



## President's Message



Dear Fellow Members, Employee Benefits Professionals and Plan Sponsors,

As we quickly approach the end of our 2016-17 Program Year, I am pleased to report that our Orange County Chapter has—by all meas-

urements—enjoyed yet another highly successful year! Membership and Corporate Sponsorships approached all-time highs, we provided the most continuing education credits in our history (for ASPPA, CEBS, CFP, CPA (CA), ERPA, General, MCLE (CA) and NIPA designations), our speakers and moderators consistently and overwhelmingly received the highest survey ratings and we have experienced record attendance for our monthly Breakfast Forums, quarterly Technical Lunch Forums, annual ABCs Seminar and monthly Webinars (put on by the Governing Board of the WP&BC).

On behalf of the entire Board of Directors, BIG THANK YOUs to all of those who made our Silver Anniversary (25th) Program Year such a huge success! Thank you to our Members for your attendance, invitations to guests (complimentary for first-timers), insightful questions and invaluable feedback. Thank you to our

Corporate Sponsors for your vital financial support which allows our Chapter to deliver first-rate programs at very reasonable costs. Special thanks to our Programs Co-Chairs, Marilyn Thompson and Shannon Main, who have done an incredible job in securing distinguished and dynamic presenters who have provided us all with such valuable information. And our singular thanks to our exceptional Chapter Administrator, Marti Hack, who keeps us well organized and on mission.

Speaking of our Programs Co-Chairs, they would want me to remind you of our final Breakfast Forum for the Program Year on Thursday, May 18th entitled “Regulation, Self-Regulation, and Professionalism and the Future of Financial Advice”. Our Presenter will be Mr. Blaine Aikin, Executive Chairman of fi360 and the Program should be of particular interest to our Members and guests in the financial services sector, as well as qualified retirement plan sponsors. Our monthly Breakfast Forums will go dark for the summer months of June, July and August but will resume with a bang in September.

The biggest bang of all, however, will occur July 9th-12th as we are privileged to have this year's annual Western Benefits Conference right in our own back-



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# A Message From Our President

yard! The “Conference is designed specifically for retirement and health and welfare benefits professionals, with an emphasis on practical issues that are important to plan sponsors and their advisors” and it is jointly sponsored by the WP&BC and ASPPA. This is undoubtedly our biggest program of the year and will provide you with unprecedented opportunities to attend tailored breakout and IRS Q&A sessions, learn about the latest hot topics from industry experts, earn valuable continuing education credits and network with vendors and fellow employee benefits professionals. Please visit the following site to learn more about—and register for—this awesome Conference:

[www.westernbenefits.org](http://www.westernbenefits.org)

We look forward to seeing you at the Conference and please also plan on attending our annual OC Chapter

Member Appreciation Night which will take place at the Downtown Disney ESPN Zone on the evening of Tuesday, July 11th. Guests are welcome but Membership for our next Program Year is now open and you would additionally receive discounted Western Benefits Conference registration fees if you are, or become, a Member so join or renew early!

Please visit our website at [www.wpbcorangecounty.org](http://www.wpbcorangecounty.org) or feel free to contact me or Marti Hack at [info@wpbcorangecounty.org](mailto:info@wpbcorangecounty.org) or 949.859.6277 for further information or if you should have any questions.

Kindest regards, Douglas Van Galder,  
Orange County Chapter President  
[douglasvangalder@boutwellfay.com](mailto:douglasvangalder@boutwellfay.com)

## WP&BC Orange County Chapter

**\*Last Program of Our Calendar Year \***

All Breakfast Forums are held at:

Andrei’s Restaurant  
2607 Main Street, Irvine, CA 92614

**\*Due to a small increase in time, we have been able to increase the Continuing Education Credits offered.**

<p><b>Thursday, May 18, 2017</b> Andrei’s Restaurant</p>	<p><b>Breakfast Forum: <u><a href="#">Regulation, Self-regulation, and Professionalism and the Future of Financial Advice</a></u></b></p>	<p><b>Blaine Aiken, Executive Chairman, fi360, and Chairman of the CFP Board of Standards</b></p>
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## Board Member Profile



**Name:** Amy O'Leary  
**Company:** Capital Bank & Trust Company  
**Job Title:** Chief Compliance Officer, Retirement Division  
**Years in the Industry:** 21 years with Capital Group, 8 years focusing on our Retirement business  
**First "real" job:** Dealer Services representative at Flagship Funds, a small municipal bond fund manager.  
**Education:** B.S. Marketing Indiana State University

### Business Background

**Nature of your work:** I provide compliance oversight for our recordkeeping and directed trustee services for IRA and retirement plan investors.

