

# Employee Benefit Compliance: DOL Preparedness

**Presented by:**

**Michelle Cammayo, CEBS, RHU**

*National Compliance Leader,*

*IMA Financial Group*

**Moderated by:**

**Michelle Landrum, CEBS, GBDS**

The logo for ISCEBS (International Society of Certified Employee Benefit Specialists) is displayed in white text within a white circular outline. The background of the slide features a decorative, wavy graphic in shades of purple and pink that spans across the bottom half of the page.

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International Society  
of Certified Employee Benefit Specialists

International Foundation  
OF EMPLOYEE BENEFIT PLANS 

# Upcoming Events

- **Webinar: SECURE Act 2.0**

November 7<sup>th</sup> | 8:30 am PT

Speaker: Sarah Ivy, Shareholder of Saxton & Stump Lawyers

- **Webinar: Personal Security Insights Program**

November 28<sup>th</sup> | 9:00 am PT

Speaker: Gary F. Rossi, Head of Cyber Fraud & Personal Security Insights Program at Fidelity Investments

- **In-Person: Holiday Happy Hour**

December 7<sup>th</sup> | 5:00 pm PT

Tapizon, 450 Main Street, El Segundo | No cost to attend, RSVP by November 22<sup>nd</sup>

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# Speaker Bio



**Michelle Cammayo, CEBS, RHU**

**National Compliance Leader, IMA Financial Group**

Michelle Cammayo has close to 20 years of Employee Benefits experience specializing in all lines of health and welfare benefits. Today, Michelle works closely with clients and partners to provide guidance in areas of the law including ERISA, HIPAA, COBRA, FMLA and PPACA. She is also the IMA National Practice Leader for Compliance and endeavors to ensure IMA helps its clients manage and eliminate risk in the most effective manner. She is passionate about educating others and her passion for this shined in the Covid era where Michelle conducted weekly and then monthly webinars providing guidance to employers. Her podcast, Cammayo's Compliance Talk, has gained popularity in the last three years to become a favorite amongst Bolton clients. She also contributes regularly to the Bolton blog and has authored several articles for industry-related newsletters. Michelle's consultative approach with employers provides practical advice as employers endeavor to be complaint.

A close-up, low-angle photograph of a pair of metal scales of justice. The scales are dark and appear to be made of cast iron or steel. The lighting is dramatic, coming from the side, creating strong highlights and deep shadows. The background is a soft, warm, golden-brown color. The scales are positioned on the left side of the frame, with the pans extending towards the right.

## EMPLOYEE BENEFIT COMPLIANCE: DOL PREPAREDNESS

Presented By

**Michelle Cammayo, CEBS, RHU**  
*National Compliance Leader*

NOVEMBER 1, 2023

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# WHAT DOES IT MEAN TO BE COMPLIANT?

U.S. Department of Labor

Employee Benefit Security Administration  
J.F. Kennedy Federal Building, Room 575  
Boston, MA 02203  
Phone: (617) 565-9600  
Telefax: (617) 565-9666



DATE: A Sad but Certain Day in Your Future

To: Every Plan Administrator  
Who USED to Sleep Well at Night

RE: **Your Company's** Health and Welfare Plan  
Case No. 31-035068

Dear **Mr or Ms Up-a-Creek,**

The Department of Labor has responsibility for the administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Title I establishes standards governing the operation of employee benefit plans such as **Your Company's** Health and Welfare Plan (the Plan).

The Plan is scheduled for investigation by this office. Investigative authority is vested in the

