

Fiduciary Standards and Responsibilities

One of the most important functions associated with all qualified retirement plans is the fiduciary role. The definition of fiduciary is a wide ranging one. Section 3 (21) (a) of ERISA¹ defines a fiduciary with respect to a plan to the extent he or she:

“exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management of its assets, renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan or, has any discretionary authority or discretionary responsibility in the administration of such plan.”

Department of Labor (DOL) Regulation 2510.3-21 exempts a securities broker or dealer if that person transacts the purchase or sale of securities on behalf of the plan, in the ordinary course of business as a broker or dealer, if the plan fiduciary is not the broker or dealer and the broker or dealer is operating under instructions from the plan. An insurance agent is similarly exempted if he or she provides the disclosure required in DOL Class Exemption 84-24.²

Duties of a Plan Fiduciary

- The fiduciary must follow the prudent man rule, but is held to a higher standard than the normal prudent man rule. ERISA¹ states that the fiduciary is required to discharge his duties “with the care, skill, prudence and diligence under circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.”³
- A fiduciary has the duty to diversify plan investments so as to minimize the risk of large losses, unless, under the circumstances, it is clearly not prudent to do so.⁴ Investment of plan assets in a single bank or other pooled fund, mutual funds, annuity contracts, or life insurance contracts will satisfy the diversification rule if the fund itself is properly diversified.⁵
- The fiduciary is required to invest plan assets exclusively for the benefit of plan participants and beneficiaries.
- Fiduciaries must act in accordance with the plan documents unless that would violate the law.
- The fiduciary must arrange to purchase the bond required under ERISA.¹

¹ ERISA refers to the Employee Retirement Security Act of 1974.

² See DOL Reg. 2510.3-21 and DOL Class Exemption 84-24 for more details.

³ See ERISA Sec. 404(a)(1).

⁴ See ERISA Sec. 404(a)(1)(C).

⁵ See H Rep. No. 1280, 93rd Cong., 2nd Sess. 305 (1974).

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(Continued)

- Unless given a funding policy by the sponsoring employer or plan trustee, the fiduciary must develop a funding policy for the plan and measure results against such policy on an annual basis.
- If there are multiple fiduciaries, each fiduciary is responsible for the acts of the other fiduciary(s) unless the fiduciary authority has been delegated in writing to another specific fiduciary(s). If assets do not have a readily determinable or ascertainable value, the fiduciary must annually have an independent appraisal done to determine market value. A fiduciary may not engage (directly or indirectly) in the following activities between the fiduciary and the plan.
 - Sale, exchange or lease of property
 - Lending money or extending credit
 - Furnishing goods, services or facilities
 - The transfer of assets to or for the use of the fiduciary
 - Dealing with the plan assets for his or her own account
 - Receiving any payment from a party dealing with a transaction involving plan assets