

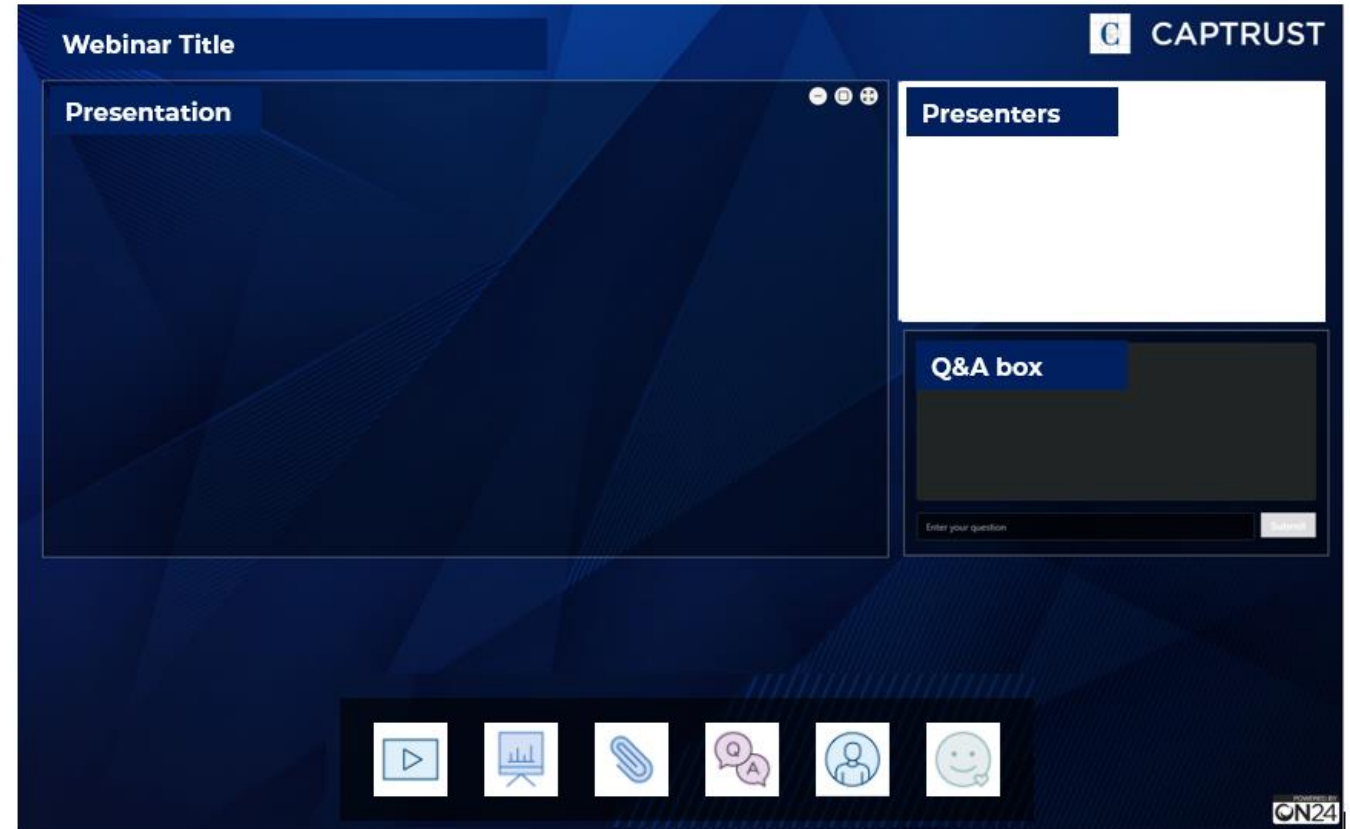
ON BEYOND FIDUCIARY: EFFECTIVE PLAN GOVERNANCE

May 14, 2025



Information About Today's Session

- All attendee lines are automatically muted and in listen-only mode.
- Questions may be submitted during the event by selecting the Q&A icon and typing them into the Q&A box.
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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



