


**InFRE® Retirement Plan
Administrator Series**

**Fundamentals of
Compliance & Ethics**

Part 3

Presented by
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Willett Consulting

FUNDAMENTALS OF COMPLIANCE AND ETHICS
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Workshop Overview

This workshop is designed for all parties responsible for a retirement plan, particularly those who have a fiduciary role.

It is intended to provide a basic understanding of what is required to ensure the retirement plan complies with governing federal tax laws.

It also discusses the ethical principles that should govern plan administrators, board or committee members and other fiduciaries.

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Course Topics

- Introduction to Governmental Regulation
- Fiduciary Role and Responsibilities
- Compliance in Form
- Compliance in Operation
- IRS Corrective Programs
- Reporting
- The Role of Independent Professionals in Plan Operation
- Ethics for Retirement Administrators

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Today's Webinar Agenda

- Text Book Chapters
 6. Reporting
 7. The Role of Independent Professionals in Plan Operation
 8. Ethics for Retirement Administrators



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Chapter 6

Reporting



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Overview

- Reporting requirements differ between public and private sector plans
- Plans subject to ERISA have specific requirements that must be complied with regarding reports to the Department of Labor and participants
- Public sector plans often consider requirements as best practice guidance

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Financial Statement Requirements

- Governmental Accounting Standards Board (GASB) establishes guidelines for public sector retirement systems
 - Financial Accounting Standards Board (FASB) governs private sector entities
- GASB standards are not mandatory for state and local governments
- If GASB not met the government entities bond rating could be jeopardized

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Plan Financial Statements

- Defined benefit plans
 - Define the state of the pension plan and identify the assets available for benefits
 - Identify funding obligations and are used by actuary in making funding assumptions
- Defined contribution plans
 - Allow participants and beneficiaries to receive a complete and accurate statement of their account

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Financial Statement Components

- **Statement of Plan Net Assets**
 - Shows assets and liabilities on a given date
- **Statement of Changes in Plan Net Assets**
 - Shows inflow and outflow for a specified period



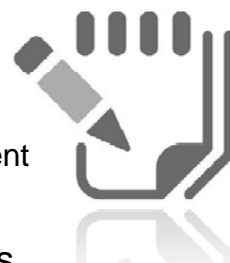
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Financial Statement Components

- **Schedule of Funding Progress**
 - Shows the unfunded actuarial accrued liability both as absolute dollars and percentage of covered payroll for current and past five years
- **Schedule of Employer Contributions**
 - Shows the annual required contribution for the employer and how much the employer actually contributed to the plan



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Plan Compliance Reports

- **Investment Performance Report:** monitors the retirement plan's investment
 - DB plan: monitors trust investments to ensure compliance with investment policy statement (IPS)
 - DC plan: monitors investment menu to ensure continued appropriateness for participant investments and consistency with IPS parameters

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Plan Compliance Reports

- **Plan Statistics Report**
 - DC Plans: Participant demographics (age, deferrals), portfolio diversification, deferral allocations, distribution statistics
 - DB Plans: demographic profile of participation base (age, service trends, actuarial assumption summary, funding status of trust fund.
- **Contract Compliance Report:**
 - monitors outsourced service providers; performance standards

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Summary Plan Description (SPD)

- Requirement under ERISA and applicable to private sector plans
- Explanation of the plan for participants and must be written in easily understood language
- Provides participants with key information
 - Eligibility requirements
 - Benefit descriptions
 - Claims procedures

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Summary of Material Modification (SMM)

- ERISA requirement
- Prepared and distributed to participants to describe any material modifications or changes to the plan identified in the SPD
- Particularly important when plan must be modified to comply with governing laws or regulations

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Participant Benefits Statement

- Although not mandated for public sector plans, considered a best practice
 - Quarterly for participant directed DC plans
 - Annually for all other DC plans
 - Every three years for DB plans
- Content varies by plan type
- *Potential future requirement for DC plans: illustration of lifetime income based on accumulated assets*



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Participant Directed DC Plan

