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Fiduciary SeriesSM

A series of education and fiduciary management tools to complement
The BEST of AMERICA[®] Group Retirement Series.

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A Fiduciary Handbook

for Retirement
Plan Sponsors

of Participant-Directed
Qualified Plans

**Do
You
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***NATIONWIDE FINANCIAL
FIDUCIARY SERIESSM***

A Fiduciary Handbook for Participant-Directed Qualified Retirement Plans

The Reish Luftman Reicher & Cohen Employee Benefits Practice

Fred Reish

Reish Luftman Reicher & Cohen is nationally-known for its employee benefits practice. That practice includes advising plan sponsors and fiduciaries and litigation on the full range of retirement plan issues.

The firm's areas of expertise are:

- Advice to fiduciaries on their responsibilities about operating and investing for retirement plans and investment plan assets
- Counsel to employers on 401 (k) plans, ESOPs, 403(b) arrangements, 457 plans and other qualified and nonqualified retirement plans
- Representation of employers and fiduciaries in correcting tax qualification defects in the documentation and operation of the plans
- Representation of employers and fiduciaries in IRS audits and DOL investigations

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He is a Charter Fellow of the American College of Employee Benefits Counsel, which recognizes the top employee benefits attorneys in the country. His contributions to the benefits community have been recognized by the IRS and the American Society of Pension Actuaries.

Fred is regularly quoted in pension publications and in the general media, such as *Fortune, Inc.*, the *New York Times*, the *Los Angeles Times*, and *USA Today*.

The fiduciary handbook and the accompanying materials contain a general discussion of ERISA's fiduciary responsibility and prohibited transaction rules. This discussion is not intended to be legal or investment advice, but rather to be an introduction to rules and guidelines for your qualified plan. ERISA has other rules and regulations, beyond those discussed in these materials, which govern your responsibilities and the operation and investment of your plan. Further, the rules are discussed as they generally apply to plans and are not specific to the circumstances of any plan. As a result, the materials cannot be relied on as a specific and detailed analysis of the issues in operating your plan. For detailed advice on your plan's circumstances, you should consult a qualified attorney, investment professional or pension consultant, as appropriate.



Foreword

A 401(k) plan is a valuable benefit for your employees. The tax-deferral features coupled with high-quality mutual funds or other investment options can generate enthusiasm and appreciation by your employees.

However, it is also a responsibility. To get the best results, the plan needs to be designed and administered properly. The investments must be selected prudently and reviewed at least annually. At some point, it will probably be necessary to remove an underperforming fund to protect your employees. ERISA—the federal law regulating retirement plans—imposes these and other duties on employers who sponsor retirement plans, including 401(k) plans.

Are you aware of your legal responsibilities? Are you satisfying them?

The materials accompanying this letter contain a *Fiduciary Responsibility Success Quiz* so that you can grade the job you are doing—it may point out where you need to improve. Take the test. For a 15-minute commitment, you should be able to improve the performance of your plan, increase the quality of your employees' benefits (as well as your own) and better protect yourself from fiduciary liability.

If you have questions about your responsibilities, the explanation following the scorecard may provide you with many of the answers.

The job of an investment fiduciary is difficult, but manageable—if you know the rules and have the right tools. Hopefully, the *Success Quiz* and this handbook will help you better understand some of your most important duties.

—Fred Reish

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Introduction to this Handbook

Is your company one of the many businesses not following the fiduciary rules for managing their qualified retirement plans?

Navigating the complex rules for qualified retirement plans can be a daunting experience. If your company sponsors a retirement plan, the owners, officers and directors should understand their responsibilities for managing this employee benefit. To fulfill their duties, the owners, officers and directors need to be aware of their responsibilities as fiduciaries under the Employee Retirement Income Security Act (ERISA), the federal law that governs the management of retirement plans.

ERISA was enacted to protect the participants and beneficiaries of retirement and welfare plans. Persons serving as fiduciaries of those plans must follow ERISA's standards to properly perform their duties and avoid liability. While it may seem that common sense would be enough to satisfy these rules, ERISA has a higher standard of conduct for plan fiduciaries—a standard that goes beyond mere good faith efforts.

Plan fiduciaries are expected to act with the “care, skill, prudence and diligence” of a qualified and experienced person in fulfilling their duties.

Fiduciaries who do not follow ERISA's fiduciary guidelines are personally responsible for violations of those rules, known as fiduciary breaches. This means that, if you commit a fiduciary breach, you may lose your personal assets, your home and your business. However, if you follow ERISA's standards, you and your employees could enjoy high quality and secure retirement benefits.

The U.S. Department of Labor and the Internal Revenue Service enforce ERISA for 401(k) and other participant-directed plans. In addition, participants can “enforce” the fiduciary rules through lawsuits.

Being a fiduciary isn't an easy task, but it is possible to provide an important employee benefit while avoiding unwelcome surprises from ERISA's enforcement agencies. This handbook is an important first step in the right direction and will help you:

- **Understand the fiduciary rules and regulations**
- **Identify possible shortcomings concerning the operation of your company's plan**
- **Better meet your fiduciary obligations by using *The Nationwide Financial Fiduciary Handbook and Tools***

It Really Happened...

Examples of Fiduciary Violations



By offering a qualified retirement plan to your employees, you've accepted fiduciary responsibilities for managing the plan and selecting the investments. Unfortunately, the rules for retirement plan fiduciaries aren't always clear—and even good intentions can go awry if you don't follow the rules. As illustrated by the following examples of fiduciary violations—or breaches—those who commit mistakes may have had good intentions but simply didn't understand the standards for fiduciary conduct.

Example: Failure to submit deferrals on time

A company decides to simplify its procedures for investing employee deferrals in the mutual funds in the company's 401(k) plan. Participants defer from their pay on a bi-weekly basis, but the employer has decided to hold all deferrals until the end of the month. The deferrals were previously mailed to the investment provider immediately following each payroll.

This is a fiduciary breach and a prohibited transaction, because the company is able to invest the employee deferrals shortly after each payroll, but has decided to hold on to the money for a longer period.

It's a good idea to review your procedures to determine if you're submitting deferrals as timely as possible—even a delay of a few days could be a concern if the deferrals could easily be submitted sooner. Although the deferrals are deposited within the outside time limit under the Department of Labor guidelines—before the 15th business day of the next month—the company has held plan assets for its own benefit, since it could have deposited and invested them earlier.

So why is this delay in investing employee deferrals a problem? Consider two possible scenarios:

(1) The market experiences a dramatic rise during the beginning of the month. However, the participants' assets are not invested and they do not receive that gain. In this case, fiduciaries would be liable for lost earnings.

(2) The company goes bankrupt and its creditors seize the company's assets, including the deferrals that were not deposited. It is common in this situation for the employees to notify the Department of Labor about their loss. In that case, the DOL will sue the fiduciaries, typically settling for a reallocation of money out of the fiduciaries' accounts in the 401(k) plan into the accounts of the employees who lost money because their deferrals weren't put into the plan.

Example: Poor investment selection and monitoring process

The plan committee for a large bank is charged with choosing an investment provider for the bank's 401(k) plan. The committee members consider only one investment provider. The bank is eventually sued for the investments in its 401(k) plan because the participants felt the investments did not perform well and had unreasonable fees for the investments and services provided. The plaintiffs' attorneys allege the underlying funds used by the plan were "overly expensive and mediocre performing." The attorneys also assert that the committee members who were responsible for ongoing monitoring of the funds failed to monitor the funds and to remove underperforming options.

