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Plan Sponsor Fiduciary Risk Litigation Webinar

Lisa Caito: I am Lisa Caito, the Director of Plan Consulting Team at CAPTRUST, and joining me today is Jenny Kiffmeyer. She is the Chief Operating Officer of the Retirement Learning Center. Jenny began her career in the retirement in retirement services industry in 1993 and joined the Retirement Learning Center in 2004.

She has a strong track record for producing award-winning educational content, and regularly contributes articles to various industry peer periodicals and newsletters. She is. Played a key role in developing several professional certification programs in the retirement services industry. Jenny is also the co-author and editor of the Retirement Learning Center's Book, retirement Resource Guide, essential ERISA Education and Best Practices for Financial Advisors, winner of Multiple Apex Awards for Publication Excellence.

She also received her JD from the TAF Law School. Jenny, I'm gonna turn it over to you.

Jennifer Kiffmeyer: Thank you so much and thank you all for joining. Today we're gonna talk about hot topic fiduciary issues and litigation. And as an overview of our topics today we wanna talk about retirement plan management and what some of the litigation targets are emerging areas of litigation.

What the courts say about the types of fact situations that are likely to produce a bad result for plan sponsors, and then also what are some best practices to avoid litigation. Next slide, please.

So to start off, let's first do some level setting and review basic fiduciary responsibilities. First off, who is a fiduciary? It is anyone who is actually named as a fiduciary. For example, in the plan document, it may be the plan sponsor, it may be the plan administrator, it may be the trustee.

So anyone who is named. But then there are also individuals or entities that could be fiduciaries based on what they do and how they control the plan. And

those are called functional fiduciaries. So if a person or entity ex exercises control over the plant administration or assets, it could be a fiduciary.

Also, if an investment advisor provides advice for a fee versus just education, that advice for a fee would re result in fiduciary status. And then finally. If a person has discretionary authority over the plan in any way they are going to be considered a fiduciary. Next slide please.

We know that an employer that sponsors a retirement plan that covers employees is automatically a fiduciary. They can never pass that responsibility off. But they can share the fiduciary responsibility and so oftentimes a plan sponsor. Will enlist a committee, a plan committee to help them make decisions regarding the plan.

And then, so in that case fiduciary committee members, if they have control over the plan or are making decisions with respect to the plan, they're going to be pulled in as a fiduciary as well. Now, it's interesting on most lawsuits the plaintiff's attorneys are going to list. Everyone and anyone that they possibly can in order to come out with the, the most possible favorable outcome.

So you, it's quite often you'll see the plan sponsor as well as the committee, as well as per service providers named in a lawsuit. Next slide, please. All right, our first quiz. Remember, it's important to answer at least three of these. So our question, our first question is, under erisa, a person is a fiduciary if A, they are an officer of the employer.

B, they are a highly compensated employee. C, they are in the human resources department or D. They exercise control over plan, administration or plan assets, render investment advice for a fee, or have discretion with respect to the plan. And we'll give you a few moments to review the options and register your response.

And as luck would have it, I'd get a little tickle in my throat. So it's a good opportunity for me to pause for a moment here. So again, we are wondering under erisa, a person is a fiduciary if, and make your selection among A, B, C, or D and we'll be able to see the results here in just a few moments.

As I mentioned here we go. Very good. It looks like everyone or nearly everyone went for d which is the correct answer if you're exercising control over the assets or providing investment advice for a fee. Next slide.

What are some critical fiduciary duties? We know that fiduciaries are held to a level of prudence and in fact, that's called the prudent person or prudent expert standard. It means that any action or decision that a fiduciary makes regarding the plan is going to be judged against a person acting in a like capacity.

Who is familiar with the particular subject matter? So the DOL in looking at a prudent standard, is expecting a fiduciary to act as an expert and make informed decisions. And that carries through to responsibility to prudently. Select and monitor service providers as well as investment alternatives for the plan.

