Fiduciary Responsibility

- **Who is a fiduciary?**
- **What are the responsibilities of a fiduciary?**
- **How can you limit your liability?**
- **What if you know that someone else is breaking the law?**

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Who is a Fiduciary?

- Anyone with discretion in administering and managing a plan or controlling the plan's assets
- Fiduciary status is determined by the functions performed for the plan, not a person's title
- A plan must have at least one fiduciary (a person or entity) named in the written plan document
- A plan's fiduciaries normally include the trustee, investment advisors, all individuals exercising discretion in the administration of the plan and those who appoint others to fulfill those duties. Attorneys, accountants, third party administrators and actuaries are generally not fiduciaries.

What are the responsibilities of a fiduciary?

- Acting solely in the interest of plan participant and their beneficiaries and with the exclusive purpose of providing benefits to them
- Participants must be provided, at enrollment and on an ongoing basis, with sufficient information to make informed decisions with regard to their options under the plan (including investment options)
- Carrying out their duties prudently
- Lacking the expertise of a "prudent expert," the fiduciary will want to hire someone with the professional knowledge to carry out those functions
- Prudence focuses on the process for making fiduciary decisions, so the process should be documented
- To follow the plan documents
- The plan document serves as the foundation for all plan operations
- To diversify plan assets
- Diversification helps to minimize the risk of large investment losses to the plan
- Fiduciaries will want to document their evaluation and investment decisions
- To only pay reasonable expenses
- Must monitor, understand and track expenses to ensure they are reasonable
- A fiduciary should be aware of others who serve as fiduciaries to the same plan, since all fiduciaries have potential liability for the actions of the co-fiduciaries

How can a fiduciary limit their liability?

- Fiduciaries who do not follow the basic standards of conduct may be personally liable to restore any losses to the plan, or restore any profits made through improper use of plan assets resulting from their actions
- Fiduciaries can limit their liability by properly documenting the processes used to carry out their fiduciary responsibilities
- By allowing participants to have control over their investments, some of this liability is transferred to the participant
- By hiring a service provider, the employer can also reduce liability for the decisions of that provider, but the employer will always maintain the liability for selecting and monitoring that advisor.

What happens when you hire outside service providers?

- Hiring a service provider is in and of itself a fiduciary function. An employer should document its selection and monitoring process for the selection.
- Fees paid out of the plan for such services should be "reasonable".
- An employer should establish and follow a formal review process at reasonable intervals to ensure service providers are performing as they should.
- Review service provider's performance;
- Read any reports they provide;
- Check actual fees charged;
- Ask about policies and practices; and
- Follow up on participant complaints
- For fund monitoring, use the following criteria:
    1. The investment option should be highly correlated to its asset group
    2. The investments should be evaluated against its peers for median manager return as well as the 1-, 3- and 5- year cumulative returns
    3. The investment should be evaluated against the peer group's risks
    4. Investments should be reviewed annually and modified if not meeting the performance levels specified

What about investment advice and education?

- More employers are offering participants help so they can make informed decisions regarding investments. Employers can hire an investment advisor offering specific advice to the participants. These advisors are fiduciaries and have a responsibility to plan participants.
- An employer may also hire a service provider to provide general financial and investment education, interactive investment materials and information based on asset allocation models. As long as the material is general in nature, providers of investment education are not fiduciaries.
- The decision to select and investment advisor or provider offering investment education is a fiduciary action.

Need more help?

- We are experts in fiduciary responsibility and can help you every step of the way!