Tips for Documenting the Selection and Monitoring of Your Advisers

In working with our plan sponsor clients, we have found that while most go to great lengths to establish procedures to select and monitor plan investment options, many do not have adequate processes or documentation regarding the selection and monitoring of consultants or advisers that often assist the plan fiduciaries in investment-related matters. Fiduciaries of employee benefit plans are charged with carrying out their duties prudently and solely in the interest of participants and beneficiaries of the plan and are subject to personal liability to, among other things, make good any losses to the plan resulting from a breach of their fiduciary duties. In selecting service providers, the responsible plan fiduciary must engage in an objective process designed to elicit information necessary to assess the qualifications of the service provider, the quality of the work product, and the reasonableness of the fees charged in light of the services provided. In addition, this process should be designed to avoid self-dealing, conflicts of interest or other improper influence. The following steps are designed to assist fiduciaries in evaluating the adviser and the services to be provided.

Step 1: Evaluate the credentials of the adviser and his or her experience with servicing employee benefit plans, the services to be provided and the fees to be charged.

- You should also consider obtaining competing bids from other providers offering equivalent services and document the basis upon which you have selected your adviser, including any relevant industry experience and/or retirement-specific designation(s).

Step 2: Evaluate any potential conflicts of interest and the adviser's policies and procedures designed to address those conflicts.

- The SEC has warned that "business alliances" among pension consultants and money managers can give rise to serious potential conflicts of interest under the Advisers Act that need to be monitored and disclosed to plan fiduciaries. The following questions are designed to aid in determining whether conflicts, or potential conflicts, of interest exist:

  - Is the adviser registered with the SEC? If yes, does the adviser comply with all disclosure requirements?

  - Does the adviser have relationships with money managers that the adviser recommends?

  - Does the adviser, or a related company, receive any payments from money managers?

  - Does the adviser use plans that pay the adviser a consulting fee?

  - Does the adviser consider him/herself to be a fiduciary under ERISA with respect to the recommendations the adviser provides for the plan?

Step 3: Periodically review the performance of your service providers to ensure that they are providing the services in a manner and at a cost consistent with the agreements.

Step 4: Review plan participant comments or any complaints about the services and periodically ask whether there have been any changes in the information you received from the service provider prior to hiring (e.g. does the provider continue to maintain any required state or federal licenses).

Step 5: Prepare a written record of the process you followed in reviewing potential service providers and the reasons for your selection of a particular provider.