That's an ongoing duty. Along in along in the prudence category, we can throw in the idea that plan fiduciaries must always follow the plan document unless it, for whatever reason goes against erisa. But follow the written plan document is important as well as making sure that the plan investments are diversified for the plan.

Next slide, please. So we have prudence. And then the second is loyalty. Fiduciaries must act for the exclusive purpose of providing benefits for their participants and beneficiaries while only paying reasonable expenses for the services that are received. We'll talk more about what reasonable means and just to, caveat that the Department of Labor.

Never says that you have to run the cheapest plan possible but only that the services are reasonable or the fees are reasonable for the services that are provided. Next slide, please. Along with the idea of prudence and loyalty there are certain transactions that are absolutely prohibited from between a plan fiduciary and the plan or any of the participants.

And these are actions that really boiled down to the fiduciary. Taking exchanging funds with the plan buying, selling things from the plan and somehow personally benefiting from the transaction with the plan or the participants. And that is prohibited. Now of course we need to have certain support functions with a plan.

And so there are a long lists, or there is a long list of prohibited transaction exemptions from the Department of Labor that then allow for surface providers to be paid for their services. Otherwise, that would be a prohibited transaction. So we have prohibited transactions exemptions as long as.

The service provider follows those they can be paid for their services. Next slide please.

As I mentioned service providers are generally not going to be fiduciaries unless they become a functional fiduciary and somehow take over control of a particular area of the plan or direct the investments, et cetera. So most often a service provider will. Even states specifically in their service contract that they are not serving as a fiduciary.

However, the ultimate test comes down to what is the service provider doing? And if they are exercising control in any way, they could become a functional fiduciary. And in fact, there are some cases that have come up where a service provider either failed to. Follow the prohibited transaction exemption and somehow exerted power over the over the plan and therefore became a fiduciary, or somehow the compensation that the service provider was receiving was deemed to be unreasonable and therefore would constitute a prohibited transaction.

Next slide, please. Oh, we're already onto our second question, and this time our question is a fiduciary must a act for the exclusive purpose of providing plan benefits and defraying reasonable plan expenses. B, conform to a standard of an experienced professional. C. Follow the plan unless it conflicts with erisa.

D offer a diversified range of investment options, or E, all of the above. And as before, we'll pause here. Remember, if you're seeking CE credits, it very important for you to complete at least three of these questions, and I always remind. People that you don't have to get them right. You just have to participate.

So don't worry, no judgment here. Just making sure you're participating in order to get the continuing education credit. So we'll pause for just another few moments to give everyone a chance to thoroughly consider the options and make their selection, and then we will move on to the result and then the rest of our presentation.

So in this case our answer is E, all of the above. Moving on to our next slide, we'll see that we'll talk about litigation procedures. Now, this is really important and this. Came to the forefront recently in a Supreme Court case with Cunningham versus Cornell. So there's really seven steps to the litigation process.

First off, you have the plaintiff and the plaintiff files a complaint. Next then the defendant is served papers regarding the complaint. And the third step is the motion to dismiss. And this is a very critical step, and until recently, most cases

were dismissed for failing to state a claim or having any legal cause for the litigation.

So many times the case was just dismissed and so the plan sponsor was. Free from any breach of fiduciary duty now with this court case, the Supreme Court case of Cunningham v Cornell, the the ability to get through the motion to dismiss. Has become more difficult. And we'll get into the details of that a little bit later as we talk more about that case.

But if a case does not if the co court denies the motion to dismiss. That means the case has to move on to the next step, which is the discovery phase. And that is the longest phase of the litigation process and the most expensive. And oftentimes if you know the case wasn't dismissed and we have moved to discovery oftentimes the plan sponsor as a defendant will choose to settle versus go to trial to save on costs.

So that's the, if we are in the discovery phase and we can get through that. The next phase then is either trial or settlement. Next slide please. And we'll talk about the critical significance of the motion to dismiss. So it used to be prior to this court case that the plaintiff in their complaint would have to address whether or not there was a prohibited transaction exemption that would clear.

