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Argent

Beware: Dangers Lurking In The Retirement Plan Waters

Presented by Chris Shankle

Argent | Chris W. Shankle, CPA, CGMA

- Chris is an Investment Advisor Representative and senior manager of Argent Retirement Plan Advisors, which is a Registered Investment Advisor. He has over 30 years of experience of providing tax and retirement solutions to his clients across the South
- He works with sponsors of plans of a variety of sizes and types attend to the fiduciary obligations and plan governance issues. This includes vendor monitoring and selection (including RFPs), investment analysis and selection, target date reviews, plan design considerations, fiduciary education, participant engagement and fee benchmarking.
- Chris is a graduate of the University of Mississippi (Ole Miss) School of Accounting and is a licensed CPA. In addition, he is a member of the AICPA and Louisiana and Mississippi CPA societies where he frequently volunteers and ASPPA.
- Currently he serves on the AICPA Employee Benefits Technical Resource Panel and is the AICPA liaison to the American Bar Association – Joint Committee on Employee Benefits. On a state level, he also serves on the LCPA's Members in Industry and Human Resources Committees
- From 2014 to 2017 he was appointed by the U.S. Treasury to serve on the IRS Advisory Committee on Tax Exempt and Government Entities.



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In our discussion today, we'll be covering the following topics:

- **Secure Act 2.0**
- **Required Minimum Distributions - 401(a)(9)**
- **Rollovers From Qualified Plans and IRAs - DOL PTE 2020-02**
- **Developing Issues**



Secure Act 2.0

The Consolidated Appropriations Act passed by Congress in December and signed into Law by the President in the last days of 2022 contain provisions from 3 bills that had been working their way through the process. The largest of these was commonly referred to as Secure 2.0 and the retirement portion of this package is still referred to by this moniker.

For many of these provisions, we need to see the regulations and other guidance from regulators before we have a full picture of the compliance landscape.

What comes next is an overview of some of the more impactful (more interesting to you) provisions.

Effective with signing of the act

- Increase in age for required minimum distributions (RMD)

RBD is April 1 after year in which participant reaches	Applies to non-5% owners born	Relevant law
Later of age 70-1/2 or retirement*	Before July 1, 1949	SBJPA
Later of age 72 or retirement*	On or after July 1, 1949	SECURE 1.0
Later of age 73 or retirement*	On or after Jan. 1, 1951	SECURE 2.0
Later of age 75 or retirement*	On or after Jan. 1, 1959**	SECURE 2.0

* If plan doesn't delay RMDs until after retirement, RBD is April 1 of year after participant reaches applicable age.

** Date is subject to future technical correction.

ALERT: *A participant born in 1959 will turn 73 in 2032 (i.e., before Jan. 1, 2033, with an RBD of 73) and will turn 74 in 2033 (i.e., after Dec. 31, 2032, with an RBD of 75)*

- Startup Credit for Small Employers –
 - Increases the 3-year startup credit from 50% to 100% of administration (\$5,000 max)
 - Full credit for employers with 50 or less, phased out for 51 – 100.

Effective with signing of the act

- Pooled Employer Plan (PEP) & Multiple Employer Plan (MEP)
 - Small Employer Startup Credit made available for employers joining a MEP or PEP retroactively for tax years beginning after 12/31/19 (111)
 - PEP may designate a named fiduciary (other than employer) to collect contributions to the plan. (105)
 - 401(b) plans are now allowed to participate in MEPs and PEPs.(106)
 - Clarified that group plans need audit at 100 participants or more (345)
- Employers may offer de minimis financial incentives (low-dollar gift cards, trinkets, etc.) to boost participation in a retirement plan. (113)
 - Can not be paid with plan assets
- Plan Overpayments – plan fiduciaries have the discretion to decide not to recoup overpayments to retirees. (301)

