

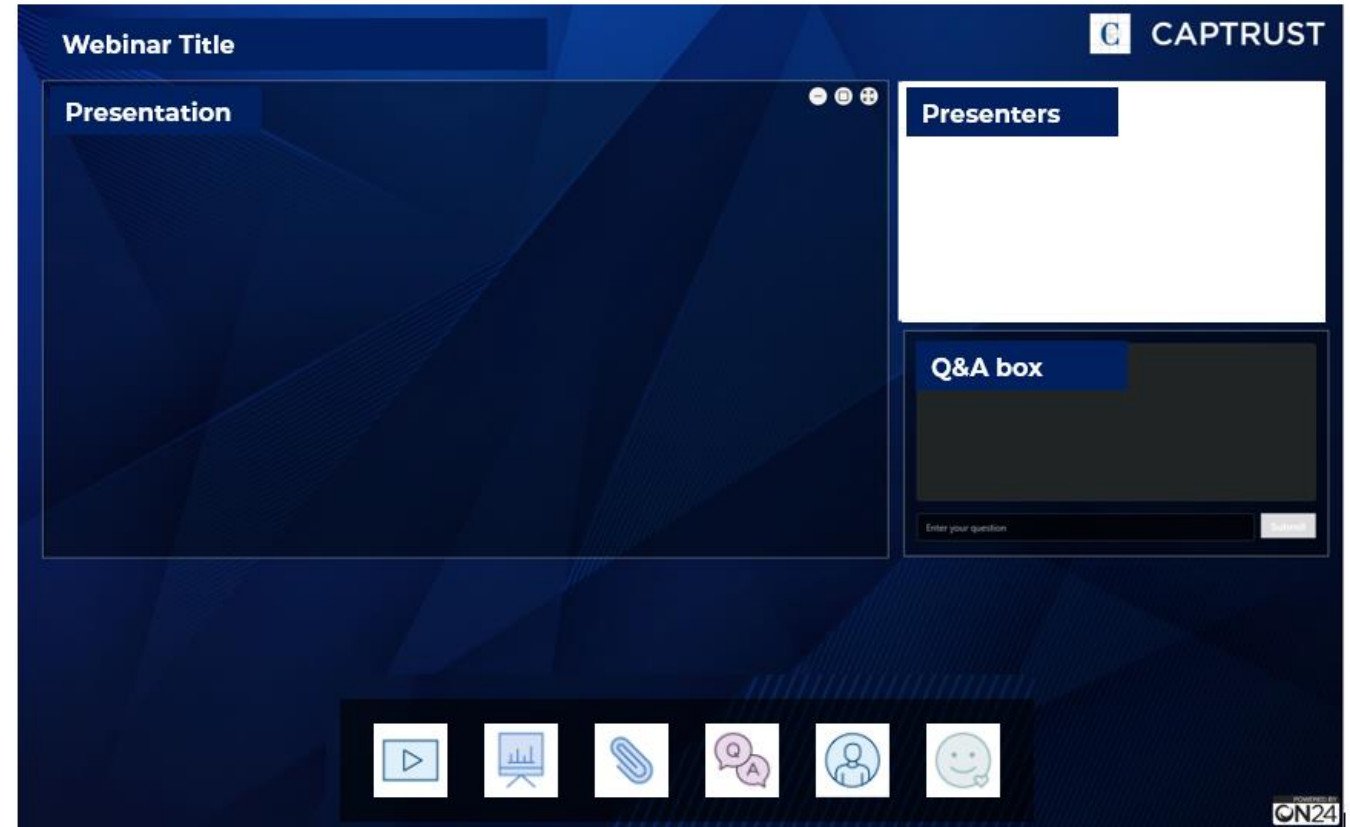
FIDUCIARY BEST PRACTICES FOR PLAN SPONSORS

March 2025



Information about Today's Session

- All attendee lines are automatically muted and in listen-only mode.
- Questions may be submitted during the event by selecting the Q&A icon and typing them into the Q&A box.
- Submitted questions will be visible to other audience members.
- Today's session is being recorded. The recording will be available for rewatching within 24-48 hours following the event.
- You can access content by selecting the Related Content icon. Today's slides will be included and available post-event.



