



# 2022 EMPLOYEE BENEFIT PLAN CONFERENCE

**VIRTUAL EVENT**

**FRIDAY, MAY 20<sup>TH</sup>**



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## THANK YOU TO OUR SPONSORS!



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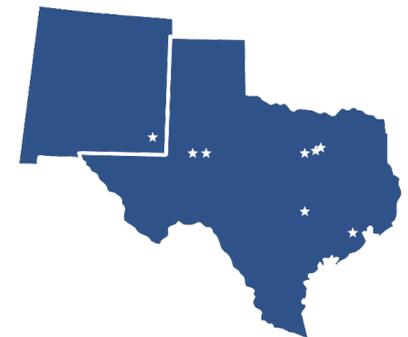
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## FIRM UPDATE

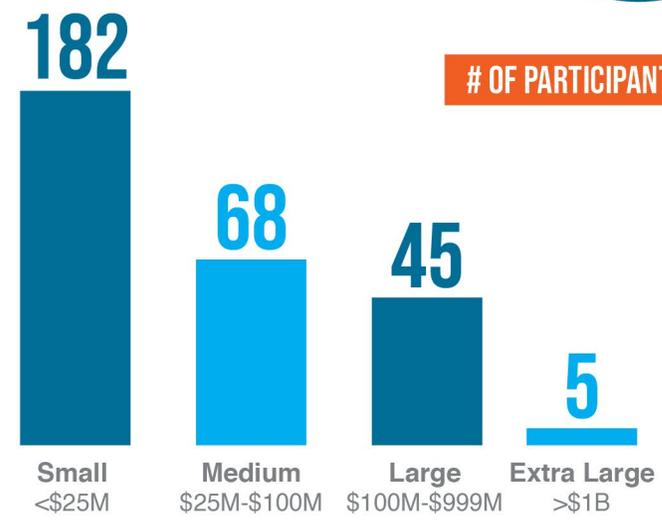
- Whitley Penn is the 40th largest firm in the nation based on 2022 rankings in *Accounting Today* and one of the fastest growing firms in the nation. For more than 20 years, Whitley Penn has been named to the “Best of the Best” listing by *INSIDE Public Accounting*, the publication’s report of the top 25 accounting firms in the country. We have an extensive team of experienced audit, tax, consulting and valuation professionals who represent clients through a myriad of industries.



# EMPLOYEE BENEFIT PLAN AUDITS

More than  
**300**  
Total Number of  
Plans Audited

- 237 Defined Contribution - Limited Scope
- 21 Defined Benefit - Limited Scope
- 12 Defined Contribution - Full Scope/ SEC 11-K
- 13 Defined Contribution 403 (b) and 401 (a)
- 5 ESOP
- 3 Defined Benefit - Public Sector
- 2 Defined Contribution - Full Scope/ Non-SEC
- 5 Health and Welfare
- 2 Defined Benefit - Full Scope

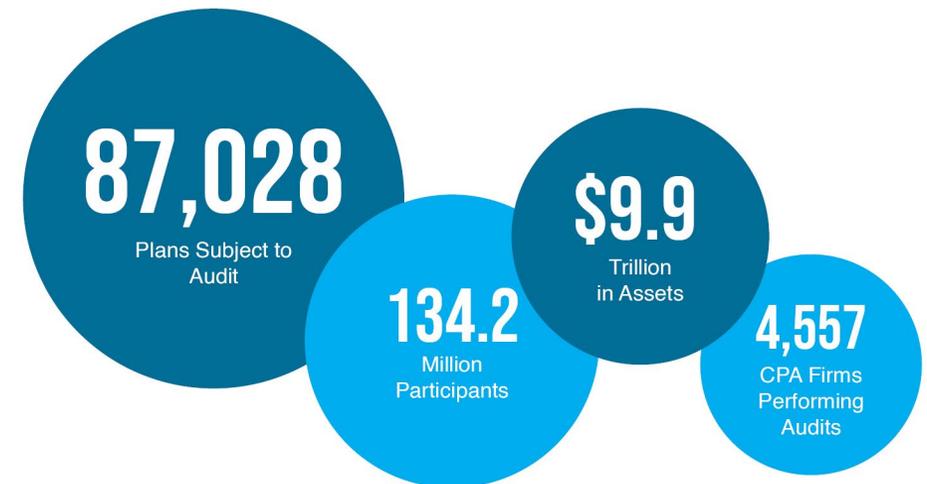


# OF PARTICIPANTS



SIZE BY NET ASSETS

# DOL UPDATE: AUDIT AND AUDITOR LANDSCAPE



*(Based on 2019 Form 5500 Data)*

*Credit: Michael Auerbach, CPA, Chief Accountant in the Office of the Chief Accountant with DOL's EBSA Division*

## WHAT IS THE EMPLOYEE RETENTION CREDIT?

- The Employee Retention Credit (ERC) has emerged as one of the biggest and most overlooked COVID-19 related tax provisions. Originally part of the CARES Act, the ERC has undergone multiple changes since it was introduced. Most importantly, the Consolidated Appropriations Act made the ERC available to employers that also received Paycheck Protection Program (PPP) loans.
- If eligibility criteria is met, credits are available for up to 70% of wages and health insurance premiums paid to each employee up to \$10,000 for the first three quarters of 2021. Credits are also available for up to 50% of wages and health insurance premiums paid to each employee up to \$10,000 for full-year 2020.
- For example, a Company with 100 employees can benefit up to \$700,000 per quarter during 2021 and \$500,000 for the full-year 2020 or \$2,600,000 in total. If a Company received a second PPP loan the benefit may be reduced.
- Visit our website for more information and to fill out the intake form to see if you qualify: <https://www.whitleypenn.com/erc/>

## **PANEL QUESTION:**

**REGARDING THE NEW AUDITING STANDARDS, IS THERE ANYTHING MORE WE MUST DO AS A CLIENT?**

## **PANEL QUESTION:**

**WHAT IS A “WATCH LIST”?**

**PANEL QUESTION:**

**HOW WILL A RECESSION AFFECT THE  
401(K) INDUSTRY?**

## **PANEL QUESTION:**

**PLEASE ADDRESS THE CAPITAL PRESERVATION OPTIONS OF MONEY MARKET FUNDS OR STABLE VALUE FUNDS LONG TERM AND DURING THIS PERIOD OF RAPIDLY RISING INTEREST RATES.**

**PANEL QUESTION:**

**WILL THE IRS STILL ALLOW REMOTE NOTARIZATION  
OF SPOUSAL CONSENTS?**

**PANEL QUESTION:**

**OUR 401(K) PLAN HAS NEVER BEEN AUDITED BUT WE'RE CLOSE TO MEETING THE AUDIT REQUIREMENT. WHAT'S YOUR BEST ADVICE FOR PREPARING FOR OUR FIRST PLAN AUDIT?**

## **PANEL QUESTION:**

**HOW REAL OF A THREAT IS CYBER SECURITY THESE DAYS?**

**PANEL QUESTION:**

**WHAT TRENDS ARE YOU SEEING WITH PLAN SPONSORS  
DECIDING BETWEEN A 3(21) CO-FIDUCIARY ADVISOR OR A  
3(38) DISCRETIONARY INVESTMENT MANAGER?**

**PANEL QUESTION:**

**HAS THE IRS ANNOUNCED THE NEXT RESTATEMENT  
DEADLINE FOR 403(B) PLANS?**

**PANEL QUESTION:**

**LAST YEAR OUR PLAN WAS SELECTED FOR A DOL INVESTIGATION. ARE YOU ALL SEEING AN INCREASE IN THE NUMBER OF CLIENTS BEING SELECTED FOR THESE INVESTIGATIONS?**

## **PANEL QUESTION:**

**WITH THE MARKET VOLATILITY WE HAVE SEEN THIS YEAR,  
WHAT ARE YOU RECOMMENDING TO YOUR CLIENTS DO TO  
HELP THEIR PARTICIPANTS THROUGH THESE CHALLENGING  
TIMES?**

## **PANEL QUESTION:**

**WHAT CAN AN EMPLOYER DO IF IT MISSED THE  
JULY 31, 2022 RESTATEMENT DEADLINE?**

## **PANEL QUESTION:**

**WITH THE DOL MANDATED LIFETIME INCOME DISCLOSURE ILLUSTRATIONS COMING OUT WITH Q2 STATEMENTS AND MANY PRODUCTS COMING TO MARKET FOCUSED ON THE DECUMULATION OF RETIREMENT ASSETS, WHAT ARE YOU SEEING PLAN SPONSORS DO ON TOPIC OF RETIREMENT INCOME?**

## **PANEL QUESTION:**

**WE UNDERSTAND THE PERIOD FOR SELF  
CORRECTING SIGNIFICANT OPERATIONAL FAILURES  
WAS CHANGED FROM TWO YEARS TO THREE YEARS.  
CAN ANYONE COMMENT OR EXPLAIN FURTHER HOW  
THIS WORKS?**

## **PANEL QUESTION:**

**WHY DO OUR AUDITORS KEEP REFERRING US TO AN ERISA ATTORNEY FOR CORRECTIONS TO PARTICIPANT ACCOUNTS?**

**GIVEAWAY TIME!**



## REMINDER: ADMINISTRATIVE ITEMS

- CPE Credit– Please fill out the evaluation survey sent via email at the end of the event to obtain certificates from LC Vista account
  - *For questions about CPE, please email [CPE@whitleypenn.com](mailto:CPE@whitleypenn.com)*
  - *HRCI / SHRM Credit – to obtain your certificate please email [Marketing@whitleypenn.com](mailto:Marketing@whitleypenn.com)*
- Recording & Presentations will be available next week, visit our events page
  - [www.whitleypenn.com/events](http://www.whitleypenn.com/events)

**THANK YOU!**

SEE YOU NEXT YEAR

# Highlights From The Headlines-- What's New In Employee Benefits

Jim Griffin  
Partner, Scheef & Stone, L.L.P.  
[Jim.griffin@solidcounsel.com](mailto:Jim.griffin@solidcounsel.com)

2022 Employee Benefits Conference  
WHITLEY PENN  
May 20, 2022

# Jim Griffin, Partner Scheef & Stone, L.L.P.



[Jim.griffin@solidcounsel.com](mailto:Jim.griffin@solidcounsel.com)

214-706-4209

[www.linkedin.com/in/jimgriffinerisalawyer](http://www.linkedin.com/in/jimgriffinerisalawyer)

- Attorney for more than 35 years
- Former chair of the ERISA Committee of the State Bar of Texas Tax Section
- Selected Community Service: UT Southwestern Medical School, KCBI, MATA, Broadway Dallas
- Leadership Dallas
- SMU Dedman School of Law
- Texas Tech University
- Married to Sheila

# U.S. Supreme Court Issues Unanimous Opinion Requiring Prudence For Each Investment Choice

- Plaintiff sued Northwestern University claiming that Northwestern violated its ERISA fiduciary duty of prudence by
  - Offering needlessly expensive investment options, and
  - Causing the plan to pay excessive recordkeeping fees
- 7<sup>th</sup> Circuit dismissed case because the Northwestern plan offered over 400 investment choices, including low-cost choices

# U.S. Supreme Court . . .

- Supreme Court
  - **Rejected** diverse menu defense
  - **Held** that the content of the duty of prudence turns on the circumstances **prevailing at the time the fiduciary acts** and that the appropriate inquiry will necessarily be **context specific**
  - **Reminded** that fiduciaries have a duty to monitor all plan investments and to remove any imprudent ones **within a reasonable time**
  - **Warned** that the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, and courts must give due regard to the range of **reasonable judgments a fiduciary may make based on her experience and expertise.**

# Costco Settles 401(k) Litigation for \$5.1 Million

- Plaintiffs argued that Costco
  - Did not have a viable method for monitoring the expenses of the funds in the plan
  - Failed to have an independent system of review to ensure that the participants were charged appropriate and reasonable fees for the plan's investment options
  - Failed to leverage the plan's size to negotiate lower expense ratios for certain investment options maintained and/or added to the plan during the class period
- Costco agreed to cap quarterly recordkeeping fees at **\$3.25 per participant per quarter**

# USI Wins Early Dismissal

- Plaintiffs filed suit against USI Insurance alleging that it paid unreasonable 401(k) recordkeeping fees--nearly 3X what should have been paid
- Plaintiff provided a table of fees paid by comparable plans
- Defendants successfully challenged the “comparability” of the plans using information in 5500 filings
- Court ruled that the plaintiffs were required to allege that the “comparable” plans offered the same “basket of services” as the USI plan
- Without that allegation, the court agreed with the Defendants and dismissed the case

# Capital One Seeks Dismissal

- Plaintiffs filed suit against Capital One claiming that Capital One
  - Breached the duty of prudence by including underperforming and expensive funds in its 401(k) line up; and
  - Failed to discharge its duty to monitor its own 401(k) committee
- In seeking dismissal, Capital One argued that
  - it is not sufficient simply to say that investment funds were more expensive than “average,” or that investment funds underperformed other investments
  - A lawful claim must identify investment choices that would have been more prudent and compare the services that the plan received in exchange for the fees paid

# 6<sup>th</sup> Circuit Rejects Arbitration of ERISA Disputes

- Raymond and Robin worked for Cintas and signed individual employment agreements that agree to arbitration and waiver of class actions
- Raymond and Robin sued Cintas arguing that the Cintas 401(k) plan should have offered passive investment choices that are cheaper than active investment choices
- They also argued that the recordkeeping fees in the Cintas 401(k) plan were expensive and imprudent
- Lawsuit sought damages for the plan for breach of fiduciary duty

# 6<sup>th</sup> Circuit Rejects . . .

- 6<sup>th</sup> Circuit held
  - Although the ERISA claims were brought by individual plaintiffs, it is the plan that takes legal claim to the recovery
  - The claim really belongs to the plan
  - Because the ERISA claims belong to the plan, an arbitration agreement that binds only individual participants cannot bring such claims into arbitration because the plan is not party to the agreement to use arbitration

# Survey Question #1: Mountains or Beach

A. Mountains

B. Beach

# When a Wrongdoer Has Money in Your Company's 401(k) Plan

- Money in an ERISA plan cannot be assigned or alienated from the participant or beneficiary
- “If a former employee embezzled money from his employer, can the employer/plan sponsor use the terminated employee's 401(k) plan balance to help offset the financial loss to the employer?”
- *Greebel* is a case pending in the 2<sup>nd</sup> Circuit in which a defendant committed wire fraud and securities fraud and was ordered to pay restitution of over \$10 million

# Counting “Participants” --Moving From Confusion To Common Sense

- DOL has proposed a change to the regulations that would count only participants with account balances rather than eligible participants in determining the number of participants in a 401(K) plan
- This would affect
  - 5500 filings
  - Audit requirements
  - Partial termination calculations

# Beneficiary of Deceased 401(k) Participant

- Jimmy Moore worked for NCR and was a participant in NCR's 401(k) plan that was administered by Fidelity
- The NCR 401(k) said

Unless designated otherwise, the Beneficiary of a married Participant shall be his spouse. In the event a married Participant designates someone other than his spouse as Beneficiary, such initial designation or subsequent change shall be invalid unless the spouse consents in a writing, which names the designated Beneficiary, acknowledges the effect of the designation, and is notarized, or witnessed by a Plan representative

# Beneficiary . . .

- December 25, 2010--Jimmy named his brother Billy as his beneficiary in the event of Jimmy's death
- May 24, 2016--Jimmy was diagnosed with esophageal cancer
- July 22, 2016--Jimmy signed his will named Billy as sole heir and executor
- July 26, 2016--Jimmy signed a premarital agreement with Beulah
- August 17, 2016--Jimmy and Beulah were married

# Beneficiary . . .

- February 14, 2017--An NCR representative advised Jimmy to call Fidelity about confirming his beneficiary
- March 20, 2017--Jimmy and Bill spoke to a Fidelity advisor. Jimmy advised of his marriage and that Billy was to be the beneficiary and sole heir. Fidelity advisor confirmed that right now Billy is set to inherit all
- March 22, 2017--Fidelity's website shows Billy as Jimmy's 100% beneficiary
- August 12, 2017--Jimmy died

# Beneficiary . . .

- October 7, 2020--Billy filed lawsuit against NCR and Fidelity alleging that they had breached their fiduciary duties under ERISA by
  - Failing to file an interpleader lawsuit to let the court resolve the claims
  - Failing to disclose their intent to pay Beulah
- The court ruled that
  - Under the terms of the NCR plan, Billy was not longer a plan beneficiary **IMMEDIATELY** upon Jimmy's marriage to Beulah
  - The NCR plan owed no ERISA duties to Billy whatsoever

# Plan Imposed Limitations Period Not Enforceable

- Contractual limitations periods are used in employee benefit plans to limit the time that a participant is allowed to file a lawsuit for benefits
- The Supreme Court has held that the limitations period must be reasonable
- A Federal district court in Utah ruled in May, 2022 that the plan's limitations period was not enforceable because the limitations period was not disclosed in the benefit denial notice

# Survey Question #2: Diet Coke or Diet Pepsi

A. Diet Coke

B. Diet Pepsi

# HIPAA-ERISA Tightrope

- Ken Wilson's minor son received residential mental health treatment
- United Healthcare denied the claim as medically unnecessary
- Ken hired a lawyer who requested all relevant documents from UHC and included a HIPAA authorization
- UHC ignored the lawyer's request because it decided that the HIPAA authorizations was invalid

# HIPAA . . .

- Court ruled that
  - UHC should have provided the plan document and its medically necessary guidelines and any other general information
  - UHC was correct in not disclosing the son's individually identifiable health information
  - UHC violated its ERISA duties by ignoring the claims and that it should have at least responded that the HIPAA authorization was deficient

# Employee Benefits Angle on *Roe vs. Wade*

- Seyfarth—Businesses Seek To Provide Abortion Travel Benefits in Light of Potential Supreme Court Decision, May 12, 2022
- Morgan Lewis--Considerations For Employers and Employer Plan Sponsors Related To Potential Changes In The Effect Of Roe V. Wade, May 6, 2022

# Employee Benefits Angle . . .

- How would ERISA preemption apply to employer health plan designs in state with laws that restrict abortions?
- Would an employer's abortion travel reimbursement policy be considered part of a group health plan?
- Are travel expenses to obtain medical care considered a "medical care" expense?
- Can an employer limit its travel benefit reimbursement benefit to abortion services or would other conditions have to be included?
- How would an employer travel benefit impact the health savings plan requirement that employees must satisfy their deductible before high deductible health plan coverage is available?
- Can cafeteria plan funds be used for travel if the procedure is illegal in the employee's home state?

