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HOW TO AVOID LITIGATION in Your Retirement Plans



DISCLAIMER

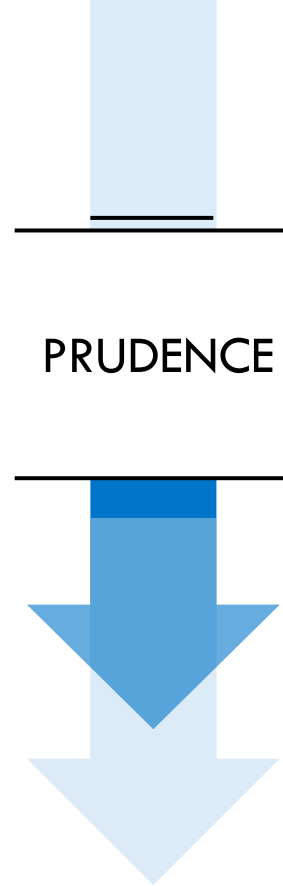
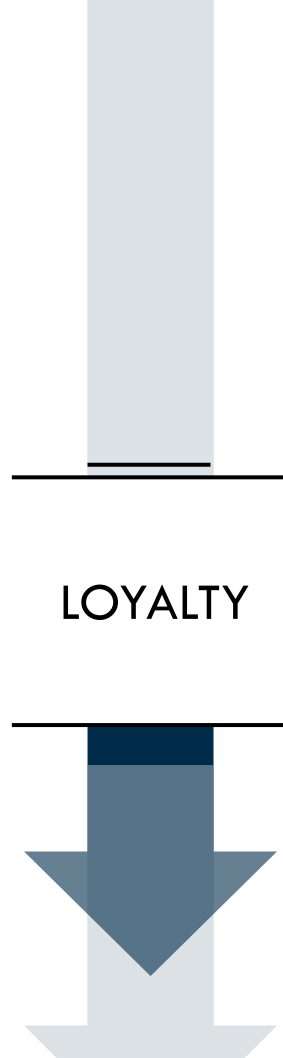
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FIDUCIARY DUTIES



FIDUCIARY FUNCTIONS



FIDUCIARY FUNCTIONS



Restore Losses



Civil & Criminal
Penalties



Fiduciary
Insurance &
Indemnification

PERSONAL LIABILITY



PARTICIPANT
LOSSES



MAKE-UP OF
EXCESS FEES



MISHANDLED
BENEFITS

POTENTIAL LIABILITY



CONCEAL/
PARTICIPATE



ENABLE



KNOWLEDGE

LIABLE FOR THE ACTIONS OF OTHERS



WAYS TO LIMIT YOUR LIABILITY

 <p>Fiduciary responsibilities Be aware of the importance of proper allocation of fiduciary responsibilities.</p>	 <p>Plan governance Develop proper plan governance procedures, investment guidelines, and policies.</p>	 <p>Processes and procedures Follow the processes and procedures developed.</p>	 <p>Legislative Updates Engage in periodic, timely regulatory reviews.</p>	 <p>Document relevant procedural processes, including:</p> <ul style="list-style-type: none"> • Fiduciary activities, such as meeting minutes and discussions. • Advice received from experts and any deliberations based on such advice. • Any legal opinions. • All formal corporate actions taken with respect to the plan.
 <p>Fee monitoring Monitor provider fees and services for reasonableness.</p>	 <p>Reporting requirements Comply with government reporting requirements.</p>	 <p>Insurance Have adequate insurance coverage.</p>	 <p>Education and tools Provide participant education and tools to help them make informed decisions.</p>	

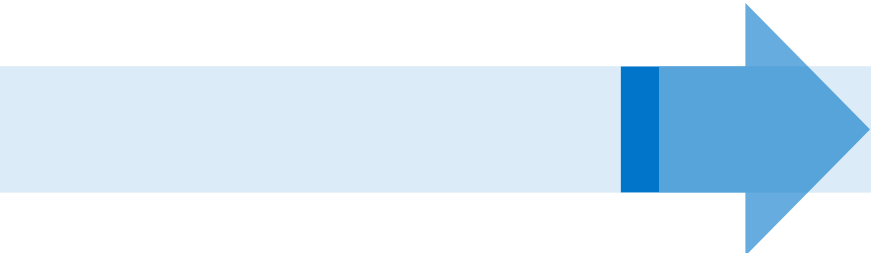
Overview of the Steps to Take to Protect Yourself as a Fiduciary

