

403(b) Mailbag

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Question: I have recently discovered that our ERISA 403(b) plan has utilized the same service provider for over 20 years, and that no one remembers the last time a Request for Proposal (RFP) process was conducted, to evaluate alternatives to our current vendor. Should I be concerned from a fiduciary perspective?

Answer: You probably should be. It is true that ERISA does not mandate vendor searches via a an RFP process with any particular frequency; ERISA and related DOL guidance does, however, state that plans must pay only reasonable expenses, and that expenses should be monitored to determine whether they continue to be reasonable. In addition, the guidance states that employers should establish and follow a formal review process at reasonable intervals to decide if they want to continue using the current service providers or look for replacements. In the current marketplace, vendors are constantly updating their fees, products and service offerings, and such features are often introduced to potential new clients as part of the RFP process before they are introduced to existing clients. For this reason, it would appear that the best method of deciding "at reasonable intervals" if a plan sponsor wishes to continue utilizing an existing service provider would be via an RFP process.

But what exactly is a "reasonable interval" to verify whether a vendor remains suitable? Although the DOL doesn't explicitly say, many practitioners have observed that the approximate life cycle of an existing vendor product/service offering is approximately 3-5 years, before it becomes noncompetitive relative to other offerings in the marketplace. Thus it would make sense to conduct an RFP approximately every 3-5 years, as a best practice.

So if you are an ERISA plan sponsor, and you cannot remember the last time your firm conducted an RFP, chances are it is time for one!

Finally, it should be noted that plans not governed by ERISA (e.g., church, and governmental plans) are, of course, not subject to ERISA's fiduciary rules. Furthermore, a 501(c)(3) plan sponsor who maintains an elective deferral-only plan that is intended to be ERISA-exempt should not conduct an RFP if it wishes to maintain the ERISA exemption, as such a process would likely subject the plan to ERISA.

