

Fiduciary and Compliance Checklist: Assessing plan status



Continued focus on retirement plan compliance and ERISA plan fiduciary responsibilities is keeping all plan sponsors on their toes. In addition to meeting Internal Revenue Service (IRS) compliance rules that apply to all plans, Department of Labor (DOL) fiduciary requirements that apply to ERISA plans are often followed as a “best practice” for non-ERISA plans.

With plan governance processes in place, you can better manage your regulatory obligations. This checklist can help you get started. As part of a comprehensive and ongoing review program, it can help ensure your plan is compliant and continues to offer your employees opportunity to seek a safe, secure and timely retirement. Please note that while this checklist can assist you in meeting requirements, TIAA-CREF does not and cannot provide legal advice. We recommend that you consult your own ERISA/tax legal counsel for such advice.

Overall plan governance

- Have you established a retirement plan review or other committee along with written plan governance policies that define fiduciary roles, protocols and procedures?
- Have you appointed or selected plan fiduciaries according to your plan’s governance policies and any applicable laws?
 - 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/fiduciary 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 fiduciary, and included in a permanent file for the plan?



Plan documents

- Do you have a written Plan Document in place that satisfies IRS and applicable ERISA requirements?
- Do you maintain a list of everyone with oversight of the Plan Document?
- Does this list clearly designate those accountable for ensuring your plan is operated in accordance with your Plan Document?
- Have you confirmed that your plan is operated in accordance with your Plan Document and other governing documents?
- Have you reviewed and updated your Plan Document in the last year to reflect recent required changes?
- 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 information if applicable to your plan?
- If subject to ERISA, do you have a process for providing Plan Participants with Summary Plan Descriptions (SPDs), Summaries of Material Modifications (SMMs) to the plan and Summary Annual Reports (SARs)?

Investment policy & management

- Do you have an Investment Policy Statement (IPS) and does it align with your overall policy for employee benefits? (NOTE: Having an IPS and Benefits Policy in place is considered “best practice” but is not an ERISA requirement.)
 - Has the IPS been reviewed in the last year and updated as necessary?
 - Do you have an investment committee that ensures the IPS is followed?
 - 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 the plan intended to satisfy ERISA Section 404(c) safe harbors (i.e., contain appropriately diverse asset classes from a risk and return perspective)?
 - Does your investment lineup offer at least three core options with various risk/return characteristics (i.e., Fixed Income vs. Stocks vs. Stable Value or Cash)?
 - Has a 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 meet their individual needs?
- If your plan permits participants to select investments, have you provided them with enough information to make informed decisions?
 - 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 has a Qualified Default Investment Alternative (QDIA), has it been reviewed for compliance with federal regulations?
- 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 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?
 - 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?
 - Annual Investment Review
 - Periodic Investment Return and Risk Reporting (typically quarterly)
 - Rationale for any investment policy changes
 - Rationale for any investment lineup changes
 - 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 on 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?

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 DOL requirements?
- Do you have processes for notifying participants that they are required to take Required Minimum Distributions and overseeing the distribution process?

Transactional compliance

- Do you have a process to track the amounts that you contribute for your plan participants 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 certifying 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 403(b) plans)?

Participant communication

- 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?
- Have you reviewed and re-evaluated your participant fee disclosure strategy?
 - Does your strategy comply with the timing set forth in the DOL §404a-5 regulation, which covers the initial required disclosures, disclosures for new participants as they become eligible to participate in the plan and annual disclosures to all participants thereafter? (See [Fee Disclosure 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 what 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?
 - Do you have a process in place to review and update your master list of participants and eligible employees?
 - Have you reviewed the DOL's policy on electronic delivery of disclosures? (See [DOL Safe Harbor Guidelines](#))
 - Are you aware of the benefits of eDelivery for you and your participants?
 - Have you determined how and when you will leverage TIAA-CREF's Disclosure Assist® tool to deliver the annual Plan and Investment Notice to your participants—including the level of service you'll need? 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 [Disclosure Assist Fact Sheet](#))
- Do all participants regularly receive, or have access to, educational materials and facilities that explain basic investing principles including risk and return, and the importance of asset allocation/diversification?
 - Do participants have access to personalized investment guidance or advice, and to simplified investment choices, such as lifestyle or lifecycle investment options, or managed accounts?
 - 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?
- Do you have a process in place to review all emails sent to participants from vendors?

Annual plan review & reporting

- 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, and
 - an examination of service quality and participant/employee satisfaction?
- 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 our [Checklist for Evaluating your Plan Fees](#) for guidance.
 - Did you document your review and assessment process?
- In the past 12 months, has there been a review of your plan's investment choices, including selection, performance and expenses, that involves comparison with the investments' peer groups and benchmarks, and comparisons with similar retirement plans?
- Do you have a process for ensuring you have the applicable information for accurate and timely filing of your Forms 5500 and 8955-SSA and preparation of financial statements, if required?
 - 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 experience to provide the appropriate report to accompany your Form 5500? (see sidebar)
- 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?

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 audit. In the event that workpapers are deemed to be insufficient to support the audit opinion, the DOL may reject the related Form 5500. If this happens, the plan administrator may be assessed a fine. One way to assess your auditor's skills is to validate that your plan auditor is a member of the American Institute of CPAs' [Employee Benefit Plan Audit Quality Center](#).

Next steps

After completing the checklist, ask your Relationship Manager, or any plan advisor you may be working with, about the Fiduciary and Compliance services we offer to help you manage these responsibilities.

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



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