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

Kara Chase:

Hello everyone and welcome to today's webinar, Fiduciary Training Part Four: Staying Ahead of Retirement Plan Audits. I would now like to introduce Dawn McPherson, Director of Retirement Plan Consulting at CAPTRUST. Dawn?

Dawn McPherson:

Good afternoon, everyone. I am really pleased that you've chosen to join us today for our fourth installment of our fiduciary training series. This is putting a bow on our 2023 year, all four quarters here after today. So this series is part of our ongoing commitment to provide you, our clients, with service beyond expectation. And as a reminder, this ongoing training is really designed to help you stay informed on industry trends, litigation, regulations, and the overall shifting requirements of a plan sponsor of someone in your role. Today we're going to dive into retirement plan audits as well as DOL and IRS audits, and our goal is to provide you with additional information and useful tips that you can use when navigating these audits and perhaps set some expectations to make them feel a little less daunting. I'm joined by three industry experts today, Jodi Green, Scott Miller, and my colleague, Susan Shoemaker.

Jodi is an employee benefits attorney with THP in Atlanta. I noticed when prepping for this that we're each coming from different parts of the country, which is good. Jodi advises plan sponsors and service providers who seek her counsel because of her unique experience and expertise around various compliance issues with benefit plans. Prior to moving into the private sector, Jodi spent more than a decade with the US Department of Labor in the Employee Benefits Security Administration. So Jodi liked to remind us when we were prepping for these sessions that she no longer works for the Department of Labor. So all questions are on the table. Nothing's off limits, right, Jodi?

Jodi Green:

Absolutely.

Dawn:

Jodi enjoys fitness, oil painting, travel and scuba diving. Scott is joining us from Texas. He's a certified public accountant. He specializes solely in retirement plan audits and even started a firm solely focused on retirement plan audits. He started his career at Ernst & Young, and he was focused on auditing large insurance companies, banks and asset management companies. And he's completed more than 350 retirement plan audits, including some for large companies that had 20,000 or more employees. Scott enjoys playing the guitar. He's getting married in March of next year, and funny now, might not have been funny at the time, he was once chased by an elephant in South Africa when he was 16 years old, so there could be some follow-up questions on that for you, Scott?

Scott Miller:

Okay.

Dawn:

My colleague, Susan, is an advisor here at CAPTRUST and she's focused on institutional retirement plans. Susan leverages her years of experience to assist organizations of all sizes in meeting their fiduciary

responsibilities related to providing an effective retirement benefit offering. She understands that every organization is unique and thus every retirement plan should be designed with those goals in mind. Susan loves to golf, bike, read, travel, and newly loves to moderate panels about retirement plan audits. Susan will moderate today's discussion and based on her years of work supporting her clients on various aspects of their fiduciary duties, including navigating plan audits and DOL audits, Susan has taken all of this experience and has teed up some really great questions for Jodi and Scott.

I'm going to say we had a lot of fun prepping for this. I learned a lot from these conversations that we had, and so I know you'll be eager to hear their comments. Without further delay, Susan, I'll turn it over to you.

Susan Shoemaker:

Thank you, Dawn. It was a lot of fun working with Scott and Jodi and learning so much about what both of them do. I think the four of us would actually have a great time at a party talking about ERISA and fiduciary responsibilities. So Jodi, let's start with you. So I have had a few clients have departmental labor audits over the last year or two, probably three or four, it seems like more than I have had in my career. And each audit seemed to focus on something different. So one of the audits, the auditor really dug into lost participants and non-cashed checks. On another audit, the Department of Labor auditor, looked at revenue sharing and how that revenue sharing was used. Luckily, both the audits came out clean, but are Department of Labor audits ever random? And if they're not, what are they looking at when they decide to audit a plan? What are the most common things that's an audit trigger?

Jodi:

So I'm not surprised that you have these very niche specific audits for your clients. Generally speaking, most audits are not random, and these audits or investigations, as they might be called, are usually very precisely selected, primarily from the Form 5500. So my guess is that many of these were large plan clients. When you talk about missing participants or those participants who might be vested, no longer working for the company but they still have balances and maybe their balance is below that $5,000 threshold so that they could have received a mandatory contribution, or when you're talking about revenue sharing or even fees, all of these are indicated in the Form 5500 and the audit. And so the investigators at DOL have a targeting committee that is trained, and they will actually use data from the Form 5500, from the audit, and they have systems where they can determine which plans most likely have issues.

