



FIDUCIARY CONSIDERATIONS FOR GOVERNMENTAL RETIREMENT PLANS

August 17, 2017

The background of the lower half of the slide is a teal color. On the right side, there is a reflection of a modern building with a glass facade, showing a grid pattern and reflections of the sky and clouds.

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BIOGRAPHY

Frank Wan, MBA, AIF
Senior Vice President



Mr. Frank Wan is a senior consultant responsible for economic research, plan design and investment consulting. Mr. Wan is the Chair of the Investment Committee and oversees all client investments valued in excess of \$3.6 billion. His research has been published by Investor Business Daily and Forbes. Prior to joining BCA, Frank was an equity analyst for a market-neutral hedge fund, where he was responsible for financial modeling. Frank received his undergraduate degree from Stetson University and MBA from Rollins College. Frank is an Accredited Investment Fiduciary (AIF).

AGENDA

- ❖ INTRODUCTION
- ❖ FIDUCIARY RESPONSIBILITY
- ❖ FIDUCIARY FUNCTIONS
- ❖ LIMITING FIDUCIARY LIABILITY
- ❖ TYPES OF FIDUCIARY ADVISORS
- ❖ ILLUSTRATIVE EXAMPLES
- ❖ LAWSUITS AND LESSONS
- ❖ INDUSTRY TRENDS
- ❖ RESOURCES

INTRODUCTION

- Fiduciaries of 403(b), 401(a) and 457(b) retirement plans have come under increased scrutiny in recent years, in part due to participant lawsuit filed against plan sponsors and the resulting media attention.
- The Internal Revenue Services and Department of Labor (DOL) have also increased the number of plans they audit each year. Because significant consequences can result from a fiduciary breach, you are encouraged to understand the responsibilities that apply to plan related-decisions or lack-of.
- DOL Conflict of Interest Rule became effective on June 9, 2017.
- Who is a Fiduciary? A person acts in a fiduciary capacity when he or she handles money or property for the benefit of another.
- Why is it important? Unlike Defined Benefit plans, the responsibility and control of investment outcomes is substantially shifted from the plan sponsor to the participant.
- The plan sponsor is solely responsible for maintaining the plan, meeting regulatory requirements, educating participants, prudently selecting and monitoring both investment options and service providers, and controlling plan expenses.

PLAN FIDUCIARIES

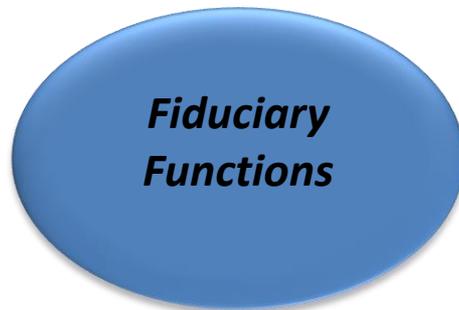
A fiduciary is a legal term that can be simply defined as anyone who:

- Exercises discretionary control over plan assets
- Has discretionary responsibility in the administration of the plan
- Provides investment advice for a fee
- Makes decisions regarding investments
- Is appointed to a Committee or Board, responsible for the plan oversight
- Is responsible for choosing and terminating service providers
- Has the authority to bind the plan sponsor through plan-related contracts
- Establishes policies and procedures for the plan

Fiduciaries may be a designee by function, or duties may be delegated to others, but this does not remove fiduciary responsibilities. Also, you do not have to make decisions to be a fiduciary; simply having authority to make decisions makes you a fiduciary.

FIDUCIARY RESPONSIBILITY

- State law governs Non-ERISA plans; Non-ERISA does **NOT** mean Non-Fiduciary.
- “Each retirement system or plan shall have one or more named fiduciaries with authority to control and manage the administration and operation of the retirement system or plan.” Florida Statute 112.656
- **Fiduciary responsibility: the obligation to make every plan-related decision prudently and with only the best interests of the plan participants in mind.**
- Employers sponsoring a DC plan act in a dual capacity:



FIDUCIARY FUNCTIONS

Fiduciary Functions

Establishing policies and procedures for the plan.

