



Pension & Benefits Quarterly

Summer 2017

Legislative & Regulatory Update

Executive Compensation

Share-based Payment Awards: On May 10, 2017, the Financial Accounting Standards Board published Update No. 2017-09 to clarify the application of guidance on modification accounting in Topic 718, Compensation-Stock

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S.F. Chapter 2017 Spring Conference Recap

The annual San Francisco Chapter Spring Conference took place on Thursday, May 18, 2017, at One Kearny Club – an iconic event location, blending history with modern design. The conference provided a variety of session topics, informative speakers, and valuable industry insight.

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Immediate Past President’s Letter:

It’s not goodbye. It’s just see you later! It is with great amazement that I ponder this letter and the reality that I saved the file as “Past President Letter July 2017.” I have been a member of WP&BC for nearly 30 years. And, a volunteer in some capacity, for all but three of them.

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“ During this summer break, your leadership team has already been diligently planning the upcoming meetings and events. ”

Kevin Nolt
Trucker Huss

President’s Letter - Pg 2



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PRESIDENT'S LETTER

Happy Summer 2017!

I hope you are enjoying a family vacation, BBQ with friends or just some pool time with your favorite summer book.

I am excited to have started my term as President of the San Francisco Chapter (effective July 1, 2017). My goal over the next two years is to continue to develop innovative ways to provide our members with high-quality programming and networking opportunities. Timely, informative programming in an interactive setting is the cornerstone of our organization and will continue. While education can be obtained in other ways, the personal connections that are established and fostered during the networking receptions that follow each Chapter meeting are irreplaceable. The opportunity to have a conversation with our presenters and colleagues in an informal setting helps build and solidify lasting relationships.

I am fortunate to serve this Chapter and work towards these goals with a very dedicated and talented Board. I am pleased to announce your leadership team for 2017-2018. The Vice President is Karen Mack, the Treasurer is Brad Wall, and the Secretary is Michon Caton. Remaining Board members are Lori McKenzie, Bill Berry, Ami Givon, Alison Wright, Matt Gouaux, and Claire Eyges. I am also pleased to announce that the Program Committee Co-Chairs are Gary Shipper and Sandy Purdy, the Spring Conference Chair is Mike Zelda, the Brown Bag Lunches Coordinator is Alison Wright, the Field Trip Coordinator is Lori McKenzie, the Newsletter Editor is Jahiz Agard, and the Membership Committee Chair is Robert Gower. I also look forward to working with Jenifer McDonald and her team, the administrator of our Chapter.

Last but not least, our Immediate Past President is Tina Chambers. I want to thank Tina for her leadership over the past two years. It has been a privilege to work with and learn from her. She took on the challenges faced by the organization with drive, creativity and a good sense of humor. I have big shoes to fill but am confident I can lead this organization and help to position us for the next generation of benefits professionals.

During this summer break, your leadership team has already been diligently planning the upcoming meetings and events. You will soon receive an announcement for the first Chapter meeting of the year – check the chapter website for details on our all chapter events.

Ultimately, this organization is a product of its members. Your feedback on programming and growing the organization is always welcome and highly encouraged. Our Chapter is here to help you succeed in your career as a benefits professional - whether you are an actuary, administrator, attorney, auditor, consultant, investment advisor or plan sponsor. If you have renewed your membership, thank you! If you have not, please consider doing so and getting more involved. We appreciate you and hope you will continue to support our Chapter's continued success.

Thank you. I look forward to the 2017 - 2018 Year!

Kevin Nolt, Director
Trucker Huss LLP

KEYNOTE PRESENTATIONS

Engaging Across the Ages

The 2017 Spring Conference kicked off with a timely and important keynote presentation – Engaging Across the Ages. Drawing from significant research compiled and analyzed by the Massachusetts Institute of Technology’s Age Lab, **Michael Lynch**, Vice President of Strategic Markets for the Hartford Funds, provided a thought-provoking and insightful analysis of generational differences in thinking about retirement. Mr. Lynch’s presentation engaged attendees with a discussion of how the youngest members of the workforce perceive retirement savings, and how the use of technology in communication campaigns can help encourage retirement preparedness from an early age. This analysis reaffirmed the importance of understanding diversity in age and thought in encouraging retirement preparedness.

Critical Conversations for Benefits and Business Success

Brian Anderson, Chief Marketing Officer at POPin, detailed how brilliant ideas cannot impact a company unless there is buy-in from the teams doing the work. Anderson provided insight into how leaders are using crowdsourcing to have honest and open conversations. Crowdsourcing is the practice of obtaining input (usually through the Internet or a software program) into a project by enlisting the contributions of a large number of people. Using a crowdsourcing platform, POPin is creating revolutionary ways to have safe and actionable conversations which generate answers to leadership’s toughest questions. Mr. Anderson closed his talk by sharing several real life examples of how Ford and Red Robin used POPin to anonymously crowdsource the answers to specific questions posed by company leadership to drive business success.

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Photos from the conference

BASICS

- **Name:** Gary Shipper
- **Company:** Wells Fargo Asset Management
- **Title:** Defined Contribution Investment Only (DCIO) Specialist
- **Education:** BA, San Diego State University and Certified Investment Management Analyst (CIMA™)
- **Years in the industry:** 21
- **Please tell us about your first “real” job:** I started as a request for proposal (RFP) writer for Schwab Retirement Plan Services right out of college. It was a bit tedious, but it ended up giving me a crash course in learning everything there is to know about 401(k) recordkeeping and plan administration.



BUSINESS BACKGROUND

- **Nature of your work:** I work with Defined Contribution advisors and consultants across the Western U.S. and provide them with industry intelligence, practice management tips, and help them provide investment solutions to their clients.
- **How you got into the field:** I had always been interested and fascinated with investments since a young age. In college I got an internship at Shearson Lehman Brothers, which ended up being in retirement planning. When I started networking to find a job after college, that brief experience with retirement led to the opportunity at Schwab.
- **What you like about the field:** The retirement industry has done an incredible job of helping millions of Americans retirement dreams come true. But I’m driven by the fact that we still have a ways to go. And I really enjoy working with all the talented and passionate people who are focused on helping people become retirement-ready.

