



Fi360

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On Beyond Fiduciary:

## ASCENDING THROUGH THE FIRE WITH AN EVOLVING FIDUCIARY GOVERNANCE APPROACH

PlanChampion<sup>SM</sup>

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# MassMutual Speakers



**Mark Cover**  
**MassMutual Investments**  
*Head of DCIO Field Sales*

Mark Cover is the Head of Defined Contribution Investment Only (DCIO) Field Sales at MassMutual. In this role, Mark manages MassMutual's external wholesalers who work directly with retirement focused advisors and recordkeeper wholesalers. Prior to MassMutual, he served as the Head of DCIO Field Sales for T. Rowe Price for eight years.

Prior to joining T. Rowe Price, Mark was the National Sales Manager for ADP Retirement Services, where his team focused on driving retirement plan sales through the Financial Advisor community. Mark also spent nearly a decade working for Scudder Investments and Pioneer Investments; with all positions focused on the retirement industry. Mark graduated from Bryant University in Rhode Island with a B.A. Actuarial Sciences.



**John Carl**  
**Retirement Learning Center**  
*President*

John Carl is Founder and President of Retirement Learning Center, the nation's preeminent thought leader on retirement issues, as well as founding lecturer for The Retirement Advisor University (TRAU) at UCLA Anderson School of Management Executive Education, and Executive Director of the PLANSPONSOR Institute, the education and training arm of PLANSPONSOR. He also serves on the Government Affairs Committee for the National Association of Plan Advisors. As the "advisor to the advisors," John is a highly sought after industry insider who travels the country educating groups of financial professionals on the very latest in retirement legislation, forecasts, and developments affecting the industry.

A veteran of the retirement industry with over 25 years of experience, John has been featured on CNBC, CNN, Forbes, ABC News, The Wall Street Journal, USA Today, and CBS MoneyWatch.com, among others. John released his first book in 2009, Retirement Resource Guide: Essential ERISA Education & Best Practices for Financial Advisors, which has won multiple APEX Awards for publishing excellence and serves as the basis continuing education workshops for financial advisors.

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# Experience You Can Trust

- As part of a mutual insurance company, we manage our business for the long term and for the benefit of our policyholders, customers and intermediaries
- Providing stability for our customers in the face of uncertainty
- Strong financial strength and ratings
- Recognized leader you can trust
  - Top 100 Company (FORTUNE 500®, Ranked #89 in 2020)\*
  - World's Most Admired Company (FORTUNE, 2020)\*
  - World's Most Ethical Company for the seventh year in a row (Ethisphere Institute, 2020)
  - Best Employer for Diversity (Forbes, 2020)
  - Military Friendly Employer (2020)

<b>A.M. Best</b>	<b>A++</b>
<b>Fitch Ratings</b>	<b>AA+</b>
<b>Moody's Investors Service</b>	<b>Aa3</b>
<b>Standard &amp; Poor's</b>	<b>AA+</b>

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# Be a Champion for Your Clients

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**PlanChampion is a practice management program that turns retirement advisers into Champions.**

The program works by aligning specific external partner capabilities to advisers' and sponsors' needs. Our focus is on identifying viable, "quick win" tools with a preference on partnering with places where we see unique expertise. The result is a roster of industry leading development, analytical, and governance tools **that all work together** to drive better plan outcomes for sponsors and their participants by placing YOU, the adviser, as the PlanChampion for your clients.

**Our primary goal is to help your efforts to attract, grow, and retain clients.**

# The PlanChampion Experience

## What we can do for your clients

Our team at MassMutual Investments works with you to develop specific actionable, business-building ideas that leverage our expansive network of specialists within the PlanChampion program.

