

3(16) and the Fiduciary Plan Administrator: The Next Number to Decode

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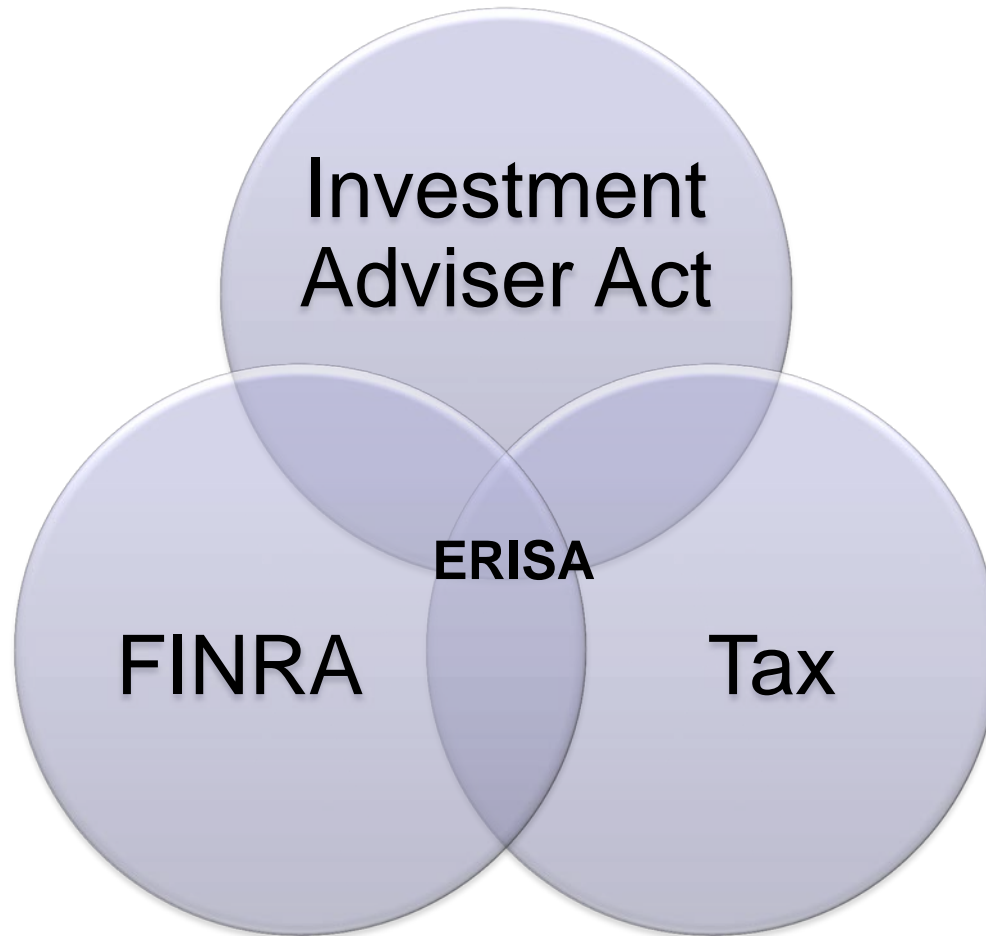
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Ask Kidder.®

