



# A Guide to Institutional Fiduciary Consulting Services

Comprehensive Solutions for Retirement Plans

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## Who we are

The Spano Group are wealth managers working as fiduciary consultants for businesses regarding their retirement plans. We are dedicated to providing financial services to help institutions, corporations, and individuals manage financial resources in a compliant and fiduciary capacity. We deliver solutions that are designed to meet each client's unique long term goals and objectives.

In the desire to provide the best services available, The Spano Group has contracted Freedom Financial Advisors with their over 100 years combined experience, to serve as Fiduciary Consultants. Freedom's dedicated advisors will work closely with your team providing answers and support for your fiduciary concerns.





## Your partner in complex retirement strategies

As a full capacity consulting group, we provide clients with objective guidance regarding their unique retirement plan objectives. We provide **expertise in defined contribution, defined benefit and non-qualified plans**. We operate as a fiduciary under the strict rules of ERISA, IRS and SEC Law providing the following consulting services:

- Needs assessment and competitiveness evaluation of the current plan
- Direction for corporate fiduciaries in a constantly changing regulatory environment
- Support and training in fulfilling your fiduciary responsibilities
- Provide plan governance, verifying documents and fiduciary policies
- Annual investment reviews of performance and fees
- Identifying and working with the most qualified service providers- placing them in a competitive position to "earn" your business
- Provide structure to help mitigate liability and risk
- Make sure employees are receiving the right education to make informed investment decisions
- Service provider search and benchmarking through the RFP process
- Ongoing reviews communicating on the plan performance, compliance and expenses



# What is a Fiduciary?

**ERISA**, the Employee Retirement Income Security Act of 1974, sets the standards of conduct for those who manage a retirement plan and its assets. A person or entity that manages a plan and its assets is called a fiduciary. A fiduciary's responsibilities include ensuring that:

1. Fees are reasonable and not excessive,
2. Terms outlined in plan documents are followed,
3. Investments are diversified, and
4. Decisions about the plan and investments are made in the best interests of participants (and their beneficiaries).
5. Act with care, skill, prudence and diligence
6. Act solely in the best interest of plan participants and beneficiaries
7. Cybersecurity of plan providers

**Key takeaway:** If an employer fails to act in a way that upholds fiduciary duty, for example, by failing to make decisions in the best interest of their employees, they may be held personally liable.



# ERISA Fiduciary Responsibilities

<b>1. Act solely in the best interests of plan participants and their beneficiaries</b>	Your actions must be for the exclusive purpose of providing benefits to plan participants and ultimately their beneficiaries. You must disclose and avoid any and all conflicts of interest, and must never act with any intent to benefit yourself above others.
<b>2. Carry out your duties with prudence</b>	Always exercise skill, care, and diligence in your fiduciary responsibilities and be able to prove it. This requires a thorough investigation and documentation process for all decisions. If you don't have the expertise or ability to manage certain plan aspects, you're required to hire a competent professional who does.
<b>3. Diversify plan investments</b>	The plan must provide investment options which can be diversified enough to avoid large losses and allow participants to vary their investment risk and returns.
<b>4. Follow the plan documents</b>	Plan documents serve as the basis for plan operational and management decisions. You may not deviate from them.
<b>5. Ensure plan expenses are reasonable</b>	You must investigate, analyze, hire, and monitor plan service providers which charge reasonable fees. <b>This is the single largest area the Department of Labor is investigating and plan fiduciaries are failing at!</b>



82% of plan sponsors say fiduciary matters are important yet more than one-third of plan sponsors don't know they're a fiduciary.

# In The News

COMPLIANCE | January 4, 2023

## California Food Processing Firm Sued for Alleged ERISA Violations

Participants of a retirement plan sponsored by Ventura Foods allege that Ventura's mismanagement cost their retirement savings significantly.

COMPLIANCE | December 30, 2022

## Fiduciary 401(k) Breach Claims Against Milliman Will Proceed

A federal judge ruled against a Milliman Inc. motion to dismiss fiduciary breach allegations that it failed to prudently choose and monitor 401(k) plan investments.

COMPLIANCE | January 5, 2023

## ESOP Plan Faces Retirement Records Lawsuit

When a former worker at medical technology company BD sought distribution of his vested and accrued retirement assets, the firm said it had no record of his individual account.

## CEO Pleads Guilty to Fraud, Failing to Pay 401(k) Contributions

Maddox Group's Adam Belardino faces up to 45 years in prison for wire fraud and making false statements to the IRS.

