Joe Lombardo
Governor

Jack Robb
Director

Matthew Tuma
Deputy Director

Rob Boehmer
Executive Officer

STATE OF NEVADA DEPARTMENT OF ADMINISTRATION

PUBLIC EMPLOYEES' DEFERRED COMPENSATION PROGRAM
100 N. Stewart Street, Suite 100, Carson City, Nevada 89701
Telephone 775-684-3398 | Fax 775-684-3399 | defcomp.nv.gov

DEFERRED COMPENSATION COMMITTEE
QUARTERLY MEETING MINUTES

Friday, December 1, 2023

The quarterly meeting of the Deferred Compensation Committee was held on Friday, December 1, 2023, at 8:30 a.m. by videoconference and teleconference.

A copy of meeting material including this set of meeting minutes, the agenda, and other supporting material, is available on the Nevada Deferred Compensation (NDC) website at: https://defcomp.nv.gov/Meetings/2023/2023_Meetings/.

COMMITTEE MEMBERS
Samantha Jayme
Debbie Bowman, Vice Chair
Jeff Ferguson, Chair

OTHERS PRESENT
Bishop Bastien, Voya Financial
Rob Boehmer, NDC Executive Officer
Rasch Cousineau, Hyas Group
Scott Darcy, Voya Financial
Eric Leavitt, Empower
Robin Monchamp, Humboldt County
Henna Rasul, Sr. Deputy Attorney General
Micah Salerno, NDC Admin. Assistant
442-291-4999

1. Call to Order/Roll Call

   Chairman Ferguson called the quarterly meeting to order for the Nevada Deferred Compensation (NDC) Committee at 8:30 a.m. on Friday, December 1, 2023.

   Mr. Boehmer took the roll, determined a quorum was present, and confirmed the meeting was properly noticed and posted.

   Chair Ferguson welcomed new NDC member, Samantha Jayme.

2. Public Comment

   There were no public comments.

3. For Possible Action- Approval of Nevada Public Employees' Deferred Compensation Program (NDC) Committee (Committee) meeting minutes for Committee Meeting held on August 30, 2023.

Motion by Vice Chair Bowman to approve the minutes from the August 30, 2023, meeting. Second by Ms. Jayme. Motion passed unanimously, 3-0.

4. For Possible Action- Receive, discuss, and approve Executive Officer Report of third quarter 2023.

Mr. Boehmer reviewed his quarterly report including:

a. FY2023 Budget Status Report (BSR):
   i. A report was given and reviewed on the current projection of revenue based on the up-to-date participant level and projection of expected reserve balance at the
   i. end of FY2024. The projected 2024/2025 revenue shortfall was expected to be filled by fees coming from new enrollments.
   ii. The FY2023 Budget Status Report was presented reflecting the end of FY2023 budget year.
   iii. A report was given and reviewed on the Administrative Account data and General Ledger data. As of November 6, 2023, Admin Allowances were $290,274 for Full-Time Plans and $33,865 for the FICA Alternative Plan. Mr. Boehmer requested Hyas Group provide a fee analysis to determine the appropriateness of current plan admin fees and whether it was enough to cover expenses.
   iv. Current expenses and reserve details:
      a) Expenses: $555,340 total ($523,243 for 457 Pland and $32,097 for FICA alternative)
      b) Reserve: $73,073 total ($71,730 for 457 Plan and $1,343 for FICA Alternative)
      c) Expenses + Reserve total $628,413 ($594,973 for 457 Plan and $33,440 for FICA Alternative)
      d) The 401(a) Plan would have its own (minimal) expenses and reserve account.
   v. Current admin fees:
      a) 457(b) Plan Administrative Fees: Effective January 1, 2020, a $10.25 administrative flat per-account charge ($41 per year) would be withdrawn quarterly for all participants with a total account balance of $1,000 or more, regardless of how they were invested. 457(b) Plan Administrative Fees did not subsidize the 3121 FICA Alternative Plan. Ideally 401(a) admin fees would match the 457(b) Plan but also not subsidize the Plan and vice versa.
      b) 3121 FICA Alternative Plan Administrative Fees: Effective January 1, 2020, a $0.55 administrative flat per-account charge ($2.20 per year) would be withdrawn quarterly for all participants. 3121 FICA Alternative Plan Administrative Fees did not subsidize the 457(b) Plan.

b. The Quarterly Plan Activity and Data Report was received and discussed. Year-to-date enrollments were 889, which was 95 above last year's total (794) at that time.

c. Contract Management Report -
   i. Casey Neilon Annual Evaluation- Contract expiration July 1, 2025.
      a) The Fiscal Year 2023 Financial Audit started in September. Reports should be shared at the January meeting.
   ii. Hyas Group contract would expire May 31, 2025
   iii. Voya Financial contract would expire December 31, 2024.
      a) A report was provided on the development of the 2024 RFP.

        1. It was noted there could be three separate contracts, one for each plan: 457(b) Deferred Compensation, FICA Alternative, and the new 401(a) Defined Contribution Plan. That structure would ensure no subsidization of Plan fees.
        2. The evaluation Committee would consist of an outside evaluator, likely from NV PERS, staff, and Committee members.
  d. Mr. Boehmer reported on staff changes at the NDC Administrative Office.
     i. A report on the office move was provided. An office move was expected in the coming quarter. Once NDC was housed in the new space, address changes would be sent out to appropriate parties: investment managers, recordkeepers, industry organizations, etc.
     ii. Staff updated the Committee of the search to fill the two vacant Committee positions. The goal was to fill the vacancy left by Matt Kruse with another Political Subdivision representative, preferably from public safety, since they were large contributors to NDC. Regarding Kent Ervin's vacancy, the goal was to fill that position with another NSHE representative.
     iii. NV DAG representative, Henna Rasul, noted that with two vacancies and only three currently filled positions, quorum rules were modified. Only two-thirds of members needed to be present for a quorum with only three spots filled.

Motion by Ms. Jayme to approve the Executive Officer report. Second by Vice Chair Bowman, motion carried unanimously, 3-0.

