CONGRATULATIONS

You’re sponsoring a valuable retirement plan for your employees, and BB&T is delighted to assist you in that effort. Employees will appreciate this important benefit, and you’ll have the continuing satisfaction of knowing that you’re helping them prepare for a financially secure retirement.

Sponsoring a retirement plan brings about new roles and responsibilities that present some unique challenges, such as collecting and transmitting employee contributions and making sure the plan is in compliance with laws and regulations.

But, you’re not in this alone. BB&T is eager to help you meet your fiduciary obligations. That’s why we’ve prepared this booklet — to help refresh and reinforce your responsibilities as a fiduciary.

Inside, we’ve summarized your legal requirements and highlighted specific duties, functions and principles to help guide your actions. We also have identified specific reports, support tools and services that BB&T provides to help you satisfy your obligations.

There are many specific tasks related to being a fiduciary. Although you can’t delegate your fiduciary responsibilities to others, you can seek assistance from experienced retirement plan professionals like BB&T. Our services provide the tools you need to fulfill your duties and make your job as plan sponsor less complicated and time-consuming.

Let’s get your refresher course started...

The information in this publication is for general information only and is not intended to provide legal or tax advice, or recommendations for any particular situation. Nothing in this booklet should be construed as legal or tax guidance, nor as the sole authority on any regulation, law or ruling as it applies to a specific plan or situation. Plan sponsors should always consult the plan’s legal counsel for advice regarding plan-specific issues.
**FIDUCIARY FRAMEWORK**

The Employee Retirement Income Security Act (ERISA) is the primary law governing retirement plan fiduciaries. Enforced by the Department of Labor (DOL), ERISA was enacted in 1974 to protect the interests of retirement plan participants by establishing standards of conduct, responsibility and obligation for employee retirement plan sponsors and fiduciaries. Fiduciary responsibility under ERISA is a topic with many facets, making it easy to get lost in the details. The following guidelines will help you understand the major requirements and give you a framework of knowledge for successfully accomplishing your duties.

1. **Understand your fiduciary role**
   Increased scrutiny from federal regulators makes it essential that you understand and fulfill your role and responsibilities as plan sponsor and fiduciary. While you don’t need to be able to quote chapter and verse of a particular compliance rule, you will need to be acquainted with the rules and your company’s procedures to satisfy them.

2. **Establish a foundation**
   Creating a plan committee composed of representatives from various areas of the company can be helpful in bringing expertise and diverse viewpoints to the common goal of maintaining an excellent employee benefit plan. Key functions of the committee would include the development of an Investment Policy Statement and the selection of the plan’s investment options and professional service providers.

3. **Monitor investments, providers and expenses**
   It’s not enough to select your investment alternatives and plan providers and then ignore them. Fiduciaries must regularly monitor the suitability and performance of the investment options, as well as the service standards of the providers, to make sure they meet the requirements of the plan.

4. **Review and document fiduciary goals and procedures**
   The risks of sponsoring a retirement plan can be minimized by setting goals, documenting them, and implementing proper procedures. Risks can range from complaints of improper investment choices offered to the mishandling of participant contributions. While the risks can be serious, reviewing and documenting goals can help you significantly reduce your fiduciary liability. A fiduciary calendar outlines important fiduciary activities, dates, and deliverables. It helps you plan for the year ahead, to keep you in compliance and help reduce your fiduciary liability.

5. **Educate plan participants**
   Plan fiduciaries may relieve themselves of liability for investment losses resulting from an employee’s decision-making in a participant-directed plan by providing participants with sufficient information to make informed investment decisions.

**STEP 1 — UNDERSTAND YOUR FIDUCIARY ROLE**

To manage your risk as a fiduciary, it is important that you understand the definition of fiduciary and be fully aware of your fiduciary responsibilities at all times.

**Definition of a Fiduciary**

To the extent that discretion is involved, many activities related to operating a retirement plan make the person or entity conducting them a fiduciary. Fiduciary status is not based on a person’s job title. Rather, it is based on the functions performed for the plan.

According to ERISA, a fiduciary is anyone who performs any of the following plan functions:

- Exercises discretionary authority over a plan or its assets
- Renders investment advice for a fee
- Exercises discretionary authority over plan administration

A plan must have at least one named fiduciary having control over the plan’s operation. This named fiduciary can be identified by a person’s name or by office, department or entity. The employer (as the plan sponsor) is always a fiduciary, since the employer has the authority to administer a plan and choose its investments.

