

The Buck Stops with You: Retirement Plan Liability Management

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The webinar will start at 11:00 am CT



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Administration



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About the Speaker



Brad Bechtel

Senior Vice President
Employee Benefit Services

Leader of AGH's employee benefits
services division

Experience as consultant to numerous
Fortune 500 companies

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About the Speaker



David Darby

Vice President
Employee Benefit Services

More than 25 years financial services
industry experience

Expertise in fund selection and
retirement plan education

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Today's Learning Objectives

Understand a retirement sponsor's fiduciary responsibilities

Learn the most likely litigation hotspots in retirement plans

Identify best practices for decreasing plan sponsor risks



Fiduciary Focus





Polling Question #1



Who is a Fiduciary?

Exercises discretionary authority over the plan

Named in the plan document

Offers investment advice regarding plan assets



Who is a Fiduciary?



Administrative
committee, Board of
Directors



Anyone who
performs a fiduciary
function



Maybe you



Other Fiduciaries

Investment Representatives (IR)

- Associated with a broker dealer
- Not a fiduciary
- Under newly proposed DOL guidance may change

Registered Investment Advisor (RIA)

- Discretionary fiduciary 3(38) vs.
- Non-discretionary fiduciary 3(21)

Trustee

- Discretionary vs Directed



Non-fiduciaries

Custodian – holds assets, processes deposits & distributions, and reporting

Record keeper / Third Party Administrator (TPA) - accounting and/or compliance services

Actuaries and auditors

Attorneys



What are a Fiduciary's Duties?

Act solely in
participants' interest

Carry out duties
prudently

Follow the plan
documents

Diversify plan
investments

Pay only reasonable
plan expenses



Plan Fees

Historically..

- Difficult to determine
- Inconsistent & nonstandard

Recently enacted regulations

- Not anymore...
- 408(b)-2 & 404(a)-5



Why Consider Fees?

Employee with 35 years to retirement, current 401(k) balance of \$25,000

- Annual returns during the next 35 years: 7%
- Fees and expenses reduce your average return by 0.5%.
- Account will grow to \$227,000 at retirement even if no further contributions are made to the plan.
- If fees and expenses are 1.5%, account balance will grow to only \$163,000.

Conclusion: 1% increase in fee and expenses reduces account balance at retirement by 28%.



Defined Contribution Fees, Costs & Charges

Fee, Cost or Charge	Explanation
Management & operation (expense ratio)	Ongoing charges for managing the assets of the fund
12b-1 fees	Fees paid by broker/dealers for fund distribution, marketing, service support and recordkeeping.
Sub-transfer agency fees	Payments to recordkeepers from mutual funds companies related to accounting services
Wraps	Charges for variable annuity programs offered by insurance companies that bindle together suites of services
Sales charges (loads or commissions)	Transaction cost for buying and selling shares
Brokerage or record fees	Asset-based fees paid to broker/dealer for providing plan services (i.e., mutual fund selection, education/commissions)
Contingent Deferred Sales Charges (CDSC)	Sales charge or load that a mutual fund investor pays when selling class B shares (occasionally on A shares) within a specified number of years of the date on which they were originally purchased.
Mortality risk and administrative expenses (M&E)	Fees for providing an annuity product and life insurance.
Redemption fees	Asset-based fee/penalty paid to mutual fund companies when participants or plan sponsors conduct short-term trading.

Source: Segal Advisors, Inc.



“ERISA holds plan fiduciaries to a high legal standard ... the responsibilities of fiduciaries have been described as the highest known to the law.” [Donovan v. Bierwirth 2d Cir 1982] “Obviously, not all fiduciaries have the skills needed to satisfy these high standards. Fortunately, ERISA permits fiduciaries, and in fact requires them, to get help when they need it.”

– Fred Reish/Joe Faucher

Employee Retirement Income Security Act of 1974 (ERISA)



Delegation of Duties



Duties may be delegated and assigned, but not responsibilities.



