



# **THE STANDARD FOR OPERATIONAL FIDUCIARY SERVICES** **IN** **POOLED PLANS**

This document contains the practices that are used to assess the qualification of recordkeeping and/or administration firms, stewards, and other fiduciaries responsible for the operation of pooled retirement programs and for service as the plan administrator as defined by ERISA Section 3(16)(A). The purpose of the certification program is to identify for investors and the public at large those firms and group retirement solutions that take active, ongoing steps to promote operational fiduciary excellence through systems and procedures that provide an effective mechanism for fiduciaries to comply with **substantially all operational requirements** under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code ("Code").

CEΦEX Pooled Plan Administrator and Named Fiduciary certification is based on the Standard for Operational Fiduciary Services in Pooled Plans ("Operational Fiduciary Standard"), a new CEΦEX Standard created in response to the SECURE Act, the growth of Pooled Employer Plans (PEPs) and the proliferation of service offerings described as "3(16)".

The primary focus of the Standard for Operational Fiduciary Services in Pooled Plans ("Operational Fiduciary Standard") is group retirement programs, including multiple employer plans (MEPs)—such as PEPs, PEO MEPs, and association retirement plans (ARPs)—and "groups of plans," as defined by Section 202 of the SECURE Act<sup>1</sup> ("GoPs," also known as Defined Contribution Groups or DCGs), and similar bundled service arrangements. Because the Standard is closely tied to fiduciary requirements for plan administrators as defined by ERISA Section 3(16)(A) ("3(16) Administrators"), the Pooled Plan Standard also serves as a means of certifying 3(16) Administrators.

The Standard was developed by subject matter experts and CEΦEX Analysts of Broadridge Retirement and Workplace.

The program creates several new certification types and expands several existing types, as follows.

## **New Certification Types**

### **Pooled Plan Services**

This certification type is for nonfiduciary recordkeepers and contract administrators (i.e., third party administrators or TPAs) to evaluate the readiness of their compliance infrastructure to support compliance with substantially all operational requirements under ERISA and the Code.

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<sup>1</sup> Setting Every Community Up for Retirement Enhancement, passed as part of the Further Consolidated Appropriations, 2020 Act in 2019



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### **Operational Plan Fiduciary Services**

The scope of this certification type includes Pooled Plan Providers (PPPs), 3(16) Plan Administrators, ERISA Section 402(a) Named Fiduciaries, and other operational fiduciaries under ERISA Section 3(21)(a)(iii).

#### **Pooled Plan**

This is for the certification of the Pooled Plan itself. The scope includes the certification of the individual components of a Pooled Plan, including:

- Recordkeeper;
- TPA;
- Investment Advisor or Manager;
- Operational Plan Fiduciary, if applicable;

### **Expanded Scope of Certification for Investment Stewards and Advisors**

#### **Investment Steward**

Scope may be expanded to include Group Plan Investment Fiduciary.

#### **Investment Advisor**

Scope may be expanded to include Group Plan Investment Advisor and/or Manager.

#### **Complementary to the CEFEX/ASPPA Recordkeeper/TPA Certifications**

The Pooled Plan certification types are supplemental and complementary to the recordkeeper and TPA certifications developed in conjunction with the American Society of Pension Professionals and Actuaries (ASPPA). The ASPPA certifications focus on organizational structure and capabilities; the Pooled Plan certifications focus on compliance infrastructure.

#### **Theme of the New Certification Types and Scopes**

The unifying theme of the expanded certification types and scope is the need for compliance infrastructure that fulfills “substantially all of the administrative duties”<sup>2</sup> required of a Pooled Plan Provider, as defined by ERISA Section 3(44), under the SECURE Act. The SECURE Act took a significant step in a new direction for ERISA-governed retirement plans by making it possible for service providers to serve as plan sponsors and named fiduciaries with broad responsibility over PEPs and to be compensated for doing so as PPP. Against the backdrop of the U.S. retirement industry’s historic practice of placing employers in the plan sponsor and principal fiduciary role, the confusing variety of available service arrangements, which accept widely varying levels of fiduciary responsibility, and the proliferation of pooled retirement solutions that often allow service providers to accept less responsibility than the PPP of a PEP, the PPP role serves as a proxy for all ERISA fiduciaries charged with complying with “substantially all” obligations under ERISA and the Code (referred to hereafter as “substantially all compliance requirements”).

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<sup>2</sup> Internal Revenue Code Section 413(e)(2)(B)



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In other words, practices that are sufficient to evaluate a PPP can be applied universally to PEPs, ARPs, PEO MEPs, group trust programs, and other group arrangements under names like MEAP (multiple employer aggregation arrangement), “exchange,” and similar marketing names, as well as to single employer plan service arrangements. Such arrangements are frequently represented in the marketplace as a means for outsourcing or fulfilling fiduciary responsibilities: the Operational Fiduciary Standard provides an objective means of evaluating such representations.

