



Pension & Benefits Quarterly

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Fall 2018

Qualified Retirement Updates

By Ami Givon | GCA Law Partners LLP

Modifications to Safe Harbor Explanations Regarding Eligible Rollover Distributions: In Notice 2018-74, the IRS issued modifications to two safe harbor explanations provided in Notice 2014-74 that may be used to satisfy the requirement of Internal Revenue Code (Code) section 402(f) that a plan administrator provide certain information to recipients of eligible rollover distributions. The modifications take into account (1) the changes made by the Tax Cuts and Jobs Act of 2017 that extend the rollover deadline for qualified plan loan offsets, (2) the exception to the 10% additional tax under Internal Code section 72(t) for phased retirement distributions to certain federal retirees under the Moving Ahead for Progress

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“ It reminded me again of some of the key benefits of this organization – in-person discussions and, of course, networking. ”

Kevin Nolt
Trucker Huss

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President's Letter

Fall is officially here and it's an interesting time for benefits professionals due to President Trump's recently issued Executive Order on strengthening retirement security and the several retirement reform bills in Congress.

- What is the future of open multiple employer plans (MEPs)?
- Will the required minimum distribution (RMD) rules change?
- Will there be safe harbor 401(k) improvements?

We will address any developments at our annual legislative and regulatory update session in January. Please keep an eye out for details on that session.

Our 2018-2019 events are off to a great start. We started the new program year with a complimentary networking event for members and non-members. After a Q&A session with the benefits counsel at Square, attendees had the opportunity to reconnect with their peers, make new connections and enjoy a wine and cheese tasting. A fun time was had by all. Thank you to the Membership Committee for planning the event. See later in this Newsletter for a recap of this event.

As discussed in this Newsletter, our first regular Chapter meeting was on socially responsible investing. It was a very timely session as it is a topic on the minds of many plan participants. The panel of speakers led a lively discussion with many questions and comments from the audience. It reminded me again of some of the key benefits of this organization – in-person discussions and, of course, networking. These benefits cannot be replaced by webinars and other on-line education.

This organization is about its members, and thus we need your continued support. If you are reading this and have not renewed your membership or have never been a member, please consider the benefits of membership. It has been very exciting to see new members joining our Chapter and to witness new benefits professionals starting their own networking groups. These are the future leaders of our industry and they are meeting and fostering their relationships through WP&BC.

I hope to see you at our December 11th Chapter meeting which will be a panel discussion on creative benefits communication strategies followed by a festive holiday party. Come hear a panel of plan sponsors discuss how they communicate benefit changes to their employees. It is sure to be an interesting session.

I wish you all a happy holiday season!

Kevin Nolt, Director
Trucker Huss, APC

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Member Profile

Name: Kaitlyn (Katie) Erin Gardner

Company: Hanson Bridgett LLP

Title: Associate Tax & Employee Benefits Attorney

Education: I graduated from Stanford in 2012 with a BA in psychology. I couldn't stay away from the Bay Area's great weather, so I came back to the farm and got my JD from Stanford in 2016.

Years in the industry: I'm starting my 3rd year!

Please tell us about your first "real" job: Well, my first job that felt real was cleaning the salad bar at Sizzler's Steakhouse. But my first professional job out of college was working as an Admissions Counselor for the University of Utah. My recruiting territory included Washington, Oregon, and Texas – I got to be on the road quite a bit. If you ever need restaurant recommendations in those areas, let me know.



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BUSINESS BACKGROUND

Nature of your work: My work is split between companies and government entities. Most of the issues I deal with are transactional, but I have occasionally ventured into litigation research. I am fortunate that I get to counsel clients at this point in my career, but generally I stick to drafting documents, researching new areas of the law, and, more recently, assisting in employee benefits disclosures for mergers.

How you got into the field: I actually studied gerontological psychology in undergrad. I became close with an older couple I met through a class called "Women and Aging," and ended up having breakfast with them once a week, every week, throughout law school. I realized I wanted to help people as they aged, and I liked the logic of tax law – fewer messy opinions (though lots of messy regulations). Employee benefits was a natural fit!

What you like about the field: I like that the field is technical and specialized. We're able to help our clients navigate some really thorny issues, and our advice ends up allowing employees to retire and have medical care. We stay intellectually sharp because the field is constantly evolving, but we also do good work that helps people.

PERSONAL

Ways you spend free time: I live by Sutro Forest, so I get to hike there a lot on the weekends. Staying close to friends and family feels very rewarding, so I try to prioritize it. I can also play some extremely questionable electric bass.

