



“The Investment Policy Statement Through the Eyes of a Former DOL Investigator”

As a Former U.S. Department of Labor Senior Investigator, I get several calls every day with questions about ERISA and best practices. One that pops its head up often is the question about the need for an Investment Policy Statement (IPS). A common question is *“are retirement plans required to have an IPS?”* The answer is very simple, NO! This answer often shocks people because like a lot of things ERISA is a complex Federal regulation and the statutes often gets lost in translation or sales pitches from crafty advisors.

Is having an IPS a good best practice? Well, the answer is yes and no. When you as a fiduciary adopt an IPS it becomes part of your plan document and it must be followed. Failure to follow a plan document is a violation under ERISA Section 404(a)(1)(D). Adopting an IPS and then not following it is a common mistake make by fiduciaries.

Let’s look at a common scenario and see how things can go bad. A fresh faced college graduate gets a job with a financial institution. Because he is green in the business he is handed a list of local 401(k) plans to call on. A mutual fund company gives him a sample IPS to use. As part of his cold calling script, the new advisor is looking for plans that don’t have an IPS. Once face to face the advisors stress the need for an IPS and the fear of risk of the big bad DOL coming in and fining them thousands of dollars. The plan hires the new advisor to manage their small \$300,000 retirement plan. The fiduciary adopts an IPS based on the recommendation of the advisor. In the IPS it states that the investments will be reviewed quarterly. Most advisors like to add quarterly requirements to IPS because it allows the advisor to get more face time and more face time reduces the risk of losing the business. Several years pass and the advisor has refined his sales pitch and is now prospecting larger plans. Because the plan’s commissions don’t warrant the advisors time, the advisor suggest that *“now because of his professional guidance the plan is running much better and the fiduciary only needs to meet once a year.”* The fiduciary whose time is valuable agrees. Several years later during a DOL investigation, it is revealed that the IPS states the investments need to be reviewed quarterly but they have only been reviewed annually for the past few years. The fiduciary is in violation of not following the plan documents and could face further damages and penalties if it is found that the plan suffered losses due to this failure.

There is a lot of discussion that needs to take place between the plan fiduciary and his/her professional service providers when deciding whether to adopt and IPS or not. As a fiduciary failing to follow your IPS, or failing to monitor an outsourced investment fiduciaries can make you personally liable for any damages to the plan, fines and or penalties. As a fiduciary do your homework when a suggestion is made regarding your plan. Look at what is best for your participants because, ERISA Section 404(a)(1) states that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries

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