Please note: This is a transcription so there may be slight grammatical errors.

Jennifer Doss (00:00):
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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.

Jennifer Doss (00:51):
Welcome to another episode of Revamping Retirement. I'm Jennifer Doss and I'm joined by my co-host Scott Matheson. And we are very excited today to talk to Janet Luxton, who is a senior ERISA consultant and attorney in Vanguard Strategic Retirement Consulting Group. In her role, she consults with some large institutional retirement plan clients on a range of issues, including plan design, fiduciary best practices and compliance issues. She's also very involved in the SECURE 2.0 rollout, which is what we're going to focus on today with Janet. She earned a BA in sociology at Suffolk University and a JD at the Dickinson School of Law of the Pennsylvania State University. She's a member of the Pennsylvania and the Massachusetts bars. So thank you for being here, Janet.

Janet Luxton (01:36):
Thanks. Glad to be here.

Jennifer Doss (01:38):
Yeah. So I guess before we dive in, just want to set the stage for why we're speaking with you today. There's been a lot of discussion around SECURE 2.0 and I think today what we wanted to do is just get more of the record keeper perspective from it. There's a lot behind the scenes that goes on. Frankly, we know record keeping margins have been squeezed over the past five to seven years. You've got a more competitive landscape, which is driving some of our merger and acquisition activity. You've got more fee transparency. There's also been an increased focus on cybersecurity protection, protecting participant accounts, which is really a very time-consuming and a costly endeavor, we know for your firm and others. Additionally, you've got all these ancillary and technology services that record keepers have to offer being competitive, things like, "You've got debt consolidation services, you've got student loan assistance, emergency savings, we want mobile transactions, we want chatbots, we want account aggregation." You can tell that the list goes on and on.

(02:39):

So amidst all of that background, we do have SECURE 2.0 that comes out and is massive. And while I know that many of the provisions, and we talked about this last time in our podcast was they're optional and it's pretty spread out over a long period of time. But there are some that are mandatory and there are some that are coming up sooner rather than later. And even the ones that are optional may not really be optional for record keepers such as yourself given that competitive environment we talked about. So with all of that said, Janet—

Scott Matheson (03:09):
I think you're stressing her out.

Jennifer Doss (03:11):
No, I'm sorry. I'm just trying to give context.

Scott Matheson (03:16):
Okay.

Jennifer Doss (03:16):
So with all that said, again, we want to give our listeners a sense for what the record keeper perspective is like for this. So just to get us started, how as an organization, as a record keeper, how do you approach some legislation like this? How do you build your technology roadmap, if you will, or what do you focus on first?

Janet Luxton (03:36):
Right, so the first thing naturally that we're going to focus on is to look at what is required versus what is optional, and then digging a little deeper into that, looking at effective dates. So naturally the first target of our focus is going to be those things that are required and are effective immediately or soon after passage. From a SECURE 2.0 perspective, that's RMDs and the change to the RMDH. So that was essentially effective three days after SECURE became law. So we hit the ground running, getting out to participants to let them know about the change, stopping RMDs that were in the queue, all of those types of things kind of happened pretty quick out of the gate. Then we'll focus on some of the other things that are required in the coming year and down the pike to see about how we'll implement those. And simultaneously we're looking at all of the optional things to get a sense of what do we want to do first and what are our clients looking for?

Scott Matheson (04:41):
So is three days not usual from a standpoint of how long you have to prep?

Janet Luxton (04:49):
It's not unusual, unfortunately. We thought with SECURE 1.0 that we had I think a whopping 28 days.

Scott Matheson (04:58):
At least you got a long weekend built into those three days. So that was nice.

Janet Luxton (05:01):
Yeah.

Scott Matheson (05:02):
All right. Well I'm curious, I know you work for one record keeper, but I know from your background that you had experience on our side of the house too, if you will, and so you've worked in an environment where you've got a lot of visibility into record keepers overall. And so with that as a backdrop, maybe just how differently do you think that the record keepers out there are going to be and how they approach some of these provisions? I think about emergency savings and student loans as good examples of where I would expect differences depending on what's already been built and what their vision is for how they serve participants. But I'm really just curious how you see differences playing out.

