

The logo for Fi360, featuring the text 'Fi360' in a white, sans-serif font. The 'i' has a dot, and the '3' is a simple numeral. The entire logo is centered within a white square frame.

Fi360

A Broadridge® Company

Introduction to Fiduciary Prudent Practices

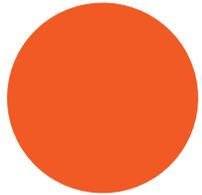
Rich Lynch, AIFA®

Lead AIF Instructor, Broadridge Fi360 Solutions

Bennett Aikin, AIF®

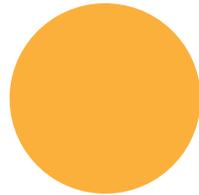
Director of Designations, Broadridge Fi360 Solutions

U.S. Legislation



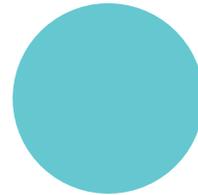
ERISA:

Employee Retirement
Income Security Act
(Qualified retirement
plans)



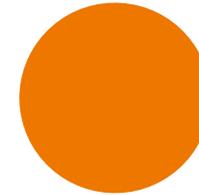
UPIA:

Uniform Prudent Investor
Act (Private trusts, the
default standard if nothing
else “fits”)



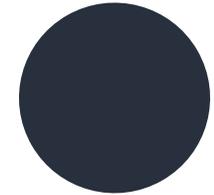
UPMIFA:

Uniform Prudent
Management of Institutional
Funds Act (Foundations,
endowments, and
government sponsored
charitable institutions)



MMPERSA:

Uniform Management of
Public Employees
Retirement Systems Act
(State, county, and
municipal retirement
plans)



IAA:

The Investment Advisers
Act of 1940

Global Fiduciary Precepts

- 01 Follow laws and governing documents
- 02 Diversify to manage risk and return
- 03 Prepare and follow an investment policy statement
- 04 Prudently select fiduciary and non-fiduciary service providers
- 05 Control and account for costs
- 06 Avoid or manage conflicts of interest
- 07 Monitor service providers
- 08 Monitor and assure conformity to fiduciary obligations

Prudent Practices



ANSI Accreditation



Fi360 is accredited to ISO standard 17024: see

<https://www.ansi.org/Accreditation/credentialing/personnel-certification/AllDirectoryDetails?&prgID=201&OrgId=12311&statusID=4>

Job Task Analysis



Components of a Standard: Practices and Criteria



1.1 PRACTICE

The duty of care generally requires the advisor to “act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.” This language is commonly known as the prudent person rule. Fiduciary investment advisors should think of this as the prudent “expert” rule because the phrase “acting in a like capacity and familiar with such matters” elevates the obligation to that expected of an expert in the field.

SUGGESTED PROCEDURE

Complying with all applicable standards related to your services requires assessing the scope of your advisory services, determining your fiduciary status under applicable laws and regulations, and understanding the obligations that apply to the specific client engagement. Fiduciary laws and regulations are intentionally principles-based. In contrast to rules-based regulations such as those administered by FINRA dealing with non-fiduciary sales practices, fiduciary laws and regulations are not highly prescriptive. They require professionals to always serve clients’ best interests by staying current with developments in their field and responding appropriately to changing economic, market and social conditions, technology, and the body of knowledge in the profession.

Professional standards play a critical role in providing specific, practical, and timely guidance to advisors. This handbook addresses the reality that most advisors serve several client types: individuals, retirement plan sponsors, charitable organizations, trusts, and others. The fiduciary practices delineated here are substantiated in the various laws that apply to those audiences. Additionally, the practices are updated periodically to stay current with best investment management, business, and fiduciary practices. That is why Practice 1.1 requires adherence to all practices that apply to any given client engagement.

The ethical and competency standards established by professional associations also serve the important role of guiding the conduct of practitioners in their specific disciplines. Organizations such as the American Institute of CPAs, Certified Financial Planner Board of Standards, CFA Institute, and others set and enforce codes of conduct and ethics for their members or certified professionals. Practice 1.1 recognizes the importance of professional standards-setting bodies and the obligation of investment advisors to honor the commitments they have made to such organizations.

Organizations that confer professional designations and trade associations may promulgate professional standards of conduct or codes of ethics with more stringent requirements than apply under law or regulations; they cannot eliminate or lower legal or regulatory obligations. As a practical matter, advisors who are subject to varying levels of fiduciary accountability need to adhere to the highest one to avoid being out of compliance at some level.

The pursuit of fiduciary excellence by advisors serves the best interests of investors and enhances the reputation of the profession of investment advice. This involves going beyond mere compliance to adopt professional best practices.

