

Plan governance toolkit

**Guidelines to document and manage
a competitive, effective, and compliant plan**



This toolkit has been created to help facilitate the management of your fiduciary and compliance responsibilities. It is not intended to provide legal or tax advice. We strongly encourage you to consult with your own legal counsel for such advice.

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Plan governance toolkit

With increased oversight of retirement plans—and continually changing guidance—you want to be confident that your retirement plan is compliant. Whether working on your own or with the assistance of a plan consultant, good controls for maintaining plan documentation as well as the policies and procedures for effective plan governance, can help prepare you in the case of a plan audit or plan compliance check. It's also a great way to increase the efficiency of your plan while improving the experience of your participants.

At TIAA, we understand your need for assistance with understanding the requirements for keeping your plan compliant. This toolkit is intended to provide information and resources to help you, and any consultant you may be working with, facilitate your plan's compliance. The toolkit is intended for educational purposes only. It is not intended as legal or tax advice. We strongly encourage you to consult with your own legal counsel to ensure your plan is operated in accordance with its terms as well as all applicable legislative and regulatory requirements.

What is plan governance and why is it important?

Plan governance is the oversight needed to assist with keeping your plan compliant. Good plan governance will help you ensure you're managing an effective and compliant plan. It is the framework that can help you make effective decisions about all aspects of the plan—from plan documents and investments to operations and financial reporting. Effective plan governance will also help mitigate risk.

Strengthening your governance process

Effective plan governance streamlines decision making, reduces risk, increases the likelihood of meeting plan objectives and improves controls. Effective governance might include documenting processes and procedures for effectuating the duties and responsibilities required for administering your plan. To maximize effectiveness, your policies and procedures should include the delegation of duties, reporting requirements, required communications, plan documentation, plan investments and oversight, and delegation of responsibilities to plan service providers and the oversight thereof. Effective plan governance is critical to help ensure that plan sponsors continue to meet their responsibilities.



Plan governance provides the framework for effective and efficient oversight of your plan.

How to use this guide

This guide takes the processes outlined in our *Fiduciary & Compliance Checklist* and:

- Includes suggestions regarding documentation you might maintain to demonstrate compliance
- Includes tools and templates for your consideration to help get you started (watch for **hyperlinked** text throughout)
- Includes, for your consideration, a file structure and procedures for maintenance

Sample file structure

- 1 Overall Plan Governance—processes and procedures
- 2 Plan documentation
 - Signed Plan Document and Adoption Agreement (if applicable)
 - Amendment Process
 - Plan Amendments
 - Board Resolutions
 - Summary Plan Descriptions and Summary of Material Modification (for ERISA-covered plans)
- 3 Investment Policy and management
- 4 Compliance Monitoring
- 5 Participant Disclosure and Communication
- 6 Annual Plan Review and Reporting
- 7 Contracts and agreements (may include service provider agreements, annuity contracts, etc.)

With an effective structure in place, plan compliance efforts can be more effective. Make sure to maintain a regular calendar of governance activities, respond to regulatory changes (e.g., required plan amendments) and ensure you efficiently document all activities, communications and decisions.

Quick link:



**Fiduciary &
Compliance
Checklist**

Section 1:

Overall plan governance

Document the work you've done—alone or with any plan consultant you may be working with—to demonstrate your efforts related to prudent plan administration. If your retirement plan is subject to the Employee Retirement Income Security Act of 1974 (“ERISA”), the plan administrator is subject to the fiduciary requirements of ERISA. You might implement policies and procedures to meet your fiduciary obligations under ERISA by forming committee(s) that accept key areas of fiduciary responsibility (e.g., an investment committee to oversee investment selection and monitoring) and/or hiring third-party service providers to handle certain fiduciary functions. As a part of your policies and procedures, you may also want to collect fiduciary acknowledgments to ensure fiduciaries maintain awareness of their responsibilities, keeping in mind that it continues to be your responsibility to maintain oversight of those fiduciaries and service providers.

Even if your plan is not subject to ERISA, as the plan's sponsor, you are responsible for operating the plan in accordance with its terms and keeping the plan compliant with applicable IRS and state guidance.

What if I am a sponsor of a non-ERISA plan?

