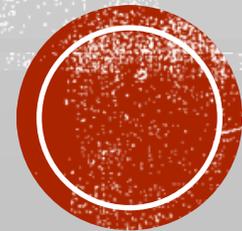


# FIDUCIARY TRAINING

## PART 2



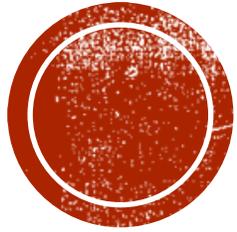
CastleRock  
Investment Company  
Est. 2006



- Prohibited Transactions
- Limiting Potential Liability
- Administration Issues
  - Annual Compliance and Nondiscrimination Tests
  - Annual Audit
  - Form 5500
  - Required Employee Notices
  - DOL Guidance on Missing Participants
  - DOL Guidance on Cybersecurity
  - Top 10 Failures Found in IRS Voluntary Correction Program
  - Late Deposit Errors
  - Additional Resources

# TABLE OF CONTENTS





# PROHIBITED TRANSACTIONS

# PROHIBITED TRANSACTIONS

Any transaction or dealing between a plan and a “party-in-interest” is a prohibited transaction...  
unless an exemption applies.

Party-in-interest includes:

- Any person who provides services to the plan
- Fiduciaries and employees of the plan
- An employer whose employees are covered by the plan
- A person who owns 50% or more of the employer
- Relative of any of the above individuals



# PROHIBITED TRANSACTIONS

## What is prohibited? Party-in-Interest Transactions

- A sale, exchange, or lease of property
- A loan or other extension of credit (including late deposits of employee deferrals to the trust)
- The furnishing of goods, services or facilities
- A transfer of the plan's assets to a party-in-interest for the use or benefit of a party-in-interest
- An acquisition of employer securities or real property in violation of the 10% limitation



# PROHIBITED TRANSACTIONS

## What is prohibited? Fiduciary Transactions

- Dealing with plan assets in their own interest (self-dealing)
- A fiduciary cannot use discretionary authority to influence or increase their compensation
- Representing anyone with adverse interests to a plan or both sides of a transaction (conflicts)
- Receiving consideration from a third party in connection with dealing with plan assets (kick-backs)

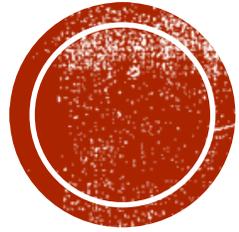


# PROHIBITED TRANSACTIONS

## Consequences of a Prohibited Transaction

- 15% excise tax on the amount involved
- If not corrected, the 15% excise tax is imposed again in each subsequent tax year
- 100% excise tax is also imposed, if the prohibited transaction is not corrected by the time of the IRS's assessment of the excise tax
- Transaction must generally be unwound





# LIMITING POTENTIAL LIABILITY

# LIMITING POTENTIAL LIABILITY

- Develop and follow a prudent fiduciary process
- Hold regular committee meetings
- Meet with providers periodically
- Take appropriate and detailed minutes
  - Document decisions and other matters considered
- Review all investment material carefully
- Establish appropriate procedures for communicating with participants
- Use third-party service providers – and select and monitor them carefully
- Engage independent fiduciaries when there are potential conflicts or prohibited transactions
- Purchase Fiduciary Liability Insurance



# LIMITING POTENTIAL LIABILITY

## **ERISA Section 404(c)**

Protection from liability for investment decisions made by participants if certain conditions are met. DOL and some courts have taken the position that Section 404(c) does not protect from liability for imprudent selection of the investment menu.

## **Requirements**

1. Offer a broad range of investment alternatives
  - a. At least three
  - b. Each must be diversified
  - c. Each must have materially different risk and return characteristics
2. Provide participant with an opportunity to exercise control
3. Participant must actually have exercised independent control
4. Plan must satisfy specific disclosure requirements



# LIMITING POTENTIAL LIABILITY

## **ERISA Section 404(c)(5)**

Added by the Pension Protection Act of 2006 for the investment of participant accounts when participants fail to give investment instructions and whose plan assets flow to the Qualified Default Investment Alternative (QDIA) will be treated as if the participant exercised control over the assets in their accounts.



