

Fiduciary Responsibility in the Age of Technology

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Overview

- This webinar will discuss the responsibilities of plan fiduciaries, the impact of technology on retirement plan administration, make you aware of common errors and ways to minimize your liability.
- Retirement Plans have always been and continue to be complex.
- There are many moving parts that require coordination to insure a successful result.
- Success often depends on service providers, but responsibility for results lies squarely on the Plan Fiduciaries.

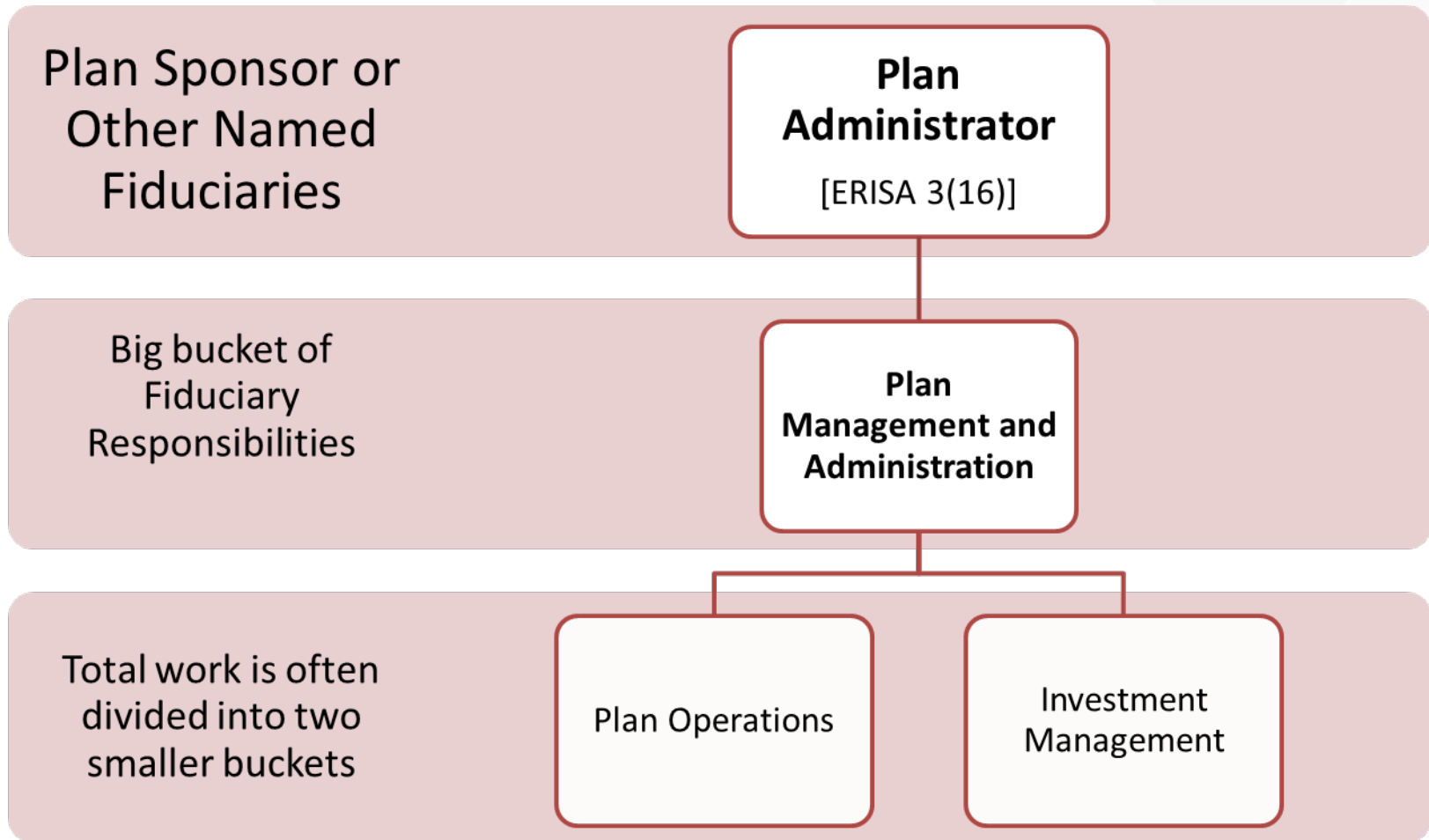
Consequences of Fiduciary Mismanagement

Personal Liability

ERISA Sec. 409 makes a fiduciary personally liable for any breach of responsibility that he directly commits, either by act or omission.