Guiding philosophy: Do excellent work, but always be kind.

Favorite charities: I work closely with the San Francisco Education Fund, which does great work in local public schools. They provide resources to schools collectively as well as individual students. And, of course, they have retirement plan needs!

Last books read: "Everyone Brave is Forgiven" by Chris Cleave. I have a bookstore I love in Utah, and the owner recommended it. I grew up visiting her store constantly, so she has a pretty great idea of what I will enjoy.

Restaurant recommendations: Orex in West Portal has amazing lamb shank and steak for relatively reasonable prices. Plus, it's still a little under the radar!

What will you do when you retire: I have always wanted to learn physics when I retire. I like the logic and the predictability, and I think I would be good at it. Although I might just be saying that because I haven't taken any classes yet.

Member Profile

Name: Jennifer R. Schuessler

Company: Empower Retirement

Title: Regional Sales Director, West Coast

Education: University of Kansas, Finance and Spanish / Kansas State University, Graduate Certificate in Financial Planning

Years in the industry: 12

Please tell us about your first “real” job:

My real job after college, following a stint in Spain where I taught English, was working as a financial advisor with my father in Topeka, Kansas. I worked with individuals at all stages of life to take their next best step toward building a secure financial future.



BUSINESS BACKGROUND

Nature of your work: I consult with retirement plan intermediaries and their plan sponsor clients to present a tailored service offering based on each client’s culture and plan objectives, as well as the needs of their workforce.

How you got into the field: My father is a financial advisor, so I have seen the impact that his guidance has had on individuals now living in retirement today with a secure source of income and established plans for leaving behind assets to family members, charities, etc. While I enjoyed working as an advisor for individual wealth management clients, I discovered quickly that my passion was in educating those who didn’t yet have assets to manage. That is how I found my first corporate job as an Education Specialist in the field, presenting to employees for our clients across the country each week. That was an extremely fulfilling job, and the memories from conducting those meetings for three years allow me to never forget why I do what I do today.

What you like about the field: More and more, individuals in our field are challenging the traditional approach to designing retirement plans, educating participants and settling for the status quo. Many companies are starting to push for real change to address income gaps for Americans in retirement, and greater access to retirement plans for every working American. Thought leadership that challenges each of us to approach every conversation with our clients in a new way...that’s what continues to energize me.

PERSONAL

Ways you spend free time: Hiking, skiing and exploring new areas in Washington State with my daughters, ages 5 and 8. Orangetheory Fitness and Hot Yoga classes keep me sane during the week.

Guiding philosophy: Happiness is the new rich. Inner peace is the new success. Health is the new wealth. Kindness is the new cool.

Favorite charities: National Alliance on Mental Illness and American Foundation for Suicide Prevention.

Last books read: “Love Warrior” by Glennon Doyle Melton and “Girl, Wash Your Face” by Rachel Hollis.

Restaurant recommendations: Michael Mina’s Test Kitchen in San Francisco, Nourish Café in Victoria, British Columbia and Woodman Lodge in Snoqualmie, Washington.

Member Profile, continued

What will you do when you retire: I would like to retire early from the corporate world and run a retreat center in the mountains, focused on personalized healing journeys for guests using various alternative therapies alongside daily yoga and meditation practice.

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MEMBER PROFILE

SAVE THE DATES FOR UPCOMING CHAPTER MEETINGS



Topic: Creative Benefits Communications Strategies

THURSDAY, JANUARY 31, 2019

Topic: Legislative Update

TUESDAY, MARCH 12, 2019

APRIL 28 – MAY 1, 2019

NIPA Expo and Forum

Loews Coronado Bay Resort – San Diego

WEDNESDAY, MAY 15, 2019

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Qualified Retirement Updates, *continued*

in the 21st Century Act, (3) the extended exception to that additional tax for specified federal employees under the Defending Public Safety Employees' Retirement Act and (4) the self-certification procedures under Revenue Procedure (Rev. Proc.) 2016-47 for claiming eligibility for a waiver of the deadline for making rollovers.

Notice 2018-74 contains two appendices to assist the implementation of the modified explanations. Appendix A contains two complete model safe harbor explanations, one for distributions from a designated Roth account and one for distributions that are not. Appendix B provides instructions on how to modify the Notice 2014-74 safe harbor explanations to reflect the revisions included in the Appendix A safe harbor explanations.

