

Pension Plan Fix-It Handbook

Employee Benefits Series

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Why It Matters How Much You Know About the Plan Auditor You Hire

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Retirement plan sponsors have the fiduciary responsibility both to do due diligence when selecting service providers, then to continue monitoring them to ensure that the service providers are doing what they were hired to do.

This column examines steps and provides some tips for two of the most important aspects of being a fiduciary working with service providers: hiring a plan auditor and selecting investment funds.

The Independent Qualified Public Accountant

Qualified retirement plans with more than 100 participants at the beginning of the plan year are subject to what is referred to as an ERISA audit by an Independent Qualified Public Accountant. Retirement plans with fewer than 100 participants at the beginning of the plan year may be exempt under the small-plan audit rule (see April story). The plan sponsor elects whether to have a “full scope” or “limited scope” audit performed (see January 2013 column).

A recent extensive assessment (<http://www.dol.gov/ebsa/pdf/2014AuditReport.pdf>) by the U.S. Department of Labor’s Employee Benefits Security Administration of the quality of ERISA audit work being done is worth noting, especially if you are a plan sponsor that selected a small certified public accountant firm to conduct your plan’s ERISA audit.

The assessment found that audit quality has not improved since previous studies were conducted.

Fiduciary tip: *Experience matters! Always ask for relevant experience when selecting a plan service provider.*

EBSA selected 400 plans with an attached accountant’s/auditor’s opinion from its 2011 Form 5500 database. The agency segmented its audit sample based on the number of audits that a CPA firm performed. The majority (61 percent) of the audits were in good shape

(completely compliant or containing only minor deficiencies). But the remainder, nearly 40 percent, were deficient. Key findings of the assessment included disclosure that CPA firms:

- that performed the fewest audits had a 76-percent deficiency rate;
- that performed the most audits had a 12-percent deficiency rate;
- that were members of the American Institute of CPAs’ Employee Benefit Quality Center tended to have fewer deficiencies; and
- with targeted training relating to employee benefit plans tended to have fewer deficiencies.

Fiduciary tip: *When selecting an ERISA auditor or any service provider, ask about the level of experience and Continuing Education requirements at the firm, including number of CE hours required each year.*

Other statements from the EBSA assessment included recommendations to amend ERISA to:

- include qualifications in the definition of “qualified public accountant”;
- repeal the limited scope audit; and
- give the U.S. Secretary of Labor authority to establish accounting principles and standards that would protect employee benefit plans.

As a result of this assessment, EBSA is going to narrow its focus and review plans with a large amount of assets that are audited by CPA firms with a small employee benefit audit practice. If your CPA firm conducts fewer than 100 employee benefit plan audits a year, it might find itself in DOL’s crosshairs.

Given the study results, it is imperative that plan sponsors selecting small CPA firms understand their experience and breadth of practice.

See Andersen, p. 2

DOL's website provides information to help plan sponsors understand their fiduciary responsibility and how to work with plan service providers (see box below).

- Selecting And Monitoring Pension Consultants — Tips For Plan Fiduciaries
<http://www.dol.gov/ebsa/newsroom/fs053105.html>
- Tips For Selecting And Monitoring Service Providers For Your Employee Benefit Plan
<http://www.dol.gov/ebsa/newsroom/fs052505.html>
- Selecting An Auditor For Your Employee Benefit Plan
<http://www.dol.gov/ebsa/publications/selectinganauditor.html>

The Plan Investment Manager

A much-awaited U.S. Supreme Court ruling in May 2015 didn't really provide the details on fiduciary duty to monitor plan investments that many were anticipating. The outcome of *Tibble v. Edison International* (see May story) reaffirmed the duty but didn't provide any insights on how to conduct that duty. The case was remanded to the appeals court that heard it earlier to work out the details.

Briefly, participants in the case held that the plan sponsor breached its fiduciary duty by selecting retail-priced investment funds, rather than virtually identical institutionally priced investment funds for Edison's 401(k) plan. Three of the investment funds were selected in 1999 and three funds were added in 2002. The federal district court that first heard the suit held that the six-year ERISA statute of limitations for action on breach of fiduciary duty had run out on the funds selected in 1999 and the 9th U.S. Circuit Court of Appeals agreed.

Citing trust law that provides that a trustee has a continuing duty to monitor and remove imprudent trust investments, the High Court disagreed, and stated that the fiduciary must fulfill its obligations with the same "care, skill, prudence and diligence" that a similarly situated person would use. It is now up to the 9th Circuit to decide whether the fiduciaries breached their duties.

What Does It Mean to Plan Sponsors?

Any plan sponsor that had hoped the ERISA six-year statute of limitations would get it out of continuous monitoring of plan investments should cancel that thought. The decision reaffirms this duty as ongoing. Plan sponsors that have implemented an investment policy statement, appointed an investment committee and conduct periodic investment reviews shouldn't be affected by the decision on remand.

But plan sponsors that haven't been diligent about the investment review process should dust off the procedures, reconvene the committee and revisit their IPS.

Plan sponsors that do not have any of the above should develop them immediately. In addition:

- All retail-priced funds should be reviewed for replacement with lower-cost institutionally priced funds, when available.
- Hiring an outside financial adviser, where warranted, should be considered.
- Document, document, document decisions regarding the selection of plan investment funds.

Key Is Documenting

Figuring out fiduciary responsibilities is sometimes relatively straightforward, as in the vendor selection process, but sometimes it's not — as in how and when a plan sponsor decides to remove an investment from a fund lineup. The key is documenting plan processes, seeking expert guidance when needed and conducting periodic self-audits to ensure that procedures and controls are in place to mitigate any errors or omissions.

Above all, follow plan provisions and develop procedures that meet your particular situation. ❖

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