

REDEFINING

▶ ROLES AND RESPONSIBILITIES



A PLAN SPONSOR'S GUIDE
FOR SAVING TIME AND MANAGING RISK



Elsass Financial
Group, Inc.



EMPLOYER - SPONSORED RETIREMENT PLANS SERVE TWO IMPORTANT GOALS: ATTRACTING AND RETAINING SKILLED EMPLOYEES; AND PROVIDING A PLATFORM TO HELP THEM SAVE FOR A TIMELY AND DIGNIFIED RETIREMENT.

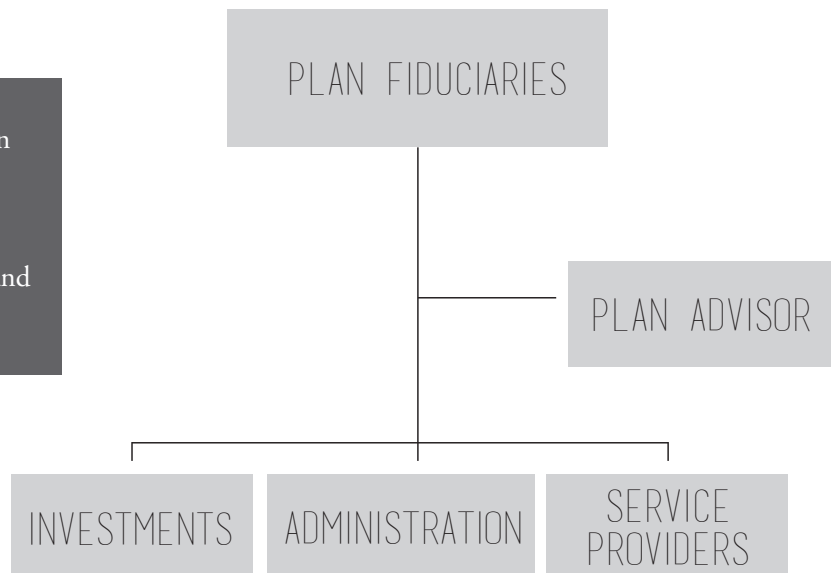


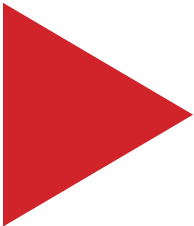
As a retirement plan sponsor, you have the opportunity to contribute to the success of the plan. Having the right mix of features and services, coupled with actionable employee education, can help you reach these critical objectives. At the same time, you have certain responsibilities that must be satisfied. The Employee Retirement Income Security Act (ERISA) sets forth specific standards for plan sponsors to ensure employees' benefits are protected and the plan is well managed. ERISA requires plan sponsors to designate one or more "fiduciaries" in the plan document. Additionally, anyone who makes decisions concerning the management and administration of the plan will be considered to be plan fiduciaries by their acts, regardless of their title. Among other things, fiduciaries are required to act prudently and solely in the interests of participants and beneficiaries. If you fail to meet your fiduciary duties, you can be held personally liable to restore any losses suffered by the plan.

To ensure a successful plan and avoid personal liability, it is critical for you to understand your responsibilities as a fiduciary and establish a process to make well-informed decisions. Indeed, recent announcements by Department of Labor (DOL) representatives suggest that you may in fact be required to seek out fiduciary training. You are expected to understand the nature and scope of your responsibilities as a fiduciary.

At a basic level, your duties can generally be broken down into three areas:

- ▶ Selection and monitoring of plan investments;
- ▶ Selection and monitoring of service providers; and
- ▶ Administration and reporting.





You need not be an expert in all categories; however, where you lack the necessary expertise to make well-informed decisions, you have a fiduciary duty to hire professional assistance. Consequently, most fiduciaries look to retirement plan advisors and other service providers for assistance. Knowledgeable plan advisors can help you establish a process to document the needs of the plan and its participants. They can also assist with the coordination of products and services to meet those needs and help you monitor fulfillment by the plan's other service providers.