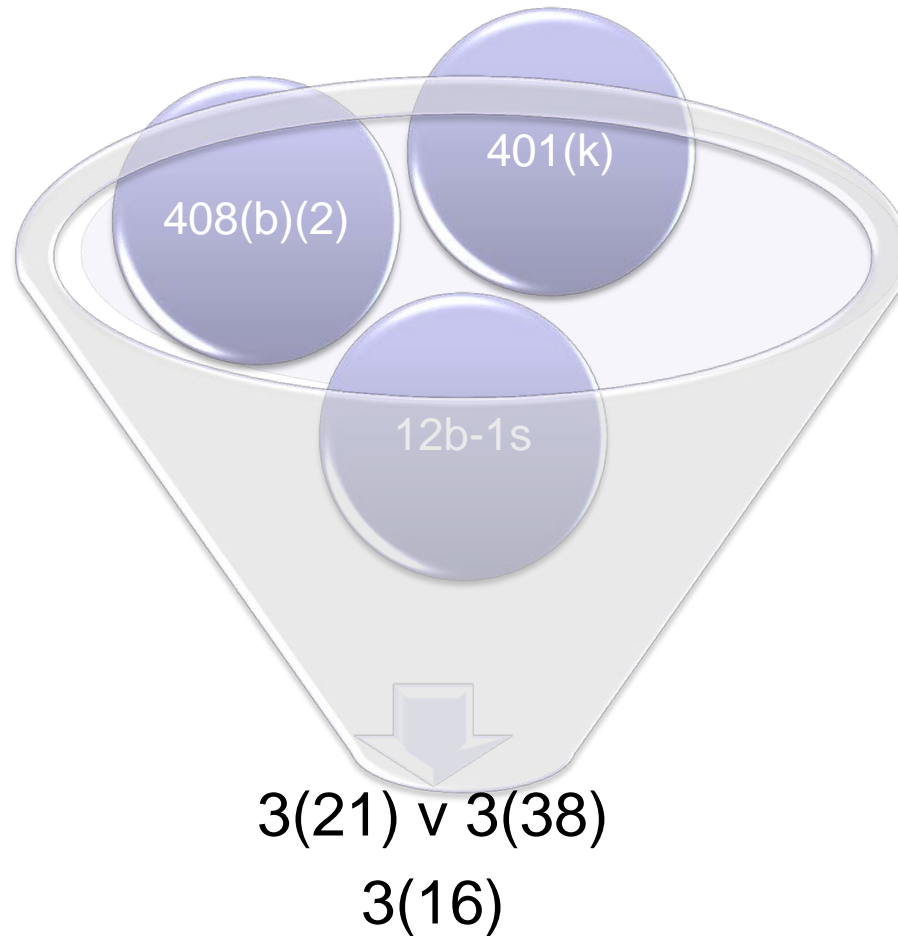
Objectives

- Understanding the sources of ERISA speak
- Differences between fiduciary v ministerial services
- Knowing when to allocate responsibility
- Learning how to price

ERISA Intersects Distinct Bodies of Law



Demystifying a Language of Numbers



3(16) Plan Administrator

- Designated by plan document
- If not, the Employer (plan sponsor)

ERISA Plan Fiduciary

3(21)

