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Institutional Advisors

How Key's 401(k) Pooled Employer Plan Can Significantly Reduce Fiduciary Risks

Being a plan fiduciary is serious business

Employers that offer a 401(k) retirement plan to their employees take on significant fiduciary risk and responsibilities as well as administrative duties. These fiduciary responsibilities are often held personally by the senior executives/owners of an organization, so it is important for all involved to understand the roles and obligations in managing a single-employer 401(k) plan.

The primary responsibility of fiduciaries is to run the plan solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and paying plan expenses, according to the Department of Labor (DOL).

Potential financial penalties or legal liabilities

Fiduciaries who do not follow the principles of conduct from the DOL may be **personally liable** to restore any losses to the plan, or to restore any profits made through improper use of plan assets. Being **personally liable** means that your personal assets may be at risk and you could potentially face jail time if you are found guilty of breach of fiduciary duty. In addition, plan fiduciaries can be subject to civil and criminal penalties and fines.

401(k) plan management and fiduciary responsibilities

Examples of essential areas for managing a 401(k) plan, including fiduciary responsibilities, include the following. Note that in a traditional single-employer 401(k) plan, while some of these services can be outsourced, most of the fiduciary risk still typically lies with the employer, including senior executives.

Investment selection and monitoring

- Employers must prudently select and monitor investment options offered.

Compliance and regulatory requirements

- Employers must comply with various regulations, including Employee Retirement Income Security Act (ERISA) and DOL regulations.
- Examples include providing required participant disclosures, filing annual reports, and monitoring contribution limits.

Fees and expenses

- Employers are responsible for ensuring the plan's fees and expenses are reasonable and adequately disclosed to participants.
- Failure to monitor and control these costs can erode participants' retirement savings over time.

Participant education and communication

- Employers must also provide participants with sufficient information and education about the plan to help them make informed decisions about their retirement savings.

401(k) plan lawsuits are on the rise — Why managing fiduciary risk can be critical to your organization

There continues to be an increase in the number of 401(k) plan lawsuits largely related to breach of fiduciary duty, including those of some of the largest companies. Some recent 401(k) lawsuits mentioned in the news include well-known companies such as Amazon,[1] American Airlines,[2] and UnitedHealth Group.[3] UnitedHealth Group, as an example, recently agreed to a $69 million settlement in a class action lawsuit involving fund selection for its 401(k) plan.[3]

Sample 401(k) Lawsuit Claims

- Application of plan forfeitures
- Challenges with investment fund lineup, including share class selection or use of proprietary funds
- Excess recordkeeping fees
- Excess investment management fees
- Self-dealing (when a plan fiduciary acts in its own best interest)

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How a 401(k) Pooled Employer Plan Can Significantly Reduce Fiduciary Risks

How does Key's 401(k) PEP help employers reduce fiduciary risk?

Key's 401(k) pooled employer plan (PEP) can help significantly reduce the fiduciary risk your organization may have in managing its retirement program. This is because the 3(16) plan administrative fiduciary risk and 3(38) investment fiduciary risk are transferred to professional fiduciaries who have the expertise and resources to manage the plan effectively. Importantly, this can also result in better investment options and improved outcomes for participants.

Note that, while most of the fiduciary responsibilities are transferred, individual employers still do maintain some level of fiduciary responsibility. This would include the decision to join our PEP and ongoing monitoring of the PEP and its service providers.

The bundled service offering is shown in the following table:

Role	Summary and Impact on Fiduciary Risk Reduction
Pentegra as the Pooled Plan Provider (PPP)	The PPP is the overall fiduciary for the PEP and its operations, including acting as the 3(16) plan administrative fiduciary. Importantly, the PPP replaces the employer as the named fiduciary and plan sponsor, further supporting the fiduciary risk reduction.
KeyBank as the Investment Manager	Provides fund monitoring and selection and takes on the fiduciary responsibility as 3(38) investment manager.
Transamerica as the Recordkeeper	Provides full recordkeeping services, participant education, and financial wellness tools.

For more information, please contact your advisor.

KeyBank Institutional Advisors collaboratively engages stakeholders to understand their organizations' strategic mission, values, and goals. Our advisors are professionals supported by subject matter experts across client disciplines/market segments. Combining our expertise with an understanding of the client, we recommend and implement customized, coordinated financial solutions.

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1 Pensions&Investments, January 3 2025 "Amazon hit with ERISA lawsuit over policy for forfeited 401(k) funds"
2 Pensions&Investments, January 10 2025 "Federal judge rules against American Airlines in signature 401(k) ESG lawsuit"
3 Planadviser, December 13, 2024 "UnitedHealth Group Settles 401(k) Fund Complaint for $69 Million"

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Pooled Employer Plans (PEPs) are a new type of multiple employer plan for which the Department of Labor (DOL) and IRS guidance is still pending in a number of areas. An employer participating in the plan retains certain fiduciary responsibilities, including responsibility for retaining and monitoring the Pooled Plan Provider (PPP), for determining the reasonableness of its fees, and for periodically reviewing the plan as a whole.

Nothing in this communication should be construed as the commencement of operations by a PPP prior to registration as a PPP. Among other responsibilities, the PPP acts as the ERISA 3(16) Plan Administrator. Pentegra Services, Inc. (Pentegra) serves as the PPP and the ERISA 3(16) Plan Administrator for the PEP. KeyBank serves as the 3(38) Investment Manager to the PEP. Transamerica serves as the Recordkeeper for the PEP. Pentegra, KeyBank, and Transamerica are separate and unaffiliated companies.

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