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GLOBAL ASSET MANAGEMENT

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FIDUCIARY OBLIGATIONS OF RETIREMENT PLAN SPONSORS

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IMPORTANT NOTE: The Law Offices of Geoffrey M. Strunk, LLC have prepared this white paper on behalf of Legg Mason & Co., LLC. This paper includes suggested practices that plan sponsors, and the financial professionals who work with plan sponsors, may wish to consider in connection with the management of the plan and its investments.

It is important to note that the suggested practices are not the exclusive means of managing plan investments, monitoring the fees of service providers, or fulfilling administrative obligations. Other combinations of practices also may be effective. Plan sponsors and other fiduciaries should consult with their own legal counsel concerning their responsibilities under ERISA in the administration and management of their respective plans.

Future legislative or regulatory developments may significantly impact these suggested practices and the related matters discussed in this paper. Please be sure to consult with your own legal counsel concerning the application of ERISA to the selection of plan investments and your other fiduciary obligations under ERISA.

This white paper is intended for general informational purposes only, and it does not constitute legal, tax or investment advice on the part of the Law Offices of Geoffrey M. Strunk, LLC or Legg Mason & Co. and its affiliates. Plan sponsors and other fiduciaries should consult with their own legal counsel to understand the nature and scope of their responsibilities under ERISA and other applicable law.

INVESTMENT PRODUCTS: NOT FDIC INSURED • NO BANK GUARANTEE • MAY LOSE VALUE

INTRODUCTION

Companies that decide to sponsor a retirement plan do so in pursuit of the significant tax advantages and financial investment opportunities that a retirement plan can offer. However, what many businesses may fail to initially recognize is that there are significant responsibilities that accompany retirement plan sponsorship too. Retirement plan sponsors are required by law to act as a careful expert with respect to literally every aspect of the establishment, maintenance and operation of such plan.[1] Any failure to satisfy these requirements can result in personal liability for such plan's decision makers.[2]

A tangled web of statutory and regulatory compliance issues that demand expert-level understanding and which carry with them the threat of personal liability can be incredibly intimidating, if not downright scary. However, there is a path to compliance that every company can follow in order to manage these concerns. In this regard, this article discusses the fiduciary obligations imposed on retirement plan sponsors by the Employee Retirement Income Security Act of 1974, as amended ("ERISA" or the "Act"), and makes specific suggestions on how to satisfy them. By following the principles and suggestions set forth within this article, individuals who serve as fiduciaries at companies that sponsor a retirement plan can develop a procedure that greatly reduces their exposure to potential liability under ERISA.

[1] ERISA § 404(a)(1)(B).
[2] ERISA § 409(a).

FIDUCIARY STATUS

As suggested above, owners and employees of companies that sponsor a retirement plan often become a fiduciary in relation to such plan. More specifically, under ERISA, an individual is a retirement plan fiduciary to the degree that he or she exercises discretionary authority or control over the management or administration of a retirement plan subject to the Act.[3] As it sounds, this is an operational test which is triggered by the behavior of the individual as opposed to his or her intent. Thus, it is possible to unintentionally become a retirement plan fiduciary under ERISA without affirmatively identifying oneself as a fiduciary.

For those who don't already understand, the fiduciary label triggers many obligations that must be discharged in accordance with the highest standard of care. In this regard, an ERISA retirement plan fiduciary must both prudently and expertly discharge every duty and responsibility imposed upon him or her under ERISA.[4] In general, this involves difficult tasks such as avoiding all potential conflicts of interest by acting solely in the interest of plan participants and their beneficiaries with the exclusive purpose of providing benefits to them; diversifying plan assets in order to avoid the risk of large losses; and accurately and precisely following the plan document's terms.[5] Failure to adequately satisfy any of these responsibilities can result in personally liability for an ERISA fiduciary.[6]

The ERISA fiduciary duties are broad and nebulous. Therefore, it becomes incredibly important to make sure one understands what they encompass so that they can be addressed and satisfied. As with any complicated task, it is best to be prepared by formulating a careful and calculated approach. A documented, task-oriented procedure can help a fiduciary to successfully navigate through the potential pitfalls of regulatory compliance.

