

2020 Regulatory Updates and Fiduciary Best Practices

November 12, 2020

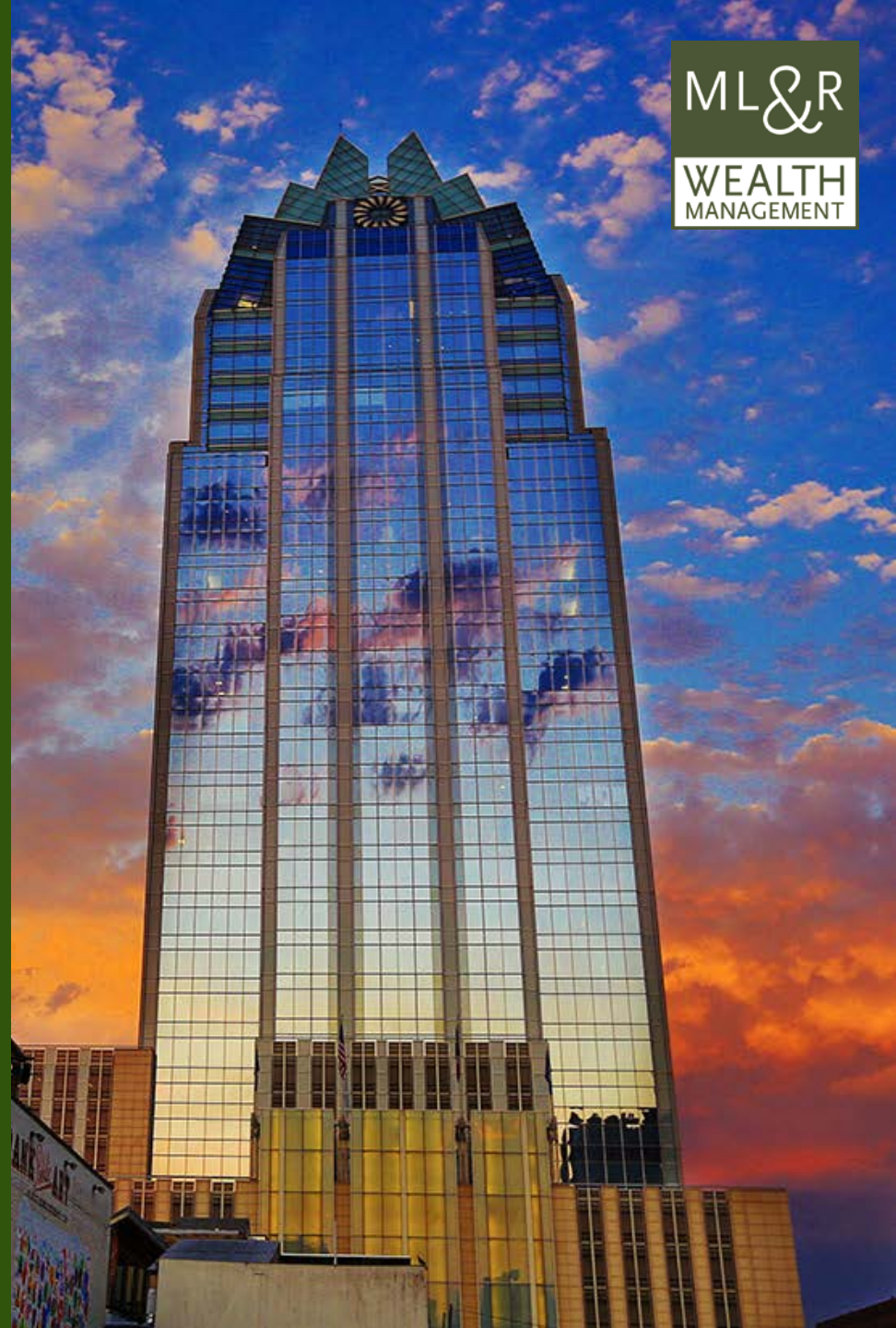
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Agenda

- ❖ Review of recent regulatory changes including those from the SECURE Act and the CARES Act
- ❖ Introduction to the upcoming document restatement cycle for qualified plans
- ❖ Fiduciary review of best practices including ways to avoid an IRS or DOL audit
- ❖ Cybersecurity tips and online safety reminders



Regulatory Updates



The SECURE Act

Required Minimum Distributions

- The age for required minimum distributions increased from 70 ½ to 72. However, this is only effective for individuals who attain age 70 ½ after December 31, 2019.

Inherited Accounts

- Elimination of the stretch provision
- Spousal beneficiaries are not affected

The SECURE Act



Tax Credits

Increased tax credit for start up expenses, plan administrative cost, and participant education.

