2020 ERISA FIDUCIARY INSTITUTE

AGENDA
(As of February 24, 2020)

THURSDAY • APRIL 2, 2020

8:00-8:30  REGISTRATION AND NETWORKING CONTINENTAL BREAKFAST (Non-CLE)

8:30-8:40  WELCOMING REMARKS (Non-CLE)
Co-Chairs: Joni L. Andrioff, RSM US LLP
Peter M. Kelly, Retired Deputy General Counsel & Chief Employee Benefits Counsel of Blue Cross and Blue Shield Association

8:40-9:10  INTRODUCTION TO FIDUCIARY GOVERNANCE
This session will set the table for the day’s discussions with an exploration of the role of Good Governance practices in assuring a committee or other ultimate fiduciary can meet the challenges of fiduciary litigation.
Speaker: Peter M. Kelly, Retired Deputy General Counsel & Chief Employee Benefits Counsel of Blue Cross and Blue Shield Association

9:10-10:00  BENEFIT CLAIMS
The session will review the ERISA benefits claim and appeal process and explore recent case law and regulatory developments that demand more rigorous adherence to fiduciary’s “full and fair review” obligations.
Moderator: Peter M. Kelly, Retired Deputy General Counsel & Chief Employee Benefits Counsel of Blue Cross and Blue Shield Association
Speakers: Susan E. Rees, The Wagner Law Group
Martina Sherman, DeBofsky Sherman Casciari Reynolds PC

10:00-10:20  BREAK (Non-CLE)

10:20-11:10  UPDATE AND TRENDS IN FIDUCIARY CASES
This panel will discuss recent developments and trends in ERISA fiduciary cases, including important ERISA cases now before the Supreme Court. Join us for a lively discussion with experienced litigators from both the plaintiffs' and defendants' perspective.
Moderator: Robert W. Rachal, Jackson Lewis PC
Speakers: Mark G. Boyko, Bailey & Glasser LLP
Sara R. Pikofsky, Steptoe & Johnson LLP

11:10-12:00  401(k) PLAN INVESTMENT ISSUES
This session will take a deep dive into fiduciary issues to monitor and evaluate Target Date Funds due to their importance as the Qualified Default Investment Alternative (“QDIA”) in most 401(k) Plans, and since participants are being “encouraged” to use Target Date Funds as their best one-stop investment alternative. Issues to consider will include:
• Litigation involving Target Date Funds
• Glide paths “to” and “through” retirement
• 5-year groupings vs. 10-year spreads
• Differences in Target Date Funds between Vendors
• Participant Investment and Distribution Issues

Moderator: Frank Palmieri, Palmieri & Eisenberg
Speakers: Matthew J. Eickman, Qualified Plan Advisors
          Marie Swartzwelder, The Newport Group

12:00-1:10  LUNCHEON ADDRESS (Non-CLE)

1:10-2:10  RISK MITIGATION IN THE SECURITY AND USE OF PLAN DATA
Retirement plan cybersecurity and participant data privacy are growing concerns for the plan sponsor, service provider, and insurance communities. Focus on these areas will continue to build in light of the growing oversight by federal, state and international regulators. Join our speakers to discuss hot button issues involving plan data, including:
• Data breaches, their consequences, and how to prevent them
• The current state of the law concerning the status of individual participant data as a “plan asset” and related prohibited transaction issues
• An overview of recent legislative and regulatory initiatives in these areas
• Evolving regulatory enforcement and litigation risks relating to plan data
• Steps plan sponsors can take to manage cybersecurity risks
• Real world examples of plan sponsor experiences and affirmative defensive steps.

Moderator: David N. Levine, Groom Law Group
Speakers: Mark G. Boyko, Bailey Glasser
          April A. Goff, Perkins Coie LLP

2:10-3:00  403(b) PLAN ANNUITIES
The panel will focus on fiduciary issues for Section 403(b) annuity and custodial plans including issues such as:
• How to Terminate Fiduciary Obligations when Terminating Annuity Plans
• Excessive Fees and Restrictive Fee Arrangements (e.g., Surrender Charges and
  Contingent Deferred Sales Charges (“CDSCs”) generally found in Group Annuity
  Contracts
• Limited Investment Alternatives
• Vendor Quality Issues
• Fiduciary Litigation - Case Review (e.g., Fee Cases)

Moderator: David N. Levine, Groom Law Group
Speakers: TBD

3:00-3:20  BREAK (Non-CLE)

3:20-4:10  UPDATE ON DOL ENFORCEMENT ACTIVITY
This panel will focus on the latest DOL enforcement actions, the DOL’s “hot button” issues in audits involving ERISA fiduciaries, and the parameters of a DOL audit.
Moderator: Robert W. Rachal, *Jackson Lewis PC*
Speakers: Michael Schloss, *Regional Director, Employee Benefit Security Administration, U.S. Department of Labor*
          Erin M. Sweeney, *Miller & Chevalier Chartered*

4:10-5:00  **FIDUCIARY ISSUES WITH VENDORS**
This session will review the importance of reviewing service agreements before they are executed. Most vendors will protect their interests, which is expected in any service agreements. However, many vendors are beginning to limit the circumstances in which they serve as a fiduciary, where employers fail to use the lowest cost share possible and continue to use any revenue sharing. This session will focus on important issues to consider when reviewing service agreements and vendor issues.
Moderator: Frank Palmieri, *Palmieri & Eisenberg*
Speakers: Jason P. Lacey, *Foulston Siefkin LLP*
          Allison Wielobob, *American Retirement Association*

5:00-6:00  **NETWORKING RECEPTION (Non-CLE)**

6:00  **ADJOURN**

FOR MORE INFORMATION OR FOR ASSISTANCE REGISTERING
Contact Karen Case at 202.662.8641 or karen.case@americanbar.org.

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**FACULTY**

Joni L. Andrioff, Program Co-Chair, *RSM US LLP*, Washington, DC
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Matthew J. Eickman, *Qualified Plan Advisors*, Omaha, NE
April A. Goff, *Perkins Coie LLP*, Dallas, TX
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