



FIDUCIARY PLAN GOVERNANCE, LLC

Helping Your Clients Know How DOL Thinks

Presented by:

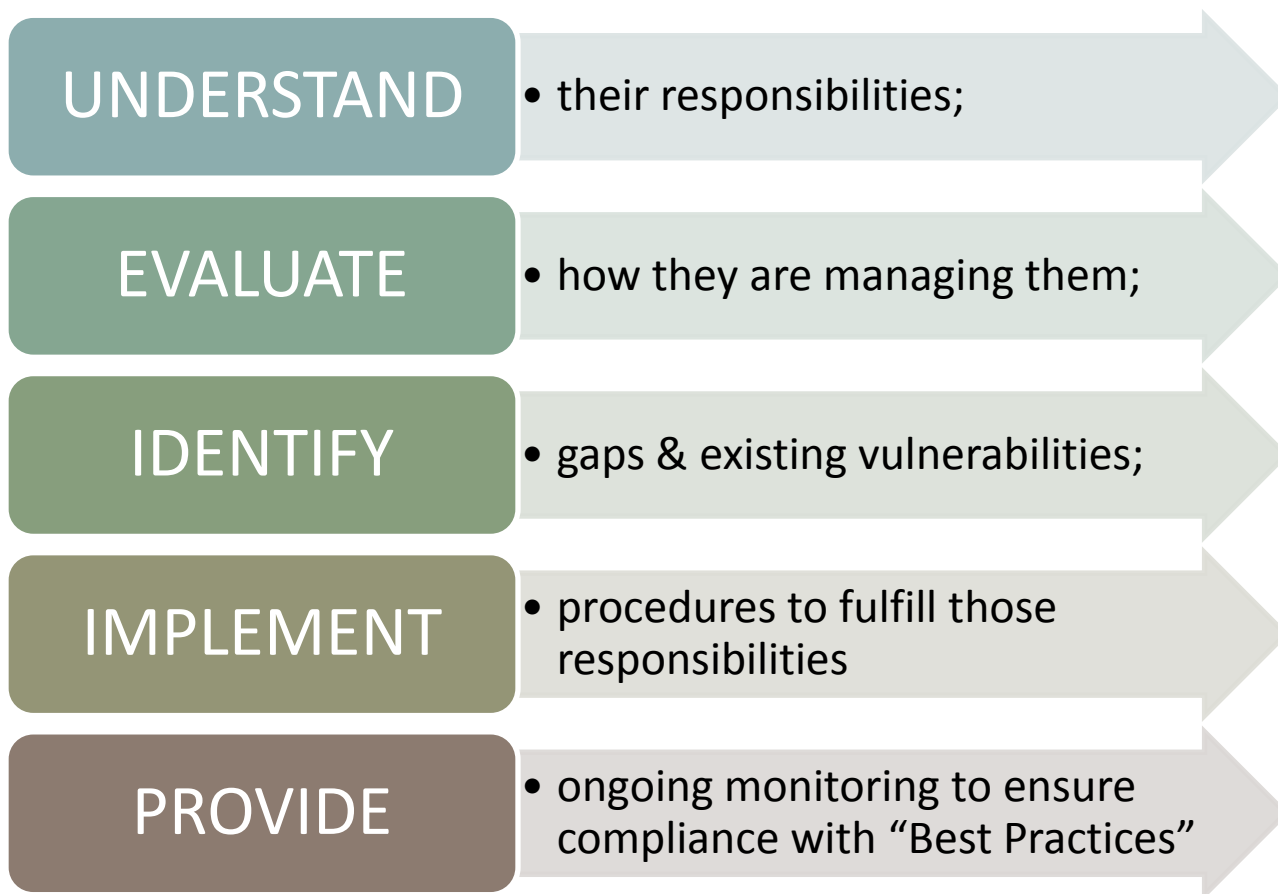
Edward M. Lynch, Jr., AIFA®, RF™
Lynne McAuley, CPA, CEBS, AIFA®
Donald K. Jones, AIFA®, PRP, RF™



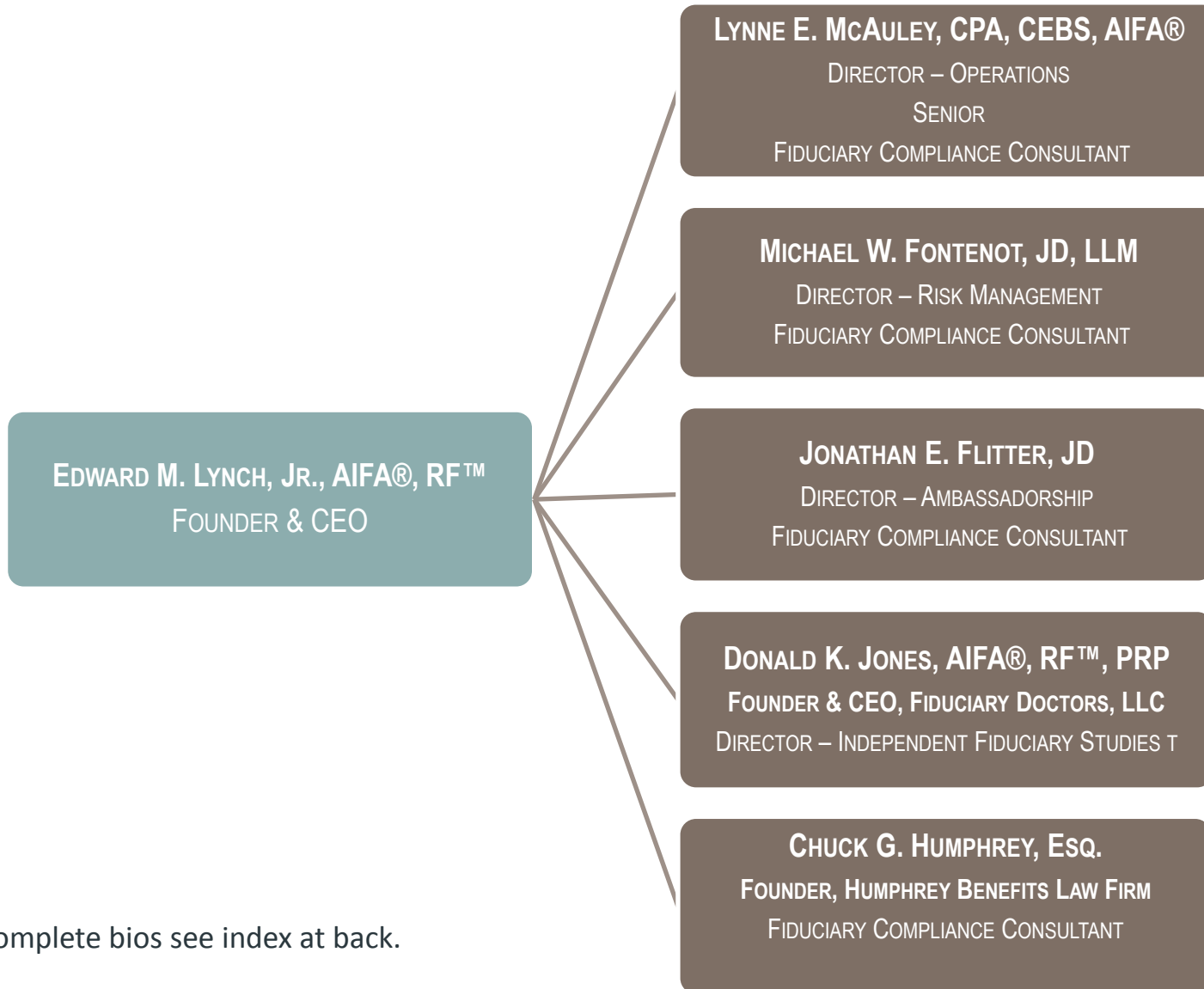
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Fiduciary Plan Governance, LLC

