THE ANGELL PENSION GROUP, INC.

Fiduciary Best Practices for Our Nonprofit Partners:

Are You Meeting Your Fiduciary Responsibilities?

Presented by:

Ann Corey, New Business Consultant
The Angell Pension Group, Inc.

Regulation of Retirement Plans

<u>Federal Agencies with Authority Over 403(b)/401(k) Plans</u>

- Internal Revenue Service (IRS)
  - Participation, Vesting
- Department of Labor: Employee Benefits Security Administration (DOL/EBSA)
  - Reporting and disclosure
  - Fiduciary governance

DOL Accountability

Who is responsible for the fiduciary governance of a 403(b)/401(k) plan?

- Plan Fiduciaries
  - Named vs. Functional Fiduciaries

Who is a Fiduciary?

ERISA Definitions

- A person who exercises discretionary authority or control over management of plan assets
- A person who has discretionary authority or responsibility in the administration of the plan
- Named Fiduciaries vs. Functional Fiduciaries

Who is a Fiduciary?

- Fiduciaries have specific responsibilities and functions
  - Investment decisions
  - Benefit claims and processing
  - General oversight of the plan

Fiduciary Responsibilities

Four Basic Fiduciary Rules

- Exclusive Benefit Rule
- Prudent Expert Rule
- Diversification Rule
- Plan Document Rule

Fiduciary Responsibilities

Four Basic Responsibilities

1. Exclusive Benefit Rule – act solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits to them

   Observation: Emphasis on reasonableness of fees

   Trend: Fee compression within industry by recordkeepers and providers

2. Prudent Expert Rule – act with the care, skills, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity would act

   Observation: If a fiduciary lacks experience and expertise in a given area, they must obtain expert advice

   Trends: Engage a registered investment advisor to act as a co-fiduciary under DOL Regulation 3(21) 3(38)

Fiduciary Responsibilities

The difference of a 3(21) investment advisor is the recommendation of funds and their selection, whereas a 3(38) investment advisor has discretion to replace and/or add funds without a plan fiduciary's approval

Caution: Fiduciaries need to understand the difference between a broker model vs. RIA model

3. Diversification Rule – diversify plan investments to minimize risk and maximize return

   Observation: with open architecture and the advent of target date funds, this rule is easily obtainable

4. Plan Document Rule – Act in accordance with plan document (unless conflicts with ERISA)

   Observation: Many compliance issues and penalties are derived from operational defects

   Trends: Perform an operation audit to ensure the plan document is in sync with the actual operation of the plan

Fiduciary Liabilities

Personal Liability

- Fiduciaries who do not follow the basic standards of conduct may be personally liable to restore any losses to the Plan, or to restore any profits made through improper use of the Plan’s assets resulting from their actions

To Limit Fiduciary Liability

- Establish a prudent process
- Follow the process
- Document the process
- Purchase Fiduciary Liability Insurance
- Comply with ERISA §404(c)

Limiting Fiduciary Liabilities

Prudent Process

Hold Investment Committee meetings regularly to:

1) Review Investments
2) Evaluate fees
3) Monitor participation and content of employee educational meetings
4) Review compliance with:
    - ERISA §404(a) (participant disclosure)
    - ERISA §408(b)(2) (service provider disclosure)
    - Administrative procedures (bonding, employee remittances)

Limiting Fiduciary Liability: Selecting and Monitoring Investment

- Review Investments regularly
  - Document investment review through meeting minutes
  - Save performance reports in fiduciary audit file
- Investment Policy Statement (IPS)
  - Adopt IPS that reflects process of investment selection
  - Review IPS annually to ensure continued application

Limiting Fiduciary Liability: Selecting and Monitoring Investment

<u>Individual vs. Group Contracts</u>

- Responsibility to Monitor investments in both types of Contracts
- Limited control over Individual Contracts
- Cannot force Participants to move from Individual to Group Contracts

Limiting Fiduciary Liability: Establish Process to Evaluate Fees

- Maintain copies of 408(b)(2) disclosures in fiduciary audit file
- Document review of 408(b)(2) disclosures through meeting minutes
- Evaluate fees: Are services being provided commensurate with compensation received by service provider?
- Maintain copies of benchmarking reports yearly
- RFI or RFP every 3-5 years

ERISA §408(b)(2) Service Provider Disclosure

- All Service Providers expecting to receive more than $1,000 in compensation must provide a statement of services to the plan. Statement must include:
  - Services provided to the plan
  - Fiduciary Status
  - Direct and indirect compensation received by the service provider
- DOL to require providers to provide guide to understanding disclosure documents

Participant Directed Plans: ERISA §404(c)

- Provides limited relief for fiduciaries of plans that permit participants to exercise control over the assets in their account

- Fiduciary must provide Participants with the following:
    - A broad range of investment alternatives
    - Sufficient information to make informed decisions
    - Notification of intention to comply with 404(c)

Limiting Fiduciary Liability: Timely Participant Contributions

Timing of Employee Contributions

- Participant contributions and loan repayments must be deposited into the plan as soon as administratively feasible

- ***Deposit participant contributions and loan repayments immediately following EVERY pay date***
    - Coordinate automation of this process with your payroll provider and investment company

DOL may levy substantial penalties and fines for late participant contributions

Limiting Fiduciary Liability

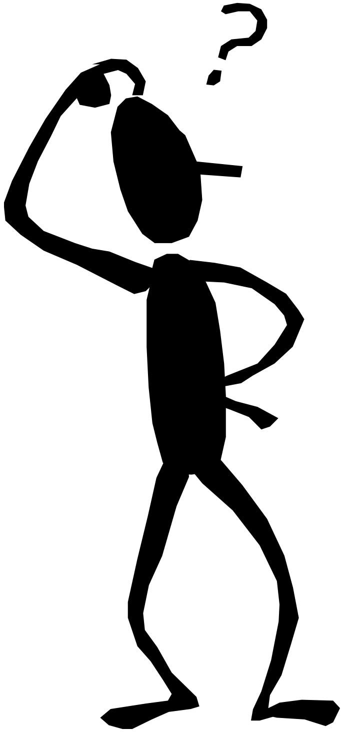
Required

- ***Fidelity Bond*** in the amount of 10% of the fair market value of assets ($1,000 minimum or $500,000 maximum)
  - Covers fraud/dishonesty for fiduciaries but NOT breach of fiduciary responsibilities

Recommended

- **Fiduciary liability Insurance**
  - Directors and Officers and/or Errors and Omissions insurance should include fiduciary breaches for plan fiduciaries
    - Consider separate fiduciary insurance or rider

Questions?



The Angell Pension Group, Inc.
88 Boyd Avenue
East Providence, RI 02885

www.angellpensiongroup.com
401-438-9250 ext. 170