



403(b) Plans: ERISA Fiduciary Best Practices

September 14, 2010

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Innovative Employee Benefits Solutions

Overview

- Application of ERISA to 403(b)
- Overview of ERISA Fiduciary Duties
- ERISA Fiduciary Best Practices
- Special 403(b) Issues
- Non-ERISA Plans—Fiduciary Requirements

Application of ERISA to 403(b) Plans

- Department of Labor (“DOL”) “Safe Harbor” – 1979
 1. Plan must be voluntary, salary reduction only
No match or employer contribution
 2. All rights under the annuity contract or custodial account enforceable solely by employee or beneficiary
 3. Employer receives no consideration other than reasonable reimbursement for services rendered
- IRS 403(b) Regulations – Finalized 2007
 1. Trend toward treating 403(b)’s like 401(k)’s
 2. Trend towards requiring more employer responsibility for compliance
- DOL Field Assistance Bulletin 20007-2 and 2010-01
 1. Reinforce shrinking DOL safe harbor

Overview of ERISA Fiduciary Duties

- **Two Types of ERISA Fiduciaries:**
 - **Named Fiduciary**
 - Purpose –
 - to determine responsibility and potential liability for each aspect of plan management
 - Plan procedures may allow named fiduciary to:
 - Allocate responsibilities among other named fiduciaries
 - Delegate other persons to carry out fiduciary duties
 - Appoint investment managers
 - **Functional Fiduciary**
 - Under ERISA § 3(21)(A), a person is a fiduciary to the extent she or he:
 - Exercises any discretionary authority or discretionary control respecting management or administration of the plan or disposition of the plan assets; or
 - Render investment advice for a fee

Overview of ERISA Fiduciary Duties

- Fiduciary required to discharge his or her duties:
 - Act solely in the interest of plan participants and beneficiaries
 - Act prudently
 - Use plan assets only to pay plan benefits and “reasonable” plan expenses
 - Diversify plan assets to avoid large losses
 - Comply with governing plan documents unless inconsistent with ERISA

Overview of ERISA Fiduciary Duties

- Measured against the standard of a “prudent man” acting in a like capacity and familiar with such matters
- Prudent fiduciaries engage in a prudent process:
 - Identify and consider relevant information
 - Identify alternative courses of action
 - Make decisions consistent with relevant information
 - Document decision-making process
 - Use experts when appropriate
- Fiduciaries must avoid certain transactions with plans that are prohibited under ERISA

