



# On Beyond Fiduciary: Effective Plan Governance

# Learning Objectives



Understand  
the importance  
of a plan  
governance  
process



Assist plan  
sponsors and  
committees in  
becoming  
better  
consumers of  
fiduciary  
services



Identify and  
address actual  
and potential  
conflicts of  
interest



Avoid the legal  
implications of  
inconsistent  
plan-related  
documents,  
service  
agreements,  
and contracts



Assess  
educational  
needs of  
committees  
and plan  
officials

# Important questions

What are the responsibilities of plan officials?

What are the elements of plan governance?

Who is responsible for creating and executing a plan governance process?

What and who is involved with a good plan governance process?

What does a good governance process look like?

# The Governance Process

# What are the responsibilities of plan officials?

- **Exclusive benefit rule:** Fiduciary must operate plan in a way that solely benefits participants and beneficiaries, while paying reasonable fees
- **Prudent expert rule:** Fiduciary actions in plan operation will be held to a standard of an experienced professional
- **Plan document rule:** Fiduciary must follow the plan unless the terms of the plan contradict the rules of ERISA
- **Investment diversification rule:** Fiduciary must offer a wide range of investment options to help participants meet their investment needs and diversify their investments accordingly

# The elements of plan governance



Select and monitor plan service providers



Oversee plan investments



Operate the plan according to the governing documents, laws and regulations



Keep documents up-to-date for law changes



Ensure fulfillment of reporting and disclosure requirements



Avoid and/or mitigate conflicts of interest



Build, maintain, and document a plan governance process



Ensure governance team is effective and has appropriate educational opportunities

# Importance of a governance policy document

Delegates authority to responsible parties

Assigns duties, rights, and obligations of responsible parties

Defines how actions with respect to the plan are approved

Sets how frequently responsible parties meet

Identifies recurring agenda items and how to introduce new items

Prescribes the process for taking and archiving operational notes and meeting minutes

# The Governance Team



Who is responsible for creating and executing the governance process?

A. The record keeper

B. The advisor

C. The TPA

D. The 3(38) fiduciary

E. None of the above

Who is responsible for creating and executing the governance process?

E. None of  
the above

# Who is responsible for creating and executing the governance process?

That means you.



The plan sponsor is ultimately responsible for the governance process.



This duty cannot be delegated, but sponsor may enlist help from a plan committee



# The governance team



Plan sponsor



Committee members

# The governance team



Does each understand his/her duties, rights, and obligations?



Do the sponsor and committee understand the nature and type of the services needed?



Who are the plan service providers?



Which, if any, of the service providers offer fiduciary services?

# The governance team

If authority is granted, the plan committee has the duty to monitor and evaluate fiduciaries and service providers



Recall, this oversight is held to an expert standard

# Who may be plan service providers?

Record  
keeper

TPA

Custodian

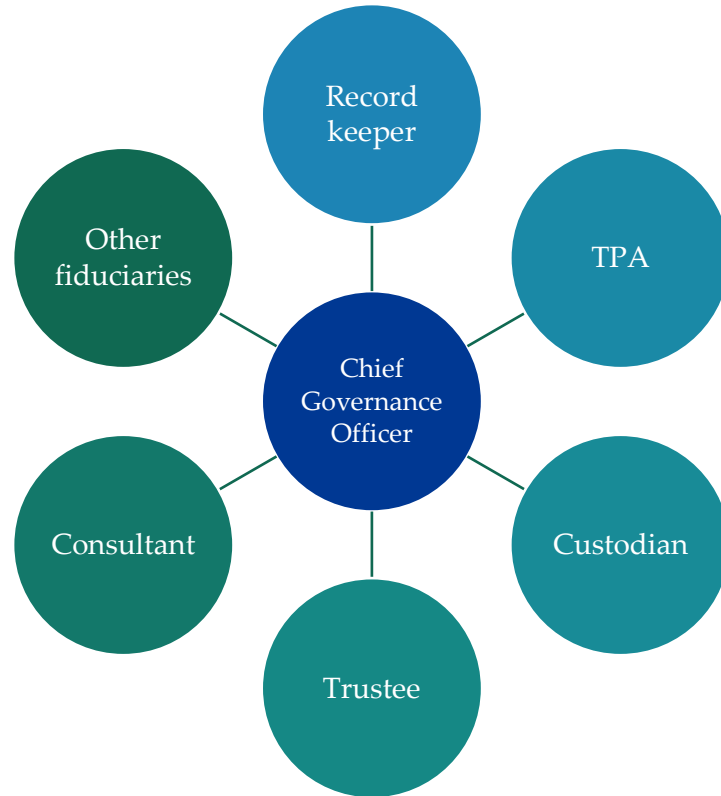
Trustee

Advisor

Consultant

Other  
fiduciaries

# Identify Chief Governance Officer





# Committee meetings

Is the process written down?

Meeting times and dates?

Agenda?

Minutes?

# Fiduciary services

# Many fiduciary services are available...

ERISA 3(38)

ERISA 3(21)

ERISA 3(16)

408(g)

...But not all  
fiduciary  
services are  
created  
equal

- Contract terms: What's covered
- Settlement provisions: When will provider pay and for what?
- Backing: What (or who) is backing the agreement

# The right and wrong reasons to use outside fiduciaries



## Right

Augment skill sets

Administrative convenience [e.g.,  
ERISA 3(38)]



## Wrong

Eliminate fiduciary liability and  
responsibility

# Are the committee members ERISA experts?

- Are committee members experts at vetting and monitoring fiduciaries?
- Maybe not...
- What does the prudent expert rule require?

