S. Government Accountability Office (GAO)*

2:00-3:55 **Concurrent Breakout Sessions**

2:00-2:55 **Recent COBRA Developments**
Final Department of Labor regulations impose new COBRA notice requirements. This session focuses on the impact of these final COBRA regulations and the administrative issues arising in complying with the new notice requirements, recent case law and the applicability of COBRA to new approaches to the delivery of health benefits.
Moderator: **Susan J. Daley**, *Perkins Coie LLP*
Speaker: **Paul M. Hamburger**, *McDermott Will & Emery*

Cafeteria Plans and Other Tax Issues for Health and Welfare Plans
Choice is very important for health and welfare benefits. This session focuses on structuring, administrative and tax issues with cafeteria plans, as well as tax issues in providing health and welfare benefits.
Moderator: **Diane J. Fuchs**, *Womble Carlyle Sandridge & Rice, PLLC*
Speaker: **T. David Cowart**, *Jenkens & Gilchrist*

Consumer Driven Health Plans: Key Issues for Employers
As more employers consider moving toward some form of consumer-driven health plans, what are the key design, workforce and legal issues they need to consider? This session is designed as a hands-on workshop with an in-house corporate expert regarding what employers need to focus on before, during and after they decide to implement a consumer-driven health plan.
Moderator: **Richard L. Menson**, *McGuireWoods LLP*
Speaker: **Tami L. Graham**, *Intel Corporation*

EEOC Update
A number of important issues are before the EEOC and the courts that impact on employee health benefit plans. This session will focus on some of these key questions and their impact on strategic benefits planning for plan sponsors.
Moderator: **Phyllis C. Borzi**, *O'Donoghue & O'Donoghue LLP*
Speakers: **Dianna B. Johnston**, *Assistant Legal Counsel, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission*
Paul E. Boymel, *Senior Attorney-Advisor, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission*

3:00-3:55 **Recent COBRA Developments**
Moderator: **Susan J. Daley**, *Perkins Coie LLP*
Speaker: **Paul M. Hamburger**, *McDermott Will & Emery*

Cafeteria Plans and Other Tax Issues for Health and Welfare Plans
Moderator: **Diane J. Fuchs**, *Womble Carlyle Sandridge & Rice, PLLC*
Speaker: **T. David Cowart**, *Jenkens & Gilchrist*

Outsourcing Plan Administration: Drafting Tips for Plan Sponsors
With more and more plan sponsors moving plan administration and human resource functions to outside vendors (both on-shore and off-shore), careful attention must be paid to drafting plan documents and contracts with vendors to avoid potential liability. This session will provide some practical tips on what should be in those documents and what plan sponsors need to focus on when they consider outsourcing important plan administration functions.
Moderator: **Sally Doubet King**, *McGuireWoods LLP*
Speaker: **Michael A. Hart**, *Kirkpatrick & Lockhart Nicholson Graham LLP*

International Benefits
As companies expand globally and companies try and coordinate their benefit plans, the issues dealing with global benefits become very important. This panel will examine the key trends, legal and design considerations and corporate governance issues dealing with Health and Welfare Plans globally.
Moderator: **Richard L. Menson**, *McGuireWoods LLP*
Speaker: **Tami L. Graham**, *Intel Corporation*

3:55 **Break**

4:15 **Ethical Considerations in Health and Welfare Benefit Plans**

The current health care delivery system poses many ethical challenges to employers and plan sponsors designing and maintaining health and welfare plans for their employers. Issues such as the selection of providers or networks, financial incentives and disclosure, the scope of covered treatment, and confidentiality of patient information may raise important ethical as well as fiduciary questions. This session will discuss the principles of legal ethics and rules that may apply to these situations. The panel will also discuss the effect of Circular 230.

Moderator: **Richard L. Menson**, *McGuireWoods LLP*
Speakers: **T. David Cowart**, *Jenkens & Gilchrist*
Tami L. Graham, *Intel Corporation*
Sally Doubet King, *McGuireWoods LLP*
David R. Levin, *Gardner Carton & Douglas LLP*

5:15 **Adjourn**

FRIDAY • OCTOBER 28, 2005

8:00 **Registration and Networking Breakfast**

8:20 **Hot Topics in Health and Welfare Plan Litigation**

A number of important ERISA cases involving health and disability benefit claims, class action issues, standard of review and remedies are before the courts. In addition, as states enact legislation to attempt to provide consumer protections for their residents, suits are being brought challenging those enactments and raising ERISA preemption and other constitutional law defenses. This session focuses on some of the more significant lower court cases currently in litigation and which were decided this year, as well as predictions on issues to watch.

