

# Welcome



## 2024 Employee Benefit Plan Conference

**CALIBRE CPA GROUP, PLLC**  
**November 21, 2024**



# Audit, Accounting, and Tax Updates

GLENN M. EYRICH, CPA | PARTNER  
CALIBRE CPA GROUP, PLLC



# Industry Stats

## **Total Retirement assets are more than \$38.5 trillion (December 31, 2023)**

- ▶ \$13.6 trillion in IRA's (90% are rollovers)
- ▶ \$10.6 trillion in DC plans
- ▶ \$3.2 trillion in private DB plans
- ▶ \$8.7 trillion in state/local/fed plans
- ▶ \$2.4 trillion in annuity reserves



# Industry Stats

## **Estimated Retirement Plan Audits Performed Annually**

- ▶ 88,600 plans are subject to audit
- ▶ \$10.15 trillion in assets subject to audit
- ▶ 3,402 firms participating in audits
- ▶ 167.62m participants
- ▶ 134 firms audit more than 100 plans



# SAS 136 – Implementation Considerations

- ▶ Consideration of relevant provisions
- ▶ Performance procedures for ERISA Section 103(a)(3)(C) audits
- ▶ Substantially complete Form 5500
- ▶ Management Representation letter
- ▶ Auditor's reports
- ▶ Auditor's communication, including reportable findings



# SAS 136 – Implementation Considerations

## Relevant Plan Provisions

- SAS 136 requires auditors, when designing and performing audit procedures for employee benefit plans subject to ERISA, to consider relevant plan provisions that affect the risk of material misstatement (i.e., whether eligibility and contribution provisions are administered in accordance with the plan document)



# SAS 136 – Implementation Considerations

## New Performance Procedures

- If a plan sponsor elects an ERISA Section 103(a)(3)(C) – formerly known as a limited scope audit – management must affirm that this is permissible and that the qualified institution can certify the investment information
- That's not a huge change, but it must be documented

# SAS 136 – Implementation Considerations

## Substantially Complete 5500

- ▶ In addition to making sure the 5500 was substantially complete, we have to make sure the right opinion boxes is checked

### Form 5500 Accountant's Opinion

<b>SCHEDULE H</b> <b>(Form 5500)</b> <small>Department of the Treasury Internal Revenue Service Department of Labor Employee Benefits Security Administration Pension Benefits Guaranty Corporation</small>	<b>Financial Information</b> <small>This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA), and section 6058(a) of the Internal Revenue Code (the Code).</small> <b>2021</b> <small>File as an attachment to Form 5500.</small>	<small>OMB No. 1520-0110</small> <b>2021</b> <small>This Form is Open to Public Inspection</small>
---	--	--

<b>Part III Accountant's Opinion</b> <b>3</b> Complete lines 3a through 3c if the opinion of an independent qualified public accountant is attached to this Form 5500. Complete line 3d if an opinion is not attached. <b>a</b> The attached opinion of an independent qualified public accountant for this plan is (see instructions): (1) <input checked="" type="checkbox"/> Unmodified    (2) <input type="checkbox"/> Qualified    (3) <input type="checkbox"/> Disclaimer    (4) <input type="checkbox"/> Adverse <b>b</b> Check the appropriate box(es) to indicate whether the IOPA performed an ERISA section 103(a)(3)(C) audit. Check both boxes (1) and (2) if the audit was performed pursuant to both 29 CFR 2520.103-8 and 29 CFR 2520.103-12(d). Check box (3) if pursuant to neither. (1) <input type="checkbox"/> DOL Regulation 2520.103-8    (2) <input type="checkbox"/> DOL Regulation 2520.103-12(c)    (3) <input type="checkbox"/> neither DOL Regulation 2520.103-8 nor DOL Regulation 2520.103-12(d)
--

Most common for ERISA Section  
103(a)(3)(C) audits

Use this box for non-Section  
103(a)(3)(C) audits

Line 3(a)= Type of Opinion

Line 3(b)=Type of Audit

(1) DOL Regulation 2520.103-8 Limitation on scope of accountant's examination

(2) DOL Regulation 2520.103-12(d) Limited exemption and alternative method of compliance

(3) Neither  
[i.e., No election/exemption]





# New Standards

## SAS No. 143 Auditing Accounting Estimates and Related Disclosures

### What Are the Key Changes to SAS 143?

- ▶ Key changes in the auditing standards effective with the adoption of SAS 143 include:
  - ▶ Emphasizes the need for auditors to focus on factors that contribute to estimation uncertainty and exercise professional skepticism when evaluating the assumptions and methodologies used to develop fair value estimates
  - ▶ Mandates a more detailed risk assessment process, specifically tailored to address the complexities involved in auditing accounting estimates, including fair value estimates
  - ▶ Requires auditors to evaluate whether the accounting estimate and related disclosures are reasonable within the context of the applicable financial reporting framework, including the determination as to whether the methods, assumptions and data used are permitted
- ▶ SAS 143 is effective for audits of financial statements for periods ending on or after December 15, 2023



# New Standards

## SAS No. 143 Auditing Accounting Estimates and Related Disclosures

### Potential Impact and Audit Procedures Relative to SAS 143

- ▶ For pension plans with alternative investments, a significant portion of the audit process is dedicated to the evaluation of estimates, including fair value estimates
- ▶ The auditor may perform the following steps when evaluating accounting estimates:
  - ▶ **Method:** Assess if the method used by management aligns with the applicable financial reporting framework and whether the method is appropriate under the circumstances and consistent over periods
  - ▶ **Significant Assumptions:** Determine whether the assumptions and judgments used by management in the accounting estimate are suitable within the context of the applicable financial reporting framework, whether they consider both positive and negative potential outcomes, and whether they are consistent with prior periods and other business activities
  - ▶ **Data:** It is required that the auditor also evaluate the reliability of the data used in determining the accounting estimate, whether the data was developed by management or obtained from independent sources. This requirement may result in the need for the auditor to better understand the sources of the data used in the accounting estimate
  - ▶ **Management's Point Estimate and Disclosures:** When management chooses a precise value (referred to as a point estimate) instead of a range, SAS 143 mandates the auditor scrutinize alternative outcomes and assumptions. It also requires evaluation of whether management's judgment could be biased



# New Standards

## SAS No. 144 Use of specialists and Use of Pricing Information

- ▶ Provides guidance regarding audit evidence when applying SAS No. 143 when management has used the work of a specialist in developing accounting estimates
- ▶ Provides enhanced guidance about evaluating the work of management's specialist
- ▶ Adds a new appendix that provides guidance on the use of pricing information from pricing services when evaluating management's estimates related to the fair value of financial instruments
- ▶ Enhances the guidance related to using the work of an auditor's specialist

