



## Economic and Market Insights

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### What Does The New Fiduciary Rule Mean For Retirement Investors?

The Department of Labor (DOL) announced today its long-awaited new “fiduciary rule.” The rule provides a new interpretation of the term fiduciary under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code, which state that a person is considered a fiduciary to a plan or Individual Retirement Account (IRA) if he or she offers “investment advice for a fee.”

Under the prior rule, a person was not considered as dispensing investment advice unless they provided the advice “on a regular basis.” The DOL adopted the rule in the mid-1970s at the beginning of the IRA and 401(k) plan experiments; and the old rule gradually became outdated.

Further, in application it meant that many service providers who called themselves “advisors” were not providing “investment advice” within the meaning of the rule. These advisors faced a more lenient “suitability” standard.

Among other changes, the new rule eliminates the requirement that advice be provided “on a regular basis” for an advisor to be considered a fiduciary. Under the new guidelines a person gives fiduciary investment advice if he or she makes recommendations on buying, holding or selling securities, or makes recommendations as to the management of securities or other property in a retirement plan or IRA. A one-time sale of a commission-based product to a retirement plan or IRA now triggers fiduciary status.



Of course, even the new rule contains limitations and exceptions. The most well-known of these, called the Best Interest Contract Exemption, provides conditional relief for common compensation arrangements, such as commission and revenue sharing, subject to certain conditions, including disclosure of costs and conflicts of interests.

Many broker-dealers had previously avoided providing advice on a regular basis. So the new rule, and its intended and unintended consequences, may force major changes for those broker-dealers. For broker-dealers selling commission-based products, satisfying the terms of the Best Interest Contract Exemption will prove challenging. Even for registered investment advisors and banks, who have been accustomed to compliance with the more stringent fiduciary standard, the rule will present challenges, especially for the rollover advice they provide to Traditional and Roth IRA owners. On the other hand, for some providers the new rule will offer opportunities.

For more information on the change in definition of fiduciary, please visit the U.S. Department of Labor web site at <http://www.dol.gov/> where more details on the rule will be posted Friday.

### Takeaways

1. For plan sponsors, particularly small plan sponsors, expect a change in the service and documentation from advisors who previously provided advice on a non-fiduciary basis.
2. For IRA owners, expect more protection and more disclosure.
3. For plan sponsors and IRA owners, ask more questions of your advisors.

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