

# **RETIREMENT COMMISSION MINUTES**

The Retirement Commission met on Wednesday, January 26, 2022. The following members were present: Ashley Marshall, Joe Hatter, David Hughes, Jason Vandever, Scott Hendrix, Al Elias, Ben Cullop, Chris Cullinan, Markell Henderson, Brian Pinkston. Absent: None. Others present: Lachen Parks, Sara Butler, Lisa Burch, Allyson Davies.

## **Call to Order**

Jason Vandever called the meeting to order at 8:34 AM.

## **Approval of Minutes**

The minutes from the December 2021 meeting were approved unanimously with Brian Pinkston abstaining because he was not present at the December meeting.

## **Oversight of Defined Contribution Plans**

Allyson Davies addressed the Commission regarding the Commission's responsibility of oversight of the City's Defined Contribution Plans. It was agreed that the Commission needs more information regarding the plans and fiduciary training at the February meeting.

## **COLA Discussion**

The City assumes a 1% retiree COLA each year. The Commission discussed a recommendation for Fiscal Year 2023 and a motion was made to recommend a COLA of at least 2% for retirees. The motion was approved with one opposing vote from David Hughes.

## **New Business**

Lisa Burch presented a tentative calendar for upcoming 2022 meetings.

## **Closed Session**

Pursuant to section 2.2-3712 of the Virginia Code, Chris Cullinan made a motion that the Charlottesville Retirement Commission should close the meeting and that the Investment Subcommittee should convene in a closed session to discuss investment strategies of the Retirement Fund which are subject to exclusion under § 2.2-3705.7 (24).

On a motion by Chris Cullinan, the Retirement Commission certified by a unanimous recorded vote that to the best of each Commissioner's knowledge only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the Motion convening the closed session were heard, discussed or considered in the closed session.

## **Adjournment**

The meeting adjourned at 10:21 AM.

# City of Charlottesville Defined Contribution Plan

Information for Retirement Commission

February 23, 2022

*Human Resources Staff Contacts:*

*Lisa Burch, Human Resources Benefits Coordinator, Retirement*

*Sara Butler, Benefits Administrator*

## Defined Contribution 401a Retirement Plan

- A plan in which fixed contributions are paid into an individual's account by the employer
- The employer contributions are then invested and returns on the investment (which can be positive or negative) are credited to the individual's account
- Upon retirement, the employee's account balance is used to provide retirement benefits

## City of Charlottesville Defined Contribution Plan for general employees City Code 19-94(c)

- Established July 1, 2001
- Employer contribution is 8% of pay deposited into employee accounts every bi-weekly pay day; no employee contributions
- 3 year graded vesting schedule
- Wide variety of investment options for participants to choose from
- If employees do not select investment options, contributions default into target date funds based on date of birth
- Post Retirement Benefits: Participants who retire with at least 10 years of service may be able to continue medical and dental at their own expense in retirement [benefits ends at Medicare eligibility for employees hired on or after July 1, 2012]

City of Charlottesville Defined Contribution 401a  
Plan for employees exempt from personnel  
appeals system [*Lead Team*] City Code 19-94(a)

- Contribution set by City Manager
- Automatic vesting
- Same investment options as general employee plan
- Same default investments as general employee plan

# Plan Administration

- Recordkeeper: Mission Square (ICMA-RC)
- Investment Advisor: CAPTRUST
- Informal Sub-committee oversight
- In the past the sub-committee has consisted of members of Human Resources, Finance, Budget and Treasurer's Office
- Day to day administration: Human Resources staff

# New Employee Irrevocable Election

- 30 days to elect either the Defined Benefit or the Defined Contribution Plan

- Onboarding education

- New employee orientation

*[group setting prior to Covid restrictions/phone or one-on-one consultation during Covid restrictions]*

- Benefits Video detailing both plans; also on HR InTouch portal
    - Benefits Handbook/Flip book detailing both plans; also on HR InTouch portal
    - Retirement Summaries and Handbooks available on HR InTouch portal
    - Mission Square representative available for DC plan investment questions

*Also Available* - Employees can supplement their retirement by investing their own money into a 457 Deferred Compensation Plan

- Employees can enroll at any time
- Pre-tax or Roth contributions allowed
- Recordkeeper: Mission Square (ICMA-RC)
- Investment Advisor: CAPTRUST
- Informal Sub-committee oversight
- In the past the sub-committee has consisted of members of Human Resources, Finance, Budget and Treasurer
- Day to day administration: Human Resources staff



# For more information

❖ Detailed information on all employee benefits can be found on the employee benefits portal created in 2019

<https://charlottesville.hrintouch.com>

## Staff Contacts:

Lisa Burch, Human Resources Benefits Coordinator, Retirement  
(434) 970-3097 [burchel@charlottesville.gov](mailto:burchel@charlottesville.gov)

Sara Butler, Benefits Administrator  
(434) 970-3462 [butlers@charlottesville.gov](mailto:butlers@charlottesville.gov)



ICMA-RC is now

# MissionSquare

RETIREMENT

- **New brand, same mission-based, nonstock, nonprofit, financial services company**
- **50 years of experience helping those who serve their communities build retirement security**
- **Personalized Financial Wellness Center, including online tools and consultations with licensed professionals**
- **Results-oriented retirement plans, education, investments, and advice delivered to public employees**



# For those who serve

Dedicated to providing the best retirement and financial wellness services for those who serve their communities.

- Founded by the public sector in 1972
- A mission-based, non-stock, non-profit corporation with a volunteer Board of Directors made up of public and private leaders
- Focused on government, education, healthcare, and not-for-profit



# Public sector experience

**1972**  
Year founded

over  
**9,800**  
Public sector plans

over  
**1.6M**  
Public sector accounts

over  
**\$73B**  
Total assets under management and administration

over  
**\$8B**  
In the state of Virginia

As of September 30, 2021. Includes 457, 401, 403(b), Retirement Health Savings (RHS) plans, Employer Investment Program (EIP) plans, affiliated IRAs, and investment-only assets. Includes assets under administration and management by MissionSquare with its subsidiaries.



