



HYAS GROUP

FIDUCIARY FUNDAMENTALS

State of Nevada

January 2021

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Risks & Protections

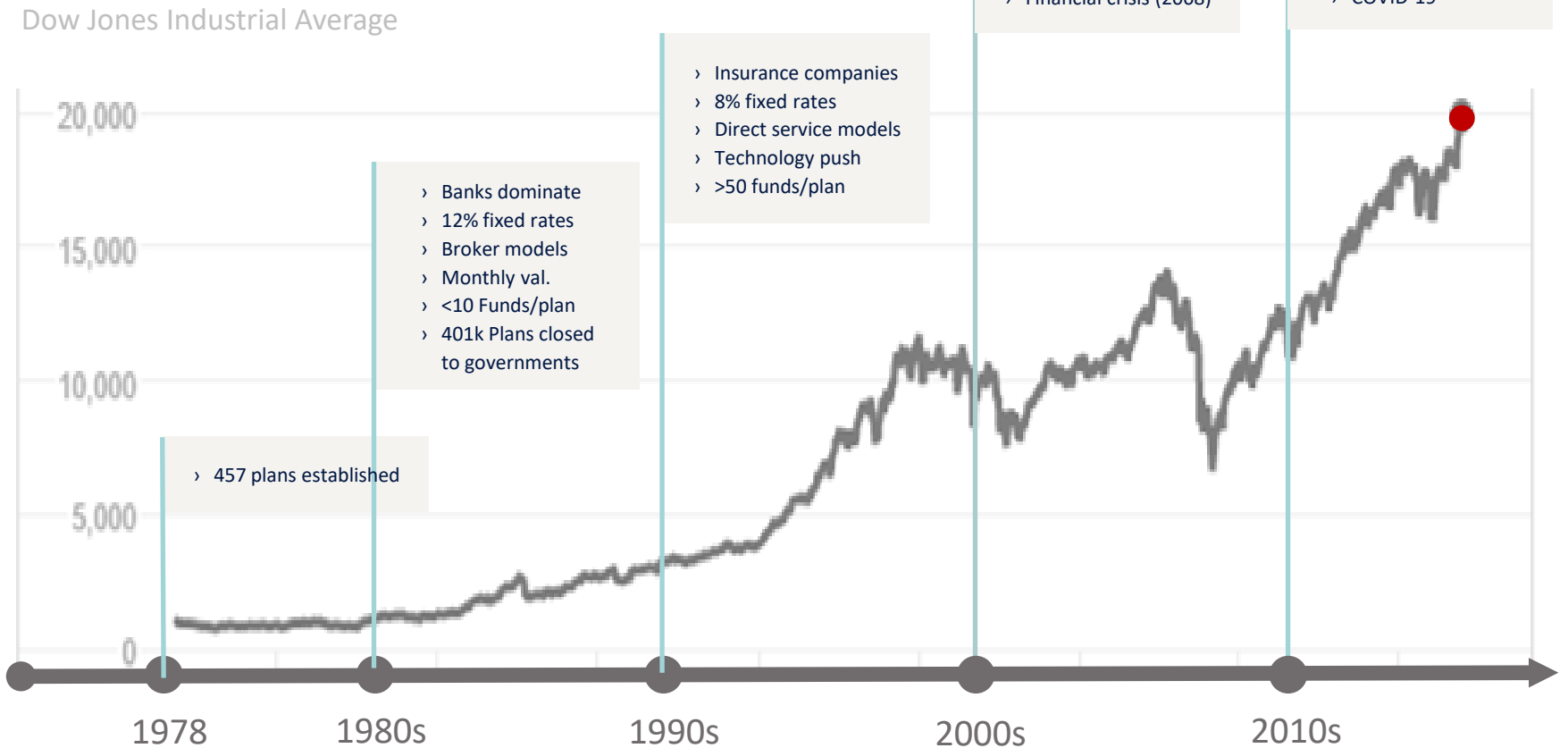
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Background