## ATTACHMENT A

PLEASE PROVIDE ALL REQUESTED DOCUMENTATION FOR THE CURRENT PLAN YEAR UNLESS OTHERWISE SPECIFIED

### PLAN DOCUMENTS

1. Plan documents, including, but not limited to, the following:
  - a. Summary Plan Description (SPD);
  - b. Benefit booklets;
  - c. Evidences of coverage (EOCs) and Certificates of Coverage for each medical option;
  - d. Enrollment package provided at open enrollment and to new hires, including front and back of all enrollment forms; and
  - e. Documents describing plan coverages, rules, costs, including, but not limited to, documents specifying:
    - i. Eligibility, coverage, reimbursement or payment rates;
    - ii. Out of pocket maximums;
    - iii. Preauthorization requirements;
    - iv. Individual or aggregate dollar limits on claims;
    - v. Hospital stay limits;
    - vi. Deductibles or co-pays under the plan;
    - vii. The members of any network of eligible or preferred providers under the plan;
    - viii. The rules regarding coverage of medical/surgical and mental health benefits, including information as to any aggregate lifetime dollar limits and annual dollar limits; and
    - ix. The rules regarding pre-authorization for a hospital length of stay in connection with childbirth.
  - f. Documents describing changes to any of the above documents.
2. Summary of Benefits and Coverage (SBC), Notices of Material Modifications, and Uniform Glossary.
3. If the Plan has any assets and/or a trust:
  - a. All trust agreements and all governing documents, to the extent not previously provided in response to Request No. 1;
  - b. All bank account statements where monies are held to fund payment of claims, expenses, or administrative fees; and
  - c. Documents sufficient to show the Plan's income, expenses, assets, and liabilities on a quarterly basis for relevant period.
4. Fidelity bond, fiduciary liability policy, and stop-loss policy, if applicable.

**\*\*Compliance Checklist – annual review\*\***



# MAJOR SECTIONS OF LAW GOVERNING BENEFIT PLANS



ERISA – SPD, Plan Document, Form 5500 and much more



Cobra Regulations & Continuation of Coverage



ACA –Pay or Play, Reporting, Disclosures and more



IRS – Cafeteria Plans and other arrangements that allow for favorable tax treatment



MHPAEA Compliance



HIPAA – BAAs, Risk Analysis, Privacy & Security policies, HIPAA training and HIPAA NPP







# ERISA & COBRA



# ERISA COMPLIANCE – PLAN DOCUMENT

- + ERISA requires that each “plan” have a comprehensive written instrument describing the operation and administration of an employer’s plan. The plan document is legalese and may be difficult for the average participant to read and understand
  - + This document does not need to be distributed to participants unless requested
  - + Plan Document provides more detail than the SPD and should be referred to when administering the plan.
- + Penalty 502(c)(1) and 502(c)(6)
  - + Failure to provide to DOL upon request: \$184/day but not greater than \$1,846 per request
  - + Failure to provide to plan participant within 30 days upon request: \$110/day

## ERISA COMPLIANCE – SPD / SUMMARY PLAN DESCRIPTION

- + Primary vehicle for informing participants and beneficiaries about their plan and how it operates.
  - Must be written for average participant and be sufficiently comprehensive to apprise covered persons of their benefits, rights, and obligations under the plan.
- + Must be distributed to participants within 90 days of becoming covered by the plan. Updated SPD must be furnished every 5 years if changes made to SPD information or plan is amended.
- + In the meantime, if material modification occurs, SMM must be distributed not later than 210 days after the end of the plan year in which the change is adopted. Material reductions changes must be distributed no later than 60 days after reduction is adopted.
- + Penalty 502(c)(1) and 502(c)(6)
- + Failure to provide to plan participant within 30 days upon request: \$110/day

# ERISA COMPLIANCE – FORM 5500 REPORTING

- + Annual information return consists of the main form as well as different schedules (A is insurance information, C is service providers)
- + Reporting required under ERISA and the IRC (Internal Revenue Code)
- + Plans with over 100 participants enrolled in coverage at the beginning of the plan year must file
  - Employers most often use the Life invoice to obtain this number. However, this will not always be the best practice. For example, Employer A has more on the dental than on the life insurance because the dental plan is open to their affiliate companies; whereas the life insurance is not.
- + Delinquent Filer Voluntary Compliance Program
  - not available once the DOL begins an audit

- + Penalty 502(c)(2)
- + Failure to File: \$2,586 per day\*

\*Employers can choose to correct this using the Delinquent Filer Program which reduces penalties owed; however, this is not an option if DOL catches the mistake first

# ERISA COMPLIANCE – FORM 5500 REPORTING

WHAT	WHO	WHERE	WHEN
Form 5500 and accompanying schedules and auditor's report, if applicable	All ERISA plans (except unfunded or insured plans with less than 100 participants)	Internal Revenue Service	Before the last day of the 7 <sup>th</sup> month after the plan year ends (extensions available)
Summary Annual Report (SAR)	Plans covered by ERISA and filing 5500s	To plan participants and beneficiaries	2 months after the Form 5500 is filed



# **ERISA COMPLIANCE – FORM 5500 REPORTING: SUMMARY ANNUAL REPORT (SAR)**

Willful failure to distribute a SAR or failure to complete 5500 reporting is significant.

