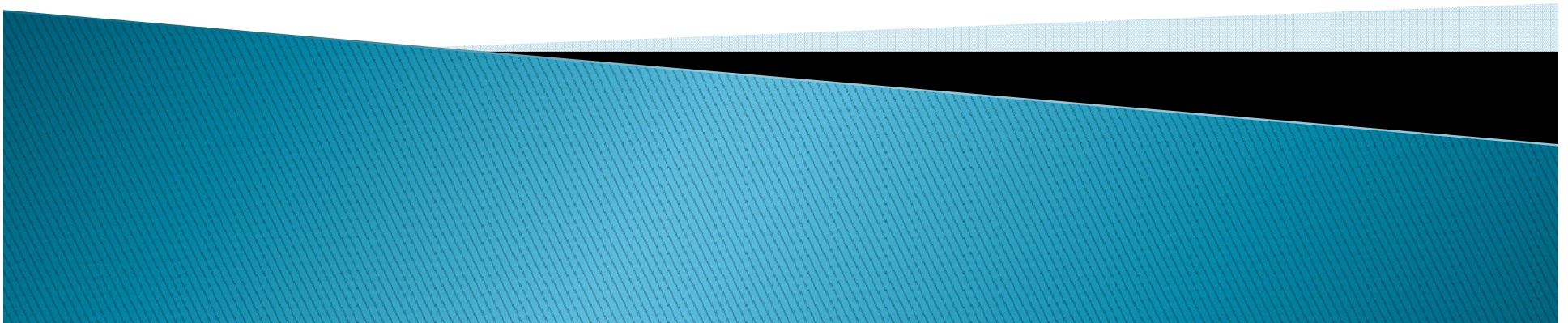


DUTIES OF FIDUCIARIES OF 403(b) PLANS

By D. Wesley Newhouse

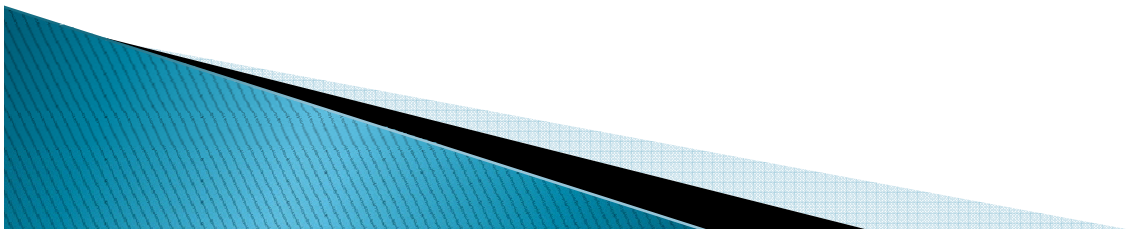
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February 2011



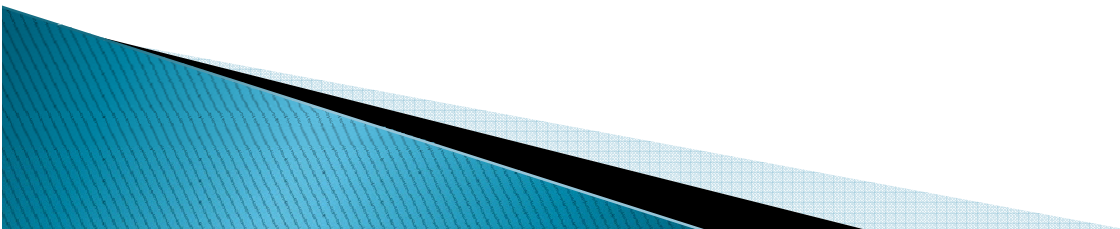
403(b) PLANS – A SHORT HISTORY

- ▶ ESTABLISHED 1964.
- ▶ 1979 SAFE HARBOR REGULATION.
- ▶ 2007 REGULATIONS – EFFECTIVE JANUARY 1, 2009.
- ▶ ADOPTION OF WRITTEN PLAN DOCUMENTS – EMPLOYER INVOLVEMENT.
- ▶ TRIGGER OF FIDUCIARY OBLIGATIONS.



