

AICUP CAMPUS LEADERS FORUM
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Retirement Plan Sponsorship:
Dealing With the Pitfalls and Challenges



Overview: A Challenging Environment

- Sponsoring a retirement program is an increasingly challenging—but necessary—undertaking
- Challenges come from a number of sources:
 - Regulators,
 - Legislators,
 - Auditors,
 - ...and, of course, those pesky participants (and their lawyers)
- Purpose of this session is to describe some of these challenges and some tools/approaches for coping

Fiduciary Responsibilities 101

- “Every employee benefit plan shall be established and maintained pursuant to a written instrument”
- Fiduciaries must act for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses; consequences of a decision for employer cannot affect fiduciary decision-making
- Fiduciaries must act with the skill, care, prudence, and diligence that a prudent person acting in a like capacity and familiar with plan matters would use (“prudent expert”)--if plan fiduciaries do not possess requisite expertise, it is incumbent upon them to obtain that expertise

Plan Document

- Retirement plans must be administered in accordance with terms of the plan document
 - Plan documentation can be difficult to follow
 - Many plan sponsors simply don't know what is in their plan document
 - Discrepancies between plan documents and administrative practices are leading source of self-correction and IRS corrective filings
- Failure to follow plan document can also be bootstrapped into a fiduciary breach

Outmoded—and Misunderstood Provisions

- Certain plan provisions are (exceptionally) complex and provide little real value to participants or sponsor
 - Special 403(b) 15-year catch-up provision
 - Mandatory employee contributions

Challenging—but Necessary--Provisions

- Certain plan provisions are (exceptionally) complex – but are necessary
 - Eligibility and Service Crediting Rules
 - Once-in-always-in
 - Student exclusion
 - Definition of Compensation

Regulatory Traps

- Beware of regulators' focus on certain hot button issues
 - Late contributions
 - Missing participants
 - Cybersecurity

Fiduciary Litigation

- Fiduciary litigation (typically class action) alleging breaches of fiduciary responsibility; particular focus on DC plans and:
 - Plan fees—especially recordkeeping fees;
 - Plan investments—at what point does poor performance represent a failure to properly manage investments?
 - Use of participant data to cross-sell financial products and services
- Fee claims have some very distinct categories
 - Absolute level of costs too high
 - Use of active vs passive funds
 - Use of revenue sharing/higher cost share classes
 - Asset based fee structures
- These cases have (until recently) focused on larger plans; cases are either dismissed or settled

Hot Topics: Coming to a Plan Near You Soon

- Pooling arrangements (see next slide) offer potential solutions to compliance, administration, fiduciary and cost challenges
- More pressure for automatic enrollment
- ESG
- Increased role for DC assets (e.g., emergency funds, matching student loan repayments)

Hot Topics: MEPs, PEPs and GOPs

	Multiple Employer Plan	Pooled Employer Plan	Group of plans
Commonality Required?	Yes	No	No
Who is the sponsor?	Lead employer or board of adopters	The employer is the plan sponsor; the PPP is the responsible fiduciary for administration of the PEP and for selecting and monitoring service providers	Each Adopting Employer
Single plan under ERISA	Yes	Yes	No, all single-employer plans
Outsourced corporate governance	Yes to lead employer or board	Yes - PPP governs	No, each adopting employer is the sponsor
5500/audits	One for MEP	One for PEP	One 5500, separate audits
Audit requirements	One for entire plan if more than 100 participants	One for entire plan if over 1,000 participants or if a single employer in plan has 100 or more participants covered by the plan	Each plan over 100 participants
Economies of scale pricing	Yes	Yes	Yes
3(16) administrative fiduciary available	Yes	Yes	Yes
3(38) investment fiduciary available	Yes	Yes	Yes

Questions? Comments?

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