Best practices for plan sponsors

hooker & holcombe

Fiduciary best practices: Why investment oversight is important for 401(k) committees

Selecting and monitoring investment options for your company's retirement plan is just one part of your fiduciary responsibility. How do you evaluate, benchmark and assess your plan and what other expertise or protection should you consider?

An investment committee has a lot of responsibilities, including selecting and monitoring the investment options for the retirement plan; but there are plenty of resources available to help make informed decisions.

By being proactive and educated on these topics, you can reduce the risk of lawsuits related to excessive fees or violations of ERISA. In recent years, class action lawsuits have been filed against plan sponsors for breaching their fiduciary duty. Thus, it's important to understand fiduciary duty, plan oversight and guidance, as well as available advisory services and protection.

Your fiduciary responsibilities

As a fiduciary, the plan sponsor/employer is required to act solely in the interest of the participants. The Department of Labor states that the primary responsibility of fiduciaries is to act prudently and diversify the plan's investments to minimize the risk of large losses.

To assist with this oversight, investment committees often include advisors with specific fiduciary knowledge:

- A 3(21) advisor serves in a co-fiduciary capacity to the plan and shares investment fiduciary responsibility and liability with other plan fiduciaries. A 3(21) advisor provides counsel and guidance but does not have discretion. Responsibility for investment decisions rests with the plan sponsor.
- A 3(38) advisor or investment manager is a fiduciary that assumes full discretionary control over the investment selection and monitoring decisions for the plan. When you hire a 3(38) fiduciary advisor, the plan fiduciaries remove themselves from the ongoing investment decision-making process.

Investment Policy Statement

Every investment committee should have an Investment Policy Statement (IPS). Think of the IPS as a roadmap for your plan's investments. It provides governance and helps ensure that the plan's objectives and investment approach are aligned. It also is a framework for the committee to evaluate the retirement plan's performance.

Evaluate, benchmark and assess

Investment committees should regularly monitor the plan's investment performance and compliance. Assistance from a fiduciary expert can be very helpful when conducting these reviews.

Here are steps to consider:

- Evaluate: Are the goals and objectives as outlined in the IPS being attained? Review the investment lineup and the funds' fee structure to ensure they are reasonable. Also, make sure to review deliverables and fees with investment service providers, third-party administrators and vendors.
- Benchmark: Compare your plan to market indices or similar plans to help benchmark performance on an appropriate basis. Be sure to work with an investment advisor familiar with overall market conditions and who can review historical performance.
- Assess: Based on the review of fees, performance and other criteria, decide whether changes to the investment lineup, service agreements and/or outside experts need to be made.

What is fiduciary liability insurance?

As a plan sponsor, strongly consider obtaining fiduciary liability insurance. Simply, this provides legal protection for the employer and those acting in a fiduciary role if there is a claim of a fiduciary duty breach or mismanagement of the retirement plan. While it's not required by law and it does not protect against acts of fraud, fiduciary liability policies will pay defense costs and judgment awards if a company is found liable.

It's important to note that this differs from an ERISA fidelity bond, which protects the plan against losses caused by fraud or dishonesty.

Fiduciary liability premiums range from several hundred to a few thousand dollars per year, depending upon a company's needs. According to one report, "most small businesses with fewer than 100 employees will pay less than $1,500 per year."[2]

Fiduciary oversight, financial integrity

Oversight of a retirement plan and its investment lineup is a tremendous responsibility with significant consequences if not managed properly. To protect the financial integrity of your plan, it is best to work with fiduciary experts, including qualified 3(21) or 3(38) advisors. A well-managed plan and investment strategy can help deliver an optimized plan that enables employees to confidently pursue their retirement goals.

If you would like help selecting and monitoring investments for your company's retirement plan, please contact us. We are happy to answer any questions you may have about our services or how we can assist you in meeting your fiduciary responsibilities.

[1] Department of Labor, "Fiduciary Responsibilities", DOL.gov

[2] Counterpart, "Fiduciary Liability Insurance", February 2022