




# ERISA PLAN FIDUCIARIES and SERVICE PROVIDERS FIDUCIARY TRAINING

FIDUCIARY WISE, LLC

AN INDEPENDENT PROFESSIONAL ERISA 402(a) NAMED FIDUCIARY FIRM



# Disclaimer

The views expressed in this presentation are the opinions of Fiduciary Wise for education purposes only. No other party or governmental agencies have reviewed or approved the content of this presentation.



# Fiduciary Wise Approach

## Mission Statement:

1. Focus on the exclusive retirement benefit of the participant and of their beneficiaries- ERISA §404(a)
2. Make decisions with the level of care that a prudent person familiar with retirement plans would use under the same circumstances- ERISA § 404(a)(1)(B)
3. Use care to prevent co-fiduciaries (and non-fiduciaries) from committing breaches and rectify the actions of others- ERISA § 405
4. Do not engage in prohibited transactions- ERISA § 406
5. Control expense of the plan- ERISA §404(a)

## How We Do It:

1. Introduction Call
2. Document Fiduciary Process
  - Plan Administrative Committee (PAC) Meetings
3. Fiduciary Oversight of Responsibilities & Tasks (FORT)
4. Review, Certification, and Signature on Form 5500



# Common Terms

Retirement plans have a language all their own. Here are a few need-to-know terms

- **ERISA:** Employee Retirement Income Security Act - Regulator for Retirement Plans
- **ERISA 402(a) Named Fiduciary:** Discretionary Fiduciary manages and administers Plan operation & administration
- **ERISA 3(16) Plan Administrator:** responsible for fiduciary duties not performed by Trustee
- **Third-Party Administrator (TPA):** compliance testing, Form 5500, participant notices, plan documents
- **Record-Keeper (RK):** Record participant contributions and investments and direct the Directed Trustee or Custodian to make trades on Plan Participants' (PP) behalf.



# Common Terms, cont.

- **ERISA Directed Trustee:** holds plan assets in trust solely for the benefit of participants and beneficiaries.
- **Custodian:** makes trades as directed by the Record-Keeper.
- **Fiduciary:** person/entity trusted with another person's money/property to care for as if it were their own.
- **Plan Fiduciary:** Employer(s) entrusted to administer retirement plan solely for plan participants and beneficiaries.
- **Plan Core Investment Menu:** investments in which participants can invest 401(k) savings.



