

Ask the 401(k) Nerds

-A Year of Webinars in Review

July 12, 2018

Today's Topics and Presenters

- **401(k) Plan Committee Best Practices**
 - *Betsy Piper/Bach, JD, CFP[®], CIMA[®]*
President, ASAE Business Services, Inc.
- **Best Practices for Selecting a 401(k) Advisor**
 - *Kathleen McBride, AIFA[®]*
Director, Steward Marketing, CEFEX
- **Best Practices for 401(k) Plan Administration**
 - *Jason Dwyer, CPFA, QKA*
Owner, Jackson Avenue, LLC

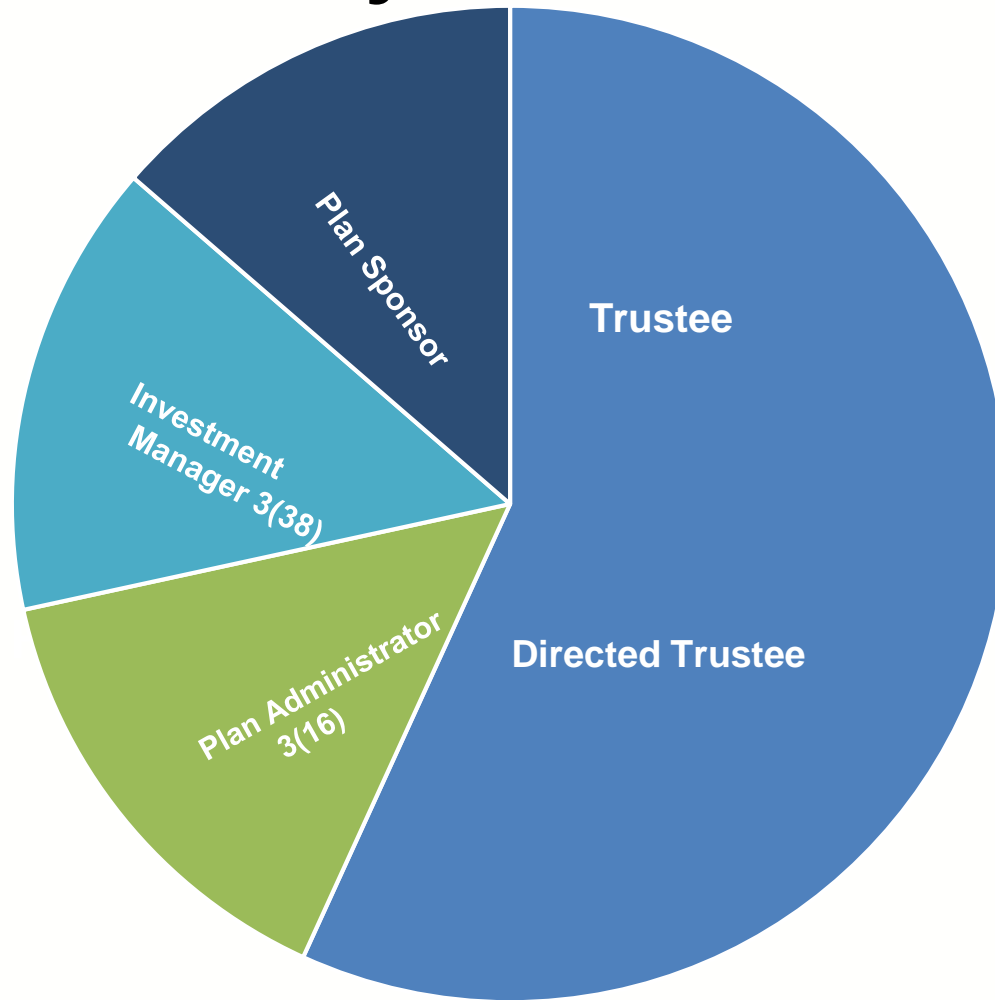
401(k) Plan Committee Best Practices

*Betsy Piper/Bach, JD, CFP®, CIMA®
President, ASAE Business Service, Inc.*

Discussion Points

- 1) Fiduciary Status and Roles
- 2) 401(k) Committee Governance
- 3) Trustee Functions
- 4) Fees

Who is a Fiduciary?



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



...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 by others

Fiduciary Liability Penalties....

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

Nerd Question #1:

What is the difference between a Trustee and a 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
- Hold harmless agreement



Did you know...

