Plan sponsor fiduciary guide

Wealth Management

A tool to help you manage your company retirement plan

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One of the most important duties you have as the sponsor of your company retirement plan is your fiduciary responsibility to act in the best interests of plan participants. Are you aware of your responsibilities as a plan fiduciary? Does your plan have an investment policy statement? Do you want to comply with ERISA regulations that help reduce your fiduciary liability? Are you prepared to evaluate the reasonableness of the compensation and expenses related to services provided by plan providers? Do you review your plan on an annual basis? Although you cannot delegate all your fiduciary responsibilities to others, you can hire professionals—financial representatives, trustees, attorneys, accountants and administrators—who can offer their expertise and guidance. Our goal is to help you make well-informed decisions about your company retirement plan.

Overview

What Is ERISA?

The Employee Retirement Income Security Act of 1974 (ERISA) is the federal law that governs the administration and management of employer and union sponsored retirement plans and health/welfare plans.

ERISA was enacted to protect the interests of plan participants and their beneficiaries. Under ERISA, when a plan sponsor is acting as a fiduciary, it must do so in the best interests of plan participants and their beneficiaries.

This Plan Sponsor Fiduciary Guide is designed to help you understand your fiduciary responsibilities to your company retirement plan.

Inside you will find valuable information on important topics that may help you make decisions about your retirement plan.

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The role of an ERISA Fiduciary

Fidelity bond

ERISA requires fiduciaries, or others who handle plan assets, to be insured by a Fidelity Bond. For a fiduciary having overall responsibility for a plan, the amount of the bond must be at least 10% of the value of the plan's assets and need not be greater than $500,000 ($1,000,000 for plans holding employer securities). The bond provides coverage for loss of property resulting from dishonest or fraudulent acts. Fidelity Bond information is required to be reported on the annual IRS Form 5500.

Who is a fiduciary?

Many of the activities involved in operating a plan make the person or entity performing them a fiduciary. Using discretion in administering and managing a plan or controlling the plan's assets makes that person a fiduciary to the extent of that discretion or control. The plan's fiduciaries will normally include:

- **Plan administrator —** May be the employer itself, an administration committee, or an individual, as named in the plan document.
- **Plan trustees —** Bank trustees, individuals, committees, etc.
- **Named fiduciaries —** Plan documents are required, under ERISA, to identify, either by name or through an appointment process described in the plan document, one or more fiduciaries as "named fiduciaries."
- **Others —** Third-party investment managers retained by the named fiduciary.

Fiduciary responsibilities: in general, a fiduciary must:

- **Demonstrate prudence —** Act with care, prudence, skill and diligence of a prudent person acting in a similar capacity.
- **Diversify investments —** Diversify to minimize the risk of large losses.
- **Comply with the Exclusive Benefits Rule —** Act solely in the interest of plan participants and their beneficiaries with the exclusive purpose of providing benefits to them and defraying the reasonable expenses of the plan.
- **Adhere to the plan —** Act in accordance with the documents and instruments governing the plan (unless inconsistent with ERISA).

Establishing an Investment Policy Statement

What are the benefits of an Investment Policy Statement?

Although an Investment Policy Statement (IPS) is not required, ERISA Section 402(b)(1) states that plans must "provide a procedure for establishing and carrying out a funding policy in a method consistent with the objectives of the plan." There are several benefits to establishing an IPS:

- **Documentation —** Provides written documentation of the policies, practices and procedures for making investment selections.
- **Clarification —** Provides a clear baseline and framework to help with continuity during staff turnover.
- **Evaluation —** Having a written policy provides a clear standard for evaluating and monitoring the plan's (and its service providers') performance in seeking to achieve the IPS objectives.
- **Communication —** Participants can be assured that there is a logical and disciplined approach to the process of managing the plan.
- **Protection —** Can serve as your first line of defense against potential fiduciary liability.

Reasons to consider a corporate trustee

ERISA requires that all plan assets be held in trust. A trustee—either an individual trustee or a corporate trustee—must be selected for this purpose. As the number of participants in a retirement plan grows, so can the complexity. A corporate trustee offers a number of benefits over an individually or self-appointed trustee, including:

- May reduce potential concern that the plan assets won't be used for the exclusive benefit of plan participants and their beneficiaries.
- May limit potential conflicts of interest that might exist if the fiduciary acts as a trustee for the plan.
- May offer a "limited scope" audit opinion that is less expensive and easier to prepare than a full audit.*

* Plan audits are required by ERISA for plans with more than 100 participants.

What would typically be included in an IPS?