Although this general article isn't able to address the nuances of each retirement plan fiduciary's individual circumstances, it can serve as a guide that focuses such a fiduciary on many of the broad issues that require attention. With that, the following discusses several items that should be considered within every plan sponsor's "fiduciary compliance procedure."

3 ERISA §§ 3(21)(A)(i) & (iii).

4 ERISA § 404(a)(1)(B).

5 ERISA §§ 404(a)(1)(A), (C) & (D).

6 ERISA § 409(a).

FIDUCIARY COMPLIANCE PROCEDURE

A. Retirement Plan Committee

Once the initial decision is made to establish a retirement plan, a formal governing body for the retirement plan should concurrently be established by the plan sponsor. The establishment of a retirement plan committee creates a necessary forum for understanding, discussing and delegating the tasks and duties that are created as a result of the adoption of a retirement plan. The size and composition of retirement plan committees often vary dramatically and generally correspond to the size and sophistication of the plan sponsor itself. However, regardless of the demographics of the plan sponsor, all companies that sponsor a retirement plan routinely need to make many important decisions that directly impact the compliant and successful operation of its retirement plan. Therefore, the establishment of a retirement plan committee is an important first step.

Other than in relatively small companies where the retirement plan committee may consist of only the owner, the committee should generally be composed of an odd number of mid- to high-level decision makers who are influential with regard to the plan sponsor itself. Such a structure facilitates the knowledge base necessary to successfully operate the plan while avoiding deadlock on issues that require a formal vote.

It also is advisable for a retirement plan committee to attempt to broadly represent different skill sets across the membership of the committee. For example, most would expect a CFO to belong to a retirement plan committee due to the financial considerations associated with the committee's deliberations, but it is important to incorporate the expertise of others as well. Thus, the inclusion of senior representatives from the human resources and legal departments, among others, generally is advisable in order to beneficially widen the scope of experience and viewpoints included as different issues are considered.

Generally, different companies face dramatically different challenges when it comes to supplying the expertise necessary for a retirement plan committee to operate in a proper and compliant fashion. For example, as discussed above, a retirement plan fiduciary is obligated to act as a prudent expert when discharging his or her duties.[7] In this regard, very few companies would be able to supply the necessary level of investment expertise from its existing staff. Thus, it is important for the committee to retain experts, in this example a competent investment professional, when it is necessary to do so in order to satisfy its fiduciary duties. Similarly, even those retirement plan committees that are fortunate enough to include legal expertise in the form of in-house counsel often lack the knowledge necessary to successfully navigate the intricacies of ERISA and its regulatory scheme. Therefore, every retirement plan committee should also attempt to identify legal uncertainties and pose them to a qualified legal professional.

Although it may seem like common sense that someone should seek advice from a qualified professional when he or she encounters uncertainty, it often can be difficult to even identify issues that require additional assistance. As the saying goes, "One doesn't know what one doesn't know." Thus, in the context of a complex regulatory environment such as the ERISA area, which does not lend itself to intuitive interpretation or resolution, retirement committees should err on the side of caution when it comes to delegating responsibilities and/or seeking advice from qualified professionals.

The committee composition must also be free of conflicts of interest in order to avoid "prohibited transactions." Prohibited transactions are certain statutorily defined situations, relationships and actions that, by their very nature, bring the independence of a plan fiduciary into question.[8] As a result, these relationships and actions are not permitted. In the context of a retirement plan committee, this means that no member of the committee should personally benefit from the decisions it makes.[9] In the event that an issue creating such a conflict presents itself to the committee, at a minimum, conflicted members should recuse themselves. However, it may be necessary to take additional steps, such as the resignation of conflicted members from the committee entirely, in order to avoid a conflict. Thus, such situations should be carefully considered if they arise.

