ERISA FIDUCIARY ADVISORS

Timely Topics for Fiduciaries & Plan Sponsors June 2015

In This Issue

Best Practices in Hardship Distributions

These days, many plans are experiencing an uptick in the number of participant requests for hardship distributions. Much of this increased activity may be attributed to our prolonged and tepid economic recovery.

As these requests are considered, you want to be sure not to act to the detriment of your plan. Improper handling of a hardship request can ultimately result in plan disqualification. It is important to understand what the law, and your plan document, allow so your actions do not result in unintended but impermissible hardship distributions.

First, the law requires that any hardship distribution can only be made due to a participant's immediate and heavy financial need.

The law does not permit a distribution in excess of the amount necessary to satisfy the need, which cannot be met by other resources reasonably available to the participant. Unless the plan has knowledge to the contrary, the regulations allow a plan to rely on the participant's written representation that the need cannot be reasonably relieved by insurance, liquidation of other assets, cessation of contributions, distributions, or non-taxable loans from employer plans of commercially available loans.

Also, assets available for distributions are limited to the participant's accumulated elective contributions, exclusive of earnings but reduced by losses.

If the plan allows hardship distributions, the plan document must specifically state so.

A few safe harbor provisions have been granted. A safe harbor set of guidelines for what qualifies as an immediate and heavy financial need can be incorporated into the plan document. Also, regulations provide for the availability of safe harbor provisions to be included in the plan document to aid in determining if the distribution may be deemed necessary as long as any other loan or distribution available under the plan has been exhausted and the participant is suspended for making elective contributions for at least six months.

There is also a requirement for documentation of the hardship request activity. This includes maintaining a copy of the participant's application with appropriate representations, as well as your determinations regarding: immediate and heavy need; availability of other resources; and appropriateness of the amount of distribution.

Take this opportunity to review your plan's hardship provision to make certain you are following procedures correctly. Remember, inconsistent, sloppy, or overly liberal distributions may result in significant issues for the plan.

Financial Financial Times Top 401 Advisors 2015

Congratulations to Thomas B. Bastin, JD, LLM, AIF, CEBS® **and Brad L. Larsen, PRP, AIF® of ERISA Financial Advisors, Inc. for being named in the inaugural 2015 Financial Times Top 401 Retirement Advisers!**

They join financial advisors from more than 40 states in being selected as one of the 401 top plan advisors. It's quite a group. The "average" advisor on the list has 18 years of experience advising DC plans, and manages a whopping $700 million in DC plan assets.

The **2015 Financial Times Top 401 Retirement Advisers** report was published on May 28th 32015. To access a PDF of the full list of the FT 401 advisors, please click here. You can also see the list of 401 advisors and the individual articles included in the 12-page report by visiting FT.com here.

Cindy L. Day becomes part of the EFA team

Cindy L. Day, CFP® joins ERISA Fiduciary Advisors, Inc. (EFA) as a Senior Financial Advisor. Cindy brings over two decades of Retirement Plan experience to the EFA team.

"Her focus will be on supporting existing EFA clients as we'll as developing her own Individual and Employer Sponsored Retirement Plan business. The addition of Cindy to our staff will add a significant level of experience and expertise in both the qualified retirement plan market as well as individual investment planning" according to Tom Bastin, Founder of ERISA Fiduciary Advisors, Inc.

Ms. Day has earned the Certified Financial Planner designation from the Certified Financial Planner Board of Standards, Inc. When it comes to ethics and professional responsibility, CFP® professionals are held to the highest of standards. They are obliged to uphold the principles of integrity, objectivity, competence, fairness, confidentiality, professionalism and diligence as outlined in CFP Board's *Code of Ethics*. The *Rules of Conduct* require CFP® professionals to put their client's interests ahead of their own at all times and to provide their financial planning services as a "fiduciary"- acting in the best interest of their financial planning clients.

According to Brad Larsen, EVP of ERISA Fiduciary Advisors, "I have known Cindy for 10+ years and have always admired her reputation and professionalism, we are very fortunate to add someone of her caliber to our team".

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

Cynthia L. Day, CFP
Senior Financial Advisor
cindy@efadvisor.com

ERISA Fiduciary Advisors, Inc.
866-606-4015

1160 Birchwood Road
Weston, FL 33327

532 Colorado Avenue
Stuart, FL 34994

www.efadvisor.com

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