



2024 Fiduciary Training Series, Part 2: Plan Governance (Webinar Recording)

It can be daunting to navigate the evolving landscape of retirement plan oversight, especially with the recent increase in regulatory requirements. However, ensuring compliance is crucial. Creating and maintaining a sound governance process will allow for effective and efficient plan oversight.

In this webinar recording, we delve into the essentials of retirement plan governance. We discuss how effective governance streamlines decision-making, reduces risk, increases the likelihood of meeting plan objectives, and improves controls.

Topics include:

- overall plan governance;
- documenting processes and procedures to ensure you're meeting your fiduciary obligations;
- appropriately delegating duties and responsibilities;
- managing and developing an investment policy; and
- selecting and monitoring service providers.

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So, today we're going to provide an overview of governance. What is it? Why is it important? That might be a refresher for you, but it's really foundational to what we're going to discuss. We'll talk about what a good planned governance review might look like. And what should plan fiduciaries know about their plan?

And then we'll leave you with some key takeaways. I'm really excited about our speakers today. We have a great group for you. We have Abigail Russell. She's joining us from Raleigh, North Carolina, CAPTRUST headquarters. She's been with CAPTRUST for 17 years and in the industry for over 25 years. And Abigail's a retirement focused plan advisor.

She has significant experience consulting in the defined contribution space, including 401Ks and 403Bs, defined benefit plans, non qualified retirement, and cash balance plans. Her [00:01:00] sponsor clients are predominantly corporate plans. across multiple industries and various participant demographics, but her expertise lies with law firms and biotechs.

So, Abigail, thanks for being with us today. Tim Irvin is also an advisor at CAPTRUST. He's focused in the retirement plan space as well and is based in New York City. And I'm sorry that you can't see out his window for his fabulous view of New York City. Um, he's been with CAPTRUST since 2021, but has over 10 years of experience in the industry consulting with plan sponsor clients.

And Tim's client base is also a great mix, but his concentration is with larger plans, our large market tax exempt space, which gives him a good combination of ERISA and non ERISA plan types and will lend really well to this conversation. So that those of you joining us thinking, well, what [00:02:00] happens if I'm not, if I don't have to, um, our plan's not subject to ERISA regulations, should I still do some of this stuff?

So we'll be able to speak well to that. And then finally, John Shambari is a partner with Kutak Rock and is based in Omaha, Nebraska. And thankfully is joining us by audio today. John, so I feel like we're covering a good portion of the country here. We've got New York City, Raleigh, North Carolina. I'm in Kansas City and John's out of Omaha.

We just needed somebody more West, further West. John leads his firm's National Employee Benefit and Executive Compensation Practice. His focus is primarily on minimizing his clients legal risk, of course, but while ensuring that their benefit and comp programs align with whatever their goals are. He works with private, public, and governmental employers on both Qualified and non qualified plans.

So, again, to that point of we'll be able to really give you some perspective across all of the different slices of your retirement plan. So, I'm really excited again to have all three of these share their experience. Lots of years of knowledge and working with plan sponsors like all of you joining us today.

I think you'll appreciate their perspective and the best practices that they're going to share with you. from the work that they do with their respective clients. So thanks to all three of you for being with us today. And John, I'm, I've, I know you've had some technical challenges here with our, uh, system, but I'm going to start with you as the attorney in the group.

I think to create the foundation for today's discussion, we really need to understand What plan governance is and either inform or remind our listeners why it's important and why we're spending A whole webinar focused on plan governance. So do you mind starting us out by talking through those [00:04:00] two items?

Don, thank you, and I apologize everybody for my technical, uh inefficiencies here. Um, So why is plan governance important? Why do we care about? Um, whether we have a good process in place when it comes to managing our benefit plans, primarily focusing here today on our retirement plans. Well, there's two primary reasons.

There's the, there's the one reason that, that should apply in all cases. And really, if we all are great people, which we are, we should follow the first reason. We don't need a second reason. So the first reason is why should we care about plan governance, well, because it's the right thing to do for your employees.

If you have a good fiduciary process involved in managing your retirement plan, that's going to lead to better decisions. For your employee participants [00:05:00] and and and we all want that that you know, and again in a in a perfect world That's the only reason we need um, if we can do right by our employees in the in the retirement plan by having a good process in place to make the Best possible decisions we can to benefit our employees.

Well, we should all be doing that Um, I even though i'm in Omaha, Nebraska where everybody's incredibly nice Um, I don't always See that side of some, some folks. And sometimes businesses need to make decisions that aren't necessarily just what's best for their employees. They might need to make business decisions that are best for the business or best for the shareholders or maybe best for others.

And sometimes those. Decisions can conflict with what might be best for the employees. So if there are any employers out there that maybe need further motivation or another [00:06:00] reason why it's important to have a good Governance process and, and just doing right by your employees isn't quite enough to get, get you over that hurdle.