DEMONSTRATE THE PROCESS

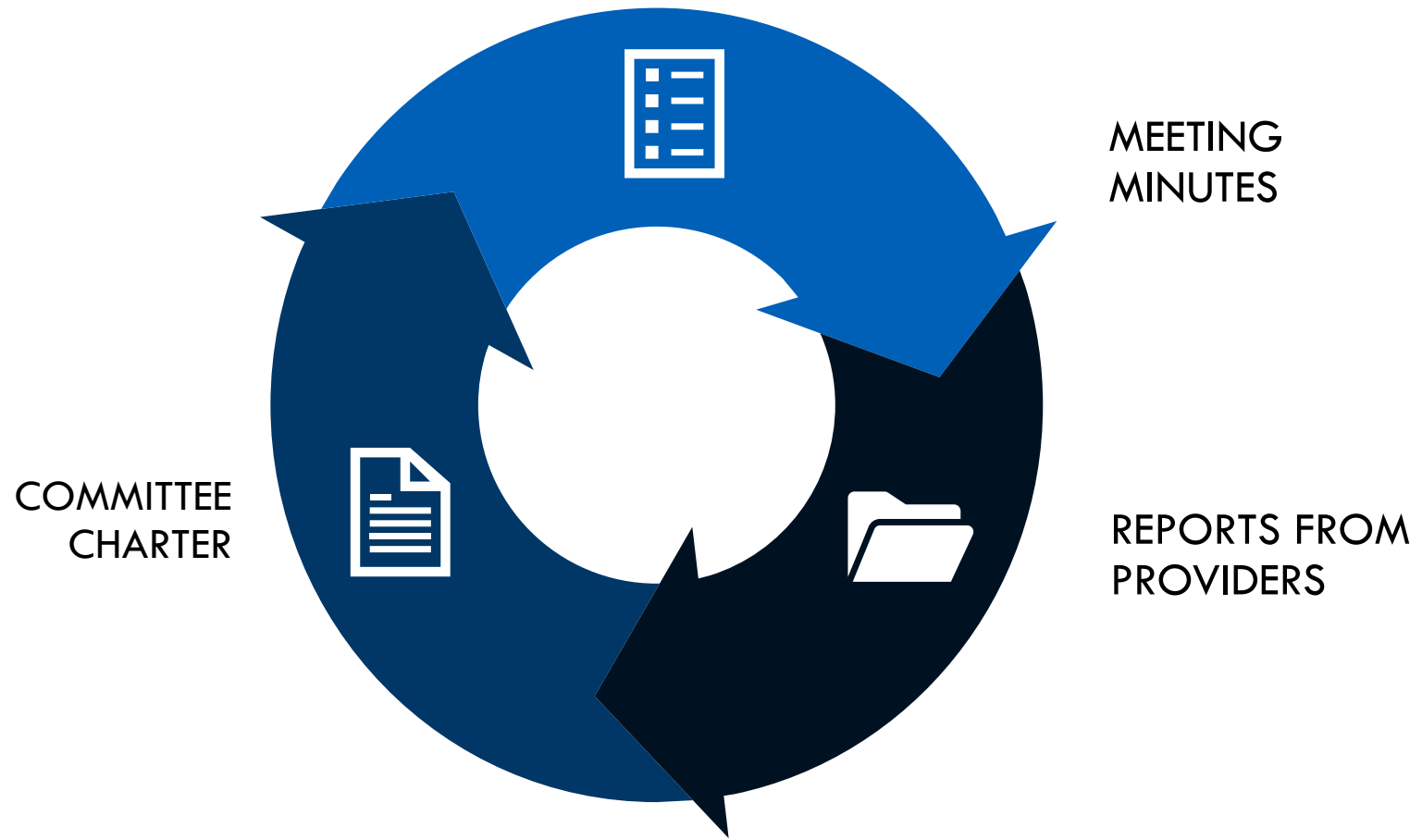


CREATE A RECORD

DOCUMENT THE REVIEW PROCESS



Implement & Document Prudent Fiduciary Process



Committee Procedures

Determine Structure of
Investment Menu



Monitor Performance
and Expenses Regularly



Investment Policy
Statement

