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Retirement Plan Governance:

Principles for effective oversight

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Key takeaways:

- Plan sponsors retain ultimate fiduciary responsibility, even when outsourcing key functions to third-party providers
- Effective governance requires structured oversight, including committees, documented processes, and regular reviews of investments and service providers
- A disciplined, well-documented process—rather than outcomes alone—is central to demonstrating fiduciary prudence under ERISA
- Outsourcing does not eliminate fiduciary responsibility, making ongoing oversight of service providers and documented decision-making essential.
- Effective governance is ongoing, not one-time, requiring regular reviews, benchmarking, and updates to adapt to evolving regulatory and participant needs.

Introduction

As a retirement plan sponsor, the choices you offer affect employees' sense of well-being, job satisfaction, and their families.

Whether you're new to plan sponsorship or have a seasoned team, this fiduciary responsibility brings complexities around legal requirements, investment selections, plan design, and more. The right guidance can help satisfy your fiduciary responsibilities while reducing administrative burdens.

Wilmington Trust has created this e-book as a guide for plan sponsors like you. With decades of experience advising companies on plan governance, we understand the intricacies. We know that an experienced retirement plan advisor can help you navigate Employee Retirement Income Security Act (ERISA) regulatory requirements and create a plan design to help improve the participant experience.

Inside, you'll find articles and infographics that walk you through key aspects of plan governance. We'll explain your responsibilities around fiduciary duties, managing service providers, and more. You'll learn how to build an effective committee, select investments prudently, and engage participants through communications. Finally, we offer a calendar to help you organize your annual plan activity.

With the right plan governance, you can create a retirement program that adds value for employees while mitigating risks and avoiding compliance pitfalls.

The Employee Retirement Income Security Act (ERISA) is a federal law that specifies requirements for private industry retirement and health plans to protect participants and beneficiaries.

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Understanding Plan Sponsor Responsibilities

Plan sponsors are responsible for overseeing plan operations, meeting regulatory requirements, and fulfilling fiduciary duties in the best interests of participants.

As a plan sponsor, your company oversees the selection and monitoring of plan investments, compliance with legal and regulatory requirements, and the administration of plan benefits. In addition, you must ensure that you meet your fiduciary responsibilities. In short, you have a legal duty to manage plans prudently and align your plan's assets, investments, and costs to the best interests of participants and beneficiaries. These duties include selecting and monitoring plan investments, operating in compliance with plan documents, meeting legal and regulatory requirements, and providing adequate funding for the plan.

Frequently, this oversight is done by a committee established by the plan sponsor.

Such committees are routinely charged with:

- plan design
- investment selection and monitoring
- oversight of legal and regulatory compliance
- benefit administration

Effective governance over such functions often entails specialized skills that you may not have in-house. As a result, many companies work with third parties, including advisors, plan providers, third-party administrators (TPAs), auditors, and other professional service providers to perform these functions.

While TPAs and other service providers can provide guidance and alleviate some administrative burdens, the ultimate accountability and fiduciary responsibility as the plan sponsor remains with you.

As a fiduciary, understanding your responsibilities is crucial. In our experience, plan sponsors often face challenges in three common areas:
1) building an effective committee;
2) handling fiduciary responsibilities;
3) managing service providers in the plan.[1]



Effective governance over retirement plan functions often entails specialized skills that you may not have in-house.

Building an effective committee

In our experience, committee sizes and structures depend on company size. That said, you should strive for representation from individuals in the following areas: HR, finance, and legal. These individuals may already be familiar with the operations of the benefit plan. Typically, they also complete training to understand the regulatory requirements around employer-sponsored plans. In addition, representation from within your employee base, including managers and staff, can help you stay in touch with the needs and preferences of plan participants.

Experienced partners and service providers play an additional and vital role in supporting plan administration, compliance, reporting, and tax filing. External support is especially relevant for smaller companies. Still, even companies with several hundred employees may prefer to outsource some or many aspects, particularly those that require specialized expertise or experience.

Engaging the right resources just makes sense and can help you focus on the things that you do best and that matter most to your employees.

[1] https://www.govinfo.gov/content/pkg/COMPS-896/pdf/COMPS-896.pdf

Handling fiduciary responsibilities

Fiduciary responsibilities are often the most significant source of anxiety for plan sponsors. Among these fiduciary responsibilities are the obligations:

(i) to act with prudence, loyalty, and impartiality when making decisions,
(ii) to act in the participants' best interests, and
(iii) to disclose actual and potential conflicts of interest.
Understanding these broad concepts alone is somewhat complex, but complying with the 521-page ERISA document, which defines these requirements, is considerably more complex.

The legal and financial risks of getting it wrong are high. Non-compliance exposes your company to fines, penalties, and tax withholding complexities. You also face the possibility of participant-level litigation if plan investments aren't selected and managed in the best interest of participants.

For example, optimizing plan fees and costs takes investment experience. Employers typically don't have the time, technology, or data access to consider the most cost-effective share class or monitor investment performance regularly. The dynamic nature of the investment market also means that the best choices change.

Managing service providers to the plan

Plan sponsors have mechanisms in place to help mitigate risks. Sometimes, plan providers can help them manage ERISA compliance by supplying benchmarking data and remaining competitive on pricing. TPAs can offer more in-depth support and even take on some risks contractually. Various types of TPAs can also take on areas such as plan administration, investment decisions, or investment advice.



When outsourcing, it is still the responsibility of your plan committee to review and document the service provider's work and develop an effective oversight program to ensure that such service providers are fulfilling their duties.