Governance...can protect you.

Committee Members

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

Agenda 101



Agenda 101 Cont'd

Statement of
Purpose

Regulatory
Updates

Goals

Plan
Operations

Investment
Policy
Statement

Insurances

Compliance
Topics

Plan
Documents

Nerd Question #2:

How often does the 401(k) committee need to meet?

Nerd Question #3:

Do I need to hire an investment adviser?

Investment Adviser Role

Investment advice:

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

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

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

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



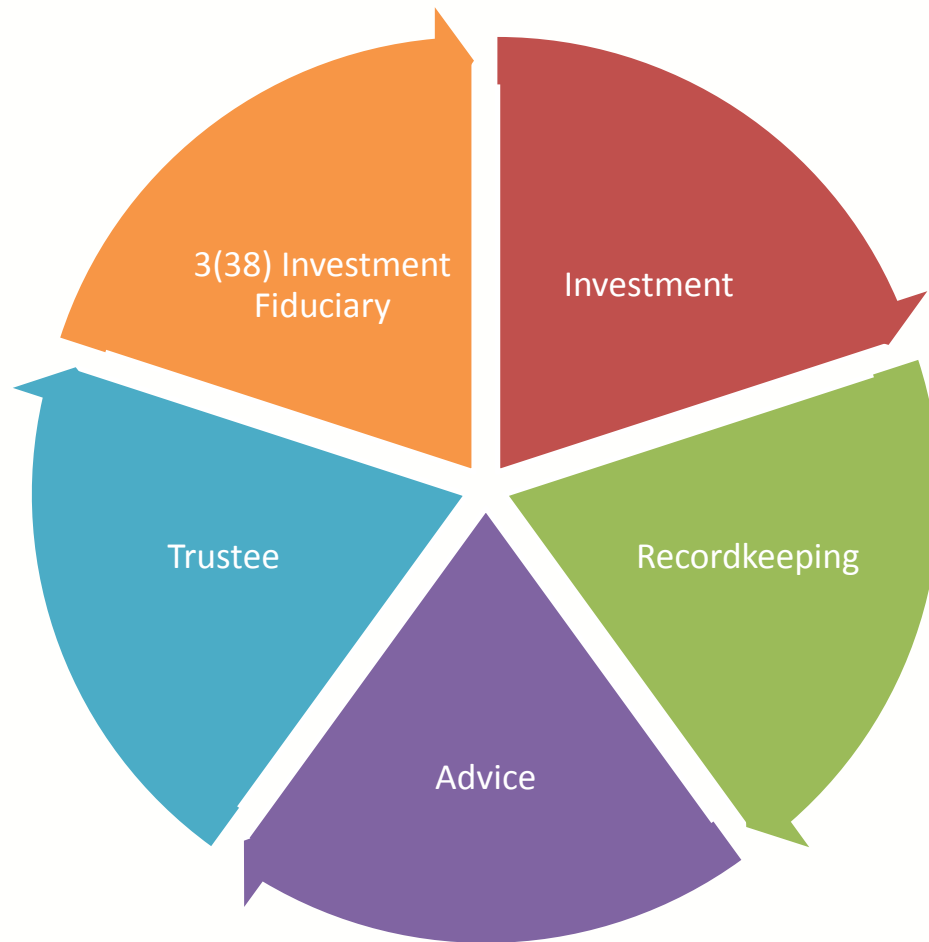
It's Your Fiduciary Duty, but Did you know...

Fees

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



- **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



Fiduciary Considerations When Selecting a 401(k) Advisor

Kathleen McBride, AIFA®

Director, Steward Marketing, CEFEX

Introduction

What's CEFEX?

CEFEX – Centre for Fiduciary Excellence
an independent, global, assessment and
certification organization.

CEFEX serves to help investors and
stewards determine the trustworthiness of
service providers.

Introduction

What's Certification?

Certification is an independent verification of a firm's adherence to a defined standard.

It is achieved through annual assessments.



Advisors
Managers
Stewards



Corporate RIA
Tools Providers



Recordkeepers
TPAs

Prudent Practices

Background

- ERISA established “Prudent Expert” Rule
- *“A fiduciary shall discharge his duties with respect to a plan 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.”*
- Prudent Practices define the practices that a fiduciary would adopt to conform to the standard of conduct mandated by ERISA
- Conforming to Prudent Practices could mitigate the risk and liability associated with the type of fiduciary breach claims we are seeing

Nerd Question #4:

Is there a way to see exactly what the fees and expenses for the plan are?

