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ERISA FIDUCIARY INSTITUTE: Know Your Responsibilities

September 12, 2023

American Bar Association

1050 Connecticut Avenue, NW, Washington, DC

Early Bird Registration Deadline: August 15, 2023

To Register On-line or For More Information: www.americanbar.org/jceb/



2023 ERISA FIDUCIARY INSTITUTE

AGENDA (as of June 9)

TUESDAY • SEPTEMBER 12, 2023

8:00-8:30 **REGISTRATION AND NETWORKING CONTINENTAL BREAKFAST** (Non-CLE)

8:30-8:40 **WELCOME REMARKS** (Non-CLE)

Co-Chairs: **Joni L. Andrioff**, Program Co-Chair, *RSM US LLP*, Washington, DC
Peter M. Kelly, Program Co-Chair, *Retired Deputy General Counsel & Chief Employee Benefits Counsel of Blue Cross and Blue Shield Association*, Chicago, IL
Frank Palmieri, Program Co-Chair, *Palmieri & Eisenberg*, Princeton, NJ

8:40-9:10 **1. INTRODUCTION TO FIDUCIARY GOVERNANCE**

This session will set the table for the future discussions for the day. Speakers will explore the role of good governance practices in assuring a committee or other ultimate fiduciary can withstand the challenges of ERISA fiduciary litigation. The first part of the session will focus on fiduciary duty basic principles. The final part of the session will focus on the good governance process as a framework for a broad-based procedural prudence defense, including a review of specific good governance practices.

Speakers: **Joni L. Andrioff**, Program Co-Chair, *RSM US LLP*, Washington, DC
Peter M. Kelly, Program Co-Chair, *Retired Deputy General Counsel & Chief Employee Benefits Counsel of Blue Cross and Blue Shield Association*, Chicago, IL

Learning Objectives:

- Review basic fiduciary duty principles
- Review good governance practices
- Review how good governance practices can withstand ERISA fiduciary litigation

Field of Study: Specialized Knowledge.

9:10-10:00 **2. BENEFIT CLAIMS**

ERISA requires and prescribes extensive procedures for the internal processing of claims and appeals. The session will review the ERISA benefits claim and appeal process and explore recent case law and regulatory developments that demand more rigorous adherence to fiduciary's "full and fair review" obligations.

Moderator: **Peter M. Kelly**, Program Co-Chair, *Retired Deputy General Counsel & Chief Employee Benefits Counsel of Blue Cross and Blue Shield Association*, Chicago, IL

Speakers: **Susan E. Rees**, *The Wagner Law Group*, Washington, DC
Martina Sherman, *DeBofsky Law, Ltd.*, Chicago, IL

Learning Objectives:

- Review the ERISA benefit claim and appeals process
- Explore recent case law and regulatory developments
- Define fiduciary's full and fair review obligations

Field of Study: Specialized Knowledge.

10:00-10:20 **BREAK** (Non-CLE)

10:20-11:10 **3. PRACTICAL ISSUES IN PREPARING FOR A DOL CYBERSECURITY AUDIT**

This Program will provide practical insight to help benefits professionals understand the focus of potential DOL audits and to arm employers with practical tools to successfully survive an audit. Highlights will include:

- Introduction and Background
- EBSA Guidance
- Something Old, Something Borrowed and Something New

Moderator: Frank Palmieri, Program Co-Chair, *Palmieri & Eisenberg*, Princeton, NJ

Speakers: Elham (Ellie) Fayyazi, Chief of Criminal Investigation Division, Employee Benefits Security Administration (EBSA), U.S. Department of Labor, Washington, DC (*Invited*)

Sabrina McIntyre Halstead, *Charles Schwab & Co., Inc.*, Lone Tree, CO

Susan E. Rees, *The Wagner Law Group*, Washington, DC

Raymond Soriano, *Eisner Advisory Group LLC*, Iselin, NJ

Learning Objectives:

- Understand the focus of potential DOL audits
- Note the issues to consider in preparing for a DOL Cybersecurity audit
- Consider the practical tools needed to successfully survive an audit

Field of Study: Specialized Knowledge.