- ❖ Exists because fiduciaries desperately want unbiased expert help and advice
- ❖ Our unique approach helps retirement plan sponsors:



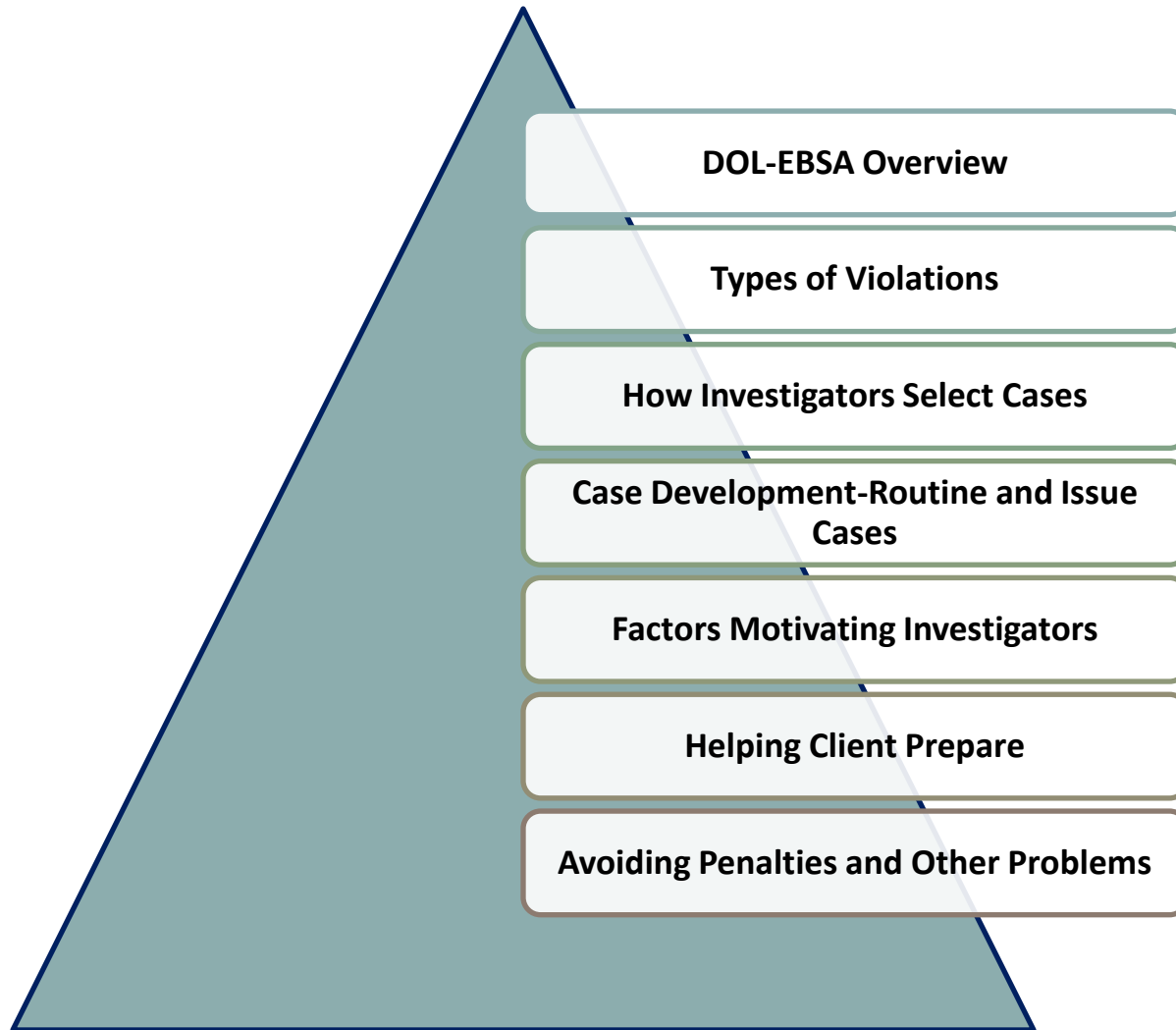
Fiduciary Compliance Team



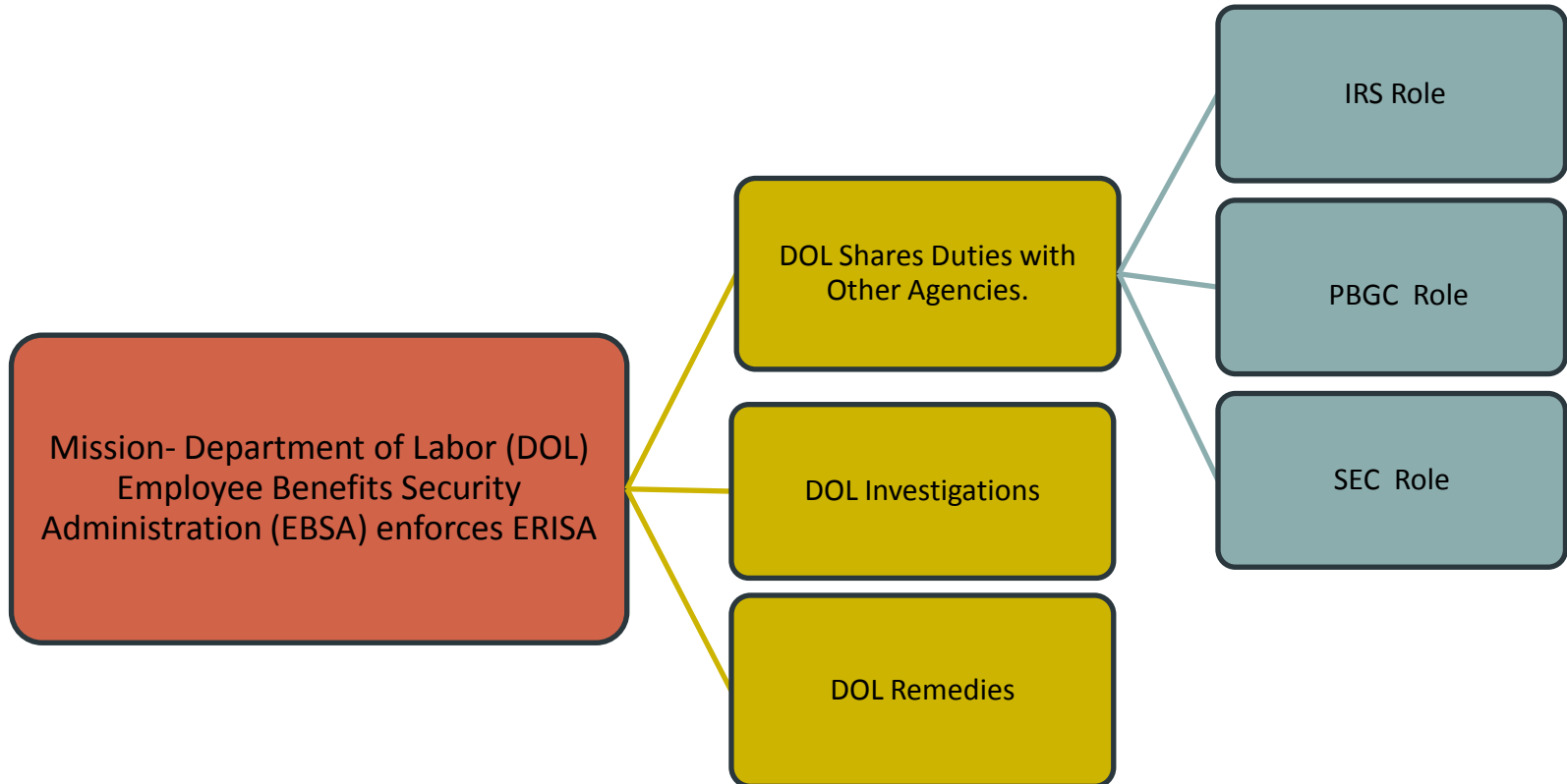
*For complete bios see index at back.

