

In the dynamic employee benefits industry of 2005, it's more important than ever to have effective decision-making processes in place. A benefit plan committee and/or a benefit advisory committee can fill the vital need for necessary input and review. This article takes a look at how to set up well-designed committees and handle challenges that can arise.

Benefit Committees— Reinforcing and Retooling for Change

by Ivy Silver and John Walp

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Benefit costs and their significant impact on the balance sheet continue to draw attention from senior management teams, boards of directors and the employees on the factory floor. With the cost of providing benefits continuing to rise faster than the gross domestic product, salary increases at a near standstill and decreasing unemployment rates, today's benefit plans require ever more diligent and sensitive decision making in both design and administration.

The establishment and ongoing operation of an effective benefit plan committee (and/or benefit advisory committee) helps fulfill the need for greater input and review. Post-Enron standards to which organizations—public entities, not-for-profit entities and private corporations—are subject require organizations to review their current plan governance in light of higher standards of scrutiny. This article will describe ways to strengthen the effective administration of your health benefits through the use of well-structured committees, and discuss some challenges endemic to the approach.

First, let's quickly review "Plan Governance 101." When adopting a benefit plan for the first time, an organization's board of directors establishes the basic framework for the plan's governance. The board will typically retain the authority over amendment or termination of the plan or con-

centrate such decision making in the ranks of its own compensation and benefits committee. However, the board will clearly delegate to management the day-to-day authority to administer and interpret the plan's provisions, often by establishing a benefit plan committee.

This group, which we'll call the BP Committee, is generally comprised of a few very senior members of management (e.g., head of human resources, CFO and general counsel) and is clearly fiduciary in nature. Procedurally, when the BP Committee members detect the need for change, they are obligated to present the board with the rationale and associated amendments for consideration and approval. For expediency, all of an organization's benefit plans typically share a single benefits committee. Needless to say, this puts a tremendous strain on the BP Committee members.

In recognition of this challenge, today's BP Committees are expanding their membership and increasingly relying upon internal advisory committees to help them stay current on cost-containment strategies, critical regulatory requirements, competitive design trends and, perhaps most significantly, to help the organization actively cultivate a more positive employee relations environment. The most progressive advisory committees include non-management employees from the rank and file.

So, while BP Committees are neither new nor avant-garde, they are being retooled and reinforced to better serve their many stakeholders. Most of us are familiar with the basic requirements and operation of a BP Committee with respect to qualified pension plans, ERISA plans and Taft-Hartley plans. The fiduciary nature of the committee's functions and the disciplined manner in which the committee is structured are designed to address the complexities of the responsibilities, obligations and potential liabilities inherent in such plans. At a minimum, BP Committees operate with a primary focus on meeting ERISA obligations. These include:

1. Providing a procedure for establishing and carrying out a funding policy and method consistent with plan objectives and ERISA
2. Describing procedures for the plan operations and administration responsibilities
3. Providing a procedure for amending

the plan and identifying who has authority to do so

4. Specifying the basis on which payments are made to and from the plan
5. Assuring that the plan does not act in a way that would constitute a prohibited transaction and, of course,
6. Assuring that the plan serves in the best interest of the participants.

In today's environment, consideration needs to be given to expanding the type, depth and quality of analysis, and to the operations of the continuous monitoring of the plan. Contemporary BP Committees need to reinterpret what these responsibilities mean. Many BP Committees focus the majority of their time evaluating retirement plan performance, with little time spent on health plans. With continued double-digit cost increases, health benefit costs account for the single highest human resource cost, after payroll expenses. Retirement plan costs, although real and formidable, do not match the cost obligations of most health plans for active employees and/or retirees. Employee morale (and thus, productivity and turnover) is significantly more impacted on a routine basis by the ever-changing nature of health plans and health plan cost sharing.

As mentioned above, cost obligations and liabilities are not the only driving forces in the origination and operation of an advisory committee. Participative advisory committees help promote broader acceptance of change and a more positive employee relations climate overall, because employees feel they have had some influence on the end result. After all, significant choices exist in matters of plan design and administrative options. While the marketplace moves toward alternative delivery systems, acceptance of changing cost controls and health management options require employee buy-in. Employees more willingly shoulder the cost burden of plans when they have some input into the structure of plan offerings and/or contract provisions. And, employers are seeking more ways to engage employees so that they can become more active participants in their own health management.

An advisory committee (or subcommittee) affords both employer and employee a way to understand the value systems of one another. It can provide a forum to understand the complexity in managing and

Continued on next page

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Aon Consulting: *Forum (U.S.)*,
June 2004, pp. 1-3.
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operating a comprehensive, responsive benefit program. Both parties—management and employees—can profit from the experience of serving on such a committee. The joint knowledge that both management and employees gather inevitably educates and serves the benefits program in profound ways. All stakeholders thus gain by the work related to operating a benefits committee.

Taft-Hartley plans are familiar with joint representation from both sides of the stakeholders—but non-Taft-Hartley plans do not routinely have such representation—especially if the committee resides in a publicly traded company and the only benefits committee is comprised of board members who are ultimately responsible for compensation, pension plan and health plans.