5. <u>For Possible Action- Receive and approve Hyas Group Investment Consultant's review of third quarter 2023.</u>

Hyas Group provided the Investment Consultant Review which included:

  a. The Third Quarter 2023 Performance Report – Features of the report were:
     i. Market Commentary – After two strong quarters to kick start 2023, the third quarter was down. Historically the weakest quarter for the markets, Q3 2023 was no different. Major benchmarks were all down for the period. The S&P 500, MSCI-ACWI ex-US, and Bloomberg Agg were down 3.27%, 3.77%, and 3.23% respectively. Even with the negativity, equity returns were up. The S&P was still ahead 13.07% year-to-date and the MSCI-ACWI ex-Us was up 5.34%. Of the three noted benchmarks, only the Bloomberg Agg Fixed Income index was down for the year at -1.21% through 09/30. Fixed Income had been an uphill battle to turn positive. Any upside momentum was quickly squashed by policymakers. The Federal Reserve and other central banks seemed intent to keep interest rates higher for longer to fight inflation. Even though the US Fed finally hit the pause button on its rate hikes, the European Central Bank continued to tighten in September, bringing rates to the highest level since the creation of the eurozone. Retailers, home builders, airlines, and the hospitality industry were cautioning that the consumer may have hit the limit. All these factors lead to a number of questions regarding holiday season spending, interest rates, fixed income and equity markets, continued war in Ukraine and conflict in the Middle East – how will all of this weigh on markets? We will see how the fourth quarter is impacted by these questions.
     ii. Plan Data Review – September 30, 2023, full-time Plans' assets were $994,643,677 which represented a market loss of $26,985,278 for the quarter. Net cash flow was negative for the quarter and year-to-date at -$6,157,760 and

negative year-to-date at -$15,902,804. For the Third Quarter, $1,319,429 transferred out of fixed income.

iii. Current Fund Lineup Overview and Performance Review – All funds were in qualitative and quantitative compliance.

iv. Plan Fee/Revenue Analysis – Fees were weighted at 26.8 basis points, down by 6.7 basis points since March of 2020. The reduction equates to $34,000 in savings per month for NDC participants.

b. The Voya Fixed Account and Corporate Ratings Analysis was reviewed and discussed. 33% of NDC money was invested in this fund.

i. The General Account benchmark was provided. The Voya General Account was underweight to US Government securities by 43.6% and overweight to MBS, Corporate Bonds, ABS, and CMBS by 4%, 7.5%, 5.4%, and 8%, respectively.

ii. Portfolio duration was provided (6 – 6.5 years).

iii. Full Time Plans crediting rate was 3.0%. FICA Alternative was 2.25%.

iv. The put notification to possibly exit the Fixed Fund by 12/31/2024 needed to be submitted to Voya by 12/15/2023. The put draft had been provided to NDC by Hyas Group.

c. Legal, Regulatory Communication Updates which included:

i. SECURE Act 2.0 – The IRS announced a 2-year administrative delay on Section 603 of SECURE Act 2.0 until January 1, 2026. This was the provision that required age 50+ catch-up contributions to be made on a Roth basis for an individual earning over $145,000 in prior year wages. The provision was initially set to take effect on January 1, 2024. This was generally a good thing for plan sponsors as it allowed more time to prepare for the regulation to go into effect. Part of the update was that Plans who were FICA exempt (NDC) might also be exempt from Provision 603 altogether. Further clarification about the FICA exemption was being obtained by legal firms such as Groom Law Group. Hyas Group would share more information as additional guidance was provided.

ii. 2024 Plan limits were announced:

a) 457 limits would be increased to $23,000 from $22,500

b) The annual IRA contribution would increase to $7,000 from $6,500.

c) Catch-up contributions for those 50 years and older in DC plans would remain at $7,500, adding up to a total allowed annual contribution of $30,500 for qualifying DC plans.

d) The super catch-up contribution provision in the SECURE 2.0 Act of 2022 would not take effect until 2025. When it does go into effect, it would permit those aged from 60 through 64 to contribute the greater of $10,000 or half the ordinary catch-up amount (currently $7,500), both of which would be indexed to inflation starting in 2026.

e) The income phase-out range for taxpayers making contributions to a Roth IRA would increase to between $146,000 and $161,000 for singles and heads of household, up from between $138,000 and $153,000.

The White House (re) introduced a Fiduciary Rule targeting “junk fees” in retirement plans and expanded the rule to include travel and ticketing fees. Regarding retirement plans, the focus was on independent advisers rolling money away from institutionally priced retirement plans and holding those advisers accountable from a Fiduciary perspective. The White House issued a fact sheet estimating participants pay as much as $5 billion per year in “junk fees.” The rule was expected to be challenged immediately and would likely take years to implement, if at all.

d. Recordkeeper RFP update was provided:
    i. The goal was to have the document out by February 2024.
    ii. An RFP draft had been sent to Staff for review.
    iii. The RFP would include 457(b), 401(a), and FICA Alternative Plans.
    iv. Voya required the Fixed Account put notification by 12/15/2023.
e. 401(a) Plan updated included:
    i. Voya noted the Plan would be live 12/04/2023.
    ii. Due to Vanguard's 90-day processing requirement, the initial 401(a) Plan fund lineup would include Mutual Funds only. Collective Trusts would replace Mutual Funds in the International Index and Target Retirement Suite by March, as appropriate.
    iii. 401(a) contract terms matched the 457 Plan.

Motion by Vice Chair Bowman to accept the Hyas Group report. Second, by Ms. Jayme, motion carried unanimously, 3-0.

6. <u>For Possible Action – Receive and approve plan activity and service report from recordkeeper Voya Financial for third quarter 2023.</u>

Mr. Bastien and Mr. Darcy provided the third quarter 2023 report for the period ending September 30, 2023. Highlights included:

a. Voya Plan activity:
    i. November 30, 2023, assets were back over $1 billion.
    ii. Overall net cash flow was negative ($6.1 million) for the quarter and down $15.9 million year-to-date.
    iii. Top rollover recipients were Fidelity and Charles Schwab and Edward Jones.
b. Voya provided a Communications update that included:
    i. An overview of the new customer homepage experience was provided.
        1. Previous Employer accounts would be included on the participant dashboard.
        2. "My Orange Money" would still be featured but also reduced.
        3. Voya local representative information would be provided consistently during the experience.
    ii. The NDC annual survey was issued in November and closed 11/30/2023. In the past it had been issued in August/September. Voya noted that satisfaction was high and would share the results at the January Planning Meeting.
c. Voya Field activity update:
    i. 388 enrollments, 92 group meetings and 1,888 individual meetings were conducted during the quarter.

Motion by Ms. Jayme to accept the Voya Quarterly Report. Second, Vice Chair Bowman, the motion passed unanimously, 3-0.

7. <u>Informational Item- Training Report.</u>

The following training and educational experiences were reported:

a. The Institutional Investor Institute Conference held in Half Moon Bay, CA on September 12-14, 2023, was attended by Chair Ferguson and Rob Boehmer
b. The NAGDCA 2023 Annual Conference was held in Seattle, WA on October 8-11, 2023, and was attended by Chair Ferguson, Committee member Samantha Jayme, Rob Boehmer, and former Committee member Kent Ervin.

c. The Pension and Investments DC West Conference was held in Carlsbad, CA on October 22-24, 2023, Rob Boehmer attended.
d. It was noted that common themes throughout the conferences included cybersecurity, RFP discussion, auto enrollment, employee engagement, decumulation, and SECURE 2.0.

8. For Possible Action- Confirm Planning Meeting for January 18, 2024, and Quarterly Meeting for February 29, 2024. Schedule any special meetings.

The upcoming Committee meeting schedule:
a. The 2024 Annual Planning Meeting would be held in person and by videoconference on January 18, 2024.
b. Quarterly Meeting would be held on February 29, 2024.
c. The Committee might have special meetings to discuss the recordkeeping RFP as necessary.

