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Quarterly Fiduciary Training Webinar : Washington Pulse- What Plan Committees Need to Know

Lisa Cato: Good afternoon, everyone. We're excited to walk you through the Washington Pulse, Practical and Tactical Actions for Plan Sponsors, which is a timely update on what's happening in Washington and what it means for your retirement plan. Today's session will focus on key regulatory, legislative, and enforcement developments shaping our industry, along with practical steps you can take right now to strengthen the plan governance and manage fiduciary risk.

Our goal is to translate complex updates from the DOL, IRS, and Capitol Hill into clear, actionable insights so you have... You leave with a better understanding of current priorities, emerging trends, and what actions matter most for your plan in 2026. I'm Lisa Cato, the director of plan consulting at CAPTRUST.

Joining me today is Jenny Kufmeyer, chief operating officer of the Retirement Learning Center. Jenny has been in the retirement services industry since 1993 and is a recognized leader in ERISA education, professional certification development, and award-winning industry content. She's also the co-author and editor of the Retirement Resource Guide, Essential ERISA Education and Best Practices for Financial Advisors, and holds a JD from the Taft Law School.

Before we begin, let's review a few housekeeping items so we can participate in today's event. The webinar is being offered for CE credit. To be awarded the full CE credit hours, you must be present for the entire session, registering your attendance and departure in the webinar. To receive CE credit, you must answer three polling questions during the presentation.

Failure to complete the three questions will result in no CE credit. You will be given 60 seconds to answer the question. Any questions you have related to the award, awarding of CE credit will be resolved after consultation with the Retirement Learning Center's CE administrator.

You are connected using your computer's audio, and all attendee lines are muted, listen-only mode. You may submit questions at any time by typing them into the Q&A box, which you can open or minimize using the icon at the bottom of the screen. All questions will be collected and addressed after the event.

To turn on closed captioning, click on the small circle with the two CCs, the two Cs in the bottom right of the media player. Today's webinar is being recorded. A follow-up email with a link to the recording and a copy of the slides will be sent within a week. With that, Jenny, let's get started.

Jennifer Kiffmeyer: All right.

Thank you. It is exciting to be here this afternoon to talk about what's going on in Washington and the impact on retirement re-plans across the country. So for today, we're going to look at what the Department of Labor is focusing on, what the IRS is focusing on, what the Trump administration is focusing on, and then what Congress is focusing on, as well as some of the hot topics in the industry.

And our goal then at the end of today's session is for you to walk away with an understanding of the Department of Labor's focus and its enforcement efforts what are the top issues that the IRS and Department of Labor look at, and have walking away with a good understanding of what is on the minds of our congresspeople and our the president and other agencies that govern retirement plan operations.

So with having said that, let's dive right into Department of Labor and IRS enforcement update. So every year, the Department of Labor publishes its enforcement results, and year over year, they're pretty consistent. In fact we do have 2025's recently released numbers, and they're very similar to these numbers here of 2024.

Both years, the monetary recovery amount, this is dollars that were returned to plans on behalf of participants, was \$1.4 billion. And that is a significant increase from prior years. The DOL, as has several programs self-correction programs like the Voluntary Fiduciary Correction Program and the Delinquent Filer Voluntary Compliance Program.

Those programs alone had 25,000 applications and were able to restore \$39 million. But where probably the biggest chunk of money where the Department of Labor was able to bring that money back and give it to participants was

through their Informal Complaint Resolution Program, and that consists of their website, and there is a portal on their website where individual participants can go in and register a complaint.

That complaint then goes to a regional office, and the regional personnel will review it and decide whether it should be escalated to maybe a full-blown DOL audit. So last year, And then also there's an 800 phone number listed on the website. So the DOL has made it very easy for individual participants to log complaints, and last year they received over 220,000 individual complaints.

And so that led to enforcement actions by picking some of those complaints and escalating them to full-blown audits. I oftentimes get asked what... Y- why would a plan be audited? Why would the DOL pick a plan for audit- auditing?" And it comes really in two different ways. Number one is 5500 filing errors, whether the form is filed late or not at all or is incomplete or has some red flags in the filing.