Um, I would ask you to answer one question and that is, um, if you are one of those folks that are responsible for overseeing your retirement plan, um, that one question is how, how much do you like your house, your car, your family, And if you're in your sailboat, let's just say. And I ask that obviously a little facetiously, but the reason I say it like that, and I say it like that to all of my clients and fiduciaries all across the country, is ERISA, which is the federal law that governs what we're talking about here and governs retirement plans, um, is one of the only laws that we have in the country that impose personal [00:07:00] liability on employees of a company for doing their job.

If you are an employee of a business and you happen to be in charge of your retirement plan or perhaps you're on a committee overseeing the retirement plan, And, um, you do a bad job. Not, not, you're not a bad person, but, but you don't maybe have a good governance process. So you didn't maybe make a good fiduciary decision.

The law says that anybody harmed by that, by that poor decision, can bring a lawsuit against you personally and your personal assets. So every fiduciary decision you make, I want you thinking about Your house, your car, your sailboat. That usually is a good enough reason to get people to think, uh, long and hard about governance, um, because most people don't want to be subject to personal liability.

That's not the gig you signed up for when you went to work for your company is certainly to have your personal assets on the line when you are. So, two reasons why governance is important. Number one, it's the right thing for your employees. Number two, it, um, uh, it is important if you care about your personal assets, including your house, your car, and your sailboat.

So, let me also then just, just mention two other. Reasons why a good governance process, kind of the crossing the T's and dotting your I's, is important. Um, you may tell me that, hey John, I'm always doing the right thing for my employees, and I don't really care if my house, my car, my sailboat's at risk, I don't like them anyways, so why do I care about governance anymore because I'm always doing the right thing.

And I would say, first of all, you're a wonderful human being because you're always doing the right thing, um, which is great, but there's, there are still two reasons why governance, and here I'm talking about the crossing of the T's and dotting your I's, is important. Number one, I want you to get credit for being that wonderful human being that always does the right thing for your employees.

The best way I can ensure that you are getting credit is if you are following a good governance process. And we're going to spend the rest of the webinar talking about what that might look like. But having a good governance process, documents, And records for all of history what a great human being you are when it comes to making fiduciary decisions.

That's going to make it very easy for me to show that, that you're a great human being, and you'll get credit for all those good things [00:10:00] you're already

doing. So lots of times when I step in with a new client, they already and they're already doing really good things. But what they might not be great at is that process, that governance process where they're getting credit for all those good things.

The second thing that's important is I want the decision makers to be the ones On the hook, so to speak, for these decisions, and I don't want it to be somebody else. For example, most retirement plans will say that the Board of directors of the company is the named fiduciary. They are ultimately in charge of the retirement plan.

That's pretty common. And without a great governance structure in place, you might have somebody in HR, a couple people in HR, that actually make the day to day decisions. They're the ones that are picking investments, hiring advisors, all of that stuff. If there's a lawsuit, because maybe one of [00:11:00] those decisions wasn't a great decision, that lawsuit is going to name the board of directors.

And the board of directors, as the named fiduciary, is They're going to be on the hook, and that means when the plaintiff's lawyers show up, and they bring this lawsuit, they're going to take the deposition of all the board members, and they're going to say, tell me what you were thinking when you made this decision.

And that board of director member is going to say, I have no idea what you're talking about. And that's not a great answer. When that director is a fiduciary. So having a good governance process, not only gets the right people credit for all the good things they're doing, but it also gets the wrong people out of the conversation, the board of directors should not be the fiduciaries if they are not the ones actually doing all of the things that it takes to run a plan.

So I'm going to pause there and Tim, Abigail, anything you'd like to, to add, uh, to that portion. Sure, I can jump in. And [00:12:00] John, I'm in New York City and I promise the people here are also nice, not just in Omaha. But John, I think you made a great point. We don't want to use the threat of litigation as the primary motivator for implementing a sound documented fiduciary process.

But I'm wondering if you can speak a little bit to The inconsistencies in the outcomes when it comes to litigation, I think thematically in a lot of these lawsuits, we see similar themes repeated over and over again. But the reality is, I think the outcomes are just so inconsistent. Do you think that's going to continue to be the case where we get any consistency?

I mean, we've seen dismissals, jury trials, and really large settlements. Is that what we should be expecting moving forward? Tim, that's a great question. And I'll answer that by saying, yes, I expect a lot of inconsistency over the next couple of years. And the reason, there's a couple reasons why, but probably the biggest [00:13:00] reason is, This, this type of fiduciary litigation where, where, and this is almost always class action litigation.

You might, you know, any, any of the clients on here, uh, might say, well, hey, I know my employees and they would never sue me because of a mistake I made or maybe a, arguably a bad fiduciary decision. Well, I'm not worried about your employees, quite honestly, or I'm not worried about one employee being upset about their 401k balance.

