GUARDIAN®

A GUIDE TO FIDUCIARY RESPONSIBILITY

The Guardian Advantage®

for Qualified Retirement Plan Fiduciaries

By sponsoring a 401(k) plan you've made an important investment in helping to secure the future of your most valuable asset—your employees.

THE GUARDIAN COMMITMENT—

helping you meet your obligations

401(k) plans are the sole retirement plan savings vehicle for over 42 million Americans*. But many employers offer them without being fully aware of their fiduciary responsibilities—and the risks and liability that can accompany 401(k) plans.

As a plan sponsor, you have certain responsibilities that have been established by the Employee Retirement Income Security Act of 1974 (ERISA) and which are monitored by the Department of Labor (DOL). Some of these responsibilities arise from your role as a fiduciary to a qualified retirement plan.

This guide is designed to help you understand these responsibilities and the steps to take to effectively manage the retirement plan you offer your employees. You'll also learn about the services offered by Guardian that can assist you with your fiduciary obligations.

Inside this guide you'll find…

The basics of fiduciary responsibility

- What a fiduciary is
- What your fiduciary responsibilities are
- How ERISA Section 404(c) can help limit your liability

What you, as a fiduciary of a qualified retirement plan, need to do—and how Guardian can assist

- The importance of documentation
- Why you need an Investment Policy Statement
- How to approach the investment selection and monitoring process
- What you need to communicate to participants
- Your plan administration responsibilities

This guide is not intended by The Guardian Life Insurance Company of America, The Guardian Insurance & Annuity Company, Inc. (GIAC) or any of its employees or agents to be considered investment, tax, or legal advice. Please consult your tax or legal advisor for guidance and information that is specific to your plan.

* Number as of end of year 2003. Employee Benefit Research Institute, History of 401(k) Plans, An Update, February 2005.

UNDERSTANDING FIDUCIARY RESPONSIBILITY

As a plan fiduciary, one of your responsibilities is to ensure that your 401(k) plan complies with the standards under the Employee Retirement Income Security Act of 1974, as amended (also known as "ERISA"). ERISA is the federal law that governs most private qualified plan administration and investment practices.

Who is a Plan Fiduciary?

A fiduciary is any person who:

- Is named in the plan document as a fiduciary or is appointed as a fiduciary
- Exercises discretionary authority or control over the management of the plan, or
- Provides investment advice for compensation with respect to plan assets

Plan fiduciaries have responsibility for the administration of the plan or the selection of investment options. Every plan must have a least one named fiduciary. It's been our experience that the plan sponsor is generally a named fiduciary.

For the most part, those individuals affiliated with the plan sponsor such as officers, directors and plan committee members are also considered fiduciaries. The same holds true for the plan administrator, trustee, and investment managers. Recent court decisions have also stated that many financial advisors and financial consultants to qualified retirement plans are fiduciaries. These could include brokers who selected funds to be included in a 401(k) plan or who advised plan sponsors to select a particular 401(k) package of investments and services.

Protection for Participants and Plan Sponsors

Fiduciary responsibilities under ERISA were established to protect the interests of participants and beneficiaries, and to protect plan assets from misuse. By complying with ERISA, plan sponsors can also limit their potential liability.

What are the Responsibilities of a Fiduciary?

ERISA has four "standards of conduct" that apply to all fiduciary actions. Fiduciaries have the duty of:

1. **Loyalty -** To act solely in the interests of participants and beneficiaries (the "exclusive benefit" rule). This includes ensuring that plan expenses are reasonable and that benefits are paid.
2. **Prudence -** To act with the care, skill, prudence, and diligence of a prudent person who has experience dealing with similar situations (the "prudent expert" rule). Fiduciaries are not required to be experts in every area of retirement plan management; they can hire outside advisors such as attorneys, accountants, administrators and investment managers. Doing this does not relieve plan fiduciaries of their fiduciary duties—they are still responsible for prudently selecting and monitoring these advisors.
3. **Diversification -** To diversify the investments of the plan in order to minimize the risk of investment losses.
4. **Follow Plan Documents -** In accordance with the documents and instruments governing the plan, assuming they comply with ERISA.

YOU'RE NOT EXEMPT BECAUSE YOU'RE A SMALL BUSINESS

ERISA-related law suits have been rising over 10% each year.[1] In 2004 alone, over 11,000 civil suits were filed against fiduciaries of 401(k) plans.[2] And while big companies, such as Enron, have dominated the headlines, much of this litigation involved much smaller companies.

