Fiduciary Compliance

CecilCo
Managed Solutions

Protection through Process

The best way to meet your Fiduciary Compliance responsibilities is to follow a process of "Best Practices".

Acting as an **ERISA 3(21)** fiduciary, CecilCo provides professional fiduciary guidance to hundreds of employers, mostly based in the Dallas-Ft. Worth area.

Investing Solution Selection	**Determining which investment solutions are best suited for participants to reach their retirement goals while utilizing fiduciary safe harbors (i.e. "Do it myself vs. Do it for me")**
Investment Policy Statement	**Formalizing selection solutions and monitoring criterion in an Investment Policy Statement of trustee approval**
Manager & Fund Selection	**Using both Qualitative and Quantitative Analysis, determine appropriate managers and funds that are likely to perform better than peer groups**
Fund Monitoring & Benchmarking	**Apply Investment Policy criterion and selection process methodology to determine relative investment performance compared to appropriate benchmarks**
Documenting Process	**Maintaining at least annual meeting reports and notes indicating fund status documentation and action as well as participant notices**

In addition to years of specializing in fiduciary compliance, CecilCo consultants have achieved the status of ACCREDITED INVESTMENT FIDUCIARY ANALYST (AIFA®) as designated by the Center of Fiduciary Studies, University of Pittsburgh, PA.

AIFA™ | *Accredited Investment Fiduciary Analyst™*

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Investment Fiduciary Under ERISA

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 (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 Section 8 for more information on expenses of the plan.

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.

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 professionals before you hire them to make sure they are qualified for the task at hand. You also need to carefully read and understand the reports to make sure the professional did sufficient analysis of the relevant facts. Finally, fiduciaries cannot blindly rely on the advice of outside professionals. You must review and understand the advice of professionals 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 section 4 "Core Fund Review" 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.

Investment Policy Statement (IPS)

The best way to stay on track to meet your Fiduciary Compliance responsibilities is to create and follow the IPS CecilCo has helped you create which formalizes the following:

Selected Solutions-

Determining which investment solutions are best suited for participants to reach their retirement goals while utilizing fiduciary safe harbors (i.e. "Do it for Me" versus "Do it Myself" solutions).

Manager & Fund Selection-

Using both Qualitative and Quantitative Analysis, determine appropriate managers and funds that are likely to perform better than peer groups.

Monitoring & Benchmarking Criterion-

Apply IPS criterion and selection process methodology to determine relative investment performance compared to appropriate benchmarks.

Documentation Mandates.

Maintaining at least annual meeting reports and notes indicating fund status documentation and action as well as participant notices as provided in this Fiduciary Review Booklet.

Glossary or Terms

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) 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.

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.

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.