



# **A Quick Guide to Plan Fiduciary Responsibilities**

The decision to offer a workplace retirement plan also comes with fiduciary responsibility. At first glance, fiduciary responsibilities may appear intimidating, but they don't have to be. Understanding what a fiduciary is—and what you're responsible for as a fiduciary—is step one.

## Who is a Fiduciary under ERISA?

The Employee Retirement Income Security Act of 1974, as amended (“ERISA”) defines a fiduciary as a person who exercises discretion, control or authority over plan assets, the management of the plan or the administration of the plan.

Though there can be a number of fiduciaries in a plan by function, ERISA requires that at least one individual or entity be named in the plan document as the “named fiduciary.”

Plan fiduciaries are subject to stringent fiduciary duties under ERISA including, but not limited to, fiduciary duties of loyalty, prudence and care to the plan. As such, an ERISA plan fiduciary must act:

- Solely in the interest of plan participants and beneficiaries
- For the exclusive purpose of providing benefits to participants and their beneficiaries
- To defray reasonable expenses of administering the plan
- To diversify the investments of the plan to minimize risk of large losses, unless under the circumstances it is clearly not prudent to do so
- To discharge their duties with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims
- In accordance with the documents and instruments governing the plan (unless inconsistent with ERISA)

## Defined Roles under ERISA

Plan fiduciaries may hire a 3(38) investment manager, a 3(21) investment consultant and/or a 3(16) plan administrator to provide services to the plan. Your Morgan Stanley Financial Advisor may serve as a 3(38) investment manager or as a 3(21) investment consultant capacity to your retirement plan.

### 3(38) Investment Manager

ERISA defines a 3(38) investment manager as any fiduciary (other than a trustee or named fiduciary) who:

1. Has the power to manage, acquire, or dispose of any asset of a plan;
2. is registered as an investment adviser under the Investment Advisers Act of 1940; is a bank; or is an insurance company qualified to perform services; and
3. has acknowledged in writing that they are a fiduciary with respect to the plan.

### 3(21) Investment Consultant

A 3(21) investment consultant is a non-discretionary advisor that recommends investment options for the plan sponsor to consider. Plan sponsors must ensure that reliance on the advice is reasonably justified, and that continued investment is prudent. In this arrangement, ultimate responsibility for the plan’s investments, as well as all fiduciary duties and potential liability that accompanies them, lies with the plan sponsor.

### 3(16) Plan Administrator

A 3(16) plan administrator is responsible for the ongoing operation and day-to-day management of the retirement plan. Plan sponsors and/or fiduciaries may hire a third-party administrator (“TPA”) to reduce the administrative burden of operating the plan. Morgan Stanley has relationships with a suite of major vendors who can serve as 3(16) plan administrators. Morgan Stanley can assist plan fiduciaries with the search for vendors to provide services to a plan, which may include help with evaluating RFP responses and conversion support.

## Consider a Fiduciary Audit File

A Fiduciary Audit File may help plan sponsors and plan fiduciaries understand, manage and demonstrate compliance with their fiduciary responsibilities. A fiduciary audit file is an organized documentation used to define policies and procedures as well as demonstrate compliance and manage reporting.

### In a nutshell, a fiduciary audit file may help:

- Organize plan records
- Identify areas requiring further development
- Demonstrate that plan policies and procedures were established, maintained and periodically reviewed
- Document adherence to those policies and procedures
- Manage plan administrative or investment issues more effectively
- Prepare for and respond to participant or government inquiries

You can organize a fiduciary audit file in a way that works best for you. The information below are general requirements under ERISA and not specific to a fiduciary audit file structure.

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## Components of a Qualified Retirement Plan

- Plan document (and any amendments)
- Adoption agreement (if prototype plan)
- Trust agreement
- Favorable Internal Revenue Service Determination or opinion letter

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## Example of Annual Reporting Requirements and Forms

- Plan's annual Form 5500, including relevant schedules

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## Fiduciary Liability Regarding Third-Party Plan Service Providers

Plan fiduciaries often hire third-party consultants or service providers to assist with fiduciary responsibilities, such as recordkeepers, administrators and consultants. Plan fiduciaries have a duty to prudently select and monitor any service provider engaged on behalf of a plan and to ensure the fees charged for such services are reasonable. When selecting a service provider, a fiduciary may consider the following:

- Information about the provider firm itself: financial condition and experience with retirement plans of similar size and complexity
- Information about the quality of the provider's services: the qualifications of professionals who will be handling the plan's account
- Any recent litigation or enforcement action that has been taken against the firm; the firm's experience or performance record
- A description of business practices
- The services to be provided and the proposed fee structure (including all direct and indirect fees)

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## Fiduciary Bonding Requirement Under ERISA

Plan fiduciaries must have a fidelity bond (unless exempt from this requirement) and can also hold fiduciary liability insurance.

- **Fidelity bonds:** ERISA Section 412 generally requires that every person who handles plan funds or other property be bonded to protect the plan against loss due to fraud or dishonesty on the part of persons who handle plan funds or other property
- **Fiduciary liability insurance:** This coverage provides protection for the insured's businesses' and employers' assets against any claim that alleges a violation of ERISA

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## Participant Communications and Disclosures

ERISA imposes various documentation and disclosure requirements, including, but not limited to, the following items required to be provided to plan participants and beneficiaries:

- Summary plan description
- Summaries of material modifications
- Summary annual report
- An individual benefit statement (self-directed individual account plans must provide quarterly statements)
- Certain other plan-related documents must be made available upon request

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## Fiduciary Duties Under ERISA Regarding Investment Selection and Monitoring

As a plan fiduciary, you will always retain responsibility for selecting the plan's investments and for monitoring the performance of such investments. During the investment selection process, plan fiduciaries are required to make such investment selections based on suitability of each investment option evaluated and in accordance with the fiduciary standards under ERISA. Further, the fiduciary must monitor each investment on an ongoing basis. When determining whether an investment option is prudent for a plan, a plan fiduciary may consider the following (non-exclusive):

- Complying with the investment policy statement to the plan, where applicable
- Types of underlying investments (stocks, bonds, etc.)
- Investment styles and objectives
- Risk and return characteristics
- Historical performance
- Liquidity and future cash flows
- Fund manager (tenure, style)
- Fees and expenses



**While the above is not exhaustive, it is a great starting point to help you organize the necessary information.**

Your plan's Morgan Stanley Financial Advisor can help plan fiduciaries comply with their investment-related fiduciary duties under ERISA. Morgan Stanley does not provide tax or legal advice. Be sure to speak with your legal and tax advisors regarding your fiduciary responsibilities.

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