The Pentegra Fiduciary SMARTPATH™

A guide to understanding your responsibilities

PENTEGRA

Outsourcing = cost savings, increased productivity, reduced liability, increased objectivity, fewer conflicts of interest, increased services. **More successful outcomes.**

THE PENTEGRA FIDUCIARY SMARTPATH™

A solid retirement plan is among the most valuable employee benefits available. And while the laws governing retirement plans and their fiduciaries may appear complex, complying with them doesn't have to be.

As an institutional fiduciary, Pentegra is intimately familiar with the role of a plan fiduciary and the responsibilities fiduciaries have to a retirement plan and its participants. Understanding these responsibilities is the first step in uncovering the potential liability you face as a plan sponsor.

The Pentegra Fiduciary SmartPath™ is designed to help you understand your fiduciary responsibilities and offers best practice recommendations and guidance for managing these duties.

What is the role of a fiduciary?

Many of the actions involved in operating a retirement plan make the person or entity performing them a fiduciary. Exercising discretion in administering and managing a plan or controlling the plan's assets makes that person or entity a fiduciary to the extent of that discretion or control. Fiduciary status is based on the functions performed for the plan, not just a person's or entity's title in relation to the plan. A plan must have at least one fiduciary named in the written plan, having control over the plan's operation.

What is the significance of being a fiduciary?

Fiduciaries have important responsibilities and are subject to standards of conduct because they act on behalf of participants in a retirement plan. These responsibilities include:

- Administering the plan
- Acting solely in the interest of plan participants and their beneficiaries
- Carrying out their duties prudently
- Following the plan documents
- Diversifying the plan's investments
- Paying only reasonable plan expenses
- Selecting and monitoring the services for the plan

The duty to act prudently is one of a fiduciary's central responsibilities under the Employee Retirement Income Security Act of 1974 (ERISA). It requires expertise in a variety of areas, such as investments. Lacking expertise in a specific area, a fiduciary will want to hire someone with that professional knowledge to carry out those functions.

What liability is involved?

With these fiduciary responsibilities, there is potential liability. Fiduciaries may be personally liable to restore any losses to the plan, or to restore any profits made through improper use of the plan's assets resulting from their actions. But, there are actions you can take to demonstrate that you carried out your responsibilities, as well as ways to limit your liability.

With fiduciary responsibility comes liability.

Defining Fiduciary Responsibilities

Fiduciary responsibilities cover a wide range of functions needed to operate a retirement plan.

Identification/Designation Of Fiduciaries

- Identify ERISA named fiduciary(ies)

Appoint Plan Committee(s)

- Determine whether a single retirement committee or separate plan administrative and investment committees will be used

