

2. The company has an interest in the soundness of fund investments since the results directly affect its employee-employer relations and an unfavorable experience can result in an increase in future costs or in a reduction in benefits payable to employees.

3. There is a genuine public concern with what happens to participants' benefits after retirement or other termination of employment.

4. While the study is primarily one dealing with "Old Age Income Assurance," the economic aspect of the large amounts of savings that are being accumulated in these trusts is very important to the country. Aside from the immediate effect, the constructive investment of these funds will influence future productivity of industry which is the ultimate source from which benefit payments will be made to employees under these plans. (Papers will be presented by other authors which will discuss this subject fully.)

5. In multiemployer-union plans, a board of trustees (representatives of employers and the union) has the direct responsibility for supervising the plan. If a bank is used as an ancillary trustee for handling funds of the plan, the relationship between the bank and the board of trustees is similar to that which exists between the bank and the company in single employer plans. (In the interest of brevity, the discussion is confined to the bank-company relationship in single employer plans.)

We believe that the extent of existing governmental, legal and internal safeguards of pension and profit sharing funds held by bank trustees for the protection of these varied interests should be seriously considered in any new study of the need for new legislation.

FIDUCIARY RESPONSIBILITY

In the report to the President on private employee retirement plans, the Committee stated that "the general standards of conduct for any trustee have been long established by law and custom. These include the degree of prudence that must be exercised in investing the funds of others. Similarly, transactions that unfairly benefit other parties at the expense of the trust constitute unfaithfulness on the part of the trustee and may provide a ground for legal proceedings under State laws by the employer-grantor against the trustee."

The time-tested standard is that a trustee is required to employ such diligence and such prudence is in the care and management of trust property as in general prudent men of discretion and intelligence employ in their own affairs. A bank trustee may in some important respects be held to an even higher degree of care since it holds itself out to be an expert and because it is better equipped than the ordinary man. (Scott on Trusts, sec. 174-1.)

The trustee has an undivided loyalty to the trust. The typical employee benefit trust is a dedicated fund to be held and managed for the benefit of employees and their beneficiaries, and the trustee is required to measure each action taken in the trust in terms of whether it serves this dedicated purpose. Section 1.401-1(a) (3) (iv) of the Treasury Regulations provides the following in relation to employee benefit trusts which seek the tax advantages of a qualified trust: