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## 2025 Fiduciary Training Series, Part 2: Effective Plan Governance

**Lisa Caito:** Welcome everyone to this Quarter's Fiduciary Committee webinar Effective Plan Governance. Join me in welcoming Jenny Kiffmeyer as our guest today. She's the Chief Operating Officer of the Retirement Learning Center. Jenny began her career in retirement services industry in 1993 and joined the Retirement Learning Center in 2004.

She has a strong track record for producing award-winning educational content, and regularly contributes articles to various industry periodicals and newsletters. She has placed a. Played a key role in developing several professional certification programs in the retirement services industry. Jenny is also the co-author and the editor of the Retirement Learning Center's Book, retirement Resource Guide, essential ERISA Education, best Practices for Financial Advisors, winner of Multiple Apex Awards for Public Publication Excellence.

She also received her JD from the TAF Law Group. Today she will be focusing on retirement plan governances. We will discuss the importance of a plan governance team, the core fiduciary obligations along with the importance of operating your plan in accordance with the terms of the plan document. Just a reminder today we will not be answering questions during the webinar, but if you do have any questions, please add them to the chat and we will respond to all questions after the webinar.

Jenny, I'm gonna turn it over to you.

**Jenny Kiffmeyer:** Thank you so much. I'm very happy to be here. And with that, let's launch right into our presentation today on Beyond Fiduciary, the need for Plan Governance. At the end of today's session, I really want to accomplish primarily one thing to.

To set in your minds the importance of having a good governance process, having a process following the process and documenting the process is going to go a long ways to satisfy your fiduciary responsibilities. And should you ever

be, questioned by the Department of Labor, that documentation is gonna be all important.

Next slide please. So important questions that the plan sponsor as a fiduciary to the plan as well as the plan committee members are, just understanding the responsibility of the plan officials. What are the major elements of the plan governance process? Who's responsible for creating and executing the governance process?

What's involved in a good governance process and again, documenting that process. Next slide please. So let's dive right into what is the governance process. So first off, it's very important to identify who the fiduciaries are of the plan, and any committee members that might be involved with making decisions with respect to the plan.

Those are going to be called your plan officials. And the plan officials generally will have fiduciary responsibility and fiduciary responsibility comes from the law of ERISA. The employee compliance resolutions, excuse me, employee Retirement Income Security Act of 1974. So we've had ERISA around for 50 years and, but all of the rules and regulations of ERISA can be boiled down into four main.

Pillars the exclusive benefit rule, the prudent expert rule, the plan, document rule, and the investment diversification rule. And let's take a moment here to just dig into those, each of those in a little more detail. I. So the exclusive benefit rule says that a fiduciary must operate the plan in the way that solely benefits the participants and beneficiaries and only paying reasonable expenses for the services that the plan receives.

So this is the idea that the plan first and foremost, must benefit the participants and beneficiaries. Next we have the prudent expert rule, and that is a rule that says Any fiduciary making a decision with respect to the plan they're going to be held to a standard of an experienced professional. So that means if you are faced with a decision.

For a plan, let's say you have to make investment related decisions, putting together the investment menu, and you don't have the necessary expertise to be able to do that. It's very important to bring in an expert. In that case, many plans will bring in a fiduciary investment advisor to assist with those investment decisions.

So that's the prudent expert rule. The plan, document rule very important in that all retirement plans must be presented in a written format, and they must have the language that is up to date for all recent law changes. And one big point to keep in mind here is that with the last, within the last, five, six years, we've had several law changes.

The CARES Act, secure Act 1.0, secure Act 2.0 that are going to require that all plans be amended. And so we know that under that plan document rule, it's a fiduciary responsibility to make sure that plan is updated correctly. And then finally we have the investment diversification rule. This rule generally is going to apply when we have an investment advisor assisting the plan sponsor, and the advisor is going to be helping to meet that diversification rule.

Which says that the plan has to have a wide range of investment alternatives to help meet the needs of the participant and so that they can diversify their investments so as to not incur great losses. So that diversification is very important. So those are the four pillars fiduciary responsibility.

