

Fiduciary Responsibilities for ERISA Plans

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As retirement plans have seen increasing number of regulatory changes enacted by the Department of Labor (DOL) and Internal Revenue Service (IRS) in recent years, it would be beneficial to review your fiduciary responsibilities under the Employee Retirement Income Security Act ([ERISA](#)) guidelines.

A fiduciary is any individual who has control over the plan's operation. According to the Employee Benefits Security Administration (EBSA), the following are the significant responsibilities of a fiduciary:

- Acting solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them;
- Carrying out their duties prudently;
- Following the plan documents (unless inconsistent with ERISA);
- Diversifying plan investments; and
- Paying only reasonable plan expenses.

Following the terms of the plan document should be an increased area of awareness for the fiduciary as many plans have had to restate the plan document due to requirements under the Pension Protection Act of 2006 for pension plans and the Affordable Care Act for health and welfare plans. Although fiduciaries may rely on third parties to determine that the restated plan documents are compliant with new regulations, the fiduciary needs to ensure that the plan document is being followed when making future discretionary decisions in administration of the plan. Any change to the Summary Plan Description (SPD) or a Summary of Material Modification (SMM) must be furnished to participants within 210 days after the end of the plan year in which the change was adopted*. It is the fiduciary's responsibility to ensure that the SPD or SMM has been sent to the participants.

Diversification of plan investments is a constantly changing issue of fiduciary responsibility due to fluctuations of investment return in the market. The fiduciary should



monitor the plan's investment portfolio for a reasonable allocation to achieve the plan's objectives in providing benefits to participants. The plan may appoint an investment manager as a fiduciary (bank, insurance company, or registered investment advisor) that assumes responsibility for individual investment decisions. However, a plan sponsor fiduciary is required to monitor the manager periodically to assure that it is handling the plan's investments prudently and in accordance with the appointment*.

Documentation of decisions on administering the plan is instrumental to limiting the liability of fiduciaries as they can be personally liable for any losses to the plan for breaching the fiduciary's responsibilities. Fiduciaries will want to document the process used and evaluation of the alternatives presented to them to demonstrate that they have prudently made the decision in accordance with their fiduciary responsibilities.

EBSA has developed the following tips for fiduciaries to ask as a starting point to determine if they are meeting their fiduciary responsibility:

- Have you identified your plan fiduciaries and are they clear about the extent of their fiduciary responsibilities?

- If participants make their own investment decisions, have you provided the plan and investment related information participants need to make informed decisions about the management of their individual accounts? Have you provided sufficient information for them to exercise control in making investment decisions?
 - Are you aware of the schedule to deposit participants' contributions in the plan, and have you made sure it complies with the law?
 - If you are hiring third-party service providers, have you looked at a number of providers, given each potential provider the same information, and considered whether the fees are reasonable for the services provided?
 - Have you documented the hiring process?
 - Are you prepared to monitor your plan's service providers?
 - Have you identified parties in interest to the plan and taken steps to monitor transactions with them?
- Are you aware of the major exemptions under ERISA that permit transactions with parties-in-interest, especially those key for plan operations (such as hiring service providers and making plan loans to participants)?
 - Have you reviewed your plan document in light of current plan operations and made necessary updates? After amending the plan, have you provided participants with an updated SPD or SMM?
 - Do those individuals handling plan funds or other plan property have a fidelity bond?

*United States Department of Labor, Employee Benefits Security Administration. Meeting Your Fiduciary Responsibilities –
<http://www.dol.gov/ebsa/publications/fiduciaryresponsibility.html>