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2025 Fiduciary Training Series, Part 1: Best Practices for Plan Sponsors (Webinar Recording)

Lisa Keith: So, hello everyone, and again, welcome to this quarter's fiduciary training webinar. As Kara indicated, I am Lisa Keith, the senior manager on our retirement planning consulting team here at Camp Trust. Again, thank you for joining us. So, we are beginning the third year of this series, and as we have done in the past, we will start the year out by conducting a fiduciary training 101, if you will.

This will be an overview of what it takes to be a good fiduciary in a plan. So, we're going to talk about understanding fiduciary roles, duties, ways to mitigate your risk, and other best practices. And we are honored to be joined today by Jenny Kiffmeyer. She's the Chief Operating Officer at Retirement Learning Center.

So welcome, Jenny. So let me give you a little bit of background on Jenny. So, Jenny began her retirement services career back in 1993. And he has been with Retirement Learning Center since 2004. She has a strong track record for producing award winning educational content and regularly contributes articles to various industry periodicals and newsletters.

She has played a key role in developing several professional certification programs in the retirement services industry. Jenny is a co-author and editor of Retirement Learning Center's book, Retirement Resources Guide, Essential ERISA Education, and Best Practices for Financial Advisors, which is a winner of multiple APEX awards for publication excellence.

In 2016, Jenny received her Juris Doctor or JD. from Taft Law School, specializing in ERISA law. Again, welcome Jenny. And before we get started, I just want to remind people that again, we will not be answering questions during our live webinar today, but we do strongly encourage you to ask questions in that box indicated, and that we will get back to you as soon as possible following our webinar.

Jenny, I'm going to have you take it away. So, thank you all.

Jennifer Kiffmeyer: Thank you. My pleasure to be here this afternoon and oftentimes plan sponsors fear the F word fiduciary, but today we hope to take that fear away and provide some best practices, some practical actions that plan sponsors and committee members can take to alleviate the fear of being a fiduciary.

Next slide, please.

We will do a quick overview here of what we want to accomplish today. We're going to look at, fiduciary responsibility and liability and also who are planned fiduciary. Sometimes they're obvious, sometimes they're not. And some ways to mitigate fiduciary liability and, everybody messes up once in a while, but there are some ways to correct it that the Department of Labor and IRS make available to people.

Plan sponsors. So, we'll include a little discussion on that as well. And we'll talk about what are the four key responsibilities of plan fiduciaries. What are some of the outcomes if they fail to fulfill their fiduciary responsibilities? And again, talk about some tactics to take the fear out of fiduciary.

Next slide, please.

So, one of the reasons of plan sponsors fear the title of fiduciary is lawsuits. And I'm sure if you've watched the news, listen to the news, read the news, you are aware of the increasing number of lawsuits that are filed against plan sponsors and plan committees. And it really comes down to a couple of key areas that are mostly litigated.

Number one is fees that these have historically been historically the area where lawsuits have come up. But in more recent years, we see lawsuits related to the selection of qualified default investment alternatives, in particular, target date funds, also forfeiture use in plans and also ESG types of investments.

So, the enforcement that can happen comes from the Department of Labor each year. The D. O. L. Puts out its enforcement action, a summary of what they accomplished in the prior year. The most current for their fiscal year is 2023 and the D. O. L. Was able to recuperate. 1. 4 billion in participant assets and return those two participants through 731 civil cases as well as 196 criminal cases.

We see a lot of class action lawsuits that used to be the only way that participants. Participants could participate in a lawsuit, but a few years ago after a Supreme Court case that allowed individuals then to actually file cases against fiduciaries on their own. How do participants file suits or how does the Department of Labor find out?

about wrongdoings? A couple of the keyways is number one plan participants who are not happy with the way the plan is being operated. The DOL on their website has a very easy portal that participants can go to and actually just log in, enter their complaint and send it off to the regional office and the regional office will take a look at it, investigate it and go down if they feel there's some.

wrongdoing that's taking place. I'll take it further down and potentially could turn into an audit. So, keeping planned participants happy is one way to keep them from complaining to the Department of Labor. The other way that audits come about. With the Department of Labor and IRS relate to form 5500 filings.