9. Committee Members comments

There were no additional Committee Member comments.

10. Update from Investment Consultant

There were no additional updates from Hyas Group.

11. Update from Recordkeeper

There were no additional updates from Voya.

12. Administrative Staff/Department of Administration Updates

NDC staff thanked the Committee members, Hyas Group, and Voya. Mr. Boehmer noted he would be presenting at the upcoming training for State Parks employees in February.

13. Public Comment

There were no closing public comments.

14. Adjournment

The meeting was adjourned at 11:00 a.m.

Respectfully submitted,

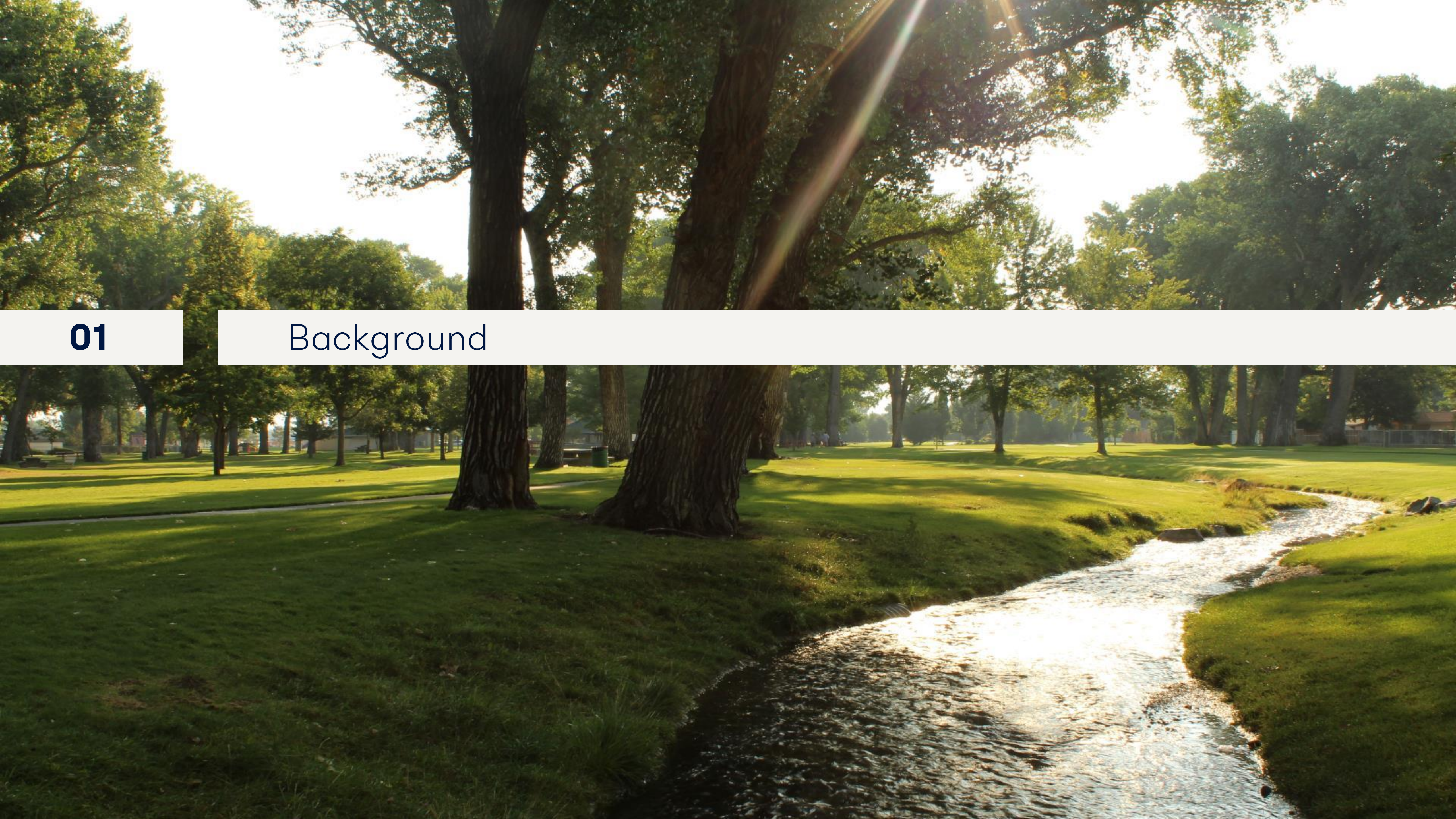
____
Micah Salerno
NDC Administrative Assistant

HYAS GROUP

FIDUCIARY FUNDAMENTALS

State of Nevada

January 2024



01 Background

PUBLIC SECTOR RETIREMENT PLAN FIDUCIARY OVERSIGHT MILESTONES

1974

Employee Retirement Income Security Act (ERISA) *

1978

Revenue Act created 457, 401(k) plans

1986

Tax Reform Act of 1986 closed 401(k) plans to State and Local Governmental entities

1992

Unemployment Compensation Amendments introduced mandatory 20% withholding

1996

Small Business Job Protection Act placed 457 plan assets into "trust" status

PUBLIC SECTOR RETIREMENT PLAN FIDUCIARY OVERSIGHT MILESTONES

2002

EGTTRA legislation eliminated most differences between 457 plans and private sector 401(k) plans

2006

Pension Protection Act; introduces QDIAs, auto features for Plans where applicable

2008 - PRESENT

Litigation over failure to oversee retirement plans increases, with most actions involving investments and fees

PUBLIC SECTOR RETIREMENT PLAN FIDUCIARY OVERSIGHT MILESTONES

2017

DOL unsuccessfully attempts to expand fiduciary definitions

2019

SECURE Act modifies certain fiduciary related items

2020

CARES Act introduced to provide relief to participants affected by COVID-19 pandemic

2021

"DOL Year"
ESG
Cybersecurity
Missing Participants
E-Communications

2022

SECURE Act 2.0

SECURE 2.0 ACT OF 2022
("SECURE 2.0")

- Passed as part of Consolidated Appropriations Act of 2023
- Passed December 27, 2022
- Signed into law December 29, 2022

SECURE 2.0 ACT PROVISIONS [1]

Mandatory Provisions	Notes	Effective
107 – Increase in Age for RMDs	In 2023 age goes from 72 to 73 and then to 75 in 2033.	Immediately but in phases
302 – Decrease in Excise Tax	Reduces the penalty for failure to take RMDs from 50% to 25% of the shortfall (drops to 10% if corrected in two years).	Immediately
303 – Retirement Savings Lost & Found	Requires the establishment of an online searchable database that would enable retirement savers who may have lost track of their accounts to search for the contact information of their plan administrator.	01/01/2025
306 – Eliminates the First Day of the Month Rule	Eliminates the unique rule for 457 plan enrollment and contribution changes.	Immediately
309 – Exclusion of Certain Disability-related First Responder Retirement Payments	First responders are permitted to exclude service-connected disability payments from their gross taxable income after reaching retirement age.	01/01/2027
325 – Eliminates Roth RMDs	Removes the required distribution rules for Roth contributions within retirement plans (but the after-death RMDs still apply).	01/01/2024
338 – Annual Paper Benefit Statement	Annual paper benefit statement unless participant has specifically requested electronic delivery.	01/01/2026
603 – After-tax Catch-up Contributions	Requires that all catch-up contributions be made as Roth contributions (participants whose prior year's wages were less than $145,000 are exempt).	01/01/2026