The IRS is also stepping up probes into qualified plans of all sizes. In 2006, as many as 9,000 plan sponsors will be targeted for focused exams—a 23% increase from 2005.[3]

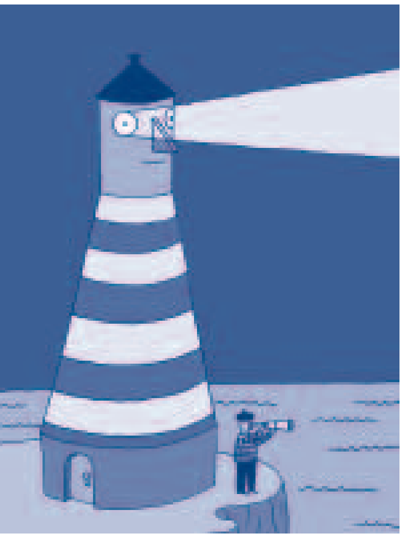
1 **ERISA Arising,** Ken Ziesenhelm, Oct. 2002, based on data from the Administrative Office of the U.S. Courts.

2 http://www.uscourts.gov/caseload2005/contents.html

3 IRS to Step Up Retirement Plan Examinations, Plansponsor.com, January 31, 2006 1/30/06

A WORD ABOUT EXPENSES

- **Remember, in terms of managing plan costs, no plan is free. All services have a cost.**
- **Expenses don't have to be the lowest, but they have to be reasonable.**
- **What's really important is that plan fiduciaries understand what services they are getting for the fees they are paying.**



Limiting liability with ERISA Section 404(c)

Although voluntary, many 401(k) plans are designed and operated to comply with the requirements of ERISA Section 404(c). This section of ERISA provides limited relief from fiduciary liability for retirement plans in which participants exercise independent control over their own plan investments. It basically shifts the responsibility for investment losses from the plan fiduciary to the participant, so long as certain requirements are met.

It's important to remember that, even if participants direct the investment of their plan accounts among the plan's investment options, an employer or other plan fiduciary who selects plan investment options still must comply with ERISA's fiduciary responsibility standards in selecting the investment options that will be available to participants.

Here's a summary of the main requirements of 404(c)—and how Guardian, together with your Third Party Administrator (TPA), can help you meet them:

SECTION 404(c) REQUIREMENTS	HOW WE OR YOUR TPA HELP YOU COMPLY
Offer at least 3 diversified investment options	We offer a broad range of investment options with different risk/return considerations and different investment objectives.
Inform participants that plan is a 404(c) plan	This requirement is explained in the Summary Plan Description (SPD) provided to participants. Your TPA will generally prepare the SPD.
Provide sufficient investment information to make informed decisions	We provide an array of investment information materials.
Give participants the opportunity to give investment instructions and receive written confirmation	We offer website and toll-free account access for participants to accommodate daily investment changes and provide written confirmations for each transaction.
Give participants the ability to change investment instructions at least quarterly	Our recordkeeping system accommodates daily investment changes.
Communicate to participants when your plan adopts new provisions	Your TPA will help draft necessary plan documents.

Please note that the above summary is not a comprehensive list of all requirements under ERISA Section 404(c). Please consult your legal advisor for more information.

DELIVERING ON YOUR RESPONSIBILITIES

Now that you know what some of your responsibilities are and why they are important, let's talk about how to deliver on them.

Step One - Document your decisions

At the time you establish your company's retirement plan, you should set up a due diligence file. (And, if you currently have a plan without a due diligence file, now's a good time to establish one.) This file will document decisions you make about your retirement plan and serves as evidence that you've satisfied your fiduciary requirements. Keep this information for a minimum of six years.

A DUE DILIGENCE CHECKLIST TO GUIDE YOU

To help you know what you need to document, we've included a fiduciary checklist in the back pocket of this guide.

Step Two - Establish an Investment Policy Statement

An investment policy statement (IPS) is the foundation for your investment decisions. It establishes the objectives for the management of the plan's investments, including your criteria for investment selection, evaluation, and monitoring. It also enables you to be more disciplined and systematic in your decision-making.