**Types of Fiduciaries**

- Investment managers, if they have control over the management and disposition of the assets
- Investment consultants, if they render investment advice
- Plan sponsors
- Investment committees
A directed trustee is always a fiduciary under ERISA because the directed trustee has some limited authority or control respecting the management or disposition of trust assets. The directed trustee must follow the "proper" direction of the plan sponsor only if: 1) it is made in accordance with the terms of the plan, and 2) it is not contrary to ERISA. A directed trustee has an extremely limited duty to inquire about the prudence of a particular decision.

Who is not a fiduciary? Among this group are mutual fund managers and record keepers. Their activities do not involve discretion with respect to the administration of the plan, so they are usually not considered fiduciaries.

Fiduciary Duties

ERISA defines the fiduciary standards that apply to all actions performed by a fiduciary. The standards of conduct are high because retirement plan fiduciaries act on behalf of participants and beneficiaries.

The six fundamental principles that guide ERISA fiduciaries are:

1. Follow the "exclusive benefit" rule

ERISA requires fiduciaries to act solely in the interest of participants and beneficiaries. This means that the plan is to be operated for the exclusive benefit of the employees and beneficiaries who are covered by it and not for any other purpose.

Plan sponsors must make decisions that recognize the impact of the results on participants’ benefits. Asking questions such as “How will this decision impact the plan and plan participants?” and “What result is in the best interest of the plan and its participants?” will help you adhere to the exclusive benefit rule.

2. Act prudently

According to ERISA, a fiduciary must be familiar with all aspects of his or her responsibilities and be able to capably and prudently perform his or her duties with the care, skill and diligence of a person who is familiar with such matters. This is the "prudent person" rule. It is essential to follow the prudent person rule in the selection and monitoring of investment options and service providers.

A good-faith effort isn’t sufficient. Under ERISA, fiduciaries are measured by the standard of an experienced person. Most fiduciaries are not investment experts and must seek guidance from knowledgeable investment professionals.

3. Diversify the plan’s assets

ERISA requires fiduciaries to diversify the plan’s investment choices in a way that could help minimize the risk of investment losses. A "prudent person" would carefully outline the investment selection criteria, how investment performance will be reviewed, and what steps would be taken to adjust the level of diversification should it become necessary.

This is often accomplished through the development and use of an Investment Policy Statement, which covers in detail the process of selecting and monitoring the plan’s investment choices.

4. Adhere to the document

All ERISA plans must be established and maintained pursuant to a written document. Fiduciaries must abide by the terms of the written plan document, unless doing so would violate one of their other fiduciary obligations.

5. Avoid prohibited transactions

ERISA and the Internal Revenue Code prohibit fiduciaries from entering into transactions with parties who have a significant relationship with the plan. Under ERISA, a "party in interest" can be a plan fiduciary; persons providing services to the plan; the employer sponsoring the plan; employees, officers, directors, or 10% owners of the employer; and relatives of any other party in interest.

Examples of prohibited transactions include:

- Lending money or extending credit between the plan and a party in interest
- The transferring to, or use of, plan assets by an interested party
- Self-dealing (dealing with the assets of the plan in the fiduciary’s own interest)
- Conflict of interest (acting in a plan transaction on behalf of a party whose interests are adverse to those of the plan or participant)

Another category of violations involves what are known as fiduciary breaches. Examples include:

- Failure to offer diverse investment choices
- Failure to deposit participant deferrals and loan repayments in a timely manner
- Providing misleading information about benefits or investments
- Failure to strictly follow the terms of the official plan document

Penalties for engaging in a prohibited transaction or committing a fiduciary breach can be severe. ERISA provides for criminal penalties of up to $100,000 for individual fiduciaries ($500,000 for corporations) and up to 10 years in prison. Criminal penalties are in addition to civil penalties including: the repayment of plan losses, the surrender of any profits, and payment of legal fees. Under the Internal Revenue Code, an excise tax penalty can be imposed. Lawsuits from participants and others can bring additional costs.

To help manage fiduciary risk, you should educate all of your plan’s fiduciaries about these violations and the potential penalties.

6. Monitoring fees for reasonableness

In order to exist, retirement plans require a variety of services to be performed by:

- Plan Administrators
- Recordkeepers
- Custodians
- Investment Advisors
- Consultants
- Investment Managers

In general, in order to be reasonable, fees must match the services provided and must not be duplicative or excessive.

