

SPONSOR E-News



Welcome to the August 2007 edition of Sponsor E-News!

In this issue:

- Fiduciary Focus: ERISA's Standard of Care
- Service Standards: Excellence Guaranteed
- Market Commentary
- Safe Harbor Notices
- 401(k) Day: Tee up for Retirement



Sponsor E-News' ongoing series, *Fiduciary Focus*, examines the fundamental obligations of a fiduciary under ERISA.

Also in the spotlight are our Service Standards, which we guarantee as part of our commitment to providing you with excellent service.

We've included quarterly market commentary from the experts at Standard & Poor's to provide you with more insight on stock and bond markets.

If you currently offer a Safe Harbor Plan, you will soon have notices to distribute to your participants. If you aren't sponsoring a Safe Harbor Plan, we provide some information about Safe Harbor benefits.

Finally, we round out the month with a reminder about the next annual 401(k) Day event, scheduled for September 7th. We have developed promotional materials that can help you promote the benefits of your company's retirement plan to your employees.

To help convey important information to you quickly, our newsletter messages are color-coded:



Action Required: Noted in red, these messages require action, such as a signature, by the Trustee or Fiduciary of the plan



Legislative / Compliance Update: Noted in blue, these messages discuss legislative or compliance-related topics.



For Your Information: Noted in green, these messages provide you with general information covering subjects such as participant education, product and service features, and helpful tips for using the Web site.

Fiduciary Focus: ERISA's Standard of Care



In previous editions of Sponsor E-News, we discussed who a plan fiduciary is and how ERISA's¹ functional definition of a plan fiduciary is applied to determine and limit fiduciary status. It is also important to understand the standard of care that is expected of plan fiduciaries, and to learn which functions a fiduciary may perform and the functions that are prohibited by law.

We will now begin to explore the fundamental obligations a fiduciary owes the plan under ERISA, as well as the activities between the plan and related parties that are prohibited by law (*prohibited transactions*).

The standard of care demanded of plan fiduciaries by ERISA is extremely high. In fact, one court called the duty of prudence "the highest known to law"! ERISA's standard of care is established in four fundamental obligations that each and every fiduciary owes the plan: (1) the duty of loyalty; (2) the duty of prudence; (3) the duty of asset diversification; and (4) the duty to adhere to the plan documents. It is especially important to understand the magnitude of this standard of care to understand why ERISA prohibits certain plan transactions.

The Duty of Loyalty

Often referred to as the "*exclusive benefit rule*," the duty of loyalty states that a fiduciary must discharge his or her duties (a) solely in the interest of the plan's participants and beneficiaries; (b) for the exclusive purpose of providing benefits to plan participants and their beneficiaries; (c) to ensure that the expenses of administering the plan are reasonable.

Furthermore, the duty of loyalty forbids a fiduciary to:

- Use plan assets for personal interest; and
- Support the interests of a third party over the interests of the plan's participants (even if the fiduciary's interests are not implicated).

The Duty of Prudence

The duty of prudence, also known as the "*prudent man standard*," states that a fiduciary must act "with the care, skill, prudence and diligence that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and like aims." In other words, when acting on behalf of the plan, a fiduciary must use the same attention to detail, competence, cautiousness and thoroughness that a sensible and cautious person would use when acting in the same circumstances.

The Duty of Asset Diversification

If one of the fiduciary's responsibilities is the selection, monitoring and/or investment of the plan's assets, he or she has a duty to diversify the plan investments to minimize the risk of large losses unless, under the circumstances, it is clearly prudent not to do so.

Generally speaking, the duty of asset diversification prohibits a plan fiduciary from investing a

disproportionate amount of a plan's assets in a single investment or enterprise. However, there are no specific rules, guidelines, or formulas that define percentage requirements for prudent diversification and there is also no specifically defined violation of the diversification provision. Whether the plan fiduciary has prudently diversified plan assets or not depends on the facts and circumstances of each individual case. However, once it has been established that there has been a failure to diversify, it becomes the responsibility of the fiduciary to prove that the failure to diversify the plan assets was "clearly prudent" under the circumstances.

The Duty to Adhere to the Plan Documents

ERISA requires that a fiduciary act in accordance with the documents that govern the plan *to the extent that the plan documents are consistent with Titles I and IV ERISA*. However, ERISA and the courts have also established that a fiduciary cannot blindly follow, or hide behind, the provisions of the plan documents to the obvious detriment of the plan participants and beneficiaries if the document provisions are inconsistent with ERISA.

In practical application, a plan fiduciary must know and understand the provisions of ERISA that govern the plan and its documents. The plan fiduciary must also know and understand the provisions of the documents that govern the plan. When acting in accordance with the plan documents, the plan fiduciary cannot ignore the three other duties that govern the standard of care that he or she owes the plan participants and beneficiaries. ERISA requires that a plan fiduciary comply with the law even if it violates the provisions of the plan documents. ERISA also requires that the plan fiduciary fulfill the duties of loyalty, prudence and asset diversification even if doing so requires that he or she violate a plan provision that would result in loss or disadvantage to the plan participants and beneficiaries.