# The Big Picture of What FW Does as a 402 Fiduciary

## Experts in

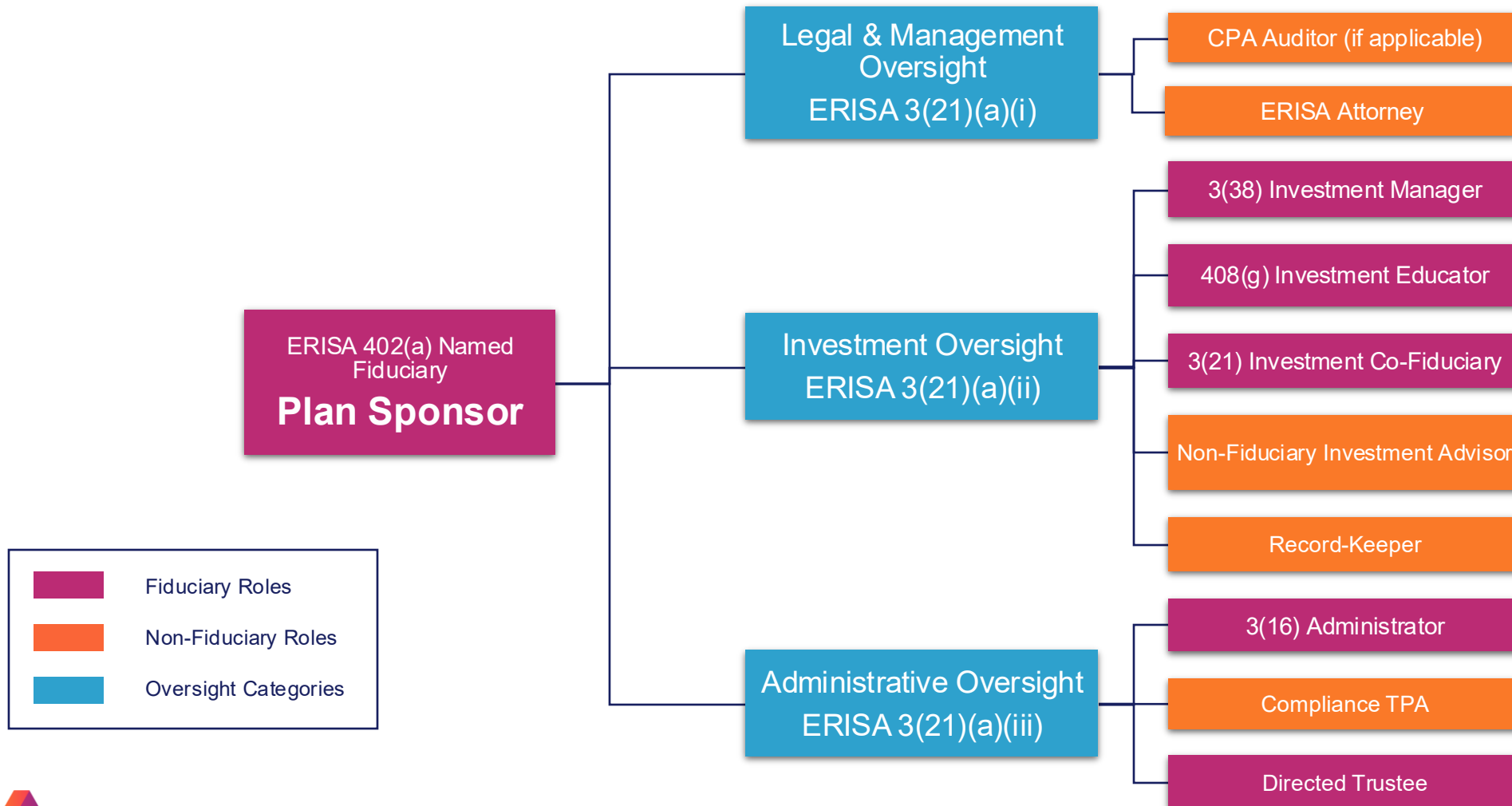
- **ERISA**
- **Common Law of Trusts (Restatement Third of Trusts)**
- **Uniform Prudent Investor Act**