This Plan Sponsor Guide presents an overview of basic fiduciary responsibilities and provides you with answers to commonly asked questions by plan sponsors. It is designed to provide a foundation from which you and your retirement plan advisor can determine the proper assignment of roles and responsibilities across the plan's service providers. The Service Provider Support Worksheet will help you document the areas in which you and your participants need assistance and provides a basis from which you and your plan advisor can monitor the services provided.

Properly allocating roles among service providers will not only mitigate your fiduciary liability, it can save you and your staff valuable time by ensuring you have the right level of assistance when necessary. By taking the time to document these decisions and establish consistent and repeatable processes to administer your plan, you will be better able to justify the decisions you ultimately make as a retirement plan fiduciary.



OVERVIEW

OF FIDUCIARY RESPONSIBILITIES

WHO ARE THE PLAN'S FIDUCIARIES?

A fiduciary is anyone who:

- makes decisions about managing the plan or its investments, such as selecting the investment choices for participants or hiring persons who provide services to the plan;
- makes decisions about administering the plan, such as determining who is eligible to participate, distributing benefits statements, and ruling on benefits claims; or
- is paid to provide investment advice to a plan.

You are a fiduciary if you are the plan sponsor, a trustee of the plan, or the plan administrator. Someone you hire to provide services to the plan is also a fiduciary if he or she provides investment advice to you or plan participants or has discretion over your plan's investments. You are considered a fiduciary based upon your actions and not what title you may have, so it does not matter if you are not named a fiduciary in the plan document. You are also considered a co-fiduciary of the other fiduciaries to the plan and may share responsibility for their actions.

WHAT DUTIES DO FIDUCIARIES OWE TO THEIR RETIREMENT PLAN PARTICIPANTS?

Among other things, fiduciaries must:

- operate the plan only in the interest of participants and beneficiaries, for the sole purpose of providing benefits and paying plan expenses;
- diversify the plan's investments in order to minimize the risk of large losses;
- follow the terms of plan documents written to govern the plan; and
- avoid conflicts of interests with the plan.





HOW MUST THE FIDUCIARY'S DUTIES BE SATISFIED?

A fiduciary must act prudently. This requirement means that fiduciaries must follow an objective process designed to support sound decision-making, including:

- a formal review process, at reasonable intervals, to review performance of an investment or service provider and to look for replacements;
- read any reports regarding services or investments;
- review actual fees charged;
- implementing a proper framework for plan administration; and
- review any participant complaints.

Process is critical because fiduciaries are not judged by the results they obtain - they are not guarantors of results - but their performance is measured by the steps they have taken to arrive at well-informed decisions.

WHY IS IT IMPORTANT FOR FIDUCIARIES TO MEET THEIR OBLIGATIONS?

Because fiduciaries make decisions that can impact the retirement savings of dozens, hundreds, or even thousands of plan participants, ERISA requires them to take their obligations seriously. The DOL regularly conducts investigations of retirement plans, and you can be punished with fines and even criminal penalties for failing to adhere to your fiduciary responsibilities. As discussed, fiduciaries can be personally made to restore any investment losses to the plan and even be held liable for others who violate their fiduciary duties. That is why it is essential plan sponsors determine what expertise is available within the company and identify areas where external experts may be needed to fill any gaps.



FREQUENTLY ASKED QUESTIONS

BY RETIREMENT PLAN FIDUCIARIES

GENERAL FIDUCIARY DUTIES

I am unsure about what to do to meet all of these duties. Can I get help?

Yes. If you do not have the necessary expertise to meet all of your duties, ERISA requires you to hire someone who can help.

I simply don't want all this potential liability. Can I give some of it to someone else?