**SAS 144 is effective for audits of financial statements  
for periods ending on or after December 15, 2023**



# New Standards

## SAS No. 145 Understanding the Entity and its Environment and Assessing the Risks of Material Misstatement

SAS 145 revised several aspects of the risk assessment process, including the requirements specific to the auditor's responsibilities with regard to obtaining an understanding of an entity's system of internal control. Particularly, SAS 145 revised the auditor's requirements related to the evaluation of design and implementation of certain controls, including information technology general controls (ITGC). **SAS 145 is effective for audits of financial statements for periods ending on or after December 15, 2023.** Specifically, under SAS 145, the auditor is required to identify ITGCs that address the risks arising from the use of IT and to evaluate their design and determine whether they have been implemented by the entity. The four domains are as follows:

- ▶ Security and Access – controls that allow users to access the information necessary for their job responsibilities, which facilitates appropriate segregation of duties and controls to recertify or evaluate user access for ongoing authorization over granting and revoking of access to IT applications, cloud providers and financial folders
- ▶ Systems Change – controls over the process to design, program, test and migrate changes (patches, upgrades, workflows and report changes) into a production environment and controls that segregate access to make changes from migrating changes to a production environment
- ▶ System Development – controls over initial IT application acquisition, development or implementation or in relation to other aspects of the IT environment and controls over the conversion of data from a prior system to a new system, development, implementation of a new system and creation of new reports for the new system
- ▶ Computer Operations – controls to monitor financial reporting programs for successful execution (job schedules and batch jobs) and controls to ensure backups of financial reporting data occur as planned and that such data is available and able to be accessed for timely recovery in the event of an outage or cyberattack



# Upcoming Standards – 2025/2026

SAS No. 146 – 149

- ▶ SAS No. 146 – Quality Management for an Engagement Conducted in Accordance with Generally Accepted Auditing Standards

**SAS 146 is effective for engagements conducted in accordance with GAAS for the periods beginning on or after December 15, 2025**

- ▶ SAS No. 147 – Inquiries of the Predecessor Auditor Regarding Fraud and Noncompliance with Laws and Regulations
- ▶ SAS No. 148 – Amendment to AU-C Section 935
- ▶ SAS No. 149 – Special Considerations – Audits of Group Financial Statements
- ▶ **SAS 147/148 – Effective in 2023**
- ▶ **SAS 149 is effective for audits of group financial statements for periods ending on or after December 15, 2026**



# Upcoming Standards – 2025/2026

SAS No. 146 – 149

## Some Key Objectives of SAS 146-149

- ▶ To identify certain requirements an engagement partner must satisfy in performing an audit engagement
- ▶ To identify a type of unconscious bias defined in SAS No. 146
- ▶ To identify when a successor auditor should request management to authorize a predecessor auditor's response to the successor auditor's inquiry
- ▶ To recognize one of the new inquiries a successor auditor should make of a predecessor auditor by SAS No. 147
- ▶ To recall the extent of a predecessor auditor's response to a successor auditor's inquiries when there are certain restrictions on the predecessor auditor
- ▶ To identify an example of a recently issued auditing standard that SAS No. 148 incorporates into amendments to AU-C 935, Compliance Audits
- ▶ To recall examples of inherent risk factors related to identifying and assessing risks of material misstatement in a compliance audit
- ▶ To identify the party required to take overall responsibility for the quality on a group audit engagement in accordance with SAS No. 149



# AICPA Activity AA Guide Update

**2024 AICPA EBP Audit and Accounting Guide** The AICPA recently issued the 2024 edition of the **Audit and Accounting Guide, Employee Benefit Plans (through August 1, 2024) (EBP Guide)**, which incorporates recent changes and other guidance including:

- FinREC recommendations regarding accounting for revenue sharing arrangements in accordance with FASB ASC 606, Revenue from Contracts with Customers
- Changes in the participant count methodology for defined contribution plans
- A change in the deadline for plan amendments to reflect the applicable provisions of the SECURE Act and SECURE Act 2.0
- Adjustments to annual reporting penalties and other penalties
- Changes made regarding preapproved plan documents for 403(b) plans
- Updates to illustrative notes to the financial statements regarding a 403(b) plan's tax status



# AICPA Activity AA Guide Update

As described in paragraph 5.55 of the AICPA Audit and Accounting Guide – Employee Benefits Plans (AAG EBP), the Financial Reporting Executive Committee (FinREC) believes that a DC plan can elect to recognize the employee and the related employer matching contribution either

- (1) in the period related to the participant's service or compensation (even if not yet withheld), or
- (2) in the period the employee contribution is withheld.

**Regardless of which accounting policy is established, FinREC believes that the plan's accounting policy with respect to recognizing employee contributions receivables and the related employer matching contributions should be applied on a consistent basis.**





# Regulatory Updates – DOL

## **AUDIT QUALITY STUDY**

In 2023, the Office of the Chief Accountant (OCA), Employee Benefits Security Administration (EBSA), U.S. Department of Labor (DOL), has completed its fourth assessment of the quality of audit work performed by independent qualified public accountants (IQPAs)

Overall, EBSA's review found that 70 percent of the audits fully complied with professional auditing standards or had only minor deficiencies under professional standards. However, 30 percent of the audits (3 out of 10) contained major deficiencies with respect to one or more relevant generally accepted auditing standards requirements



# Regulatory Updates – DOL

## **AUDIT QUALITY STUDY – FINDINGS**

1. Clear link between the number of employee benefit plan audits a CPA performed and the quality of the audit work.
2. Peer review and practice monitoring efforts do not help identify deficient plan audits.
3. Audits performed by members of the American Institute of Certified Public Accountants' (AICPA) Employee Benefit Plan Audit Quality Center had a significantly lower deficiency rate.
4. In 2011, there were 81,162 plan audits performed by 7,330 CPA firms. In 2020, there were 86,863 plan audits performed by 4,300 CPA firms.
5. The total number of CPA firms performing those audits has decreased sharply (40 percent). Firms with 1-2 plan audits decreased from 3,684 to 1,729, now representing 40 percent of total firms (down from 50 percent in 2011)



# Regulatory Updates – DOL

## AUDIT QUALITY STUDY – RECOMMENDATIONS

- 1. With respect to case targeting strategies, EBSA should:**
  - a. Continue to focus on CPA firms with smaller employee benefit plan audit practices that audit plans with large amounts of plan assets and**
  - b. Annually increase the number of large benefit practice CPA firms that are reviewed as part of EBSA's CPA Firm Inspection activities.**
- 2. EBSA should work with state licensing boards to enhance the investigation and sanctioning process.**
- 3. With respect to the AICPA's Peer Review Program, EBSA should:**
  - a. Work with the AICPA to make the peer review process more transparent by disclosing when peer reviewers have identified deficiencies.**
- 4. EBSA should work with the NASBA to encourage state boards to require specific licensing requirements for CPAs who perform employee benefit plan audits.**
- 5. EBSA should expand its outreach activities to include plan administrator organizations in order to explain the importance of hiring competent CPAs.**
- 6. EBSA should communicate with each of the state boards of accountancy (licensing boards) regarding the audit study results.**
- 7. EBSA should encourage state societies of CPAs to create employee benefit plan audit training.**



