

NAGDCA ANNUAL CONFERENCE 2009

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Fiduciary Issues for New Members

Moderator:
Sherry Mose, City of Houston (TX)

Speakers:
Vincent Galindo, Americh Massena & Associates
Edward Zagajeski, NY Metropolitan Transportation
Authority

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Specifics for Plan Fiduciaries

Presented by
Vincent Galindo, Consultant
Americh Massena & Associates
Portland, Oregon

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PEARLS OF WISDOM

- A few words from our lawyers: This seminar is not legal advice. Only your counsel can give you legal advice.
- Good results may keep you out of court, but a prudent documented process may allow you to prevail in court.



FIDUCIARY RESPONSIBILITIES

Documentation and maintenance of records

- Charter
- Investment Policies
- Minutes of actions and decisions
- Supporting documents and data



IMPORTANCE OF AN INVESTMENT POLICY

- Do you have one?
- Is it a sound policy?
- Do you follow it?
- When was it last reviewed?



INVESTMENT POLICY CONTENT

- Introduction and purpose
- Responsibilities
- Committee process
- Investment criteria and benchmarks
- Investment selection and monitoring
- Underperformance and termination



EXPENSES, REVENUE, AND FEES

- Transparency
- Reasonableness
- Competitiveness



EXPENSES, REVENUE, FEES

Fund	Assets	% of Assets	Expense Ratio	Expense \$	Rev Share	Rev \$
Capital Preservation						
Stable Value	\$10,000,000	50.0%	0.35%	\$35,000	0.20%	\$20,000
Fixed Income						
Total Return	\$750,000	3.8%	0.68%	\$5,100	0.25%	\$1,875
Bond Index	\$750,000	3.8%	0.20%	\$1,500	0.00%	\$0
Target Date Portfolios						
Ret Inc TRD Portfolio	\$500,000	2.5%	0.48%	\$2,400	0.25%	\$1,250
2010 TRD Portfolio	\$500,000	2.5%	0.64%	\$3,200	0.25%	\$1,250
2020 TRD Portfolio	\$750,000	3.8%	0.72%	\$5,400	0.25%	\$1,875
2030 TRD Portfolio	\$750,000	3.8%	0.76%	\$5,700	0.25%	\$1,875
2040 TRD Portfolio	\$550,000	2.8%	0.79%	\$4,345	0.25%	\$1,375
2050 TRD Portfolio	\$500,000	2.5%	0.82%	\$4,100	0.25%	\$1,250
Large Cap						
Large Cap Growth	\$500,000	2.5%	0.94%	\$4,700	0.35%	\$1,750
Large Cap Value	\$500,000	2.5%	0.96%	\$4,800	0.35%	\$1,750
Large Cap Blend Index	\$500,000	2.5%	0.10%	\$500	0.00%	\$0
Mid Cap						
Mid Cap Growth	\$400,000	2.0%	0.98%	\$3,920	0.35%	\$1,400
Mid Cap Value	\$400,000	2.0%	1.10%	\$4,400	0.25%	\$1,000
Mid Cap Blend Index	\$400,000	2.0%	0.20%	\$800	0.00%	\$0
Small Cap						
Small Cap Growth	\$250,000	1.3%	1.13%	\$2,825	0.35%	\$875
Small Cap Value	\$250,000	1.3%	0.98%	\$2,450	0.25%	\$625
Small Cap Blend Index	\$250,000	1.3%	0.23%	\$575	0.00%	\$0
International						
International Growth	\$500,000	2.5%	0.75%	\$3,750	0.25%	\$1,250
International Value	\$500,000	2.5%	0.98%	\$4,900	0.35%	\$1,750
International Index	\$500,000	2.5%	0.20%	\$1,000	0.00%	\$0
Grand Total	\$20,000,000	100.0%		\$191,385		\$41,150
		Weighted Average		0.91%		0.21%




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PARTICIPANT EDUCATION VS. ADVICE

- What are the risks?
- What is the process?
- What is the desired outcome(s)?

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Legal Requirements For A Plan Administrator

Presented by
Edward F. Zagajski
MTA Deferred Compensation Program
New York, New York

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WHO IS A PLAN FIDUCIARY

- ERISA Guidance
- Plan and Trust Documents
- Applicable State Law and Regulations

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FIDUCIARY PRINCIPLES

- Exclusive Benefit Rule
- Prudent Expert Standard

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IMPORTANCE OF WHETHER YOU ARE A PLAN FIDUCIARY

Personal Liability

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INVESTMENT ISSUES

- Reasonable Process to Select and Monitor Investment Options
- Investment Policy
- Document Process

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IS THE INVESTMENT PERMITTED BY:

- State Law and/or Regulation
- Plan Documents
- Investment Policy

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ERISA 404(c) Safe Harbor

- Participants Chose Where Their Contributions Are Invested
- Plan Needs To Provide Participants With
 - Broad range of investment alternatives
 - Sufficient information
 - Opportunity to exercise choice

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CONFLICTS OF INTEREST

- No Duty to Plan Sponsor
- No Duty to Subgroup of Participants
- Self-Dealing
- Prohibited Transactions

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PLAN FIDUCIARIES

- Board/Committee Members
- Plan Sponsors: Generally not fiduciaries
- Plan Administrators: Can be fiduciaries based on functions performed



WHEN PLAN ADMINISTRATORS ARE NOT FIDUCIARIES

- You do not have the authority to make any decisions as to plan policy, interpretations, practices or procedures
- DOL has identified certain tasks which do not involve fiduciary responsibility:
 - Apply plan rules to determine eligibility for participation/benefits
 - Calculate service for vesting
 - Preparation of communication material
 - Maintaining plan records
 - Preparation of government reports
 - Participant orientation
 - Advise participants of plan rights and options
 - Collection and allocation of participant contributions
 - Preparation of reports of participant benefits
 - Process claims
 - Make recommendations to Board or Committee for plan administration



SPECIFIC ACTIONS WHICH MAY INVOLVE FIDUCIARY DUTIES

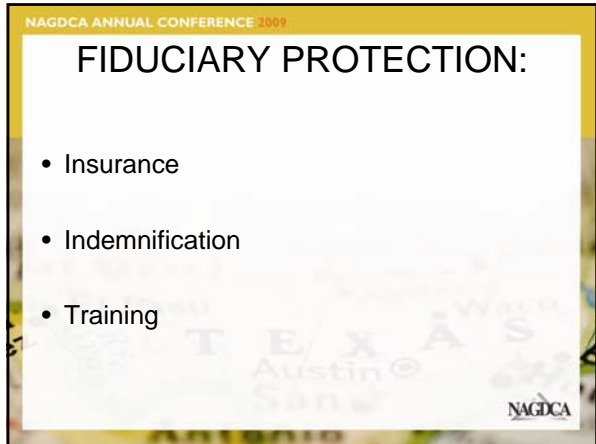
- Plan Expenses
- Hardship and Unforeseen Emergency Withdrawals
- QDRO's
- Blackout Periods
- Loans
- Responding to Participants
- Compliance with Plan



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FIDUCIARY PROTECTION:

- Insurance
- Indemnification
- Training



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Q&A