And the reason that they target these plans versus randomly is just thinking about it. You have probably 400, maybe less than 500 investigators, I think the number is actually much lower, and hundreds of thousands of retirement plans and even more health plans out there that they have to focus their time. So they have to be very careful where to use their resources. And what I'm excited about today, and we've been talking about before, is well, there's ways to help plan sponsors avoid being targeted and it's working with the auditor and it's recognizing what issues can be corrected or explained in greater detail in the audit notes.

Susan:

That's really good information. Scott, have you seen any common audit triggers?

Scott:

Yeah, so my observations are really just all speculative. Whenever I've seen clients that I'm performing their audits for and they go through the DOL or IRS audit, I've made the observation that it's typically

clients that have delinquent contributions and just when I talk to other professionals in the industry, they notice the same sort of thing. And so we believe that it's a very compliance question, Schedule H, part four or A question if you're familiar with that. And we believe that it's an indication of a internal control deficiency. And so my guess is it probably sends up flares and alarms like, "Well, if this is wrong, then what else could be wrong in the plan?" So that's the only speculation comment I have about that.

Susan:

Okay, thank you. The other thing, I was able to obtain a list of the questions that my clients received from the Department of Labor. And in the past there would always be a few questions on cybersecurity. With these last few audits, there are probably eight to 12 different questions and they go into a lot of detail. So I'm sure it is very challenging for some plan sponsors to even come up with all the information or provide all the information the Department of Labor is requiring. So Jodi, is there anything that you're talking to your clients about as it relates to cybersecurity and the providers that have access to the participant data?

Jodi:

Yeah, cybersecurity has definitely become a hot topic. Before the DOL started looking into cybersecurity for all of their plans, they would receive cases of fraudulent emails. And so to give you an example, there might be a fraudulent email to a third party administrator or to a plan administrator, and it would say something along the lines of, "Hey, plan administrator, this is Jodi Green and I would like to take out a loan and I need this, or I would need a hardship distribution, or I know I'm not retired yet, but I'm fine. I'll pay the fees, I'll pay the taxes. I need a lump sum distribution now." And the protocols for making sure that it was actually Jodi calling or was actually Jodi emailing because there's the wire information and Jodi is actually a participant in the account, she had the information provided where the proper... Maybe there was a password in there, maybe there was some other information in there.

And so the money was distributed to the bank account that was provided in the email by this false Jodi person. And so who's responsible? Is it the third party administrator that went through some checks with the company, with the plan sponsor, the employer, but maybe their HR person was rushed and they saw that Jodi was employed and they didn't look further into it. And so what would happen is a few months later, Jodi's calling up and saying, "Where's my money?" And there was more than one instance of this and soon after, the cybersecurity policies were developed.

So the DOL has provided on their website about three different documents, and it gives all the information that they're asking in their audits. They want third party providers to have cybersecurity features, they want plan sponsors. And it's more important for your large plans because there's more money at stake to have some cybersecurity protocol, possibly to have cybersecurity insurance for plan sponsors as well, especially when you're getting into the large plans and certainly for third party service providers and record keepers. It is no longer a here and there problem. It's definitely occurring more often than not.

Susan:

Yeah, it's scary.

Jodi:

It is, it is.

Susan:

Absolutely. Scott, I'm going to get to you in those audits, right? So over the last year or two, we've had a lot of plan sponsors comment on how they feel like the audit has changed. They feel like it goes into more depth, but they also have commented that the auditors are holding them to higher standards and taking more responsibilities for what they're doing related to the audit. It's my understanding that their responsibilities haven't really changed, it's just that the auditors are now addressing those responsibilities. Can you comment on that or provide some insight as to why all of this has changed?

Scott:

Yes, absolutely.

Susan:

And Kira, if you want to go to the next page, thanks.

