

Governmental Defined Contribution Plans: An Employer's Role as a Plan Fiduciary

Gulf Coast Chapter FGFOA
Spring Conference and Networking Event
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Investment advice offered through OneDigital Investment Advisors LLC.





National Client Base

Approximately

\$120+ Billion

Retirement Plan Assets Under Advisement

6,400+

Plans Served

1,000,000+

Plan Participants

Florida Public Sector

Approximately

\$2+ Billion

Retirement Plan Assets Under Advisement

47

Plans Served

30,000+

Plan Participants



Retirement Plan Consulting

Historical Focus has been on DB Plans

Defined Benefit (DB)

- Consultant support
- Educated Trustees
- Defined responsibilities
- More transparent pricing
- RFP driven provider selection

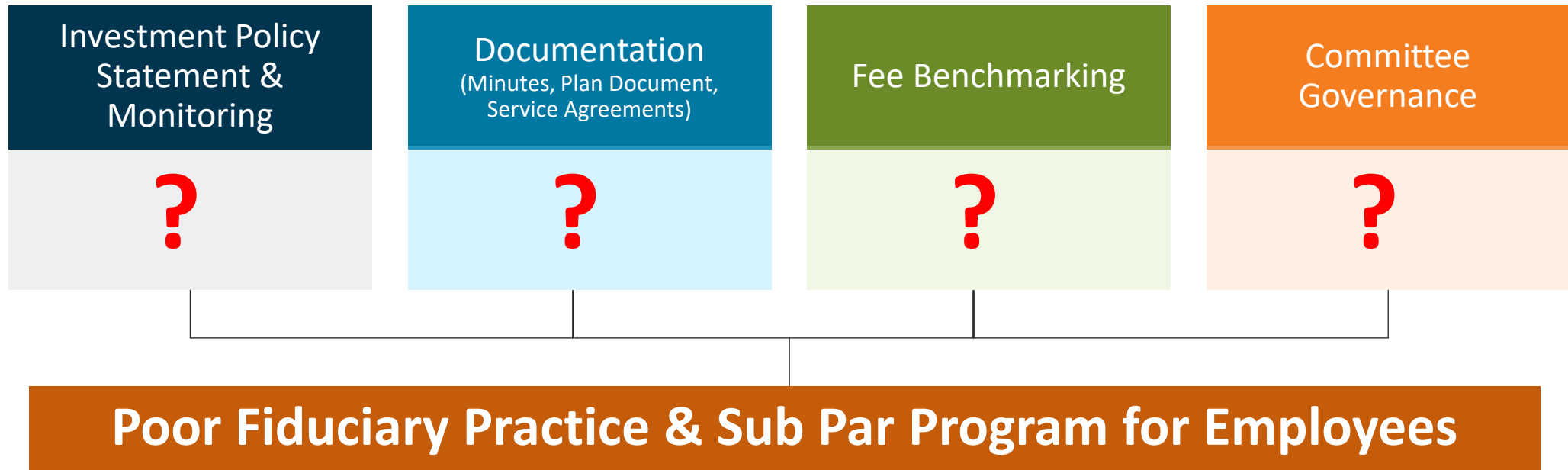
Defined Contribution/Deferred Comp (DC) - 457(b) & 401(a)

- Limited oversight
- Limited education
- Limited acknowledged responsibility
- High, non-transparent fees
- Providers added without competitive bid process

DC Plans Shift Risk and some Responsibility to Employees

Shifted Responsibilities	DB Plan	DC Plan
Funding (Plan Contributions)	Employer	Employee
Retirement Income	Employer	Employee
Individual Account Investment Allocation	Employer	Employee
Pay Plan Expenses	Employer	Employee
Retained Responsibilities	DB Plan	DC Plan
Plan Level Investment Menu Selection	Employer	EMPLOYER
Negotiate Plan Expenses	Employer	EMPLOYER
Employee Communication	Employer	EMPLOYER

