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Questions and Answers on the DOL Fiduciary Rule

What exactly is a fiduciary?

The term "fiduciary" comes from the Latin word, "fiducia," meaning trust. A fiduciary must act for the benefit of another person in a financial relationship and not for their own personal gain. Fiduciaries must disclose all conflicts of interest, and have a legal obligation to take into account the beneficiary's circumstances, goals, risk tolerance, time horizon and investment experience. In other words, when you hire a fiduciary, he or she is legally and ethically required to act in your best interests.

Why does the DOL Fiduciary Rule matter?

The rule is an important step in the right direction towards ensuring that consumers receive retirement planning advice that has their best interests in mind, and ushers in a new era of the financial services industry in which it better serves the needs of more consumers.

We see this as a component of a larger trend towards increased transparency with more options to get financial advice and guidance. Critics of the rule worry that it may force some advisors to abandon clients with small account balances, as they would not be profitable to serve. However, lower and middle income retirement savers have many cost effective options today that they didn't have before: robo-advisors, access to unbiased guidance through a workplace financial wellness program, fee-only CFP® professionals (including those who work on hourly charges or retainers), and low-cost financial planning services offered by reputable online investment companies. A retirement saver can choose the guidance that works best for their situation and their budget in ways they never could before. The fiduciary rule coupled with new innovations in the industry and cost effective ways to deliver good advice comes at a time when we need this the most.

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The rule by itself doesn't solve the entire retirement crisis though. While lower investment fees should improve account balances, Americans still need to save more. According to our 2015 Year in Review research on employee trends, only 22% of employees are on track to reach their income goals in retirement.

The fiduciary rule doesn't eliminate market risk, and consumers need to understand how they are invested and why. They must be able to explain their investments, understand why they invested, and the related risks and costs. Individuals can't lose sight that they have to practice financial self reliance. No one cares more about your money than you do.

Will our company have fiduciary responsibilities under the new rule?

Employers who offer retirement plans already have fiduciary responsibilities under the Employee Retirement Income Security Act (ERISA), the federal law regarding retirement plans that sets standards regarding fiduciaries. The DOL's ERISA Fiduciary Advisor is a tool which helps employers understand their basic fiduciary responsibilities in administering the plan and managing its assets. Per ERISA, a company still has fiduciary responsibilities even if they hire a third party service provider to manage the plan.

Employers who offer retirement plans, such as 401(k) or 403(b) plans, as well as Health Savings Accounts (HSA), must become familiar with the DOL rule. We see areas where employers may have to take extra care in exercising their fiduciary responsibilities. Employers will need to work with their retirement plan and financial wellness providers to:

- *Make sure that the education offered by the plan provider and/or workplace financial wellness provider is truly educational and unbiased, and not just consultative selling.*
- *Increase participant education on the risks of holding large, undiversified positions, including company stock.*

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- *Ensure that the plan offers a sufficient range of investments and does not inappropriately favor certain funds over others.*
- *Offer more education on all available retirement plan distribution options upon separation, including the benefits of remaining in the plan (if applicable), rolling funds to another plan or IRA, and taking a taxable distribution.*
- *Consider offering retirement income investment options (for those plans that permit retirees to remain in the plan after retirement and handle ongoing distributions).*
- *Clarify how robo-advice and other asset-allocation and rebalancing services falls under the fiduciary umbrella.*

How does the rule affect employees?

The expectation is that advisors who are now required to act as fiduciaries will recommend lower-fee investments to their clients. The DOL has estimated that this will save investors up to $40 billion in fees over the next 10 years. The practical implication of the fiduciary standard is that when choosing between two otherwise very similar investments, a fiduciary would choose the one with the lower costs. This is very helpful as the structure of much of the financial services industry is full of inherent conflicts of interest that don't always favor consumers.

Practically speaking, participants in employer-sponsored retirement plans with higher fees should see those fees reduced over time, as plan providers move towards incorporating lower-fee mutual funds in order to meet the fiduciary standard.

However, the new fiduciary rule only applies to retirement and other tax-advantaged accounts. Employees who have non-retirement investment accounts, e.g., a taxable brokerage or mutual fund account, are not covered under the DOL rule. This puts pressure on the Securities and Exchange Commission to step up and develop a uniform fiduciary standard that covers all investment advice.

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How does the rule affect workplace financial wellness programs?

The DOL rule is in the spirit of what workplace financial wellness programs have been addressing since they were first launched: offering unbiased financial guidance and coaching to employees so they can make wiser, informed decisions. As more employers become aware of the responsibilities under the Fiduciary Rule, we expect that an increasing number will adopt comprehensive workplace financial wellness programs as well as utilize financial wellness technology tools. Financial wellness programs in the workplace are compatible with, and support, the DOL goals of supporting financial education and empowering consumers of financial products and services.

The rule specifically gives "financial education" as an example of something which is not considered an investment recommendation. This means that employers who offer financial wellness programs can continue to offer comprehensive and holistic financial education, guidance and coaching to employees. Financial wellness programs can continue to help employees understand their benefits, including their retirement plans and HSAs.

The rule also better clarifies that retirement plan sponsors and providers can offer guidance and education funds within the employer-sponsored plan. Under the rule, it appears that education programs must be strictly educational and unbiased as not to appear to be making an investment recommendation. Benefits professionals who administer employer-sponsored retirement plans may choose to offer comprehensive financial education as a complement to investor education from the retirement plan provider. This is positive for the growth of workplace financial wellness as an employee benefit and as an emerging industry.

What will be the effect on fees?

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Does the rule affect other employee benefits, like insurance or voluntary benefits?

No. The DOL rule only covers advisors who give advice for retirement accounts, HSAs, and Coverdell Education Savings Accounts. The rule exempts those benefits that do not include an investment component, such as term life insurance, health insurance and disability insurance.

If a company offered investment advice as a voluntary benefit or an employee benefit (e.g., executive financial planning and investment management) that could fall under the DOL rule to the extent that it incorporates the employee's retirement investments.

What role will litigation play in further defining the rule?

The rule gives clients ammunition through the "Best Interest Contract Exemption," which states that the advisor must sign a contract stating that they will provide investment advice in the best interests of the client. We expect the rule to be further defined over time as dissatisfied clients take action against financial services firms through arbitration or lawsuits citing violations of the fiduciary standard in retirement accounts.