# Life Insurance and EOI—Who Wins and Who Loses

- Beth Skelton worked at Davidson Hotel and was covered by a \$100,000 group life policy
- Beth was married to Corey and when Corey's son moved in with Corey and Beth, Davidson advised her that was a life change event and that she could increase her life insurance
- Which she did—up to \$238,000
- Reliance Standard told Beth that she would need to provide evidence of insurability (EOI) and that she would not have to pay premiums until her EOI was approved

# Life Insurance and EOI . . .

- Davidson confirmed the insurance change and started withholding premiums
- Beth never turned in her EOI
- Davidson did bulk billing and so Reliance never knew that a premium was being paid on Beth
- Beth died
- Reliance denied Corey's claim because Beth never turned in her EOI

# Life Insurance and EOI . . .

- Davidson paid \$175,000 of the \$238,000
- District court ordered Reliance to pay the remaining \$63,000
- 8<sup>th</sup> Circuit court found that Reliance was a fiduciary of the Davidson life insurance policy
- Reliance breached its ERISA fiduciary duty by not having an effective enrollment system

# Survey Question #3: Steak or Seafood

A. Steak

B. Seafood

# Liability Hidden in COBRA Notices

- 50 cases filed over the past few years involving name brand companies, like Amazon, General Motors, Target
- Home Depot settled for \$815,000
- Fiat Chrysler settled for \$600,000
- Costco settled for \$750,000
- DOL filed a friend of the court brief supporting Southwest Airlines' COBRA notice

# Liability Hidden in COBRA Notices

- Claims that COBRA notices
  - Don't contain required information
  - Too complicated to understand
  - Designed to scare people from filing for COBRA by warning against filing false information
  - Fail to use the DOL model notice
  - Fail to identify the plan administrator



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# **MANAGING YOUR INVESTMENT AND RETIREMENT PLAN COMMITTEES**

Travis Whitten and John A. Pickett

May 20, 2022

# Topics for Discussion

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**01**

Plan Fiduciaries' Duties

**02**

Components of an Effective Fiduciary Process

**03**

Forming a Committee

**04**

Committee Best Practices

# The Six Commandments as Handed Down to Plan Fiduciaries

---

1

Duty to  
be Prudent

2

Duty of  
Loyalty and  
Impartiality

3

Duty to  
Diversify

4

Duty to  
Monitor and  
Supervise

5

Duty to  
Ensure  
Reasonable  
Plan Costs

6

Duty to  
Avoid  
Prohibited  
Transactions

# The Most Common Components of an Effective Fiduciary Process

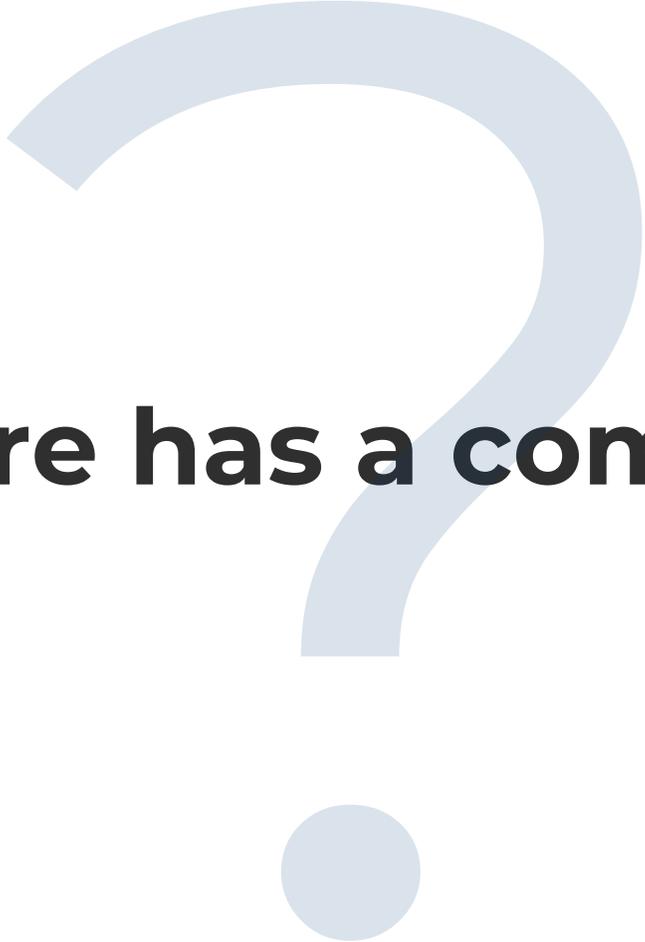
 Fiduciary Committee

 Shared Purpose

 Guiding Document

 Ongoing Oversight

 Decision Documentation



**Who here has a committee?**

## Audience Poll

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**How many members do you have on your committee?**

- A. 1-3**
- B. 3-5**
- C. 5-8**
- D. > 8**

## Forming a Committee

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**“If you want to kill any idea in the world, get a committee working on it.”**

— Charles Kettering

**“A committee is a group of people that keeps minutes and loses hours.”**

— Milton Berle

# Forming a Committee

---

- Key considerations before forming your committee:
  - What does the plan name as a fiduciary?
  - What powers does the named fiduciary have to delegate authority to other parties?
  - How is that documented and achieved?
- These are matters of organizational liability
- Important to grant authority and responsibility for fiduciary oversight and decisions
  - May require executed resolutions to grant authority

# Forming a Committee

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We are ultimately looking for a group of people who collectively have the skills and experience to meet ERISA's prudent expert standard of care...

# Forming a Committee

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## WHO TO INCLUDE?

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- No prescribed answer
- Commonly an odd number
- 5 is common
- 1-2 finance/treasury
- 1-2 human resources
- 1-2 operations (businesspeople)

## WHO NOT TO INCLUDE?

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- CEOs
- Domineering CFOs
- Rank-and-file employees

## POPULAR EX-OFFICIO OPTIONS

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- Internal counsel
- Plan managers

# Forming a Committee

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# Committee Best Practices

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- Fiduciary training for all committee members...rinse, wash, repeat
- Schedule meetings on a regular interval
- Schedule meetings well in advance
- Create an agenda
- Respect committee members' time and attention
- Determine how decisions will be made
- Document, document, document!
- Have a thorough understanding of your plan and how it operates (you may want to move this up on your list)

# The Whys Have It

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Best-in-class fiduciary processes are built by committees that know why:

- Why do we have a committee?
- Why am I on the committee?
- Who am I representing on the committee?
- Why do we meet as frequently as we do?
- Why is our plan design as it is?
- Why do we use the recordkeeper we use?
- Why do we offer the asset classes we offer?
- Why do we offer the funds we offer?
- Why do we pay the fees we pay?
- Why do we allocate those fees the way we allocate them?
- And on, and on, and on...

# Documentation Best Practices

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- Meeting minutes or reports (not all groups use minutes)
  - What is captured in meeting minutes is effectively the ONLY thing that happened in a meeting
- Investment reviews
- Investment comparisons/searches
- Fee benchmarking reports
- Periodic reviews of the investment policy statement (IPS)

# Documentation Best Practices

-  Fiduciary Committee ✓
-  Shared Purpose ✓
-  Guiding Document ✓
-  Ongoing Oversight ✓
-  Decision Documentation ✓



# QUESTIONS?

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**TRAVIS WHITTEN, CFP®**

---



Senior Vice President,  
Financial Advisor



214.622.6020



[travis.whitten@captrust.com](mailto:travis.whitten@captrust.com)



**JOHN A. PICKETT, CIMA®**

---



Senior Vice President,  
Financial Advisor



214.622.6020



[john.pickett@captrust.com](mailto:john.pickett@captrust.com)

# Fraud Awareness

**Felix J. Lozano III, CPA, CFE**

Chief Growth Officer | Partner

May 20<sup>th</sup>, 2022



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# Lozano Update

What I've been up to

# Disclaimer

- This presentation and related materials are designed only to provide general information regarding the subject matter discussed during this presentation. The statutes, authorities, and other laws cited in this presentation are subject to change.
- This presentation and related materials are not intended to provide tax, accounting, legal, or other professional advice to any specific person or entity. Any advice or opinion regarding the application of the subject matter for a specific person or entity should be provided by a competent professional advisor based on an application of the appropriate law and authorities to the facts and circumstances applicable to that person or entity.



## FELIX J. LOZANO III CPA, CFE

- TCU Alumni
- EY – 8 Years
- Whitley Penn Since 1995



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# Executive Summary

Total Slides	80
Admin Slides	<u>- 4</u>
Total Slides Discussed	76
Time Per Slide	x42 seconds per slide
Presentation	= 52 min
Q&A (Us Talking)	<u>+ 8 min</u>
<b>Total Estimated Minutes</b>	<b>60 min</b>

# Learning Objectives

## Fraud

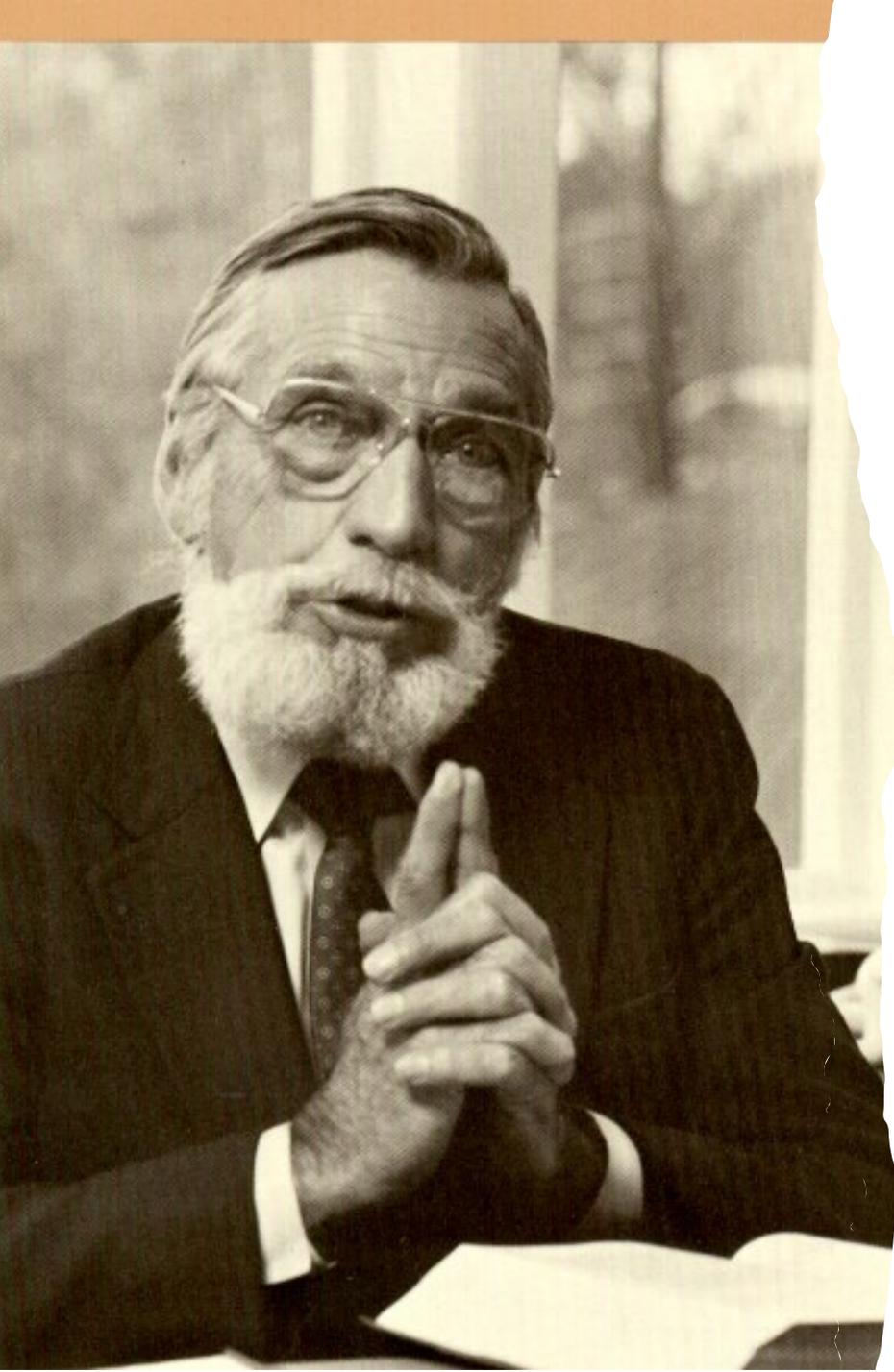
- Defined
- Statistics
- Trivia
- Faces

## Fraud Example

- What Happened
- How Much
- Who Perpetrated
- Behavioral Red Flags

## Elements of Fraud

- A representation
- About a material point
- Which is false
- Intentionally or recklessly
- Relied upon by the victim
- To the victim's damage



## Donald R. Cressey

- Known for his studies of organized crime
- Served as organized crime consultant to the President's Commission on Law Enforcement and Administration of Justice in 1966 and 1967
- Cressey's hypothesis later became known as the "Fraud Triangle"

# The Fraud Triangle

PRESSURE



PERCEIVED  
OPPORTUNITY

RATIONALIZATION



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## Association of Certified Fraud Examiners

- Founded in 1988 by Dr. Joseph T. Wells, CFE, CPA
- 70,000 members in > 150 countries
- Report to the Nations (occupational fraud)
- Issued every other year since 1996
- **2,504 Fraud cases in 2020 (11<sup>th</sup> edition)**
- Cases included more than 125 countries in 2020

<http://www.acfe.com/>

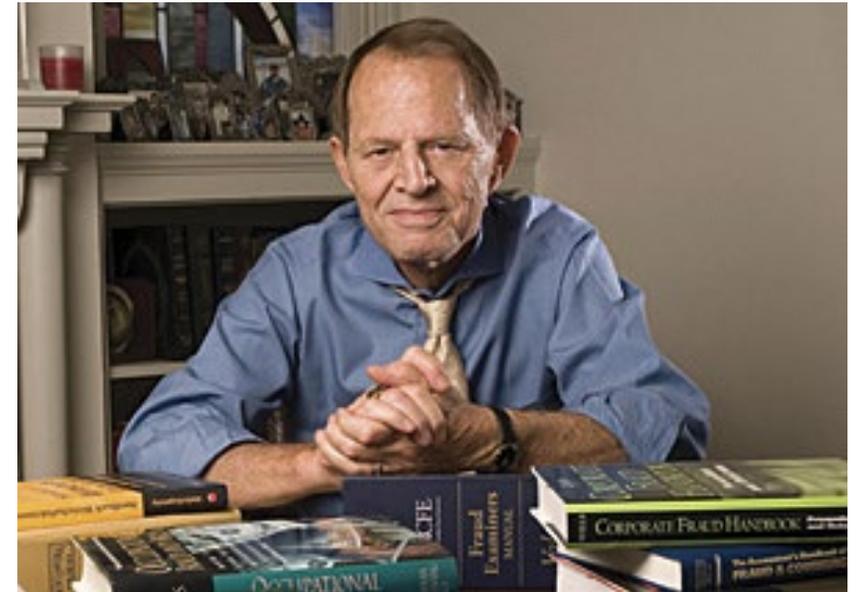


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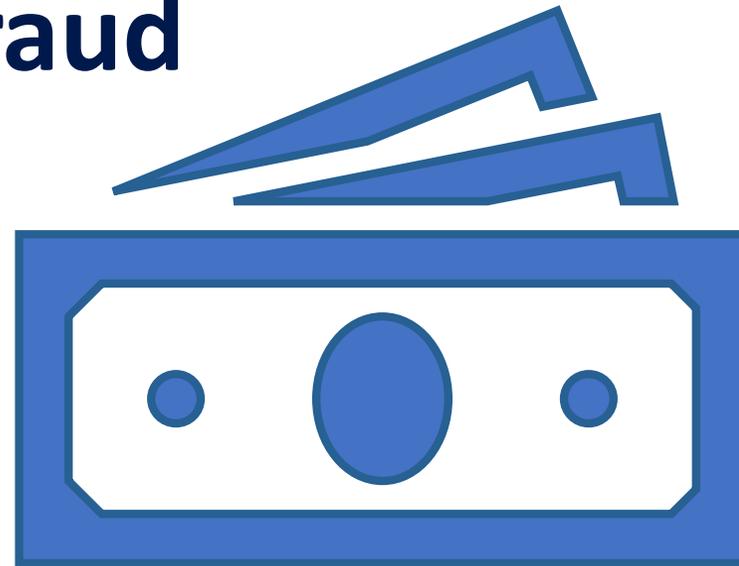
# Occupational Fraud Defined

The use of one's occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization's resources or assets.

# Wide World of Fraud

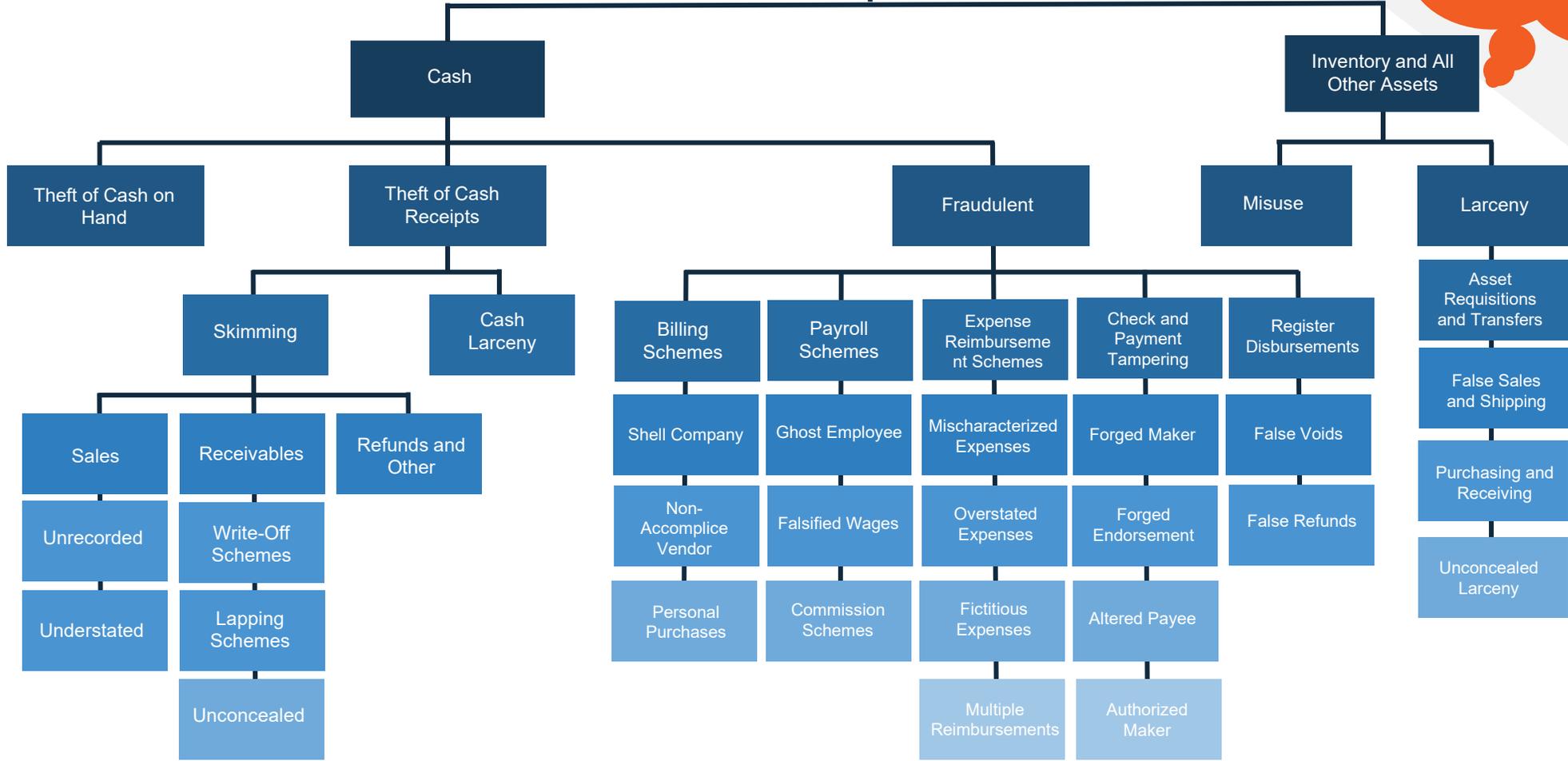
## Three Branches

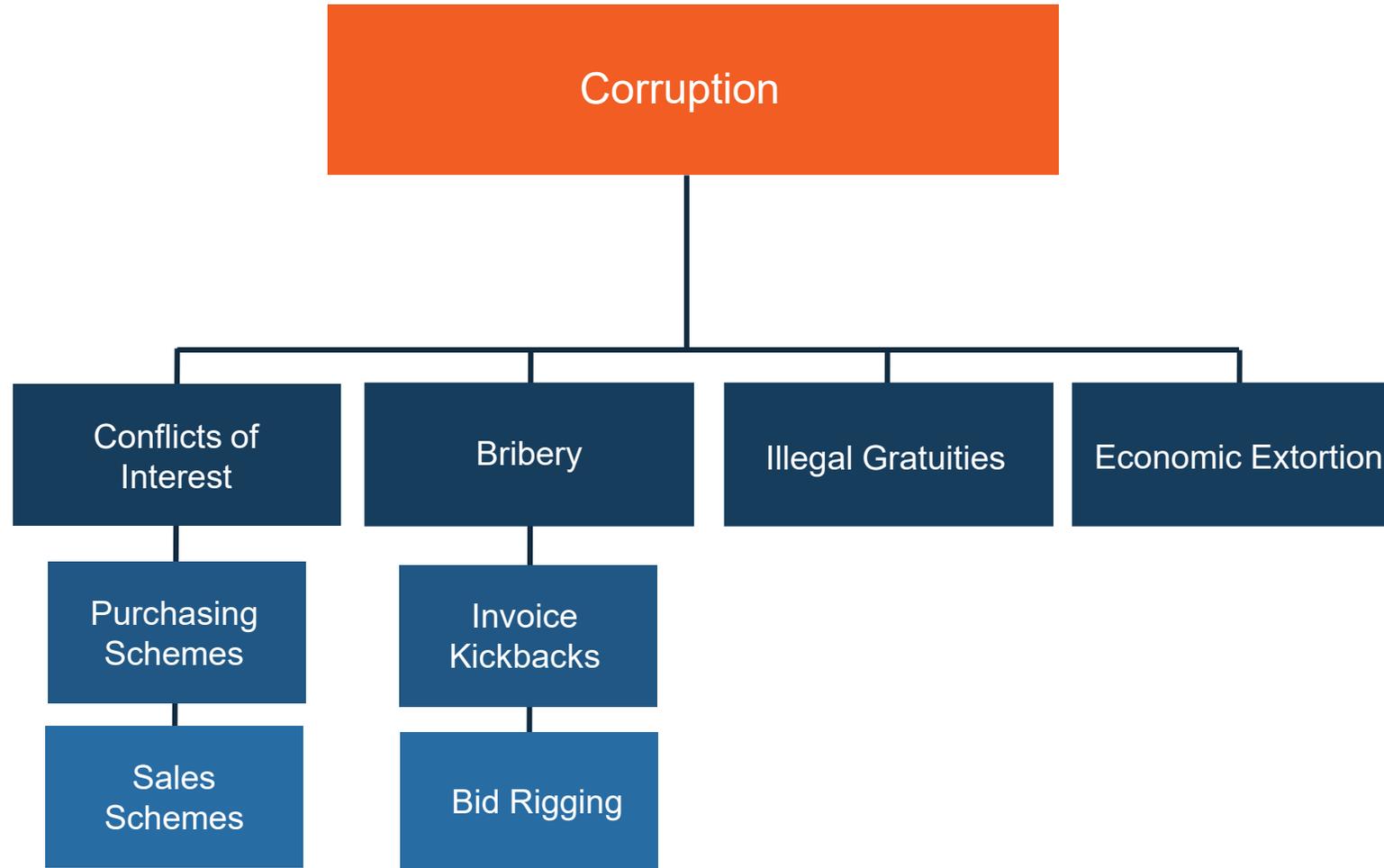
- Asset Misappropriation
- Financial Statement Fraud
- Corruption