Next slide, please.

The elements of the plan governance process are many. And so it's very important that you identify what those steps are and perhaps document what those steps are. So first off, we wanna select. The governance committee is going to have to monitor and select service providers for the plans.

That's a very important fiduciary responsibility. Have to oversee the investments for the plan, operate the plan according to the plan document as we just discussed. That's important aspect of it. Keeping those documents up to date. Fulfilling reporting disclosure requirements for the plan, avoiding any conflicts of interest that relates to the exclusive benefit rule.

You want to maintain the governance process and make sure you are documenting everything the decisions that are being made as you go along. Next slide, please.

So some plans plan sponsors and committee members go so far as to create what's called a governance charter or a governance policy document. And in this document they commit to keeping this updated and current. For the operation of the plan, and it identifies who are the fiduciaries, what is their responsibilities what are their assigned duties, what do they need to carry out?

How frequently the parties are going to meet some, plans. If a plan is larger, the governance committee will probably meet. At least on a quarterly basis. Sometimes it's maybe twice a year. It just really depends on the size of the plan and the decisions that need to be made with respect to the plans.

So we've got when is the par, when is the group going to meet to make decisions what's going to be on the agenda? Identifying those agenda items. And sometimes it's very helpful to put together what's called a governance calendar. So you know that every year during a certain period of time, during, the.

Calendar year, there are certain decisions that are always going to be important to make. Let's say you're operating on a calendar year plan and you're, you're in the fourth quarter and the beginning of the next quarter, people are gonna have the opportunity to change their investment elections.

Maybe you've switched out some investment options in the plan. So putting that that decision making process and the how are we going to communicate all this to the participants on the calendar for the, maybe the fourth quarter of the year prior or prior to the occurrence is a good idea so that you are prepared ahead of time.

So having that governance calendar, really important. And of course, how all of this information is going to be documented. Who's going to be responsible for taking notes and for keeping the documentation together in a fiduciary file? Again, as important information, should you ever come under an investigation, you'll have this nice complete file that demonstrates.

The process, you followed, how you made your decisions, and that goes a long way in satisfying what the Department of Labor is looking for. Next slide, please. So let's talk a little bit more about the governance team next slide. Who, oh before I do that, let's take time to take a quiz question here.

Our first quiz question is. Who is responsible for creating and executing the governance process? Is it A, the record keeper? Is it B, the advisor? Is it C, the TPA, or the third party administrator? Is it D, the 3 38 investment manager, or is it E? None of the above. And we'll give you a minute here to think over the options that are available here and select your decision.

As a reminder, it's very important to keep in mind that if you are seeking CE credit, you need to complete at least three of the polling questions that we have

today. Doesn't matter if you get the answers right, but you do have to participate. And that's what we're looking for in these polling questions.

So the question at hand is, who is responsible for creating and executing the governance process? The record keeper, the advisor, the TPA. The 3 38 fiduciary or none of the above? We are at the one minute mark, so that means we can move on to see the results. And as you the slide indicates here, oh, we're split across the board, but in fact it's none of the above because the answer is, it's the plan sponsor's responsibility to make sure that there is a governance process in place and that it's executed correctly.

Next slide please. That means as our quiz indicated that responsibility lies with you, the plan sponsor and the plan committee. So the plan sponsor is ultimately responsible for the governance process. That plan sponsor, however, can pull in others to help. With all that responsibility, and that's where the plan committee comes in and maybe some professional fiduciaries that you pull in to help with the governance process.

Next slide please.

So we'll have another quick quiz item here. And this is really just in enforced what we were just talking about. Our next question, who is responsible for the plan governance process? Is it. The TPA, the third party administrator, is it the plan sponsor, or is it the 3 38 fiduciary, which is the investment manager?

And again, we'll give you one minute to think over your options, make a selection on who is responsible for the plan governance process.

We need some good elevator music in between here or even perhaps the Jeopardy time song.

Just a few more seconds here. We'll give everyone a good opportunity to be able to select an answer and we'll see how everyone does here in just a second. Someone mentioned the Jeopardy music in the q and a. We're on the same wavelength, everyone. So we're at the one minute mark and yay.

