



ERISA FIDUCIARY ADVISORS

Timely Topics for Fiduciaries & Plan Sponsors

AUG 2015

In This Issue

[DOL Regulations - Part 1: Who is a Fiduciary?](#)

[Record Retention: What to Keep for How Long..](#)

[Have You Considered a Non-Qualified Plan Lately?](#)

DOL Regulations - Part 1: Who is a Fiduciary?

Recently, the DOL released its second attempt at redefining ERISA's definition of "fiduciary" for the era of participant-directed retirement savings. The new, proposed regulation is significantly different than ERISA's existing definition, broadening both the group of individuals and firms considered fiduciaries, as well as expanding the retirement savings vehicles covered by the new fiduciary standards to include IRAs. Advisers, consultants and brokers are most significantly impacted by the proposed regulation as drafted, but plan sponsors can also expect changes: advisers and consultants previously not considered fiduciaries to date may now become fiduciaries, and employee investment education programs may need to be revised. The regulation is in proposed form right now and may change before the time it becomes final. This article introduces a few of the changes most applicable to plan sponsors.



Who Is a Fiduciary? The New Definition

The proposed regulation provides that a person is a fiduciary if he or she provides certain types of advice to a plan, plan fiduciary, plan participant, beneficiary or IRA owner in exchange for a fee or other compensation, and the person (or an affiliate) either acknowledges fiduciary status or provides the advice pursuant to an agreement, arrangement or understanding that the advice is individualized to or that such advice is specifically directed to the advice recipient for consideration in making investment or management decisions with respect to securities or other property of the plan or IRA.

The four types of advice covered by the proposed regulation are the following:

1. A recommendation as to the advisability of acquiring, holding, disposing or exchanging securities or other property, including recommendations to receive a distribution of benefits or rollover assets from a plan or IRA;
2. A recommendation as to the management of securities or other property, including recommendations as to the management of assets to be rolled over or distributed from a plan or IRA;
3. An appraisal, fairness opinion or similar statement concerning the value of securities or other property provided in connection with a specific transaction that involves the plan or IRA; and
4. A recommendation of a person who will also receive a fee or other compensation for providing the types of advice described in items 1 through 3.

Plan sponsors can expect that advisers and consultants they work with who have not been considered a fiduciary in the past may be a fiduciary under the proposed regulation. For example, this new definition provides that a person who advises a plan one time will be considered a fiduciary with respect to such advice. In the past, the advice needed to be provided on an ongoing basis in order to be considered fiduciary advice. The recommendation of another adviser is now considered fiduciary advice under the proposed regulation. As a result, consultants and advisers may be required to enter into new agreements, revise the manner in which their fees are paid, or provide rigorous disclosures to plan fiduciaries. Also, advice to plan participants regarding distributions or rollovers from a plan and advice to IRA owners are now considered fiduciary advice.

Next month we will feature, DOL Regulations, Part II, which will cover who is NOT a fiduciary.

Record Retention: What to Keep for How Long

When it comes to plan-related document storage remember that your primary goal should be to preserve materials in a format allowing for quick and easy retrieval. It's appropriate to store plan records electronically whenever possible. Also, be sure to retain an executed copy (or countersigned copy, as applicable) of each record and not the unsigned original that may have been sent to you for signature. While most providers can provide reports and current plan documents, the plan administrator remains ultimately responsible for retaining adequate records that support the plan document reports and filings.

Documentation	Retention Requirement for Audit Purposes*
Plan Documents (including Basic Plan Document, Adoption Agreement, Amendments, Summary Plan Descriptions, and Summary of Material Modifications)	At least six years following plan termination
Annual Filings (including 5500, Summary Annual Reports, plan audits, distribution records and supporting materials for contributions and testing)	At least six years
Participant Records (including enrollment, beneficiary, and distribution forms; QDROs)	At least six years after the participant's termination
Loan Records	At least six years after the loan is paid off
Retirement / Investment Committee meeting materials and notes	At least six years following plan termination

****For litigation purposes, we recommend that documents be retained indefinitely.***

If you have questions, contact your plan consultant.

Have You Considered a Non-Qualified Plan Lately?

Tired of getting retirement plan refunds or not allowing your highly compensated employees to save enough for retirement? A non-qualified plan is not subject to the requirements of ERISA. As a result, these plans are designed to be discriminatory by favoring highly compensated employees and can accomplish three primary goals: 1) recruit, 2) retain, and 3) reward the key talent of the organization.

Not all non-qualified plans are created equal and are extremely flexible regarding cost, plan design, and investments. Regardless if you are a C-Corp, S-Corp, LLC, or LLP, your plan consultant can discuss the variety of non-qualified plans that make the most sense to help you accomplish your goals. In addition, if you do have a non-qualified plan, we can help evaluate your current plan to help ensure overall best practices. Our services range from investment analysis, plan design, funding analysis, employee communications, and more.

Contact your Plan Consultant for more Information

Thomas B. Bastin, JD, LLM, AIF, CEBS
CEO & General Counsel
tom@efadvisor.com

Brad L. Larsen, PRP, AIF
Executive Vice President / Shareholder
brad@efadvisor.com



Top
**Financial
Advisers**
2015



a proud member of



planadviser's 2015
TOP100
RETIREMENT PLAN ADVISERS

ERISA Fiduciary Advisors, Inc.
866-606-4015

1160 Birchwood Road
Weston, FL 33327

532 Colorado Avenue
Stuart, FL 34994

www.efadvisor.com

[Join Our Mailing List!](#)

Copyright © 2014. All Rights Reserved.

[Forward this email](#)



This email was sent to brad@efadvisor.com by brad@efadvisor.com | [Update Profile/Email Address](#) | Rapid removal with [SafeUnsubscribe™](#) | [About our service provider.](#)



Try it FREE today.

ERISA Fiduciary Advisors, Inc. | 532 Colorado Avenue | Stuart | FL | 34994