January 29, 2007

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5669
U.S. Department of Labor
200 Constitution Ave, NW
Was
Attention: 401(k) Plan Investment Advice RFI

Ref: Response to RFI; Prohibited Transaction Exemption for Provision of Investment Advice to Participants in Individual Account Plans (published 12/04/2006).

Document ID: EBSA-2006-0050-0001

Fiduciary360 (see Enclosure 1 for additional information about "fi360") is pleased to submit the following responses to the above captioned RFI:

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Presuppositions

Our responses are based on three presuppositions:

1. We believe that, in order to meet the requirements of section 408 of ERISA, the evaluation of a computer model ("model") necessitates two different and distinct approaches:

   408(g)(3): An evaluation to determine whether the model meets the requirements defined in Section 601; the proverbial "factory warranty."

   408(g)(5): An evaluation to determine whether the fiduciary adviser is utilizing the model correctly, and in the best interests of the participants.

   Our RFI responses will attempt to address both evaluations, and will reference whether the response is intended to satisfy **408(g)(3)** or **408(g)(5)**.

2. There is likely to be confusion as to whether a model is intended to be used only in the development of a participant's asset allocation strategy, or to be more inclusive and apply to the development of a participant's overall investment strategy. We believe the latter; the proper evaluation of a computer model also should include how the model is used in all four steps of a traditional investment decision-making process.

   To illustrate, each of the model criteria ("criteria") described in the ERISA section 408(g)(3)(B) can be mapped to one of the four steps:

   Step One – Organize: What participant input is required, and how does the computer model obtain and organize the information?

   Criteria: Utilizes relevant information about the participant, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments.

   Step Two – Formalize: How does the computer model formalize the investment strategy, including the development of the participant's asset allocation strategy, and prepare a written document that summarizes the participant's inputs and records the suggested investment strategy provided to the participant?

   Criteria: Applies generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time.

Step Three – Implement: How does the computer model suggest the implementation of the investment advice, and identify specific investment options for implementation?

Criteria: Utilizes prescribed objective criteria to provide asset allocation portfolios comprised of investment options available under the plan.

Criteria: Operates in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser.

Step Four – Monitor: How does the computer model monitor the participant's investment strategy? Does it include procedures to periodically rebalance the participant's portfolio? Prompt the fiduciary adviser to check for material changes in the participant's profile? And provide investment performance information to participants?

Criteria: Takes into account all investment options under the plan in specifying how a participant's account balance should be invested, and is not inappropriately weighted with respect to any investment option.

3. We believe the evaluation of a model also requires an assessment of the procedural prudence of the plan sponsor, particularly how the plan's investment options are selected and monitored. The best model in the world will still fall short if the plan sponsor has not provided appropriate investment options.

Computer Model Certification, Question #1: What procedures and information would be necessary and adequate to determine whether a computer model used in connection with an investment advice program satisfies the criteria described in ERISA section 408(g)(3)(B)?

To satisfy **408(g)(3)**:

ERISA was designed to be a flexible doctrine that gives consideration to incorporating changes in the types of financial products made available to retirement plans, as well as evolving investment strategies and theory. At the root of this doctrine is the concept of a process standard, and the requirement that investment decision makers demonstrate their procedural prudence.

Computer-driven advice models provide the industry an additional means for managing investment decisions, but they still must be evaluated against the backdrop of sound fiduciary practices. No model is ever inherently imprudent; it is the way it is built and how it is used that determine whether the prudence standard has been met. While even the most aggressive and unconventional model can meet the standard if arrived at through a sound process, the most conservative and traditional one may be inadequate if a sound process was not implemented.

Enclosure 2 provides the criteria that should be used by the investment expert ("expert") to evaluate whether a model meets the prudence standard.

To satisfy **408(g)(5)**:

Enclosure 3, which we refer to as a Self-Assessment of Fiduciary Excellence (SAFE™), is a draft of the auditing criteria we are developing for the evaluation of the "eligible investment advice arrangement" between a fiduciary adviser and a plan sponsor, which includes an evaluation of the fiduciary adviser's use of the model. The proposed audit procedures are based on the global auditing procedures defined by ISO 19011.

Computer Model Certification, Question #2: What types (e.g., technological, financial, other) and levels (e.g., educational, professional experience, professional certification) of expertise would be required to determine whether a computer model used in connection with an investment advice program satisfies the criteria described in ERISA section 408(g)(3)(B)?