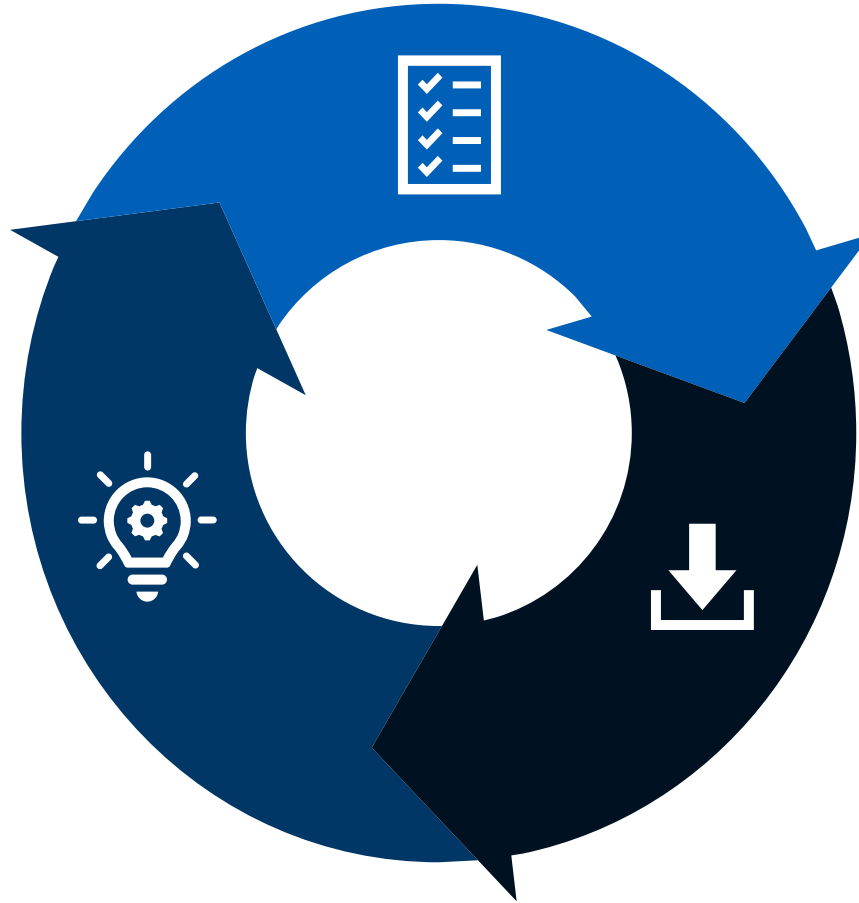


Replace Options
When Necessary



Investment Oversight

Understand Notice Requirements and Responsible Party



Ensure Correct Addresses

Keep Evidence of Mailings or Document Process



Full Disclosure to Participants

Perform Due Diligence
When Selecting Providers