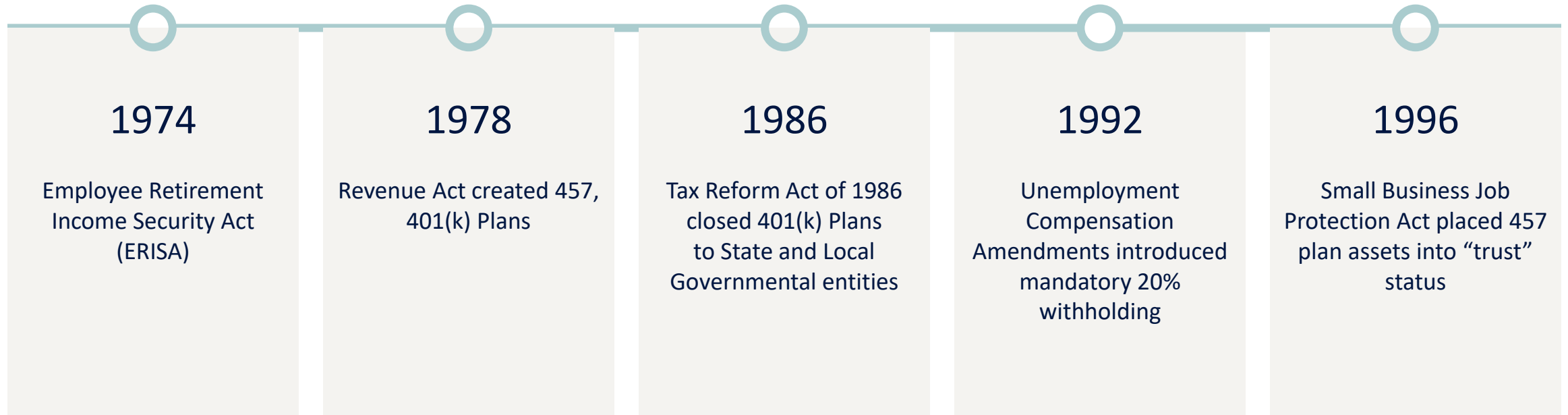




HOW WE GOT HERE



PUBLIC SECTOR RETIREMENT PLAN FIDUCIARY OVERSIGHT MILESTONES



PUBLIC SECTOR RETIREMENT PLAN FIDUCIARY OVERSIGHT MILESTONES

2002

EGTTRA legislation eliminated most differences between 457 plans and private sector 401(k) plans

2006

Pension Protection Act; introduces QDIA's, auto features for Plans where applicable

2008
-
PRESENT

Litigation over failure to oversee retirement plans increases, with most actions involving investments and fees

PUBLIC SECTOR RETIREMENT PLAN FIDUCIARY OVERSIGHT MILESTONES

2017

DOL unsuccessfully attempts to expand
Fiduciary definitions

Nevada introduces own version
(SB 383/NRS 628) *

2019

SECURE Act modifies certain fiduciary related
items

2020

CARES Act introduced to provide
relief to participants affected
by COVID-19 pandemic **

*

- › Nevada law affirmatively states that broker-dealers owe a fiduciary duty for most of their advice to customers
- › Under Nevada law, a customer can sue an advisor (at a broker-dealer or RIA) for breach of fiduciary duty
- › The Nevada proposal requires a more in-depth disclosure of compensation than Federal Regs
- › The Nevada proposal makes clear that a broker-dealer has a fiduciary duty to monitor a customer's account

**

- › Sec. 2202(a) Tax favored withdrawals up to \$100,000 from qualified retirement plans
- › Sec. 2202(b) Increased limit on loans from qualified retirement plans
- › Sec. 2203 Temporary waiver of required minimum distributions (RMD) for 2020

02

Who is a Fiduciary?

WHO IS A FIDUCIARY?

Anyone with discretionary authority or control over the administration of a retirement plan or its assets



WHO IS A FIDUCIARY?

Fiduciary by name:

- ▶ Plan Sponsor
 - ▶ NDC Committee
 - ▶ NV-DOA Admin Staff
 - ▶ NV-DAG
- ▶ Co-Fiduciaries
 - ▶ Investment Consultant

Fiduciary by action:

Anyone who acts as a fiduciary can be considered a fiduciary

WHAT IS A FIDUCIARY?

Persons who, by either function or appointment, have discretionary authority over plan assets and/or administration



WHAT IS A FIDUCIARY?

