



President's Message



“In our view, participant data is a plan asset and, as such, is to be protected by fiduciaries in a manner consistent with the ERISA fiduciary principles of prudence and loyalty.” I’m paraphrasing the wording that might be used by a

Department of Labor field agent in an audit findings letter to a plan sponsor but a similar sentiment could have been conveyed just as easily by a participant whose account was breached or, perhaps worse, an attorney representing a class of participants in litigation. As ERISA practitioners, preparing for and meeting the cybersecurity threats now taking aim at retirement plans is perhaps our biggest challenge in 2019.

ularly adept at predicting the future, I’m thinking that cybersecurity is not only the theme that the Chapter will close its 2018-2019 Breakfast Forum program with but also one that we will revisit in 2019-2020 whether in-person as a group or through a webinar.

As we close our Chapter’s fiscal year, I’m pleased to report to you that the Chapter continues to be active and growing. We are at 95 individual members currently – near an all-time high. A significant percentage of these members have already joined for the upcoming Chapter year starting July 1 as well. If you are a member who has already renewed for next year, “thank you.” If you have not done so yet, why not today? Marti will be happy to take care of the necessary paperwork and processing while Doug updates you on the cybersecurity threats facing your plans.

To that end, I hope you are planning on joining me this Thursday when Doug Peterson, the Chief Information Security Officer of Great-West Financial presents at our May 16 Breakfast Forum at Andrei’s where he will be leading a session that asks if you and your plans are at risk. Spoiler alert, you and your plans are at risk. And while I’m not partic-

Please join me in thanking our 12 corporate sponsors whose continued support of the Chapter makes the programming like today’s Breakfast Forum possible. See page 9 for the list of our Sponsors. Also, join me in welcoming Aubrey Silva of



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A Message From Our President

the Capital Group to the Chapter's Board. Aubrey's profile is featured in this newsletter.

Also included is an article written by Kathleen Salas Bass from Boutwell Fay on "*The Definition of Compensation: When Operation Does Not Match the Plan*" a topic that we know is of interest to many of you.

The Board wishes each and every one of you a happy and healthy Summer of 2019 and trusts that each of you will find some time away from work and

the office to rest and relax to enjoy your favorite recreational or volunteer activities, and maybe with just a bit of time for one of our upcoming summer technical lunch sessions or webinars.

And as the old song goes, "See You in September."

Hitz Burton, Partner, Legal Consulting & Compliance

Aon

Orange County Chapter President

Welcome to the WP&BC New & Renewed Members

2019 — 2020

Renewed Sponsors:

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New Gold Members:

Alex Sanchez, Pension Assurance

Don Wordon, Mass Mutual

New Individual Members:

Jason Colin Patrick, Fiduciary Advisors

Michael Rossi, Vertical Advisors

Board Member Profile



Name: Aubrey Silva

Company: Capital Group Companies, Inc.

Title: Manager – Education and Retention

Years in the Industry: 20

First “real” job: Receptionist at TPA firm, CPI Qualified Plan Consultants, Inc.

Education: Associates of Applied Science in Business Management and Leadership with an Emphasis in Pension Administration

Business Background

Nature of your work: I work on a team that strives to make doing business in the retirement industry easy for financial advisors, plan sponsors and TPAs.

How you got into the field: I began my career at a small TPA firm and had the opportunity learn from great mentors about the industry. I’ve been lucky enough to capitalize on that experience ever since.

What you like about the field: I love the problem solving. Between the complexity of regulations and coordinating efforts between multiple advisors/service providers, the challenge in finding the right path to retirement for a plan’s participants that also fits the objective of an employer is something I find fun.

Why did you join the WP&BC? To continue building my knowledge of the retirement industry from multiple perspectives.

Personal Background

Ways you spend free time: Hiking and camping with my husband and daughter, motorcycle riding

Guiding philosophy: When you can’t control the wind, you must adjust your sails.

Favorite charity: Augie’s Quest – dedicated to finding a cure for ALS.

Last book read: *I Know Why the Caged Bird Sings* by Maya Angelou

Restaurant recommendation: Urban Grill & Wine Bar – Foothill Ranch

What will you do when you retire? Travel



Ask The Expert



Kathleen Salas Bass
Of Counsel
Boutwell Fay, LLP



The Definition of Compensation: When Operation Does Not Match the Plan

In every qualified plan, such as a Code Section 401(k) plan, there is a specific definition of compensation. It could be based on a different general definition such as compensation reported on Form W-2 or compensation subject to withholding. Some plan documents exclude bonuses, some plans exclude fringe benefits, some exclude neither. There are many options for defining plan compensation. The most important thing is that the plan is administered consistent with the definition of compensation that applies to that plan. And yet so frequently the wrong definition of compensation is used when determining contributions. This can happen because the payroll system was set up, or has evolved, without reference to the terms of the plan. Or perhaps there was an administrative reason for excluding certain items of compensation, but corresponding amendments were never made to the plan document. It is important to understand why the failure occurred for purposes of ensuring it does not happen in the future, and correction for the failure to follow the terms of the plan must be made to ensure the continued qualification of the plan.

