

# ERISA 3(16) Fiduciary Services

## Considerations, options, opportunities

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## Today's Agenda

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

## Course Objectives

- Discuss the Fiduciary Responsibilities of CFOs and their teams, as Administrators of 401(k) Plans
- Outline the Financial Impacts and Risk of Administrative Failures
- Review Considerations when Evaluating 3(16) Solutions

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## ERISA 3(16)

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

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## 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.

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## 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

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## 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

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## 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

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## 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

Source: <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/ebsa-monetary-results.pdf>

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

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

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## 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

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## 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*

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## Advisor opportunities

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

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## 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

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## Employer preferences drive appropriate solution

- Employer Goal
  - Reduce work/liability but retain ultimate decision making control
- Solution
  - Select reputable service provider that takes on limited 3(16) fiduciary role
- Result
  - Less work, reduced risk with professional administration, but retain decision making

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## 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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## Questions?

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