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# Learn More about Outsourcing Employee Benefit Services

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One of the topics studied by the 2014 ERISA Advisory Council was “outsourcing employee benefit plan services.” The [report](#) is available on the ERISA Advisory Council website, and offers a variety of interesting insights into this topic. While many actuaries have some knowledge of this topic, this report offers some interesting insights and is a chance to learn more about an important current business topic.

The recommendations are in five major categories:

- A. Educate plan sponsors on current practices with regard to outsourced services
- B. Clarify the legal framework under Employee Retirement Income Security Act of 1974 (ERISA) for delegating fiduciary responsibility to service providers
- C. Provide additional guidance on the duty to select and monitor service providers
- D. Facilitate the use of multiple employer plans and similar arrangements as a means of encouraging plan formation
- E. Update and provide additional guidance on insurance coverage and ERISA bond-

ing of outsourced service providers.

As an actuary, I thought about outsourcing as a way to get work done, but not generally as a way to transfer responsibility. Employers who sponsor benefit plans assume significant responsibility for their management, and serve as fiduciaries. One of the big questions is whether and when that fiduciary responsibility can be transferred or delegated.

## CONFUSION ABOUT OUTSOURCING

The report includes a discussion of outsourcing investment services including investment strategy, asset allocation, underlying investment management, manager selection and monitoring, and proxy voting. A development noted is the “outsourced chief investment officer.” The report also discusses outsourcing the plan administrator and named fiduciary roles. Contracting practices are also discussed in the report. One of the big issues discussed is how much responsibility can be delegated and in what cases fiduciary responsibility can be delegated. This is very important to plan management. A section of the ERISA Advisory Council report focuses on where the buck stops:



“Based upon the oral and written testimony from a number of witnesses, the Council learned that the provisions under ERISA that govern outsourcing arrangements are (i) complex, (ii) not widely understood by plan sponsors and other fiduciaries, and (iii) not clear in several key respects. Thus, plan fiduciaries face challenges in determining who is ultimately liable for what or, in other words, where “the buck stops.” However, the Council believes that the Department can play a key role in better defining the roles and responsibilities of plan sponsors, named fiduciaries, and service providers to whom key plan responsibilities are outsourced. This can be accomplished by (i) clarifying whether, by naming the named fiduciary in the plan document, the “buck” essentially stops at the named fiduciary rather than the employer, (ii) defining the scope of fiduciary liability when the

fiduciary outsources plan services to non-fiduciary services providers, and (iii) explaining how the co-fiduciary provisions interact with the general fiduciary duty provisions in the outsourcing context and the knowledge requirement.”

## DISCUSSIONS ABOUT MEPS

The report also discusses multiple-employer plans (MEPs) as a special type of outsourcing provider. MEPs allow full outsourcing of benefit management, and for a true multiple-employer plan, audits and filings are conducted at the plan and not the employer level. A big question today is the future of open MEPs. These are plans that permit unrelated employers to join a MEP, but they are not recognized by the Department of Labor as a single plan, so each employer is separately subject to plan filing and audit requirements. The ERISA Advisory Council report points to testimony in-

dicating that MEPs will be advantageous to small employers if the rules are liberalized so that they are treated as a single plan. Some individuals believe that the increasing availability of MEPs will increase the availability of pension benefits for small employers. However, there are available various types of prototype plans that are efficient and easy to implement. Therefore, it is unclear how much such arrangements will increase small employer offering of benefits unless there is a mandate. Clearly, advocates for these plans are asserting that they can increase small employer benefit offerings.

However, liberalizing such arrangements can have downsides. Other types of multiple-employer benefit arrangements, particularly multiple-employer welfare arrangements (MEWAs) have been subject to abuse. That leaves open the question of what types of protections are needed in such MEPs. The ERISA Advisory Council identified areas

where MEP administration/operation can be improved. The report stated:

“Based upon the testimony, the Council believes that MEPs, including open MEPs, may prove helpful in increasing retirement plan coverage of employees who work for small businesses. The Council recommends that the Department take several actions with respect to MEPs, including: (i) consider the benefits of multiple employer arrangements in facilitating plan formation in rulings and interpretations; (ii) consider developing a sample structure for MEPs that will help ensure that conflicts of interest, prohibited transactions, and fiduciary independence and disclosure are in place; and (iii) develop safe harbors for MEP sponsors and adopting employers that would not expose them to liability from acts of non-compliant adopting employers.”

Later on the report stated:

“The Council does recognize that there are “bad actors” in the retirement MEP marketplace. In fact, the Department of Justice and the Department of Labor have recently addressed situations involving such bad actors. However, given the potential advantages of MEPs, the Council recommends that the Department consider how open MEPs may be used, while still protecting the interests of participants and beneficiaries. This tension between balancing the benefits of outsourcing against potential downsides for participants is most prevalent in the area of vendor oversight. One of the fundamental benefits of a MEP is that the plan sponsor can relieve itself of many of the obligations of plan administration by having those obligations assumed by the MEP sponsor. Where the MEP sponsor is also a ven-

dor, there is clear potential for a conflict of interest.”

## CONCLUSION

The ERISA Advisory Council report increased my knowledge about outsourcing, and also pointed out important business issues and questions to me. It is clear there are areas where regulatory guidance is fuzzy, and where evolving practices leave open questions. I recommend the report to actuaries and suggest that this is an important area to contemplate. ■



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