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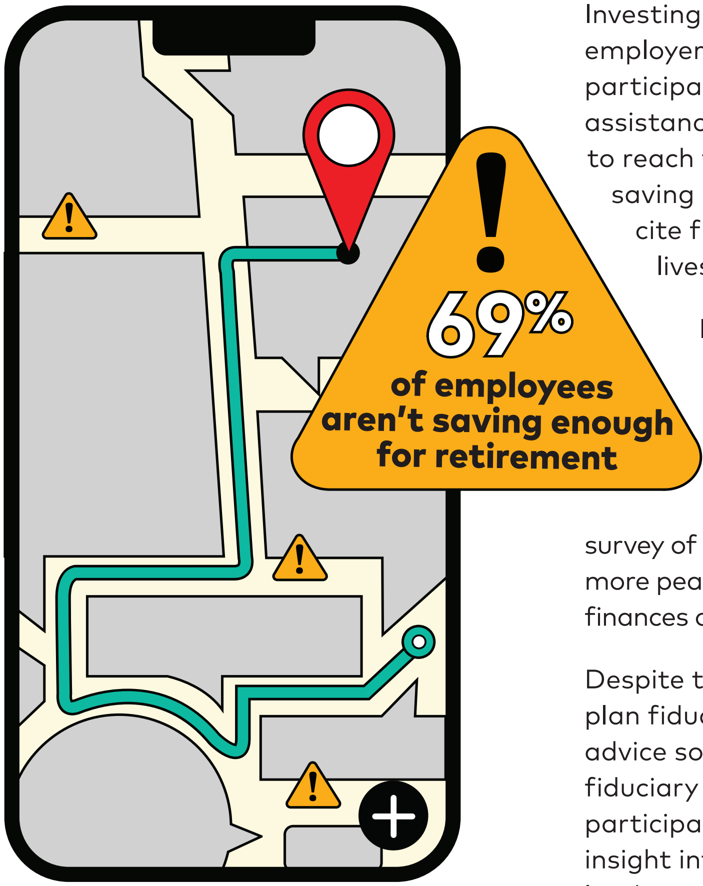
Participant advice and the prudent fiduciary: A road map to compliance



Investing can be complicated—and investing in an employer's retirement plan especially so. Employees participating in an employer's plan often need assistance managing their finances and saving enough to reach their goals. In fact, 69% of employees aren't saving enough for retirement,[1] and more than half cite finances as the leading cause of stress in their lives.[2]

Investment advice for participants can help. Studies show that advised participants save more and are better engaged in their retirement saving strategies. We find that advice can also reduce stress and contribute to improved emotional well-being. In a recent survey of 7,746 advised clients, 86% of them report feeling more peace of mind, compared with those managing their finances on their own.[3]

Despite the benefits of investment advice, retirement plan fiduciaries are often unsure how to approach advice so that they are complying with applicable fiduciary rules while still helping position their participants for financial success. This paper provides insight into the case for advice, the legal and fiduciary landscapes, and the prudent processes plan fiduciaries should follow to ensure a compliant advice program that helps provide better outcomes for their participants.

[1] *7 in 10 U.S. Employees Not Saving Enough for Retirement, WTW Survey Finds*. WTW, July 19, 2022.
[2] *PwC's 2023 Employee Financial Wellness Survey: Guiding Your Employees Through Uncertain Times*. PwC, May 9, 2023.
[3] *Can You Quantify the Emotional and Time Value of Financial Advice? What About the Value of Roadside Assistance?* Vanguard, 2025.

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Why advice matters

Plan participants want help. In a 2023 survey, 73% of participants indicated they would welcome personalized investment advice.[4] In Vanguard's view, offering advice programs helps give participants the best chance for financial success while also addressing fiduciary risk for the plan sponsor. Effective advice programs enhance the likelihood that participants will make sound decisions and utilize their retirement plans to increase retirement security. Better investment decisions lead to fewer investment errors, potentially reducing the risk of litigation.

Investment advice is designed to align with an investor's goals, time horizon, and risk preferences, leading to less dispersion in total returns for advised participants compared with that of self-investors. This is achieved through a personalized, diversified, and disciplined investment strategy that focuses on risk management and appropriate asset allocation.

Advice programs can provide a path to financial wellness for diverse populations of participants whose needs and circumstances change throughout their lives. These programs reach beyond investment advice to provide value in many ways.

For example, advice programs can help participants define their goals and objectives and determine appropriate savings targets. And such programs can help keep participants on course through turbulent economic periods by providing behavioral coaching and emotional support.

