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PARTICIPANT-DIRECTED ERISA PLAN FIDUCIARY GUIDE

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USE BY GOVERNMENTAL PLANS



This fiduciary guide was created to provide you, a fiduciary of a participant-directed defined contribution plan, with general information that you may find helpful in complying with your fiduciary responsibilities. Although governmental plans are not subject to the Employee Retirement Income Security Act of 1974 (ERISA), many states have fiduciary statutes that are similar to, and do not conflict with, ERISA.

As the sponsor of a governmental plan, your specific fiduciary responsibilities are established by state and local law and the terms of your plan document. Many state fiduciary statutes may not be as detailed as ERISA's fiduciary principles, but are generally similar. We have designed this fiduciary guide to provide a simplified explanation of basic fiduciary responsibility, and it can be useful to any governmental plan sponsor who chooses to use ERISA fiduciary principles as a best practice.

This fiduciary guide is not a legal interpretation of your responsibilities under state law, nor is it intended to be a substitute for the advice of a retirement plan professional.

Appendix A is a fiduciary checklist designed to assist you in fulfilling your fiduciary responsibilities. As a governmental plan sponsor, some of the items may not apply to your plan. We suggest that you consult with counsel or other experts to determine whether this list is appropriate or sufficient for your plan.

Appendix B is a checklist of the general participant fee disclosures that ERISA plans are now required to provide to employees. Governmental plan sponsors are not required to provide fee information in this specific format, but may choose to provide the ERISA-compliant participant fee disclosures as a best practice. Even if you don't choose to use ERISA fee disclosure documents, the remainder of this fiduciary guide serves as a best practice.

Appendix C is an ERISA Section 404(c) checklist that governmental plans may choose to follow. ERISA plan fiduciaries who meet all of the requirements of 404(c) are not liable for losses resulting from the investment choices made by participants.

For more information, contact your adviser, consultant or Great-West representative.¹

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INTRODUCTION

Maintaining a healthy retirement savings plan requires some time and effort on your part, and Great-West Retirement Services[®] understands that you may have questions and concerns regarding your fiduciary obligations.

Great-West Retirement Services has created this manual to provide you, a fiduciary of a participant-directed retirement plan, with general information that you may find helpful in complying with your fiduciary responsibilities under the Employee Retirement Income Security Act of 1974 (ERISA).¹

MEETING YOUR FIDUCIARY RESPONSIBILITIES

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Please note that Great-West Retirement Services cannot provide you with legal or tax advice regarding your plan or your fiduciary duties. For that type of assistance, consider consulting with your own ERISA attorney or advisor.

The Plan Fiduciary

As the sponsor of your qualified retirement plan, you are offering your employees a great savings opportunity, and you have assumed some responsibility as well. As plan sponsor of an ERISA-governed retirement plan, you have a number of fiduciary duties and a standard of conduct imposed upon you by ERISA. By understanding your fiduciary role and responsibilities, you are in a better position to handle your fiduciary duties appropriately.

A plan fiduciary is ultimately responsible for maintaining the plan, and your employees place their trust in you to keep the plan in full compliance with applicable law. This obligation is an important one, but it may not be as daunting as you may think. With careful attention to your responsibilities, the plan fiduciary role, although challenging, can be rewarding as well.

Who Is a Plan Fiduciary?

Under ERISA, fiduciary status is attributed to anyone specifically named as a fiduciary in the plan document or to persons performing certain functions on behalf of the plan. A plan administrator or named fiduciary is considered a plan fiduciary with respect to not only the areas of plan operation over which it exercises discretionary authority, but also with respect to plan operations over which it exercises authority in selecting and monitoring the providers retained to provide services to the plan. Other plan fiduciaries can include:

- ▶ Any person specifically named as a fiduciary in the plan document, which may include the plan administrator, an administrative committee or plan trustees
- ▶ Any person with discretionary authority or discretionary responsibility over the administration or management of the plan
- ▶ Any person who exercises any authority or management or disposition of plan assets
- ▶ Any person rendering or with authority or responsibility to render investment advice for a fee or other compensation with respect to the plan's investment options
- ▶ Any Investment Manager, defined under ERISA as any fiduciary that is a bank, insurance company or registered investment adviser with power to manage, acquire, or dispose of plan assets and who acknowledges in writing that he or she is a plan fiduciary

Plan Fiduciary

A plan fiduciary is ultimately responsible for maintaining the plan, and your employees place their trust in you to keep the plan in full compliance with applicable law.