- Restoration of Losses
- Disgorgement of profits (return of profits gained as a result of a breach)
- Other relief determined equitable or remedial by the courts to compensate for a breach

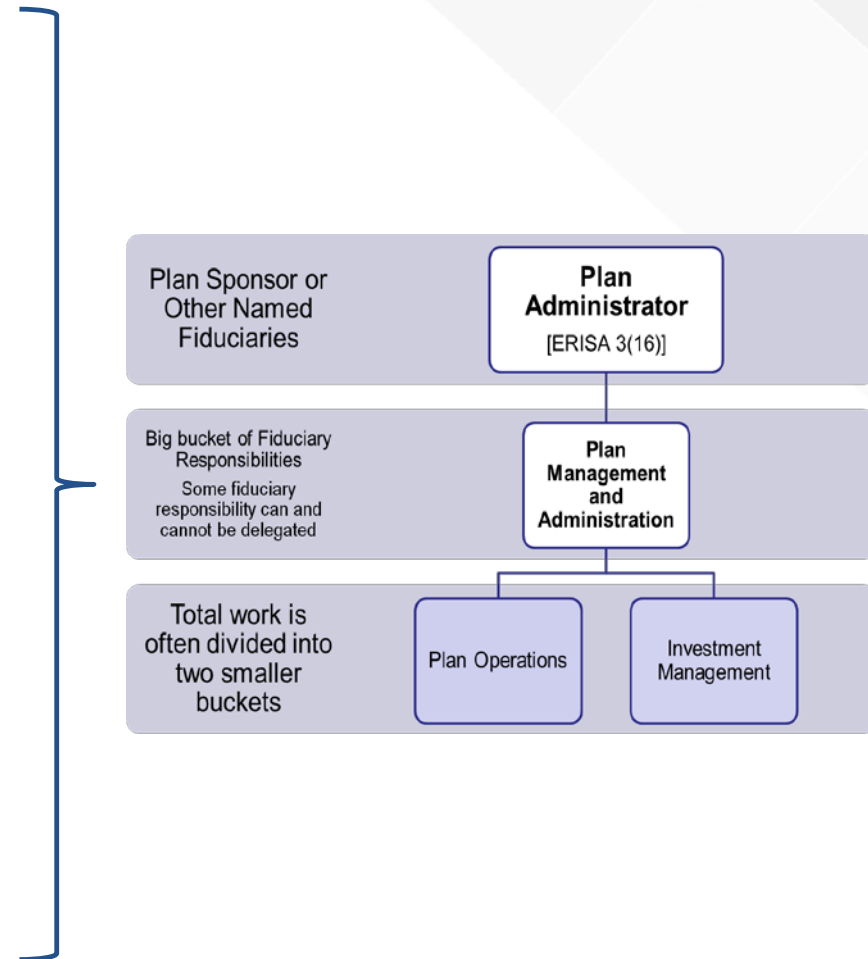
Retirement Plan Management



Examples of duties of a 3(16) Plan Administrator

Administrator

- Select, evaluate and monitor:
- Trustee(s)
- Administrative Service Providers (fiduciary or non-fiduciary)
- Investments Offered under the plan
- Investment advisor to the plan, if any (RIA or broker)
- Decision to delegate plan administration and/or investment management responsibilities to other fiduciaries
- Evaluation of all plan fees 

