



Understanding Your Fiduciary Responsibilities

Fiduciary is a broadly used term. Here's a more detailed explanation of what such duties really mean for plan sponsors.

The law is clear -- if you're involved in running a workplace retirement plan, you'll be judged by whether your actions are in keeping with a fiduciary standard of care.

And that's not just according to basic ethical standards expected by your plan participants. Fiduciary responsibilities have become a big issue raised in courtrooms across the country and, of course, regulators in Washington, D.C.

As a result, it shouldn't be surprising to those involved in administering 401(k) and 403(b) plans to find that the Department of Labor (DOL) isn't likely to be very sympathetic to employers who don't understand their plan provisions and what is required under the law governing retirement plans.

So what is a fiduciary? It's certainly an overarching term used in a broad number of industries and by a wide assortment of financial professionals. Generally, however, a fiduciary is defined by the Merriam-Webster dictionary as someone acting on behalf of another and "assumes a duty to act in good faith and with care, candor and loyalty in fulfilling the obligation."

You get the idea -- put the plan participant's concerns front-and-center. But even the best intentions can go awry, so to speak, when an administrator tries to do right and match a myriad of different investment responsibilities with real-world plan provisions.

Fortunately, the DOL has issued some key pointers for plan sponsors to help make sure they're acting in a fiduciary manner as mandated under the Employee Retirement Income Security Act (ERISA). In its booklet, "Meeting Your Fiduciary Responsibilities," department officials highlight the following as essential elements of running a retirement plan:

A written plan must be developed that accurately explains its benefits structure and can be used to guide a plan's daily operations.

- The plan's assets should be held in a trust.
- An internal recordkeeping system needs to be designed to track money flows into and out of the plan's coffers.
- Documents relating to plan information for consumption of plan participants and government authorities.

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The DOL adds a caveat to where a plan should hold money. If set up through an insurance contract, then a plan doesn't necessarily need to hold that contract in trust. Also, it notes that many plan sponsors choose to hire outside administrators to help with their recordkeeping responsibilities.

Some other fundamental aspects of operating a retirement plan outlined by the DOL in its basic guidelines include:

- A plan must designate at least one person or entity (i.e., office) as a fiduciary. This can include naming an administrative committee or a company's board of directors to fulfill such oversight duties.
- Fiduciaries will typically include trustees, investment advisors and anyone who must use at least some degree of discretion in a plan's administration. For plans with an administrative committee, that group's members are ordinarily considered as fiduciaries.
- By contrast, three key professionals -- attorneys, accountants and actuaries -- aren't normally treated as fiduciaries.

How can you tell if someone involved in administering a plan is really considered a fiduciary? In its public booklet, the DOL suggests framing such a question this way:

“A number of decisions are not fiduciary actions but rather are business decisions made by the employer. For example, the decisions to establish a plan, to determine the benefit package, to include certain features in a plan, to amend a plan, and to terminate a plan are business decisions not governed by ERISA. When making these decisions, an employer is acting on behalf of its business, not the plan, and, therefore, is not a fiduciary. However, when an employer (or someone hired by the employer) takes steps to implement these decisions, that person is acting on behalf of the plan and, in carrying out these actions, may be a fiduciary.”

Once plan administrators are comfortable with properly defining and identifying their responsibilities, regulators and plan advisors often urge those involved with the process to take even more far-reaching measures to serve the best interests of plan participants. Specifically, they describe industry best-practices as including some sort of ongoing procedure to monitor service providers.

In this respect, plan sponsors are frequently advised to put together and follow a formal and regular review process to review their working relationships with third-party providers. This can include performance reviews and examining service provider fees.