FIDUCIARY SERIES

Investments—designing and monitoring your plan menu

Participants rely on your plan's investment options to help them pursue a secure retirement. And, for many, the plan will be their main source of retirement income. That's why, as the sponsor of an ERISA-covered retirement plan, it's so important that you meet your fiduciary responsibilities to carefully select and monitor suitable funding choices for your plan.

As an ERISA fiduciary, you should keep in mind the following points needed to fulfill your obligations:

- ERISA generally requires the diversification of plan investments
- A prudent investment selection and monitoring process is necessary
- Diligent and regular investment reviews and adjustments should be part of a prudent process

Select your plan's investment options carefully

A well-designed investment menu should fit your employees' needs and help provide the income they will need in retirement.

Plan fiduciaries who do not comply with ERISA's fiduciary requirements can be held personally liable for losses directly caused by their failure to perform their duties, which can result in penalties and sanctions.

Reducing your liability

ERISA Section 404(c) can help relieve you of certain fiduciary liability for participants' investment decisions. To receive this protection, you must offer a broad range of investment alternatives (generally, at least three), that give participants sufficient opportunity to diversify their investments. However, you are still responsible for the prudent selection and monitoring of the funding options.

In addition, participants must be given sufficient information to make informed decisions about the investment options available under the plan. Participants must have the opportunity to give investment instructions at least once each calendar quarter. It is important to consult with your legal counsel to understand both the obligations and relief under 404(c). Note: Plans are not required to adhere to 404(c). A plan sponsor can choose not to subject a plan to 404(c).

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Make prudent investment menu selections

When designing your investment menu, be sure your selections satisfy ERISA's diversification requirements. If you have implemented an investment policy statement (IPS), make sure you follow your IPS. When selecting your investment menu, consider the following:

- Be easy to understand
- Be diversified and allow employees to build portfolios based on their situations and goals
- Address both the accumulation and income phases of retirement planning
- Consider professionally managed investment options for participants who aren't active in their retirement planning

Here are some steps you can consider to help you meet your investment fiduciary responsibilities.

Create and document your process

Document your policies and procedures. You might consider creating and following an IPS. If you choose to adopt an IPS, your IPS must clearly spell out a process for selecting and monitoring your plan's investment options and service providers. Please note that while an IPS might be beneficial for some plan sponsors, it is not required. A trusted provider, consultant or your legal counsel might be able to help you create your IPS by offering guidelines and providing sample templates. Before implementing an IPS, please be sure to consult with your legal counsel and/or tax advisor to confirm that it is appropriate for your plan.

Watch your numbers

More isn't necessarily better when it comes to the number of investment choices you offer. Too many choices may confuse participants, or worse, it may keep them from investing because they are overwhelmed. Please be careful to take into account your own plan and its participants, and consult with your counsel to determine what might be appropriate.

A well-constructed investment menu should contain enough choices to suit a variety of investing preferences and meet a range of objectives. Some of the investment options you might consider include, but are not limited to:

- Target date funds, which are intended to simplify asset allocation. (Please note that target date funds include a target date that approximates when investors plan to start withdrawing their money. The principal value of the funds is not guaranteed at any time, including at the target date. Target date funds share the risks associated with the types of securities held by each of the underlying funds in which they invest. In addition to the fees and expenses associated with the target date funds, there is exposure to the fees and expenses associated with the underlying mutual funds as well.)
- Mutual funds, which allow participants to broadly diversify
- Lifetime income solutions such as annuity contracts, which can, as one of the income options, provide for a guaranteed lifetime income option* to help your participants meet their basic needs in retirement

*Guarantees are based on the claims-paying ability of the issuer and the terms of the applicable annuity contract.

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To avoid confusion and promote good planning habits, make sure you give your employees access to the information they need to make informed investment decisions. Under ERISA, such information must be delivered in a format that's easy for your participants to understand and allow them to compare plan investment options. You should also carefully evaluate each fund's expenses against the potential value of what an investor receives in return.

Properly monitor plan investment options

Selecting suitable investment options is only part of your obligation; you also have the obligation to monitor and review these investment options on a regular basis. If you do not regularly monitor, it is possible that your plan's investment options are not being managed consistent with their objectives, underperforming or are charging higher than average fees. Improper monitoring may put you personally at risk for penalties and sanctions. Here are some tips to help you monitor your plan:

Conduct regular plan investment reviews

Thoroughly review your plan's investment menu no less frequently than annually. If market conditions, provider concerns or participant issues warrant, make sure that you are monitoring and reviewing more often, if necessary. Document your monitoring/review process carefully. The goal is to be able to demonstrate how well your investment options are performing and identify any weaknesses that need improvement. It is important to:

- Review each investment option against benchmarks
- Evaluate whether each investment option is still suitable for your plan's menu
- Monitor costs and understand their impact

Follow your investment policy statement

If you determined that it was appropriate to implement an IPS, make sure that you are following the terms of your IPS as you conduct your annual fund review. As part of the review process, pay attention to your IPS' guidelines about when to place funds on a watch list. These guidelines should also indicate when to inform participants about fund concerns or potential changes. As always, make sure to document your policies and procedures carefully.

Seek expert assistance

Consider collaborating with a third party who offers fiduciary support. A third party can help you with:

- Providing sample investment policy statements for your consideration
- Investment menu design
- Investment selection and monitoring

If you do work with a third party, remember that, as an ERISA plan sponsor, it's still your fiduciary responsibility to prudently select and monitor that plan provider, and to ensure that all policies and procedures comply with ERISA requirements. If you are an ERISA plan sponsor and want to engage a third-party investment fiduciary, note that there are different types, so make sure you understand and document what, if any, fiduciary responsibilities they are assuming.

Having a well-thought-out and documented process to select and monitor your plan's investment options will help you fulfill your fiduciary obligations. It can also help your employees prepare for retirement and pursue lifetime income.

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