Building a Strong Foundation

Plan Compliance and Governance

PLAN GOVERNANCE

Plan fiduciaries accept personal financial liability associated with their roles in managing ERISA benefit plans. In order to mitigate this personal risk, every fiduciary needs to understand core ERISA requirements and be informed of the boundaries within which he or she must operate. ***To facilitate good decision-making, we recommend providing formal fiduciary training to all committee members, and also creating a process to identify and address potential conflicts of interest.***

On a positive note, we can take comfort that ERISA is more concerned with the quality of the processes we follow than with our outcomes. While we cannot always control the outcomes associated with plan decisions, it is within our control to ensure that proper policies and procedures are established and followed, and also to monitor our plan(s) for ERISA compliance. With that said, we will focus our attention on two critical fiduciary concepts established by ERISA to guide plan fiduciaries: ***(1) the exclusive benefit rule*** and ***(2) the prudent man rule.***

Minimizing Fiduciary Risk

1. Exclusive Benefit Rule. Fiduciaries must act for the ***exclusive purpose*** of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses. Inherent within this statement, ***fiduciary*** decision-making cannot be affected by the ultimate consequences for the employer/plan sponsor.

Plan committee members looking to maximize their fiduciary protection must always *make decisions under the premise of acting in the best interest of plan participants.* The only exception to this rule would be for actions specifically documented as settlor functions (e.g. reducing the employer contribution or match).

Returning our focus to fiduciary decisions, one significant concern is the oversight of plan fees. Ensuring "fee reasonableness" does not mean obtaining the lowest price for all services. Rather, fees paid by participants for plan investments and services must be competitive with those offered in the market. In completing this review process, engaging a knowledgeable expert may be a critical first step, and this leads us to our second point.

2. Prudent Man Rule. Fiduciaries must act with the skill, care, prudence and diligence that a prudent person acting in a like capacity and *familiar with plan matters* would use. In short, this ERISA guideline holds oversight committee members to a "prudent expert" standard. Furthermore, the guideline goes further to state that *if plan fiduciaries do not possess requisite expertise, then it is incumbent upon them to obtain that expertise.*

Most committee members have limited time to allocate to their plan management duties. As such, it is likely not reasonable to assume that they will become and remain experts with regard to all critical fiduciary functions. In particular, many plan fiduciaries require outside assistance with their investment oversight responsibilities in order to satisfy ERISA's prudent expert standard. Once prudent investment policies have been established to guide plan decision making, it is important to document, on a regular basis, both how policies are followed and how they are reviewed. And again, please keep in mind that a "prudent expert" standard will serve as ERISA's measuring stick.

Minimizing Fiduciary Risk

3. Applying ERISA guidelines to the management of your benefit plan(s).

On the surface, the aforementioned ERISA guidelines can appear challenging. We emphasize that the focus needs to be on establishing and following prudent policies and procedures. When necessary, qualified professionals should be engaged to assist with your plan management. Whereas your goals will include maximizing outcomes for your plan participants, *ERISA does not place its focus on plan outcomes.*

However, by developing and following policies that focus on maximizing participant outcomes, you are acting in accordance with the exclusive benefit rule. And by engaging experts who are *familiar with plan matters* to assist in your plan management, you are complying with the prudent man rule. More importantly, by requiring the plan experts you engage to act in a co-fiduciary capacity, you will further minimize your own fiduciary risk.

In conclusion, we strongly encourage plan fiduciaries to build strong governance foundations for their retirement plan(s). *Well-defined policies and procedures, rooted in the principles established under ERISA, serve as the cornerstone for solid plan management.* Furthermore, we recommend that you regularly monitor your plan(s) for ERISA compliance, and also to confirm that you are operating your plan(s) in accordance with your plan documents.

Step-By-Step Process to Better Outcomes for Plan Fiduciaries, Administrators and Participants

Placing your initial focus on plan governance and compliance will pave the way for effective plan management that is in acordance with ERISA standards. Again, we emphasize that following our five-step process has enabled plan administrators and committee members to minimize their fiduciary risk.

Looking ahead, we will continue to walk through PlanPILOT's five-step action plan, with our next letter focused on plan design:

1) Building a Strong Foundation: Plan Compliance and Governance
2) **Maximizing Plan Design to Increase Employee Impact**
3) Developing Investment Policy and Structure: Balancing Diversity and Simplicity
4) Improving Plan Efficiency to Maximize Return on Investment
5) Helping Participants Make Better Decisions

We hope the thoughts contained in this letter help you improve the management of your retirement plan(s).

PlanPILOT is Here to Help

We welcome the opportunity to assist you and your retirement oversight committee in managing your retirement program. Please do not hesitate to call us at **(312) 973-4911** or visit www.planpilot.com to discuss how we can be of assistance to you and your plan oversight committee.

PlanPILOT