

Retirement Plan Compliance Check Up

Key Areas Every Plan Administrator Should Review



René J. Avilés García

Ferraiuoli LLC

American International Plaza, 250 Muñoz Rivera Avenue, 6th Floor
San Juan, P.R. 00918 · (787) 766-7000 · raviles@ferraiuoli.com

Ferraiuoli



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What we will cover today

01

ERISA fiduciary duty

Initial considerations: who is a fiduciary and what the duties are

02

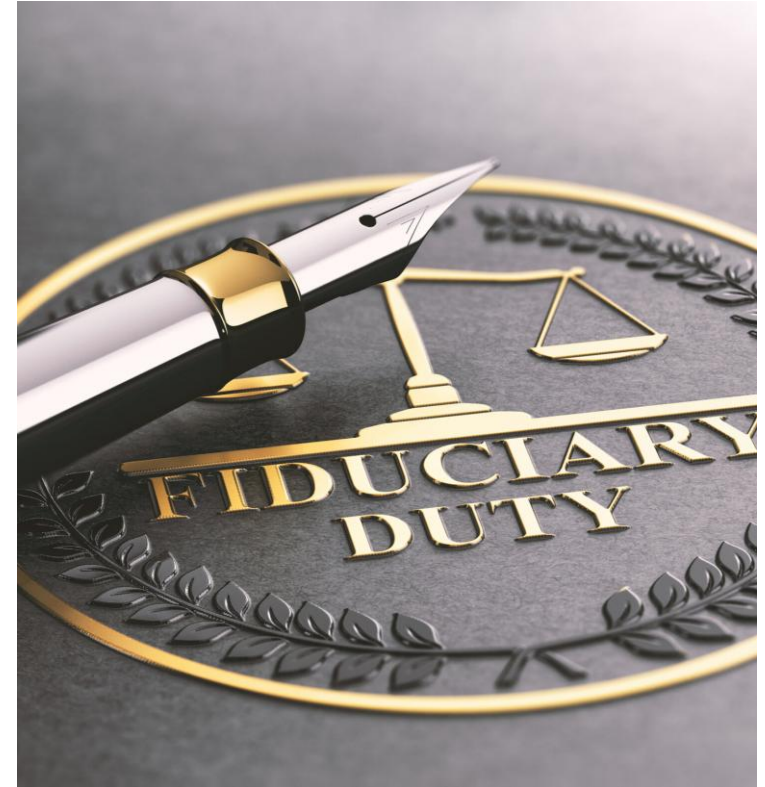
Why day-to-day policies and procedures matter

Evidence of loyalty and prudence, and protection from liability

03

The most important plan policies and procedures

Hardship, loans, QDROs, cyber security and missing participants





01

ERISA fiduciary duty

Initial considerations

Fiduciary duties of retirement plans: initial considerations

ERISA

Employee Retirement Income Security Act of 1974, as amended



Regulates the administration of certain benefit plans offered by employers to their employees.

PLANS COVERED BY ERISA



Pension plans



Welfare plans



Some consequences of ERISA application



Disclosure & participant rights

- Disclosure requirements to participants (SPD, reports and notifications) and reports to the DOL (5500)
- Acquisition of vesting rights
- Anti-cutback rule
- Rule in case of future reductions of benefits
- Rules on designation of beneficiary
- No alienation of benefits



Fiduciary governance

- Appointment of fiduciaries / fiduciary duties
- Establishment of trust
- Prohibited transactions
- Bond
- Legal liability / fiduciary



Administration & funding

- Funding requirements
- Claims procedure
- Preemption of local law
- PBGC (“D/B plans”)

Who is a fiduciary under ERISA § 3(21)?

A person is a fiduciary if they meet any one of these tests:



Discretion or control

A person who exercises **discretion** or **control** over the **management** of a plan or **assets** of a plan.



Paid investment advice

A person providing **investment advice** to a plan in exchange for compensation.



Administrative authority

A person who has any **authority or discretionary responsibility** over the **administration** of an ERISA plan.

