

M&T Bank

**How To Make Your 401(k) Plan Reviews More Effective
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Jessica:

Hello, everyone, and welcome to today's event, How to Make Your 401(k) Plan Reviews More Effective. Before we get started, I'd like to mention that today's webinar is being recorded and you are currently in a listen-only mode.

Now I'd like to acquaint you with some of the ways that you can participate during today's presentation. We will have a question and answer session towards the end of today's session and you may type into that Q&A panel that is available for you on the lower left portion of your screen. By typing your questions into that window and then clicking on submit, your questions will be logged into the queue. We will also have a polling question to get your feedback toward the end of today's presentation. To vote on that poll when it appears, simply click on the circle next to your answer and then click on Submit.

Finally, if you experience any technical difficulties during today's event, first try refreshing your browser to reset your connection. You can also enter your technical issue into that same Q&A panel on the lower left, and we'll be happy to assist you. At this time, let's begin today's event, How to Make Your 401(k) Plan Reviews More Effective. I would like to introduce your moderator for today, and that is Dan Colluccio, Vice President, retirement services, sales manager, Wilmington Trust. Dan, the floor is yours.

Dan Colluccio:

Thank you so much, Jessica, and thanks everybody so much for investing the time today. Super excited about our dialogue. It's great to be here with some retirement plan experts to really cover an important topic, How to Make Your 401(k) Plan Reviews More Effective. And I'm really, really excited about today's conversation because if we think about it, whether you're a business owner, head of human resources, or whether you're running finances for your business, one of the most challenging things out there right now, it's the labor market, right? Sourcing, retaining, and attracting top talent, it's just so difficult right now.

And part of solving that equation is your benefits package. So I want you to think, is the 401(k) that you're offering your staff helping or hurting you in this fight? Your 401(k) plan reviews are so important because you want to understand the competitive landscape. You'll also want to understand what are all these levers that you could potentially pull to not only make your plan more competitive, but also make sure that it's the best 401(k) for your staff.

Now, I think we all know that as individuals who are responsible for overseeing your 401(k) plan, we all know that there's a fiduciary obligation, right? And it's no surprise that litigation just keeps continuing to tick up, up, up, up. And so having a process around your 401(k) plan reviews, it's just

so important, whether you're a committee of two, whether you've got a big committee charter and a big process around things, having an approach to your 401(k) plan reviews is really just paramount to insulate you from risk, but also to make sure that you are offering an extremely competitive that benefit, especially during this labor market.

So really excited about this dialogue because we're going to cover a few things today. First, we're going to hear from Diane Gallagher. Diane Gallagher leads the employee experience over at American Century and she's going to tell us a story about how American Century was able to navigate a class action lawsuit against their 401(k). So I think everyone's going to get some great nuggets on how a committee, basically a peer of yours as a plan sponsor, navigated a very difficult situation.

Then we're going to switch over to a great panelists discussion with some retirement plan experts from Wilmington Trust and Diane is going to be kind enough to join us in that discussion as well. And we're going to tackle the important themes that you should be covering during your annual 401(k) plan reviews. So really, really delighted, again, to have everybody here today. I want to introduce Diane Gallagher. Diane is with American Century Investments. She's the head of employee experience. And what's very important is she's also the committee chair for their retirement committee. So Diane, thank you so much for joining us and please do tell us your story.

Diane Gallagher:

Thanks so much Dan and everyone for having me today. I'm going to go back in time a little bit and share with you the story about our experience. So a couple of things that'll cover. One, I want to talk a little bit about the core claim against our committee and candidly against me personally, as a named defendant. I'll also speak through the timeline of a case just to give you an overview of how it started and what that experience was like, and then ultimately just court the decision. So we did go to court. So I'll give you the punchline ahead of time. We went to court and we were successful, as Dan said, in defending ourselves.