Either they're late filings or there are incorrect filings, or they see some things on the 5500 that just don't add up. And so, they might want to look at the plan more closely. So those are the key areas that audits pop up. Next slide please.

As I mentioned, there are four key fiduciary responsibilities, or they fall into four. primary pillars, exclusive benefit rule, the prudent expert rule, the plan document rule, and what's called the diversification rule. Now, the exclusive benefit rule really boils down to no self-dealing, that as a fiduciary, you have a legal and ethical responsibility to operate the plan in the best interest of the participants.

and beneficiaries. So that way you really have to take a backseat. The plan sponsor, the employer takes a backseat to their desires for the plan and really what is in the best interest of participants and beneficiaries. Exclusive benefit. The next rule, a prudent expert. This one is a tricky one in that.

Any fiduciary associated with the plan. So, the plan sponsor, the trustee plan committee members are going to be held to a standard of someone who's considered to be an experienced professional. Now, not a lot of people come out, wake up and say, oh yeah, I'm a, I'm an experienced plan professional.

So, in this case, if you understand and realize that you might be lacking in certain areas of knowledge. in plan operation and administration, then it behooves you to seek out expert advice and bring in service providers that can

fill that gap. So, hire expert help. If you are unable to reach that expert standard for the prudent expert rule, the next one is planned document rule.

Every retirement plan has to be in a written format. It has to have a written plan document. That document has must be kept up to date for all law changes. And as you may well be aware, we've had several law changes over the past decade. And come next December 31st of 2026, there's going to be a slew of amendments that are due for those planned documents.

So a very important planned document update cycle coming through here. With the deadline of next year to incorporate changes. Be aware of that. Finally, the key fiduciary responsibility relates to diversification of investment options. And so this is giving participants a wide range of investment options within the plan so that they can meet their investment needs and diversify their investments.

Here. Oftentimes we plan and the committee will reach out to either a 3 38 investment manager to help with investments or a 3 21 investment advisor to help with the investments and satisfying the diversification rule. Next slide please. Now, there are certain things a plan sponsor and any other fiduciary with the plan cannot do.

They are prohibited, and it gets back to that issue of self-dealing. You cannot personally benefit by running this plan. And so any kind of sale or exchange or lease of property, lending of money, transferring the plan assets for your own personal use that's a prohibited transaction. And those have to be Stopped and mitigated and corrected.

If something does happen. Next slide, please.

So if a plan fiduciary does fail, it is important that they be aware. There are some penalties that could apply. And now I'm not going to. Go over this in a, in attempt to scare you. But it is to just reinforce the importance of being a good fiduciary and adopting a good fiduciary process to avoid these penalties.

So if there is a breach of fiduciary duty, fiduciaries are, can be held personally liable. That means the Department of Labor could go after the plan sponsor's bank account personal assets. So you are on the hook to make that plan good for any kind of failure that you are responsible for causing.

So there's also civil and criminal penalties that could apply. There's a 20 percent penalty on the amount of error that could happen. And there's also On the criminal side, there could be a fine as well and between 5, 000 and 10, 000. And

you could also do jail time. There was a case in Ohio, a steel company embezzled money from the plan.

The plan sponsor got 18 months in jail. And three years of supervised probation along with a 10, 000 fine. They're serious about this, especially if it's an egregious error. But again, that's, those errors are far and few between. Most plan sponsors are trying their best to run the plan in the best possible way.

Next slide, please.

And to do that, to run the plan in the best possible way it's important to have a plan governance process. Fiduciary liability reduction is all about having a good process, following that process, and documenting that process. And so what does that process entail? It means, number one, identifying who all of the fiduciaries are that interact or govern the plan.

So the obvious ones are the plan sponsor and maybe the trustee. But we also have some fiduciaries that are functional fiduciaries where they aren't necessarily Named as a fiduciary but because of the actions they take with the plan They control the plan in some way or they control the assets of the plan Those individuals will also be considered fiduciaries and it's good to make sure you make note of those individuals as well so that you have a good idea of who's in charge of what?