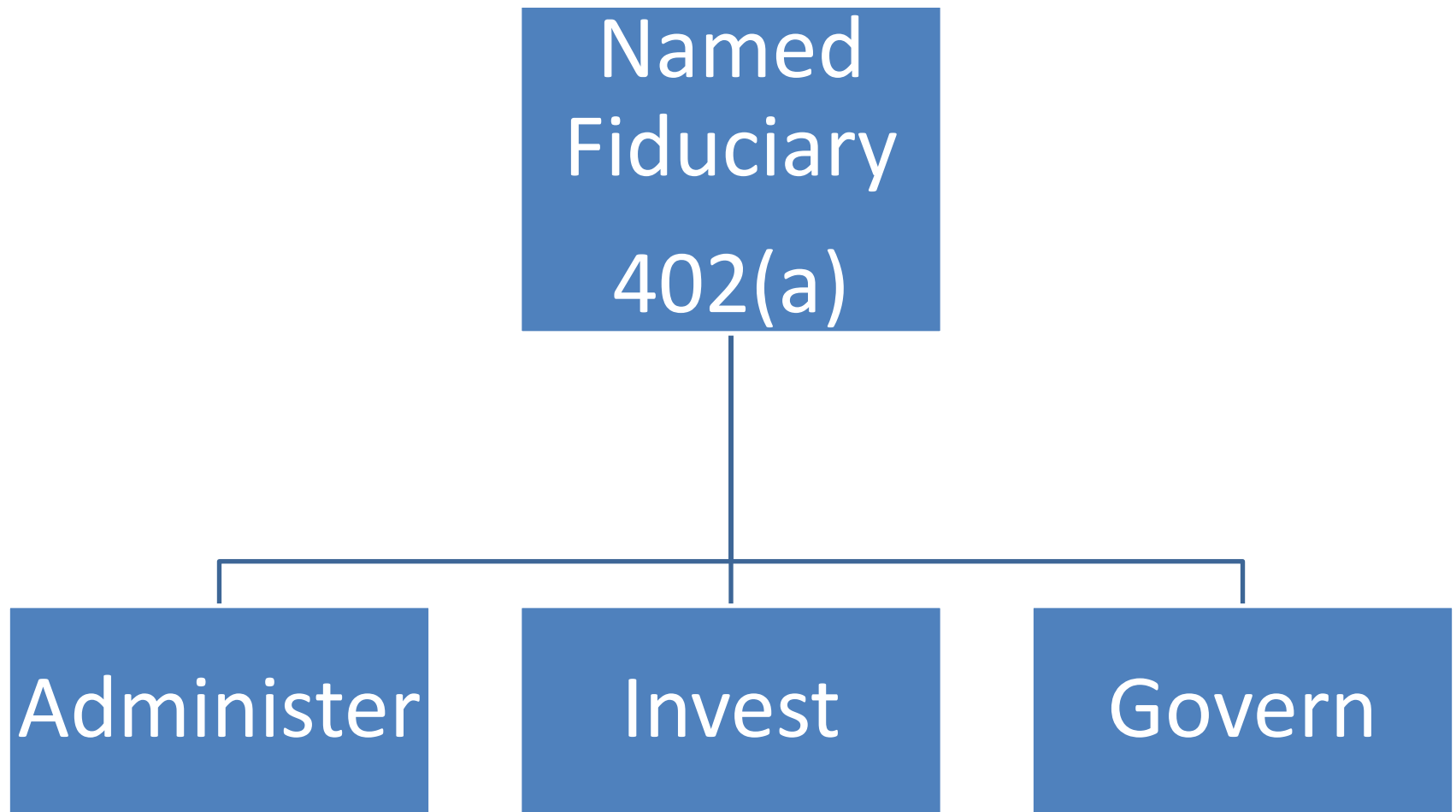


**Discretionary authority
in administration of plan**

**Investment advice for a
fee**

**Discretion authority over
plan assets**

Plan Management



Plan Administration Functions



Ministerial v Fiduciary?