This example highlights the importance of the plan fiduciaries initially selecting investment options with:

- Average or below-average expense ratios
- Above-average performance records

More importantly, the investments must be monitored regularly to help ensure they continue to be reasonably priced and perform well relative to funds in their peer group. Finally, if committee members do not have the education or experience to handle the job, then they should seek expert assistance.

Who is a Plan Fiduciary?

CHAPTER TWO



The first step in understanding ERISA's requirements is knowing who the plan fiduciaries are: A fiduciary is anyone who exercises authority or control over the management of a retirement plan or its assets.

The plan sponsor and plan trustees are always fiduciaries. The fiduciaries who are identified in the plan document—either by name or through an appointment process described in the plan—are called “named fiduciaries.” But you don't need to be formally named in the plan document to be considered a plan fiduciary. Anyone may be a fiduciary if they act in a fiduciary role—for example, if they select the investments for a plan or hire an advisor for the plan. Such a person is known as a “functional fiduciary.” For example, the president of the company may become a functional fiduciary by selecting investments for the plan, even if he or she is not formally given that responsibility by the plan.

Most plan documents provide for the appointment of a committee to oversee the plan administration and the investments. Typically, the committee members are appointed by the company's board of directors. In that case, the committee is the ERISA plan administrator and its members are fiduciaries. If a committee is not appointed, then the officers who oversee the operation of the plan will be the ERISA administrator and plan fiduciaries.

The plan committee for a retirement plan is given certain jobs and generally makes decisions about the operation of the plan, especially the investments. The members of the board of directors are also fiduciaries since they appoint the committee members. As fiduciaries, the directors have a duty to prudently select and monitor the committee members. Both the directors and committee members are named fiduciaries because they are identified through the plan document.

In general, fiduciaries are responsible for:

- Managing the plan for the exclusive benefit of participants and beneficiaries
- Acting prudently
- Selecting and monitoring diversified plan investments
- Selecting and monitoring the services for the plan
- Abiding by the plan's provisions

A PLAN FIDUCIARY... the legal definition

Under ERISA section 3(21), a fiduciary is a person who:

- Exercises any discretionary authority or control respecting the management of a plan or exercises any authority or control over the management or disposition of its assets.

For a 401(k) plan, the people who fall under this category are usually inside the company, such as the officers and the plan committee members who select and monitor the investments and oversee the general management of the plan.

- Renders investment advice for a fee or other compensation (direct or indirect) as to any monies or other property of a plan, or has any authority or responsibility to do so.

This is typically someone outside of the company, such as a registered investment professional who has been hired to assist the plan fiduciaries with selecting the investment options.

- Has discretionary authority or discretionary responsibility in the administration of the plan.

This generally includes officers and plan committee members who oversee the administration of the plan, including calculation of benefits and determining who is covered under the plan.

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Named fiduciary

The plan document must provide for one or more named fiduciaries who are authorized to control and manage the operation and administration of the plan. The named fiduciary can be a person or group of people who are named in the plan document or who can be identified by a procedure described in the plan document. For example, the plan document may state that the named fiduciary will be a committee that is selected and monitored by the employer's board of directors.

When choosing the named fiduciary, the board of directors acts in a fiduciary role. Make sure your board:

- Carefully considers the qualifications of the named fiduciary
- Documents in meeting minutes its discussion and rationale for selecting the named fiduciary
- Documents ongoing and periodic evaluation of the named fiduciary's performance

Because the named fiduciary need not be an expert in all areas, plan documents usually allow the named fiduciary to hire outside experts. If fiduciaries act prudently in selecting the outside experts, this will generally fulfill their fiduciary obligations and protect themselves from personal liability. However, the fiduciaries must also monitor the performance of outside experts.

Who is not a plan fiduciary?

In the day-to-day administration of a retirement plan, some individuals are responsible for performing administrative functions that do not require discretionary decisions or the provision of investment advice. Individuals who perform administrative functions for the plan but who cannot make decisions about plan assets, policies or interpretations are not fiduciaries. The following are examples of administrative functions that are not considered fiduciary activities:

- Applying rules to determine eligibility for participation or benefits
- Preparing employee communication materials
- Calculating benefits according to the rules in the plan document
- Receiving contributions and applying them as provided in the plan

Allocation and delegation of fiduciary duties

A retirement plan may have different fiduciaries who have different duties for the plan. Most of the time, their skill sets are not the same. Consequently, it is appropriate to allocate duties among the fiduciaries based on their interests and abilities.

The plan sponsor is the ultimate fiduciary. Acting through its board of directors, it appoints the key fiduciaries—the trustee and the members of the plan committee. In appointing the key fiduciaries, the company board must act prudently in making its selections, taking into account the responsibilities of the positions and the abilities of the people they appoint. The board also has a duty to monitor their performance, to make sure they do a good job and continue to do a good job for the plan and its participants.

The plan committee manages the plan. In some plans, there are two committees, one responsible for the selection of investments and another for the administrative operations. The committee has the duty to oversee the proper administration of the plan and the prudent selection and monitoring of the funds offered to the participants. The committee members do not perform all the duties themselves, but they are responsible for selecting those who can perform them well.

Plan committees also get help by hiring outside experts, generally where the committee members lack knowledge about investments or administration. Some of the experts are also fiduciaries, such as registered investment advisors whose duties may include preparing the plan's investment policy, selecting investments, monitoring investments, recommending changes, etc. Other parties are typically not fiduciaries, such as attorneys, accountants, recordkeepers and administrators. These experts help with drafting and reviewing documents, completing and filing government forms, keeping track of participant account balances and processing distributions. For all of these jobs, the plan fiduciaries have the duty to make sure that all individuals are properly filling their roles and to replace any party who is not performing properly.



Selection of plan trustees

Qualified plans are required to hold their assets in trust. This separation from the sponsoring employer's assets assures that the plan's assets are protected from the creditors of the sponsor and always available to provide benefits to participants.

Some plan sponsors prefer to name individuals as trustees; others prefer to delegate this function to an outside, institutional trustee that is licensed and knowledgeable in providing trustee services. For more information about deciding whether to choose an institutional trustee, see "Why Use an Institutional Trustee?" in the fiduciary tools provided with this handbook.

Plan trustees must follow the terms of the plan and trust documents in performing their duties. After accepting an appointment as trustee, the trustee has the authority to manage and control plan assets, unless:

- The plan states the trustees are subject to the direction of a named fiduciary (for example, a plan committee) who is not a trustee
- The authority to manage, acquire or dispose of plan assets is delegated to one or more investment managers

Plan fiduciary meetings

The plan committee and other fiduciaries are required to monitor the operation of the plan and the investment of its assets. To fulfill that responsibility, the fiduciaries should pay attention to issues that arise in the course of the year and also should meet at least annually to review the plan document, plan operation and administration, and the plan's investments. A detailed due diligence file of the meetings should be maintained with the notes, minutes, agenda, background information and supporting documentation for plan and investment decisions.

The meeting is a good way for fiduciaries to:

- Review the plan's investments
- Review any recent law changes that may affect the plan's operation and costs
- Review participant education and communication materials
- Review service provider performance and fees

See the fiduciary tools provided with this handbook for a *Plan Fiduciary Meeting Checklist*, a *Due Diligence File Checklist* and a *Model Investment Policy Statement* for more information. The *Fiduciary Responsibility Success Quiz* included with this handbook may also be used during scheduled plan fiduciary meetings to help ensure that your plan continues to meet the responsibilities and best practices outlined on the list.