To satisfy **408(g)(3)**:

No university offers a Ph.D. in investment fiduciary responsibility. There are many advanced degrees offered in portfolio management, applied economics, and securities analysis; but none on the practices that define a prudent investment process.

Similarly, there is no single professional designation that would indicate a person is adequately prepared to serve as an expert.

We have been involved in the training of investment professionals on fiduciary practices for more than twenty years, and we believe the question has correctly framed the factors that go into determining whether a party is qualified to serve as an expert: It is a combination of formal education, investment industry experience, and professional certifications.

The following table outlines the education, training, and work experience requirements that we believe should be factored when considering the qualifications of an expert. We believe the expert candidate should be able to score eight or more points:

Category	Source	Points
Highest Level of Education	Bachelor's	1
	Master's	2
	Doctorate/JD	3
Related-Industry Credentials	AIF®, AIFA®, AFIM®, CEBS, CFA, CFIRS, CFP®, CFSA, CIMA, CPA, CTA, CTCP, PFS, QPFC, Series 7 or 65 securities license, and other comparable designations	1 point each
Relevant Industry Experience	Less than 2 years	0
	2–3 years	1
	3–4 years	2
	4–5 years	3
	> 5 years	4
Professional Auditing Experience (Fiduciary assessments, ISO Audits, Financial Audits)	2 or more years	2

To satisfy **408(g)(5)**:

The independent auditor should, likewise, possess a combination of formal education, industry experience, and professional training; but doesn't need to have the same depth of experience and training as the expert. Using the above table, we believe an auditor should be able to score four or more points.

To satisfy both **408(g)(3)** and **408(g)(5)**:

In terms of specific industry knowledge, we believe both the expert and the auditor should be able to:

- Articulate the legal and regulatory environment that frames the standards of care for fiduciary advisers and plan sponsors, particularly the investment advice provisions of the PPA
- Assess the procedural prudence of a fiduciary adviser and plan sponsor
- Conduct asset allocation studies, including the proper use of optimization software
- Prepare investment policy statements
- Assess the prudent implementation of an investment strategy utilizing different types of investment vehicles
- Conduct due diligence on money managers and mutual funds
- Analyze an investment program's expenses and fees
- Analyze the performance of various investment options

Computer Model Certification, Question #3: With respect to currently available computer models or programs for providing investment advice to plan participants or beneficiaries in the form of asset allocation portfolios comprised of plan investment options:

> **A. What is the process for designing, developing, and implementing the computer model/program? What parties are involved, and what are their roles? What hardware and software technologies are used to construct computer model investment advice programs? What direct economic costs are associated with the process for designing, developing, and implementing the computer model/program?**
>
> **B. What types of modifications are made to the computer model/program after its use has begun? Why and how often are the modifications made (e.g., changes in methodology, technology, economy, marketplace, or plan), and how do the modifications affect the investment advice provided? What parties are involved in the modification process, and what are their roles? What direct economic costs may be associated with the modifications?**
>
> **C. What economic costs and benefits are associated with the use of the computer model/program for providing investment advice, including changes in investment performance and in retirement wealth due to the provision of such advice? What are the indirect costs and benefits such as impact on markets for financial services, including investment advice services, and their impact on financial markets, including demand for and pricing of securities?**

Though we have experience in building computer models used to provide investment advice, we do not consider ourselves "experts" in this area, and have chosen not to comment.

Computer Model Certification, Question #4: Would the responses to 3.a., 3.b., or 3.c. differ in the case of a computer model/investment advice program intended to satisfy the requirements of ERISA section 408(g)(3)(B)?

Though we have experience in building computer models used to provide investment advice, we do not consider ourselves "experts" in this area, and have chosen not to comment.

Computer Model Certification, Question #5: With respect to the Department's development of regulatory guidance, what special considerations, if any, should be made for small businesses or other small entities? Are there unique costs and benefits for small businesses or other small entities?

We're going to frame our response from three different prospectuses:

1. The plan sponsor who is a small business owner

2. The "investment expert" and "fiduciary adviser" who are a small business owner

3. The small business organization that builds models and/or trains and supports the expert and fiduciary adviser

1. The impact of the computer model provisions on the small plan sponsor

I don't think size of the plan matters as much as the average participant's account balance. A plan with 10,000 participants, each with an average account balance of $5,000, is going to be more problematic than a plan with 10 participants, each with an average account balance of $50,000.