It's the class action lawyers. And this has become a. It's a huge money making venture for class action plaintiff's lawyers. Um, the godfather, the OG of plaintiff's lawyers, class action lawyers, I think in the last 15 years or so, they've made about 600 million in attorney's fees. That's pretty lucrative.

There are other We're showing your slide now on that, John. I know you can't see it. Oh, yeah, yeah, yeah. [00:14:00] Yeah, so this slide that's up there now, this is the OG of lawyers. He started by having advertisements like this. They've evolved now. I've got a couple of clients that called me in a panic in the last year because Other law firms were advertising on LinkedIn, and any employee that listed this employer in their bio on LinkedIn got a This is how LinkedIn works, I guess, got an ad and the ad said, Hey, do you work at name of the employer?

You may have been harmed by, by your employer's, uh, breach of fiduciary duties, and you might be entitled to significant compensation. Give us a call. That these are very, very sophisticated law, uh, law firms that are, Actively marketing against this. It really came into into vogue in 2008 2009 [00:15:00] when we had the financial crisis and you had people that were getting ready to retire Uh, and all of a sudden they lost 50 of their 401k or 403b account balance And then you have plaintiff's lawyers whispering in their ear saying it wasn't your fault It's your company's fault.

Let's bring a lawsuit. Well, that's what's happening. And so it's big business. Now, Tim, even though it's big business and I don't expect that to go away, I do think we're starting to see some signs of courts applying a little bit of consistency in other jurisdictions, um, in the Midwest, out in, in New York, we're starting to see a little bit more.

recognition by the courts that if you have a good governance process, the courts are going to give you credit for that. It's not universal, but it is definitely starting, we're starting to see the tide turn more in favor of. [00:16:00] Those companies that have a good process getting out of these cases much earlier in the process.

That's great. Thanks, John. I think also, um, well, I appreciate the overview of governance and, and the Um, striking terror in the audience on why it's important. I'm just teasing. Uh, but thanks for sharing the backdrop of why we need to be paying attention to it. That's really helpful and I think it will be critical for us to have that as the foundation when we move along.

Tim and Abigail, I think I'd like to get, um, to also pause and ask, do you have a few thoughts on how you approach plan governance or think about it as you Approach things with each of your client bases. And I don't, I don't mind who starts. Abigail, do you wanna start with that one? Sure. Um, so, you know, I like, uh, like, um, John said, you know, we focus, I remind my clients if you're, if you're, if you have a good fiduciary process, if you've got good go.

Um, you're protecting yourself as an organization, but you truly are taking care of your people. So you're going through and you're reviewing fees, all the different types of fees that could impact your participants, whether it's the record keeping fees, transaction fees, um, investment fees, um, and you're, you're looking at the performance of the investments, the share classes that they have access to, all of these things.

important when you're going through that fiduciary governance to be keeping that in mind, that this is about helping your people and, and the beneficiaries of the plan. But it, the, the thing that we also focus on is, you know, remembering and focusing on the, the documentation, you know, have that process, follow that process and document the process.

Those are some of the key things that I talked to my clients about. And, and we do a lot in terms of that documenting that process, going through these [00:18:00] discussions, and then making sure, um, you know, we've got the benchmarking documents, the quarterly review documents, the other documents that we use in our discussions.

And then we are documenting with those meeting minutes. Those are really the key things is making sure that we're documenting the conversations that we're having and the decisions that are being made. Tim, what about you? Yeah, I agree with everything you said, the documentation. I think sometimes I have to remind myself we have what I call the blocking and tackling of fiduciary governance, those items that we go through every year.

Things like fiduciary training. And as we were prepping today, I realized, you know, the reality is even the most seasoned committees and committee members who could probably do the fiduciary training at this point in time have heard me go through it for the past decade. I do think they can still benefit and pull some nuggets out of the fiduciary training, even if it isn't that exhaustive 45 minute version.

We do our best to try to make it topical. John went through, [00:19:00] you know, what's going on in the landscape and we try to bring that into fiduciary training. But the other thing I would indicate, I always say, day to day, we're in the fiduciary trenches. We do this for a living. We are very deep into it, very granular.

But that is not the reality for many of our plan sponsors and committee members who wear a multitude of hats, are responsible for so many other benefits. And so, just thinking about that, the annual fiduciary training for them doesn't seem so exhaustive as us doing it every single quarter. So I just think the repetitiveness of it, Um, can be a good thing.

It's just making sure you have that foundation built for the governance, documenting it. It doesn't have to be the same amount of time each time you go through it, but I think the documentation of the fiduciary training process. Is

really important to build on as a foundation. That's great. Thank you, John. I also think I would be remiss if I didn't give you the opportunity. So much of what we talk about around governance really ties back directly to the duties under ERISA. And then even if you're not a plan that's subject to ERISA, you know, those best practices that you're trying to align with so that you can run a, an efficient, um, Compliant plan.

