Retirement Plan Commitee Best Practices

Understanding the importance of continuous growth for your plan and participants.

Each time the retirement plan committee meets, does it feel like there is a new rule or legislation your plan is required to comply with? While at the same time, participants are demanding more of you and your organization to be successful because the defined contribution plan is likely the only savings vehicle these individuals will ever have for retirement? If these feelings resonate with you, so will the committee best practices we discuss in this guide. Keep reading as we help you understand what the Employee Retirement Income Security Act (ERISA) (and similar state laws) requires for plans, how committees have typically functioned, and how committees will need to function to be successful and sustaining for years to come.

ERISA's Influence on Fiduciaries and Committees

ERISA, which governs private employer-sponsored retirement plans, outlines the minimum requirements for plans. Because employers (also known as plan sponsors) are entrusted with the assets of their employees (also known as participants), plans covered by ERISA are all required to have at least one fiduciary named in a written document.[1] Even those plans that ERISA does not govern are governed by the Internal Revenue Code (the Code) and a set of state laws that likely resemble ERISA, meaning these same requirements will generally apply.

Historically, retirement plans were simple. There were a few basic elements to the plan (as identified by the Department of Labor) and the basic responsibilities outlined in ERISA Section 404[2]:

Key Elements of a Plan

- A written plan that describes the benefit structure and guides day-to-day operations
- A recordkeeping system to track the flow of monies going to and from the retirement plan
- A trust fund to hold the plan's asset
- Documents to provide plan information to employees participating in the plan and to the government

Key Responsibilities for a Plan Sponsor

- Acting solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them
- Carrying out their duties prudently
- Following the plan documents (unless inconsistent with ERISA)
- Diversifying plan investments
- Paying only reasonable plan expenses

Over time, retirement plans have grown increasingly more complex. The basic components that existed when ERISA passed in 1974 have rapidly expanded with technology in retirement plans. Investments, service providers, litigation, and legislation are in constant motion. The list of what the DOL considers to be fiduciary obligations is constantly expanding. For example, a decade ago, procedures related to cybersecurity and missing participants were not top of

[1] See ERISA Section 402(a).

[2] See DOL, Meeting Your Fiduciary Responsibilities.

mind for plan sponsors; these are now requirements for retirement plan sponsors. What once could have been handled by one or two people at the organization now typically takes a formalized delegation process reliant on calendars, checklists, and process plans as well as third-party consultants. Thus, most retirement plans go well beyond the requirement of having one fiduciary and instead have several.

A fiduciary, or someone acting on behalf of another, is specifically defined under ERISA to include anyone exercising discretion or authority on behalf of the plan as it relates to the plan's assets or the management of the plan.[3] One becomes a fiduciary by virtue of their function related to the plan and not via a title at the organization.

Many plan sponsors delegate the oversight and administration of their retirement plan to a committee within their organization. This committee takes on fiduciary responsibility for almost all aspects of managing and overseeing the employer's retirement program. The committee may further outsource fiduciary obligations by prudently selecting and monitoring service providers.

While not required, the successful delegation of responsibility from the plan sponsor to a committee for ongoing administration of the plan is often handled through a committee charter or other delegation document. The committee charter generally sets forth expectations of how the committee will operate and details items such as frequency of meetings, assignment of roles for certain committee members, expertise expected from committee members, and the reporting requirements. While a charter is not required by ERISA, it is a helpful tool for all members of the organization with responsibility under ERISA, and it can help fiduciaries to understand their status as a fiduciary; likewise, it can assist those non-fiduciary staff members at the organization in understanding how to maintain their ministerial roles, if desired.

Committees: Historical Models

Committees come in all shapes and sizes, and under ERISA, there is no right or wrong answer. However, time and experience working with a variety of different organizations have shown that there are some ways of running committees that work better than others. Historically, plan sponsors have utilized the following structures to accomplish their fiduciary obligations:

- **No committee:** Today, less than 5% of plans do not have a committee.[4] Some committees might be quite small, but most plan sponsors have at least some committee in place, even if it is only a representative from human resources and a representative from finance. Those organizations not using a committee structure are

[3] See ERISA Section 3(21). Fiduciaries under ERISA also include those that render investment advice for a fee or other compensation, which includes investment advisors. These fiduciaries are outside the scope of this Guide.

[4] See Plan Sponsor Council of America, Retirement Plan Committees, available at: https://www.psca.org/sites/psca.org/files/Research/2021/2021%20Snapshot_Ret%20Plan%20Com_FINAL.pdf.

either new plans, very small plans, or committees that are struggling with compliance and plan operations that would benefit from a committee structure.

