

Is it Time for an Investment Committee Tune-up?

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Companies sponsoring a 401(k) plan to help their employees save for retirement often form an investment committee to help select plan investments without realizing the duties that the committee assumes. To help prevent investment committee members from unintentionally breaching their fiduciary duties, companies periodically review their investment committee compliance and should keep complete records of appointments, policies, and procedures. The following investment committee checklist can be a starting point for this review:

- Review the underlying plan document to determine who it lists as the named fiduciary. Most plan documents provided by third party administrators list the plan sponsor as the named fiduciary, which means the board of directors is the governing body responsible for acting as a fiduciary, absent a delegation of such fiduciary responsibility by the board of directors to a committee. If your plan lists the plan sponsor as the named fiduciary and you have a committee selecting and monitoring investments, make sure the board of directors has adopted resolutions formally appointing the committee to act as the investment fiduciary for the plan.
- Review the charter for the investment committee at least annually to ensure no changes are required (and if the committee does not currently have a charter, adopt a charter for the committee).
- Make sure the investment committee members have accepted their appointment to the committee in writing, and if an individual is no longer serving on the investment committee, that he or she has formally resigned from the committee.
- Review the investment policy statement for the plan at least annually (and more frequently if the investment committee changes the asset classes available for investment under the plan). Often, the investment policy statement is prepared by a third party, and it is not unusual to find simple drafting errors in the policy. Investment committee members should review the investment policy statement for accuracy and must understand the principles that should guide their selection of investments under the plan.
- Conduct fiduciary training at least once a year, and as soon as possible for all new members. The training should outline the fiduciary duties of the committee members, as well as highlight how to identify prohibited transactions and possible penalties associated with a breach of fiduciary duties.
- Review your fiduciary liability insurance policy to ensure the list of covered individuals includes members of the investment committee.
- Make sure the investment committee is meeting regularly and that all members are able to attend the majority of the meetings. The investment committee should meet at least once per calendar quarter, and more frequently as the need arises. In addition, if members frequently miss meetings, the plan sponsor should consider removing them from the investment committee and appointing other individuals who are able to attend most of the committee meetings.
- Ensure that the investment committee receives reports about the investments being reviewed at least one business day prior to the meeting so that committee members have an opportunity to review the reports in advance of the meeting. The reports provided to the investment committee should not only document investment performance but should include

benchmarking as well as a review of fees charged to participants under the plan (and how those fees compare to fees charged by other similar investments).

- If the investment committee uses an investment advisor for the plan, the plan sponsor should also monitor the performance of the investment advisor and consider conducting an RFP process every four or five years to make sure the services being provided are the best for the plan and its participants and beneficiaries.

While each plan sponsor's individual circumstances will vary, the foregoing checklist outlines some of the basic items that each investment committee should consider. Plan sponsors should work with their outside counsel and service providers when conducting the review of their investment committees to ensure the committees are operating in compliance with the plan documents and ERISA.