COMPLIANCE | December 21, 2022

## Molina, flexPATH ERISA Suit Continues, But Adviser NFP Dropped

A federal judge is allowing a plaintiff's lawsuit against plan sponsor Molina Healthcare and TDF provider flexPATH to continue, but has absolved adviser NFP from a fiduciary duties breach.

COMPLIANCE | November 28, 2022

## Judge Grants Motion to Dismiss Ricoh Complaint

The two counts brought by plaintiffs were bounced by the Chief Judge for the U.S. District Court for the Eastern District of Pennsylvania, but the motion to dismiss was granted with leave to amend.

COMPLIANCE | December 22, 2022

## Xerox Reaches \$4.1 Million Preliminary Settlement in Excessive Fee Lawsuit

The settlement in principle is pending court approval.

COMPLIANCE | November 14, 2022

## MassMutual Faces Four ERISA Breach Counts in Retirement Lawsuit

Plaintiff seeks class certification in alleging mismanagement and violations of fiduciary duty.

COMPLIANCE | November 29, 2022

## Attorneys File Similar ERISA Lawsuit Against Freight Transporter

A second national freight transporter within a month is faced with an ERISA breach lawsuit from the same attorneys.

# Fiduciary Basics

Every retirement plan must have at least one named fiduciary. For most plans, the business owner or plan sponsor serves that roll and is always considered a fiduciary- even if a plan document names other fiduciaries or if the plan sponsor hires others to assist them with their responsibilities.

The common types of fiduciaries under ERISA are 3(16), 3(21), and 3(38)

A 3(16) fiduciary is a service provider hired by an employer to function as a “Plan Administrator,” by fulfilling a comprehensive set of duties that many plan sponsors find demanding, including keeping the plan in compliance with ERISA guidelines (compliance failures can be costly).

Hiring a 3(16) plan fiduciary allows the sponsoring employer to delegate some fiduciary responsibilities, and limits their fiduciary responsibility, as well as the overall administrative burden of operating a plan.

A 3(21) or 3(38) fiduciary plays a role in overseeing the plan assets and/or investments and they are required to act under ERISA guidelines.



# Three Common Plan Fiduciaries

## Employer

Identified by their position (CEO,CFO,etc) or name, they're the main fiduciary listed in the plan document. They manage service providers, committees, plan policies, procedures and practices and have a heightened fiduciary responsibility

## Trustee

Plan assets are always held in a trust of custodial account for participants. The plan trustee is always a fiduciary.

## Plan Administrator

The plan sponsor who is responsible for the day-to-day plan management.



# ERISA Penalty Examples

Civil Penalty/Monetary Penalty Description and ERISA Penalty Statute Section	Current Maximum Penalty	New Maximum Penalty Effective Aug. 1, 2016
Failure to furnish statement of benefits to former retirement plan participants and beneficiaries or failure to maintain records for a retirement plan. Section 209(b)	\$11/employee	\$28/employee
Failure or refusal to file annual report (Form 5500). Section 502(c)(2)	\$1,100/day	\$2,063/day
Multiemployer defined benefit (DB) plan's failure to certify endangered or critical status. Section 502(c)(2)	\$1,100/day	\$2,063/day
Failure to notify single employer DB plan participants of certain benefit restrictions and/or limitations arising under Code Section 436. Section 502(c)(4)	\$1,000/day	\$1,632/day
Failure to furnish certain multiemployer defined benefit plan financial and actuarial reports upon request by participant, beneficiary or employee representative. Section 502(c)(4)	\$1,000/day	\$1,632/day
Failure by plan sponsor or plan administrator of multiemployer DB plan to furnish estimate of withdrawal liability upon	\$1,000/day	\$1,632/day



# How We Help

By working with you as a consultant on your 3(16) fiduciary responsibilities, our plan administration services and monitoring systems protect you and your organization.

**Reducing an employer's liability.** The Department of Labor is most concerned about the process you use to manage your 401k plan. We provide structure and best practices show you taking your fiduciary responsibilities seriously. We help you create operating policies and procedures, document the procedures, maintain plan records, periodically review all of your services providers and make them "bid for your business", making sure employees are provided education, review investment performance and fees.

**Reducing the day-to-day administrative work** involved in managing a 401(k) plan. For example, rather than the employer having to work through issues like loan and distribution approval, a 3(16) fiduciary will do this for you. Some 3(16) fiduciaries will even handle signing and filing the annual Form 5500 required of many 401(k) plans.

From filing paperwork with government agencies to ongoing communications between employees and service providers, retirement plans need ongoing support to stay compliant with the law. For that reason, many employers find it helpful to hire a 3(16) fiduciary to serve as the plan administrator and to handle much of the administrative work. Our job is to help you find the right plan administrator.



