EDUCATION

guide

the 401k service solution™

<u>YOUR STEP-BY-STEP GUIDE TO:</u>

- Understanding ERISA's Guidance for Fiduciaries
- Reviewing How Well You Are Meeting Your Responsibilities
- Reviewing the Industry Best Practices
- Retirement Plan Committee Formation and Management

KLAAS 401K

FIDUCIARY

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This education guide is not intended to be legal or tax advice. Rather, it is intended only as a general summary, in non-technical terms, of certain basic concepts applicable to 401(k) and, in some cases, certain other types of tax-qualified retirement plans. Although this material concentrates on 401(k) plans, it is not intended to provide a comprehensive discussion of 401(k) plans or other types of tax-qualified retirement plans. Plan sponsors should consult their attorneys about the application of any law to their retirement plans.

ERISA Guidance for Fiduciaries

Understanding ERISA and the Guidance Provided for Plan Fiduciaries

As a plan sponsor offering a retirement plan for employees, you are considered a fiduciary.

In this role, there are certain things you must understand regarding standards of conduct, the regulatory agencies that govern qualified plans, and what is expected of fiduciaries.

This education guide is designed to help you understand better those items and how to meet your fiduciary responsibilities.

What is ERISA?
ERISA is the acronym for the Employee Retirement Income Security Act, a federal law enacted in 1974. ERISA regulates employer-sponsored retirement and welfare benefit plans. *One of the primary purposes of the Act is to impose specific duties on plan fiduciaries. It imposes a federal standard of conduct—with specific duties—that must be fulfilled*.

What role does the Department of Labor (DOL) play?
It is the responsibility of the DOL to enforce ERISA. In some ways, the Department of Labor has similar responsibilities to that of a plan fiduciary—they keep a close eye on employers to ensure that plan participants' best interest are adequately served.

What are the main responsibilities of a fiduciary?
Fiduciaries have important responsibilities and are subject to standards of conduct because they act on behalf of participants in a retirement plan and their beneficiaries. Individuals acting in this capacity are expected to provide services according to five basic principles of fiduciary duty: Prudence, loyalty, exclusive purpose, diversification, and adherence.

- The duty to act prudently is one of a fiduciary's central responsibilities under ERISA. Prudence focuses on the process for making fiduciary decisions.
- Fiduciaries are expected to act solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them.
- Another key fiduciary responsibility is diversifying plan investments and paying only reasonable plan expenses.
- And finally, it is important that fiduciaries understand and follow the plan documents.

Prudence focuses on the process for making fiduciary decisions. Therefore, it is wise to document decisions and the basis for those decisions. Review the information in this educational education guide then turn to the resource section in the back to find resources that can help you in meeting your fiduciary responsibilities.

Who is considered a fiduciary on a plan?

Under ERISA, the plan sponsor is considered to be a fiduciary. Other fiduciaries for your plan may be:

- A person or group of people, such as an administrative committee, specifically named as a fiduciary in the plan document,
- Anyone with discretionary control over the administration of your retirement plan or the investments offered in the plan, and
- Anyone who renders investment advice to the plan and/or its participants for a fee or other compensation whether direct or indirect.

Who is not considered a fiduciary?

While you may have a person who performs certain administrative tasks within a framework of the plan's policies, practices, and procedures, they most likely are not considered a fiduciary under ERISA if they cannot "act with discretion."

Limiting Liability...What is an ERISA Fidelity Bond?

The Employee Retirement Income Security Act (ERISA) requires each fiduciary or other person who ***handles plan assets*** to be insured by a fidelity bond. The required ERISA Fidelity Bond provides coverage for loss of property of an Insured Plan resulting directly from dishonest or fraudulent acts committed by a named fiduciary.

Limiting Liability...Why consider Fiduciary Insurance?

ERISA Section 409 provides that any "person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach…" While a Fidelity Bond is required for those who directly handle plan assets it does not cover other named fiduciaries responsible for investment and plan decisions. Fiduciary Liability Insurance is not required but is an option that named fiduciaries should consider on a case-by-case basis.

Meeting ERISA Guidance

How well are you fulfilling your fiduciary obligations?

One of the goals of this guide is to provide you with the information that will help you make better decisions as a plan fiduciary.

ERISA gives clear guidance on several issues and industry ‘best practices’ indicate how to implement a prudent process in other areas of plan management. All of the issues involved in running a successful and compliant plan must be addressed and your decision making process should be documented. These issues include (but are not limited to) the following areas:

- <u>Plan Documents:</u> Establishing, Distributing, Maintaining, Filing Amendments, etc.