Effective with signing of the act

- Excise Tax on Failed RMD – penalty tax on RMD distributions not taken drops from 50% to 25%. For IRAs, if corrected in a timely manner drops further to 10%. (302)
- Expansion of IRSs Employee Plans Compliance Resolution System (305)
 - EPCRS to allow more types of errors through self-correction
 - Expands to IRA errors
- Qualified Birth or Adoption Distributions (QBADs) (311)
 - Original SECURE Act allowed distribution for purpose without invoking 72(t) 10% penalty. These distributions could be repaid at any time and treated as a rollover.
 - Recontribution period is restricted to 3 years from date of distribution.
 - Distributions from prior years must be repaid by Jan 1, 2026

Effective with signing of the act

- Employer may rely on Employee Certification for Hardship Distributions
 - Employees may self-certify that they have had an event that constitutes a hardship.
 - Employers would not be required to get and retain evidentiary material
- IRAs involved in a prohibited transaction (322)
 - Clarifies that where an individual has multiple IRAs, only the IRA containing or with respect to the prohibited transaction is disqualified.
- Distributions for Individuals With Terminal Illness (326)
 - The 72(t) 10% penalty is excepted for terminally ill individuals
 - Self-certification of terminal illness is NOT allowed

Effective with signing of the act

- Treatment of Employer Contributions as Roth (604)
 - Allows DC plans to provide participants with the option of receiving employer contributions on a Roth basis.

Argent | Key Provisions of the Retirement Provisions

Effective Plan Years After December 31, 2022

- Increase in age for required minimum distributions (RMD) (107)

RBD is April 1 after year in which participant reaches	Applies to non-5% owners born	Relevant law
Later of age 70-1/2 or retirement*	Before July 1, 1949	SBJPA
Later of age 72 or retirement*	On or after July 1, 1949	SECURE 1.0
Later of age 73 or retirement*	On or after Jan. 1, 1951	SECURE 2.0
Later of age 75 or retirement*	On or after Jan. 1, 1959**	SECURE 2.0

* If plan doesn't delay RMDs until after retirement, RBD is April 1 of year after participant reaches applicable age.

** Date is subject to future technical correction.

- **ALERT:** A participant born in 1959 will turn 73 in 2032 (i.e., before Jan. 1, 2033, with an RBD of 73) and will turn 74 in 2033 (i.e., after Dec. 31, 2032, with an RBD of 75)

Effective Plan Years After December 31, 2022

- Elimination of Requirements for Unenrolled Participants. (320)
 - Notices are no longer required for participants electing not to participate in the plan.
 - An annual reminder notice of eligibility is required for these participants along with any otherwise required document requested by the participant.

Effective Plan Years After December 31, 2023

- Indexing IRA Catch-up Limit (108) – allows for indexing of the IRA catch-up for the first time.
- Student Loan Payments Treated As Deferrals for Match (110)
 - Employers are permitted to make matching contributions (401(k), 403(b) & SIMPLE plans) with respect to qualified student loan payments
 - Qualified student loan payments is any indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee
 - The matching contributions must be:
 - Available to all participants eligible to receive a match;
 - Matched at the same rate as elective deferrals;
 - Subject to the same vesting schedule.

Effective Plan Years After December 31, 2023

- Withdrawals for Emergency Expenses – withdrawal excepted from the 72(t) 10% penalty for emergency expenses for unforeseen immediate financial needs for family.
 - One distribution per year up to \$1,000
 - May be repaid within 3 years
 - No further distribution available during 3 years unless repayment occurs.
- SIMPLE Plan – allows a flexible contribution in addition to 2% non-elective or 3% match.
 - Must be made in a uniform manner and can not exceed 10% of employee comp or \$5,000 (indexed) (116)
 - Contribution limits for SIMPLE plans changed (117)
 - SIMPLE deferral and catch-up increased by 10%
 - Employers with 26 to 100 employees could provide higher deferral limits if the employer increased contributions to 3% non-elective or 4% match.

