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Qualified Plan Governance: Is Your Fiduciary House in Order?

As we enter the new year, many qualified retirement plan sponsors use this time as an opportunity to examine current fiduciary structure and processes to ensure all is in order.

Whether or not your organization's retirement plans have been recently audited by the Department of Labor and/or IRS, it is advisable to be sure your plans will hold up under such audit and/or plan participant scrutiny, and that the proper protections for the company and its designated fiduciaries are in place.

When reviewing your current fiduciary structure, policies and procedures, we suggest the following considerations:

If none exists, establish a formal internal committee to include appropriate representative leadership members.

- Conduct fiduciary training to educate committee members on their responsibilities under ERISA and attendant, personal fiduciary liability.
- Examine, assess and modify current processes — and be in a position to address and answer the following questions:
  - » Does a written committee charter exist? If so, does it need to be updated to reflect the current structure, governance, membership, etc.?
  - » Has each committee member signed a written acceptance of his/her responsibilities?
  - » Are regular Committee meetings held to review plan investments and administration?

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  - » How are decisions made and documented?
  - » Are minutes kept to document and memorialize committee meetings, attendance, votes, actions, etc.?
  - » Have previous authorized actions (e.g., investment changes) been executed?
  - » Does the plan have a written investment policy? This is not required by ERISA, but having and following one is considered the best practice.
  - » Is fiduciary liability insurance and/or a company indemnification provision in place to protect the individual fiduciaries in the event of individual or class action civil litigation?
- Confirm all required, and related, plan documentation exists and can be easily accessed.
  - » Plan document and amendments (fully-executed).
  - » Summary plan description (SPD)/summary of material modifications (SMM).
  - » ERISA § 404(c) disclosures and general compliance.
  - » ERISA § 404a-5 participant fee disclosures.
  - » Favorable IRS determination letter.
  - » Service provider agreements/ERISA § 408(b)(2) fee disclosures.
  - » Service provider selection/monitoring process and outcomes.
  - » Parties-in-interest.
  - » Compliance testing results, and corrective action, if applicable.
  - » Government audit results, and corrective action, if applicable.
  - » Self-audit results, and corrective action, if applicable.

With this review made and necessary corrective steps taken, plan fiduciaries will take comfort in knowing their collective fiduciary house is in order and will pass muster under government review, and plan participants will be assured that the committee's decisions and commensurate actions are being made with their sole and best interests in mind.

If you have questions about, or need assistance with, achieving this result, contact your plan consultant.

Top Five New Year's Resolutions for Retirement Plan Fiduciaries

We always hear the same resolutions when the new year rolls in: lose weight, get organized, travel more, etc. Resolutions for fiduciaries are not something you read about every day, which is why we are bringing you the top five resolutions to become a better plan fiduciary in 2015.

5. Providing Information in Participant-Directed Plans.* When plans allow participants to direct their investments, fiduciaries need to take steps to regularly make participants aware of their rights and responsibilities under the plan related to directing their investments. This includes providing plan and investment-related information, including information about fees and expenses, that participants need to make informed decisions about the management of their individual accounts. Participants must receive the information before they can first direct their investment in the plan and annually thereafter. The investment-related information needs to be presented in a format, such as a chart, that allows for a comparison among the plan's investment options.

4. Be Educated on Prohibited Transactions.* Who is prohibited from doing business with the plan? Prohibited parties (called parties in interest) include the employer, the union, plan fiduciaries, service providers and statutorily defined owners, officers and relatives of parties in interest.

Some of the prohibited transactions are:

- A sale, exchange or lease between the plan and party in interest
- Lending money or other extension of credit between the plan and party in interest
- Furnishing goods, services or facilities between the plan and party in interest

Other prohibitions relate solely to fiduciaries who use the plan's assets in their own interest or who act on both sides of a transaction involving a plan. Fiduciaries cannot receive money or any other consideration for their personal account from any party doing business with the plan related to that business.

3. Monitoring Your Service Providers.* An employer should establish and follow a formal review process at reasonable intervals to decide if it wants to continue using the current service providers or look for replacements. When monitoring service providers, actions to ensure they are performing the agreed-upon services include:

- Evaluating any notices received from the service provider about possible changes to its compensation and the other information it provided when hired (or when the contract or arrangement was renewed)

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- Reviewing the service providers' performance
- Reading any reports they provide
- Checking actual fees charged
- Asking about policies and practices, such as trading, investment turnover and proxy voting
- Following up on participant complaints

2. Review and Monitor Plan Expenses and Fees.* Fiduciaries should ensure that all required fee disclosures are made timely and monitor fees on a regular basis. Fiduciaries should establish a policy for ongoing plan expense and fee monitoring and benchmarking. Also, as necessary, disclose plan fees to participants.

1. Adopt a Financial Wellness Program. These programs optimize employee participation and action through engaging group and individual guidance. Financial wellness looks beyond a participant's retirement plan and provides an individualized blueprint that summarizes goals and objectives and identifies action items to create a well-rounded financial picture.