What Are Your Duties as a Fiduciary?

CHAPTER THREE

These ERISA rules govern the conduct of a fiduciary:

1. Act solely in the interest of plan participants and beneficiaries.

This is also known as the “duty of loyalty.” In fulfilling this duty, plan fiduciaries may not place their own interests over those of the plan participants and beneficiaries. Fiduciaries may not engage in conflicts of interest or “self-dealing”—acts that serve personal interests or those of the company sponsoring the plan. The foremost responsibility of a fiduciary is the sound administration of the plan and management of its assets for the sake of plan participants and beneficiaries.

As an example, if a plan holds employer stock, the fiduciaries are obligated to vote the stock (unless the voting is passed through to the participants) in the best interests of the participants, even if that conflicts with the goals of the company officers.

2. Hold and deal with plan assets for the exclusive purpose of providing plan benefits and defraying reasonable expenses of administering the plan.

This is also known as the “exclusive benefit rule.” When serving as a plan fiduciary, it’s important to remember the primary purpose of your plan: to provide retirement benefits for the participants and beneficiaries. The prudent oversight of plan investments is key to meeting this long-term responsibility.

For example, the fiduciaries must make sure that the employee deferrals are promptly paid to the plan and not used by the sponsor for its business operations. Also, the fiduciaries should not allow the plan assets to be used for their benefit or for the company’s benefit—for example, a loan from the plan to the company.

Additionally, fiduciaries must be aware of and fully understand all the expenses paid from the plan. The decision to pay expenses from plan assets is a fiduciary act. Fiduciaries must ensure that expenses are reasonable and are in the interests of plan participants and beneficiaries.

Please see the *Other Important Guidelines* section of this guide for more information on paying expenses from plan assets.

3. Act with the care, prudence, skill and diligence that a prudent person acting in like capacity under similar circumstances would act.

This is also known as the “prudent person rule.” This rule applies when selecting investments and weighing issues related to investment activities, including diversification, appropriateness, risk and anticipated return—as well as when assessing the need for and performance of outside service providers.

Procedural prudence: Investigation and documentation

A common theme throughout ERISA regulations is procedural prudence. Procedural prudence is the process fiduciaries use to make sure their decisions are in the best interests of participants and their beneficiaries. Note that the emphasis is on the process, the fiduciary’s research and documentation involved in making a decision, rather than on the results. Plan fiduciaries must be able to show they properly investigated and documented each plan fiduciary decision. This process also applies to the selection and ongoing monitoring of service providers and plan investments. Following the right steps as a fiduciary can satisfy your responsibilities regardless of the outcome. In this case, the old adage is true: it’s not who wins or loses, but how you play the game that counts. It is important, however, that you keep records to document the steps you took in performing your duties.



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For example, in selecting and monitoring the plan's investment options, the fiduciaries must act with the prudence and skill of a knowledgeable long-term investor. That means that the fiduciaries must investigate the alternatives available to the plan and make a reasoned and informed decision about the investment options being offered to the participants.

In doing that investigation, the fiduciaries (for example, the plan committee) need to review information about the investment alternatives, the expenses and other important factors. You will review information about fund alternatives to select the funds to be offered to the participants. The failure to gather and review the necessary information is a fiduciary breach. The benefit of reviewing such information is that the fiduciary's decisions will be informed and reasoned, satisfying ERISA's standards.

If you don't have the expertise to perform certain duties, you should seek guidance from others, such as an investment professional or a consultant. In fact, prudence requires that you seek outside help if you don't have the expertise. But like other decisions you make, you have to investigate the credentials and experience of the experts before you hire them to make sure they are qualified for the task at hand. You also need to carefully read and understand the expert reports to make sure the expert did sufficient analysis of the relevant facts. Finally, fiduciaries cannot blindly rely on the advice of outside experts. You must review and understand the advice of experts before you can comfortably rely on their guidance.

4. Diversify the plan's investments unless it's clearly imprudent to do so.

Plan fiduciaries must diversify the plan's assets to minimize the risk of large losses to the plan—unless it's clearly prudent not to do so. Mutual funds and other pooled investment vehicles may meet this requirement, provided the mutual funds or the underlying assets of the pooled investment vehicles are diversified. Special rules also apply to investments in stock of the company sponsoring the plan.

Participant-directed plans must diversify at two levels. First, the core investment options, a broad range of prudently selected investments, must be diversified. For example, each core fund must be adequately diversified to minimize the risk of unreasonably large losses. Most mutual funds are adequately diversified. However, some are not—for example, sector funds (technology, health-care funds, etc.) and single region international funds. Also, the participants must be provided with a slate of funds that constitutes a broad range, to allow them to assemble a portfolio adjusted to their personal risk and reward needs. Please see the section *How Are Plan Investments Selected?* in this guide for a discussion of the broad range requirement.

5. Act in accordance with plan documents.

Understanding and fulfilling your fiduciary duties is a combination of the laws governing retirement plans and the provisions of the plan document. As a plan fiduciary, you must carefully follow the terms and provisions outlined in the plan documents and any trust agreement. The only exception is when these documents violate the provisions of ERISA. If the plan document conflicts with ERISA, then plan fiduciaries must follow ERISA's rules.

6. Monitor the investments.

Once the committee has selected the investment funds for the plan, their performance must be monitored at least annually. This means periodically assessing each fund's performance, using evaluation guidelines set forth in the plan's investment policy statement (IPS) and removing funds that are not performing satisfactorily. This is a critical job, equally as important as the initial fund selection process. It recognizes that things change over time, and you have to respond to those changes in meeting your fiduciary obligations.



Although an IPS is a valuable tool to assist in selecting and monitoring plan investments, many plans do not have one in place. One benefit of an IPS is the formal identification of the criteria the fiduciaries will use in reviewing or monitoring the plan's investment options. Some criteria that are often considered when evaluating plan investments include:

- Performance for 1, 3, 5 and 10 years for the investment relative to its peer group or other benchmark
- Expense ratio and other costs relative to the investment's benchmark
- Style and asset allocation consistency
- Risk and volatility
- Additional characteristics such as changes in the size of the fund and portfolio manager tenure

While ERISA does not specifically require plans to have investment policy statements, investment experts generally consider the preparation and use of an IPS to be a “best practice” for fiduciaries. And at least one court has found that, under the facts of the case it decided, an IPS was required to satisfy ERISA's general fiduciary standards.

Investment reviews, along with supporting materials, should be documented and maintained in a due diligence file. See the section *How Are Plan Investments Selected?* and the *Model Investment Policy Statement* in the fiduciary tools provided with this guide for more information.

How Are Plan Investments Selected?

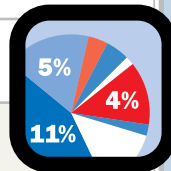
Investment fiduciaries

Certain plan fiduciaries are considered investment fiduciaries. These are the people who select and monitor the investment options offered to the participants. If the employer's board of directors appoints a committee or officers to select and monitor the investments, the directors are responsible for prudently selecting and monitoring the investment fiduciaries. In cases where the responsibility for selecting the investments is not assigned to a specific committee or officers, it remains with the employer. In that case, the investment fiduciaries are the officers who select the investments for the plan.