# LIMITING POTENTIAL LIABILITY

## **ERISA Section 404(c)(5) cont'd**

Protection from liability for investments made in the absence of participant direction if certain conditions are met

- Useful for automatic enrollment and fund mappings
- Plan fiduciary must prudently select the investment option

## **Qualified Default Investment Alternative (QDIA) requirements:**

1. Eligible investment alternatives are:
  - a. Life cycle or target date funds
  - b. Balanced funds
  - c. Managed accounts
  - d. Stable value or money market generally not permitted
2. The participant had the opportunity to provide direction but failed to do so
3. Proper advance and annual participant notices provided

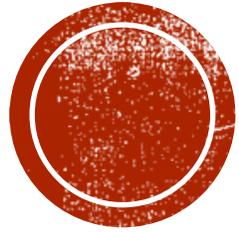


# LIMITING POTENTIAL LIABILITY

## **Safe-Harbor Plan Designs**

In exchange for meeting certain contribution, vesting, distribution, and notice requirements, a plan sponsor is able to avoid the requirement of nondiscrimination testing.





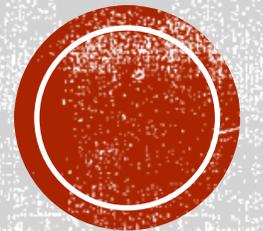
# ADMINISTRATION ISSUES

# ADMINISTRATION ISSUES

- Annual Compliance and Nondiscrimination Tests
- Annual Audit (if required)
- Form 5500 filing
- Required Employee Notices
- Missing Participants
- Cybersecurity
- Top 10 Failures Found in IRS VCP
- Late Deposit Errors



# ANNUAL COMPLIANCE AND NONDISCRIMINATION TESTS



# ANNUAL COMPLIANCE AND NONDISCRIMINATION TESTS

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• 401(a)(4)-2 rate group testing;

• 401(a)(4)-4 availability of benefits, rights, and features;

• 401(k)/ADP test;

• 401(m)/ACP test;

• 402(g) contribution limit;

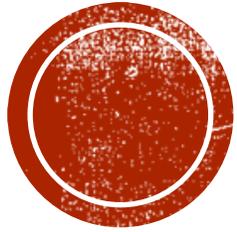
• 410(b) coverage testing;

• 414(s) compensation ratio testing;

• 415(c)(3) annual additions contribution limit; and

• 416 top-heavy testing





# ANNUAL AUDIT

# ANNUAL AUDIT



Review the plan document to ensure that it has been updated for all required legislative provisions as well as discretionary plan design changes.



Maintain a summary plan description (SPD), updated for all plan design changes, and distributed to all employees.



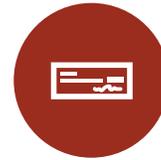
Confirm written procedures for all plan transactions are consistent with the plan document and applicable regulations.



Verify the plan's definition of an eligible employee is consistent with the way the plan is being administered.



Review the definition of compensation as defined in the plan document and verify that the correct compensation amounts are being sent to the service providers and being used for the correct purpose.

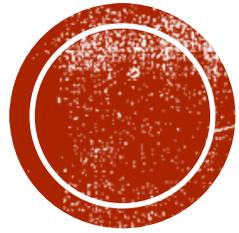


If the plan document is a "prototype" document, make sure that it is IRS-approved and has been amended as required by IRS procedures.



Review the process for making plan loans and verify the loan processing by the service provider is consistent with the written procedures of the plan.





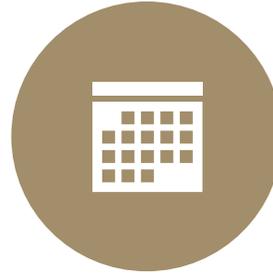
# FORM 5500

# FORM 5500

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The IRS Form 5500 is an annual report, filed with the U.S. Department of Labor (DOL) that contains information about a 401(k) plan's financial condition, investments, and operation.



