Fiduciary Responsibility Series:

Eye on the target — the basics of fiduciary responsibility

TIAA CREF

In a world of changing regulations, shifting market needs and evolving plan designs, defining your fiduciary responsibility as a plan sponsor can be a moving target. The key to keeping your focus in this environment is to establish a consistent process that helps you ensure compliance, reduce risk and maximize outcomes even in the face of changing conditions.

It starts by understanding the obligations of a fiduciary under ERISA, and then implementing a plan to meet and maintain them. We outline here the various elements that you should consider to be part of your plan and also introduce the ten most common mistakes fiduciaries encounter. We expand upon these potential fiduciary mistakes in other parts of the **Fiduciary Responsibility Series**.[1] Being aware of these steps and potential pitfalls, in addition to seeking guidance from your legal counsel, can help you become a more compliant and responsible fiduciary.

A prudent process

The requirements of fiduciary responsibility are rooted in common sense and sound business practice. While specific regulations may change, a prudent fiduciary process should consider several key points.

- **Exclusive Benefit Rule** A fiduciary is obligated to carry out his or her fiduciary functions solely in the interests of plan participants and beneficiaries.
- **Prudent Expert Standard** A fiduciary is obligated to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent expert acting in a like capacity and familiar with such matters would use.
- **Comply with Plan Documents** Acting in accordance with the terms of the plan document is a fiduciary duty. Fiduciaries should be familiar with the terms of their plan, and they should administer their plans in accordance with those terms.
- **Selection of Appropriate Investments for Participants** ERISA requires the fiduciary to diversify plan investments to minimize the risk of large losses, unless it is prudent not to do so.
- **Selection of Service Providers and the Duty to Monitor** A fiduciary must exercise prudence in the selection of service providers and continue to monitor the service providers selected. A prudent process will often meet the requirement of prudence as fiduciaries cannot always determine future outcomes in advance—nor are they expected to.

Fiduciary. . .or not?

Regulatory changes over the past few years have placed more nonprofit retirement plan sponsors into the role of fiduciary. Fiduciaries may be formally designated, or they may be considered fiduciaries by virtue of the role or activities they perform. Because fiduciaries are held to high standards and can be personally liable for breaches, it's important to clearly identify them, along with any fiduciary responsibilities allocated to third parties as defined under ERISA.

As you'll see throughout this series, documentation is a critical aspect of fiduciary prudence. In addition to identifying fiduciaries, documentation should also include acknowledgement that fiduciaries understand their roles, along with evidence of initial and ongoing fiduciary training. Sponsors should not downplay the importance of fiduciary training as it has been the subject of recent DOL retirement plan investigations. Meeting notes with fiduciaries should be taken in greater detail than traditional corporate minutes, and all minutes and materials distributed to fiduciaries should be retained, approved and signed by each fiduciary. In this environment, rigorous documentation is

ERISA Essentials:

- Employee Retirement Income Security Act (ERISA)
- A 1974 enacted federal law setting minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans
- Requires plans to provide participants with plan information including important information about plan features and funding
- Provides fiduciary responsibilities for those who manage and control plan assets
- Requires plans to establish a grievance and appeals process for participants to get benefits from their plans
- Gives participants the right to sue for benefits and breaches of fiduciary duty
- Many amendments have been added to ERISA since its passage in 1974. An up-to-date knowledge of the Act is essential to maintaining fiduciary responsibility.

necessary to protect your interests, as well as the interests of the plan and its participants.

Steps to success

There are some basic steps you can take to help you meet your fiduciary responsibilities.

1. Understand your responsibilities to avoid common fiduciary mistakes (see below).

2. Establish a plan governance process that defines all fiduciary roles, protocols and procedures. You should also maintain files that document all the processes that you have in place as proof of your due diligence.

3. Revisit plan design and the Plan Document to determine if you are in compliance with IRS plan document requirements and you are operating in compliance with your plan document.

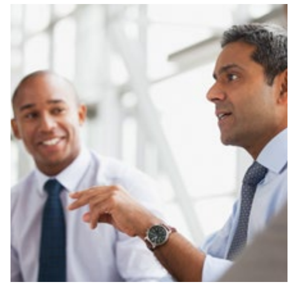
4. Assess investment policy and management by creating an investment policy statement that aligns with the plan's objectives. It is in the interest of your participants to consider an investment approach that gets them both to and through retirement.

5. Review compliance monitoring processes to determine whether transactions meet their respective limits and timing requirements. Part of the monitoring process should also include benchmarking investment performance against established benchmarks.

6. Communicate with employees regularly to meet required communications and provide employees with access to the information they need to make informed decisions.

7. Complete annual plan and investment reviews. A review process, which also includes reporting, can help clarify how well your plan is working and identify areas for improvement.

8. Maximize value through plan simplification which can benefit you by helping to control costs and ease the administrative burden on your staff.



Explore further

For more on this topic and on how fiduciaries can address the challenges they face, visit our **Fiduciary Responsibility Series** site.[1]

Common fiduciary mistakes

Plan sponsorship has never been easy, and today's volatile regulatory and market environment adds more complexity. Listed here are some of the mistakes fiduciaries may commonly make. Avoiding them is more important than ever. Public plan administrators should also be aware that ERISA rules provide helpful guidance and best practice, and may actually be binding in certain states.

For additional information on how to address these concerns, you may review other installments of TIAA-CREF's Fiduciary Responsibility Series.

Top Ten Fiduciary Mistakes:

1. Failure to follow plan documents
2. Improper selection of plan investment alternatives
3. Improper monitoring of plan investment alternatives
4. Improper selection of plan fiduciaries
5. Improper delegation of fiduciary functions
6. Inadequate investment education and disclosure of fees
7. Undue reliance on an "expert"
8. Confusion surrounding fidelity bonds and fiduciary liability insurance
9. Failure to understand and follow restrictions in plan funding vehicles
10. Failure to disclose plan changes to participants

[1] Direct link - **www.tiaa-cref.org/public/plansponsors/news/views-and-commentary/fiduciary-responsibility-series**

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.

Please note this material is for informational purposes only and the statements made represent TIAA-CREF's interpretation of applicable law. It is presented with the understanding that TIAA-CREF (or its affiliates, distributors, employees, representatives and/or insurance agents) is not engaged in rendering legal or tax advice.

Investment, insurance and annuity products are not FDIC insured, are not bank guaranteed, are not deposits, are not insured by any federal government agency, are not a condition to any banking service or activity, and may lose value.

TIAA-CREF Individual & Institutional Services, LLC and Teachers Personal Investors Services, Inc., members FINRA, distribute securities products.

TIAA CREF

Financial Services

C15972

200520_293001
A13944 (04/14)