Named Fiduciary

A named fiduciary is one who has the ultimate authority to control and manage the operation and administration of the plan.

Who Is NOT a Plan Fiduciary?

If the person performing services for the plan has no discretionary authority or control over the plan or plan assets, that person will not be considered a plan fiduciary in most cases. The services provided by the following persons generally do not cause the person to be considered a plan fiduciary:

- ▶ Attorneys, accountants, actuaries and consultants
- ▶ Persons performing ministerial or administrative functions for the plan as directed by a plan fiduciary
- ▶ Service providers, such as record keepers that do not perform any fiduciary functions and are not identified as fiduciaries in the plan document

Co-Fiduciary Liability

Some plan sponsors are under the mistaken impression that selecting one or more persons to serve as a plan fiduciary eliminates the plan sponsor's further fiduciary responsibility or liability. As the plan sponsor, however, you remain a fiduciary regardless of the number of other plan fiduciaries you may select. In fact, ERISA imposes co-fiduciary liability in certain situations. You may be held responsible for the acts or omissions of other co-fiduciaries. For example, if you know that another plan fiduciary has committed

a fiduciary breach and you knowingly participate in that act or omission, you may also be liable for that breach. Likewise, if you have knowledge of a breach by another plan fiduciary (or should have had knowledge of it) and you fail to make reasonable efforts to remedy the breach, you could be held responsible for that breach.

For example, if you retain a consultant or broker to provide the plan with investment information, but you retain all discretion over the investment options chosen for the plan, the consultant or broker is generally not a fiduciary. On the other hand, the consultant or broker would be considered a fiduciary if they make investment decisions for the plan for a fee or other compensation, and you may have co-fiduciary liability for their actions.

A fiduciary's exposure to co-fiduciary liability may be less when an appointed Investment Manager makes investment decisions for the plan. In that circumstance, the fiduciary that appointed the Investment Manager would be responsible for the prudent selection and monitoring of the Investment Manager and would have co-fiduciary liability if the fiduciary actively participated in the breach, enabled the breach to occur, had knowledge of the breach, or knowingly concealed a breach, but the fiduciary would not otherwise have liability for actions taken by the Investment Manager.

Stay Responsible

Generally, plan fiduciaries that hire or appoint other fiduciaries remain liable for the prudent selection and monitoring of those fiduciaries. Plan fiduciaries may be liable for the acts of the hired or appointed fiduciaries.

Diversification

The prudent man standard requires plan fiduciaries to evaluate the investment options to be made available under the plan and to generally offer a diverse range of investment options to plan participants to minimize the risk of large losses.

Plan Document

The plan document is your manual for operating and administering the plan, and you must keep it updated to comply with ERISA and the Internal Revenue Code.

A Plan Fiduciary's Roles and Responsibilities

A plan fiduciary has a variety of roles and duties with respect to the plan and must perform those duties prudently and solely in the best interest of plan participants and beneficiaries. ERISA can be used by plan fiduciaries to guide them toward a sound, well-maintained plan. The ERISA principles that plan fiduciaries are expected to follow include:

Prudent Man Standard of Care – ERISA requires you to act with the care, prudence, skill and diligence that a knowledgeable and prudent person would use in a similar situation. The following are some general guidelines for prudent fiduciary actions:

- » Carry out your duties in accordance with the terms of the plan document, using good judgment and sound processes when handling the affairs of the plan.
- » Consider hiring experts to aid in making decisions with or for the plan if necessary. Fiduciaries often hire corporate trustees, attorneys, accountants and Investment Managers, to name a few. The plan sponsor's fiduciary liability, however, cannot be waived merely because an expert is hired.
- » Careful selection of the expert is necessary to comply with ERISA's prudent man rule, and the performance of all persons retained must be continually monitored.

Prudent Selection and Monitoring of Service Providers – Choosing the service providers for your plan, and ensuring that those providers continue to provide valuable service for a reasonable fee over time, are fiduciary decisions that must be made in accordance with the plan document and the prudent man standard of care. Most service providers are required by ERISA to give you detailed information about the fees they will charge and the services they will offer, as well as to identify themselves as a fiduciary if they are offering fiduciary services. You are responsible for making sure that you collect this information, that you understand it, and that ultimately the fees are reasonable in light of the services offered.