While an IPS is not explicitly required under ERISA, the Department of Labor has issued guidance stating that having an IPS is consistent with the fiduciary obligations of loyalty and prudence. Specifically, an IPS can help to:

- Carry out your fiduciary responsibilities in compliance with the legal guidelines;
- Shield fiduciaries from complaints and potential legal action;
- Create a clear, comprehensive record that demonstrates your prudent planning and procedures; and
- Establish a framework for determining the selection, monitoring,and termination of plan investments.

THE TIME IS NOW TO CREATE AN IPS FOR YOUR PLAN

We can help get you started with drafting an investment policy statement that is right for your plan. We offer an Investment Policy Statement Guide, which walks you through the important aspects of creating an IPS, a copy of which is included in the back pocket of this guide. It is also available online at www.guardianretirement.com.

Step Three – Select investment options

Your next step is to choose investment options for the plan that are consistent with the objectives set forth in the IPS.

Section 404(c) regulations explain that participant-directed plans, such as 401(k) plans, should offer a "broad range of investment alternatives." In effect, a plan's investment options should be diverse enough to provide participants the opportunity to:

- materially effect potential returns and degrees of risk;
- choose from at least three core diversified investment alternatives, each of which have different risk and return characteristics;
- choose among available investment options to achieve a portfolio that has risk and return characteristics within a range normally appropriate for the participant; and
- diversify investments in order to minimize the risk of large losses.*

** Source: Department of Labor Regulations, at 29 C.F.R.§2550.404c-1(b)(3).*

THE GUARDIAN ADVANTAGE® OFFERS A VARIETY OF WELL RECOGNIZED

The Guardian Insurance & Annuity Company, Inc. (GIAC) utilizes the specialized investment advisory services of Fairway Wealth Management, LLC ("Fairway") to assist in the selection and ongoing monitoring of funds currently offered under The Guardian Advantage®. Each fund in our current fund line-up has been selected by Fairway after having met strict review and selection criteria. A copy of the criteria is included in the back pocket of this guide.

Fairway is an independent registered investment advisory firm. The principals at Fairway have more than 30 years of industry experience. They have expertise in fund performance review and extensive knowledge

A closer look at "Prudence, Process and Conduct"

To comply with ERISA's fiduciary responsibility standards, fiduciaries must demonstrate a prudent decision process, which ideally is outlined in the plan's IPS. Selecting plan investment options prudently involves:

- Determining the plan's requirements;
- Gathering and reviewing specific information about each investment option, such as investment objective, strategy and style, type of assets, manager expertise and experience, risk and return characteristics and investment performance;
- Consulting experts when appropriate; and
- Making decisions that are reasonable based on the available information.

IT'S ABOUT PROCESS—NOT JUST RESULTS

The test of prudence focuses on the fiduciary's conduct in investigating, evaluating, and making the investment. It is the process a fiduciary uses in deciding to hire a particular investment advisor that becomes central to his or her fulfillment of ERISA's fiduciary responsibility.

It's important to understand that ERISA's fiduciary responsibility standards may not be satisfied by selecting investment options based only on above-average, short-term investment results, or by selecting the lowest cost service provider. In fact, fiduciaries could fail to satisfy ERISA's fiduciary responsibility standards by selecting investment options based on these criteria alone. "[ERISA's] test of prudence... is one of conduct, and not a test of performance of the investment. The focus of the inquiry is how the fiduciary acted in his selection of the investment, not whether his investments succeeded or failed."[1] Appropriate funds for your plan are not necessarily the least expensive and short term performance does not indicate a long-term winner. For this reason, fiduciaries are increasingly recognizing that ERISA's fiduciary responsibility standards reward prudent "conduct and process."

BROAD SELECTION OF CHOICES FROM A INVESTMENT MANAGERS.

of the money management community.

Fairway has no affiliations with any bank, brokerage, or money management firm and is not compensated in any way through the sale or placement of investment products. As such, Fairway is completely independent from the funds offered under The Guardian Advantage® and, therefore, can present information and analysis without any inherent conflicts of interest.

Fairway Wealth Management, LLC is not an affiliate or subsidiary of The Guardian Life Insurance Company of America, GIAC or any of its subsidiaries.

Step Four – Monitor Investment Options

As a fiduciary, one of your duties is to oversee and monitor the performance of funds offered to plan participants. This responsibility includes the preparation of fund performance review reports along with analysis of data in these reports.

