



PATTERSON SMITH ASSOCIATES, LLC

**We Design, Build and Manage Employee Benefit Programs**



## ***DOL EXAMINATIONS OF RETIREMENT PLANS & FIDUCIARY BEST PRACTICES***

Presented by:

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Patterson Smith Associates, LLC

# *Understand Your Role As a Fiduciary*

- Who is a Fiduciary?
- What are the Types of Fiduciaries?
- What are the Duties of a Fiduciary?
- What are the Triggers for a DOL Audit?
- 10 Steps Fiduciaries can Take to Manage Responsibilities and Risks

## *Who is a Fiduciary?*

ERISA says a person is a Fiduciary with respect to a plan to the extent that he/she:

**(i)** exercises any discretionary authority or control of the management of such plan;

**(ii)** renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority of such plan, or has any authority or responsibility to do so or,

**(iii)** has any discretionary authority or responsibility in the administration of such a plan.

# *Types of Fiduciaries*

- Anyone who exercises discretion or control with regard to the management or administration of the plan may be a Fiduciary, examples of “Functional” Fiduciaries include:
  - Plan sponsors (owners/officers)
  - Investment committee members
  - Investment advisors, if they render investment advice to the plan or its participants
  - Plan administrators
- Each plan must have a named Fiduciary identified in the plan document

# *ERISA Fiduciary Duties*

## **Act in the best interest of participants**

- Discharge your plan duties solely in the interest of the participants and beneficiaries
- And for the exclusive purpose of
  - Providing benefits to participants and their beneficiaries
  - Defraying reasonable expenses of administering the plan

## **Act with care, skill, prudence and diligence**

- ... that a prudent person acting in a like capacity and familiar with such matters...
- ... would use in the conduct of an enterprise of a like character and with like aims

# *ERISA Fiduciary Duties*

## **Avoid prohibited transactions and be free from conflict**

- You can't deal with the assets of the plan for your own account
- Or receive compensation direct or indirect from any party dealing with the plan in a transaction involving plan assets

## **Provide participants with all required documents & notices**

- Participants (Fee Disclosure/ Safe Harbor/ QDIA/ Auto Enrollment Notices)
- Newly eligible participants (Enrollment materials, SPD, All Participant Notices)
- Participants that waive (Fee Disclosure, Waiver Form, All Participant Notices)
- Participants that terminate (Fee Disclosure)

# *ERISA Fiduciary Duties*

## **Monitor All Service Providers and Benchmark Fees**

- Third Party Administrator
- Record-keeper
- Financial Advisor
- Investment Providers

## **Diversify and monitor the investment options**

- Establish an Investment Policy Statement
- Benchmark Investment Returns
- Have a documented process

## **Follow the terms of plan documents**

- Definition of compensation (Bonuses)
- Participant eligibility (Break-in-service rules)
- Employer eligibility (Controlled group)

# *Triggers of DOL Audit*

## **Participant Complaints**

- Late or Missing Contributions
- Plan Fees too high

## **Unusual Information Reported or Omitted on Form 5500**

- Excessive Administration Fees
- Failure to transmit employee contributions timely
- Insufficient Bonding
- Alternative Investments (i.e. hard to value investments)

## **Random Selection**



# *10 steps Fiduciaries can take to manage their responsibilities and risks*

Conduct semi-annual fiduciary meetings, record all minutes of such meetings

Establish a formal Fiduciary governance process / Ensure Advisors acknowledge Fiduciary status

Document the investment process in a formal Investment Policy Statement (IPS)

Conduct regular reviews of the plan's investments/Benchmark investment performance vs. peer groups

Provide participants with all required notices and disclosures/ Electronic Delivery Consent

Maintain all 408(b)(2) fee disclosure documents from all service providers

Educate participants to help them make informed decisions/Document all employee meetings

Monitor provider fees and services for reasonableness/Benchmark plan fees/RFP every 5 years

Follow terms of plan document/hire an independent Third Party Administrator (TPA)

Have adequate fiduciary insurance coverage

# Questions?

*We can help.*

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