As with participant education, I think only a small percentage of participants will take advantage of the models, and there will be a correlation with average account balance. Those participants with larger account balances more likely will take advantage of the models.

Similar to the costs associated with participant education, there will be an upfront expense to identify and retain a qualified fiduciary adviser, and set-up fees to put the model in place. The small business owner will have to weigh the cost against the potential benefit of the advice to those participants who take advantage of its services.

2. The impact of the computer model provisions on the small fiduciary advisory firm

This is not going to be an easy undertaking for fiduciary advisers. Most will need to undergo some additional training; will need to acquire special technology to help automate the retention of participant records; and, will need to factor in the cost/time involved in executing all of the various disclosure documents with the plan sponsor and the participants. I suspect many investment advisers will respond to the call to serve as a fiduciary adviser; but only a few will make it the focus of their practice.

I don't believe size of firm will have an impact on experts, although the few expert candidates that I know in the industry tend to come from small firms or academic institutions. The likely minimum education, training, and experience prerequisites for experts, coupled with requirements that the expert be independent of an investment adviser, likely will produce a very small pool of qualified candidates.

3. The impact on small business organizations that build models and/or train and support the expert and the fiduciary adviser

Our organization would fall into this category.

With regard to the vendors of models, I think the industry experience will be similar to what we saw when the 404(c) safe harbor provisions and the SunAmerica opinion letter were released. Perhaps as many as a dozen firms will develop the first generation of models, but within five years there will be consolidation and perhaps only three or four firms will end up with the lion's share of the business.

As important as the subject of investment fiduciary responsibility is to the management of our nation's retirement wealth, there is no federal or state agency that supports the education and training of the millions of men and women who serve as trustees and investment committee members of retirement plans; or as investment consultants and fiduciary advisers. (The DOL's current fiduciary training initiative is focused more on benefits and administration, as opposed to the investment fiduciary topics addressed in this RFI).

To our knowledge, we were the first organization to produce formal training programs focused exclusively on the subject of investment fiduciary responsibility. Our organization was self-funded in 1999, and is sustained today by operating revenues. We have never received support from any government agency (though we have asked for support in the past) and, to protect our objectivity, we have never asked for or accepted any financial support from "Wall Street" firms.

Although we have trained more than 6,000 professionals in the last eight years, we remain a small organization of 17 staff members with an operating budget of $2.5 million. With our current structure, we can train about 1,000 professionals a year—a good start—but we can barely make a difference when one considers that there are millions of men and women who serve as investment fiduciaries. Any meaningful education and training initiative is going to require government support and assistance.

Model Form for Disclosure of Fees and Other Compensation

Although we have experience in developing training modules on how to analyze the fees and expenses associated with investment programs, we do not consider ourselves "experts" in this area, and have chosen not to comment on this section of the RFI.

Enclosure 1: About Fiduciary360 (fi360)

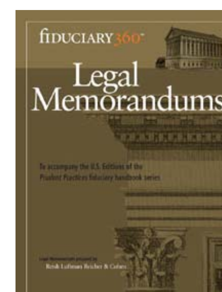
Fiduciary360 (fi360) is the unincorporated identity brand coordinating the resources of the Foundation for Fiduciary Studies, Center for Fiduciary Studies, and Fiduciary Analytics. Our mission is to promote a culture of fiduciary responsibility and improve the decision making process of investment fiduciaries. This includes topics covered in this RFI.:

> The **Foundation for Fiduciary Studies** is a nonprofit organization established for the purpose of defining the practices that detail a prudent process for investment fiduciaries including investment advisors, trustees, and investment committee members. The Foundation has produced a series of fiduciary handbooks, three of which served as a basis to the responses in this RFI. Copies of these three handbooks are included with this RFI. Additional copies are available in a limited number upon request:

Prudent Practices for Investment Stewards (U.S. Edition) – Defines the fiduciary practices for plan sponsors, trustees, and members of investment committees.

Prudent Practices for Investment Advisors (U.S. Edition) – Defines the fiduciary practices for professionals who provide comprehensive and continuous investment advice. These practices can serve as the basis for defining the standard of care for the PPA's fiduciary adviser and model expert.

Legal Memorandums – Provides the legal opinions to substantiate all of the fiduciary practices defined for Investment Stewards and Investment Advisors.



The function of the PPA's fiduciary adviser represents a melding of traditional investment fiduciary practices with financial planning. As such, we suggest that the Financial Planning Association's handbook, ***Prudent Practices for Fiduciary Advisers***, (as of this date, it is still in draft form) also be referenced in conjunction with this RFI.

The **Center for Fiduciary Studies**, which is associated with the **University of Pittsburgh's Center for Executive Education** at the **Joseph M. Katz Graduate School of Business**, provides educational programs on investment fiduciary responsibility, and sponsors the professional designations Accredited Investment Fiduciary® (AIF®) and Accredited Investment Fiduciary Analyst™ (AIFA®). To date, more than 6,000 professionals have gone through the fiduciary training programs.

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The AIF is the core course on fiduciary responsibility, and is available on-line or at various university and professional locations across the country. In 2006 the AIF designation was named one of the "Ten Most Wanted" designations in the investment industry by Financial Planning magazine.

The AIFA is the advanced course on fiduciary responsibility which trains professionals to serve as analysts to assess whether an entity is in conformance with defined fiduciary practices. The assessment process is based on the global auditing procedures defined by ISO 19011. We believe that AIFA designees are well-suited to serve as experts, and to conduct the annual audits of fiduciary advisers.

Fiduciary Analytics is a technology firm which develops Web-based tools, including models, incorporating fiduciary practices. Though fi360 has experience in building models, it does not anticipate that it will serve as a vendor of such tools in support of the PPA.

Enclosure 2: Criteria for the Certification of a Computer Model [to satisfy ERISA 408(g)(3)]

Introduction

Computer-driven advice models ("model") provide the industry with an additional means for managing investment decisions, but they still must be evaluated against the backdrop of sound fiduciary practices. No model is ever inherently imprudent. It is the way it is built and how it is used that determine whether the prudence standard has been met.

The following questions are intended to serve as a guide to help a qualified investment expert ("expert") make a determination as to whether a model meets the criteria outlined in ERISA 408(g)(3)(B) ("criteria"), and to satisfy the requirements of Section 408(g)(3) as amended by the PPA.

The criteria and questions are aligned with the four steps of a traditional investment management process. Consistent with the documentation requirements of ERISA, the expert should keep detailed records of the evaluation.

Step One – Organize:

> *Criteria: Utilizes relevant information about the participant, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments.*

1. How does the model determine the participant's risk tolerance?

2. How does the model allow a participant to opt out of an asset class?

3. How does the model incorporate the participant's time horizon until retirement?

4. How does the model incorporate the participant's life expectancy?

5. How does the model overlay the participant's time horizon until retirement with the participant's life expectancy?

6. How does the model calculate the expected return that a participant needs to earn in order to meet retirement goals?

7. How does the model factor in other sources of retirement income?

Step Two – Formalize

> *Criteria: Applies generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time.*

The development of an asset allocation strategy involves as much art and intuition as science; and the outputs of a computer model are only as good as the inputs. The old adage "garbage in—garbage out" has never been more applicable. The challenge for the expert in evaluating the model is to be able to evaluate the reasonableness of both the inputs and the outputs.

8. How were the capital markets inputs (expected return, standard deviation, correlation coefficient) developed for the model?

   Simply stated, there are two approaches to developing computer model inputs: (1) Using the actual historical returns of various asset classes; or (2) Using historical returns to then further develop risk-premium inputs. Of the two, the risk-premium approach is the methodology preferred by most institutional investment consultants, while the use of historical data is preferred by most broker-dealers.

   The problem with using simple extrapolations of recent historical data is that they are not only likely to be poor estimates of future performance, they also may cause the computer model to overweigh an asset class that has had recent superior performance, and underweight the laggards; setting the stage for the classic investment mistake—buying high and selling low. On the other hand, the development of risk premium inputs is quite involved, and equally challenging to evaluate.

9. Are the capital markets inputs reasonable?

   There should be no fiduciary requirement; nor should a fiduciary adviser ever imply; that the computer model is capable of forecasting future returns. However, there should be a requirement that the expert evaluating the computer model be capable of easily determining the source of data used by the model, and the process that was followed in developing the inputs.

Enter the capital markets inputs for the model, and compare to those developed by fi360:

Broad Asset Class	Standard Deviation	Comparable to fi360 (√)	Modeled Return	Comparable to fi360 (√)
Cash/Money Market				
Short-term Fixed Income				
Intermediate-term Fixed Income				
Broad Fixed Income/ High Yield				
Global Fixed Income				
Real Estate				
Large Cap Equities				
Mid Cap Equities				
Small Cap Equities				
International Equities				
Alternative Investments/Other				

10. Does the model prepare a written investment strategy for the participant?

    See Enclosure 4 for a sample Participant Policy Statement ("PPS"). By reducing the details to writing and preparing a written investment strategy (PPS), the fiduciary adviser can: (1) reduce misunderstandings with participants, (2) minimize the possibility of missteps by the participant due to a lack of clear guidelines, and (3) establish a reasoned basis for measuring success, both in terms of meeting the participant's objectives and the fiduciary adviser's efforts.

11. How is the level of risk communicated to the participant?

    The primary function of the model is to demonstrate the probable risk and return ranges associated with different investment strategies, so that the average participant can comprehend the risk/return tradeoffs associated with each proposed strategy.

12. How does the model calculate the expected return for a specific asset allocation?

Using the model, calculate the risk/return profile of the following asset mix:

30% Large cap equities
15% Small cap equities
15% International equities
30% Intermediate fixed income
10% Money market, cash, short-term fixed income

Record Risk: Worse case scenario _____ and/or Standard Deviation _______
And/or other risk measure ______________________________

Record Expected Return _______

If possible, compare results to fi360's Optimizer, utilizing the same asset allocation
Risk: Model ___________ fi360 ____________
Return: Model ___________ fi360 ____________

13. How does the model determine which asset classes should be included?

The following illustration is a suggested guide: Ordinarily, the most appropriate asset classes to be used as a starting point are the broad market classes representing the full capitalization-weighted range of investment opportunities. Simply stated: stocks, bonds, and cash. From this starting point, additional asset classes and peer groups should be added that provide meaningful risk and return benefits to the participant's overall investment strategy.

ADDING ASSET CLASSES TO AN IMPLEMENTATION MATRIX

# OF OPTIONS		ASSET and SUB-ASSET CLASSES
3		Large Blend, Multisector Fixed & Cash
4	Add	International Equity Blend
5	Add	Small Blend
6	Add	Intermediate Fixed
7	Add	Mid-Cap Blend
8	Add	Large Value, Large Growth
9	Add	Emerging Markets
10	Add	Real Estate
11	Add	High-Yield Fixed
12	Add	International Bond

14. Is the model output provided to participants in a clear and conspicuous manner; and in a manner the average plan participant can understand?

Step Three – Implement

Criteria: Utilizes prescribed objective criteria to provide asset allocation portfolios comprised of investment options available under the plan.

Criteria: Operates in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary Adviser.

15. What due diligence process is used to identify, select, and monitor investment options utilized by the model?

fi360 developed the following due diligence process more than eight years ago, and believes that it represents the minimum process that should be used to evaluate an investment option in both the selection and monitoring phases.

Suggested Fields of Due Diligence	fi360 Suggested Threshold	Model Defined Threshold	Implement (Step 3)	Monitor (Step 4)
1. Regulatory oversight	Each investment option should be managed by: (a) a bank, (b) an insurance company, (c) a registered investment company (mutual fund), or (d) a registered investment adviser.			
2. Minimum track record	Each investment option should have at least three years of history, so that performance statistics can be properly calculated.			
3. Stability of the organization	The same portfolio management team should be in place for at least two years.			
4. Assets in the product	Each investment option should have at least $75 million under management			

	(for mutual funds, can include assets in related share classes).			
5. Holdings consistent with style	At least 80% of the underlying securities should be consistent with the broad asset class.			
6. Correlation to style or peer group	Each investment option should be highly correlated to the asset class being implemented.			
7. Expense ratios/fees	Fees should not be in the bottom quartile (most expensive) of the peer group.			
8. Performance relative to assumed risk	The investment option's risk-adjusted performance (Alpha and/or Sharpe Ratio) should be evaluated against the peer group median manager's risk-adjusted performance.			
9. Performance relative to a peer group	Each investment option's performance should be evaluated against the peer group's median manager return, for 1-, 3-, and 5-year cumulative periods.			
10. Other				
11. Other				

Step Four – Monitor

Criteria: Takes into account all investment options under the plan in specifying how a participant's account balance should be invested, and is not inappropriately weighted with respect to any investment option.