Investment fiduciary activities include:

- Determining the range of investment options and selecting the specific options
- Designating the person who will make the decisions about plan investments
- Selecting the investment provider

As a fiduciary, your job is to establish the investment policy, decide on the positions (asset classes) to be filled and then select the investments for the participants. The committee must select a combination of investment funds that have the potential to perform well individually and that fit together properly as a team. Committee members must seek outside assistance if they lack the education and experience to handle the job. As mentioned previously, outside experts must be prudently selected and monitored. Again, the importance of "procedural prudence" must be emphasized. Fiduciaries have the duty to investigate and document their work when selecting and monitoring investments and service providers.

*Choosing an investment provider*

The duty to prudently select and monitor the funds in your plan means that, at some point in the future, you may, or probably will, need to remove one or more under-performing funds. An investment package with investment options from only one management company or that offers limited availability of funds from outside providers may cause problems with fund selection and monitoring. Because investment management companies often follow the same investment philosophies for all their funds, many of the mutual funds managed by the same company may concentrate in the same stocks, making difficult to achieve appropriate diversification.

Additionally, if providers force plans to choose a certain number of their own proprietary funds, it may be difficult for the fiduciaries to fulfill their duties to monitor the plan investments because a suitable replacement may not be available if a fund underperforms. Fiduciaries should determine whether the investment package offers a sufficient number and variety of choices so that if an investment option (e.g., a small-cap value fund) were to underperform, it could be replaced by another qualified fund of the same type.

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Duty to select and monitor investments

Although many plan fiduciaries seek ERISA Section 404(c) protection, it's important to note that the preamble to the final 404(c) regulations states:

"[T]he act of designating investment alternatives is a fiduciary function to which the limitation on liability provided by section 404(c) is not applicable."

In other words, plan fiduciaries retain the responsibility for selecting and monitoring the investment options made available to participants, even if the plan intends to comply with ERISA Section 404(c). See the ERISA 404(c) section of the fiduciary overview and the ERISA 404(c) *Checklist* and 404(c) *Q&A Brochure* in the fiduciary tools provided with this guide for more information.

Three key investment decisions

There are three key investment decisions fiduciaries must make when selecting investment options for a 401(k) or other participants-directed plan:

1. **Each individual investment option must be carefully selected.** After researching the possible funds to offer in the plan, the fiduciaries should believe each investment option chosen will perform well relative to its peer group.
2. **The group of funds available in the plan must cover a broad range.** ERISA Section 404(c) regulations define a broad range as:

"a broad range of options where a participant has a reasonable opportunity to materially affect the potential risk and return ... at any point within the range normally appropriate for the participant."

Many investment professionals believe that to cover the broad range requirement, the plan should consider having investments in at least the following investment categories:

- Stable value investment such as a guaranteed investment contract (GIC) or money market fund. Because the value of the securities held by stable value funds will fluctuate, there is the risk that an investor will lose money investing in stable value funds.
- U.S. government or corporate bonds. While the fund invests primarily in securities of the U.S. Government and its agencies, the fund's value is not guaranteed by these entities.
- Large-cap U.S. equities. Invest in the largest 5% of companies in the market. These are larger, more established, profitable and well-known companies.
- Mid/small-cap U.S. Equities. Small cap stocks have higher risks than stocks of larger, more established companies and have significant short-term price volatility. Small company funds involve increased risk and volatility.
- International or global equities. International investing involves additional risks, including: currency fluctuations, political instability and foreign regulations.

3. **The investment options individually and as a whole must be appropriate for the particular workforce.**

Employees must understand the investment options so they can invest successfully for retirement. Ensuring that the investment options are suitable for employees involves providing the right investments, communication and education.

Participants are entitled to have prudently selected investment options available to them. This means that the committee must assess the needs of the participants and choose funds that meet those needs.

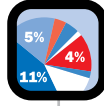
The process of selecting the plan's investment options is similar. The committee needs to choose funds to fill different investment categories, from cash to bonds to domestic and international equities: funds with stocks of large and small companies and funds with growth and value styles. The objective is to offer quality funds that work together as a winning team to give participants a range of choices that allows them to customize their investments to help meet their individual needs.

Asset allocation funds and models

Because participants vary widely in their investment knowledge, determining the right combination of plan funds can be a difficult task. That's why it might be a good idea to include asset allocation funds or models for those participants who do not have the knowledge or desire to allocate assets on their own.

Offering asset allocation funds or model and educational materials to participants also helps satisfy ERISA's requirement that the investments be suitable for the participants. Many investment education programs include a questionnaire to help participants determine their investor profiles. Asset allocation does not guarantee a profit or protect against loss in a declining market. However, with this information, participants can choose the appropriate asset allocation model based on their risk tolerance and investment time horizon.

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Investment policy statement

An important job of the investment fiduciary is to lay out the strategy for a winning group of investments. In other words, you have to develop the plan's investment policy—the guidelines. Although an investment policy statement is not specifically required under ERISA or its regulations, it's wise for every plan to have one. The general purpose of an investment policy statement is to:

- Create a written document of the guidelines and standards used to select the plan's investment options
- Provide a basis for the periodic evaluation of investment performance

Without an investment policy statement, fiduciaries may have only limited protection under “procedural prudence” because there is no clear documentation of how the plan's investment options are selected and monitored.

The investment policy statement should be designed to:

- Assure that the plan has documented investment objectives
- Ensure that the investments selected meet the plan's objectives
- Provide a basis for periodic review and documentation of existing investments

Investment fiduciaries need to be aware that they are responsible for the initial selection of plan investments as well as the monitoring of these funds. When necessary, investment fiduciaries must replace investment options that are under-performing the appropriate benchmarks outlined in the investment policy statement. Careful documentation of the monitoring and analysis of the plan's investment options should be maintained in a due diligence file. To assist you with your plan's investment selection and monitoring process, a *Model Investment Policy Statement* is included in the fiduciary tools provided with this guide.

Self-directed brokerage accounts

In recent years, self-directed brokerage accounts have become popular options in retirement plans. Plan sponsors considering self-directed brokerage accounts may be concerned about the greater possibility of participant investment loss in a self-directed brokerage account. In a self-directed brokerage account, participants are responsible for both selecting quality funds and diversifying their accounts in order to minimize the risk of large losses. Plan fiduciaries should weigh the potential liability of offering these accounts by considering the following:

- You have a fiduciary responsibility to determine whether it's prudent to offer self-directed brokerage accounts to plan participants and to prudently investigate the brokerage provider—including the appropriateness of fees, commissions and expenses, trade execution and other services.
- It's best to prohibit leveraged investing, such as margin trading, which could result in taxable income in the plan. Also, be sure that the brokerage provider can enforce any restrictions you may require to be comfortable with this offering.
- If your plan offers a self-directed brokerage option, the offering must be communicated to all participants. Participants should be warned that the investments available through the self-directed brokerage account have not been prudently selected and monitored.

Employer and employee responsibilities for investments in a 401(k) plan

Employer responsibilities:

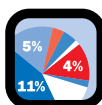
- Establish investment policy
- Select investment options or investment manager
- Monitor investments
- Educate participants

Employee responsibility:

- Select among the available investment options

Fund Window Option

Some plans offer participants the option of mutual fund windows. Similar to brokerage accounts, mutual fund windows allow participants to select from a large universe of investments (in this case, mutual funds). Fiduciaries are responsible for determining if it is prudent to offer this option to their participants. If offered, the fiduciaries should warn participants that these mutual funds have not been prudently selected and monitored. As a result, participants who use these windows are responsible for determining both the quality of the fund, as well as the portion of their account to allocate to it. This wider range of options should only be provided by plans whose participants are either knowledgeable or willing to take the time to learn the strengths and weakness of the funds.



