

## Doing the right thing as a plan fiduciary -- Giving employees the retirement planning advice they need.



Most enlightened plan sponsors have made great strides in recent years in improving the fiduciary “infrastructure” related to their retirement plans. The key fiduciary requirements include:

1. Acting solely in the interest of plan participants and their beneficiaries – and with the exclusive purpose of providing retirement income to them;
2. Carrying out plan duties as a prudent expert would do them;
3. Following the plan’s documents (unless inconsistent with ERISA or other applicable law);
4. Diversifying plan investments; and
5. Paying only reasonable plan expenses.

Further, to limit liability under ERISA, and to help get the protections of making participants responsible for their investment directions, plan sponsors must:

1. Ensure effective and documented processes and actions for plan-related decisions, and monitoring of provider results; and
2. Provide participants information to make informed investment decisions.

This second point brings with it some interesting considerations worth pondering. When an employer considers offering investment advice solutions for a retirement plan, several concerns are often articulated:

1. Liability for losses or other problems associated with investment guidance or advice;
2. Ability to select a competent investment advice service provider; and
3. Ability to monitor the investment advice service provider.

These are all valid concerns – but there is one issue many employers do not consider. All of these concerns reflect only a “Plan Duties” perspective. That is all well and good, but, unfortunately, there is very little or no focus on actual “Employee Outcomes” associated with the fiduciary’s offering and management of the retirement plan! If an employer knows that its employees don’t know how to use their retirement plan or don’t know how to invest their plan savings, has the employer prudently managed the plan for its *purpose* of providing retirement income?

In this regard, let’s review the provision of participant investment guidance and advice as it pertains to fiduciary risk mitigation. The U.S. Labor department’s staff and other employee-benefits experts have said that:

1. Many employees need investment guidance or advice;
2. Investment education is an important tool; but
3. Education alone may not be enough for some employees (*and, this is important*);
4. Plan fiduciaries do not have to be liable for the acts of guidance/advice providers; and
5. The prudent selection of the investment advice and service provider can greatly limit a fiduciary’s liability.

Here’s the overlooked fiduciary perspective. Regarding the view that investment education alone may not be enough for some employees, Fred Reish, a nationally regarded legal expert on fiduciary matters concludes that:

**While the law does not force a plan to offer guidance or advice, it does suggest that fiduciaries *have a responsibility to do so if they believe that the employees are unsophisticated about investment matters.***

From a fiduciary standpoint, there is quite a conundrum facing plan fiduciaries regarding the provision of investment advice solutions and their effectiveness given the plan sponsor's workforce population. In a world where 77% of employees cite "the ability to afford retirement" as the top challenge to them as an individual<sup>1</sup>, but only about 5% engage any sort of investment advisory solution<sup>2</sup>, fiduciaries may be "setting a nice investment offering table", but not at all succeeding in helping their employees "partake" of the feast. Most participants don't want "education". Instead, they are crying out for a saving and investing recommendation that:

1. Is right for them (personalized); and
2. Puts them on track for predictable retirement "success."

So, as employers and plan sponsors/fiduciaries are we really doing all we can to help ourselves from a fiduciary risk standpoint – and our employees from a retirement outcomes standpoint? The answer is typically "no" – but the good news is there is an effective solution....Financial Soundings' Retirement Planning *Insights*!

Our *Insights* solution has proven itself in diverse workforce settings:

1. 100% of all eligible employees (not just plan participants) reached with a personalized FS *Insights* report from an independent adviser with no conflict of interest;
2. Broadened asset diversification among the investment options in the plan;
3. Increased payroll contributions based on Financial Soundings' recommendations; and
4. Improved participation in the plan.

Although no investment adviser can guarantee that investment advice will result in desired investment outcomes, we can assure that every participant and eligible employee will receive advice, thus lowering your risks from lawsuits asserting that you had a fiduciary duty to act prudently on your knowledge that your employees don't know how to make retirement investment decisions.

Priced at a surprisingly low per employee per year cost, our FS *Insights* solution is usually funded through the retirement plan's ERISA Expense Account. We would value the opportunity to learn about your plan and your fiduciary and workforce concerns so that we can share with you how other employers are using our *Insights* tool to:

1. Increase/Improve plan participation;
2. Improve their employees' probability of successful and risk-balanced retirement asset accumulation;
3. Improve employee understanding and appreciation of their retirement plan (and other benefits);
4. Better leverage their retirement plan to drive higher levels of workforce financial wellness, retention and engagement;
5. Enhance their fiduciary protection through minimized risk (as noted above) and Financial Soundings Investment Advisor, LLC assuming fiduciary liability for our investment advice.

Financial Soundings can help. Let us show you how.

For more information, including our Disclosure Brochure, please call us at 877.393.8222 or visit our website at [www.FinancialSoundings.com](http://www.FinancialSoundings.com).

- 1 Deloitte 2010 Top Five Total Rewards Survey
- 2 EBRI 2008