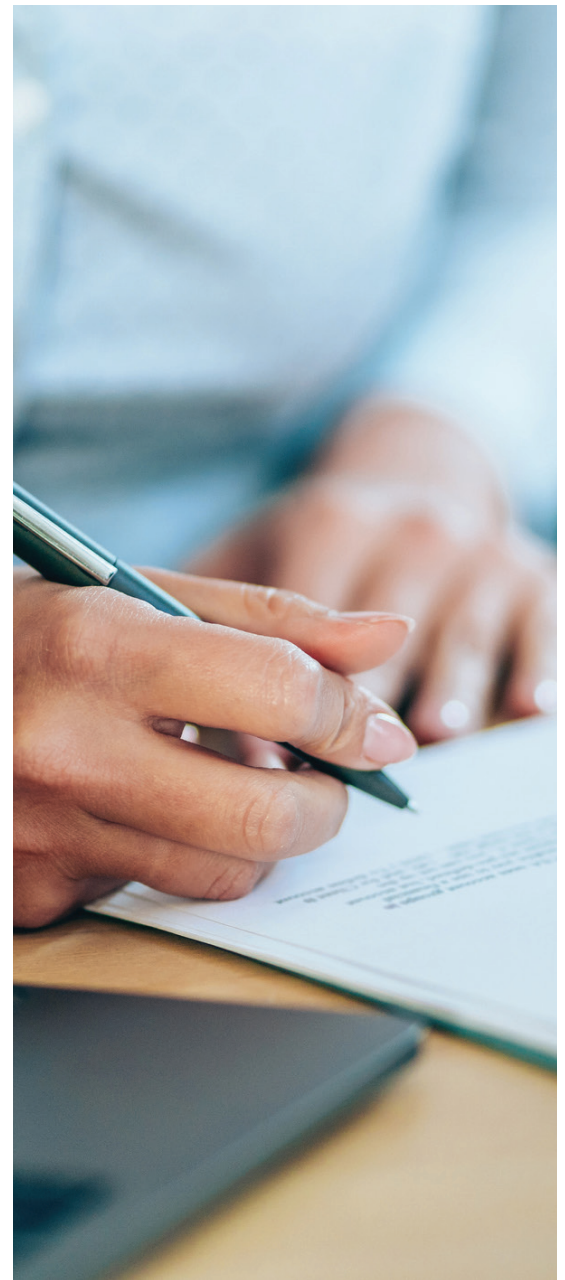


# Compliance and due diligence checklist

## **A tool for fiduciaries of defined contribution retirement plans**

The compliance and due diligence checklist outlines the four main responsibilities of defined contribution plan fiduciaries and describes steps you can take to help fulfill your duties and limit your liabilities. Your ERISA consultant can provide more specific guidance on any of the obligations or suggestions discussed in the following pages.



**A framework for  
fiduciary compliance in  
an easy-to-use format**

## Management of plan operations

Review the plan document and other plan-related materials to understand the extent of your fiduciary role and the scope of your responsibilities.

Establish processes and timelines to ensure compliance with the plan document.

Create a monitoring schedule to periodically review the plan document. Consider including an ERISA attorney or ERISA professional in your reviews to help ensure that the plan document stays up to date with any new regulatory or discretionary plan design changes.

Review your plan's transaction processes to ensure they're in line with what's described in the plan document, administrative procedures, and applicable regulations. Specifically, review the processes around employee deferral, catch-up and rollover contributions, loan requests and repayments, and withdrawals to ensure they're executed in a timely and compliant manner.

Prepare a summary plan description (SPD) and distribute it to all participants and beneficiaries according to the following requirements:

- For existing plans, a new participant must receive a copy of the SPD within 90 days of becoming a participant, and a beneficiary must receive a copy within 90 days after receiving benefits.
- For newly created plans, the SPD must be distributed to participants and beneficiaries no more than 120 days after the plan is first instituted.
- If a participant requests an SPD, the plan sponsor must provide it within 30 days.

If there are material changes to the plan, prepare and distribute an updated SPD or summary of material modifications (SMM). Generally, these updates must be provided no later than 210 days after the end of the plan year in which the modification or change is adopted. Any SMMs must also be provided along with SPDs to newly eligible participants and to participants who request an SPD.

If changes are made to the plan or SPD, an updated SPD must be furnished every five years to all participants and beneficiaries. If there are no changes to the plan or SPD (which is unlikely due to IRS statutory amendments), an updated SPD must be furnished every 10 years to all participants and beneficiaries.

Ensure all required government reporting, such as Form 5500, is completed in a timely manner.

**TIP:** Refer to our participant disclosures and compliance calendar, available from your Manulife John Hancock Retirement representative, for more information.

Ensure you have a fidelity bond and that it:

- Continues to provide the correct coverage amount
- Covers fiduciaries and other employees or third parties involved with handling the assets of the plan against theft, fraud, or dishonesty

**TIP:** Generally, the amount of the bond should be 10% of plan assets, up to a maximum of \$500,000 (\$1 million for plans holding employer securities).

