

THE DEPARTMENT OF LABOR FIDUCIARY RULES

Key Points for Retirement Plan Sponsors

The significant growth of 401(k) plans and IRAs led the U.S. Department of Labor (DOL) to do something that it hadn't since 1975: implement, as of April 2016, stronger protections for investors who rely on advice from a financial advisor.

The rules expand the definition of who is a fiduciary, and include prohibited transaction exemptions that allow certain advisors who act as fiduciaries to continue to receive common forms of compensation if they provide advice that is impartial and in the best interest of the investor. Many of the provisions were effective in June, 2017. All of the new rules will be in effect on January 1, 2018.

To stay in compliance with the DOL rules, financial services firms must be sure their investment recommendations are prudent for the client, their compensation reasonable and they have not made any material misleading statements.

Reviewing the following questions and answers should help you prepare for implementation of the new rule.

Q: What are the purposes of the new regulations?

A: The DOL wants to ensure that financial advisors who provide advice about retirement accounts put their clients' interests first. Another goal is to require transparency about the cost of investment advice and the costs of financial products recommended by an investment advisor.

The rules also apply to plan-to-IRA transfers.

Q: What is the definition of fiduciary?

A: A person provides fiduciary investment advice to a plan if, among other things, he or she provides a recommendation regarding investment securities for a fee or other compensation. Further, fiduciary advice is present if the person making the recommendation indicates he or she is acting as a fiduciary within the meaning of ERISA or the Internal Revenue Code, offers the advice pursuant to a written or verbal agreement that it is based on the specific needs of the recipient of the advice, or directs the advice to a specific recipient.

Q: What constitutes a recommendation?

A: It is a communication that would reasonably be seen as a suggestion that the advice recipient take or refrain from a particular course of action.



Q: Does the investment advice rule apply to a recommendation to roll money out of a 401(k) plan into an IRA?

A: Yes, the DOL's final rule indicates that a recommendation of a distribution or rollover from a 401(k) into an IRA constitutes fiduciary advice under ERISA. Plan sponsors should confer with the plan's recordkeeper to determine how requests for plan distributions are handled.

Q: What is not viewed as covered investment recommendations?

A: Non-fiduciary communications include:

- **Education** – Regardless of who is providing the education or in what form, presentation of plan information and/or objective information about investment choices in the plan (such as fees, expenses investment objects, risk and return characteristics and historical return information) is non-fiduciary.
- **General Communications** – These include descriptions of investment concepts, market data about performance, price quotes and newsletters.

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- **Platform Providers** – Making available a platform of investment alternatives without regard to individual investor needs is not considered investment advice as long as the plan fiduciary is independent of the service provider.

Other categories of communications not considered investment advice include asset allocation models and interactive investment materials, so long as they are designated investment alternatives selected or monitored by an independent plan fiduciary, and certain other conditions are met.

Q: Are there exemptions from the DOL fiduciary rules?

A: Yes. The Best Interest Contract (BIC) exemption allows firms to avoid conflict of interest violations when they use their former compensation and fee practices as long as they mitigate conflicts of interest and provide advice designed to be in the best interest of their client. For this BIC exemption to apply, advisors must adhere to impartial conduct standards and provide various disclosures.

One requirement of the Best Interest Contract Exemption (BICE) is disclosure on the firm’s website.

Q: Are our employees who work on various aspects of the plan considered fiduciaries under the DOL rules?

A: If employees who work in payroll, accounting, human resources or finance routinely prepare reports or recommendations for the company or named fiduciaries as part of their normal job duties and do not receive any compensation beyond their normal pay, they will not be viewed as fiduciaries.

So long as they make no recommendations to a participant, these employees can provide non-fiduciary education including general financial, investment and retirement information. They also can:

- Help participants enroll, decide how much to save and learn more about the basics of the plan.

- Provide education on an individual or group basis, in writing or orally, via a call center, or by way of video or computer software.
- For plans, use of hypothetical asset allocation models or interactive investment materials intended to educate participants and beneficiaries as to what investment options are available are permitted, so long as they are designated investment alternatives selected or monitored by an independent plan fiduciary.

Q: What plan decisions made by a plan sponsor are affected by the new rule?

A: The same fiduciary standards apply, whether the plan sponsor hires someone to manage the plan, or does some or all of the plan management itself. The plan sponsor remains a fiduciary with respect to selecting and monitoring investments for the plan unless working with a 3(38) fiduciary (including default investments for automatic employee contributions), meeting conditions for fiduciary liability relief for these investments, hiring a service provider and disclosing information to participants, and reporting to Government Agencies, among other decisions.

Q: What should we as a plan sponsor do to endeavor to comply with the DOL fiduciary rules?

A: There are several steps you can take to help maintain compliance with DOL rules, including:

- Review your existing relationships with plan service providers to identify who may be treated as a fiduciary under the DOL rules.
- Review any written agreements with service providers to ensure compliance with the new regulations.
- Refresh your knowledge of fiduciary best practices.
- Review any education materials with your financial advisor to determine if there are inadvertent investment recommendations.
- Make sure that employees working on various aspects of the plan understand the fiduciary rules.

Q: Where can I get more information about recent changes to the fiduciary rules?

A: Contact your LPL advisor. More information can also be found at the Department of Labor’s website (<http://tinyurl.com/NewFiduciaryRules>) including the full rules, Fact Sheets and Frequently Asked Questions.

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