

401(k) Plan Committee Best Practices

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November 9, 2017

Today's Topics

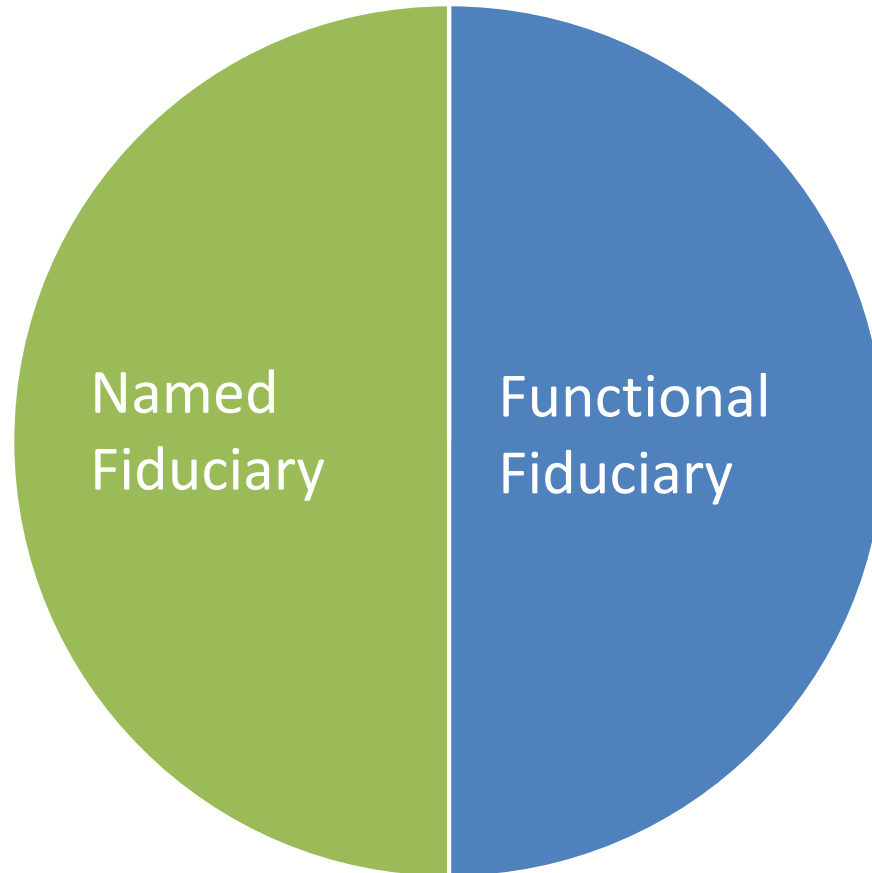
- 1) Fiduciary Status and Roles
- 2) 401(k) Committee Governance
- 3) Trustee Functions
- 4) Discretionary Investment Manager Functions
- 5) Plan Administrator Functions
- 6) Fees

What Makes You a Fiduciary?

- 1) Exercise any discretionary **control** over management of plan assets
- 2) Any discretionary **authority**
- 3) Rendering advice for a fee



Fiduciary Types



Named Fiduciary

1) Trust Language

“By adopting the Carbon Association Employee Retirement Plan and the Trust, and by continuing its Employer Plan hereunder, the **Employer** is the named fiduciary for its Employer Plan Trust.”

2) Can be changed/delegated

3) Employer remains responsible for hiring and oversight of vendors

Functional Fiduciary

- Judged by actions taken:
 - Plan trustees
 - Members of investment committee



...and Why Do I Care

- **Loyalty Standard**

- 1) Solely in the interest of participants
- 2) Exclusive purpose of providing
- 3) benefits and
- 4) Defraying reasonable expenses

- **Prudence Standard**

- 1) Reflects the care, skill, prudence &
- 2) diligence
- 3) Under the same circumstances
- 4) That a prudent person
- 5) Familiar with such matters
- 6) Would use in the same situation

I work for money,



If you want loyalty,
get a dog.