Penalty: Failure to provide SAR to plan participant within 30 days upon request: \$110/day

# COBRA COMPLIANCE

Employers have two major obligations:

1. Distribute/Furnish a Cobra initial rights notice aka general rights notice to a new plan participant within 90 days of their enrollment as an active employee
2. Furnish a Cobra election notice within 44 days of a Cobra QE

- + Failure to Distribute: up to \$110/day plus legal action may be pursued to recover Cobra damage (i.e. large claims that weren't covered)



# CONTINUATION OF COVERAGE: LIFE INSURANCE CONVERSION RIGHTS NOTICES

Carriers often shift responsibility to distribute to the employer via the carrier contract or admin manual.

1. Notice must be distributed to terminated plan participants within 15 days of termination date. The employee has 31 days from the date of coverage termination to apply for conversion.
  - + Best practice is to include in the exit packet and document on the exit packet checklist

+ Failure to Distribute: legal action







# ACA & IRS



# ACA



# ACA REPORTING: WHO MUST REPORT

- + Applicable Large Employers – ALEs
  - 50 or more full-time employees\*, including full-time equivalents
  - Employer aggregation rules apply: companies with a common owner or otherwise related under certain rules of section 414 of IRC (control group) are treated as a single employer for determining ALE status
- + Two provisions of the ACA apply to ALEs
  - #1 – ACA reporting
  - #2 – Employer shared responsibility provisions (ESRP)

\*Seasonal workers can be excluded as long as they meet the definition found [here](#).



# ACA REPORTING

Pay or Play: Still in effect so ACA Reporting is required

1095-C – distributed to employees by March 1, 2024

1094-C – the employer uses this form to report to provide summary information to the IRS and transmit the 1095-C forms – due by April 1. All employers must electronically file starting 2024.

Both forms above are used to determine if an ALE owes a payment under the employer shared responsibility provisions (pay or play)

IRS Letter 226J: notifies ALEs of their potential penalty

1. Contact your broker & tax advisor that typically responds to IRS tax issues such as an accounting firm or law firm
2. Call the number on your Letter 226J and request a 30-day extension
3. Agree to IRS assessment and pay or disagree and respond to the IRS
4. **MUST RESPOND BY THE DATE ON THE LETTER** (clear and concise responses have done well with the IRS in the past)

Penalty for failure to report 1095-C forms to the IRS is \$290/form. An additional penalty of \$290/form applies for failure to distribute to full-time employees





## ACA REQUIRED DISCLOSURES

- + Failure to distribute a medical Summary of Benefits and Coverage (SBC) as required by law: \$1,362 per failure calculated on a per participant basis
  - Must be distributed when an employee is newly eligible before they make plan decisions and during OE before plan decisions are made
  
- + Failure to distribute an ACA Marketplace Exchange Notice
  - Must be distributed to new hires, regardless of benefits eligibility
  - DOL announced they would not penalize employers for non-compliance

# IRS COMPLIANCE – DOCUMENTATION

- + Certain plans with favorable tax treatment are required have IRS plan documents.
    - Section 105, Section 125, Section 129, Section 127 & Section 137
  - + If you do not have a POP on file, but you are taking pre-tax deductions, heavy penalties may apply
- + Failure to have a document: an IRS audit could result in a reclassification of all pre-tax insurance deductions back to taxable income. The IRS could then assess and add interest and penalties on the unpaid taxes.

# IRS COMPLIANCE – NON-DISCRIMINATION RULES

- + All plans with favorable tax treatment are subject to non-discrimination rules
- + Bottom Line: Employers cannot discriminate in favor of the highly compensated if receiving favorable tax treatment
- + Section 125 & 105 plans must test annually: recommended to test twice a year
  - + In the event of general IRS tax audit, the auditor will ask for the results of the test at the close of the Plan Year
- + Penalties result in imputed income (and interest earned on any taxes owed for that imputed income)
- + Failure to have a document: an IRS audit could result in a reclassification of all pre-tax insurance deductions back to taxable income for the highly compensated. The IRS could then assess and add interest and penalties on the unpaid taxes. 95%