11:10-12:00 **4. BITCOIN, MAGIC BEANS, AND ESG INVESTMENTS**

This Program will focus on ERISA's fiduciary duties regarding unique investment alternatives offered in retirement plans with participant-directed investments, including the controversy surrounding ESG investments, the pros and cons of plan brokerage windows, and plan investments in gold and cryptocurrency.

Moderator: Joni L. Andrioff, Program Co-Chair, *RSM US LLP*, Washington, DC

Speakers: Jason Lee, *Groom Law Group, Chartered*, Washington, DC

Jamison Sites, *PwC*, Washington, DC

Peggy A. Whitmore, *CAPTRUST*, Port Washington, NY

Learning Objectives:

- Understand the fiduciary implications of alternative investments for participant-directed investments
- Consider ESG investments as a separate investment classification
- Examine the selection of gold, bitcoin, and other unique investments as qualified plan investments
- Understand the pros and cons of brokerage windows

Field of Study: Specialized Knowledge.

12:00-1:10 **LUNCHEON ADDRESS (Non-CLE)**

1:10-2:10 **5. FIDUCIARY HOT TOPICS**

This Program will cover current developments concerning the Department of Labor's initiatives and projects, including DOL ESG regulations and related activity, the prohibited transaction exemption on the definition of a "Fiduciary", SECURE 2.0 initiatives, and other pending or final regulations.

Moderator: Joni L. Andrioff, Program Co-Chair, *RSM US LLP*, Washington, DC

Speakers: Joe Canary, Director of the Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), U.S. Department of Labor, Washington, DC (*Invited*)

Andrew L. Oringer, *The Wagner Law Group*, New York, NY

Erin M. Sweeney, *DLA Piper LLP (US)*, Washington, DC

Learning Objectives:

- Review the current DOL initiatives and pending or final regulations
- Review regulatory considerations of offering ESG investments in qualified plans
- Review the status of the prohibited exemption on the definition of a fiduciary

Field of Study: Specialized Knowledge.

2:10-3:00

6. PROS AND CONS OF COMPUTER INVESTMENT CONSULTANTS

This Program will focus on the increased usage of computers to serve as ERISA 3(38) fiduciaries and how to evaluate such services. Highlights will include:

- What Happens When a Computer Program Serves as your ERISA 3(38) Fiduciary?
- Presentation of Case Study
- Discussion on Artificial Intelligence and the use of Computer Programs.

Moderator: Frank Palmieri, Program Co-Chair, *Palmieri & Eisenberg*, Princeton, NJ

Speakers: Peggy A. Whitmore, *CAPTRUST*, Port Washington, NY
Others TBD

Learning Objectives:

- Examine the impact of computers as fiduciaries and the impact of AI
- Discuss how to evaluate computer investment services
- Review and discuss case study

Field of Study: Specialized Knowledge.

3:00-3:20 **BREAK (Non-CLE)**

3:20-4:10

7. PROCEDURAL PRUDENCE: ONE SIZE DOES NOT FIT ALL

This session will describe a variety of fiduciary governance best practices and explore how the rigor of ERISA's fiduciary standards may be calibrated to take into account practical limitations of a plan sponsor's size and resources. Speakers will discuss their observations on governance best practices that in-house fiduciaries operating in a committee centric plan administration model can be expected to employ in satisfying specific aspects of their fiduciary duties. Practical options available to small- and medium-sized plan sponsors to satisfy the requirements of procedural prudence, in each of those same specific aspects of their fiduciary duties, will also be discussed.

Speakers: Peter M. Kelly, Program Co-Chair, *Retired Deputy General Counsel & Chief Employee Benefits Counsel of Blue Cross and Blue Shield Association*, Chicago, IL
Frank Palmieri, Program Co-Chair, *Palmieri & Eisenberg*, Princeton, NJ

Learning Objectives:

- Review and discuss fiduciary governance best practices
- Explore ERISA's fiduciary standards and limitations of plan sponsors size and resources
- Examine options to satisfy procedural prudence

Field of Study: Specialized Knowledge.