Do you want to spend just a couple minutes? I know we got a little late start, but do you want to spend a couple minutes talking and we'll flip to the next slide and just talk a little bit about fiduciaries, the different roles and responsibilities, and how that will relate to what we're going to jump into on good, what governance review looks like, and things like that.

Yeah, you bet. So, so, um, if there's anybody in the audience still on after I scared them about their house, their car, and their boat, it is important to realize what I'm talking about there are fiduciary related decisions, and, and, um, very few of us are hired to be a fiduciary. Some of us are, but, but very few of us are hired to be a fiduciary.

We're [00:21:00] usually hired to be, um, In charge of benefits in hr, the CFO, the controller, whatever we are, we have our day job, and then we are a fiduciary by night. So a a fiduciary is, we're gonna have basically two types. Um, one type is gonna be Tim and Abigail. They are, uh, they provide their clients, um, investment advice, investment recommendations.

And they get paid for that. Um, that makes them a fiduciary, which is, which is why they're very popular. Because if you are a fiduciary, you like to have. Other co fiduciaries around you because who knows maybe Abigail and Tim Have nicer houses and cars and boats than we do and they're going to be more at risk than we are Um, but but that that the investment advisor is going to be a fiduciary and if you have an investment consultant This wouldn't be CAPTRUST.

You wouldn't be a CAPTRUST client You do you need an investment consultant that is an ERISA fiduciary But for the rest of us that don't provide investment advice for a fee If we have discretionary authority to interpret or manage the assets of the plan We are going to be a fiduciary. So if I have the authority to Change an investment option in the 401k or the 403b plan.

I'm a fiduciary if I have the ability to hire The record keeper for the retirement plan. I am a fiduciary. Um, if, if I may have the ability to hire the auditor and we're going to pay the auditor to, to, to run the audit for the 401k plan. I am a

fiduciary. So anybody that has discretionary authority. Uh, over the administration of the retirement plan is going to be a fiduciary.[00:23:00] Like I said, you probably all have a day job. So you may be head of HR, you may be head of finance, accounting, what have you. And you may make decisions that impact the plan, but are not fiduciary decisions. So it's really hard in sometimes, sometimes we refer to this as wearing two hats. You have your day job hat when you're HR or finance, and then you have your night time hat when you are a fiduciary.

It's really important to know what hat you're wearing, because that will help drive the decision you're making. Um, I think even a better analogy than two hats, Remember who your boss is when you show up to work and you are in HR or in finance You know exactly who your boss is your boss is, you know Whoever's above you on the totem pole when you are making a fiduciary decision Your boss is not whoever's above you in the totem pole.

Your boss is All of those participants and beneficiaries [00:24:00] in the retirement plan and everything you do has to be How do I make my boss happy? And so it's really really important that you know whether or not you're acting as a fiduciary when you're making that decision Or whether you're acting as an HR person, a finance person, an accounting person.

So with that, let me jump real quick. Um, we can, we can skip, um, two slides ahead and go to fiduciary duties. Uh, we, we've talked about fiduciary duties are very important, um, because it can generate personal liability and, and we all care about that. So what are these fiduciary duties? Well, there are, there are four.

Thou shall do commandments. Thou shall be a good person type commandments. And then there's one really big thou shall not do set of commandments. Things that you cannot do if you want to be a good fiduciary. [00:25:00] So what are the thou shall do? Well, everything you do as a fiduciary, everything you do as a fiduciary has to be for the exclusive benefit of of your bosses.

Every decision you make as a fiduciary has to be what is in the best interest of the participants and the beneficiaries of the plan. How do I maximize benefits for those participants and beneficiaries? How do I get their 401k or 403b balances bigger? And then how do I drive down the expenses that might be dragging on, on their account balances?

Cause they go hand in hand. So, so what's, what's in the best interest. And so if

you're making a decision, so oftentimes you'll get this conflict where you have to decide on a service provider for the plan. And, you know, maybe your, Day job boss [00:26:00] plays golf with this service provider, and you know it's really important to your daytime boss to keep that service provider happy and fully employed.

Even if it's not in the best interest of all the participants and beneficiaries because you're paying too much to that service provider because it's the boss's golfing buddy. That is an easy example of you getting in trouble, of you putting your house, your car, and your sailboat at risk. Because when you are deciding whether to hire that service provider, the boss's golf buddy, and pay that service provider Maybe too much in fees than, than they deserve.