What are the Potential Liabilities?

Personal liability

Potential liability
for co-fiduciaries



Polling Question #2



How Can Risk be Reduced?

Compliance with
ERISA Section
404(c)

Investment
Policy
Statement

Retain
investment
experts

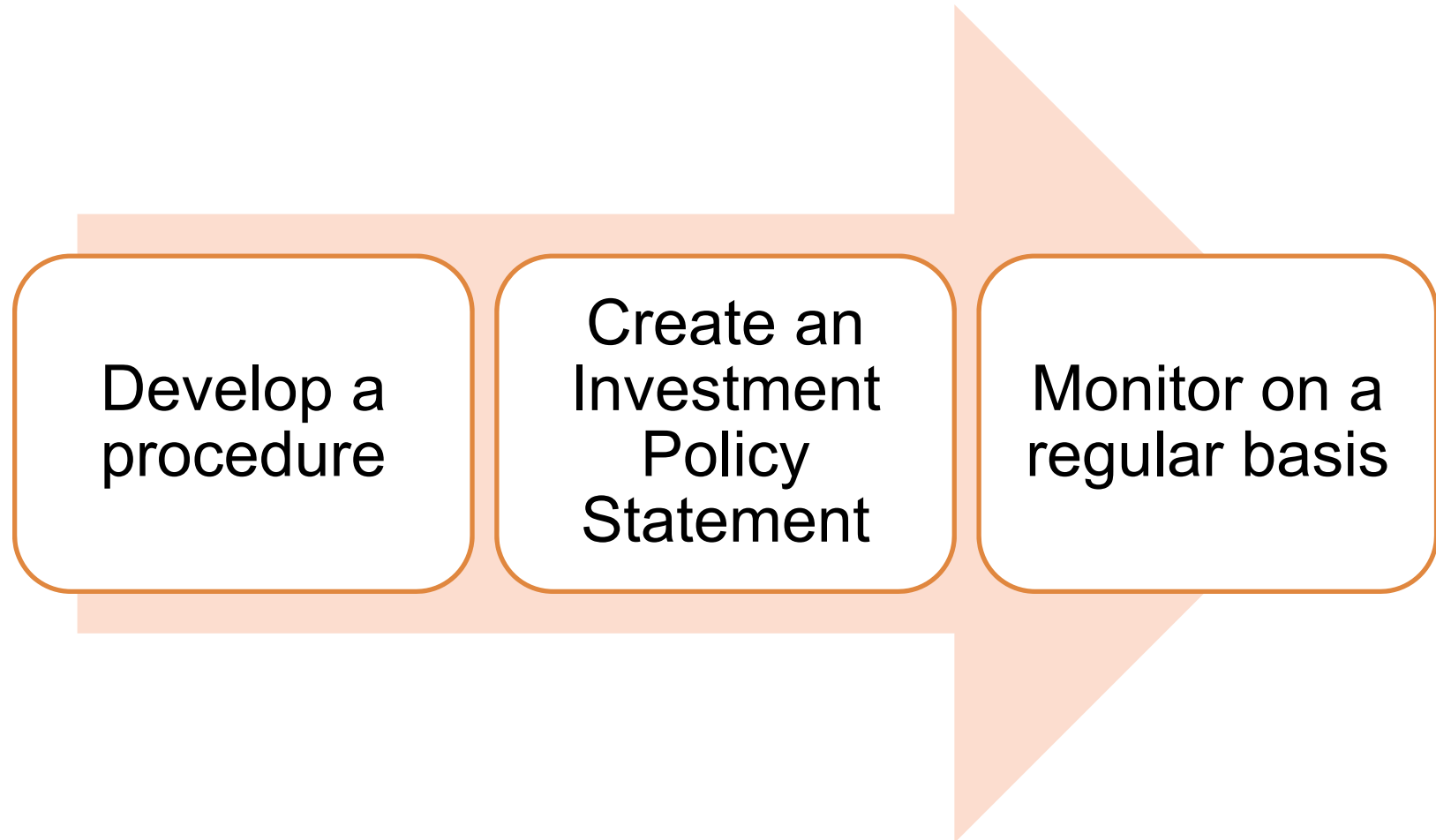
Obtain a fidelity
bond

Fiduciary liability
insurance
(optional)

Document!