Who's responsibly is it and making sure that the roles are being fulfilled. Assessing plan documentation on a regular basis, at least annually, it's a good idea to look at the plan document, look at the trust agreement, look at the service provider agreements and the summary plan description, the investment policy statement, all of the various documents that.

come together to really make the planned documentation to review all that number one for consistency and accuracy but to see if there's anything missing, that you should have in your files. Next is to look at your plan administration procedures and operations. Even though you might hire a record keeper or a third party administrator, as a plan sponsor and plan committee members, if they are involved, you remain on the hook.

for properly and prudently selecting those service providers and making sure that they are delivering their services for reasonable fees. So important to evaluate those service providers on a regular basis as well. And the same goes true for plan investments, looking at plan investments and following your

investment policy statement moving on to identifying all plan fiduciaries, which we were just talking about, if we go on to the next slide.

We'll see that again, there's individuals who are named at the document as a fiduciary but those functional fiduciaries and sometimes some, you might hire a service provider and that they, their service agreement will say specifically that we are not going to be a fiduciary of the plan, but through their actions, again, It's if they control the plan in any way or the assets of the plan in any way, they are considered a functional fiduciary and then they're brought into the fold as being held to those standards for fiduciary care.

Next slide, please. There are professional fiduciary services that can plan sponsor can hire for the plan. I mentioned an ERISA 338 that is an investment manager that individual or team takes over the full responsibility for managing the investments for the plan. So in this case, the plan sponsor would be responsible for prudent.

prudently selecting the 338. But once they do that, the 338 then takes over the whole shoot and match for managing investments for the plan. In contrast to that, a plan could hire what's called it a 321 fiduciary, and that's an investment. advisor, and an investment advisor is not as controlling as the 3 38.

The investment advisor will put together an investment menu suggests that for the plan, but ultimately it is the responsibility for the plan sponsor to select the menu most appropriate. for the plan. So the investment advisor and sponsor are working very closely together to work on their put together the investment lineup for the plan.

Then there's something called a 316 fiduciary administrator. This is a service provider that can take on much of the day to day operation of the plan, processing distributions processing loans updating beneficiary information for individuals, et cetera. So a lot of the day to day grudge work with a plan that oftentimes plan sponsors do not have the time for can be outsourced to a 316 administrator and they are taking on a fiduciary responsibility for those administrative responsibilities.

Finally, you might hire what's called a 408G fiduciary, and that is an individual that provides investment advice to plan participants, but that person is hired by the plan sponsor. to offer advice to all plan participants. It's just a new flavor of a fiduciary actually came out in the Pension Protection Act.

So it's been around a while but it's only been in the last several years that plans have begun using them to any great extent. Next slide please.

A co fiduciary. So we've got our straight up ERISA fiduciaries, but then there's something called a co fiduciary. And these are any of the fiduciaries that you bring in that are responsible for only portions of the plan operation. So if you bring in a 321 investment advisor under their service contract, they're going to say that they are only responsible for this area, the investment area of the plan and providing a selection of investment menus.

So they are carving out their little niche of fiduciary responsibility. They are a co fiduciary to the plan. However, every fiduciary in the plan has co fiduciary responsibility. Means that, meaning that it's I am my brother's keeper. If I am a fiduciary and you're a fiduciary, And I see that you are not upholding your responsibilities.

You're not doing what you are contracted to do or have promised to do. I have to fix that or at least bring that to your attention as a co fiduciary and try to remedy that situation. Because otherwise I am just as much on the hook for a failure by another co fiduciary. So an important concept to keep in mind.

Next slide, please. So let's talk about more something, some strategies and tactics we can do to reduce fiduciary liability. Next slide. The first one is what's called an investment policy statement. You probably are. aware of this. Most plans have them. 83 percent of plans have an investment policy statement.

They are something that ERISA doesn't necessarily technically require. However, they referred ERISA refers to having a policy for investment. Management for the plan. There's been court cases that look for the investment policy statement. And if a plan lacks one it's been, ruled that it's a breach of the prudent man rule.

It's one of the first documents the department of labor asks for if they're going to audit the plan. And having an investment policy statement is great. Making sure you revisit that investment policy statement is even better following the investment policy statement is the best. There's nothing worse than having an investment policy statement.

And you don't follow it. That's just a really easy roadmap for the DOL to say, Oh, here's your IPS, but you're not doing any of these things. We can, find, see that you're already breaching your fiduciary responsibility. So having a good investment policy statement, don't set it and forget it.