Fiduciary Functions:

- ▶ Selecting, retaining or terminating record-keepers
- ▶ Selecting, retaining, or terminating investment options
- ▶ Processing and submitting participant contributions
- ▶ Negotiating fees and expenses for plan services and investment

Must be more than “Ministerial”:

- ▶ Maintaining records and other administrative roles are not covered
- ▶ Processing payroll may qualify though, if decisions can delay deposits

MULTIPLE LAYERS OF PROTECTION & FIDUCIARY OVERSIGHT

Recordkeeper

Plan Sponsor

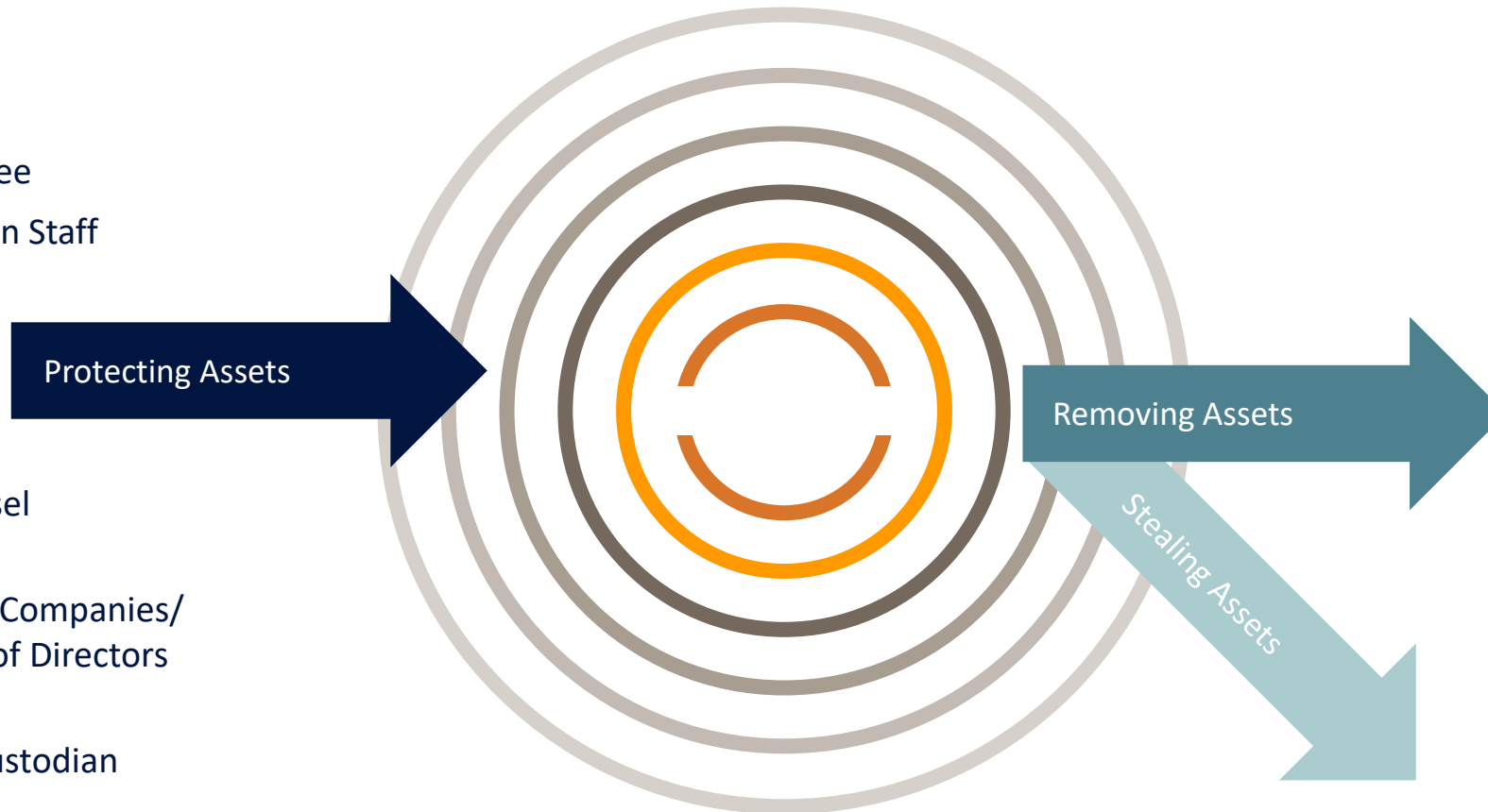
- NDC Committee
- NV-DOA Admin Staff
- NV-DAG

