



NEWS RELEASE

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FOR IMMEDIATE RELEASE

Press Guide to

2006 Pension Protection Act; Title VI, It's Impact on Investment Professionals

Pittsburgh, PA, August 7, 2006— Title VI of the 900-page Pension Protection Act (Act) deals with the provision of specific investment advice being provided to plan participants.

Fiduciary 360 has prepared the following release to assist members of the press and others in understanding the investment fiduciary issues which will impact financial services firms, investment advisers, plan sponsors, and plan participants.

Who is a “*Fiduciary Adviser*” Under the Act?

Will be inclusive of: (1) financial services firms that provide record-keeping and/or investment management services (mutual fund managers) and also provide specific investment advice to participants; and, (2) investment advisers who provide specific investment advice (as opposed to education) to participants, including advisers of a registered investment adviser, bank, insurance company, and/or broker dealer.

Of particular note is the inclusion of registered representatives of broker dealers. **The Act will now put considerable pressure on broker dealers to define appropriate investment fiduciary policies and procedures for their brokers serving as *fiduciary advisers*.**

Up-to-this point: (1) broker dealers have, for the most part, refused to acknowledge any circumstance under which their brokers may be deemed to have fiduciary status; (2) The NASD has never defined an investment fiduciary standard of care for broker-advisers; and, (3) The SEC has skirted the issue of whether a broker-adviser could be deemed to have fiduciary status by making permanent an exemption for broker dealers to register as investment advisers as long as the broker's advice was incidental to the sale of a financial product or the execution of a transaction.

Fiduciary Advisers Affiliated with a Service Provider vs. Independent Fiduciary Advisers

Fiduciary Advisers associated with a 401(k) service provider (record-keeper and/or investment manager) will:

1. Be limited to advice that has been generated by a computer model which has been developed by a qualified expert and annually certified by a qualified fiduciary expert.
2. Be limited to level-compensation, such as an asset-based fee or a project-based fee. For example, the fiduciary adviser would be prohibited from taking compensation that varied depending on: (a) which fund family was selected, (b) which asset classes were selected, and/or (c) which share class was selected.
3. Not have discretion over investment decisions of the participant.
4. Have to acknowledge fiduciary status in writing, including a full disclosure of potential conflicts of interests and forms and amounts of compensation.
5. Have to have their services audited annually by an independent third-party.

Fiduciary Advisers who are independent of a 401(k) service provider will:

1. Not be limited to advice generated by a computer model.
2. Be limited to level-compensation, such as an asset-based fee or a project-based fee. For example, the fiduciary adviser would be prohibited from taking compensation that varied depending on: (a) which fund family was selected, (b) which asset classes were selected, and/or (c) which share class was selected.
3. Have to acknowledge fiduciary status in writing, including a full disclosure of potential conflicts of interests and forms and amounts of compensation.

4. Have to have their services audited annually by an independent third-party.

The Plan Sponsor's Safe Harbor

The Act will define a "Safe Harbor" for plan sponsors, insulating the plan sponsor from investment related liability associated with participant advice, provided certain requirements are met:

1. The plan sponsor must prudently select a qualified *fiduciary adviser*.
2. The *fiduciary adviser* must acknowledge fiduciary status in writing.
3. The plan sponsor must determine that the fees of the *fiduciary adviser* are fair and reasonable for the level of services rendered.
4. The plan sponsor must prudently monitor the *fiduciary adviser* on an ongoing basis.

Required Audits

The computer models used by *fiduciary advisers* associated with a 401(k) service provider will have to be certified by a fiduciary expert every year – the "expert" must be independent of the creator of the model.

The scope of investment services provided by the *fiduciary adviser* (whether the adviser is independent or associated with a 401(k) service provider) will have to be audited by an independent auditor each year. Though the scope of the audit is not defined in the Act, Fiduciary360 released earlier this year formal procedures to assess whether an investment adviser conformed to a defined fiduciary standard of care.

Where the Act Fell Short

The Act did not go far enough in defining the scope of services which should be provided by, and be the responsibility of, the *fiduciary adviser*. The Act focused on the use of computer models which deal almost exclusively on the development of a participant's asset allocation decision.

In the opinion of Fiduciary360, an appropriate advice model should include:

1. Asset allocation and optimization procedures
2. Due diligence procedures for selecting investment options
3. Due diligence procedures for monitoring investment options

4. An assessment of investment-related fees and expenses
5. An assessment of whether the plan sponsor is meeting its investment fiduciary responsibilities

*About **Fiduciary360** (www.fi360.com): **Fiduciary360** is a trilogy of associated organizations focused solely on investment fiduciary responsibility. The **Foundation for Fiduciary Studies** is a nonprofit organization established in 2000 for the purpose of defining the practices that detail a prudent process for investment fiduciaries. The **Center for Fiduciary Studies**, which is associated with the **University of Pittsburgh's Center for Executive Education** at the **Joseph M. Katz Graduate School of Business**, was founded in 1999 and provides educational programs on investment fiduciary responsibility. **Fiduciary Analytics** is a technology firm established in 1999 which develops Web-based tools incorporating fiduciary practices for investment decision-makers.*

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