You gotta it's your plan. Investments change. Your plan needs change. So it's important to revisit that investment policy statement, probably on an annual basis, at least. Next slide, please. There are some key elements in the investment policy statement. Number one, you want to make it. comprehensive enough so that you are covering the key areas of, to have a roadmap for investment management in the plan, but you don't want to make the investment policy statement so detailed as to box yourself in.

So it's got to be comprehensive enough, yet flexible enough to give you some leeway. And so that's there's an art to designing a great investment policy statement. Some of the key areas, though, to have in the investment policy statement is number one. What is the purpose of the plan and what is the purpose of your IPS?

identifying the roles of fiduciaries responsible for the investment management in the plan. What kind of things will you take into account when you are selecting investments? And also as you're monitoring cause it's a, not only a fiduciary responsibility to select investments, but also the ongoing monitoring and replacing of poorly performing investments.

So what is the procedure that you're going to follow in order to do that? And how are you going to select providers for the plan? All of those elements are key to having an investment policy statement an area a couple of new kind of things to add in do you have qualified default investment alternatives in the plan?

You may want to add a special notation in the IPS. of how you go about selecting your QDIA if you have one. That is an important one. How about environmental, social, and governance investments? That's a kind of a new category of investments that plan sponsors have become more interested in.

Is that a category that your plan will consider? If so, maybe you want to address that somewhat in the IPS. Next slide, please.

Another area to help reduce the liability with respect to fiduciary liability, I should say, is related to fees. Early on in the presentation, I mentioned that most of the litigation with plans relates to fees, plans charging too much. Too much for the services that they are receiving investment fees that are too high.

So here again, following the requirements on fee disclosure can go a long way towards. Warning off any of those fee lawsuits and we have three sets of regulations that relate to fee disclosure for a plan. We've got the service

provider fee disclosure rules, sometimes referred to as 408 B2. We have the plan.

Participant disclosures, sometimes referred to as 4 0 4 a five. And then we have fee disclosure, that's part of the annual 5,500 filing. So on the 4 0 8 B two or the plan service provider. The disclosures, those are the disclosures that any plan service providers must provide to the plan sponsor.

And these are the disclosures that are going to, that the plan sponsor and committee will need to read through, evaluate and use that information to determine whether the fees are reasonable. Let's talk a little bit about reasonable fees. A lot of times plan sponsors approach a plan with the idea that they have to have the cheapest services and the cheapest investments and everything's got to be cheap.

And that's just not the case. ERISA clearly says that You your fees just need to be reasonable for the services that you have available in the plan. If you find that certain services are necessary and you document why you feel those services are necessary, then. Then it's just important to document the fees and why you feel these fees are reasonable for this particular service.

So reasonableness of fees is the litmus test, not cheap. Cheap is probably not good. So again, fees being reasonable using that plan service provider 408 B2 fee disclosure that they must provide important that if you go to the next slide, not only that you receive that fee disclosure from the service provider, but that you understand it.

Do and the unfortunate part of the regulations is they did not prescribe a set format for this disclosure. So you could be getting disclosures that look completely different trying to give you similar information from a variety of service providers. So it's important that you evaluate each of those disclosures.

Determine are you getting the services that the service contract says? Number one, are they showing up in the disclosures and are you getting the value that you anticipate important to benchmark plan fees? That's goes a long way to mitigate or have a defense. in any kind of lawsuit that related to fees.

Benchmarking your fees for the plan to show that they are within the, an acceptable range. Again, related to the services that are provided to the plan benchmarking fees on a, an annual basis, and then also benchmarking your service providers. Probably on a three to five year, cycle just to say we looked at our service providers we looked at a couple of others competitors and we

really feel that you know We're good where we are or it's time to make a service provider change All of that should be documented and in your plan file again.

It just demonstrates a good fiduciary process next slide, please moving on to the other, another set of the regulations on fees. And this is relating to disclosing those fees on the annual 5,500. So plans have to report these fees. And so this is where it could be that when the Department of Labor and IRS are reviewing the 5,500 filing, if they're seeing something strange related to fee disclosure on the 5,500 filing, or there's.