So the core claim against our committee, against our plan was breaches of fiduciary duty under ERISA. American Century Investments is a pure asset manager. Our plan has now over a billion dollars in assets, it's our big plan. And the core allegation against the committee was really around self dealing. And a very prominent ERISA attorney shared with me last year, we were speaking at a virtual conference like this and we were in a virtual green room before we went on to talk about the case and he was not involved in our case, but he shared with me.

He said "Diane, you know, that you are accused of the worst possible offense under ERISA." I hadn't thought about it to that degree. But he was absolutely right. You know, what he said was so many of these cases really came about around the assertion that the committee's been a sleep at the wheel. You know, they haven't benchmarked fees. They haven't really been as diligent in looking at their investment line up. They're supposed to meet every quarter. They meet once a year. They just haven't really been attentive and haven't been paying enough attention.

He said, in your case, you were accused of making money for your employer on the backs of your colleagues and hadn't thought about it in that-- in that frame. But he was right, we were-- we were accused of something of that series of a nature. So two things. One, it's categorically not true and two, we were able to prove that. So let me kind of step through the timeline of how this came about. And it's a little bit the way back machine because this has now been a couple of years, but it's still a really fresh memory. And for me frankly, it's way easier to tell the story in 2021 than it was in 2018, for sure.

Back in 2015, so six years ago, one night I'm scrolling through my Facebook feed, which my kids are horrified that I'm still on Facebook. But I was scrolling through my Facebook feed and there was a post that said, you work at American Century and you may have been harmed in your

retirement plan, click here. I didn't click obviously. I took a screenshot. By this point I am on the committee, I'm not the chair, but I joined the committee a year before. I went running into my dear friend who's our associate general counsel.

The next morning, Jenny, she was shaking hands, to show her my screenshot and she said, "Yeah, we know everyone got that." And basically they were posts, sponsored posts on both Facebook and on LinkedIn to that effect. So we knew it was coming. The case ultimately was filed-- was filed. Two former employees, ultimately clicked and agreed to be the named defendants, and the case was filed on June 30th, 2016. So a little more than five years ago, and it covered any time on or after June 30th of 2010. So this goes back now six years of the time that the case was filed and named defendants, I've included all current and former committee members over that period of time. At that point, we knew what's coming, so we were already getting pulled for documents, but at that point, flags went on all of our emails. Any documents were taken from our desks. I sit here any office here. I sit in a renovated floor that's very open. I don't have any paper at my desk. I get a ready been paperless, so I didn't have a lot of any, you know paper to take, but anyone who've done that committee any length of time, old PowerPoints, handwritten notes, everything was collected as part of that discovery for the case.

There was a court-ordered mediation in November of 2016. I'm told that meeting was pretty quick, that our general counsel basically said, I'm going to court, I have good facts, I'm not going to settle this case. And we can talk about this, I know through the time, this is a very internal decision organization needs to make on making the decision to settle versus go forward. I've personally felt very supportive that we were willing to go to court, and that discovery and preparation continued for almost the next full two years. We went to court in September of 2018. We were in federal court, the Western District of Missouri, here in downtown Kansas City, where I sit, we were in front of federal judge. It was a bench trial, not a jury trial, but the case went on for three weeks.

By this point, I am chair of the committee, and one of the questions I got asked on the stand was when I testified was how did you become committee chair. And my response, which was absolutely accurate, I was under oath, was I looked up at the wrong time, which is exactly what happened. Our committee chair had retired. It was time to name a new committee member we were in a committee meeting and we need to renew chair, and I looked up and everyone else in the committee was looking at me and pointing, but I did volunteer absolutely. I said I'll be happy to be committee chair.

But as Committee Chair, I served as the corporate defendant, corporate representative at the defense table. So through the three weeks of the trial, I sat just like on "Law & Order." I sat at the, the table surrounded by our attorneys for the full three weeks, and then I personally testified the last week, last week in the case. But I spent most of that time passing post it notes back and forth with our lawyers through the, through the course of the case, and all of the witnesses on both the plaintiff side in on our side and the defense, we went through an exhaustive detail about how retirement plans work, and this is a federal judge, right?