Course Overview

- Fiduciary failures can result in personal liability
- Fiduciary responsibilities of retirement plan sponsors
- Identifying all plan fiduciaries
- Strategies and tactics to limit fiduciary liability
- Fiduciary correction programs

Learning Objectives

- List the four key responsibilities of plan fiduciaries.
- Learn how to identify plan fiduciaries.
- Understand the potential consequences of a fiduciary failure.
- List fiduciary liability reduction strategies and tactics.
- Differentiate between the two Department of Labor (DOL) fiduciary correction programs.



FIDUCIARY ISSUES

Fiduciaries Face Lawsuits

- The DOL's 2023 enforcement actions for ERISA plans resulted in:
 - Over \$1.44 billion restored to plans, participants, and beneficiaries
 - 731 civil cases
 - 196 criminal cases
- Hundreds of lawsuits have been filed against retirement plan fiduciaries due to excessive fees in the last several years.¹
- The Supreme Court case of *LaRue v. DeWolff, Boberg and Associates, Inc.* changed the industry by allowing individual breach of fiduciary duty lawsuits against plan fiduciaries.
- Plan sponsors and other fiduciaries face personal liability for their breach of duties under current ERISA guidelines.

^[1] Vital Law Case Database, 2025



FIDUCIARY RESPONSIBILITIES OF RETIREMENT PLAN SPONSORS

What Are a Fiduciary's Responsibilities?

Fiduciary Responsibilities	
Exclusive benefit rule	Fiduciary must operate the plan in a way that solely benefits participants and beneficiaries, while paying reasonable fees.
Prudent expert rule	Fiduciary actions will be held to a standard of an experienced professional.
Plan document rule	Fiduciary must follow the plan unless its terms contradict the rules of ERISA.
Diversification rule	Fiduciary must offer a wide range of investment options to help participants meet their investment needs and diversify their investments accordingly.

© 2025 Retirement Learning Center, LLC
This presentation is intended for institutional plan sponsors and is not intended for retail clients or private individuals.

Certain Transactions between a Fiduciary and the Plan Are Prohibited

- Sale, exchange, or lease of property
- Lending of money or other extension of credit
- Furnishing of goods, services, or facilities
- Transfer or use of plan assets

Fiduciaries Who Fail Face Penalties

- Personally liable to make good losses to the plan
- Personally liable to return any profits resulting from the breach
- May be subject to civil penalties and fines
- May be removed as a fiduciary

DOL Civil Penalty	Criminal Penalty Examples
20% on the amount payable pursuant to a court order or settlement agreement	\$5,000 fine and/or jail time for reporting or disclosure failures
Various penalties under ERISA 502(c)	\$10,000 fine and/or jail time for plan kickbacks or embezzling

What Is a Fiduciary Liability Reduction Strategy?

- Regularly conduct a governance review.
 - Identify plan fiduciaries and their roles.
 - Assess plan documentation (e.g., the plan document, trust agreement, service provider agreements, summary plan description, fidelity bond, participant communication material, investment policy statement, etc.).
 - Evaluate plan operations and administration procedures (e.g., service providers and fees).
 - Address plan investments.
- Assess fiduciary gaps.
- Implement fiduciary liability reduction tactics.
- Document the process.
- Reassess plan on an ongoing basis.



IDENTIFYING ALL PLAN FIDUCIARIES

Who Is an ERISA Fiduciary?

A fiduciary is any person or entity that:

- Is named in the plan document as a fiduciary (e.g., the business owner sponsoring the plan)
- Has discretionary authority over the management of a retirement plan or its assets
- Offers investment advice with respect to plan assets for a fee

Many Fiduciary Services Are Available

ERISA 3(38)

ERISA 3(21)

ERISA 3(16)

408(g)

Who Is an ERISA Co-Fiduciary?

One plan fiduciary can be liable for another fiduciary's breach if he/she:

- Knowingly participates in or undertakes to conceal an act or omission of such other fiduciary, knowing such act or omission is a breach
- Has enabled such other fiduciary to commit a breach
- Has knowledge of a breach by such other fiduciary, unless he/she makes reasonable efforts under the circumstances to remedy the breach

Plan sponsors should closely review service agreements with co-fiduciaries.



STRATEGIES AND TACTICS TO LIMIT FIDUCIARY LIABILITY

Adopt an Investment Policy Statement (IPS)

- ERISA does not require an IPS, but regulations state that having one is consistent with meeting plan fiduciary responsibilities.¹
- Court cases have found that the lack of an IPS was a breach of ERISA's Prudent Man Rule (*Liss v. Smith*, 991 F. Supp. 278, S.D.N.Y. 1998).
- It is one of the first documents requested in a DOL plan investigation.²
- DOL investigations conclude more quickly when an IPS exists.
- An IPS is found in 83% of all plans.³

^[1] 29 C.F.R. §2509.94-2(2).

^[2] DOL/EBSA Advisory Council Report of the Working Group on Prudent Investment Process

^[3] Plan Sponsor Council of America, 66th Annual Survey, 2023

Key Elements of an IPS

- The objective and purpose of the IPS for the plan
- Roles and responsibilities of key players
- Factors the plan will take into account when selecting investments
- The frequency and the methodology for rebalancing investment portfolios, if applicable
- Procedures for controlling and accounting for investment expenses
- Procedures for monitoring investment performance, how to identify and put investments that are underperforming on watch, and what the criteria is for replacing an investment
- A description of how the plan will select service providers

Comply with Fee Disclosures Rules

- Final DOL Reg. 2550.408b-2
- Final DOL Reg. 2550.404a-5
- Final DOL Reg. 2520.103-1 (Form 5500, Schedule C)

	DOL Reg. 2550.408b-2	DOL Reg. 2550.404a-5	Form 5500, Schedule C
Who?	Service provider gives info to plan sponsor of DB and DC plans	Plan sponsor gives info to participants and beneficiaries of participant-directed DC plans	Plan sponsor of DB, DC, and Welfare benefit plans gives info to IRS and DOL
Guidelines	Disclose direct and indirect compensation of \$1,000 or more	Disclose certain plan and investment-related information with annual notice and quarterly statement	Report direct and indirect compensation of \$5,000 or more paid to service provider

© 2025 Retirement Learning Center, LLC
 This presentation is intended for institutional plan sponsors and is not intended for retail clients or private individuals.

Plan Fees Must Be Reasonable

Plan sponsors have a fiduciary responsibility under ERISA to ensure plan fees are reasonable based on services provided.

“ERISA...obligates plan fiduciaries to obtain and carefully consider information necessary to assess the services to be provided to the plan, the reasonableness of the compensation being paid for such services, and potential conflicts of interest.”

*Final regulations under ERISA
Section 408(b)(2)*

“The reasonable compensation standard requires that compensation not be excessive, as measured by the market value of the particular services, rights, and benefits the Investment Professional and Financial Institution are delivering to the Retirement Investor.”

Amended PTE 2020-02

Best Practices for Plan Fee Evaluation

- Carefully evaluate service provider fee disclosures required under Final DOL Reg. 2550.408b-2.
- Ask service providers to explain fees and services.
- Scrutinize service provider contracts. Are you getting what you paid for?
- Benchmark fees.
 - There is an implied DOL requirement to regularly benchmark fees among service providers.
 - Conduct request for proposals (RFPs) every three to five years.¹
- Use proprietary and free online fee comparison tools.

^[1] [Reasonable Contract or Arrangement Under Section 408\(b\)\(2\)—Fee Disclosure](#)

Form 5500, Schedule C Reportable Compensation

- Applicable to large plans (i.e., 100 or more participants)
- What fees and expenses must the plan sponsor report?
 - Money and any other things of value (e.g., gifts, awards, trips) received by a person, directly or indirectly, from the plan (including fees charged as a percentage of assets and deducted from investment returns) in connection with services rendered to the plan or the person's position with the plan.
- \$5,000 or more
- DOL Regulation 2520.103-1(e)

Reportable Gifts and Entertainment

- Report nonmonetary compensation (other than compensation with a value of less than \$50 and an aggregate annual value from any one source of less than \$100).
- Gifts with a value of less than \$10 are not counted toward the \$100 threshold.
- Employees of an organization who provide a benefit are treated as one source, but employees of an organization who receive a benefit are treated as separate persons.
- There is no stated *de minimis* rule for ERISA self-dealing prohibitions.

Satisfy Annual Participant Disclosures

Plan Information

- General information
- Administrative expenses
- Individual account expenses

Investment Information

- Identifying information
- Performance data
- Benchmarks
- Fees and expenses
- Website
- Glossary

Quarterly Statements

Administrative

- Dollar amount of fees
- Description of services
- General statement on revenue sharing

Individual Account

- Dollar amount of fees
- Description of services

Lifetime Income Illustration

- DC plans must include “lifetime income illustrations” or LIIs, in participant benefit statements on an annual basis.
- LIIs must show a monthly income amount, assuming the participant is age 67 (or his or her actual age, if older), based on the participant’s account balance as of the last day of the statement period (with no additional contributions), converted to a lifetime income equivalent as a:
 1. Single life annuity (SLA); and
 2. Qualified joint and survivor annuity (QJSA).

Best Practice: Execute a Plan Fee Audit

- Do you compile adequate information that allows you to evaluate whether plan fees and services are reasonable?
- Do you satisfy the Form 5500, Schedule C reporting requirements, if applicable?
- Are service providers furnishing you the annual disclosures they must provide, and do you understand them?
- Are service providers readily willing to discuss the annual disclosures with you?
- Are you confident you are satisfying the annual and quarterly participant disclosure requirements?
- Do the participants in your plan understand the disclosures?

Comply with ERISA 404(c)

ERISA 404(c) reduces employer fiduciary liability by shifting investment responsibility to participants and beneficiaries.

- Receive adequate information
- Note that participant fee disclosure regulations replace much of the information that had been required to be provided under ERISA section 404(c)
- Opportunity to make periodic investment changes
- Allowed to invest in a broad range of investments

Best Practice: Conduct an ERISA 404(c) Compliance Audit

- Does the plan document state the plan intends to comply with ERISA 404(c)?
- Do plan participants have the ability to control their assets?
- Has the plan provided the participant with the required information, including the information required under participant fee disclosure rules?
- If requested by the participant, does the plan provide the information that must be available upon participant request?
- Does the plan provide the necessary participant information in a timely manner?
- Does the plan carry out participant investment instructions?
- Do participants have the ability to change their investments as often as the volatility of the investments may require (and at least quarterly)?
- Does the plan offer a broad range of investment alternatives?

Prudently Select Qualified Default Investment Alternatives (QDIAs)

- The employer is not liable for investment elections made by participants in an ERISA Sec. 404(c) plan.
- ERISA Sec. 404(c) requirements include:
 - Participant direction of investments
 - Participants receive adequate investment information, including information required under participant fee disclosure regulations
 - A broad range of diverse investment alternatives
- Use of a QDIA can extend ERISA 404(c) protection to plan sponsors where participants fail to give investment direction (e.g., automatic enrollment).

Types of QDIAs

Investment Type	Limitations
Specialized funds	Multiple age-, target date-, or life expectancy-based funds
Single fund	Suitable for the average risk tolerance of participants based on employee demographics (e.g., balanced fund)
Managed account	Based on age, target retirement date, or life expectancy
Capital preservation fund	Limited use
Grandfathered stable value funds	For default contributions made on or before 12.24.07

© 2025 Retirement Learning Center, LLC
This presentation is intended for institutional plan sponsors and is not intended for retail clients or private individuals.

Best Practice: Default Investment Audit

- Do you offer a default investment for your plan?
- Do you want to ensure you have ERISA 404(c) fiduciary protection for the default investment?
- Is your plan's default investment option a QDIA?
- Have you followed a prudent process for the selection of the plan's QDIA?
- Have you documented the selection process in your plan's Investment Policy Statement?
- Have you provided the required participant disclosures for the QDIA?
- If your QDIA is a target date fund, have you considered the suggestions the DOL offers in its "Target Date Retirement Funds — Tips for ERISA Plan Fiduciaries"?

Avoid 401(k) Nondiscrimination Testing with a Qualified Automatic Contribution Arrangement (QACA)

- Automatic deferrals by all eligible participants (3%–15% of compensation)
- Automatic annual deferral increases (3% deferral rate initial and second year, 4% during the third year, 5% during the fourth year, and 6% during the fifth and subsequent years and thereafter up to a maximum of 15%)
- Employer contribution: a matching contribution equal to 100% of deferrals up to 1% of compensation, plus 50% of deferrals from >1% to 6% of compensation OR a 3% nonelective contribution
- Immediate vesting of salary deferrals; full vesting of employer contributions after two years of service
- Participant notification of plan terms
- Use of QDIA is optional

QACA Example

Without QACA

- Company with 100 employees
- Company has a 401(k) plan
- 401(k) plan has very low participation
- Year after year, the plan continues to fail its nondiscrimination testing

With QACA

- Increased plan participation
- Automatic deferral increases
- Automatic passage of nondiscrimination testing and top-heavy rules
- Help ensure employees are saving for retirement

Engage a 408(g) Fiduciary Advisor for Participant Advice

- Participants have access to professional investment advice while limiting plan sponsor fiduciary liability
- Authorized by the plan sponsor
- Uses an eligible investment advice arrangement that is either a
 - Level-fee arrangement
 - Computer model arrangement
 - Combination of the above
- Independent audits
- Computer model certification
- Disclosure and notice requirements
- Record retention requirements

Who Can Be a Fiduciary Advisor?

- Registered as an investment advisor under the Investment Advisers Act of 1940 or under State laws
- A bank, a similar financial institution supervised by the United States or a state, or a savings association (as defined under the Federal Deposit Insurance Act), but only if the advice is provided through a trust department that is subject to periodic examination and review by federal or state banking authorities
- An insurance company qualified to do business under State law
- An affiliate of any of the preceding
- Registered as a broker or dealer under the Securities Exchange Act of 1934
- An employee, agent, or registered representative of any of the preceding who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of advice
- Any person who develops the computer model, or markets the computer model or investment advice program



DOL AND IRS CORRECTION PROGRAMS

Voluntary Fiduciary Correction Program (VFCP)

Four-Step Process

Step 1:

Identify any violations and determine whether they fall within the transactions covered by the VFCP.

Step 3:

Calculate and restore any losses or profits with interest, if applicable, and distribute any supplemental benefits to participants.

Step 2:

Follow the process for correcting specific violations (e.g., improper loans or incorrect valuation of plan assets).

Step 4:

File an application with the appropriate Employee Benefits Security Administration (EBSA) regional office that includes documentation showing evidence of corrective action taken.

New Self-Correction Component

1. Delinquent participant contributions and loan repayments
2. Eligible inadvertent participant loan failures

Delinquent Filer Voluntary Compliance Program (DFVCP)

- Form 5500 filing failures
- If an administrator is notified in writing by the DOL of a failure to file a timely annual report, they must submit required forms and documents prior to the notification date.
- Pay reduced civil penalties for voluntarily complying with the annual reporting requirements through the DFVCP

New IRS Pre-Examination Compliance Pilot Program—*Extended*

- IRS will notify a plan sponsor by letter that its retirement plan was selected for an upcoming examination
- Plan sponsor has “90-day window” to review plan for errors and use the less costly self-correction measures to remedy errors instead of the more expensive Closing Agreements Program (CAP)

At the end of phase two, the IRS will evaluate the program’s effectiveness and determine if it should continue to be part of our overall compliance strategy.

Employee Plans Compliance Resolution System (EPCRS)

Correction Program	Description
Self-Correction Program (SCP)	Permits a plan sponsor to correct certain plan failures without contacting the IRS or paying any fee
Voluntary Correction Program (VCP)	Permits a plan sponsor to, any time before audit, pay a fee and receive IRS approval for correction of plan failures
Audit Closing Agreement Program (Audit CAP)	Permits a plan sponsor to pay a sanction and correct a plan failure while the plan is under audit



SUMMARY AND ACTION STEPS

Summary

- Fiduciary failures can result in personal liability.
- Identify all plan fiduciaries and their roles and responsibilities.
- Implement strategies and tactics to limit fiduciary liability.
- Take advantage of fiduciary correction programs to correct errors.



QUESTIONS

Thank You

Disclosure

Investment advisory services offered by CapFinancial Partners, LLC (“CAPTRUST” or “CAPTRUST Financial Advisors”), an investment adviser registered with the SEC under The Investment Advisers Act of 1940.

The material in this presentation was provided by Retirement Learning Center, LLC, a third-party content provider, and is confidential and proprietary to Retirement Learning Center, LLC and/or its content providers. Retirement Learning Center, LLC is not affiliated with CAPTRUST Financial Advisors. This material is not to be copied, reproduced, retransmitted, or distributed to any third party in whole or part without the express written consent of Retirement Learning Center, LLC and CAPTRUST Financial Advisors. Neither Retirement Learning Center, LLC and/or its content providers, nor CAPTRUST Financial Advisors are responsible for any damages or losses arising from any use of this information. While we believe the sources of the content to be reliable, such content is made available for informational purposes only and does not constitute legal, accounting, or tax advice. Please consult the appropriate legal, accounting, or tax advisor if you require such advice. This content may not apply to all investors or all situations and is not a solicitation or an offer to buy any security or instrument or to participate in any trading strategy. The opinions expressed in this report are subject to change without notice. We make no representations or warranties as to the content and do not guarantee the accuracy, timeliness, completeness, or usefulness of the content.

This presentation is intended for institutional plan sponsors and is not intended for retail clients or private individuals.