Scott:

Yes, absolutely. So great question. Happy to share a little bit of my world. So I feel like to give a little bit of a history lesson, this is all stemming out of that May 2015 audit quality study. And I'm sure many of you remember if you saw that study, it was really surprising that there was a really high number of audits that were considered deficient, meaning auditors weren't doing what they were supposed to be doing, not all the procedures were being done properly. And so what happened recently, and this really started in the 2021 plan year, was responsibilities were codified, that essentially auditors should be doing just based off of basic auditing standards. But now there are specific wording or worded standards that all CPAs have to follow. And if they don't follow them, then they're not in compliance. And auditors get audited as well, so we get peer reviewed and...

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Scott:

And auditors get audited as well. So we get peer reviewed and they're going to be checking that we are following all these rules now. So this really started back in the 2021 plan year, which I'm sure many of our listeners may have noticed, "Hey, our auditors are asking a lot more questions. There's a lot more communication happening about responsibilities." And that goes both ways. Auditors are supposed to clearly communicate, "This is what we're doing, this is what our audit entails."

On the plan sponsor side, the auditor is going to communicate to them, "You have to be aware of who your qualified institution is. You're taking ownership of these financial statements." And so, there's a lot more specific clear communication on who's doing what. Along with that, the rest of those changes there is changes in specific review procedures that CPAs now have to do in reviewing the form 5500. And we have to compare that to the audited financial statements and just kind of make sure everything is looking accurate and relate to each other. The other thing, I don't know why they did it, but they changed the name of the limited scope audit that we all know so well to ERISA 103(a)(3)(C). Which is a mouthful, but that is the new name of our limited scope audits.

Back in this most recent auditing year that just finished on October 16th, there was another auditing standard auditors, us CPAs have to do more work on our end to make sure that we are evaluating how sufficient and persuasive the evidence we are receiving. And so, this sort of leads into sort of the new change that we can all expect going into next year, and ties into this cybersecurity focus that we've been seeing in the industry lately. We're moving from a paper world into digital evidence everywhere. And so, it's really important to understand, how is this data being fed into the systems? Who has access to

change, view, edit? And so, that is the new required CPA standards going into effect next year that we can all expect the CPAs are going to be asking about.

Susan:

It sounds like plan sponsors should make sure that they're using auditors that are used to doing benefit plan auditors because they're a lot more complicated than they used to be.

Scott:

Yes.

Susan:

Yeah.

Jodi:

Thanks.

Susan:

So, you talked about the changes in the auditing standards. And the clients feel like there's still more disclaimers, yet the audit seems to go into a lot more depth. They have a lot more work to do, a lot more things to provide to the auditors. Is there anything that they can be doing throughout the year to get ready for that audit? I mean, I have a lot of clients that seem like, "I know why you're getting married in March and not October." But that week before October 15th, all of a sudden, "I've got to get this 5500 in." So, how can you help to make this a little easier so that they can get some things done in advance?

Scott:

Yes, and you are completely right that I do plan my life a little bit around the filing deadlines. But yeah, so for the audit, definitely being... don't forget about your 401K plan. Be proactive in your investment committees with your advisors, with your record keepers. Have that open communication. When you do see notification email or a reminder email coming through, read it carefully and just sort of be proactive.

I know if you do have an audited plan or already are going through an audit, hopefully your auditor is giving you open communication and feedback saying, "Hey, we noticed this. This is something you can improve on." And this is where hiring the right service provider and the right auditor, your auditor quality will make a big difference. Some auditor that is specialized in understanding how a retirement plan works. Who are all the key players, and making sure a plan is operating smoothly and effectively, they're going to give you good feedback on, "Hey, this is a way you can improve." Or they'll have tools or checklists.

I'm happy to share some of our workbooks, obviously without our audit documentation, but a plan provision summary just to kind of give them a quick cheat sheet of, what are the key plan provisions in their plan? Auditors love it when they are able to give a clean opinion with no errors. We love to see our clients succeed. And for me, it kind of breaks my heart when I have to give bad news to a client, if we find some significant errors.