Select Members

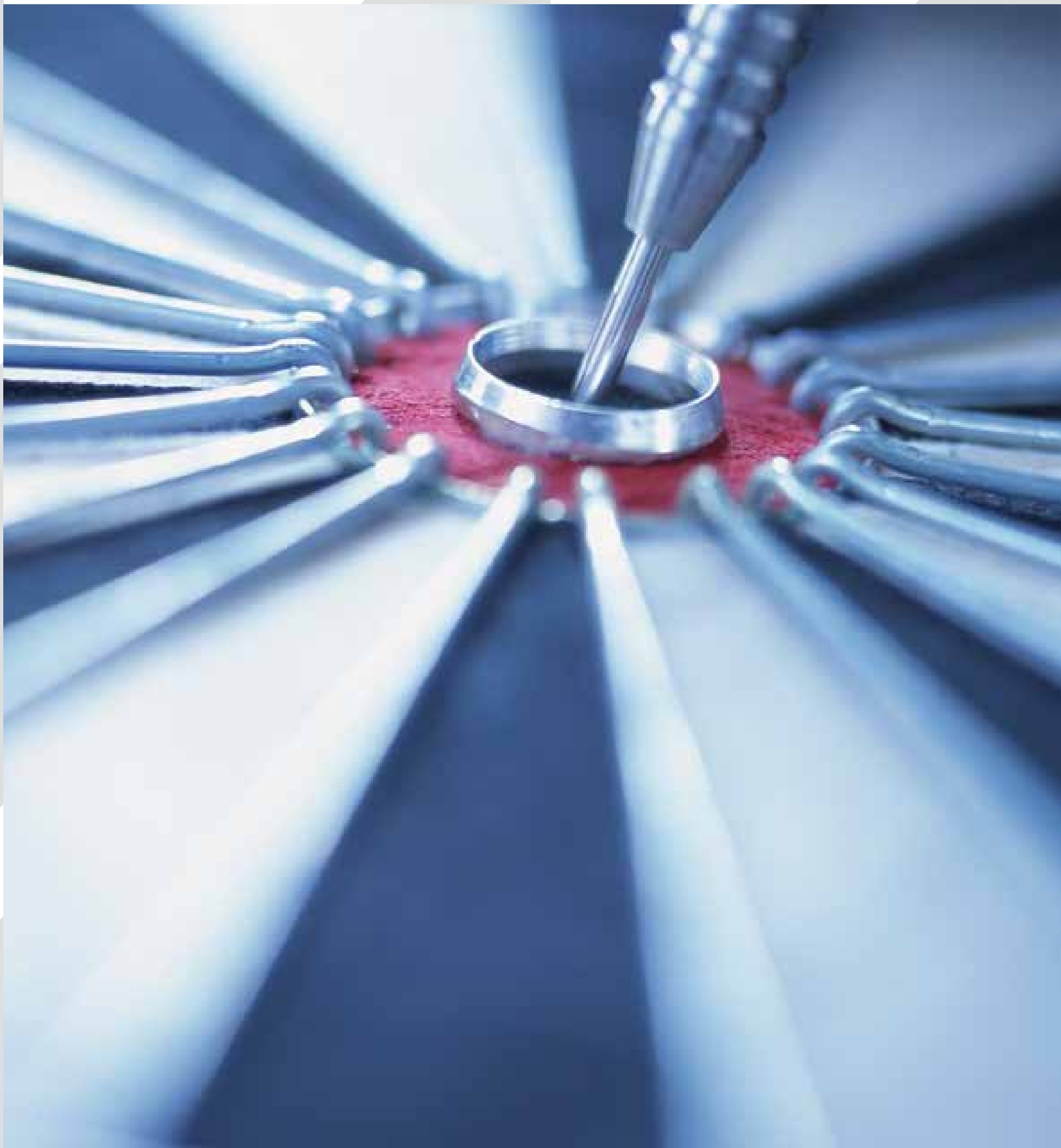
- Select members with Human Resources/Employee Relations expertise
- Select a member from the Legal department to serve as clerk/secretary
- Select members with executive-level decision-making authority
- Select members with investment experience, such as from Treasury or Finance departments

Establish Procedures

- Create/confirm written delegation of the role (i.e., plan administration and/or investment) to the committee(s)
- Adopt procedures providing for formal requirements of meetings (e.g., frequency, quorums, voting rules, membership positions)
- Conduct regular meetings
- Keep detailed minutes of meetings that document attendance, note matters considered, record decisions made, etc.
- Designate individual members or employees to act on behalf of the committee for routine matters
- Conduct at least one annual meeting to review the overall "state of the plan" concerning administrative and recordkeeping matters
- Require annual meeting for a comprehensive, in-depth review of investment fund performance and to decide on fund changes, if any
- Require periodic meetings to monitor investment fund performance
- If an investment policy statement (IPS) is adopted, procedures may be included, and supplemented as necessary, within the IPS

Appoint/Confirm Trustee

- Confirm the trust agreement correctly reflects fiduciary roles of the plan committees and the plan sponsor
- Appoint ERISA investment managers for any group trusts/separate accounts
- Confirm agreements/documents properly reflect the investment manager's role and acknowledge status as fiduciaries



Know your **responsibilities.**

Implement The Investment Process

- Adopt an investment policy statement (IPS)
- Select investment funds in accordance with the terms of the IPS or other prudently considered standards, if no IPS exists
- Conduct quarterly meetings to monitor fund performance and add/replace funds in accordance with the IPS or other prudently considered standards, if no IPS exists
- Conduct annual meeting for in-depth review of fund performance, overall fund lineup and, if used, the IPS, and to add/replace funds in accordance with the IPS or other prudently considered standards, if no IPS exists
- Conduct checkup meetings to monitor fund performance
- If company stock is in the plan, monitor its suitability as a plan investment
- Follow all required procedures, including documenting all meetings and decisions
- Determine if the plan is intended to be an ERISA section 404(c) plan
- If investment advice is provided by a third party, carefully review the selection of the provider and regularly review its performance