16. How does the model determine the number of investment options presented to a participant?

    There are numerous factors that should be considered in determining the number of investment options presented to a participant, but no formula can determine the best number of investment options—the appropriate number and type are determined by facts and circumstances:[1]

    - Size of the participant's portfolio
    - Investment expertise of the participant
    - Ability of the participant to properly monitor the strategies and/or investment options
    - Ease of liquidity
    - Minimum required investment
    - The degree to which the investment is diversified
    - Ease in meeting asset allocation and rebalancing guidelines
    - Degree of portfolio transparency
    - Whether portfolio and performance information is audited
    - Degree of regulatory oversight
    - Ability to give investment direction to the portfolio manager

17. Does the model facilitate the rebalancing of the participant's account?

[1] Most of these factors were developed by the AICPA's Personal Financial Planning Executive Committee (Investment Advisory Task Force)

Enclosure 3: Criteria for the Annual Audit of the Arrangement between a Plan Sponsor and a Fiduciary Adviser [to satisfy ERISA 408(g)(5)]

SAFE

Self-Assessment of Fiduciary Excellence

Level I Verification

Criteria for the Annual Audit of the Arrangement Between a Plan Sponsor and a Fiduciary Adviser

The 2006 Pension Protection Act requires the engagement between the plan sponsor of a qualified pension plan and a fiduciary adviser (an adviser who is providing specific investment advice to participants) to be audited every year by a qualified and independent auditor. This SAFE outlines the suggested criteria for the annual audit.

your guide to global fiduciary intelligence

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Introduction

The Pension Protection Act of 2006 (PPA) requires "Arrangement Audit" between a qualified plan sponsor and a "fiduciary adviser" every year.

This Self-Assessment of Fiduciary Excellence (SAFE™) is intended to introduce the criteria that should be used as the basis for the Arrangement Audit. More detailed criteria and procedures on how the Arrangement Audit should be conducted are included in a companion piece called the Consultant's Assessment of Fiduciary Excellence (CAFE™).

The SAFE and the companion CAFE are based on auditing procedures defined by ISO-19011 (www.iso.org), a globally recognized auditing standard, and CEFEX (www.cefex.ca), an international certifying body for investment fiduciaries. The SAFE and CAFE auditing criteria include industry best practices and requirements that have been specified by the PPA.

PPA requires that the auditor: (1) be independent, (2) have appropriate technical training or expertise and proficiency, (3) make such representations in the audit report, and (4) present in the audit report specific findings regarding compliance with the PPA.

Each question in this SAFE is intended to be answered in the affirmative ("Yes"). A careful inquiry should be made into all "No" responses to determine whether:

1. There is an omission to the plan sponsor's and/or fiduciary adviser's procedures; and/or

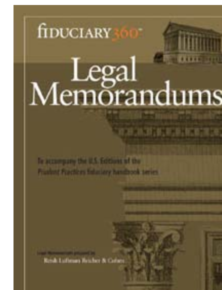
2. The question is not applicable to the audit.

The auditing criteria outlined in this SAFE and the CAFE are based on the assumption that the fiduciary adviser is an investment fiduciary to the plan and, therefore, may be co-liable for breaches by the plan's other fiduciaries, most notably the plan sponsor's investment committee. Therefore, the audit begins with an assessment of the plan sponsor's procedural prudence. After all, *the best participant advice in the world will still fall short if the plan is not being prudently managed.*

The audit criteria are based on fiduciary Practices outlined in the handbooks ***Prudent Practices for Investment Stewards*** and ***Prudent Practices for Investment Advisors***.

The assessment of the plan sponsor's procedural prudence (Part 1 of the Arrangement Audit) includes references to *practices* from the ***Investment Stewards*** handbook.

The assessment of the adviser's procedural prudence (Part 2 of the Arrangement Audit) includes references to Practices from the ***Investment Advisors*** handbook.



The *practices* are fully substantiated by ERISA, case law, and regulatory opinion letters; and are covered in the handbook ***Legal Memorandums***, which was prepared by the law firm of Reish Luftman Reicher & Cohen.

