MULTNOMAHGROUP

Governing Without a Safety Net

Fiduciary Best Practices for Governmental Retirement Plan Committees

A GUIDE FOR CITIES, COUNTIES, AND OTHER PUBLIC EMPLOYERS

When Congress enacted the Employee Retirement Income Security Act in 1974 (ERISA), it created something genuinely rare in American law: a comprehensive, uniform fiduciary framework that applies consistently across every private-sector retirement plan in the country. Over the past five decades, ERISA has been interpreted, litigated, and refined into one of the most developed bodies of fiduciary law. Plan sponsors know what it requires. Courts know how to apply it. And the consequences of falling short are well understood.

Governmental deferred compensation plans exist in a different world. Exempt from ERISA, they are governed instead by a patchwork of state statutes, constitutional provisions, trust law principles, and common law fiduciary obligations that vary meaningfully from state to state, and within states, from plan type to plan type. In California, deferred compensation funds are classified as public pension funds under the state constitution, making fiduciary obligations explicit and constitutionally grounded. In Washington, the Uniform Prudent Investor Act imposes trust-law duties on those who manage plan assets. In Texas, the statutory framework addresses state agency plans directly but is less prescriptive for political subdivisions. In Oregon, Idaho, and Montana, the obligations are primarily governed by trust law and general fiduciary principles.

The result is not an absence of duty. It is an absence of uniformity and, too often, of the governance infrastructure that ERISA's framework has compelled private-sector plan sponsors to build. For cities, counties, school districts, and other governmental employers, that gap is both a risk and an opportunity: the risk of operating without the structure the duty demands, and the opportunity to close it deliberately.

This guide is for the HR directors, finance officers, administrators, elected officials, and committee members who oversee governmental deferred compensation plans. It makes the case that ERISA-grade governance is not merely aspirational for public employers; in many states, it is already legally required, and in all states it represents the standard against which governance will be measured if it is ever challenged.

The Legal Landscape: Fiduciary Duty Without ERISA

The Federal Framework

ERISA governs private employer-sponsored retirement plans. Governmental plans are explicitly excluded. That exclusion means governmental plan sponsors are not subject to ERISA's reporting, disclosure, funding, or vesting requirements. But it creates a governance vacuum that plan sponsors sometimes misread as freedom from obligation.

The Internal Revenue Code (IRC) imposes its own requirements on governmental 457(b) plans, commonly called deferred compensation plans. Most important, is the requirement that all assets and income of a governmental 457(b) plan be held in trust for the exclusive benefit of participants and their beneficiaries. That trust structure is not ceremonial. It creates a legally enforceable fiduciary relationship between those who oversee the trust and those who benefit from it. The prudent investor standard, the duty of loyalty, and the duty of impartiality are all hallmarks of trust law, and they apply here.

State-by-State Overview

Six western states demonstrate an active spectrum from constitutionally explicit fiduciary obligations to trust-law-dependent frameworks. The practical takeaway is the same across all six: duty exists, and governance structures should reflect it.

State	Framework	Key Provisions
California	Strongest	California Government Code §53609 classifies deferred compensation funds as public pension or retirement funds under Article XVI, §17 of the California Constitution. Governing boards are constitutional fiduciaries subject to an exclusive benefit rule, a prudent expert standard (stricter than ERISA), and diversification requirements. Courts apply ERISA as an interpretive framework where state law is underdeveloped.
Oregon	Strong	Oregon Investment Council members are designated fiduciaries by statute. Local governments outside OSGP are governed by Oregon's Uniform Trust Code and prudent investor principles. Obligations are clear; the statutory link to deferred comp specifically is less explicit than California's.
Washington	Strong	The Uniform Prudent Investor Act (RCW 11.100) imposes duties of prudence, loyalty, impartiality, and diversification on trustees. Governmental 457(b) plan assets held in trust are clearly subject to these standards. Courts apply ERISA by analogy. Washington's trust law is among the most developed in the region.
Texas	Moderate	Government Code Chapter 609 governs deferred comp. State agency plans are subject to board-of-trustee duty of care tied to ERS standards. For political subdivisions (cities, counties), fiduciary obligations run through trust law and the Texas Uniform Prudent Investor Act. The statutory hook is less direct than CA or OR but liability exposure is real.
Montana	Moderate	MPERA-governed plans operate under Montana Code fiduciary obligations for public retirement systems. MPERA's structure is well-defined. Local government plans operate under Montana trust law and general public fund fiduciary principles, similar to Idaho.
Idaho	Baseline	The Uniform Prudent Investor Act under Title 68 applies to trustees. For local governments operating their own plans, obligations derive primarily from trust law. Idaho has the least explicit state-specific statutory framework of the six states, but fiduciary duty still attaches through trust law and IRC asset-trust requirements for governmental 457(b) plans.