Form 5500 must be filed annually by the last day of the seventh calendar month after the end of the plan year (July 31 for calendar year plans, January 31 for Master Magnetics) unless an extension is filed.

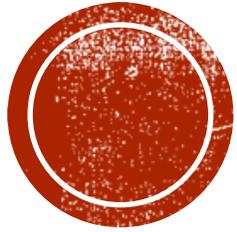


If the plan files for an extension, the Form 5500 is due two and a half months later (October 15 for calendar year plans, April 15 for Master Magnetics).



Electronic versions of Form 5500 and related documents are available on the federal government's EFAST2 website, which is also used to file these forms with the IRS.





# REQUIRED EMPLOYEE NOTICES

**Participant Account Statements**

**Summary Annual Report**

**Summary Plan Description**

**Summary of Material Modifications**

**Section 404(c) Plan Disclosure (if applicable and separate from SPD)**

**Safe Harbor Notice (if applicable)**

**Automatic Contribution Arrangement Notice (if applicable)**

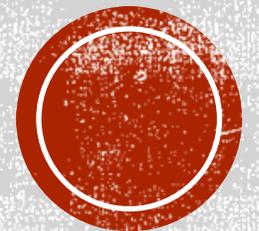
**Eligible Automatic Contribution Arrangement Notice (if applicable)**

**Qualified Automatic Contribution Arrangement Notice (if applicable)**

**Qualified Default Investment Alternative Notice (if applicable)**

**404a-5 Annual Participant Fee and Investment Disclosure**

# **REQUIRED EMPLOYEE NOTICES**



# SAFE HARBOR FOR E-DELIVERY EFFECTIVE JULY 26, 2020

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Covered Documents

Covered Individuals-  
provided email  
address or  
smartphone number

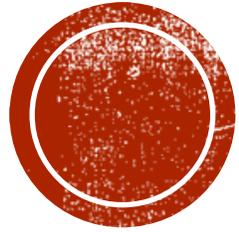
Initial Notice of  
Internet Availability  
(Paper Notice)

Notice of Internet  
Availability to  
electronic address

Website Delivery or  
Email Direct  
Delivery of Covered  
Documents

Maintain Procedures  
for Undeliverable  
Addresses and Opt-  
Outs





# **DOL GUIDANCE ON MISSING PARTICIPANTS**

# MISSING PARTICIPANTS BEST PRACTICES

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MAINTAINING ACCURATE  
CENSUS INFORMATION FOR  
THE PLAN'S PARTICIPANT  
POPULATION.



IMPLEMENTING EFFECTIVE  
COMMUNICATION  
STRATEGIES.



MISSING PARTICIPANT  
SEARCHES.



DOCUMENTING  
PROCEDURES AND  
ACTIONS



# MISSING PARTICIPANTS BEST PRACTICES

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## **Relevant contact information could include:**

- Home and business addresses
- Telephone numbers (including cell phone numbers)
- Social media contact information
- Next of kin/emergency contact information