Effective Plan Years After December 31, 2023

- Automatic Portability – employers are permitted to “force out” balances under \$5,000 and amounts over \$1,000 should be distributed to a default IRA.
 - Service providers can provide employer plans with default portability services. (120)
 - Mandatory distribution amount increased from \$5,000 to \$7,000 (304)
- Starter 401(k) – Employers with no retirement plan may offer this new plan (121)
 - Auto enrollment of participants between 3 – 15% deferral rate
 - Contribution limit is the same as IRAs (\$6,000 w/ \$1,000 catch-up)
- Emergency Savings Account – creates a separate source within the plan for emergency
 - Contributions up to \$2,500 and treated as Roth Deferrals (eligible for match)
 - Distributions treated as qualified Roth distribution and not taxable.
 - Eligible for rollover to a Roth IRA or other plan at termination
 - Employers may automatically enroll employees at up to 3% of pay.

Effective Plan Years After December 31, 2023

- Top-Heavy for DC Plans Covering Excludable Employees – On top of other DC non-discrimination tests, plans must address Top-Heavy which is a hold over from when DB ruled the retirement plan world. (310)
 - Plans that are top-heavy are required to provide a 3% nonelective contribution .
 - 401(k)/(m) testing may be done separately for excludable employees but not top heavy.
 - Allows similar treatment to separately test excludable employees for top heavy.
- Withdrawal for Domestic Abuse (314)
 - Participants may self-certify to domestic abuse and withdraw the lesser of \$10,000 (indexed) of 50% of account balance.
 - Not subject to 72(t) 10% penalty
 - Participants may repay the withdrawal over 3 years and refunded income tax on money repaid.

Effective Plan Years After December 31, 2023

- Roth Plan RMD (325)
 - Required minimum distributions are not required of Roth IRAs but Roth accounts that are a part of a qualified plan have been subject to RMD rules
 - Pre-death required minimum distributions for Roth accounts in employer plans is removed.
- Surviving Spouse Election to be treated as Employee (327)
 - Allows a surviving spouse to be treated as the deceased employee for purposes of RMD rules. (claim as their own)
- Mid-year Replacement of SIMPLE plans with Safe Harbor 401(k)
 - Allows the replacement of a SIMPLE plan with Safe Harbor 401(k) or other plan requiring mandatory employer contributions during the year.

Effective Plan Years After December 31, 2024

- Higher Catch-Up Limit
 - Current catch-up limit for those that have attained age 50 is \$7,500 (or \$3,500 for SIMPLE plan)
 - For individuals who have attained age 60, 61, 62 and 63, the limit is increased to the greater of \$10,000 (\$5,000 for SIMPLE) or 50% more than the regular catch-up amount in 2025.
 - Indexed for inflation after 2025

Effective Plan Years After December 31, 2024

- Auto-enroll / auto-increase required for new 401(k) and 403(b) plans (101)
 - Effective plan years after December 31, 2024
 - Exempts: grandfathered plans prior to this date; church and governmental plans, new businesses (< 3-years), employers with 10 or fewer employees.
- Long-Term Part-Time Employees – SECURE in 2019 required plans be offered to part time employees who work at least 500 hours per year for 3 consecutive years.
 - The term is reduced from 3 to 2 years and coverage is extended to 403(b) and any ERISA plan. (125)
- Department of Labor is directed to create a national lost-and-found database of benefits. (303)
- The Treasury and DOL are directed to amend regulations to permit consolidation of required plan notices (341)

Effective Plan Years After December 31, 2024

- Long-Term Part-Time Employees – SECURE in 2019 required plans be offered to part time employees who work at least 500 hours per year for 3 consecutive years.
 - The term is reduced from 3 to 2 years and coverage is extended to 403(b) and any ERISA plan. (125)
 - **NOTE:** *Measurement period began 1/1/2023*
- Department of Labor is directed to create a national lost-and-found database of benefits. (303)
- The Treasury and DOL are directed to amend regulations to permit consolidation of required plan notices (341)

Expanding participant coverage and increasing retirement savings:

