
Legal and Legislative Update

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Agenda

- ▶ Legislation
- ▶ Regulatory Developments
- ▶ Case Law

Legislation

- ▶ President Obama's FY2017 Budget Proposal
 - Automatic IRA enrollment
 - Open MEPs

- ▶ State-Run Retirement Plans
 - Proposed Rule
 - Interpretive Bulletin

Regulatory Developments

- ▶ Mid-year Changes to Safe Harbor Plans (IRS Notice 2016-16)
 - Most changes permitted with notice and election opportunity
 - Few prohibited changes

- ▶ Changes to Determination Letter Program (IRS Notice 2016-03)
 - Program availability sharply limited after Cycle A
 - Kutak Rock Retirement Plan Opinion Letter Program

Regulatory Developments (cont.)

- ▶ Guidance on Selecting Benefit Plan Auditors (DOL)
 - Focus on firms with demonstrated experience
 - Membership in AICPA Employee Benefit Plan Audit Quality Center

Regulatory Developments (cont.)

- ▶ Documentation requirements for loans and hardship distributions (IRS Employee Plans News 2015-4)
 - Plan sponsors responsible for hardship/loan documentation, even if TPA handles
 - No electronic self-certification of hardship

- ▶ SEC Money Market Reform

- ▶ Fiduciary Rule Status

Case Law

▶ *Amgen v. Harris* (U.S. 2015)

- Reaffirms importance of *Dudenhoeffer*

▶ *Smith v. Aegon Companies Pension Plan* (U.S. 2015)

- Plans may include venue selection clauses

▶ *In re Fidelity ERISA Float Litigation* (1st Cir. 2016)

- Lower court held recordkeeper not a fiduciary with respect to float
- Currently being appealed

Case Law (cont.)

▶ *Tussey v. ABB Inc.* (W.D. Mo. 2015)

- Damages = TDF's performance vs. *minimum* return of prudent options

▶ *Tibble v. Edison* (U.S. 2015)

- Reaffirms that fiduciaries have continuing obligation to monitor investments

▶ *Bell v. Anthem* (S.D. Ind. 2015)

- Ongoing complaint—may provide new guidance about lower-cost share classes, separate accounts, and collective investment trusts

Case Law (cont.)

▶ *McCaffree Financial Group v. Principal Life Insurance Company* (8th Cir. 2015)

- Service provider not fiduciary merely for picking options under service agreement or following terms of agreement

▶ *Spano v. Boeing* (S.D. Ill. 2015)

- Highlights importance of monitoring sector funds carefully

▶ *Pfeil v. State Street Bank and Trust* (6th Cir. 2015)

- Reaffirms importance of prudent process
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Questions??