## Process

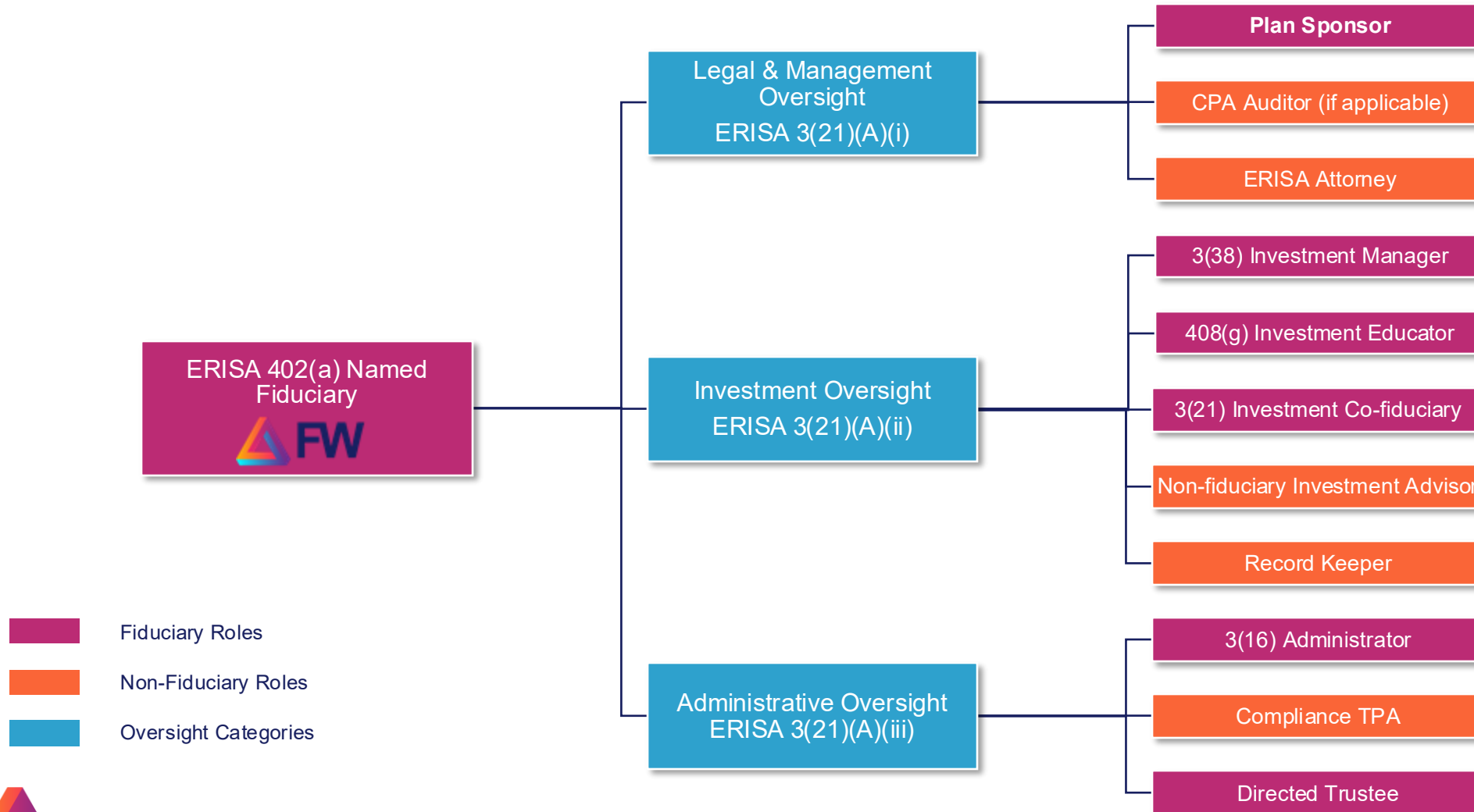
- **Document substantive, procedural prudence (PAC Meeting)**
- **Find and remedy 406(a) breaches before they become a 406(b) breach**
- **Certify 402(a) compliance at the end of each plan year (FORT)**



# RESPONSIBILITIES OF THE NAMED FIDUCIARY



# ENTRUST US TO BE THE RESPONSIBLE FIDUCIARY



# Plan Administrative Committee (PAC) Meeting

1. Held twice a year

2. Purpose

- Document Procedure
- Regular Reporting from all Service Providers
- Plan of Action on plan issues
- Ensure compliance



# Plan Responsibilities Chart

## FIDUCIARY WISE SERVICE RESPONSIBILITY CHART

September 19, 2023

<b>Plan Sponsor:</b>	ABC, Inc.
<b>Plan Name:</b>	ABC, Inc. 401(k) Plan & Trust

The purpose of this chart is to ensure each plan fiduciary and service provider, knows and agrees to provide services for the above Plan within the requirements of ERISA 404(a)(1)(B). Said services shall include undertaking efforts to participate in every Pension Administration Committee (PAC) meeting called by Plan Fiduciaries. Fiduciary Wise, as the ERISA 402(a) named fiduciary, will determine if the standards of conduct under ERISA are met; or work with you until they are met. Failure to meet these expectations may result in the termination of your services.