Susan:

Yeah. Thank you. I personally don't think I have a plan sponsor that's had a plan for more than five years. Most of my clients have had plans for much more than five years that probably... they haven't had an operational error or some kind of error. And these errors, even if they're small, I mean they can take a lot of time, cost a lot of money. Maybe the correction is $2,000, but to get it fixed is thousands of dollars. And definitely want to get them fixed before you have a Department of Labor audit.

So if we look at the next slide, Jody, what have you seen with your clients, as it relates to some of the errors, the most common errors? And how do you help your clients with these? I mean, because they're a big deal.

Jodi:

They are. And they can be scary. And you made a good point that having operating errors, it is, it's the course of business. You're going to have them. The key is to find them early, have an auditor and an advisor. When you've got good people around you that know what to look for, they bring it to your attention, they catch the issues. And then you say, "Okay, this is an issue. Now we have to get legal involved." And so, just catching them early before the numbers stack up is the best way to do it.

But everyone's going to have late contributions every couple of years. It's part of the course of business and related to that, and how to correct and what we're seeing going on. When there is a problem, one can actually try to be strategic with it. I see from Dawn that a good question came in, which is, are there trends in the size of an employee count that makes a plan more likely to be audited? So when there's an issue with needing a correction, one of the things that I talk about with the client is, we have to talk about the fact that you're a very large plan because it's true. The larger the plan is, the more likely that there's going to be a DOL investigation. Because as we talked about before, DOL has limited number of investigators, they have limited resources, they have to be smart how to do it. So you have a big plan, it's affecting more participants, it's affecting more money.

So, let's say there's late contributions. Am I going to advise this company to just voluntarily correct, informally make that lost in earnings calculation? Or am I going to advise them to go through the formal correction with the DOL? Or if there's another issue, the formal correction with the IRS? Depending on whether they can do this... I say formal and informal being that informal, we're not putting it in front of these agency's eyes. Because when you have a large plan or you have certain issues, we have to be strategic in deciding whether it's worth bringing more attention to this plan. And we'll go through that analysis.

But to answer your question, Susan, what I see where there are issues is companies that are going through a corporate structural change, there's been a merger, there's been an acquisition, there's been some sort of turnover. There's a head of HR or the person that was handling the employee contributions and the enrollment hasn't been happy for five months, quits, and they look back and there were all these issues. I would say that if you're in a company plan sponsors out there or anyone in HR and you anticipate that you might be going through some corporate changes, this is that time to really look at the 401K, because often the 401K can be neglected. And that's where we're seeing late enrollments, missed eligibilities, earnings, lost earnings that need to be deposited because of late contributions. And then there can be other issues tied to it such as late form 5500s, which can have high penalties, and just general operational or even some plan document failures.

Susan:

And there's another question here too, Jody. What's considered a large plan?

Jodi:

So I know Scott will have a different answer than me from the auditing side, so I'll answer mine first and then let Scott explain this beautifully. So for the how to avoid A DOL investigation and in terms of your risk, when I say a large plan, I'm thinking of a plan that's probably got minimum say, five to 10 million in assets, which isn't that large. Or maybe they have in the minimum low one thousands or so participants. But in terms of risk of being investigated, the larger the plan is, the higher the risk, which means that, guess what. You've got more homework to do, have more investment committee meetings, compliance checks, whatever it may be. And now, Scott, onto you for what is a large plan audit wise.

Scott:

Absolutely. So I'm a rules and regulations and definitions kind of guy. And so, the form 5500 defines a large plan as one that fits a certain participant account threshold, which just generally speaking is about a hundred participants and greater. And so, that even gets more complicated because rules change for the 2023 form 5500 going forward. Before, it was just the count of how many eligible employees were able to participate in the plan, regardless of whether they were participating or not. But going forward, it's based off of account balances. But we base it off of people, a hundred is that count.

But I do kind of want to backtrack a little bit on just when it comes to, I guess correcting these errors that happen, I like to always remember the essence of why ERISA came about. It was all about protecting participants' benefits and to protect for their future. So when we do find these errors and want to create them or correct them, really the DOL and the IRS just wants to see the participants being made whole.

