

Understanding Fiduciary Coverage

ERISA SECTION 3(16) Plan Administrator definition

- The term “plan administrator” is defined by ERISA as the person designated by the terms of the plan document, and if no administrator is named, then the Plan Sponsor (commonly called the “ERISA administrator”) is the 3(16). This should not be confused with a “Pension Administrator” or “Third Party Administrator.” The plan administrator is responsible for the overall operation of the plan including:
 - Timely filings with the federal government (form 5500, etc), Disclosures to plan participants, hire plan service providers, and fulfill other responsibilities as set forth in the plan documents (even though a third party administrator or pension administrator may be contracted to perform these duties).

ERISA SECTION 3(21) Defines Who is a “Fiduciary” Under ERISA

Fiduciaries include:

- Anyone with discretionary authority or control over plan assets or plan administration, such as an investment manager or plan administrator.
- Anyone who provides investment advice to participants or other fiduciaries in connection with plan assets.
- A “fiduciary” can either have complete discretion or serve in an advisory capacity only (leaving final decisions to another fiduciary). “Advisory” fiduciaries are sometimes known as “limited scope” fiduciaries.
 - In either case the Employer is still a fiduciary
 - An agreement is typically executed between the Employer and 3(21) fiduciary

ERISA SECTION 3(38) Defines a Certain Type of Fiduciary, an “Investment Manager”

- A 3(38) fiduciary is anyone other than a named fiduciary or trustee who has full discretion and control for investment selection, monitoring, and replacement. The presence of a 3(38) relieves the Employer from fiduciary liability for the investment selection, monitoring, and replacement. The sponsor is, however, still liable for the prudent selection and monitoring of the 3(38) fiduciary.
- A 3(38) fiduciary must typically be a bank, insurance company, or a registered investment advisor (RIA).
- An agreement should be executed between the Employer and 3(38) fiduciary.