"The First Rule for Fiduciaries Is to Put Their Interests Last"

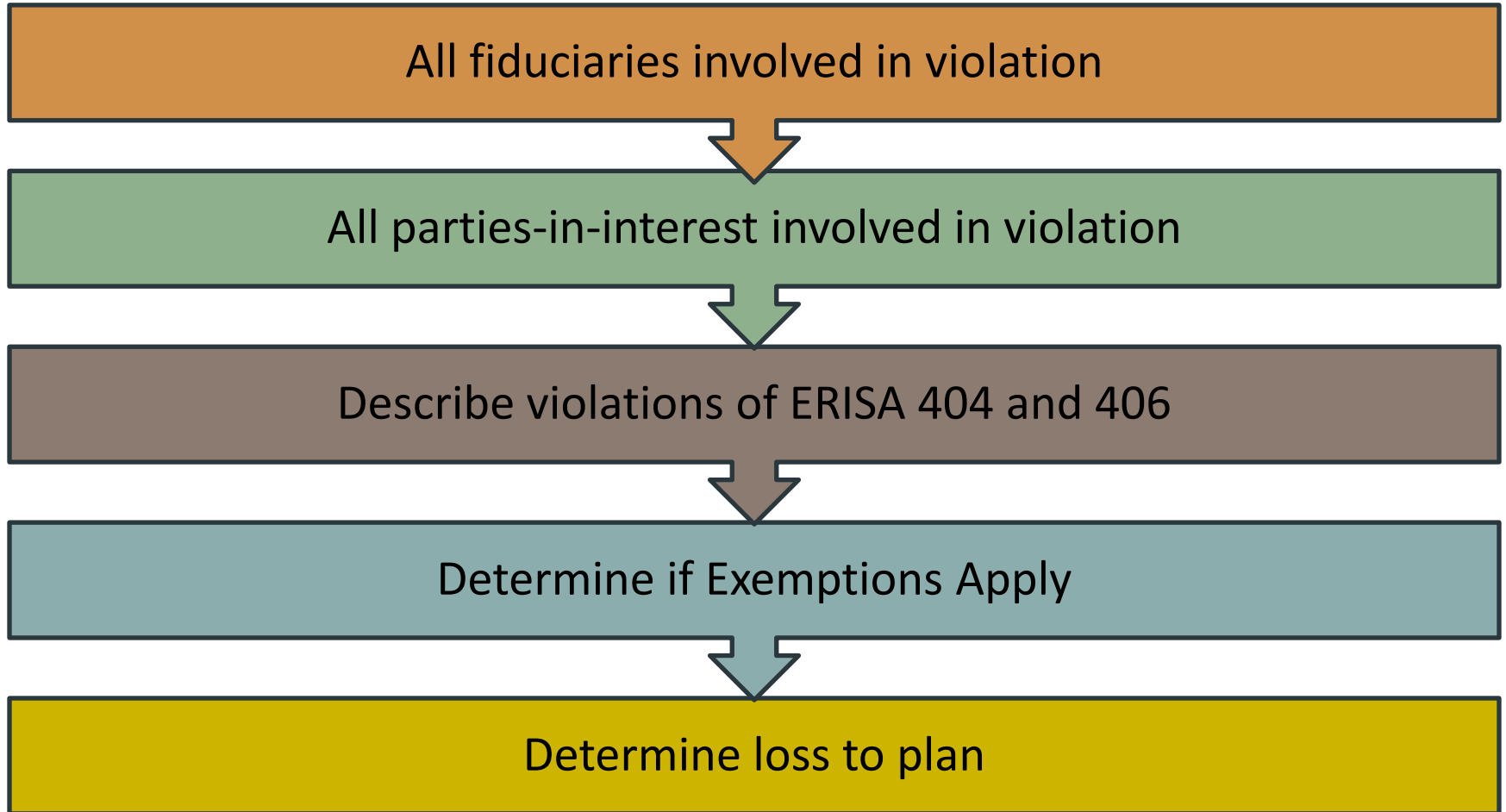
Topics To Be Discussed



EBSA/DOL - Overview



An Investigator's Mental Process



How does ERISA Define a Fiduciary?

ERISA 3(21) encompasses all fiduciaries. A person is a fiduciary to the extent that:

He/she exercises discretionary authority concerning plan management or managing/disposing of plan assets;

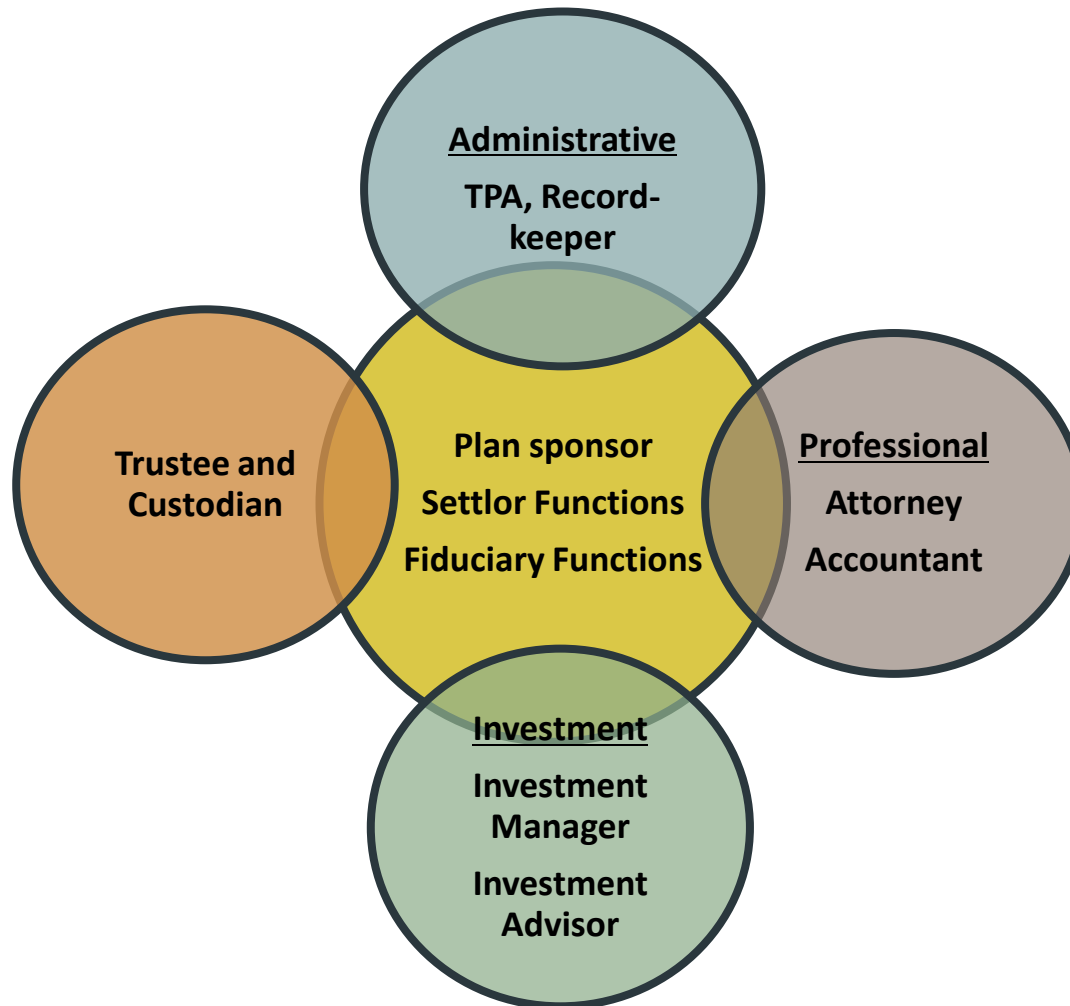
Exercises authority with respect to managing/disposing of underlying assets of an entity in which plan invests that are considered plan assets;