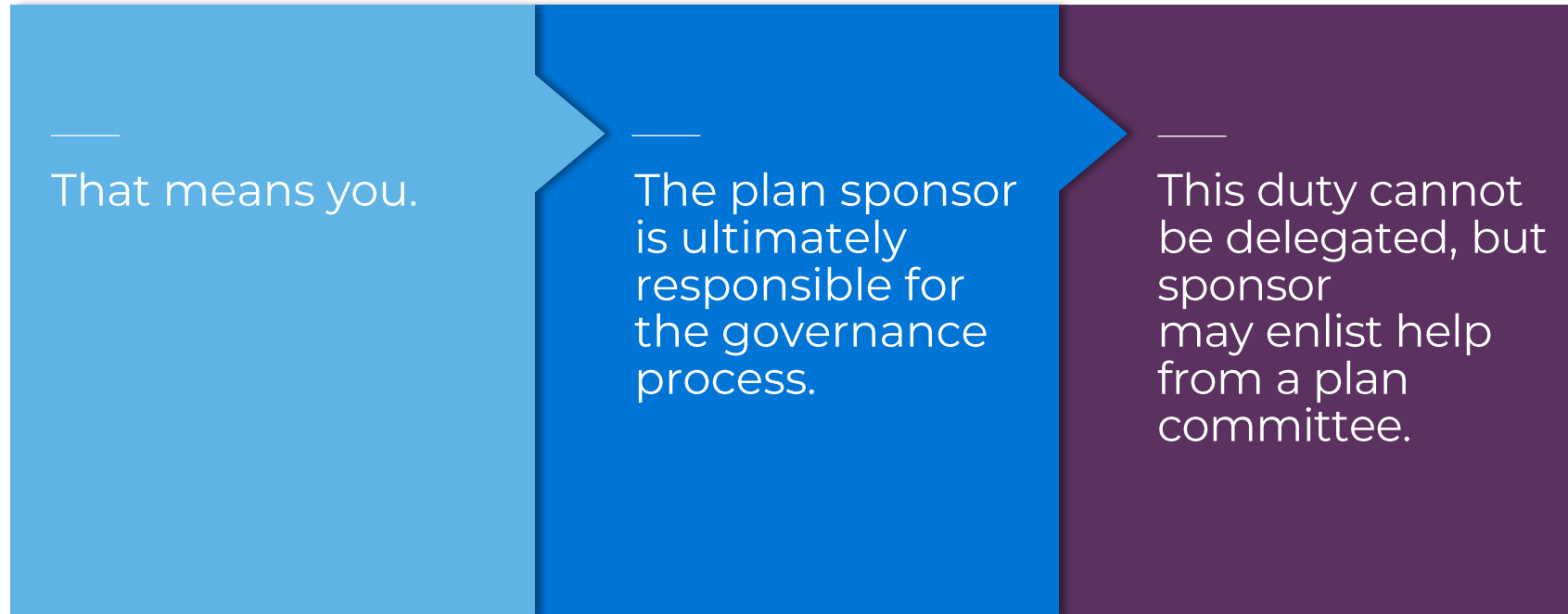
PRESCRIBES THE PROCESS FOR TAKING AND
ARCHIVING OPERATIONAL NOTES AND
MEETING MINUTES

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THE GOVERNANCE TEAM

Who Is Responsible for Creating and Executing the Governance Process?





QUIZ TIME!

Quiz Time

Who is responsible for the plan governance process?

- A. The TPA
- B. The plan sponsor
- C. The 3(38) fiduciary

Quiz Time

Who is responsible for the plan governance process?

