

EMPLOYEE BENEFIT REFERENCE

Core Analysis Procedures

Examiners are to consider these procedures but are not expected to perform every procedure at every institution. Examiners should complete only the procedures relevant for the institution’s activities, business model, risk profile, and complexity. If needed, based on other identified risks, examiners can complete additional procedures not included below. References to laws, regulations, supervisory guidance, and other resources are not all-inclusive.

Findings and Conclusions

Document findings and conclusions here, and include a summary of these findings and conclusions in the appropriate Primary or Supplemental modules.

General Administration

1. Determine whether the institution serves in the following capacities:

- **Trustee or plan administrator**
- **Participant record keeper**
- **Investment manager**
- **Investment advisor**
- **Custodian**
- **Agent**
- **Named fiduciary¹**

2. Determine whether the institution properly documents the administration of employee benefit plans. Consider whether the institution maintains copies of:

- **The plan and trust agreement and any amendments, or an adoption agreement for prototype plans [ERISA 404(a)(1)(D)]**
- **The plan sponsor's board resolution adopting the plan and any subsequent amendments**
- **The Internal Revenue Service's (IRS) determination letter qualifying the plan for tax deferred contributions (prototype plans may maintain a centralized determination letter)**
- **Co-fiduciary approvals for investments or other actions as needed**
- **The plan's adoption of any collective investment funds (refer to Pooled Investment Vehicle Module as needed) [IRS Revenue Ruling (RR) 81-100, RR 2011-1, and RR 2014-24]**
- **Documents evidencing appointment and specimen signatures of those individuals authorized to direct the institution (i.e., plan sponsor, plan administrator, investment manager, third party service providers)**

¹ Other than an own-bank plan, it is not prudent for institutions to assume the responsibility and liability of being a named fiduciary for purposes of the Employee Retirement Income Security Act of 1974, as amended (ERISA).

<ul style="list-style-type: none"> • Written authorizations for benefit payments, participant loans, and other actions • Written investment directives, or choice-of-investment options for participant directed plans, if the institution does not have investment authority
<p>3. Determine whether the institution inappropriately relies on exculpatory provisions which attempt to relieve a fiduciary from liability. [ERISA 410]</p>
<p>4. Determine whether fees charged by the institution are in accordance with governing documents, fee agreements, or the institution's fee schedule, and are collected at appropriate intervals.</p>
<p>5. Determine whether synoptic records or other electronic account information are accurate and adequately summarize the governing documents.</p>
<p>6. Determine whether a tickler system establishes reminders for all significant events.</p>
<p>7. If the institution provides administrative services to plans for which it is responsible for preparing or distributing the Summary Plan Description (SPD), determine whether:</p> <ul style="list-style-type: none"> • The SPD accurately reflects the provisions of the plan • A copy of the SPD is provided to plan participants in the following circumstances: <ul style="list-style-type: none"> ○ Upon initial participation in the plan ○ After significant plan changes (of if a summary of material modification (SMM) was provided) ○ At least once every five years
<p>8. Evaluate the services provided by the provider of any prototype plan documents used by the institution, including updates and training.</p>
<p>9. Determine whether the institution has any co-fiduciary liability. [ERISA 405] Consider whether the institution:</p> <ul style="list-style-type: none"> • Knowingly participated in or undertook to conceal a breach by another fiduciary • Failed to act prudently, which enabled another fiduciary to commit a breach • Failed to make reasonable efforts to remedy a breach, that such fiduciary had knowledge of, by another fiduciary

10. Determine whether plans are administered for the exclusive benefit of the plan participants and beneficiaries and for defraying reasonable expenses of administering the plans. [ERISA 404(a)(1)(A)]
11. Determine whether the institution acts with care, skill, prudence, and diligence when acting as a fiduciary to plans.² [ERISA 404(a)(1)(B)]
12. Determine whether plans are administered in accordance with the governing documents. [ERISA 404(a)(1)(D)]
13. Determine whether all employee benefit accounts have had an adequate annual administrative and investment review.
Acceptance of Employee Benefit Plan Deposits
14. Determine whether the institution refrains from accepting employee benefit plan deposits if the institution is less than adequately capitalized. [Federal Deposit Insurance Act Section 11(a)(1)(D)(ii)]
Prohibited Transactions
15. Determine whether plans have entered into any prohibited transactions [ERISA 406, 407 and 408, and Internal Revenue Code (IRC) 4975(c)(1) and 4975(d)], with parties in interest [ERISA 3(14)], or disqualified persons [IRC 4975(e)(2)]. Consider the following transactions:^{3, 4} <ul style="list-style-type: none"> • Sale, exchange or lease of property [406(a)(1)(A)] • Lending money or other extension of credit [406(a)(1)(B)]

² See Department of Labor (DOL) Field Assistance Bulletin 2004-03 regarding the fiduciary responsibility of directed trustees with respect to publicly traded securities.