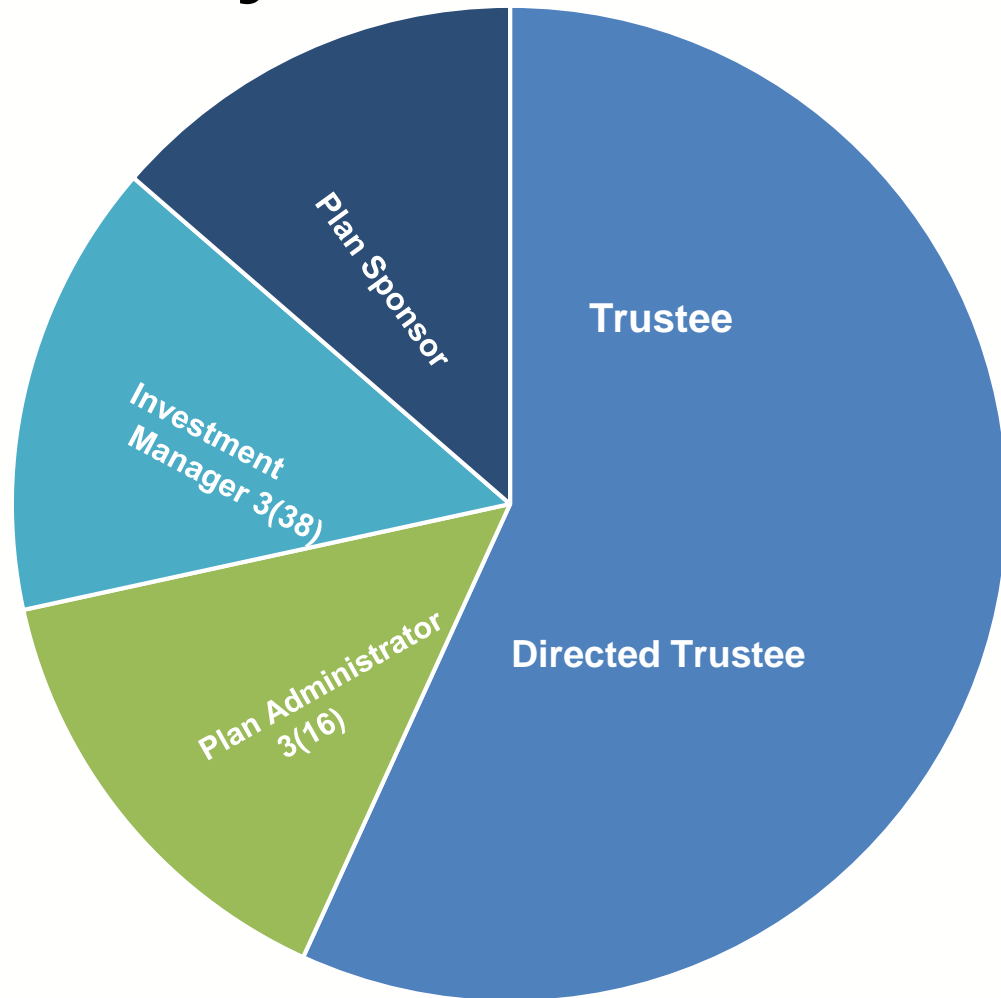
What is the Fiduciary Liability?

- Personal liability for fiduciary breaches
- Co-fiduciary liability for fiduciary breaches

Fiduciary Liability Penalties....

- Department of Labor investigation
 - 20% civil penalty
 - Criminal penalties for willful actions including jail time
 - Restore losses to the plan

Who is a Fiduciary?



Trustee vs. Directed Trustee

Trustee

- “....has exclusive authority and discretion over the management and control of plan assets.”
-looks for the consequences of NOT doing something



Directed Trustee

- A trustee who takes direction from a fiduciary with a higher level of authority
- Named Fiduciary can hire/delegate another entity to be a directed trustee
- Hold harmless agreement



Did you know...

