Retirement Plan Fiduciaries Roles and Definitions

Defined contribution retirement plans (e.g. 401(k) plans) are a common employee benefit tool. Often, the individuals charged with managing and operating these plans ("fiduciaries") do not fully understand their ERISA-defined responsibilities. Confounding matters, these fiduciaries hire service providers (i.e. recordkeepers, brokers and third party administrators) and similarly misperceive and inadequately comprehend the providers' obligations and potential liabilities. This white paper outlines how ERISA defines the various fiduciary roles.

Generally, there are four "named fiduciaries" under ERISA: (1) the section 3(21) named fiduciary, (2) the 3(16) Plan Administrator, (3) the 3(38) Investment Manager, and (4) the 403(a) Trustee.

3(21) Fiduciaries

The 3(21) fiduciary controls and manages the operation and administration of the plan. The 3(21) fiduciary is a plan's chief decisionmaker and can be held liable for any omissions or missteps in carrying out fiduciary duties. 3(21) fiduciaries frequently delegate some of their fiduciary responsibilities to plan administrators, investment advisors, trustees, and investment managers. These assignments modify – not eliminate – liability. To illustrate, creating an investment committee only protects a 3(21) fiduciary against litigation over fund changes if the 3(21) fiduciary can demonstrate that he or she uses reasonable procedures to ensure that all committee members are competent. When delegating, 3(21) fiduciaries must responsibly hire, monitor, and evaluate the plan's service providers. Acknowledging the broad assumption of responsibility and risk, some commentators colloquially refer to these fiduciaries as 3(21) "full scope" fiduciaries.

It's important not to confuse 3(21) "full scope" fiduciary status with the 3(21) "limited scope" fiduciary label often used to identify investment advisors who sponsors hire to assist in the monitoring, evaluation, and modification of the fund lineup but grant no independent authority to make final decisions. In contrast to 3(21) limited scope fiduciaries, who can typically only "recommend" or "propose" investment actions, 3(38) investment managers – discussed below – can generally unilaterally initiate and execute a course of action. Generally, courts have been reluctant to hold 3(21) "limited scope" fiduciaries (think: advisors) liable for actions arising out of a plan's investment decisions.

3(16) Administrators

The 3(16) Plan Administrator ("Administrator") primarily oversees the plan's communication responsibilities. ERISA obligates the administrator to make certain participant disclosures, timely submit required documentation to the government (i.e. 5500 forms), and create summary plan descriptions, annual reports, and vested benefit statements, among the satisfaction of other filing requirements. Generally, the plan administrator is also responsible for determining which employees are eligible to participate, acknowledging when plan benefits become due, and managing responses to benefit claims and appeals. Additionally, the Administrator usually directly handles or supervises any communication between (a) the plan and (b) third parties or participants. As with any other fiduciaries, the Administrator may take on additional responsibilities pursuant to a provision in plan documents.

3(38) Investment Managers

Unlike the 3(21) Fiduciary and the Administrator, who are named in the plan documents, the 3(38) investment manager ("Investment Manager") usually derives his or her authority from a supplemental contract or via a formal appointment from the Plan Sponsor. The Investment Manager – which must be a registered investment advisor, bank, or insurance company that has acknowledged its fiduciary status in writing – has exclusive "power to manage, acquire, or dispose of any asset of a plan." It must engage in reasonable and regular monitoring and evaluation of the plan's investments and modify the fund lineup when necessary. Some Investment Managers create and abide by a comprehensive Investment Policy Statement which articulates the plan's investment goals and requires extensive documentation. Either the Plan Sponsor or the 3(21) Fiduciary must routinely ensure that the Investment Manager is prudently satisfying its duties. The Plan Sponsor usually retains the power to, at any point, rescind the delegation of discretionary investment authority to the Investment Manager and to reassume all liability and authority to direct investments.

403(a) Trustees

A sponsor, through the plan document, can authorize either a 403(a) "discretionary trustee" or a 403(a) "directed trustee." The difference in roles mirrors that between a 3(21) "limited scope" fiduciary and a 3(38) investment manager. While a "discretionary trustee" has exclusive authority, and all resulting liability, over the selection, monitoring, and modification of plan assets, a "directed trustee" has neither the freedom to act independently nor any liability exposure for plan investment decisions. The directed trustee acts under the guidance and supervision of other fiduciaries. Upon appointment of a 3(38) Investment Manager, both "discretionary trustees" and "directed trustees" become subservient to the Investment Manager.