So the DOL does monitor those filings very closely. And then the other area where they will pick audit candidates from are the individual complaints. So I emphasize make sure to file your 5500 timely and accurately and keep your plan participants happy. If they're happy, they're not gonna be inclined to go online and file any kind of complaint.

Another question I get quite frequently is what's the likelihood of my plan being audited?" And as we know, government agencies have had cutbacks in personnel in the last year and a half, and as a result, the Department of Labor, has cut back on some of its auditor auditing capabilities.

And so really the plans that they focus on the most are those that are, have the highest number part- of participants. They're gonna get the biggest bang for their buck by focusing on those larger plans. So generally plans that have 5,000 or more participants, they have about a 2% chance of being audited.

Whereas if you go to the other end of the spectrum for plans that are less than 100 participants, there's about a quarter of a percent Of that they could be under a DOL audit. For plans with one hundred to a thousand participants, it's about half of a percent, and from one thousand to five thousand it's about 1%.

So the percentages are low, but not zero. And so it's, always best to run the best prudent plan that a plan sponsor can in order to, keep that audit risk as close to zero as possible. The Department of Labor, what are they concerned with? They focus on prot- protecting participants and their assets.

So they're going to look closely at fiduciaries, and one of the things that they say quite frequent- frequently is plan fiduciaries not knowing that they are a fiduciary and/or not knowing what their responsibilities are. And this is very common up- among plan sponsors because many of them are under the impression it's someone else's responsibility.

It's, "No, the record keeper's handling that. No, the TPA's doing that. No, my payroll department has that handled." But ultimately, the plan sponsor is always responsible for the operations of the plan, and while they can share some of those responsibilities the plan sponsor always retains the overall responsibility to make sure the plan is run in a compliant manner.

So very important for plan fiduciaries committee members, the sponsor, et cetera, to be aware of who is a fiduciary in, with respect to their plans, and making sure their duties are well defined and the individuals understand what they are responsible for. Another top concern is late deposit of employee deferrals.

We know that there is the... for a larger plan, it's within, 15 business days. However, the ultimate test is as soon as administratively feasible. So if a plan can depo- deposit those deferrals sooner than those 15 business days, then they need to do that. And we also have a safe harbor seven-day deposit deadline for small plans, those with under 100 participants and the third top error that the DO- that the DOL looks for is excessive fees.

Now I wanna emphasize that the Department of Labor doesn't say a plan sponsor has to run the cheapest plan possible. They have said and stated in a couple of different regulations w- and also some prohibited transaction exemptions, that the DOL expects fees to be reasonable for the services that are delivered.

And sometimes it's important to have these extra services to make sure that the plan is running and in the best interest of participants. So if it is d- documented that the plan sponsor and committee have talked about these different services, and they understand the fees, and they realize that they've done some benchmarking, and they have found that these fees are reasonable for the services that the plan has, that's all the Department of La- Labor is looking for.

Do you have a process to look at these fees and services, and is it documented? Process is the key word these days. Is there a prudent process in place, and is it documented? One other thing I'll point out here on this top list of concerns cybersecurity has really become a top concern for the Department of Labor.

They have actually listed that as one of their agenda items for 2026. And they will, if a plan is already under audit, then they will ask the plan sponsor for information so that they can verify their cybersecurity practices in making sure that they are protecting participants' information.

So that is something that we're focusing, or they are focusing on. We don't have federal regulations that give us a safe harbor approach to cybersecurity. We do have some best practices from the Department of Labor and we encourage plan sponsor teams, sponsors to use those best practices.

And there's also a version of the best practices for plan participants because we have found in, based on s- on research, that the weakest link in cybersecurity breaches is the individual. So with respect to a 401 plan, it's the individual participant, failing to have a strong password, not having multi-factor authentication those kinds of easy things at the participant level that can be addressed.

