

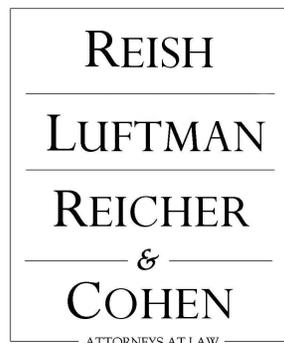
Executive Summary

Selecting Plan Investments, Services and Providers: Satisfying ERISA's Fiduciary Requirements Using Fiduciary Benchmarks, Inc. Reports

A WHITE PAPER:

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EXECUTIVE SUMMARY:

FIDUCIARY RESPONSIBILITY: ERISA imposes high standards upon fiduciaries responsible for managing the operations of retirement plans – the courts refer to those duties as “the highest known to law.” Although they may be broken down into a number of subparts, these duties are, in substance: (i) the duty of loyalty to the participants and beneficiaries; (ii) the exclusive purpose requirement; and (iii) the prudent man rule. *Based on our understanding of ERISA’s fiduciary provisions for participant-directed plans, and our review of the services provided by Fiduciary Benchmarks, Inc. (“FBI”), we have concluded that those services provide substantial support in the performance of those duties.*

DESCRIPTION OF FBI SERVICES: FBI is an independent authority on fees, success measures, support and services for defined contribution plans. The company provides plan sponsors with reports that support fiduciary and best practices assessments, as well as information for use in communications with plan participants. To provide its service, FBI has developed a comprehensive database and system to gather and continuously update plan data, and has developed software to build reports that compare a plan’s fees, participant success measures, support and services (“benchmarking reports”) to a universe of similar plans (the “Benchmark Group”). Its services are available through advisor/consultants, plan providers, and can be accessed directly.

FBI’s benchmarking reports enable defined contribution plan fiduciaries to obtain data that will permit them to assess how their plan compares in multiple respects to the Benchmark Group. The purpose of this information is to assist fiduciaries in fulfilling their obligation to assess their plan’s investment fees reasonableness, services and costs, and to make changes as necessary in the best interests of the plan, the participants and their beneficiaries.

ERISA Fiduciary Requirement	Reish Comment: How FBI Reports Assist Fiduciaries in Meeting their ERISA duties
<p>The Duty To Investigate: Fiduciaries must conduct a thorough investigation and make decisions based on the information they have gathered. In this regard, ERISA requires fiduciaries to use a prudent process. To meet this requirement, they must thoroughly investigate the issues under consideration to obtain relevant information and then base their decisions on the information obtained.</p>	<p>To provide its service, FBI maintains a large database of information, which is continually updated, and has developed software to build reports that compare a plan’s fees, participant success measures, support and services to a universe of similar plans. The use of FBI’s service provides material assistance to fiduciaries in fulfilling their legal responsibilities in the information gathering, analysis and monitoring phases of the due diligence process.</p>
<p>The Duty To Use Outside Sources: Fiduciaries are not expected to be experts. They may reasonably rely on the assistance of others in performing the required investigation and data gathering process. One of the key issues in determining whether reliance on the expert is reasonable is whether the expert is independent and unbiased.</p>	<p>The fiduciaries ultimately must make the decisions about a plan’s investments, services and providers; however, in arriving at that decision, the fiduciaries may rely on third parties to assist them in the process. And, indeed, prudence may <i>require</i> them to do so. FBI is an independent organization that focuses on fees, success measures, support and services for defined contribution plans. The company provides plan sponsors with reports that support fiduciary assessments under ERISA. FBI does not make any decisions for the fiduciary; rather, it supports the process by assisting the fiduciaries in assembling the relevant information, and providing a meaningful basis upon which to evaluate that information under the requirements of ERISA.</p>

