

FIDUCIARY BEST PRACTICES

KNOW 'EM. PRACTICE 'EM.

What, or who, is a fiduciary?

The word “fiduciary” is based on the Latin word meaning *to hold something in trust, confidence, or reliance*. A *fiduciary* is a trusted individual or entity, responsible for proper management of a plan, program, or funds. To understand this word in the context of benefit plans, we look to how ERISA¹ defines a fiduciary:

A person using discretion in administering & managing a plan or controlling the plan's assets is a fiduciary to the extent of that discretion or control. Fiduciary status is based on the functions performed for the plan, not just a person's title.

ERISA is the federal regulation that sets minimum standards for both retirement and health & welfare plans in private industry, with the goal of protecting individuals in those plans.

For health & welfare plans, ERISA fiduciaries include plan sponsors and plan administrators. Additionally, persons who *act with discretionary decision making regarding the plan* will likely be considered *functional fiduciaries*, even if unnamed in a plan document or designated as a plan fiduciary.

What are ERISA's fiduciary duties?

The [5 fiduciary responsibilities](#):

1. **Act** solely in the interest of plan participants & their beneficiaries with the exclusive purpose of providing benefits to them;
2. **Perform** duties prudently;
3. **Follow** the plan documents;
4. **Hold** plan assets in trust; and
5. **Pay** only reasonable plan expenses.

What plan decisions are *fiduciary* in nature?

- **Overseeing** the creation, distribution, & maintenance of plan documents, including updating participants on plan changes (*e.g., drafting, amending, & updating forms; & distributing open enrollment materials*).
- **Following** the written terms of the plan document(s), including contributions, rebating, & claims provisions.
- **Deciding** who & why a person was chosen to act on the plan's behalf.
- **Making** discretionary administrative & claims decisions (*especially for self-funded plans who are often named plan administrators & handle protected participant information*).
- **Selecting** plan providers & negotiating contracts.
- **Evaluating** performance of plan providers (*e.g., TPAs, PBMs, COBRA administrators, & consultants*).
- **Maintaining** the financial health of the plan, including diversifying plan assets.

¹ [Employee Retirement Income Security Act of 1974](#)

Fiduciary behavior – what to do...& not to do.

Fiduciary responsibilities & actions underscore the need for businesses to assess plans, prioritize participant interests, & oversee providers to ensure compliance.

- ✓ Act in the best interest of plan participants & beneficiaries.
Don't engage in self-dealing actions.
- ✓ Comply with regulatory requirements.
Failures include fines & litigation risk.
- ✓ Avoid conflicts of interest.
Ethical lapses damage relationships & reputations.
- ✓ Evaluate plan providers regularly.
Avoid business partnerships based solely on referrals or personal connections.
- ✓ Establish processes & use checklists to comply with evolving regulations.
Know your plan; document decisions; & designate personnel to own tasks.
- ✓ Set annual meetings to audit plan documents & balance financials.
Don't ignore plan oversight.
- ✓ Follow written plan terms.
"Making an exception" to deviate from plan terms creates risk for complaints.

Have a complicated or concerning plan issue? When in doubt, consult tax advisors, legal counsel, & experienced software providers for guidance. Create necessary processes, systems, & documentation in preparation for plan requests.

10 Fiduciary Best Practices:

1. **Identify** & separate fiduciary decisions from plan design decisions.
2. **Establish** & maintain a plan committee, including both named fiduciaries & those who make discretionary decisions about the plan.
3. **Document** personnel choices, plan decisions & reasons for such decisions.
4. **Train** fiduciaries about the plan & their ERISA duties.
5. **Maintain** all plan provider agreements.
6. **Evaluate** provider pricing annually.
7. **Review** provider disclosures.
8. **Create** & maintain plan-related documents (*SPD, SBC, Notices, etc.*).
9. **Follow** a plan compliance calendar or checklist.
10. **Comply** with transparency rules (*e.g., prescription drug reporting & the gag clause attestation under The Consolidated Appropriations Act*).

What plan decisions *are not* fiduciary in nature?

Employers are permitted, for example, to establish a plan; change plan design & benefit structure; & amend or terminate the plan. These decisions are often based on business need. All plan decisions, however, must be implemented in accordance with ERISA, including following necessary & appropriate notice provisions respecting plan participants.