Broadridge Fi360 Solutions Webinar Series

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THE
BROADRIDGE
WEBINAR
PROGRAM

Benefit from partnering with a third-party fiduciary

Thursday, April 21, 2022

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Thank you to today's presenting sponsor

Mesirow

MESIROW FIDUCIARY SOLUTIONS

Benefit from partnering with a third-party fiduciary

April 21, 2022

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About Mesirow

Mesirow is an independent financial services firm founded in 1937 and owned by employees.

- Global headquarters in Chicago with offices worldwide; 495 employees
- Diversified core businesses that include:
  - Advisory Services
  - Global Investment Management
  - Capital Markets and Investment Banking

WE INVEST IN WHAT MATTERS

OUR CLIENTS

OUR COMMUNITIES

OUR CULTURE

CLIENT-ALIGNED OWNERSHIP

ensures we think and act as owners

100% of voting shares are held by active employees

STRONG BALANCE SHEET

provides stability and flexibility

$346M in capital[1] and no debt

CORPORATE RESPONSIBILITY

reflects our clients' values

5K volunteer hours in Chicago communities

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Evolving marketplace

The competitive landscape is changing, and external forces are weighing on advisors' businesses; regulation, consolidation and the substantial monetary and human capital costs of keeping up.

Leveraging a third-party fiduciary can prove advantageous for any advisor with a retirement plan.

Advisors' Retirement Business

Process

- Establish a prudent fiduciary process under ERISA
- Adhere to a compliance process for monitoring retirement plan business
- Evolving compensation models and shifts towards fee-based business

Oversight

- Evolving regulatory environment
- Greater supervision of investments within retirement plans and IRAs