Once you have collected and understood a service proposal, you must decide whether it's reasonable. Your job is not necessarily to find the lowest cost provider but rather to make sure that the fees are reasonably competitive given the range and quality of services offered. In order to make this determination you may want to consider your past experience with paying for plan services, fee benchmarking data, past effectiveness of the service provider, and other factors. You may also wish to consult with experts to evaluate competing proposals.

You should also receive information from your plan's service providers if there is a change to what was contained in their initial disclosure. If there is a change to any of the investment related fees such as sales loads, surrender charges, expense ratios, etc., that information must be updated at least annually. If there is a change to other types of fees or services, the change must generally be communicated within 60 days of when the service provider knows of it.

The Department of Labor has defined what information service providers are required to give you about their fees and services in order to avoid a violation of ERISA's prohibited transaction rules. You are responsible for understanding what information you should be receiving and for making sure you get it. If you don't receive all the required information or you don't understand it, you should make a written request for additional information. The additional information should be provided to you within thirty days of when you request it. If it is not provided within thirty days, you should consult with an ERISA attorney and you may need to file a report with the Department of Labor and/or terminate the services of the service provider in order to avoid engaging in an ERISA violation.

Loyalty – One of the most important of your fiduciary duties is that of loyalty to the plan participants and beneficiaries. As an employee you may be inclined to put the interests of the company ahead of the interests of the plan. ERISA specifically requires you to put your duty as a plan fiduciary ahead of your corporate responsibilities when you are making a decision as a plan fiduciary. Called the “exclusive benefit rule,” you must act solely in the best interests of the plan and its participants and beneficiaries.

Follow the Plan Document – The plan document can be viewed as the contract between the plan sponsor and the plan participants and beneficiaries. The plan document is your manual for operating and administering the plan, and you must keep it updated to comply with ERISA and the Internal Revenue Code.

Avoid Prohibited Transactions – As a plan fiduciary, you must avoid causing the plan to engage in any transaction that you know may directly or indirectly result in the following:

- » Sale, exchange or lease of any property between the plan and a party-in-interest²
- » Lending money or other extension of credit between the plan and a party-in-interest
- » Furnishing goods, services or facilities between the plan and a party-in-interest
- » Transfer or use of plan assets by or for the benefit of any party-in-interest
- » Dealing with or acquisitions of employer securities or employer real property in violation of ERISA

Monitor Investments – The menu of investment options offered to plan participants must be evaluated periodically. Development of a formalized written Investment Policy Statement defining the criteria to be used in selecting, retaining and terminating an investment option will be an immensely valuable tool. If an investment option does not meet the criteria set out in the Investment Policy Statement, appropriate action must be taken.

Develop Prudent Fiduciary Processes and Procedures – Developing a prudent process for managing and administering the plan, and documenting compliance with that process, increases your chances of limiting your fiduciary liability. In addition to the points already discussed, these fiduciary procedures should include:

- » Compliance with a written Investment Policy Statement
- » Compliance with ERISA section 404(c), if applicable
- » Compliance with all applicable notice, reporting and disclosure requirements, including all fee disclosure requirements
- » And development and delivery of effective, easy-to-understand employee communications

Monitoring Plan Success

Plan fiduciaries are not responsible for ensuring that participants make the right decisions about saving, investing, and spending to end up with adequate income in retirement. However, as a practical matter, the more satisfied participants are with their plan experience, the less likely they will be to blame others for a negative outcome. It makes sense, therefore, to monitor how many eligible employees are participating in the plan, what their deferral rates are, what their investment choices are, and whether they are spending their retirement savings dollars prematurely on loans or other withdrawals. It may also make sense to offer participants tools to help them understand how the choices they make today will impact their future retirement income and what changes they might make to improve the outcome. Monitoring participant behavior not only helps control risk and improve outcomes, it can also be helpful in measuring the effectiveness of plan service providers and plan design features.

Communicating Fee and Investment Information to Participants

When participants are given investment control over their retirement plan accounts ERISA requires that they be given enough information to allow for informed decision making. There are very specific rules about what information must be provided, when it must be delivered, and who must receive it, and any violation of those rules is a fiduciary breach. Following is an overview of what must be provided. A more detailed description of these requirements can be found in Appendix B.