<p>The Duty to Prudently Monitor: When hiring a service provider or selecting investments, a fiduciary is responsible for making a prudent evaluation of the provider and the reasonableness of the fees being charged for the service to be performed. In addition, the fiduciary is responsible for prudently monitoring the activities and reviewing the performance of the provider. Finally, fiduciaries need to review and evaluate the results produced by the provider’s services.</p>	<p>Once the plan is established, there is an additional ongoing fiduciary obligation to monitor the extent to which the plan’s investments, services and providers actually meet the needs of the participants (<i>i.e.</i>, are they “working” from a participant perspective), and whether the associated costs are reasonable in terms of the value that is being provided. This monitoring obligation requires both the gathering of a substantial amount of information, and the assessment of that information in relation to some reasonable measurements, or benchmarks. Critical measurements include how a plan’s investments, services, operations and other features compare to similarly situated plans, as well as how the results being produced by the plan’s operations (<i>e.g.</i>, participation and deferral rates) compares to those plans. That is, fiduciaries should measure how the plan “benchmarks” against a universe of similar plans. This is precisely the information provided by FBI’s reports.</p>
<p>The Duty Of the Service Provider to Provide Plan Fiduciaries with Information: A plausible interpretation of ERISA §408(b)(2) is that a plan’s service providers have a legal duty to provide the plan fiduciaries with any information they reasonably need to fulfill their fiduciary duties under ERISA.</p>	<p>To the extent a legal duty and service providers are uncooperative in this regard, the arrangement they have with the plan may be unreasonable and, as such, may constitute a prohibited transaction under ERISA. Service providers would be well advised to take the prudent approach in this instance and endeavor to provide plan fiduciaries with the information they have that is responsive to the fiduciary’s reasonable request. If the service provider were to do otherwise, it may constitute a prohibited transaction, and it may also constitute a breach of an express or implied contract with the plan and/or plan sponsor.</p>
<p>The Duty to Know What Products and Services are Available in the Market Place: In conducting searches for providers of services and investments, and assessing the reasonableness of plan fees and expenses, fiduciaries have an obligation to know what products and services are available.</p>	<p>With respect to investments, services and providers, the legal obligation of plan fiduciaries starts with the requirement to investigate the marketplace to determine what services and products are available and their costs. The next step is to analyze the information obtained in the investigation process, compare it to the needs of the plan and the participants, and then to make a decision in the best interests of the plan participants and for the exclusive purpose of providing retirement benefits. The foundation for the process is the gathering of the relevant data (that is, the data that a prudent fiduciary would evaluate in reaching an “informed” and “reasoned” decision), which can be a formidable task. The information FBI’s benchmarking reports provides to plan fiduciaries enables them to perform this analysis and reach informed decisions about what is reasonable and best for the plan.</p>
<p>The Duty to Obtain A Broad Range of Information: In ERISA §408(b)(2) guidance, the Department of Labor is careful to point out that a full and proper analysis of compensation and fees is <i>not</i> enough – fiduciaries must have all the information necessary to enable them to make informed decisions, and prudently operate the plan for the exclusive benefit of the participants and their beneficiaries.</p>	<p>FBI’s benchmarking reports are structured to assist fiduciaries in meeting their obligations to take into account all relevant plan data and information. In addition to information regarding investments and fees, the data should permit value comparisons of (i) plan complexity; (ii) outsourcing of administration and communication services; (iii) fiduciary oversight and best practices relative to plan design and administration; (iv) the differences in business volumes and timing; (v) participant success in terms of both participation and adequacy of retirement benefits; (vi) satisfaction with the plan’s services team for plan sponsors and participants; and much more. FBI’s benchmarking reports provide substantial assistance in gathering the data necessary to conduct these types of value comparisons.</p>

<p>The Duty to Monitor Utilization of The Plan Services: In addition to the general obligation to monitor the performance of service providers, fiduciaries must also monitor <i>utilization</i> of services, to determine whether they are reasonably designed and operated to meet the goals of the plan.</p>	<p>FBI’s benchmarking reports are structured to assist a fiduciary in meeting not only the general obligation to monitor the performance of service providers, but also the <i>utilization</i> of plan services. That is, the extent to which the services are being used effectively by plan sponsors and participants, and whether they are reasonably designed and operated to meet the goals of the plan.</p>
<p>The Prudent Man Rule: A fiduciary must perform its duties “with the care, skill, prudence and diligence <i>under the circumstances then prevailing</i>, that a prudent man acting in like capacity and familiar with such matters would use . . .”</p>	<p>The emphasized language is particularly important. This is due to the fact that, in recent years, significant investment and service options have come on the market. And, at the same time, more information about all aspects of plan operations has become available to fiduciaries. Thus, in our observation, the expectations of fiduciaries are changing under the “circumstances [now] prevailing,” because they have more information available to them, which they are legally obligated to consider in carrying out their fiduciary responsibilities. This means fiduciaries need to gather this additional information and carefully evaluate it, such that the decisions they make are informed and well reasoned. FBI’s benchmarking reports contain the information and data fiduciaries must consider to meet the prudent man rule, and it is presented in a manner that facilitates the process of making informed and reasoned decisions under this standard.</p>
<p>Conclusion: FBI’s Benchmarking Reports provide material assistance to fiduciaries in gathering the substantial amount of data necessary to select and monitor a defined contribution plan’s investments, services and providers, and in developing measurements or benchmarks for evaluating that data. The services cover all major aspects of plan operation, including investments, services, participation, deferral rates, and fees and expenses. All decisions regarding a plan remain those of the fiduciaries, but by utilizing the FBI benchmarking service fiduciaries will be able to provide substantial evidence of having gathered and evaluated the information required for a prudent process, and for an informed and reasoned decision.</p>	