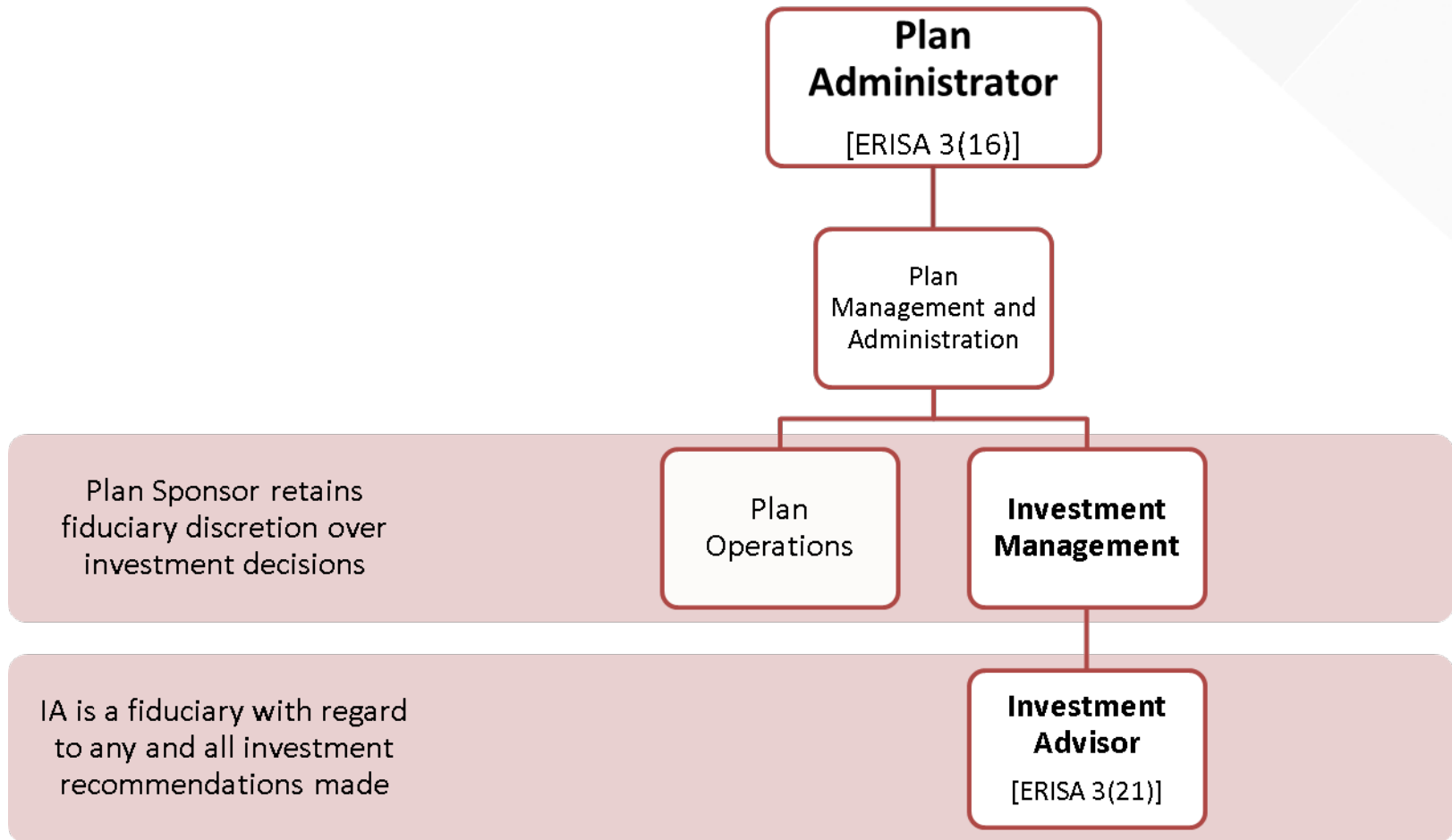


More Plans are Turning to Investment

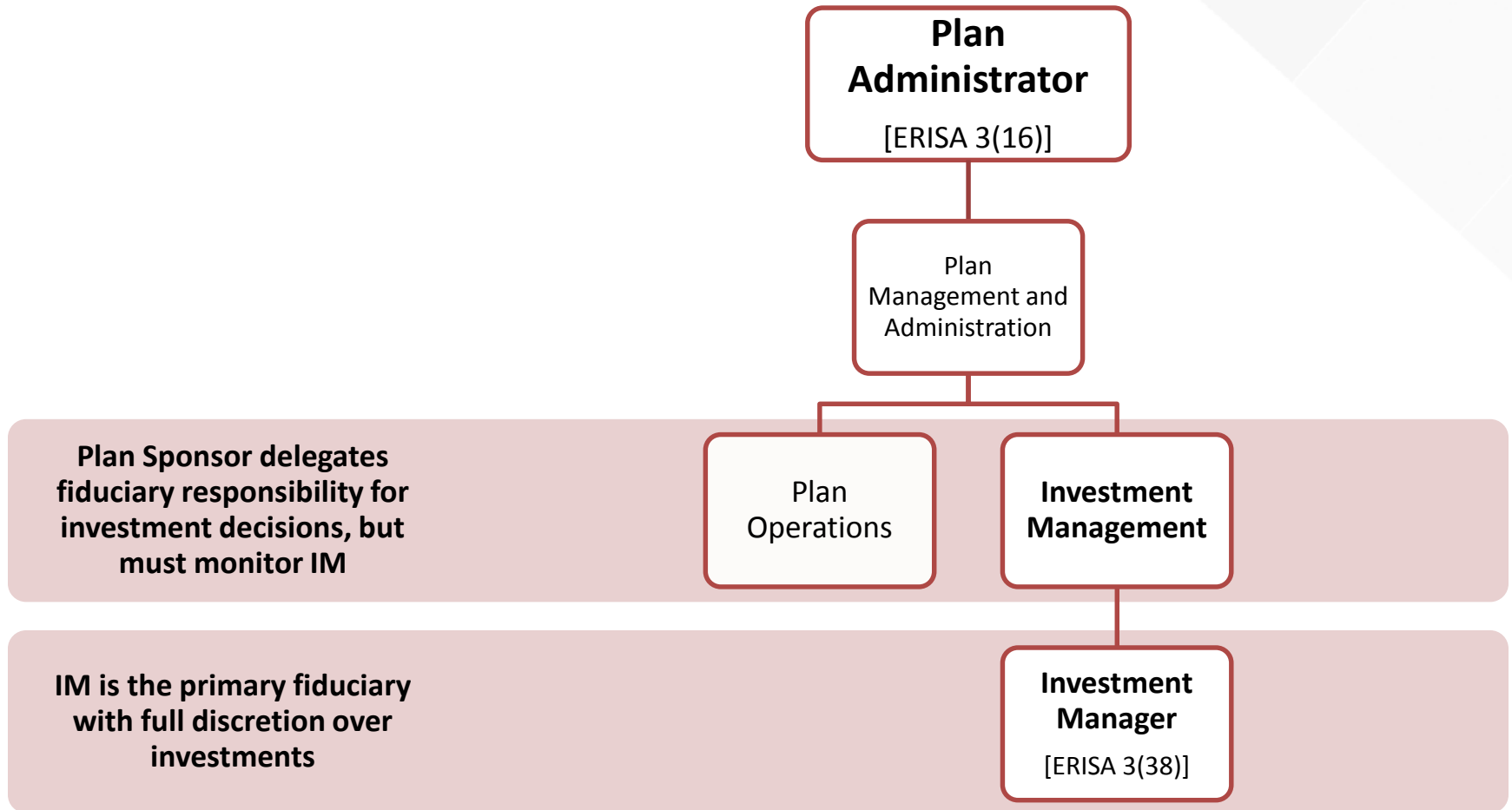
Advisors

- Delegating fiduciary responsibility to fee-only investment advisors has become a very common occurrence in the last few years.
- 82% of new plans sold in 2010 hired an advisor versus 69% in 2009
