Making it personal every step of the way
Retirement plan administrative and recordkeeping services provided by McCready and Keene, Inc., a OneAmerica® company

Understanding Fiduciary Responsibilities for plan sponsors

Every step of the way

Get to know our fiduciary responsibilities

Retirement plan administrative and recordkeeping services provided by McCready and Keene, Inc., a OneAmerica® company
Offering a retirement plan is a rewarding benefit to participating employees, their beneficiaries and the plan sponsor. With this benefit come certain responsibilities of administering the plan and managing its assets. This guide provides an overview to help plan sponsors determine if they are meeting their fiduciary responsibilities and acting in the best interest of the participants in the retirement plan.
This booklet provides a summary of Fiduciary responsibilities for your review.

- Fiduciary basics
- ERISA Fiduciary roles and responsibilities
- Protection for Fiduciaries
- Resources for plan sponsors
- Fiduciary responsibility checklist

For more information, contact your client services manager or visit www.oneamerica.com.
Fiduciary basics

The Employee Retirement Income Security Act of 1974 (ERISA) is the federal law that governs the management of retirement plans and protects the rights of participants and beneficiaries by imposing rules that fiduciaries must follow to ensure that they are managing their plans properly.

Types of fiduciaries

In general, there are fiduciaries, and then there are Fiduciaries. A common law fiduciary is an individual with a special, confidential relationship and a duty to act in good faith and candor for the primary benefit of another. A common law fiduciary is required to act prudently and is responsible to

• act in the best interest of the other person,
• disclose adverse information to the beneficiary, and
• receive no more than reasonable compensation.

Anyone who has discretionary control over retirement plan assets and has an additional requirement to act prudently in carrying out their duties is an ERISA Fiduciary. ERISA Fiduciaries are held to a much higher standard of care than a common law fiduciary, and their conduct will be measured accordingly.

Who may be a Fiduciary?

- Plan sponsors
- Plan administrators
- Plan trustees
- Investment managers
- Committee members
Classic fiduciary relationships
ERISA Fiduciary roles and responsibilities

The plan sponsor’s Fiduciary role primarily comes from holding and exercising control over the management of the plan and its assets. The plan sponsor is responsible for making sure all fiduciary responsibilities are completed and determining what fiduciary responsibilities will be assigned to other parties.

Prudent expert rule

In addition to acting as a prudent person, Fiduciaries also must be knowledgeable in the particular action. This is often called the prudent expert rule. ERISA requires that prudent Fiduciaries exercise their responsibilities with care, skill, prudence and diligence when selecting and monitoring investments for the plan and assessing the performance and service levels of plan providers. This rule ensures that procedures are in place for making fiduciary decisions and does not require that a specific outcome or success must be reached. The documented procedure may be used to prove that a decision, resulting in a good or bad outcome, was reached through a process that a prudent expert would follow.

ERISA Fiduciaries must:

- **Act with the skill and diligence** of a prudent person knowledgeable in the particular action being taken
- **Carry out responsibilities** solely in the interest of plan participants for the exclusive purpose of providing plan benefits and defraying reasonable expenses
- **Diversify investments** to manage risk and effects of large losses
- **Act in accordance with plan documents** when not inconsistent with ERISA
Fiduciary responsibility categories

Plan administration
- Interpret the terms of the plan
- Make discretionary decisions regarding claims for benefits and appeals of denied claims
- Select service providers to administer the plan
- Ensure that the plan is operated in accordance with its terms

Plan investment
- Determine the investment structure for the plan
- Select and monitor the individual investment options in the plan
- Comply with ERISA section 404(c), if applicable
Consequences of a Fiduciary breach

Fiduciaries may be held personally and/or criminally liable for failing to fulfill their responsibilities. Any Fiduciary who breaches their duties may be held accountable to repay any losses to the plan as a result of their action or inaction. Additionally, Fiduciaries may be relieved of their responsibilities and permanently prohibited from acting as a Fiduciary.

A fiduciary should be aware of others who serve as fiduciaries to the same plan, because all fiduciaries have potential liability for the actions of their co-fiduciaries. Any Fiduciary may be held liable for knowingly participating in another Fiduciary's breach, concealing the breach or not acting to correct the breach.