No fee information. Those are red flags that could cause an audit, could trigger an audit. So again, very important to satisfy in order to satisfy your 5500 filing requirements to accurately report the fees associated with the plan. Next slide please. This relates to even, may not be just cash exchanges.

It could be gifts or, entertainment to that. The plan sponsor receives that. In some cases has to be reported. So just be aware of that. Next slide, please. I'm finally satisfying the participant disclosures. These are very important. This is participant information that must go out on an annual basis as well as a quarterly basis.

So it's to prompt. So the planet participant must receive plan information, general plan information, About how the plan operates. It didn't administrative expenses and then individual account expenses and then investment information as well. Next slide. Please on the, quarterly statement side.

There has to be a reflection of the dollar amount of fees and what was actually charged to that participant in the prior so that the individual will be aware of the fees that they are actually paying. So very important to keep in mind, you have the annual part of the participant disclosure as well as the quarterly part.

Now, most times the plan. record keeper or TPA will fulfill the participant disclosure rules related to the plan and the investments. However, it is ultimately the plan sponsor and committee's responsibility that those disclosures are delivered timely, and they include the appropriate information. So a review of those participant disclosures is important that the plan sponsor do those.

And I have heard of scenarios where the, yes, the record keeper provided the disclosures, but it, but they left it up to the part or plan sponsor to actually just, send those out to participants. And if that didn't happen, that's a failure. So again, who's doing it? Are they complete?

And making sure you review them on a regular basis. Next slide, please. A new addition to the annual disclosure is a lifetime income illustration. This comes about from the Department of Labor. They wanted participants to start moving away from an accumulation mindset to a retirement income mindset.

So sometimes participants will look at a large plan balance and think, wow, I've got a lot, I've got a big pot of money. I'm good to go. But if That is that pot of money is translated into what might be a monthly an annuity payment. It could be a shock to find out that, that 500, 000 400K balance isn't going to take me far in retirement.

So DOL added this requirement. Their level of disclosure is low. The assumptions are that you're assuming that participants is age 67. You're basing the projection on the last. in the plan, so you're really not this illustration while it's intended to be helpful really isn't that it helpful, especially for younger plan participants because of course their balances are small and if you're projecting that small balance out to at age 67 with no additional contributions, it's going to be pittance.

A lot of times what plan record keepers and TPAs they already have a

That the participant can access online. So having that available as well is another way to really, again, getting back to the idea of keeping your participants happy goes a long way to making sure, you don't get sued. Next slide, please.

So when we talk about our fees being so important, do a planned fee audit, are you getting the disclosures that you need from your service providers to make sure those fees are reasonable? Are you reporting accurately on your 5500? Are you getting what you contracted for? Look at the service agreement and look at what you're being charged and are they in, are they coordinated?

And do you understand those disclosures and also do your participants understand their disclosures? It might be a great educational session to help participants understand what their fee disclosures are telling them. Next slide, please.

Another way to reduce fiduciary liability is through what's called ERISA 404 C. And this is the ability to transfer some of the. fiduciary responsibility and liability for investments to the plan participants themselves. And this is done by number one. It has to be stated in the plan that the plan intends to be a 404 C compliant plan, and the participants have to receive notice of that.

The participants have to receive adequate information on the investments and how to make investment changes and selections so that they can make informed. Investment decisions they have to have their, the fee disclosure that we just spent time reviewing. They have to be able to make periodic investment changes at least quarterly or perhaps more frequently if the investment type is volatile.

And also they have to have a broad range of investment alternatives available to them. If all of those criteria are met, then the plan sponsor can relieve. Itself of how the investments perform. Really the participants are picking the investments. And so then they are responsible for how those investments ultimately perform.

However, caveat plan sponsors are still responsible for picking the overall investment menu for the plan that is something that still remains the responsibility of the plan sponsoring committee. Next slide. Please.

We keep going back to the idea of auditing these various processes with plan. With the plan and so doing a 404 C compliance audit. Is it stated in your plan? Does the participant have control and can make investment changes at least quarterly? Are your investments appropriately diversified, et cetera to meet that 404 C requirement.