Modifications to Employee Plans Compliance Resolution System (EPCRS): On September 28, 2018, the IRS released Rev. Proc. 2018-52 updating EPCRS, the comprehensive system of programs to correct compliance failures of tax-qualified plans, tax-sheltered annuities, SEP IRAs and SIMPLE IRAs. The Rev. Proc. primarily modifies the procedures that must be used when filing Voluntary Correction Program (VCP) applications. Beginning April 1, 2019, all VCP applications must be submitted and user fee payments must be made electronically using Pay.gov – paper submissions will no longer be accepted. During the period January 1, 2019, through March 31, 2019, applicants have the choice of making submissions using Pay.gov or by paper.

Rev. Proc. 2018-52 also makes modifications to the prior EPCRS Rev. Proc., 2016-51, to reflect recent changes in the pre-approved plan programs for Code section 401(a) and Code section 403(b).

Further Extension of Temporary Nondiscrimination Relief for Closed Defined Benefit Plans: In Notice 2018-69, the IRS extended through plan years beginning before 2020 the temporary nondiscrimination relief for certain closed defined benefit plans (plans that before December 31, 2013, were amended to limit future benefit accruals to some or all employees who were participants as of a specified date) that was first provided in IRS Notice 2014-5 and extended in subsequent IRS notices. Extension of relief will be provided if the conditions set out in Notice 2014-5 are satisfied.

Private Letter Ruling (PLR) Approving Student Loan Benefit Program in 401(k) Plan: In PLR 201833012, released on August 13, 2018, the IRS concluded that a program under which employer nonelective contributions are made to a Code section 401(k) plan on behalf of employees who make student loan repayments of a minimum percentage of eligible compensation, in amounts equal to the amounts of matching contributions the employer would have made instead had the employees made elective contributions of the same minimum percentage of eligible compensation, did not violate the "contingent benefit" prohibition of Code section 401(k)(4)(A) and Treasury Regulation section 1.401(k)-1(e)(6).

The program considered in PLR 201833012 was voluntary: An employee would need to elect to enroll, and once enrolled, could opt out of enrollment prospectively. While enrolled in the program, if the employee made student loan repayments of at least 2% of eligible compensation for any pay period, the employer would make, as soon as practicable after the end of the plan year, a nonelective contribution equal to 5% of the employee's eligible compensation for that pay period – the same regular matching contribution percentage the employer would make for that pay period for an employee who electively contributed at least 2% of eligible compensation for the pay period. An enrolled employee making the minimum 2% student loan repayments would still be eligible to make elective contributions to the plan, but would not be eligible to receive regular matching contributions. If the employee did not make a student loan repayment for a pay

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Qualified Retirement Updates, *continued*

period equal to at least 2% of the employee's eligible compensation, but did make an elective contribution during that pay period equal to at least 2% of the employee's eligible compensation for that pay period, the employer would make, as soon as practicable after the end of the plan year, a "true-up" matching contribution equal to 5% of the employee's eligible compensation for that pay period. Both the employer nonelective contribution and the true-up matching contributions would be conditioned on the employee's being employed on the last day of the plan year (unless employment terminated due to the employee's death or disability).

Both nonelective contributions and true-up matching contributions would be subject to the same vesting schedule as regular matching contributions. The nonelective contribution would be subject to all applicable plan qualification requirements, including eligibility, vesting, and distribution rules, contribution limits, and coverage and nondiscrimination testing.

As with all PLRs, PLR 201833012 may not be cited as precedent or relied upon by anyone other than its recipient, but it indicates how the IRS would treat similar programs.

Increase in Social Security Wage Base: The Social Security Administration has announced that the maximum amount of wages in 2019 subject to the 6.2% Social Security tax (old age, survivor, and disability insurance) will rise from \$128,400 to \$132,900.

Extension of Deadline to Submit Applications for Opinion Letters for Pre-Approved Defined Contribution Plans for Third Six-Year Remedial Amendment Cycle: In Rev. Proc. 2018-42, effective August 15, 2018, the IRS modified Rev. Proc. 2017-41 to extend from October 1, 2018, to December 31, 2018, the deadline for submitting on-cycle applications for opinion letters for pre-approved defined contribution plans for the third six-year remedial amendment cycle.

Disaster Relief Provided By the IRS, Pension Benefit Guaranty Corporation (PBGC) and Department of Labor (DOL): The IRS has provided plan-related relief to victims of wildfires and high winds that began July 23, 2018, in parts of Northern California (CA-2018-11); victims of Hurricane Florence in parts of Virginia, South Carolina and North Carolina (VA-2018-2, SC-2018-01, NC-2018-3, IR-2018-202); victims of Hurricane Michael in parts of Florida and Georgia (FL-2018-4, FA-2018-04, IR-2018-202) and victims of severe storms in Wisconsin (WI-2018-07). 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.