Administering the plan in compliance with the plan document.

Ensuring regulatory compliance and updates.

Developing formal written Investment Policy Statements (IPS).

Monitoring the fees, ensuring reasonableness.

Selecting and monitoring service providers, trustees, and consultants.

Selecting and monitoring investment options.

Promote participation and increase awareness.

Educating participants about the plan's investment options.

Providing the tools to help them save for a secure retirement.

FIDUCIARY FUNCTIONS

DUTY OF LOYALTY

ERISA Fiduciary:

- Duty of care
- Duty of loyalty

Ensure plan fees are reasonable.

Avoid conflicts of interest.

DUTY OF PRUDENCE

Act with care, skill, prudence, and diligence.

See (Florida Prudent Investor Rule; FS 518.11)

Establish prudent process for administrative decisions of the plan.

DUTY TO DIVERSIFY

Duty to diversify plan assets to minimize risk unless it is clearly prudent to do otherwise.

Obligated to offer diversified investment choices.

DUTY TO SELECT/ MONITOR INVEST.

Investment Policy Statement (IPS)

Strong encouraged to adopt an IPS, which may be the single most important document to help you manage your fiduciary duty.

DUTY TO FOLLOW PLAN DOCUMENTS

Fiduciaries must act in accordance with an executed plan document and other governing instruments.

Must maintain compliance with all Internal Revenue Code (IRC).

- IRS determination letter: remedial amendment cycles eliminated on January 1, 2017.
- The determination letter program has never applied to eligible 457(b) plans.
- Plan sponsor wanting assurance from the IRS may request a “private letter ruling”.

INVESTMENT BEST PRACTICES

Practice 1.1
demonstrate
fiduciary
awareness

Practice 1.2
investments:
consistent with
governing doc.

Practice 1.3
responsibilities
are defined and
documented

Practice 1.4
address conflict
of interest

Practice 1.5
review of all
related
agreements

Practice 2.1
develop time
horizon for each
Investment

Practice 2.2
identify risk
parameters

Practice 2.3
set an expected
return for each
investment

Practice 2.4
select appropriate
asset classes

Practice 2.5
establish
monitoring
constraints

Practice 2.6
review investment
policy

Practice 3.1
due diligence
process for
service provider

Practice 3.2
administer plan in
compliance with
required doc.

Practice 3.3
document all
decisions made
with fiduciary care

Practice 4.1
periodic review:
benchmark &
peer objectives

Practice 4.2
review service
providers

Practice 4.3
update policies &
compliance
requirements

Practice 4.4
periodic reviews:
reasonable fees

Practice 4.5
review of fiduciary
responsibilities:
checklist

1. Organize -> 2. Formalize -> 3. Implement -> 4. Monitor

LIMITING FIDUCIARY LIABILITY

- Develop plan objectives
 - Maximize wealth; income replacement
- Measure effectiveness
 - Measure participation, savings rate, median account balance
- Reduce complications and oversight obligations
 - Limit loan obligations
- **Consolidate to a single record keeper**
 - Economy of scale**
 - Reduce administrative burdens**
- Limit number of core investment options
 - Customize menu: less is more
- Compliance with ERISA 404(c)
 - Provide participant education
 - Qualified Default Investment Alternative (QDIA)
- Hire a fiduciary advisor to provide ongoing oversight
 - Provide assistance with RFPs, benchmarks, and compliance

The more satisfied participants are with their plan, the less likely they will be to blame plan fiduciaries for a negative outcome.