 <b>Targeting Clients</b>	<ul style="list-style-type: none"><li>• <b>Plan Beacon Reports:</b> consisting of data from 5500 and other plan details that are available for adviser use</li><li>• <b>Prospecting Lists:</b> target specific plans for advisers by geography, asset class, or other criteria</li></ul>
 <b>Needs Assessment</b>	<ul style="list-style-type: none"><li>• <b>Specific Plan Improvement Opportunities:</b> using simple/sophisticated software combined with the Plan Governance Index Model (PGI) and 100 Questions Questionnaire dealing with Investment Process, Plan Administration, and Participant Outcomes</li><li>• <b>Fi360 Fund Reports:</b> provide fund lineup comparison reports</li></ul>
 <b>Finals Presentation</b>	<ul style="list-style-type: none"><li>• <b>Professional PGI Reports:</b> with plan sponsor scorecard</li><li>• <b>Recommended Action Steps:</b> used to improve the 3 focus areas (Investment, Administration, and Outcome) packaged up in professional, easy to use presentations</li><li>• <b>Detailed Plan Deep Dives:</b> get detailed analysis of plan's 5500 from Retirement Learning Center (RLC) ERISA consultants (8-10 hrs. of prep time per report) for plans over \$50M</li></ul>
 <b>Close</b>	<ul style="list-style-type: none"><li>• <b>Expertise at the Ready:</b> access to highly experienced RLC resources desk to help win business</li></ul>
 <b>Retention</b>	<ul style="list-style-type: none"><li>• <b>Benchmark Your Plans:</b> track them regularly before competitors do</li><li>• <b>Resources at the Ready:</b> access to highly experienced RLC resources desk to help retain business</li></ul>



# Learning Objectives



Understand the importance of a plan governance process



Assist plan sponsors and committees in becoming better consumers of fiduciary services with a Chief Governance Officer



Identify and address actual and potential conflicts of interest



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



Add plan benchmarking and reporting, beyond investments and assess educational needs of committees & 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?
- What does a good governance process look like?
- What and who are involved with a good plan governance process?

# The Governance Process & Team



# 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

1. Delegates authority to responsible parties
2. Assigns duties, rights, and obligations of responsible parties
3. Defines how actions with respect to the plan are approved
4. Sets how frequently responsible parties meet
5. Identifies recurring agenda items and how to introduce new items
6. Prescribes the process for taking and archiving operational notes and meeting minutes

# Quiz Time



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

# Quiz Time



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?



Plan  
Sponsor

The plan sponsor is ultimately responsible for the governance process.



Committee  
Members

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

# The Governance Team

YES

NO

☐☐

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

☐☐

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

☐☐

Do they know the plan service providers?

☐☐

Do any of the service providers offer fiduciary services?



# The Governance Team

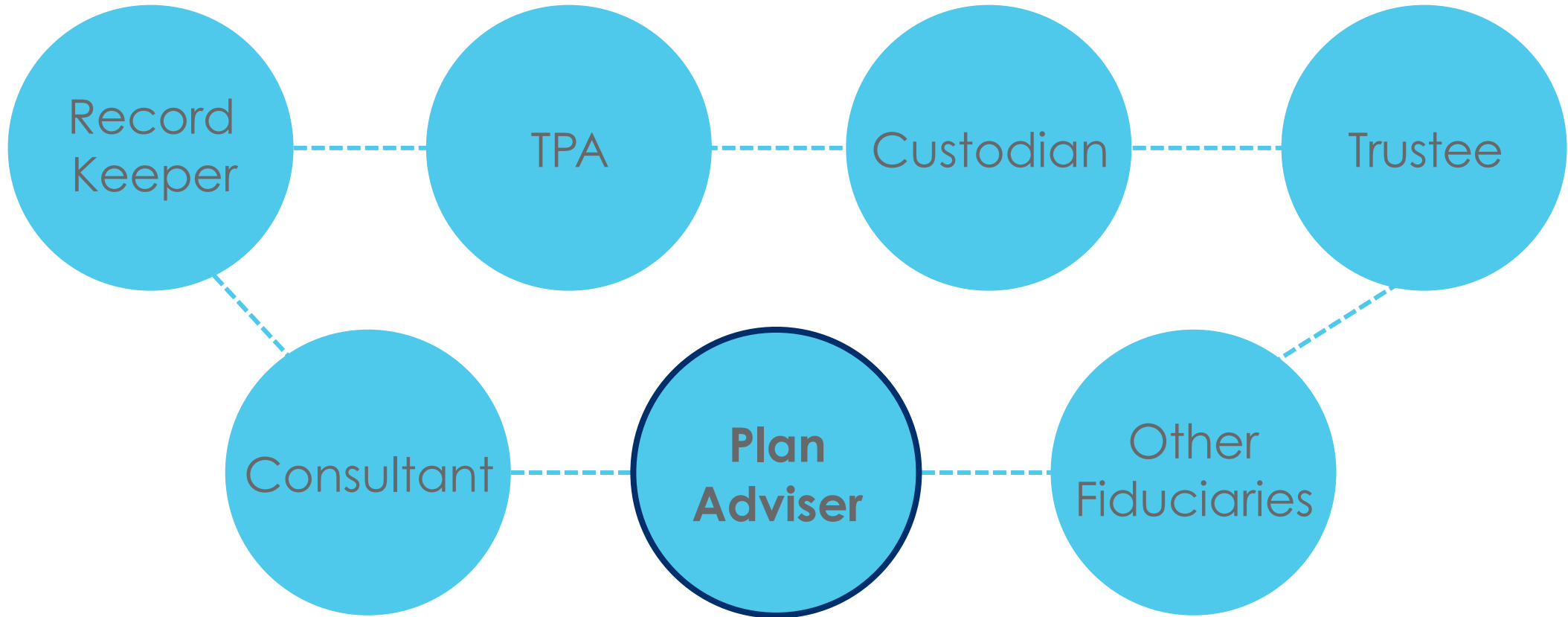
If authority is granted, the plan committee has the duty to monitor and evaluate fiduciaries and service providers



