CARVER
FINANCIAL SERVICES

Retirement Plan Update

Opportunities & Risks

DECEMBER 2021 ACCREDITED CLE

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Agenda

Current and Pending Legislation

Year End Planning

Eliminating Fiduciary Liability

Investment Accounts and Planning

The SECURE Act – December 20, 2019 major changes to retirement plans

- Suspended RMD for 1 year
- Required distribution age increased to 72
- Allow traditional IRA contributions for everyone regardless of age
- Heirs may face higher taxes
  - Non-spouse beneficiaries must distribute an inherited IRA (or retirement account) within 10 years following the death of the account owner, instead of gradually taking withdrawals based on their remaining life expectancy*
  - Acceleration of income may push heirs into higher tax bracket

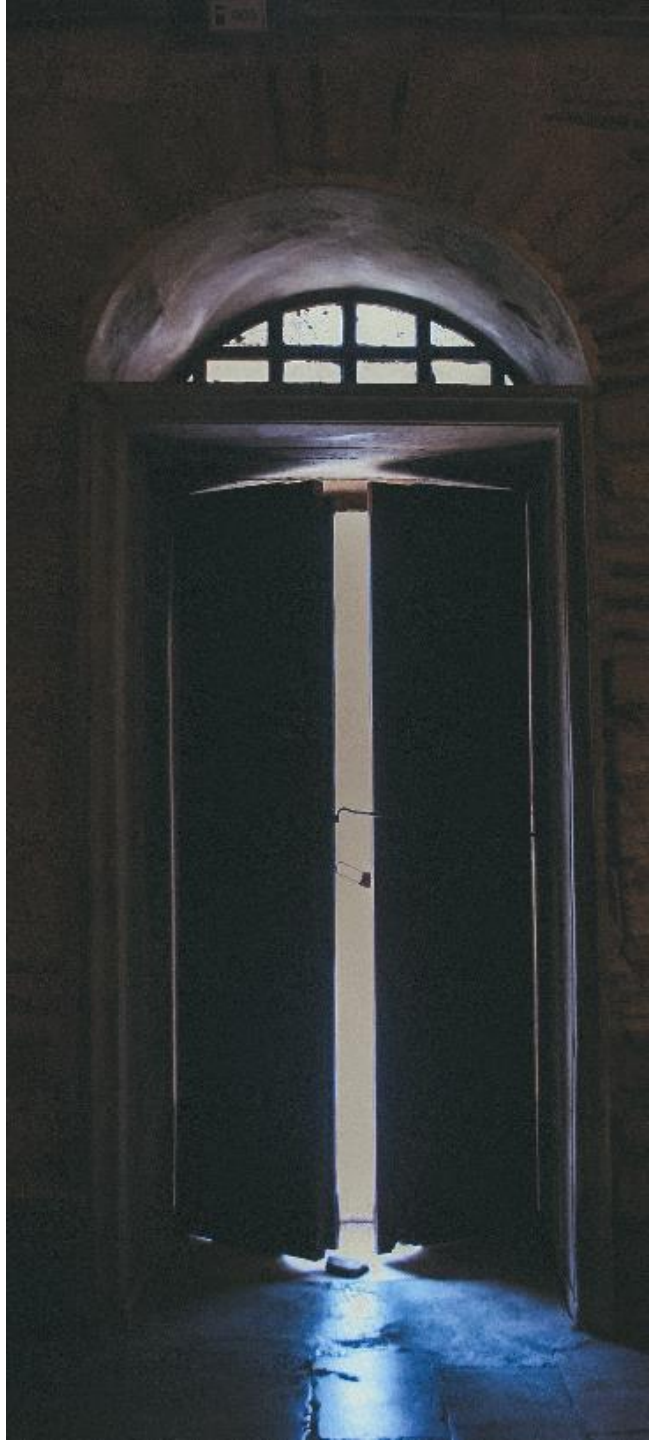
*Certain exceptions apply including (non-spouse) beneficiaries who are disabled, chronically ill, and less than 10 years younger than deceased IRA owner, and minor children (though the 10-year rule applies once minor child of deceased IRA owner reaches age of majority).

Proposed Change: Restrictions on Large IRA Balances

- Once balance of IRA & Defined Contribution Plan exceeds $10 mil no additional contributions are allowed
- RMD is immediate on 50% of amount over $10 mil
- Applies only to taxpayers with income over $400k – Single/$450k – Joint
- Additional rules aggregate over $20 mil

Proposal to Disallow ROTH Conversions

- After 12/31/21 ROTH conversions only on pre-tax funds – eliminates Back Door ROTH
- Also prohibits transfer of after-tax funds in DC plan to ROTH – eliminates Mega Back Door ROTH
- No ROTH conversions at all for taxpayers with $400k Single/$450k Joint MAJI



Prohibit certain securities in IRA

- Beginning 1/1/22 investment which require an individual to be an accredited investor are not allowed to be in the IRA
- Additional restrictions if the owner has a beneficial interest
- All ‘prohibited investments’ must be out of IRAs in 2 years

New Bill Would Eliminate Back-Door and Mega Back Door ROTH

The bill "prohibits all employee after-tax contributions in qualified plans and prohibits after-tax IRA contributions from being converted to Roth regardless of income level, effective for distributions, transfers, and contributions made after 12/31/21."