# How are you filling the knowledge gap?



What are the skills of the team members?



What service providers are retained? Why?



Are additional resources necessary to fill knowledge/skills gaps?

# Team effectiveness



**Recall, plan officials are held to an expert standard**

What would an expert have done?



**Ongoing education needed to enhance skillset and demonstrate commitment to education**



**Document educational process**



# Team effectiveness

- ERISA fundamentals
- Conflict of interest primer
- Understanding fees, expenses, and investments
- Understanding the industry: who's who and important trends

# Core Fiduciary Obligations

# Plan investments

Historically investment-related issues create the most potential liability

Plan officials held to reasonableness standard

Having and adhering to a process for handling plan investments is the cornerstone of risk mitigation

Investment policy statement (IPS) is important

# Reporting and disclosure compliance

Often delegated to service providers

Remains responsibility of plan officials

Common misconception

- “Gee, I thought the [insert name of service provider] was doing that.”

# Reporting and disclosure compliance

- Many elements:
  - Plan documents and amendments
  - IRS compliance testing
  - Form 5500 reporting
  - Participant reporting (notices, SPD, SAR, etc.)



# Conflicts of interest

Conflict of interest is a DOL consideration

The IRS has similar rules addressing “prohibited transactions”

For our purposes, we will focus on conflicts of interest

# Avoiding conflicts of interest

ERISA requires conflicts of interest be avoided

A conflict of interest occurs in the following situations

- A sale or exchange between plan and a “party in interest”
- Lending or credit extension between a plan and party in interest
- Furnishing of goods or services between a plan and a party in interest

# A party in interest includes



The plan sponsor  
and its affiliates



The plan committee  
(if one exists)



Other plan  
fiduciaries



Plan service  
providers



# What constitutes a conflict of interest?



The advisor of record on the plan is the owner's brother in law?



A CEO of the plan sponsor also serves on the board of plan service provider?



Plan uses a bank service provider that controls the plan sponsor's line of credit?

# ERISA requires avoidance of conflicts



Identify and address  
potential conflicts



These determinations are  
highly facts and  
circumstances specific



Policies are useful to  
mitigate potential  
conflicts

# Conflict of interest mitigation strategies

Recusal of committee members on potentially conflicting decisions

Utilization of an alternate service provider

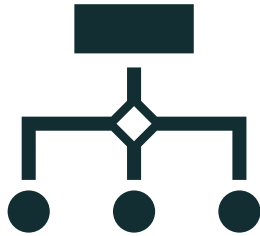
Policy development is important

# Documents and governance

ERISA: Must  
follow plan  
document

Plan  
document  
equates to law

# A proliferation of documents



As service models become more varied and complex, more documents are utilized

Documents are drafted by various organizations

# Plan documents can be many and varied



# Documents and governance examples


An IPS calls for an investment class not permitted in the plan document



A 3(38) provider has contracted with service providers without the plan document level authority to do so

# Documents and governance examples

An IPS stated the responsibility for the asset decisions was that of the “Fiduciary”



Per the plan document, various fiduciaries were utilized, and it was not clear which, specifically, was responsible for the IPS execution.



# Documents and governance—Must haves

Lines of  
authority must  
be clear

Roles must be  
defined

Process is  
consistent

# Documents and governance actions



# Important oversight elements



Review of plan provisions



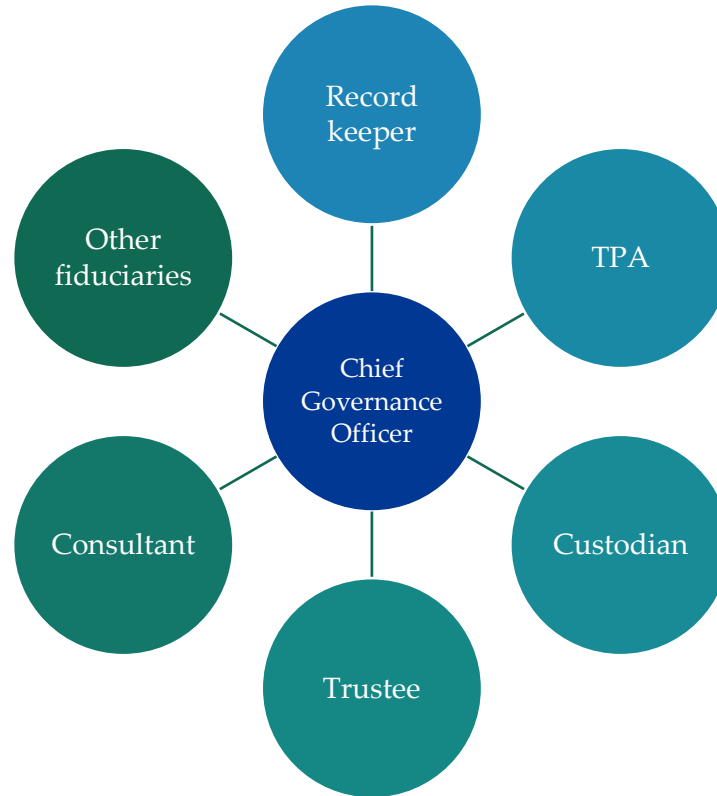
Review of service provider  
documentation



Ensuring record keeping  
and payroll is consistent  
with plan provisions

# Next Steps/Conclusion

# Identify Chief Governance Officer



# Next Steps



# Questions?



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