Recall, this oversight is held to an expert standard



# Who may be Plan Service Providers?



# Committee Meetings

1. Is the process written down?
2. Meeting times and dates?
3. Agenda?
4. Minutes?

# Fiduciary Services & Obligations



# Many Fiduciary Services are Available...

ERISA 3(38)

- Oversee the investment process and can make changes to the investment line-up

ERISA 3(21)

- Advise the committee regarding investment issues but don't have the authority to make the changes

ERISA 3(16)

- Responsible for the oversight and running of the plan

408(g)

- Tasked with providing investment advice to individual participants



...But not all  
fiduciary  
services are  
created equal

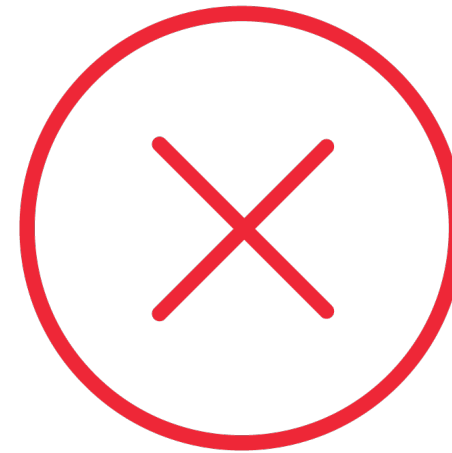
- **Contract terms:** What's covered
- **Settlement provisions:** When will provider pay and for what?
- **Backing:** What (or who) is backing the agreement

# 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...
- Can they meet the criteria under the prudent expert rule?

# 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?



- Recall, plan officials are held to an expert standard
- Ongoing education needed to enhance skillset and demonstrate commitment to education
- Document educational process

# What is a Chief Governance Officer?



- Possess an understanding of the retirement industry, its products and services
- Intimate knowledge of the specific details of the plan and the plan's service providers
- Skillsets well suited to support plan sponsors in coordination and decision-making
- Understanding of challenges and opportunities faced by the retirement industry
- May or may not be a voting member of the plan committee

**This role does not need to be fulfilled internally at the plan sponsor, and it may be well suited for a plan adviser as part of his or her responsibilities.**