The defendant or the plan sponsor, that's no longer the case as a result of the Cunningham versus Cornell case. Now the plaintiff merely has to claim that there was wrongdoing. And then it is up to the defendant to bring up whether or not there was a prohibited transaction exemption that would relieve them of any wrongdoing.

So it's, we're going to see and the time will tell, but we're going to see more cases move past the motion to dismiss and into the discovery phase again, which is the longest and most expensive phase. Next slide please.

So let's talk about proof. So this is a critical piece for plaintiffs is to the, to prove that there has been a breach of fiduciary duty and that they have suffered as a result of this breach. And so how do you approve? There's been a. There is a complaint, there is a breach. Most often it's going to be a comparison.

You're comparing fund A to fund B or plan record keeper, fees to plan Bs, record keeper fees, and deciding, between the two. Why is one more expensive than the other? So a lot of litigation has focused on fighting that comparator. And whether or not, that comparator is fair you can't just pick anyone.

You've gotta pick a, reasonably comparable fund or to compare in order to make a valid comparison. Next slide, please. So now we're gonna talk about. Who gets sued, and I mentioned earlier, the plaintiff's attorneys are gonna list as many defendants as possible and then whittle 'em away as the case proceeds.

But when we're looking at the types of plans that get sued you'll notice that defined benefit plans are much less likely to face lawsuits. And that's because DB plans plan sponsors are the entity that's on the hook. To make up the losses for any plan wrongdoing or losses to the plan because of poor judgment.

And so really the plan sponsor is responsible. We will see cases with defined benefit plans if an, if for example the. Defendant, the plan sponsor wants to change the benefit formula because the benefit formula is a form of protected benefit. So we have to make sure that protected benefit is not reduced going forward.

So those are the kind of cases we'd see with defined benefit plans, but we're really going to see the bulk of cases filed against defined contribution plans. Because in those cases the responsibility for investment performance has really been shifted to plan participants. In most cases, they've got self-direction of their assets in the plan, and so it's really the participant then that feels the brunt of the losses and therefore are going to be more apt to file lawsuits in those cases.

Next slide, please.

Why do plan sponsors and not providers get involved with lawsuits? Sponsors are always going to be fiduciary, so they're always going to be part of the lawsuit because they are. Must be held to that prudence and loyalty standard and uphold the other pillars of fiduciary responsibility.

Providers are generally not fiduciaries, but as I mentioned earlier, they could be pulled in if they overstep their bound or perhaps their fees are unreasonable, they could be pulled in. There was a case TTS v, great West Life and Annuity. Where great West was the record keeper. And in that case, they were able to set their own compensation and could change their pay at any time without consulting the plan sponsor.

And in that case, that was deemed to be breach of fiduciary responsibility on the part of the plan sponsor. Next slide, please.

So we're, let's look at why plans get sued. And that's probably the, $64,000 question of the day is usually, and we've seen this, historically the lawsuits are going to focus on unreasonable fees, whether it's record keeping fees or investment fees or trustee fees. Unreasonable fees is a leading.

Lawsuit reason. Another is poor investment performance, and then the third relates to having company stock in the plan. Next slide please. As I mentioned, fees it are front and center. And so they, started off the lawsuit. Momentum and it keeps building on those fee and unreasonable fee accusations.

And so again, it relates primarily to record keeper fees, trustee fees and investment management fees not being reasonable or where lower cost share classes were available, but the plan sponsor failed to ask. To put those in the plan versus the higher cost retail shares. Next slide, please.

Also record keeping fees here. We can look to a field assistance bulletin. It's from the Department of Labor, 2003 dash three. That gives us some guidance as to what's reasonable. As for as far as allocating. Fees and they can be done on a pro rata, a per capita or utilization basis. Now what most courts have found is that the cost of record keeping should be compared on a per capita or per participant basis.