So we encourage the, plan sponsors to use that as a training opportunity for plan sponsors... or excuse me, for plan participants to help them tighten up security for plan information. Now moving on to the IRS. So we have the Department of Labor that is interested in protecting plan participants.

The IRS is focused on taxes maintaining the tax-qualified status of the plan so that participants and plan sponsors can receive the tax benefits available to them. And the first thing that the IRS is always concerned with, is the plan up to date? Now we know a plan has to have a written plan document, and it must be kept up to date for all law changes, and the plan has to follow the terms of the document unless there is something in there that would contradict ERISA.

And we know that because of SECURE Act 2.0 and SECURE Act 1.0 and the CARES Act and a couple of other smaller law changes in the past several years, we are facing this year mandatory amendments to all retirement plans. We'll talk more about that in detail, but it is a year of plan amendments, and so we must be on the lookout to make sure that those are completed timely and accurately.

A couple of other key areas the IRS focuses on is the plan's definition of compensation. The plan uses a couple of different or maybe three, four different definitions of compensation depending on what the function is. So for contributions, what is the definition of compensation? For plan testing, what is the definition of compensation?

So we have to make sure that the plan is following the definitions of compensation that have been identified in the plan document. Distributions are another area. Our our RMDs in particular, loans in-service distributions, are these h- being handled properly and with proper disclosures et cetera.

Ah, here's our first polling question, and I'll remind you that you need to participate in at least three of the four polling questions. And it's not important to get them correct, you just have to participate. So take the pressure off, just go with your gut, and that's all that we are looking for today is for you to select one of the answers here and participate.

So our first question, what is the best way for plan sponsors to avoid compliance issues? Is it A, to conduct annual compliance reviews; B, wait to be notified by the Department of Labor or IRS; C, rely on the auditor to address them; or D plan sponsors are not required to monitor the plan for compliance deficiencies.

Now, I'll pause for a moment here and we will give you an opportunity to review these options, make a selection, and register it for credit towards a continuing education credit. And we have about 20 seconds left here for you to make your selection and have it count. What is the best way for plan sponsors to avoid compliance issues?

And then we're ending the polling now, and we'll see absolutely conduct annual compliance reviews. Be proactive about this.

Ooh. Oh, sorry, I- I'm- I got a little click happy there. I apologize. Moving on to our next section here, and the administration's retirement related initiatives. Now, as you recall, we have a new administration as of last year. We're into the second year of Trump's administration. And there are some dramatic changes that have taken place.

To begin with, we we immediately saw a broad shift toward deregulation. The President issued a a regulatory memorandum right away freezing any regulations for 60 days- That was followed quite quickly by an executive order that to reduce regulations a ten-to-one deregulation order which said that for every new regulation that an agency wanted to introduce, they had to identify 10 other regulations, old regulations, that could be discarded.

And then following that, we also had another executive order on... in February of last year for agencies to do a very thorough review of all of the regulations to find those where they may have overstepped their boundaries and lack authority

to issue rules and regulations. So these executive orders and the presidential memoranda have had a direct impact on several retirement-related regulations.

The first r- the deregulation order this was the one of we're reducing, for every one new regulation to get rid of 10 regulations. Just to put that into perspective, in 2025, we had three major retirement-related regulations. We had the fiduciary investment advice, we had the ESG regulations, and then we also had the what I'm trying to...

asset alternative assets regulation. So w- we would have had to identify 30 other regulations to get rid of under that deregulation order.

The affected regulations that took a hard hit were, number one, the fiduciary investment advice regulations. They will likely be reintroduced in 2026. As of March 2026, the old regulations, the 2024 rules that had been released under the Biden administration were vacated. So they are l- no longer applicable.

That means we are back to the old 1975 five-part test for determining when an investment advisor is providing investment advice for a fee which then requires the use of a prohibited transaction exemption. So they are the old rules are out, and we do anticipate new rules coming out here.