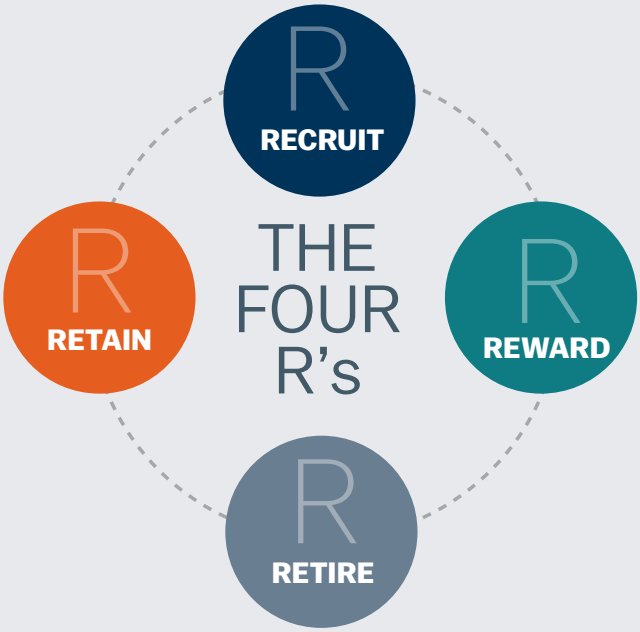
Focusing on the "Four Rs"

The goal of effective plan design is to achieve the Four Rs: Recruit, Retain, Reward, and Retire.

Common factors include employee age, tenure, retention rates, compensation, and status as salaried or hourly. Employee populations who are older and who have low turnover rates will have different needs than younger and more mobile cohorts. However, the plan must treat all eligible employees fairly. These factors make up an essential consideration for plan design and updates.

Conclusion

Retirement plan committees must contend with a significant set of responsibilities and obligations. These obligations often follow a regular calendar.[2] Outsourcing to various service providers can be a cost-effective solution for managing risks, as long as you exercise effective oversight and remember a key governance principle.



RECRUIT

- Eligibility
- Employer match formula
- Plan industry benchmarking
- Vesting
- Bonus & compensation
- Financial wellness program
- Rollover support
- Student debt
- HSA

REWARD

- Stock & synthetic stock plans
- Non-qualified plans
- Bonuses
- Match
- Profit sharing

RETIRE

- Advice
- Retirement income
- Withdrawal analysis
- HSA
- Long-term care
- Estate planning
- IRA rollover

RETAIN

- Vesting
- Match
- Distribution options
- HSA
- Non-qualified options
- Student debt
- Emergency saving

[2] These roles are defined in sections 3(16), 3(21), and 3(38) of ERISA. https://www.govinfo.gov/content/pkg/COMPS-896/pdf/COMPS-896.pdf

Building Effective Retirement Plan Governance

Establishing a clear governance framework—including defined roles, committees, and processes—supports consistent oversight and informed decision-making.

It's your responsibility, as plan sponsor, to make decisions that are in the best interest of the participants in the plan. Given the significant liabilities and risks associated with a fiduciary role, many plan sponsors outsource fiduciary services to third-party providers. However, you first must fully assess your own capabilities and responsibilities before determining whether to delegate fiduciary duties.

Here are four essentials you need to consider:

1. Understanding the role of a fiduciary

The role of a plan fiduciary requires acting in participants' best interests, following legal requirements, and demonstrating care, skill, prudence, and diligence in decision-making and oversight.

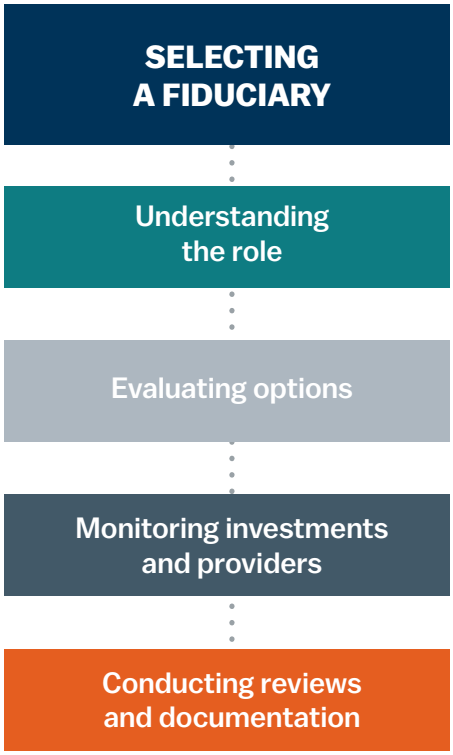
Plan fiduciaries must remain up to date with the laws and regulations surrounding retirement plans and the various regulatory interpretations of them, including ERISA, the Internal Revenue Code (IRC), Department of Labor (DOL) regulations, and Secure 2.0.

Your core responsibilities

- Ensuring that plan documents, such as the summary plan description, are current and accurate
- Filing all required government reports (such as Form 5500)
- Periodically and routinely convening and maintaining thorough records of committee meetings, plan administration, and investments
- Overseeing investment options by selecting and monitoring options that meet strict fiduciary standards
- Monitoring changing market and macroeconomic conditions that could impact plan options

2. Evaluating fiduciary options thoroughly

Even when delegating, a plan sponsor retains the obligation to conduct proper oversight of providers. When establishing which specific fiduciary services you require, take into consideration your own capabilities and risk tolerance, and then ask providers about their capabilities, credentials, services, fees, and service levels for performing, monitoring, and reporting on such services to you.



