



PEDERNALES ELECTRIC COOPERATIVE

ERISA Fiduciary Highlights For Boards that Appoint Fiduciary Committees

October 21, 2022
Johnson City, Texas

CAPTRUST

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ERISA FIDUCIARY ISSUES

Plan Fiduciary Issues: Scope

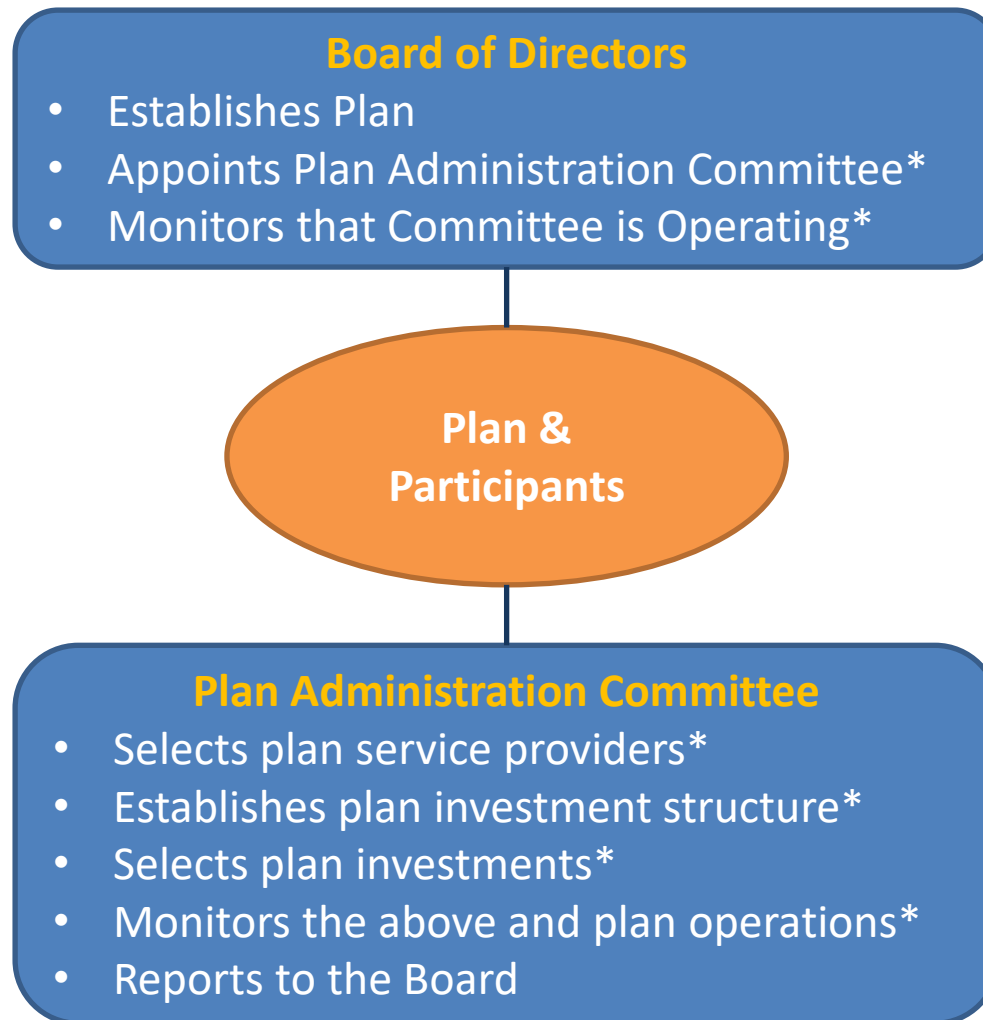
- Cliff Notes Version....
- Background
 - What plans are Covered
 - Who is a Fiduciary
- Basic Fiduciary Responsibilities
- Fiduciary Governance and Process

ERISA FIDUCIARY ISSUES

“Cliff Notes” Version: There are 4 rules....