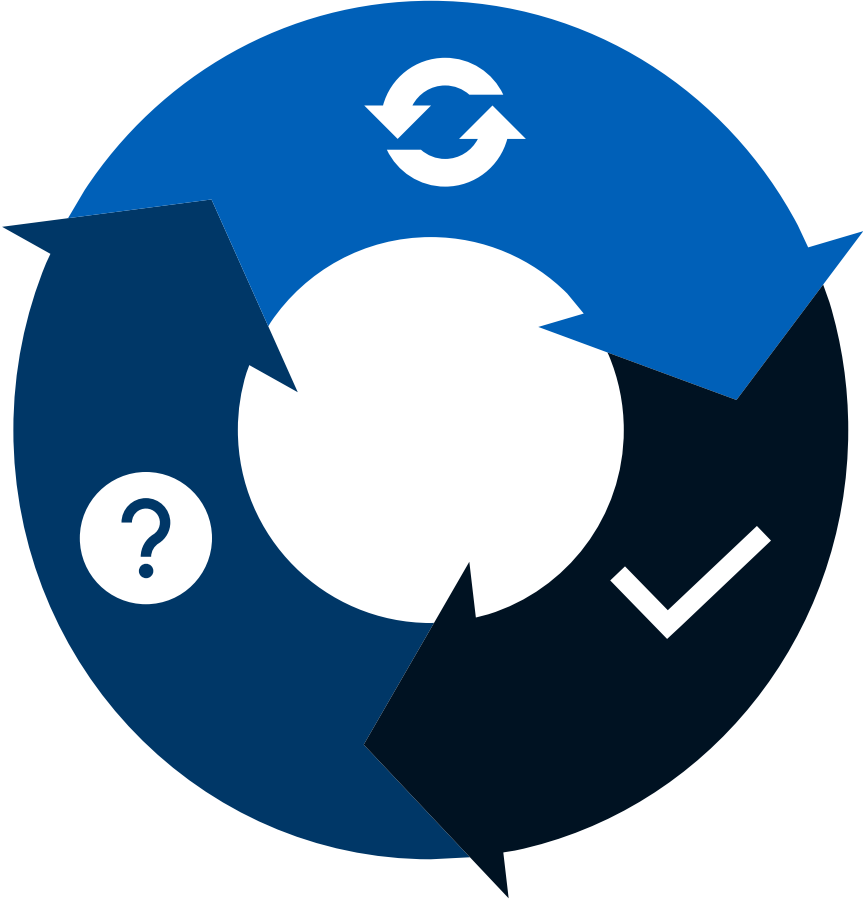


AT LEAST Annually
Review Performance

Annually Review Their Fees With
A Deeper Review Every Several
Years

Hire Professionals

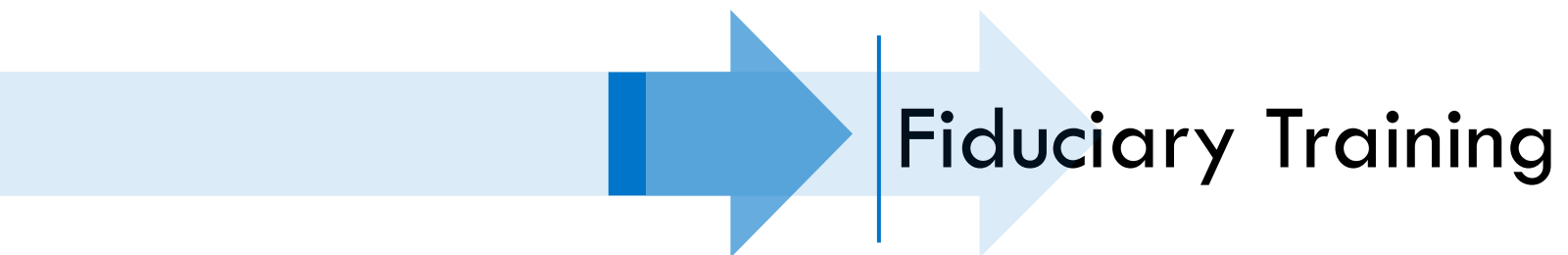
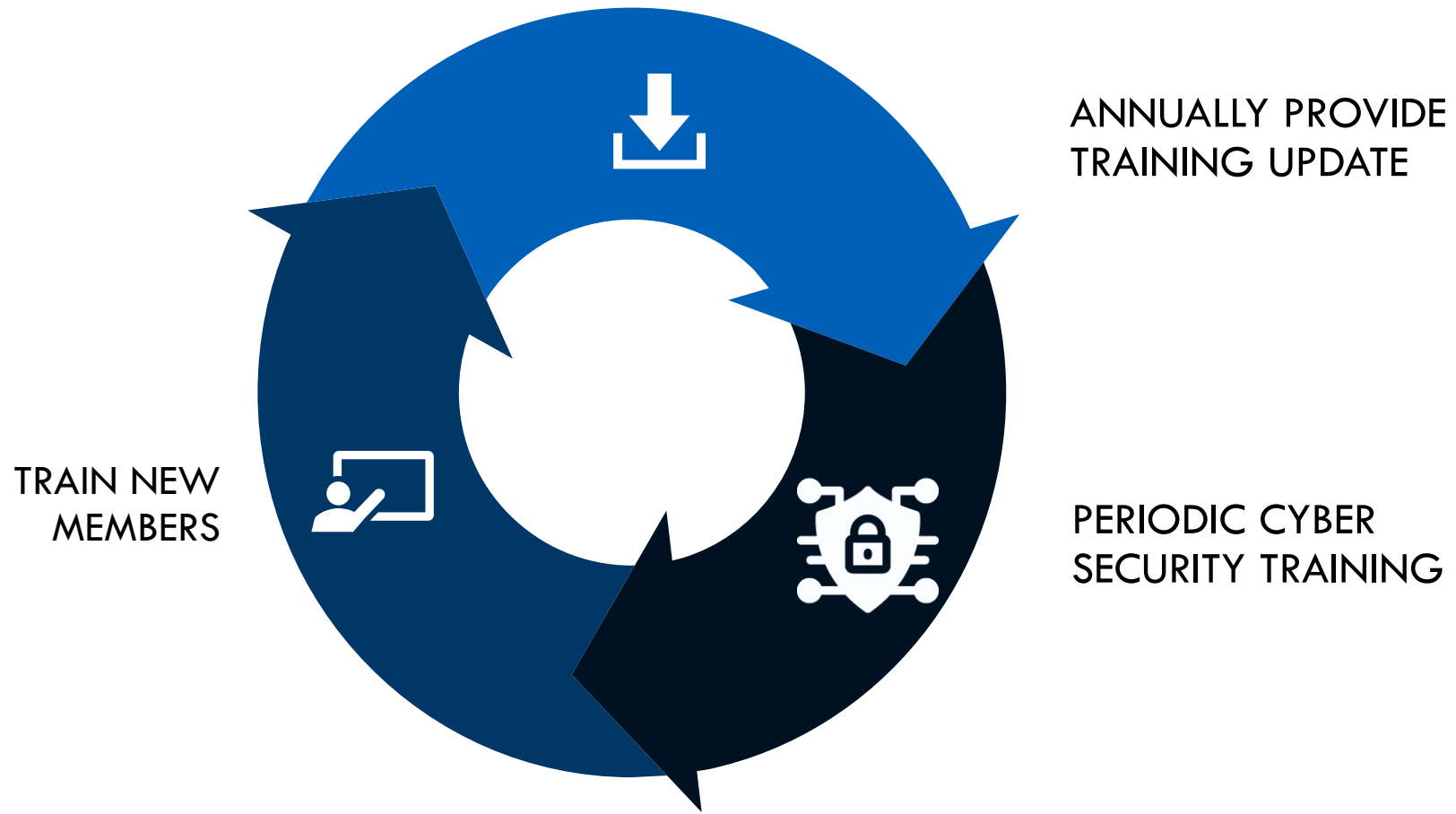
Do Members Possess
The Right Expertise