4:10-5:00

8. ERISA FIDUCIARY ISSUES UNDER SECURE 2.0

This Program will include an in-depth discussion of the ERISA fiduciary issues resulting from SECURE 2.0, including its effect on the Voluntary Fiduciary Closing Program, plan over-payments, lump-sum payment rules, Retirement Savings Lost and Found, and other matters.

Moderator: Joni L. Andrioff, Program Co-Chair, *RSM US LLP*, Washington, DC

Speakers: Lisa M. Gomez, Assistant Secretary, *Employee Benefits Security Administration (EBSA)*, U.S. Department of Labor, Washington, DC (Invited)
Julia A. Love, *Thompson Hine*, Cleveland, OH
Lisa A. Tavares, *Venable*, Washington, DC

Learning Objectives:

- Review and discuss the ERISA fiduciary issues resulting from Secure 2.0
- Examine the extent to which Secure 2.0 impacts the Voluntary Fiduciary Closing Program

Field of Study: Specialized Knowledge.

5:00-6:00 **NETWORKING RECEPTION (Non-CLE)**

6:00 **ADJOURN**

FOR MORE INFORMATION OR FOR ASSISTANCE REGISTERING

Contact Karen Case at 202.662.8641 or Karen.Case@americanbar.org.

FACULTY

Joni L. Andrioff, Program Co-Chair, *RSM US LLP*, Washington, DC

Joe Canary, Director of the Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), U.S. Department of Labor, Washington, DC (*Invited*)

Elham (Ellie) Fayyazi, Chief of Criminal Investigation Division, Employee Benefits Security Administration (EBSA), U.S. Department of Labor, Washington, DC (*Invited*)

Lisa M. Gomez, Assistant Secretary, Employee Benefits Security Administration (EBSA), U.S. Department of Labor, Washington, DC (*Invited*)

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Erin M. Sweeney, *DLA Piper LLP (US)*, Washington, DC

Lisa A. Tavares, *Venable*, Washington, DC

Peggy A. Whitmore, *CAPTRUST*, Port Washington, NY

ATTEND THE PROGRAM, AND LEARN WHAT YOU NEED TO KNOW ABOUT:

- An Introduction to Fiduciary Governance
- Benefit Claims
- Practical Issues in Preparing or a DOL Cybersecurity Audit
- Fiduciary Hot Topics
- ERISA Fiduciary Issues Under Secure Act 2.0
- Bitcoin and ESG Investments
- Procedural Prudence

TUITION

EARLY BIRD TUITION – Before August 15

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| \$695 | Non-Member |
| \$645 | ABA Member— <i>join a Section, and save even more!</i> |
| \$595 | Sponsoring Section Member |
| \$350 | Government Employee |
| \$25% Discount | Employee Benefits Passport Holder |

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| \$745 | ABA Member— <i>join a Section, and save even more!</i> |
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| \$350 | Government Employee |
| \$25% Discount | Employee Benefits Passport Holder |

REGISTRATION POLICY

Any individual attending any part of the **2023 ERISA Fiduciary Institute** must register and pay the registration fee. Shared registrations are not permitted. Registrations must be postmarked or emailed by August 15th to receive the discounts.

Registrants will have access to download materials prior to the conference and any additional materials provided. Each registrant will also be eligible for MCLE accreditation within those states that require continuing legal education.

To register with any of these discounts contact Karen.Case@americanbar.org.

ADDITIONAL SAVINGS

Receive a **25%** tuition discount if you are a **JCEB Employee Benefits Passport** holder.

OR

If two or more register from the same firm, one registrant will receive a **\$50** reduction in program tuition!

SCHOLARSHIP INFORMATION

A limited number of scholarships to defray tuition expenses are available for this program on a case-by-case basis.

Qualifying attorneys will receive at least a 50% reduction in the course fee(s). Preference will be given to full-time LL.B. candidates. Scholarship applications must be received in the ABA office no later than thirty days prior to the program presentation. You will be notified prior to the program if your application is approved. To request an application or receive additional information, contact Karen Case at Karen.Case@americanbar.org.

