



## Retirement Plan Fiduciary Responsibilities

In general terms, a fiduciary is a person who owes a duty of care and trust to another and must act primarily for the benefit of the other in a particular activity. For retirement plans, the law defines the actions that result in fiduciary duties and the extent of those duties.

Many of the actions needed to operate a qualified retirement plan involve fiduciary decisions – whether you hire someone to manage the plan for you or do the plan management yourself. Controlling the plan assets or using discretion in managing the plan makes you or the entity you hire a plan fiduciary to the extent of that discretion or control. Fiduciary status is based on the functions performed for the plan, not a title. Be aware that hiring someone to perform fiduciary functions is itself a fiduciary act.

Some plan decisions are business decisions, rather than fiduciary decisions. For instance, the decisions to establish a plan, include certain features, amend or terminate a plan are business decisions. When making these decisions, you are acting for your business, not the plan, and therefore, you wouldn't be a fiduciary. However, when you take steps to implement these decisions, you (or those you hire) are acting for the plan as a fiduciary.

### Basic responsibilities

Fiduciaries are in a position of trust with respect to the participants and beneficiaries in the plan. A fiduciary's responsibilities include:

- acting solely in the interest of the participants and their beneficiaries;
- acting for the exclusive purpose of providing benefits to workers participating in the plan and their beneficiaries, and defraying reasonable expenses of the plan;
- carrying out duties with the care, skill, prudence and diligence of a prudent person familiar with the matters;
- following the plan documents; and
- diversifying plan investments.

The responsibility to be prudent covers a wide range of functions needed to operate a plan. Since you must carry out these functions in the same manner as a prudent person, it may be in your best interest to consult experts in such fields as investments and accounting.

For some functions, there are rules that help guide the fiduciary. For example, if your plan provides for salary reductions from employees' paychecks for contribution to the plan, then you must deposit these contributions as soon as it's reasonably possible to do so, but no later than the 15th business day of the month following the payday. If you can reasonably make the deposits sooner, you need to make the deposits at that time.

### Limiting liability

With these responsibilities, there is also some potential liability. However, there are actions you can take to demonstrate that you carried out your responsibilities as well as ways to limit your liability.

Fiduciary responsibilities cover the process used to carry out the plan functions rather than the results. For example, a plan investment doesn't have to be a "winner" if it was part of a prudent overall diversified investment portfolio for the plan. Since a fiduciary needs to carry out activities through a prudent process, you should document your decision-making process to demonstrate the rationale behind the decision at the time it was made.

There are other ways to limit potential liability. You can set your plan up to give participants control of the investments in their accounts. For participants to have control, they must have sufficient information on the specifics of their investment options. If properly executed, this type of plan limits your liability for the investment decisions made by participants. You can also hire a service provider or providers to handle

some or most of the fiduciary functions, setting up the agreement so that the person or entity then assumes liability.

### **Hiring a service provider**

Even if you hire a financial institution or retirement plan professional to manage your plan, you retain some fiduciary responsibility for the decision to select and keep the service provider. You should document your selection process and monitor the services provided to determine if you need to make a change.

Some items to consider in selecting a plan service provider:

- Information about the firm's affiliations, financial condition, experience with 401(k) plans, and assets under their control;
- A description of how the firm will invest plan assets or how it will handle participant investment directions, and its proposed fee structure;
- Information about the identity, experience, and qualifications of the professionals who will be handling the plan's account such as:
  - any recent litigation or enforcement action that has been taken against the firm;
  - the firm's experience or performance record;
  - whether the firm plans to work with any of its affiliates in handling the plan's account; and
  - whether the firm has fiduciary liability insurance.
- Once hired, these are additional actions you should take when monitoring a service provider:
  - Review the service provider's performance;
  - Read any reports they provide;
  - Check actual fees charged;
  - Ask about policies and practices (such as trading, investment turnover, and proxy voting); and
  - Follow up on participant complaints.

### **Prohibited transactions and exemptions**

The law prohibits certain transactions to prevent self-dealing or conflicts of interest that could harm the plan. However, there are a number of exceptions under the law, and the U. S. Department of Labor may grant additional exemptions where protections for the plan are in place in conducting the transactions.

For example, an exemption permits you to offer loans to participants through your plan. If you do, you must carry out the loan program in such a way that protects the plan and all other participants.

See [FAQs Regarding Plan Investments](#) for more on prohibited transactions and disqualified persons.

### **Bonding**

Finally, you generally cover persons handling plan funds or other plan property by a fidelity bond to protect the plan against fraud and dishonesty.

### **Additional resources**

- [Retirement Plan Fiduciary Responsibilities](#)
- [401\(k\) Plan Fees Disclosure Tool](#)

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