Review Use Of Outside Providers/Experts

- When selecting new providers or experts, carefully review credentials, fees, and scope of services
- Periodically review performance of providers, fee arrangements, and extent of services
- Use RFP process for significant, ongoing relationships
- For plan recordkeeper, periodically review plan's administrative guidelines to ensure conformity with plan documents. Have an annual "state of the plan" review
- Review fees charged to the plan to ensure they are reasonable and may be properly paid by the plan

Make Employee Contributions On A Timely Basis

- Coordinate among plan sponsor, payroll provider, and trustee to create systematic procedures to ensure employee contributions are contributed to the plan accurately and promptly

Obtain/Confirm ERISA Fidelity Bonding Coverage

- Consult with insurance provider/broker to ensure ERISA bonding requirement is satisfied

Secure Adequate Fiduciary Liability Insurance

- Consult with insurance provider/broker to review insurance coverage for fiduciary liability claims
- Make sure fiduciary insurance covers the plan sponsor and employees/directors of the plan sponsor through "non-recourse riders"

Carefully review plan providers.

Defining Fiduciary Roles in a Retirement Plan

The fiduciary definition has two parts—defining who is a fiduciary, and, to what extent the person is a fiduciary.

The Role of the Named Fiduciary

The Named Fiduciary holds the highest level of fiduciary responsibility for the plan. Think of the Named Fiduciary as the plan's 'CEO.' The ERISA-Named Fiduciary is the principal fiduciary for a plan, and prudently monitors and documents all decisions affecting the plan and its investments. The Named Fiduciary can delegate responsibilities to others in order to provide varying levels of support for the plan. These roles can be both fiduciary and non-fiduciary in nature and can include the plan administrator, the Trustee, an investment advisor, or an investment manager.

The Role of the Trustee

The Trustee is the person or entity with authority and discretion to manage and control the assets of the plan. Think of the Trustee as the plan's 'CFO.' This authority can also be assigned to one or more investment managers and can be delegated in a discretionary or directed capacity.

