Managing Your Fiduciary Responsibility

As an employer, it is important to realize and understand that you are a fiduciary for your qualified plan.

Who is a fiduciary?

A fiduciary is anyone who exercises any authority or control with respect to the management or disposition of plan assets; any individual who renders, or has the authority to render, investment advice for a fee or other compensation, direct or indirect, with respect to plan assets; or; any individual who has any discretionary authority or responsibility in the administration of the plan.

As a plan fiduciary, you are tasked with discharging your duties with respect to the 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 unreasonable expenses of administrating the plan
- Acting with the care, skill, prudence and diligence under the prevailing circumstances that a prudent person acting in like capacity under similar circumstances would act
- Diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, and
- In accordance with the documents and instruments governing the plan

Who is not a fiduciary?

A person who performs nondiscretionary or ministerial duties is not a fiduciary. Some examples of “nondiscretionary” or “ministerial” duties are:

- Applying clear-cut rules to determine eligibility for participation or benefits
- Calculating service and compensation credits for benefits
- Preparing employee communication material
- Maintaining participants’ service and employment records
- Preparing reports required by government agencies
- Calculating benefits
- Orientation of new participants and advising them of their rights and options under the plan
- Collecting contributions and applying them as provided in the plan
- Preparing reports concerning a participants’ benefits
- Processing claims
- Making recommendations to others with respect to plan administration

How does someone become a fiduciary?

A fiduciary may be named as the fiduciary in the plan document. They may be named in the plan document as having the authority to control and manage the operation and administration of the plan. They may also become a fiduciary via delegation. Normally there is an appointment and an acceptance; however; an individual may be regarded as a fiduciary by simply giving the impression of being one, such as signing documents.

What are the five basic principles of fiduciary duty?

Prudence – The fiduciary must perform their duties with care, diligence and sound judgment.

Loyalty – The fiduciary should act solely in the best interest of the participant at all times.

Exclusive Purpose – The fiduciary acts for the exclusive purpose of providing benefits to participants.

Diversification – The fiduciary takes appropriate steps to diversify assets and minimize the risk of large investment losses.

Adherence – The fiduciary carries out all duties in accordance with the governing retirement plan documents and all applicable laws.

Baird, in conjunction with our vendor partners, can assist you in managing your fiduciary duties. Specifically, we can assist you with the following:

- Establishing a due diligence file for your plan
- Creating an Investment Policy Statement (IPS)
- Reducing fiduciary liability with respect to employee's investment choices through compliance with section 404(c) of ERISA
- Evaluating Plan needs
- Comparing and selecting an Investment Provider
- Communication and education to employees
- Your duty to select and monitor investment options

What are Prohibited Transactions?

Prohibited transactions are certain transactions between a plan and parties-in-interest which benefit the parties-in-interest at the expense of plan participants and beneficiaries. It is the responsibility to ensure that the plan does not engage in a prohibited transaction. The following transactions are considered prohibited:

- Sale, exchange or lease of any property between the plan and a party-at-interest
- Loan of money or other extension of credit between the plan and a party-at-interest
- Furnish of goods, services or facilities between the plan and a party-at-interest
- Transfer of any plan assets to, or use by or the benefit of, a party-in-interest; and

- Acquisition, on behalf of any plan, of any security or employer real property in violation of the 10% limitation

Also, a fiduciary with respect to a plan must not:

- Deal with assets of the plan in his/her own interest or for his/her own account
- In his/her individual or in any other capacity act in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan or interests of the participants and beneficiaries
- Receive any consideration for his/her own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan

Exemptions to the prohibited transaction rule:

There are statutory exemptions within ERISA that are available if the plan satisfies all conditions. In addition, the Department of Labor may grant exemptions on either a class or individual basis upon request.

Who is considered a party-in-interest?

A party-in-interest with respect to a plan includes the following:

- Any fiduciary, counsel or employee of the plan
- A person providing services to the plan
- An employer, any of whose employees are covered by the plan
- An employee organization, any of whose members are covered by the plan
- Certain owners who either directly or indirectly, have 50% or more ownership
- Relatives of certain individuals described above
- Corporations, partnerships, or trusts of which at least 50% is owned by certain people described above
- Officers, directors 10% or more shareholders and employees of certain persons or organizations described above
- A 10% or more partner of or joint venture with certain people or organization described above

Is a fiduciary required to be bonded?

Yes, generally all fiduciaries are required to be bonded to protect plan assets from loss due to fraud or dishonesty. Each individual handling plan assets must be bonded for an amount of not less than 10% of the assets he/she handles or $1,000, whichever is greater. A plan administrator, officer or employee shall be deemed to be “handling” plan assets if, whenever his/her duties or activities with respect to given funds are such that there is a risk that such funds could be lost in the event of fraud or dishonesty on the part of such person.

Contact your Financial Advisor for more information.

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