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Plan Governance Best Practices

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Administering a retirement plan and managing its assets involve specific responsibilities that are required by the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code. The following slides include various processes and best practices that plan fiduciaries can implement to help them be compliant and to administer the retirement plan in an efficient manner.

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Committee Structure & Meetings

Committee members must satisfy their fiduciary responsibilities of ERISA, which require making prudent decisions in the best interest of plan participants. The purpose of this slide is to provide a few general guidelines regarding the structure, topics, and best practices for Committee meetings.

- Committee members should acknowledge their fiduciary status in writing through a Board Resolution.
- A Committee Charter should be established to outline the Committee's bylaws, roles and responsibilities.
- Committee size should be manageable as problems arise when committees are too large and cannot meet on a regular basis, stagnating the decision-making process.
- Members must have adequate time to devote to plan matters and not have any conflict in serving as plan fiduciaries.
- Members should include individuals that are knowledgeable about retirement plans and that are also involved with the daily administration of the Plan; for example: Plan Administrator, Human Resources leadership, senior management member (CFO, COO), company's legal counsel, and one or more nonvoting members who can serve as Committee secretary or attend to provide additional information concerning delegated administrative duties.
- Plan sponsors can establish a single Committee responsible for overseeing all aspects of the plan, including both Plan Administration and Plan Investments; or two Committees: an Administrative Committee responsible for daily operations of the plan and an Investment Committee responsible for investment selection and monitoring as well as the adoption of an Investment Policy Statement*.
- The Committee must meet frequently (quarterly/semi-annually or more often as needed) to review the health of the plan and consider certain recommendations or investment advice; otherwise, the Committee would be vulnerable to potential fiduciary liability for failing to act, or have a decision-making process.
- Circulate an agenda and materials to the Committee members beforehand.
- At the start, it is common for the Committee to approve the minutes from the previous meeting.
- Topics that must be discussed throughout the year include (among others): investments (quantitative and qualitative issues) following the Plan's Investment Policy Statement*, target date funds, new legislation and how recordkeepers might implement any required changes, plan amendments and participant communication, fee review including how they are being paid and benchmarking to assess reasonableness, participants' utilization of the plan, education initiatives and strategy, Form 5500 audit results, compliance with filing of government forms and distribution of required notices to participants, and whether operational errors have occurred.
- Include, when appropriate, all the vendors that are involved and/or provide services to the Plan (i.e., recordkeeper, investment advisor, third party administrator, auditor).
- Committee must be diligent about taking minutes and documenting the processes for each decision (Our next series will include Do's & Don'ts for Meeting Minutes).
- Fiduciary Training should be part of the agenda from time to time and especially for new Committee members.

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Conducting Self-Audits

Self-Audits or plan reviews may be conducted to assess compliance with ERISA and Internal Revenue Code requirements, both in form and in operation. If failures are found, the plan sponsor can generally correct using the correction methods under the IRS Employee Plans Compliance Resolution System (EPCRS) which includes the Self Correction Program (SCP) or the Voluntary Correction Program (VCP) which is subject to filing fees and used for failures that are ineligible to correct under SCP.

Self-Audits also provide an opportunity for plan sponsors to establish procedures to prevent failures from occurring in the future. These proactive measures also assists plan sponsors manage their risk regarding potential lawsuits and IRS or DOL audits. Most common errors found under IRS/DOL investigations relate to plan amendments or lack thereof, violations of definition of compensation, employee eligibility, participant loans, vesting provisions, in-service withdrawals, required minimum distributions (RMDs), nondiscrimination and coverage testing, missing participants, and late payroll deposits.

Situations that may trigger operational errors

- Recent regulatory changes affecting your plan
- Restatement or amendment to plan document does not reflect how the plan is currently being administered
- Your organization has made changes to its payroll systems
- Your benefits and payroll teams have not reviewed wage types to confirm the correct reporting of plan compensation
- Organizational changes such as acquisitions, spin-offs, or mergers

Self-Audits may be tailored to cover general compliance, plan operations, or both:

- Compliance reviews may include reviewing plan documents for required amendments, ensuring correct government filings were prepared and filed timely, verifying that signed copies of documents and filings are kept on file, reviewing plans for required coverage and nondiscrimination testing, and that corrective action was taken where applicable.
- Operational reviews may include reviewing procedures, administrative forms, and processes encompassing eligibility provisions and plan entry, participant loans, distributions (e.g., in-service, RMDs, cash-outs), and timing of payroll deposits.

