

What Makes a Provider Partnership Truly ‘Fiduciary-Ready’?

All parties need to connect effectively and document relevant processes.

Reported by MALLIKA MITRA

A plan administrator who thinks hiring a 3(16) or 3(38) fiduciary will alleviate the need to consider fiduciary responsibilities may need to reconsider. While bringing in these providers can help reduce fiduciary risk for clients, it is important for the providers and their clients to form effective partnerships.

When a plan sponsor appoints a plan administrator or investment manager, they are typically delegating the responsibility for the day-to-day management of the plan to that third party. That may insulate the plan sponsor from liability for day-to-day plan operations, but they are still typically responsible for selecting and overseeing the plan administrator or investment manager, explains Michael Kreps, a principal in Groom Law Group.

“The sponsor does not have to second-guess every decision that gets made, but they do have to ensure that the professionals they have selected are competently executing their duties,” he says. “Running a retirement plan is really a team effort, and the most important thing you can do is to make sure to clearly identify everything that needs to be done and to assign those tasks to someone.”

Most mistakes are not intentional; someone just dropped the ball, Kreps says, but the easiest way to prevent that from happening is to be very clear about who is doing what.

Putting a Process in Place

Building a strong relationship starts with the education of the sponsor, says Fred Johnson, a vice president and retirement plan executive at OneDigital, which serves as a 3(38) investment fiduciary.

“A lot of people take it for granted that the plan sponsor or the consumer [knows what ‘fiduciary’ means](#),” Johnson says. “My first suggestion for any adviser is be prepared to educate your client on what it means to be a fiduciary, both from the operational side and the investment side.”

He says this can start with a simple conversation to ensure the plan sponsor understands what the 3(38) and 3(16) provider will be doing before roles are determined. Then, when setting up the relationship, Johnson says to consider a disciplined process for five pieces of the puzzle: governance, documentation, fee oversight, investment services or monitoring, and operational execution.

The key is making the processes repeatable and focused on the best outcomes for the participants. That could mean annual, quarterly or semiannual compliance meetings to ensure they are being reviewed.

“The strongest co-fiduciary relationships begin with clearly defining who owns each fiduciary function before the engagement starts,” says Ari Sonneberg, a partner in The Wagner Law Group.

Sonneberg says best practices include carefully reviewing service agreements to identify exactly which fiduciary responsibilities have been accepted and which remain with others; developing a written responsibility matrix to designate who does what; and [establishing regular communication](#) between the adviser, recordkeeper, 3(16), 3(38), third-party administrator and plan sponsor.

Kreps says he typically encourages co-fiduciaries to document responsibilities in writing and then design controls to make sure everything gets done.

Documenting Decisionmaking

It is vital, according to Kreps, that sponsors document the actions they take to periodically evaluate plan vendors and ensure fees are reasonable. And if

the Department of Labor comes knocking?

It “typically wants to see a record that plan fiduciaries took the selection and monitoring process seriously,” Kreps says. “You can’t just set it and forget it.”

That means conducting a thorough analysis on the front end and then periodically refreshing that analysis. It often requires periodic market checks to confirm that the fees are reasonable in light of the services being provided, Kreps says.

Among the items of particular importance to DOL investigators are an investment policy statement; documentation of due diligence conducted in selecting the provider; board or committee minutes reflecting discussions and decisions; and written monitoring procedures, Sonneberg says.

Other important documents include periodic performance reviews, benchmarking or request-for-proposal analyses, reports received from the provider, and documentation showing follow-up on any issues identified as putting plan assets at risk.

“One of the most overlooked documents is a clear written delineation of responsibilities,” Sonneberg says. “Many disputes arise because everyone assumed someone else was responsible for a particular task.”

Monitoring Provider Performance

Strong and prudent monitoring depends on the specific circumstances, but in general, it is important to make sure the vendor is doing their job competently and for a reasonable fee, Kreps says.

“For investment professionals, that often means evaluating performance against a reasonable benchmark and periodically conducting a market check to ensure that the fees are reasonable in light of the services being provided.”

In the case of a 3(16) fiduciary, Sonneberg says monitoring may focus more heavily on timeliness and accuracy of required filings; operational controls; timeliness and accuracy of participant communication; cybersecurity and data protection; error rates; responsiveness to the plan sponsor; and compliance with evolving regulatory requirements.

“Monitoring should be risk-based,” Sonneberg says. “A fiduciary is not expected to audit every decision made by a designated fiduciary, but it should monitor and understand enough about the provider’s performance to determine whether they are generally acting prudently and in the best interest of the plan and whether continued retention remains prudent.”

Closing Gaps Between Services

Johnson says plan advisers should watch for a gap between perceived efforts and results.

“I think a lot of times we run across situations where it feels like a lot’s being done, yet the results all lag—the fees are high, the employee behavior is behind, and the retirement readiness scale is behind, but there’s a ton of activity,” he says. “Ensuring that [activity] is connected to a scope of services or a value chain is really important.”

Johnson also says while it is easy to try a set-it-and-forget-it approach, having a disciplined, repeatable process goes a long way to avoid having one’s plan fall behind.

Tags 3(16) fiduciary, 3(38) fiduciary adviser, Plan Documents,

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