Substantiation

Employee Retirement Income Security Act of 1974 [ERISA] §404(a) (1)

Regulations
29 C.F.R. §2550.404a-1

Case Law
Tibble v. Edison, Int’l, 135 S. Ct. 1823, 59 E.B.C. 2461 (2015), on remand 843 F.3d 1187 (9th Cir. 2016) and 2017 WL 3523737 (C.D.Cal. 2017); *Tussey v. ABB, Inc.*, 52 E.B.C. 2826, 2012 WL 1113291 (W.D. Mo. 2012), *aff’d in part* 2014 WL 1044831 (8th Cir. 2014) and 2017 WL 929202 (8th Cir. 2017); *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585 (8th Cir. 2009), 6:08-cv-03109-GAF (W.D. Mo. 2012); *Marshall v. Glass/Metal Association and Glaziers and Glassworkers Pension Plan*, 507 F. Supp. 378 2 E.B.C. 1006 (D.Hawaii 1980); *Katsaros v. Cody*, 744 F.2d 270, 5 E.B.C. 1777 (2d Cir. 1984), *cert. denied*, *Cody v. Donovan*, 469 U.S. 1072, 105 S. Ct. 565, 83 L. Ed. 2d 506 (1984); *Marshall v. Snyder*, 1 E.B.C. 1878 (E.D.N.Y. 1979); *Donovan v. Mazzola*, 716 F.2d 1226, 4 E.B.C. 1865 (9th Cir. 1983), *cert. denied*, 464 U.S. 1040, 104 S. Ct. 704, L.Ed.2d 169 (1984); *Fink v. National Savings and Trust Company*, 772 F.2d 951, 6 E.B.C. 2269 (D.C. Cir. 1985); *Metzler v. Graham*, 112 F.3d 207 (5th Cir. 1997)

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Practice 1.1

Advisors

Practice 1.1 – The investment advisor demonstrates an awareness of fiduciary duties and responsibilities.

1.1.1 The investment advisor complies with all laws and rules that apply to the services the advisor is providing.

1.1.2 The investment advisor complies with all applicable Practices and Procedures defined in this Prudent Practices handbook.

1.1.3 The investment advisor adheres to all applicable standards of conduct and code(s) of ethics required by law, regulation, employers, and professional organizations.

Practice 1.2

Advisors

Practice 1.2 – Investments and investment services provided are consistent with governing documents.

1.2.1 Investments are managed, and investment services are provided, in accordance with governing documents, including documents establishing the terms of an account or client engagement and the investment policy statement.

1.2.2 Documents pertaining to the investment management process, including records of decisions made by fiduciaries and clients, are secure and readily and reliably accessible by authorized persons.

Practice 1.3

Advisors

Practice 1.3 – The roles and responsibilities of all involved parties, whether fiduciaries or non-fiduciaries, are defined and documented.

1.3.1 All involved parties have acknowledged their roles and responsibilities and fiduciary or non-fiduciary status in writing.

1.3.2 Each investment committee formed, controlled, or required by the investment advisor has a defined set of by-laws or operating procedures to which the committee adheres.

Practice 1.4

Advisors

Practice 1.4 – The investment advisor identifies material conflicts of interest and avoids or manages conflicts in a manner consistent with the duty of loyalty.

1.4.1 Policies and procedures for overseeing and managing conflicts of interest, including to avoid self-dealing and making false or misleading statements, are defined and followed.

1.4.2 Conflicts of interest are avoided when prohibited by law and/or governing documents.

1.4.3 Conflicts of interest that are not avoided must be managed in the client's best interest.

1.4.4 Conflicts of interest that are not avoided must be disclosed to the client and informed client consent must be obtained.

Practice 1.5

Advisors

Practice 1.5 – Agreements under the supervision of the investment advisor are in writing and do not contain provisions that conflict with fiduciary obligations.

1.5.1 The investment advisor fully discloses in writing all compensation arrangements and affiliations associated with the service agreement.

1.5.2 If the investment advisor is responsible for oversight of other service providers, the advisor must evaluate all material compensation, affiliations, and the fiduciary status of each service provider.

1.5.3 Agreements are periodically reviewed to ensure consistency with the needs of the client.

1.5.4 Comparative reviews of service agreements for which the investment advisor is responsible are conducted and documented approximately every three years.

Practice 1.6

Advisors

Practice 1.6 – Sensitive personal identifying information and assets of clients are prudently protected from theft, embezzlement, and business disruption risks.