The DOL has provided employee plan guidance and relief for victims of Hurricanes Florence and Michael. The DOL relief includes: (1) not treating a plan as failing to follow all procedural requirements for plan loans and distributions, if the failure is attributable solely to the hurricanes and the plan administrator makes a good-faith diligent effort to comply with those requirements and makes a reasonable attempt to assemble any missing information as soon as practicable; (2) not taking enforcement action with respect to a temporary delay attributable to the hurricanes to forward participant contributions and loan repayments, provided affected employers and service providers act reasonably, prudently and in the interest of employees as soon as practical under the circumstances; (3) with respect to blackout periods related to the hurricanes and for which the advance 30 days advance notice to participants and beneficiaries was not provided, not alleging a violation of the requirement that a fiduciary make a written determination that the advance notice was not provided due to the events beyond the reasonable control of the plan administrator; (4) providing grace periods and other relief for claims processing where appropriate when full and timely compliance with

Qualified Retirement Updates, *continued*

claims processing requirements may not have been possible; and (5) providing Form 5500 series return filing relief corresponding to the relief provided by the IRS.

The DOL also has issued FAQs for participants and beneficiaries following Hurricanes Florence and Michael. Both the plan guidance and FAQs appear at the DOL's Employee Benefits Security Administration website.

PBGC Final Rule Regarding Owner-Participant Changes to Guaranteed Benefits and Asset Allocation:

On October 3, 2018, the PBGC issued its final rule conforming its regulations to changes made by the Pension Protection Act of 2006 affecting guaranteed benefits and asset allocation when a plan has one or more participants with certain ownership interests in the plan sponsor. The final rule amends the PBGC's benefit payment regulation by replacing the guarantee limitations applicable to substantial owners with a new limitation applicable to majority owners. Additionally, the rule amends PBGC's asset allocation regulation by prioritizing funding of all other benefits in priority category 4 ahead of those benefits that would be guaranteed but for the new, owner-participant limitation. The final rule also clarifies that plan administrators may continue to use the simplified calculation in the existing rule to estimate benefits funded by plan assets.



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Health and Welfare Updates

By Elizabeth M. Harris

Orrick, Herrington & Sutcliffe LLP

IRS Provides Additional Guidance on Paid Family and Medical Leave Tax Credit

On September 24, 2018, the IRS issued updated guidance in Notice 2018-71 (the "Notice") on Internal Revenue Code Section 45S, the business tax credit for employers which provides paid family and medical leave under the Medical Leave Act ("FMLA"). The tax credit was created by the Tax Cuts and Jobs Act of 2017.

The FMLA tax credit, which is in effect for calendar years 2018 and 2019 only, enables eligible employers to claim a general business tax based on an employee's qualifying wages while they are on family and medical leave, subject to certain conditions.

The credit applies to employers that grant employees earning less than \$72,000 in 2017 at least two weeks of annual paid family and medical leave for full-time employees, and a comparable amount for part-time employees where the paid leave rate equals at least 50% of the employee's qualifying wages. The credit for employers may total between 12.5% and 25% for such qualifying wages.

For purposes of the FMLA tax credit, "family and medical leave" is leave for one or more of the following reasons:

- Birth of an employee's child and to care for the child.
- Placement of a child with the employee for adoption or foster care.
- Care of the employee's spouse, child, or parent who has a serious health condition.
- A serious health condition that renders the employee unable to perform the functions of his or her position.
- Any "qualifying exigency" due to an employee's spouse, child, or parent being on covered active duty (or having been notified of an impending call or order to covered active duty) in the Armed Forces.
- Care of a service member who is the employee's spouse, child, parent, or next of kin.

The Notice 2018-71 covers five general topics in FAQ format:

- (1) Who is an eligible employer?
- (2) What constitutes family and medical leave?
- (3) What are the minimum paid leave requirements?
- (4) How to calculate and claim the credit? and
- (5) What is the effective date?

Among other things, the Notice provides that:

An employer need not be subject to the FMLA to claim the tax credit. A "qualifying employee" is an employee who has been employed by the employer for one year or more, and whose compensation is no more than \$72,000 in the prior year. The employee does not have to be subject to the FMLA.

For an employer to be eligible to claim the credit, the employer must have a written leave policy that: (a) provides at least two weeks of annual paid family and medical leave to all qualifying employees who are not part-time employees, and at least a proportionate amount of paid family and medical leave to qualifying employees who are part-time employees; (b) requires a rate of payment that is not less than 50% of wages; and, (c) includes specified "non-interference" language for employees who are not subject to FMLA protections.

