The 3(16) Fiduciary Risk Checklist

Thirteen questions every plan sponsor should be able to answer without calling anyone. If you can’t answer one of them, that’s where your liability lives.

Most plan sponsors don’t know how much fiduciary liability they personally hold.

Under ERISA, the plan sponsor is liable for administrative decisions by default — signing the Form 5500, tracking eligibility, delivering notices, depositing deferrals on time. Those duties can be delegated to a **3(16) plan administrator** and a **402(a) named fiduciary**, but only in writing, and only if someone actually accepts them.

Work through the checklist below with your plan document and last Form 5500 in front of you. Check the box only if you can point to **evidence**, not a memory. Every unchecked box is a question a DOL investigator, an auditor, or a plaintiff’s attorney can ask you.

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01 Form 5500 & filings

- [ ] **Who signs your Form 5500?**
  If a company officer signs it, your company carries the filing liability — not a service provider. A full-scope 3(16) administrator signs and files it in its own name.

- [ ] **Was your last 5500 filed on time, with the right schedules?**
  Late or incomplete filings draw DOL penalties that accrue per day, per plan. Confirm the filing date and which schedules (A, C, H, I, R) were attached.

- [ ] **Do you have a documented process for the annual audit, if required?**
  Large plans need an independent audit. A missing or late audit report is one of the most common findings on a DOL letter.

02 Eligibility & enrollment

- [ ] **Can you prove every eligible employee was offered the plan on time?**
  Missed eligibility is the #1 operational error we correct. Fixing it usually costs the employer a corrective contribution plus lost earnings.

- [ ] **Are your plan document’s eligibility rules what you actually operate?**
  Hours, service, entry dates and rehire rules drift over time — especially after a payroll or recordkeeper change.

- [ ] **Who tracks and delivers required notices?**
  Safe harbor, auto-enrollment, QDIA and SAR notices all have deadlines. “Nobody, really” is a fiduciary breach, not an admin gap.

03 Contributions & payroll

- [ ] **How fast do deferrals reach the trust after each payroll?**
  Late deposits of employee money is the error the DOL looks for first, because it is easy to prove from payroll dates.

- [ ] **Has anyone reconciled payroll to the recordkeeper this year?**
  Compensation definitions, bonuses and pre-tax deductions are where mismatches hide.

- [ ] **Are loans and hardship withdrawals reviewed against the plan document?**
  Approving one that the document doesn’t allow is an operational failure with a real correction cost.

04 Fiduciary structure & documentation

- [ ] **Who is named the 402(a) named fiduciary in your plan document?**
  If the answer is your company or an owner personally, that person is exposed. It can be delegated.

- [ ] **Do you have signed service agreements showing which fiduciary role each provider accepts?**
  “We handle that” in an email is not a delegation. Look for 3(16), 3(38) or 402(a) stated in writing.

- [ ] **Do you hold documented committee meetings and benchmark fees?**
  Procedural prudence is judged on documentation. No minutes means no defense.

- [ ] **Is your fidelity bond current and at the right amount?**
  ERISA requires a bond of at least 10% of plan assets. Bonds are often set once and never updated.

Count your unchecked boxes.

0–2 unchecked — well run. Keep documenting.
3–5 unchecked — normal, and worth fixing before your next filing or audit.
6+ unchecked — you are carrying fiduciary risk you were never meant to carry personally.

Book a 15-minute 3(16) fit check — admin316.com · (361) 271-1211

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