WESTERN PENSION & BENEFITS COUNCIL
San Francisco

Pension & Benefits Quarterly

Spring 2019

Inside this edition

Qualified Retirement Updates

By Ami Givon | GCA Law Partners LLP

EPCRS Update: On April 19, 2019, the Internal Revenue Service (IRS) issued Revenue Procedure (Rev. Proc.) 2019-19, which updated the IRS's Employee Plans Compliance Resolution System (EPCRS), the comprehensive system of programs to correct compliance failures of Internal Revenue Code (Code) Section 401(a) plans, tax-sheltered annuities, SEP IRAs and SIMPLE IRAs. Rev. Proc. 2019-19 modifies and supersedes Rev. Proc. 2018-52, the most recent prior consolidated statement of the correction programs under EPCRS.

Rev. Proc. 2019-19 primarily expands the availability of the Self-Correction Program (SCP) under EPCRS to permit correction of certain plan document and loan failures, and

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"If you are a member of the Chapter, I hope to see you at the Member Appreciation Event on June 18th at La Mar SF. The Chapter hosts this event as a thank you to our members."

Kevin Nolt
Trucker Huss

President's Letter - Pg 2

President's Letter

As my term as President of the San Francisco Chapter comes to an end on June 30th, I reflect on the organization's successes during the past two years. We have continued to provide our members with high-quality programming which ranged from "Ask the Retirement Experts" to "Socially Responsible Investments" to "Health Savings Accounts." We also provided innovative networking opportunities, including wine and cheese tastings and field trips to local points of interest. The Chapter has new members crossing all benefit professions, and attendance at the Chapter meetings has increased. There is a renewed energy as the organization embraces the ever changing nature of our industry.

Another success has been our partnership with the National Institute of Pension Administrators (NIPA) for an annual 3-day benefits conference – the Annual Forum & Expo (NAFE). Our second joint conference was held at the Loews Coronado Bay Resort in San Diego. The conference included a wide range of retirement plan topics suitable for all benefit professions and experience levels. I returned from NAFE with increased knowledge, substantial continuing legal education credits, and more industry contacts. Please see later in this newsletter more information on this conference. We are excited about our partnership with NIPA for the 2020 conference in Nashville. Time to dust off that cowboy hat and the dancing shoes! More details to come. We value your feedback, so if you have thoughts on the conference and on our partnership with NIPA, please let us know.

If you are a member of the Chapter, I hope to see you at the Member Appreciation Event on June 18th at La Mar SF. The Chapter hosts this event as a thank you to our members. This organization is about you and for you. If you like ceviche and pisco sours, then this is the event for you.

This is our last newsletter of the 2018/2019 program year. I want to take this time to thank Jahiz Agard, the newsletter editor. This is his last newsletter for the Chapter. His hard work and diligence is evident by the quality of the newsletter. I also want to thank all other contributors to the newsletter.

Thank you also to all of our Chapter sponsors. Your support of our organization enables us to have events for our members. You have received sponsorship information for the 2019/2020 program year. If you have not yet renewed, please consider doing so, as your sponsorship enables us to continue to provide great programs.

Please watch your email for information this Summer about the events planned for the Fall, including another complimentary membership event. Details to come!

Kevin Nolt, Director
Trucker Huss, APC

Qualified Retirement Updates, continued

also provides an additional method of correcting operational failures by plan amendment under SCP. The changes made by Rev. Proc. 2019-19, which are effective April 19, 2019, include:

- Operational failures may be corrected by plan amendment under SCP if three conditions are satisfied: (a) the plan amendment would result in an increase of a benefit, right, or feature; (b) the increase in the benefit, right, or feature is available to all eligible employees; and (c) providing the increase in the benefit, right or feature is permitted under the Code and satisfies generally-applicable correction principles.
- Errors relating to the failure to repay a plan loan according to plan terms (a defaulted loan) may be corrected under SCP. The correction methods for such a failure are the same as before (through payment by a single-sum repayment, re-amortization of the outstanding loan balance, or a combination of the two). However, plan loans that are made in excess of the loan limits under Code Section 72(p)(2)(A), or plan terms that do not meet the requirements of Code Section 72(p)(2)(B) or (C), may be corrected only under the Voluntary Correction Program (VCP) or the Audit Closing Agreement Program (Audit CAP) under EPCRS.
- A plan document failure (the inclusion or absence of a plan provision in violation of an applicable Code requirement) may be corrected under SCP, if the following conditions are met: (a) the plan has received a favorable determination or opinion/advisory letter (special rules apply to some 403(b) plans); (b) the failure is corrected by the end of the second plan year following the year in which the failure first occurred; (c) the failure does not relate to an initial failure to adopt a qualified retirement plan or written 403(b) plan document in a timely manner; and (d) the failure does not involve a demographic failure or an employer eligibility failure.
- The failure to obtain spousal consent to a plan loan may be corrected by notification to the affected participant and spouse and the spouse's providing spousal consent. If spousal consent is not obtained, the failure must be corrected using either VCP or Audit CAP.
- The granting of a number of plan loans that exceeds the number of loans permitted under a plan (including the granting of plan loans under a plan that does not permit plan loans) may be corrected under SCP by the adoption of a retroactive plan amendment if (a) the amendment satisfies Code Section 401(a); (b) the plan as amended would have satisfied Code Section 401(a) and the requirements applicable to plan loans under Code Section 72(p) had the amendment been adopted and effective when plan loans were first made available; and (c) plan loans (including plan loans in excess of the number permitted under the terms of the plan) were available to either all participants, or solely to one or more participants who were non-highly compensated employees.
- The reporting of a deemed distribution (via Form 1099-R) for a corrected plan loan failure may be made for the year of correction (instead of the year of the failure) without a specific request to the IRS to do so.

Limited Expansion of Determination Letter Program for Individually Designed Plans: The IRS, in Rev. Proc. 2019-20, issued on May 1, 2019, has provided for a limited expansion or its determination letter program under Rev. Proc. 2016-37. During the twelve-month period beginning September 1, 2019, the IRS will accept determination letter applications for individually designed statutory hybrid plans (such as cash balance plans). In addition, the IRS will accept determination letter applications for individually designed merged plans on an ongoing basis beginning September 1, 2019. The IRS will continue to accept determination letter applications for individually designed plans with respect to their initial plan qualification and qualification upon termination.

Individually designed statutory hybrid plans submitted under the expansion will be reviewed based on the 2017 Required Amendments List (Notice 2017-72) as well as all Required Amendments Lists and Cumulative Lists issued prior to 2016.

