

AHLBECK & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS

FIDUCIARY RESPONSIBILITIES - WHAT YOU NEED TO KNOW

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WHO IS RESPONSIBLE?

The Employee Retirement Income Security Act (ERISA) protects participants and beneficiaries in employee benefit plans (EBPs) by requiring certain standards of conduct from those charged with fiduciary responsibilities (plan administrators, trustees, sponsors, investment advisors, etc.)

Various roles can be shared by the same party. For example, in a plan established or maintained by a single employer, the employer is also the plan sponsor. Furthermore, under ERISA, the plan administrator is also the plan sponsor if the plan document does not name a different administrator. Thus, the same party may act as employer, plan sponsor and plan administrator.

WHAT IS REQUIRED?

Fiduciaries must follow certain standards of conduct.

- Act solely in the interest of participants / beneficiaries with the exclusive purpose of providing benefits.
- Carry out their duties prudently.
- Follow the plan document.
- Diversify plan investments/minimize risk.
- Pay only reasonable plan expenses.
- Avoid conflicts of interest.

FAILURE TO FOLLOW

If these standards are not adhered to, the fiduciary may be personally liable to

restore any plan losses or profits made through improper usage of plan assets. If fiduciaries breach their duties under ERISA, courts may take action as appropriate against them (including their removal).

LIMITING POTENTIAL LIABILITY

A fiduciary may be able to shift some liability to participants who control the investment of their accounts (e.g. participant-directed accounts). Participants are considered to have control only if they can:

- choose from a broad range of investment alternatives with differing risk and return (with at least 3 different core investment options);
- change investments with appropriate frequency;
- receive sufficient information to make informed investment decisions.

Setting up a plan this way can limit a fiduciary's liability for the investment decisions made by participants. The fiduciary still bears responsibility, however, for selecting the investment providers and the investment options, as well as monitoring their performance.

Hiring an independent third party (known as a third-party administrator or TPA), such as a bank trust department or benefit consultant, to assist in plan administration is also a fiduciary function. Under an agreement, the TPA would assume liability for the function selected. The fiduciary is still required to monitor the TPA to ensure that it is properly performing the agreed-upon procedures and should document both the selection and monitoring process.

SELECTING A TPA

According to the Department of Labor (DOL), selection of the TPA by the fiduciary should give consideration to the:

- financial condition of the TPA and its retirement plan experience;
- quality of its professionals and its performance record;
- description of its business practices including proposed fee structure, anticipated management of plan assets and fiduciary liability insurance.

It is also important to consider the ability to access data maintained by the TPA (daily, monthly, etc.); the support the TPA will provide to understand the financial statements; and whether the TPA agrees to obtain a quality SAS No. 70 report.

This report (prepared by an independent CPA) includes a detailed description of the TPA's controls and an assessment of whether the controls are suitably designed and placed in operation. Using a TPA that obtains a quality SAS No. 70 report may result in lower audit fees as your plan auditors may be able to reduce the amount of time spent in understanding the TPA's controls.

Hiring an auditor for the plan is also a fiduciary responsibility. An audit is required for those plans with at least 100 participants at the end of the plan year.

I HAVE A TPA – NOW WHAT?

A formal review process should be established to ensure periodic monitoring of the TPA. This includes:


- reviewing the TPA's performance;
- reading TPA reports for consistency, completeness and reasonableness;
- checking actual fees charged;
- asking about policies/practices (e.g. trading, investment turnover, etc.);
- following up on participant complaints.

(as issued on our website www.ahlbeck.com)

Keep in mind that a formal monitoring process will allow you to evaluate the quality of the service you are receiving from your TPA and help identify any areas for cost savings or greater efficiency. This also provides the ongoing opportunity to assess whether to continue the relationship or look for replacements.

As part of a fiduciary's responsibility, it is important to keep in close contact with its TPA and meet at least annually to discuss issues or concerns.

Additional details about the information herein can be found on the DOL and AICPA websites.

 Did you know that -

EBSA closed 3,236 civil investigations in FY 2007 (of which nearly 75% resulted in correction of violations under ERISA).

Criminal investigations (in conjunction with other law enforcement agencies) led to indictment of 115 individuals for crimes involving pension, health and other benefit programs.

Source: US Dept. of Labor 12/28/07 EBSA News Release

ABOUT AHLBECK & COMPANY

Over 20 years of EBP experience gives us the technical expertise and training to resolve related complex and unique issues. As a member of the AICPA Employee Benefit Plan Audit Quality Center, we are committed to effective and efficient service. For assistance with any of the items mentioned herein or any other EBP issues, please contact us.

Ahlbeck & Company offers a diverse menu of services. We are more than an accounting firm. We are your business partner, willing to assist in all aspects of your business needs. From governmental filings and tax compliance to operational efficiency, we can meet your needs.

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