- ▶ **Initial Disclosure Upon Plan Eligibility:** Any employee who becomes eligible to participate in the plan must receive the following information before the date they are first able to direct investment of their account:
 - » General plan information relevant to investment decision making
 - » Information about administrative or individual fees that may be charged to their account
 - » Investment related information illustrated in a comparative format
- ▶ **Annual Disclosure:** All of the information in the initial disclosure must be updated and distributed annually.
- ▶ **Quarterly Disclosure:** On a quarterly basis participants must be informed of administrative or individual fees actually charged against their account expressed in dollars and including a general description of services provided.
- ▶ **Disclosure upon Request:** Participants are entitled to receive additional information, such as prospectuses, upon request.
- ▶ **Disclosure in the Event of a Change:** In the event of a change to any of the general plan information or the fee information that is included in the initial and annual disclosure document, that change must be communicated within 30 to 90 days in advance of when it becomes effective.

Periodic Evaluation

With respect to trustees, administrators, attorneys and others who perform services for the plan, periodic evaluation is necessary to ensure that they are performing prudently.

Planning Pays Off

Developing a prudent process for managing and administering the plan, and documenting compliance with that process, increases your chances of limiting your fiduciary liability.

Breaches of Fiduciary Duty

As a fiduciary, you may be personally liable if you are considered to be in breach of your fiduciary duties under ERISA. Breach of fiduciary duty may result in participant lawsuits, monetary penalties or the intervention of the Department of Labor (DOL) in your plan.

You may be considered in breach of your fiduciary duties if you:

- ▶ Fail to comply with the exclusive benefit rule by entering into self-dealing transactions, such as using plan assets for your own or your company's benefit
- ▶ Fail to exercise your responsibilities to the plan in a prudent manner
- ▶ Fail to prudently diversify the menu of investment options offered under the plan
- ▶ Fail to monitor the plan's investment options and replace funds as necessary pursuant to your investment policy
- ▶ Engage in a prohibited transaction
- ▶ Fail to provide participants with enough information to permit informed decision making (see Appendix B)

Penalties for Breach of Fiduciary Duty

A number of civil and criminal penalties may be applied to fiduciaries who breach their responsibilities to the plan participants and beneficiaries. For example:

- ▶ Plan fiduciaries can be held personally liable for any losses or may be required to restore profits to the plan resulting from a breach of fiduciary duty.
- ▶ Plan fiduciaries may be subject to removal as a fiduciary by the DOL.
- ▶ Plan fiduciaries may be assessed monetary penalties or may have personal criminal penalties or imprisonment imposed upon them for willful violations of fiduciary responsibility.

Penalties

A number of civil and criminal penalties may be applied to fiduciaries who breach their responsibilities to the plan participants and beneficiaries.

Written Investment Policy Statement

The DOL encourages plan fiduciaries to implement prudent policies for the selection and monitoring of investment options. Consolidating the criteria to be used in the selection and monitoring process into a written set of guidelines will assist you in following a prudent course. Documenting your compliance with those guidelines will also go a long way toward protecting you from liability.

A central theme of compliance is that fiduciaries must discharge their duties prudently and that the exercise of prudence in this context requires a deliberative process resulting in the best informed decisions possible under the circumstances.

The purpose of an Investment Policy Statement is to set forth the goals and objectives of the investment options to be made available to the plan participants. It should provide a framework of guidelines for monitoring and evaluating the plan's investment options, including a procedure for terminating and replacing any under-performing fund.

An effective Investment Policy Statement may include, among other things:

- » A statement regarding the investment objectives applicable to long-term retirement plan savings
- » A methodology for selecting a broad, diversified array of investment options that provide different levels of risk and historical returns
- » The criteria to be used for selecting investment options that will enable participants to select investment options that are appropriate for their personal savings goals
- » The performance standards that the selected funds will be expected to meet in order to be retained in the investment menu
- » The criteria to be used to evaluate the fees and expenses of each fund
- » The plan's processes for monitoring and evaluating plan investments, including the frequency, content and person(s) responsible for the review
- » The names and responsibilities of those plan fiduciaries charged with selecting and monitoring the plan's investments
- » Compliance with ERISA section 404(c), if applicable

Informed Decisions

Fiduciaries must discharge their duties prudently, and the exercise of prudence in this context requires a deliberative process resulting in the best informed decisions possible under the circumstances.

High Standards

A person acting in a fiduciary capacity is held to a high standard of honesty and full disclosure in regard to the plan client and must not obtain a personal benefit at the expense of the client.