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Qualified Retirement Updates, continued

Individually designed merged plans (plans resulting from the merger or consolidation of two or more plans of entities that are not part of the same controlled or affiliated service group in connection with a corporate merger, acquisition or similar transaction among those entities), may be submitted for determination letter consideration provided that (a) the plan merger occurs no later than the last day of the plan year that begins after the first plan year that includes the date of the underlying corporate merger, acquisition or similar transaction; and (b) the determination letter application is submitted within the period beginning with the date of the plan merger (as defined in Rev. Proc. 2019-20) and ending on the last day of the first plan year of the merged plan that begins after the date of the plan merger. Merged plans submitted under the expansion will be reviewed by the IRS based on the Required Amendments List that was issued during the second full calendar year preceding the submission, as well as all previously issued Required Amendments Lists and Cumulative Lists.

If plan document failures, other than failures related to the final statutory hybrid regulations or related to effectuate the merger, are discovered during IRS review, the plan sponsor must pay a sanction and enter into closing agreement with the IRS. If either (a) the amendment that created the failure was adopted timely and in good faith with the intent of maintaining the plan's qualified status or (b) the plan sponsor failed to adopt an amendment required by a change in the qualification requirements because the plan sponsor reasonably and in good faith determined that the amendment did not impact the plan document, the sanction is equal to amount of the VCP user fee that would had applied had the plan sponsor identified the failure and submitted the plan for consideration under VCP. Otherwise, the sanction amount is equal to the applicable sanction amount set forth in Rev. Proc. 2019-19, Section 14.04, which provides for a sanction for certain plan document failures discovered by the IRS during the determination letter process that is equal to 150% to 250% (depending on the duration of the failure) of the applicable user fee had the plan been submitted under VCP.

Plans submitted for a determination letter under Rev. Proc. 2019-20 during an open remedial amendment period under Treasury Regulations Section 1.401(b)-1(e)(3) will receive an extension of that period through the ninety-first day after the issuance of the determination letter.

Lump-Sum Payment Option to Retirees Currently Receiving Annuity Payments: On March 6, 2019, the Treasury Department and the IRS issued Notice 2019-18, retracting the intent, expressed in Notice 2015-49, to propose regulations under Code Section 401(a)(9) that would disallow the practice of offering retirees and beneficiaries who are currently receiving annuity payments under a defined benefit plan the option to elect a lump-sum payment in lieu of future annuity payments. The intended regulations would have been applied as of July 9, 2015 so as to have the effect of discontinuing the practice as of that date, except in the case of a lump-sum window with respect to which specific concrete steps (adoption, specific authorization to adopt, collective bargaining, or written communication furnished to participants) with respect to the plan amendment had been taken, or a determination letter or letter ruling had been received, before that date.

Pending the issuance of further guidance, the IRS will not assert that a plan amendment providing for a retiree lump-sum window program causes the plan to violate Code Section 401(a)(9), but will continue to evaluate whether the plan, as amended, satisfies other Code requirements. Prior to the issuance of further guidance the IRS will not issue private letter rulings with regard to retiree lump-sum windows, but determination letters will no longer include a caveat expressing no opinion regarding the tax consequences of such a window.

IRS Operational Compliance List: The IRS has updated its Operational Compliance List to include changes to qualification requirements that are effective in 2019. The updated list includes the following:

- Changes relating to hardship distributions made by the Bipartisan Budget Act of 2018 and proposed regulations issued in November 2018. These changes include:

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- Elimination of the requirement that a participant be required to take all available plan loans prior to taking a hardship distribution;
- Expansion of the sources of hardship distributions to include elective contributions, QNECs, QMACs, safe-harbor contributions, and earnings on these amounts;
- Elimination of the requirement that the participant be prohibited from making elective contributions and employee contributions for the 6-month period after receipt of a hardship distribution;
- Modification of the safe harbor list of expenses for which distributions are deemed to be made on account of an immediate and heavy financial need;
- Replacement of the current rule under which the determination of whether a distribution is necessary to satisfy a financial need is based on all the relevant facts and circumstances with a general standard for determining whether a distribution is necessary; and
- Extension of the relief provided under Announcement 2017-15 through March 15, 2019 for victims of Hurricanes Florence and Michael.
- Extension of temporary nondiscrimination relief for closed defined benefit pension plans.

Increase in Statutory Penalties for ERISA Violations: On January 23, 2019 the Department of Labor issued its final rule providing for inflation-adjusted increases for statutory penalties for ERISA violations, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. Among the increases was the maximum penalty for failure to file a Form 5500, to $2,194 per day. The increases apply to penalties assessed after January 23, 2019 (with respect to violations occurring after November 2, 2015).

Covered Compensation Tables for 2019: In Revenue Ruling 2019-06, the IRS issued its tables of covered compensation under Code Section 401(l)(5)(E) and related Treasury Regulations for plan years beginning in 2019.

Updated Mortality Improvement Rates and Static Mortality Tables for Defined Benefit Pension Plans for 2020: In Notice 2019-26, the IRS specified updated mortality improvement rates and static mortality tables to be used for defined benefit pension plans Code Section 430(h)(3)(A) for purposes of calculating the funding target and other items for valuation dates occurring during the 2020 calendar year. The notice also included a modified unisex version of the mortality tables for use in determining minimum present value under Code Section 417(e)(3) and ERISA Section 205(g)(3) for distributions with annuity starting dates that occur during stability periods beginning in the 2020 calendar year.

Final PBGC Regulations Amending Valuation, Reporting, and Disclosure Regulations for Terminated and Insolvent Multiemployer Plans: On May 2, 2019, the Pension Benefit Guaranty Corporation (PBGC) issued final regulations amending valuation and other regulations for terminated and insolvent multiple employer plans. The final regulations are effective July 1, 2019.

Disaster Relief Provided By the IRS and PBGC: The IRS has provided plan-related relief to victims of the earthquake that took place on November 30, 2018 in Alaska (AK-2019-01), tornadoes, stream-line winds and severe storms in Alabama (AL-2019-01 and IR-2019-31), severe winter storm, straight-line winds, and flooding in Nebraska (NE-2019-02), and Iowa severe storms (IA-2019-02). Relief consists of an automatic extension, without penalty, to file Form 5500 series returns.

Pursuant to its Disaster Relief Announcement released July 2, 2018, the PBGC provides specified relief for disasters for which the IRS has issued disaster relief.

