



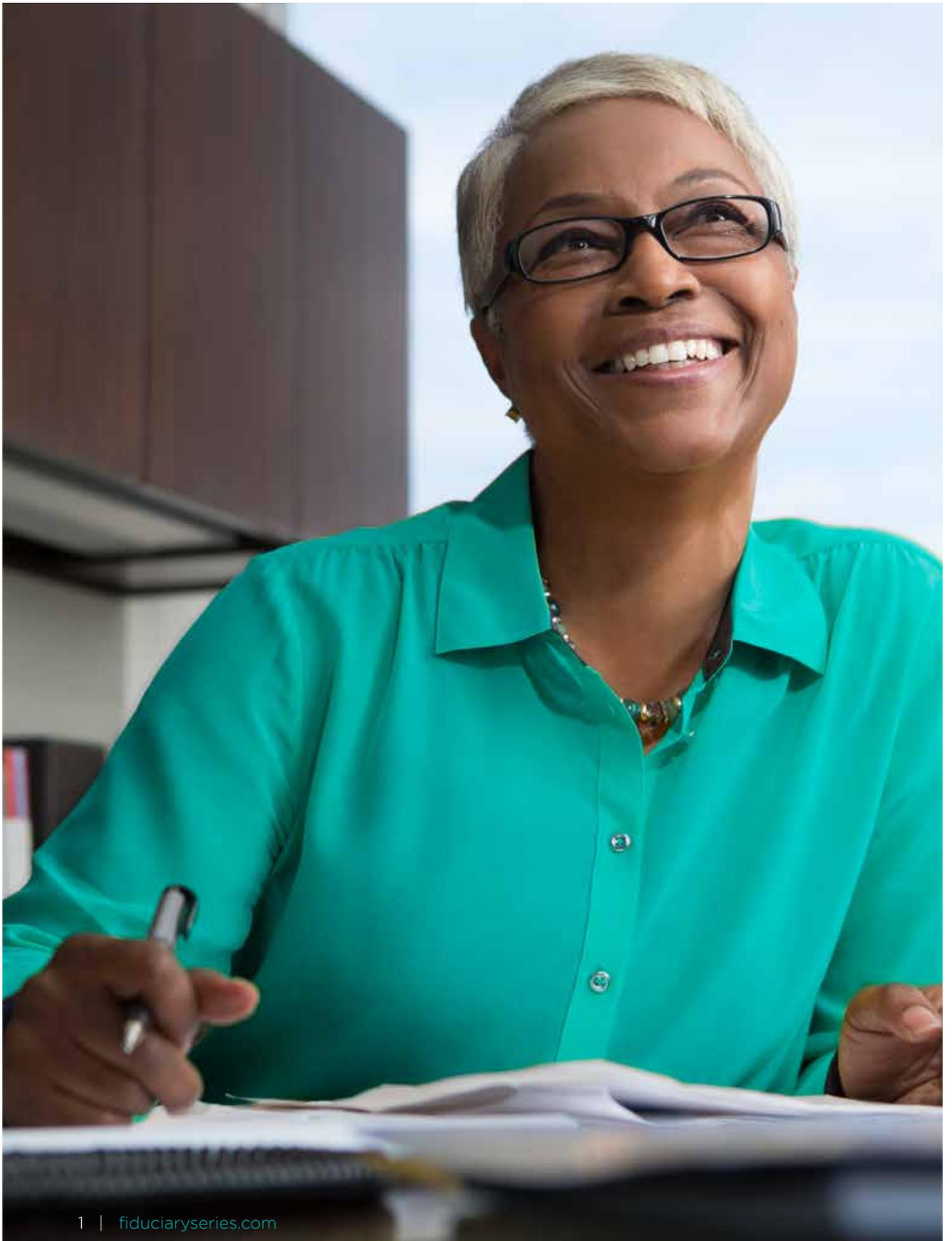
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is on your side

Retirement Plans

Fiduciary Series Education Guide

Giving you the  
support you need  
to do what's right

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# You've made a great choice.

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Congratulations on deciding to offer a qualified defined contribution plan — you now have the noble and rewarding responsibility of helping your employees potentially achieve a more secure financial future. But what does that responsibility involve? And who can help?