The final retirement plan committee issue considered within this article concerns the need for the committee to pursue ongoing education. This is necessary not only to ensure that, on a very practical level, its membership understands the general fiduciary obligations that are the foundation of its responsibilities to the plan and its participants but also to ensure that members receive proper guidance regarding new issues as they develop in the dynamic retirement plan regulatory landscape. Often this can be accomplished during periodically scheduled meetings with competent service providers associated with the retirement plan. However, at times, it may be necessary to seek specific guidance on particular topics, especially in the context of regulatory changes and/or issues that raise any level of uncertainty.

[7] ERISA § 404(a)(1)(B).

[8] ERISA §§ 406(a) & (b).

[9] See id.

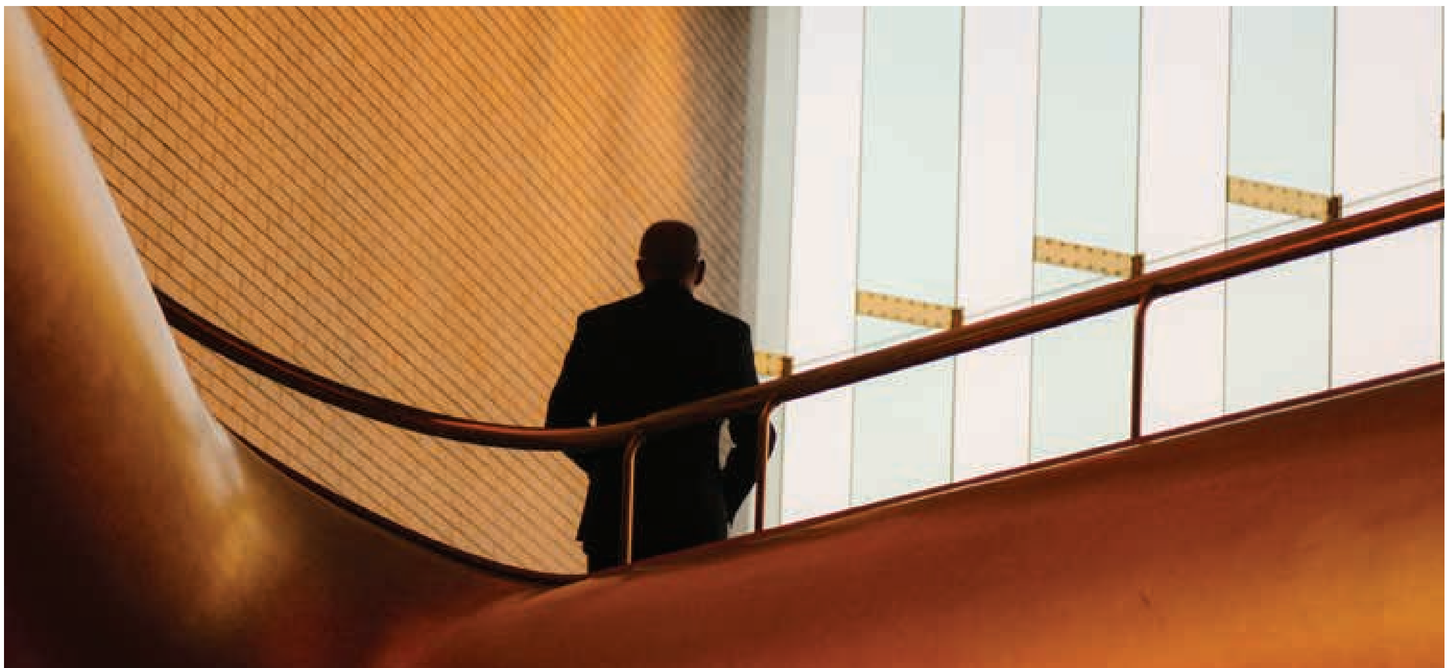
B. Plan Investments

Although individuals who serve as a plan fiduciary have a diverse list of subject matter with which to concern themselves in order to maintain regulatory compliance, the most transparent and therefore riskiest area likely involves plan investments. In this context, "transparency" refers to the fact that the performance of the underlying investments which comprise a retirement plan portfolio generally is publicly available information. Thus, it makes it easy for anyone to at least attempt to evaluate the performance of the funds available for investment within the retirement plan and, in the event of an underperforming fund or funds, challenge why such a fund or funds were ever offered for investment at all. As a result of this concern, it is critical to have a carefully drafted Investment Policy Statement ("IPS") that establishes the roles of those involved in the investment decision-making process as well as the parameters for evaluating fund and financial professional performance.[10]

A well-drafted IPS will clearly describe the authority and responsibilities of each individual associated with the investment process. For example, the IPS should identify those members of the retirement plan committee responsible for discretionary investment-related decision making. In addition, it should identify any investment advisors and/or investment managers as well as the specific roles and responsibilities delegated to such individuals. Identification of trustees and their duties is also recommended.

The IPS also should clearly indicate the objective criteria by which individual investments and investment advisors and/or managers are reviewed. This process allows the plan fiduciaries to have a formally defined procedure to follow in order to determine if specific funds or investment professionals are satisfying the investment goals of the retirement plan and, if they are not, establish the context for their replacement or dismissal.