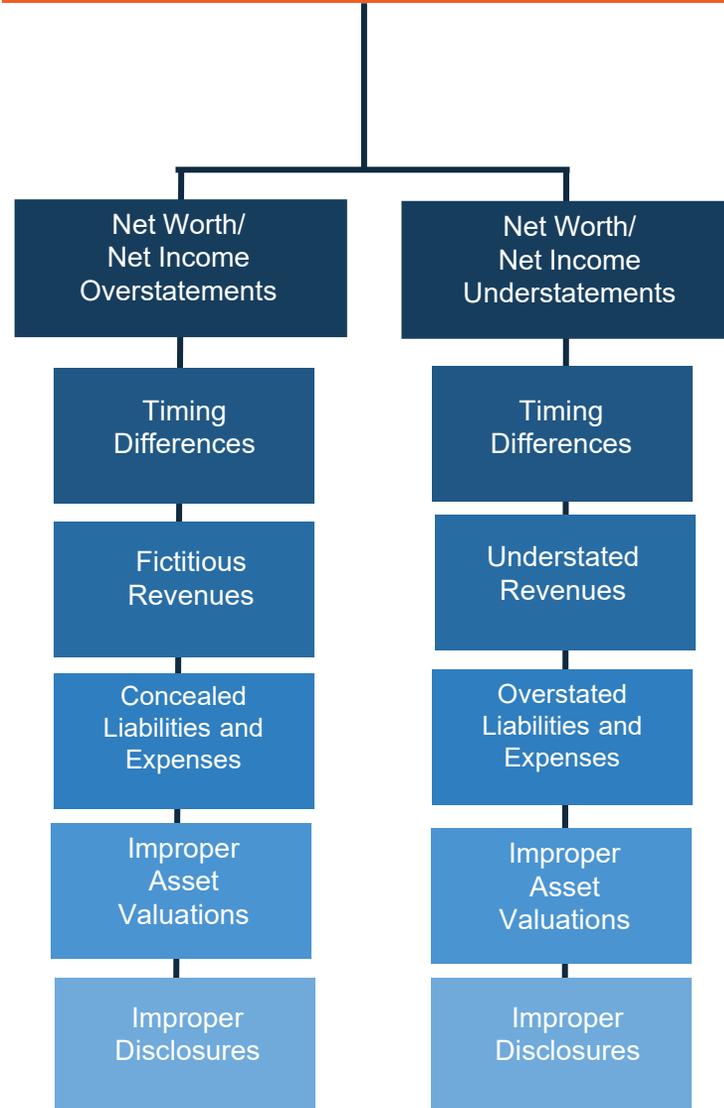
# Asset Misappropriation

Most Common & Least Costly  
86% cases  
\$100K Median loss



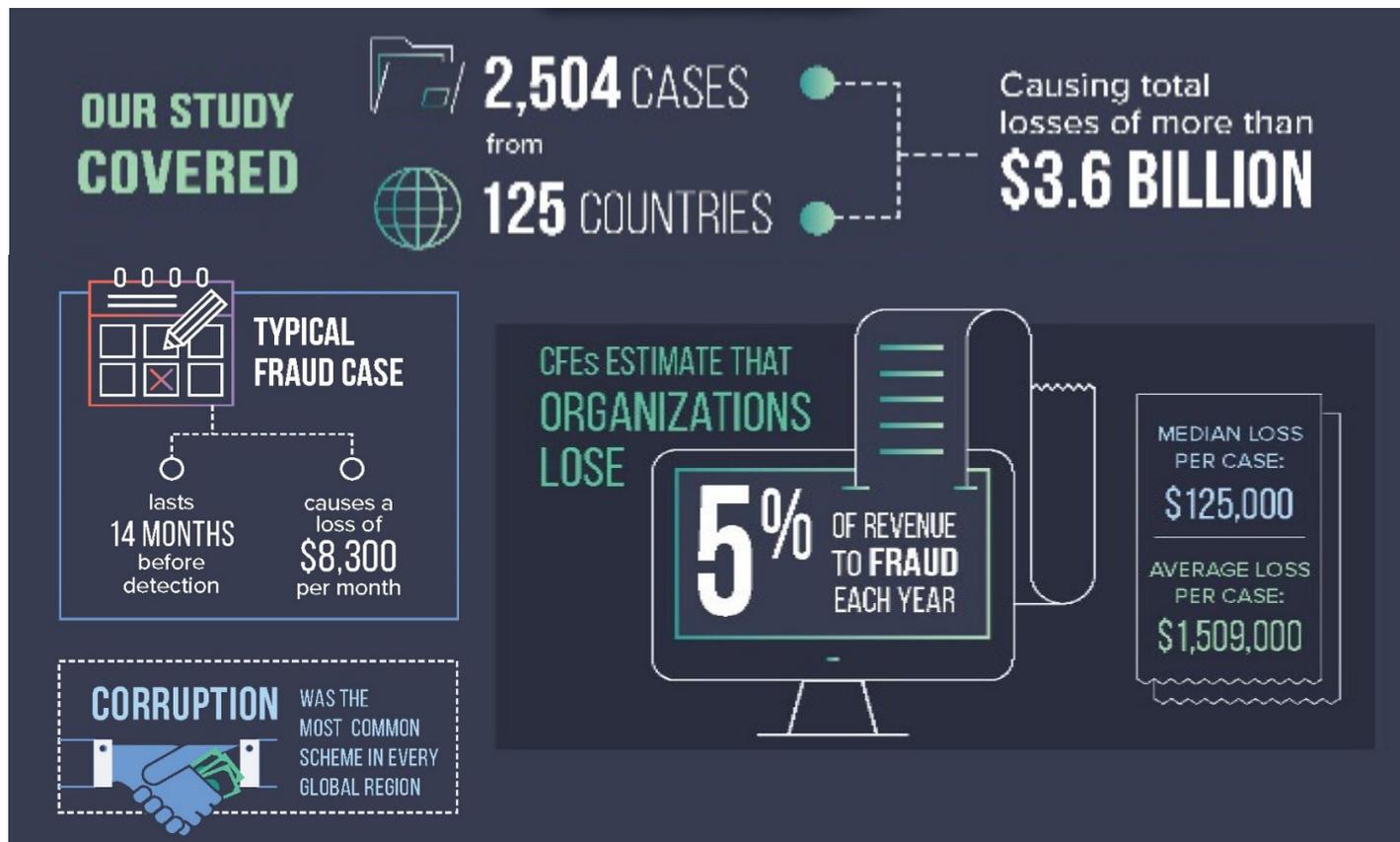


# Financial Statement Fraud

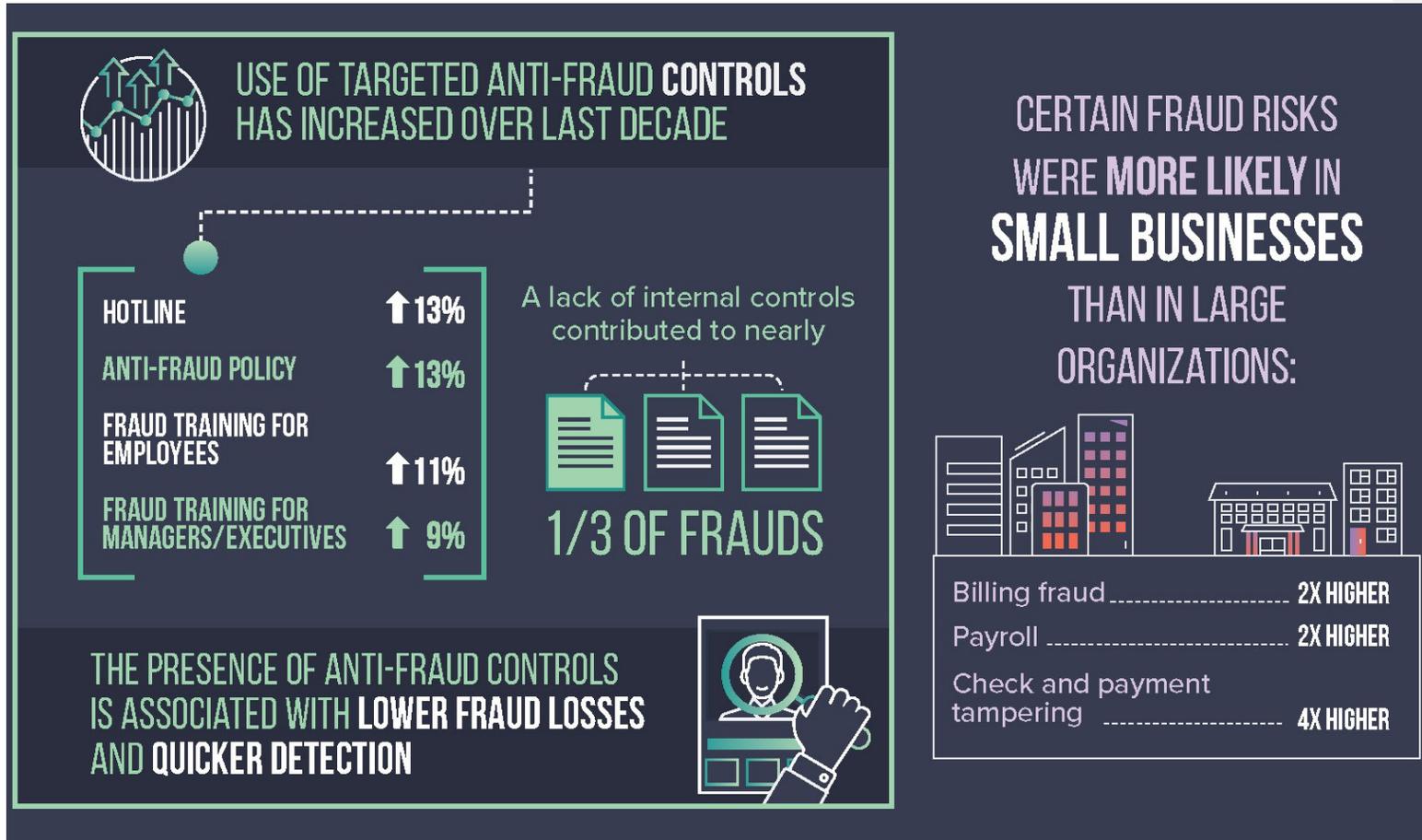


Least Common & Most Costly  
10% cases  
\$954K Median loss

# 2020 Key Findings



# 2020 Key Findings



## 2020 Key Findings

MORE THAN HALF of all occupational frauds came from these four departments:



OPERATIONS 15%



ACCOUNTING 14%



EXECUTIVE/UPPER  
MANAGEMENT 12%



SALES 11%



80% OF FRAUDSTERS

FACED SOME FORM OF  
INTERNAL DISCIPLINE FROM  
THE VICTIM ORGANIZATION

46% of victim  
organizations declined  
to refer cases to  
law enforcement  
because

INTERNAL DISCIPLINE  
WAS SUFFICIENT



42% OF  
OCCUPATIONAL  
FRAUDSTERS WERE

LIVING BEYOND THEIR MEANS



26% OF  
OCCUPATIONAL  
FRAUDSTERS WERE

EXPERIENCING FINANCIAL  
DIFFICULTIES



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# What is the most common method of initial detection of fraud?

- A. External Audit
- B. Tip
- C. Internal Audit
- D. By Accident

# 2020 Key Findings

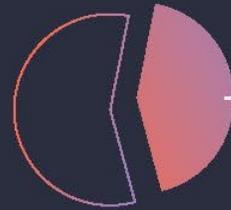
Organizations with **FRAUD AWARENESS TRAINING** for employees were **more likely** to gather tips through



**FORMAL REPORTING MECHANISMS**

**56%** of tips with training

**37%** of tips without training



**43%** OF SCHEMES WERE DETECTED BY TIP, and half of those tips came from employees 



**TELEPHONE HOTLINE** and **EMAIL**

were each used by whistleblowers in

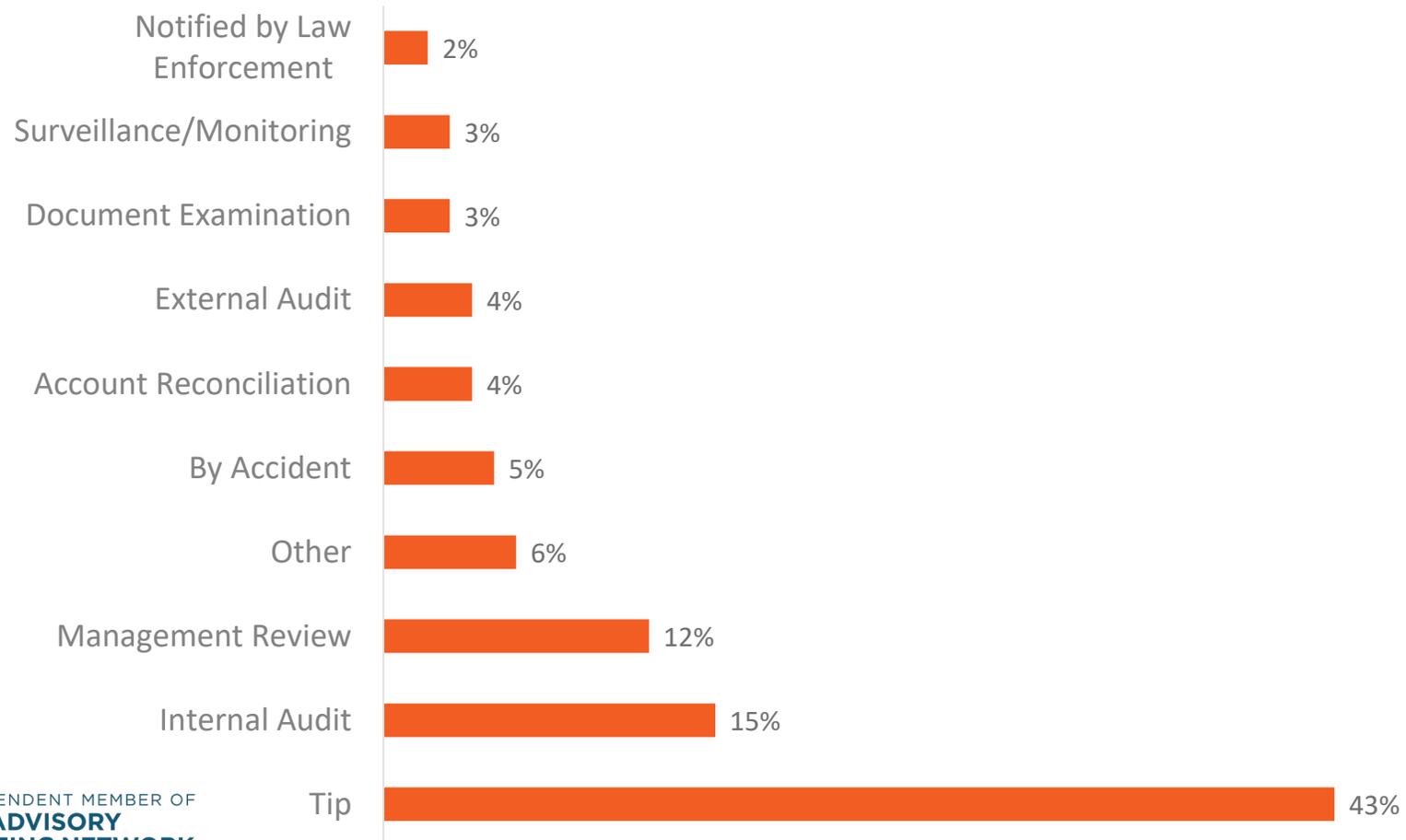
**33%**  
**OF CASES**



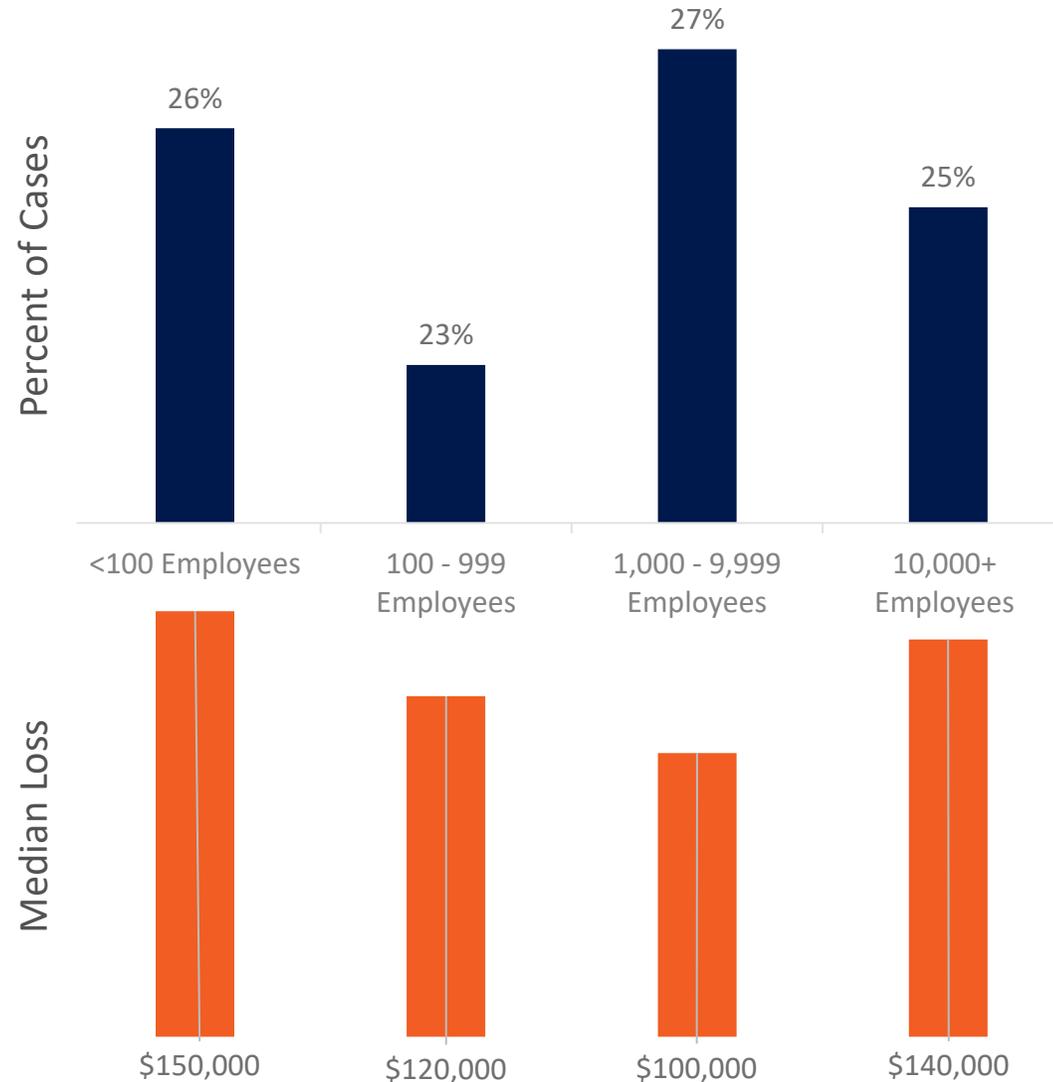
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## Initial Detection of Occupational Frauds