That's the standard that's emerged when we look at those types of cases. Another area is that the court will look at is how often the defendant reviews the record keeping service providers fees. Now there is some guidance in the Department of Labor Regulations that suggests that every three to five years a plan sponsor should.

Put the plan out for bid or at least get bids in so they can compare their current fees to what other, what, comparable providers might be charging. So that they can document that they have researched this and determine that they have reasonable fees for the services that are being provided.

Finally it's important to not only consider direct fees, but also indirect fees, like those that might be present in revenue sharing arrangements. It they should be understood whether you've got revenue sharing arrangements or you've got some indirect fees what those fees are and if they're reasonable.

Next slide please.

As I alluded to earlier that we have a Supreme Court case that just was settled in April of this year. Cunningham v Cornell. And this relates to the why it will

now be easier for plaintiffs to get past that motion to dismiss and move on to the discovery phase and actually, have their cases potentially carry through to trial or settlement.

And so this again moved the requirement to. Prove that there was any kind of prohibited transaction exemption. It moves that from the plaintiff's claim. And puts that over to the defendants. After the claim has been stated, then now the defendants has to come and state that there was a prohibited transaction exemption.

It, again, it may increase the number of cases. Now that case also listed some ways to, keep the number of meritless cases at bay. And that is, the defendant once it's. Ben served, in ca. Case the defendant can apply for a cause to bar the suit. So if there if it has an exemption, so rather than going on the defendant then can apply this to bar the suit because I know I have this prohibited transaction exemption that will alleviate any wrongdoing that I have been accused of.

Secondly there, there could be a dismissal of the case by the court simply because there was no injury. That has to be part of the claim as well, is not only was there a breach, but there was actually injury that the plaintiffs incurred. And finally, the courts can limit the time spent on discovery so that can, truncate that and keep, potentially keep costs down.

Next slide please. Asset management fees. The problem here is it then relates in particular to actively managed funds because. If you think about it, actively managed funds, there's really no comparator. Because, they're changing ongoing and it's going to be a different there are other, of course actively managed funds, but the way that they are managed is different.

So it's gotten to be difficult to use that as a comparative. However, where some traction has taken place is in a complaint that shows that the plan used. Higher cost retail funds versus ex comparable institutional funds. That's a clear cut. If the plan has access to those lower cost institutional funds, that is a case where there would be a breach to not have used those lower cost funds.

Same if there's a cheaper share class, a comparable share class. And then there's also issues on revenue sharing and if whether or not that is the fees that are shared, what they are used for, are they reasonable, et cetera. Next slide please. I think we're up to our third question of the day, and yes, our quiz for number three is generally speaking, fiduciary litigation involves what?

A, record keeping fees, B, investment management fees, C, investment performance fees, or D, all of the above. Now we'll pause here again for a moment to contemplate whether it's A, B, C, or D and we'll give you a few moments to register your selection and keeping in mind that it's important to complete these quizzes in order to receive the CE credit that's associated with today's session.

So generally fiduciary litigation involves which of these items.

In just a moment more. We will then see what everyone thought. I,

I need my jeopardy. Oh, here we go. And the group again, you're right on track. You are correct in answering all of the above. Can be fiduciary litigation possibilities. Next slide, please. So let's talk specifically about some court cases and the outcome what we learned from these cases.

And in this case, Tibble v Edison International. This was a test of the Prudence Standard. And here what we found was that the defendant, the plan sponsor, used a retail fund. That where there was an, a comparable institutional fund available, but they still chose to use the retail fund and did not consider using the institutional share class.

And again, when those two are comparable. And you can get the lesser fee with the institutional share. That's where the court is going to side. So that was a kind of a pivotal case regarding that issue. Next slide please. Next we have Tussi, VABB. And again, this dealt with a breach of PR of prudence. And in this case the plan sponsor caused the plan to overpay for record keeping services.

