

Defined Contribution Plan Fiduciary Guide



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Your Fiduciary Responsibilities



A Guide for Plan Sponsors

As a plan sponsor, you've already fulfilled an important responsibility. You've established a retirement plan to help employees prepare for a secure financial future.

You believe that your plan is a significant benefit that can help attract and retain talented employees. And you care deeply about how your plan is progressing—whether it's attracting maximum participation among employees, whether participants are contributing as much as they can and whether investment options are performing up to expectation.

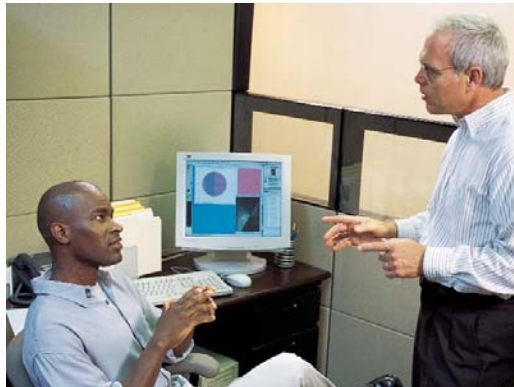
The Employee Retirement Income Security Act (ERISA), however, contains a number of rules and guidelines that may not be familiar to you. In fact, according to a recent survey conducted by plansponsor.com¹, concerns about fiduciary liability have become the biggest concern of plan sponsors in today's environment.

Fortunately, fiduciary responsibilities can be manageable with the right support. This guide has been prepared to help you understand what's expected of you and suggestions about how you may meet them.

¹ Plan Sponsor CapTrust Survey, February 2005.

Fiduciary Responsibility under ERISA

As someone with fiduciary responsibilities, you may know that retirement plans are subject to numerous rules and regulations under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA was designed to protect the rights of retirement plan participants and created a comprehensive set of fiduciary standards. These standards apply to individuals involved in the administration of retirement plans, as well as the managing and overseeing of plan assets.



While many types of retirement plans exist today, most plans are generally categorized as either defined contribution or defined benefit plans. Both defined contribution and defined benefit plans are subject to the rules and regulations of ERISA, including the fiduciary standard requirements. Many aspects of this guide apply to both types of plans; however, much of the guide is focused on defined contribution, employee-directed plans, such as 401(k) plans.²

- Regularly renders individualized investment advice to the Plan pursuant to a mutual agreement or understanding that such advice will serve as a primary basis for Plan investment decisions, or has any authority or responsibility to do so, or
- has discretionary authority or responsibility in the administration of a retirement plan.

UBS Financial Services Inc. and its Financial Advisors do not act as fiduciaries to your Plan unless otherwise agreed in a written contract under a UBS investment advisory program.

Who Is a Fiduciary?

Under ERISA, a fiduciary is anyone who:

- Exercises discretionary authority or discretionary control over the management of a retirement plan (“Plan”) or exercises any authority or control over the management or disposition of Plan assets

It is important to note that being a fiduciary does not necessarily depend on whether an individual holds a particular title or office. While certain fiduciaries are appointed in the Plan document (referred to as “named fiduciaries”), any person or entity who acts in a fiduciary role will be subject to the same requirements of ERISA.

² This Fiduciary Guide and the accompanying enclosures and binder are not intended as, and do not constitute, legal advice. This Fiduciary Guide provides a general description of the rules applicable to a fiduciary under ERISA. Fiduciaries are urged to seek the advice of their attorneys as to their precise duties, responsibilities and liabilities in specific situations.

Many plan fiduciaries are company employees, such as officers and members of various committees, typically an administrative or investment committee. Administrative committee members have certain discretionary responsibility to administer the Plan (e.g., oversee plan eligibility decisions and benefit calculations), whereas investment committee members exercise control over Plan assets (e.g., adopt and maintain the investment policy, select available investment options, periodically review and evaluate investment results, as well as make decisions to add, remove or replace the Plan's available investment options when necessary). These committees can be separate or one in the same and may also be referred to as the benefits committee. In contrast, company employees who merely carry out non-discretionary day-to-day plan administration (e.g., processing employee election forms or preparing employee communications) are not considered fiduciaries.