Fiduciary Precepts: What to Assess

1. Know standards, laws and trust provisions
2. Diversify assets to specific risk/return profile of the client
3. Prepare an investment policy statement
4. Use prudent experts and document due diligence
5. Control and account for investment expenses
6. Monitor the activities of prudent experts
7. Avoid prohibited transactions and avoid or manage conflicts of interest in favor of the client

A Defined Standard for Advisors



- 21 Fiduciary Best Practices
- 93 Supporting Criteria
- Each legally substantiated by
 - statutes, regulation, regulatory guidance & case law.

Prudent Practices

Why Are They Important ?

- Fiduciary breach lawsuits on the rise since 2003
 - More suits now result in damage awards or expensive settlements
 - Suits no longer limited to large plans
 - US Supreme Court now weighs in – *Tibble v. Edison*



Judicial Deliberations

Courts take note of Prudent Practices in judicial deliberations:

- **Tussey v. ABB (2010):** Expert testimony on Prudent Practices accepted by the Court
- **Tibble v. Edison (2014):** Amicus brief filed on Prudent Practices
- **Kruger v. Novant (2016):** Declaration on Prudent Practices filed to support Motion to Approve Settlement
- **Gordon v. Mass Mutual (2016):** Declaration on Prudent Practices filed to support Motion to Approve Settlement

Nerd Question #5:

How do I know whether my plan adviser is working to benefit us?

Steward Obligations

- Conduct reasonable **due diligence** on service providers.
- Conduct **periodic reviews** of service providers.
- Decisions regarding investment are **documented**.
- **Agreements** are in writing and consistent with standard of care.
- Use a CEFEX-certified Advisor to benefit from an independent perspective.

AND

- Gain recognition for YOUR plan.

Tools Help in Monitoring Advisors

Prepared for: Sample 401(k) Client

Fi360 Fiduciary Score® Breakdown (Funds/ETFs/GRPs only)

Fi360 Fiduciary Score Criteria

- 1 Inception Date: The investment must have at least a 3 year track history.
- 2 Manager Tenure: The investment manager must have at least a 2 year track history. (Most senior manager's tenure)
- 3 Assets: The investment must have at least 75 million under management. (Total across all share classes for funds/etfs)
- 4 Composition: The investment's allocation to its primary asset class should be greater than or equal to 80%. (Not applied to all peer groups)
- 5 Style: The investment's current style box should match the peer group. (Not applied to all peer groups)
- 6 Prospectus Net Exp Ratio: The investment must place in the top 75% of its peer group.
- 7 Alpha: The investment must place in the top 50% of its peer group.
- 8 Sharpe: The investment must place in the top 50% of its peer group.
- 9 1 Year Return: The investment must place in the top 50% of its peer group.
- 10 3 Year Return: The investment must place in the top 50% of its peer group.
- 11 5 Year Return: The investment must place in the top 50% of its peer group.

Calculation Methodology

The Fi360 Fiduciary Score is a peer percentile ranking of an investment against a set of quantitative due diligence criteria selected to reflect prudent fiduciary management. The criteria include total returns, risk-adjusted returns, expenses, and other portfolio statistics. Investments are ranked according to their ability to meet due diligence criteria every month. The rank becomes the Fi360 Fiduciary Score. The Fi360 Fiduciary Score Average is a one-, three-, five- or ten-year rolling average of an investment's Fi360 Fiduciary Score. The Fi360 Fiduciary Score represents a suggested course of action and is not intended, nor should it be used, as the sole source of information for reaching an investment decision. Visit the Glossary or fi360.com/fi360-fiduciary-score for more information.

Legend

- ✓ Investment meets the criterion
- ✗ Investment does not meet the criterion
- N/A Investment data is not available
- N/S Investment doesn't have the history to be scored
- N/A Investment is not screened on the criterion