General Services Provided	Firm & Representative(s)	Specific Services Provided <sup>1</sup>	Written PAC Report <sup>2</sup>	Oral PAC Summary <sup>3,4</sup>	Date Reviewed
Plan Sponsor	ABC, Inc. Voting Members	Attend PAC meetings; hire/fire all service providers; make contributions on a timely and accurate basis; maintain adequate bonding as required under ERISA Section 412; provide required data as needed	No written report required	Significant changes in the business, controlled group issues, general assessment of service providers	09/19/2023

<sup>1</sup> This is a general, high-level, list and is not intended to cover all services.

<sup>2</sup> Fiduciary Wise will give and review the written report before the first PAC meeting is held and will send your specific report to you to be completed before the PAC meeting. The report does not need to be overly length but complete enough to meet the standards of ERISA 404(a)(1)(B). Fiduciary Wise will contact you before the PAC meetings if we are unsure of something or need addition details.

<sup>3</sup> The oral summary is presented in the PAC meeting by the service provider and covers the highlights of the written report.

<sup>4</sup> All plan fiduciaries and service providers attest to any known or potential fiduciaries breaches that have not been discussed previously in the PAC meetings or other PAC meetings.

General Services Provided	Firm & Representative(s)	Specific Services Provided <sup>1</sup>	Written PAC Report <sup>2</sup>	Oral PAC Summary <sup>3,4</sup>	Date Reviewed
ERISA 402(a) Fiduciary <sup>5</sup>	Fiduciary Wise Don Jones Trevor Merrill Michael Jones	Fiduciary governance under ERISA 3(21)(A)(i), (ii), (iii) as disclosed in the Fiduciary Wise Service Agreement	Pre-PAC, PAC, & Post-PAC fiduciary governance	Prepare and conduct PAC meeting; prepare and provide official PAC meeting Minutes	09/19/2023
ERISA 3(16) Fiduciary <sup>6</sup>	Fiduciary Wise Tom Bick Kristi Dalley	Fiduciary governance under ERISA 3(21)(a)(1)(i), per the Fiduciary Wise Service Agreement	Oversight over Plan distributions; review and sign relevant Plan-related documents	Reviewed in 2 <sup>nd</sup> PAC meeting of each year	09/19/2023
Recordkeeper & Custodian*	[Record-keeper Name] Representative	Provide a record of Plan-level and participant-level investments	Specifics outlined in Fiduciary Wise written report	Summary of the written report	09/19/2023
T.P.A.*	[TPA Name] Representative	Plan document compliance: preparation of IRS 5500 Series Forms and required attachments	Specifics outlined in Fiduciary Wise written report	Summary of the written report	09/19/2023
Advisor* – Education & Enrollment – Group Education	[Financial Advisor Name] Representative	Group education to plan fiduciaries and plan participants, enrollment meetings.	Specifics outlined in Fiduciary Wise written report	Summary of written report	09/19/2023
ERISA 3(38) Fiduciary <sup>7</sup> *	[3(38) Name] Representative	Discretionary Investment Manager	Specifics outlined in Fiduciary Wise written report	Summary of written report	09/19/2023


<sup>5</sup> This fiduciary is responsible to see that the Plan meets all fiduciary governance requirements under Title I of ERISA and is an exculpatory fiduciary.

<sup>6</sup> This fiduciary is responsible to review and sign all documents, as an example, the ERISA forms 5500

<sup>7</sup> This fiduciary is a discretionary fiduciary and is an exculpatory fiduciary.

\* Fiduciary Wise will recommend retention of all service providers if all duties and responsibilities listed above are met with highest standards.