³ ERISA 408(b)(17) provides an exemption for certain prohibited transactions for non-fiduciary parties in interest that provide services to a plan or are related to a service provider to a plan. ERISA 408(b)(20) provides limited exemptive relief for certain prohibited transactions that are corrected within 14 days of discovery.

⁴ DOL 2550.408b-2 requires covered service providers to make certain disclosures to a responsible plan fiduciary regarding the costs and other information concerning the service contract or arrangement in order for the contract or arrangement to qualify for an exemption from the prohibitions of ERISA §406(a)(1)(C).

<ul style="list-style-type: none"> • Furnishing goods, services or facilities [406(a)(1)(C)][408(b)(2)][DOL Regulations at 29 CFR 2550.408b-2] • Transfer of assets [406(a)(1)(D)] • Use of, or benefit derived from, plan assets [406(a)(1)(D)] • Acquisition of employer securities or real estate [407(a)]
<p>16. Determine whether plans have entered into any nonexempt transactions with fiduciaries. [ERISA 3(14)(A); ERISA 406(b); IRC 4975(e)(3)] Consider the following transactions:</p> <ul style="list-style-type: none"> • Dealing with the plan assets in the institution's own interest or for its own account • Acting adversely to the interests of the plan or its participants or beneficiaries • Receiving any consideration from dealing with the plan's assets
<p>17. Determine whether the acquisition of employer securities or employer real property would potentially constitute a prohibited transaction under ERISA 406(a) or IRC 4975(c). [ERISA 407; ERISA 408(e); DOL 2550.408e; IRS Regulations at 26 CFR 54.4975-12] Consider whether at the time of acquisition:</p> <ul style="list-style-type: none"> • The purchase did not exceed limits established by the plan • The purchase did not exceed ten percent of the fair market value of plan assets, if the plan does not otherwise set a limit (the ten percent limit may be exceeded in eligible individual account plans, such as ESOPs, stock bonus plans, and others, if plan documents specify other limits) • Employer real property is geographically dispersed and suitable for more than one use
<p>18. Determine whether investments in proprietary mutual funds are consistent with DOL's Prohibited Transaction Class Exemption (PTE) 77-4.⁵</p>
<p>19. Determine whether the institution receives any compensation or fees from plan assets. [ERISA 406(b)] Consider the following:</p> <ul style="list-style-type: none"> • Shareholder or participant record keeping fees from mutual funds⁶ • Securities and Exchange Commission Rule 12b-1(b) fees • Soft dollars on securities transactions that do not meet the safe harbor requirements of Section 28(e) of the Securities Exchange Act of 1934 • Sweep fees in discretionary accounts [DOL Advisory Opinion (AO) 86-FRB; AO 88-2A]

⁵ Also refer to the Pooled Investment Vehicle module. FRB: see SR 99-7.

⁶ Refer to the Pooled Investment Vehicle module

<p>20. Determine whether overdrafts in employee benefit accounts may constitute prohibited transactions. [DOL PTE 80-26; DOL AO 2003-02A]</p>
<p>21. Determine whether own-bank deposits qualify for exemption from ERISA 406 (prohibited transactions). [ERISA 408(b)(4)] Consider the following requirements:</p> <ul style="list-style-type: none"> • The deposits bear a reasonable rate of interest • The plan covers only bank and affiliate employees • The deposits are expressly authorized
<p>22. Determine whether the following investments qualify for an exemption from ERISA 406 (prohibited transactions):</p> <ul style="list-style-type: none"> • Insurance or annuities [ERISA 408(b)(5)] • Collective investment funds or certain pooled investment funds. [ERISA 408(b)(8); IRC 4975(d)(8); DOL PTE 91-38]
<p>23. Determine whether the institution identified and reported any prohibited transactions to the Department of Labor under one or several of DOL’s voluntary correction programs.⁷</p>
<p>Plan Assets</p>
<p>24. When applicable, determine whether plan assets are adequately diversified, unless clearly prudent not to do so [ERISA 404(a)(1)(C)], or unless plan participants direct the investments. [ERISA 404(a)(2)].</p>
<p>25. Determine whether third party investment managers acknowledge in writing that they are a fiduciary to the plan.</p>
<p>26. Determine whether the assets of discretionary accounts are invested in accordance with:</p> <ul style="list-style-type: none"> • The plan’s funding policy and investment objectives • Any unique investment provisions contained in plan documents