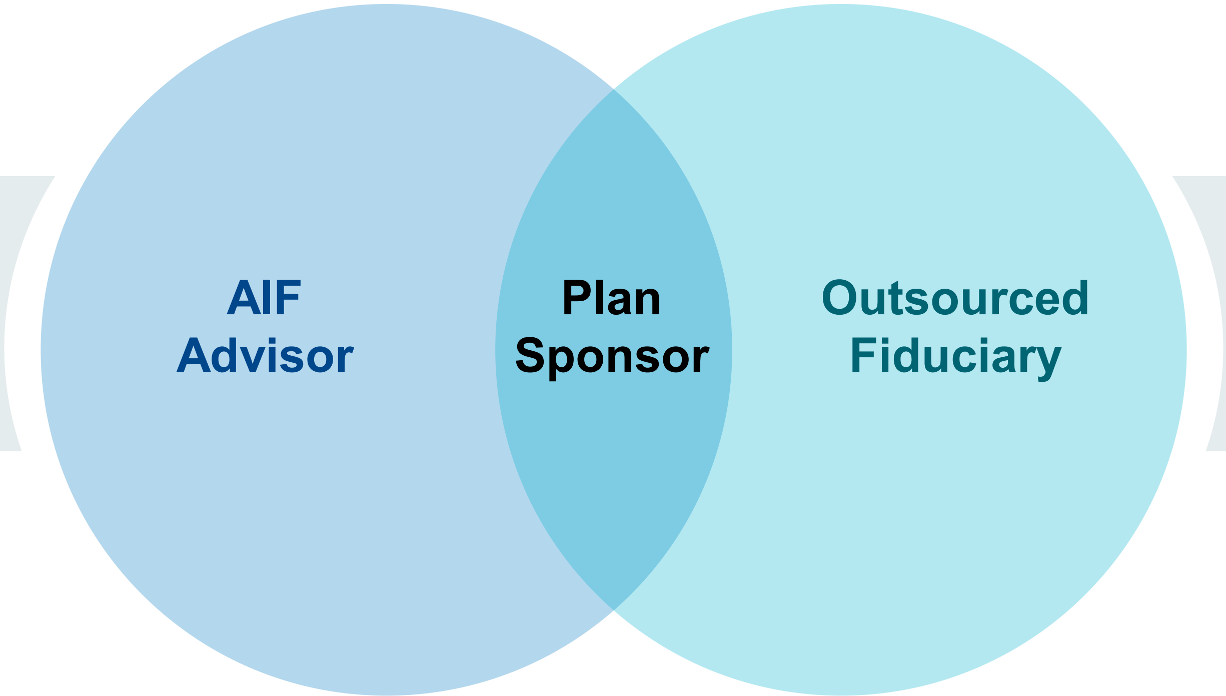
Risk

- Fiduciary responsibility and associated liability
- Must have a proportionate amount of capital and/or insurance available to back potential claims

Partnering with an outsourced fiduciary

Partnering with a third-party fiduciary

Third-party fiduciary services complement an advisor's services to help plan sponsors meet their fiduciary responsibilities.



Third-party fiduciary services can save advisors time and mitigate fiduciary risk by providing the tools necessary to appropriately select and monitor plan investment lineups.

How third-party fiduciary solutions support advisors?

Financial advisor concerns

Time
Money
Risk

Outsourced Fiduciary Partnership Service

Outsourced fiduciary capabilities

Process
Expertise
Outsource

Offer an added layer of independent fund due diligence

- Alleviation of conflicts of investment selection through an independent third-party review
- A documented and disciplined fiduciary process that includes selection and monitoring of investments from an independent third-party team of experts for your plan sponsors

Low-cost way to mitigate advisor's and plan sponsor's legal risk

- Outsourced fiduciary's agreements may protect sponsors and advisors

Enable advisors to better service and grow their book of business

- Advisors often own the relationship with plan sponsor
- Outsourced fiduciary does not interact directly with plan sponsors
- Advisor may focus on other responsibilities for the plan, such as plan design and participant education
- Increased satisfaction and loyalty from your plan sponsors

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Quarterback the relationship

Hires advisor and third-party fiduciary	Plan sponsor
Owner of the relationship	AIF advisor
Contractual ERISA fiduciary	Third-party fiduciary