# Form 5500 Revisions

## Changes to the 2023 Form 5500 Revisions:

- ▶ The U.S. Department of Labor, the IRS, and the Pension Benefit Guaranty Corporation issued the third and final phase of changes to the Form 5500 and Form 5500-SF Short Form related to the implementation of a September 2021 regulatory proposal. These changes, which apply beginning with 2023 Plan Year reports that generally will be filed beginning in 2024, include:
  - ▶ **Additional breakout categories added to Schedule H breakout of “Administrative Expenses Paid by the Plan.”**  
The breakouts for administrative expenses will now be “Salaries and allowances,” “Contract administrator fees,” “Recordkeeping fees,” “IQPA audit fees,” “Investment advisory and investment management fees,” “Bank or trust company trustee/custodial fees,” “Actuarial fees,” “Legal fees,” “Valuation/appraisal fees,” “Other Trustee fees/expenses,” and “Other expenses”

# Form 5500 Revisions

## Changes to the 2023 Form 5500 Revisions:

<b>ii</b> Interest expense .....	<b>2ii</b>	
<b>i</b> Administrative expenses:		
(1) Salaries and allowances.....	<b>2i(1)</b>	
(2) Contract administrator fees.....	<b>2i(2)</b>	
(3) Recordkeeping fees.....	<b>2i(3)</b>	
(4) IQPA audit fees.....	<b>2i(4)</b>	
(5) Investment advisory and investment management fees .....	<b>2i(5)</b>	
(6) Bank or trust company trustee/custodial fees .....	<b>2i(6)</b>	
(7) Actuarial fees .....	<b>2i(7)</b>	
(8) Legal fees .....	<b>2i(8)</b>	
(9) Valuation/appraisal fees .....	<b>2i(9)</b>	
(10) Other trustee fees and expenses .....	<b>2i(10)</b>	
(11) Other expenses .....	<b>2i(11)</b>	
(12) Total administrative expenses. Add lines <b>2i(1)</b> through (11) .....	<b>2i(12)</b>	
<b>i</b> Total expenses. Add all <b>expense</b> amounts in column (b) and enter total .....	<b>2i</b>	



# Form 5500 Revisions

## Changes to the 2023 Form 5500 Revisions

- ▶ A change in the participant-counting methodology for determining eligibility for simplified reporting alternatives (generally plans with fewer than 100 participants), including the conditional waiver of the audit requirement
- ▶ Prior to the change, in counting participants, individuals were considered participants a defined contribution retirement plan when they have satisfied the plan's age and service requirements for participation (i.e., eligible to participate), even if they have elected not to participate in the plan
- ▶ Under the new methodology, defined contribution retirement plans will use the number of participants with account balances as of the beginning of the plan year in counting participants.
- ▶ This change in methodology is expected to result in a reduction of 8,000 defined contribution retirement plan audits



# Form 5500 Revisions

## Schedule R Expansion

- ▶ Schedule R is required for a pension benefit plan that is a defined benefit plan or is otherwise subject to Code section 412 or ERISA section 302. This schedule has been expanded to add several new tax compliance questions, in Part VII, related to nondiscrimination testing, ADP testing, and pre-approved plan IRS determination letters.

**Line 21a: Does the plan satisfy the coverage and nondiscrimination tests of Code sections 410(b) and 401(a)(4) by combining this plan with any other plans under the permissive aggregation rules?**

**Line 21b: If this is a Code section 401(k) plan, check all boxes that apply to indicate how the plan is intended to satisfy the nondiscrimination requirements for employee deferrals and employer matching contributions (as applicable) under Code sections 401(k)(3) and 401(m)(2).**

**Line 22: If the plan sponsor is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, enter the date of the Opinion Letter and the Opinion Letter serial number.**



# Secure 2.0 Act

## Secure 2.0 Act

- ▶ The new SECURE 2.0 Act of 2022 includes sweeping changes intended to enhance and protect retirement security. Some of the most significant provisions include:
  - ▶ Requiring most employers to automatically enroll employees in their retirement plan at a rate of at least 3%, but no more than 10% for any plans established after December 29, 2022
  - ▶ Increasing the age required minimum distributions (RMDs) start from 72 to 73 in 2023 and then to 75 by 2033
  - ▶ Requiring plan sponsors who employ part-time employees who work between 500 and 999 hours annually to become eligible to participate in the company's retirement plan after no more than two consecutive years
  - ▶ Allowing penalty-free access to retirement accounts for qualifying emergencies, up to \$1,000 annually, starting in 2024





# IRS Activity – Self Correct

## **Self Correct Program Changes - Revenue Procedure 2021-30**

### OVERPAYMENTS

- ▶ Expanded corrections relating to recovery of overpayments paid out by defined benefit plans

### EXPANDS THE SCP

- ▶ Expands correction period for significant failures by 1 year to now 3 years.
- ▶ Simplified retroactive plan amendments to fix operational failures by removing conditions that limited its use under SCP



# IRS Activity - Forfeitures

## IRS Proposes Regulations on Using Forfeitures

- ▶ The Proposed Regulations provide guidance as to when defined contribution plans must use plan forfeitures and the purposes for which plan forfeitures may be used. According to the Proposed Regulations, defined contribution plans must provide that the following:
  - Forfeitures will be used no later than 12 months after the close of the plan year in which the forfeitures are incurred;
  - Forfeitures will be used for one or more of the following purposes: (i) to pay plan administrative expenses, (ii) to reduce employer contributions under the plan, or (iii) to increase benefits in other participants' accounts in accordance with plan terms.

The Proposed Regulations also include transition relief for defined contribution plans with large, long-accruing forfeiture suspense accounts. The transitional relief would allow a plan to treat forfeitures incurred during any plan year that begins before January 1, 2024, as having been incurred in the first plan year that begins on or after January 1, 2024. This could allow plans to use the amounts in the forfeiture suspense accounts by the end of the 2025 plan year.



