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Let's Focus on ERISA Fiduciary Obligations and Governance

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Today's Speakers



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Please note that the following is intended to be used for general guidance purposes only — it is not intended to constitute tax or legal advice. Any question of application of the law should be addressed to legal or tax counsel. The information is current as of March 19, 2025.

Agenda

- Introduction
- Developments Impacting Plan Fiduciaries
- Employer Action Steps
- Key Takeaways for Employers
- NFP Publication and Resources



A man with a beard, wearing a plaid shirt, is seated at a wooden desk. He is looking at a laptop screen with his left hand on the keyboard. His right hand holds a pencil over an open spiral-bound notebook. The background is dark and out of focus, suggesting an indoor office or study environment. The text "Developments Impacting Plan Fiduciaries" is overlaid in white, bold font across the center of the image.

Developments Impacting Plan Fiduciaries

Transparency Laws:

- Hospital Price Transparency Rule
- Transparency in Coverage Rule
- CAA 2021, Title II

Why were these law enacted?



Address sharply rising healthcare costs and the lack of information available to plans and participants to make informed healthcare choices.



Remove barriers to obtaining network rates and quality of care information.



Promote greater transparency in healthcare pricing and prevent surprise bills.



Create a more competitive healthcare marketplace, narrow price dispersions and put downward pressure on prices.



Why is transparency important for group health plan sponsors?

- The lack of transparency has made it very difficult for plan sponsors to obtain accurate information about healthcare costs and make informed decisions regarding plan benefits.
- Under ERISA, the employer as plan administrator has a fiduciary duty to:
 - Ensure plan assets are administered prudently and solely in the interest of participants;
 - Monitor the performance of plan service providers; and
 - Verify that their service providers' compensation is reasonable.

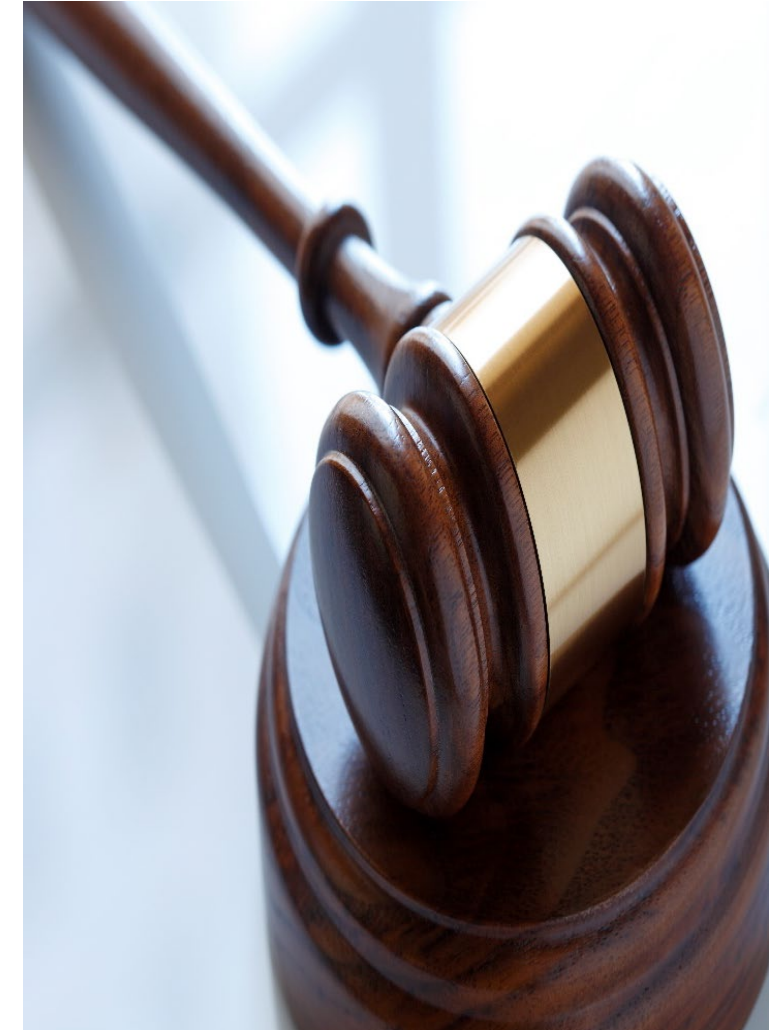
To fulfill these duties, plans need access to healthcare costs, claims data and service provider compensation.

This is particularly for self-insured plans, where the employer assumes greater financial responsibility and a higher level of fiduciary obligations.

