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## Fiduciary – The Misunderstood “F” Word

The term “fiduciary” is not a new one with respect to employee benefit plans, however there is often a misunderstanding of what fiduciary responsibility means and who has the responsibility. A fiduciary is defined in section 3 of the Employee Retirement Income Security Act of 1974 (“ERISA”). A fiduciary is determined by their actions with respect to a plan, not due to a title, so there can be confusion by plan sponsors. It is not uncommon for us to hear from clients that their service provider is responsible for a certain task related to plan operations and therefore it is not their responsibility, however this is a misunderstanding under ERISA. There are also times when plan sponsors understand the responsibilities, but are frustrated by the amount of time and energy it can take to properly operate a plan. To better understand the various roles and options available with fiduciary responsibility, we have summarized the different types of fiduciary service.

### **Named Fiduciary**

A named fiduciary would be designated in the plan documents and would have the highest level of responsibility with respect to a plan. This named fiduciary could be an individual or a committee whose responsibilities include documenting and monitoring the operations of the plan. While some of the responsibilities of the plan can be delegated by the named fiduciary, it is important to understand that the named fiduciary is still ultimately responsible unless those activities are delegated through specific arrangements where that responsibility would be transferred.

### **3(16) Plan Administrator**

Most often, plan sponsors will designate a plan administrator within the company to handle the day to day operations of the plan. However, by delegating these responsibilities to a Section 3(16) advisor, the functions and responsibilities would be transferred, providing plan sponsors with more time to focus on business operations. One word of caution here as many plan sponsors utilize third party administrator to assist in this function, however this is generally not a 3(16) arrangement. There can be several different responsibilities that could be covered, so in order to avoid any confusion or gap in the services provided, a careful review should be done to fully understand what responsibilities, if any, could remain with the plan sponsor. The arrangement should clearly state who has the responsibility for specific services.

## **Trustee**

A trustee is the designated individual in the plan document that is responsible for the custody and management of the plan assets. This can often times be the same individual as the named fiduciary and/or a plan administrator. Even when the assets are held by a trust company or other entity, and the terms “trustee” and “custodian” are used, the trustee would have the responsibility of monitoring the service provider who holds the assets and provides the recordkeeping. In addition, investment disclosure responsibilities would also be part of the trustee responsibilities, even if the service is delegated. With respect to investment third party arrangements, there are two different types that fall under ERISA Section 3.

### **ERISA 3(38) Investment Manager**

An ERISA 3(38) investment manager would take on all responsibility for the investment decisions. By entering into this type of arrangement, the investment advisor would have full discretion and authority for both deciding investment options and monitoring the investments. This type of advisor must be registered investment advisor, bank or insurance company, and must follow an Investment Policy Statement.

### **ERISA 3(21) Investment Advisor**

An ERISA 3(21) investment advisor would be more limited in their responsibilities than an ERISA 3(38) investment manager, and would be a co-fiduciary to the plan along with the named fiduciary. This type of investment advisor could provide recommendations related to plan investments, but would not have full discretion to make changes.

There are many different types of service providers available to plan sponsors to help with all different aspects of plan operations. It is important to keep in mind that regardless of which type of service provider used, including any of those noted above with respect to ERISA Section 3, the named fiduciary to the plan is still responsible for exercising prudent judgement in choosing advisors, as well as monitoring them. It is always a best practice to also formally document these decisions and monitoring activities.

At Hedman Partners LLP, our experienced and knowledgeable team has developed effective and efficient procedures for performing plan audits, and reviewing plan controls and procedures. Please feel free to give us a call if you have any audit needs, questions regarding the items noted above or have questions related to your plan by contacting Janet Thomerson at (661) 286-1543 or [Janet.Thomerson@HedmanPartners.com](mailto:Janet.Thomerson@HedmanPartners.com)