

Fiduciary education is key for plan-sponsor investment committees

Regular training can help committee members understand their responsibilities to plan participants

By **Evan Cooper** | *September 2, 2017 - 6:00 am EST*

The word "fiduciary" is no longer quaint financial jargon for most plan sponsors. Due to regulatory changes over the past several years and [attention surrounding](#) the new Labor Department conflict-of-interest rule for plan advisers, the term and its requirements are now very much on the minds of most plan-sponsor investment committee members.

But as advisers and others serving plans will attest, greater awareness doesn't necessarily mean that committee members understand their legal responsibilities or precisely what they should be doing as a plan fiduciary.

"For the most part, committee members don't know what they don't know," said Joshua Itzoe, a partner who heads the institutional client group at Greenspring Wealth, a Towson, Md.-based registered investment adviser managing \$2.3 billion in retail and institutional assets. The firm serves more than 50 retirement plans.

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Broadly, he says regular fiduciary training and education should help committee members understand their responsibilities to plan participants. Those responsibilities include what the Employee Retirement Income Security Act of 1974 expects of them, both philosophically and specifically as fiduciaries, as well as their own personal liability as a result of the legal obligations they assume as fiduciaries.

While Mr. Itzoe contends that some advisers engage in unnecessary "fear-mongering" about a fiduciary's legal liabilities, there is no denying many committee members are unaware of the personal risks that come with the job.

"It's true that the frequency of DOL audits is rather low, and that relatively few plans are ever audited, but 67% of audits find an ERISA violation," said Kim Shaw Elliott, president of Tampa, Fla.-based IFP Plan Advisors and the firm's ERISA counsel. "And if there is a plan loss, many committee members are shocked to learn they are personally liable and also could be required to pay an excise tax of up to 15% a year, for each year that a prohibited transaction is not corrected – up to a whopping 100% of the amount involved."

In addition to education about risks, committee members should receive training in several areas, plan consultants say.

"Over the years, the role of the committee member has gravitated away from largely overseeing investments to a holistic role that involves overseeing vendors and processes that touch every aspect of the plan and its participants," said Ryan T. Gardner, a managing partner at Fiduciary Investment Advisors in Windsor, Conn., which advises more than 275 plans holding \$58 billion in assets. "Training and education should help committee members make reasonable decisions in every area on behalf of those in the plan, including those in connection with the necessity and reasonableness of fees and the selection and retention of record keepers and investment managers, for instance."

Thomas Clark Jr., an attorney with The Wagner Law Group, agrees that administration has become the second "big bucket" area of training, along with investments.

"It's easy to mess things up in plan administration without knowing it," said Mr. Clark, based in St. Louis. "Even something as innocuous as sending an email to all plan participants can run afoul of ERISA if there is no documentation that a sufficient number of plan participants can receive email."

"Under ERISA, the Department of Labor is concerned about processes, which can be controlled, not outcomes, which can't," said Jim O'Shaughnessy, managing partner at Sheridan Road Financial, an advisory firm headquartered in Northbrook, Ill., that serves 300 plans. "Fiduciary education must focus on awareness of the need for process in all areas of the plan and the importance of consistency in carrying out those processes."

Fortunately, the need for fiduciary education comes at a time when innovations in communication provide many new ways to meet the growing demand. Advisers are delivering fiduciary training and education via streaming and recorded video presentations, webcasts and podcasts, as well as through traditional printed materials and live, in-person presentations at investment-committee meetings, said Ms. Elliott, whose firm advises on more than \$30 billion in assets.

Over the past five years, fiduciary training has gone from being a one-off effort to part of Sheridan Road's regular service offering, Mr. O'Shaughnessy said. The firm is using innovative ways to communicate the basics and inform committee members about new developments.

"Since there is turnover in committee members and new issues are always coming up, regular training is important," he said. "We're currently beta-testing a cloud-based training program that has basic and advanced training modules created by ERISA attorneys, as well as modules we can add where appropriate. The great advantage of the system is that it tracks usage and documents the education process."

Advisers and attorneys said consistency in training and education material, whether developed in-house or by a third party, is important.

"Of our nine lead advisers, four have responsibility for retirement committees, and we work hard to institutionalize the process by which those four provide fiduciary education," said Mr. Itzoe of Greenspring Wealth.

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