- <u>Administrative Processing:</u> 5500 Filing, Withholding, Loans, Data Collection, Top Heavy Testing, etc.

- <u>Participant Communication and Processing:</u> Enrollment, Withdrawals, Distributions, ERISA Section 404(c), etc.

- <u>Legislative and Regulatory Updates:</u> ERISA, DOL, EBSA, IRS Cost of Living Adjustments, Pension Reform, etc.

- <u>Investment Selection and Monitoring:</u> Establishing an Investment Policy, Asset Allocation, Fund Expenses, Industry Benchmark Comparisons, etc.

- <u>Provider Due Diligence:</u> Selecting an appropriate provider, ongoing monitoring of service providers and pension consultants, meeting Safe Harbor Provisions if applicable, Benchmarking your Plan Against Industry Averages, etc.

Consider the following questions:

- Is a plan required to have a written Investment Policy Statement?
- What are the main requirements necessary in order to meet Section 404(c) of ERISA?
- How often should a formalized IPS be reviewed?
- What factor triggers the replacement of a fund in an employer-sponsored plan?
- What are some prohibited practices?
- Does your plan provide and track ongoing employee investment education?
- Do the plan fiduciaries meet regularly and keep well documented minutes of those meetings?
- Is your plan covered by a fidelity bond against losses due to fraud or dishonesty?

If you are not able to answer the questions above or don't feel you are adequately addressing all of the issues listed on the previous page, there are steps you should take to better understand and meet your fiduciary responsibilities. Some resources are listed in the back of this education guide that can serve as a starting point to implementing a process for achieving a successful

Industry Best Practices

It is important to understand the legislative acts that govern qualified plans as well as industry best practices and how to meet them.

The three legislative acts that shape investment fiduciary standards are: ERISA, UPIA, and MPERS.

ERISA—Employee Retirement Income Security Act

UPIA—Uniform Prudent Investor Act

MPERS—Uniform Management of Public Employee Retirement Systems Act

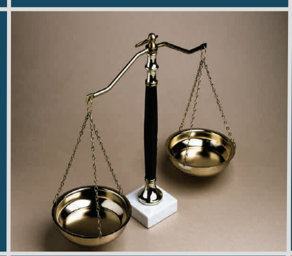
There are seven standards that are common to the three legislative acts that shape investment fiduciary standards. The ***Prudent Practices*** Handbook written by fi360, Inc., defines these standards as the Global Fiduciary Precepts:

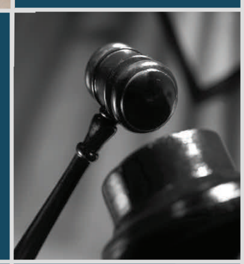
1. Know standards, laws, and trust provisions.
2. Diversify assets to specific risk/return profile of client.
3. Prepare an investment policy statement.
4. Use "prudent experts" (money managers) and document due diligence.
5. Control and account for investment expenses.
6. Monitor the activities of "prudent experts."
7. Avoid conflicts of interest and prohibited transactions.

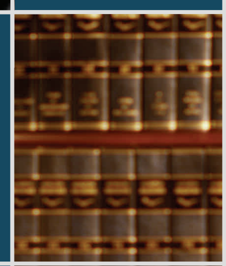
These standards make up the foundation that guides a fiduciary as the traditional investment management process is carried out.

It is recommended that all plan fiduciaries have a copy and become familiar with fi360's Handbook—***Prudent Practices for Investment Stewards.*** This handbook covers twenty-two *Practices* that define a prudent investment management process from beginning to end. You can purchase this handbook from the fi360.com website.

While the *Prudent Practices Handbook*'s basis is guiding the ***investment management process*** of monitoring and supervising the investments within your plan, it also covers other key practices fiduciaries need to understand in order to ensure regulations are being adhered to.







Forming an Investment Committee

Form a Retirement Plan Committee to address Key Fiduciary Responsibilities

Forming a Retirement Plan Committee can create the foundation for a successful employer-sponsored plan. The main purpose of having a committee is to implement a process to help manage the key fiduciary responsibilities and to help ensure your plan remains competitive while continually offering a solid array of investment options. The committee does this by participating in the governance of the plan and overseeing investment and provider selection and review.

Most small business have no formal committee in place but it is recommended that all companies, regardless of plan size, establish a Retirement Plan Committee. Some larger companies establish an Investment Oversight Committee responsible exclusively for monitoring plan investments as well as an Administrative Committee.

How Does the Committee Function?

A formal committee usually meets on a quarterly or semi-annual basis.

The committee is a crucial part of establishing a process to monitor all aspects of the plan.