It's not just any responsibility — it's fiduciary responsibility. ERISA (the Employee Retirement Income Security Act of 1974) exists to make sure you and any other plan fiduciaries are making prudent decisions about the plan solely in the interest of your employees.

There are legal ramifications associated with failing to prudently fulfill your role. However, when you follow ERISA guidelines, get help from your plan's financial advisor, and support from Nationwide, serving as a plan fiduciary can be a fulfilling experience, not an overwhelming one.

We're here to help. As a plan provider committed to helping America's employees prepare for and live in retirement, Nationwide is proud to partner with you. We'll support you and any others helping to manage your plan with tools and resources needed to help you remain compliant with the law and keep your employees' retirement priority #1.

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This education guide is a great place to start understanding  what being a plan fiduciary is all about.

If you have questions along the way, contact your plan's financial advisor, an ERISA attorney, or plan administrator for more details or for assistance executing any changes.

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# What is fiduciary responsibility?

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## fi·du·ci·ar·y:

from the Latin fiducia meaning trust or confidence. Someone who has an obligation to act on behalf of someone else.

Ex: A fiduciary relationship is one of trust between two or more parties. In such a relationship, the fiduciary is required to act for the sole benefit of the trusting party.

To further understand the concept of fiduciary responsibility for retirement plan fiduciaries, it helps to understand who oversees the retirement plan industry from a regulatory and legislative perspective. The following groups are charged with enforcing the laws that regulate employee benefit plans.

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## DOL

**Department of Labor (DOL):** A cabinet-level department responsible for labor and commerce-related concerns, such as wage and hour standards, workplace safety, and unemployment benefits.

## EBSA

**Employee Benefits Security Administration (EBSA):** One of many DOL agencies responsible for overseeing federal labor laws. The EBSA is solely responsible for administering, regulating, and enforcing the Employee Retirement Income Security Act of 1974 (ERISA). ERISA was created to protect the interests of participants and their beneficiaries in the wake of increasing instances of failed pensions and public support for pension reform. ERISA works to protect these interests by:

- > Requiring the disclosure of financial information concerning plan participants and beneficiaries
- > Providing for appropriate remedies and access to federal courts
- > Establishing standards of conduct for plan fiduciaries

## IRS

**Internal Revenue Service:** The U.S. Government Agency responsible for tax collection and tax law enforcement.

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# Who is a fiduciary?

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The first step in sponsoring a defined contribution plan is to draft a plan document. This is the foundation of the plan and includes:

- > Definitions of terms found throughout the document
- > Rules for participation, including when employees become eligible to participate in the plan
- > Information on how contributions, investment of contributions, vesting, loans, and payment of benefits will be managed
- > Identification of the Named Fiduciary

The Named Fiduciary is the individual or group who is authorized to control the operation and administration of the plan. This person or group ensures that all aspects of the plan are executed in accordance with ERISA and that prudence is shown in all decision-making.

Depending on the size of the firm, the Named Fiduciary may retain all responsibility, fulfilling all the roles incurring fiduciary responsibility; or the Named Fiduciary may share responsibility with additional fiduciaries supporting the plan. In that case, the Named Fiduciary is responsible for appointing, hiring and overseeing the other plan fiduciaries who take on any fiduciary responsibility as a result of their roles within the plan — roles like the Plan Administrator, Trustee, Investment Advisor or Investment Manager.