Across all six states, courts have demonstrated a willingness to apply ERISA's standards as a benchmark when evaluating governmental plan governance. Even where state statutes are silent, litigants and regulators look to ERISA for interpretive guidance. Building governance around ERISA's framework is, therefore, not merely aspirational; it is the most defensible approach in any of these jurisdictions.

NAGDCA and Industry Standards

The National Association of Government Defined Contribution Administrators (NAGDCA), the leading professional organization for public-sector DC plan administrators, representing 270 plan sponsors across 49 states, has published a Governance Best Practices Guide specifically for plans exempt from ERISA. Its guidance emphasizes that while state-specific regulations must be followed, the principles of strong governance are consistent: documented processes,

structured committee oversight, clear delegation, and regular review. The alignment between NAGDCA's framework and ERISA's principles is not a coincidence. Sound governance looks similar regardless of the legal vehicle.

The Stakes: Why Governance Quality Matters

Participant Outcomes

For most public-sector employees, the defined contribution plan, whether a 457(b), 401(a), or 403(b), is the primary vehicle for supplemental retirement savings alongside a defined benefit pension. In many governmental contexts, the DC plan bridges the gap between pension income and retirement income adequacy. Social Security, for public employees eligible for it, typically replaces 20–30% of pre-retirement income. A pension may replace another 30–45%, depending on tenure. The deferred compensation plan is often the instrument that closes the rest of the gap.

A committee that meets infrequently, conducts perfunctory investment reviews, allows a recordkeeper to drive the agenda, and documents nothing is not a committee protecting participant outcomes; it is a committee creating a quiet liability. The participant population of a city, county, or agency depends on the people around that committee table in ways that are often invisible until something goes wrong.

> *Inaction is not a neutral act. A committee that fails to review fees, evaluate investment performance, or assess service provider conflicts is making a decision — it is deciding to let conditions persist. That decision carries fiduciary weight.*

Institutional and Reputational Risk

ERISA plan litigation has risen sharply over the past decade, with more than 200 new class action cases filed in 2020 alone. Governmental plans are not directly subject to ERISA claims, but that does not mean they are immune from litigation. Claims under state law, constitutional provisions (particularly in California), and common law trust principles all provide avenues for challenging governance failures. And unlike the private sector, where governance failures primarily create financial exposure, governance failures in the public sector carry reputational and political consequences that extend well beyond the plan.

Courts in ERISA and non-ERISA cases alike have consistently emphasized that the quality of a committee's decision-making process matters more than the outcomes of individual decisions. A committee that followed a thoughtful, documented process and reached a reasonable conclusion is well-positioned to defend itself. A committee with no documented process, no investment policy, and no meeting minutes is not.

Service Provider Conflicts

Recordkeepers and other retirement plan service providers have faced fee compression for years. Their response has been to build revenue streams beyond recordkeeping, through proprietary investment products, managed account programs, financial wellness platforms, and participant data monetization. None of this is inherently inappropriate. But it means that the agenda a recordkeeper brings to a committee meeting is not always the same as the agenda that serves plan participants.

A well-governed committee understands that its service providers have their own commercial interests. Monitoring those interests; understanding indirect compensation; evaluating the real cost of proprietary products; and assessing whether the services delivered justify the fees charged are fiduciary obligations regardless of whether ERISA applies.

The absence of Form 5500 filing requirements and 408(b)(2) disclosures in the governmental space makes this vigilance more important, not less.

