

Governance—a framework for sustaining fiduciary responsibility



Many consider effective plan governance essential to accurate and compliant plan management. But what is plan governance?

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Plan governance provides you with a framework to oversee and monitor your plan. This can help you maintain your institution's plan objectives, as well as manage your fiduciary and compliance obligations. An effective retirement plan governance program incorporates processes for all duties and responsibilities involved with sponsoring your plan, and helps reinforce and maintain established plan objectives.

Why documentation matters

While well-thought-out processes and procedures can help you make appropriate fiduciary decisions, it's a best practice to document every step of the decision-making process. Documentation offers a number of benefits.



Demonstrates due diligence



Serves as a permanent record



Helps fiduciaries to know their roles and carry them out properly



Provides evidence of following a prudent process in legal cases or examinations by the courts, DOL or Internal Revenue Service.

Proper plan governance can help avoid common fiduciary breaches. You can work with your provider or consultant to help you develop, implement and coordinate a thorough and comprehensive governance process. For additional help with the governance process, you can also consult with your legal counsel for advice.

Here are some steps you can take to help put in place a solid governance plan and avoid falling short of your fiduciary responsibilities.

#1: Select plan fiduciaries

Establish appropriate plan committees to provide fiduciary oversight and keep plan fiduciaries on track with their responsibilities relative to investments, fees and administrative duties. It's also important to document the committee selection process.

Committee members should:

- Have the expertise needed to act as a fiduciary in the capacity for which they are chosen
- Fully understand their responsibilities (be sure to define and communicate their roles)
- Be willing to make the commitment to and be actively engaged in their roles

Having this committee meet periodically and asking them to approve and sign meeting minutes allows you to hold your fiduciaries accountable.

Prudent selection and training can minimize risk

You should follow a thoughtful and clear process when identifying, selecting and training your plan fiduciaries, as well as when evaluating or even replacing them. You also want your decisions to be consistent with your plan document or other policies and procedures.

Selecting fiduciaries who lack the appropriate expertise or commitment to their responsibilities could put you at greater risk of a fiduciary breach.

#2: Delegate fiduciary functions appropriately

Performing an activity—rather than a formal designation—is the determining factor for who is and isn't considered a plan fiduciary. That's why being aware of their responsibilities and the potential risks for noncompliance is just as important for those who perform fiduciary functions as for those who are named fiduciaries. As you identify plan fiduciaries, consider reporting structures carefully and be sure your fiduciaries understand who has which responsibilities so that no task goes uncompleted.

Fiduciaries can have potential liability for the actions of their co-fiduciaries, if they participate in a breach, conceal it or fail to help correct it.

One aspect of delegating fiduciary functions is to make sure that the individuals you delegate these responsibilities to are fully aware of their status as fiduciaries, acknowledge their role and recognize the potential liability for not meeting these duties. Once again, clear processes and full documentation are considered best practices in protecting against fiduciary breaches.

With respect to process, your plan can allocate fiduciary roles under ERISA. Most commonly, administrative and investment responsibilities are delegated separately. In addition, you should document your allocation procedures in either your plan or a separate governance document.

Done properly, delegation of fiduciary functions will result in fiduciaries understanding their roles along with the fact that their roles potential liability will be limited to the performance of those roles.

#3: You may rely on experts, but document your decisions

It's common practice for plan sponsors to use the services of outside experts to help fulfill their fiduciary responsibilities. Under ERISA, a plan fiduciary should hire an expert if the fiduciary lacks the expertise needed to fulfill his or her responsibilities.

ERISA permits fiduciaries to rely on expert opinions, but not “blindly.” Remember, selecting service providers is a fiduciary act, requiring due diligence and ongoing monitoring.

A fiduciary must exercise prudence by examining whether the expert's assumptions are reasonable. The plan fiduciary must also take the time to understand the expert's advice and determine whether or not it makes sense to follow it. Along with this decision, the reasons for following or not following the expert's advice should also be documented.

Finally, given that many plan sponsors do hire third parties for professional support and expertise, it is important to

clearly define roles and manage the activities that may be distributed among third-party administrators, consultants, vendors and recordkeepers.

#4: Maintain fidelity bonds and fiduciary liability insurance

ERISA requires all fiduciaries and anyone else who handles plan assets to be bonded (fidelity bond) in order to protect the plan and its participants against loss from fraud or dishonesty. This bond must be at least 10% of the amount of funds managed or handled by the fiduciary up to a maximum bond amount of \$500,000 or \$1,000,000 for plans with employer stock.

Bonding is required for plans funded with plan-owned annuity contracts and mutual funds. It's recommended for plans funded only with individually owned/allocated annuity contracts.

Another optional protection to consider seriously is fiduciary liability insurance, which covers liability or losses arising from a breach of fiduciary duty. Coverage is relatively inexpensive and quite broad.



Keep your plan governance updated

Proper governance sets a framework for fulfilling fiduciary responsibilities effectively. It dictates who is responsible, holds them accountable and, when necessary, helps protect them in the event of fiduciary mistakes. As you consider your plan's governance, remember it is a dynamic process—one that you may need to update periodically to reflect organizational changes and/or regulatory developments.



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