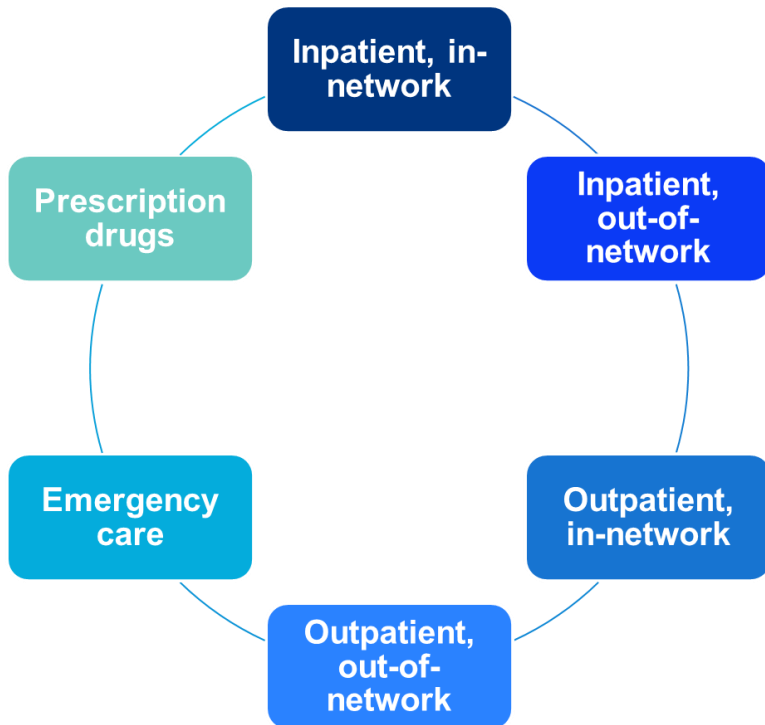


# MHPAEA COMPLIANCE





# ACHIEVING MHPAEA COMPLIANCE



## Annual & Lifetime Limits

- Must be the same or more generous than for medical/surgical benefits

## Financial Requirements & Quantitative Treatment Limitations

- Cannot be more restrictive than the predominant requirements or limitations that apply for substantially all (2/3) medical/surgical benefits

## Non-Quantitative Treatment Limitations (NQTLs)

- Cannot impose processes, strategies, evidentiary standards or other factors that are more stringent than for medical/surgical benefits

# ENFORCEMENT

- + EBSA staff are focused on mental health parity enforcement, and they must report activity each year to Congress
  - + Group health plans must perform NQTL analysis each year and have results on hand in the event of an audit
  - + Self-insured plans have the most risk
  - + All plans should show a good faith effort towards confirming compliance with their carriers/TPAs and/or PBMs
- + Non-compliant plans could be subject to a penalty of up to \$100/day per affected individual, and if disclosures are not available upon request, general ERISA penalties could apply.

95%



# CASE STUDIES

RETIREE PLAN  
THIRD PARTY RECOVERY  
LONG TERM DISABILITY DISPUTE

# GORDON VS. CIGNA CORP.

- + Plaintiff sought to represent a putative class participants and beneficiaries who were deemed ineligible for additional life insurance benefits despite having paid premiums for the additional coverage, because they failed to submit an EOI
  - Plaintiff is the deceased husband's beneficiary
  - She made a claim to Cigna for the life insurance amount and was denied. Cigna cited no EOI was submitted.
  - Plaintiff claimed the employer and insurer breached fiduciary duties by failing to notify the insured of the EOI requirement while continuing to accept premiums
  - Court rejected the Plaintiff's argument on the grounds that Cigna had no knowledge of the employer's collection of a premium for the additional coverage. Court found the employer responsible as the day to day administration and fiduciary duties lies with the employer.



# KING VS. BLUE CROSS AND BLUE SHIELD OF ILLINOIS UPS 10, 15-55880

- + Mrs. King suffered a back infection that required immediate surgery and extensive post-surgery rehab. After initially approving her treatment as medically necessary, the defendants denied her claim for benefits because Mrs. King exceeded her plan's \$500K lifetime benefit maximum (note this is a retiree health plan).
  - Mrs. King passed away before her suit made it to court. Mr. King argued that the defendants failed to adequately disclose that the lifetime benefit maximum applied to the plan.
  - Original judgement for the defendants. Mr. King appealed.
  - Courts found that the SPD and subsequent summary of material modifications violated ERISA's statutory and regulatory disclosure requirements. Decision in favor of the defendants was reversed.