- Statements include:
 - Value of each investment with allocated assets
 - Explanation of any investment limitation or restriction
 - Explanation of the importance of a well-balanced, diversified portfolio
 - Direction to sources of investment information at the DOL Web site at www.dol.gov
- Specific information about fees and cost for participating in the plan should be provided

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402(f) Notice

- Applies to all public and private sector plans including 457(b) plans
- Notice must inform participants and beneficiaries
 - Rights to elect direct rollovers
 - Mandatory 20% withholding rules if not rolled
- Must be provided between 30 and 180 days of lump sum distribution
- IRS provides two model 402(f) notices

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Explanation of QJSA & QPSA

- State and local laws generally govern public sector plans
- Qualified joint survivor annuity (QJSA) is lifetime benefit paid over lives of participant and surviving spouse
- Qualified pre-retirement survivor annuity (QPSA) is benefit paid to surviving spouse if vested participant dies before distribution
- Explanations of each must be provided to participant and spouse

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Availability of Information



- Open records laws generally apply to public sector plans
- Type of information that should be made available includes
 - Plan document
 - Trust agreements
 - Summary plan description
 - Participant statement
 - Contracts
 - IRS determination letter

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Electronic Reporting - IRS

- Required notices provided electronically must meet IRC regulations
- Must be reasonably designed and in a manner as easily understandable as paper
- Form must be capable of being retained and reproduced for later reference
- Participants generally must provide prior consent

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Electronic Reporting - DOL

- Only applicable to private sector employers; may be considered best practice guidance for public sector
- Two safe harbor rules
 - Electronic delivery through work e-mails
 - Prior consent provided by recipients
- Electronic delivery must verify receipt
- System must protect confidentiality

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Fiduciary Responsibility


- Annual report can capture all required notices/reports to demonstrate fiduciary responsibilities have been met
- Although public sector plans are exempt from many reporting requirements, many are adopted as best practice
- Participant reporting is crucial to demonstrate the value of this important benefit

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Chapter 7

The Role of Independent Professionals in Plan Operation



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Overview

- A variety of professionals are needed for the successful operation of a retirement plan
- Plan type (i.e., DB or DC; primary or supplemental) will dictate the type of professionals that will be required
- All in-house and outsourced providers must have a comprehensive understanding of the plan and their specific responsibilities

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Attorney

- Types of services provided by an attorney include
 - Drafting the plan document
 - Representing the plan with the IRS and negotiating solutions
 - Evaluate legitimacy of qualified domestic relations orders
 - Interpreting changes in federal laws and regulations

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Accountant

- Generally services will be provided by a certified public accountant (CPA) for
 - General tax consulting
 - Financial statements and audits
- Audits may be required to be performed by an independent auditor
 - State statutes may dictate certain requirements
 - ERISA offers best practice guidance
- Errors or defects identified in an audit may need to be corrected via the EPCRS

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Actuary

- Actuaries specialize in specific type of benefit
 - Life and health contingencies
 - Risk and insurance premiums
 - Valuation of pension plans
- Actuaries used by public sector employers hold one or more actuarial credentials
- ERISA plans are required to use enrolled actuaries to certify DB plan information

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Investment Professionals

- Registered Investment Advisor (RIA)
 - Licensed by the state or Security and Exchange Commission (SEC) to offer advice
 - May be delegated certain trustee duties as a co-fiduciary
- Registered Representative (RR)
 - Licensed to buy and sell securities on behalf of client
 - Must also be an RIA to offer investment advice

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Investment Consultant

- May be an RIA or RR and contracted to
 - Develop investment policy statements
 - Help select and monitor investments
 - Educate participants about investments
 - Provide investment guidance or advice
 - Conduct enrollment meetings and investment workshops

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Investment Manager

- Generally will be an RIA
- Actively engaged in buying/selling investments of a portfolio or fund
- Plan's investment policy statement will provide guidelines to fund managers

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Plan Administrator

- Responsible for day-to-day operation of the plan to ensure compliance with federal and state laws
- Role of plan administrator may involve
 - Hiring professionals and managing contracts
 - Establishing policies and procedures
 - Approving or denying benefit claims
 - Managing distribution of benefits, preparation of participant statements
 - Developing fiduciary reports and communications