KEY POINT

Fiduciary status depends on the functions a person performs, not only on their title.

Automatic vs. functional fiduciaries

Automatic fiduciaries

Fiduciaries by virtue of their position



Plan Administrator



Named Fiduciary



Investment Managers



Trustee

Functional fiduciaries

Fiduciaries by what they actually do

A person who **“de facto”** performs specified discretionary duties respecting management, assets or administration of the plan.



What are the fiduciary responsibilities? ERISA § 404(a)



Loyalty

Act solely in the interests of participants and beneficiaries.



Prudence

Hire or acquire expertise to act as a diligent expert.



Diversification

Diversify to minimize the risk of large losses.



Plan documents

Act in compliance with the constituent documents of the plan.





02

Why day-to-day policies and procedures matter

Having them, and following them, is part of meeting your fiduciary duties

Importance of retirement plan policies and procedures

Having **and** following retirement plan policies and procedures



Evidence of compliance

Serve as evidence of compliance with the fiduciary duties of **loyalty** and **prudence**.



Protection

Such compliance can protect fiduciaries from fiduciary liability under ERISA.



Efficiency

Help administrators do their job more efficiently and effectively.



The five most common and useful plan policies

1



Hardship distribution procedures

Help in analyzing the approval or denial of hardship distributions.

2



Loan policy

Essential to set forth rules when the plan allows for participant loans.

3



QDRO procedures

Assist in handling domestic relations orders from courts or other government bodies to determine plan ownership rights, usually in divorce or support cases.

4



Cyber security policies / procedures

Assist in setting controls of online systems to prevent cyber security breaches.

5



Missing participants / uncashed checks

Help set forth guidelines to assist in finding participants that have not claimed their plan benefits.



03

The most important plan policies and procedures

Hardship distributions · Loans · QDROs · Cyber security · Missing participants

Hardship distribution procedure / policy

Hardship distributions allow participants in certain tax qualified retirement plans (most commonly 401(k) / 1165(e) / 1081.01(d)) to withdraw elective deferrals (i.e., pre-tax contributions) and other contributions (and earnings) **before** reaching distributable events such as retirement or termination of employment.



If an employer chooses to provide for hardship withdrawals

it needs to consider the hardship distribution rules of Article 1165-8(d) of Treasury Regulations 5678 (for PR qualified plans).

GOOD TO KNOW

NOT

required by law

Employers are allowed to choose to permit hardship distributions (or not) in their eligible retirement plans.

Hardship distribution events under PR Treasury regulations

5

qualifying hardship events

Under PR Treasury regulations, a hardship distribution must be for one of these events.

	Medical expenses	PR Code § 1033.15(a)(4)
	Purchase of principal residence	Doesn't have to be the first one
	Post-secondary education	Tuition and education expenses for the next 12 months for the employee, spouse, children or dependents
	Prevent eviction or foreclosure	Rent (eviction) or owner (foreclosure) of the employee's principal residence
	Other	Other events approved by PR Treasury

Hardship distribution rules: prior conditions

For a hardship distribution to be approved under a qualified plan that allows such withdrawals, the following prior conditions must be met:

THE EMPLOYEE

cannot cover the
hardship through...

A



Reimbursement or insurance

B



Sale of other personal assets

C



Cessation of pre-tax contributions

D



Loans or other distributions

Hardship distribution consequences



Taxable in PR

Reported on Form 480.7C

The hardship distribution is taxable in Puerto Rico (480.7C) (see Article 1081.01(b)-4(a) of Regulation 8324).



10%

Withholding

The hardship distribution is subject to 10% withholding or taxable accounts (see Article 1081.01(f) of Regulation 8324).



12 months

Contribution suspension

Employer plans must discontinue pre-tax contributions for the following 12 months after the hardship distribution.



\$15,000

less pre-tax made that year

Pre-tax contributions for the employee's following tax year must be limited to the 1081.01(d) limit (i.e., \$15,000.00) less the pre-tax contributions made for the year the hardship distribution was received.