[1] *SECURE 2.0 Act of 2022*
United States Senate Committee on Finance
https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

SECURE 2.0 ACT PROVISIONS (CONT.)[1]

Optional Provisions	Notes	Effective
109 – Higher Catch-up Limits	Increases to $10,000 or 150% of the catch-up amount in 2024 for participants age 60 to 63.	01/01/2025
110 – Matching of Student Loan Payments	Allows qualified student loan payments to be treated as retirement plan deferrals for matching purposes.	01/01/2024
115 – Penalty-free Emergency Expenses	Plans can offer distributions with no early withdrawal penalty for "unforeseeable or immediate financial needs relating to necessary or personal family emergency expenses." Distributions cannot exceed $1,000, a participant may take only one such distribution per calendar year, Plan administrators can rely on participant's self-certification of eligibility, and participants can repay a distribution within three years.	01/01/2024
127 – Emergency Savings Linked to DC Plans	Allows employers to offer their non-highly compensated employees and pension-linked emergency savings account as part of their deferred compensation program. Employers may automatically enroll employees at 3% or less (capped at $2,500) on an after-tax basis.	01/01/2024
304 – Increase in De Minimis Amount	Raises the small account cash-out limit from $5,000 to $7,000.	01/01/2024
312 – Self-certifying Hardships	Plans sponsors can rely on participants to state that they incurred an unforeseeable emergency, that the amount of the request is not in excess of the amount required to satisfy the financial need, and that the participant has no alternative means reasonably available to satisfy such financial needs.	Immediately

[1] *SECURE 2.0 Act of 2022*
United States Senate Committee on Finance
https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

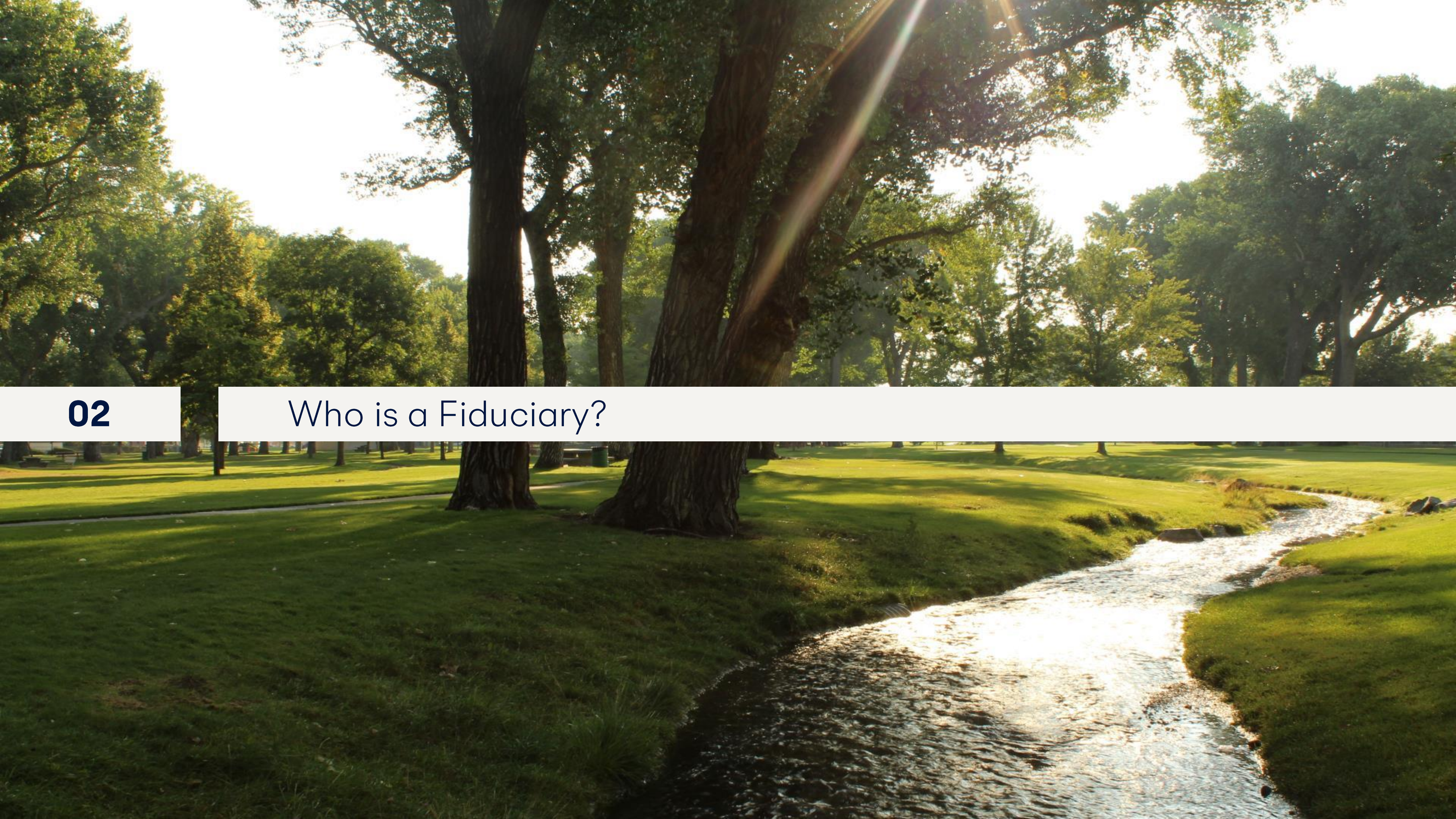
SECURE 2.0 ACT PROVISIONS (CONT.)[1]

Optional Provisions	Notes	Effective
314 – Penalty-free Withdrawals in the Event of Domestic Abuse	Plans that aren't subject to IRC's qualified joint and survivor and preretirement-survivor annuity requirements can offer distributions with no early withdrawal penalty to victims of domestic abuse. Distributions cannot exceed the lesser of $10,000 (indexed after 2024) or 50% of the participant's vested benefit, distributions must be made within one year of the date on which the participant is a victim of domestic abuse by a spouse or domestic partner, Plan administrators can rely on participant's self-certification of eligibility, and participants can repay a distribution within three years.	01/01/2024
326 – Penalty-free Withdrawals for Terminal Illness	Plans can offer distributions with no early withdrawal penalty to participants certified by a physician as having a condition reasonably expected to result in death within 84 months after the date of certification. Statute does not limit amount or number of distributions that can be made available, and distributions can be repaid within three years.	Immediately
328 – Distributions to Retired Public Safety Officers for Health & Long-Term Care Premiums	These distributions no longer have to be paid directly to the insurer.	Immediately
329 – Change to Early Withdrawal Penalty	Extends the exception of the 10% early withdrawal penalty to public safety who have separated from service and have 25 years of service.	Immediately
330 – Change to Early Withdrawal Penalty	Similar to the above, this expands the public safety definition to include certain corrections officers.	Immediately
331 – Disaster Relief	Distributions up to $22,000 per federally-declared disaster with no early penalty and option to repay over three years. Temporary max loan cap at $100,000.	Immediately
604 – After-tax Match	Participants may be able to designate some or all employer matching contributions as Roth contributions.	Immediately

