WILMINGTON TRUST

MEMBER OF THE M&T FAMILY

Evaluating Advisory Services and Fiduciary Obligations

Solutions for employer-sponsored retirement plans

Most business owners are not retirement plan experts.

Whether an owner, partner, finance executive, or human resources leader, executives are focused on growing a successful business. While they understand the importance of offering an effective employer-sponsored retirement plan, many executives feel overwhelmed by the cost and administrative burden of managing the plan.

The Challenge

As plan sponsors, employers may incur hard-dollar expenses related to their 401(k) plan, 403(b) plan or similar employer-sponsored retirement plan for items such as matching contributions and employee education meetings.

Employers may also incur soft-dollar costs for items such as retirement plan committee meetings, administrative work, and the opportunity costs of managing a retirement plan.

Critically, employers/plan sponsors need to understand their absolute responsibility to the plan. Many employer-sponsored retirement plans are subject to the Employee Retirement Income Security Act (ERISA), which requires plan sponsors to act as fiduciaries.

Embracing Fiduciary Responsibility

ERISA requires plan sponsors to follow basic standards of conduct. Failure to do so may result in civil and/or criminal penalties to both the employer and to the individuals administering the plan.

Plan fiduciaries are subject to a very high standard of care (“the highest duty known to the law”), even higher than the duty imposed on corporate directors and officers.

These standards include:

- Adhering to a strict duty of loyalty, acting exclusively in the best interest of plan participants and their beneficiaries, including diversifying plan investments.
- Acting with a duty of prudence, which requires plan sponsors to operate with the appropriate skill, knowledge and expertise required to fulfill their duties, including paying reasonable expenses and avoiding conflicts of interest.
- Ensuring the plan is administered according to all legal and regulatory requirements, including administering the plan in accordance with plan documents.

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Getting Support Where It Counts

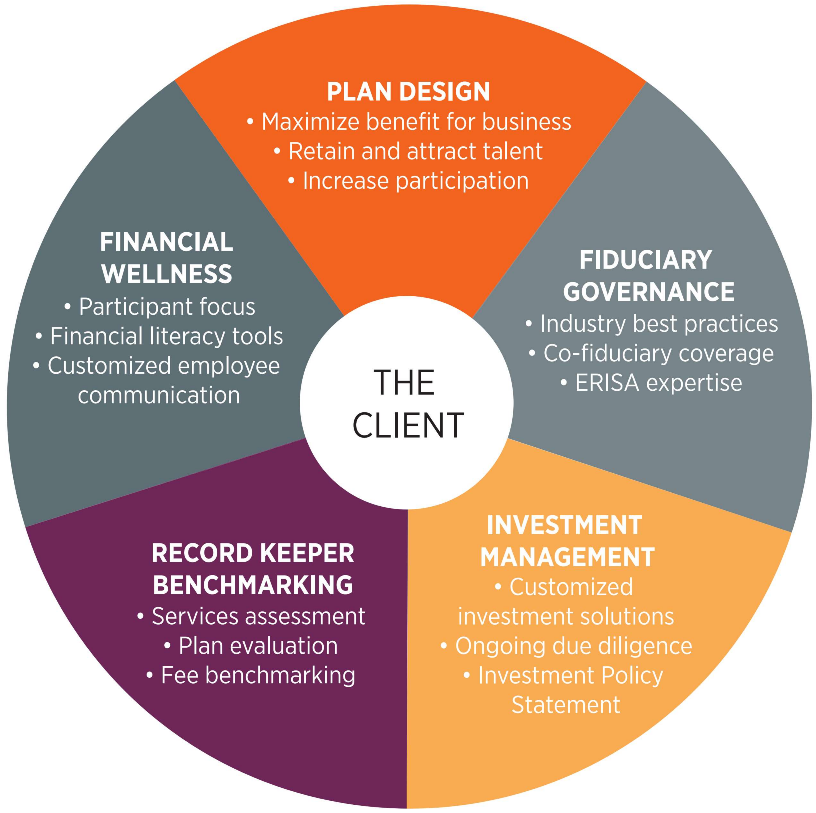
Plan sponsors do not need to administer their plans alone. Experienced professionals are available to work with businesses to assist in administering employer-sponsored retirement plans, decrease hard-dollar and soft-dollar expenses, and reduce fiduciary risk.

What you need to know

52%

of plan sponsors are not aware of their fiduciary status.*

- Plan fiduciaries are subject to "the highest duty known to the law." Failure can result in civil and/or criminal penalties to both the employer and individuals administering the plan.
- Businesses can outsource multiple administrative functions, reduce costs, and mitigate risk by working with an experienced professional to help administer a plan.
- In some cases, plan sponsors can even share fiduciary responsibility with an advisor.



The Value of a Retirement Plan Advisor Partnership

Due to the many complexities and risks associated with administering a retirement plan, plan sponsors should consider the benefits of hiring a competent advisor and other service providers to help fulfill the mandatory duties.

A well-qualified advisor can help administer an employer-sponsored retirement plan in multiple ways, including:

- **Plan Design:** Determining key design provisions for the plan, including safe harbor provisions and selecting plan features, such as auto enrollment, auto escalation, or Roth 401(k) options.
- **Fiduciary Governance:** Providing educational materials on the plan sponsor's core fiduciary duties and industry best practices.
- **Investment Management:** Drafting the investment policy statement, either as a co-fiduciary or discretionary investment manager, and assisting in the selection, monitoring and replacement of the plan's investment lineup.
- **Record Keeper Benchmarking:** Performing periodic, independent evaluations of record keeper fees, services, and capabilities.
- **Financial Wellness:** Delivering content, tools, and support to employees that contribute to higher retirement plan participation rates, investment fluency and financial wellness.