Yes. Some, but not all fiduciary duties may be delegated to others. Key tools to consider include:

- Participant-directed accounts under ERISA Section 404(c). If you provide participants a diversified investment menu and enough information for them to make informed decisions, you are not liable for the investment choices the participants make for themselves.
- Qualified Default Investment Alternatives (QDIAs). If the participant fails to make an investment decision for him/herself, then you are also not responsible if the participant's account is defaulted into a conservative investment that meets certain requirements.
- Investment Managers under ERISA (3)(38). If you prefer that a professional make the investment decisions for your plan, you may appoint an investment manager and be relieved of responsibility for the investment decisions he or she makes, so long as you can demonstrate the delegation was prudently made and monitored.
- Discretionary Administrators under ERISA 3(16). As discussed, the plan document must name at least one person, committee, or entity that will serve as the Plan Administrator. Some third party administrators and providers are now offering to assume this role and administer all or select duties that would otherwise need to be performed by the plan fiduciaries.

There seems to be so much to do. How do I know which activities are delegated in whole or in part?

You should begin by listing all of the activities that are required to administer a compliant and effective retirement plan. **By working with your plan advisor to complete the Service Provider Support Worksheet, you will understand which service provider is responsible for each activity, and it will serve as the basis for you and your advisor to monitor the services provided.** Once you have a clear understanding of the areas in which you need support, you begin to properly evaluate the sufficiency of that support and the adequacy of the services provided.

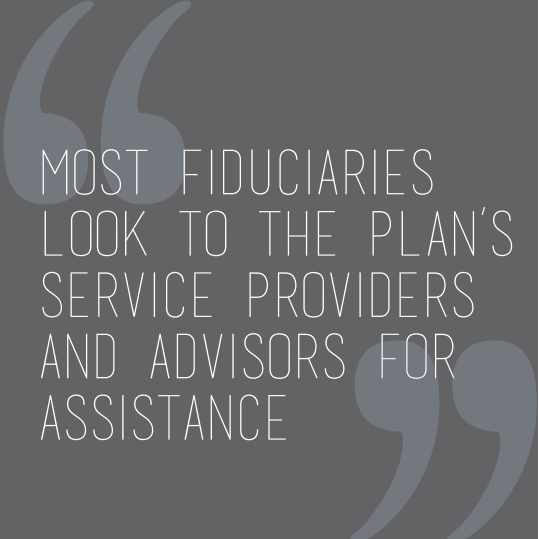
INVESTMENTS

What is investment advice?

Investment advice means giving recommendations:

- about the value of or advisability of investing in securities or other property;
- on a regular basis;
- pursuant to an agreement or arrangement with the plan;
- that the advice will serve as a primary basis for investment decisions; and
- that is individualized to suit the needs of a specific plan.

If an investment adviser representative provides you investment advice, that individual becomes a fiduciary to your plan. You retain decision making authority for the investments, but the advisor shares fiduciary responsibility with you.



MOST FIDUCIARIES
LOOK TO THE PLAN'S
SERVICE PROVIDERS
AND ADVISORS FOR
ASSISTANCE

How do I know if my plan investments are properly diversified?

You may want the advice of an investment professional to help you make this determination. To be relieved of fiduciary responsibility for investment choices made by participants, you must ensure participants can choose from a broad range of options. There are many ways to accomplish this, but a common method is to create a menu of at least three choices, often more, mutual funds, each with different risk and return characteristics.

PLAN ADMINISTRATION

Do I personally have to be involved in deciding eligibility questions or approving loans?

No. When organizing your plan committee, think carefully about what functions must be performed in each of the three major categories (Investments, Plan Administration, and Service Providers) and who among your staff is best qualified to make the decisions. While day-to-day plan administration can be readily outsourced to third party administrators, ultimate decision making authority is typically retained by the plan sponsor. You may find it necessary to weigh-in on critical decisions but choose to delegate select responsibilities to other committee members who have necessary qualifications and can operate pursuant to the plan's governing documents.