401(k) REPORT created for My Client
7 JUN 2016

404(c) Diversification



		f360 Fiduciary Score Average					f360 Fiduciary Score Criteria											
Investment Name	Peer Group	Score	1 Yr	3 Yr	5 Yr	10 Yr	1	2	3	4	5	6	7	8	9	10	11	Action
Large-Cap Equity																		
American Century Fundamental Equity A (AFDAX)	Large Blend	46	17	16	16	-	✓	✓	✓	✓	X	✓	✓	✓	X	✓	X	Watch
		# of Peers	1,333	1,249	1,139	875												
Delaware US Growth Instl (DEUX)	Large Growth	16	8	11	20	41	✓	✓	✓	✓	✓	✓	✓	✓	X	✓	✓	-
		# of Peers	1,452	1,363	1,222	945	552											
Mid-Cap Equity																		
Dreyfus Structured Midcap A (DPSAX)	Mid-Cap Blend	0	16	29	35	-	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	-
		# of Peers	342	323	288	207												
Small-Cap Equity																		
Columbia Small Cap Index A (NMSAX)	Small Blend	25	6	9	13	17	✓	✓	✓	✓	X	✓	✓	✓	✓	✓	✓	-
		# of Peers	582	559	497	369	206											
Developed International Equity																		
Hanning & Napier World Opportunities A (EXWAX)	Foreign Large Blend	66	65	45	30	22	✓	✓	✓	✓	X	✓	X	X	✓	X	X	Watch
		# of Peers	676	633	544	380	204											
Emerging Market Equity																		
Acadian Emerging Markets Instl (AEMGX)	Diversified Emerging Mkts	0	20	22	26	14	✓	✓	✓	✓	N/A	✓	✓	✓	✓	✓	✓	-
		# of Peers	397	347	255	169	99											



Nerd Question #6:

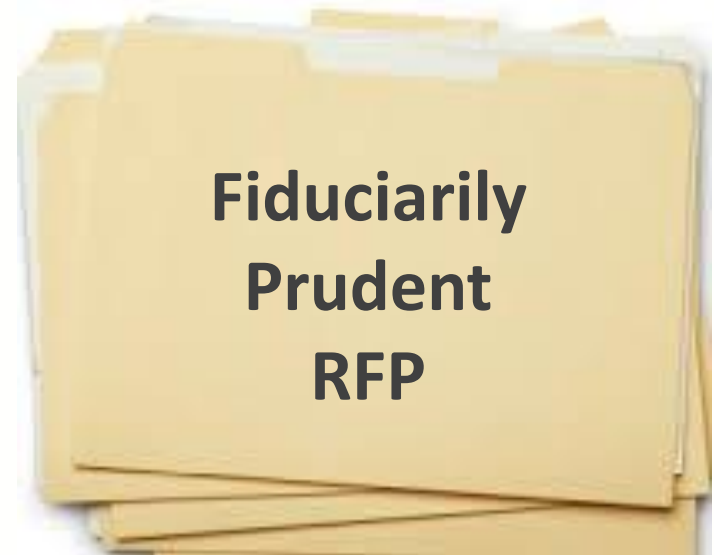
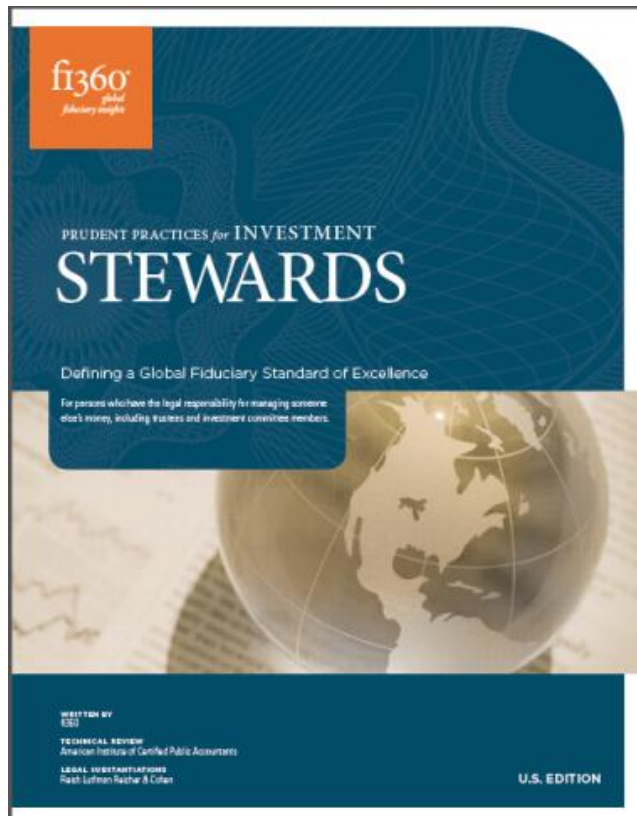
Why can't my golf buddy just run the plan?

