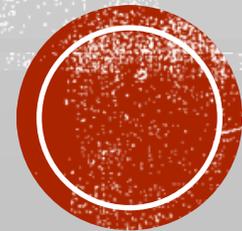


FIDUCIARY TRAINING

PART 1



CastleRock
Investment Company
Est. 2006



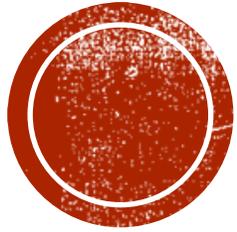
Castle Rock PEP Contacts



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- Overview
- Fiduciary Status
- Fiduciary vs. Settlor Functions
- Fiduciary Duties
- Investments: Selection and Monitoring
- Plan Expenses: Negotiating and Benchmarking





OVERVIEW

OVERSIGHT OF QUALIFIED PLANS

Internal Revenue Service

The IRS enforces the tax code and determines the qualified status of a plan.

Department of Labor

The DOL enforces the fiduciary duties outlined in ERISA.



WHAT IS ERISA?

Employee Retirement Income Security Act of 1974 ("ERISA"), as amended

Imposes very strict conflict-of-interest rules and prohibits transactions between a wide range of parties involved with the plan (including service providers), unless an exemption applies

- Legislation that followed the termination of the Studebaker employee pension plan in 1963 to protect pension benefits
- Often referred to as the law of "NO"
- Allows both plan participants and the Department of Labor to sue plan fiduciaries



OVERVIEW

Applies to:

- Defined contribution plans (401(k), profit-sharing, etc.)
- Defined benefit plans (traditional pension, cash balance, etc.)
- Health and welfare plans



OVERVIEW

Parties of Interest Involved

- Plan Sponsor
- Participants
- Plan and Trust
- Trustee
- Recordkeeper
- Administrator
- Investment Advisor

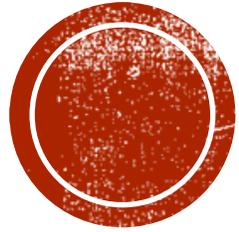


OVERVIEW

Employer Roles

- As Settlor
Employer
- As Fiduciary
Plan Sponsor
Named Fiduciary
Plan Administrator
Administrative / Investment Committee





FIDUCIARY STATUS

FIDUCIARY STATUS

Definition of “fiduciary”

- Exercises discretionary authority or control over management or disposition of plan assets
 - Renders investment advice for a fee
 - Has discretionary authority or responsibility for plan administration
-
- Includes those named as fiduciaries in governing documents
 - Includes those responsible for appointing other fiduciaries
 - Functional test overrides title
 - Ministerial functions are not fiduciary acts



FIDUCIARY STATUS

Examples

- Committees assigned or exercising fiduciary functions
- Individual members of the committee and possibly investment and benefits staff who have discretionary authority or control over the administration and management of the plan
- The trustee (to a limited extent in the case of directed trustee)
- Managers of separately managed accounts of plans and collective investment trusts (but not mutual fund managers)
- Investment consultants



FIDUCIARY STATUS

Fiduciary Governance Documents Include

- Board Resolution establishing Committee and adopting Committee Charter
- Committee Charter
- Fiduciary Appointment Letters
- Fiduciary Acceptance and Acknowledgement Letters
- Investment Policy Statement



FIDUCIARY STATUS

Examples of Non-Fiduciary Parties

- The employer as “settlor”
- Record Keepers
- Third-party Administrators
- Mutual Fund Managers
- Attorneys
- Auditors



FIDUCIARY STATUS

Named Fiduciary

- Every plan must name one or more fiduciaries who have authority to control and manage the operation and administration of the plan – referred to as “named fiduciaries.”
- Typically, the plan sponsor
- Primarily responsible for selection and monitoring of plan investment options
- Responsibilities can be split between two or more parties



FIDUCIARY STATUS

Plan Administrator

- Every plan must have an “administrator” with responsibility to oversee administration of the plan
- If the administrator is not specified in the plan document, it is the plan sponsor
- The plan administrator is responsible for discretionary day-to-day operational matters (e.g., loans, distributions), participant disclosures, and other duties



FIDUCIARY STATUS

Trustee Responsibilities

- Safeguarding plan assets, including holding legal title
- Managing the investment of the assets, unless appointed as a directed trustee or delegated to an investment manager
- Responsibility for having to collect delinquent contributions is a risk that generally still falls on the plan sponsor today.



