

Fiduciary Duty #4

As we continue our series of brief articles on the duties that present themselves to those who oversee a retirement plan on behalf of their participating employees, our next topic deals with:

Duty to Follow Your Plan Documents

The specific code section that pertains to this duty states the following:

“A fiduciary will discharge his/her duties with respect to a plan solely in the interests of the participants and beneficiaries...in accordance with the documents and instruments governing the plan”

This duty seems pretty clear cut and straight forward on the surface, but in speaking personally with individuals who audit corporate retirement plans, they indicate that the great majority of plans do NOT operate in accordance with the terms found within the plan document. They don't do so intentionally, but it happens due to past practices that are established because “this is the way we have always handled that issue” or because they have made assumptions that certain terminology means something different than what was intended. An example of this can be found in reference to the topic of compensation. There can be an assumption of what that means, and then there can be reality of how it is defined within the plan document itself. The end result can be an interpretation that is far different than what is stated in the document.

As such, here are five suggestions for establishing an effective system to help ensure your plan documents remain compliant and up to date, and that you are operating the plan in compliance with those governing plan documents.

Review the terms of the plan document. Read your plan document often and be sure that you understand each and every provision and how each should be administered. The IRS requires you to operate the plan in compliance with the terms of the document. The most common errors discovered in the operation of defined contribution plans relate to the employer not following the terms of the plan document.

Ensure documents are up-to-date. Perform an annual review of your plan to ensure your plan document is updated for all changes to the Code and regulations. Be sure the plan is amended timely whenever you choose to add an optional feature, such as plan loans or Roth contributions. Be sure the plan document and all amendments, the trust agreement and all service agreements are properly executed. Retain all important plan documents in a safe, accessible place for the life of the plan.

Create a procedures manual. Your plan document is your manual for operating the plan. Most compliance issues can be avoided by a periodic review of the plan document provisions and conforming the plan's policies, procedures and forms to the document. Audit several transactions to ensure your processes comply with the plan document.

Monitor plan investments. Your written Investment Policy Statement (IPS) is a governing plan document for selecting, monitoring and deselecting the funds made available to plan participants. Drafting and adopting an IPS is not enough - you must follow it. Since things can change over time, review your IPS periodically and, if necessary, revise it as necessary. Compliance with your IPS will go a long way toward protecting you from liability, while noncompliance with your IPS may be evidence that you are not prudently managing plan assets.

Monitor third party service providers. It is critical to properly oversee any plan operational functions that are outsourced to service providers. The plan sponsor has ultimate responsibility for the operation of the plan even for functions performed by other parties. An effective selection and monitoring program of providers is essential and can reduce the risk that errors will go undetected.

Please let us know if any of the above information generates questions you would like to discuss.

We hope you find this helpful in assisting you with understanding and fulfilling your duties as the Responsible Plan Fiduciary (RPF) of your corporate plan.

Mike & Matt