401k plan sponsor first duty: Exclusive Benefit Rule

We think the Exclusive Benefit Rule is where the fiduciary requirement begins and from which all others flow. The Exclusive Benefit Rule is**: ERISA section 404(a)(1)(A) requires that a fiduciary, the plan sponsor, discharge his or her duties with respect to the plan for the exclusive benefit of the plan participants and their beneficiaries.**

So what does this mean for plan sponsors and their committees? Typically, a committee will consist of at least 3 people. One owner/officer, someone from HR and a rank and file employee. There may come a time in the management of the plan an owner/officer will be presented with a decision that would lessen the financial obligations of the company while at the same time increase the costs to the plan participants. A decision must be made.

The rank and file employee on the committee may have a buddy in the investment business that he/she would like to manage the plan. Is that OK? More likely though, will be to the questions of fees and costs associated with the plan. If the committee is to manage the plan for the sole benefit of the participants how does the committee decide what fees are fair and others are that are not.

These questions and many others need to be anticipated and a process must be implemented to answer these questions. Most importantly, all of this needs to be documented. It does the sponsor no good if it cannot show the IRS or DOL how the plan is operated. In the absence of documentation, they may think the committee has done nothing. And remember, it is not about running afoul with the regulators but managing the plan for the benefit of the participants which, when managed well, causes better performance and financial outcomes for the participants, including those on the committee.

Next time we talk about the "Prudent Man Rule", maybe the most misunderstood of the regulations.

Jim Garber