A. The TPA

B. The plan sponsor

C. The 3(38) fiduciary

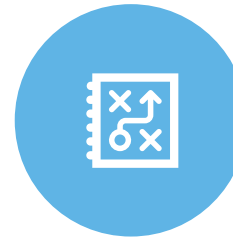
The Governance Team



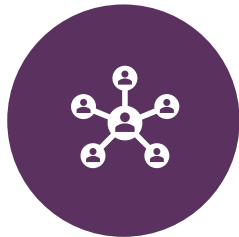
The Governance Team



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?



Recordkeeper



TPA



Custodian



Trustee



Advisor

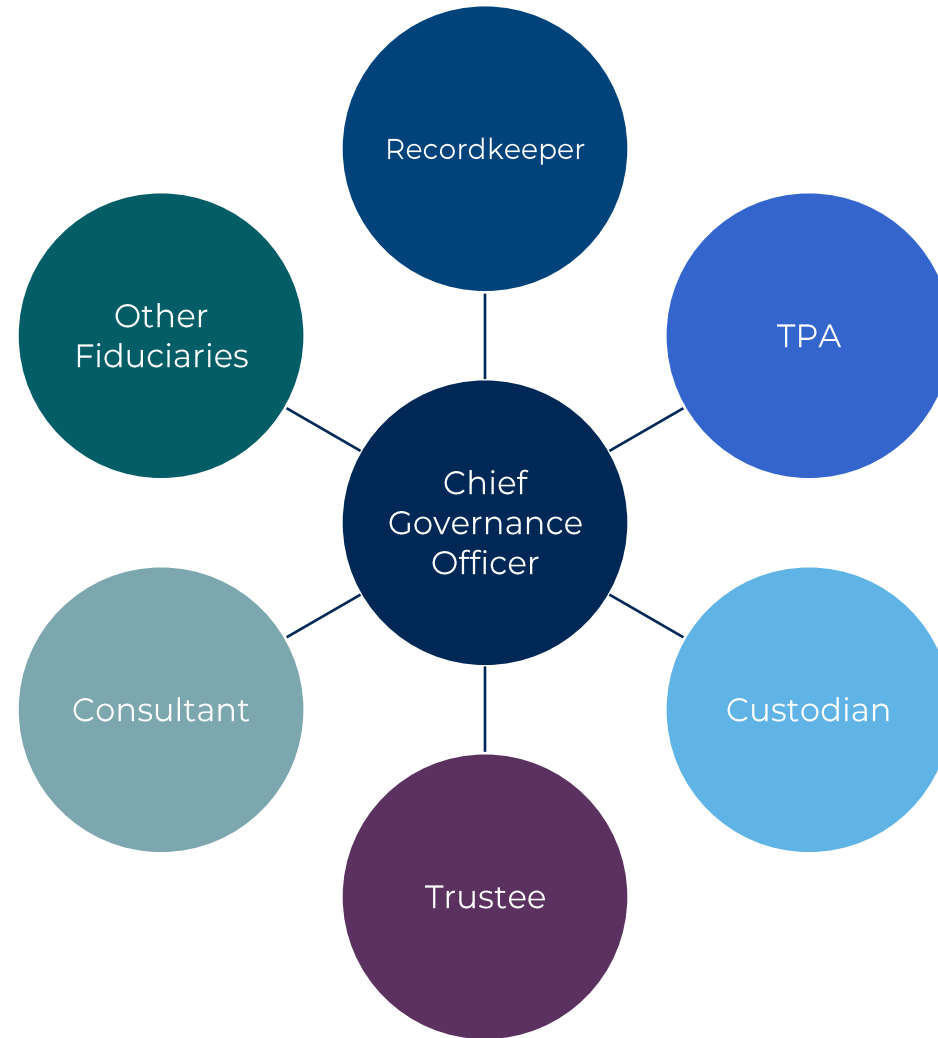


Consultant



Other Fiduciaries

Committee Meetings



Identify Chief Governance Officer



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



QUIZ TIME!

Quiz Time

Which fiduciary makes investment related recommendations?

- A. 3(16)
- B. 3(21)
- C. 3(38)
- D. 408(g)

Quiz Time

Which fiduciary makes investment related recommendations?

