



ERISA 404(a): Are You a Fiduciary?

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The Employee Retirement Income Security Act of 1974 (“ERISA”) requires that a Defined Contribution plan identify one or more named fiduciaries in the plan document. In addition to the named fiduciary(s), a person may also be considered a fiduciary based on their conduct and authority over the plan.

A fiduciary is defined as anyone who:

- exercises discretionary authority or control over the management or administration of the plan
- exercises any authority or control over the management or disposition of plan assets
- provides investment advice to the plan for a fee or other consideration (direct or indirect)

It is important to remember that being a fiduciary is functional in nature — one’s title or job description does not always accurately reflect the true nature of their fiduciary role. In addition, the same individual can perform both fiduciary and non-fiduciary functions on behalf of the plan. This is an important distinction, as any fiduciary acts must be made in the best interest of the plan participants, whereas non-fiduciary functions are not held to the same duty of loyalty.

A plan’s fiduciaries ordinarily include all individuals exercising discretion over the administration of the plan, all members of a plan’s investment committee, those who appoint committee members, the trustee of the plan, and any investment consultant(s)/adviser(s) who provide investment advice on a continuous basis for a fee.

ERISA Fiduciary Standards

Section 404 of ERISA imposes a “prudent man standard of care” on fiduciaries. This fiduciary standard is actually comprised of five separate standards — the duty of loyalty, the exclusive purpose rule, the duty of prudence, the duty to diversify, and the duty to follow plan documents.

A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and:

- for the exclusive purpose of providing benefits to participants and their beneficiaries; and defraying reasonable expenses of administering the 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;
- by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;
- in accordance with the documents and instruments governing the plan.

IMPORTANT DISCLOSURE

The views and opinions expressed in this document solely reflect those of Gosselin Consulting Group LLC as of December 2013. They should not be construed as investment advice or recommendations made by Gosselin Consulting Group LLC and are subject to change without notice based on market and/or other conditions.

The factual information contained herein is obtained from third-party sources and believed to be reliable, but its accuracy, completeness, or correctness is not guaranteed.

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