# Plan Accountability

Administering a retirement plan can be challenging and time consuming. Many companies struggle to keep up with their legal responsibilities to monitor their plan providers. As a fiduciary you are responsible to make sure your plan provider is in compliance with the laws and are following the plan documents.

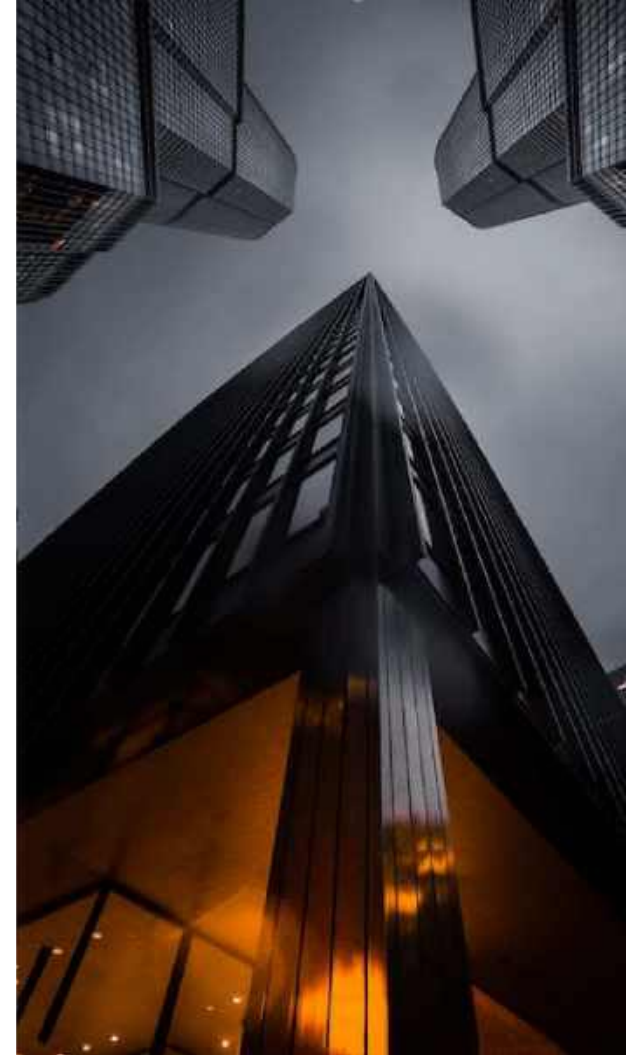
- But what should you monitor?
- How should you monitor?
- When should you audit your plan provider?
- What should you be looking for?
- Are participants contributions being placed in their account in a timely fashion?
- Are loans being process correctly?
- Is the government reporting being done in a compliant manner?
- How are you selecting your plan provider? Are you using a RFP? What requirements should be in that RFP?
- What level of cybersecurity does your plan providers and administrator provide?

**As Consultants** will answer these questions for you and will server as your in house compliance team. By outsourcing these and many other administrative fiduciary functions to our team we can relieve the time consuming and technical responsibility from your shoulders.



# Plan Consulting and Functions

- **Provider Due Diligence**-RFP administration to determine the quality and appropriateness of a plan providers products and services. Analysis of current product plan and investment choices, administrative fees, on site services and compare them to the current plan objectives. Bid plan out if necessary through RFP for competitive benefits and cost savings.
- **Investment Analysis and Monitoring** - Independent investment analysis focused on the health of your investments making sure they are appropriate and diversified for your employees and are performing up to their acceptable peer group benchmarks and in accordance with your Investment Policy Statement.
- **Fiduciary Management Consulting** - As a fiduciary, you have personal liability for assets in the company's retirement plan. It is crucial that you partner with an independent firm specializing in services that reduce your exposure to fiduciary liability.
- **Participant Education and Communication**- Statistics indicate that many employees today are not saving enough for their retirement. We will also monitor the plan providers to make sure they are providing the same types of services to all participants.
- Make sure your are complying with ERISA 404(c) Standards, which when done correctly, effectively transfers the risk of making investment decisions directly from you to your participants.





## Joe Spano, Sr., FRC

**President & CEO**

**Investment Management Consultant, IAR**

Joe entered the Insurance business and Financial Services industry in 1983 with Equitable Life assurance Society as an agent and becoming a Financial Advisor in 1984. Joe has always had a deep commitment to his community and a desire to positively impact the clients he serves. With over 39 years of experience, he is well qualified in all aspects of retirement planning, including 23 years of hospital and educational retirement plans. He has led 3 companies as the top producer in the world namely CitiStreet, MetLife, and AIG Retirement out of over 65,000 advisors. He has won numerous industry awards in his career. Joe has qualified for the prestigious Million Dollar Round Table 21 times, with 10 Court of the Table qualifications, and is the first, and only 3-time "Top of the Table" Million Dollar Round Table in the State of West Virginia, the highest achievement in the industry for both production and ethics.

