

EBSA News



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Contact: Gloria Della
Phone: (202) 693-8664

Employee Benefits Security Administration Releases Guidance on the Duties of a Directed Trustee

WASHINGTON--The U.S. Department of Labor's Employee Benefits Security Administration (EBSA) today released Field Assistance Bulletin (FAB) 2004-03 providing guidance to field investigators on the responsibilities of a directed trustee under the Employee Retirement Income Security Act (ERISA).

Consistent with the department's brief in the Enron case, the FAB clarifies that a directed trustee is a fiduciary under ERISA, responsible for carrying out its duties prudently and solely in the interest of the participants and beneficiaries of employee benefit plans. The FAB also makes clear that the named fiduciary, not the directed trustee, is primarily responsible for ensuring the prudence of plan investment decisions. A directed trustee is only required to question the directing fiduciary's instructions regarding transactions involving publicly traded securities in rare circumstances.

The FAB specifically addresses the responsibilities of a directed trustee in determining whether a direction is "proper" – consistent with the terms of the plan and not contrary to ERISA. When a directed trustee has non-public information regarding a security that is necessary for a prudent decision by the directing plan fiduciary, the FAB provides that the directed trustee has a duty to inquire about the named fiduciary's knowledge and consideration of the information. In the case of public information, a directed trustee would be required to question the instructions of the directing fiduciary only in extraordinary circumstances. The FAB provides that a directed trustee may have to question directions involving the purchase or holding of a security where there are "clear and compelling public indicators" that call into question the issuer's viability as a going concern.

The FAB is part of the department's ongoing compliance assistance program to help employers, plan officials, service providers and others comply with ERISA. Field Assistance Bulletins are available on the Internet at www.dol.gov/ebsa.

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