$48 Million ERISA Settlement Serves as a Reminder of 401(k) Fiduciary Duties

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ADP TotalSource Group, Inc., Automatic Data Processing, Inc., and ADP TotalSource Retirement Savings Plan Committee (collectively, the "***Defendants***") recently settled a class action lawsuit alleging various breaches of fiduciary duty and prohibited transactions arising from the Defendants' management and administration of the ADP TotalSource Retirement Savings Plan (the "***Plan***"). The motion for preliminary approval of the settlement, which includes a proposed $48 million cash settlement, is available here.

Although some of the allegations in this case arose from the Defendants' unique business model, some of the claims covered by the settlement arose from allegations of underperforming funds and excessive fees paid to plan service providers, claims which have become standard in ERISA class action litigation. The large settlement should serve as an important reminder to plan fiduciaries to ensure that they satisfy ERISA's procedural prudence requirements and adhere to ERISA's fiduciary standards. Among other things, plan fiduciaries should:

- Exercise extreme caution when using plan assets to pay or reimburse the plan sponsor or an affiliate for services provided to the plan.
- Periodically benchmark the fees and services of plan service providers and regularly conduct requests for proposals from plan service providers. Ensure that the plan investment committee meets regularly to review investment performance and fees, make appropriate changes when warranted, and thoroughly document its deliberations, analyses, and decisions.
- Provide regular fiduciary training to plan committee members and other fiduciaries so they understand their responsibilities under ERISA.

Expanded discussions of 401(k) fiduciary duties are available here, here, and here.