

ERISA 3(16) Fiduciary Services

Considerations, options,
opportunities





Today's Agenda

- ERISA 3(16) fiduciary duties
- Plan sponsor impact
- Considerations when evaluating 3(16) solutions
- Advisor opportunities



ERISA 3(16)

- “Administrator” means
 - Person specifically so designated by the plan terms,
or
 - If an administrator is not so designated, the plan sponsor



ERISA fiduciary standards

1. Act in the best interest of participants
2. Act prudently
3. Diversify investments*
4. Follow plan documents
5. Pay only reasonable fees from plan assets

*Diversification does not guarantee against loss. It is a method used to manage risk.



Sampling of administrator duties

- Administer plan in compliance with documents, policies and federal law
- Safeguard participant retirement savings
- Provide employee education opportunities
- Deliver required notices, documents
- Select, monitor service providers
- Pay only reasonable plan expenses from plan assets
- Have a policy for managing conflicts of interest



Plan sponsor challenges

- ERISA 3(16) duties are extensive, complex
- Many employers not equipped to handle
 - Limited retirement plan knowledge
 - No time
 - Unaware of the risk
- Growing litigation
 - Threat to plan sponsors and participants



Administrative tasks where errors commonly occur

- Failure to deposit contributions on a timely basis
- Periodic monitoring of service providers, including an evaluation of fee reasonableness
- Understanding, applying plan provisions
 - Compensation, determining eligibility, loan provisions, distributions, etc.
- Timely distribution of participant required notices, disclosures
- File a Form 5500 annually



What's the risk?

- Employee Benefits Security Administration (EBSA)
 - Collected \$1.1B in plan restorations, fines, penalties
 - 1707 civil investigations
 - 65.3% required to restore losses or correct deficiencies
 - 113 individuals indicted in criminal investigations
 - Most violations generally sponsor oversight, errors, omissions



ERISA 3(16) solutions in marketplace

- Broad, non-fiduciary outsourcing
- Limited scope 3(16)
- Comprehensive 3(16)



ERISA 3(16) solutions in the marketplace

| Type | Pros | Cons |
|---|--|---|
| Broad, non-fiduciary outsourcing Provider completes administrative tasks | <ul style="list-style-type: none"> No additional cost | <ul style="list-style-type: none"> Minimal protection Perception vs. reality |
| Limited scope 3(16) Provider or third party assumes limited 3(16) liability | <ul style="list-style-type: none"> Low cost Mitigates risk Outsourcing fiduciary liability and work | <ul style="list-style-type: none"> Not a complete transfer of fiduciary responsibilities Need to clearly clarify roles: advisor, employer, 3(16) provider |
| Comprehensive 3(16) Third party assumes full 3(16) liability | <ul style="list-style-type: none"> More significant protection Closest to true outsourcing | <ul style="list-style-type: none"> Cost Limited employer authority/control |

Not intended to be an all-inclusive listing of 3(16) service options available in the marketplace



Considerations for ERISA 3(16) providers

- Plan sponsor responsible for monitoring performance of 3(16) provider
 - Including full 3(16) arrangements
- Objective process that allows evaluation of three criteria
 - Qualification of service provider
 - Quality of services provided
 - Reasonableness of fees for services provided



Know your provider

- Capacity to pay legal claims
- Maintain sufficient level of insurance
- Ensure no duplication of efforts across service providers
- Lawsuit
 - *Caldwell and Partners Inc. v. Vantage Benefits Administrators*



Advisor opportunities

- Differentiate yourself from other advisors
- Educate clients about fiduciary duty
- Determine employer goals
- Deliver appropriate solution



Good employer candidates for ERISA 3(16) service

- Risk averse with desire to outsource responsibilities and limit liability
- Seeking comprehensive administrative services
- Limited retirement plan knowledge or experience
- Stretched resources with a need to off-load work



Employer preferences drive appropriate solution

- Employer Goal
 - Reduce work/liability to greatest degree, fine with reduced authority
- Solution
 - Select reputable 3(16) service provider that takes on comprehensive 3(16) role
- Result
 - Less work, greater risk mitigation

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