And I can kind of share, I go to these AICPA conferences every May, and they're kind of held throughout the country, and they move. This last year was in Denver. And I love always listening in to the DOL and the IRS talking to the CPA community. And the general feeling that they give when they're talking to us is, they just want plan sponsors and their service providers to do what's right for the employees. Let's remember what ERISA is about. So, it's just great to keep that focus when it comes to finding errors and correcting them.

Susan:

I think one thing that, when I'm even reading some of these top 10 failures, is really for plan sponsors to understand their plan documents and to... I'm looking at definition of compensation, which is a huge thing, or eligibility. So that's just really important to understand that document, because that does rule.

So the other thing that we do as we really stay on top of what's happening as it relates to litigation, because over the years we frankly, have learned a lot from the litigation. And over the last month, maybe not even that long, I think it's maybe been a month, there've been a few cases related to the use of forfeitures. And when I look at a planned document, it looks pretty clear cut, and I'm like, "Why would these cases even pop up?" So, I'm going to ask both Jody and Scott to provide their thoughts on forfeitures. I mean, I have had clients, new clients that I get a new client and they have a half a million dollars in forfeitures. And I'm...

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Susan:

That I get a new client and they have a half a million dollars in forfeitures and I'm like, "Oh, what are these here for?" Right? You need to use those. And so Jody, I first I'll address to you what do you think about this case? Or is it too early to tell? And then do you think, it seems like the Department of Labor has been a little bit more focused on forfeitures than they have been in the past and even have

published a few things related to maybe what their guidance is going to be related to using those forfeitures as far as timing, not for what?

Jodi:

Yeah, so forfeitures, it's this account that is sitting there with money. And so we know that plans are supposed to get rid of the money in the forfeiture account every year, but how do they get rid of it and get rid of it is lightly put. Where can they utilize that money to reduce their obligations or to reduce the plan's obligations? So we are seeing forfeiture cases where plaintiffs, which are usually the participants saying there was a lot of money in that forfeiture account. There were people whose employer contributions didn't invest. And so the money was in the forfeiture account. It was intended for participants and that money should be used for the participants' benefits. We want you to use that money to pay for, I'm picking on Scott here, the auditing expenses, we wanted to use that money on the expenses that typically come out of us, the participants' accounts in the form of some sort of basis points or whatever other plan expenses that are used.

And so you have then the defense or the company saying, "Uh-huh, ERISA law says that we can use the forfeitures to also pay for employer contributions that the company would be providing to the plan." And so there's this battle of how can it be used? And ultimately, DOL has in the past allowed for forfeitures to be used for either purpose. And so that means that we're looking at the plan document. What does this governing document, the Bible of ERISA plans say forfeitures should be used? And the majority of them out there are allowing plans to use forfeiture money for employer contributions. That's typically what's being seen, but it's something that plan sponsors out there, participants out there, that's the language that they're looking for in the plan document. And on the legal side, when I'm advising clients, not only are we looking for that language, but we might add some additional language to it and we might add some additional protective language and making sure also that that language is in the summary plan description very clearly.

Susan:

That's a great idea. I like that. Scott, when you're doing an audit, do you ever pay attention to forfeitures or... Okay.

Scott:

Yes. So absolutely. And I do know that court case you're talking about too, so I may touch on that. But yeah, so I believe all auditors should be looking at the forfeiture account and not only the forfeiture account, we call them unallocated accounts, monies that are sitting in suspense accounts or ERISA budget accounts, forfeiture accounts, all those accounts that are held in the plan that don't really have a participant name allocated to that. And those amounts should be technically financial statement disclosures that, so it gives the DOL and the IRS visibility on money that's being carried forward and so a DOL investigator is going to be very interested if they see a forfeiture balance being carried forward from year to year and not being used. From the auditor point of view, I definitely pay attention to that and I use it as a way to provide as a value add to get to the client because sometimes they're just simply unaware that they have a balance sitting in their forfeiture account and they don't know that they can use that to offset some employer matching contributions or profit share or even pay expenses.

