

EMPLOYEE BENEFIT PLAN COMMITTEE BEST PRACTICES

Who is watching out for your employee benefit plan? Developing an advisory committee for your employee benefit plan will ensure that the plan is being properly managed and that important fiduciary responsibilities are met. Having a committee will mitigate fiduciary and regulatory risk and is also important to demonstrate the company's commitment to making sure the plan is meeting the needs of its employees. Management of an employee benefit plan requires knowledge in a variety of areas such as legal matters, human resources, investment advising, and general accounting. In most organizations, no one person has skill sets in all of these areas. By forming a committee, a company can pool its resources and represent each of these areas. Additionally, in the event of an audit from the IRS or DOL, having a committee which adequately documents its activity provides proof that the company has carried out key fiduciary duties.

Committee participants

At a minimum, the committee should include those involved in making key decisions regarding the 401(k) plan, typically the plan's fiduciary as well as anyone involved in daily plan administration. It should also include at least one member of senior management such as the CFO, CEO or COO. A third-party investment advisor is often included as they are able to provide insight on investment performance and strategies. Some companies may also choose to involve one or two plan participants in order to get a wide range of perspectives from all levels of employees.

Meetings/agenda

In order to stay on track, the committee should develop an agenda for each meeting and a list of goals for each year. Agendas and minutes of related meetings should be documented and stored in a safe location, along with

other important company records. Tasks can be broken up and spread throughout the year; however, at least once per year, the committee should consider the following:

- Implementation of the Plan – Includes review of important plan documents to verify they are maintained and up to date with current laws and regulations. Also includes consideration of any required amendments.
- Major Decisions – There should be written documentation of all major plan decisions such as those to modify, merge, or terminate the plan. This should also include authorization of any discretionary employer contributions to the plan.
- Written Investment Policy - What is the desired outcome of the plan? How can the plan meet those goals? What features are important to plan participants? These questions are often answered by developing a written investment policy.

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- Investment Performance – Are the investments performing in line with expectations and the investment policy? How is performance compared to other products on the market? For this aspect, it can be useful to utilize your outside investment advisor to perform an investment review to address these questions. This process should also include recommendations for adding or replacing investment options.
- Internal Control – What are the plan's area of risk? How can you ensure there are strong internal controls surrounding the plan so that fraud or errors are prevented?
- Plan Expenses – Are the plan's fees in line with the market for similar products? Third party advisors and other independent resources can be a good source for aiding in fee benchmarking.
- Plan Financial Activity Reporting – The committee should review the reports for the plan including the annual 5500 filing and audited financial statements, if applicable.

Plan records should be agreed to contributions and payroll data maintained by the company (verified quarterly at a minimum.) This would also include addressing questions such as: Are the plan administrator's reporting functions adequate? Do the plan sponsor and participants have access to transparent reporting at reasonable intervals throughout the year?

- Participants – There are various reporting requirements that plans must meet throughout the year. This includes notices of plan fees, modifications, and the Summary Annual Report. Generally, these notices are available from the plan administrator; however, it is the responsibility of the committee to ensure that all necessary disclosures have been made. Evaluation should also be done on participant satisfaction which could include review of enrollment levels and investment education resources.
- Insurance Requirements – Companies with an employee

benefit plan are typically required to carry a certain level of fiduciary insurance related to the plan.

- Fiduciary Checklist – Review the Fiduciary Checklist as a tool for discussion to ensure all appropriate matters are discussed.

Documentation

Most importantly, agendas and meeting minutes of the employee benefit plan committee should be documented and maintained with other important company documents. Documenting the actions and discussions of the committee provides proof that the plan sponsor is fulfilling their fiduciary responsibility. If the work has been done, the committee should take credit!

Questions

If you have questions or would like further assistance, please contact Julie Courtney, CPA at jcourtney@shannon-cpas.com or Jeanette Roatch, CPA at jroatch@shannon-cpas.com.

INTERNAL CONTROLS ARE ESSENTIAL IN RETIREMENT PLANS

The Internal Revenue Service is changing the way it approaches audits by focusing more on internal controls. In light of this, we have included the following article from the IRS website:

“An ounce of prevention is worth a pound of cure” definitely applies to keeping retirement plans tax-qualified. Effective internal controls and annual reviews of your plan are essential “ingredients” to prevent costly mistakes that can jeopardize the plan's tax-favored status. Unfortunately, retirement plan audits and voluntary correction submissions often reveal that plans don't have needed internal controls in place or they aren't administered properly.

Benefits to strong internal controls

Having effective practices and procedures to prevent compliance problems is a basic requirement to

be eligible to use the Self-Correction Program. You can self-correct insignificant operational errors at any time and preserve the tax-favored status



of the plan without having to pay any fees.

When auditing a retirement plan, the revenue agent begins by evaluating the plan's internal controls to determine whether to perform a focused or expanded audit. In addition, if the agent finds plan errors, the strength of internal controls is a factor in the negotiation of the sanction amount under the Audit Closing Agreement Program. The agent will make every effort to ensure that the plan has internal controls in place when the audit concludes.

Please note that hiring a service provider doesn't relieve you of the responsibility of keeping your plan in compliance. Problems typically occur when there's a communication gap between you and the plan administrator about what the plan document provides and what documentation is needed to ensure compliance.

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INTERNAL CONTROLS ARE ESSENTIAL IN RETIREMENT PLANS

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Common mistakes

These mistakes commonly result from communication problems between the plan sponsor and administrator.