Some plan sponsors hire administrative fiduciaries to handle essential tasks like compliance, reporting, and recordkeeping per all governing laws and regulations. These services fall under section 3(16) of ERISA. Others choose to hire a 3(38) ERISA discretionary investment manager or a 3(21) ERISA co-fiduciary investment advisor to provide an array of services, including selection and monitoring of plan investments.

ERISA-defined fiduciaries

- Discretionary Investment Manager (also known as ERISA 3(38) Investment Manager): Acts as the sole investment manager for the plan with the power to manage, acquire, or dispose of any assets of the plan

- Co-Fiduciary Investment Advisor (also known as ERISA 3(21) Co-Fiduciary Investment Advisor): Acts as a co-fiduciary that renders investment advice for a fee or other compensation, including assistance with the Investment Policy Statement, selection, and monitoring of plan investments as well as investment performance and analytics. However, the plan sponsor retains the ultimate discretionary responsibility for making investment decisions, changes, and investment actions Vetting multiple providers and obtaining references from current or past clients is highly recommended when evaluating the best

option for your plan. When assessing fiduciary service providers and options, our experience is that plan sponsors will want to consider eight factors:

Assessment factors

- Experience with retirement plans
- Resources
- Industry knowledge
- Qualifications
- Longevity
- Proven track record of success
- Required credentials
- Reasonable and transparent fees

In addition, fiduciary service providers should be able to clearly articulate the specific services they will provide, their responsibilities, the reports and communications they will deliver, and their approach to investment selection and monitoring. Clarity on their process and deliverables is critical.

3. Monitoring plan investments and fiduciary

Plan sponsors aren't responsible for ensuring that plans yield the highest possible investment return, nor are they required to select a service provider with the lowest cost.

However, sponsors and their fiduciaries are responsible for offering appropriate investment options and having well-documented processes for all reviews and decision-making. Activities include selecting diverse investment options, engaging service providers that are reasonably priced and have a track record of performing well, providing participants with clear and understandable information about their plan choices, and ensuring that fees and expenses associated with the plan are reasonable and transparent.

Benchmarking investment performance helps to show whether your plan is achieving appropriate returns within a reasonable and prudent risk framework. Competent investment monitoring and reporting requires a specialized understanding of markets, expense ratios, and net returns. You should also compare the performance of your plan's investment options against standard benchmarks and peer groups to determine whether any necessary changes or corrective actions are necessary or appropriate.

In addition, benchmarking your third-party service providers against industry standards and competitors is essential for prioritizing your plan participants' interests. Per the DOL, you should conduct a review at least every three years. You should examine the specific services provided, fees charged, reports and communications delivered, and overall service standards to confirm that your service provider is properly fulfilling their responsibilities.

4. Conducting reviews and documentation

Fiduciary review and oversight are continuing obligations. Sponsors should start by planning a regular review process and establishing a clear and consistent documentation process that outlines the reviews conducted, issues identified, and corrective actions taken. This level of diligence, oversight, and documentation is critical in mitigating liability and demonstrating your commitment to the highest fiduciary standards.



Keeping open lines of communication between you and your plan fiduciaries results in the most constructive degree of transparency. Maintaining an ongoing working relationship enables comprehensive governance and oversight. As part of this process, document all conversations with your provider.

Conclusion

Plan fiduciaries play an essential role in the governance, risk management, and oversight of retirement plans. Leaders in human resources and finance must fully comprehend their responsibilities, evaluate fiduciary options thoroughly, consistently monitor performance through benchmarking, and take corrective action as needed.

Fiduciary governance should be a top priority. Failing to fulfill your fiduciary obligations can lead to negative consequences. Consider consulting retirement plan specialists, if needed, to ensure proper governance. Comprehensive oversight, documentation, communication, and benchmarking enable strong governance and risk management of your plan.

Driving Engagement Through Plan Communications

Thoughtful communication strategies can help improve participant understanding, engagement, and overall plan effectiveness.

A well-constructed retirement plan will only go so far if it isn't effectively communicated to employees. Plan providers and other resources such as advisors and recordkeepers can help you navigate what you can and can't say and keep you from crossing regulatory lines.

The following sections outline the best practices for engaging employees via regular communications and financial planning options. We also highlight dos and don'ts to help you evaluate providers and avoid missteps.

Communications, tools, and plan engagement

Retirement plan engagement includes required communications about retirement plan offerings, options, and optional tools for your employees' financial planning.

To meet transparency requirements, employers must provide material regarding plan features and benefits when introducing the plan to employees. They must also provide information about enrollment periods, updates about plan changes or amendments, and individual participant statements. Typically, employers rely on third-party providers for these communications.

Other communications, such as responses to participant inquiries or concerns, can be more subjective. These responses can be informational but can also include or imply guidance on specific investment choices. Anything, including in-person meetings, digital platforms, emails, printed materials, social media, internal discussion boards, and text messages, could be considered plan communication.



Dos and don'ts to consider for plan engagement

Do:

Make strategic choices about communications and tools

The market is full of communications solutions built with varying features and options, from self-service plan selection tools to full-service platforms that offer access to planning tools, financial advisors, and additional investment or savings products.

Digital options and service levels typically affect provider costs. Low-cost providers offer fewer ways to communicate, while providers with more services, including individualized financial advisory and planning services, tend to be more costly. Looking at benchmark data about features, costs, and performance helps navigate the options.