Three common fiduciary breaches:

1. Failure to operate the plan in accordance with the terms of the document
2. Failure to carry out responsibilities solely in the best interest of participants and their beneficiaries
3. Failure to provide prudent investment options

A breach does not need to have criminal or fraudulent intent. Rather, it must show only that the Fiduciaries breached their duties.
Voluntary Fiduciary Correction Program (VFCP)

The VFCP allows plan sponsors to voluntarily comply with ERISA by self-correcting certain Fiduciary violations. Anyone who may be liable for fiduciary violations under ERISA may voluntarily apply to the program for relief, provided they comply with the criteria and procedures outlined in the VFCP. Violations can be fully and correctly resolved in four steps.

According to the DOL website, applicants must restore the plan, participants and beneficiaries to the condition they would have been in had the breach not occurred. The VFCP includes an online calculator to assist applicants by automatically calculating correction amounts that must be paid to the plan. Plans must then file, where necessary, amended returns to reflect corrected transactions or valuations.

Applicants also must provide proof of payment to participants and beneficiaries, or properly segregate the affected assets in cases where the plan is unable to identify the location of missing individuals. Payment of the correction amount may be made directly to the plan where distributions to separated participants would be less than $20 and the cost of correction exceeds the distributions owed.

Four steps to resolving violations:

1. Identify any violations and determine whether they fall within the transactions covered by the VFCP
2. Follow the process for correcting specific violations (e.g., improper loans or incorrect valuation of plan assets)
3. Calculate and restore any losses or profits with interest, if applicable, and distribute any supplemental benefits to participants
4. File an application with the appropriate EBSA regional office that includes documentation showing evidence of corrective action taken
Fees and expenses

ERISA requires that the plan fees and expenses be reasonable. Reasonableness can be determined by evaluating the services included and by benchmarking against other plans with similar characteristics and features. Plan sponsors should evaluate what services are included, compare different providers’ programs and conduct ongoing due diligence to ensure that fees and expenses continue to be reasonable. Reasonable does not mean “cheapest,” but the cost should be commensurate with the services received.

Response to fee disclosure requirements

The DOL has issued two regulations requiring that new disclosures be provided in connection with most retirement plans covered by ERISA.

- The 408(b)(2) regulation requires covered service providers to the plan make disclosures to the responsible plan Fiduciaries.
- The 404(a)(5) regulation requires that an IPS template is offered to document the investment selection process.

In response to these regulations, McCready and Keene, Inc. provides access to a suite of information through MSafe, a secure file exchange. Materials include:

- **408(b)(2) Amendment**: This amends the Administrative Services Agreement and describes direct and indirect compensation, among other things, as required by the DOL.
- **408(b)(2) Exhibit C**: This exhibit lists all investment options available under the plan and any applicable revenue sharing.
- **404 Participant Fee Disclosure Notice**: This notice includes a list of all investment options along with rates of return, expense ratios and the corresponding benchmark information, as well as a description of fees and expenses.
- Summary of the electronic distribution rules for the 404 Participant Fee Disclosure Notice

Three categories of plan fees and expenses generally fall into:

1. Plan administration
Fee-related legal concerns

As the recent fee disclosure requirements bring more awareness to plan participants about the costs associated with their retirement plan, plan sponsors should be especially aware of their Fiduciary responsibilities relating to plan fees. Several lawsuits have come about over the past few years regarding fee transparency. Even in cases when the court favored the plan sponsor, plan sponsors, it is important to be aware of what these ruling mean for plan sponsors and their Fiduciary responsibilities.

**Hecker v. Deere**
Plan participants claimed that Deere and Fidelity breached their Fiduciary duties by managing the plans in a way that caused fees to be excessive and not solely for the benefit of the participants and beneficiaries. Additionally, the participants claimed that Deere and Fidelity failed to communicate fee information honestly, clearly and accurately. The court ruled that the fee disclosures the participants received met the existing requirements.

**Martin v. Caterpillar**
In this case, plan participants claimed that the Fiduciaries responsible for overseeing the plans breached their duties under ERISA by letting the plans pay excessive investment management and other fees. Caterpillar settled the case and, during a two-year settlement period, Caterpillar plans to increase and enhance communication with employees about 401(k) investment options and associated fees.