**How you got into the field:** I came to Capital Group by chance 21 years ago, and have been fortunate enough to work in various capacities both in our operational service areas and compliance.

**What you like about the field:** The retirement plan business is complex and continuously evolving. I am constantly learning.

### Personal Background

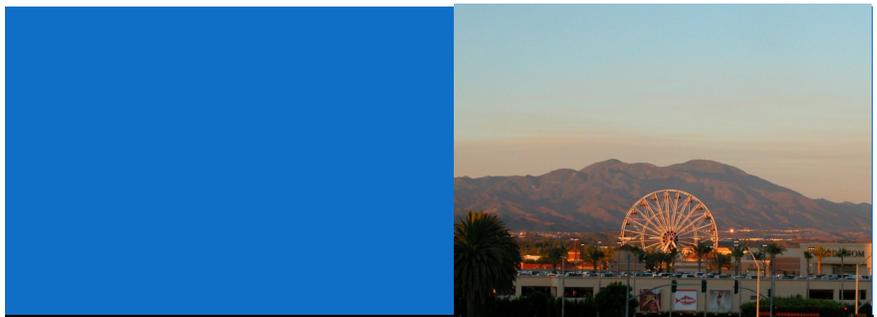
**Ways you spend free time:** Spending time with family and friends

**Guiding philosophy:** "Real integrity is doing the right thing, knowing that nobody's going to know whether you did it or not."

**Favorite charity:** Merciful Help Center, a local organization I support that provides basic living needs, food, medical and other support to residents in need.

**Last book read:** *The Winter Sea*, by Susanna Kearsley

**What will you do when you retire:** Relocate to a warm, sunny beach town (currently based in Indiana)



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## Plan Fiduciaries—How to Mitigate Risk of Conflicts



**Hitz Burton, Partner  
Aon Hewitt,  
Retirement and Investment**

Since the Employee Retirement Income Security Act of 1974 (ERISA) became law, fiduciaries have been required to avoid conflicts of interest. Plaintiffs' attorneys are taking advantage of this idea as they continue to advance various theories of liability involving litigation over excessive fees charged to plan participants. In the last three years, more than 20 financial service firms have been sued regarding their use of proprietary investment funds and affiliated service providers in the 401(k) plans they sponsor. Among other allegations, these lawsuits typically allege that the investment fees associated with the proprietary investment funds are too high when compared to competing funds available in the marketplace.

An important first step for any fiduciary whose plan is using proprietary funds or affiliated service providers is to understand the precise nature of the actual or possible conflict and how best to respond. As always, plan governance and process matter—particularly where financial incentives may exist that favor the plan sponsor.

Typically, a fiduciary committee composed of three or five voting members that meets regularly, documents its deliberations and decisions thoughtfully, acts pursuant to a well-drafted investment policy statement, and utilizes independent expertise when necessary will be on solid ground when attempting to support its decisions. Committees dominated by a single individual or by a corporate executive making decisions in lieu of a committee can put plans at higher risk.

The importance of utilizing independent advisors cannot be overstated. Plan sponsors may have sophisticated internal expertise capable of addressing many plan-

related fee and investment issues—but to the extent proprietary funds or affiliated service providers are involved, the utilization of an independent advisor could prove quite helpful in supporting the committee's ultimate decisions.

For a number of years, “outside assistance” meant hiring an investment consultant to provide access to market-based benchmarking data. That data was then used by plans to demonstrate that recordkeeping and mutual fund expenses were “reasonable” since they were in line with the expenses paid by similar plans. Recent litigation, however, appears to be placing a greater burden of proof on fiduciaries, suggesting that investment committees need to:

- Understand sometimes subtle differences in various mutual fund asset classes
- Demonstrate that their decisions are independent of the interests of the plan sponsor and are for the benefit of plan participants
- Better understand how to utilize the purchasing power of their plan for the exclusive benefit of plan participants

Given the inherent conflict-of-interest risk associated with proprietary investment funds and affiliated service providers, plan fiduciaries would be wise to develop a strong fiduciary record to support that the decisions they make are in the best interest of plan participants.