Document all procedures, discussions, and decisions.



## Service provider selection and monitoring

Evaluate the plan's needs, then identify the type of investments, administration, and participant communication services required to address those needs.

**TIP:** Enlist the services of a retirement plan professional if additional expertise is needed to complete this task.

Make sure you receive the required Section 408(b)(2) disclosures from all covered service providers (CSPs) before entering an arrangement.

**TIP:** Review our [Section 408\(b\)\(2\) viewpoint](#) for details on selecting and engaging CSPs.

Document the selection process and the reasons for your selection decisions. Include supporting paperwork such as meeting notes and any benchmarking information received.

Conduct annual or more frequent periodic reviews of your CSPs' performance and fees, factoring in your plan's needs and industry benchmarks.

Document your meetings, including any issues raised and decisions made.



## Investment selection and monitoring

Consider using an [investment policy statement](#) (IPS) to document your investment selection, monitoring process, and decisions. If you plan to satisfy ERISA Section 404(c) requirements, consider documenting this in the IPS as well.

Schedule periodic reviews (at least annually) of the plan's investment options (and/or IPS) to ensure they continue to meet the plan's investment goals and objectives. In your review, consider the following due diligence criteria:

- Performance and fees relative to a recognized benchmark
- Performance relative to assumed risk and return
- Total assets in the product (low assets may warrant removing the investment option)
- Stability of the organization, industry, and so on, in which the investment option is invested

If you plan to satisfy ERISA Section 404(c) requirements, ensure the investment options you make available meet the criteria outlined in that regulation.

**TIP:** Review "[Seven suggestions for designing a 401\(k\) investment menu](#)" for some perspective on selecting and monitoring the plan's investment options.

Provide timely communications to employees around the investment options and related changes.

Document all your investment-related reviews, communications, discussions, and decisions.



## Participant communication

Ensure employees receive timely notifications regarding the plan and its investment options, including related changes. These are the types of disclosures you may have to provide, depending on your intentions for the plan:

- U.S. Department of Labor (DOL) Reg. §404a-5 plan and investment fee disclosures
- SPD
- SMM
- Summary annual report
- ERISA Section 404(c) notifications, if the plan intends to comply
- Quarterly participant account statements
- Blackout notice, if the plan is changing service provider, closing an investment option, or suspending transactions
- Mapping notice, if the plan intends to comply with the ERISA mapping safe harbor
- Qualified default investment alternative (QDIA) notices, if the plan intends to comply with the ERISA QDIA safe harbor

**TIP:** Refer to the “Participant disclosures and compliance calendar” for more information.

If requested, provide employees with:

- Copies of any prospectus, financial statements, reports, or any other material that’s been provided to the plan relating to an investment option
- A list of assets making up an investment option’s portfolio, if the option isn’t a mutual fund

**TIP:** For ease of access, consider making this information available electronically.

Consider developing processes to ensure communications are provided as required.

Consider using an education policy statement to document your plan’s communication objectives.

Document and monitor how the communications are distributed. If electronic delivery is used, you may be able to use the DOL’s safe harbor rules issued in 2002 or its newest safe harbor rules issued in 2020 (see the DOL’s May 2020 “Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA” (published in the *Federal Register*).

**TIP:** Two Manulife John Hancock Retirement viewpoints can provide valuable background. See “What the DOL’s final rule for electronic delivery means for ERISA retirement plans” and “A closer look at the DOL’s safe harbor eDelivery rule” at [retirement.johnhancock.com](https://retirement.johnhancock.com).

Maintain samples of all participant communications, including distribution date and channel, communication type, and names of recipients, among other communications.



## Ways to help limit your fiduciary liability overall

Consider enlisting the services of an ERISA attorney to ensure the plan is compliant with the law, both in form and operation.

Obtain fiduciary liability insurance.

Consider hiring a 3(16) plan administrator to reduce fiduciary liability.

Consider obtaining investment advice by retaining the services of a 3(21) fiduciary or a 3(38) investment manager.

Consider maintaining all documentation—organized by fiduciary focus area (categories above)—in a due diligence file.

Stay informed about regulatory and legislative matters—and ask questions.

### More support

The DOL's [fiduciary education campaign](#) website is dedicated to “educating employers and service providers about their fiduciary responsibilities under ERISA.”

Manulife John Hancock Retirement offers a frequently updated collection of webinars, viewpoint articles, publications, and more on our [“Resources to help fiduciaries”](#) landing page at [retirement.johnhancock.com](#).

If you're looking for direct guidance, consider working with a retirement plan expert. Your financial professional, third-party administrator, or Manulife John Hancock Retirement representative can connect you with an ERISA consultant or help identify an ERISA attorney who can help you navigate these fiduciary requirements.



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