- Increased catch-up limits
 - Increases catch-up contributions to the greater of \$10,000 or 50% more than the age 50 catch-up amount for participants age 60 – 63
 - Effective after December 31, 2024
 - **ALERT:** *Drafting error eliminates catch-up contributions in 2024!!! (sec 603)*

Effective Plan Years After December 31, 2025

- Requirement for Paper Statements – required plans to distribute paper statements on occasion. (338)
 - For DC plans, unless a participant elects otherwise, at least annually
 - For DB plans, unless a participant elects otherwise, at least once every 3 years.
 - For plans relying on the 2002 electronic delivery safe harbors, an initial notice is added for those becoming eligible after Jan 1 2026.
 - DOL to update regulations on correspondence by Dec 31, 2024

Effective Plan Years After December 31, 2026

- Saver's Match – (103)
 - Repeals and replaces the credit for IRA and retirement plan contributions (50% of contribution up to \$2,000 per individual 41-71MFJ)
 - Tax refund credit is will be replaced with a federal matching contribution deposited to the taxpayer's IRA or retirement plan



Required Minimum Distributions

Secure Act of 2019 impact on Required Minimum Distributions.

- Changed the age at which RMDs Begin from 70½ to 72.
- Eliminated the age limit (was 70½) for making an IRA contribution.
- Eliminated the Lifetime Distribution for all but Eligible Designated Beneficiaries
 - Minor Children (until majority is attained)
 - Disabled Persons
 - Chronically Ill
 - Not more than 10 years younger
 - Spouses
 - Certain Trusts (look through provisions – where beneficiary is one of the above)

Argent | Required Minimum Distributions (2019 Secure Act)

BENEFICIARY

Eligible Designated Beneficiary (Stretch Still Applies)

- Minor Children *
- Disabled Persons
- Chronically Ill
- Not More Than 10-years Younger
- Spouses
- Certain Trusts**

Designated Beneficiary (10-Year Rule)

- Non-Spouses
- Certain Trusts**

Non-Designated Beneficiary (5-Year Rule)

- Charities
- Your Estate
- Generally, any designation without a life expectancy.
- Certain Trusts**

* Until the minor reaches the age of majority

** Where the trust beneficiary is one of the above

Surprising Language impacting 401(a)(9)(H) – RMDs after owner’s death

- Generally under 401(a)(9)(H), distributions are required to be made within 10 years of the death of the employee / IRA owner.
- The rules governing distributions after death are contained in two separate locations in the proposed regulations, which parallel the organization of the rules in the current final regulations
 - § 1.401(a)(9)-3 provides rules applicable to determining RMDs in the case of the account owner’s death prior to the required beginning date (RBD)
 - § 1.401(a)(9)-5 contains rules applicable to determining the lifetime minimum distributions to an employee or IRA owner, and the RMDs after the death of the employee or IRA owner if death occurs after the RBD.
- At issue – the “at least as rapidly” interpretation in IRS’s Proposed Regulations

Practitioners didn't assume incorrectly. There is support for the position taken

- The statute added section 401(a)(9)(H) to the IRC, which modifies section 401(a)(9)(B)(ii) for defined contribution plans with respect to decedents who die after 12/31/2019. New section 401(a)(9)(H) functions as an overlay on top of section 401(a)(9)(B)
 - Section 401(a)(9)(H)(i) provides that except in the case of a beneficiary who is not a designated beneficiary, section 401(a)(9)(B)(ii) shall be applied by substituting “10 years” for “5 years.”
 - The distribution requirements of the 5-year rule mandate that the full distribution must be made at the end of the period and does not require annual distributions. Congress would have explicitly stated in the statute, if they had intended to change the operating requirements of the 5-year rule or 10-year rule, to require annual distributions.

Further support for the position taken

- The “at least as rapidly” rule has been rendered inoperative by section 401(a)(9)(H).
 - Section 401(a)(9)(H)(i)(II) states that subparagraph (B)(ii) (i.e., the 5-year rule that is changed to 10 years) “shall apply whether or not distributions of the employees’ interest have begun in accordance with subparagraph (A)” (i.e., whether or not the death occurred prior to the RBD or after).
 - Therefore, the 10-year rule also applies if death occurs after distributions have “begun.”
 - The language does not specifically indicate that the “at least as rapidly” rule continues to apply.
 - Therefore, the “at least as rapidly” rule does not apply, making the 10-year rule the only rule applicable.