All things being equal, plan sponsors should choose the best service levels from recordkeepers and advisors within their desired participant outcomes, plan design, and overall budget. Doing so improves employees' satisfaction and ability to make financial planning decisions.

Don't:

Cross the line between offering access and advice

Plan sponsors must tread a fine line between informing employees and providing personal financial advice. The simple answer is never to give financial advice. Even when you have financially savvy leaders and staff, they should never act as financial advisors. In theory, even an informal conversation between a plan participant and their manager or benefits coordinator could be considered financial advice.

Instead, if you want your plan participant to have access to advice, you should engage the services of licensed advisors who can offer a comprehensive and objective approach.

Do:

Monitor and evaluate your providers and participant engagement

Sponsors often use plan participation and deferral rates to measure plan effectiveness. However, engagement has an enormous impact on plan success and satisfaction. You should work with recordkeepers and advisors to monitor communications, such as the frequency of logging into digital platforms, calls to call centers, email open and click-through rates, and similar activities at communication touchpoints, in order to help understand the level of engagement.

Measuring communications helps ensure you get the full value out of your investment. If you're paying high service fees for options that employees tend not to use, it's a clear indicator to reevaluate what you're offering and at what cost.

Do:

Use these four factors to evaluate providers and options

There are four elements to consider when reviewing plan providers' communication capabilities:

1. **Depth of advice**
   A qualified provider is well-versed in a broad spectrum of investment vehicles and is able to explain these options simply and clearly to the participant. The expertise may include an in-house investment strategy team or equivalent specialists.

2. **Reasonable fees**
   Cost considerations may limit the participant communication and planning tools you can provide. In designing a plan and selecting providers, your goal should be to strike the right balance between employee engagement and overall costs, not just for communications.

3. Objective financial planning

Plan sponsors have a regulatory responsibility to ensure that planning tools and investment advisory services are fair, accessible, and objective. As a result, you must take steps to avoid conflicts of interest. These issues can occur when plan providers offer proprietary funds, share revenue with third-party fund managers, or offer other financial products and services at additional cost to the participant.

4. Demographic fit

Demographic fit refers to the ability to plan communications and tools to meet the needs of your participants. The mix of printed material, call center access, websites, apps, chatbots, and in-person services should correspond to the types of employees you have. For example, your workforce may include older individuals, non-native English speakers, workers with disabilities, or other populations. If your recordkeeper only offers a desktop version of a website in English without accessibility features, you could end up discriminating against segments of your employee base.

Don't:

Forget about cybersecurity

Digital plan engagement requires employees to create online accounts and share sensitive personal data. DOL guidelines call for paying close attention to providers' cybersecurity approach.[3]

At a minimum, digital platforms should support best practices around user management, passwords and password expiration, suspicious activity, and similar protections to help minimize
misuse or exploits. In addition, you should explore providers' guarantees and compensation. For example, if a participant's account is hacked and they lose funds, does the provider restore the stolen funds, and under what conditions?
You should include these considerations in any provider evaluation.

[3] See "Cybersecurity program Best Practices," U.S. DOL, https://www.dol.gov/sites/dolgov/files/ebsa/key-topics/retirement-benefits/cybersecurity/best-practices.pdf

Conclusion

Remember, as a plan sponsor, offering retirement plans is only part of your decision- making process. You must also consider effective communication, the right service providers, and how to measure plan success. Communication is powerful. It helps to ensure that employees are getting the most value and the best experience possible so they can focus on meeting their long-term financial goals.

Your Plan Communications Checklist

✓ **Do:**
Make strategic choices about communications and tools

✓ **Do:**
Monitor and evaluate your providers and participant engagement

✓ **Do:**
Use advice, fees, planning tools, and demographic fit to evaluate providers and options

✗ **Don't:**
Cross the line between offering access and advice

✗ **Don't:**
Forget about cybersecurity

Applying Prudence in Plan Management

A disciplined approach to oversight, documentation, and decision-making is essential to demonstrating prudent management of plan assets.

ERISA requires plan sponsors to manage retirement plans prudently. Per the so-called "prudent man standard of care:"

Fiduciaries must act with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.[4]

However, the concept often needs clarification. Plan sponsors, fiduciaries, and courts have had differing interpretations of this language and what it means to act with prudence when managing a retirement plan.

Applying prudence

Some plan sponsors mistakenly assume they are responsible for choosing plans with superior investment performance or at the cheapest overall cost. That prospect is especially concerning, given today's market volatility, complex compliance tasks, and litigation risks.

Prudence doesn't directly equate to cost or performance. ERISA focuses on the process. It calls for reasonable fees and returns rather than the cheapest or highest-yield options. It also means that plan sponsors must make informed decisions that benefit the participants' best interests overall.

Maintaining sound, coherent, and well-implemented policies and procedures is crucial to applying prudence. Doing so includes governing documentation, investment oversight, third-party oversight, and compliance reporting. These four areas of responsibility create a stable platform for plan management

Who is a fiduciary?

A person is a "fiduciary" to a plan to the extent they have any authority or control over the management of plan assets or plan administration. Fiduciaries may include:

- Plan administrators
- Administrative and investment committees
- Trustees
- Investment managers and investment advisors
- Claims decision-makers

Prudence and loyalty

Prudence goes beyond policy considerations as well. It requires operating the plan "for the exclusive purpose of providing benefits to participants and their beneficiaries."4 In other words, plan sponsors must make decisions that solely benefit the participants rather than additional benefits for the sponsor. There must be no conflicts of interest or self-dealing.