Moderator: **Richard L. Menson**, *McGuireWoods LLP*
Speakers: **Mary Ellen Signorille**, *AARP Foundation Litigation*
Steven D. Spencer, *Morgan Lewis & Bockius LLP*

10:00 **Break**

10:15 **Making Your Plan Documents Work For You And Not Against You**

Tips for drafting plan documents and summary plan descriptions, including whether to use one document or two and addressing plan sponsor and fiduciary concerns, based on the speakers' experience and the latest case law.

Moderator/
Speaker: **T. David Cowart**, *Jenkens & Gilchrist*
Speaker: **Carol A. Weiser**, *Sutherland Asbill & Brennan LLP*

11:10 **Medicare Modernization Act (MMA)**

For employers who offer retiree medical benefits, the passage of the Medicare Modernization Act, establishing a new Part D providing prescription drug coverage, is an opportunity to reduce costs while maintaining coverage. The Act provides opportunities for employers to claim tax-free subsidies if they substantially contribute to retiree drug costs under their own plans and other options for reducing their costs through benefit design changes aimed at coordinating employer-provided benefits with the new prescription drug benefit. Through a dialogue between one of the key experts at the Centers for Medicare and Medicaid Services (CMS) on employer issues and private practitioners, this session will provide a practical look at the options for plan sponsors, unions and retirees.

Moderator: **Phyllis C. Borzi**, *O'Donoghue & O'Donoghue LLP*
Speakers: **Mark Hamelburg**, *Director, Employer Policy and Operations Group, Centers for Medicare and Medicaid Services (CMS) (Invited)*
Charles K. "Chip" Kerby, III, *McDermott Will & Emery*

12:00 **Lunch (On your own)**

1:30-3:30 **Concurrent Breakout Sessions**

1:30-2:25 **Litigating Welfare Plan Claims**

What you do during the benefit claims procedure can make or break your case, whomever you represent. This session focuses on what you can do during the benefit claims procedure to enhance your case and approaches to welfare plan claim litigation once a lawsuit is filed.

Moderator: **Carol A. Weiser**, *Sutherland Asbill & Brennan LLP*
Speakers: **Mary Ellen Signorille**, *AARP Foundation Litigation*
Steven D. Spencer, *Morgan Lewis & Bockius LLP*

Implementing Medical Privacy and Security

Even though the compliance dates for HIPAA's privacy and security rules have come and gone, lingering implementation questions remain and new issues are frequently raised. Taking the lead primarily from the audience regarding the topics to be discussed in this roundtable session, a government expert and an experienced practitioner will share their best thinking on how best to address these questions.

Moderator/
Speaker: **Kathryn Bakich**, The Segal Company
Speaker: **Susan McAndrew**, *Senior Advisor for HIPAA Privacy Policy, Civil Rights Division, U.S. Department of Health & Human Services*

New Strategies for Providing Retiree Medical Benefits

With the continued escalation of health care costs and the advent of HRAs, HSAs and the new Medicare Prescription Drug Act, are employers rethinking their approach to providing retiree medical benefits?

Moderator: **Sally Doubet King**, *McGuireWoods LLP*
Speakers: **Tami L. Graham**, *Intel Corporation*
Charles K. "Chip" Kerby, III, *McDermott Will & Emery*

2:25 **Break**

2:35-3:30 **Managing Your Health & Welfare Benefit Plans Prudently: Fiduciary Concerns**

Although most plan sponsors think the majority of activities they perform regarding their health plan issues involves settlor functions, a number of fiduciary issues also may be involved. As a threshold matter, this session will focus on where the line between settlor and fiduciary functions may be drawn. In addition, other potential fiduciary issues may need to be considered, such as: what vendor through which to offer benefits, to what extent does the financial ability of the employer affect the prudence of that choice, and how should vendor activities be monitored when functions are outsourced?

