

ERISA **ERISA 3(16) FAQ** smart

Q: What is a 3(16) Administrative Fiduciary?

A: The function of a 3(16) Administrative Fiduciary are derived from ERISA definition section 3(16). Under a contractual agreement a third party will take on the fiduciary responsibility for supervision and approval of certain day-to-day plan administrative duties such as participant distributions, plan communication, participant disclosures and approving, signing and filing the Form 5500 Annual Report with the regulators. If these specified ERISA obligations are not met, the third party could be subject to fines and possible legal action from plan participants.

Q: Why should a Plan Sponsor engage the services of a 3(16) Administrative Fiduciary?

A: According to the DOL, during fiscal year 2013, the DOL found that 73% of the plans they investigated were required to restore losses to the plan or take another type of corrective action to correct plan deficiencies, *“From the investigations, we can conclude the majority of violations generally come from oversight, errors and omissions by plan sponsors.” – U.S. DOL.*

Q: Can a 3(16) Fiduciary eliminate a Plan Sponsor’s risk?

A: A Plan Sponsor can never completely eliminate its risk. By outsourcing fiduciary responsibility to a knowledgeable third party a plan sponsor can significantly reduce its risk. Under ERISA the Plan Sponsor must still fulfill its duty to monitor co-fiduciaries.

Q: Doesn't my TPA or Recordkeeper already handle these functions?

A: Your TPA or Service Provider performs many of these functions and has a contractual obligation to do so in a competent and timely manner. The TPA or Service Provider does not have fiduciary responsibility or liability for the plan management or administration.

Q: What other benefits does a 3(16) Administrative Fiduciary Provide?

A: By implementing this solution, the Plan Sponsor further insulates itself from liability for complex federal pension regulations and requirements. This solution also provides a second review, by a fiduciary with a legal stake in the results, of administrative practices and challenges which when incorrectly performed often result in DOL assessments on audit.



Q: Who is ERISA SMART, Inc.?

A: ERISA SMART, Inc., is a firm owned and staffed by former DOL Investigators from the U.S. Department of Labor's Employee Benefit Security Administration. Beyond their 3(16) Fiduciary Services, ERISA SMART also provides expertise on a variety of retirement plan governance issues, ERISA regulations, fiduciary training and industry best practices.

Q: What should a Plan Sponsor look for in a 3(16) Service Provider?

A: A 3(16) Service Provider should be experienced in the review of and DOL interaction with plan administration. The services covered by the arrangement should be clearly articulated in the Service Agreement executed by both parties. The 3(16) Service Provider should have appropriate liability insurance to cover the fiduciary responsibilities undertaken. The 3(16) Service provider should also provide the Plan Sponsor the ability to monitor its activities and tasks through a robust reporting mechanism and work product analysis. Currently there are no licensing or registration requirements for offering 3(16) services. A Plan Sponsor will want to have a record of its due diligence in selecting the 3(16) provider with which it decides to work.

Q: What makes ERISA SMART 3(16) different from other providers?

A: ERISA SMART 3(16) services is powered by the ERISA SMART Plan Manager™ a proprietary software system developed by former DOL Investigators and ERISA attorneys. The program allows each plan to be stress tested for potential omissions and errors by duplicating a DOL Investigation on a rolling year basis. Furthermore, the system not only ensures certain tasks are completed it also filters and scrubs the required information to make sure its content is compliant with the most current ERISA regulations and guidelines.

Q: How much does this service cost and can it be paid as a plan expense?

A: The fees for the 3(16) Administrative Services are unique to each plan's demographics. The cost is ranges from 0.15% of plan assets to 0.08% of plan assets as the plan size increases. The service provided are administrative in nature and can therefore be paid by the plan or by the employer. The governing plan document may need to be amended in order to clarify that such fee can be paid by the plan.

Q: What type of bonding or insurance requirements are there for a 3(16)?

A: The Employee Retirement Income Security Act of 1974 (ERISA) requires all persons who handle assets of employee benefit plans to be bonded. This requirement protects plans against losses sustained due to acts of fraud or dishonesty by those persons whose positions require them to come in direct contact with or exercise discretion over plan assets. A 3(16) would therefore, have to have such a bond. Additionally Fiduciary Administration, LLC and ERISA SMART, Inc. carry E&O (Errors & Omission) insurance that provides for more comprehensive coverage and additional relief in the event of a breach of fiduciary duties.

ERISA SMART, Inc.
2419 E. Harbor Blvd., Suite 163
Ventura, CA 93001
(805) 628-9127
www.erisasmart.com