Fiduciary Duty #29

This topic of fiduciary duties involves the subject of ERISA 404(c).

The premise surrounding the concept for this section of the code is as follows:

Absent the election of certain protections within the Employee Retirement Income Security Act (ERISA), named fiduciaries are accountable for the prudent investment of an individual participant's assets, even if the plan allows for participant-direction of investments.

To avoid this dilemma, the named fiduciaries may take advantage of specific protection provided under ERISA 404(c).

Under ERISA 404(c), the named fiduciaries are protected from liability for a participant's poor investment choices **so long as the plan satisfies certain requirements.**

In order to enjoy the protection of ERISA 404(c), named fiduciaries must first notify participants that an election has been made to be an ERISA 404(c) plan, (done annually on IRS Form 5500) and that the fiduciaries will not be liable for the participants' investment performance.

In addition, ERISA 404(c) contains over **20 critical requirements** that must be satisfied in order for the fiduciaries to enjoy insulation from liability.

Thus, achieving complete protection is an illusory goal for many plans; and failing to comply with a single requirement can subject fiduciaries to liability for the investment of a participant's account.

Bottom line: this is an important step in the process of reducing your liability as a Responsible Plan Fiduciary (RPF). Although the Fee Disclosure Rules that went into effect a few years ago have made this a lower bar to clear, it is still an important part of your plan governance procedures and one that you want to keep current.

If you would like to discuss this matter further, or revisit the checklist that surrounds this topic, please don't hesitate in letting us know.

Mike and Matt