

Fiduciary Checklist for Plan Sponsors

The following are areas of review that retirement plan fiduciaries may want to consider in fulfilling their fiduciary responsibilities. Plan sponsors and plan officials are encouraged to consult their ERISA attorneys, service providers, advisors, or consultants for additional guidance and information.

Roles and Responsibilities

Have you made a definite list of the fiduciaries involved in your company's plan?
Have you provided training for the named fiduciaries in your plan?

Investments

Have you adopted a written Investment Policy Statement for other investments than company stock in the ESOP?

The Investment Policy Statement should include:

1. The identity of each fiduciary and service provider to the plan, including the investment committee, investment consultant, and investment custodian/trustee;
2. Investment objectives and goals;
3. Classes of investments authorized;
4. Styles of investments authorized;
5. Criteria for reviewing/selecting investment options and investment manager performance, including periodic performance against an appropriate index, peer group, and investment objectives;
6. Criteria for reviewing fees for investment management and other plan services and the reasonableness of such fees in light of services provided;
7. Restrictions on investments;
8. Standards for reviewing use of directed brokerage arrangement;
9. Proxy voting procedures; and
10. Reporting standards applicable to investment managers and other advisors.

Administration

Do you conduct an annual meeting with the retirement committee and plan fiduciaries?

Do you record detailed minutes of these meetings, including all decisions made by the committee?

Did you obtain an independent appraisal of the company stock? Did you review it? Is there a record of communications between the ESOP Trustee(s) and the valuation firm?

Is your record keeper assuring that you are compliant with the applicable Internal Revenue Code tests, such as (where applicable):

- 410(b) coverage testing;
- 401(a)(4)-4 availability of benefits, rights, and features;
- 414(s) compensation ratio testing;
- 415(c)(3) annual additions contribution limit;
- 402(g) contribution limit; and
- 416 top-heavy testing?

Do you conduct an annual review of outside experts and service providers (including investment advice providers, plan consultants, trustee, and/or record keeper, etc.) to ensure that service and performance standards are being met?

Do you document the review/meetings and issues discussed, as well as any decisions made during or as a result of the review/meetings?

Do you review the fees received by all outside experts and service providers to the plan (direct and indirect) to ensure complete understanding of all costs and services associated with those fees?

Are there any inherent conflicts existing that may impact the objectivity of the advice received?

Do you review contracts with experts and service providers, making sure the contracts:

- Are in writing;
- Do not contain provisions that conflict with fiduciary standards of care; and
- Do not authorize fees that are in excess of “reasonable compensation”?

Have you recently checked the fidelity bond to ensure that it provides an appropriate coverage amount and that it covers fiduciaries, as well as other employees or third parties involved with the retirement plan?

Do you complete and file all required government reporting, such as Forms 5500 and 1099R?

Do you periodically review any administrative procedures adopted by the committee to ensure they are consistent with the plan document?

Do you document all procedures and decisions and maintain the documents in a central due diligence file?

Plan Review

Has ERISA counsel reviewed the plan document to ensure that it has been updated for all required legislative provisions (e.g., GUST, EGTRRA, HEART etc.)?

Have you maintained a summary plan description (SPD), updated for all plan design changes, and distributed to all employees? (ERISA requires that SPDs, summaries of material modification, and summary annual reports are automatically disclosed to participants/beneficiaries.)

Have you confirmed that written procedures for all plan transactions are consistent with the plan document and applicable regulations?

Have you verified that the plan covers the right employees, or does not exclude employees who may be entitled to participate in the plan?

Have you verified that the plan's definition of an eligible employee is consistent with the way the plan is being administered?

Have you checked the plan documents and trust agreements to ensure that the plan fiduciaries have been appointed properly?

Have you reviewed the definition of compensation as defined in the plan document and verified that the correct compensation amounts are being sent to the service providers and being used for the correct purpose?

Participant Communications

Do you conduct an annual meeting with the retirement committee and plan fiduciaries? And do you record detailed minutes of these meetings, including all decisions made by the committee?

Do you provide ongoing communication on investments and plan features?

Have you conducted educational meetings?

- Information concerning the value of shares or units held in a participant's individual account?

Have you maintained samples of all participant communications, including the date provided and to whom provided? And have you maintained a record of the administrative procedures used to distribute the required disclosures?

Limiting Liability

Have you obtained fiduciary liability insurance (errors and omissions insurance)?

Do you use qualified experts (individuals, firms, and sources with advanced knowledge and experience with qualified plans and fiduciary responsibilities) to assist plan fiduciaries?

Have you established operating procedures for committees and followed them?