

# How Does the New DOL Fiduciary Investment Advice Rule Impact Plan Sponsors?

As you probably know, the Department of Labor issued final guidance on the fiduciary rule in April. Now that the dust has settled, let's take a closer look at how the new standards affect plan sponsors.

The biggest change is an expanded definition of fiduciary advice and who provides it. As such, you may see changes in the recommendations you receive from your retirement plan advisors and professionals, and probably additional, more detailed disclosures than before, too. Additionally, in many circumstances, the "investment advice" provided may be subject to ERISA fiduciary standards.



## What Constitutes Fiduciary "Investment Advice"?

Broadly speaking, any communication that can be construed as a recommendation that a plan, participant or beneficiary take or avoid a specific action, typically in exchange for a fee, is potentially subject to the rule. According to the DOL, these may be recommendations related to: 1. An investment e.g., buy, sell, hold), 2. Dealing with distributions from a plan or IRA,

and/or 3. Investment management (e.g., investment policies/strategies, asset allocation, investment advisor or management selections, etc.).

The more the communication is customized, the more likely it may be considered a recommendation. For example, a list of stocks tailored to a particular investor's goals would likely be viewed as fiduciary investment advice.

## Who Is a Fiduciary?

Furthermore, the recommendation must be made directly or indirectly e.g., through an affiliate) by someone who either:

- Confirms he or she is acting as a fiduciary,
- Provides advice based on the recipient's investment needs, with a clear understanding between both parties that they are doing so, or
- Makes recommendations to a specific recipient on the suitability of a particular investment or management decision in a retirement plan or IRA.

At worst, not clearly understanding and following these guidelines could lead to a bevy of prohibited transactions, resulting in a 15% penalty tax to the plan sponsor.

The DOL provides some relief in a provision called the "Best Interest Contract" (BIC) exemption. Simply, that means those providing investment advice must put their clients' best interests ahead of profits, avoiding payments that create conflicts of interest or receiving compensation in compliance with an approved exemption.



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### **What Communications Aren't Subject to the Rule?**

Communications such as provider marketing, general communications, plan information and investment education, as well as routine advisor marketing activities that do not include or result in specific recommendations or advice, are excluded from the DOL fiduciary advice guidelines, and are not considered recommendations under the rule.

### **What Do I Need to Do?**

Here's the key takeaway: You should carefully review your current relationships with your plan's advisors and professionals and make sure they're in line with the guidelines provided under the new fiduciary rule. You'll need to evaluate whether or not they should be treated as fiduciaries and, depending on their roles, how they should be compensated. Moreover, you'll

need to determine if those relationships still serve the best interests of your plan and participants.

Plan sponsors have until April 2017 to implement any changes related to the new fiduciary rule, and even longer to deal with implications of the BIC exemption. There's still time, but given the work involved, you'll want to start reviewing these relationships and making any necessary modifications as soon as possible. In short, there's no time like the present.

Find more details on the new DOL rule at <http://tinyurl.com/DOLFiduciaryAdviceInfo>.



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