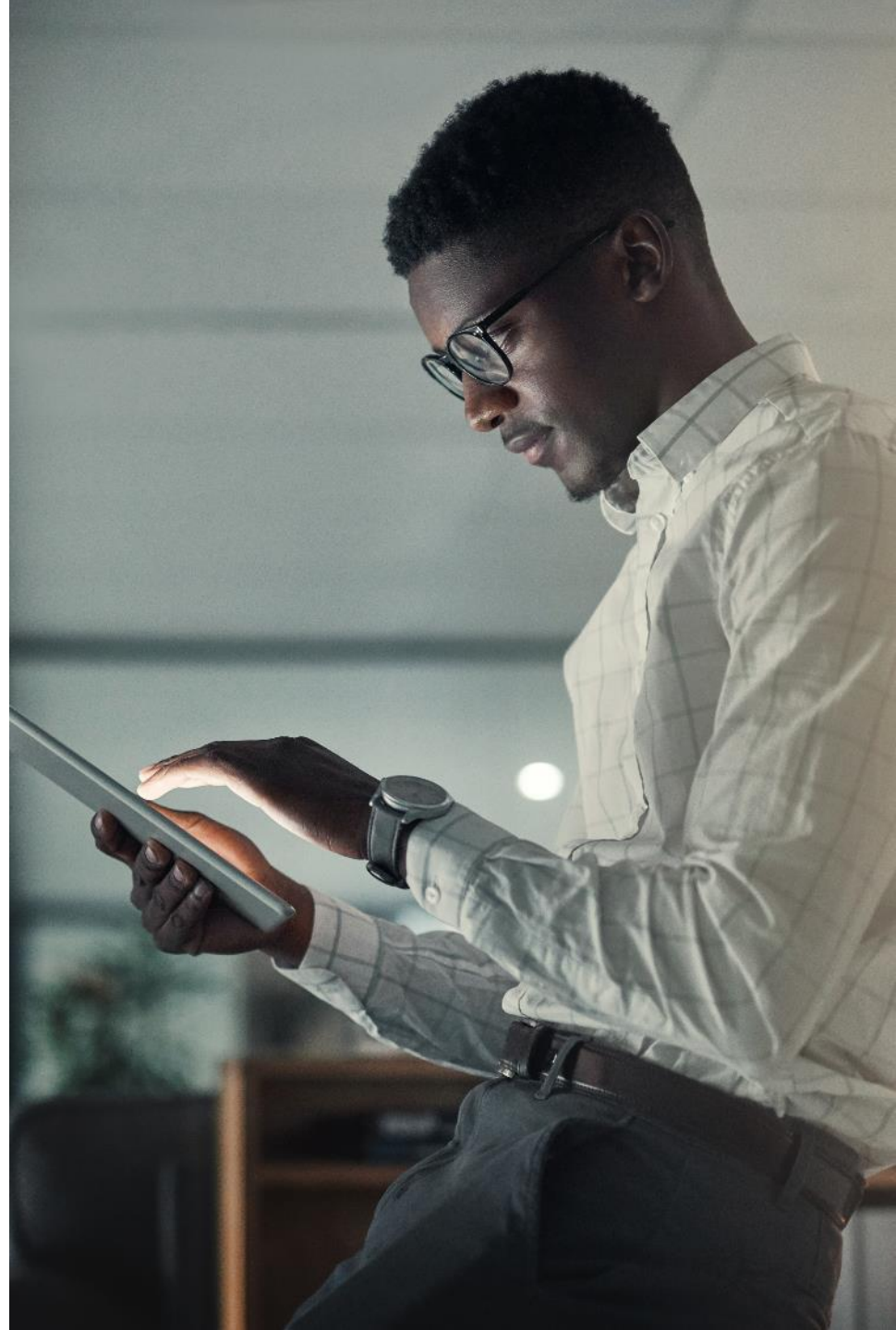
# LENAI MULL NORMAN MULL VS. BOARD OF DIRECTORS OF MOTION PICTURE INDUSTRY HEALTH PLAN, 15-56246

