Did You Know?

The section of the Internal Revenue Code that made 401(k) plans possible was enacted into law in 1978. It was intended to allow taxpayers a break on taxes on deferred income.

In 1980, a benefits consultant named Ted Benna took note of the previously obscure provision and figured out that it could be used to create a simple, tax-advantaged way to save for retirement.

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Finding the Best Service Provider for Your Plan

These days, many Chief Financial Officers and Human Resources Professionals have been thinking about conducting a search-and-selection process (a.k.a. “RFP Process”) to identify the best recordkeeper for their retirement plan. They also want to modernize their plan with the incumbent service provider through this process.

Additionally, most employers see their retirement plans as comprehensive benefits to their employees, and they have a wide range of needs they’re trying to satisfy. Unfortunately, many retirement plan service providers project what employers’ needs are, instead of going through an objective process to identify and prioritize their needs and the retirement plan needs of their employees. Modernizing a retirement plan through a vendor RFP process can help reduce overall plan expenses, reduce fiduciary risk, improve the plan’s investment structure, update the plan’s design to include new best practices and service capabilities, and save time related to daily plan administration.

Working with an independent retirement plan consultant or advisor can help to complete an objective RFP process that is designed to meet an employer’s unique needs today and into the future. By using an outside consulting firm, a retirement plan sponsor receives the objective expertise of an independent reviewer and helps mitigate any conflicts of interest, if the consultant is compensated through a fee-based service agreement and does not receive commissions based on the recordkeeper used. In addition, the RFP process can help employers satisfy their ERISA fiduciary requirement to determine whether their retirement plan services and fees are “reasonable.” An industry best practice for helping to determine reasonableness is to receive and compare “live bids” from a wide range of service providers available in the marketplace.

This issue of “Fiduciary Insights and Updates” provides information on the key components of completing an independent and productive RFP process.
Fiduciary Best Practices

Employers that sponsor a retirement plan for their employees have certain obligations to prudently select services and investments for the exclusive benefit of plan participants and their beneficiaries, as described in the Employee Retirement Income Security Act of 1974 ("ERISA"). The effectiveness of the process employers follow to achieve this major objective is a key determining factor in their ultimate satisfaction with the services selected and the overall success of their retirement plan.

More disclosures of fees, service capabilities, and investments have been provided to employers and their employees as a result of the Department of Labor’s (DoL) amendment to ERISA 408(b)(2). As a result, there may be greater scrutiny on an employer’s process to select and monitor the retirement plan services it provides to employees.

Additionally, employers (and their retirement plan advisors) have new case law to reference for potential best practices related to searching for a new a recordkeeper and applying the appropriate ongoing fiduciary oversight process. For example, on March 31, 2012 a U.S. District Court for the District of Western Missouri levied a $35.2 million judgment against ABB, Inc. for breach of fiduciary duty. In Tussey vs. ABB, Inc., ABB made a number of missteps that led to the lawsuit and eventual judgment. The defendants included the company (ABB, Inc.), the fiduciary committees serving the plans, and one executive who was named personally. By taking the appropriate precautions, you can avoid a similar fate for your retirement plan and yourself.

For employers, their fiduciary liability includes selecting and monitoring the vendors who service their plan. This includes the responsibility of demonstrating that a meaningful analysis and comparison of services and fees (in other words, a “prudent process”) has taken place. While not a regulatory requirement, issuing a vendor request for proposal (RFP) and engaging in an analysis of the responses has tremendous potential to reduce fiduciary liability and ensure competitive proposals are provided by a wide range of available service providers. Additionally, the DoL, in a preamble to its new 408(b)(2) fee disclosure regulations, assumes that “plans normally conduct RFPs from service providers at least once every three to five years.”

The RFP process is designed to ensure that a service provider is providing optimal service for the price being charged. Periodically conducting an RFP process to evaluate the current provider is not only a best practice to demonstrate fiduciary prudence, but more importantly, it is in the best interest of plan participants. If the current service provider is the best fit for the plan, the RFP process will validate this and provide fiduciary documentation of prudence. If not, it is the plan fiduciaries’ responsibility to engage with the firm that proposes the best value to the participants.

The requirements of employers are significant as ERISA imposes high standards upon fiduciaries who are responsible for managing the operations of retirement plans—the courts have referred to those duties as “the highest known to law.”
Fiduciary Best Practices (cont.)

Conducting a full RFP may provide many benefits:

- Maximizing cost savings for plan participants, as an RFP places the employer in the strongest possible negotiating position, especially with the current provider. The current provider knows that it is unlikely the employer will change vendors without an RFP process; the process thereby spurs them to review their fee and service offering to be more competitive.

- Providing documentation of the execution of a prudent fiduciary practice: Periodic RFP searches document the ongoing evaluation of your providers, taking into account current market conditions, any growth of plan assets, and other factors.

- The RFP process assists committee members in familiarizing themselves with modern best practices from the top providers in the marketplace in order to implement some of these practices for the benefit of their participants.

Who conducts the RFP process may have an impact on the immediate and long-term benefits of the process. ERISA requirements of plan fiduciaries include the duty to investigate and the duty to use independent experts, as employers are not expected to be experts. The DoL says that employers may rely on the assistance of others to fulfill their fiduciary duties, including performing a prudent research and selection process. The independent expert hired may become an ERISA fiduciary to the plan by the nature of the work they perform to the plan. Thus, it is important for the employer to determine if independent expert’s work is objective and reliable. Additionally, vendors invited to respond to the RFP will quickly identify the level of expertise of the person or organization assigned the responsibility to complete this process—a greater level of expertise and independence typically influences the vendors to be more competitive with their responses to the RFP.