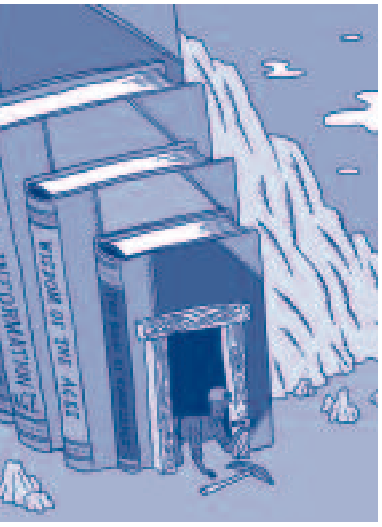
Fiduciaries typically choose to either handle this responsibility themselves or hire an independent investment advisor to prepare the reports and assist in the reviews. As a plan sponsor who has selected The Guardian Advantage® as your plan's funding vehicle and by simply signing an agreement, you can receive assistance with this oversight responsibility without incurring the additional cost of hiring an outside consultant or advisor.

Assistance to Fiduciaries for Monitoring Fund Performance from Fairway Wealth Management LLC (Fairway)

GIAC has contracted with Fairway to oversee and monitor the performance of the funds offered under The Guardian Advantage. In addition, Fairway provides a series of comprehensive reports and informational tools that assist plan sponsors in the ongoing oversight and monitoring of funds in their plans.

The information created by Fairway is intended solely to offer plan sponsors information that they may consider in making independent and informed decisions and it is not investment advice. It is the respon-

[1] **Donovan V. Cunningham,** 716 F. 2d 1455, 1467 (5th Cir. 1983).



sibility of each plan sponsor to review the information created by Fairway and to make appropriate decisions for his or her plan. Fairway may make general observations, such as adding a particular fund to a "watch list". The plan sponsor reserves the right to accept or reject the observations or recommendations of Fairway and it is each plan sponsor's sole responsibility to determine the course of action his or her particular plan should take.

Fairway is not an affiliate or subsidiary of GIAC or The Guardian Life Insurance Company of America or any of its affiliates.

Tools to help you track your plan's investments

Fairway provides the following investment information to assist plan sponsors in the selection and ongoing monitoring of their plan's investments:

1. **A quarterly review report that includes:**
   - A summary analysis of the financial market environment
   - Summarized fund performance information of current funds available under The Guardian Advantage®, compared to appropriate peer groups and benchmarks
   - Highlights of notable fund activity, such as fund mergers, manager changes, or significant over or under performance
   - Maintenance of a fund watch list
   - Fund observations/recommendations to consider
   - Performance and certain statistical information for funds formerly included in The Guardian Advantage investment option platform may also be provided as an Appendix from time to time.
2. **An annual review report that includes:**
   - A year-in-review analysis of the economy and financial markets
   - Summarized fund performance information of current funds available under The Guardian Advantage®, compared to appropriate peer groups and benchmarks
   - Detailed analysis on the performance of each fund
   - Detailed quantitative and graphical reviews of fund performance and style consistency
   - Maintenance of a fund watch list
   - Fund observations/recommendations to consider

- Performance and certain statistical information for funds formerly included in The Guardian Advantage investment option platform may also be provided as an Appendix from time to time.

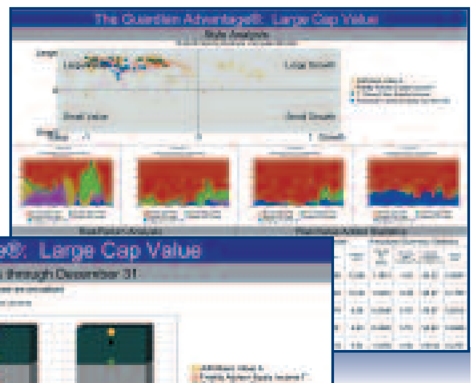
3. A quarterly toll-free conference call facilitated by principals of Fairway to review the quarterly/annual reports and answer questions about those reports.

To receive electronic versions of these reports, simply review and sign the Assistance to Fiduciaries for Monitoring Fund Performance form in the back of this guide and return it to Guardian Group Pensions, 1560 Valley Center Parkway, Suite 100 Bethlehem, PA 18017.

