

CHECKLIST

Fiduciary Governance: A Map to Success

Checklist for Selecting a Knowledgeable Advisor

When an employer adopts a retirement plan, such as a 401(k) plan, it usually has two primary goals: to attract and retain employees by providing a vehicle so that they can achieve financial security in retirement and to minimize the risk of claims of fiduciary failures. In effect, the firm wants to do good for its employees and do well by avoiding risk.

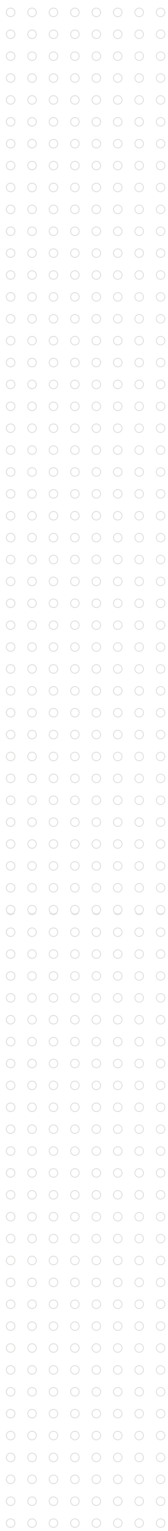
The first decision—whether to adopt a plan and how to design it—involves virtually no risk. However, the operation of the plan—selection of providers and investments—is fraught with risk. In both cases, the use of a knowledgeable retirement plan advisor can be invaluable. For the first decision, an advisor can help with the design decisions—what options are available and what are the pros and cons of each option. The rules are now flexible enough that plans can be individualized to the plan sponsor...but how can you know all the options and how they work?

However, this checklist is about the second part...the operation of the plan. Once a plan is adopted, all kinds of decisions must be made about the plan's operation. Those are fiduciary decisions and that is where the risk is. To be clear, the officers and managers who make decisions about plan operations are fiduciaries and, if there are problems, they will likely be the ones that are blamed. (This checklist refers to those fiduciaries as the plan committee because those officers and managers often meet as a committee.)

Since most committee members are not experts on operating retirement plans, they will need help in knowing what decisions need to be made and how to make those decisions. Even the language can be foreign...share classes, revenue sharing, 12b-1 fees, expense ratios, sub-transfer agency fees, per capita or pro rata allocations.

But how can a committee know if an advisor has the experience and knowledge needed to provide that help? This checklist includes some of the most important questions to get answers to. It is a good starting point for interviewing and selecting a good advisor.

Questions



☐ **When you give us advice about our plan’s investments and services, will you be acting as an ERISA fiduciary?**

ERISA-the Employee Retirement Income Security Act-governs the operation of private sector retirement plans. It says that the people who make decisions about the operation of those plans are fiduciaries, subject to the twin duties of prudence and loyalty; it is often called the highest standard in the law. As a result, committee members should make sure that their advisor is held to the same high standard of care. The advisor should confirm in writing that the advisor is a fiduciary under ERISA.

☐ **Will you provide the committee with regular fiduciary education sessions about the committee’s responsibilities, industry changes, new laws and regulations, and fiduciary lawsuits?**

The retirement plan landscape is constantly evolving. There are new laws and regulations; almost every year it seems that there are new claims by plaintiffs’ attorneys; and new products and services are introduced regularly. It isn’t reasonable to expect plan committee members to know all of that. However, an advisor who works in the retirement plan world should know about those changes and keep the committee up to date.

☐ **Do you have any conflicts of interest? If so, what are they and how do you manage them to make sure our plan and its participants aren’t harmed by the conflicts?**

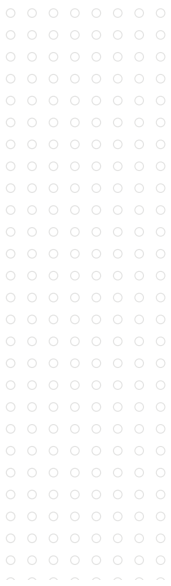
The financial services world is rife with conflicts of interest. There are many ways that products and service providers can make money from the plan, which means that the participants pay for that, directly or indirectly. For example, an advisor could recommend mediocre investments managed by an affiliate or expensive investments that pay fees or revenue sharing to the advisor’s firm. Some of those payments are not easy to spot; as a result, a committee member who is not in the financial services industry may not know about them. However, fiduciaries have a legal duty to know about any conflicts and to make sure that the participants are not harmed by them. As a result, committees need to know if any conflicts exist and, if so, how they are managed.

☐ **Do you work with other plans similar to ours?**

The type and size of a plan matter. For example, while 401(k) and 403(b) plans may seem similar, there are notable differences. The most helpful advisor will be one who knows those differences. Also, large plans have different pricing and, in some cases, different providers than small plans. And large plans have access to less expensive investments. A plan committee is best served by working with an advisor who is experienced in working with plans of a size similar to yours.

□ **How will you help us monitor the plan?**

ERISA requires that fiduciaries monitor, or review, their plan's investments, services and costs a regular basis. The committees for most plans do the monitoring annually, or in some cases, more frequently. One of the monitoring duties is to look at the cost of the plan's recordkeeper and administrator and to compare it to the costs to similarly situated plans. But how can that be done? A focused retirement plan advisor will have access to benchmarking reports with that information. Make sure that the advisor explains how the monitoring will occur and what information the advisor will provide to help the committee with the monitoring job. or three contractors to bid on that scope of work. All bids submitted should be itemized and presented on a time and material basis. Ultimately, the objective is to develop a consensus and reach an agreed price for the reconstruction work. If contents are damaged, you may need to have vendors come in to inspect, test and evaluate damaged equipment, furniture, etc. If machinery is damaged, contact the manufacturer's representatives to evaluate the machinery. In the event of differences of opinion, you may need to engage an expert (e.g., a third-party contractor, engineer or architect) to support your position. These costs are generally not recoverable under the policy unless policy provisions grant the coverage, or you can secure the insurer's agreement in advance to fund them.



Put our global resources and local expertise to work for you.

Consult with your Retirement & Private Wealth Advisor to help you ensure fiduciary compliance.

This content was authored by Fred Reish. Fred Reish is a partner with the law firm of Faegre Drinker who specializes in retirement law, focusing on fiduciary and best interest standards of care, prohibited transactions, conflicts of interest, and retirement plans.

The views expressed in this article are those of Fred Reish, and not necessarily of Faegre Drinker or HUB International. The article is for general information only and is not intended to provide investment, tax or legal advice, or recommendations for any particular situation. Please consult with a financial, tax or legal advisor on your circumstances. HUB International and Faegre, Drinker are not affiliated entities.

This material was created for educational and informational purposes only and is not intended as ERISA, tax, legal or investment advice. If you are seeking investment advice specific to your needs, such advice services must be obtained on your own separate from this educational material.

HUB Retirement and Private Wealth employees are Registered Representatives of and offer Securities and Advisory services through various Broker Dealers and Registered Investment Advisers, which may or may not be affiliated with HUB International. Insurance services are offered through HUB International, an affiliate. Consult your HUB representative for additional information about the provision of specific securities, investment advisory, and insurance services.

U.S.