



FIDUCIARY RESPONSIBILITY AND DEFERRED COMPENSATION PLANS

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BIOGRAPHY

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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 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
- ❖ INTERACTIVE QUIZ
- ❖ 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 lawsuits filed against plan sponsors and the resulting media attention.
- The Internal Revenue Services and Department of Labor 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.
- 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

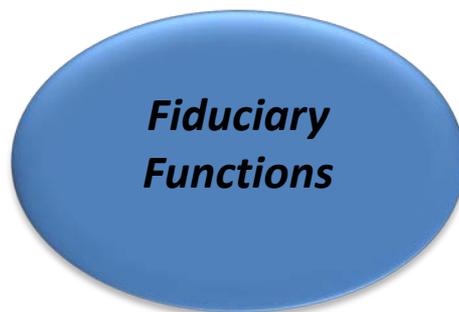
A fiduciary is a legal term that can be simply defined as anyone who:

- 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>	
3(21)	3(38)
<ul style="list-style-type: none"> ▪-State in writing co-fiduciary status <ul style="list-style-type: none"> ▪-Assist in drafting IPS ▪-Helps design initial fund menu <ul style="list-style-type: none"> ▪-Provides monitoring ▪-Recommends changes ▪-Recommends mapping strategies <ul style="list-style-type: none"> ▪-Provides documentation 	<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.

ILLUSTRATIVE INVESTMENT MENU

Client ID: 000716166

Unique Participants: 1,229

Relationship View

Total Participants: 1,229

Investment Summary					
Investment Option	Assets (As of 12/31/2016) ¹	Ticker	Category ²	Total Investment Option Fees ³	
				%	\$
FID FREEDOM K 2030	\$ 11,354,224	FFKEX	Target-Date 2030	0.65	\$ 73,802
FID FREEDOM K 2020	\$ 7,076,013	FFKDX	Target-Date 2020	0.58	\$ 41,041
FID FREEDOM K 2040	\$ 6,068,967	FFKFX	Target-Date 2040	0.67	\$ 40,662
FID 500 INDEX PR	\$ 5,909,214	FUGVX	Large Blend	0.05	\$ 2,659
FID FREEDOM K 2035	\$ 5,769,165	FKTHX	Target-Date 2035	0.67	\$ 38,653
FID CONTRAFUND K	\$ 5,766,149	FCNKX	Large Growth	0.61	\$ 35,174
FID FREEDOM K 2025	\$ 5,483,039	FKTWX	Target-Date 2025	0.61	\$ 33,447
FID EXT MKT IDX PR	\$ 3,532,964	FSEVX	Mid-Cap Blend	0.07	\$ 2,473
FID FREEDOM K 2045	\$ 2,928,975	FFKGX	Target-Date 2045	0.67	\$ 19,624
FID LOW PRICED STK K	\$ 2,800,304	FLPKX	Mid-Cap Value	0.78	\$ 21,842
BROKERAGELINK	\$ 2,232,499	N/A	Brokerage	Unknown	
FID FREEDOM K 2050	\$ 2,156,590	FFKHX	Target-Date 2050	0.67	\$ 14,449
FMMT RETIRE GOV II	\$ 2,076,567	FRTXX	Money Market-Taxable	0.42	\$ 8,722
FID REAL ESTATE INVS	\$ 1,847,061	FRESX	Real Estate	0.78	\$ 14,407
USAA INCOME FUND	\$ 1,827,027	USAIX	Intermediate-Term Bond	0.51	\$ 9,318
FID MID CAP STOCK K	\$ 1,629,569	FKMCX	Mid-Cap Growth	0.61	\$ 9,940
FID DIVERSIFD INTL K	\$ 1,504,089	FDIKX	Foreign Large Growth	0.87	\$ 13,086
VANG SM CAP IDX ADM	\$ 1,448,796	VSMAX	Small Blend	0.08	\$ 1,159
FID EQUITY INCOME K	\$ 1,406,980	FEIKX	Large Value	0.59	\$ 8,301
MIP CL 1	\$ 1,255,388	N/A	Stable Value	0.78	\$ 9,792
FID FREEDOM K 2015	\$ 1,229,079	FKVFX	Target-Date 2015	0.56	\$ 6,883
FID INDEPENDENCE K	\$ 988,581	PDFKX	Large Growth	0.78	\$ 7,711
LOOMIS VALUE Y	\$ 790,219	LSGIX	Large Value	0.70	\$ 5,532
FID US BOND IDX PR	\$ 788,073	FSITX	Intermediate-Term Bond	0.05	\$ 394
ARIEL FUND	\$ 749,372	ARGFX	Mid-Cap Blend	1.02	\$ 7,644
FID INTL INDEX PR	\$ 671,752	FSIVX	Foreign Large Blend	0.08	\$ 537
FMI LARGE CAP	\$ 667,501	FMIHX	Large Blend	0.87	\$ 5,807
ABF INTL EQUITY INST	\$ 653,406	AAIEX	Foreign Large Value	0.74	\$ 4,835
FID FREEDOM K 2055	\$ 635,762	FDENX	Target-Date 2055	0.67	\$ 4,260
INVESCO DIVRS DIV R6	\$ 622,928	LCEFV	Large Value	0.44	\$ 2,741
FID FREEDOM K 2010	\$ 622,415	FFKCX	Target-Date 2000-2010	0.53	\$ 3,299
ABF SM CAP VAL INST	\$ 578,029	AVFIX	Small Value	0.82	\$ 4,740
MSIF SM CO GRTH A	\$ 520,223	MSSMX	Small Growth	1.32	\$ 6,867
FID FREEDOM K INCOME	\$ 500,036	FFKAX	Target-Date Retirement	0.44	\$ 2,200
FID REAL ESTATE INC	\$ 374,494	FRIFX	Real Estate	0.82	\$ 3,071
WM BLAIR MID CP GR I	\$ 296,359	WCGIX	Mid-Cap Growth	1.05	\$ 3,112
SLNT MLP&E INFR I	\$ 200,899	SMLPX	Energy Limited Partnership	1.20	\$ 2,411
FID FREEDOM K 2060	\$ 83,623	FDKNX	Target-Date 2060+	0.67	\$ 560
CONESTOGA SM CAP IS	\$ 48,684	CCALX	Small Growth	0.90	\$ 438
FID FREEDOM K 2005	\$ 33,738	FFKVX	Target-Date 2000-2010	0.49	\$ 165
Totals	\$ 85,128,755			0.55%	\$ 471,758