Source: IRS.gov

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Cybersecurity Guidance for Retirement Plan Sponsors

The U.S. Department of Labor (DOL) issued new guidance on cybersecurity for defined contribution and defined benefit pension plans that are subject to ERISA. The guidance includes best practices for three audiences: Plan Sponsors Tips for Hiring a Service Provider With Strong Cybersecurity Practices, Recordkeepers Cybersecurity Program Best Practices, and Plan Participants Online Security Tips. On this slide, we will focus on the best practices provided for plan sponsors and a summary of USI's compliance to each recommendation.

1. **Inquire about each service provider's information security practices, policies and audit results, and compare to industry standards.**

   The USI information security program is centered on maintaining the confidentiality, integrity, and availability of our critical information assets, as well as our clients'. The security program is anchored by our information security policy in conjunction with information protection technologies. We implement technical security controls to manage information in accordance with privacy law, regulatory requirements and generally accepted security principles. Our information security program is based on the National Institute of Standards and Technology (NIST).

2. **Ask each service provider what levels of security standards it implements and has met and identify provisions of service provider's agreement that permit the review of audit results demonstrating compliance with these standards.**

   USI technology products, services, and data centers are subject to various ongoing audits that allow us to gain an independent view of our information security compliance. There are several forms of audits conducted including annual SOC type 1 & 2, security risk assessments, on-site field audits, network vulnerability scans, baseline audits which review technical controls and build process of components such as operating systems, databases, and infrastructure.

3. **Assess each service provider's reputation by searching publicly available information on past security incidents, litigation and legal proceedings.**

   USI has not experienced any security breaches in the past five (5) years.

4. **Ask service providers about any past security breaches, including what happened and how they responded.**

   USI has not experienced any security breaches in the past five (5) years.

5. **Inquire about service provider's insurance policies covering losses attributable to cybersecurity failures and identity theft breaches (both internal and external).**

   USI maintains a cybersecurity liability policy.

6. **Confirm service provider agreements require ongoing compliance with information security and cybersecurity standards, and an acceptable level of indemnification for IT security breaches (e.g., agreement addresses third party audits, confidentiality requirements, notifications of cybersecurity breaches, record retention compliance standards and insurance).**

   USI technology products, services, and data centers are subject to various ongoing audits that allow us to gain an independent view of our information security compliance. There are several forms of audits conducted as outlined in our response to #2. In addition, USI maintains compliance with various statutory, regulatory, and contractual requirements as needed for cybersecurity and privacy controls.

USI strongly recommends plan fiduciaries to learn about their plan(s) recordkeeper(s) protocols and procedures that they have in place to protect plan participants from cyber attacks or security breaches, and educate participants of steps they can take to better protect their accounts.

Sources: DOL/EBSA, Cyber-Security DOL – USI Response
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Dos and Don'ts for Meeting Minutes

Fiduciaries can limit their fiduciary liability by documenting the decision-making process (e.g., meeting minutes) to demonstrate the rationale behind the decisions made. Minutes are considered an official record of actions; thus, they will be subject to discovery in the case of litigation. Therefore, it is important to be prudent about what it is included in the minutes. Below are some guidelines that Committee members can follow when taking meeting minutes:

Who should take the Minutes?

A Committee member or someone from their organization the Committee designates as the Committee Secretary

Items to Include

- The agenda items
- The title of the group that is meeting (i.e., Investment Committee or Administrative Committee); the date, time, and venue; the names of those in attendance (including Committee members and the individual taking the minutes)
- Follow the order of the agenda, with a basic summary sentence for each item, along with the name of the person who presented it
- Log decisions in their place of order from the agenda by noting "Action: Motion made, seconded, and carried." It is preferred not to record the names of the Committee members who voted for decisions.

Items to Avoid

- Direct quotations as even without a name, the speaker may be identifiable
- Recording everything that was said or details of discussions, especially who said what
- Future action items or to-do lists should not be recorded in minutes

When items discussed are not on the agenda, simply note that "time was provided for members to discuss items not on the agenda"

Lastly, once the minutes are approved, destroy any notes and audio or video recordings of the meeting. The final approved minutes should be the only record of the meeting that you distribute and keep.