- **One committee:** Approximately 64% of plans have one committee.[5] This committee typically varies widely in the number of individuals on the committee and includes various levels of experience and expertise related to the retirement plan. This committee is generally tasked via a committee delegation document such as a charter for all areas of responsibility related to the plan, including investments, vendor fees and services, employee engagement, and plan operations.

- **Two or more committees**: In some instances, larger plans break the responsibilities into two parts. One committee will handle the investment-related tasks while the other tasks are addressed by a second committee. In rare instances, there might be more than two committees.

Historically, these models had worked when the set of responsibilities and structures remained finite. In these cases, a charter or other delegation document was able to identify exactly what each committee was responsible for and where additional expertise was required. Where additional resources or expertise are needed, ERISA allows committees to hire experts.

These existing committee structures flourished in an environment where one or two members of the organization's staff made outreaches to service providers as-needed with very little coordination and collaboration among all members in the benefits ecosystem.

These structures were not built for the complexity and interconnectedness that benefit structures require today. Consider:

- What happens when the committee(s) needs to be strategic across the entire benefits universe?
- How are longer-term benefits decisions for the organization made?
- How is the organization tracking whether participants can retire timely and with enough money for a sustained retirement?
- How are the decisions in the retirement plan committee meeting impacting gender, income, and racial equity?

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[5] See id.

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Committees: Moving Ahead

Four primary drivers of the past decade have led to the need to revisit the committee models, which are the foundation to a good governance process in a retirement plan. Again, retirement plans are only legally required to have one fiduciary, but a well-run plan has more than one fiduciary that utilizes a committee structure and a strong governance framework.

The primary drivers that influence the need to revisit committee structures and a changing governance program include:

- **Fiduciary obligations on the rise**: The pace of regulation from the DOL is moving at record speeds, and with each new presidential administration comes a new interpretation of the rules. The once simple plan and associated responsibilities described above has become a list of 50+ fiduciary obligations ranging from handling uncashed checks to the evaluation of cybersecurity protocols. More than ever, this requires constant monitoring and interpretation of guidance related to regulation.

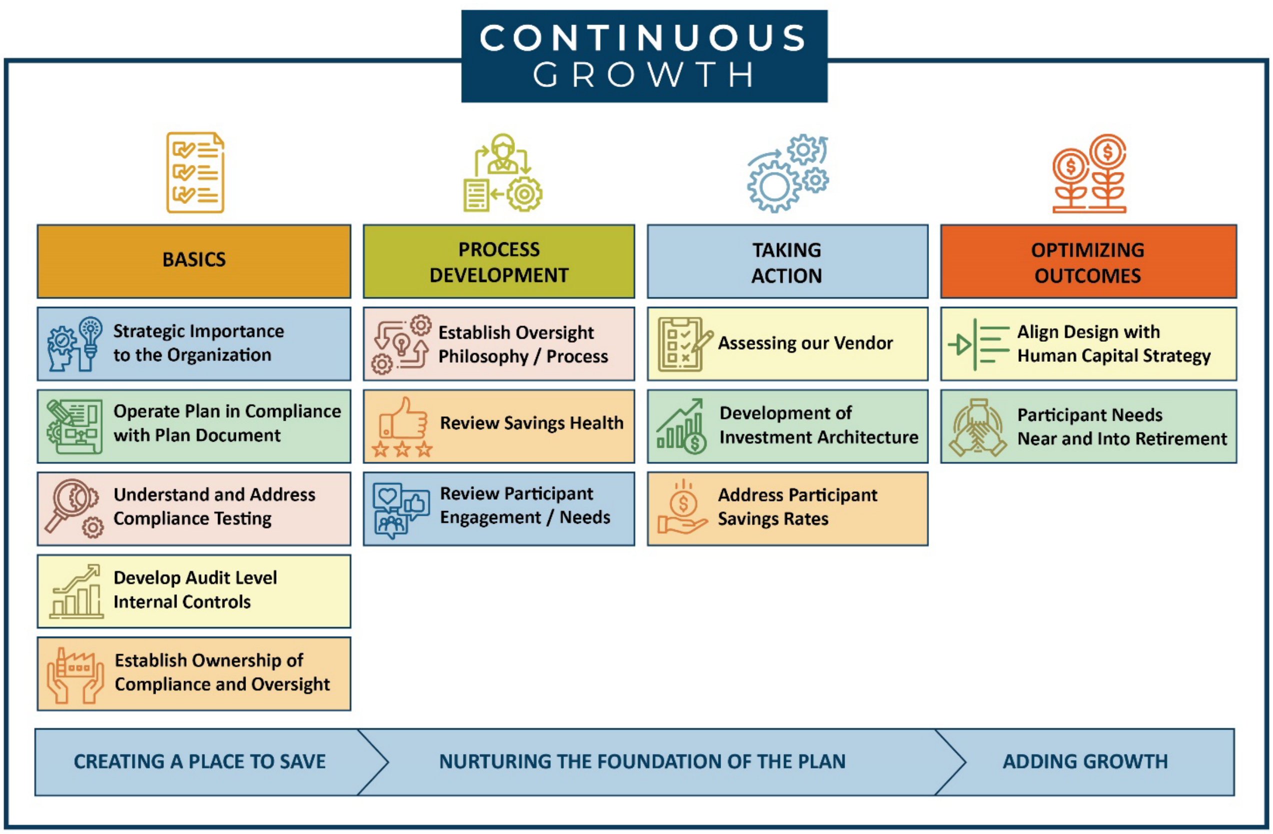
- **Retirement plans require strategic decisions**: Retirement plan participants require more than what was once considered a function in human resources to send out required notices. Instead, participants are demanding more of their employers. This requires coordination internally across the organization as well as externally among service providers to aid employees in being prepared for retirement. This demands coordination across a greater human capital strategy consisting of strategic decisions over several months and years and not just day-to-day tactical work.