Once a satisfactory IPS is approved and adopted, it is imperative that its terms be followed. This is because the IPS is the retirement plan fiduciary's written guide on how to make plan investment decisions. A fiduciary's failure to follow the terms of an IPS can be used as an indictment against such fiduciary with respect to why a plan failed to accomplish its investment goals.[11] Consequently, although it is strongly recommended that every plan sponsor adopt an IPS, it would likely be better to adopt no IPS at all than to adopt an IPS and fail to follow its terms.



[10] See ERISA § 402(b)(1) (without explicitly defining or requiring an "investment policy statement," requiring the creation of a "procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of [ERISA]"); see also Tussey v. ABB, Inc. 2012 WL 1113291 (W.D. Mo. Mar. 31, 2012) (plan fiduciaries breached their duty of prudence due to their failure to follow the terms of their IPS).

[11] Id.

C. Fees

Inherent in the decision to establish a retirement plan is an acceptance of the fees and expenses attendant to its adoption and operation. Being aware of such costs and properly managing them is another task that a retirement plan fiduciary must perform.

Certain plan-related fees and expenses may be charged to the trust of the plan.[12] Therefore, in the context of fees, a primary concern is that a plan fiduciary understands which fees and expenses may permissibly be charged to the trust of the plan. Unfortunately, there is no single resource provided by the Department of Labor ("DOL"), the federal agency charged with enforcing ERISA, for determining which fees and expenses are properly chargeable to the trust of a retirement plan. Instead, there are a collection of Labor regulations, DOL Advisory Letters, Field Assistance Bulletins, federal court decisions and assorted "sub-regulatory" guidance that collectively provide the principles necessary to determine whether a particular expense may be charged to the plan or not.[13] This absence of a single source of explicit guidance creates another set of challenges for plan fiduciaries. Ultimately, this means that in the event of any uncertainty, a plan fiduciary should consult with a qualified professional before any fees or expenses are charged to the retirement plan trust.

Following are some examples of the types of fees that are or are not permitted to be charged to the trust of a retirement plan. In general, basic administrative expenses associated with the plan may be charged to the trust of the plan.[14] This includes fees associated with recordkeeping and third-party administrator ("TPA") services, as well as the cost of the ERISA fidelity bond.[15] However, the cost of legal or consulting services in connection with plan formation or plan design, the cost of correcting a fiduciary error, and the cost of implementing a discretionary plan amendment may not be charged to the trust of a retirement plan.[16] Although it may be possible for a plan sponsor fiduciary to anticipate and determine whether certain plan expenses are chargeable to a retirement plan trust, other expenses may not be so easily identified. Thus, this is an area where extra care should be taken in order to maintain compliance.