For instance, a plan sponsor could theoretically agree to an arrangement for discounted payroll processing or other service benefits in exchange for placing their plan with a particular provider. ERISA specifically precludes such activity, with few exceptions.

A "Final Rule on Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights," released November 22, 2022, adds additional nuance. Plan sponsors can prudently choose between competing investments or options if they are equally suitable for the retirement plan's interests in the long run. In that scenario, they may opt for a plan with collateral benefits, such as improved plan administration, additional perks and opportunities, or enhanced employee education. However, "the final rule maintains the longstanding principle that the fiduciary may not accept reduced returns or greater risks to secure collateral benefits."[5]

Third-party support and overnight

Third parties play a critical role for plan sponsors. Few companies have the resources to handle every aspect of plan management independently. However, plan sponsors must oversee any advisors and service providers (e.g., record keepers, plan communications, trustees, TPAs, or 3(38) advisors). This requirement begins with exercising due diligence in provider selection.

SIX QUESTIONS YOU SHOULD ASK YOURSELF ABOUT PRUDENCE

1. Do you have written plan documents and an investment policy statement, and know where are they stored?
2. Are you hosting an annual plan review, and with whom?
3. When was the last time you reviewed your governance process and decision-making process?
4. Do you understand the selection and oversight of your investment options?
5. Do you regularly monitor and evaluate the providers (including service levels and fees) who support your plan?
6. Are you aware of cybersecurity best practices and coverage requirements for you as a sponsor and your vendors?

[4] See 29 U.S.C. § 1104(a)(1)(A). (https://www.govinfo.gov/content/pkg/COMPS-896/pdf/COMPS-896.pdf, page 223).

[5] See 29 U.S.C. § 1104(a)(1)(A). (https://www.govinfo.gov/content/pkg/COMPS-896/pdf/COMPS-896.pdf, page 223).

Prudence continues with regular provider reviews to confirm that they offer an appropriate mix of services and options for plan participants at a reasonable cost.[6] On January 24, 2022, the Supreme Court ruled that the requirement that a sponsor conduct regular reviews of fiduciaries also applies to other services such as third-party administration and recordkeeping.[7]

For example, a lower-cost provider might offer limited online tools or minimal advisory support. This less costly offering may not fully align with the best interests of a company's employee population. In contrast, a higher-cost provider might deliver a service level that would better meet the specific needs of participants.

Furthermore, third-party oversight can also strengthen prudent management. When sponsors engage external resources to supplement internal capabilities, they benefit from experience with the nuances of operating a plan prudently while also delivering the best possible outcomes for plan participants.

A Quick Look at Liability

Mismanagement opens the possibility of liability for restoring the losses suffered by the plan and paying fines and damages. Historically, it has been an active area of litigation and complaints.

A 2021 report by the Government Accountability Office (GAO) found that the DOL had received over 10,000 complaints about retirement plan fiduciaries in the past five years. The GAO report also found that the DOL had recovered over $1 billion in losses for retirement plan participants as a result of these complaints, with approximately 200 cases filed in 2020 alone. Being uninformed, neglecting to have an investment policy, or failing to review the plan regularly increases exposure.[8]

Third-party providers help mitigate such risks by providing helpful input that strengthens a provider's good judgment within the boundaries set by ERISA. Moreover, additional risks lie outside ERISA, such as responsibility for deploying appropriate and reasonable cybersecurity measures to protect participants using online plan options or services.[9]

In addition, prudent, careful, and skillful management is a shared responsibility. To mitigate liability risks, fiduciaries should act with care, document decisions, follow a prudent process, and seek professional advice when necessary.

Alongside 3(21) co-fiduciary advisors and 3(38) investment managers, 3(16) plan administrators, sometimes called "plan administrator fiduciaries," assume responsibility for the retirement plan's day-to-day administrative tasks and compliance activities. Their services include recordkeeping, participant communications, compliance testing, reporting, and ensuring the plan meets ERISA requirements.

Conclusion

A comprehensive approach incorporating ongoing evaluation, effective communication, and adherence to regulatory guidelines for prudence is essential to successful plan management. Documented procedures, maintaining high-level meeting minutes that capture decision-making, and a track record of prudent management codify this approach in a way that stands up to scrutiny in the case of potential liability. By adopting these best practices, plan sponsors can confidently navigate the complex landscape of prudent retirement plan management.

[6] See "Final Rule on Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights," November 22, 2022. (https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/final-rule-on-prudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights)

[7] "Supreme Court Clarifies ERISA Fiduciary's Duty of Prudence," Paul, Weiss LLP, January 27, 2022. (https://www.paulweiss.com/practices/litigation/litigation/publications/supreme-court-clarifies-erisa-fiduciary-s-duty-of-prudence?id=42249)

[8] "Enforcement Efforts to Protect Participants' Rights in Employer-Sponsored Retirement and Health Benefit Plans," U.S. GAO, https://www.gao.gov/products/gao-21-376

[9] See "Cybersecurity program Best Practices," U.S. DOL. (https://www.dol.gov/sites/dolgov/files/ebsa/key-topics/retirement-benefits/cybersecurity/best-practices.pdf)

Annual Planning and Governance Calendar

A structured annual timeline helps plan sponsors manage key deadlines, maintain compliance, and support ongoing governance activities.

Plan Calendar

As a plan plan sponsor of a tax-qualified defined contribution plan, you must meet many responsibilities to ensure you are offering a competitive benefit and complying with your fiduciary responsibilities. Doing so means meeting administrative and recordkeeping deadlines, understanding your plan's investment options, and keeping pace with regulatory changes. Not doing so can expose you to risk.