- The focus on fees in the last 12 months has accelerated Plan Sponsor interest in working with advisors
- To follow is a quick overview of how fiduciary delegation works from the investment perspective:

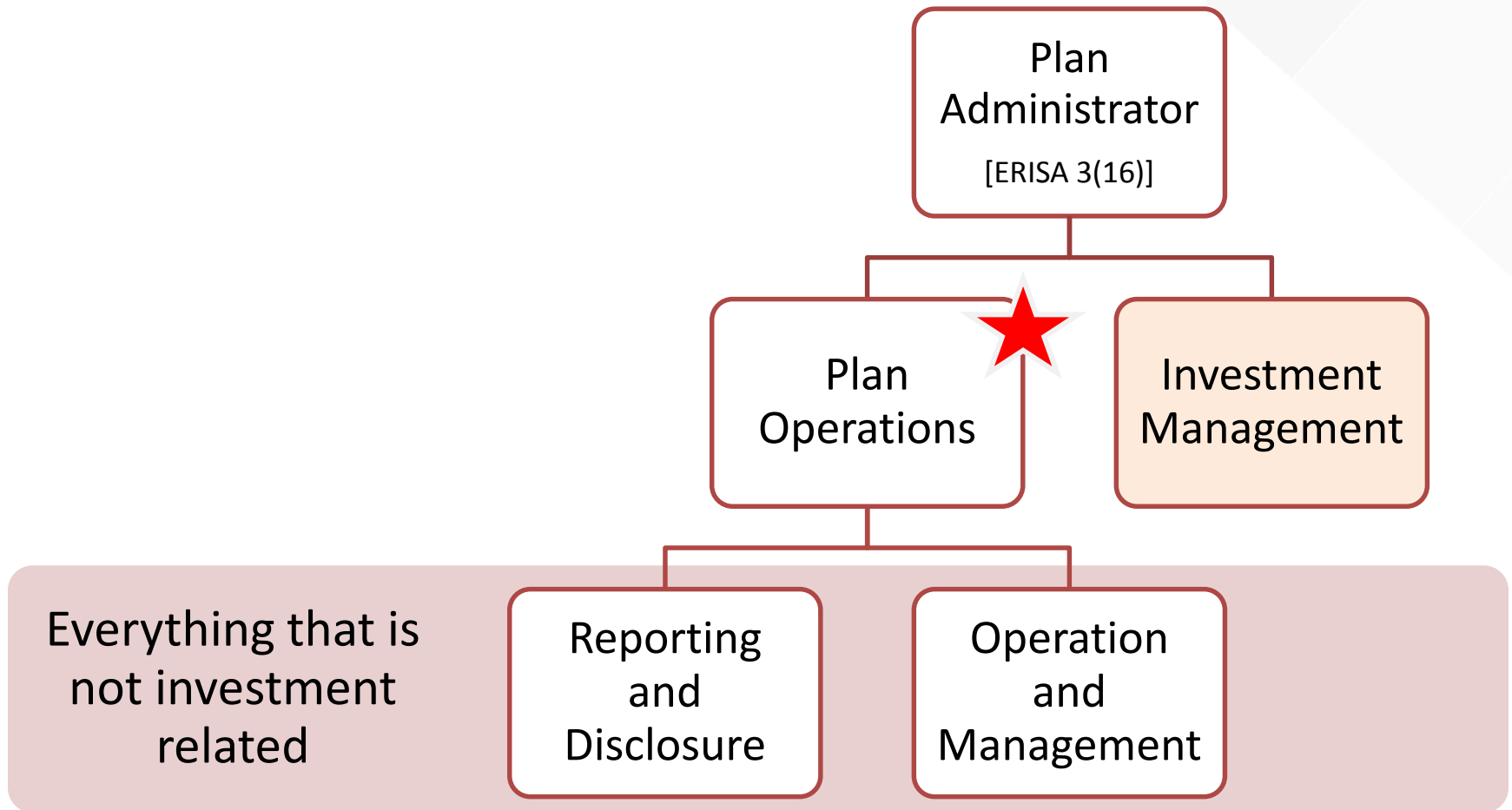
Hiring an Investment Advisor [ERISA 3(21)]