Yes. Plan sponsor is the correct answer, ultimately responsible to put together the governance process. So let's move on to our next slide. We talked about how it's, the plan sponsor's responsibility, but oftentimes they will pull in other individuals to create the governance team. And so you'll have different committee members as part of the plan governance process.

So moving on to the next slide, we'll see that the governance team it's important to make sure your team members, each of them understand what they're responsible for, what are their duties and their obligations. If they're going to be making decisions with respect to the plan. They have a discretionary authority over the plan or its assets.

Then they are also going to be considered a fiduciary and held to a fiduciary standard. So it's very important for them if they're given that fiduciary responsibility to understand that's what's going on. And do they understand the type of service why they are being asked to be on the committee?

It may come as a surprise to someone to be asked if they're not really familiar with, how a 401k plan operates. So helping them to get acclimated as to, why were they chosen to be on the committee? What unique aspects or perspective do they bring to the committee and helping them feel at home on the committee.

They're going to be helping you pick this plan service provider. So again, introducing the committee members to what types of services are involved with the 401k plan and how do we go about picking service providers? And if we are going to be hiring a fiduciary, sometimes they're referred as professional fiduciaries.

It's good to have clarity on what types of fiduciaries do we hire in which particular cases. Next slide please. So the governance team, if the authority is granted, then the plan committee will have the duty to monitor and evaluate fiduciaries and service providers. If that's the case, if you recall, one of the four pillars was being held to the expert standard.

So if an individual on the committee doesn't feel they have that level of expertise, it's important to bring in either another outside expert or to have regular fiduciary education on the gaps of expertise that you might identify among committee members. So today, in fact, this webinar is a great example of a fiduciary education that can count towards satisfying or filling that knowledge gap for the committee.

Next slide please. So I mentioned that it's very important for all the committee members to understand who are the service providers associated with the plan. And there are, can be many, there's the record keeper. There could be a TPA involved. There's the custodian that holds the assets of the plan.

There is the trustee who provides some direction. On how the plan is operated and maintained. There's no doubt an investment advisor who's going to provide

recommendations or perhaps an investment manager for the plan. There's other consultants that might be hired. For example, someone might hire a cybersecurity expert to make sure plan details and information and participant information is kept secure.

And there I might be other fiduciaries that are brought in, for example, a three 16 plan administrator an entity that would help with the administration of the plan. So there's a lot of different service providers that might be involved. Next slide, please.

I mentioned as part of the governance process. To the, that the governance committee will meet on a regular basis. And that timeline of when they meet is dependent on the needs of the plan. Could be quarterly some plans, if they're going through maybe a merger and acquisition or something, they might have a couple of.

Committee meetings month to month with, if there are a number of important decisions to be made, but there should be at least a regular cadence of committee meetings and it, during the committee meetings, it's often a good idea to have someone who's considered the chief governance officer.

It's kind of someone to take, hold of the gavel and say, okay, we're gonna bring this meeting to order and make sure that all of the elements that are identified on the agenda are addressed. And just give everyone a an opportunity to voice their opinions and ask questions on that.

So identifying a chief governance officer write that process down. Just as I will sound like a broken record by the end of the session, that document. So very important to have that documentation in place. So write it down. Write down the meeting times the dates.

Have and insert a copy of the agenda into the file. Make sure the minutes are there, make sure the minutes are complete. You wanna make sure that, this was, this question was on our agenda. Here's the information that we discussed, and here was the decision that was made. Next slide, please.

Fiduciary services I met mentioned sometimes you might bring in what's called a professional fiduciary. Next slide, please. If we. Look at the most common professional fiduciaries that might be enlisted to help with the plan. The first one would be an ERISA 3 38, and that just stands for the section of ERISA law that refers to an investment manager and an investment manager has complete authority.

To make all the investment related decisions for the plan picks, the investments, picks how assets are allocated to those investments, et cetera. So that person is has full discretion on investment decisions. I. Now contrast that with an ERISA 3 21 fiduciary. Still a fiduciary but in this case, this is an investment advisor, and in the investment advisor puts together menus of investment options or listings.