Editorial Note: This document uses the terms "adviser" and "advisor":

"Adviser," as in "fiduciary adviser," is in reference to the term defined by the 2006 Pension Protection Act.

"Advisor," as used by Fiduciary360 throughout its materials, refers to the professional who is providing comprehensive and continuous investment advice.

Part 1 – Assessing the Procedural Prudence of the Plan Sponsor as It Pertains to the PPA

1. Are investments managed in accordance with applicable ERISA and PPA provisions, the plan's trust documents, and written investment policy statements (IPS)? (Practice S-1.1)

2. Are the roles and responsibilities of the fiduciary adviser defined, documented, and acknowledged? (Practice S-1.2)

3. Is there no indication that the fiduciary adviser is involved in self-dealing? (Practice S-1.3)

4. Are service agreements and contracts of the fiduciary adviser in writing? Are they written without provisions that conflict with fiduciary standards of care? (Practice S-1.4)

5. Is the fiduciary adviser covered by the required ERISA surety bond? (Practice S-1.5)

6. Are the plan's investment options appropriate, given the participant demographics? (Practices S-2.1, 2.2, and 2.3)

7. Do selected asset classes represented by the plan's various investment options provide participants the ability to prudently diversify their portfolio? (Practice S-2.4)

8. Are selected asset classes consistent with the plan sponsor's implementation and monitoring constraints? (Practice S-2.5)

9. Does the plan have an IPS which contains sufficient detail to define, implement, and manage a specific investment strategy? (Practice S-2.6)

10. Have the plan's investment options been prudently selected? (Practice S-3.1)

11. Is the plan following applicable "safe harbor" requirements (when elected)? (Practice S-3.2)

12. Are investment vehicles appropriate for the portfolio size? (Practice S-3.3)

13. Is a due diligence process followed in selecting service providers? (Practice S-3.4)

14. Are there periodic reports comparing investment performance against an appropriate index, peer group, and IPS objectives? (Practice S-4.1)

15. Are periodic reviews made of qualitative and/or organizational changes of investment decision-makers? (Practice S-4.2)

16. Are fees for investment management consistent with agreements and with all applicable laws? (Practice S-4.4)

17. Are "finder's fees" or other forms of compensation that may have been paid for asset placement appropriately applied, utilized, and documented? (Practice S-4.5)

18. Is there a process to periodically review the plan sponsor's effectiveness in meeting its fiduciary responsibilities? (Practice S-4.6)

Part 2 – Assessing the Procedural Prudence of the Fiduciary Adviser

19. Has the fiduciary adviser acknowledged fiduciary status in writing, received express authorization from an independent plan fiduciary to function as a fiduciary adviser, identified the "eligible investment advice arrangement", and provided the plan sponsor and the participants any other disclosures required by the adviser's registration with regulators (such as the ADV for a RIA)? (Practice A-1.3)

20. Are documents pertaining to the adviser's investment management process filed in a centralized location and maintained for a period of six years? (Practice A-1.2)

21. Does the fiduciary adviser have a procedure for providing information to a participant about the adviser's investment process prior to the time they receive any advice and annually thereafter, upon request, and in the event of any material change in the adviser's information? (Practice A-1.2)

22. Does the adviser provide in writing to the plan sponsor and each participant:

    A. An acknowledgment of fiduciary status?

    B. A disclosure of all conflicts of interests?

    C. A disclosure of any material affiliations with any other parties involved with the plan and/or the investment options?

    D. A disclosure of all forms of compensation, including amounts provided by a third party? (The DOL is to issue a "model notice" form for the purpose of disclosing compensation.)

E. The past performance of the plan's investment options, even if the information is also supplied by another adviser or provider?

F. The types of services provided by the fiduciary adviser in connection with the provision of investment advice?

G. Evidence that investments occur solely at the direction of the participant?

H. Acknowledgement that a participant may use another adviser that has no material affiliation with, and receives no compensation from, the investments? (Practice A-1.3)

25. Are the fiduciary adviser's explanations provided to participants written in a clear and conspicuous manner, and in a manner the average plan participant can understand? Are the explanations sufficiently accurate and comprehensive to reasonably apprise the participant of the information required in the notice? (Practice A-1.3)

26. Has the computer-driven advice model (model) used by the fiduciary adviser been certified by an independent "eligible investment expert" (when one is utilized)?