PERSONAL

- **Ways you spend free time:** I love to travel and take every opportunity to see the world, in fact I just returned from Italy this Spring. Staying active with all sorts of outdoor activities. Following Bay Area Sports. Cooking is also a passion, and I enjoy wine country - you can find me in Sonoma many weekends.
- **Guiding philosophy:** Those who seek, find. Those who knock will be let in.
- **Favorite charities:** My New Red Shoes. They are a Bay Area charity that gives new shoes to underprivileged children for the start of school. My wife and I will often help with their packing and distribution efforts. For many of the kids, it’s their first new pair of shoes ever, and it helps give them a sense of pride on the first day of school.
- **Last books read:** I tend to read non-fiction. Recently I read “SPQR, A History of Ancient Rome,” for a history refresh before my Italy trip. “Life” - Keith Richards’ autobiography, and Bill Sharpe’s new ebook, “Retirement Income Scenarios.”
- **Restaurant recommendations:** Ichi for sushi, Coqueta for Spanish, Swan Oyster Depot for the best fresh seafood, and Kokkari for Greek. But my favorite would have to be Bix in Gold Alley. It has a supper-club/ speakeasy feel with live jazz and excellent food. I may be biased though - I was married there.
- **What will you do when you retire:** Lots of dinner parties with friends and family. Hopefully spend time somewhere tropical and continue to travel the world. I’d also like to finish my goal of visiting every major league baseball stadium (currently at 19 of 32).

Is this a taste of what retirement will feel like?

I hope not because I do not like to stop moving, learning, and doing. So many thanks continue to be in order. The Board, Committee Chairs, McDonald Association Management Company team members Jenifer and Sean, the members, speakers, moderators, and anyone else I may have just accidentally left off my list.

Our Chapter has had tremendous leadership over the years, and I can only hope I offered a fraction of the impact as those who presided before me. I also admire the leadership team that is taking the reins and am confident that their knowledge, passion, and dedication to both our industry and the membership will continue to make WP&BC a truly unique organization.



As I write this final letter I am reminded of a quote I came across a few years ago that said “you are old when you stop learning.” Since no one wants to be old (least not me) I decided to fight the aging process by becoming a lifelong learner. Learning comes in many forms, and while it is with reflection and some sadness that I see the Immediate Past President title as a bit passive, I look forward to learning more from the Chapter, Board, members, and speakers – just in a different way.

I hope you are making the most of summer while we still work diligently to make a positive impact on the retirement security for all workers.

Cheers,
Tina

Not for Nothing

IRS Issues New Proposed Guidance on Not for Profit Deferred Compensation Plans

Brown Bag Lunch, May 25, 2017

At the May 25, 2017, brown bag lunch, **Marc Fosse**, a Director at Trucker Huss, led a discussion regarding the new proposed IRS regulations promulgated under Internal Revenue Code Section 457(f), governing non-qualified deferred compensation plans sponsored by tax-exempt employers. Those in attendance represented plan sponsors exempt from tax under Internal Revenue Code Section 501(c)(3) and service providers who work with tax-exempt employers, including government employers. This event was held at the San Francisco offices of Orrick, Herrington & Sutcliffe LLP.

Mr. Fosse led off with an overview of the proposed regulations and highlighted open issues. The attendees asked questions and discussed at length the proposed regulations including the definition of substantial risk of forfeiture and the application/importance of vesting schedules in non-qualified deferred compensation plans sponsored by tax-exempt employers. The group agreed that many questions would be unanswered until the final regulations are published and that overall the proposed regulations provide increased flexibility in the design of non-qualified deferred compensation plans sponsored by tax-exempt employers.

Compensation, to a change to the terms or conditions of a share-based payment award. Update No. 2017-09 discusses the fact that an entity may change the terms or conditions of a share-based payment award for many different reasons, and the nature and effect of the change can vary significantly. Furthermore, Topic 718 broadly defines the term “modification” which has led to diversity in practice. Update No. 2017-09 states that an entity should account for the effects of a modification unless the fair value (as defined in the update), vesting conditions, or the classification of the award (as equity or liability) remains the same. The amendments in this update affect any entity that changes the terms or conditions of a share-based payment award. Update No. 2017-09 is effective for all entities for annual periods, and interim periods within those annual periods, beginning on or after December 15, 2017. Early adoption is permitted. <http://www.fasb.org>

Qualified Retirement Plans

Department of Labor (“DOL”) Fiduciary Rule Development. On April 7, 2017, the DOL postponed the applicability date of its final “investment advice” regulation (the “Final Regulation”) for a period of 60 days from its then April 10, 2017, applicability date to June 9, 2017. The DOL similarly postponed the applicability date of related prohibited transaction exemptions, including the Best Interest Contract (“BIC”) Exemption, and amendments to existing prohibited transaction exemptions. In addition, the DOL required that fiduciaries relying on the BIC Exemption and Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs adhere only to the Impartial Conduct Standards as a condition of those exemptions during a transition period from June 9, 2017, through January 1, 2018. <https://s3.amazonaws.com/public-inspection.federalregister.gov/2017-06914.pdf>.

