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Hello, and welcome to Revamping Retirement, a podcast brought to you by Captrust, where we explore the opportunities and challenges facing today's retirement plan sponsors and fiduciaries. Our hosts, Jennifer Doss and Scott Matheson lead the employer-sponsored retirement plan practice at Captrust, one of the largest registered investment advisors in the US and a thought leader in the retirement plan advisory and consulting space. We hope you enjoy Revamping Retirement.

Scott Matheson:

Welcome to episode 43 of Revamping Retirement. I'm Scott Matheson. On today's episode, I get to do what I love best and put my co-host, Jennifer Doss, on the hot seat as I interview her. And Jennifer, I can tell from looking, you're already excited about this.

Jennifer Doss:

I feel like this is an every month occurrence now.

Scott Matheson:

Yeah, we're doing like every other month. Good news is that you're not going to go alone this time because I've enlisted help for you. I've asked Dawn McPherson to join us here today. So hello, Dawn.

Dawn:

Hello, Scott and Jennifer.

Scott Matheson:

Yeah. By way of introduction, Dawn joined us almost six months ago and is the director of our retirement plan consulting team here at Captrust. Her team of seasoned experts work with our clients every day to ensure they have prudent fiduciary processes in place to really oversee and implement their retirement plans. And I would also mention that same team is an invaluable resource to our clients who need retirement plan technical expertise, most notably the fun technical subject of ERISA.

Scott Matheson:

So today we're going to work together to update our listeners on the latest happenings in our nation's capital, specifically as it relates to retirement plans, and really with a primary focus on proposed legislation, though I am going to circle back on what we're hearing out of the Department of Labor after we take our midway break with our own Mike Webb. I asked Dawn to join today because Jennifer and Dawn, along with three of our other colleagues from across the country, actually flew to Washington, D.C. last month to have some meetings on the Hill with congressional leaders and their staffers, really to make sure that our perspectives, and really when I say our, I mean, our clients' perspectives, are being informed or informing how our elected officials are thinking about some of the pending legislation that's out there. So, y'all ready for this?

Jennifer Doss:

Absolutely.

Dawn:

[inaudible].

Scott Matheson:

Perfect. All right, Jennifer, I'll start with you. And back on episode 35, as we rounded out 2021, you'll recall, we interviewed Jeff Bush, who authors The Washington Update and is frequently a guest on CNBC, and XM radio, the channel POTUS. We asked him to give his interpretations and predictions of activity inside the beltway in D.C. We talked a lot on there about the priorities Congress would be focusing on in 2022. And of course a lot has happened in 2022 that has shifted some priorities on the Hill, but right after Jeff signed off on that very same episode of our podcast, Jennifer, you'll recall you and I talked about SECURE 2.0, which we also talked about in episode 41, just two months ago, but it is pretty meaningful. So why don't you do us a favor and get us started here by bringing our listeners up to date on how SECURE 2.0 or RISE and SHINE, if you take the other branch of the Congress into consideration, tell us how it's trending in Congress.

Jennifer Doss:

Yeah. So I would say generally speaking, I mean, you always have to knock on wood when you say this about Congress, but I feel like it's trending in a very positive direction. We say this all the time, but retirement legislation is very bipartisan. Everybody likes to have little soundbites where they talk about what they're doing for people and how they're getting them better equipped to save for retirement and more financially secure. And so there's a lot of good stuff in here that people can point to, particularly around election year. And so people are excited, I think, to get this done. Now, does that mean it's going to get done before December? I mean, probably not at this point. I think they just started meeting, the House and the Senate, they just started meeting what we heard was last week. And today is August 29th just for clarity.

Jennifer Doss:

So I think the conference between the groups has just started and the good news is that there's just a lot of consistency in what they're trying to achieve. Overall, there's a lot of provisions in there that are trying to expand retirement coverage, it's trying to encourage more savings. So all those provisions are pretty much going to be doing that. And so there's a couple of buckets that they're going to go through. So one is where there's really identical provisions between the House and the Senate bills. And there's actually quite a few. The second is where there's slight variations between the House and the Senate, and that's where it's just a little bit of compromise between how does this get done or what is this number? But they're small. And then the third is just where there's something in the House bill that's not in the Senate or vice versa. And so those might take a little bit more conversation.

