



# BULLETIN

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## Allocating Fees Among Participant-Directed Plan Participants

Reish & Reicher has just released a White Paper entitled “Allocating Fees Among Participant-Directed Plan Participants” by Fred Reish, Bruce Ashton and Summer Conley. The White Paper analyzes the obligation of fiduciaries with respect to the proper allocation of revenue sharing among participants and the obligation to disclose information about that allocation to the participants.

The use of revenue sharing paid on plan investments is a widespread practice that helps reduce the cost of plan management. While ERISA does not specify how plan expenses or the revenue sharing that helps pay those expenses should be allocated, it does require fiduciaries to act prudently in making the decision. There are a number of workable and acceptable approaches, from pro rata based on account value, to per capita, to an emerging possibility that allocates revenue sharing to the accounts of the participants invested in the funds that make those payments. We are beginning to see the latter approach be used in larger plans using service providers with the resources to develop these sophisticated systems. The specific allocation method that fiduciaries choose may depend on which methods the service provider can accommodate.

Whatever allocation method is used, fiduciaries must engage in a prudent process to consider an equitable method of allocation to avoid a breach of fiduciary duty. This likely means fiduciaries have an obligation to consider all available allocation methods when deciding how to properly allocate revenue sharing amounts.

The White Paper analyzes the issues related to the decision on how to allocate costs and the offsetting of revenue sharing, and discusses the obligation of fiduciaries to disclose the methodology to plan participants. The disclosure issue has come into sharper focus in light of the DOL’s proposed participant disclosure regulation.

The White Paper is posted to our website at [www.reish.com/publications/pdf/whiteproct10.pdf](http://www.reish.com/publications/pdf/whiteproct10.pdf). Please contact any of us if you have questions about the issues discussed.

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