As stated earlier, the standard of care expected of plan fiduciaries by ERISA is extremely high. To appropriately fulfill his or her fiduciary role, the fiduciary must be fully aware of the four fundamental obligations to the plan, and must constantly assess his or her actions with respect to the plan against the requirements set forth in those obligations. Not doing so could all too easily result in a fiduciary lapse that could cause harm to the plan participants and beneficiaries.

In next month's issue, we will examine the topic of prohibited transactions in light of the standard of care expected of plan fiduciaries.

FOR YOUR INFORMATION

Service Standards: Excellence Guaranteed

Transamerica Retirement Services² ("Transamerica") is committed to standards you can count on – guaranteed. If you're not entirely satisfied with any of the administrative services we provide, we will waive the fee for that service accordingly. In order to earn your business every day and maintain our annual client retention rate of 93%³, we focus on providing excellent service with every interaction. We focus on providing you with superior customer service that exceeds your expectations. Here are our results:

- 100% complete processing of participant transactions received via Interactive Voice Response System or participant Web site prior to 4:00 p.m. ET are



processed the same day

- 99.7% of enrollment kits are mailed within 5 business days of receipt of request
- 99.4% of participant statements are mailed within 10 business days
- 99.0% of participant distributions and loans are processed within 3 business days

We're proud of the high service standards we set, and the resulting high performance for our plan sponsors.

FOR YOUR INFORMATION

Quarterly Market Commentary

What do the experts have to say about the equity and bond markets? What impact may world markets have on my portfolio? Are interest rates expected to rise this quarter? How will the stock market react to these changing conditions?

These are just a few of the questions that you may be asking yourself in light of recent volatility in the stock market. We provide you with expert market commentary from Standard & Poor's every quarter. This commentary can help you gain insight into what happened in U.S. and world markets during the last quarter and what strategists believe will happen in the near future.



Standard & Poor's Market Commentary is posted to www.TA-Retirement.com as soon as two weeks after the end of each quarter. [Access the most recent quarter's commentary.](#)

LEGISLATIVE / COMPLIANCE UPDATE

Coming Soon: Safe Harbor Notices

Are you aware of the advantages of having a Safe Harbor Plan? A Safe Harbor Plan can:

- Eliminate 401(k) nondiscrimination tests: Average Contribution Percentage (ACP) and Average Deferral Percentage (ADP)
- Permit the Highly Compensated Employees (HCEs) to defer up to the maximum amount permissible
- In some cases, Safe Harbor contributions can be used to satisfy the top-heavy required contributions and be counted in the New Comparability calculations

The attached [brochure](#) can provide you with more information to help you decide if a Safe Harbor Plan is right for you.

If you are sponsoring a Safe Harbor Plan, or simply have questions about amending your plan to be Safe Harbor for 2008, please contact us at (866) 498-4557. We're happy to help.



401(k) Day: Tee Up for Retirement



This year, 401(k) Day is celebrated on Friday, September 7, 2007 with the theme "*Tee Up For Retirement*." Following pro-golfer Zach Johnson's incredible Masters Tournament victory, we have developed promotional materials to help you get the word out about your company's 401(k).

401(k) Day provides a great way to communicate the benefits of your company's retirement plan to your employees. Log on to www.TA-Retirement.com and you will have access to many great tools to help promote 401(k) day.

You will find:

- 401(k) Day flyer that outlines the benefits of contributing a 401(k) plan
- "Tips from the Pros" flyer that provides tips to help establish a successful retirement planning strategy
- Payroll Stuffers featuring retirement tips
- A crossword puzzle test your employees knowledge with this fun and engaging crossword puzzle.

To access our 401(k) Day tools, [click here](#).

For your convenience, our 401(k) Day materials can be used at any time throughout the year to promote your company's retirement plan.

At your request, we will send Sponsor E-News to anyone at your organization who you believe would benefit. Just e-mail us at sponsorconnect@transamerica.com, and we will add them to our mailing list.

We would also like to hear your suggestions and ideas for future topics for E-News. Please let us know how we can be of service to you by replying to this e-mail, or by calling (866) 498-4557. We look forward to hearing from you.

¹ Employee Retirement Income Security Act of 1974 (ERISA).

² Transamerica Retirement Services ("Transamerica"), a marketing unit of Transamerica Financial Life Insurance Company ("TFLIC"), 4 Manhattanville Road, Purchase, New York 10577, and Transamerica Life Insurance Company ("TLIC"), 4333 Edgewood Road NE, Cedar Rapids, Iowa 52499, and other TFLIC and TLIC affiliates, specializes in the promotion of retirement plan products and services. TLIC is not authorized in New York and does not do business in New York.

³ As of December 31, 2006.