Health and Welfare Updates

By Elizabeth M. Harris
Orrick, Herrington & Sutcliffe LLP

EEOC LEAVES WORKPLACE WELLNESS PROGRAMS WITHOUT CLARITY

The Equal Employment Opportunity Commission (EEOC) issued regulations effective January 1, 2019 that rescind incentive-based workplace wellness programs, leaving employers without guidance for at least the next few months.

By way of background, in May 2016, the EEOC finalized regulations outlining how employers could provide financial and other incentives to employees for answering disability-related questions, taking medical exams or by having their spouses provide information about current or past health status. The EEOC designed the regulations to promote workplace wellness while avoiding compromising the obligations under the Americans with Disabilities Act (ADA) of 1990 or the Genetic Information Nondiscrimination Act (GINA).

Under the final ADA regulation, employers can offer wellness programs, inquiring about health or offering medical examinations in exchange for incentives of up to 30% of the total cost of the employee's "self-only" health insurance plan. The final GINA regulation applied the same maximum incentive for information provided by employees' spouses. The EEOC also claimed that the rules complied with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

In October 2016, the American Association of Retired Persons (AARP) brought a suit on behalf of its members, arguing that the regulations violated the ADA and the GINA provisions requiring that the disclosure of health information to an employer be "voluntary," and that employees who would not otherwise choose to do so would be forced to disclose information in order to take advantage of the health coverage costs offered by such wellness programs.

According to the regulations, "in order for the participation in an employee health program to be voluntary, a covered entity may not require employees to participate, deny access to health coverage for nonparticipation, generally limit coverage under its health plans, take any other adverse action, or retaliate, interfere with, coerce, intimidate, or threaten an employee who does not participate or fails to achieve certain health outcomes, and must provide a notice clearly explaining what medical information will be obtained, how it will be used, who will receive it, and the restrictions on disclosure."

In August 2017, the U.S. District Court for the District of Columbia ruled that the EEOC had failed to justify the 30% figure and ordered it to reconsider it "in a timely manner." However, the court found that vacating the regulations altogether would cause "widespread disruption and confusion."

The AARP subsequently moved for vacatur of the regulations and the U.S. District Court for the District of Columbia granted the motion in December 2017, setting an effective date of January 1, 2019. He directed the EEOC to issue a notice of proposed rulemaking by August 2018.

In January 2018, the D.C. District Court granted a motion by the EEOC to partially vacate the December 2017 order by removing the August 2018 rulemaking deadline.

In October 2018, the EEOC indicated that new rules would not be promulgated until at least June 2019. On December 20, 2018, the agency published notices of its intent to rescind the ADA and GINA regulations as of January 1, 2019.

How to Interpret "Voluntary"

The ADA and the GINA generally prohibit employers from asking employees about their and their families' health unless the questions are "voluntary." However, the laws don't define the word "voluntary," which had

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left employers in a problematic situation if they wanted to implement such wellness programs. The Affordable Care Act of 2010 (ACA) amended HIPAA to allow employers to raise or lower their employees' health insurance premiums by 30% if they participated in wellness programs, but it wasn't until the EEOC finalized its regulations in 2016 that employers had some clarity about what they were permitted to do under the ADA and GINA.

Employers offer wellness programs to encourage workers, among other incentives, to invest in their health and to save on the cost of insurance. However, with the incentive provisions of the rules vacated, employers are at some risk of EEOC action or private suits challenging their existing programs as strong-arming its employees.

Takeaways for Employers in the Meantime

Now that the EEOC has offered an opinion as to what it perceives to be voluntary, employers are in a better position to make judgment calls when assessing their current incentive programs. If employers' programs are in line with the 2016 rules, experts say it is unlikely that the EEOC will pursue action against them for coercive policies. It helps that the D.C. District Court did not address other sections of the law that help employers ensure that they are not compelling workers to participate. This includes provisions regarding confidentiality requirements, the methods employers utilize to communicate with workers, and by what means programs are designed to make employees healthier. Employers can look to the vacated guidelines as a framework, and now must carefully take into consideration what is "voluntary" under the ADA.

FEDERAL JUDGE CONSIDERS DOL HEALTHCARE RULE UNLAWFUL UNDER ERISA, ACA

On March 28, 2019, a federal Judge in Washington, D.C. rejected a significant provision in a Trump administration regulation on association health plans, "Definition of 'Employer' Under Section 3(5) of ERISA—Association Health Plans".

A U.S. District Judge found that language in the Department of Labor's (DOL) regulation permitting small businesses and self-employed individuals to group together for the purpose of buying health insurance on the large-group market is essentially unlawful and a clear "end-run" around the ACA. The District Court also found that the rule misrepresents the meaning of the term "employer" as used under ERISA, and that it constitutes an attempt to unlawfully expand the term's meaning in violation of the Administrative Procedure Act (APA).

The ruling came in the context of a lawsuit against the DOL brought in July by the attorneys general of California, Delaware, Kentucky, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Virginia, Washington, and Washington, D.C., alleging that the rule violates the "text, structure and purpose" of the ACA and is based on a misreading of ERISA. The U.S. District Court ruled that the attempted expansion of the term "employer" neglects the ACA's "careful statutory scheme distinguishing rules that apply to individuals, small employers and large employers." By permitting unrelated small employers and self-employed individuals to form associations to offer health coverage to their members, they could avoid certain ACA requirements contrary to Congressional intent.

"For decades," the U.S District Court explained, DOL has only permitted "bona fide associations" of employers "with close economic and representational ties to their employer members" to be considered "employers" under ERISA, and therefore empowered to purchase large-group insurance on the market for their employees. The 2018 Final Rule ignores this requirement. The purpose, the Court found, is to permit small businesses

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Health and Welfare Updates, continued

and some individuals "to avoid the healthcare market requirements imposed by the ACA," which the law does not allow. In fact, the Court noted, the President himself directed that the DOL design the Final Rule to accomplish this very result and acknowledged that its purpose was to avoid the stringent rules of the ACA, as evidenced by the language in his executive order directing the DOL to disseminate what became the Final Rule. The Court remanded the rule to the DOL to permit the agency to try to address the possible severability of the invalidated portion.

HHS AGENCIES ISSUE PROPOSED RULES ON ELECTRONIC HEALTH INFORMATION ACCESS AND EXCHANGE

On February 11, 2019, in a harmonized effort, two agencies within the Department of Health and Human Services (HHS) proposed rules to enhance the ability and exchange of electronic health information (EHI) and improve access to, and the quality of, information needed by consumers to make informed healthcare decisions.