In May 2017, the DOL issued its third set of FAQs in connection with the Fiduciary Rule. <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/coi-transition-period.pdf>. This third set provides information on the transition period and some additional guidance on the Fiduciary Rule itself. Key points of these FAQs include:

- Transactions entered prior to the new (June 9, 2017) applicability date qualify for grandfather relief under the BIC Exemption, subject to conditions.
- During the transition period, the DOL and the Internal Revenue Service (“IRS”) will not pursue claims against fiduciaries “who are working diligently and in good faith to comply” with the Fiduciary Rule and its exemptions.
- The FAQs confirm that during the transition period, compliance with the BIC Exemption requires only adherence to the Impartial Conduct Standards (i.e., the “best interest” standard, no misleading statements, and reasonable compensation).
- Robo-advice providers that receive a level fee and other “level-fee advisers” may rely on the BIC Exemption during the transition period, subject to adherence to the Impartial Conduct Standards.
- During the transition period, the DOL expects financial institutions “to adopt such policies and procedures as they reasonably conclude are necessary to ensure that advisers comply” with the Impartial Conduct Standards.
- The FAQs provide several examples of communications to participants about increasing plan contributions as not constituting fiduciary advice.
- The “independent fiduciary” exception’s requirement that the person making the recommendation “reasonably believe” that the recipient of that recommendation meets the definition of an “independent fiduciary” may be satisfied by relying on a written representation from the recipient or by negative consent to a written representation that that requirement is satisfied.

On July 6, 2017, the DOL issued its Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions in connection with its ongoing review of the Fiduciary Rule. <https://www.federalregister.gov/documents/2017/07/06/2017-14101/request-for-information-regarding-the-fiduciary-rule-and-prohibited-transaction-exemptions>. The DOL indicated it is in the process of reviewing and analyzing comments received in response to its March 2, 2017, request for comments and detailed the issues on which it seeks additional public input on possible additional exemption approaches or changes to the Fiduciary Rule, as well as the advisability of extending the transition period beyond January 1, 2018.



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On April 13, 2017, a few friendly and thirsty WP&BC members joined together for the field trip to DaDa Bar (www.dadasf.com) on the ground floor of the Mechanics Institute Building at 65 Post Street in San Francisco. DaDa is a bar and art gallery with plenty of space for large groups to gather. We drank, laughed, talked and brainstormed ideas for the next set of field trips in 2017-2018. Oh, and we did look at the art and took photos in front of some of our favorites. The best line of the night was, "Is this the field trip?... just drinking?" Well, the answer was, "Yes." You see, we can drink and talk about more than just H&W benefits, investments or wellness programs. We had fun getting to know each other better and looking at some very original art.

Please send future field trip ideas (or happy hour locations) to Lori.Mckenzie@schwab.com. We welcome your suggestions.

DaDa Bar Field Trip



The Impact of a Non-Retirement Ready Workforce S.F. Chapter Meeting, April 26, 2017

At the April 26, 2017, chapter meeting, a distinguished panel provided an insightful and practical outlook as to why plan sponsors should care about retirement plan outcomes. The panel focused on three primary themes:

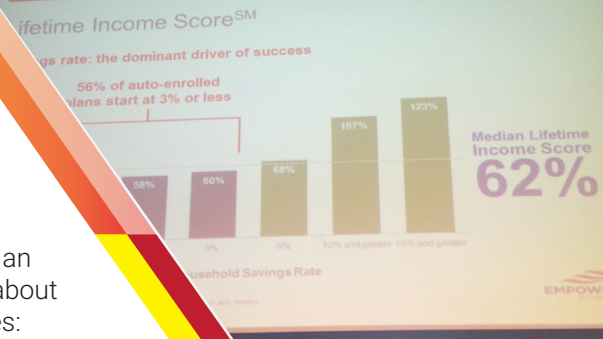
- Why workers are not retirement ready, even if they have been contributing to their 401(k) plans;
- A business case study for why a chief financial officer should be concerned about whether the company’s workers can retire; and
- Ways the industry is working to prevent a dystopian future.

E. Thomas Foster Jr., the National Spokesperson for MassMutual’s Workplace Solutions Division kicked off the presentation providing an overview of the retirement landscape and practical ways to engage both human resources and finance professionals on how to measure and solve for retirement readiness among employees. Mr. Foster works with MassMutual financial advisor and plan sponsor clients to educate them on 401(k) plans. He shared his experiences of what has worked and what has not.

Dagmar Nikles, Managing Director and member of the U.S. & Canada Defined Contribution (DC) Group within BlackRock’s Global Retail and iShares businesses, next presented insights regarding the lower expected rates of return in the capital markets and the impact on employee savings rates and income replacement. Ms. Nikles is responsible for leading the PlanStrategy team, focusing on helping plan sponsors and advisors improve participant retirement readiness via participant and plan level analytics, innovative DC plan tools, and thought leadership.

Aram Boornazian Director at Empower Retirement™, concluded the presentation by sharing (1) findings from Empower’s survey of working Americans and (2) ideas to engage plan sponsors beyond the usual 401(k) retirement plan metrics. Mr. Boornazian is responsible for distribution of Great-West’s investment products designed for improving participant outcomes, including advisory services. In this role, he frequently represents the firm’s capabilities at point-of-sale presentations, industry events and with key intermediary teams.

The event was held at the SPUR on Mission Street, south of Market Street, and attendees enjoyed a social hour and networking reception following the presentation. A special thanks to Fidelity Investments and Clifton Larson Allen for sponsoring the event.



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Photos from the Conference

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S.F. Chapter 2017 Spring Conference Recap - continued

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Nullification of DOL Safe Harbor for Government Sponsored Savings Programs. On April 13, 2017, President Trump signed into law H.J. Res. 67, the resolution adopted by Congress that nullified the DOL's final regulation, issued on December 20, 2016, that extending to cities, counties and other governmental units of a state that establish savings programs for private employers the safe harbor exemption from ERISA coverage. <https://www.whitehouse.gov/the-press-office/2017/04/13/president-donald-j-trump-signs-hjres-67-law>. On May 17, 2017, President Trump signed into law H.J. Res. 66, Congress's similar resolution nullifying the DOL's final regulations issued in August 2016 that had provided the same exemption for similar programs sponsored by states. <https://www.whitehouse.gov/the-press-office/2017/05/17/president-donald-j-trump-signs-hjres-66-law>.