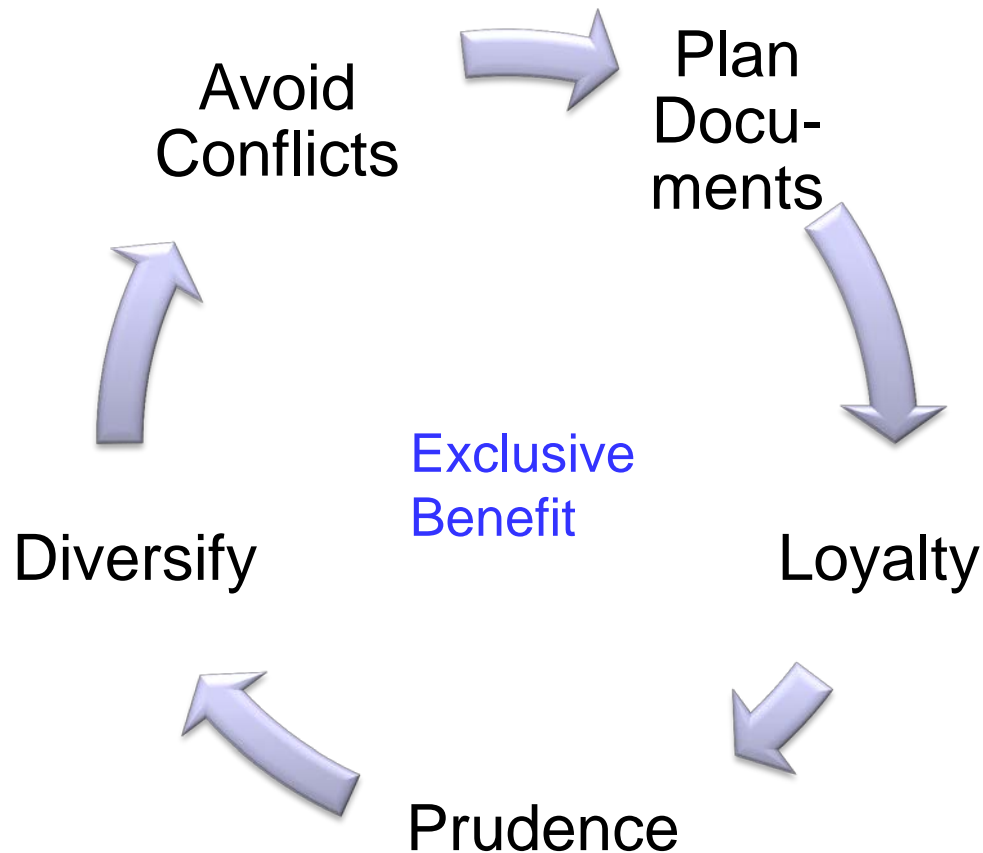
Follows Rules

- Calculate benefits
- Prepare reports
- Process claims
- Inform participants
- Maintain records
- Recommend (other than investment advice)
- Collect contributions
- Process loans

Makes Discretionary Decisions

- Determine plan design
- Sign and file 5500s
- Determine and approve census, eligibility, QDROs, loan policy and loans, claims
- Adopt IPS
- Approve disclosures
- Hire other service providers

Fiduciary Responsibilities



What happens if I breach fiduciary duties?



- *Personally liable* for losses and lost opportunity costs.
- Required to pay attorney fees.
- Subject to Department of Labor civil fines or excise taxes.
- Liable for breaches of other fiduciaries.