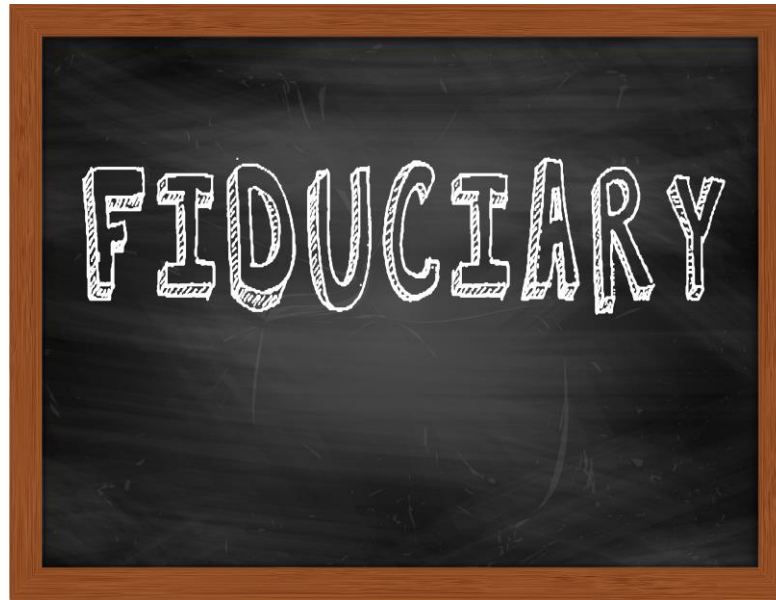
Governance...can protect you.

What do you mean we need a 401(k) committee?



Who are the Regulators?





“Fiduciaries should review
plan operations and investments
as often as necessary and
appropriate.”

Department of Labor

Membership

Large Plans

3 – 5 members

- 1 C-Suite Rep, such as CFO (permanent)
- HR (permanent)
- Representatives from various departments
 - Rotate membership amongst the departments
- Plan consultant
- Can allow voting for non-fiduciary and not for fiduciary

Small Plans

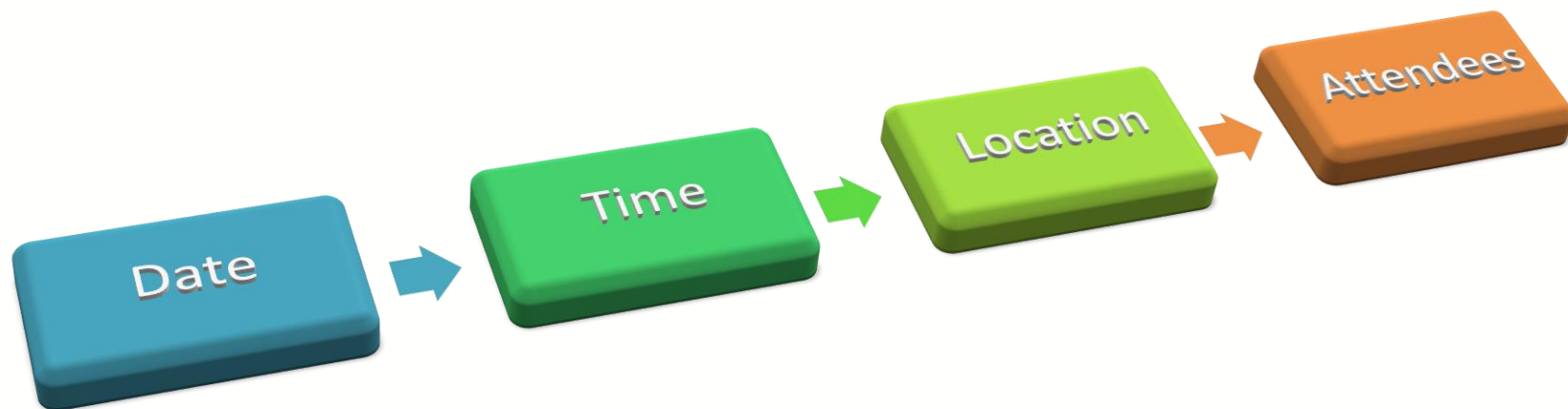
- 3 – 5 members
 - Include the CEO
 - HR/CFO/COO
- Plan consultant
- Can allow voting for non-fiduciary and not for fiduciary