New Procedures for Issuance of Opinion Letters for Pre-approved Plans. On June 30, 2017, the IRS issued Revenue Procedure (Rev. Proc.) 2017-41 setting forth revised procedures for the issuance of opinion letters for pre-approved plans. <https://www.irs.gov/pub/irs-drop/rp-17-41.pdf>.

- Under the new procedures, the master and prototype program and volume submitter program have been combined into a single opinion letter program involving two types of pre-approved plans: standardized plans and nonstandardized plans (the latter effectively replacing volume submitter plans). Each may use either a single plan document format or a basic plan document-adoption agreement (with multiple forms of adoption agreements) format. Minor modifications now may be made only to a nonstandardized plan.
- The combination of a money purchase pension plan with a 401(k) or profit sharing plan in the same pre-approved document is now permitted.
- A nonstandardized plan (but not a standardized plan) may contain an ESOP (including one with a 401(k) feature) or a cash balance plan feature. A cash balance formula contained in a nonstandardized plan now may determine interest credits based on the actual rate of return of all (but not a subset) of plan assets.
- A non-electing church plan now may submit an application for a nonstandardized plan.
- A nonstandardized plan may provide for either safe harbor or non-safe harbor hardship distributions.
- The IRS will no longer rule on the exempt status of a pre-approved plan's related trust or custodial agreement.
- The IRS will not review for and an opinion letter will not consider ERISA Title I issues.
- An adopting employer now may obtain reliance under Internal Revenue Code ("IRC") sections 415 and 416 through a Form 5307 application.
- The submission period for defined contribution plans will begin on October 2, 2017 and end on October 1, 2018.

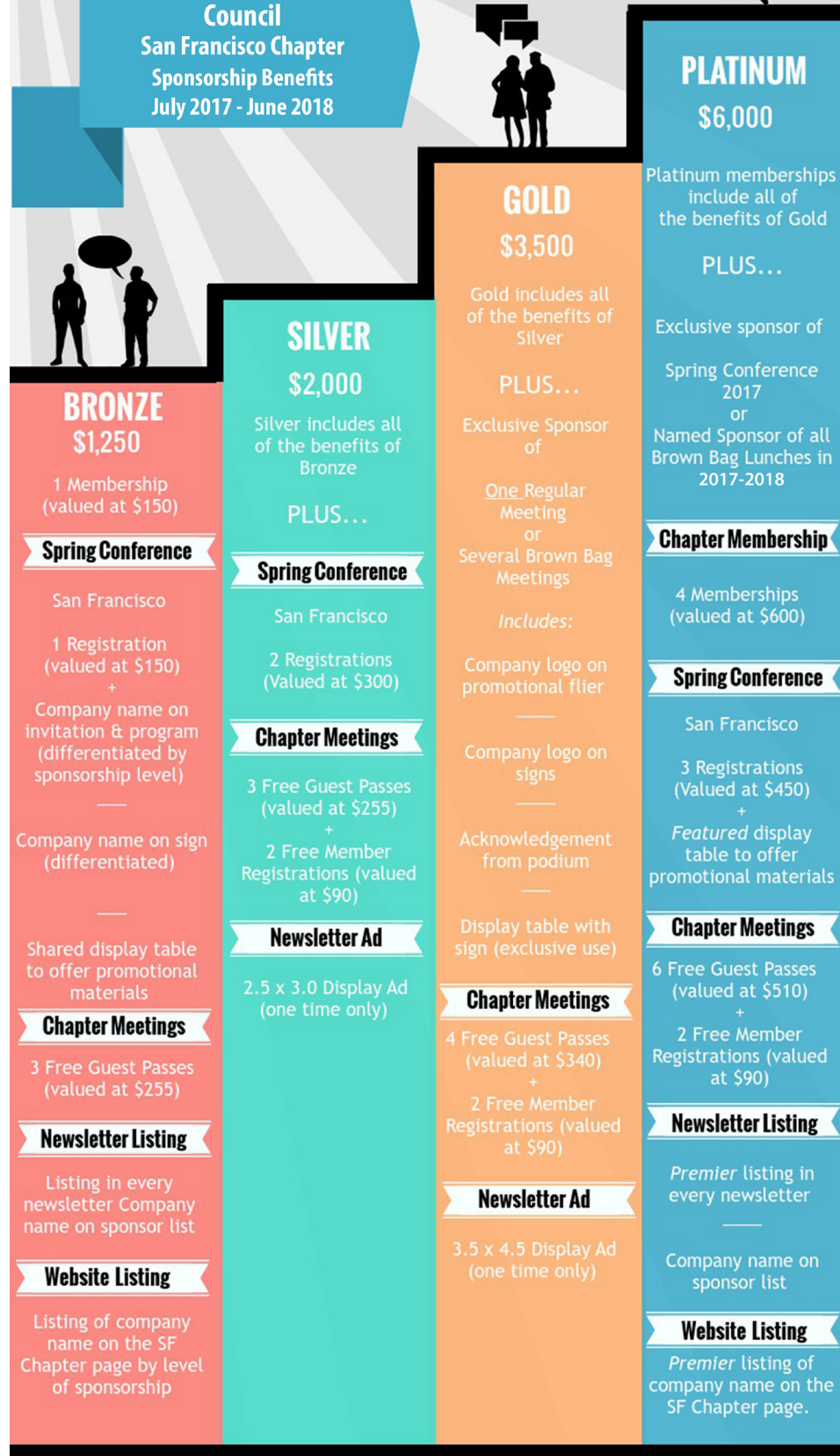
Cumulative List of Changes in Plan Qualification Requirements for Pre-Approved Defined Contribution Plans. In Notice 2017-37, the IRS released its 2017 Cumulative List to be used to submit opinion letter applications for pre-approved defined contribution plans for the third six-year remedial amendment cycle that began on February 1, 2017 and ends January 31, 2023. <https://www.irs.gov/pub/irs-drop/n-17-37.pdf>.