Overview of ERISA Fiduciary Duties

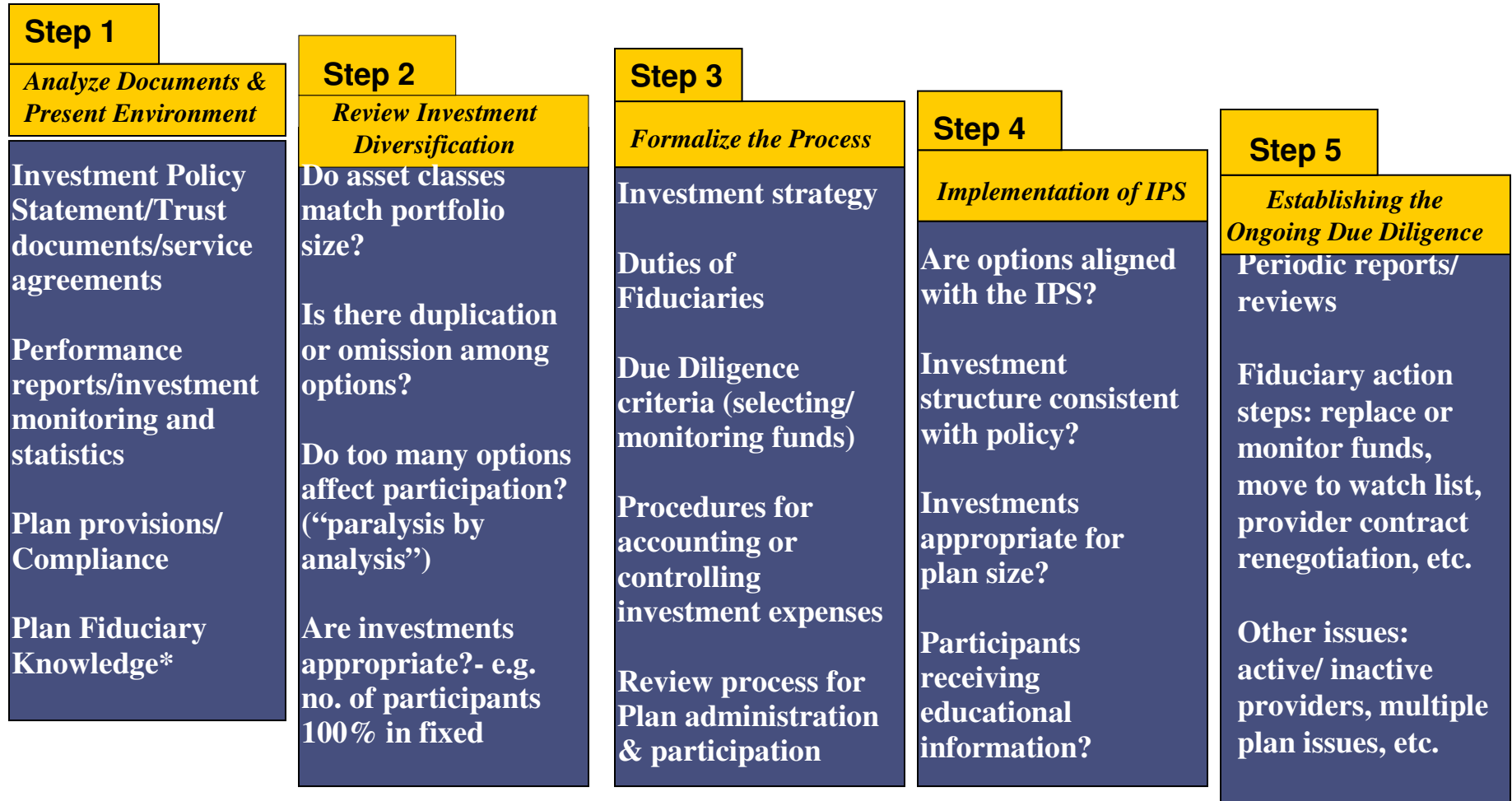
- If fiduciaries breach their duties, they are personally liable for:
 - Restoring losses to the plan caused by a breach of duty,
 - Disgorging profits, and
 - Other appropriate equitable relief.
- Co-fiduciaries can be liable for breaches by other fiduciaries if they knew or should have known of the breach
- Fiduciaries also may be liable if they engage in “prohibited transactions” under ERISA

ERISA Fiduciary Best Practices

- Appointment of Plan Committee
- Written Committee Charter
- Periodic Committee Meetings
- Investment Policy Statement
- Request for Proposal (RFP) Process
- Monitoring Investments and Investment Fees

ERISA Fiduciary Best Practices

- Are Plan fiduciaries informed of their duties and responsibilities



Special 403(b) Issues

- Fee Disclosure
- Moving Money to a New Provider

Non-ERISA Plans – Fiduciary Requirements

- Long history of hands-off approach to investments offered for many non-ERISA plans
- No ERISA fiduciary requirements, but concern is that other requirements may apply
 - Consider applying ERISA-like fiduciary standards voluntarily
 - Don't let plaintiffs' lawyers create the standard through litigation

