

Benefit Plan Governance: From Fiduciary Fundamentals to Best Practices



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November 5, 2025

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Benefit Plan Governance

- ERISA Fiduciary Status
- Fiduciary Duties Overview
- Hot Topics
- Best Practices

ERISA FIDUCIARY STATUS

Who is a Fiduciary?

Two types of fiduciaries for ERISA purposes:

1. Named Fiduciaries
2. Functional Fiduciaries

Who is a Fiduciary (cont'd)?

1. Named Fiduciaries

- ERISA requires that every plan have one or more “named fiduciaries” designated by the plan with general authority for plan operation and administration
- Named Fiduciaries are fiduciaries by designation and definition (e.g., Plan Sponsor, Plan Administrator)
- Named Fiduciaries are personally liable for all aspects of plan operation unless duties properly delegated to another fiduciary or co-fiduciary

Who is a Fiduciary (cont'd)?

2. Functional Fiduciaries

- ERISA employs a functional test - fiduciary status determined based on functions performed rather than title or position
- Functional Fiduciaries include anyone exercising:
 - authority or control over plan assets;
 - discretionary authority over the plan's management; and
 - discretionary authority or responsibility in the plan's administration.
- Settlor vs. Fiduciary

Who is a Fiduciary (cont'd)?

Fiduciaries generally include the:

- Plan administrator
- Investment committee members
- Investment manager
- Trustee

Specific to Each Employer/Plan

- Consider governance structure
 - Who is the plan sponsor?
 - Differentiating between fiduciary and settlor responsibilities
 - Who is the plan administrator?
 - Is there a committee?

Specific to Each Employer/Plan (cont'd)

- Investment Authority
 - Has investment authority been delegated? Is there a 3(21) or 3(38)?
- Claims Authority
 - Does a third-party have discretion with respect to claims? (Common to ASOs)

Example - Employer ABC, Inc.

Plan Name	401(k) Plan	Pension Plan	NQDC Plan	Welfare Plan
Plan Administrator	Retirement Committee	Retirement Committee	Retirement Committee	Plan Sponsor *Third-party claims administrator
Investment Manager / Advisor	3(38) Investment Manager	3(38) Investment Manager	Follows 401(k) Plan	N/A
Trustee	Third-Party	Third-Party	N/A	N/A

FIDUCIARY DUTIES OVERVIEW

Take-Aways

- What is required of fiduciaries is prudence, not perfection
- The hallmark of a prudent fiduciary is a prudent process

ERISA Fiduciary Duties

- ERISA fiduciary duties are “the highest known to the law”
- The Big Four Fiduciary Duties:
 - Duty of Loyalty (Exclusive Benefit Rule)
 - Duty of Procedural Prudence
 - Duty to Diversify Investments
 - Duty to Follow Plan’s Terms (consistent with ERISA)

ERISA Fiduciary Duties (cont’d)

Other General ERISA Fiduciary Duties

- Establish and maintain a trust for plan assets
- Obtain fidelity bond covering all persons handling plan assets
- Follow strict code of conduct avoiding self-dealing, conflicts of interest, and other “prohibited transactions”
- Assume personal liability for fiduciary breaches

MONITORING INVESTMENTS

Big Picture Concerns

- Are the plan assets safe and are they still appropriate?
- Are plan participants receiving appropriate communications?
- Is plan governance in place?
- Should any changes be made to the plan's investment strategy or investments?

Overview of Steps

- Determine objectives
- Develop investment strategy
 - Consider plan architecture
- Hire Investment Manager
 - Duty to monitor co-fiduciaries
- Adopt an Investment Policy Statement
 - ERISA requires a plan to have a procedure for establishing and carrying out a funding policy

Overview of Steps (cont'd)

- Monitor investments/investment options
- Take appropriate action
- Coordinate decisions with plan recordkeeper
- Document decisions

TRENDING TOPIC 1

HOT BUTTON INVESTMENTS

ESG Considerations

- Potential fiduciary liability is not limited to selection of ESG
- ERISA plan fiduciaries have a duty to monitor service providers

Alternative Asset Investments

- August 7, 2025 Executive Order
 - Policy shift to expand investment options for participants in employer-sponsored defined contribution plans to allow for investment in “alternative assets”
 - Directs the DOL to reexamine its guidance regarding fiduciary decisions around alternative assets, including providing safe harbors and prioritizing actions that may curb ERISA litigation
- Biden DOL previously cautioned against these investments (that statement has been rescinded)

MONITORING EXPENSES

Basic Rule

- Plan fiduciaries must monitor everything on which plan assets are spent
- “Exclusive Benefit Rule”

Primary Objectives

- It is fine for the provider to make a reasonable profit
- Plan sponsors should be able to demonstrate that fees collected by provider are:
 - Permissible according to DOL guidelines
 - Commensurate with the services being provided, and
 - In line with what’s available in the marketplace

