

# Understanding the Responsibilities of Various Parties

The Employee Retirement Income Security Act (ERISA) states that certain parties that are named in the plan documents as well as others, as a result of the service provided to the plan, are deemed "fiduciaries."

These individuals are to act for the exclusive purpose of providing retirement benefits (Exclusive Purpose Rule) and further states "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of:

- Providing benefits to participants and their beneficiaries and
- Defraying reasonable expenses of administering the plan."

The plan sponsor (company owner or board of directors) can retain all the fiduciary responsibilities or delegate certain responsibilities to employees or a professional fiduciary 3(21) or investment fiduciary 3(38).

There are four Fiduciaries listed in the plan documents.

## 1. **Named Fiduciary** (ERISA section 402(a))

- Named in the plan documents
- Can be the owner or an employee of the plan sponsor or an independent party
- Verifies objectives of plan are being met
- Duty to control, manage and administer the plan
- Primary decision-maker
- Ultimate day-to-day responsibility
- Hires and monitors service providers
- Ensures all fees are reasonable
- Ensures prudence in plan management

## 2. **Plan Administrator** (ERISA section 3(16))

- Ensures all filings with the Federal Government (form 5500, etc.) are timely
- Makes important disclosures to plan participants
- Hires plan service providers if no other fiduciary has that responsibility
- Fulfills other responsibilities as set forth in plan documents
- ERISA sections 101, 102 and 103 describe the specific fiduciary responsibilities
- This is not to be confused with the "Third Party Administrator"

## 3. **Trustee** (ERISA section 403(a) and 403(b))

- The trustee is a person or group of persons
- Exclusive authority and discretion over the management and control of plan assets (unless investment manager 3(38) is appointed)
- Responsibility and discretion for managing trust assets
- Accountable to, and monitored by, the named fiduciary or can be one in the same

## 4. **Investment Manager** (ERISA section 3(38))

- Full discretionary powers for selecting, monitoring and replacing the investment options
- Ensure that the objectives of the plan's portfolio are being met
- Ascendant role over in the trustee
- Monitored by the Named Fiduciary (or the full scope 3(21) fiduciary)
- Optional – Without this fiduciary position, investment liability resides with named fiduciary

### **Other "Non Named" Fiduciaries**

- Investment Advisor (ERISA section 3(21))
  - Not a ERISA defined term in the same manner as the aforementioned fiduciaries
  - Does not have discretion over plan assets
  - May exercise effective discretion through its influence upon others
  - Must meet the fiduciary standard of care
  - Does not have the authority to establish its own fees
  - Can only propose fees that may be approved by a higher authority
  - Bears little or no liability for the consequences of their advice
- Members of committees appointed by the board of directors or the Named Fiduciary
- Others that may be acting in some fiduciary capacity under ERISA due to their actions

### **Service Providers are not fiduciaries**

- Record keeper
- Custodian
- Auditor
- Attorney
- Broker Dealer representative
- Insurance salespeople