He knows the law, but doesn't know things about required notices and when a committee makes a decision, how things need to happen, what are all the levers that get pulled, you know require notices to participants, updating the website, deciding on a mapping strategy, or re-enrollment, all that stuff that we have to do that is really important needs to happen in, in sequence. So a lot of time about that. A lot of time talking about the periodic table and how different asset classes perform differently in different markets.

And at the core, a lot of time talking about the criteria that that we set up, the current committee and all the way back to June 30th of 2010, and here we are in September of 2018, over that eight year period of the criteria that were lined out in making a decision, and the facts that aligned with

that criteria at that point in time. So there was a lot of detail, a lot of time spent on saying “no, wait, no one knew that was not the criteria, and no one knew that in 2011 or 2012.” That was not a knowable fact at that point in time because keep in mind, the decision covers a period of time where we ended up having what would be the longest bull market in history.

Nobody knew that in the second half of 2010. So a lot of discussion about timing. So ultimately, after three weeks of testimony, it was a rather unceremonious cases. We went home. We stood up, the judge walked out, we walked out too, and we just waited. And on January 23rd, 2019, we received the decision from courts. Jenny, my dear friend, our associate general counsel, emailed me that PDF, the decision. And I would never by any stretch of the imagination, pretend to be a lawyer, but I read it. And then I called her and I said, “I think this is good.” She said it couldn't be better. The decision was, according to the plaintiff's counsel who let our outside counsel know, they felt the decision was a appeal proof, and we received a final judgment on February 6th of 2019.

So the core issue is that the plaintiff's failed to prove any breach of fiduciary duty. And there were three core areas that the judge called out in decision. It's a matter of public record. One discussion about the committee members, we spent a lot of time talking about the expertise and the experience of our committee members. We've got two career retirement plan professionals, our head of comp and benefits, a CFA, and a career personal finance expert. So no one from our C-suite sits on that committee. So we were able to talk about this as a group that understands the gravity of the decision of the weight that they have. They take it seriously that we have fiduciary training, that we have our minutes talked about debate, and deliberation and guest speakers, that this was a group that was really engaged in that decision. So really called out the committee members.

Secondly, called out understanding of the employee population. And I sit in HR and how we value that? We have employees who manage billions of dollars and assets, and we have support staff as well. That we have constructed our plan in a way that we can help all of those individuals achieve retirement security. And then finally, I'll called out our investment policy statement, that our criteria were such that we had discretion. We looked at multiple factors when evaluating investments in making decisions, but at the end of the day, we did not have mandates. Like if this happened, we didn't have to make a move. We could use the full kind of forced, the full complement of the information that we had to make decisions.

So at the end I will just say as an employee, I felt very validated and vindicated in that decision. I can tell you as a committee member, and I will just share this. I've spent my entire career up to that point now working with on the participant experience. I used to run that participant communications and education department for a large record keeper. I've spent my entire career working with big employers across the country, and really helping people take full advantage of this benefit. As Dan said, this is one of most important benefits we can bring to our employees. And I've spent all these years focused on that.

But in this particular plan, it is comprised of my colleagues, and my friends in the idea that I was not acting on their behalf, was personally and professionally unconscionable to me, and I couldn't get beyond that. And I testified to that in court when I was on the stand when I was asked how I felt. It feels terrible. It felt like an attack on my own integrity. And I think that's the most important thing that we take away from this. If we can get all bunched up in and all the machinations of running this benefit that is so valuable. But at the end of the day, if you just keep remembering acting in the best interests of your participants is always defensible. I heard it yet a speaker at a conference say that 25 years ago, "Acting in the best interests of your participants is always your North star," it gives you an incredible amount of clarity. So, I'll turn it back to you Dan, sorry I rambled a little bit, but I get wound up about that experience.

Dan Colluccio: No, I think that's great and just for the group here that's dialed in, there's three kind of main takeaways that I took from that, that American Century was able to do to really prove successful. First thing I wrote down was diversification. Diversification of your committee members. Different experiences, some with more experience at what's going on within the company, some with more experience with the retirement plan industry in itself. So I think diversification sounds like that was key. Second thing that I wrote down was education and debate. Being educated on what are the options available and really trying to dive deep into those things, so that's important.