[1] *SECURE 2.0 Act of 2022*
United States Senate Committee on Finance
https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

DEPARTMENT OF LABOR ("DOL") and the EMPLOYEE BENEFITS SECURITY ADMINISTRATION ("EBSA")

- The DOL is an executive department of the federal government responsible for the administration of federal laws governing occupational safety and health, unemployment benefits, retirement, and other labor related matters.
- EBSA is an agency of the DOL responsible for administering, regulating, and enforcing the provisions of Title 1 of ERISA.
- ERISA is a federal tax and labor law that establishes minimum standards for pension plans in private industry, although ERISA also contemplates governmental plans (although such plans are not subject to Title 1 of ERISA).



02 Who is a Fiduciary?

WHO IS A FIDUCIARY?

Fiduciary by name:

- Plan Sponsor
  - Committee
  - Administrative Staff

- Co-Fiduciaries
  - Investment Consultant

Fiduciary by action:

Anyone who acts as a fiduciary can be considered a fiduciary

WHAT IS A FIDUCIARY?

Persons or entity who, by either function or appointment, exercises discretion, control or authority over plan assets, the management of the plan, and/or the administration of the plan

WHAT IS A FIDUCIARY?

Fiducíary Functions:

- Selecting, retaining, or terminating recordkeepers
- Selecting, retaining, or terminating investment options
- Processing and submitting participant contributions
- Negotiating fees and expenses for plan services and investment

Must be more than "Ministerial":

- Maintaining records and other administrative roles are not covered
- Processing payroll may qualify though, if decisions can delay deposits

MULTIPLE LAYERS OF PROTECTION and FIDUCIARY OVERSIGHT

Recordkeeper

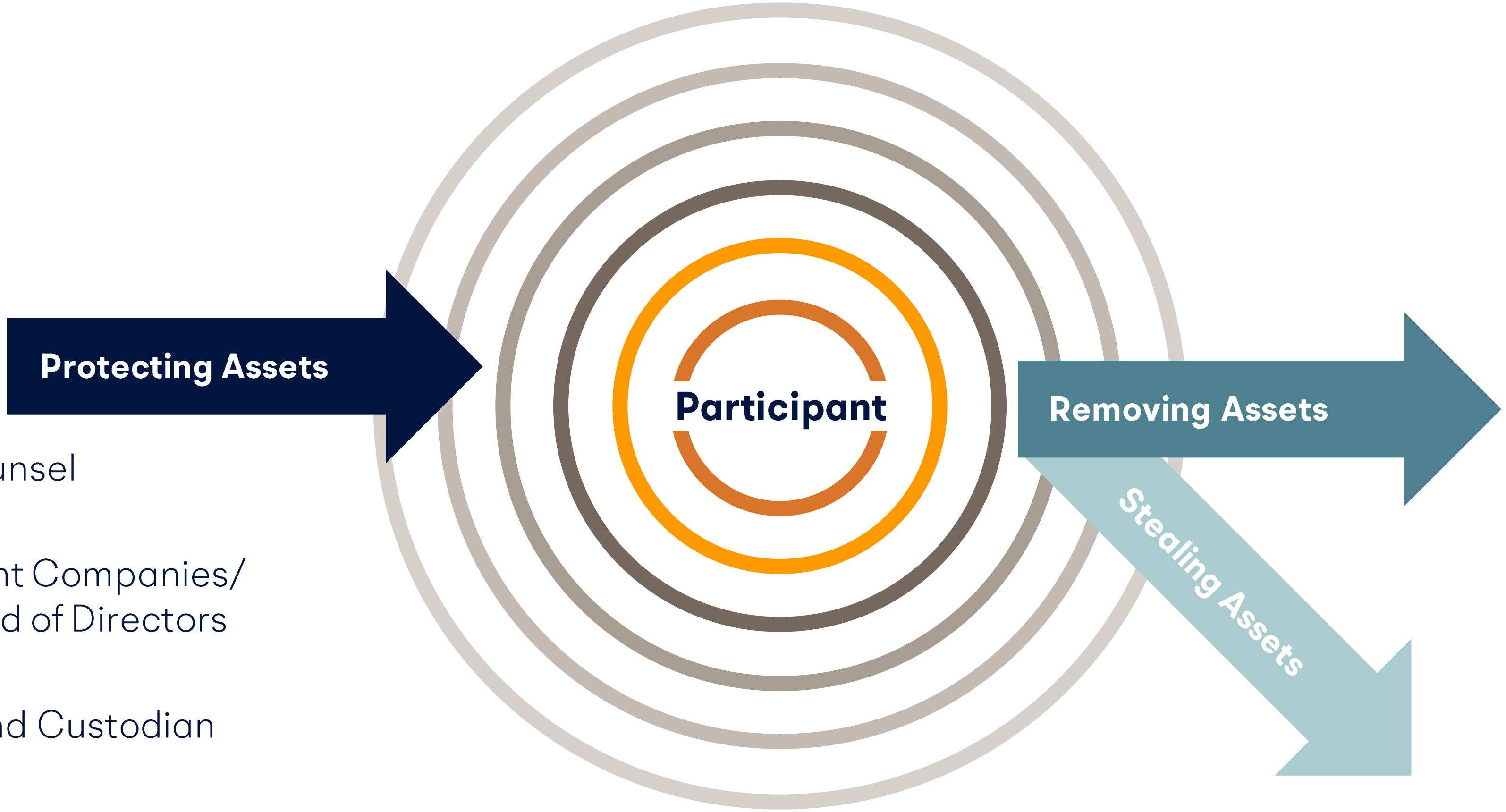
Plan Sponsor

Plan Consultant

Outside Legal Counsel

Asset Management Companies/
Funds/Trust/Board of Directors

Trust Company and Custodian



Advisors

Brokers

Annuity Sales

Recordkeeper's IRA

Hackers

Fraudsters

03 Fiduciary Duties

FIDUCIARY DUTIES PER ERISA

Duty of Loyalty

- Avoid self-dealing
- Avoid conflicts of interest
- Operate the plan for the exclusive purpose of providing benefits and offsetting reasonable expenses
- Reasonable Plan expenses may be charged

Duty of Prudence

- A fiduciary must execute his/her duties with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with such matters would use:
  - Allows for the hiring of “experts” to assist
  - Experts must be prudently selected and monitored

