Choosing a New Retirement Plan Provider?

Take it to the Bank

The right partner can help shoulder your fiduciary responsibility – and mitigate risk

Retirement plan fiduciary risk. It’s a topic that has generated no shortage of discussion, debate and concern on the part of plan sponsors. Each newly-issued U.S. Department of Labor (DOL) pronouncement seems to ignite a firestorm, as sponsors grapple with the ever-changing scope of their fiduciary duties. There’s no avoiding the fact that as a plan fiduciary, you expose yourself to risk—at times substantial risk. It can feel as though you’re precariously perched on a high wire, balancing the often conflicting goals of managing a compliant, cost-effective plan while having it be an attractive benefit to your employees.

Your far-reaching fiduciary duty

As a plan fiduciary, you’re compelled to maintain undivided loyalty to plan participants. This includes avoiding all potential conflicts of interest, securing the best value for plan services and investments, and ensuring that plan assets are used solely to provide participant benefits and defray reasonable and customary costs of administering the plan. In the various roles that plan sponsors fulfill in operating a retirement plan, you personally carry potential liability for any breach of fiduciary duty.

Yet under ERISA Section 404(a)(1), the scope of fiduciary duties continues to broaden. Simply monitoring and managing fees and providing adequate investment oversight is no longer sufficient. Today, fiduciary duties encompass responsibility for avoidance of a host of other deficiencies, such as failing to employ sufficient rigor in searching for missing participants in order to distribute their benefits. Compared to a decade ago, the cost, complexity and time commitment required to maintain a compliant plan has become exponentially higher, and the potential liability for any mistakes or omissions has become far greater.

A century of unparalleled trust oversight and governance

At its core, a retirement plan is fundamentally a trust arrangement – a pool of assets held for the benefit of a defined group of people. The handling and safeguarding of those assets, from the time a dollar comes in the door to when it goes out, is governed by a strict set of rules intended to achieve certain goals. It’s the type of fiduciary structure that has been an essential banking service for more than a century.

Banks have always been the go-to experts for these complex trust arrangements. It’s practically in their DNA to know how to establish and oversee trust vehicles. This isn’t to suggest that large investment firms and insurance companies aren’t competent and capable providers. But in a banking environment, the degree of attentiveness and fiduciary oversight given to a retirement plan is unprecedented, with an army of people who focus on nothing else but optimizing policies and procedures and evaluating risk – all for the benefit of the plan participants. It’s a depth of infrastructure that other organizations simply can’t offer. And even all of this great work remains subject to even an additional layer of oversight – the federal government banking regulators.
The increasing focus on transparency and fee disclosure is forcing providers to expand policies and procedures to meet these demands. For the most part, however, banks have been doing this for years, as they have always been required to be transparent as to exactly how they are getting paid. New fee disclosure requirements can present a challenge for other providers, but they are merely business as usual for bank plan providers.

Rigorous policies and procedures
It’s an immutable fact that no other type of financial organization is subject to the extent of auditing (both internal and external) as a bank. Not only do banks answer to a myriad of regulatory agencies, they also are closely monitored by the Federal Reserve Bank. In fact, at larger regional and national banks like SunTrust, the Federal Reserve maintains a constant presence with a full-time on-site auditor whose sole function is to scrutinize the bank’s policies and procedures – the same policies and procedures that are used to manage retirement plans on behalf of our clients.

And under the regulatory requirements laid out by the Federal Reserve, any third-parties who are engaged by a bank to provide plan services must be subject to the same rigorous oversight and regulatory review as if those services were provided internally.

Other retirement plan providers have nowhere near the level of accountability that banks do. We simply don’t have the luxury of our policies and procedures not being pristine.

While the DOL court cases that garner press coverage tend to center around investment improprieties, the vast majority of DOL actions are brought because of failure to adhere to written policies and procedures. Procedural issues such as not getting contributions deposited in a timely fashion, not following the specifics of the plan document, or filing irregularities are where many plans get tripped up. And that’s precisely the realm of procedural excellence where banks tend to shine.

The client acceptance process at a large bank is far more rigorous than at virtually any other plan provider organization. At SunTrust, we like to say that if a client makes it through our acceptance process, it’s a better plan the next day. We find missing documents, identify issues within the plan document, and pinpoint processes and procedures that should be taking place but aren’t. When we step in as a fiduciary, because of our regulatory oversight and nature of our business, we look very closely to make sure that every “t” is crossed and “i” is dotted – far beyond the rigor of other providers.

Flexibility to fit your fiduciary needs
As the DOL continues to broaden the scope of individuals and organizations who fall under their definition of fiduciaries or potential fiduciaries, many organizations have suddenly begun to hold themselves out as ERISA Section 3(21) or 3(38) fiduciaries, not based upon any enhancement to their service offering, but rather as a reluctant acknowledgement of their role should a class action lawsuit over investment choices ever be brought by plan participants.