The the DOL's docket says they'll be released in May, but we'll see. The, another regulation was the ESG, the Environmental, Social and Governance, ESG rules. Those rules, the prior rules were from 2022. They are no longer being enforced. The, this current administration has moved to a more pecuniary rule in evaluating an ESG types of investments.

That means that it's a more restrictive rule that looks at the returns, specifically the returns that these investments provide, rather than any kind of ancillary benefits or ESG-related characteristics of the investment. Another regulation was the cryptocurrency and alternative assets.

We do believe that we'll see new regulations in 2026. We do have a proposed regulation right now for alternative assets. We'll talk more detail about those. They're... It's not currently finalized. They're proposed, but we do anticipate there will be a final version of that coming out.

And finally regulations related to employee stock ownership. This administration is very pro-small business, and they do support businesses trying to have ESOPs in order to promote small businesses. So just a... I'm not gonna

go spend a lot of time on the, this detailed, long, and winding path of the fiduciary regulations through 2026.

Suffice it to say that the old rules are no longer enforced. We're going with the 1975 five-part test and the prohibited transaction exemptions for now, a- with the anticipating that there will be new rules coming out here in the very near future. So what does all that mean? Most financial advisors are already under some kind of process that has been laid out by their firms.

The firm has decided how they are going to handle providing investment advice, whether it's going to be advice or education. If it's going to be advice, they will follow some type of prohibited transaction exemption like 2020-02 or 8424 for insurance products. Or if they are going to restrict advisors to providing education, they'll be following an investment- Information Bulletin 96-1.

So while the firm really is going to make the call on how this will be handled for the advisor from the plan sponsor's perspective they can anticipate that most advisors are going to be approaching them with their best interest in, at at the, in the forefront and follow prudent, well-documented fair practices regarding investment advice for the plan and for those participants that engage with a financial advisor.

Regarding the ESG rules they too were kind... basically left by the roadside. They're no longer being enforced, the old rules. We do anticipate 2026 to see some new rules. So as I mentioned, these rules will focus on what we call pecuniary issues, which relates exclusively to the return of, returns on these investments and are they prudent investments for the participant and for the plan to be incorporating.

So practical and tactical actions for DOL ESG rules. One thing to be very cautious of if a plan is considering ESG investments is the definition of the ESG. That is one thing that we lack in the industry is a comprehensive set of consistent definitions for what constitutes an ESG investment.

There's m-much talk about greenwashing where an investment that has existed for years sim-simply adopts a new green-friendly name and advert-advertises itself as an ESG fund. That doesn't, that shouldn't fly. And so one of the things a committee and the plan sponsor needs to do is to make sure that they have settled on what definition they'll use for ESG if they're going to incorporate them into the plan how to benchmark those types of investments, and how they

should adopt the policies in the investment policy statement for selecting these types of investments.

A lot of plans are taking a wait and see approach to ESG rules investments until we get some more definitive guidance and so that it's not such a gray area

Moving on to alternative assets in DC plans. Now the, under the Biden administration the EBSA under the p- the Department of Labor took a very cautious stance towards alternative assets. Now they have removed that cautionary announcement, and they are no longer, go... favoring or not favoring alternative assets.

They are following this kind of deregulation order saying that, w- there, there's no issue in having alternative investments in DC plans as long as, again, the plan sponsor and committee follow a prudent process in selecting those investments making sure that they are there to serve the best interest of participants.

And again, if it is properly addressed in the investment policy statement. We do anticipate the some final rules perhaps later this year. We do have those proposed rules right now that actually follow or suggest that sponsors should follow six or look at six criteria when they're evaluating alternative assets, and that is the performance, the fees, liquidity, valuation, how to benchmark those assets, and how complex those are.

Taking those six criteria into consideration, and then also, looking at the plan demographics and whether or not the, that type of investment would be beneficial and in the best interest of participants. It's all about a prudent process and documenting that process. That's what the Department of Labor is going to look for if they were to audit a plan.