How to Shift Fiduciary Authority

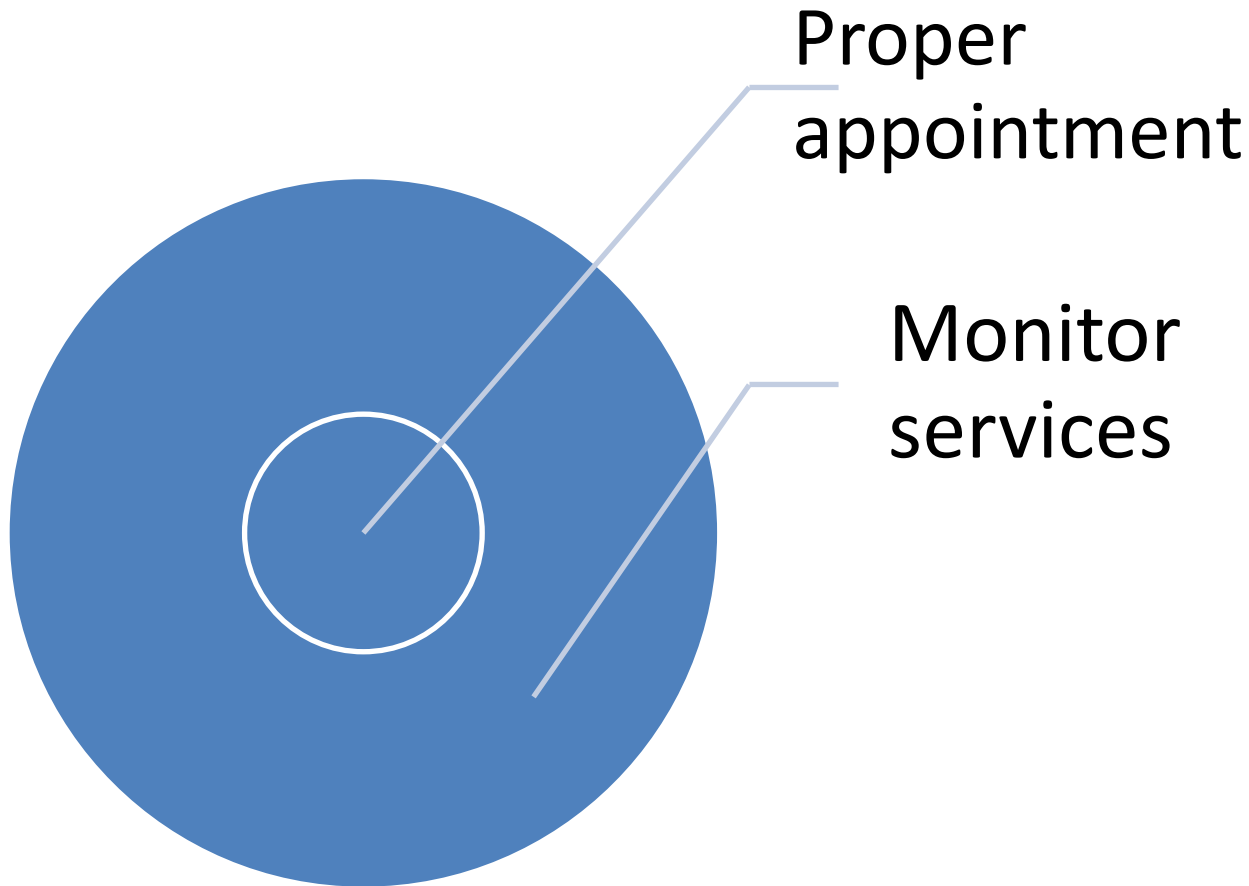
Designate

- Per plan documents OR
- Follow procedure in plan to designate another
- Have fiduciary duty only for what specified

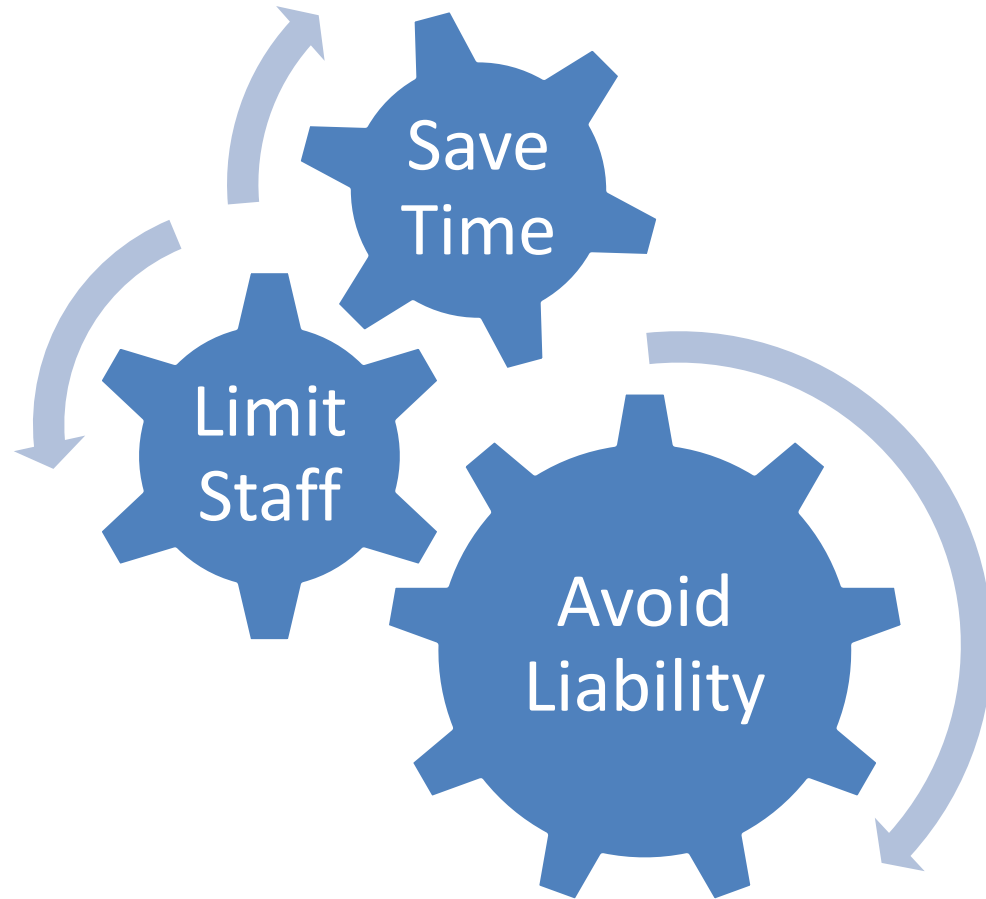
Allocate

- Among named fiduciaries themselves, **IF** follow plan procedure
- Carved out – each named fiduciary directly liable
- If no plan procedure, remain liable

What Fiduciary Duty Cannot Be Delegated?