The Role of the 3(38) Investment Fiduciary

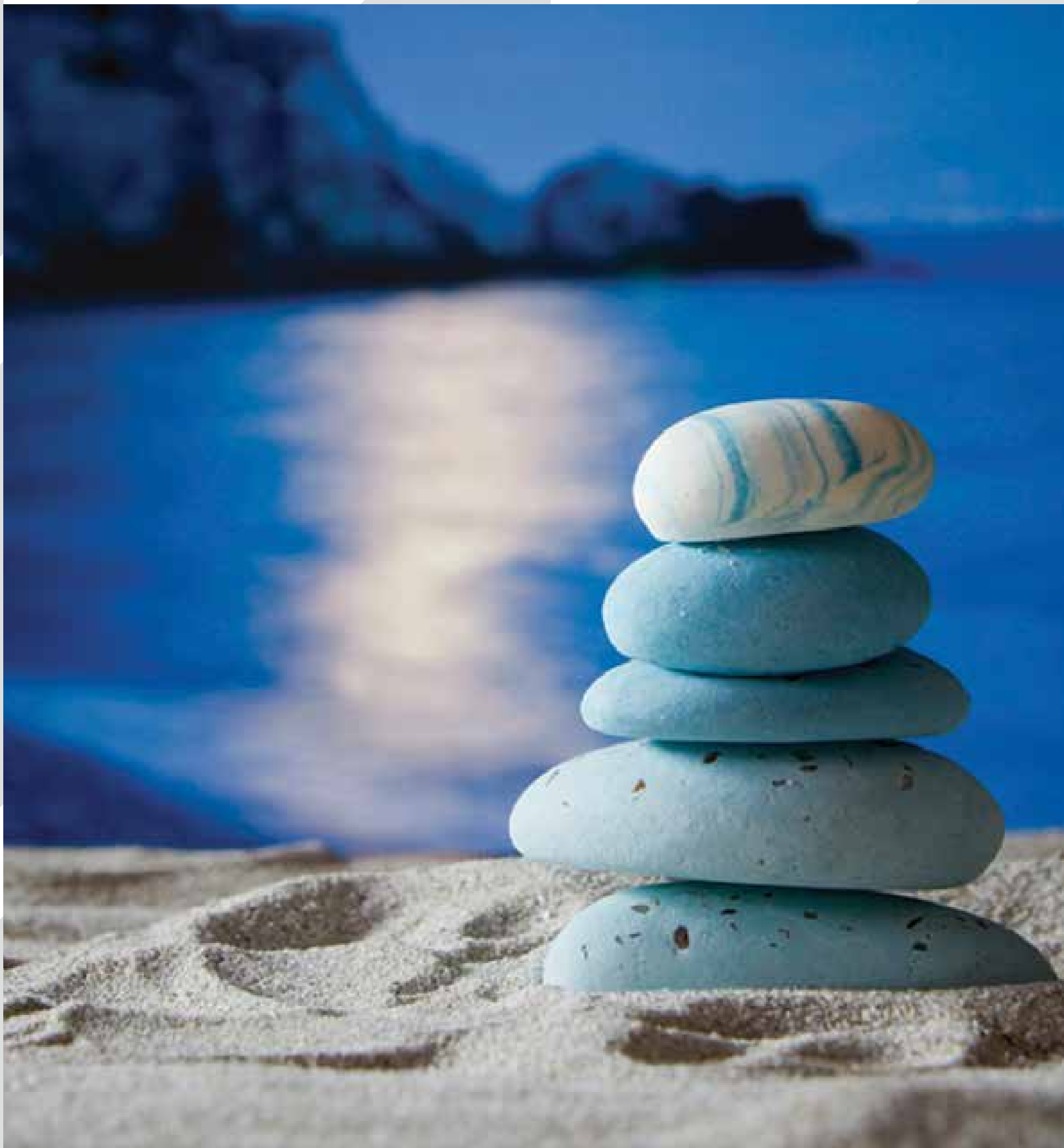
The 3(38) investment fiduciary, or a plan's Investment Manager assumes responsibility for the plan's investment decisions. The 3(38) investment fiduciary assumes full discretionary authority and control over the selection, monitoring and replacement of plan investment options. The 3(38) must be a registered investment advisor, bank or insurance company.

The Role of a 3(21) Investment Fiduciary

The 3(21) investment fiduciary may recommend plan investments, monitor investments, provide investment guidance and counsel to the plan sponsor in accordance with the plan's Investment Policy Statement, and provide participant education and advice. While a 3(21) investment fiduciary provides counsel and guidance, the 3(21) investment fiduciary does not have discretion and responsibility for investment decisions at the plan level.

The Role of the 3(16) Administrative Fiduciary

ERISA Section 3(16)(A) defines the plan administrator role. The plan administrator is the fiduciary responsible for the overall operation of the plan and managing the day to day administration. Think of the 3(16) Administrative Fiduciary as the plan's 'COO." Under the most expansive scenario, the 3(16) Administrative Fiduciary accepts all, or nearly all, of the functions of the plan administrator as well as the legal title.



Each role and responsibility must be clearly defined—in writing—
and understood by all parties.

Identify Everyone's Role

Each role and responsibility for the plan must be clearly defined—in writing—and understood by all parties.

A sponsor or fiduciary should therefore be able to answer these questions readily:

- Who are the plan fiduciaries (all of them)?
- Who is the Plan Administrator?
- If the Plan Administrator is the plan sponsor or a committee, which specific individuals fill this role?
- Who is/are the trustee(s)?
- Is the trustee fully discretionary or have some duties of the trustee been retained by a named fiduciary who directs the trustee? If so, who is that named fiduciary, and which specific duties are allocated to each party?
- Is there an investment advisor? If so, what is the specific scope of the advice to be rendered? Will the advisor have any discretion? If so, over what?
- Is there an investment manager? If so, over what assets does the manager have discretion? Have any limitations been placed on that discretion? If so, by whom?
- Who is/are the fiduciary or fiduciaries responsible for appointing and/or monitoring each of the other fiduciaries?
- What fiduciary responsibilities have been retained by the plan sponsor? Who fills that fiduciary role on behalf of the sponsor (e.g., the owner or board of directors)?
- Do the contracts for all fiduciary service providers correctly identify them as fiduciaries and correctly delineate their responsibilities?
- What fiduciary decisions are made by the board of directors? Are all of the directors involved in fiduciary decisions, or only certain directors? Are all directors who make fiduciary decisions aware of their status and responsibilities?
- Can you prove it (i.e., by producing signed appointment forms on which each fiduciary acknowledges the specific duties delegated or allocated to it and the general responsibilities of a fiduciary under ERISA)?