The proposed rules are aimed at expounding and implementing provisions in the 21st Century Cures Act of 2016 related to interoperability, information blocking, and certification of health information technology developers.

The first proposed rule, "21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program", issued by the Office of the National Coordinator for Health Information Technology (ONC), would implement "certain provisions of the Cures Act, including conditions and maintenance of certification requirements for health information technology (health IT) developers under the ONC Health IT Certification Program, the voluntary certification of health IT for use by pediatric healthcare providers, and reasonable and necessary activities that do not constitute information blocking."

In addition, the proposed rule would modify the ONC Health IT Certification Program in order to "advance interoperability, enhance health IT certification, and reduce burden and costs."

The second proposed rule, published in March 2019 issued by the Centers for Medicare & Medicaid Services (CMS), is entitled "Medicare and Medicaid Programs: Patient Protection and Affordable Care Act; Interoperability and Patient Access for Medicare Advantage Organizations and Medicaid Managed Care Plans, State Medicaid Agencies, CHIP Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans in the Federally-Facilitated Exchanges and Health Care Providers."

CMS said in a summary that it is "committed to solving the issue of interoperability and achieving complete access to health information for patients in the United States healthcare system" and is "taking an active approach to move participants in the healthcare market toward interoperability and the secure and timely exchange of health information." The regulation focuses on Medicare and Medicaid programs, the Children's Health Insurance Program, and issuers of qualified health plans.

The proposed rule is to make patient data "more useful and transferable through open, secure, standardized, and machine-readable formats while reducing restrictive burdens on healthcare providers."

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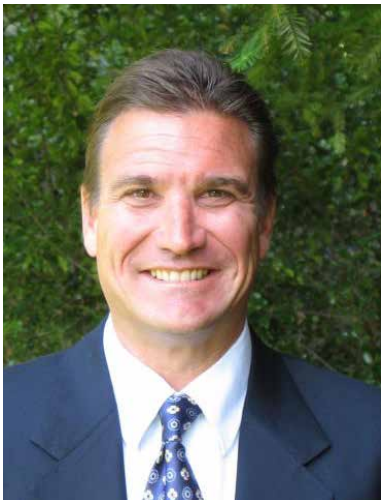
Member Profile: Matt Borror

Company: Law Office of Matthew J. Borror

Title: ERISA Attorney

Education: B.A. Pure Mathematics, Fresno State University; J.D., Santa Clara University School of Law

Years in the industry: 27



Please tell us about your first "real" job: I worked in the third party administration department of an insurance broker who sold retirement investment products to scores of local businesses. Money purchase/profit sharing plans with pooled accounts were common then. The pay was a pittance, but the people were friendly, and I learned a lot. One afternoon when the owner and I were visiting clients downtown, we walked into Brooks Brothers and he bought me a suit!

BUSINESS BACKGROUND

Nature of your work: I provide legal services to employers and advisors with plans that are too small to justify the costs associated with engaging a large law firm.

How you got into the field: I was a math major and thought I wanted to be an actuary until actually spending time at such a firm.

What you like about the field: Clients are grateful to have their concerns about IRS or DOL issues behind them. The issues are interesting and most all of the other service provider representatives are nice people.

PERSONAL

Ways you spend free time: Biking, swimming, doing crossword puzzles, walking my dogs.

Guiding philosophy: Pretty simple: Be nice. Do unto others….

Favorite charities: Turning Wheels for Kids, Humane Society.

Last books read: "The Killer Collective," by Barry Eisler; "12 Rules for Life," by Jordan Peterson; "Life Reimagined," by Barbara Bradley Hagerty.

Restaurant recommendations: Tadich Grill, Outerlands.

What will you do when you retire: That is a long way off and I never think about it.

Member Profile: Aimee Hendershott

Company: Principal Financial Group

Title: Relationship Manager

Education: B.A. Spanish, University of Arizona; Teaching Credential, University of Oregon.

Years in the industry: 23

Please tell us about your first "real" job: Vocational Rehabilitation Counselor, helping workers return to work in a full or modified capacity, after recovering from a work-related injury.

MEMBER PROFILE

BUSINESS BACKGROUND

Nature of your work: Relationship Manager: I support advisors and clients with ongoing retirement plan management. I share consultative solutions with advisors and their clients that have multiple plan types, with complex plan designs. I enjoy helping clients with strong benefits packages that include DC, DB, ESOP and non-qualified plans. My job is most rewarding when I see participants retiring with enough money to meet their needs and live their best lives.

How you got into the field: The insurance broker for the company I was working for referred me to the Principal Financial Group.

What you like about the field: Working to create the best possible outcome for employees. I enjoy the continuous opportunity for learning and growth. Most of all, I enjoy the people I work with.

PERSONAL

Ways you spend free time: Run, hike, ski, yardwork, spend time in tropical places, hang out with friends & family.

Guiding philosophy: The Golden Rule. There is something to like about everyone if you keep looking. Every day is a gift; Find joy in everything you do (Except SalesForce entries, which is not an enjoyable task).

Favorite charities: Rabbit Ears Rabbit Rescue, Berkeley Humane Society, World Wildlife Foundation.

Last books read: "Never Lose a Customer Again," by Joey Coleman (assigned reading, but good); "Practical Demon Keeping," by Christopher Moore; "Just Mercy," by Bryan Stevenson.

Restaurant recommendations: Rivoli, Albany; Doyle Street Café, Emeryville; The Cliff House (not necessarily for the food but it's gotten to be pretty good); Skates, Berkeley.

What will you do when you retire: Run if I still can, ski, hike, read, spend time on Maui, cliff diving, become a yoga instructor. Do all of the above with family and friends.

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Industry Leader Profile: Craig P. Hoffman

Current Position: Counsel, Trucker Huss

Prior Positions: General Counsel, the American Retirement Association; General Counsel, Relius Division of SunGard (now FIS); Associate Attorney, Commander Legler, Werber, Dawes and Sadler; Associate Attorney, Ackerman, Senterfitt and Eidson.