Administrative Revenue Allowance					
Investment Option Fees Attributable to Recordkeeping ⁴		Additional Value for Fidelity Products ⁵		Total Administrative Revenue Allowance ⁶	
%	\$	%	\$	%	\$
0.10	\$ 11,354	0.10	\$ 11,354	0.20	\$ 22,708
0.10	\$ 7,076	0.10	\$ 7,076	0.20	\$ 14,152
0.10	\$ 6,069	0.10	\$ 6,069	0.20	\$ 12,138
0.00	\$ -	0.00	\$ -	0.00	\$ -
0.10	\$ 5,769	0.10	\$ 5,769	0.20	\$ 11,538
0.10	\$ 5,766	0.10	\$ 5,766	0.20	\$ 11,532
0.10	\$ 5,483	0.10	\$ 5,483	0.20	\$ 10,966
0.00	\$ -	0.00	\$ -	0.00	\$ -
0.10	\$ 2,929	0.10	\$ 2,929	0.20	\$ 5,858
0.10	\$ 2,800	0.10	\$ 2,800	0.20	\$ 5,601
0.00	\$ -	0.00	\$ -	0.00	\$ -
0.10	\$ 2,157	0.10	\$ 2,157	0.20	\$ 4,313
0.10	\$ 2,077	0.10	\$ 2,077	0.20	\$ 4,153
0.25	\$ 4,618	0.10	\$ 1,847	0.35	\$ 6,465
0.25	\$ 4,568	0.00	\$ -	0.25	\$ 4,568
0.10	\$ 1,630	0.10	\$ 1,630	0.20	\$ 3,259
0.10	\$ 1,504	0.10	\$ 1,504	0.20	\$ 3,008
0.00	\$ -	0.00	\$ -	0.00	\$ -
0.10	\$ 1,407	0.10	\$ 1,407	0.20	\$ 2,814
0.10	\$ 1,255	0.10	\$ 1,255	0.20	\$ 2,511
0.10	\$ 1,229	0.10	\$ 1,229	0.20	\$ 2,458
0.10	\$ 989	0.10	\$ 989	0.20	\$ 1,977
0.25	\$ 1,976	0.00	\$ -	0.25	\$ 1,976
0.00	\$ -	0.00	\$ -	0.00	\$ -
0.40	\$ 2,997	0.00	\$ -	0.40	\$ 2,997
0.00	\$ -	0.00	\$ -	0.00	\$ -
0.40	\$ 2,670				\$ 2,670
0.04	\$ 261				\$ 261
0.10	\$ 63				\$ 1,272
0.00	\$ -				\$ -
0.10	\$ -				\$ 1,245
0.04	\$ -				\$ 231
0.40	\$ -				\$ 2,081
0.10	\$ -				\$ 1,000
0.25	\$ 9				\$ 1,311
0.15	\$ 445				\$ 445
0.08	\$ 161				\$ 161
0.10	\$ 84	0.10	\$ 84	0.20	\$ 167
0.00	\$ -	0.00	\$ -	0.00	\$ -
0.10	\$ 34	0.10	\$ 34	0.20	\$ 67
0.10%	\$ 82,312	0.07%	\$ 63,591	0.17%	\$ 145,903

Total Investment Fees Collected by Recordkeeper: \$145,903 (0.17%); \$119 Per Participant

*For illustrative purposes only. Source: BCA, Fidelity. Sample client data: 6/30/2017.

ILLUSTRATIVE INVESTMENT MENU

Investment and Administrative Fees and Other	%	\$
Total Investment Option Fees	0.55%	\$471,758
Other Recordkeeping (RK)	0.00%	\$0
Float ⁷	0.00%	\$0
Sub-total	0.55%	\$471,758

Administrative Fees and Other	%	\$
Total Administrative Revenue Allowance	0.17%	\$145,903
Other Recordkeeping (RK)	0.00%	\$0
Float ⁷	0.00%	\$0
Total Considered for Pricing Purposes	0.17%	\$145,903
Blended Per Participant		\$119

Additional Fees:		
Transaction	0.01%	\$8,355
Other Administrative	0.00%	\$0
Total	0.56%	\$480,113

Additional Fees:		
Transaction	0.01%	\$8,355
Other Administrative	0.00%	\$0
Total	0.18%	\$154,258

Fee Details				
Fee Type	Category	Payment Method	Rate	Rolling 12-Month History ⁸
Loan Maintenance	Transaction	Paid by Participant	\$15	\$4,680
Loan Setup	Transaction	Paid by Participant	\$35	\$3,675
Overnight Mailing Fee	Transaction	Paid by Participant	\$25	\$0
Transaction Total				\$8,355

Total Fees Collected by Recordkeeper:
\$153,258 (0.18%);
\$125 Per Participant

*For illustrative purposes only. Source: BCA, Fidelity. Sample client data: 6/30/2017.

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 may 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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