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Health and Welfare Updates, *continued*

For purposes of the tax credit, a part-time employee is an employee who is customarily employed for fewer than 30 hours per week.

For an employer's first taxable year beginning after December 31, 2017, the written leave policy or an amendment to a policy will be considered to be retroactively in place as of the effective date of the policy (or amendment), rather than a later adoption date, if: (a) the policy is adopted on or before December 31, 2018; and, (b) the employer brings its leave practices into compliance with the terms of the retroactive policy for the entire period covered by the policy.

Paid leave provided under an employer's short-term disability program, whether self-insured by an employer or provided through a short-term disability insurance policy, may be characterized as paid family and medical leave. Nevertheless, any leave paid by a state or local government or required by state or local law will not be considered in determining the amount of the tax credit.

The policy may not exclude any classification of employees (for example, collectively bargained employees) if they are qualifying employees.

Note that wages paid to an employee for family and medical leave taken before an employee becomes a qualifying employee are excluded in determining the employer's credit.

OSHA Clarifies that Safety-Incentive Programs and Post-Incident Drug/Alcohol Testing are Permissible

In May 2016, OSHA published a new Electronic Injury and Illness Reporting Rule that prohibited employers from retaliating against their employees for reporting work-related injuries or illnesses. OSHA interpreted this provision (29 C.F.R. § 1904.35(b)(1)(iv)) to apply to action taken under workplace safety incentive programs and post-incident drug testing policies. For the past two years there has been uncertainty as to whether OSHA would deem such programs and drug testing to be retaliatory.

On October 11, 2018, OSHA issued a memorandum clarifying its position that the regulation "does not prohibit workplace safety incentive programs or post-incident drug testing." OSHA recognized that "many employers who implement safety incentive programs and/or conduct post-incident drug testing do so to promote workplace safety and health." Consequently, an employer who consistently enforces legitimate work rules (whether or not an injury or illness is reported) would establish that the employer is serious about creating a culture of safety. OSHA concludes that action taken under a safety incentive program or post-incident drug testing policy would only violate the law's anti-retaliation provision "if the employer took the action to penalize an employee for reporting a work-related injury or illness rather than for the legitimate purpose of promoting workplace safety and health."

Safety Incentive Programs

OSHA further acknowledged that "incentive programs can be an important tool to promote workplace safety and health." There are various types of incentive programs; one program rewards employees for reporting near-misses or hazards, and encourages involvement in a safety and health management system. OSHA noted that "[p]ositive action taken under this type of program is always permissible."

Another kind of incentive program is rate-based, which focuses on reducing the number of reported injuries and illnesses by rewarding employees with a prize or bonus at the end of an injury-free month or assesses managers based on their work unit's lack of work-related injuries. Rate-based incentive programs are also acceptable as long as they are not implemented in a manner that discourages reporting. OSHA would not

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HEALTH AND WELFARE UPDATES

Health and Welfare Updates, *continued*

cite an employer if it takes a negative action against an employee by withholding a prize or bonus because of a reported injury as long as the employer has implemented suitable precautions to ensure that employees feel free to report an injury or illness.

According to OSHA, "a statement that employees are encouraged to report and will not face retaliation for reporting may not, by itself, be adequate to ensure that employees actually feel free to report, particularly when the consequence for reporting will be a lost opportunity to receive a substantial reward." An employer should take "positive steps to create a workplace culture that emphasizes safety, not just rates" by implementing (1) an incentive program that rewards employees for recognizing unsafe conditions in the workplace; (2) a training program for all employees to emphasize reporting rights and responsibilities and underlines the employer's non-retaliation policy; and (3) a mechanism for correctly evaluating employees' inclination to report injuries and illnesses.

Post-Incident Drug Testing

Finally, OSHA noted that "most instances of workplace drug testing are permissible." Permissible drug testing includes: random drug testing; drug testing unrelated to the reporting of a work-related injury or illness; drug testing under a state workers' compensation law; drug testing under other federal law, such as a U.S. Department of Transportation rule; and drug testing to evaluate the root cause of a workplace incident that harmed or could have harmed employees. With respect to post-incident testing, OSHA advises that the employer test all employees whose conduct may have contributed to the incident, not just employees who reported injuries.

In its clarification memorandum, OSHA clearly states that any other OSHA interpretive documents that are inconsistent with the interpretive position described are superseded. OSHA has further directed its Regional Administrators to enforce the anti-retaliation provisions in a manner consistent with the memorandum and to consult OSHA's Directorate of Enforcement Programs before distributing any citations related to workplace safety incentive programs or post-incident drug testing.