Expert governance leads to

better results.

There is a simple solution—fiduciary outsourcing.

Today, there is a great deal of talk about helping employers with fiduciary responsibility, yet the talk often falls short of what most employers actually want and need—someone to simply handle it for them.

What is fiduciary outsourcing?

Fiduciary outsourcing involves the transfer of legal responsibility for a retirement plan from an employer to an institutional fiduciary. Historically, most employers have named/designated themselves as Named Fiduciary, 3(16) Plan Administrator, and Trustee because there have been few other options.

The employer can outsource all three of the principal ERISA fiduciary roles: 402(a) Named Fiduciary, 3(16)(A) Plan Administrator and Trustee. The employer can outsource each role individually, or all three collectively. When all three roles are outsourced, Pentegra describes this as "full" fiduciary outsourcing. Under a full fiduciary outsourcing scenario, the employer retains a handful of fiduciary functions such as the obligation to make timely contributions, manage internal processes such as payroll, provide accurate data to providers as needed on a timely basis, and select and monitor plan service providers.

Employers want someone to simply

handle it for them.

Why outsource fiduciary responsibilities?

Retirement plan administration and the oversight of plan assets are involved, complex, and laden with compliance burdens. For many plan sponsors, the level of self-education and the commitment of time and energy required to effectively fulfill these fiduciary duties is an unwelcome concern–a concern that too often distracts from the more critical responsibility of running a business.

While traditionally the industry has provided help in the form of third party administration (TPA) and investment advisors, too often the actual fiduciary responsibility—and a broad and poorly understood array of duties—are left in the hands of the employer. The risk—the executives and employees assigned responsibility for these roles often do not know what they entail or what is expected of them, yet the legal burden falls squarely on them. Most employers actually desire and need someone to simply handle these responsibilities for them.

Outsourcing fiduciary responsibility to a professional minimizes risks, reduces burdens and saves time and money. Outsourcing fiduciary responsibility relieves your existing internal retirement plan committee and/or board of directors of these responsibilities. In fact, a widely accepted interpretation of ERISA's "prudent expert rule" states that a plan should outsource to independent experts if they themselves do not have the expertise. Effective outsourcing not only offers objective fiduciary guidance but ultimately drives plan success.

The IRS Top Ten List Of Common Voluntary Correction Program (VCP) Submissions

1. Failure to amend for tax law changes
2. Incorrect definition of compensation
3. Failure to include eligible employees or exclude ineligibles
4. Loan errors
5. Impermissible in-service withdrawals
6. Required Minimum Distribution errors
7. Employer eligibility failure
8. ADP/ACP failure not timely corrected
9. Failure to provide minimum top heavy benefit
10. Exceeding maximum contribution limits

Objective fiduciary guidance ultimately

drives plan success.

Outsourcing drives plan success

Save Time

Fiduciaries have several distinct burdens that take up considerable amounts of time. The educational burden is the time required to become familiar with basic fiduciary and retirement plan rules, the employer's own plan provisions, and the processes for implementing and ensuring compliance with those provisions. Meetings are another burden: employers who outsource can feel safe opting for fewer and shorter meetings with fewer people attending and less time spent preparing. Other burdens include time spent on day-to-day operations such as payroll and employee events such as hardship distributions and terminations. All of these burdens can be reduced through outsourcing.