⁷ Institutions are not required to participate in any of DOL’s voluntary correction programs – self reporting and correction are voluntary. In addition, not all types of prohibited transactions qualify for DOL’s voluntary correction programs and, as noted above, ERISA 408(b)(20) provides limited exemptive relief for certain prohibited transactions that are corrected within 14 days of discovery.

<ul style="list-style-type: none"> • The institution’s investment policies
<p>27. Determine whether sweep funds are used. If so, consider if the use was approved by the plan sponsor, a prospectus was provided to the plan sponsor, and whether all fees were disclosed.</p>
<p>28. Determine whether investments in repurchase agreements, banker’s acceptances or commercial paper comply with the provisions of DOL PTE 81-8 (short-term investments).</p>
<p>29. Determine whether real estate is administered in accordance with ERISA. Consider the following:</p> <ul style="list-style-type: none"> • Perfection of title to the property • Performance of annual inspections • Evaluation of potential environmental liability • Adequacy of insurance showing the trustee as loss payee • Payment of real estate taxes • Maintenance of the property in good condition
<p>30. Determine whether non-publicly traded assets are properly valued. [IRS RR 59-60; ERISA 404(a)(1)(B)] Procedures may include:</p> <ul style="list-style-type: none"> • Annual appraisal of assets by an independent third party • A reasonable method for valuing assets held in individual or segregated account plans • Reasonable methods for determining the fair market value of qualifying employer securities and real estate
<p>Participant Loan Administration [ERISA 408(b); IRC 4975(d); DOL 2550.408b-1]</p>
<p>31. Determine whether the institution is authorized to approve participant loans or maintains written directives from authorized parties.</p>
<p>32. Determine whether loans are available to all participants on a reasonably equivalent basis.</p>

33. Determine that loans are not available to highly compensated employees in amounts greater than other employees.⁸
34. Determine whether plans contain specific provisions for administering loan programs, including the following: <ul style="list-style-type: none">• Identity of the person or position authorized to administer the loan program• Procedures for applying for loans• Basis on which loans will be approved or denied• Any limitations on the types and amount of loans offered• Procedures for determining a reasonable rate of interest• Types of collateral that may secure a loan• Events constituting default and the steps that will be taken to preserve plan assets in the event of default
35. Determine whether loans bear a reasonable rate of interest and comply with the plans' established loan program.
36. Determine whether loans are adequately secured.
37. Determine whether the institution maintains appropriate policies governing the administration of participant loans.
38. Determine whether participant loan program provisions reflect IRC provisions, including Section 72(p). Loan restrictions include the following: <ul style="list-style-type: none">• Loans to each participant cannot exceed a maximum of \$50,000 minus the highest outstanding loan balance during the prior 12-month period• Repayment is required within five years, except for loans used to acquire a principal residence• Loans require substantially level amortization, with payments required at least quarterly
39. Determine whether spousal consent is obtained when necessary. [IRC 417 (a)(4)]

⁸ Refer to DOL Field Assistance Bulletin 2003-01 for details concerning when a participant loan may be denied to a director or executive officer.