- Finally, be certain to cover this key point with participants about the additional investment risk of self-directed accounts: Participants will be investing in securities of their own choice. Unlike the core investment options offered in the plan, investments selected as part of a self-directed account have not been prudently selected and monitored by the employer.

Employer securities

Keep in mind that if you offer employer stock as a plan investment option, the fiduciaries have the responsibility for overseeing the investment in employer stock. Employer securities held within the plan must be qualifying employer securities as defined in ERISA Section 407.

Investment advice vs. investment education

Many plan fiduciaries struggle with how to provide participants with the best support to enable them to make informed investment decisions that are appropriate for investing for retirement. Some of the answers are to provide a broad range of core funds, asset allocation funds, and investment education and investment advice (see the discussion of the three key investment decisions and asset allocation funds and models earlier in this section).

Investment education is just that—education on investment concepts. Investment advice, on the other hand, points the participants to the specific funds that are appropriate for them. In a manner of speaking, investment education points you in the right direction, while investment advice takes you to the specific location.

In most cases, both investment education and advice are delivered to the employees through outside services selected by the sponsoring employer or the plan fiduciaries. Investment advice is most often provided by independent businesses unrelated to the investments—because of the potential for bias if they were closely associated with the investments.

Because investment education does not point the participants to specific investments, it is not considered fiduciary investment advice. However, the provider of investment advice to the participants is a fiduciary under ERISA.

Investment information can cover the following topics and not be considered advice (see DOL Interpretive Bulletin 96-1.):

- Plan information
- General financial and investment information
- Asset allocation models
- Interactive investment materials

Both investment educators and advisors are chosen by the plan fiduciaries and accordingly must be prudently selected and monitored. The information gathered and reviewed in that process should be kept in the plan's due diligence files.

How Can Plan Fiduciaries Limit Their Liability for Investment Losses?



ERISA Section 404(c)

Under ERISA Section 404(c), a plan fiduciary is not liable for investment decisions made by plan participants who direct their own investments, as long as several requirements are met. Meeting all the requirements does not relieve plan fiduciaries of all liability, however. Plan fiduciaries are still responsible for:

- Investment selection and monitoring
- Communicating certain information about the plan investments to participants
- Ensuring that participants have adequate account access to effectively manage their investments

Relief from fiduciary liability under Section 404(c) is available only if the participants have the opportunity to exercise control over their investments. The regulations state that participants can't exercise this control unless they have the opportunity to provide investment direction "to an identified plan fiduciary." Most employers give that job to the plan committee, but some appoint an officer to fill that role (for example, the vice-president for human resources).

A 404(c) fiduciary must be named who is responsible for carrying out participant investment direction. Although these duties may be delegated—subject to prudent selection and monitoring—the appointment of a 404(c) fiduciary should be appropriately documented, and the 404(c) fiduciary's performance should be monitored.

If a plan intends to comply with ERISA Section 404(c), this fact should be indicated in the plan document, summary plan description and Form 5500.

Department of Labor requirements for ERISA Section 404(c) compliance

The plan must allow participants to invest in a broad range of investment options, each with materially different risk or return characteristics. These funds, called "core options," must be diversified to help minimize the risk of large losses. As a result, stock of the company sponsoring the plan cannot be a core investment option.



Additional items to consider include:

Employer stock

If employer stock is selected as an investment option, plan fiduciaries must give participants a written description of the procedures for maintaining the confidentiality of stock purchase and sale information, as well as procedures for exercising voting, tender and other shareholder rights.

Assets held in a default account

Many 401(k) plans use a default account for deferrals when participants fail to provide investment directions. The default account is often the most conservative investment option in the plan, such as a money market account. Keep in mind that placing the funds in the default account is not “participant direction.” As a result, plan fiduciaries are responsible and accountable for the investment of such funds under ERISA. It may not be prudent to use the plan’s most conservative investment option for the default account when a long-term investment would be more appropriate.

Blackout periods

Fiduciaries are generally responsible for investment performance during a “blackout period,” a period of time when participants cannot control their investments due to a plan conversion from one investment provider to another. A blackout period may be difficult to avoid, but plan fiduciaries must minimize the impact on participants by making it as short as possible and providing notice of the blackout period in advance, so that the participants can properly arrange their investments for the blackout period.

Allow appropriate frequency of participant investment direction

The plan must allow participants to give investment direction at an appropriate frequency considering the market volatility of the investment. Thus, more volatile investments must allow participants a greater exchange frequency.

At least three of the core investments (that is, the investments that satisfy the broad range requirement) must permit changes at least every three months. However, in today’s world of daily changes, this is seldom an issue.

Provide required participant information

Plan fiduciaries must provide participants with sufficient information to make informed investment decisions. Certain information must be provided automatically to participants, while other information must be made available to participants at their request.

Either via a written notice or a provision in the summary plan description, the following information should automatically be given to the participants:

- Participants will be able to direct investments in the plan
- The plan intends to comply with 404(c) and the plan fiduciaries may be relieved of liability for losses
- The name, address and phone number of the 404(c) plan fiduciary responsible for providing information upon request and for receiving and complying with participant investment instructions

Additionally, plans are required to include a statement in the summary plan description indicating if the plan intends to comply with ERISA 404(c) requirements.

Other information that must be provided to participants for the mutual fund options includes:

- A list of investments and appropriate information about each investment
- A description of all charges and fees related to the purchase or sale of investments in their accounts (“transaction fees”)
- An explanation of how to give investment direction, any applicable limitations and the frequency with which investment direction may be made
- An explanation that participants have an opportunity to obtain written confirmations of their investment instructions
- Identification of designated investment managers, if any;
- A list of the information available on request and the name, address and phone number of the 404(c) fiduciary responsible for providing the information
- A copy of the most recent prospectus provided to the plan, to be given immediately before or after a participant’s initial investment in a mutual fund



Participant information for the mutual fund options that can be given automatically or supplied on request

- Prospectuses, financial statements/reports and other information relating to the investment options to the extent they are provided to the plan
- Confirmations of investment instructions
- A description of the annual operating expenses of the investment options, such as investment management fees
- Information concerning the value of shares or units of investment options in the plan, as well as past and current investment performance information
- A list of the holdings in the portfolio of each investment option

Other sources of information that may help participants make informed decisions include:

- Periodic account statements (an annual comprehensive statement is required)
- Automated voice response unit/Internet access to account and investment information (if available)
- General investment education, such as participant newsletters and payroll stuffers

For assistance with fulfilling the 404(c) requirements, please see the *ERISA 404(c) Requirements Checklist and Questions & Answers Brochure* in the fiduciary tools provided with this guide.



What Are Prohibited Transactions?

ERISA also contains significant rules on prohibited transactions, including transactions between a plan and a “party in interest” and acts of self-dealing. Prohibited transactions are strictly forbidden—even if the results are favorable for the plan.

