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Retirement Plan Governance: UNDERSTANDING THE ROLE OF A BENEFIT PLAN COMMITTEE

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Retirement plan sponsors and other plan fiduciaries face harsh consequences if they fail to satisfy the stringent standards set forth under ERISA. The best way for fiduciaries to protect and defend against the severe liabilities to which plan fiduciaries can become subject for ERISA violations, is developing a clear awareness and understanding of the relevant fiduciary rules and ensuring the plan's operation is consistent with these requirements. As explained below, the plan committee — that is generally responsible for operating the plan — is the party whose actions are critical for minimizing potential exposure to fiduciary violations that could lead to DOL enforcement and/or private litigation.

SOURCES OF FIDUCIARY **AUTHORITY AND RESPONSIBILITY**

Who may be a fiduciary?

ERISA provides that the fiduciary with the authority to control and manage the operation and administration of the plan must be named or identified in the plan's written document.[1] This "Named Fiduciary," which has primary fiduciary authority over the plan as well as control over plan investment matters, does not necessarily need to be the employer sponsoring the plan, although as a practical matter, many plan sponsors are inclined to retain control over the plan's operation.

Accordingly, the plan document frequently names the employer as the Named Fiduciary.[2] However, the plan document may instead identify an internal committee made up of officers and employees as the Named Fiduciary. Even when Named Fiduciary status is retained by the plan sponsor, however, the sponsor's responsibilities in this regard are generally delegated to a committee whose members will themselves be fiduciaries.

It would also be customary in traditional arrangements for the plan document to name the plan sponsor as the plan's "Administrator" as defined under ERISA Section 3(16). The term "Administrator" when used in this sense refers to a special type of fiduciary with key reporting and disclosure responsibilities under ERISA. The Administrator is responsible for the plan's annual regulatory filings on the Form 5500 and for engaging an accounting firm to perform audits of the plan's financials as necessary. In addition to these reporting duties, the Administrator is also responsible for providing summary plan descriptions and other required disclosures to participants. The Administrator alone is subject to statutory penalties for any violation of ERISA's reporting or disclosure requirements, even if it relies on a third-party provider to help it discharge its reporting and disclosure duties.[3] As in the case of the responsibilities of a Named Fiduciary, the Administrator's responsibilities may be delegated to a committee.

1 ERISA Section 402(a)(1).

2 For purposes of this guide, the earlier references to a "plan sponsor" are generally references to a plan sponsor that has assumed the role of the plan's Named Fiduciary.

3 ERISA Section 502(c). For violations occurring after November 2, 2015 that are also assessed after August 1, 2016, the failure to file a timely Form 5500 may result in a civil penalty of up to $2,063 per day, and the failure to provide timely disclosures to a participant may result in a civil penalty of up to $147 per day.

PLAN COMMITTEE **ORGANIZATION**

The structure and personnel of a committee that oversees a plan and undertakes the functions of a Named Fiduciary or Administrator deserves serious consideration. ERISA includes provisions intended to avoid the situation where members of such a committee cannot be identified and so escape responsibility and liability. Thus, either the specific persons who are members of the committee or other body that has governing authority over the plan must be named in the plan document or the means by which the members will be selected must be stated.

The first matter that should be decided is the nature of the committee's workload and whether more than one committee should be established to handle it. Investment matters (including the structure of the investment menu for plans that permit participant-directed investments, the development of an investment policy statement and the monitoring of investment performance) are sometimes assigned to a separate committee populated with officers and employees of the plan sponsor who have financial expertise. This group may also be responsible for hiring and evaluating the performance of other plan vendors, such as the recordkeeper, investment advisor and other service providers.

The design and operation of the plan is another set of functions that may include government reporting as well as employee communications and education. The responsibilities of a committee overseeing these matters may also entail establishing uniform policies and procedures, as well as rules for determining benefit eligibility and oversight of the plan's claims procedure and loan programs.

The membership of the committee (or committees) should be large enough to handle the assigned workload but not so large as to make it unmanageable. A committee consisting of three to seven members is often considered to be the most efficient. It is usually inadvisable to name specific individuals to the committee, since their resignation or death would create a vacancy and impede the committee's work if the vacancy is not filled. Accordingly, the plan document sometimes designates plan committee members by the function they perform for the plan sponsor. For example, the heads of the employer's Finance, Human Resources and Legal divisions would automatically assume committee membership. Alternatively, a process for appointing committee members may be set forth in the plan document.

