

The Fiduciary Role

One of the key tenants of any employer-sponsored retirement plan, such as a 401(k) is your role and responsibility as a [Fiduciary](#).

A Fiduciary as defined in [ERISA](#) is somehow who:

1. Exercises discretion over the management of the plan or any authority over plan assets;
2. Renders investment advice for a fee or other compensation, directly or indirectly; or,
3. Has discretion over plan administration issues.

Your Responsibilities

Although you can have an advisor on your retirement plan who can help share in your Fiduciary responsibilities, you as the plan sponsor are considered a Fiduciary. Core Fiduciary duties drawn from ERISA include:

- **Loyalty** – duty to always act in the best interest of plan participants and beneficiaries.
- **Exclusive Benefit** – must act for the exclusive purpose of providing benefits to participants and beneficiaries, while defraying reasonable expenses of administering the plan.
- **Prudence** – duty to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would act, including ensuring investments remain prudent investments. In other words, Fiduciaries must meet a “prudent expert” standard: They must act as an experienced and knowledgeable expert might.
- **Diversification** – duty to ensure plan assets are well-diversified to “avoid large losses.”
- **Documentation** – must follow the terms of the plan document and other documents governing the plan, unless inconsistent with ERISA. The plan document’s provisions must be consistently applied.

In addition, ERISA also requires that plan Fiduciaries maintain bonding to protect the plan against losses due to fraud and dishonesty. To limit personal liability, it is critical that Fiduciaries conduct themselves with an exceptional level of care and that senior management provide appropriate oversight to their deliberations and decisions.

Best Practices

As you can see, being a Fiduciary as part of your plan carries many responsibilities. So how can you handle these tasks while limiting your personal and company’s liability and provide a service to your employees?

Here are several Fiduciary best practices that we have identified and put into place with our clients:

1. Have a well-organized and effective committee staffed with qualified individuals
2. Select and monitor plan investments regularly. Section 404(c) of ERISA provides important Fiduciary protections for defined contribution plan sponsors
3. Be attentive to plan costs. Reasonableness includes an assessment of the quality of the services provided, as well as the cost. Plan Fiduciaries should also consider different fee allocation methods that may be available.

4. Oversee plan administration. Fiduciaries must oversee the creation of plan documents; ensure that the plan operated strictly according to those documents; and satisfy all the legal and regulatory rules issued by the relevant agencies including the DOL, IRS, and SEC.
5. Education and advise. In participant-directed plans such as a 401(k) or 403(b), effective plan design as well as ongoing education and advice are essential if participants are to make well-informed decisions. The DOL supports the offering of such programs as a way of minimizing the plan sponsor's Fiduciary risk while increasing the likelihood of adequate retirement savings for plan participants.

Detailing the Role of a Fiduciary is just one of many Fiduciary best practices that we cover as part of our employer-sponsored retirement plan series. We designed this series to help support businesses of any size to help you reduce potential liability and provide a plan that best serves your employees.

Contact us for more information about any of these best practices or to see how we may better support your company and employees with a low-cost, high service employer-sponsored retirement plan.



Paul Fenner, CFP®, ChFC
President, TAMMA Capital
Registered Investment Advisor