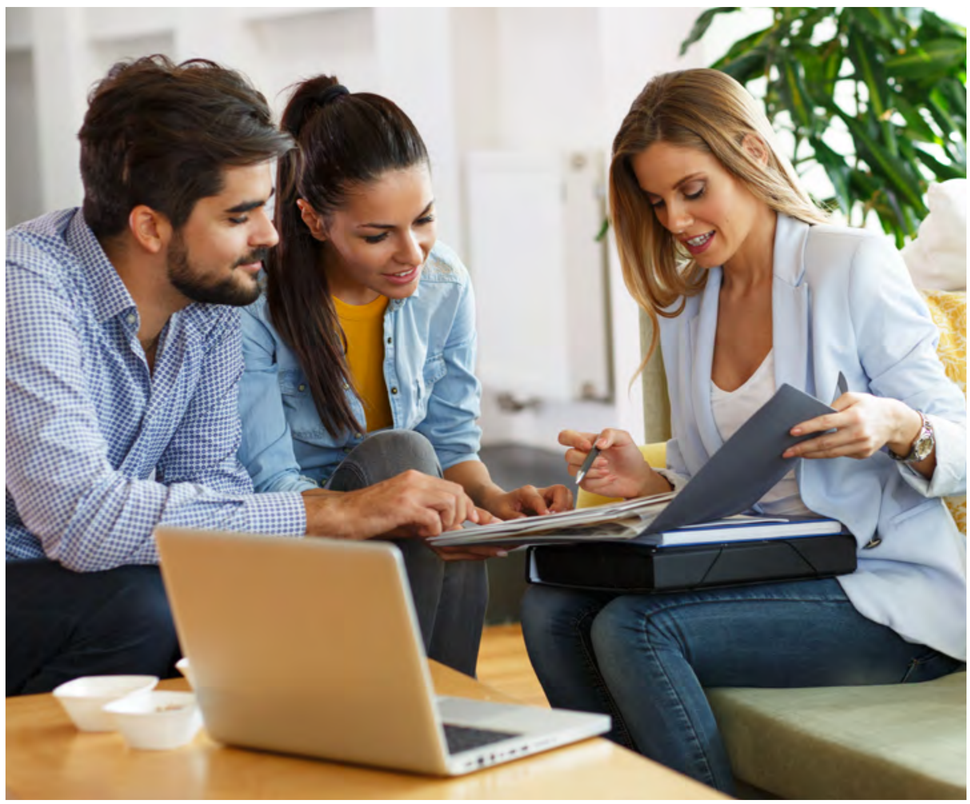
PLAN SPONSOR
Digest

Issue 1, 2023

Your Challenge, Our Solutions™

A fiduciary blueprint for 2023

As a retirement plan sponsor, you're providing your employees with the opportunity to accumulate wealth for the future. But with this valuable benefit comes a fiduciary responsibility to protect participants' assets in the plan. With an increased spotlight on retirement plan fiduciaries in recent years, plan sponsors should make sure they understand their fiduciary role under the Employee Retirement Income Security Act of 1974 (ERISA) and have processes in place to meet their responsibilities each year.



Understand fiduciary and nonfiduciary roles

The purpose of ERISA is to ensure that individuals with authority to manage retirement plans act in the best interests of plan participants and handle plan assets properly. Fiduciaries must follow ERISA's high standards of conduct when making decisions regarding the plan:

1. Base each decision regarding the plan solely on what is best for the plan participants and beneficiaries.
2. Act prudently in overseeing the plan, which requires knowledge about retirement plan investments and administration. If the plan sponsor does not have the expertise necessary, professionals who have that expertise should be engaged.

Continued on page 2

Investment and insurance products are not insured by the FDIC or any other federal government agency, are not deposits or other obligations of, or guaranteed by, a bank or any bank affiliate, and are subject to investment risks, including possible loss of the principal amount invested.

Continued from page 1

3. Diversify investments to the extent needed to reduce the risk of large losses to plan assets.
4. Follow the terms of the plan document when operating the plan.
5. Pay only reasonable fees for necessary plan services from plan assets.

The plan sponsor is typically considered the ERISA "named fiduciary" with overall responsibility for the plan. Plan sponsors also take on the fiduciary role of plan administrator, sometimes referred to as an ERISA 3(16) fiduciary. The plan administrator has authority and discretion over how the plan is operated, including hiring and monitoring service providers to help administer the plan and ensuring that required plan notices and disclosures are delivered to participants.

Plan sponsors can hire or appoint others to share their fiduciary roles but can never fully transfer their role as an ERISA fiduciary. For example, plan sponsors typically rely on the investment knowledge of a financial advisor to help select and monitor the plan's investment menu. A financial advisor may serve as a nonfiduciary advisor or as an ERISA investment fiduciary following one of two paths:

1. An ERISA 3(38) investment manager assumes full discretionary responsibility for selecting and monitoring plan investments, relieving the plan sponsor of fiduciary liability for the investments. The plan sponsor is still responsible for prudently selecting and monitoring the 3(38) manager.
2. An ERISA 3(21) investment advisor makes investment recommendations subject to the ERISA fiduciary standards and shares legal responsibility for the selection of investments with the plan sponsor, but the plan sponsor makes the decisions regarding investments for the plan.

Plan sponsors also rely on the compliance knowledge of recordkeepers and third party administrators (TPAs) to help them navigate the tax rules for qualified retirement plans. Example of these rules include contribution and deduction limits, and nondiscrimination requirements that prevent a plan from disproportionately favoring the highest paid employees. Service providers also assist with other plan administrator requirements, such as delivering employee notices, tracking the detailed plan data and transactions, and preparing the Form 5500 annual return for the plan. TPAs and recordkeepers do not typically take on an ERISA fiduciary role, so plan sponsors retain the ultimate responsibility for compliance with the tax rules, along with prudent selection of services and providers for the plan.

Prudence focuses on the process

As stated by the Department of Labor in its Meeting Your Fiduciary Responsibilities guide for plan sponsors, "prudence focuses on the process" for making decisions. Following the provisions of your plan document, obtaining expert assistance and diligently following processes designed to support prudent decision making are the keys to meeting your fiduciary responsibilities. Documenting your actions will help demonstrate that you have carried out your duties. You may also want to keep a plan file with minutes of fiduciary meetings, documentation of significant plan-related decisions and copies of reports used to evaluate investment options and plan fees.

Consider including the items on the following checklist as you develop processes for managing your fiduciary responsibilities throughout the year.

Continued on page 3

Continued from page 2

Fiduciary blueprint

Understand roles, service agreements and plan documents

- ☐ Identify your plan's fiduciaries.
  - — If you have delegated responsibilities to a committee or service provider, make sure each responsible person understands their role and responsibilities.
- ☐ Review service agreements with your plan's service providers.
  - — Understand your responsibilities and whether any of your service providers are performing services as an ERISA fiduciary.
  - — Understand the fees being charged for services and how they're being paid.
- ☐ Review your plan document.
  - — Understand all the provisions of your plan document to ensure that your plan is being operated according to the terms selected in the plan document.
  - — Consult with your document provider to ensure your plan document is up to date for all required amendments.
  - — Maintain a current Summary Plan Description (SPD) and deliver it timely to newly eligible employees and make it available upon request for plan participants and beneficiaries.
- ☐ Confirm you have an adequate fidelity bond in place.
  - — Plan sponsors are required to protect the plan in case of fraud or dishonesty by securing a fidelity bond covering each individual who "handles" plan assets. The bond must be equal to at least 10% of the plan assets handled in the preceding year, with a minimum bond of $1,000 and a maximum of $500,000 ($1 million for plans that hold employer securities).

Monitor plan investment options and plan fees

- ☐ Understand the role of your financial advisor.
  - — Will they provide investment information and education, or will they provide investment advice or investment management as an ERISA fiduciary?
- ☐ Work with your advisor to set investment objectives for your plan.
  - — Consider adopting an Investment Policy Statement (IPS), if you haven't already, to define the strategic objectives for the plan's investments, as well as the specific criteria that will be used to evaluate investments on an ongoing basis.
- ☐ Adopt a prudent process for monitoring your plan investments and plan fees on a regular basis. Your advisor can provide benchmarking and other evaluation tools to help you.
  - — Review the required fee disclosures and make sure you understand the fee structures used by service and investment providers.
  - — Evaluate the performance of the plan's investment options against the criteria in the plan's IPS to determine if they continue to fit the objectives of your plan.
  - — Monitor the reasonableness of plan investment fees, including benchmarking fees against those for other available investment alternatives.
  - — Review service provider fees to ensure they are reasonable for the services provided.

Manage plan operations

- ☐ Make timely deposits of employee contributions and loan repayments every payroll.
- ☐ Double-check the accuracy of the census information and payroll data you provide to plan service providers.
- ☐ Review all plan reports and other communications sent to you by your service providers.
- ☐ Correct any failed nondiscrimination tests or contribution excesses timely.
- ☐ Make certain you or your service providers deliver all employee notices and disclosures within the time frames required by the rules (e.g., Summary Annual Report, participant fee disclosures, lifetime income disclosures).
- ☐ Authorize distributions and loans, following the terms of your plan document.
- ☐ Review the Form 5500 prepared by your service provider and file it on time.
- ☐ Promptly address any plan errors or employee concerns that arise.

DOL proposes new self-correction option for late deposits

During fourth quarter, the Department of Labor (DOL) proposed updates to its Voluntary Fiduciary Correction Program (VFCP) for the first time since 2006. Updates include expanding the transactions eligible for the program and making it easier and more cost effective for plan sponsors to correct fiduciary violations under the Employee Retirement Income Security Act (ERISA). The biggest change would be to allow plan fiduciaries to self-correct one of the most common retirement plan fiduciary violations: late deposits of employee salary deferrals and loan payments into the plan. If employee contributions are not deposited into the plan within the required time frame (generally as soon as can reasonably be segregated from company assets), the fiduciary is viewed as misusing plan assets for its own benefit.

To correct this fiduciary breach under the VFCP currently, a plan fiduciary (who is not already under investigation by the DOL) must file an application and other paperwork to the DOL for approval. If the application is complete and all breaches fully corrected, the DOL will issue a no-action letter, providing relief from a civil investigation and penalties, as well as excise taxes for some of the covered transactions. With the proposed update, plan fiduciaries would be allowed to self-correct the fiduciary breach of delinquent deposits without having to wait for DOL approval if the following requirements are met:

- The delinquent contributions are deposited into the plan within 180 days of being withheld from a participant's wages or receiving the amount from the participant.
- The VFCP online calculator is used to calculate lost earnings based on the actual date of withholding or receipt.
- The lost investment earnings do not exceed $1,000.
- The plan fiduciary files a self-correction notice with the DOL using a VFCP web tool and completes a Self-Correction Retention Record checklist and retains certain documentation.

The DOL is requesting comments on the proposed changes and will announce when the program updates are final and may be used.

250 Nicollet Mall | Minneapolis, MN 55401

22-20-03193_20181-CC (01/23)