A view that seems to be gaining more adherents is that committee members should have term limits. Rotating committee membership has the advantage of bringing fresh perspectives to committee deliberations. However, an effort to retain continuity and institutional knowledge should be made by staggering terms so that experienced members are always part of the mix. Training materials should be made available to new members to apprise them of fundamental fiduciary principles and key issues faced by the committee.

To ensure the committee understands its role, it would be useful to formalize its mission, as well as its structure, in a plan committee charter. The statement of the committee's duties should be flexible enough to allow it to fulfill any additional responsibilities as may be delegated to it from time to time by the plan sponsor, its board of directors or the plan's Named Fiduciary if the committee is not itself designated as the Named Fiduciary.

A charter can also state the rules for committee governance by stipulating the requirement of regular committee meetings to be held at intervals that are either stated in the charter or determined in some other manner authorized by the charter, such as at the direction of the committee chair. A charter can also establish the rules for establishing a quorum and may clarify whether members may participate in a meeting by means of electronic communication. A critical element for the purpose of demonstrating procedural prudence under ERISA is that a written record be kept of committee meetings and fiduciary-related decision-making, such as the reason for hiring an investment or service provider. A charter can ensure that this writing requirement is part of the committee's basic operating procedures.

COMMITTEE **MEETINGS**

As noted, a plan committee should meet on a regular basis. The meetings should be used not only to address immediate issues but also as a way to meet the plan's long-term goals. Therefore, meeting agendas should be set in advance to cover specific administrative issues of the day as well as long-term strategic questions, such as the plan's role in the plan sponsor's overall compensation structure, the effectiveness of its design, retirement readiness of participants, and efficient utilization of available investment products and services.

To maximize the usefulness of committee meetings, the agenda should be distributed to committee members and their staffs in advance of the meeting. This will also facilitate documentation of the matters to be discussed at the meeting. It is a best practice for certain topics, such as investment performance, to be addressed at least annually. Representatives from the plan's various service providers should attend meetings that focus on their areas of expertise and be prepared to answer questions from the committee members. For example, outside actuaries, accountants, lawyers, recordkeepers investment advisors and benefits consultants should participate in meetings where their work for the plan will be considered. However, it is not advisable to include these outsiders on the committee.

The scope of the committee's questions should extend to developments in the disciplines of the plan providers attending the meeting that have the potential to affect the plan. This will provide the committee with a sense of the potential issues that will need to be addressed in the future and enable it to set an agenda for the coming year. For example, legal specialists and accountants can provide their knowledge with respect to issues likely to be the focus of a DOL or IRS audit and the materials that should be maintained to meet document requests by investigators from these agencies, as well as new regulatory guidance and issues arising from fiduciary litigation. The committee's interaction with service providers is also a good way to sort out which provider is responsible for various plan duties. Committee members will need to understand the terms and benefit formulas of the plans for which the committee is responsible so that they can determine what needs to be done and by whom.

SELECTION OF PLAN INVESTMENTS

Investment policy statement

One of a plan committee's principal duties is the selection and review of a plan's investments or, in the case of a defined contribution plan with participant direction of investments, the selection of the plan menu. It is a common and best practice to conduct this process in accordance with guidelines laid out in the plan's investment policy statement (IPS).

An IPS is a written statement designed to further the purposes of the plan by providing a set of principles to guide the plan's fiduciaries in managing the plan's investments.[4] According to the DOL, the maintenance of an IPS is consistent with a plan sponsor's fiduciary obligations under ERISA, including the "duty of loyalty" under ERISA Section 404(a)(1)(A) and the "duty of prudence" under ERISA Section 404(a)(1)(B). It is highly recommended that a plan sponsor formulate an IPS and periodically revise it to fit changing circumstances. Financial advisors who work with plan sponsors should strongly recommend that they do so and be prepared to render assistance in developing guidelines meeting each plan's particular needs.

Although there are no definitive rules with regard to the content of an IPS, this document customarily addresses: (1) the plan's investment objectives, (2) the roles and responsibilities of particular plan fiduciaries, (3) guidelines for selecting, monitoring and changing investment options, and (4) participant communications and investment education. With respect to the asset classes of investments covered by the plan's menu, the IPS should contemplate a broad range of investment categories that satisfy the fiduciary requirements discussed below.