# Guide to Collections and Payroll Auditing

MARY MARGARET PRANGE, CPA | PARTNER  
CALIBRE CPA GROUP, PLLC



# Agenda

- ▶ Developing and implementing a strong delinquency policy
- ▶ Working with employers to improve reporting
- ▶ Increasing collections through payroll audits
- ▶ Communication between collection attorneys and the fund office



# Developing and Implementing a Strong Delinquency Policy

- ▶ Collections and delinquency policies—What to include
  - ▶ Procedures for collections
    - ▶ Timing of when an employer becomes delinquent
      - ▶ Payment postmarked or arrives at fund office
      - ▶ Grace period
    - ▶ Timing of notice letters
    - ▶ Counsel involvement? When?
  - ▶ Calculation of interest, liquidated damages
    - ▶ Reminder—IRA and prime rates change periodically
  - ▶ When collection cost (attorney/auditor) is passed onto the employer
  - ▶ Overreported or erroneous payment policy
  - ▶ Owner-operator/non-bargaining
    - ▶ Participation Agreement



# IRS Interest Rates – Change Frequency

Interest rate on noncorporate overpayments and underpayments

Dates	Overpayments	Underpayments
Jul. 1, 2024 – Sep. 30, 2024	8%	8%
Apr. 1, 2024 – Jun. 30, 2024	8%	8%
Jan. 1, 2024 – Mar. 31, 2024	8%	8%
Oct. 1, 2023 – Dec. 31, 2023	8%	8%
Jul. 1, 2023 – Sep. 30, 2023	7%	7%
Apr. 1, 2023 – Jun. 30, 2023	7%	7%
Jan. 1, 2023 – Mar. 31, 2023	7%	7%
Oct. 1, 2022 – Dec. 31, 2022	6%	6%
Jul. 1, 2022 – Sep. 30, 2022	5%	5%
Apr. 1, 2022 – Jun. 30, 2022	4%	4%
Jan. 1, 2022 – Mar. 31, 2022	3%	3%
Oct. 1, 2021 – Dec. 31, 2021	3%	3%
Jul. 1, 2021 – Sep. 30, 2021	3%	3%
Apr. 1, 2021 – Jun. 30, 2021	3%	3%
Jan. 1, 2021 – Mar. 31, 2021	3%	3%
Oct. 1, 2020 – Dec. 31, 2020	3%	3%
Jul. 1, 2020 – Sep. 30, 2020	3%	3%
Apr. 1, 2020 – Jun. 30, 2020	5%	5%
Jan. 1, 2020 – Mar. 31, 2020	5%	5%
Oct. 1, 2019 – Dec. 31, 2019	5%	5%
Jul. 1, 2019 – Sep. 30, 2019	5%	5%
Apr. 1, 2019 – Jun. 30, 2019	6%	6%
Jan. 1, 2019 – Mar. 31, 2019	6%	6%

Source: <https://www.smbiz.com/sbrl004.html>



# Working With Employers to Improve Reporting

- ▶ Clear directions on remittance reports or online reporting on how to complete the report
- ▶ Reaching out to the employer when something doesn't "look quite right" on the remittance report
- ▶ Training the employer's new staff
  - Either at the employer's location or fund office
- ▶ Periodic lunch and learns with a group of employers, *i.e.*, employer association
  - Common remittance report errors
  - Why payroll audits are conducted
  - Common payroll audit findings (what to avoid)



# Increasing Collections Through Payroll Audits - Fund

- ▶ Communication and consistency
  - ▶ Fund should have:
    - ▶ Concrete collections policy that includes payroll audit process and procedures
    - ▶ Payroll audit cycle that includes all employers audited every three to five years
      - ▶ New employers—Within first year (courtesy review)
      - ▶ Employers exiting—Confirm additional contributions are not due
      - ▶ Delinquent employers may be audited more often
    - ▶ Periodic delinquency meetings with trustees, fund administrator, attorney and payroll auditor—The “A” team.





# Increasing Collections Through Payroll Audits – Fund Office

- ▶ Provide current CBAs, MOAs, participation agreements, reciprocity agreements
- ▶ Provide auditor with a participation history report (contribution/remittance reports)
- ▶ Answer questions regarding payments
- ▶ Send correspondence to the employer
  - Audit notification letter (depending on policy)
  - Audit results letter
- ▶ Support the auditor with difficult employers
- ▶ Collections



# Increasing Collections Through Payroll Audits – Payroll Auditor

- ▶ The payroll auditor should have and demonstrate:
  - ▶ An understanding of the CBA and plan documents, including understanding the collection policy established by the plan
  - ▶ An understanding of the industry and the participating employer
    - ▶ Where is the risk?
      - ▶ Construction, entertainment
        - ▶ Non-union employees/subcontractors
        - ▶ Cash for covered work
      - ▶ Trucking, warehouse, stores, and manufacturing, hospitality
        - ▶ Leased employees/independent contractors
        - ▶ Layoffs and LOA
        - ▶ Full-time/part-time eligibility—Look back period
        - ▶ Holiday and vacation



# Increasing Collections Through Payroll Audits – Payroll Auditor

- ▶ Newer chapter in the AICPA Audit Guide on Payroll Audits (AU-C Section 610)
- ▶ Auditor should have work papers documenting their payroll audit methodology and audit program (steps)
  - ▶ Demonstrate that the participating employer provided all requested records
  - ▶ Show an understanding of how the participating employer's payroll system operates
    - ▶ Does the employer report on paycheck date, work period date or calendar?
    - ▶ How is overtime reflected on the payroll?
    - ▶ What wages are in the "other" column?
  - ▶ Identify covered and non-covered employees
    - ▶ Must review the entire payroll not just the "reported employees"
  - ▶ Demonstrate that the procedures are designed to identify errors or deficiencies



# Increasing Collections Through Payroll Audits – Payroll Auditor

- ▶ Best practice procedures by the payroll auditor to expedite collections
  - ▶ “Exit interview” at the end of fieldwork
  - ▶ “Preliminary” findings report for the employer to dispute prior to fund administrator involvement.
    - ▶ Detail report should separate reasons for exceptions for easier dispute discussion
  - ▶ Communication between the fund administrator and the auditor on open items auditor can't resolve (possible counsel involvement)
    - ▶ CBA interpretation
    - ▶ Employee classification
    - ▶ Overreported contributions
  - ▶ Communication with the “A” team
    - ▶ Trustees/fund administrator/attorney/payroll auditor



# Communication Between Collections Attorney and Fund Office

- ▶ Prior to beginning payroll audit program
  - Allow legal to review pre-audit letters
  - Agree on audit period
  - Review selected employers
- ▶ Contact collections attorney promptly of
  - Any employers not responding to audit request
  - Any employer's refusal that fund office cannot resolve
- ▶ Post-audit
  - Collections assistance after one or two collection attempts
  - Review the amount of delinquency to determine next steps
  - Assemble documents for filing of suit—Time consuming  
= \$\$



# Key Takeaways

- ▶ Establish, review and enforce your policy consistently
- ▶ Develop a timeline for notices, responses, collections and follow-up
- ▶ Regular delinquency and status meetings with “A” team
- ▶ Educate employers on common issue/discrepancies
- ▶ Communicate, communicate, communicate

# Break



## 2024 Employee Benefit Plan Conference

CALIBRE CPA GROUP, PLLC  
NOVEMBER 21, 2024

# Legislative & Regulatory Update

**Meredith B. Golfo, Esq.**

Principal

Slevin & Hart, P.C.