# How MissionSquare can help

## Competitive investment options

- Open architecture platform
- Fixed accounts
- Lower total fees
- Full fee disclosure

## Simplified plan administration

- Dedicated relationship manager for plan sponsor support
- Fewer vendors to manage alleviates your administrative burden and simplifies participant education, enrollment, and maintenance process

## Participant-focused experience

- High-tech options to learn, enroll, and wisely grow retirement plan assets
- High-touch service for personalized, relevant participant communications
- Objective in-person or over-the-phone meetings with MissionSquare representatives
- Guidance during both the accumulation and distribution phases
- Plans that reflect more accurate pension benefit calculations
- No high-pressure sales tactics
- Vendor consolidation makes participant decision-making easier



# Ongoing support

Outsourcing plan administration to MissionSquare

Support type	Cost
<input checked="" type="checkbox"/> Online enrollment	\$0
<input checked="" type="checkbox"/> Deferral changes	\$0
<input checked="" type="checkbox"/> Auto rebalancing	\$0
<input checked="" type="checkbox"/> Online withdrawals	\$0
<input checked="" type="checkbox"/> Beneficiary designation and updates	\$0
<input checked="" type="checkbox"/> Emergency withdrawal approval	\$0
<input checked="" type="checkbox"/> De minimis accounts	\$0
<input checked="" type="checkbox"/> MissionSquare plan document maintenance	\$0
<input checked="" type="checkbox"/> Employer bulletin/regulatory updates	\$0

# Plan health monitor

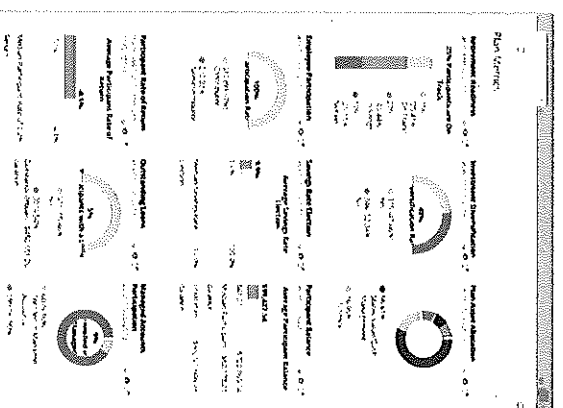
Actionable insights and guidance

A quick and accurate way to assess plan health and identify opportunities to improve outcomes

**High-level plan snapshot**  
Participation rates, average savings rate election, retirement readiness and more

**Filtering and segmentation capabilities**  
See who may need more help

**Results tracking**  
Insights into most effective strategies



**You can use these tools to review whether:**

- We implement the right campaigns to optimize your plan's health
- You are getting the plan support you need
- Investments are being utilized
- Participation rates are increasing