Which accounts, and how much?



Accounts subject to hardship distributions

AT THE VERY LEAST

Pre-tax (and catch-up) contributions and earnings thereof.

AS PROVIDED BY THE PLAN

Other accounts, such as after-tax, match and profit sharing.



Dollar limit of hardship distributions

1

Never in excess of the participant's **vested balance** in hardship-eligible accounts.

2

Never in excess of the **immediate and grave financial need**.

3

The immediate and grave financial need may include the amount needed to pay taxes due to the distribution (this usually works backwards to account for the 10% withholding).

PR hardship rules vs. IRS distribution rules



PR-only qualified plans

Are NOT subject to IRS rules for hardship withdrawals.



Dual qualified plans

ARE subject to IRS rules for hardship withdrawals.

FOR DUAL QUALIFIED PLANS, SOME IRS RULES ARE...

Harsher

10% early distribution penalty on hardship distributions.

More lenient

- No 12-month suspension
- No loan-first requirement
- Repair of damage to principal residence (US Code § 165)
- Expenses and losses due to federally declared disaster

Procedural best practices for hardship distributions

01



Adopt written procedures

Specify (i) eligible expenses, (ii) required documentation and (iii) the approval process.

02



Align your documents

Make sure plan documents and summary plan descriptions (SPDs) conform to the written procedures.

03



Train administrative staff

Train administrative staff to handle hardship petitions.

04



Apply rules consistently

Establish consistent application of approval rules (i.e., avoid discrimination).

05



Coordinate reporting

Coordinate with the recordkeeper to issue 480.7C forms correctly and on time.

06



Check ADP testing

Consider the impact of hardship distributions on ADP testing.

Loan policy

A **loan policy** sets forth the rules (both legally required under ERISA / the tax code and administrative under plan terms) when a retirement plan offers participant loans.

Plan loan terms and requirements are so specific that, when made available, they are rarely fully described in the plan document and are detailed in a separate document: the loan policy.

WHY DO YOU NEED A LOAN POLICY?

Given the technical nature and statutory regulation of plan loans (under ERISA and the tax code), a plan loan policy is almost a necessity to prevent plan failures and prohibited transactions.

COVERS TOPICS SUCH AS

Eligibility	Loan sources
Fees	Number of loans
Loan minimum / maximum	Reamortization
Payment terms	Payoff
Default	

QDRO: what is it?

QUALIFIED DOMESTIC RELATIONS ORDER

State domestic relations orders that assign to a person other than the participant (i.e., the alternate payee) the right to receive all or a portion of the participant's benefit.



IN WHAT CONTEXT DO QDROs OCCUR?



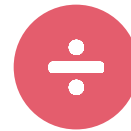
Child support



Divorce



Alimony



Marital property
partitions

Why do I need a QDRO procedure?

When a court or other state authority issues a domestic relations order, the plan administration is called upon to:



WHY IT HELPS

QDRO procedures help the administration navigate this complex process.

What is included in QDRO procedures?



Cyber security policies and procedures



WHAT IS IT?

A series of processes that assist plan administrators in protecting plan assets from bad actors, impersonators and cyber criminals who perpetrate attacks or divert participant benefits from retirement plans.

WHY DO I NEED IT?

