



# Protecting Participants

Understanding your role as a fiduciary



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# A guide to fiduciary responsibilities

If you've followed the headlines over the years, it will come as no surprise that retirement plan fiduciaries have faced intense legal scrutiny for the way their actions (or even inactions) have affected the savings of retirement plan participants.

Participants depend on you as a fiduciary to choose a retirement plan provider, to select and monitor their plan investments and to make the right decisions when decisions need to be made.

The role of a fiduciary is vital because people are counting on you to make decisions that will help protect their retirement assets.

This brochure can help you better understand the role of a fiduciary and guide you in making decisions that will meet your legal obligations.

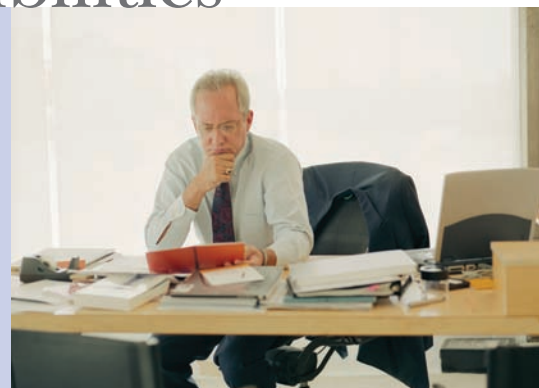
## Why a brochure for fiduciaries?

When you provide a qualified retirement plan to your employees, you accept fiduciary responsibility for making decisions about the plan and choosing investments. But many business owners and officers aren't fully aware of what those responsibilities entail.

Even when they are, they may not be experts in all the nuances of the Employee Retirement Income Security Act (ERISA), the federal legislation governing fiduciary responsibility for qualified retirement plans.

This brochure can clarify some of ERISA's requirements and the role of a fiduciary in a retirement plan. We'll also show you how The Standard can help you meet those requirements.

This brochure was developed to help you define and understand your role as a plan fiduciary. But it's also important to remember that you have a professional team available to help and guide you along the way — including your partner firm and the specialists at The Standard.



### Inside

- Why a brochure for fiduciaries?
- What is a fiduciary?
- A fiduciary's responsibilities
- Limitations on fiduciary liability
- Laws, regulations and legal decisions
- Investments and advice
- Pick your partner wisely
- A checklist for fiduciaries



# What is a fiduciary?

## The Employee Retirement Income Security Act of 1974

The Employee Retirement Security Act of 1974 — ERISA, for short — was enacted in part to address public concern that funds of private pension plans were being mismanaged and abused.

ERISA requires most voluntarily established pension plans in private industry to:

- provide fiduciary responsibilities for those who manage and control plan assets
- provide participants with plan information about features and funding
- establish a grievance and appeals process for participants to get benefits from their plans

The federal law also gives participants the right to sue for benefits and breaches of fiduciary duty.

A fiduciary is a person in whom trust has been placed to act for the benefit of others. For retirement plans, fiduciaries are expected to protect employee benefit plan assets.

ERISA Section 404(a) dictates that a fiduciary must act solely in the interest of the plan participants and beneficiaries and perform his or her duties with the care, skill, prudence and diligence that a prudent person acting in a similar capacity would use under the same circumstances.

The ERISA fiduciary requirements apply to most plans qualified under Internal Revenue Service Code Section 401(a) and employer-sponsored 403(b) plans.

As retirement plan issues grow increasingly complex, it's becoming more difficult to know if you're living up to ERISA's requirements.

## Who is a fiduciary?

A fiduciary is a person who exercises any decision-making authority over, or discretionary control in the management of, the plan or its assets.

The plan trustees always make this list, as well as people who are “named fiduciaries” in the plan document. But you don't need to be listed to be considered a plan fiduciary. Under ERISA, the legal definition of a fiduciary includes:

- anyone named in the plan document as a fiduciary
- anyone who gives direct or indirect investment advice for compensation with respect to plan assets or has any authority or responsibility to do so
- anyone who has discretionary authority or responsibility in the administration of the plan

Examples often include the investment manager, plan administrator and plan trustees. In some cases, board members or corporate officers may also be considered fiduciaries.

Service providers such as attorneys, actuaries, third-party administrators and accountants usually are not fiduciaries unless their work for the plan satisfies the definition.