In creating an IPS, a plan committee should consider only those factors that relate to the economic interest of plan participants and the demographics of the overall plan population. The committee's determination of the terms of an IPS is itself an exercise of fiduciary responsibility and, as such, the IPS should take into account the duty of prudence and other fiduciary requirements under ERISA.[5] Since an IPS is part of the "documents and instruments governing the plan" for purposes of ERISA Section 404(a)(1)(D), plan fiduciaries are obligated to follow the terms of the IPS in order to meet their duty to comply with the plan documents. Therefore, plan fiduciaries must comply with the provisions of the IPS insofar as the policy directives or guidelines are consistent with the minimum requirements of ERISA. In light of the fiduciary duty to comply with the terms of the IPS, advisors should make sure the IPS's provisions are flexible, providing sufficient "wiggle room" with respect to when and how any required investment course of action must be taken under the IPS.

In addition to considering investment performance, the IPS guidelines should also incorporate a review of the plan's investment fees. In recent years, plan fees have been attacked by the plaintiffs' bar, which has brought numerous legal claims against sponsors and providers, alleging that a lack of transparency and awareness contributed to the payment of excessive fees by the plan and plan participants. 401(k) fees, in particular, have become subject to heightened scrutiny by Congress, the DOL and the media. As a result of these concerns, it is a best practice to include guidelines in the IPS for evaluating the reasonableness of the fees and expenses charged by the plan's investment funds and to adopt a formal Fee Policy Statement.

[4] DOL Interpretive Bulletin 08-2, Interpretive Bulletin Relating to the Exercise of Shareholder Rights and Written Statements of Investment Policy, Including Proxy Voting Policies or Guidelines, 29 CFR 2509.08-2.

[5] DOL Interpretive Bulletin 08-2.

When commencing a new relationship with a plan client, an advisor should discuss the importance of the plan's IPS with the plan committee. Before recommending any changes to the plan's investments or investment menu, the advisor should discuss with the committee making appropriate changes to the plan's IPS. When considering and approving any recommended changes to the IPS, it should be recalled that the act of changing the terms of the IPS may, in and of itself, be an exercise of fiduciary responsibility, and that the committee will be obligated to follow all of the terms of the IPS. If the plan does not have an IPS or if the existing IPS is inconsistent with the plan's investment needs and objectives, the advisor should work with the committee to establish a new IPS.

Diversification of investments

When advising a plan committee on the selection of plan investments, it is critical to consider the "duty to diversify" under ERISA Section 404(a)(1)(C). This duty requires the plan fiduciary to diversify the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. This duty has a special application to 401(k) plans, which by their nature, divide investment responsibilities between the plan sponsor and the plan participants. The sponsor is responsible for maintaining a proper menu of investment alternatives, and participants are responsible for making individual allocation decisions for their accounts. Naturally, the sponsor remains responsible for any investment losses that are the result of a flawed menu. For example, if a sponsor were to establish a limited menu of investment options in a narrow range of asset categories, making it impossible for participants to create a diversified portfolio, the sponsor would be in breach of its fiduciary duty to diversify.

As a practical matter, the duty to diversify requires plan fiduciaries to ensure the plan's investment menu covers a sufficient number of asset classes and categories (e.g., cash and cash equivalents, large-cap and small-cap equities, fixed-income securities, etc.). Even if the range of investments available through the plan's provider in certain asset categories is limited, plan fiduciaries should ensure that at least one investment option is included in the menu for each desired asset category. The plan menu should not have any impermissible gaps in its coverage of asset categories. Accordingly, fiduciaries should consider the full range of investments available to the plan through its provider in each desired asset category, including both actively managed funds and passively managed funds and ETFs.

Financial advisors should work with plan committees to determine whether a plan's investment portfolio or — in the case of a 401(k) plan, its investment menu — is sufficiently diversified. However, committees should be warned to avoid overreacting by concluding that the more investment options on a menu, the better. A recent spate of lawsuits against educational institutions sponsoring defined contribution plans with hundreds of investment options shows the folly of this approach. These lawsuits assert that by spreading plan assets among such a large number of investments, plan sponsors dilute the plan's bargaining power and limit its ability to negotiate lower investment fees. They also argue that giant investment menus only serve to confuse participants. Currently, the trend is to reduce the number of a plan's investment options; thus, making 12 to 20 investment alternatives available to participants is deemed to be sufficient to meet the diversification requirement. This range should be reflected in the plan's IPS.