Benefits of Hiring a Prudent Advisor

- Increase value from your service providers
- Reduce your personal and institutional liability
- Improve plan participant outcome
- Mitigate your firm's reputational risk
- Attract talented employees in an era of high employment

Be an Excellent Fiduciary

- Consider using CEFEX's Request for Proposal when selecting an Advisor.



Demonstrate Your Stewardship

OUR RETIREMENT PLAN IS CEFEX-CERTIFIED



A MESSAGE TO EMPLOYEES

When it comes to your retirement plan, the CEFEX Certification Mark tells you that:

- your investment lineup has been prudently selected
- your investments are being monitored
- your investment expenses are being controlled
- your plan is well-managed

CEFEX conducts an annual review of your retirement plan. CEFEX certification verifies that the plan utilizes industry best practices and incorporates the most up-to-date guidance. Additionally, the CEFEX review includes a comparison against other plans so you can know that your plan measures up.

The decisions being made today by stewards of your retirement plan can affect the retirement nest egg you will enjoy in the future. That's why you need to have confidence in your retirement investment plan – confidence that the CEFEX Certification Mark gives you.



WHAT DOES IT MEAN TO BE CEFEX-CERTIFIED?

- The plan complies with investment-related laws and internal governing documents
- Accepted industry best practices are being used
- Conflicts of interest are minimized and disclosed



visit ►
asaacenter.org/RetirementTrust

Additional Benefit

- Stewards can achieve a 25% discount on fiduciary liability insurance with CEFEX certification.

Example: \$5M Plan (\$1M limit)

Regular FLI premium: \$3,311.00

With CEFEX cert: \$2,483.25

Discount: \$827.75

Example: \$20M Plan (\$1M limit)

Regular FLI premium: \$5,527.50

With CEFEX cert: \$4,145.63

Discount: \$1,381.87

2 year packages with ERISA bond can include extended coverage.

Errors & Omissions
Fiduciary Liability Insurance

25% System Discount

Colonial recognizes adherence to industry best practice!

Colonial Surety Company, a leading provider of pension related insurance, offers special rates for E&O and Fiduciary Liability Insurance to those firms and individuals who achieve industry certification through the Centre for Fiduciary Excellence (CEFEX).

Under the program, CEFEX-certified firms may apply for coverage at preferred rates through Colonial Surety Company. The Company's president, Wayne Nunziata said, "We appreciate the investment in people, process, and technology that elite firms make in achieving certification through CEFEX. It demonstrates a commitment to quality, and we are very pleased to partner with CEFEX."

Errors & Omissions and Fiduciary Liability Insurance details:

- ✓ Coverage for third party administrators, record-keepers, and advisors
- ✓ Specifically covers work performed under Title I ERISA
- ✓ Limits up to \$5,000,000

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CENTRE FOR FIDUCIARY EXCELLENCE