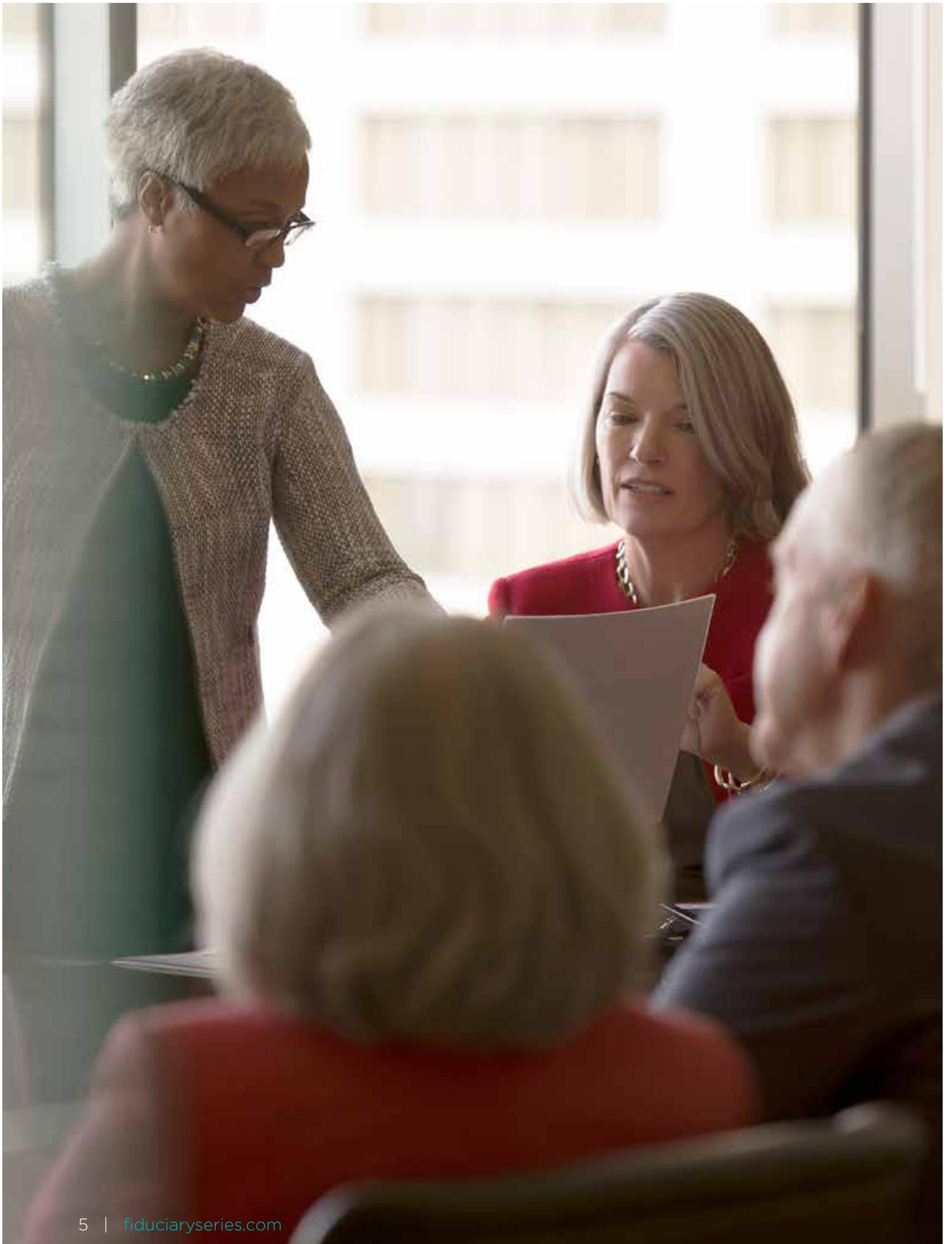


## Section 3(21) of ERISA defines a fiduciary as a person or legal entity who:

1. Exercises discretionary authority or control in the administration of the plan or exercises any authority or control over the management or disposition of the plan assets
2. Renders investment advice for a fee or other compensation (direct or indirect) for any assets of the plan, or has any authority or responsibility to do so
3. Has discretionary authority or discretionary responsibility in the administration of the plan.

The second provision mentions “investment advice,” which can be difficult to define. As a result, the DOL has promulgated a broad definition of fiduciary investment advice. However, there are specific carveouts available for certain activities. Those carveouts include the following:

1. Marketing of an investment platform by a recordkeeper
2. Selection and monitoring assistance provided in connection with the marketing of a platform
3. Investment education
4. General communications
5. The Independent Fiduciary with Financial Expertise Exclusion enabling fiduciaries to market their own investment fiduciary services



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# What are my fiduciary responsibilities?

