

Retirement Plan Governance and Fiduciary Duties: The New Frontier

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AGENDA

- Process of initiating or replacing a current retirement plan
- Retirement plan choices
- Update on MEP Legislation
- Who creates the regulations?
- Processes to protect staff from fiduciary liabilities
 - 401(k) Committee
 - Appropriate Investments
 - Reasonable Fees
 - Insurances
- What are the penalties?



RESEARCH COMMITTEE

Due Diligence/RFP for Providers

- Experience and Expertise
- Information about their:
 - Services
 - Fees
 - Processes
- Contract terms
- Conflicts of interest



WHO ARE YOU HIRING?

- Record Keeper
- Administrators
- Investment Manager/Adviser
- Trustee/Directed Trustee



Create and Design Plan

- **Auto enroll**
 - 2013- 55%
 - 2015 - 62%
 - 2017 - 67%
- **Auto escalate**
- **How many loans**
- **Match percentage**
- **Entry dates**
- **Vesting methods**

Create...

Bundled vs. Un-Bundled Plans

Multi-Employer Plan

Multiple Employer Plan

PEP's

Group Trusts - ASAE

Brokerage Window

Multi-Employer vs. Multiple Employer

Multi-Employer

- All employers in the same industry
- Collectively bargained for design and benefits
- Managed as one entity
- Single 5500

Multiple Employer

- Unrelated employers with a nexus of commonality “Closed”
- Unrelated employers with no nexus of commonality “Open”
- Share administrative responsibilities
- Managed as one entity
- Separate 5500’s

PEP

- Pooled Employee Plan



81-100 Group Trust

- One trust for the investments
- Individual Plans
- Separate 5500's



Self-Directed Brokerage Window

- 10% Usage
- Legal Responsibility
- Limitations



MEP Update

- 
- 1) Professional employer organization
 - 2) Trade Group
 - 3) Open MEP's co-sponsored by unrelated employers

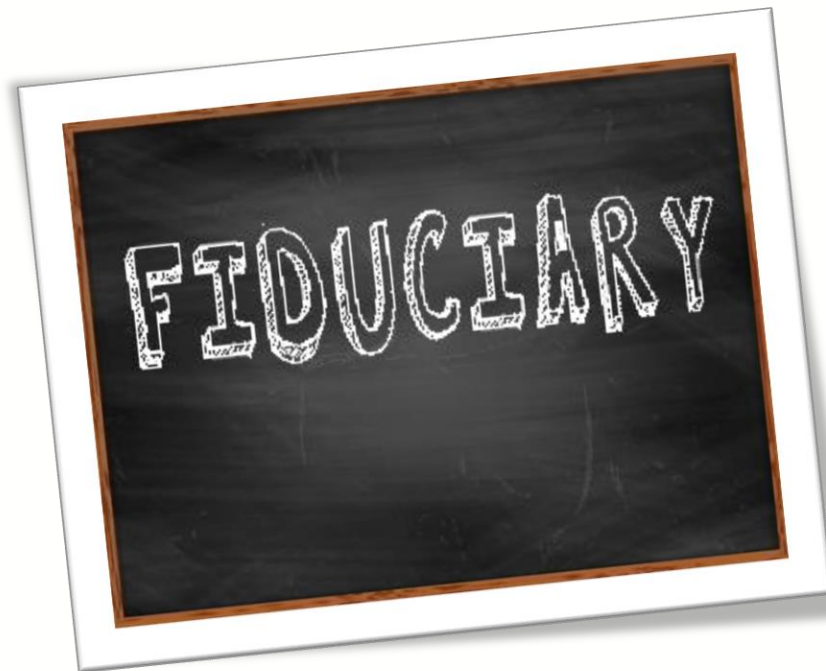
Retirement Enhancement and Savings Act “RESA”

- Modernizing the Tax Code required new disclosures
- Minimum Distribution Amounts
- One Bad Apple
- Issues

Who are the Regulators?