We are onto our second quiz. And so our second item is the following question. Which of the following statements is true? Is it A, the Dep... the Department of Labor forbids cryptocurrency as a plan investment? Is it B, the DOL forbids ESG funds as a plan investment? Is it C, the DOL forbids alternative assets as a plan investment?

Or is it D, the plan sponsors must prudently select investment alternatives for their plans that are in the best interest of participants? And now we'll give you some time here to contemplate the options that are available, and Make your selection. Again, it's important to complete three of the four polling questions to register your participation in the webinar today for CE purposes.

And we've got a few more seconds here, and we'll reveal what the correct answer is. Ah very good. The correct answer is D: plan sponsors must prudently select investment alternatives for their plans that are in the best interest of participants. If you can remem-- If a plan sponsor and committee live by that rule that it will take them a long ways in compliance.

So moving on now to SECURE Act provisions. We had a number of SECURE prac-- SECURE Act 2.0 provisions already take effect. Some that took effect last year relate to the mandatory automatic enrollment, so new plans that were established on or after December twenty-ninth of twenty twenty-two had to incorporate an automatic enrollment feature.

Also last year, we had higher catch-up contribution limits take effect for those who are age sixty to sixty-three. A change in the long-term part-time employee eligibility rules reducing the three-year eligibility rule to two years for those long-term part-time employees.

We were anticipating the DOL to come out with some performance benchmarks. They are tardy on that. We're still waiting for that. And then finally we have a new option to for plan participants to take distributions of up to twenty-five hundred dollars to help pay for long-term care insurance contracts.

That actually took e-effect at the end of twenty twenty-five so it's more, likely to be used here in twenty twenty-six. Now in 2026, we have a couple of important provisions that are taking effect. I'm sure you have heard much about this first provision, the Roth mandatory catch-up contributions for high-income participants.

This has become a real headache for record keepers, payroll departments, plan sponsors because there's so much coordination that has to happen. So the provision requires that if an employee earned above \$150,000 last year, so in 2025, that they had \$150,000 or above \$150,000 in FICA wages, then if they make catch-up contributions in 2026, they all have to be made as Roth catch-up contributions.

So what's interesting about that is that, not all plans allow for catch-up contributions. It is optional, and not all plans allow for Roth contributions because that is also an optional feature. So if a plan does not offer Roth designated, contributions, then individuals who earn above that \$150,000 threshold would not be able to make catch-up contributions.

So there's a lot of discussion going on and important to coordinate with payroll providers and the record keeper. A lot of record keepers are making it... putting the onus on- The payroll department and the employer to identify the individuals and properly identify which contributions should be the designated Roth.

But it really does vary by providers. So very important to be in close conversation about this provision. We do have another provision here required paper benefit statements that went into effect for this year. So DC plans have to provide at a paper benefit statement at least once annually, and DB plans have a requirement to do it every three years.

Now, there is an exception if the plans are following the two thousand two electronic disclosure regulations, where participants have opted into electronic disclosure then the paper statement is not required. So there, it's important to find out what is the record keeper following as far as disclosure rules.

There is the twenty-- the two thousand two rules, and there's also the twenty twenty rules. And to make sure they are complying with the r- electronic elections and also if they need to provide the paper statements. Now one thing for the defined benefit plans too, there is a, an exception if they're using an alternative to the annual statement.

So there is an option for DB plan sponsors to do that. As I mentioned earlier it is an amendment year, and I wanna spend a fair amount of time on this because it is important to make sure that the plan, as it's being-- as in, as it's been in operation matches what is being incorporated into the plan document.

Now the... This year, the record keepers usually are the entities that provide amendment packets for any pre-approved plans that their clients use. So if a plan sponsor is using a pre-approved plan, then the record keeper or perhaps the TPA will be sending out an amendment packet that will have some default elections for the various options, That are available for election.

So we had a number of new provisions under SECURE 2.0 that were mandatory, but more options that were optional. And so it's important for plan sponsors to make sure they look at how they've been operating their plans, if they've elected any of the optional provisions and are... have implemented those to make sure that the amendment packets that they receive accurately reflect how they're operating their plan.

