401(k) fiduciary responsibilities

How fees and expenses fit into managing defined contribution plans **Interviewed by Leslie Stevens-Huffman**

As the sponsor of a retirement plan, CEOs are helping their employees achieve a secure financial future. Sponsoring a plan, however, also means that you, or someone you appoint, will be responsible for making important decisions about the plan's management.

The Employee Retirement Income Security Act (ERISA) requires that those responsible for managing retirement plans, referred to as fiduciaries, carry out their responsibilities prudently and solely in the interest of the plan's participants and beneficiaries. Among other duties, fiduciaries have a responsibility to ensure that the services provided to their plan are necessary and that the cost of those services is reasonable.

"With more companies offering defined contribution plans rather than the traditional pension plans and given that the future of social security is hazy, there's both a legal and moral obligation to make certain that the company's 401(k) plan is managed prudently," says Roy Rader, manager for audit and business advisory services for Haskell & White LLP.

Smart Business spoke with Rader about what CEOs should know concerning the responsibilities of 401(k) plan sponsorship.

Roy Rader
Manager for audit and business advisory services
Haskell & White LLP

What steps can CEOs take to evaluate plan fees and expenses?

Oversight of the plan's costs is getting harder to do because many of the plan administration fees are not fully visible to the plan participants. Many CEOs, especially in smaller companies, also serve as trustees or fiduciaries of the 401(k) plans. Therefore, in that capacity, you should first ask for full disclosure of all plan fees and administrative costs. Second, monitor what you are charged via monthly statements and audits to make certain that the plan is compliant. You can certainly shop various firms to see if what you are being charged is in line with market comparables. Before you seek bids or estimates, establish your requirements. You will need to know how much of the work will be done in-house and what duties will be required of an outside administrator. This will help you compare service plans and the proposed fees.

In addition, ask each prospective provider to be specific about which services are covered for the estimated fees and which are not. To help in gathering information and making comparisons, you may want to use the same format to review the pricing for each prospective provider. The U.S. Department of Labor Web site is a very good reference tool that can help you know what fees will be charged and what is reasonable and customary.

What other responsibilities rest with the plan fiduciary?

The fiduciary is held to certain standards of conduct and certain responsibilities including:

- Acting solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them
- Carrying out all duties prudently
- Following the plan documents (unless inconsistent with ERISA)
- Diversifying plan investments

The bottom line is that, following Enron, plan administrators have greater responsibility to educate their employees about how to manage a defined contribution plan and to make certain that they provide a wide array of investment choices for their employees. Also, if company stock is offered as an investment option in the plan, make sure to stress the importance of diversification through educating the employees about how to choose investments that will fit their risk tolerance and future financial and retirement needs.

What education should fiduciaries provide to plan participants?

Many firms are hiring outside consultants to conduct seminars, and they are providing employees with access to Web sites that provide plan information and help employees figure out how much they'll need to retire. These same sites provide a long-term forecasting tool that can show expected returns by investment type as well as historical trends. Employees can become more comfortable with their own risk tolerance and how to plan for their financial needs at retirement.

Are 401(k) plan audits required?

All 401(k) plans are required to file a form 5500 annual return/report with the federal government. An audit is required once a plan elects to file as a 'large plan' after reaching 100 participants at the beginning of the year. A copy of the auditor's report must be attached to the form 5500 filing. The information reported under the 5500 is distributed to all of the various governmental agencies that oversee pension plans, including the Department of Labor and the IRS, as well as the public and the plan participants. There are penalties for failing to file required reports and provide required information to participants.

What penalties can be levied against a fiduciary for failing to meet the administrative responsibilities of 401(k) plan management?

Fiduciaries who do not follow these principles of conduct may be personally liable to restore any losses to the plan or to restore any profits made through improper use of plan assets. With so much riding on the success of these plans, it behooves all executives to make certain that their firms are fully compliant with their fiduciary responsibilities.

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