MCLE INFORMATION

The ABA will seek **6.5** hours of CLE credit in 60-minute states* and **7.8** hours of CLE credit for this program in 50-minute states* Credit hours are estimated and are subject to each state's approval and credit rounding rules. Please visit the program website for more CLE details, or for general information on CLE visit the ABA's website at www.americanbar.org/mcle.

CPE INFORMATION

EARN CPE CREDIT: The American Bar Association is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website: www.learningmarket.org.

Recommended CPE Credits and Field of Study: Specialized Knowledge. Program attendees can earn up to 7.8 CPE credits. Prerequisites: There are no prerequisites. Advanced preparation: None. Program Level: Basic. Delivery Method: Group Live.

CPE credit is available for live sessions only. CPE Credit is not available for recorded versions of live sessions.

How to request CPE credit: To request CPE credit for your participation (and obtain a certificate of completion), you will need to complete an ABA Attendance Affidavit. Attendance Affidavits are available at the end of the entire conference, after we have verified your attendance. To receive CPE credit, please check "CPE for Accountancy (NASBA) under "Certificates and Credit" on the ABA Attendance Affidavit.

NOTE: All attendees seeking CPE credit must sign in and sign out. You may only claim credit for sessions within the period between your sign-in and sign-out: credit will be adjusted or modified accordingly.

You will receive a personalized link to submit your Attendance Affidavit via email within 7 business days of the last day of the conference. If you do not receive this email by then, please contact Karen Case at Karen.Case@americanbar.org.

For more information about administrative and registration policies such as refunds and cancellations, please visit <https://cvent.me/qwzKVN>. For other information about CPE credit and to resolve complaints, contact Karen Case at Karen.Case@americanbar.org.

CANCELLATION AND REFUND POLICY

Cancellations will be honored on the following basis:

- On or before August 15 – 100% Refund minus \$50 administrative fee*
- After August 15 – No Refund**

Substitute registrants are welcome.

Please contact customer care via email at meetingcancellations@americanbar.org.

*Day of Cancellation is the day the cancellation is received by the ABA, by telephone or in writing.

**No refunds will be made for cancellations received after August 15; written confirmation of refund requests must be received within 14 days following the National Institute presentation.

COMPLAINT RESOLUTIONS

Please contact Karen Case at Karen.Case@americanbar.org or (202) 662-8641.

HOTEL INFORMATION

DEADLINE FOR HOTEL RESERVATIONS: August 22

If you are interested in booking a hotel room at the St. Gregory Hotel, 2033 M Street NW, Washington, DC 20036, contact Karen Case at 202.662.8641 or Karen.Case@americanbar.org. A limited number of rooms have been set aside for the Employee Benefits Spring Update registrants at **\$329** for single or double occupancy.

AIRLINE INFORMATION

With **ABA Egencia**, you can automatically obtain ABA negotiated airfare discounts for travel to the ABA Meetings. ABA Egencia enables you to purchase the best airfare at the time of booking, by providing you with the ability to search for and compare fares from virtually every airline serving the destination.

Reservations with ABA Egencia can be made online or offline. For offline reservations, call (877) 833-6285.

ABA Egencia is available online via ABA Travel Services at <https://www.egencia.com/public/us/>.*

ABA airfare discounts on some carriers may also be obtained by purchasing your tickets under the ABA Discount Codes directly from the airline or through your travel agent.

- **American Airlines**

ABA Discount only available at ABA Egencia at <https://www.egencia.com/en/customer>.

- **United Airlines**

To make flight reservations online, click on Discount Code: [ZMCR946142](#)

Via Phone: 800-426-1122

Booking fees are waived for Meeting reservations.

- **Delta Airlines**

To book flights online click on Discount Code: [NM2AZ](#)

Via Phone: 800-328-1111

- **Southwest Airlines**

Southwest tickets can be booked on ABA Egencia. If not booking via ABA Egencia you can book via www.swabiz.com and use ABA SWABIZ Company ID **99422890**.

*A Travel Profile is required when booking airline reservations with ABA Egencia, visit www.americanbar.org/travel for more information.

Not an ABA Member, but traveling to an ABA Meeting? Please email travel services at travel.services@americanbar.org for more information.

UNABLE TO ATTEND?

