



THE BIG MISUNDERSTANDING IN 401(K) PLANS – WHO IS THE FIDUCIARY?



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The biggest challenge for most plan sponsors is understanding that they are the plan fiduciary. This designation comes with heavy responsibilities. So what is the definition of a fiduciary? I have asked several clients this question and their answer is the following: The advisor, the investment provider, the CPA, the TPA firm, or the actuary. Not once did they claim, they are the fiduciary of the plan and hold the liability. This didn't surprise me, as the industry is full of individuals who are not properly educated in plan regulations. Most financial advisors who handle the investments of these plans are not retirement plan specialists.

Last year when the numbers came out that 73% of DOL investigations of 401(k) plans result in fines, I was alarmed. Being in the TPA/Actuarial industry for over 20 years has given me extensive knowledge on the rules and laws regarding retirement plan compliance. It was no secret that most plans are not compliant, but to see it has risen so much in the last few years, has inspired me to take a proactive approach in educating business owners about their role as a plan sponsor. I have seen these plans unfolding over the years with many costly errors. Unfortunately, the client usually comes to me after the mistakes have been made and they are either facing an audit or having to go through a Voluntary Corrections Program (VCP). Why not reach out to these companies before the DOL comes knocking?

The DOL states what anyone acting in the capacity as

a fiduciary for a 401(k) plan should do:

- Acting solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them
- Carrying out their duties prudently;
- Following the plan documents (unless inconsistent with ERISA);
- Diversifying plan investments
- Paying only reasonable plan expenses.

As a business owner dealing with the day to day responsibilities of managing a company how can one

also be expected to understand the fiduciary responsibilities of a qualified retirement plan? Can a small business afford to take a big hit with the high fines of IRS and DOL audits?

Are you confident that you can handle all of these responsibilities? Of course not, nor should you be expected to! It is a complex process with an absurd amount of rules and regulations. It is not only suggested, but required under DOL guidelines to consult with a qualified retirement specialist.

When was the last time your plan was reviewed?



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