And so this is something that if I see something like that and it's not being used actively, I give the client a recommendation letter at the end, "Hey, as a heads-up, here's a formal recommendation from us that you have money sitting here that that is at your disposal and you should probably use it." And then I kind of give them a little bit of a reminder on some technical language. And I've looked all over the

internet for some sort of additional guidance coming out from both the DOL or the IRS. And to be honest, the last piece of guidance I could see was in this 2010 spring newsletter from the IRS where it just gave a reminder like, "Hey, forfeitures are supposed to be used within the year that they were sourced from." And you could use it in any way that your plan document states, which Jody kind of mentioned earlier.

It could be only employer contributions, it could be expenses, it could be allocating them as an additional interest that goes into all the participant accounts. But it really all comes down to what did the plan sponsors select in their plan document. That case that you mentioned, I found it pretty interesting because I do think it is going to bring this really interesting argument on what should take priority, should you use the forfeitures for expenses because that provides a benefit to the participants, or should it be employer contributions? Because that also gives a benefit to the participants. So I think it will really kind of come down to this specific plan and if fees are reasonable in that and how is that being allocated to participant accounts.

Susan:

Yeah, so I think that might even be an example where you say that it's in the benefit audit you put in there what your forfeitures were one year and what they are the next year. So if the Department of Labor saw that you had these huge forfeiture amounts, that might be another DOL audit trigger, right?

Scott:

Yeah.

Susan:

So one of the things, and now I'm going to talk about just when we meet, I remember when I started in this business, it was document, document, document and then documents. So we work with our clients to make sure they have minutes, we make sure they have some due diligence documents, basically documents to support every decision that they make and why they made that decision. The other thing that we started doing, because we've had... Most auditors are asking if the clients have reviewed, and if you want to go to the next slide, Kira, their SOC one and SOC two reports. And I don't know how many people have ever read these reports, but you wouldn't need a sleeping pill if you read these two reports [inaudible 00:35:38]. So Scott, would you mind providing high level what... We make sure that their clients get a copy of these from their providers every year, high level what they are and what clients should be looking for, what you're expecting them to look for when you ask them, "Did you review these?" If you could just do that.

Scott:

I would love to, and I hope I don't put anybody to sleep with this and I'll try to not get too technical in it. But just to go high level, a SOC one report, this is pretty much an audit that a CPA does on professional organizations and service providers, and they give an opinion on how effective their control environment is on their side. We as consumers and plan sponsors and employers, we hire companies based off of our impression and the value that we believe they provide. But the SOC one report will kind of give you an inside view of how are they operating things on internally. And so sometimes getting a SOC report isn't going to be super easy. I've seen a lot of plan sponsors through the plan sponsor portal. You can find it in there and download it, but these reports will tell you how are they designing controls?

How are they safeguarding the assets? How are they double checking that when they're processing the distribution that is being paid out to the person? And so these SOC one reports, I love hearing that

you're starting to bring in these SOC reports as and encouraging your clients to review them because maybe if you see the control that was supposed to be verifying that vesting was being calculated correctly on their end and you see that it's saying, "You know what? This specific control is not operating effectively," and they found errors, it may make you rethink what you're doing on your end and how can you double check that, payments to employees are being calculated properly, maybe adding an extra step there to catch a mistake before it happens. And on this slide, to make things more complicated, there's specific definitions for this.

So there's a SOC one type one and a SOC one type two report. The one that CPAs are most interested in is that SOC one type two report, because if an employer or if a record keeper's controls are operating effectively, we can essentially reduce the risk and reduce sample sizes, which means lower fees, a smoother audit. And we love that.

Susan:

Yeah, great. Thank you. No, they are important and it's important to look at them, particularly to look at those exceptions. So we have a lot of clients that [inaudible 00:38:50] large plan. Clients, so they don't require a benefit audit, a formal benefit plan audit. So Jody, I mean, I don't know what you do with your clients, but for us, the benefit plan auditor, like Scott often finds it before it becomes a big problem. How do you suggest that these plans that are smaller plans maybe work with their advisor or their ERISA account to make sure that they would otherwise have a benefit audit without any management letter comments or minimize errors? Right?

