A fiduciary's investment educational guide

Helping to make it easier to understand your fiduciary responsibilities.

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Voya Financial® is here to help you understand and navigate your fiduciary responsibilities as they relate to your retirement plan. Consult this guide for answers to these and other important fiduciary-related questions:

- Is your plan governed by ERISA or other fiduciary duties?
- Are you a fiduciary?
- What are your fiduciary duties and responsibilities regarding the selection of investment options?
- What plan fees must a service provider disclose?
- What are the participant fee disclosure requirements?
- What criteria should a fiduciary consider when selecting investments for the plan?

Please note that this document is intended to assist you in complying with only one aspect of Section 404(c)—choosing the appropriate investment options for your plan. You should consult your legal adviser regarding full compliance with ERISA 404(c).

What is ERISA?

The Employee Retirement Income Security Act of 1974 (ERISA) is a Federal law that regulates how you administer an employee-benefits plan, including a retirement plan. ERISA requires that a plan fiduciary perform a number of duties with regard to the manner in which the plan must be administered and funded.

What plans are governed by ERISA?

Almost all plans are covered by ERISA and include:

- 401(a) Profit Sharing and Money Purchase plans
- 401(k) Cash or Deferred Arrangements
- Defined Benefit plans

What plans are exempt from ERISA?

- Church and governmental plans
- Voluntary § 403(b) program – If an employer merely makes available a payroll practice for voluntary salary-reduction 403(b) contributions and doesn't do anything to administer 403(b) contracts, sponsor the program, or endorse any provider or its contracts, that's not a plan.[1] This "hands-off" idea doesn't work for a retirement or deferred compensation plan other than a 403(b) arrangement.
- Select-group deferred compensation plan – If you maintain an unfunded deferred compensation plan for a select group of highly compensated or management employees (i.e., an excess-benefit plan), Part 4 of Subtitle B of Title I of ERISA doesn't apply to such a plan.[2]

What if a plan isn't governed by ERISA?

If ERISA doesn't govern a plan, State law applies. Every State's law includes the law of trusts and fiduciary relationships. Even without those duties, every State's law includes principles of fair dealing in applying Contracts—so even a non-ERISA plan will involve fiduciary duties.

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[1] 29 C.F.R. § 2510.3-2(f).

[2] 29 U.S.C. § 1101, ERISA § 401.

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Are You a Fiduciary?

Is a director, officer or employee of the employer a fiduciary?

Maybe. Court decisions have held that a person within an employer who makes decisions about how to administer the plan is a fiduciary. Also, the Secretary of Labor argued that a person or organization who is or that appoints a fiduciary is himself, herself or itself a fiduciary to the extent of his, her or its duty to consider whether the appointed person has not acted prudently or, for another reason, should be removed and someone else appointed.[3]

For example, if a company that sponsors a plan also is the plan's administrator, the company's directors or managers might be fiduciaries because they have power to elect and remove the company's officers, and the company's president or general manager might be a fiduciary because he or she has the power to appoint and remove officers and employees who manage the retirement plan.

What must an ERISA fiduciary do?

An ERISA fiduciary must act solely in the best interest of the plan's participants for the exclusive purpose of providing retirement benefits to participants and their beneficiaries. ERISA requires that a fiduciary must act with the care, skill, prudence and diligence that a prudent person acting as a fiduciary and familiar with retirement plan matters would use in the conduct of managing a retirement plan. This means that a plan fiduciary must act as an expert would.

Under ERISA's prudent-expert concept, a fiduciary must make a careful inquiry into the merits of any decision it makes. If a fiduciary doesn't have sufficient knowledge to evaluate an issue, the fiduciary must get expert advice. But a fiduciary can't blindly rely on advice; instead, it must make its own decision using that advice. What's important is that a fiduciary must consider enough information to make a well-informed decision.

What happens if a plan fiduciary fails to do the right thing?

