



Employee Benefits and Executive Compensation February 11, 2019

The Ins and Outs of Retirement Plan Committees

Many qualified retirement plan documents, for employers large and small, initially delegate authority for plan administration by default to the sponsoring employer. From a governance standpoint, this places the fiduciary obligations for administration of the plan on the governing body of that employer (e.g., the Board of Directors). However, a sponsoring employer's governing body may not always be best suited to perform the fiduciary duties of a plan administrator. Therefore, plan sponsors often delegate all or some of these fiduciary duties to one or more committees. Large employers may have two committees: an administrative committee and an investment committee. This newsletter briefly discusses certain considerations for plan sponsors who have delegated, or are considering delegating, authority to a committee.

Delegating Authority to One or More Committees - Without proper delegation of authority, the actions taken by a committee may not be legally valid and could be brought into question by the Internal Revenue Service or Department of Labor, if either were to audit the applicable plan, or a court, if a participant ever were to bring a legal claim against the plan or its fiduciaries. Therefore, plan sponsors who want to delegate authority to a committee (or who are acting as if they have already done so) should ask themselves the following questions:

- *What does the plan document say?* It is possible that the plan already states that the committee will act as plan administrator and, if so, may outline the duties and obligations of that committee in such capacity. However, often times the sponsoring employer is also named as the plan administrator and given the discretion to delegate authority to another party.
- *If the plan does not name the committee as plan administrator, has the Board of Directors (or other governing body) of the plan sponsor formally delegated authority to the committee?* This will generally be done through written resolutions, approved by the governing body prior to the committee acting in such capacity.
- *In either case, is there a written document setting forth the authority, duties, and obligations of the committee?* Even if the governing body has formally delegated authority to the committee, it is important to have some written document in place to clarify what the committee can do and how it operates. This is generally accomplished through a committee charter, although sometimes the delegating resolutions or even the plan document will address these matters.

Importance of a Committee Charter - When delegating authority to a committee with respect to a plan, it is important to document the authority, duties, and obligations of the committee and how it will exercise its authority. The workings of a committee may be set out in a plan document, in resolutions delegating authority to the committee, or in a separate committee charter. Regardless of the type of documentation, the document acting as a committee charter should be kept up to date and should contain enough detail to provide the committee with guidance on its processes and responsibilities. Ensuring that the charter is up to date and complete will minimize any confusion going forward regarding the role of the committee or its authority to act. Generally, a committee charter will include the following:

- Rights and obligations of the committee
- Make-up of the committee membership and how members are elected and removed
- How the committee may approve an action
- How the governing body delegating authority and the committee will interact

In addition to a committee charter, a plan sponsor should also formalize an investment policy statement for any committee to which it delegates investment authority. While the charter is more concerned with the workings of the committee, the investment policy statement sets forth investment goals and guidelines for the investment committee to take into account as it selects and monitors investments for a plan.

Role of Benefits Counsel in Committee Meetings - Once the retirement plan committee has been formed and begins holding committee meetings, the committee will often invite relevant plan advisors (e.g., investment advisers, record keepers, legal counsel, and actuaries) to provide information on topics under discussion based on their individual expertise. Involving benefits legal counsel in regular committee meetings allows counsel not only to stay up to date on the current considerations before the committee, but also to discuss any concerns under applicable law regarding items raised by the committee during the meeting. This can ensure that the committee does not agree on a course of action that may be impermissible or inadvisable. Benefits counsel can also offer education sessions for the committee members to ensure that they are aware of their fiduciary obligations under ERISA and any recent legal developments (e.g., regulatory changes and new case law) that may impact their decision making. At a minimum, benefits counsel should be made aware of any plan design or administrative changes that are being considered by the committee and be given the opportunity to comment on any legal implications or concerns before the committee formally approves such changes.

The Employee Benefits and Executive Compensation Practice Group at Hill Ward Henderson frequently advises clients regarding the structuring and documentation of retirement plan committees and attends client committee meetings to provide legal advice on retirement plan issues.

If you have questions or would like additional information, please contact a member of our Employee Benefits and Executive Compensation Practice Group.



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