For example, you may appoint human resources professionals to deal with loan approvals, eligibility decisions, and claims appeals, while associates from finance or accounting review certain reports such as the plan's Form 5500. You might consider enlisting someone with a background in purchasing or procurement to help evaluate the plan's service providers. So long as these individuals are acting at the direction of a plan fiduciary, it is not necessary for them to become fiduciaries themselves. You should consult an experienced ERISA attorney to ensure that you have made the proper assignments and that the plan is governed in accordance with the plan document.

SERVICE PROVIDERS

What should I do with all of these disclosures from various service providers?

As a plan fiduciary, you have a duty to ensure only necessary services are being paid for by plan assets and each arrangement with a service provider is reasonable. **The Service Provider Support Worksheet will help you determine which services are necessary for the operation of the plan**, and the disclosures delivered to you in compliance with ERISA 408(b)(2) should provide sufficient information to determine whether the value of the services is reasonable with respect to the fees charged. If you do not have enough information to make this determination, then you are required to request more detail from the service provider. Your plan advisor may be able to help you with the organization and evaluation of the service provider disclosures and determining the value of services with respect to industry benchmarks.

If your plan allows participants to direct their investments, you also have the duty to use some of that same information to deliver proper disclosures to the plan participants so they may make informed decisions, including how to allocate their investments. Additionally, all ERISA plans must communicate certain information about the plan's service providers to the DOL annually in the Form 5500.

Must I accept the lowest bid from a service provider?

No. Acting prudently does not require that you seek out the lowest cost. Your decision to select or replace a service provider should be based upon the necessity of the services provided and the reasonableness of the arrangement. With respect to the latter, you should consider the terms of the arrangement and the value of the services provided.

Value can be influenced by a number of factors. Like any professional service, more experience comes at a higher cost. An experienced plan advisor, for example, may charge more for their services because of their expertise and ability to help you and your participants. They may have specific retirement plan-related training, credentials, insurance, or access to tools and programs that save you time, manage risk, and help your participants maximize their benefits under of the plan. For each service provider, you should evaluate the experience of the service provider, benchmark the value of the services, and document the basis for your decision to select, retain, or replace the plan's service providers.

<p>ⁱ ERISA 3(16) http://www.law.cornell.edu/uscode/text/29/1002</p>	<p>The term “administrator” means—</p> <ul style="list-style-type: none"> i. the person specifically so designated by the terms of the instrument under which the plan is operated; ii. if an administrator is not so designated, the plan sponsor; or iii. in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.
<p>ⁱⁱ ERISA 3(21)(A) http://www.law.cornell.edu/uscode/text/29/1002</p>	<p>.... a person is a fiduciary with respect to a plan to the extent he/she:</p> <ul style="list-style-type: none"> i. exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, ii. 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 authority or responsibility to do so, or iii. has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 1105 (c)(1)(B) of this title.
<p>ⁱⁱⁱ ERISA 404 http://www.law.cornell.edu/uscode/text/29/1104</p>	<p>a) Prudent man standard of care</p> <p>1. Subject to sections 1103 (c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—</p> <ul style="list-style-type: none"> A. for the exclusive purpose of: <ul style="list-style-type: none"> i. providing benefits to participants and their beneficiaries; and ii. defraying reasonable expenses of administering the plan; B. with the care, skill, prudence, and diligence under the 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; C. by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and D. in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter and subchapter III of this chapter.
<p>^{iv} ERISA 409 http://www.law.cornell.edu/uscode/text/29/1109</p>	<p>a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 1111 of this title.</p> <p>b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this subchapter if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.</p>
<p>^v See Profit Sharing/401k Council of America, PSCA’s ERISA Fiduciary Training: DOL Requests Proof of Fiduciary Training, available at: https://www.fiduciary-education.org/fiduciary-training-dol-audit. PSCA states: “During several recent DOL audits, plan sponsors were surprised to hear the DOL ask for documentation that the members of the Fiduciary Committee received fiduciary training over the past year.”</p> <p>^{vi} According to the DOL, “The duty to act prudently is one of a fiduciary’s central responsibilities under ERISA. It requires expertise in a variety of areas, such as investments. Lacking that expertise, a fiduciary will want to hire someone with that professional knowledge to carry out the investment and other functions.” Department of Labor, Meeting Your Fiduciary Responsibilities, available at: http://www.dol.gov/ebsa/publications/fiduciaryresponsibility.html.</p> <p>^{vii} Plan advisors come in many forms – registered investment advisors, broker-dealer representatives, insurance agents and consultants. The difference relates to the licenses they are required to hold, the nature of compensation received and the ability to provide fiduciary investment advice. Unless making a distinction otherwise, these professionals will be collectively referred to as “plan advisors” or “advisors.”</p>	

