6 Steps for Managing Fiduciary Risk

Dos and Don'ts for Your Company's Retirement Plan Committee

Scan the business news and you will likely find an article detailing the latest 401(k) litigation against a company accused of a fiduciary breach. The litigious trend started with corporate behemoths but has been trickling down to small and mid-size plans.

Whether it's due to increased lawsuits or education efforts, fiduciary awareness has been on the rise. However, 30% of plan sponsors still don't see themselves as fiduciaries, and strikingly, nearly half (46%) of that group has primary responsibility for their retirement plan.[1]

While it is possible to outsource aspects of your retirement plan such as fiduciary oversight, as a plan sponsor, you are still a fiduciary. Meaning, you are still responsible for adhering to the Department of Labor's Employee Retirement Income Security Act of 1974 (ERISA) guidelines, which govern and enforce the administration of 401(k) plans and their assets.

Here are six ways that you can aim to lower fiduciary risk and stay in accordance with ERISA. If you have questions about the complexities of plan management, contact us for support.

1. Plan Committee, IPS and Governing Documents

Establishing a plan committee is the first step in guiding the fiduciary oversight process. The committee should be a reasonable size (3-5) and because each member will become a fiduciary, it should include experienced members of finance, HR and operations. In turn, members will be responsible for numerous aspects of plan management, often in conjunction with your retirement plan advisor.

Next, the investment policy statement (IPS) is a roadmap for investment oversight because it determines the prudent processes and criteria for selecting and monitoring plan investments. When the plan committee meets, it uses the IPS to benchmark and review funds, fees and whether each investment strategy is meeting its stated goals and objectives, among other things.

Additional governing documents include the plan document, trust document and charter statements that should be read, reviewed, understood, and followed by all committee members.

2. Document the Investment Process

Documentation of process is critical in establishing fiduciary compliance. This includes recording minutes every time plan fiduciaries or plan committees meet to discuss investment changes or decisions. The documentation must show that due diligence has been taken in advance of a decision.

1 AllianceBernstein L.P. "Inside the Minds of Plan Sponsors." A/B Research, 2021.

3. Conduct Oversight Meetings

Plan committees should have regularly scheduled meetings (either annually, semiannually, or quarterly, depending on the size of the plan) to monitor the performance, evaluate service provider agreements and ensure that costs and fees remain reasonable.

Be careful of the tempting “set it and forget it” mindset that leads to infrequent monitoring and lack of process, which can result in a failure of fiduciary duties.

4. Fund Choices

Offering numerous funds (i.e., “a fund for everyone”) does not reduce fiduciary risk. Rather, plan sponsors should conduct prudent due diligence to ensure that fund selection aligns with the IPS and corresponding investment strategies are appropriate.

The investment choices should not favor a particular asset class over another nor be overtly correlated to each other; however, the fund menu should provide a spectrum of risk and reward.

Underperforming funds should be monitored closely and replaced if necessary. Simply adding funds to counteract low performers increases fiduciary risk and can be interpreted as not fulfilling ERISA responsibilities.

5. Fee Transparency and Reasonableness

Since the 2012 Department of Labor (DOL) rule, the transparency of retirement plan fees has significantly improved. Each year, plan sponsors are provided with a disclosure and information detailing their retirement plan’s fees. As a plan sponsor, it is your responsibility to verify the accuracy and reasonableness of all plan fees and document the benchmarking process.

6. Participant Outcomes

Individual complaints from employees are a frequent source of DOL investigations. In 2021, from a total of 175,986 inquiries from workers, 251 resulted in the opening of new investigations.[2] However, we believe that when you focus on providing financial education and customized resources you can help employees on their journey towards achieving retirement readiness.

While plan sponsors bear significant responsibility and oversight for the company’s 401(k) plan, the burden can be eased by working closely with professional retirement plan advisors and staying abreast of fiduciary obligations.

The result? **A win-win-win for the plan sponsor, advisor, and participants!**

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2 Department of Labor. "Fact Sheet. EBSA Restores Over $2.4 Billion to Employee Benefit Plans, Participants and Beneficiaries." 2021.