Jennifer Doss:

And so, one of the things, I think, that I've mentioned before, that's going to be probably a big discussion point is things like required minimum distribution. So they both want to push them back as you recall with SECURE 1.0 at the end of 2019, we just pushed it back from 70 and a half to 72. And now we're talking about pushing it to 75, which again, everybody's pretty positive on doing. However, that's very, very expensive. And so when you start to talk about all these other provisions that you want to put in there, you're going to have to make some, I think, decisions between when do we want to enact this or do we want to drop this? And so some hard decisions are going to have to be made, but right now we do

still anticipate they're going to go through conference and then hopefully we get some sort of sign bill attached to something that has to go through in December, so some sort of budget bill.

Scott Matheson:

Gotcha. Yeah, I think important, I'm sure people already know this, but the reason the RMDs are expensive?

Jennifer Doss:

So the reason that required minimum distributions are expensive is because it's deferred income for the government. So the longer that you keep your money within a retirement plan, not talking about Roth, but primarily pre-tax is what you have in there. And so the longer that you keep it in that plan without taking it out, the longer their tax income gets deferred. And so that costs the government money and quite a bit of it too.

Scott Matheson:

Yeah. And important here is one of the wonky things that happens when they score these bills and acts is the government looks at the budget on a go-forward basis, but only over a 10 year period of time. So any time you actually defer more revenue receipts, you're actually looking like it's purely an expense, so one of the fun things of dealing with the congressional budget office and the process that gets into legislative acts.

Scott Matheson:

All right, Dawn. You thought you were going to get off the hook, didn't you?

Dawn:

I was hoping.

Scott Matheson:

Yeah. Nope, not so much. So curious because you did take time while you were in D.C. to not only listen to some of our congressional leaders and other regulatory leaders and subject matter experts, but you also actually went to the Hill and met with Congress or congressional staff, so I'm curious what you, maybe just describe the message you were hearing back from those meetings.

Dawn:

Well, thanks Scott. First I'll say, I thought there was really fantastic engagement across the senators representatives and their staff. I had been to the Hill one other time and this time I spent much more time in front of the folks that we were there to see, so that was encouraging. And then, as far as the message that we were hearing, I think it was really consistent across the meetings I attended and then those that others in the crowd were talking about afterwards, but just a lot of consensus to Jennifer's point. Normally we see so much disagreement on various provisions, but there's a lot of consensus and agreement, which is great. And then also a lot of agreement on trying to really push something through, again, to Jennifer's point, attached to a larger bill, so that was all very encouraging to hear.

Scott Matheson:

Wait, so you're saying there's usually disagreement [inaudible]?

Dawn:

Yeah, I know. That's a shocker. We haven't seen much of that.

Jennifer Doss:

[inaudible].

Scott Matheson:

Yeah, yeah, yeah. Well, that's good. And I think that the concept that you're talking about with kind of attaching into something else, we always joke about the amount of pork barreling, but there is a lack of ability to focus on big standalone bills and acts coming out of the Congress these days, it seems. And so pork-barrelling it or attaching to something else that needs to get through does seem to be the path forward for this.

Scott Matheson:

All right, Jennifer, we have joked a bit in the past, on past episodes about the vast number of provisions. In fact, you told me, I think it was 40-something and you weren't going to regurgitate them all, but I do think that given the optimistic outlooks I just heard from both of you, that this is a good time to really talk about, maybe dig a little deeper here and just talk about the ones that are most important or maybe they get you most excited here. And I'll let you decide where to start.

Jennifer Doss:

Yeah. So again, I think we were at 40 at some point. I think we're close to 90 at this point. So again, all really positive things, all positive outcomes for retirees and participants, but that is a lot to sift through. And so clearly going through and saying what's most important to one person is not going to be what's most important to another, but I would just lift out a few that I think are pretty important and maybe the most relevant to a lot of discussions that people are probably hearing in the industry right now.

Jennifer Doss:

So the first is student loans, so we're not going to talk about the recent student loan news, but I would say that most people agree that the level of student loans within the country is very, very high. And what I think we're most concerned about with regards to retirement legislation is how can we allow people to pay down their student debt if they come out with a good amount of debt and how can we also encourage them to save within their retirement plan? We just don't want people to be foregoing saving within their retirement plan, particularly some of those earlier years right when they start, we all know the compounding effect that that can have.

Jennifer Doss:

And so really what this provision would do is say, okay, if you participant or employee, I guess, are going to be paying down your student debt, we will count that, we will match that into your 401(k). And so basically it'll be counted as a matching contribution. So there's obviously a lot of logistics that have to go on behind the scenes there, somebody has to track that and an account for that. But at the end of the day, what it really is trying to do is saying, "Look, if you can't afford to do both, then you should at least get maybe the match that you would've gotten if you'd had the money to be able to put it into your retirement account." So I think that's a big one. And again, everybody really likes that one. I don't see any issues with that one whatsoever.

