

Meeting Expectations

By Fred Reish

I recently met with several plan committees to educate the members on their responsibilities as fiduciaries. I thought you might like to know some of the most commonly asked questions—and the answers.

How often should the committee meet?

The easy answer is: as often as is necessary. However, as a practical matter, plan committees tend to meet on a quarterly basis. In effect, there are three "event-driven" meetings and one "overview" meeting. By "event-driven," I mean that the focus of the non-annual meetings tends to be on specific issues (such as mutual fund manager changes), follow-up on current projects (such as automatic enrollment or watch-listed investments), changes in the law, and so on. The annual meeting should include a complete review of all of the investments and services.

What should be on the agenda?

Over the course of the year, all of the following items should be addressed at one meeting or another:

- ❖ *Investment Options.* The major headings of an investment policy statement should be the agenda for the part of the meeting dealing with the investments, including the selection and monitoring of investment options, review of the plan's investment services (both plan- and participant-level investment advice), and review of the investment policy statement itself. These discussions also could include the addition of new asset classes (or investment categories) or new features (e.g., brokerage accounts, mutual fund windows).
- ❖ *Services.* The services used by the plan should be monitored at least annually, including the plan-level investment consultant; compliance services (e.g., testing, 5500s, etc.); the recordkeeper; enrollment and investment education services; and, yes, the plan's attorney. The services should be reviewed for quality, effectiveness, and adherence to the governing agreements.
- ❖ *Fees and Expenses.* This topic rapidly is becoming the No. 1 issue for consideration by plan committees—or, at least, it should be. The committee should focus on the reasonableness of the expenses and on understanding and evaluating all indirect revenues being paid to and from the plan's providers.
- ❖ *External Changes.* This might include things like Roth deferrals, automatic enrollment, and qualified default investment alternatives (or QDIAs), as well as age-based lifecycle funds, education for participants, and so on.
- ❖ *Quality of Participant Investing.* It is not well known that fiduciaries have significant responsibilities for the quality of participant investing. In fact, if a plan does not satisfy 404(c), fiduciaries are liable personally for imprudent participant investing. Fiduciaries also are responsible for monitoring the plan's enrollment services and investment education to determine, among other things, whether they are working.
- ❖ *Levels of Participation.* Fiduciaries have a responsibility to implement a plan's eligibility provisions and to oversee the communications with their eligible employees. However, the scope of that duty is not well-defined. As a result, fiduciaries periodically should evaluate the plan's communication and enrollment services. That can be done by reviewing, among other things, data about the actual levels of participation and then comparing it with industry benchmarks supplied by the plan's advisers or providers.
- ❖ *Adequacy of Deferrals.* This area is also largely unexplored. However, there is a duty for fiduciaries to select prudently and monitor their providers of participant education. Fiduciaries should solicit input from their advisers and providers about the available services to educate participants, about appropriate deferral rates, and should consider services to help participants increase their deferrals.

Some attorneys are concerned that minutes may be used against a committee. However, my experience is that, when properly prepared, minutes can be helpful in showing that a committee has engaged in a prudent process. The minutes, together with other materials reviewed by a plan committee, should be kept in a due diligence file for at least seven years.

They should list the people attending the meeting, the items discussed, the materials reviewed, any input from advisers, and the decisions reached. In my opinion, there should be little in the way of discussion in the minutes.

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