Janet Luxton (05:39):
So there's definitely differences among record keepers as to how to approach a massive piece of legislation like SECURE 2.0 and it's really going to vary, not only from record keeper to record keeper, but provision to provision. There's a number of factors on how to approach these different provisions, including things like what's needed for immediate action, what's the corporate philosophy of that record keeper about build versus buy? So some providers build, some buy, some do a combination of both. What are the technology capabilities and resources and what's the concern about speed to market for some of the optional things? So all of that comes into play when deciding which path to take.

Scott Matheson (06:26):
Yeah, that's really good perspective too, and certainly we see a lot of those same things you're talking about drive other business decisions that are not legislatively imposed or mandated. So I'm curious, last time when we got together and were talking internally posts SECURE 2.0 passing, we were of course kind of jabbing at the fact that the government has done what business does now and just labeled it 2.0 instead of coming up with something unique. But I guess that's okay. But we talked a lot about favorites and surprises and perceived pain points, and so I'm going to put you on the spot here. Is there a provision out there that gives you the most heartburn from a maybe administrative or administrative and compliance perspective?

Janet Luxton (07:11):
I really think it has to be the emergency savings account—so that in-plan sidecar solution or however you want to characterize it. There's a ton of moving parts with that provision. The contribution cap, the applicability to NHCEs [non-highly compensated employees], the distribution features, the required investment component, all of those things come into play. And then there's the big unknowns that we'll need guidance for about tax reporting and is this W2 tax reporting, is it a 1099 function? How all of that is going to work out. There's so many unknowns around that provision. We've got some lead time, it's not effective until 2024, but that's only 11 months away now. So it's creeping up. But yeah, that's the one that gives me a little bit of [inaudible 00:08:05].

Jennifer Doss (08:06):
Yeah, and I think that's a good segue maybe into the next thought I had, which was there are a lot of provisions in there that we do need industry guidance on. We need guidance from the Treasury, the IRS, the Department of Labor. Like you said, it's 11 months away. How do you get started on these things without having the full guidance and not knowing when you're going to get it as well?

Janet Luxton (08:30):
So I think there's a couple of things to keep in mind. So we saw SECURE 2.0 coming. We had a version of the bill, a House version back in March of 2022. Went through a whole reconciliation process before it was passed late last year. So we had a little bit of insight into what we thought would be included in the bill, and we've been working internally for a while to assess how we're going to manage some of these provisions. And this is always an issue with new legislation. We know there's going to need to be guidance from the regulators; statutory language isn't complete. And what we start out with really is a plain reading of the statute. What can we garner from the statutory language itself as to how we think this should work?

(09:15):
So then on the side, we're working through our government relations group in Washington, working with industry trade groups to help educate the regulators as to the questions we have and what we think we're going to need going forward to build a legally compliant solution or service for all of these provisions and hope we get what we need in a timely fashion. If we don't, then we start building what we think is the right answer based on the statute. And again, working with industry trades, trying to get the regulators to provide some sort of transition relief so they understand that we need to start building and get these products available for our clients and we can't wait until the 11th hour to do that.

Jennifer Doss (10:05):
Yeah, like you said, it's 11 months away for some of these. You're going to have to get started on some of this as best efforts, right?

Janet Luxton (10:13):
Right. And there's not just stuff that we have to do. There's stuff that plan sponsors will have to do too. So we can't say, "Oh, catch-ups need to be Roth 1/1/2024 and we're going to tell you what we're doing in November." That's not going to help our clients. We need to have an answer before that so they can do what they need to do on their side.

Scott Matheson (10:30):
So not three days.

Janet Luxton (10:32):
Not three days.

Scott Matheson (10:33):
Okay.

Jennifer Doss (10:33):
I was going to say, to be fair on catch-ups, we need a lot more than that. We need to know if we could even do them anymore.

Janet Luxton (10:33):
That's true.

Jennifer Doss (10:40):
That's a whole different animal.

Janet Luxton (10:42):
That's a little bit of a thing that needs to be fixed.

Jennifer Doss (10:45):
Just a little. But again, that's another layer on top of this, where you've got some errors in there in the text always that need to be kind of rectified and technical corrections and you don't know how long that's going to take between when we got the bill and then when are you going to get these things? So that's another thing to watch out for that'll be fun.

(11:06):
All right, well, we are going to take a quick break. We're going to do our Minute with Mike. Mike Webb is going to talk about collective investment trusts in 403(b) plans as it relates to the SECURE 2.0 Act. Sort of. So I won't ruin it, but I'll let him talk about that. Take it away, Mike.