Offering a broad range of investment alternatives

Section 404(c) of ERISA is the statutory provision which makes 401(k) plan participants solely responsible for their investment allocation decisions. A plan sponsor has no responsibility for investment losses resulting from a participant's allocation decision, but only to the extent the plan satisfies the conditions of ERISA Section 404(c). To be eligible for 404(c) protection, the plan must include "a broad range of investment alternatives" that is sufficient to provide participants with a reasonable opportunity to: (1) materially affect the potential investment return of their accounts, (2) choose from at least three alternatives with materially different risk and return characteristics, and (3) diversify the investments in their accounts so as to minimize the risk of large losses. Advisors should integrate the "broad range of investment alternatives" requirement into their advice when making recommendations about the number and range of investment options for a 401(k) plan menu.

In addition, in order to qualify for relief under Section 404(c), the plan generally must provide participants with an opportunity to exercise control over their accounts and to obtain sufficient information to make informed decisions regarding the plan's menu. The related 404(c) disclosure requirements are detailed and technical in nature. To meet the Section 404(c) requirements, many 401(k) plans include summary investment information in the enrollment kits for new participants (e.g., an investment brochure and fund fact cards). Prospectuses and summary prospectuses are also frequently included in these kits or mailed separately following the participant's initial investment in a fund. Participants must also receive an explanation that the plan is intended to constitute a Section 404(c) plan and that plan fiduciaries may be relieved of liability for plan losses as a result.

The prudence requirement

Each investment option on a 401(k) plan menu should be selected in accordance with the duty of prudence under ERISA, which requires a fiduciary to act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."[6] Courts have interpreted this duty as requiring plan fiduciaries to conduct an independent investigation of the merits of each of the plan's selected investments.[7] Accordingly, the essence of complying with this duty is following an investigative process for gathering relevant information, and then considering such information when arriving at an investment decision.[8] If the committee lacks investment knowledge or experience, it would be consistent with its ERISA duties to engage an investment advisor to provide it with expert advice.

In the context of a 401(k) plan, the duty of prudence requires plan fiduciaries to ensure that each investment choice in the plan menu is a prudent investment option.[9] Appropriate consideration should be given to all relevant factors concerning a particular investment fund, including the role the investment fund will play in the plan's investment menu and a consideration of the risk of loss and the opportunity for gain.[10] Therefore, when recommending an investment fund for the plan menu, the advisor should also provide the committee with all relevant information concerning the fund, highlighting both the merits and possible drawbacks. By considering each fund's opportunity for gain and risk of loss, as well as all other relevant information, the sponsor will ensure its investment decisions are made prudently.

The test for prudence is procedural in nature, and it is not simply a question of how an investment fund performs once it has been selected. Plan committees should be made aware of the procedural nature of ERISA's duty of prudence and undertake to follow an "investigative" process of information gathering before arriving at any investment decisions.

[6] Section 404(a)(1)(B) of ERISA.

[7] See, e.g., Donovan v. Cunningham, 716 F.2d. 1455 (5th Cir. 1983), cert. denied, 469 U.S. 1072 (1984).

[8] See also, e.g., In re Unisys Savings Plan Litigation, 74 F.3d. 420 (3d Cir.) cert. denied, 519 U.S. 810 (1996).

Consideration of investment fees

In the procedural review of a recommended investment fund, an advisor should provide the committee with comprehensive information concerning the fund's fees and expenses. There has been an explosion in the number of fee-related lawsuits filed claiming that 401(k) plan sponsors imprudently selected funds with excessive fees or improper share classes. These legal actions claim that inadequately disclosed revenue sharing payments made from the plan's funds or fund managers to service providers should be viewed as evidence of excessive compensation. In light of this potential risk, the advisor should ensure the sponsor has comprehensive information concerning the fees charged by an investment fund, as well as disclosures concerning any revenue sharing payments made by the fund manager and any similar payments made by the fund (e.g., 12b-1 fees, shareholder servicing fees, sub-transfer agency fees) to the plan's service providers. The required disclosures to plan fiduciaries by vendors that began in 2012 under ERISA Section 408(b)(2) make this information available to plan committees, but it frequently requires the assistance of an advisor to interpret the disclosures and explain their significance.

A committee may wish to consider engaging a provider of benchmarking services to ascertain the prevailing investment fees for a comparable group of plans. Before selecting a benchmarking service provider, the committee should seek clarification of how the benchmark group of plans is determined, the quality of the underlying data, the scope of plan services and fees covered by the benchmarking analysis. The committee should also determine how the benchmarking results will be presented and explained. Advisors can assist the committee in selecting a qualified provider of benchmarking services, and they can also help the committee evaluate the benchmarking results in their proper context. A committee should make investment decisions based on all relevant factors, and never based on an isolated review of fees or benchmarking results alone. If any portion of the plan's investment fees is utilized to pay for administrative services to the plan, the evaluation of the investment fees should also consider the quality of these services.