They used revenue sharing from the plan investments to pay for record keeping. They didn't monitor this. And so it was deemed that they paid too much. For those record keeping services and therefore, what was a breach of fiduciary duty. Next slide please. Next we have the Bki versus at and t again relating to prudence.

And the claims in this case were dismissed. So the fiduciary was able to demonstrate that they followed a fiduciary process. It's related to indirect. Record keeping fees and the claims were that those fees were excessive and that the record or that the plan sponsor didn't properly monitor them and therefore they breached their fiduciary duties, duty of prudence.

But the plan fiduciary, the sponsor in this case, was able to document or had documented the process for determining. The record keeping services that they

needed and the fees that were inco incurred because of this were indeed reasonable, and therefore the court dismissed the allegations.

So that leads me to a very important point. That documentation is so very critical. It in order to come out with a positive outcome for a plan sponsor in the plan committee document what was discussed, the pros and cons, and why you came to a particular decision or why the plan came to a particular decision.

That's what's going to hold up in court from the Department of Labor's perspective. If. It's not documented. It didn't happen. Document. Next slide, please. Now we'll talk some more about record keeping fees. Very important to always review the record keeping fees, do so on a regular basis, and document that review as I just was reiterating.

Fees should be evaluated on a per capita basis for record keeping fees, and also pay special attention to revenue sharing arrangements and how those fees are used. Next slide, please. So now let's talk about fund fees. Now fiduciaries absolutely must understand what those fund fees are and who ultimately gets paid and what those fees are.

Are they indirect payments from, revenue sharing? What are the reasonableness or what's the reasonableness level of those fees for the services that are delivered? Again, the retail shares, that's a classic retail versus institutional share, classic lawsuit. And then of late, we've seen a lot more cases come up about the use of target date funds, and that's primarily because most target date funds have a high level.

Of plan assets I think it's about 85 to 90% of plans offer target date funds and a lot of the high percentage of the plan assets are allocated to target date funds. So they are a target for lawsuits. Next slide.

So we're gonna talk about performance litigation. And in these cases, again, we're coming down to comparing a and b fund A and fund B. And is one cheaper than the other when they're, comparable funds. So that's the first step. But what we have begun to see in court cases that the court is looking for something more than just the comparison.

They want more evidence that there's been inadequate. Vetting of the provider or the fund in this case or that they failed to continue to monitor the fund. It's not just to set it and forget it. Fiduciaries have an ongoing responsibility to monitor the fund and to make sure it still. Meets the standards for keeping it in the plan.

And if not, how does the fiduciary and the plan committee go about replacing funds that are underperforming? Next slide, please.

So here's another example of an actual case, the Putnam Investments, LLC versus Brotherson. Here the plaintiff established a loss by comparing the return on an actively managed in-house fund and with two other passive. In comparators. So that was an interesting comparison, a comparison where they were looking at actively managed versus passive comparators.

And so that shifted the risk to the plan, fiduciary to demonstrate that it was still a prudent selection on their ha on behalf of the plan to use that actively managed fund versus passive funds. Next slide, please. Another case that we can look at is Smith V. Common Spirit Health.

Again, this was another actively managed versus this time and indexed funds. Now the plaintiff claim claimed, but the claims were later dismissed regarding the, that the actively managed fund was an impudent investment as compared to the indexed. But the court concluded that there is really nothing imprudent about an actively managed fund, per se.

So just claiming under performance is not enough. There has to be more, to the claim. Again, they, the, perhaps the claim could include that the plan, sponsor and committee failed to prudently select the actively managed account on the a fund on the, at the very beginning, or failed to monitor it at a, on an ongoing basis.

Next slide, please. Another case we can look at is called Bell Doc V Microsoft. And in this case, again, the case, the plaintiff's case was dismissed. But the initial claim was that the target date suite or target date fund suite of investments that were offered in the plan were imprudent. But the court ruled that you can't just state that.