For what could be offered in the plan. But the ultimate decision lies with the plan sponsor and perhaps the committee to decide which of these menus is going to be the best fit for the plan. So it's a kind of a tag team with the 3 21 investment advisor and the plan sponsor and plan committee.

Next, we might have an ERISA three 16 plan administrator. Now ERISA three 16, just if you look that up, it's entitled Plan Administrator and if there's no one else named in the plan document or any other documentation, the plan sponsor is automatically the three 16 plan administrator, but the plan sponsor.

As they are tasked with so many other busy things with just keeping a business running that it's a good idea to, to pull in a fiduciary to help them out with those day-to-day plan operational tasks. And that's where you can pull in a three 16 outsourced solution to help with those plan administration tasks.

Finally, there's something that's called an ERISA 4 0 8 G, and this is a fiduciary advisor, someone that is hired by the plan sponsor. In order to give investment advice to plan participants on a one-on-one basis, you don't have to have a 4 0 8 G. Some plans do. And it's really if the plan sponsor and committee feels it's important for plan participants to have investment advice on a one-on-one basis.

Although, of course there'll probably be additional costs. So those are our most common fiduciaries that are pulled in. Next slide, please. With that discussion, the most important thing I want to point out there is not all fiduciary services are created equally. Everyone's got their snazzy slick marketing material and it make, it will make them sound like they had their end all be all, but so very important to look at their contracts.

What does it cover? What are their settlement provisions? In their contracts? What are can, are they offering? Are they stating they'll be a fiduciary or are they nuts? They're saying they won't be a fiduciary. And who's backing the agreement? Making sure that they've got, do they have a fiduciary ins insurance?



Do they have great e and o coverage? All of that is very important to try to weed through all of the providers out there to zero in on those who are going to be best for your plan. Next slide, please. And there are right and wrong reasons to bring in an outside fiduciary. The right reason is if you want to augment any skill sets that are missing or any expertise that's missing on your plan committee.

That's a great reason to bring in an outside fiduciary. If you simply just want to have, with respect, let's say the investments, if you just wanna hand that over to someone to handle it from soup to nuts, you could pick a 3 38 and that's. You know you're going to be done as long as you have prudently selected that investment manager.

So there's good reasons to do it. The wrong reason to do it is if you think you're going to eliminate fiduciary liability and responsibility completely. Because while you will share it with these individuals, the plan sponsor can never fully. Eliminate their fiduciary responsibility because the plan, sponsor and committee will always have an ongoing responsibility to prudently, select and monitor the fiduciaries they bring in for the plan.

Next slide, please. Alright, we've got time for another quiz, and if we ask the question, it's going to be, which fiduciary makes investment related recommendations? Is it a. The three 16? Is it B, the 3 21, is it C, the 3 38, or is it D? The 4 0 8 G. Again, these are all ERISA fiduciaries, but only one of them makes recommendations versus managing the investments.

Is it the three 16, the 3 21? 3 38 or the 4 0 8 G bu. I'll spare you.

We have just a few more seconds we'll give you to make your selections and we will then reveal how the group did. In thinking about these outsourced fiduciary services.

Again, these services are not mandatory, but only if it's going to be helpful for the plan and the correct answer is the 3 21 is the investment related recommendations are made by the investment advisor. For those who pick the 3 38, you're close, but they are a manager and they actually manage the assets versus the 3, 3 21.

Next slide, please. So remember the prudent expert rule? I'll keep reminding us of that because it's important to ask yourselves. Are the committee members ERISA experts? If they're not we really need to invest in some education for them. So we might have to make sure that they are able to make.

Good prudent decisions for the plan and with respect to service providers be able to monitor them effectively. Next slide, please.

How are you going to fill that potential knowledge gap on your committee? The first thing you really need to do is just really get to know your committee members and see where there might be a gap in their knowledge or understanding of plan operations. Great place to start and identifying their skillset their knowledge level, and, what might be missing among those committee members. So then you can decide, do we bring in another person to the committee, or do we bring in someone to provide, targeted education on a particular topic? Or do we bring in an expert that we hire an outside fiduciary. Next slide, please.