Mike Webb (11:26):
Thanks, Jennifer and Scott. Mike Webb here with another Minute with Mike. In this month's minute we'll commence with our special SECURE Act series on 403(b)s and CITs. If you read SECURE Act 2.0, you come away with a definite impression that CITs are allowed in 403(b) plans. Unfortunately, that is not the case. Though SECURE Act 2.0 does amend the code to allow for CITs in 403(b)s, securities law amendments are necessary as well for CITs to be permitted in 403(b) plans. The draft of SECURE Act 2.0 did have such securities law language in place, but the proper congressional committee was not consulted. That committee also expressed some reservations on allowing CITs in 403(b) plans. The language was removed and we have no idea at this point when, or even if, Congress and/or the SEC will take up the issue.

(12:20):
Despite this, at least one large public university, the University of California, has offered CITs in its 403(b) plan since 2017. The university reported to have obtained a no action letter from the SEC as well as an IRS private letter ruling, but neither document has been made public. And it remains to be seen whether other jumbo 403(b) plan sponsors will try to follow the University of California's lead now that at least the IRS tax code allows for CITs in 403(b) plans. For

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

Scott Matheson (12:58):
All right, thanks, Mike. Now we all know what Jennifer meant when she said sort of as it relates to CITs and 403(b) plans. But welcome back, everybody. We're still chatting here with Janet Luxton, who's a senior ERISA consultant and attorney with Vanguard.

(13:13):
Janet, before we move on from the topics we were talking about before that break real quick, you gave a great outline of how differently some of the record keepers and some of the decisions and business and structural decisions that will drive how they think about these provisions. But can you do me a favor? When we were prepping, we talked a little bit about some practical, I think it'd be good for our listeners to hear maybe a practical example of how that might play itself out.

Janet Luxton (13:41):
Sure. So if you take emergency savings, for example, so Vanguard's done a lot of work in the financial wellness space and we think that it's critical that employees are financially well in order to help them on their retirement savings journey. So last year we rolled out an offer with Candidly to address student loan debt, and now we're working towards a SECURE 2.0 solution with Candidly as well. So kind of an example of that buy versus build, if you will.

Scott Matheson (14:10):
No, I gotcha. Okay, that's super helpful. When you said Candidly, I thought you were saying candidly. It took me a minute. It always takes me a minute, Janet. All right, well, so we have talked about some of the struggles before the break and issues with implementing SECURE 2.0, but I also think, like we talked about in our last episode, as an industry, we all realize that the outcomes that can come out of this legislation for participants are pretty positive. There's a lot of opportunities for enhancements here that are meaningful in addressing some meaty issues, candidly. So let's talk about those positive sides, if we will. And maybe I'll start with from your perspective or maybe Vanguard's perspective, what's one of the optional provisions that Vanguard thinks is going to be really popular in demand from plan sponsors and why?

Janet Luxton (15:00):
So I think we're getting a lot of inquiries about what I'll call the headliners. So clients are asking about emergency savings, they're asking about employer contribution as Roth. Those are some hot topics, but to be honest, I don't think they're going to be the most actionable. I think clients are looking at them. There'll be some interest in discussion, but little uptick. I think where we're really going to see a lot of usage or addition is with one of the less popular provisions, and that's the FEMA hardship distribution or FEMA disaster distribution. So this provision eliminates that need for the IRS to continually issue ad hoc guidance every time there's a natural disaster, providing an avenue for participants to get access to those retirement funds if they need them. In the past, a lot of our plan sponsors adopted all of those ad hoc withdrawal types, and I think

it just makes sense to ease administration to do this as kind of a once and done. So in reality, I think we'll see a lot of interest in that particular space.

Scott Matheson (16:10):
That's interesting. Yeah, I wouldn't even have thought of that. So that is interesting.

Janet Luxton (16:16):
Yeah, it's not one of the, quote, "sexy" topics, but there's some practicality there.

Scott Matheson (16:21):
Oh yeah, because I'm sure we know from our own plan sponsor experience when something like that happens and they want to provide relief, they want to act quickly, and you got to wait for guidance and adopt particular guidance. Yeah, that's awesome. Well, all right, how about from your perspective, what are you most excited about? Is there a provision or two that you're pretty pumped about?