These many tasks can be intimidating for plan sponsors, but help does exist. Plan providers and TPAs can help you navigate.

In addition, these tasks must occur in a predictable rhythm with fixed dates. Having a timeline for the year helps you avoid surprises, understand what you need to do, and anticipate what you should expect from your plan provider.

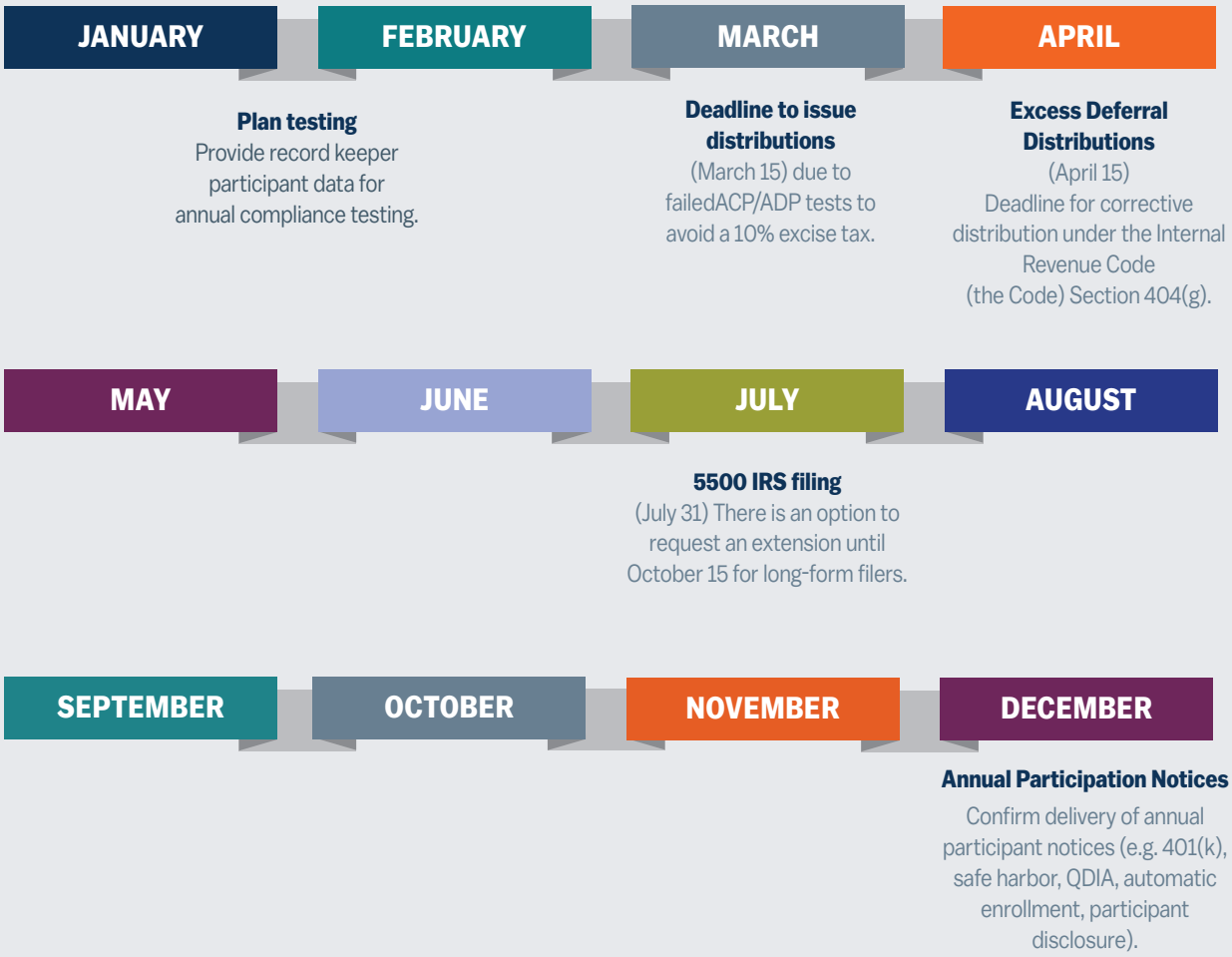
TIPS

- Include the dates below in your calendar, along with the usual meetings, business events, and holidays
- Adjust the dates to fit the start of your plan year. If your plan begins on a date other than January 1, follow the indicated month numbers rather than month names (as detailed on the next page)
- Create draft versions of an agenda for each meeting of your Plan Governance Committee in advance so that you can focus and keep on track

Our dedicated retirement professionals can help plan sponsors, in collaboration with their recordkeepers, navigate compliance requirements.

Please note: This timeline does not identify all obligations or due dates. Wilmington Trust Retirement Advisory Services professionals do not provide legal or tax advice. Plan sponsors and recordkeepers should coordinate with legal and tax counsel on compliance questions.

What plan sponsors should do to plan for the year ahead



JANUARY - FEBRUARY

January (Month 1)

You should also begin planning for annual compliance testing to make sure that you are running your plan according to your plan terms and operating within all legal limits.

Finally, if your plan has 100 or more participants, you need a plan audit from an independent qualified public accountant (IQPA). Although the audit is not due until July 31 or the last day of Month 7, an audit can take up to six months. Therefore, January/Month 1 is an ideal time to engage an independent auditor.