New York, N.Y.

Washington, D.C.



# Definition of Investment Fiduciary

- When ERISA implemented in 1976, defined benefit plans more common.
- Typically, defined benefit plans managed by investment professionals and funded by employers, who bear risk of investment performance.
- In last 50 years, shift towards defined contribution plans.
- Result=investment decisions increasingly made by participants, who bear risk of investment performance.

# Definition of Investment Fiduciary

- Original 5-factor test -- person was fiduciary only if met all five elements:
  - Render advice as to value of securities or other property, or make recommendations as to advisability of investing in, purchasing, or selling securities or other property,
  - On regular basis,
  - Pursuant to mutual agreement, arrangement, or understanding with plan or plan fiduciary,
  - That advice will serve as primary basis for investment decisions with respect to plan assets, and
  - That advice individualized based on particular needs of plan.

# Definition of Investment Fiduciary

- DOL attempted to redefine 4 times – 2010, 2016 (vacated in 2018 by Fifth Circuit), 2020 Rule (partly overturned by Florida court in 2023).
- New rule issued 10/31/23 – comment period ended 1/2/24.
- Final released 4/23/24 – effective 9/23/24.
- First lawsuit filed in Texas in 5/2/24.
- 5/15/24 – U.S. House resolution to disapprove
- In July 2024, two district courts in Texas delayed the rule from taking effect

# Definition of Investment Fiduciary

- New April 2024 Final Rule proposes that person would be investment advice fiduciary if:
  - Advice or recommendation provided for fee/other compensation (direct or indirect as defined in the Rule); and
  - The person makes recommendation in following contexts:
    - The person either directly or indirectly (e.g., through or together with any affiliate) makes professional investment recommendations to investors on a regular basis as part of their business and the recommendation is made under circumstances that would indicate to a reasonable investor in like circumstances that the recommendation:
      - Is based on review of the retirement investor's particular needs or individual circumstances,
      - Reflects the application of professional or expert judgment to the retirement investor's particular needs or individual circumstances, and
      - May be relied upon by the retirement investor as intended to advance the retirement investor's best interest; or
    - The person represents they are acting as a fiduciary under Title I or Title II of ERISA

# Definition of Investment Fiduciary

- Notably, 1975 Rule required explicit agreement or ongoing relationship to establish that person was fiduciary.
- New Final Rule creates fiduciary status even if advice one time.
  - Consider impact on participant asking Vanguard for rollover recommendation:
    - 1975 Rule: Not fiduciary
    - New Rule: Could be fiduciary

# Secure & Secure 2.0 – Final Rule

- Final Rules issued on July 19, 2024
  - Focus on Secure 1.0 provisions in 2022 proposed regulations and some changes from Secure 2.0
- Effective Date. Compliance with the final regulations is required beginning January 1, 2025, with a reasonable, good faith standard for prior years.
- Plan amendments are not required for most plans until December 31, 2026. Plan amendment deadline for collectively bargaining plans is December 31, 2028, and for governmental plans is December 31, 2029.
- IRS issued proposed rules on the same date implementing issues reserved in the final rule

# Secure & Secure 2.0 – Required Beginning Dates

- Section 401(a)(9) – required beginning date is April 1 of the calendar year following the later of (1) the calendar year in which the employee reaches the applicable age, and (2) the calendar year in which the employee retires from employment with the employer maintaining the plan.
- Applicable age is defined based on the employee's age, as follows
  - employees born before July 1, 1949, the applicable age is 70  $\frac{1}{2}$ ;
  - employees born on or after July 1, 1949, but before January 1, 1951, the applicable age is 72;
  - employees born on or after January 1, 1951, but before January 1, 1959, the applicable age is 73; and
  - employees born on or after January 1, 1960, the applicable age is 75.
- Preamble notes that plans can continue to use a uniform rule based using the applicable age of 70  $\frac{1}{2}$ .

# Secure & Secure 2.0 – Death Before RBD

- If an employee dies before the RBD:
  - Rules for DB Plans have generally not changed; for DC Plans, added a new category of beneficiary called eligible designated beneficiary (EDB). EDB can be a spouse, child under the age of majority, disabled individual, chronically ill individual or a person who is not 10 years younger than the employee.
  - Default rule for DC Plans:
    - If no designated beneficiary, entire interest must be distributed by end of the year that includes the 5<sup>th</sup> anniversary of date of death.
    - If designated beneficiary that is not an EDB, entire interest must be distributed by end of the year that includes the 10<sup>th</sup> anniversary of date of death.
    - If designated benefit is an EDB, payments commence by the end of the calendar year following the calendar year in which the employee died and continue each year until entire interest is distributed.
- Special rules if the sole designated beneficiary is the employee's surviving spouse.



# Secure & Secure 2.0 – Death After RBD

- If an employee dies after the RBD, the employee's remaining interest must be distributed at least as rapidly as the method used to pay the employee; AND the must be paid fully paid within 5 or 10 years (whichever is applicable) of the employee's death.

Because the requirement to satisfy both conditions has caused confusion, final rule includes relief if a plan did not make a payment for the first 10 years after an employee's death from 2021- 2024.

- Requirement to take continued annual payments includes the year of the employee's death.

# Secure & Secure 2.0 – Final Rule

- The Final Rule provides:
  - If an employee's entire interest under a DC plan is in a designated Roth account, no distributions are required to be made to the employee during the employee's lifetime and upon the employee's death, that employee is treated as having died before the RBD.
  - For an EDB, the Plan can adopt one of the distribution options in its plan document or allow the beneficiary to choose between the two options. If Plan allows an election between both options, the Plan must specify a default rule, but only if the outcome would be different than the default rules under the Code.
  - Under the life expectancy option, a distribution is due for the calendar year in which the EDB dies; to be paid to his/her beneficiary unless a distribution was made to the EDB in the year of his/her death.
  - Annual distributions continue for up to 10 years after: (1) the death of an EDB who was taking life expectancy payments; or (2) the attainment of the age of majority (if the EDB was a minor child of the employee taking life expectancy payments).
  - DC plans can have different rules for different categories of eligible designated beneficiaries. Ex: a DC plan may provide that only an employee's surviving spouse may elect between the 10-year rule and life expectancy payments.