Uh, you are not acting in the best interest of your boss, which is the participants and beneficiaries of the plan. Number two, commandment. You have to act as a prudent person would act. This is really a prudent expert standard. It is completely unfair and unreasonable. Uh, don't [00:27:00] shoot the messenger, but every decision you make as a fiduciary, you're going to be judged with the benefit of hindsight as what would an expert in making that decision have done.

So when you're trying to decide. Should we change the International Small Cap Equity Fund in our 401k lineup? You're going to be judged as an expert in evaluating International Small Cap Equity Funds. And I don't know about you, but most of us are not experts in evaluating international small cap equity funds, but that's the standard you're going to be judged by.

So, so it's a horrible place to be in. So what the courts have told us is, if you're going to be judged as an expert and you don't have that expertise yourself, well then, You call up Abigail and Tim and say, Hey, you guys are supposed to be smart at investments. You got a good team behind you. Uh, I'm being judged as an expert in international small cap equity selection.

I'm not an expert. So I'm bringing you in as a co fiduciary. So Abigail and Tim, I want you thinking about your house, your car, your boat. And then I want you making your recommendations to me that way. Number three, you've got to follow your plan documents. This sounds basic, but gets so many people in trouble.

Oftentimes, and we're going to talk a little bit about this later, um, you're going to hear, you're going to hear, uh, lawyers, you're going to hear advisors, consultants tell you, Oh my gosh, you have to have a charter if you're going to be a fiduciary committee. Oh my gosh, you are in charge of your 401k plan.

What I will tell you. Is don't put anything in writing that you can't promise me as your lawyer that you're going to follow. Um, Tim asked earlier about his, you know, the, the, the inconsistent litigation. We've got a great case out of New [00:29:00] York involving Goldman Sachs where they were sued, their fiduciary committee was sued.

And one of the things the class action plaintiff's lawyers made a big deal about, and this is a top law firm, they said, Goldman Sachs did not have an investment policy statement, therefore, they are bad fiduciaries, and let's sock them with lots of penalties, and let's take all of their houses and cars and boats.

And the court said, There is nothing in ERISA that requires you to have an investment policy statement. And in fact, Goldman Sachs followed a very good process in evaluating investments, and therefore, this lawsuit is dismissed. So, follow your planned documents. It is It is a definite best practice. It's really good.

If you have an investment policy statement, it's a best practice. It's really good. If you have a charter, but only if you can look me in the eyes and promise me that you will follow those documents because that's your commandment. Lastly, thou shall [00:30:00] diversify the assets. We don't have to worry about this too much on 401k plans and 403b plans because we, we offer a broad menu of investment alternatives.

So I won't spend a lot of time there. Last, thou shall not do. You shall not commit what's called a prohibited transaction. This, this is anything as a fiduciary that just doesn't feel right. It's a transaction that, ah, maybe I'm getting pressure from my boss to do. It's a transaction with an affiliated company.

Uh, it's a transaction with, with maybe the, maybe that's with the employer. It's not quite in the best interest of the employees. It's probably something that wouldn't pass the first four commandments, if we were being honest, but Congress felt it was so bad that they were going to remove all doubt and all ability to interpret or away and identify these prohibited transactions.

So with that done, let me pause and see where we want to take the conversation to next. Yeah, that was great, John. Thanks for those, um, very important

reminders because they're all what drives our actions and, um, process, um, creation and things like that. What I want to do is shift the conversation a little bit.

I, Tim, You said some interesting things. We, you know, when we were doing prep work, it's nice when we get a document that kind of lists out, um, here are all the things that you can do. Check the box, follow this process, and you'll be fine. Will you spend just a minute talking about, um, How that isn't necessarily the case with governance.

It's not a cookie cutter approach. Sure. Yeah, the way I, I compare it is much like an investment lineup. Fiduciary process is not one size fits all. And I think John did a really good job of explaining kind of the cornerstones of your fiduciary process. The duty of loyalty is paramount. Are we doing something that's going to help put our participants in a better place?

Is it reasonable? You know, are you a prudent expert or working with one? And then is it documented? All significant action items are documented in our meeting minutes and reflected in our discussions. But above and beyond that, I think there are intricacies to every fiduciary due diligence process at each institution and differences.

And I think that's frankly a good thing. And I think there are a multitude of reasons Why you might get a variance from one institution or committee to another, and why you don't necessarily need to just benchmark your process against a peer's process. So one is, how long has the committee been working together?

Um, we work with committees that have been together for a decade, and so they have one way of doing things, and they may have that blocking and tackling I alluded to earlier, down pat, and so a lot of the discussion is around cybersecurity or Secure 2. or something that's very topical. Versus a new committee who's just implementing a process where a lot of what we're talking about today is going to be the focus.

The committee composition is another one. We work with some of those committees, John, that are subject matter experts on international small cap equity. And so they're very honed in on the investments. Others may be more focused on, you know, plan design and education. So I think every committee is going to differ there as well.