Duty to Diversify

- A fiduciary must diversify investments in order to minimize risk of loss unless it would be considered prudent not to diversify investments
- For Defined Contribution Plans with Self-Direction of Investments by Participants:
  - ERISA § 404(c) is an accepted guide to minimums, but only requires three options

Duty to Follow Plan Document

- Must oversee and make sure the plan operates in compliance with the plan document, trust agreements and/or other documents
- Fiduciaries should be familiar with:
  - Plan documents
  - Federal and State law in relations to the documents

Duty of Loyalty

- Avoid self-dealing
- Avoid conflicts of interest
- Operate the plan for the exclusive purpose of providing benefits and offsetting reasonable expenses
- Reasonable plan expenses may be charged

Duty of Prudence

- A fiduciary must execute their duties with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with such matters would use:
    - Allows for the hiring of "experts" to assist
    - Experts must be prudently selected and monitored

Duty to Follow Plan Document

- Must oversee and make sure the plan operates in compliance with the plan document, trust agreements and/or other documents
- Fiduciaries should be familiar with:
    - Plan documents
    - Federal and State law in relations to the documents

Duty to Diversify

- The "Diversification Rule":
  - A fiduciary must diversify investments in order to minimize risk of loss unless it would be considered prudent not to diversify investments
- For Defined Contribution Plans with Self-Direction of Investments by Participants:
  - ERISA § 404(c) is an accepted guide to minimums, but only requires three options

04 Meeting Fiduciary Responsibilities

FIDUCIARY RESPONSIBILITIES

Plan Design and Administration Issues:

- Design the plan and fee allocation to be fair to all participants
- Establish appropriate rules and policies for participants
- Enforce plan rules consistently
- Communicate rules, policies and amendments to participants
- Review plan documents at least annually to ensure compliance
- Review trust, custodial and other service agreements regularly

FIDUCIARY RESPONSIBILITIES CONT.

Plan Governance:

- Establish roles, rules and procedures for Committee functions
- Follow a prudent process when making decisions
- Select and train qualified people to serve on Committee
- Hold regular meetings
- Document decisions and keep minutes of fiduciary meetings

FIDUCIARY RESPONSIBILITIES
CONT.

Investment Responsibilities:

- Create an Investment Policy Statement (IPS) that reflects the plan objective and clarifies the responsibilities of all parties
- Determine types of investment options to be offered:
  - Number of asset classes
  - Diversification
  - Target-date funds
  - Managed accounts
- Develop criteria for selecting, monitoring and removing investments and investment managers/advice providers
- Set guidelines for appropriate actions

FIDUCIARY RESPONSIBILITIES
CONT.

Selection and Monitoring of Service Providers:

- All contracts should be in best interest of plan participants
- Competitive bid or search process should be based on objective criteria
- Follow a prudent process and be able to justify contract awards
- Establish appropriate performance standards
- Evaluate contractors regularly
- Have reasonable basis for determining appropriateness of provider fees:
  - Benchmarking
  - RFP

FIDUCIARY RESPONSIBILITIES CONT.

Guidance From ERISA §404(c):

- Relieves fiduciaries from responsibility where participants control their accounts and certain requirements are met
- Regulations set forth what constitutes effective control:
  - Offer a broad range of investment options:
    - At least 3 diversified choices with materially different risk/return
    - At least one safety of principal option
  - Provide for flexibility of investment transfers
  - Provide information to participants

FIDUCIARY RESPONSIBILITIES
CONT.

Guidance From ERISA §404(c) cont.**:**

- Qualified Default Investment Alternative (QDIA) rules can provide added protection/waivers where additional criteria are met:
  - Diversified investment option–balanced, life cycle/target date, or managed account
  - Set automatic investment parameters

- Fiduciaries are not relieved from the duty to:
  - Select an appropriate menu of options
  - Select investment managers and service providers
  - Monitor performance of managers and services providers

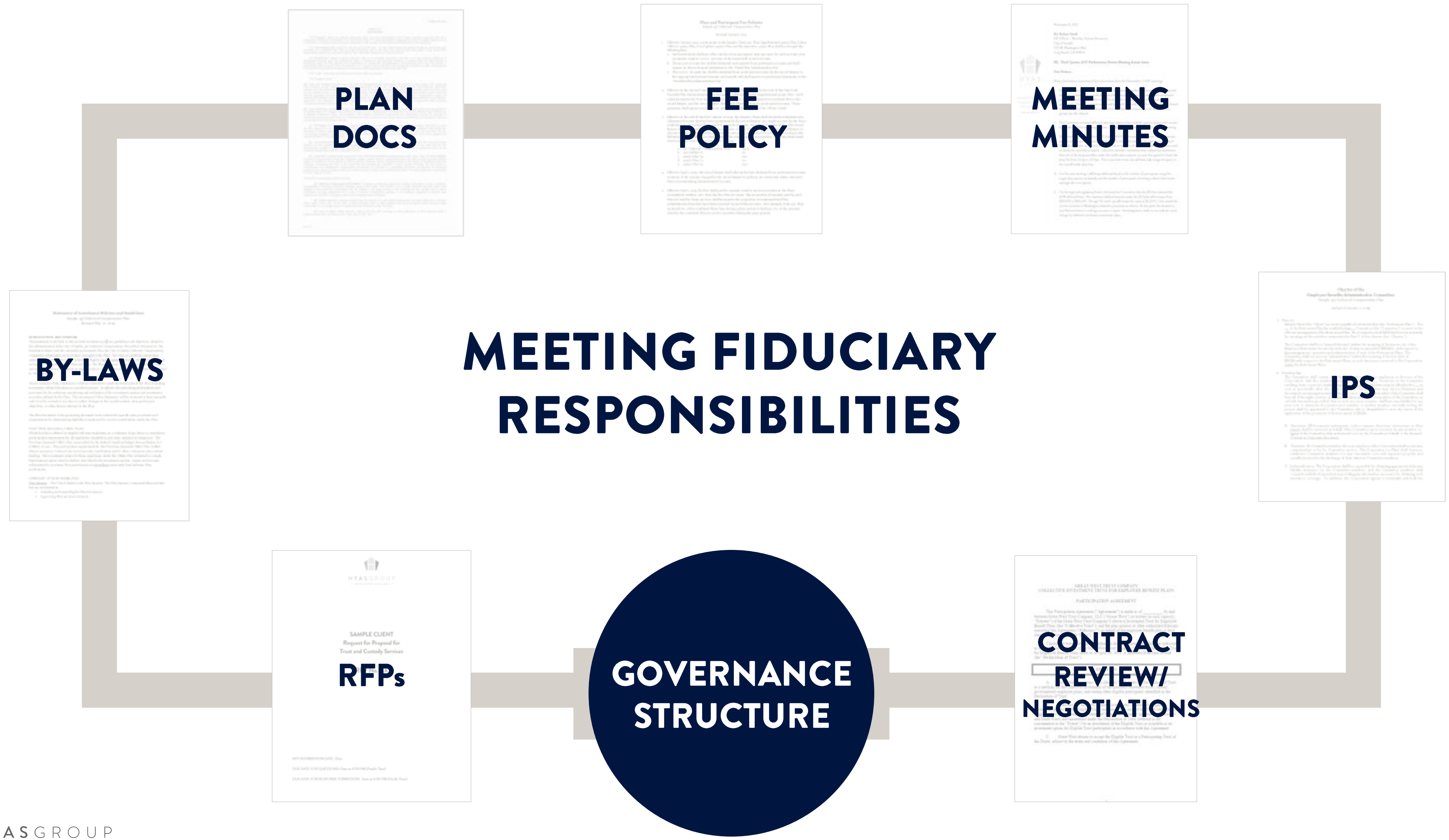
FEE DISCLOSURES

Participant Disclosures:

- General plan information
- Administrative expenses
- Investment information:
  - Performance
  - Fees and expenses
- In practice, disclosure is created by the recordkeeper; however, a fiduciary must approve it

Plan Sponsor Disclosures:

- Required of service providers (e.g. recordkeeper, consultant)
- Description of services, fiduciary status, and fees for each provider
- Determine that fees are reasonable for services provided


MEETING FIDUCIARY RESPONSIBILITIES
PLAN DOCS
FEE POLICY
MEETING MINUTES
BY-LAWS
IPS
SAMPLE CLIENT
Request for Proposal for
Trust and Custody Services
RFPs
GOVERNANCE STRUCTURE
CONTRACT REVIEW/ NEGOTIATIONS

05 Risks & Protections

RISKS and PROTECTIONS FOR FIDUCIARIES

What is at risk?:

- Cost of fiduciary breach
- Penalties and taxes
- Personal liability
- Public relations problems
- Fiduciary insurance

Plan document/plan sponsor should protect fiduciaries from personal liability to the extent allowed by law:

- State law may provide certain protections
- Seek indemnification from employer
- Evaluate fiduciary insurance and bonding needs

SUMMARY OF COMMITTEE RESPONSIBILITIES

- Fiduciary review of investments
- Fiduciary review of service providers
- Authorize changes to investments
- Authorize changes to investment providers
- Create or approve design of education/counseling programs
- Review and approval of hardship withdrawal requests
- Monitoring of fees and expenses

CASE STUDY #1

The Committee has received a request from a plan participant to add a particular real asset fund to the 457 plan that has recently been performing very well. You actually know of the specific fund because you have invested in it through your IRA and it has performed very well for you. You have recently been considering adding more money to the fund.

As a Committee Member, do you vote to add the fund?

a) Yes—Because you know the fund and it has done very well for you

b) No—You abstain from voting because you don't feel you can be objective about the decision, given your personal experience with the fund

c) Maybe—Discuss whether real asset funds are appropriate for your Plan's participants based on their investment knowledge

CASE STUDY #2

As a fiduciary Committee member, you are approached by the plan's record keeper. He offers you two different share classes of the same mutual fund. One has an expense ratio of .70% annually, but rebates back .25% to the plan to help offset record keeping expenses. The other has an expense ratio of .55%, but rebates nothing to help offset expenses.

Which one do you choose?

a) The less expensive one because it is cheaper for participants

b) The more expensive one because revenue sharing pays all the plan's administrative expenses

c) Neither until you have assessed fee reasonableness and method for allocating plan expenses

CASE STUDY #3

Your Committee has identified an investment manager that is not performing in line with expectations contained in the Investment Policy Statement.

What should you do?

a) Replace the manager immediately

b) Identify the reasons for failure to meet expectations

c) Consult the Investment Policy Statement for a watch list procedure and follow it

d) Both b) & c)

e) None of the above

CASE STUDY #4

As a fiduciary Committee member, you have noticed that one of the other Committee members rarely attends any of the meetings. This member also does not appear to make any effort to become informed about what they may have missed when not in attendance.

What should you do?

a) Nothing since you have a quorum without this member

b) Contact the SEC

c) Discuss the issue with the Committee since members may be responsible for the conduct of others on the Committee

d) Quit the Committee immediately

CASE STUDY #5

In spite of efforts to provide clear, concise communications to participants about the plan fees and structure, a participant continues to complain about the costs associated with the investments in the plan and claims everything is too expensive.

As a Committee member, what would you do?

a) Tell the participant to call the consultant

b) Tell the participant to call his/her broker

c) Discuss the situation with the full Committee and determine a course of action

d) None of the above

THANK YOU.

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Secure Act 2.0 Appendix[1]

Section 107 – Increase in Age for Required Beginning Date for Mandatory Distributions: Increases the age at which required minimum distributions ("RMDs") from retirement plans must commence from age 72 to age 73 in 2023 and to age 75 in 2033 ("RMD Age"). Specifically, the RMD Age is (a) age 70 ½ for individuals born before July 1, 1949, (b) age 72 for individuals born after June 30, 1949, but before 1951, (c) age 73 for individuals born after 1950, but before 1960, or (d) age 75 for all others – note, apparent drafting error in the statutory language, makes it unclear when age 75 starts to apply in lieu of age 73, but it appears age 75 is intended to apply if born after 1959. Effective for distributions made after December 31, 2022, for individuals who attain age 72 after that date.

Section 109 – Higher Catch-up Limit to Apply at Age 60, 61, 62 and 63: Increases the catch-up contribution limit for non-SIMPLE plans for individuals aged 60 to 63 to the greater of (i) $10,000 per year, or (ii) 150% of the regular catch-up contribution amount in 2024 (as indexed for inflation). The catch-up contribution limit for SIMPLE plans is similarly increased for individuals ages 60 – 63 to the greater of (i) $5,000 per year, or (ii) 150% of the regular catch-up amount in 2025 (as indexed for inflation), beginning for taxable years beginning after December 31, 2024.

Section 110 – Treatment of Student Loan Payments as Elective Deferrals for Purposes of Matching Contributions: Allows for employer contributions made on behalf of employees for "qualified student loan repayments" to be treated as matching contributions to 401(k) plans, 403(b) plans, SIMPLE IRAs, and governmental 457(b) plans. With respect to nondiscrimination testing, such plans are permitted to separately test the employees who receive matching contributions on student loan repayments. Effective for plan years beginning after December 31, 2023.

Section 115 – Withdrawals for Certain Emergency Expenses: Allows one penalty tax-free withdrawal within a 3-year period up to $1,000 per year for "unforeseeable or immediate financial needs relating to personal or family emergency expenses." Such withdrawal may be repaid within the 3-year period and if so repaid, more than one withdrawal may be permitted within the 3-year period. Effective for distributions made after December 31, 2023.