# Team Effectiveness

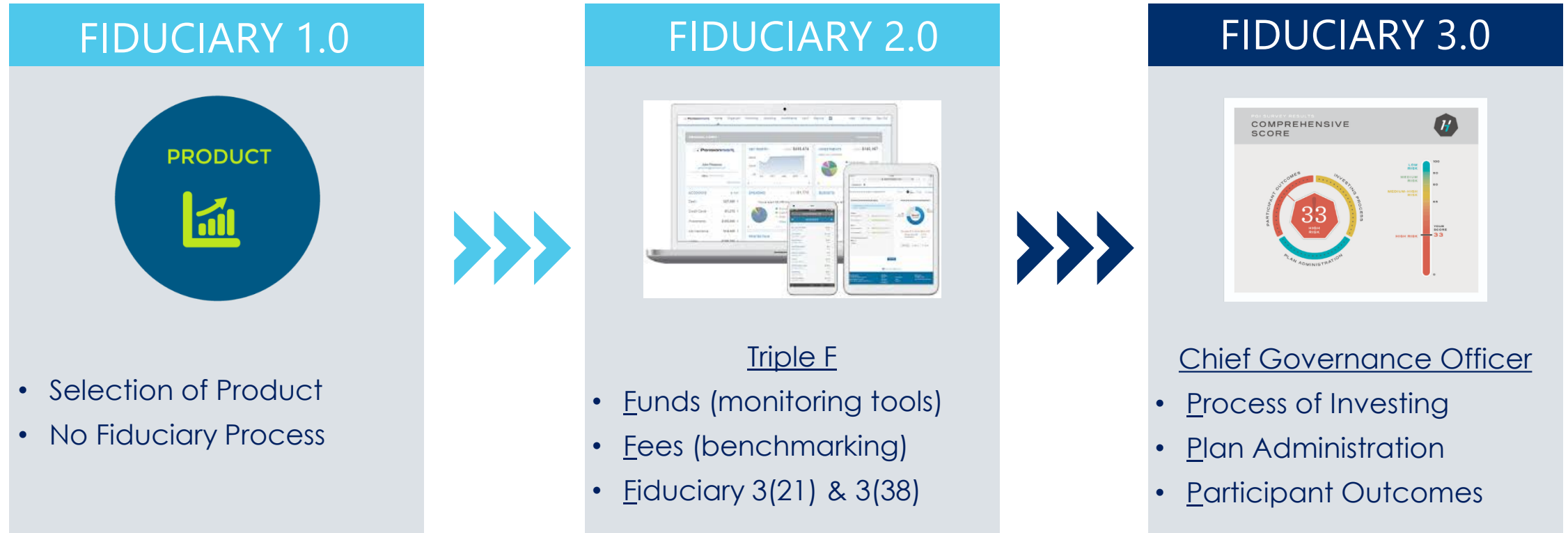
- ERISA fundamentals
- Conflict of interest primer
- Understanding fees, expenses, and investments
- Understanding the industry: who's who and important trends

# 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

# The Consulting Evolution

## Product → Process



# What Plan Sponsors Need and Want

A financial professional-led process management system that creates clarity around retirement plan success.



- Comprehensive retirement plan governance
- Benefits to have a positive impact on employees' lives (quantified)
- Benefits to have a measurable business impact on their organization (quantified)



HERO7

# Show Value through Monitoring the Process

The *Plan Governance Index™ Score* uses a single easy to understand value on a 100-point scale. Along with the *PGI Score*, you and your clients can view and discuss clear remedies and suggested best practices to address identified gaps in ideal performance.