Fiduciary Breach Litigation

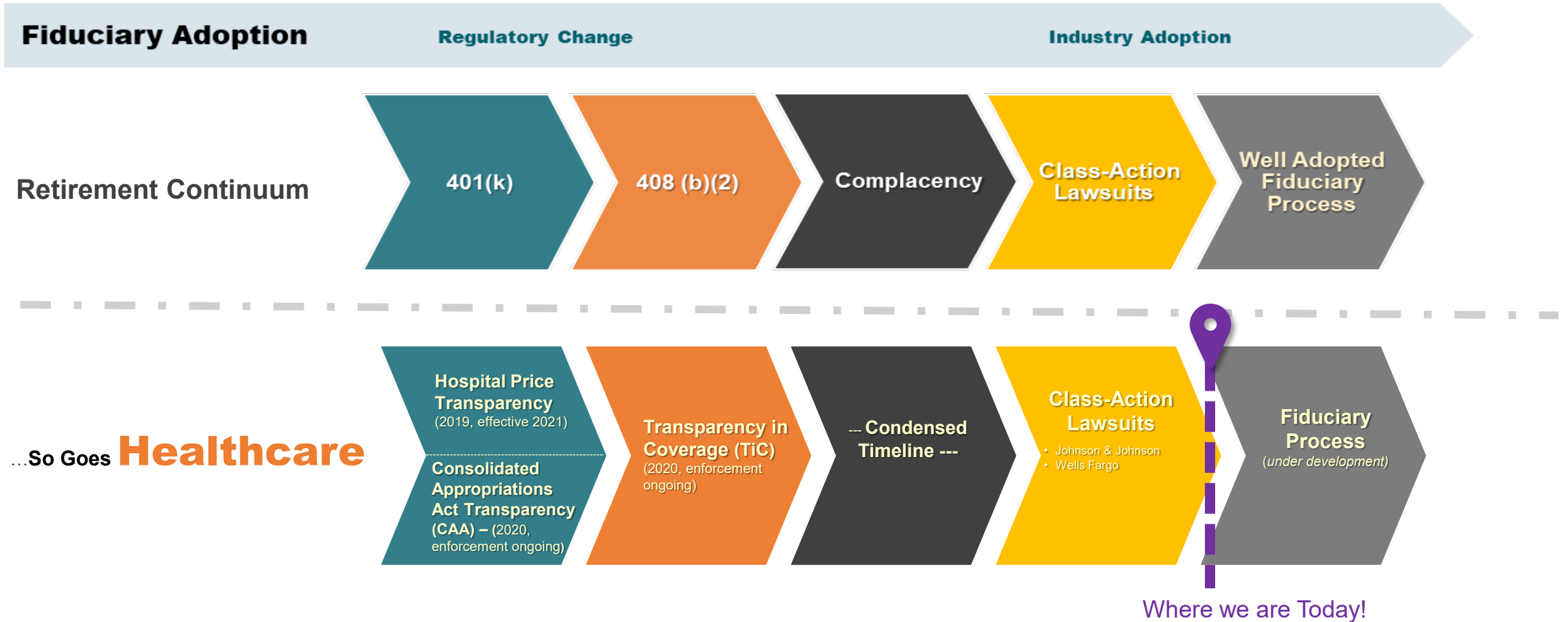
How are the fiduciary breach lawsuits connected to transparency laws?

- The availability of data raises the bar for plan sponsors in terms of fulfilling their fiduciary obligations.
- Since more data is now publicly available, class action law firms (on behalf of participants) have used it to sue plan sponsors for alleged breaches of their ERISA fiduciary duties, particularly regarding pharmacy benefit plans.
- In several high-profile cases, participants have asserted that plan fiduciaries failed to prudently:
 - Manage their pharmacy benefit plans
 - Negotiate better prescription drug pricing
 - Select their PBM
 - Monitor the PBM and the PBM's compensation
- Plaintiffs in these cases face significant legal hurdles (please see our [article](#) on one recent ruling).
- But the lawsuits are expected to continue and present numerous legal risk and potential liabilities for group health plan sponsors.



Fiduciary Breach Litigation

What should GHP sponsors do now? Follow retirement sponsors and adopt a prudent process.




Let's Focus on ERISA Fiduciary Obligations and Governance

Increased Regulatory Attention

Are regulators reviewing GHP fiduciary compliance?

- Previously, regulators focused largely on retirement plan fiduciaries.
- But recently, the DOL has been focused more on GHP fiduciary compliance and:
 - Published a guide: [Understanding Your Fiduciary Responsibilities Under A Group Health Plan](#) to ensure employers recognize ERISA's basic rules and fulfill their roles as group health plan sponsors.
 - Clarified their cybersecurity guidance applies to ERISA health and welfare plans and not just retirement plans.
 - See [Compliance Assistance Release No. 2024-01](#)
 - Signaled potential reforms to GHP claim procedures to reduce claim denials.
 - Fiduciaries must maintain a plan's claim procedures, so this is an issue to monitor.
- We don't know all the Trump Administration's employee benefit regulatory priorities.
 - BUT enforcement of transparency laws is a big one, and sponsors should stay tuned for rulemaking following a recent executive order; please see our [article](#).



A pair of black-rimmed glasses with clear lenses is resting on a stack of books. A red ribbon bookmark is visible, tucked between the pages of the books. The background is softly blurred, showing more books and a wooden surface.

Employer Action Steps

Employer Action Steps

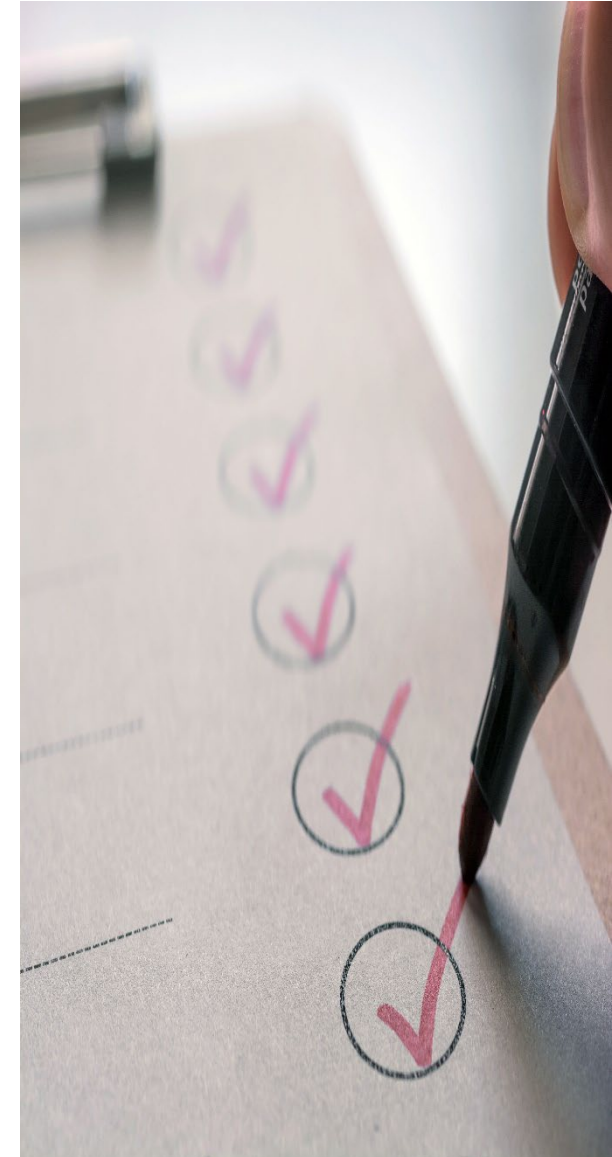
So, what should employers do now?

General Steps

- Employers should take a proactive approach to fiduciary governance.
- ERISA's application is not one-size-fits all; each organization's governance structure, policies, and procedures should be tailored to their size, needs, and the complexity of their benefit plans.
- Consulting with experienced ERISA counsel is always advisable for exact direction.

Specific Practical Steps in Establishing a Fiduciary Governance Program:

1. Identify plan fiduciaries.
2. Ensure plan fiduciaries understand the basic ERISA standards for fiduciary conduct.
3. Review the fiduciary governance structure and consider establishing a committee.
4. Adopt prudent processes for making and documenting fiduciary decisions.
5. Recognize that selecting and monitoring service providers is a fiduciary function.
6. Consider fiduciary liability insurance/indemnification to protect plan fiduciaries from potential liability.



Fully Insured vs. Self-Insured Employers

Fiduciary Duties Apply to Both; Heightened Responsibility & Additional Tasks for Self-Insured

- **Fully Insured Employer**

- Fiduciary duties shared with carrier
- Carrier plays a significant role in compliance with fiduciary obligations
- Primary Concerns:
 - Identifying and training fiduciaries, prudent decision-making process, documentation of decisions, and overseeing/monitoring carrier (and other vendor) performance/cost/quality.

- **Self-Insured Employer**

- Bears more fiduciary responsibility due to increased involvement in plan decision-making and therefore need to take more steps to develop appropriate governance program.
- Employer plays primary role in compliance; but needs to work even more closely w/ TPAs and vendors
- Primary Concerns:
 - Identifying/training fiduciaries, forming a committee, prudent decision-making process, keeping meeting minutes, documentation of decisions, overseeing/monitoring TPA/vendor performance/cost/quality, fiduciary liability insurance.



Identify Plan Fiduciaries

Identify Plan Fiduciaries

Who is an ERISA fiduciary?

Basic Definition: A party who has or exercises discretionary authority or control over the management of the plan or plan assets.

There are several types of fiduciaries.

- **Named Fiduciary:** ERISA requires that a “named fiduciary” be specified in the written plan document.
 - The plan administrator, who is responsible for the plan’s overall compliance, is presumed the named fiduciary unless this role is otherwise assigned.
 - The plan sponsor is the default plan administrator absent another designation.
 - *By default, the sponsoring employer (i.e., the board of directors of a corporation, the managers of a limited liability company, or the partners in a partnership) assumes the plan administrator and named fiduciary role with significant plan fiduciary obligations (and related liability exposure).*
 - Accordingly, it is crucial for the employer to carefully consider if and how that fiduciary role will be allocated (e.g., to individuals or a committee) within the organization.

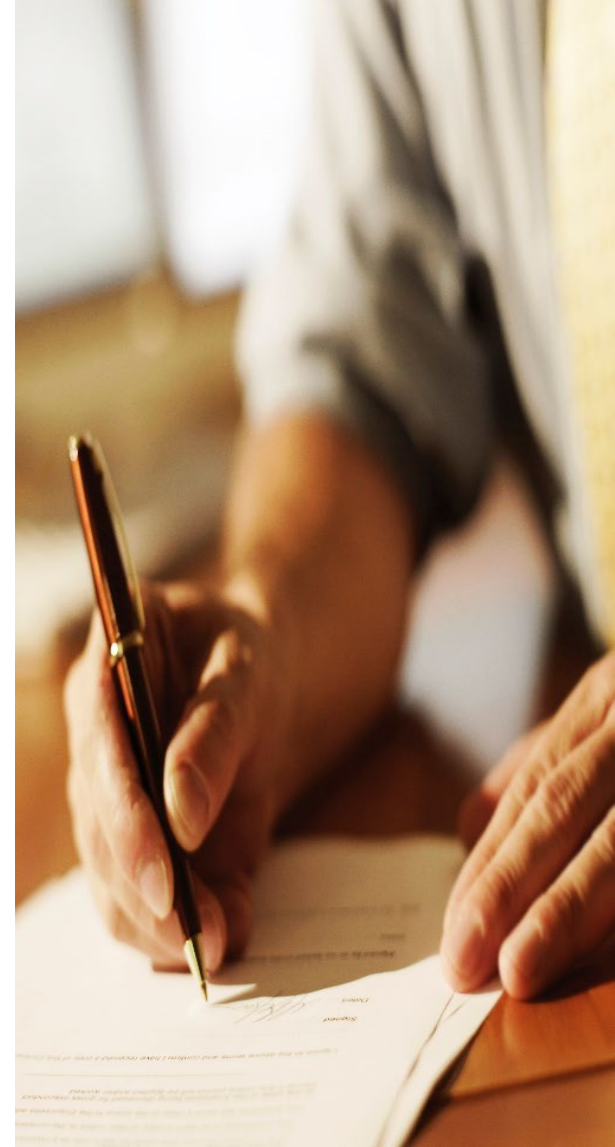


Identify Plan Fiduciaries

Who is an ERISA fiduciary?