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Third Party Administrator (TPA)

- Generally performs ministerial functions
 - Applying eligibility rules
 - Calculating benefits and processing claims
 - Preparing communications
 - Keeping records
 - Preparing participant statements and fiduciary reports

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Government Audits



- IRS audits can be triggered by
 - Random selection
 - Complaints from individual or group
 - Information generated from unrelated audit or review
- Audits evaluate compliance with IRC, such as benefit and contribution limits
- Audits by State auditor or similar government entity

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Fiduciary Issues

- Structure and administration of retirement plans under intense scrutiny
- One of the most important role for plan administrators is ensuring fiduciaries have sufficient education and training on their duties to participants and beneficiaries
- *Educated fiduciaries = well managed plan*

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Chapter 8



Ethics for Retirement Administrators

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Overview

- Ethical decisions are not always clear
- Goes beyond what is legal, to determine what is ethically right
- Workplace environment and organizational leadership can have a positive influence on ethical decisions
- InFRE Code of Ethics identifies acceptable, ethical behavior for professionals

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What is Ethics?

- System of moral principles
- Deals with right versus wrong based on the profession's rules of conduct
- For ethical situations, the answer is not always clear



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Ethical Behavior

- How do you behave when you think no one is looking?
- Knowing the difference between
 - *What you have a right to do*
 - *What is the right thing to do*
- What is your personal responsibility, beyond the law

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Law and Professional Ethics Code



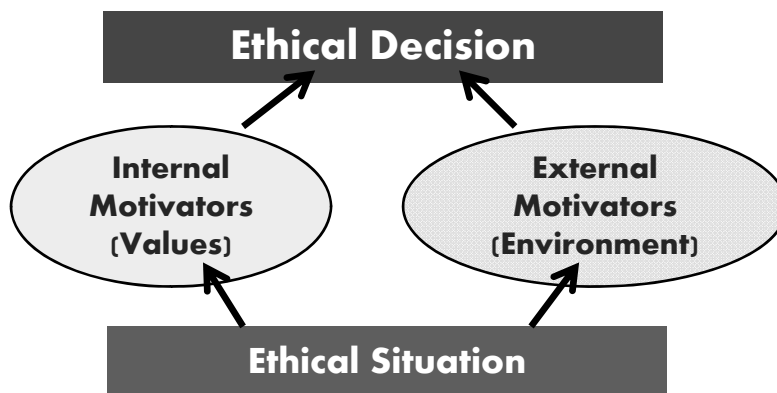
- Ethics goes beyond legal rules
- Conflicts of interest are good examples of ethical dilemmas that are not governed by law
- InFRE code of ethics was established to provide guidance on acceptable behavior for retirement plan professionals

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Making Ethical Decisions



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Approach to Ethical Decisions

- Conventional approach: Compares actions to what is considered the prevailing norm to justify conduct
 - “everyone does it” – i.e. taking office supplies
- Utilitarianism approach: Considers the greatest good for the greatest number of people to determine if a decision is ethically sound
 - Consider Robin Hood...

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Principle Of Rights

- Considers one’s duty or obligation
- Individual’s rights take priority
- Moral principles guide decision regardless of consequences
 - Honesty, Fairness
 - Loyalty, Trustworthiness
 - Respect for others

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Golden and Platinum Rules

Golden Rule

- *Do unto others as you would have them do unto you*
- Considered the “natural law”

Platinum Rule

- *Do unto others as they would have you do unto them*
- Considers what would be right from the other person’s perspective

Workplace Environment

- Culture at work is a powerful influence on one’s ethics
- Does the organization as a whole
 - Respect authority and the organizational structure
 - Commit to group success
 - Recognize and reward team players
 - Reject pressure for bottom-line results
 - Not penalize “messengers of bad news”
 - Conform to expectations of behavior

Studies show that when it comes to dealing with ethical dilemmas on the job, influences within the organization play a significant role



