

Adviser Report  
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## Investment Policy Statements: Errors & Omissions

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In recent years, we have reviewed many investment policy statements prepared by advisers. For the most part, they have been well-drafted. However, we have found problems. This article highlights four of those.

- **404(c) Compliance.** IPSs often say that the plan intends to comply with 404(c) and that the IPS provisions insure compliance (or words to that affect). That presents a number of issues. The first is that, when we ask plan sponsors whether they understand the 404(c) requirements and whether they are taking steps to comply, their responses are often “no” and “no.” Our concern is that advisers may inadvertently be giving plan sponsors the impression that the IPS can somehow assure 404(c) protection—which it cannot.

Also, item 8a on the Form 5500 asks plan sponsors to indicate whether or not they intend to comply with 404(c). Obviously, the answer to 8a and the language of the IPS should be consistent.

Our recommendation is that advisers should either take the 404(c) language out of the IPS (and, as that suggests, there is not a requirement that it be in the IPS) or modify it to state that the IPS is “intended to be consistent” with 404(c) compliance (as opposed to language like “insure”).

- **Mandatory Language.** Many IPSs require literal compliance with their terms. For example, an IPS might require that an investment be removed under specific circumstances. From a risk management perspective, we disagree with that approach, since the failure to follow the terms of the IPS can be a fiduciary breach. Instead, we prefer language that states that the IPS is a set of guidelines to assist the plan committee in fulfilling its fiduciary responsibilities but is not mandatory.
- **QDIAs.** Surprisingly, we find a number of IPSs that do not discuss QDIAs. That is probably because they are out of date, that is, they have not been updated for the QDIA regulation. An IPS should have a provision regarding the selection and monitoring of a QDIA.

For example, if a balanced or other risk-based fund is used, the IPS should describe a process to satisfy the DOL requirement that the demographics of the participant population be evaluated to determine the appropriate level of risk.

- **Target Date Funds.** We also find that most IPSs do not include detailed language about the selection and monitoring of target date funds. For example, did the fiduciaries select an aggressively allocated suite of target date funds? If they did, what was the reason? What are the guidelines for reaching that decision? Is the suite of target date funds designed to be “to retirement” or “through retirement?” What were the criteria fiduciaries used to select one or the other? The decision of “to” or “through” is a fundamental decision for fiduciaries to make in selecting target date funds.

These are just four issues. There are more. We recommend that advisory firms—including consultants, RIAs, and broker-dealers—have competent legal counsel review their investment policy statements to make sure that they are up to date and appropriately drafted.

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