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To ensure that plans are operated responsibly, ERISA lays out clear guidelines as to what is expected of all fiduciary roles. These are the pillars by which fiduciaries are judged:

## Duty of Loyalty

Fiduciaries are obligated to act on behalf of their trusting party, putting the participants' needs above all others, including their own. Doing so ensures that fiduciaries avoid conflicts of interest and that the fees being charged to the plan are reasonable.

## Exclusive Benefit

Fiduciaries must hold and transact or manage plan assets for the exclusive purpose of providing plan benefits and defraying reasonable expenses of administering the plan. Doing so requires plan fiduciaries to ensure the plan doesn't pay excessive compensation to available investments or service providers.

## Duty of Prudence

Fiduciaries are also required to "act with care, skill, prudence and diligence" when conducting business for the plan. The goal is to make sure fiduciaries give an appropriate amount of consideration in their decision-making on behalf of participants.

## Duty to Diversify Investments

The duty to diversify investments, as long as it is prudent to do so, exists to help minimize the risk of large losses. The intention is to ensure that too much of the plan's portfolio isn't placed in a single investment option unless it's prudent to do so.

## Duty to Follow Plan Documents

Fiduciaries are also obligated to follow plan documents as long as those documents are in accordance with ERISA. This guarantees transparency and provides some level of understanding for the participant.

## Duty to Monitor Investments

Fiduciaries have an ongoing duty to monitor the plan's investment options to ensure their performance is aligned with appropriate indexes, that the options meet the provisions of the investment policy statement, and the organizational structure of the portfolio managers. Plan fiduciaries are also obligated to ensure underperforming options are replaced.

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## Prudence is Paramount

Of the aforementioned duties, prudence in decision-making is often the most important. In courts of law, fiduciaries are not judged on how well investments perform, but whether they acted in a way that a "Prudent Man" in the same situation, with the same knowledge, would have acted.

The easiest way to demonstrate prudence is through detailed records. Plan fiduciaries should keep detailed information about decisions they've made, why they made them, and the information that informed the decision.

This is important because if a plan fiduciary is found to have lacked prudent decision-making in his or her role or to have committed a breach of fiduciary duty, he or she may be personally liable for all losses incurred by participants. In certain circumstances, a plan fiduciary may face criminal liability as a result of willful or intentional violations of the law.

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# How can Named Fiduciaries share their responsibilities?

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Some Named Fiduciaries may possess an expert understanding of their responsibilities. However, it's extremely common for plan fiduciaries to hire experts outside of their organization to provide support and take on some or most of their fiduciary responsibility.

In the event third parties are hired to share fiduciary responsibilities, the Named Fiduciary will always be responsible for the prudent selection and continued monitoring of those third parties. Though the role of the Named Fiduciary is generally not outsourced, there have been instances where a third party has agreed to act as a plan's Named Fiduciary. In such an event, the employer who sponsored the plan will retain responsibility for the prudent selection and continued monitoring of the Named Fiduciary.

## Sharing responsibilities internally through Trustees

The assets of a plan must be held in a trust unless there is an applicable statutory or regulatory exemption from the trust requirement. The purpose of the trust requirement is to ensure plan assets will be used for their intended purpose of providing benefits to plan participants. By virtue of the role they fulfill for the plan, a trustee will qualify as a plan fiduciary.

An internal Trustee is appointed by the Named Fiduciary and holds the legal title to the plan assets. The Trustee has the fiduciary responsibilities of holding and controlling all assets, determining investment options (to the extent another plan fiduciary is not performing this task), ensuring funds are appropriately invested and ensuring contributions are properly added to the plan.

There are two types of trustees — discretionary and directed. A discretionary trustee is one who is granted authority by the Named Fiduciary to manage and control plan assets. A directed trustee is one who is limited to taking direction from the Named Fiduciary as long as it is in accord with the plan document and not contrary to ERISA. Since their decision-making abilities are limited to taking direction, directed trustees incur less fiduciary responsibility than discretionary trustees.