Next slide, please. Qualified default investment alternatives. I mentioned that as part of, adding that as a paragraph in your investment policy statement. QDI is a way for a plan sponsor to extend the fiduciary relief that they can get under ERISA 404 C. With the QDIA, where this comes into play most is, let's say a plan allows the participants to select their own investments, and they meet the criteria for 404C coverage but the participants fail to respond.

And so the plan doesn't have an election on file for the plans for that participant or in for a number of participants. What do you do with their assets? The plan sponsor could tell them where to go, but then you're taking back responsibility for determining. The investment for those participants.

So alternatively, the plan can use what's called a Q. D. I. A. Qualified default investment alternative. And if you prudently select that for the plan, it becomes the default for any situations where a participant fails to give direction. There are only certain types of investments that can qualify as a Q.

D. I. A. If we move on to the next slide, I think we see a list of those that can be offered as Q. D. I. A. S. So it's a target date or life expectancy fund. It's a

managed account. or a balanced fund that could be the, a type of QDIA. And then there's a couple of short-term funds that could be used, but really you've got three core long term QDIAs in the target date, balanced fund, and managed account.

And looking at when you make a decision on what to use, why are you making the decision to, let's say, use a target date fund over a managed account and document the reasons why you chose that. That goes again into your fiduciary file because really what the Department of Labor is going to look for if they come knocking on your door is that you followed a prudent process.

You, you looked at, you are responsible for the investments you have a process in place for evaluating these. Investments. And here's why we chose these investments. And I have, good reasons that I chose them. And the Department of Labor is going to say, check, good process.

Fees are reasonable where this plans in good order. It's when you don't have that documentation that the DOL can say it's fine. You can tell me you did that, but. If unless I see it in writing it, in my eyes, it never really happened. So document very important.

Next slide, please. Again, the idea of auditing if you're going to have a default fund in the plan doing, an audit. At least annually is it the right still the right default of odd or excuse me audit default fund for the plan Based on the employee demographics do you have the prudent process in place?

Is it addressed in your ips? The department of labor has a nice little brochure target date retirement fund since target dates, I believe make up about 90 of the qdias that are in DC plans these days. So DOL came out with a target date, retirement funds tips for selecting target date funds to make sure you're following a prudent process.

So that's available on the Do L'S website. One of the things they bring out in there is to make sure that you look at non-proprietary funds. 'cause sometimes you know, the record keeper you choose will already have an automatic. Fill in the Q. D. I. A. Section with their proprietary funds. And you want to make sure that If you are going to go with those funds, you have reason to do and you document the reasons that you stayed with the proprietary funds and why you didn't go with nonproprietary funds in that case. Next slide, please.

So sometimes again, the way to keeping a, plan out of hot water is just. simply keeping participants happy. And that's through great plan design is one way to

do that. Now, if you have a plan that is continually failing its discrimination testing, you're continually having to distribute excess contributions to some of the highly compensated employees and they're frustrated at year after year.

It might be a good idea to pick a plan that. Automatically satisfies those nondiscrimination tests. And one of the types of plans that does that is a qualified automatic contribution arrangement or a quack, all these great acronyms. So the quack has automatic deferrals, so participants starts you setting, you set the deferral rate at 3 percent and then it's increased annually.

Up to a maximum of 10%. But overall, they could go up to 15 percent if the participant wanted to go that high. There's also an employer contribution that is required and their vesting schedule that can apply. But a Quacka is one way to increase plan participation and avoid failing a non discrimination tests.

There are other designs too, like a standard Safe Harbor 401k plan could also help you help a plan sponsor avoid those non discrimination tests. Next slide, please. So here we see comparison. If you have a quack, you've got increased participation. Your deferrals are automatically increased.

You're passing the tests. You're passing top heavy rules and you're helping ensure participants are saving for retirement. Next slide, please.

Finally, a 408 G fiduciary advisor. I mentioned this early on. This is one of the services that you could hire. So this is an individual. The plan sponsor would contract with a fiduciary advisor to give investment advice to participants in the plan. So the plan sponsor hires the individual. The fiduciary advisor can hire the Use either computer model.

to generate investment advice for participants or as long as they have a level fee arrangement that, that means that the advisor isn't going to benefit by suggesting one type of investment over the other, that the advisor is strictly looking at what investment is the best fit for that participant, or they could use a combination of the computer or, their own.