Jodi:

Yeah, just a way to sort of internally review the plan and preventatively make sure that it's running well and not worry about issues down the road. One of the best tools I think is their advisor. You're sitting down in the investment committee meeting and just asking questions. And one of the best times to do that is after or during the Form 5500 process, it is compiling documents. It's going to be up to the plan sponsor and those who are compiling documents maybe to start off with the questions and just discuss any issues, concerns that they have. But on top of that, whoever is reviewing the form 5,500 with them, if there's an audit involved from the auditor who can talk them through it, that can be helpful as well. I do have some clients that have me sit in investment committee meetings and we do a similar process, but oftentimes it depends. It's a tough question because it depends on the client and it depends maybe what issues they have, but preventative work can certainly save quite a lot of resources down the road.

Susan:

And these plans are so complicated. I mean, it takes a lot to run a plan to do it well and write. And I know that a lot of our clients have limited resources, so sometimes the 401k plan or any of their benefits might not get as much attention as they would otherwise like to give it. So when we're talking about these benefit audits, one of the things we will hear from our clients is, "I've been doing this link forever and my benefit auditor never caught it and now they tell me it's wrong. And I've been doing this for 10 years." I think, Scott, one of the things that clients think is that you are looking at when they have a benefit audit, they think for X amount of money everything's being looked at, when in reality it would be 10 times the amount to really look at everything. What do you suggest clients do? Should they look at procedures or look at other things? And can you explain why you're not catching everything that they think you should?

PART 3 OF 4 ENDS [00:42:04]

Susan:

You're not catching everything that they think you should catch or might catch.

Scott:

So this one is a tough one, but I'll answer it from just sharing a little bit about the CPA world. So a lot of CPAs create their own methodology, and there's something that we call auditor judgment. So not all CPAs are considered equal, and one auditor may design procedures differently from another auditor on how they decide to test certain things. So I have heard what you're mentioning before where, "Why didn't our auditor catch this? We've been operating the plan the same for five years, and we've had the same auditor for five years." It's not necessarily that the auditor didn't do what they should have been doing, but it does mean maybe there's other procedures that the auditor could have done that would've been able to catch that. So I like to remind clients to read that auditor report carefully. So the report has some specific wording in there that says an audit only provides reasonable assurance, which is a high level of assurance, but not absolute.

And that really comes back to our audits are based off of statistics. So it's really a sample basis. We do risk analysis. It tells us how many samples to take. It doesn't necessarily mean that we're going to catch every error, but we should have designed procedures that should identify systematic problems. So if there is say, a definition of compensation problem that everybody's getting paid the same compensation every pay period, we're going to probably find that in our sample sizes. But if there is some specific one-off very isolated incident that happens, that will occasionally slip through the cracks. But this is where this materiality threshold concept comes into scope. Where if it's a $10 error, would that ruin the financial statements and be considered a misstatement? Probably not. But if it is one of these systematic errors that audit procedures are designed to find, that's when an auditor is going to get Jody involved and be like, "Hey, this looks like this has been going on for 30 years. How big of an error is this?"

And whatever that number is, it could be material or immaterial, and it's going to be hard to figure that out. I do see a question over here where how do you determine what is considered a late deferral? I'll field this one real quick. So I know from our point of view, what we do is, if you remember that DOL rule and regulation, they have that bright line, which is 15 business days from the month end of the paycheck. I'm not going to go into the crazy detail there, but there's also a clause that says, "Or as soon as administratively feasible." So I typically, I have to have that candid discussion with a client where I ask them, "Hey, I saw you were able to remit contributions into the plan within four days or two days over here. What caused for it to be eight days or 10 days over here? Was that considered as soon as administratively feasible?" And I also get an understanding of their audit process.

Maybe they're taking a bunch of payroll companies and it takes them a week to process everything and get everything organized. So it's really a judgment call. And I also allow, have this conversation with the client and say, "After knowing what the rules and regulations are, do you think this would be considered late or not?" But I also let them know, "Hey, if you don't call it late, you do pose the risk that a DOL regulator is going to come in and think differently. And then you're going to have to go back for how many years and pull up all these payroll records just to call these all delinquent and correct them.

Susan:

And Jody, we only have, Link, a few minutes here, but I know that I've seen the DOL look at those late deferrals and Link, if you've always done a day, you better do a day because if it all of a sudden becomes three days, if there's a few three days, they might call you out on that.