<p>viii. See ERISA 3(21) at note ii; see also 29 CFR 2510.3-21 http://www.law.cornell.edu/cfr/text/29/2510.3-21</p>	<p>(c) <i>Investment advice.</i></p> <p>1) A person shall be deemed to be rendering “investment advice” to an employee benefit plan, within the meaning of section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (the Act) and this paragraph, only if:</p> <ul style="list-style-type: none"> i. Such person renders advice to the plan as to the value of securities or other property, or makes recommendation as to the advisability of investing in, purchasing, or selling securities or other property; and ii. Such person either directly or indirectly (e.g., through or together with any affiliate)— <ul style="list-style-type: none"> A. Has discretionary authority or control, whether or not pursuant to agreement, arrangement or understanding, with respect to purchasing or selling securities or other property for the plan; or B. Renders any advice described in paragraph (c)(1)(i) of this section on a regular basis to the plan pursuant to a mutual agreement, arrangement or understanding, written or otherwise, between such person and the plan or a fiduciary with respect to the plan, that such services will serve as a primary basis for investment decisions with respect to plan assets, and that such person will render individualized investment advice to the plan based on the particular needs of the plan regarding such matters as, among other things, investment policies or strategy, overall portfolio composition, or diversification of plan investments. <p>2) A person who is a fiduciary with respect to a plan by reason of rendering investment advice (as defined in paragraph (c)(1) of this section) for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or having any authority or responsibility to do so, shall not be deemed to be a fiduciary regarding any assets of the plan with respect to which such person does not have any discretionary authority, discretionary control or discretionary responsibility, does not exercise any authority or control, does not render investment advice (as defined in paragraph (c)(1) of this section) for a fee or other compensation, and does not have any authority or responsibility to render such investment advice, provided that nothing in this paragraph shall be deemed to:</p> <ul style="list-style-type: none"> i. Exempt such person from the provisions of section 405(a) of the Act concerning liability for fiduciary breaches by other fiduciaries with respect to any assets of the plan; or ii. Exclude such person from the definition of the term “party in interest” (as set forth in section 3(14)(B) of the Act) with respect to any assets of the plan.
<p>ix. ERISA 405 http://www.law.cornell.edu/uscode/text/29/1105</p>	<p>(a) Circumstances giving rise to liability</p> <p>In addition to any liability which he may have under any other provisions of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:</p> <ul style="list-style-type: none"> 1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; 2) if, by his failure to comply with section 1104 (a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or 3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.
<p>x. See ERISA 404 at note iii; see also ERISA 406 http://www.law.cornell.edu/uscode/text/29/1106</p>	<p>(a) Transactions between plan and party in interest</p> <p>Except as provided in section 1108 of this title:</p> <ul style="list-style-type: none"> 1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect – <ul style="list-style-type: none"> A. sale or exchange, or leasing, of any property between the plan and a party in interest; B. lending of money or other extension of credit between the plan and a party in interest; C. furnishing of goods, services, or facilities between the plan and a party in interest; D. transfer to, or use by or for the benefit of a party in interest, of any assets of the plan; or E. acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 1107 (a) of this title. 2) No fiduciary who has authority or discretion to control or manage the assets of a plan shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 1107 (a) of this title. <p>(b) Transactions between plan and fiduciary</p> <p>A fiduciary with respect to a plan shall not –</p> <ul style="list-style-type: none"> 1) deal with the assets of the plan in his own interest or for his own account, 2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or 3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan. <p>(c) Transfer of real or personal property to plan by party in interest</p> <p>A transfer of real or personal property by a party in interest to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a party-in-interest placed on the property within the 10-year period ending on the date of the transfer.</p>
<p>xi. See ERISA 404 at note iii; see also, <i>Donovan v. Mazzola</i>, 716 F.2d 1226 (9th Cir. 1983), and <i>Leigh v. Engle</i>, 727 F.2d 113 (7th Cir. 1984).</p>	
<p>xii. See DOL ERISA Enforcement at: http://www.dol.gov/ebsa/erisa_enforcement.html.</p>	

