The Importance of Budgeting Resources for Plan Document Review in RFPs

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As we previously reported here and as recommended by the DOL, in order to fulfill its ERISA fiduciary duty to monitor, the fiduciary at the plan sponsor responsible for hiring retirement plan service providers, including the record keeper and third party administrator, should conduct requests for proposals ("***RFPs***") at least once every three to five years. This review is necessary so that the fiduciary can review and compare the services and fees provided by various service provider candidates. While plan sponsors may plan and budget for expenses relating to conducting the RFP, and even negotiating the service agreements if a new provider is chosen, one critical area often overlooked in budgeting relates to changes that may be necessary to the current plan document if a plan sponsor decides to change service providers. This is especially true for 401(k) plans that are using their current service provider's pre-approved plan documents, since many service providers require plans to utilize their form documents if they are going to serve as the plan's third-party administrator and recordkeeper.

Plan sponsors may believe that the 401(k) preapproved plan adoption agreements used by various service providers are substantially similar and that it is easy to move from one service provider's plan document to another provider's document. This can be true, but it is not always the case. The options provided in different service providers' adoption agreements typically are not identical and are not easily mapped from one document to the other. As a result, a legal analysis is required to determine which selections should be made under the new service provider's plan document. There may also be protected benefits issues if the new service provider's plan does not allow all the same options as the old service provider's plan. At the very least, the plan's legal counsel should compare the current plan document with the proposed new document to ensure there are no unintended changes in the new document.

It is not uncommon for service providers to make mistakes when completing the new adoption agreement, and these mistakes can result in plan operational errors that are time-consuming and expensive to correct. Plan sponsors should budget time and resources for legal counsel to review the proposed new plan document before it is adopted to help ensure that there are no unintended changes in the new plan document and that plan sponsors are aware of any changes that are unavoidable as a result of the difference between the two service providers' plan documents.

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