Replace Members
Who Aren't Engaged

Ensure You Have A
Quorum at Meetings

Proper Committee Members





ALLOCATION OF FUDICARY DUTIES

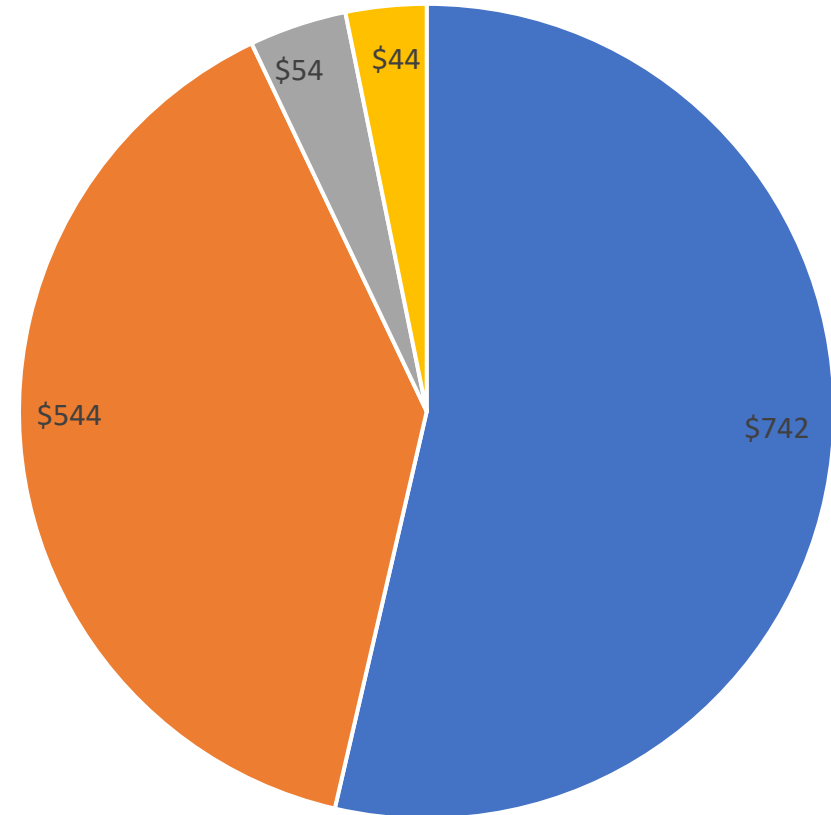


2024 DOL PENALTIES



DOL Recoveries

Total of \$1.4 Billion Recovered in 2024
Recoveries in Millions



■ DOL Enforcement Actions ■ Complaint Resolutions ■ Abandoned Plan Program ■ VFCP