Plan sponsors and ERISA fiduciaries seeking additional protection may wish to consider the appointment of an independent investment fiduciary—this may be a role that is limited to discrete transactions, or may involve a continuing role with the committee. Over the years, ERISA fiduciaries have utilized independent fiduciaries in a number of areas posing heightened risks, from the forced liquidation of an employer stock fund and an annuity lift-out transaction involving a defined benefit pension plan, to responsibility for ongoing monitoring of employer stock in a defined contribution plan's employer stock fund.

# *Western Pension & Benefits Council - Orange County Chapter*

## *Nominating Committee Report to the Members*

The Nominating Committee has nominated the following Members to serve on the Board of Directors for the 2017-2018 and 2018-2019 fiscal years (July 1, 2017 through June 30, 2019):

Marilyn Thompson: Director at Large (Programs Co-Chair)

Shannon Main: Director at Large (Programs Co-Chair)

Cindi Grossinger: Director at Large

The following Members will continue to serve as the Officers of the Organization for the 2016-2017 and 2017-2018 fiscal years (July 1, 2016 through June 30, 2018):

Douglas Van Galder President

Hitz Burton: President-Elect

Curtis Farrell: Secretary

Mark Murphy: Treasurer

The following Members will continue to serve on the Board of Directors for a two-year terms beginning July 1, 2016 and ending June 30, 2018:

Kathleen Bass: Director at Large

Tom Drosky: Director at Large (Sponsorship Chair)

Alison Fay: Director at Large

Stuart Hack: Director at Large

Doug Jones: Director at Large (Membership Chair)

Margaret Martinazzi: Director at Large

Dylan Porter Director at Large (Immediate Past President)

Samantha Ter-Kasarian: Director at Large (Webinars Chair)

## Member Profile



**Name:** Michele Giangrande  
**Company:** T. Rowe Price  
**Job title:** Regional Sales Consultant  
**Years in the industry:** 17  
**First "real" job:** Recruiting financial advisors  
**Education:** BS Finance, Villanova University

### Business Background

**Nature of your work:** Partnering with DC consultants to support their efforts in maintaining and growing their corporate retirement practice.

**How you got into the field:** I've always loved Finance and planning for the future. I enjoy helping advisors because I know how difficult, yet rewarding it is to manage a book of clients.

**What you like about the field:** I get to work with various audiences including advisors, plan sponsors and participants. I enjoy educating audiences on various topics related to retirement plans. Although it's important to live in the present, everyone needs a plan for their future.

### Personal Background

**Ways you spend free time:** Hot Yoga, reading

**Guiding philosophy:** It's not what you have in life, but who you have in life that matters

**Favorite charity:** Women Helping Women (WHW)

**Last book read:** *Nightingale*

**Restaurant recommendation:** Maro Wood Grill in Laguna Beach

**What will you do when you retire:** Retire?





**Deborah Fabricant, Esq  
Of Counsel**  
Law Offices of Boutwell Fay, LLP

## 10 Questions to Ask Before Signing That New Service Agreement

### “Attached is Our Standard Service Agreement...”

Sound familiar? Employers and others (referred to in this article simply as “Employer”) who outsource services for their employer benefit plans to vendors, such as record keepers, third party administrators, custodians, and investment advisors, should be wary of so-called “standard” vendor service agreements, many of which have already been amended and circulated in anticipation of the new DOL fiduciary rule (the effective date of which is now delayed until at least June 9, 2017.) We work with many of our clients in reviewing and negotiating proposed service agreements, and in our experience, a vendor’s “standard” agreement has generally been designed by its attorneys to protect the vendor. Employers need to carefully review and negotiate proposed service agreement terms (even if their plans are not covered by ERISA) to ensure that they are balanced, fair and reasonable, comply with ERISA where applicable and other applicable law and do not create liabilities, duties and obligations that they, in hindsight, never would have “bargained for.” Below are just a few of the most common areas that should be scrutinized and negotiated with the help of business and legal advisors.

