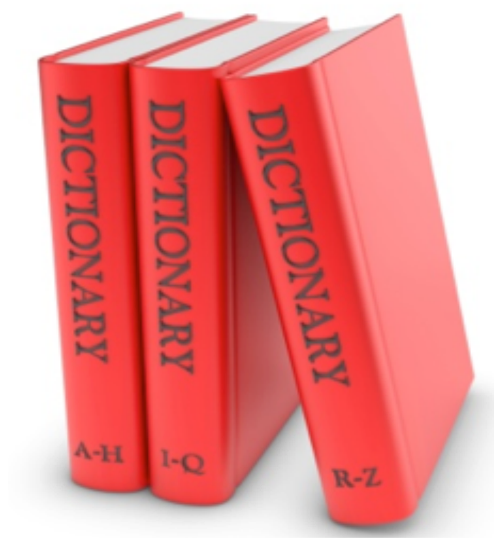
RETIREMENT Report

SEPTEMBER 2015 *News and updates for plan sponsors and fiduciaries of defined contribution plans*

DOL REGULATIONS, PART I: WHO IS A FIDUCIARY?

Recently, the DOL released its second attempt at redefining ERISA's definition of "fiduciary" for the era of participant-directed retirement savings. The new, proposed regulation is significantly different than ERISA's existing definition, broadening both the group of individuals and firms considered fiduciaries, as well as expanding the retirement savings vehicles covered by the new fiduciary standards to include IRAs. Advisers, consultants and brokers are most significantly impacted by the proposed regulation as drafted, but plan sponsors can also expect changes: advisers and consultants previously not considered fiduciaries to date may now become fiduciaries, and employee investment education programs may need to be revised. The regulation is in proposed form right now and may change before the time it becomes final. This article introduces a few of the changes most applicable to plan sponsors.



Who Is a Fiduciary? The New Definition

The proposed regulation provides that a person is a fiduciary if he or she provides certain types of advice to a plan, plan fiduciary, plan participant, beneficiary or IRA owner in exchange for a fee or other compensation, and the person (or an affiliate) either acknowledges fiduciary status or provides the advice pursuant to an agreement, arrangement or understanding that the advice is individualized to or that such advice is specifically directed to the advice recipient for consideration in making investment or management decisions with respect to securities or other property of the plan or IRA.

The four types of advice covered by the proposed regulation are the following:

1. A recommendation as to the advisability of acquiring, holding, disposing or exchanging securities or other property, including recommendations to receive a distribution of benefits or rollover assets from a plan or IRA;

2. A recommendation as to the management of securities or other property, including recommendations as to the management of assets to be rolled over or distributed from a plan or IRA;

3. An appraisal, fairness opinion or similar statement concerning the value of securities or other property provided in connection with a specific transaction that involves the plan or IRA; and

4. A recommendation of a person who will also receive a fee or other compensation for providing the types of advice described in items 1 through savings rates. Assumptions are made based on and for the average participant. Even then, assumptions vary greatly. A participant is only average after the other million people in the sample are included, then divided by a million, and one is added (the participant). Further, those most disadvantaged in this exercise are the participants not saving enough as weLLas the participants purportedly doing well for themselves by saving more than enough. These two

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groups are severely underrepresented when Plan sponsors can expect that advisers and consultants they work with who have not been considered a fiduciary in the past may be a fiduciary under the proposed regulation. For example, this new definition provides that a person who advises a plan one time will be considered a fiduciary with respect to such advice. In the past, the advice needed to be provided on an ongoing basis in order to be considered fiduciary advice. The recommendation of another adviser is now considered fiduciary advice under the proposed regulation. As a result, consultants and advisers may be required to enter into new agreements, revise the manner in which their fees are paid, or provide rigorous disclosures to plan fiduciaries. Also, advice to plan participants regarding distributions or rollovers from a plan and advice to IRA owners are now considered fiduciary advice.

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EMPLOYEE STRESS COSTS BUSINESSES BILLIONS

Employee stress costs U.S. businesses $300 billion annually. On an individual level, stress costs U.S. employers $1,685 per employee per year. With 45 percent of employees reporting they are stressed and 28 percent extremely stressed, employers will benefit from knowing why. Among varying reasons, the top reason is financial difficulties. Eighty-six percent of Americans report feeling stressed for this reason[1] and one in four workers reports that financial stress distracts them at work.[2]

Effects of Financial Stress

Employees' physical and mental health is impacted greatly by financial stress. Of those who rate their financial stress "very" or "somewhat high," 47 percent said they are sleeping less, 43 percent said they have less patience with friends or are seeing them less often, 31 percent are eating more junk food or gaining weight and 21 percent are arguing more with their spouse or significant other.[3] Lost productivity due to health issues including absenteeism and "presenteeism," which accounts for lost productivity by workers whose quality of work suffers due to illness or stress, totals $1.1 trillion per year.[4] Presenteeism is so detrimental to productivity that it costs employers two to three times more than direct medical care paid for by companies in the form of insurance premiums or employee claims.[5] "We're talking about people hanging in there when they get sick and trying to figure out ways to carry on despite their symptoms," says Debra Lerner, a professor at Tufts University School of Medicine in Boston, who notes that presenteeism may be more common in tough economic times when people are afraid of losing their jobs. "If every employee stayed home each time a chronic condition flared up, work would never get done," said Lerner.