—House Ways & Means Committee

Consider Converting Tax Deferred to ROTH Before Year End

Potentially Higher Taxes

May Not Be Able To Do At All

Practice Tip - Business owners with net operating losses (NOLs) might consider a Roth conversion before year end

- An NOL may occur during a tax year in which business deductions exceed income
- Unlike net capital losses, where taxpayers are limited to only $3,000 annually to offset ordinary income, there are fewer restrictions on utilizing an NOL (unlimited carry-forward, limit on offset to 80% of taxable income each tax year)
- Business owners carrying forward NOLs may want to consider a Roth IRA conversion

Assumes business structured as a flow-through or pass-through entity for tax purposes. Rules for calculating and utilizing NOLs are complicated and require expertise from a qualified tax professional. For additional information, refer to IRS publication 536, "Net Operating Losses (NOLs) for Individuals, Estates, and Trusts." For certain pass-through business entities, such as an S Corp, partnership, or LLC, the calculation of an NOL is more complicated. In these cases, a business loss for a particular year is first applied to the taxpayer's cost basis in the business. Once the basis in the entity is reduced to zero, an NOL may apply. Additionally, entities generating passive income (from real estate activities, for example) are subject to the passive loss rules and may be limited when calculating a deduction for NOL

Securities Based Lending

- Opportunity to access funds without realizing cap gains or Tax
- Investments continue to work

Eliminating Fiduciary Liability for Business Owners

Dan McGinnis, CFP®
Financial Advisor, Carver Financial Services

Roles and Responsibilities

ERISA broadly defines a fiduciary as anyone who:

- Exercises discretion or control over plan assets
- Has discretionary authority for plan administration
- Renders investment advice for a fee

Being a fiduciary comes with a lot of responsibility:

Act in the sole interest of participants

Exercise prudence in selecting suitable investments

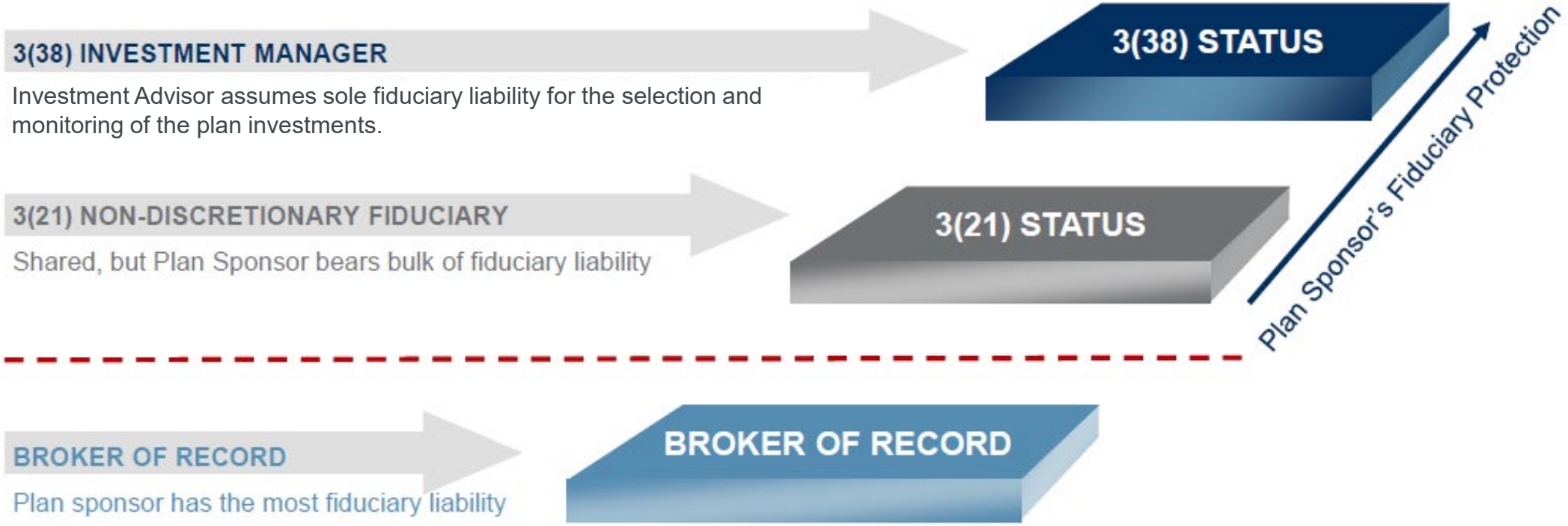
Provide a diversified investment menu lineup

Follow all plan documents

Ensure reasonable expenses & avoid conflicts of interest

Fiduciary Protection

With these responsibilities, also comes fiduciary liability. Investment Advisors can shift that burden by sharing the investment liability as a 3(21) Non-Discretionary Fiduciary or assume full responsibility of investment selection and monitoring as a 3(38) Investment Manager.