January 31: The last day of January is the deadline for your plan provider to send IRS forms 1099-R, 945, W-2, 1099-NEC, and 1099-MISC to your plan participants.

February (Month 2)

is an active month to prepare for various compliance activities.

Testing for discrimination is essential to demonstrate that your plan does not discriminate in favor of highly compensated employees (HCEs) when it comes to contributions and deferrals. You may be required by your recordkeeper to provide participant data for the nondiscrimination, top-heavy, and 402(g) compliance testing this month.

Two main tests exist for this testing: Actual Deferral Percentage (ADP) and Actual Contribution Percentage (ACP). The tests determine whether the average contributions and deferrals of HCEs match the average contributions and deferrals of employees overall.

Failing such tests may require corrective action in the form of Return of Excess (ROE) Contributions that must be completed no later than the middle of March/Month 3. If you don't make these ROE distributions, you're subject to a 10% excise tax on the failure amount.

TIPS

- You can improve your nondiscrimination test outcomes by implementing auto-enrollment for employees, auto-escalation, and offering a Safe Harbor option
- Make sure you address any discriminatory issues in your plan design when you consider plan design for the following year (typically starting in October/Month 10 of the current year

In addition, you should plan for and calculate any Required Minimum Distributions (RMDs) following IRS requirements for the distribution amount. RMDs are required for plan participants older than 73 (or 72 if they reached that age before January 1, 2023).

MARCH - APRIL

March (Month 3)

March 15: You must remediate any ADP/ACP testing failures no later than March 15 or the 15th of Month 3.

March 31: You must also file (electronically) the required IRS reporting forms by the last day of the month. These forms can include line items related to your plan.

- W-2: compensation paid to employee plan participants
- 1099-R: distributions from the plan to participants
- 1099-NEC: compensation paid to non-employee plan participants such as qualified contractors
- 1099-MISC: payments made to plan service providers, (accountants, administrators, attorneys, auditors, consultants, etc.)

April

April 1: You must make any Required Minimum Distributions (RMDs). RMDs apply to plan participants older than 73 (or 72 if they reached that age before January 1, 2023).

For your first RMD, and only your first, Participants may delay taking a distribution until April 1 of the year after they turn 73.

- First RMD by December 31 of the applicable year
- First RMD delayed until April 1 of the following year. This option results in a first and second RMD in the same year.

Active non-owner employees have the option to take an RMD but are not required to do so

Excess contribution distributions also apply when employees contribute more than federal annual limits. For 2026, these maximums are as follows (subject to filing status and income):

- Simple IRA: $17,000, with a catch-up contribution of $4,000 for individuals age 50 or older
- 401(k): $24,500, with a catch-up contribution of $8,000 for individuals age 50 or older

April 15: When employee contributions exceed these limits, excess contributions and any associated earnings from the plan must be withdrawn.

It is crucial to notify employees, set up distributions, and send required information by April 15 (or the Friday before the deadline if it falls on a weekend).

If you offer Health Spending Accounts (HSAs), these also must be processed before the tax year filing date.

TIPS

- Because most employees must file their 2023 taxes by April 18, these actions must happen in March, not in Month 4.
- Proactively monitor this issue to catch and distribute excess contributions early to avoid penalties and additional tax complexities.

MAY - SEPTEMBER

May and June (Months 5 and 6)

If your plan requires an independent audit, you should be ready to review the result at some point in June/Month 6. You must include the audit when you file Form 5500.

July (Month 7)

July 29: Distribute Summary of Material Modifications (SMM) (or an updated SPD) to participants for amendments adopted in the prior year.

July 31: On the last day of July/Month 7, you must file two forms:

- Form 5500: Discloses your plan's financial information and compliance with laws and regulations, especially ERISA. Unless you file for an extension, you must file this form, along with your audit report if required, with the U.S. DOL and the Internal Revenue Service
- 8955-SSA: An annual statement Identifying separated participants who have vested benefits in your plan. Unless you file for an extension, you must file this form with the Internal Revenue Service and the Social Security Administration.

TIP

You can request an extension for filing these forms using Form 5558. The extension can be for up to two and a half months

September (Month 9)

September 20: By the last day of September/ Month 9, you must provide a Summary Annual Report (SAR) to all plan participants, beneficiaries, and other payees, as well as plan participants, including those no longer employed by you.

The SAR must be provided in a manner and format that you reasonably expect to result in the recipient's actual receipt. This requirement means you must make good-faith efforts to deliver them to a valid mailing or electronic address.

You can provide the SAR electronically:

- If you have provided notice of Internet availability to required recipients
- If they consent to receive it
- If you retain a record of the consent

Unless you meet all these conditions, you must provide the SAR in paper format.

TIP

Requesting an extension for Form 5500 also affects the SAR deadline. You must distribute a SAR no later than two months following the filing date for Form 5500.

OCTOBER - DECEMBER

October (Month 10)

October 15: This is the deadline to retroactively amend your plan to correct a 410(b) coverage or 401(a)(4) nondiscrimination failure.

The final quarter of your plan year is the ideal time to begin considering plan changes to implement them for the following year.

Your governance committee should begin discussing the following:

- Plan changes that may help attract and retain employees
- Compliance issues caused by plan design issues that you should minimize or remove
- Benchmarks of plan and provider performance
- Implementation timelines for plan changes

TIP

Keep in mind that any extensions of required filings mean that you must track the filing dates for Forms 5550 and 8955-SSA and the distribution of SARs. These must occur no later than the 15th of this month.

