

WINNING PRACTICES
INNOVATIVE APPLICATIONS

**Best Practices & Lessons Learned from Private Sector
Defined Contribution Plans**

Moderator/Panelist: Judith Boyette, Hanson Bridgett LLP
Jeffrey Cable, Colorado PERA
Sherrie Grabot, Guided Choice
Mark Kordonsky, SageView Advisory Group

Presentations: Tuesday, Sept. 25, 2018 2:45-3:45 pm
Wednesday, Sept. 26, 2018 9:45-10:45 am

NAGDCA 2018 ANNUAL CONFERENCE

WINNING PRACTICES
INNOVATIVE APPLICATIONS

Best Practices and Lessons Learned

What We Will Cover Today

- Introduction—Why you need to listen to this presentation
- ERISA Standards That May Serve As Best Practices
- ERISA Standards That May Prove Problematic As Best Practices
- Lessons Learned--Recent Trends in Investment Structures
- Lessons Learned--ERISA Lawsuits Involving DC Plan Fiduciaries
- Key Takeaways

NAGDCA 2018 ANNUAL CONFERENCE

2

WINNING PRACTICES & INNOVATIVE APPLICATIONS

Why Should You Care About This Presentation?

- Be aware of best practices to better serve participants
- See which private sector/ERISA standards can serve as best practices
- See which private sector/ERISA standards could create problems
- Avoid litigation ---avoid type of lawsuits brought against ERISA plans
- You don't want to rely on sovereign immunity protecting you in all cases

WINNING PRACTICES & INNOVATIVE APPLICATIONS

Why Should You Care About This Presentation?

States generally apply prudence rules to fiduciaries of governmental plans

- The prudent person rule- looks at each investment in isolation
- The prudent investor rule (ERISA standard)—looks at entire portfolio and risk/reward (26 states have adopted)
- Some variation of the prudence standard

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

Why Should You Care About This Presentation?

Common Law Fiduciary Requirements

- Duty of loyalty
- Duty of prudent investment
- Duty to follow terms of trust

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

ERISA Standards That May Serve As Best Practices

1. Who is a fiduciary?

- Fiduciary is based on functions performed not a title

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

ERISA Standards That May Serve As Best Practices

2. Fiduciary Responsibility

- Loyal to the Plan
- Diversify plan investments
- Pay only reasonable plan expenses
- Provide participants needed information to make informed decisions

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

ERISA Standards That May Serve As Best Practices

3. Statement of Fiduciary Responsibilities

- Purpose is to reduce fiduciary liability
- Document processes used for each fiduciary responsibility
- Demonstrate that they have followed the documented process
- Follow Section 404c
- If defaulting, use one of the four investments types outlined by the DOL

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

ERISA Standards That May Serve As Best Practices

4. Process for selection of investments

- Investment Policy Statement
- Prudent Expert

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

ERISA Standards That May Serve As Best Practices

5. Claims and Appeals Procedures

- Documented and provided to participants, usually in SPD
- No filing fees or costs for filing claims and appeals
- Waiting period for decision is 90 days (180 days if extension applies)
- If claim is denied, the Plan must send a written notice
- Describe Plan's procedures and deadlines for submitting an appeal

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

ERISA Standards That May Serve As Best Practices

6. Communications

- Summary of Material Modification (SMM)
- Summary Plan Description (SPD)
- Individual Benefit Statement (IBS)
- Summary Annual Report (SAR)
- If automatic enrollment, Automatic Enrollment Notice
- If change requires, Blackout Period Notice

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

ERISA Standards That May Serve As Best Practices

7. Communications– Plan Related

- General Plan Information
- Administrative Expense Information
- Individual Expenses Information

WINNING PRACTICES

INNOVATIVE APPLICATIONS

ERISA Standards That May Serve As Best Practices

8. Communications– Investment Related

- Benchmark information
- Historical performance data
- Fee & expense information
- Website with investment specific information
- General glossary of investment terms
- Comparative format

WINNING PRACTICES

INNOVATIVE APPLICATIONS

ERISA Standards That May Serve As Best Practices

9. Standard ERISA Contract provisions

- Basics
- Standard of care– best is “expert”
- Confidentiality and HIPAA
- Investment Contracts
- “Reasonable” termination provisions
- Fee disclosure
- Signature line

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

ERISA Standards That May Serve As Best Practices

10. Standard ERISA Contract provisions

- Other provisions
- Provisions for problems

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

ERISA Standards That May Prove Problematic

1. Claims and Appeals Procedures

- Specific time to respond (i.e. 90 days or 180 if extension applies)
- Specific content for claim denial
- Consider using as standards in vendor agreements

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

ERISA Standards That May Prove Problematic

2. Communications-Investment Related

- Example: Meet requirements “similar to those prescribed in [Code section 404(c)] for private sector employers”
- Don’t always have to be identical

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

ERISA Standards That May Prove Problematic

3. Beneficiary Designations

- Rules differ from ERISA rules
- State law requirements may apply (i.e. automatic revocation upon divorce)
- Don’t have to be identical

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

ERISA Standards That May Prove Problematic

4. Statement of Fiduciary Duties

- State law may not be identical to ERISA rules
- If you commit to a particular standard, can be held to that standard contractually
- And—also held to state law standard

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

ERISA Standards That May Prove Problematic

5. Standard ERISA Contract Provisions

- Avoid any higher standards than State law for fiduciary
- If commit, can be held to that standard contractually in addition to any State law requirements that may apply
- Consider service standard with penalties for vendor rather than expressly adopting the “ERISA” standard

WINNING PRACTICES & INNOVATIVE APPLICATIONS

Lessons Learned: Colorado PERA

In 2011, PERA adopted white label structure for investments

- PERAdvantage funds have three tiers:
 - TRD's (QDIA)
 - Asset Class funds: Stable Value, Fixed Income, Real Return, Small/Mid Cap, Large Cap, International Stock, Socially Responsible Investing fund
 - TD Ameritrade Self-Directed Brokerage
- Limited investment choices based on asset classes to achieve better diversification

WINNING PRACTICES & INNOVATIVE APPLICATIONS

Lessons Learned: Colorado PERA

In 2011, PERA adopted white label structure for investments

- Ability to change investment managers quicker and without blackout periods
- Use of separate accounts and commingled funds for lower fees
- Revenue sharing used to offset investment fees for that investment fund
- 404a5 Fee Disclosure for PERA DC participants (Google "Colorado PERA Fund Fees")

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

Lessons Learned: Colorado PERA

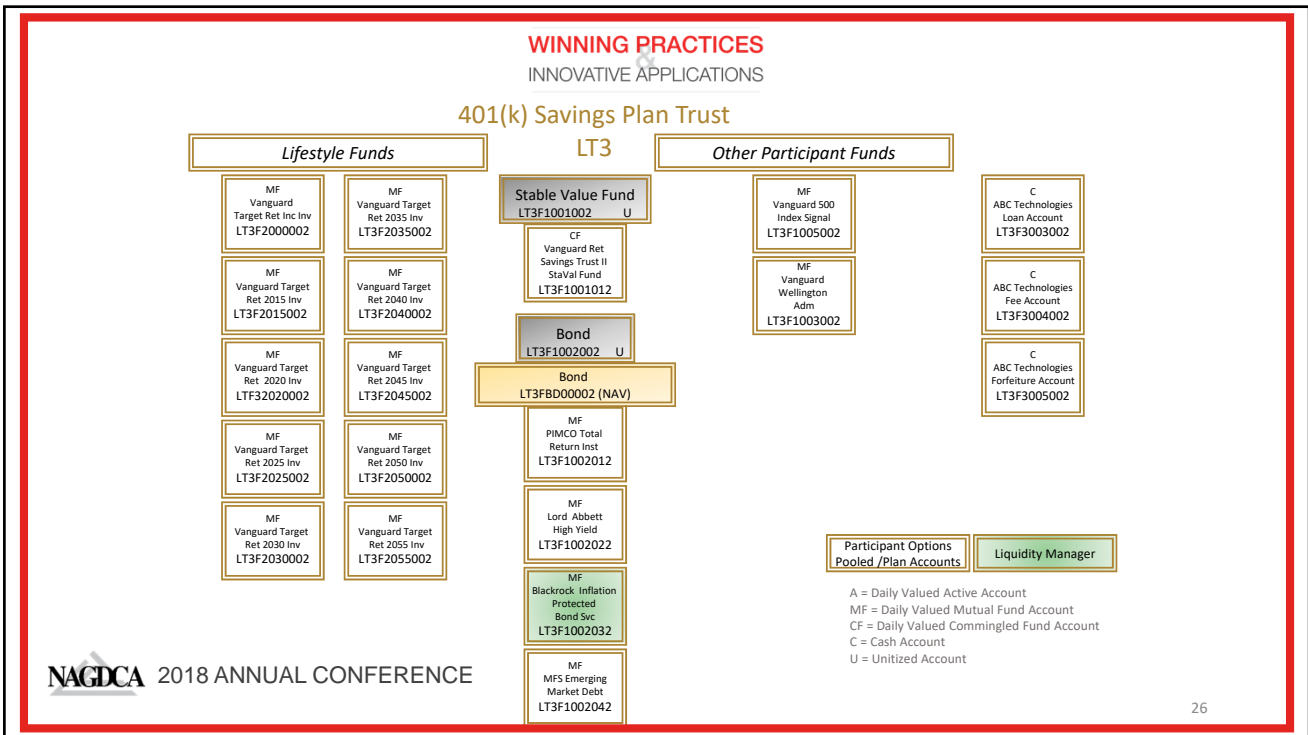
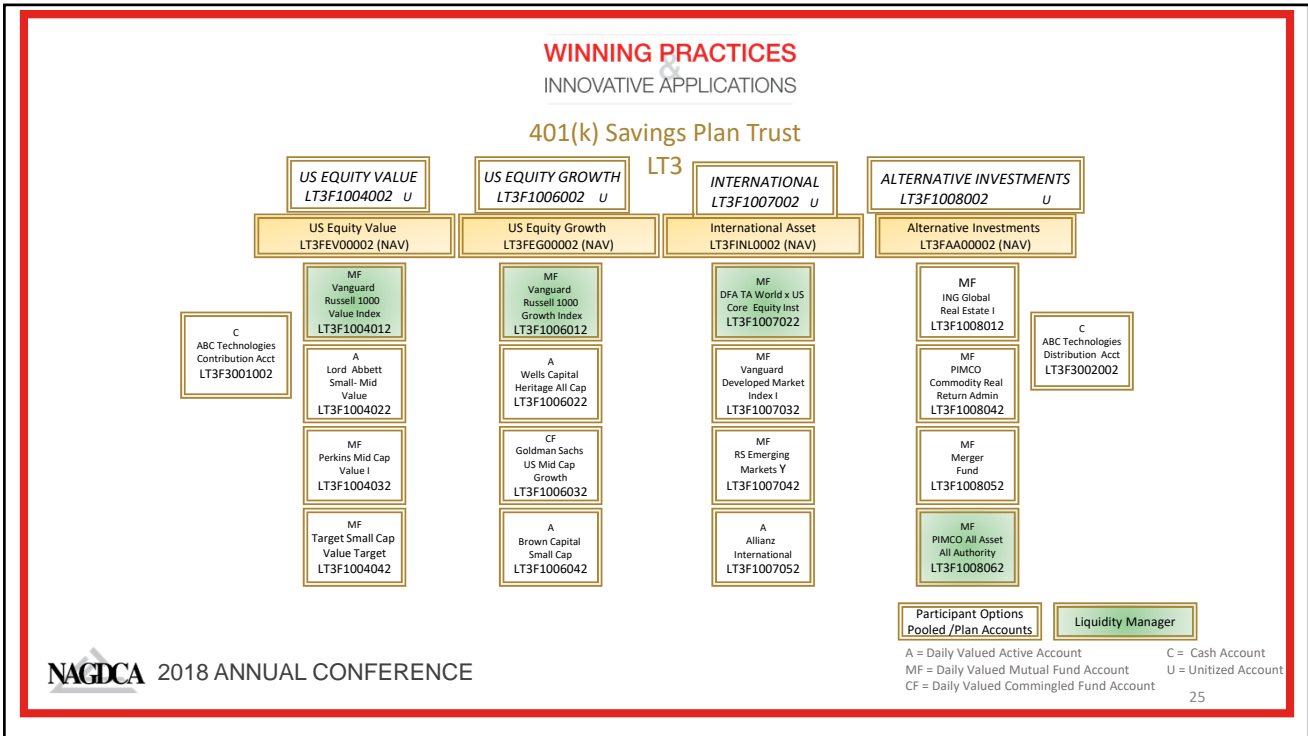
- Unbundled Investment Structure
 - No investments with recordkeeper, so participant advice is completely conflict free
 - Online Advice at no additional cost
 - Professional Management for a fee

- Investment Advisory Committee with RVK Investment Advisors
 - Quarterly meetings to review investment performance and PERAdvantage fund composition

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

Lessons Learned: Private Sector 401(k) Plans:

A Look at a Smaller Plan Experience



WINNING PRACTICES & INNOVATIVE APPLICATIONS

Lessons Learned: Private Sector 401(k) Plans:

- Fee sharing arrangements
 - Home Depot
- Investment selection
 - Home Depot, Philips, Lowe's, FirstGroup America

WINNING PRACTICES & INNOVATIVE APPLICATIONS

Key Take-Aways

- Stay Informed—Investment Trends and Fiduciary Challenges
 - Fiduciary standards under State law are similar
 - Plaintiffs' counsel looking at big \$\$ targets---public plans are big \$\$ targets
 - May involve similar issues (e.g. investment and recordkeeping fees/selection and monitoring)
- Pursue Best Practices---But...
 - Take care in formally adopting standards
 - Watch for state law conflicts

WINNING PRACTICES
&
INNOVATIVE APPLICATIONS

Questions????