

PLAN FUNDING & FIDUCIARY RESPONSIBILITIES

1. Unfunded Plans

- a. Non-qualified Deferred Compensation
 - i. Typically not funded.
 - ii. Contractual promise to pay at a future date
 - iii. Subject to risk of employer creditors
 - iv. Benefit amount based on specific criteria
 - v. Sometimes utilizes shadow investment portfolio
 - vi. Requires substantial risk of forfeiture
 - vii. Can be funded via a Rabbi Trust
- b. 457 (f)
 - i. For tax exempt organizations
 - ii. Often use Rabbi Trust

2. Funded Plans

- a. Funding Vehicles
 - i. Trust
 1. Full Trustee – full fiduciary responsibility, including selection and monitoring plan investments
 2. Directed Trustee – liability limited to specific activities, usually to hold assets, transmit transactions, maintain record of plan assets
 - ii. Custodial Account – similar to Directed Trustee
 - iii. Annuity Contract – insurance contract, assets held by insurance company, usually in a separate account or an interest in an undivided account (such as mutual fund shares or a fraction of a managed account)
- b. Typical types of plan assets
 - i. Mutual funds - registered securities
 1. Various share classes, designed for specific product distribution streams
 - a. Brokers
 - b. Insurance agents
 - c. Broker/dealers
 - d. Record keepers
 2. Various asset classes
 - a. Equities
 - i. Foreign
 - ii. Domestic
 - iii. Large cap
 - iv. Small cap
 - v. Medium cap
 - vi. Value
 - vii. Growth
 - viii. Blend
 - ix. Special asset classes, such as Real Estate

- b. Bonds
 - i. U. S. Treasury
 - ii. Corporate
 - iii. Foreign
 - iv. Hi Yield
 - c. Money Market
 - 3. Internal fees/charges/expenses
 - a. Disclosed in prospectus
 - i. Investment management fee
 - ii. 12b-1 fee
 - iii. Transfer agency fee
 - iv. Administration and record keeping fee
 - v. Commissions
 - vi. Contingent deferred sales charges
 - b. Undisclosed expenses/costs
 - i. Trading fees
 - ii. Trading efficiencies
 - ii. Annuity wrapper
 - 1. Insurance company wraps services and fees around the mutual fund or separately managed account
 - 2. Method of flexible compensation for distribution systems
 - iii. Stable asset funds
 - 1. Guaranteed yield usually annually adjusted
 - 2. Market value of underlying assets transparent until large payment or surrender of account i.e. market value adjustment made
 - 3. Usually benefit payments exempted from market value adjustment
 - 4. Participant direction sensitive
 - 5. Underlying assets include bonds, BIC's, GIC's, insurance company general accounts
 - iv. Separately Managed Accounts
 - 1. Portfolios created by investment manager
 - 2. Some mutual fund managers also manage separate accounts
 - 3. Potential for much lower management fees and avoidance of distribution/sales fees
 - c. ERISA 404(a) fiduciary responsibilities
 - i. Selection and monitoring of investment alternatives and asset classes
 - ii. Can be tasked to others, but ultimate responsibility is plan sponsor and investment fiduciaries
 - d. Participant-directed accounts
 - i. Fiduciary safe harbor for participant asset allocation investment results
 - ii. Not all participant-directed plans are 404(c) plans
 - iii. ERISA 404(c) exemption for participant directed accounts
 - e. QDIA for default accounts
 - i. Fiduciary safe harbor for default investment
- 3. **Other Fiduciary Responsibilities**

- a. ERISA general responsibilities
 - b. Reasonable plan expenses
 - c. Fee disclosures
4. **Fiduciary liability management**
- a. Fiduciary failure law suits are EXPENSIVE
 - b. Fiduciary liability insurance only covers defense and settlement
 - c. Best insurance is documented compliance
5. **EPCRS**
- a. Correct qualification problems through EPCRS
 - b. Revenue Procedure 2008-50
 - c. The Employee Plans Compliance Resolution System (EPCRS) offers a comprehensive system of correction programs for sponsors of retirement plans that are intended to satisfy the requirements of sections 401(a), 403(a), 403(b), 408(k), or 408(p) of the Internal Revenue Code, but which have not met these requirements for a period of time. This system allows plan sponsors to correct these failures and thereby continue to provide their employees with retirement benefits on a tax-favored basis. The components of EPCRS are:
 - i. Self-Correction Program (SCP),
 - ii. Voluntary Correction Program (VCP),
6. **U.S. Department of Labor Correction Programs**
- a. The Employee Benefits Security Administration (EBSA) office of the Department of Labor protects the integrity of retirement, health and other employee benefit plans. Among the key areas EBSA oversees are the fiduciary responsibility, prohibited transaction, and reporting and disclosure requirements of the Employee Retirement Income Security Act (ERISA).
 - b. Delinquent Filer Voluntary Compliance Program (DFVC)
 - i. Provides plan administrators with a way to comply with the annual reporting requirements by coming up to date with corrected filings of Form 5500s.
 - c. Voluntary Fiduciary Correction Program (VFPC)
 - i. Gives plan sponsors and service providers the chance to self-correct fifteen specific financial transactions that violate ERISA, such as delinquent participant contributions.
7. **Large Plan Audit Requirement**
- a. Large plans are , in general, those with 100 or more *eligible employees*
 - b. Audit required by independent CPA firm
 - c. Audit is part of the form 5500 filing – form is incomplete without it attached