Investment Policy Statement Checklist

While the sponsor of a qualified retirement plan is not required by law to have a written Investment Policy Statement (IPS) for its plan, per se, the Employee Retirement Income Security Act of 1974 (ERISA law) is clear that plans must "provide a procedure for establishing and carrying out a funding policy in a method consistent with the objectives of the plan" [ERISA §402(b)(1)].

The Department of Labor (DOL) states in Interpretive Bulletin (IB) 2016-1 that, “The maintenance by an employee benefit plan of a statement of investment policy designed to further the purposes of the plan and its funding policy is consistent with the fiduciary obligations set forth in ERISA §404(a)(1)(A) and (B).” Furthermore, “for purposes of this document [IB 2016-1], the term ‘statement of investment policy’ means a written statement that provides the fiduciaries who are responsible for plan investments with guidelines or general instructions concerning various types or categories of investment management decisions, which may include proxy voting decisions, as well as policies concerning economically targeted investments or incorporating environmental, social or governance (ESG) factors in investment policy statements or integrating ESG-related tools, metrics and analyses to evaluate an investment’s risk or return or choose among equivalent investments.” IB 2016-1 also states that, “Statements of investment policy … would be part of the ‘documents and instruments governing the plan’ within the meaning of ERISA §404(a)(1)(D).”

Courts regularly examine plans’ IPSs when their fiduciary processes are in question. In at least one court case, *Liss v. Smith*, 991 F. Supp. 278, 1998 U.S. Dist. LEXIS 238 (S.D.N.Y. 1998), the court found that, based on the given circumstances, it was necessary for the plan to maintain a written investment policy statement.

Clearly, a plan sponsor has a fiduciary responsibility under ERISA to put in place a prudent procedure for selecting, monitoring and replacing the investment options the plan offers to participants. To that end, a formal, written IPS can

1. Serve as documentation for this required investment procedure;
2. Help plan sponsors and other plan fiduciaries prudently manage their plans’ assets; and
3. Mitigate fiduciary liability.

The IPS is typically one of the first documents requested in a DOL investigation for potential fiduciary misconduct. The lack of an IPS may indicate a lack of fiduciary oversight. Arguably, the only thing worse than not having an IPS is having one in place and not adhering to its guidelines and documenting such.

The language of the IPS must be “just right,” neither too loose nor too strict. It should outline the actual steps that are part of a fiduciary process, while not being overly detailed or restrictive so as to preclude flexibility on the the part of the fiduciaries. Avoid the use of inflexible words like “must” and “shall” when writing an IPS. Because there is no formal requirement to have a tangible IPS, there is no prescribed format or template for creating the statement.

Use the following questions to help design an effective IPS.

IPS Considerations Check Off

- ☐ **What is the plan’s description?**

- ☐ **What is the purpose of the plan?**

- ☐ **What is the purpose of the investment policy for the plan?**
- ☐ **What is the objective of the IPS?**
- ☐ **Who are the key plan personnel and what are their roles and responsibilities (e.g., fiduciaries, trustees, third-party administrators, investment advisors, investment managers, investment committee, etc.)?**
- ☐ **Does the plan intends to conform to ERISA 404(c)?**
- ☐ **What is the plan's participant education and communication plan?**
- ☐ **What selection criteria will the plan use to identify investments, including a qualified default investment alternative?**
- ☐ **How will the plan monitor investments on an ongoing basis?**
- ☐ **What is the frequency and the methodology for rebalancing investment portfolios?**
- ☐ **What are the criteria for indentifying and watching underperforming investments?**
- ☐ **What are the criteria for replacing an investment?**
- ☐ **How will the plan control and account for investment expenses?**
- ☐ **How will the plan monitor the investment policy on a continuous basis?**
- ☐ **How will the plan select service providers?**
- ☐ **How will the IPS coordinate with the plan's other governing documents?**
- ☐ **Who signs the IPS?**