FIDUCIARY SERIES

Plan documents—compliance is in the details

As a plan sponsor, one of your most significant responsibilities—and challenges—is operating your plan according to its written terms. While plan management can be complex and requires a great deal of oversight, knowing what to watch out for can help you stay compliant and avoid missteps.

Compliance is the key to avoiding plan document and operational failures (see "Making sense of the terminology" on the next page). But what does compliance really mean? As a plan sponsor, it means keeping your plan terms updated in writing and understanding your plan inside and out, so that you can effectively administer it.

A written plan is a must

Employer-sponsored 401(a)/(k), 403(b) and 457(b) retirement plans must be maintained in accordance with a written plan document, which contains all the terms and conditions for eligibility, benefits, limitations, the form and timing of distributions and investments available under the plan. Failure to satisfy this requirement could disqualify your plan, and all plan contributions could be treated as fully and immediately taxable.

Put your plan terms in writing

To comply with the written plan, here are just some of the things you need to include in your plan document:

- Eligibility terms
- Available benefits
- Contribution limits
- List of plan funding vehicles

The IRS has preapproved plan document programs for certain plan types. Plan document sponsors (e.g., your plan providers, consultants, attorneys, etc.) may submit a plan document to the IRS for approval. If the IRS determines the document meets the requirements for a compliant plan, the IRS will issue a letter so indicating. Employers that adopt a preapproved plan generally have reliance on the letter from the IRS that their plan document complies with IRC Section 401(a)/(k) or 403(b), as applicable (as long as the plan sponsor does not materially change the provisions previously approved by the IRS). To date, the IRS does not have a preapproved plan program for 457(b) plans. However, the IRS has provided model plan document language for such plans.

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Making sense of the terminology

Written plan document: A written record that outlines the operational and administrative terms of the plan. This may come in the form of one single document or a collection of different documents.

Funding vehicles: Financial products that are available through the plan for employer or employee plan contributions. For example, they might include mutual funds in a custodial arrangement or annuities.

Operational failure: Generally occurs when a plan sponsor doesn't operate the plan in accordance with the terms of the written document. For example, offering loans to employees when the written plan document doesn't allow for them.

Plan document failure: Takes place when a plan document has a provision (or lacks a plan provision) that violates the requirements for that plan type.

Follow your plan terms

Your administrative practices need to match your plan's written provisions. If you don't operate the plan according to your written terms, you'll be out of compliance, even if your written plan meets all regulatory requirements.

For example, a 401(k) plan that includes an employer matching contribution may satisfy certain testing requirements by using current-year testing methods, prior-year testing methods, or satisfying one of the design-based safe harbors. However, you are required to use the method you selected in your written plan document. Absent an amendment to the written plan document changing the methodology, using a different method than the one selected could be considered an operational failure.

As the plan sponsor/administrator, be sure you thoroughly understand your plan's terms. You might consider assigning an individual to be responsible for overseeing the operation of the plan and monitoring that it continues to be operated in accordance with its terms. This designated person would be accountable for plan compliance and for tracking any legislative or regulatory changes that might impact the plan.

Understand your plan's funding vehicles

While the written plan may be the engine that runs a plan, the funding vehicles (e.g., mutual funds and/or annuity contracts) are its fuel. Based on the plan type, plan sponsors may be restricted with respect to the types of funding vehicles they can offer in their retirement plan. That's one of the reasons why its important to know the basic rules about the type of plan you sponsor, the provisions of the document, as well as the attributes of the investment vehicles offered under your plan.

Making sure your written plan is aligned with your funding vehicles can help you avoid future conflicts. Be sure to notify your plan's service providers, investment providers and anyone else serving the plan right away if you make any changes to your written plan.

Resolve conflicts

Resolve any conflicts between the terms of your written plan and the terms of any investment vehicles before an error is made. This is especially true if your plan has multiple investment providers.

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If you include an annuity contract(s) as an investment option, be sure to understand the provisions of such contracts and how they work within the framework of your plan.

What if there's an error?

Even with careful due diligence you may experience compliance errors. The good news is that the Employee Plans Compliance Resolution System (EPCRS) can help bring your plan back into compliance. EPCRS is an IRS correction program developed to provide plan sponsors with guidelines and options to correct a range of errors in their retirement plans. Make sure to consult with your legal counsel if you believe you have any written plan document issues and to discuss the possibility of utilizing the EPCRS program.

Review your plan every year

Review the terms of your written plan document and funding vehicles terms no less frequently than annually. It can help you make sure that your plan's written terms, administrative practices and funding vehicles are working together. It can also help you anticipate any needed updates and remind you to coordinate responsibilities with your funding vehicle providers.

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