



**SERIOUSLY  
GOOD GOVERNANCE  
QUESTIONNAIRE**

# EXECUTIVE SUMMARY

Over the last few years, there has been a proliferation of litigation against retirement plan sponsors and their fiduciaries. One of the first higher profile 403(b) lawsuits was brought in 2016 against New York University (“NYU”) and its plan fiduciaries<sup>1</sup>. Claims focus on excessive recordkeeping fees, conflicts of interest and failure to prudently monitor plan investment options for performance and fees.

While there can be no assurance of being able to avoid litigation, there are steps a plan sponsor through its retirement plan committee can take to minimize the likelihood and potential impact of lawsuits. Much of this risk can be managed by:

1. Maintaining a clearly defined plan governance committee, process and documentation,
2. Regularly reviewing and, as appropriate, negotiating service providers’ services and fees, and
3. Having an effective process of investment monitoring, including fund fees and evaluating appropriateness of share classes.

But, there are other questions that can and should be addressed to ensure a robust and radically effective governance process. These questions get at the culture and functioning of an effective retirement plan committee. They move beyond the tasks and documents of what good governance entails to the effectiveness of seriously good governance.

The following questions will help you determine whether you have effectively designed and implemented your retirement plan oversight functions in ways that can vastly improve the proper functioning of your plan and limit your risk exposure.

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<sup>1</sup> Nevin E. Adams, JD, “New Grounds Emerge in NYU Excessive Fee Suit,” *napa-net.org*, <http://www.napa-net.org/news/technical-competence/erisa/new-grounds-emerge-nyu-excessive-fee-suit/>, January 19, 2018

# PART 1 SERIOUSLY GOOD GOVERNANCE QUESTIONS

## Survey

Please read and answer the following questions honestly. If you can answer most questions constructively, you are well on your way to maximizing the effectiveness of your plan oversight. If you cannot answer them affirmatively for the most part, have no fear; working with a consultant can assist you in getting your oversight where you need it to be.

	Yes	No	Unsure	Needs Improvement
Are the objectives of the retirement plan committee closely aligned with the mission of the company/institution and the goals and priorities of senior management?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conversely, does senior management respect the authority and decision-making role of the committee and not use it as a mere formality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the committee fully in tune with the needs and goals of its plan participants?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the HR staff survey the participants regularly to identify their needs and opportunities for improved service and communications?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the committee focus more strategically on the design issues and leave the tactical implementation work and decisions to the staff and service providers?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the committee trust its staff and service providers to make decisions and their ability to implement those?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	Unsure	Needs Improvement
Do the staff and service providers provide the right amount of information to support the results of the implementation of decisions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the committee have the “right” number, type and diversity of its members?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do all committee members have high ethical and professional standards and take their fiduciary responsibilities seriously?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the committee actually meet on a regular basis and not make excuses to not be able to?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the committee foster an environment of open discussion, trust and mutual respect for all its members?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the committee encourage fresh ideas and dissenting points of view?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Alternatively, does the committee avoid being dominated by one person or a small group of individuals?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the committee embrace, rather than avoid, the complexity of the discussion topics?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the committee have thorough information on which to base decisions rather than emotion, opinion or other competing agendas?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the committee focus enough attention on the various risks presented and that need to be managed in any topic of discussion?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the committee allow the “right” amount of time for discussion of each issue?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the committee document and securely store for easy retrieval the results of its discussions and decisions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**How did you do?** If you could not check **yes** to at least several of the questions, there is room for improvement. Good news is expert assistance is available.

## PART 2

# BENEFITS OF USING A CONSULTANT

### Support

Given the increasingly challenging and complex regulatory and litigation environment for retirement plans, it can be very beneficial for a retirement plan committee to employ an external retirement plan consultant. Although committee members are not expected to be experts on retirement plan matters, they are fiduciaries with substantial responsibility. Consultants in turn are experts and serve as co-fiduciaries with the committee.

Consultants serve as a valuable resource due to the breadth and depth of their specialized knowledge in the retirement plan industry. Consultants can provide many direct and indirect benefits to the committee, including:

- **Supporting committees.** They know how to support committees in operating efficiently. As they meet with many committees, consultants know what works and how to effectively encourage all members to participate and make decisions. They will also know how to help everyone on the committee fully understand the topics being discussed and be able to update the committee on any relevant regulations and litigation.
- **Knowledge of the common trends regarding the retirement plans** of peers and what is available in the marketplace. This helps to bring more ideas to the table and ensures that your plan does not fall behind your peers in attracting and retaining quality employees. Thoughtful and comprehensive plan design will help ensure your employees are more likely to be retirement ready at an appropriate age.

## CONCLUSION

Effective retirement plan governance is key to the successful operation of your plan and the retirement readiness of your participants. The key to good governance is a well-run retirement plan committee that oversees the plan, its vendors and investment options, and the various fees paid. While there can be no assurance of being able to avoid legal claims, a plan sponsor through its retirement plan committee can minimize litigation risk by taking the following steps:

1. Maintaining a clearly defined plan governance committee, process and documentation,
2. Regularly reviewing and, as appropriate, negotiating service providers' services and fees, and
3. Having an effective process of investment monitoring, including fund fees and evaluating appropriateness of share classes.

Seriously good plan governance goes further though and asks more thought provoking questions that can ensure a robust and thorough process. These questions get at the culture and functioning of an effective retirement plan committee. They move beyond the tasks and documents of what governance entails to the effectiveness of the process overall. They will help you determine whether you have effectively designed and implemented your retirement plan oversight functions in ways that can vastly improve the proper functioning of your plan and limit your risk exposure.

An expert consultant can assist the plan sponsor and its fiduciaries in accomplishing this effectively.

## Take the next step.

Call (312) 973-4911 for more information or guidance on creating more effective retirement plan governance or visit [www.planpilot.com](http://www.planpilot.com)



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