The third thing that I wrote down was investment policy statement. Having flexibility but also following a discipline policy statement, making sure that one's on file and one is updated not only on file from 10 years ago, but obviously updated to be more relevant. I guess I have maybe an elementary question for you. You mentioned self dealing. What did they have against American Century? What was the action or the thought on the from that perspective. How was self dealing even brought up? What exposed you to that risk?

Diane Gallagher: We do have in our investment line up, we have 25 core investment options, most of which are American Century investments. The allegation where they kept coming forward was, how much money are you making on those investments? The reality as we were able to show in time and time again, we don't calculate it. We have the lowest share class available to participants. We feel very strongly about the value of active management. That is, in our investment policy statement, we do have a passive sleep right down the middle of the style box but that is -- that's also subtle discussion about our investment line up but the core was their-- Their outside expert basically presented four different models in calculating the damage -- the alleged damage and the reality is we were able to refute, our attorneys and our outside expert, that the assumptions were false because there's a lot of -- I recall a lot of the DeLorean with a flux capacitor. If we all went back in time, eight or 10 years and selected the one investment, we'd be in a different place. I mean, all the assumptions were not true, but the core issue was that we were selecting investments at the urging of our executive team and the fact that we don't have a member of the executive team on that committee and we were able to show through our meeting minutes in our participant communications, our executive team found out decisions around the investment line up after they were made. They found that when all the other participants found out. So, we were able to really show there was no influence.

Dan Colluccio: That's great. Almost the proprietary nature and then being able to document the process around it and I think for everyone who's dialed in here, proprietary funds are not bad. It may be a very efficient and the right investment vehicle for the staff, but making sure that you are evaluating options that are not just amongst that proprietary nature. We actually do have a question coming from the Q&A here. It's what's the -- during the trial, Diane, what was the biggest surprise during this process?

Diane Gallagher: You know, it was -- what was interesting in learning this is a gain, this is a federal judge, so this is -- he's a big deal, but this is not his area of expertise. He knows a lot and we weren't prepared for that. Like don't -- he could ask questions as well. I think again, my experience in a courtroom was watching "Law & Order," but knowing that the judge could -- could ask questions when I was at the stand, the judge asked me a question. That was a surprise to me, but the level of detail that we went into in talking about not only how retirement plans work, but also about how the markets perform, which was very interesting.

A lot of time that I think a lot of people on the call would think, well, I know all that and yeah, when you're in the industry, when you're in it, you do but we were talking to the judge about how all that level of detail and he asked great questions in the course of the discussion. That did surprise -- we spent a lot of time on the periodic table. He actually had the exhibit, he was saying,

so this one was way up here this year and then down here this year. He was calling that out from the stands.

Dan Colluccio: That's awesome, very, very cool. So thank you so much for that story. I think we all can take away some good nuggets there and diversify your committee, make sure you're getting education around your options within the 401(k) plan and really debating that as a committee and then having an investment policy statement and following it. Those are kind of my three biggest takeaways there.

So we're going to move to the next part of our discussion here and really hear from a broader group of retirement plan experts and Diane, thanks for sticking with us here. So, we're going to talk right now about the top themes and best practices that 401(k) committees can take when conducting an annual plan review. John Speakman heads up Wilmington Trust's 401(k), client experience. John comes with nearly 15 years of experience on the retirement plan side of things, both as a consultant for retirement plans, also in the record keeping space, with firms like Vanguard and then Lauren Mance is joining us from Wilmington Trust. Lauren Mance is our CFA charter holder. Lauren is part of our investment committee, also with 15 years of experience, both at the institutional level and within the retirement plan level.

So delighted to have Lauren, John and Diane have this dialogue here around what we all should be doing when we're conducting our annual plan reviews. To start the dialogue, I want to pose our first question to John.