- 1.6.1 The investment advisor has a reasonable basis to believe assets are within the jurisdiction of a viable judicial system.
- 1.6.2 Appropriate procedures are in place to secure and prudently protect the privacy of client or plan data.
- 1.6.3 Appropriate procedures are in place to assure that sensitive personal identifying information and assets of clients are prudently protected from physical, operational, virtual, and other material risks associated with business disruptions.
- 1.6.4 The investment advisor has a reasonable basis to believe assets are protected by appropriate insurance, bonding, internal controls, and security measures taken by fiduciaries and other service providers, including the investment advisor's own firm.
- 1.6.5 The investment advisor has procedures in place to manage situations where the advisor reasonably believes that a client's assets are at risk due to suspicious behavior by service providers, the client, or others with access to or influence over the client's assets.
- 1.6.6 The investment advisor has documented a succession plan and a business continuity plan that is reviewed and tested periodically.

Practice 2.1

Advisors

Practice 2.1 – An investment time horizon has been identified for each investment objective of the client.

2.1.1 Sources, timing, distribution, and uses of cash flows are documented.

2.1.2 In the case of an individual investor, an appropriate needs-based analysis has been factored into the time horizon.

2.1.3 In the case of a defined benefit retirement plan, an appropriate asset/liability study has been factored into the time horizon.

2.1.4 In the case of a defined contribution retirement plan, the investment options provide for a reasonable range of participant time horizons.

2.1.5 In the case of a foundation or endowment, a schedule of expected receipts and disbursements of gifts and grants has been factored into the time horizon to the extent possible and an estimated equilibrium spending rate has been established.

Practice 2.2

Advisors

Practice 2.2 – An appropriate risk level has been identified for the portfolio.

2.2.1 The expected volatility of the portfolio is understood by the investment advisor and communicated to the client, and the quantitative and qualitative factors that were considered are documented.

2.2.2 “Large loss” scenarios have been identified and considered in establishing the portfolio’s risk level.

2.2.3 Expected disbursement obligations and contingency plans have been considered when establishing liquidity requirements for the portfolio and assessing the capacity to assume portfolio risk.

2.2.4 In the case of a defined contribution retirement plan, the investment options provide for a reasonable range of participant risk tolerance levels.

Practice 2.3

Advisors

Practice 2.3 – The distribution of projected portfolio returns is evaluated in the context of the client’s risk and return objectives.

2.3.1 The projected portfolio return is consistent with the client’s tolerance and capacity to assume volatility risk and investment goals and objectives.

2.3.2 Projected return assumptions for each asset class are based on reasonable risk premium assumptions.

2.3.3 For defined benefit plans, the projected return values used for modeling are reasonable and are also used for actuarial calculations.

2.3.4 For defined contribution plans, the projected returns for pre-diversified options, such as target date funds or model portfolios, are based on reasonable risk premium assumptions.

2.3.5 For endowments and foundations, the projected return values used for modeling are reasonable and are consistent with distribution requirements or the projected equilibrium spending rate.

Practice 2.4

Advisors

Practice 2.4 – Selected asset classes are consistent with the portfolio’s time horizon and risk and return objectives.

2.4.1 Asset classes are appropriately weighted to conform to the portfolio's specified time horizon and risk/return profile.

2.4.2 For participant-directed plans, selected asset classes provide each participant the ability to diversify their portfolio appropriately given their time horizon and risk/return profile.

2.4.3 The methodology and tools used to establish appropriate portfolio diversification are prudent and consistently applied.

Practice 2.5

Advisors

Practices 2.5 – Selected asset classes are consistent with implementation and monitoring constraints.

2.5.1 The Investment Advisor has the time, resources, knowledge, and skills to implement and monitor all selected asset classes.

2.5.2 The process and tools used to implement and monitor investments in the selected asset classes are appropriate.

2.5.3 Appropriate investment products are accessible within each selected asset class.

Practice 2.6

Advisors

Practice 2.6 – The investment policy statement contains sufficient detail to define, implement, and monitor the portfolio’s investment strategy.

2.6.1 The investment policy statement identifies the bodies of law governing the portfolio.

2.6.2 The investment policy statement defines the duties and responsibilities of all parties involved.

2.6.3 The investment policy statement specifies risk, return, and time horizon parameters.

2.6.4 The investment policy statement defines diversification and rebalancing guidelines consistent with risk, return, and time horizon parameters.

2.6.5 The investment policy statement defines due diligence criteria for selecting investment options.

2.6.6 The investment policy statement defines procedures for controlling and accounting for investment expenses.

2.6.7 The investment policy statement defines monitoring criteria.

Practice 2.7

Advisors

Practice 2.7 – Investment due diligence using environmental, social, and governance (ESG) factors conforms to governing documents and the fiduciary obligations of investment decision-makers.