Determining the Scope of the Failure

The guiding principle in plan corrections is to put the plan participant in the same position they would have been in had the failure not occurred. So, the first step is to determine what compensation should have been included and analyze what contributions should have been made based on the compensation amount as defined in the plan compared to the contributions that were actually made. The definition of compensation can affect all types of contributions:

- **Deferrals:** Deferrals are usually elected as a percentage of compensation. For example, assume a participant elects to defer 5% of compensation and they have \$1,000 in salary and \$200 in bonus. The plan does not exclude bonuses, but deferrals were only calculated based upon the participant's salary. In that case, \$50 is deferred (5% of \$1,000) rather than \$60 (5% of \$1,200). Under the terms of the plan, the participant should have had \$60 in deferrals. Note—if a participant elects a fixed dollar amount, then compensation is not used to determine the deferral contribution.
- **Match:** Since matching contributions by definition are tied to deferral contributions, an incorrect deferral contribution amount will generally result in an incorrect match. However, the definition of compensation can also affect matching contributions when there is a limit on matching contributions of a percentage of compensation. For example, using the same facts as in the example above, assume that the plan provides for a match of 100% of deferrals up to 3% of compensation. If compensation is only based on salary, then the maximum match the participant would receive is \$30 (3% of \$1,000) but under the terms of the plan the participant was entitled to \$36 (3% of \$1,200).
- **Profit Sharing:** Some profit-sharing contributions are allocated pro rata, based on the ratio of the participant's compensation compared to the total compensation of all participants in the plan. The use of an incorrect definition of compensation can affect both sides of that equation and the affects would need to be analyzed by a re-calculation of the whole profit-sharing allocation.

Ask The Expert

- **Non-Discrimination Testing:** Compensation is also one of the elements used in non-discrimination testing, therefore an analysis should be made whether the correct definition was used for that purpose as well and the effects on plan testing if an incorrect definition was used. The definition of compensation used for testing can be different than that used for plan contributions, but similar system errors can create problems in this context as well.

The Correction

While the examples used above resulted in an inadequate allocation of contributions, it is possible that the use of the wrong definition of compensation could result in an excess allocation (for example, if bonus compensation is excluded under the terms of the plan but included in operation). The correction methods will be different depending upon whether there is an inadequate allocation or an excess allocation. Correction may be made under the general principals under EPCRS [See: [*What is EPCRS?*](#)] IRS safe harbors or a negotiated correction (either through a VCP application or closing agreement with the IRS in the event the issue is raised in an examination):

- **Inadequate allocation:** Where there is an inadequate allocation of contributions, a corrective contribution must generally be made by the employer to the affected participants' accounts. The IRS safe harbor correction in this circumstance would generally require a contribution equal to:
 - ◇ 50% of the amount of underpaid deferrals
 - ◇ 100% of the amount of underpaid matching contributions
 - ◇ 100% of the amount of underpaid profit-sharing contributions
- **Excess allocation:** Where there is an excess allocation of contributions, the IRS safe harbor correction in this circumstance would generally require:
 - ◇ Distribution of all excess deferral contributions
 - ◇ Forfeiture of all excess matching contributions
 - ◇ Forfeiture of all excess profit-sharing contributions

All corrections must include lost earnings, if any. Where a correction involves participants who have terminated and taken distributions, additional steps must be taken.

See IRS guidance on this issue at <https://www.irs.gov/retirement-plans/plan-compensation-errors-how-to-correct-when-your-plan-definition-of-compensation-is-different-from-plan-operations>.

Notes for Best Practices

- Because this type of failure is a frequent problem for plans, and it can go on for many years before discovery, it is a good idea to include an annual audit of your payroll system and the plan's definition of compensation in the plan's administrative procedures to determine that they are consistent.
- If it is discovered that the incorrect definition of compensation has been used, corrective steps to prevent continued failures, such as updating the payroll system or amending the plan document, should be carried out as soon as possible to limit the liability for the failure.
- Seek professional help from third-party administrators and legal counsel to ensure the correction is accurate, complete, and appropriate for the specific situation.
- Review fiduciary liability and corporate errors and omissions policies to determine if the failure is covered and whether reporting to the insurer is required.
- As with all corrections to qualified plans, before proceeding with any self-correction, an analysis should be done to determine whether the facts and circumstances support eligibility for self-correction, or whether a voluntary compliance program submission is needed.

2019 NAFE — NIPA & WP&BC Annual Forum & Expo Winner



At two consecutive Breakfast Forums the Orange County Chapter of the Western Pension & Benefits Council gathered business cards from attendees. Over 100 cards were collected. The purpose of the collected cards was to offer a paid registration to the NAFE Forum & Expo at the Coronado Bay Resort in San Diego from April 28—May 1. The value of the prize was a maximum of \$1,525.00. Tom Drosky, Board member and as a representative of PenChecks, a sponsor of the Conference, drew the business card of the lucky winner.

The lucky winner was our member, Shareen Balkey, Director of Retirement Services, Index Fund Advisors. Shareen first attended the WP&BC Breakfast Forum in 2012; and, has been attending ever since. We are delighted to have been able to provide this opportunity.

