



THE COMMITTEE ON INVESTMENT OF EMPLOYEE BENEFIT ASSETS

CIEBA of AFP Opposes Joint Trusteeship in 401(k) Plans

Over the years, a number of proposals have been made to require employee representation on retirement plans' investment boards. Most recently, a bill (S. 1992) introduced by Senator Kennedy in the 107th Congress, called for joint trusteeship of single employer, individual account plans that include employee contributions. The Kennedy proposal required that assets of such plans have to be held in a trust administered by a joint board of trustees consisting of at least two trustees representing on an equal basis the interests of the employer maintaining the plan and the interests of the participants and beneficiaries. [S. 1992 did not apply to plans with fewer than 100 participants.] Others have proposed requiring at least one employee representative on retirement plan investment committees or boards of trustees.

The Committee on Investment of Employee Benefit Assets (CIEBA) believes that proposals to require employee representation are fundamentally flawed.

➤ **Joint trusteeship/employee representation will not solve the "Enron Problem".**

Joint trusteeship is a solution looking for a problem. The fact is that employers establish savings plans as a benefit to employees, and that employers' interests are not served by mismanagement of the savings plans. Thus, it is the relatively rare exception in which the plan sponsor fails to appoint a trustee that will exercise proper oversight or where the sponsor is complicit in the mismanagement of the fund. And ERISA, with its comprehensive enforcement mechanism, is already well equipped to handle the exceptions.

Joint trusteeship wouldn't necessarily address the egregious "Enron Problem." Conscientious trustees, like regulators and investors, can be deceived by misleading financial statements or other fraudulent action. Employee trustees are no more likely to uncover fraud than non-employee trustees. Thus joint trusteeship establishes a layer of "oversight" that adds cost and inefficiency to the system without adding any real protection for plan participants.

➤ **Joint trusteeship should remain a labor/management issue.**

The federal government has traditionally maintained a role as a neutral arbiter in labor-management issues. Mandated joint boards of trustees/employee representation would be a significant break from that historical role, as labor would be given preferential treatment in the context of employer-provided pension plans. Grafting provisions from the National Labor Relations Act on top of ERISA's regulatory regime, moreover, upsets ERISA's carefully constructed balance between encouraging plan sponsorship and protecting workers' pensions.



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➤ **Joint trusteeship will increase the cost and complexity of plan administration.**

Employers voluntarily choose to sponsor retirement plans for their employees. The costs associated with these plans are significant, both in terms of time and money. Proposals that increase plan cost and complexity will naturally reduce the attractiveness of these plans to their sponsoring organizations, leading many to reduce benefits or benefit coverage in order to offset the increased costs.

For this reason, there has been an ongoing bipartisan effort in recent years to reduce these administrative burdens and increase retirement plan coverage. Requiring joint trusteeship or other forms of employee representation would undo these bipartisan efforts by imposing a number of new and expensive administrative rules on retirement plans, some of which are unworkable. For example, creating and administering a new mechanism for periodic elections will result in potentially significant additional costs and burdens. Additional cost and/or complexity are especially troublesome because they *do not add value for plan participants*.

Complexity increases with the number of plans administered. Companies that sponsor more than one plan to cover different groups of employees may be forced to form separate boards of trustees for each plan. Many of these companies invest the funds for a number of plans jointly in order to reduce costs by taking advantage of economies of scale. To the extent that investment decisions would diverge with separate boards, they would no longer be able to invest the funds jointly and would lose the cost efficiencies of doing so.

➤ **Trustees should be selected on the basis of their qualifications as fiduciaries.**

ERISA sets high standards for plan fiduciaries. They must act as “prudent experts” in fulfilling their responsibilities. Investment decisions should be entrusted to individuals who are most able and willing to act with the care, skill, prudence and diligence of a prudent expert. Subjecting the selection of fiduciaries to some lesser criteria, such as a popular vote, would weaken these high standards set by ERISA. Further, with employee representatives facing the need to get re-elected, they may focus on short-term results at the expense of longer-term investment goals.

ERISA requires plans to operate for the “exclusive benefit” of participants and beneficiaries. But, a board of trustees made up of both employee and employer representatives could potentially convert what should be a fiduciary decision-making process into an adversarial process in which the interests of participants and beneficiaries are subverted to other objectives.

➤ **Overall benefit plan design needs to be an employer decision.**

Defined contribution plans are part of companies' total benefits packages. They are often designed to work in concert with defined benefit plans and/or other employee benefits. Participant representatives may not share the companies' interest in overall benefit packages. Employers will be less likely to support plans that cannot be easily integrated into their overall benefits design. This potential negative effect may be greatest on those employers who offer the broadest array and most generous benefits.

➤ **The plan sponsor bears the ultimate risk for breaches of fiduciary duty.**

Joint trusteeship/employee representation separates investment decision-making and risk. As a practical matter, the plan sponsor, as the party with the deepest pockets, bears the ultimate financial risk for any imprudent decisions made by the trustees of its benefit plans. Plan sponsors may not want to voluntarily continue arrangements where investment decision-making and risk-bearing are allocated to different parties"?

CIEBA is the voice of the Association for Financial Professionals on employee benefit plan asset management and investment issues. CIEBA represents more than 115 of the country's largest pension funds with members managing more than \$1 trillion in retirement plan assets on behalf of 16 million participants and beneficiaries.

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