John, what do you think about running 401(k) plan review conversations with plan sponsors, what do you think are the most important themes that 401(k) committee should be covering?

John Speakman: Absolutely. Thank you for the question, Dan and just first off, just thanks to Diane for such a great story. I think it really hits home. I think it would hit home to our attendees on the call today to really hear from an actual committee member and in this case, we're able to hear from the chair of that committee during a pretty difficult time in the journey as a committee member. So thank you so much, Diane, for sharing that and really thank you for the attendees here on the call. We know you're taking some time out of your schedules today and we really hope that we can bring some value to you that you can take back and really make sure the time is spent well here today.

So to Dan's question around the key items that you want to make sure as a committee that you are touching on at least annually during your plan reviews. There's really five key things that you want to touch on.

The first being, making sure that your plan is being administered correctly based off of the plan document. Potentially just up there with the investments in the plan, you want to make sure that you're operating based off of that plan document and adoption agreement, which essentially governs everything that's happening within your 401(k) plan. So that governs how much fidelity bond coverage you have. The eligibility in your plan, the employer match, the compensation. All those details and plan design that goes into your adoption agreement and plan document are essential to make sure that you're following and certainly this is a partnership between yourself, your advisor, your record keeper, and potentially a TPA if you use one but it ultimately does fall in the committee to ensure that you're following that document as it's stated.

Secondly, as I just mentioned, plan design, you want to make sure that you're reviewing your employer match, your profit sharing, your enrollment and eligibility, at least on an annual basis, right? These are very key plan metrics that we're going to talk a little bit about in a few minutes here but plan design is essential to make sure that you're covering that at least once a year.

Third is the investment monitoring, right? I think all of us are familiar with this. You must make sure that you have a clear process in place to evaluate your investments. Lauren Mance, who Dan introduced earlier, is part of our investment team. She will go a little bit more in depth on the investment side of things when you're doing your plan reviews but certainly the investment monitoring is a key item to keep in mind.

The fourth thing are the fees and services of the plan. We recommend and as well as regulatory guidance that's been passed a long, is that every three or five years, you should do a detailed benchmarking of the fees and services in your plan, but on an annual basis, the committee should be revealing the fees that are associated with the plan to ensure that they are reasonable and that they are—they make sense based off of how it's designed and that's revealing the record keeping fees, any TPA fees, and any advisory fees as well. So on an annual basis, the committee should be aware of the fees that are assessed within the plan.

And then lastly, participant education, right? I think on an annual basis, the committee should take a step back and think about, “are we providing the level of education to our participants that sets them best up for success in their retirement?” You know, something that hit home with me when Diane was just going through her story was as a committee members that we have on this call today, they really are co-workers of yours and potentially friends, and you really want to do the right thing for them right? Aside from what we're being told from a fiduciary perspective, you really feel obligated to set them up for success so that they can actually retire comfortably. So making sure that participant education is a big part of that and a gain, as I stressed, I think all five of these is really in partnership with the service providers that you're leveraging, especially your advisor. Your advisor plays a key role in making sure that things like participant education are delivered and really figuring out who the key players are to involve in those types of conversations to deliver to your employee. So those-- keeping in mind those five key things there to really address at least annually during your plan reviews.

Dan Colluccio: Great. Thanks so much, John. Yes, that's my takeaway is it sounds like I wrote down here making sure the plan is administered right. Looking at the plan design annually, making sure you've got an evaluation of the investments, the fees, and lastly educating the participants. So investments, came up a couple of times and we're advisors, so it would be silly if we didn't talk about them. So I'm going to pass this question over to you, Lauren. On the investment side, can you speak to the important items for the investment review piece of the 401(k) that committee should be considering and talking about?

Lauren Mance: Sure. Thanks, Dan. So as was mentioned by Diane and Dan, I think it was one of your takeaways as well, the first thing is to look at the investment policy statement, make sure it's up to date, and make sure the investments align with that investment policy statement. Another thing is to look at the overall plan options. Plan should have a solid target-date option for those participants who are more passive in managing their portfolios. But then we also want to have enough options across various asset classes for participants who need more flexibility in creating their own asset allocations. Typically, we look to have both active and passive options across domestic equities, international and fixed income.