<p>40. Determine whether loans not complying with the IRC have appropriately been deemed as taxable distributions. [IRC 72(p)-1] Consider the following events that could necessitate a deemed distribution:</p> <ul style="list-style-type: none"> • Loans exceed the maximum repayment terms • Loans are not evidenced by an enforceable agreement • Any portion of a loan in excess of the \$50,000 maximum • Loan payments are not received at least quarterly, unless the plan has adopted a grace period (not to exceed the last day of the calendar quarter following the calendar quarter in which the required payment was due)⁹
<p>41. Determine whether participants are provided Form 1099 for the tax year in which a loan is deemed a distribution.¹⁰</p>
<p>42. Determine whether the institution maintains records for loans deemed as distributions in prior years.</p>
<p>43. Determine whether loans deemed as distributions remain as plan assets until such time as the plan allows for in-service withdrawal or actual distribution.</p>
<p>44. Determine whether prohibited loans have been made to an “owner-employee” who is a sole proprietor, a 10 percent or more partner in a partnership, or a five percent or more owner of a Subchapter S Corporation. [ERISA 406(a) and 408(d); IRC 4975(c)]</p>
<p>Participant Recordkeeping</p>
<p>45. If the institution performs participant record keeping services, determine whether:</p> <ul style="list-style-type: none"> • Record keeping is performed for all types of plans • The institution only performs record keeping services for plans where it serves as trustee

⁹ IRC 414(u)(4) allows a plan to suspend payments during periods when an employee is performing service in the uniform services.

¹⁰ Form 1099 does not have to be provided until February 15 of the year following the taxable event.

46. Determine whether a separate agreement delineates the duties and responsibilities relating to participant record keeping, and if the covered service provider disclosures required by DOL Regulation 2550.408b-2 have been provided.
47. Determine whether comprehensive policies and procedures are maintained for participant record keeping activities.
48. Determine whether managers and employees have the necessary expertise and specialized training in participant record keeping.
49. Assess quality control or other review procedures for participant record keeping activities.
50. Review customer complaints relating to participant record keeping.
51. Determine whether appropriate procedures are in place to monitor the receipt of timely employer contributions and employee salary deferrals.¹¹
52. Determine whether audit procedures include a review of participant record keeping.
53. Determine whether items maintained in suspense accounts are reviewed frequently and cleared in a timely manner.
Securities Lending (Refer to the Interagency Policy Statement on Securities Lending)
54. Determine whether securities lending arrangements are governed by a written agreement.

¹¹ Refer to DOL Field Assistance Bulletin 2008-01 for details concerning fiduciary responsibility for collection of delinquent contributions.

<p>55. Determine whether financial information is obtained from borrowers and if a credit analysis is performed prior to entering into any securities lending arrangement.</p>
<p>56. Determine whether the collateral received from borrowers consists of cash, government securities or irrevocable bank letters of credit, the fair market value of which is at least 100 percent of the market value of the borrowed securities.</p>
<p>57. Determine whether collateral margins are monitored and maintained for the duration of the loan.</p>
<p>58. If securities lending arrangements involve parties in interest, determine whether the borrower or any affiliate of the borrower has discretionary authority or control with respect to the investment of plan assets or renders investment advice to the plan. [ERISA 406(a); DOL PTE 2006-16]</p>
<p>59. Determine whether plans continue to receive dividends, stock splits, etc., during the term of the loan.</p>
<p>60. Determine whether plans receive a reasonable fee relative to the value of the borrowed securities and the duration of the loan, or that plans have the option of investing cash collateral.</p>
<p>61. Determine whether compensation for services rendered in connection with securities lending complies with DOL PTE 2006-16.</p>
<p>Employee Stock Ownership Plans (ESOPs)</p>
<p>62. Review employer stock purchases. Consider the trust committee’s role in ensuring:</p> <ul style="list-style-type: none"> • Investments are prudent and in compliance with the plan documents [ERISA 404(a)(1)(B); 404(a)(1)(D)] (if investments are not considered prudent, determine whether the plan requires investment in employer securities or only permits such investments) • Not more than adequate consideration is paid; [ERISA 3(18); ERISA 408(e); DOL 2550.408e(d); DOL 2510.3-18(b)] • No direct or indirect commissions are paid to parties in interest [ERISA 408(e)(2)]