Civil Investigation Results

Civil Investigations	
Total investigations closed	729
Total investigations closed with results	514 (71%)
Cases referred for litigation	53

Civil Investigation Recoveries	
Terminated vested participant benefit payments	\$432.6 million
All other investigations	\$309.3 million
Total recovered from investigations	\$741.9 million



Criminal Investigation Results

Criminal Investigations	
Total investigations closed	177
Number of guilty pleas or convictions	161
Number of individuals indicted	68



Informal Complaint Resolutions

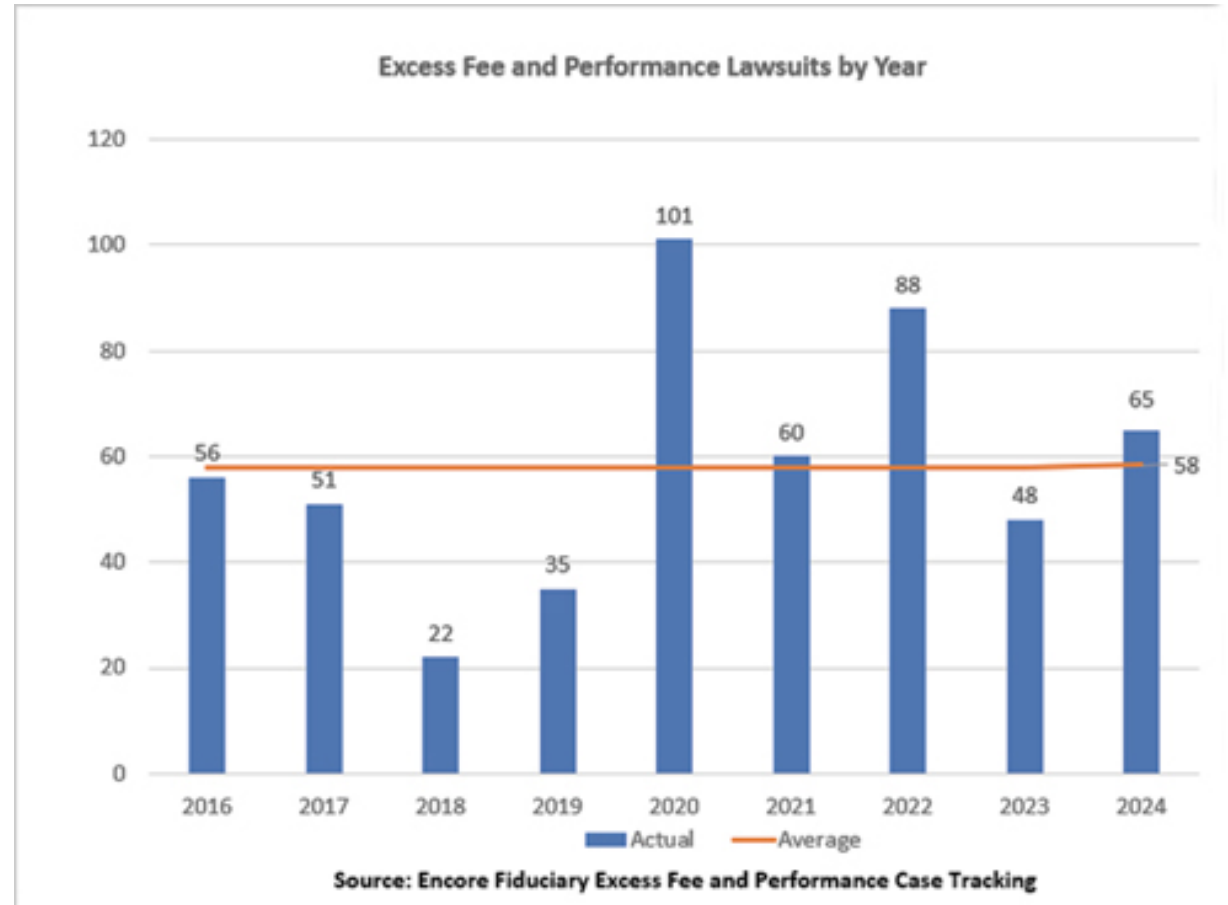
Informal Complaint Resolutions	
Total inquiries from participants and beneficiaries	199,094
Investigations opened from inquiry referrals	294
Total recovered from informal complaint resolution	\$544.1 million