## City of Charlottesville Plan data:

### Active participants

401a – 305

457b – 382

### Average balance

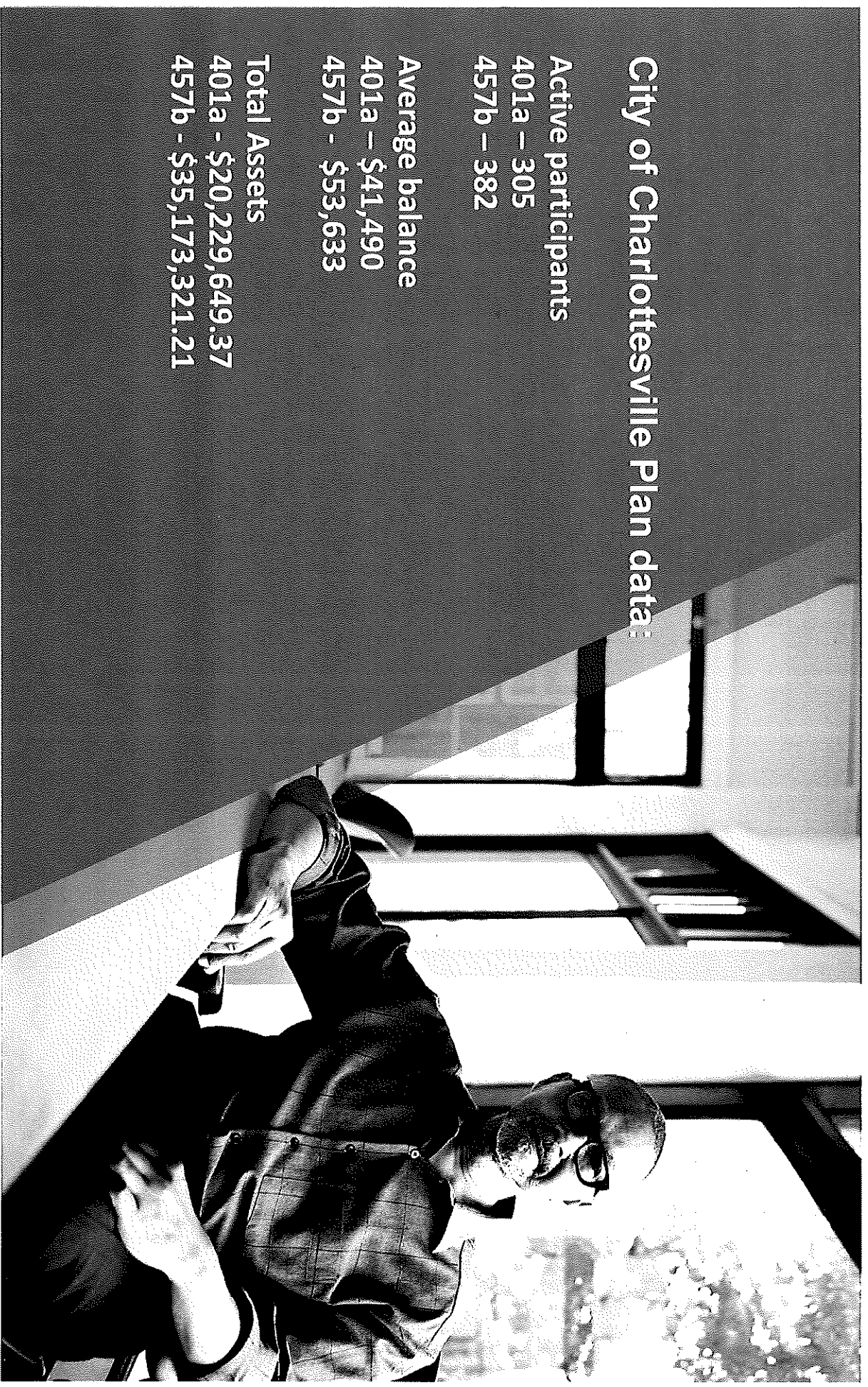
401a – \$41,490

457b - \$53,633

### Total Assets

401a - \$20,229,649.37

457b - \$35,173,321.21





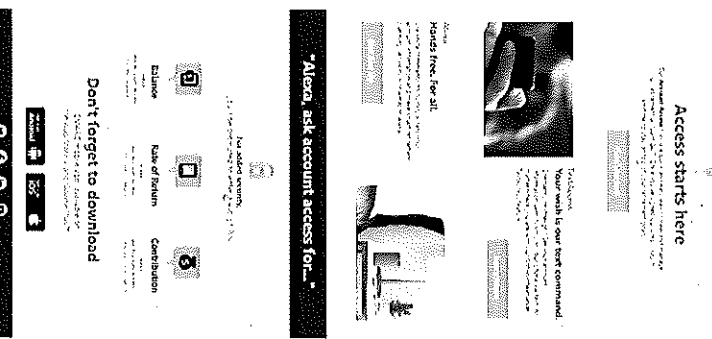


# Education that works for you

MissionSquare  
RETIREMENT



Experienced local representatives and resources available both in-person and anywhere digitally



- Online one-on-one consultations
- Online group seminars
- 24/7 account management via Account Access
- Mobile app
- TextAccess notifications
- Alexa account updates
- Retirement Education Center

# Participant Education

FOR PARTICIPANTS ONLY

**MissionSquare**  
RETIREMENT

## MissionSquare Retirement Financial Wellness Center:

Giving participants greater control over their finances with interactive resources

### What it is

The MissionSquare Retirement Financial Wellness Center is an easy-to-use, interactive, personalized financial education resource available to all participants when they log into their account.

### Why it exists

Wherever participants are in life, planning for their financial future is important, and we're here to help guide them.

Living our commitment to financial wellness every day, we help public employees make informed financial decisions by giving them access to helpful and meaningful resources like our Financial Wellness Center.

### What it offers

- **More than 100 tools and resources**  
Educational videos, calculators, articles, tutorials, and interactive charts
- **One location**  
Everything is in one place when participants log into their account at [www.1cmarc.org](http://www.1cmarc.org)
- **Engaging financial topics**  
Credit card debt and budget management, college tuition planning, general savings strategies, investing tips, retirement planning basics, and much more

### How it's personalized

Each participant's experience is personalized, based on their personal and account data. When they refine their financial goals and enter a few additional facts about themselves by choosing if they consider themselves a planner, spender, learner, or worrier, they'll see customized information based on their preferences every time they visit.

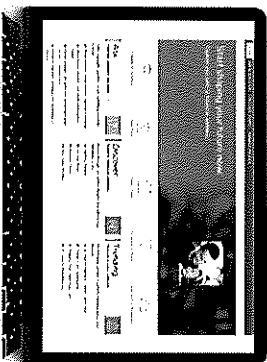
As they change their preferences – for example, marital status, age group, financial personality traits, and number of dependents – topic recommendations change accordingly.