Revised Procedures for Applications for a Suspension of Benefits under a Multiemployer Defined Benefit Pension Plan in Critical and Declining Status under IRC section 432(e) (9). On July 13, 2017, the Treasury Department issued Rev. Proc. 2017-43, which contains revised procedures for applications for a suspension of benefits under a multiemployer defined benefit pension plan that is in critical and declining status under IRC section 432(e)(9). <https://www.irs.gov/pub/irs-drop/rp-17-43.pdf>. The revised procedures replace and include the following key changes to procedures set forth in Rev. Proc. 2016-27:

- If the Treasury Department identifies an error in an application after it is submitted, it may request that the plan sponsor provide additional materials to correct the error.
- Projected withdrawal liability payments that are included as part of the projection of the plan's available resources, and as part of the support for the certification that the plan is projected to avoid insolvency (taking the proposed suspension into account), now are to be separately identified as projected payments attributable to prior withdrawals and projected payments attributable to expected future withdrawals.

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Western Pension & Benefits Council
San Francisco Chapter
Sponsorship Benefits
July 2017 - June 2018



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Email: info@wpbcf.org

- Sample calculations with respect to the guarantee-based limitation under IRC section 432(e)(9)(D)(i) and the disability-based limitation under IRC section 432(e)(9)(D)(iii) for an individual in each category or group that is treated differently under the suspension must now be provided only for an individual currently receiving benefits, a contingent beneficiary of an individual currently receiving benefits, and a future retiree.
- Certain information that would otherwise be required to demonstrate that the proposed suspension is equitably distributed in accordance with IRC section 432(e)(9)(D)(vi) need not be provided in the case of an application in connection with a proposed partition of a plan under section 4233 of ERISA.
- A new section and new Appendix B have been added to consolidate the descriptions of the actuarial assumptions used with respect to certain illustrations and projections included in the application and to provide additional detail regarding those assumptions.
- A narrative statement of the reasons the plan is in critical and declining status now must be included.
- The accountant's report for the plan's most recently filed 5500 now must be provided.
- Appendices have been revised to include minor clarifications.

The new procedures must be followed for applications submitted on or after September 1, 2017.

Health and Welfare

House Passes Measure to Repeal and Replace the Affordable Care Act (ACA)

After reaching agreement on several amendments to the original House bill, the House of Representatives passed the American Health Care Act, (the "AHCA") a budget reconciliation bill to repeal and replace the ACA. The first draft of the AHCA, released by House Republicans on March 6th was withdrawn by Speaker Ryan on March 24th due to opposition from the Freedom Caucus, among others. Several significant changes were made to the original bill and it was passed by a narrow margin on May 4th; 217-213.

As explained further below, the fate of the AHCA now rests with the Senate. It is unclear whether the Senate will act before the end of 2017. Even if the Senate acts by year-end, the question remains whether the Senate can craft a bill that will pass both chambers of the Congress. Given the uncertainty in the Senate, it's unclear which parts of the AHCA, if any, will remain or whether any parts of the AHCA will be effective for the 2018 plan year. Amidst all this uncertainty, employers are designing and preparing their health plans for 2018 open enrollment and health insurers are setting or have already set their rates for next year.

Subject to this uncertainty, below is a brief description of the main provisions in the AHCA as passed by the House of Representatives that impact employer-sponsored health plans:

- Repeal of the employer mandate penalties, effective January 1, 2016.
- Repeal of the individual mandate penalties, effective January 1, 2016.
- Replacement of the individual mandate with a "continuous coverage" requirement. If an individual fails to prove continuous coverage over the prior 12 months, he will be required to pay the insurer (not the Federal government) a 30% premium surcharge, effective for the 2018 plan year.
- The AHCA makes significant changes to eligibility for and the amount of premium tax credits. Under the AHCA, individuals eligible for employer-sponsored health plans may no longer receive a premium tax credit, even if the plan does not provide minimum value or is unaffordable. The unaffordability and minimum value standards of the ACA will no longer apply. The AHCA also expands the availability of premium tax credits for enrollment in health plans outside Exchanges.
- The ACA requirement to provide "Essential Health Benefits" remains but states may request a waiver from the ACA's definition of EHB and create their own definition.
- Delay of the "Cadillac" excise tax on high-cost plans until December 31, 2026, at which point it reappears.



More than 50 San Francisco Chapter members enjoyed a lovely evening of hosted food, beverage and amazing networking on June 15 at SENS Restaurant in the Embarcadero Center.

The board members were in charge of a networking event which allowed each guest to earn raffle tickets and a chance at winning items donated by board members and sponsors. The Chapter leaders continue to believe in-person networking is the best way to engage members in conversations about the most critical issues of their profession and this event and our game of matching cards made for many new connections.

Tina Chambers, outgoing President, led the games throughout the evening and during her remarks thanked the current and upcoming board and committee chairs and volunteers and members for their continued dedication to the Chapter.

She also asked the attendees to write down their favorite memories about being in the Chapter. Those thoughts were shared during the event.

