

The Fiduciary Landscape Today

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Today

1. Who Is A Fiduciary
 2. Industry Models
 3. As The Trusted Business Advisor
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1. Who Is A Fiduciary

Named Fiduciaries (ERISA)

What This Means for the Plan Sponsor

Investments
Administration

Options - Not One Size Fits All

Outsourcing Options

Investments
3(21)
3(38)

Administration
3(16)

Outsourcing Options

ERISA SECTIONS 3(16), 3(21), AND 3(38) – HOW FAR DOES OUTSOURCING GO?

Often outsourcing is spoken of in terms of ERISA definitions –

- Under ERISA section 3(16), the plan's "administrator" must be "designated by the terms of the instrument under which the plan is operated." ERISA assigns certain duties to the administrator, such as filing the plan's annual report (Form 5500) and furnishing participants with the SPD. These duties may be "outsourced" by appropriately designating the outsourcing provider as the plan's administrator.
- ERISA section 3(21) gives the general definition of an ERISA "fiduciary." The definition includes (among others) consultants who render investment advice but do not make final investment decisions.
- ERISA section 3(38) defines an "investment manager" as a fiduciary who has "power to manage, acquire, or dispose of any asset of a plan" and who meets certain requirements – e.g., a 3(38) fiduciary must generally be a bank, an insurance company or a registered investment advisor. A 3(38) fiduciary can be appointed, for instance, to manage the selection, monitoring and, if necessary, replacement of a plan's fund managers.

Application Point:

Is Financial Advisor
A Fiduciary?

Is The CPA a Fiduciary?

Why The Controversy

Fiduciary landscape – DOL fiduciary rule

Trump Administration has ordered a review:

- ❖ DOL has delayed the "applicability date" for 60 days, until June 9, 2017
- ❖ Review pursuant to Executive Memorandum likely to take longer
- ❖ The current ("holdover") DOL's position appears to be that redefinition of "fiduciary" and the Impartial Conduct Standards described in the related exemptions will not be affected by the review
- ❖ The Trump Administration has described the rule as "a solution in search of a problem"

We will have to wait until new Secretary of Labor and head of EBSA are in place to get a sense of the Trump DOL's position on these issues

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Fiduciary landscape – DOL position on fees

More broadly: what will be the new (Trump) DOL's position on fees?

The Obama DOL regarded fees as *the* critical 401(k) policy issue

- ❖ First four years focused on two major fee disclosure regulations
- ❖ Last four years focused on fiduciary rule (which was largely about fees)

2 key questions:

- ❖ Will the Trump DOL continue this focus, or will it leave fee issues to the market?
- ❖ Will the Trump DOL change litigation policy or in any way involve itself in 401(k) fee litigation?

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A Fiduciary Isn't

A Fiduciary Isn't

- Applies to investment recommendations and distribution recommendations (only in retirement accounts not retail)
- Some things are not fiduciary actions
 - Decision to offer or not offer a plan
 - Upgrading Simple to 401(k) or CB
 - RFPs – "hire me"
 - General communications
 - Education (without recommendation)
 - RMD advice
 - Asset Allocation models
 - Platform provider exception
 - Proxy voting
- Best Interest Contract Exemption
 - Allows for compensation that is otherwise prohibited (**non-level fees**)
 - Applies to both plans and IRAs
 - Applies to rollovers **EVEN IF** the compensation will be higher
 - If there are no payments from a third party involved (12b-1, revenue sharing, bid concessions, seminars/education, etc.) then a streamlined version is available

A Fiduciary Is

2. Industry Models

Fit Matters

Good Better Best

Your Industry

Retirement Plan Industry

1. Turbo Tax

Automated – DIY
Payroll

2. H&R Block

1-800 call center
Investments & Plan Design Bundled

3. CPA/Accountant

Focused Expertise, Scaled to client needs
Third Party Consultant & Administrator

Good Better Best Applied

3. As The Trusted Business Advisor

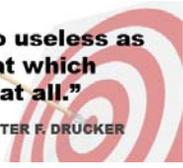
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Who is the client?

Which Plan?

“There is nothing so useless as doing efficiently that which should not be done at all.”

- PETER F. DRUCKER



2 Takeaways

Bill, Which plan for this client?



Repeatable Process

- ✓ Efficient for your practice
- ✓ Repeatable
- ✓ Create deductions for client?
- ✓ Ongoing support in future years?

Does This Repeatable Process Work
