

# Fiduciary and compliance checklist: Assessing plan status



For retirement plan sponsors, meeting the requirements of the Internal Revenue Code (the “Code”) and—for those subject to the Employee Retirement Income Security Act of 1974 (ERISA), as amended—your ERISA plan fiduciary obligations is imperative to operating a compliant plan. Many sponsors of non-ERISA plans choose to implement certain quasi-ERISA standards for purposes of maintaining plan compliance. The following are some guidelines for ERISA plan compliance. Of course, you should always consult with your legal counsel to ensure that your plan operates in compliance with applicable guidance, the terms of written plan documents, the investment arrangements, and any plan policies and procedures.

With effective processes and procedures in place, you can better manage your obligations. This checklist is intended to help you start with thinking about plan compliance. As part of a comprehensive and ongoing review program, it can help you facilitate compliance and better assist your employees in their attempt to achieve lifetime financial security. Please note that while this checklist is intended to assist you with identifying your obligations, it is not all-inclusive and is informational only. It is not intended to meet the specific needs of your plan. TIAA cannot provide legal or tax advice. We recommend that you consult your own legal counsel and/or tax professional to ensure you are meeting the compliance obligations for your specific plan.

## Overall plan governance

- **Have you established a retirement plan review board or other committee in addition to written plan governance policies that define roles, protocols and procedures?**
- **If your plan is subject to ERISA, have you appointed or selected your plan’s fiduciaries according to your plan’s governance policies and any applicable guidance?**
  - » Have all potential plan fiduciaries been identified and notified of their fiduciary status?
  - » Do fiduciaries receive initial and ongoing training that includes awareness of their duties and responsibilities, including their responsibility to act with prudence, and solely in the interest of plan participants and beneficiaries?
  - » Are fiduciaries aware of their potential personal liability for failing to meet their fiduciary duties?
  - » Is there a succession plan to replace fiduciaries as needed?
  - » If an ERISA-covered plan, is every fiduciary and person who handles funds or other plan property covered by a fidelity bond?
  - » Are delegated fiduciary responsibilities clearly documented in writing?
- **Are committee meetings held regularly to review your plan’s operations and Plan Document, and to make decisions as appropriate? Does each fiduciary regularly attend?**
- **Have you created a permanent file to retain your Plan Document and other relevant documentation?**
- **Are meeting minutes and all decisions (and supporting rationale) documented, approved, signed by each committee member (fiduciary, if applicable) and included in a permanent file for the plan?**

## Plan documents

- Do you have a written Plan Document in place that satisfies requirements of the Code and, if applicable, ERISA?
- Do you maintain a list of everyone with oversight of the Plan Document?
- Does your list clearly identify those accountable for operating your plan in accordance with its terms?
- Is your Plan Document regularly reviewed and amended, as needed, for applicable legislative and regulatory updates?
- Do you maintain copies of the Plan Document(s) at the principal office of the plan administrator for examination by participants and beneficiaries?
  - » Do you have a process for responding within 30 days to written participant inquiries for plan documents and other information applicable to your plan?
- If subject to ERISA, do you have a process for timely providing plan participants with summary plan descriptions (SPDs), summaries of material modifications (SMMs) and any other required participant disclosures?