If you are interested in purchasing the Digital Audio sets (electronic course materials and downloadable recordings) available approximately 4-6 weeks after the program, please contact Karen Case at karen.case@americanbar.org or 202.662.8641 for further information.

PROGRAM CONFIRMATION

Written confirmation of your registration will be e-mailed to you as soon as your online registration is complete. In addition, details and instructions on how to access the event site and materials will follow approximately a week before each scheduled session. If you do not receive the confirmation notices, email Karen.Case@americanbar.org to confirm that your registration was processed and the program is being held as scheduled.

QUESTIONS

If you have a specific question that you want answered, you can email it up to the day before the program to Karen.Case@americanbar.org, or ask the speakers directly during the program presentation.

SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required, please email Karen.Case@americanbar.org. Reasonable advance notice is requested.

ABA SPONSORING SECTIONS

Join one of these dynamic Sections, and become active in one of their employee benefit committees. Join the ABA and one or more of the Sections when registering for this program, and save up to \$100 on this program tuition.

- Section of Business Law, \$65
- Section of Labor and Employment Law, \$75
- Section of Taxation, \$105
- Section of Health Law, \$65
- Section of Real Property, Trust and Estate Law, \$75
- Section of Tort Trial and Insurance Practice, \$65

THANK YOU TO OUR SILVER LEVEL SPONSORS



MARK YOUR CALENDAR AND CHECK OUR WEBSITE FOR UPCOMING PROGRAMS

www.americanbar.org/jceb/

October 2-3, 2023

HEALTH AND WELFARE BENEFIT PLANS NATIONAL INSTITUTE, Arlington, VA

October 11-13, 2023

ERISA BASICS NATIONAL INSTITUTE, VIRTUAL PROGRAM

October 26-27, 2023

EXECUTIVE COMPENSATION NATIONAL INSTITUTE, Washington, DC

REGISTRATION AND ORDER FORM

2023 ERISA FIDUCIARY INSTITUTE
(202) 662-8641 • www.americanbar.org/jceb/

American Bar Association
1050 Connecticut Avenue, NW, Washington, DC

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- \$645 ABA Member
- \$595 Sponsoring Section Member
ABA# _____

FULL TUITION – After August 15

- \$745 Non-Member
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- \$645 Sponsoring Section Member
- ABA# _____

ON-SITE TUITION

- \$795 Non-Member
- \$745 ABA Member
- \$695 Sponsoring Section Member
ABA# _____

ADDITIONAL RATES

- 25% Discount applied to all rates listed above for Employee Benefits Passport Subscribers
- \$350 Government Rate

UNABLE TO ATTEND?

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- Send me the JCEB calendar for upcoming Employee Benefits Programs

NOTE: *CLE and CPE credit are available for live sessions only. Credit is not available for recorded versions of live sessions.*

TO REGISTER:

Online: <http://www.americanbar.org/jceb/> with credit card payment

Mail: American Bar Association
Attention: Service Center—Meeting/Event Registrations Department
Meeting Code: EB2309FI
321 N. Clark Street, Floor 19
Chicago, IL 60654

PAYMENT: *Must include one of the following:*

- Check made payable to: *American Bar Association - JCEB*
- Credit Card: MasterCard, VISA or American Express

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Organization _____

Address _____

City _____ State _____ Zip _____

E-mail _____ Phone _____

Billing Address (If different from above) _____

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**Tax: DC residents add 6%. IL residents add 10.25%, before including postage and handling charges. Price is subject to change after 9/13/2023.*

CANCELLATION POLICY

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- After August 15 – No Refund**

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* "Day of Cancellation" is the day the cancellation is received in writing by the ABA.

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- I am interested in becoming a member of the American Bar Association. Please send me information and membership forms.
- I am an ABA member, but want a further reduction on my tuition for this program. Please enroll me into the Section listed below; I have enclosed a separate check made payable to the ABA.
 - Section of Business Law, \$65
 - Section of Labor and Employment Law, \$75
 - Section of Taxation, \$105
 - Section of Health Law, \$65
 - Section of Real Property, Trust and Estate Law, \$75
 - Section of Tort Trial and Insurance Practice, \$65