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[Kurt Winiecki]

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The law that governs 401(k) plans (the Employee Retirement Income Security Act of 1974) is hundreds of pages long and written by Congress. Given that most CFOs won't be referring to the actual statute anytime soon, below is a list of eight essential criteria plan sponsors can use to help assess a plan's features, service providers and possible legal exposure.

Many other obligations and best practices exist, but responses to this list will be a good indication of whether you need to take a deeper dive into the compliance pool.

If you don't think this is an important exercise, stay tuned for the story of how one document would have saved a plan sponsor that employed only 12 people an ERISA violation lawsuit and about $60,000.

1. Find Your List of Plan Fiduciaries
Plan sponsors should have a physical file that includes a list of the plan fiduciaries and the responsibilities of each one. Best practices include having each plan fiduciary sign an annual acknowledgment letter stating that they understand their responsibilities and that they can be held personally liable for imprudent plan decisions (even those made by other plan fiduciaries).

2. Review Your Advisory (or TPA) Contract for Fiduciary Status
Many plan sponsors presume their service providers (especially those who "help" select the investments) are fiduciaries that act in the best interests of plan participants. Review your contract to determine if the advisor has any fiduciary obligations. If the advisor is not a fiduciary or is a Section 3(21) co-fiduciary, the plan fiduciaries are solely responsible for investment decisions and probably shouldn't be taking biased advice on investments.

3. Review Your Advisory (or TPA) Contract's Indemnification Clause
We are finding more indemnification clauses that actually increase a plan sponsor's liability when it works with a service provider. For instance, one service provider states it is a fiduciary, but the indemnification clause then places the responsibility and liability on the plan sponsor for everything but the provider's gross negligence. Hardly the fiduciary protection the plan sponsor was seeking.

4. Grab Your 408(b)(2) Fee Disclosure File
New federal rules require every 401(k) plan sponsor to obtain fee disclosures from every service

provider. Plan sponsors should keep hard copies of each fee disclosure in a separate file to comply with this rule. If you don't have this file, start one and request 408(b)(2) fee disclosures from every service provider.

5. Find Your Benchmarking Report
The purpose of the rule requiring plan sponsors to obtain fee disclosures is to help plan sponsors determine whether fees paid by plan participants are reasonable (which has always been required of plan sponsors). Accordingly, obtaining the fee disclosures is not enough; objectively comparing those fees to an industry standard (or some sort of benchmark) is required as well. Because fees are often tied to increasing asset values, your benchmarking report should be no less than three years old (plans with plan assets over $10 million should benchmark annually). If you cannot find a benchmarking report, numerous benchmarking services can provide you with one.

6. Examine Your Fund List for Bias
Self-dealing harms participants and can expose plan fiduciaries to liability. Glance at funds offered in your plan. Does the name on the investment match the name on the advisor's door? Does a single fund family name dominate the lineup? Are more than 40 percent of plan assets concentrated in one fund family's offerings? If so, it's easy to argue that the fund selection was biased in favor of certain funds. Given that plan fiduciaries have a duty to select the best investments, biased fund selection might be a breach of fiduciary duty.

7. Check for an ERISA Violation Insurance Provision or Policy
ERISA violation insurance protects the personal assets of plan fiduciaries against allegations of breaches of fiduciary duties. Typically, directors and officers, errors and omissions, nd employee benefit liability insurance policies *carve out* ERISA violations from coverage. CFOs exposed to personal liability by virtue of being a plan fiduciary should at least be insured on the company's dime. Failure to have ERISA violation coverage may be especially problematic if a CFO is separated from the company when an ERISA violation claim is filed.

8. Review Your Fidelity Bond
Check your latest Form 5500 for your fidelity bond and amount. This will help you correct an erroneous Form 5500 if necessary. The bond requirement is the lesser of 10 percent of plan assets as of the beginning of the plan year or $500,000. Bear in mind that many bonding companies now only offer three-year bonds. Accordingly, you must estimate the amount of plan assets as of the beginning of the third year (by estimating contributions and investment gains) so the bond will be sufficient in the future.

The Takeaway
This is a non-exhaustive list of some of the most important (read: legally problematic) issues that plan fiduciaries face. If these issues and documents are not familiar to your company, it may be time to brush up on ERISA practices.

Kurt Winiecki is CEO of Winiecki Wealth Management.

http://www.cfo.com/retirement-plans/2014/05/15-minute-401k-plan-review/