Renders investment advice for a fee or other compensation, direct or indirect, concerning any money or other property of the plan or has any authority to do so,

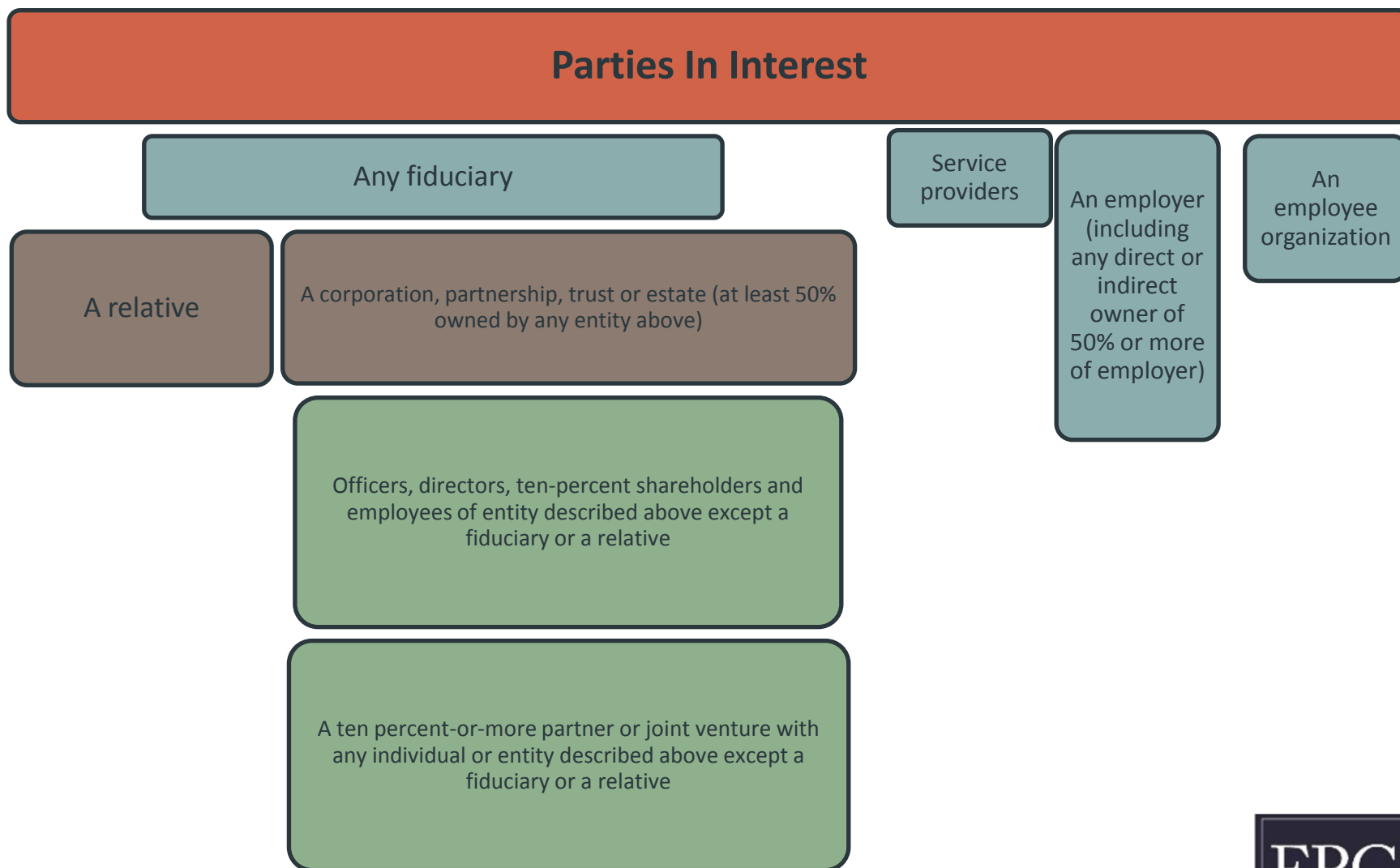
Has any discretionary authority or responsibility in the administration of the plan



Review of the “Players” to be Considered



Party-in-Interest Definition



Fiduciary Breach & Prohibited Transactions

EBSA investigates violations
of §404(a) and §406

404(a)-Prudence Provisions-

These include:

Exclusive benefit/defray
costs;

Prudence;

Diversification

According to plan
documents

406-(a)-Prohibited Transactions Between Plan and Party in Interest

These include:

Sale, exchange or lease

Loan or extension of credit

Furnishing of good, services
or other facilities

Transferring assets to Party
in Interest

Employer Securities

406(b)-Prohibits self- dealing transactions between ERISA Plans and Fiduciaries, even if at arms- length

. These include:

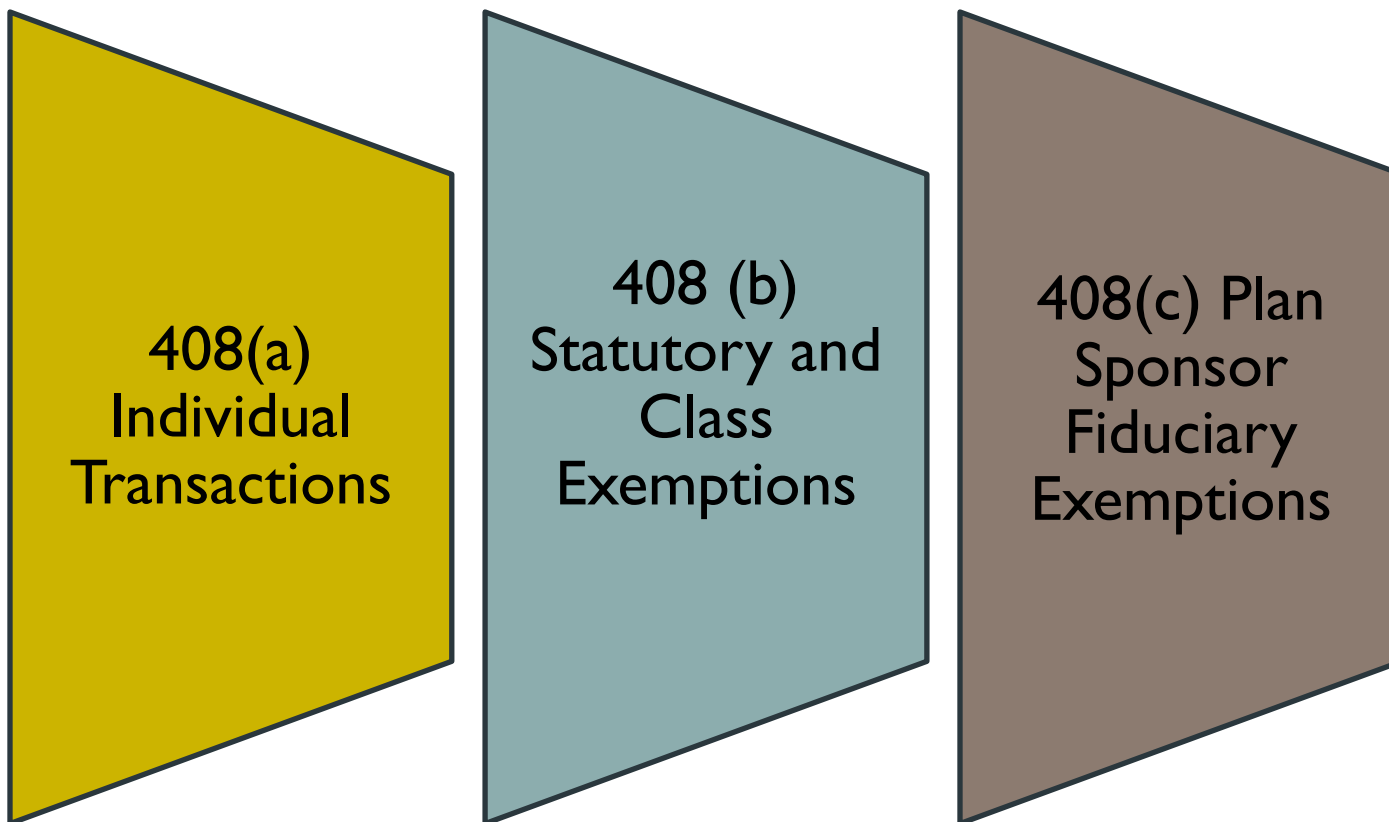
In one's own interest

If interests are adverse

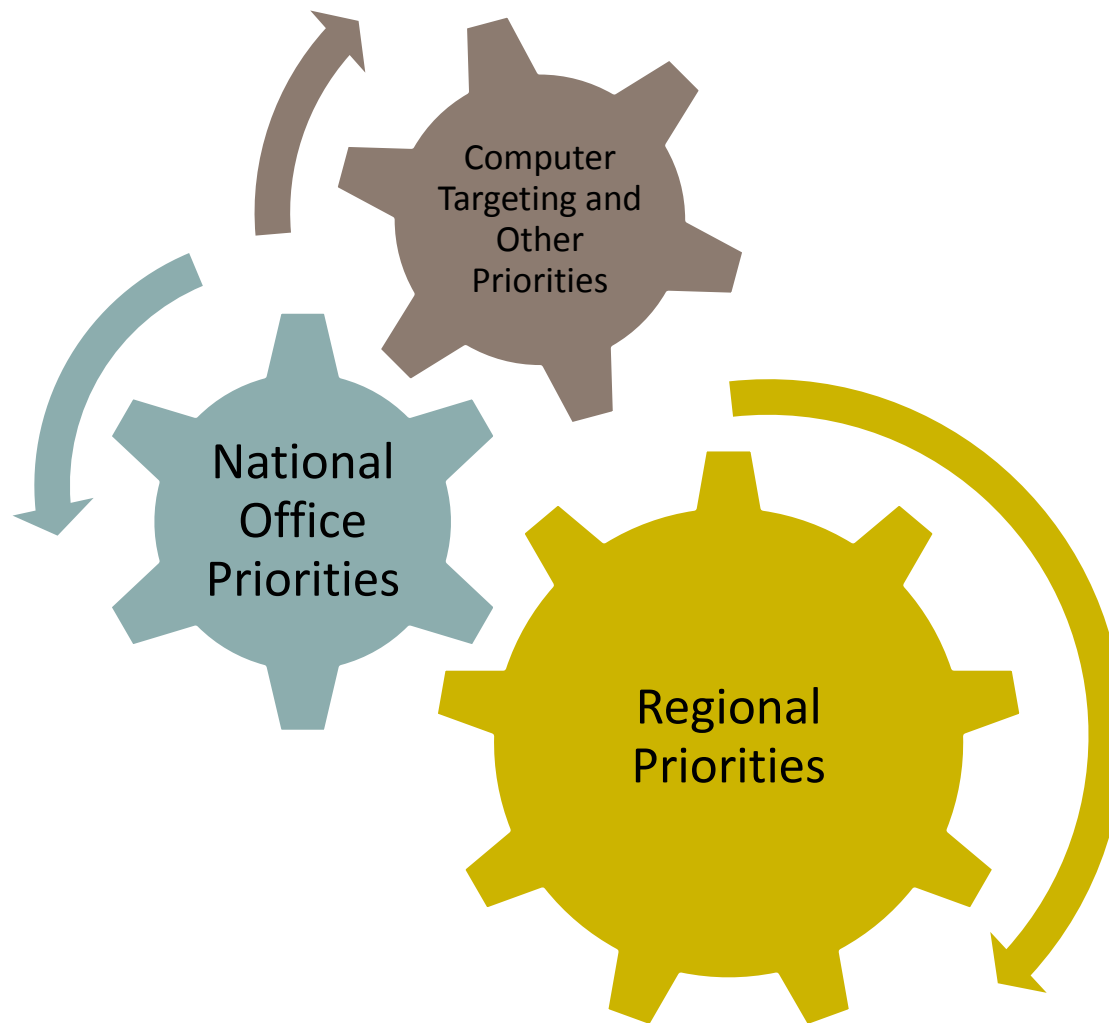
Receiving consideration for
oneself (kickback)

FPG

Exceptions to the Rules



How Do DOL Investigators Select Cases?



How Do DOL Investigators Select Cases?

Computer targets - 30 pre-designed programs for pension plans

Examples:

Plans with large percentage of assets in real estate (limited partnerships)

