There are a number of different roles that all plans have which are fiduciary.

The following pages identifies those roles, which all play an important part in the structure, and governance of your plan.

These materials and the associated fiduciary checklist are a technical supplement to the seminar presentation.
FIDUCIARY ROLES – ERISA 3(16)

(A) The term “administrator” means:

(i) the person specifically so designated by the terms of the instrument under which the plan is operated;

(ii) if an administrator is not so designated, the plan sponsor; or

(iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

(B) The term “plan sponsor” means:

(i) the employer in the case of an employee benefit plan established or maintained by a single employer,

(ii) the employee organization in the case of a plan established or maintained by an employee organization, or

(iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.
FIDUCIARY ROLES – ERISA 21(A)

Section 3(21)(A) of ERISA provides that a person is a fiduciary with respect to a plan to the extent:

(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets

(ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or

(iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.
FIDUCIARY ROLES – ERISA 3(38)

The term “investment manager” means any fiduciary (other than a trustee or named fiduciary, as defined in section 1102(a)(2) of this title):

(A) Who has the power to manage, acquire, or dispose of any asset of a plan;

(B) Who:
   (i) is registered as an investment adviser under the Investment Advisers Act of 1940;

   (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act [15 U.S.C. 80b–3a(a)], is registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary’s registration under the laws of such State, also filed a copy of such form with the Secretary;

   (iii) is a bank, as defined in that Act; or

   (iv) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and

(C) has acknowledged in writing that he is a fiduciary with respect to the plan.
FIDUCIARY ROLES – ERISA 403(a)

Section 403(a) of ERISA provides that plan assets be held in trust by one or more trustees. The trustee(s) shall have exclusive authority and discretion to manage and control the assets of the plans, except to the extent that:

(1) the plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to this, or

(2) authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment managers appointed under the terms of the plan
Fiduciary Checklist

Developed from information provided in *The 401(k) Answer Book*

**Plan Fiduciaries**

- All plan fiduciaries are aware of their role and responsibilities.

- Investment fiduciaries have been appointed in accordance with plan and trust documents.

- Fiduciaries and plan committee members meet not less than annually.

- A fiduciary file is maintained and contains:
  - Investment documentation
  - Meeting notes
  - Minutes of Board decisions regarding investments
  - Reports and background information

- Review of all plan fees, services delivered to the plan by plan providers regularly.
  - 408(b)2

- Monitor the timely deposits to the plan of employee contributions.

- Fidelity Bond in place covering not less than 10% of the plan assets (up to $1,000,000) and covering ALL plan fiduciaries and third parties that have access to or handle plan assets.

- Fiduciary Liability Insurance covering plan fiduciaries.

- Review of all plan fees paid from the plan participant accounts.
  - 404(a)5 (annually)
Plan Documents

☐ Plan document has received IRS approval and all required amendments.

☐ Our plan design reflects our needs.

☐ We have had our plan reviewed by ERISA legal counsel.

☐ We have and continue to distribute up-to-date Summary Plan Descriptions according to the law.

☐ Our plan specifically excludes those employees that we do not intend to cover including temporary employees, independent contractors and employees of affiliated employers.

☐ We have discussed with our providers any and all businesses that are owned by our primary owner and/or their family members.

☐ We maintain a record of all meetings and have minute reviewed by counsel.

☐ We provide required notices to Plan Participants and Government agencies as prescribed by ERISA.
Plan Investments

☐ Our plan has a written Investment Policy Statement.

☐ Our plan provides a broad range of investment alternatives.

☐ Our plan provides a broad range of investment alternatives
  - Quarterly
  - Semi-annually
  - Annually

☐ Investment reviews are conducted and measured against the Investment Policy Statement.

☐ Investment review analysis contains:
  - Modern Portfolio Theory
  - Peer Group Measurement
  - Correct Indices
  - Historical Performance (1 yr / 3yr / 5yr)
  - Expenses
  - Volatility
  - Style Drift Analysis

☐ Investment review is thoroughly documented to fiduciary file.

☐ We have documented procedures for fund analysis and replacement and we follow those procedures.

☐ Our plan is not limited to using funds from a specific family or families.

☐ Our plan is not restricted to using a specific number of funds from an individual fund family.

☐ Our plan identifies our Qualified Default Investment Alternative.
Employee Education

☐ Our plan has an active employee education program with regular communication to new employees and ongoing education programs.

☐ Our plan uses asset allocation models that employee may chose to adopt.

☐ Our plan provides participants with access to independent advice.

    Method used: ______________

404(c) Requirements

☐ No, our plan is not intended to comply with 404(c) requirements.

☐ Yes, our plan is intended to comply with the 404(c) requirements.

☐ If Yes, our Summary Plan Description or Notice provides the following:

    ☐ Participants have the ability to direct their investments.
    ☐ Has language indicating that the plan intends to comply with 404(c).
    ☐ Has language that may relieve the plan fiduciaries of liability for losses.
    ☐ Provides the name, address and phone of the 404(c) plan fiduciary responsible for providing information upon request and complying with participant’s instructions.

☐ All participants receive(d) information about all options offered under the plan.

☐ All participants have received or have access to information regarding the plan investment options.

☐ Form 5500 indicates that the plan intends to comply with ERISA 404(c).