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
- Exercise discretionary authority or control with respect to disposition of assets of the plan
- Provide investment advice for a fee
- Have any discretionary authority or responsibility in the administration of the plan

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 it means to be a retirement plan fiduciary

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 key points.

- **Exclusive benefit rule:** A fiduciary must carry out fiduciary functions solely in the interest of plan participants and beneficiaries and for the exclusive purpose of:
  - Providing benefits to plan participants and beneficiaries and
  - Defraying reasonable expenses of administering the plan
- **No self-dealing:** In acting for the interests of plan participants and beneficiaries, self-dealing (taking advantage of a position in a transaction and acting for personal interest) is strictly forbidden.
- **Prudent person standard:** A fiduciary must act with the care, skill, prudence and diligence that a prudent person in a similar capacity would use under like circumstances. For example, that may mean engaging a third-party expert if you don’t have the knowledge to properly evaluate or monitor investment options, and prudently monitoring any experts engaged.
- **Compliance with plan documents:** Fiduciaries must confirm there is a Plan Document that complies with ERISA and follow the terms of that Plan Document at all times, unless it is prudent not to do so.
- **Diversification of plan investments:** ERISA generally requires a fiduciary to diversify plan investments to help minimize the risk of large investment losses* unless it is clearly prudent not to do so.
- **Selection of service providers and the duty to monitor:** A fiduciary must exercise prudence in the selection of service providers and continue to monitor those 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 design to determine compliance with your plan document and ensure that your plan document meets IRS documentation requirements.
- **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.
- **Keep employees informed.** Provide employees with required fee and plan 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.