Loan or lease defaults

Insufficient rents paid for property or insufficient interest paid on loan

Lack of Diversification

Untimely contributions to plans

Three Phases of an Investigation

Case Selection



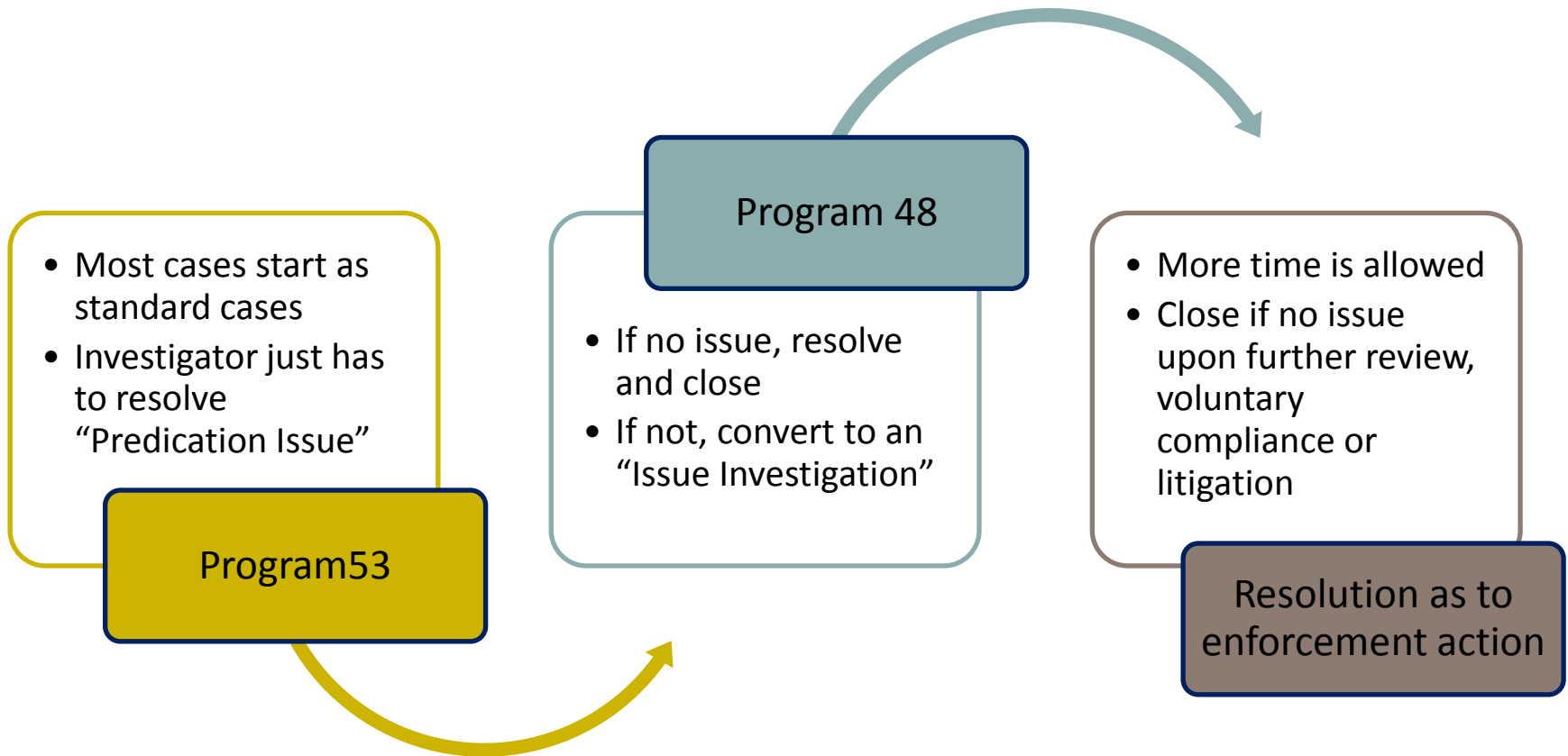
Case Development



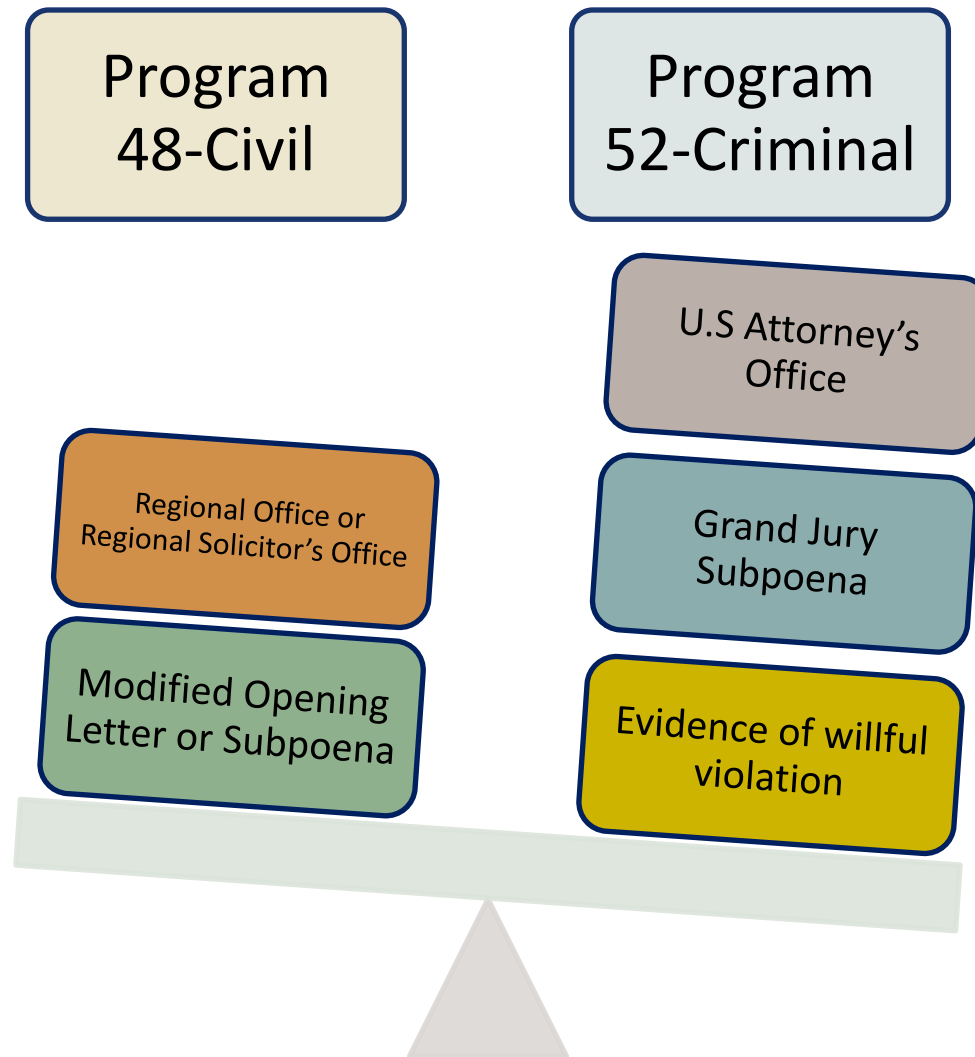
Case Settlement



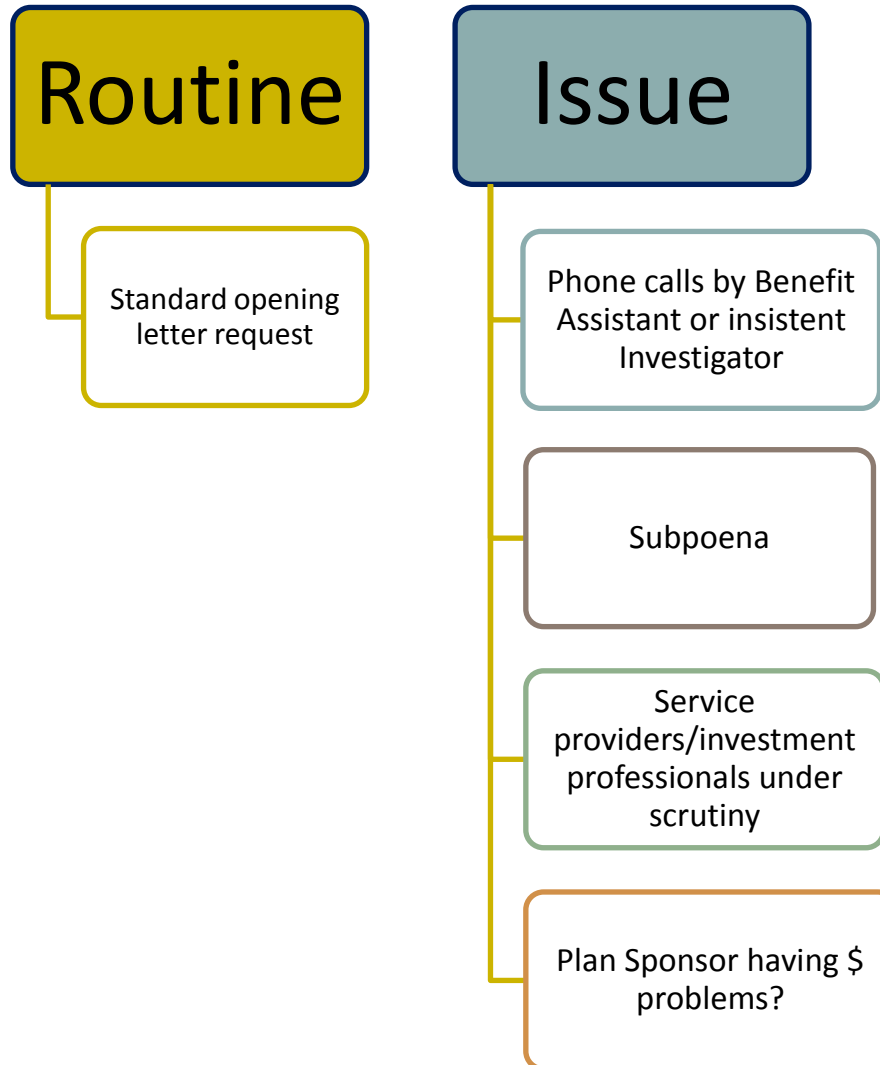
Typical Case Development & Sequence



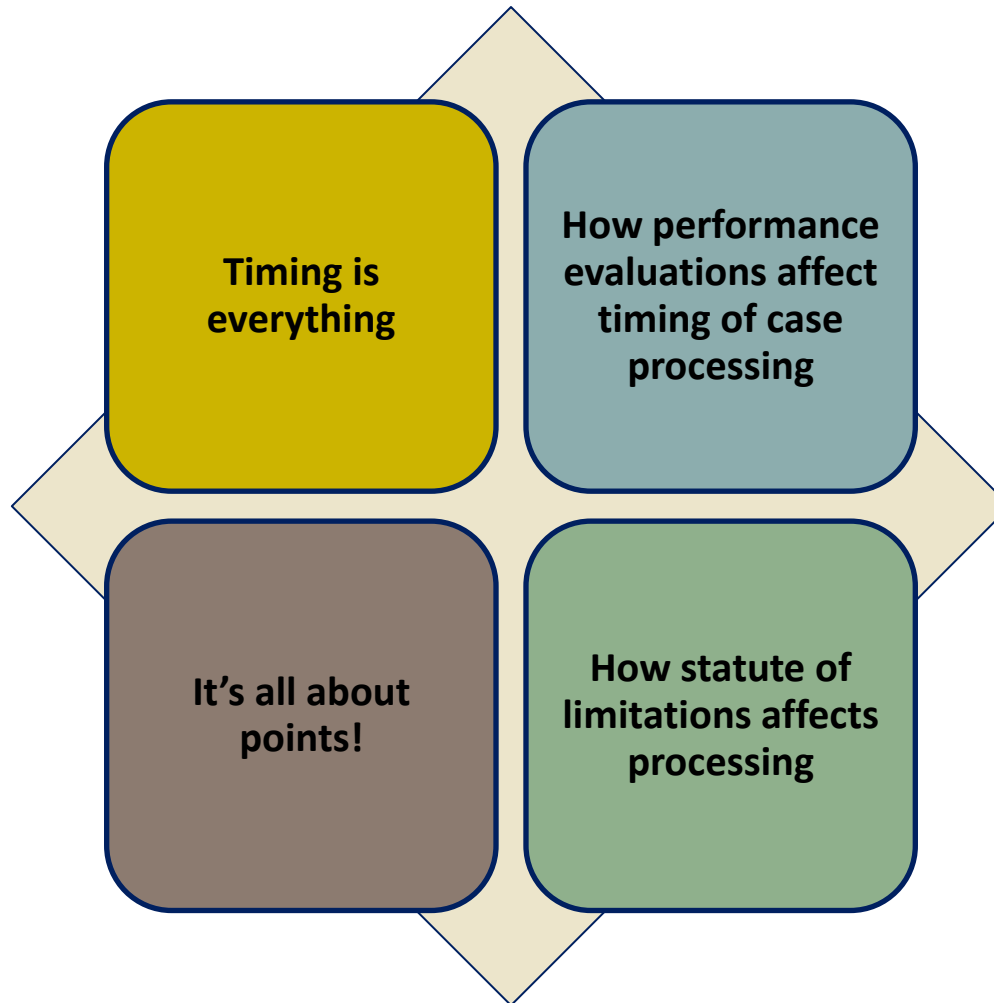
Case Development: Issue Case



Determining if Case is Routine or Issue



Factor Motivating Investigators



Impact of 408(b)(2)

Purpose:

To ensure that arrangements with service providers are “**reasonable**” and that only “**reasonable**” compensation is paid for services. *Reasonableness* can be assessed by:

- *Is the service needed or used?*
- *Is the cost fair?*
- *Is the quality acceptable?*



408(b)(2): Considerations

- Can the plan fiduciary be reasonably expected to carry out this responsibility with the disclosure provided?
- Are the services necessary and the fees fair? That is, is the arrangement “reasonable?”
- **If any arrangement is determined to be unreasonable, plan sponsors must act:**
 - Change arrangement so that it becomes reasonable, or
 - Replace the service provider, or
 - Eliminate the service from the plan



Helping Your Client During An Investigation

Opening Letter

- Call investigator & see about extension from deadline
- Ask investigator if any information investigator specifically needs and if routine investigation.
- Send back information requested-make sure organized & annotated. If it is easy to follow, the investigator can close in less than 3 days.

Preparation for Investigator coming on-site

- Ask investigator for a list of topics, people to interview and documents needed
- Review plan governance documents and plan financial records .
- Perform fiduciary and party-in-interest analysis
- Organize records and fiduciary file
- Prepare client

While Investigator is on-site

- Realize that investigator will ask same question in several different ways
- Have someone available to copy documents
- Make sure investigator understands transaction
- By the end of the interview, ask about next steps and timeframes.