To an unknown extent, the dynamic marketplace helps ensure that fees are reasonable.

Department of Labor disclosure requirements help with fee transparency.

BB&T provides a detailed fee disclosure document to help you understand and monitor plan fees and expenses.

A fiduciary has an ongoing duty to monitor fees to ensure they remain reasonable and to provide plan participants with sufficient information about fees to enable them to make informed investment decisions.
STEP 2 — ESTABLISH A FOUNDATION

With today’s regulatory and “litigation-happy” environment, it is advisable to establish a plan committee to oversee the plan. Usually, the plan committee’s charge is to make policy decisions and interpretations necessary to administer the plan. This can range from looking at overall plan participation levels to carefully monitoring the performance of the plan’s investment options.

Periodic meetings of the committee could focus on:
- Plan design
- Benefits cost management
- Investment trends and review
- Participant communications
- Plan administration and compliance
- Fiduciary management

In addition, the plan committee often has responsibility for making sure that the ERISA fidelity bonding requirements are met. Bond coverage must be at least 10% of plan assets, up to a maximum bond amount of $500,000. If employer stock is held in the plan, the maximum bond amount increases to $1,000,000.

Establishing a plan committee to oversee the plan brings different levels of knowledge and experience to the table, which may be beneficial in day-to-day operations. Having a plan committee can also be an effective way to raise awareness of fiduciary roles and responsibilities among those involved with the plan.

Adopt an Investment Policy Statement

Similarly, you should adopt and then follow an Investment Policy Statement. An Investment Policy Statement outlines in detail the investment strategy to meet the plan’s goals. (A retirement plan’s primary goal is obviously to enable participants to invest for a financially secure retirement.) The purpose is to document the guidelines and standards used to choose and, if necessary, modify the plan’s investment alternatives to specify how the performance of those investment options will be measured and reviewed on a periodic basis.

Select Investment Options

When selecting investment options, ERISA requires that the plan’s fiduciaries be objective and thorough. It is important to focus on asset allocation and diversification in order to provide a suitable and broad range of alternatives to participants.

The plan’s Investment Policy Statement is essential to this process. It should clearly identify the factors used to choose the investment options and specify the due diligence actions to be taken in evaluating the choices.

The key steps in selecting investments include:
- Consider hiring a professional retirement plan investment advisor
- Review the Investment Policy Statement
- Review available asset classes (for example, domestic stock, fixed income, etc.)
- Consider employees’ investment knowledge/sophistication and risk tolerance
- Review share classes and expenses (costs to the plan sponsor, if any, as well as to individual investors)

Specific questions to ask may include:
- What is the fund’s objective?
- Are there special risks with this option? (for example, currency risks in international stock funds)
- What is the fund’s track record and performance relative to peers?
- Are the investment expenses reasonable?

Document Everything

It is extremely important that everything you do as a fiduciary be documented. Fiduciaries must prepare and retain documentation of meetings, communications, deliberations and decisions to demonstrate their prudence and adherence to the plan document and Investment Policy Statement. Additionally, they must show that the actions being taken are in the best interests of the plan and plan participants.
STEP 3 — MONITOR INVESTMENTS, PROVIDERS AND EXPENSES

Continuous monitoring of the plan’s investment choices, service providers and operation costs is essential.

Again, the plan’s Investment Policy Statement plays a key role. It should:
- Specify the plan’s investment objectives and how they are to be reached
- Identify standards for selecting and monitoring investment options
- Define performance measurement criteria and selected investment categories
- Identify standards such as a fund manager’s tenure

The plan committee should periodically review each investment option in light of the following:
- Does it still meet the objectives of the plan?
- Is it consistent with the investment style or asset class it was intended to fill?
- How does historical performance compare to peers and any relevant benchmarks?
- Is performance appropriate given market and economic conditions during the period?
- Is the fund staying true to its stated investment objective?
- How do the fees compare to the fund’s peer group?

As a result of the review, it may be appropriate to consider placing a particular investment choice on a “watch list” or to replace it immediately. It may also be useful to expand (or shrink) the number of choices. Keep in mind the fiduciary duty to weigh the impact on participants and their benefits.

Knowledge of the level of investment sophistication of the employee population will be important, especially for participant-directed plans. Distributing additional information to participants above the ERISA-required disclosures about investment choices, is always prudent, including details about periodic reviews and the results.