### What it complements

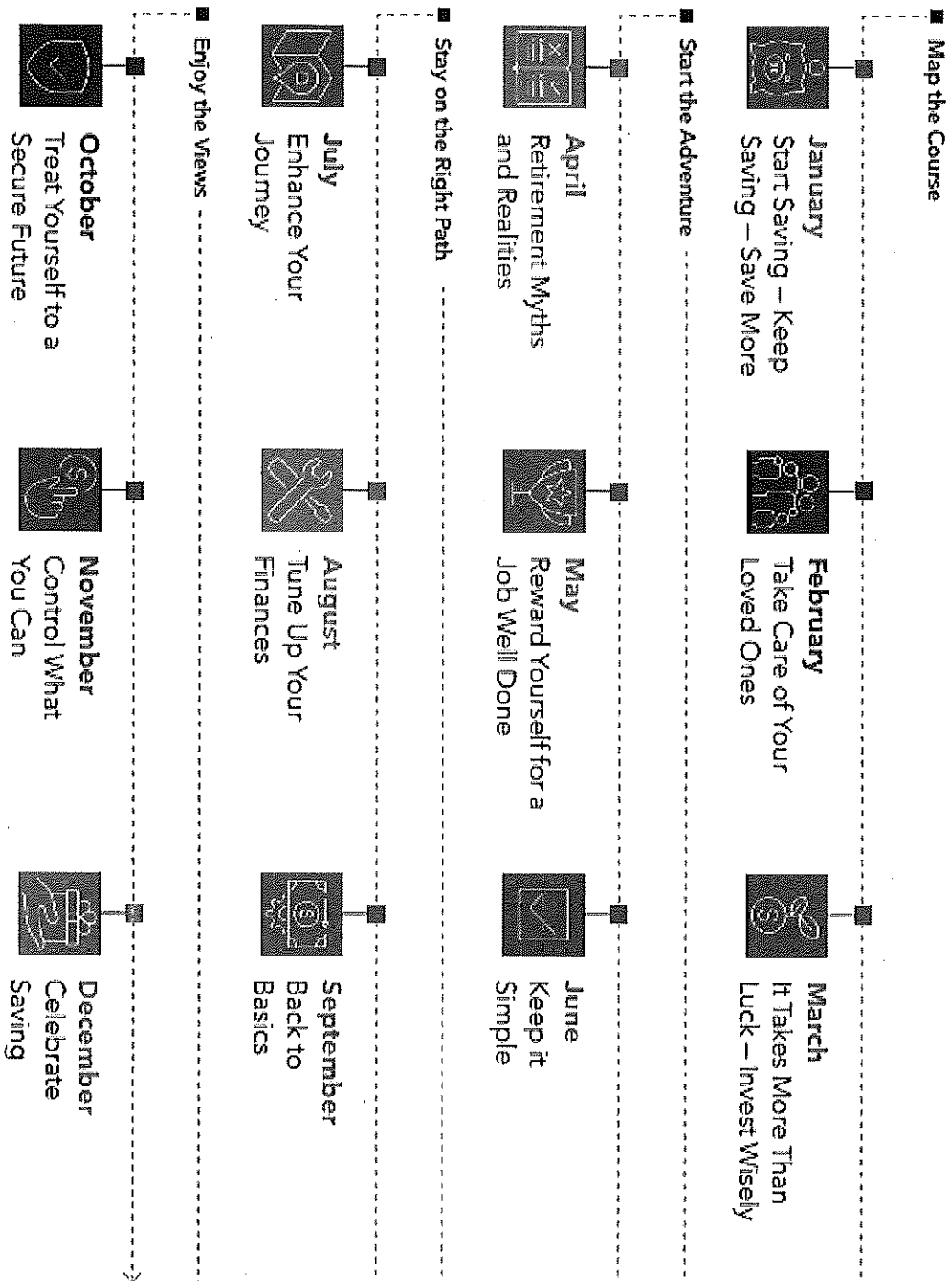
The center complements our existing digital tools and resources for participants, including our mobile app, TextAccess, Ask Alexa, and eDelivery. Visit [www.1cmarc.org/digitalresources](http://www.1cmarc.org/digitalresources).

It also complements the human side of our business, as participants always have access to our CERTIFIED Financial Planners™ professionals, Financial Consultants, Retirement Plans Specialists, and phone representatives.

**Have questions about the Financial Wellness Center? Contact your MissionSquare representative.**

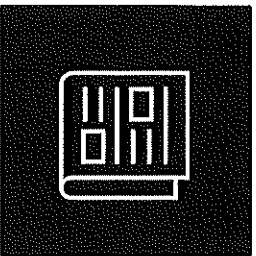


## Targeted Monthly Communications

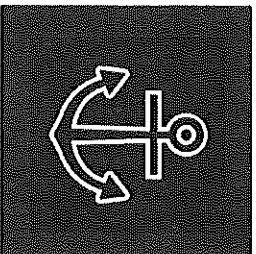




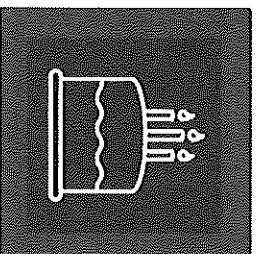
# Financial wellness campaign examples



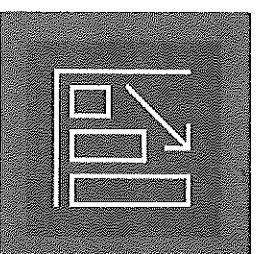
**Monthly  
RealizeRetirement®  
participant  
e-newsletter**  
Promotes articles,  
videos, and other  
educational content



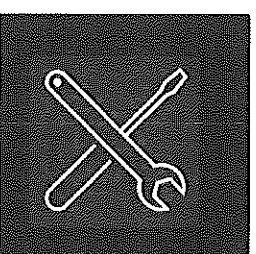
**New participant  
onboarding**  
Educates new  
participants on  
products, tools, and  
resources  
to get started with  
MissionSquare



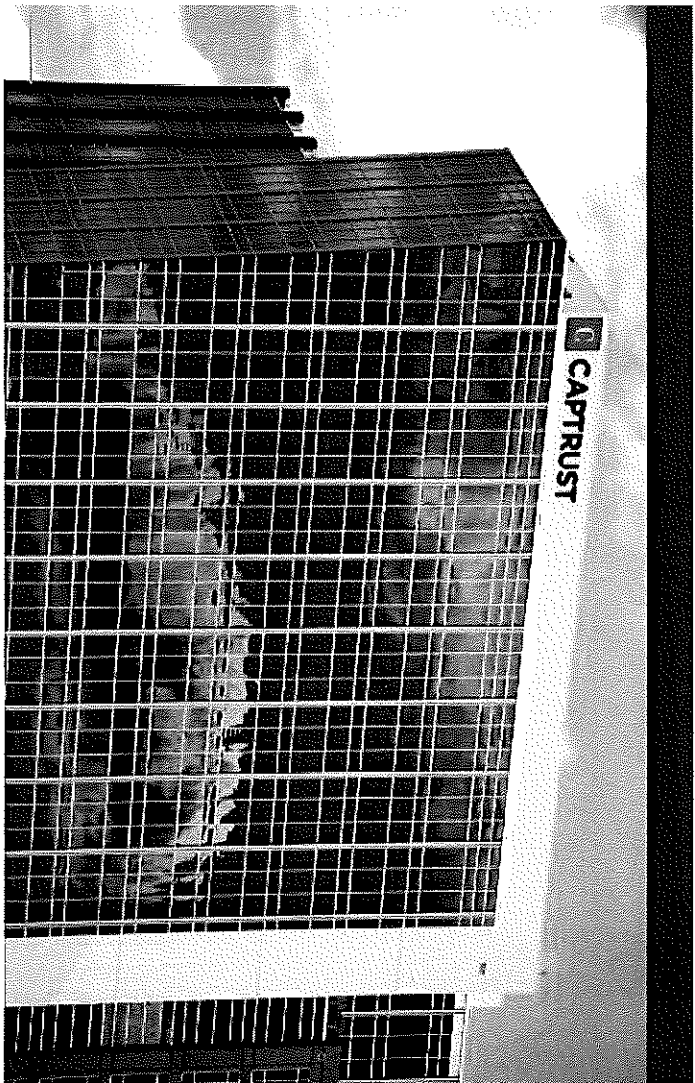
**Milestone age  
checkups**  
Provides birthday  
wishes and relevant  
retirement planning  
information prior to  
participants turning a  
milestone age  
(i.e., 30, 40, 50)