- 50% of the cost limited to the lesser of \$250 times the number of non-highly compensated staff or \$5,000
- Credit is good for the first three years of the plan
- \$500 credit for adding auto-enrollment to the plan which can also be applied to existing plans as well for three years

The SECURE Act

Safe Harbor Changes

- Safe-harbor non-elective notice becomes optional
- Ability to switch from a non-safe harbor plan to a safe harbor plan during the plan year

Lifetime Income Calculations

- Required estimated income in retirement will need to be added to participant statements

The SECURE Act

Qualified Birth or Adoption Distributions

- Optional add on to the plan
- Ability to withdraw up to \$5,000 for qualified birth or adoption
- Waiver of the 10% early withdrawal penalty
- Ability to repay this to a retirement plan



The SECURE Act

Participation of Long-Term Part-Time Employees in 401(k) Plans

- Affects participants who:
 - Are over age 21 and;
 - Have worked 500 hours or more in 3 consecutive 12 months periods
- Retirement plans will have to:
 - Allow them to defer from their own pay checks
 - Provide a vesting credit for future employer contributions
 - But can still exclude them from employer contributions

The CARES Act

Coronavirus Related Distributions

- Optional for the plan
- Qualified participants can be allowed to withdraw while still employed
- Limit of \$100,000 or 100% of the account
- Set to expire 12/31/2020



Expanded Tax Treatment

- Ability to spread the liability over a three-year period
- Ability to repay the distribution as a rollover to an IRA or retirement plan
- Any qualifying participant can use even if the CRD provision is not in their plan
- Set to expire 12/31/2020

The CARES Act

Expanded Loan Options

- Option for the plan
- Affected participants could borrow at increased rate – expired 9/23/2020
- Delay on repayment of loan payments
- Loan payments must begin in January of 2021
- Catch up options:
 - Multiple payments
 - Balloon payment
 - Extended term

Required Minimum Distributions

- Suspended requirement for 2020





Polling Question

Live polling question!

Document Restatements



Document Restatement Cycle

Overview of the process set by the IRS:

- Required restatement of plan documents is cyclical
- Determination letter filing is not required
- Used to incorporate recent law changes
 - Optional changes to hardship rules from Budget Act of 2018
 - Optional and required provisions from the SECURE Act
 - Optional CARES Act provisions
- Option to add in new or different plan designs and features



Document Restatement Cycle

Bipartisan Budget Act of 2018:

2019 optional rules for hardship distributions:

- Elimination of the 6-month suspension from deferrals
- Elimination of the requirement to take a loan from the plan first
- Casualty losses do not have to be tied to a federally declared disaster
- Federally declared disaster is automatically qualified
- Expanded assets available – deferrals, QNEC, QMAC, safe harbor and earnings from all of the above
- Facts and circumstances test eliminated

2020 required changes for hardship distributions:

- Elimination of the 6-month suspension from deferrals
- Casualty losses do not have to be tied to a federally declared disaster
- Facts and circumstances test eliminated

Document Restatement Cycle

Documentation will be needed on:

- When you adopted the optional hardship provisions
- CARES Act provisions that you enacted

Decisions will need to be made on:

- Any optional hardship provisions you wish to enact
- Any optional SECURE Act provisions you wish to enact

Required changes:

- SECURE Act part-time employees
- Hardship provisions



Document Restatement Cycle

Other provisions?

- Safe harbor options
- Profit sharing allocation options
- Eligibility for new employees
- Compensation exclusions
- Loans and in-service distribution options



Remember:

- Discuss any changes with your providers
- Some provisions cannot be eliminated under nondiscrimination rules/anti-cutback rules



Polling Question

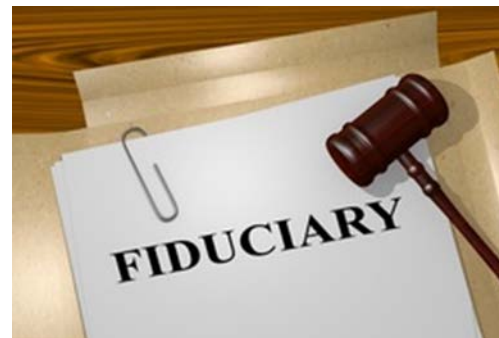
Live polling question!

