Nevada Public Employees’ Deferred Compensation Program

FIDUCIARY RESPONSIBILITIES/PLAN GOVERNANCE

Presented by:
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Today’s Agenda

- General Fiduciary Responsibilities
- Role of Committee, Staff and Advisors
- Best Practices in Plan Governance
- Discussion
Who is a fiduciary?

Anyone who:

- Has discretionary authority over the management of the plan
- Exercises any control over plan assets or disposition of plan assets
- Gives investment advice for compensation

Examples:

- Plan Sponsor, Plan Committee, and Registered Investment Advisors

Exercise of *discretion* is the key
Who is not a fiduciary?

- Anyone who performs administrative functions but does not have authority for discretionary decisions:

- Examples:
  - The following are generally not considered fiduciary activities:
    - Applying established rules
    - Preparing communication material
    - Processing payroll contributions
    - General administrative functions
Functional Analysis

- Did you participate in the decision to:
  - Offer the plan, or make decisions on plan design
  - Select the plan type
  - Choose investment options

- Observation:
  - You don’t have to make decisions to be a fiduciary just having the authority to do so makes you one
Are you on a Committee that reviews:

- the plan
- Its provisions
- Its investment options
- Its administration services

Observation:

- Advising or recommending actions may also be a fiduciary function
Do you have responsibility to:

- choose or evaluate service providers
- bind employer through contracts
- establish policies and procedures and/or make exceptions to these rules

Observation:

- Contracting out all services, functions and/or decisions does not remove you from your fiduciary
### Are You A Fiduciary?

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<tr>
<th>Yes</th>
<th>No</th>
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<tr>
<td>Did you participate in the decision to offer the plan, the type of plan that is offered, or in the selection of the investment options?</td>
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<td>Do you participate in a committee meetings to implement the plan, to administer its provisions or to select and monitor its investment options?</td>
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<td>Do you have any responsibility to choose or evaluate service providers?</td>
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<td>Do you establish policies and procedures relating to plan administration or do you have authority to make exceptions to these rules?</td>
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<td>Do you have authority to bind the employer through contracts, or to delegate certain functions for the plan?</td>
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If you’ve checked yes to any of the above, you are likely a fiduciary.

Plan Governance

- The plan sponsor (employer) is the ultimate fiduciary

- Fiduciaries may be appointed or elected
  - Members of Plan Committees

- If appointed, decisions must be prudent and take into consideration position/abilities of individuals or contractors
Plan Governance

- Certain activities/responsibilities may be delegated

- Plan sponsor or Committee is responsible to ensure delegated actions and activity are
  - handled appropriately, and
  - in accordance with fiduciary duties, plan documents and governing laws
Fiduciary Duties

- Act solely in the interest of plan participants and beneficiaries
  - Duty loyalty
  - May not engage in “self-dealing,” acts that serve personal or business interests

- Internal Revenue Code §401(a)(2) exclusive benefit rules and §4975 prohibited transactions

- ERISA can provide guidance even if your plan is not subject to it

- State statutes and municipal codes on plan creation, ethics and conflicts of interest

- Common law and applicable court decisions
Fiduciary Duties

- Maintain the plan and its assets for exclusive purpose of providing benefits
  - Exclusive benefit rule; primary plan purpose is to provide retirement benefits for participants and beneficiaries
- Example:
  - Expenses paid from plan assets must be for the benefit of participants and beneficiaries
Primary Fiduciary Responsibilities

➢ Under ERISA §404(a)(1), affirmative duties are:
  • Act prudently with respect to plan assets and expenses
  • Diversify assets to minimize risk of large losses
  • Loyalty to beneficiaries of trust
  • Act solely in the interests of such beneficiaries for the exclusive purpose of providing plan benefits and paying plan expenses
  • Comply with plan provisions and applicable laws

➢ Fiduciary duties under common law of trusts:
  • Prudence
  • Loyalty

➢ Example:
  • When selecting and monitoring investments, it may be necessary to hire expert services to advise decision makers
Fiduciary Duties

- Diversify plan’s assets to minimize risk unless it is clearly prudent to do otherwise.

Example:
- You should provide suitable, diversified investment choices, and adequate investment education, to enable participants to make decisions that will minimize their investment risk.
The legal standards applied to fiduciaries (duties of prudence and loyalty) are the highest standards under the law and are often difficult to understand.

Meeting the fiduciary standards requires more than just common sense or a good faith attempt.

The fiduciary standards are the same for all Committee members regardless of how they became a member.

The fiduciary standard is not applied on a “sliding scale,” therefore, all members of the Committee are instantly held to this very high standard as soon as they become committee members.
Duty of Prudence

- A retirement plan fiduciary is to manage the plan with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. This level of care is known as the “prudent expert” rule.

- A determination of whether a fiduciary has exercised prudence in an investment decision must be made by considering the investment of all of the assets of the trust over which the Committee has management and control, rather than by considering the prudence of a single investment. This description of the duty of prudence comes from “modern portfolio theory” and reflects current best practices.