Jennifer Doss:

The second I might highlight is emergency savings. I think this came up over the last couple of years with the pandemic, and obviously we had to enact some emergency coronavirus distributions and loans, and we had to do some on-the-fly things there. But at the end of the day, what we're trying to achieve here is to allow people to maybe link some emergency savings to their retirement account, because we know that people are just much more likely to do it if it's just kind of coming out of their paycheck every month. And particularly if you could link it to the retirement account, it's all in one place. So there's different ways and there is a little disagreement within the House and the Senate about how exactly to achieve that, or maybe what the amounts are.

Jennifer Doss:

So that would kind of fall into that second bucket, where they're going to talk about some of the small differences, but everybody wants there to be some type of emergency savings legislation provision to encourage, again, people to at least, even if it's just \$1,000, I think that's the most common one people tend to throw out is like, if you don't even have \$1,000 to cover for unforeseen circumstances, we want to get people to that level of financial security. And I think we all agree on that.

Jennifer Doss:

And then the third is one that I think we talked about very briefly with Shlomo on our last episode, Dr. Benartzi, was this auto-portability concept, where you're trying to prevent your favorite word, which is plan leakage, and now I'm just saying it just to annoy you.

Scott Matheson:

Just to annoy me.

Jennifer Doss:

Yeah. But the reality is that when people quit jobs and they leave their money at old employers, and then they start a new one, sometimes again, that money gets lost. And we hear a lot about lost participants, which is also something that there's a separate provision on that they're trying to work on, which is this lost-and-found concept for missing participants. So I think that combined with this auto-portability provision, which is basically a way to automatically, through technology, connect and say, "Hey, actually, we followed you to your new employer, we followed you to your new record keep, and we're going to pull your money over unless you say otherwise."

Jennifer Doss:

So there's a lot more to it than that, but the point of it is trying to again, prevent this missing participant issue and trying to prevent plan leakage from people just saying, "Actually, I'll just cash that out," because more people do that than people realize, and the numbers are staggering. So I think we talk about increasing people's retirement readiness, and this is a big way to go about doing that. So I think those are just a couple that I would highlight.

Scott Matheson:

Yeah. So provisions 12, 14, 77, and 83. Is that right? Yeah.

Dawn:

Maybe.

Scott Matheson:

Those are the ones we like to talk about on Saturday nights. Yes.

Scott Matheson:

Yeah. Yeah. Dawn and I were talking about it earlier that the nice part about all these is that they're so aligned with the focus of all of our clients towards, we'll call it financial wellness. I mean, you're really talking about getting people in a spot where if they can't save, then they can continue to save in different ways because the employer match is still coming into play for student loans that they're paying off and trying to get down that burden. Obviously emergency savings is a big deal, you think about 1,000 bucks. What if your brakes go out in your car and you can't get it to work anymore? You need 1,000 bucks or you're just going to lever up with consumer debt, which is the worst of all. And obviously, trying to maintain momentum in an environment where newer employees in particular are less apt to stay at jobs longer. So auto-portability and finding lost participants, all very aligned with that. So good stuff.

Scott Matheson:

Dawn, we appreciate you joining us today and we'll hope to see you back soon for some more episodes of Revamping Retirement. I will-

Dawn:

Yep. Thanks so much for having me.

Jennifer Doss:

Yep, thank you.

Dawn:

It's always fun talking about provisions in Congress. [inaudible].

Scott Matheson:

It didn't feel very genuine.

Jennifer Doss:

No, no.

Scott Matheson:

All right. Well, we're going to do our usual and break over to our minute with Mike, where Mike's going to talk about when to use terminations versus plan mergers and some tips and considerations if you are faced with that decision. All right, take it away, Mike.

Mike Webb:

Thanks, Jennifer and Scott. Mike Webb here with another minute with Mike. In this month's minute, we'll discuss two ways to eliminate an existing retirement plan that would be termination or merger. In a plan termination, the plan and its assets ceased to exist. All assets are distributed to the individual

participants that own them, and the plan is no longer maintained. Now in a merger, the plan itself goes away, but the assets are absorbed into another plan. Organizations can almost always terminate a plan. Until recently, it was difficult to terminate certain 403(b) plans. However, a guidance has been issued that addresses those challenges.

