

# **Fiduciary Best Practices: Helping You Meet Your Obligations under ERISA**

## **Part One: Why all the Fuss about Fiduciary Responsibility?**

By Mike Rogers, Director at Vista Wealth Management

Recent market volatility and uncertainty have put plan sponsors in the spotlight in terms of their governance and fiduciary responsibilities with regard to their companies' retirement plans. Government agencies such as the Internal Revenue Service and Department of Labor issue rules and regulations related to fiduciaries that must be followed in order for plans to operate in a non-discriminatory manner and to ensure that employees' rights are protected. This discussion has spilled over to the House, the Senate and the SEC, all debating whether there should be a single standard for fiduciary conduct.

As a retirement plan sponsor, you need to be aware of your fiduciary responsibilities relating to the day-to-day administration of your Plan, and to understand what steps you can take to comply with the rules and regulations that govern qualified retirement plans. Overall, fiduciaries are held to a high standard of care.

Before we can even get to the discussion of how to go about performing these fiduciary functions, we first need to determine who the fiduciaries are.

### **Who is a plan fiduciary?**

Plan fiduciaries have the responsibility for the establishment and ongoing administration of the Plan, as well as the selection of investment options and service providers.

### **Common examples of fiduciaries include:**

- Plan Trustee – an individual or entity that holds title to the assets in a trust for the benefit of plan participants and their beneficiaries. A trustee is always a fiduciary to some degree. Most outside trustees are “directed” trustees which mean they take their instructions from the plan sponsor and have limited exposure;
- Plan Administrator – a person or entity responsible for the day-to-day administration of the Plan and is generally designated in the plan document. **The Plan Administrator should not be confused with a Third Party Administrator (TPA). A TPA is typically not a fiduciary;**
- The sponsoring employer;
- The employer's Board of Directors;
- Officers of the employer who are responsible for decisions that affect the Plan;
- An outside broker or advisor who provides investment advice with respect to Plan assets for compensation, such as commissions.

Fiduciaries can either be named or they can be functional. Thus, fiduciary status is based on the **functions performed for the plan**, not just a person's title. In many instances, a plan sponsor will “appoint” a Retirement Plan Committee or Investment Committee to oversee the Plan's operation. The members of these committees, by their actions, become fiduciaries with respect to the Plan.

As you can see, the net can be cast quite wide in terms of who can be considered a fiduciary with regards to the Plan. It is important to identify who the fiduciaries are and for them to understand and acknowledge their roles and responsibilities.

In my next article, I will discuss what it means to be a fiduciary and the responsibilities of the position.

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