- + Mrs. Mull was injured in a motorcycle accident. The Plan paid approximately \$148K in benefits for treatment of her injuries. Mrs. Mull received a \$100K recovery payment from a third party, and the Plan sought reimbursement. Mrs. Mull declined to provide reimbursement.
  - The SPD states that no benefits will be payable in a third-party liability claim unless the participant agrees to reimburse the plan for any benefits previously paid. The SPD further states that if reimbursement is not received, the amount of benefits paid will be deducted from all future benefits payable to the participant and his/her dependents.
  - The court ruled in favor of Mrs. Mull stating that the reimbursement provisions were only contained in the SPD and not in any document that constituted “the plan” so the reimbursement was not legally enforceable under ERISA.



# STEVENS VS. SANTANDAR HOLDINGS USA INC., 14-1481

- + Mr. Stevens worked for a subsidiary of Santander Holdings, Sovereign Bank. They offered a self-insured STD plan administered by Liberty Mutual. Mr. Stevens went out on disability.
  - Initial payments approved for 6 months. Upon reviewing again, Liberty Mutual did not find sufficient evidence that Mr. Stevens qualified for disability so his benefits were terminated.
  - Santander found at fault for not conducting an independent review of Stevens' file; therefore “rubber stamping” Liberty's benefit determinations.
  - Court ruled in favor of Mr. Stevens.





# COMMON ISSUES

ELECTRONIC DELIVERY OF PLAN DOCUMENTS  
SPDS  
SECTION 125 NON-DISCRIMINATION RULES  
ACA REPORTING



# NON-COMPLIANCE ISSUES

- + Electronic Delivery – pay close attention to electronic delivery rules. Recent case Raymond Thomas v. Cigna – reminder that employers must follow some fairly specific rules to make sure their documents are *delivered* and not just *furnished*
  - *Employee went out on disability with an Employer-paid and Voluntary Life policy. Employer did not notify employee of the waiver of disability provision. Employee passed away 4 years later, and her beneficiary sued Cigna for denying the claim.*
  - *Court ruled in favor of the beneficiary because the SPD was not “furnished”. The employer argued the forms were on the intranet, but the Court determined there was no evidence that the plan administrator had provided the plan participant with an appropriate SPD. Now, it’s likely that Cigna and the employer will argue who is responsible to pay the claims...the insurer or the plan sponsor (employer).*
- + SPD – common issues include: SPD does not properly reflect eligibility requirements imposed by employer, does not include required provisions (WHCRA, claims procedures, ERISA rights, etc)

# NON-COMPLIANCE ISSUES

- + Plan Document – common issues include: undocumented arrangements (issue with flex plans, HRAs, EAPs), poor documentation of benefits for self-insured plans
- + Form 5500 – common issues include: oversight of filing
- + Section 125 – common misconception that non-discrimination rules do not apply or there is a safe harbor if you classify by similar situated individuals (exempt or non-exempt)
  - **Bottom Line:** if your plan discriminates in favor of the highly-comped, there is no safe harbor
- + ACA Reporting – control groups are subject to reporting regardless if all entities in the control group have less than 50 FTEs each



## More Than Just Insurance

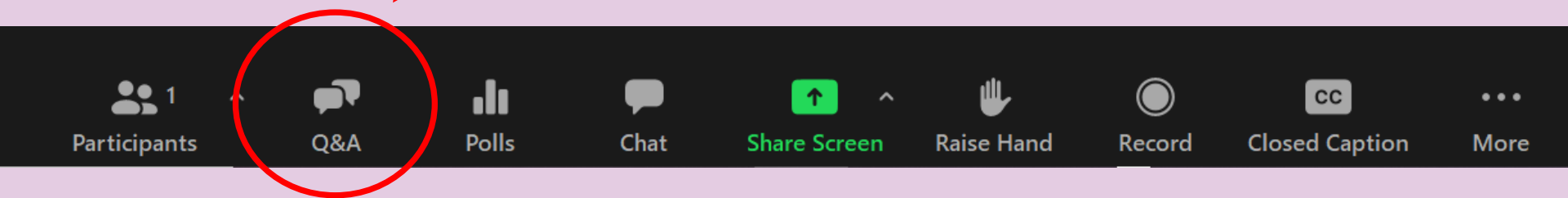
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**Michelle Cammayo, CEBS, RHU**  
**National Compliance Leader**  
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