# Top Three Fiduciary Priorities in 2015

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*After the wrap-up of the holiday season and amidst even busier schedules upon the commencement of the New Year, the corporate C-suite is inundated with priorities to juggle as of January 1. With unprecedented regulatory oversight over retirement plans and their management teams, plan sponsor executives need straightforward, easy-to-execute steps for maintaining compliance and effectiveness in their fiduciary role. This month's column provides the top three "fiduciary checkpoints" that will help keep retirement plan managers on track and in control of their retirement plan processes in 2015.*

## A CHALLENGING REGULATORY ENVIRONMENT

As has been reported over the last several years, the United States Department of Labor (DOL) has significantly increased its oversight activity related to employee benefit plans and their management teams. The Employee Benefits Security Administration (EBSA) of the DOL is responsible for enforcing the Employee Retirement Income Security Act (ERISA) and "ensuring the integrity of the private employee benefit plan system in the United States."[1] The EBSA oversees nearly 684,000 retirement plans, approximately 2.4 million health plans, as well as welfare benefit plans. In total, these plans cover about 141 million workers and their dependents and include assets of over $7.6 trillion.[2] In 2014, the EBSA recovered $599.7 million for direct payment to plans, participants and beneficiaries. The following table provides further statistics related to the EBSA's regulatory and enforcement actions over the last year.

| EBSA Statistics—FY 2014 | |
|---|---|
| **Total Recoveries** | **$599.7 M** |
| **Civil Investigations Closed** | **3,928** |
| **Criminal Investigations Closed** | **365** |

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| | |
|---|---|
| **Delinquent Filer Voluntary Compliance (DFVC)* Program Filings Received** | **25,060** |
| **Monetary Benefit Recoveries from Workers' Informal Complaint Resolution** | **$356.2 M** |

* DFVC encourages the correction of violations of ERISA by providing significant incentives for fiduciaries to self-correct.

With these numbers setting the backdrop for another active year for the DOL, it is paramount that fiduciary leaders gain control and confidence over their retirement plan management processes and vendors in 2015. Following are the top three fiduciary checkpoints that executives may use to ensure their plans are compliant under ERISA and that fiduciary risk is minimized for themselves and their management teams.

## TOP THREE FIDUCIARY CHECKPOINTS FOR 2015

Fiduciary responsibility has become a hot topic among corporate leaders and retirement plan vendors alike. But what is the "must-have" checklist of items that can help keep risk at bay and lessen the burden for over-committed executives? Below is a summary of those top three fiduciary checkpoints and related processes that can help leaders who are seeking reassurance about their retirement plan management approach in the New Year.

### 1. Fiduciary Qualified Plan Review

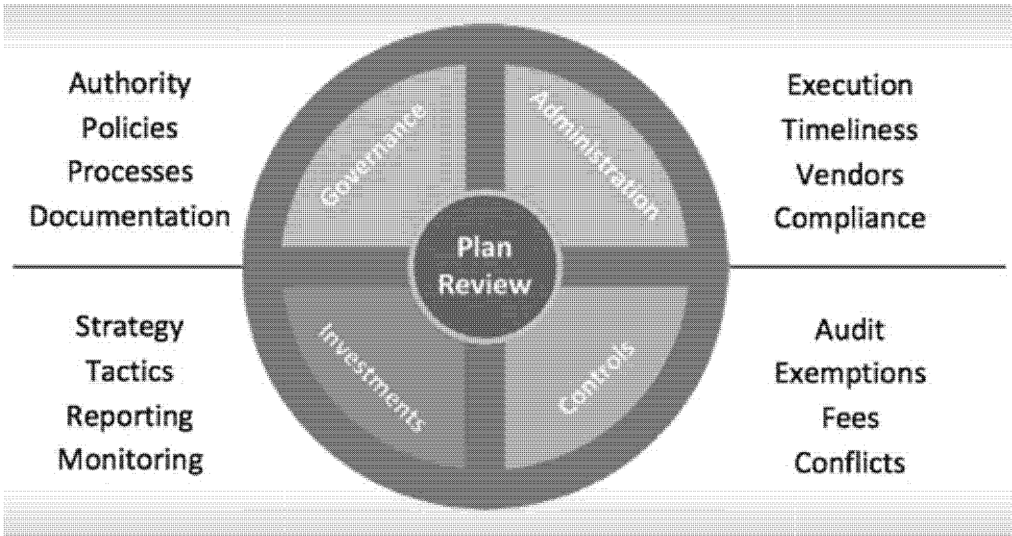
An annual Fiduciary Qualified Plan Review ("Fiduciary QPR") can be the easiest way to take stock of a retirement plan's current processes, while gaining an understanding of any needed adjustments going forward. The Fiduciary QPR, which assesses key compliance processes and satisfies a vital risk management need, is a standards-based retirement plan review that should utilize DOL guidelines and adhere to current fiduciary standards to ensure the authenticity of its results.