Finally, certain individuals outside the company (e.g., the plan trustee and investment managers) who have control over Plan investment decisions will also be considered fiduciaries under ERISA. However, most outside parties who provide services to a plan will not be considered fiduciaries. For example, third-party recordkeepers, brokers, financial advisors, actuaries, accountants and attorneys who may provide general advice or guidance, but do not have or exercise discretion or responsibility in the management or administration of a plan, are typically not fiduciaries.

Business Decisions vs. Fiduciary Decisions

Often, company employees who are responsible for making business decisions concerning the retirement plan are the same individuals who serve as plan fiduciaries. However, this does not mean that every decision they make regarding one of the plans involves exercising their fiduciary function. ERISA distinguishes between these types of decisions as those made by an individual on behalf of the business as opposed to decisions made by this same person in their role as a fiduciary.

Settlor Decisions vs. Fiduciary Decisions

Business decisions made by a person concerning a plan are often referred to as "settlor" decisions and are not subject to ERISA's fiduciary standards. For example, the decisions to establish a plan, change the benefits offered under a plan, or terminate a plan are all "settlor" decisions and are therefore not subject to ERISA. On the other hand, decisions such as hiring service providers or adding/modifying investment options are fiduciary decisions that must be made in accordance with ERISA standards.

Not all decisions fall easily into categories. For example, if a decision to provide increased benefits (e.g., an early retirement window) under a plan is implemented in a manner that disadvantages certain employees, it may be considered a breach of fiduciary duty. This is an example of how the manner in which settlor decisions are carried out may be subject to ERISA's fiduciary requirements.

What Are the Duties of an ERISA Fiduciary?

ERISA establishes fiduciary responsibilities in the form of five principle rules that govern fiduciary actions and conduct. Failure to follow these principles may subject the fiduciary to personal liability, both civil and criminal. Legal actions for breaches of fiduciary duty may be brought by participants, beneficiaries, the Department of Labor or other fiduciaries.

These rules are:

Duty of Loyalty

A fiduciary must discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries.

This fundamental requirement, often referred to as the “duty of loyalty,” requires a fiduciary to act with undivided loyalty to plan participants and beneficiaries. A plan fiduciary may never place his or her own interests, the interests of the plan sponsor or any other person ahead of what is in the best interest of plan participants and beneficiaries. In addition, fiduciaries must avoid placing themselves in positions that will compromise their ability to act with complete loyalty to plan participants and beneficiaries.

Many of the legal cases involving the duty of loyalty concern the investment of Plan assets in a way that provides incidental benefits to the fiduciary or plan sponsor. For example, the duty of loyalty is violated if Plan assets are invested in a manner that generates fees for the fiduciary or reduces the cost of a company loan.

However, not every incidental benefit will result in a fiduciary breach. It depends on the particular facts and circumstances. The courts and the Department of Labor have repeatedly indicated that fiduciaries may take actions that provide incidental benefits, but only if the fiduciary concludes after a careful and objective investigation that these actions are in fact in the best interest of the plan participants and beneficiaries.

Exclusive Benefit Rule

A fiduciary must discharge his or her duties with respect to a plan for the exclusive purposes of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan.

The exclusive benefit rule is closely tied to the duty of loyalty, as previously described. While the duty of loyalty prevents a fiduciary from engaging in actions that involve a conflict of interest or self-dealing, the exclusive purpose rule prevents a fiduciary from favoring the interest of a third party.

This rule requires that plan fiduciaries operate the plan for the exclusive purpose of providing retirement benefits to participants and their beneficiaries. For example, the payment of “excessive” compensation to a trustee violates the exclusive purpose rule. Likewise, the use of Plan assets for corporate purposes will violate this rule, such as investing Plan assets in a company that is commonly owned with the company sponsoring the Plan.

Additionally, using Plan assets to pay Plan expenses is a fiduciary act. Accordingly, fiduciaries must determine that such expenses are reasonable, properly attributable to plan administration and not “settlor” decisions and are permitted to be paid under the terms of the Plan document. For example, the cost of employee communications, such as the summary plan description, may generally be paid with Plan assets. In contrast, expenses related to a plan redesign or conducting union negotiations are generally considered “settlor” costs and may not be paid from the plan.

Duty of Prudence

A fiduciary must discharge his or her duties with respect to a plan with the care, skill, prudence, and diligence that under the circumstances a prudent person, acting in a like capacity and familiar with such matters, would use.

The duty of prudence is a requirement that applies to all fiduciary actions. It requires a fiduciary to act not only as a reasonable person, but also as a person familiar with relevant matters. The courts have stated that ERISA does not require plan fiduciaries to be experts in all phases of plan administration, but it does encourage fiduciaries to seek the advice of qualified experts.

The majority of the cases dealing with the duty of prudence involve plan investment decisions. Almost uniformly, the courts have determined that satisfying the duty of prudence is an issue of procedure (see “Procedural Prudence” on page 9) and that it is a flexible standard that may

vary depending upon the circumstances involved. For example, when a fiduciary evaluates the investment options offered in the Plan, it is essential to carefully and objectively evaluate the merits of each investment option in order to comply with the duty of prudence.

Duty of Diversification

A fiduciary must discharge his or her duties with respect to a plan by diversifying the investments of the plan so as to minimize the risk of large losses.

Under ERISA, proper diversification is not defined as a fixed percentage allocation. It depends on the particular circumstances of each case. This rule was designed to avoid a concentration of Plan assets in a single security or single type of security. Although the courts have failed to agree upon a uniform standard, a large percentage of Plan assets invested in a single investment will certainly raise issues that the Plan may have failed to properly diversify.

The issue of diversification is very often linked to the issue of prudence. Plan investment approaches that fail to satisfy the diversification requirement are very often found to violate the duty of prudence as well.

Duty to Act in Accordance with Plan Documents

A fiduciary must discharge his or her duties with respect to a plan in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of ERISA.

The duty to act in accordance with Plan documents is relatively straightforward. Plan documents usually contain provisions regarding eligibility, vesting, benefit amounts and so on. Provided such provisions do not violate ERISA, fiduciaries must administer the Plan in a manner consistent with such provisions. However, what actually constitutes the “plan documents” can be unclear at times and create some gray areas.

For example, if a summary plan description is inconsistent with the basic Plan document, which provision should the fiduciary follow? The courts have not provided a clear answer to these types of questions, which highlights the necessity for careful and consistent preparation of all documents related to the Plan.

Examples of Fiduciary Actions (Exercising Your Fiduciary Responsibilities)

Selecting and Monitoring a Service Provider

The selection of a service provider to a plan (e.g., administrator, recordkeeper, trustee or broker) is a fiduciary act. Thus, a fiduciary’s choice of a service provider must be made solely in the interest of the participants and beneficiaries (duty of

loyalty) and must not take into account other considerations (e.g., business relationships of the plan sponsor). In addition, the fiduciary’s decision must be made for the exclusive purposes of providing benefits to participants and beneficiaries (exclusive purpose rule) and in accordance with the documents and instruments governing the Plan (duty to act in accordance with Plan documents).

The duty that is perhaps most important in selecting a service provider is the duty of prudence. In selecting a service provider, a fiduciary must act with the care, skill and diligence that a prudent person acting in such a matter would use. For example, a prudent person would be likely to first evaluate and determine the necessary services to satisfy the needs of the Plan, and then review the available options. The areas of examination will be different depending on the type of plan. Some examples of issues to consider are:

- The fee structure (both hard dollar and asset based)
- Fees or deferred sales charges for early termination of the services
- Any applicable start-up/transfer fees
- The type of assistance provided and level of services, e.g.:
 - Assistance in monitoring plan investments
 - Assistance in plan enrollments
 - Assistance in participant education

In making a decision, the fiduciary should consider all of the information he or she receives, weigh the advantages and disadvantages of each particular service provider and be guided by the duties of ERISA. While fees and costs are important considerations, for instance, they are not

the only factor. Selecting the least costly service provider may not be a prudent decision if the provided services are of an inferior quality.

Once a service provider is selected, the fiduciary must monitor the provider's performance. This usually means establishing and following a formal review process at reasonable intervals to determine whether ongoing retention of the service provider is prudent. This process may include, for example, reviewing the service provider's general performance, reviewing reports and reviewing actual fees charged. By failing to monitor the service provider and, as a result, retaining the provider when it is no longer prudent to do so, the fiduciary risks being personally liable for the losses caused by that service provider.

It is important to be aware that the Department of Labor and the courts determine whether a fiduciary has acted prudently by looking at the decision-making process the fiduciary followed when making a particular decision. Therefore, in choosing and monitoring a service provider, fiduciaries should carefully document the decision-making process and maintain records related to this process. This information will be invaluable should the fiduciary's choice of service provider ever be questioned.

Reviewing and evaluating multiple providers can be a complicated process. Your UBS Financial Advisor can help you review various service providers and the features and services available. He or she can also help you understand the various costs and expenses connected with each program. Depending on your needs, we can provide this type of support through both our brokerage and advisory services.



Choosing and Monitoring Investment Options

The selection of a plan's investment options is also a fiduciary act. Under ERISA's requirements, the fiduciary must choose the Plan investments solely in the interest of the participants and beneficiaries, for the exclusive purposes of providing benefits to participants and their beneficiaries and in accordance with the documents and instruments governing the Plan.

In addition, the fiduciary must diversify the Plan investments to minimize the risk of large losses and must select those investments using the care, skill and diligence that a prudent person, acting in such a matter, would.

Selection

In selecting investment options, a fiduciary should identify investments that will target different risk/reward levels. Information on all of these investments should be gathered and reviewed. In the case of mutual funds or separate accounts, for example, prospectuses, government filings and information about the funds' advisors should be gathered.

A fiduciary will want to weigh many factors before making final choices. For example, a fiduciary may select only investment options that adhere to a stated objective and investment style or that have an average annual return that exceeds a pre-determined benchmark for some period of time. The fiduciary may also consider the reports from different rating services. Finally, fees and costs should also be reviewed, remembering that fees can have a large effect on net investment performance.

Monitoring

Once the initial investment options are chosen and implemented, the fiduciary has a duty to monitor the selected investments on a periodic basis. A fiduciary will want to consider some or all of the same factors used in making its initial selections, including fees, performance and ratings.

Even though a given investment option may have at one time been the prudent choice, if it becomes apparent during the monitoring process that the fund is no longer a prudent investment choice, the fiduciary should take steps to remove that option from the Plan.

In all cases, a fiduciary should be careful to document any decisions made with respect to choosing and monitoring investment options.

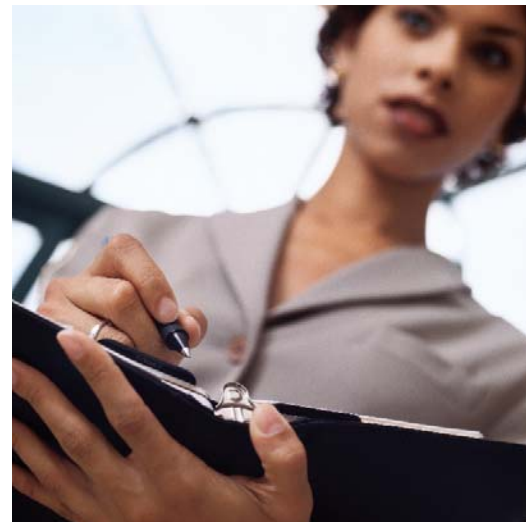
Your UBS Financial Advisor can offer assistance with reviewing the investment options in your qualified retirement plan and providing performance updates.

Liability for Breaches of Fiduciary Duty

Failure to comply with ERISA's fiduciary standards may subject the fiduciary to personal liability, both civil and criminal. Legal actions for breaches of fiduciary duty may be brought by participants, beneficiaries, the Department of Labor or other fiduciaries.

Under ERISA, a fiduciary that breaches his or her duties to a plan may be required to:

- Make good to the Plan any losses resulting from such breach
- Restore to the Plan any profits made by the fiduciary through the use of Plan assets
- Step down as a fiduciary and provide such other relief as a court may deem appropriate



The Department of Labor may also impose a 20 percent penalty on any amount that a fiduciary is required to pay due to a breach of fiduciary duty.

In addition to monetary penalties, a fiduciary who is convicted of willfully violating his or her fiduciary duties may be imprisoned for up to 10 years and fined up to \$100,000.

Co-Fiduciary Liability

Fiduciaries should be aware that they are also potentially liable for the actions of other fiduciaries (called co-fiduciaries). The primary objective of the co-fiduciary rule is to cause fiduciaries to monitor the actions of their co-fiduciaries and prevent breaches of duty.

Under this rule, if the fiduciary knowingly participates in or conceals a co-fiduciary's breach of fiduciary duty, the fiduciary is liable. Similarly, a fiduciary may be liable if a fiduciary knows of a breach and does not make reasonable efforts under the circumstances to remedy it. The fiduciary must also know that the other person is in fact a co-fiduciary and must know that he or she participated in an act that constituted a breach.

Minimizing a Fiduciary's Exposure to Liability

Complying with the fiduciary standards of ERISA can be a complex task. However, failure to comply is an unacceptable alternative that may lead to adverse economic consequences, criminal

penalties and costly litigation. While it may not be possible to prevent every claim of a fiduciary breach, there are certainly steps that a fiduciary can take to minimize the risk.

Procedural Prudence

As described in previous sections, the duty of prudence is a guiding principle of ERISA that impacts all fiduciary actions. In determining whether a fiduciary has satisfied the duty of prudence under ERISA, the Department of Labor and the courts have focused upon the decision-making process used by fiduciaries. The prudence standard has been determined to be an objective standard that requires a fiduciary to:

- Perform proper methods of investigation
- Give appropriate consideration to the relevant facts and circumstances
- Act in a manner consistent with others who are familiar with such matters
- Exercise independent judgment when making a decision

The Department of Labor and the courts do not want to "second guess" prudent fiduciary decisions. The courts have recognized that even the most carefully evaluated matters may not result in success and that fiduciaries are not insurers of success. Therefore, by engaging in a thorough and deliberative process that results in an informed and reasoned decision, the fiduciary can limit his or her exposure to liability under ERISA.

Delegate Duties

Many fiduciaries, especially company employees, may not have the expertise necessary to carry out their fiduciary duties. Therefore, ERISA permits a fiduciary to delegate some fiduciary responsibilities to other persons, provided such delegation is permitted by the Plan document.

The delegation of fiduciary responsibility is in itself a fiduciary act that must be carried out in accordance with ERISA's fiduciary standards. On the other hand, if a proper delegation has been made, the fiduciary will not be liable for the acts or omissions of the person to whom fiduciary duties have been delegated.

A fiduciary's responsibilities do not end with proper delegation. He or she will have an ongoing responsibility to monitor the person to whom fiduciary duties have been delegated. The fiduciary has the duty to determine on a regular basis if such delegation continues to be prudent. The requirement to monitor the delegate's performance may be satisfied by a formal periodic review or day-to-day contact and evolution. An effective review process requires the ability to terminate the delegation. Therefore, a fiduciary who elects to delegate responsibilities should enter into arrangements that allow them to terminate on relatively short notice.

ERISA 404(c)

Another way to limit fiduciary liability, which applies to defined contribution plans (e.g., 401(k) and profit sharing plans), is to give plan participants control over the investments in their accounts. Under Section 404(c) of ERISA ("Section 404(c)"), a plan fiduciary may be relieved of fiduciary liability for investment decisions if they comply with certain rules.

Although compliance with Section 404(c) is voluntary, it is required if the Plan fiduciaries wish to take advantage of this protection. Furthermore, Section 404(c) does not relieve plan fiduciaries of all their fiduciary duties with respect to the Plan's investments. For example, Plan fiduciaries responsible for selecting the Plan's investment options must do so in a prudent manner and must monitor those investment options to assure that they continue to be appropriate.

The requirements to be an "ERISA Section 404(c) Plan" are set forth in Department of Labor regulations and are quite extensive. Section 404(c) is broken down into two core requirements as discussed in further detail below: to offer a broad range of investment alternatives and to provide a meaningful opportunity for participants to exercise control over the assets in their account.

Broad Range of Investment Alternatives

As indicated above, a plan intending to meet the requirements of Section 404(c) of ERISA must provide a broad range of investment alternatives. The investment

alternatives that satisfy the “broad range” requirement are considered a plan’s “core” investment alternatives.

To meet this requirement, participants must have the opportunity to materially affect the potential return and investment risk on the assets in their accounts. This applies to the portion of their accounts that they are able to exercise control over. More specifically, the participants must have the opportunity to:

- Choose from at least three investment alternatives—
 - Each of which is diversified
 - Each of which has materially different risk and return characteristics
 - All of which, in the aggregate, enable participants to achieve a portfolio with risk and return characteristics that are appropriate for them
- Diversify the investment of their accounts so as to minimize the risk of large losses

Opportunity To Exercise Control

Provide participants with a meaningful opportunity to exercise control over the assets in his or her account.

To satisfy this requirement, the participant must have a reasonable opportunity to give investment instructions to a party who is obligated to comply with these instructions. In addition, the participant must have the opportunity to obtain sufficient information to make informed decisions about the investment options available under the Plan.

A participant will not be considered to have sufficient investment information unless he or she is provided with:

- An explanation that the Plan is intended to comply with Section 404(c) of ERISA
- An explanation that the plan fiduciaries may be relieved of liability for any losses that result from the participant’s investment instructions
- A description of the investment alternatives available under the Plan, including a general description of the investment objectives and risk and return characteristics of each such alternative
- Identification of any designated investment managers
- An explanation of how a participant may give investment instructions and an explanation of any limitations on such instructions (e.g., restrictions on transfers to or from a designated investment alternative) and any restrictions on the exercise of voting, tender and similar rights
- A description of any transaction fees and expenses which affect the participant’s account (e.g., commissions, sales loads, deferred sales charges, redemption or exchange fees)
- For plans with employer stock, a description of the procedures established to provide for the confidentiality of information relating to the purchase, holding, sale, voting and tender of employer stock and the name of the plan fiduciary responsible for monitoring compliance with such procedures



- With respect to an initial investment in publicly traded stock, bond or mutual fund, a copy of the most recent prospectus for the security provided to the Plan
- All materials related to the voting, tender and similar rights related to securities held in the participant's account to the extent such rights are passed through to participants under the Plan

In addition, the Plan must provide any of the following information upon request and identify to participants the name of the fiduciary who will be responsible for its dissemination.

- A description of the annual operating expenses of each investment alternative
- Copies of any prospectuses, financial statements and other materials relating to the investment alternative
- A list of the assets that comprise each investment alternative and the value of each such asset

- Information concerning the value of shares or units in the available investment alternatives
- Information regarding past and current investment performance of each investment alternative
- Investment instruction confirmations

A plan does not fail to provide participants an opportunity to exercise control over their individual accounts merely because it imposes charges for reasonable expenses, permits a fiduciary to decline to implement investment instructions that would result in a prohibited transaction (see Prohibited Transaction Section on page 13), or imposes reasonable restrictions on frequency of investment instructions.

In order for restrictions on the frequency of investment instructions to be reasonable, participants must be allowed to give investment instructions in a frequency that is appropriate in light of the expected market volatility for each investment offered. The regulations further provide that:

- At least three of a plan's "core" investment alternatives must permit participants to give investment instructions at least once within any three month period
- If the Plan permits any of its non-core investments to be exchanged more frequently than once every three months, then at least one of the Plan's core investments must accept these transfers at the same frequency—otherwise, there must be a low-risk, liquid investment (e.g., a money market fund) available to hold these funds until the core investments can accept the transfers

Although the Section 404(c) rules discussed on the previous page basically require transfers to be at least as frequent as once every three months, most service providers in today's environment offer daily transfer capabilities. To help you in your efforts to comply with the extensive rule of Section 404(c), we have included a comprehensive checklist located in the fiduciary tool kit.

Insurance

Fiduciary Liability Insurance

According to ERISA, any agreement that attempts to relieve a fiduciary of either his or her responsibility or liability under ERISA's fiduciary rules and duties will not be considered a legally valid agreement. In other words, plan fiduciaries cannot eliminate the liability that comes along with being a plan fiduciary. However, this does not prohibit a plan from purchasing insurance to cover liability or losses resulting from a fiduciary's acts or omissions, provided the fiduciary continues to remain liable for a breach of their fiduciary obligations.

This type of insurance is commonly known as "fiduciary liability insurance." ERISA fiduciary insurance is generally available and often purchased by the employer as a rider or in connection with directors and officers insurance to protect employees who serve as plan fiduciaries.

Bonding

In addition, ERISA requires that every fiduciary of an employee benefit plan and every individual who handles Plan assets must be bonded. The "handling of Plan assets" applies to individuals who authorize and direct other individuals who handle plan assets as well as those who are in physical contact with Plan assets.

The bond is a form of insurance that will reimburse the Plan for dishonest acts of these individuals. For example, the insurance will cover situations where an office employee responsible for collecting payroll withholdings and forwarding them to the Plan's 401(k) custodian uses the funds for their own benefit and subsequently cannot be located, or where a plan fiduciary withdraws funds for a personal loan and is not able to repay the loan.

The amount of the bond is determined at the beginning of each year and must not be less than ten percent of the amount of the Plan assets handled by the fiduciary. However, the amount of the bond may not be less than \$1,000 and need not be more than \$500,000. Certain types of service providers may be exempt from this requirement, but generally all plan sponsors must be covered.

Prohibited Transactions

The prohibited transaction rules are extremely broad. Absent a statutory or other exemption (discussed below), many transactions between a plan and parties related to the Plan are expressly prohibited, even if such transaction benefited the Plan. There are three general kinds of prohibited transactions:

1. Party in Interest Transactions

A fiduciary may not cause a plan to engage in certain "prohibited transactions" with a "party in interest." A party in interest includes, among others, plan fiduciaries, the employer or its affiliates, any union and service providers. The term "prohibited transaction" includes:

- Any sale, exchange or leasing of any property between the Plan and a party in interest
- Lending of money or other extension of credit between the Plan and a party in interest
- Furnishing goods, services or facilities between the Plan and a party in interest
- Transfer to, or use by or for the benefit of, a party in interest, of any assets of a plan
- Causing a plan to acquire and to retain employer securities or employer real property in violation of ERISA

2. Self-Dealing and Conflict of Interest Transactions

In addition to the fiduciary standards discussed earlier, such as ERISA's prudence, exclusive benefit and other fiduciary duties, the plan fiduciary is specifically prohibited from the following transactions:

- Dealing with Plan assets in its own interest or for its own account or that of one of its affiliates (referred to as "self-dealing")
- Acting in any transaction involving Plan assets on behalf of a party whose interests are adverse to the interests of the Plan or of the participants or beneficiaries of the Plan
- Receiving any consideration for its own account from any party dealing with the Plan in connection with a transaction involving plan assets

The statutory and administrative exemptions covered under ERISA that apply to party-in-interest transactions (described on page 13) normally will not extend to conflict-of-interest situations.

3. Employer Securities and Employer Real Property

ERISA prohibits a plan from acquiring or holding employer securities or employer real property in certain circumstances. In general, a plan is prohibited from acquiring these "employer-related" investments unless they are considered "qualifying" employer securities or real property. (Your plan's attorney can advise you whether particular securities or real property will qualify.) In addition, the value of the securities or real property may not exceed 10% of the total fair market value of the Plan's assets unless the Plan is an "individual account plan" (e.g., 401(k) or profit sharing plan).

In the case of an individual account plan, the Plan document must explicitly allow for the acquisition and holding of such property, and provide that the plan may invest in excess of 10% of its assets in employer securities or real property.

Consequences of Prohibited Transactions

Under ERISA, a civil penalty can be imposed on a fiduciary who violates the prohibited transaction provisions discussed above. The amount of the penalty is equal to 20% of the amount recovered in a settlement or judicial proceeding. Furthermore, fiduciaries will also be subject to federal income tax penalties on prohibited transactions. In certain circumstances, a waiver or reduction of this civil penalty may be permitted.

Prohibited Transaction Exemptions

There are a number of exemptions in ERISA that provide protections for the Plan when conducting necessary transactions that would otherwise be considered a prohibited transaction. The Department of Labor may grant additional administrative exemptions that allow plans to engage in transactions that would otherwise be prohibited, but only if the transaction would be in the interests of the Plan and of its participants.

Exemptions are provided in ERISA for many dealings with banks, insurance companies and other financial institutions that are essential to the ongoing operations of the Plan.

Reporting and Disclosure Obligations

There are extensive reporting and disclosure requirements applicable to qualified retirement plans under both ERISA and the Internal Revenue Code. Such requirements mandate disclosure not just to government agencies, (e.g., IRS, DOL) but to plan participants and beneficiaries as well. Failure to comply with such disclosure requirements may result in significant fines and penalties.

A detailed administrative checklist including certain reporting and disclosure obligations can be found in the fiduciary tool kit.

The reporting and disclosure obligations can be divided between annual task (i.e., required on a yearly basis) and event-based task (i.e., required upon the happening of a specific event).

Annual Tasks

Form 5500. Plan administrators are required to file IRS Form 5500 Annual Return/Report on a yearly basis. The Form 5500 reports information about the Plan and its operation, including, for example, information regarding service providers, financial information and insurance information.

Summary Annual Report. Plan administrators must also furnish annually to participants a Summary Annual Report. The Summary Annual Report outlines in narrative form the financial information contained in the Plan's Form 5500.

Form 1099-R. Plan administrators must provide IRS Form 1099-R to participants who have received distributions from the Plan. The Form 1099-R will show such information as the amount of the distribution and the amount of tax withheld. A copy of Form 1099-R must also be filed with the IRS.

Event-Based Tasks

Summary Plan Description. Participants are entitled to receive a copy of the Plan's Summary Plan Description ("SPD") within 90 days after first becoming eligible for the Plan.

The SPD is a plain language explanation of the Plan. It must be written in a manner calculated to be understood by the average plan participant. Thus, an SPD should not contain excessive technical jargon or long, complex sentences. The SPD must be sufficiently comprehensive to reasonably apprise participants of the features of the Plan and their rights and responsibilities under the Plan. Among other things, the SPD must include information about when and how employees become eligible to participate in the Plan, the source of contributions and contribution levels, the vesting period (if any), how to file a claim for those

benefits and a statement of the participant's basic rights and responsibilities under ERISA. SPDs must also be redistributed periodically and provided on request.

Summary of Material Modification.

The Summary of Material Modification (SMM) appries participants and beneficiaries of changes to the Plan or to the information required to be in the Summary Plan Description (SPD). The SMM must be furnished to participants within 210 days after the end of the plan year in which the change was adopted.

Benefit Statements. Participants must be provided with an individual benefit statement that contains information about this account balances and vested benefits. Such statement must be provided when a participant submits a written request, but no more than once in a 12-month period, and automatically to certain participants who have terminated service with the employer. As a "best practice" approach, many plans automatically provide participants with quarterly account statements.

Blackout Notices. A Blackout Period Notice must be provided to affected participants in individual account plans in advance of any blackout period with respect to the Plan. Among other things, this notice must state the reasons for the blackout period, identify the affected investments, identify the expected beginning and end date of the blackout period and include a statement that the participant should evaluate the appropriateness of their current investment decisions in light of their inability to direct their assets during the blackout period. The notice must be provided at least 30 days, but not more than 60 days, before the start of the blackout period.

Preemption of State Law

Generally, ERISA supersedes any provisions of any state law that relates to employee benefit plans. Therefore, fiduciaries of employee benefit plans subject to ERISA generally need not comply with any state law that relates to the Plan. The exceptions to this general rule include state laws relating to insurance, banking or securities. In addition, ERISA does not supersede any other federal laws. For example, ERISA does not supersede any applicable federal securities law.



Speak to your **Financial Advisor** for more information on the tools, services and additional resources we offer to assist you in carrying out your fiduciary responsibilities.

It is important that you understand the ways in which we conduct business and the applicable laws and regulations that govern us. As a firm providing wealth management services to clients in the U.S., we are registered with the U.S. Securities and Exchange Commission (SEC) as an investment adviser and a broker-dealer, offering both investment advisory and brokerage services. Though there are similarities among these services, the investment advisory programs and brokerage accounts we offer are separate and distinct, differ in material ways and are governed by different laws and separate contracts.

It is important that you carefully read the agreements and disclosures that we provide to you about the products or services we offer. While we strive to ensure the nature of our services is clear in the materials we publish, if at any time you seek clarification on the nature of your accounts or the services you receive, please speak with your Financial Advisor or call **201-352-9999**.

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This Fiduciary Guide and the accompanying enclosures and binder are not intended as, and do not constitute, legal advice. This Fiduciary Guide provides a general description of some of the rules applicable to a fiduciary under ERISA. Fiduciaries are urged to seek the advice of their attorneys as to their precise duties, responsibilities and liabilities in specific situations.

Neither UBS Financial Services Inc. nor its employees provide tax or legal advice. You may consult with your legal and/or tax advisors regarding your personal circumstances.

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