Party in interest transactions

A party in interest is generally anyone who is closely related to the plan, including:

- Plan fiduciaries
- Owners
- Employer sponsoring the plan
- Relatives of plan fiduciaries
- Any person providing services to the plan

Although certain exemptions apply, the following are some of the prohibited transactions with a party in interest:

- The sale, exchange or lease of property
- Loans or other extensions of credit
- The furnishing of goods, services or facilities
- The transfer or use of plan assets

A plan fiduciary is also prohibited from acquiring or holding any securities issued by the plan sponsor other than “qualifying employer securities,” as defined by ERISA.

Acts of self-dealing

ERISA also says that a plan fiduciary must avoid self-dealing—any transaction which serves his or her personal interests or those of the company sponsoring the plan.

The following are examples of self-dealing:

- An investment professional who is a golfing partner of a plan fiduciary offers a discount on the fiduciary’s personal investments if the advisor’s investment firm is selected to manage the plan’s assets. If the plan fiduciary accepts the offer, this action could constitute both a prohibited transaction and a fiduciary breach—even if the investments the advisor recommends perform favorably for the plan.

- The trustee of a profit-sharing plan invests his personal funds in a start-up business. He later needs more capital to help the business grow, and he invests the plan’s assets in the business. Again, this is a prohibited transaction and a fiduciary breach, even if the investment performs well.

The Department of Labor and the Internal Revenue Service have outlined the following taxes and penalties for fiduciary breaches and prohibited transactions. Keep in mind that fiduciaries may be held personally liable for payment of the taxes and penalties.

- Civil penalty—20% of amount recovered in a fiduciary breach, if the amount is collected due to Department of Labor intervention. This penalty is in addition to the amount necessary to correct the breach.
- Tax—15% of amount involved in each prohibited transaction. If the prohibited transaction is not corrected in a timely manner, an additional tax of 100% may be assessed. Severe violation of prohibited transaction rules could also result in a violation of the “exclusive benefit rule,” which could cause the Internal Revenue Service to disqualify the plan.

Prohibited transaction exemptions

There are three kinds of exemptions from the prohibited transaction rules:

- Statutory exemptions are included within ERISA and its regulations. An example is the exemption under ERISA Section 408(b)(2) for using plan assets to pay reasonable fees to service providers.
- Class exemptions are issued by the Department of Labor and are available to anyone who meets the requirements of the exemption.
- Administrative exemptions are requested by individuals under special circumstances and apply only to that individual.

Federal tax laws are complex and subject to change. Please consult your tax or legal advisor for answers to your specific questions.

Other Important Guidelines

CHAPTER SEVEN



Making timely plan contributions

Employee contributions must be paid to the plan on the earliest date by which the money can reasonably be segregated from the employer's assets, but no later than the 15th business day of the month following the month in which the money would have been paid to the employee. As the example at the beginning of this overview illustrated, deferrals should be sent as soon as possible.

As noted in our examples of fiduciary violations, failure to deposit contributions in a timely manner is both a prohibited transaction and a fiduciary breach. The employer and responsible fiduciaries may be liable for the amount of contributions and lost earnings, plus prohibited transaction penalties.

Paying expenses from plan assets

In general, expenses that are necessary for the operation of the plan—investment management expenses, annual administration and government reporting costs—can be paid by the plan. The Department of Labor offers guidelines on paying expenses from plan assets in its Department of Labor Advisory Opinions 97-03A and 2001-01A.

Expenses paid from plan assets should be consistent with ERISA standards of fiduciary conduct and the plan document. The DOL has taken the position that if the plan documents are silent—that is, the documents don't have language specifically authorizing or disallowing expenses—then reasonable expenses for administering or operating the plan may be paid from plan assets. If the fees are unreasonably high, you risk breaching your fiduciary duties and engaging in a prohibited transaction. However, you aren't required to select the least expensive investments or services. Instead, you must determine if the services provided are of value to the plan and if the costs are reasonable in light of the services provided.

The advisory opinions also identify expenses that can't be paid from the plan: costs for the design, creation and termination of the plan. These expenses are termed “settlor”—or employer—functions.

It's important to note the actual decision to terminate a plan is a settlor function, and any related expenses or services associated with the decision may not be paid from the plan. However, the Department of Labor has stated that because the act of terminating a plan—after the decision is made—is fiduciary in nature, reasonable expenses involved with implementing an orderly plan termination are payable by the plan. This may include a plan audit, preparing benefit statements, calculating accrued benefits and other responsibilities to ensure that the plan termination is handled in a way that benefits plan participants and beneficiaries.

DOL Advisory Opinion 2001-01A clarifies the issue of “settlor” functions, specifically the payment of expenses related to the plan's tax-qualified status. The Department of Labor states that the formation of a plan as a tax-qualified plan is a settlor activity for which a plan may not pay. However, the plan may pay reasonable expenses involved with implementation of this settlor decision. Implementation activities may include drafting plan amendments required by changes in the tax law, nondiscrimination testing and requesting IRS determination letters.

Determining if fees are reasonable

The DOL has published materials to assist fiduciaries with evaluating retirement plan fees and expenses. The materials include brochures for participants and employers and a 401(k) fee worksheet, which describes the information fiduciaries should gather from providers to evaluate the fees and expenses charged to the plan. These materials can be obtained from the DOL's Employee Benefits Security Administration Web site at <http://www.dol.gov/dol/pwba>.

In reviewing the fees and services of different providers, try to make sure you're comparing apples to apples. It's important to understand the assumptions each provider makes in completing the worksheet to adequately compare providers. Also, keep in mind that you're not required to choose the least expensive investments or providers. Rather, you should examine fees in light of the products and services provided and make sure you're satisfied that the plan and its participants receive value in relation to the expenses.



Co-fiduciary responsibilities

ERISA Section 405 covers co-fiduciary rules. Even if you do a good job performing your duties, you may be responsible for breaches or violations made by other fiduciaries. For example, you can be responsible for other fiduciaries if you:

- Knowingly participate in a breach by another fiduciary
- Knowingly help conceal an improper act or omission of another fiduciary
- Enable another fiduciary to commit an improper act by failing to carry out your duties
- Fail to take steps to correct a breach by another fiduciary when you know about the other fiduciary's breach

For example, if the trustee of a plan becomes aware that employee deferrals are not being forwarded to the trust, then the trustee must take reasonable steps to protect the participants. If the trustee does not act, then he could be personally liable for any losses that could have been avoided by timely action.

If you suspect that a fiduciary is not doing his or her job, you must take steps to address the problem and document those steps to protect the participants, the beneficiaries and the plan. However, it should be noted that a fiduciary is not responsible for directly overseeing the activities of other fiduciaries, unless the first fiduciary appointed the second fiduciary. In that case, it's a direct fiduciary responsibility (not a co-fiduciary duty) of the fiduciary to prudently select and monitor the activities of the appointed fiduciary.

Selecting and monitoring service providers

ERISA allows plan fiduciaries to hire outside professionals or experts to provide assistance or advice. In fact, it may be a necessity to seek outside assistance or expertise because the laws are so complex. A good rule to follow is: when in doubt, seek expert assistance.

The plan fiduciaries or plan committee is responsible for hiring and supervising the plan's service providers. While seeking the assistance of competent professionals may mitigate some of the risk involved with managing a retirement plan, fiduciaries must review, understand and accept the advice provided and then make the appropriate decisions based on the advice. The professional or outside service provider can't make the decisions for the fiduciary.