# Fiduciary Oversight of Responsibilities & Tasks (FORT)



**Legend**  
 R- Responsible  
 I -Involved  
 M -Monitoring

Check all that are applicable →

Responsibilities & Tasks		Plan Sponsor Before Delegation		Plan Sponsor After Delegation		Delegate					Hire (Usually not a Co-Fiduciary)				Date Completed
						Fiduciary		Co-Fiduciary							
				402(a) Named Fiduciary	3(38) Investment Manager	3(21) Investment Consultant	408(g) Fiduciary Adviser	3(16) Plan Administrator	Third-Party Administrator (TPA)	Record Keeper (RK)	Education/Financial Wellness	Broker of Record/Advisor	CPA/Auditor	Legal Counsel/Plan Consultant	
<b>Checklist of required tasks &amp; responsibilities</b>															
17.	Prepare and maintain currency of Plan Administrative Committee (PAC) Charter	R	M	R					X	X	X	X	X		08/17/2023
18.	Conduct Fiduciary PAC Meetings and maintain minutes	R	M	R		I	I			I	I	I			02/09/2023 & 08/17/2023
19.	Administer 411 Disclosures	R	M	R			I			I					08/17/2023
20.	Each Fiduciary PAC member is to acknowledge the appointment (Acceptance/Resignation Letters)	R	M	R			I			I	I	I			08/17/2023
21.	Coordinate Service Provider Reports to Fiduciary PAC	R	M	R		I	I			I	I	I			02/09/2023 & 08/17/2023
22.	Identify who is going to determine the eligibility of participants	R	M	R			I			I	I	I	I		02/09/2023 & 08/17/2023
23.	Identify who is responsible for enrollment and education	R	M	R		I					I				02/09/2023 & 08/17/2023
24.	Prepare and keep a current list of all Plan fiduciaries and service providers	R	M	R		I	I			I	I	I	I		02/09/2023 & 08/17/2023
25.	Keep current ERISA 408(b)(2) Service Provider Disclosures	R	M	R		I	I			I	I	I	I		08/17/2023
26.	Determine who is a Party-in-interest	R	M	R			I			I	I	I	I		02/09/2023 & 08/17/2023
27.	Determine whether there is a Controlled Group or Affiliated Service	R	M	R			I			I	I				02/09/2023 & 08/17/2023

401k Fiduciary Oversight of Responsibilities & Tasks™ (FORT) Page 5 of 10



# FORT Certification

## Certification of Substantive Prudence

Fiduciary Wise, as the ERISA 402(a) Named Fiduciary and ERISA 3(16) Plan Administrative Fiduciary, has reviewed the duties above. We provide oversight for the above duties in conjunction with other service providers or perform ourselves. Fiduciary Wise attests that we know of no known or potential fiduciary breaches that have not been disclosed at this time.

Fiduciary Wise appreciates the privilege of serving your Plan in an ERISA fiduciary capacity.

*Donald K. Jones*

Donald K. Jones, BCF

Fiduciary Wise, LLC

ERISA 402(a) Named Fiduciary



# Documentation of Substantive Procedural Prudence From Beginning to End

Steps to Meet ERISA Fiduciary Standards	Purpose
ERISA Plan Fiduciaries and Service Providers Fiduciary Training	Overview of fiduciary requirements for members of the PAC Committee to meet ERISA Fiduciary Governance.
Pre-PAC Meeting Preparation	<ul style="list-style-type: none"> <li>• Schedule PAC Meeting.</li> <li>• Prepare Agenda.</li> <li>• Remind Service Providers of Written Reports.</li> <li>• Prepare Fiduciary Training</li> </ul>
Plan Administrative Committee (PAC) Meeting	As outlined under slide 9.
Post-PAC Meeting	Assist Plan Fiduciaries and Service Providers with Action Items