[12] ERISA § 408(b)(2).

[13] Labor Reg. § 2550.408b-2; DOL Advisory Opinion 2001-01A (January 18, 2001); DOL Advisory Opinion 1997-03A (Jan 23, 1997); DOL Field Assistance Bulletin 2003-3 (May 19, 2003); DOL Ltr. To Henderson (July 28, 1998); DOL/PWBA Ltr to Maldonado (March 2, 1987).

[14] DOL Field Assistance Bulletin 2003-3 (May 19, 2003).

[15] ERISA § 412; DOL/PWBA Ltr to Maldonado (March 2, 1987).

[16] DOL Advisory Opinion 2001-01A (January 18, 2001); DOL/PWBA Ltr to Maldonado (March 2, 1987); Voluntary Fiduciary Correction Program, 71 Fed. Reg. 20262 at 20272 (April 19, 2006). IRS Rev. Proc. 2016-51.

Notwithstanding the type of fee at issue, a fee may only be charged to the trust of a plan if it is necessary for the establishment or ongoing operation of the plan and is "reasonable" in amount.[17] Obviously, in a general sense, reasonable is a subjective term. This means that context is paramount to determining whether the condition has been satisfied. In the context of determining the reasonableness of retirement plan fees, best practices require that a plan sponsor periodically benchmark the fees it incurs as compared to the fees of other providers of comparable services.[18] A good general rule is that at least once every three years fees and services should be reviewed in a comparative format in order to attempt to ensure that the fee being paid for the service being obtained remains competitive and, as a result, reasonable. Also, in order for a service provider's fee to be reasonable, it generally must be formally disclosed to a retirement plan fiduciary via a "408(b)(2) fee disclosure" form. 408(b)(2) is a reference to the statutory authorization for the payment of reasonable and necessary fees from plan assets.[19]

While benchmarking fees, it is important to recognize that the quality of the service provided is at least as important as the overall cost incurred. In this regard, a fiduciary should not simply pursue the cheapest provider and instead should attempt to ensure that the value of the services received adequately meet the needs of the plan at the cost point that is selected.[20] The comparison of cost to value is often difficult due to the fact that many different service providers supply what may initially appear to be similar retirement plan services but are actually supplying varying degrees of service. Thus, in the context of two different service providers with "all in" fees, it becomes very difficult to create a true "apples to apples" comparison. Consequently, a retirement plan fiduciary must be certain to inquire and understand exactly which services are supplied by each provider in order to properly understand both the cost and value of the services provided.

Once it is determined that a particular fee is permitted to be paid from plan assets and the amount of such fee is reasonable, a retirement plan fiduciary must then decide how to allocate the fee among different participants. On this matter, the DOL has stated that individual facts and circumstances should be considered in order to determine the most equitable method of allocating fees.[21] However, the DOL has only explicitly endorsed pro-rata and per-capita methodologies of allocating expenses among participant accounts.[22] Notwithstanding the foregoing, the DOL has not prohibited the employment of other reasonable methods of allocating plan expenses.[22] As a result, other permissible but creative allocation methodologies are also routinely employed.[22]

The impetus for employing allocation methodologies other than pro-rata or per-capita revolve around potential inequities that may result from such approaches. For example, a per-capita fee that charges $50 per participant account would mean that a participant with a $1,000 account balance would pay 5% of his or her account balance toward fees, while a participant with a $100,000 account balance would pay only five one-hundredths of 1% of his or her account balance in fees. When one considers that the overall retirement plan benefits provided to the participant with the larger account balance likely significantly outweigh the benefits that are provided to the participant with the smaller account balance, such an allocation seems inequitable. Similar inequitable results can occur in the context of a pro-rata allocation with the difference being that small account balances may pay less than a reasonable share of total fees.