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Membership Appreciation Event





- The AHCA makes a number of changes intended to strengthen and enhance HSAs, and other consumer accounts, beginning in 2018, such as:
 - Increasing the maximum HSA contribution limits to equal the sum of the amount of the HSA deductible and out-of-pocket limitation for any year. For 2018, the maximum amount would be at least \$6,650 for self-only coverage and \$13,100 for family coverage. These amounts will likely increase due to inflation adjustments.
 - Permitting both spouses to make “catch-up contributions” to the same HSA.
 - Reducing the tax on distributions from HSAs and Archer MSAs for expenses that are not “qualified medical expenses” from 20% to 10% for HSA distributions and 15% for Archer MSA distributions, effective January 1, 2018.
 - Reimbursement of health expenses from an HSA established within 60 days of an employee’s first date of coverage under a HDHP will be allowed even if the expense was incurred before the date the HSA was established, effective January 1, 2018.
- Over the counter medications will once again be eligible for reimbursement from health FSAs, HSAs, Archer MSAs and HRAs as an excludable medical care expense, effective January 1, 2018
- Repeal of any monetary limit on contributions to health FSAs, effective January 1, 2018.
- For retiree medical plans, employers may again claim a deduction for retiree prescription drug costs subsidized by HHS payments, effective January 1, 2017.
- Provide a lower floor of 5.8% for medical expense deductions, effective 2017.

The AHCA also eliminated several taxes and fees imposed by the ACA.

House Passes Health Care Tax Credit Bills

On June 15, 2017, the U.S. House of Representatives passed three bills that clarify eligibility for health care premium tax credits.

The first bill, was the VETERAN Act (H.R. 2372), passed by a voice vote. This bill would clarify eligibility for premium assistance tax credits for certain individuals who are not enrolled in Veterans Affairs health insurance programs. Specifically, the bill would apply retroactively to the current premium credit for tax years ending after 2013 and any premium assistance credits that would become effective upon the enactment of the AHCA of 2017.

The second bill, the Broader Options for American Act (H.R. 2579), passed by a vote of 267-144. The bill would allow individuals to apply the premium assistance tax credit towards the cost of unsubsidized COBRA continuation coverage, provided that the COBRA continuation coverage has to meet the requirements for qualified health plans. The effective date of the bill is the date of enactment of the AHCA of 2017.

Finally, the House passed the Verify First Act (H.R. 2581) by a vote of 238-184, which would require the IRS to verify an individual’s citizenship status prior to any advance payments of premium assistance tax credits. The effective date of the bill is the date of enactment of the AHCA of 2017.

Senate Adds Uncertainty to Health Care Reform

As of the publication date of this Pension & Benefits Quarterly, it is not clear if the Senate will pass a bill in relation to the AHCA. With a slim majority and no support from Democrats, Senate Republicans can only lose two votes and still pass the measure and send it to a Conference Committee. In July 2017, the Senate voted without successful passage on the following three amendments/bills to modify the AHCA:

1. Better Care Reconciliation Act (defeated on July 25, 2017, in a 43-57 vote);
2. Obamacare Repeal Reconciliation Act (defeated on July 26, 2017, in a 45-55 vote); and
3. Health Care Freedom Act (defeated on July 28, 2017, in a 49-51 vote).

Rather than voting down the AHCA, the Senate sent the AHCA back to the Senate calendar and adjourned for summer recess in early August 2017. Thus, much uncertainty surrounds passage of health care reform legislation in the near future.

BREAKOUT SESSIONS

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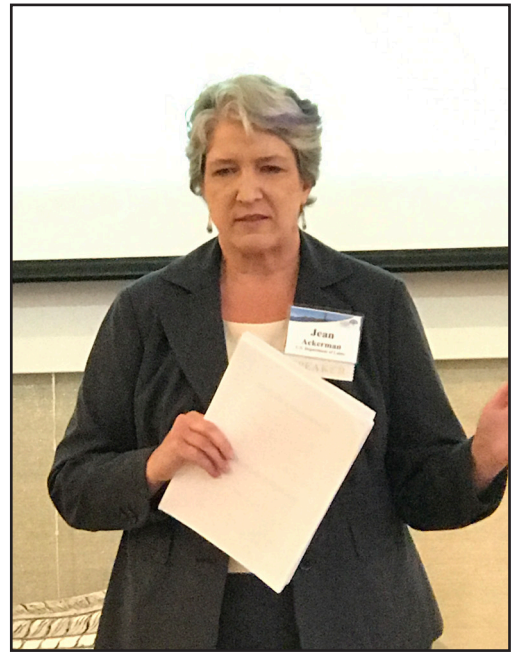
Department of Labor (DOL) Regulatory Enforcement Matters & Legal Update

This year we combined the DOL Regulatory Enforcement Matters and Legal Update sessions. We were privileged to once again have **Jean Ackerman**, Regional Director of the San Francisco Regional Office of the U.S. DOL Employee Benefits Security Administration (EBSA) address our members. Ms. Ackerman has been enforcing ERISA for over 30 years, thus her perspective on employee benefits is always valuable. She was joined this year by **Edward M. Bernard**, a partner at Hanson Bridgett LLP, whose experience in the field of employee benefits and related issues includes more than 10 years as an attorney and more than 10 years as a consultant and plan administrator.

Ms. Ackerman provided the latest DOL EBSA regulatory and enforcement news as of May 2017, including the areas of enforcement that EBSA is focusing on, both nationally and regionally. With regards to the status of the DOL's final fiduciary rule, which was scheduled to go into effect on June 9, 2017, she stated that she could not comment on the current administration's actions, but stated that EBSA would enforce the law if the rule became final. She noted that DOL Secretary Alexander Acosta was actively meeting department heads and getting updates soon after taking office in Washington, DC. Ms. Ackerman also shared a few voluntary compliance settlement results with the audience and spoke about the work and results of EBSA's Customer Service Unit. She concluded by stating that EBSA would continue to vigorously protect the assets and benefits of plan participants and beneficiaries, to the extent required under ERISA.

Mr. Bernard provided a high level review of legal developments as of May 2017. He covered a variety of topics including mental health parity, issues related to the implementation of the Affordable Care Act coverage mandates, non-discrimination in ERISA plans, employer stock, investment fee issues, and other recent court cases affecting health and retirement plans. Regarding the impact of the Trump Administration's agenda on retirement and health plans, Mr. Bernard noted his expectation of a roll-back on the proposed Fiduciary Rule and ERISA enforcement, in general.

