



Registered Investment Advisor

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# Common Mistakes Fiduciaries Make and How to Avoid Them

*presented by*

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# Agenda

- There's a lot of “noise” out there!
- Common mistakes fiduciaries make
- How to avoid them



# Relying on Non-Fiduciary Advice

- “Financial Advisor” vs. Salesperson
- Pricing conflicts:
  - Up-front fees
  - Hard-dollar vs. soft-dollar
  - Share class impact
  - Proprietary vs. non-proprietary



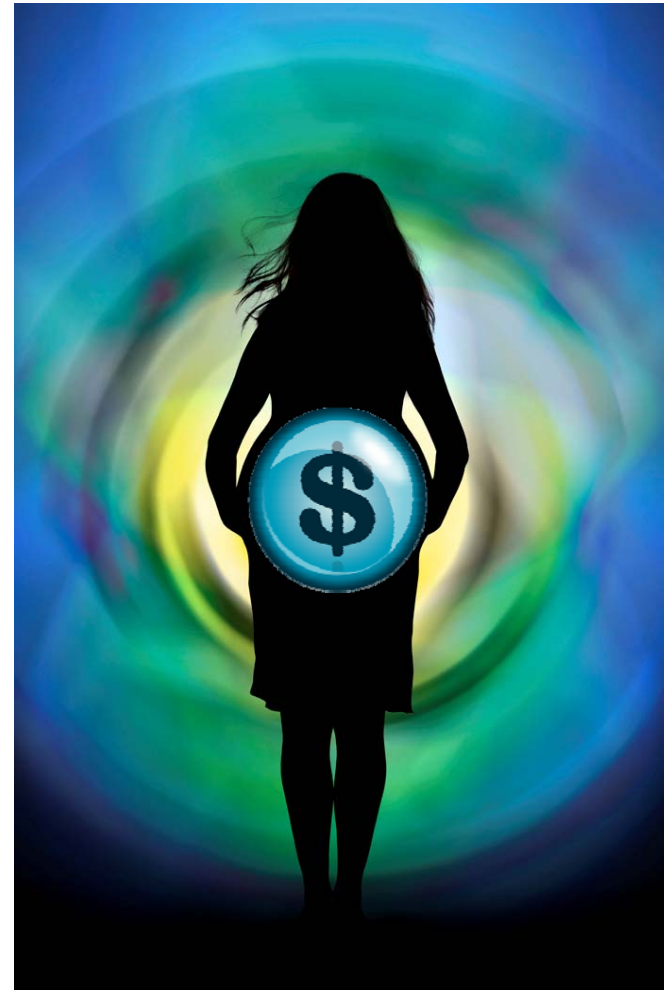
# Failing to Understand Fees

- 401(k) plan fee lawsuits
- Disclosure requirements
  - Form 5500 Schedule
  - The latest from Capitol Hill
- Benchmarking difficulties
  - Provider comparability
  - Product consistency
  - Resources



# Failing to Obtain 404(c) Protection

- What is 404(c)?
- Should we comply?
- 401(k) fee cases
- Provider vs. Plan Sponsor role



# Failing to Utilize a Prudent Process

- Sec. 404(a)(1) subject to sections 403(c) and (d) and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purposes of
  - Providing benefits to participants and their beneficiaries; and
  - Defraying reasonable expenses of administering the plan;
- With the care, skill, prudence, and diligence under the circumstances then prevailing 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 with like aims:
  - Research, decide, monitor

# Failing to Utilize a Prudent Process (cont.)

- Applies to...
  - Advisor selection
  - Vendor selection
  - Product selection
  - Education plans
  - Any fiduciary action...

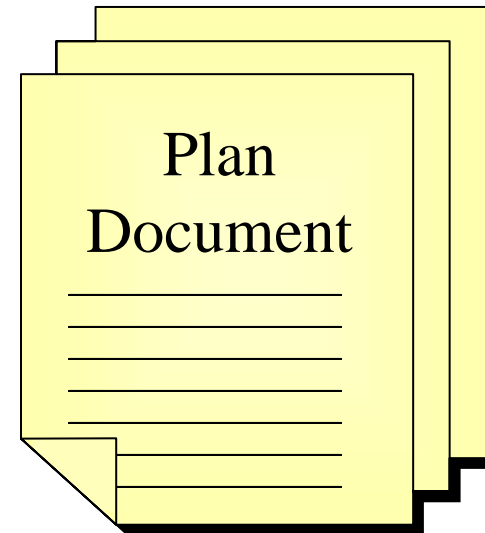


# Failing to Maintain Documentation

- “If there is no documentation, it didn’t happen”,  
*Most any HR professional or lawyer*
- “Investment reports used for decision making”
- “Any Service Provider Contracts and Fee Schedules”
- “Any Minutes of Plan Trustees, Plan committees, Plan and/or Sponsoring Company Board of Directors regarding the plan”  
*Client DOL Audit Letter*
- Examples
  - Fee reports
  - Demographic reports, ...