It seems as if overnight, a whole cottage industry of fiduciary partners has sprung up. Some are large and reputable organizations, but many more are small 2-10 person boutique firms. The important questions plan sponsors need to ask themselves, however, is what kind of financial backing does the organization really have? Who do they want sitting beside them as a co-fiduciary if a tough issue comes up?

It’s not just that banks can provide multiple levels of service, it’s that they’ve built a deep bench of expertise and specialization in all critical roles associated with plan implementation, administration and governance.

Banks are uniquely qualified to operate on any of the various fiduciary levels. Sometimes, we’re engaged in a directed trustee role where we also serve as a non-fiduciary agent (providing plan sponsors and plan advisors with recordkeeping and investment information only). Often, we provide plan services as a 3(21) fiduciary where we take on a fiduciary obligation in presenting investment options and making a recommendation, while the plan sponsor makes the final decision. We also can offer full discretionary trustee services within our recordkeeping unit, which represents a combination of discretionary and 3(38) fiduciary duties.

And for plan sponsors looking to hire an outside fiduciary, larger banks like SunTrust offer fully-bundled 401(k) recordkeeping services combined with whatever level of fiduciary services the sponsor desires. More importantly, though, it’s not just that banks can provide multiple levels of service, it’s that they’ve built a deep bench of expertise and specialization in all critical roles associated with plan implementation, administration and governance.
**Investment independence**

Some banks, such as SunTrust, do not impose proprietary fund restrictions within their 401(k) business. That allows them to go out and secure the absolute best-of-breed investment products without any conflicts of interest. It’s an untainted impartiality that has helped banks become exceedingly adept at evaluating best-of-breed investment management talent and monitoring the performance of those managers to ensure that they continue to excel. And it’s a level of independence that you don’t find with insurance companies and investment firms who have proprietary products that could pose conflicts of interest.

As witnessed in the high-profile ongoing case of Tussey vs. ABB, an over-reliance on proprietary funds can quickly become a fiduciary slippery slope, raising questions and inviting scrutiny even when the plan sponsor’s intentions are purely in the best interest of their participants.

And more recently, the Supreme Court’s decision in the case of Tibble v. Edison International sent a clear message to plan sponsors about their liability for not only new funds they add to their menus, but also their duty to monitor those they may have chosen long ago and thought to be outside of the six year statute of limitations for ERISA.

**Improve your plan. Improve participant outcomes.**

A carefully-crafted retirement plan managed by objective fiduciaries will help to improve participant outcomes, while also simultaneously serving to mitigate your organization’s fiduciary risk. And working with a trusted bank can bring a renewed energy and confidence to your plan. So if you’re looking at new retirement plan providers, be sure to consider a bank. We’re the only organization that lives under such an intense culture of compliance.

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**FIVE ESSENTIAL FIDUCIARY BEST PRACTICES**

1. **Audit the plan and evaluate plan design.** It’s a prudent fiduciary practice to periodically conduct plan audits to assess and correct deficiencies or simply to validate that the plan is being administered according to plan documents. Review your plan design and evaluate it against its primary goal of income replacement at retirement.

2. **Review the IPS.** The investment policy statement provides an established framework for allocating plan assets, and selecting and monitoring investment managers and investment options consistent with ERISA and the objectives of the plan. Make sure the IPS identifies and defines the duties of key players, details the process for selecting diversified investment options prudently and designates the procedures for adding and removing funds when performance fails to meet established benchmarks.

3. **Monitor and evaluate fund performance.** Monitor and evaluate the performance of plan investment options as they relate to the funding objectives of the plan in accordance with the IPS, assessing diversification, liquidity and projected investment return.

4. **Document processes and maintain records.** Carefully document the entire plan governance process including maintaining minutes of plan committee meetings, payment of liabilities, reviews of contracts and service agreements, compliance reviews, and plan audits. Records of all actions and decisions should be maintained for a minimum of six years.

5. **Communicate frequently to participants.** Review the plan’s communication program to ensure it’s providing all the required participant disclosures. Audit plan communications for both compliance AND effectiveness. Is the communication truly helping employees make better-informed decisions and save for retirement?
**About SunTrust**

SunTrust has more than a half century of experience helping companies with their retirement plan needs. We understand how important your retirement plan is to your company. It helps employees build a foundation for their futures, and also gives you a competitive advantage to help you recruit and retain the best talent. Our team of specialists partner with you to define your plan goals and work with you to implement services and solutions to meet those goals. Our expertise in fiduciary support, plan administration and employee education helps streamline plan operations enabling clients to focus more time on their business.

SunTrust Banks, Inc. is a purpose-driven company dedicated to Lighting the Way to Financial Well-Being for the people, businesses, and communities it serves. SunTrust leads onUp, a national movement inspiring Americans to build financial confidence. Join the movement at onUp.com.

If you have questions about the information in this document, or to learn more about our retirement plan solutions, talk to one of our specialists at 866.786.4015.

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- Are not FDIC or any other Government Agency Insured
- Are not Bank Guaranteed
- May Lose Value

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