**Tussey v. ABB, Inc.**
This is another case in which the court ruled in favor of plan participants. ABB, Inc. plans’ Fiduciaries were found to be in violation of ERISA’s fiduciary standards of conduct when they:
- Failed to monitor recordkeeping costs paid through revenue sharing and hard dollars, and to negotiate rebates for the plans
- Failed to prudently deliberate prior to deselecting and replacing investment options in the 401(k) line-up
- Selected more expensive share classes for the plans’ investment line-up when less expense share classes were available
- Permitted revenue sharing for the purpose of subsidizing corporate expenses unrelated to the administration of the 401(k) plans from which the revenue sharing was generated

When it comes to plan fees, transparency is imperative. When both plan sponsors and participants are informed about and understand plan-related fees, there is less opportunity for problems to arise.

---

2. **Investment and sales charges**

3. **Individual service and other charges**
Fiduciary risk

A Fiduciary can be held personally liable for losses caused by breach of their obligations. While it is unusual, it is not unheard of for a Fiduciary to be held criminally liable.

Best practices to minimize Fiduciary risk

Due diligence and Fiduciary file
The due diligence process should include reviewing documentation, investments and fees. The key step in this process is documentation — have a written process and follow it. Create and maintain a Fiduciary file, which can be used as proof that diligent procedures were followed in the event of legal action. The checklist beginning on page 17 provides details on what should be included in the Fiduciary file.

Investment committee charter
An investment committee charter provides for the establishment and definition of the retirement plan committee. It also puts in place a formal set of operational rules and procedures for committee members’ actions.

Investment policy statement (IPS)
The goal of the IPS is to establish procedural prudence for investments used by the plan. The IPS provides a framework for selecting and monitoring the plan’s investment options and investment managers.

Prohibited transactions
Some transactions are prohibited under the law in order to prevent dealings with parties who may be in a position to exercise improper influence over the plan. These parties include the employer; a union; plan fiduciaries; service providers and statutorily defined owners, officers and relatives of interested parties. Fiduciaries are also prohibited from engaging in self-dealing and should avoid conflicts of interest that could harm the plan.

Examples of prohibited transactions between the plan and parties of interest may include:
• sale, exchange or lease of property
• lending money or extension of credit
• furnishing goods, services or facilities

Timing of contributions
The Department of Labor (DOL) requires that plans subject to Title I of ERISA satisfy requirements regarding the timely remittance of employee deferrals, after-tax contributions and participant loan payments. Most profit-sharing, money purchase, 401(k) and 403(b) plans are subject to title I of ERISA.

Failure to follow the current contribution rules may result in the employer engaging in a prohibited transaction with respect to the late remittances, resulting in an excise tax being owed by the employer. The employer also would be responsible for any investment losses due to the late deposit.

Fidelity bond
As added protection for plans, those who handle plan funds or other plan property must generally be covered by a fidelity bond. Plan sponsors should consult with their insurance provider or broker to ensure ERISA bonding requirements are satisfied. The bond should cover Fiduciaries, other employees and third parties involved with the retirement plan. The bond must be at least 10 percent of the plan assets being handled by the insured, a minimum of $1,000 and a maximum of $500,000. If the plan allows investment in the employer’s stock, then the maximum is $1,000,000.
Investment committee charter

Timing of contributions

Prohibited transactions

Due diligence

Fiduciary file

Investment policy statement

Fidelity bond

Best practices to minimize Fiduciary risk
Protection for Fiduciaries

Plan Fiduciaries can receive fiduciary protection through ERISA Section 404(c) and Qualified Default Investment Alternatives.

ERISA Section 404 (c)

If the plan is participant directed — meaning participants are allowed to make certain investment decisions — and if it satisfies certain operational and disclosure requirements, the plan sponsor may be able to comply with ERISA Section 404(c). Compliance with ERISA 404(c) is voluntary, but can relieve the Fiduciary from responsibility for participant decisions.