- **Fiduciary by Delegation:**

- A named fiduciary can (and typically does) delegate certain fiduciary functions to third parties, as permitted by the plan document.
- The party accepting the delegation becomes a fiduciary accountable for delegated tasks.
- *Example:* A self-insured plan administrator contractually delegates fiduciary authority to a TPA to review and decide plan claims and appeals, making the TPA a fiduciary to the extent of such adjudication authority.
- The delegating fiduciary (e.g., employer):
 - Must act prudently in selecting the third party and cannot contract away its own fiduciary status by the delegation.
 - Remains responsible for monitoring the third party and assessing whether they are properly performing the delegated duties.
 - Failure to prudently select and monitor third party service providers is a common claim in the recent wave of lawsuits!



Identify Plan Fiduciaries

Who is an ERISA fiduciary?



- **Functional Fiduciary:**

Since ERISA fiduciary status is based on the actual functions a party performs, a party that exercises discretionary authority over the plan or assets (e.g., a TPA exercising discretion in deciding claims and appeals) can be a fiduciary, even without a formal designation in a contract.

- Generally, courts have not found PBMs to be functional fiduciaries, despite debate on this issue.

- **Nonfiduciary:**

- Other third parties (e.g., health FSA vendors) typically are not plan fiduciaries because their roles are “ministerial” (i.e., nondiscretionary and limited to following the plan’s established rules and policies).



Understand ERISA Standards for Fiduciary Conduct

ERISA Standards for Fiduciary Conduct: Fiduciary vs. Settlor Functions

When does an employer act in a fiduciary capacity?

Basic Rule: Fiduciary obligations apply broadly to plan administrative functions but not to purely “settlor” functions.

- ERISA's fiduciary rules affect every aspect of plan administration.
- But when an employer makes a business decision in relation to plan establishment, design, amendment or termination, they are acting as settlor, not as fiduciary, so their decisions are not governed by fiduciary rules.
- However, implementation of that business decision (e.g., notifying participants of a plan termination via SBC/SMM) is a fiduciary act.
- When conducting affairs, employers should remember they wear “two hats”.
 - It is good practice to have separate committees and meetings to review plan business vs. administrative matters.



ERISA Standards for Fiduciary Conduct: Overview

What are the primary duties of an ERISA plan fiduciary?

Basic Rule: Generally, an ERISA fiduciary acts in a position of trust for the benefit of plan participants and is held to a higher standard of conduct than in other business relationships, which requires great care in decision-making.

The main duties of an ERISA fiduciary are:

- To act according to the plan document
- To act solely in the best interest of plan participants (duty of loyalty);
 - To use plan assets for the sole purpose of paying plan benefits or reasonable plan administrative expenses (the exclusive benefit rule);
 - To avoid prohibited transactions (i.e., conflicts of interest);
- To act with the care, skill, prudence and diligence of a prudent person in similar circumstances (duty of prudence);

Many plan administrative situations implicate more than one of these duties!



ERISA Standards for Fiduciary Conduct: Duty to Follow Plan Document



Why is it so important for an employer to follow the plan document terms?

Basic Rule: The employer as plan administrator has a fiduciary obligation to operate the plan in accordance with the written plan document.

- ERISA requires every benefit plan to be maintained pursuant to a written document.
- The plan document must specify certain information (e.g., “named” fiduciary, a description of benefits, eligibility, funding, claims procedures, the plan amendment and termination process).
- *The employer must be familiar with the document terms to properly administer the plan.*
- Remember: In the event of litigation or an audit, the plan document is one of the first items that opposing counsel or a regulator will request!
- The terms should be applied consistently to all similarly situated employees.
 - Making one-off exceptions that deviate from plan terms (e.g., waiving plan waiting period) is a fiduciary breach.

ERISA Standards for Fiduciary Conduct: Duty of Loyalty

What does the duty of loyalty require of a fiduciary?

Basic Rule: A fiduciary must act solely in the interests of plan participants and for the exclusive purpose of providing plan benefits and paying reasonable plan administrative expenses (the exclusive benefit rule). A fiduciary must also avoid self-dealing and conflicts of interests.

- Duty extends to handling of “plan assets”, which include:
 - Participant contributions towards premiums or benefits.
 - Amounts attributable to plan assets (e.g., portion of insurance rebates due to participant contributions).
 - Amounts held in a separate account/trust to pay plan benefits (i.e., not part of employer’s general assets).
- Employer must:
 - Ensure participant premium contributions are timely forwarded to the carrier (fully insured plan) or applied to the payment of benefits (self-insured plan) or amounts must be held in a trust per [DOL Technical Release 92-01](#).
 - Apply plan asset portion of insurance rebates (e.g., MLR rebates) per [DOL Technical Release 2011-04](#).
 - Verify plan service provider compensation is reasonable.

Duty of loyalty also involves a duty of disclosure of material plan information to participants.

ERISA Standards for Fiduciary Conduct: Duty of Prudence

How does a fiduciary fulfill their duty of prudence?

Basic Rule: The duty of prudence requires that a plan fiduciary act with the same care, skill, prudence, and diligence of a comparable knowledgeable plan fiduciary acting under similar circumstances.

- This is known as the “prudent expert” test and is a high bar!
- Fiduciary may need to engage experts if they lack the necessary knowledge.
 - E.g., consult with doctor when reviewing appeal of complex medical claim
- *The focus is on prudence in the decision-making process, not the result.*
 - *A regulator/court would objectively review how a fiduciary reached the decision.*
 - *A fiduciary who acts prudently can avoid liability, even if in hindsight, they would have made a different decision.*
- Recent fiduciary breach lawsuits primarily allege violations of the duty of prudence.
 - Common claim is that fiduciary was not prudent in selecting and monitoring plan service providers.
 - Plan sponsors would be wise to review their fiduciary governance and decision-making practices.