- **Failure to timely amend the plan or to follow the terms of the plan**

It's common during audits that an employer can't locate documentation to prove the plan was timely amended for current law. This results in an audit closing agreement under Audit CAP. If the error had been discovered through an annual review of the plan document before the plan was audited, the plan sponsor could have filed a much less expensive Voluntary Correction Program submission to bring the plan current with all law changes (self-correction isn't available for document failures).

When you change your plan document, you should also make corresponding

changes to the summary plan description and communicate the changes to plan participants. It's also important to share changes made to the plan with all persons who provide service to the plan. For example, if the plan's definition of compensation is changed, you should communicate this change to anyone involved in determining deferral amounts, performing nondiscrimination tests or allocating contributions.

- **Failure to review in-service, termination, and loan distribution forms to make sure they follow the plan terms**

Many plan vendors use the same distribution forms for all of the plans they administer despite the fact that individual plans may have different distribution options and requirements. Using a generic form can lead to incorrect distributions and incorrect tax reporting.

- **Failure to count all eligible employees in testing**

Plan sponsors often fail to share information with the plan administrator on all employees:

- eligible to make an elective deferral, including those terminated during the year, or
- of a related company with common ownership interests.
- These employees may be eligible to participate in the plan and, therefore, may need to be included in the various tests.

Free tools

The tools on our website can help you strengthen your plan's internal controls. For links to helpful resources, see <http://www.irs.gov/Retirement-Plans/Internal-Controls-Protect-Your-Retirement-Plan>.



Can We Help?

Our firm offers a broad range of employee benefit plan services. If we can be of service to you, please call!

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BETWEEN A ROCK AND A HARDSHIP

When a participant requests access to money in his or her qualified retirement plan account, do you know the rules for distributing it? Federal tax law allows hardship distributions for an employee's "immediate and heavy" financial need. Here's what you need to know.

Hardships and your plan document

Qualified retirement plans, such as 401(k)s and 403(b)s, aren't required to allow for hardship withdrawals. If they do, they use one of two hardship methods:

1. Safe harbor. Under safe harbor hardship rules, hardship withdrawals are allowed for:

- Certain medical expenses,
- Costs relating to the purchase of a principal residence,
- Tuition and related educational fees and expenses,
- Payments necessary to prevent eviction from (or foreclosure on) a principal residence,
- Burial or funeral expenses, and
- Certain expenses for the repair of damage to the employee's principal residence.

2. Facts and circumstances. Under the facts and circumstances rule, the plan sponsor determines if the expense

qualifies based on the IRS hardship definition of immediate and heavy need. However, this offers less protection to a plan sponsor, so the sponsor should consider requiring the six IRS safe harbor reasons.

The plan sponsor determines if a request qualifies as a hardship under the plan provisions. Ask the participant to provide documentation to verify the need and the amount requested. This may be an invoice, a past-due billing statement or notice, or a letter from a financial institution or business. Review the documentation to ensure its validity and keep a copy in the employee's file for audit purposes.

Hardships and other financial resources

Plan sponsors may rely on an employee's representation that he or she has exhausted all other monetary sources unless the plan sponsor has actual knowledge that this isn't the case. For example, a hardship distribution isn't permitted if the participant can obtain funds:

1. Through reimbursement or compensation from insurance,
2. By liquidation of the employee's assets,
3. By stopping elective contributions or employee contributions under the plan,

4. By other available distributions (such as plan loans or in-service distributions) under plans maintained by the employer or by any other employer, or
5. By borrowing from commercial sources.

However, a participant isn't obligated to take counterproductive actions. For instance, obtaining a plan loan isn't required if it would prevent the participant from obtaining additional financing for a home purchase.

Consider implementing an internal hardship application with a participant's signature. The application may include items such as the reason for the hardship and verification that the applicant has exhausted all other available means. Retain a copy for your records.

Making hardships work

Plan sponsors should remind participants that, if they're under age 59½, they will owe a 10% early withdrawal penalty in addition to any taxes they owe on the distribution. Hardships are heavily regulated. This article covers only some of the requirements. Make sure you understand your plan hardship requirements and that hardship distribution paperwork is in order.



Julie Courtney, CPA, Partner, our Director of Accounting and Auditing for Shannon & Associates, is in charge of the firm's employee benefit plan audit practice. Julie is involved in all aspects of the audits we perform as well as plan consulting and advisory services.

Julie has over 20 years of public accounting experience. Her areas of expertise include benefit plan and financial audits and financial reporting. Her responsibilities include advising closely-held businesses, internal control review, and various tax engagements. She also assists in quality control and staff training for the firm. Julie attends the AICPA National Conference on Benefit Plans annually. She has served clients in many industries including the following: manufacturing, non-profit organizations, real estate development, wholesale distributors, restaurants, construction (home builders), and professional services. Julie holds a Bachelor of Arts degree in Accounting from Western Washington University.



Bethany Hulbert, CPC, our Employee Benefits Consultant, has over 10 years experience specializing in defined contribution plan administration and holds the Certified Pension Consultant (CPC) credential from the American Society of Pension Professionals and Actuaries (ASPPA). This experience, along with her educational background in accounting and attendance at numerous seminars and courses, has resulted in an up-to-date mastery in profit sharing, 401(k), and money purchase pension plans. We encourage you to contact Bethany regarding any questions you may have with your defined contribution plans.

Bethany provides expert and timely services in the areas of plan document design, implementation and submission to the IRS; employee communications; all aspects of plan administration; evaluation of controlled groups and related businesses; discrimination/coverage testing and solutions; compliance with all reporting required by the IRS and DOL; and minimum required distributions.

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