

Explaining New DOL Fiduciary Rules - Impact on 401k Plan Participants

If your company sponsors a 401(k) plan, you must read this.

The Labor Department has issued **new rules** for tax-advantaged retirement accounts. Potentially, they affect every 401(k) plan participant. They also impact **IRA rollovers** originating from 401(k) plans, and investment recommendations that may be made pertaining to any distributions from 401(k)s.

Under the new rules, any financial services industry professional who makes investment recommendations to 401(k) plan participants, 401(k) plan sponsors, or IRA owners in exchange for compensation will be considered a **fiduciary** under ERISA. A fiduciary is someone who accepts a distinct, legally binding obligation to manage invested assets in the best interest of plan participants and their beneficiaries.^{1,2}

The Labor Department has expanded its definition of “fiduciary” to reduce chances of conflicts of interest affecting relationships between financial professionals and investors. In particular, it wants to diminish any potential conflict that may emerge related to the possibility of a commission from an investment transaction.

How will the new rules impact 401(k) plan sponsors & participants? Plan sponsors will have to decide if they want to provide participants with investment help amounting to education, or investment help amounting to financial advice.

The industry-wide move toward the fiduciary standard means that, in the near future, plan sponsors and participants may have to pay for investment advice, rather than receiving it for free as a component of a workplace retirement plan.²

Soon, **many financial professionals may initiate fee-based advisory relationships** with plan sponsors and participants. A fee-based advisory relationship is only fitting when a financial professional upholds a fiduciary standard; it diminishes the potential for conflicts of interest. In such a relationship, financial advice is provided only in exchange for an advisory fee. The fee may be hourly or per-project, it may be a quarterly or yearly retainer fee, or it may be an annual fee equivalent to a tiny percentage of account value.

Under the new rules, **plan sponsors and financial firms may still provide basic education on retirement saving without assuming the role of a fiduciary.** The presentation of plan information and general information on investing, personal finance, and retirement is not considered an offer of advice. So employees can learn how to enroll in a 401(k) plan, learn the basics about the types of investments offered

by the plan vendor, and learn how much to save for retirement without the plan sponsor or the financial firm inviting fiduciary duties and liabilities.²

A recommendation to make a 401(k)-to-IRA rollover is now defined as a fiduciary act. One possible effect of this: more workers may leave money in their 401(k)s after leaving an employer.²

In the near future, if a plan sponsor or plan participant wants **investment advice, investment appraisals, or investment management recommendations** pertaining to an IRA or a 401(k) plan account, or regarding a rollover or distribution of assets from an IRA or a 401(k), one of two documents must be in place:

**A written agreement to a fee-based advisory relationship with a financial professional.*

**A Best Interest Contract (BIC), in which a financial professional and a plan sponsor or participant agree in writing to a commission-based fee structure.* Financial professionals who receive primarily commissions rather than fees commit to acting as a fiduciary through this contract. The BIC directs plan sponsors and participants to a disclosure website where both the costs of the financial advice offered and the potential conflicts of interest in the advisory relationship are disclosed.^{3,4}

Fees are poised to rise as a consequence of the new rules, because insurance costs for financial services firms will be driven higher. Firms like ours will face an added compliance burden, and along with that burden, an increased possibility for litigation. Still, the financial industry has been transitioning toward a fee-based business model for years, and it is a business model that many investors have come to appreciate.

The fiduciary standard is scheduled to apply for plan advisors on April 1, 2017. The due date for updated forms, documents, contracts, and key participant disclosures that need to be legally reviewed is January 1, 2018.²

We welcome the chance to talk to you about all this. If you have questions or concerns, please call us at 217-337-5584 or email us at nate.lewis@rfsadvisors.com.

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Citations.

1 - money.usnews.com/money/blogs/planning-to-retire/articles/2016-04-08/the-new-retirement-account-fiduciary-standard [4/8/16]

2 - shrm.org/hrdisciplines/benefits/articles/pages/fiduciary-rule-plan-sponsors.aspx [4/6/16]

3 - wealthmanagement.com/regulation-compliance/final-dol-fiduciary-rules-glance [4/6/16]

4 - dol.gov/ebsa/faqs/faq-conflict-of-interest.html [4/11/16]