Brave New World of 403(b) Oversight

IN CUPA–HR Spring Conference
April 24, 2012
Key Points

• Plan Governance
• What do the required DOL fee and investment disclosures mean to you?
• How do you comply?
• What happens if you don’t?
• Take aways
Northwest Comprehensive & PlanPilot


Northwest Comprehensive & PlanPilot
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Plan Governance

Retirement plan governance is about more than just fiduciary responsibility. Plan governance encompasses all of the duties, responsibilities and actions connected with the establishment and administration of the plan and the management of the plan assets.
Plan Governance

Current DC Market

- Unprecedented market volatility
- Heightened concern about fee transparency
- Desired benefit outcomes unlikely based on current participant behaviors
- Increased participant litigation
- Dynamic legislative environment
- Confusion around investment choices
- Savings may not be sufficient for retirement

Strategic Decisions

- How can the risk be managed?
- How can we be sure we are minimizing the fees to the plans?
- Are the investment options meeting faculty and staff needs?

DC Risk Management

- IPS must address market environment
- Plan oversight is increasing
- Design & communication must be aligned
  - Fiduciaries are examining fees
- Greater transparency of fees
- Increased exposure to litigation
- Redefinition of investment policies
Plan Governance – 1 Billion Reasons

An estimated 70% of retirement plans audited by the Department of Labor (DOL) in 2009 and 2010 were fined, received penalties or had to make reimbursements for errors, according to the DOL. DOL statistics show the agency received $1.08 billion in corrections, reinstatements and fines.

Source: PlanSponsor Magazine
Plan Governance – 10 Steps

1. Establish and Document Authority
2. Determine Fiduciary Structure
3. Evaluate and Select Appropriate Fiduciaries
4. Training: Initial and Ongoing
5. Review Financial Risk Mitigating Options
6. Develop Documentation to Support Governance
7. Establish Committee Infrastructure
8. Monitor Service Providers
9. Monitor Appointed Fiduciaries
10. Repeat Process
Plan Governance – Step 8

Monitor Service Providers:

- At least annually meet with your service providers and review their oversight procedures and performance
- Review service provider contracts and note any limits of liability, recent lawsuits and potential conflicts of interest (if any)
- Gather plan demographic information and document how it influences your fiduciary decisions
- Develop a process to regularly review plan fees and services
- Determine appropriate timing for these reviews
DOL Fee Disclosures

• Complying with DOL Fee and Investment Disclosure Regulations

Service Providers 408(b)(2)
Must provide new contract provisions and fee disclosures by July 1, 2012

Plan Sponsors 404(a)(5)
Must provide initial fee and investment disclosures by August 31, 2012

Participants
Among other things, this means that Fiduciaries must:

• Document allocation of fiduciary responsibilities

• Establish a prudent process for selecting investment alternatives and service providers; preferably, document in policies

• Ensure that fees paid to service providers and other expenses of the plan are reasonable in light of the level and quality of services provided

• Select investment alternatives that are prudent and adequately diversified

• Monitor investment alternatives and service providers to determine whether they continue to be appropriate choices and their fees continue to be reasonable
Fee Trends

$ Price/Participant

Service Provider Disclosure

- All covered service providers must provide disclosure to plan sponsor
  - Providers that expect to earn $1,000 or more in compensation for services
  - Direct compensation
  - Indirect compensation (received from sources other than directly from the plan)
- Plan Sponsor must review these disclosures and determine two things:
  - Are the fees reasonable?
  - Are there any conflicts of interest?
- Coordination and review of disclosures can be time consuming; so plan accordingly
- This disclosure will be revealing for some sponsors and will likely lead to overall lower costs within the industry
# Service Provider Disclosure

<table>
<thead>
<tr>
<th>Plans Affected</th>
<th>All ERISA Plans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covered Service Providers</td>
<td>Recordkeeper</td>
</tr>
<tr>
<td></td>
<td>TPA</td>
</tr>
<tr>
<td></td>
<td>Investment Advisor</td>
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<tr>
<td></td>
<td>Broker</td>
</tr>
<tr>
<td>Others to Consider</td>
<td>Accountant &amp; ERISA counsel</td>
</tr>
<tr>
<td>Compensation Trigger</td>
<td>Payments of $1,000 or more</td>
</tr>
</tbody>
</table>
## How do you comply?