Forming and Structuring a Governance Committee

The Case for a Formal Committee

Most plan sponsors, governmental and private alike, have at least some committee structure in place. Among ERISA plans, fewer than 5% operate without a committee. In the governmental space, informal structures are more common: a single HR staff member handling administrative functions, a finance officer making investment decisions without a formal deliberative process, or an elected board that reviews the plan annually without specialized expertise or preparation.

These informal structures worked when plans were simpler. They are not adequate for the complexity that exists today. Investment menus have expanded. Fee structures have become more opaque. Cybersecurity and missing participant obligations have been added to the list of governance requirements. Participant expectations for retirement income adequacy have risen. A committee with formal structure, defined roles, and documented processes is not bureaucratic excess; it is the minimum infrastructure required for competent oversight.

Committee Structure

Committees come in several configurations. The appropriate structure depends on plan size, complexity, and available organizational resources:

- A single committee handling all plan responsibilities (investments, administration, vendor oversight, and compliance) is the most common structure, appropriate for most mid-size governmental employers.
- Larger organizations may benefit from separating investment oversight and administrative oversight into distinct committees, with clear delegation between them.
- Very small governmental employers may have limited internal capacity and should consider whether engaging an investment consultant as a delegated fiduciary (analogous to ERISA's 3(38) model) is appropriate.

Regardless of structure, the key is formalization. The committee's composition, authority, and responsibilities should be documented in writing before it begins operating.

Committee Membership

Committee members do not need to be retirement plan experts. They do need to be qualified to serve and willing to fulfill the duty they accept. Typical governmental deferred compensation plan committees draw membership from:

- Human Resources: responsible for plan administration, eligibility, and participant communication
- Finance or Treasury: responsible for investment oversight, fee monitoring, and financial controls
- Legal or Risk Management: responsible for compliance, contractual review, and liability management
- Senior Leadership (City Manager, CFO, or equivalent): responsible for strategic alignment and board reporting

Including fire and public safety personnel, such as firefighters and law enforcement, on deferred compensation plan committees is a strategic best practice. These groups represent a highly engaged and influential segment of a

municipality's workforce, with distinct retirement timelines and financial planning needs. Because they often retire earlier than other employees, they are uniquely positioned to benefit from specialized provisions in the Internal Revenue Code that a well-structured plan can intentionally incorporate. Their participation can enhance the relevance and effectiveness of the plan and support strong, collaborative labor-management relationships.

Committee appointments should be in writing, should acknowledge the fiduciary obligations being accepted, and should specify the term of service. Continuity matters. Committee turnover without proper knowledge transfer creates governance gaps. The governing body (council, board, or commission) should formally appoint committee members and should receive regular reports on committee activities.

Core Governance Documents

The Committee Charter

The committee charter is the foundational document of plan governance. It defines who the committee is, what authority it has, and how it operates. A well-drafted charter reduces ambiguity, clarifies accountability, and provides a reference point when governance questions arise. It is also one of the first documents a regulator, litigant, or auditor will request.

A complete charter should address:

- Purpose and scope: the plans and plan types covered by the committee's authority
- Membership: how members are appointed, the term of service, and the process for replacement
- Roles and responsibilities: the specific duties assigned to the committee as a whole and to individual members
- Delegation authority: the committee's authority to engage external consultants, investment managers, and service providers
- Meeting frequency and quorum: the minimum number of meetings per year and the requirements for a valid meeting
- Decision-making process: how decisions are made, documented, and communicated
- Reporting obligations: how the committee reports to the governing body

The charter should be adopted by formal resolution of the governing body (council, board, or commission), not merely by the committee itself. This anchors the committee's authority in the organization's governance structure and reinforces the fiduciary chain from governing body to committee to participants.

The Investment Policy Statement

The Investment Policy Statement (IPS) is the committee's written framework for investment decision-making. While the charter governs how the committee operates, the IPS governs how investment decisions are made. Together, these two documents constitute the foundation of defensible governance.