For example, behavior of immediate supervisor shown to have the most impact on our actions

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Role of Leadership

- Organizational leaders have a responsibility to set the tone by
 - Setting an example
 - Rewarding ethical behavior
 - Discouraging unethical behaviors



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InFRE Code of Ethics

- Addresses situations that retirement counselors, administrators, and other financial professionals are likely to face in professional activities
- Affirmation of increased importance of retirement administration, planning, education, counseling and advice

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Principle # 1

*Comply with the letter and spirit
of all federal and state laws that
regulate advice, services,
records, and transactions
applicable to retirement planning
or retirement administration*

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Principle #2

Act always in the best interest of the individual retirement plan participant for whom services are performed; and, when performing services for a retirement plan as a whole, act in the best interest of all persons who have rights under the plan

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Principle #3

Never disclose confidential information about the finances or status of a particular plan participant unless authorized by the participant or by law

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Principle #4

Be truthful and forthright in all communications relating to retirement services and transactions

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Principle #5

Perform all retirement services competently, diligently, and according to the highest professional standard; maintain the necessary specific knowledge and expertise to do so, and decline any activity that cannot be competently performed

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Principle #6

Conduct activities relating to the retirement profession under the highest standards of personal and professional integrity; and in ways that reflect creditably on the profession

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Principle #7

- *To all persons for whom services are provided by the Certificate Holder,*
 - Disclose all sources of compensation,
 - The identity of any person or entities paying the compensation,
 - And any material fact about the compensation that is necessary to understand potential adverse interest

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Principle #8

Supply material information relating to the transaction or service to the person for whom services are performed (including information that is not requested), if such information is generally recognized as necessary to any informed decision

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Case Study Examples

- Examining case studies (pages 8-16 to 8-21) can help you understand the application of ethics in real life situations
- Take time to review each study after this Webcast and document how you would personally handle each situation
- Working through these in a group can provide additional insights

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Practical Steps

- Gather information
- Consider results of alternate courses
- Identify ethical obligations
- Consider personal character and values
- Check for established policies
- Confirm with others (as appropriate) on decisions

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Case Study #1

- The retirement counselor invites a registered representative to conduct a seminar on the plan's investment options
- Counselor's goal is to increase enrollments
- Representative will receive a commission on the investment decisions
- Counselor and representative agree not to mention commissions

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Case Study #2

- A financial education program is established by the retirement specialist
 - Although the budget is adequate, specialist uses cheapest and easiest approach
 - Materials are generic and do not adequately relate to the plan
- Specialist rational for using this approach
 - It is better than nothing
 - Boss will be impressed because of lower costs

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Case Study #3

- A board member seeks investment counseling
- Counselor learns that the member's annual salary is \$100,000
- A best friend of the counselor is in a similar position in a different city office and makes considerably less salary
- The counselor shares this information with the friend who uses this to obtain a pay raise

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Case Study #4

- A long-term employee is seeking advice about early distributions from 401(k) account to help fund a grandchild's education
- The participant is 60 years of age and, although not yet retired, is eligible for a withdrawal
- The participant wants to retire at 65, but does not want to discuss the impact of the early withdrawal on future retirement income
- The counselor processes with application with no discussion of retirement issues or concerns

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Case Study #5

- A retirement counselor receives a call from a friend to request a beneficiary designation form for her mother, who is a retired participant
- The friend wants the counselor to send the form directly to her because the mother is ill and may be upset by the form

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Case Study #6

- The Plan administrator, who is responsible for hardship withdrawal decisions, determines an applicant does not meet IRC rules for a withdrawal
- A board member mentions to the administrator that a nephew has requested this withdrawal and should be given extra consideration
- Administrator discusses concern about this situation the next day with a coworker

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Recap of Today

- Text Book Chapters
 6. Reporting
 7. The Role of Independent Professionals in Plan Operation
 8. Ethics for Retirement Administrators



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Evaluation

REMINDER: PLEASE COMPLETE
THE EVALUATION THAT POPS UP
WHEN YOU LEAVE THE WEBINAR

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Any Questions?



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