

Legislative and regulatory bulletin

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Be in the know: Fiduciary standards for state and local government retirement plans

The fundamental duties and obligations of plan sponsors and other fiduciaries that oversee retirement plans for private sector workers are set forth in the Employee Retirement Income Security Act of 1974 (ERISA) and are designed to protect plan participants and beneficiaries by holding fiduciaries to a high standard of conduct. Over the 40-plus years since Congress enacted ERISA, these fiduciary standards have been shaped and refined by court decisions and Department of Labor (DOL) guidance.

ERISA's fiduciary provisions do not apply to government plans, but that does not imply a lower level of accountability. To determine the responsibilities of trustees and other fiduciaries of state and local government plans, one needs to look to the statutes and regulations of the particular state. Interestingly, the language concerning fiduciary duties in many state statutes looks a lot like ERISA's.

Fiduciary duties under ERISA

Like the duties that apply to government plan fiduciaries, ERISA's fiduciary duties are generally derived from the law of trust. Trustees owe a duty of loyalty and a duty of prudence to their trusts' beneficiaries. These duties are expressed in section 404(a)(1) of ERISA as follows:

Loyalty: "... a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and [] for the exclusive purpose of ... providing benefits to participants and their beneficiaries ... and defraying reasonable expenses of administering the plan."

Prudence: "... a fiduciary shall discharge his duties with respect to a plan ... with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man 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."

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In addition, fiduciaries must diversify their plans' assets, follow the provisions of their plans' documents and avoid conflicts of interest and other specified prohibited transactions.

Fiduciary duties under state law

So how similar are the laws outlining the responsibilities of fiduciaries of state and local government plans? In many states, the relevant statutes are nearly identical to ERISA. For example, the state of Illinois describes the duties of fiduciaries as follows:

Loyalty: "A fiduciary ... shall discharge his or her duties with respect to a retirement system or pension fund solely in the interest of the participants and beneficiaries and ... for the exclusive purpose of ... providing benefits to participants and their beneficiaries [] and defraying reasonable expenses of administering the retirement system or pension fund."

Prudence: "A fiduciary shall discharge his or her duties with respect to a retirement system or pension fund ... with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man 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."¹

In other states, the laws are not identical to ERISA but essentially impose similar duties of loyalty and prudence on government plan fiduciaries. Take Arkansas, for example:

Loyalty: "Trustees shall invest and manage the trust assets solely in the interest of the members and benefit recipients of the trust."²

Prudence: "Trustees shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustees shall exercise reasonable care, skill, and caution."³

Importing ERISA into state laws

A few states specifically incorporate ERISA provisions or DOL rules into their laws. For example, after describing the fiduciary duties of loyalty and prudence using language similar to ERISA's, Florida's statute goes on to say:

"The performance of the investment duties set forth in this paragraph shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 ..."⁴

¹40 Illinois Compiled Statutes Section 5/1-109

²Arkansas Code Section 24-2-614

³Arkansas Code Section 24-2-611

⁴Florida Statutes Section 121.4501(15)(a)

Another example is California, which specifically incorporates ERISA section 404(c) to relieve fiduciaries of local government 457 plans of responsibility for participants' investment choices.

“Notwithstanding any other provision of law, participants choosing individually directed investments shall relieve the trustee and local agency of responsibility under the terms of the plan and trust. That relief shall be conditioned upon the local agency compliance with communication and education requirements similar to those prescribed in [section 404(c) of ERISA] for private sector employers.”⁵

NEXT STEPS

Government plan fiduciaries should consider reviewing the laws in their state to determine the standards that apply to them. In doing so, they are likely to find that their responsibilities as fiduciaries are similar to those required of fiduciaries of plans subject to ERISA. Consequently, fiduciaries of state and local government plans may want to consider employing some of the best practices that ERISA fiduciaries have adopted over the years. Financial advisors and consultants can help educate fiduciaries about these practices.

⁵California Government Code Section 53213.5(b)

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