Both speakers' frank discussions of their topics were well-received by the audience.



Future State of the Affordable Care Act (ACA) – A Panel Discussion

This breakout session on the Future State of the ACA was a panel discussion led by **Mary Powell** of Trucker Huss with **Brian Gilmore** from ABD Insurance and Financial Services and **Bill Brusher** from Stanford Health Care taking part as speakers. As an ERISA attorney who specializes in helping employers implement the ACA, Ms. Powell shared important background on ACA "vitals," along with an explanation of the new bill passed by the House in May 2017. Mr. Gilmore provided attendees with a big picture understanding of the steps legislators will need to take in order to repeal and replace ACA and the challenges they face throughout the reconciliation process. Mr. Brusher shared his unique perspective as a representative of both a health care provider as well as an employer that is mandated to comply with the current rules under ACA.

The panel discussion focused on the fundamental differences between Democrats and Republicans as evidenced in their positions regarding the following issues: (1) whether affordable/accessible healthcare is a right, and (2) whether the federal government is the appropriate entity to pass laws to promote affordable/accessible healthcare. With several contentious items such as reduction of Medicaid and a new refundable tax credit to replace the current subsidies under the ACA exchanges included in the House bill (collectively known

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Nonetheless, by way of background, on July 13, 2017, Senate Republicans released changes to their health care overhaul bill, which included several amendments to the original bill that was released in June. The Senate bill, the Better Care Reconciliation Act (BCRA), largely mirrored the House bill regarding employee benefit changes. It added one important change from the House bill to permit individuals to use money in their health savings accounts to pay health care premiums. Another change made by the Senate to the House version was the retention of the net investment income tax that the House had proposed to repeal. The 3.8 percent tax was estimated to bring in \$172 billion over the course of a decade.

The BCRA bill also retained the 0.9 percent Medicare surtax that applies to wages, railroad retirement compensation, and self-employment income above a certain threshold. The surtax and the net investment income tax apply to "high earners" (individuals earning more than \$200,000 and couples filing jointly and earning more than \$250,000). Finally, the BCRA kept the ACA's \$500,000 limit on how much of each health insurance executive's pay is tax deductible by his or her employer.

The Obamacare Repeal Reconciliation Act was a "clean repeal" bill without any new provisions to replace the ACA. The Health Care Freedom Act was a "skinny repeal" bill that would have repealed some of the ACA's provisions, in particular, the individual mandate and some parts of the employer mandate.

Currently, there is some discussion on Capitol Hill that after the summer recess the Senate may vote on a proposal from Republican Senators Lindsey Graham (South Carolina), Bill Cassidy (Louisiana) and Dean Heller (Nevada). The crux of this proposal is to return money (via block grants) to the states, resulting in states having significant flexibility to tailor health care plans for their own citizens. However, some Senators are strongly opposed to revisiting health care reform. Reflecting this sentiment, Senate Finance Chairman Orrin Hatch (R-Utah) said, "We're not going back to health care. We're in tax now. As far as I'm concerned, they shot their wad on health care and that's the way it is. I'm sick of it."

ERISA Litigation – Life Insurance Conversions and ERISA Fiduciary Breaches

A recent district court case illustrates how legal issues with life insurance policy conversions can arise and the consequences that follow if a court determines that plan administrators failed to provide adequate disclosure of the life insurance policy's conversion requirements. In *Erwood v. Life Ins. Co. of N. Am.*, 2017 WL 1383922 (W.D. Penn. Apr. 13, 2017), the plaintiff was the spouse and beneficiary of a deceased employee. As an active employee, the participant had been insured for \$1,000,000 in group life insurance under the employer's ERISA-governed life insurance policies. After a terminal brain tumor diagnosis, the employee stopped working and took a leave of absence under the Family and Medical Leave Act (FMLA).

At the start of FMLA, the participant and spouse confirmed with the employer's benefits representatives that his benefits coverage would not change going forward and both were informed that they needed to pay premiums during FMLA to continue life insurance coverage as well as other benefits.

Under the terms of the insurance policy the participant was required to convert his group coverage to an individual policy within 31 days from the date on which his coverage ended and the employee failed to do so in a timely manner prior to his death. The employer did not provide the following: the materials needed to convert the life insurance coverage; information about where to access such materials; information concerning where to send the conversion materials to complete the process; and the deadline for submitting the conversion materials.

The life insurance company denied the beneficiary's subsequent claim for benefits under the policy, arguing that the participant was not an active employee at the time of his death and that his coverage had not been timely converted to an individual policy.

The participant's spouse-beneficiary sued the employer for breach of fiduciary duty under ERISA Section 502(a)(3), arguing that the employer failed to adequately inform her and her deceased spouse of the need to convert the policy.

First, the court found that the employer was an ERISA fiduciary because, among other reasons, it was the ERISA plan administrator and had acted in a fiduciary capacity in administering the policies and explaining those benefits to the participant.

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Second, the court rejected the employer's argument that its summary plan description (SPD) provided adequate notice of the conversion rights and concluded that the employer violated its ERISA fiduciary duties by failing to provide proper notice of conversion.

Finally, the court found that the employer's inadequate disclosure was material and that allowing a \$750,000 policy to lapse in the last year of a terminally ill person's life was "unquestionably a harmful decision". Further, the court found it substantially likely that the employer's inadequate disclosure would mislead a reasonable participant to make that same decision. The court concluded that detrimental reliance was clearly established and entered a \$750,000 verdict in the beneficiary's favor.

This issue of the Quarterly Regulatory Update was written by:

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Legislative & Regulatory Update - continued

as the American Health Care Act or AHCA), the Senate has stated that they would craft their own healthcare bill rather than vote on the AHCA. The panel concluded that, at the end of the day, it is unlikely that the bill signed by the House will be the same healthcare bill that would ultimately reach President Trump's desk for signature.