**Increase  
contributions  
engagement**  
Encourages  
participants to make  
incremental savings  
increases for better  
retirement outcomes



**Smart Savers  
series**  
Highlights different  
digital tools  
and calculators  
participants can use,  
such as TextAccess  
and the "Am I On  
Track" calculator



February 2022

Presented by:

Barry Schmitt  
Principal | Financial Advisor

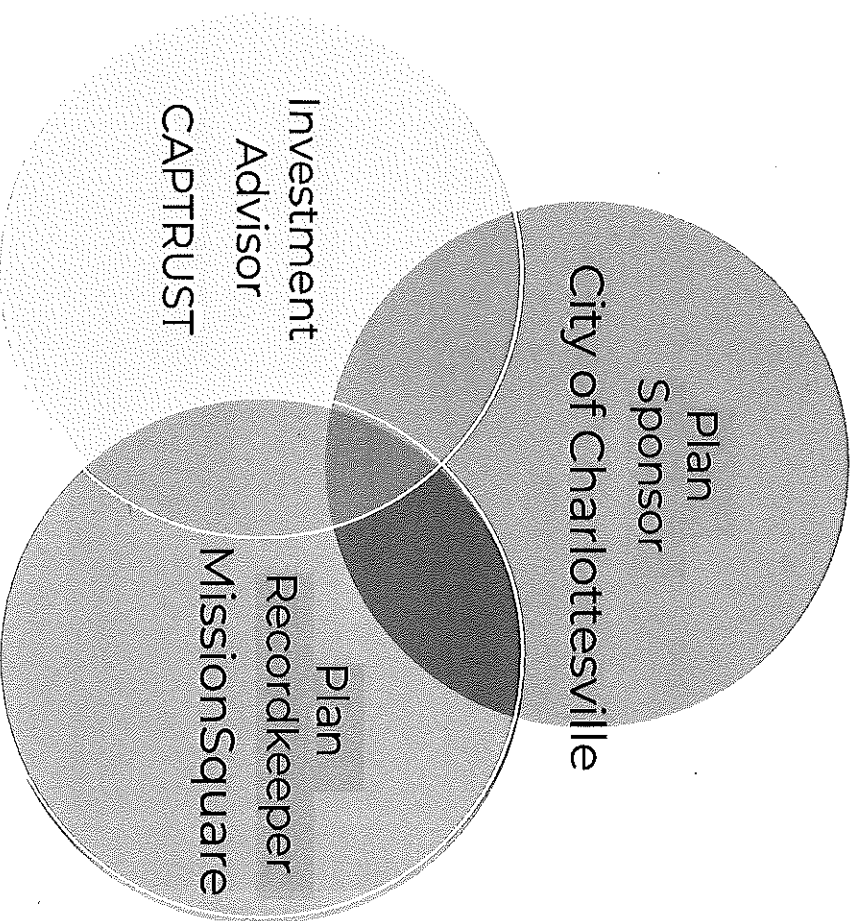
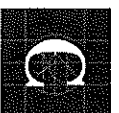
Fran Slacum  
Senior Financial Advisor |  
Relationship Manager

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CAPTRUST



# How We Work Together For You



Plan Sponsor

Provides and oversees your benefits

Plan Recordkeeper

Reconciles your accounts, provides access to account information and handles transactions

Investment Advisor

Monitors investments and provides advice.





# CAPTRUST

CAPTRUST is one of the country's leading independent advisory firms, specializing in providing consultative retirement and investment services to plan sponsors.

## CORPORATE STRUCTURE AND OWNERSHIP

- 35-year operating history
- Culture of employee ownership
- 49% of employees participate in ownership
- 100% of revenue from client advisory services
- Six-member outside advisory board
- 986 employees
- 98% client retention (average since 2009)

## ALIGNED INTERESTS AND OPERATIONS

- Objective and unbiased fiduciary
- \$662 billion in client assets under advisement
- More than 2,900 institutional clients
- Dedicated subject matter experts by practice
- Over More than 3.5 million plan participants across all 50 states

## INDUSTRY INVOLVEMENTS AND LEADERSHIP

- Provided retirement related testimony to both the House Committee on Ways and Means and Education and Labor
- Invited to assist the Government Accountability Office (GAO) in a study on target date funds
- Presented expert analysis to the Securities and Exchange Commission (SEC) on improving target date fund disclosures
- Asked to testify to the Department of Labor regarding retirement plan issues
- Founding member of the National Association of Plan Advisors (NAPA)
- Member of the Retirement Advisor Council
- Publish white papers: retirement income, target date funds, stable value, NQDC
- Invited to attend Pension Research Council at the Wharton School at University of Pennsylvania
- Panelist at multiple industry leading national conferences and events

## SPECIFIC EXPERTISE

- 3,803 defined contribution plans representing \$563 billion in assets under advisement
- 1,870 401(k) plans representing \$256 billion in assets under advisement
- 931 403(b) plans representing \$218 billion in assets under advisement
- 309 defined benefit plans representing \$29 billion in assets under advisement
- 486 nonqualified plans representing \$7 billion in assets under advisement
- 323 endowment/foundation portfolios representing \$11 billion in assets under advisement