If the amendment package does not reflect what's in operation, you need to, or the plan sponsors need to make sure the documents align with how they are operating the plan. So very important to review those amendment packets carefully so that the amendment can be executed carefully. 403 plans a deadline for that is also December 31st of 2026.

Same for qualified retirement plans. Those for the 403 plans for non-public schools is December 31st of 2026. If there's a public school, those plans are due to be amended by the end of 2029. And as far as governmental plans, the deadline is the end of 2029, so December 31st of 2029. So we all know that New Year's Eve, everybody for most part, will be amending their retirement plans.

IRAs for any of those of you working or having... have an IRA, you can expect amendments here as well. Those documents have, though, until the end of 2027 for amendments, so December 31st of 2027. Ah, here we go. It's our third question. And so for this question we have, sponsors must amend their qualified plan documents for various law changes by, is it A, December 31st of 2025, B, December 31st of 2026, C, dec- the end of the 2025 plan year, or D, plan amendments are not required?

And here you have about 35 seconds left here to contemplate A, B, C or D and register your selection

Remember to take the pressure off, you don't have to necessarily get the question correct, you just have to show that you participated. For those of you who have test anxiety, don't sweat it.

All right, we're done, and now for the reveal. That is absolutely correct. The end of this year, December 31st of 2026, most qualified retirement plans will not need to be amended.

Now we'll move on to our next section, and this relates to any new re-legislation that's being considered for retirement plan purposes. Earlier last year signed on the Fourth of July, we had the One Big Beautiful Bill Act which became Public Law 119-21. There weren't really a lot of retirement-related provisions in that bill.

However, there was one provision that created Trump accounts for children. And we'll spend a little bit of time looking at those Trump accounts. So again, this is for any child through the age of 17 who has a Social Security number. It

is like an IRA but it is a distinct account. The maximum contribution up to \$5,000 per year.

You can have employer contributions going into the plan, into the Trump IRA of up to \$2,500 a year, and that would be included in the \$5,000 aggregate limit. There could be a government seed contribution of \$1,000, and that is obtained by filing IRS Form 4547 for Trump account elections, and then the individual could receive that \$1,000 seed money.

Then we also have the ability for tax exempts and charities governmental entities to perhaps donate to the Trump account, and that amount would not be included in that \$5,000 limit. There are very strict limitations on distributions while the t- account is in the accumulation mode.

But then once the individual turns 18, it really... the account will function basically like a, an IRA. So there's been a lot of interest in this. A lot of there's a... website you can go to if an individual or an employer or entity is interested in setting up a Trump account for a child.

Another couple of proposals that have come forth in Congress is the Retirement Fairness for Charities and Educational Institutions Act of 2025. And now this would allow, if enacted, would allow 403plans to freely invest in collective investment trusts, or CITs. SECURE Act 2.0 cleared the way for 403s from a IRS standpoint to invest in CITs.

However, there were still some SEC regulations that prevented 403s from being able to invest in CITs. So this bill would change that if it's enacted. And it is a bipartisan bill. There's exact versions in the House and the Senate. Right now these bills don't have a lot of activity going on as we've got a lot of other things that Congress is trying to deal with.

But know that these, once we get through some of the more im- imminent things that we need to deal with in Congress some of these are, will be on the docket once again. Another one bill that has been proposed is the Retirement Savings for Americans Act. This would recr- would create a federal plan called the American Worker Retirement Plan.

And President Trump alluded to this plan in his State of the Union address. So this plan would be primarily focused for em- part-time employees and other employees who lack access to a workplace retirement plan. It would require automatic enrollment, there would be a government match and investments

would be those that are similar to the Thrift Savings Plan that the government employees enjoy.

As I mentioned President Trump alluded to this in his State of the Union address. There is I believe it's a Trump Account website that's being set up and will be activated. But these Tr- going back to Trump Accounts, they will not be available until July 4th of 2026.