Years in the industry: 38

AT WORK

What has been the nature of your work?
My professional career has been focused on federal tax and ERISA. I went to law school in Florida where I am licensed and practiced at a couple of Florida law firms. I then went to work for a pension administration software firm, SunGard, where I served as General Counsel for 19 years. In my most recent job, I was General Counsel for the American Retirement Association (ARA) which has over 20,000 individual members who provide consulting and administrative services to American workers, savers, and the sponsors of retirement plans. At ARA, I led our advocacy efforts with the IRS, DOL and other federal agencies. I also took part in our lobbying efforts on Capitol Hill, meeting with members of Congress and their staff on legislative proposals. I am now Counsel to Trucker Huss practicing exclusively in the area of federal tax and ERISA matters.

What attracted you to join the employee benefits industry? A professor in the LL.M. program at the University of Florida taught me the basics, and there was a need for folks in this area as ERISA was only 7 years old when I started. It was where I started as a tax lawyer, and there has been plenty of work to keep me busy over the last thirty-eight years.

What has been the most surprising thing about your roles in the employee benefits industry? My work with the American Retirement Association, both as a volunteer and a paid staffer, was not something I anticipated when I started out. Being part of our various advocacy efforts and being able to make a difference in the determination of retirement policy was quite rewarding and an unexpected wrinkle in my career path.

What advice do you have for individuals new to the employee benefits profession? Get a copy of the ERISA Outline Book from ASPPA.

What significant changes do you predict for the employee benefits industry in both the near future and the long term? In the near term, it will be interesting to see how MEPs [multiple employer plans] change the small plan market, if at all. In the longer term, workplace retirement plan coverage needs to improve. Obviously, some states, including California, are instituting their own mandates but a federal mandate is not out of the question. House Ways and Means Chairman Richie Neal (D-MA) is expected to reintroduce his Automatic 401(k) Plan Act in the current Congress which may have a better chance in two years after the results of the 2020 election are known.

AT PLAY

When you are not working, what is one thing you enjoy doing? Playing golf.

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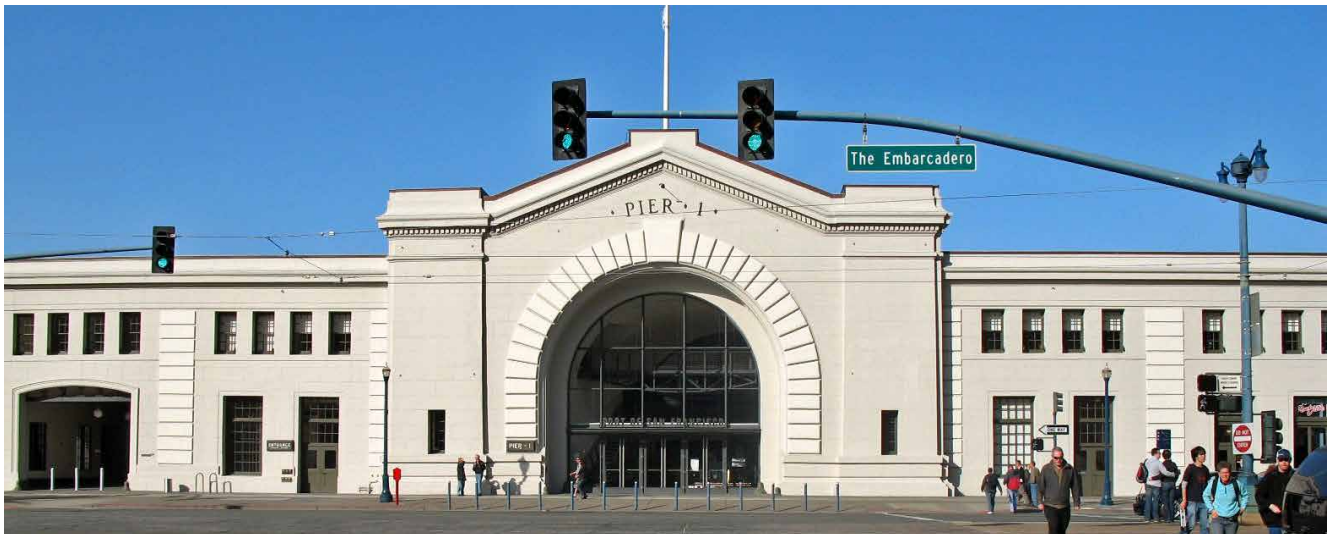
Industry Leader Profile, continued

What is the most interesting place you have visited and why? Recently, the Jameson Distillery, Midleton, Ireland. Being a fan of the beverage it was very interesting to see how it is made and I got to fill my own bottle directly from the cask.

What movie or play do you recommend and why? I recently saw "Green Book" on a plane and thought it was quite good. "Hamilton" for a play.

If you could have dinner with a person (dead or alive) that you greatly admire, who would that be and why? My father, who has passed away, for many obvious reasons.

Please Join Us!
Member Appreciation Event!
Tuesday, June 18, 2019
La Mar Restaurant
Embarcadero | Pier 1
4:30 - 7:00 p.m.
Register on our website:
www.wpbcsanfrancisco.org



