

**U.S. Department of Labor  
Employee Benefits Security Administration**

**ERISA Fiduciaries  
Plan Investments  
EBSA Enforcement Initiatives**

**Bart Winter  
Senior Investigator  
Kansas City Regional Office  
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**EBSA's Mission Statement**

The mission of the Employee Benefits Security Administration is to assure the security of the retirement, health and other workplace related benefits of America's workers and their families. We will accomplish this mission by developing effective regulations; assisting and educating workers, plan sponsors, fiduciaries and service providers; and vigorously enforcing the law.



- ## Types of Investigations
- Civil
    - Plan
    - Service Provider
  
  - Criminal
    - Plan
    - Service Provider
    - Employer
    - Individual

## Who is a “fiduciary” under ERISA?

- Named fiduciaries – plan trustees, plan administrators
- Functional fiduciaries – any person who exercises control over plan assets or has discretionary authority in plan administration or management
- Allocation of fiduciary responsibility – named fiduciaries may allocate and delegate responsibilities if allowed by the plan

## Other ERISA Fiduciaries

- Service providers to ERISA plans –
  - 3(38) Investment Managers – have the authority to manage, acquire and dispose of plan assets – functional fiduciaries
  - Someone who renders investment advice for a fee
  - Record keepers – only if functional fiduciaries
  - Broker-dealers – only if functional fiduciaries or provide investment advice for a fee

## Basic Fiduciary Duties

- Acting solely in the interests of the participants and their beneficiaries
- Being prudent
- Paying only reasonable and necessary expenses of the plan
- Following the terms of the plan

## Reasonable Expenses *means*

- Expenses are reasonable only if they are necessary for the operation of the plan, and are not excessive for the service received.

For example – Don't Pay Twice

**In-house  
Recordkeeper**

&

**Third Party  
Recordkeeper**

## Fiduciary Duties – Prohibited Transactions

- Prohibited transactions with parties in interest (PII) unless an exemption applies
  - Sale/exchange with a PII
  - Loan/extension of credit with a PII
  - Goods, services & facilities with a PII
  - Transfer to, use by or for the benefit of a PII

## Fiduciary Duties – Prohibited Transactions

- Self-dealing transactions
  - Do not deal with plan assets for own interest
  - Do not represent a party whose interests are adverse to the interests of the plan
  - Do not accept kickbacks

## Fiduciary Duties – Investments

- Comply with investment policy document if one has been established
- Consider professional assistance
- Report investments at fair market value

## Fiduciary Duties – Investments

- Establish and follow prudent processes to select and monitor investments considering:
  - Asset diversification
  - Risk and return of the investments
  - Fees associated with the investments
  - Share classes of investments available to the plan
  - Revenue sharing arrangements

## **Tibble v. Edison U.S. Supreme Court Ruling**

- Edison 401(k) participants alleged:
  - plan fiduciaries failed to adequately monitor retail-class plan mutual fund options
  - lower fee institutional shares were available
  - participants lost money as a result of the higher fees associated with the retail-class mutual funds

## **Tibble v. Edison U.S. Supreme Court Ruling**

- In addition to the duty to prudently select plan investments, the trustees had a continuing duty to monitor plan investments and remove imprudent ones.
- Plan trustees must systematically consider all plan investments at regular intervals to ensure appropriateness of the investments.

## Fees and Expenses

- Fiduciary has a duty to ensure that fees and expenses paid by the plan are reasonable in light of the quality and quantity of services provided.
- Both costs and quality are important factors.
- Ask if the provider is receiving fees from third parties, such as “12b-1” fees.

## Fees and Expenses

Field Assistance Bulletin 2003-03

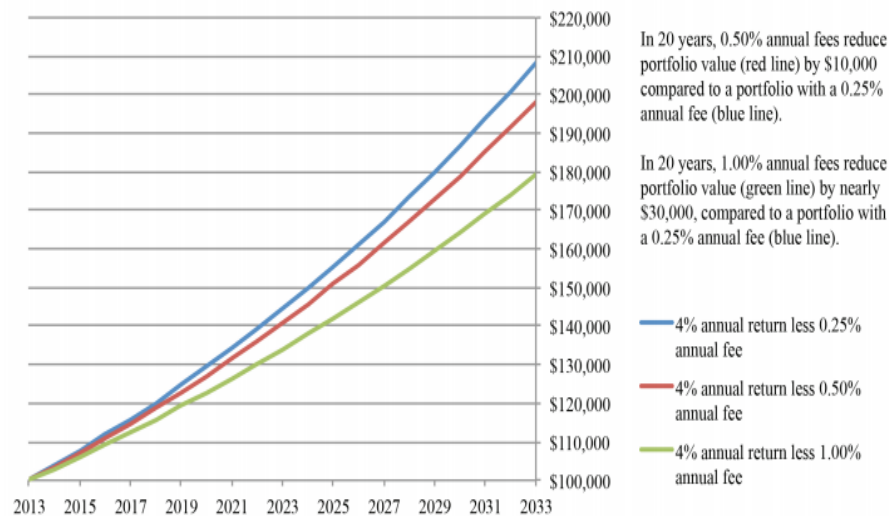
- Who can pay plan expenses?
  - Plan sponsor / participant
- How can fees and expenses be allocated among participants?
  - Pro rata / per capita



## Fees – Why They Matter

- More participants are relying on 401(k) plans for their retirement income.
- High fees can significantly reduce the amount of retirement income available to Ps.
- As illustrated in the next slide, a .75 % increase in fees can decrease the earnings on an initial \$100K investment by \$30K over 20 years.

Portfolio Value From Investing \$100,000 Over 20 Years



In 20 years, 0.50% annual fees reduce portfolio value (red line) by \$10,000 compared to a portfolio with a 0.25% annual fee (blue line).

In 20 years, 1.00% annual fees reduce portfolio value (green line) by nearly \$30,000, compared to a portfolio with a 0.25% annual fee (blue line).

- 4% annual return less 0.25% annual fee
- 4% annual return less 0.50% annual fee
- 4% annual return less 1.00% annual fee

Source: Securities and Exchange Commission, Office of Investor Education and Advocacy, Publication No. 164 (February 2014)

## **Fees – What Should Plan Fiduciaries Do?**

- Obtain sufficient information regarding the investment fees and other compensation financial service providers receive – 408(b)(2) disclosures.
- Determine whether direct and indirect compensation received by the service provider is reasonable.
- If multiple share classes are available, determine which is the best value for the plan.
- Document the selection and monitoring process.

## **Fee and Investment Disclosures**

- Disclosure requirement
- Participant-Directed Plans Only
- Field Assistance Bulletin 2012-02R

## Fee and Investment Disclosures

What information must be disclosed?

“Plan-related information”

- Administrative expense information
- General plan information
- Individual expense information

## Fee and Investment Disclosures

What information must be disclosed?

“Investment-related information”

- Performance data
- Benchmark returns
- Fee and expenses
- Internet website address
- Glossary

## Fee and Investment Disclosures

- When must the information be disclosed?
  - Up front
  - Annually (2-month grace period available)
  - On request
- How must the information be disclosed?
  - Comparative chart
  - Model provided

## Fee and Investment Disclosures

- Any other information?
  - "statement of expenses actually deducted"
- Plan-related expenses
  - Administrative expenses
  - Individual expenses
- At least quarterly
  - Individual benefit statement

## National Enforcement Initiatives

- Contributory Plans Criminal Project (CPCP)
- Health Enforcement Initiatives Project
- Plan Investment Conflicts Project (PIC)
- Employee Stock Ownership Plans (ESOP)
- Protecting Benefits Distributions (PBD)

## National Enforcement Initiatives

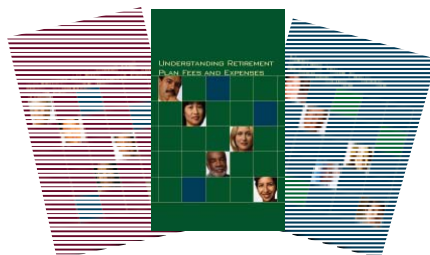
- **Plan Investment Conflicts Project (PIC)**
  - Focus is on fiduciary service providers and investment managers of plan asset vehicles that may be engaging in fiduciary breaches and prohibited transactions
  - Assess whether fees are excessive and/or disclosed
  - Determine prudence and due diligence related to investment decision making process

## Regional Enforcement Projects

- **Direct Filing Entities** – Common Collective Trusts, Pooled Separate Accounts, and Master Trusts
  - Overall focus is the prudent management of assets in accordance with the governing documents
  - Operating expenses
  - Asset valuation
  - Prohibited transactions with investment sponsor and service providers

## For Help - See

- Understanding Retirement Plan Fees and Expenses
- Meeting Your Fiduciary Responsibilities



## Contact Information

- EBSA Regional Offices  
(866) 444-EBSA (3272)
- My Direct Dial & Email:  
(816) 285-1839  
[winter.steven@dol.gov](mailto:winter.steven@dol.gov)
- EBSA website: [www.dol.gov/agencies/ebsa](http://www.dol.gov/agencies/ebsa)
- EFAST website: [www.efast.dol.gov](http://www.efast.dol.gov)