Retirement Gateway® group variable annuity

retirement plan fiduciary responsibilities

The sponsor of a qualified retirement plan is responsible for compliance with detailed reporting, disclosure and general qualification requirements. These requirements are imposed by the Internal Revenue Code and the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974 ("ERISA").

important note

Retirement Gateway® is a program of bundled and unbundled qualified plan services that includes a group variable annuity and offers a complement of fiduciary support services to help you meet your responsibilities.

ERISA

ERISA fiduciaries are often said to be charged with the "highest duty known to the law" and could face personal liability for breaches. Many plan sponsors assume that by hiring administrative service providers, such as recordkeepers, actuaries, accountants, financial advisors and consultants, they have "outsourced" their fiduciary responsibilities and satisfied their obligations. Unfortunately, fiduciary duties can never be completely outsourced. Plan fiduciaries are responsible for selecting and monitoring service providers and could ultimately bear the responsibility for administrative or operational problems that may arise.

Now, more than ever, plan sponsors must understand their roles and fiduciary responsibilities in order to obtain the tax benefits of sponsoring a qualified retirement plan, help employees prepare for retirement, and at the same time take steps to limit the liability associated with fiduciary status.

What is a fiduciary?

A fiduciary is generally a position of trust acting for the benefit of others with a high duty of care and loyalty. ERISA defines a fiduciary as any person to the extent he or she:

1. Exercises any discretionary authority or control over the management or disposition of a plan's assets,
2. Renders investment advice for a fee or other direct or indirect compensation with respect to plan assets, or has the authority or responsibility to do so, or
3. Has any discretionary authority or responsibility in the administration of the plan.

ERISA fiduciaries could face personal liability for breaches of fiduciary duties.

ERISA fiduciaries are charged with the following basic duties:

- Act solely in the interests of plan participants and beneficiaries with the exclusive purpose of providing benefits to them ("**duty of loyalty**") and avoid prohibited transactions.

- Be prudent. Act with the care, skill, prudence and diligence of a person acting in a like capacity and familiar with such matters (the "**prudent expert rule**"). Hire experts where needed.
- Understand and follow the terms of the plan documents (unless inconsistent with ERISA) and make sure document provisions are up-to-date as required by current law.
- Diversify plan investments to minimize the risk of large investment losses.
- Pay only reasonable and necessary expenses associated with the maintenance and administration of the plan.

Who is a fiduciary?

In general, an employer sponsoring a plan is identified as the "Named Fiduciary" under ERISA. The named fiduciary can be an individual or a committee and serves as the "fiduciary in chief" in charge of overall plan decision making, selection and monitoring of plan investments and service providers, participant education and communication, and day-to-day plan administration and compliance.

The Named Fiduciary can delegate fiduciary responsibilities to service providers who may or may not act in a fiduciary capacity. For example, an insurance company providing a group variable annuity product used to fund a 401(k) plan can be viewed as a "product manufacturer." The product manufacturer is typically not a fiduciary to the plan but, in addition to its role as the insurer issuing the contract, may provide various services related to the contract and plan (e.g., recordkeeping and administration). In selecting that product manufacturer, a plan sponsor has delegated these responsibilities to the insurer. Despite the delegation, the Named Fiduciary always retains the "fiduciary duty to monitor" service providers, basically to review periodically to make sure that (1) the services remain necessary and appropriate, (2) the arrangement with the service provider is still appropriate for the plan, (3) the service provider is delivering services per the contractual service arrangement, and (4) fees are reasonable. If a chosen service provider does not perform as promised and there is resulting harm or loss incurred by the plan, the Named Fiduciary is ultimately responsible to the plan and its participants, but has whatever recourse is available under the contractual arrangements with its chosen service providers. The importance of prudent selection and monitoring of service providers is critical.

The role of "advisor" is another example of the Named Fiduciary's delegation of responsibility to a service provider. Advisors typically assist the Named Fiduciary with participant education, investment selection and monitoring as well as ongoing administration of the plan (like a "quarterback"). Plan sponsors should carefully review service and engagement agreements to determine the fiduciary or non-fiduciary status of their chosen service providers.