## Specialized assistance

Another way to share fiduciary responsibilities is through an external vendor. Using either an 3(21)(a)(ii) Investment Advisor or a 3(38) Investment Manager can give plan fiduciaries added confidence through expertise and shared responsibility. Using a 3(16) Plan Administrator can provide discretion to others, or allow Nationwide to share tools and resources with an appointed internal trustee for plan administration purposes.

### Professionals who can help with investment selection and monitoring

#### 3(21)(A)(ii) Investment Advisor

**This helps: a *Named Fiduciary who wants an external “investment advice fiduciary” to offer advice that will serve as a primary basis for investment decisions.***

The Investment Advice fiduciary must provide individualized advice based on the particular needs of the plan including:

- > Investment policies or strategy
- > Overall portfolio composition
- > Diversification of plan investments

After that, it's up to the appropriate fiduciary of the plan to decide whether to accept some, all or none of the advice.

#### 3(38) Investment Manager

**This helps: a *Named Fiduciary who wants an external professional to manage, acquire or dispose of any asset of a plan.***

As opposed to the 3(21)(a)(ii) Investment Advisor who only provides guidance and recommendations, the 3(38) Investment Manager is actually delegated the responsibility to act on behalf of the plan fiduciaries in the best interest of plan participants. To do so, a 3(38) Investment Manager has to be registered as an investment advisor, a bank or a qualified insurance company

### Professionals who can help with plan administration

#### 3(16) Plan Administrator

**This helps: a *Named Fiduciary who wants a trustee or vendor specifically designated to be primarily responsible for the administration of the plan.***

This includes the fulfillment of reporting and disclosure documents mandated under ERISA. Specific responsibilities include:

- > Ensuring all filings with the government are made on time
- > Making important disclosures to plan participants
- > Interpreting plan document provisions
- > Hiring plan service providers
- > Other responsibilities set forth by plan documents

Nationwide or your investment professional can help you find a third party 3(16) Plan Administrator that's right for your needs. *Note: this is not the same as a Third Party Administrator (TPA), which provides non-fiduciary services. Additionally, the Named Fiduciary retains fiduciary responsibility for the selection and oversight of the third-party firm.*



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# What are the details of ERISA section 404(c)?

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ERISA is a federal law which sets the standards of protection for participants and provides fiduciary responsibilities for those who manage or control Plan assets. ERISA also contains a “safe harbor” provision which affords plan fiduciaries the opportunity to limit their fiduciary liability by permitting participants the ability to exercise control over the assets in their account. Essentially, the plan’s fiduciaries will not be liable for losses resulting directly from participants’ or beneficiaries’ decision-making if the plan satisfies all of ERISA’s requirements.

To obtain protection under section 404(c), plan fiduciaries must comply with specific requirements outlined by ERISA. Very generally, these include:

1. Offering a broad range of investment alternatives\*
2. Allowing participants the ability to elect and transfer funds between core investment options at least quarterly or with a frequency which is appropriate relative to the investment’s volatility
3. Giving participants or beneficiaries the opportunity to obtain enough information to make educated investment decisions, including, among other things:
  - > A statement of the plan’s intent to comply with ERISA section 404(c)
  - > A description of each investment option including its objectives, risk and return characteristics and investment manager.
  - > When and how participants can give instructions about investments and transfers
  - > Information about transaction fees and expenses
  - > The name, address, and phone number of the fiduciary and representatives who can provide the required information



## Please note:

ERISA Section 404(c) is not mandatory, but complying with its requirements can significantly benefit plan fiduciaries and participants alike. However, fiduciaries must still prudently select the investment alternatives made available to participants and beneficiaries and monitor the investment performance of these selections.

Plan fiduciaries who wish to take advantage of 404(c) protection should, with the assistance of legal counsel, review the requirements as briefly described above (and specifically set forth in the Section 404(c) regulations) to determine if the current plan design, disclosures and trading procedures meet ERISA section 404(c) requirements.

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*\* ERISA 404(c) requires at least three diversified investment alternatives providing different risk and return characteristics are made available as core investment options.*

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# Are there other ERISA considerations?