Shareen states about her experience, "I thought the NAFE conference was packed with useful information that a 3(38) Advisor could use to help educate plan sponsors. I found the NAFE program both productive and enjoyable. All of the presenters I saw were very knowledgeable and eager to answer questions. I really appreciate the opportunity that WP&BC gave to me to attend this conference. I got a lot out of it. And I hope to return again in the future! Thank you so much for the invitation. It was well worth the time."

For a 2019—2020 membership, join now! The Benefits are:

- **Members** are listed in our online membership roster
- **Members** have access to the rosters of all chapters of the WP&BC as well as access to the Members-only areas of the website
- **Members** receive **discounted registration** fees to Chapter events—our Breakfasts, Technical Lunch Forums, Seminars and the webinars !!
- **Members** may use the **Free Guest program** to bring clients to Chapter events
- **Corporate Members** get the benefit of bringing 3 associates to each Breakfast at no additional charge and discounted registration fees to Technical Lunches, webinars and the Annual Conference.
- **Sponsors** receive all the benefits of Corporate Members **PLUS Corporate logo and recognition** as a Sponsor on all mailings, meeting flyers, newsletters and brochures as well as **on the WP&BC OC Chapter website** with a link to the **Sponsor's website**.
- Recognition as a **Sponsor on a large poster, table top placards** and on a **rotating screen saver at each regular** breakfast meeting, technical lunch forums and other special events held during the year.

Our Chapter is dynamic! Our events provide high-quality education, continuing education credit for multiple certifications, and great networking opportunities. [CLICK HERE](#) to visit the membership page of our website to review the membership opportunities for 2019-2020.



Western Pension & Benefits Council - Orange County Chapter

Nominating Committee Report to the Members

Hitz Burton is the President, and Doug Van Galder is the Immediate Past President, for the 2019 and 2020 fiscal years (July 1, 2018—June 30, 2020) as provided for in our Bylaws.

The Nominating Committee has nominated the following Members to serve as the Officers of the Organization for the 2018-2019 and 2019-2020 fiscal years (July 1, 2019 through June 30, 2020):

Shannon Main:	President-Elect
Curtis Farrell:	Secretary
Mark Murphy:	Treasurer

The following Members will continue to serve on the Board of Directors for the 2019 and 2020 fiscal years (July 1, 2018 through June 30, 2020):

Kathleen Bass:	Director at Large (Newsletter Chair)
Tom Drosky:	Director at Large (Sponsorship Chair)
Alison Fay:	Director at Large
Samantha Graboff:	Director at Large (Webinars Chair)
Stuart Hack:	Director at Large (Programs Co-Chair)
Doug Jones:	Director at Large (Membership Chair)
Margaret Martinazzi:	Director at Large

The following Members have been nominated to serve on the Board of Directors for two-year terms beginning July 1, 2019 and ending June 30, 2021:

Marilyn Thompson:	Director at Large (Programs Co-Chair)
Aubrey Silva:	Director at Large (Programs Co-Chair)
Andrew Hermann:	Director at Large

2019 Calendar of Programs

All Breakfast Forum Meetings will be held at

Andrei’s Restaurant

2607 Main Street

Irvine, CA 92614

Our slate of speakers and topics is subject to change throughout the year. To find the most current information about upcoming meetings, visit www.WPBCOrangeCounty.org, then select “Events.”

<p>5/16/2019 Andrei’s Restaurant Irvine, CA 92614</p>	<p>Breakfast Forum: Cyber-Security—Are You at Risk?</p>	<p>Doug Peterson, <i>Great West</i></p>
<p>5/14/2019 Online Webinar Western Pension & Benefits Council</p>	<p>Online Webinar: Courts, Congress & Compliance—What’s New for ERISA Litigation, Benefits Legislation, and Agency Guidance for 2019?</p>	<p>Tim Verrall, <i>in the Houston office of Ogletree Deakins</i></p>
<p>6/18/2019 Online Webinar Western Pension & Benefits Council</p>	<p>Online Webinar: Mergers and Acquisitions: a Who’s the Employer Perspective.</p>	<p>S. Derrin Watson, <i>Attorney at Law</i></p>

Meeting Details:

Breakfast Forums are held at Andrei’s Restaurant, address above. Registration is \$75 per person, with discounts for members and early registration. Your registration fee includes a full breakfast buffet and hosted valet parking. Check-ins begin at 7:30 am, breakfast and networking until 8 am. Presentations typically end at 9:30 am. Members may bring one guest for free.

Technical Lunch Forums are held at the Precept Advisory Group in Irvine. Registration is \$40 per person, with discounts for members. Your registration fee includes a full boxed lunch and parking. Check-ins begin at 11:30 am and typically end at 1:30 pm. Walk-ins cannot be accommodated.

Online Webinars are sponsored by the Western Pension and Benefits Council. Registration for a 100 minute session is \$75.00 for members and \$90.00 for non-members. Registration for a one hour session is \$50.00 for members and \$65.00 for non-members.



The Western Pension and Benefits Council appreciates our Sponsors whose support enhances all that we do!



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