Moderator: **Phyllis C. Borzi**, *O'Donoghue & O'Donoghue LLP*
Speaker: **David R. Levin**, *Gardner Carton & Douglas LLP*

Implementing Medical Privacy and Security

Even though the compliance dates for HIPAA's privacy and security rules have come and gone, lingering implementation questions remain and new issues are frequently raised. Taking the lead primarily from the audience regarding the topics to be discussed in this roundtable session, a government expert and an experienced practitioner will share their best thinking on how best to address these questions.

Moderator/
Speaker: **Kathryn Bakich**, *The Segal Company*
Speaker: **Susan McAndrew**, *Senior Advisor for HIPAA Privacy Policy, Civil Rights Division, U.S. Department of Health & Human Services*

Providing Benefits to Domestic Partners: Evolving Legal Issues

Who is a "spouse" for purposes of ERISA welfare plans? This session focuses on the developments in the definition of spouse and marriage and their impact on welfare plans as well as the tax and administrative issues in providing benefits to domestic partners.

Moderator: **Susan J. Daley**, *Perkins Coie LLP*
Speaker: **Frances E. Snyder**, *Marriott International, Inc.*

3:30 **Adjourn**

HIGHLIGHTS OF THIS NATIONAL INSTITUTE

Attend the program, and learn what you need to know about:

- New Legislation (including the impact of the Medicare prescription drug legislation)
- Implementing the New COBRA Notice Requirements
- Latest Developments Regarding Domestic Partner Benefits under Welfare Plans
- The Effects of the Medical Privacy Rules on Group Health Plans, Plan Sponsors and Providers
- Strategies for Employers Regarding the Use of Health Reimbursement Arrangements (HRAs)
- Ethical Issues in Health and Welfare Plans

Who Should Attend?

- All lawyers seeking a comprehensive overview of health and welfare benefit plans and health care reform
- Practitioners requiring information directly from the Administration, Capitol Hill, Internal Revenue Service, EEOC, Department of Labor, Department of Health and Human Services, and Centers for Medicare and Medicaid Service (CMS)
- Personnel managers, human resource professionals, accountants, and actuaries involved in the establishment or administration of these plans
- Health care professionals who want timely legislative and litigation updates, and information on current practices and health care reform

What Past Participants Have Said ...

"The program is good for those who have been in the benefits field for years and for those new to the field. A nice, wide array of topics was covered, mixing recent developments and established facts quite well. This program was well organized and actually fun to take part in."

- **Dennis Fish**, *Department of Labor*

"The presenters were all very good, clearly knowledgeable in the field. There was a great mix of general welfare plan information with more specific, technical information."

- **Carolyn Trenda**, *McGuireWoods LLP*

"A perfect seminar for the Health and Welfare Benefit Lawyer. I learned all the new laws and had a volume of valuable information to take home and share with other attorneys in my office."

- **Rosanne Lienhard**, *IBP, Inc.*

"Good information, great for updating your knowledge. This is a great way to interact with other practitioners and appropriate government regulators that those not from DC generally do not have!"

- **Thomas A. Conlon, Jr.**, *Hinman, Howard & Kaltell, LLP*

"Knowledgeable speakers, comfortable atmosphere, handbook is excellent!"

- **Cindy Dunwater**, *IFCBP*

UNABLE TO ATTEND? CAN'T DECIDE WHICH SESSIONS TO ATTEND?

Audiotapes will be available approximately 3 weeks after the program.
To order complete tape sets, see the Registration and Order Form panel of this brochure.
Order forms for individual tapes will be available on site.

For more information, see www.abanet.org/jceb/ or call 202.662.8641.