## Investment policy and management

- **Do you have an investment policy statement (IPS) and does it align with your overall policy for employee benefits? (NOTE: An IPS is not required by ERISA or the Code. An IPS can be useful for purposes of choosing and monitoring your investments. However, an IPS might not be appropriate for all plans. Please consult with your legal counsel before implementing an IPS.) If you choose to implement an IPS for your plan:**
  - » Has the IPS been reviewed in the last year and updated as necessary?
  - » Do you have an investment committee that oversees the selection and monitoring of investments to confirm that they are consistent with the IPS?
  - » Does your investment committee meet regularly to review all applicable aspects of the plan's investment options, including performance and suitability?
- **Is the investment lineup for your plan intended to satisfy ERISA Section 404(c) (i.e., does it contain appropriately diverse asset classes from a risk and return perspective to provide for certain ERISA fiduciary relief)?**
  - » Does your investment lineup offer at least three core options with various risk/return characteristics (e.g., Fixed-income versus stocks versus stable value)?
  - » Has a plan fiduciary evaluated the risks associated with the plan's investment options, and determined they are prudent and in the interests of plan participants and beneficiaries prior to including the investment options in your plan?
  - » Have you made educational materials available to help participants make informed investment decisions that can help them better satisfy their own individual needs?
  - » Do you track the effectiveness of your ongoing employee investment education and advice services?
  - » Do you provide participants with appropriate and timely notifications of changes to the investment lineup?
- **If your plan is subject to ERISA and has a qualified default investment alternative (QDIA), has it been reviewed to ensure the investment selected meets the requirement for a QDIA?**
  - » Have the appropriate QDIA notices been timely provided to participants and are their procedures in place to provide additional required notices?

- **Do you periodically review your plan's investments against appropriate peer groups and benchmarks over varying periods of time, and as otherwise required by your IPS (if you have an IPS)?**

- » If warranted, have you completed a gap/redundancy analysis on the plan investments offered?
- » Have you completed an annual investment review to ensure your investment lineup continues to be aligned with your IPS (if applicable)?
- » Has appropriate action been taken to remove, close or replace plan investment options, if warranted?

- » If you have outsourced services, have any conflicts of interest been identified and disclosed?
- » Do you maintain documentation of the following?
  - o Annual investment review
  - o Periodic investment return and risk reporting (typically quarterly)
  - o Rationale for any investment policy changes
  - o Rationale for any investment lineup changes
  - o Other relevant meeting notes or analysis

## Plan compliance

- Do you have a list of individuals or committees who are responsible for coordinating compliance monitoring activities?
- Do those responsible receive initial and ongoing training for their duties and responsibilities?
- Do you maintain a list of all vendor representatives who support your plan, along with details of their roles and responsibilities? Do you have processes in place to monitor these vendor representatives?

## Operational compliance

- Is your plan required to perform nondiscrimination testing? If so, is a process in place for testing?
- Does the plan pay participant benefits on time and in the correct amounts?
- Are plan contributions remitted in a timely way, and in accordance with the requirements of the Code and ERISA (if applicable)?
- Do you have processes for notifying participants that they are required to take required minimum distributions and for overseeing the distribution process?

## Transactional compliance

- Do you have processes in place to track the amounts that you and your participants contribute annually to ensure they don't exceed the statutory limits? Do you have a process for refunding contributions that exceed statutory limits?
- Do you have a process in place to certify loan eligibility and ensure that individual participant maximums are not exceeded?
- Do you have a process for approving hardships, and ensuring that all distributions comply with applicable rules and limitations?
- Do you have appropriate agreements with all approved service providers to ensure that information necessary for compliance is being shared for proper plan compliance?

## Participant communications

- **Within the past 12 months, have all employees (including nonparticipants) received or had access to information about the benefits of participating in your retirement program, and how they can enroll?**
- **Are participants provided access to the Plan Document, and to information about all available investment options (including prospectuses as required) and other informational/governing documents?**
- **For ERISA plans, have you reviewed your participant fee disclosure strategy?**
  - » Does your strategy comply with the timing and manner set forth in the DOL §404a-5 regulation? (See “DOL fact sheet”.)
  - » Do the disclosures you provide meet the DOL’s §404a-5 requirements, including the specific investment fee, benchmark and performance information? (See “DOL fact sheet”.)
  - » Have you established clear expectations with your service providers as to when and how they will deliver annual fee disclosure information as well as change notifications that need to be provided 30–90 days in advance of a service or fee change?
  - » Do you have operational procedures in place to support your annual participant fee disclosures?
    - o Do you have a process in place to review and update your master list of participants and eligible employees?
    - o Have you reviewed the DOL’s policy on electronic delivery of disclosures? (See DOL safe harbor guidelines and the most recent voluntary safe harbor for retirement plan administrators who want to use electronic media as a default.)
- o Are you aware of the benefits of eDelivery for you and your participants? (See “eDelivery FAQs”.)
- o Please note that you can use TIAA’s Disclosure Assist® tool to deliver the annual Plan and Investment Notice to your participants.
- o Have you allowed sufficient time to input data from other vendors, as necessary, and to coordinate the data required to deliver your participant disclosures? (See “Plan sponsor’s guide to fee disclosure” for more information on Disclosure Assist.)
- **Do all participants regularly receive or have access to educational materials that explain basic investing principles including risk and return, and the importance of asset allocation/diversification?**
- **Do participants have access to personalized investment advice about in-plan investment options?**
- **Do participants receive sufficient information about each of the plan’s investment options, including relevant risks, transfer policies and liquidity restrictions?**
- **Over the past 12 months, have participants received at least 30 days’ advance notice of any changes to the plan’s investment lineup and/or any blackout periods that may have limited their ability to execute account transactions?**
- **Do participants receive quarterly account statements that include:**
  - » Transaction activity within their accounts (e.g., deferrals, fees, withdrawals, exchanges, etc.)?
  - » Account balance and future deferrals by asset class, and other relevant information?

## Annual plan review and reporting

- **For ERISA plans, in the past 12 months, have your fiduciaries requested a review of your plan for:**

- » A statistical analysis of participant activities (participant deferrals, asset mix, transaction history)?
- » Total investment and plan administrative costs?
- » An examination of service quality and participant/employee satisfaction?



### The importance of auditor selection

The Department of Labor (DOL) routinely reviews plan auditors' workpapers to determine if professional standards were followed during the conduct of the plan audit. In the event that workpapers are deemed to be insufficient to support the audit opinion, the DOL may reject the related Form 5500 filing. If this happens, the plan administrator may be subject to penalties. One way to assess your auditor's skills with respect to retirement plans is to confirm that your plan's auditor is a member of the American Institute of CPAs' Employee Benefit Plan Audit Quality Center.

- **For ERISA plans, in the past 12 months, have you assessed the reasonableness of your plan's service providers' fees?**

- » Do you have all ERISA Section 408(b)(2) fee and services disclosures from your plan's service providers that are covered under the regulations?

- » Have you contacted providers with any questions about whether the services provided are necessary, the terms of the arrangement are reasonable, and the fees and expenses are appropriate for the quality of services provided? (See Understanding plan fees for frequently asked questions.)
- » Have you reviewed your fee management strategy to ensure that costs are allocated equitably to your participants? (See Fee leveling fact sheet.)
- » Did you document your review and assessment process?

- **In the past 12 months, has there been a review of your plan's investment options, including selection, performance and expenses, that involves comparison with the investments' peer groups and benchmarks, and comparisons with similar retirement plans?**

- **For ERISA plans, do you have a process for ensuring that you have the applicable information necessary for the accurate and timely filing of your "Forms 5500" and "8955-SSA", and preparation of your plan's financial statements, if required? (See "Form 5500 fact sheet" .)**

- » Do you have arrangements with all your providers to send required documentation for your filings?
- » Have you incorporated processes for reviewing year-end financial reports provided by your plan's recordkeepers for accuracy?
- » Where appropriate, have you selected a qualified auditor with ERISA plan experience to provide the appropriate report to accompany your Form 5500?

- **Do you have processes in place to review your plan demographic information (dates of birth, hire, rehire, termination, death, retirement, etc.) and confirm its accuracy?**



## Next steps

After completing the checklist, ask your TIAA representative or any plan consultant you may be working with about the services offered by TIAA, which are intended to assist you with managing your compliance and fiduciary responsibilities.

If you are served exclusively by the Administrator Telephone Center, please call **888-842-7782**, 8 a.m. to 8 p.m. (ET), weekdays. Our consultants will be happy to help you.

**NOTE:** This educational brochure has suggestions that may not be appropriate or necessary for all plan sponsors. Some of the suggestions go beyond legislative and regulatory requirements, and there are different ways to comply with many of those requirements. TIAA cannot provide legal advice, and it is important that you consult with your own counsel about these matters.

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