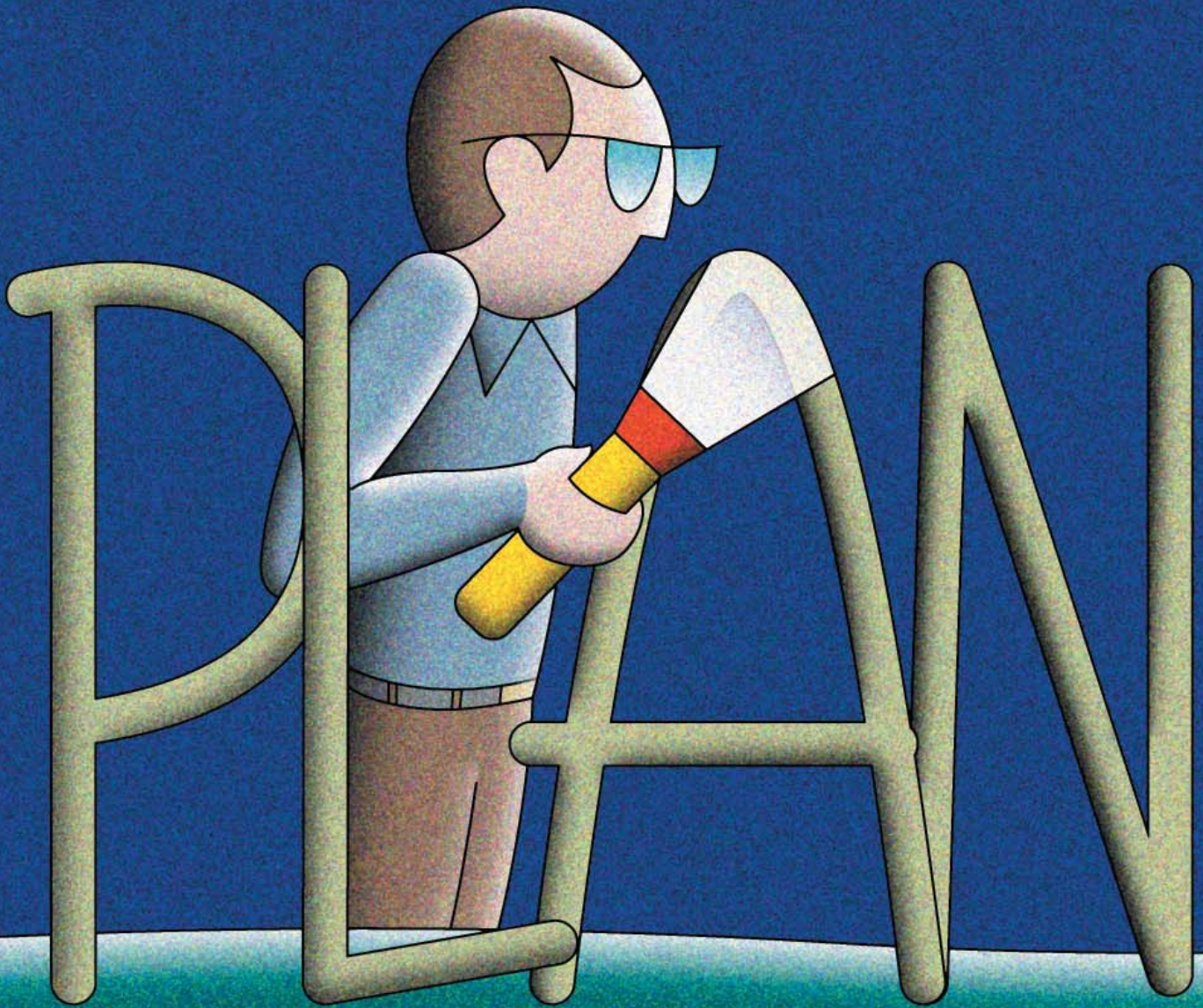


WHAT YOU SHOULD KNOW ABOUT YOUR RETIREMENT



This publication has been developed by the U.S. Department of Labor, Employee Benefits Security Administration (EBSA).

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▶ CHAPTER 7: RESPONSIBILITIES OF PLAN FIDUCIARIES

In every retirement plan, there are individuals or groups of people who use their own judgment or discretion in administering and managing the plan or who have the power to or actually control the plan's assets. These individuals or groups are called **plan fiduciaries**. Fiduciary status is based on the functions that the person performs for the plan, not just the person's title.

DOES YOUR PLAN HAVE TO IDENTIFY THOSE RESPONSIBLE FOR OPERATING THE PLAN?

A plan must name at least one fiduciary in the written plan document, or through a process described in the plan, as having control over the plan's operations. This fiduciary can be identified by office or by name. For some plans, it may be an administrative committee or the company's board of directors. Usually, a plan's fiduciaries will include the **trustee**, investment managers, and the **plan administrator**. The plan administrator is usually the best starting point for questions you might have about the plan.

WHAT ARE THE RESPONSIBILITIES OF PLAN FIDUCIARIES?