NATIONAL INSTITUTE FACULTY

Kathryn Bakich
The Segal Company
Washington, DC

Harry Beker
Branch Chief, Health and Welfare Branch, Office of Associate Chief Counsel (Tax-Exempt and Government Entities Division)
Internal Revenue Service
Washington, DC

Phyllis C. Borzi
Program Co-Chair
O'Donoghue & O'Donoghue LLP
Washington, DC

Paul E. Boymel
Senior Attorney-Advisor
Office of Legal Counsel
U.S. Equal Employment Opportunity Commission
Washington, DC

John J. Canary
Chief, Division of Coverage Reporting and Disclosure
Office of Regulations and Interpretations
Employee Benefits Security Administration (EBSA)
U.S. Department of Labor
Washington, DC

T. David Cowart
Jenkens & Gilchrist
Dallas, TX

Susan J. Daley
Program Co-Chair
Perkins Coie LLP
Chicago, IL

Diane J. Fuchs
Womble Carlyle Sandridge & Rice, PLLC
Washington, DC

Tami L. Graham
Intel Corporation
Folsom, CA

Paul M. Hamburger
McDermott Will & Emery
Washington, DC

Mark Hamelburg (Invited)
Director, Employer Policy and Operations Group
Centers for Medicare and Medicaid Services (CMS)
Baltimore, MD

Michael A. Hart
Kirkpatrick & Lockhart Nicholson Graham LLP
Washington, DC

Dianna B. Johnston
Assistant Legal Counsel
Office of Legal Counsel
U.S. Equal Employment Opportunity Commission
Washington, DC

Charles K. "Chip" Kerby, III
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Washington, DC

Sally Doubet King
McGuireWoods LLP
Chicago, IL

Kevin P. Knopf
Attorney-Advisor
Office of Benefits Tax Counsel
U.S. Department of the Treasury
Washington, DC

David R. Levin
Gardner Carton & Douglas LLP
Washington, DC

Susan McAndrew
Senior Advisor for HIPAA Privacy Policy
Civil Rights Division
U.S. Department of Health and Human Services
Washington, DC

Richard L. Menson
Program Co-Chair
McGuireWoods LLP
Chicago, IL

David Mlawsky
Health Insurance Specialist
Private Health Insurance Group
Centers for Medicare and Medicaid Services (CMS)
Baltimore, MD

Dean Rosen
Health Policy Advisor
Office of the Senate Majority Leader
U.S. Senate
Washington, DC

Mary Ellen Signorille
AARP Foundation Litigation
Washington, DC

Frances E. Snyder
Marriott International, Inc.
Bethesda, MD

Steven D. Spencer
Morgan Lewis & Bockius LLP
Philadelphia, PA

Bridgett Taylor
Committee on Commerce Minority Staff
U.S. House of Representatives
Washington, DC

Amy J. Turner
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Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration (EBSA)
U.S. Department of Labor
Washington, DC

David M. Walker
Comptroller General of the United States
U.S. General Accountability Office
Washington, DC

Russell E. Weinheimer
Senior Attorney, Health & Welfare Branch
Office of Chief Counsel (Tax Exempt & Government Entities Division)
Internal Revenue Service
Washington, DC

Carol A. Weiser
Sutherland, Asbill & Brennan LLP
Washington, DC

NATIONAL INSTITUTE INFORMATION

TUITION

Attend the entire two-day program, the luncheons, the reception, each breakfast, and network with other registrants and faculty. Registrations must be postmarked, e-mailed or faxed by **Wednesday, September 28** to receive the discount.

Early Bird Registration - Before September 28

$945 General Public

$845 ABA Member (*$100 Savings - join a Section, and save even more!*)

$745 Sponsoring Section Member (*$200 Savings*)

Full Tuition - After September 28

$995 General Public

$895 ABA Member (*$100 Savings - join a Section, and save even more!*)

$795 Sponsoring Section Member (*$200 Savings*)

On-Site Tuition

$1045 General Public

$945 ABA Member (*$100 Savings - join a Section, and save even more!*)

$845 Sponsoring Section Member (*$200 Savings*)

ADDITIONAL SAVINGS

If three or more register from the same firm, one registrant will receive a $50 reduction in program tuition! Every registrant will receive a copy of the informative course materials book, which can be used as a comprehensive resource long after the program is held. Each registrant will also be eligible for MCLE accreditation within those states that require continuing legal education.

SCHOLARSHIPS

Financial scholarships to defray tuition expenses for full-time LL.B. candidates only are available for this program. To request an application or receive additional information, contact Karen Case at 202.662.8641. Scholarship applications must be received in the ABA offices no later than thirty days prior to the program presentation.