So again, here are expert standard rules. It's always a good idea to say, what would a prudent expert do in a particular SA situation? Any question that you're faced with on plan operations or plan decisions. How are, how would an expert act in this, in answering this question and then document it.

Next slide please. And one thing, the bare minimum that we need to make sure that our our team members are aware of and feel comfortable with is the ERISA fundamentals. Those four pillars make sure they understand the requirements there, avoiding conflicts of interest. That means they cannot self benefit from the plan in any way, shape or form.

No conflicts of interest. Because so many court cases today with plans relate to fees and expenses, understanding how plan fees and expenses work, especially related to the investment options in the plan, that's an important core knowledge area. And understanding the industry, what are the important trends and should we be looking out for different types of investment options that we need to be aware of, like environmental social governance, ESG investments or cryptocurrency.

What's, where do we stand on that? So being aware of trends and how to evaluate those trends are is important. Next slide, please.

So let's revisit, I mentioned those four core fiduciary obligations. Let's peel back the onion a little bit further. And we'll go onto the next slide and we'll look in particular at our plan investments. As I just mentioned, historically most of the litigation related to plans has been.

Because of investment related issues and charging high fees with respect to those investments and so many plans, sponsors and committee members maybe

have the mistaken idea that a plan has to be run at the bare absolute, cheapest way possible. And that is not what. ERISA says it's not what the Department of Labor is looking for.

What the DOL and ERISA say is that you operate the plan for reasonable expenses based on the services that you need. So first and foremost, you have to maintain the plan that is going to solely benefit the participants and beneficiaries. And to do that, it may be necessary to bring in some additional services or add some services or types of, investment products that.

Best suit the plan and those services and investments maybe will carry some higher cost to them. But if you can document, it's reasonable, those fees are reasonable. We feel that these services are necessary and the fees are reasonable. That's all the Department of Labor is looking for. Just the reasonableness of fees and having a process to evaluate whether those.

Fees are reasonable, is so very important. And when it relates to investments, the best way to document the process for evaluating investments is to have an investment policy statement or an IPS next slide please.

Another area of responsibility is reporting and disclosure for plan, sponsor and the committee. Now you might think that my record keeper takes care of this. My record keeper does all the, fills out the 5,500 and they handled all the participant disclosures and they may very well do that.

However, it is still ultimately the plan sponsor and committee's responsibility to make sure that the reporting is done timely and is accurately done as same way for any disclosures that are mandated for the plan, that the disclosure language meets the requirements, and that those disclosures are given out on a timely basis.

So while you can delegate the, the, part of, getting, distributing the notices, et cetera to participants it's is still ultimately your responsibility to make sure they are accurate and correct and timely done. So you don't, wanna say, oh gee, I thought it was my record keeper that was doing that.

Uhuh you are still responsible for making sure it's done correctly. Next slide, please.

Along with that reporting and disclosure compliance, it goes along with making sure you've got planned documents. Updated amendments are coming up for secure Acts one and two in the CARES Act. Those are due by December 31st,

2026. So now is a really good time for you to be documenting the decisions you're making regarding the provisions of secure Acts one and two, which ones you're implementing.

Of course there are some that are mandatory that you'll have to amend that your document for, but there are many that are optional, so you have to make sure you know which ones you're going to adopt. And how you're implementing and when you implemented them come time to, when it comes time to complete your plan amendment.

There's plan compliance testing. Again, your record keeper is probably going to actually do the testing. I. But you need to be able to understand that testing and sign off that it's been done correctly with the correct information, et cetera. Same with the 5,500 they'll do the 5,500, but make you have to make sure that it's done correctly.

Same with participant reporting and notices. Next slide please. Another opportunity for a quiz. Here we go. Moving on to the next, we'll see that the question this time is, which entity is generally responsible for plan reporting and disclosure? Is it a, the 338 fiduciary? Is it B the plan sponsor?

Is it c, the record keeper?