The IPS should establish:

- The investment objectives of the plan and the characteristics of the participant population
- The criteria for selecting investment options, including quantitative performance standards, qualitative factors, and vehicle preferences (mutual funds, CITs, stable value, etc.)
- The monitoring framework: how frequently investments are reviewed, what thresholds trigger a watch list placement, and what actions are available in response to watch list status

- The criteria for removing and replacing investment options
- The policy for the plan's qualified default investment alternative (QDIA), if applicable
- The approach to investment menu design, including diversification across asset classes, risk levels, and participant life stages

The IPS should be reviewed at least annually and updated whenever material changes occur in plan design, participant demographics, or available investment vehicles. A committee that has an IPS but does not follow it is in a weaker position than a committee that has no IPS at all. The document creates an expectation, and deviation from it without documented justification is a governance failure.

Running Effective Meetings

The Annual Fiduciary Calendar

A well-governed committee does not operate reactively. It plans its agenda for the year in advance, ensuring that all required reviews are completed, all regulatory changes are evaluated, and all participant-facing initiatives are tracked. The annual fiduciary calendar is the mechanism for that planning.

A governance calendar for a governmental plan should include:

- Q1 — Annual planning and goal-setting: Review prior year outcomes, establish plan objectives for the current year, assess participant enrollment and savings rate data
- Q2 — Service provider review: Formal evaluation of recordkeeper performance, fee benchmarking, review of service agreements, assessment of conflicts of interest
- Q3 — Investment governance: Comprehensive investment menu review, IPS compliance check, evaluation of watch-listed funds, review of plan design elements such as QDIA and investment tier structure
- Q4 — Compliance and operational review: Plan document review, regulatory update, participant communications review, assessment of cybersecurity and missing participant protocols

In addition to these quarterly themes, every meeting should include review and approval of the prior meeting's minutes, a market and investment performance update, and discussion of any regulatory developments or participant inquiries of note.

Meeting Preparation

Materials should be distributed to committee members sufficiently in advance of each meeting to allow for meaningful preparation. Agendas should distinguish between action items (decisions the committee is being asked to make) and information items (updates or discussions that do not require formal action). This distinction helps members understand what will be expected of them and keeps meetings focused.

If the committee uses an external investment consultant, it is good practice for one or two committee members to preview materials with the consultant in advance of the full meeting. This allows for clarifying questions to be resolved before the meeting, ensures alignment on recommendations, and makes the formal meeting more productive.

Documentation and Minutes

Meeting minutes are the committee's primary evidentiary record. In any challenge to committee decisions, whether by a regulatory authority, a participant, or a governing body, the minutes will be the first document examined.

Minutes that consist only of attendance records and a list of topics discussed provide very little protection. Minutes that document who attended, what information was reviewed, what questions were asked, what outside expertise was consulted, and why the committee reached the conclusions it did provide significant protection.

Minutes should be reviewed and formally approved at the subsequent meeting. They should be retained in the committee's governance file for a minimum of seven years. For governmental employers subject to public records laws, committee minutes may be subject to disclosure; this is not a reason to document less. It is a reason to document accurately and professionally.

Decision items require particularly thorough documentation. The record should reflect not only the decision made but the deliberative process that preceded it: the information reviewed, the alternatives considered, the expertise consulted, and the rationale for the conclusion reached. For investment decisions, this means documenting the investment review process, the data evaluated, the consultant's recommendation, and any dissenting views.

Fiduciary Education and Ongoing Development

Fiduciary responsibility should not be assumed; it must be taught and reviewed. New committee members, in particular, may not fully appreciate the obligations they have accepted. They may know that they are "on the deferred compensation plan committee" without understanding what that means from a legal and practical standpoint. Regular, structured fiduciary education addresses this gap.

Fiduciary education should cover:

- The basics of fiduciary duty (loyalty, prudence, diversification, adherence to the plan document) and how they apply in the governmental context
- State-specific legal obligations, including any constitutional or statutory provisions that apply to the employer's specific plan type
- Current regulatory developments: IRS guidance, DOL direction (including any interpretive influence on governmental plans), and state-level changes
- Emerging governance topics: cybersecurity, missing participants, retirement income, and plan design innovations
- The committee's own governance documents

Education should not be a one-time event. It should be a standing component of the committee's annual calendar, with at least one dedicated session per year and shorter updates incorporated into regular meetings. As the complexity of deferred compensation plan governance continues to grow, a committee that stops learning stops governing effectively.

