



Best practices for confident plan compliance

Ongoing efforts to expand retirement plan participation, promote transparency and enhance benefit security have increased responsibilities for plan sponsors. You need to make sure your plan not only meets regulatory requirements, but also distinguishes your organization in the marketplace and allows your participants to prepare for a better retirement outcome.

TIAA-CREF can provide guidance in helping you understand your role as a fiduciary. The following sections highlight strategies for minimizing your fiduciary and compliance risk, and provide information on our resources and services available to assist you—and your advisors—in helping employees seek lifetime financial security.

Three critical steps:

1. Know and understand fiduciary and compliance requirements.
2. Adopt best practices to minimize fiduciary and compliance risk.
3. Seek guidance from plan providers and use all available resources.

Step 1

Minimizing risk:
understand basic requirements

Fiduciary responsibilities for plan sponsors are detailed in the Employee Retirement Income Security Act (ERISA) of 1974, which is enforced by the Department of Labor (DOL). Although some plans may not be subject to ERISA's fiduciary requirements, it is widely recognized that satisfying those requirements—even for a non-ERISA plan—is a recommended practice. And while not every plan must follow ERISA guidelines, all plans must comply with IRS regulations. The following overview summarizes key fiduciary and compliance roles and responsibilities. Plan sponsors should consult with their service providers, legal counsel or other advisors for detailed guidance.



Fiduciary responsibilities

Who is a plan fiduciary?

Whether formally designated a fiduciary or considered one by virtue of the role or activities performed, a fiduciary is responsible and liable for some or all aspects of plan operation.

- A “named fiduciary” is one specifically named or designated in the plan document, trust agreement or by a designation procedure spelled out in the plan document.
- Under ERISA, anyone who engages in any of the following is also considered a fiduciary:
 - Exercises any discretionary authority or control over management of the plan or the management of plan assets
 - Renders investment advice for a fee or other compensation (direct or indirect) or has any authority or responsibility to do so
 - Has any discretionary authority or responsibility in the administration of the plan

What are the fiduciary’s primary responsibilities?

A fiduciary of an ERISA plan must meet certain standards in five key areas:

- **“Exclusive Benefit” rule**—Fiduciary obligations must be performed solely in the interests of plan participants and beneficiaries with the exclusive purpose of providing benefits to them.
- **Compliance with terms of the plan documents**—Fiduciaries must act in accordance with the terms of the plan document at all times.
- **Diversification of plan investments**—ERISA generally requires the fiduciary to diversify plan investments to help minimize the risk of large investment losses.
- **Selection of service providers**—A fiduciary must exercise prudence in selecting and monitoring service providers for the plan.
- **“Prudent Person” standard**—A fiduciary must act with the care, skill, prudence and diligence that a prudent person in a similar capacity would use under like circumstances.

What are the penalties for noncompliance?

Failure to meet fiduciary obligations can result in serious penalties and liabilities, such as:

- **Personal liability**—A fiduciary can be held personally liable for any losses to the plan resulting from a breach of fiduciary duty.
- **Legal action**—The DOL, a participant, a beneficiary or another fiduciary can bring a civil claim against the plan fiduciary.
- **Fines**—For a fiduciary breach resulting in a financial loss, the DOL can assess a 20% penalty on the amount of the loss. If the breach involves a prohibited transaction, excise taxes may also be levied.

Compliance responsibilities

Who is responsible for ensuring compliance?

When it comes to compliance, clarity of roles is essential. While organizational structures vary, all plan sponsors should clearly designate—and document—who is responsible and accountable for each aspect of plan compliance.

What are the plan sponsor's primary compliance requirements?

IRS regulations that took effect in 2009 essentially transformed 403(b) plans from primarily employee-controlled, tax-sheltered accounts into fully integrated plans in which the plan sponsor bears responsibility and liability for a broad range of factors. Among the key compliance areas addressed are:

- **Plan documentation**—All 403(b) plan sponsors are required to maintain a written plan document that includes detailed information on plan eligibility, benefits, contribution limits and distributions.
- **Operations**—Employer-funded 403(b) plans must satisfy statutory universal availability and nondiscrimination requirements, including control group rules. These requirements are designed to ensure access to the plan for all eligible employees and equitable distribution of plan benefits among highly paid and non-highly paid participants.
- **Transactions**—Participant-directed asset transfers are generally limited to authorized fund providers that share information with the plan sponsor. Transaction monitoring helps the plan sponsor ensure employee contributions and distributions comply with IRS rules.
- **Financial reporting**—ERISA 403(b) plans are now subject to the same Form 5500 (Annual Return/Report of Employee Benefit plan) filing requirements as 401(a), 401(k) plans and private-sector defined benefit plans. In addition, large 403(b) plans—those with more than 100 eligible participants at the beginning of the plan year—are generally required to have their financial statements audited by an independent auditor beginning with the 2009 plan year.

What are the penalties for noncompliance?

Noncompliance can lead to a range of penalties for both the plan sponsor and individual participants, depending on the severity and scope of the issue. These penalties may include:

- Fines levied against the plan sponsor
- Tax liability and penalties for individual participants if plan contributions or distributions exceed IRS limits or otherwise fail to comply with appropriate regulations
- Full plan disqualification, which could make all plan assets subject to taxation

Step 2

Maximizing outcomes:
adopt best practices

“Best practices” aren’t simply a loose collection of administrative tasks, but rather a cohesive set of policies and processes that support an overarching goal: **reducing risk for plan sponsors while increasing the likelihood of desired outcomes for participants.** The most effective way to optimize fiduciary performance is through a strategic approach encompassing all aspects of plan design, governance and oversight. The steps outlined below can help plan sponsors ensure fiduciary and regulatory compliance.

Establish a plan governance process

- Create written plan governance policies that define all fiduciary roles, protocols and procedures.
- Ensure that all individuals designated as fiduciaries within the organization are aware of their status and receive proper training to understand their duties and potential liability for not meeting those duties.
- Consider forming committees tasked with key areas of responsibility, including an investment committee to oversee investment selection and review.

Review and update plan documentation regularly

- Review and update the plan document. Since both ERISA and the IRS require a written plan document, it’s helpful to establish a disciplined process that spells out how the written document will be created, maintained and updated. Review all plan documents with legal counsel.
- Create an investment policy statement that spells out guidelines for selecting and monitoring plan menu options and service providers. The policy statement must align with the plan’s objectives.

Revisit plan design to promote better outcomes

- Expand plan coverage for all eligible employees, supported by automatic enrollment. Adopt a qualified default investment alternative (QDIA) to enhance the asset allocation options for new participants who fail to provide instructions on how their contributions are to be invested.
- Increase overall benefit security and savings levels through the use of an automatic annual increase program. Consider offering catch-up contributions for participants over age 50 to help preretirees maximize their savings.
- Consider an investment lineup that not only ensures broad diversification to help balance risk and return for all investor types, but also offers guaranteed retirement income products.¹ These include:
 - Target-date fund options—a one-stop choice for participants who are hesitant about making investment decisions or simply prefer to have their retirement assets managed professionally
 - Mutual funds—with 15–20 investment vehicles for flexible asset allocation without an overwhelming number of choices
 - Lifetime income solutions—guaranteed income for life to help meet basic needs in retirement
- Offer comprehensive employee financial education and wellness programs, including objective, noncommissioned investment advice.
- Provide opportunities to save for retiree healthcare expenses.

¹ All guarantees are subject to the claims-paying ability of the issuer.

Monitor plan transactions and investments

- Establish a process to ensure that contributions, distributions and other participant transactions meet their respective limits and sequencing requirements. Plans served by multiple vendors are required to establish a process for monitoring participant transactions, such as loans and hardship withdrawals across vendors.
- Monitor investment performance against established benchmarks.

Communicate with participating employees regularly

- Implement a process for notifying employees about plan eligibility, enrollment deadlines, contribution limits, QDIAs and other information, as required.
- Educate employees to help them understand the benefits of plan participation, build their knowledge of investments and take appropriate action to keep their retirement savings on track.
- Ensure employees have access to the information they need to make informed investment decisions and that the information is delivered in a format that enables them to easily compare the investment options offered within their plans, as required by DOL Fee Disclosure regulations.
- Partner with provider(s) to ensure employees receive objective advice that helps them make informed investment decisions.

Conduct an annual plan and investment review

While not required by regulation, we strongly advocate an annual plan and investment review. These reviews can help clarify how well the plan is working and identify areas for improvement. Reviews should cover areas such as plan participation, asset flows, service quality, cost, transaction activity, participant satisfaction and investment performance.

DOL Fee Disclosure regulations will require plan sponsors to receive, review and assess the service and fee disclosure information sent by their providers by April 1, 2012. This information can be used to inform your annual plan and investment review. You should consider questions such as:

- Are the services provided necessary to the plan?
- Are the terms of the arrangement reasonable?
- Are fees and expenses appropriate for the quality of service provided?

Maximize value through plan simplification

- Take steps to control costs, which may include consolidating multiple providers to a single provider offering greater control, flexibility and cost efficiency.
- Evaluate each provider's ability to assist with administrative tasks, which can ease the burden on the plan sponsor's staff and help manage or reduce costs.

A strategic approach to adopting best practices

- Raises awareness of the plan sponsor's fiduciary and compliance responsibilities and potential liability to all levels of leadership in the organization
- Establishes compliance as a top priority
- Reduces exposure and risk for plan fiduciaries.

The importance of lifetime income options

A well-diversified fund menu should include an investment lineup that contains a variety of investment options, each with different objectives, benefits and suitability to serve a wide range of investor needs for long-term growth and lifetime retirement income.²

Most plans include investment vehicles that help employees accumulate assets during their working years. However, with fewer organizations offering defined benefit plans (per the [IRS](#)), increased longevity and unprecedented stock market volatility, it has become increasingly important to provide guaranteed options—such as annuities—designed specifically to cover essential expenses in retirement.³

- EBRI's 2011 Retirement Confidence Survey⁴ reports that 73% of workers say they will rely on employer-sponsored defined contribution (DC) plans for retirement income.
- *Voice of the Defined Contribution Participant*, a 2011 Brightwork Partners study, reports that 72% of participants would be “somewhat or very interested” in contributing to an investment option within their 401(k)/403(b)/457 plan that, instead of accumulating an asset balance, focused mainly on generating a guaranteed monthly income in retirement.

Guaranteed options such as annuities that are designed specifically to meet retirement income needs are not only an appropriate investment vehicle, but also the most effective way to provide retirees with a steady stream of income that they can't outlive. Of course, no single fund or investment vehicle represents a complete retirement savings program. But as a component of a diversified portfolio that may also include variable investments, a guaranteed annuity can play an important role.

Fiduciaries should practice sound due diligence when evaluating all investment options, including guaranteed annuities. By using a prudent, carefully documented process to demonstrate how and why each investment is a good fit for the overall plan—and in the best long-term interests of participants—plan sponsors can be confident that their lineup is consistent with their fiduciary obligations.

² Based upon the issuer's claims-paying ability. Payments from the variable accounts will rise or fall based on investment performance.

³ Guarantees are subject to the claims-paying ability of the issuer.

⁴ Employee Benefits Research Institute; 2011 Retirement Confidence Survey http://www.ebri.org/pdf/surveys/rcs/2011/PR914_15Mar11_RCS.pdf

Step 3

Seek guidance and resources

Backed by years of experience as a leading retirement plan provider, TIAA-CREF has the knowledge and insight to partner effectively with many different types of institutions and other advisors that serve them. To help plan sponsors better understand their fiduciary and compliance obligations—and to make it easier to fulfill them—we offer a full suite of services and tools:

- **Plan document service**—Specimen 403(b) and Prototype 401(a) plan documents and supporting materials, with compliant provisions and ongoing updates
- **Investment consulting services**—Help with sample investment policy statements, sample investment menus and ongoing performance monitoring
- **Compliance monitoring services**—A variety of tools and guidance to help you meet plan compliance requirements in such areas as loan and hardship withdrawals, contribution limits and nondiscrimination
- **Financial reporting & plan audit services**—Support for Form 5500 preparation and plan audits, including an online instructional/reporting package

All of these are supported by a comprehensive employee communication and education program to provide some of the required employee notifications on your behalf (e.g., 402(f) tax notices, Retirement Equity Act notices, and a Relative Value Disclosure illustration) and to assist your employees in obtaining the information and advice they need to effectively manage their retirement accounts. This includes an option to provide employees with objective advice through our relationship with Ibbotson Associates, as well as information and tools to help you fulfill the new DOL requirements around fee disclosure.

These resources are an important part of our commitment to provide plan sponsors and their employees with the best overall value for all their retirement planning needs.

Building a holistic retirement system

The economic turmoil of the past few years has taken a toll on retirement security for many American workers. Individuals are looking to rebuild their nest eggs and Washington continues to focus on expanding retirement plan coverage, increasing benefit security and providing greater transparency. It has become increasingly important for policymakers, service providers, employees and employers to play an active role in strengthening the retirement system.

As your service provider, TIAA-CREF is dedicated to helping those who work in the academic, medical, cultural and research fields pursue their financial security. We provide the information and resources you need to meet fiduciary and compliance obligations—offering plan design solutions with proven results and providing access to objective advice and guidance for employees.

To discuss how our Fiduciary and Compliance services work, and which of them best meet your needs, please contact your Managing Consultant. If you are served exclusively by the Administrator Telephone Center, please call 888 842-7782, 8 a.m. to 8 p.m. (ET) Monday through Friday. Our consultants will be happy to help you.

Clients can choose from 10,000+ funds from our open platform when they finalize their menu. TIAA-CREF Individual & Institutional Services, LLC, and Teachers Insurance and Annuity Association (TIAA) and College Retirement Equities Fund (CREF), are not plan fiduciaries and do not provide investment menu advice or make recommendations.

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