ERISA 3(21) vs. 3(38) INVESTMENT FIDUCIARIES

<i>What is the difference?</i>	
<p>3(21)</p> <ul style="list-style-type: none"> -State in writing co-fiduciary status -Assist in drafting IPS -Helps design initial fund menu -Provides monitoring -Recommends changes -Recommends mapping strategies -Provides documentation 	<p>3(38)</p> <ul style="list-style-type: none"> -State in writing co-fiduciary status -Draft IPS -Builds initial fund menu -Monitor menu -Makes changes -Determines mapping strategies -Provides documentation

Plan sponsor retain the responsibility to select and monitor the adviser, regardless of their adviser's fiduciary status.

REASONABLE PLAN EXPENSES

The first step of a fiduciary is to identify all fees, however some are “hidden”.

Examples of visible fees:

- Management fees
- Managed account fees
- Administrative fees
- Transaction fees
- Maintenance fees
- Consulting fees

Examples of hidden fees:

- 12(b)-1 fees
- Sub-transfer agency (sub-t/a) fees
- Revenue sharing fees
- Wrap fees
- Finder’s fees
- Other soft-dollar arrangements

ILLUSTRATIVE INVESTMENT MENU

Fund Name	Morningstar Category	Prospectus Net Expense Ratio	SubTA, 12b-1 & Other Rev Sh.	Proprietary Fund Rev Share	Administrative/wrap fees (Rates: 75/55/45)	Estimated Balance
American Century Growth Inv	US OE Large Growth	0.97	0.35		0.75	1,026,766
American Century Value Inv	US OE Large Value	0.97	0.35		0.55	1,155,028
American Funds Growth Fund of Amer A	US OE Large Growth	0.65	0.25		0.75	57,676
American Funds Income Fund of Amer A	US OE Balanced	0.55	0.25		0.75	136,626
Dreyfus Appreciation Investor	US OE Large Blend	0.92	0.50		0.55	42,203
Dreyfus S&P 500 Index	US OE Large Blend	0.50	0.35		0.75	998,521
Federated US Govt 2-5 Yr Instl	US OE Short Government	0.58	0.10		0.75	151,627
Fidelity® Contrafund®	US OE Large Growth	0.71	0.25		0.75	3,687,722
Invesco Growth and Income A	US OE Large Value	0.84	0.35		0.55	1,202,626
Invesco International Growth R5	US OE Foreign Large Growth	0.98	0.50		0.55	973,599
JPMorgan Mid Cap Value A	US OE Mid-Cap Blend	1.24	0.50		0.55	580,504
MFS International Value R3	US OE Foreign Large Blend	1.03	0.50		0.55	1,404,477
Nationwide Bond Index A	US OE Intermediate-Term Bond	0.68	0.40	0.10	0.55	547,457
Nationwide 2015 Instl	US OE Target-Date 2015	0.64	0.25	0.10	0.45	91,533
Nationwide 2020 Instl	US OE Target-Date 2020	0.65	0.25	0.10	0.45	487
Nationwide 2025 Instl	US OE Target-Date 2025	0.66	0.25	0.10	0.45	4,717
Nationwide 2030 Instl	US OE Target-Date 2030	0.66	0.25	0.10	0.45	13,674
Nationwide 2035 Instl	US OE Target-Date 2035	0.65	0.25	0.10	0.45	1,619
Nationwide 2040 Instl	US OE Target-Date 2040	0.65	0.25	0.10	0.45	2,460
Nationwide 2045 Instl	US OE Target-Date 2045	0.64	0.25	0.10	0.45	5,253
Nationwide 2050 Instl	US OE Target-Date 2050	0.64	0.25	0.10	0.45	305
Nationwide 2055 Instl	US OE Target-Date 2055	0.64	0.25	0.10	0.45	22,248
Nationwide 2060 Instl	US OE Large Growth	0.65	0.25	0.10	0.75	15,640
Nationwide Bond Inv	US OE Intermediate-Term Bond	0.74	0.25	0.10	0.55	810,069
Fixed Account/Stable Value	Fixed Assets/Stable Value	0.55	0.25	-	-	10,094,170
Total Market Values						\$ 23,027,007
Estimated Management Expenses						\$ 90,731
Estimated Admin/Wrap Fees						\$ 83,137
Estimated SubTA, 12b-1 & Others						\$ 70,046
Estimated Proprietary Revenue Sh.						\$ 1,515
Total Fees (\$)						\$ 245,430
Total Fees (%)						1.07
Per Participant Fees (417 count)						\$ 588.56
Per Participant Recordkeeper Fee						\$ 370.98

