A Fiduciary Overview

How plan sponsors can outsource the tasks and liability associated with their retirement plans

REDUCE YOUR RESPONSIBILITIES

What is a fiduciary?

The law defines a fiduciary as an individual who is in a position of authority and is legally obligated to act in good faith on behalf of the individuals he or she represents. A fiduciary must always put the interests of the plan's participants and beneficiaries above his or her own interests.

The Employee Retirement Income Security Act (ERISA) establishes specific rules for qualified retirement plan fiduciaries:

- Use a prudent process to manage, or delegate the management of, the plan investments in a judicious, diversified manner.
- Verify that the plan is paying reasonable fees for services.
- Keep the plan document in compliance.
- Operate the plan in compliance with the plan document as well as with Internal Revenue Service (IRS) and Department of Labor (DOL) rules.
- Avoid conflicts of interest.
- Prevent prohibited transactions from occurring within the plan.

MAKING THINGS EASY

Who is a fiduciary?

The Department of Labor (DOL) states:

"A plan must have at least one fiduciary (person or entity) named in the written plan, or through a process described in the plan, as having control over the plan's operation."

Thus, it's important to note that plan sponsors are always fiduciaries, regardless of other named fiduciaries in the plan document or anyone they hire to help with fiduciary responsibilities. However, plan sponsors can still mitigate their responsibilities.

How can plan sponsors mitigate their responsibilities?

The DOL, which enforces ERISA, recognizes that the plan sponsor may need to hire someone who is an expert in retirement compliance, tasks, and investments to act on behalf of the plan. In doing so, the expert may take on fiduciary liability, as well. As the DOL states, "A fiduciary can also hire a service provider or providers to handle fiduciary functions, setting up the agreement so that the person or entity then assumes liability for those functions selected." There are three types of services that may be outsourced with fiduciary duty.

Investment fiduciary

3(21): A prudently-hired investment advisor who acts as a co-fiduciary and uses their expertise to help with plan investments. The plan fiduciary still has responsibility for investment decisions.

3(38): A prudently-hired named co-fiduciary who acts as an investment manager and is authorized to make investment decisions.

Administrative fiduciary

3(16): A prudently-hired named co-fiduciary who agrees to take on specific administrative tasks for the Plan Administrator or Administrative Committee.

It's important to remember that the employer sponsoring a plan is always responsible for oversight of anyone they have hired to act as a plan fiduciary.

No Investment Responsibility	No Administrative Responsibility	
3(16) Plan Administrator	**3(21) Investment Advisor**	**3(38) Investment Manager**
▪ Signs 5500 ▪ Signs distribution, loan, and hardship forms ▪ Assures plan remains in compliance with plan document, required testing, and participant notices	▪ Advises on Investment Policy Statement (IPS) ▪ Advises on fund menus and helps with monitoring ▪ Recommends changes in accordance with IPS	▪ Drafts IPS ▪ Determines and monitors fund menu in accordance with IPS ▪ Authority to make investment changes