Now we know that for plan reporting and disclosure, there's lots of various elements, lots of working parts there. So who is ultimately responsible for doing that? Making sure it's done correctly.

And again, we'll pause for a few seconds here just to give everybody an opportunity to consider the options. And select what they think is the right answer.

And again, keep in mind you gotta answer three of these polling questions for CE credit. Alright, we're at the one minute mark. And so the answer to this question, 78.3% of you were correct. It is the plan sponsor that is ultimately responsible to make sure it all gets done correctly. And next slide please.

Let's talk a little bit more about conflicts of interests. Again, this goes back to the exclusive benefit rule and that the plan has to be maintained solely for the benefit of plan participants and beneficiaries. Under that rule the Department of Labor has regulations about conflicts of interest.

Which are areas where a plan sponsor or a plan committee member or any other fiduciary of the plan could cross the line if they are. In some way, shape, or form, personally benefiting from a decision that they're making. With respect to the plan the IRS has similar rules on these, it's, they're called prohibited transactions on the IRS side.

So both the DOL and the IRS are very interested in avoiding conflicts of interest. And if a conflict of interest exists, how it's going to be mitigated. It's the oftentimes needs to be disclosed, and then what steps are taken to reduce or mitigate that conflict of interest. Next slide, please. So erisa, the Department of Labor requires that conflict of interest be avoided.

So that means you cannot, sell or exchange property between the plan and yourself as a fiduciary. You can't lend money to the plan or you can't. Borrow money from the plan. So for example, you can't say, oh gee, I gotta pay the company's electric bill this month. Let me just dip into the 401k.

That's would be considered a particularly egregious conflict of interest and prohibited transaction. So not not recommended and you can't furnish goods or services to the plan. Again, if you are, if you or a fiduciary or a committee member can personally benefit from that action or decision with respect to the plan.

I would say then that's gonna be some type of conflict of interest and to avoid that completely better safe than sorry. Next slide, please. So a party in interest I mentioned is the plan sponsor could be the committee members again, if they have fiduciary responsibilities. Any other fiduciaries that you pull into the plan and it could involve service providers as well.

In fact when I talked about many of the litigation or lawsuits that are pending against plans in the fee area. Service providers are often pulled in because of, some fees, hidden fees that the service providers might be receiving, or kickbacks that the service providers might be receiving which is would be prohibited.

Next slide, please.

What does erisa consider it to be a conflict of interest. So here are some just kind of common examples of what might be a conflict of interest. So the advisor on record. So the investment advisor of the plan is the owner's brother-in-law. Now, on the surface maybe that's fine. However, if look.

Below the surface you might be that the brother-in-law is, getting extra kickbacks or being paid extra amount for surfacing the plan and that simply, is not allowed. Again, that would be a conflict of interest. Let's say we've got a CEO of the plan serves on the board of one of the service providers for the plan.

Now, you've got CEO on the plan and the CEO's on the service provider. Again, you could come in, have a conflict of interest, who is he serving as a, on the plan sponsor side, that's, he's gotta put the plan first and foremost. The third example, we've got a bank, a service provider that controls the plan, sponsors line of credit.

Again, it's got, not only, as the bank, a service provider for the plan, but it can pull some strings as well with the plan sponsor. So it's just a little too convoluted. And it could represent a conflict of interest. So best to just keep it clean and above board. Next slide, please.

I will just say it again that ERISA requires that the avoidance of conflicts of interest. So identify any, again, identify your fiduciaries and what conflicts they might have. What what can be done. Perhaps they can. Recruit, recuse themselves. Let's say a committee member is involved in on the board of one of the service providers.

If they're making a decision regarding that service provider, that board member could recuse themselves from participating as an example. Next slide, please. I believe we're still talking a bit about some mitigation strategies. Again, the recusal from the committee member. You, choosing an alternative service risk provider that would avoid the conflict of interest and make sure that there's a policy that's addressed in maybe, it could be part of the investment policy statement or it could be part of the governance charter about how you are going to identify and avoid conflicts of interest.

Next slide please.

