

## FIDUCIARY FUNDAMENTALS

**THINK FURTHER** FOR RETIREMENT



Employers who sponsor a retirement plan for their employees are committed to providing a vehicle to help employees save today—for a financially secure tomorrow. However, providing that employee benefit comes with some important responsibilities. Recent regulatory initiatives and lawsuits have clearly demonstrated how important it is for plan sponsors to *Think Further* about their retirement plan.

### HELPING **PLAN SPONSORS** THINK FURTHER FOR THEIR RETIREMENT PLAN



The purpose of this article is to provide a brief overview of ERISA fiduciary responsibilities to help Plan Sponsors **Think Further** about what it means to be a retirement plan fiduciary and to introduce some steps that may enhance fiduciary compliance.

## 1 WHY DO RETIREMENT PLANS HAVE FIDUCIARIES?

The Department of Labor (DOL) is the government agency responsible for providing guidance regarding ERISA fiduciary requirements and enforcing these rules.

To protect employees who choose to save for retirement in a plan sponsored by their employer, such as a 401(k) plan, the Employee Retirement Income Security Act (ERISA) imposes important obligations and high standards of conduct on those who establish and manage the plan.

These rules are designed to ensure that fiduciaries, individuals, or entities with authority to manage retirement plans and plan assets act in the best interests of plan participants (and their beneficiaries) and handle plan assets prudently.

## 2 WHO ARE A PLAN'S FIDUCIARIES?

### ■ Plan Sponsor's ERISA Fiduciary Role

#### **Named Fiduciary ERISA 402**

Under ERISA, every plan must have at least one “*named fiduciary*”—a person or an entity named in the written plan document (or through a process identified in the plan). The plan sponsor (i.e., the employer) is typically the named fiduciary with overall responsibility for the plan.

#### **Plan Administrator ERISA 3(16)**

Most plan documents also name the plan sponsor as the ERISA plan administrator, sometimes referred to as an ERISA 3(16) fiduciary. This fiduciary has discretion over how the plan is operated and is often responsible for hiring service providers to help administer the plan and ensure that plan notices and disclosures are properly delivered.

The plan sponsor can appoint others to share the fiduciary role but can never fully transfer fiduciary responsibilities. One common example of delegating responsibility is to establish a plan committee. Plan committees are quite common among mid-size and larger plans but may also be formed by smaller plans.

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### ■ Financial Advisor's ERISA Fiduciary Role

Another example of delegating fiduciary responsibility is engaging a financial advisor to assist with investment responsibilities. Although some financial advisors provide only non-fiduciary support, such as investment information and education, many advisors provide fiduciary investment support. There are two avenues for delegating fiduciary investment responsibility to financial advisors under ERISA.

#### **Investment Manager ERISA 3(38)**

A bank, insurance company, or registered investment adviser (RIA) may be engaged as an ERISA 3(38) investment manager. Investment managers assume full discretionary responsibility for selecting and monitoring plan investments, relieving the plan sponsor of fiduciary liability for the investments selected.

#### **Investment Advisor ERISA 3(21)**

A financial advisor may also serve as an ERISA 3(21) investment advisor. An investment advisor shares fiduciary responsibility with the plan sponsor and recommends investments to be included in the plan menu, but typically leaves the final decision regarding the investment menu to the plan sponsor. Investment advisors are sometimes referred to as nondiscretionary fiduciaries because the plan sponsor retains ultimate discretion and control over plan investments.

### 3 WHAT ARE A PLAN SPONSOR'S FIDUCIARY RESPONSIBILITIES?

<b>Loyalty</b>	Focus on participant and beneficiary benefits and protections when managing the plan, basing decisions solely on what's best for the participants and beneficiaries, not what's best for the fiduciary
<b>Prudence</b>	Carry out duties with the care, skill, prudence, and diligence that a prudent person familiar with the matter at hand would use, hiring professionals who have specialized expertise, such as third party administrators or financial advisors, if fiduciaries do not have the expertise to handle their responsibilities
<b>Investment Diversification</b>	Diversify plan investments to the extent needed to reduce the risk of large losses to plan assets
<b>Plan Terms</b>	Follow the terms of the plan document to the extent that the plan terms are consistent with ERISA
<b>Reasonable Fees</b>	Ensure that only reasonable fees are paid from plan assets for plan investments and plan services that are necessary for the plan

If a financial advisor is providing fiduciary investment advice, the advice must be impartial and in the client's best interest under the ERISA standards of loyalty and prudence. Investment fiduciaries also must avoid conflicts of interest that could potentially benefit the fiduciary at the expense of the plan or plan participants.