The Named Fiduciary typically delegates trustee responsibilities. The "Trustee" of a plan is a term often confused with the "Named Fiduciary". The trustee of a plan is responsible for safekeeping of plan assets. In some cases, a plan trustee will also serve as the plan's Named Fiduciary. Today, however, many trust arrangements under defined contribution plaus (e.g. , 401(k) plans) are "directed trustee" relationships where the trustee has some fiduciary responsibility in that it must hold plan assets for the exclusive benefit of plan participants and beneficiaries. A directed trustee will take direction from the Named Fiduciary and/or any investment manager retained by the named fiduciary (for example, where an independent third party is engaged as a discretionary investment manager). The Trustee also takes direction from plan participants where they are allowed to direct the investment of their plan accounts.

There are a number of different service arrangements available in the defined contribution marketplace. Some services are offered by a single provider on a "bundled" basis, while others involve arrangements with several different service providers. Other arrangements may be structured somewhere in between. Plan sponsors need to be aware of their roles and responsibilities as well as the roles and responsibilities of the service providers they choose. An informed plan sponsor with strong, trusted partners can successfully navigate through ERISA requirements and work to develop processes and procedures that are designed to facilitate successful plan operation while limiting exposure to fiduciary liability.

Are you a fiduciary?

An important first step in that process is to determine your level of fiduciary awareness and take the necessary steps to bring you and your colleagues up to speed. Consider the following "**Fiduciary Five**" questions:

1. Do you know who the fiduciaries of your plan are?
2. Do the fiduciaries of your plan know that they are fiduciaries?
3. Do the fiduciaries of your plan know their responsibilities under ERISA?
4. Do you have a "fiduciary structure" that outlines the roles and responsibilities of each fiduciary, establishes administrative and/or investment committees and a system for the delegation of duties?
5. Do established and documented processes exist to demonstrate compliance with fiduciary responsibilities under ERISA?

If you are unable to answer "yes" to all "**Fiduciary Five**" questions, consider the following five-step process as an important first step toward complying with fiduciary responsibilities and protecting yourself from liability.

Action Steps

Work with a retirement plan professional to assess your current level of fiduciary compliance, identify gaps and utilize "best practices" to address those gaps. It's easy to remember… just think "E-R-I-S-A!"

1 Educate

Arrange a training session with an ERISA expert and your plan fiduciaries to explain ERISA's fiduciary responsibility provisions and discuss common misconceptions, industry trends and best practices.

2 Review

Review current practices, identify gaps, and develop action steps, processes, and procedures.

3 Implement—Decide & Delegate

Implement a "fiduciary structure" with appropriate documentation (e.g., board resolution, committee charter, delegation of duties and fiduciary acceptance documents).

4 Stay on Track—Follow Established Processes

Use tools and checklists to help you follow established processes and maintain consistency in carrying out fiduciary responsibilities.

5 Always Document Decisions

Be sure to keep clear documentation of all meetings, discussions and information used to make fiduciary decisions.

Continuous Improvement

Wherever you find yourself on the fiduciary scale today, there is always room for improvement. An understanding of basic fiduciary principles and roles is an important starting point in developing an appropriate framework to manage potential liability while operating a successful plan to achieve the multiple goals of attraction and retention of employees, preparing those employees for retirement, and benefiting from the ability to make tax-deductible employer contributions.

Learn more about fiduciary support, AXA Equitable products that can fund your retirement plan and online tools for plan sponsors. Go to www.axa.com and contact your Financial Professional.

Retirement Gateway® is a group variable annuity contract issued by AXA Equitable Life Insurance Company. It is a long-term financial product for retirement purposes. Subject to the terms of the employer's plan and the Internal Revenue Code of 1986, employer contributions are made to the contract. AXA Equitable will provide the annuity benefit options available under the contract, including lump sum or partial withdrawals, or a fixed or variable annuity distribution option. There are contract limitations and fees and charges associated with group variable annuities, which include, but are not limited to, administrative fees and charges for investment management. Amounts in the annuity's variable investment options are subject to fluctuation in value and market risk, including loss of principal.

Because an annuity contract would be used to fund your employees' retirement plan, you should keep in mind that your employees' participation should be based on the annuity's features and benefits other than tax deferral. For such cases, tax deferral is not an additional benefit of an annuity. Your employees may also want to consider the relative features, benefits and costs of this annuity with any other investment that they may use in connection with their retirement plan or arrangement.

Withdrawals are subject to normal income tax treatment and, if taken prior to age 59½, may be subject to an additional 10% federal income tax penalty. This annuity contract contains certain limitations. For costs and complete details, contact your financial professional.

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