

## FIDUCIARY COMPLIANCE CHECKLIST



Plan Fiduciaries are responsible for a variety of notices and duties as part of their responsibilities under ERISA. Fiduciaries must take every step to ensure compliance with the following checklist to avoid personal liability for a breach of their duties to plan participants.

### IDENTIFYING PLAN FIDUCIARIES

ERISA defines a fiduciary as a person who has discretionary control or authority over plan administration, asset management, or renders investment advice for compensation.

- Who are the fiduciaries named by the plan document (trustee, administrator)?

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- Are there any other individuals who are performing fiduciary duties not named under the plan (interpreting the plan document, handling funds, etc.)?

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- Who serves as the ERISA Plan Administrator?

- Employer
- Administrative Committee:

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- Who serves on the plan Investment Committee?

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## IDENTIFYING PLAN FIDUCIARIES

- List the ownership of the plan sponsor:

Name \_\_\_\_\_ Ownership % \_\_\_\_\_

Name \_\_\_\_\_ Ownership % \_\_\_\_\_

Name \_\_\_\_\_ Ownership % \_\_\_\_\_

- Does the plan sponsor (or any owner) own any other entities?
- Are there any affiliated companies?
- Have there been any mergers or acquisitions?
- Are there any other retirement plans?
- Are there any employees who are related to the owners?
- Does any owner's spouse own a separate business?

If the answers to any of these questions are affirmative, there may be coverage issues related to controlled or affiliated group status.

## PLAN DOCUMENT ISSUES

- What is the form of the plan document:
- Prototype
  - Volume submitter
  - Individually designed
- Did the Plan Sponsor obtain an IRS determination letter?
- If yes, date of latest letter \_\_\_\_\_
  - If no, date of master prototype or volume submitter letter \_\_\_\_\_
- Has the plan and Summary Plan Description (SPD) been restated once every 5 years?
- Have all interim amendments since the last restatement been timely adopted?
- Are the plan fiduciaries familiar with the plan provisions regarding eligibility, contributions, loans, distributions, and investments?
- Is the plan being operated consistent with the plan provisions?

Has the plan ever submitted a Voluntary Compliance Program (VCP) Application?

If yes, identify the issue and date of compliance statement:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Has the sponsor distributed an SPD to each participant within 90 days of their plan eligibility?

For any plan amendment or policy change, has a Summary of Material Modification been provided to each participant?

### PLAN FILINGS

Is the plan current with all Form 5500, Form 5330, and SSA filings?

If not, has the sponsor used the DFVC program for any late filings?

Is the plan claiming ERISA 404(c) compliance for all or part of the plan?

Are there any unusual items on the Form 5500 that may be a red-flag for audit (outside loans, hard to value assets, more than 20% of assets in any investment)?

Does the plan have more than 100 participants? An independent audit may be required.

### BONDING REQUIREMENTS

Is the plan sufficiently bonded? ERISA requires plan fiduciaries to be bonded for no less than 10% of the fair market value of the plan assets (up to a maximum of \$500,000). Such Surety (or Fidelity) Bonds can be separate instruments or riders on the plan sponsor’s overall insurance coverage.

Amount of Bond \_\_\_\_\_

Carrier \_\_\_\_\_

Named Fiduciaries \_\_\_\_\_

\_\_\_\_\_

Does the plan hold more than 5% of total assets outside of a bank or investment account? Department of Labor regulations require additional bonding on the amount of “non-qualifying” assets to avoid a required audit.

Fiduciary insurance (different from the ERISA bond) is available to personally insure plan fiduciaries against claims for breach of fiduciary duty.

## PARTICIPANT CONTRIBUTIONS

- Are amounts withheld from pay (salary deferrals and loan payments) being deposited into the plan as soon as possible after payroll?
- If a small plan (under 100 participants), are deposits being made within seven business days after the payroll date?
- If a large plan, are deposits being made within a few days of each payroll?
- If not, has the plan submitted a Voluntary Fiduciary Compliance (VFC) application?