Lack of Oversight on DC Plans



“Non-ERISA” ≠ “Non-Fiduciary”

- ERISA (Employee Retirement Income Security Act of 1974) does not apply to governmental plans. ¹
- Fiduciary Standards Precede ERISA
- State Laws Govern Non-ERISA Plans
- Florida Statutes use ERISA language and refer to ERISA standards. ²

1. ERISA 4(b)(1)

2. FS 112.656, FS 112.661

Who is a Fiduciary to the Plan

FIDUCIARY

- Employer Plan Sponsor
 - Plan Trustee(s)
 - Plan Administrator
- Plan Investment Committee
- Investment Advisor

GENERALLY NOT A FIDUCIARY

- Non-discretionary directed Trustee
- Recordkeeping Provider
- Third Party Administrator
- External Attorney

Fiduciary Defined

- Many of the actions involved in operating a plan make the person or entity performing them a fiduciary.
- Using discretion in administering and managing a plan or controlling the plan's assets makes that person a fiduciary to the extent of that discretion or control.
- Providing investment advice for a fee also makes someone a fiduciary.
- The fiduciary status is based on the ***functions performed for the plan.***

Department of Labor – “Meeting Your Fiduciary Responsibilities”

Fiduciary Duties

Duty of Loyalty	Duty to Act Prudently	Duty to Diversify Plan Assets	Duty to Act in Accordance with Plan Document
<ul style="list-style-type: none">• Act <u>solely</u> in the interest of the plan participant and their beneficiaries.• Exclusive purpose of providing benefits to them• Pay only fair and reasonable expenses.	<ul style="list-style-type: none">• When acting on behalf of the plan, exercise the care, skill prudence and diligence that a prudent person familiar with such matters would exercise.• This <u>requires expertise</u>. Lacking that, a fiduciary will want to hire someone with that professional knowledge to carry out the investment functions.• The Department of Labor (DOL) and courts measure prudence by analyzing the <u>process</u> used to select an investment or course of action.	<ul style="list-style-type: none">• Minimize the risk of large investment losses to the plan.• Fiduciaries should consider each plan investment as part of the plan's entire portfolio.• Fiduciaries will want to document their evaluation and investment decisions.	<ul style="list-style-type: none">• Follow the terms of the plan document.• Employers want to be familiar with their plan document, especially when it is drawn up by a third-party service provider.• Periodically review the document to make sure it remains current.

DC Plan Oversight Best Practices

- Establish a Committee & educate members on their fiduciary duties
- Meet regularly & draft meeting minutes to document decisions
- Establish an Investment Policy Statement (IPS)
- Monitor plan investment options regularly & take action on those that fail the IPS requirements
- Engage professionals who assume a fiduciary role
- Identify all plan fees
- Regularly benchmark plan fees, including periodic RFP/RFI, to ensure they are reasonable
- Consider consolidation of service providers to reduce fees & potential conflicts
- Establish an employee education strategy to engage & improve financial wellness

Common Themes

Issues Identified

- 457(b) / 401(a) DC Plans with multiple recordkeeper providers
- No formal Committee
- Investment not regularly monitored including some fairly imprudent funds
- High, non-transparent fees
- Engaged an independent plan advisor assuming investment fiduciary role to assist in reviewing fees and services

Possible Solutions

- ✓ Establish & train formal Committee via Charter
- ✓ Establish an Investment Policy Statement
- ✓ Conduct Recordkeeping Provider RFP/RFQ/RFI
 - ✓ May be able to identify cost savings
 - ✓ Possible improvements to plan & participant services
 - ✓ Assess for institutional, high scoring low-cost investment fund menu
- ✓ Schedule regular Committee Meetings
- ✓ Maintain ongoing investment monitoring & action
- ✓ Maintain prudent documentation & fiduciary process

THANK YOU!

QUESTIONS?

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