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## Prohibited Transactions – Transactions between the Plan and a Fiduciary

The aforementioned fiduciary standards of care are supplemented by prohibited transaction rules. ERISA strictly prohibits a fiduciary from engaging in a transaction involving plan assets where certain conflicts of interest exist. For example, a fiduciary:

- > may not deal with plan assets in his own interest or his own account
- > may not act in any transaction involving the plan on behalf of a party whose interest are adverse to the interests of the plan or plan participants
- > may not receive consideration for his own personal account from any party dealing with the plan in connection with a transaction involving plan assets

Generally, the disclosure of such prohibited conflicts do not absolve a fiduciary of their liability—rather, such conflicts must be completely avoided. A fiduciary who engages in a prohibited transaction may be required to reverse the transaction, restore losses or lost opportunity earnings to the plan and its participants, disgorge any profits, and pay a penalty or excise tax.

## Prohibited Transactions – Transactions between the Plan and a Party in Interest

Unless there is an exemption under ERISA that permits such a transaction, a fiduciary can not cause the plan to engage in a transaction that is a direct or indirect:

- > sale or exchange or lease of property between the plan and a party in interest

- > lending of money or extension of credit between the plan and a party in interest
- > furnishing of goods, services or facilities between the plan and a party in interest

A “party in interest” with respect to a plan includes:

- > all fiduciaries of the plan
- > any person providing services to the plan
- > any employer or union whose employees are covered by a plan
- > numerous parties affiliated with a party in interest in various direct and indirect ways

### Co-Fiduciary Liability

In addition to liability a plan fiduciary may have for a breach of its own duties, a plan fiduciary may also be liable for another fiduciary’s breach under certain circumstances. Through co-fiduciary liability, one plan fiduciary may ultimately be responsible for restoring losses to a plan or its participants rather than the plan fiduciary that was directly liable for the breach.

Co-fiduciary liability may be found where a fiduciary:

- > knowingly participates in, or knowingly conceals an act or omission of another fiduciary that it knows to be a breach of fiduciary duty
- > fails to comply with its own fiduciary duties and as a result enables another fiduciary to commit a breach
- > has knowledge of a breach by another fiduciary and does not make reasonable efforts under the circumstances to remedy the breach

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# How can Nationwide help?

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Nationwide provides resources and support to help plan fiduciaries of all kinds fulfill their responsibilities. Many of these resources can be used with your plan's financial advisor, plan administrator, or legal counsel to help ensure the continued success of your plan.

## Nationwide Fiduciary Series<sup>SM</sup> Website

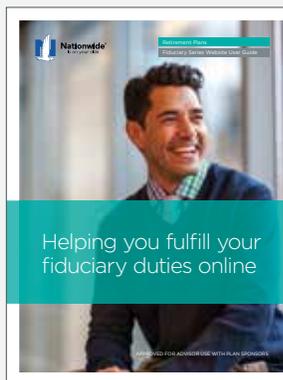
A website designed to help plan fiduciaries navigate the responsibilities of selecting, monitoring and replacing the plan's available investment options. Available to advisors and administrators, the site provides detailed information about each available fund, including easily interpretable "batting averages" and statuses to help fiduciaries quickly understand if the funds are performing adequately or if some fund may require attention.

The site also helps plan fiduciaries fulfill additional responsibilities, such as

recordkeeping, review of plan expenses, and the timely submission of plan contribution. Information on the site is available to plan sponsors, but must be retrieved and provided by the plan's advisor; plan sponsors may not access the site directly.



Advisors and administrators  
can access the site by visiting  
[www.fiduciaryseries.com](http://www.fiduciaryseries.com)



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## Nationwide Fiduciary Series User Guide

A User Guide focused on helping advisors and administrators access the Nationwide Fiduciary Series<sup>SM</sup> website and learn more about how to monitor investments and document due diligence. After accessing the site and following the User Guide, advisors and administrators may be better able to manage available investment options and determine if they are still appropriate for the plan and participants by reviewing available reports. Advisors may share this information with plan sponsors at their discretion.

# Additional resources for documenting due diligence

The checklists and documents listed below are part of Nationwide's fiduciary resources and can facilitate the successful fulfillment of many fiduciary responsibilities, especially documenting the plan's due diligence process and prudent decision making.

