

# Fiduciary Checklist for Plan Sponsors

Retirement plan fiduciaries should consider the following areas when fulfilling their fiduciary responsibilities.

# Fiduciary Checklist for Plan Sponsors

The following are areas of review that retirement plan fiduciaries may want to consider in fulfilling their fiduciary responsibilities. Plan sponsors and plan officials are encouraged to consult their ERISA attorneys, service providers, advisors or consultants for additional guidance and information.

## Roles and Responsibilities

- Have you made a definite list of the fiduciaries involved in your company's plan and their specific roles?
- Have you provided training for the named fiduciaries in your plan?

## Investments

- Have you adopted a written Investment Policy Statement?

The Investment Policy Statement should include:

- The identity of each fiduciary and service provider to the plan, including the investment committee, investment consultant and investment custodian/trustee;
- Investment objectives and goals;
- Classes of investments authorized;
- Styles of investments authorized;
- Criteria for reviewing/selecting investment options and investment manager performance, including periodic performance against an appropriate index, peer group and investment objectives;
- Criteria for reviewing fees for investment management and other plan services and the reasonableness of such fees in light of services provided;
- Restrictions on investments;
- Standards for reviewing use of directed brokerage arrangement;
- Proxy voting procedures; and
- Reporting standards applicable to investment managers and other advisors.

## Review Investment Options

- Do you review the plan's investments at least annually?
- Does the plan maintain a broad, well-diversified investment lineup that covers the risk/return spectrum and any applicable requirements of the plan's written investment policy?
- If the plan is intended to comply with ERISA Section 404(c), have you ensured that the investment lineup includes investment options that give participants a reasonable opportunity to:
  - materially affect both the potential return and degree of risk relating to his or her accounts;
  - choose from at least three "core" investment alternatives – each of which is diversified and satisfies certain other requirements; and
  - diversify his or her investment to minimize the risk of large losses?
- Do you document the investment options review along with the relevant investment options information, including discussions and decisions regarding the evaluation and replacement of investment options that do not meet required criteria?
- Do you maintain this documentation in a central due diligence file?

## Administration

- Do you conduct an annual meeting with the retirement committee and plan fiduciaries? Do you record detailed minutes of these meetings, including all decisions made by the committee?
- Do you review the process for collecting employee contributions and loan repayments, forwarding contributions and loan repayments to the service provider, and investing the contributions and loan repayments in a timely manner?<sup>1</sup>
- Are you compliant with the applicable Internal Revenue Code tests, such as:
  - 410(b) coverage testing;
  - 401(k)/ADP test;
  - 401(m)/ACP test;
  - 401(a)(4)-2 rate group testing;
  - 401(a)(4)-4 availability of benefits, rights, and features;
  - 414(s) compensation ratio testing;
  - 415(c)(3) annual additions contribution limit;
  - 402(g) contribution limit; and
  - 416 top-heavy testing?

<sup>1</sup> DOL regulations provide that participant contributions become plan assets as of the earliest date that they can reasonably be segregated from the employer's assets.

## Administration (continued)

- Do you conduct an annual review of outside experts and service providers (including investment advice providers,<sup>2</sup> plan consultants, trustee, and/or recordkeeper, etc.) to ensure that service and performance standards are being met? Do you document the review/meetings and issues discussed, as well as any decisions made during or as a result of the review/meetings?
- Do you review the fees received by all outside experts and service providers to the plan (direct and indirect) to ensure complete understanding of all costs and services associated with those fees? Are there any inherent conflicts existing that may impact the objectivity of the advice received?
- Do you review contracts with experts and service providers, making sure the contracts:
  - Are in writing;
  - Do not contain provisions that conflict with fiduciary standards of care; and
  - Do not authorize fees that are in excess of “reasonable compensation”?
- Have you recently checked the plan’s fidelity bond to ensure that it provides an appropriate coverage amount<sup>3</sup> and that it covers fiduciaries, as well as other employees or third parties involved with the retirement plan?
- Do you ensure that all required government reporting, such as Forms 5500 and 1099R are filed?
- Do you periodically review any administrative procedures adopted by the committee to ensure they are consistent with the plan document?
- Do you document all procedures and decisions and maintain the documents in a central due diligence file?

<sup>2</sup> The plan sponsor has the fiduciary responsibility to select and monitor the performance of any investment advice (or guidance) service provider whose services are being offered to participants.

<sup>3</sup> In general, the amount of the bond is 10% of plan assets (up to \$500,000).

## Plan Audit

- Has ERISA counsel reviewed the plan document to ensure that it has been updated for all required legislative provisions (e.g., GUST, EGTRRA, etc.)?
- Have you maintained a summary plan description (SPD), updated for all plan design changes, and distributed to all employees? (ERISA requires that SPDs, summaries of material modification, and summary annual reports are automatically disclosed to participants/beneficiaries.)
- Have you confirmed that written procedures for all plan transactions are consistent with the plan document and applicable regulations?
- Have you verified that the plan covers the right employees, or does not exclude employees who may be entitled to participate in the plan?
- Have you verified that the plan's definition of an eligible employee is consistent with the way the plan is being administered?
- Have you checked the plan documents and trust agreements to ensure that the plan fiduciaries have been appointed properly?
- Have you reviewed the definition of compensation as defined in the plan document and verified that the correct compensation amounts are being sent to the service providers and being used for the correct purpose?
- If your plan includes an automatic enrollment plan feature, have you:
  - Verified that the default investment option is selected using a prudent process consistent with ERISA?
  - Confirmed contributions are invested in the default option?
  - Provided participants with communications regarding the default?
- If the plan document is a "prototype" document, have you made sure that it is IRS-approved and has been amended as required by IRS procedures?
- Have you reviewed the process for making plan loans and verified that the loan processing by the service provider is consistent with the written procedures of the plan?
- If the plan is intended to comply with ERISA Section 404(c), have you evaluated with ERISA counsel the plan's compliance with the statute and the regulations issued thereunder?

## Participant Communications

Do you conduct an annual meeting with the retirement committee and plan fiduciaries? Do you record detailed minutes of these meetings, including all decisions made by the committee?

Do you provide ongoing communication on investments and plan features (e.g., loans, distributions, contributions, etc.)?

Have you distributed information to all eligible employees regarding the investment options available under the plan?

Have you conducted educational meetings and provided general financial and investment information?

If the plan is intended to comply with section 404(c), have you confirmed that participants receive the following communications before investing:

- Notification that the plan intends to comply with 404(c);
- A description of each investment alternative;
- A description of the rights and procedures for directing investments in the plan, along with limitations on those rights;
- A description of any transaction fees or expenses charged;
- Contact information for the fiduciary responsible for providing participants with 404(c) information on request;
- If there is company stock, a description of procedures established to maintain the confidentiality of information regarding a participant's purchases, sales, voting or tender of the stock; and
- A copy of the prospectus for mutual funds the first time a participant invests in that fund?

Have you confirmed that participants receive the following items upon request:

- A description of the annual operating expenses of each investment alternative;
- Copies of any prospectus, financial statements, reports, and other materials provided to the plan about the investment option;
- If the investment option is not a mutual fund, a list of assets making up the option's portfolio;
- Information concerning the value of shares or units in the investment option, including past and current performance information; and
- Information concerning the value of shares or units held in a participant's individual account?

Have you maintained samples of all participant communications, including the date provided and to who they were provided? Have you maintained a record of the administrative procedures used to distribute the required disclosures?

## Limiting Liability

- Have you obtained fiduciary liability insurance (errors and omissions insurance)?
- Do you use qualified experts (individuals, firms, and sources with advanced knowledge and experience with qualified plans and fiduciary responsibilities) to assist plan fiduciaries?
- Have you established operating procedures for committees and followed them?
- If it doesn't currently, consider having the plan comply with ERISA Section 404(c).