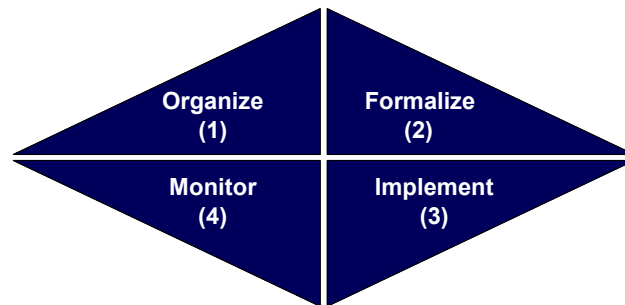
## The Format

The Standard is comprised of 23 Practices which provide the foundation and framework for a disciplined process for fulfilling substantially all compliance requirements in retirement plan arrangements, including group plans.

The Practices are organized under a four-step management system, which is used in the Global Fiduciary Standard of Excellence for Investment Fiduciaries<sup>3</sup>. The steps are analogous to the global ISO 9000 Quality Management System standard, which emphasizes continual improvement to a decision-making process:

### *TRADITIONAL FOUR-PART QUALITY MANAGEMENT SYSTEM*

(Analogous to the ISO 9000 QMS Continual Improvement Process)



**Step 1: Organize**

(Practices that begin with 1.)

**Step 2: Formalize**

(Practices that begin with 2.)

**Step 3: Implement**

(Practices that begin with 3.)

**Step 4: Monitor**

(Practices that begin with 4.)

<sup>3</sup> Available at [www.fi360.com](http://www.fi360.com). Fiduciary Handbooks are published by Fi360, Inc.





For each Practice, one or more *Criteria* are provided to define the details of how the Practice is assessed for conformity.

Broadridge Fi360 Solutions welcomes comments and suggestions. Please contact Carlos Panksep at 416-693-9733.



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## **ORGANIZE**

### **Practice 1.1: The arrangement is designed to promote compliance with substantially all requirements under ERISA and the Code.**

#### Practice Criteria

- 1.1.1** Comprehensive compliance is an intentional element of the arrangement's design.
- 1.1.2** Fiduciary responsibilities are either assigned to professional fiduciaries or to any employers who retain responsibilities and who are well-positioned to fulfill them.
- 1.1.3** Service provider offerings are intended to incorporate comprehensive compliance support.

### **Practice 1.2: Service providers have the expertise, workflow management systems, and capacity to support comprehensive compliance.**

#### Practice Criteria

- 1.2.1** There is sufficient expertise available to provide comprehensive compliance support.
- 1.2.2** Staffing is adequate to serve clients.
- 1.2.3** Systems are in place and designed to promote comprehensive compliance support.

### **Practice 1.3: Adequate risk management processes are in place.**

#### Practice Criteria

- 1.3.1** Cybersecurity practices are at least as robust as those identified in DOL's published guidelines.
- 1.3.2** Fiduciaries and key service providers maintain adequate insurance coverage for major risks.
- 1.3.3** ERISA bond coverage meets regulatory requirements.

## **FORMALIZE**

### **Practice 2.1: The plan document is compliant in form and harmonized with other governing documents.**

#### Practice Criteria

- 2.1.1** The base plan document, adoption agreement, and participation agreement (if applicable) comply with all legal and regulatory requirements.
- 2.1.2** All required amendments, including a good faith PEP amendment (if applicable), are appropriately prepared and executed.
- 2.1.3** Amendments are screened to ensure they are nondiscriminatory and meet regulatory requirements for form and content.
- 2.1.4** The plan has a current IRS opinion, advisory, or determination letter on which it may rely, if appropriate.



- 2.1.5** Other governing documents such as a joinder agreement, service agreements, trust agreement, or investment policy statement are consistent with the plan's administrative provisions, use of terms, and definitions.
- 2.1.6** Governing documents protect co-sponsors' respective settlor rights with respect to modification or amendment of plan terms, if appropriate.

**Practice 2.2: Written contracts or arrangements clearly allocate or delegate all fiduciary responsibilities to parties well-positioned to fulfill those responsibilities.**

Practice Criteria

- 2.2.1** Responsibilities retained by employers are clearly defined in service agreements.
- 2.2.2** Responsibilities assigned to an employer are appropriate for an employer to fulfill.
- 2.2.3** Responsibilities not assigned to employers are allocated or delegated to professional fiduciaries.
- 2.2.4** Contractual limitations on the extent of a professional fiduciary's obligations with respect to any specific fiduciary responsibility do not implicitly transfer duties back to employers in a way that violates Criteria 2.2.1 and 2.2.2.