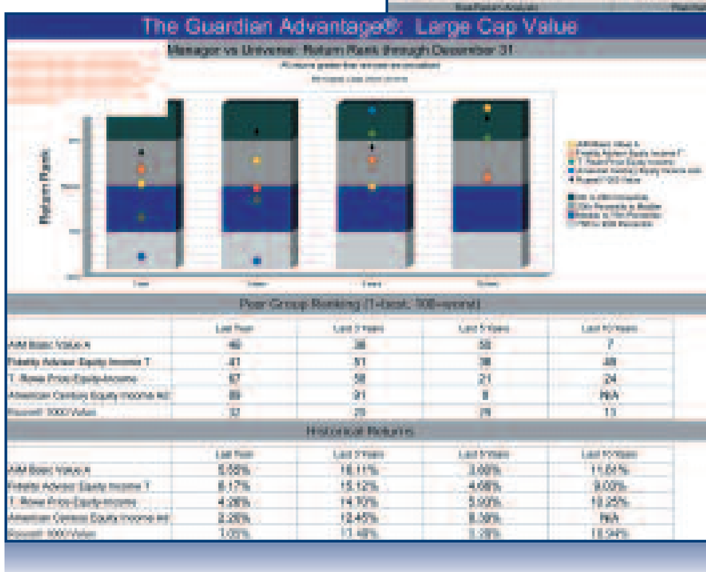
Step Five – Communicate to participants

For plans that wish to comply with ERISA Section 404(c), certain participant communications are required that will enable them to exercise control over their investment decisions. Plan fiduciaries need to provide participants with:

- A Summary Plan Description (SPD) before enrollment, which is prepared and supplied by your TPA. Simply distribute to your participants.
- Written notice that your plan intends to qualify as an "ERISA Section 404(c) plan." This notice should be included in your SPD.
- Statement of Material Modifications and Summary Annual Report at specified times, which your TPA will provide.

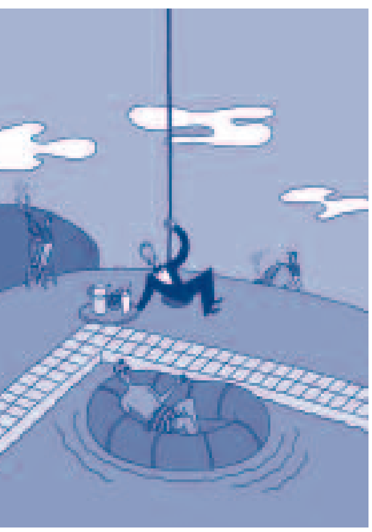


- General description of investment objectives and risk and return characteristics of each fund, including information on the type and diversification of assets in the portfolio. This information is typically communicated through the Guardian Participant Enrollment Kit, Fund Prospectuses, Investment Fact Sheets, and Annual Reports.
- Instructions on who to contact to give investment instructions and specific limitations on transferring among investment options. These instructions are explained in the Participant Enrollment Kits.



Communications to empower your employees

Guardian's participant services include communications designed to help you comply with 404(c). Your participants have access to a wide array of investment information and education tools.



- Customized Enrollment Kits with:
  - Retirement Basics Overview
  - Plan Highlights
  - Fund Fact Sheets
  - Consolidated Fund Performance Summary
- Asset Allocation Worksheets
- "Retirement Outlook" Newsletter
- Quarterly Participant Statements
- Online Education
- Online & Toll-Free Telephone Account Access
- On-site Enrollment Specialists

MANAGING YOUR ADMINISTRATIVE RESPONSIBILITIES

Just as you are responsible for oversight of investment decisions for your plan, you are also responsible for monitoring administrative aspects. Your Third Party Administrator (TPA) helps by overseeing your plan documentation, compliance and other administrative services.

Fiduciaries selecting 401(k) plan service providers should also consider the type and quality of services offered compared to the plan's service needs. This review should look at the number of available investment options; loan services; live client service representatives; telephone voice response and internet service capabilities; participant communication and investment education programs; reporting services; and the fees and expenses the plan will pay.

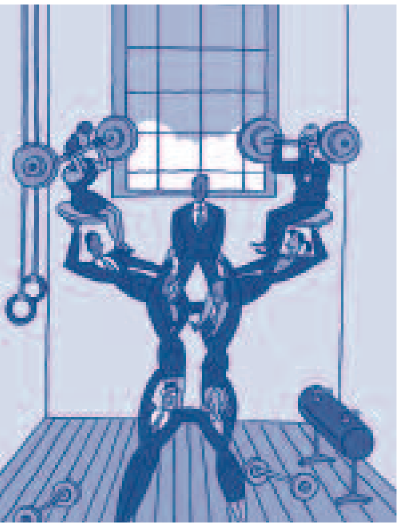
Once your plan is established, on an ongoing basis, ERISA imposes a number of reporting and disclosure requirements. For example, plan fiduciaries must:

- File an annual report and Form 5500 with the government each year.
- Obtain an ERISA fidelity bond of at least 10% of plan assets for individuals who handle plan funds. (This is not the same as liability or errors and omissions insurance). ERISA bonds are inexpensive and readily available. Your business insurance agent can generally help you secure the coverage you need.
- Arrange an independent CPA to audit the plan annually if your plan has 100 or more participants (at the beginning of the plan year).
- Submit deferrals on a timely basis. This means your employee's money must be deposited as soon as administratively feasible but no later than the 15th business day of the month following the month in which the amounts were withheld from participant's paychecks. This is a common fiduciary oversight that plan fiduciaries should pay close attention to.

Guardian helps to streamline reporting

Audit Package
For plans with 80 or more participants (or upon request), Guardian will provide an audit package to your TPA or plan auditor. This package consolidates all the information needed to complete the Form 5500, along with a step-by-step guide that explains what information is needed, and where to find it on the enclosed Guardian reports.

SAS 70 Type II Reporting This report is provided to your auditors. The Statement of Auditing Standards **(SAS) 70,** Type II is an auditing standard established by the American Institute of Certified Public Accountants (AICPA). This report gives auditors a detailed accounting of the operating processes and control procedures GIAC has in place. This report is required for plans with 100 or more participants.



NEXT STEPS

Now that you understand some of your fiduciary responsibilities and how Guardian can help you, it's time to take the steps necessary to ensure you are managing your duties properly. Let's recap what you need to do:

Step 1 Document your Decisions

Step 2 Establish an Investment Policy Statement

Step 3 Select Investment Options

Step 4 Monitor Investment Options

Step 5 Communicate to Participants

… And don't forget to Manage your Administrative Responsibilities

For additional guidance on managing your fiduciary responsibilities, you should consult with your attorney, accountant and/or plan administrator.

The back pocket of this guide includes some tools to get you started. Here you'll find a:

Due Diligence Meeting Agenda and Checklist	Use this checklist to document your decisions and keep track of what you need to do and when you need to do it.
Investment Policy Statement Guide	Use this guide to get started drafting an IPS for your plan.
Assistance to Fiduciaries for Monitoring Fund Performance Form	Complete this form to receive electronic investment reports from Fairway Wealth Management, LLC to assist in monitoring your plan's investments.
Fairway Wealth Management, LLC Initial Investment Option Platform - Review & Selection Criteria for The Guardian Advantage®	This document records Fairway's objectives in selecting funds for the current Guardian Advantage® fund line-up, the criteria utilized to review funds considered, and concurrence that each fund meets stated review and selection criteria as of the date it was selected. Keep this document in your due diligence file.

ADDITIONAL SOURCES FOR FIDUCIARY INFORMATION AND ASSISTANCE:

- Department of Labor - www.dol.gov
- Profit Sharing Council of America - www.psca.org
- ERISA Industry Committee - www.eric.org
- Employee Benefits Institute of America - www.ebia.com
- The Handbook for Investment Committee Members: How to Make Prudent Investments for Your Organization by Russell L. Olson
- The New Fiduciary Standard: The 27 Prudent Investment Practices for Financial Advisers, Trustees, and Plan Sponsors by Tim Hatton
- Creating An Investment Policy Statement by Norman M. Boone, Linda S. Lubitz

The Guardian Advantage® is a group variable annuity contract issued by The Guardian Insurance & Annuity Company, Inc. (GIAC), a Delaware corporation whose principal place of business is 7 Hanover Square, New York, NY 10004. GIAC is a wholly owned subsidiary of The Guardian Life Insurance Company of America, New York, NY.

Investments offered under The Guardian Advantage® group variable annuity are not deposits or obligations of, or guaranteed or endorsed by, any bank or depository institution, nor are they federally insured by the Federal Deposit Insurance Corporation, the Federal Reserve Board or any other agency. They involve risk, including possible loss of principal amount invested.

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