

Third party administrator (TPA)

A TPA is hired to prepare documents and filings, etc. on behalf of the Plan Administrator. The TPA does not exercise independent authority; it just follows orders.

A third party administrator (TPA) is almost never a fiduciary. If it is, its status as fiduciary arises from a service provided other than its service as a TPA.

A TPA works under the terms of its contract. Usually in that contract are clauses which make sure no one can call the TPA a fiduciary.

“ministerial services only”—means only takes orders from the plan.

“has no authority”

“can exercise no authority”

Mutual Fund

A mutual fund is an investment pool which invests for the benefit of all of its investors. It does not manage the investments as a fiduciary entity to each, to any or to all of the investors.

A retirement plan may invest in a mutual fund, but that does not make the mutual fund a fiduciary to the plan. (How could it be? Each investor may have different needs.)

A mutual fund hires an investment management company to provide investment management services to the fund. There may be a fiduciary relationship between an investment management company and the mutual fund it advises, but the relationship is limited to those two parties.

A Registered Investment Adviser (RIA)

A Registered Investment Advisor is an advisor registered with a state or FINRA (Financial Industry Regulatory Authority) to provide investment *advice*. A party hires the Advisor to give unbiased advice. In contrast, a broker may also advise clients on investments to buy or sell, but the broker is not paid for the advice; the broker is paid to make the transaction on behalf of the investor.

An RIA is paid for its unbiased advice, and it is always a fiduciary to its client to whom the advice is given.

Accredited Investment Fiduciary (AIF)

An Accredited Investment Fiduciary is a designation given in exchange for passing a course about fiduciary duties regarding investments. Hiring a person with an AIF designation neither creates a fiduciary relationship nor transfers liability to that person. Fiduciary status depends on having or exercising authority.

Registered Fiduciary

A Registered Fiduciary is a designation given in exchange for passing a course about fiduciary duties. Hiring a person with a Registered Fiduciary designation neither creates a fiduciary

relationship nor transfers liability to that person. Fiduciary status depends on having or exercising authority.

Broker

A broker is an employee of a Broker-Dealer. A Broker-Dealer is licensed to provide investments to its customers and gives its customers access to the investment marketplace. A retirement plan may sign a Customer Agreement with a Broker Dealer so that the plan may buy or sell investments for its plan participants.

Neither the broker nor the broker dealer has authority over the choice of plan investments. They are not fiduciaries.

See *FAQ Litigation and Legislation Highlights*, The Merrill Lynch ruling

Full Scope Services vs. Limited Scope Services

Full scope and Limited scope are descriptive, not legal terms. A service provider might provide fiduciary services to a plan, but such services are limited to a specific service. If so, the service contract is likely to contain a clause in which the plan or the employer indemnifies the service provider from fiduciary liability for services beyond the limited service provided.

In this case the relationship is that of co-fiduciaries. See FAQ What is Co-fiduciary liability?

Discretion vs. Direction

Usually refers to Trustee services:

“Discretion”—services provided give discretion to the service provider. Discretion is most likely involving an exercise of authority and therefore it is a fiduciary relationship.

“Direction”—services are provided only under the direction of a fiduciary. Direction is not granting of authority and therefore not a fiduciary relationship.

An Employee of the Employer

An employee of an employer is not a fiduciary unless it is appointed as one or it exercises authority over the plan.