Selection and Monitoring of Investments





Fund Selection



Options should cover a range of asset classes and investment styles.



Fund Selection



Provide options for those who can't or don't want to manage their own investments.



Fund Selection

- Seek a proven management team and solid performance.
- Compare fund expenses.





Employer Stock

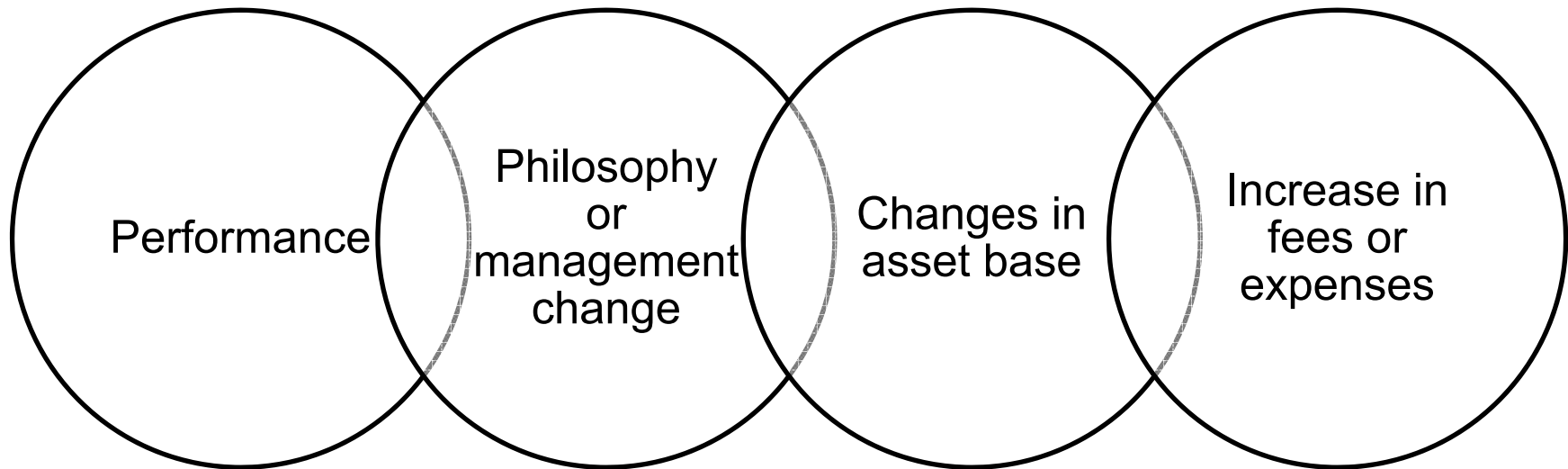
Appropriate for participants?

Can it be easily diversified?





Fund Monitoring





Adding an Investment Plan

- Expand the roster of asset classes.
- Provide access to wider range of styles.
- Include asset allocation, lifestyle and/or target-date funds.