Advice also can help participants choose their best retirement age, determine an optimal time to claim Social Security, and establish a sustainable payment schedule in retirement. Vanguard research shows that most participants can receive substantial value from reasonably priced, customized advice that helps them make financial decisions aligned with their goals and circumstances. In a 2022 study of participant saving behaviors, managed account participants were the most likely cohort to increase their saving rate on their own and to engage with Vanguard.

Advice versus target-date funds

Based on the structure and design of target-date funds (TDFs), some fiduciaries question whether participants need access to an investment advice program if they have TDFs in their plan lineup. While TDFs are important investment options, investment advice is the most holistic and flexible solution for participants who would want or need it.

While TDFs can be applicable to a broad range of investors, they generally cater to investors who intend to retire at a certain time. The year in each fund's name indicates when an investor in the fund would expect to retire and leave the workforce. Because of their automatic nature, TDFs may work for participants who might lack investment knowledge or may be unable to engage in a more personalized solution. Advice, on the other hand, allows participants to customize their responses—and with some services, have an ongoing relationship with an investment professional. Advice can recommend and implement personalized investment portfolios/glide paths tailored to a participant's unique situation across multiple variables, resulting in an equity exposure that is often 5, 10, or 20 percentage points different from what a TDF investor would receive.[5]

[4] *2023 401(k) Participant Study*. Charles Schwab, August 2023.
[5] Vanguard, 2025.

The two solutions are not mutually exclusive, however, and plans should consider offering both TDFs and participant investment advice. For more information, see Vanguard's *TDFs or Financial Advice? How About Both?* commentary.

Committee planning note: Plan fiduciaries should understand the total costs of all services provided to a plan and be wary of situations in which one product or service could potentially be funding another. For example, an advice provider may offer to charge a low participant recordkeeping fee to a plan sponsor who agrees to default certain or all participants into their managed account advice program as the participants' qualified default investment alternative (QDIA). The prudent fiduciary should carefully review the overall fee arrangement, ensuring the reasonableness of the allocation of fees as well as the amount of each specific fee, to confirm that the fees of those enrolled in the managed account program are not subsidizing the recordkeeping costs of others in the plan. Furthermore, fiduciaries should ensure they understand any revenue-sharing arrangement between a recordkeeper and a managed account provider.

Fiduciary considerations

The historical path to advice

By the late 1990s, the DOL had recognized that investment education alone would not be sufficient for plan participants to navigate the shift from traditional pension plans to 401(k) profit-sharing plans. Unlike in defined benefit plans, participants in defined contribution plans generally retain responsibility for selecting their own investments from among those offered by the plan, thus shifting decision-making from the employer to the employee. The DOL knew that employees were often ill-equipped to make such decisions, and in a few key advisory opinions, the DOL provided the foundation for advice upon which some of Vanguard's offerings have been designed.

In two of these advisory opinions, the *Frost Bank* and *COUNTRY Trust* opinions, the DOL approves the fee leveling or offset method of offering investment advice.[6] Under this approach, fees or other compensation the advice provider receives from the mutual funds it selects directly reduce the advisory fee, so the provider doesn't receive additional income from the investments chosen under its advice program.

In the *SunAmerica* advisory opinion issued in 2001, the DOL permits plan fiduciaries to offer an advice program in which the investment recommendations provided use computer models developed by an independent, third-party financial expert if the advice provider exercises prudence in selecting and monitoring the models.[7]

Congress first demonstrated its support for advice in the Pension Protection Act of 2006 (PPA). The PPA provides a prohibited transaction exemption necessary to address a potential conflict of interest for a plan investment fiduciary under ERISA and establishes rules to ensure that advice programs will not favor investments that offer additional compensation to the fiduciary (that is, by requiring the fiduciary to receive only level fees that do not change based on the investments selected). While the PPA stopped short of mandating that plans offer investment advice, in its final advice regulation, the DOL continued to advocate for plan sponsors to offer qualified advice programs to their participants to reduce investment mistakes and help improve retirement outcomes.[8]

[6] DOL Advisory Opinion 97-15A (Frost Bank) and DOL Advisory Opinion 2005-10A (COUNTRY Trust Bank).

[7] DOL Advisory Opinion 2001-09A.

[8] Employee Benefits Security Administration, DOL. Investment Advice—Participants and Beneficiaries. October 2011.

Different advice programs rely on different pieces of guidance to comply with ERISA fiduciary standards. Plan fiduciaries should ask any necessary questions of the advice provider to ensure they fully understand how a program meets the applicable legal and regulatory compliance requirements. For more insight into the evolution of advice through legal and regulatory developments, refer to Vanguard's *Participant Advice: The Current State*.

