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*The important role
you play.*



Employers' Guide to Understanding Fiduciary Responsibilities

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Overview

Since their inception, employee benefit plans, also known as 401(k) plans, have grown in popularity in order to provide employees with the opportunity to invest a portion of their wages to individual accounts. While offering a plan can be rewarding to both the participants and the plan sponsor, there are specific regulations and responsibilities employers need to implement and follow.

Governing employee benefit plans and setting the standards of conduct is the Employee Retirement Income Security Act (ERISA). Ensuring protection of the rights of plan participants and beneficiaries, ERISA requires all employers to categorize the individuals responsible for the administration and management of plans as “fiduciaries.” But as a plan sponsor, your responsibilities don’t stop there – you must guarantee the plan is in compliance with rules and regulations, and decisions being made are in the best interest of the plan’s participants and beneficiaries.

To help you understand how to meet your fiduciary responsibility, Doeren Mayhew’s Employee Benefits Group documented the important things you need to know about being a plan sponsor:

- The main building blocks of a plan’s foundation
- What defines you as a fiduciary
- The significant responsibilities of a fiduciary
- How to limit your liability
- Best practices for seeking third-party assistance
- What to know about providing advice to participants
- Other things to consider when operating a plan
- Required communications for getting the word out to participants
- Helpful advice for fiduciary success

Main Building Blocks of A Plan’s Foundation



Defining a Fiduciary

Many of the actions involved in operating and maintaining a plan make the person or entity performing them a fiduciary. A fiduciary status is based on the functions performed for the plan, not just an individual's position or title. Generally, the following functions are associated with fiduciary responsibilities:

- Plan administrators
- Administrative committees
- Plan trustees
- Named fiduciaries
- Others, such as investment advisors

Although helpful in the process, attorneys, accountants and actuaries typically are not fiduciaries of a plan.

Fiduciary Actions vs. Business Decisions

Employers often have many individuals playing a role in making their plan offerings successful, but not all are considered fiduciaries. To be labeled a fiduciary, the party must have control and make decisions regarding the plan, not the business. Most decisions not governed by ERISA can be labeled as business decisions, such as determining the benefit package, selecting plan features and terminating the plan. The employer is making these types of decisions on behalf of the business, not the plan. Once an employer or a third party takes steps in implementing these decisions they typically are classified as a fiduciary.

You are a fiduciary if you . . .

Have discretionary authority or control over the management of the plan.

1

Manage and control the plan's assets.

2

Provide investment advice for plan funds or for a fee.

3

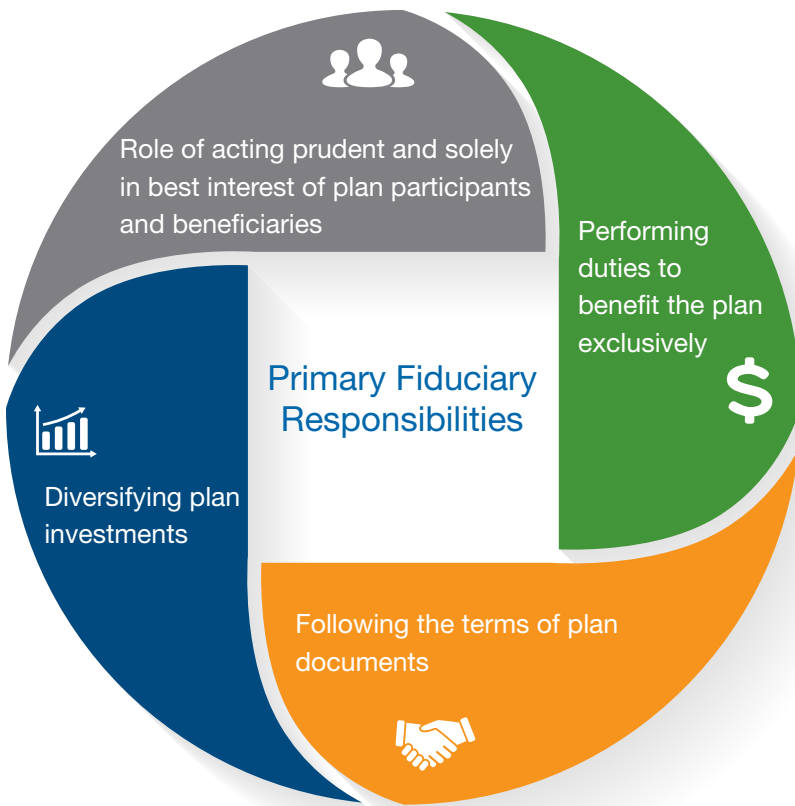
Have authority or responsibility in the administration of the plan.