<p>xiii. 29 CFR 2550.404c-1 http://www.law.cornell.edu/cfr/text/29/2550.404c-1</p>	<p><i>ERISA Section 404(c) plans.</i></p> <p>(a) In general.</p> <p>1) Section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) provides that if a pension plan that provides for individual accounts permits a participant or beneficiary to exercise control over assets in his account and that participant or beneficiary in fact exercises control over assets in his account, then the participant or beneficiary shall not be deemed to be a fiduciary by reason of his exercise of control and no person who is otherwise a fiduciary shall be liable for any loss, or by reason of any breach, which results from such exercise of control. This section describes the kinds of plans that are “ERISA section 404(c) plans,” the circumstances in which a participant or beneficiary is considered to have exercised independent control over the assets in his account as contemplated by section 404(c), and the consequences of a participant’s or beneficiary’s exercise of control...</p>
<p>xiv. 29 CFR 2550.404c-5 http://www.law.cornell.edu/cfr/text/29/2550.404c-5</p>	<p><i>Fiduciary relief for investments in qualified default investment alternatives.</i></p> <p>(a) In general.</p> <p>1) This section implements the fiduciary relief provided under section 404(c)(5) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), 29 U.S.C. 1001 et seq., under which a participant or beneficiary in an individual account plan will be treated as exercising control over the assets in his or her account for purposes of ERISA section 404(c)(1) with respect to the amount of contributions and earnings that, in the absence of an investment election by the participant, are invested by the plan in accordance with this regulation. If a participant or beneficiary is treated as exercising control over the assets in his or her account in accordance with ERISA section 404(c)(1) no person who is otherwise a fiduciary shall be liable under part 4 of title I of ERISA for any loss or by reason of any breach which results from such participant’s or beneficiary’s exercise of control. Except as specifically provided in paragraph (c)(6) of this section, a plan need not meet the requirements for an ERISA section 404(c) plan under 29 CFR 2550.404c-1 in order for a plan fiduciary to obtain the relief under this section...</p>
<p>xv. ERISA 3(38) http://www.law.cornell.edu/uscode/text/29/1102</p>	<p>The term “investment manager” means any fiduciary (other than a trustee or named fiduciary, as defined in section 1102 (a)(2) of this title) –</p> <p>A. who has the power to manage, acquire, or dispose of any asset of a plan;</p> <p>B. who</p> <ul style="list-style-type: none"> i. is registered as an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.]; ii. is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act [15 U.S.C. 80b–3a (a)], is registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary’s registration under the laws of such State, also filed a copy of such form with the Secretary; iii. is a bank, as defined in that Act; or iv. is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and <p>C. has acknowledged in writing that he is a fiduciary with respect to the plan.</p>
<p>xvi. ERISA 405(d) http://www.law.cornell.edu/uscode/text/29/1105</p> <p>ERISA 402(c)(3) http://www.law.cornell.edu/uscode/text/29/1102</p>	<p><i>Investment managers</i></p> <p>1) If an investment manager or managers have been appointed under section 1102 (c)(3) of this title, then, notwithstanding subsections (a)(2) and (3) and subsection (b) of this section, no trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.</p> <p>2) Nothing in this subsection shall relieve any trustee of any liability under this part for any act of such trustee.</p> <p><i>Optional features of plan</i></p> <p>Any employee benefit plan may provide –</p> <ul style="list-style-type: none"> 1) that any person or group of persons may serve in more than one fiduciary capacity with respect to the plan (including service both as trustee and administrator); 2) that a named fiduciary, or a fiduciary designated by a named fiduciary pursuant to a plan procedure described in section 1105 (c)(1) of this title, may employ one or more persons to render advice with regard to any responsibility such fiduciary has under the plan; or 3) that a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of a plan.