retirement
trust
Re-envisioning the future

 colonial

visit ►
asaacenter.org/RetirementTrust

Video Description



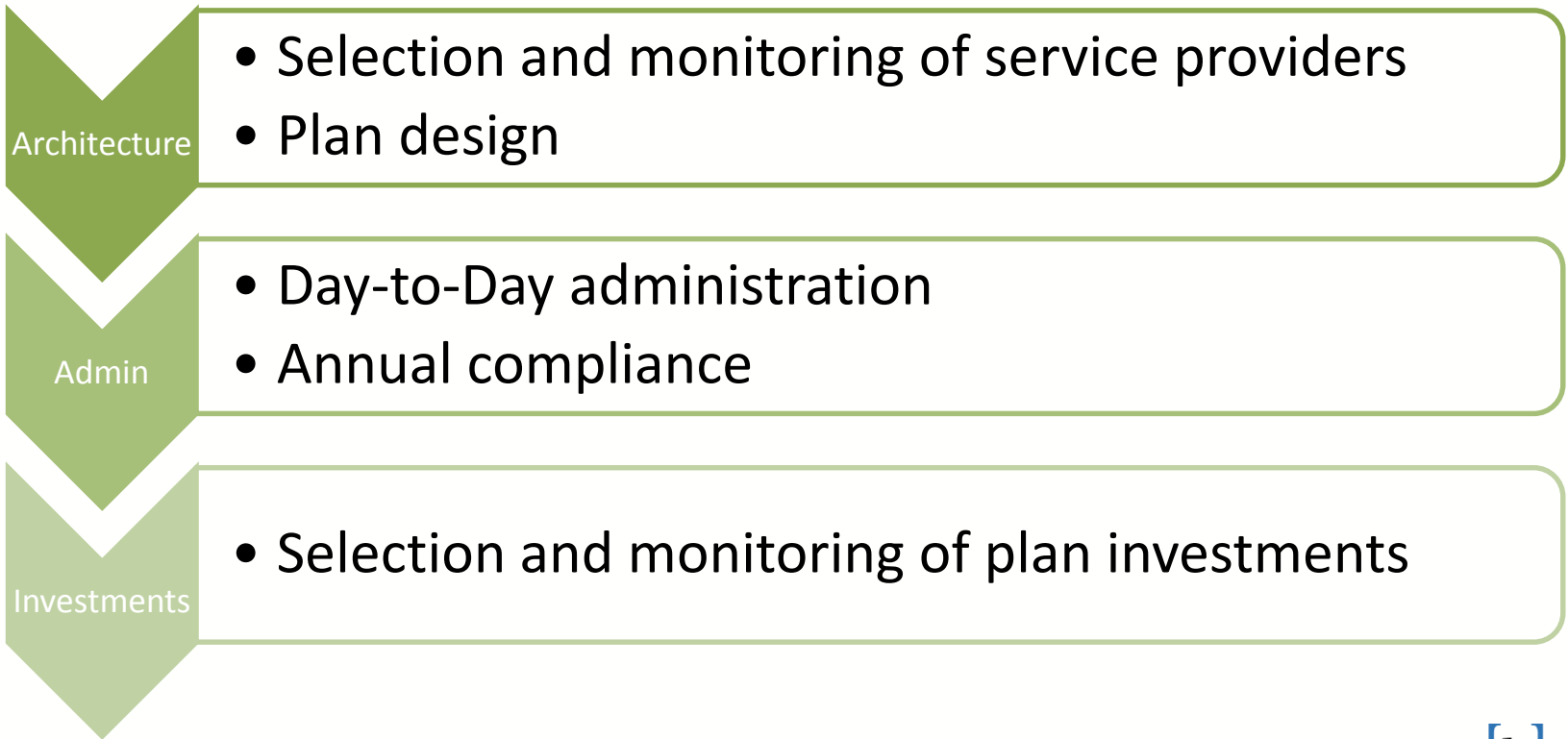
For more information

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Best Practices for 401(k) Plan Administration

Jason Dwyer, CPFA, QKA
Owner, Jackson Avenue, LLC

Main Functions of a 401(k) Plan



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Discussion Points

- What are the potential penalties
- What does Plan Administration entail
- What are the requirements
- What is most important
- What are your best practices

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Potential Penalties

Failure to:	Penalty
Provide statements	\$28/employee
File IRS Form 5500	\$2,140/day
Furnish auto enroll notice	\$1,632/day
Furnish blackout notice	\$136/day/employee
Respond to EE's request for info	\$147/day
Remit withholdings	Complicated but at least lost earnings
Provide benefit information	\$147/day/ incident
Requested documents by DOL	\$152/day
Making an improper distribution	\$15,909/distribution
Breach of Fiduciary duty	20% of the recovery amount

Plan Administration

Official

Fiduciary-Legally responsible Party

Named in the Plan Document

Almost always the Plan Sponsor

Un-Official

Not a Fiduciary

Service providers

HR staff

Acting as directed

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Requirements

Reporting

New Hires
Terminations
Pre-Tax
Roth
Hours
Addresses
E-Mails

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Requirements

Distributions

All employee distribution requests, including loans, must be approved

Approval means they comply with the plan document

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Requirements

Contributions

The #1 most important issue!

Deductions must be correct

Deductions must be deposited timely

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Requirements

Employee
Communication

Automatic Enrollment

Safe Harbor

Qualified Default
Investment Alternative

Summary Plan
Descriptions

Summary Annual Report

Fee Disclosure

Summary of Material
Modifications

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Nerd Question #7:

How do I know if we are properly utilizing electronic delivery of participant notices?

