

Fiduciary best practices & the new regulatory regime



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November 17, 2010



Agenda

- Fiduciary best practices
 - “Hot button” issues for plan fiduciaries
 - Four fiduciary best practices
 - Vanguard’s approach to fiduciary responsibility
- Service provider fee disclosure under ERISA §408(b)(2)
 - ERISA background on fee disclosure and the “reasonableness” standard
 - Vanguard’s approach to service provider fee disclosure
- Participant fee disclosure
 - Fiduciary obligations and considerations
 - Vanguard’s approach to participant fee disclosure

Focus on fiduciary duties

“Hot-button” issues affecting fiduciaries

Plan fee disclosure

- Interim final regulations issued under ERISA §408(b)(2) governing service provider fee disclosure
- Final participant fee disclosure regulations issued in Oct. 2010

Investment selection and fee litigation

- Continue to see cases alleging “excessive fees” for services provided and/or investments offered under the plan

Pension Protection Act

- Groundbreaking legislation providing fiduciary reforms impacting investment advice, fund mapping and qualified default investment alternatives

Standard of fiduciary conduct

Plan fiduciaries have the following duties

Exclusive benefit: Act for the exclusive purpose of providing benefits to participants and defraying reasonable expenses of administering the plan

Prudence: Act with care, skill, prudence, and diligence —“prudent man” rule

Diversification: Diversify plan investments so as to avoid large losses

Documents: Follow terms of the plan (unless inconsistent with ERISA)

Vanguard's perspective: Four principal best practices for fiduciaries

1

Have a well-organized and effective committee

2

Select and monitor plan investments regularly

3

Oversee plan administrative operation

4

Be attentive to plan costs



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Fiduciary best practices ... continued

Committee best practices for fiduciaries

- Have a clear appointment process for fiduciaries
- Organize effectively in terms of size, membership, and responsibilities; hold regular meetings
- Ensure all fiduciaries have the necessary qualifications and training

Investment best practices for fiduciaries

- Create a carefully considered investment strategy (e.g. Investment Policy Statement)
- Develop a disciplined and documented process of selection, ongoing monitoring, and evaluation of investments
- Implement a default investment fund, preferably a qualified default investment alternative (QDIA)

Administrative best practices for fiduciaries

- Ensure plan operation is consistent with the terms of your plan document
- Engage in timely remittance of participant contributions
- Ensure distribution of appropriate and effective notifications and disclosures to participants



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Fee and expense best practices for fiduciaries

- Ensure only reasonable fees charged against the plan assets
- Monitor the plan's "all-in" costs, including all direct and indirect charges
- Evaluate cost and quality of services
- Disclose participant fees

Service provider fee disclosure under ERISA §408(b)(2)

Fiduciary duty to ensure that *all* fees paid by the plan are reasonable

- ERISA §404 requires plan fiduciaries to act in the best interest of plan participants and beneficiaries and to use plan assets for the *exclusive purpose* of paying plan benefits
- ERISA §406 prohibits the provision of goods and services between a plan and a party in interest (prohibited transaction)
- ERISA §408 provides an exception to that prohibited transaction which allows the provision of services between a plan and a party in interest, *provided that the fees paid are reasonable*



Service provider fee disclosure under ERISA §408(b)(2)

Vanguard continues to support fee transparency through enhanced disclosure

- Vanguard is a covered service provider under the regulation in two capacities: fiduciary (trustee) and recordkeeper
- Vanguard has a long-standing practice of providing an “all-in” fee report to our full-service clients on a regular basis.
- For compliance, Vanguard will provide an enhanced “all-in” fee report which will include:
 - Breakdown of the asset-based, non-asset based and service fees
 - Description of the services provided
 - Methodology used to determine the recordkeeping fee
- Important consideration - Plan fiduciaries need to evaluate the “reasonableness” of **all** fees paid by the plan, not just one component, such as recordkeeping fees



Participant fee disclosure

Participant disclosure required under ERISA §404(a)

- Regulation imposes a “duty to disclose” on plan fiduciaries (sponsors)
- Plan sponsors will look to service providers to assist with the disclosure
- Vanguard already discloses much of the required information
 - Currently reviewing our processes and information workflows to determine how to effectively help plan sponsors fulfill their duties
- Compliance will require partnership between plan sponsor and Vanguard
 - Data/population challenges
 - Multi-vendor 403(b) challenges
- Vanguard continues to support electronic delivery and welcomes the opportunity to comment on the benefits of expanding electronic disclosures to participants

