Eight Reasons to Have an Investment Policy Statement for Your Retirement Plan | Fiduciary Focus Series

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A plan investment policy statement (IPS) is a written statement intended to provide a plan's investment fiduciaries with a framework for decision making regarding various types or categories of plan investments. Typically, an IPS outlines the roles of the parties involved with the plan investment process and details their investment responsibilities. Although an Employee Retirement Income Security Act (ERISA) retirement plan is not required to have an IPS, it is generally considered a best practice to have one.

Why is that? Here are eight reasons to establish and maintain an IPS:

- One reason is the Department of Labor ("DOL") favors IPSs. Over 25 years ago, in Interpretive Bulletin ("IB") 94-1, DOL stated its belief that an IPS serves a "legitimate purpose" in helping to ensure a plan's investments are structured to promote its purposes and funding. DOL further clarified that the maintenance of an IPS for a plan is consistent with ERISA's required duty of prudence. IB 94-1 has since been superseded, but the DOL essentially retains this view in IB 2016-01, the current iteration of this guidance. DOL's regular practice of asking to see a plan's IPS in a retirement plan audit further buttresses this view.

- Additionally, there is some safety in numbers. Investment policy statements have become practically ubiquitous. Since most plans maintain an IPS, not having one can be seen as "outside the lines" and may subject the plan's fiduciary compliance to greater scrutiny. In fact, it is not hard to imagine a plaintiff's firm arguing that a plan's failure to have an IPS is de facto evidence of a fiduciary breach.

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- Most plan investment consultants will insist that their plan clients have an IPS. In fact, many investment consultants assist plan clients with the development of an IPS as one of their core service offerings. This is particularly true in the 401(k) space. Investment consultants offer this service to help their plan clients develop a strategic and coherent approach to plan investments. However, investment consultants also benefit from this practice because the IPS will usually serve as a roadmap for the investment consultant's services to the plan as well.

- Establishing a well-constructed IPS by the plan's named fiduciary, typically the plan sponsor or an investment committee, requires careful consideration of the plan's investment objectives and how to achieve them. Undertaking this process is a useful exercise.
    - In the context of a defined benefit plan, this exercise requires consideration of, among other things, the plan's funding status and policy, the plan's liquidity requirements and applicable plan administration components (i.e., whether the plan is closed to new participants or additional accruals).
    - In the context of a 401(k) plan, this exercise requires consideration of, among other things, plan demographic information, including age and income, plan design features (e.g., automatic enrollment) and the investment sophistication of plan participants.

  In both cases, this undertaking requires the named fiduciary to consider the types of investments it considers prudent and those it may want to restrict.

- By setting forth criteria involved in the selection and monitoring of plan investments and time periods for assessing investment performance, an IPS, if adhered to, can promote consistent plan investment decision making in accordance with objective factors. For example, an IPS generally provides

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the asset classes that the plan's investments should represent. An IPS also includes both quantitative and qualitative factors which should be considered when selecting, monitoring and terminating investment funds or managers.

- In addition to promoting consistent plan investment decision making, establishing the selection and monitoring criteria involved in plan investments, as well as the applicable time periods for assessing investment performance, also helps to demonstrate the existence of prudent fiduciary processes. ERISA doesn't require 20/20 investment hindsight, and bad investment outcomes are still generally protected under ERISA if they result from a prudent decision-making process. As a result, laying out the process for prudent plan investment decision making has independent value.

- On a related note, an IPS also creates a roadmap for documenting the ongoing monitoring of plan investments required by plan fiduciaries. Quarterly investment reporting typically keys off the investment criteria listed in the IPS.

- Finally, an IPS can help socialize new investment committee members to their duties as they rotate onto an investment committee (or new employees working with plan investments). This may bridge the gaps that sudden changes to an investment committee (or investment personnel) may otherwise cause. In this sense, an IPS can help preserve institutional memory of a plan's investment objectives, strategies and processes.

If you have any questions about this article, or if you need help with your IPS, contact Sarah Lowe in Frost Brown Todd's Employee Benefits & ERISA group.

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