<p>63. Determine whether valuation practices for employer stock are adequate [ERISA 404(a)(1)(B)] by:</p> <ul style="list-style-type: none"> • Reviewing valuation reports of third party appraisers, • Assessing the independence of third party appraisers, and • Determining whether adequate documentation is maintained.
<p>64. Determine whether any stock purchases were made from or through a disqualified person. [IRC 4975(e)(2)] Also, determine whether the fair market value of the stock was documented as of the date of the transaction. [IRC 54.4975-11(d)(5)]</p>
<p>65. Determine whether loans to purchase qualified employer securities: [References: ERISA 406, 407, 408(b)(3); IRC 4975(d)(3); DOL 2550.408b-3]</p> <ul style="list-style-type: none"> • Were for the primary benefit of the plan participants and beneficiaries • Bear a reasonable rate of interest • Are payable over a specified term and not payable on demand, except in the event of default • Were used exclusively to purchase qualified employer securities or repay a prior exempt loan • Are collateralized only by the employer securities • Do not include recourse against the plan other than the pledge of the securities acquired • Provide that the purchased securities will be released from encumbrance as provided in DOL 2550.408b-3(h) • Comply with the provisions of the plan documents [ERISA 404(a)(1)(D)]
<p>66. Review the procedures for maintaining a suspense account for employer securities purchased but not yet allocated to participants. [IRC 54.4975-11(c)]</p> <ul style="list-style-type: none"> • Review the sufficiency of accounting procedures and records. • Determine whether voting procedures for unallocated shares are in accordance with the plan documents.
<p>67. Determine whether voting rights are passed through to the participants for those shares allocated to individual accounts. [IRC 409(e); SEC 240.14c-7]</p>
<p>68. Evaluate the trustee’s management of potential conflicts of interest when the institution acts both as trustee and lender to a plan.</p>

Own-Bank Plans
69. Review board or committee minutes relating to the operation of the plans.
70. Determine whether plans have been amended since the previous examination and that appropriate documentation of such amendments has been maintained.
71. Determine whether ESOP plans provide a put option for the following: [IRC 54.4975-11; DOL 2550.408b-3]
<ul style="list-style-type: none"> • Non-publicly traded employer securities purchased with an exempt loan. • Employer securities subject to a trading limit when distributed.
72. Determine whether affiliate or covered transactions comply with FRB Regulations 23A and 23B.
73. Determine whether the institution refrains from charging fees other than direct costs and expenses. [AO79-49]
74. Determine whether the plan is covered by fiduciary liability insurance and the amount of any such insurance. [ERISA 410]
75. Determine whether the institution provides plan participants periodic pension benefit statements within applicable timeframes and containing all required information. [ERISA 105(a); Field Assistance Bulletins 2006-3 and 2007-3]
76. Determine whether the plan administrator provides disclosures concerning plan-related information, administrative expenses, and individual expenses to each participant or beneficiary having the right to direct the investment held in, or contributed to, his/her individual account, prior to the date that the participant or beneficiary can first direct investments in the account, and at least annually thereafter. [DOL 2550.404a-5 and ERISA 408(b)(2)]

<p>77. Determine whether the institution discloses to individual account plan participants their right to divest of employer securities. [ERISA 101(m)]</p>
<p>78. Review the most recent top heavy and nondiscrimination test results for compliance with IRC requirements.</p>
<p>79. Review the most recent Summary Plan Description and determine whether it accurately reflects the governing plan documents.</p>
<p>80. Determine whether directives from plan participants are implemented in a timely manner and in accordance with plan documents. [ERISA 404(a)(1)(B) and (D)]</p>
<p>81. Determine whether fiduciaries to the plan, other than the institution or plan sponsor, are bonded. [ERISA 412; Field Assistance Bulletin 2008-4]</p>
<p>82. Review the most recent Form 5500 to determine whether the institution is properly reporting plan assets, including participant loans.</p>
<p>Defined Benefit Plans</p>
<p>83. Determine whether a funding policy consistent with ERISA’s minimum funding standard has been implemented and addresses:</p> <ul style="list-style-type: none"> • Minimum funding requirements and target funding levels • Actions required to address funding deficiencies, including requests for funding deficiency waivers • Procedures to comply with any funding-based limitations on benefits and plan amendments • Procedures to comply with any Pension Benefit Guaranty Corporation (PBGC) notifications • Procedures to comply with provisions of annual funding status notices
<p>84. Review the most recent actuarial report to determine whether plans meet the ERISA minimum funding standard. [ERISA 302 and 303]</p>