A comprehensive plan review by sponsors of retirement programs qualified under ERISA is a legal necessity, yet executives that oversee the plans often face challenges in satisfying the plan review requirement. Some executives are simply unaware of their responsibility to perform a qualified plan review, while others find that training and experience in performing a comprehensive plan review is hard to find. The truth is that qualified plan reviews are time consuming and difficult to resource internally. And even small plans are not exempt—plans of all sizes are required under ERISA to review their retirement plan process on a regular basis.

An annual plan review helps executives gain confidence about their retirement plan effectiveness and oversight process. An independent Fiduciary QPR examines every aspect of a retirement plan's operation against a defined standard, and includes all four fiduciary disciplines outlined under ERISA (see Figure A). A Fiduciary QPR also provides fiduciary assurance for retirement plan sponsors that choose to retain in-house rather than outsource their 3(16) Plan Administrator responsibility. This independent third-party review assesses whether in-house fiduciary managers are complying with current regulations and adhering to fiduciary standards.

Before outsourcing a Fiduciary QPR process, plan sponsors should ascertain whether their vendor is wholly independent (i.e., does not provide investment or other services to the plan) and properly accredited (the Fiduciary Supply Management Association, or FSMA, is a leading fiduciary standards accreditation organization that should recognize firms providing Fiduciary QPR services).

*Fig. A. Fiduciary QPR Should Examine All Four Fiduciary Disciplines*




**2. Fiduciary Training**

For plan sponsors seeking to stay abreast of current fiduciary best practices and excel in their fiduciary role, training can provide practical insights and proven strategies for fiduciary leadership, plan management, and regulatory compliance under ERISA. Fiduciary training can help build the skills and confidence needed to translate concepts into effective action and strengthen the safety of plan participants' assets. Some sample topics offered by Roland¦Criss' Stewardship Development Center illuminate the types of issues around which plan sponsors may obtain guidance. Following are brief synopses of three such top-of-mind training topics for plan sponsors in 2015:

- **The ERISA Plan Sponsor's Job in the New Fiduciary Era**. Understanding how to perform and supervise fiduciary activities with confidence and safety is paramount in the new era of fiduciary responsibility and regulatory oversight. Plan sponsors can learn fast, easy-to-use tools and techniques to transform unproductive confusion about the demands on fiduciaries into predictable outcomes. This training seminar equips plan sponsors with the most effective tools to satisfy the changing fiduciary requirements of ERISA.

- **Unraveling A Pension Plan's Costs: Are They Reasonable?** Understanding the complexities of pension service providers' fee structures can be a challenge for plan sponsors who are not specially trained in these esoteric knowledge areas. Plan sponsors can learn what the DOL requires them to know regarding the fees their plans pay to service providers. According to the DOL, "Vendors are specialists in the design of their products, services, and compensation. Plan sponsors lack this specialization. Vendors have a strong incentive to use their information advantage to distort procurement decisions in their favor. ERISA holds plan sponsors rather than vendors accountable for testing the cost and quality of pension plan services." By taking this seminar, finance executives, investment committee members, and human resources managers will be significantly ahead in their preparedness to satisfy their cost and value related accountability.

