Best practices for confident plan compliance

Efforts to improve retirement plan participation, promote transparency and enhance retirement security have increased responsibilities for plan sponsors. In addition to managing your plan to meet fiduciary and compliance requirements, you also want it to stand out in the marketplace with solutions that help maximize participants’ readiness for retirement.

TIAA supports your ongoing plan management efforts with information to help you understand your role as a plan sponsor and fiduciary. The following sections highlight general strategies for managing your fiduciary and compliance risk, and provide information on resources and services available to assist you—and any plan consultants you may be working with—in helping employees seek lifetime financial security. Please note that TIAA does not and cannot provide legal advice, and that you should consult with your legal counsel for such advice.

**Three critical steps:**
1. Understand fiduciary and compliance requirements
2. Adopt best practices to manage fiduciary and compliance risk, and enhance participant retirement readiness
3. Seek help from plan providers and consultants, and make good use of available resources

Fiduciary responsibilities for plan sponsors are set forth in the Employee Retirement Income Security Act (ERISA) of 1974, which is enforced by the Department of Labor (DOL). Although some plans may not be subject to ERISA’s fiduciary requirements, it is widely recognized that satisfying those requirements—even for a non-ERISA plan—is a recommended best practice. And while not every plan must follow ERISA guidelines, all plans must comply with applicable IRS requirements. The following overview summarizes key fiduciary and compliance roles and responsibilities.
Fiduciary responsibilities

Who is a plan fiduciary?
Whether formally designated as a fiduciary or considered one by virtue of the role or activities performed, a fiduciary is responsible and liable for some or all aspects of plan operation:

- A “named fiduciary” is one specifically named or designated in the plan document, trust agreement or by a designation procedure spelled out in the plan document.
- Under ERISA, anyone who engages in any of the following is also considered a fiduciary:
  - Exercises any discretionary authority or control over management of the plan or plan assets
  - Provides investment-related recommendations, that are individualized or specifically directed to recipients for a fee or other compensation (direct or indirect), or has any authority or responsibility to do so
  - Has any discretionary authority or responsibility in the administration of the plan

What are a fiduciary's primary responsibilities?
A fiduciary of an ERISA plan must meet certain standards in five key areas:

- “Exclusive Benefit” rule: Fiduciary obligations must be performed solely in the interests of plan participants and beneficiaries with the exclusive purpose of providing benefits to them and defraying reasonable expenses of administering the plan.
- No self-dealing: In acting for the interests of plan participants and beneficiaries, self-dealing (taking advantage of a position in a transaction and acting for personal interest) is strictly forbidden.
- Compliance with terms of the plan documents: Fiduciaries must confirm there is a plan document that complies with ERISA and must act in accordance with the terms of that plan document at all times unless it’s not prudent to do so.
- Diversification of plan investments: ERISA generally requires a fiduciary to diversify plan investments to help minimize the risk of large investment losses unless it is clearly prudent not to do so.
- “Prudent Person” standard: A fiduciary must act with the care, skill, prudence and diligence that a prudent person in a similar capacity would use under like circumstances. An important aspect of this is the procedural prudence test, in which a fiduciary’s prudence is judged by the process used in reaching a decision, as opposed to the outcome of the decision.
  - Selection of service providers and the duty to monitor: Fiduciaries must exercise prudence in the selection of service providers and continue to monitor the providers selected.

What are the penalties for noncompliance?
Failure to meet fiduciary obligations can result in serious penalties and liabilities, such as:

- Personal liability: A fiduciary can be held personally liable for any losses to the plan resulting from a breach of fiduciary duty.
- Legal action: The DOL, a participant, a beneficiary or another fiduciary can bring a civil claim against the plan fiduciary.
- Fines: For a fiduciary breach resulting in a financial loss, the DOL can assess a penalty on the amount of the loss. If the breach involves a non-exempt, prohibited transaction, excise taxes will also apply.
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Compliance responsibilities

Who is responsible for ensuring compliance?
When it comes to compliance, clarity of roles is essential. While organizational structures vary, all plan sponsors should clearly designate—and document—who is responsible and accountable for each aspect of plan compliance.

What are a plan sponsor’s primary compliance requirements?
Below are examples of some of the key compliance areas addressed by the IRS and DOL.

- **Plan documentation:** An employer-sponsored retirement plan must be in writing.
  - With a limited exception, the requirement was extended to 403(b) plans in the final 403(b) regulations including governmental plans and salary deferral-only plans even though not subject to ERISA.
  - For a 403(b) plan, a “written plan” can be a single document or a collection of documents, but must include detailed information on plan eligibility, benefits, contribution limits and distributions.
  - As Congress passes new legislation, plan sponsors are given an allotted time to make and execute amendments required by the new laws.

- **Operations:**
  - Employer-funded retirement plans must be operated in accordance with the terms of their written plan.
  - All retirement plans must generally satisfy nondiscrimination requirements (with an exception for governmental and some church plans) designed to ensure equitable distribution of plan benefits among highly paid and non-highly paid participants.
  - Section 403(b) salary deferral-only plans (including governmental plans) must satisfy universal availability requirements designed to ensure access to the plan for all eligible employees.

- **Transactions:** Participant-directed asset transfers within a 403(b) plan are generally limited to authorized service providers that share information with the plan sponsor. Transaction monitoring helps the plan sponsor ensure employee contributions and distributions comply with IRS rules.

- **Financial reporting:**
  - ERISA 403(b) plans are subject to the same Form 5500 (Annual Return/Report of Employee Benefit Plan) filing requirements as 401(a), 401(k) plans and private-sector defined benefit plans.
  - Plans with 100 or more eligible participants at the beginning of the plan year are generally required to have their financial statements audited by an independent auditor.

What are the penalties for noncompliance?
Noncompliance can lead to a range of penalties for both the plan sponsor and individual participants, depending on the severity and scope of the issue. These penalties may include:

- Fines levied against the plan sponsor
- Tax liability and penalties for individual participants if plan contributions or distributions exceed IRS limits or otherwise fail to comply with appropriate regulations
- Loss of tax deferral, which could make all plan assets subject to taxation
“Best practices” should be implemented as a cohesive set of policies and processes that support an overarching goal: Managing your risk as a plan sponsor, while enhancing the likelihood of retirement readiness for participants. The most effective way to manage fiduciary performance is through a strategic approach encompassing plan design, governance and oversight. The steps outlined below can help you achieve fiduciary and regulatory compliance.

**Establish a plan governance process**
- Create written plan governance policies that define fiduciary roles, protocols and procedures.
- Provide individuals designated as fiduciaries within the organization with information about their status along with proper initial and ongoing training that allows them to understand their duties and potential liability for not meeting those duties.
- Consider forming committees tasked with key areas of responsibility, including an investment committee to oversee investment selection, review and monitoring.
- Maintain files to document the processes you have in place.

**Revisit plan design and the plan document**
- Review your plan document so that it accurately reflects the way your plan is being operated along with the investment options offered and any associated limitations.
- Consider the value of making operational changes to your plan such as implementing one of the design-based safe harbors or offering catch-up contributions for participants over age 50 to help preretirees maximize their savings.
- Consider the value of additional services or products to simplify your plan management:
  - Implement automatic enrollment to expand plan coverage for all eligible employees
  - Adopt a qualified default investment alternative (QDIA) for participants who fail to provide instructions on how their contributions are to be invested
  - Implement an automatic annual increase program to increase overall benefit security and savings levels
- Remember to sign and file any amendments to the plan document, and distribute Summaries of Material Modifications in a timely manner.

**Assess investment policy and management**
- Create an investment policy statement that spells out guidelines for selecting and monitoring plan menu options and service providers. The policy statement must align with the plan’s objectives.

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1 An Investment Policy Statement is not required, but is a recommended best practice.
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- Consider an investment approach that helps participants get to and through retirement.
  - Products that provide potential for asset accumulation via an open architecture that provides access to “best in class” mutual funds and target-date fund options
  - Products that provide lifetime income options plus the advantage of having them available within the plan
- Provide opportunities to save for retiree healthcare expenses.

Review compliance monitoring processes
- Establish a process to provide for contributions, distributions and other participant transactions to meet their respective limits and requirements. Plans served by multiple vendors are required to establish a process for monitoring participant transactions, such as loans and hardship withdrawals across vendors.
- Monitor investment performance against established benchmarks.

Communicate with employees regularly
- Implement a process for notifying employees about plan eligibility, enrollment deadlines, contribution limits, QDIAs and other information, as required.
- Educate employees to help them understand the benefits of plan participation and build their knowledge of investments so they can take action to help them stay on track.
- Provide employees with access to the information they need to make informed investment decisions and deliver the information in a format that enables them to easily compare the investment options offered within their plans, as required by DOL Fee Disclosure regulations.
- Work with provider(s) to make advice and education available to help employees make choices appropriate for their situation.

Complete annual plan/investment review and reporting
While not required by regulation, an annual plan and investment review can help clarify how well your plan is working and identify areas for improvement. Reviews should cover areas such as plan participation, asset flows, service quality, cost, transaction activity, participant satisfaction and investment performance.

In 2012, DOL 408(b)(2) Fee Disclosure regulations required plan sponsors to review and assess the service and fee disclosure information sent by their providers. Among other requirements, disclosure information should be shared at the onset of a new provider relationship and existing providers should send updated information when there are changes. This information can be used to inform your annual plan and investment review. You should consider questions such as:

- Do the services provided add value to the plan?
- Are the terms of the arrangement reasonable?
- Are fees and expenses appropriate for the quality of service provided?

Finally, the process of filing your annual Forms 5500 and 8955-SSA provides another opportunity to look at the details of your plan’s financial operation.
Maximize value through plan simplification

- Take steps to control costs, which may include consolidating multiple providers to a single provider offering greater control, flexibility and cost efficiency.
- Evaluate services available through your providers that can assist with administrative tasks, in order to ease the burden on your staff and help manage or reduce costs.

Backed by years of experience, TIAA has the knowledge and insight to work with you—and any plan consultants you may be using—to help you better understand and empower you to fulfill your fiduciary and compliance obligations. We offer a full suite of services and tools to help you meet your responsibilities.

- Plan document service: IRS-approved plan documents, adoption agreements and sample Summary Plan Descriptions (if applicable) for a variety of plan types*
- Investment services**: Information and tools to help you create an investment policy statement, design your investment menu and monitor it’s performance
- Compliance monitoring services: A variety of tools and education to help you meet plan compliance requirements in such areas as loan and hardship withdrawals, contribution limits and nondiscrimination
- Financial reporting & plan audit services: Support for Form 5500 preparation and plan audits, including an online instructional/reporting package
- Service & Fee Disclosure Support: A complete set of disclosures, plus education on baseline regulatory requirements
- A comprehensive employee communication and education program: Some of the required employee notifications (e.g., 402(f) tax notices, Retirement Equity Act notices, and a Relative Value Disclosure illustration) are provided on your behalf. Communications also assist your employees in obtaining the information and advice they need to effectively manage their retirement accounts. This includes education for the spectrum of financial needs employees have both within and beyond the retirement plan.

These resources are an important part of our commitment to provide plan sponsors with services of value for their plans, together with holistic retirement solutions for their employees.

* 457(b) plan documents provided by TIAA are specimen plans that have not been approved by the IRS. All plan documents should be reviewed by your legal counsel.

** As a result of the DOL Fiduciary Investment Advice Rule, some services may only be available to plan fiduciaries who qualify as “sophisticated fiduciaries” with “financial expertise” under the Rule.
**Building a holistic retirement system**

The role of plan sponsorship has become more complex in recent years. With ever-expanding compliance and fiduciary responsibilities, sponsors are tasked with helping their existing workforce prepare for and live a vibrant and secure retirement—while at the same time offering competitive plans that attract new talent and retain current employees.

The best practices discussed above relating to your plan’s design, how you manage it, the investments you offer and how you engage your employees, all play a part in how successful you are at meeting these responsibilities.

As your service provider, TIAA is dedicated to providing information, services and resources to help you meet your fiduciary and compliance obligations, and help your employees plan for their financial well-being. We offer solutions in key service areas—investment products, recordkeeping, and education and services to help you meet your responsibilities—while also providing advice, education and a holistic approach to help employees pursue retirement readiness.

For more information on our Fiduciary and Compliance services, please contact your Relationship Manager or any plan consultant you may be working with. 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.