A failure to perform your fiduciary duty makes you liable for any harm to the plan. Also, failing in your duty could result in a civil penalty and, in some cases, criminal punishment. A breach of a fiduciary duty (or violation of a law) might result in:

- An investigation by the Department of Labor's Employee Benefits Security Administration
- A complaint from a participant, beneficiary, alternate payee or other claimant
- Liability to the plan (including participants' accounts) for harm to the plan
- An additional civil penalty of up to 20 percent of the plan assets involved in your breach
- Restoring to the plan the value of your improper use of the plan's assets
- Excise taxes
- Paying the expenses (including lawyers' and accountants' fees) of any correction
- Criminal punishment, including a fine up to $100,000 for individuals or $500,000 for "non individuals" and up to 10 years imprisonment.

[3] See Complaint for ERISA Violations, Elaine L. Chao v. Enron Corporation, No. H-03-CV-2257 consolidated with No. H-01-CV-3913 and Consolidated Cases (S.D. Tex. filed June 26, 2003); Amended Brief of the Secretary of Labor as Amicus Curiae Opposing the Motions to Dismiss (filed Aug. 30, 2002), Tittle v. Enron Corp., No H-01-CV-3913 and Consolidated Cases .(S.D. Tex. filed Nov. 13, 2001).

Is the employer a fiduciary?

Yes, because an employer serves as a plan's administrator and makes discretionary decisions in maintaining and administering its retirement plan.

Caution:

- If you're an ERISA fiduciary, you're responsible for another fiduciary's breach if you knew (or should have known) about it and didn't take action to stop it.
- A court order or settlement agreement may require that your personal liability to a retirement plan be paid from your plan account. For example, a court could require that you lose your plan account so that the plan will get money to increase the accounts of other participants.
- Although meeting fiduciary duties often is "extra" work, the consequences of a fiduciary breach could threaten your financial well-being.

An employee benefit plan that is subject to ERISA must:

"...provide a procedure for establishing and carrying out a funding policy and method consistent with objectives of the plan..."

Voya provides this guide to clients to share information we believe will assist a plan fiduciary in:

1. Creating a funding policy and investment guidelines for the plan.
2. Understanding and developing criteria to be considered in the selection and periodic evaluation of the investment options offered to plan participants.
3. Understanding the importance of communicating investment-related information to plan participants.

The purpose of this guide is to provide you with a framework for carrying out your fiduciary duties surrounding the investment responsibilities of your retirement plan. **This material is not intended to provide legal, investment or tax advice. Your attorney or tax advisor should be consulted on all such decisions.**

The primary goal of most defined contribution retirement plans is to provide a vehicle for the plan participants to take a more active role in saving for their long-term financial and retirement needs. In creating an investment structure to support this goal, the fiduciary should become knowledgeable about matters that will impact the plan and its participants.

Fiduciary Duties

What are the fiduciary duties for the selection of investment options?

A fiduciary would consider many issues, including the following:

- **Establishment of written policies and guidelines that form the basis of the fiduciary's decisions and actions.** Are the fiduciary's investment decisions guided by a written investment policy statement? Is this statement periodically reviewed to ensure its relevance to the plan's objectives and participant needs?
- **Selection and ongoing evaluation of investment options.** Does the fiduciary possess the necessary expertise or should he/she seek advice or assistance? Is the fiduciary able to exercise the appropriate care and prudence in assessing the investments for initial selection and evaluating those investment decisions over time?
- **Diversification of investment options.** Are there enough investment options with different risk and return characteristics? Are there appropriate opportunities for participants to help minimize their risk by spreading assets across the three main categories of investments (growth/equities, income/bonds and safety of principal/cash)? Are there enough options that have potential to provide returns over the long term that could outpace inflation?
- **ERISA Section 404(c) compliance.** Is it intended that the plan will comply with ERISA Section 404(c)? The 404(c) regulations contain substantive requirements concerning the investment options and information that must be given to participants. (See Addendum A on page 8 for further explanation of relevant 404(c) information.)
- **Fidelity bond.** If you handle a retirement plan's money, investments or other rights, ERISA requires that you keep fidelity bond insurance to protect the plan against stealing or similar dishonesty.[1]

What are the fiduciary responsibilities for the selection of investment options?

It is difficult to quantify each participant's retirement income needs. The amount that a participant will need in retirement will be affected by a number of variables, including inflation rates, federal and state tax rates, salary trajectory, other income, expected expenses during retirement and interest compounding. Further, each individual will have his or her own notions about the definition of an "adequate retirement income."

In selecting investment options, the fiduciary should keep in mind the impact of these variables, as well as the experience and education levels of employees concerning investments, savings and retirement planning. For example, the potential impact of inflation on investing for retirement might be assessed by the fiduciary as he/she determines what investment options will be offered under the plan. The fiduciary may wish to make available growth-oriented investment options that seek to provide returns that potentially could exceed the inflation rate.

In addition, the fiduciary should consider the relationship between risk and return (see "What are the risk/return considerations on page 4?").

[1] 29 U.S.C. § 1112, ERISA § 412.

Investment Criteria

What investment criteria should be considered?

Most fiduciaries seek to offer an array of investment options that give participants the potential opportunity for an investment return that exceeds the ongoing rate of inflation, the potential to achieve investment returns corresponding to their personal retirement investment objectives and to diversify or to help minimize risk of principal loss.

Consideration of time-tested investment principles, ERISA Section 404(c) conditions, state or federal statutes, employee demographic information and existing investment options, if applicable, should help the fiduciary in establishing criteria for the selection of investment choices for the plan. The fiduciary might come to the following conclusions, to satisfy ERISA Section 404(c) conditions:

- At least three diversified investment alternatives (core funds) with materially different risk/return characteristics should be selected.
- These funds should allow participant access at least once every three months.
- Significant information should be provided regarding all funds selected to permit participants to make informed investment decisions.

The age breakdown of eligible employees and their corresponding investment horizons (years until retirement) may suggest the inclusion of investment option(s) to potentially meet the needs of late-, mid- and/or early-career individuals.

The annual compensation ranges of eligible employees and their contribution patterns point to the inclusion of aggressive, moderate and/or conservative investment option(s), as appropriate, to help meet the needs of all.

What are the risk/return considerations?

One of the fundamental considerations in choosing investment options is the trade-off between potential investment return and potential risk of principal loss. As a general rule, investment options representing asset classes that offer the potential for greater long-term returns also exhibit a higher degree of volatility or risk.

In selecting the investment options to be included as plan selections, the fiduciary should assess the relative risk and potential return associated with each option to make an informed choice among appropriate asset classes and investment options within each asset class. Consideration and care should be given to asset class selection as well as specific fund or security selection.

Retirement objectives, time horizons and risk tolerances will vary among plan participants. Some will accept and seek out high risk in exchange for greater return potential, while others will want to forego higher potential returns for greater principal protection. The plan should offer a diversified selection of investment options from which all participants can choose that satisfy their personal return objectives and risk tolerances.

In addition, the fiduciary may want to receive information that discloses a breakdown of the plan's holdings, particularly those in "risky" securities from time to time. This might include the use of derivative securities, leverage, below investment-grade debt and foreign securities. Investment managers could be scrutinized to determine if they are adhering to their stated investment objectives and are not assuming inappropriate risk.

Participant Communications

Each plan participant's personal investment objectives and risk tolerances are unique and depend upon a variety of factors. Among the factors that each participant must consider in developing an individualized investment strategy are time horizon (number of years until retirement), current savings/contribution level, income needs after retirement, alternative sources of retirement income, attitudes toward risk and personal preferences. Each participant will allocate the assets in his or her account based on individual preferences and desires.

For adequate retirement planning, it is necessary that each participant be able to appropriately assess his or her objectives and make informed decisions about how to best pursue them through the plan's investment options. Informed and educated participant asset allocation is a key ingredient to a successful investment strategy. This can lead to higher contribution and participation rates as employees place a high value on their employer's retirement plan.

Therefore, the fiduciary should make a concerted effort to provide plan participants with educational tools and communication materials to help develop their understanding of investment options and appropriate asset allocation decisions among those options. A variety of media should be considered in delivering information to participants, including personal presentations, written materials, slide presentations, websites and interactive computer software.

These communication efforts should be evaluated by the fiduciary through periodic reviews of the plan participation rate, contribution levels and asset allocation among the available investment options.

Changing plan providers

For an existing plan, the current investment options may provide a guide to the new investment menu when changing investment providers. When a new investment provider is selected, and assets are to be transferred to new investment options, the fiduciary should consider selecting new options with similar investment objectives and management styles.

Transferring assets to different investment options calls for consideration of the investment fund policies, restrictions and fees. The overall program should be more beneficial when new investment providers are selected and assets are transferred to new investment options. Differences between the former investment plan and the new one should be clearly communicated and explained to participants. If the investment options available under the plan do not represent enough asset classes or investment styles along the risk/return spectrum to meet the needs of plan participants, others should be considered to provide a more comprehensive selection.

Blackouts, which are periods of time when restrictions are placed on participants' ability to execute account transactions, may be imposed for many reasons, including a change in plan administrator, a merger or acquisition, or system maintenance.

In the case of a transfer of records between service providers, a blackout allows the new provider sufficient time to balance accounts and make sure all fund choices are invested in accordance with directions received from the plan sponsor and participants.

What selection criteria should a fiduciary consider?

The fiduciary may wish to evaluate investments on the basis of certain selection criteria before a final decision is made. Many fiduciaries consider past performance a key factor in evaluating investment options, although past performance is not a guarantee of future results.

In general, the periods selected in measuring the performance of investments are at least three- and five-year periods, as well as ten-year periods, where available. Certainly, more frequent review of performance is appropriate given the long-term nature of participants' retirement savings and investment horizons.

Therefore, the fiduciary should be prepared to monitor and assess the performance of selected investment options over time. In so doing, one part of the fiduciary's evaluation might be a comparison of the investments against a recognized benchmark or market index as well as a ranking of the performance of the investment fund within a competitive universe of similarly managed funds.

At least annually, the fiduciary might wish to evaluate the three-, five- and ten-year performance of each investment option as compared to its respective benchmark index (e.g., the Standard & Poor's 500)[1] and competitive universe of funds with similar investment objectives.

A fiduciary might wish to set standards for each investment option, such as:

- It should meet or exceed its respective market benchmark over the three-, five- and ten-year periods; and it should perform in the top 50 percent of its competitive universe over those same time periods.

This is a sample of some common performance standards, and different standards or additional criteria may be appropriate for each particular retirement plan. In addition to performance, other quantitative and qualitative criteria should also be considered, such as:

- Risk measures
- Risk-adjusted returns
- Consistency of management style to stated investment objectives
- Investment expenses versus the average for similar funds
- Investment manager tenure and stability of the investment management firm

This list is by no means exhaustive, but representative of standards used by plan fiduciaries.

Performance Evaluation of Selected Investment Options

After consideration of these matters, as well as other relevant issues, the fiduciary might choose:

- A selection of asset classes that meets the broad needs of the work force; and
- A selection of investment options within each asset class that exhibits the qualitative and quantitative criteria desired.

[1] The Standard & Poor's (S&P) 500 Index is an unmanaged group of stocks considered to be representative of the stock market in general. The S&P returns assume reinvestment of all dividends and do not reflect the portfolio of any specific investment.

Fee Disclosure

What are the fee disclosure requirements for service providers?

The Department of Labor (DOL) has issued regulations requiring the disclosure of fees and expenses by service providers to plan fiduciaries. These regulations are intended to help the plan fiduciary determine whether the fees paid for such services are reasonable. The final regulation, under ERISA Section 408(b)(2), was published in February 2012.

This regulation requires disclosure of certain service provider's fees and compensation before the plan's fiduciaries cause the plan to enter into an arrangement or contract with the service provider, and require updates whenever a change to the previously disclosed information occurs. These required disclosures are intended to aid plan fiduciaries in assessing the services and related costs charged to a plan by the plan's service providers.

Under ERISA's prohibited transactions rules, services may not be provided to a plan by a service provider unless the arrangement for those services complies with the conditions found in ERISA 408(b)(2).

Generally three conditions apply:

1. The services must be necessary for the establishment and operation of the plan
2. No more than reasonable compensation can be paid for the services
3. The services must be provided pursuant to a "reasonable arrangement"

Under the regulation, arrangements with recordkeepers, fiduciary services providers and certain other "covered service providers" will be considered "reasonable" within the meaning of the 408(b)(2) exemption only if written disclosures are furnished to the responsible plan fiduciary describing the services to be provided and detailing the direct and indirect compensation that the service provider reasonably expects to receive in connection with its provision of services to the plan.

The 408(b)(2) final regulation was effective July 1, 2012 and applies to pension plans including 401(k) and 401(a) defined contribution and defined benefit plans, as well as ERISA 403(b) plans. However, the final regulation excludes certain 403(b) annuity contracts and custodial accounts that were issued before January 1, 2009.

A "covered service provider" is one that reasonably expects to receive $1,000 or more of direct or indirect compensation for providing certain fiduciary or registered investment advisor services, recordkeeping or brokerage services and other services for which indirect compensation will be received (e.g., accounting, auditing, actuarial, appraisal, banking, consulting, third party administration, etc.).

General Disclosure Requirements

A covered service provider must disclose in writing to the fiduciary of the covered plan, certain information regarding the services to be provided and the direct or indirect compensation to be received for those services. The service provider must make the disclosure prior to its engagement with the plan and whenever a change in the information provided occurs.

Self-Directed Brokerage Account

A Self-Directed Brokerage Account (SDBA), where a plan participant has the ability to self-direct investments into a very large selection of mutual funds and/or individual securities, presents its own set of issues for fiduciaries.

SDBAs may be suitable for the more experienced and sophisticated investor and, as a result, the fiduciary should carefully evaluate whether the SDBA fits within the plan's overall investment policy and the level of participant sophistication and risk tolerance. Also, the fiduciary must exercise the same care and prudence in electing to offer a SDBA with its wide range of investment options.

Employer stock

Offering employer stock as an investment option raises a unique set of issues, including suitability, diversification and cost. A plan fiduciary should consider whether employer stock meets the plan's investment objectives and criteria for selection of investment options.

Also, since employer stock is undiversified, the plan fiduciary should consider what other options are available to ensure adequate diversification within the equity asset class and among other asset classes.

Administration of the employer stock account may trigger additional costs, particularly if the plan intends to comply with the 404(c) regulation.

Finally, adding employer stock may trigger securities law requirements for registration of the plan and guarding against insider trading that would add to the costs of administering the plan.

Voya is Committed to Helping You Manage Your Plan

Voya's industry leadership in fee transparency enables us to meet the service provider fee disclosure requirements, as well as assist you in disclosing plan and investment expenses to your participants.

We will provide support to help you navigate today's regulatory landscape and motivate your participants to take full advantage of your plan's benefits.

What are the requirements for participant fee disclosure?

Participant fee disclosure regulations expand ERISA Section 404(a) fiduciary duties of loyalty and prudence to include an obligation that plan fiduciaries make certain disclosures about the plan and the plan's investment options, including fee and expense and performance information. Plan sponsors or other fiduciaries responsible for plan administration will be obligated to see that participants receive regular disclosures – some annual and some quarterly – of information intended to support informed decision making with regard to the management of their individual accounts.

The regulations apply to participants and beneficiaries in ERISA participant-directed defined contribution plans.

What are the required disclosures?

The information that must be provided includes:

- General plan related disclosures
- Investment related disclosures in a chart or similar format designed to facilitate and encourage easy comparisons of the alternatives by participants

In providing the information, plan administrators are permitted to rely in good faith on information prepared by a plan service provider or the issuer of a designated investment alternative, and will not be liable for the completeness and accuracy of that information.