A man in a blue suit is standing and pointing towards a whiteboard, addressing a group of people seated at tables in a modern office or meeting room. The room has large windows and a high ceiling. The whiteboard contains handwritten notes and sticky notes. The text "Review Fiduciary Governance Structure/ Consider Establishing a Committee" is overlaid on the image.

Review Fiduciary Governance Structure/ Consider Establishing a Committee

Make a list
Write down the most
important things
I will give you the
first: you
... to yourself, the way
you would be to someone, you can
You can't skip chapters, that's not
... works.
... read every line,
... or you won't understand

Review Fiduciary Governance Structure/Consider Committee Approach

What is the case for a fiduciary committee approach?

- With retirement plans, the ERISA named fiduciary and plan administrator roles are often fulfilled by a formally designated committee.
- Employers should consider if a committee approach would benefit their health and welfare (H&W) plan administration.
 - May help to facilitate and document a prudent decision-making process.
 - Can limit fiduciary liability exposure of company and their board of directors (BoD).
 - BoD is default plan administrator, but members may not always have significant substantive knowledge of plan administration (e.g., to select service providers or carry out a plan's ongoing operations).
 - BoD may prefer to delegate fiduciary roles to others with more experience/expertise in managing H&W plans.
 - Employers are generally familiar with this type of committee structure, which is normally used for corporate governance purposes.
 - Good corporate governance practices stress careful selection of members with defined roles, responsibility, accountability, integrity, and internal controls; all can apply to GHP context.
 - Employers with retirement committees could consider adopting a similar arrangement for H&W plans.

Review Fiduciary Governance Structure/Consider Committee Approach

What should be considered when selecting plan fiduciaries/committee members?

- Traditionally, with H&W plans, 1-2 individuals (e.g., from human resources) may be designated as plan administrator.
- Committee approach expands this role to a small, dedicated group of knowledgeable individuals with relevant experience who are willing to serve as fiduciaries.
 - By “relevant experience”, consider all aspects of plan administrator’s role (e.g., overseeing plan administration and compliance, interpreting plan terms, selecting and monitoring service providers and their compensation, reviewing claim appeals)
- These subject matter specialists from various areas of the company can weigh in on issues and provide different perspectives, resulting in more informed decisions.
 - For example, members of a plan administrative committee may include executives or senior representatives selected from the human resources, finance, and, as applicable, compliance departments.
- There is no required size, although five to seven members may allow for a sufficient variety of opinions without being unmanageable. An odd number is generally preferable to avoid a tie when voting on fiduciary matters.
- Each organization needs to structure and staff its committee based on their size and resources as well as the complexity of their benefit plans, among other factors.

Review Fiduciary Governance Structure/Consider Committee Approach

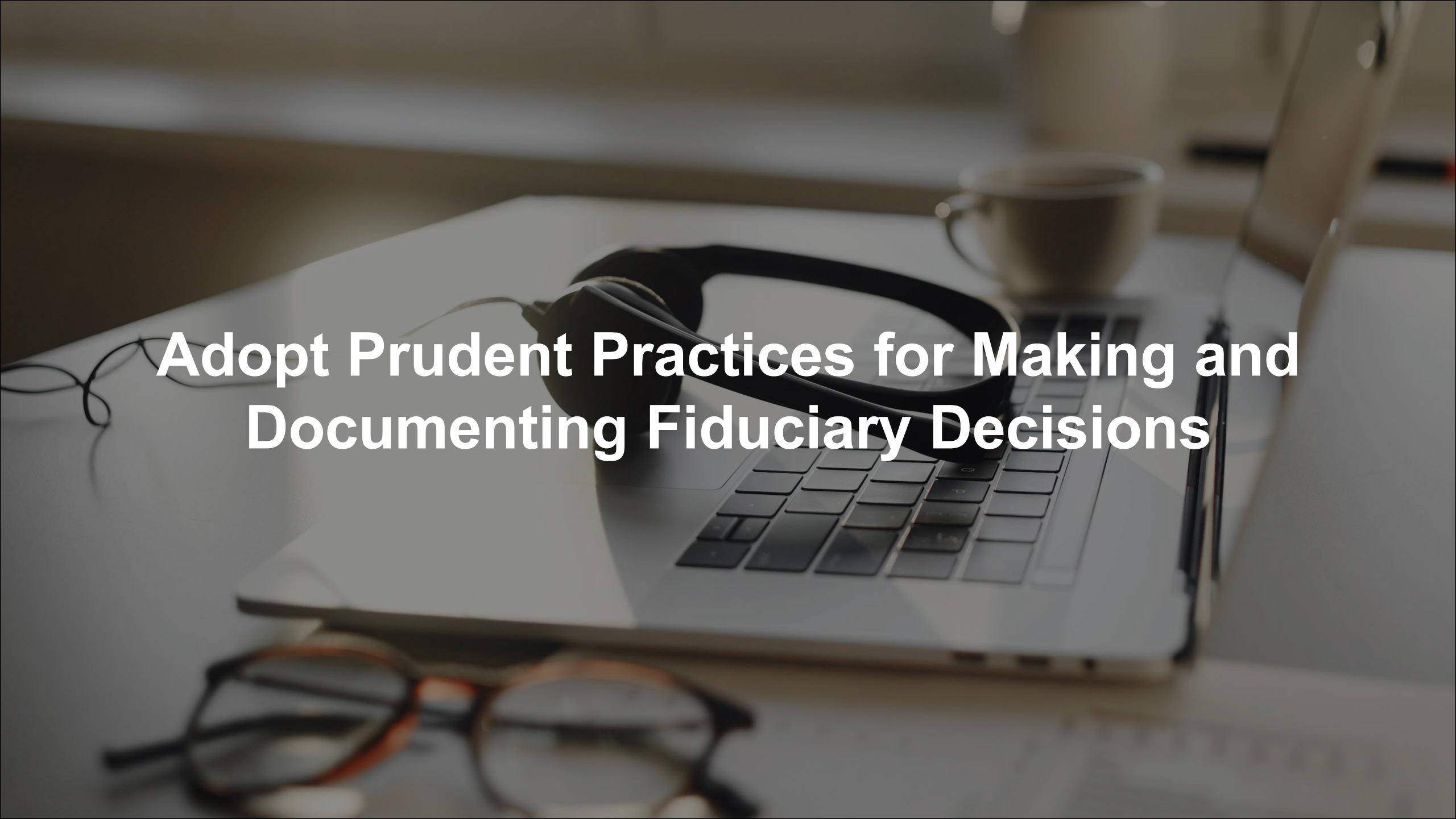
How are plan fiduciaries/committee members appointed?