- **Employee Communication Tactics that Eliminate Trouble.** An effective employee communication program provides the conduit for a healthy relationship of trust and good stewardship between a plan sponsor and its employees. Regardless of the makeup of an employee communication program, it must pave the way to action. For example, it is not enough to hold a financial seminar for employees in the hope that they will take action. The success of such a seminar greatly increases if workers can respond immediately. This course tackles the challenges facing pension plan sponsors to help their employees' build and maintain a high level of competency about their retirement savings, while at the same time ensuring that a plan's fiduciaries avoid unintended liability for their efforts.

Depending on the provider, training can be offered online, in-person, or on-site at the plan sponsor's organization. Again, ensuring the training organization is properly credentialed and independent will ensure that plan sponsors receive the most accurate, unbiased, and up-to-date information available. (For more information on the training courses described above, visit www.rolandcriss.com/what-we-do/services/fiduciary-training.)

### 3. ERISA Fee Assessment

Compliance with ERISA changed dramatically when the DOL released regulation 408(b)(2). Also called the "fee disclosure" rule, it created the need for a new kind of unbiased expert. The regulation offers a "safe harbor" exemption from breach of fiduciary duty, but obtaining it is not automatic nor is it easy for plan sponsors who are not trained in this area of law.

In order to earn the safe harbor exemption, ERISA plan sponsors are required by the regulation to prove they have followed three steps (see Figure B):

1. Received fee disclosures from vendors

2. Examined the disclosures for adequacy; and

3. Proved that fees are reasonable (assessment and opinion).

*Fig. B. The Three Requirements of Plan Sponsors under 408(b)(2) Regulation*


Determining the "reasonableness" of retirement plan fees can be difficult for plan sponsors, and fee benchmarking alone does not fulfill ERISA's requirement. A fee assessment is an unbiased, audit-like opinion that weighs the quality of vendor services against their fees, providing an easy-to-understand quantitative score.

Moving beyond mere fee benchmarking, an ERISA Fee Assessment measures the value that employees receive for the fees they pay their retirement plans' service providers. It does this by considering both services provided and fees charged to plan sponsors, rather than just a comparison of fees—which does not provide a complete picture of a vendor's value. A quality ERISA Fee Assessment should include the following components:

- Unbiased and impartial analysis
- An outline of incorrect pricing structures and how to correct them
- Financial values for hard-to-evaluate vendor services
- Apples-to-apples comparisons of vendors' services and fees
- A lack of confusing retirement plan industry jargon
- Compliance with ERISA's 408(b)(2) fee disclosure rule
- Customized report (not a boiler plate report produced by an agent for a vendor)
- Evaluation of all relevant plan vendors, including investment managers, mutual funds, investment advisors, third party administrators, recordkeepers, and custodians.

Depending on the vendor utilized for this service, an ERISA Fee Assessment may be included in the Fiduciary QPR process. It is important for a plan sponsor to ask about this possibility during the service provider vetting process.

## IT'S NOT WHAT YOU DO, BUT HOW YOU DO IT

To feel confident about fiduciary processes, there are a plethora of different approaches that can work for plan sponsors.

Some may choose to retain all fiduciary responsibility in-house, while others choose to completely outsource their liability to a qualified, independent 3(16) Plan Administrator. The key concept to remember regarding fiduciary responsibility is that it's not just *what* you do, but *how* you do it that matters. If you find that your retirement plan committee meets quarterly and spends most of time reading investment reports, for example, but there is no defined process behind how those investments are evaluated and little or no attention is given to the other three fiduciary disciplines mentioned earlier in this article that is a red flag. ERISA cares more about plan sponsors' stewardship processes than their investment outcomes—and this is where an outside consultant can quickly align a plan sponsor with a best practice approach, and/or implement a process that follows these guidelines. Whichever approach you choose, the "top three" list discussed herein will help keep fiduciary management practices on track to ensure plan compliance and plan sponsor peace of mind.

**NOTES:**

[1] Department of Labor Fact Sheet, 2014.

[2] As of October 29, 2014.