Monitor Service Providers

As fiduciaries, plan sponsors must ensure that providers have the experience, technology, staff and financial resources to meet the plan’s needs. A provider may be a recordkeeper, third-party administrator, actuary, accountant, investment advisor or insurance agent.

When selecting and monitoring providers, sponsors should:
- Be very clear on the specific services to be performed, and when and by whom
- Verify licensing requirements to ensure that providers (for example, an investment advisor) have up-to-date licenses from the appropriate authority if necessary
- Confirm that any non-bank provider has a fidelity bond, if plan assets will be handled
- Review specific fee disclosures that service providers must deliver under ERISA Section 408(b)(2)
- Ask for references, an SOC1 report and industry rankings

Monitor Plan Expenses

With respect to fees, how do you determine if the expenses are reasonable? A starting point is to compare charges from several providers for a specific service that the plan requires. There is no specific rule that states you must choose the least expensive. The only requirement is that the cost be reasonably related to the service being performed for the plan.

In performing your monitoring duty, it’s important not to neglect the big picture. While a fiduciary should regularly evaluate the services and functions performed by the plan’s service providers, remember that the review should be done in the context of what is best for your plan’s participants and beneficiaries. There could be instances where, for example, your review determines that a particular fee is higher than normal. But, the value received by participants for that service could be more than offset by the cost.

Don’t forget to look at key indicators, such as participation rates, income replacement ratios, withdrawal activity and the number of participants who voluntarily reduce or discontinue their contributions to the plan. They may signal the need to improve educational efforts and reinforce the benefits of the plan.

As with all other fiduciary duties, you should always document all actions taken and decisions reached. Be sure to include the thought processes and reasoning for all decisions.
STEP 4 — REVIEW AND DOCUMENT FIDUCIARY GOALS AND PROCEDURES

Basic fiduciary functions by their nature carry some risk, since you’re responsible for someone else’s assets. Likewise, there is risk in sponsoring and operating an employee benefit plan. But rest assured, the risk can be controlled.

In addition to establishing a plan committee and adopting an Investment Policy Statement, there are other steps you can take to manage fiduciary risk, such as:

**Hiring a professional retirement plan advisor**
A professional retirement plan advisor will construct a strong investment array that is representative of multiple investment managers and asset classes. The tangible impact for your plan is demonstrated in a number of areas:

- Investment manager selection and monitoring
- Reasonableness of fees
- Efficiency
- Retirement readiness among participants
- Advice based on ERISA standards

**Hiring a corporate trustee for the plan**
ERISA requires retirement plan assets to be held in a trust. One or more individuals, or an entity such as a bank or trust company, may be appointed as trustee. A trustee may have discretionary powers or take direction from another person or entity who assumes discretionary authority. In this case, the trustee’s role is that of a “directed trustee”. In a participant-directed plan, the trustee is typically taking individual investment instructions from participants or plan sponsors.

Duties of the trustee may include:

- Protecting trust property against theft or loss
- Maintaining records on investments, contributions, distributions and other transactions
- Sending contributions to funding agents (mutual fund companies)
- Ensuring prohibited transactions do not occur under ERISA or the Internal Revenue Code.

**Developing written administrative procedures**
In order to be able to demonstrate that the fiduciaries have followed the “exclusive benefit” and “prudent person” principles, it’s essential to have written procedures that explain how different plan features are administered. These types of written procedures ensure fair treatment of all participants and demonstrate the fiduciary’s adherence to the fiduciary fundamentals. The written procedures must be followed.

**Creating a fiduciary calendar** for the full year ahead will help in planning the resources for timely completion and avoid last minute rushes and surprises.

**Conducting informal internal audits** can be very helpful in identifying administrative issues that might require stronger procedures or different staffing. A self-audit might focus on the timing of transmitting participant contributions and loan repayments to the plan’s trustee, in order to ensure compliance with ERISA.

BB&T can help you establish written procedures and create a fiduciary calendar.

STEP 5 — EDUCATE PLAN PARTICIPANTS

An effective communication strategy is integral to the success of any retirement plan. Helping participants understand how much money they will need at retirement and how to invest their retirement savings usually leads to higher participation rates, higher contributions and positive outcomes for participants at retirement.

ERISA Section 404(c) may relieve plan fiduciaries of liability for investment losses that result from an employee’s decision-making in a participant-directed plan, such as a 401(k) or 403(b) plan. If participants are provided sufficient information to make informed investment decisions and they control their investments, the plan’s fiduciaries will generally not be legally responsible for the participants’ investment decisions.

Practical steps to comply with 404(c) include:

- Partner with experienced service providers for compliance assistance
- Confirm that the plan’s investment options satisfy the “broad range” rule
- Announce your intent to comply with 404(c) to the plan’s participants in the Summary Plan Description
- Be sure to make prospectuses, performance reports, etc. readily available to participants

Disclosure regulations require fiduciaries to communicate with eligible and current plan participants as follows:

- Offer a broad range of investment options
- Allow transfers/exchanges among/between options at least quarterly
- Provide participants with the following information at least annually (and update during the year as needed):
  - General plan-related information (how to invest, options available and investment managers)
  - General information on administrative expenses (such as legal, accounting and recordkeeping fees)
  - General information about individual expenses that may be charged to a participant’s account, such as loan or distribution fees
  - Specific investment information (performance data, expense ratios, fees and relevant websites)
- Provide fiduciaries a quarterly statement with administrative expenses and individual expenses actually charged to the participant’s account
- Make available upon request certain investment documents (such as prospectuses, financial statements or reports, and lists of constituent assets of any investment option)

OTHER CONSIDERATIONS

Unfortunately, a fiduciary can’t guarantee himself or herself total protection from claims of fiduciary violations. But there are many practical steps, in addition to those already mentioned, that fiduciaries can take to manage overall fiduciary risk.

Some of these steps are:

- Follow the Department of Labor’s “timely deposit” rule covering participant contributions and loan repayments
- Arrange and carefully monitor the timely preparation and analysis of compliance testing (for example, top-heavy and nondiscrimination testing)
- Conduct self-audits
Verify that the plan’s ERISA fidelity bond is up-to-date and is in an amount at least equal to the legally required minimum.

Engage an ERISA 3(38) Investment Manager to significantly limit your ERISA exposure for investment options.

BB&T will gladly work with you to get your fiduciary liability under control and lessen the burden of your fiduciary responsibilities. Remember that the starting point in mounting a successful effort is to follow BB&T’s fiduciary management program:

1. **Understand your fiduciary role**
2. **Establish a foundation**
3. **Monitor investments, providers and expenses**
4. **Review and document fiduciary goals and procedures**
5. **Educate plan participants**

A complete list of fiduciary duties and risk management steps would take many pages, and still might not be complete for your plan. Here are a few suggestions applicable to most plans, and how BB&T can help:

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<tr>
<th>Fiduciary Duty</th>
<th>BB&amp;T Can Help You</th>
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<tbody>
<tr>
<td>Keep your plan document up to date</td>
<td>✓</td>
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<tr>
<td>Identify all plan fiduciaries and make them aware of their roles</td>
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<tr>
<td>Establish a plan committee</td>
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<tr>
<td>Develop an Investment Policy Statement</td>
<td>✓</td>
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<tr>
<td>Obtain an ERISA fidelity bond</td>
<td>✓</td>
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<tr>
<td>Select the plan’s investment options</td>
<td>✓</td>
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<tr>
<td>Create policies and procedures</td>
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<tr>
<td>Conduct and review compliance testing</td>
<td>✓</td>
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<tr>
<td>Conduct an annual review of the plan’s investment options and performance</td>
<td>✓</td>
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<tr>
<td>Prepare a participant communication strategy</td>
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<tr>
<td>Complete required government filings</td>
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<tr>
<td>Maintain a central due diligence file with plan committee meeting minutes, etc.</td>
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<tr>
<td>Watch for prohibited transactions and fiduciary breaches</td>
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<tr>
<td>Prepare annual “safe harbor” notice for plan participants (note: plan sponsors are responsible for distribution to participants)</td>
<td>✓</td>
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In addition to the confidence resulting from meeting the statutory and regulatory requirements placed on plan sponsors and fiduciaries, you’ll enjoy the satisfaction of knowing that you’re doing the right thing for participants by giving them an excellent opportunity to prepare for a financially secure retirement and reach their savings goals.

BB&T is ready, with the highest level of experience and expertise, to help you understand and meet your fiduciary responsibilities.

Don’t think that you have to do this alone. Take advantage of the services and resources offered by BB&T Retirement and Institutional Services.