- The selection and appointment of ERISA fiduciaries is itself an ERISA fiduciary duty, so employers should formally appoint fiduciaries per the ERISA plan document terms.
- Typically, for a committee format, BoD adopts:
 - A resolution (to delegate authority to a committee) and
 - A committee charter (to affirm scope of authority delegated and committee's specific obligations).
 - Please see [Sample Board Resolution to Form Fiduciary Employee Benefit Plan Committee/Plan Committee Charter \(Appendix B\)](#).
- Normally, BoD does not delegate all fiduciary duties and must monitor appointees' performance (oversee committee).
 - Level of oversight depends upon scope of authority delegated; appointees typically report periodically to BoD.
- Although atypical, it may be possible for BoD to not assume any fiduciary obligations (and avoid related liabilities).
 - E.g., ERISA plan document designates benefits committee as named fiduciary with authority to appoint its own members. (BoD would relinquish control of ERISA fiduciary obligations to committee.)
 - Perhaps worth consideration if BoD's plan activities are normally limited to settlor functions (i.e., plan establishment, design, amendment, and termination).
- **Employer should always consult with legal counsel for specific advice and guidance!**

Review Fiduciary Governance Structure/Consider Committee Approach

How does the employer/BoD ensure appointed fiduciaries understand their obligations?

- Although not required, the employer/BoD could provide each appointee/committee member with a summary of their role and the general guidelines for fulfilling their duties.
 - The summary could also explain prohibited conduct (e.g., engaging in activity with plan adverse interests) and disqualification factors (e.g., violation of certain laws) for committee members.
 - Please see [Sample Summary of Fiduciary Employee Benefit Plan Committee Duties and Responsibilities \(Appendix C\)](#).
- The appointed fiduciaries could be required to acknowledge in writing their receipt and review of the summary and willingness to serve.
 - Please see [Sample Fiduciary Employee Benefit Plan Committee Acknowledgement \(Appendix D\)](#).
- Importantly, regular ongoing training should be provided to fiduciaries to reinforce the conduct standards and provide updates on new developments.
 - There are no certified ERISA fiduciary training materials or program, so employers have flexibility to tailor their training program to their organization's needs.

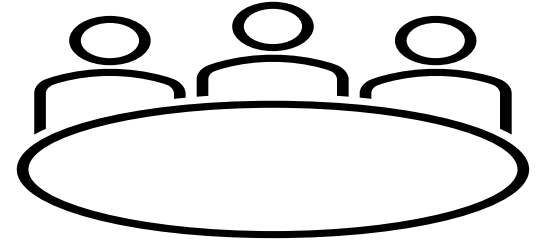
A blurred background image of a desk. In the center is a silver laptop with a pair of black over-ear headphones resting on its keyboard. To the right of the laptop is a white ceramic cup of coffee. In the foreground, a pair of glasses with brown and black frames lies on the desk. The overall scene is softly lit, suggesting a professional or study environment.

Adopt Prudent Practices for Making and Documenting Fiduciary Decisions

Adopt Prudent Practices for Making and Documenting Fiduciary Decisions

What prudent practices should an employer adopt?

- If an employee benefits committee is formed, the prudent policies and procedures usually begin with establishing operational rules (aka by-laws) to direct the committee's activities.
 - Among other items, these rules will normally address:
 - Committee membership, and the process for appointing and replacing members;
 - Committee meetings, including the meeting schedule and frequency (e.g., quarterly), what constitutes a quorum (i.e., minimum number of members needed to hold meetings or make decisions), and how members can participate in meetings (e.g., via a video conferencing platform) and cast votes; and
 - The process for amending the operating rules/charter.
- With respect to decision-making, the procedures should be designed to ensure:
 - ERISA plan fiduciaries must engage in thorough analyses and deliberations before reaching a fiduciary decision.
 - Sufficient relevant information is gathered so fiduciaries can make informed decisions and demonstrate a prudent process.
 - Expert advice is sought when necessary.
 - The fiduciary decision-making process is documented.



Adopt Prudent Practices for Making and Documenting Fiduciary Decisions

How should employers document their decisions?

- Documentation of the decision-making process should be in the form of formal minutes.
- *Meeting minutes are one of the most important types of documentation that a fiduciary committee can use to show carried out its ERISA fiduciary duties prudently.*
 - Without minutes, it will be very difficult for the plan fiduciaries to show that they engaged in a prudent decision-making process, particularly many months or even years later, when an inquiry may arise.
- Minutes should include sufficient information to demonstrate good judgment and consistency in decision-making from a compliance perspective but not details that could potentially be used against plan fiduciaries in the event of litigation or an audit.
- Minutes should NOT be a transcript of a meeting but should provide information and impartial summaries of the discussions.
- Preferably, minutes should be drafted during the meeting to ensure accuracy and approved by committee members shortly thereafter (when memories are fresh) to establish a strong evidentiary record.
- Please see **Sample Meeting Minutes (Appendix E)**.

