

Should We Restate the Plan/ Get a Determination Letter?

- Rev. Proc. 2007-44
 - Cycle for plan restatements and requesting determination letters
 - Governmental plans are in cycle C but may elect cycle E
 - Current cycle E ends January 31, 2016



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2

Should We Restate the Plan/ Get a Determination Letter?

- Announcement 2015-19
 - Eliminate 5-year restatement cycle effective January 1, 2017
 - Limit scope of determination letters to initial qualification and termination
 - Current cycle E may be last opportunity for governmental plan to get a determination letter

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2015 Session of Missouri General Assembly

- ***Continuing Trustee Education*** H.B. 326
 - The only bill applicable to all pension plans that was approved by the General Assembly
 - “Each **defined benefit** plan shall, in conjunction with its staff and advisors, establish a board member education program....”



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4

2015 Session of Missouri General Assembly

- **Continuing Trustee Education** H.B. 326 cont'd
 - Would have changed RSMo Section 105.666 to apply only to board members of public defined benefit plans. In other words, Board members of public defined contribution plans would not be covered by Section 105.666.



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5

2015 Session of Missouri General Assembly

- **Continuing Trustee Education** H.B. 326 cont'd
 - Governor's veto: H.B. 326 would have inexplicably excluded board members of defined contribution plans from commonsense educational requirements.
 - "Board members have a responsibility to be educated in all areas relevant to their service."

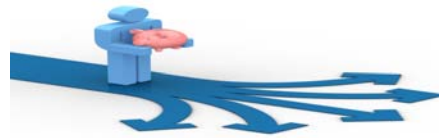


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6

Procurement Action Plan

- RSMo 105.702
 - All retirement plans defined under section 105.660 RSMo. shall develop a procurement action plan for utilization of minority and women money managers, brokers, and investment counselors. Such retirement systems shall report their progress annually to the joint committee on public employee retirement and the governor's minority advocacy commission.



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7

Trustee Fiduciary Responsibility

- **Trust Requirement** RSMo 105.662
 - The assets of public pension funds represent the deferred wages and future economic security of plan participants and shall not be commingled with any other funds of the political jurisdiction. All funds of the plan shall be placed in a trusteeship, and adequate reporting and disclosure requirements shall be established.

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Trustee Fiduciary Responsibility

No Self-Dealing RSMo 105.667

- 1. Any appointing authority, board member, or employee shall be prohibited from receiving any gain or profit from any funds or transaction of the plan, except benefits from interest in investments common to all members of the plan, if entitled thereto.

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Trustee Fiduciary Responsibility

No Bribes RSMo 105.667 cont'd

- 2. Any appointing authority, board member, or employee accepting any political contribution, gratuity, or compensation for the purpose of influencing his or her action with respect to the investment of the funds of the system shall thereby forfeit his or her office and in addition thereto be subject to the penalties prescribed for bribery.

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Trustee Fiduciary Responsibility

 **No Benefits to Plan-Related Felon** RSMo 105.667
cont'd

- 3. Any trustee, employee, or participant of a plan who pleads guilty to or is found guilty of a plan-related felony after August 28, 2007, that is determined by a court of law to have been directly committed in connection with the member's duties as either a trustee, employee, or participant of a plan shall not be eligible to receive any retirement benefits from the respective plan.

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Trustee Fiduciary Responsibility

 **No Benefits to Felons** RSMo 105.669

- 1. Any participant of a plan who is found guilty of a felony offense listed in subsection 3 of this section, which is committed in direct connection with or directly related to the participant's duties as an employee on or after the effective date of this section, shall not be eligible to receive any retirement benefits from the respective plan based on service rendered on or after the effective date of this section, except a participant may still request from the respective retirement system a refund of the participant's plan contributions, including interest credited to the participant's account.

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Trustee Fiduciary Responsibility

No Benefits to Felons RSMo 105.669 cont'd

- 2. Upon a finding of guilt, the court shall forward a notice of the court's finding to the appropriate retirement system in which the offender was a participant. The court shall also make a determination on the value of the money, property, or services involved in committing the offense. The plans shall take all actions necessary to implement the provisions of this section.

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Trustee Fiduciary Responsibility

No Benefits to Felons RSMo 105.669 cont'd

- 3. The finding of guilty for any of the following offenses or a substantially similar offense provided under federal law shall result in the ineligibility of retirement benefits as provided in subsection 1 of this section:
 - (1) The offense of felony stealing under section 570.030 when such offense involved money, property, or services valued at five thousand dollars or more as determined by the court;
 - (2) The offense of felony receiving stolen property under section 570.080 when such offense involved money, property, or services valued at five thousand dollars or more as determined by the court;

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Trustee Fiduciary Responsibility

No Benefits to Felons RSMo 105.669 cont'd

- 3. The finding of guilty for any of the following offenses or a substantially similar offense provided under federal law shall result in the ineligibility of retirement benefits as provided in subsection 1 of this section:
 - (3) The offense of forgery under section 570.090;
 - (4) The offense of felony counterfeiting under section 570.103;
 - (5) The offense of bribery of a public servant under section 576.010; or
 - (6) The offense of acceding to corruption under section 576.020.