Understand What the Plan is Paying

- Review the plan documents
 - Plan/Trust document
 - Fund prospectuses
 - Provider service and investment contracts
- Insist on full and open disclosure from the provider
- Benchmark against the market
- If you don't have the expertise, consider retaining someone who does (prudent expert rule)

Implement Ongoing Processes To:

- Monitor
 - On an ongoing basis
- Adjust
 - Appropriately
- Document activities
- Communicate with participants
 - When necessary
 - DOL may require certain information be delivered to participants

TRENDING TOPIC 2 USE OF FORFEITURES

Participant Challenges

- Emerging theory in 2023
 - Participants challenging the use of forfeited employer 401(k) plan contributions to reduce future 401(k) plan employer contributions rather than to pay plan expenses otherwise borne by participants
- Majority of district courts have sided with the plan sponsor on motions to dismiss
 - Three cases are on appeal to the U.S. Court of Appeals for the Ninth Circuit
 - DOL weighed in, siding with the plan sponsor and noted that the plaintiff's theory misconstrues the settlor and fiduciary principles
- Court decisions continue to focus on plan language

MONITORING OPERATIONS

Monitoring Operations

- Beyond investment and traditional fiduciary issues, don't lose sight of keeping plan working properly and qualified
- Be sure plan document terms are followed
 - Eligibility
 - Vesting
 - Loan defaults
 - Forfeitures
- Keep plan up to date with legal and regulatory requirements and changes

What the IRS is looking for:

- Late deposits of participant deferrals and loan repayments
- Failure to properly apply plan's definition of compensation
- Failure to properly update the plan document
- Failure to follow eligibility provisions
- Incorrect employer contributions
- Failure to properly apply plan's vesting provisions
- Improper use of plan forfeitures

What if there is a problem?

- IRS (and DOL) programs exist to fix them
 - SECURE 2.0 encourages self-correction
- General correction principles require that participants be put back in the position they would have been had the problem not occurred

TRENDING TOPIC 3 SECURE 2.0 FINAL CATCH-UP REGS

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Catch-up Contributions

Increased Limits (Sec. 109)

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SECURE 2.0 - “Super” Catch-up

- Effective for taxable years beginning January 1, 2025
- Increases catch-up contribution limit for individuals ages 60-63
- Increased to greater of \$10,000 or 150% of the regular catch-up amount for 2025 (indexed)

Final Regs - “Super” Catch-up

Confirms:

- There’s an exception to the usual “universal availability requirement” for “super” catch-up contributions
- “Super” catch-up is in addition to special 403(b) catch-up
- Plan amendment should expressly provide for “super” catch-ups

Catch-up Contributions

Roth Requirement (Sec. 603)

SECURE 2.0 - Roth Catch-ups

- Effective for taxable years beginning January 1, 2024~~25~~²⁶
- Catch-up contributions must be made as Roth contributions for “high earners”
- Applies to employees with FICA wages of \$145,000 (indexed) or more in the previous year

Final Regs - Roth Catch-ups

- Must implement effective January 1, 2026
 - Good faith standard applies prior to January 1, 2027
- Confirmed a few points that were in the proposed regs:
 - If no Roth feature, no requirement to add, but then no “high earner” catch-ups
 - Can’t require all participant catch-ups be Roth
 - Participants who do not have FICA wages (e.g., K-1) are exempt
 - Plans can “deem” pre-tax catch-ups to be Roth

Final Regs - Roth Catch-ups (cont'd)

- Added new points:
 - Allows, but does not require, wage aggregation for employers within controlled group (document process)
 - Authorizes correction methods for “separate election plans”
 - Do not need to recharacterize as pre-tax if not actually a catch-up
- Governmental 457(b) plans, final 457(b) regs still under consideration and Roth catch-up requirement to be addressed then

Final Regs - Roth Catch-ups (cont'd)

- New Correction Methods
 - Form W-2 Correction Method
 - In-Plan Roth Rollover Method
- Must apply consistently
- Deadlines to correct

TRENDING TOPIC 4 USE OF AI IN ADMINISTRATION

Potential Bias and Limited Oversight

- Third-party administrators implementing AI for eligibility and claim determinations
- Limitations includes:
 - Bias
 - Limits to competence and accuracy
 - Restricted oversight (can't see under the hood)

BEST PRACTICES

Best Practices

- Hold regularly scheduled committee meetings (quarterly)
- Have a process for selecting/monitoring investments and reviewing fees
 - Investment Policy Statement (IPS)
 - Request for proposal (RFP) every 3-5 years; request for information (RFI) more frequently
- Document the process
 - Committee minutes

Questions?



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