

Simple Steps to Being a Stellar Plan Sponsor

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Based on our experience in working with pension and retirement plans and meeting with providers and plan sponsors, we have seen there is frequently a difference between the requirements of the law and the steps needed to keep your plan in top shape. By following these basic guidelines, your fiduciary responsibilities as a plan sponsor will be greatly enhanced.

Establish & Update an Investment Policy Statement (IPS) That is Consistent With the Plan

Plan advisers and consultants advise plan sponsors on the importance of having an IPS to establish a prudent process. Plan fiduciaries will find it much easier to ensure an objective, well-documented, process to monitor and conduct the plan's investment activities in accordance with a set of written, established, prudent standards. The most important aspect of the IPS is to follow it and abide by its standards. DOL examiners routinely begin an audit by reviewing the IPS. They check that the Plan is being managed in compliance with the IPS and plan document.

Form & Convene a Well-Informed Plan Investment Committee

ERISA states that the named fiduciary of the plan (an individual or a committee) must make "prudent expert" decisions that are in the best interests of plan participants and beneficiaries. ERISA allows you to form a committee or utilize outside experts to help you make these

decisions and that is recommended. ERISA has a personal liability clause so make sure your committee members are knowledgeable and willing to participate in the decision-making responsibilities for the plan.

The committee must meet regularly in order for the plan to be properly and prudently managed as the law requires. A written record such as minutes of the meetings is an essential item in documenting the results and deliberations. These minutes can provide committee members with a history of the proceedings, the alternatives and recommendations presented, as well as the decisions made.

Fiduciaries Should Understand Their Roles and Responsibilities

The most important thing is to understand who the plan fiduciary is—who has the ability to control and influence the plan assets. A fiduciary is any person or entity named in the plan document (e.g., the plan sponsor and trustee), any person or entity that has discretionary authority over the management of a plan or its assets (all individuals exercising discretion in the administration of the plan, all members of a plan's administrative committee and those who select committee members), and any person or entity that offers investment advice with respect to plan assets, for a fee.

Importantly as plan sponsor, the authority to appoint a fiduciary makes you a fiduciary - and that hiring a co-fiduciary does not eliminate your fiduciary duties. If you are a fiduciary and you feel that you lack

the expertise to make those decisions, you are expected to hire someone with the professional expertise to carry out the investment and monitoring functions for the plan.

Proactively Monitor the Plan Investments and Replace Underperforming Funds

Whether or not you have a written IPS, the committee is expected to conduct a review of the plan's investment options and eventually that review will turn up a fund that no longer meets the criteria established for the plan. A written IPS will provide you with the discipline to place that fund on a "watch list" or drop the fund completely and map any participants' balances to a new, more appropriate fund one that meets the plan's criteria.

By misunderstanding the qualifications for 404(c) protection, many plan sponsors think their plan meets the standards of ERISA 404(c), a provision that protects them from being sued for participant investment decisions, as long as certain conditions are met.

You may be covered from an individual participant's claim, but industry experts have expressed concern that very few plans meet those standards and offer no protection from a participant's suit predicated on an inappropriate investment option. The Department of Labor assumes you are responsible for every participant investment decision except those behind the 404(c) "wall."

Know What's in Your Target-Date Funds

Target date funds now represent the single largest asset category in most 401(k) plans and are typically designated the QDIA. Currently the DOL has opined that the managers of TD funds are not fiduciaries. Investment Committee members are fiduciaries yet TD investment managers are not fiduciaries of the plan. Yet, the plan sponsor has no choice in the TD funds' selection of the underlying assets (commodities, high yield, emerging markets) included in the plan's target date funds when they are the only suite of funds offered by a bundled provider. Some legislators want to change this to make fiduciaries out of the money managers who make the asset allocation decisions and manage the assets since they have sole discretion in making investment decisions.

Monitor Plan Providers on a Regular Basis

Monitoring the quality and services of plan providers is ongoing and includes:

- Checking the providers financial stability
- Conducting a regular service review.
- Updating annually access to new automated, technology and online services.
- Detailed plan cost and fee information (direct and indirect expenses)
- Progress reports on meeting the plan's annual goals
- Significant changes your participant communications programs.

- Reviewing the plan design and updating policies
- Trends in participation or contribution levels
- Assessing the effectiveness of communication and education programs.
- Allocation of assets in the plan among funds and asset classes
- Fiduciary risk mitigation
- Regulatory and legislative changes that may impact the plan

You should review your plan's participation, deferral, and asset diversification as a measure of plan success. Plan documents prepared by your provider should meet your plan's needs and administrative approach and not simply accommodate that provider's systems and processes.

Review Plan's Fidelity Bond

Is everyone covered that provides financial direction to the plan? Review officer and executive coverage with the assistance of your corporate insurance company. Consider what changes you might make to the plan in light of the Pension Protection Act of 2006 (PPA) or any other legislative changes. For example, PPA increases the maximum bond amount to \$1 million for retirement plans that hold employer stock or other employer securities.

Review Plan Fees for Reasonableness

Periodic review of plan fees is prudent. Recent lawsuits against plan sponsors and providers claiming excessive fees are a poignant re-

minder. The pending DOL section 408(b)(2) legislation, will require defined contribution plan providers to disclose all fees. The Department of Labor states that "fiduciaries have a responsibility to ensure that the services provided to their plan are necessary and that the cost of those services is reasonable." Benchmarking fees and services are a key way to determine "reasonableness."

Bridgebay Financial, Inc. Retirement Plan Services

Bridgebay is an independent, institutional consulting firm

The firm has advised premier technology and biotech companies on their retirement plans and balance sheet investments since 1987.

Each consultant and CFA charter holder has over 20 years of institutional experience in advising 401(k), 403(b) and 457 plans.

Our extensive expertise, market and retirement plan knowledge are invaluable in guiding plan sponsors in the administration, compliance and monitoring of plan assets.

Our due diligence process helps mitigate fiduciary liability in the areas of investments, plan design, participation, compliance and fiduciary education. Bridgebay's extensive experience brings the strengths of the institutional world to the defined contribution plan realm.

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