The Department of Labor Confirms that Organ Donors Can Qualify for FMLA Leave

The U.S. Department of Labor ("DOL") has released Opinion Letter FMLA 2018-2-A confirming that organ donation surgery can qualify as a "serious health condition" that is eligible for protection under the Family and Medical Leave Act of 1993 ("FMLA"). The DOL's opinion comes in response to an inquiry it received from Congresswoman Jaime Herrera Beutler (R-WA, 3rd District).

In 2016, Ms. Beutler's husband donated one of his kidneys to their daughter who was born without kidneys. Subsequently, Ms. Beutler authored an appropriations funding bill provision to require DOL to rule on whether organ donation was protected under the FMLA. In connection with this process, Ms. Beutler requested that the DOL confirm: (i) whether an employee who donates an organ can qualify for FMLA leave, even when the donor is in good health before the donation; and (ii) whether the organ donor can use FMLA leave for post-operative treatment.

The FMLA permits eligible employees of covered employers to unpaid, job-protected leave for specified family and medical reasons. Eligible employees may take up to 12 weeks of leave in a 12-month period for a serious health condition.



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Health and Welfare Updates, *continued*

The FMLA defines “serious health condition” as an “illness, injury, impairment, or physical or mental condition that involves” either “inpatient care in a hospital, hospice, or residential medical care facility” or “continuing treatment by a health care provider.”

In Opinion Letter FMLA 2018-2-A, the DOL explained that an organ donation can qualify as an impairment or physical condition that is a serious health condition under the FMLA when it involves either “continuing treatment” or “inpatient care.” The DOL further explained that organ donation frequently requires overnight hospitalization, and that alone suffices for the surgery and the post-surgery recovery to qualify as a serious health condition eligible for protection under the FMLA.

UPDATES



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October Chapter Meeting

At the October Chapter Meeting, a lively and highly-experienced panel provided thought-provoking and practical insights in their discussion on “Top Considerations for Evaluating and Including SRI/ESG Investments in Your DC Plan.” There is a growing interest and demand for Environmental, Social, Governance (ESG) / Socially Responsible Investing (SRI) funds, particularly from Millennials who are becoming the largest generation in the workforce. At this session, we explored the complexities of this trend in the investment landscape as it relates to DC plans and what factors to consider when evaluating these investments in retirement plans.

Ben Spater started off the event. Ben is an attorney and Director at Trucker Huss, APC, who concentrates his practice on the design and tax-qualification of retirement plans including pension, profit sharing and 401(k) plans, the taxation of employee benefits, executive compensation and ERISA. Ben discussed how ESG funds fall within the Exclusive Benefit, Prudent Person, and Diversification Rules of ERISA. He then went on to provide different meanings of “social investing” including economically targeted investments, shareholder activism, and preferences for certain investment managers. It was interesting to hear his commentary on the philosophies shaping social investing policies, including defensive justification for how investing is intended to avoid risky companies or industries as well as benefiting society. Ben went on to provide a history of the shifting theories shaping the U.S. Department of Labor (DOL) policy and guidance under various U.S. presidential administrations and the associated DOL bulletins. He explained the consistent DOL principles that fiduciaries cannot accept lower investment returns or higher risks for participants in order to serve social policy goals, and the fiduciaries can use factors such as environmental, social and governance considerations to “break-ties” between otherwise equivalent alternatives.

Ben reviewed fiduciary best practices:

- Review socially responsible investment funds under same ERISA prudence standard applicable to all investments
- Follow an investment policy statement (IPS) using only economic factors that all funds must pass, including the SRI fund, and remove the SRI fund as needed
- Offer non-SRI funds that meet ERISA 404(c) broad range of investment alternatives on their own (without considering the SRI fund)
- Add a non-SRI fund of the same asset class as the SRI fund
- Do not use the SRI fund as the qualified default investment alternative
- Consider enhanced education on the SRI fund
- Consider special disclosure in 404a-5 notice
- Consider offering a brokerage window instead of a single ESG/SRI fund.

