Professional Perspective

Importance of a Plan Administrative Committee & Its Charter

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Many companies that sponsor qualified retirement, health, and other benefit plans subject to the Employee Retirement Income Security Act (ERISA) delegate the plans' administrative powers and duties to an administrative committee. A plan committee charter is a document that describes the committee's scope of authority, sets forth its responsibilities, and sets out the details of its operations.

This article discusses the advantages of delegating to a committee, why a committee needs a charter and then, more broadly, the key functions of a charter for that committee and what provisions the charter should include.

Why Does a Plan Need a Plan Committee?

All plans established under ERISA must have a Plan Administrator. ERISA Section 3(16). The Plan Administrator is responsible for the administration and operation of the plan and is therefore a named fiduciary of the plan. "Plan Administrator" should not be confused with a third-party administrator (TPA) or a human resource employee who may be responsible for carrying out the day-to-day administration of the plan. The Plan Administrator is responsible at a higher level, retaining ultimate responsibility for proper administration and operation of the plan even for duties delegated to others.

The identity of the Plan Administrator is stated in the plan document. ERISA 3(16)(A)(i) and Code Section 414(g)(1). If no other person or entity is named as Plan Administrator in the plan document, the Plan Sponsor is the Plan Administrator. ERISA 3(16)(A)(ii) and Code Section 414(g)(2).

In most cases, the Plan Sponsor is also the Plan Administrator. But what does this mean, practically? It is unwieldy for a board of directors to weigh in on all administrative decisions for a benefit plan because a board may not meet with frequency or agility, and often has other core business issues demanding its attention. The solution is delegation.

The delegation could be made to an individual such as an officer of the company, or to a human resources manager. While this might resolve the issue of streamlining administrative decisions, it doesn't necessarily provide the highest quality decision-making. A group of people—in this case, a committee—will most frequently make better decisions than an individual. The old adage, "two heads are better than one" comes to mind.

Having a group of people looking at and processing a decision together will improve the quality of the decision for many reasons. A group provides the opportunity to talk things through with other interested individuals who are looking at the issue from different perspectives and experiences, explore alternatives, and weigh the pros and cons in a forum. This is why delegating plan administrator duties and authority to a committee is a best practice.

Why Does a Committee Need a Charter?

So, if a Plan Administrator decides that it wants to delegate some or all of its duties and powers to a committee, how does this work? One should always look at the plan document to see what it says. Rarely does a plan document even mention a plan committee, but routinely there is language giving the Plan Administrator the authority to delegate some or all of its powers. In those situations where a committee is mentioned, details of how the committee will operate are even rarer. This means that it is up to the Plan Administrator to decide the parameters of its delegation of powers and responsibilities to a committee.

Every plan fiduciary should endeavor to make the best decisions for the plan, using best practices to do so. A well-rounded group of interested individuals to make the decisions for the plan is a better practice than leaving the decisions to a single individual or a cumbersome or inattentive board. Adopting a charter for that group is a best practice and an imperative for the smooth functioning of that committee. It also creates a structure for demonstrating and documenting the committee's fiduciary process, which can be vitally important in a lawsuit, as well as in audits by the IRS or DOL.

An active and serious committee is a key defense in such actions, and a charter is valuable exhibit number one! With the rise of class action lawsuits regarding plan fees, investment diversity, and employer stock drops, a charter, and the structure it provides for robust fiduciary governance, is a necessity, particularly if it leads to better recordkeeping and the documentation of committee decisions.

The next considerations are written delegations by the plan administrator to a committee and topics covered by charter provisions.

Written Delegation & Charter Provisions

The delegation of plan administrative duties should be accomplished via some form of official, written delegation by the Plan Administrator to a committee. This is best done through board resolutions. The board resolutions can be detailed or they can incorporate a committee charter that provides the details of how the committee will operate.

The provisions of a charter should include:

- **Composition of the Committee.** Who will be a member of the committee? Will there be a chairperson to head the committee? A Secretary to record the minutes of committee meetings? How many members will there be on the committee? This detail sets out the committee's membership and structure, providing key positions for the operation of the committee. As mentioned above, an important factor of good decisions by a group of individuals is the diversity of the members. Committee members may bring various business skills—finance, human resources, and executive leadership—to broaden the committee's perspective.

- **Comings & Goings of the Committee.** Does an officer of the company appoint committee members? Or is membership automatically assigned to particular positions in the company, such as the chief financial officer, human resources director, etc.? Does an appointed committee member have to accept that appointment in writing? How can a member be removed or resign? The charter provides such detail to ensure that any changes to the composition of the committee is consistent, and clearly defined.

- **Powers & Duties Being Delegated.** Is the Plan Administrator delegating all powers and duties to the committee? Only certain powers and duties? Is there a requirement that any material increase in cost be approved by the board? Can a committee adopt plan documents? Hire outside service providers? This detail is crucial for the committee to know whether it is operating within in its purview. Generally, a committee will be working with a registered investment advisor (RIA) to monitor investments, consider plan design changes, evaluate and make decisions on plan corrections, and develop an understanding of legislative changes and how they will impact the plan and its participants. The committee will also generally be responsible for monitoring vendors, the reasonableness of plan fees, and the effectiveness of internal administrative procedures.

- **How Decisions are Made.** Must there be a quorum? Are decisions made by unanimous decision? A simple majority? These need to be established so that the committee knows whether a decision produces the intended result.

- **How Often the Committee Will Meet.** Will the committee meet quarterly? Twice per year? Annually? Is unanimous written consent without a meeting permitted? If this isn't decided up front, regular committee meetings can be overlooked, jeopardizing the administration of the plan. Generally, it is best practices for a committee responsible for a basic retirement plan to meet at least twice per year. But for a more complex plan design, more frequent meetings may be needed.

- **Indemnification of Committee Members.** While some plan documents have language providing for indemnification of an employee carrying out operations of the plan, not all have this language, and it is both clarifying and reassuring to members of the committee if that language is set out specifically.

Without these details spelled out in one place, the committee could easily descend into chaos, hampering its innate decision making superiority. The time spent on figuring out what to do if someone leaves the committee, whether a decision made by some but not all of the committee is effective, or whether the committee even has the power to make a particular decision in the first place, become wasteful, needless distractions. A charter addresses these issues of committee operations and authority, leaving the committee to focus on the decisions it needs to make for the plan and its participants.

Conclusion

Delegating plan administrator powers and responsibilities to a committee is an important best practice for plan administration. A plan committee, unlike a board of directors or a single officer of the company, has, as its sole purpose, the administration of the plan. With the collective wisdom of its carefully chosen members, the committee can make better decisions than an individual.

A charter is an important foundational instrument for a committee, as for any decision-making group, because it provides for the structure of the group and defines its mission. It is also a powerful demonstration of the sponsor's commitment to responsible plan administration.

