Delegation, Oversight and Reporting Back to the Board

The Employee Retirement Income Security Act (ERISA) Section 402(a) outlines the essential requirements for the establishment and maintenance of employee benefit plans, including the requirement to identify a person or entity who will be responsible for the plan. However, that doesn't mean that a single person or entity must do it all. Many of the duties under ERISA can, and should, be delegated, so long there is ongoing monitoring of the parties who are performing these duties.

Here's What You Really Need to Know:

- Section 402(a) of ERISA requires that the retirement plan document identify a "named fiduciary" who will be responsible for the overall management of the plan that is (i) named in the plan document or (ii) named by either an employer or employee organization pursuant to a procedure set forth in the plan documents. That "named fiduciary" may delegate duties to other parties where the named fiduciary lacks the expertise to perform certain duties.
- Periodically, there should be a report back to the named fiduciary or the entity that delegated the fiduciary duty (or duties) regarding the actions taken and the fulfillment of responsibilities. This named fiduciary may be the board of directors for the organization or the owner of the business, for example.
- Proper documentation of fiduciary delegation not only demonstrates a prudent process under ERISA but also is a best practice that helps the plan's fiduciaries to understand roles and responsibilities, ensuring the effective and transparent management of retirement plans.

Let's Dive In

ERISA Section 402 and the Plan Administrator

ERISA Section 402(a) requires that the plan document name a fiduciary responsible for the overall management of the plan. This fiduciary, often referred to as the plan administrator, is typically the employer or a designated entity within the plan document.[1] The plan administrator is responsible for ensuring compliance with ERISA and associated regulations and managing the plan's day-to-day operations. The plan administrator plays a critical role in the effective management and operation of the retirement plan, ensuring that it meets changing regulatory requirements –such as cybersecurity or missing participants and more, and serves the best interests of plan participants.

Delegation of Duties

While the plan administrator is the primary fiduciary, they often delegate specific responsibilities to other parties. This delegation can include service providers such as investment managers, investment advisors, third-party administrators (TPAs), recordkeepers, and individuals or committees within the organization. The delegation process helps distribute the workload and leverages outside expertise to manage various aspects of the retirement plan effectively.

ERISA Section 402 allows for the delegation of fiduciary responsibilities, provided that the plan includes procedures for such delegation. The plan administrator must ensure that any delegated duties are clearly defined and that the individuals or entities to whom duties are delegated are qualified to perform them. Despite delegating certain tasks, the plan administrator is ultimately responsible for ensuring that the plan complies with ERISA regulations.

Additionally, ERISA Section 405(c) permits named fiduciaries to designate other fiduciaries to carry out specific responsibilities. This delegation must be done prudently, and the designated parties must be qualified to perform the assigned duties. This can include appointing various service providers such as investment managers to handle the plan's investment decisions or hiring TPAs to manage administrative tasks. The plan administrator must periodically monitor the performance of these delegated fiduciaries to ensure they are fulfilling their duties appropriately. If a delegated fiduciary fails to perform their responsibilities, the plan administrator may be held liable for any resulting breaches of fiduciary duty.

By effectively delegating duties, the plan administrator can ensure that the plan is managed efficiently and in compliance with all regulatory requirements, while also leveraging the specialized skills and expertise of various service providers.

Documentation of Delegation

For delegation to outside professionals, there must be an agreement and proper documentation required by ERISA Section 408(b)(2) when payment is made from plan assets. For delegation made within an organization, whether to individuals or a committee, it is also crucial to document these arrangements. When delegating within an organization, one effective way to document delegation is through a committee charter or other formal delegation documents. These documents should clearly outline the roles, responsibilities, and authority of each party involved in the plan's administration. The fiduciary responsibilities under ERISA are generally the same for both small and large plans.

Best Practices for Committee Charters

Creating a committee charter involves several best practices:

- **Define Roles and Responsibilities**: Specify the duties of each committee member or delegated party. For any duties not delegated, keep in mind that the plan administrator remains responsible for such fiduciary obligations.

- **Establish Meeting Schedules**: Schedule regular meetings to review plan operations and compliance. The charter – or delegation document – may also specify the rules for running the meeting such as Robert's Rules of Order.

- **Set Reporting Requirements**: Outline the frequency (e.g., annually) and format of reports to be submitted to the plan administrator or board.

Best Practices for Reporting

When considering how to report back to the board or other named fiduciary from which fiduciary responsibility was derived, consider the importance of reporting. Fiduciaries cannot completely absolve themselves of their duties; they must continuously monitor the plan's operations and the performance of parties with delegated responsibilities.

- **Regular Updates**: Provide consistent and timely updates on plan performance, compliance, and participant activity.
- **Detailed Reports**: Include details on plan performance, potential issues, and any other information that would enable the board to make informed decisions and fulfill their oversight responsibilities of the plan. However, these reports do not need to identify every action taken by the committee. Rather, they should provide a high-level summary of the most important actions taken as well as the credentials of those serving on the committee to demonstrate the requisite expertise to fulfill the duties.
- **Actionable Insights**: Recommend improvements or changes based on the report's findings.

Action Items for Plan Sponsors

Plan sponsors should consider the following steps to ensure effective plan administration:

- **Review and Update Plan Documents**: Regularly review the plan document to ensure it accurately reflects current practices and complies with ERISA requirements. Given all of the updates from SECURE 2.0, this step is now particularly critical to keep track of current and pending amendments.
- **Establish Clear Delegation Protocols**: Develop and maintain clear protocols for delegating responsibilities and documenting these arrangements.
- **Implement Robust Monitoring Systems**: Set up processes to monitor the performance of all parties involved in plan administration, including all service providers.
- **Provide Ongoing Training**: Ensure that all fiduciaries and committee members receive regular training on their responsibilities and ERISA compliance. Document that the training was completed.

[1] Field Assistance Bulletin No.2008-01 reinforces the principles outlined in ERISA Section 402 by providing detailed guidance on the fiduciary duties related to the management and administration of employee benefit plans.

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