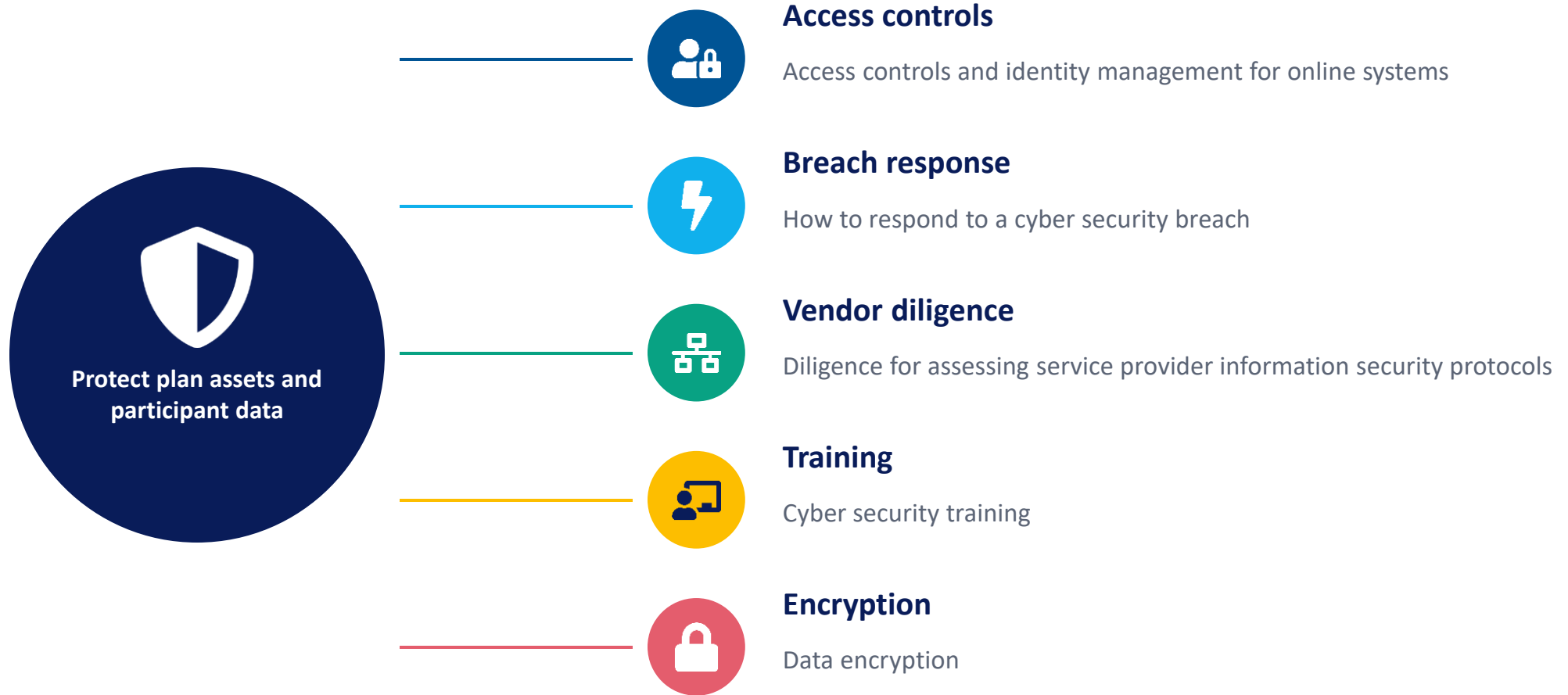


To protect plan assets



To assist plan administrators in DOL investigations

What's included in cyber security policies and procedures?



Missing participants / uncashed checks policies

WHAT IS IT?

A procedure that prevents and resolves missing participants and uncashed checks, by ensuring these individuals are identified and contacted, and that in-transit payments are collected.



Prevent

Keep participant records current so people don't go missing.



Resolve

Identify, reach out and collect in-transit payments.



Spotting and locating missing participants



When do I know I have a missing participant?

- Usually, a participant who is not in active employment
- Who has had no account activity in a long time
- For whom contact attempts through plan information have been unsuccessful
- When I have an uncashed check



How do I locate them?



Search company / plan records



Commercial location services



Word of mouth



Credit report



Internet search tools

What should a missing participant / uncashed check policy include?

A complete policy covers the full life cycle, from keeping records current to recovering uncashed checks.



Thank you!

Questions & answers



CONTACT INFORMATION

René J. Avilés García

Ferraiuoli LLC · American International Plaza
250 Muñoz Rivera Avenue, 6th Floor, San Juan, P.R. 00918
(787) 766-7000

raviles@ferraiuoli.com

Ferraiuoli

