



**HEFREN-TILLOTSON**

METICULOUS WEALTH MANAGEMENT SINCE 1948

## MaherDuessel CPE

### Apollo 13....A Guide to Survive Your 403(b) Plan

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## Agenda

- Hefren Background
- 403(b) Fiduciary Best Practices
- Investment Menu
- Employee Education Best Practices

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## Who is Hefren-Tillotson

- Firm established in 1948
- Oldest, largest privately-owned financial services firm in the region
- 260 Employees
- \$12 billion AUM
- 350 Defined Contribution retirement plans (\$1 billion)
- Hefren-Tillotson Corporate Services

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## Fiduciary Best Practices



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## Who is a Fiduciary

- “**Named** Fiduciaries” at the Organization
- “**Functional** Fiduciary” - individuals who “exercise any **discretionary authority** or discretionary **control** with respect to the management of the plan or .....disposition of plan assets”.
  - Directors
  - Officers
  - Senior executives
  - HR professionals
  - The Plan’s Financial Advisor (see also, 2016 DOL “Conflict of Interest” Rule; and 2019 SEC “Regulation Best Interest”)

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## Advisors as Fiduciaries

- The Plan's Financial Advisor
  - 3(21) Advisor vs 3(38) Manager
  - **Fee-based** vs commission-based compensation
    - The Plan pays a fee
      - Plan sponsor pays an invoice, or
      - May be deducted from Participant accounts
    - Investment Companies pay commissions directly to the Advisor
  - **Level** compensation – the same amount regardless of which investment the participant chooses (can be \$ or %)
  - Participant advice – if level, fee-based compensation, then advice is deemed “unbiased”
  - DOL “Conflict of Interest” Rule (2016), and
  - SEC “Regulation Best Interest” (2019)

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## Who else can be a Fiduciary?

- Some Third-Party Administrators can also serve as a **3(16) fiduciary Plan Administrator**
  - Eligibility tracking
  - Submit contributions on behalf of the Plan
  - Sign/approve distributions
  - Sign/file the Form 5500
  - Can reduce the risks associated with Plan administration

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## Fiduciary Procedures

- Establish a written Investment Policy Statement (IPS) for the plan;
- Diversify plan assets;
- Make investment decisions with the skill and care of a prudent expert (similar to one “familiar with such matters”);
- Monitor investment performance on an on-going basis;
- Control investment expenses; and
- Avoid prohibited transactions.
- Document a regular, ongoing process that outlines how you are doing the above.

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## What If - DOL or IRS Audits

- **Document** regular, ongoing reviews of the following items:
  - Compliance with Standards and Laws
    - Plan Document
    - Documentation of Enrollment elections
    - Documentation of Deferral changes
    - Submission of employee contributions
  - Investment Policy Statement
  - Investment menu
  - Investment Performance vs. Benchmark and vs. Category
  - Investment Expenses
  - Plan Expenses & Benchmarking (Brightscope, 401(k) Averages Book)

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## Building an Investment Menu



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## Building an Investment Menu

- 10-20 Options that cover core investment categories
- Target Date-type funds
- Risk-based portfolios
- Actively-managed funds
  - Performance (net of costs)
  - Risk
  - Costs
- Passively-managed/Index funds
- Environmental, Social, Governance (ESG) funds

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## Target Date Funds

- DOL “Target Date Tips for ERISA Plan Fiduciaries”
  - Establish a process for comparing and selecting TDFs
  - Establish a process for the periodic review of selected TDFs
  - Understand the fund’s investments & allocation
    - Stocks, bonds, cash, specialty funds
    - Glide Path
  - Review the fund’s fees and expenses
  - Determine if Proprietary or Non-proprietary is the best fit
  - Develop effective employee communications
  - Document the process

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## ERISA 404(c)

- **ERISA Section 404(c)** (29 CFR 2550.404(c)-1) states that plan fiduciaries can avoid liability for losses incurred by plan participants if they provide their employees with:
  - A “broad range of investment alternatives” sufficiently diversified to avoid the risk of “large losses”;
  - The ability to change their investment options at least quarterly; and
  - Sufficient information to allow plan participants to make informed decisions.
- If this is done, it will be deemed that the plan participants exercised independent control over the assets in their accounts and, therefore, **the plan fiduciaries will not be responsible for their losses.**

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## Employee Education



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## Education Best Practices

- There are no guidelines in ERISA regarding participant education (frequency, content, etc.)
- Do Participants **understand** the plan provisions?
- Do Participants have **easy access** to review their retirement account and make necessary changes?
- Do participants have a **resource for investment guidance** or advice?
- What about other **Financial Wellness** topics?

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## Education Best Practices

- Hold **regular, ongoing** educational sessions
- Or, send regular email/mail/text communications to participants about the plan (many recordkeepers have capacity to do this)
- **Document** meeting attendees, email recipients, etc. to establish a written record of how/how often information about the benefit was communicated
- **Listen** to employees....what are they asking for?

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## Additional Resources

- DOL Target Date Guidelines  
Internet Search “DOL Target Date Guidelines”  
<https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/target-date-retirement-funds.pdf>
- ESG DOL Field Assistance Bulletin  
Internet Search “DOL ESG Guidelines”  
<https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2018-01>

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## Questions?

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