



FIDUCIARY FUNDAMENTALS: BASICS AND BEST PRACTICES

RETIREMENT & BENEFIT PLAN SERVICES



At Grimbleby Coleman, we understand the important role that you, the plan fiduciary, serve in maintaining the integrity of your company’s retirement plan. We also understand the pressure fiduciaries experience trying to keep up with their responsibilities.*

This guide will provide an overview of the role of a plan fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA) and provides suggested best practices that may help you fulfill your fiduciary responsibilities.

This guide will cover:

- The essential role of a fiduciary
- Responsibilities of a fiduciary
- Fiduciary “best practices” and how we can help you draw on the expertise of our firm to implement best practices

*Grimbleby Coleman CPAs, Inc. does not provide advice on the roles and responsibilities of fiduciaries. Please consult your own counsel regarding the matters discussed in this document to the extent that they may apply to your situation.

A Plan Fiduciary Serves an Important Role...

Serving as a plan fiduciary is no small challenge. Here's just a sampling of what a fiduciary needs to consider:

- Do you offer participants a diversified menu of investment options that have been prudently selected?
- If participants make their own investment decisions, have you provided sufficient information and education for them to exercise control in making those decisions?
- Have you taken advantage of available fiduciary safe harbors?
- Have you reviewed plan costs for reasonableness?



We are prepared to assist you by drawing upon the expansive capabilities across our organization to help fulfill your challenging fiduciary duties. Our collaboration with the BDO Seidman Alliance grants us access to the collective knowledge of a worldwide cooperative of highly experience, knowledgeable financial experts.

The Essential Role of a Fiduciary...

We offer a range of tools and expertise that have been developed based upon years of helping clients like you meet their fiduciary responsibilities.

Who is considered a retirement plan fiduciary under ERISA?

A fiduciary under ERISA is any person or entity that exercises authority or control over a plan's assets, gives investment advice for compensation or has discretion over plan administration. Plan sponsors are generally fiduciaries. For some plans, administrative committees or a company's board of directors may be fiduciaries. Attorneys, record keepers, accountants, and actuaries generally are not fiduciaries when acting solely in their professional capacities.

At a minimum, a plan must have at least one fiduciary by virtue of the functions they perform. For example, individuals who exercise control over a plan's assets are fiduciaries no matter what titles or positions they hold.

The fiduciary role

Standards of fiduciary performance under ERISA generally are process-based as opposed to outcome-based. Fiduciaries must act with prudence consistent with the "prudent man" standard of care.

Plan fiduciaries must exercise their duties with the prudence of a person familiar with the business they are responsible for, or employ the assistance of those with the requisite experience. This is also known as the prudent expert rule.

The responsibilities of a plan fiduciary generally include:

- Acting solely in the interest of plan participants and their beneficiaries.
- Defraying reasonable expenses for the administration of the plan.
- Following the plan documents (unless inconsistent with ERISA).
- Diversifying plan investments.

Process-Based Prudence

Giving appropriate consideration to those facts and circumstances that the fiduciary knows or should know are relevant to the particular investment or investment course of action involved and then acting accordingly.

Loyalty	Prudence	Education	Monitoring	Diversification
<ul style="list-style-type: none"> Discharge plan duties solely in the interest of participants and beneficiaries Ensure expenses are reasonable 	<ul style="list-style-type: none"> Act with the care, skill, and diligence of a prudent expert Develop and document processes for decision making Hire third parties where internal expertise is lacking Carefully select service providers 	<ul style="list-style-type: none"> Provide participants with tools and education that enable them to make sound investments and decisions 	<ul style="list-style-type: none"> Regularly review service providers, including performance and fees Follow terms of plan document 	<ul style="list-style-type: none"> Ensure plan investments are adequately diversified to minimize risk of large losses*

Fiduciaries may be personally liable for any losses to the plan resulting from a breach of fiduciary duty. These duties can be breached by failing to perform their duties with prudence for the benefit of the plan, engaging in prohibited transactions or failing to monitor those to whom fiduciary duties have been delegated.

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*Diversification does not ensure a profit or protect against loss.

Fiduciary Best Practices...

While outcomes are always important, a fiduciary will want to demonstrate procedural prudence by maintaining written policies and procedures, minutes or other documentation of actions and decisions. It is also important to maintain supporting documents and data used in the decision-making process. In addition, fiduciaries should consider taking advantage of safe harbors, which protect them from liability associated with certain investment decisions. What follows is a list of practices that all plan fiduciaries should consider adopting.

1. Identify all plan fiduciaries

It is important to identify all the fiduciaries in an organization and to assure that they are aware of their responsibilities.

If an organization maintains an investment committee, it is important that the committee be properly formed. Investment committees are typically created by an organization's board of directors or the chief executive and the establishment of the committee should be documented.

When a fiduciary delegates responsibility to another person or committee, the original fiduciary retains a residual fiduciary responsibility.