Financial Wellness Programs

One way to reduce stress is through education, 63 percent of plan participants would like more education and advice from their employers on how to reach their retirement goals. This desire is highest among Millennials, 73 percent of which desire more education. Providing a financial wellness program for employees can help create a holistic financial plan that provides services such as financial planning, investment advice, meeting with financial advisors and debt elimination or consolidation tools. Highly stressed workers find these tools helpful as they are aware they are not taking action to rectify their financial situation.[6]

Health Wellness Programs

Along with financial wellness programs, employers may consider implementing health-focused wellness programs. Health wellness programs promote a healthy lifestyle.

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These workplace programs can consist of healthy activities and benefits such as lunch time walking clubs, healthy snacks in the break room, discounts on gym memberships or incentives for meeting health goals.

Encouraging physical activity amongst employees is an easy way to improve employee health. Exercise releases endorphins in the brain and is proven to lower stress levels as well as lower the symptoms associated with mild depression and anxiety. Alongside mental benefits, exercise helps relax muscles and relieve tension in the body. Exercise provides mental and physical relief from the effects of stress and helps employees focus and increase productivity.

Company Culture

Company culture can make or break employee health and happiness. Adding a little fun to the workplace can make a world of difference for stress levels and mental health. Having fun at work may sound distracting, but it has been proven to help employees accomplish more, extend more help to co-workers, improve pride in the organization, grow job engagement and encourage employees to be more creative. “With people spending more and more of their lives at work, they feel they might as well make it enjoyable, and our study finds surprising payoffs when they do,” said Erin Fluegge Woolf, who conducted a study on fun in the workplace for the University of Florida, “Not only did employees report being in better moods and more engaged in their work, they also performed better on the job.”[7]

An untraditional way to decrease stress, increase physical activity and improve productivity is to allow employees to bring their dogs to the office. Not only are dogs proven stress relievers, but they force the owner to get moving when they have to walk them. “Having dogs around leads to a more productive work environment and people get to know each other through the pets,” says Lisa Conklin a public relations manager at Replacements, a company that allows employees to bring their dogs to work. “If you are in a position where something is stressful, seeing that wagging tail and puppy smile brightens the day. It can turn around the whole environment.” According to a 2008 survey by the American Pet Products Manufacturers Association, companies that allow pets in the workplace have employees who are more willing to work longer hours and also a lower rate of employee absenteeism.

[1] ORC International
[2] New York Life Retirement Plan Service 2014 Financial Stress Survey
[3] American Institute of CPAs by Harris Interactive
[4] Milken Institute Review, An Unhealthy America: The Economic Burden of Chronic Disease
[5] Harvard Business Review, Presenteeism: At Work-But Out of It
[6] 15th Annual Transamerica Retirement Survey of Workers

RECORD RETENTION: WHAT TO KEEP AND FOR HOW LONG

When it comes to plan-related document storage remember that your primary goal should be to preserve materials in a format allowing for quick and easy retrieval. It’s appropriate to store plan records electronically whenever possible. Also, be sure to retain an executed copy (or countersigned copy, as applicable) of each record and not the unsigned original that may have been sent to you for signature.

While most providers can provide reports and current plan documents, the plan administrator remains ultimately responsible for retaining adequate records that support the plan document reports and filings.For more information, contact us. Should you encounter a situation that creates any doubt as to whether a transaction may be considered a prohibited transaction, or a violation of its cousin the Exclusive Benefit Rule (any plan-level decision must be for the exclusive benefit of the participants), please contact your plan consultant for clarification and/or an ERISA attorney referral.

See the chart on the next page.

Documentation	Retention Requirement for Audit Purposes*
Plan Documents (including Basic Plan Document, Adoption Agreement, Amendments, Summary Plan Descriptions, and Summary of Material Modifications)	At least six years following plan termination
Annual Filings (including 5500, Summary Annual Reports, plan audits, distribution records and supporting materials for contributions and testing)	At least six years
Participant Records (including enrollment, beneficiary, and distribution forms; QDROs)	At least six years after the participant's termination
Loan Records	At least six years after the loan is paid off
Retirement / Investment Committee **meeting materials** and notes	At least six years following plan termination

COMMUNICATION CORNER: Stress in the Workplace

This month's employee memo discusses the effects of financial stress on employee health and productivity.

As a reminder, we post each monthly participant memo online via the Fiduciary BriefcaseTM (fiduciarybriefcase.com).

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