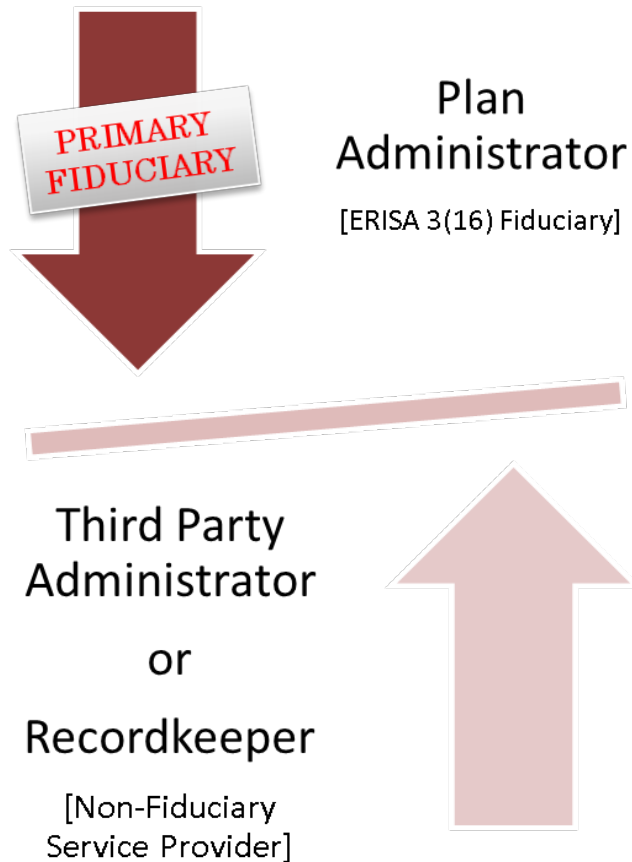
Hiring an Investment Manager [ERISA 3(38)]