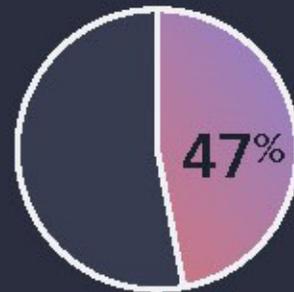
# Size of Victim Organization - Median Loss



# Fraud in Small Businesses

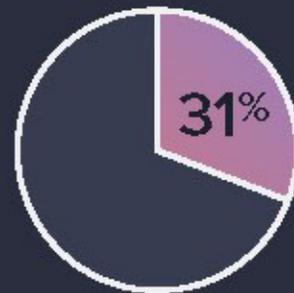
Small organizations are especially likely to detect occupational fraud by tip

<100  
EMPLOYEES

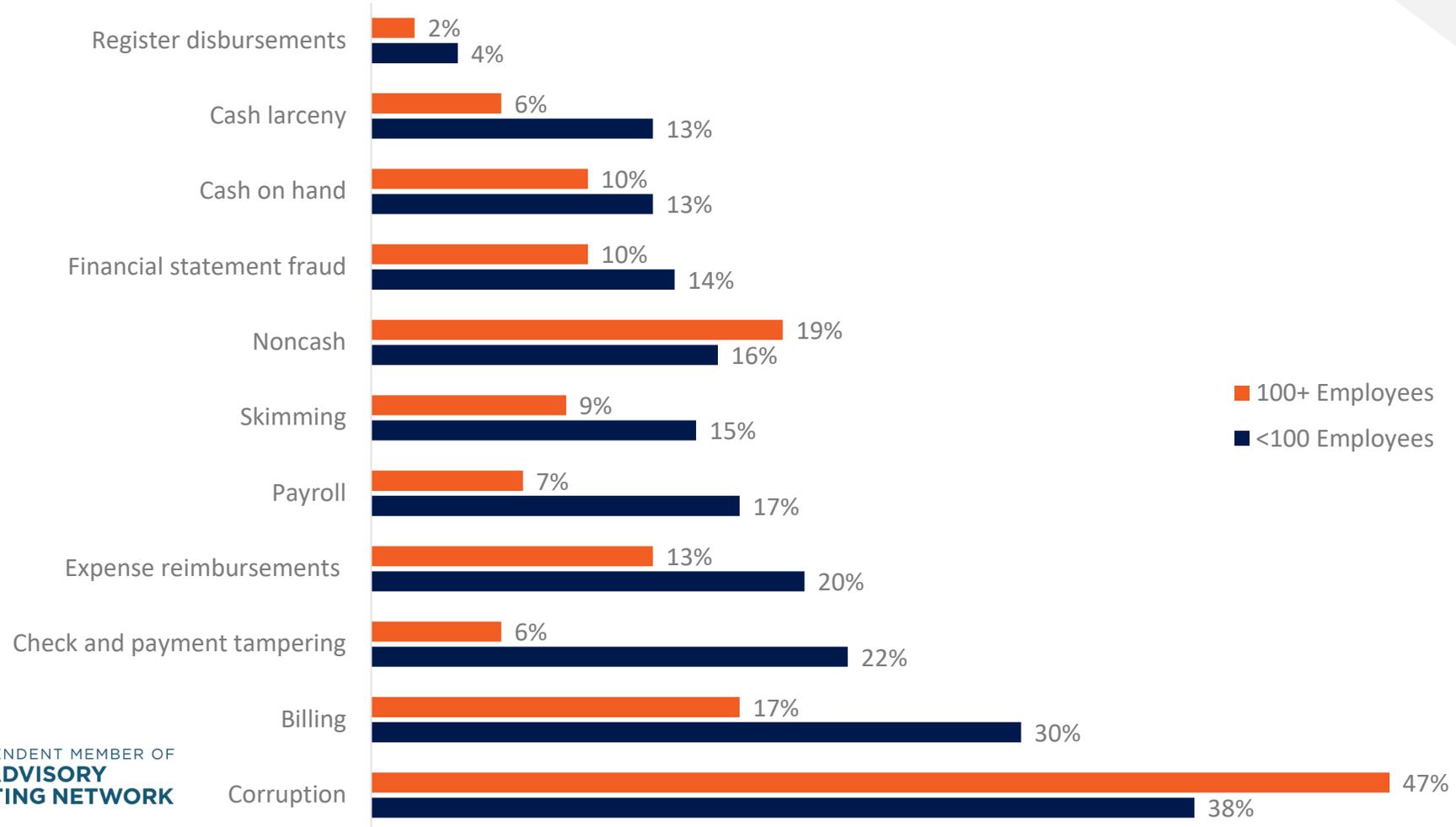


cases  
detected  
by tip

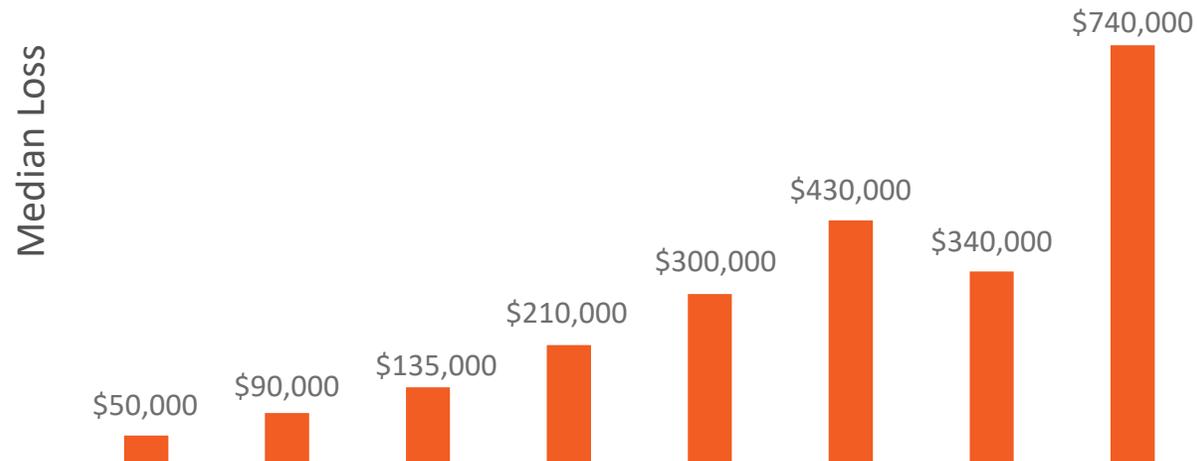
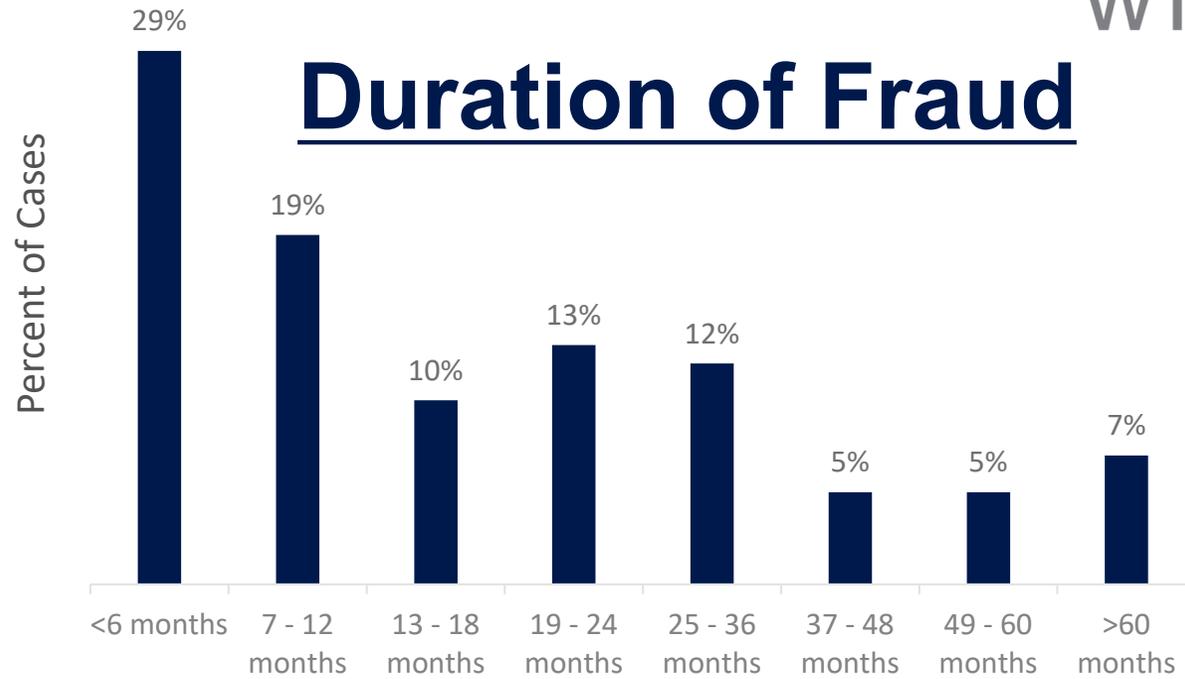
100+  
EMPLOYEES



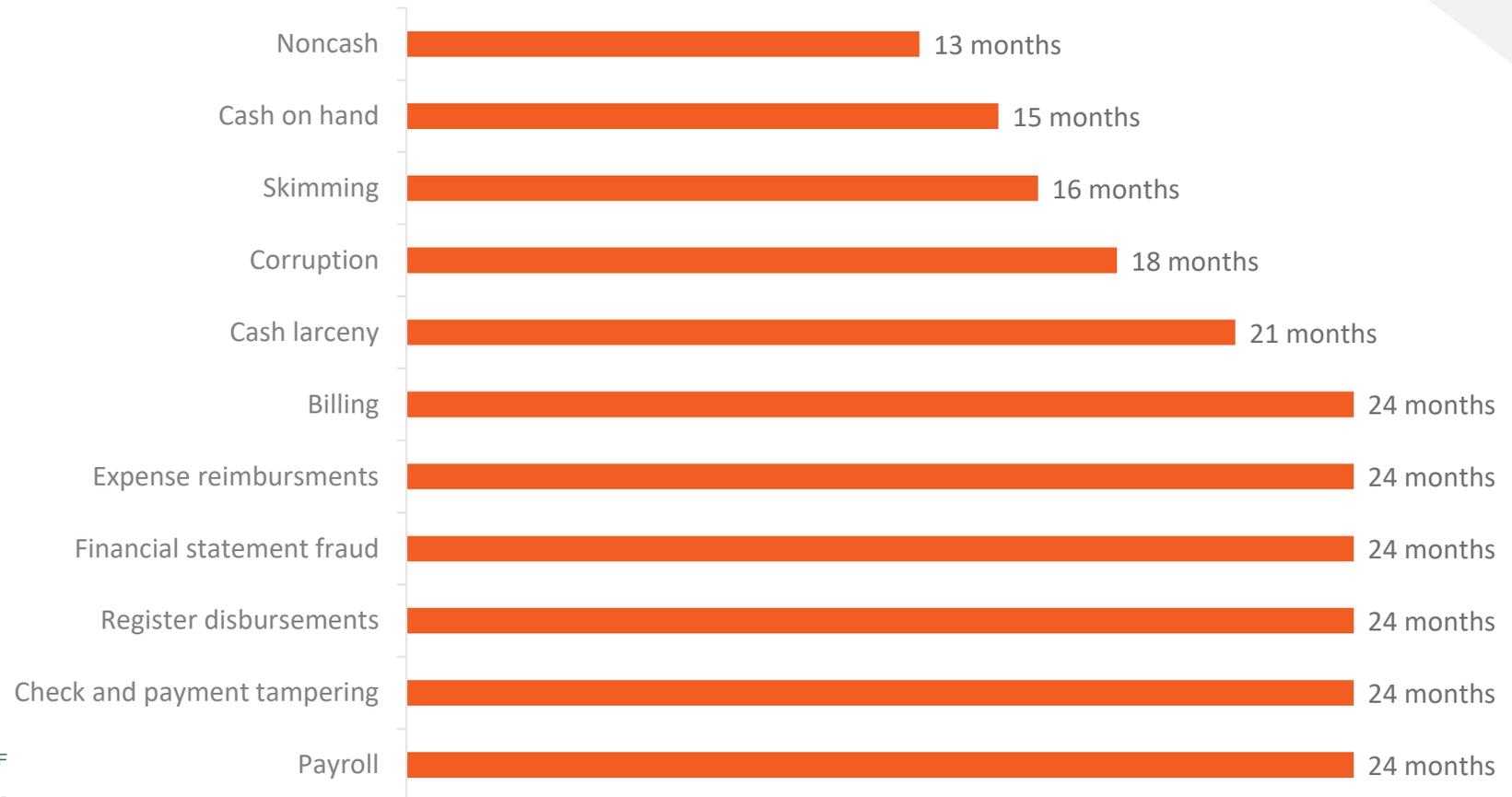
# Fraud in Small Businesses



## Duration of Fraud



# Duration of Fraud by type



## How Occupational Fraud Is Concealed

Understanding the methods fraudsters use to conceal their crimes can assist organizations in more effectively detecting and preventing similar schemes in the future.

### TOP 4 CONCEALMENT METHODS USED BY FRAUDSTERS



40%

Created fraudulent physical documents



36%

Altered physical documents



27%

Altered electronic documents or files



26%

Created fraudulent electronic documents or files



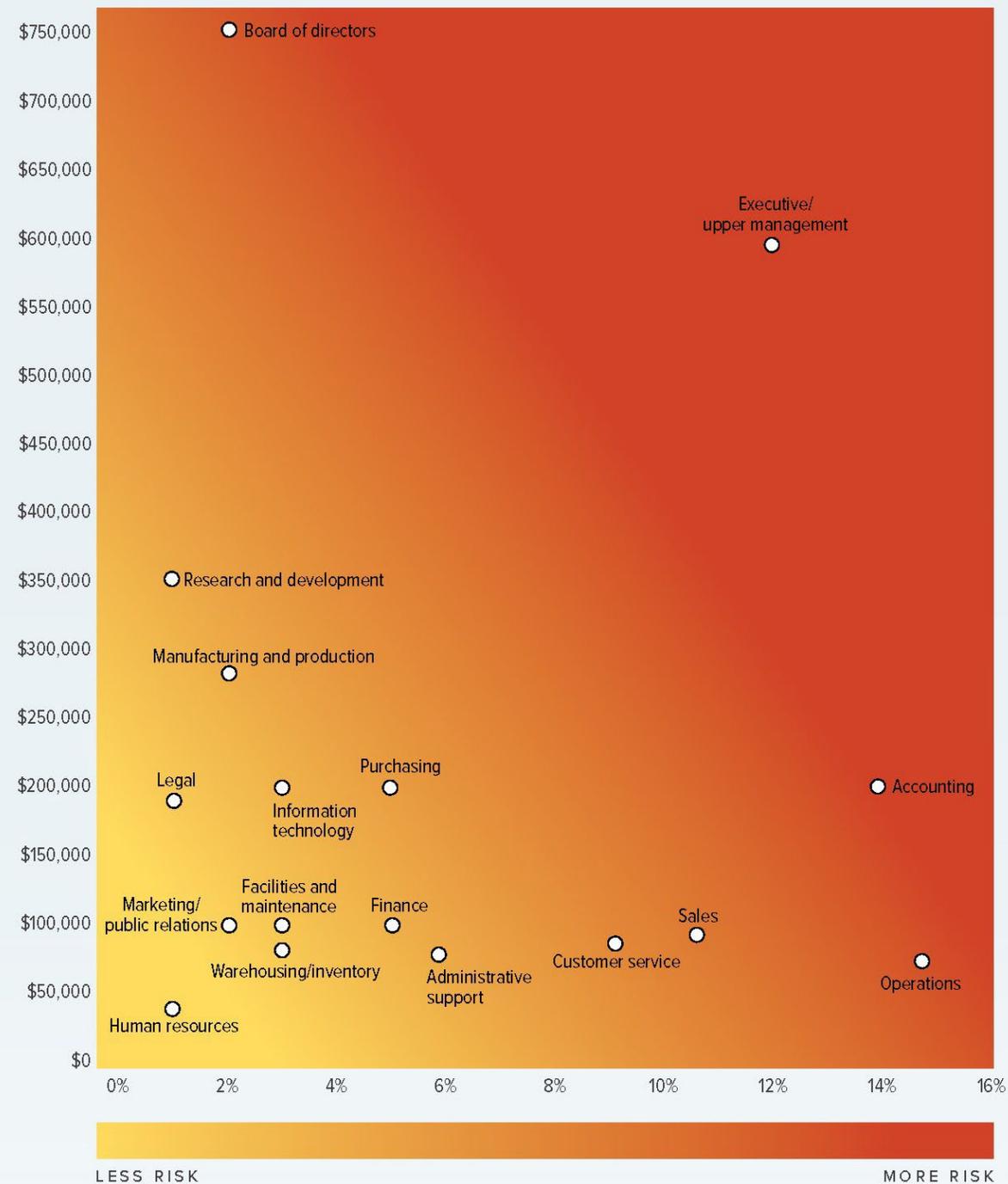
12% did not involve any attempts to conceal the fraud

More occupational fraud originated in the **accounting department** than in any other business unit.

→ **24%**

Only **4%** of perpetrators in this study had previously been convicted of a fraud-related offense.

# Department of Perpetrator



# Retirement Plan Fraud Case

## Who did it?

- Orange County, California man
- Acquired individual information and retirement account data from the individual's Voluntary Investment Plan accounts (VIP)
- Operated between January and June of 2019

## The Result

- Attempted to obtain \$783,328 from employee accounts and succeeded in obtaining at least \$360,847
- Indicted on charges related to retirement plan fraud
- Charged with three counts of bank fraud and one count of aggravated identity theft

## 6 Ways to Fraud Proof Your Retirement Savings

1. Consider leaving your money where it is
2. Activate security features for your accounts
3. Reduce Liquidity and automate the payout process
4. Diversify your accounts
5. Demand fiduciary standards from your financial adviser
6. Sign a “springing” power of attorney

## Who Stole a Piece of The Pie?

- A. Sandy Jenkins
- B. Kay Jenkins
- C. Mr. Collin
- D. Sandy & Kay Jenkins





# Collin Street Bakery Embezzlement

## So who are Sandy & Kay Jenkins?

- 64 & 63 years old, from Corsicana
- Sandy was Corporate Controller for the Collin Street Bakery (1998 – 2013)
- Fired for alleged fraud on June 21, 2013
- Created 888 fraudulent checks
- Indicted, along with his wife Kay, for mail fraud, conspiracy to commit money laundering and making a false statement to a financial institution
- Kay Jenkins
  - Sentenced to five years probation
  - Forced to write a letter of apology to the bakery
  - 100 hours of community service
- Sandy Jenkins
  - In 2014 sentenced to 10 years in prison
  - Died in prison in 2019

# How much did Sandy and Kay Jenkins embezzle?

- A. \$5.5 Million
- B. \$9.2 Million
- C. \$16.7 Million
- D. \$21.4 Million



# What did Sandy & Kay buy?

- 38 luxury vehicles
- 98 Watches - \$3.5 million
- \$658,000 Vacation home in Santa Fe, NM
- 223 Trips-Addison-based N. Dallas Aviation
- \$500,000 for 43 flights – Chartered Jets (Santa Fe, Aspen, Napa)
- 596 bottles - Lavish wine collection
- \$11 million in charges on AmEx cards
- \$1.2 million in Neiman Marcus charges



## How was the fraud perpetrated?

# How was the Fraud uncovered?

- A. Sandy admitted to the Fraud
- B. A tip by Semertic Walker
- C. By accident
- D. Kay turned Sandy in



# How much is typically recovered by victims?

- A. 100%
- B. 50%
- C. 25%
- D. 15%
- E. <10%

How much was recovered?