- **Increased litigation**: During 2020, over 200 new ERISA class action cases were filed, and 2021 has been on track to keep pace. Although high costs and poor funds might be concerning, the courts in these cases are more focused on the process a committee uses to make its decisions than the end results. This requires that committees demonstrate a strong process.

- **Service providers' agendas**: Partially due to increased litigation, recordkeepers and other retirement plan service providers have faced fee compression over the past decade. Despite that, recordkeepers continue to invest in recordkeeping as a business because they believe there is an opportunity to generate additional revenue beyond the recordkeeping fees for servicing retirement plans.[6] This means that recordkeepers, as well as other service providers, have their own agendas, which doesn't always include putting the plan sponsor's and participants' interests first. This requires committees to do extra legwork to understand the service providers' agendas as well as potential and actual conflicts.

While not an exhaustive list, these drivers have led to Multnomah Group's continuous growth model for retirement plan committees, which will create stronger governance programs for better retirement plans in 2022 and beyond.

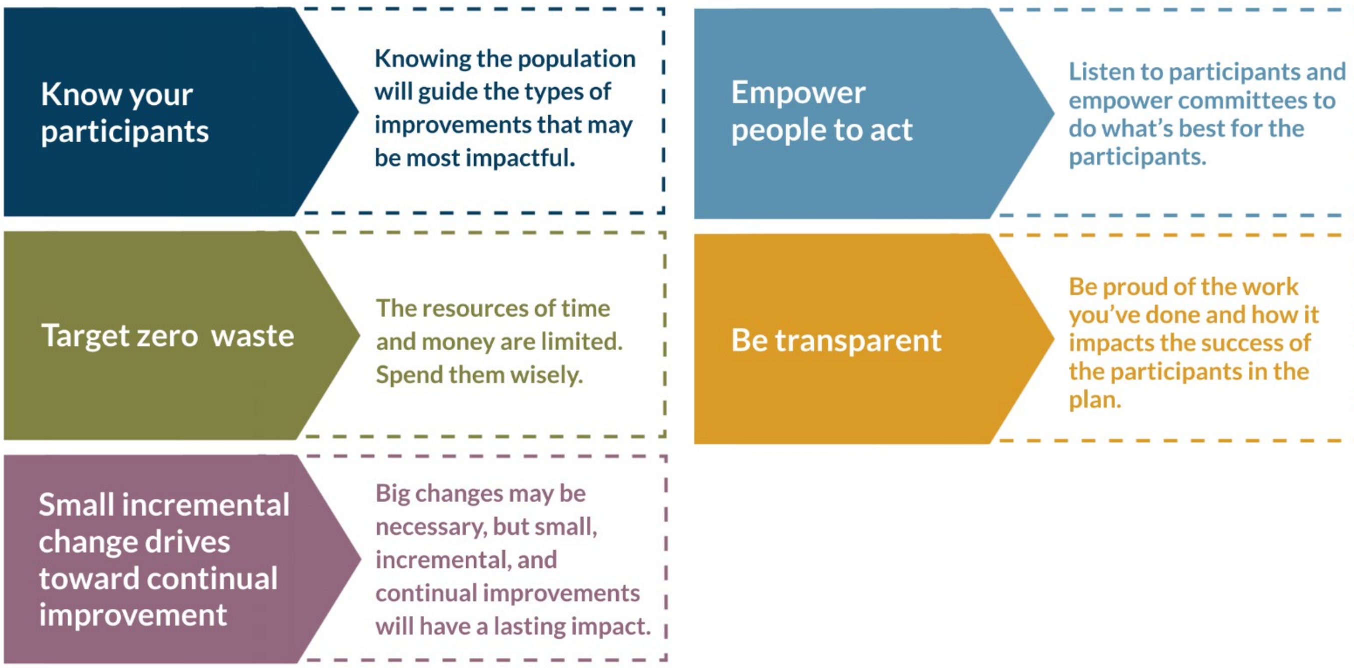
Continuous Growth Model



The continuous growth model is the recognition that if the committee structure and accompanying governance process doesn't evolve, it will lead to repetitive meetings, and a "nothing has changed, let's move on" attitude toward the retirement plan. Counter to this attitude is the continuous growth model, which is the process of good governance to establish goals, track the impact of changes, and continually move towards the previously articulated goals in a