There are four main stages of an RFP process:

1. Preparation: determining the goals of the process (more effective participant services, lower fees, improved customer service and recordkeeping technology, etc.), identifying key constituents and their roles, setting minimum qualifications of vendor capabilities and attributes, identifying and prioritizing the scoring criteria, and defining the project timeline.

2. Construction of the RFP: identifying the vendors to receive the RFP, preparing appropriate data about your plan to share with all vendors so they are equally positioned to provide their most competitive response, incorporating any preferences and confirming which investments will be utilized in the future, sending the “RFP package” to each vendor, and responding to vendor phone calls and emails seeking any clarification or additional information.

3. Evaluation of RFP responses: creating an “apples-to-apples” comparison of all RFP responses, scoring and ranking the responses based on your priorities, calculating and comparing all fees, identifying the top “finalists” to present their proposals, and ultimately selecting the “winner” who is in the best position to meet your needs today and into the future.
Fiduciary Best Practices (cont.)

4. **Finalizing the Agreement**: working with the winning bidder to refine or negotiate the points that are most important to the employer, checking the vendor’s references, and then finalizing the new agreement. (Don’t forget to maintain copies of documents and meeting minutes related to the RFP activities before moving ahead with implementing the new services or converting to a new recordkeeper.)

**Comparing and prioritizing** each vendor’s RFP response is a critical part of the entire process. This is based on the preferences and priorities that were confirmed in the first stage of the process. Another area of difficulty for most employers is evaluating the elements of the conversion/transition process proposed by each vendor, if moving to a new vendor is the eventual outcome of the process. This is a critically important area that may impact all of the participants of a retirement plan.

In conclusion, fiduciaries of retirement plans have a responsibility to ensure that the plan’s vendor(s) are providing the highest and most appropriate level of service at a reasonable fee. The most effective way to accomplish this is to conduct a periodic vendor search via the RFP process. For employers to meet their fiduciary responsibilities, the process should be designed so that the plan’s fiduciaries can demonstrate objective evaluation and decision-making, meaning the chosen vendor did not provide any “incentives” that benefit the employer. ERISA requires that the decision to hire a retirement plan vendor must be made solely based on the best interests of plan participants.

**Contact RMB Capital Management’s** team of experienced retirement plan consulting and advisory professionals for additional information on how RMB may help your organization complete an objective and independent RFP.

[Scoring RFPs]

This is a good way to help compare the responses from each of the vendors, enabling side-by-side comparisons.
Retaining Retirement Plan Records

Government reports, such as Form 5500, and the records used to prepare them must be kept for at least six years after the filing date. What supporting records does your plan need to retain? You need to keep any records a government auditor might need to verify the accuracy of the original report:

- Financial records
- Hours of service and vesting determinations
- Corporate income-tax returns (to reconcile deductions)
- The plan's fidelity bond
- Documents relating to plan loans, withdrawals, and distributions
- Nondiscrimination and coverage test results
- Payroll records used to determine eligibility and contributions, including details supporting any exclusions from participation.

If records are lost, stolen, or destroyed during the required six-year retention period, the plan administrator must re-create them, unless doing so would result in excessive or unreasonable costs.

Other records may need to be maintained and updated on a more-or-less permanent basis to ensure proper administration and promote legal compliance. These include:

- The original signed and dated plan document, plus all original signed and dated plan amendments
- Summary Plan Descriptions, Summaries of Material Modifications, and anything else describing the plan that you provide to plan participants
- Documentation supporting the trust’s ownership of the plan’s assets
- The most recent determination letter from the IRS or the form requesting a determination letter if one is pending

Important Dates and Deadlines

**September 30** -- Distribute Summary Annual Report (if a request for a 2.5-month extension for Form 5500 was not filed with the IRS)

**October 15** -- File Form 5500 with the DoL (for plans filing under a Form 5558 extension)

**November 1** -- Meet all data and other requirements to allow for timely distribution of any annual participant notices (e.g., 401(k) safe harbor, QDIA, automatic enrollment, participant disclosure)

**November 15** -- Meet all data and other requirements to ensure timely distribution of any minimum required distributions

**November 30** -- Meet all data and other requirements to ensure timely year-end processing of distributions, loan defaults, and forfeitures

**December 1** -- Deliver annual participant notices (e.g., 401(k) safe harbor, QDIA, automatic enrollment, participant disclosure)

**December 15** -- Distribute Summary Annual Report (if a request for a 2.5-month extension for Form 5500 was filed with the IRS)

**December 31** -- Issue corrective distributions for prior year’s ADP and/or ACP testing failures

*Additional requirements may apply*
Contact us to schedule a consultation.

In an initial meeting, we strive to provide valuable industry updates and insights, as well as a unique perspective on how you may improve your retirement plan without moving to a new service provider.

DISCLOSURE

Objectives: The primary objective of this newsletter is to help the Plan Sponsor and its Retirement Plan Committee become more aware of issues related to fulfilling their fiduciary duties. Past performance does not guarantee future returns and retirement plan fiduciaries should consult their advisors and consider additional information before making any decisions. This newsletter should not be considered legal or tax advice.

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