## PARTICIPANT LOANS

- Does the plan permit loans?
- Is there a loan policy to set loan parameters?
- Are all loans being repaid through payroll deduction?
- Has the participant consented to the payroll withholding of loan payments?
- Are loans treated as a segregated asset or part of the investment pool?
- What is the application procedure for a participant loan?
- Is someone determining that the requested loan is within the statutory limits?
- Have participants been informed of any loan processing or maintenance fees?
- Are the fiduciaries familiar with the loan default procedures?

## PLAN DISTRIBUTIONS

- Are in-service distributions permitted? Under what circumstances?
- Are hardship distributions allowed? What are the requirements for hardship?
- What are the procedures (notification, calculation, approval) for severance distributions?
- Do Joint and Survivor rules apply to the plan? If yes, is spousal consent obtained on all distributions and loans in excess of \$5,000?
- What is the plan's "cash-out" limit for distributions? \_\_\_\_\_.
- Are separate distribution conditions applicable to rollover accounts?
- Is the plan complying with required minimum distribution requirements?

- Who is responsible for remitting tax withholding on distributions?
- How does the plan deal with lost or non-responsive participants?

## PLAN INVESTMENTS AND ASSET MANAGEMENT

- Are plan investments pooled or participant-directed? \_\_\_\_\_.
- Does the plan engage one or more money managers or registered investment advisors (RIAs)?
- Have any appointed advisors agreed to be fiduciaries under ERISA?
- Does the plan have a written investment policy statement (IPS)?
- Does the plan have an investment committee?
- Do the plan fiduciaries meet regularly to review the investments and performance against IPS benchmarks?
- Are minutes or notes kept of all meetings?
- If participant-directed:
  - What is the process for determining additions or deletions to the investments being offered to participants?
  - Is the plan in compliance with ERISA 404(c) by allowing participants to exercise control over their accounts and allowing them to choose from a broad range of investments as how to invest their accounts?
  - Does the plan have a Qualified Default Investment Alternative (QDIA) for those who have not made an investment election?
- Do the plan investments follow the Department of Labor guidelines for prudence and diversification?
- Does the plan hold any investments whose value is not readily determinable?
- If yes, have the fiduciaries obtained an independent appraisal of such assets or taken other measures to determine fair market value at the plan's valuation date?

## FEE DISCLOSURES

- Has the plan received written fee disclosure information from all vendors on an annual basis?
- If not, has the plan sponsor terminated those services as required by regulations?
- Have the plan fiduciaries determined whether fees charged for services are reasonable? Has this determination been documented?
- For investment fees, have the fiduciaries performed a benchmarking analysis of the fund investments and offerings?

- For participant-directed plans, have the participants been provided an estimate of the fees to be charged against their accounts on an annual basis?
- For participant-directed plans, are participants informed on a quarterly basis of the actual fees deducted from their accounts?
- Are all participant fees disclosed in the plan's SPD and other communications?

## PARTICIPANT NOTICES AND DISCLOSURES

- If the plan has a safe harbor provision:
  - Has the annual safe harbor notice been provided to all participants between 30 and 90 days prior to the beginning of the plan year?
  - Is a safe harbor notice provided to new participants prior to their entry dates?
- If the plan has an auto enrollment feature:
  - Has notice been provided prior to the beginning of the plan year or entry date?
  - Is there a notification procedure for automatic increases?
- For participant-directed plans:
  - Is there an election on file by the participant choosing self-direction of investments?
  - Have QDIA notices been provided to participants 30 to 90 days prior to the beginning of the plan year or initial eligibility date?
  - Is the plan providing the required annual and quarterly Pension Protection Act notices?
- For salary deferral plans:
  - Is there a current salary deferral election on file for each participant?
- For all plans covered by ERISA:
  - Is there a current beneficiary designation form on file for each participant?
  - Has the plan provided each participant and beneficiary with an annual benefit statement and a summary annual report?

This is a partial listing of fiduciary duties and does not include other aspects of plan administrations such as eligibility determination, nondiscrimination testing, and contribution calculations. Plan fiduciaries should be familiar with all aspects of plan operations and engage qualified professionals where appropriate and necessary to maintain the qualified status of the plan.

If you have questions about this checklist or would like more information regarding the responsibilities and duties of plan fiduciaries, please contact Richard Green at [rgreen@windes.com](mailto:rgreen@windes.com) or (562) 435-1191.