Your internal governance structure is huge. So we have, John, again, pointing

back to something you said, some committees where all authority has been delegated down from the board to them to oversee everything as it pertains to the plan. So they're looking at plan design, the investments, the fees, the record keeper.

We have other committees that are advisory in nature and so they know exactly what the purview of their review is and they are doing an annual presentation up to the board. And so inherently, There are going to be differences there, [00:34:00] and the final thing I would say is your service model with external counsel and your consultant.

Abigail and I were prepping and comparing notes. Even within CAPTRUST, we approach different topics with different ways, and so I think that's a good thing. As long as you have those three cornerstones, you know, the prudence, the loyalty, and the documentation of the process, I think the variation in the fiduciary process is then not only acceptable, but can be a good thing.

Yeah, good points, Tim. I appreciate that. Um, John, we were going to have you talk through what a, um, typical or, you know, kind of routine plan governance review might look like. I think we're going to. Move ahead of that 1st, and maybe come back to that if we have time, but we showed the slide here on the kind of overview of what a governance review might look like.

Um, but I want to move over to you, Abigail and to the next slide [00:35:00] because. This slide, I think, is really, well, I don't want to steal your thunder. I think this is huge because it speaks to, as a fiduciary of a plan, what are all the different things you need to know about your plan and be able to speak to or show documentation for.

So will you talk to us about this slide and then I know all of us are going to chime in. Absolutely. I think this slide is great because it's really. Almost it's a checklist for a committee of all the different things to be thinking about. And, and we call this the why slide. Um, and this really goes back to understanding why a committee is doing the things that it's doing.

Why is it making the decisions that it's making? And, um, and it really, it covers all aspects of the plan, whether it's on the fees, the investments, your [00:36:00] compliance side of things. And then really as the, as the, um, industry evolves and, you know, people like to think that retirement, Is, you know, a little sleepy industry, but, you know, the DOL and the IRS keep us on our toes and Secure Acts and Secure Act 2.

0 keep us on our toes. So if there's a lot of development going on all the time and litigation, certainly as well. So this slide, I think, is phenomenal when it comes to helping committees. To really go through a great process on all of these things and be able to say, here's why we're making the decisions that we're making.

So having a conversation about these items and then remembering to document it and go through the minutes because it's not necessarily What the decision is, but the fact that you're having these conversations and you're documenting them. So, when you've got huge turnover on a committee, which we've seen a lot of, you know, people moving around over the last few years, a lot of turnover in committees, they don't necessarily understand why we've done the things that we've done up until now.

And so it's really important to go ahead and revisit these topics. And then also just to do it on, on a schedule to make sure that things still apply. So when we think about, you know, on the fee side, you know, what are people paying? Who's getting paid by the plan by the participants, whether it's the record keeper or other, um, You know, auditors or whatever it is, what other services that you're using that people have access to, making sure that the fees are fair and reasonable for the services that they're getting.

When you have record keepers, their services can really vary. And so it's making sure, all right, if you don't get a lot, are you not paying a lot? If you get a lot, you might have to pay more. It doesn't have to be the cheapest, but just understanding the marketplace and When it comes to the different fees that you're paying, not just the administration fees, but transaction costs, you know, we're seeing people having to now think about the managed account solutions and benchmarking those fees.

For example, that's a newer one that's coming out. So thinking about the different fees that are being paid and then also thinking about The methodology that fees are being paid. Are fees being paid fairly across all the participants? So, you know, some people are very generous and they pay the fees corporately.

So this doesn't necessarily apply to you for all the, um, plan fees that are being paid. If you're writing a check, great, very generous of you. But a lot of the fees are paid from the plan. And then thinking about is it fairly dispersed across the participants or is it really being driven by the investments that they're, they're selecting.

So thinking about the fee methodology. If we're thinking about investments, You know, on the IPS, you know, John talked about the fact that you don't have to have an IPS. You don't have to have a charter, but if you do, um, you know, make sure people are aware of it, especially if you've got new committee members, or if you haven't reviewed it in a while, certainly good to go back through and review your IPS.

Make sure you're [00:39:00] following the IPS. If you have a charter, make sure you're following that charter. And things like share classes. Are you monitoring the share classes? New share classes become available. Your plan may grow. You may meet new thresholds that gives you access to lower cost share classes. Making sure you're reviewing your share classes every once in a while. You know, on a year, an annual basis, for example. Um, that's a good opportunity to potentially reduce costs for your participants. Um, and then the Department of Labor came out with Their tips for selecting and monitoring target date funds. That's a great resource. 26 step process to go through in terms of having a good process for your qualified default investment alternative. If it's a target date fund, um, going back to fees, I know there's one thing Tim was going to add a good one, and this is a really good one. Um, just given what's been changing in the world of interest rates that, uh, you know, that's getting more in the spotlight recently when it comes to fees, Tim.