Other ERISA 404(c) requirements
- Offer a broad range of investment alternatives (at least three) that have materially different risk/return characteristics, allow the creation of a portfolio that is normally appropriate for the participant and tends to manage the overall risk through diversification
- Provide participants with sufficient information about
  - making informed investment decisions
  - operating expenses
  - prospectuses
  - value of shares or units, including investment performance

Qualified Default Investment Alternatives

Fiduciaries may further limit Fiduciary liability for the investment of plan assets into a Qualified Default Investment Alternative (QDIA). QDIAs must be either
- age-based or target date investments
- balanced investments
- managed accounts

Plan sponsors also must consider certain procedural requirements. Participants must be given a reasonable opportunity to direct the investments at least 30 days in advance of plan eligibility and of the first investment into a QDIA. Participants also must be able to transfer out of the QDIA and into other options with the option to opt-out at any time.

Investment education and advice

Plan sponsors are responsible for providing participants the tools they need to make informed investment decisions with respect to retirement preparation. Plan sponsors can seek the services of an investment advisor who offers specific investment advice to participants. These advisors are Fiduciaries and have a responsibility to the plan participants.

Another option is to use a service provider to provide general financial and investment education, interactive investment materials, and information based on asset allocation models. Providers that offer general investment education are not Fiduciaries. Ultimately, decisions about providing investment education and advice are Fiduciary actions and must be carried out in the same manner as hiring any plan service provider.
Additional resources

Fiduciary responsibility
Materials that will help inform and educate plan sponsors on best practices to meet their Fiduciary obligations.

Year-end services center
Information that will assist with the completion and submission of annual data as well as useful information related to the Form 5500 and detailed plan testing information.

Prospectuses
Available for all plans and mutual fund families.

Important plan documents
Plan documents (including amendments and notices), Summary Plan Descriptions (SPDs), Summary of Material Modifications (SMMs) and contract amendments and agreements.

Enrollment center
Participant general retirement education and documents such as the Section 404(c) notice and Section 404(a)(5) notice.
This Fiduciary responsibility checklist can be used as a tool to help guide plan sponsors in executing their Fiduciary responsibilities with prudence and diligence. Documentation is one way that Fiduciary risk can be minimized and can support that decisions are well informed and consistent with the plan’s objectives. ERISA requires that records be kept for a period of time, and this checklist can be detached and kept in a Fiduciary file. Plan sponsors should consult legal counsel when designing record retention guidelines and/or if further guidance is needed.
Fiduciary responsibility checklist

Identification of Fiduciaries and administration due diligence:
- Identify and designate ERISA Fiduciaries
  - Work with legal counsel to help Fiduciaries understand their responsibilities
- Select committee members
- Investment Committee Charter executed
- Appoint/confirm a trustee
  - Confirm the trust agreement correctly reflects Fiduciary roles of the plan committees and the plan sponsor
- Annual meeting
  - Conduct at least an annual meeting with the retirement committee and/or plan Fiduciaries
  - Record and distribute meeting minutes to the committee and/or plan Fiduciaries

Plan investments and education:
- Adopt an Investment Policy Statement
- Consider ERISA section 404(c) compliance
  - Confirm that all requirements under Section 404(c) are being met if the plan intends to comply with ERISA
- Review the plan’s investment lineup
- Maintain a broad, well diversified plan with different risk and return characteristics
- Document the review of the evaluation and replacement of poorly performing investment options, which should be performed at least annually
  - Be sure to follow the frequency set in the plan’s written Investment Policy Statement
- Ensure QDIA investment characteristics and objectives are met and documented
- Provide investment education (and advice, if applicable)
  - Review the selection of any third party providers and regularly review their performance
- Educational meetings and/or communications
  - Provide financial, investment and retirement information to participants
- Provide ongoing communication and education to participants on topics such as:
  - Investments
  - Benefits to starting early
  - Nearing retirement
  - Personal finance
  - Retirement tools available

