

ERISA Section 3(16) Fiduciary – Plan Administrator

ERISA fiduciary definition:

A plan fiduciary is defined under ERISA Section 3(21) as an individual that: 1) has discretionary authority or control with respect to management of the plan or disposition of plan assets; 2) renders investment advice for a fee; or has discretionary authority or responsibility for the administration of the plan. In addition, under ERISA Section 3(38) an individual is also a fiduciary if he or she agrees in writing to be an investment manager for the plan, having the power to manage, acquire or dispose of any assets of the plan. This individual is either: 1) a registered investment advisor under the 1940 Act; 2) is not registered under the Act but is registered with the state; or 3) is a bank or an insurance company.

There is a third fiduciary definition under ERISA Section 3(16) for an individual who is a plan administrator. This individual agrees to take responsibility for either all of the daily operation of the plan or agrees to take responsibility for only certain functions.

Plan administrator under ERISA 3(16) is:

- 1) The person named in the plan document; or
- 2) If no person is named then the plan sponsor is the plan administrator; and
- 3) In the case of a plan maintained by two or more employers it is the association, committee, joint board or trustees, or other similar group of representatives of the parties who establish or maintain the plan.

Determination of fiduciary responsibility: This determination is based on the functions of the individual and not necessarily the job title. This person (or group) must have discretionary authority or control over the management (primarily related to plan assets) or administration of the plan (primarily the operation of the plan). Frequently, management and administration duties overlap.

Examples of the duties of a plan administrator under ERISA 3(16) that may involve fiduciary decisions or responsibilities include (but are not limited to):

- 1) Plan Management and Administration
 - Selection, evaluation and monitoring of:
 - Trustee(s)
 - Service providers
 - Document provider
 - Unbundled or bundled services
 - Investments offered under the plan
 - Investment advisor to the plan, fiduciaries or participants
 - Evaluation of all plan fees (e.g., service provider fee disclosure and determination of which fees may be paid by the plan)
 - Decision to delegate plan administration responsibilities to other fiduciaries
- 2) Operation of the Plan:
 - Interpretation of the plan document
 - Timely and accurate reporting and disclosure (e.g., Form 5500, distribution of Summary Plan Description/Summary of Material Modifications, participant fee disclosure, benefit statements, Qualified Default Investment Alternative notices and other required participant disclosures)
 - Distribution of benefits
 - Administration of QDROs (develop procedures and process)
 - Administration of Loans (develop procedures and process)

Certain "ministerial functions" are not fiduciary duties: For example, if a service provider performs these plan administration functions based on established plan policies, rules, procedures, etc. that were made by others, the service provider does not have discretionary authority over the plan management or administration of the plan. Some examples of ministerial functions are:

- Application of the plan's eligibility rules
- Preparing the Form 5500
- Collecting contributions
- Preparing benefit statements
- Making recommendations to someone that has decision making authority

Fiduciary and co-fiduciary liability under ERISA Section 405:

If the plan provides, the named fiduciaries may allocate responsibilities among themselves or to others. In this case, each named fiduciary will only be liable for his/her responsibilities and not for those of the other fiduciaries. Each fiduciary is personally liable for any breach of responsibility he/she directly commits.

Co-fiduciary liability can occur under certain circumstances if a fiduciary:

- 1) Knowingly participates in or conceals an act that is a breach of fiduciary duty;
- 2) Enables a breach of fiduciary duty to occur by another fiduciary by failing to perform his/her fiduciary duties; or
- 3) Knows of a breach of fiduciary duty but makes no reasonable effort to remedy the situation

Any fiduciary that breaches his/her fiduciary responsibility is personally liable to make good on any losses to the plan.

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