One example of another reasonable way to allocate plan expenses among participants involves charging fees on a per-capita basis with certain modifications. More specifically, participant accounts that are less than a certain dollar threshold may have a reduced fee applied to them or no fee at all. The reduction in fee assessments on smaller account balances can then be recovered from larger account balances within the retirement plan, resulting in a more equitable allocation of fees among separate accounts.

[17] ERISA § 408(b)(2); Labor Reg. § 2550.408b-2.

[18] See id.

[19] ERISA § 408(b)(2); Labor Reg. § 2550.408b-2.

[20] Id.

[21] DOL Field Assistance Bulletin 2003-3 (May 19, 2003).

[22] Id.

D. Administrative Obligations

A retirement plan fiduciary's duties and responsibilities do not end with investment performance and fee considerations. Retirement plan fiduciaries also have a number of administrative responsibilities that must be satisfied in order to maintain a retirement plan's regulatory compliance. Most plan fiduciaries are aware that one of the administrative requirements associated with retirement plan sponsorship for which they are responsible is the annual filing of Form 5500, Annual Return/Report of Employee Benefit Plan ("Form 5500").[23] However, a retirement plan fiduciary's administrative obligations extend well beyond the filing of Form 5500.

Plan fiduciaries are required to maintain copies of all relevant plan documents and records. Generally, ERISA requires that the plan records necessary to substantiate the content of any mandatory filing or disclosure be maintained for a period of at least six years after the filing date of such document.[24] However, another section of ERISA also states that the records necessary to determine a participant's claim for a benefit under the plan be kept for as long as a possibility exists that they may be relevant to a determination of benefits.[25] Consequently, best practices require that all plan documentation be maintained from plan inception until after the plan is terminated and the statute of limitations has expired on a regulatory audit or a participant benefit claim. Fortunately, electronic record retention in this context is permissible under IRS and DOL rules.[28]

Plan fiduciaries are also responsible for issuing all necessary plan participant communications. The number of communications to which this responsibility applies are so numerous that they easily extend beyond the scope of this article. However, this obligation includes such items as "summary plan descriptions," "black-out notices" resulting from time periods during which a participant may not be able to change investments or receive distributions from the plan, participant benefit statements, participant fee disclosure forms and "summary annual reports," among others.[27] Although plan fiduciaries may delegate the dissemination of these documents to third-party providers, the underlying obligation for distributing these documents is the plan fiduciary's and not the third-party provider to whom such responsibility was delegated.[28] Thus, if a necessary communication is not provided as required under ERISA, the DOL will pursue the plan fiduciary for such failure and the plan fiduciary generally will, at best, have a contractual claim against the service provider for such failure. Consequently, it is imperative for the plan fiduciary to remain vigilant on this issue even if the responsibility is delegated to a third party.

Also among these administrative tasks are periodically reviewing the plan's design and operation in order to ensure that it is effectively delivering the retirement plan benefits that are its ultimate goal. Although this particular task may not be directly required as an affirmative ERISA plan fiduciary obligation, a failure to address poor design or operational issues could easily result in compliance and/or fiduciary breaches which might otherwise have been avoided. For example, while automatic enrollment in a deferral feature of a 401(k) plan is often a desirable plan design, in some circumstances it may not be suitable. In the context of a plan sponsor where most employees opt out of the automatic enrollment feature, it likely is appropriate to remove the automatic enrollment feature. This is because the administrative challenge of ensuring that the opt outs are properly honored may outweigh any benefit that might otherwise have resulted from a large percentage of employees automatically enrolling in such feature.

[23] ERISA §§ 104 & 4065.

[24] ERISA § 107.

[25] ERISA § 209.

[26] ERISA §§ 107 & 209; Labor Reg. § 2520.107-2.

[27] ERISA §§ 104(b), 101(i) & 105(a); Labor Reg § 2550.404a-5.