Retirement Plan Litigation

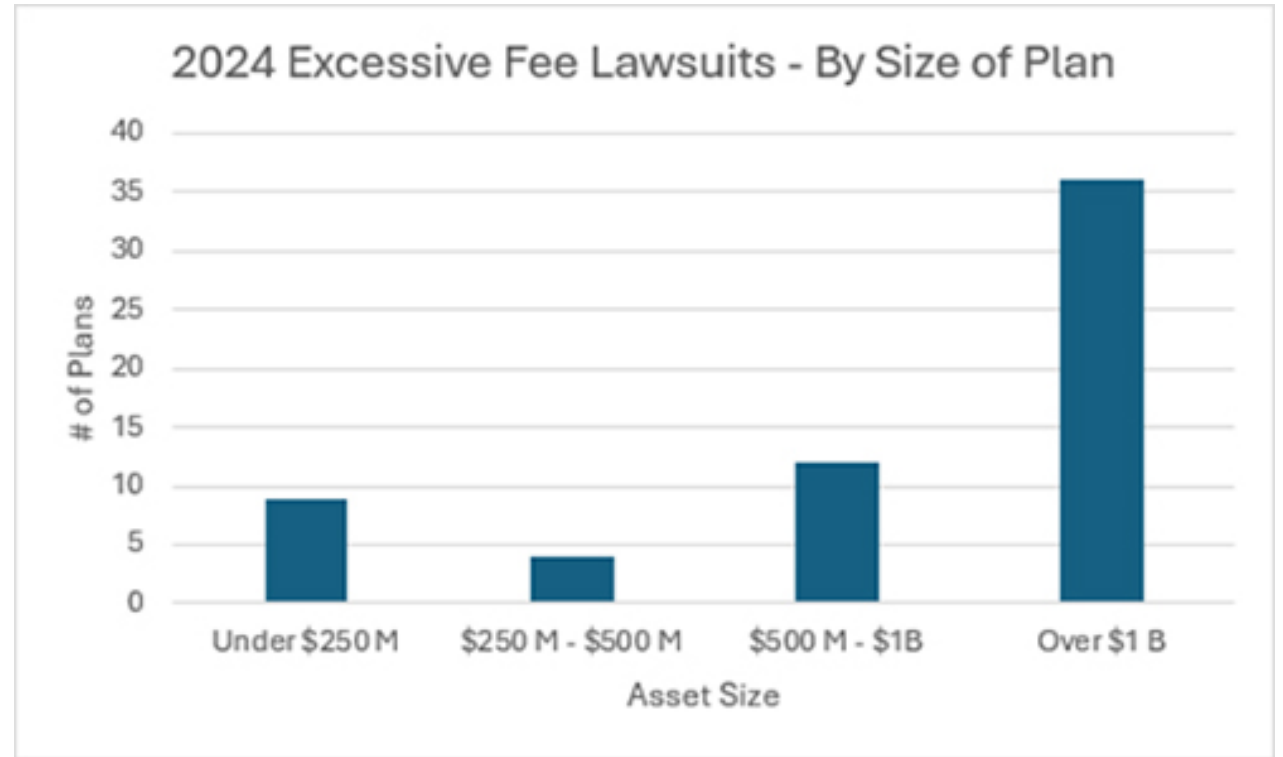


Plan Litigation





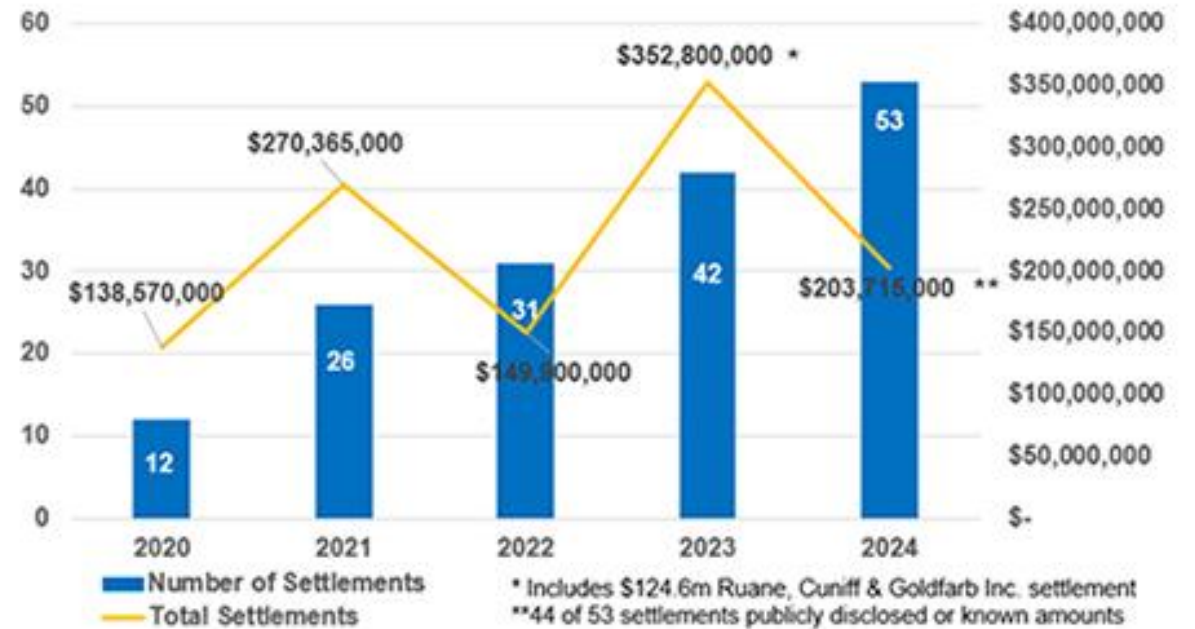
Plan Litigation





Plan Litigation

Excessive Fee Litigation Settlements
Years 2020 through 2024: 164 Total Settlements



Excessive recordkeeping costs

Not using low cost funds

Keeping funds with poor performance

Having too many actively managed funds

Having too many funds v. having too few funds

Pension plans – picking a risky annuity when de-risking or terminating

Common Claims in Litigation

More than 30 lawsuits filed since fall 2023 on how plan sponsors are using forfeitures

Alleging improper to use forfeitures to reduce employer contributions

Several have survived motion to dismiss and several have been dismissed

Brings to light the fiduciary responsibility of use of forfeitures

New Forfeiture Litigation Claims

US Supreme Ct Case – April 2025

Held plaintiffs don't need to plead facts to survive motion to dismiss

Only need to prove that a fiduciary:

- Caused the plan to engage in a transaction;
 - Knew or should have known it involved furnishing goods, services, or facilities;
 - Knew the transaction was with a party in interest.
-

Fiduciary governance & documentation more critical than ever

Cunningham v. Cornell University

Boston's Children's Hospital recently settled 403(b) case for \$3m

Class action alleging plan fees were excessive and that funds were risky and expensive

Alleged hospital engaged in virtually no comparison or benchmarking on fees

Used a more expensive actively managed target date fund

Monteiro v. Children's Hosp. Corp.



Key Takeaways

- ✓ If there is no committee today, consider establishing one