Before Enforcement Action is Taken

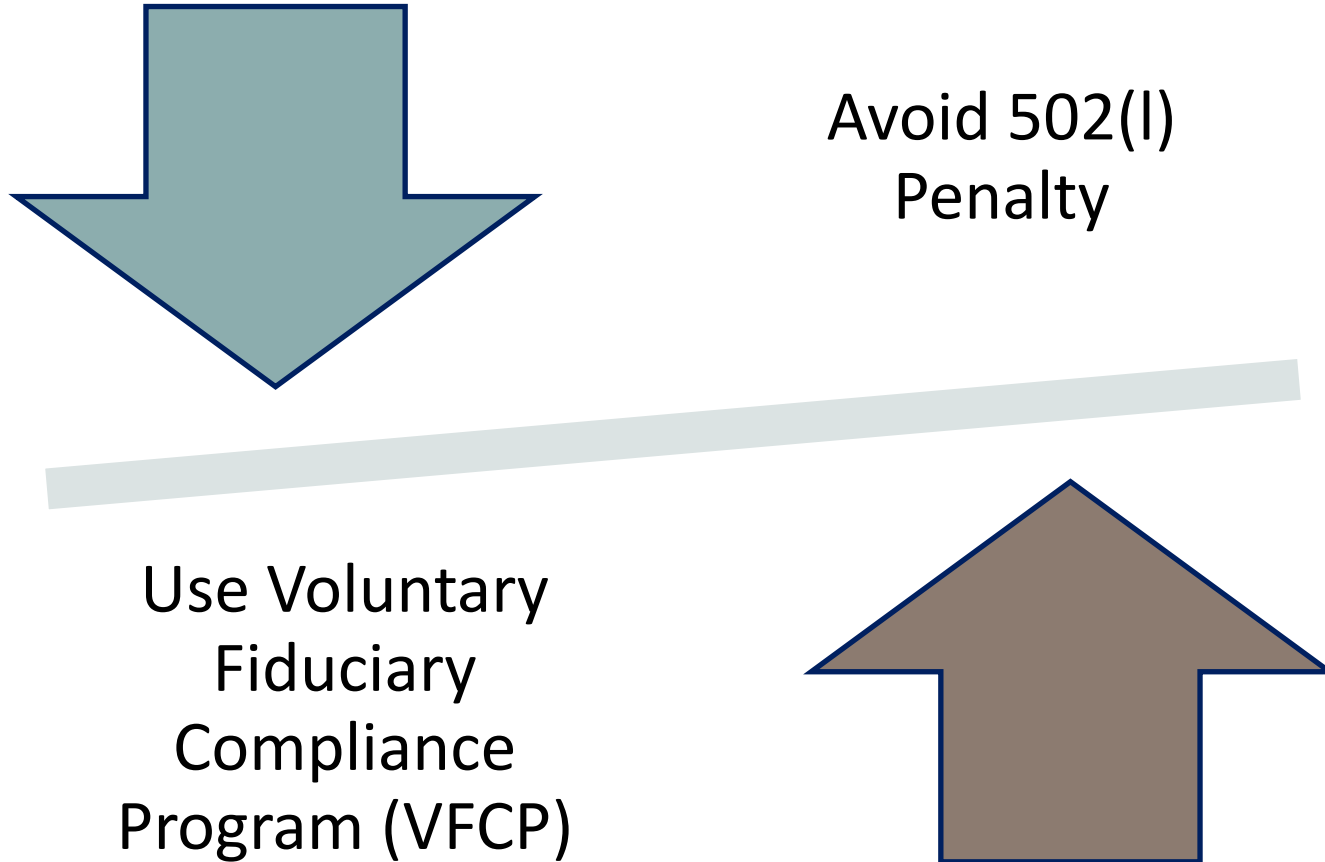
- Take actions before a Voluntary Compliance letter to avoid 502(l) penalty
- Stay in touch with the investigator by phone and email and ask how things are coming.
- Offer to provide additional information if necessary.

Once Enforcement Action is Taken

- Pay attention to the clock. Does client want to settle or dispute transaction? What is the dollar amount involved?



Avoiding Penalties & Other Problems



Fiduciary Plan Governance | Fiduciary Success

"The first rule for fiduciaries is to put their interests last."

Fiduciary Plan Governance, LLC is not an investment advisor and does not provide any investment-related services. We are an expert resource actively engaged in supporting broker/dealers, registered representatives, registered investment advisors and plan fiduciaries in effectively meeting their responsibilities.

Please contact us for further information on how we can strengthen and broaden your professional services. Our team is looking forward to working with you.

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Edward M. Lynch, Jr., AIFA® , RF™

Founder & CEO

Ed Lynch has worked with ERISA-qualified plan sponsors and designated fiduciaries in most aspects of plan development and maintenance since the early 1980s.

In 2003, Ed became one of the first practitioners in the United States to complete the Accredited Investment Fiduciary Analyst (AIFA®) program of advanced studies at The Center for Fiduciary Studies (Joseph Katz School of Business, University of Pittsburgh).

In September 2008, Dietz & Lynch Capital, formerly 401(k) Advisors Group, became “[one of] the first Investment Advisors globally” to successfully complete the Centre for Fiduciary Excellence (CEFEX) independent certification process. The CEFEX certification “provides assurance to investors, both institutional and individual, that Dietz & Lynch Capital has demonstrated adherence to the industry’s best fiduciary practices...indicating [it’s] interests are aligned with those of investors.”

In 2009, Ed was voted by his peers as one of the 40 “Most Influential Retirement Plan Advisors” in the United States in a national survey conducted by the 401(k) Wire, the 401(k) Exchange and The Boston Research Group. Based on over 100,000 votes from the industry, business metrics and input of an editorial board, the top 300 and top 40 were recognized for their business success, and their influence on retirement plans, their fellow advisors and retirement plan providers.

Ed has served as an Expert Witness in ERISA-plan related litigation and is a graduate, *summa cum laude*, of Gordon College in Wenham, Massachusetts.



Lynne E. McAuley, CPA, MPA, CEBS, AIFA®

Former Senior Investigator, US DOL/EBSA

Director – Operations, Senior Fiduciary Compliance Consultant

From 1990 to 2004, Lynne served as an auditor for the United States Department of Labor's Employee Benefits and Security Administration (EBSA) in the Boston Regional Office where, over her tenure, she investigated over 200 qualified retirement plans and welfare plans.

The primary focus of her investigations during her years with the Department was the conduct of plan sponsors and other fiduciaries relative to the prudence of their investment selection and monitoring process. She assessed the practices of employee benefit service providers, and evaluated if plan sponsors and other fiduciaries complied with the reporting and disclosure provisions of ERISA and other related Federal laws.

She is a CPA, an Accredited Investment Fiduciary Analyst (AIFA®), and Certified Employee Benefits Specialist (CEBS). She has a Master of Public Administration (MPA) from Kentucky State University and a Bachelor of Arts degree from Drew University.



Donald K. Jones, AIFA[®], PRP, RF[™]

Founder & CEO, Fiduciary Doctors, LLC

Director – Independent Fiduciary Studies & Training, Fiduciary Compliance Consultant

Don has been in the retirement and financial industry for 40 years now. He wrote his first retirement plan in 1973, one year before ERISA, and since that time has been involved in thousands of retirement plans.

Don was a successful third party administrator for nearly 20 years, an expert witness for ERISA litigation and mediation, and was the national sales manager for two national retirement plan organizations. To improve the efficiency and results of retirement plans, Don has spent a great deal of time in helping the financial industry and plan fiduciaries understand the proper use of ERISA management and fiduciary governance in these plans. He has pioneered such tools and research papers as:

- ***"Qualified Plan University Studies (Q-PLUS)"***: A comprehensive 9 month, 18 hour C.E. study class for investment professionals on how to obtain, manage and keep qualified plans.
- ***"ERISA Management & Fiduciary Governance in Qualified Retirement Plans Today"***: How to improve retirement plan results in each and every plan.
- ***"What If We Are Wrong: Investing Money in Retirement Plans Today"***: This research paper was written in 2003 and been prophetic as the rest of the 2000's have unfolded.
- **A Leader in the Development of a National Record-keepers Online Fiduciary Selection and Monitoring Tool for "CORE" Investments in an ERISA-Qualified Plan**: A comprehensive tool that is considered one of the best in the industry.