- Technically, ERISA does not apply to public retirement plans. ERISA only protects those in the private sector; however, there is no good policy reason to provide less protection to public employees by using lower standards.

- Fiduciaries for public retirement plans who do not live up to the prudent expert standard are not following current best practices in the public retirement arena and are depriving their members of the protections afforded to employees in the private sector.
Fiduciary Duties

- Act in accordance with the plan documents and governing instruments

Example:

- Fiduciaries must make sure that the plan document and trust agreements are amended to comply with any changes in federal/state laws and applicable regulations
- Maintain vendor service performance standards
- Investment and administrative guidelines
Role of the Committee, Staff and Advisors

➢ Committee’s Role
  • Strategic governance
  • Establish internal controls
  • Audit of processes and people
  • Examination of issues and options
  • Due diligence activities

➢ Staff’s Role
  • Implementation of administrative and reporting activities
  • Operations, documentation and research
  • Assist Committee in fact finding, vendor management and implementation of program changes/modifications
Role of Advisors

Type of Advisors
- Investment Consultant
- External Counsel
- Field Representatives
- Auditor

Selection Process
- Selection is done in the best interest of the participants
- A prudent, clearly defined process is key
- Assures competitive cost for value
- Adhere to appropriate due diligence processes
- Identify selection decision responsibility

Reporting Structure
- Clarify reporting schedule and content
- Reporting structures can vary depending on the service providers’ focus
Best Governance Practices

- Provide a governance manual to all Committee members
  - Committee’s mission statement, including its vision and guiding principles
  - Governing plan documents (statutes, regulations, plan summaries)
  - Organizational chart, role descriptions and summaries of contracts
  - Governance policies and procedures
  - Committee meeting schedules and rules of procedure

- Develop Committee practices
  - Development of a strategic plan that guides the Plan towards its goals
  - Adoption of fiduciary education program to improve skill sets
  - Perform periodic assessment and audits to evaluate internal controls, performance and risks to fund and its fiduciaries
Best Governance Practices

- Maintain written policies
  - Standards of conduct, ethics and conflict of interest rules
  - Investment policy that includes goals, monitoring procedures and risk tolerances
  - Procurement guidelines that document procedures to select/monitor contractors
  - Privacy and information policy

- Conduct risk oversight
  - Governance structure that defines risk and accountability
  - Assessments to test internal controls and risk events (e.g., data systems)
  - Key measures to assess exposure to risk (including financial, operational, reputational)

- Make a strategic plan
  - Set goals and performance measures for key functions
  - Long-term investment goals, risk tolerance and diversification objectives
  - Multi-year budget needs
  - Service quality goals and plans to achieve them
  - Process for improving plan compliance and internal controls
### Governance Policies - Purpose

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<th>Intent</th>
<th>Guidance</th>
<th>Protection</th>
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| - Implement plan documents/applicable laws  
- Provide governance framework  
- Communicate to stakeholders  
- Establish historic record | - Provide direction to fiduciaries and their delegates  
- Set expectations for committee and individual trustee conduct | - Set out due diligence process  
- Establish monitoring and reporting process |
Key Governance Policies

- **Ethics**
  - Code of conduct
  - Gifts and consideration

- **Education**
  - Describe educational objectives and how funding will be allocated
  - Require justification for any educational sessions attended
  - Include travel reimbursement rules

- **Investment**
  - Asset class diversity
  - Benchmarks (RFP process)
  - Guidance on evaluation and changes

- **Governance**
  - Define Committee and staff roles
  - Implementation of Plan rules

- **Communications**
  - Identify rules under which the Committee will operate
  - Guidelines for Committee communications (with participants, external parties)
  - Specifics on information dissemination and privacy concerns
Fiduciary Governance Checklist

- Avoid conflicts of interest and perception of conflict
  - Contracting
  - Investments

- Develop decision processes
  - Follow the process
  - Record the process
  - Make fact-supported decisions

- Monitor and verify results
  - Performance reviews
  - Compliance reviews
  - Financial audits

- Ask questions – Get answers
Fiduciaries must document:

- Monitoring activities, actions and decisions
- Meeting minutes and rationale for any decisions and actions
- Process to select and monitor outside contractors and service providers
Fiduciary Best Practices

- Hold Committee meetings
- Maintain documentation of actions and meeting minutes
- Establish written procedures and policies (investment policy)
- Outsource when experience and expertise is needed
**Investment Policy Statement**

**What is an Investment Policy?**
- Guides all decisions about the Plan’s investment options
- More plans recognizing the need for an established policy

**What should it say?**
- Clarify responsibilities of parties
- Identity types of investments to be offered, selection criteria and processes
- Define how funds will be monitored, replaced, or removed

**This policy is not static!**
- Periodically review and update
- Document should evolve as plan and industry evolves
- Evaluate the performance of the Plans investment options to its benchmarks and peer universe
- Monitor the administration services of the plan service provider