Plan Consultant

Outside Legal Counsel

Asset Management Companies/
Funds/Trust/Board of Directors

Trust Company & Custodian



Advisors

Brokers

Annuity Sales

Recordkeeper's IRA

03

Fiduciary Duties

FIDUCIARY DUTIES

Duty of Loyalty

Duty of Prudence

Duty to Follow Plan Document

Duty to Diversify

Duty of Loyalty

- ▶ Avoid self-dealing
- ▶ Avoid conflicts of interest
- ▶ Operate the plan for the exclusive purpose of providing benefits and offsetting reasonable expenses
- ▶ Reasonable Plan expenses may be charged

Duty of Prudence

- ▶ A fiduciary must execute his/her duties with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with such matters would use:
 - ▶ Allows for the hiring of “experts” to assist
 - ▶ Experts must be prudently selected and monitored

Duty to Follow Plan Document

- ▶ Must oversee and make sure the plan operates in compliance with the plan document, trust agreements and/or other documents
- ▶ Fiduciaries should be familiar with:
 - ▶ Plan documents
 - ▶ Federal and State law in relations to the documents

Duty to Diversify

- ▶ The “Diversification Rule”:
 - ▶ “A fiduciary must diversify investments in order to minimize risk of loss unless it would be considered prudent not to diversify investments”
- ▶ For Defined Contribution Plans with Self-Direction of Investments by Participants:
 - ▶ ERISA § 404(c) is an accepted guide to minimums, but only requires three options

04

Meeting Fiduciary Responsibilities

FIDUCIARY RESPONSIBILITIES

Plan Design & Administration Issues:

- ▶ Design the plan and fee allocation to be fair to all participants
- ▶ Establish appropriate rules and policies for participants
- ▶ Enforce plan rules consistently
- ▶ Communicate rules, policies and amendments to participants
- ▶ Review plan documents at least annually to ensure compliance
- ▶ Review trust, custodial and other service agreements regularly

FIDUCIARY RESPONSIBILITIES

CONT.

Plan Governance:

- ▶ Establish roles, rules and procedures for Committee functions
- ▶ Follow a prudent process when making decisions
- ▶ Select and train qualified people to serve on Committee
- ▶ Hold regular meetings
- ▶ Document decisions and keep minutes of fiduciary meetings

FIDUCIARY RESPONSIBILITIES

CONT.

Investment Responsibilities:

- ▶ Create an Investment Policy Statement (IPS) that reflects the plan objective and clarifies the responsibilities of all parties
- ▶ Determine types of investment options to be offered:
 - ▶ Number of asset classes
 - ▶ Diversification
 - ▶ Target-date funds
 - ▶ Managed accounts
- ▶ Develop criteria for selecting, monitoring and removing investments and investment managers/advice providers
- ▶ Set guidelines for appropriate actions

FIDUCIARY RESPONSIBILITIES

CONT.

Selection & Monitoring of Service Providers:

- ▶ All contracts should be in best interest of plan participants
- ▶ Competitive bid or search process should be based on objective criteria
- ▶ Follow a prudent process and be able to justify contract awards
- ▶ Establish appropriate performance standards
- ▶ Evaluate contractors regularly
- ▶ Have reasonable basis for determining appropriateness of provider fees:
 - ▶ Benchmarking
 - ▶ RFP

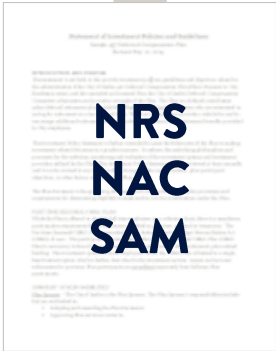
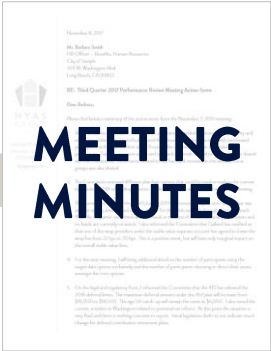
FEE DISCLOSURES