### 4 WHAT ROLE DOES A FIDUCIARY PLAY IN SELECTING AND MONITORING PLAN INVESTMENTS?

In most defined contribution retirement plans, the fiduciaries are responsible for selecting and monitoring the plan's investment options. Most plan sponsors engage investment professionals to help select and monitor the menu of investments. Some financial advisors will assume fiduciary responsibilities as either an **ERISA 3(21)** investment advisor or **ERISA 3(38)** investment manager, as explained above.

Once the investment alternatives are selected, most 401(k) plans allow employees who participate in the plan to decide how their contributions should be allocated among the available investments.

#### Procedural prudence is key for satisfying fiduciary responsibilities mandated by ERISA.

- Setting objectives
- Developing a written due diligence process for selecting and monitoring investments
- Consistently following that process
- Keeping records of due diligence activities

### 5 WHAT IF A FIDUCIARY DOESN'T PERFORM HIS/HER DUTIES?

If a fiduciary does not follow the fiduciary standards of conduct, ERISA provides enforcement mechanisms.

**Department of Labor** Authority to enforce the rules through civil and criminal actions

**Participants & Other Fiduciaries** Right to initiate lawsuits to correct fiduciary wrongdoing

To protect the plan from fiduciary wrongdoing, each fiduciary and any other individual who handles plan assets must be bonded. Some fiduciaries also carry fiduciary insurance to protect against claims that they breached their fiduciary responsibilities.

## 6 WHO CAN A PLAN FIDUCIARY TAP INTO FOR SUPPORT?

The plan sponsor serving as the named fiduciary and the ERISA plan administrator is ultimately responsible for making sure they are performing their duties in compliance with ERISA, the tax rules, and the plan document, including delivering employee notices and making timely deposits into the plan. Fortunately, financial advisors and recordkeepers have the expertise to help manage this complex set of requirements.

In some cases, the third party administrator and recordkeeper will be separate entities, and in other cases the same entity. Most third party administrators and recordkeepers do not have discretion over how the plan is administered and are not considered ERISA fiduciaries.

### Investment Support

Many plan fiduciaries rely on their financial advisor for a broad range of support services.

- Education regarding the duties of a plan fiduciary
- Investment information and support to help fiduciaries select and monitor the investment options for the plan
- Investment information for plan participants to enable them to allocate their savings among the options available in the plan
- Benchmarking information to help fiduciaries compare plan features and fees against other plans, for example, plans offered by businesses that are similar in size or industry
- Hiring and monitoring third-party service providers such as recordkeepers

### Administrative Support

Most plan sponsors engage a recordkeeper or third party administrator as their administrative compliance expert.

- Monitoring new laws and regulations
- Checking plan limits and ensuring the plan operates in accordance with the rules
- Providing document drafting and amendment support
- Helping generate and deliver required employee notices
- Performing various compliance and nondiscrimination testing
- Preparing the Form 5500 annual return for the plan
- Preparing quarterly benefit statements for employees who participate in the plan



**To learn more about the responsibilities of a plan fiduciary or to access tools for working with plan fiduciaries, reach out to your Alger contact, email us at [retirement@alger.com](mailto:retirement@alger.com), or visit us at [www.alger.com](http://www.alger.com).**

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This document contains a general, high level summary of certain considerations applicable to qualified retirement plans. This summary does not purport to be a complete description of all the considerations applicable to a plan, plan sponsor, fiduciary or participant and it should not be considered to be guidance of any kind regarding a

specific plan or situation and should not be relied upon as such. The summary is based upon general principles in the Internal Revenue Code of 1986, as amended (the "Code"), the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), as well as certain guidance issued under the Code and ERISA that may be applicable, all as currently in effect at the time that this summary was drafted, and all of which are subject to change or to differing interpretations, possibly retroactively, which could affect the continuing validity of this summary. There should be no anticipation that this summary has been, or will be, updated for any developments in the law or interpretation.

Tax and ERISA matters are very complicated and the consequences to plans, plan sponsors, fiduciaries and participants will depend on the facts of a particular situation. We encourage retirement plan sponsors, fiduciaries and participants to consult their own advisors regarding these matters, including applicable federal, state, local and foreign laws and the effect of any possible changes in the law.

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