



## An Overview of ERISA Fee Recapture Accounts

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# Agenda



Framework for ERISA fee recapture accounts

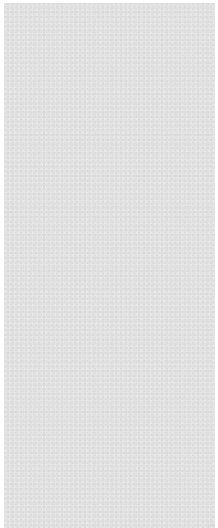


DOL guidance



Account structure & administration considerations

# What's in a Name?



ERISA Reimbursement  
Account

ERISA Fee Recapture  
Account

ERISA  
Credit

ERISA  
Budget

ERISA  
Account

Fee Credit  
Account

ERISA  
Bucket



# Why All the Attention NOW?



DOL fee transparency initiative

GAO study

- *401(k) Plans: Increased Educational Outreach and Broader Oversight May Help Reduce Fees* (April 2012)
- 48% of plan sponsors didn't know if their service providers engaged in revenue sharing practices

DOL Advisory Opinion 2013-03A

# Revenue Sharing Basics



Definition – payments by an investment provider to other service providers for product distribution or recordkeeping & administrative services

Sources

- 12b-1 fees
- Sub-transfer agent & administrative fees

# Revenue Sharing Basics



Revenue sharing amount varies

- Among various investments
- Within share classes of a mutual fund

Amount typically expressed as a percentage of assets

- Example: 25 basis points (.25%)

# Impact



## Benefit

- Offsets recordkeeping and administration costs

## Concern – complexity

- “Free” recordkeeping myth
- Plan sponsors confused or unaware

ERISA 408(b)(2) service provider disclosures designed to help close the knowledge gap

# ERISA Framework



No ERISA definition of ERISA fee recapture accounts

ERISA 3(14)(B) – service provider is a party in interest

ERISA 406(a)(1)(C) – furnishing of goods or services between a plan & a party in interest is a prohibited transaction unless an exemption applies

ERISA 408(b)(2) – exemption for services if

- Services are necessary for the administration of the plan
- Fees are reasonable

# Fee Recapture Account Structure



## Option 1 – Credits outside the plan

- Amounts retained by the service provider
- Tracked and credited by service provider

## Option 2 – Account inside the plan

- Deposited in plan account
- Allocated by plan fiduciary



# Option 1: Credits



Revenue sharing is paid to service provider

- Amounts paid from the menu of investment options offered to plans
- Held as general company asset

Anticipated revenue sharing taken into account when setting fee schedules

Credits may be given to plans based on a methodology or formula

# Plan Asset Question



Question: Are the revenue sharing amounts retained by service providers plan assets?

Impact

- Trust requirement
- Prohibited transaction concerns
- Plan fiduciary impact

Addressed in recent DOL advisory opinion





## Investments

- Pay revenue sharing to Principal

## Principal

- Retains all revenue sharing amounts
- May agree with a plan sponsor to keep a bookkeeping record of revenue sharing received in connection with that plan's assets
- Applies the credits to pay certain expenses or deposit an amount equal to the credit into the plan

## Plan Sponsor

- Amounts received by service providers are not plan assets
- Deposits into plan considered plan assets
- Contractual right to receive the payments is a plan asset



# Plan Sponsor Impact



ERISA 3(14)(B) – service provider (Principal) is a party in interest

ERISA 406(a)(1)(C) – furnishing of services between a plan & a party in interest is a prohibited transaction unless an exemption applies

ERISA 408(b)(2) – exemption for services if

- Services are necessary for the administration of the plan
- Fees are reasonable



# Plan Sponsor Impact



Prudent negotiation of service provider arrangement requires

- Prior to entering into arrangement, understanding the formula, methodology & assumptions used to credit fees
- Periodically monitoring the arrangement



# Recordkeeper & TPA Impact



Disclosure of compensation from third parties

Must explain

- Methodology used to credit revenue sharing
- Administration of credits
  - Applied to expenses outside the plan
  - Deposited into the plan

## Option 2: Account Within the Plan



Considered a plan asset

Separate account

Amounts are not considered plan contributions

Allocations directed by plan sponsor – a fiduciary function





Types of expenses to be paid from ERISA fee recapture accounts

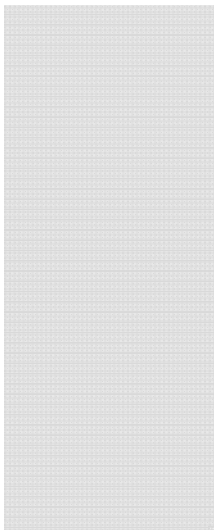
Allocation methodology/crediting

- Plan level
- Participant level
- Timing

Excess revenue sharing amounts



# Questions



# Continuing Education

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- Verify your attendance
- Check the box if you want your attendance reported to IRS (for ERPA reporting and those with a PTIN only)

## 2. Pick up your certificate of attendance

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