

PEBA

Fiduciary Responsibilities and
Avoiding Common Compliance
Errors

Fiduciary Responsibility

- What does it mean to be a fiduciary?
 - Exercises any discretionary authority or control over the plan's management
 - Exercises any authority or control over the management or disposition of the plan's assets
 - Renders investment advice for a fee or other compensation with respect to plan assets
 - Has any discretionary authority for a fee or other compensation with respect to plan assets

What is required of Fiduciaries

- Exclusive Benefit Rule- Act solely in the interest of participants and for exclusive purpose of providing benefits
- Prudent Expert Rule- Act with care, skill, prudence and diligence that a prudent person who is familiar with such matters would use
- Diversification Requirement- Must diversify plan's assets
- Plan Document- Must follow plan's terms unless they conflict with ERISA
- Fees- Pay only reasonable plan expenses

Being a Fiduciary in a Down Economy

- Increased scrutiny on investments in 401(k) plans in a down economy
- Good idea to conduct a fiduciary review to protect yourself as a fiduciary and the plan participants
- Qualified Default Investment Alternatives
 - 404 (c) Protection
 - Important in automatic enrollment situations

Common 401(k) Plan Errors

- IRS on their website lists the top ten errors found in Voluntary Compliance Programs
 - Failure to timely amend the plan for tax law changes
 - Failure to follow the plan's definition of compensation for determining contributions
 - Failure to include eligible employees in the plan or the failure to exclude ineligible employees from the plan
 - Failure to satisfy plan loan provisions
 - Impermissible in-service withdrawals
 - Failure to satisfy IRC Section 401(a)(9) MRD
 - Employer eligibility failure
 - Failure to pass ADP/ACP tests
 - Failure to properly provide the minimum top-heavy benefit or contribution under IRC 416 to non-key employees
 - Failure to satisfy the limits of 415

401(k) Checkup

- IRS strongly encourages plan sponsors to undergo a “Checkup” of their 401(k) plans
- Focus on plan document compliance and an operational review of the plan
- Upon completion of checkup determine whether any mistakes were identified and how to best correct them

Correction Options

- EPCRS- Employee Plans Compliance Resolution System
 - Self Correction Program (SCP)
 - Voluntary Correction Program (VCP)
 - Audit Closing Agreement Program (Audit CAP)