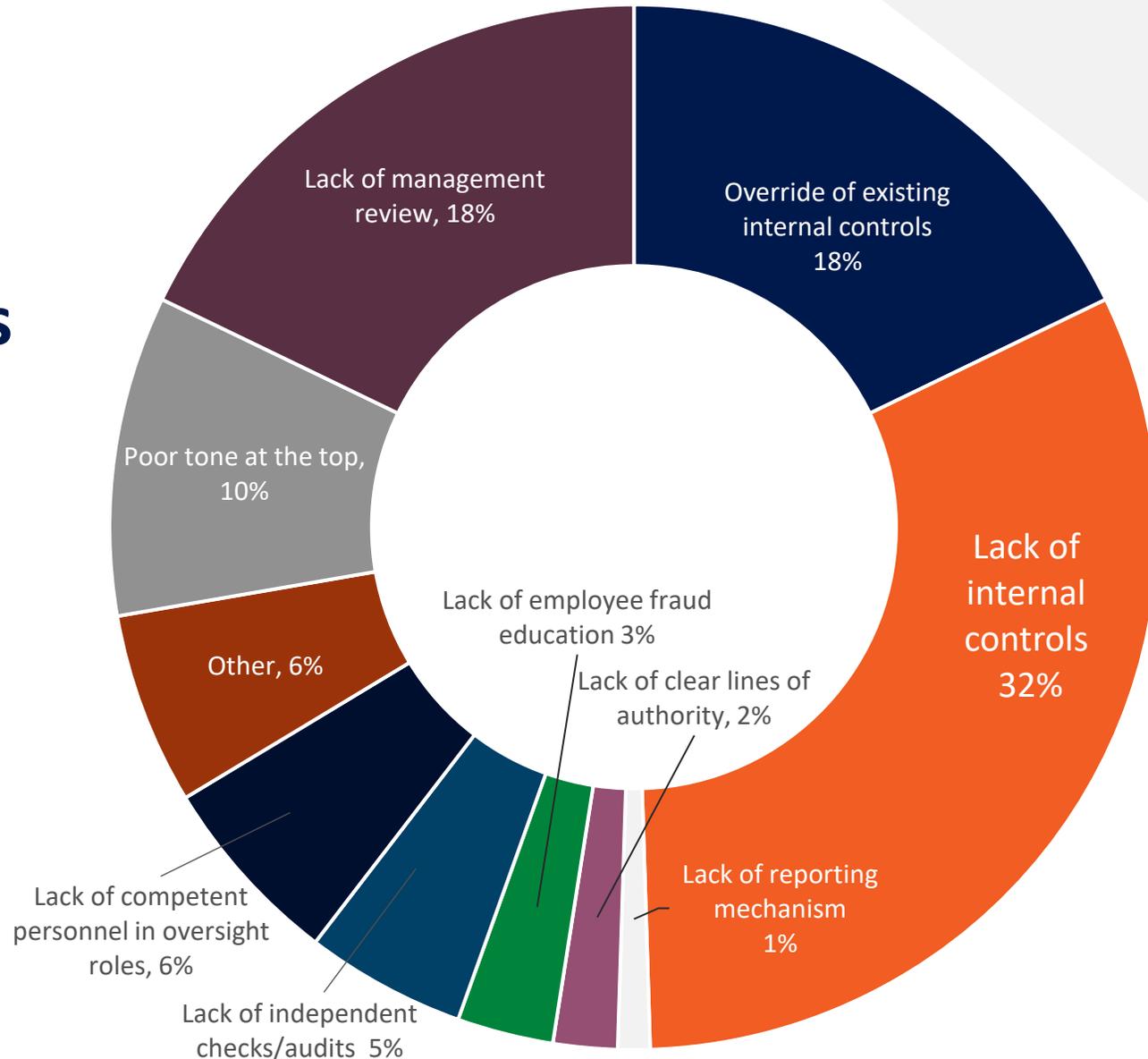
- A. \$4.0 Million
- B. \$5.0 Million
- C. \$6.0 Million
- D. \$10.0 Million



# Why did Sandy do it?

- A. Greed
- B. Wanted to travel the world
- C. To be something new and wonderful and revered
- D. To have a lavish lifestyle
- E. To be like Larry William McNutt

## Primary Internal Control Weaknesses Observed by CFE



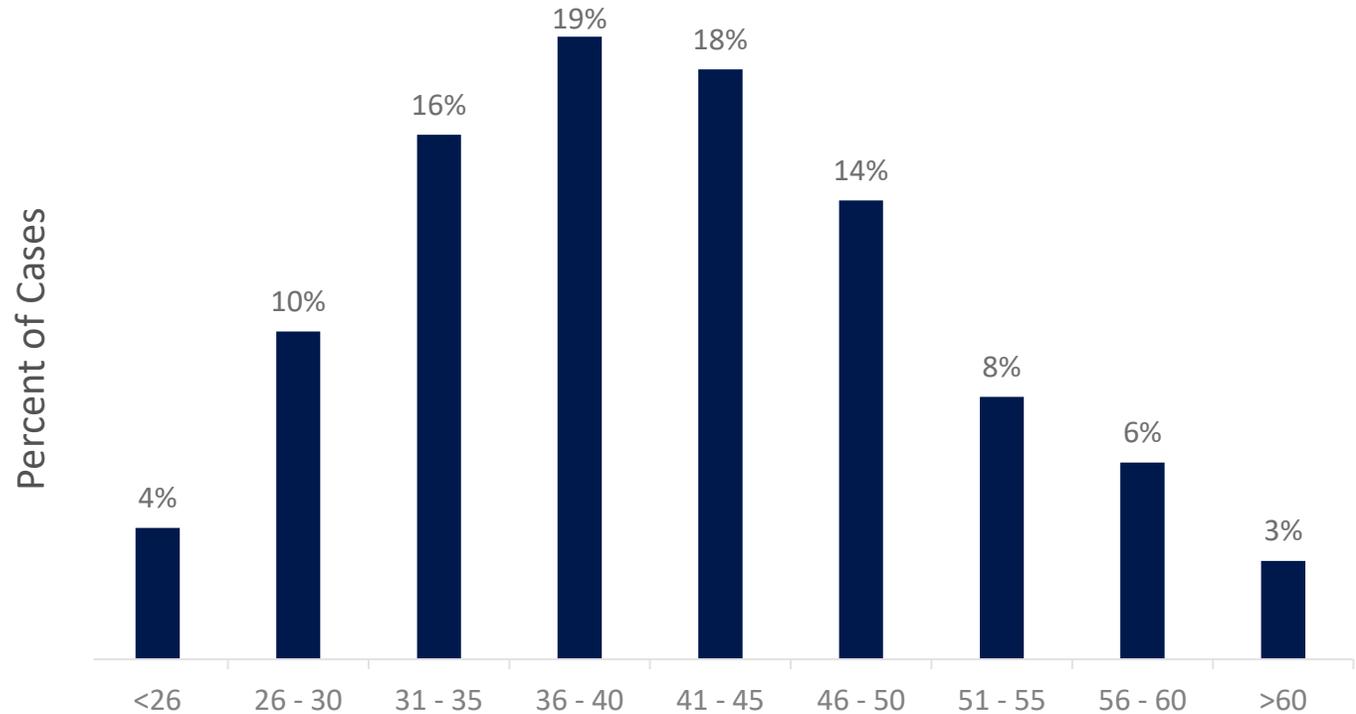
# 2020 Key Findings



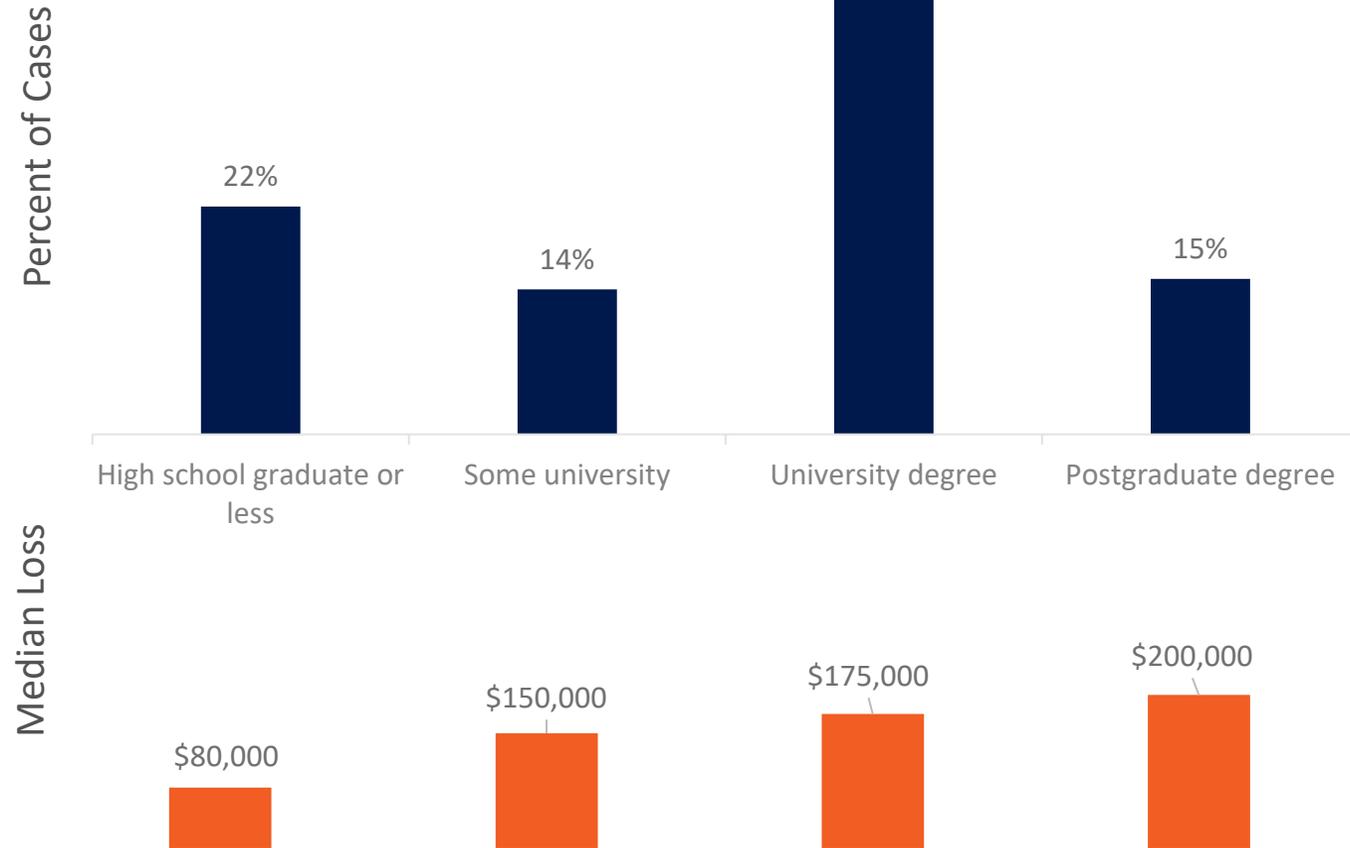
## TENURE

Occupational fraudsters who had been with their organizations at least 6 years caused **TWICE** the loss of less-tenured employees.

# Age of Perpetrator - Median Loss



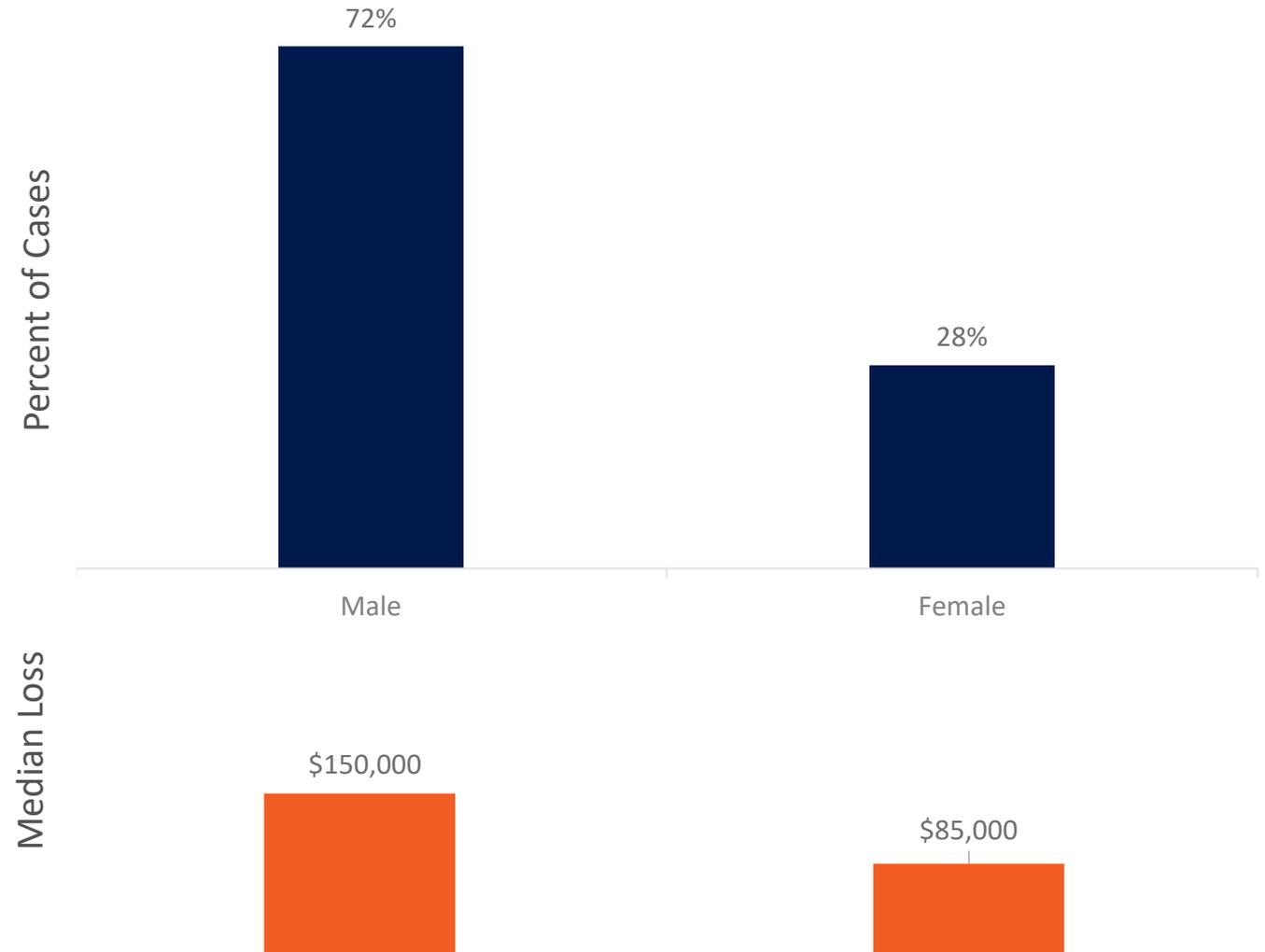
# Education of Perpetrator - Median Loss

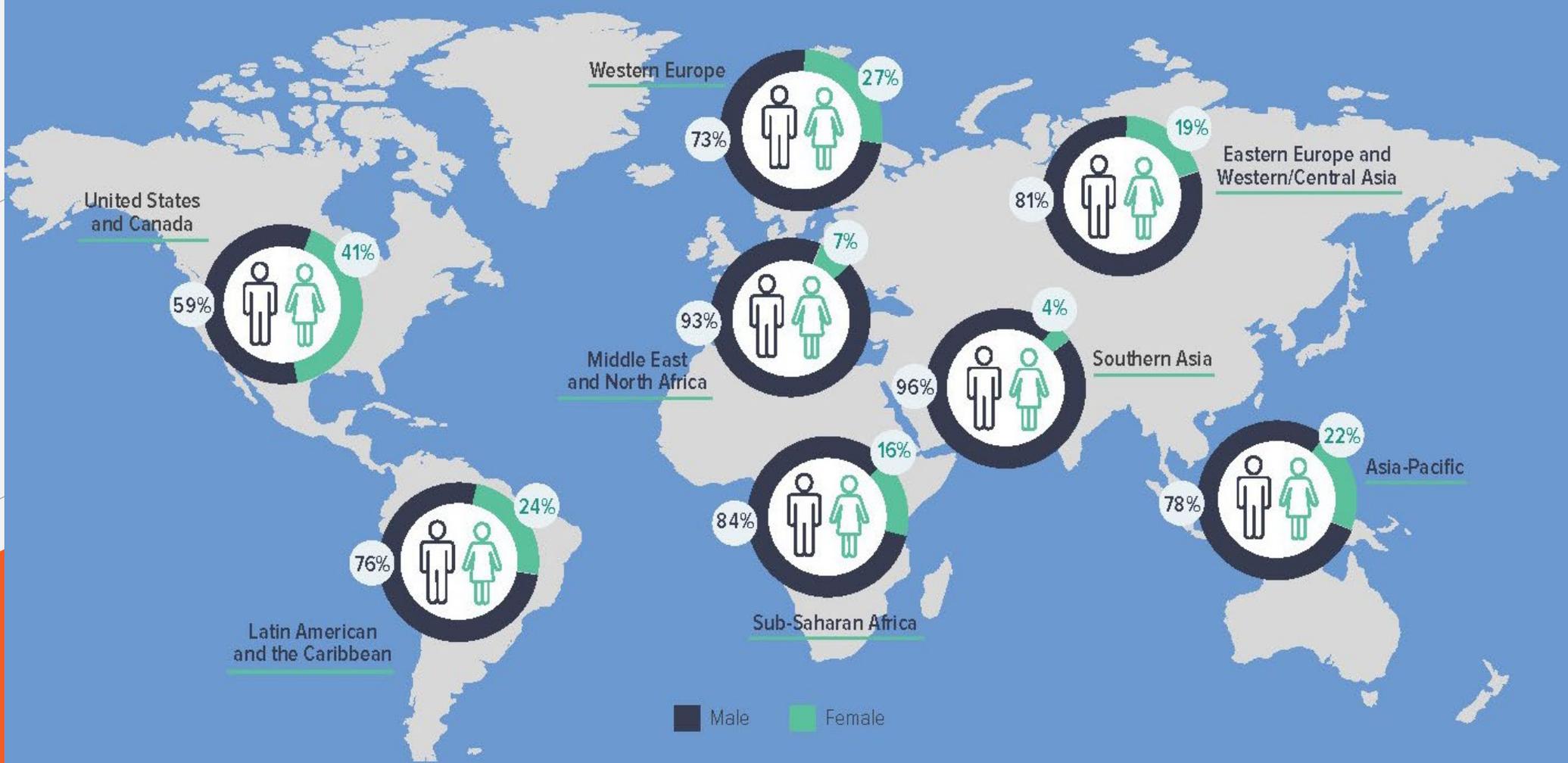


# Position of Perpetrator – Median Loss



# Gender of Perpetrator – Median Loss





# Gender of Perpetrator - Frequency



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# 2020 Key Findings



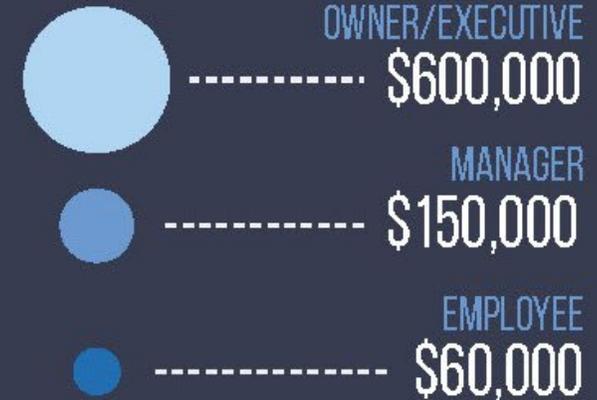
MALE  
**\$150,000**  
Median loss



FEMALE  
**\$85,000**  
Median loss

**Men committed 72%**  
of all occupational fraud,  
and also caused  
larger losses than women

**Owners/executives**  
committed only 20% of  
occupational frauds, but they  
caused the **largest losses**



# Who is Thomas Coughlin?

- A. V.P. of Enron
- B. V.P. of WorldCom
- C. V.P. of Wal-Mart
- D. V.P. of 7-11
- E. V.P. of Macy's



