

The following is a suggested checklist of items that should be considered when becoming a fiduciary of an ERISA plan as well as during the course of a fiduciary's tenure. This outline represents a summary of the measures that should be undertaken when becoming a fiduciary of a plan. It is not an exclusive list of all such actions. This information is intended for general informational purposes only. It is not intended to interpret laws, regulations or to address specific individual situations and is not intended as legal or tax advice. Plan sponsors should consult their attorneys about the application of any law to their retirement plans.

	UNDERSTANDING YOUR RESPONSIBILITIES UNDER ERISA	RECOMMENDED ACTION
Description	<p>If an individual is appointed as a fiduciary for a plan, that individual becomes immediately bound to follow the fiduciary requirements under ERISA. It is, therefore, vital that the fiduciary understands ERISA's fiduciary requirements as well as the other requirements under ERISA.</p> <p>This includes, for example, understanding:</p> <ul style="list-style-type: none"> • What conduct is fiduciary in nature subject to ERISA's requirements and when one is acting as a fiduciary (as opposed to, for example, when acting as an employee of an employer) • The standard of conduct applicable to fiduciaries, including the duty of prudence, duty to diversify plan assets, exclusive benefit rule, and obligation to follow plan documents (unless inconsistent with ERISA) • What is an employee benefit plan subject to ERISA (if, for example, a person who makes determinations under an employer's severance policy will be a fiduciary of such plan even if he or she may not be formally designated as such) • Who are the other fiduciaries of the plan and what are the co-fiduciary liability rules • What are prohibited transactions • Fiduciary liability and consequences of breaching one's fiduciary duties or engaging in prohibited transactions • The reporting and disclosure requirements under ERISA that apply to the plan • The ERISA-required claims procedure 	<p>Fiduciaries/Plan Sponsors should participate in a Fiduciary Training Session provided by a USICG ERISA Benefits Counsel periodically (at least annually). During the training a USICG consulting attorney will walk through a two hour presentation with your plan fiduciaries to explain ERISA's fiduciary responsibility provisions in addition to discussing common misconceptions, industry trends and best practices.</p>
	UNDERSTAND THE PLAN DOCUMENT	RECOMMENDED ACTION
Description	<p>One of ERISA's fiduciary requirements is to follow the terms of the plan documents insofar as they are consistent with ERISA. Obviously, in order to follow the plan's terms, a fiduciary must be familiar with its provisions. This means that the plan documents must be read. This includes not only the plan, but also the trust agreement, the administrative services agreement, the summary plan description, and other relevant plan documents. Furthermore, the IRS requires that plan documents are restated timely to reflect required IRS amendments. The deadline for employers to adopt a pre-approved Defined Contribution Plan is April 30.</p>	<p>Fiduciaries and individuals responsible for administering the plan should acquire all plan documents relating to the plan and familiarize themselves with the plan provisions along with the service and trust agreement terms. In addition, a fiduciary file should be created to house all documents and agreements pertaining to the plan.</p>

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	UNDERSTAND THE FIDUCIARY STRUCTURE	RECOMMENDED ACTION
Description	<p>The responsibilities of each ERISA fiduciary (including, for example, each plan committee, members of such committees, plan administrator and all other fiduciaries) should be defined carefully in writing, and the distinctions among fiduciary positions should be strictly enforced. A fiduciary should understand from whom and among whom his or her fiduciary duties have been allocated or delegated and, therefore, to whom he or she is accountable and responsible. A fiduciary should also know his or her co-fiduciaries.</p> <p>In addition, to the extent a fiduciary has delegated fiduciary responsibility, he or she has an obligation to monitor the performance of the fiduciary to whom duties have been delegated. This may include, for example, requiring reports from and/or meetings with the appointed fiduciaries on a monthly, quarterly, semiannual, or annual basis. Allocations of responsibility among named fiduciaries and delegations to fiduciaries must be clear and in writing.</p>	<p>A board resolution and charter should be adopted to formalize the members of the retirement plan committee, delegate responsibilities of members and set forth processes for holding committee meetings.</p> <p>Board Resolution Sample</p> <p>Charter Sample</p>
	UNDERSTAND PLAN INVESTMENTS	RECOMMENDED ACTION
Description	<p>If a fiduciary is involved with plan investments (including a named fiduciary appointing an investment manager, a trustee, or investment manager), the fiduciary must understand the investments relating to the portion of assets for which he or she has discretion and control and/or monitor the investment manager to whom investment responsibility has been delegated.</p> <p>In addition to understanding plan investments, it is strongly suggested that plan sponsors ensure that employees receive education periodically on the retirement plan from plan service providers as it relates to plan participation and investment guidance.</p>	<p>The plan committee should formalize an Investment Policy Statement to set forth the processes for monitoring funds. In addition, the committee should have an investment review meeting with an Investment Strategist on a periodic basis to monitor funds within the plan and make decisions on fund recommendations. Schedule periodic employee education sessions.</p>
	UNDERSTAND PLAN PROCEDURES	RECOMMENDED ACTION
Description	<p>A fiduciary must understand the operation of the plan and its procedures. If adequate procedures are not in place, a fiduciary must ensure that proper procedures are established.</p>	<p>Fiduciaries should ensure that employees administering the plan perform periodic audits to ensure the plan is being operated according to plan provisions and ERISA regulations. If errors are uncovered during the audit, plan administrators should consult with a plan consultant and/or ERISA benefits counsel on suitable IRS or DOL correction methods and programs.</p> <p><i>The following checklists provided by the IRS can help in running a short operational review:</i></p> <p>401(k) - https://www.irs.gov/pub/irs-pdf/p4531.pdf</p> <p>403(b) - https://www.irs.gov/pub/irs-pdf/p4546.pdf</p> <p>2019 updates pertaining to the IRS Operational Compliance List - https://www.irs.gov/retirement-plans/operational-compliance-list</p> <p><i>*Please note these checklists do not provide a complete description of all plan requirements and shouldn't be used as a substitute for a complete plan review.</i></p>

	UNDERSTAND OTHER APPLICABLE LAWS AND SEEK ADVICE	RECOMMENDED ACTION
Description	<p>While a fiduciary's conduct is regulated by the ERISA standard, a fiduciary may need to have an understanding of the application of other laws to the plan. This may include, for example, the Internal Revenue Code, Family and Medical Leave Act, Age Discrimination in Employment Act, Americans with Disabilities Act, Labor Management Relations Act, certain securities laws, state laws not preempted by ERISA, banking requirements (e.g., FDIC regulations), and insurance requirements. If a fiduciary is not familiar with the requirements of relevant laws, he or she should consult with others who are knowledgeable about such laws.</p> <p>In addition, a fiduciary should seek the advice of others where he or she is not sufficiently familiar with the issue or does not understand the legal, financial, or other considerations relevant to the plan, the participants, and/or his or her role as fiduciary.</p>	<p>Fiduciaries and plan administrators should consult with USICG plan consultants and/or ERISA benefits counsel on any inquiries regarding their role, the plan or applicable legislature and regulations.</p>
	PRUDENT DECISION MAKING	RECOMMENDED ACTION
Description	<p>A fiduciary must act prudently and for the exclusive benefit of participants in connection with its decisions. A fiduciary must consider the appropriate substantive factors (substantive prudence) and must do so by using proper procedures (procedural prudence), in order to satisfy the duty of prudence.</p> <p>This includes, for example, doing the following:</p> <ul style="list-style-type: none"> (a) Ensuring that he or she has received the pertinent information necessary to reach a decision on a particular matter and that he or she has had adequate time to review and understand the materials presented; (b) Requesting reports from their advisors where appropriate; (c) Attending meetings (such as trustee or committee meetings) where matters are considered and evaluated by plan fiduciaries; (d) Taking an active role in decision making (this includes expressing one's own opinions, thoughts, and decisions, asking questions, and, where necessary, objecting to a particular course of action proposed by his or her co-fiduciaries) and, if a proposed action may violate ERISA's fiduciary duty requirements, taking appropriate steps to avoid the violation; (e) Observing formalities and documenting actions (e.g., minutes of meetings). (Note that minutes of all meetings, as well as resolutions regarding plan decisions, should be maintained to reflect not only the decision reached by the fiduciaries but also to reflect the decision-making process.) If advisors were consulted, the minutes should reflect that action, including any attendance at the meeting, as well as the advisors' reports and recommendations. 	<p>The plan committee should formalize an Investment Policy Statement to set forth the processes for monitoring funds. In addition, the committee should have an investment review meeting with an Investment Strategist on a periodic basis to monitor funds within the plan and make decisions on fund recommendations. Schedule periodic employee education sessions.</p> <p>In addition, during committee meetings, topics regarding important plan matters and monitoring fiduciary responsibilities should be addressed.</p>

	UNDERSTAND BONDING REQUIREMENTS	RECOMMENDED ACTION
Description	<p>ERISA requires a plan to bond any fiduciary or all other persons who handle plan assets. A fiduciary should confirm that the amount of the bond is sufficient and proper. Because fidelity bonds only reimburse the plan for losses arising out of a fiduciary's dishonesty, a fiduciary should confirm that the plan sponsor will indemnify the fiduciary for claims brought against him or her (which indemnification obligation may be secured by a guarantee, purchase of a surety bond or letter of credit, or other available means). The indemnification provision must be set forth in the plan sponsor's articles of incorporation or bylaws and should require rather than permit indemnification to the fullest extent permitted by law although exceptions may be made for gross negligence or willful misconduct). In addition, the fiduciary should confirm that fiduciary liability insurance has been obtained. Because bonding, indemnification, and fiduciary liability insurance issues can be complex, a fiduciary should consult an expert knowledgeable in such areas.</p>	<p>Fiduciaries should review bonding and Fiduciary Liability Policies with Property & Casualty Provider to ensure the proper coverage is in place for the plan and for plan fiduciaries.</p> <p>Please Note: The ERISA Bond must be no less than 10% of plan assets with minimum of \$1,000 and a maximum of \$500,000, or \$1 million if the plan holds employers stock.</p>
	UNDERSTANDING PLAN FEES	RECOMMENDED ACTION
Description	<p>Fiduciaries have a responsibility to ensure that fees for plan administration and services relating to the plan are reasonable. Moreover, 408(b)(2) regulations require that the plan fiduciaries receive 408(b)(2) fee disclosures pertaining to the plan in order to understand all of the fee associated with the plan including any relevant fund revenue sharing that may generate from the fund options within the plan and additional fees charged to plan participants for outsourcing services and additional accounts (i.e. - loan/distribution administration, managed accounts or self-directed brokerage account fees). It is also important that fiduciaries review 408(b)(2) disclosures to ensure they are complete and accurate. Any missing information should be reported back to the service provider in order to update the disclosure accordingly. If the service provider refuses to supply this information they should be reported to the DOL within a certain timeframe.</p> <p>In addition to the 408(b)(2) disclosures, plan administrators are required to provide 404 a-5 participant fee disclosures to participants prior to participating in the plan and on a quarterly and annual basis. The DOL had initially required plan administrators provide annual fee disclosures a year from the initial date of distribution. However, on March 18, 2015, the DOL provided plan administrators with a 2 month grace period to provide participant fee disclosures to participants.</p>	<p>Fiduciaries should ensure that fee disclosures are being reviewed and provided to participants according to DOL regulations.</p> <p>In addition, fiduciaries should work with USICG to benchmark fees annually and go through a full RFP process every 3-5 years to ensure fees and services are reasonable.</p>
	COMPLIANCE CALENDAR & DISTRIBUTION OF REQUIRED PARTICIPANT NOTICES	RECOMMENDED ACTION
Description	<p>In addition to the participant fee disclosures previously noted, plan fiduciaries must provide certain plan documents and notices to participants upon eligibility and on a periodic basis as mandated by the DOL and IRS. If notices/plan documents are not provided timely there are penalties that can be assessed by the DOL or IRS. Plan fiduciaries must also perform certain tasks associated with the compliance of the plan in a timely manner (to review plan compliance requirements please click here to refer to the <i>Compliance Calendar</i>).</p>	<p>Fiduciaries and plan administrators should consult with USICG or utilize USICG tools and literature to ensure that all compliance deadlines are met and notices/plan documents are provided to participants in a timely fashion (please click here to see <i>Participant Notice Glossary</i>)</p>