



HYAS GROUP

# **FIDUCIARY FUNDAMENTALS**

City of San Jose

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**01**

Background

**02**

Who is a Fiduciary?

**03**

Fiduciary Duties

**04**

Meeting Fiduciary Responsibilities

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**01**

Background

# BACKGROUND: ABOUT ERISA

## Why does ERISA exist?

- ▶ Abuses of existing law by some firms and unions
- ▶ Assets being misused
- ▶ Cliff vesting, where employees become fully vested on a specific date vs. becoming partially vested in increasing amounts, resulted in many never gaining a pension
- ▶ Confusion of conflicting state laws

## What is the Employee Retirement Income Security Act (ERISA) of 1974?

- ▶ ERISA protects the retirement assets of workers in the U.S. by implementing rules that plan fiduciaries must follow to ensure that plan fiduciaries do not misuse plan assets.
  - ▶ Employers must provide participants with information about the plan each year
  - ▶ Administrators must follow the plan's vesting and funding rules
  - ▶ Plan fiduciaries can be held accountable if they breach their fiduciary duty to plan beneficiaries
- ▶ The result is an approach that blends state trust laws to form a national standard for benefit plan definition and administration
- ▶ For the public sector, a convenient guide to best practices and accepted methods for plan design and operation

# WHY ERISA

- ▶ It is considered to be a high standard and is a comprehensive guide
- ▶ It is believed by many to be a model that the courts will look to for guidance when considering non-ERISA cases
- ▶ It is continually updated to reflect changing realities in the retirement plan and investment environment
- ▶ Many States follow ERISA closely and, in some instances, even call out certain statutes

**02**

Who is a Fiduciary?

# WHO IS A FIDUCIARY?

Anyone with discretionary authority or control over the administration of a retirement plan or its assets

# WHO IS A FIDUCIARY?

## **Fiduciary by name:**

- Plan Sponsor
- Trustee
- Named Administrator

## **Fiduciary by action:**

- Anyone who acts as a fiduciary can be considered a fiduciary:
  - A Committee appointed by the Board, Trustees or Council
  - Anyone administering the Plan
  - Anyone selecting investment and service providers
  - Anyone giving investment advice for a fee (to Plan or Plan participants)



## **WHAT IS A FIDUCIARY?**

Persons who, by either function or appointment, have discretionary authority over plan assets and/or administration

# WHAT IS A FIDUCIARY?

## **Fiduciary Functions:**

- ▶ Selecting, retaining or terminating record-keepers/plan administrators
- ▶ Selecting, retaining, or terminating investment options
- ▶ Processing and submitting participant contributions
- ▶ Negotiating fees and expenses for plan services and investment

## **Must be more than “Ministerial”:**

- ▶ Maintaining records and other administrative roles are not covered
- ▶ Processing payroll may qualify though, if decisions can delay deposits

**03**

Fiduciary Duties

# FIDUCIARY DUTIES

**Duty of Loyalty**

**Duty of Prudence**

**Duty to Follow Plan Document**

**Duty to Diversify**

## Duty of Loyalty

- ▶ Avoid self-dealing
- ▶ Avoid conflicts of interest
- ▶ Operate the plan for the exclusive purpose of providing benefits and offsetting reasonable expenses
- ▶ Reasonable Plan expenses may be charged

## Duty of Prudence

- ▶ A fiduciary must execute his/her duties with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with such matters would use:
  - ▶ Allows for the hiring of “experts” to assist
  - ▶ Experts must be prudently selected and monitored

## Duty to Follow Plan Document

- ▶ Must oversee and make sure the plan operates in compliance with the plan document, trust agreements and/or other documents
- ▶ Fiduciaries should be familiar with:
  - ▶ Plan documents
  - ▶ Federal and State law in relations to the documents

## Duty to Diversify

- ▶ The “Diversification Rule”:
  - ▶ A fiduciary must diversify investments in order to minimize risk of large loss unless it would be considered prudent not to diversify investments
- ▶ For Defined Contribution Plans with Self-Direction of Investments by Participants:
  - ▶ ERISA § 404(c) is an accepted guide to minimums, but only requires three options



**04**

## Meeting Fiduciary Responsibilities

# FIDUCIARY RESPONSIBILITIES

## Plan Governance:

- ▶ Establish roles, rules and procedures for Committee functions
- ▶ Follow a prudent process when making decisions
- ▶ Select and train qualified people to serve on Committee
- ▶ Hold regular meetings
- ▶ Document decisions and keep minutes of fiduciary meetings

# FIDUCIARY RESPONSIBILITIES

CONT.

## Plan Design & Administration Issues:

- ▶ Design the plan and fee allocation to be fair to all participants
- ▶ Establish appropriate rules and policies for participants
- ▶ Enforce plan rules consistently
- ▶ Communicate rules, policies and amendments to participants
- ▶ Review plan documents at least annually to ensure compliance
- ▶ Review trust, custodial and other service agreements regularly

# FIDUCIARY RESPONSIBILITIES

CONT.

## Investment Responsibilities:

- ▶ Create an Investment Policy Statement (IPS) that reflects the plan objective and clarifies the responsibilities of all parties
- ▶ Determine types of investment options to be offered:
  - ▶ Number of asset classes
  - ▶ Diversification
  - ▶ Target-date funds
  - ▶ Managed accounts
- ▶ Develop criteria for selecting, monitoring and removing investments and investment managers/advice providers
- ▶ Set guidelines for appropriate actions

# FIDUCIARY RESPONSIBILITIES

CONT.

## **Selection & Monitoring of Service Providers:**

- ▶ All contracts should be in best interest of plan participants
- ▶ Competitive bid or search process should be based on objective criteria
- ▶ Follow a prudent process and be able to justify contract awards
- ▶ Establish appropriate performance standards
- ▶ Evaluate contractors regularly
- ▶ Have reasonable basis for determining appropriateness of provider fees:
  - ▶ Benchmarking
  - ▶ RFP

# SUMMARY OF COMMITTEE RESPONSIBILITIES

- ▶ Fiduciary review of investments
- ▶ Fiduciary review of service providers
- ▶ Authorize changes to investments
- ▶ Authorize changes to investment providers
- ▶ Create or approve design of education/counseling programs
- ▶ Review and approval of hardship withdrawal requests
- ▶ Consult with legal advisors when necessary
- ▶ Monitoring of fees and expenses

# THANK YOU.

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