- ✓ Ensure there is proper Board delegation of duties
- ✓ Review/establish committee bylaws and delegation of responsibilities
- ✓ Ensure you have the right committee members
- ✓ Seek expert advice for fiduciary training as needed

Relating to Committees

- ✓ Establish a regular meeting cadence
- ✓ Ensure there a quorum at each meeting
- ✓ Develop a fiduciary calendar
- ✓ Ensure detailed minutes are taken at each meeting

Relating to Meetings

- ✓ Consider whether you need to hire a service provider/advisor
- ✓ Review agreements to understand whether providers are fiduciaries
- ✓ Ensure the fees that you are receiving are reasonable for services being provided
- ✓ Review and keep the service provider fee disclosures

Relating to Service Providers

- ✓ Review your IPS and make sure investments are being reviewed against it
- ✓ Regularly review investments or meet with advisor to review investments
- ✓ Ask whether there are lower share classes available
- ✓ Document reasoning why any underperforming fund is being retained

Relating to Investments

- ✓ At least annually, review your forfeiture balance
- ✓ Review your plan document to ensure forfeitures are being used in accordance with the document
- ✓ Use up forfeitures by the end of the year following the year in which they were incurred

Relating to Forfeitures

Q&A

The image features the text "Q&A" rendered in a bold, three-dimensional, blue font. The letters are thick and have a slight shadow cast beneath them, giving them a sense of depth. The "Q" is on the left, followed by an ampersand "&" in the middle, and the letter "A" on the right. The entire graphic is set against a plain white background.



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