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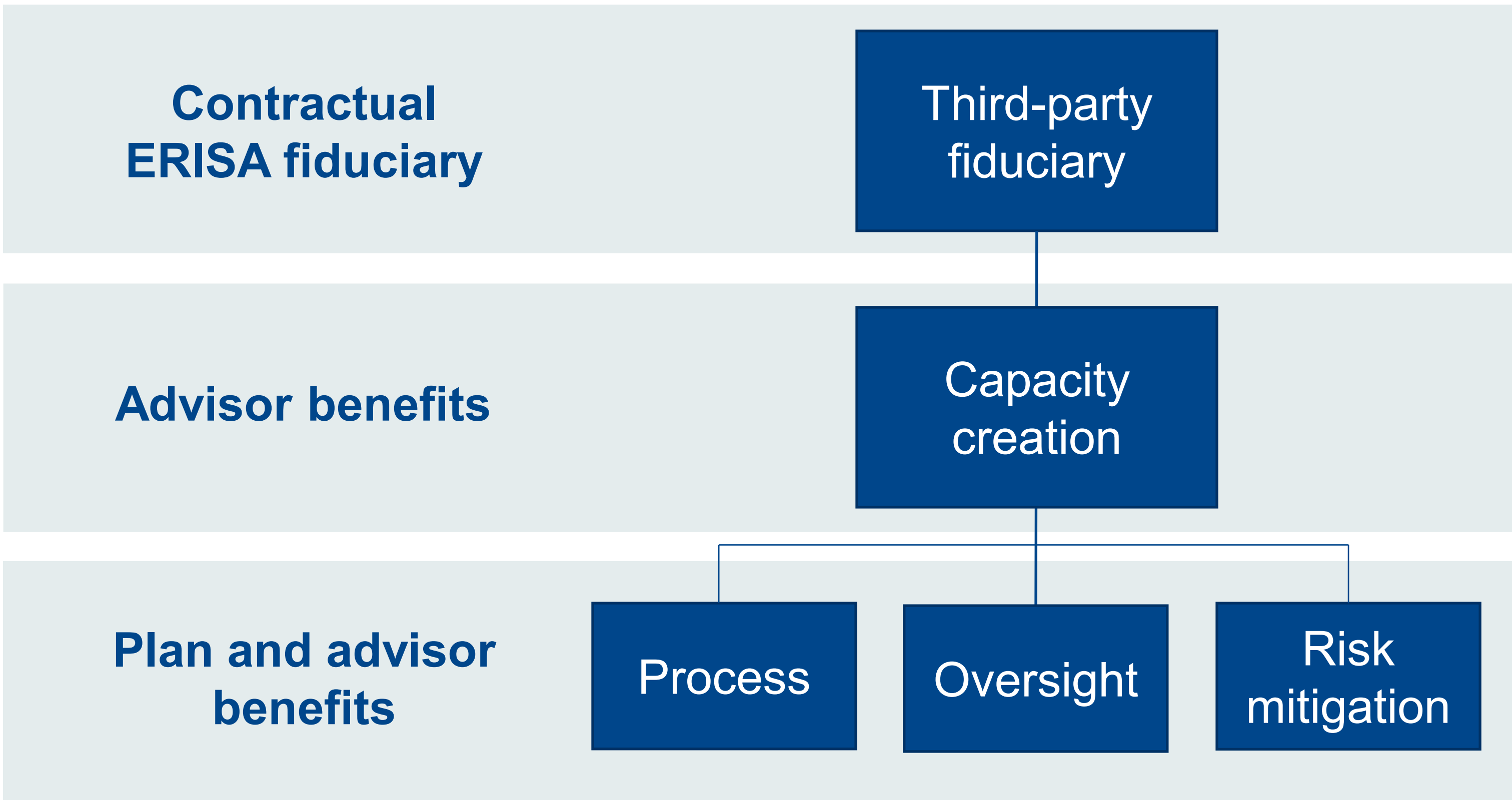
Quarterback the relationship



Quarterback the relationship

Investment committee

Your client should establish an investment committee to review its outsourced fiduciary and make decisions based on the outsourced fiduciary's recommendations.

It is best practice for plan sponsors to create a "procedural and substantive prudent process" through the creation of an investment committee which then formally records all decisions made by that committee on behalf of the plan.

Considerations when establishing an investment committee, include:

- Who should be on the committee
- Function of the committee & roles of its members
  - Disclosure of conflicts of interest
  - Establishment of officers of the committee
  - Attendance requirement of committee members
  - Process for adding/removing/ or resigning committee member(s)
- Documenting meeting minutes
- Potential voting process
- Definition of fiduciary duties
- Fiduciary acknowledgement by committee member of duties

Quarterback the relationship

Investment policy statement

An investment policy statement provides a road map to document the general investment objectives of the retirement plan.

Work with a fiduciary who provides a template to make you look good.

You should expect it to include:

- **Executive Summary** – Lists general information about the plan
- **Purpose** – Outlines the reason for having the investment policy statement
- **Statement of Objectives** – Lists what is meant to be accomplished by offering the plan
- **Duties and Responsibilities** – Describes the responsibilities of all parties involved with the plan
- **Asset Class Guidelines** – Defines the asset classes that will be offered to plan participants
- **Implementation** – Presents an overview of how investment options are to be selected
- **Monitoring** – Describes an overview of the process for monitoring investment options offered in the plan

Quarterback the relationship

Plan design

Work with your recordkeepers to develop an optimal plan design for your client.