Mike Webb:

The exception to this is when an organization looks to start a new plan of the same type. For example, if a 401(k) plan is terminated, the same organization cannot establish a new 401(k) plan during the next 12 months. However, there is an allowance for organizations where fewer than 2% of employees would be eligible to participate in the replacement of what we call in the industry, successor plan. Since plan termination results in distributions, participants who would not ordinarily be eligible for one, the IRS does not want plan-sponsored circumventing normal restrictions by terminating plans solely to provide employee access to retirement funds.

Mike Webb:

By contrast, in a plan merger, there is no distributable event. All funds are moved to another plan and participants do not receive distributions unless they were entitled to one in the first place. So that's a big difference between plan terminations and mergers. However, not all plan types can be merged into one another. For example, a 401(k) plan cannot be merged into a 403(b) plan and vice versa. In these situations, plan termination is the only option to reduce the number of plans.

Mike Webb:

For organizations with a choice between the two, plan mergers are typically preferred as they tend to avoid the plan distribution or what we call the industry leakage in issue that I just described. Mergers can also be less complicated than terminations, requiring a simple board resolution and amendments than the merging plans. By contrast, the asset distribution process and a plan termination can be a chore. And for large plans, an IRS filing might even be prudent.

Mike Webb:

For Revamping Retirement, I'm Mike Webb and this has been your minute with Mike. Now back to Jennifer and Scott.

Scott Matheson:

All right, welcome back. And thanks as always, Mike, for that informative update. All right, Jennifer. So I know you did spend that time on the Hill, but I also know that you got to spend some time listening to Ali Khawar, who's deputy assistant secretary of labor really focused on the employee benefit security administration within the DOL, which by way have mentioned to all of our listeners is the division of the Department of Labor responsible for regulating ERISA retirement plans. Ali has been serving in the acting assistant secretary chair as we've been waiting for confirmation of our new assistant secretary of labor, one of the appointees of the Biden administration, but I'm interested, what did you hear new or continued to beat the drum on that our listeners might find interesting? In other words, what's the focus, the future focus of the Department of Labor that you're hearing?

Jennifer Doss:

Yeah, well, I would just point out there's a few main topics he covered when he spoke. One was obviously just talking about, as you can imagine, the hot topic of cryptocurrency in 401(k). And so he

talked a lot about why they did that and why it was so timely, and why it's important to them, and how, again, this isn't the end all be all, this is not, "We're never going to do this." This is just, "Hey, for now, there's not enough protections in place and we really want people to think very long and hard about this." So he did talk about that. And then he also talked about cybersecurity. Obviously, we got some cybersecurity guidance from the DOL a while back, and I think that's been going really well. I know we've been working with a lot of our retirement plan sponsors and their record keepers to really stay on top of that.

Jennifer Doss:

And I know I've learned a ton, and I'm hoping that our retirement plan sponsors have learned a ton too, about what it really takes to secure all these transactions that happen and all these accounts. And it's just a lot. And what he talked about was how, again, not to take words out of his mouth, but how cybersecurity is what keeps him up at night because, and so this is going to be a continuing focus of the Department of Labor going forward, because we have so much trust in our retirement system when you put your money with your employer and you deposit that money from your account, you do not fear that anybody is going to take it. And that is critical for a voluntary retirement system to work. And he knows that. And so it is a critical component for him and something that again, keeps him up at night. Unfortunately, we all have our things.

Jennifer Doss:

But the third thing he talked about, which was really not an update at all, but just, "Hey, I know you guys are waiting on our ESG, so our Environmental Social Governance kind of regulation to come out our final rule." And we were expecting something to come out middle of this year. And then because of the assistant secretary push back with that appointment, they've pushed that now to, I think on the agenda, it says the estimated date is December. So again, whether it comes out a little earlier, a little later, I don't know, but the estimate is December, so I think we're still going to wait on that. He did not give any indication about how that was going to go. He just talked about how it was just the most comments they've ever received on a piece of proposed regulations, so I think it's just taking them a really long time to go through.

Jennifer Doss:

And I think they know how much is writing on this and how much people are watching and really just, I mean, dissecting every word that they say about this topic. And so I think they're just taking their time, and rightfully so. So I don't think we're going to see anything in the next couple of months on that. I think maybe we'll get that right around the same time we get SECURE 2.0, and it's like a big Christmas gift. I don't know.

Scott Matheson:

There you go.