FIDUCIARY STATUS

Delegation of Duties

A named fiduciary can delegate responsibility to other fiduciaries after a due diligence process is followed and is prudently monitored

- Internal committees
- Section 3(38) “investment manager”
- Section 3(16) administrator



FIDUCIARY STATUS

Co-Fiduciary Responsibilities

A fiduciary will be liable for a breach of another fiduciary when:

- It participates knowingly in an act of such other fiduciary, knowing such act is a breach
- By its failure to comply with its own fiduciary standard of care that enabled the breach
- By having knowledge of a breach and failing to make a reasonable effort under the circumstances to remedy the breach



FIDUCIARY STATUS

Consequences of a Fiduciary Breach

- Personal liability for fiduciary breaches and losses
- Restore profits received and opportunity costs
- Other equitable and remedial relief (e.g., removal from fiduciary position) and additional penalties
 - Monetary penalties to DOL
 - Criminal penalties
 - Reputation risk



FIDUCIARY STATUS

Bonding Requirements

- Every plan fiduciary and person that handles plan assets must be bonded for protection to the plan against loss by reason of acts of fraud or dishonesty on the part of fiduciaries or plan officials handling plan assets
- Equal to 10% of plan assets – Minimum of \$1,000 and maximum of \$500,000 (\$1 million for plans that hold employer stock)

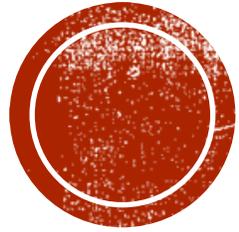


FIDUCIARY STATUS

Examples of fiduciary acts

- Selecting and monitoring the plan's investment options
- Hiring and monitoring plan service providers, including: Recordkeepers, Trustees, Investment advisors
- Determining the reasonableness of plan fees
- Assuring that participants receive summary plan descriptions, account statements and other disclosures
- Depositing employee contributions in the plan on a timely basis
 - As soon as it is reasonably possible to segregate them from company assets, but no later than the 15th business day of the month following payday
 - For plans with fewer than 100 employees, contributions will be deemed timely if made within 7 business days following payday
- Assuring that fiduciaries and persons who handle plan funds are covered by a fidelity bond that protects the plan against losses due to fraud or dishonesty





FIDUCIARY VS. SETTLOR FUNCTIONS

FIDUCIARY VS. SETTLOR FUNCTIONS

OFFICERS OF THE PLAN SPONSOR TYPICALLY WEAR BOTH HATS

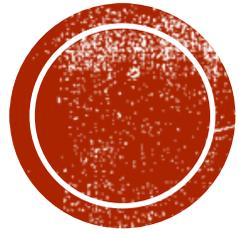
Fiduciary Functions

- Hiring and negotiating contracts with service providers
- Selection and monitoring of investment options
- Benchmarking plan expenses
- Understanding of written service agreements
- Carried out in the best interest of plan participants
- Expenses can be charged against plan assets

Settlor Functions

- Adoption, amendment, and termination of the plan
- Plan design decisions including eligibility requirements, employer contributions, vesting, eligibility requirements, loan feature, etc.
- Carried out in the best interest of the plan sponsor as employer
- Expenses cannot be charged against plan assets