Investment Advice and Education

More and more employers are offering assistance to participants so they can make informed investment decisions. Employers may decide to retain an investment advisor offering specific investment advice to participants. Depending on the fees and services provided, these advisors likely qualify as fiduciaries and have a responsibility to the plan participants.

Alternatively, the plan sponsor may retain a service provider to provide general financial and investment education, interactive investment materials, and information based on asset allocation models. Those who provide educational material that is general in nature are not fiduciaries.

Compliance with ERISA Section 404(c)

As previously discussed, the plan fiduciary of a participant-directed plan is responsible for selecting the menu of investment options to be made available to plan participants. Any protection provided to the plan fiduciary under ERISA section 404(c) does not extend to the selection of the investment options for the plan.

ERISA section 404(c) does, however, offer you limited relief from liability for losses resulting from the individual investment choices made by plan participants. While 404(c) compliance is not mandated by ERISA, relief is available only if certain rules are met. As the plan sponsor, it is your responsibility to monitor and maintain your plan's compliance with section 404(c). First, you must give notice to plan participants that the plan is designed to comply with section 404(c) and that plan

fiduciaries may be relieved of liability for any participant investment losses. This notice is often considered the "trigger" that establishes the date when section 404(c) protection becomes available. Special requirements must be met for 404(c) relief to extend to investments in a default fund or employer securities.

In addition to the notice to participants, there are other general conditions that a participant-directed plan must satisfy in order to take advantage of the fiduciary relief available under section 404(c), including that:

- ▶ The plan must offer at least three diversified investment alternatives ("core funds"), that have materially different risk and return characteristics and enable participants to minimize risk through diversification.
- ▶ The plan must permit transfers among these three core funds at least quarterly.
- ▶ The plan must give participants enough information to permit informed decision making. The regulation is very specific about what information must be given to participants automatically and upon request. The disclosure rules for 404(c) are the same as the fee and investment disclosure rules for all participant directed plans with two additional requirements. Participants must receive the "trigger" notice previously described and, if employer securities are offered, participants must be given information relevant to maintaining the confidentiality of purchases, voting, and other transactions. The requirements are outlined in Appendix C.
- ▶ Participants must be given the opportunity to give investment instructions to an identified plan fiduciary who is obligated to comply with those instructions.

404(c) Relief for Defaulted Investments

One of the requirements for 404(c) relief is that participants must actively make their own investment decisions. There is a special rule, however, that extends 404(c) relief to certain types of default funds, called Qualified Default Investment Alternatives or QDIAs. Some of the general requirements for obtaining this relief are:

- ▶ The default investment option must be a balanced fund, a target date or other type of asset allocation fund, or a managed account service and must satisfy all other requirements to be a QDIA investment option.
- ▶ A notice must be provided to participants both initially and annually containing specified information about the QDIA, how participants can avoid the default investment, and other information.
- ▶ The plan must offer a broad range of investment alternatives and participants must have had the opportunity to invest in those alternatives, but failed to do so.
- ▶ All of the fee and investment information required in participant directed plans must be provided. It is not necessary in order to obtain fiduciary relief for a QDIA for the plan to otherwise be a 404(c) compliant plan or for the separate 404(c) notice to be provided.

For a more detailed description of the QDIA requirements, see Appendix C.

Maintain Compliance

As the plan sponsor, it is your responsibility to monitor and maintain your plan's compliance with section 404(c).

Investment Advisor

Depending on the fees and services provided, these advisors may qualify as ERISA fiduciaries and may have a corresponding responsibility to the plan participants.

APPENDIX A

Fiduciary Checklist¹

The following list is designed to assist you in fulfilling your fiduciary responsibilities. As always, you should consult with your ERISA counsel or other experts to determine whether this list is appropriate or sufficient for your plan.