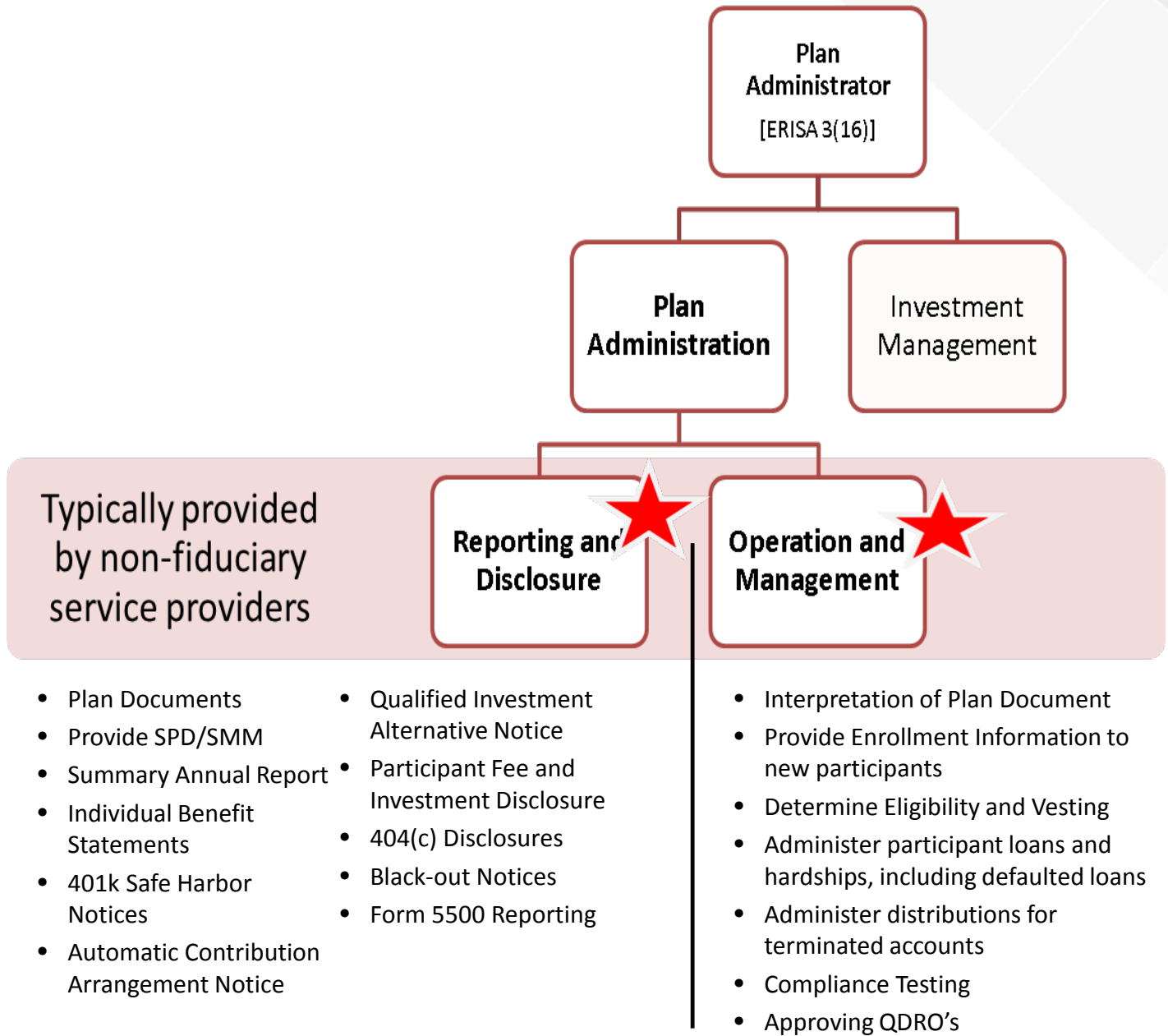
Retirement Plan Management



Typical Service Arrangements



- TPA's and Directed Recordkeepers are **not fiduciaries**
- Service providers do not interpret the plan document and make discretionary decisions
- “Ministerial” services are non-fiduciary by nature



Plan Administrator
[ERISA 3(16)]

Plan Administration

Investment Management

Reporting and Disclosure

Operation and Management

- Plan Documents
- Provide SPD/SMM
- Summary Annual Report
- Individual Benefit Statements
- 401k Safe Harbor Notices
- Automatic Contribution Arrangement Notice

- Qualified Investment Alternative Notice
- Participant Fee and Investment Disclosure
- 404(c) Disclosures
- Black-out Notices
- Form 5500 Reporting

- Interpretation of Plan Document
- Provide Enrollment Information to new participants
- Determine Eligibility and Vesting
- Administer participant loans and hardships, including defaulted loans
- Administer distributions for terminated accounts
- Compliance Testing
- Approving QDRO's