[28] See id.

E. Prudent Process

This article is not intended to discuss every fiduciary obligation imposed by ERISA. However, it is intended to attempt to present many of the routine issues that may be encountered by owners or employees of plan sponsors who serves as retirement plan fiduciaries. Knowing that it is not possible to discuss every fiduciary concern within a single cursory article leaves the challenge of attempting to convey general principles that can assist with retirement plan compliance. In this regard, as suggested at the beginning of this article, the most important general compliance principle is the creation and adherence to a prudent process associated with all retirement plan decision making.

A prudent process means that retirement plan fiduciaries must perform adequate due diligence regarding each decision that is made in connection with the plan. Obviously, the procedure and degree of effort necessary to satisfy this principle varies greatly depending upon the particular concern at issue. Notwithstanding, careful and thoughtful decision-making principles should be applied in the context of each and every obligation and challenge presented to a retirement plan fiduciary.

In the event that fiduciary decision making is challenged, it is the process that is followed by such fiduciaries which will determine whether the fiduciary standard of care required under ERISA is satisfied.[29] The DOL and the federal courts do not expect that retirement plan fiduciaries will achieve the most favorable result in connection with every decision that is made. Such a standard would literally be impossible to maintain and satisfy. Instead, what the DOL and the federal courts examine is that fiduciaries take the care to thoroughly examine issues, ask questions and employ experienced qualified professionals when it is necessary to do so.[30]

Even when the careful process suggested above is employed, unfavorable results can occur. Investment funds or financial advisors may underperform compared with expectations. Administrative service providers may make mistakes in the performance of their duties. At those times, what is important from a potential liability standpoint is that fiduciary-level decision makers can justify that any less-than-favorable results were not the result of a flawed or inadequate decision-making process." Consequently, it is of the utmost importance that all fiduciary decision making be carefully documented so that it can serve as a record of the adequate care taken in satisfying this responsibility.

Compilation of the necessary documentation is best achieved by holding regular meetings of the retirement plan committee, during which careful and detailed meeting minutes are taken. The minutes should encompass not only the issues presented and resulting decisions that are reached but, most importantly, the process that was followed in order to reach those decisions. Subject matter for retirement plan committee meetings should routinely consider all of the issues presented within this article, among others, as well as any new developments or potentially unforeseen issues that may arise during the course of the plan's ongoing operation and existence. In an effort to ensure that new developments and unforeseen issues are brought to the attention of the retirement plan committee, meetings should also regularly include the attendance of and/or communication with any retirement plan service providers that work with the plan.

Ideally, retirement plan committee meetings are held on at least a quarterly basis, with supplemental unscheduled meetings to be held as the need arises. Meetings scheduled on a quarterly basis have the advantage of allowing the committee to review investment-related issues with greater regularity, which then allows the committee to be more responsive to concerns which may need more immediate attention. This frequency helps to minimize the potential for negative impact. Notwithstanding, some plan sponsors hold regularly scheduled retirement plan committee meetings less frequently than quarterly. Regardless, retirement plan committee meetings should always be held on at least an annual basis.

[29] White v. Chevron, Case No. 16-cv-0793-PJH (N.D. Cal. Aug. 29, 2016); quoting Donovan v. Mazzola, 716 F.2d 1226, 1232 (9th Cir. 1983); Tatum v. RJR Pension Inv. Comm. 761 F.3d 346 (4th Cir. 2014) quoting DiFelice v. U.S. Airways, Inc., 497 F.3d 410, 420 (4th Cir.2007); see also Pension Benefit Guar. Corp. ex rel. St. Vincent v. Morgan Stanley Inv. Mgmt., 712 F.3d 705, 716 (2nd Cir. 2013).

[30] See id.