## INSTITUTIONAL RETIREMENT ADVISORY SERVICES

- Plan-level investment advice
- Fee benchmarking and plan revenue analysis
- Vendor management, monitoring, search, and selection
- Fiduciary process management and training
- Participant engagement and individual investment advice
- Plan design and behavioral finance consulting
- Market, legislative, and regulatory plan sponsor updates

## RECORDKEEPING/ADMINISTRATIVE DUE DILIGENCE

- Experience and ongoing evaluation with 123 providers
- 332 service/fee benchmarking projects conducted in 2020
- 55% of clients we assisted obtained improved provider pricing in 2020
- Annual onsite due diligence with top 20 vendors
- Unique understanding of platform options and service teams
- Documented success negotiating fee arrangements
- Process for assisting clients with recordkeeping mergers

## INVESTMENT RESEARCH EDGE

- 97 professionals dedicated to investment research
- Multiple sophisticated manager database tools
- 3,500+ due diligence calls annually and 350+ onsite interviews
- Access to top-level decision-making portfolio managers
- Unique investment evaluation process and product knowledge

## LOCATIONS

ARROW, OH	COLUMBIA, MD	GREENWICH, CT	LODI, CA	RICHMOND, VA	UNIONTOWN, OH
ALLEN TOWN, PA	COLUMBIA, MO	GREENWOOD VILLAGE, CO	LOME TREE, CO	RIVERSIDE, CA	VALENCIA, CA
ALPHARETTA, GA	CORPUS CHRISTI, TX	CO	LYNCHBURG, VA	RIVERSIDE, NJ	WASHINGTON, DC
ATLANTA, GA	DALLAS, TX (2)	HARRISONBURG, VA	MINNEAPOLIS, MN	ROANOK, VA	WAZATA, MN
AUSTIN, TX (2)	DAYTON, OH	HOWEWOOD, AL	MONTGOMERY, AL	ROSVILLE, CA	WESTHESTER TOWNSHIP, OH
BETHLEHEM, PA	DOVER TOWNSHIP, PA	HOLISTON, TX	NEW YORK, NY	SACRAMENTO, CA	OH
BOERNE, TX	DRAPER, UT	JACKSON, MS	NORTH MIAMI, FL	SAN ANTONIO, TX (2)	WEST DES MOINES, IA
BOSTON, MA	FOLSOM, CA	LAKE HARRY, FL	OKLAHOMA CITY, OK	SAN RAMON, CA	WEST HOLLWOOD, CA
CHARLOTTE, NC	GRAND RAPIDS, MI	LAKE SUCCESS, NY	PEACHTREE CITY, GA	SANTA BARBARA, CA	WESTLAKE VILLAGE, CA
CHICAGO, IL	GREENSBORO, NC	LAS VEGAS, NV	PHOENIX, AZ	SOUTHFIELD, MI	WILMINGTON, NC
CHESTERTON, IN	GREENSBURG, PA	LEWES, DE	PITTSBURGH, PA	STOCKBRIDGE, GA	
CLARKSTON, MI	GREENVILLE, SC	LEXINGTON, KY	RALEIGH, NC	TAMPA, FL	
		LEXINGTON, VA			

# KEEPING CLIENTS UP TO DATE

In today's environment, plan sponsors need to stay in the know. We can help by providing CAPTRUST's industry-leading experts' thoughts, opinions, and recommendations. We communicate important updates and thought leadership in a number of ways.

## Investment Strategy

Written by CAPTRUST Chief Investment Officer Kevin Barry and published quarterly, Investment Strategy captures the latest developments in the global capital markets and explains the likely impact of current events on the market's direction.

## Fiduciary Updates

Written by CAPTRUST's Drew McCorkle—and with best practice implications for retirement plan sponsors—this quarterly deliverable highlights recent court cases and other topics of note for qualified plan sponsors.

## Topical Webinars

CAPTRUST subject matter experts host quarterly webinars on topics of interest to plan sponsors. In recent quarters, topics have included the implications of rising rates for plan sponsors, employee financial wellness, and discretionary plan management.

## Market Thoughts

Market Thoughts is a bulletin published 4-6 times a year to address current events and market developments. Past topics have included the impact of presidential elections, Brexit, and passage of the Tax Cuts and Jobs Act on the capital markets.

## Plan Sponsor eBriefs

Plan Sponsor eBriefs provide real-time updates about legal and regulatory topics of interest to plan sponsors. Typically, we publish 4-6 eBriefs a year on topics such as plan contribution limits, fiduciary regulation, and updates to IRA rules.

## Advice and Wellness

In conjunction with our Participant Advice Service (PAS), employees can schedule an advice desk meeting or access a range of tools, calculators, articles, market updates, topical videos, and webinars intended to drive employee financial wellness via [captrustadvice.com](http://captrustadvice.com).





CAPTRUST is one of the country's leading independent advisory firms, specializing in providing consultative retirement and investment services to plan sponsors.

