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Fiduciary Responsibilities and Opportunities

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While many plan sponsors view the fiduciary obligations associated with retirement plans as a burden, it is refreshing that some plan sponsors embrace their obligations. Some plan sponsors also view their fiduciary responsibility as an opportunity to build a sound retirement program and better equip plan participants to secure adequate retirement savings. They embrace their responsibility for the structure and operation of the committee charged with plan oversight, plan investment monitoring, and governing plan documents.

Employee Benefits Committees

Most organizations structure an employee benefits committee (EBC) to allow representation from all significant business functions and bring in the requisite expertise to address the many facets of overseeing an employee benefits plan, particularly a participant-directed retirement plan. Typically, this structure results in an EBC comprised of officers or directors representing the human resources, legal, finance, risk management, and operations departments. All committee members should acknowledge that they are a plan fiduciary, be educated on the responsibility of a fiduciary, and know that fiduciaries are held to the standard of a prudent expert.

From an operational standpoint, an EBC must meet on a quarterly or semiannual basis. A central due-diligence file should be maintained to include items such as agendas, notes, minutes, and supporting documentation for the process followed in making plan-administration and plan-investment decisions. Documentation that supports a prudent process for making plan decisions is crucial, especially with regard to hiring service providers such as recordkeepers, consultants, and auditors. Without proper due diligence, EBCs cannot substantiate that they fulfilled their fiduciary obligation to act in the best interests of plan participants.

Plan Investment Monitoring

EBCs have the fiduciary responsibility to structure an appropriate investment menu, prudently select investment managers, and monitor the performance, fees, and qualitative characteristics of the investment managers. Most committee members acknowledge they are not experts in this area and often decide to delegate these responsibilities to an outside consultant.

The outside consultant must be completely independent. If outside consultants' recommendations can influence their compensation through commissions or revenue- sharing payments, an inherent conflict of interest is created. This has received heightened attention recently due to the SEC investigation that revealed certain brokerage firms channeled the vast majority of their clients' investments into mutual funds that paid the firms higher commissions. Complete independence of the consultant eliminates this scenario, allowing for advice that aligns with the interests of the committee and plan participants.

Governing Plan Documents

Committees should work with competent Employee Retirement Income Security Act (ERISA) counsel to ensure the plan's governing documents are up to date and in compliance with all regulatory guidelines. Committees must also have procedures that ensure a plan is administered in accordance with its terms. For example, if a plan has a unique definition of compensation, a procedure must be in place to ensure that the definition is followed when calculating employee deferrals, employer matching contributions, and employer profit-sharing contributions.

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If a committee suspects there may be some plan operational failures, it should consider engaging professionals to conduct a compliance review. A compliance review is a type of audit where critical plan operations are tested to compare a plan's actual operation to the terms of the governing plan documents. While correcting a plan's operational failure typically entails costs for the employer, failures discovered and corrected early can be much less costly than if discovered by the IRS or Department of Labor during an audit. To prevent compliance review findings from discovery, committees should consider having ERISA counsel engage the professionals conducting the compliance review, rather than the plan sponsor.

A Plan's Success

Developing sound processes, committing to follow them, and documenting decisions will go a long way toward ensuring that fiduciary obligations are fulfilled. Yet some plan sponsors have determined that meeting these core responsibilities is not enough, and take advantage of their opportunity to create a truly successful retirement program for plan participants. Even after a successful framework for plan participants has been created, without measuring participants' individual success, plan sponsors do not know if their plans are providing adequate retirement benefits. To measure a plan's success, sponsors should evaluate participation and deferral rates, participant investing and asset allocation, and the success of investment education programs.

This is important because for most plan participants, their defined contribution plans will need to provide their primary source of funds during retirement.In the author's review of retirement plan providers, quality providers have the tools for plan sponsors to gauge participants' savings and investment behaviors. Communication materials can be targeted to participants who are viewed to be at risk. For example, if the participants in only one investment fund (not a lifecycle or target-date fund) are identified, materials on the importance of asset allocation or an invitation to an asset allocation seminar could be directed to that group.

Managing a retirement program completes the circle to ensure the original purpose of the plan is being fulfilled. Serving as a plan fiduciary entails assuming certain responsibilities, but it also provides significant opportunities. A fiduciary has the responsibility to develop a diversified menu of quality investment options and review plan costs to ensure there is a reasonable balance between participant services and the plan costs. A fiduciary also has the opportunity to address participant investment quality and their savings rates to increase the likelihood that participants secure adequate retirement benefits.