This legal evolution brought about through legislation and regulation has allowed financial institutions to confidently develop and enhance advice programs. It has also assured fiduciaries they can take appropriate steps to offer advice to their participants with confidence knowing that Congress and the DOL support and encourage that decision. This has resulted in a significant increase in the number of plans offering advice. As recently as 2007, only 5% of Vanguard plans offered advice, representing 25% of participants.[9] By 2023, 43% of plans offered advice and 77% of participants had access to it. Among larger plans, those rates rose to 80% and 84%, respectively.[10]

Plan sponsors should be familiar with the spectrum of advice programs offered to meet their participants' differing needs and preferences. Some programs offer investment recommendations and leave it to the participants to implement them, while others, such as managed accounts, assume control of the participant's account and manage the investments directly. Service options can include digital platforms, access to onetime consultations with an advisor, extensive financial planning capabilities, and ongoing access to advisors.

While Congress and the DOL have expressed their support for advice, plan fiduciaries adopting advice should ensure they understand their fiduciary responsibilities related to choosing and monitoring an advice provider and follow a prudent process.

Once they decide to offer advice, plan fiduciaries have the duty to prudently select the advice program at the outset, and they retain ongoing oversight responsibility to monitor it. If the plan sponsor fulfills these duties in the best interests of employees and beneficiaries, the DOL confirmed in Field Assistance Bulletin (FAB) 2007-01 that the plan sponsor will not be liable for the advice given. This is true whether an advisor is independent or whether they manage conflicts of interest using the applicable regulatory guidance, including those described above. To help fulfill these duties, the DOL has furnished the following guidance outlining standards for fiduciaries to follow.

Selecting and monitoring fiduciary advisors

Retirement plan sponsors can meet their fiduciary obligations for selecting and monitoring investment advisors by using criteria outlined in FAB 2007-01.

While it's not an exhaustive list, FAB 2007-01 helps identify standards for selecting and monitoring an investment advisor. The DOL has indicated that a fiduciary should utilize an objective selection and monitoring process designed to elicit detailed information. The monitoring process must avoid self-dealing, conflicts of interest, or other improper influence.

Considerations when selecting an investment advisor

To make a prudent choice, plan sponsors should assess, at a minimum:

- What are the investment advisor's qualifications, experience, and registrations in accordance with applicable federal and state securities laws?
- What are the qualities of the advisor's services?
- Does the advisor assume fiduciary status and responsibility under ERISA and/or federal or state securities laws?
- Is the advice provided based upon generally accepted investment theories?
- Are the fees reasonable for the services provided?

[9] *How America Saves 2012*. Vanguard.

[10] *How America Saves 2024*. Vanguard. Note: Larger plans are those with 5,000 participants or more.

Committee planning note: Committees concerned about recent litigation involving advice programs should understand that these cases are very fact specific. Plan fiduciaries should understand their own fee arrangement, including any revenue sharing between the advice provider and the recordkeeper, and seek legal guidance when appropriate.

Considerations when monitoring an investment advisor

When monitoring advisors, plan sponsors should periodically review additional information relevant to the advisor's performance and continued qualifications. That review should include, at a minimum:

- Have there been any material changes to the information that was the basis for the initial selection of the advisor, including whether the advisor continues to meet applicable federal and state securities law requirements and whether the advice is based on generally accepted investment theories?
- Does the advisor comply with the contractual provisions of the engagement?
- How often do participants use the investment advice service in relation to the plan cost, and what benefits are they receiving?
- What commitment to innovation does the firm adhere to?
- Does the fiduciary advisor comply with applicable regulatory or fiduciary requirements?

For more information regarding the types of information a fiduciary should request, as well as Vanguard's responses to those questions, see *Meeting Your Fiduciary Responsibilities with Vanguard Advice Services*. In addition, a checklist outlining these criteria, as well as additional considerations, has been included in the Advice Fiduciary Checklist.

Plan sponsors selecting and monitoring their advice service providers appropriately will be afforded substantial protection when offering investment advice programs to retirement plan participants and beneficiaries. It should be noted, however, that the considerations listed on this page (and included in the Advice Fiduciary Checklist) are not exhaustive. As with all fiduciary matters under ERISA, compliance with fiduciary duties will be determined based on all facts and circumstances surrounding a particular matter. As such, the fiduciary authorizing the advice program should thoroughly review all relevant documentation and, when necessary, seek additional clarification or data. And, as with any fiduciary decision, fiduciaries should document all final decisions as well as all materials relied upon in making those determinations.