The selection and monitoring of outside service providers must be done in a prudent manner. A few additional guidelines should be followed to help minimize risks involved with using outside service providers:

- A due diligence file should be maintained for each advisor, documenting the extent of the initial provider inquiry and appointment, fees and ongoing monitoring.
- Fiduciaries should enter formal agreements with each provider to document responsibilities, fees, service standards, etc.
- Arrangements with providers must be reasonable as to duties, conditions and fees. If the arrangements are not reasonable, then payment of fees from plan assets is a prohibited transaction, and a fiduciary breach has occurred. Penalties and restitution may result.
- Fiduciaries should verify that providers have appropriate insurance and check their policies to verify adequate coverage for the services provided.

Service providers are generally not fiduciaries, but they can become fiduciaries if they exert authority or control over plan assets or the management of the plan.

Common plan service providers

- **Third-party administrator (TPA)**—typically performs ministerial or administrative day-to-day functions and is not usually a fiduciary. (Note: This is not the same as a statutory plan administrator under ERISA, which is a fiduciary responsible for the operation of the plan. The ERISA plan administrator typically makes administrative decisions like determining eligibility to participate and to receive plan benefits.)
- **Investment provider**—provides investment vehicles for the plan and is typically an insurance company, mutual fund company or bank.
- **Auditor**—an independent accounting firm that verifies that plan assets exist and are reported properly.
- **Appraiser**—values plan assets that are not readily marketable, such as closely held employer securities.
- **Legal counsel**—provides legal advice on fiduciary responsibilities, plan administration and investment management.



Fiduciary resignations and replacements

Plan and trust documents typically include resignation and replacement provisions for fiduciaries. Agreements with service providers, including an investment manager, should also include resignation and replacement procedures.

Resigning is itself a fiduciary act and must be done according to the procedures in the plan document. If there is no qualified replacement, the resigning fiduciary may be exposed to liability.

Documenting decisions and maintaining a due diligence file

To show you were procedurally prudent in your selection and monitoring of plan investments and any outside experts or service providers, be sure to keep a well-documented due diligence file.

These files are helpful if a government agency investigates or audits your plan. With a properly documented due diligence file, you'll be able to promptly provide the information they require. If it takes several months to gather the pertinent information the agency is requesting, you'll send a bad message about how you're running your plan. A sample Due Diligence File Checklist is included in the fiduciary tools provided with this guide.

Fiduciary protection and insurance

Remember, plan fiduciaries may be personally responsible for any breach of their fiduciary duties. Plan fiduciaries may be sued for plan losses, benefit discrepancies, or compliance issues.

ERISA liability claims can be filed as an individual action, a class action suit, or as a result of an investigation by a government agency, such as the Department of Labor or Internal Revenue Service. Litigation can potentially drain your personal assets and your company's assets.

Fiduciaries can manage their risk by following the rules, seeking expert assistance when needed and following prudent, well-documented procedures. In case errors do occur, though, it's important to have insurance.

ERISA permits the purchase of fiduciary liability insurance. If the insurance is purchased with plan assets, the insurance policy must permit recourse by the insurer against the fiduciary. Recourse allows the insurer to try to collect from the fiduciary if a breach is determined to have occurred. A nonrecourse rider is a supplemental insurance policy that may be available which eliminates the insurer's right of recourse. A nonrecourse rider costs extra and may not be paid for with plan assets.

Other insurance that may be used to provide protection against liability include:

- **Directors & officers insurance**—your company's directors and officers insurance may or may not cover fiduciary breaches. Check the insurance policy, because many policies specifically exclude ERISA plans.
- **Errors and omissions insurance**—"E&O" insurance protects against liability for administrative errors and omissions. This insurance typically covers third-party administrators, accountants and attorneys.

ERISA bonding

With a few exceptions, every fiduciary and person who "handles" funds or other plan assets must be bonded, according to ERISA Section 412. This regulation requires a bond to reimburse the plan for losses resulting from fraudulent or dishonest acts by plan fiduciaries and others who handle the assets. Certain entities, such as banks, savings and loan institutions and insurance companies, may be exempt from the bonding requirement.

Handling of plan assets is not limited to physical contact. Handling occurs whenever a person's duties or activities present the risk that plan assets could be lost due to fraud or dishonesty, whether by an individual or group acting in collusion. The required bond amount is \$1,000 or 10% of the amount of funds handled, whichever is greater, and it need not exceed \$500,000.

The Department of Labor allows the use of plan assets to pay for an ERISA Section 412 bond.



Timely government filing and response to participant requests

Fines may be assessed for failure to file the plan's annual report (Form 5500) and other filings as well as failure to respond to a participant request for benefit information.

Failure to timely file the plan's annual report

Both the Department of Labor and the IRS may impose civil penalties for failure to file the plan's annual report on time. Both agencies view Form 5500 filing violations to be serious, and the penalties, which are typically measured daily, can quickly reach several thousand dollars.

It's also important to note that the statute of limitations doesn't begin until the Form 5500 and related schedules are accurately completed and filed. The Internal Revenue Code contains a statute of limitations that permits only the IRS to challenge matters covered in the Form 5500 for three years from the date of filing, provided that the form and related schedules were completed properly and in good faith.

Failure to respond to a participant request for benefit information report

Unless a response is provided to the participant within 30 days, the plan administrator named in the plan document (usually either the employer or a plan committee) may be subject to a civil penalty of up to \$110 per day.

A final word to plan fiduciaries

Offering a retirement plan is one of the most important benefits you can provide your employees. It also brings special responsibilities and certain challenges to you, the plan fiduciary.

Keep your reputation and your personal assets intact and establish a game plan for a winning team by:

- Prudently investigating, documenting and monitoring all decisions affecting the plan, the investments and service providers
- Following ERISA and its regulations
- Seeking expert assistance when you don't know the answers or lack expertise

Your retirement plan could be more successful because of your efforts, and you'll have the satisfaction of helping your employees work towards a secure financial future.

The Best of America[®] Group Retirement Series

Nationwide knows that the laws and regulations that apply to retirement plans are complex and has designed quality products, programs and services with ERISA's fiduciary guidelines in mind. The Best of America Group Retirement Series offers flexible and comprehensive retirement programs, including both a program of mutual funds and unregistered group annuities. Key features include:

Quality plan design and administration

Nationwide understands the need for innovative plan design and quality administration services. As a result, Nationwide has developed strategic alliances with preferred plan administrators (PPAs) across the country who provide a "hands-on" approach to customized plan design and high-quality administration.

Nationwide and its network of PPAs recognize that the rules and regulations related to employee benefit plans are complex and challenging. However, your PPA is an expert who will assist you with plan design and administrative services and help you maintain proper compliance with ever-changing pension law.

Investment professional guidance

Investment professionals are available to provide you with the information you need to select and monitor your plan's investments. Your investment professional can assist you with investment performance information, underlying fund prospectuses and other information you may require. Your investment professional will also help with plan enrollments and re-enrollments, with the assistance of your local PPA when necessary.

Diverse investment options

The Best of America Group Retirement Series offers an attractive array of investment options. Nationwide realizes that no one investment company has the best options for every participant's investment objective and style. For this reason, Nationwide was one of the first to build partnerships with many of America's best-known money managers to provide a diverse and comprehensive package of fund options.