#### 1. Who is signing the agreement?

Many “standard” service agreements name the “plan sponsor” as the contracting party, but in fact, the plan sponsor may not be the proper signatory to all or part of the agreement. An Employer must look at its plan document and other relevant documents, such as any committee charter, to determine who has the authority to

sign a service agreement and who has the obligation to perform under the agreement. That authority may have been delegated (to limit the plan sponsor’s fiduciary liability exposure or otherwise) to the plan administrator (which might also be the employer but in a different capacity), plan administrative committee, plan trustee or other person or entity. (See our FAQ on committee charters which can be found here: <http://www.boutwellfay.com/wp-content/uploads/2016/09/FAQ-What-is-a-Plan-Committee-Charter.pdf>) In short, the plan sponsor may have purposely relieved itself of the legal authority to engage vendors, and if it just goes along with the “standard” proposal, it may be creating an inconsistency with the plan document and/or creating a risk that it is agreeing to take on fiduciary and other duties/liabilities it intended to avoid.

#### 2. Who is a fiduciary with respect to the services covered by the service agreement?

Many “standard” service agreements that we have seen in the past require the Employer to agree that the vendor is not a fiduciary even though some of the vendor’s actual responsibilities under the agreement appear to be fiduciary in nature or in fact (for example, determining benefits, administering claims procedures etc.) If the vendor in fact performs fiduciary functions, the Employer should address this with the vendor and review the scope of indemnity provided by the vendor with respect to these functions.

#### 3. How and what exactly is the vendor being paid for its services?

Many “standard” service agreements generally refer to or incorporate a “standard” schedule of fees but provide few (or no) details about the compensation the vendor receives. Without that detail, an Employer may not be

able to determine if it is entering into a service agreement that violates ERISA's prohibited transaction rules. (See ERISA § 406(a)(1)(C) providing that a service agreement that permits a vendor to receive more than reasonable compensation is a prohibited transaction). (See also DOL's §408(b)(2) disclosure rules that require plan fiduciaries to understand and take into account all indirect and other compensation paid to vendors to determine if compensation is reasonable.) (See 29 C.F.R. § 2550.408b-2.) The service agreement needs to clearly set out exactly what compensation (direct and indirect) is to be paid to the vendor (or how that compensation will be determined). This is one area in which you may see big changes as vendors react to the new fiduciary rule.

#### **4. What services is the vendor agreeing to provide to the plan?**

Many "standard" service agreements use vague or general language about the nature of the vendor's services (for example "provide record keeping and reporting services"), and/or reference non-contractual/internal and non-client specific schedules for a description of services. The service agreement should clearly spell out the services being provided.

#### **5. What obligations is the Employer undertaking under the service agreement?**

Many "standard" service agreements give the vendor unilateral discretion to dictate at a future time or in some non-contractual document what the Employer must do to enable the vendor to perform its services. For example, many service agreements provide that the vendor will unilaterally determine what information/data the Employer must provide and how and when the information/data must be provided. They also often provide that the vendor has the absolute right to rely on information/data received from the Employer and/

or others, with no vendor obligation to verify or even question the correctness of information it receives (even when it suspects it is wrong!) The service agreement should spell out each party's obligations with sufficient clarity that each party understands its obligations under the agreement.

#### **6. Who is responsible for the vendor's mistakes – limits of liability, indemnity and hold harmless provisions?**

Many "standard" service agreements contain strong unilateral indemnity provisions and/or liability caps/hold harmless provisions whereby the Employer agrees to indemnify the vendor for all losses that the vendor causes whether the vendor's conduct is inadvertent, negligent or intentional. Similarly, many service agreements cap vendor liability at a set dollar amount – often the amount of fees the Employer pays to the vendor regardless of the actual amount of loss the vendor causes. Moreover, some "standard" service agreements do not contain reciprocal indemnity where the vendor is liable for losses it causes to the plan, plan sponsor/participants, or, if they do contain reciprocal provisions, they are effectively negated by a hold harmless or liability cap protecting it. All of these types of clauses should be reviewed by counsel and thoughtfully negotiated.

#### **7. What is the vendor doing to protect plan/participants' data?**

Many "standard" service provisions have a so-called "force majeure provision" that protects the vendor from liability in the event of a disaster or other so-called "act of God." Typically, these provisions include data breaches and internet failures. However, vendors should have a disaster recovery plan in place and Employers. . . . [Click here to complete the article.](#)

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**Join your fellow members of the Orange County Chapter of the Western Pension and Benefits Council at the Western Benefits Conference!**

**Anaheim Hilton**



**Double the Fun!**

**Join the WP&BC—OC Chapter  
Member Appreciation Event at the  
ESPNZone in Downtown Disney**

**July 11, 2017      6—8 p.m.**

