

## FIDUCIARY SERIES

# What it means to be an ERISA plan fiduciary

If you are a fiduciary, as defined by the Employee Retirement Income Security Act of 1974, as amended (ERISA), you are responsible for the administration and compliance of your organization's retirement plan. If you better understand your role and responsibilities under ERISA, you can properly administer your plan.

## Who is a plan fiduciary?

An ERISA fiduciary is somebody who is either formally designated under the terms of an ERISA plan as a "named fiduciary" or is 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 plan sponsors are subject to ERISA. Note that public institutions (e.g., public education), governmental employers and churches are examples of types of plan sponsors that are exempt. For plans that are 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 advantages 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. Before implementing any quasi-ERISA standards for a non-ERISA plan, please consult your legal counsel to ensure that it is consistent with the requirements for your plan.

If you are an ERISA plan fiduciary or if you are a non-ERISA plan sponsor that chooses to follow certain ERISA requirements, you might consider implementing processes and procedures to make prudent decisions in the best interest of your plan participants and their beneficiaries, including, but not limited to, monitoring plan investments and service providers properly. If you are a public or government plan sponsor, 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 these five key things:

1. **“Exclusive benefit” rule:** A fiduciary must carry out its 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.

1. **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.)

2. **Compliance with plan documents:** Fiduciaries for an ERISA plan must implement and operate a plan document that complies with ERISA as well as the IRC. A plan that is not subject to ERISA must comply with the written plan requirements for such plans under the IRC, as well as any applicable state requirements.

3. **“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 on the outcome of the decision.

4. **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 common practices intended to help you with meeting your ERISA fiduciary responsibilities.

**Be aware.** Understand your responsibilities. (Refer to Page 3, 10 things to avoid.)

**Follow a process.** Consider establishing a plan governance process and procedures that identify and define all fiduciary roles and protocols. Maintain files that document your processes to demonstrate your due diligence.

**Maintain compliance.** Review your plan document to be sure it accurately reflects the operation of your plan, together with the investment options offered and any associated limitations therein, as well as ensuring that it is regularly updated for applicable legislative and regulatory requirements.

**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 might be prudent 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. It is prudent to maintain your plan documentation—including, but not limited to, detailed notes from meetings that address fiduciary responsibilities as well as any minutes and materials approved by each fiduciary. 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 raised in the course of Department of Labor retirement plan investigations. In the current regulatory environment, detailed and comprehensive documentation can be invaluable.



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](#).



## 10 things to avoid

1. Failure to follow plan documents
2. Imprudent selection of plan investment alternatives
3. Failure to properly monitor available plan investments
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 provide required disclosures to plan participants and beneficiaries

Being aware of potential pitfalls can help you avoid problems and meet your ERISA fiduciary obligations.



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