**Practice 2.3: Procedures for collection of contributions and loan repayments are reasonable, diligent, and systematic.**

Practice Criteria

- 2.3.1** In PEPs, a qualified named fiduciary is responsible for the contribution collection process.
- 2.3.2** The procedures for contribution and loan repayment collection are reasonable, diligent, and systematic, and, in PEPs, are in writing.

**Practice 2.4: Plan setup processes promote fulfillment of substantially all compliance requirements in plan operations.**

Practice Criteria

- 2.4.1** Participating employers are systematically required to share information regarding ownership, entity type, and benefits and features they offer to employees.
- 2.4.2** Policies and procedures for plan setup are designed to comprehensively prepare for compliance with substantially all ERISA and Code requirements.
- 2.4.3** Employees are properly trained in the policies and procedures for plan setup.
- 2.4.4** Management supervises plan setup processes adequately.
- 2.4.5** Investment product features such as market value adjustments, surrender charges, and/or hard to value assets are handled in compliance with product requirements and compliance requirements as applicable.



**Practice 2.5: Processes for plan operations promote fulfillment of substantially all compliance requirements.**

Practice Criteria

- 2.5.1** There is an effective handoff from plan setup to plan operations, including ensuring operations personnel are well-versed in the plan's benefits and features.
- 2.5.2** Team members tasked with serving the plan are made aware of their responsibilities, have capacity to provide effective service, and have appropriate qualifications.
- 2.5.3** Management systems and procedures are in place to properly supervise the plan and team members serving the plan.

**Practice 2.6: Fees and expenses are assessed, credited, and disclosed in compliance with legal and regulatory requirements.**

Practice Criteria

- 2.6.1** Fees to be paid by employers, deducted from the plan, and/or paid by third parties are disclosed to clients.
- 2.6.2** Procedures are in place to ensure that indirect payments from any source are handled in compliance with applicable requirements.
- 2.6.3** Procedures are in place to ensure only non-settlor expenses are charged to the plan.

**Practice 2.7: Periodic reviews are conducted to ensure that compensation and expenses are fair and reasonable for the services provided.**

Practice Criteria

- 2.7.1** A summary of all parties being compensated from plan or trust assets and the amount of compensation has been documented.
- 2.7.2** Compensation and expenses paid from plan or trust assets are periodically reviewed to ensure consistency with all applicable laws, regulations, policies and procedures and service agreements.
- 2.7.3** Procedures are in place to avoid or identify and appropriately address unreasonable fees.

**Practice 2.8: New requirements from law and regulation are incorporated into the arrangement.**

Practice Criteria

- 2.8.1** New requirements from law and regulation are systematically identified.
- 2.8.2** Systems, policies, procedures, and training are systematically updated to reflect new requirements.
- 2.8.3** New requirements are incorporated as appropriate into plan and service provider audits.



## **IMPLEMENT**

### **Practice 3.1: Processes for preparing and delivering required notices, disclosures, and correspondence (“notices”) fulfill substantially all requirements for form, content, and method of delivery.**

#### Practice Criteria

- 3.1.1** The systems and procedures address which notices are required to be sent, when they need to be sent, notice preparation, and delivery via means reasonably calculated to ensure actual receipt.
- 3.1.2** The systems and procedures meet requirements for electronic delivery.
- 3.1.3** The systems and procedures meet requirements for undeliverable notices, both paper and electronic.
- 3.1.4** Foreign language requirements are met.
- 3.1.5** Investment notice requirements (e.g., equity wash, trading restrictions) are met.
- 3.1.6** Recordkeeping and retention procedures for notice delivery meet regulatory requirements.

### **Practice 3.2: The eligibility and entry process is managed to promote compliance with substantially all eligibility and entry requirements.**

#### Practice Criteria

- 3.2.1** Systems and procedures ensure all eligible employees are timely identified, the appropriate parties are notified, and new participants are entered in the plan as appropriate for each contribution source.
- 3.2.2** Responsibility for eligibility and entry requirements is transferred from employers to service providers to the degree appropriate.
- 3.2.3** Common variations in eligibility requirements can be accommodated without impairing compliance.
- 3.2.4** The eligibility and entry process is automated to the degree appropriate. Manual intervention has been reduced appropriately.
- 3.2.5** The process to manage auto-enrollment provisions promotes compliance.
- 3.2.6** The process to manage special eligibility and entry requirements (e.g., FMLA, USERRA, long-term part-time, breaks in service, rehires) promotes compliance.

### **Practice 3.3: Payroll support promotes a participating employer's ability to transmit contributions, loan repayments, and relevant information correctly and on time.**

#### Practice Criteria

- 3.3.1** The onboarding process prepares employers to submit contributions, loan repayments, and appropriate participant data correctly and on time.
- 3.3.2** There is a process for managing employee classifications and classification changes.