Requirements

Compliance

IRS Form 5500

Highly Comp Test

Top-Heavy

Deferral/Roth Limit

Coverage

Annual Additions

Plan Docs

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Requirements

Fidelity Bond

Type of insurance that protects against fraud or dishonesty

10% of assets handled annually

\$1,000 min
\$1,000,000 max

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Requirements

Fiduciary Insurance

Protects fiduciaries against losses to a plan as a result of errors or omissions or breach of their fiduciary duties

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But my recordkeeper takes care of it.

- Record keepers are not fiduciaries
- Simply maintain your records
- Assume no responsibility
- Act at your direction

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Plan Providers (aka Recordkeepers)

- [Rek-erd-kee-ping]
 - The maintenance of a history of one's activities, as financial dealings, by entering data in ledgers or journals, putting documents in files, etc.

➡ Garbage in; Garbage out

➡ The Plan Sponsor must ensure the recordkeeper has accurate data

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Play Offense & Defense

Offense

Know what
your
recordkeeper
does

Know what
you must do
or have done

Defense

Most errors are in
contribution
reporting

Reconcile your
payroll records
with your
recordkeeper

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Offense – Who does what?

- Employee enrollment
 - Notices
 - SPD
- Annual notices
 - Fee disclosure
 - QDIA
 - Safe Harbor
 - Automatic Enrollment
 - SAR
 - SMM
- Employee Communication Requirements
 - E-Mail?
- ➡ Employer contribution calculation

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Nerd Question #8:

What are some of the more common contributions errors?

Defense – Check it & Fix it Now!

- Most errors are contribution errors
 - Voided or corrected payroll
 - Contributions by ineligible or suspended participants
 - Manual keying errors
 - Incorrect match calculation by payroll provider
- Try and fix in the same plan year
 - Not as simple as reporting a negative contribution
 - Must adjust for market fluctuation
 - Employer money is much easier to fix

What is most important?

- Correct contribution reporting
- Timely contribution reporting
- New employee communication
- Annual employee notices

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Your Best Practices Are:

- Know what needs to be done and when
- Understand what services are being provided
- Reconcile your payroll records with your plan recordkeeper quarterly
 - Including a match calculation verification
- Utilize Plan design options to ease reporting requirements
 - Eligibility and vesting requirements
 - Definition of compensation
- Make sure you have Fidelity bond coverage
- Consider Fiduciary insurance
- Have a true 401(k) advisor/consultant for unbiased support

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Broad Stroke Best Practices Are:

- Review your plan operation annually
- Review your service providers annually
- Benchmark your service providers every 3 years
- Review your plan design annually

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For more information

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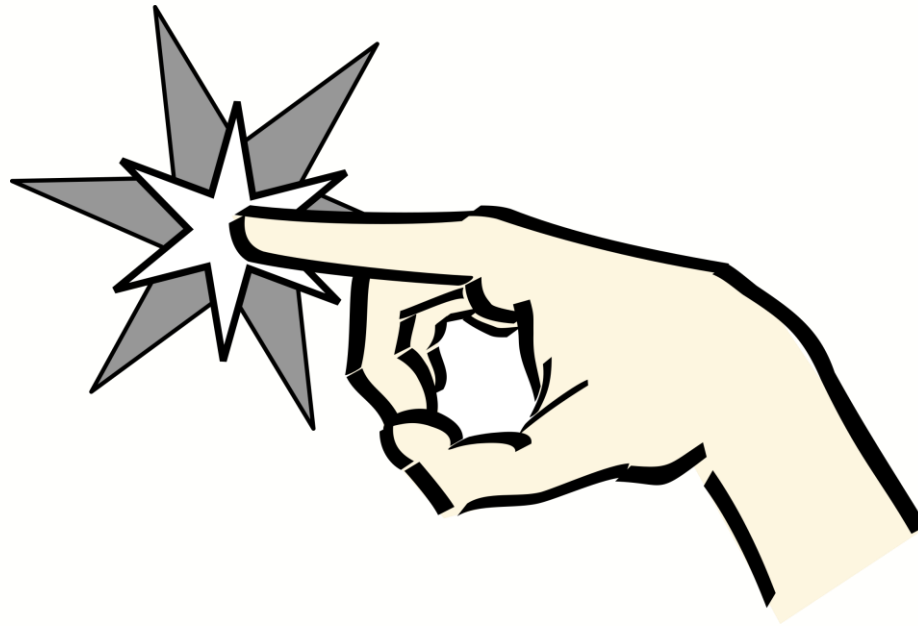
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Thank you for attending!

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