



Fiduciary Fitness

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Photo by Cameron Davidson



1. Appointments to Fiduciary or Investment Committees. It is appropriate to appoint the senior corporate officers to your plan's fiduciary or investment committees consistent with (1) knowledge and understanding of financial matters, (2) ability to devote appropriate time and resources to serving on the committee, and (3) a need to avoid "conflicts" with company responsibilities (typically more important for companies with significant insider information concerns). They should actually be those performing most of the day-to-day committee responsibilities, rather than delegating them.

2. Board of Directors' Role. Generally, we prefer that the members of the board of directors not serve in a fiduciary capacity, with the one exception being that the board appoint the named fiduciary of the plan (to the extent that the appointment is not "hard-wired" in the governing documents). This does not mean members of the board will be excluded from playing an important role in the oversight of a company's benefit program.

3. Implement an Investment Policy Statement (IPS). Nothing in ERISA requires that plans have an IPS, but the Department of Labor (DoL) and some courts have suggested that it is a good practice. An IPS can provide fiduciary protection—assuming it is followed—by clarifying fiduciary roles and expectations, by serving as evidence of proper fiduciary practice and procedure, and by helping to avoid the types of participant misunderstandings that can lead to litigation. The typical IPS contains a statement of purpose, a statement of plan investment objectives, a description of the investment structure, and a description of investment selection and ongoing monitoring procedures. We prefer that an IPS not include specific duties and responsibilities for company employees serving on fiduciary or investment committees.

4. Appoint an Investment Committee Liaison. Investment committees generally meet only periodically but, for larger plans, there typically are decisions that must be made or carried out on an ongoing basis. Where there is a full-time director of investments or similar position, that person is likely the best candidate to be the committee's liaison to implement committee policy, oversee company staff who perform investment functions, and communicate with various plan service providers.

Prudent Investment Oversight

5. Revisit Fee Arrangements with Service Providers. With several lawsuits pending, new DoL disclosure requirements completed or pending, and rumblings of discontent from Capitol

Hill, plan fees are going to be in the spotlight again in 2008. It is critical that plan fiduciaries review their fee arrangements and investment alternatives on a regular basis. Now is the time to start this kind of review.

6. Develop Prudent Investment Oversight Procedures. Plan fiduciaries should have procedures in place for monitoring the performance of plan investments relative to objectives set forth in the plan's IPS. Fiduciaries should be reviewing quantitative performance data on managers vis-à-vis benchmarks and peer groups quarterly. They also should be performing qualitative reviews of each manager or designated investment alternative annually.

7. Observe a Regular Schedule for Committee Meetings. It is important to establish a protocol for meetings and the documentation of committee deliberations and decisions in order to prove that plan fiduciaries did, in fact, act prudently in making decisions. If your plan is one of the many that fail to hold regular committee meetings and/or keep complete records, start 2008 off right by getting into good habits.

8. Review Your Fiduciary Disclosure Obligations. For fiduciaries of 401(k) and other individual account plans, now is a good time to review the type of investment and other plan information provided to participants, and even to consider whether to develop or beef up participant education programs.

The old adage, "An ounce of prevention is worth a pound of cure," seems to apply here.

By following the eight steps discussed above, your plan will be more efficient, and you will be saving yourself a lot of future aggravation.

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