Chris Donnager took on the role of providing an investment manager’s philosophy and process, and what that means for risk, returns and investment option evaluation. Chris is a Director in the Investment Specialist Group of MFS Investment Management and has earned his Accredited Investment Fiduciary (AIF) designation. He is responsible for the firm’s investment management business through retirement plans in the southwestern United States. Chris

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October Chapter Meeting, *continued*

shared a unique outlook of how investors throughout the world are incorporating ESG / SRI into their portfolios and that they consider this a global movement throughout retirement plans, and how DC plan sponsors face their own challenges. He shared how Millennial interest in sustainable investing continues to intensify, especially in pursuing as 401(k) plan options, and how the largest wealth transfer in modern history is occurring. Chris shared how there are conflicting objectives with a tone of legislation as “trade-off oriented” leaving plan sponsors in the problematic position of trying to adhere to appropriate governance processes yet balance returns with societal value pressures. He then went on to share various approaches to sustainable investing: ignore it, negative screening, and ESG integration. One study shows how the results in real potential portfolio cost, if negative screening leads to a reduction in returns of 0.50% or 1.0%, this can reduce retirement income coverage by 5 years or 10 years. This led MFS to engage in academic studies to explore and validate plan sponsor concerns, including examining the issue modeled by the risk vs. return trade-off along with return vs. societal value related to ESG. What they discovered was that in the long-run, the trade off may not exist. Thus, MFS developed and utilizes a process so that their investment managers integrate ESG through a set of material criteria and factors of integration (mindset), engagement (process), and stewardship (impact). Chris covered examples of how this has played out in the short-term and long-term for Walmart and Costco stock as well as Zimmer Biomet.

Chris suggests that plan sponsors consider:

- Adopting a formal investment management questionnaire to evaluate ESG integration efforts
- Adopting a formal policy statement around the approach to ESG
- Developing a dedicated ESG Committee
- Proactively communicating the ESG approach to participants, including; leveraging partners

Michon Caton wrapped up the meeting with a plan sponsor’s perspective. She offered insight into Gap, Inc.’s process of aligning company morals and values within the fiduciary governance process. Michon is a 19-year veteran of GAP, Inc., currently in the role of the Director of Retirement Benefits, PTO and Financial Education. She provided



Continued pg. 18

October Chapter Meeting, continued

an overview of the company and retail lines of business together with the types of retirement plans offered and an interesting peek at Gap, Inc.'s challenging plan demographics. Michon relayed how they have aligned their socially responsible mission as a company with providing a socially responsive fund, how the fund supports their overall corporate strategy, the usage and assets of the fund, and how the plan administrator selects and monitors the properly diversified fund. She also went on to discuss how Gap, Inc. communicates with its employees and has utilized automatic enrollment, automatic escalation and plan re-enrollment with tremendous results. Michon provided the company's viewpoints and approaches on employee education, brokerage accounts, Committee consideration process and plan documentation.

Karen Casillas, a Vice President and Institutional Investment Advisor at CAPTRUST, moderated the session and added some practical suggestions such as understanding your advisor's ESG investment process, resources and integration as well as partnering with your vendor to understand how a stand-alone ESG fund may be incorporated into model portfolios, managed accounts and participant advice/education programs.

The event was held at Schwab's beautiful headquarters with complimentary wine and appetizers shared on the open-air balcony. A special thanks to our gracious and generous hosts from Schwab as well as our annual Chapter sponsors.



Speakers: Ben Spater, Trucker Huss, Michon Caton, GAP, Inc.
Chris Donnager, MFS Investment Management



Chris Donnager and Karen Casillas, CAPTRUST



Michon Caton and Lori McKenzie, Schwab

October Chapter Meeting, continued

Fall 2018

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OCTOBER MEETING

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San Francisco Chapter September Membership Networking Event

On September 25, 2018, the San Francisco Chapter gathered at Orrick for a free networking event to kick off the fall season. Chapter members were encouraged to bring non-members in an effort to expose more industry professionals to the benefits of membership. The event began with an introduction from Chapter President Kevin Nolt who explained the Chapter's upcoming events and the many advantages of membership.

The educational component of the event was a moderated discussion with Square's benefits counsel, Jennifer Brooks. Our Membership Committee Chair, Robert Gower, moderated the discussion. Jennifer discussed her breadth of experience in the benefits industry and her current role at Square. Jennifer and Robert also engaged the audience in lively discourse related to strategies for increasing participation in retirement plans, especially among younger employees, and the new IRS private letter ruling that allowed an employer to make 401(k) contributions on behalf of employees who make student loan repayments.

Following the discussion with Jennifer and Robert, attendees were invited to participate in a cheese tasting catered by The Cheese School of San Francisco. The Cheese School provided two curated tastings that included cheese, food that complimented the cheese and wine that highlighted each cheese's features. Two "Cheesemongers" from The Cheese School were on site to assist with the tasting and answer questions. The cheese tasting allowed members old and new to engage in thoughtful discussion over delicious cheese. Another highlight of the event was the raffle and many winners took home wine or Starbucks gift cards.