<p>85. Determine whether the institution is in compliance with ERISA’s funding-based limitations on benefits and benefit accruals if the plan’s funding target attainment percentage is less than 60% or would be less than 60%. [ERISA 206(g)(1)]</p>
<p>86. Determine whether the institution is in compliance with ERISA’s limitations on plan amendments if the plan’s funding target attainment percentage is less than 80% or would be less than 80% after such amendment. [ERISA 206(g)(2)]</p>
<p>87. If the institution’s funding target attainment percentage is less than 80%, determine whether the institution has provided the required notice to PBGC. [ERISA 4010(b)]</p>
<p>88. Determine whether the institution provides annual funding status notices to participants and beneficiaries. [ERISA 101(f); Field Assistance Bulletin 2009-1]</p>
<p>89. Review agreements with outside investment managers and the procedures used to monitor their performance.</p>
<p>Individual Account/Participant Directed Plans</p>
<p>90. Determine whether plans operate consistent with DOL 2550.404c-1 in order to limit fiduciary responsibility and liability for participants or beneficiaries who can exercise control over assets. [ERISA 404(c)] Consider the following:</p> <ul style="list-style-type: none"> • Plan documents should clearly state that the plans are intended to constitute an ERISA 404(c) plan, and that fiduciaries will be relieved of responsibility for investment losses • Participants should provide at least three investment alternatives, each of which is diversified and has materially different risk and return characteristics • Participants should be allowed to give investment instructions not less than quarterly on at least three investment options and more frequently for more volatile investments • Participants should be provided sufficient information to make informed investment decisions [DOL 2550.404a-5] • Participants should be given a description of fees and expenses chargeable against their accounts [DOL 2550.404a-5] • Plan fiduciaries should appropriately select and monitor investment options to ensure that they are prudent choices for the plans • The institution should use a Qualified Default Investment Alternative (QDIA) [Field Assistance Bulletin 2008-3] • The institution should conform to provisions regarding investment advice [ERISA 408(b)(14); ERISA 408(g); Field Assistance Bulletin 2007-1]

Deferred Compensation/Excess Benefit Plans
<p>91. Determine whether plans are nonqualified and, therefore, not subject to ERISA. [ERISA 3(36); 401(a)(1)]</p> <ul style="list-style-type: none"> • Determine whether plans are unfunded.¹² • Review nonqualified plans for prudent administration.
Self-employed Retirement Plans (KEOGH or HR-10)
<p>92. Determine whether accounts which cover only the "owner-employer" comply with the prohibited transaction provisions of ERISA 406 and IRC 4975.</p>
<p>93. Determine whether accounts covering both the "owner-employer" and other employees comply with ERISA 404, ERISA 406, and IRC Section 4975.</p>
<p>94. Determine whether accounts hold any collectibles or coins that should be treated as distributions. [IRC 408(m); PTE 91-55]</p>
<p>95. Determine whether accounts are invested in the bank's collective investment funds.¹³</p>
Individual Retirement Accounts
<p>96. Determine whether the fair market value of all assets has been reported annually, including limited partnerships, real estate, and other non-publicly traded assets. [IRC 408(i)]</p>
<p>97. Determine whether accounts hold any collectibles or coins that should be treated as distributions. [IRC 408(m); PTE 91-55]</p>

¹² Plans are generally unfunded if the assets in the plan could be available to pay the employer's general creditors in the event the employer becomes insolvent.

¹³ Refer to the Pooled Investment Vehicle module.

98. Determine whether accounts have entered into any prohibited transactions with a disqualified person. [IRC 4975 and DOL AO 89-03]
99. Determine whether investments in proprietary mutual funds comply with the PTE 77-4. [AO 93-26A]
100. Determine whether accounts are invested in the bank's collective investment funds.¹⁴
Terminating or Abandoned Plans
101. Determine whether an IRS determination letter is received prior to final termination and distribution of plan assets.
102. In the event of a distressed or involuntary plan termination, determine whether the institution has provided participants with the information required by ERISA 4041 or 4042.
103. Determine whether assets have been distributed or appropriately transferred in a timely manner.
104. Determine whether the institution is making reasonable efforts to locate any lost participants. [See Field Assistance Bulletin 2004-2 for details concerning a fiduciary's duty to locate missing participants of a terminated plan.]
105. Determine whether the institution complies with outstanding DOL Guidance governing any abandoned plans for which the institution is a fiduciary. [PTE 2006-6]
End of Core Analysis.

¹⁴ Refer to the Pooled Investment Vehicle module.