<p><b>PGI SURVEY RESULTS</b></p> <h1>PROCESS OF INVESTING</h1> 	
<p><b>QUESTION 1 ANSWER: YES</b></p> <p>Is there an Investment Policy Statement addressing all plan investments, including the CDIA and Cash Equivalent/Stable Value/Fixed/Guaranteed being utilized?</p>	<p><b>PGI SURVEY RESULTS</b></p> <h1>PROCESS OF INVESTING</h1>
<p><b>QUESTION 2 ANSWER: YES</b></p> <p>Does documentation exist regarding the services and fees of the Plan investment RFP/Market Analysis every 5 years?</p>	<p>ERISA is a law based on “process.” The PGI™ metric of Process Of Investing is designed to provide a broader standard beyond the prevalent practice of evaluating investment performance and associated fees, which is necessary but insufficient from a prudence perspective for a Plan Fiduciary.</p>
<p><b>QUESTION 3 ANSWER: YES</b></p> <p>Is there a clear and documented process for investment selection and monitoring of those Providers?</p>	<p>This section is comprised of binary (yes/no) questions focused on the process of investing elements affecting a defined contribution plan.</p>
<p><b>QUESTION 4 ANSWER: YES</b></p> <p>Have all Plan Fiduciaries and Service Providers acknowledged their fiduciary duties?</p>	
<p><b>QUESTION 5 ANSWER: YES</b></p> <p>If applicable, has the Plan engaged any ERISA 3(21) or 3(38) Providers and is monitoring of those Providers?</p>	<p><b>HIGH RISK</b> 0-65</p> <hr/> <p><b>MEDIUM-HIGH-RISK</b> 66-80</p> <hr/> <p><b>MEDIUM RISK</b> 81-90</p> <hr/> <p><b>LOW RISK</b> 91-100</p>

The PGI™ comprises three distinct modules:

- PROCESS OF INVESTING
- PLAN ADMINISTRATION
- PARTICIPANT OUTCOMES

Each section is scored separately on a 100-point scale and averaged together for a comprehensive score.

The PGI™ Survey is designed to identify Plan governance breaches and provide clear remedies for Plan Fiduciaries to fix the gaps and follow the roadmap provided toward improving the PGI™ score.

The PGI™ score is delivered in the context of a risk spectrum so that Plan Fiduciaries can prudently assess their risk and liability. The Risk factor combines with a measurement of their plan design to determine if the Plan is leveraging elements that create successful outcomes for employees.

\* Process Of Investing scoring is derived by percentage on a 100-point scale.

# Interesting Stats from H7

As of July 30, 2020

- 220 Advisory Teams
- 1189 Plans in the System

Average Score:

44

## Prospect Plan

74

# Client Plan

86%

DO NOT have documentation regarding 3(16) duties for the TPA/Admin (if applicable)

77%

DO NOT have documentation regarding the selection process of their current QDIA (if applicable)

79%

DO NOT have documented results of their Wellness program (if applicable)

89%

DO NOT have documentation that the fiduciaries of the plan acknowledge their fiduciary status in writing (if applicable)

Source: Hero7. The information is provided by Hero7 and believed to be accurate, but is subject to change at anytime, These views are for informational purposes only and should not be relied upon as a recommendation to purchase any security or as a solicitation or investment advice.

# 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

# Documents and Governance

ERISA: Must  
follow plan  
documents



**Plan documents  
equate to law**

Watch out: 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



## Scenario One:

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

## Scenario Two:

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.