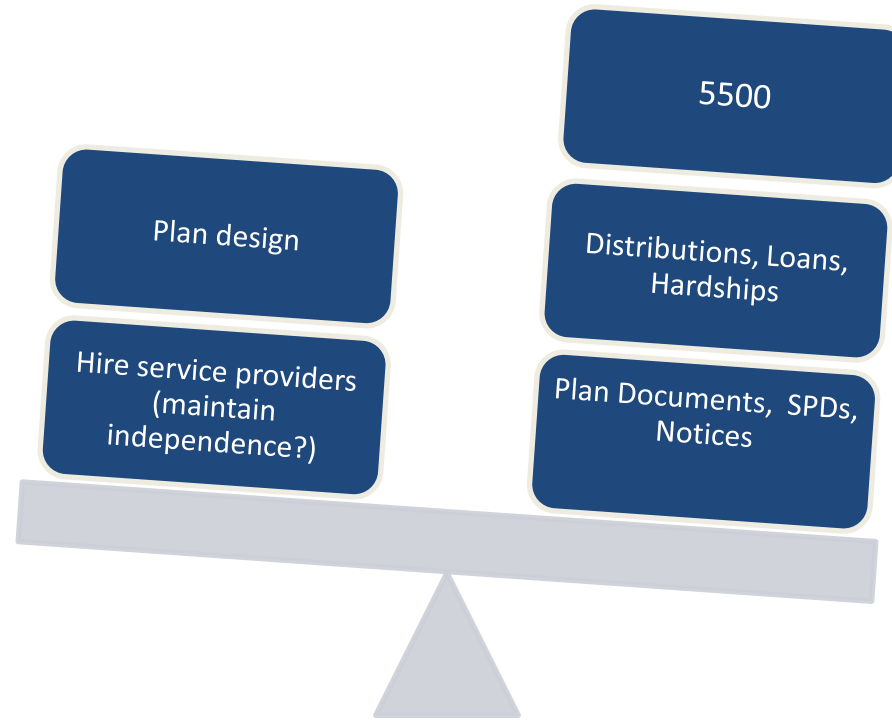
What Do Plan Sponsors Want?



Deciding What Duties to Assume--Can the risk be controlled/mitigated?

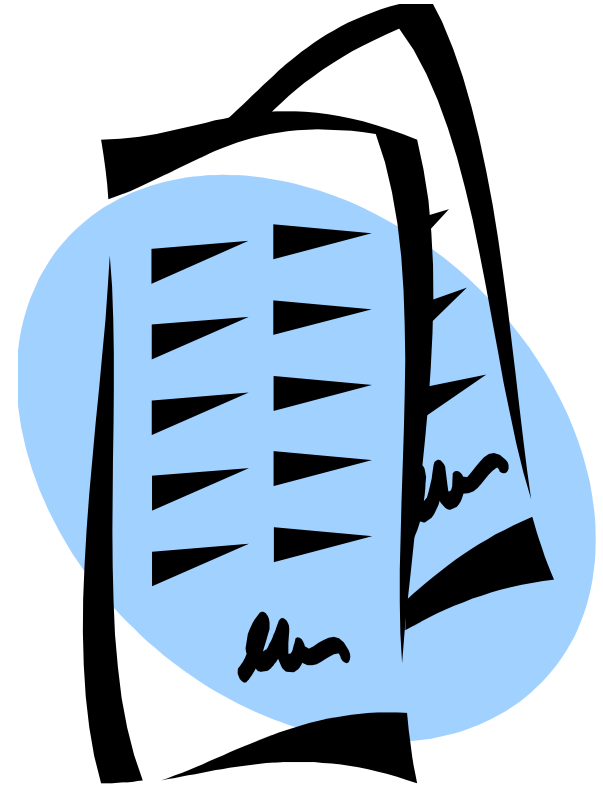
Do Not Have Necessary
Information, Expertise and
Resources

Have Necessary Information,
Expertise and Resources



Contracts

- Menu based, check-the-box format
- Bundled packages
- State what you *don't* do
- Sponsor represents that authorized to appoint
- Plain English



Conflicted Advice?

	1	2	3
3(16) Fiduciary Administrator	√	√	√
Registered Rep	√		
3(21) Advisor		√	
3(38) Investment Manager			√

A fiduciary may not use the authority, control, or responsibility which makes him/her a fiduciary to cause a plan to pay an additional fee to him/herself to provide a service. Nor use that authority to cause a plan to enter into a transaction in which he/she has an interest which may affect the exercise of best judgment as a fiduciary or receive additional consideration from a third party .