A. 3(16)

B. 3(21)

C. 3(38)

D. 408(g)

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 are the skills
of the team
members?



What are the skills
of the team
members?

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

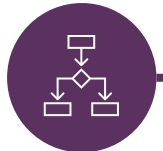
Plan Investments



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.)



QUIZ TIME!

Quiz Time

Which entity is generally responsible for plan reporting and disclosure?

- A. The 3(38) fiduciary
- B. The plan sponsor
- C. The recordkeeper

Quiz Time

Which entity is generally responsible for plan reporting and disclosure?

- A. The 3(38) fiduciary
- B. The plan sponsor
- C. The recordkeeper**

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



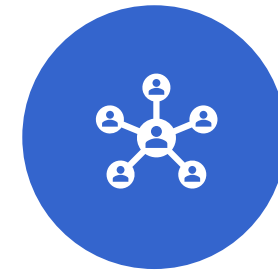
The plan sponsor
and its affiliates



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

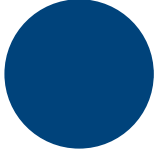
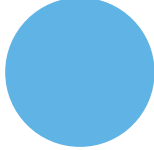
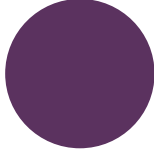


These
determinations are
highly facts and
circumstances
specific



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

- Plan document
- Trust and custodial agreements
- Summary Plan Description (SPD)
- Recordkeeping service agreements
- 3(38) agreements
- 3(21) agreements
- 408(g) agreements
- Plan governance policy statement
- Investment policy statement

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



QUIZ TIME!

Quiz Time

True or False: an Investment Policy Statement (IPS) is a required document.

A. True

B. False

Quiz Time

True or False: an Investment Policy Statement (IPS) is a required document.

A. True

B. False

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



QUIZ TIME!

Quiz Time

What document supersedes all other plan-related documents?

- A. The plan document
- B. The IPS
- C. The summary plan description

Quiz Time

What document supersedes all other plan-related documents?