FIDUCIARY DUTIES

FIDUCIARY DUTIES

- Duty of Loyalty (exclusive benefit rule)
- Duty of Prudence (“prudence expert” standard)
- Duty to Diversify
- Duty to follow plan documents
- Duty to determine reasonableness of fees and expenses
- Avoid prohibited transactions



FIDUCIARY DUTIES

Duty of Loyalty (exclusive benefit rule)

- Must discharge duties with respect to a plan:
 - Solely in the interest of the participants and beneficiaries
 - For the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan
- Prohibits conflicting loyalties
- Interests of participants and beneficiaries must take priority over those of the fiduciary, the company and others



FIDUCIARY DUTIES

Duty of Prudence

- Must discharge duties with respect to a plan “with the care, skill, prudence, and diligence 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”
- Courts have interpreted the duty of prudence to be a “prudent expert” standard
- A fiduciary need not be the expert, but may need to consult an expert
- “A pure heart and an empty head are not enough”



FIDUCIARY DUTIES

Duty of Prudence – Procedural Standard

- Does not require a fiduciary to guarantee outcomes, but rather requires use of a prudent process
- Requires the fiduciary to demonstrate that it followed a prudent process in making a fiduciary decision
- Critical to document fiduciary considerations and decision making
- Delegations of authority should be periodically and carefully reviewed
- Regular meetings of fiduciary committees:
 - Meeting materials and minutes



FIDUCIARY DUTIES

Duty of Prudence – Importance of Fiduciary Training

- Good fiduciary risk-management tool
- Some fiduciary liability policies require it
- Recent DOL audits include questions about fiduciary training
- Identified in litigation as a helpful fact in demonstrating compliance with fiduciary duties



FIDUCIARY DUTIES

Duty to Diversify

- A fiduciary must diversify 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
- Generally considered based on the plan's entire portfolio, so individual investment managers may not have to diversify



FIDUCIARY DUTIES

Duty to Act in Accordance with Plan Documents

- A fiduciary shall discharge its duties with respect to the plan in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of ERISA
- An investment that otherwise satisfies ERISA, could constitute a fiduciary breach if it is inconsistent with the terms of the plan documents, including the Investment Policy Statement.



FIDUCIARY DUTIES

Duty to Act in Accordance with Plan Documents (cont'd)

- Courts construe the phrase “documents and instruments governing the plan” broadly to include investment policy statements and other documents not generally considered the plan document
- Critical for fiduciaries to review and understand plan documents
- Terms should be consistent across documents (e.g., Base Plan Document, Adoption Agreement, and Summary Plan Description)
- Important to follow the procedures specified in the Investment Policy Statement



FIDUCIARY DUTIES

Plan Documents Include

- Base Plan Document
- IRS Determination or Opinion Letter
- Adoption Agreement
- Summary Plan Description
- Summary Material Modifications
- Investment Policy Statement



FIDUCIARY DUTIES

Duty to Determine Reasonableness of Plan Expenses

Examples of litigation over fees brought by participants

- Retail vs. Institutional share classes
- Active vs. passive investment options
- Excessive fees and conflicts of interest resulting from revenue sharing
- Retention of “float” income by record keepers

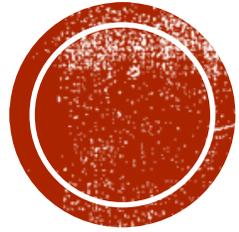


FIDUCIARY DUTIES

Avoid Prohibited Transactions

- Self dealing: A fiduciary's use of plan assets in his or her own interest
- Conflicts of interest: Acting on both sides of a transaction involving the plan
- Kickbacks: Personally receiving anything of value from any party dealing with the plan in connection with plan asset transactions
- Certain "party in interest" transactions
 - Parties in interest include fiduciaries, service providers, employees, plan sponsors and certain of their owners and officers
 - Example: The plan purchases an asset from the plan sponsor
 - Prohibited transaction exemptions permit certain transactions that are not considered abusive
- Consequences of engaging in a prohibited transaction
 - Potential liability for breach of fiduciary's duties
 - Excise tax of 15% of the amount involved (up to 100% in some cases)





INVESTMENTS SELECTION AND MONITORING

INVESTMENTS

Duty to Diversify

Draft and adhere to a well-written Investment Policy Statement (“IPS”). It summarizes the plan’s investment strategy; and it describes the process for evaluating money managers. The IPS should detail performance measurement and the frequency of reviews.