Fiduciary Best Practices



Identify your fiduciaries:

- **The named Plan Administrator in the document – required by 402(a)**
- **The named Trustee in the document – required by 403(a)**
- **The Plan Sponsor**
- **The investment advisor**
- **Members of the fiduciary committee**
- **Unintended fiduciaries**
 - Day to day administration
 - Selecting or monitoring investment options
 - Selecting service providers
 - Closing out the plan



Identify your providers:

- **Recordkeeper**
- **Third Party Administrator**
- **Custodian**
- **Professional Fiduciary**
 - Investment Advisor
 - Directed Trustee



Hire an expert



As a fiduciary, you can delegate to paid fiduciaries.

- 3(21) – co-fiduciary investment advisor
- 3(38) – co-fiduciary investment manager
- 3(16)- administration
- Directed Trustee

Hire an expert

3(21) Investment Advisor	3(38) Investment Manager
The investment advisor renders investment advice for a fee.	The investment manager has the discretion to manage the assets of the plan.
The investment advisor makes recommendations for the plan to the investment committee.	The investment manager selects the investments available to plan participants for a fee.
The investment committee makes the final decision on the funds in the plan.	The investment committee has a duty to monitor the investment manager.

Either option requires that the fiduciary acknowledge in writing that they are a fiduciary.

Hire an expert

- **3(16) Fiduciary Optional Services:**
 - Signing the Form 5500 and Form 8955-SSA
 - Reviewing and approving distributions and loans
 - Authorizing refunds, as needed, from the plan
 - Reviewing QDRO's
 - Monitoring contribution timing
 - Determining eligibility
 - Distributing notices and enrollment materials
 - Fixing errors
 - Interpreting the documents
 - Monitoring service providers
 - Monitoring that the plan has a sufficient fidelity bond

Have a committee

The committee set up:

- Odd number of members
- Diverse
- Formal adoption of membership is recommended either by named members or specific job titles.
 - HR
 - Finance
 - Legal
- Committee members should accept their roles and understand their liabilities.



Two main topics (or separate committees):

- Administrative
- Investment

Adopt and adhere to an IPS

It is recommended that the plan have an investment policy statement (IPS).

The IPS should:

- Establish goals for the types of funds in the plan, including categories of market coverage
- Establish a qualified default investment alternative (QDIA)
- Establish measurable criterion for monitoring the funds and replacement of funds
- Establish a review schedule for the IPS
- Identify all parties in the advisory relationship

The IPS should be given to all fiduciaries of the plan.

When selecting funds for the plan, consider:

- The right number of options
- The expense ratio of the funds
- Active vs. Passive

Benchmark your plan's fees and services

- **Look at the net cost for each provider:**
 - Investment Advisor
 - Third Party Administrator
 - Directed Trustee
 - Recordkeeper
 - Mutual Fund Expense Ratios
- **Value add is important.**
- **Benchmark your fees with other retirement plans.**
- **Be wary of “free plans”.**
- **Cheaper does not mean better.**



Deposit contributions on time

- Have written procedures for payroll processing
- Have a back up for your payroll person
- Review your transmissions from your recordkeeper, custodial statements and bank statements
- Submit as soon as administratively feasible
- Small plan allowance – 7 business days
- Large plans – consistency is the key
- Correction methods are available
- Reporting on the 5500 can be an audit trigger

Keep good records

As a fiduciary you are responsible for the day-to-day operations of the plan. Make sure you have:

- Current plan documents in compliance with the most recent law changes of the IRS, DOL, PBGC and SEC
- Reviewed the plan's transactions
- Ensured the plan passed all nondiscrimination testing and/or that all corrective measures have been completed timely
- Any errors have been documented and corrected via Employee Plans Compliance Resolution System (EPCRS)
- File all required government filings every year on time



Have a well documented process

Document, document, document!

- Written procedures that ensure you are following the plan document
- Written procedures for payroll processing
- Written notes from committee meetings
- Documentation on any self-audit that has been done
- Documentation of services provider reviews
- Documentation of when notices are sent
- Documentation of when amendments are completed
- Documentation of when the required filings are completed

Communicate with participants

Stay in touch with your participants :

- Required participant notices – 404(a)(5), safe harbor match, QDIA, Summary Annual Reports, Summary Plan Descriptions, Summary of Material Modifications
- New enrollee meetings & Re-enrollment meetings
- Education on other financial matters
- Access to investment advisors
- Written or electronic enrollment guides
- Periodic written or electronic educational pieces



Be mindful of cybersecurity

- Require multi-factor authentication for your network and for your providers and on all email
- Check your firm security
- Never disclose personal data in an email such as SSN or DOB or account numbers
- Use encrypted email or portals
- Review the policies of your service providers
- Sometimes the extra check or extra step is worth it
- Adopt a cybersecurity policy

And as always, if it looks fishy – don't click – ASK!



Polling Question

Live polling question!

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