Monitoring investments

Plan committees responsible for investment selection have a duty to monitor their plan's investments or investment menu choices at regular intervals to ensure that each investment remains prudent. Compliance with this duty of prudence requires proper documentation of the investment review process.[11] The investment reviews should be conducted in accordance with the IPS and any decisions resulting from this process should be put into writing. And just as the plan's menu is reviewed, the IPS itself should be reviewed on an ongoing basis and revised as necessary.

At each investment review meeting, the plan fiduciaries should confirm that the menu continues to provide a "broad range of investment alternatives" for ERISA purposes. The investment performance, volatility, style, fees and other relevant data for each investment fund should be evaluated. In connection with the review of investment fees, if the plan experiences a significant increase in the number of participants or growth in plan assets, the plan committee should pay particular attention to the continuing suitability of an investment fund's share class and the related 12b-1 fees and other expenses which may have increased beyond the limits of fiduciary acceptability as a result of such growth.

If during the review process an area of dissatisfaction is identified with respect to a particular investment option, the committee must decide if further action must be taken. One way of making this determination is by putting the challenged fund on a "watch list," which would typically requiring enhanced monitoring during a probationary period (e.g., reviewing performance more frequently and using investment analytics to dissect performance). If the fund does not improve or the committee otherwise decides to eliminate the investment, the challenged fund may be replaced by a new investment alternative.

9 Preamble to DOL regulations under ERISA Section 404(c), 57 Fed. Reg. 46922 (Oct. 13, 1992).

10 See 29 C.F.R. 2550.404a-1(b)(1).

11 DOL Interpretive Bulletin 08-2.

RESOLUTION OF BENEFIT CLAIMS

When acting in the role of the plan's administrator, a committee is ultimately responsible for resolving participant benefit claims through the plan appeals process, even if the initial determination on benefits liability is handled by in-house staff or an outside vendor. In order to ensure proper application of plan terms, this makes it important that at least one committee member has a working knowledge of the various benefit programs that may be reviewed. Where disputed benefit claims are involved, it is essential that the committee expeditiously affirm or reverse the initial benefit determination within the time limits set by the plan.

Mitigation of risk

Under section 409(a) of ERISA, a fiduciary who breaches its responsibilities under ERISA is personally liable for any losses to the plan resulting from the breach and must disgorge related profits. Fiduciaries can also be subject to civil penalties for breaching their duties under ERISA, and they can be held responsible for the misconduct of co-fiduciaries and service providers.

The committee should review the adequacy of the fidelity bond's coverage amount at regular intervals, but it should recognize that ERISA fidelity bonds are designed to protect the plan and not fiduciaries. Although it is not required to do so, a plan committee may take steps to determine the sufficiency of liability insurance coverage for plan fiduciaries, including the committee's own members, and to arrange for additional coverage if needed. Waiting until the last minute to investigate the sufficiency of insurance coverage can be a costly mistake, since it is often too late to develop a strategy to minimize a plan fiduciary's potential exposure, once a significant failure relating to a fiduciary breach occurs.

Although a plan may not purchase fiduciary liability insurance for a fiduciary, the fiduciary itself or the plan sponsor may do so.[12] Purchasers of fiduciary liability insurance should ensure that their policy contains the appropriate coverages, including protection against liability for breaches of fiduciary duty, negligent advice regarding benefits eligibility, defense costs, punitive damages, civil penalties under ERISA, and sanctions imposed under DOL and IRS compliance programs. Some insurers interpret exclusionary language in their policies very aggressively to their own advantage, and plan committees would do well to ask the broker or the carrier itself for specific examples of when exclusions will be applied.

Conclusion

Plan committees are responsible for oversight of a broad array of plan investment and administrative functions. In this role, they are acting in a fiduciary capacity, which requires them to implement processes that gather all the relevant information for each issue faced, which must then be evaluated to arrive at a reasoned and documented decision. This approach will result in effective plan governance that eliminates much of the fiduciary risk and ultimately facilitates the plan's delivery of benefits to its participants and beneficiaries.

[12] DOL Interpretive Bulletin 75-4, 29 CFR §2509.75-4 states that, "Indemnification provisions which leave the fiduciary fully responsible and liable, but merely permit another party to satisfy any liability incurred by the fiduciary in the same manner as insurance purchased under section 410(b)(3), are therefore not void under section 410(a)."

