



Choosing the Right Retirement Plan Consultant: Independence, Transparency & Fiduciary Duty

Introduction



Under the Employee Retirement Income Security Act (ERISA), plan sponsors have a fiduciary duty to act prudently and in the best interests of plan participants. Selecting and monitoring retirement plan consultants is critical to fulfilling this duty. This guide provides a framework for evaluating fiduciary retirement plan consultants, emphasizing the importance of independence, transparency, fiduciary expertise, governance, and regulatory readiness.

Legal and Regulatory Context

Under ERISA 404(a)(1)(B), plan fiduciaries are expected to make decisions with the same level of care, skill, and judgment that a knowledgeable and responsible person would use in a similar role and situation. The Department of Labor (DOL) and the Securities and Exchange Commission (SEC) have issued joint guidance on the importance of selecting and monitoring service providers to avoid conflicts of interest.

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Questions 6 and 7 – Other Business Activities and Financial Industry Affiliations

In these questions, firms must disclose whether the advisory firm or its personnel are engaged in other lines of business or whether they have affiliations that could create conflicts. The most common conflicts in this area are:

- **Dual registration** – where the firm or individuals are also registered as or affiliated with a broker-dealer, allowing for additional incentives and compensation on product sales
- **Insurance sales affiliations** – where the firm, its advisory representatives, or employee educators may receive commissions for recommending annuities or insurance products to clients
- **Affiliations with recordkeepers or asset managers** – which may bias recommendations regarding service providers

Question 11 – Disclosure Information

This section requires the firm to disclose legal or disciplinary events involving the firm or its personnel. The most common risks in this question are:

- **Past regulatory action** – this may come from the SEC, FINRA, or state regulators
- **Settlements of fines** – especially those related to breach of fiduciary duty, fraud, or failure to disclose to clients adequately
- **Pending litigation** – litigation may create risk for clients

Schedule A – Direct Owners and Executive Officers

This schedule lists the individuals and entities that own or control the advisory firm. The most common risks to be aware of in Schedule A are:

- **Private equity ownership** – generally, private equity comes with intense pressure to prioritize revenue growth over fiduciary best practices, and likely indicates additional future changes in ownership
- **Parent companies with multiple business lines** – this is where potential conflicts to sell additional products and services to plans and participants alike would arise, ranging from annuity products to participants or health insurance to plan sponsors

The DOL and SEC have opined extensively on the duty to monitor, and the fewer conflicts that need to be understood and addressed, the simpler that assessment should be.



A Prudent Evaluation Framework

The challenge facing most retirement plan sponsors, regardless of their level of sophistication and desire to get it right, is defining a prudent evaluation framework focusing on the most impactful issues for engagement success. Without this framework, sponsors hyperfocus on feature differentiation, even when those features may not be differentiated at all.

This framework outlines key attributes to consider when evaluating fiduciary retirement plan consultants. Each section includes what to look for and why it matters under ERISA and to the success of the engagement.

Without a clear framework,
plan sponsors risk focusing on the
wrong things.

Independence and Objectivity

Consultants should strive to avoid conflicts of interest. Plan sponsors who work with consultants with business models that have numerous or complex conflicts carry an additional burden to meet their fiduciary responsibilities. A consultant providing guidance to a committee may be providing the most suitable recommendations to their client, but if the consultant generates additional economic benefits that can vary based on their recommendations, proving the recommendations were not influenced by the conflict is often difficult, if not impossible.

The retirement plan consulting industry is in flux. Private equity firms are aggregating consultants with a desire to gain scale and distribute proprietary products and solutions to clients. National investment managers and brokerage firms are aggregating consultants to distribute products through the massive U.S. retirement system. Health and welfare brokers are accumulating retirement plan consultants, and their clients, to distribute high-margin health insurance and benefits through their client relationships.

Plan sponsor requirements under Section 408(b)(2) mandate that fiduciaries understand the fees paid by the plan, which frequently include consulting fees. Fees should be easy to calculate and disclosed to clients each year of the engagement.

While each model carries unique conflicts, here are the primary models we see in the market.

- **Consultant vs. Provider:** A firm may act as both the investment consultant and the investment manager (or have affiliated entities that do), creating a conflict between objective advice and promoting their products.
- **Revenue Sharing & Indirect Compensation:** Increasingly, retirement plan consulting firms are accepting services, research, sponsorships, gifts, and travel expenses from the firms they are charged with objectively overseeing. Investment companies and recordkeepers are sponsoring consultant conferences, paying extraordinary sums for an opportunity to pitch to the consultants in attendance.
- **Proprietary Products:** Consultants have begun distributing proprietary investment products, custom target date products, and adviser-managed accounts, as a way to augment revenues.
- **Fee Structures:** Litigation in the retirement plan space has understandably pushed fee models for recordkeepers and consultants away from asset-based models in the larger plan market to pass economies of scale savings along to participants. Many consultants have used 3(38) upsells and adviser-managed accounts to escape the flat fee model.

Transparency and Fee Clarity

Consultants should offer clear and straightforward fee structures. Opaque or layered fee arrangements can obscure the true cost of services and create conflicts. Sample RFP questions can help uncover hidden compensation and ensure transparency.

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Fiduciary Expertise and Focus

Retirement plan consulting is unique in the scope of issues consultants are asked to address relative to other areas in finance, financial planning, and human resource benefits consulting. Consultants need to be skilled in understanding ERISA and potentially state law for those plans operating outside ERISA.