The a target date fund is impudent based on underperformance when compared to other types of target date funds. So there has to be something more versus just a claim that's imp prudent. You have to have some kind of proof as to why that is considered and imp prudent and that there was actual injury as a result.

Next slide please. So let's summarize a few of the takeaways. I cannot overemphasize the importance of documentation, plan, sponsor, and committee documentation. Put it in the committee notes, make sure it's part of, regular reviews of, investment. Funds as well as providers is part of your annual

process with your plan, and that is well documented and saved in the fiduciary file.

A key element that will come into play is the investment policy statement Now. You know the Department of Labor, this is a catch 22. The Department of Labor does not mandate that a plan have an investment policy statement or IPS. However, it is one of the first items that the court is going to look for should there be a lawsuit.

Is there an investment policy statement? 'cause the plan has to have some kind of policy on how it is going to invest plan assets. And the investment policy statement should reflect how the committee is operating and choosing the investments for the plant. Next slide please. A couple of other areas where we might see lawsuits relate to some investment classes like company stock.

The stock of the sponsoring employer is difficult or can be troublesome because of the volatility because it may be difficult to value because it can be it can entice participants to become over concentrated in employer stock. So beware of employer stock that can, be a, an area that could be an easy target for litigation. One area, one thing that the Supreme Court has done is ruled that you, that plaintiffs generally cannot bring a. Case that's involving a publicly traded stock. Unless there's been some insider trading going on where there's been some sharing of information among the, only certain individuals and not across the plan and plan participants as a whole.

Next slide please.

Another court exa case example would be the Fifth Third Bank Corp versus Dundon Huffer. Good German name there. So in this case this was an, a case where the plan invested employer contributions in the stock of the sponsoring employer, or was a stock fund that held stock of the employer. And within a three month period, the stock value fell 74%.

As you can about imagine there were a number of participants. That were enraged and therefore, filed a lawsuit in this case, but the court found again because this was a publicly traded company, that generally it is okay for the company to rely on the market prices. And so that is not, as far as the fair market value of the stock.

If you can attain it on a publicly traded venue, then. And that is acceptable. And they didn't, the court decided that it's better to deal with any insider trading issues under the securities laws versus bringing it through under an ERISA case.

Next slide, please. So I think in a nutshell, just be aware of that there are some special risks associated with investing in company stock.

It doesn't, it's not prohibited. In fact, there are, there's virtually nothing that's. Prohibited as far as an investment within a retirement plan. Of course you'd wanna look to the plan document language to make sure there's if there's any references there to the types of investments that are allowed.

But so there, so it's not prohibited, but we want to be careful to evaluate the types of investments to make sure, again, getting back to that, prudence and loyalty, those standards, is it a prudent investment? Is it in the best interest of planned participants and beneficiaries?

And do they come with reasonable fees? Next slide please. We've heard more and more talk in the industry and seen headlines and heard reports about other investment classes they're becoming coming into view more frequently. Cryptocurrency initially the department A of Labor had.

Issued a warning to be super cautious about putting cryptocurrency as an investment in the plan. The DOL has since backed off on that. As well as the current administration is really stating that, it takes a neutral stance towards cryptocurrency. But again, the bottom line comes down to is this a prudent investment for.

The participants in the plan in question. This comes relates as well to private equity funds as well as ESG branded funds. Now, ESG is the environmental social governance types of funds. The biggest concern I would say with ESG branded funds is there's no regulation that defines. What is an ESG fund?

So we've had cases or have seen cases where companies have just taken off a standard off the shelf fund and put ESG onto it, just in name only. Called, white washing WA or greenwashing and offered it. And so we really are lacking any guidance on how to determine what is an ESG fund.

But the bottom line again comes down to is this fund going to be in the best interest of planned participants and beneficiaries? Next slide, please.

We have seen a growing number. This is an interesting area, a growing number of lawsuits related to the use of forfeitures in plans. And we, when these first started to come out, I thought this is a head scratcher because we have clear guidance that plan forfeitures can be used for.