- **Overview —** Describes the plan that is covered by the IPS and whether the plan is intended to comply with ERISA Section 404(c).
- **Purpose of the IPS —** Explains the purpose and intent of the IPS, not only for current plan personnel, but for successors as well.
- **Investment objectives —** Lists the objectives by which investment options will be selected.
- **Roles & responsibilities —** Identifies the various parties involved in the plan investments, including trustees, investment managers, recordkeepers and investment committees and summarizes their responsibilities.
- **Selection of investments & managers —** Describes the plan's intent to provide an appropriate range of investment options spanning the risk/return spectrum and typically identifies the appropriate index and peer group to be used for each option.
- **Investment monitoring & reporting —** Outlines the ongoing processes for revisiting the investment option selection process and confirming that the criteria in the IPS are met. This should be a regular, disciplined and documented process.
- **Manager termination —** Describes how underperforming managers will be reviewed and replaced.
- **Participant education & communication —** Indicates the plan will communicate to employees that employees control their own investments, can make investment changes at least quarterly, and that the plan will provide effective educational materials to help employees make informed decisions.
- **Coordination with the plan document —** Clarifies the interrelationships among the IPS, the plan document, the summary plan description and other plan materials.
- **Optional guidelines —** If your plan offers features, such as a Mutual Fund Window, Self-Directed Brokerage, Company Stock and/or Investment Advice to participants, you may want to add further guidelines to your IPS.

Who is responsible for drafting the Investment Policy Statement?

Like all plan documents, an Investment Policy Statement should be carefully drafted and thoroughly reviewed by the plan sponsor and its legal counsel. It's important to review and update the IPS periodically to reflect any changes in the plan's investment strategy. We can provide a sample IPS that may help you to develop your own Investment Policy Statement.

Staying on track

Ways to manage your fiduciary responsibilities

- Select competent and qualified providers
- Create an Investment Policy Statement
- Monitor your plan investments and service providers
- Comply with ERISA Sections 404(c) and 404(a)(5)
- Document and review plan operations
- Consider a corporate trustee
- Respond to written participant inquiries for copies of plan documents and information within 30 days

What if a mistake is made?

The good news is that the IRS recognizes mistakes can and do happen when managing and administering employer-sponsored retirement plans. Accordingly, the IRS created a system whereby a plan sponsor can bring a plan back into compliance without losing its tax benefits. The name of the system is the Employee Plans Compliance Resolution System (EPCRS). EPCRS actually encompasses three separate and distinct correction programs, including: 1) the Self-Correction Program (SCP); 2) the Voluntary Correction Program (VCP); and 3) the Audit Closing Agreement Program (Audit CAP). The eligibility for correction under any part of EPCRS is limited in any case to plan-related failures that do not involve misuse or diversion of assets from the plan. For further information, refer to IRS Revenue Procedure 2013-12.

In addition, the Department of Labor (DOL) offers two self-correction programs; 1) Voluntary Fiduciary Correction Program (VFCP) for self-correcting certain fiduciary violations, including failures to timely remit participant contributions, improper loans and improper plan expenses, along with certain prohibited transactions with parties-in-interest and; 2) Delinquent Filer Voluntary Compliance Program (DFVCP) to assist late or delinquent filers in getting up-to-date with their IRS Form 5500s. The DFVCP offers delinquent plan sponsors a means by which they can avoid potentially higher civil penalty assessments by satisfying the program's requirements and agreeing to pay a reduced penalty amount. Plan sponsors are eligible for these reduced civil penalties provided the required filings under the DFVCP are made prior to the date on which the plan sponsor is notified in writing by the DOL of a failure to file a timely annual IRS Form 5500 under Title I of ERISA.

Ways to reduce your fiduciary liability

Comply with ERISA Section 404(c) regulations

ERISA Section 404(c) provides plan fiduciaries with certain protections from liability with respect to investment decisions made by participants in participant-directed retirement plans, provided certain information and disclosures are provided.

Overall, plan participants must be provided with multiple disclosures, both proactively on the part of the plan sponsor as well as upon request of the plan participant. The basic requirements include:

- Plan must offer a broad range of investment alternatives, consisting of at least three investment categories with materially different risk and return characteristics.
- Plan participants must be able to change investment elections at least quarterly.
- Plan participants must receive sufficient information to allow the participant to make informed decisions

Compliance with ERISA Section 404(a)(5) participant fee disclosure regulations (see following topic) simplifies the disclosure requirements for ERISA Section 404(c), leaving only two remaining disclosures required:

1. The plan must state that it intends to comply with ERISA Section 404(c), and
2. Where employer securities are offered to plan participants, the plan offers information regarding the holding and tender of employers securities and the voting rights associated with employer securities.

Plan fiduciaries, however, must still prudently select and monitor the investments in their plans.

Compliance with ERISA Section 404(c) is not mandatory. For guidance and to determine whether you may benefit from compliance with ERISA Section 404(c), please contact your legal counsel.