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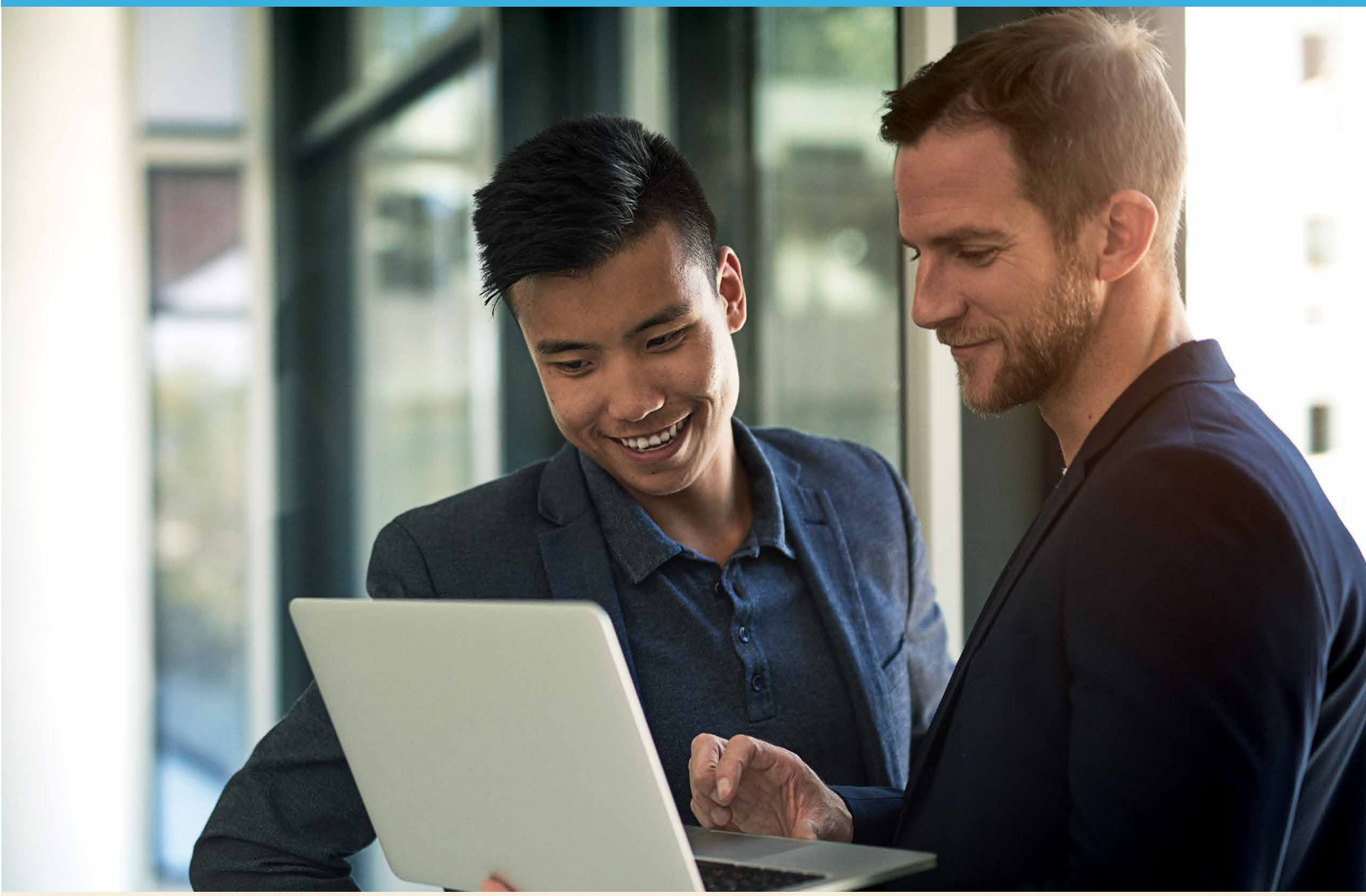

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Executive Compensation Updates

By Anjuli Cargain
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Amended Regulation S-K Disclosures

On March 20, 2019, the Securities and Exchange Commission (SEC) adopted amendments to the disclosure requirements in Regulation S-K (SEC Release No. 33-10618). Regulation S-K provides reporting requirements used by public companies for SEC filings. The final rules are based on certain amendments proposed by the SEC in October 2017 to modernize and simplify disclosure requirements and related rules and forms, as mandated by the 2015 Fixing America's Surface Transportation Act (the FAST Act). Among other things, the final rules adopt amendments to Item 401, (directors, executive officers, promoters and control persons), Item 405 (compliance with Section 16(a) of the Exchange Act), and Item 407 (corporate governance) of Regulation S-K.

The amendments to Item 401 simplify the rules for determining what disclosure about executive officers may be included in Form 10-K when other disclosure in Part III of Form 10-K will be incorporated by reference to the registrant's definitive proxy or information statement. The amendments to Item 405 allow registrants to rely on a review of Section 16 reports submitted on EDGAR rather than reports furnished to the registrant when providing disclosure about Section 16(a) compliance, changes the disclosure heading, and eliminates the checkbox on the cover page of Form 10-K (and the related instruction) relating to delinquent Section 16(a) filings. Finally, the amendments to Item 407 clarify the applicable auditing standard and the disclosure requirements for the compensation committees of emerging growth companies.

In addition, to providing for a consistent set of rules to govern incorporating information by reference and hyperlinking, the SEC also adopted parallel amendments to several rules and forms applicable to investment companies and investment advisers. The amendments become effective May 2, 2019, except where indicated in the final rules.

SOURCE: *www.sec.gov*

March 12th Chapter Meeting

At the March 12, 2019, Chapter meeting, attendees were provided an economic update as a two-part presentation: **Omar Aguilar, SVP** and **CIO** of **Equities and Multi-Asset Strategies for Charles Schwab Investment Management**, provided an overview of current market conditions and how markets are influenced by investor behavior. He was followed by the perspective of two advisors, Karen Casillas of CAPTRUST and Jon Chambers from SageView, on how they are presenting market data and economic trends in their discussions with retirement plan fiduciaries.

Omar Aguilar used March Madness and the irrationality of sports fans to set the context for how investors make decisions and that volatility of markets is exacerbated by emotional decision making and technology. Omar presented Schwab's market outlook and insight in the context of other broader trends affecting the markets and economic cycles, forecasting that 2019 was a "transition year." Trends included historically low fixed income yields since 2006, global economic deceleration and that the Tax Cut legislation was a short-term stimulus. Omar suggested that GDP around 2% was likely an appropriate and sustainable level, and that wage pressure is growing, as there are more jobs than people who can fill them.

In follow up to Omar's presentation, **Jon Chambers, Managing Director, SageView Advisory Group,** and **Karen Casillas, AIF, CPFA, CFS, Vice President & Financial Advisor, CAPTRUST,** engaged one another and the audience in an interactive presentation that addressed several key themes that they are encountering during their fiduciary review meetings. Both agreed that fiduciaries are asking whether the current volatility of the stock market signaled an imminent market correction. Jon suggested that it is equally likely that the Fed will raise or lower interest rates over the next 12 months in reaction to economic data. Jon also indicated that many fiduciaries are interested in streamlining their 401(k) fund offerings especially if there is a concern over the paradox of choice. Fiduciary committees are also engaging in deeper reviews of their target date strategies, including assessing again if active versus passive index strategies are appropriate for their demographics in addition to considering glidepath construction.

Karen shared that in addition to target date and investment due diligence, there is continuing discussion and debate about whether a money market fund or stable value fund is the best choice for participants' cash allocation ("conservation of capital" asset class). Karen said that she is also receiving requests to understand Environmental, Social and Governance

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March 12th Chapter Meeting , continued

(ESG) investments and other alternative asset class strategies. Both Karen and Jon expressed that their discussions regarding plan and participant level managed account and ERISA 3(38) services are becoming more nuanced and detailed as there are an increasing array of products and fees continue to be a barrier. In addition, there are operational risks--including transparency of trading costs for Collective Investment Trust (CIT) products, performance reporting issues and difficulty when needing to unwind managed accounts if something goes wrong.