Thorbahn Retirement Services

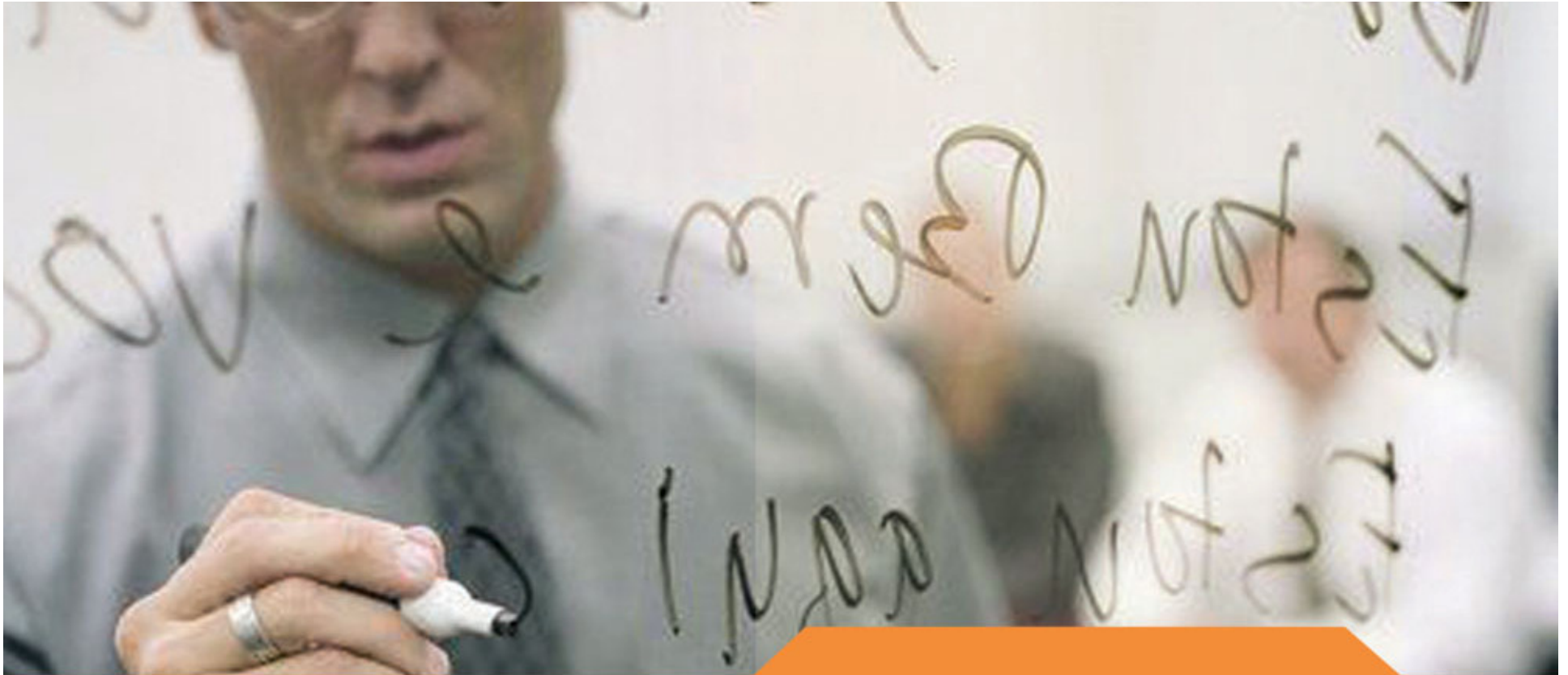
- A client centric, team approach
- Our team has over 50 years of Retirement and Investment experience
- Thorbahn Retirement Services include:
 - Fiduciary Education
 - Documented Monitoring of ERISA Compliance Guidelines
 - Retirement Plan Committee
 - Investment Policy Statement
 - Meeting Minutes
 - Independent Investment Consulting
 - Employee Education/Advice
 - Annual Plan Audit
 - Benchmarking Analysis
 - Plan Design Consulting
 - Provider Analysis and Management
 - RFP Analysis
 - Plan Conversion
 - Day to Day Plan Support
 - Non-Qualified Deferred Compensation Plans
 - Asset Allocation Models
- Partnership with Thorbahn Retirement Services ensures a successful Retirement Plan



Questions?

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