And so these accounts too will be available in the near future. We have the Helping Young Americans Save Retirement Act. This would lower the eligibility age to 18 so it can cover employees earlier in their working career. So that gives them more time to accumulate assets for retirement.

Some other bills that are out there Retirement Simplification and Clarity Act, Small Nonprofit Retirement Security Act Independent Retirement Fairness Act, Women's Retirement Protection Act, and Protecting Americans' Retirement Savings Act. A lot of these, are... have bipartisan support, but again, they're kinda low on the totem pole as far as Congress's focus right now.

Here we go. Another quiz opportunity for you to get in the third of your questions. The question is, true or false, some provisions of Secure Act 2.0 took effect immediately. Is that true or false? And call it Secure 2.0 was signed into law at the end of twenty twenty-two. My, how time flies.

And we'll give you just a few more seconds to review the options, true or false, and register your selection. And it's ag- again, important to complete these polling questions to show your activity during the webinar in order to earn the continuing education credit.

And we've got about fifteen sec... Oh, now we're done. And we'll reveal the result. That is true. Many of the provisions of Secure Two Secure Act 2.0 took effect immediately but we also have a number of provisions that don't take effect until later years, even as far out as twenty thirty-three.

It's the gift that keeps on giving, for sure. Moving on now into our next section, let's talk about some litigation reform. We know that the new head of the Employee Benefit Security Administration is anti-litigation and anti regulation. His name is Daniel Aronowitz, He is a former in-- member of a law firm that focused on fiduciary liability insurance, and so he has seen and probably been involved with many cases where there were frivolous lawsuits filed against plan sponsors.

And so he is very much against any kind of frivolous lawsuits, and he's also looking to make sure regulations are more about providing a process for employers to follow so that they aren't necessarily as punitive as they are, more as a helpful way or a safe harbor way to approach investments for example.

We also had, as far as litigation reform, a very important Supreme Court decision in the case Cunningham versus Cornell University. And this, as a result, will make it easier for plaintiffs to survive for their cases to survive dismissal in lawsuits. And how that works is that before the Supreme Court decision, this is...

these are the steps that a case would go through. There'd be a complaint filed. The next step would be a motion to dismiss. And it was at this second step where most cases were dismissed. And so they would not proceed past the motion to dismiss. And what Cunningham case did was allows more cases to get past this motion to dismiss and then advance to the discovery phase where they can, both parties then have to spend time and effort and money to discover evidence and then plead their cases. So this is going to... the long-term effect is probably going to allow more cases to continue on at least through discovery, and which then would result in higher costs, et cetera for most of the parties involved.

More litigation focus has been on forfeitures of plan assets. Which to begin with, this really puzzled me because most plans are very clear about how forfeitures should be used, and the regulations provide three ways. They can be allocated among participants they can be used to reduce employer contributions, or they can be used to pay plan administrative expenses.

Where the court cases have come in is where a plan fiduciary has discretion in deciding say that they will use the forfeitures to reduce employer contributions. The argument has been that is self-serving to the plan sponsor and a breach of fiduciary duty. Now, the court cases have been divided.

However there is a tendency, or we're seeing a trend, that they are favoring plan sponsors, and the key is that plan sponsors should review the plan documents for specific forfeiture language that removes any discretion on their part and allows for the forfeitures to be used in any of the three ways that is allowed under regulation.

So minimizing any employer discretion in the use of forfeitures is the key. Cybersecurity cases have increased. The first one that really started it all off was in 2020, Barnett versus Abbott Labs. A participant lost \$245,000 of her 401 plan

balance because some cyber criminals were able to get her login information and security code and log in and take money out as the participant.

The participant was able to recoup about \$140,000, I believe, of the account but not the full amount. And the end result, the court did not find that the sponsor was at all responsible. They did, however, find fault with the record keeper for failing to enforce the security provisions. And so cybersecurity really focuses on keeping that participant information secure.