The event was held at the Jackson Lewis office in San Francisco. Virginia Krieger Sutton, Vice President, Retirement Plans Practice, Johnson & Dugan Insurance Services Corporation, served as the moderator for the event. A special thanks to Fidelity for sponsoring the program.

MARCH 12TH CHAPTER MEETING

May Chapter Meeting: How Participant Data Metrics Will Revolutionize Benefits!

On May 14, 2019, the Chapter held its first joint event with the International Society of Certified Employee Benefits Specialists. The event was well attended and provided valuable, cutting-edge information, as well as a great networking opportunity for Chapter members to mingle with other engaging benefits professionals.

The program hour featured a distinguished speaker, **Hugh O'Toole, CEO of Innovu**, who gave a fascinating presentation entitled, "Real-Time Insight: Analytics You Can Act On." Hugh's presentation covered the novel practice of utilizing participant data and analytics to more efficiently allocate resources. Hugh's presentation brought to light some of the inefficiencies in the administration of employee benefit plans, particularly with respect to healthcare and retirement plans. The presentation was not only informative but offered pragmatic, data driven solutions that if utilized by employers, may reduce inefficiencies and thus, enable employers to provide superior benefits to its employees and retirees. The event was interactive and included many questions and comments from attendees.

The event was held at Orrick with lively conversation spilling over past the program into the social hour, which included delicious food and beverages.

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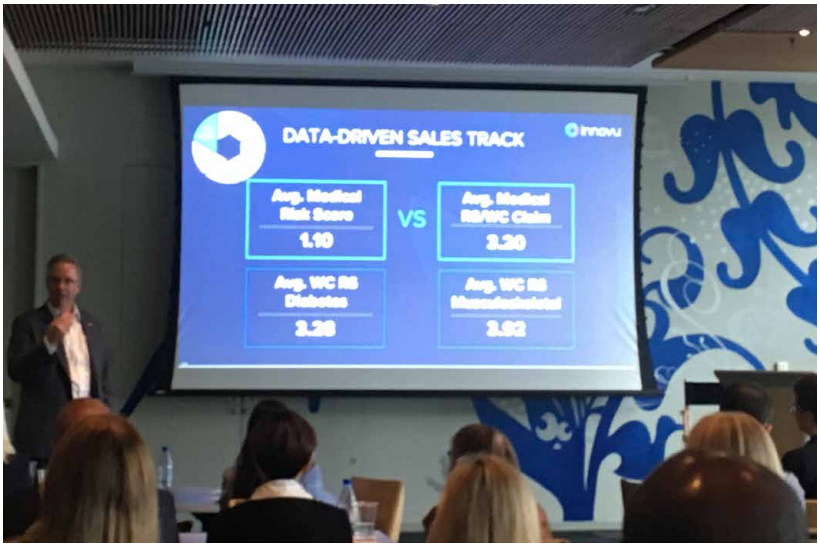
May Chapter Meeting, continued



WP&BC
WESTERN PENSION & BENEFITS COUNCIL
San Francisco

Spring 2019

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April Brown Bag Roundtable Discussion Bringing Clarity to Cash Balance Plans

On April 25, 2019, during the lunch time hour, the Chapter hosted a brown bag roundtable discussion on cash balance plans. This standing-room-only event was held at Trucker Huss and featured presentations by the following Altman & Cronin actuaries:

- **Dan Jaffe:** an Enrolled Actuary with over 25 years of experience consulting on retirement plan issues to private-sector defined benefit plan sponsors. Dan's areas of focus include compliance, administration, nondiscrimination, particularly in connection with cash balance plans.
- **Janelle Ong:** a Fellow of the Society of Actuaries and an Enrolled Actuary. She has over 14 years of experience in retirement consulting that has encompassed valuation, financial accounting, compliance, plan design and administration of qualified and non-qualified defined benefit plans and post-retirement medical plans. She has been working on law firm cash balance plans at A&C since 2010.
- **Julie Sachs:** a Fellow of the Society of Actuaries and an Enrolled Actuary with over 14 years of actuarial experience in the retirement area. She consults to both large and small employers on a variety of actuarial topics and has extensive expertise in pension risk management, retirement plan design, valuation, financial consulting, and administration.

The presenters covered the basics of cash balance plans for professional firms from the perspective of both participants and plan sponsors. The presenters primarily focused on partner cash balance plans where the goals are to (1) maximize partner tax deductible contributions, and (2) maintain parity between partners (each partner pays for his/her own benefit). Topics included an introduction to market rate cash balance plans, design considerations, deductions, nondiscrimination testing, 415 limits, and top-25 issues. The discussion covered the basics as well as details for more sophisticated practitioners.

Attendees were quite active in asking questions and sharing comments. A special thanks to Altman & Cronin for sharing its expertise with us and to Trucker Huss for providing the meeting facility and refreshments.

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April Brown Bag, continued

2019 NIPA Annual Forum & Expo

The Western Pension & Benefits Council (WP&BC) once again partnered with the National Institute of Pension Administrators (NIPA) at their NIPA Annual Forum & Expo (NAFE) conference, which took place this year in San Diego from April 28th through May 1st at the Loews Coronado Bay Resort. The conference went well and featured speakers from WP&BC, including our Chapter's Brad Huss and Craig Hoffman, as well as speakers from other WP&BC chapters, including Brenda Berg, Mike Clark, and Phil Allen.

The sessions were varied, although primarily retirement-focused. Tracks included defined contribution (DC) plans, defined benefit (DB) plans, business, and specialty tracks which included such topics as ERISA litigation, ethics, and "ask the experts."

Craig Hoffman - Washington Update - The conference kicked off with a Washington update given by Craig Hoffman, now Counsel at Trucker Huss but previously General Counsel at the American Retirement Association. The update was a combination of regulatory update and legislative update. On the regulatory front, he spoke about hardship withdrawal changes for 2019, the trend of providing matching contributions in a 401(k) plan based on student loans, the Employee Plans Compliance Resolution System (EPCRS) self-correction program expansion as noted in Revenue Procedure 2019-19. He also gave some insight on President Trump's executive order on retirement security. On the legislative front, he spoke about the Setting Every Community Up for Retirement Enhancement (SECURE) Act, the Retirement Enhancement and Savings Act (RESA), the fiduciary-free multiple employer plan (MEP) model, the Johnson Security and Flexibility Act, and the Neal Automatic Retirement Plan Act.