# Thomas Coughlin

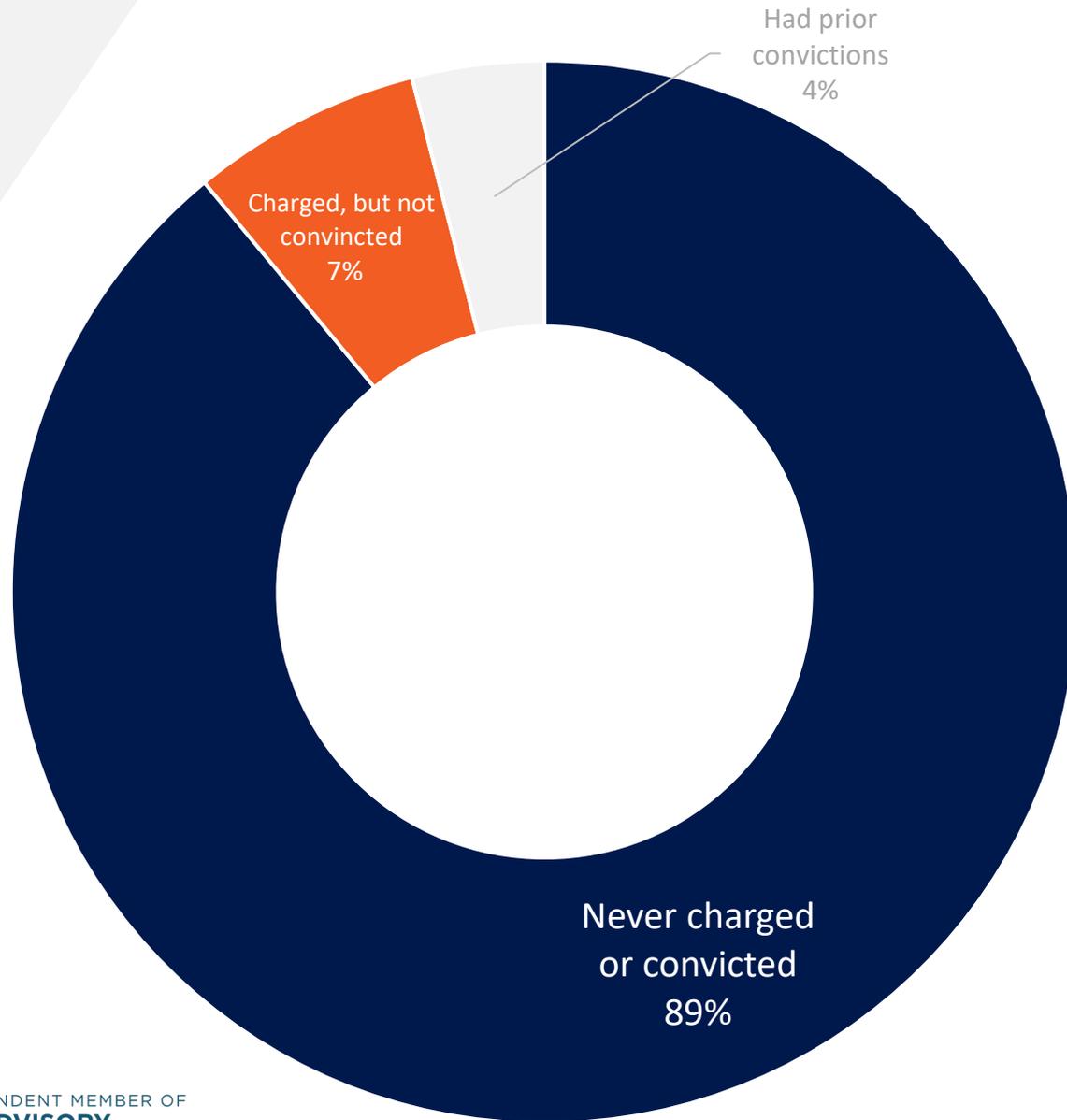
- In 1978 hired as Director of Loss Prevention
- Worked his way up to the Vice Chairman, No. 2 Guy
- Was 57 years old
- Base salary of \$1.03 million
- 2005 total compensation
- Held \$20 million in company stock
- In 2006 plead guilty to felony wire fraud and tax evasion for embezzlement of cash, gift cards and merchandise.

# Thomas Coughlin

## HOW DID HE DO IT?

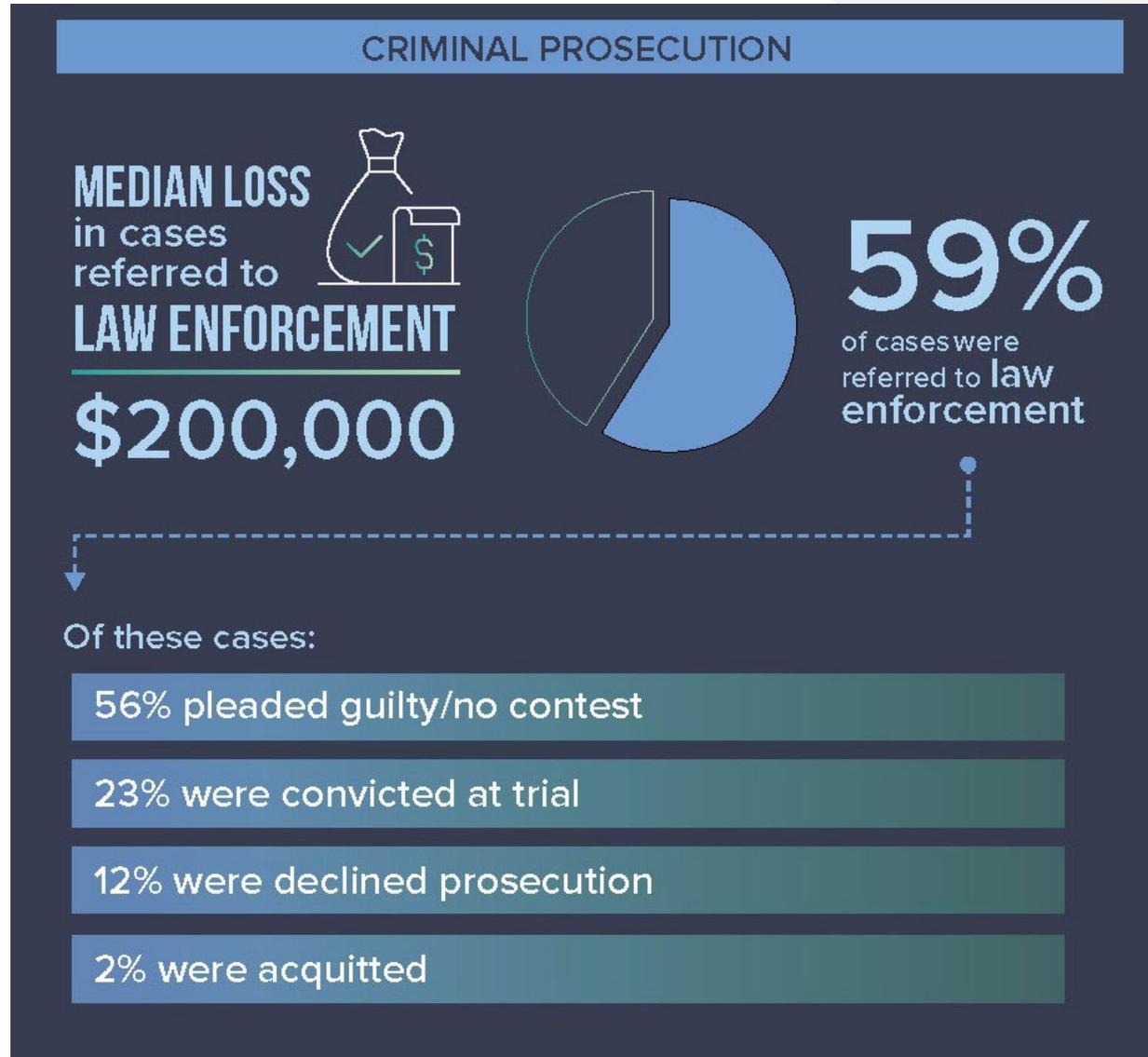
For 5 years had subordinates create fictitious invoices for:

- \$700 for travel, but was for care of hunting dogs
- \$1,359 alligator boots
- \$2,590 dog pen
- \$2,695 for upgrades to 1999 Ford truck
- \$3,100 for check to be cashed for personal use
- \$6,500 to pay for private hunting lease
- Fraudulently obtained “Gift Cards” to pay for:
  - Cooler
  - Cases of Smirnoff, Miller Lite, Bottle of Jack Daniel’s and Carton of Tequila



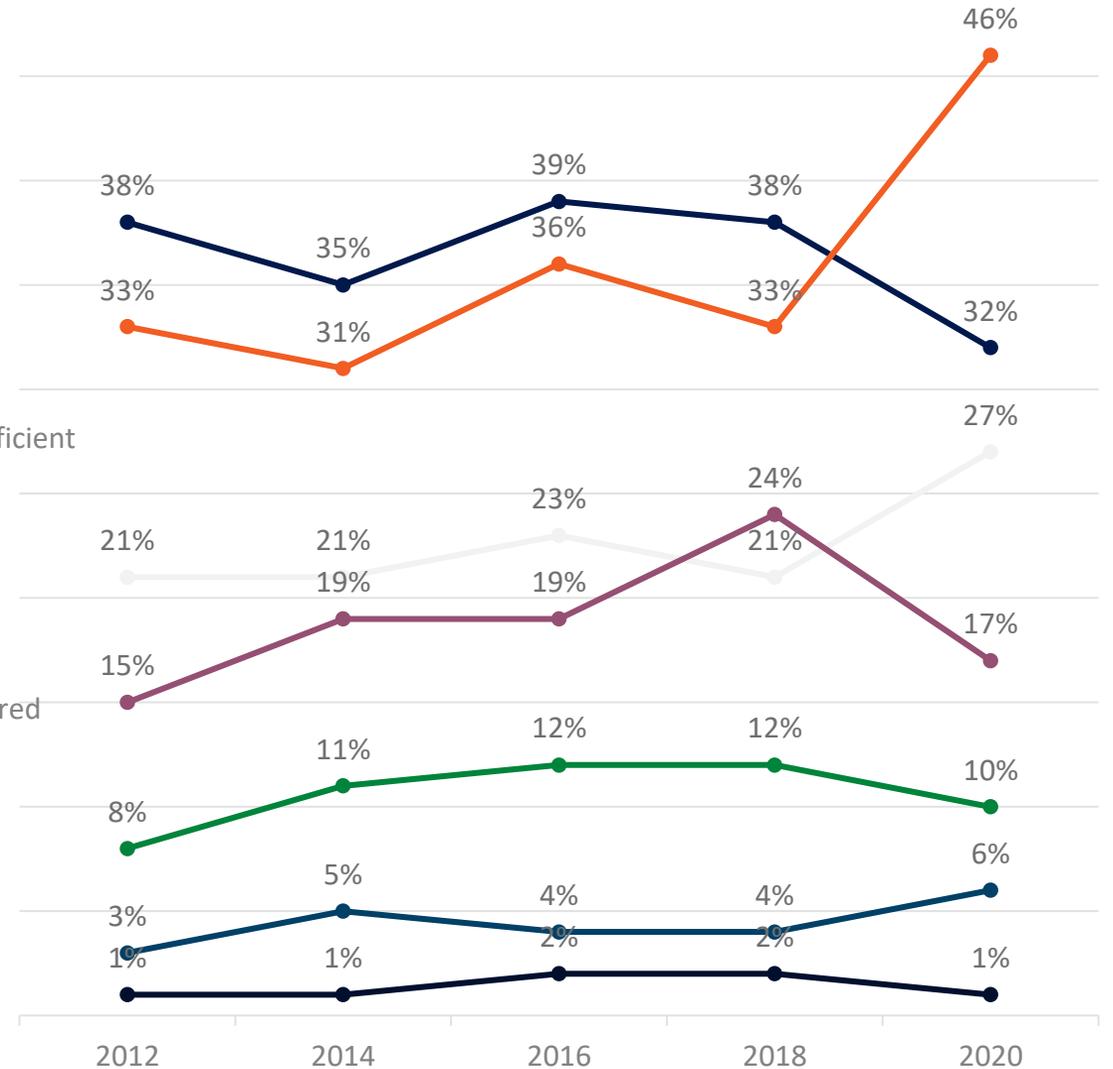
## Criminal Background of Perpetrator

## Result of Cases Referred to Law Enforcement

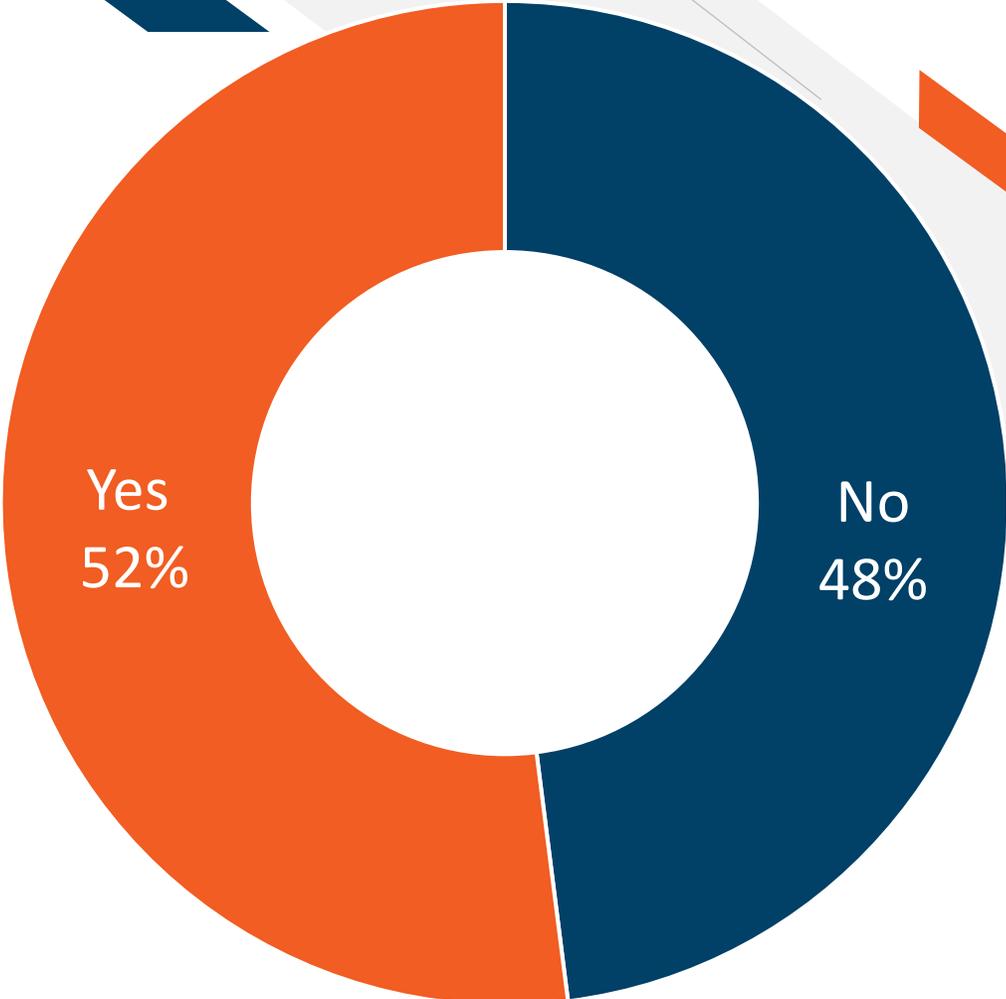


# Reason(s) Case Not Referred to Law Enforcement

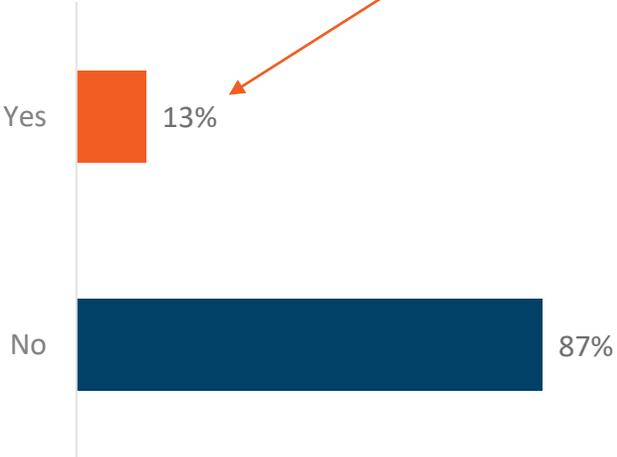
- Fear of bad publicity
- Internal discipline sufficient
- Private settlement
- Too costly
- Lack of evidence
- Civil suit
- Perpetrator disappeared



# Background Check run on the Perpetrator



Did the background check reveal existing red flags?



# Recovering Fraud Losses



# Three North Texas Labs Indicted in **\$300 Million** Kickback Fraud

# The Scheme

- Connected several lab companies, including Unified Laboratory Services, Spectrum Diagnostic Laboratory, and Reliable Labs, that allegedly paid medical professionals to order unnecessary tests at their labs.
- These schemes are quite common yet difficult to catch because of the massive amount of data that flows through federal healthcare programs.
- The pandemic has increased lab activity, and many have been caught bundling COVID-19 tests with other more expensive and unnecessary lab services and defrauding federal tax payers.

## How they did it

- Ordered millions of dollars worth of tests while labs attempted to disguise as medical advisor agreement payments, salary offsets, lease payments, and marketing commissions.
- Paid doctors hundreds of thousands of dollars for “advisory services” in exchange for lab test referrals.
  - The labs also paid portions of the doctors’ staff’s salaries and parts of their office leases, depending on the number of lab tests they referred each month.
- Attempted to avoid detection by making direct payments to the provider’s spouse.
  - Other times made threats that payments would cease if the provider didn’t make more referrals.

## Face up to **55 years** in prison for:

- Conspiracy to commit healthcare fraud
- Pay and receive healthcare kickbacks
- Offer or pay illegal kickbacks
- Solicit or receive unlawful kickbacks.

**Are celebrities ever found  
guilty of Fraud?**

# What is Operation Varsity Blues?

---





# VARSITY BLUES PARENTS

# Felicity Huffman

## Sentence

- Two weeks in prison
- \$30,000 fine
- 250 hours of community service
- One year's probation





# Lori Loughlin

## Sentence

- Two months in prison
- \$150,000 fine
- 100 hours of community service
- Two years' probation

# Mossimo Giannulli

## Sentence

- Five months in prison
- \$250,000 fine
- 250 hours of community service
- Two years' probation



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# What triggered operation Varsity Blues?

- A. Denied Parent
- B. University Coach
- C. A Student
- D. A Teacher
- E. An Investment Advisor

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# Tip Lead to Operation Varsity Blues

Morrie Tobin



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# Hotlines and Reporting Mechanisms



# The Red Flags of Fraud

## Behavioral Red Flags of Fraud

Recognizing the behavioral clues displayed by fraudsters can help organizations more effectively detect fraud and minimize their losses.