Comply with ERISA Section 404(a)(5) participant fee disclosure regulations

This regulation includes specific disclosures plan fiduciaries must provide to both new and existing plan participants of participant-directed retirement plans.

Plan participants must be given information about investments, plan provisions, administrative expenses and individual expenses before they begin participating in the plan and annually thereafter. Investment related fee disclosures must be provided in a “comparative” format, such as a chart, to enable participants to reasonably compare the costs of the plan’s designated investment alternatives. The Department of Labor has assembled a “model chart” which, if properly completed, will satisfy the fee disclosure requirement.

Fiduciaries must see that plan participants receive information concerning the voting, tender or similar rights associated with investments in the plan, if those rights are passed along to plan participants. Upon request by plan participants, fiduciaries must also provide copies of prospectuses, financial statements, a statement of the value of shares or units and a complete list of the assets in the portfolio.

Quarterly statements will need to show the amount of any charges and the nature of the charge to the participant’s account. If there is a change to any plan information

that was previously disclosed, the plan administrator must provide each participant with a description of that change at least 30 days, but no more than 90 days, before the effective date of the change, except in the case of unforeseeable circumstances beyond the control of the plan (in which case the notice of the change must be made as soon as reasonably practicable).

The disclosures can be made electronically and information can be included in the summary plan description or as part of the benefit statement as long as the items are distributed with the required frequency.

Generally speaking, a plan administrator may reasonably and in good faith rely on information it receives from the plan service provider. However, the ultimate responsibility for compliance with the regulation rests on the shoulders of the plan administrator. Since ERISA Section 404(a)(5) regulations are detailed and complex, it is imperative you work closely with your plan's third party administrator and record keeper to assure timely compliance with the participant fee disclosure requirements.

Understand your role with ERISA Section 408(b)(2) regulations

Related to the required fee disclosure to plan participants, ERISA Section 408(b)(2) requires plan providers to disclose to plan fiduciaries, in writing:

- Certain disclosures necessary for the plan fiduciary to make informed decisions about the services the plan receives from the plan provider,
- The costs associated with these services,
- Whether the plan provider is providing any services as an ERISA fiduciary to the plan, and
- Whether there are any potential conflicts of interest that may affect the performance of those services.

This disclosure from plan providers to plan fiduciaries is required within 60 days of any material changes and upon request of responsible plan fiduciaries.

As a plan fiduciary, it is your responsibility to use the information disclosed to you by plan providers to fulfill your obligation to ensuring that arrangements with service providers are "reasonable" and that only "reasonable" compensation is paid for services.

For more information on how ERISA Section 408(b)(2) disclosures affect you as a plan fiduciary, please speak with your legal counsel and your plan provider.

Comply with Pension Protection Act of 2006 provisions

Plan sponsors who add a Qualified Default Investment Alternative (QDIA) to their plan for use with plan participants who are automatically enrolled, or for those who do not make an investment election, may be able to seek fiduciary relief for these investment decisions. A QDIA may also provide ERISA Section 404(c)(5) protection, as long as proper notification is provided to plan participants. The Department of Labor's final regulations for QDIAs include: target-date retirement funds, balanced funds and professionally managed accounts.

This Act may also extend ERISA Section 404(c)(4) fiduciary protection for mapping decisions if the new investment alternatives are reasonably similar to the investment alternatives being eliminated. Written notice must be provided to the plan participants at least 30 days but not more than 60 days before the effective date of the change. The notice must compare the old investment alternatives to the new investment alternatives.

Annual plan review

Plan review

ERISA requires plan fiduciaries to operate the plan in accordance with its written terms. Therefore, it makes sense to review the plan's routine operations at least once every year. You can use the following checklist as an agenda for your plan review. This checklist is not exhaustive. There may be other areas of your plan's operations that should be included in your review. Consult with your legal advisers to make sure that you're covering all of the bases.

Annual plan review scorecard

Check out your fiduciary score. Mark the boxes in the checklist below that you routinely use to manage your fiduciary responsibility.

