

# “What keeps you up at night?”

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## Benefit programs for nonprofits: Why look for trouble?

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If you are a Board member of a nonprofit organization or an employee with executive responsibilities, you already know of the fiduciary obligations that come with such service. Board members and executives should carry out their duties in a careful way, showing loyalty to the organization and its goals. Many nonprofits offer benefit programs for employees, including retirement plans, health insurance and other types of benefits, and this adds another layer of fiduciary responsibility. The Employee Retirement Income Security Act (ERISA) imposes obligations on those who manage such plans. The requirement is that plans be administered with the care, skill and diligence of a prudent person. It sounds easy, but these few words have generated a mountain of lawsuits.

There are two reasons why concerns about the management of benefit plans have become more important in recent times. One is the spectacular fraud committed by Bernard Madoff, and perhaps others, which included theft of millions of dollars from retirement plans. The other is the growing interest of the Internal Revenue Service in governance issues for nonprofits, and particularly in ensuring that nonprofits have policies in place that help to prevent problems.

Most people didn't invest with Madoff or any of the other advisors who have now been accused of misdeeds. But it is certain that other people are currently devising schemes to try to transfer other people's money to themselves. How can nonprofits avoid becoming victims?

As with most problems, the solution is to be careful, and to follow the detailed rules in ERISA on how to manage benefit plans. For example:

- Do you have bonding and fiduciary responsibility insurance for your retirement plans? Bonding is required for qualified retirement plans, and fiduciary responsibility insurance, which is similar to D&O insurance, is a valuable protection.
- Have you taken steps to ensure that your service providers are skilled and responsible? Do you have information about the financial condition of the firm chosen, its experience and qualifications and its business practices?

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- Do you know what fees are being charged, express and embedded, by providers? This is often difficult to determine without professional analysis.
- Are you taking steps to monitor service providers on a regular basis? This includes reviewing their actual performance on the job, carefully reading reports, checking the fees actually charged, and responding to complaints from plan participants.
- Has all reporting and disclosure required by law been done? There are severe penalties for failing to carry out the required reporting and disclosure, and government programs have been established to help people who come forward to clear up such failures.

The key to avoiding problems is to know your responsibilities, to determine how and by whom they will be carried out, and to document what decisions you make and how you reached them.

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