# A fiduciary's responsibilities

ERISA requires that fiduciaries make decisions in the best interest of plan participants and beneficiaries. The law establishes four basic rules:

- the exclusive benefit rule
- the prudent person rule
- investment diversification
- consistency with plan documents

Examining these one by one, we can better describe how these rules govern the conduct of a fiduciary.

## Act exclusively in the interest of plan participants and beneficiaries

Also known as the “duty of loyalty,” the *exclusive benefit rule* is twofold: First, it requires fiduciaries to act solely for the purpose of providing benefits to participants and their beneficiaries. Second, it permits fiduciaries to defray reasonable expenses of administering the plan.

This means fiduciaries must not engage in activities that entail a conflict of interest with regard to the retirement plan — activities that would serve the fiduciary’s own personal interests or the interests of the company sponsoring the plan.

For example, a fiduciary may not sell, exchange or lease property between the plan and a party in interest to the plan. A fiduciary also may not deal with plan assets for his or her own interest or account.

It is permissible for plan assets to be used for reasonable administrative expenses, including expenses for complying with qualification and other legal requirements (*see list at right*). However, expenses incurred for plan design and termination studies are not payable from plan assets. They are related to “settlor” functions that primarily benefit the plan sponsor, not the plan.



**Some administrative expenses can be paid using plan assets. Acceptable expenses include those related to:**

- amendments required by law
- nondiscrimination testing
- Form 5500 preparation
- audits
- benefits calculation



## The Investment Selection and Monitoring Committee

The Investment Selection and Monitoring Committee comprises senior-level staff appointed by the heads of Standard Retirement Services, Inc. and StanCorp Investment Advisers, Inc., a registered investment advisor. The committee meets in the month following quarter-end to review each fund's performance and status during the preceding quarter. The committee applies to all funds strict monitoring criteria and determines any appropriate action.

## Perform duties with the care, skill, prudence and diligence that a prudent person acting in a similar capacity would use

The *prudent person rule*, also called the “duty of care,” requires a fiduciary to take action that a prudent person acting in a similar capacity and familiar with the matters at hand would take under the circumstances. This rule does not allow you to act as an “ordinary” person; you must generally act as an expert.

If, for example, you're making decisions about a plan investment option, you must make the quality of decision that a knowledgeable investor would make. You must investigate the investment option, including its expenses and its value as a long-term investment for people saving for retirement. Then you must make a thoughtful, informed decision about whether to offer that option.

## Diversify plan investments to minimize losses, unless circumstances indicate it is not prudent to do so

*Investment diversification* is a fundamental principle of investing success, so it's also a fundamental feature of ERISA's requirements. The goal is to minimize the risk of large losses by plan participants.

To accomplish this, the plan should offer a broad range of investment options with varying risk and return characteristics. The range of investment options will allow participants to develop a portfolio of funds tailored to their specific retirement goals and risk tolerance.

The plan's investment options must be monitored for performance, and their role in the investment option lineup must be reviewed periodically.

You should document the process each time you review a fund, and these documents should be maintained in a due diligence file.

## Act in a manner consistent with the plan documents, as long as the documents are consistent with ERISA

A fiduciary's actions must be *consistent with the plan documents* insofar as the documents are consistent with the provisions of ERISA.

The law specifically forbids fiduciaries from following the plan documents if doing so would be imprudent or otherwise violate ERISA, according to the U.S. Department of Labor's amicus brief in *Tittle v. Enron*.

In other words, you must follow the terms and provisions of the plan document and trust agreement. However, if these documents conflict with ERISA, plan fiduciaries must follow ERISA's rules.

## What constitutes a breach of fiduciary duty?

When you don't carry out the responsibilities required of you under ERISA, or if you take actions contrary to that of a fiduciary, you are considered in breach of your fiduciary duties.

ERISA's regulations hold fiduciaries personally liable for losses in the plan if they fail to perform their fiduciary duties. ERISA also provides remedies and potential consequences for breaching fiduciary duties:

- The fiduciary must restore to the plan any profits he or she made through the use of plan assets
- The fiduciary may be liable for other equitable relief awarded by a court
- The U.S. Department of Labor may assess a civil penalty of 20 percent of the amount recovered from a fiduciary for a breach
- A fiduciary may be liable for another fiduciary's breach if:
  - ✓ duties are shared (such as among trustees)
  - ✓ a fiduciary is aware of another fiduciary's breach and does nothing about it
  - ✓ a fiduciary fails to monitor another fiduciary's performance when required



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# Limitations on fiduciary liability



Although many of ERISA's requirements are absolute, Section 404(c) is voluntary. If Section 404(c) is satisfied, it relieves a fiduciary of liability for the investment decisions of plan participants in their individual accounts.

To satisfy Section 404(c), the plan must allow the participant to exercise control over the assets in the account and choose from a broad range of investment alternatives.

Regardless of whether or not Section 404(c) is satisfied, fiduciaries retain the responsibility to select investment options prudently and monitor them on an ongoing basis.

## Fiduciaries must choose and monitor investment options

Under ERISA Section 404(c), fiduciaries retain the responsibility to prudently select investment options offered by the plan and monitor them on an ongoing basis.

A written Investment Policy Statement (IPS) is not required. However, you can help protect yourself from liability for investment decisions by creating a written IPS that outlines the procedure for making those decisions consistent with ERISA requirements. You must then follow the procedure and maintain records showing how you followed it.

An Investment Policy Statement establishes a framework for making investment decisions and managing fiduciary risk. It identifies:

- plan investment goals
- appropriate asset classes
- the process of selecting, monitoring and terminating investment options
- special provisions and restrictions



## Participant control over account assets

To exercise control over account assets, a participant must have a reasonable opportunity to give investment instructions as frequently as appropriate for the investment option (at least every three months).

Furthermore, a participant must have or be able to obtain sufficient information to make informed investment decisions. Information that must be provided includes:

- notice that the plan intends to satisfy Section 404(c) and that the fiduciary may be relieved of responsibility for participants' investment decisions
- descriptions of the investment options, including objectives, risk and return characteristics and types and diversification of assets
- identification of the investment managers
- an explanation of how to give investment instructions and any limitations or restrictions
- a description of fees and expenses associated with investment transactions
- confidentiality procedures relating to employer securities
- prospectuses for investment options, if required
- pass-through voting materials, if applicable
- a description of additional information that is available upon request and the person to contact for it. Such information includes:
  - ✓ fund operating expenses
  - ✓ listing of underlying assets
  - ✓ investment performance
  - ✓ individual account values in the funds

## Broad range of investment options

The ability to choose from a broad range of investment options requires that participants have:

- the opportunity to exercise control over investments that materially affect their potential return on assets
- a choice of at least three investment options, each of which is diversified and has materially different risk and return characteristics
- the opportunity to diversify investments in order to minimize the risk of large losses

### Do you have a written IPS?

The Standard provides plan-level fiduciary support, including helping plan sponsors develop and adhere to an IPS.

By sharing fiduciary responsibility with our plan sponsors and acknowledging this contractual agreement in writing, The Standard works as a true partner in the selection and management of plan assets.

If you would like more information, ask your client service consultant for The Standard's "Investment Policy Statements" brochure or talk with your investment advisor.

# Laws, regulations and legal decisions



Retirement plan laws change regularly, and being a responsible fiduciary means keeping up with those changes. Remember, your employees count on you to make good decisions to help protect their retirement assets.

In the last decade, a number of new laws, regulations and legal decisions have significantly changed the retirement plan landscape. Three in particular — The Sarbanes-Oxley Act of 2002, the Pension Protection Act of 2006 and the 2008 U.S. Supreme Court decision in *LaRue v. DeWolff, Boberg & Associates, Inc.* — affected fiduciary responsibilities in ways of which plan sponsors should be aware. Fiduciaries may also want to keep an eye on updated fee disclosure regulations proposed in 2008 by the U.S. Department of Labor for implementation in 2009.

## The Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act requires plan administrators to notify participants of blackout periods when participants cannot direct or transfer investments or take distributions or loans.

- A blackout period must last longer than three consecutive business days in order to fall under the Sarbanes-Oxley requirements. Blackouts for holidays are omitted from this requirement.
- Participants must be informed 30 to 60 days before the blackout.
- In announcing the blackout period, a calendar week for the beginning and ending of the blackout period may be used rather than the precise dates.
- Fiduciaries face a penalty of up to \$100 per day per participant for failure to give notice.

## The Pension Protection Act of 2006

The Pension Protection Act offers fiduciaries safe harbor protection for default investments when participants fail to provide investment directions.

The Pension Protection Act also:

- requires companies to provide quarterly benefit statements to defined contribution plan participants who have the right to direct investments in their accounts
- clarifies companies' fiduciary responsibility for participants' account balances during blackout periods, when participants are temporarily unable to change their retirement plan investments
- requires that within 120 days of the end of the plan year, defined benefit plans must notify participants of the funded status of their plan

## The *LaRue* decision

In the landmark *LaRue v. DeWolff, Boberg & Associates, Inc.* case, the U.S. Supreme Court ruled that a retirement plan participant can sue a plan fiduciary under ERISA to recover investment losses to the participant's individual 401(k) account. The court did not rule that the fiduciary is liable for losses, only that the participant can pursue a claim under a particular provision of the federal labor law.

Many of the duties that could give rise to such lawsuits are typically performed by service providers, not plan sponsors. As such, service providers already have assumed potential liability for such losses (to the extent their contracts don't limit their liability).

The Standard recommends that participants have easy access to account information on paper, on a website and through an interactive voice response phone service. Participants should be encouraged to review their account information periodically and bring any concerns to their employer's or service provider's attention immediately.

## Proposed disclosure requirements

In 2008, federal regulators unveiled disclosure requirements mandating that plan sponsors furnish participants with basic plan information, including investment returns and expenses. The regulation is proposed for plan years beginning on or after Jan. 1, 2009, and The Standard will support these disclosure requirements in 2009.

The proposed rule requires that these disclosures be provided when a participant first becomes eligible and every year thereafter. Data will be consolidated into one document in a comparison chart or similar format with benchmarking information.

Plan fiduciaries also will be required to disclose to participants:

- fees and expenses that may be charged to participants and beneficiaries for plan administrative services and the basis for allocating these charges to individual accounts
- fees and expenses that may be charged to participants' and beneficiaries' accounts for individual services, such as loan processing
- the actual dollar amount charged to participants' and beneficiaries' accounts and the services that were provided
- how to obtain more detailed information



### Valuable resources

- [www.dol.gov/ebsa](http://www.dol.gov/ebsa)
- [www.irs.gov/formspubs/index.html](http://www.irs.gov/formspubs/index.html)
- [www.401khelpcenter.com](http://www.401khelpcenter.com)
- [www.benefitslink.com](http://www.benefitslink.com)
- [www.plansponsor.com](http://www.plansponsor.com)
- Your client service consultant at The Standard



# Investments and advice

## **Quarterly Monitoring Report**

Plan sponsors who sign up for investment advisory services receive the *Quarterly Monitoring Report*.

You and your plan advisor can use the report to help select new investment options, monitor current investments and substantiate the diversity of your plan's investment options. The report includes:

- commentary on the market and the investment options
- notes and recommendations on funds that are failing performance criteria, have changed fund managers or have changed investment objectives or operations
- examination of performance relative to peers in each asset class, as well as analysis of long-term style orientation and style drift
- data on industry diversification
- information on market cap, portfolio composition and bond exposure, as well as regional exposure of international and world stock funds

Choosing the investments for your plan is one of your most crucial tasks as a fiduciary. The Standard makes it easier for you by providing a diverse selection of investment options. We will work with you to determine the best arrangement for your plan.

Our investment selection and monitoring process is objectively defined, strictly enforced and free of institutional bias. We do not offer any proprietary mutual funds and do not retain fees paid by fund companies.

The Standard provides you with fiduciary protection in several critical areas:

- Investment recommendations are 100 percent driven by what's best for you and your participants. We disclose all plan fees and do not retain fees paid by fund companies.
- You receive an Investment Policy Statement for your plan based on your investment goals, fund manager evaluations and monitoring. This is an essential tool for meeting your fiduciary obligations and defending any future legal actions.
- Through the *Quarterly Monitoring Report*, the investments in your plan are continually monitored to ensure that participants have a full range of quality options. We will remove or place on a watch list any fund that fails to meet our high standards.
- We believe so strongly in our ability to provide sound investment advice and monitoring services that we will contract with you to serve as fiduciary for the investments offered in your plan.<sup>1</sup>

<sup>1</sup> Please ask for a sample investment advisory contract to review our clear written commitments.

# Partners who know what they're doing

As a fiduciary, you're in an unenviable position: You deal with complicated laws in a litigious society. In recent years, you've also faced a stock market that served up uncertainty and business reports full of market-timing scandals and corporate malfeasance.

Even when you earnestly try to protect the best interests of your participants, a small mistake or overlooked requirement can come back to haunt you.

That's why it's important to team with people who know what they're doing. Under these circumstances, you have to pick your partner wisely.

Your support team will include your partner firm, account managers, sales representatives and people to service your plan and educate your participants.

When you choose The Standard as your retirement plan provider, you're choosing a provider that is highly regarded by the industry for our due diligence in fund selection and monitoring.

## The time to act is now

The Standard works with your partner to identify an investment program that helps you manage your fiduciary responsibilities and provide participants with diverse and competitive investment options.

The Standard's regional offices are staffed with pension professionals prepared to help solve your retirement plan challenges. The process begins as soon as you call us. We look forward to working with you.



### Who is The Standard?

- A leading provider of group and individual disability insurance, group life, AD&D and dental insurance, retirement plans, individual annuities and investment advice
- Ranked by our customers as among the retirement plan industry's leaders in customer service and overall satisfaction
- Unbiased in our approach to investment recommendations because we don't offer proprietary mutual funds or profit from the selection of one mutual fund over another
- Founded in 1906 in Portland, Oregon
- 8.7 million customers and \$18.7 billion in plan assets as of December 31, 2007

# A checklist for fiduciaries

This checklist can help you assess whether you are meeting your fiduciary obligations and ERISA requirements. This is not a complete list of ERISA requirements, but it is a good action list for fiduciaries.

1. Have the investment fiduciaries been appointed in a manner consistent with the plan and trust documents?
  - understand all investment costs and the services provided for these costs?
2. Are all plan fiduciaries aware they are fiduciaries? Have all fiduciaries been informed of their obligations under ERISA?
3. Do the trustees meet at least once a year?
4. Is a due diligence file maintained with minutes, notes and supporting documentation, such as The Standard's *Quarterly Monitoring Report*, to track investment decisions made at fiduciary meetings?
5. Does the plan have a written investment policy?
6. Does the plan have investments in a diverse group of investment categories, such as the ones below, to ensure participants can choose from a broad range of funds?
  - ✓ stable value, guaranteed investment contract or money market fund
  - ✓ U.S. government or corporate bonds
  - ✓ large-cap U.S. equities
  - ✓ mid-/small-cap U.S. equities
  - ✓ international or global equities
7. Have the plan fiduciaries reviewed the plan's investments in the last 12 months? Was the review done in compliance with the investment policy?
8. Did your investment provider give you information on the proper peer group indices, expenses, historical performance, volatility and other factors? If not, did you gather that information yourself for review?
9. Are investment costs reasonable in comparison to the appropriate benchmarks? Do fiduciaries fully understand all investment costs and the services provided for these costs?
10. Does the plan provide employee enrollment education explaining the importance of participating, saving for retirement and the basics of investing? Does the plan provide ongoing investment education material or seminars for employees?
11. Do plan fiduciaries ensure the plan collects and invests employee deferrals in a timely manner?
12. Is the plan covered by a fidelity bond of at least 10 percent of plan assets (up to \$500,000)? Does the bond cover plan fiduciaries and other employees or third parties who handle or have access to plan assets?
13. If the plan intends to employ the fiduciary protections of ERISA Section 404(c), does the summary plan description or other written notice inform participants of:
  - ✓ the ability to direct their own investments?
  - ✓ the plan's intention to comply with 404(c), and that plan fiduciaries may be relieved of liability for investment losses?
  - ✓ the name, address and phone number of the 404(c) plan fiduciary responsible for providing information upon request and for receiving and complying with participant investment instructions?
14. Have all participants received information about each investment option available under the plan?
15. Does the Form 5500 filing indicate that the plan intends to comply with ERISA Section 404(c) requirements?





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Plan sponsors and participants should carefully consider the investment objectives, risks, charges and expenses of the investment options offered under the retirement plan before investing. The prospectuses for the individual mutual funds and The Standard Group Variable Annuity Contract and each underlying investment option in both the group variable annuity and group annuity contain this and other important information. Prospectuses may be obtained by calling 877.805.1127. Please read the prospectus carefully before investing. Investments are subject to market risk and fluctuate in value.

StanCorp Equities, Inc., member FINRA/SIPC, distributes group variable annuity and group annuity contracts issued by Standard Insurance Company and may provide other brokerage services. Third-party administrative services are provided by Standard Retirement Services, Inc. Investment advisory services are provided by StanCorp Investment Advisers, Inc., a registered investment advisor. StanCorp Equities, Inc., Standard Insurance Company, Standard Retirement Services, Inc., and StanCorp Investment Advisers, Inc. are subsidiaries of StanCorp Financial Group, Inc., and all are Oregon corporations.