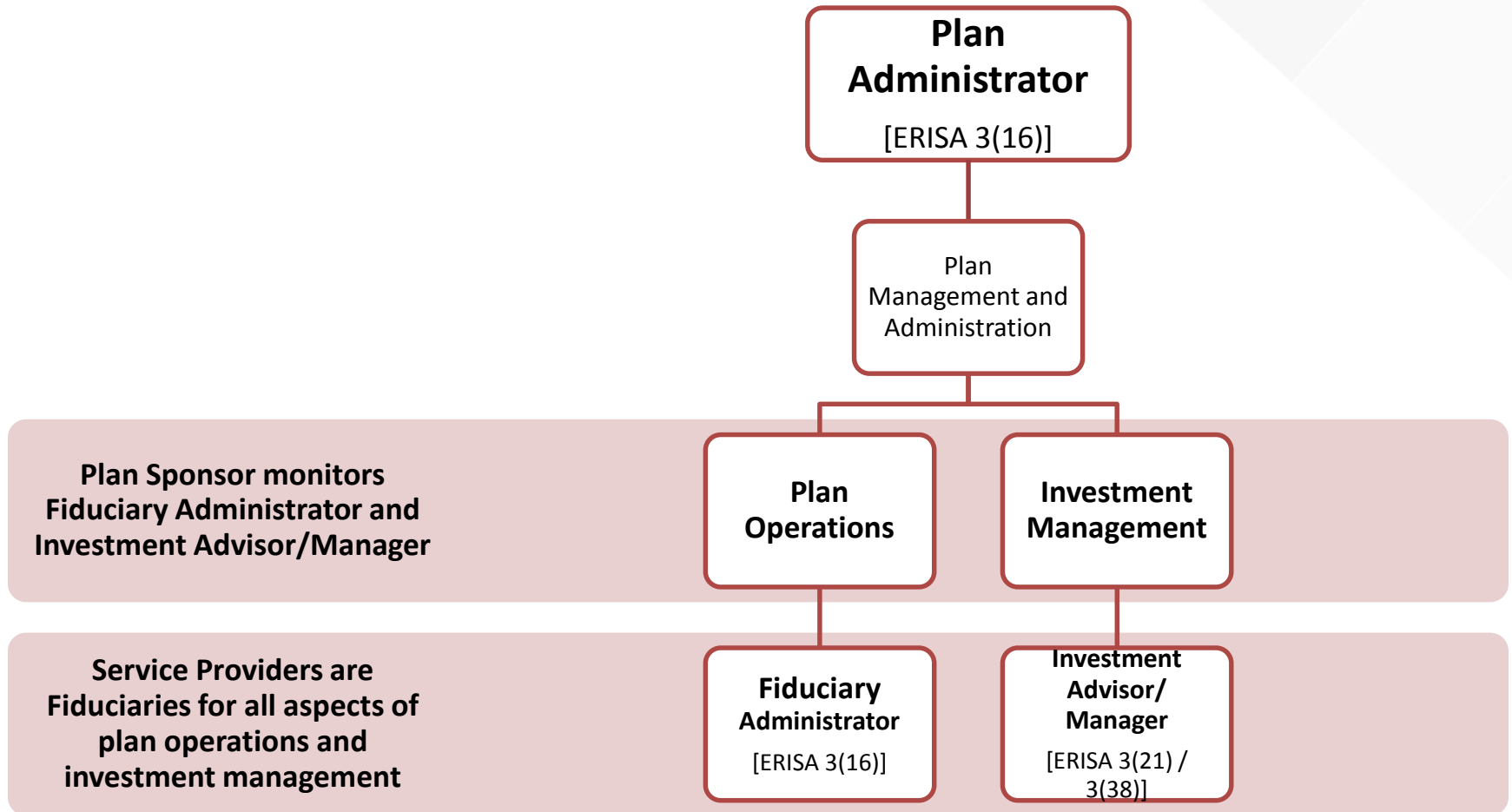
Raising the Stakes

- Plan Sponsors are seeking solutions to outsource more fiduciary responsibility for lots of reasons:
 - Managing a retirement plan is not a core competency or profit center
 - The work requires cross-functional cooperation within companies (HR, Payroll, Finance ... who's responsible?)
 - Business turnover creates gaps and inconsistencies, which increase fiduciary risk
- The next evolution to fiduciary outsourcing is the emergence of 3(16) Plan Administrator service providers

Advantage of Hiring a 3(16) Fiduciary

- Plan Sponsor ceases to be responsible for the applicable reporting and disclosure obligations under ERISA
and / or
- operation and management of the Plan as a whole
however
- Plan Sponsor always retains fiduciary responsibility to select and monitor delegated fiduciaries.

The Future Retirement Plan ?



The Age of Retirement Plan Technology

- Many aspects of plan administration have now become automated. Some examples are payroll, enrollment, participant selection of investments, loans, distributions, 404(a)(5) participant investment disclosures, and other annual notices such as safe harbor notices.
- Unless you hire a 3(16) Administrator you still have fiduciary responsibility for the correct operation of your plan.
- Technology automations can change the administration of the plan but should be reviewed on a regular basis. Your Plan Auditor will help you manage this.

Payroll

- One of the most common errors IRS agents find in retirement plans is that the plan is using a definition of compensation to calculate deferrals, match and employer contributions that does not reflect what is written in the plan document.
- It is very important that you make sure you are using the correct plan definition of compensation for your employer profit sharing contributions calculations.
- Usually employee deferral elections are automatically calculated based on the way your payroll is set up. In addition, payroll period matches are also automatically calculated with payroll.

Age of Technology – Payroll Submission

Fiduciary Responsibility

- Payroll feeds have become more and more automated over the years often saving a lot of time for the plan sponsor.
- Generally plan funding is also included in the automated process to ensure deposits are made timely in accordance with the DOL regulations.
- With these automated processes it is more important than ever to implement a checks and balances system to confirm payroll set-up and payroll pay period totals for all employees.
- Introducing an automated process does not necessarily mean it is a set it and forget it approach, especially if you amend your plan definition of compensation.
- Plan sponsors should check each pay period deposit for accuracy.

