

December 2006

An employer sponsored retirement plan is an important employee benefit and sponsors have a fiduciary responsibility to protect the rights and benefits of participants and their beneficiaries. Failure to meet fiduciary obligations can result in potential added expenses, litigation and in some cases, prosecution. There are some basic principles that a fiduciary must always follow when it comes to the retirement plan. These are:

- Act solely in the interest of the plan's participants and beneficiaries.
- Maintain the plan and its assets for the exclusive purpose of providing benefits.
- Act with care, skill, prudence and diligence as a prudent person would act in a similar circumstance.
- Diversify the plan's assets to minimize risk unless it is prudent to do otherwise; for a defined contribution plan, this rule can be taken to mean that you must provide sufficient investment choices to allow participants to diversify their account balance to achieve an optimum balance between risk and return that is appropriate for their long-term investment portfolio.
- Maintain the plan in accordance with governing laws and the plan document.

Understanding how the principles above relate to actual decisions and activities of the fiduciaries can be difficult. This checklist has been prepared to identify the 35 key steps that fiduciaries should follow to meet their fiduciary obligations to the retirement plan and its participants.

#### **Plan Document and Trust Provisions**

1. Do you have a formal plan document that is in compliance with federal and state laws and reflects current plan operations?
2. Have you reviewed your plan document within the past 12 months to reflect any changes in federal and state laws or regulations or plan operations that may have occurred, or have you delegated this responsibility to a competent professional?
3. Has your plan adopted a trust, custodial account or annuity for the purpose of maintaining plan assets for the sole benefit of participants and their beneficiaries, as required by the Internal Revenue Code?

#### **Fiduciary Appointments, Training and Meetings**

4. Have current plan fiduciaries been appointed or selected according to the plan documents and any governing statutes (state or local laws)?
5. Have you identified all potential plan fiduciaries and notified them of their fiduciary status?
6. Have training opportunities been provided to current or new board or committee members and/or staff over the past 12 months to ensure they are aware of their fiduciary responsibilities to the plan and its participants?
7. Are fiduciaries aware of their potential liability for not meeting their fiduciary duties?
8. Are fiduciary meetings held on a periodic basis to review the plan and make decisions as appropriate?

9. Are meeting minutes and documentations of actions, with supporting rationale, kept for a specified time period (e.g. 10 years) in a due diligence file?
10. Over the past 12 months, have fiduciaries reviewed the plan as a whole, such as through:
  - a. a statistical analysis of participant activities (participant deferrals, asset mix, transaction history),
  - b. a review of the total cost of the program (investment and administrative), and
  - c. an examination of participant/employee satisfaction (surveys), etc., to ensure the plan continues to meet the needs of the workforce?

#### **Investment Selection, Monitoring and Oversight**

11. Does your plan have an investment policy statement either established by the plan sponsor or a bundled plan provider?
12. Has this investment policy statement been reviewed within the past 12 months to ensure it reflects current policies and procedures for selecting and monitoring the plan's investments?
13. Does your plan allow participants to achieve efficient diversification by offering investment options in a broad range of diverse asset classes, such as equities, bonds, cash and real estate?
14. Over the past 12 months, has there been a comprehensive review of the plan's investments to ensure they continue to meet the stated objectives in the investment policy statement as appropriate long-term investment vehicles for plan participants?
15. Is the performance of the plan's investment options and their volatility systematically and periodically measured net of fees and compared to appropriate benchmarks?
16. Are the fees and expenses charged by the investment companies evaluated and monitored to ensure they are appropriate as compared to peer funds within the asset class?
17. Are in-house experts or external (third party) resources used to assist in the review of the plan's investment options?
18. If external resources are used, are they free from potential conflicts of interest (i.e., fund providers or brokers are not reviewing their own funds)?
19. Has appropriate action been taken to remove, close or replace investment options, if warranted by the review of the plan's investment options?
20. Do you maintain documentation of your review process, rationale for fiduciary actions, and any other relevant notes or analysis in the plan's due diligence file?

#### **Operations and Monitoring Service Providers**

21. Have employee deferrals been collected and invested in a timely manner?
22. If the plan permits participant loans, are loan repayments current, with defaulted loans offset or processed as a deemed distribution?
23. Have fiduciaries evaluated the performance and reasonableness of fees for services from the plan's outsourced service providers over the past 12 months?

24. Have fiduciaries required outsourced investment managers and advisers as well as other service providers to provide a disclosure of qualifications, conflict of interest and all sources of compensation over the past 12 months?
25. Have all performance standards been adhered to, or deficiencies addressed appropriately?
26. Have all participant complaints or concerns over the past 12 months been documented and resolved?
27. Have requests for withdrawals under the emergency financial hardship provision been decided appropriately and consistently?

#### **Participant Education, Advice and Disclosures**

28. Within the past 12 months, have all employees (non-participants included) received, or had reasonably available, information about the benefits of participating in the program and how they can enroll?
29. Are participants provided access to the Plan Document, prospectuses for all investment options, investment policy statement and other governing documents?
30. On an on-going basis, do all participants receive, or have access to, education to help them with their investment decisions - such as employee workshops, on-line tools and print material that explain investment basics including risk & return and the importance of asset allocation/diversification?
31. Are participants provided personal counseling or advice or a simplified approach to investing, such as through lifestyle, lifecycle or managed accounts?
32. Do all participants receive sufficient relevant information about each of the plan's investment options that includes the associated investment risk of each option, and any trading policies and restrictions?
33. Do participants receive full disclosure about the fees and expenses that are charged to their account, including any costs that are not itemized on their statements, such as investment management fees that are deducted from investment returns?
34. Do participants receive quarterly statements that identify:
  - a. all transaction activity within their accounts (deferrals, investment experience, fees, withdrawals, exchanges, etc.),
  - b. the allocation of their account balance and future deferrals by asset class, and
  - c. other relevant information such as designated beneficiaries?
35. Over the past 12 months, have participants received advance notice (at least 60 days) of any changes to the plan's investment line-up and/or any blackout periods that may have occurred that limited their ability to execute transactions in their account?

*Neither NAGDCA, nor its employees or agents, nor its contributing authors, provide tax, financial, accounting or legal advice. This memorandum should not be construed as tax, financial, accounting or legal advice; it is provided solely for informational purposes. NAGDCA members, both government and industry, are urged to consult with their own attorneys and/or tax advisors about the issues addressed herein.*