- 3.3.3** Controls are in place at both the employer and service provider, for monitoring deferral limits and timely remission of deferral contributions and loan repayments and making appropriate corrections.
- 3.3.4** There is a process for payroll support of automatic contribution arrangements.

**Practice 3.4: Processes for managing participant events such as loans and distributions are compliant, reliable, and appropriately automated and outsourced.**

Practice Criteria

- 3.4.1** Participant event types are identified for inclusion in processes.
- 3.4.2** Participant transactions are processed in compliance with plan provisions and applicable regulatory requirements such as vesting, available money sources, notices, and tax reporting.
- 3.4.3** Fraud protections are in place.
- 3.4.4** Participant event transactions are automated and outsourced to the degree appropriate.

**Practice 3.5: Support for plan filings and reports promotes compliance with applicable laws and regulations.**

Practice Criteria

- 3.5.1** The trust/custodian solution meets DOL requirements to allow the plan to have an ERISA Section 103(a)(3)(C) audit, if appropriate.
- 3.5.2** ERISA audit support is available for fiduciaries and participating employers.
- 3.5.3** The Form 5500 Annual Report with all required Schedules and attachments is prepared and submitted correctly and on time.
- 3.5.4** Form 1099R returns are completed and submitted to the appropriate parties correctly and on time.
- 3.5.5** Form 5330 is prepared and submitted if and as required in a manner consistent with reporting on the Form 5500.

**Practice 3.6: Annual reconciliation, testing, and valuation processes are designed to catch and correct errors, perform required compliance tests, and complete valuations and reports.**

Practice Criteria

- 3.6.1** There is a process to ensure employers provide all necessary data about the employer, such as key employees, entity ownership, control groups or affiliated service groups, and mergers and acquisitions.
- 3.6.2** Employers are encouraged to diligently validate census information supported by service providers who assist in identifying and correcting defects in the data.
- 3.6.3** Service providers follow an annual reconciliation process designed to ensure data in recordkeeping, trust, and payroll systems is consistent and correct.
- 3.6.4** Required compliance tests are performed and timely corrections are made, including consideration of special rules for MEPS.



- 3.6.5** Supplemental compliance tests are performed as appropriate to catch and correct previously undetected administrative errors such as late contributions or participant eligibility and entry failures.
- 3.6.6** Trust/plan assets are valued and reported in accordance with applicable regulatory requirements.
- 3.6.7** Participating employers are provided reports on the reconciliation, testing, valuation, and trust accounting results.

**Practice 3.7: Support for employer and plan transitions is sufficient to promote compliance with applicable laws and regulations.**

Practice Criteria

- 3.7.1** There is a process for identifying and executing partial and full plan terminations.
- 3.7.2** The process for managing blackout requirements promotes compliance.
- 3.7.3** There is a process for the movement of employees among participating employers which accounts for hours of service and contribution limits, including how the rules differ in MEPS.
- 3.7.4** There is a process to ensure that no distributions are made that would violate the successor plan rule.
- 3.7.5** There is a process to identify and handle orphaned plans in a timely manner.

**Practice 3.8: Records are kept in compliance with legal, regulatory, and contractual requirements.**

Practice Criteria

- 3.8.1** There is a records retention policy that complies with requirements from DOL, IRS, other regulators, and contractual requirements.
- 3.8.2** Records are readily available for personnel, participating employers, and other fiduciaries to review upon reasonable request when and as required.

**Practice 3.9: Systems and procedures accommodate and appropriately address miscellaneous plan features when applicable.**

Practice Criteria

- 3.9.1** There are processes for the disposition of unclaimed property and identifying and locating lost/missing participants.
- 3.9.2** There is a process for beneficiary administration.
- 3.9.3** There is a process for the administration of benefit overpayments.

**Practice 3.10: Substantive changes to services and fees are communicated appropriately to the affected parties.**

Practice Criteria

- 3.10.1** Material changes to fees, services, or settlor rights are communicated to participating employers and fiduciaries in accordance with applicable regulations.



**3.10.2** Material changes in fees and services are communicated to participants and beneficiaries in accordance with applicable regulations.

## **MONITOR**

**Practice 4.1: Operations are reviewed periodically to evaluate fulfillment of substantially all compliance requirements.**

Practice Criteria

**4.1.1** Reviews are conducted at appropriate intervals to evaluate compliance with substantially all requirements under ERISA and the Code.

**Practice 4.2: Plan and service provider audits are incorporated into the monitoring process as appropriate.**

Practice Criteria

**4.2.1** The plan is audited by an independent qualified public accountant if and as required by DOL regulations and the audit is reviewed and acted upon by plan fiduciaries.

**4.2.2** Service providers' cybersecurity practices are audited by an outside (third-party) auditor, and the audits are reviewed and acted upon by plan fiduciaries.

**4.2.3** Fiduciaries review and act upon other service provider audits, if applicable.