Committee planning note: When changing participant investment advice providers, plan fiduciaries should consider how to handle existing managed account assets. They can transfer these assets into a new managed account program that meets QDIA standards or move them to the plan's primary QDIA, such as a target-date fund. Participants are encouraged to update their personal information to ensure the investment advice is tailored to their needs, but default values may be used if they do not. The decision should be documented and aligned with participants' needs and retirement outcomes, providing QDIA liability relief under ERISA.

The READ fiduciary framework

When creating a prudent process for selecting and monitoring advice providers, plan fiduciaries can use Vanguard's READ model: research, evaluate, ask, and determine (see the Advice Fiduciary Checklist). The model is designed to aid compliance with the DOL's fiduciary criteria. Research involves collecting information about the advice provider, including their methodology, philosophy, goals, adherence to regulatory and legal requirements, and fees. It's best to have a comprehensive amount of information that can then be used to evaluate whether the advisor is a good fit for the plan and whether they meet the DOL's standards.

Evaluation includes reviewing all relevant information to determine whether the advisor meets the fiduciary's standards, such as having a methodology that adheres to generally accepted investment principles, having an investment philosophy in line with the committee's, and offering reasonable fees in light of the services provided. Research and evaluation will be the most time-consuming aspects of the process.

Committee planning note: When selecting an advice provider, plan sponsors should pay close attention to fees. It's not enough to simply obtain the base fee for the advice service. Research should include gathering information about all direct and indirect fees, obtaining disclosures about any subadvisors or third-party contracts, and ensuring that advisory fees are being used to pay for advice—not other services.

Even after gathering information and evaluating the quality and cost-effectiveness of the advisor and the program, the committee may have more questions or need additional information. It's incumbent upon fiduciaries to ask for whatever information they need, including input from experts, such as investment or legal advisors.

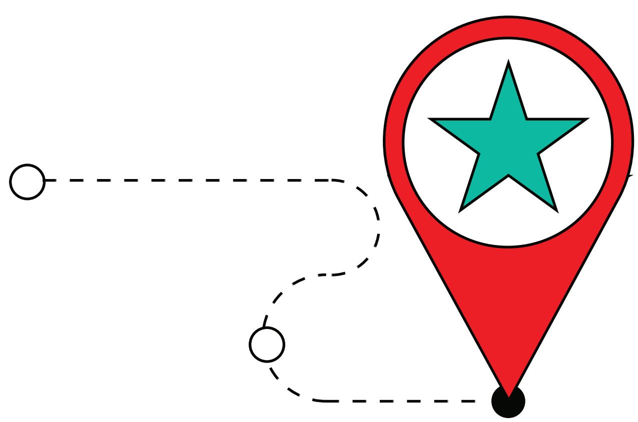
Finally, once all information has been collected, a thorough evaluation has been completed, and any outstanding questions or issues have been addressed, the fiduciary will need to make a determination based on the facts and circumstances. It's imperative that the decision, including all information and expert advice relied upon, is well documented.

Of course, the "determination" part of the model continues. The fiduciary must continue to monitor the advisor, including their compliance with the contract and the reasonableness of their fees, on an ongoing basis.

Committee planning note: While it's important for participants in automatic solutions such as TDFs to monitor their investments and allocation to make sure they still align to their goals, it's equally important for plan sponsors to maintain fiduciary prudence when selecting an advisor. While most of the READ process will occur during selection, it's critical to continue applying that fiduciary lens. In addition to ensuring the investment advisor's compliance with the contract and ongoing adherence to any applicable laws or regulations, the plan fiduciary should consider whether the fees charged remain reasonable in light of participant use and whether the program continues to meet the needs of the plan population. It will be important to decide which criteria and data will be used to make these determinations.

Conclusion

Studies show that most plan participants need help reaching their financial goals. Participant investment advice, either alone or combined with education and/or a TDF, can provide that help, customized for the participant. Plan fiduciaries concerned about the risks of adding advice services can find comfort in knowing that Congress and the DOL have underscored support for advice. By following a prudent process that includes understanding and ensuring the reasonableness of fees, fiduciaries can mitigate risk while giving participants a range of financial wellness solutions.



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Investments in target-date funds are subject to the risks of their underlying funds. The year in the fund name refers to the approximate year (the target date) when an investor in the fund would retire and leave the workforce. The fund will gradually shift its emphasis from more aggressive investments to more conservative ones based on its target date. An investment in target-date funds is not guaranteed at any time, including on or after the target date.

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