



Should You Adopt a Plan Committee Charter?

Yes! The primary purpose of a committee charter is to document overall plan governance. It is not dissimilar to how your Investment Policy Statement (IPS) acts as a “roadmap” for managing your plan investments. The charter also documents delegation of fiduciary responsibilities from the plan’s “named fiduciary” to co-fiduciaries. Even small plans with a single fiduciary who makes all plan management decisions can benefit from having a plan governance document.

But simply having a committee is not sufficient. Per ERISA, a retirement plan governance committee charter sets out the committee’s goals and responsibilities. It should include certain specific fiduciary principles, such as managing the plan for the exclusive benefit of participants; practicing ERISA’s procedural prudence; adhering to the plan document; and ensuring proper diversification of investment options.

Committee members should sign the charter initially stating that they understand and accept responsibilities as a plan fiduciary, and resign when retiring from the committee if they remain with your company.

What is a Named Fiduciary?

Every plan document is required to identify the plan’s “named fiduciary.” This can be a specific individual, an entity, or most frequently, “the company” can be the named fiduciary. “The company” as the named fiduciary denotes the main decision-making person or entity (e.g., the party with authority to adopt the plan). For a “C Corporation” this would be the board of directors. The board of directors, as the named fiduciary, can never delegate all its fiduciary responsibility, but via committee charter it

can delegate nearly all plan fiduciary responsibilities (except the responsibility of prudently selecting and monitoring the plan’s committee members, who serve as fiduciaries) to co-fiduciaries (e.g., committee). As a result of this monitoring requirement, the committee needs to keep the board (named fiduciary) informed of its activities and to approve its recommendations on key items which may not have been delegated.

Who, What, When and Why of the Committee

Given the high level of the committee’s responsibility, a representative of top management should play a key role on the committee.

The number of committee members varies, but one should consider having an uneven number of committee members to avoid any voting ties. Typically, medium, and larger plans committees will have 3, 5, or 7 members. Some plans will have a separate investment committee if in-house investment knowledge is available in house. It is important that committee members can make a contribution, and are agreeable, to participating in committee activities.

Most medium and larger plan committees will meet with their plan advisor on a quarterly basis discussing and documenting topics covered such as: investments, participant behavior/retirement readiness, funding, administration, plan goals/objectives, plan administrative processes and general plan management. Committees may occasionally invite a third party to a meeting who represents a specific plan function (plan administration, representing a specific employee group, CEO, etc.).

It is expected that all committee members attend meetings regularly. Those that do not, or otherwise demonstrate a lack of commitment to their role, should be considered for potential removal and or replacement. If a member with specific expertise important to the plan leaves the committee, they need to be replaced by someone with the same expertise.

All committee topics and decisions should be thoroughly and carefully, in accordance with ERISA procedural prudence, and then documented in committee meeting minutes. If the decisions have an ongoing impact on the plan those decisions should be reviewed periodically to insure their continued prudence.

All committee members should receive training on their fiduciary responsibilities under ERISA, their liabilities (and mitigation strategies), plan operations and plan administration. During an annual plan audit (required for plans with 100+ participants) or a DOL investigation, it is typical for evidence of the frequency of fiduciary training for committee members be requested.

ERISA requires retirement plan fiduciaries to exercise their authority "with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." This standard of "...a prudent person acting in a like capacity and familiar with such matter..." means having or obtaining expertise pertaining to each matter under consideration. As an example, when considering an investment decision, credentialed investment expertise is a best practice whether in-house or with a credentialed fiduciary plan investment advisor.

Personal Financial Fiduciary Liability Mitigation

As a plan fiduciary you may become personally financially liable for any breach of duty that causes financial detriment to your plan participants. Retirement plans that operate without a coherent governance structure are susceptible to mismanagement potentially incurring personal financial legal liability for imprudent or ill-informed decisions. There are effective strategies for mitigation this potential liability. Understanding your ERISA fiduciary responsibilities, liabilities, clearly and administering your plan document accurately are most important.

Obtaining ERISA fiduciary liability insurance and/or company indemnification should be considered.

By creating an effective plan governance committee, including ongoing fiduciary education, your plan management can operate effectively for the benefit of plan fiduciaries and plan participants. ■