USI Consultants take notes and distribute them to the Committee so they can be incorporated into their own meeting minutes.

Source: ASAE - The Center for Association Leadership, "Do's and Don'ts for Meeting Notes" (September/October 2016 Issue)

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Plan Governance Best Practices

Why Fiduciary Training

Knowing your fiduciary obligations is critical to mitigating risk for your organization and yourself. At the company level, failing to meet all fiduciary requirements can lead to consequences, including exposing the organization to litigation risk ranging from hundreds of thousands to several million dollars. There is also a liability concern at the individual level, as fiduciaries are required to act in the best interest of plan participants.

Training is a Best Practice
The Department of Labor (DOL) considers fiduciary training a critical element of prudent oversight and is increasingly looking for evidence during audits that such training has been provided. Retirement plan administrative committee members are strongly encouraged to receive training on the practices and processes needed to fulfill their fiduciary obligations to plan participants. It is the fiduciary duty of the employer to protect the interests of their employees and retirees in their benefit plans. ERISA fiduciary responsibility imposes a high standard of care and loyalty on those responsible for managing retirement plans.

USI's Fiduciary Training
Members of USI's ERISA legal team provide guidance for understanding fiduciary responsibility and best practices to mitigate potential liability as listed below:

Understanding fiduciary responsibility	Areas of responsibility	Best practices
Who is a fiduciary? Is it you?	What is a fiduciary responsible for?	What practices can a fiduciary follow to mitigate potential liability?
Topics covered:		
• The different types of fiduciaries • Understanding your role • Best practices for retirement plan fiduciaries • Penalties for fiduciary violations	• Fiduciary governance core elements - Creation of Retirement/investment committee - Committee charter/procedures • Plan operations - Plan document - Administrative procedures • Service providers and fees - Fees models - Disclosure notices • Investments - Investment Policy Statement - Diversification • Insurance & Bonding	• Hiring service providers - Plan recordkeeper - Investment advisor • Monitoring service providers - Benchmarking fees/investments • Committee meetings - What to expect - Minutes

Contact our USI Consultant to schedule your fiduciary training session.

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Record Retention

An appropriate record retention policy and related practices are essential for a plan sponsor to meet their ERISA fiduciary duties, to fulfill their responsibilities in processing claims, to mitigate any problems in IRS or DOL audits, and to avoid protracted disputes with participants, beneficiaries, and retirees. The primary authority for record retention rules can be found in ERISA Sections 107 (plan-level records) and 209 (participant-level records), as well as in the IRS's statute of limitations related to audits.

Generally, there are two approaches to record retention, moderate and conservative. The conservative approach is to permanently keep executed plan documents and records, while the moderate approach, which is considered the bare minimum, is to retain records for at least six years as outlined below:

Plan Documents	Including an Individually Designed Plan Documents, Basic Plan Document, Adoption Agreement, Amendments, Summary Plan Descriptions and Summaries of Material Modifications.	For the life of the plan followed by a minimum of six years after the plan has terminated and all plan benefits have been paid out.
Participant Recrods	Including distribution, enrollment, beneficiary, investment forms and investment statements with a participant's account balance and activity.	For at least six years after the participant's complete withdrawal or distribution from the plan. Some would interpret this as "indefinitely".
Administrative Reports	Including plan testing, annual census data and contribution calculations	For the life of the plan followed by a minimum of six years after the plan has terminated and all plan benefits have been distributed.
Federal Forms	Including Form 5500and related schedules, SSA-8955, 5330, 1099-R, 1096, Summary Annual Reports and PBGC forms.	For a minimum of six years.

Retaining Plan-Level information would permit a plan sponsor verify and explain plan records to federal agencies which will confirm the accuracy and completeness of the sponsor's representations about the plan. Retaining Participant-Level information would help plan sponsors determine the benefits of plan participants. Very often, a participant will contact a plan sponsor or its recordkeeper and claim that they have no proof that they ever received their plan benefits, which can happen decades after the participant took a distribution from the plan. In addition, failure to maintain such Participant-Level required records for any plan year could result in a civil penalty for each employee affected by the failure.