Sure, I'll hit a couple of, I call them fee adjacent topics. So two things before I jump into that, which is float income. Two other things you may consider working into your annual fiduciary due diligence process. One, to the expense you have a revenue credit account or an ERISA budget, making sure that's on the fiduciary calendar, perhaps creating a budget for that and making sure that that doesn't grow to be too large.

And along those same lines, forfeitures, maybe just redefining if you have a vesting schedule, how are we able to utilize the forfeitures. Really importantly and topical, is that what it states in our plan document, which I know John could comment on and then making sure you're zeroing that out, but Abigail float income.

So I think the easiest way to define this is for certain record keepers when they are processing transactions, they may put the money in a separate account overnight that earns interest. You wouldn't have heard about this a couple years ago because interest rates were near zero, but now that they're elevated, that float income can be pretty substantial depending on, [00:41:00] you know, the

size of your plan.

And so a couple things you should be thinking about is A, how does our vendor treat float income? The answer will differ pretty dramatically record keeper to record keeper. Uh, and then B, is it disclosed? And so making sure you have a process there in place while it's quite topical is important, and I just wanted to highlight for our internal record keeping RFP team, they've actually added a question on float income so that when our plans are going out to bid, they're getting a look at the landscape to understand how different vendors are treating the float income.

So very topical at the moment. Yeah, and it's, it was surprising for larger plans in particular, it can be a significant amount of money. So it is great to just make sure it's in the agreements. You're going through that process of reviewing that every year from a compliance perspective, you know, meeting minutes.

We've talked about those, you know, do you have meeting minutes documenting all the, the committee meetings that have been held the decisions that have been made? Even before that, we talked about the plan document and making sure that you're aware of the plan document. You know, we think it's a great idea, particularly if there's turnover on the committee, to have the record keeper come in and do a deeper dive on the plan document and make sure the Committee is familiar with what's in the document so that they can fill that, fulfill that fiduciary responsibility of making sure the document is being followed correctly.

That's just a great, um, just good habit to get into. Um, and then the other thing I know when this comes up a lot with, um, when we're going through fiduciary training, it's always a good takeaway. All right, where are we on our, our fidelity bond? Do we have enough coverage? How about our fiduciary liability insurance?

Is that up to date? You know, where are we with that? And making sure that's in a good spot. So those are always two good options. Takeaways from our, our fiduciary training and certainly a good thing to be, um, reviewing, um, occasionally. Um, those are a couple of the key things. I think the other thing that people will forget about because we're so dependent upon record keepers and many of them do a great job, but it's about those participant disclosure notices.

They are ultimately the responsibility of the plan sponsor. A lot of record keepers draft them, um, send them out on your behalf. But it is important to

remember, ultimately, it is, it is your responsibility. It is important to understand what's the timeline and make sure that they are getting out in a timely manner. Some record keepers do require the plan sponsor to send them out. So making sure that you're aware of those timeline requirements and getting them out in a timely manner to meet those disclosure requirements really is a best practice for folks. And then finally, on the other considerations, this is where we've seen a lot of new things coming out.

In particular, the DOL has been very active with their guidance the last few years, and I know that Tim had some comments he wanted to make on this topic. Cybersecurity is the hottest of hot topics, for sure, since the Department of Labor came out with their guidance in 2021. I can tell you we have plans working through audits, and those audits have 8 to 10 questions on cybersecurity.

I don't believe there is a right answer for how to do this, but considerations certainly include Bringing the vendor in and having them go through cyber security, talking about how they're complying with the DOL guidelines and the things they're doing to protect participant data is an option. I know for CAPTRUST, we have a team that reviews those guidelines and we can provide reports that can be either given to the committee, or Or I think last but not least, if you have internal experts, if you have people in IT or HRIS who speak that language, setting up something separate to have them go through the paces with the record keeper, so they can really get granular and ask all the right questions. And then you can bring those internal folks to a committee meeting for an update. I think those are options that you have, but I think it is of the utmost importance to have a process in place and make sure that [00:45:00] cyber security isn't something you're glossing over that you've done in evaluation, to Abigail's point, of your record keepers and what they're capable of doing.

And then, oh, go ahead. All right. One other thing was just, you know, the evolving landscape that we talked about. Um, I know this is just a key part of, of what we do for our clients every quarterly review and, and then other communications we share with our clients. So, Tim, what are some things that you do to keep your clients up to speed on this evolving landscape and fiduciary governance process?

Yeah, like you said, it's an exciting time. It feels like every year between Secure and the DOL coming out with guidance and ESG, there's just always an update. So, I think we depend primarily on our quarterly reports and the industry update slides. I know that come out of Raleigh, hyper focused on making sure

providing the most topical information back to our clients.