Another key component of the investment review is looking at the qualified default investment alternative or the QDIA. That should be evaluated and make sure it's the best option for participants. And as was also mentioned, is doing a deep dive into the individual investments and the strategies and the funds within the lineup, making sure that they are appropriate and they're meeting requirements. So to do this, we look at performance, we look at it first, the benchmark, and look at it for peers. We try to look at a full market cycle. So we'll look at 1, 3, and 5 year of returns. We also look at risk metrics, style drift, and an evaluation of the organization and the actual team managing the strategy.

We also want to review and discuss any items, any funds on a watch list. If anything doesn't-- isn't meeting our criterion goes onto the watch list that should be looked at as well during the investment review. And of course, the investment review should also include a look at the cost of the investments, making sure that they're the best as far as cost, and that there's no alternative options that are a lower cost, that are similar in nature.

Dan Colluccio: Great. Thanks, Lauren. So, you know, we're talking about annual plan reviews, you know, some plans meet on a quarterly basis, some plans meet annually. I guess I'd loved the panelists to maybe opine here a little bit around, how often should these reviews take place at a company level?

John Speakman: Dan, I can take that one and let the rest of the panelists chime in here as well but, you know, I think, you know, we recommend and, you know, from a regulatory perspective, committee should be meeting at least annually. That is really, you know, the minimum frequency in terms of meeting to discuss the plan and, you know, focus on those five items that we talked about in addition to any other items that may be pertinent to that plan. But, you know, depending on the committee, the plan sponsor, the company, the size of the company. Those committees may meet more often than annually, right? You know, it's based off of complexity and size of a plan. It may require that committee to come together, you know, whether that's semi-annually, three times a year or even as much as quarterly to review the plan. So I think, you know, the guidelines says at least annually, you should be meeting as a committee but depending on the complexity of the plan and the size of the plan, there may be a need to meet more frequently as a committee.

Dan Colluccio: Great, thanks.

Lauren Mance: Yeah. And as far as making investments, because the market environment is always changing, we do like to at least look high level at the best investments on a quarterly basis. It doesn't have to be a formal meeting that should be at least annually by just taking a broad look at the investments at least quarterly.

Dan Colluccio: Let me throw you on the spot, Diane. How often does American Century meet to discuss their 401(k)?

Diane Gallagher: We meet quarterly. Though our committee meets quarterly, and then we do our third quarter meeting, for example, is always includes an agenda item of a deep dive into our target date collective investment trusts, which is a default for the plan. So regardless of what's going on there third quarter meeting, we will always talk about the default as well, but we do meet quarterly.

Dan Colluccio: That's great. That's great. So we're actually getting a question here from the chat. Maybe we could spend some time on this. It's revolved around plan design. So the question is, what are some new plan design features that committees are considering now? I know, John, you work a lot of committees on the holistic consulting side of things. So any thoughts there on progressive types of bland designs to help answer that question?

John Speakman: Sure, it's a-- it's a great question from the audience and conversations that I think myself and our team continue to have, right? And I think, you know, as we talk again about, you know, your opening Dan of such a, you know, pretty difficult labor market right now, are, you know, are our clients are really looking for ways to distinguish themselves, especially within their own industry, right? And ways to do that can be a bit more progressive in terms of the design of the plan and what they offer to their participants. You know, could be, you know, traditional items such as generous match, profit sharing.

But more kind of recent updates in that are around integration of NHTSA account, and health savings account. So integrating that with a 401(k) plan, had been something that committees and in the industry has been discussing is being implemented within 401(k) plans today. Student loan repayment options being included in a 401(k) plan so employers providing a certain level of match that the 10, you know, allocated towards student loan repayments. So that is gaining steam as well. And then, you know, auto features, I think we, you know, continually discuss all the features, but, you know, this is something that may not be as new as the first two that I just mentioned.