I mentioned those three best practices announcements from the Department of Labor. Those are available from the DOL online. RLC, we do have copies of that we can also provide if you ask for those

Just to follow up on the cybersecurity issues, we don't have that formal regulatory regime. We know that the Government Accountability Office has again prompted and encouraged the DOL to come out with a regulation. So hopefully it will happen in twenty twenty-six or, hopefully within the next year or so.

So what should I... dOL sponsor... Excuse me. What should sponsors do right now? They do have a re- a responsibility to make sure any electronic systems that they use for plan administration keeps the personal information confidential. So they do have to make sure that they're checking with their record keepers and do vetting their their recordkeeping partners' process for cybersecurity.

The DOL is asking for documentation on how they are vetting their service providers in cybersecurity practices. And oftentimes, a plan sponsor and the committee can turn to their financial advisor for some helpful tips or at least coordinating the efforts and communication between- between the service providers.

A hot topic in retirement lifetime retirement income in retirement plans. More participants based on some studies in, are indicating they would really like to see some lifetime income options in plans. But in contrast, plan sponsors are worried about the complexity of these retirement income solutions and adding them to the plan.

So right now there's only about a third of the plans in various studies that can, have incorporated a lifetime income option. So some things that a plan sponsor can consider is do, does the employer also have a DB plan? If so, the DB plan

then becomes the primary retirement or lifetime income solution, and then the DC plan is really an ancillary arrangement for participants.

But if you only have a 401 plan, then for many, that is going to be the retirement plan that the-- will be the focus or the primary provider of retirement income. So it's important then to consider whether or not a retirement income product would be a prudent option. Again, it gets back to evaluating it on a prudent process-- through a prudent process that takes into consideration the best interest of plan participants and should also be addressed in the investment policy statement.

We talked a bit about alternative investments. This administration is m- looking at alternative investments in a more favorable light, and we do have those six criteria that plan sponsors should consider if they are going to think about adding alternative investments to the plan. There's nothing wrong with alternative investments, again, as long as there's a documented process in evaluating them to make sure they are suitable and in the best interest of participants for the plan.

Takeaways here. A lot of plan sponsors, I mentioned earlier, are kinda taking a wait and see approach for cryptocurrency and some alternative assets until we get some more concrete regulations and guidelines from the Department of Labor. If that's the stance that a sponsor wants to take, perfectly fine with that.

Otherwise, again, it all comes down to that prudent, documented process. One thing I'll finally mention here is there was a change in the family attribution rules so that married couples are not necessarily considered owners in their spouse's business any longer. And this was really problematic in community property states like California or Texas because then if the married couple each had a plan for their respective businesses, they were treated as a controlled group.

SECURE 2.0 changed that so that that we do not have to look at the community property laws in those states for a controlled group determination. And if each spouse independently runs their plan for their business, they are not considered as being a controlled group. So that's gonna open up some plan opportunities and make plan administration easier.

For those individuals. These last slides I'll just mention in passing. These will be just handy go-tos for dollar limits for IRAs retirement plans, HSAs. And we'll wrap up with, a summary here that enforcement still remains a priority for

Department of Labor and IRS, but we do have a shift to deregulation and reduced litigation.

And some of the most important things a plan sponsor and committee can do is document decisions that they make for their plan follow a prudent process and make sure it's documented, and monitor their service providers on an ongoing basis, make sure that's all documented, and update their plans by December 31st 2026, to make sure that the-- they are up to date for law changes.

Now we'll stop there and try to address some questions here.

Lisa Caito: Actually, just we're... respond at a later time since we're at time. Okay. Very good. Thank you for that. And as we think about everything we've covered today, the key takeaway is this: the regulatory landscape continues to evolve. The fundamentals remain the same. Strong governance, thoughtful documentation, and proactive approach to fiduciary decision-making are your best tools for managing risk and driving better outcomes for a participant.

As a reminder, to receive CE credit, please be sure you completed all required polling questions, answer the survey, and remain logged in until the end of the full session. The webinar recording and related materials will be available within the next week. Thank you again for joining us today. We truly appreciate you taking the time to be with us.

Thanks again.

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