6 See, Multnomah Group, Protecting Participant Data: How to Monitor and Mitigate Recordkeeper Conflicts of Interest.

measurable way. This framework incorporates outside service providers, including the recordkeeper and investment consultant to ensure a holistic approach to governance and the retirement plan. This collaborative approach ensures the right people at the table at the right time to make decisions for successful outcomes.
The continuous growth model is a framework for plan fiduciaries that includes five core components. It is the recognition of long-term productivity and strategery for the retirement plan and the organization. It includes:



Implementing a new framework is never easy. While this is not a complex plan design change, there is something bigger and more powerful happening than implementing automatic enrollment, for example. And while something like automatic enrollment might create change, implementing a governance structure such as the continuous growth model will continue to give the plan, the organization, and the community sustained life for years to come.

When considering how to implement this new framework, Multnomah Group can assist with the following considerations in the coming months:

1. **Educational Considerations**.
   The process commences with learning more. Exceptional retirement plans are not created overnight. Multnomah Group will start by educating committees about this sequential approach to using good governance to make a difference in the lives of participants and the organization. Each step on that path and accomplishment opens new opportunities for improvements that will impact the future health and happiness of participants. By educating the current retirement plan committee about this opportunity for change, the committee can overcome the first obstacle of change which is purely emotional. Change is hard, and it is slow. By commencing the education process about the opportunities that await, committees can evaluate the benefits for themselves, their participants, their organizations, and their communities.

2. **Documentation Considerations**.
   Once a committee determines it is ready to make a change, it may need to consider if any updates in documentation are required. For plan sponsors that don't have a committee today, it is likely that no changes are required. For large plan sponsors that have multiple committees today, it is likely that some changes in documentation are required. Examples of updates that might be required include but are not limited to: (1) changes in fiduciary status due to restructuring the committee (but keep in mind fiduciary status is functional in nature), (2) updates to the committee charter or other delegation document, and (3) potential plan document updates if the plan document specifies fiduciary committee members (though unlikely). In many cases, the only document that will need to be updated will be the committee charter, which needs to be executed by the party that initially signed the document (e.g., the Board or sub-committee of the Board and not the committee itself).

3. **Tactical Considerations.**
   In conjunction with the documentation considerations, there might also be a series of tactical considerations. The tactical considerations and documentation considerations will go together. For example, plan committees will want to consider the following as opportunities to re-evaluate as they consider the evolution of their committee in the continuous growth model:
   - Change in the structure and typical agenda of committee meetings
   - Duration and timing of committee meetings
   - Updates to the annual fiduciary calendar, if applicable
   - Functions of service providers and their agreements, if applicable
   - Monitoring of service providers and associated functions
   - Functions of fiduciaries and support staff in the organization
   - Monitoring of support staff in the organization
   - Nature and frequency of typical reporting
   - Frequency and nature of report back to governing parties (e.g., Board or sub-committee of the Board)
   - Updates to documentation structure

Next Steps for Plan Sponsors

ERISA and similar state laws set forth the minimum requirement to have one fiduciary and a plan document. Beyond that, plan sponsors have a lot of flexibility in how to structure committees and governance frameworks to ensure the success of their retirement plans. Historical models of structuring committees worked for many years, but given the drivers discussed

> By taking the first step toward educating yourself about the continuous growth model, **you will start to understand how you can free up time for staff at your organization**, which is critically important in an era where human resources have more and more on their plates. And, you will be able to **focus more on participant outcomes in an era where the defined contribution plan is likely the only retirement savings** that many of your participants will ever have.

above, these models will not continue to sustain organizations and their plans. Organizations must start to embrace a forward-looking model now, which the continuous growth model provides.

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Given these reasons, consider taking the following steps today to start your retirement plan's journey toward growth and improvement:

1. Meet with Multnomah Group and educate your committee on the continuous growth model.
2. Establish a continuous growth mindset.
3. Evaluate the tactical considerations alongside the documentation considerations.
4. Take action and track your progress over time.

To learn more or to get started today with your first step in the continuous growth model, contact a Multnomah Group consultant.

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