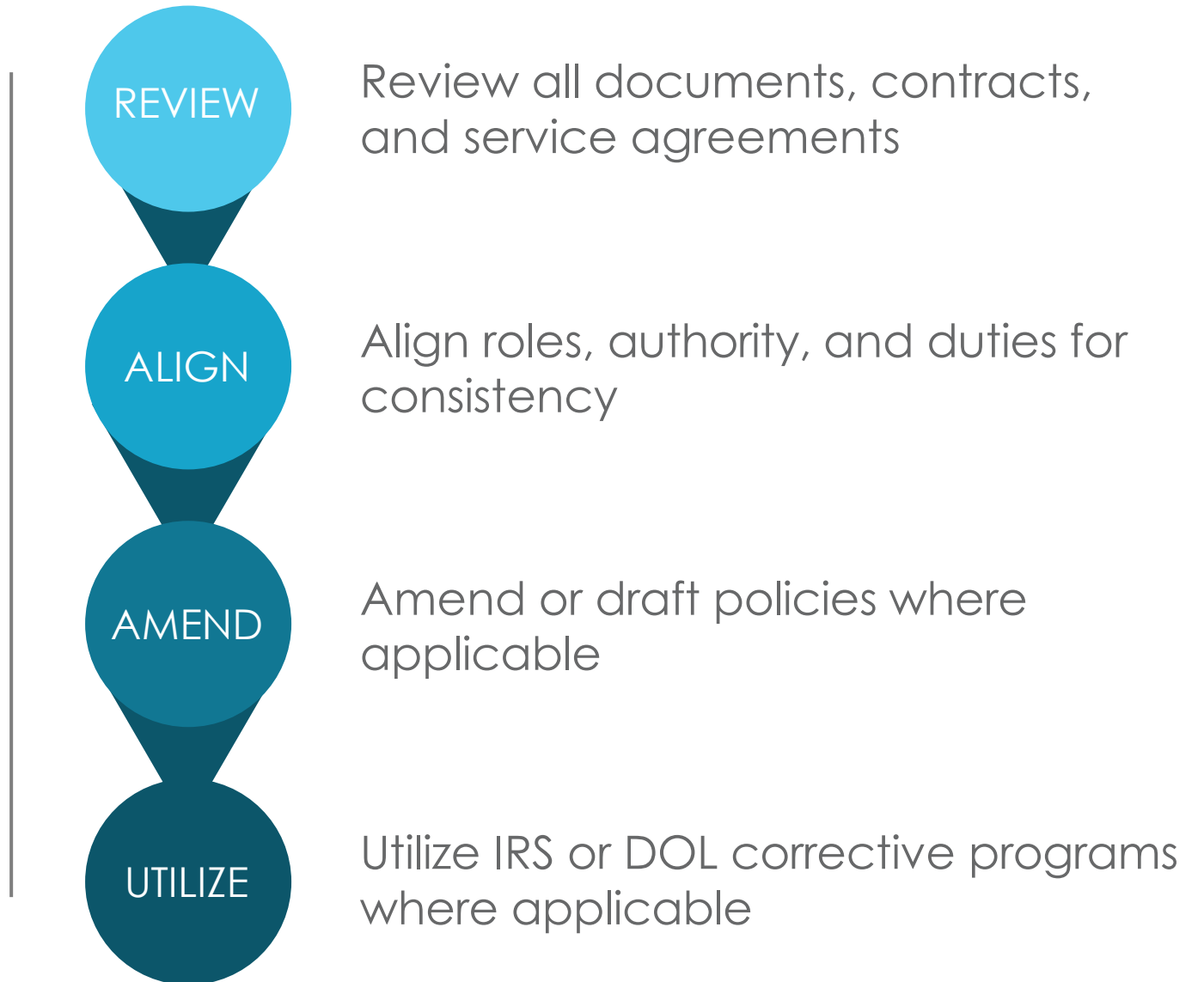
# Documents and Governance—Must Haves

Lines of authority  
must be clear

Roles must be  
defined

Process is  
consistent

# Documents and Governance Actions



# Important Oversight Elements



Review of plan provisions

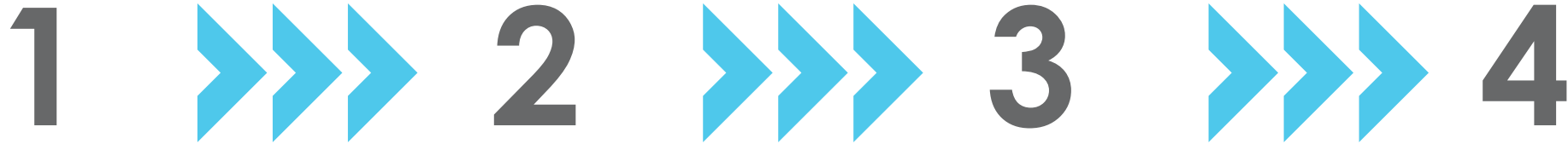


Review of service provider documentation



Ensuring record keeping and payroll is consistent with plan provisions

# Next Steps




1  
Incorporate a Chief Governance Officer into the Plan and draft a governance policy and calendar

2  
Compare documentation and make amendments or modifications where necessary (including corrective actions)

3  
Review conflict of interest rules and identify possible conflicts and mitigation strategies

4  
Incorporate a plan benchmarking system that includes more than investments.





Questions  
and  
Answers

 **MassMutual**  
Investments

Contact us anytime at  
**1-866-329-6277**, option 2

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