Advisory Committee Role

An advisory committee can be structured to go beyond the traditional benefit program issues such as eligibility and claims handling. All parties should view an advisory committee as a partnership in responding to such issues as cost escalation, synchronization with the organization's philosophical and mission-driven changes and evolving employee needs. Such an advisory committee may simply consult to the BP Committee; or, depending on members' appetites for absorbing fiduciary accountability and the associated risks, represent the plan in its entirety via appropriately ratified board delegation (over time, in effect ultimately becoming the BP Committee). Separate advisory committees may be established by type of plan (for example, one such committee may handle health and welfare plans and another may focus purely on retirement plans).

Advisory committee activities therefore differ according to the stated purpose of the committee, the level of fiduciary accountability required and by the type of plan for which it's responsible. They also differ according to the developmental stage of the plan itself. For example, is the plan new or already in place? Before launching new plans, BP committees often rely upon advisory committee input when selecting the plan service providers (third-party administrators, accountant, claims fiduciary, vendors, etc.) as well as establishing a claims appeal process, pur-

chasing ERISA-required bonds and determining how HIPAA privacy requirements will be managed. While there are significantly more logistical issues to solve when new plans are launched, existing BP Committees for established plans should continually review their own functions to remain up to date and assure adherence to their charter.

Effective BP committees are given clearly specified missions, membership criteria, authority and rules of governance. Effective BP committees operate within a formal framework defined by the organization's board of directors through a separate formal charter and/or its Articles of Incorporation and by-laws (if Taft-Hartley). Advisory committees, however informal, should have a clearly enunciated mission and/or statement of purpose. For the remainder of this article, the term *charter* will be used to address the formalized purpose, duties and accountabilities of the committees.

BP and advisory committee charters would do well to model elements required within publicly traded companies' Board Compensation & Benefits Committee charters, as mandated by the Sarbanes-Oxley Act and SEC, NYSE and NASD rules. For example, the committee's authority and responsibilities must be specifically identified, not generally worded. An overly simplified statement of responsibility would be one that merely states that the committee will review the administration of plans, periodic reports and guidelines. A more specific and thus stronger statement of responsibility would be: The committee will have the authority to review and approve on an annual basis the plan's design, structure and third-party vendors within the constraints approved by the board of directors. The committee will develop goals and objectives for plan performance and will set the standards of which the plan will operate. The plans will be evaluated against the standards of measurement that have been agreed to.

The authority ascribed to the committee should be clear. One should make sure the charter answers several questions in that regard. Will the committee issue final decisions or generate recommendations to be acted upon by others, such as the board of directors, its compensation and benefits committee, or the owners of the business? May the committee further delegate authority to a subcommittee? This statement

of authority should address how the committee can use outside counsel, consultants and advisors and who can approve or set the fees needed for these outside services. From a group process standpoint, the conflict resolution method should not be overlooked.

Committee Membership

Who should serve on the committee? What departments or positions are best represented? Traditionally, three primary departments are represented in BP and advisory committees: finance, legal and human resources. There are other areas to consider, such as labor relations in a unionized setting. And, in today's business environment, there is both a need and a value ascribed to having an independent informed outside party attending committee meetings as a nonvoting resource.

You will need to decide if your BP and advisory committees will be inclusive of nonmanagement employees, or exclusive. Even in union-free organizations, nonmanagement committee members outside of the HR/benefits department should be carefully selected by management (not nominated or appointed by peers) and should be rotated on and off the committee, so as not to create the risk of inadvertent collective bargaining recognition. It is always best to consult your employment lawyer on this matter before proceeding. There should be a plan of action regarding how committee members themselves will be evaluated, one that clearly outlines standards of performance and behavior by each committee member.

Committee member training, although not required, is important to allow all the parties involved to perform at an optimal level. Not all BP Committee or advisory committee members will have sufficient working knowledge of benefit plans at first, and will also require updates as regulations change and design trends emerge. The complexity of benefit plans, the degree of difficulty in understanding new plan opportunities and the inherent legal requirements all point to assuring that the committee members are skilled and well versed in the nuances of plan management.

Charters should specify the frequency with which the committee will meet, and list all official reports and associated communication that members may expect to review between official meetings.

In addition to facilitating the meetings, members of the HR department will need to periodically provide committee members with access to plan records and documentation, and ensure the timely and accurate compilation and circulation of all reports referenced in the charter. Committee members will periodically need to review trust agreements, summary plan descriptions and related summaries of material modifications, investment policies (if appropriate), audit reports, custodian reports, claims fiduciary reports, administrator's reports, past minutes of the trust meetings, IRS determination letters, Forms 5500 and all other government filings germane to the plan. The administrator's report, which is a key communication piece to committee members, should include interim financial reports, participation levels, plan operation data, overall service provider activity and performance guarantees, claims and appeals data, as well as acknowledgment of continuing compliance with legal and plan changes.

It is clear that any BP or advisory committee has a number of audiences and stakeholders. The activities of these com-

mittees impact more than just the operations of the plan itself: They deeply affect the lives of the people covered by the plan and its provisions. Plan management should not be taken lightly—Government agencies won't really allow for that anyway. With proper oversight and management, benefit plans have the capacity to yield

great rewards to both the organization and the members who benefit from their proper operation. As with most good operations, planning for success helps foster success. **B&C**

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