Factors for consideration:

- Number of employees
  - Full-time vs. part-time employees
  - Temporary employees
- Economic changes that have affected the employer’s business or industry
- Administrative burden / compliance expenses
- Changes in related employer relationships, including common ownership or purpose, or service affiliations
- Legislative or guidance changes that have affected plan features
- Changed in employer saving or benefit objectives

Considerations when making plan design changes:

- Eligibility options
- Employer contribution allocation conditions
- Employee contribution changes
- Employer contribution changes
- Compliance testing
- Vesting
- Distribution triggering events

ERISA & fiduciary responsibility

Understanding ERISA & fiduciary

ERISA

Federal statute that sets standards for most employer and union-sponsored retirement plans in private industry and imposes responsibilities

Fiduciary

Typically defined as a person who has the legal and/or implied moral responsibility to manage the assets of another person, acting "solely in the best interest" of that person or partner

Fiduciaries have important responsibilities and are subject to certain standards of conduct (and penalties) because they act on behalf of plan participants.

Fiduciary responsibilities according to ERISA

- Act solely in the interest of plan participants and their beneficiaries
- Carry out duties prudently
- Follow the plan documents
- Diversify plan investments
- Pay only reasonable plan expenses

Fiduciaries are responsible for the prudent selection and ongoing monitoring of plan investments.

Fiduciary responsibilities according to ERISA

- At least one **named fiduciary** in the written plan
  - Or through a process described in the plan, a named fiduciary having control over the plan's operation
- Fiduciary status **based on functions** performed for the plan, not by title
- Fiduciary may be held **personally liable** for losses he or she caused
- Fiduciary may be held **liable for the acts of another fiduciary** if:
  - Fiduciary participates knowingly in a breach of fiduciary duty
  - Fiduciary has knowledge of a breach and makes no reasonable efforts to remedy it

ERISA defined fiduciaries

- Named fiduciary; identified by name in the plan documents
  - Responsibility or liability for investing plan assets
  - Appoint a third-party as an ERISA 3(21) fiduciary to provide investment advice, but retain responsibility for investing plan assets
  - Appoint a third-party ERISA 3(38) fiduciary with responsibility for investing plan assets
- 3(16) fiduciary (Administrator)
- 3(21) fiduciary
- 3(38) fiduciary

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3(16) fiduciary

Focuses on a plan's administrative functions

3(16) fiduciary:

- Takes responsibility for the daily administrative tasks associated with the plan, such as:
  - Determining employee eligibility
  - Providing disclosures to employees and other participants
  - Hiring or replacing plan service providers
  - Making discretionary amendments to the plan
  - Fixing errors in the plan leading to compliance test, nondiscrimination test, and ADP/ACP test failure
  - Signing and filing annual 5500 forms (as required)
  - Approving and processing loans and distributions
- Scope of 3(16) services varies by provider

Benefits:

- Reducing day-to-day administrative work involved in managing a 401(k) plan.
- Allows sponsoring employer to delegate:
  - Fiduciary responsibilities
  - Limit their fiduciary responsibility, as well as the overall administrative burden of operating a plan

3(21) fiduciary

Investment advisory service

3(21) fiduciary:

- Takes an advisory role and provides assistance with the investment selection and monitoring of plan investments. 3(21) fiduciary programs may:
  - Include assistance with 404(c) diversification requirements
  - Provide flexibility
  - Not limit on the number of funds in plan lineup
  - Allow plans to select any combination of core asset class funds and supplemental funds
  - Provide legal protection

Benefits:

- Typically, more flexible
  - Suited for plan sponsors and advisors who want to maintain discretion of their fund lineup while offloading some fiduciary risk
- Leverage a third-party's due diligence expertise
- Generally, lower cost than 3(38)
- Not all 3(21) fiduciaries are the same
  - Legal and financial protection offered (e.g., advisor protected?)
  - Degree of customization allowed
  - Deliverables for the service vary
    - Quarterly investment manager monitoring reports
    - Recommended investment lineups
    - Investment policy statement

3(38) fiduciary

Investment management service

3(38) fiduciary:

- Assumes a full discretion for selecting, monitoring and replacing the investment options in the plan
  - Lineups may meet ERISA 404(c) diversification requirements
  - Fiduciary should acknowledge their responsibility under ERISA Section 3(38) through its agreement with the plan sponsor
  - Fiduciary may indemnify the plan and/or advisor through its agreement with the plan sponsor
- Plans may be able to selected their initial lineup if it meets the third-party fiduciary's criteria

Benefits:

- Typically, less flexible
- Suited for plan sponsors and advisors who outsource their fund lineup's management
- Leverage a third-party's due diligence expertise
- Generally, more expensive than 3(21)
- Not all 3(38) fiduciaries are the same
- Legal and financial protection offered (e.g., advisor protected?)
- Initial setup
  - One or more pre-built lineups from which to choose one, or;
  - Narrow approved fund list
- Deliverables for the service vary
  - Quarterly investment manager monitoring reports
  - Discretionary investment lineups
  - Investment policy statement

Can fiduciaries be subject to criminal penalties?

If someone is found guilty of willfully violating ERISA's provisions, they may be subject to criminal penalties.

- Fines can equate to upwards of $1,000/day depending on the penalty

What issues typically give rise to criminal prosecution?

- Failure to comply with rules surrounding the backgrounds of plan fiduciaries (i.e., someone convicted of robbery, bribery, embezzlement, perjury or certain drug offenses cannot serve as a fiduciary of a plan)
- Willful violations of reporting and disclosure requirements
- Interference with a participant exercising his or her rights under a benefit plan (by such things as fraud, force, violence or threat)

Can fiduciaries be subject to civil penalties?

Yes, the penalty depends on the violation:

- Breach of fiduciary duty
- Failure to comply with prohibited transaction rules
- Failure or refusal to file Form 5500
- Failure to furnish required notices or documents to a participant on request (e.g., quarterly benefit statements, plan documents, etc.)
- Failure to provide documents upon DOL request (e.g., summary plan description, summary of material modifications, or other plan-related documents)
- Failure to provide blackout period notice

What is indemnification & who can indemnify a plan fiduciary?

Indemnification is the protection from monetary liability by a third-party.

- For example, XYZ Corporation agrees to indemnify its Benefits Director, a plan fiduciary, in the event the Benefits Director is held liable for fiduciary breach. If the Benefits Director is sued by a participant for fiduciary breach and is found to owe monetary damages, XYZ Corporation is obligated to pay those monetary damages due to the indemnification agreement.

Who can indemnify a plan fiduciary?

- A plan fiduciary can be indemnified by the employer sponsoring the plan, an employee organization that has employees participating in the plan (such as a union), or an outsourced fiduciary with a contract that includes indemnification.

Note: A benefit plan cannot indemnify a plan fiduciary.

Advisor considerations

Where might co-fiduciary services be useful?

- Advisor wants to growing their business by freeing up time to sell and creating efficient operations to increase margins
- Advisor unable to act, or prohibited from acting, as a fiduciary
- Advisor rarely works with retirement plans or lacks the resources to devote to plan sponsor's specialized needs
- Advisor wishes to focus on other plan servicing needs
  - Managing the relationship
  - Plan design
  - Financial wellness
- Small to mid-size plans
  - Costs are prohibitive to customizing selection and monitoring of investment options
- Larger plans
  - Where an advisor wishes to pass on part of the fiduciary risk
  - Where an advisor is resource constrained/unable to devote sufficient time for investment selection and monitoring

Questions to ask when evaluating a fiduciary service provider

- Does the provider enter into a contract with the plan sponsor?
- What legal and financial protection is offered?
  - Am I protected as an advisor
  - Limit on liability capped or uncapped
  - Investment options excluded from coverage
- What is the fiduciary service provider's experience in providing such services?
  - Firm reputation and history in providing fiduciary services
  - Team and resources
- Can the fiduciary service provider stand behind their service?
  - Appropriate levels of insurance
  - Sufficient capital
- How difficult is it to qualify for the fiduciary service?
  - Flexibility
  - Menu of funds versus lineups

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