

Fiduciary Checklist

If you make decisions for your company's 401(k) plan, including managing or spending plan assets, hiring service providers, making investment choices, or overseeing plan administration, you are a fiduciary.



Use the checklist below to follow fiduciary best practices and protect against costly mistakes.

Fiduciary Duties

- ☐ Do you act in accordance with the documents and instruments governing the plan?
- ☐ Have you developed written procedures for routine fiduciary decisions?
- ☐ For example, do you have a process for making investment decisions or hiring service providers?
- ☐ Do you keep a record of meetings and decisions so that you can demonstrate your compliance with a prudent process?
- ☐ Have you asked plan counsel to make sure you are complying with all retirement plan regulations?
- ☐ Do you provide education for new fiduciaries as well as continuing education for all fiduciaries?

Compliance Oversight

- ☐ Have you reviewed all provisions of recent retirement law changes from SECURE 2.0:
 1. Do you understand the pros/cons of the optional provisions, and are aligned on which ones you will adopt in your plan?
 2. Do you understand the mandatory provisions, and have you taken action to adopt them in your plan?
- ☐ Have you worked with your plan providers to update your plan document and processes so you are compliant with the SECURE 2.0 provisions?
- ☐ Do you ensure your plan is compliant with ERISA 404(c)?
- ☐ Have you reviewed your plan providers to confirm:
 1. You have their fiduciary status in writing?
 2. Any conflicts of interest they may have?
- ☐ Do you create and maintain a fiduciary audit file for your plan?
- ☐ Have you requested that your current advisor (or 3rd party) review your Form 5500 to identify potential compliance gaps?
- ☐ Have you considered an advisor who helps you mitigate risk by proactively helping accomplish the above?

Investment Oversight

- ☐ Do you know who is responsible for directing investments in your plan?
- ☐ Is there an investment policy statement (IPS) documenting all of the plan's investment requirements and processes?
- ☐ Do you have an adviser acting as an ERISA 3(38) Investment Manager to maintain high-quality, low- cost investment options in your plan?

Service Provider Oversight

- ☐ Do you conduct a periodic review of service providers to ensure that service and performance standards are being met?
- ☐ Do you document the review, including meetings, issues discussed, and any decisions made?
- ☐ Have you familiarized yourself with the requirements of Section 408(b)(2) of ERISA?
- ☐ Have you assessed the reasonableness of fees and whether any conflicts exist?
- ☐ Do you periodically benchmark your plan's fees and services to make sure expenses are reasonable for services rendered?
- ☐ Do you periodically conduct an in-depth review of service providers to ensure that your fees and arrangements are consistent with current practices and costs and to determine whether a new RFP process is warranted?

Fiduciary Liability

- ☐ Do you maintain a well-documented, prudent fiduciary process for decision-making?
- ☐ Do you also include documentation showing that decisions were actually made?
- ☐ Have you obtained liability insurance to protect plan fiduciaries from the costs associated with litigation, including unfavorable judgements?
- ☐ Have you identified an attorney that can advise you in the event of a DOL investigation?

Plan Administrator Basics

- ☐ Have you developed a compliance plan or calendar to keep track of deadlines throughout the plan year?
- ☐ Do you periodically review plan documents to ensure that they reflect current practices and have been updated for legal and regulatory changes?
- ☐ Do you complete and file all required government reporting, such as Form 5500, on time?
- ☐ Do you comply with the applicable Internal Revenue Code nondiscrimination tests?
- ☐ Have you reviewed the process for achieving the following in a timely manner:
 1. Collecting employee contributions and loan repayments?
 2. Forwarding contributions and loan repayments to the service provider?
 3. Investing contributions and loan repayments?

Employee Support and Education

- ☐ Have you checked in with your service providers about required participant disclosures?
- ☐ Do you provide ongoing communications on investments and plan features (e.g., loans, distributions, or contributions)?
- ☐ Do you distribute information to all eligible employees regarding the investment options available under the plan?
- ☐ Do you conduct educational meetings and provide general financial and investment education?
- ☐ Do you offer automatic enrollment with a qualified default investment alternative (QDIA)?
- ☐ Do you offer one-on-one meetings with employees to discuss retirement goals, investment selection, contribution types and savings rates?