4

Significant Responsibilities

Accepting the role of acting on behalf of participants and their beneficiaries, fiduciaries carry important responsibilities. Some of the most significant responsibilities ERISA requires are shown below.

Even if the plan has other active fiduciaries, fiduciaries who no longer want these duties cannot simply walk away from them. Specific plan procedures need to take place to ensure another fiduciary is carrying out the responsibilities left behind. It is critical to make sure the plan has fiduciaries in place at all times so it can continue its operations and participants have a way to interact with the plan.



Keep reading to learn more about what each responsibility entails, as we break them down on the following pages.

Role of Prudence

Under ERISA, the most important rule for a fiduciary to follow is exercising prudence. Focused on the process in which decisions are made, prudence requires you to use sound judgment decisions to act solely in the best interest of the plan's participants and its beneficiaries.

The role of prudence applies in the selection and monitoring of investments, as well as the management of third-party relationships. To successfully take on this role, one requires expertise in a variety of areas, including investments. If you lack this expertise, it is often best to hire a third party with the knowledge and skills to carry out the investment and other functions where knowledge is lacking.

Benefiting the Plan

ERISA requires fiduciaries to perform their duties exclusively to benefit the plan and its stakeholders. Ensuring plan expenses are reasonable is expected as part of this. Additionally, to protect the plan from improper influence there is guidance on transactions prohibited by plan parties. See the sidebar for a list of prohibited transactions.

Following the Plan Documents

The plan documents serve as a foundation for plan operations. Performing all duties as outlined in the written document, as long as it is in compliance with ERISA, is an essential role of the fiduciary. Keeping the plan up-to-date with any changes will also help to protect the plan and its beneficiaries from any liabilities. Pay close attention to the details in terms of changes and responsibilities laid out in the plan documents, especially if produced by a third-party provider.

Diversifying Plan Assets

To minimize risk exposure of large losses to the plan, fiduciaries should provide a broad range of investment options. Using this technique provides participants with the ability to customize their individual portfolios based on personal objectives. Don't forget to document your investment decisions each time one is made to help limit liability.

Prohibited Transactions

Take note, not all transactions are permissible between the plan and interested parties, including:

- A sale, exchange or lease
- Lending money or other extension of credit
- Furnishing goods, services or facilities
- Receive money or considerations for personal accounts

The above transactions are prohibited to occur by:

- The employer
- The union
- Plan fiduciaries
- Third-party service providers
- Statutorily defined owners
- Officers and relatives of interested parties

Limiting Your Liability

Along with these significant responsibilities, comes potential liability for a fiduciary. By not following the basic standards of conduct or improperly using the plan's assets, as the plan fiduciary you may face some harsh consequences, including:

- Personally liable to restore any losses to the plan
- Removal as plan fiduciary
- Penalties up to 20 percent for any amount recovered as a result of an ERISA violation
- Deliberate violations resulting in personal criminal penalties of up to \$5,000 (\$10,000 for corporations) and up to one year in prison
- Liability for a breach committed by another fiduciary if you enable the other individual in the breach, or have knowledge of the occurrence and fail to address it

Ways to Reduce Liability

Doeren Mayhew offers 4 ways to help reduce liability related to your fiduciary responsibilities:

1. **Documentation:** Document the processes used to carry out fiduciary responsibilities.
2. **Control:** Set-up the plan to give participants control over the investments in their account. But remember, you have to give them a broad range of investment alternatives and are still liable for selecting and monitoring these options.
3. **Enrollment:** Automatic enrollment of employees limits liability for any plan losses as a result of automatically investing participant contributions into default investments.
4. **Assistance:** Hire a third-party provider to handle fiduciary functions and set-up the agreement so the person or entity is liable for specific functions.

