

Disclosure Requirements & Fiduciary Responsibilities

Katy Green, JD
90 Degree Benefits



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Disclosure Requirements

- Brokers
- Consultants
- Agents
- Third Party Administrators
- Interested Parties

PTE 84-24 Requirements

- Prohibited Transaction Class Exemption 84-24 (PTE 84-24) as issued by the Department of Labor permits the receipt of reasonable compensation by certain enumerated interested parties, including agents and TPAs, for services rendered if proper disclosure is given and the transaction is approved by appropriate independent Plan Fiduciaries. PTE 84-24 requires that the transaction must be at arm's length and must be in the best interests of the Plan Participants.

Consolidated Appropriations Act of 2021 (CAA) Requirements

- ASA Language
 - The Consolidated Appropriations Act of 2021 (CAA) requires that covered service providers, whether brokers, consultants, or TPAs, disclose direct and indirect compensation to an ERISA-covered group health plan in accordance with the Act. This Notice and the accompanying Fees & Expense Schedule on the prior pages serve to satisfy the disclosure requirements of the CAA.

Direct Compensation vs. Indirect Compensation

- Before CAA
 - PTE 84-24 only mentioned direct compensation & did not touch on indirect compensation.
- After CAA
 - CAA specifically addressed direct & indirect compensation and addresses the below monetary check points.
 - \$500+ Direct
 - \$1,000+ Indirect

Example #1- Basic Disclosure Language

Prohibited Transaction Class Exemption 84-24 (PTE 84-24) as issued by the Department of Labor permits the receipt of reasonable compensation by certain enumerated interested parties, including agents, consultants, and TPAs, for services rendered if proper disclosure is given and the transaction is approved by appropriate independent Plan Fiduciaries. PTE 84-24 requires that the transaction must be at arm's length and must be in the best interests of the Plan Participants. This Notice serves to satisfy the disclosure requirements of PTE 84-24.

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Example #2

Description of Transaction (list out supplemental products)

Insurer:

Compensation Paid to Company: _____ %

Please note, the Insurer or Insurers listed above may pay Company an override or bonus for retention, persistency, or performance. These amounts vary by Insurer by year and are not always guaranteed to be paid.

Example #3

Description of any other fees, service charges or other compensation, including insurance brokerage fees, which should be disclosed to the independent fiduciary to permit the independent fiduciary to determine that total compensation from the Plan or from Plan assets received by the TPA is "reasonable":

Broker Compensation payable to:

Health Plan Monthly Administration:	EE: \$	EE/Spouse: \$	EE/Child: \$	Full Family: \$
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(The Broker Compensation fee listed above is not a separate fee. It is included in the total Monthly Health Plan Monthly Administration Fee)

Example #4

While John Doe was an employee of Company, he was the designated Company salesperson for Client, and John Doe is still performing services for Company and Client. As such, for certain mutual clients of Company and John Doe, Company and John Doe have subsequently entered into an arrangement where John Doe will receive XXX of the revenue that Company receives for services provided to Client. This is not an additional fee to Client and said amount shall be paid directly by Company to John Doe.

Example #5

Company has a marketing arrangement with ABC Corporation to market Company's services to various select brokers. In exchange for ABC Corporation's marketing services, ABC Corporation receives fluctuating marketing compensation that averages XXX. This is not an additional fee to Client and said amount shall be paid directly by Company to ABC Corporation. Company may also periodically contribute to ABC Corporation's marketing efforts, and these amounts will vary.

Example #6

For certain mutual clients of Company and John Doe, Company and John Doe have entered into an Independent Contractor Agreement where John Doe will receive XXX of the revenue that Company receives for services provided to Client during the first year and XXX for any renewal year. These amounts may increase by up to XXX if certain amounts are met on an annual basis for both new business generated and retention. This is not an additional fee to Client and said amount shall be paid directly by Company to John Doe.

Fiduciary Responsibilities

What is a fiduciary?

- A fiduciary is a person or entity with the discretionary authority to control and manage the operation and administration of a benefit plan covered by the Employee Retirement Income Security Act (ERISA).

Fiduciaries are subject to standards of conduct because they act on behalf of participants in an employer-sponsored plan and their beneficiaries. Fiduciary responsibilities under an ERISA-covered plan include:

- Acting solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them.
- Carrying out their duties prudently.
- Following the plan documents (unless inconsistent with ERISA).
- Diversifying plan investments.
- Paying only reasonable plan expenses.

Department of Labor Requirements

- The Employee Retirement Income Security Act (ERISA) protects your plan's assets by requiring that those persons or entities who exercise discretionary control or authority over plan management or plan assets, anyone with discretionary authority or responsibility for the administration of a plan, or anyone who provides investment advice to a plan for compensation or has any authority or responsibility to do so are *subject to fiduciary responsibilities*. Examples of Plan fiduciaries include, plan trustees, plan administrators, and members of a plan's investment committee.
- Fiduciaries who do not follow these principles of conduct may be *personally liable* to restore any losses to the plan, or to restore any profits made through improper use of plan assets. Courts may take whatever action is appropriate against fiduciaries who breach their duties under ERISA including their removal.

Best Practices

- If it seems wrong/off there is probably a reason, ask questions.
 - Ask you Broker whether they are 100% sure the conduct is okay.
 - Consult your TPA or other like entity.
- Consult a professional if you are unsure. There are ERISA attorneys or specialty entities that you can consult for guidance.

Language Example:

FIDUCIARIES' ACKNOWLEDGMENT

By my signature on page ____, I hereby acknowledge that in my capacity as an independent fiduciary with authority to act on behalf of the Plan, I have received the above information concerning the above transaction and I approve the transaction on behalf of the Plan. I am not an insurance agent or broker, pension consultant, or insurance company involved in the transaction. Further, I will not receive any compensation or other consideration, directly or indirectly, for my own personal account from any party dealing with the Plan in connection with the transaction. The undersigned will hold in confidence all information in this statement.

Name of Plan: _____
Plan Fiduciary

Questions?



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