A. The plan document

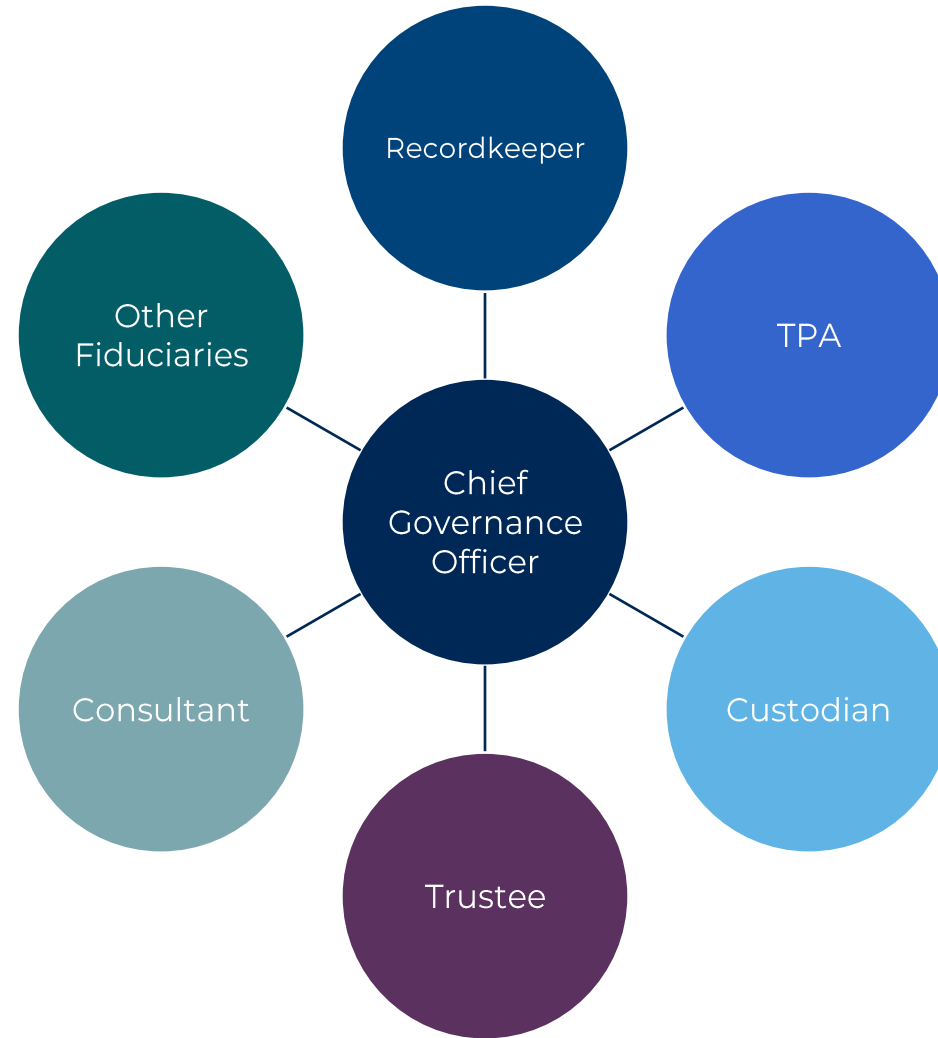
B. The IPS

C. The summary plan description



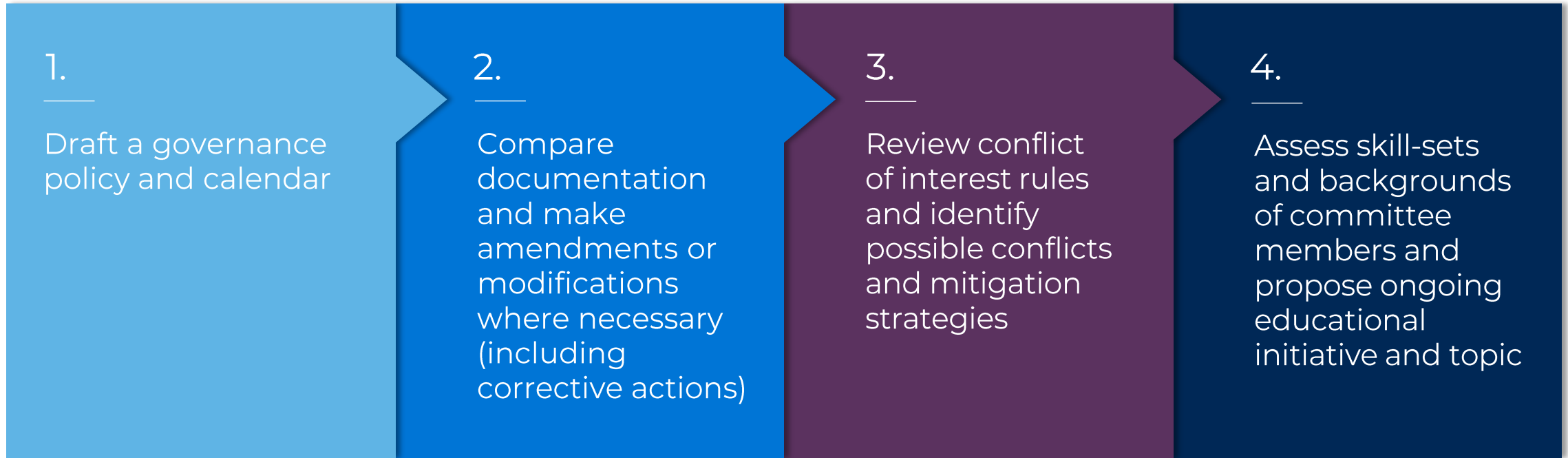
NEXT STEPS/CONCLUSION

Identify Chief Governance Officer



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Next Steps





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