# Fiduciary Wise Reviews, Certifies, and Signs IRS Form 5500

We Review,  
Certify,  
and Sign  
Form 5500

<b>Form 5500-SF</b> Department of the Treasury Internal Revenue Service <hr/> Department of Labor Employee Benefits Security Administration <hr/> Pension Benefit Guaranty Corporation	<b>Short Form Annual Return/Report of Small Employee Benefit Plan</b> This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA), and sections 6057(b) and 6058(a) of the Internal Revenue Code (the Code).  ▶ Complete all entries in accordance with the instructions to the Form 5500-SF.	OMB Nos. 1210-0110 1210-0089 <hr/> <b>2022</b> <hr/> <b>This Form is Open to Public Inspection</b>
<b>Part I Annual Report Identification Information</b>		
For calendar plan year 2022 or fiscal plan year beginning <u>01/01/2022</u> and ending <u>12/31/2022</u>		
<b>A</b> This return/report is for:	<input checked="" type="checkbox"/> a single-employer plan	<input type="checkbox"/> a multiple-employer plan (not multiemployer) (Filers checking this box must attach a list of participating employer information in accordance with the form instructions.)
<b>B</b> This return/report is	<input type="checkbox"/> the first return/report	<input type="checkbox"/> the final return/report
	<input type="checkbox"/> an amended return/report	<input type="checkbox"/> a short plan year return/report (less than 12 months)
<b>C</b> Check box if filing under:	<input checked="" type="checkbox"/> Form 5558	<input type="checkbox"/> automatic extension <input type="checkbox"/> DFVC program
	<input type="checkbox"/> special extension (enter description)	
<b>D</b> If this is a retroactively adopted plan permitted by SECURE Act section 201, check here.....▶	<input type="checkbox"/>	
<b>Part II Basic Plan Information—enter all requested information</b>		
<b>1a</b> Name of plan		<b>1b</b> Three-digit



# Summary

The language of fiduciaries....if you don't know, ask. We are the professionals.

Substantive Procedural Prudence is completed through PAC meeting process.





## Schedule PAC Meeting

- Our first annual PAC meeting will be held on:
- Fiduciary Wise will send out a calendar invite and webcast information for this call.



# Who do you contact when you have a question?

## **Fiduciary Care**

- Marta Hurst [marta.hurst@fiduciarywise.com](mailto:marta.hurst@fiduciarywise.com)
- Kate McBride [kate.mcbride@fiduciarywise.com](mailto:kate.mcbride@fiduciarywise.com)
- Don Jones [don.jones@fiduciarywise.com](mailto:don.jones@fiduciarywise.com)

## **Administrative issues**

- Tom Bick [tom.bick@fiduciarywise.com](mailto:tom.bick@fiduciarywise.com)
- Kristi Dalley [kristi.dalley@fiduciarywise.com](mailto:kristi.dalley@fiduciarywise.com)

## **Investments and Administration**

- Your plan investment professional or TPA.



# THE LANGUAGE OF ERISA

Note: This is a handy reference is for your use and not all topics will be discussed in this training

- **Adviser:** Licensed individual who is a fiduciary: ERISA 3(21)(a) is a “directed” fiduciary Investment Adviser, does not assume all risk for investment selection; ERISA 3(38) “discretionary” Investment Manager - assumes fiduciary duty & risk for investment core menu
- **Best Interest:** Desires to meet ERISA fiduciary standards but based on Broker-Dealer's “inventory”
- **Breach:** Anything not meeting ERISA's “highest standards”
- **Brokerage Window:** When PP select and are responsible for investment choices outside of the plan's core fund menu
- **Co-fiduciary:** Not a real ERISA term, invented by the financial industry - 3(21) Investment Advisor is an example; Plan Sponsor retains risk and responsibility and final decision-making for Plan's core investment menu
- **Common Law of Trusts:** Congress mandated this was the fiduciary foundation of ERISA care
- **Closet Index Fund:** Not a real index fund because costs are too high or guide path issue
- **Comparator:** What you compare another fund to, so as, to determine if the fund is acceptable
- **Cost-Conscious:** Determining if a fund is a good buy for the participant
- **Damages:** What participants are owed for a breach to make them “whole”
- **Delegation:** The ability for the plan sponsor or plan fiduciaries to delegate responsibility to a service provider
- **Disclosure:** Details, “fine print;” most are difficult to find or understand