Keep in mind, those who handle funds or other plan property generally must be covered by a fidelity bond to protect against loss from fraudulent or dishonest acts.



Seeking Third-Party Assistance

If you are considering prospective third-party service providers, it is best to know the exact services you are seeking. Be prepared with a list of information you need from each provider in order to make comparisons. You will want to have a complete understanding of the services being provided, compensation and any conflicts of interest that may impact the performance of the provider. Throughout the process, document the evaluation and selection process to limit your liability, as well as safeguard the best interest of participants.

Considerations when selecting a provider

- Experience with similar sized plans and complexity
- Professional expertise and qualifications of engagement team
- Recent litigation against the firm
- Does the firm have fiduciary liability insurance
- How will the plan assets be invested
- Method for carrying out participant investment directions

Reasonable Plan Expenses

As part of your fiduciary responsibilities to safeguard employees' investments from unreasonable expenses, fees should be a major consideration when evaluating a third-party provider.

Plan expenses are typically paid for by the employer, the plan or in some instances both. If paid by the plan, these costs may be passed through to the individual participants' accounts. Expenses generally fall into three main fee categories, including:

1. Plan administration
2. Investment
3. Individual service

While some providers offer a number of services for one fee, others may charge separately for individual services. If the prospective provider is quoting a number of services in one fee, you may want to inquire about what is included in the fee so you can determine if the quote is inclusive of only the services desired.

For many years, plan expenses, which could have been considered unreasonable to some, went unnoticed. In 2012, the Department of Labor (DOL) mandated fees become transparent by requiring them to be disclosed on a quarterly basis to participants.

As a result, your employees may express concern about these from time to time. To demonstrate you are acting in the best interest of the plan to help minimize these fees, all related expenses and fees should be continuously monitored for acceptability year after year.

Monitoring

To ensure your provider is performing the agreed-upon services effectively, you should establish a review process at specified intervals during the plan year to evaluate their performance.

As best practice, a review process of this nature should include:

- Evaluating their overall performance as an administrator
- Reviewing any notices given from the provider about changes to their compensation
- Validating you are in agreement with the policies and procedures set in place, and they are being carried out properly
- Assessing reports provided for accuracy
- Verifying actual fees charged are aligned with agreements
- Following-up on participant complaints

Guidance for Monitoring Providers

Confirm advice is provided in a timely manner

Be mindful and observant of changes in advisory personnel

Determine if you are comfortable with the advice being given to affirm it is appropriate for the participants

Providing Advice to Participants

For a plan allowing participants to direct their own investments, many employers choose to provide investment advice. ERISA does not require you to provide this advice. However, as the fiduciary you still carry the responsibility for prudently selecting and monitoring the investment advisor or provider, if investment advice is provided. Remember anyone hired to provide investment advice to participants is labeled as a fiduciary and is subject to all ERISA standards and responsibilities.

Rendering investment advice includes providing:

- Guidance on the value of the securities or property
- Recommendations for investing, purchasing, or selling securities and property
- Direct/indirect authority of purchasing or selling securities and property
- Advice directly/indirectly on a regular basis serving as a primary basis for the participants' or beneficiaries' given investment decisions

Investment Advisor Assistance

Hiring an investment advisor can be helpful for participants to understand all investment options and help make informed decisions. An employer may hire a third-party provider to supply general financial and investment education, interactive investment materials and information based on asset allocation models. However not required, it is recommended the fiduciary inquires on the background and credentials of prospective providers to verify they are qualified to offer such investment advice to participants.

Require Sound Advice?

Standing ready to help you uphold your fiduciary responsibilities to both your employees and the plan itself, is our affiliate, Greystone Retirement Group.

Armed with a team of professionals with experience spanning nearly 40 years, Greystone will provide you with the sound investment advice you require to meet your fiduciary responsibilities.

Other Things to Consider

Employee Contributions

If your plan is designed for salary reductions from employees' paychecks for contribution to the plan consider the following guidelines:

- Legally, the employer must deposit the contributions in the plan as soon as administratively possible and no later than the 15th business day of the month following the payday.
- For plans with less than 100 participants, salary contributions must be deposited in the plan no later than the 7th business day following withholding by the employer.
- The plan must have a designated fiduciary, typically the trustee, to ensure both employee and employer contributions are collected timely.