MCLE

Required sponsor documentation has been forwarded to and credit requested from MCLE states with general requirements for lawyers. 12.83 hours of credit, including 1 hour of ethics credit, have been requested from states that recognize a 60-minute credit hour. 15.40 hours of credit, including 1.2 hours of ethics credit, from those states granting credit hours on a 50-minute basis (14.5 hours, including 1 hour of ethics credit, from NY State). Lawyers seeking credit in Pennsylvania must pay a fee of $1.50 per credit hour directly to the PA CLE Board. The ABA pays applicable fees in other states where the sponsor is required to do so. In states where a late fee may become applicable, the ABA pays this fee as well. Please be aware that each state has its own rules and regulations including its definition of CLE as well as "Ethics". Therefore, certain programs may not receive credit in some states. Please check with your state agency for confirmation of general as well as ethics approval for any program. You may contact the ABA Service Center at 800.285.2221 or Karen Case at 202.662.8641 for confirmation of the number of credits approved by any particular state. This transitional CLE program has been approved for all New York licensed attorneys in accordance with the requirements of the New York CLE Board for NYMCLE.

QUESTIONS?

If you have a specific question that you want answered, you can fax it up to the day before the program to Karen Case (FAX: 202.622.8682), or ask the speakers directly during the program presentation.

SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required, please contact Karen Case at 202.662.8641. Reasonable advance notice is requested.

CANCELLATIONS

Refunds will be made only if requests are received by **Wednesday, September 28**, and a $50 administrative fee will be charged. **No refunds will be made for requests received after Wednesday, September 28**. Substitute registrants for the National Institute are welcome.

PROGRAM CONFIRMATION

Written confirmation of your registration will be e-mailed to you upon receipt. Please bring it with you to the National Institute as proof of registration. If you do not receive the confirmation notice prior to the program, please call the ABA (202.662.8641) to confirm that your registration was received and the program is being held as scheduled.

HOTEL INFORMATION

DEADLINE FOR HOTEL RESERVATIONS:

Wednesday, September 28

You may make hotel reservations at the Washington Court Hotel, 525 New Jersey Avenue NW, Washington, DC 20001. A limited number of rooms have been set aside for National Institute registrants at $249 for a single occupancy or $274 for a double occupancy room. All room rates are subject to city occupancy and sales tax, currently 14.5%. Unclaimed rooms will be released on **Wednesday, September 28**, after which the hotel will accept reservations on a space and rate available basis only. All reservations must be guaranteed with a major credit card. ***To register at the hotel, call the hotel directly at 202.789.1234 or 800.233.1234, and be sure to mention the ABA Health and Welfare Benefit Plans National Institute - to receive the special discounted rate.***

AIRLINE INFORMATION

The American Bar Association has secured discounted rates with American, Delta, and US Air for all National Institute participants. To make reservations, or for more information call:

American Airlines 800.433.1790
ABA Account 17715

Delta Airlines 800.241.6760
ABA Account 207843A

US Air 877.874.7687
ABA Account 6513236

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ABA # ______________________

ON-SITE TUITION

❍ $1045 General Public
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($100 Savings - join a Section, and save even more!)
ABA # ______________________
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ABA # ______________________

❍ Two or more people have registered with me; please apply the $50 tuition reduction to the tuition rate indicated above.

❍ Send me the **Health and Welfare Benefit Plans Audiotape Package, PC5470635**, (tapes and course materials) available three weeks following the presentation at the special price of $649.95, including postage and handling*.

❍ Send me the **Health and Welfare Benefit Plans Course Materials, PC5470636B** at the special prepublication price of $267.95, including postage and handling*.

❍ Send me the JCEB calendar for upcoming Employee Benefits Membership Events

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Join one of these dynamic Sections, and become active in one of their employee benefit committees. Join one or more when registering for this program and save up to $200 on this program tuition.

❍ I am interested in becoming a member of the American Bar Association. Please send me information and membership forms.

❍ I am an ABA member, but want a further reduction on my tuition for this program. Please enroll me into the Section listed below; I've enclosed a separate check.

❍ Section of Business Law, $55
❍ Section of Labor and Employment Law, $40
❍ Section of Taxation, $50
❍ Section of Health Law, $50
❍ Section of Real Property, Probate and Trust Law, $50
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Chicago, IL

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