A man in a blue suit is standing and pointing towards a whiteboard in a classroom or meeting room. Several people are seated at long tables, listening. The room has large windows and a modern, industrial feel. A whiteboard on the right side of the frame contains handwritten notes and sticky notes. The text "Recognize Selecting and Monitoring Service Providers is a Fiduciary Function" is overlaid in the center of the image.

Recognize Selecting and Monitoring Service Providers is a Fiduciary Function

Make a list
Write down the most
important things
I will give you the
first - you

Be kind to yourself, the way
you would be to someone you love
in skip chapters, that's not
works.

read every line,
or you won't enjoy it

Recognize Selecting and Monitoring a Service Provider is a Fiduciary Function

What should employers consider when **selecting** a service provider?

- GHP must engage in a prudent process when selecting a service provider and document it, and a formal RFP may be the most effective way to select service providers, particularly TPAs and PBMs.
- Per the DOL, when selecting a service provider, fiduciaries should request information from multiple service providers (via RFP or otherwise) and compare:
 - The reasonableness of costs, quality of services, experience and qualifications of professionals providing services, and their current licensure and/or ratings (e.g., of brokers, TPAs, insurers).
 - Information about the firm itself (e.g., performance record, experience with GHPs of similar size and complexity, financial condition, and any recent litigation or enforcement action taken against the firm).
 - Quality of care (for healthcare services), including the scope of available services, qualifications of medical providers and specialists and their ratings and accreditations, patient access to providers, patient confidentiality protections, procedures to timely consider and resolve patient questions and complaints and enrollee satisfaction statistics.
- Experts should be engaged if employer lacks knowledge to evaluate providers and proposed financial terms.
 - E.g., PBM contract terms (pricing structure and guarantees, rebates, formularies) can be complex!

Recognize Selecting and Monitoring a Service Provider is a Fiduciary Function

What should employers consider when **monitoring** a service provider?

- After a service provider is selected, the employer maintains a fiduciary duty to monitor their performance.
- The resulting contract should require periodic reporting from the service provider, the right to audit their performance and as applicable, acknowledgement of fiduciary status (e.g., of a TPA adjudicating claims).
- The employer should also establish a formal review process and follow it at reasonable intervals to decide whether to continue using the current service providers or look for replacements.
- The review should consider if the service providers are meeting their contractual obligations and any service performance standards, including by:
 - Reviewing any reports they provide
 - Asking about policies and practices, (e.g., a TPA's claims processing systems)
 - Verifying the actual service fees charged
 - Ensuring proper maintenance of plan records, and
 - Following up on participant complaints.

Recognize Selecting and Monitoring a Service Provider is a Fiduciary Function

How should employers **evaluate** service provider compensation?

When evaluating service provider compensation, employers:

- Are not required to select the lowest bidder but must ensure the compensation is reasonable for the services provided.
- Must understand the estimated fees and expenses, whether assessed for services individually or as part of a “bundled” arrangement, and whether there is any indirect compensation (finder’s fees, commissions or revenue sharing).
- Should ensure they receive a §408(b)(2) compensation disclosure from group health plan brokers and consultants prior to entering a contract.
 - Carefully review and evaluate its content and document the process.
 - Failure to receive and evaluate disclosure is a prohibited transaction under ERISA!

Fees and expenses should be monitored throughout the relationship to determine whether they are still reasonable.



A pair of black-rimmed glasses is resting on a stack of books. A red bookmark is visible in the foreground. The background is blurred, showing more books and a wooden surface.

Consider Measures to Protect Plan Fiduciaries from Potential Liabilities

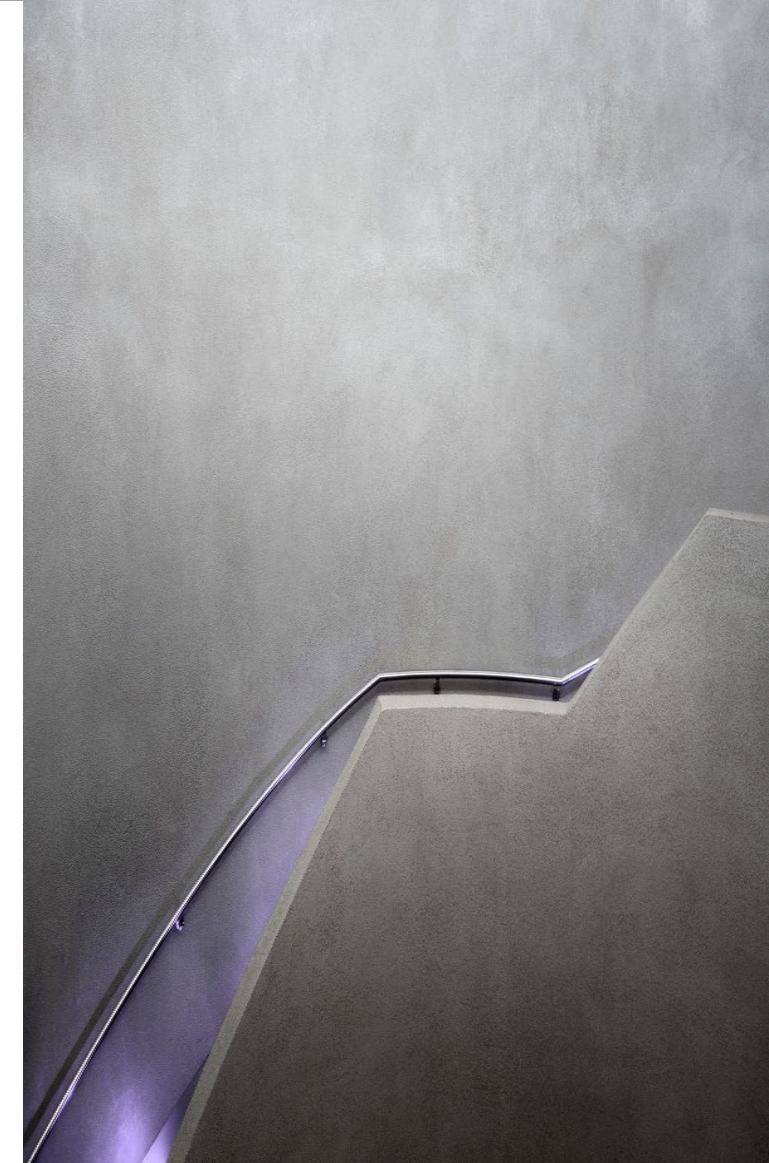
Addressing Fiduciary Liability Exposure: Breach Consequences

