



Fiduciary Checklist

The following are areas of review that retirement plan fiduciaries may want to consider when fulfilling their fiduciary responsibilities. While fiduciaries may want to consider reviewing this checklist on an annual basis, the timing of review for individual items depends on the facts and circumstances surrounding your plan. Plan sponsors and plan officials are encouraged to consult their ERISA counsel for additional guidance and information.

MY ROLE AS A FIDUCIARY

- Consider if your duties cause you to exercise discretion over plan assets or administration (hiring service providers, making investment choices, spending plan assets, etc.). If so, you are a fiduciary and need to make sure you understand and comply with your duties.
 - Consider establishing procedures for delegating fiduciary authority, including consideration of whether you should make a written delegation clearly identifying the scope of delegated authority—for example, using a third party.
 - Provide fiduciary education for new fiduciaries as well as continuing education for all fiduciaries.

BASIC FIDUCIARY DUTIES

- Keep records of meetings and decisions so that you can demonstrate your compliance with a prudent process.
- Develop written procedures for routine fiduciary decisions. For example, do you have a process for making investment decisions or hiring service providers?
- Consider asking plan counsel to make sure you are complying with any prohibited transaction exemptions that might be necessary.
- Act in accordance with the documents and instruments governing the plan.

OVERSEEING INVESTMENTS

- Find out who is responsible for directing investments in your plan.
- Consider setting up a formal investment committee if you don't have one.
- Consider developing an investment policy statement documenting all of the plan requirements and processes.
- Review company stock options (if any) for compliance and consider engaging an independent fiduciary to help monitor the appropriateness of company stock as an investment option.
- Consider engaging an independent fiduciary to help monitor the appropriateness of all investment options.

OVERSEEING SERVICE PROVIDERS

- Conduct a periodic review of service providers to ensure that service and performance standards are being met.
- Document the review/meetings and issues discussed as well as any decisions made during, or as a result of, the review/meetings.
- Familiarize yourself with the requirements of Section 408(b)(2).
 - Review the fees (direct and indirect) of service providers to assess the reasonableness of fees and whether any conflicts exist.
- Conduct an in-depth review of service providers periodically to ensure that your fees and arrangements are consistent with current practices and costs and to determine whether a new request for proposal process is warranted.

HELPING PARTICIPANTS

- Talk to your service providers about providing required participant disclosures.
- Provide ongoing communications on investments and plan features (e.g., loans, distributions, or contributions).
- Make sure all communications are accurate.
- Distribute information to all eligible employees regarding the investment options available under the plan.
- Consider conducting educational meetings and providing general financial/investment information.
- Consider using automatic enrollment with a qualified default investment alternative (QDIA).

PLAN ADMINISTRATOR BASICS

- Develop a compliance plan or calendar* to keep track of the various deadlines throughout the plan year.
- Periodically review the plan documents to ensure that they reflect current practices and have been updated for legal and regulatory changes.
- Complete and file all required government reporting, such as the Form 5500.
- Comply with the applicable Internal Revenue Code nondiscrimination tests.
- Review the process for achieving the following in a timely manner:
 - collecting employee contributions and loan repayments,
 - forwarding contributions and loan repayments to the service provider, and
 - investing the contributions and loan repayments.

*Review compliance calendar on the following page.

FIDUCIARY LIABILITY/DOL AUDIT

- Maintain a well-documented, prudent fiduciary process for decision-making.
 - Consider including documentation that decisions were actually made.
- Consider obtaining liability insurance that protects plan fiduciaries from the costs associated with litigation (including unfavorable judgments).
- Designate a point person (often an in-house or outside attorney) to coordinate and work with the Department of Labor (DOL) in the event of an investigation.

2019 Compliance Deadlines

Note: Includes significant deadlines for defined contribution plans with a December 31 plan year-end date. Some deadlines will vary for plans that follow a different year-end date. If a due date falls on a holiday or weekend, the IRS may provide an extension for certain filing and reporting deadlines.

FIRST QUARTER

January 31:

- Mail IRS Form 1099-R to participants who received a distribution in the prior year.
- File Form 945 (Annual Return of Withheld Federal Income Tax).

February 28:

- File Form 1099-R on paper with the IRS (or March 31, if filing electronically).

Early March:

- In order to meet the March 15 deadline, consider submitting refund requests for ADP and ACP nondiscrimination testing failures to your nondiscrimination testing provider (for calendar year plans).

March 15:

- IRS deadline for issuing refund checks for ADP and ACP nondiscrimination testing to avoid the 10% excise tax for calendar year plans. (Note: Plans that satisfy the requirements of an eligible automatic contribution arrangement (EACA) have a June 30 deadline.)
- Some plans may need to file partnership and S-corp tax returns and deposit employer contributions for unincorporated entities, unless there is a filing extension.

March 31:

- Electronic filing of Form 1099-R to report distributions made in prior year.

SECOND QUARTER

April 1:

- Deadline for initial required minimum distribution (RMD) payments.

April 15:

- Distribute excess deferrals.
- File corporate tax returns and deposit employer contributions for incorporated entities, unless there is a filing extension.

June 30:

- Issue refund checks for ADP and ACP nondiscrimination testing failure for EACA plans looking to avoid the 10% excise tax for calendar year plans.

THIRD QUARTER

July 29:

- Issue summary of material modifications (SMM) for calendar year plans (relating to amendments which were effective in 2018).

July 31:

- File the Form 5500 return (unless filing for an extension).
- File Form 5558 for automatic extension of time to file Form 5500.
- File Form 5330 (Return of Excise Taxes Related to Employee Benefit Plans).

September 15:

- File partnership and S-corp tax returns, and deposit employer contributions (extended deadline).

September 30:

- Distribute the summary annual report (SAR) (unless Form 5500 filing extension was requested).

FOURTH QUARTER

October 15:

- File Form 5500 return (for extended filers).
- File corporate tax returns for incorporated entities and deposit employer contributions (extended deadline).

December 1:

- Distribute applicable participant notices: automatic contribution arrangement (ACA) notice, EACA notice, qualified automatic contribution arrangement (QACA) notice, qualified default investment alternative (QDIA) notice, and/or safe harbor notice.
- Distribute 404a-5 Plan and Investment Disclosure.¹
- Distribute contingent safe harbor notice for current year if making safe harbor contribution and amend plan document.

December 15:

- Distribute the summary annual report (SAR) (for extended filers).

December 31:

- Adopt discretionary amendments for the current plan year.
- Deadline for annual required minimum distributions (RMDs).
- Address 2018 ADP/ACP test failures.

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¹Plan fiduciaries are required to distribute their 404a-5 Plan and Investment Disclosures at least once in any 14-month period.

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