Jennifer Doss:

For weird nerds like us. I don't know who that's a Christmas gift for, but anyway. But that's one of the things. And one of the other people that we heard from was the SEC, actually, talking about ESG as well. So the Security Exchange Commission, they regulate investment products like mutual funds. And so they were talking about how they have a proposed rule out too, where they're really going to try to get their arms around, or help I guess, the industry get their arms around the nomenclature for ESG, because

right now there's just really no rules or regulations around what you can call yourself to that regard. Sustainable, social. It doesn't mean much right now. And so really trying to say, "Okay, there's going to be three main types of ESG funds and this is what's going to fall into each category."

Jennifer Doss:

And I think that's really going to help from a consistency and a standardization standpoint because one of the biggest problems that we have right now in looking at these, is again, you have kind of a marketing issue where people can say things and there's not really a lot to back it up or they don't have to back it up. And so it's really hard to compare two different strategies or three different strategies, and they might all have very different objectives and all have very different levels of maybe ESG focus or integration. So I think that's going to be the three that they proposed that again, I personally think makes a lot of sense.

Jennifer Doss:

One is an ESG integration fund, so that's something where it's a normal investment strategy, but they integrate ESG factors into their evaluation of companies. The second is going to be ESG-focused investments. And so that's going to be where it really is a very core part. And this is where you would typically think of an ESG fund if you're going to select that for your plan, that is their primary focus is, and maybe they're doing screening or positive election and things like that. And then the third is going to be impact funds, which is you are trying to achieve a certain impact. So the best example might be a carbon reduction or carbon emissions reduction fund. They're trying to reduce the amount of carbon. And so that's very clear, here's what they're trying to do.

Jennifer Doss:

And so for each one of those, what will be really interesting is again, there's firm definitions of how you fall into each category and when you can call yourself one or the other. And then there's also some disclosure and some annual reporting that you have to do depending upon which one you fall into. So there's some accountability on the end of the actual investment manager. Again, still proposed, they're going through the regular proposal and comments that they're getting back, and then it'll be a while before we see anything final, but I think it's really interesting that the DOL and SEC are both working on this problem independently, obviously, but I think both are going to be super helpful for our industry.

Scott Matheson:

Yeah, I would agree. I think all three of those are really important. I continue to marvel over crypto, the idea of putting it into retirement plans. I keep flashing back to you and I starting here 15, 15 and a half years ago. And the industry was just adding standalone mid caps. And we're talking about crypto. And we still know that, unfortunately, that a lot of employees, participants in these plans aren't well versed in the world of investments. And so you need to be careful about introducing things with really big risk associated with them for them to choose from. It's the thing that keeps us up at night all the time, so cybersecurity obviously critical. And as you said, a big, big topic that's continued for us and continue for our employer, clients, plan-sponsored clients.

Scott Matheson:

And I just keep thinking about all the feedback that we get through our participant advice folks who are talking to those first-generation immigrants into the United States who have come from places with a

lack of trust in the banking system. And it's so hard to get them to put any money into these plans, so we can't do anything to damage that.

Jennifer Doss:

Yeah.

Scott Matheson:

ESG, I think it's really telling that they received the most comments ever after how transformative the 2016 Fiduciary Rule was to the industry that this is getting even more comments than that, but obviously it's a hot topic. Obviously the administration is really focused on climate change among one of the things and just that E category there. And so the nomenclature at the SEC would be super helpful, of course. All right. Well, anything else to add from your time in D.C.?

Jennifer Doss:

No, I would just say again, Dawn and I had a great time along with a couple of our other colleagues, and it's just super great to be able to get back to the capital actually in person, because we've been doing this every year for a few years now, but the last couple years were virtual and this year we were back in person. And it's just super helpful to sit across from people and to really see what it's like there. And I know everybody else was super excited to have meetings back as well. And so the capital is open to that regard, and so that was really nice to see.

Scott Matheson:

Yeah. Well, it is important, it is impactful, I appreciate you doing it. And I think people, I was always surprised when I went just how well versed so many of these congressional staffers are in the issues that our industry is dealing in. And that's a reason for optimism, so.

Scott Matheson:

All right, well, you've done it again, folks. You've made it to the end of another episode of Revamping Retirement. Thanks as always to Jennifer for tolerating me. And a special thanks to Dawn for lending us her time and perspectives today. If you have feedback for us or suggestions on future episode topics or guests, please send those our way. And of course, if you like what we're doing here, don't forget to like and subscribe on your favorite podcast app or platform. For Jennifer Doss, Mike Webb, our sound engineer, Ben Farmer, and our producer, Kara McCauley, I'm Scott Matheson saying thanks for listening and we'll talk to you next month.

VO Artist:

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