**85%** OF ALL FRAUDSTERS displayed at least one **BEHAVIORAL RED FLAG** while committing their crimes.



### 7 KEY WARNING SIGNS



**42%**

Living beyond means



**26%**

Financial difficulties



**19%**

Unusually close association with vendor/customer



**15%**

Control issues, unwillingness to share duties



**13%**

Irritability, suspiciousness, or defensiveness



**13%**

"Wheeler-dealer" attitude



**12%**

Divorce/family problems

# Fraud Financial Reporting Schemes

- Improper Revenue Recognition
- “Roundtrip” Transactions (b/t 2 or more co’s)
- Bill and Holds
- Altering shipping documentation
- Holding accounting periods open
- Failure to record sales provision/allowances

# Inventory Schemes

- Inflating the Value of Inventory
- Off-Site or Fictitious Inventory

## Other Financial Reporting Schemes

- Fraudulent Audit Confirmations
  - 2019-Wirecard failure, London \$3 Billion
- Refreshed Receivables
- Adjustments to Estimates (significant ones)
- Off Balance Sheet Entities (“SPE’s”)
- Phony Investment Deals

## Other Financial Reporting Schemes

- Improper Capitalization of Expenses
- Adding back outstanding checks to cash
- Unjustified Consolidation Entries
- Fraudulent Disbursements

# Related Party Transactions why all the concern?

- A. Must be arm's length
- B. Must be properly reviewed/tested
- C. Highly scrutinized by regulators
- D. Must be properly recorded and disclosed
- E. Pay particular attention when there are multiple entities with RPT's

# Other Items To Consider

- Unusual Distributions, out of the normal pattern
- Work In Process does not change
- Change in Partners, elimination or addition
- Ad hoc Instructions for adjustments



# Ponzi Scheme

- A form of fraud
- In which belief in the success of a nonexistent enterprise
- Is fostered by the payment of quick returns to the first investors
- From money infested by later investors



## Charles Ponzi

- \$15 Million in 8 months
- In 1920
- International Postal Reply Coupons
- Scheme carries his name although not the first to do it!



# Ponzi Scheme

- Scott Rothstein - \$1.2 billion – bogus legal settlements
- Tom Petters - \$3.7 billion – retail merchandise to be sold at discount
- R. Alenn Stanford - \$7 billion – bogus C.D's
- Bernie Madoff - \$20 billion - investments



-  Felix J. Lozano III, CPA, CFE
-  214.393.934
-  Felix.Lozano@whitleypenn.com
-  whitleypenn.com



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# Legislative and Regulatory Update

**Joan McDonagh**  
Senior National Regulatory Policy Director

# Agenda

- Securing a Strong Retirement Act (SSRA) of 2022
- Senate activity
- Proposed rule on required minimum distributions
- Other regulatory guidance and pending guidance

# Securing a Strong Retirement Act (SSRA) of 2022

- Passed the House on March 29, 2022, by a 414 – 5 vote.
- Generally follows prior versions of SSRA with modifications to incorporate provisions from the Retirement Improvement and Savings Enhancement (RISE) Act of 2021.
- Now waiting on Senate action.

# SSRA – Key provisions

- Automatic enrollment requirement for new plans:
  - Carve out small employers, new employers, governmental entities and churches
  - Plans in existence on date of enactment grandfathered
  - Generally effective in 2024
- Increases tax incentives for small employers
- Increases RMD beginning date to age 75 in one-year increments:
  - Age 73 in 2023
  - Age 74 in 2030
  - Age 75 in 2033

# SSRA – Key provisions

- Increases catch-up contribution to \$10,000 for individuals age 62–64
- Allows matching contributions on student loan payments
- Long-term part-time employees eligible after two consecutive years of at least 500 hours; provision extended to include ERISA-covered 403(b) plans
- Plans not required to send unenrolled employees all notices
- Establishes a retirement savings lost and found
  - Provision directing DOL to create a safe harbor for missing participants
  - Cash-out limit raised from \$5,000 to \$7,000

# SSRA – Key provisions

- Qualified birth and adoption distributions must be repaid within three years.
- Penalty-free withdrawals allowed in case of domestic abuse.
- Enhances current savers credit by:
  - Setting a uniform 50% credit. (Under current law there are three levels: 10%, 20% and 50%.)
  - Making tax credit a non-refundable credit.
- Small financial incentives for participation in a plan permitted.

# SSRA – Key provisions

- Annual paper statement requirement added.
- Catch-up contributions must be in the form of a Roth contribution.
- Matching contributions may be Roth.
- SIMPLE and SEP IRAs may allow Roth contributions.
- Opportunity for self-correction of tax code-related errors expanded.

# Senate activity

- Retirement Security and Savings Act contains many of the same provisions as SSRA.
- Emergency savings tied to retirement plan.
- New spousal consent requirements added.
- Automatic reenrollment requirements added.

# SECURE Act changes to RMD rules

- Required beginning date: Moved from age 70½ to age 72 for distributions occurring on or after January 1, 2020, to individuals born on or after July 1, 1949 (regardless of whether they survived to age 70½).
- New time limits on payout of death benefits: Under prior law designated beneficiaries could generally choose to stretch the payment of a death benefit over their life expectancy. The SECURE Act eliminated this option for all IRA and defined contribution plan beneficiaries except eligible designated beneficiaries (EDBs) and instead requires distribution of the death benefit be made in full within 10 years following the year of the participant's death.

## Eligible designated beneficiaries:

Spouse

Child of the deceased who has not reached the age of majority (21)

Disabled or chronically ill person (proposed rule defines)

Person who is not more than 10 years younger than the deceased

# Guidance on SECURE Act changes to DC plans

## General rules for payout of death benefits

- Eligible designated beneficiary – life expectancy
- Non-eligible designated beneficiary – 10-year rule
- Non-designated beneficiary (e.g., some trusts, estates, charities) – 5-year rule

Effective date: Changes were generally effective January 1, 2020, with a deferred effective date of January 1, 2022, for governmental and collectively bargained plans. The CARES Act subsequently suspended RMDs due in 2020.

# Clarification of death benefit payout rules

Detail is provided regarding timing and calculation of death benefits based on a number of variables, including:

- Whether the participant died before or after their required beginning date.
- Type of beneficiary (eligible designated beneficiary, designated beneficiary, neither, mix).
- Number of beneficiaries.
- If to a trust, type of trust and whether there are separate accounts for each beneficiary.
- Whether an initial or successor beneficiary.
- Type of plan or IRA involved.
- Type of benefit involved (i.e., annuity contract or plan payout).
- Plan document terms.

# Action steps for plan sponsors

- ID who is responsible for implementing the RMD process for your plan (forms, participant communications, calculation of benefit, tax withholding and reporting, rollover eligibility).
- Confirm that person/entity is taking steps to understand and comply with new rules (although not final) and review distribution packages, RMD letters and other processes.
- Consider plan document amendments that may simplify the options/process in your plan.

# Cryptocurrency guidance

On March 8, 2022, President Biden released an Executive Order on Ensuring Responsible Development of Digital Assets. On March 9, 2022, the DOL published Compliance Release No. 2022-01, “401(k) Investments in Cryptocurrencies.”

DOL has concerns with cryptocurrencies, including their speculative nature and volatility, the reliability of valuation data, vulnerability to hackers, lack of adequate disclosures to permit informed decision-making, and the changing regulatory environment. Included in the guidance is the following statement (emphasis added):

*“DOL expects to conduct an investigative program aimed at plans that offer participant investments in cryptocurrencies and related products, and to take appropriate action to protect the interests of plan participants and beneficiaries with respect to these investments. The plan fiduciaries responsible for overseeing such investment options or allowing such investments through brokerage windows should expect to be questioned about how they can square their actions with the duties of prudence and loyalty in light of the risks described above.”*

Guidance appears to cover a broad array of digital assets. It remains unclear whether/how guidance applies to cryptocurrencies held as part of an asset allocation fund.

# Fiduciary oversight of brokerage windows

- DOL FAB 2012-02R – DOL retracts earlier guidance suggesting that 404a-5 participant disclosure of fee and investment information may be required of certain brokerage window investments. Revised Q 39 states that plan fiduciaries owe a duty of prudence and loyalty to participants investing through a brokerage window “...including taking into account the nature and quality of services provided in connection with the [window].”
- DOL 2014 RFI – Asking whether additional guidance on fiduciary responsibility in relation brokerage windows is needed, particularly with respect to “brokerage window only” plans.
- ERISA Advisory Council 2021 report on brokerage windows – Collected data and testimony on use of brokerage windows, including fact that they are typically offered in very large plans used by a very small percentage of participants in those plans. Recommended that further fact-finding and potential guidance may be appropriate with respect to plans that only offer investing through a brokerage window.
- DOL letter to Senator Tuberville 4/20/22 – States that the 2012 FAB was never intended to be interpreted to limit fiduciary oversight of brokerage windows to prudently selecting and monitoring the service provider.

# Pending guidance

SECURE Act implementation, including:

- Final rule on lifetime income disclosures
- Final ESG rule
- Long-term part-time employee inclusion, qualified birth or adoption distributions, and other rules already effective
- Form 5500 changes – PEPs and GoPs/DCGs (currently at OMB)

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Thank you

# ACCOUNTING, AUDITING, AND COMPLIANCE UPDATE

ADAM RHODES, PARTNER

EMPLOYEE BENEFIT PLAN CONFERENCE – MAY 20, 2022



## TOPICS COVERED TODAY:

- Auditing Updates
- Accounting Updates
- Compliance Updates and Other
- 11-K Reminders and Sampling

# AUDITING UPDATES

## New GAAS Auditing Standards Effective:

- SAS 134, Auditor Reporting and Amendments, Including Amendments Addressing Disclosures in the Audit of Financial Standards
- SAS 135, Omnibus Statement on Auditing Standards
- **SAS 136, Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA**
- SAS 137, The Auditor's Responsibilities Relating to Other Information Included in Annual Reports
- SAS 138, on Materiality
- SAS 140, Amendments to Incorporate SAS 134-137
- SAS 141, Amendment to the Effective Dates of SAS Nos. 134-140

# AUDITING UPDATES

## *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*

- AU-C 703 replaces AU-C 700 for plans subject to ERISA
- SAS 136, as amended by:
  - SAS 138 (materiality)
  - SAS 140 (supplementary information)
  - SAS 141 (effective date)
- Cannot be applied/adapted to non-ERISA plan audits; not applicable to trust audits
- Effective for periods ending on or after December 15, 2021 (early adoption permitted)

## AU-C section 703 (SAS 136 amended) Addresses:

- The auditor's responsibility to form an opinion on ERISA plan financial statements.
- The form and content of the auditor's report
- Plan management's responsibilities and their acknowledgment and understanding of their responsibilities related to the audit.

# AU-C 703 (SAS 136, as amended)

Engagement acceptance – preconditions (.15-.17)

Risk assessment and response (.18-.26)

Communications with those charged with governance (TCWG) (.27-.28)

ERISA Section 103(a)(3)(C) procedures (.29-.35)

Written representations (.36)

Forming an opinion and form of opinions (.37-.46)

Form 5500 filings (.47-.59)

Auditor's reports (.60-.135)

ERISA required schedules (129-.135)

# AUDITING UPDATES

## Terminology Changes

Limited scope audit ► ERISA Section 103(a)(3)(C) audit

Full scope audit ► ERISA Non-Section 103(a)(3)(C) audit

# AUDITING UPDATES

## AU-C Section 703 (SAS 136 amended) Key Changes:

- Engagement acceptance considerations and preconditions
- Consideration of relevant plan provisions in audit risk assessment and response
- Performance procedures for ERISA Section 103(a)(3)(C) audits
- Substantially complete 5500 reviewed
- Changes to management representations letter
- Auditor Report changes
- Auditor's communications, including reportable findings to those charged with governance

# AUDITING UPDATES

## Engagement Acceptance

In additions to preconditions in AU-C section 210, Terms of engagement, plan management must acknowledge responsibilities for:

- Maintaining a current plan document including amendments
- Administering the plan and determining plan's transactions conform with plan provisions
- Maintaining participant records to determine the benefits due
- Providing the auditor, prior to the dating of the auditor's report, a draft of Form 5500 that is "substantially complete"

# AUDITING UPDATES

## Engagement Acceptance

Plan management must acknowledge the responsibility for:

- Determining an ERISA Section 103(a)(3)(C) audit is permissible
  - Investment information is prepared and certified by a qualified institution
  - Certification meets the DOL requirements
  - Disclosed in accordance with the applicable financial reporting frame (GAAP, modified cash basis, etc.)
- It is permissible to perform an ERISA Section 103(a)(3)(C) audit when only a portion a plan's investments, but not all investments, have been certified and meet the requirements. For the portion of investments that are not certified, the auditor should perform audit procedures on the investment information.

# AUDITING UPDATES

## Engagement Acceptance

Engagement letters must be updated for:

- Changes to the audit scope, if an ERISA Section 103(a)(3)(C) audit is performed.
- Management responsibility changes
- Auditor responsibility changes

# AUDITING UPDATES

## Relevant Plan Provisions

- Consider relevant plan provisions that affect risk of material misstatement at the relevant assertion level for classes of transactions, account balances, and disclosures
- Many financial statement amounts are determined based on plan provisions
- It would be rare for the auditor not to test any relevant plan provisions
- Auditor judgement involve quantitative and qualitative materiality factors in determining relevant plan provisions
- Incorporate unpredictability in testing
- Evaluate financial statements as well as regulatory and compliance risk factors

# AUDITING UPDATES

## Relevant Plan Provisions

### Plan Provision Risk Factors for Consideration:

- Quantitative or qualitative risk of material misstatement
- Concerns of those charged with governance
- Significant risk of fraud or error
- Pervasive or apply to most participants
- Complex
- Significant estimate
- Operational errors
- Amendments or law changes
- Financial or going concern issues
- Lack of reconciliation of key accounts
- Changes in the control environment

# AUDITING UPDATES

## Performance Procedures

Management's responsibility for determining conditions for an ERISA Section 103(a)(3)(c) audit have been met:

- Permissible under the circumstances
- The investment information is prepared and certified by a qualified institution under 29 CFR 2520.103-8
- The certification meets the requirements of CFR 2520.103-5
- The certified investment information is appropriately measured, presented, and disclosed in accordance with the applicable financial reporting framework
- We have included a form in our templates this year to address management responsibilities surrounding the certification. It can be provided to management to document procedures performed.

# AUDITING UPDATES

## Performance Procedures

### Auditor's Responsibility:

- Evaluation of management's assessment
- Whether the certification applies to the plan and period under audit
- Information not certified by the qualified institution and where the related audit work is documented
- Certified information that is incomplete, inaccurate, or otherwise unsatisfactory

# AUDITING UPDATES

## Substantially Completed Form 5500

- Auditor required to obtain and read a substantially complete Form 5500 prior to dating the auditors report
- Review for material inconsistencies with the financial statements, send any changes to management and/or 5500 preparer
- Should include forms and schedules that could have a material effect both quantitatively and qualitatively on the financial statements AND the applicable supplemental schedules
- Form 5500 Schedules:
  - Schedule A
  - Schedule C
  - Schedule D
  - Schedule G (rare)
  - Schedule H
  - Schedule R
  - Schedule SB (defined benefit plans)

# AUDITING UPDATES

## Substantially Completed Form 5500

### Form 5500 Accountant's Opinion

<b>SCHEDULE H</b> <b>(Form 5500)</b> <small>Department of the Treasury Internal Revenue Service</small> <hr/> <small>Department of Labor Employee Benefits Security Administration Pension Benefit Guaranty Corporation</small>	<b>Financial Information</b>  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).  ▶ <b>File as an attachment to Form 5500.</b>	OMB No. 1210-0110
		<b>2021</b>  <b>This Form is Open to Public Inspection</b>

#### Part III Accountant's Opinion

**3** 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.

**a** The attached opinion of an independent qualified public accountant for this plan is (see instructions):

(1)  Unmodified    (2)  Qualified    (3)  Disclaimer    (4)  Adverse

**b** Check the appropriate box(es) to indicate whether the IQPA 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)  DOL Regulation 2520.103-8    (2)  DOL Regulation 2520.103-12(d)    (3)  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]

# AUDITING UPDATES

## Substantially Completed Form 5500

Form 5500 Accountant's Opinion - Disclaimers

<b>SCHEDULE H</b> <b>(Form 5500)</b> <small>Department of the Treasury Internal Revenue Service</small> <hr/> <small>Department of Labor Employee Benefits Security Administration</small> <hr/> <small>Pension Benefit Guaranty Corporation</small>	<b>Financial Information</b>  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).  <b>▶ File as an attachment to Form 5500.</b>	OMB No. 1210-0110 <hr/> <b>2021</b> <hr/> <b>This Form is Open to Public Inspection</b>
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**Part III Accountant's Opinion**

**3** 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.

**a** The attached opinion of an independent qualified public accountant for this plan is (see instructions):  
 (1)  Unmodified    (2)  Qualified    (3)  Disclaimer    (4)  Adverse

**b** Check the appropriate box(es) to indicate whether the CPA 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)  DOL Regulation 2520.103-8    (2)  DOL Regulation 2520.103-12(d)    (3)  neither DOL Regulation 2520.103-8 nor DOL Regulation 2520.103-12(d).

Select either:  
3b(1) for ERISA Section 103(a)(3)(C) or  
3b(3) for non-Section 103(a)(3)(C)

Disclaimers were and expected to continue to be common for 403(b) plan due to records issues associated with beginning of year balances or exclusion of certain contracts under the DOL FAB 2009-02

Line 3(a)= Disclaimer  
Line 3(b) may be  
(1) If management elected an ERISA Section 103(a)(3)(C) audit under 29 CFR 2520.103-8  
(3) For non-Section 103(a)(3)(C) if no election was made

## AUDITING UPDATES

### Management Representation Letter

#### New Representations for all ERISA Audits:

- Management has provided the auditor with the most current plan instrument, including plan amendments
- Management acknowledges its responsibility for administering the plan and determining the plan's transactions that are presented and disclosed in the financial statements are in conformity with the plan's provisions, including maintaining sufficient records with respect to each of the participants to determine the benefits due.

# AUDITING UPDATES

## Management Representation Letter

### New Representations for Section 103(A)(3)(C) Audits:

- Acknowledgement that management's election of the ERISA Section 103(A)(3)(C) audit does not affect its responsibility for the financial statements and for determining whether:
  - An ERISA Section 103(A)(3)(C) audit is permissible
  - The investment information is prepared and certified by a qualified institution
  - The certification meets the requirements in 29 CF 2520.103-5, and
  - The certified investment information is appropriately measured, presented, and disclosed in accordance with the applicable financial reporting framework (GAAP, modified cash basis)
- Obtain written representations from management:
  - That it acknowledges its responsibility for the presentation of the ERISA-required supplemental schedules in accordance with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA and
  - That it believes the ERISA-required supplemental schedules, including their form and content, are presented in conformity with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA

# AUDITING UPDATES

## Management Representation Letter

New Representations for audits not subject to ERISA Section 103(A)(3)(C) :

- Reporting whether the ERISA-required supplemental schedules are fairly stated, in all material respects, in relation to the financial statements as a whole

# AUDITING UPDATES

## Communication of Reportable Findings

- Instances of noncompliance with laws and regulations (unless clearly inconsequential) (AU-C 250)
- Significant findings that are relevant to those charged with governance (“TCWG”) regarding responsibility to oversee the financial reporting process (AU-C 260)
- Control deficiencies identified during the audit and report to management. Communicate to TCWG if different from management and the deficiency relates to a relevant plan provision (AU-C 265)
- Significant deficiencies and material weaknesses to TCWG (AU-C 265)

# AUDITING UPDATES

## Communication of Reportable Findings

### Written communications to TCWG:

- Should be communicated on a timely basis
  - Include a description of a reportable finding
  - Sufficient information to enable TCWG and management to understand the context
  - An explanation of potential effects on the financial statements or to the plan
- What if there were no reportable findings identified during the audit? DO NOT issue a written communication stating no reportable findings.