The event was an engaging way to begin the Chapter's slate of Fall programs. We want to thank our Chapter sponsors for making this event possible, especially Trucker Huss for sponsoring this fun and free event, and Orrick for providing the event space. Thank you also to the Membership Committee Chair, Robert Gower, and the rest of the Membership Committee, Andrew Ferguson, Katie Gardner and Kelsey Blegen, for their efforts in organizing the event.



Fall 2018

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TIM SHORTT

Tim Shortt | May 1962 to August 2018



We would like to take a moment to recognize the passing of one of our long term members, former Board member and former Chapter President, Tim Shortt. He spent his career dedicated to the retirement plan business working most recently for Wells Fargo Bank in client service and relationship management, serving plan sponsors.



Tim was President of the SF Chapter when I first joined the Board. It was such a pleasure to work with him. He was smart, kind and had a wonderful sense of humor. He continued his involvement for many years after his tenure as President ended. The Chapter was lucky to have him. We will miss Tim's good humor and can do spirit.

Kevin Nolt

Trucker Huss, Current President of SF Chapter

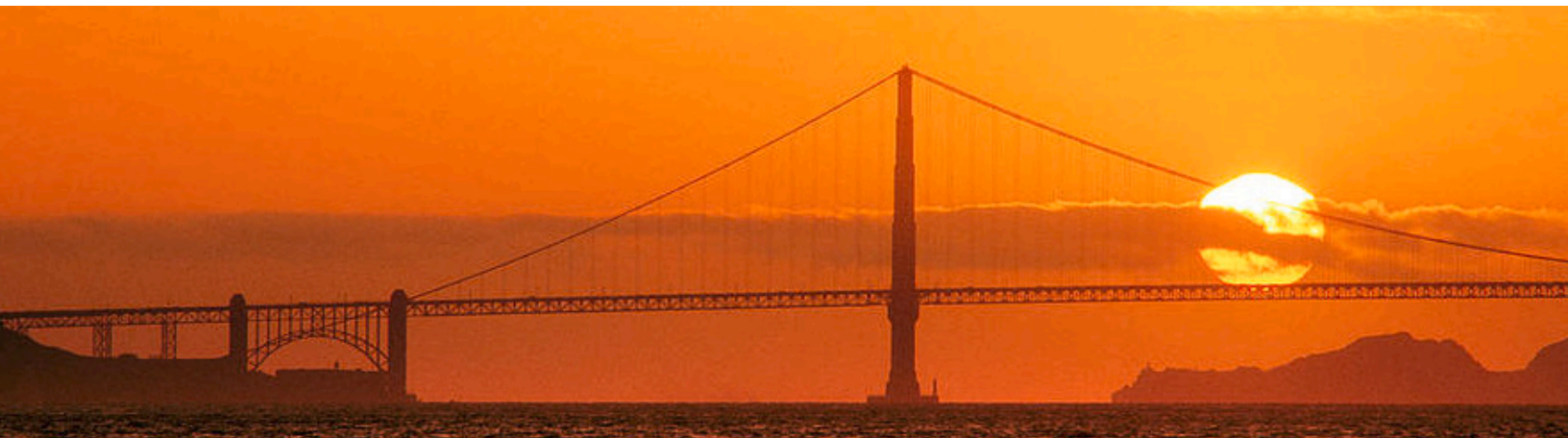


Tim Shortt was such a supportive member of the San Francisco Chapter. From the day we came on as chapter management in 2013, Tim was extremely generous with his time and talent to bring us on board and then to make sure we had a place to hold a chapter meeting if we had a need. Just last year we had a meeting at the "Penthouse" that included the tour of the Wells Fargo Museum. It was fantastic. At another event, we laughed and laughed when working together to slop up a beverage that someone had dropped that coated him and several chairs that surrounded him. Tim's sparkling, effervescent welcome and easy way of helping with whatever we needed is treasured. I was saddened to hear that this friendly, active and engaged member had passed way too soon.

Jenifer McDonald

San Francisco Chapter Administrator

McDonald Association Management Company



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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@wpbcfsf.org.

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Membership in the WP&BC San Francisco Chapter is open to individuals who are productively, substantially and continuously engaged in work in the field of employee benefits. Any individual who has been engaged in work in the field of employee benefits may become a member upon submission of a completed membership application, payment of dues, and approval by the Chapter Board of Directors. To join, visit www.westernpension.org

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*Want to get involved in the
San Francisco Chapter?*

**Contact Kevin Nolt
to volunteer!**

FALL 2018

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