## Due Diligence File Checklist



Used to ensure proper documentation of all plan-related decisions and events. Checklists should be thoroughly prepared in the event of a DOL or IRS plan audit.

## Plan Fiduciary Meeting Checklist



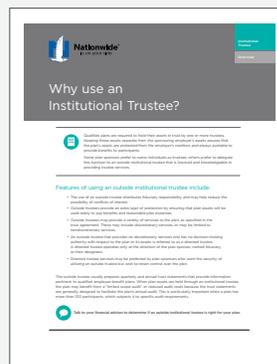
Used to guide the annual (at least) meetings of plan fiduciaries to review fiduciary-related attributes of the plan. More frequent reviews are encouraged.

## ERISA 404(c) Checklist



Provides the requirements plan fiduciaries must meet to achieve protection under ERISA Section 404(c). The checklist may help identify your specific responsibilities as well as how others may be able to provide assistance with each requirement.

## Why Use an Institutional Trustee



Explains the ERISA requirement about how plan assets should be held in trust and lists the advantages of using an institutional trustee.

## Key Administrative Dates



A guide plan fiduciaries of calendar-year plans can use to maintain compliance with required reporting. The guide displays necessary items and actions which need to

be completed by certain dates for plans operating on a calendar year. Please note that all plans do not operate on a calendar year and some actions apply regardless of how the plan operates. Check with your financial advisor for applicability.

## Model Investment Policy Statement



For use with Nationwide Fiduciary Series, the investment policy statement will help establish written guidelines for plan fiduciaries to follow when selecting and evaluating plan investments.

To receive an investment policy statement for your plan, have your advisor or administrator contact Nationwide and request to complete the required questionnaire. Upon completion, a customized investment policy statement will be returned to the requestor.



This material is not a recommendation to buy, sell, hold or roll over any asset, adopt an investment strategy, retain a specific investment manager or use a particular account type. It does not take into account the specific investment objectives, tax and financial condition or particular needs of any specific person. Investors should work with their financial professional to discuss their specific situation.

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Each fund is evaluated on the basis of six evaluation measures (fund evaluation measures) that quantify the relative operating expenses, total returns and risk-adjusted performance of a fund within its peer group. The total returns of cash equivalents and index funds are evaluated against their specific market benchmarks. The evaluation methodology is not an attempt to predict a fund's future potential; it summarizes how well each fund has historically balanced expenses, returns and risk. The six evaluation measures together provide a systematic process to evaluate and monitor funds using generally accepted investment principles and modern portfolio theories. For each of the six evaluation measures, all funds are ranked using percentile rankings ranging from 1% (best) to 100% (worst) within their respective peer group to determine each fund's relative performance. Percentile ranks for each evaluation measure are translated into "batting averages" for presentation purposes. Batting averages range from 0.400 (best) to 0.100 (worst). The six evaluation measures are equally weighted to compute each fund's overall batting average within its peer group, which is used to determine each fund's status rating. This ranking system provides for appropriate comparisons of funds with similar objectives and investment styles. The batting average is not adjusted for any plan or Nationwide charge's or expenses (if applicable). This report must be accompanied by the Fund Evaluation and Monitoring Methodology which is available at [www.fiduciaryseries.com](http://www.fiduciaryseries.com). Detailed batting average information for each fund can also be obtained at this website.

ERISA and Federal income tax laws are complex and subject to change. The information in this brochure is based on current interpretations of the law and is not guaranteed. Neither the company nor its representatives give legal or tax advice. Please consult your attorney or tax advisor for answers to specific questions.

Certain underlying investment options are not publicly traded mutual funds and are not available directly for purchase by the general public. They are only available through variable annuity/variable life insurance policies issued by life insurance companies or in some cases, through participation in certain qualified pension or retirement plans.

The Nationwide Group Retirement Series includes unregistered group fixed and variable annuities and trust programs. The unregistered group fixed and variable annuities are issued by Nationwide Life Insurance Company. Trust programs and trust services are offered by Nationwide Trust Company, a division of Nationwide Bank. Nationwide Investment Services Corporation, member FINRA. Nationwide Mutual Insurance Company and Affiliated Companies, Home Office: Columbus, OH 43215-2220.

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