- An up-to-date plan document is being used.
- A copy of the IRS Favorable Determination Letter and/or Prototype Opinion or Advisory Letter has been obtained.
- The plan document is amended for all legislatively required changes.
- The plan is being operated in accordance with its terms and new legal requirements that may not yet be reflected in plan documents.
- The plan trustees have been properly appointed and the plan's trust agreement has been properly executed.
- All fiduciaries have been identified and the scope of their responsibilities has been defined and documented.
- Any employee acting as a fiduciary has received sufficient training and assistance to fulfill their responsibilities in accordance with ERISA's fiduciary standards of conduct.
- All plan fiduciaries have been made aware of and understand their fiduciary responsibilities.
- Service contracts exist with all plan fiduciaries and service providers clearly outlining their responsibilities.
- Periodic meetings are held with all plan fiduciaries to review their fiduciary responsibilities and provide fiduciary training as appropriate.
- A fidelity bond is maintained covering fiduciaries and all persons handling plan assets.
- If deemed appropriate, fiduciary liability insurance coverage has been purchased as a protection against personal liability.
- You are operating every aspect of the plan in compliance with plan document provisions.
- All salary reduction deferrals and loan repayments are being collected and invested in the plan as soon as administratively practicable.
- All of your plan's Covered Service Providers have provided you with required disclosures about their fees and services and provide timely updates of those disclosures in the event of a change.
- The fees being paid by the plan are reasonable based upon the investment options and services being provided.
- The plan maintains and abides by a written Investment Policy Statement.
- The plan fiduciaries have selected a broad range of investment options for the plan.
- The plan fiduciaries monitor the investment options periodically to ensure that the funds continue to meet the requirements set out in the Plan's Investment Policy Statement.
- All experts and providers retained to provide services to the plan are monitored periodically to ensure they are meeting the performance standards set for them.
- You document each of your meetings, the results of your review and monitoring of investments and service providers, and the decisions made with respect to the plan.
- You document your review and the decisions made with respect to the investment options to be deleted or retained by the plan.
- You maintain a due diligence file containing documentation supporting your fiduciary process and decision making.

- ❑ You have provided an up-to-date Summary Plan Description to all employees, redistribute the Summary Plan Description or distribute a Summary of Material Modifications whenever plan design changes dictate, and provide Summary Annual Reports and any required notices based on plan design.
- ❑ You have provided all eligible recipients with the initial, quarterly and annual disclosures required by the participant disclosure rule and have responded timely to requests for additional information (see Appendix B).
- ❑ You have provided Individual Benefit Statements to all eligible recipients on a quarterly basis.
- ❑ You have effective, easy-to-understand participant communications on all important aspects of the plan and hold seminars to educate participants about the plan, the importance of saving for retirement and the basics of investing.
- ❑ You have reviewed plan success metrics such as participation rates, salary deferral rates, investment diversification, and retirement income readiness on a periodic basis.
- ❑ You review and consider changes to plan design, plan services, or investment products as warranted in order to improve plan success metrics.
- ❑ You have filed an accurately completed Form 5500 in a timely manner.
- ❑ If you are a large plan filer (generally a plan with 100 or more participants) you have included an accountant's opinion with your report.
- ❑ If you are utilizing multiple service providers for your plan, you have a defined communication process to ensure that services are integrated in a timely, accurate and cost-efficient manner.
- ❑ You have conducted all required testing for your plan based on plan design and have addressed any testing results that require action.
- ❑ You have a process in place, which is in compliance with ERISA, to respond to participant claims against the plan.
- ❑ You comply with ERISA section 404(c), if applicable. See Appendix C.
- ❑ If the plan utilizes a Plan Expense Account (also referred to as an ERISA Spending Account) you have ensured that all payments were for allowable expenses and have determined the appropriate treatment of any assets remaining in the account.
- ❑ The plan has not engaged in any financial transaction with a party-in-interest (i.e. a fiduciary, service provider, employer, owner, employee or officer) that is not exempt.
- ❑ No plan fiduciary has used assets of the plan for his or her personal interests.

¹ The information contained herein is for general use only. It does not constitute legal advice upon which any party may rely. A plan sponsor is encouraged to consult its own advisers for specific guidance regarding its plan.

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APPENDIX B

Checklist for Participant Fee Disclosure¹

When employers give their employees control over investment of their retirement plan account they are required under ERISA's general fiduciary rules to provide enough information to allow for informed decision making. The Plan Administrator identified in the plan document is responsible for providing this disclosure. For a complete understanding of the requirements of the disclosure rule, please consult with your ERISA counsel or other experts. Following is a checklist of general requirements. Please note that all disclosures are required to be made to employees eligible to participate in the plan, plan participants, and beneficiaries with the right to direct plan investments (including QDRO beneficiaries). All those recipients will be referred to collectively as "participants" throughout this checklist.

