

# 10 Questions to Ask Yourself About Your Retirement Plan

Understanding fiduciary responsibilities is important for the security of a retirement plan and compliance with the law. If you answer “no” to any of the following questions, you may not be complying with federal regulations.

## 1. HAVE YOU IDENTIFIED YOUR PLAN FIDUCIARIES, AND ARE THEY CLEAR ABOUT THE EXTENT OF THEIR FIDUCIARY RESPONSIBILITIES?

ERISA defines a retirement plan fiduciary as a person or entity that does any of the following with respect to a retirement plan:

- Exercises discretionary control or authority over the management of the plan or its assets
- Provides investment advice or manages the plan assets for a fee
- Has discretionary responsibility in the administration of the plan
- Is specifically identified in the written plan documents as a fiduciary

Fiduciary responsibilities include:

- Acting solely in the interest of plan participants and their beneficiaries, and with the exclusive purpose of providing benefits to them and paying plan expenses
- Carrying out their duties prudently
- Following the plan documents (unless inconsistent with ERISA)
- Diversifying plan investments
- Paying only reasonable plan expenses
- Monitoring investments
- Avoiding transactions that are a conflict of interest

## 2. IF PARTICIPANTS MAKE THEIR OWN INVESTMENT DECISIONS, HAVE YOU PROVIDED SUFFICIENT INFORMATION FOR THEM TO UNDERSTAND THEIR RIGHTS AND RESPONSIBILITIES UNDER THE PLAN RELATED TO THE DIRECTION OF THEIR INVESTMENTS?

You must provide plan- and investment-related information (including details of fees and expenses) before participants make their first investment decision in the plan, and annually from then on. If the information you provide comes from a service provider that you rely on reasonably and in good faith, you will not be liable for its completeness and accuracy.

## 3. HAVE YOU CONSIDERED WAYS TO LIMIT FIDUCIARY LIABILITY UNDER THE PLAN?

Document the processes used to carry out fiduciary responsibilities, such as the hiring process for plan service providers and the selection and monitoring of plan investment alternatives. Set plans up in a way that gives participants control over the investments in their accounts—this can help limit the fiduciary liability for participants’ own investment decisions. To do this, participants must be given the opportunity to choose from a broad range of investment alternatives that follow these guidelines set by the Department of Labor (DOL):

- There must be at least three different investment options so that employees can diversify investments within an investment category (such as through a mutual fund, and among the investment alternatives offered)
- Participants must be permitted to provide investment instructions at least once per quarter, and possibly more often in the case of volatile investment options
- Sufficient information must be provided to participants to allow them to make informed decisions about the investment options the plan offers

Plans in which employees are automatically enrolled can be set up to limit fiduciary liability for plan losses that are a direct result of participant contributions being automatically invested in certain default investments. There are four alternatives for default investments, as explained in DOL regulations, and in order to use them, an initial notice and an annual notice must be provided to participants. Participants must be given the opportunity to direct their investments to a variety of other plan options, and given information on these other options.

#### **4. ARE YOU AWARE OF THE SCHEDULE TO DEPOSIT PARTICIPANTS' CONTRIBUTIONS IN THE PLAN, AND HAVE YOU MADE SURE IT COMPLIES WITH THE LAW?**

When employee contributions are made through payroll deductions, employers must deposit the employees' contributions into the plan "as soon as it is reasonably possible," according to the DOL. As a general rule, employers must deposit employees' contributions into the plan by the 15th business day of the month following the payday, but should do so sooner if it is possible. However, for plans with fewer than 100 participants, an employer will comply with the law if employees' contributions are deposited with the plan no later than the 7th business day following withholding by the employer.

#### **5. IF YOU ARE HIRING THIRD-PARTY SERVICE PROVIDERS, HAVE YOU LOOKED AT A NUMBER OF SERVICE PROVIDERS AND MADE MEANINGFUL COMPARISONS?**

Provide each potential provider with complete and identical information about the plan and what services you are looking for. You should also compare providers based on the same information, such as services offered, experience, current client base and costs. Gather and evaluate information about the firm as a whole, including financial condition, experience with similar group health plans and the qualifications of the professionals who would be handling the plan and verify that the firm's licenses, ratings and/or accreditations are current. Finally, ensure that you understand how the company will manage investments and take direction from participants.

#### **6. ARE YOU PREPARED TO MONITOR YOUR PLAN'S SERVICE PROVIDERS?**

You should create and follow a review process at predetermined intervals to evaluate whether the current service provider is meeting your plan's needs. This review should take into consideration the provider's performance, reports, notices, fees, questions and follow-up and should include asking the plan's service providers about policies and practices, ensuring that plan records are properly maintained and following up on participant complaints. The review process should be documented, and when using an internal administrative committee, you should educate committee members on their roles and responsibilities.

#### **7. HAVE YOU IDENTIFIED PARTIES-IN-INTEREST TO THE PLAN AND TAKEN STEPS TO MONITOR TRANSACTIONS WITH THEM?**

Parties-in-interest to the plan may include:

- Plan fiduciaries, legal counsel or employees
- Individuals who provide services to the plan
- Employers with employees who are covered by the plan
- Organizations with members who are covered by the plan (such as a union or employee organization)
- Relatives of any of individuals who are considered parties-in-interest
- Employees, officers, directors or 10% or more shareholders of individuals who are considered parties-of-interest
- Owners of 50% or more of: combined voting power of a corporation; capital or profits interest of a partnership; beneficial interest of a trust or unincorporated enterprise which is an employer with employees who are covered by the plan or an organization with members who are covered by the plan

Some prohibited transactions include:

- Sales, exchanges or leases between the plan and a party-in-interest
- The lending of money or other credit between the plan and a party-in interest
- The furnishing of goods, services or facilities between the plan and a party-in-interest

#### **8. ARE YOU AWARE OF THE MAJOR EXEMPTIONS UNDER ERISA THAT PERMIT TRANSACTIONS WITH PARTIES-IN-INTEREST, ESPECIALLY THOSE KEY FOR PLAN OPERATIONS (SUCH AS HIRING SERVICE PROVIDERS AND MAKING PLAN LOANS TO PARTICIPANTS)?**

One exemption allows the provision of investment advice to participants who direct the investments in their accounts. This applies to the buying, selling or holding of an investment related to the advice, as well as to the receipt of related fees and other compensation by a fiduciary adviser. Many other exemptions may be applicable, depending on the situation—exemptions that apply to classes of plans and to individual plans can be viewed at [www.dol.gov/ebsa](http://www.dol.gov/ebsa) in the “Compliance Assistance” section.

## **9. HAVE YOU REVIEWED YOUR PLAN DOCUMENT IN LIGHT OF CURRENT PLAN OPERATIONS AND MADE NECESSARY UPDATES? AFTER AMENDING THE PLAN, HAVE YOU PROVIDED PARTICIPANTS WITH AN UPDATED SPD OR SMM?**

Review your plan document on a regular basis to ensure accuracy. A Summary Plan Description (SPD) explains the plan simply while still providing all of the necessary information on plan features and what to expect—it is provided within 90 days of when coverage begins and is redistributed every five years or within 30 days of a request. A Summary of Material Modification (SMM) informs participants of material changes to the plan or to what is included in the SPD—it is provided within 210 days after the end of the plan year, unless it represents a reduction in covered services or benefits, in which it is provided within 60 days of the change.

## **10. DO THOSE INDIVIDUALS HANDLING PLAN FUNDS OR OTHER PLAN PROPERTY HAVE A FIDELITY BOND?**

ERISA requires that individuals who handle plan funds have fidelity bonds (narrow, moderate or broad). The required limit of liability for an individual's fidelity bond must equal 10% of the plan funds handled, with a minimum of \$1,000 and a maximum of \$500,000 in most cases.

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