Janet Luxton (16:43):
I am excited about the auto portability provisions in SECURE 2.0. So Vanguard's one of the leaders in the creation of the Portability Services Network, the consortium working with Retirement Clearinghouse to help reunite participants with those previously transferred small account balances that are sitting in IRAs all over the place. So we think that'll really help participants get reunited with their monies and consolidate those balances so they don't become subject to those continual small account cash-outs.

Scott Matheson (17:15):
Yeah, that is a good one.

Jennifer Doss (17:19):
Okay. Well, Janet, I guess like I said, we wanted to really take this opportunity with you and really appreciate your time, to just get the record keeper perspective. We all know that there's a lot of work going on behind the scenes. There's a lot of conversations that are going to happen. So I guess I'll just maybe leave it at this before we ask you maybe a more personal question. I guess if you had one message to deliver, no pressure, basically representing all the record keepers, two plan sponsors specifically related to SECURE 2.0 rollout, what would that be?

Janet Luxton (17:59):
It would really be engage your payroll provider or payroll department early and often. There are a lot of provisions here required or optional that are going to involve payroll resources. We know those resources are scarce and hard to come by and often costly. So be prepared that you're going to need to expense some resources to do some of these things. Record keepers will do as much as we can for you, but there's a significant payroll component associated with these provisions as well.

Jennifer Doss (18:32):

Yeah, that's fair. And to your point, there's a number of them that interact with the payroll provider, so they're doing the same thing on their end, trying to prioritize what do they work on and all of that. And I think we talked about the employer contributions as Roth is a good example. It's like, well yeah, it was effective 1/1 but you can't really do it 1/1.

Janet Luxton (18:53):
Right. You absolutely can't do it 1/1. We don't have any of the answers we need to do it.

Jennifer Doss (18:58):
Right, right.

Janet Luxton (18:59):
But there'll most likely be some payroll implications there once we get to the point where we can.

Jennifer Doss (19:04):
Yeah, absolutely. Okay, well great. All right. I have the hardest question. What does retirement look like to you, Janet Luxton?

Janet Luxton (19:15):
So I'm actually in the process of taking over our family cottage in Maine. It's truly my happy place. So this is where I plan to spend half of my time in retirement. So it's Maine and it's cold and it's not all-season, but the idea of just spending days on the lake, relaxing in a hammock, kayaking, watching the loons swim by, it makes me smile. So that's kind of my first view of retirement, and then I need something to do for the other six months of the year. So being a lawyer, I use my left brain a lot. I'd like to use my right brain a little bit in retirement. Interior design is something that I really enjoy, so I could end up down that path as sort of that retirement job, as you say. So that's kind of my view for retirement.

Jennifer Doss (20:09):
Yeah, we call that the second act, right? It's like what do you want to do in your second act? Do you want to be an interior designer? It's great.

Janet Luxton (20:16):
Something totally different from the lawyer role that I've played my whole life.

Jennifer Doss (20:20):
Yeah, that's great.

Scott Matheson (20:21):
Man, that is so cool. And while we're recording this, Janet is remote from us right now and I can look behind her and tell from her setup that she'll be a great interior designer. So plug for that.

Jennifer Doss (20:36):

Well, thanks.

Scott Matheson (20:38):
All right, well we'll wrap it up for today and just wanted to say a heartfelt thanks. I know that just yesterday, I'm recording this on the 10th, you hosted a pretty massive webinar where I think you were getting bullets from all sides in terms of questions out there coming your way, everybody's grinding on this. And so the fact you made time to do this with us means a lot. I know that our listeners enjoy hearing your perspective and the side of the record keeper perspective and somebody with a depth of knowledge that you have. Means a lot to them, means a lot to us. So thank you for that, Janet.

Janet Luxton (21:12):
Thanks. Happy to chat today.

Scott Matheson (21:14):
Great stuff here. I think everybody comes away with some better perspective as we head into what is sure to be a very busy year for the retirement industry. Jennifer's already told me that she can't do anything else for the team this year because she's going to be putting SECURE 2.0. I got excuses too. But anyway, I do want to remind our listeners to like and subscribe wherever they get their favorite podcasts or listen to them, leave us feedback because we'd love that as well. If you got topic ideas, reach out to us. But short of that, thanks as always for listening and we will talk to you next time on Revamping Retirement.