Save Money

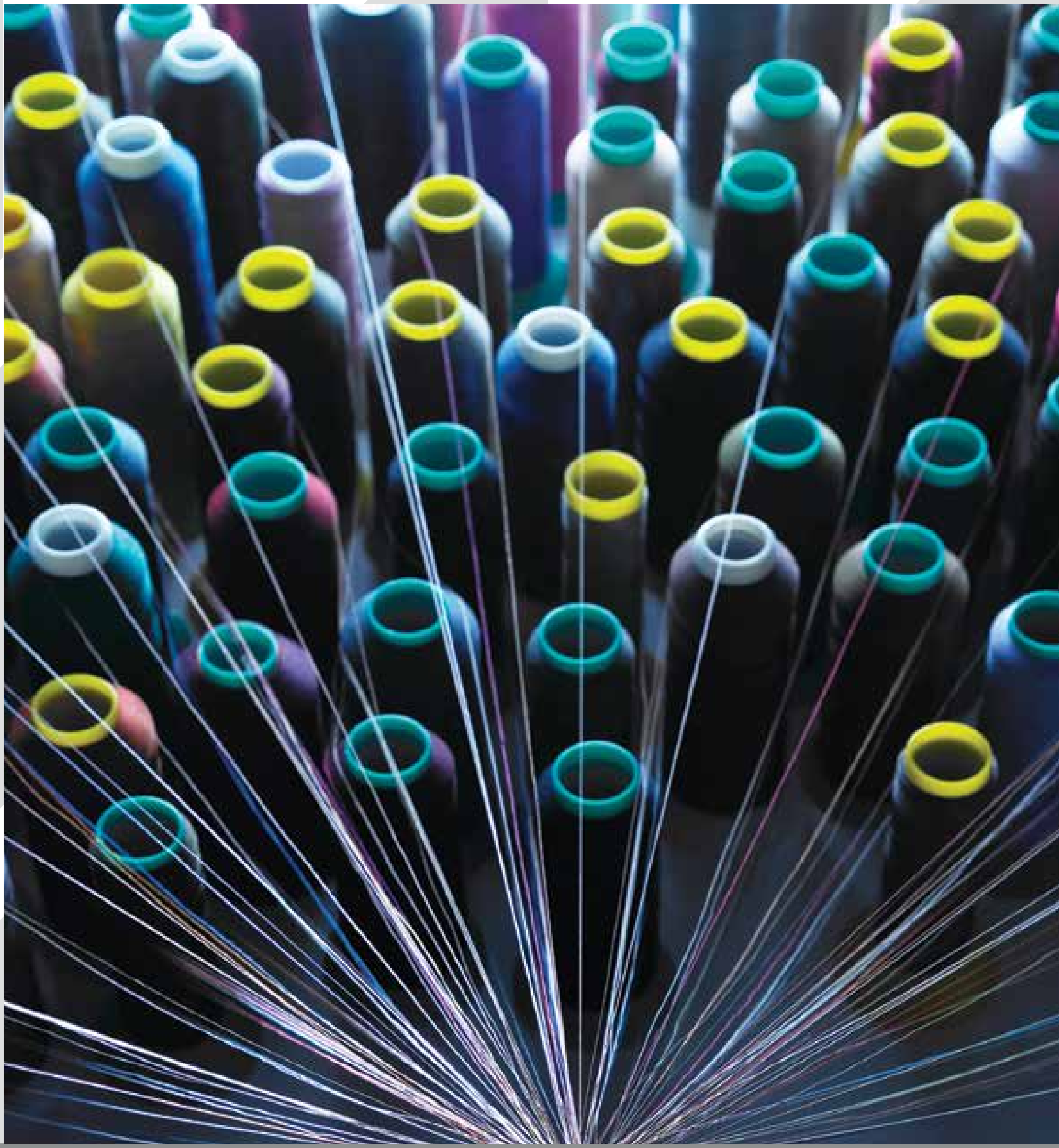
Time is money to most organizations. The individuals whose time is most needed for fiduciary governance tend to be officers and executives—those whose time costs the most. Beyond the time savings, some forms of outsourcing, such as multiple employer plans, offer even greater cost savings in the form of economies of scale that can reduce costs outright.

Simplify Administration

In a complex endeavor involving tens or hundreds of thousands of transactions per year, something will always go wrong, and fixing it can be a hassle. Easy fixes sometimes work and sometimes don't, such as when an error leads to a filing with the IRS' Voluntary Correction Program. Outsourcing not only eliminates headaches, but also substantially reduces potential pain, because the easiest way to avoid the headaches associated with being the plan administrator is to NOT be the plan administrator.

