



What it means to be a retirement plan fiduciary

As a fiduciary defined by the Employee Retirement Income Security Act of 1974, as amended (ERISA), you exercise discretion over your plan while navigating in a challenging regulatory environment. If you understand your responsibilities and some ERISA basics, you can more confidently administer your plan.

Who is a plan fiduciary?

Simply put, a fiduciary is somebody who is either formally designated by an ERISA plan as a “named fiduciary” or is considered a fiduciary based on their roles and responsibilities. ERISA, together with the Internal Revenue Code (IRC), provides the guidance for private workplace retirement plans. Note that while all plan sponsors must comply with the IRC, not all employers are subject to ERISA. Note that public institutions (e.g., public education), governmental employers and churches are examples of employers that are not subject to ERISA. A person or entity is considered an ERISA plan fiduciary, if they:

- Exercise any discretionary authority or control over management of the plan and/or the plan assets
- Provide investment advice for a fee or other compensation (direct or indirect) with respect to any assets of a plan, or have any authority or responsibility to do so
- Have any discretionary authority or responsibility in the administration of the plan



What if I'm a non-ERISA plan sponsor?

Even if your plan is not subject to ERISA, there may be benefits to following certain ERISA requirements. For example, ERISA generally requires a plan fiduciary to offer a plan with a diversified menu of investment options. Non-ERISA plans generally follow this practice as well.

If you are an ERISA plan fiduciary or if you are a non-ERISA plan sponsor that chooses to follow certain ERISA requirements, you will need a process to help you make prudent decisions in the best interest of plan participants and beneficiaries, and monitor plan investments and service providers properly. Taking these steps may also provide you with additional protection under any applicable state laws that impose fiduciary requirements. It is important that you familiarize yourself with any state law requirements that might be applicable to your plan.

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What does it entail?

If you're an ERISA plan fiduciary, it's important to familiarize yourself with the responsibilities that come with that role. You should consider the following five key areas.

- 1 "Exclusive benefit" rule:** A fiduciary must carry out fiduciary obligations solely in the interests of plan participants and beneficiaries with the exclusive purpose of providing benefits to them and defraying reasonable expenses of administering the plan.
 - **No self-dealing:** Self-dealing (taking advantage of a position in a transaction and acting for personal interest) is strictly prohibited.
- 2 Diversification of plan investments:** Fiduciaries must diversify plan investments to help minimize the risk of loss. Whether the diversification requirement is met is based on the relevant facts and circumstances for the plan. (Note: Diversification is a technique to help reduce risk. There is no guarantee that diversification will protect against income loss.)
- 3 Compliance with plan documents:** Fiduciaries for an ERISA plan must implement and operate a plan document that complies with ERISA as well as the Internal Revenue Code. A plan that is not subject to ERISA must comply with the written plan requirements for such plans under the Internal Revenue Code and applicable state requirements.
- 4 "Prudent person" standard:** A fiduciary is obligated to act with the care, skill, judgment and diligence that a prudent person in a similar capacity would use under like circumstances. An important aspect of this is the "procedural prudence test" in which a fiduciary's prudence is judged by the process used in reaching a decision, not judged necessarily the outcome of the decision.
- 5 Selection of service providers and the duty to monitor:** Fiduciaries must exercise prudence in the selection of service providers and continue to monitor the providers selected. That means, for example, that a fiduciary's responsibility does not end with the proper selection of an investment option. A fiduciary must continue to monitor that investment option to ensure that it remains appropriate for the plan.



Follow your procedures

Here are some suggested practices to help you meet your ERISA fiduciary responsibilities.

Be aware. Understand your responsibilities to stay away from fiduciary trouble spots (see **Top ten things to avoid**).

Follow a process. Establish a plan governance process and procedures that identify and define all fiduciary roles and protocols. Maintain files that document your processes as proof of your due diligence.

Maintain compliance. Review your plan document to be sure it accurately reflects the way your plan is being operated, together with the investment options offered and any associated limitations.

Align investments and objectives. Consider an investment policy statement (IPS) that aligns with the plan's objectives and includes an investment approach that sees participants to and through retirement. Consult with your legal counsel to determine if an IPS is appropriate for your plan.

Monitor. Review your monitoring processes to determine whether participant transactions (such as contributions) meet their respective limits and timing requirements. Also review how investments are performing against established benchmarks.

Communicate with employees regularly. Implement processes and procedures for notifying employees about plan information including any required notices for eligibility, enrollment deadlines, contribution limits, Qualified Default Investment Alternatives (QDIAs) and ERISA required fee disclosures.

Review annually. Complete at least annually (and more frequently if circumstances warrant it). Perform plan and investment reviews on your own and/or with the help of a qualified advisor. Consider a review of your reporting to clarify how your plan is working and to identify areas for improvement.

Simplify. It is also a good idea to look for ways to simplify and control costs, and ease the administrative burden on your staff where possible.

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Protect yourself and the plan

Documentation is key to protecting your interests as well as the interests of the plan and your participants. It goes beyond just identifying plan fiduciaries. Documentation should include detailed notes from meetings that discuss fiduciary responsibilities in sufficient detail. Consider having all minutes and materials distributed should be retained and approved by each fiduciary in writing. Plan fiduciaries should acknowledge and understand their roles, and should take part in initial and ongoing fiduciary training. It's important not to overlook the importance of this training, as it has been the subject of Department of Labor retirement plan investigations. In this environment, detailed and comprehensive documentation should be a priority rather than just a nice to have.



For more information about your ERISA plan fiduciary responsibilities, work with your legal counsel, tax advisor and/or plan provider. You can also learn more from the **Department of Labor**.



Top ten things to avoid

- 1 Failure to follow plan documents
- 2 Improper selection of plan investment alternatives
- 3 Inadequate monitoring of plan investment alternatives
- 4 Improper selection of ERISA plan fiduciaries
- 5 Inappropriate delegation of fiduciary functions
- 6 Failure to provide timely and/or adequate required disclosures to plan participants.
- 7 Reliance on an "expert" without documenting why certain decisions were made
- 8 Confusion surrounding fidelity bonds and fiduciary liability insurance for ERISA plans
- 9 Failure to understand and follow restrictions in plan funding vehicles
- 10 Failure to timely disclose plan changes to participants

Being aware of potential trouble spots can help you be a more compliant and responsible fiduciary.



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