But, you know, real direct ways that can, you know, not only benefit your employees right by, you know, kind of getting rid of the inertia of not taking action to want, you know, to enroll themselves and enrolling them for this benefit. But there's also benefits to the employer and the plan sponsor as well in terms of getting more people on the plan and helping with, you know, annual compliance testing and other things that can bring more contributions in the plan. It can help at that level. So those are just a few items that have been on our radar and discussions that we've had with our clients.

Dan Colluccio: That's a great. Any of the other panelists who want opine on any plan design features that are helping other plans or Diane, your plan now?

Diane Gallagher: Yeah. I could just talk a little bit about kind of our approach to savings rates because, you know, you say nothing makes up for a bad saver when-- in comes-- in terms of retirement savings. So we have taken a pretty aggressive approach to automatic enrollment even. So we default everyone at 5% as an initial contribution rate. Our company match is very generous. It's a 100% on five, so we start everybody at five to get the full benefit of that match. But it is not just for new hires. We also do an annual sweep. So we just got the message today our open enrollment started for our health benefits for 2022 and anyone who's not contributing five will go back to five come January. So every year we kick everybody back up to five and we do have automatic escalation by 1 to 15. So we've kind of deployed everything that we can to help people save as much as they can.

Dan Colluccio: That's great. It's great. So I want to certainly be able to leave some time for questions here. So for those who are dialed in here, I want to move over to the questions, a piece of our dialogue, and if you do use the chat feature, please ask any questions that you might have. I do see one coming in here. What levels of fiduciary coverage are recommended for 401(k) committees? So do any of the panelists want to take that?

John Speakman: Yeah. Dan, I can I can kick things off and then a gain, as we've had in the last few questions, everyone can feel free to-- on the panel, opine, but, you know, a gain, it's a conversation that we have with our clients. You know, even our clients that we are fiduciaries for. I think we continually analyze this question with them. The first thing I always talk about with our clients is that as a plan sponsor, regardless of how much of the fiduciary responsibility you're outsourcing to third parties, you are ultimately still responsible from a fiduciary perspective to hold your employees at the best interest and provide a benefit that is in the best interests of your employees.

So, those of you who are outsourcing that coverage, you're responsible for ensuring that that third party is administering the services. But ultimately, you want to continue to have that lens as a fiduciary, as a plan sponsor, to ensure your insulating your company from that risk.

But I really wanted to focus on two levels of fiduciary coverage from an advisory perspective specifically. And I think we've, you know, on the audience most you have heard of these levels of coverage before. They are 321 co and a 338 discretionary investor advisor. So let's start with a 321 co-fiduciary. So a 321 co-fiduciary will work directly with the committee to assist the committee with the investment decisions that were made. A lot of times this is going to be ongoing analysis of those investments as a co-fiduciary. The 321 co-fiduciary will not take the step of having

discretion over the decisions that are made in the investments. As a 321, that a advisor is consulting the plan sponsor but ultimately any decisions that are made to add investments or change investments falls on our plan sponsor to ultimately sign off on that decision.

The 338 discretionary investment advisor does have final discretion over the decisions that are made in the investment line up. Certainly as a 338, advisors are keeping the committee up to speed on the decisions that are made, are providing a analysis on the criteria that's being used to make the decision. But ultimately as a 338 discretionary advisor, the advisor does have ultimate say over the decisions that are made in the investment line up.

Dan Colluccio:

Got it. So you've got those two levels of coverage, right? You have the 321, not any discretion at the investment manager firm level. They're really providing recommendations to the committee and then the committee ultimately makes the decision. But it is a very good level of coverage to insulate some risks. And then if you want to take a step further, you've got that 338 level of coverage, where really the committee's job is to make sure that you've got that investment policy statement. It's monitored and you're really evaluating, is that 338 investment manager doing their job, right? Hire and fire that 338 manager.

