

TOOLS FOR CONFIDENT PLAN COMPLIANCE

New legislative and regulatory requirements aimed at increasing plan participants and enhancing retirement readiness have created new considerations for plan sponsors. In addition to managing your plan to meet your administrative and compliance requirements, you also want it to appeal to your employees by offering a plan that helps maximize readiness for retirement.

TIAA supports your ongoing plan administration efforts with information intended to help you understand your role as both a plan sponsor and a plan administrator. The following sections highlight some general strategies intended to assist with managing risk, provide information on resources and services available to assist you and any plan consultants you may be working with—in an effort to help your employees achieve in retirement financial security. Please note that TIAA does not and cannot provide legal or tax advice. TIAA encourages you to consult with your legal counsel and/or tax advisor regarding the operation and maintenance of your plan.

Implement policies and procedures in an effort to

- 1** Understand plan administrative and compliance requirements
- 2** Manage risk and enhance participant retirement readiness
- 3** Seek help from plan providers and consultants, and make good use of available resources

Step 1 – Understand fiduciary and compliance requirements

Fiduciary responsibilities for plan sponsors of ERISA plans, as well as the definition of a plan fiduciary, are set forth in the Employee Retirement Income Security Act (ERISA) of 1974, as amended, which is enforced by the Department of Labor (DOL). Although some plans may not be subject to ERISA's fiduciary requirements, a plan sponsor may determine that following certain ERISA requirements—even for a non-ERISA plan—may be prudent. And, while not every plan is subject to ERISA requirements, all plans must comply with applicable IRS requirements. The following overview summarizes key administrative and compliance roles and responsibilities.

Fiduciary responsibilities

Who is a plan fiduciary?

For plans that are subject to ERISA, whether formally designated as a named fiduciary, or if you are a fiduciary by virtue of your roles and responsibilities with respect to the plan, 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 other plan documentation.
- Under ERISA, anyone who engages in any of the following can also be considered a fiduciary:
 - Exercises any discretionary authority or control over the management of the plan and/or plan assets
 - Provides investment advice for a fee or other compensation (direct or indirect) with respect to any assets of a plan, or has any authority or responsibility to do so

What are a fiduciary's primary responsibilities?

An ERISA plan fiduciary must meet certain standards in five key areas:

1. **“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 and defraying reasonable expenses of administering the plan.
 - No self-dealing: Self-dealing (taking advantage of a position in a transaction and acting for personal interest) is strictly prohibited.
2. **Diversify plan investments:** Diversify plan investments to help minimize the risk of loss. (Note: Diversification is a technique to help reduce risk. There is no guarantee that diversification will protect against income loss). Whether the diversification requirement is met depends on the relevant facts and circumstances of the plan.
3. **Comply with the terms of plan documents:** Fiduciaries for an ERISA plan must implement and operate a written plan that complies with ERISA. A plan that is not subject to ERISA must comply with the written plan requirements for such plans under the Internal Revenue Code and applicable state requirements.
4. **“Prudent person” standard:** A fiduciary is obligated to act with the care, skill, prudence and diligence that a prudent person in a similar capacity would use under like circumstances. An important aspect of this is the “procedural prudence test” in which a fiduciary's prudence is judged by the process used in reaching a decision and not necessarily judged by the outcome of the decision.
5. **Selection of service providers and the duty to monitor:** Fiduciaries must exercise prudence in the selection of service providers and continue to monitor the providers selected.

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 penalty on the amount of the loss. If the breach involves a nonexempt, prohibited transaction excise taxes will also apply.

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 a plan sponsor's primary compliance requirements?

Below are examples of some of the key compliance areas addressed by the IRS and DOL.

- **Plan documentation:** An employer-sponsored retirement plan must be operated in accordance with a written plan.
 - As Congress passes new legislation, plan sponsors are given an allotted time to make and execute amendments required by the new laws.
- **Operations:**
 - Employer-funded retirement plans must be operated in accordance with the terms of their written plan.
 - All ERISA-covered retirement plans must generally satisfy certain nondiscrimination requirements designed to ensure equitable distribution of plan benefits among highly paid and non-highly paid participants. Plans that are not subject to ERISA include, but are not limited to, plans sponsored by public education institutions, governments and certain churches.
 - All Section 403(b) plans (including governmental plans and salary-deferral-only arrangements) must satisfy universal availability requirements designed to ensure access to the plan for all eligible employees.
- **Transactions:** Participant-directed exchanges among investments within a 403(b) plan are generally limited to authorized investment 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 plans are subject to annual Form 5500 (Annual Return/Report of Employee Benefit Plan) filing requirements.
 - Plans with 100 or more eligible participants at the beginning of the plan year are generally required to have their financial statements audited by an independent auditor.

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
- Loss of pretax deferral status, which could make plan assets subject to taxation

Step 2 – Adopt policies and procedures

Consider implementing a cohesive set of policies and processes that support an overarching goal: **managing your risk as a plan sponsor, while enhancing the likelihood of retirement readiness for participants**. The most effective way to manage fiduciary performance is through a strategic approach encompassing plan design, governance and oversight. The steps outlined below can help you maintain fiduciary and regulatory compliance.

Establish a plan governance process

- Create written plan governance policies that define fiduciary roles (for ERISA plans), protocols and procedures.
- Provide individuals designated as fiduciaries within the organization with information about their status, along with proper initial and ongoing training that allows them 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, review and monitoring.
- Maintain files to document your processes, policies and procedures.

Review your plan document and its provisions

- Periodically review your plan document to ensure that it accurately reflects the way your plan is being operated together with the investment options offered and any associated limitations.
- Consider the value of making changes to your plan provisions, such as implementing one of the design-based safe harbors or offering catch-up contributions for participants over age 50 to help them maximize their savings.
- Consider the value of additional services or products to assist with your plan administration.
- Remember to execute any amendments to the plan document, and distribute summary plan description (SPD) or a summary of material modification (SSM) in a timely manner to all participants.

Assess investment policy and management

- Consider implementing an investment policy statement¹ that spells out guidelines for selecting and monitoring the plan's menu of investment options and service providers. Any investment policy statement must align with the plan's objectives. Before implementing any investment policy statement, consult with your legal counsel and/or tax advisor to confirm it is appropriate for your plan.
- Consider an investment approach that helps participants secure an income stream in retirement.
- Provide opportunities to save for retiree healthcare expenses.

Review compliance monitoring processes

- Establish a process to provide for contributions, distributions and other participant transactions to meet their respective limits and requirements. Plans served by multiple investment providers must monitor participant transactions, such as loans and hardship withdrawals, across investment providers.
- Monitor investment performance against established benchmarks.

Communicate with employees regularly

- Implement a process for notifying employees about plan eligibility, enrollment deadlines, contribution limits, Qualified default investment arrangements (QDIAs) and other information, as required.
- Educate employees to help them understand the benefits of plan participation and build their knowledge of investments so they can take action to help them stay on track.
- Provide employees with access to the information they need to make informed investment decisions and deliver the information in a format that enables them to easily compare the investment options offered within their plans, including any required disclosures (e.g., required participant fee disclosures if your plan is subject to ERISA).
- Work with provider(s) to make education opportunities available to help employees make choices appropriate for their situation.

A strategic approach to adopting policies and procedures:

- Raises awareness of your administrative and compliance responsibilities and potential liability to all levels of leadership in the organization
- Keeps compliance as a top priority
- Helps manage exposure and risk for plan sponsors and/or ERISA plan fiduciaries

Complete annual plan/investment review and reporting

An annual plan and investment review can help determine if your plan is meeting your organization's goals.

Reviews can cover areas such as plan participation, asset flows, service quality, cost, transaction activity, participant satisfaction and investment performance.

DOL 408(b)(2) Fee Disclosure regulations require plan sponsors of ERISA plans to review and assess the service and fee disclosure information assessed by their plan service and investment providers. Among other requirements, disclosure information should be shared at the onset of a new provider relationship and existing providers should send updated information when there are changes to fees. This information can be used to inform your annual plan and investment review. You should consider questions such as:

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

Finally, the process of filing your annual Forms 5500 and 8955-SSA, if your plan is subject to ERISA, provides another opportunity to look at the details of your plan's financial operation.

Step 3 – Seek help and resources

Backed by years of experience, TIAA has the knowledge and insight to work with you—and your plan consultants—to assist with addressing your administrative and compliance obligations. We offer a full suite of services and tools designed to assist you with your responsibilities.

- **Plan document service:** IRS preapproved plan documents (where available), summary plan descriptions (or summary of plan provisions), discretionary and required amendments, and summary of material modifications (SMMs).* TIAA also offers a specimen 457(b) document for both governmental sponsors and private tax-exempt plan sponsors. (Note that the IRS does not have a preapproved document program for 457(b) plan documents.)
- **Investment services:** Information and tools to help you create an investment policy statement (if appropriate), help design your investment menu and monitor investment performance.
- **Compliance monitoring services:** A variety of tools and education to help with your plan compliance requirements in such areas as loan and hardship withdrawals, contribution limits and nondiscrimination.
- **Financial reporting and plan audit services:** For ERISA plan sponsors, support for Form 5500 preparation and plan audits, including secure online access to your year-end financial reports and our “Plan sponsor reporting and audit guide”.
- **Service and fee disclosure support:** For ERISA plan sponsors, a complete set of specimen disclosures, ongoing support, education on baseline regulatory requirements and access to Disclosure Assist[®], an online tool to help streamline the creation and delivery of your disclosures.
- **A comprehensive employee communication and education program:** Some of the required employee notifications (e.g., 402(f) special tax notices, Retirement Equity Act notices, and a relative value disclosure illustration) are provided at your direction. Communications also assist your employees in obtaining the information they need to effectively manage their retirement plan accounts. Addressing investments beyond the scope of the plan can be a sensitive point for some plan sponsors.

These resources are an important part of our commitment to provide plan sponsors with services of value for their plans, together with holistic retirement solutions for their employees.

Implementing comprehensive policies and procedures

With expanding administrative responsibilities, sponsors are tasked with helping their employees prepare for a secure retirement.

The information herein relating to your plan’s design, how you manage it, the investments you offer and how you engage your employees all play a part in meeting your goals and obligations.

TIAA is dedicated to providing information, services and resources to help you meet your fiduciary and compliance obligations, and help your employees plan for their financial well-being. We offer solutions in key areas—investment products, recordkeeping and education—to help you meet your goals, and to help employees pursue retirement readiness.

For more information on our fiduciary and compliance services, please contact your Relationship Manager or any plan consultant you may be working with. If you are served exclusively by the Administrator Telephone Center, please call **888-842-7782**, weekdays, 8 a.m. to 8 p.m. (ET).

* All plan documents should be reviewed by your legal counsel.

¹An investment policy statement is not required.

This educational brochure includes strategies that might not be appropriate or necessary for all plan sponsors. There are other approaches and strategies that might be utilized to comply with many of the legal requirements. TIAA does not provide legal or tax advice, and it is important that you consult with your own legal counsel and/or tax advisor when making any decisions regarding the adoption, operation and maintenance of your plan about these matters.

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