## **Regularly request updates to contact and beneficiary information**

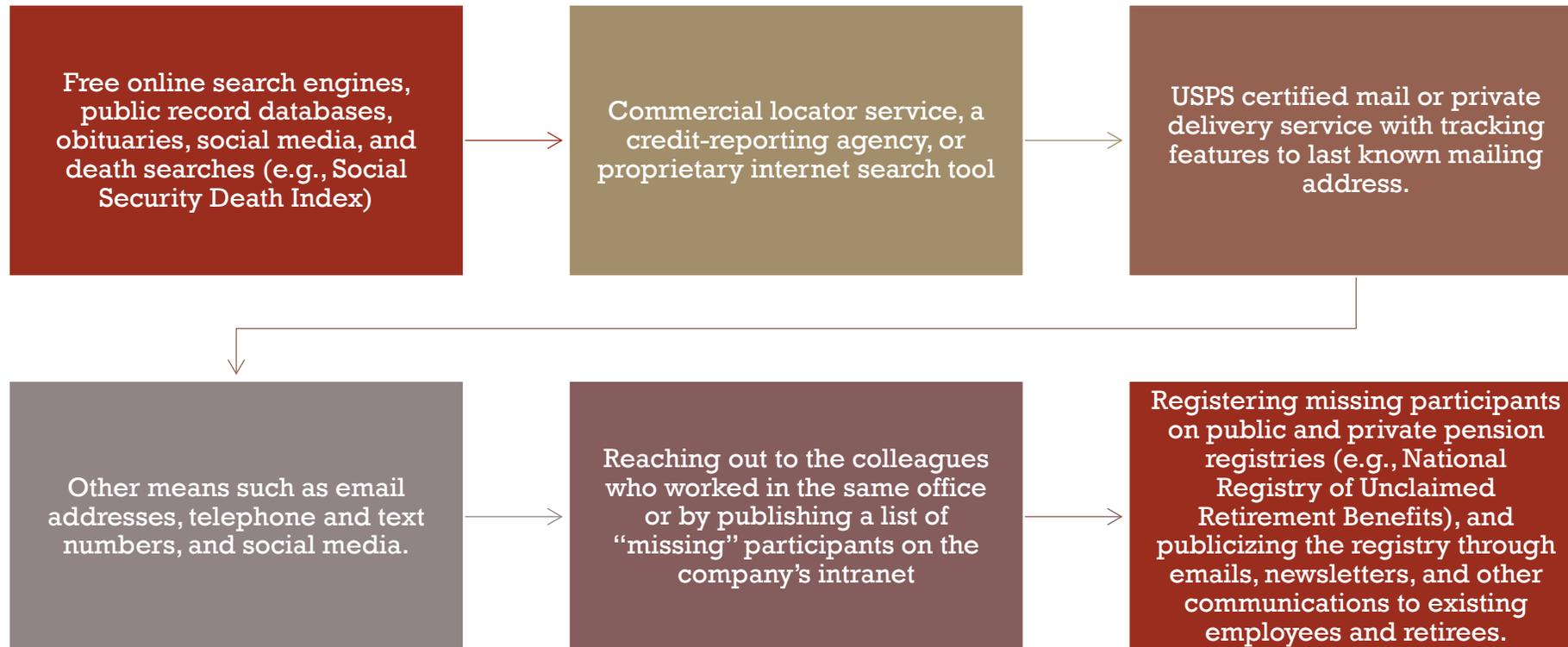




**MISSING  
PARTICIPANTS  
BEST PRACTICES**

- **Building steps into the employer and plan onboarding and enrollment processes for new employees, and exit processes for separating employees, to confirm or update contact information and advise employees of the importance of ensuring the plan has accurate contact information at all times.**

# MISSING PARTICIPANTS BEST PRACTICES



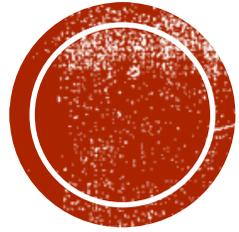
# MISSING PARTICIPANTS BEST PRACTICES

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Document  
procedures and  
steps to implement  
policies.

Ensure third party  
record keepers  
perform agreed  
upon procedures.





# DOL GUIDANCE ON CYBERSECURITY



**Tips for Hiring a Service Provider**: Helps fiduciaries select a service provider.



**Cybersecurity Program Best Practices**: Assists plan fiduciaries and recordkeepers manage cybersecurity risks.



**Online Security Tips**: Offers plan participants basic rules to reduce the risk of fraud and loss.

# CYBERSECURITY BEST PRACTICES





Ask about the provider's information security audit results



Ask the provider what levels of security standards it has met



Evaluate the provider's track record



Ask whether the provider has experienced past security breaches



Find out if the provider has any insurance policies that would cover losses caused by cybersecurity and identity theft breaches