Making Changes

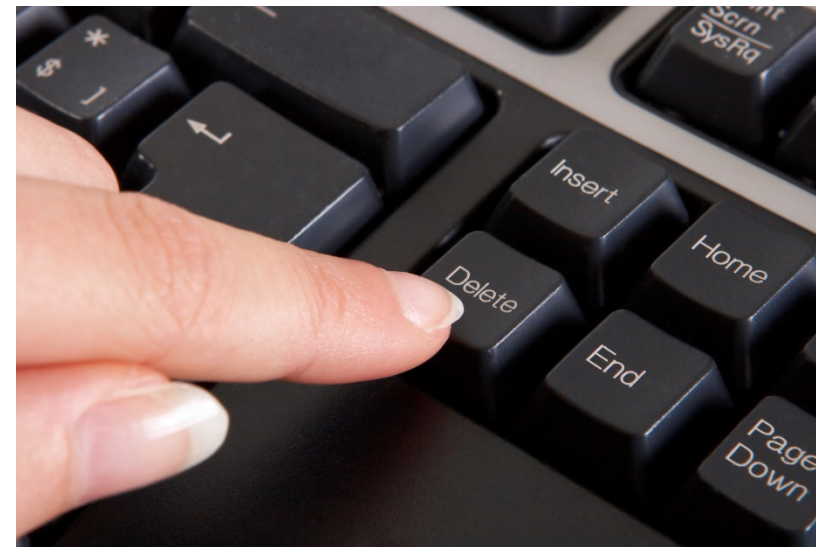
- Replace a fund that isn't performing.
- Add funds to diversify choices.
- Record any action/inaction.





Terminating Funds

- Simplify asset allocation.
- Eliminate duplication.
- Eliminate high-risk funds.





Educating Participants





Keep Participants Informed

Participant communications may be triggered by:

Plan changes

Administrative changes

Investment option changes



Polling Question #3



Where Fiduciaries Get In Trouble

- Not knowing
- Inattention
- Imprudence





Causes of Imprudent Decisions

Little or no training (what you don't know *will* hurt you)

Failing to grasp personal risk involved

Abdicating a duty that cannot or should not be deferred

Failing to document decisions

Failing to establish defined processes and follow them



Litigation Hotspots

Recent cases

Tibble v Edison International

Summary: Onus on plan sponsors to monitor and remove imprudent investments. U.S. Supreme Court ruling fortifies the idea that continuous retirement plan monitoring and removal of imprudent investments is a critical duty of all investment fiduciaries and those that fail to do so could face costly litigation.

Tatum v. RJR Pension Committee

Summary: This case was about what to do when a fiduciary has breached their duty of prudence by failing to put in place a prudent process to evaluate an investment decision. "Could have" v "Would have" argument.

Source: mcgladrey.com & fraplantools.com



Defined Contribution Fees, Costs & Charges

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Newly Proposed DOL Regulations

- Game changing for providers!!!
- Vastly broadens definition of fiduciary
- Brings fiduciary parity between registered investment providers and broker dealer registered representatives
- Requires more disclosures (Best Interest Contract)
- Caution – Don't compensate investment committee members



Fiduciary Responsibility Checklist

- ☐ Make sure that the plan document is updated for legal changes.
- ☐ Maintain the Summary Plan Description and other materials used by employees.
- ☐ Determine who the plan's fiduciaries are, and make sure they understand their responsibilities.
- ☐ Develop an Investment Policy Statement and keep it current.
- ☐ Obtain the required ERISA fidelity bond.
- ☐ Be acquainted with ERISA Section 404(c) provisions.
- ☐ Review outside experts and advisors.
- ☐ Document all procedures and decisions.
- ☐ Educate and communicate with employees and participants.



Polling Question #4



Web Resources

dol.gov/ebsa

irs.gov

benefitslink.com

plansponsor.com

401khelpcenter.com

ifebp.org

aghwealth.com

psca.org

principal.com

morningstar.com

reish.com



Consult Advisors at First Sign of Trouble

- Fix problems as they arise.
- Lawsuits often begin with participant letters/phone calls claiming benefits.
- Incorporate “Firestone language” into your plan document.
- Consult with attorneys to develop model claim/appeal denial letters.
- DOCUMENT DOCUMENT DOCUMENT



Final Thoughts

Prudence is found in PROCESS.

PROCESS is proof of conduct.

Conduct, not investment outcomes, defines PRUDENCE.



Thank You



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