

# Reducing 403(b) plan litigation risk

Why fee benchmarking and recordkeeper search are part of strong governance

## Changing fiduciary landscape

The fiduciary landscape has fundamentally changed for organizations that sponsor ERISA 403(b) plans, and there has been an uptick in lawsuits for imprudent plan management. Some defendants are appealing multimillion-dollar damage awards, while others are facing significant settlements on topics ranging from excessive fees to failure to monitor revenue sharing to overlapping and underperforming investments.

Under ERISA, plan fiduciaries have always had the responsibility to ensure that the cost of plan services is reasonable, so cost oversight is not a new issue. In recent years, however, 403(b) plan litigation and regulatory scrutiny have increased, and many 403(b) plan sponsors have struggled to keep up.

## Fee benchmarking and recordkeeper search

If you are a plan fiduciary who oversees a 403(b) plan, how do you know that plan fees are reasonable for the services provided? How can you demonstrate that having multiple recordkeepers is in the best interest of plan participants? How can you demonstrate prudent plan management in the event of a lawsuit?

Conducting regular fee reviews and, when warranted, a formal recordkeeper search can answer these questions and more.

### Fee benchmarking

We recommend that most 403(b) plan sponsors conduct fee benchmarking every one to three years. Our approach is informed by years of experience and focuses on the areas that expose plan fiduciaries to the most risk. We leverage our experience as a leading defined contribution recordkeeper search partner to help our 403(b) clients evaluate their existing fees and negotiate more competitive arrangements.

### What is included in a 403(b) plan fee review?



**Step 1:** Inventory fees, including direct and indirect fees paid by the employer, the plan and plan participants.



**Step 2:** Benchmark fees against other comparable employer retirement plans.



**Step 3:** Assess capabilities and employer/participant services against comparable recordkeepers. Research the lowest available share class and analyze the impact of using lower-cost options on total plan expenses.

## Recordkeeper search

Following a fee benchmarking review, plan sponsors often find that a formal recordkeeper search is necessary in order to confirm cost and service competitiveness. We recommend that most 403(b) plan sponsors conduct a recordkeeper search every five to seven years.

Willis Towers Watson has extensive knowledge of the recordkeeper community.

**We have conducted more recordkeeper searches and market studies on behalf of our clients in the mid- to large-plan market than any other consulting company, which gives our experts a deep understanding of each provider's strengths and weaknesses.**

We leverage that expertise and our strong recordkeeper relationships to help our clients secure competitive fees, receive superior service and fulfill their fiduciary obligations.

Our process helps uncover many opportunities to improve or introduce new services to plan participants. It also minimizes administrative fees and fiduciary risk, while creating more value to you and your plan participants. Often we find that favorable outcomes can be accomplished without the need to change providers.

## Challenge areas for 403(b) plan sponsors

### *What challenges do 403(b) plan sponsors face that call for additional support?*

- **Multiple recordkeepers:** Most annuities cannot be record-kept on all recordkeeper platforms. This means that sponsors seeking to consolidate their administrative platforms may need to consider an alternative arrangement.
- **Investment manager choice:** Because 403(b) plans are limited to mutual funds and annuities, costs may be higher than large 401(k) plans that can use commingled investment trusts and separate accounts. This can limit investment manager options.
- **Governance and decision making:** Decision making at tax-exempt organizations tends to require input from a diverse group of stakeholders. Employee populations – particularly in higher education and health care – tend to be very diverse, which can introduce additional communications and change management challenges.

## Why Willis Towers Watson?



### **Independence**

We do not receive revenue from providers and do not charge providers for their participation in searches.



### **Recordkeeper database**

We benchmark fees against our proprietary Retirement Services Vendor Database (not requests for information or surveys), which contains over 35 recordkeepers and includes over 3,000 data elements on each provider's services. Data are reviewed and updated on at least a semiannual basis.



### **Market knowledge**

We regularly conduct onsite due diligence visits of major outsourcing providers that specialize in the 403(b) plan space and maintain numerical rankings of recordkeeper strengths and weaknesses based on these visits.



### **403(b) expertise**

We understand how 403(b) recordkeepers do (and do not) work together in a multiple provider arrangement. We have a deep understanding of the various pricing models offered by 403(b) recordkeepers, which is particularly important given the complex provisions of some 403(b) annuity contracts.

## About Willis Towers Watson

Willis Towers Watson (NASDAQ: WLTW) is a leading global advisory, broking and solutions company that helps clients around the world turn risk into a path for growth. With roots dating to 1828, Willis Towers Watson has 45,000 employees serving more than 140 countries and markets. We design and deliver solutions that manage risk, optimize benefits, cultivate talent, and expand the power of capital to protect and strengthen institutions and individuals. Our unique perspective allows us to see the critical intersections between talent, assets and ideas – the dynamic formula that drives business performance. Together, we unlock potential. Learn more at [willistowerswatson.com](http://willistowerswatson.com).



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