EXHIBIT A

Plan sponsor self-assessment and checklist

			Yes	No
1	**Named Fiduciary and Plan Administrator duties**	**Proper delegation of responsibilities** • If the plan sponsor has retained the title of Named Fiduciary or Plan Administrator, have the duties of these fiduciary positions (e.g., investments, government reporting and participant disclosures) been properly delegated in writing to one or more plan committees? • If a Named Fiduciary or Plan Administrator other than the sponsor will be appointed, has the appointment been made pursuant to the process described in the plan document?	☐	☐
2	**Structure and duties of plan committee**	**Committee charter** • Has a plan committee charter been adopted to delineate committee composition and duties? • Is committee membership limited to a workable number (e.g., 3 to 7 members)? • If term limits are used for committee membership, have the terms been staggered so as to retain institutional knowledge and continuity?	☐	☐
3	**Plan committee meetings**	**Schedule and agenda for meetings and minutes** • Are plan committee meetings being held on a regular periodic basis? • Are meetings conducted pursuant to an agenda prepared and circulated in advance of the meeting that focuses on immediate and long-term goals? • Do outside consultants and experts attend committee meetings and respond to questions about agenda issues, as well as report on new developments? • Are written minutes of plan committee meetings and deliberations being maintained?	☐	☐
4	**Investment policy statement**	**Development and implementation of IPS** • Has the committee overseen the development of an investment policy statement (IPS) appropriate to the needs of the plan? • Is the IPS periodically reviewed and revised? • Are the committee's investment decisions being made in accordance with the guidelines set forth in the IPS?	☐	☐
5	**ERISA section 404(c) qualification**	**Range of investment options** • Is the range of plan investment options sufficiently broad to enable participant decisions to materially affect investment returns? • Do the investment options enable participants to diversify investments so as to minimize the risk of large losses? • Does the investment menu include at least three investment options from different points on the risk/return spectrum? • Are investment options limited to a number that will not overwhelm participants or result in dilution of the plan's bargaining power with investment providers?	☐	☐
6	**Plan investment menu**	**Process for selecting investment options** • If committee members lack investment knowledge or experience, has the committee engaged an investment expert to provide advice? • Have all the relevant facts about a potential investment option (not just performance) been considered? • Has the committee considered each investment's fees and expenses? • Has the committee considered engaging benchmarking services to help evaluate investment performance, as well as fees and expenses?	☐	☐
7	**Ongoing investment reviews**	**Monitoring** • Is the committee reviewing the performance of investment options on the plan investment menu at regular periodic intervals and at least annually? • Do the committee's reviews include fees of investment and service providers? • Is indirect compensation to investment and service providers being monitored? • If an investment is put on a watch list, does the committee follow through by removing the investment from the plan menu if it does not improve?	☐	☐
8	**Review of benefit decisions**	**Appeals of benefit denials** • Do committee members have a working knowledge of plan benefits and the terms for benefit eligibility? • Are participant appeals being handled expeditiously and without unusual delays?	☐	☐

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About Marcia Wagner and The Wagner Law Group

Marcia S. Wagner is a specialist in pension and employee benefits law, and she is the principal of The Wagner Law Group, one of the nation's largest boutique law firms, specializing in ERISA, employee benefits and executive compensation, which she founded over 20 years ago.

A summa cum laude and Phi Beta Kappa graduate of Cornell University and a graduate of Harvard Law School, she has practiced law for over 30 years. Ms. Wagner is recognized as an expert in a variety of employee benefits issues and executive compensation matters, including qualified and non-qualified retirement plans, all forms of deferred compensation, and welfare benefit arrangements.

Ms. Wagner was appointed to the IRS Tax Exempt & Government Entities Advisory Committee and completed her three-year term as the Chair of its Employee Plans subcommittee, and received the IRS' Commissioner's Award. Ms. Wagner has also been inducted as a Fellow of the American College of Employee Benefits Counsel. For the past eight years, 401k Wire has listed Ms. Wagner as one of its 100 Most Influential Persons in the 401(k) industry, and she has received the Top Women of Law Award in Massachusetts and is listed among the Top 25 Attorneys in New England by *Boston Business Journal*. Ms. Wagner has written hundreds of articles and 14 books about retirement and benefit plans. Ms. Wagner is widely quoted in business publications such as *The Wall Street Journa*l, *Financial Times*, *Pension & Investment*s, and more, as well as being a frequent guest on FOX Business, CNN, Bloomberg, NBC and other televised media outlets.

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