The IPS will outline:

- Minimum criteria for the investment selection process.
 - Example: Management tenure \geq 2 years
- Appropriate Peer Groups to offer eligible participants
- Guidelines on monitoring and replacing investments in the plan



INVESTMENTS

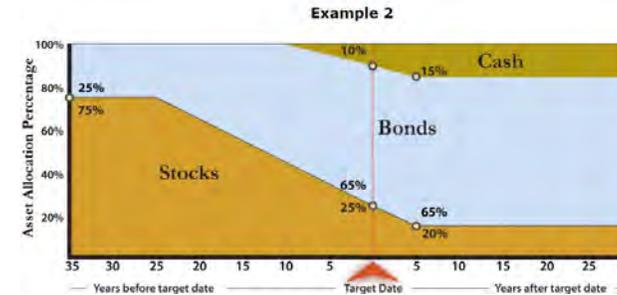
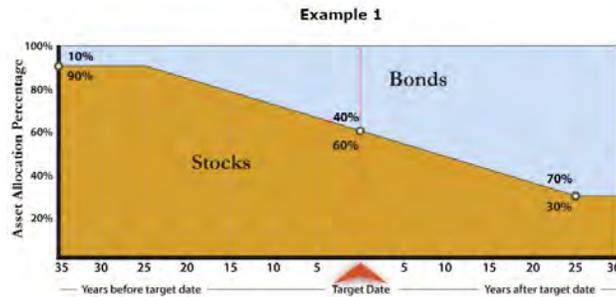
Monitoring Investment Options

Review the plan's investments at least annually and, to the extent applicable, in accordance with the requirements of the plan's written investment policy statement. Potential due diligence criteria for reviewing/selecting investment options include the following:

- Performance relative to peers;
- Performance relative to assumed risk;
- Inception date of product;
- Correlation to specified peer group;
- Total assets in the product;
- Holdings consistent with style;
- Expense ratios or fees; and
- Stability of organization.

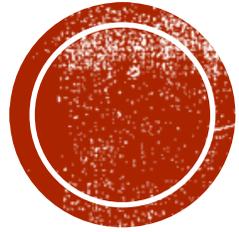


DOL'S TIPS WHEN CHOOSING TARGET DATE FUNDS¹



- Establish a process for comparing and selecting TDF's
- Establish a process for the periodic review of selected TDFs
- Understand the fund's investments – the allocation in different asset classes, individual investments, and how these will change over time.
- Review the fund's fee and investment expenses.
- Inquire about whether a custom or non-proprietary target date fund would be a better fit for your plan.
- Develop effective employee communications.
- Take advantage of available sources of information to evaluate the TDF and recommendations you received regarding the TDF selection.
- Document the Process.





PLAN EXPENSES NEGOTIATING AND BENCHMARKING

Review the fees received from or charged by all outside experts and service providers to the plan (direct and indirect) to ensure complete understanding of all costs and services associated with those fees and whether inherent conflicts exist.

PLAN EXPENSES

Duty to determine reasonableness of plan expenses

Examples of plan expenses

- Administrative (plan amendments, nondiscrimination and compliance testing, Form 5500 reporting, required employee disclosures)
- Audit
- Recordkeeping
- Investment management
- Trustee
- Custodial
- Consulting (Investment)



PLAN EXPENSES

Duty to determine reasonableness of plan expenses

- Costs are not dispositive
- Understand what is included
- Duty to ask
- Benchmark to plans of similar size and service levels
- Document the review

Disclosures to review:

Plan Sponsor Fee Disclosures by service providers- 408(b)(2)

Participant Fee Disclosures- 404(a)(5)

Form 5500



PLAN EXPENSES

Duty to determine reasonableness of plan expenses

How are fees paid?