A level fee arrangement to select investments for the participant. There are some criteria that the advisor has to meet. They have to be audited on an annual basis. There has to be a certification of the computer model. If they are using that, they have to retain records and they have to disclose and provide notices.

So that's one, again, an area to offer to participants investment. Advice. The only certain individuals can be a fiduciary advisors. An R. I. A. A bank or a

similar financial institution, an insurance company, or basically anyone associated with those entities. A broker dealer can be. So we have to be careful of who we're hiring if we're going to use a fiduciary advisor.

Next slide, please.

Despite your best efforts some things may go wrong with the plan. Fortunately, the Department of Labor and the IRS have correction programs and really the DOL and the IRS want to work with plan sponsors and committees to keep plans functional and fix them rather than shutting them down and distributing the assets because that just defeats The entire purpose of having a retirement plan is to ensure you've got funds to help participants have a successful and favorable retirement.

So they really are on your side, the DOL and IRS. And so one program that the Department of Labor has is the voluntary fiduciary correction program. There are 19 different violations that plan sponsors can correct. with the VFCP and they also just added a new self correction component. So with self correction there's no need to file a formal filing with the department of labor.

The individual, the sponsor corrects the. Error and the error can relate to, failure to deposit deferrals timely or making loan repayments timely. Those are the types of investment or excuse me corrections that can be handled with self correction. And so there's really just making that plan whole, but there's no formal filing with the Department of Labor.

So again, VFCP is a great option. Next slide, please.

The when it relates to filing a form 5500, if a plan is required to do they have 100 participants or more. We've got the full form 5500 filing plus an audit. The DOL. requires that you that be an annual filing. And there are penalties that apply if or a failed filing or an incomplete filing or an incorrect filing is actually 20 or 2, 790 or 39.

I believe that just increased a day for failing to file that correct. Or on time 5500. So take it seriously if you find that you have incorrectly filed or failed to file the df vcp program can be a way to Correct that with reduced fees. Keep that in mind and by all means it's much better to fess up correct your errors Before the dol finds them because there's less.

You get fewer options, you have fewer options and higher expenses if you wait until the DOL finds the error. Next slide please. They also have what's called a

pre examination compliance program, and this is through the IRS. It used to be that if you received a notice that you're going to be under IRS audit or investigation, it was too late to take advantage of any of the reduced programs, but that's not the case anymore.

If you get a letter, you have a 90 day window to review your plan errors and use the less costly self correction measures that are available under the IRS correction programs. So be sure again, even if you've gotten an audit a letter, saying you're going to be investigated be sure to check into this 90 way day pre examination compliance program to see if you can take advantage of the self correction.

Next slide, please. So this is just a summary of the three programs that are in the IRS employee plans compliance resolution system. There's the self correction, there's the voluntary program, and then there's also the full blown audit cap. Program or Audit Closing Agreement Program. So now we'll move on, we'll wrap up our summary here with today's presentation and what are our action steps.

Just keep in mind, I don't want to scare people, but it's important to realize that as a fiduciary, it's an honor to be a fiduciary, but with it comes great responsibility. And so also great liability, and that includes personal liability. So important to understand the roles and responsibilities each person who is a fiduciary or entity that is a fiduciary has and making sure that those they are fulfilling those responsibilities, taking advantage of any of those strategies like having a good IPS, like ERISA 404C like a fee audit, making sure you're covering your fees and they're reasonable, et cetera.

goes a long way and document. And if you happen to have an error, make sure you take advantage of the correction programs. Next slide, please.

I believe we are, yeah, we're just at the disclosure. Thank you for having me here this afternoon. I really appreciate your time.

Lisa Keith: Thank you, Jenny. There's so much great information here. I learned a lot myself and I'm pretty sure you didn't scare anyone. This is great. So just as a reminder, we will have this material available for you within a day the next day or two.

So you will have this for reference as well. Please, we still have a moment or two if you have any questions, but if you think of something after the fact, please reach out to your CAPTRUST advisor and we are here as a resource for

you. So we'll get back to you. as well. Again, thank you so much for your time and we will see you in the next one.

Thank you all.

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