Plans of certain organizations are never subject to ERISA (e.g., public education institutions, non-electing churches, governmental entities). While certain plan types may be structured to be exempt from ERISA (e.g., Section 403(b) arrangements of section 501(c)(3) organizations that are structured as exempt from ERISA for limited employer discretion, section 457(b) plans of section 501(c) tax-exempt organizations). Even if your plan is not subject to ERISA, as the plan's sponsor, you are required to operate the plan in accordance with its terms, applicable IRS guidance and applicable state laws. If you are a section 501(c)(3) sponsor of a section 403(b) arrangement which is exempt from ERISA for limited employer discretion, you need to make sure that your role is limited to settlor functions only.

What you should have on file

- **Proof of establishment of retirement plan committee(s) (as applicable)**
 - Initial meeting minutes that document the establishment of a retirement plan review or other committee, along with its governance policies, recommended members and a recommendation for confirmed members to sign an acknowledgment of fiduciary responsibility—**Sample initial meeting minutes template**
 - For ERISA-covered plans, signed acknowledgments of fiduciary responsibility from committee members—**Sample fiduciary acknowledgment template**

Quick links:



Sample initial meeting minutes template



Sample fiduciary acknowledgment template



Sample committee meeting minutes template

- **Administrative documentation**

- List of all outside service providers and consultants, and documentation of your monitoring activities
- Department of Labor (DOL) 408(b)(2) plan fee and service disclosure from covered service providers (if applicable), review of services, costs, reconciliation of plan data and transactions, benchmarking information and Service Organization Controls reports (formerly Service Auditor's Examination) (if your plan is subject to ERISA)
- Documentation of committee changes (as applicable)
- Copies of any fiduciary liability insurance (if your plan is subject to ERISA)
- Required fidelity bond from your insurance provider (if applicable)

- **Proof of ongoing committee activity**

- Minutes of each committee meeting, filed by date and detailing topics of discussion—
Sample committee meeting minutes template
- Succession planning steps
- Documentation of your attendance at educational **webinars** and meetings (e.g., TIAA webinar, *Investment Perspectives: Second Quarter*)
- Training and ongoing educational materials pertaining to best practices

Process for ongoing maintenance of ERISA-covered plans

- Ensure you update your list of plan fiduciaries as changes occur, and be sure to secure signed acknowledgments from new fiduciaries and formal resignations from departing fiduciaries
- Ensure new fiduciaries are trained and fully understand their responsibilities, and provide ongoing training for existing fiduciaries
- File all committee meeting minutes
- Review and renew your fiduciary liability coverage and fidelity bond(s) annually for adequacy of limits, coverages, covered plans and covered committees
- Take advantage of TIAA's periodic fiduciary and compliance plan sponsor **webinars**

Section 2: Plan documents

All employer-sponsored retirement plans must be maintained, both in form and operation, pursuant to a written plan.

What you should have on file

- A list of everyone who has oversight over the plan document, both individuals and committees, with clear designation of who is accountable for ensuring operation of the plan in accordance with the terms of the plan document
- Plan documents for each plan retained in the following five subfolders:
(Be sure to create a set of folders for both active and frozen plans.)
 1. Signed Plan Document and Adoption Agreement (if applicable)
 2. Amendment processes for legally required regulatory and/or legislative amendments as well as voluntary plan design changes
 3. Amendments to the plan and associated adoption agreements
 4. Board resolutions adopting the plan/amendments—**Sample board resolution template**
 5. Summary Plan Description (SPD) and any Summary of Material Modifications (SMM) for plans subject to ERISA
- Overview of all funding vehicles that are used by the plan
 - a. Funding vehicle types and how many of each
 - b. Benefits/Limitations of each type of funding vehicle
- Signed Recordkeeping Services Agreements with plan providers
- Signed Custodial Agreements (and trust documents to the extent applicable)
- IRS Opinion Letter or Determination Letter (if applicable)
- Proof of communications notifying participants of amendments/updates to the plan document (SMM for plans subject to ERISA)

Quick link:



**Sample board
resolution
template**

Process for ongoing maintenance of ERISA-covered plans

- If you make operational changes to your plan (e.g., implementing one of the design-based safe harbors or changing availability of distributions), update your plan document accordingly.
- Document, sign and file any amendments to the plan, including amendments to the plan's adoption agreement and/or basic plan document.
- At the end of your plan year, if your plan is subject to ERISA, create a SMM summarizing all changes made to the plan during the year. Be sure you provide a copy of the SMM to participants and beneficiaries within 210 days of your plan year-end and file proof that you did so.
- Make SMMs and SPDs easily accessible for distribution to newly eligible participants or upon request if your plan is subject to ERISA.
- Revise your SPD at least once every five years. Ensure it includes notification that the plan has been drafted to comply with ERISA Section 404(c) if applicable. Retain and send a copy of the SPD and any SMMs to all eligible employees and plan participants, beneficiaries and alternate payees who have an account balance. Document for your records that you sent copies of the SPD and SMMs.

Section 3:

Investment policy and management

If your plan is subject to ERISA, you are required to diversify plan investments in an effort to minimize risk of loss. If your plan is not subject to ERISA, you are still responsible for the selection and monitoring of your plan investments.

For ERISA-covered plans, the fiduciary is required to follow the “prudent person” standard. A fiduciary is obligated to act with the care, skill, judgment and diligence that a prudent person in a similar capacity would use under like circumstances. An important aspect of this is that the ‘procedural prudence test’ in which a fiduciary’s prudence is judged, is by the process used in reaching a decision, not necessarily by the outcome of the decision.

What you should have on file

- An Investment Policy Statement (IPS) (not required, but might be a best practice depending on your plan). If you implement an IPS (which will also be discussed with the annual plan review mentioned in Section 6), it should be filed with your investment policy and management materials. If you are interested in implementing an IPS, you can speak with your Relationship Manager or contact the Administrator Telephone Center about access to sample IPS language to get you started. Keep in mind, if you implement an IPS and you are audited, you will be expected to have followed and met the requirements of your IPS.
- Documentation demonstrating how the investments in your lineup comply with your IPS (if applicable).
- Document compliance with ERISA section 404(c) (if applicable)
- Confirm your plan’s Qualified Default Investment Alternative (QDIA), if applicable, has been reviewed for compliance with applicable guidance. Note: This serves to establish a baseline for future decision making. The documentation might include:
 - Minutes from the committee meeting during which the plan’s investment options were decided
 - Notes from discussions with your investment consultant
 - A printout of your Plan Investment Menu page, signed by the responsible parties
- Representation from providers stating their ability to meet applicable legislative and regulatory requirements (e.g., SECURE Act)
 - Note that TIAA’s representation can be found on the PlanFocus Compliance Overview page

- Documentation of investment monitoring and discussions pertaining to the IPS (if applicable). Create separate subfolders annually containing notes on:
 - Periodic investment return and risk reporting (typically quarterly)
 - Annual investment review
 - Discussions of appropriate investments, including alternatives considered
 - Comparison of investments to benchmark(s) as established in the IPS (if applicable)
 - Decisions on whether investments continue to meet the IPS (if applicable) and whether they should be retained or replaced, along with your rationale for any changes to the investment lineup or IPS

Process for ongoing maintenance of ERISA-covered plans

While you should review your investment menu at least once every year, the goal is to monitor the performance of your plan investments with enough frequency to spot trends that may indicate a need for change. You may be working with a consultant who helps you facilitate the investment menu review. If you implement an IPS, make sure that you are compliant with the terms of your IPS. You can:

- Click *Investment Performance and Research* on the PlanFocus Administration tab to see and/or export performance against benchmarks, and document the dates that you've done
- Document your meetings with TIAA or other investment providers as well as your attendance at TIAA or other quarterly investment webinars
- Conduct and maintain a written record of your annual investment review
- Update your files with any fee change notifications received from your covered service providers and **assess reasonableness**

Quick link:

 **Four questions to guide your fee evaluation process***



Checklist

Four questions to guide your fee evaluation process

As a plan fiduciary, you have a responsibility to ensure your service providers' compensation is reasonable relative to the services provided. A fiduciary process for assessing fees can help meet your obligation to provide a plan that operates in the best interest of your employees. Your plan provider or consultant can help you navigate this process by helping you answer four key questions.

1. Who is receiving compensation from your plan?	
Identify all plan-covered service providers receiving direct and indirect compensation. Collect complete information regarding their qualifications, scope and quality of services.	<input checked="" type="checkbox"/>
Following a documented process to regularly monitor each of your providers is considered a best practice. This includes having set criteria to measure their effectiveness and determining whether there are any potential conflicts of interest.	<input checked="" type="checkbox"/>
Collect and review your plan's service providers' required disclosures to verify they are complete and accurate. Clarify any questions you may have with your provider or consultant.	<input checked="" type="checkbox"/>
2. What are the fees and expenses associated with your plan?	
Understand all of the fees associated with your plan and how they are charged. This includes reviewing how recordkeeping, offsets are handled by your provider and how participant fees are assessed.	<input checked="" type="checkbox"/>
Think about using an alpha fee approach to determine your total plan costs and to help facilitate the fee evaluation process.	<input checked="" type="checkbox"/>
Comparing your fees by subcategories, investment and individual categories may make it easier to understand what services are included in your offering and their related cost drivers.	<input checked="" type="checkbox"/>
Review strategies available to pay for plan expenses and assess whether your current fee strategy covers plan costs, and is administratively feasible and efficient.	<input checked="" type="checkbox"/>
Make sure you communicate the plan fees to your employees and that you have the necessary information from your service providers to help create your required participant fee disclosures.	<input checked="" type="checkbox"/>

[Download Checklist](#)

**This is intended as informational and educational only. The "Four Questions" are not designed to meet the needs of any specific plan, plan type, or plan sponsor. This document is not intended as legal or tax advice, as TIAA cannot provide such advice. We strongly encourage you to consult with your legal counsel and/or tax advisor and have them review all of your plan documentation to determine if this document is appropriate for your plan.*

Section 4:

Compliance monitoring

Plan sponsors bear responsibility and liability for a broad range of compliance requirements. Clarity of all stakeholder roles—including outside consultants—is essential to ensure accountability for each. For ERISA plans, the annual filing of your Forms 5500 and 8955-SSA are part of your compliance responsibilities and are covered in Section 6: Annual plan review and reporting.

What you should have on file

- A list of individuals or committees at your organization who are responsible for coordinating various compliance monitoring activities (e.g., nondiscrimination testing if applicable, contribution limits monitoring and transactional compliance), along with their assigned tasks. This usually includes someone from Human Resources/Benefits. For ERISA plans, include the names of individuals who are responsible for overseeing the preparation and filing of Forms 5500 and 8955-SSA.
- A list of all TIAA and other vendor representatives who support your plan, along with details of their roles, responsibilities and contact information
- Operational compliance—documentation of internal controls in place to ensure:
 - a. Accurate plan data needed for testing and reporting is collected, and the results of the testing are reviewed
 - b. Timely plan contributions and a written review of the timeliness (e.g., download and maintain copies of contributions reports available on TIAA's PlanFocus® website)
 - c. Timely benefit payments and a written review of the timeliness (e.g., download and maintain copies of distributions reports available on TIAA's PlanFocus website)
 - d. Required minimum distributions (RMDs) are made in the appropriate time frame (TIAA can supply a list of participants who need to take RMDs, if provided date of birth for all participants as well as employment status)
 - e. Completion of nondiscrimination testing (file your calculations and results)
- Transactional compliance—documentation of internal controls in place to monitor participant transactions. This includes:
 - a. Your plan loan eligibility rules (if loans are permitted from your plan)—which are especially important in the event of an audit
 - b. Loan documentation (e.g., download and maintain copies of the reports on loan information, loan issuance, loans in arrears and loan repayments available on the PlanFocus website)

Quick link:



Keeping your plan in shape—The TIAA Nondiscrimination Testing Guide



Keeping your plan in shape

The TIAA Nondiscrimination Testing Guide



- c. Your plan hardship withdrawal eligibility rules if hardships are available from your plan. (Note that hardship rules are not applicable for Code section 457 deferred compensation plans.) Rather, unforeseeable emergency distributions might be available under Code section 457 plans.
- d. Ongoing contribution limits monitoring (e.g., download and maintain copies of the Audit Report available through the PlanFocus website)
- e. Documentation of participant notifications if limits are exceeded, and the actions taken
- f. A documented process for coordinating with the Service Organization Controls Report (formerly SSAE 16) if your plan is subject to ERISA

Process for ongoing maintenance

Operational compliance

- Log in to the **Reporting** section of the PlanFocus website on a regular basis to run, review and file the reports listed above, and gather the same information for any other service providers.
- Consult **Keeping your plan in shape—The TIAA Nondiscrimination Testing Guide** for support in conducting annual nondiscrimination testing if applicable to your plan.

Transactional compliance

- Log in to the **Reporting** section of the PlanFocus website on a regular basis to run, review and file the reports listed above, and gather the same information for any other service providers.
- Review **Reporting** to ensure distributions have been made according to requirements and that limits have not been exceeded.
- Notify participants who have exceeded or are approaching limits, and make any necessary corrections.

Section 5:

Participant disclosure and communication

Plan sponsors must provide a number of basic disclosures to eligible employees and participants to notify them of certain plan terms and conditions to comply with the federal tax code and ERISA, if applicable. In addition to required disclosures, plan sponsors often provide education and support to help participants understand the benefits of plan participation and how to make informed investment decisions. The following list of disclosures is for reference only. The list is not intended to address your specific plan. TIAA encourages you to contact your legal counsel to determine which disclosures are required for your plan(s).

SECURE 2.0 Act Update:

SECURE 2.0 Act included a provision that directs the Secretaries of Labor and the Treasury to adopt regulations providing that a plan may, but is not required to, consolidate two or more of the following notices into a single notice:

- Qualified default investment alternative notice;
- Safe harbor notice;
- Auto enrollment safe harbor notice; and
- Permissive withdrawal notice.

The Treasury Department, DOL, and Pension Benefit Guaranty Corporation are directed to review reporting and disclosure requirements for pension plans and to make recommendations to Congress to consolidate, simplify, standardize, and improve such requirements.

This may include the Secretaries of Labor and the Treasury to adopt regulations providing that a plan may, but is not required to, consolidate two or more of the following notices into a single notice:

- Qualified default investment alternative notice;
- Safe harbor notice;
- Auto enrollment safe harbor notice; and
- Permissive withdrawal notice.

The effective date is no later than three years after December 29, 2022.

Any consolidated notice must include the required content, clearly identify the issues addressed therein, and be furnished at the time and frequency required by law for each notice. Additional conditions also apply.

What you should have on file

- Participant required disclosures**—Make sure to document that participants have received all required disclosures including confirmation of receipt if required.

ERISA participant disclosures

- Individual statement to separated participants with deferred vested retirement benefits
- Summary Plan Description
- Summary of Material Modifications
- Summary Annual Report
- Notification of benefit determination (claims notices or “explanation of benefits”)
- Plan document upon request
- Periodic retirement benefit statement
- Statement of accrued benefits and nonforfeitable benefits
- Notice of blackout period
- Annual qualified default investment alternative (QDIA) notice
- Annual automatic contribution arrangement notice if applicable
- Qualified domestic relations order notices
- Automatic rollovers notice
- Participant plan and investment fee disclosures (annual, web and quarterly disclosures)
- Section 404(c) plan disclosure

Federal tax code required disclosures

- Annual notice of effective opportunity to make or change elective deferral election
- Annual 401(k)/403(b) safe harbor (nondiscrimination testing) notice
- Annual qualified automatic contribution arrangement (QACA) notice
- Annual eligible automatic contribution arrangement (EACA) notice
- 401(k)/403(b) safe harbor (nondiscrimination testing) discontinuance notice if your plan is ...
- Updated notice for mid-year changes to safe harbor plan or notice
- Eligible rollover distribution notice (“Special Tax Notice”)
- Explanation of automatic rollover
- Consent to distribution explanation
- Qualified joint and survivor annuity explanation
- Qualified preretirement survivor annuity explanation
- Qualified domestic relations order notices
- Universal Availability notices must be provided to all eligible employees not less frequently than annually. This applies to both ERISA and non-ERISA 403(b) plans.

- Financial education, workshops and consultation**

- A list of education opportunities made available to employees

- Targeted communications**

- Any applicable participant campaign calendars (e.g., diversification, participation or financial education campaigns) and/or collected samples of communications provided

Process for ongoing maintenance

- Allow sufficient time before the end of your plan year to confirm that all data and other requirements have been met for timely delivery of annual participant notices.
- Use the following sample notices as applicable to your plan:
 - **Universal Availability Notice (applicable to Code section 403(b) plans only)**
 - Sample Qualified Default Investment Alternative (QDIA) notifications (available in the PlanFocus Compliance section)
 - Sample Auto Enroll notifications (available in the PlanFocus Compliance section)
- Immediately file emails or other dated communications showing your approval for delivery of plan investment and other plan changes.
- Record dates on which your providers have made seminars available to employees and ask your provider representative(s) for statistics on appointments made for individual consultations.
- Ensure participants receive annual fee disclosure communications and consider promotion of eDelivery. Refer to this step-by-step **checklist** designed to help you stay on track and ensure that you meet your deadline. Additional tools and resources are available online, under the **PlanFocus compliance** tab.

Section 6:

Annual plan review and reporting

The following are two of the primary annual reporting requirements:

- 1) Information reporting including Forms 5500 (and schedules) and 8955-SSA
- 2) Plan participant fee disclosures (DOL §404a-5 regulation)

ERISA plans with 100 or more participants are also required to have their financial statements audited annually by a qualified independent public auditor. You might also consider an annual plan and investment review with your plan provider and consultant, if applicable, regardless of whether your plan is subject to ERISA. The reviews can help you ensure that the plan is operating properly and meeting your objectives. In addition, the review can help you identify areas for improvement and opportunity.

What you should have on file

- Working files for your Forms 5500 (and schedules) and 8955-SSA in progress, including communication with your auditor, if your plan is subject to ERISA
- Folders for past Forms 5500 and 8955-SSA filings with audited statements (as required) if your plan is subject to ERISA
- Participant fee disclosure (§404a-5) documentation as covered in the Participant communication section above if your plan is subject to ERISA
- A review folder for each plan that includes:
 - a. A statistical analysis of participant activities
 - b. Review of the total cost of the retirement program
 - c. An examination of service/quality and participant/employee satisfaction
- A folder for each plan's investment review (filed in your investment policy & management folder above)

Process for ongoing maintenance

Forms 5500 and 8955-SSA preparation and filing

For your plans that are subject to ERISA, you will have access to your TIAA plan financial reports through our PlanFocus website within 60 days of your plan year-end. Use these reports to prepare your Form 5500, share them with Deloitte Tax if you're using our Form 5500 Preparation Service or share them with any plan consultant you've retained. To help facilitate the preparation of your Form 8955-SSA, ensure you maintain and provide current census data to all plan providers.

Quick link:



**Plan Sponsor
Reporting &
Audit Guide**



Plan sponsor reporting and audit guide

For defined contribution retirement plans subject to ERISA
A comprehensive resource for meeting annual reporting
and fee disclosure requirements
Plan year 2019, version 1.1



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Annual plan and investment review

With each plan review, take a look at participant investments, activities and participation rates in relation to your plan objectives and Investment Policy Statement (IPS), and consider:

- Is the plan doing what it's intended to do?
- If you implement an IPS, does the IPS need updating?
- Are there plan design changes you may want to consider (e.g., auto enrollment, auto increase)?

Working with consultants

New compliance regulations and more complex administrative duties have many plan sponsors engaging consultants to help manage their responsibilities.

If you've retained a consultant for your plan, be sure to engage them as you gather the information suggested here to ensure you benefit from their valuable insight on proper plan governance processes.

TIAA is committed to collaborating with you and your consultant to provide retirement solutions that best meet the needs of your participants. To learn more about the support we provide, please contact our **consultant relations team**.



Next steps

To learn more about how this toolkit can help strengthen your plan governance efforts or to find out about the other fiduciary and compliance services we offer, contact your relationship manager.

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



This material is for informational or educational purposes only and does not constitute investment advice under ERISA. This material does not take into account any specific objectives or circumstances of any particular investor, or suggest any specific course of action. Investment decisions should be made based on the investor's own objectives and circumstances.

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

The material is for informational purposes only and should not be regarded as a recommendation or an offer to buy or sell any product or service to which this information may relate.

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