FIDUCIARY ROLES: HOW DO YOU PROTECT YOURSELF

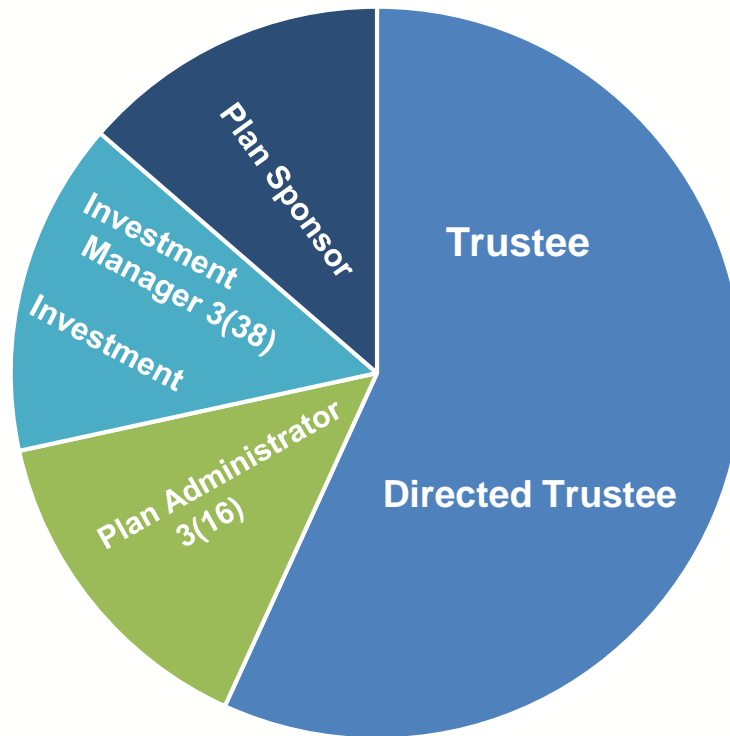


How Do You Become a Fiduciary?

1. Exercise any discretionary **authority or control** over management of a plan or assets
2. Rendering investment advice for a fee
3. Exercise any discretionary authority or responsibility in the administration of the plan



Who is a Fiduciary?



Fiduciary Duty

- **Prudence Standard.... Duty of Care**
 1. Reflects the care, skill, prudence & diligence
 2. Under the same circumstances
 3. That a prudent person
 4. Familiar with such matters
 5. Would use in the same situation
- **Loyalty Standard**
 1. Solely in the interest of participants
 2. Exclusive purpose of providing
 3. benefits and
 4. Paying reasonable expenses



WHAT DO YOU MEAN WE NEED A 401 (K) COMMITTEE?!



Employee Retirement Income Security Act “ERISA”



“Fiduciaries should review plan operations and investments as often as necessary and appropriate.”

Agenda



Agenda



Bipartisan Budget Act of 2018

- No longer need suspension after hardship withdrawal
- No longer need to take a loan before hardship approval
- Expanded asset sources available for hardship withdrawal
- Need to amend plans due to Act

Investments



Investment Offerings

- Provide participant-directed investments around 404(c)
- Set up default investments under DOL rules
 - Balanced Fund
 - Target Date Funds
 - Managed Accounts



Current State of Offerings

- 90% offer actively managed domestic funds
- 89% offer target date funds (85% in 2015 and 77% in 2013)
- 88% offer passively managed domestic funds
- 88% offer actively managed global funds
- 84% offer core bond
- 77% passively managed global/international equity
- 76% stable value/GIC
- 60% emerging markets
- 59% high yield bond
- 59% money market



Trending

1. 32% offer TIP
2. 15% offer socially responsible funds
3. 10% offer ETF's

Fees



Benchmarking

- Brightscope
- Fiduciary Benchmarks
- Consultants



Change in fee payment Source

- **Through the investment options:**
 - 2015 – 50% 2017 – 39%
- **Paid directly to the recordkeeper:**
 - 2015 – 41% 2017- 53%
- **Allocated fee credits back to participants:**
 - 2015 – 24% 2017 – 55%

Lastly:

- Review results of activities
- Discuss next actions
- Assign members of committee to follow up on issues



FIDUCIARY LIABILITY PENALTIES



- Department of Labor Investigation
 - 20% civil penalty
 - Criminal penalties for willful actions including jail time
 - Restore losses to the plan

Litigation



- **401(k) plans:**
 - Allianz – Settled - \$5M
 - New York Life – Settled - \$3M
 - Morgan Stanley – \$8B assets .
- **403(b) plans:**

MIT, NYU, Yale, Duke, Vanderbilt, JHU
- **JHU Class Action filed 8/11/16**

Insurance

- Fidelity Bond
- Fiduciary Insurance



Questions?



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