ILLUSTRATIVE FUND REPORT CARD

Current Legend

(ID) Investment Name (Ticker)	fi360 Fiduciary Score				\$ Amount
	Score	# of Peers	Avg (3 Yr)	# of Peers	
Investments Shown in the Scatter Plot					
1 - American Funds Income Fund of Amer A (AMECX)	0	322	4	267	136,626.00
2 - Dreyfus S&P 500 Index (PEOPX)	0	1,331	5	1,100	998,521.00
3 - American Century Value Inv (TWVLX)	0	1,109	7	935	1,155,028.00
4 - Invesco International Growth R5 (AIEVX)	0	289	10	241	973,599.00
5 - MFS International Value R3 (MINGX)	0	645	24	533	1,404,477.00
6 - Fidelity Contrafund (FCNTX)	24	1,498	8	1,190	3,687,722.00
7 - JPMorgan Mid Cap Value A (JAMCX)	26	319	29	248	580,504.00
8 - Nationwide Destination 2040 R (NWMDX)	31	195	40	146	2,460.00
9 - Invesco Growth and Income A (ACGIX)	33	1,109	28	935	1,202,626.00
10 - Nationwide Destination 2035 R (NWL BX)	53	150	41	91	1,619.00
11 - American Century Growth Inv (TWC GX)	56	1,498	33	1,190	1,026,766.00
12 - Nationwide Growth Instl Svc (NGISX)	56	1,498	41	1,190	15,640.00
13 - Nationwide Destination 2030 R (NWBIX)	56	196	46	147	13,674.00
14 - American Funds Growth Fund of Amer A (AGTHX)	56	1,498	59	1,190	57,676.00
15 - Nationwide Destination 2050 R (NWO BX)	58	179	50	113	305.00
16 - Nationwide Destination 2045 R (NWN BX)	59	142	48	89	5,253.00
17 - Nationwide Destination 2025 R (NWH BX)	59	150	58	91	4,717.00
18 - Nationwide Destination 2020 R (NWFTX)	61	196	62	147	487.00
19 - Federated US Govt 2-5 Yr Instl (FIGTX)	66	117	44	98	151,627.00
20 - Dreyfus Appreciation Investor (DGAGX)	78	1,331	42	1,100	42,203.00
21 - Nationwide Destination 2015 R (NWEBX)	81	148	73	102	91,533.00
22 - Nationwide Destination 2010 R (NWDBX)	88	123	94	92	547,457.00
Investments NOT Shown in the Scatter Plot					