# Secure & Secure 2.0 – Final Rule

- Clarifications on the definition of EDB:
  - Child includes anyone under Code Section 152(f)(1) (step-child, eligible foster child) under 21.
  - Disability is defined under Code Section 72(m)(7), but if the beneficiary is under the age of 18, a disability exists if the beneficiary has “a medically determinable physical or mental impairment that results in marked and severe functional limitations, and that can be expected to result in death or to be of long-continued and indefinite duration.”
  - Having a determination of disability from the SSA is a safe harbor.
  - Documentation of the disability or chronic illness must be provided to the plan no later than October 31 of the calendar year following the year of the employee’s death.
    - Relief from the documentation requirement for calendar years 2020-2023 if documents are received by October 31, 2025.
- If there are multiple beneficiaries and at least one is not an EDB, then the rules for non-EDB apply, with some exceptions.

# Secure & Secure 2.0 – Final Rule

- Generally, the calculation rules have remained the same, with a few modifications:
  - 2002 regulations had a bifurcation rule for distributions when a portion of the account balance was used to purchase an annuity contract.
  - Final Rule provides an alternative to the bifurcation rule -- a plan may permit an employee to elect to satisfy the RMD rules for the annuity contract and that account balance in the aggregate by adding the fair market value of the annuity contract to the remaining account balance and treating payment under the annuity contract as distributions from the individual account.

# Early Distribution Rules Under Secure 2.0

- Code §72(t) provides that all payments from qualified retirement plan paid before participant reaches age 59½ are subject to 10% “early distribution” penalty unless an exception applies.
- Secure 2.0 added two new optional exceptions to this early distribution penalty:
  - Emergency Personal Expense Distribution – distribution to meet unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses, up to a maximum of \$1,000 and limited to one distribution per calendar year.
  - Domestic Abuse Victim Distribution – distribution to a victim of domestic abuse during the one-year period of when the abuse occurred, up to maximum of \$10,000.
- Plan can rely on participant self-certification.
- If the Plan allows rollover contributions, participant can repay the distribution amount within 3 years of when the distribution was made.
- Distributions are not subject to the rollover rules.

# Early Distribution Rules Under Secure 2.0 – IRS Notice 2024-55

- Emergency Personal Expense Distributions:
  - Facts and circumstances test – factors include needs related to medical care, accident or loss of property due to a casualty, need to pay for funeral or burial expenses, auto repairs, or other necessary emergency personal expenses.
  - Distribution cannot exceed the lesser of (i) \$1,000 or (ii) the participant's vested account balance over \$1,000. Amount is not adjusted for inflation.
  - Notwithstanding the 1-year rule, a participant cannot receive a second Emergency Personal Expense Distribution during the following three calendar years unless (i) the previous Emergency Personal Expense Distribution is repaid to the Plan; or (ii) the participant's aggregate elective deferrals and employer contributions, after the previous Emergency Personal Expense Distribution, is at least equal to the previous Emergency Personal Expense Distribution that has not been repaid.
  - If Plan does not offer this type of distribution, but a participant takes a distribution that meets the requirements, that person can treat it as an Emergency Personal Expense Distribution on his/her tax return.

# Early Distribution Rules Under Secure 2.0 – IRS Notice 2024-55

- Domestic Abuse Victim Distributions
  - Domestic abuse means physical, psychological, sexual, emotional or economic abuse or to undermine the victim's ability to reason independently, which can include abuse of the victim's child or another family member living in the household.
  - Can be added to any eligible retirement plan that is not subject spousal consent rules.
  - Distributions limited to the lesser of: (i) \$10,000; or (ii) 50% of the participant's vested account balance.
  - \$10,000 limit subject to annual cost of living adjustments.
  - If Plan does not offer this type of distribution, but a participant takes a distribution that meets the requirements, that person can treat it as a Domestic Abuse Victim Distribution on his/her tax return.



# Student Loan Repayments As Elective Deferrals for Matching Contributions

- Effective 2024, SECURE 2.0 permits matching contributions on behalf of participants in a 401(k), 403(b) or 457(b) plans with respect to qualified student loan payments, in same manner as if those payments were elective deferrals to plan.
- A “qualified student loan payment” (QSLP) is an employee’s repayment of a “qualified education loan” for higher education expenses of an employee, the employee’s spouse or the employee’s dependent when debt arose.
- Employee must certify annually to the employer making the matching contributions that payment has been made on the loan.



# Student Loan Repayments As Elective Deferrals for Matching Contributions – IRS Notice 2024-63

- Employee must have a legal obligation to repay the loan, such as a co-signor, but the QSLP can only be made for the person who actually makes the loan repayment.
- A plan cannot limit QSLP matches to only certain qualified education loans.
- All employees eligible to receive matches on election deferrals in a plan that has a QSLP match feature must be eligible to receive QSLP matches.
- QSLP matches can only be made to employees who are eligible for matches on elective deferrals.
- QSLP certifications must include certain specified information – the amount and date of the loan payment, that payment was made by the employee, that the loan is a qualified education loan and was used for a permitted purpose and that the loan was incurred by the employee.
- QSLP matches can be made at different frequencies than matches on elective deferrals, provided the QSLP matches are contributed at least annually.



# Managing Cybersecurity in Employee Benefit Plans

**BRIAN M. ISENSTEIN | DIRECTOR OF INFORMATION TECHNOLOGY**  
**CALIBRE CPA GROUP, PLLC**



# The Current State of Cyber Security

- ▶ Cyber attacks are on the rise.
- ▶ Organizations are struggling to keep pace with rapidly evolving threats.
- ▶ New technologies bring new security risks.
- ▶ Employees are often the weakest link in cybersecurity defenses.



# The Current State of Cyber Security

- ▶ Global cybercrime costs are projected to rise to \$10.5 trillion USD annually by 2025, up from \$3 trillion USD in 2015. (Cybersecurity Ventures)
- ▶ 65% percent of breaches are initiated by external attackers, with 35% from internal users, up 20% from the prior year. (Verizon)
- ▶ 65% of breaches involved a non-malicious human element, clicking a link, etc. (Verizon)
- ▶ 14% of breaches involved the exploitation of vulnerabilities as an initial access step, almost triple the amount from last year's report. (Verizon)



# The Current State of Cyber Security

- ▶ National Public Data – 2.7 Billion Records Breached.
  - ▶ Background check entity that was breached from insecure web development and password management.
- ▶ Change Healthcare – 154 Million Records Breached and Claims processing halted.
  - ▶ Ransomware attack resulted in exposed information. In addition, countless entities could not process insurance claims. Resulted from stolen credentials.
- ▶ Dell – 49 Million Records Breached.
  - ▶ A brute force attack granted access to a reseller's portal which granted access to the data.
- ▶ AT&T – 73 Million Records Breached.
  - ▶ Resulted from compromised credentials to a third-party cloud repository.