xviii. 29 CFR 2550.404c-1
<http://www.law.cornell.edu/cfr/text/29/2550.404c-1>

Broad range of investment alternatives.

(i) A plan offers a broad range of investment alternatives only if the available investment alternatives are sufficient to provide the participant or beneficiary with a reasonable opportunity to:

A. Materially affect the potential return on amounts in his individual account with respect to which he is permitted to exercise control and the degree of risk to which such amounts are subject;

B. Choose from at least three investment alternatives:

- 1) Each of which is diversified;
- 2) Each of which has materially different risk and return characteristics;
- 3) Which in the aggregate enable the participant or beneficiary by choosing among them to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the participant or beneficiary; and
- 4) Each of which when combined with investments in the other alternatives tends to minimize through diversification the overall risk of a participant's or beneficiary's portfolio;

C. Diversify the investment of that portion of his individual account with respect to which he is permitted to exercise control so as to minimize the risk of large losses, taking into account the nature of the plan and the size of participants' or beneficiaries' accounts. In determining whether a plan provides the participant or beneficiary with a reasonable opportunity to diversify his investments, the nature of the investment alternatives offered by the plan and the size of the portion of the individual's account over which he is permitted to exercise control must be considered. Where such portion of the account of any participant or beneficiary is so limited in size that the opportunity to invest in look-through investment vehicles is the only prudent means to assure an opportunity to achieve appropriate diversification, a plan may satisfy the requirements of this paragraph only by offering look-through investment vehicles.

(ii) Diversification and look-through investment vehicles. Where look-through investment vehicles are available as investment alternatives to participants and beneficiaries, the underlying investments of the look-through investment vehicles shall be considered in determining whether the plan satisfies the requirements of subparagraphs (b)(3)(i)(B) and (b)(3)(i)(C).

^{xix} See DOL Fact Sheet "Final Regulation Relating to Service Provider Disclosures Under Section 408(b)(2)" at:
<http://www.dol.gov/ebsa/newsroom/fs408b2finalreg.html>.

^{xx} See DOL Final Rule "Reasonable Contract or Arrangement under Section 408(b)(2) – Fee Disclosure" at:
<https://webapps.dol.gov/federalregister/PdfDisplay.aspx?DocId=25781>.

^{xxi} See DOL Fact Sheet "Final Rule to Improve Transparency of Fees and Expenses to Workers in 401(k)-Type Retirement Plans" at:
<http://www.dol.gov/ebsa/newsroom/fsparticipantfeerule.html>.

^{xxii} See DOL Fact Sheet "Tips for Selecting and Monitoring Service Provider for your Employee Benefit Plan" at:
<http://www.dol.gov/ebsa/newsroom/fs052505.html>.



Running a successful retirement plan can be gratifying – you are working to reward those who contribute to the success of your business. By understanding your obligations as a fiduciary, you can evaluate the areas in which you need help. You can begin the process by completing the Service Provider Support Worksheet with your advisor and constructing a process to document decisions you make. Once you have the right services in place, you can spend more time working to improve the efficacy of the plan and helping participants maximize their benefits.

For questions, or to obtain a Service Provider Support Worksheet, contact Kevin Chiu (kevin@elsass-efg.com) at 330-702-9950 or Karl Elsass (karl@elsass-efg.com) at 330-336-9292.

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