**Plan Provider Fee Disclosure Action Calendar**

<table>
<thead>
<tr>
<th>Dates</th>
<th>Action Step</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>Contact your service providers and request preliminary fee disclosure information</td>
</tr>
<tr>
<td>May 1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>Begin determining if your fees are reasonable and free of conflicts</td>
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<tr>
<td>July 1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>If service provider has not provided final disclosure, or you question the validity/completeness of their disclosure, you should issue a written request</td>
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<tr>
<td>August 1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>Notify the DOL if you have not received a response to your written request</td>
</tr>
<tr>
<td>30 Dates After Notice of Refusal</td>
<td>Notify the DOL if the service provider has refused your request</td>
</tr>
</tbody>
</table>
## Service Provider Disclosure – Take Inventory

<table>
<thead>
<tr>
<th>Service Provider Name</th>
<th>Type of Service Provided</th>
<th>Did they comply with requirements?</th>
<th>Is their contract on file?</th>
<th>Who pays the fee?</th>
<th>Did you benchmark?</th>
<th>Are the fees reasonable &amp; free of conflicts?</th>
</tr>
</thead>
<tbody>
<tr>
<td>YXZ Provider</td>
<td></td>
<td>Date received:</td>
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<tr>
<td>Attorney</td>
<td></td>
<td>Disclosure of Direct Comp?</td>
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<tr>
<td>TPA</td>
<td></td>
<td>Yes</td>
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<tr>
<td>Record keeper</td>
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<td>No</td>
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<tr>
<td>Advisor</td>
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<td>Disclosure of Indirect Comp?</td>
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<tr>
<td>Broker</td>
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<td>Yes</td>
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<tr>
<td>Other</td>
<td></td>
<td>No</td>
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<tr>
<td>Investment Disclosures?</td>
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<td>Yes</td>
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<td>No</td>
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</table>
Service Provider Disclosure

• If the service provider does not comply with your written request?
  – You have a fiduciary duty to terminate the relationship

• If you don’t terminate the relationship:
  – It is a prohibited transaction
  – Potential liability to plan participants to restore any losses or smaller gains than expected
  – Potential exposure to litigation alleging that plan expenses are unreasonable
  – There is a 15% prohibited transaction excise assessed
  – Fiduciaries could be held personally liable for the losses
Keys to Evaluate Fee Reasonableness

• Benchmark fees and services by comparing:
  – Services provided relative to other providers
  – Fees (direct and indirect) versus other providers

• Fees can be evaluated by:
  – Soliciting bids from other providers
  – Using a third party benchmark

• Don’t rely on your provider to inform you of the competitiveness of their fees

• If fees are not reasonable, negotiate with current provider or seek other providers

• Document process
Participant Disclosure

• Covers
  – Current and terminated plan participants
  – Beneficiaries
  – Eligible, but not participating

• Requires plan sponsor to disclose:
  – Plan information
  – Fees
  – Investment information: participants should be able to compare options

• Two notices
  – Annual disclosure
    • Plan related information
    • Investment related information
  – Quarterly notice: statement of fees and services
Participant Disclosure

• Requires you as the plan sponsor to “attest” to the reasonableness of plan fees...thus creating a risk to plan fiduciaries unless you manage that risk

• Many participants will realize, for the first time, that they have been paying for their 403(b) plan and this may create unrest unless the message is managed

• The fee information will likely be sensationalized in the media; leading to participants comparing their fees versus others
How do you comply?

<table>
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<tr>
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<th>Action Step</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 1(^{st})</td>
<td>Contact your service providers and request preliminary fee disclosure information</td>
</tr>
<tr>
<td>August 30(^{th})</td>
<td>First annual notice should be distributed to participants</td>
</tr>
<tr>
<td>October 15(^{th})</td>
<td>Initial quarterly notice: include in 3(^{rd}) quarter participant statements</td>
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<tr>
<td>Ongoing</td>
<td>Provide the annual notice to newly eligible employees</td>
</tr>
<tr>
<td>As change occurs</td>
<td>No later than 30 days, and no earlier than 90 days, provide updated information</td>
</tr>
</tbody>
</table>
Take Aways

• Request your recordkeeper provide a “preliminary” fee disclosure statement
• Develop a strategy to review your plan’s fee reasonableness
• Determine where you can get assistance
  – Start with your recordkeeper by contacting your relationship manager
  – ERISA counsel
  – The Department of Labor
  – Retirement Plan Advisor
• BE PREPARED
PlanPilot

Our mission is to deliver comprehensive advisory services that help plan sponsors meet and exceed their fiduciary responsibilities by providing them with the proper risk management solutions and independent advice they need.

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