Pricing Services

Ala Carte

- Difficult to monitor
- Nickel and diming?

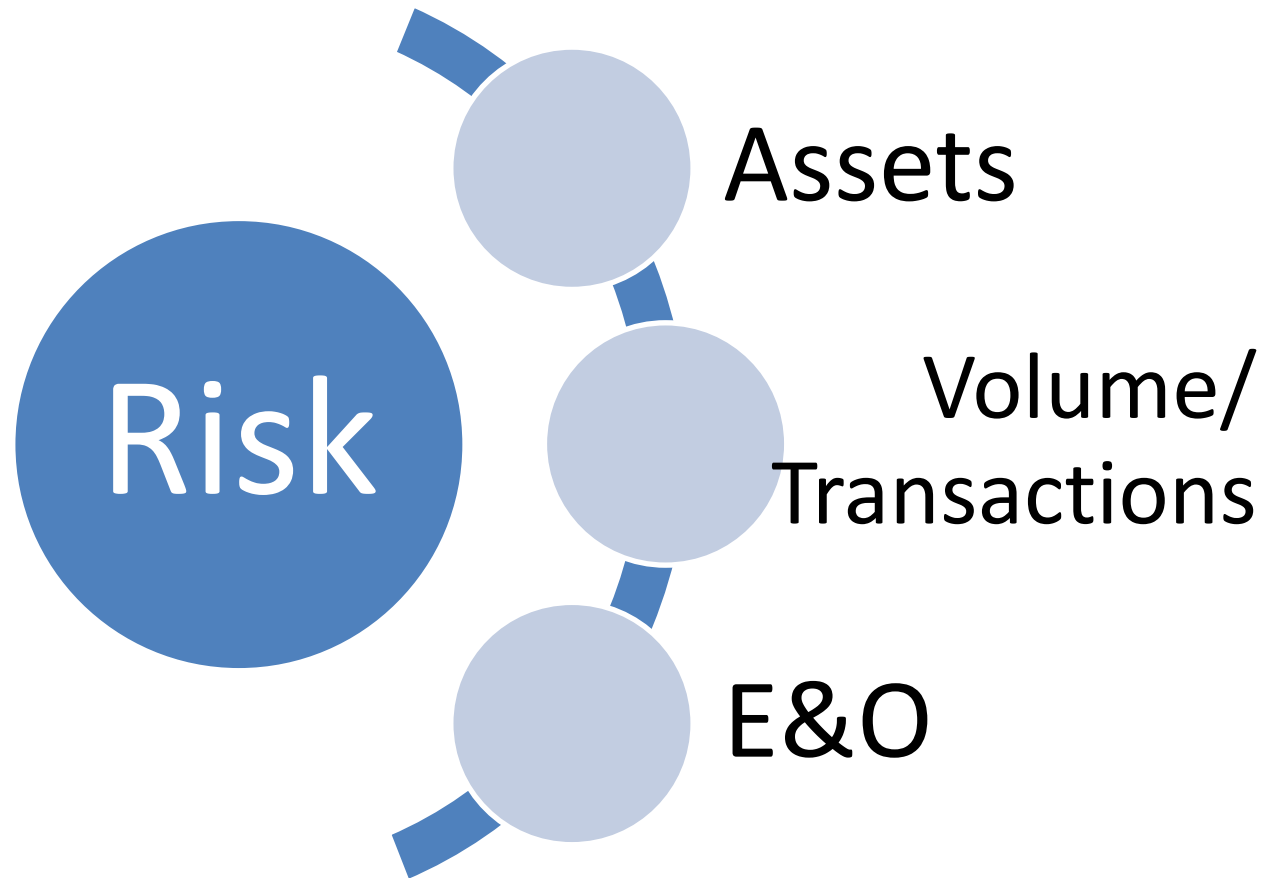
Fee Based

- Grows with assets
- Measuring increased work with increased assets?