2. Maintain a written investment policy statement

The selection, monitoring, and maintenance of an investment menu are duties most frequently identified with being an ERISA fiduciary. The investment policy statement provides the framework for this process. This investment policy statement should be reviewed at least annually and amended to reflect the changes in the securities markets, plan objectives, or other factors relevant to the plan. The policy statement should:

- Identify the key functions and responsibilities necessary for the ongoing management of the plan's assets.
- Describe the investment structure for the plan's assets, including the various asset classes that are expected to produce an investment return over the long term while prudently managing risk.
- Establish formal criteria to monitor and evaluate plan performance results on a regular basis.

3. Take advantage of fiduciary safe harbors

Fiduciary Liability Safe Harbor – 404(c)

Section 404(c) of ERISA provides a voluntary safe harbor intended to protect plan fiduciaries from liability for the decisions participants make in managing their investments. Three key requirements for compliance with the Section 404(c) safe harbor are:

- Participants must be offered at least three core investment alternatives that are diversified and materially different in their risk and return characteristics.
- Participants must have the opportunity to exercise control over the accounts, such as changing investment options at least quarterly.
- Certain information about the plan must be disclosed or made available to participants, including sufficient details about the investments offered in the plan to make sound investment decisions, and more.



Plan fiduciaries must continue to prudently select and monitor plan investments. To take advantage of ERISA 404(c), fiduciaries must provide notice to participants of the intent to use safe harbor. Typically, this notice is provided in the summary plan description.

Additional 404(c) Safe Harbors

Default investments: The Pension Protection Act of 2006 extended certain protections of section 404(c) to fiduciaries in plans that invest participants' accounts in default investment options in the plan. This protection relieves the fiduciary of liability associated with the choice of asset classes used for default investments. While utilizing a QDIA is optional, fiduciaries for plans that utilize default investments should consider the benefits of this safe harbor protection.

Leveraging Qualified Default Investments in Automated Programs

Your qualified default investment option can serve as the centerpiece of an automated program that includes enrollment and regular deferral increases to help your employees achieve retirement success. The Pension Protection Act of 2006 reflected strong endorsement of such programs by Congress based on the legislators' desire to encourage sponsors to take more aggressive steps to help employees secure their financial future.

4. Review fees and expenses for reasonableness

Plan fiduciaries are responsible for ensuring that the fees charged to plan assets are reasonable relative to the services provided. These costs should be reviewed periodically. Two main types of fees are commonly paid out of plan assets:

- Fees for maintenance and administration of plan.
- Investment management fees paid to fund managers and fund management companies.

The Department of Labor requires plan sponsors to disclose fees paid directly or indirectly to providers on Schedule C of IRS Form 5500. Rulemaking underway would expand sponsor disclosures to participants of fees and performance investment options. Providers would be required to give sponsors written details of services and fees prior to entering contracts.

5. Maintain fiduciary liability insurance

While most documents will provide for the indemnification of fiduciaries by the plan sponsor, many plan sponsors maintain fiduciary liability insurance as an additional layer of protection. This is typically a separate policy distinct from any directors and officers or errors and omissions policy.

6. Educate and update participants with clear, consistent communications

It is always a good policy to identify those communication activities that are intended to be “educational” in nature, as opposed to “investment advice”. It is important to communicate to participants the responsibilities assumed by them relative to those assumed by the plan fiduciaries. The maintenance of clear documentation on this point is viewed by many as a fiduciary best practice.

7. Maintain a regular governance calendar

There are a myriad of issues that a fiduciary or fiduciary committee must monitor and manage. The most effective fiduciaries maintain a regular governance calendar. They identify their “key areas of focus,” set objectives and establish policies, and identify leverage points—those action items that can impact the objectives.

After setting performance objectives, they implement a monitoring process and document the entire process. Each of the key areas of focus is revisited on a regular basis according to a governance calendar. These processes can be as formal or informal as circumstances require.

8. Document, document, document

In the unlikely event of litigation, the most effective way of proving a prudent fiduciary process is to produce the documents governing the process and the minutes or other records capturing how that process was followed.

Sample Plan Governance Calendar

1st Quarter

Plan Investments

- Review investment policy
- Review plan menu construction
- Evaluate fund/manager performance

Washington Outlook

- Legislative and regulatory updates

2nd Quarter

Plan Administration

- Review compliance issues
- Review 404(c) safe harbor procedures
- Review recent interpretations of plan language
- Review plan fees for reasonableness

Evaluation of Fund/Manager Performance

- Quantitative and qualitative analysis

3rd Quarter

Business Planning

- Determine impact of corporate transactions
- Implement necessary plan or business changes

Fiduciary Update

- Fiduciary education refresher
- Review fiduciary liability insurance

Evaluation of Fund/Manager Performance

- Quantitative and qualitative analysis

4th Quarter

Participant Utilization

- Participation and contribution rate analysis
- Investment pattern analysis
- Review participant communication strategies

Washington Outlook

- Legislative and regulatory updates



Talk to Us Today...

Speak to your Grimbleby Coleman representative to learn more about how we can help you fulfill your fiduciary responsibilities. We can assist with reviewing and refining your investment policy statement as well as monitoring and evaluating your internal control procedures.

Grimbleby Coleman can also help you design a tailored employee education and communication strategy that will encourage participants to make the most of the plan. Employees who understand and appreciate a plan are more likely to enroll and increase contributions over time. We can help you assess your current communication and education program.