# 401(k) Plan Sponsor Quarterly Newsletter

**July 2021**

## ONWARD FINANCIAL NETWORK IS YOUR ONE-STOP SHOP!

We are more than just the Advisor for your retirement plan - we are your one-stop shop for everything 401(k)!
Whenever you or your participants have questions regarding the 401(k) plan, we are simply a phone call or email away!
And we'll see everything through to a successful conclusion!
Whether it is a matter concerning the management of the plan or that one of your participants would like to speak with one of our advisors to discuss their 401(k) account or financial plan, we are always here to serve you - Our Client. Give us a call, anytime!

## 2021: PLAN RESTATEMENT CYCLE YEAR

Every six years, the IRS requires that a qualified plan document must be completely re-written or restated. Plan restatements are mandatory to remain in compliance and **are not voluntary**. If you fail to have your 401(k) plan restated on time, consequences rendered could lead to disqualification of the plan which means that all tax benefits of the plan are lost. There could also be additional penalties and fees assessed by the IRS. The deadline for completion of the plan restatement is July 31, 2022. This is also a good time to review your current plan provisions to see if there is anything else you would like to update at the same time.
Once your plan document has been restated, participants should be provided with a copy of the newly updated Summary Plan Description.

## QUARTERLY INVESTMENT REVIEWS

We are always willing to meet with you to do a quarterly review of your fund line up and plan demographics so sign up for a Quarterly Investment Review with us at the beginning of each quarter!

## FIDUCIARY FITNESS

As part of our focus on Fiduciary Fitness and to help you better understand your fiduciary duties, this newsletter will focus on some of the things you should be cognizant of as a fiduciary to the 401(k) plan. Each quarter we will focus on different aspects of fiduciary fitness so you will have a well-rounded understanding of all aspects of your plan.

# Upcoming Seminars

### Estate Planning — July 2021

Estate planning is often overlooked by most people when planning for retirement because most people don't know where to begin. Designating who will receive your assets and handle your responsibilities once you are no longer able to is an important decision that should be well-planned and thought out. Join us to take the first step and learn how to get started with planning your estate.

### Medicare & Insurance — August 2021

Learn about the different types of insurance available and the advantages to each. The main focus will be on the different Medicare plans.

### Saving for Retirement in your 20s and 30s — September 2021

Join us to discuss tips for early savers and learn how establishing your retirement plan early can benefit you in retirement. It's never to soon to start saving for your retirement!

### Asset Allocation/ Understanding Risk — October 2021

Understanding risk can help you invest smarter and panic less during times of higher volatility in the market. Most people have no idea how this volatility can affect their ability to retire. Join us to learn how an understanding of investment risk and asset diversification can help you make smarter and more confident financial decisions.

### Financial Planning/ Distribution Strategies — November 2021

As you near retirement, financial planning and determining your distribution strategy for your retirement assets is more important than ever. Join us as we talk through some strategies and financial planning items that you should keep in mind as your retirement deadline approaches.

## WHAT IS THE DEFINITION OF A FIDUCIARY?

Each plan must have one "named" fiduciary named in or identified with a procedure prescribed in the plan document. It may be the plan sponsor, officer, board of directors, board of trustees or member of the management team or committee. If the plan document permits, this "named" fiduciary can allocate responsibilities to others.

A fiduciary is any individual or entity that has or exercises discretionary control over the management of the plan or the plan's assets. A plan may have more than one fiduciary or a single individual serving in more than one fiduciary capacity. A fiduciary is not anyone who performs ministerial functions (such as a payroll administrator) and does not have the authority to make decisions with respect to plan policies, procedures etc.

## FIDUCIARY DUTIES & RESPONSIBILITIES

- Implementing plan-related decisions
- Carrying out processes and procedures regarding plan management
- Acts carried out on behalf of the plan
- Selection of provider, investments or investment manager

A fiduciary must act solely in the interest of the plan participants, their beneficiaries and alternate payees. In doing so, a fiduciary must:

- Carry out duties prudently
- Follow the terms of the plan document (unless those documents are inconsistent with ERISA
- Diversify plan assets
- Pay only fair and reasonable expenses

## PLAN FEES

As part of the fiduciary duty, plan sponsors must ensure that plan fees are reasonable.

Plan fees are made up of the following:

- ***INVESTMENT MANAGEMENT FEES***
- ***PLAN ADMINISTRATION FEES*** (Third Party Administrator)
- ***ADVISOR/FINANCIAL PROFESSIONAL FEES***

ERISA Section 408(b)(2) requires covered service providers to disclose fees to plans in writing.

ERISA Section 404(a)(5) requires that plan fees be disclosed to participants, which include:

- an explanation of administrative fees
- fees actually charged against participant accounts
- individual expenses deducted from a participant's account (e.g. loan fees)
- investment fee and expense information

## BEST PRACTICES TO DETERMINE IF FEES ARE REASONABLE:

- Determine what services are covered under the estimated fees and which are excluded
- Monitor the level and quality of the services and performance of the providers and investments to ensure the costs are reasonable and continue to meet participants' needs
- Establish a prudent process for understanding, monitoring and documenting fees

Plan fiduciaries must monitor performance routinely by means of:

- Identification of all fiduciaries, outline responsibilities, measure performance and review any complaints
- Utilization of a documented process
- Review the plan on an annual basis

## TRUSTEES AS FIDUCIARIES

Plan Trustees are considered fiduciaries due to management and control of plan assets. There are two types of trustees - a ***discretionary*** trustee has authority and discretion for the management and control of plan assets, while a ***directed*** trustee is subject to the discretion of a plan fiduciary, other than that individual and is only a fiduciary to the extent of its discretion, which is generally limited.