As an example, for investment monitoring, the committee would monitor the investment options, notice and discuss the relevance of any factor in a fund that could affect its continued suitability, and decide the inclusion or elimination of the fund from the line-up.

Minutes of every meeting should be taken and documented in a formal plan folder or other organization system.

What Topics are Covered in a Committee Meeting?

A typical meeting might cover these topics:

- Review investment line -up
- Evaluate investments in light of the plan's Investment Policy Statement
- Review of fees by investment option
- Discuss ongoing participant needs and education
- Trends and legislation affecting plans and participants
- Review of consultant's report

Who Should Serve on the Committee?

A Retirement Plan Committee is usually comprised of senior management personnel from the areas of finance, operations and human resources. Typically, a committee with four to six members functions best. While it is not required, it is a good idea that the committee appoint a chairperson, who is often the Chief Financial Officer of the company, as well as a secretary to keep meeting minutes.

"Guests" sometimes attend committee meetings on a regular or rotating basis (usually employees from different business units) to give plan participants a voice in the management of their retirement plan. However, "guests" would not be permitted to vote on issues.

Managing Fiduciary Liability

Each committee member must be aware of his/her personal fiduciary responsibility and fully understand the issues involved in managing a successful and compliant plan. When new members are added, they too should be trained to understand their responsibilities and the investment monitoring process. It should never be assumed that all members understand these issues.

An Important Function

An effective Retirement Plan Committee is the cornerstone of a company retirement program and helps ensure the plan remains competitive and continues to offer a line-up of fund options that will help participants in achieving their retirement plan goals. Each member's input and perspective is critical to making the plan a great one. All committees require time. Participation on the Retirement Plan Committee influences the decisions that affect everyone involved in the plan so active participation is a must.

Resources for Plan Sponsors

There are many issues to address in order to run an effective and compliant plan. Below, you will find a variety of other of resources and tools available to help you as you look implement a process to meet your fiduciary responsibilities.

The Department of Labor (www.dol.gov) offers the following publication:

- **Meeting Your Fiduciary Responsibilities** This publication provides an overview of the basic fiduciary responsibilities applicable to retirement plans under the law.

The following is available on the fi360.com website:

- ***Prudent Practices for Investment Stewards*** by fi360, Inc. This handbook was developed specifically for Investment Stewards - trustees, investment committee members, attorneys, accountants, institutional investors, and anyone else who is involved in managing investment decision-making. The Handbook serves as a foundation for prudent investment fiduciary practices. It provides investment fiduciaries with an organized process for making informed and consistent decisions.

Additional Tools available include:

- **The 401k Plan Checklist** by the Internal Revenue Service. This checklist provided by the IRS is a 'quick tool' to help keep your plan in compliance with many of the important rules regarding fiduciary administrative issues. This can be found at www.irs.gov/ep.

The following newsletters and publications provide plan sponsors with current updates on issues relating to employer-sponsored plans:

- **Employee Plans News** A publication of the Employee Plans office of the Tax Exempt and Government Entities Operating Division of the IRS. This quarterly newsletter provides information about current developments and upcoming events within the retirement plans arena. (www.dol.gov)

- **Department of Labor** DOL offers additional updates through their website: (www.dol.gov). By voluntarily subscribing to E-mail Updates, OCA will send you an e-mail when significant Compliance Assistance activities occur or when DOL adds new, valuable information to the Compliance Assistance Web pages.

- **Internal Revenue Service** The IRS also offers a newsletter for sponsors that includes regulatory updates at www.irs.gov. They offer two newsletters:

  Employee Plans News
  Geared toward retirement plan practitioners - attorneys, accountants, actuaries and others - this newsletter presents information about retirement plans.

  Retirement News for Employers
  Designed for employers and business owners, this newsletter provides practical retirement plan information.

- **Profit Sharing Council of America** offers Legislative & Regulatory Updates. PSCA's Executive Report is a monthly legislative newsletter and compliance bulletin for members. (www.psca.org)

How well are you fulfilling your FIDUCIARY obligations?

"Offering a retirement plan can be one of the most challenging, yet rewarding, decisions an employer can make. The employees participating in the plan, their beneficiaries, and the employer benefit when a retirement plan is in place.

"Administering a plan and managing its assets, however, require certain actions and involve specific responsibilities."

From the U.S. Department of Labor's Employee Benefits Security Administration booklet, Meeting Your Fiduciary Responsibilities

By reviewing this education guide, you should better understand the fiduciary responsibilities involved in managing a qualified plan and identify resources to help you implement a documented process for meeting the fiduciary responsibilities on your plan.

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