- ☐ Have an IRS-approved plan document — "Prototype" documents have been approved by the IRS. Keep a copy of all required "interim" or "model" plan amendments, along with the prototype plan document's IRS "Opinion" Letter, as well as the plan's IRS "Determination" Letter, in the event one was obtained from the IRS.
- ☐ Make sure the plan document has been amended to reflect all required legislative updates (e.g., GUST, EGTRRA, PPA, etc.).
- ☐ Maintain a current Summary Plan Description (SPD), updating it as necessary to reflect plan design changes, and distribute it to all participants and beneficiaries currently receiving benefits under the plan. (ERISA requires that SPDs, Summaries of Material Modification, and Annual Reports be provided to participants/beneficiaries).
- ☐ If you, your family or your company have ownership rights in any other businesses, be sure to engage expert advice concerning the possible consequences to your plan (e.g., controlled group).
- ☐ Verify that the plan's definition of an eligible employee is consistent with the way the plan is administered. If you have any workers, such as temporary employees, at your company who are not covered under the plan, does your plan document specifically exclude them from participation?
- ☐ Review the definition of compensation as defined in the plan document, and verify that the correct compensation amounts are being sent to your service provider(s).
- ☐ Review the process of collecting and forwarding employee contributions and loan repayments to your provider. Make sure the contributions and loan repayments are invested in a timely manner. (ERISA provides that participant contributions become plan assets as of the earliest date that they can reasonably be segregated from the employer's assets).
- ☐ Conduct regular, periodic, and as needed meetings with the plan fiduciaries. Record minutes of these meetings, including all decisions made by the fiduciaries (and include any background information and supporting documentation for any investment decisions made).
- ☐ Check your ERISA Fidelity Bond for proper coverage. The ERISA Fidelity Bond is protection for participants in the event a fiduciary, or other responsible person, steals or mishandles plan assets. The minimum required amount of the bond is 10% of plan assets—up to $500,000 (or $1,000,000 if plan holds employer securities). Determine whether the bond covers other fiduciaries, as well as other employees or third parties involved with handling funds or other property of the retirement plan.

- ☐ Review process for employee enrollment programs explaining the importance of plan participation, saving for retirement, and investment basics.
- ☐ Conduct a review of the investments in the plan, in accordance with the investment policy statement.
- ☐ Monitor and evaluate the plan's investment options and, as applicable, investment managers. Gather and evaluate information on the proper peer group and indices, historical performance, expenses, volatility and other significant factors to review the investment options.
- ☐ Review employee investment education materials and/or programs.
- ☐ Confirm that your plan offers a "broad range" of funds to minimize the risk of large losses such as:
    - Stable Value or Money Market Fund
    - U.S. Government or Corporate Bonds
    - Large-Cap U.S. Equities
    - Mid/Small-Cap U.S. Equities
    - International or Global Equities
- ☐ If the plan is intended to comply with ERISA Sections 404(c) and 404(a)(5), see that all requirements under these provisions are being met. Make sure the IRS Form 5500 indicates the intent to comply with the ERISA Section 404(c) requirements.
- ☐ Review the fee structure of the service provider arrangements and of the plan's investment options for complete understanding of all costs and services associated with those fees.
- ☐ Update and document all procedures and decisions; maintain the documents in an appropriate file.

How did you score? Count the boxes you marked on the checklist. If your total was:

All 17 — Excellent, continue to manage your fiduciary responsibilities

12-17 — Good, need to improve in a few areas to help manage your risk

9-12 — Not so good, could do better in several areas

8 or less — Need significant improvement, may be exposing yourself to unnecessary fiduciary liability

Your score will provide a general idea of how you're fulfilling your responsibilities. However, it is not all inclusive of your obligations under ERISA, and your score should be used just as a guideline to help you manage your fiduciary responsibilities.

RBC Wealth Management difference

A process not a product

RBC Wealth Management is a leading full-service investment, advisory and wealth management firm, founded in 1909. Over the years, we've earned a reputation for responsibly managing the assets entrusted to our care. We recognize the importance of selecting and designing an appropriate retirement plan for you and your employees, and we understand your fiduciary concerns.

We offer a wide variety of wealth management services, including non-proprietary retirement plan solutions from the top providers in the industry. We know that no one product fits all, and we work closely with you to find strategies and solutions to meet your company's unique needs.

Retirement services consulting model

We can assist you with:

- **Plan design —** Assistance with determining appropriate plan design based on your company objectives and goals
- **Provider search —** Assistance with requests for proposals and provider comparisons
- **Investments —** Assistance with creating an investment policy statement and investment reviews
- **Education —** Assistance with educating your plan participants, including plan features, investment education and retirement planning

Our approach:

- **Consultative —** Discovering your objectives and determining strategies
- **Personalized —** Dedicated to providing the customized service you desire
- **Experienced —** More than a century of investment experience
- **Comprehensive —** Offering a variety of retirement plan solutions

Other wealth management services:

- Qualified retirement plans (e.g., 401(k), defined benefit)
- IRAs, SEP & SIMPLE plans
- Non-qualified deferred compensation
- Estate & gifting options
- Custodial accounts (UGMA & UTMA)
- 529 educational savings accounts
- Cash management accounts
- Asset protection (e.g., life insurance, long-term care insurance, disability insurance)
- Retirement income planning
- Stock option exercise

Additional resources:

These sources may be helpful and include additional information on fiduciary practices:

Department of Labor

www.dol.gov/ebsa

Profit Sharing Council of America

www.psca.org

Plan Sponsor Magazine

www.plansponsormagazine.com

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