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The role of a fiduciary

As a plan fiduciary, you serve an important role in maintaining the integrity of your company's retirement plan. This overview of the roles and responsibilities of a fiduciary may help you better understand your part in your retirement plan.

Serving as a plan fiduciary is an important role. Here's a sampling of what a fiduciary needs to consider:

- Does your plan offer participants a diversified menu of investment options that have been prudently selected?
- If participants make their own investment decisions, have you provided sufficient information and education for them to exercise ERISA 404(c) investment control in making those decisions?
- Have you taken advantage of available fiduciary safe harbors?
- Have you reviewed plan costs for reasonableness?

Who is considered a fiduciary

Under the Employee Retirement Income Security Act of 1974 (ERISA), a fiduciary is any person or entity that exercises authority or control over a plan's assets, gives investment advice for compensation, or has discretion over plan administration. Plan sponsors are generally fiduciaries. Attorneys, recordkeepers, accountants, and actuaries generally are not fiduciaries when acting solely in their professional capacities.

At a minimum, a plan must have at least one fiduciary designated in the plan document as having control over the plan's operation and investments. A person or entity becomes a fiduciary by virtue of the functions they perform. For example, individuals who exercise control over a plan's assets are fiduciaries no matter what titles or positions they hold.

The fiduciary's role

Standards of fiduciary performance under ERISA generally are process-based as opposed to outcome-based. Fiduciaries must act with prudence. With respect to investments, the law defines procedural prudence as follows:

"Fiduciaries must act prudently and must diversify the plan's investments in order to minimize the risk of large losses. In addition, they must follow the terms of plan documents to the extent that the plan terms are consistent with ERISA."[1]

Fiduciary defined

The complete definition and responsibilities of qualified plan fiduciaries are contained in the Employee Retirement Income Security Act of 1974 (ERISA).

The fiduciary's responsibilities

The responsibilities of a plan fiduciary generally include:

- Acting solely in the interests of plan participants and their beneficiaries
- Defraying reasonable expenses for the administration of the plan
- Following the plan documents (unless inconsistent with ERISA)
- Diversifying plan investments
- Carrying out duties consistent with the prudent standard of care (see sidebar)

Profile of a plan fiduciary

Loyalty

- Discharge plan duties solely in the interests of participants and beneficiaries.
- Ensure expenses are reasonable.

Prudence

- Act with the care, skill and diligence of a prudent expert.
- Develop and document processes for decision-making.
- Hire third parties where internal expertise is lacking.
- Carefully select service providers.

Education

- Provide participants with tools and education that enable them to make informed investment decisions.

Monitoring

- Regularly review service providers, including performance and fees.
- Follow terms of plan document.

Diversification

- Ensure plan investments are adequately diversified to help minimize risk of large losses.[2]

The prudent man vs. the prudent expert

ERISA applies a special version of the prudent man rule to plan fiduciaries known as the prudent expert rule. Plan fiduciaries must exercise their duties with the prudence of a person familiar with the business they are responsible for or employ the assistance of those with the requisite experience. This is also known as the prudent knowledgeable person rule.

[1] U.S. Department of Labor, Fiduciary Responsibilities https://www.dol.gov/general/topic/retirement/fiduciaryresp#:~:text=Fiduciaries%20must%20act%20prudently%20and,must%20avoid%20conflicts%20of%20interest.

[2] Diversification does not ensure a profit or protect against loss in declining markets.

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