Service Provider Oversight

Governmental deferred compensation plans rely on a network of service providers: recordkeepers, investment managers, consultants, custodians, and, in some cases, third-party administrators. Each of these relationships requires active oversight. The selection of a service provider is a fiduciary act. The ongoing monitoring of that provider is equally a fiduciary obligation.

Best practices for service provider oversight include:

- Conducting a formal request for proposal (RFP) process at least every five to seven years for the recordkeeping relationship, and documenting the evaluation process and selection rationale

- Reviewing total plan costs annually, including both direct fees and indirect compensation received by service providers through revenue sharing, fund expenses, or other mechanisms
- Benchmarking fees and services against comparable plans to assess reasonableness
- Reviewing service agreements to understand what is included, what is billed separately, and where the provider's commercial interests may diverge from the plan's interests
- Documenting the rationale for retaining or replacing service providers

For governmental plans, the absence of ERISA's 408(b)(2) fee disclosure framework means that indirect compensation is often less transparent than in the private sector. Committees should affirmatively ask their recordkeepers and consultants about all sources of revenue related to the plan, including revenue sharing from investment managers, and should evaluate whether those revenue streams affect the advice and recommendations they receive.

A Path Forward: Implementing ERISA-Grade Governance

Transitioning from an informal governance arrangement to a structured, documented, and defensible governance program does not happen overnight. It is a sequential process that begins with understanding and progresses through documentation, formalization, and continuous improvement. The following steps provide a practical framework:

- **Step 1.** Assess your current state.
  - Do you have a committee charter? Is it current?
  - Do you have an Investment Policy Statement? Does your investment process follow it?
  - Are committee meetings documented with substantive minutes?
  - Has the committee received fiduciary training in the last 12 months?
  - Have service provider fees been benchmarked recently?

- **Step 2.** Establish or update foundational documents.
  - Draft or revise the committee charter to reflect the current structure, membership, and authority.
  - Review the IPS for alignment with the current investment menu, participant demographics, and plan objectives.
  - Build an annual fiduciary calendar that ensures comprehensive coverage of all governance obligations.

- **Step 3.** Formalize the meeting process.
  - Establish a standard agenda template that distinguishes action from information items.
  - Implement a materials distribution protocol with sufficient advance time.
  - Upgrade the quality and detail of committee minutes.

- **Step 4.** Invest in education and ongoing development.
  - Schedule an annual fiduciary education session.
  - Ensure new committee members receive orientation before their first meeting.
  - Stay current on state-specific legal developments affecting your plan type.

- **Step 5.** Engage independent expertise.
  - Consider engaging a fee-only investment consultant who serves as a fiduciary to the plan and has no revenue-sharing arrangements with service providers.
  - Ensure your consultant understands the governmental plan environment and the state law framework applicable to your organization.

Conclusion

ERISA may not apply to governmental deferred compensation plans, but the obligation to govern them responsibly does. In California, that obligation is constitutionally grounded. In Oregon, Washington, Texas, Montana, and Idaho, it flows through state trust law, statutory frameworks, and the common law of fiduciary duty. In all cases, regulators and courts look to ERISA as the standard of comparison when evaluating whether a committee met its obligations.

The good news is that strong governance is achievable. It does not require elaborate legal infrastructure. It requires a formal committee, a clear charter, a thoughtful Investment Policy Statement, disciplined meeting practices, quality documentation, and a commitment to ongoing learning. These are not burdens, but rather, they are the tools that allow a committee to govern with confidence, protect participants with diligence, and defend its decisions with evidence.

For the employees of cities, counties, and other governmental employers, the deferred compensation plan committee may be the most consequential financial institution in their lives. The governance quality of that committee will shape the retirement security of people who may have little else to fall back on. That is not a small responsibility. It deserves a structure equal to its importance.

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