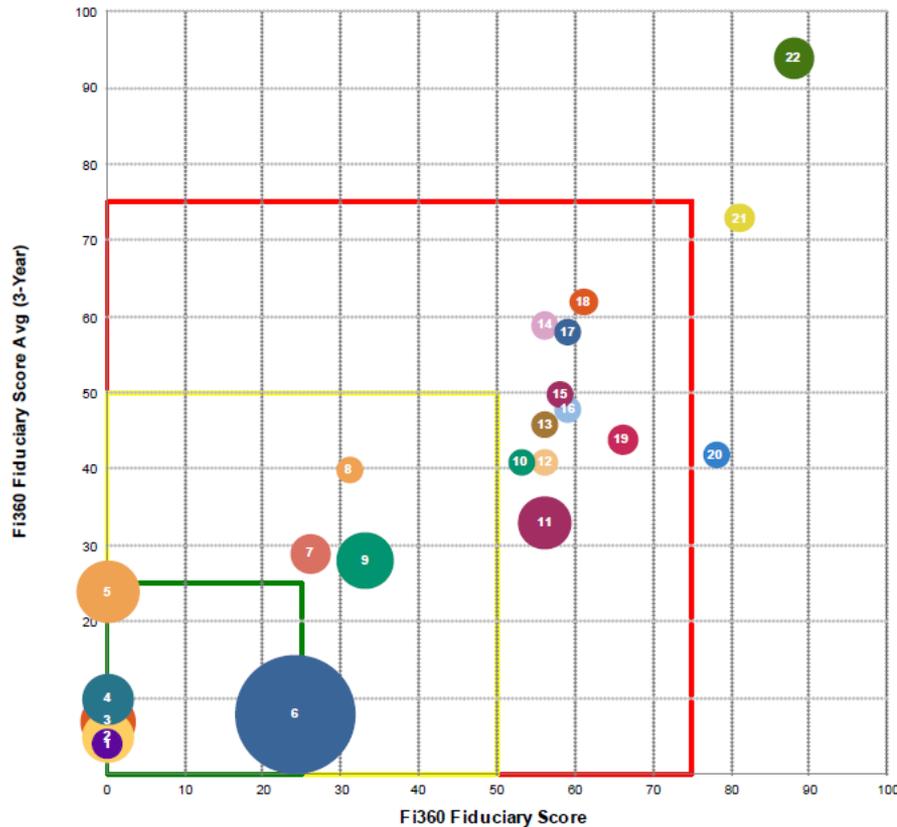
Proposed Legend

(ID) Investment Name (Ticker)	fi360 Fiduciary Score				\$ Amount
	Score	# of Peers	Avg (3 Yr)	# of Peers	
Investments Shown in the Scatter Plot					
1 - American Funds 2015 Trgt Date Retire R6 (RFJTX)	0	148	0	102	91,533.00
1 - American Funds 2025 Trgt Date Retire R6 (RFDTX)	0	150	0	91	4,717.00
1 - American Funds 2030 Trgt Date Retire R6 (RFETX)	0	196	0	147	13,674.00
4 - American Funds 2010 Trgt Date Retire R6 (RFTTX)	0	123	1	92	547,457.00
4 - American Funds 2035 Trgt Date Retire R6 (RFFTX)	0	150	1	91	1,619.00
4 - American Funds 2040 Trgt Date Retire R6 (RFGTX)	0	195	1	146	2,460.00
4 - Vanguard 500 Index Admiral (VFIAX)	0	1,331	1	1,100	998,521.00
4 - Vanguard Small Cap Index I (VSCIX)	0	634	1	530	-
9 - American Funds 2045 Trgt Date Retire R6 (RFHTX)	0	142	2	89	5,253.00
9 - American Funds 2050 Trgt Date Retire R6 (RFITX)	0	179	2	113	305.00
9 - American Funds Income Fund of Amer R6 (RIDGX)	0	322	2	267	1,541,103.00
12 - American Funds 2020 Trgt Date Retire R6 (RRCTX)	0	196	4	147	487.00
13 - American Funds Europacific Growth R6 (RERGX)	0	289	23	241	973,599.00
14 - Metropolitan West Total Return Bd I (MWTIX)	14	895	8	737	961,695.00
15 - Pioneer High Yield Y (TYHYX)	19	580	39	445	-
16 - Vanguard Mid Cap Index Institutional (VMCIX)	21	319	5	248	580,504.00
17 - Vanguard Total Bond Market Index I (VBTIX)	57	895	47	737	-
Investments NOT Shown in the Scatter Plot					
American Funds 2055 Trgt Date Retire R6 (RFKTX)	0	101	-	-	22,248.00
Polen Growth Institutional (POLIX)	66	1,498	-	-	6,032,633.00
Salient MLP & Energy Infrastructure I (SMLPX)	-	-	-	-	-
Vulcan Value Partners (VVPLX)	0	1,331	-	-	1,155,028.00