Participant Disclosures:

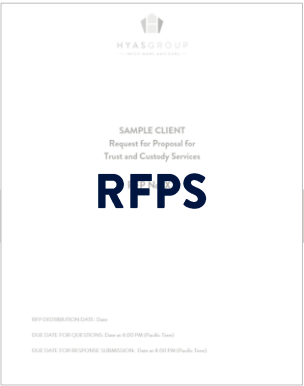
- ▶ General plan information
- ▶ Administrative expenses
- ▶ Investment information:
 - ▶ Performance
 - ▶ Fees and expenses
- ▶ In practice, disclosure is created by the record keeper; however, a fiduciary must approve it

Plan Sponsor Disclosures:

- ▶ Required of service providers (e.g. record keeper, consultant)
- ▶ Description of services, fiduciary status and fees for each provider
- ▶ Determine that fees are reasonable for services provided



MEETING FIDUCIARY RESPONSIBILITIES



RISK & PROTECTION FOR FIDUCIARIES

What is at risk?:

- › Cost of fiduciary breach
- › Penalties and taxes
- › Personal liability
- › Public relations problems
- › Fiduciary Insurance

Plan document/plan sponsor should protect fiduciaries from personal liability to the extent allowed by law:

- › State law may provide certain protections
- › Seek indemnification from employer
- › Evaluate fiduciary insurance and bonding needs

SUMMARY OF COMMITTEE RESPONSIBILITIES

- ▶ Fiduciary review of investments
- ▶ Fiduciary review of service providers
- ▶ Authorize changes to investments
- ▶ Authorize changes to investment providers
- ▶ Create or approve design of education/counseling programs
- ▶ Review and approval of hardship withdrawal requests
- ▶ Monitoring of fees and expenses

QUESTIONS?

CASE STUDY #1

The Committee has received a request from a plan participant to add a particular real asset fund to the 457 plan that has recently been performing very well. You actually know of the specific fund because you have invested in it through your IRA and it has performed very well for you. You have recently been considering adding more money to the fund.

As a Committee Member, do you vote to add the fund?

- a) Yes—Because you know the fund and it has done very well for you
- b) No—You abstain from voting because you don't feel you can be objective about the decision, given your personal experience with the fund
- c) Maybe—Discuss whether real asset funds are appropriate for your Plan's participants based on their investment knowledge

CASE STUDY #2

As a fiduciary Committee member, you are approached by the plan's record keeper.

He offers you two different share classes of the same mutual fund. One has an expense ratio of .70% annually, but rebates back .25% to the plan to help offset record keeping expenses. The other has an expense ratio of .55%, but rebates nothing to help offset expenses.

Which one do you choose?

- a) The less expensive one because it is cheaper for participants
- b) The more expensive one because revenue sharing pays all the plan's administrative expenses
- c) Neither until you have assessed fee reasonableness and method for allocating plan expenses

CASE STUDY #3

Your Committee has identified an investment manager that is not performing in line with expectations contained in the Investment Policy Statement.

What should you do?

- a) Replace the manager immediately
- b) Identify the reasons for failure to meet expectations
- c) Consult the Investment Policy Statement for a watch list procedure and follow it
- d) Both b) & c)
- e) None of the above

CASE STUDY #4

As a fiduciary Committee member, you have noticed that one of the other Committee members rarely attends any of the meetings.

This member also does not appear to make any effort to become informed about what they may have missed when not in attendance.

What should you do?

- a) Nothing since you have a quorum without this member
- b) Contact the SEC
- c) Discuss the issue with the Committee since members may be responsible for the conduct of others on the Committee
- d) Quit the Committee immediately

CASE STUDY #5

In spite of efforts to provide clear, concise communications to participants about the plan fees and structure, a participant continues to complain about the costs associated with the investments in the plan and claims everything is too expensive.

As a Committee member, what would you do?

- a) Tell the participant to call the consultant
- b) Tell the participant to call his/her broker
- c) Discuss the situation with the full Committee and determine a course of action
- d) None of the above, participants are clueless

THANK YOU.

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