



Plan documents—compliance is in the details

As a plan sponsor, one of your most significant responsibilities—and challenges—is running your plan according to its written terms. While plan management can be complex and requires a great deal of oversight, knowing what to watch out for can help you stay compliant and avoid missteps.

Compliance is the key to avoiding plan document and operational failures (see “Making sense of the terminology” on the next page). But what does compliance really mean? As a plan sponsor, it means keeping your plan terms updated in writing and understanding your plan inside and out, so that you can effectively administer it.

A written plan is a must

Employer-sponsored 401(a)/(k), 403(b) and 457(b) retirement plans must be maintained under a written program, known as the plan document, which contains all the terms and conditions for eligibility, benefits, limitations, the form and timing of distributions and contracts available under the plan. This requirement was extended to 403(b) plans in 2009. Not satisfying this requirement could disqualify your plan and all plan contributions could be treated as fully and immediately taxable.

Put your plan terms in writing

To comply with regulations, here are some of the things you need to include in your plan document:



Eligibility terms



Available benefits



Contribution limits



List of plan
funding vehicles

Plans that do not put their plan terms in writing risk “plan document failure.” Employers that adopt a pre-approved plan generally have assurance from the IRS that their plan document complies with IRC Section 401(a)/(k) or 403(b) as applicable. To date, the IRS does not have a pre-approved plan program for 457(b) plans. However, the IRS has provided model plan document language for such plans.

Making sense of the terminology

Plan document: Written records that outline the operational and administrative terms of the plan. This may come in the form of one single document or a collection of different documents.

Funding vehicles: Financial products that are available through the plan for employer or employee plan contributions. For example, they may include mutual funds or annuities.

Operational failure: Generally occurs when a plan sponsor doesn't run the plan according to the terms of the plan document. For example, offering loans to employees when the written plan document doesn't allow for them.

Plan document failure: Takes place when a plan document has a provision (or lacks a plan provision) that violates requirements. It also applies to plan sponsors that did not adopt a written 403(b) plan document by 12/31/09.

Follow your plan terms

Your administrative practices need to match your plan's written provisions. If you don't operate the plan according to your written terms, you'll be out of compliance, even if your written plan meets all regulatory requirements.

For example, a voluntary matching plan can satisfy matching test requirements by using current year testing methods; using prior year testing methods; or satisfying one of the design-based safe harbors. But, you can only use the method that's in your plan documents.

As the plan administrator, be sure you thoroughly understand your plan's terms. You should also assign an individual to be responsible for operating the plan according to these terms. This designated person should be accountable for your plan compliance and for tracking any changing regulations that can impact your plan's terms and operations.

Understand your plan's funding vehicles

While the written plan may be the engine that runs a plan, the funding vehicles (like mutual funds or annuities) are its fuel. Institutions are sometimes restricted in the types of funding vehicles they can offer in their retirement plan. That's why it's so important to understand the terms and restrictions of each funding vehicle contract, and how they work in day-to-day plan operations.

Making sure your written plan is aligned with your funding vehicles' contracts can help you avoid future conflicts. Be sure to notify your plan vendors right away if you make any changes to your written plan. They'll need to know to properly administer the benefits under the contracts and accounts.

Resolve conflicts

Resolve any conflicts between the terms of your written plan and the terms of any funding vehicles contracts before an error is made. This is especially true if your plan has multiple vendors.

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If you offer annuity contracts, you should pay special attention to how the relationship works between your participants and the insurance company that issues the annuity contract. The terms of the annuity contract or certificate sometimes govern the relationship. However, if there's a conflict between the written plan and the annuity contract or custodial agreement, the written plan generally controls as long as it doesn't expand the rights of the participant under the applicable investment vehicle.

A conflict between the written plan and the investment vehicle could cause an operational failure of your plan and the potential loss of your qualified plan status. This is because the insurance company is bound by the terms of the contract it issues and not by the terms of the plan unless the contract defers to the plan on a particular issue.

What if there's an error?

Even with careful due diligence you may experience compliance errors. The good news is that the Employee Plans Compliance Resolution System (EPCRS) can help bring your plan back into compliance. EPCRS is an IRS correction program developed to provide plan sponsors with guidelines and options to correct a range of errors in their retirement plans.

Review your plan every year

Reviewing your plan documents and funding vehicle terms each year is a best practice. It can help you make sure that your plan's written terms, administrative practices and funding vehicles are working together. It can also help you anticipate any needed updates and may also remind you to coordinate responsibilities with your funding vehicle providers.



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