What happens if an employer breaches a fiduciary duty?

Basic Rule: A fiduciary breach can have serious consequences for the fiduciary and company.

Potential consequences include:

- Lawsuits against the plan and fiduciaries by participants seeking legal or equitable relief.
 - Litigation is costly and undesirable from a public relations standpoint.
 - Employer likely will need to engage counsel for defense and corrective actions.
- *Personal liability of fiduciaries for breaches that result in plan losses or participant harm.*
 - Important to have appropriate protection (e.g., insurance, indemnification).
- DOL civil penalties (e.g., for reporting and disclosure failures, including not filing a Form 5500 or distributing an SPD).
- Criminal penalties can arise if a failure is willful.



Addressing Fiduciary Liability Exposure: Breach Consequences

What protections are available to address fiduciary liability?

- Fiduciary liability insurance, which is coverage that protects businesses and plan fiduciaries from fiduciary breach claims (allegations of mismanagement of plans or plan assets). Fiduciary liability insurance can be an effective risk management tool. The employer or fiduciaries typically purchase this coverage since there are restrictions on the use of plan assets for this purpose.
- Indemnification, by which employers contractually agree to compensate employees financially if a fiduciary breach occurs. Indemnification allows a fiduciary to be reimbursed by the employer for a monetary obligation that results from a breach (e.g., failure to file a Form 5500).



A person with a beard, wearing a plaid shirt, is seated at a wooden desk. They are using a silver laptop with their left hand on the keyboard and holding a pencil in their right hand over an open spiral-bound notebook. The laptop screen displays a blurred image of a group of people. The scene is dimly lit, with a window in the background showing some greenery.

Final Takeaways

Final Takeaways

What are the key takeaways for employers?

- The current focus on ERISA health and welfare plan fiduciary obligations is likely here to stay.
- Employers should:
 - Identify plan fiduciaries and ensure they understand basic ERISA fiduciary obligations, particularly the duty of prudence.
 - Review fiduciary governance structure and consider establishing a committee to oversee plan governance and administration.
 - Adopt prudent practices for decision-making and document this process in formal minutes, particularly for plan service provider selection and monitoring.
 - Consider fiduciary liability insurance and indemnification to protect fiduciaries from potential liability.



Publication

- Publication includes:
 - Detailed description of employer steps
 - Overview and Checklist
 - Sample documents
 - Board resolution/charter
 - Summary of Committee Duties and Responsibilities
 - Committee Appointment Letter and Notice of Acknowledgment
 - Meeting Minutes

Appendix A

Fiduciary Governance Overview and Checklist

Instructions for Fiduciary Governance Overview and Checklist

This overview and checklist is meant to provide a high-level overview list of action items an employer could take in establishing an ERISA fiduciary governance program related to the employer's group health and welfare plan offerings. More information on each action item can be found in the [ERISA Fiduciary Governance: A Guide for Employers](#) publication. This overview and checklist is nonexhaustive and may not capture every step required or necessary to establish a fiduciary governance program.

Legal Disclaimer: Neither NFP nor its affiliates provide legal or tax advice. Employers should work with their own internal or external legal counsel to solidify their approach to a fiduciary governance program, including action items, policies, and procedures.

Action Item	Comments & Status
Governance Program Establishment & Process	
Identify plan fiduciaries (named, delegated, and functional).	
Consider establishing a plan fiduciary committee (and if established, appoint committee members and adopt committee charter).	
Appoint committee members and formalize committee formation via charter adoption.	
Educate committee members on their fiduciary duties and obligations.	
Educate committee members on the guiding principles in making plan-related decisions (including the duty to act in accordance with plan documents, the duty of loyalty to plan participants, and the duty of prudence).	
Establish fiduciary policies and procedures.	
Provide regular training for fiduciaries.	
Obtain fiduciary insurance and/or fidelity bond (if plan assets held in trust).	
Conduct regular fiduciary meetings and memorialize decision-making process via meeting minutes.	
Establish practice of engaging independent experts if plan fiduciaries lack the necessary knowledge and expertise on a particular plan issue.	
General Selection and Monitoring of Plan Service Providers (PSPs)	
When vetting and hiring a PSP, consider the PSP's qualifications, service levels, fees, and quality of work.	

Please Join Us for Our Upcoming Fiduciary-Focused Webinars!

- **Fiduciary-Focused Get Wise Wednesdays Series – Save the Dates**
 - May 21, 2025
 - July 16, 2025
 - September 17, 2025
 - (All occur at 3:00 p.m. ET)
- **Additional Communications**
 - We will continue to communicate any updates on fiduciary governance and transparency obligations through our biweekly newsletter, *Compliance Corner*, our webinars, and our various publications.



A photograph of an audience in a conference room, seen from behind, with several people raising their hands. The image is dimly lit and has a dark overlay. The text is centered in white.

Questions?
Thank you for joining us!