# THE LANGUAGE OF ERISA

- **Department of Labor (DOL):** Government agency to protect the participants and beneficiaries
- **Duty of Loyalty:** “Exclusive” focus on the participant and beneficiaries' welfare
- **Duty of Prudence:** Meeting “highest standards known to the law” and nothing less
- **Education:** Participant training beyond an enrollment meeting, necessary to meet “economic empowerment” - ERISA 404(c)
- **Employee Retirement Income Security Act (ERISA):** Established by Congress to provide “guardrails” to protect the participant
- **ERISA 404(c):** Safe harbor to allow participants to manage their retirement account without the plan sponsor being liable for mismanagement
- **Expert:** Determined in the Courts under federal rule 702 by the individual's body of work
- **Fiduciary:** acting solely in the fiduciary interest of the participants. For ERISA plan investment menu, 3 distinctive types: Non-fiduciary Broker; 3(21)(a) Investment Advisor, a Directed fiduciary (PS RETAINS decision-making and liability); 3(38) Investment Manager - *Discretionary fiduciary (PS's decision-making/liability transfers to 3(38) IM)*
- **Forensic Fiduciary:** Reverse engineering how well the plan has met ERISA's fiduciary standards
- **Highest standard known to the law:** The latest and highest standards known or should have been know under ERISA
- **Independent Evaluation:** ISO 9000 and 19011, an independent, unbiased “2<sup>nd</sup>-party audit”



# THE LANGUAGE OF ERISA

- **Index Funds:** A “safe harbor” fund under ERISA and one of the acceptable “comparators” under ERISA. “It is the market.”
- **ISO:** International Standardization Organization
- **Law of Decreasing Risk:** The ability of a training ERISA fiduciary to eliminate fiduciary breaches in a plan
- **Modern Portfolio Theory (MPT):** Developed by Dr. Harry Markowitz to determine and spread risk across different types of investment assets in portfolios, aiming for better long-term results. Since most 401(k)s are self-directed by plan participants, MPT does not necessarily apply to Defined Contribution plans, unless managed portfolios are included.
- **Monitoring:** The requirement for the ERISA Named Fiduciary to determine core funds met the “highest standards under the law”
- **Named Fiduciary:** The only ERISA fiduciary that is mandatory in every plan, must be discretionary, and is responsible for all aspects of the plan
- **Open Architecture:** No exact definition but authentic fiduciaries believe it does not apply to fund companies/investment menus with a lot of proprietary funds
- **Plan Fiduciaries:** A employee of the plan sponsor who helps manage the plan for the employer and has discretionary authority
- **Pooled Employer Plans (PEP):** Created by Congress to encourage smaller employers to offer a retirement plan by potentially lowering CPA financial audit fees, and with some (undetermined) light oversight by the DOL.



# THE LANGUAGE OF ERISA

- **Pooled Plan Provider (PPP or P3):** The ERISA 402(a) and ERISA 3(16) fiduciaries who are providing and managing the Pooled Plan
- **Protection of the Participants:** The purpose of ERISA is to offer enhanced protection to the participants/ beneficiaries
- **Qualifications:** A plan fiduciary should only delegate responsibility to a service provider that is qualified by knowledge and experience under authentic fiduciary care
- **Regulation Best Interest:** The standard of care that is acceptable by the SEC, but does not meet ERISA's "highest standards known under the law"
- **Restatement of Law (3<sup>rd</sup>):** Created by the American Bar Association and the American Bankers Association to articulate the common law standard of fiduciary care
- **Risk - Adjusted Return:** Both the 2020 and 2022 DOL Rules used this measurement to determine if a core fund meets cost-conscious requirements under ERISA
- **Safe Harbor:** Congress can allow something to be given a "seal of approval" because it is in the best interest of the participants but not specifically addressed under ERISA, but the requirements must be followed exactly
- **Substantive:** Only using the highest measurements under ERISA to determine if the documentation is a prudent process
- **Suitability:** The lowest of all standards of care used by non-fiduciary Brokers under FINRA



# THE LANGUAGE OF ERISA

- **Right for one participant to sue the plan for damages:** It only takes one because of LaRue v DeWolff case under ERISA
- **Target Date Funds (TDF):** A process to diversify investments in one fund, but most TDFs are not designed for the participant but rather for the fund company
- **Uniform Prudent Investment Act (UPIA):** Codified certain essential principles of prudence laid down by the Restatement of Trusts
- **“Willful Ignorance”:** Ignoring higher standards because it is not in your best interest