Verify the contract requires ongoing compliance

# CYBERSECURITY TIPS FOR HIRING A SERVICE PROVIDER



# CYBERSECURITY SUGGESTED CONTRACT PROVISIONS

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**INFORMATION SECURITY  
REPORTING: SOC REPORT**



**CLEAR PROVISIONS ON  
THE USE AND SHARING OF  
INFORMATION AND  
CONFIDENTIALITY**



**NOTIFICATION OF  
CYBERSECURITY  
BREACHES**



**COMPLIANCE WITH  
RECORDS RETENTION  
AND DESTRUCTION,  
PRIVACY AND  
INFORMATION SECURITY  
LAWS**



**INSURANCE**



# CYBERSECURITY SERVICE ORGANIZATION CONTROL (SOC) REPORT

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DOCUMENTS INFORMATION  
TECHNOLOGY GENERAL  
CONTROLS



CONDUCTED BY AN  
INDEPENDENT OUTSIDE  
AUDITOR



ENSURES COMPLIANCE WITH  
PRINCIPLES BASED ON  
SYSTEMS AND PROCESSES TO  
KEEP YOUR COMPANY DATA  
SECURE



PLAN FIDUCIARY RESPONSIBLE  
TO ENSURE THE PROVIDER IS  
SOC COMPLIANT



# CYBERSECURITY

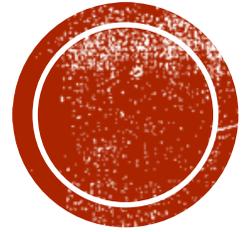
## SOC-1, TYPE 2 VS. SOC-2

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SOC-1, Type 2 report documents and tests all controls specific to a service activity (payroll processing, retirement plan transactions, etc.) at a service provider. Broader in scope than a SOC-2 report

SOC-2 reports are specifically targeted to document and test information and IT security controls at a service provider.





# TOP 10 FAILURES FOUND IN IRS VOLUNTARY CORRECTION PROGRAM

# TOP TEN FAILURES FOUND IN IRS VCP

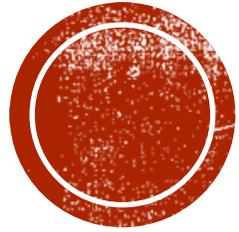
1. Failure to amend the plan for tax law changes by the end of the period required by the law.
2. Failure to follow the plan's definition of compensation for determining contributions.
3. Failure to include eligible employees in the plan or the failure to exclude ineligible employees from the plan.
4. Plan loans that don't comply with IRC 72(p).
5. Impermissible in-service withdrawals.



# TOP TEN FAILURES FOUND IN IRS VCP

6. Failure to satisfy IRC 401(a)(9) minimum distribution rules.
7. Employer eligibility failure.
8. Failed ADP/ACP nondiscrimination tests under IRC 401(k) and 401(m) not corrected in a timely manner.
9. Failure to properly provide the minimum top-heavy benefit or contribution under IRC 416 to non-key employees.
10. Failure to satisfy the limits of IRC 415.





# LATE DEPOSIT ERRORS



Both the Department of Labor (DOL) and the Internal Revenue Service (IRS) offer programs to correct plan administration failures, such as a failure to transmit participant contributions and loan payments to a qualified retirement plan in timely manner.



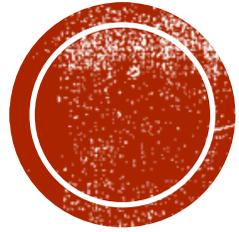
DOL's Voluntary Fiduciary Correction Program (VFCP) is to ensure that the employer isn't subject to DOL's civil penalties.



IRS' correction program is to ensure that the plan doesn't lose tax benefits arising from its qualified status.

# LATE DEPOSIT ERRORS



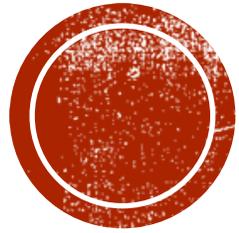


# ADDITIONAL RESOURCES

# ADDITIONAL RESOURCES

- **DOL's EBSA Website**
- <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/fiduciary-responsibilities/fiduciary-education-campaign>
- **ERISA Fiduciary Advisor**
- <https://webapps.dol.gov/elaws/ebsa/fiduciary/introduction.htm>
- **Meeting Your Fiduciary Responsibility**
- <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/meeting-your-fiduciary-responsibilities.pdf>





# QUESTIONS?