- Per capital
- Pro rata
- Per use
- All of the above

How is revenue sharing allocated?

- Offset recordkeeping fees charged to the plan
- Credited to participants invested in the fund generating the revenue sharing



PLAN EXPENSES

DOL Publications for reference:

Understanding Retirement Plan Fees and Expenses

<http://www.dol.gov/ebsa/publications/undrstndgrtrmmt.html>

Description of how to evaluate your plan's fees and expenses;

<http://www.dol.gov/ebsa/fiduciaryeducation.html>

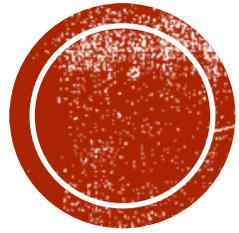
401(k) Plan Fee Disclosure Tool which provides a convenient way to compare and contrast fees and administrative costs; and

Selecting and Monitoring Pension Consultants – Tips for Plan Fiduciaries

<http://www.dol.gov/ebsa/newsroom/fs053105.html>

Provides a list of questions that are intended to assist plan fiduciaries in better understanding inherent conflicts of interest that may affect the objectivity of the advice that plan sponsors and other fiduciaries receive from plan consultants and other service providers.





ADDITIONAL RESOURCES

ADDITIONAL RESOURCES

DOL's EBSA Website

<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/fiduciary-responsibilities/fiduciary-education-campaign>

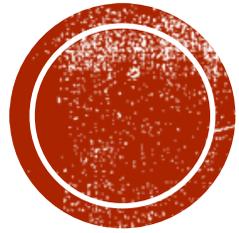
ERISA Fiduciary Advisor

<https://webapps.dol.gov/elaws/ebsa/fiduciary/introduction.htm>

Meeting Your Fiduciary Responsibility

<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/meeting-your-fiduciary-responsibilities.pdf>





QUESTIONS?

Michele Suriano, Founded the Firm in 2006



Founder: Michele Suriano, AIF®

Prior Career:

- Ceridian (2002-2006) Retirement Plan Adviser
- T. Rowe Price (1999-2002) Investment Adviser
- Transamerica and Advanta (1994 -1999) Executive Branch Manager in Colorado Springs, CO and Vienna, VA

Qualifications and Designations:

- FINRA examinations: Series 6, 7, 63, and 66
- Colorado insurance exams for life, health and variable annuities
- Thunderbird's Certificate in Fiduciary Governance
- Tax-Exempt & Governmental Plan Consultant
- Qualified Plan Financial Consultant
- Accredited Investment Fiduciary™
- Global Fiduciary Strategist

Education:

- Bachelor of Science, Applied Economics - Hofstra University, Long Island
- Leadership Development Institute – Navigators, Colorado Springs

Volunteer Work:

- Disability Law Colorado Investment Committee (2011 – Present)
- DLC Board of Directors (2011 – 2017)
- Crew Leader, Keepers of the Rock, with the Town's Teen Court program (2005 – 2018)
- Western Pension & Benefit Council Board of Directors, Denver Chapter (2007- 2013)

Awards and Quotes:

- Adviser to two finalists for PLANSPONSOR of the Year ([2013](#) and [2017](#))
- Quoted in several industry [trade](#) publications
- Panelist at [national conferences](#)



Schedule a PEP Talk

115 Wilcox Street

Suite 220

Castle Rock, CO 80104

www.CastleRockPEP.com

Michele@CastleRockPEP.com

Our values

Transparency. Honesty. Trust. Creative Solutions.

No hidden fees: You will always know what you are paying for.

No commissions: Our advice is unbiased and in your best interest.

Innovative Solutions: We provide creative and effective retirement solutions tailored to
your needs.