Documents and governance. You have to have a plan that's in a written format, and that plan must be up to date and you have to follow the terms of the plan unless for some reason the terms of the plan contradict erisa. So the plan document really is the authority for how that plan is going to be governed and operated.

The plan document equates to law. Now the plan document is not just the, let's say the adoption agreement. If you have a pre-approved plan, you've probably got an adoption agreement, and then you've got something called the basic plan

document that you know, tells the committee and participants, what, how the plan interprets different provisions in the plan.

You've got those documents, but then you might have, other documents, trust documents, service provider documents. If we go to the next slide, we'll have a see a long list of other documents associated with running the plan. The summary plan description. You've got all your service agreements, any service agreements with fiduciaries of 3 38 3 21.

You've got your governance policy document. You've got your investment policy statement. Next slide, please. So one thing that's important to do is make sure all your plan documents are in sync. Sometimes and I shouldn't just say sometimes it inevitably we have come across the documents that we have reviewed.

There'll be one document will contradict another document. So in, for example, the investment policy statement calls for a certain investment class, but you look at the plan document. On the list of permitted investments, and it's not listed. So what do you do? You have to resolve the conflict between those documents.

Also, 3 38 provider has contracted to, to with service providers but didn't have the authority to do what, how do we resolve that? So in very important to make sure all your documents and the provisions are in sync, so we're not.

Contradicting the other, and that way we can make sure things are running as they should be.

Next slide, please. So the IPS is again, will state the responsibility for the investment decisions. That the fiduciaries will make with respect to the plan and the plan document will utilize will tell you, how the document will define those investments and who is responsible for executing on the investment policy statement.

Next slide, please. Documents and governments must have. You have to understand who is the line of authority. So we'll have, lot of different cooks in the kitchen, so to speak, if you're on a committee. But you need to have lines of authority who makes the decision regarding each particular element of the plan.

Define those roles and make sure you document those roles and the process is consistent. Next slide, please. Oh, good. We have another quiz. All right. This one's a true and false. We move on to the slide. True or false? An investment

policy statement is a required document. Now, this one it's either true or false, but it's can be a on the fence question too.

And, when we have time here after the polling question, I'll tell you why I say that. It's the investment policy statement is a very important document. We've got a few more seconds left for you to decide if it's true or not that it is required, quote. But we'll see what we have for our response here.

Again, the investment policy statement governs the selection and monitoring and replacement of investments in the plan. How that process is going to flow. Where the one minute mark and the answer to this question is you, and we got pretty much a 50 50 split here. The answer is.

Actually false. It's not quote un, unquote required per the Department of Labor. However, it is the first document the Department of Labor asks for the regulations do refer to the need to have some kind of policy in place but it doesn't spell out how that policy should be put together, what needs to be in the policy.

So while it's not technically a required document. It sure is a very important document to have and if you have one, it's better to follow it than not follow it. Most plans do. I think it's 83% of plans have an investment policy statement. So just from a very practical best practices perspective, it's a good document to have.

Next slide, please. So let's review some of the things that are important on documents and government actions. Make sure to review your plan documents, your contracts, your service agreements, so that they are in alignment. Align the roles, authority and duties so we know who's responsible for what and who's doing what.

Make sure you amend your documents and keep them up to date. Revisit them. For example, the investment policy statement is not a static document should be reviewed regularly and if you come across any issues. Or problems with the plan being in breach of a fiduciary action. The IRS and the Department of Labor do have some programs that allow you to self-correct, so make sure that you're aware of those.

Next slide, please. Some important oversight elements. We talked about reviewing the plan and the service provider documentation and keeping records on all actions done with respect to the plan. Next slide, please. We'll have, I think this might be one of our last quizzes. So if we move on to the question this



time, the question is, what document supersedes all other plan related documents?

Is it the plan document? Is it the IPS or C? Is it the summary plan description? So of these three documents, we've got the plan document, we've got the investment policy statement, and we've got option C, the summary plan description. Now, if you recall on the four pillars of fiduciary responsibility, one of them was.

To make sure, you've got a written plan, you've got it's up to date and that you follow it. So we'll give you just a couple of more seconds here to review these options and then we'll reveal what the group thinks.