27. Can the adviser demonstrate that the sources, timing, and distribution of retirement savings for each participant have been taken into consideration? (Practice A-2.1)

28. Can the adviser demonstrate that each participant's retirement time horizon has been taken into consideration? (Practice A-2.1)

29. Can the adviser demonstrate that each participant's level of investment risk has been taken into consideration? (Practice A-2.2)

30. Can the adviser demonstrate that an "expected" or "modeled" return, which takes into account all of the participant's sources for retirement income, has been calculated for each participant? (Practice A-2.3)

31. Can the adviser demonstrate that participant assets are appropriately diversified to conform to each participant's specified time horizon, risk/return profile, and asset class preferences? (Practice A-2.4)

32. Are the adviser's methodology and tools used to establish appropriate portfolio diversification effective and consistently applied? (Practice A-2.4)

33. Does each participant's Participant Policy Statement (PPS) define the duties and responsibilities of the adviser? (Practice A-2.6)

34. Does each participant's PPS define a suggested investment strategy that is consistent with the participant's risk tolerance, asset class preferences, retirement time horizon, and expected return; also taking into account other sources of retirement income? (Practice A-2.6)

35. Does each participant's PPS define rebalancing guidelines? (Practice A-2.6)

36. Are participants provided relevant and timely information about the performance of their investment options? (Practice A-4.1)

37. Are the adviser's operations periodically reviewed to foster continued improvement? (Practice A-4.6)

Enclosure 4: Sample Participant Policy Statement (PPS)

Step 1 – Organize

Participant Name____________________ Date Prepared____________________

Fiduciary Adviser____________________ Adviser's Firm____________________

Current Account Balance $____________ Annual Contribution Amount $________

Additional Retirement Benefits:

Defined Benefit Plan $_____________ Spousal Retirement Benefits $_________

Savings $_______________________ Other (Define) ___________ $_________

Step 2 – Formalize (RATE)

Risk Tolerance

Investment Knowledge:

___Know a little ___Know some ___Know a lot

Risk Tolerance Scale:

___I don't want to lose any money

___I can take some investment risk

___I can take a lot of risk, knowing I also may lose a lot of money

Asset Class Preferences

___Make all of the plan's asset classes available

___Restrict the following asset classes: __________________________

Time Horizon

Age___ Years until Retirement_______

Life Expectancy___ (actuarial chart) Years in Retirement________

Expected Return

Targeted (Desired) Investment Return

___4% ___6% ___8% ___10%

Proposed allocation

Proposed	Model	Percentage Stocks	Percentage Bonds	Modeled Risk	Modeled Return
	Model A	20%	80%	0	4.0%
	Model B	40%	60%	-4.0%	6.0%
X	Model C	60%	40%	-8.0%	8.0%
	Model D	80%	20%	-12.0%	10.0%

Step 3 – Implement

Suggested Investment Options and Allocations

Fund Name	Peer Group	Allocation
Mutual Fund A	Large Cap Equity	30%
Mutual Fund B	Mid Cap Equity	10%
Mutual Fund C	Small Cap Equity	10%
Mutual Fund D	International Equity	10%
Mutual Fund E	Intermediate Fixed Income	30%
Mutual Fund F	Short-term Fixed Income	10%

Step 4 – Monitor

Historical Performance (as of Dec 31, 2006)

Fund Name	Peer Group	1 Yr	3 Yr	5 Yr
Mutual Fund A	Large Cap Equity	3.2%	2.8%	7.4%
Mutual Fund B	Mid Cap Equity	3.2%	2.8%	7.4%
Mutual Fund C	Small Cap Equity	3.2%	2.8%	7.4%
Mutual Fund D	International Equity	3.2%	2.8%	7.4%
Mutual Fund E	Intermediate Fixed Income	3.2%	2.8%	7.4%
Mutual Fund F	Short-term Fixed Income	3.2%	2.8%	7.4%

Moving Forward

Your responsibilities: You must implement the proposed strategy if you believe it is appropriate.

My responsibilities: I will meet with you on an annual basis to review your PPS, and discuss whether you need to rebalance your portfolio, make changes to your asset allocation, and/or change your mutual fund selections.

_________________________ ____________

Plan Participant Date

_________________________ ____________

Fiduciary Adviser Date