CONCLUSION

As explained throughout this article, maintaining compliance with the fiduciary responsibilities imposed by ERISA requires adopting a careful, diligent, documented process which requires a broad and intimate knowledge of many different skills and professions. As a result, it is necessary to approach these challenges in a deliberate, methodical manner so as to ensure that all obligations are satisfied. However, notwithstanding the complexity of fiduciary requirements under ERISA, retirement plan compliance can be obtained by following three general principles.

First, establish a formal and detailed fiduciary compliance procedure. Although the fiduciary challenges that each plan sponsor confronts are often unique to their own specific facts and circumstances, the issues discussed within this article can be used to assist with focusing on some of the most frequently encountered fiduciary issues of concern.

Second, as unnecessary and repetitive as it may sound, plan sponsors must ensure that they diligently adhere to the details of their fiduciary compliance procedure. The purpose of a fiduciary compliance plan is to provide a plan sponsor with the guidance necessary in order to avoid compliance failures as well as to determine how to proceed as unforeseen challenges develop. Consequently, a plan sponsor must carefully adhere to its compliance plan in order to avoid fiduciary "missteps."

Finally, engage qualified experts whenever uncertainty presents itself. Plan sponsors should err on the side of caution when it comes to retaining qualified retirement plan experts to assist with issues that arise during the on-going operation of a retirement plan. Although there is a cost associated with hiring qualified retirement plan professionals, fiduciary compliance failures can be complicated and expensive to resolve. In addition, they can result in personal liability for a fiduciary who fails to satisfy his or her obligations under ERISA. Thus, the Benjamin Franklin adage "An ounce of prevention is worth a pound of cure" is particularly appropriate in this context.

EXHIBIT A

The following is intended to provide plan sponsors with a convenient method of performing a survey of their satisfaction of their ERISA fiduciary responsibilities.

Plan Sponsor Fiduciary Compliance Checklist

		Yes	No
1	Did you know that your exercise or discretionary authority or control over the assets or administration of your company's retirement plan makes you an ERISA fiduciary?	☐	☐
2	Has your company clearly identified those who are responsible for the decision making associated with its retirement plan ("Committee")?	☐	☐
3	Does the Committee consult with qualified retirement plan professionals in order to resolve novel or questionable issues that arise during the operation and administration of the plan?	☐	☐
4	Has the membership of the Committee been vetted for potential conflicts of interest?	☐	☐
5	Does the Committee engage in ongoing fiduciary and regulatory education?	☐	☐
6	Does the Committee have an Investment Policy Statement ("IPS") that establishes the roles of the various parties associated with plan investment as well as the criteria by which the performance of investments and financial professionals are measured?	☐	☐
7	Does the Committee carefully follow the terms of the IPS?	☐	☐
8	Has the Committee ensured that all plan expenses charged to the trust of the plan are permissible expenses?	☐	☐
9	Does the Committee periodically verify that service providers' costs are "reasonable"?	☐	☐
10	Does the Committee maintain a permanent file of all relevant plan documents and records?	☐	☐
11	Does the Committee issue all necessary documentation and notifications to plan participants?	☐	☐
12	Does the Committee periodically review the design of the plan in order to ensure that it remains effective?	☐	☐
13	Does the Committee meet at least annually to discuss the ongoing operation of the plan, its investment lineup, and any new issues that may have arisen?	☐	☐
14	Does the Committee carefully document all of the issues that it considers in order to create a written record of the prudent fiduciary decision-making process it employs?	☐	☐

If you are satisfying your ERISA fiduciary responsibilities in connection with your retirement plan, you should be able to confidently answer "yes" in relation to each of the questions above. However, if you answered "no" to any of these questions, it is never too late to change your procedures and practices in order to help reduce your prospective fiduciary liability under ERISA. Therefore, be sure to consult with qualified retirement plan professionals in order to establish the means by which you can protect yourself from personal liability under ERISA.

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- Brandywine Global
- Clarion Partners
- ClearBridge Investments
- EnTrustPermal
- Martin Currie
- QS Investors
- RARE Infrastructure
- Royce & Associates
- Western Asset

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