PLAN DESIGN	PARTICIPANT ENGAGEMENT	INVESTMENT MANAGEMENT	FIDUCIARY PROCESS	VENDOR MANAGEMENT
<ul style="list-style-type: none"> <li>Ensure that retirement programs are aligned with the organization's policies and business goals</li> <li>Ensure that plan features and strategies are aligned with our participant demographics</li> <li>Ensure that the plan remains competitive with other companies that may compete for our employees</li> </ul>	<ul style="list-style-type: none"> <li>Provide the information, resources, and advice to help our employees effectively plan, save, and invest for their retirements</li> <li>Provide a very attractive and highly competitive benefit plan to employees</li> </ul>	<ul style="list-style-type: none"> <li>Provide an attractive menu of investment options and account management programs to enable our employees to prudently invest their retirement savings</li> <li>Allow for the diverse financial needs and sophistication of our employees</li> <li>Maintain a diverse but reasonable number of core menu options</li> </ul>	<ul style="list-style-type: none"> <li>Develop, follow, and document a consistent series of prudent processes to satisfy our fiduciary obligations to our employees</li> <li>Ensure that our retirement committee remains informed of prevailing regulatory considerations and market trends</li> </ul>	<ul style="list-style-type: none"> <li>Provide timely and accurate account reporting and processing</li> <li>Ensure that we retain effective and user-friendly resources for the management of our plans</li> <li>Maintain compliance with prevailing regulatory requirements</li> <li>Ensure that the plan is paying fair and reasonable fees for the services provided</li> </ul>
<b>KEY OBJECTIVES</b>				
<ul style="list-style-type: none"> <li>Peer review key plan features: eligibility, matching, and vesting policies</li> <li>Evaluate automatic features for enrollment and deferral increases</li> <li>Evaluate re-enrollment</li> <li>Evaluate optional testing methods</li> <li>Evaluate Roth feature</li> </ul>	<ul style="list-style-type: none"> <li>Allow multiple options for personalized advice</li> <li>Conduct targeted outreach campaigns</li> <li>Conduct demographic analysis</li> <li>Conduct participant satisfaction surveys</li> <li>Provide multiple forms of participant communications</li> </ul>	<ul style="list-style-type: none"> <li>Evaluate risk-versus age-based asset allocation strategies</li> <li>Evaluate model portfolios versus managed accounts</li> <li>Select qualified deferred investment alternatives</li> <li>Evaluate active and passive investing strategies</li> </ul>	<ul style="list-style-type: none"> <li>Formal investment policy statement (IPS)</li> <li>Evaluate investment oversight advisory services- 3(21) or 3(38)</li> <li>Document fee payment policy</li> <li>Fiduciary training</li> </ul>	<ul style="list-style-type: none"> <li>Fee benchmarking for service providers</li> <li>404(c) compliance</li> <li>408(b)(2) compliance</li> </ul>
<b>BEST PRACTICES</b>				

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CAPTRUST



# your CAPTRUST service team members

## TEAM MEMBERS

## RESPONSIBILITIES

**Barron V. Schmitt**  
Principal | Financial Advisor  
Barry.Schmitt@captrust.com

**Account Role: Lead Consultant**  
Our Lead Consultants serve as the primary relationship manager for the fiduciaries of corporate retirement plans. They oversee and ensure quality delivery of comprehensive investment advisory services. They are available to assist with any aspect of clients' accounts, or put them in contact with the appropriate resources here at CAPTRUST.

**Fran Slacum**  
Senior Financial Advisor | Relationship Manager  
Fran.Slacum@captrust.com

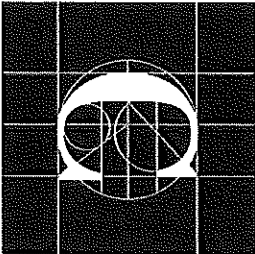
**Account Role: Consultant**  
Our Consultants have responsibility for client project management, client meetings, report preparation, and presentation. Projects involve the establishment of investment policies and objectives, asset allocation modeling, investment manager analyses and searches, fee analysis, performance evaluation, and other specialized projects. In addition, they will provide comprehensive written investment option and plan reviews, as well as monitor overall results and service delivery to ensure complete satisfaction.

**Andrew Battle**  
Manager | Institutional Client Service  
Drew.Battle@captrust.com

**Account Role: Client Management Consultant**  
The Client Management Consultants are focused on overall client management from initial conversion of new plans to CAPTRUST throughout their 'life' at CAPTRUST. As the primary contact for day-to-day client service needs, the main goal of the Client Management Consultant is to deliver exceptional proactive client service. On a daily basis, the Client Management Consultants are available to assist employees with questions related to plan enrollment and education, available investment options, and other areas.

**Karren Gorney**  
Client Management Consultant |  
Institutional Client Service  
Karren.Gorney@captrust.com

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**FIDUCIARY TRAINING  
ROLES AND RESPONSIBILITIES**

Presented by CAPTRUST Financial Advisors



# C

## IDENTIFYING PLAN FIDUCIARIES

**According to ERISA, a Fiduciary is any person(s) who:**

- Has discretionary authority over the management or administration of the plan or its assets
- Exercises any control, authority or influence over the management or administration of the plan or its assets
- Renders investment advice for a fee or other compensation which is received directly or indirectly

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# C

## WHO MAY BE A FIDUCIARY?

### IDENTIFYING PLAN FIDUCIARIES

- Named fiduciary
- Plan sponsor
- Trustee
- Plan committee
- Investment advisor who is paid to give advice
- Parties interacting with participants
- Plan administrator (normally the plan sponsor)
- Board members

**FIDUCIARY RISK MANAGEMENT**

Every fiduciary has certain obligations. It is important that corporate officers, directors, and their retirement committee members:

- Clearly understand their fiduciary obligations
- Have the appropriate tools and resources necessary to perform their duties with integrity and competence
- Ensure they meet their responsibilities to participants in a prudent and objective manner

# C

## FIDUCIARY RESPONSIBILITIES

### POTENTIAL LIABILITIES AND PENALTIES

A fiduciary who breaches their responsibility can be found liable. Penalties may be imposed for up to six years after a fiduciary violation; or three years after the party bringing suit had knowledge of the breach.

- Restore lost profits plus 20% penalty
- Criminal penalties for willful violation
- Civil actions by participants
- Removal as fiduciary
- Loss of personal assets, home, and business

# C

## OVERVIEW OF FIDUCIARY DUTIES

- I. Duty to be prudent
- II. Duty of loyalty and impartiality
- III. Duty to diversify
- IV. Duty to monitor and supervise
- V. Duty to ensure reasonable plan costs
- VI. Duty to avoid prohibited transactions



# C

## I. DUTY TO BE PRUDENT

### DUTY TO BE PRUDENT

Fiduciary liability is not determined by investment performance, but rather by whether prudent investment practices were followed.