But I think John's point is, you can never eliminate yourself from every fiduciary risk, right? You might look at Facebook one day just like Diane did and see something weird. But you can take steps to reduce some liability. I guess the only thing that comes to my mind, is you make a here there is a way you could also hand-off fiduciary responsibility to an administrator, where there's an administrative level of fiduciary coverage that plans can explore. In the world of 401(k), it's called a 316 fiduciary. And that's where a provider could help in taking fiduciary responsibility around notice delivery, signing 5500, approving loans distribution.

So those are some things progressively that plans have started to consider now. Because I think everybody here, when they were growing up, they didn't think, well, you know what, I'm going to be a plan sponsor to a 401(k). And they probably have day jobs, right? Where their job is in only managing the 401(k) plans. So hiring a advisors, hiring a administrators, to help take on some of that responsibility is certainly a trend that we've seen over the last few years here.

So that's great. So what I'd like to do now, now that we've covered some questions here is, I'd like to now move over to our poll. And our poll is very important because it actually helped us come together with the idea we were going to discuss today. So this past summer when we did our first webinar for our clients and for anybody who's trying to get some good information on the 401(k) world, we came out with a poll of what you wanted to hear next and we heard loud and clear, you wanted information on what should be covered during your plan reviews. And so we want to ask this poll here today, what you would like Wilmington Trust to share with you next? So the first option they are the evolution in the retirement plan space. Clearly today we talked a lot about progressive plan designed themes and, you know, those are progressive because things are always changing.

You may want them to hear about strategies around that plan design. Or you may want to learn a little bit more about your quarterly investment outlook. If there's things that you'd like to hear in addition to this or outside of this, please do let us know. We'd love to hear your feedback. But if you could reply to the survey here, let us know what you'd like to hear next. I think that'll make sure that the content that we deliver to you is definitely most valuable. So please do take some time and respond to that survey.

So what I want to move towards next before we close things out is really an actionable checklist that you could all take a way. Before I go through this checklist, I do want to reiterate what Diane mentioned. because I wrote down three very important things that a any retirement committee

should consider. And it was really some of the items that were helpful in making Diane and American Century's litigation a success. Diversifying your committee, being educated on the different matters in the 401(k) space and really debating them as plan committee members. And then lastly, documenting and following that investment policy statement. Two very good nuggets I took away from Diane's dialogue.

When you think about a checklist or a guide to help you in your annual plan reviews. First, make sure you're reviewing the plan document. Second, make sure you're confirming your service providers and you're getting value out of those providers. Make sure you've got that investment policy statement. You're brushing it off and monitoring it. Make sure the plan is being administered based on the plan document itself, and educate both the committee and make sure that you're educating the employees. At least putting a step to move forward at the committee level and to move forward with helping your employees be better situated to retire comfortably. So that's a checklist that hopefully everybody finds valuable and everybody can take away from this dialogue. Focus on those five things during your next plan review.

And lastly, before we closing out, just a very heartfelt thank you. I want to thank everybody for investing the time here today. I very much want to thank Diane for spending some time and reviewing the experience that you had in your class action. I want to thank Lauren for taking the time and reviewing the investments. And John for taking the time and really having a conversation on what committees should be doing during your plan review. So it's always awesome to come together with a group of retirement plan experts to help out. Thank you as panelists for joining the discussion.

What you see here on your screen, this is our Wilmington Trust team. We're here to support questions that you may have for our existing clients. We really appreciate your partnership. For those who are getting to know Wilmington Trust more and more each day, we're excited about the opportunity to partner with you and really deliver a true retirement plan experience for your plan going forward. So thank you so much for taking the time. Jessica, I'm going to pass over the end of the conversation to you to help us close things out.

Jessica:

Great. Well, thank you so much, Dan, and thanks again to all of our speakers. This does conclude our webinar today. Just want to let everybody know that there will be a survey popping up on your screen momentarily. If you could take a moment to fill that out, we would greatly appreciate your feedback before you disconnect from today's session. Thank you so much and have a great rest of your day.