

ERISA Fiduciary Fundamentals and Retirement Plan Committee's Best Practices

Michelle Marichal, Esq.



Who is An ERISA Fiduciary?



Duties of a Fiduciary

- There are five duties of a fiduciary that must be carried out in accordance with the plan documents:
 - Loyalty
 - Documentation
 - Prudence
 - Diversification
 - Reasonable plan expenses

- Also called the "exclusive benefit rule"
- Plan fiduciaries must act:
 - Solely in the best interests of the plan participants.
 - For the exclusive purpose of providing plan benefits.
- Fiduciaries cannot put employer interest before those of plan participants.
- Avoid conflicts of interest.
- Ensure that expenses for administering the plan are reasonable.

Loyalty

- Maintain up to date, signed documents including:
 - Plan documents and summary plan descriptions
 - Trust Agreement
 - Plan forms, rules, and procedures
 - Service agreements
 - Third party contracts
 - Investment contracts
 - Investment policy statements
 - Amendments to the above documents
 - Committee meeting minutes

Documentation

Prudence

Requires fiduciaries to act with the care, prudence, skill and diligence that a knowledgeable person would use in administering the plan.

Prudence requires good judgement and sound processes in the plan activities undertaken by fiduciaries.

More than just an obligation to be competent and careful in your conduct, prudence requires fiduciaries to be careful, diligent and thorough in the decision-making process.

Retain third parties to assist, if necessary.

Diversification

- Investment must be diversified to minimize the risk of large losses.
- There must be at least three different investment options that offer different risk/return characteristics.
- Election choices must allow diversification with materially different risk and return characteristics.
 - (equity funds, bond funds, money market funds, target date funds, model allocations)



Reasonable Plan Expenses

Fees are just one of several factors that fiduciaries need to consider when selecting investments and service providers.

The law does not specify permissible level fees, but fees must be "reasonable".

Plan's fees should be monitored on an ongoing basis to ensure they remain reasonable.

Information provided by services providers should include all forms of compensation.

Delegating Duties

- **How can fiduciary responsibility be delegated?**
 - Plan provisions/documentation must permit delegation
 - Delegation and authority must be clear, in writing, and delegated to appropriate individuals/committees.
 - Includes naming of trustees, investment managers, named fiduciaries, and service providers.
 - Also includes delegation and responsibilities to participants.
 - Delegation limits the liability of the delegating fiduciary – Not responsible for actions of delegate within the scope of the delegation (subject to co-fiduciary liability)





Retirement Plan Committee

- **One of the Best Practices in delegating fiduciary responsibility is delegating to one or more committees**
 - It is not required by law but is an efficient manner to delegate the management, administrative and investment decision functions of the Plan Administrator.
 - Committees are appointed by the Board of Directors of the Plan Sponsor.
 - Board members do not necessarily have the time and expertise to focus on the retirement plan issues.
 - Have a committee structure that fits the organization.
 - The specific authority that the committee holds must be clearly established in writing.

Delegating Duties

Plan Committees

Two main areas committees need to cover:

- **Settlor/Administrative Functions**
- **Fiduciary Functions**

Plan Committee Charter

- **Topics covered on a Committee Charter**
- What authority does the committee have?
- What is the committee's purpose?
- How is the committee structured?
- Who may serve on the committee?
- How are committee members replaced?
- How will the committee delegate authority?
- How will the committee assign responsibilities and duties?
- How frequently will the committee meet?
- What procedures will the committee follow?
- What are the standing agenda items and how are new topics introduced?
- What is the process for selecting and managing plan service providers?
- What reporting will the committee do and to whom?
- What are the procedures for protecting committee members financially?



• Retirement Plan Committee

- Responsible for wide range of plan oversight functions
- Comprised of members familiar with HR functions, legal/compliance, data security (cross-functional team).
- Maintain current and historical plan documentation
- Handle participant claims and appeals
- Protect plan participants' data privacy and establish cyber security policies
- Actively manage plan service providers
- Monitor administration processes and procedures
- Ensure retirement plan operational failures are corrected timely and appropriately

Administrative Functions

Investment Policy Statement

- **Topics covered on an Investment Policy Statement**

- Plan's overall investment philosophy and investment objectives
- Who is responsible for choosing and monitoring the plan's investments
- How the plan will construct its investment menu and how it determines what investment options to offer, including what asset classes are included and why
- Guidelines for evaluation of investments
- Responsibilities for all relevant parties



• Investment Plan Committee

- Comprised of members that have a financial background
- Focus on investment activities such as:
 - Funds offerings
 - Economic outlooks
 - Periodic review of plan fees and other financial benchmarking data
- Ensure investments are best in class
 - Qualitative issues: Management strategy/Management changes
 - Quantitative issues: Performance/Price
 - How funds benchmark relative to main peers
 - How funds perform net of fees
- Discuss funds that have been put on watch list
- Ensure compliance with Investment Policy Statements
- Ensure compliance with 404(c) safe harbor, if applicable

Fiduciary Functions

Committee Meetings and Documentation

Meetings

- Should take place at least bi-annually
- Should follow an agenda that covers topics such as:
 - Participants data (participation rate, average balance and deferrals, maximization of match, withdrawals)
 - Service Providers (monitoring, performance evaluation)
 - Education for plan participants
 - Discuss plan audit results
 - Reporting and disclosure requirements
 - Compliance issues and plan filings
 - Reasonableness of fees and benchmarking through industry studies, RFP or RFI

Committee Meetings and Documentation

Documentation

- Meeting agenda and minutes should identify:
 - Action items
 - Members participating
 - Decisions made
 - Voting results on any issue
 - Minutes should be detailed enough to reflect key decisions and rationale
 - Digital archive must be kept

Documenting committee meetings is important to (i) keep the BD and company executives informed and (ii) have a record in the event the plan is subject to regulator investigation or if a claim is filed.

Ongoing Education and Training

- Critical for committee members to stay on top of new rules and regulations
- Understand how the new rules would impact the plan design and administration, how they impact the fiduciary's role and responsibilities and how they impact plan documentation.

Committee Actions to Manage Fiduciary Liability

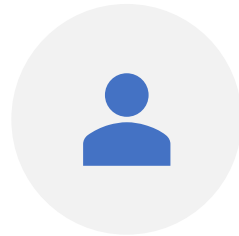
- **Actions to take to manage fiduciary liability:**
 - Review your documents – SPD, plan, investment policy
 - Review service provider agreements
 - Review and document fiduciary delegations
 - Review and document written rules
 - Review and document any written procedures or policies
 - Review and document communications, plan procedures, practices
 - Ensure administrative practices comport with plan documents



FORMALIZE
DECISION MAKING
PROCESS



MEET REGULARLY



SEEK EXPERT
ADVISE



DOCUMENT
EVERYTHING



COMPLY WITH
404(C) SAFE
HARBOR

THANK YOU

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