Bundled

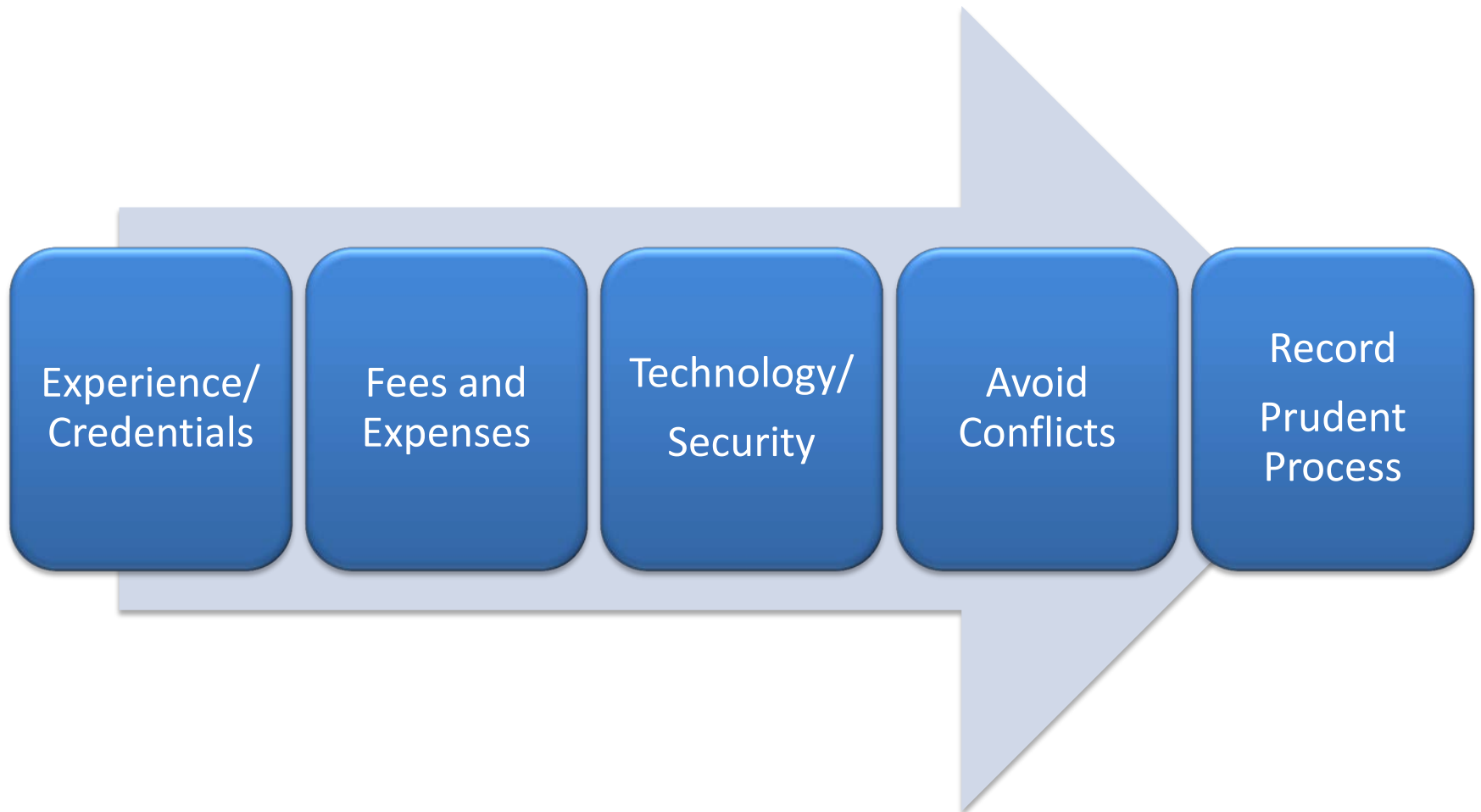
- Flat fee
- Base fee plus per transaction
- Base fee or basis points plus flat fee per decision

Pricing Services



Due Diligence

help prospects select you





ERISA Bond if “handling” funds

10 percent

Are you covered?

- Most E&O policies require special endorsement for fiduciary activity



Beware of Newest Shiny Object

- Revenue opportunity versus Real financial liability
- Do your homework
- Not for everyone
- Knowledge, Systems, Procedures
- Process, Process, Process



THANK YOU!
QUESTIONS?