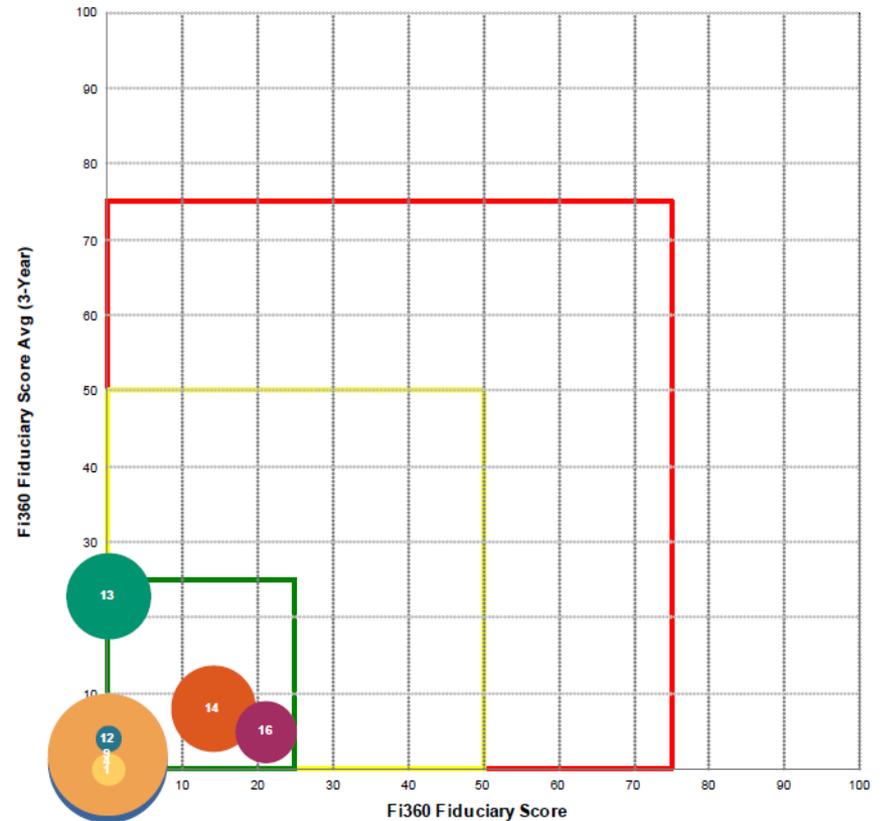
The fi360 Fiduciary Score is a peer percentile ranking of an investment against a set of quantitative due diligence criteria selected to reflect prudent fiduciary management. Criteria include total returns, risk-adjusted returns, expenses, and other portfolio statistics. Investments are ranked according to their ability to meet due diligence criteria every month.

ILLUSTRATIVE FUND REPORT CARD

Current Scatter Plot



Proposed Scatter Plot



- A simple change in the fund line-up and/or share class change quickly resulted in a superior portfolio.
- This also reduced the management fees from to 0.67 from 0.83, resulting in savings of more than \$20,000.

PARTICIPANT LAWSUITS

Recent class action lawsuits place new emphasis on:

- Fees charged by plan's investment options
- Fees charged by service providers and recordkeepers
- Multiple recordkeepers and too many options
- Allocation of fees to participant accounts
- Allocation of revenue sharing

Lessons for plan sponsors:

- ❖ Courts have based their decisions more on the process rather than the decisions.
- ❖ U.S. Supreme Court has held unanimously that plan fiduciaries have an ongoing duty to monitor the investment they make available to plan participants.
- ❖ It is the responsibility of plan fiduciaries to prudently monitor service providers.
- ❖ Documenting prudent decision making process will limit fiduciary liability.

