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What it means to be a retirement plan fiduciary

As a fiduciary, you exercise discretion over your plan while navigating in a challenging regulatory environment. If you understand your responsibilities and some fiduciary basics, you can more confidently manage your plan.

Who is a plan fiduciary?

Simply put, a fiduciary is somebody who is either formally designated by the plan as a "named fiduciary" or is considered one based on the activities they perform. Under the Employee Retirement Income Security Act of 1974 ("ERISA") (the law that governs private workplace retirement plans), a person or entity is considered a fiduciary if they:

- Exercise any discretionary authority or control over management of the plan or plan assets
- Provide investment advice for a fee or other compensation (direct or indirect) with respect to any moneys or other property 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 doesn't fall under ERISA, there may be clear benefits to following ERISA as a best practice. For example, ERISA generally requires a plan fiduciary to offer a plan menu with diversified menu options and non-ERISA plans generally follow this "best practice."

As a plan fiduciary, you'll 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 legal protection under any applicable state laws governing plan fiduciary requirements.

What does it entail?

If you're a 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**: Unless it is prudent not to do so, fiduciaries must diversify plan investments to help minimize the risk of loss. (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 must confirm there is a plan document that complies with ERISA and act in accordance with the terms of that plan document at all times, unless it is prudent not to do so.
4. **"Prudent person" standard:** A fiduciary is obligated to act with the care, skill, prudence 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, as opposed to 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 best practices

Here are some suggested best practices to help you meet your 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 that defines all fiduciary roles, protocols and procedures. Maintain files that document your processes as proof of your due diligence.

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

Align investments and objectives. Create an investment policy statement that aligns with the plan's objectives and includes an investment approach that sees participants to and through retirement.

Monitor. Review compliance 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 for notifying employees about eligibility, enrollment deadlines, contribution limits, QDIAs and required fee disclosures.

Review annually. Complete at least annually, and more frequently if circumstances warrant it, plan and investment reviews—on your own or with the help of a qualified advisor—including a review of 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.

* Diversification is a technique to help reduce risk. There is no absolute guarantee that diversification will protect against a loss of income.

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. 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 (DOL) 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 fiduciary responsibilities work with your legal counsel, plan provider and/or advisor. 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 plan fiduciaries
5. Inappropriate delegation of fiduciary functions
6. Inadequate disclosure of plan features and fees to plan participants
7. Reliance on an "expert" without documenting why certain decisions were made
8. Confusion surrounding fidelity bonds and fiduciary liability insurance
9. Failure to understand and follow restrictions in plan funding vehicles
10. Failure to 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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