

RETIREMENT PLAN ADVISING

Discussion guide: Fiduciary duty for plan sponsors

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Understanding fiduciary responsibilities to retirement plans can take a lot of effort, even for experienced financial professionals. Conveying this information to non-financial professionals, like plan sponsor clients, can be even trickier. But it is important for all parties to understand their obligations and what is expected in order to fulfill them.

To help you lead discussions with plan sponsors, here is a quick guide to topics you may want to bring up.

Who is a fiduciary?

When it comes to defined contribution plans, a fiduciary is basically anyone who exercises discretionary authority or control over a plan or its assets, or who gives investment advice to a plan for a fee. A plan fiduciary has a variety of roles and duties with respect to the plan and must perform those duties prudently and solely in the best interest of plan participants and beneficiaries.

Here are three of the guiding principles fiduciaries are expected to follow:

- **The “Exclusive Benefit Rule”** is essentially a duty of loyalty, which requires fiduciaries to work solely in the interests of the participants and their beneficiaries. In other words, job number one for all plan fiduciaries is to look out for the benefit – the exclusive benefit – of the participants and their beneficiaries, not the plan sponsor’s, financial professional’s or third-party administrator’s interests.
- **The “Prudent [Expert] Rule”** requires a fiduciary to make fiduciary decisions “with the care, skill, prudence, and diligence” that a prudent expert would. Prudent decisions require appropriate knowledge and experience. That is, intentions and “your best” are not always sufficient. Resources and appropriately knowledgeable counsel must be sought where any are lacking.

- **Investment diversification** requires a fiduciary to ensure that the plan's investment offerings are adequately diversified. Although an important fiduciary duty, this is generally not a major concern for fiduciaries overseeing defined contribution (DC) plans. These plans typically offer a broad array of investment funds and allow participants to decide which investments to choose.

Which roles are fiduciaries?

ERISA sections outline various fiduciary roles. These are required to be filled by individuals with appropriate knowledge for the role, which, in some cases, may entail hiring outside service providers.

- **Named fiduciary:** Also known as 402(a), this is the main fiduciary who oversees the selection and monitoring of all other plan fiduciaries and assumes most of the plan sponsor's duties.
- **Plan administrator:** Also known as 3(16), the plan administrator handles the day-to-day operation of the plan. They are named specifically in the plan document.
- **Discretionary trustee:** Also known as 403(a), this role has exclusive authority and discretion to manage and control plan assets, except when an investment manager is appointed to exercise such control.
- **Directed trustee:** This role does not have discretion equal to a 403(a) trustee. The 403(a)(1) directed trustee holds the plan's assets without the ability to control them.
- **Investment manager:** Also known as 3(38), this is a registered investment adviser, bank or insurance company that has exclusive authority and discretion to select and monitor the plan's investment options.
- **Investment advisor:** Also known as 3(21), the investment advisor makes investment recommendations to the named fiduciary or plan trustee for a fee but generally does not exercise discretion or control.

Feedback

Hiring service providers

The duty to act prudently requires expertise in a variety of areas, such as investments. Lacking that expertise, a fiduciary will want to hire someone with that professional knowledge. When it comes to hiring service providers, a named fiduciary does have an obligation to select and monitor them prudently.

Although hiring some service providers, such as an investment manager, may reduce fiduciary liability, it's important to be aware that the hiring fiduciary retains their obligation to prudently select and monitor service providers' activities.

Reasonable fees

ERISA requires fiduciaries to keep plan fees reasonable. Importantly, that does not mean service providers and investments need to be selected solely by price. The metric is “reasonable,” not “lowest.” After careful evaluation during the initial selection, the plan’s fees and expenses should be monitored to determine whether they continue to be reasonable.

Participant communication

As a fiduciary, part of a plan sponsor’s responsibilities include providing plan participants with enough information about the plan that they are able to make investment decisions wisely. This includes:

- delivering information to participants about the plan, its investment options and its operations before participants make investment decisions and
- providing additional information about each investment option to participants upon request, so they can make informed investment decisions.

Committee

Depending on the size of the plan, a committee of decision-makers may help fulfill the duty of prudence. In smaller organizations, a single committee usually covers decisions about the plan’s investments and administrative matters. Larger employers, especially those with complex plans, may create two committees. These would typically be an administrative committee responsible for daily operations of the plan and an investment committee responsible for investment selection and monitoring.

Additionally, keep representation in mind. Consider having a group of individuals, from different parts of the organization with different expertise and voices.

Reach out for guidance

Consider this a starting point for leading discussions with plan sponsors. If you would like any additional guidance or resources, please reach out. Your Capital Group team is here to help you win and retain retirement plan business.

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