Structure

- Committee Charter with roles and responsibilities including term limits, etc.
- Multiple Committees
- Meeting schedule



Agenda 101



Agenda 101 Cont'd

Statement of
Purpose

Regulatory
Updates

Goals

Plan
Operations

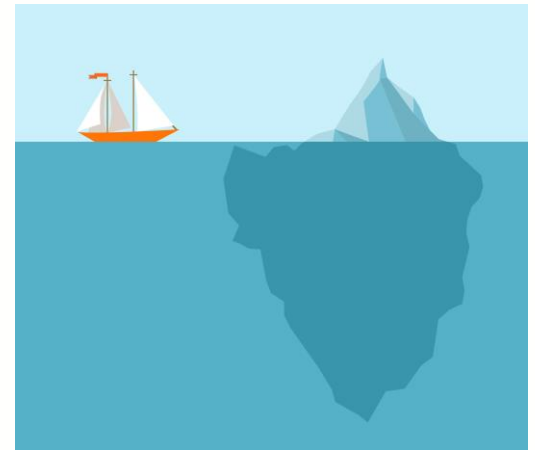
Investment
Policy
Statement

Insurances

Compliance
Topics

Plan
Documents

Themed Meetings



Investments

QDIA

Enrollment

Education

Advice

Returns

Fees

Qualified Default Investment Alternative

- An investment option that qualifies as a safe harbor
- The fiduciary will not be held liable for performance of the investment option

Enrollment Data

- Measure
 - Utilization of match
 - Participation rates
 - Retirement readiness
 - Number of participant loans
- Status of auto enrollment
- Status of auto escalate

Education

Investment education for the committee

- More knowledgeable committee
- Demonstrates proper internal controls
- If there is not a discretionary investment manager, the committee becomes it through the function of what it does when it meets

Investment Adviser Role

Investment advice:

- Market commentaries
- Fund Selection
- Fund Returns
- Fund Fees

Operational Committee

- Approve amendments or revisions to plan documents
- Review service agreements
- Reconcile census in preparation for testing purposes
- Ensure timely & proper information delivered to providers
- Have all contributions been made on time
- Review loan and distributions status
- Conduct RFI's and RFP's

**Which fiduciary is responsible for
operations
Do you know...**

The 3(16) Plan Administrator

Who is the 3(16) Plan Administrator?



3(16) Plan Administrator

- Beware of the marketing materials and service agreements
- May limit their fiduciary 3(16) services to just sending notices
- Examples of services:
 - Decides whether a loan is available to the participant
 - Decides whether a hardship withdrawal is appropriate
 - Ensures payroll is submitted timely
 - Ensures required documents are delivered to participants
 - Signs the 5500

Are these 3(16) Plan Administrator duties?

- Sends payroll to record keeper
- Collects new participant forms for record keeper
- Distributes participant notices

Delegation of 3(16) duties

- Have a document where delegations are made: Service Agreement
- Don't do anything you are unable to do
- Operational vs. Fiduciary

Investment Manager 3(38) vs. the Investment Adviser 3(21)

- Did you Know?

- The fiduciary investment manager is **NOT** the adviser that visits your office.



3(21) Investment Adviser vs. 3(38) Investment Manager



It's Your Fiduciary Duty, but Did you know...

Fees



What... I have to pay for my retirement plan?