Section 127 – Emergency Savings Accounts Linked to Individual Account Plans: Allows employers to offer their employees (excluding highly compensated employees) a pension-linked emergency savings account as part of a defined contributions plan. Employers may automatically opt employees into these accounts at no more than 3% of their salary, and the portion of an account attributable to the employee's contribution is capped at $2,500 (or a lower as set by the employer). Contributions are made on a Roth-like basis and are treated as elective deferrals for purposes of matching contributions with an annual matching cap set at the maximum account balance ($2,500 or lower as set by the employer). Requires employer matching contributions be made to the individual's defined contribution plan account rather than to the emergency savings account. At separation from service, employees are permitted to roll the emergency savings account into a Roth defined contribution plan or an IRA. Effective for plan years beginning after December 31, 2023.

Section 302 – Reduction in Excise Tax on Certain Accumulations in Qualified Retirement Plans: Reduces the excise tax penalty for failure to take RMDs from 50% to 25% of the shortfall. Such excise tax is further reduced to 10% if the individual corrects the shortfall during a 2-year window. Effective for taxable years beginning after the date of enactment.

Section 303 – Retirement Savings Lost and Found: Directs the DOL to create a national online searchable lost and found database to collect information on benefits owed to missing, lost or non-responsive participants and beneficiaries in tax-qualified defined benefit and defined contribution retirement plans to assist such plan participants and beneficiaries in locating their benefits and the contact information of their plan administrator. Requires plan to report certain information to the DOL regarding former employees whose benefits have not been paid out. Directs the DOL to create such database no later than 2 years after the date of enactment.

Section 304 – Updating Dollar Limit for Mandatory Distributions: Increases the amount that employers may, without participant consent, distribute and rollover from a participant's workplace retirement account into an IRA from $5,000 to $7,000. Effective for distributions made after December 31, 2023.

Section 306 - Eliminate the "first day of the month" requirement for governmental section 457(b) plans. Under current law, participants in a governmental 457(b) plan must request changes in their deferral rate prior to the beginning of the month in which the deferral will be made. This rule does not exist for other defined contribution plans. Section 306 allows such elections to be made at any time prior to the date that the compensation being deferred is available. Section 306 is effective for taxable years beginning after the date of enactment of this Act.

Section 309 - Exclusion of certain disability-related first responder treatment payments. Section 309 permits first responders to exclude service-connected disability pension payments from gross income after reaching retirement age. Section 309 is effective for amounts received in taxable years beginning after December 31, 2026.

Section 312 – Employer May Rely on Employee Certifying that Deemed Hardship Distribution Conditions are Met: Allows for plan sponsors to rely on "participant self-certification" that the participant had an event that constitutes hardship for purposes of taking emergency hardship withdrawals from a 401(k) plan or a 403(b) plan. Plan administrators are also permitted to rely on such participant's self-certification that the amount of such hardship distribution is not in excess of the amount required to satisfy the financial need and that the participant has no alternative means reasonably available to the to satisfy such financial needs. Similar rules apply for purposes of unforeseeable emergency distributions from governmental 457(b) plans. Effective for plan years beginning after the date of enactment.

Section 314 – Penalty Free Withdrawal from Retirement Plans for Individual Case of Domestic Abuse: Where a participant is a domestic abuse survivor, that participant may take a penalty tax-free withdrawal up to the lesser of (i) $10,000 (indexed for inflation), or (ii) 50% of their account value with the option to repay such amounts within a 3-year timeframe. Effective for distributions made after December 31, 2023.

Section 325 – Roth Plan Distribution Rules: Eliminates the lifetime minimum distribution requirement for designated Roth accounts under qualified retirement plans (but the after-death required minimum distribution rules continue to apply). Under the current law, such exemption was previously limited to Roth IRAs (but not designated Roth accounts held in 401(k) and other plans). Generally effective for tax years beginning after December 31, 2023, although not with respect to distributions required before January 1, 2024.

Section 326 – Exception to Penalty on Early Distributions from Qualified Plans for Individuals with a Terminal Illness: Creates an exception to the 10% early withdrawal penalty for those participants with a terminal illness. Requires a physician certify that such participant has an illness or condition that is reasonably expected to result in death within 84 months. Effective on the date of enactment.

Section 328 – Repeal of Direct Payment Requirement on Exclusion from Gross Income of Distributions from Governmental Plans for Health and Long-Term Care Insurance: Eliminates the requirement that, in order to be excluded from gross income (up to $3,000), distributions made from a governmental retirement plan that are used to pay for certain eligible public safety officers health insurance premiums be paid directly from such plan. Permits governmental retirement plans to pay for qualified health insurance premiums by making distributions directly to either the insurer or to the participant. If the plan makes such distributions to the participant, such participant must include a self-certification that such funds did not exceed the amount paid for premiums when filing their tax return for that year. Effective for distributions made after the date of enactment.

Section 329 - Modification of eligible age for exemption from early withdrawal penalty. The 10 percent additional tax on early distributions from tax preferred retirement savings plans does not apply to a distribution from a governmental plan to a public safety officer who is at least age 50. Section 329 extends the exception to public safety officers with at least 25 years of service with the employer sponsoring the plan and is effective for distributions made after the date of enactment of this Act.

Section 330 - Exemption from early withdrawal penalty for certain State and local government corrections employees. Section 330 extends the public safety officer exception to the 10 percent early distribution tax to corrections officers who are employees of state and local governments, effective for distributions made after the date of enactment of this Act.

Section 331 – Special Rules for use of Retirement Funds in connection with Qualified Federally Declared Disasters: Establishes permanent special rules governing plan distributions and loans in cases of qualified federally declared disasters. Permits up to $22,000 to be distributed from employer retirement plans or IRAs for affected individuals. Creates an exemption to the 10% early distribution penalty tax for such distributions. Effective for disasters occurring on or after January 26, 2021.

Section 338 – Requirement to Provide Paper Statements in Certain Cases: Amends the relevant provisions of ERISA related to pension benefit statements to require plan sponsors of defined contribution plans to provide at least one paper statement to plan participants each calendar year and, with respect to defined benefit plans, to provide at least one paper statement every 3 years. Permits exceptions to these pension benefit statement rules for plans that allow employees to opt into e-delivery statements if the plan follows the conditions of the 2002 safe harbor. Directs the DOL to update the relevant sections of their regulations and corresponding guidance by December 1, 2024. Effective for plan years beginning after December 31, 2025.

Section 603 – Elective Deferrals Generally Limited to Regular Contribution Limit: Requires that all catch-up contributions to 401(a) qualified plans, 403(b) plans, and governmental 457(b) plans be made on a Roth basis, with an exception made for those employees whose prior year wages do not exceed $145,000 (indexed for inflation). SIMPLE and SEP IRAs are excluded from this requirement. Effective for taxable years beginning after December 31, 2025.

Section 604 – Optional Treatment of Employer Matching or Nonelective Contributions as Roth Contributions: Allows a 401(a) qualified plan, 403(b) plan, or governmental 457(b) plan to provide participants with the option of treating employer matching and non-elective contributions as Roth contributions. Matching and nonelective Roth contributions must be 100% vested at the time of such contribution. Effective for contributions made after the date of enactment.

[1] *SECURE 2.0 Act of 2022*
United States Senate Committee on Finance
https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf