



Your Plan Fiduciary Must-Do and Should-Do Lists



When you're a plan fiduciary, you are, of course, prioritizing what ERISA law requires of you. You have a checklist of Must-Dos. But there is also a list of things that you can do proactively that will keep the plan—and plan fiduciaries—out of trouble. These tasks aren't required by law, but they are certainly worth deciding whether you want them to be on your Should-Do list.

So here are some things to remember that you *must* do and some related things to

consider whether you *could* do as a plan fiduciary and the reasons we think they are worth considering.

1. You *must* have a named fiduciary.

ERISA requires one named fiduciary to be the plan's decision maker and to act in the best interest of the plan participants and beneficiaries. And a named fiduciary with expertise will be able to make prudent decisions.

You *could* delegate to a plan, or investment, committee to support the named fiduciary in making those decisions.

This is especially helpful if the named fiduciary somehow lacks the expertise, or time, required to make prudent decisions. ERISA does not require you to make these decisions alone if you are not equipped or duly qualified to do so. ERISA does expect that in in such a scenario, those delegated the responsibilities will undertake them in a manner that leads to prudent decisions that are in the best interest of the plan's stakeholders.

Insider tip: Make sure that the committee members you choose are indeed able to contribute effectively and efficiently to the process.

If it proves to be more time-consuming or cumbersome than helpful, maybe this committee isn't what you need. You can always remind committee members that there may be personal liability associated with failure to meet fiduciary responsibilities under ERISA; this prompts dropout from members who are not competent and confident in their own participation.

2. You *must* have prudent decision-making processes if you have a committee.

Now, if you do have a committee (and we think it's a smart choice to have one), it is important to convene

periodic meetings and to document the outcomes of the processes undertaken at these meetings. A committee without regular, productive, organized meetings is bound to drop a ball, and this could be worse than not having a committee in the first place.

You *could* make your committee as effective as possible by following intuitive committee best practices.

Designate roles, organize meetings, take notes, and execute your action items. Forming a committee shows a concerted effort that avoids any appearance that a plan is not being managed well. Following this intuitive process will keep everyone out of the ERISA spotlight.

Insider tip: Know that the meeting minutes prove a prudent process.

Minutes provide all past and present committee members with a record for when decisions were made, why, and by whom. Minutes are useful as a reflective vehicle for reassessing a choice when the time comes.

3. You *must* conduct yourself as though you have an investment policy statement established.

While the law does not mandate that you have a *written* investment policy statement (IPS), it's a wise move to put one in place. Many a fiduciary has been glad to have had a set of investment guidelines to refer to because ERISA does expect the fiduciary to act as though there is a guidebook in place, to undertake a prudent process.

For example, when you conduct your regular review of a plan's investment options and see that one or more funds no longer meet the criteria established for the plan. Your IPS is going to be your guide in evaluating—and documenting—when and why to drop a fund or choose to leave it on the menu. In an audit, you will be able to show that you followed a set of pre-established guidelines to lead you to your prudent decision.

You *could* create a user friendly IPS during downtime when perspective and learnings are well aligned.

A good IPS sets down prudent standards that are established either in practice or in writing when there is time to think *proactively* about what decisions should be made so that those decisions don't end up being made *reactively*. The key to the winning IPS is that it is there for you when you need it—thought of, and written, long before you need it.

Insider tip: If you have an IPS, make sure you follow it.

The Department of Labor often requests a copy of the plan's IPS upon beginning an audit—even though, we mentioned above, one is not required by law. So, if you do end up developing an investment policy statement, make sure the Committee refers to and abides by it because it will be considered by the auditors.

Sources:

<https://nevinandfred.com>

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