Reduce Risk

Outsourcing is a transfer of responsibility and therefore potential liability. With fiduciary outsouring, some liability remains, but it is well-defined and small by comparison with what has been outsourced. The law is clear on this point—ERISA Section 405 and DOL Regulation Section 2509.75-8 say a fiduciary "shall not be liable for the acts and omissions" of the fiduciary to whom he or she outsources except under certain limited circumstances.



Outsourcing saves time, saves money,

and reduces burdens.

The Pentegra Fiduciary Outsourcing Advantage.

Pentegra's Fiduciary Outsourcing Advantage makes it possible to offload a large portion of the burdens associated with running a retirement plan.

As one of the nation's most experienced fiduciary service providers, our retirement plan solutions are designed to deliver fiduciary and administrative relief at every level. We deliver an elevated level of governance and attention to detail, and embrace an advanced level of responsibility.

With every retirement plan solution, we offer clients a sound approach to help manage fiduciary relief for maximum plan success, serving in all three of principal roles in a retirement plan—as a full scope ERISA 402(a) Named Fiduciary, a 3(16) Plan Administrator, and as a Trustee, whether as a fully discretionary trustee with sole authority over plan assets or as a directed trustee under 402(a)(1). We know of no other vendor in the nation who willingly accepts these roles nor has the experience that we do actually serving in these roles.

CHOOSE THE LEVEL OF FIDUCIARY SUPPORT THAT'S RIGHT FOR YOUR PLAN

Do It For Me Full Fiduciary Outsourcing	The employer outsources all three of the principal ERISA fiduciary roles: 402(a) Named Fiduciary, 3(16)(A) Plan Administrator, and Trustee; maximum protection and relief of fiduciary burden	Available for single employer plans as well as multiple employer plans and group trusts
Help Me Do It Partial Fiduciary Outsourcing	Pentegra can serve in any combination of roles: 402(a) Named Fiduciary, 3(16)(A) Plan Administrator, Directed Trustee, Discretionary Trustee, or traditional Third Party Administrator (TPA)	Highly customizable: available with a wide range of industry recordkeeping partners or with Pentegra as recordkeeper
Do It Myself Traditional Third Party Administration	Pentegra is not a fiduciary but provides a wide range of actuarial, administrative, and recordkeeping support services—the traditional TPA role.	

Shift the burden of fiduciary responsiblity

from your organization **to ours.**

Simpler, safer, easier plan management

Our fiduciary services are designed to complement the unique value proposition and service delivery model that each advisor brings to the table. You choose the level of outsourcing that's right for you. Pentegra can assume full accountability and liability for the management of your plan (with certain limited exceptions) or can serve in a more limited role.

Employer	Advisor and/or Pentegra	Pentegra
Strategic decisions about plan design	Investment manager selection & monitoring	Trustee/Custodial Services
	Provide participant guidance and advice	Plan administration
	3(21) Investment Fiduciary	Recordkeeping
	3(38) Investment Fiduciary	Plan Audit Services
		Legal Counsel
		Fiduciary Services ERISA-Named Fiduciary 3(16) Administrator

The benefit of an experienced,

institutional fiduciary.

A legacy built upon serving as a retirement plan fiduciary since 1943.

When you outsource, insist on a regulated financial institution to serve as a fiduciary. It's the safest and most secure way to outsource. Pentegra has built a legacy serving as a retirement plan fiduciary for over 70 years.

Pentegra Trust Company is a regulated financial institution as defined by ERISA. As an institutional fiduciary, we have important safeguards in place—dual controls, segregation of duties, audits, regulatory oversight, adequate reserves, insurance, and governance structures that add redundant layers of safety—to ensure that retirement plans are administered according to the highest and most secure standards.

We accept the highest level of fiduciary responsibility and accountability and are able to back our commitments with decades of successful fiduciary service.

Implement a comprehensive

governance process.

Achieve more successful outcomes with the

Pentegra Fiduciary SmartPath™.

For more information, contact us at 800.872.3473 or visit us at www.pentegra.com.

Follow our current thinking and join the conversation.

2 Enterprise Drive, Suite 408, Shelton, CT 06484-4694 | 800·872·3473 tel 203·925·0674 fax | www.pentegra.com