Generally, these disclosures are required to be provided on or before the date a participant or beneficiary is eligible to direct his or her investments for the first time and at least annually thereafter. However, information regarding fees actually deducted from participant accounts must be reported quarterly. A description of any change to information contained in the general plan related disclosures (even if it is not a material change) must generally be provided between 30 and 90 days in advance of the effective date of the change.

ERISA 404(c)

ERISA Section 404(c) compliance

A fiduciary may wish to design the plan to meet the requirements of Section 404(c) of ERISA. Under this provision, if a plan permits a participant to exercise control over the assets in his or her own account and the participant exercises such control (within the meaning of ERISA in both cases), the plan fiduciary will not be liable for investment losses or breaches of fiduciary responsibility that are the direct result of the participant's exercise of independent control over his or her account (assuming all other ERISA fiduciary requirements are met).

Plans that are crafted to take advantage of this provision must meet the requirements of the Section 404(c) regulations that, among other things, include the following general conditions:

- The plan must be designed with individually allocated accounts.
- The plan must offer participants a range of investments; that is, at least three investment alternatives, each of which is diversified and has materially different risk/return characteristics. These are the three "core" funds. The core funds, along with the other plan investment options, should provide the opportunity for each participant to sufficiently diversify his or her account to create a portfolio that helps minimize the risk of large losses, but can potentially achieve return and risk characteristics that are "normally appropriate" for that individual. (Note that a plan's SDBA, if available, may not qualify as a core investment option because of the limits on transfers and the degree of diversification of investment options themselves within the account.)
- Certain information must be provided automatically to participants and other information must be supplied upon request so participants can make informed investment decisions. (See Addendum A for further explanation of the relevant Section 404(c) information.)
- Participants must be able to exercise control over the assets in their individual accounts. This means that plan participants are able to give contributions and transfer instructions with respect to any plan investment alternative as often as required "in light of the market volatility of that alternative." The three core options must allow access at least once every three months.

Addendum A

404(c) required information for plan participants

The following information is required to be provided by the plan fiduciary to each plan participant (or beneficiary, if applicable).

1. An explanation that the plan intends to constitute an ERISA 404(c) plan, as described in the regulation, and that fiduciaries of the plan may be relieved of liability for any losses that are the direct and necessary result of investment instructions given by the participant.
2. The information required pursuant to the participant fee disclosure regulation.
3. In the case of plans that offer employer stock or other employer securities as an investment alternative, a description of the procedures established to provide for the confidentiality of information relating to such investments by participants and the identification of the plan fiduciary responsible for monitoring compliance with those procedures.

This brochure provides an overview of the issues and considerations a fiduciary faces in selecting investment options for the plan. Investment selection and evaluation are challenging processes and are endeavors that continue over the life of the plan. As a result, the fiduciary should seek information about investment concepts, participant needs, investment performance and other relevant matters on an ongoing basis.

The purpose of this guide is to provide you with a framework for carrying out your fiduciary duties surrounding the investment responsibilities of your retirement plan. This material is not intended to provide legal, investment or tax advice. Your attorney or tax advisor should be consulted on all such decisions.

A Summary of Fiduciary Responsibilities

- Thoroughly evaluate the characteristics of plan participants: age, plan retirement age, existing contribution and investment patterns, income levels, risk tolerance, etc.
- Develop a portfolio of investment choices that seeks to help meet the needs of all participants.
- Evaluate the administrative costs and complexity of the plan. This may influence the number of investment options chosen across asset classes and investment styles. However, consider at least one option in each asset category. Note that the SDBA may not qualify as a core investment option depending on any limitations on the types of investments that can be made through the account or on transfers between options.
- Determine the criteria for investment option selection (investment objectives, management style, risk performance, fees, etc).
- Document selection criteria and asset allocation framework in an Investment Policy Statement.
- Determine the relative attractiveness of each investment option by asset class and select the ones that meet your plan participants' objectives and are consistent with your selection criteria.
- Document the investment funds selected.
- Use documentation to generate annual review discussions about investment performance and plan objectives with your investment professional.

For more information please contact your financial professional.

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