All right, we are at one minute, and the answer to this question is. A the plan document. Ultimately the plan document, which for pre-approved plans is the adoption agreement and the basic plan document is really what's going to drive the operation of the plan. These others are important, but plan document is the grounding document.

So next steps in our conclusion as we're coming up on time here. If you go to the next slide, I. Remember I talked about there's going to be a number of people who may be involved. You've got your plan sponsor, you've got your governance committee members, then you might have others that you're pulling in overall to, to operate and govern the plan.

Very important to have someone identified as the chief. Governance officer could be the plan sponsor. It maybe is the investment advisor for the plan. Just someone who can take control and make sure that you're following through on your process. Next slide, please. So what we recommend for plans to do and plan committees and sponsors is to draft a governance policy or a governance charter and also put together a governance calendar so that you've got laid out for a 12 month period of time.

The topics that we're going to cover through the year. So there's very, important ones to make sure you have on, when disclosures are coming due, are, have we reviewed those disclosures when we receive service provider information and fees? Do we have it on the calendar when we're going to review those?

Making sure that we've got a calendar and an agenda set for the year. And then two, if anything comes up ad hoc throughout the year, you can call, special sessions in order to make those decisions. The second thing we recommend is to

compare all the various documentation that goes along with maintaining the plan.

We've got, the plan document of course, but then we've got these other documents that are also part of operating the plan to make sure all of the provisions are in sync. None conflict with each other. Speaking of conflicts number three, we wanna make sure that none of the individuals controlling the plan, the, plan fiduciaries do not have any conflicts of interests.

I. If they are if they're in some way conflicted and, some way could be viewed as personally benefiting from their decisions regarding the plan then it's important to identify those and how you are going to mitigate those conflicts. And number four, we've got assessing the skills and background of the committee members.

Remember the prudent expert rule keeping in mind that you are going to be held as a fiduciary, you're going to be held. To the standard of a prudent expert when making decisions regarding the plan. So either get the education bring, bring someone in, have a session, bring a speaker in, or bring another person that has that knowledge or hire someone that has that knowledge to be part of the decision making process.

And finally we'll move on to this last slide. We'll talk about a CE reminder. So again, if you are seeking continuing education credits, we need to be, make sure what we have you logged in for 60 minutes. That's taken. Care of by the system itself. And we will then look at that rec record, the recording that we'll receive from this, and also the polling questions that the three polling questions that were answered and then be able to deliver CE based on that.

And so with that, I'll leave you my final thought is above all. Having a good process is going to be the thing that the Department of Labor will look for if you were to ever come under investigation. How does a plan come under investigation? The one of the ways is because of plan complaints.

It's very easy for participants to log on to the Department of Labor website and log a complaint. There's also an 800 number that they can dial up and talk to a regional representative and file a complaint on the plan. So if you can keep your plan participants happy, that will go a long ways to avoiding any fiduciary issues.

So keeping your plan participants happy is one good way. And the other way that errors are identified is through form 5,500 filings, either late filings.

Incomplete filings or wrong filings. So making sure your form 5,500 filing is correct and timely filed. Another great way to avoid any fiduciary mid, liability.

And another tidbit I might throw out is in mitigating fiduciary liability is to have fiduciary insurance. Now you may say my plan has the ERISA bond already. That's great. And that is mandatory. There is something separate from the ERISA bond, however, and it's called the fiduciary liability insurance, and that is insurance of the plan can purchase to cover fiduciaries under the plan so that they will not be, personally have to pay out of pocket if they are found guilty of a breach.

With that said, having a process, following a process and documenting that process is what you can do to. Fulfill on your fiduciary obligations and have a good governance process in place. I thank you for participating today and if there are questions, you can submit them in the chat. We will follow up and provide answers to those questions.

And thank you so much for participating.

**Lisa Caito:** Thank you, Jenny. This was a great reminder of how vital and established governance structure and documentation and mitigating risk. The plan is thank you all for attending our webinar today, and we look forward to seeing you in September for our next webinar, taking Plan Design to New Heights. Have a great day.

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