* J.P.Morgan Asset Management – 2019 Defined Contribution Plan Sponsor Survey Findings; Fidelity Trends Volume 2 April 2020; Fidelity 2020 Plan Sponsor Attitudes Survey: Highlight 2.

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What concerns you concerns us.

- **Do you have an Investment Policy Statement (IPS) on file and are your investments monitored and reviewed in accordance with the criteria in your IPS?**
- **Do you conduct regular investment reviews of your plan options to document that they are still appropriate for your participants?**
- **Are fund expense ratios reasonable for their asset classes compared to industry averages?**
- **Do you know what criteria to use for replacing an investment within your plan?**
- **Do you document the action taken on any investment that does not meet your IPS criteria and the reason behind that action?**

Solutions for Fiduciary Investment Coverage

While ERISA does not specifically require plan sponsors to delegate investment authority to investment managers, courts have held that where plan fiduciaries lack the requisite knowledge, experience, and expertise to make the investment decisions, their fiduciary obligations require them to obtain independent professional advisors. This is particularly important when determining the appropriate benchmarks, properly defining asset classes, deciding performance attribution, and otherwise employing statistical means of evaluation that benefit from the expertise of outside professionals.

Plan sponsors can talk with an experienced advisor about their unique needs, and then, if appropriate, select the optimal level of coverage to manage their risk. In general, there are two levels of fiduciary investment coverage from which plan sponsors can choose:

1. **ERISA 3(21) fiduciary advisor**—a paid service provider that gives investment recommendations but does not necessarily have discretionary authority to make the actual investment decisions. Instead, the 3(21) fiduciary advisor typically provides suggestions to the plan sponsor, who is free to accept or reject those recommendations and who must then execute the investment decisions for the plan. The plan sponsor and the 3(21) fiduciary advisor, therefore, share fiduciary responsibility.

LEVEL OF COVERAGE

A plan with ERISA 3(21) investment advise fiduciary

Responsibility

Wilmington Trust advises you about plan investments.

Wilmington Trust will help you by:

- Recommending investment options
- Monitoring the investment lineup
- Assisting in the plan sponsor fiduciary process
- Developing investment policy statement

LEVEL OF COVERAGE

A plan with ERISA 3(38) investment manager fiduciary

Responsibility

Wilmington Trust is primary fiduciary for plan investments.

Wilmington Trust will:

- Select investment options
- Monitor the investment lineup and adjust where appropriate
- Assist in plan sponsor fiduciary process
- Develop investment policy statement

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M&T Bank Corporation—Strength and Stability for Over 160 Years*

- Founded in Buffalo, NY in 1856 NYSE: MTB
- $140 billion in assets*
- $103.6 billion in assets under management*
- One of 20 largest independent commercial bank holiding companies in the United States**

Fiduciary experience of Wilmington Trust, N.A.

- 70+ years of retirement experience
- 18+ average years of experience amongst retirement specialists
- Offer ERISA 3(21) and 3(38) services

Retirement Plan Services

- Manage assets for qualified and non-qualified retirement plans
- Provide discretionary trustee, custody, and directed trustee services for qualified and non-qualified plans
- Provide unbundled defined contribution plans
- Plan design and benchmarking services

2. **ERISA 3(38) investment manager**—an investment manager who has been specifically appointed to have full discretionary authority and control to make the actual investment decisions. The manager may select, monitor, remove, and replace the investment options offered under the plan. The 3(38) must acknowledge its fiduciary status in writing.

The primary advantages to the plan sponsor of hiring a 3(38) investment manager include:

- Limiting the plan sponsor's fiduciary responsibilities and liabilities;
- Delegating investment oversight to an investment professional and;
- Enabling the plan sponsor to focus more time and attention to running their core business.

If an investment manager is properly appointed and duly monitored by the named fiduciary, ERISA provides that the plan sponsor and a plan trustee will not be liable for the acts or omissions of the investment manager. This is especially important in situations when a company executive is named as a plan trustee. They also will not be required to invest or otherwise manage any asset of a plan, which is subject to the authority of the investment manager. When such delegation has occurred, the investment manager becomes responsible for all aspects of the investment process and is required to act prudently when it decides to buy or sell securities on behalf of the plan.

The Wilmington Trust Advantage

Hiring an outside investment professional requires a prudent decision-making process. A plan sponsor can benefit by working with a skilled advisor that knows what to look for and what to request from the beginning to help ensure a mutually beneficial business relationship.

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* M&T Bank Corporation Data as of 6/30/2020

** Based on analysis of Federal Reserve Board website data regarding U. S.-based commercial bank holding companies, as of March 31, 2020.

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Investments: Are NOT FDIC Insured | Have NO Bank Guarantee | May Lose Value

Wilmington Trust, N.A.'s 401k Advisory Service utilizes the national database of retirement plan information from Pensionmark Financial Group LLC's reporting system to provide retirement plan benchmarking and comparative vendor analysis to our clients and prospects. Wilmington Trust, N.A. has engaged Wilshire Associates Incorporated ("Wilshire") to provide consulting services that support the advisory work we perform for our clients and prospects. Wilshire provides investment research and non-discretionary investment advice to Wilmington Trust to help us assess, monitor and review investment options that are available for use by our advisory retirement clients. Wilshire is neither an affiliate of Wilmington Trust, N.A. nor M&T Bank.

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