



# Retirement Plan Committee Best Practices

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# ERISA Fiduciary Overview

- **ERISA Fiduciary Duties**
  - Loyalty
  - Prudence
  - Diversification
  - Follow plan terms, unless inconsistent with ERISA
- **ERISA Plan Structure**
  - Must have a “named fiduciary”
  - Assets must be under the direction of a trustee, unless delegated
  - Significant flexibility

# ERISA Fiduciary Duties

- **Prudence**
  - Good process, not good results
  - An empty head with a clean heart is not enough
  - “Prudent man acting in a like capacity and familiar with such matters would use...”
  - Don’t just rely on the experts blindly
- **Loyalty**
  - “Exclusive purpose” rule
  - “Two Hats” doctrine
- **Diversification**
- **Follow plan terms**

# General Best Practices

- **Document, document, document**
- **Deliberate**
- **Don't fear difficult issues**
- **Understand privilege issues**
- **Do what you say, and say what you do**
- **Keep documentation up to date**

# Plan Governance

- **Many ways to administer a plan**
- **Who manages the plan?**
  - **Sponsor issues**
  - **Investments & fees**
  - **Service providers**
  - **Supervision and monitoring**
  - **Claims for benefits**
- **Charters & managing authority**
- **Do you really want the Board of Directors involved?**
- **Independent fiduciaries/investment experts**
- **Investment policy statement**
- **Meetings, fiduciary education, and documentation**

# Service Providers

- **How is my vendor getting paid and how can you know?**
- **RFPs/Benchmarking Studies**
- **Optional services**
- **Who pays for what?**

# Investment Management

- **Constructing an investment menu**
  - ERISA 404(c)
  - Diversified investments
  - Levels of participant sophistication
  - Number of options
- **Knowing your participants**
- **Participant education**
- **Monitoring investments**
- **How to deal with third-party advisors**
- **What kind of investment vehicle?**
- **Documenting problems and the plan to deal with them**
- **Fees, fees, fees**

# Settlor Functions

- **Who's amending the plan?**
- **Assigning and dividing settlor & fiduciary functions**



# Litigation & Claims for Benefits

- **Managing claims for ERISA benefits**
  - Pay attention to deadlines
  - Follow claims procedures
- **Fiduciary insurance policies**
- **Watch litigation trends**
- **Case Study: 401(k) fee cases**
- **Are plaintiffs' counsel watching you?**

# Questions?



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