Fees

- ...fiduciaries must assure that the compensation paid directly or indirectly by the Plan is **reasonable**
- ...The responsible Plan fiduciaries therefore must obtain **sufficient information**
- ...to make an **informed decision**

Fees



Recordkeeping Fees



\$25 per person

or/and

40 bps

Advice Fees

20 bps – 100 bps
based on services



ABC Mutual Fund...investment fees

- IBM
- Coca Cola
- Yahoo
- General Mills
- GE
- Ford

Investment Fees



- Share Classes
 - **ABCA = 0.85%** (12b-1 is 0.25% of the 0.85% plus 3.75% max sales charge)
 - **ABCR = 1.10%** (12b-1 fee is 0.50 of the 1.10%)
 - **ABCX = 0.71%** (12b-1 fee is 0.25%)
 - **ABCI = 0.46%** (no 12b-1)
- Revenue Share

Expense Ratio vs. Returns

Fund	Expense Ratio	Performance Return 1 yr.* net	Performance Return 3 yr.* net	Performance Return 5 yr.* net
Vanguard Large Cap Index Fund	.03% = 3 bps	17.85%	9.58%	14.60%
T.Rowe Large Cap Core Fund	.18% = 18 bps	18.08%	9.24%	14.42%
Fidelity 500 Index - I	.68% = 68 bps	19.01%	9.70%	14.76%
American Funds Fundamental	.70% = 70bps	19.46%	9.70%	14.71%

Lastly:

- Review results of activities
- Discuss next actions
- Assign members of committee to follow up on issues
- **Document!**



- **Can you Further Limit Your Liability?**

Protections

- Document Plan Processes
- Provide Participant Directed Investments
- Set up Qualified Default Investment Alternatives
- Hire outside providers to **assist with** fiduciary functions
- Hire outside providers to **take over** fiduciary functions

Your Personal Umbrella Insurance?

- Fiduciary Coverage?



Your Association Coverages?

- Fiduciary coverage...paid for outside of the plan
- Fidelity Bond...limited to 10% of plan assets at the beginning of the plan year, up to \$500,000



What you Now KNOW

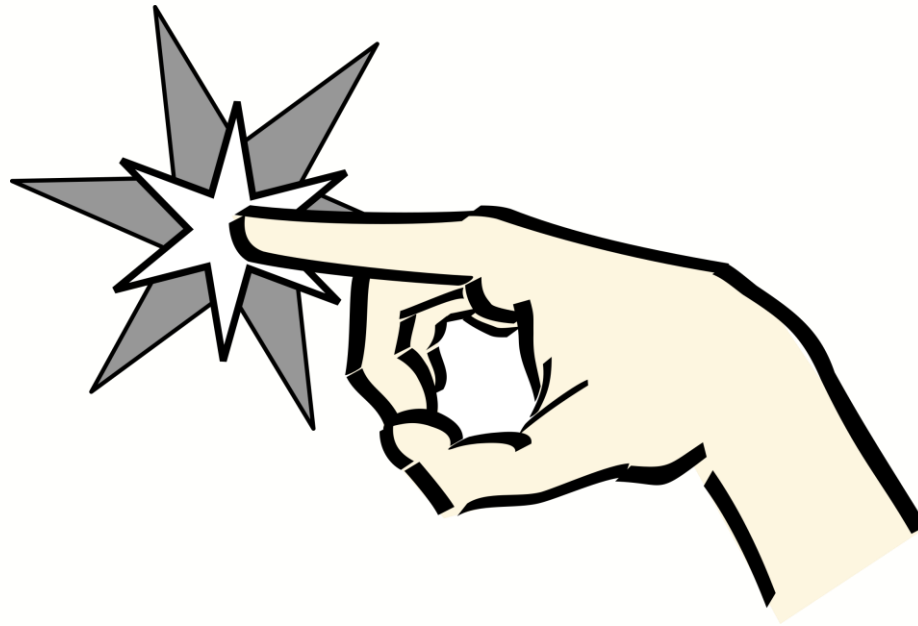
- ✓ Responsibility for the assets of a plan will make you a fiduciary.
- ✓ Documented 401k Committees will protect a fiduciary.
- ✓ You are your own Plan Administrator 3(16) unless delegated.
- ✓ Fees must be reasonable in light of the services received.
- ✓ Investment returns may be as important as the fees.
- ✓ Process is more important than results.
- ✓ Document, document, document!



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Thank you for attending!

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