



## Department of Labor Final Fiduciary Rule Issued

On April 6, 2016, the U.S. Department of Labor (“DOL”) issued the final ERISA fiduciary definition regulations.

The DOL final rule and related exemptions are intended to address conflicts of interest in retirement advice, by requiring all who provide retirement investment advice to abide by a “fiduciary” standard – putting their clients’ best interest before their own profits.

### **Covered Investment Advice**

The final fiduciary rule applies to “Covered Investment Advice” that is not exempt (or carved out). Covered Investment Advice is defined in the regulations as a recommendation to a plan, plan fiduciary, plan participant, beneficiary and individual retirement account (“IRA”) owner for a fee or other compensation as to the advisability of buying, holding, selling or exchanging securities or other investment property, including recommendations as to the investment of securities or other property after the securities or other property are rolled over or distributed from a plan or IRA.

### **What is not covered investment advice under the new Rule?**

- Education that does not rise to the level of a “recommendation” as defined in the final Rule;
- General communications that a reasonable person would not view as an investment recommendation;
- A “platform of investment alternatives” that a service provider, such as record keepers and third party administrators offer to plan fiduciaries who choose the specific investment alternatives that will be made available to plan participants;
- Transactions with independent plan fiduciaries with financial expertise; and

- Swap and security-based swap transactions.

Employees of plan sponsors, employee benefit plans, employee organizations or employees of plan fiduciaries who routinely develop reports and recommendations for an employer or named fiduciaries for a plan are not investment advice fiduciaries of the sponsor's plans if they receive no fee or other compensation in connection with any recommendations beyond their normal compensation for work performed for their employer.

### **Best Interest Contract Exemption**

Under the Best Interest Contract Exemption advisers who are fiduciaries may continue to receive commission-based compensation. In order to qualify for this class prohibited transaction exemption, a financial institution must acknowledge fiduciary status for itself and its advisers, have policies and procedures designed to mitigate harmful impacts of conflicts of interest and must disclose basic information about their conflicts of interest and the cost of their advice. The final rule no longer requires the adviser have a written agreement with an ERISA plan and allows an agreement with an IRA owner to be entered into at time of the purchase of an investment.

### **Other Information**

The DOL final rule only applies to advice to ERISA retirement plans and IRAs (and similar savings plans). It does not apply to advice to governmental plans, church plans (that have not elected to be covered by ERISA) or other non-ERISA retirement savings arrangements.

### **What do plan sponsors need to do to comply with the final DOL Fiduciary Rule?**

- Determine whether an adviser is currently a fiduciary under the new fiduciary rule and, if not, what exception (or carve out) is the adviser relying upon if they do not believe they are a fiduciary.
- Discuss the Best Interest Contract Exemption with each adviser that is a fiduciary to determine how they will document and comply with that exemption.

Here are links to the following DOL documents:

- Fact Sheet – DOL Finalizes Rule to Address Conflicts of Interest in Retirement Advice, Saving Middle-Class Families Billions of Dollars Every Year: <http://www.dol.gov/ebsa/newsroom/fs-conflict-of-interest.html>
- Chart illustrating changes from the DOL's 2015 Conflict of Interest proposal to the Final Rule: <http://www.dol.gov/ProtectYourSavings/comparison-chart.htm>

Please let us know if you have any questions or if we can be of assistance.

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