The Internal Revenue Service rules on plan operation are significant and change frequently with new appropriations bills. Plan committees need sophisticated investment review support to deliver a variety of appropriate investment products to participants.

Consultants should be aware of the latest research in behavioral economics, which impacts how participants interact with the retirement plan. Increasingly, as plans review decumulation, consultants must also understand the key decisions and financial planning implications as participants consider their options in generating retirement plan income.

Even with all that knowledge, a retirement plan consultant is most frequently charged with being a good educator of clients and committees and helping committees define goals and arrive at consensus.

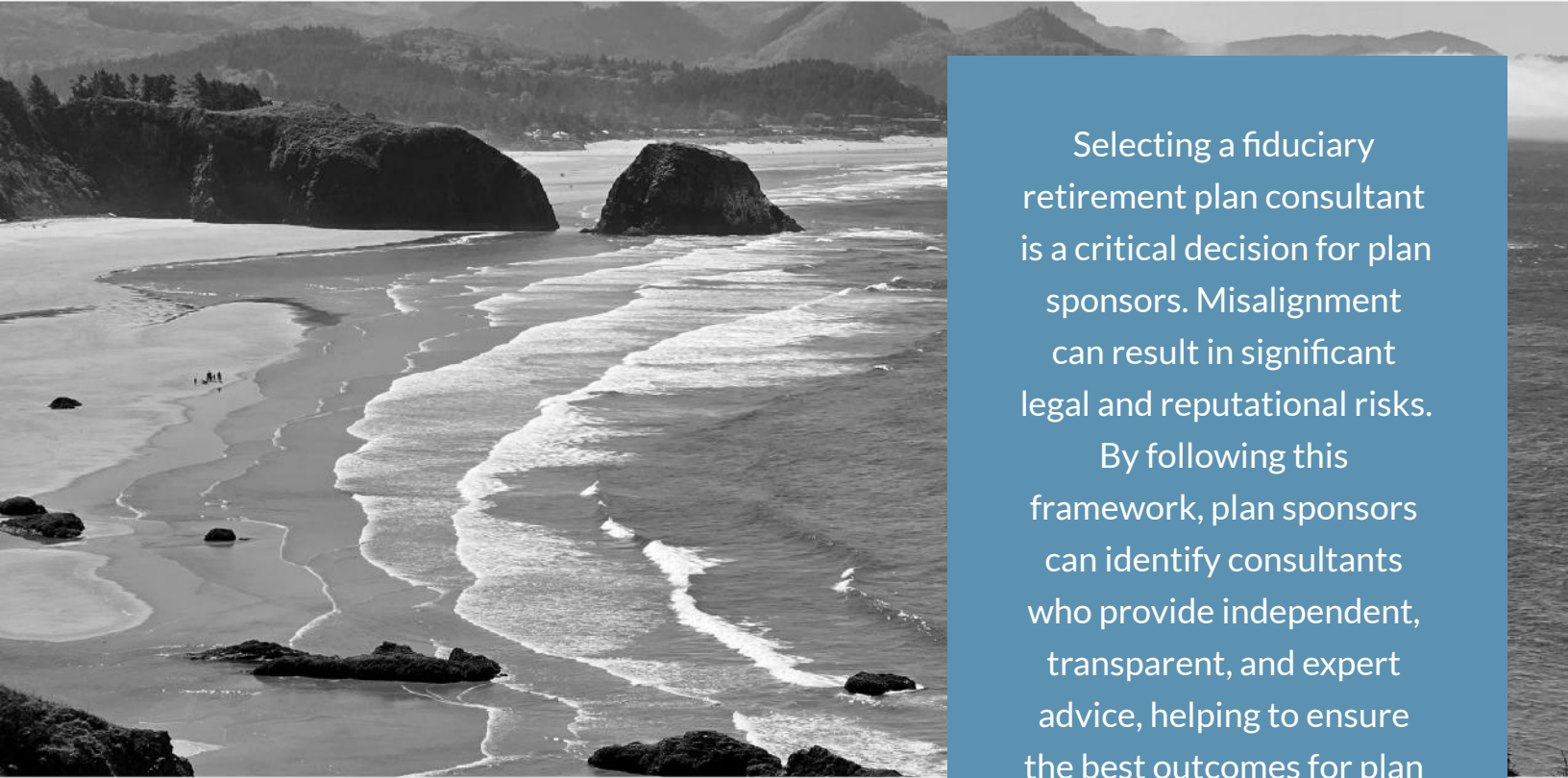
Regulatory Readiness

A good retirement plan consultant should focus on improving the plan each year to deliver benefits to participants more effectively. Occasionally, plans require more acute attention in the event of litigation or audits by the DOL.

Consultants should have policies to address such challenges, and experience supporting clients facing these issues. While ideally, no client gets audited or needs support, working with a client who is either unfamiliar with the audit process or who charges additional fees to support clients during these events will create additional foreseeable challenges for plan fiduciaries.



Conclusion



Selecting a fiduciary retirement plan consultant is a critical decision for plan sponsors. Misalignment can result in significant legal and reputational risks.

By following this framework, plan sponsors can identify consultants who provide independent, transparent, and expert advice, helping to ensure the best outcomes for plan participants.

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