*Subject to the terms and conditions of the applicable agreement.

3(38) Investment Fiduciary – “Do it for me”

- Majority of investment responsibilities are lifted from the plan sponsor and assumed by the 3(38) advisor.
- The 3(38) advisor is responsible for the investment selection, monitoring and replacement of plan options, and the plan sponsor is informed before any changes are made.
- A 3(38) advisor is for plan sponsors that don’t have the time or want to be responsible for the plan’s investments.

3(38) Process in Action

The 3(38) Retirement Plan Solution uses a prudent four-step process that incorporates best practices and offers the following features:

- designed exclusively for ERISA 401(k) plans
- a comprehensive investment strategy
- meets fiduciary obligations
- has full discretion over plan investments
- accepts full responsibility for the plan's investment selection

FIDUCIARY OWNERSHIP		
Governance Structure	3(38) Retirement Plan Solution	
Process | Responsibilities	Plan Sponsor	Investment Advisor
Step One | Understand		
Objectives / Plan Design	✔	
Investment & Governance Structure*	✔	✔
Review Overall Fees	✔	✔
Investment Policy Review & Development		✔
Step Two | Analyze		
Review Qualified Default Investment Alternative	✔	✔
Review Asset Classes		✔
Review Investment Vehicle Selection		✔
Review Investment Menu Structure		✔
Step Three | Implement		
Notification of Investment Changes	✔	✔
Execute / Review CIT Participation Agreement		✔
Investment Menu Onboarded / Confirmed		✔
Step Four | Manage		
Recordkeeper Monitoring	✔	✔
Market Overview		✔
Investment Performance Reporting		✔
Investment Monitoring		✔
Investment Options: Add / Remove / Replace		✔

*The fiduciary who appoints the investment manager also has the responsibility to monitor its performance.

MEPs, MEAPs and PEPs: SECURE Act Updates

- Multiple Employer Plans (MEPs) - Permits unrelated employers (businesses) with some commonality to join together to form a single plan. While MEPs existed prior to the SECURE Act, they now involve less risk for each employer who participates, as the "One Bad Apple" rule was eliminated.
- Multiple Employer Aggregation Programs (MEAPs) – A group retirement plan that multiple unrelated employers can join through their association or offering organization. That offering organization acts in an endorser capacity for the MEAP, as opposed to a plan sponsor capacity, the MEP or PEP. The key difference is that the joining employers still maintain their own single plan and are not grouped into one large plan with other participating employers.
- Pooled Employer Plan (PEP) - is a type of MEP, but without the requirement of all businesses sharing a commonality. A Pooled Plan Provider (PPP) operates as a single plan and can offer the PEP to employers that want to take advantage of collective purchasing power, a reduction in administration time and less fiduciary responsibility and risk. Another term for PEP is an Open MEP. Under the SECURE Act a MEP may change to the PEP structure and remove the affiliation requirement, making it open to any 401(k) plan to join.

MEAPs – How it Works

Role	Duties
3(38) Investment Manager	Maintains discretion over investment search and selection and ongoing monitoring of plan investments
Administrator	Acts as Third-Party Administrator, 402(a) Named Fiduciary and 3(16) Plan Administrator
Recordkeeper	Maintains plan documents, executes transactions, tracks employee activity, and monitors eligibility

Other Considerations – Employer-Sponsored Plans

INCREASED TAX CREDIT FOR EMPLOYER-SPONSORED PLAN ADOPTION

Under old law, if an employer with less than 100 employees adopted an employer-sponsored retirement plan, they were eligible for a $500 tax credit in the year of adoption and the following two years. The SECURE Act increases this tax credit. Starting in 2020, the credit will be the lesser of: $250 times the number of non-highly-compensated employees eligible to participate in the plan; or $5,000. Employers with less than two non-highly-compensated employees are still eligible for a minimum credit of $500. The credit is still available in the year of adoption and the following two years. The increased credit is intended to help offset the costs of establishing a retirement plan.

AUTOMATIC ENROLLMENT TAX CREDIT

The SECURE Act introduces a new $500 tax credit for employers who add automatic enrollment to their retirement plan or adopt a plan with automatic enrollment. Starting in 2020, the credit is available in the first year the sponsor includes an automatic enrollment arrangement and the following two years.

Fiduciary Liability

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Fiduciary Accounts

Difference between ‘Suitability Standard’ & Fiduciary Standard

Fee Structure

Liquidity – Proprietary Holdings

Must Consider Internal & External Expense

It’s not what you make but what you keep

Summary

Rules and Legislation are constantly changing– work with an expert

Mitigate risk and Fiduciary Liability using Fiduciary Accounts/Advisor

Consider updates before year end 2021

THANK YOU!

Please reach out to Dan, Randy or any of our team whenever we may be of service or answer any questions!

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Thank You For Joining Us Today

Please make sure to return both the Evaluation and Form 1

We want to hear from you

Have a great holiday season!