Brad Huss - ERISA litigation update - Brad spoke of 401(k) fee litigation (traditional themes, current trends, recurring themes, possible defenses and best practices to avoid). He covered company stock litigation, university 403(b) plan litigation, and state legislation regarding the fiduciary rule and ERISA preemption of Nevada state law. He also covered DB plan litigation (investment diversification and mortality tables in J&S factors), the use of different assumptions for withdrawal liability calculations. Finally, Brad discussed strategies for mitigating future plan risks, including contractual limitation provisions, forum selection clauses, and arbitration provisions.

Craig Hoffman - Multiple Employer Plans (MEPs) - Craig gave the current state of MEPs, and the primary issue of commonality requirement (common interest requirement). Essentially, the Internal Revenue Code section 413 treats an MEP as one plan but ERISA treats an MEP as consisting of separate employer plans if the commonality requirement is not met. There was a Department of Labor (DOL) ruling relaxing the commonality requirement, but it is being challenged by a lawsuit. Rules for association health plans (AHPs) and association retirement plans (ARPs) are similar. Legislative proposals (RESA and SECURE) all have some MEP provisions in there, which could impact the DOL regulations and current lawsuits. Craig believes that the DOL will push forward, thinking that it think they will prevail on appeal. Craig said that pooled employer plans (PEPs, essentially MEPs with no commonality requirement) appear to be the force driving legislation and seem to hold wide bipartisan support.

Brad Huss - DOL investigations - Brad started with an overview of Employee Benefits Security Administration (EBSA), a sub-agency of the DOL and how the DOL works with the IRS and PBGC in the enforcement of ERISA. He then discussed EBSA's national enforcement projects, which fall under the following categories: the Health Benefits Security Project, the Contributory Plans Criminal Project, the Rapid ERISA Action Team (REACT) (for when a company displays financial distress or declares bankruptcy), the Employee Stock Ownership Plans (ESOPs) Project, and the Plan Investment Conflicts Project. Finally, Brad walked through the investigative process, how targets are likely selected and how the process will go, and the voluntary fiduciary correction program as well as other helpful sources of additional information.

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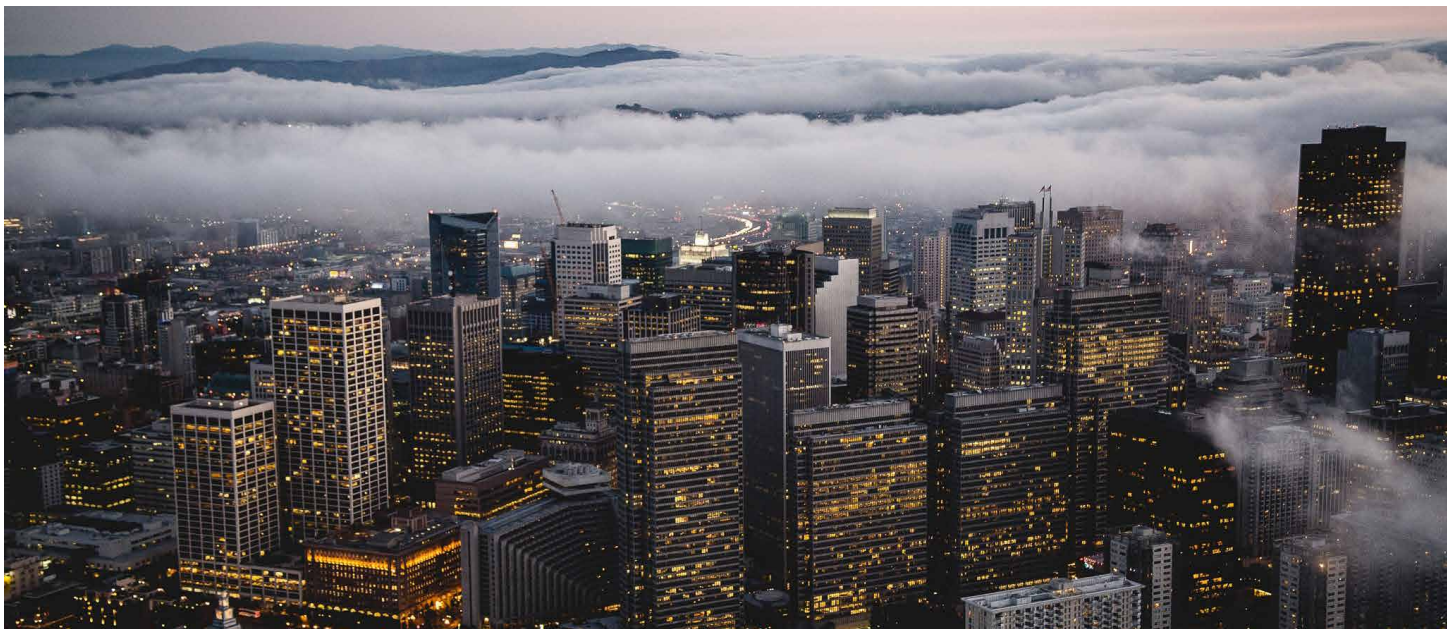
2019 NIPA Annual Forum & Expo, continued

Other sessions included ethics, "ask the experts" for both DC and DB plans, and investment, compliance, and administrative issues for DC plans. Actuarial sessions included topics regarding qualified separate lines of business (QSLOBs) and retirement plan deductions for pass-through entities.

Next year's conference will be held in Nashville from April 26 to 29, 2020, so please mark your calendars. Also, let one of the Chapter officers know if you are interested in presenting, and we can work in advance of the conference to help set the tone for content that will be helpful to our membership.



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Want to get involved in the San Francisco Chapter?

Contact Kevin Nolt to volunteer!

Spring 2019

EMPLOYMENT OPPORTUNITIES

If you wish to post an employment opportunity on our website, please read the following note: Listings must comply with applicable regulations for employment advertising. Online job postings are free to WP&BC San Francisco Chapter members. Call Terri Fulton at the Chapter office for more information, (415) 730-5479. Email all listings to info@wpbcsf.com

The Newsletter welcomes contributions from its members. If you would like to submit a topical benefits-related article for an upcoming issue, please contact the chapter at info@wpbcsf.org.

Special thanks to Bryan Card, Sarah Kanter, Virginia Krieger Sutton, and Karen Mack for help in drafting and editing newsletter articles.

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