# The Current State of Cyber Security

- Implications for not managing the risk:
  - Financial
  - Operational
  - Regulatory
  - Reputational
- The responsibility of managing the risk is owned by the Business, not IT.
  - Cybersecurity is a business issue that requires the assistance of a technical solution.

# The Current State of Cyber Security

- ▶ Top Threats
  - ▶ Ransomware
  - ▶ Business Email Compromise
  - ▶ Social Engineering
  - ▶ Denial of Service





# 2021 Dept of Labor Cybersecurity Guidelines





# A Formal Documented Cybersecurity Program

- Ensure consistency and accountability in cybersecurity practices.
- Building a cybersecurity program helps guide IT in making choices consistent w/ the plan's needs and risk tolerance.
- Include policies and procedures for identifying, managing, and mitigating cybersecurity risks.
- Not only for IT. Reviewed by leadership, explained to users.

# Prudent Annual Risk Assessments

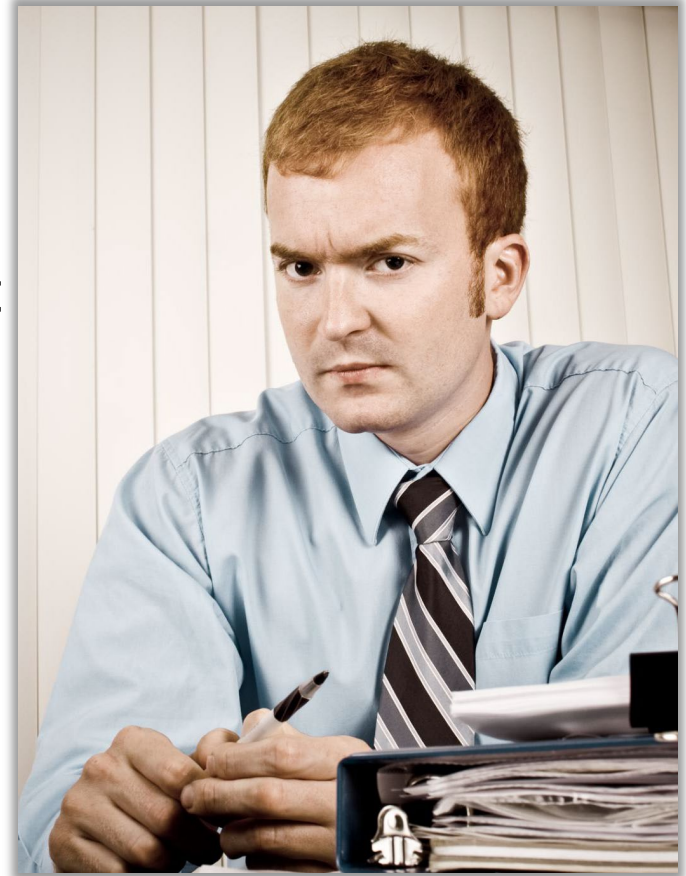
- Regular risk assessments are critical to identifying cybersecurity threats and vulnerabilities.
- Prudent risk assessments should cover both technical and non-technical aspects of cybersecurity.
- Assessments should be conducted annually or whenever significant changes are made to your IT environment.





# Third-Party Audit of Security Controls

- ▶ Third-party audits can help provide assurance that your security controls are effective.
- ▶ Audits should be conducted annually or whenever significant changes are made to your IT environment.
- ▶ Ensure that auditing firms are reputable and experienced in cybersecurity.
- ▶ Penetration test to prove that security controls work as expected.



# Roles and Responsibilities

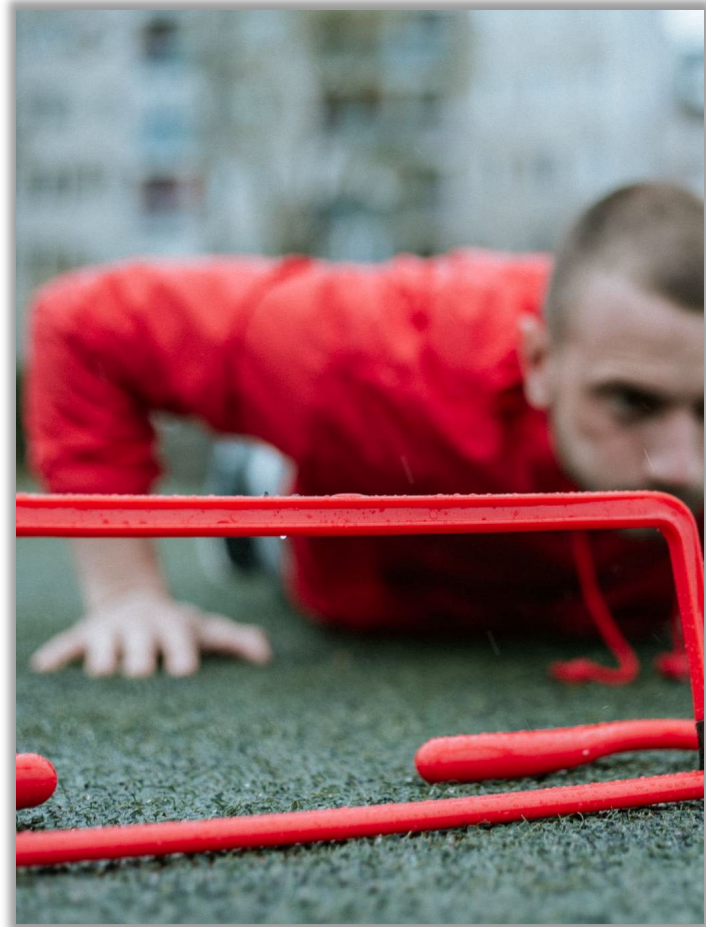


- Clearly defined roles and responsibilities are essential to effective cybersecurity practices.
- Roles and responsibilities should be documented and communicated to all employees.
- Responsibilities should cover both technical and non-technical aspects of cybersecurity.
- Provide specialized training for those w/ cybersecurity training



# Cybersecurity Awareness Training

- Employees are often the weakest link in cybersecurity defenses.
- Training employees on cybersecurity best practices can help mitigate this risk.
- Training should be conducted annually and updated regularly to reflect changing risks.



# Strong Access Control Procedures



- Access control procedures are critical to protecting sensitive information.
- Strong password policies.
- Multi Factor Authentication.
- Policies to confirm identify whenever sensitive data is accessed or updated.
- Access should be granted on a need-to-know basis following the principle of least privilege.
- Review access privileges regularly.