What did Congress say

- The “at least as rapidly” rule is inconsistent with the 10-year rule. The “at least as rapidly” rule requires distributions to be made on an annual basis, while the 10-year rule does not. Since the language of the statute states that the 10-year rule “shall apply” whether or not distributions have begun, Congress intended for the 10-year rule, and only the 10-year rule to apply.
- As to Congressional intent – Review legislative history of the SECURE Act in House Report 116-65 relative to section 401(a)(9):

“Under the provision, the five-year rule is expanded to become a 10-year period instead of five years (“the 10-year rule”), such that the 10-year rule is the general rule for distributions to designated beneficiaries after death (***regardless of whether the employee (or IRA owner) dies before, on, or after the required beginning date***) unless the designated beneficiary is an eligible beneficiary as defined in the provision. Thus, in the case of an ineligible beneficiary, distribution of the employee (or IRA owner’s) entire benefit is required to be distributed by the end of the tenth calendar year following the year of the employee or IRA owner’s death.” (Emphasis added.)

So, why was the “at least as rapidly” provision not removed by the act?

- The “at least as rapidly” rule was not removed entirely since Congress did not intend to change the rules for beneficiaries of defined benefit plans or for beneficiaries of decedents who die prior to January 1, 2020.

Nov 18, 2022 - Provides relief for taxpayers who did not take “at least as rapidly” distributions following the account owner’s death following the beginning of RMD.

- The notice reiterates IRS interpretation that distributions must continue “at least as rapidly” in the case of death following the attainment of RBD.
- A defined contribution plan that did not make the specified RMD will not be treated as having failed §401(a)(9) – a potentially disqualifying defect for a qualified plan.
- To the extent a taxpayer did not take a specified RMD, no excise tax is due.
- If a taxpayer paid an excise tax for missed specified RMD in 2021, a refund may be requested.

NOTE: The Notice stopped short of permitting Rollback of RMDs taken in 2021 and 2022.

SEE AICPA COMMENT LETTER [HERE](#)

So, it's 2023 and we still don't have clear direction...

- Status of Final Regulations?
 - Wrestle with interpretation
 - 2022 Secure 2.0 – added provisions and triage all of the needed guidance
- Notice 2022-53 only provided retroactive relief.
- Avenues Treasury is are considering
 - Could finalize 409(a) and issue separate regulations for 2022 Secure 2.0 provisions
 - Re-propose 409(a) incorporating the changes from 2022 Secure 2.0.
 - May see additional relief (like Notice 2022-53) for 2023 and even 2024
- What to do?
 - Delay RMDs implicated by the 10-year rule until later in the year.
 - Regulations are temporary – compliance is not required

Secure 2.0 and Required Minimum Distributions

- Achieved age 72 in 2022 or a prior year – follow the old rules
 - Those turning 72 in 2022 have a RMD starting date of 4/1/2023
 - If you were taking RMDs prior to 2022, continue taking them on the same schedule
- Those achieving age 72 in 2023 (to 2033) have age 73 as their RMD trigger age.
 - The first RMD is due by 4/1 of the year after they turn 73.
- Those born in 1960 or later has age 75 as their trigger age.
- RMD Penalties Reduced
 - From the old 50% to 25%
 - Can be lowered to 10% if fixed in a timely manner
 - Generally, if distributed in full in the 2nd year after it was missed, or
 - Before the IRS assesses a penalty.