1. Initial Disclosure

On or before the date a participant is first eligible to direct investment of their account, the following information must be delivered to them:

A. General Plan Information

- An explanation of the circumstances under which participants may give investment instructions.
- An explanation of any restrictions or limitations imposed by the plan on providing instructions, including any restrictions on transfers to or from a designated investment alternative. A designated investment alternative is an investment option made available in a plan for participants to invest in. It does not include brokerage windows.
- Information relating to the exercise of any voting or other rights attendant to a designated investment alternative.
- Identification of any designated investment alternatives offered by the plan.
- Identification of any designated investment managers.
- A description of any brokerage window or similar arrangement available to plan participants.

B. Expenses that May Be Charged

- An explanation of any fees for either general administrative or individual services that may be charged against participant accounts and that are not reflected in the annual operating expenses of any of the plan's designated investment alternatives.

- The manner in which such charges will be allocated (pro rata, per capita, etc.).

C. Investment Related Information

Participants must receive information about both fees and performance of the designated investment alternatives made available to them in the plan. This information must be presented in a comparative format so that participants can readily compare the available options. A model disclosure form is available at the Department of Labor's website at www.dol.gov/ebsa/participantfeerulemodelchart.doc. Different disclosure rules apply depending on whether the investment has a variable rate of return (for example mutual funds or collective funds) a fixed rate of return (such as a certificate of deposit, GIC, or variable annuity fixed account) or is an annuity with a guaranteed stream of income. There are also special rules for qualifying employer securities.

Following is a general list of investment related information that must be included in the Initial disclosure.

- Identifying information** - the name of the investment option, as well as its general asset class (ex. money market, large cap stock, etc)
- Investment performance**
 - » Variable Rate of Return Investments:
 - » One, five and ten year historical performance of the investment (or for the life of the investment if shorter) and as compared to the performance of a broad based index (such as the S&P 500) for the same time periods.
 - » A statement to the effect that historical investment performance is not necessarily an indicator of future performance.

- » Fixed Return Investments:
 - » The fixed or stated annual rate of return and the term of the investment.
 - » If the issuer has the right to adjust the return prospectively, the disclosure must also advise participants of that right, include the minimum guaranteed rate, and tell participants how to get information about the most recent rate of return.
- **Fees and expenses**
 - » Variable Rate of Return Investments:
 - » The total annual operating expense expressed both as a percentage and as a dollar amount per \$1,000 invested (e.g., 0.25% or \$2.50 per \$1,000).
 - » Any shareholder type fees, such as deferred sales charges.
 - » A statement that fees and expenses are only one of several factors to be considered when making an investment decision and that the cumulative effect of fees can substantially reduce growth.
 - » Information about how to access the DOL's website for examples demonstrating the long term effect of plan fees.
 - » Fixed Return Investments:
 - » The amount and description of any shareholder type fees that may apply .
 - » Any restrictions on the ability to purchase, transfer or withdraw amounts invested.
- **Glossary** - Participants must be provided with either a glossary of investment terms to assist them with understanding the notice, or a website address where such a glossary can be accessed.
- **Website address to access additional information** - The information that must be available on the Web varies somewhat by the type of investment. The following information must be available:
 - » Name of investment issuer (and name of contract, fund or product if an annuity).
 - » Objectives and goals.
 - » Principal strategies and risks (applies to variable rate of return investments other than employer securities only).
- » Performance data updated at least quarterly (not required for annuities).
- » Fee and expense information (type of information required varies by investment category and not required for employer securities held in shares instead of units).
- » Portfolio turnover rate (applies to variable rate of return investments other than employer securities only).

2. Annual Disclosure

- All of the information contained in the Initial Disclosure must be updated and redistributed annually.

3. Quarterly Disclosure

- The amount (expressed in dollars) of any administrative or individual fees charged to the participant's account during the preceding quarter.
- A general description of services provided for the fee.
- If applicable, a statement saying that some of the plan's administrative fees were paid from a revenue sharing arrangement.
- This information can be included in quarterly benefit statements. If there are no charges to be disclosed (e.g., in the case of an eligible employee who is not a participant), then no disclosure is required.

4. Disclosure upon Request or in the Event of Change

- Communicate any changes to the administrative or individual fee information, or the plan related information, required to be included in the Initial Disclosure 30 to 90 days in advance of the change.
- Upon request of a participant provide copies of prospectuses, financial statements, or other investment related information on designated investment alternatives that are provided to the plan.