Plan administration and operation:
- Timely remittance of employee contributions and loan repayments
  - Follow the process for remitting contributions and loan repayments to the provider and investing them in a timely manner
- Review of outside providers/experts
  - Carefully review credentials, fees and scope of services and perform periodic reviews
  - Document meeting minutes, including all discussions and decisions that are made
- Review and update the plan document for required legislative provisions
  - Determine if changes are necessary to improve the plan
- Review fees charged to the plan to make certain they are reasonable and may be properly paid by the plan
  - Gather all necessary materials needed for decision making and document all due diligence efforts in the review
  - What services do the fees cover?
    - One-time fees ______________________
    - Recordkeeping ______________________
    - Investments ________________________
    - Administration ______________________
    - Trustee ____________________________
    - Individual fees to participants ________
    - Miscellaneous fees __________________
- Carry Fiduciary liability insurance on all fiduciaries
- Proof of fidelity bond
  - Amount of coverage: $____________________
Documentation/due diligence best practices:

☐ Create a fiduciary due diligence file: Document all procedures and decisions and maintain all documents in this file, which should include the following:
  — IRS-approved plan document (including determination letter)
  — Summary Plan Descriptions (SPDs), Summary of Material Modifications (SMMs), and Summary Annual Reports (SARs) should be disclosed to participants within specified time frames and filed
  — Adoption agreement
  — Plan amendments
  — Board resolutions
  — Investment Policy Statement (IPS)
  — Monitoring reports
  — Discrimination test results
  — Signed Form 5500s
  — Compliance documentation
  — Plan communications to employees
  — Third party service provider documents
  — Plan procedures and meeting minutes

☐ Review employee compensation amounts for plan purposes
  — Review the plan document and confirm that the correct compensation amounts are being submitted to the service provider

☐ Participant due diligence
  — Participant eligibility: Be sure the plan covers employees who are eligible to participate in the plan and confirm the plan’s definition of eligible employee is consistent with the way the plan is administered
  — Confirm all applicable notices are distributed to participants by the required deadlines, such as automatic contributions, safe harbor, QDIA, etc.

☐ Participant communication and education
  — Create a calendar outlining the materials sent to participants and the date sent
  — Samples of materials sent
  — Meeting sign-in sheets

Note: Group variable annuity contracts are issued by AUL and registered group variable annuity contracts are distributed by OneAmerica Securities, Inc., Member FINRA, SIPC, a Registered Investment Advisor, 433 N. Capitol Ave., Indianapolis, IN 46204, 1-877-285-3863, which is a wholly owned subsidiary of AUL.
Group variable annuity products are issued by American United Life Insurance Company (AUL) and registered group variable annuity products are distributed by OneAmerica Securities, Inc., Member FINRA, SIPC, a Registered Investment Advisor, 433 N. Capitol Ave., Indianapolis, IN 46204, (877) 285-3863, which is a wholly owned subsidiary of AUL. Neither AUL, OneAmerica Securities nor their representatives provide tax, legal or investment advice.

Mesirow Financial, MasteryPoint, Schlindwein Associates, L.L.C., and R.T. Jones Capital Equities Management, Inc. are not affiliates of OneAmerica Financial Partners, Inc. or OneAmerica Securities and are not OneAmerica companies.

Mesirow Financial refers to Mesirow Financial Investment Management, Inc., an SEC-registered investment advisor. The Mesirow Financial name and logo are registered service marks of Mesirow Financial Holdings, Inc. © 2012, Mesirow Financial Holdings, Inc. All rights reserved.

### About McCready and Keene, Inc.

McCready and Keene, Inc., a OneAmerica company, is an actuarial and retirement benefits consulting firm that focuses on designing, installing and administering customized retirement plans. Based in Indianapolis, Ind., McCready and Keene provides actuarial services to defined benefit plans and provides record keeping services to employee stock ownership plans and other defined contribution plans, including a trust program that uses an open architecture investment platform available to 401(k), 403(b), 457, money purchase pension, and profit sharing plans.

### About OneAmerica

OneAmerica Financial Partners, Inc., headquartered in Indianapolis, Ind., has companies that can trace their solid foundations back more than 135 years in the financial services marketplace.

OneAmerica's nationwide network of companies offers a variety of products to serve the financial needs of their policyholders and other customers. These products include retirement plan products and services; individual life insurance, annuities, long-term care solutions and employee benefit plan products. The goal of OneAmerica is to blend the strengths of each company to achieve greater collective results.

The products of the OneAmerica companies are distributed through a nationwide network of employees, agents, brokers and other distribution sources that are committed to increasing value to policyholders by helping them prepare to meet their financial goals.