2.7.1 The client’s goals, objectives, and investment parameters are evaluated to determine whether ESG investing is necessary and/or desirable.

2.7.2 Provisions regarding ESG investing in governing documents are aligned with fiduciary obligations.

Practice 3.1

Advisors

Practice 3.1 – A prudent due diligence process is followed to select each service provider.

3.1.1 Prudent criteria are identified for each due diligence process used to select service providers.

3.1.2 The due diligence process used to select each service provider is documented.

3.1.3 Each due diligence process used to select service providers is consistently applied.

Practice 3.2

Advisors

Practice 3.2 – Statutory or regulatory investment safe harbors that are elected are implemented in compliance with the applicable provisions.

3.2.1 Available safe harbors are evaluated to determine if any advance the best interests of the investors and/or beneficiaries.

3.2.2 When elected, safe harbor provisions are implemented in compliance with requirements.

Practice 3.3

Advisors

Practice 3.3 – Decisions regarding investment strategies and types of investments are made in accordance with fiduciary obligations and are documented.

- 3.3.1 A prudent due diligence process is used to select investment strategies, investment managers, and investments.
- 3.3.2 Decisions regarding the selection of investments consider both qualitative and quantitative criteria.
- 3.3.3 The due diligence process used to select investment strategies, investment managers, and investments is documented and consistently applied.
- 3.3.4 Regulated investments are preferred over unregulated investments when all other characteristics are comparable.
- 3.3.5 Investments that are covered by readily available data sources are preferred over similar investments for which limited coverage is available when all other characteristics are comparable.
- 3.3.6 A prudent due diligence process is used to make decisions regarding the use of proprietary versus non-proprietary products, and separately managed versus commingled accounts.
- 3.3.7 Decisions regarding rollover advice are made in accordance with fiduciary duties of loyalty and care.

Practice 4.1

Advisors

Practice 4.1 - Periodic reviews compare investment performance against appropriate market and peer group benchmarks and overall portfolio objectives.

4.1.1 Investment performance of the overall portfolio is compared against an appropriate benchmark and evaluated in the context of portfolio objectives.

4.1.2 The performance of each investment option is periodically compared against an appropriate market and peer group benchmark and any other performance-related due diligence criteria defined in the investment policy statement.

4.1.3 Underperforming investments are monitored and decisions to retain or replace investments are documented.

4.1.4 Rebalancing procedures are reasonable, documented, and consistently applied.

4.1.5 Investment performance is periodically reported to the client.

Practice 4.2

Advisors

Practice 4.2 – Periodic reviews are made of qualitative and/or organizational changes of investment managers and other service providers.

4.2.1 Periodic evaluations of the qualitative factors that may impact the results or reliability of investment managers are performed.

4.2.2 Negative news and other material information regarding an investment managers or other service provider are considered and acted on in a timely manner.

4.2.3 Deliberations and decisions regarding the retention or dismissal of investment managers and other service providers are documented.

4.2.4 Qualitative factors that may impact service providers are considered in the contract review process.

Practice 4.3

Advisors

Practice 4.3 – Procedures are in place to periodically review policies for trading practices and proxy voting.

4.3.1 Procedures are in place to periodically review each investment manager’s policies for best execution.

4.3.2 Procedures are in place to periodically review each investment manager’s policies for special trading practices such as “soft dollars”, directed brokerage, and commission recapture.

4.3.3 Procedures are in place to periodically review each investment manager’s policies for proxy voting.

Practice 4.4

Advisors

Practice 4.4 – Periodic reviews are conducted to ensure that investment-related fees, compensation and expenses are fair and reasonable for the services provided.

4.4.1 A summary of all parties being compensated from client portfolios or from plan or trust assets, and the amount of compensation, has been documented.

4.4.2 Fees, compensation, and expenses paid from client portfolios or from plan or trust assets are periodically reviewed to ensure consistency with all applicable laws, regulations, policies and procedures, and service agreements.

4.4.3 Procedures are in place to avoid or identify and appropriately address unreasonable fees.

Practice 4.5

Advisors

Practice 4.5 – There is a process to periodically review the organization’s effectiveness in meeting its fiduciary responsibilities.

4.5.1 Fiduciary assessments are conducted at planned intervals to determine whether appropriate policies and procedures are in place to address all fiduciary obligations and that such policies and procedures are effectively implemented and maintained.

4.5.2 The investment policy statement is reviewed at least annually to ensure it is aligned with current facts and circumstances.

Q & A

Please submit any questions using the On24 interface

Additional questions can also be sent to support@fi360.com

Please provide your feedback on the survey immediately following today's webinar.

THANK
YOU