PARTICIPANT LAWSUITS

Claim	Henderson v. Emory	Clark v. Duke
Plan fiduciaries acted imprudently by offering too many investment options	Dismissed	Allowed to proceed
Various claims based on damages incurred more than six years ago	Dismissed	Dismissed
Investing in TIAA mutual funds created a prohibited transactions because TIAA is a plan recordkeeper	Dismissed	Dismissed
Plan fiduciaries failed to engage in prudent process for selecting recordkeeper	Allowed to proceed	Allowed to proceed
Plan fiduciaries imprudently retained underperforming or higher-cost investment options	Allowed to proceed	Allowed to proceed
The agreement between TIAA and the plan fiduciaries was unreasonable, in part because participants were “locked in” to annuity products	Allowed to proceed	Dismissed

Current round of rulings in the university litigation cases:

- Northern District of Georgia
- Middle District of North Carolina

University of Chicago and Princeton University Lawsuits: filed in May 2017

INDUSTRY TREND

- Roth 457
- Fee Equalization
- Re-Enrollment
- Auto Escalation [Prohibited in Florida]
- Provider consolidation
- Stable Value

Pre-Approved 403(b) Plans:

The Internal Revenue Service has recently started issuing opinion letters approving the form of pre-approved 403(b) plans. These opinion letters provide assurance from the IRS that the pre-approved plan document complies in form with the Internal Revenue Code. In late 2017 or early 2018, plan sponsors likely will need to begin restating their plan documents in connection with this process. Pre-approved 403(b) plan documents will be less flexible than the documents previously used by service providers. As a result, plan sponsors should anticipate completing a plan design review and assessment of their options to obtain assurance that their documents comply with the Code.

ADDITIONAL BEST PRACTICES TO CONSIDER

- Obtain fiduciary liability insurance coverage
- Form fiduciary/investment committee
- Hold regular meetings
- Promote continuing education
- Establish an Education Policy Statement (EPS)
- Document all minutes and decisions
- Hire advisers for guidance / RFP

FIDUCIARY CHECKLIST

- Maintain IRS related documents [determination letter, private ruling, etc.]
- Maintain records of all amendments
- Plan documents are properly executed
- Plan trustees are properly appointed
- Develop and maintain Investment Policy Statement (IPS)
- Follow a process, described in the IPS, for changes in the investment menu
- Have proper benchmarks in place
- Have an investment advisor; 3(21) or 3(38)?
- Properly outline responsibilities of service providers
- Fiduciary liability insurance coverage
- All fiduciaries have received sufficient training
- Periodic review of plan success metrics: participation, savings, diversification, readiness
- Periodic review of plan design and consider changes to improve success
- No conflict of interest
- Evaluate loan procedures
- Ensure proper administration and compliance
- Unallocated amounts in a plan account (forfeitures and/or revenue shares), if applicable, have been used to pay allowable plan expenses or have been allocated to participant accounts
- Fees paid are reasonable
- Receiving proper disclosures
- Vendor selecting and award is documented
- Maintaining broad menu of investment options
- Review quarterly statements
- Evaluate employee communication
- Provide employee education and basic tools
- Use ERISA 404(c) as a best practice to inform participants
- Periodic meetings along with documentations (minutes, notes, etc.)
- Maintain file supporting fiduciary process
- Have all property executed plan documents in an easily accessible location

RESOURCES & REFERENCES

- Pension & Investments – www.pionline.com – East Coast Defined Contribution Conference
- National Association of Government Defined Contribution Administrators – www.nagdca.org
- Government Finance Officers Association – gfoa.org
- Global Fiduciary Standard of Excellence – www.fi360.com/main/pdf/handbook_steward.pdf

THANK YOU

Since 1988, BCA has specialized in Florida retirement plans, providing our clients with independent and objective advice. We are committed to the highest level of fiduciary care, and it would be our pleasure to serve you and your employees.

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