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Trustee Fiduciary Responsibility

- **Selected Definitions** RSMo 105.687
- As used in sections 105.687 to 105.689, the following terms mean:
 - (2) "Invest" or "investment", utilization of money in the expectation of future returns in the form of income or capital gain;
 - (3) "Investment fiduciary", a person who either exercises any discretionary authority or control in the investment of a public employee retirement system's assets or who renders for a fee advice for a public employment retirement system;

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Trustee Fiduciary Responsibility

- ***Selected Definitions*** RSMo 105.687 cont'd
- As used in sections 105.687 to 105.689, the following terms mean:
 - (6) "System", a public employee retirement system established by the state or any political subdivision of the state;

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Trustee Fiduciary Responsibility

- ***Investment Fiduciaries*** RSMo 105.688
- The assets of a system may be invested, reinvested and managed by an investment fiduciary subject to the terms, conditions and limitations provided in sections 105.687 to 105.689. An investment fiduciary shall discharge his or her duties in the interest of the participants in the system and their beneficiaries and shall:
 - (1) Act with the same care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims;

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Trustee Fiduciary Responsibility

- **Investment Fiduciaries** RSMo 105.688 cont'd
 - (2) Act with due regard for the management, reputation, and stability of the issuer and the character of the particular investments being considered;
 - (3) Make investments for the purposes of providing benefits to participants and participants' beneficiaries, and of defraying reasonable expenses of investing the assets of the system;

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Trustee Fiduciary Responsibility

- **Investment Fiduciaries** RSMo 105.688 cont'd
 - (4) Give appropriate consideration to those facts and circumstances that the investment fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role of the investment or investment course of action plays in that portion of the system's investments for which the investment fiduciary has responsibility. For purposes of this subdivision, "appropriate consideration" shall include, but is not necessarily limited to a determination by the investment fiduciary that a particular investment or investment course of action is reasonably designed, ...

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Trustee Fiduciary Responsibility

- **Investment Fiduciaries** RSMo 105.688 cont'd
 - as part of the investments of the system, to further the purposes of the system, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment or investment course of action; and consideration of the following factors as they relate to the investment or investment course of action:
 - (a) The diversification of the investments of the system;
 - (b) The liquidity and current return of the investments of the system relative to the anticipated cash flow requirements of the system; and
 - (c) The projected return of the investments of the system relative to the funding objectives of the system;

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Trustee Fiduciary Responsibility

- **Investment Fiduciaries** RSMo 105.688 cont'd
 - (5) Give appropriate consideration to investments which would enhance the general welfare of this state and its citizens if those investments offer the safety and rate of return comparable to other investments available to the investment fiduciary at the time the investment decision is made.

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Trustee Fiduciary Responsibility

- **Foreign Investments** RSMo 105.689
 - Nothing in sections 105.687 to 105.689 shall prevent any investment fiduciary from making investments in any company which does business in any country with which the United States maintains diplomatic relations.

- **Prefer Missouri Providers** RSMo 105.690
 - When selection is made of a venture capital firm, a consultant or a fiduciary, preference must be given to a Missouri based company.

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Trustee Fiduciary Responsibility

- **Prudent Investor Act**
 - **New Trustee** RSMo 469.904
 - Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this act.

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Trustee Fiduciary Responsibility

- **Prudent Investor Act**
 - **Applicability to Retirement Funds** RSMo 469.913
 - The general assembly recognizes that persons, corporations, entities or state agencies who have responsibility for investing funds may be subject to a standard that is specifically set forth in other statutes. Under such circumstances, such persons, corporations, entities or state agencies shall comply with the standard of investment set forth in the other statute, and this act shall not modify or repeal that standard.

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Duty of Loyalty** RSMo 456.8-802
 - 1. A trustee shall administer the trust solely in the interests of the beneficiaries.
 - 2. Subject to the rights of persons dealing with or assisting the trustee as provided in section 456.10-1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Duty of Loyalty** RSMo 456.8-802 cont'd
 - (1) the transaction was authorized by the terms of the trust;
 - (2) the transaction was approved by the court;
 - (3) the beneficiary did not commence a judicial proceeding within the time allowed by section 456.10-1005;
 - (4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 456.10-1009; or
 - (5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Duty of Loyalty** RSMo 456.8-802 cont'd
 - 3. A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:
 - (1) the trustee's spouse;
 - (2) the trustee's descendants, siblings, parents, or their spouses;
 - (3) an agent or attorney of the trustee; or
 - (4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Duty of Loyalty** RSMo 456.8-802 cont'd
 - 6. The following transactions are not presumed to be affected by a conflict between the trustee's personal and fiduciary interest provided that any investment made pursuant to the transaction complies with the Missouri prudent investor act.
 - (1) an investment by a trustee in securities of an investment company or investment trust, or in shares or interests in a partnership or limited liability company or other entity that operates as a privately offered investment fund, to which the trustee, or its affiliate, provides services in a capacity other than as trustee.

