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Should You Be Trustee of Your Corporate Retirement Plan?

by James T. Comer

ERISA requires that “all assets in a qualified employee benefit retirement plan shall be held in trust and be managed by one or more trustees.” This issue begs the question of whether a plan sponsor should accept this trustee responsibility or hire an institutional trustee.

What role does the trustee play, what fiduciary duties and responsibilities are involved, and what happens if a plan sponsor who decides to self-trustee their plan does something incorrectly?

Trustee Responsibilities

The trustee has the “exclusive authority and discretion” to manage plan assets, except for situations where:

- the named fiduciary or trustee of the plan delegates authority over the investment and management of the plan assets to another investment manager; or
- plan assets are subject to “direction” from another plan fiduciary as is expressly provided under the terms of the plan document.

Roles and Duties of Qualified Plan Trustee:

- Administer the plan according to the documents and instruments governing the plan;
- Administer the plan for the exclusive benefit of participants and beneficiaries;
- Act in the best interest of plan participants and beneficiaries and solely in their interest;
- Avoid breaches of fiduciary duty, conflicts of interest and prohibited transactions;



- Diversify plan assets to minimize large losses; and
- Value plan assets at least annually at fair market value.

Who Should Be Trustee?

Many corporations and businesses allow individuals to self-trustee their plan and then engage outside organizations such as banks and investment advisors to take responsibility for some of their duties. These “third party” firms may either serve as a “discretionary” trustee or as a “directed” trustee. The plan or trust document will normally specify in what capacity the trustee is serving

and what duties and responsibilities have been handed off to another organization. It is important for companies who self-trustee their plans to read service provider contracts closely and be aware of the job duties, the liabilities assumed and general terms charged to either a third party recordkeeper who would provide administrative services, an investment advisor who may or may not act as a fiduciary or other institutional trustee.

A “discretionary” trustee has full control and authority over the plan assets and thereby could assume all responsibilities and potential liabilities from the investing of those assets as a 3(38) fiduciary or 3(21) fiduciary.


A “directed” trustee normally relinquishes control and authority over the plan assets to another named fiduciary and follows the instructions given to it by the named fiduciary (this could be an individual, the employer, retirement committee, etc.). Most plan and trust documents are drafted to clearly outline that the trustee is a “directed” trustee. In this instance, the trustee’s primary responsibility is to custody assets, and investment decisions are made by another party.

Generally, the directed trustee’s day-to-day role is primarily ministerial rather than fiduciary. Therefore, it is important that the plan sponsor ensure that other fiduciary duties are fulfilled, such as:

- develop a retirement or investment committee to act in the best interest of participants and beneficiaries and ensure that the committee keeps written records of decisions made and the process used to make those decisions;
- creation of an Investment Policy Statement (IPS) that is actively used to review and, if necessary, replace investments;
- development of an understanding of what 404(c) means and what protection it provides;
- ensuring that contributions are deposited to the trust in a timely manner;
- monitoring all service and provider contracts and ensuring costs are reasonable;
- following the terms of the retirement plan document and trust agreement; and
- identification of all plan fiduciaries and making certain they accept and understand their roles.

Considerations of using an institutional trustee should be weighed on a cost/benefit ratio and, where appropriate, either a “directed” or “discretionary” trustee selected or an individual who is qualified and willing to act as a trustee and fiduciary to the plan. Some of the advantages of an institutional “trustee” are:

- reductions in possible conflicts of interest;
- fiduciary responsibility may be distributed more broadly;
- distribution and loan payments with required DOL and IRS tax and notification forms;
- transfer of encrypted data, Privacy Act compliance and Patriot Act compliance, where necessary; and
- plans requiring an independent audit may find engaging an institutional trustee lowers audit fees.

As in most cases, reading the service agreement(s) is paramount in selecting an institutional trustee or in seeking tax or legal advice. 



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