



# The Focused Fiduciary

Welcome to our 3<sup>rd</sup> edition of the Nottingham Focused Fiduciary. So far in this series we've discussed what a Fiduciary is and what their duties are by definition. We've also examined the rules Fiduciaries must abide by, but lastly, how does one know if they are a Fiduciary? And as promised from our last issue, we will discuss ERISA's Five Part Test to being a Fiduciary. But before we get there we need to discuss what audience this will pertain to, and what investments ERISA regulations cover.

Well, the Employment Retirement Income Security Act of 1974, more commonly referred to as ERISA, has a basic Five Part Test to determine whether or not you fall into the court of an Investment Advice Fiduciary.

This is an important topic for both **Investment Advisors & Investment Trustees**. *This will allow Investment Trustees to know whether or not their advisors fall under a Fiduciary responsibility, and it will inform Investment Advisors whether or not they are a practicing Fiduciary.* However, one would hope that an Investment Professional would adhere to Fiduciary standards whether or not it's mandatory by law.

So, what types of investment plans fall under ERISA?

As you see the Internal Revenue Service (IRS) covers a variety of other investment plans.

These investments vehicles are subject to a unique set of regulations under the IRS code. (We can examine those in a later article.)

Investment Plans Covered by ERISA		Covered by IRS Code
Pension Plans	Welfare Benefit Plans	
401K	Day Care	IRA's
Defined Benefit	Death & Disability	403(b)
Defined Contribution	Dental/Medical	457 Plans
Money Purchase	Scholarship	Government Plans
Profit Sharing	Workers' Comp/Vacation	Churches
Target Benefit	Legal & Unemployment Services	Non-Qualified Compensation

Source: Piper/Bach, IMCA

So, what is the **ERISA Five Part Test**?

The ERISA Five Part Test identifies an individual as a Fiduciary if the provided Investment Advice is:

1. Advice given **towards the purchase, investment, selling of securities or other property.**
2. Advice given on a **regular basis.**
3. Intended towards a **mutual agreement, arrangement or a plan.**
4. Advice serves as the **primary basis for an investment decision.**
5. Advice is **individualized** based on the particular needs of a plan.

What if you're a Fiduciary but not regarding Investment Advice? What's the test for that? Well, then we can just reference the definition of a Fiduciary, when one party is legally appointed to manage the assets or "interests" of another.

Some common Fiduciary relationships include:

- Lawyers/Client
- Accountants/Client
- Administrators/Constituents
- Board of Directors/Company
- Doctor/Patient

If you have any questions regarding your Fiduciary role, please feel free to give Nottingham Advisors a call at 716-633-3800 or contact me an e-mail at [brock.wilkinson@nottinghamadvisors.com](mailto:brock.wilkinson@nottinghamadvisors.com).

In the next article we will discuss the best practices for monitoring your investment manager. If you'd like any other topics explored for future newsletters, please feel free to contact me. As always, thank you for reading, and have a great day.