Best Practices for Retirement Plan Fiduciaries

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Overview

- What is a retirement plan fiduciary?
- Should you hire a corporate/institutional Trustee?
- Do you have an investment policy statement?
- How does ERISA fee disclosures impact your plan?
- Do you have prudent practices in place?
- Prudence is a test of procedures, not results.

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Are you a Retirement Plan Fiduciary?

- ERISA determines fiduciary status more by function (what a person does) than by title
- Plan sponsor is a fiduciary
- Others fiduciaries for your plan may be:
  - person, committee or group named as a fiduciary in your plan document
  - person giving investment advice for a fee
  - giving discretionary control over the administration or investments

Basic Fiduciary Duties Under ERISA

- Act solely in the interests of the plan and its participants and beneficiaries
- Use the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use
- Diversify plan investments
- Follow plan terms (i.e., documents/instruments governing the plan) to the extent consistent with ERISA
- Comply with fidelity bonding requirements

Avoid Prohibited Transactions

- Plan fiduciaries cannot use plan assets for their own interest or to benefit a related party
- Plan fiduciaries cannot accept kickbacks
- Plan fiduciaries can cause the plan to engage in transactions with related persons/entities ("parties in interest," including fiduciaries) ONLY if they meet certain exemptions
  - There are statutory, class and individual exemptions.

Should we hire a Corporate/Institutional Trustee?

- Differences between:
  - 3(16) – Plan Administrator
  - 3(21) – Named Fiduciary
  - 3(38) – Investment Manager
- Regulate internal controls to minimize tax or ERISA violations, offer limited scope opinion for audit purposes, handle administrative details

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Investment Policy Statement (IPS)

- Discuss pros/cons with plan's ERISA attorney and have them to review
- Develop jointly with plan's financial advisor(s)
- Select a diversified portfolio of the plan's investment options
- Sets a course of action for monitoring investments and when change is warranted
- Review procedures to follow IPS
- Compliance with Plan Document

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ERISA Fee Disclosure Regulations – Two Fold – 1st on Service Providers

- ERISA 408(b)(2) regulations finalized in February 2012 governing disclosure to plan fiduciaries by service providers who expect to receive $1,000 or more in compensation.
- Written disclosures include:
  - services provided
  - description of services & compensation
  - investment-related information
  - declaration if provider serves as RIA or fiduciary

ERISA Fee Disclosure Regulations – Two Fold – 1st on Service Providers

- Subsequent disclosures must be provided when:
  - The arrangement is extended, renewed or changed
  - An investment is added to a plan's lineup
  - Changes are made to investment-related information
  - Changes in non-investment related fees and expenses change

ERISA Fee Disclosure Regulations – Two Fold – 2nd at Participant Level

- ERISA 404(a)(5) Participant Fee disclosure made when employee is first eligible and annually thereafter
- Disclosure includes plan related information
  - direct their investments, any restrictions
  - any fees and expenses changed to their accounts for administrative services
  - investment related information
  - deductions from participant accounts

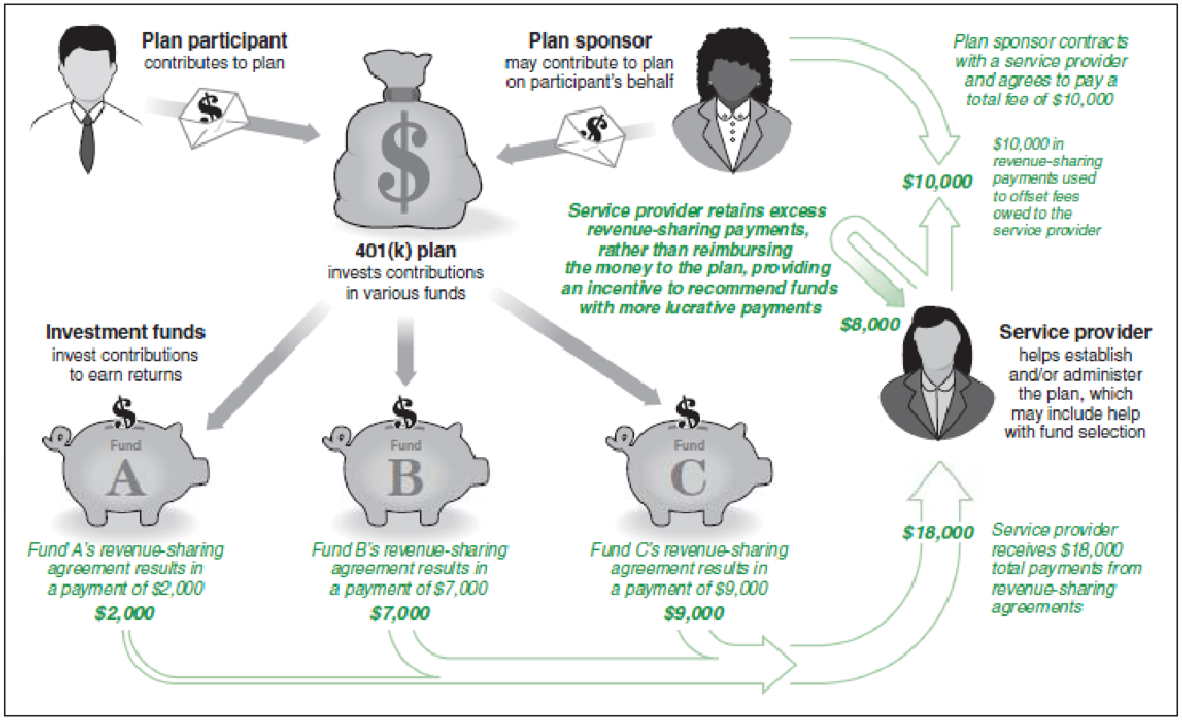
Best Practices Summary

- Establish written procedures and follow terms of plan document
- If you have change in personnel, make sure new person has a full understanding of job duties
- Backup plan for vacation? Disaster policy?
- Fully document any problems incurred in writing
- Stay consistent!

Goal of Regulation

- In recent years, there have been many changes in the way services are provided to plans, and in the way service providers are paid.
- The resulting complexity has made it more difficult for plan fiduciaries to understand how much service providers are paid.
- For example, in some circumstances, service providers are paid by parties *other than* the plan. This "indirect" compensation has not always been transparent to plan fiduciaries.

Typical Revenue-Sharing Arrangement



Source: GAO Report – "401(K) PLANS --Improved Regulation Could Better Protect Participants from Conflicts of Interest"

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Questions

Thank You!

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