Secure 2.0 RMD Reporting following Secure 2.0

- Notice 2023-23 Relief from Reporting Required Minimum Distributions for 2023
 - For taxpayers who have an RMD for 2023
 - A 5498 must be issued by 5/31/23 and Box 11 is checked indicating an RMD is required for 2023. Further details in Boxes 12a&b (RMD date and amount)
 - Must furnish a statement to the taxpayer by 1/31/23 notifying of the RMD and the date it should be distributed and the amount (or offer to calculate)
 - For taxpayers turning 72 in 2023
 - A 5498 should not have Box 11 checked nor any entries in Boxes 12a & b.
 - A statement should not be sent to the taxpayer notifying them of their RMD.
 - If a statement is issued, notice provides relief if the taxpayer is provided a notice that no RMD is required for 2023 by 4/28/23.

Rollovers from Qualified Plans and IRAs

DOL PROHIBITED TRANSACTION EXEMPTION 2020-02



Fiduciary & Best Interest Standards

Department of Labor
PTE 2020-02
App: FI & Inv Prof.

SEC
Reg BI
App: BDs/BD reps

SEC Advisers Act
Latest Interpretation
App: IAs/IA supervised
persons

NAIC Annuities Model
App: Insurers & Agents

MA State
Fiduciary Rule
App: BDs/BD reps

PTE 2020-02 Overview (7/7/2020)

“Everything old is new again” – Jonathan Swift

- 5-Part Test from DOL Regulations reinstated
 - Preamble provided a re-interpretation of old 5-part rule
 - CFR Interpretive Bulletin 96-1 (Education)
- What it does:
 - Provides prohibited transaction relief to Financial Institutions & Investment Professionals for receipt of compensation subject to conditions...
 - Aligns the exemption with other regulations, namely the SECs Reg Best Interest, through the Impartial Conduct Standards component

DOL Regulations 5-Part Test

- Original 5-Part Test
 1. Providing advice or recommendations on securities for a fee
 2. On a regular basis
 3. Pursuant to mutual understanding
 4. Advice serves as a primary basis for investment decision and
 5. Advice is individualized.
- Updated Preamble Interpretation
 - Regular basis - “broadly describes a relationship where advice is recurring, non-sporadic, and expected to continue.”
 - “Sporadic” interactions would not satisfy the regular basis prong
 - One time sales transactions – “assisting with a rollover”
 - “can make clear in their communications that they do not intend to enter into an ongoing relationship”

PTE 2020-02 Transaction Relief

- Prohibited Transaction Class Exemption permits FI & IP (and affiliates) to receive “reasonable compensation” in a transaction involving fiduciary investment advice.
 - Specifically defines this advice as transactions involving both rollover advice and how to invest assets within a plan or IRA.
- All compensation, direct or indirect, is covered:
 - Commissions, 12b-1 fees and revenue sharing
 - Any compensation or incremental fee as a result of investment or rollover advice
 - Mark-up, mark-down and riskless principal transactions and other covered principal transactions
- Transaction relief covers compensation for advice to:
 - Acquire, hold, dispose of, or exchange securities or other investments; or
 - Take a distribution from or roll over the assets to or from a qualified plan or IRA.

Conditions of 2020-02

- Impartial Conduct Standards -
 - Best Interest advice
 - Reasonable compensation
 - No misleading statements
- Disclosure
 - ERISA fiduciary status acknowledgement
 - Conflicts of interest
 - Fees and rollover recommendation factors
- Policies & Procedures
 - Recordkeeping & review (sampling)
- Self-correction

Impartial Conduct Standard – 3 Component Standards

- Best Interest Standard
 - Prudence – advice & judgement as a knowledgeable and impartial professional
 - Loyalty – undivided and with the client’s interest first
- Reasonable Compensation Standard
 - Charge no more than reasonable fee
 - Comply with securities laws regarding best execution
- Prohibits Misleading Statements – includes statements about:
 - Recommended transaction;
 - Other relevant matters (fees, compensation, etc.)
 - Material conflicts of interest or other facts that might impact the decision

Required Disclosures under 2020-02

- Fiduciary Acknowledgement – must acknowledge in writing that the FI and FP are fiduciaries with respect to any fiduciary investment advice (ERISA for QRP; Tax for IRAs)
- Written Disclosures – the investor must be provided with the following:
 - Written description of services
 - FI's and IP's material conflicts
 - Documentation of specific reasons for rollover recommendations and factors to consider

Fiduciary acknowledgement

Example, in a rollover context, the financial institution would need to gather and consider:

1. information about the investments, costs and services in the plan;
2. information about the investments, services and costs in the available IRA;
3. information about the needs and circumstances of the participant.