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Duty of Loyalty** RSMo 456.8-802 cont'd
 - 4. A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.
 - 5. A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Duty of Loyalty** RSMo 456.8-802 cont'd
 - (2) the placing of securities transactions by a trustee through a securities broker that is a part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee.

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Duty of Loyalty** RSMo 456.8-802 cont'd
 - (3) in addition to the trustee's fees charged to the trust, the trustee, its affiliate, or associated entity may be compensated for any transaction or provision of services described in this subsection 6 or in subdivision (4), (5), or (6) of subsection 8 of this section; provided, however, that with respect to any investment in securities of an investment company or investment trust, or in shares or interests in a partnership or limited liability company or other entity that operates as a privately offered investment fund, to which the trustee or its affiliate provides investment advisory or investment management services or any services described in subdivision (5) of subsection 8 of this section, the trustee shall at least annually notify the persons entitled under section 456.8-813 to receive a copy of the trustee's annual report of the rate or method by which the compensation was determined.

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Duty of Loyalty** RSMo 456.8-802 cont'd
 - 7. In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Duty of Loyalty** RSMo 456.8-802 cont'd
 - 8. The following transactions, if fair to the beneficiaries, are not presumed to be affected by a conflict between personal and fiduciary interests and are not precluded by this section:
 - ✓ (1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;
 - ✓ (2) payment of reasonable compensation to the trustee;
 - ✓ (3) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Duty of Loyalty** RSMo 456.8-802 cont'd
 - ✓ (4) a deposit of trust money in a financial institution operated by the trustee or an affiliate;
 - ✓ (5) a delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee, provided that notice of any compensation paid pursuant to the delegation is given as provided in subdivision (3) of subsection 6 of this section; or
 - ✓ (6) any loan from the trustee or its affiliate.

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Duty of Loyalty** RSMo 456.8-802 cont'd
 - 9. The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.



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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Delegation RSMo 456.8-807**
 - 1. A trustee may delegate to an agent duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:
 - (1) selecting an agent;
 - (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
 - (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Delegation RSMo 456.8-807 cont'd**
 - 3. A trustee who complies with subsection 1 of this section is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.
 - 4. By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Attorney's fees** RSMo 456.10-1004
 - In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Statute of Limitations** RSMo 456.10-1005
 - 1. A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the last to occur of the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and the date the trustee informed the beneficiary of the time allowed for commencing a proceeding with respect to any potential claim adequately disclosed on the report.
 - 2. A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

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40

Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Statute of Limitations** RSMo 456.10-1005 cont'd
 - If subsection 1 of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within five years after the first to occur of:
 - (1) the removal, resignation, or death of the trustee;
 - (2) the termination of the beneficiary's interest in the trust; or
 - (3) the termination of the trust.

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Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Personal Liability of Trustee** RSMo 456.10-1010
 - 1. Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.
 - 2. A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

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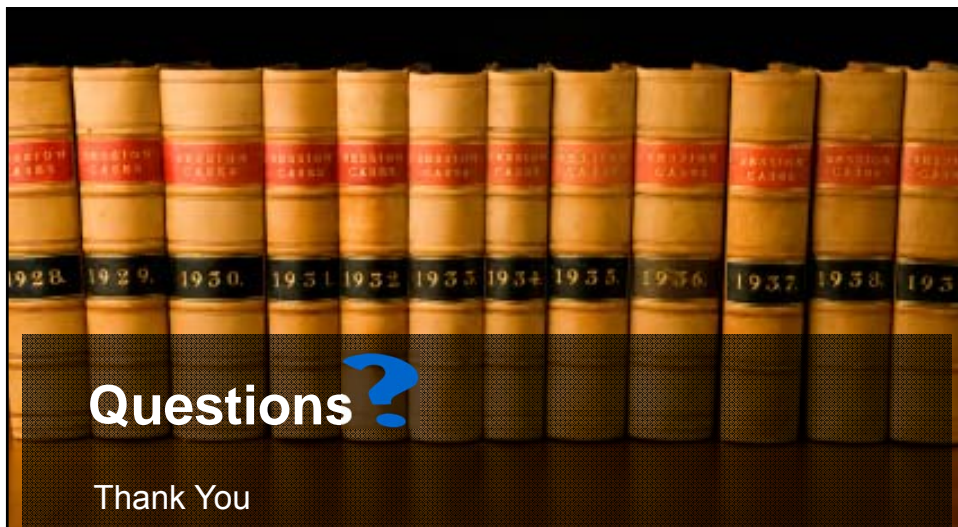
Trustee Fiduciary Responsibility



Missouri Uniform Trust Code

- **Personal Liability of Trustee** RSMo 456.10-1010 cont'd
 - 3. A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

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Questions?

Thank You

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