# Strong Technical Controls



- Implementing strong technical controls is critical to minimizing cybersecurity risks.
- Cover network and system-level security.
- Everything kept up to date, vendor supported and backed up.
  - Immutable where possible
- Network segmentation where possible



# Encryption of Sensitive Data Stored and in Transit



- Encryption can help protect sensitive data from unauthorized access.
- Sensitive data should be encrypted both while in storage and while in transit.
- Implement DLP to prevent policy violations.



# Business Resiliency Program



- Business disruptions can have a significant impact on an organization's cybersecurity posture.
- Business Continuity Plan guides recovery after a disruption.
- Disaster Recovery Plan dictates recovery and resumption of infrastructure after a major event.
- Incident Response Plan leads the response to any security incident.
- Regularly reviewed and tested.



# Responsiveness to Incidents or Breaches

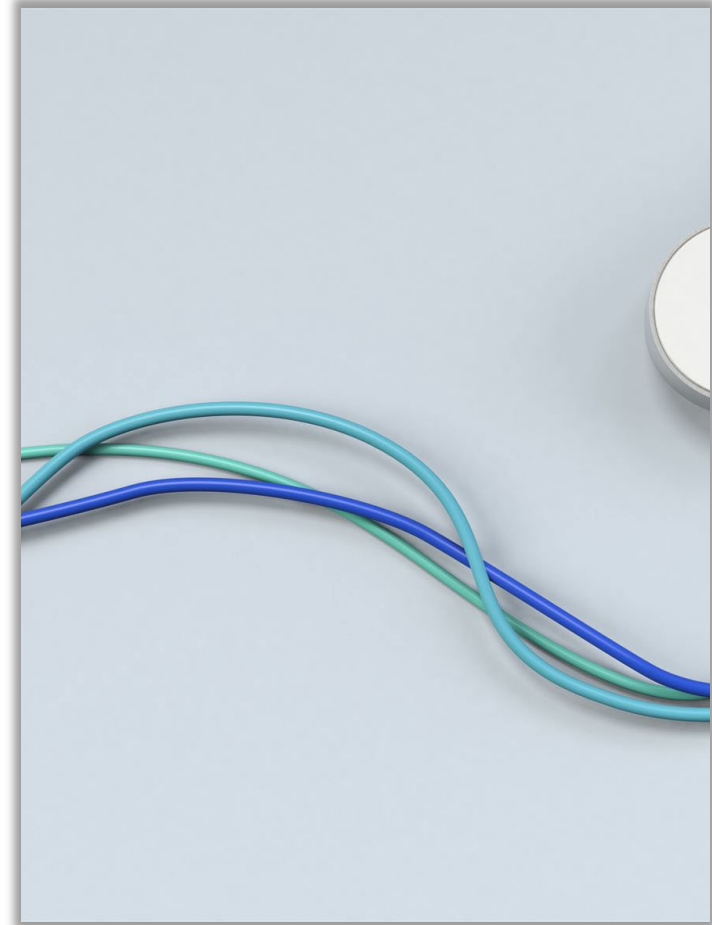


- Incident response planning is essential to minimizing the impact of cybersecurity incidents.
- Well-defined incident response plan in place before any incident.
- The plan should cover the entire incident response process, from detection to resolution.



# Third Party Service Providers

- Cloud and third-party services are often targets for cyber attacks.
- Security reviews and independent assessments should be conducted to ensure that these services are secure.
- Assessments should cover both technical and non-technical aspects of cybersecurity.



# Secure System Development Life Cycle



- Secure software development practices are critical to minimizing cybersecurity risks.
- A secure system development life cycle (SDLC) program can help ensure that security is built into software from the ground up.
- If you don't develop code in house, make sure your developers follow these practices.



2024 Update



# Updated password guidance

- ▶ Strong, unique passwords for all employees.
- ▶ Consider password policy tools to enhance what's built into Windows.
- ▶ Password management tools to create and store long, random passwords.







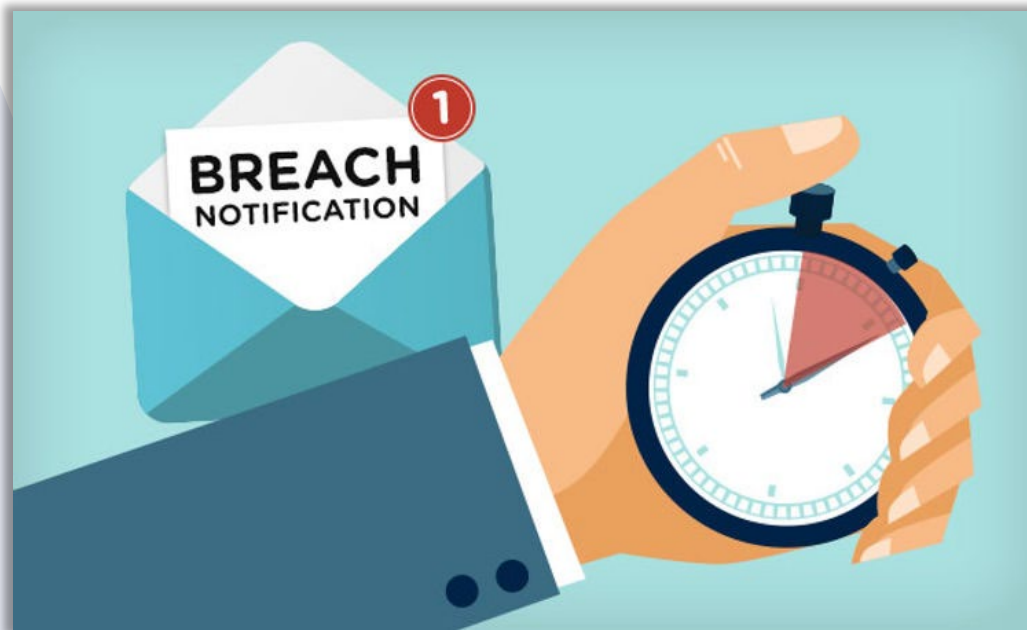
# Expanded MFA guidance

- ▶ Implement MFA across ALL internet facing systems.
- ▶ Require to access sensitive info on your network.
- ▶ Deploy Phishing Resistant MFA where possible.



# Requirement for Notifications

- Spells out requirement that participants must be notified if personal data, including PII or PHI, is accessed without unreasonable delay.







# Health Benefit Plan application

- Health plans are subject to HIPPA and HITECH
- High overlap between DOL guidance and HIPPA/HITECH
- Differences include:
  - Annual risk assessment
  - Third party audit requirement
  - Third party service provider risk assessment

# Questions & Answers



## 2024 Employee Benefit Plan Conference

CALIBRE CPA GROUP, PLLC  
NOVEMBER 21, 2024



Washington, DC

(202) 331-9880

Chicago, IL

(312) 655-0037

New York, NY

(212) 695-1300

Los Angeles, CA

(213) 341-4684