### ERISA 404 (a)(i)(B)—Prudent Expert Rule

“A fiduciary shall discharge his duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims.”

## I. DUTY TO BE PRUDENT

### BE “PROCEDURALLY” PRUDENT

- Follow a prudent process and document decisions
- Retain qualified service providers to ensure that the “knowledgeable prudent expert” standard is met
- Remember that pleading ignorance, bad communication, or inexperience will not be an adequate defense

## II. DUTY OF LOYALTY AND IMPARTIALITY

### DUTY OF LOYALTY AND IMPARTIALITY

- Fiduciaries must ensure that all decisions are made based solely and exclusively on the interests of plan participants and beneficiaries
- Corporate officers, committee members, and directors must make every effort to avoid conflicts of interest

## II. DUTY OF LOYALTY AND IMPARTIALITY

### FOLLOW THE PLAN DOCUMENT

- Plan fiduciaries should understand how their plan works, review it periodically with their third-party providers, and ensure that they remain current
- Plan documents must be updated to reflect changes in the law
- Plan documents must also be updated to reflect changes that occur within the company
- Plan documents identify the named fiduciary and their roles and responsibilities

### III. DUTY TO DIVERSIFY

#### DUTY TO DIVERSIFY

- Fiduciaries are required to diversify plan investments, so as to minimize risk of large losses
- For defined contribution plans, the plan should be sufficiently diversified to afford participants the opportunity to manage risk. For defined benefit plans, risk of individual investments should be viewed in the total plan context
- Each plan option should be considered as part of the whole plan portfolio
- When a fiduciary “failure to diversify” is established, the burden of proof falls on the fiduciary to show that it was “clearly prudent” not to diversify
- Prudence must be evaluated at the time of the investment—without benefit of hindsight

#### IV. DUTY TO MONITOR AND SUPERVISE

##### MONITOR AND SUPERVISE

- Evaluate managers at least quarterly:
  - How did the manager perform against the appropriate benchmark?
  - How did the manager perform relative to the appropriate peer group?
  - Were there any changes to the manager's style or organization?
- Evaluate services provided to determine if fiduciary investment advice is following the impartial conduct and best interest standards
- Evaluate your service providers every few years

#### IV. DUTY TO MONITOR AND SUPERVISE

##### INVESTMENT POLICY STATEMENT “IPS”

- Is the first step in ERISA conformity
- Provides a working framework for trustees and advisors
- Sets asset classes and guidelines for making investment decisions
- Establishes a basis for effective communication with investment managers
- Should establish measurable criteria

**IV. DUTY TO MONITOR AND SUPERVISE****IDENTIFY OTHER FIDUCIARIES**

- Document all parties who are fiduciaries
- Committee charter or by-laws
- Fiduciaries are responsible for the actions of one another
- Fiduciary bonding requirement
- Fiduciary liability insurance



## V. DUTY TO ENSURE REASONABLE PLAN COSTS

### DUTY TO ENSURE REASONABLE PLAN COSTS

- Analyze and document total plan costs
- Compare plan costs to the market for similar plans every 2-3 years
- Understand the use of revenue sharing arrangements on your plan costs
- A fiduciary is required to know how much they are paying; they are not required to have the least expensive plan
- DOL has targeted fees as a primary audit item

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## VI. DUTY TO AVOID PROHIBITED TRANSACTIONS

### PROHIBITED TRANSACTIONS

A fiduciary has a responsibility to act in the sole interest of plan participants and should avoid any decision or transaction that directly or indirectly:

- Benefits the plan sponsor (e.g. related bank lending arrangements or inappropriate use of company stock)
- Selects plan products or services on a preferential basis with a related party-in-interest

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## VI. DUTY TO AVOID PROHIBITED TRANSACTIONS

### POTENTIAL PROHIBITED TRANSACTIONS

#### Self-Dealing

In your capacity as a plan fiduciary, you cannot deal with the plan's assets for your own benefit.

Example: an individual has an ownership stake in two separate businesses. The individual lends money from one company's retirement plan to the other company to use for operating that business.

#### Conflict of Interest

In your capacity as a plan fiduciary, when dealing on behalf of the plan you cannot represent or act on behalf of anyone who has adverse interests to the interests of the plan.

Example: a plan has an investment in real estate. The plan fiduciary sells the real estate to his brother at a cost less than what the market would have paid for the same piece of real estate.

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## VI. DUTY TO AVOID PROHIBITED TRANSACTIONS

### POTENTIAL PROHIBITED TRANSACTIONS

#### Anti-Kickback Rule

As a plan fiduciary, you cannot get payment or benefit from anyone in connection with a plan transaction.

Example: a plan fiduciary hires an accounting firm for recordkeeping services in return for getting their personal income taxes done for free. This is a prohibited transaction.

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## DOL TIPS FOR EMPLOYERS

- Identify all plan fiduciaries and be clear about the extent of their responsibilities (get it in writing that a party is a fiduciary where it is appropriate)
- Provide sufficient information to participants who have the right to exercise control over their retirement investments
- Be aware of when participant deposits are scheduled to be made, and confirm that the schedule meets the DOL requirements

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## DOL TIPS FOR EMPLOYERS

- When hiring third parties, look at a number of them, provide the same information to each, and consider if fees are reasonable for the services you are receiving
- Document the process used to hire a provider
- Be prepared to monitor those groups you hire
- Know who a party-in-interest is and be conscious of any payment they may be receiving
- Review plan documents regularly
- Check fidelity bonding

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## ADDITIONAL RECOMMENDATIONS

- Maintain adequate fiduciary liability insurance for plan fiduciaries. The amount of coverage will relate directly to the size of your plan assets
- Develop a committee charter for your retirement plan committee
- Define roles and responsibilities for each of the plan fiduciaries
- Review all plan contracts
- Document all plan decisions regularly

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