1 The information contained herein is for general use only, it does not constitute legal advice upon which any party may rely. A plan sponsor is encouraged to consult its own advisers for specific guidance regarding its plan.

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APPENDIX C

ERISA Section 404(c) Checklist (Including QDIA)¹

ERISA Section 404(c) applies to individual account plans that permit participants (or beneficiaries) to exercise control over assets in their individual accounts. To the extent this control is exercised, and if all the requirements of 404(c) are met, plan fiduciaries are not liable for losses resulting from the investment choices made by participants.

Fiduciary protection under 404(c) is available for both actively selected investments, as well as for default funds into which a participant is invested. However, the rules vary based on whether a fund is actively elected or is a default fund. A plan can choose whether to have 404(c) relief for no funds, for actively elected funds, or for default funds.

1. Checklist for Actively Selected Investments

- ❑ Offer a “broad range of investment alternatives” - three or more funds that are diversified, have materially different risk and return characteristics, enable participants to achieve aggregate risk and return characteristics within the range normally appropriate for each participant, and enable participants to minimize risk through diversification.
- ❑ Give participants the opportunity to give investment instructions to an identified plan fiduciary who is obligated to comply with those instructions.
- ❑ Provide an opportunity for participants to receive written confirmation of investment instructions.
- ❑ Provide an opportunity for participants to make investment changes at a frequency that is appropriate in light of the market volatility of the investment options, but no less frequently than quarterly.
- ❑ Provide all of the disclosures identified in the Checklist for Participant Fee Disclosures. (Appendix B) In addition, provide a disclosure stating that the plan is intended to be a 404(c) plan and plan fiduciaries may be relieved of liability for any losses that are a direct and necessary result of investment instructions given by the participant.

- ❑ If employer securities are offered, provide a disclosure describing the procedures for maintaining the confidentiality of transactions and the exercise of voting, tender and similar rights. Also provide the name, address and phone number of the plan fiduciary responsible for ensuring compliance with these procedures.

2. Checklist for Default Investments (Qualified Default Investment Alternatives or “QDIAs”)

- ❑ The plan must offer a broad range of investment alternatives.
- ❑ Participants must have been given the opportunity to provide investment direction, but failed to do so.
- ❑ Participants must receive a notice initially and annually containing the following information:
 - » A description of the circumstances under which a default investment will be made.
 - » If applicable, a description of the circumstances under which a default contribution election will be implemented, the amount or any such contributions, and the right to elect out of the default contribution percentage.
 - » An explanation of the participant’s right to direct investment of his or her plan account.
 - » A description of the default fund QDIA including its investment objectives, risk and return characteristics, and fees.

- » A description of the participant’s right to transfer funds out of the default fund and in to any of the other investment options available in the plan as well as a description of any restrictions or fees that would apply.
- » An explanation of where participants can access information about the other investment alternatives available in the plan.
- Participants must have the opportunity to direct investments out of the QDIA at least as frequently as participants who actively elect to invest in the QDIA, but at least quarterly.
- No transfer fees or restrictions can be imposed on a defaulted participant who opts out of the QDIA within 90 days of his or her first investment in the QDIA.
- The disclosures identified in the Participant Fee Disclosure (see Appendix B) must be provided.
- The default investment option must qualify as a QDIA fund. There are three types of investment options that qualify as long-term QDIA funds:
 - » **Managed Accounts** – Investments are made by a plan fiduciary taking into account the age, target retirement date, or life expectancy of participants and becoming more conservative as the participants age.
 - » **Balanced Option** – Designed to provide diversification in equity and fixed income investments that are appropriate for the plan participants as a whole.
 - » **Target Date Option** – Designed to provide diversification in equity and fixed income investments that are appropriate for individual participants based on their age, target retirement date or life expectancy and that become more conservative as participants’ age.

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**FOR MORE INFORMATION, CONTACT YOUR ADVISOR,
CONSULTANT OR GREAT-WEST REPRESENTATIVE TODAY.**



- 1 This guide is intended to provide general educational information regarding the fiduciary responsibilities and liabilities of retirement plan fiduciaries. It does not constitute legal advice upon which you may rely, and you are encouraged to consult your own counsel for specific guidance on your plan's fiduciary issues.
- 2 Parties-in-interest include plan fiduciaries and service providers, certain company owners, officers and directors, certain relatives of individuals who are parties-in-interest, and certain other related organizations or entities.

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