One of for three reasons. Basically, they can be used to offset employer contributions. They can be used to pay plan expenses, or they can be allocated among the plan participants. And plan documents generally have language addressing the use of forfeitures, but where the cases have come up. Is the, some of the, some plaintiffs are alleging that if you use forfeitures to offset employer contributions or to pay plan expenses, that the plan sponsor is really benefiting from that versus the plan participants.

So there, the claim is that is a breach of fiduciary duty. And what we've seen is court cases are mixed on what their rulings have been, but what we can see from most of the rulings is that if a plan can have language that takes away any kind of discretion from the plan sponsor or the plan committee as to how forfeitures.

Will be used that is a can provide a safe haven basically and protection from accusations of wrongdoing. Very important to review the plan document and the language related to its use of forfeitures, and making sure that all three of those options are available and perhaps ranked as how they should be used.

So that the employer and committee has no discretion. And that's gonna go again, a long way to as a protection or as a defense and document that for sure. Next slide please. Other investment classes. Again, I mentioned, there, there really isn't thing anything that ERISA prohibits as a particular type of investment class.

But again, we wanna make sure it's. Prudent for the plan, and it's monitored on an ongoing basis. There are clear disclosures and transparency. And so it's you can, be able to understand what the fees are how to value it. And so it, it comes down again to that prudent standard.

And is it in the best interest of plan participants and beneficiaries? Next slide, please. Oh, all right. We have one last quiz item. So for this fourth item, the question is, Risa's, prudence standard depends on A, picking the right stock. B, how many experts the committee consulted, C, how good the investment policy statement is.

Or d whether the fiduciary used a prudent process to arrive at the decision. This is a good one. What does Risa's prudent standard depend on? And we'll take a moment here so that you can contemplate the options, make your decision, and we'll be able to move on. As we start to wrap up our discussion of fiduciary litigation,

so is it A, picking the right stock? B, how many experts the committee consulted, C, how good the investment policy statement is, or D, whether the fiduciary used a prudent process to arrive at the decision.

And all right. I am very pleased that you are paying attention and it is correct d that it's all about process, prudent process and documenting that process because if it's not documented, it didn't happen.

So one thing I wanted to bring up at the very end here is an important fiduciary obligation that's coming up by the end of next year, by December 31st, 2026. One of the pillars of fiduciary responsibility is to have a written plan, document, and follow the written plan document unless it contradicts Issa.

Now we know we've got a lot of law changes that have come over the side of the bow the last few years. We've got Cares Act, secure 1.0, secure 2.0. There's the Miners Act, and then there's some other Let regulatory changes that. Have come about. We know that plan documents, all plan documents will have to be amended the soonest being by December 31st, 2026.

What plan sponsors and committees can anticipate receiving amendment packet? From their plan document providers. And a lot of times those amendments will be prefilled. So I wanna caution advisors working with plan sponsors and the plan sponsors to make sure that they review the packets carefully.

Don't just settle for the defaults. Because the plan document has to reflect how the plan is being operated. And so if you have selected a particular provision. And the default documents that come do not have that reflected. It's important to make that change on the plan document and make sure that your documents are in sync.

With how your plan has been operated. And another just a point is to keep track of the various provisions as you, as the plan implements them. So we have, CARES act provisions that were put in place several years ago. We need to know when that went into effect. In particular, they related to a higher loan amount that was maybe available.

So we need to know when that went into effect. And there again is another example of how documentation is so very important. Important. So take really good notes keep them in the fiduciary file and document.

Lisa Caito: Thank you, Jenny. This was great information and will help us all strengthen our fiduciary process.

Thank you. Again, thank all of you for joining today. We really appreciate your involvement. Just as a reminder, you must submit the survey at the end for the CE evaluation confirmation. In addition to that, we look forward to seeing everyone in 2026. Our first webinar will be in February and it will be cybersecurity and retirement plans.

So thank you again and have a great day.