Fiduciaries have important responsibilities and are subject to certain standards of conduct because they act on behalf of the participants in the plan. These responsibilities include:

- ▶ Acting solely in the interest of plan participants and their beneficiaries, with the exclusive purpose of providing benefits to them;
- ▶ Carrying out their duties with skill, prudence, and diligence;
- ▶ Following the **plan documents** (unless inconsistent with **ERISA**);
- ▶ Diversifying plan investments;
- ▶ Paying only reasonable expenses of administering the plan and investing its assets; and
- ▶ Avoiding conflicts of interest.

The fiduciary also is responsible for selecting the investment providers and the investment options, and for monitoring their performance. Some plans, such as most **401(k)** or **profit sharing plans**, can be set up to permit participants to choose the investments in their accounts (within certain investment options provided by the plan). If the plan is properly set up to give participants control over their investments, then the fiduciary is not liable for losses resulting from the participant's investment decisions. Department of Labor rules provide guidance designed to make sure participants have sufficient information on the specifics of their investment options so they can make informed decisions. This information includes:

- ▶ A description of each investment option, including the investment goals, risk, and return characteristics;
- ▶ Information about any designated investment managers;
- ▶ An explanation of when and how to request changes in investments, plus any restrictions on when you can change investments;

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- ▶ A statement of the fees that may be charged to your account when you change investment options or buy and sell investments; and
 - ▶ The name, address, and telephone number of the plan fiduciary or other person designated to provide certain additional information on request.

A statement that the plan is intended to follow the Department of Labor rules and that the fiduciaries may be relieved of liability for losses that are the direct and necessary result of a participant's investment instructions also must be included.

For an **automatic enrollment** plan, such as an automatic enrollment **401(k) plan**, the plan fiduciary selects the investments for employees' automatic contributions if the employees do not provide direction. If the plan is properly set up, using certain default investments that generally minimize the risk of large losses and provide long-term growth, and providing notice of the plan's automatic enrollment process, then the fiduciary may be relieved of liability for losses resulting from investing in these default alternatives for participants. The plan also must provide a broad range of investments for participants to choose from and information on the plan's investments so participants can make informed decisions. Department of Labor rules provide guidance on the default investment alternatives that can be used and the notice and information to be provided to participants.

WHAT IF A PLAN FIDUCIARY FAILS TO CARRY OUT ITS RESPONSIBILITIES?

Fiduciaries that do not follow the required standards of conduct may be personally liable. If the plan lost money because of a breach of their duties, fiduciaries would have to restore those losses, or any profits received through their improper actions. For example, if an employer did not forward participants' 401(k) contributions to the plan, they would have to pay back the contributions to the plan as well as any lost earnings, and return any profits they improperly received. Fiduciaries also can be removed from their positions as fiduciaries if they fail to follow the standards of conduct.

WHEN DOES THE EMPLOYER NEED TO DEPOSIT EMPLOYEE CONTRIBUTIONS IN THE PLAN?

If you contribute to your retirement plan through deductions from your paycheck, then the employer must follow certain rules to make sure that it deposits the contributions in a timely manner. The law says that the employer must deposit participant contributions as soon as it is reasonably possible to separate them from the company's assets, but no later than the 15th business day of the month following the payday. For small plans (those with fewer than 100 participants), salary reduction contributions deposited with the plan no later than the 7th business day following withholding by the employer will be considered contributed in compliance with the law. In the Annual Report (Form 5500), the plan administrator is required to include information on whether deposits of contributions were made on a timely basis. For more information, see the Department of Labor's "Ten Warning Signs That Your 401(k) Contributions Are Being Misused," at www.dol.gov/ebsa for indicators of possible delays in depositing contributions.

WHAT ARE THE PLAN FIDUCIARIES' OBLIGATIONS REGARDING THE FEES AND EXPENSES PAID BY THE PLAN? CAN THE PLAN CHARGE MY DEFINED CONTRIBUTION PLAN ACCOUNT FOR FEES?

Plan fiduciaries have a specific obligation to consider the fees and expenses paid by your plan for its operations. ERISA's fiduciary standards, discussed above, mean that fiduciaries must

establish a prudent process for selecting investment alternatives and service providers to the plan; ensure that fees paid to service providers and other expenses of the plan are reasonable in light of the level and quality of services provided; select investment alternatives that are prudent and adequately diversified; and monitor investment alternatives and service providers once selected to see that they continue to be appropriate choices.

The plan may deduct fees from your **defined contribution plan** account. Plan administration fees and investment fees can be deducted from your account either as a direct charge or indirectly as a reduction of your account's investment returns. Fees for individual services, such as for processing a loan from the plan or a Qualified Domestic Relations Order (see Chapter 9), also may be charged to your account.

If you direct the investments in your account, your plan will provide information about your rights and responsibilities under the plan related to directing your investments. This includes plan and investment related information, including information about fees and expenses, that you need to make informed decisions about the management of your account. The investment related information is provided in a format, such as a chart, that allows for a comparison among the plan's investment options. The plan should provide this information before you can direct investments for the first time and annually thereafter with information on the fees and expenses actually paid provided at least quarterly.

For more information, see the Department of Labor brochure "A Look at 401(k) Plan Fees" at www.dol.gov/ebsa. To obtain a copy, contact the Department of Labor electronically at www.askebsa.dol.gov or call toll free at 1-866-444-3272.

ACTION ITEM

- ▶ If you have any questions about the management of the plan and its assets, contact your plan administrator.

