The rules, risk have changed

How the DOL has increased responsibility for plan fiduciaries

INTERVIEWED BY ROGER VOZAR

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Much attention has been given to the fees and expenses of qualified retirement plans. Many questions are being asked about the reasonableness and quality of the current 401(k) landscape.

For decades, service providers have been charging excessive, and often hidden, fees to a countless number of plan participants. Similarly, plan investment options came under fire shortly after the 2008 financial crisis, which saw millions of workers lose significant portions of their retirement savings. This unfortunate combination — excessive fees and poor returns — was the driving force behind the recent regulatory changes.

Smart Business spoke with Eric N. Wulff and Christopher D. Bart, managing directors and principals at Aurum Wealth Management Group, about the Department of Labor's (DOL) plan to address these issues.

What are some of the company's fiduciary responsibilities relating to their retirement plan?

The three main concerns revolve around fees, service and investments.

On Feb. 3, 2012, the DOL issued a final regulation under the Employee Retirement Income Security Act of 1974 (ERISA). This regulation requires a 401(k) plan's service providers to disclose all fee and compensation arrangements, effectively known as 'full fee disclosure.'

From a service perspective, companies are required by the DOL to determine the reasonableness of fees. Industry best practices indicate the most effective means by which you can evaluate the reasonableness is to place the plan out to bid. Conducting a request for proposal process allows you to compare not only the cost and compensation arrangements, but also the nature and level of the service. If the service provider does not provide a level of service commensurate to its fee, it is the company's fiduciary duty to terminate the provider.

As for investments, companies are required to maintain a documented process on the selection and monitoring of the investments in the 401(k) plan. Specifically, the DOL recently put out an advisory bulletin on target date funds requiring them to evaluate the absolute risk of these types of investments. Target date funds became a popular investment strategy because plan sponsors were given fiduciary relief if they offered them as a qualified default investment alternative. This turned out to be somewhat problematic when the market crashed in 2008 and 401(k) participants saw their investments drop by 20 percent or more.

How can companies minimize their fiduciary responsibility?

There are different types of advisers companies can engage to assist them with their responsibilities, and companies can do a better job understanding those options.

The two most common levels of fiduciary status under ERISA are 3(21) and 3(38). As a 3(21) fiduciary, the adviser serves as a co-fiduciary to the plan; in this role, the adviser monitors plan investments and makes investment recommendations to the plan sponsor, but does not have discretionary control of plan assets. As a 3(38) fiduciary, the adviser takes control of plan assets, makes all investment decisions and insulates the plan sponsor from fiduciary liability as it relates to plan investments. Hiring a 3(38) fiduciary is the highest level of fiduciary protection under ERISA.

Where do participants stand in all of this?

With most retirement plans, a big problem is that participants are not allocating assets correctly. So, many 401(k) plans are starting to implement more help features for participants. Studies show the average participant can earn an additional 2 or 3 percent per year by getting professional help. Unfortunately, the average participant tends to chase performance when determining their investment allocation.

Hopefully, these increased responsibilities on plan sponsors will continue to bring much needed change to help fix the nation's structural problem with retirement savings. ●

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