ERISA BASICS NATIONAL INSTITUTE AGENDA

WEDNESDAY, June 5, 2019

8:00  Registration and Networking Continental Breakfast

8:30  WELCOMING REMARKS AND OVERVIEW OF PROGRAM
     Program Co-Chairs:
     Denise M. Clark, Clark Law Group, PLLC
     Benjamin Eisner, Spear Wilderman, PC
     Russell L. Hirschhorn, Proskauer Rose LLP
     Joanne Roskey, Government Attorney

8:45  ERISA BASICS CONCEPTS – STATUTORY OVERVIEW
     This session will provide a high-level overview of ERISA, including what is a plan, what is a plan
     fiduciary, what is a plan sponsor, and who is an employee. It also will discuss the differences between the
     types of pension plans and types of welfare benefit plans.

9:35  FIDUCIARY STANDARDS – PART I
     This session will address ERISA’s complex definition of fiduciary and discuss ERISA’s fiduciary duties.
     It also will discuss the responsibilities entailed in investing plan assets, and the difference between a plan
     sponsor and plan fiduciary.

10:25  Morning Break

10:40  FIDUCIARY STANDARDS – PART II
     Continuing from session one, this session will provide a high-level overview of prohibited transactions, a
     technical ERISA concept, as well as an overview of remedies for fiduciary breaches. This session also
     will provide pointers for compliance with the ERISA’s mandates and an overview of hot topics in ERISA
     fiduciary and class action litigation.

11:40  MINIMUM STANDARDS FOR TAX-QUALIFIED RETIREMENT PLANS – PART I
     The Internal Revenue Code requires that a retirement plan meet minimum standards to be qualified in
     order for employers and employees to receive tax benefits related to participation in employee benefit
     plans. This session will address those standards and will outline the complicated rules with which
     employers must comply to establish a tax qualified plan. It also will provide an opportunity to delve
     deeper into the qualification standards for retirement plans and to discuss with experienced practitioners
     any issues related to compliance with these standards.

     In the Part I, the focus will be types of plans and plan formulas, definition of employee, calculating
     service, participation and coverage, minimum coverage testing, vesting, forfeitures, plan loans, IRS
     determination process, and defined contribution nondiscrimination testing rules.

12:40  LUNCHEON ADDRESS

2:00  MINIMUM STANDARDS FOR TAX-QUALIFIED RETIREMENT PLANS – PART II
     The Internal Revenue Code requires that a retirement plan meet minimum standards to be qualified in
     order for employers and employees to receive tax benefits related to participation in employee benefit
     plans. This session will address those standards and will outline the complicated rules with which
     employers must comply to establish a tax qualified plan. It also will provide an opportunity to delve
     deeper into the qualification standards for retirement plans and to discuss with experienced practitioners
     any issues related to compliance with these standards.

     In the Part II, the focus will be benefit accrual rules, benefit limitations, defined benefit nondiscrimination
     testing rules, minimum funding rules, timing of benefit payments, forms of benefit payments and taxation
     of benefits.
3:00 GOVERNMENT ENFORCEMENT—Reporting and Disclosure
Hear from the Department of Labor and practitioners regarding the requirements of plan reporting and what must be included for compliance with ERISA’s regulatory scheme.

Moderator: Joanne Roskey, Government Attorney

3:50 Afternoon Break

4:05 GOVERNMENT ENFORCEMENT—Agency Programs and Investigations
Hear from the Department of Labor regarding its enforcement program, including its structure, how it conducts investigations, and its enforcement priorities and initiatives.

5:05 Adjourn followed by a Networking Reception

THURSDAY, June 6, 2019

8:00 Registration and Networking Continental Breakfast

8:30 ERISA PREEMPTION
This session will introduce the fundamental principles of ERISA preemption and the impact it has on other legislation related to employee benefit plans and the exceptions the statute permits. It will detail how ERISA preemption has changed since the statute’s inception and discuss its current effect on state plan regulation.

9:30 FEDERAL REGULATION OF HEALTH PLANS
This session will address federal employee welfare benefit plan regulation, including the Affordable Care Act, COBRA, ADA, GINA and other statutes and regulations. This session also will focus on the reporting and disclosure requirements that generally apply to ERISA governed health plans, including ACA reporting issues.