1. *ERISA (law that covers retirement plans) cannot be avoided.*
2. *Anything you put in place you have to monitor.*
3. *Have a good governance process and follow it.*
4. *Always have a thoughtful answer to the question, “Why did you take the fiduciary actions you took, including decisions to not act?”*

PEDERNALES ELECTRIC COOPERATIVE – GOVERNANCE STRUCTURE



* Fiduciary functions

ALIGNED INTERESTS | SPECIALIZED FOCUS | PROVEN RESULTS

WHO IS A FIDUCIARY? (ERISA § 3(21))

- Functional Definition (what did they do?) *to the extent that* he/she:
 - Exercises any discretionary authority or control respecting management of the plan or disposition of its assets
 - Renders investment advice for a fee or other direct or indirect compensation
 - Has any discretionary authority or discretionary responsibility for the administration of the plan

BASIC FIDUCIARY RESPONSIBILITIES

- Core Standards of Conduct
 - Duty of loyalty (exclusive benefit rule)
 - Duty of prudence (higher standard than traditional prudence)
 - Duty to diversify investments
 - Duty to follow the plan document—so long as it would not violate ERISA to do so

FIDUCIARY STANDARDS

- Exclusive Benefit Rule
 - Fundamental Underpinning of fiduciary duty
 - Fiduciaries must execute their responsibilities to only:
 - *Provide benefits to participants and beneficiaries, and*
 - *Pay the reasonable expenses of operating the plan.*

FIDUCIARY STANDARDS

○ Prudent Man (person) Rule

- Not traditional reasonable man rule (car accidents) or business judgment rule (boards of directors)
- Prudent *professional* under similar circumstances
- Process is *more important* than results
- 20/20 hindsight standard for process
- ALWAYS be able to answer the question:

“Why did you or didn’t you do what you did or didn’t do?”

FIDUCIARY STANDARDS

- Diversification
 - If prudent to diversify
 - To protect the principal of the trust
 - To earn a reasonable rate of return.... not the largest return
 - When is it imprudent to diversify?
- Follow the Plan Document?
 - “Plan Document” can include several documents
 - Only to the extent that it would not violate ERISA to do so
 - Caution: Employer stock issues

FIDUCIARY STANDARDS

- Co-fiduciary Liability
 - Fiduciary who errs is always liable
 - Other fiduciaries are also liable if they:
 - *Knowingly participate in the breach*
 - *Knowingly conceal the breach*
 - *Permit the breach*
 - *Have knowledge of the breach and do not make reasonable efforts to remedy the breach*
 - Limited if fiduciaries have agreed in writing on allocation of responsibilities as “named fiduciaries” – but still exposed to co-fiduciary liability

FIDUCIARY COMMITTEE FORMATION

- Corporate Governance Documentation
 - Are Board delegations up to date?
 - *Board to Executive Committee*
 - *Executive Committee to Finance Committee*
 - *Finance Committee to Fiduciary Committee*
 - Delegation of responsibilities in plan document
 - Minutes and documentation of authority grant
 - Minutes and documentation of monitoring







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Drew McCorkle is a Financial Advisor and Vice President based in CAPTRUST's Atlanta office. He is a senior investment and fiduciary consultant and also supports the firm's ERISA fiduciary efforts. He has worked in this area since 1983, and provides consulting services to employers and plan fiduciaries on investment issues and the design and operation of retirement fiduciary committees.

Before joining CAPTRUST Drew was a partner with Hewitt EnnisKnupp for 14 years. Prior to that he was a partner in a Big-5 accounting firm and a law partner and trial attorney in a Washington, DC, law firm where he handled cases involving tax and ERISA issues arising with retirement plans.

Drew received his law degree from the George Washington University Law School, and he is a graduate of Davis & Elkins College where he received a B.S. degree in Economics and Management. He has been admitted to practice law in Washington, DC and a number of other jurisdictions.

Drew is involved in volunteer activities with Pace Academy and the Cathedral of St. Philip.



As retirement specialists, we welcome the opportunity to design a customized program to ensure that you effectively meet your fiduciary obligations, efficiently manage your corporate assets, and successfully prepare your loyal employees for a comfortable retirement.

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