The Best of America Group Retirement Series offers:

- More than 70 nationally recognized investment companies offering a number of underlying fund choices with varying risk levels and management styles, enabling you to offer a broad range of investment alternatives to your plan.
- Professionally managed Preset Allocation funds for those employees who prefer managed portfolios.
- The freedom to choose the funds and fund families that are appropriate for your plan. Nationwide does not favor its own family of funds over the funds of other money managers offered in The Best of America Group Retirement Series.

Certain of the underlying funds are not publicly traded mutual funds and are not available directly for purchase by the general public. They are only available through variable life insurance policies or variable annuity contracts issued by life insurance companies, or in some cases, through participation in certain qualified pension or retirement plans.

Nationwide recognizes your fiduciary obligations under ERISA to prudently select and monitor the plan investments. Nationwide also understands the difficulty plan sponsors may face if their investment provider places restrictions on the funds the plan may invest in. Unlike many investment providers, Nationwide does not require investment in any specific fund families. Plan sponsors are free to choose the funds that are most suitable for their plan. With a wide array of funds from many fund houses, you are free to choose investment options that meet your plan's specific needs.

Comprehensive fiduciary management program

In recognition of the importance of your fiduciary responsibilities, Nationwide has developed a thorough fiduciary management program. In addition to this handbook, your investment professional and you have access to a variety of tools and an on-line investment analysis system. These tools provide education and research spanning several issues, including:

- The adoption of a meaningful investment policy statement
- The selection and ongoing monitoring of your investments
- Addressing other important fiduciary obligations through productive fiduciary meetings
- The documentation and due diligence process
- Access to fidelity bond and fiduciary liability insurance programs

Nationwide is dedicated to not only helping you effectively manage your fiduciary obligations from start-to-end, but the program is designed to accomplish that in a very efficient and user-friendly manner.

Timely and accurate participant recordkeeping

Nationwide has developed a proprietary state-of-the-art participant recordkeeping system, which is electronically linked to the PPAs. Nationwide's daily valuation of underlying investment options gives participants access to their retirement accounts and allows you and your PPA to respond to the needs of your plan. The Nationwide electronic link to PPAs is unparalleled in the industry and offers the flexibility the plan needs to remain an attractive option for the participant. Nationwide's adherence to time standards gives you the assurance you need that plan requirements will be performed on a timely basis.

Communication

Making sure employees understand their investment options and have the tools they need to guide them toward their retirement goals is integral to the success of your retirement plan.

Glossary of Terms

The Best of America Group Retirement Series includes unregistered group fixed and variable annuities and trust programs. The unregistered group fixed and variable annuities are issued by Nationwide Life Insurance Company, Columbus, Ohio.

Trust programs and trust services are offered by Nationwide Trust Company, FSB. Nationwide Investment Services Corporation, member NASD. In MI only: Nationwide Investment Svcs. Corporation.

For more information about the funds available, including all charges and expenses, please consult a prospectus. Fund prospectuses and additional information relating to your retirement plan can be obtained by contacting your pension representative. Before investing, carefully consider the fund's investment objectives, risks, charges and expenses. The fund prospectus contains this and other important information. Read the prospectus carefully before investing.

Directed Trustee: A trustee that provides no discretionary services to the plan and has no decision-making authority over the plan or its assets. A directed trustee acts only upon the direction of the plan sponsor, named fiduciary or their designees

Fiduciary: Under ERISA section 3(21), a fiduciary is a person or legal entity who:

- 1) exercises discretionary authority or control in the management of the plan or exercises any authority or control over the management or disposition of the plan assets;
- 2) renders investment advice for a fee or other compensation (direct or indirect) for any assets of the plan, or has any authority or responsibility to do so; or
- 3) has discretionary authority or discretionary responsibility in the administration of the plan.

Functional Fiduciary: ERISA has a functional definition of fiduciary. This means that even if you are not formally appointed, if you exert authority or control over the management of the plan or its assets, you will be a fiduciary.

Investment Fiduciary: The person or persons responsible for selecting and monitoring the investment options offered to the plan participants. Investment fiduciary activities include determining the investment categories, selecting the specific options for each of the categories, monitoring the designated investment options and selecting and monitoring the investment provider.

Investment Manager: Under ERISA, an investment manager is a fiduciary who:

- 1) has the power to manage, acquire or dispose of plan assets;
- 2) is registered as an investment professional under the Investment Advisors Act of 1940 or is a bank or insurance company qualified to manage assets under the laws of more than one state; and
- 3) has acknowledged in writing that he or she is a fiduciary.

Investment Policy Statement: A written document of the guidelines and standards used in the selection of the plan's investment options. The investment policy statement also provides a basis for the periodic evaluation of investment option performance.

Named Fiduciary: One who is authorized in the plan document to control the operation and administration of the plan. A named fiduciary can be a person or group of people who are actually named in the plan document or who can be identified by a procedure described in the plan document.

Plan Administrator: The person or entity responsible for administering a pension plan. The plan document may designate a plan administrator by name or may describe a procedure for appointing that person(s) or committee. If an administrator is not appointed, the plan sponsor (employer) is the plan administrator. The plan administrator is not a third-party administrator who performs administrator functions for the plan and lacks discretionary authority. Instead, the plan administrator has responsibility and authority for administering the plan.

Plan Sponsor: The entity that establishes an employee benefit plan—usually an employer, an employee organization, or both.

Preferred Plan Administrator (PPA): A third-party administrator who partners with Nationwide Financial. PPAs provide a local presence to assist plan sponsors with plan design and administrative services and help maintain proper compliance with ever-changing pension law.

Trustee: An entity or person who holds title to assets in trust for the benefit of participants. Trustees have exclusive authority and discretion to manage and control plan assets; however, this authority and discretion is limited to the extent that the plan states that the trustees are subject to the direction of participants or of a named fiduciary who is not a trustee, or the authority to manage, acquire or dispose of plan assets is delegated to one of more investment managers.

Fiduciary Tools: Your Ticket to Fiduciary Best Practices

Nationwide provides convenient tools to assist you in meeting your fiduciary obligations. Many of the tools may be customized, with the assistance of your PPA, investment professional, or your plan's legal counsel, to meet the needs of your plan.

Why Use an Institutional Trustee?

This one-page document explains the ERISA requirement that plan assets be held in trust and lists the advantages of using an institutional trustee.

ERISA 404(c) Checklist

This checklist provides the requirements plan fiduciaries must meet to achieve protection under ERISA Section 404(c). The checklist may help you identify what your responsibilities are as well as how Nationwide, your PPA or investment professional can provide assistance with each requirement.

Q&A Brochure

A Q&A brochure is also provided to enable you to communicate much of the required information to participants under section 404(c).

Model Investment Policy Statement

Designed for use with our online fiduciary management tools, the model investment policy will help you establish written guidelines to follow when selecting and evaluating plan investments and may be customized to suit the needs of the plan and its participants. The IPS was designed by an independent expert, enabling you to create a sound investment policy for your plans.

Due Diligence File Checklist

An important theme in ERISA regulations is procedural prudence, that is, the proper investigation and documentation of each plan fiduciary decision. Use this checklist to ensure that you are properly documenting all plan-related events and decisions and to be thoroughly prepared in the event of DOL or IRS plan audit.

Plan Fiduciary Meeting Checklist

Plan fiduciaries should meet at least annually to review the plan document, plan operation and administration, and the plan's investments. Use this checklist as a guide to assist you with covering the appropriate topics and documenting them in the meeting minutes.

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Neither Nationwide® nor any of its representatives give tax or legal advice. Federal tax laws are complex and subject to change.

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