Government Reporting

Plan administrators are required to file a Form 5500 annual return with the federal government. The form reports information regarding the plan and its operation to the U.S. DOL, Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corporation (PBGC).

Depending on the number of participants, the filing requirements vary. The form is filed and processed electronically under the ERISA Filing Acceptance System II (EFAST2).

For more information on government reporting forms, instructions and filing requirements, visit the U.S. DOL's website at www.dol.gov.

Getting the Word Out

ERISA requires plan administrators to provide plan information to participants and beneficiaries.

Communication	Purpose	Timing Requirements
Summary Plan Description	<p>Explains the plan informing participants of their rights and responsibilities, including:</p> <ul style="list-style-type: none"> • When and how employees become eligible to participate • Source of contributions and levels • Length of time an employee must belong to the plan to receive benefits • How to file a claim for benefits • Basic rights and responsibilities under ERISA 	<p>Employees receive upon joining the plan. Beneficiaries receive after first benefits are collected. These documents must be redistributed periodically and provided on request.</p>
Summary of Material Modifications (SMM)	<p>Notifies participants and beneficiaries of changes to the plan.</p>	<p>Must be furnished automatically to participants within 210 days after the end of the plan year when change was adopted.</p>
Individual Benefit Summary (IBS)	<p>Notifies participants of their account balances and vested benefits.</p>	<p>Participant-directed account plans must furnish them on a quarterly basis, while individual account plans must furnish them annually. Traditional defined benefit plans must provide statements every three years.</p>
Automatic Enrollment Notice	<p>Details the plan's automatic enrollment process and participants' rights, including:</p> <ul style="list-style-type: none"> • Deferral percentage • Participants' right to change their percentage or not make automatic contributions • Plan's default investment 	<p>Participants must receive an initial notice at least 30 days before eligibility. For immediate eligibility upon hire, notices may be given on the first day of employment. An annual notice must be sent at least 30 days prior to the beginning of each subsequent plan year.</p>
Summary Annual Report (SAR)	<p>Outlines the financial information in the plan's annual report and is provided to participants annually.</p>	<p>Defined benefit pension plans required to provide an annual plan funding notice are not typically required to administer an SAR.</p>
Blackout Period Notice	<p>Generally occur when plans change record keepers, investment options or participants are added due to a corporate merger or acquisition. During this time participants and beneficiaries cannot direct investments, take loans or request distributions.</p>	<p>Requires at least 30 days (no more than 60 days) advance notice before a 401(k) or profit sharing plan is closed to participant transaction.</p>

Helpful Advice For Fiduciary Success

Carrying out all your fiduciary responsibilities sometimes is no easy task. Doeren Mayhew's Employee Benefit Group offers 12 tips to help you manage your duties successfully with ease.

1. Identify your fiduciaries and confirm they are aware of their responsibilities.
2. Be aware of the schedule to deposit participants' contributions into the plan to comply with laws.
3. Evaluate your third-party provider options to ensure reasonable fees are appropriate.
4. Monitor your plan's service provider on an annual basis.
5. Take the steps to monitor transactions with identified parties of interest to the plan.
6. Understand the major exemptions under ERISA permitting transactions with interested parties, especially those key for plan operations.
7. Frequently review your plan documents to verify they are updated with current plan operations.
8. Communicate with participants in the instance a change is made with an updated SPD or SMM.
9. Secure proper fidelity bonding for individuals handling plan funds or other plan property.
10. In the instance of participant-directed plans, implement a process to provide adequate plan and investment information to participants to make educated decisions.
11. Receive a plan audit annually to identify any significant deficiencies.
12. File your Form 5500 timely to avoid penalties.

Need Assistance?

While offering a plan can be rewarding to both the participants and the plan sponsor, it comes with a great deal of responsibility. Understanding your role as a fiduciary is an important step to limiting the liability related to offering such a plan.

Need help understanding your fiduciary responsibilities or implementing best practices to carry them out, Doeren Mayhew's Employee Benefit Specialists can help.



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