November and December (Months 11 and 12)

December 1: The first day of December/Month 12 is the last day to distribute the 401(k) safe harbor, automatic enrollment, and QDIA annual notice to plan participants.

December 31: Several items require processing by the last day of the plan year, typically December 31. These transactions include minimum distributions (RMDs) and de minimis distributions, loan-related payments, corrections of ADP/ACP errors, and the adoption of discretionary plan amendments.

TIP

Avoid an unnecessary rush by identifying these items in November/Month 11 so that your plan administrator has time for processing.

Additional Considerations

Under updates to the Setting Every Community Up for Retirement Enhancement Act (SECURE ACT 2.0), the following key provisions will be effective:

- Participants in Roth 401(k)s no longer need to take required minimum distributions (RMDs)
- Employers can offer student debt relief through workplace retirement plans by making matching contributions tied to a participant's student loan repayments
- Employee plan sponsors will soon be able to create emergency savings accounts for participants, who could then make Roth pay-ins (on an after-tax basis, limited to $2,500)
- Domestic abuse victims under age 59½can take up to $10,000 from their IRAs or 401(k)s without paying the 10% penalty tax. Up to $1,000 can be withdrawn penalty-free before a person has reached 59

About Wilmington Trust

Wilmington Trust is proud to be a part of the M&T Bank family, one of the 15-laraged, U.S.-based commercial bank holding companies.[10]

At Wilmington Trust, our Retirement Advisory Services team is committed to providing you with the industry experience, regulatory guidance, and investment strategies you need to make the most of your retirement plan—creating a meaningful, participant-centered benefit for your company.

With deep-rooted fiduciary experience at the core of what we do, we can serve as either an ERISA 3(38) investment manager or an ERISA 3(21) co-fiduciary advisor.

As your 3(38) Fiduciary Investment Manager, we offer maximum protection and ease of operations. We assist you in meeting your fiduciary duty as plan administrator by designing and implementing the fund lineup based on your investment policy statement.

Alternatively, we can serve as your **3(21) Co-Fiduciary Advisors** for maximum flexibility and desired committee input. In this role, we present investment options, monitor your lineup, assist in your fiduciary process, and guide the development of your IPS. However, you retain final decision authority.

Both approaches provide dedicated oversight teams and robust services, including:

- Development of an Investment Policy Statement
- Recommendations for selecting and monitoring the plan's investments
- Investment performance measurement and analysis
- Recommendations for selecting and monitoring qualified default investment alternatives
- Assistance with fiduciary oversight and committee education
- Assistance with the selection and management of service providers
- Recordkeeper benchmarking services
- Customized financial wellness strategy

With our combination of institutional experience, rigor, and flexibility, we become trusted partners in supporting your fiduciary obligations.

Rely on us for the institutional capabilities needed to simplify complexity and help your committee make informed decisions.

Please contact us to learn more about how our Retirement Advisory Services team can assist you with your organization's retirement plan needs.

Wilmington Trust Retirement Advisory Service Professionals are not authorized to and do not provide legal, accounting or tax advice. Plan sponsors and recordkeepers should consult with their legal and tax counsel on compliance questions.

Glossary

3(16) fiduciary:
A 3(16) fiduciary, defined under ERISA, assumes responsibility for plan administration functions, such as compliance, reporting, and recordkeeping, enabling plan sponsors to delegate specific administrative tasks.

3(21) investment advisor:
A 3(21) investment advisor, defined under ERISA, is a fiduciary that provides investment advice for a fee, assisting with investment decisions and monitoring, with the plan sponsor retaining ultimate responsibility for investment choices.

3(38) investment manager:
A 3(38) investment manager, defined under ERISA, is a fiduciary granted the authority to manage, acquire, or dispose of plan assets, serving as the exclusive investment manager for the retirement plan.

Department of Labor (DOL):
The Department of Labor (DOL) is the governmental agency tasked with overseeing and enforcing laws pertaining to employee benefits and retirement plans, including ERISA.

Fiduciary:
A fiduciary is a person or entity responsible for managing a retirement plan and is legally bound to act in the best interests of participants and beneficiaries.

Plan Administration / Third-party Administrators (TPAs):
Plan administration involves daily oversight and compliance of retirement plans. TPAs are specialized firms that help plan sponsors with tasks like recordkeeping and compliance.

Plan Beneficiaries and Participants:
Beneficiaries receive plan benefits if a participant passes away, while participants are active members entitled to plan benefits upon retirement.

Plan Governance Committee:
A Plan Governance Committee oversees a company's retirement plan to ensure proper administration, regulatory compliance, and meeting fiduciary responsibilities.

Plan Provider:
A plan provider, often a financial institution, offers retirement plan services, including investments and administrative support.

Plan Sponsor:
The plan sponsor, typically an employer, creates and manages an employee retirement plan.

Recordkeepers:
Recordkeepers are entities responsible for maintaining and managing retirement plan records, including participant accounts, contributions, and investment information.

Disclosures

This publication is for informational purposes only and is not intended as an offer or solicitation for the sale of any financial product or service. This article is not designed or intended to provide financial, tax, legal, investment, accounting, or other professional advice since such advice always requires consideration of individual circumstances. If professional advice is needed, the services of a professional advisor should be sought. Wilmington Trust is not authorized to and does not provide legal, tax, or accounting advice.

Investing involves risks and you may incur a profit or a loss. There is no assurance that any investment strategy will be successful. Diversification does not ensure a profit or guarantee against a loss. Past performance cannot guarantee future results.

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