An *investment advisor* is a fiduciary if the advisor meets ERISA section 3(21) requirements. The investment advisor serves as an investment expert providing investment recommendations for the plan as well as renders investment advice for a fee.

A fiduciary may rely on information provided by individuals or other entities performing ministerial functions for the plan but must exercise prudence in selecting or retaining such individual or other entities.

## FIDELITY BOND

Every fiduciary and anyone who handles plan funds or property must be bonded, unless subject to an exemption. The bond must cover at least 10 percent of the plan assets or amount handled by the individual acting in a fiduciary capacity.

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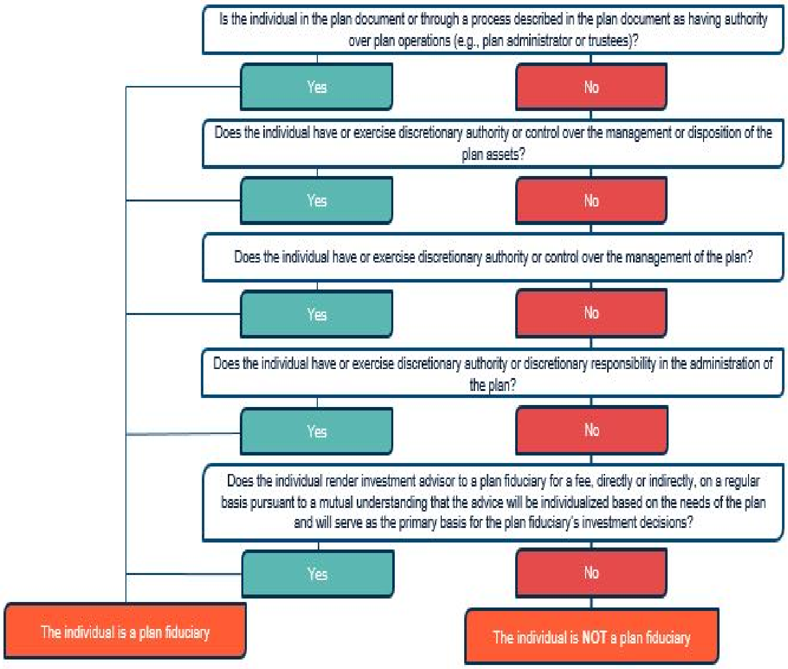
Objectivity / Competency / Attention to Detail

**Conclusion – Determining if an Individual is a Plan Fiduciary**




## STRATEGIES TO HELP MINIMIZE FIDUCIARY LIABILITY:

### Fiduciary Liability Explained

ERISA permits participants and beneficiaries to bring civil actions against a fiduciary who breaches duty. The fiduciary is ***personally*** responsible for any losses resulting from a breach and any losses suffered by the plan must be made whole. With the exception of the named fiduciary, a plan fiduciary's personal liability to the plan is limited to the functions the fiduciary perform, or for which the fiduciary is responsible. If a fiduciary takes all of the reasonable and legal steps to prevent a fiduciary breach but fails in preventing the breach, then such fiduciary should not incur liability if reasonable efforts to remedy the breach have been undertaken.

The Department of Labor (DOL) may, at its sole discretion, waive or reduce a penalty if it determines that the following occurred:

- the fiduciary or individuals involved acted in good faith
- it is unreasonable to expect the fiduciary or individuals involved to restore all losses without experiencing severe hardship
- reduced penalties may apply if the fiduciary files an application with the DOL under the **Voluntary Fiduciary Compliance Program.**

## FIDELITY BOND VERSUS FIDUCIARY INSURANCE

A fidelity bond must be in place and must cover at least 10 percent of the plan assets.
***Fiduciary insurance is not the same as a fidelity bond.*** A fidelity bond protects the plan; fiduciary insurance protects fiduciaries and their personal assets from lawsuits alleging a breach of fiduciary responsibility.

## INVESTMENT POLICY STATEMENT

An investment policy statement provides the fiduciaries who are responsible for plan investments with set guidelines and general instructions about various types or categories of investment management decisions.

## HIRE TRUSTEES AND INVESTMENT MANAGERS

Fiduciaries and trustees may look to hire outside professional trustees and investments managers to make plan decisions which can limit potential liability exposure. Fiduciaries and trustees must carefully monitor professional trustees and investment managers.

## HIRE INVESTMENT ADVISOR

Types of Investment Advisors:

- **3(21) Investment Fiduciary** - "Assist me"
  The 3(21) recommends the selection and replacement of plan investment options, but the plan sponsor must approve such changes
- **3(38) Investment Fiduciary** - "Do it for me"
  The 3(38) advisor is responsible for the investment selection, monitoring and replacement of investments. The plan sponsor is informed before changes are made.

## ESTABLISH PARTICIPANT-DIRECTED ACCOUNTS

Fiduciaries are not liable for losses due to a participant's investment choices if they are deemed to be compliant with ERISA Section 404(c).

## CONDUCT PERIODIC AUDITS

Conduct periodic self-audits to ensure that the plan is being administered in accordance with the terms of the plan document, ERISA and the Internal Revenue Code.

Employee Benefit Plans with 100 or more participants are required to have an audit as part of their obligation to file an annual return/report (Form 5500). Plan sponsor should hire an independent qualified public accountant to complete the audit.