Joe was the President and Founder of Consolidated Wealth Management before merging with Potter & Spano Financial Group in 2018. He is now the President and CEO of The Spano Group. Joe is also a certified Federal Retirement Consultant where he specializes in retirement, financial and investment consulting for federal employees, estate planning, tax advantage planning, Income replacement planning and life insurance.





## Melissa Grass, FRC

**President & CEO,  
Corporate Compliance Director, IAR**

Melissa started her career in the financial industry 28 years ago. Prior to opening her own Registered Investment Advisory firm, Freedom Financial Advisors, she served as Managing Director for companies such as MetLife, AIG and TransAmerica in both WV and TX. She hired, trained and helped develop hundreds of talented agents during her years as a director for those companies. Other experience includes serving as a Senior Financial Advisor at an investment firm affiliated with a bank holding company and also working with the prestigious Mellon Bank's high net wealth management department. Melissa has also served as an expert witness assisting attorneys in client representation, in wrongful and unethical insurance practices.

Melissa is a published author and was recently featured in a federal benefits and education magazine for her work assisting clients in preparing for retirement. She has received numerous awards throughout her career. She most recently ranked in the Top 10 advisors in the nation for her production and ethics in 2021 with Brokers International.

Melissa is also the CEO of Freedom Financial Insurance Group and Freedom Federal Educators, a government contractor that provides educational services to government agencies HR departments and federal employees. She is a certified Federal Retirement Consultant (sm) FRC and is certified in retirement planning for federal employees.





## Brian E. Ross, FRC

**Executive Vice President Retirement Planning,  
Institutional Consultant, IAR**

Brian is an Investment Advisor and Fiduciary. He serves as Executive Vice President of Retirement Planning for Freedom Financial Advisors and Freedom Financial. With over 30 years' experience in the financial services industry, Brian is uniquely qualified to help his clients with their retirement and investment planning needs.

Brian's experience ranges from serving as President of a multi-million-dollar insurance and investment firm affiliated with a bank holding company, to owning his own private practice. He is an author and the publisher of Freedom Federal Educators Magazine. Brian has been a featured speaker at numerous financial services conventions and has trained hundreds of advisors on advance insurance and retirement topics.

Brian holds a Business Administration degree from West Virginia State University. Is enrolled currently in Harvard Business School studying alternative investment options. In addition, he has completed the Wealth Management Certification Program from the Cannon Institute and received certifications from GAMA and The American College.





## Jerry Potter, FRC

**Executive Vice President Retirement Planning  
Institutional Consultant, IAR**

Jerry Potter is a Financial Advisor with 39 years of experience. He is dedicated to his community and offers the highest level of service possible. He has won numerous industry awards throughout his career including the prestigious MDRT Court Of Table status for production and ethics. Jerry qualified as a Million Dollar Round Table member 23 times before being recognized as a lifetime member.

In 2010, Jerry became a Fiduciary starting Potter & Spano Financial Group after merging with Consolidated Wealth Management. In 2022 he merged with Freedom Financial Advisors. Jerry also serves as a certified Federal Retirement Consultant for Freedom Federal Educators where he assists federal employees with all aspects of retirement planning, investment strategies, FERS/CSRS pension, estate planning, retirement planning, Social Security Analysis and Medicare.



# Joseph H. Spano, Jr

**Attorney at Law**  
**Pritt & Spano PLLC**

Joseph H. Spano Jr. is part of The Spano Group, he serves as the groups' legal counsel assisting in compliance, ERISA laws and the Fiduciary standards for their Institutional clients. He adds the legal expertise that makes our group the only consulting group in the region with an onsite attorney.

Joseph has over 14 years' experience in specialty law, plan governance, civil and criminal, and plan oversight. His knowledge regarding plan compliance oversight is deemed one of his strongest attributes. He is a managing partner at Pritt & Spano PLLC. in Charleston, WV.

Before starting the firm, he was a senior assistant prosecuting attorney in Kanawha County. Mr. Spano graduated from George Washington High School in Charleston, Concord University in Athens, WV, and WVU Law School. Mr. Spano has not only become one of the best attorneys in the state of WV but has been nationally recognized as one of the nation's top legal minds.