For best practices, a conservative approach to participant-level records is highly recommended and plan sponsors should adopt a record retention policy, whether moderate or conservative, and ensure that all individuals or entities responsible for the administration of their plans comply with that policy. Under ERISA, plan sponsors can retain records electronically if the retention medium satisfies certain criteria, which is further outlined in our July Market & Legal Update.

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Create Your Compliance Checklist

Having a retirement plan compliance checklist will help you stay on track of day-to-day administration, compliance and filing deadlines, legislative and regulatory changes, as well as organizational changes that can affect your plan. Whether you sponsor a defined contribution (DC) or a defined benefit (DB) plan, you have a fiduciary responsibility every year to ensure your plan is operating according to the rules and regulations and governing plan documents. Below are suggested topics to include in your compliance checklist, which the Department of Labor (DOL) and Internal Revenue Service (IRS) periodically publish as their main auditing areas.

Maintain accurate census records by

- **Business/Organization:** Communicate to USI and your recordkeeper any organizational changes such as acquisitions, spin-offs, mergers, downsizing, which will impact your plan's operation.
- **Definition of compensation:** Review your plan documents and operations to ensure that the definition of compensation is properly reflected and is being administered accurately.
- **Employee contributions:** Monitor that employees' deferrals and loan payments (if applicable) are being deposited timely to the trust.
- **Government Filings:** Confirm that the Form 5500 and Form SSA-8955 are filed by their due dates.
- **In-service distributions:** Review that these distributions to participants are being made in accordance with the terms of the plan.
- **Loans:** Review your plan's loan provisions to ensure loans are being administered in accordance with the terms of the plan's written loan policy.
- **Missing participants:** Follow the DOL's guidance about handling participants that cannot be located and the uncashed checks.
- **Nondiscrimination and coverage testing:** Ensure that these tests are being completed and in a timely manner, and that if failures occur, the corrections are processed timely.
- **Participant Notices:** Distribute all the required notices upon employee's eligibility and annually.
- **Plan eligibility:** Review your plan's eligibility rules to ensure they are being administered properly.
- **Required amendments:** Review your plan documents to ensure that it reflects the necessary statutory and regulatory changes.
- **Required minimum distributions (RMDs):** Confirm that these distributions are being processed as generally required for participants who reached age 70 ½ on or before December 31, 2019, or who reached age 72 on or after January 1, 2020, and 73 on or after January 1, 2023.
- **Vesting:** Vesting provisions must be stated in the plan and the summary plan description and followed accurately.

Failing to administer the plan in accordance with the provisions outlined in the plan document or with government regulations would be considered an operational failure, which entails correction (potentially costly) with the DOL and/or IRS.

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Missing Participants

Plan Fiduciaries have an obligation to maintain accurate records and census information to ensure that plan participants and beneficiaries are paid their full retirement benefits when due. On January 12, 2021, the DOL released three publications that provide additional guidance to help plan fiduciaries focus on best practices. Details of these publications were provided in our *January 2021 Market & Legal Update.*

Based on the released publications, the DOL expects plan fiduciaries to establish comprehensive policies and procedures to prevent and locate missing participants. It is not enough to deliver required communications to a known "bad address" without taking steps to verify the correct address. Below are some recommended best practices per guidance provided by the DOL:

Maintain accurate census records by:

- Flagging undeliverable mail/email and uncashed checks for follow-up
- Requesting updates to contact information for participants and beneficiaries on a regular basis
- Auditing census information and correct data errors on a regular basis

Implement effective communication strategies by:

- Confirming contact information during employee exiting processes
- Including contact information change requests reminders in plan communications
- Prompting participant to confirm contact information when accessing their plan account website

Missing Participant Searches:

- Conduct searches for missing participants regularly and check with your recordkeeper for resources
- Use online search engines, public record databases, obituaries, social media, commercial locator service, a credit-reporting agency, or a proprietary internet search tool or reach out to colleagues of missing participants
- Attempt contact via certified mail, private delivery service with tracking to the last known mailing address, email address, telephone and text numbers
- Document procedures and actions taken to prevent and locate missing participants

Follow the plan document:

- Review your plan document for guidelines about missing participants

USI has participant locator solutions to assist clients with this effort.

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Participant Contributions

Employers must implement the participants' contribution elections and deposit those contributions in a timely manner. The law requires that participant contributions be deposited in the plan as soon as it is reasonably possible to segregate them from the company's assets. Below are the guidelines:

Timely Remittance of Contributions

Participant contributions and loan repayments must be remitted to the plan's trust as soon as it is reasonably possible and in accordance with the timeframe outlined in the plan document and/or a timeframe established by the Employer. For example, if an Employer typically remits within two-business days after payroll date, a deposit on the 4th day may be considered late as there is a history of remitting sooner. For plans with fewer than 100 participants, the DOL provides a 7-business-day safe harbor, meaning that the deposits must be made to the plan's trust no later than the 7th business day following the withholding by the Employer. Note that in no event can deposits be later than the 15th business day of the following month, but this is not a safe harbor rule. In fact, the DOL is aware that Employers now adays can remit considerably earlier than that timeframe and will assess as outlined herein.

Untimely remittance of participant contributions is considered an operational failure and a prohibited transaction, which is a transaction between a retirement plan and a disqualified person (in this case the Employer), subject to excise tax, and potential filing with the DOL's Voluntary Fiduciary Correction Program (VFCP), unless it can be self-corrected.

Implement Participants' Contribution Elections

Employers must **(1)** implement the participant's deferral affirmative election, **(2)** use the correct plan compensation **(3)** provide the opportunity for the participant to make an elective deferral election and if plan has automatic enrollment, **(4)** automatically enroll an eligible employee and **(5)** automatically escalate deferral change if the plan has this provision.

Failure to comply with the above would be considered Missed Deferrals that require correction. Correction methods differ based upon the type of the missed deferral, when the failure occurred, whether the Plan is safe harbor or subject to automatic enrollment. Employers have the option to Self-Correct without contacting the IRS or paying a fee or use their Voluntary Correction Program which is subject to a filing fee.

How to Avoid

- Understand the definition of eligible employee, eligibility requirements, and the plan's definition of compensation
- Provide training to all personnel operating the Plan about these provisions
- Develop internal controls and procedures
- Periodically conduct internal audits and monitor the accuracy of employee data, deferral elections, and compensation being used
- If deposits are remitted late at one point because of vacations or other disruptions, keep a record of why those deposits were late.
- Ask your recordkeeper about services that can assist with the plan's operations, including payroll integration capabilities

USI Consulting Group can assist you in correcting delinquent contributions and missed deferrals and any other operational errors that you may discover.

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Qualified Domestic Relations Order

A Qualified Domestic Relations Order (QDRO) is a judgement, decree, or order for a retirement plan to pay child support, alimony, or marital property rights for the benefit of an "alternate payee" who may be a spouse, former spouse, child, or other dependent of a participant. QDROs are typically issued by a state authority or court to settle a property settlement agreement. ERISA requires each retirement plan to pay benefits according to the requirements of the order to the recognized alternate payee in the QDRO.

QDRO Information Requirements

Plan sponsors receiving a domestic relations order should verify the following is contained within to confirm it is a QDRO:

- Participant and alternate payee's full name and last known mailing address
- Name of each retirement plan to which the order applies
- Dollar amount or percentage (or method to determine amount or percentage) of the benefit to be paid to the alternate payee
- Number of payments or time period to which the order applies

Plan Sponsor's Responsibilities

- Provide alternate payee or their representative with requested notices and plan information for the drafting of an accurate QDRO.
- Issue communications with retirement plan's QDRO procedure guidelines to participant and alternate payee acknowledging receipt of order.
- Complete any recordkeeper required paperwork to aid with the QDRO determination and approval.
- Evaluate and provide written approval, based on the retirement plan's QDRO guidelines.
- Monitor that the recordkeeper calculates earnings according to the approved order and that it creates a separate account for the alternate payee – whereby, the alternate payee can roll funds tax-free into a qualified account, or distributions can be taken at a later date.

Best Practices for Plan Sponsors

- Utilize the plan recordkeeper's QDRO approval services to assist with the required QDRO duties.
- Develop reasonable procedures in writing to ensure QDRO determinations are made in a timely, accurate, and cost-effective manner.

Source: "QDROs - the Division of Retirement Benefits Through Qualified Domestic Relations Orders," U.S. Department of Labor

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Terminated Participants

According to the Employee Retirement Income Security Act of 1974 (ERISA), plan sponsors have a fiduciary duty to act in the best interest of all participants, even after they have terminated employment. Although no longer actively contributing, terminated employees with balances are still considered participants. These terminated participants still need to receive regular benefit statements and other required plan disclosures, and they must be counted when determining whether a plan is a "large plan" for audit requirement purposes.

Additional Risks

In addition to the ongoing fiduciary responsibility, maintaining a large number of terminated participants, particularly with low account balances may result in higher administrative fees. There is also the increased potential for lost or missing participants, since terminated participants often forget to update their contact information with plan providers.

Best Practices

Here are some best practices that plan sponsors can implement to minimize the number of terminated participants in the plan.

- Add a Small Balance Mandatory Force Out provision to your plan, which allows the involuntary distribution of accounts for terminated participants that have vested balances of $5,000 or less. Small plans should ensure the force out process is completed prior to year-end to help maintain small plan status and avoid the Form 5500 independent audit.

- Periodically contact terminated participants to remind them of their plan account. While terminated participants with vested balances greater than $5,000 can't be forced out of the plan, a formal outreach program can remind them of their balance and distribution options, while also helping to ensure contact information remains up to date.

- Incorporate a distribution notice and plan forms into your "exit interview" process. When participants leave the company, provide them information about their distribution options, including how to request a distribution and how to update their contact information in the future.

- Partner with your recordkeeper to develop a plan for managing terminated participant accounts and maintaining good contact records after employees terminate.

Source: "The Pros and Cons of Keeping Assets in DC Plans" by the Defined Contribution Institutional Investment Association
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Plan Fees & Expenses

Plan fiduciaries are required to understand how plan fees are calculated and shared by participants and determine whether they are reasonable based on the services being provided. Although ERISA does not specify permissible levels of fees that can be charged to the retirement plan, it is a fiduciary's duty to act prudently and in the best interests of participants when it comes to decisions about the plan. Below is a list of steps and best practices to help plan fiduciaries with this effort:

- Conduct periodic reviews and benchmarking of plan fees - plan sponsors gain leverage to negotiate lower fees with service providers.
- Understand the payer of fees - the employer or participants (the plan).
- Identify the various types of fees and services being provided – recordkeeping, investment management, investment advisory, auditing, transactional fees, and others.
- Identify how the fees are being paid – directly charged to participants or through revenue sharing from the investment options.
- Learn about the different payment mechanisms available – cost efficient share classes with and without revenue sharing and explore different fee structures for transparency purposes.
- Determine the 'Reasonableness' of Fees – understand what services are needed and the associated costs applicable to similarly situated plans in your "peer group."
- Negotiate lower fees and expenses if they are determined to be higher than benchmarks.
- Ensure that the recordkeeper is providing the required fee disclosure 404(a)(5) to participants – at least annually and when some fees change.
- Consider conducting an RFP - may or may not end up with a change in recordkeeper. However, one advantage is that the nature of an RFP places the fiduciary in a strong position to negotiate competitive fees and enhanced services with its current recordkeeper.
- Document your process and decisions.

Fees and expenses are an important component in managing your retirement plan as they make take a toll on participants' savings. USI provides ongoing monitoring and benchmarking of fees to help our clients reach reasonable and successful outcomes.

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Plan Investments

Plan fiduciaries have the duty to diversify plan investments and minimize risk of large investment losses. Fiduciaries must also keep in mind that decisions must be made for the best interest of plan participants and their beneficiaries. Below are some guidelines and best practices to help you comply and mitigate risk:

- Establish an investment committee and meet periodically to review the performance and fees associated with the investment lineup and how they compare to benchmarks and peers.
- Adopt an Investment Policy Statement to establish a process the selection and ongoing monitoring of plan investments.
- Offer the required asset classes for participants to be able to construct an adequate portfolio.
- Understand investments relating to portion of plan assets over which fiduciary has discretion/control.
- Hire an “investment manager” with discretion; or hire investment advisors with expertise to provide necessary information to fiduciaries.
- Consider using a Qualified Default Investment Alternatives (“QDIA”) which provides 404(c) protection where participants do not make affirmative investment choices.
- Operate participant-directed investment plans in a manner that satisfies ERISA Section 404(c),which provides fiduciaries protection against participant investment decisions.
- Participants must be able to choose from “broad range” of investments (at least three different asset classes).
- Participants must be able to give investment instructions at least quarterly (more often if investment is volatile).
- Participants must be given sufficient information to make informed decisions, including disclosures.
- Be sure that where applicable, plan participants receive adequate investment information and education.
- Document your decisions.

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Target Date Fund (TDF) Selection and Monitoring

Developed in the 1990's TDF assets have grown to over $3 trillion at the end of 2021. As with a plan's core lineup, fiduciaries have a responsibility to monitor the TDFs in the plan. Fiduciaries should consider the Target Date Retirement Funds – Tips for ERISA Plan Fiduciaries and comply with the process described in the plan's executed Investment Policy Statement (IPS). Below is a summary of best practices:

TDF Tips for ERISA Plan Fiduciaries

- Establish a process for comparing and selecting TDFs – engage in an objective process to obtain information to evaluate the prudence of any investment option. Consider how well the characteristics of the TDFs align with eligible employees' ages and likely retirement dates.
- Establish a process for the periodic review of selected TDFs – requirement to periodically review the plan's investment options. Have there been any significant changes with the fund or your plan's objectives in offering a TDF? If so, consider replacing the fund.
- Understand the fund's investments – Understand the glidepath, principal strategies and risks of the fund or any underlying asset classes or investments held by the TDF.
- Review the fund's fees and investment expenses – Understand all of the fees and expenses of the TDFs. If the TDF invests in other funds, consider the fees and expenses of both the TDF and underlying funds and understand the differences between them.
- Inquire about whether custom or non-proprietary TDF would be a better fit for your plan.
- If proprietary TDFs are being offered, learn about whether those invest only in their own proprietary funds or incorporate the plan's core funds or funds managed by fund managers other than the TDF provider's funds.
- Take advantage of available sources of information to evaluate the TDF and recommendations you received regarding the TDF selection. Several tools and sources are available and should be used for your decision-making and review process.
- Develop effective employee communications – Employees should be informed about both TDFs in general and the TDFs suit available in the plan. Ensure compliance with disclosure requirements.
- Document the process – Document the selection and review process.

Investment Policy Statement (IPS)

- Include qualitative and quantitative evaluation criteria in the selection and monitoring of TDFs
- Other factors in addition to the factors considered for traditional assets classes may be considered. (Ex. Glidepath, underlying proprietary / non-proprietary investments, transparency and comparison of each vintage year to the relevant peer group/benchmark)

USI provides ongoing monitoring and review of your TDFs and includes the necessary language in the IPS.

Source: DOL's Target Date Retirement Funds – Tips for ERISA Plan Fiduciaries
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Encourage Employees to Review Their Beneficiaries

For most, the savings accumulated in our retirement accounts is among our largest assets, but too often, we give little or no thought to how we want these accounts distributed in the event of our death. The failure to designate a beneficiary – and keep that designation up to date – has the potential to cause significant hardship and frustration for a participant's surviving family.

Most retirement plans include rules that specify a default order of payment to be used when an employee has failed to designate their own beneficiary. In such circumstances, the terms of the written plan document will determine who receives the participant's death benefit, regardless of what the individual's wishes may have been. Generally, these default beneficiary rules specify a hierarchy of payment typically including the participant's legal spouse, children, and parents in some order of priority. These assumptions, however, may differ from the reality of an employee's relationships. For example, if a plan participant has a long-term partner to whom they are not legally married, most retirement plans would not grant the partner any death benefit under their default beneficiary rules.

Furthermore, as life circumstances change, such as marriage, divorce, and the birth or adoption of a child, it is important for participants to revisit beneficiary decisions made previously and update them accordingly, as previous decisions may no longer reflect their desires or current situations. This is particularly relevant to participants with blended families who may have specific wishes about the distribution of their assets among their spouse and children

The automatic enrollment notice must contain the following:

- Ensure your plan enrollment procedures include having all new participants designate a beneficiary for each retirement plan you sponsor.
- Verify that your procedures include properly filing each employee's beneficiary designation and that HR/benefits staff know where to locate the elections in the event they are needed.
- If beneficiary designations are kept with your recordkeeper, request periodic reviews to track participants who have not provided their beneficiary designations and send reminders to that population.
- Periodically remind participants to review and update their beneficiaries, particularly whenever they experience a major life event. Communications can be delivered via flyer, internal benefits newsletter, or other means of communication that are effective with your employees.
- Be familiar with the default beneficiary rules contained in your plan document in the event a participant passes away without a designated beneficiary on file.

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Source: Retirement Management Services, LLC, How Important Are Beneficiary Forms?

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Informing Participants & Beneficiaries

ERISA requires plan fiduciaries to furnish plan information to participants and beneficiaries by distributing various plan documents and notices, upon eligibility and on a periodic basis. If they are not provided timely, penalties may be assessed by the DOL and/or IRS. Furthermore, copies of notices and proof of delivery may be requested by the DOL upon audit.

List of Documents & Notices

- Automatic Enrollment Notice – for plans that have automatic enrollment.
- Discretionary Match Notice - for plans that provide a flexible discretionary matching contribution.
- Enrollment material/instructions – for all plans to inform newly eligible employees of the plan and how to enroll.
- Employer Stock Diversification Notice – for plans that hold employer stock as a permissible investment option.
- Fee Disclosure (ERISA Section 404a-5) Notice – for all plans to provide an outline and/or changes of fees that are charged to participants.
- Qualified Default Investment Alternative ("QDIA") Notice – for plans that have designated a default investment options as a QDIA.
- Safe Harbor – for plans that use a type of safe harbor contribution.
- Sarbanes Oxley Notice (Blackout Notice) – for plans that may undergo a blackout period, which is defined as more than three consecutive business days.
- Section 404(c) Notice – for all plans that allow participants and beneficiaries to exercise investment control over their individual accounts.
- Summary Annual Report ("SAR") – for all plans to provide a high-level summary of what is being reported on the Form 5500.
- Summary of Material Modifications – for plans that had an amendment during the plan year.
- Summary Plan Description – for all plans to provide a summary of the provisions and features of the plan.
- 403(b) Universal Availability Notice – for 403(b) plans to inform participants of their right to contribute to the plan.

Distribution Methods

You can furnish these disclosures in paper or electronically. To provide them electronically, you may either post them on a plan website or email them to plan participants, after notifying participants that disclosures will be furnished electronically.

Tracking Tools & Resources

Check out USI's Participant Notice Glossary for detailed explanation about all the required notices listed above including timing and frequency of distribution, and our Participant Notice Inventory for tracking. You may also ask your recordkeeper for their tracking capabilities and reporting.

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Participant Education

Now more than ever, employees are looking to their employer to provide Financial Wellness tools and education. According to The 2022 BlackRock Read on Retirement, only 63% of surveyed workplace savers feel on track for retirement, down from 68% in 2021. Participants require regular education and tools to make informed decisions on their account in addition to providing guidance on how to financially navigate life during times of economic uncertainty. Thus, plan sponsors should have an Education Strategy in place that they can follow to help them meet their specific plan goals and the unique needs of their employees. Below are suggested guidelines:

Define the Objective of Your Education Strategy

- Identify what type of education is needed by reviewing:
  - Plan attributes and demographics
  - Participants' asset allocation
  - Current market environment
  - Surveying employees about their needs and expectations
- Set specific goals for education meetings and campaigns:
  - Increase plan participation and savings rates
  - Education on current plan provisions or plan changes such as new employer contribution formula; adding automatic enrollment and/or auto escalation, adding Roth contributions, or conversion to a new recordkeeper.
  - Education on plan investments, or relevant economic and market activity (inflation, market volatility)
  - Education on other Financial Wellness topics – navigating debt, budgeting, etc
  - Determine if in-person education, live webinar, or prerecorded broadcasts with general plan information is best.

Implement Your Education Strategy

- Request information from your recordkeeper on participant education offerings and pricing.
- Leverage existing provider educational materials, communication campaigns, and online tools.
- Confirm the number of education days and webinars are included in your plan's pricing.
- Consider combining meeting materials with financial wellness-related topics.

Evaluate The Success of Your Education Strategy

- Measure success of communication and education efforts by analyzing data reporting provided by recordkeeper to include number of meeting attendees; participation rate; average deferral rate; average account balance; asset allocation; provider website and online tool activity, and retirement readiness scores.
- Review and assess efficacy of your participant education and communication efforts at least annually and adjust your Education Strategy accordingly.
- Document education program efforts and analysis to demonstrate fiduciary commitment to plan participants.

Source: "The 2022 BlackRock Read of Retirement" survey by BlackRock.

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