The Fiduciary Studio Can Help

Manage Complexity

Reduce Risk

Simplify Plan Administration

401(k) plans are governed by a complicated thicket of rules and regulations. The Internal Revenue Service and Department of Labor govern the landscape, and the tangle of ever-changing regulations can be overwhelming. Fiduciary mistakes can lead to fines and penalties that are damaging to the retirement plan, the organization, and even the individuals responsible for the plan.

The Employee Retirement Income Security Act ("ERISA") establishes the standards of conduct for those who manage a retirement plan and its assets. Yet plan sponsors are often human resource generalists, with little time or knowledge of fiduciary requirements and the risks they pose. Appropriate guidance from a plan's investment advisor, third-party administrator, and in many cases a fiduciary services expert, can dramatically reduce risk to the individuals, the retirement plan, and to plan assets.

What follows is an explanation of ERISA's provisions and isn't intended to offer legal guidance or to substitute for the advice of a retirement plan professional.

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Who is a fiduciary in the context of retirement plans?

ERISA sets standards of conduct for plan sponsors and those who manage employee benefit plans. It defines a 'fiduciary' as one who:

i. Exercises control or authority over Plan management or administration;

ii. Exercises control or authority over Plan assets; or

iii. Provides investment advice to the Plan for a fee or other compensation.

This often includes Trustees, Administrators, members of the Plan Committee, and Plan Investment Advisors. The named Plan Sponsor or Plan Trustee (as defined in the adoption agreement) is also a fiduciary.

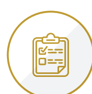
What are the fiduciary's responsibilities?

"The primary responsibility of fiduciaries is to run the plan solely in the interest of participants and beneficiaries."

Fiduciaries are subject to standards of conduct because they act on behalf of plan participants and their beneficiaries. Central to these responsibilities are five fiduciary duties:

Duty of Loyalty
Act in the interest of plan participants and their beneficiaries, with the exclusive purpose of providing benefits to them.

Duty of Prudence
Act as a 'prudent expert' of ERISA, as a 'prudent investor', and/or hire professionals with the knowledge to develop processes and execute them in accordance with the duty of prudence.



Duty of Documentation
Ensure the plan is fully and properly documented and regularly reviewed, along with key supporting documentation such as the Investment Policy and Education Policy Statements.

Duty of Diversification
Minimize the risk of large investment losses to the plan by providing diversified investments that are suitable for plan participants and their beneficiaries.

Duty to Ensure Reasonable Expenses
Understand and confirm that service provider fees are reasonable, free from conflicts of interest, and properly disclosed.

Collectively, these standards of conduct require expertise in a variety of specialized areas. Plan sponsors who lack this expertise should consider hiring retirement plan experts with the professional experience and knowledge to assist them.

Limiting Liability

"Fiduciaries who do not follow the basic standards of conduct may be personally liable to restore any losses to the plan..."

Plan responsibilities – and risks – require fiduciaries to fully understand the terms of their plan as well as the applicable regulations. Thorough documentation, management processes, and strict adherence to protocol are important measures every fiduciary must adopt to protect their plan and their personal exposure.

The **Duty of Prudence** is one of a fiduciary's central responsibilities under ERISA. But there's good news here: ERISA provides an important mechanism allowing plan sponsors to limit risk. They may designate service providers to handle fiduciary functions and assume liability for those functions. The fiduciary is then responsible for the selection of the provider, but not for the provider's decisions.

Plan sponsors often select best-of-class service providers who have expertise to help them in three vital areas:

i. **Third-Party Administrator**
The Third-Party Administrator ("TPA") performs key functions including plan design, ensuring compliance through nondiscrimination and coverage testing, preparing all required documents and forms, and assisting with disclosure notices. An experienced TPA may not always serve as a fiduciary but is always a key player to ensure compliance.

ii. **Investment Advisor**
The Investment Advisor is often a fiduciary by virtue of their work in selecting a diversified investment lineup, confirming the investments are appropriate, and educating employees on both the plan and their investment choices.

iii. **Fiduciary Services Provider**
The Fiduciary Services Provider takes on certain fiduciary responsibilities by managing specified responsibilities central to retirement plan administration. These may include day-to-day tasks like reviewing employee loans and withdrawals, or confirming oversight responsibilities such as ensuring policies, documents, and minutes are correct and regularly reviewed.

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