10:30 Morning Break

10:45 BENEFIT CLAIMS – PART I: ADMINISTRATIVE PROCEDURES
ERISA requires extensive procedures for the processing of claims and appeals, and a near-universal prerequisite to bringing suit when benefit claims are denied is the pre-suit appeal required by 29 U.S.C. § 1133. This program will cover the statutory basis for pre-suit appeals, when such appeals may be excused, and the rules and regulations governing pre-suit appeals.

11:35 BENEFIT CLAIMS – PART II: LITIGATION OVERVIEW
Not all claims are resolved internally. This program will cover topics arising in the litigation of employee benefit claims, including basic civil procedure, the availability of juries, discovery, evidentiary considerations, and disposition of claims. This program will then address what occurs when suit is filed for benefits under an ERISA plan, including exhaustion, evidence the district court may consider, the judicial standards of review applied in benefit claims litigation, and the doctrine of conflict of interest. The panel will address procedural issues and strategies to be considered by both the claimant and the plan/plan sponsor in the review process and in litigation.

12:35 Lunch (On Your Own)
1:45 DISCRIMINATION IN AND INTERFERENCE WITH EMPLOYEE BENEFITS
The breadth of protections under ERISA, the Affordable Care Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, as amended, and the Age Discrimination in Employment Act have been enlarged by recent regulatory actions of the EEOC, HHS, and DOL. This session will review potential claims in litigation including interference with an employee’s employment relationship with the specific intent of interfering with her attainment of benefits or future rights under a plan and retaliation against an employee for utilizing her benefit rights or for complaining about violations of ERISA. Discrimination in the provision of benefits in the design or access to health care, with a particular focus on denial of access on the basis of disability, sex, and sexual orientation also will be discussed. Additionally, the session will review how ERISA overlaps with other federal employment statutes when employees assert that employers have misclassified them under the Fair Labor Standards Act or have altered their terms and conditions of employment in order to avoid mandated benefits or statutory penalties under the Affordable Care Act.

2:45 Afternoon Break

3:00 REMEDIES
ERISA remedies have been a vigorously contested battle ground, especially in the wake of Cigna Corp. v. Amara, which reinvigorated the debate over the scope of “appropriate equitable relief” under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3). This panel will provide a brief overview of the types of remedies available under ERISA’s major enforcement provisions and then focus on remedies in the post-Amara world. Topics will include recent and pending cases on the scope of monetary relief under § 502(a)(3) as well as plan terms limiting the availability of equitable remedies. Working on a DC union person

4:00 ERISA ETHICAL ISSUES AND CONCERNS
This session will focus on key ethical rules and principles that should be considered by ERISA practitioners, including the scope of ethical duties to clients and non-clients, the creation and consequences of multiple representations and conflicts of interest, a lawyer’s duty to report wrongdoing of constituents in an organization, special ethical standards applicable to preparing tax opinions, rules applicable to multi-jurisdictional practice, the attorney-client privilege (and related fiduciary exception) and the attorney work product immunity.

5:00 Adjourn

FRIDAY, June 7, 2019

8:30 Registration and Networking Continental Breakfast**

9:00-9:50 MULTIEMPLOYER & OTHER COLLECTIVELY BARGAINED PLANS
A general overview of the special rules and regulations governing multiemployer employee pension and welfare benefit plans under ERISA, including the Multiemployer Pension Plan Amendments Act of 1980, which created ERISA Section 515 for the collection of employer contributions, and which provided for the creation and enforcement of Withdrawal Liability. This panel will also cover the developing law and regulations affecting collectively bargained plans since the Pension Protection Act of 2006.
10:00-
10:50  **SECTION 401(k) PLANS**
This session covers the basics of the who, what, where, when and how of Section 401(k) plans. This session outlines all of the fundamental tax code and ERISA rules that govern the daily operation of a Section 401(k) plan.

10:50-
11:05  **Morning Break**

11:05-
11:55  **ERISA POTPOURRI**
The session will discuss a number of frequently encountered issues by pension and health/welfare plans. For pension plans, this session will address the basics of QDRO’s, QMSCOs, and other spousal rights. For health and welfare plans, this session will discuss the developing law of subrogation and plan reimbursement, including plan self-help remedies and plaintiff responses to collection efforts.

12:05-
12:55  **EXECUTIVE COMPENSATION**
This session will be an overview of the fundamentals of deferred compensation (including Code Section 409A), equity compensation, SERPs, excess plans, and golden parachutes.

12:55  **Adjourn**