So, I would say I primarily utilize Those to get the education out. But Abigail, do you have other, other resources [00:46:00] that you're utilizing? So our plan sponsors can, can stay on top of what seems to be information that's changing every day. I think between our industry updates are, um, you know, our, uh, fiduciary updates.

These are really the keys that are driving our, um, committee conversations. We've got a Secure Act 2. 0 website that we've, um, made available to folks. And I think that's been a phenomenal resource for people. It has, um, our webinars that we've held on the Secure Act 2. 0, but it also has great timelines for folks in terms of, you know, there's so many, um, provisions that are coming out.

Some are mandatory, some are optional. And those timelines really help people. Our plan sponsor clients understand. All right, what do I need to be focused on and prepared for as we look at this year and the year ahead? You know, Roth, I think is a big topic of conversation. A lot of changes going on there.

So, helping plan sponsors just know what's coming down the pike. We use that as a tool and a resource a lot and share that with our clients as well. [00:47:00] I think, um, what this, hearing all of this, seeing this slide and all the different things that are considerations for, Good fiduciary governance and hearing the things that you both have talked about, Abigail and Tim, and then what John has mentioned, I, I, it just screams to me that if you're not working with your partners and involving them.

In the development and ongoing monitoring of your fiduciary governance process, you should be. So be sure that you're pulling them in and asking their, for their input on what that review should look like. Um, helping you if you don't and haven't already established those processes, pulling in your partners to do so.

Um, I know we're coming up to the hour, but I would love to lob out at least one question to John. Um, that's come in from our audience and I'll say that we will absolutely get to all the questions, even if it's in a follow up after the webinar, but we've had several come in. Um, John, this question that I want to send your way is, and we could actually, Wendy, leave it on the key takeaways slide.

You'll get a copy of this presentation. When we send out the recording of today's webinar. So I want you to know that you'll have these slides and

obviously I couldn't consolidate the key takeaways into my normal three or four. There's just a lot surrounding governance. Um, but we'll want you to have those.

Um, John the question that came in when you're talking about fiduciary responsibilities and the varied roles Someone was asking specifically we had two questions that were somewhat around this That the function, HR functions being a fiduciary role. So can you talk a little bit about how it really is dependent on what actions you're performing on behalf of the plan?

What makes you a fiduciary? Yeah, sure, you bet. Um, so what the courts do, what the courts have said is if it walks like a duck, talks like a duck, it's likely a duck, and they apply that to fiduciaries as well. So, if In your organization, it really does not matter. Not, not really. It does not matter what your title is or your role.

So you just because you are SVP of HR does not mean you're a fiduciary. Just because you are the receptionist does not mean you are not a fiduciary. It all comes down to to a facts and circumstances analysis of who has discretionary authority to make decisions. Let me give you an example. Oftentimes we'll see a committee structure put together where, where we'll have somebody from accounting, finance, HR on this committee ostensibly with the authority to make decisions.

But in reality, the committee never makes a decision because they do not feel empowered to make a decision without checking with Joe down the hall, because Joe has to decide everything. Well, Joe was smart enough, he listened to a Shambhari presentation years ago, and Joe loves his house, car, and sailboat. So Joe said, I don't want to be on that committee. But P. S. Don't make any decisions without my approval. Well, guess what? That committee, yeah, they might be a fiduciary because they maybe make some decisions and have some discretionary authority. But Joe, even though he doesn't have the right title, even though he's not on the committee, Joe is actually in practice exercising discretionary authority.

Joe's gonna be a fiduciary. So it's real important to analyze. Whether you have discretionary authority to interpret the plan, pick service providers, pick investments, manage, manage the administration and compare that versus are you just following directions? So, so if you happen to work at HR or benefits and you're the day to day contact with your record keeper, with your CAPTRUST representative, but you don't have the, you know, you, you just get

everything done.

You have to get all the work done. That doesn't mean you have the ability to. Fire CAPTRUST if you want it or change record keepers or what have you. That's somebody else. You're probably not a fiduciary even though you are the person that is doing, you know, 40 hours a week working on the retirement plan.

So last time I'll say it, focus on whether or not you have discretionary authority or responsibility over the administration of the plan. Done? Yeah, that's great, John. Thank you for that clarification. Again, I apologize we didn't get to all the questions. We will send, um, we will follow up with everyone who submitted a question, and we will send a copy of the slide deck along with the link to the recording.

um, within the next 24 to 48 hours. Thank you to all of our listeners for joining us today and bearing with us through some technical problems. Thanks to our speakers. I really appreciate the three of you taking time to prep and share your insights and knowledge with our audience. I hope that all of you will be able to join us again in August.

For our next webinar in the series, which will feature a discussion on fiduciary liability and risk mitigation. So talking more about that fiduciary liability insurance that you mentioned. So thanks so much again. Enjoy.

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