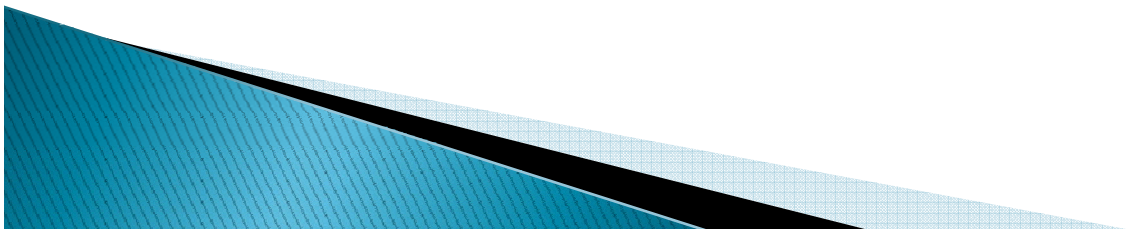
WHAT IS A “FIDUCIARY”

- ▶ A RELATIONSHIP “FOUNDED ON TRUST OR CONFIDENCE REPOSED BY ONE PERSON IN THE INTEGRITY AND FIDELITY OF ANOTHER”
 - BLACKS LAW DICTIONARY



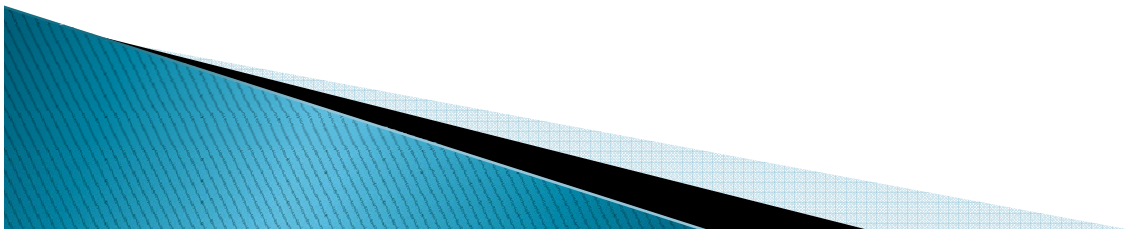
WHAT IS A “FIDUCIARY”, cont’d

- ▶ “USING DISCRETION IN ADMINISTERING AND MANAGING A PLAN OR CONTROLLING THE PLAN’S ASSETS MAKES THAT PERSON A FIDUCIARY TO THE EXTENT OF THAT DISCRETION OR CONTROL”
 - MEETING YOUR FIDUCIARY RESPONSIBILITIES, USDOL, MAY 2004



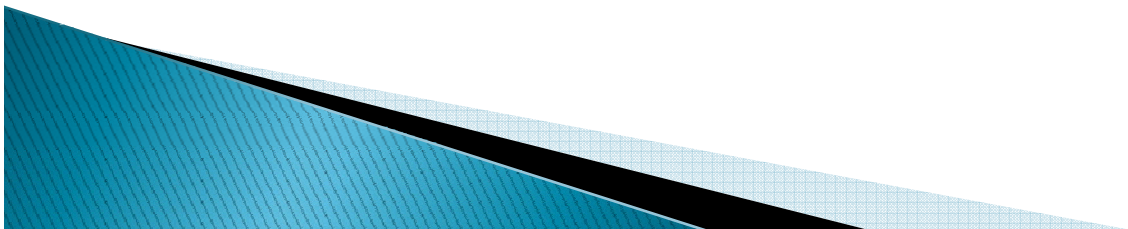
WHAT IS A “FIDUCIARY”, cont’d

- ▶ “THE KEY TO DETERMINING WHETHER AN INDIVIDUAL OR AN ENTITY IS A FIDUCIARY IS WHETHER THEY ARE EXERCISING DISCRETION OR CONTROL OVER THE PLAN”
 - MEETING YOUR FIDUCIARY RESPONSIBILITIES, USDOL, MAY 2004



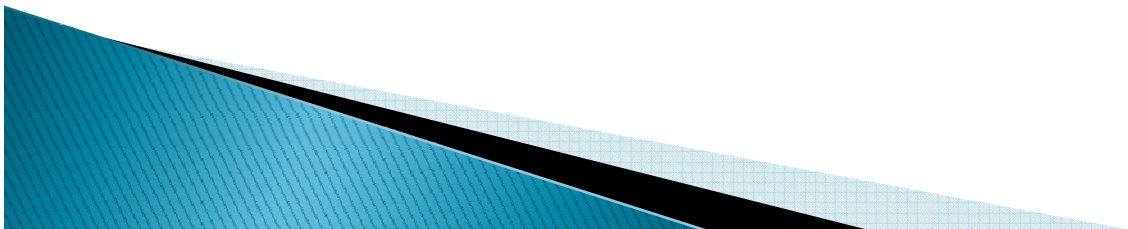
WHO ARE FIDUCIARIES?

