FIDUCIARY BEST PRACTICES

KNOW 'EM. PRACTICE 'EM.

PATRIOT GROWTH INSURANCE SERVICES COMPLIANCE

Who, or what, 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 ERISA's[1] definition of 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 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 *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.
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 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.