

A Little Help, PLEASE!

“Plan sponsors and other fiduciaries have a solemn responsibility to protect the interests of the workers and retirees in their benefit plans.”¹

by Patrick M. Fay

The pressure is on for retirement plan fiduciaries.

Minimum standards for pension plans were established by the Employee Retirement Income Security Act (ERISA) in 1974. As a result, the sponsor of a retirement plan is charged with countless duties while acting as plan fiduciary. The most important of those is the legal responsibility to select, monitor and replace a plan's investment options. Inadequate fulfillment of this duty is the most frequent cause for legal action taken against plan sponsors who fail to focus on the overall quality of the investment and prove the associated costs were reasonable. Given the significant fallout that can occur if a fiduciary doesn't fulfill their duties, more and more plan sponsors are seeking assistance through co-fiduciary advisors.

Confused?

Unfortunately, the total service provided by the fiduciary confuses many plan sponsors. Despite the availability of information and talks of transparency, many fiduciaries do not completely know what the true costs of the plan are and how that relates to the successful retirement of their employees. A lot of this uncertainty can be blamed on the service providers that offer retirement plans. They act as non-fiduciaries to a plan and, thus, do not have a duty to provide the total cost of a retirement plan. Therefore, plan sponsors who aren't receiving good advice have no way of knowing exactly what their employees are paying for.



Despite the new regulatory requirement demanding fee disclosure (set to take effect in April of 2012), it is not going to be on a level that provides enough detail to do a true fee comparison from one vendor to another. For example, if your plan is with an insurance carrier that has the ability to include their own funds in the plan, they are only required to disclose the investment expense ratios of the funds offered in the plan, as well as any fees charged above and beyond the management fees. They are not required to disclose what percentage of the investment management fee is being captured for recordkeeping purposes or what percentage is being paid to the money manager on the fund. This ultimately means that you may be paying more for a particular fund based on the share class you are in. Therefore, if you were to go outside of the platform and invest in it directly, the retirement plan provider wouldn't be required to inform you of this. All of the grey area in this arrangement creates a puzzling decision-making environment for the fiduciary responsible for an organization's retirement plan.

Help is on the way

As employers begin to grasp the significance of their role as plan fiduciary and understand the serious implications surrounding them and the organization, many are searching for the best way to mitigate this responsibility. The utilization of an outside party to serve as a co-fiduciary to the plan is beginning to be viewed as a valuable asset to the plan. If this route is taken, plan sponsors must then decide how much responsibility the co-fiduciary gets. There are two levels of support a co-fiduciary can offer: 3(21) or 3(38). The key difference between the two co-fiduciary roles involves the amount of discretionary authority afforded in each.

Let's share

A co-fiduciary acting as a 3(21) shares the fiduciary duties with the plan sponsor. They are able to provide advice and recommendations as it pertains to changes in the plan, but it is ultimately up to the investment committee to make any decisions regarding the plan. The key benefit of this approach is that the advisor is held legally responsible for their recommendations for the plan, while still allowing the investment committee to remain fully engaged in the decision making process. On the downside, when the committee goes against the advisor's recommendation, the committee is then found legally responsible for the outcome – not the advisor.

Flying solo...almost

When an employer hires a 3(38) fiduciary, they transfer all responsibility for changes to the investment line-up onto that entity. The advisor assumes full authority to make any changes to the fund line-up at their will. Thus, the outcomes of each decision lay at the hands of the advisor and their discretion. While this may sound like a great solution, it is crucial to remember that the plan sponsor cannot fully eliminate themselves of fiduciary duties, and it is now up to them to review the actions of the 3(38) and be in a position to replace them if they are not performing up to standard. In this arrangement, the employer faces less fiduciary responsibility, but it comes at the cost of giving up control to an entity who may not be making decisions in the best interest of the plan and your employees. As a result, the employer may eventually find themselves back on the hook for decisions made by the co-fiduciary.

It has been our experience that when presented with both options, most employers prefer the shared 3(21) approach. This is mostly due to the fact that, if employers are going to be held accountable one way or another, they want to retain some authority over the decisions being made. We also find that many plan sponsors are uncomfortable with an outside agency making decisions on their plan's fund line-up without thorough knowledge of the organization and the employees' needs. While both options serve their purpose, it currently appears that plan sponsors prefer to work collaboratively with the co-fiduciary.

Get some assistance

Plan sponsors face an enormous amount of responsibility when it comes to making pension plan decisions. The legal ramifications, combined with the need to provide employees with a well-designed retirement plan, place a great deal of pressure on any fiduciary's shoulders. Given the ambiguous nature of current planning procedures, as well as the upcoming regulatory changes, seeking fiduciary support is a wise decision. SilverStone Group has a dedicated Investment Services Team prepared to help you and your organization meet all of your strategic planning goals.

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¹ United States Department of Labor website. "Fiduciary Education Campaign: Getting it Right – Know Your Fiduciary Responsibilities." Accessed on August 25, 2011 at www.dol.gov/ebsa/fiduciaryeducation.html

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