Audience participation was lively throughout the presentation with questions centered around what matters to employers most. Consensus among the group was that the future state of ACA will be top of mind for months to come as our Congressional members move to either "repeal and replace" or find common ground to fix the current ACA legislation.

Actuarial Hot Topics: The Evolution of Pension Plan Design

Christine M. Tozzi, FSA, EA, Senior Consultant for Willis Towers Watson, led a discussion providing an insightful perspective on the history of pension plan design and how that is impacting decisions and considerations for future plan design. Ms. Tozzi helped us understand how actuaries have historically looked at "retirement adequacy," which is a simplistic replacement ratio concept, and why this is no longer an acceptable standard. Today's gold standard approach is calculating a Retirement Readiness Age (RRA), which is a more holistic approach encompassing factors such as defined contribution benefits, Social Security, stock and deferred compensation benefits, as well as longevity expectations and varying tax treatments of Roth and health savings accounts.

History and background were covered early in the meeting, which allowed for great discussion on RRA and plan design topics. Choice in retirement saving options has created increased complexity and additional need for personalization in assessing retirement readiness. Ms. Tozzi shared valuable insight on the variations that need to be considered to provide appropriate evaluation of RRA, including what considerations should be made for working employees compared to those in retirement. During the working years, variations that will impact the RRA include the division of contributions between Roth and pre-tax sources, investment strategy, and the need to lower expectations on Social Security benefits. For retired workers the variations to be considered include delaying Social Security benefits, assuming longer lifespans, and adding part-time employment income to improve RRA.

The most energy in the room appeared to be around the plan design and administration discussion. Ms. Tozzi shared her experience and knowledge on what she referred to as "Plan Design Gotcha's" and educated each of us on what to watch for and why. This discussion was a powerful reminder of the need for plan sponsors to be attentive and have a process for monitoring plans. Without such diligence, a retirement plan can easily run amiss. Ms. Tozzi emphasized reviewing plan documents to ensure that they are not outdated, reviewing plan administration to ensure it conforms with the terms of the plan document, and monitoring payroll codes to ensure that they match the plan's definition of compensation. In addition, as employee populations change and evolve there are decisions to be made involving suspension of benefits and minimum required distribution processing.

In summary, Ms. Tozzi's knowledge and insight provided the attendees with an increased awareness of the role of actuaries in providing an elevated assessment of retirement readiness and in pointing out potential problems in plan design and administration.

Investment Perspectives: Defined Contribution Improvement and Critical Considerations for Target Date Series Alignment

This session consisted of two parts – both addressing investments utilized within defined contribution (DC) plans. In the first part, **Marco Merz**, CFA, Director of Defined Contribution at the University of California (UC) system did a tremendous job in presenting the evolution of the UC retirement DC plans, focusing on efforts to continue to improve the overall investment structure, to reduce fees, and to help employees more intuitively understand and more appropriately utilize plan investments. Mr. Merz explained how he is executing the CIO's business plan and strategy, to oversee over \$21 billion in 403(b), 457(b) and other DC assets. He provided an entertaining outline of his short and long-term game plans to implement investment changes. He reviewed how the UC system is devising an asset-allocation framework to meet employees' needs in an ever-changing



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retirement environment. Some of the touching points in his talk included how he thinks about one of UC's janitors who is mopping by day and yet is expected to be a portfolio manager by night in order to manage his retirement assets. Mr. Merz discussed some of UC's cutting edge ideas including the following: white labeling all of UC's plan investments; designing and implementing a FinTech solution to address employee demand for access to environmental, social and governance (ESG) funds; and bifurcating the custom DC plan Pathway Target Date Fund series with an income guarantee annuity replication strategy as a default to those participants who are not eligible for the pension.

In the second part of the session, we heard from an awesome panel of three investment experts presenting the distinguishing features of their target date fund series. **Hal Bjornson**, Client Portfolio Manager in the Global Multi-Asset Group of J.P. Morgan discussed SmartRetirement Solutions and how these funds are structured. He first reviewed J.P. Morgan's participant materials – designed for those participants who want professional help and more detail on their funds. He then reviewed how J.P. Morgan's understanding of participant behavior contributes to the offered glide path – addressing multiple types of investment risks and the dynamic risk management asset allocation framework. Mr. Bjornson finished by stating that J.P. Morgan's consistent results are helping to deliver more income replacement to more employees. Next was **Adam Brown**, Defined Contribution Investment Specialist for T. Rowe Price Retirement Plan Services. Mr. Brown provided insight on the T. Rowe Price Retirement target date series three key differentiators: (1) robust glide path that addresses a wide range of investor behaviors, (2) proven tactical allocation that incorporates T. Rowe Price's market outlooks for asset class returns, and (3) strong active management with potential to meaningfully enhance the retirement outcomes of participants.

Finally, we heard from **Toni Brown**, CFA, Senior Vice President focused on defined contribution in the Retirement Strategy Group at American Funds, part of Capital Group. Ms. Brown discussed the benefits of active management and reviewed a unique slide illustrating how a small, consistent increase in returns can lead to better employee outcomes and provide additional years of retirement spending. Ms. Brown discussed the American Funds Target Date Retirement Series glide path equity and fixed income composition and how further diversification within asset classes has helped American Funds' target date series provide enhanced returns with lower volatility. All three of these industry thought leaders discussed key considerations for plan sponsors and consultants in selecting the right target date fund for retirement plans and presented compelling data points to differentiate their processes and structure.

CONCLUSION

Thanks to **Mike Zeld**, Moss Adams, Chair of the Conference, and his dedicated committee: **Karen Casillas**, CapTrust Advisors; **Justin Chilcote**, Transamerica Retirement Services; **Claire Eyges**, Newport Group; **Robert Gower**, Trucker Huss; and **Saswati Paul**, for all of their hard work in putting this conference together. Thank you also to everyone for your participation. We hope to see you again next year!

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