Final Words of Wisdom for 2015*: Being a fiduciary brings with it many responsibilities as well as potential liability. A fiduciary who does 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. It's important for all fiduciaries to understand their fiduciary obligations and the steps they can take to limit their exposure.

Solutions for a Stressed-Out Nation

Financial stress is a reality faced by the American worker every day, its ripple effects impacting individual health, productivity and quality of life. In May 2014, New York Life Retirement Plan Services sponsored a research study in which they surveyed more than 1,500 workers to uncover individual stress levels, their causes and how to best combat them.

How Stressed Are We?

Quite simply — we are very stressed. Nearly three-quarters of survey respondents admit to experiencing stress in their daily lives, and more than 25 percent report feeling extremely stressed. And when asked to identify the causes of stress, financial worries bubbled to the top:

- 60 percent worry about possible financial difficulties.
- 47 percent are concerned with facing potentially unaffordable medical expenses.
- 46 percent fear possible job loss.

Only half of all survey respondents considered their financial situation to be good.

The Impact of Stress

Stress is not something to be taken lightly. It impacts the individual and their employer.

- The World Health Organization estimates the cost of stress to U.S. businesses to be $300 billion annually.[1]
- Productivity losses related to personal and family health problems cost U.S. employers $1,685 per employee per year, or $225.8 billion annually.[2]
- One in four workers reports that financial stress distracts them at work.[3]

The Different Faces of Stress

Individuals identifying as highly stressed people are aware that they are not taking action to rectify their financial situation. 58 percent of highly stressed respondents admitted showing poor effort in saving for retirement, and half report that they fail in the basics of budgeting.

Financial stress is not limited to low earners. More than one-quarter of respondents earning more than $100,000 reported feeling highly stressed.

Women feel financial stress more acutely — 34 percent of women responding to the study reported experiencing extreme stress, compared to 22 percent of men — and are significantly more likely to bring that stress with them to work.

Lower income workers – those earning less than $50,000 – are more concerned with establishing an emergency savings than higher paid colleagues. Establishing that safety net trumps retirement savings, day-to-day bills and medical bill concerns.

Solving for Stress

As it stands now, 70 percent of respondents see their stress levels staying the same or increasing in the next year. But can we change that?

By and large, respondents recognize the value of taking action, considering the act of establishing a financial plan the most helpful in reducing stress. A holistic financial plan – one encompassing basic financial skill sets like budgeting, savings, debt management, retirement and investments – may effectively combat financial stress.

** U.S. Department of Labor. "Meeting Your Fiduciary Responsibilities." www.dol.gov/ebsa.*

[1] Forbes, 2012

[2] Center for Disease Control, October 2013

[3] PwC Employee Wellness Survey, 2013

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This means we must re-examine the best way to engage plan participants. Simply focusing on retirement planning in participant education and engagement strategies ignores the complexities of an individual's financial life — and rings hollow and incomplete.

To successfully empower individuals to save for retirement, it is imperative that we utilize tools and advice to support the broad spectrum of their financial lives. In order to increase productivity and lower the health care costs associated with financial stress, we need to help reduce financial stress.

This article was written by New York Life and published in RPAG's magazine *Impact*, Fall 2014. Minor changes were made for compatibility purposes.

Improper Handling of Hardship Distributions May Result in Significant Problems

These days, many plans are experiencing an uptick in the number of participant requests for hardship distributions. Much of this increased activity may be attributed to our prolonged and tepid economic recovery.

As these requests are considered, you want to be sure not to act to the detriment of your plan. Improper handling of hardship requests can ultimately result in plan disqualification. It is important to understand what the law and your plan document allow so your actions do not result in unintended but impermissible hardship distributions.

First, the law requires that any hardship distribution can only be made due to a participant's immediate and heavy financial need.

The law does not permit a distribution in excess of the amount necessary to satisfy the need, which cannot be met by other resources reasonably available to the participant. Unless the plan has knowledge to the contrary, the regulations allow a plan to rely on the participant's written representation that the need cannot be reasonably relieved by insurance, liquidation of other assets, cessation of contributions, distributions or nontaxable loans from employer plans or commercially available loans.

Also, assets available for distributions are limited to the participant's accumulated elective contributions, exclusive of earnings but reduced by losses.

If the plan allows hardship distributions, the plan document must specifically state so.

A safe harbor set of guidelines for what qualifies as an immediate and heavy financial need can be incorporated into the plan document. Also, regulations provide for the availability of safe harbor provisions to be included in the plan document to aid in determining if the distribution may be deemed necessary as long as any other loan or distribution available under the plan has been exhausted and the participant is suspended for making elective contributions for at least six months.

Take this opportunity to review your plan's hardship provision to make certain that you are following its procedures correctly. Remember, inconsistent, sloppy or overly liberal distributions may result in significant problems for the plan.

Communication Corner: Leaving the Company

This month's employee memo is titled "What Happens to My Retirement Plan When I Leave the Company?". This memo instructs participants on their four options to handling the money in their retirement plan when they leave their company.

As a reminder, we post each monthly participant memo online via the Fiduciary Briefcase (fiduciarybriefcase.com).

Call or email your plan consultant if you have questions or need assistance.

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