Age of Technology – Enrollment, Auto Enrollment/Escalation

Instead of completing paper forms many providers allow participants to enroll on line. This involves picking their investments and choosing the amount they want to defer online. In addition, to “traditional” enrollment where the participant selects their deferral percentage, a plan that uses Auto Enrollment will enroll a participant at a plan selected deferral rate unless the participant changes the rate. Auto escalation will often improve your ADP and ACP results which reduces or eliminates the need for refunds.

- Other Facts About Auto Enrollment
 - It can be used for just new hires or a re-enrollment can occur for all participants.
 - 22.9% of plans between \$1m and \$5m use auto enrollment
 - 43.8% of plans between \$10m and \$25m use auto enrollment
 - 46.7% of plans between \$10m and \$25m use a 3% default deferral rate

Age of Technology – Auto

Enrollment/Escalation

- **What is Auto Escalation?**
 - An option to the auto enrollment feature that increases the auto enrolled employees savings rate over time.
 - A common example is an employee is initially auto enrolled at 3%. Each year thereafter, the auto enroll percentage increases year by 1% to a maximum of 10% of pay.
 - A great tool to automatically increase an employees savings rate over time.
 - 31.3% of plans between \$10m and \$25m use auto escalation.
- **Fiduciary Responsibility**
 - There are additional administrative responsibilities a plan sponsor takes on by implementing auto enrollment.
 - Employees must be auto enrolled on the correct pay period at the right defaulted amount.
 - It is the fiduciary duty of the plan sponsor, not the recordkeeper or payroll, to monitor the auto enrollment feature is handled correctly and accurately.
 - If an employee is missed the sponsor may be required to provide contributions and lost earnings.

Age of Technology – Beneficiary

Management

Traditional Method

- Participants complete paper beneficiary forms.
- Employers responsibility to keep updated copies in employee files.
- Generally, plan recordkeeper provides the beneficiary forms but does not collect them.

Technology Method

- Participants can select and manage beneficiary information through the plan participant website.
- Selections and updates are time stamped.
- Paper forms only used if beneficiary election requires spousal consent.

Age of Technology – Beneficiary

Management

Fiduciary Responsibility

- The plan sponsor still has fiduciary responsibility to confirm beneficiary information is accurate.
- Married employees must indicate they are married during the online beneficiary management.
- If a participant is married and they list anyone other than their spouse as their beneficiary they generally must have a spousal consent form signed (paper copy).
- The online beneficiary management programs have made it easier for plan sponsors to track up to date beneficiary information for all employees.

Age of Technology – Loans & Distributions

Traditional Method

- Paper loans and distributions.
- A loan or distribution is requested by the participant and forms are sent out.
- Forms completed by plan participant and sent to plan sponsor for approval.
- Forms are then sent to TPA for processing.

Technology Method

- Participant requests loan/distribution via the web.
- Automatic request sent to plan sponsor for online approval.
- TPA approves and completes the request.

Age of Technology – Loans & Distributions

Fiduciary Responsibility

- The plan sponsor is usually still responsible for approving any hardship distributions since the participant must provide proof of hardship.
- Paper loan forms may still be required if the plan requires spousal consent for a loan.
- The plan sponsor must also still approve the plan participant request before it can be processed.
- If your plan limits the number of loans a participant can have you will want to make sure that limit is set up properly.

How to Prudently Select a Retirement Plan Provider and CPA Audit Firm

- Establish and follow a procedure that satisfies the procedural requirements of ERISA.
- According to the DOL, engage in an objective process which is designed to elicit the information necessary to evaluate the following:
 1. The qualifications of the service provider
 2. The quality of services provided, and
 3. The reasonableness of the provider's fees in light of the services provided.

Other Ways to Minimize your Fiduciary risk

- **Firm Experience and ERISA Expertise**
 - Confirm that the provider has sufficient expertise in ERISA and the educational background and experience of the firms' employees and management team.
- **Nature of Firm**
 - Identify the size of the firm, the total amount of client assets under administration as well as whether the prospective firm is a trust company, RIA or non-regulated entity.
- **Professional Liability (E&O) Coverage**
 - Confirm that the firm maintains a sufficient level of professional liability coverage or errors and omissions insurance (i.e. \$1 million) to ensure it will have sufficient assets to pay any potential claims made against it.

If a plan mistake is discovered you may correct errors using the IRS Employee Plans Compliance Resolution System (EPCRS) and correct the error before it is discovered on audit. Fees for use of EPCRS are much lower than what you would pay if the IRS finds an error first.

Questions?

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