# Mitigating Fiduciary Risk

## Defining Fiduciary

Mitigating fiduciary risk begins with understanding who is a fiduciary. Fiduciary status is based on the functions performed for the plan, not a person's title.

Your plan's fiduciaries will ordinarily include the trustee, investment advisers, all individuals exercising discretion in the administration of the plan, all members of a plan's administrative committee (if you have one) and those who select committee officials. When determining if an individual or an entity is a fiduciary, you need to look at whether or not they are exercising discretion or control over your plan.

## Basic Responsibilities

Fiduciaries are in a position of trust with respect to the participants and beneficiaries in the plan. A fiduciary's responsibilities include:

- *acting solely in the interest of the participants and their beneficiaries;*
- *acting for the exclusive purpose of providing benefits to workers participating in the plan and their beneficiaries, and defraying reasonable expenses of the plan;*
- *carrying out duties with the care, skill, prudence and diligence of a prudent person familiar with the matters;*
- *following the plan documents; and*
- *diversifying plan investments.*

Since you must carry out these functions in the same manner as a prudent person, it may be in your best interest to consult experts in such fields as investments and accounting.

## Fiduciary Best Practices

Implementing the following best practices will help you mitigate fiduciary risk:

**1. Adhere to a well-defined, deliberative, documented process.**

- Include a well-drafted investment policy statement (IPS) that describes the investment selection and monitoring criteria.
- Review annually the performance of the plan's fund lineup to determine if it meets IPS criteria.

- Identify all of your plan's service providers, know and understand their services and fees, monitor performance, and determine if fees are reasonable through objective plan benchmarking.

**2. Identify conflicts of interest.** While not illegal, conflicts of interest may result in higher plan fees and reduced investment performance over time if not monitored. Any relationship that could be viewed as making it more difficult for the plan to be operated in the exclusive best interest of plan participants increases fiduciary risk.

- Beware of financial arrangements between service providers (for example, payments from mutual fund managers to the plan record keeper, Third Party Administrator (TPA) or investment advisor) as they are the biggest source of conflicts.
- Use investment advisors in a fiduciary capacity and make sure they document that status in writing.
- If your advisors don't serve in a fiduciary capacity, be certain they are compensated on a level fee arrangement and know who pays them.
- Seek an independent review of your plan's service providers and investment platform every three to five years. Use an outside consultant, regardless of how much you trust your advisor.

**3. Take full advantage of fiduciary safe harbors provided for in the law.**

- Comply with ERISA 404(c) if you allow participants to make investment decisions. There are three compliance areas: 1) investment menu requirements; 2) plan design and administrative requirements; and 3) information and disclosure requirements.
- Implement a Qualified Default Investment Arrangement (QDIA), especially if your plan has automatic enrollment provisions. This is an approved investment selection for participants not making an affirmative investment election.

**4. Establish a fiduciary file** that contains documentation of your plan oversight activities listed above, such as:

- *All legal documents, including the IPS*
- *A copy of all service provider contracts and required disclosures*
- *All investment monitoring reports and prospectuses*
- *Minutes of all plan committee meetings*
- *All due diligence performed when selecting service providers*
- *Annual Form 5500 and audited plan financial statements, if required*

**5. Purchase fiduciary insurance.** This is not an ERISA fidelity bond, which is *required* coverage for all employees handling plan assets. A fidelity bond reimburses the plan for any losses resulting from dishonest acts by employees of the plan sponsor. Fiduciary insurance, however, protects the *personal assets* of all plan fiduciaries due to allegations of breach of fiduciary duties or failure to act prudently in the best interest of participants.

**6. Review your plan service providers.** As a plan sponsor, you have the ultimate responsibility for monitoring the performance of the plan service providers your plan hires. You cannot assign or delegate away fiduciary responsibilities to another person or organization; however, you can share fiduciary status with others who may be more knowledgeable about retirement plan operations.

Even if you hire professionals to manage your plan, you retain some fiduciary responsibility for the decision to select and keep the service provider. You should document your selection process and monitor the services provided to determine if you need to make a change.

**Some items to consider in selecting a plan service provider:**

- *Information about the firm's affiliations, financial condition, experience with retirement plans, and assets under their control;*
- *A description of how the firm will invest plan assets or how it will handle participant investment directions, and its proposed fee structure;*
- *Information about the identity, experience, and qualifications of the professionals who will be handling the plan's account such as:*
  - any recent litigation or enforcement action that has been taken against the firm;
  - the firm's experience or performance record;
  - whether the firm plans to work with any of its affiliates in handling the plan's account; and
  - whether the firm has fiduciary liability insurance.

- *Once hired, these are additional actions you should take when monitoring a service provider:*
  - Review the service provider's performance;
  - Read any reports they provide;
  - Check actual fees charged;
  - Ask about policies and practices (such as trading, investment turnover, and proxy voting); and
  - follow up on participant complaints.

Sponsoring a qualified retirement plan for your employees is a wonderful benefit and provides a means of building savings for their future. Understanding who is responsible for protecting these benefits is key to maintaining a successful program.

CIBC's Retirement Plan Services Group can help you mitigate your fiduciary risk. Contact us at 312 564-3806 for more information.

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