LINDSEY SOLUTIONS

PLAN SPONSOR

Fiduciary Responsibilities

Fiduciaries have important responsibilities and are subject to standards of conduct because they act on behalf of participants in a retirement plan and their beneficiaries. These responsibilities include the following:

1. Acting solely in the interest of plan participants and their beneficiaries, and with the exclusive purpose of providing benefits to them
2. Carrying out their duties prudently
3. Following the plan documents (unless inconsistent with the Employee Retirement Income Security Act of 1974 (ERISA))
4. Diversifying plan investments
5. Paying only reasonable plan expenses

The duty to act prudently is one of a fiduciary's central responsibilities under ERISA. It requires expertise in a variety of areas, such as investments. Lacking that expertise, a fiduciary will want to hire someone with the necessary professional knowledge to carry out the investment and other functions. Prudence focuses on the process for making fiduciary decisions. Therefore, it is wise to document decisions and the basis for those decisions. For instance, in hiring any plan service provider, a fiduciary may want to survey a number of potential providers, asking for the same information and providing the same requirements. By doing so, a fiduciary can document the process and make a meaningful comparison and selection.

Following the terms of the plan document is also an important responsibility. The document serves as the foundation for plan operations. Employers will want to be familiar with their plan document, especially when it is drawn up by a third-party service provider, and periodically review the document to make sure it remains current.

Diversification, another key fiduciary duty, helps to minimize the risk of large investment losses to the plan. Fiduciaries should consider each plan investment as part of the plan's entire portfolio. Once again, fiduciaries will want to document their evaluation and investment decisions.

It is also important to incur only reasonable costs. Fiduciaries must know what they are paying for with regard to total plan expenses and how these costs compare to the market for reasonableness. It is not necessary to have the lowest cost plan, but expenditures must be reasonable compared to similar plans.

Monitoring investments involves the implementation of an ongoing program for measuring the results of the plan's managers for consistency of style, performance against their benchmarks, significant changes in management, etc.

A fiduciary is prohibited from engaging in transactions that constitute a conflict of interest. In other words, they may not engage in transactions on behalf of the plan that benefit parties related to the plan, such as other fiduciaries, services providers or the plan sponsor. The following transactions are included in this rule:

- Selling, exchanging or leasing of property

- The lending of money
- The furnishing of goods and services
- The transferring or use of plan assets for the benefit of a party in interest
- The acquiring or holding of employer securities or employer real property in violation of ERISA

Limiting Liability

With these fiduciary responsibilities, there is also potential liability. Fiduciaries who do not follow the basic standards of conduct may be personally liable to restore any losses to the plan, or to restore any profits made through improper use of the plan's assets resulting from their actions.

However, fiduciaries can limit their liability in certain situations. One way fiduciaries can demonstrate that they have carried out their responsibilities properly is by documenting the processes used to carry out their fiduciary responsibilities.

There are other ways to limit potential liability. Some plans, including most 401(k) or profit-sharing plans, can be set up to give participants control over the investments in their accounts. For participants to have control, they must be given the opportunity to choose from a broad range of investment alternatives. Under Labor Department regulations, there must be at least three different investment options so that employees can diversify investments within an investment category, such as through a mutual fund, and diversify among the investment alternatives offered. In addition, participants must be given sufficient information to make informed decisions about the options offered under the plan. Participants also must be allowed to give investment instructions at least once a quarter, and perhaps more often if the investment option is extremely volatile.

Plans that automatically enroll employees can be set up to limit a fiduciary's liability for any plan losses that are a result of automatically investing participant contributions in certain default investments. There are four types of investment alternatives for default investments as described in Labor Department regulations and an initial notice and annual notice must be provided to participants. Also, participants must have the opportunity to direct their investments to a broad range of other options, and be provided materials on these options to help them do so.

However, while a fiduciary may have relief from liability for the specific investment allocations made by participants or automatic investments, the fiduciary retains the responsibility for selecting and monitoring the investment alternatives that are made available under the plan.

A fiduciary can also hire a service provider or providers to handle fiduciary functions, setting up the agreement so that the person or entity then assumes liability for those functions selected. If an employer appoints an investment manager that is a bank, insurance company or registered investment advisor, the employer is responsible for the selection of the manager, but is not liable for the individual investment decisions of that manager. However, an employer is required to monitor the manager periodically to ensure that it is handling the plan's investments prudently.

Adapted in part from the Department of Labor's "Meeting Your Fiduciary Responsibilities."