The best interest standard then requires that the information be evaluated at the level of a person knowledgeable about the relevant issues (e.g., plans, IRAs, retirement investing, etc.) and the resulting recommendation would need to be in the best interest of the retirement investor.

April 2021 FAQs – Factors to Disclose and Document

- Qualified Plan to IRA
 - Alternatives to rollover, including leaving money in the plan;
 - Comparison of fees and expenses of both the qualified plan and IRA
 - Whether the plan sponsor partially or fully pas the administrative expenses
 - Different levels of services and investments offered under plan and IRA
- IRS to IRA (commission-based to fee-based, or vice versa)
 - Differences in services provided
 - Long-term impact of the fee differences
 - Appropriateness of rollover, notwithstanding costs
 - Impact of economically significant features (surrender schedules, index annuity cap, participation rates)

Policies and Procedures Requirement

- FIs must establish, maintain and enforce written policies and procedures prudently designed to ensure compliance with Impartial Conduct Standard
 - Mitigate conflicts of interest to a reasonableness standard that incentives are not created for FI or IP to place their interests ahead of the investor;
 - Document specific reasons that any recommendation is in the best interest of the investor.

Retrospective Review Requirement

- FIs must conduct an annual review for PTE 2020-02 compliance
- Goals (similar to FINRA requirement)
 - Reasonably designed to assist with detection and prevention of violations of, as well as compliance of, the Impartial Conduct Standard and policies and procedures;
 - Methodology and results must be captured in writing;
 - Report provided to and reviewed by senior executive , who must make certifications
- Report must be made available to DOL within 10-business days upon request

Current Status

- American Securities Assn vs. Department of Labor (M.D. Fla. Feb 13.2023)
 - Focused on April 2021 FAQs – (#7 – regular basis; and #15 – specific reasons) – Argued that FAQ-7 unlawfully enlarged “the circumstances in which an investment advisor is subject to fiduciary duties”, thus further subjecting them to increased and expensive documentation requirements of FAQ-15, which is undue and burdensome.
 - FAQ-7 was determined to sweep conduct into purview that would not otherwise trigger fiduciary obligations and was vacated.
 - If an advisor isn’t a fiduciary, then a rollover recommendation won’t be a prohibited transaction and 2020-02 and the FAQ-15 process won’t be needed.
 - NOT SO FAST: they’ll likely just eliminate the “regular basis” language
- Fiduciary ~~2~~ ~~3~~ 4.0
 - The focus has been and will continue to be rollovers.
 - Likely that any recommendation to an ERISA plan or participant will be fiduciary.
 - Will increase the number of conflicted recommendations needing PTE.



| Other Developing Issues

As Goober said – *“Surprise, surprise, surprise!”*

Anti-Money Laundering Act of 2020

- Became law on January 1, 2021; Final regulations issued Sept 30, 2022
- Requires the reporting and disclosure of beneficial ownership of newly formed and existing business and other entities.
- Beneficial ownership is described as an individual who exercises substantial control over an entity or owns or controls at least 25% of the ownership interest.
- Reporting
 - For newly created or registered companies would be due to FinCEN within 14 days of creation or registration.
 - Existing entities would have one year from the effective date of regulations to report
 - Any changes in beneficial ownership are required to be reported within 30 days.
- The penalty for failure to report is \$500 per day plus potential criminal penalties.
- Effective date January 1, 2024

By the way.... CPAs work in Title 26 (US Tax Code); AMLA is Title 31 and practiced by Attorneys

Questions?

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Argent | Important Disclosure Information

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