# AUDITING UPDATES

## Auditor's Reports

### Year of Implementation- Current Year Unmodified

Year 1-Non-Section 103(a)(3)(C) unmodified; Prior Year Full Scope Unmodified	Year 1- ERISA Section 103(a)(3)(C) Unmodified; Prior Year Limited Scope Disclaimer
N/A	<b>Scope and Nature of the ERISA Section 103(a)(3)(C) Audit of the 2021 Financial Statements</b>
Opinion on the Financial Statements	Opinion on the 2021 Financial Statements
Basis for Opinion on the Financial Statements	Basis for Opinion on the 2021 Financial Statements
Going Concern <b>(when applicable)</b>	Going Concern <b>(when applicable)</b>
Key Audit Matters <b>(when applicable)</b>	Key Audit Matters <b>(when applicable)</b>
Responsibilities of Management for the Financial Statements	Responsibilities of Management for the 2021 Financial Statements
Auditor's Responsibilities for the Audit of the Financial Statements	Auditor's Responsibilities for the Audit of the 2021 Financial Statements
<b>Separate section "Supplemental Schedule(s) required by ERISA" or separate report</b>	<b>"Other Matter – 2021 Supplemental Schedule(s) Required by ERISA" paragraph</b>
	<b>"Other Matter – Report on 2020 Financial Statements" paragraph</b>

2022 AICPA CIMA Employee Benefit Plans Conference

# AUDITING UPDATES

## Auditor's Reports

### ERISA Section 103(a)(3)(C) Report: Year 1

#### *Scope and Nature of the ERISA Section 103(a)(3)(C) Audit of the 2021 Financial Statements*

We have performed an audit of the financial statements of [Plan Name] (the Plan), an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA), as permitted by ERISA Section 103(a)(3)(C) (ERISA Section 103(a)(3)(C) audit). The financial statements comprise the statement of net assets available for benefits as of December 31, 2021, and the related statement of changes in net assets available for benefits for the year then ended, and the related notes to the financial statements (2021 financial statements).

Management, having determined it is permissible in the circumstances, has elected to have the audits of the Plan's financial statements performed in accordance with ERISA Section 103(a)(3)(C) pursuant to 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA. As permitted by ERISA Section 103(a)(3)(C), our audits need not extend to any statements or information related to assets held for investment of the plan (investment information) by a bank or similar institution or insurance carrier that is regulated, supervised, and subject to periodic examination by a state or federal agency, provided that the statements or information regarding assets so held are prepared and certified to by the bank or similar institution or insurance carrier in accordance with 29 CFR 2520.103-5 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA (qualified institution).

Management has obtained certifications from a qualified institution as of December 31, 20X2 and 20X1, and for the year ended December 31, 20X2, stating that the certified investment information, as described in Note X to the financial statements, is complete and accurate.

# AUDITING UPDATES

## Auditor's Reports

### *Opinion on the 2021 Financial Statements*

In our opinion, based on our audits and on the procedures performed as described in the Auditor's Responsibilities for the Audit of the 2021 Financial Statements section:

- The amounts and disclosures in the accompanying financial statements, other than those agreed to or derived from the certified investment information, are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America.
- The information in the accompanying financial statements related to assets held by and certified to by a qualified institution agrees to, or is derived from, in all material respects, the information prepared and certified by an institution that management determined meets the requirements of ERISA Section 103(a)(3)(C).

### *Basis for Opinion on the 2021 Financial Statements*

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the 2021 Financial Statements section of our report. We are required to be independent of the Plan and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our ERISA Section 103(a)(3)(C) audit opinion.

# AUDITING UPDATES

## Auditor's Reports

### ***Responsibilities of Management for the 2021 Financial Statements***

Management is responsible for the preparation and fair presentation of the financial statements in accordance with U.S. GAAP , and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error. Management's election of the ERISA Section 103(a)(3)(C) audit does not affect management's responsibility for the financial statements.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Plan's ability to continue as a going concern for *[insert the time period set by the applicable financial reporting framework]*.

Management is also responsible for maintaining a current plan instrument, including all plan amendments, administering the plan, and determining that the plan's transactions that are presented and disclosed in the financial statements are in conformity with the plan's provisions, including maintaining sufficient records with respect to each of the participants, to determine the benefits due or which may become due to such participants.

2022 AICPA CIMA Employee Benefit Plans Conference

# AUDITING UPDATES

## Auditor's Reports

### *Auditor's Responsibilities for the Audit of the 2021 Financial Statements*

Except as described in the Scope and Nature of the ERISA Section 103(a)(3)(C) Audit of the 2021 Financial Statements section of our report, our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if, there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Plan's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Plan's ability to continue as a going concern for a reasonable period of time. (continued on next slide)

# AUDITING UPDATES

## Auditor's Reports

### *Auditor's Responsibilities for the Audit of the 2021 Financial Statements (continued)*

Our audits **did not extend to the certified investment information**, except for obtaining and reading the certification, comparing the certified investment information with the related information presented and disclosed in the financial statements, and reading the disclosures relating to the certified investment information to assess whether they are in accordance with the presentation and disclosure requirements of accounting principles generally accepted in the United States of America.

Accordingly, the **objective of an ERISA Section 103(a)(3)(C) audit** is not to express an opinion about whether the financial statements as a whole are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America.

We are **required to communicate with those charged with governance** regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

# AUDITING UPDATES

## Auditor's Reports

### *Other Matter-2021 Supplemental Schedule[s] Required by ERISA*

The supplemental schedule[s] of [Identify the title of supplemental schedule(s) and periods covered], [is] [are] presented for purposes of additional analysis and [is] [are] not a required part of the financial statements but [is] [are] supplementary information required by the DOL's Rules and Regulations for Reporting and Disclosure under ERISA. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information included in the supplemental schedule[s], other than that agreed to or derived from the certified investment information, has been subjected to auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with GAAS. For information included in the supplemental schedule[s] that agreed to or is derived from the certified investment information, we compared such information to the related certified investment information.

In forming our opinion on the supplemental schedule[s], we evaluated whether the supplemental schedule[s], other than the information agreed to or derived from the certified investment information, including [its] [their] form and content, [is] [are] presented in conformity with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

#### In our opinion:

- The form and content of the supplemental schedule[s], other than the information in the supplemental schedule[s] that agreed to or is derived from the certified investment information, are presented, in all material respects, in conformity with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.
- The information in the supplemental schedule[s] related to assets held by and certified to by [a] qualified institution[s] agrees to, or is derived from, in all material respects, the information prepared and certified by [an] institution[s] that management determined meet[s] the requirements of ERISA Section 103(a)(3)(C).

# AUDITING UPDATES

## Auditor's Reports

### *Other Matter-Auditor's Report on the 2020 Financial Statements*

We were engaged to audit the 2020 financial statements of the Plan. As permitted by 29 CFR 2520.103-8 of the DOL's Rules and Regulations for Reporting and Disclosure under ERISA, the plan administrator instructed us not to perform and we did not perform any auditing procedures with respect to the information certified by [a] qualified institution[s]. In our report dated [Prior Year Audit Report Date], we indicated that (a) because of the significance of the information that we did not audit, we were not able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion and accordingly, we did not express an opinion on the 2020 financial statements, and (b) the form and content of the information included in the 2020 financial statements other than that derived from the certified information were presented in compliance with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

2022 AICPA CIMA Employee Benefit Plans Conference

# AUDITING UPDATES

## Auditor's Reports

### Year of Implementation- 403(b) with Disclaimer of Opinion

Current Year Non-Section 103(a)(3)(C); Prior Year Full Scope; Disclaimer both years	Current Year ERISA Section 103(a)(3)(C) ; Prior Year Limited Scope; Disclaimer both years
N/A	Scope and Nature of the ERISA Section 103(a)(3)(C) Audit of the 2021 Financial Statements
<b>Disclaimer of Opinion on the Financial Statements</b>	<b>Disclaimer of Opinion on the 2021 Financial Statements</b>
<b>Basis for Disclaimer of Opinion on the Financial Statements</b>	<b>Basis for Disclaimer of Opinion on the 2021 Financial Statements</b>
Going Concern (when applicable)	Going Concern (when applicable)
Key Audit Matters (when applicable)	Key Audit Matters (when applicable)
Responsibilities of Management for the Financial Statements	Responsibilities of Management for the 2021 Financial Statements
Auditor's Responsibilities for the Audit of the Financial Statements <i>[Shorter- matches AUC 705]</i>	Auditor's Responsibilities for the Audit of the 2021 Financial Statements <i>[Shorter- adapted from AUC 705]</i>
Separate section "Supplemental Schedule(s) required by ERISA" or separate report <i>[No opinion- Precluded from opining]</i>	"Other Matter – 2021 Supplemental Schedule(s) Required by ERISA" paragraph <i>[No opinion- precluded from opining]</i>
	"Other Matter – Report on 2020 Financial Statements" paragraph

# AUDITING UPDATES

## Auditor's Reports

### ERISA Section 103(a)(3)(C) with Disclaimer of Opinion

[No changes to Scope and Nature section]

#### Disclaimer of Opinion on the 2021 Financial Statements

We do not express an opinion on the accompanying 2021 financial statements of the Plan. Because of the significance of the matters described in the Basis for Disclaimer of Opinion on the 2021 Financial Statements section of our report, we have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on the financial statements.

#### *Basis for Disclaimer of Opinion on the 2021 Financial Statements*

The Plan has not maintained sufficient accounting records and supporting documents relating to certain annuity contracts and custodial accounts issued to current and former employees prior to January 1, 2009. Accordingly, we were unable to apply auditing procedures sufficient to determine the extent to which the accompanying financial statements may have been affected by these conditions.

[Further, as described in Note [Y] to the financial statements, the Plan has excluded from investments in the accompanying statement of net assets available for benefits certain annuity contracts and custodial accounts issued to current and former employees prior to January 1, 2009, as permitted by the DOL's Field Assistance Bulletin No. 2009-02, *Annual Reporting Requirements for 403(b) Plans*. The investment income and distributions related to such accounts have also been excluded in the accompanying statement of changes in net assets available for benefits. The amount of these excluded annuity contracts and custodial accounts and the related income and distributions are not reasonably determinable. Accounting principles generally accepted in the United States of America (U.S. GAAP) require that these accounts and the related income and distributions be included in the accompanying financial statements.]

# AUDITING UPDATES

## Auditor's Reports

### ERISA Section 103(a)(3)(C) with Disclaimer of Opinion

**[No changes to Management's Responsibilities section]**

#### ***Auditor's Responsibilities for the Audit of the 2021 Financial Statements***

Our responsibility is to conduct an audit of the Plan's financial statements in accordance with auditing standards generally accepted in the United States of America and to issue an auditor's report. However, because of the matters described in the Basis for Disclaimer of Opinion on the 2021 Financial Statements section of our report, we were not able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on these financial statements.

We are required to be independent of the Plan, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit.

#### ***Other Matter – 2021 Supplemental Schedule[s] Required by ERISA***

The supplemental schedule[s] of *[Identify the title of supplemental schedule(s) and periods covered]* [is] [are] presented for purposes of additional analysis and [is] [are] not a required part of the financial statements but [is] [are] supplementary information required by the DOL's Rules and Regulations for Reporting and Disclosure under ERISA. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. Because of the significance of the matters described in the Basis for Disclaimer of Opinion on the 2021 Financial Statements section of our report, it is inappropriate to and we do not express an opinion on these supplemental schedule[s].

# AUDITING UPDATES

## Auditor's Reports

### ***Other Matter- Auditor's Report on the 2020 Financial Statements***

We were engaged to audit the 2020 financial statements of the Plan. As permitted by 29 CFR 2520.103-8 of the DOL's Rules and Regulations for Reporting and Disclosure under ERISA, the plan administrator instructed us not to perform, and we did not perform, any auditing procedures with respect to the information certified by [a] qualified institution[s]. Further, the Plan has not maintained sufficient accounting records and supporting documents relating to certain annuity contracts and custodial accounts issued to current and former employees prior to January 1, 2009. Accordingly, we were unable to apply auditing procedures sufficient to determine the extent to which the accompanying financial statements may have been affected by these conditions.

[The Plan has excluded from the 2020 financial statements certain annuity contracts and custodial accounts issued to current and former employees prior to January 1, 2009, as permitted by the DOL's Field Assistance Bulletin No. 2009-02, Annual Reporting Requirements for 403(b) Plans. The investment income and distributions related to such accounts have also been excluded from the 2020 financial statements. The amount of these excluded annuity contracts and custodial accounts and the related income and distributions are not determinable. U.S. GAAP require that these accounts and the related income and distributions be included in the 2020 financial statements.]

In our report dated [Prior Year Audit Report Date], we indicated that because of the significance of the information that we did not audit, we were not able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion and accordingly, **we did not express an opinion on the 2020 financial statements.**

***NOTE: Required to describe all matters***

# AUDITING UPDATES

## Auditor's Reports

### *continuing auditor*

<i>Illustration No.</i>	<i>Type of plan</i>	<i>Current year (2021) – type of audit</i>	<i>Prior year (2020) – type of audit</i>
1-1	401(k)	ERISA Section 103(a)(3)(C)	Limited scope
1-2	401(k)	ERISA Section 103(a)(3)(C)	Full scope
1-3	401(k)	Non-Section 103(a)(3)(C)	Limited scope
1-4	401(k)	Non-Section 103(a)(3)(C)	Full scope
1-5	403(b)	ERISA Section 103(a)(3)(C) with a limitation on the scope of the audit	Limited scope with respect to investment information and additional limitation on the scope of the audit

### *successor auditor*

<i>Illustration No.</i>	<i>Type of plan</i>	<i>Current year (2021) – type of audit</i>	<i>Prior year (2020) – type of audit</i>
1-6	401(k)	ERISA Section 103(a)(3)(C)	Limited scope
1-7	401(k)	ERISA Section 103(a)(3)(C)	Full scope
1-8	401(k)	Non-Section 103(a)(3)(C)	Limited scope
1-9	401(k)	Non-Section 103(a)(3)(C)	Full scope

# AUDITING UPDATES

- **Top 10 Accounting considerations during EBP audits:**

1. Investment classification
2. Related party and party-in-interest disclosures
3. Plan mergers (report on the legal merger date)
4. Disclosure of assumptions related to significant accounting estimates
5. Mortality assumptions
6. Use of liquidation basis of accounting
7. Proper reporting of investment contracts
8. Proper recording of receivables
9. Deferred taxes for health & welfare plans
10. Disclosure of risks and uncertainties

**Not a lot new from an accounting perspective**

# AUDITING UPDATES

## Risk & Uncertainties

- Under ASC 275, need to disclose:
  - Nature of operations (description of plan provisions)
  - Use of estimates in preparation of the financial statements
  - Items which could affect the f/s amounts in the near term or materiality
  - Concentrations
- Current items to consider: COVID-19, the Russia-Ukraine crisis, focus on ESG matters
- In addition to considering the disclosure matters, these items should be considered in assessing risk throughout the audit.

## ACCOUNTING UPDATES

### *Risk & Uncertainties Example Disclosure:*

The Plan invests in various investment securities. Investment securities are exposed to various risks, such as interest rate, market, and credit risks. **Market risks include global events which could impact the value of investment securities, such as a pandemic or international conflict.** Due to the level of risk associated with certain investment securities, it is at least reasonably possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect participants' account balances and the amounts reported in the statement of net assets available for benefits.

# AUDITING UPDATES

Relevant ASUs that could possibly impact an EBP audit:

FASB ASU	Name	Effective Date
2016-02	Leases (Topic 842) Leases: Amendments to the FASB Accounting Standards Codification®	12/31/2019 [Updated: 12/31/2022]
2018-01	Leases (Topic 842): Land Easement Practical Expedient for Transition to Topic 842	With 2016-02
2018-10	Codification Improvements to Topic 842, Leases	With 2016-02
2018-11	Leases (Topic 842): Targeted Improvements	With 2016-02
2018-20	Leases(Topic) 842: Narrow-Scope Improvements for Lessors	With 2016-02
2019-01	Leases(Topic) 842: Codification Improvements	With 2016-02
2021-05	Leases (topic 842): Lessors - Certain Leases with Variable Lease Payments	With 2016-02
2021-09	Leases (Topic 842): Discount Rate for Lessees That Are Not Public Business Entities	With 2016-02
2016-13	Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments	12/31/2022
2018-19	Codification Improvements to Topic 326, Financial Instruments - Credit Losses	With 2016-13
2019-04	Codification Improvements to Topic 326, Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments	With 2016-13
2019-05	Financial Instruments—Credit Losses (Topic 326): Targeted Transition Relief	With 2016-13
2019-10	Financial Instruments—Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842): Effective Dates	With 2016-13

## ACCOUNTING UPDATES

### Mortality Improvement Scales (MP-2021)

- **The new version of the scales reflects historical U.S. population mortality experience through 2019 and does not reflect the impact of the COVID-19 pandemic.**
- **The Scale MP -2021 mortality improvement rates can be found on the SOA website at the following link:**

<https://www.soa.org/resources/experience-studies/2021/mortality-improvement-scale-mp-2021/>

### **Mortality Improvement Model, MIM-2021 -**

<https://www.soa.org/resources/research-reports/2021/mortality-improvement-model/>

# COMPLIANCE UPDATE AND OTHER

American Rescue Plan Act (ARPA):

- ARPA provided further funding relief for single employer pension plans in the form of interest rate stabilization and extending the period for amortizing funding shortfalls:
  - Extends the 7-year amortization period for funding shortfalls to 15 years
  - Extends interest rate stabilization rules that were set for phase out starting in 2021 and modified the interest rate floor and corridor
  - Note: the Infrastructure Investment and Jobs Act in November 2021 further extended the phase out of the interest rate corridor

# COMPLIANCE UPDATE AND OTHER

## American Rescue Plan Act (ARPA):

- IRS Notice 201-48: *Guidance on Single-Employer Defined Benefit Plan Funding Changes under the American Rescue Plan Act of 2021*, includes guidance on changes to the funding rules
- The amortization period extension applies to all plan years beginning after December 31, 2021, while allowing for plan sponsors to elect to have this relief applied retroactively, starting for plan years beginning after December 31, 2018. The election must have been made by the later of 1) last day of the plan year beginning in 2021 or 2) December 31, 2021.
- Most plan sponsors will see reductions in their minimum required contributions as calculated under prior law.
- Some plan sponsors may be eligible to redesignate all, or a portion of, a contribution that was originally designated as applying for the plan year beginning in 2019 or 2020 as a contribution for the immediately succeeding plan year
- **TAKE AWAY-** If you have a plan that retroactively applies the relief and it changes BOTH the Schedule SB and the Schedule H, The prior plan years affected will have to be evaluated for potential restatement.

## COMPLIANCE UPDATES AND OTHER

- Regulatory Matters:
  - Quality Study ongoing by the DOL. Second round of selections coming soon. Last study was performed in 2014. (Inspection of the 2020 population of EBP audits)
  - Cybersecurity guidance for plan sponsors, fiduciaries, recordkeepers, and participants
  - Cryptocurrency- Compliance Assistance Release 2022-01; Fiduciary concerns
  - Required amendments for Plans

# COMPLIANCE UPDATES AND OTHER

## EBP Audit Guide Updates:

Enhance updates	Guide paragraphs
Section 103(a)(3)(C) audit considerations	-recurring audits (2.28-2.29) -management's responsibilities (2.35-2.38) -guidance for applying required procedures (11.205-.208)
Considerations for inquiries of management	2.43-2.46
Considerations for determining relevant plan provisions	3.21-3.23
Identification and evaluation of reportable findings	3.63-3.73 (and related communications with those charged with governance 13.44)
Substantially complete Form 5500 filing considerations	13.04-13.16

# COMPLIANCE UPDATES AND OTHER

## Upcoming audit standards

New SAS	Effective for audits of financial statements for periods ending on or after
SAS 142, <i>Audit Evidence</i>	December 15, 2022
SAS 143, <i>Auditing Accounting Estimates and Related Disclosures</i>	December 15, 2023
SAS 144, <i>Amendments to AU-C Sections 501, 540, and 620 Related to the Use of Specialists and the Use of Pricing Information Obtained From External Information Sources</i>	December 15, 2023
SAS 145, <i>Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement</i>	December 15, 2023

**QUESTIONS?**

**THANK YOU!**