

Q4 Fiduciary Legal Briefing

Sponsor Latitude in Paying Fees

The Department of Labor (DOL) issued advisory opinion providing plan sponsors with latitude in deciding which fees the sponsor will, or will not, cover

DOL approved Citigroup Inc.'s "Action for Racial Equity" (ARE) program" whereby Citigroup can elect to pay all, or a portion of, the investment fees charged by "Diverse Managers" available in Citigroup's benefit plans

- Qualification will be determined based on investment management firm data over which Citigroup has no control or influence
- No party-in-interest can be qualified under ARE
- Determination of qualified Diverse Managers will be set for minimum of 3 years - helps investment committee decision making
- Citigroup intends to make existence of ARE known to employees/participants
- ARE program intended to be factored into investment committee's decision-making processes but does not provide any dictates to said committee

DOL states Citigroup does not become a fiduciary as to selection of investment managers under the plans by establishing ARE or by paying fees under ARE

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Investment committee members will not violate their fiduciary duties if they factor the ARE program payment of fees of an investment into their investment decision making processes

DOL states that inclusion of information regarding ARE, and Citigroup's payment of investment manager fees in participant disclosures will not rob fiduciaries of 404(c) protection

- Expense ratio reflecting Citigroup's commitment to pay investment management fee will be included in disclosures
- 404(c) only available if participant has ability to exercise independent control – this is compromised if subjected to “improper influence by a plan fiduciary or the plan sponsor”
- Nothing in 404(c) or regulations promulgated thereunder precludes plan administrator from providing additional information appropriate for participants to make comparisons of investment alternatives – ARE falls within this scope