Jodi:

Oh, yeah. The rules, they're complicated, but it's what is the quickest that you can deposit those funds into the plan trust? And they look at the records. Well, you've been saying it's three days, but we see a couple times where it's one and two. So sometimes the answer is we're a small company, small corporate office of two people. So some days it's the quickest is three days or four days or five days. It's just going to depend on that company and their process.

Susan:

Document, document, document.

Jodi:

Oh, yeah, exactly.

Scott:

It is [inaudible 00:47:48].

Susan:

And document some more.

Scott:

It'd be [inaudible 00:47:51] to stay in that if it's not documented, it's not done.

Susan:

That's right. Well, thank you both for participating in this webinar. And again, the last month working with you has been really, I always learn something new. Right when I think I know everything, I learn more. So Dawn, do you want to wrap us up?

Dawn:

Yes, I would love to. Thanks again. That was really great. We have a lot of great questions that have come in. I tried to lob a few your way and I appreciate you all tackling those. I do have one more we could answer before I walk into the key takeaways and leave-

Susan:

Okay, great.

Dawn:

Our listeners with some key points to apply today. But let's see, I'm so sorry. What is the downside of leaving terminated participants with a vested balance in the plan?

Scott:

I'll jump in.

Dawn:

I figured that would go to you, Scott, but I didn't want to call you out.

Scott:

So the first one is, if they are on the cusp between that legal definition of a small plan and a large plan, those are account balances that may really be pushing them into that large plan. And then you come into my world a little bit and it requires that audit. So you definitely, if you don't need the audit, I would encourage pushing out those terminated vested accounts so that you just don't have accounts lingering there and you're necessarily having to go through the audit process. Additionally, I believe based off of what I've been seeing in service contracts, account balances also increase plan fees too. So it's a way of getting some accounts out and reducing concurrent plan fees.

Susan:

Particularly those small balances. We like to keep those million dollar balances in the plan. Those terminated participants can stay.

Dawn:

Thank you. So we do have some other questions that we did not get to today, but I will assure you, we will answer each of your questions and follow up. We also received a few questions about the slides and a link to the recording. So just as a reminder, you will get an email within 24 hours providing you with the link to this recorded webinar and our slide deck. So with that, we always like to leave you with a few key items that you can apply to your day-to-day. So I think the most meaningful takeaways for you today would be thoroughly review your plan document, and that will help you to ensure that the current operation of the plan aligns with your plan provisions. With the review, you should be able to identify any potential compliance issues. And if you do identify any compliance issues, be sure that you are proactive in addressing them.

The second thing I would say, and I think... Oh, I actually have mine out of order, but I will say document your meetings. And I think Susan, maybe all of you said this, but document, document, document. If it isn't documented, it didn't happen. Document meetings, procedures, and any decisions made by the committee. And I'll backtrack to number two, stay current with any regulatory and litigation updates. The retirement landscape is constantly changing. We're frequently seeing introduction of new regulations and requirements, so it's really helpful if you stay aware. Your partners can help you to stay aware, but stay aware of these changes by working with your provider and your partners on that.

And then finally, I allude to it, but it's really important, now more than ever, that you partner with the right team of experts. So your advisor, your record keeper, CPA, and attorney to ensure that you're receiving the proper support in meeting your fiduciary duties and allowing them to help offload some of your administrative burden. So the next slide, we've provided you with a few resources, so links that will point you to the employee benefits security administration's page so that you can look at their programs and initiatives and be aware of what they're focused on. Some cybersecurity policies from the Department of Labor or guidance from the Department of Labor, and then the 401(k) Plan Fix-It Guide that I think shows the errors and corrections.

So again, thank you to our panel and thanks to each of you for joining us as you take away these topics and contemplate them. If you do have additional questions or you want to dive in a little deeper on any of the topics, please reach out to your CAPTRUST advisor. We are happy to field those questions and make sure that you get the support you need. We hope that you'll join us again in the first quarter as we continue our fiduciary training series and enjoy the rest of your day. Thanks so much.

Susan:

Thank you.

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