- ▶ EMPLOYER
- ▶ INVESTMENT ADVISORS
- ▶ ADMINISTRATIVE COMMITTEE
- ▶ PLAN TRUSTEE
- ▶ TPA'S
- ▶ EMPLOYEES WITH DECISION-MAKING AUTHORITY



BASIC DUTIES OF FIDUCIARIES

- ▶ PROVIDE A LEGALLY-COMPLIANT PLAN DOCUMENT
- ▶ TIMELY DEPOSIT FUNDS
- ▶ KEEP ACCURATE RECORDS
- ▶ COMMUNICATE WITH PARTICIPANTS
- ▶ MANAGE ASSETS PRUDENTLY
- ▶ SELECT CONSULTANTS CAREFULLY
- ▶ AVOID CONFLICTS OF INTEREST

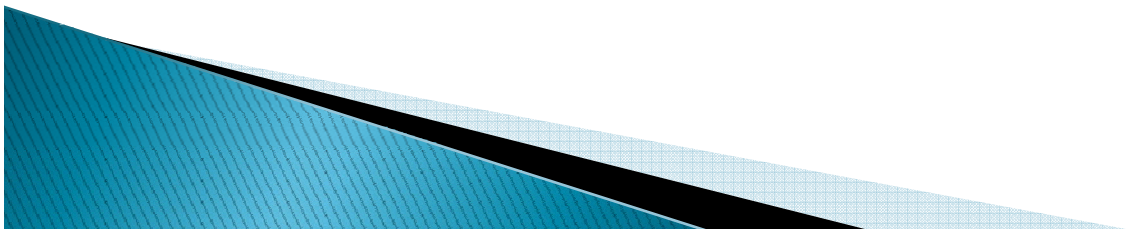


PLAN DOCUMENTS

- ▶ PLAN
- ▶ SUMMARY PLAN DESCRIPTION
 - UPDATE
 - DOCUMENT RECEIPT BY EMPLOYEES
- ▶ SUMMARY OF MATERIAL MODIFICATION
 - 210 DAY RULE
 - NEW SPD IS BETTER
- ▶ SUMMARY ANNUAL REPORT
- ▶ FORM 5500
- ▶ AUDIT

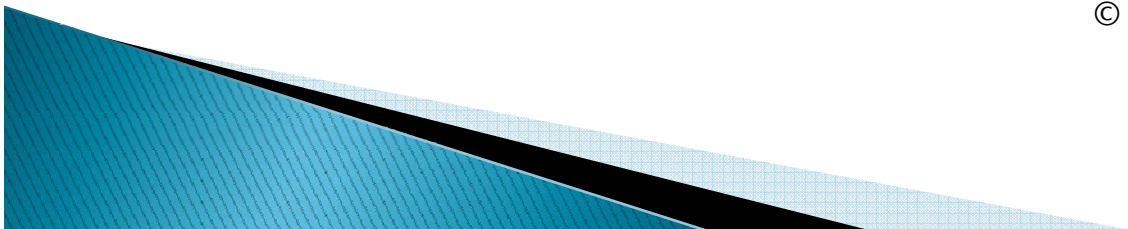
PARTICIPANT COMMUNICATION

- ▶ INVESTMENT OPTIONS
- ▶ FUND PERFORMANCE GENERALLY
- ▶ INDIVIDUAL STATEMENTS QUARTERLY
- ▶ PLAN EXPENSES



PRUDENT FUND MANAGEMENT

- ▶ MEANINGFUL CHOICES
- ▶ DIVERSIFICATION
- ▶ ABILITY TO LIQUIDATE
- ▶ COMMISSIONS AND FEES
 - REASONABLE
 - TRANSPARENT
- ▶ USE OF EXPERTS



SELECTION OF CONSULTANTS

- ▶ DUTY TO SELECT CAREFULLY
 - EXPERIENCE
 - RECENT LITIGATION OR ENFORCEMENT ACTIONS
 - GET DESCRIPTION OF PROCEDURES
- ▶ MONITOR PERFORMANCE
- ▶ READ THEIR REPORTS
- ▶ DOCUMENT COMMUNICATIONS
- ▶ REVIEW FEES
 - REASONABLE
 - TRANSPARENT (BUNDLE)
 - DOCUMENTED

AVOID CONFLICTS OF INTEREST

▶ PARTIES IN INTEREST

- EMPLOYER
- PLAN FIDUCIARIES
- SERVICE PROVIDERS
- RELATIVES OF ABOVE

▶ PROHIBITED TRANSACTIONS

- SALE
- LEASE
- LOAN
- FURNISHING GOODS AND SERVICES

AVOID CONFLICTS OF INTEREST, CONT'D

▶ PREVENTION

- CONFLICT POLICY
- CONTRACTUAL RESTRICTIONS
- MARKET RATE DATA