# Failing to Operate the Plan in Accordance with Plan Document

- More individuals involved, greater risk
- Plan change not communicated
- Lax internal process
- Our experience
  - Definition of compensation
  - Eligibility



# Failure to Monitor Investments

- Agreed upon standard - Modern Portfolio Theory
- Plan Sponsors lack data and/or process
- Data
  - Style      - Cost
  - Risk      - Management
  - Return    - Peer Ranking
- Importance of the index
- Examples



# Providing Improper Employee Advice

- PPA Fiduciary Advisor – prohibited transaction exemption
  - Level fee
  - Audited computer model
- The latest from VP Biden
- Plan Sponsor liability
- Model and questionnaires
- Participant solicitation



# Failure to Stay Current in Industry

- Product related
  - Target Date Fund issues
  - Income annuity products
- Design related
  - QACA
  - Future testing concerns due to market correction
- Provider related
  - Consolidation



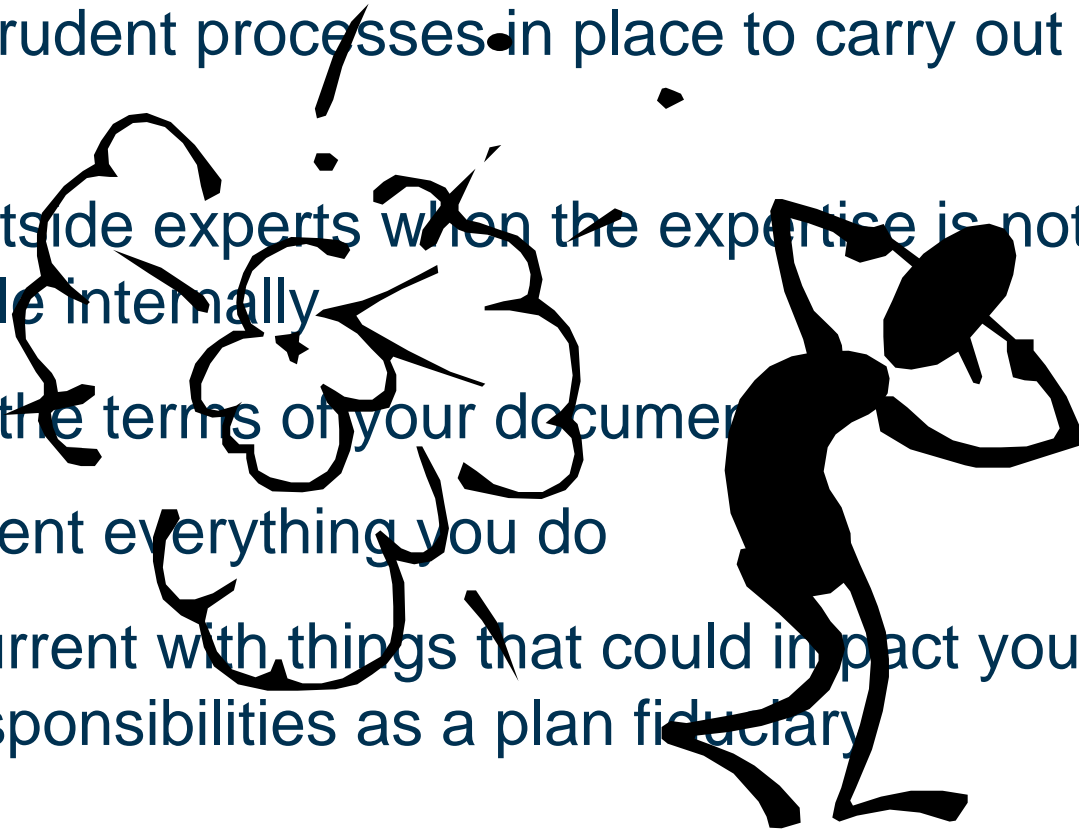
# Relying Solely on the Provider

- “What I Don’t Know Can’t Hurt Me”
- 404(c) status
  - “Our Provider is XYZ and They Handle That”
- Provider is a Fiduciary????
  - Proprietary investments



# How to Avoid Mistakes

- Have prudent processes in place to carry out fiduciary duties
- Hire outside experts when the expertise is not available internally
- Follow the terms of your documents
- Document everything you do
- Stay current with things that could impact your roles and responsibilities as a plan fiduciary



# Thank You!

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